

Crime -
Victims Bill & rts.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 27, 1996

June 27, 1996

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: Renewing our Commitment to Crime Victims

We have made tremendous progress over the last 3 years in reducing crime and making America safer. Nonetheless, crime continues to affect the lives of millions of Americans, greatly diminishing their sense of safety and security.

For too long, the rights and needs of crime victims and witnesses have been overlooked in the criminal justice system. Through the Violent Crime Control and Law Enforcement Act of 1994 and the Antiterrorism and Effective Death Penalty Act of 1996, we have begun to address this problem. But those important measures are not enough.

As important as the protections those laws provide are, they do not -- and cannot -- give victims equal status with the accused. That's the next step we need to take.

I strongly believe that victims should be central participants in the criminal justice system, and that it will take a constitutional amendment to give the rights of victims the same status as the rights of the accused. In the interim, I want my Administration to do everything possible to ensure that victims' rights are respected and that victims' participation in the criminal justice process is encouraged and facilitated. Our Federal investigators and prosecutors should not simply comply with the letter of the law, they should also fulfill the spirit of the law.

That is why I am directing you to take a number of important steps that will improve the treatment of victims in the Federal, State, military, and juvenile criminal justice systems.

First, I am directing you to undertake a system-wide review and to take all necessary steps to provide for full victim participation in Federal criminal proceedings. I want you to hold the Federal system to a higher standard of victims' rights than ever before. In particular, I want you to adopt a nationwide automated victim information and notification system so that we can better inform and protect crime victims.

Second, I would like you to work with other Federal agencies whose missions involve them with crime victims in order to ensure that a common and comprehensive baseline of participation for victims can be achieved.

Third, I want you to review existing Federal statutes to see what further changes ought to be made. For example, I would like you to consider legislation that would prohibit employers from dismissing or disciplining employees who are victims of crime and whose participation as victims in criminal proceedings requires them to take time away from their employment.

more

(OVER)

Finally, I want you to work with State officials -- governors, attorneys general, legislators, district attorneys, and judges -- and victims' rights advocates to identify the needs, challenges, best practices, and resources necessary to help achieve a uniform national baseline of protections for victims. The Department of Justice should provide technical assistance to State and local law enforcement, as well as other Federal agencies, and serve as a national clearinghouse for information about the most effective approaches to realizing fully the rights of victims of violent crime.

To achieve these objectives, I expect you to identify funding needs where and as appropriate. Please report to me in writing as soon as possible on the specific steps you will take to achieve these goals.

WILLIAM J. CLINTON

#

BACKGROUND ON VICTIMS' RIGHTS CONSTITUTIONAL AMENDMENT

- **A victims' rights amendment to the U.S. Constitution is necessary because victims of violent crime are the most deserving of protection in the criminal justice system and yet have no Constitutional rights.**
 - The rights of those accused of violent crime are spelled out throughout the Constitution: the right to a fair trial; the right to counsel; the right to confront witnesses against them, etc.
 - Yet none disagree that state and federal criminal law proceedings must, whenever possible, be conducted in a manner that respects the rights of those who are the victims of violent crime.
 - Victims have no constitutional right to learn about the release of the accused or convicted offender. They have no right to attend the trial. They have no right to speak at parole hearings.
- **When a defendant's federal constitutional rights are even remotely implicated, a victim's assertion of a state or federal statutory right or state constitutional right is often automatically rejected.**
 - In New Jersey recently, the parents of a murder victim were refused the ability to exercise their rights in a new state law to address the jury when it was deciding whether or not to impose the death penalty.
 - * In 1995, they lost their 8-year-old girl, Jakiyah, when she went to visit a friend a few blocks away. She didn't return home a few hours later, and the police later found her body in a closet of an abandoned apartment that was being used by a homeless man. She had been sexually assaulted and strangled.
 - * Jakiyah's mother wanted the jurors who would consider whether to impose the death penalty to know more about her daughter than simply the grisly details of the crime. She wanted them to know that the day before Jakiyah's death, she had been accepted into a school for gifted children. Her mother wanted to say, "Who is he to decide how long a person can live? He has no right. Only God has that right."
 - * The trial judge said the law giving victims that right violated the

defendant's constitutional right to a fair proceeding.

-- In Utah, a state court reversed a rape conviction because it held that the accused rapist's constitutional right to due process was violated because the rape victim was given the opportunity, pursuant to a state victims' rights law, to sit in the courtroom throughout the trial.

- * The court said that her presence gave her the chance to tailor her testimony and thus violated the defendant's rights.

- * All defendants have the right to be present at their trials, even though they, too, could tailor their testimony to fit the proof. But that is left for a jury to consider.

- * A court could not exclude a defendant because a defendant's right to be present at trial is grounded in the Constitution.

- **The Constitution should be amended only if every other reasonable alternative has been exhausted.**

-- Victims have exhausted every other alternative: the tireless work of crime victims has led to passage of a victims' rights law in every state in the country; the enactment of a victims' rights constitutional amendment in 20 states (e.g., Florida, California, Michigan, Texas); and broad victims' rights protections in federal statutes, regulations and Department of Justice policy.

-- But when those rights come into conflict with a defendant's rights, for example, when the defendant objects to the victim being present at trial or speaking at sentencing, the defendant's right -- which is set forth in the federal constitution -- automatically trumps the victim's lesser right.

- **Victims should have a right to participate and be heard in the criminal justice system.**

-- Much like the First Amendment's right to petition the government for a redress of grievances or the right to vote protected throughout the Constitution, victims of violent crime should have a constitutional right to observe and take part in the government proceedings concerning the violent crime that was committed against them.

-- The amendment should be self-executing, meaning it does not require further legislation.

-- The amendment should enumerate certain specific rights for victims of violent crimes:

- * the right to have notice of, and not to be excluded from, public court proceedings;
- * to be heard by the trial court concerning the release of the accused, the sentence, and acceptance of any plea, if present at the proceedings;
- * to have notice and to attend and be heard in relation to parole hearings;
- * to be given notice of any release or escape from custody of the defendant;
- * to restitution from the defendant;
- * to reasonable measures to protect the victim from violence or intimidation by the defendant;
- * and to notice of these rights.

-- The amendment should authorize Congress to pass further legislation for federal proceedings and the state legislatures to pass further legislation for state proceedings.

- **In arriving at appropriate amendment language, we must ensure against unintended consequences that would require another amendment to cure.**

-- An amendment should not adversely affect prosecutors' ability to get convictions of violent criminals.

-- An amendment should not permit fellow criminals, such as gang members, who happen also to be victims of their associates' crimes, to take advantage of these protections.

-- An amendment should not expose local, state and federal governments and officials to civil damage suits.

-- To accomplish these objectives, an amendment may need to include a clause that permits Congress and the state legislatures to make appropriate exceptions and regulations.

- **Amending the Constitution may take years, and we should attempt to provide more protections for victims of violent crime immediately.**

-- The President has directed the Attorney General to take a number of important

measures to improve the treatment of victims in the criminal justice system.

-- The President has specifically asked the Attorney General to adopt a nationwide automated victim notification system so that all crime victims are informed and secure.

- * This system was the outgrowth of a tragedy in Kentucky when Mary Byron was shot to death by her ex-boyfriend, who was under indictment for raping her and, without her knowledge, had just been released from jail on bond.

- * Mary Byron's parents, John and Pat Byron, led the effort to install the computerized system, known as VINE, in their county and then their state.

- * The computerized system calls the victim when the defendant is released, and continues calling until it connects with the victim. It also provides a 24-hour-a-day calling service so that victims can learn the location of their assailant whenever they wish.

VICTIMS' RIGHTS Q&A
For Internal Use Only

- Q. Why is the President endorsing this amendment now? Isn't it plain that the President is announcing his support for an amendment for political reasons?
- A. No, it is not. The President's focus on victims' rights is not new. He has been fighting for victims' rights for nearly twenty years. As Arkansas Attorney General, he submitted two bills to provide crime-victim compensation. As Governor, he was able to pass laws that guarantee the right of victims to be present in the courtroom in all phases of the system; a Victim/Witness Coordinator assists victims and their families in coping with the criminal justice system; and a Victim Reparations Act allows compensation for victims and their families. These efforts prompted official recognition by the National Organization for Victim Assistance as an "ally" in the campaign for victims' rights.

President Clinton signed the Crime Act, the Anti-terrorism Act and Megan's Law, all of which recognized that victims need to be afforded a greater role in the criminal justice system. Specifically, the Crime Act provides victims of violent crime or sexual abuse the right to speak to the court before the imposition of a sentence in federal cases. The Crime Act also requires that state and local law enforcement be notified when federal inmates convicted of violent crime or drug trafficking are released, and encourages states to enact registration systems. Megan's Law added mandatory community notification procedures for criminals convicted of child abuse, rape, and other sexual crimes. The Anti-terrorism Act makes restitution mandatory in all violent crime cases.

Victims' rights and services increasingly have been the focus of public attention since the early 1970s when a few victim assistance programs were initiated by domestic violence and sexual assault victim advocates. Today there are more than 10,000 programs that provide services to crime victims across the country. Over the last 3 years, the Department's Office for Victims of Crime has provided more than \$564 million to help support these programs.

The first statutory protections for crime victims were enacted in the 1970s. By the 1980s, states enacted victims' bills of rights. Today, virtually every state has a victims' bill of rights, and 20 states have victims' rights constitutional amendments.

Throughout the country, however, various victims' protections have been struck down by courts that determined that the victims' rights were in conflict with, and inferior to, defendants' federal constitutional rights. Just last year, a New Jersey court struck down a newly enacted state law that would have allowed a murdered child's parents to speak to the jury during sentencing.

In April, Senators Kyl and Feinstein introduced a proposed constitutional amendment. The President then asked the White House Counsel and the Attorney General to study the amendment and make detailed recommendations to him. This process has recently been completed.

Q. Isn't this just another case of "Me, too", as President Clinton is following Bob Dole's support for a victims' rights amendment?

No, throughout his political life, as state attorney general, Governor, and President, Bill Clinton has repeatedly proposed and signed legislation to protect victims' rights.

And the President's response to the Kyl-Feinstein amendment is anything but "Me, too." The President is not simply endorsing it, as others have done. Rather, the Administration has studied it carefully, and the President is supporting the elements of it that work and those that need further attention.

The President has been consistent and unwavering in his efforts to fight violent crime. From the Crime Bill to the Brady Bill to the Antiterrorism Bill, we are making a difference. Those laws contained protections for victims, and as important as those protections are, they do not -- and cannot -- give victims equal status with the accused. That's the next step we need to take.

Q. If you support amending the Constitution in this area, why not support amendments for other policies you support, such as prayer in school, anti-flag burning, and balanced budget?

It is important to take each proposed amendment on its own terms. The President has never taken the position that we should never amend the Constitution. What he has said is that amending the Constitution is a serious matter that should not be undertaken unless and until we are sure that all other alternatives short of amending the Constitution have been attempted. There most certainly has been exhaustion in this area.

As for prayer in school, the President did not support an amendment even though he believed that the right to free exercise of religion includes voluntary prayer in school. The First Amendment was carefully crafted to construct a balance between protecting the free exercise of religion and prohibiting the establishment of religion. The President does not believe that we should alter the balance that the Founders struck and that has served us well throughout history.

Flag-burning is also a question of existing language in the First Amendment. Although the President may not agree with particular decisions in this area, he does not believe a constitutional amendment for a particular type of expression is warranted.

Both the school prayer and flag burning amendments would have opened up the First Amendment, which the President has said is a dangerous proposition. In contrast, a victims' rights amendment is consistent with existing constitutional provisions that guarantee the right of citizens to participate in their government. Prior amendments have afforded American citizens the right to vote, sit on juries, and petition the government for redress of grievances. A victims' rights amendment similarly will give victims of crime the right to participate in the criminal justice process.

As for the balanced budget amendment, amending the Constitution would be a hollow gesture because it would not bring us any closer to a solution. It is essentially unenforceable, or, worse, it would give unelected judges the power to make economic decisions for the country. In contrast, we believe that a victims' rights amendment can be drafted that is both enforceable and effective.

Q. What effect will a victims' rights amendment have on defendants' rights?

It will change things in that a defendant's assertion of a constitutional right will no longer be a trump card that automatically and without consideration defeats the victim's lesser right. But neither will the victim's right automatically defeat a defendant's recognized right. With a victims' rights amendment, their respective rights will have to be balanced, just like the rights to a fair trial and free press are now balanced. This amendment will give defendants' and victims' rights the same constitutional status and will ensure that they are on equal footing during the balancing process. In essence, it will give equal dignity and respect to victims and defendants with regard to participation in the criminal justice process.

Q. Does the Administration support Kyl-Feinstein? Why not?

The Administration supports much of Kyl-Feinstein. It is substantially self-executing, meaning it does not require further legislation.

We support an amendment that gives victims the right to have notice of, and not to be excluded from, public court proceedings; to be heard by the trial court concerning the release of the accused, the sentence, and acceptance of any plea, if present at the proceedings; to have notice and to attend and be heard in relation to parole hearings; to be given notice of any release or escape from custody of the defendant; to restitution from the defendant; to reasonable measures to protect the victim from violence or intimidation by the defendant; and to notice of these rights. Most of those rights parallel Kyl-Feinstein.

We also support permitting, as Kyl-Feinstein does, Congress to pass further legislation for federal proceedings and the state legislatures to pass further legislation for state proceedings.

We do not support, however, an amendment that could adversely affect prosecutors' ability to get convictions of violent criminals. We do not support permitting fellow criminals, such as gang members, who happen also to be victims of their associates' crimes, to take unfair advantage of these protections. We also do not support exposing local, state and federal governments and officials to civil damage suits.

Q. What has the Administration done for victims?

A. [See Above.]

Q. What process did the Administration undertake in determining its position on this matter?

The President asked the White House Counsel and the Attorney General to study Kyl-Feinstein and to report back to him with their assessments. They have been engaged in that process since the day Kyl-Feinstein was introduced.

Q. Is it true that within the Department of Justice there was widespread disagreement about whether to endorse amending the Constitution?

The Department of Justice supports a victims' rights constitutional amendment. It is true that some of the goals of the amendment can be achieved with non-constitutional measures. And the Attorney General has been directed to identify and implement them. But some things just can't be accomplished without an amendment. For example, an amendment is necessary to give parity to defendants' and victims' rights, and to ensure that victims have a basic set of rights consistent throughout the federal and state criminal justice systems, including in military and juvenile proceedings.

Q. Isn't it inconsistent on the one hand to declare that nothing short of a constitutional amendment will suffice and on the other hand to announce a series of executive actions to help victims?

A. No, both announced measures are necessary to fulfill the fundamental goal of protecting victims of violent crime. It is true that some of the goals of the amendment can and must be achieved with non-constitutional measures, such as the victim notification system. The Attorney General has been directed to implement some of them. But some things just can't be accomplished without an amendment. For example, an amendment is needed to give parity to defendants' and victims' rights, and to ensure that victims have a basic set of rights throughout the federal and state criminal justice systems.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

June 25, 1996

REMARKS BY THE PRESIDENT
AT ANNOUNCEMENT OF VICTIMS' RIGHTS CONSTITUTIONAL AMENDMENT

The Rose Garden

12:11 A.M. EDT

THE PRESIDENT: Good morning, ladies and gentlemen, and let me thank you all for being here. Thank you, Senator Kyl and Senator Feinstein, for your ground-breaking work here. Thank you, Senator Exon; my longtime friend, Senator Heflin. Thank you, Congressman Frost, Congressman Stupack, Congressman Orton.

I thank all the representatives here of the victims community, the law enforcement community. I thank the Attorney General and John Schmidt and Aileen Adams and Bonnie Campbell for doing such a fine job at the Justice Department on all criminal justice issues. I thank the Vice President and, especially, I want to thank Roberta Roper and the other members of the National Movement for Victims' Advocacy. And, Mr. Roper, thank you for coming. Thank you, John and Pat Byron; thank you, Mark Klaas; and thank you, Pam McClain. And especially, John Walsh, thank you for spending all of these years to bring these issues to America's attention. Thank you, sir. (Applause.)

I'd also like to say a special word of thanks to the person who did more than any other person in the United States to talk me through all of the legal and practical matters that have to be resolved in order for the President to advocate amending our Constitution: former prosecutor and a former colleague of mine, Governor Bob Miller of Nevada. Thank you, sir, for your work here. (Applause.)

For years, we have worked to make our criminal justice system more effective, more fair, more even-handed, more vigilant in the protection of the innocent. Today, the system bends over backwards to protect those who may be innocent, and that is as it should be. But it too often ignores the millions and millions of people who are completely innocent because they're victims, and that is wrong; that is what we are trying to correct today.

When someone is a victim, he or she should be at the center of the criminal justice process, not on the outside looking in. Participation in all forms of government is the essence of democracy. Victims should be guaranteed the right to participate in proceedings related to crimes committed against them. People accused of crimes have explicit constitutional rights. Ordinary citizens have a constitutional right to participate in criminal trials by serving on a jury. The press has a constitutional right to attend trials. All of this is as it should be. It is only the victims of crime who have no constitutional right to participate, and that is not the way it should be. (Applause.)

Having carefully studied all of the alternatives, I am now convinced that the only way to fully safeguard the rights of victims in America is to amend our Constitution and guarantee these basic rights -- to be told about public court proceedings and to attend them; to make a statement to the court about bail, about sentencing, about accepting a plea if the victim is present, to be

MORE

told about parole hearings to attend and to speak; notice when the defendant or convict escapes or is released, restitution from the defendant, reasonable protection from the defendant and notice of these rights.

If you have ever been a victim of a violent crime, it probably wouldn't even occur to you that these rights could be denied if you've never been a victim. But, actually, it happens time and time again. It happens in spite of the fact that the victims' rights movement in America has been an active force for about 20 years now.

The wife of a murdered state trooper in Maryland is left crying outside the courtroom for the entire trial of her husband's killers, because the defense subpoenaed her as a witness just to keep her out, and never even called her. A rape victim in Florida isn't notified when her rapist is released on parole. He finds her and kills her.

Last year in New Jersey, Jakiyah McClain was sexually assaulted and brutally murdered. She had gone to visit a friend and never came home. Police found her in the closet of an abandoned apartment; now, her mother wants to use a New Jersey law that gives the murder victims' survivors the right to address a jury deciding on the death penalty. She wants the jury to know more about this fine young girl than the crime scene reports. She wants them to know that Jakiyah was accepted into a school for gifted children the day before she died. But a New Jersey judge decided she can't testify even though the state law gave her the right to do so. He ruled that the defendant's constitutional right to a fair trial required him to strike to law down.

Well, Jakiyah's mother had the courage to overcome her pain to be with us today. We have to change this for her and for other victims in America. Thank you, and God bless you. (Applause.)

The only way to give victims equal and due consideration is to amend the Constitution. For nearly 20 years I have been involved in the fight for victims' rights since I was attorney general in my home state. We passed laws then to guarantee victims' rights to attend trials and to get restitutions, and later to get notice and to participate in parole hearings.

Over all those years, I learned what every victim of crime knows too well: As long as the rights of the accused are protected but the rights of victims are not, time and again, the victims will lose.

When a judge balances defendants' rights in the Federal Constitution against victims' rights in a statute or a state constitution, the defendants' rights almost always prevail. That's just how the law works today. We want to level the playing field. This is not about depriving people accused of crimes of their legitimate rights, including the presumption of innocence; this is about simple fairness. When a judge balances the rights of the accused and the rights of the victim, we want the rights of the victim to get equal weight. When a plea bargain is entered in public, a criminal is sentenced, a defendant is let out on bail, the victim ought to know about it and ought to have a say.

I want to work with the Congressional leadership, the House and Senate Judiciary Committees, including Senators Kyl and Feinstein and Chairman Hyde and law enforcement officials, to craft the best possible amendment. It should guarantee victims' rights in every court in the land -- federal, state, juvenile, and

military. (Applause.) It should be self-executing so that it takes effect as soon as it's ratified without additional legislation. Congress will take responsibility to enforce victims' rights in federal courts, and the states will keep responsibility to enforce them in state courts, but we need the amendment.

I also want to say, just before I go forward, again I want to thank Senators Kyl and Feinstein and the others who have approached this in a totally bipartisan manner. (Applause.) This is a cause for all Americans. When people are victimized, the criminal almost never asks before you're robbed or beaten or raped or murdered: Are you a Republican or a Democrat? This is a matter of national security just as much as the national security issues beyond our borders on which we try to achieve a bipartisan consensus. And I applaud the nonpolitical and patriotic way in which this manner has been approached in the Congress, just like it's approached every day in the country -- and we ought to do our best to keep it that way.

We know that there can be, with any good effort, unforeseen consequences. We think we know what they would likely be and we believe we know how to guard against them. We certainly don't want to make it harder for prosecutors to convict violent criminals. We sure don't want to give criminals like gang members, who may be victims of their associates, any way to take advantage of these rights just to slow the criminal justice process down.

We want to protect victims, not accidentally help criminals. But we can solve these problems. The problems are not an excuse for inaction. We still have to go forward.

Of course amending the Constitution can take a long time. It may take years. And while we work to amend it, we must do everything in our power to enhance the protection of victims' rights now. Today I'm directing the Attorney General to hold the federal system to a higher standard than ever before, to guarantee maximum participation by victims under existing law and to review existing legislation to see what further changes we ought to make.

I'll give you an example. There ought to be, I believe, in every law, federal and state, a protection for victims who participate in the criminal justice process not to be discriminated against on the job because they have to take time off. That protection today is accorded to jury members; it certainly ought to extend to people who are victims who need to be in the criminal justice process. And we shouldn't wait for that kind of thing to be done. (Applause.)

I want investigators and prosecutors to take the strongest steps to include victims. I want work to begin immediately to launch a computerized system so victims get information about new developments in a case, in changes in the status or the location of a defendant or a convict.

I do not support amending the Constitution lightly; it is sacred. It should be changed only with great caution and after much consideration. But I reject the idea that it should never be changed. Change it lightly and you risk its distinction. But never change it and you risk its vitality.

I have supported the goals of many constitutional amendments since I took office, but in each

amendment that has been proposed during my tenure as President, I have opposed the amendment either because it was not appropriate or not necessary. But this is different. I want to balance the budget, for example, but the Constitution already gives us the power to do that. What we need is the will and to work together to do that. I want young people to be able to express their religious convictions in an appropriate manner wherever they, even in a school, but the Constitution protects people's rights to express their faith.

But this is different. This is not an attempt to put legislative responsibilities in the Constitution or to guarantee a right that is already guaranteed. Amending the Constitution here is

simply the only way to guarantee the victims' rights are weighted equally with defendants' rights in every courtroom in America.

Two hundred twenty years ago, our Founding Fathers were concerned, justifiably, that government never, never trample on the rights of people just because they are accused of a crime. Today, it's time for us to make sure that while we continue to protect the rights of the accused, government does not trample on the rights of the victims. (Applause.)

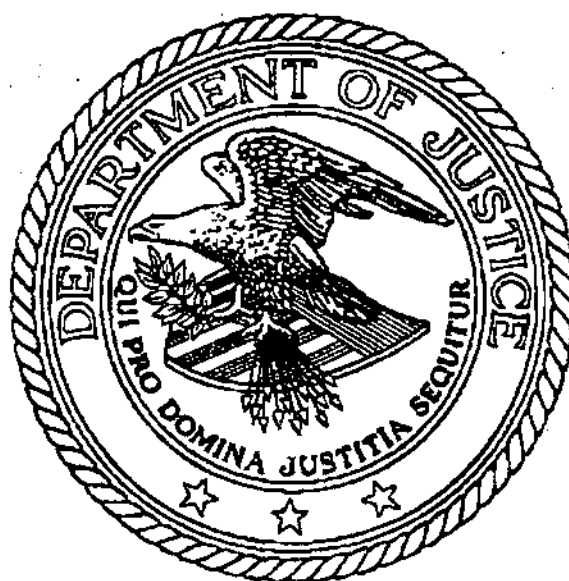
Until these rights are also enshrined in our Constitution, the people who have been hurt most by crime will continue to be denied equal justice under law. That's what this country is really all about -- equal justice under law. And crime victims deserve that as much as any group of citizens in the United States ever will.

Thank you, God bless you, and God bless America. (Applause.)

END

12:25 P.M. EDT

*Crime-Victim Bill
of Rights*



Office of Policy Development
United States Department of Justice
10th and Constitution Ave. NW
Washington, D. C. 20530

TO: Bruce Reed

FAX: (202) 456-5777

FROM: Grace Mastalli

VOICE: (202) 514-4606

FAX: (202) 514-8639

Total Pages (excluding this cover):

Additional Message:

VICTIMS' RIGHTS MEASURES IN THE 1994 CRIME ACT AND IN THE
TERRORISM LEGISLATION:

I. The 1994 Crime Act

SECTION 20417: Notification required to state and local law enforcement concerning the release to their areas of federal violent and drug offenders on supervised release.

SECTION 40113: Strengthening of restitution for victims in sex offense cases.

SECTION 40121: Formula grants to combat violent crimes against women, including support for victims' services.

SECTION 40231: Grants to support effective domestic violence enforcement and encourage pro-victim policies in such cases.

SECTION 40211: Authorization of national domestic violence hotline.

SECTION 40221: Interstate domestic violence and violation-of-protection order offenses. Right for victim to address the court in pretrial release hearings in prosecutions for these offenses concerning the danger posed by the defendant. Strengthening of restitution for victims of these offenses. Full faith and credit for protection orders in all states.

SECTION 40241: Authorization of funding for battered women's shelters and other domestic violence services.

SECTION 40302: Civil rights remedy for victims of gender-motivated violent.

SECTION 40501: More consistent authority for pretrial detention in sex offense cases.

SECTION 40503: Payment of cost of testing sexual assault victims for sexually transmitted diseases. Authorization to require HIV testing of defendants in sexual assault cases in certain circumstances, with disclosure of test results to the victim.

SECTION 40504: Extension of restitution to include victim's lost income and other costs resulting from participation in the investigation or prosecution or attendance at proceedings.

SECTION 40505: Suspension of eligibility for federal grants, contracts, loans, and licenses for offenders who refuse to comply with restitution obligations.

SECTION 40601: Authorization to include stalking and domestic violence protection orders in national criminal records system.

SECTIONS 40701-03: Creation of self-petitioning rights for battered immigrant women and children.

SECTION 170101: Jacob Wetterling Act to encourage states to establish effective registration systems for child molesters and other sexually violent offenders. (Act included authorization of community notification, which was subsequently made mandatory for states wishing to comply with the Act by Megan's Law, with the Department's support.)

SECTION 170303: Establishment of permanent federal law enforcement task force to assist in missing children cases.

SECTION 230101: Creation of right of allocution in sentencing for victims of violent and sexual abuse crimes.

SECTION 250002: Increase of penalties for telemarketing fraud and strengthening of restitution for victims of such offenses.

II. The Terrorism Legislation

TITLE II, SUBTITLE A: Makes restitution mandatory in all violent crime cases.

TITLE III, SUBTITLE C: Authorization of special grants for assistance to victims of terrorism and mass violence. Improvements in administration of federal support for state crime victim compensation and services programs, including increase in minimum amount for victim services grants to the states.

VICTIMS' RIGHTS IN THE MILITARY JUSTICE SYSTEM

I. General Victims' Rights

Existing law provides various rights for victims in regular federal criminal cases; there are pending proposals to extend these rights through constitutional amendment or statutory or administrative reform. What is the status of the following existing or proposed rights in the military justice system?:

- (1) Notice to victims concerning proceedings, release of the defendant or offender, and other important occurrences in the case.
- (2) Right or opportunity for victims to attend proceedings.
- (3) Right of victims to be heard concerning the sentence.
- (4) Right of victims to be heard concerning other decisions, such as pretrial release, plea acceptance, or postconviction release.
- (5) Consultation by prosecutors with victims concerning important decisions in the case.
- (6) Restitution, emergency assistance, and other forms of compensation for victims.
- (7) Protection of victims from defendants or offenders through release conditions, detention, or other means. (E.g., withholding of victim addresses from defendants, waiting areas for victims which are separate from those for defendants and defense witnesses, temporary relocation or direct guarding of threatened victim-witnesses, etc.).
- (8) Preservation and prompt return of property of victims when it is no longer needed as evidence.
- (9) Notice or information for victims concerning their rights and available services, and concerning the general operation of the justice and correctional system as it affects their cases.
- (10) Speedy trial rules or other requirements protecting against delayed or prolonged proceedings which compound the suffering of victims.

II. Sexual and Domestic Violence

Domestic violence victims. What provision is there in the military justice system for meeting the special needs and problems of domestic violence victims -- immediate protection through arrest or restraint of the abuser, alternative shelter and support for financially dependent victims, advocacy and counseling services for victims, removal from abusive situations

- 2 -

and alternative care for child victims, reporting requirements concerning suspected abuse, etc.?

Sexually transmitted diseases and forensic medical examinations. Is there provision in the military justice system for payment by the government of the cost of testing of sexual assault victims for sexually transmitted diseases, or for the cost of forensic medical examinations in sexual assault cases? Is there provision for HIV testing of defendants, with disclosure of test results to the victim?

Sex offender registration. Sex offender registration will need to be extended in some manner to regular federal offenders and military offenders. There are various possible approaches to doing this.

Evidence rules in sexual offense cases. Rules 413-15 of the Federal Rules of Evidence allow evidence of other sexual offenses committed by the defendant in a sexual offense case, to show his propensity to commit such crimes. Conforming changes have been made in the military rules of evidence, but the new military evidence rules (apparently inadvertently) are substantially narrower in scope than Fed. R. Evid. 413-15. Also, effective implementation will require educating prosecutors and judges in the military justice system concerning the new rules. We could help out by making available the guidance materials and briefs we have used in litigation under Fed. R. Evid. 413-15, and by extending to military prosecutors the litigation support we now provide to AUSAs in this area.

RIGHTS OF CRIME VICTIMS UNDER EXISTING FEDERAL LAW

There is a general federal statutory crime victims' bill of rights (42 U.S.C. 10606), and various other provisions scattered through the federal statutes and rules which have the purpose or effect of protecting victims' interests. The Attorney General Guidelines for Victim and Witness Assistance (hereafter, "Attorney General Guidelines") elaborate on most of these provisions, and specify procedures for carrying them out. The principal provisions are as follows:

CRIME VICTIMS' BILL OF RIGHTS:

42 U.S.C. 10606(b) provides that a crime victim has the following rights: (1) to be treated with fairness and respect for the victim's dignity and privacy, (2) protection from the defendant, (3) notice of court proceedings, (4) attendance at court proceedings, with some qualification, (5) to confer with the prosecutor, (6) restitution, and (7) information about the conviction, sentencing, imprisonment, and release of the offender.

The enforcement mechanism for § 10606(b) is a requirement in § 10606(a) that federal investigators and prosecutors make "best efforts" to see that victims are accorded these rights. Section 10606(c) states explicitly that no cause of action or defense arises from the failure to accord these rights. Because of these limitations, and the vagueness of a number of the specified rights, § 10606(b) is essentially a hortatory provision.

How well these rights are actually enforced depends on the will of the executive branch to ensure that victims enjoy them, or on separate provisions which give a legally mandatory character to some aspects of these rights. The Attorney General Guidelines (pp. 5-6) provide for "best efforts" reporting and performance appraisal concerning compliance with 42 U.S.C. 10606 and other federal victims' rights requirements.

VICTIMS' INFORMATIONAL AND CONSULTATION RIGHTS:

42 U.S.C. 10607 directs that notice and information be provided to victims concerning rights and available services, and concerning substantially all significant occurrences in their cases (arrests, filing of charges, court proceedings, pleas and sentencing, release or escape of the offender, etc.). Each investigative and prosecuting agency is directed to designate personnel who will be responsible for carrying out these functions. These requirements are elaborated in the Attorney General Guidelines (pp. 6-11). In addition to fleshing out the statute's informational requirements, the Guidelines (p. 10) direct diligent and reasonable efforts to consult with the victim.

- 2 -

Like 42 U.S.C. 10606, 42 U.S.C. 10607 explicitly provides that no cause of action or defense arises from non-compliance with the section. Hence, the reality of the rights and requirements under § 10607 also depends on the will of the executive branch to carry them out, and the availability of adequate resources to do so.

VICTIMS' ATTENDANCE RIGHTS:

42 U.S.C. 10606(b)(4) states that victims have the right to be present at all public court proceedings in their cases, "unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial." This falls short of an unqualified right to attend public proceedings and, as noted above, 42 U.S.C. 10606 generally does not give rise to rights that are binding on the courts. Fed. R. Evid. 615 does not exempt victims from the rule allowing potential witnesses to be excluded. Hence, under current federal law, victims may be excluded from the courtroom during the trials of the offenders who victimized them.

VICTIMS' RIGHT TO BE HEARD:

Under current federal law, victims of violent crimes and sexual abuse crimes have a right to address the court concerning the sentence. However, victims do not have a right of allocution in sentencing in cases involving non-violent crimes, though the offender has this right in all cases. Victims are generally afforded an opportunity to speak at parole hearings for "old law" prisoners as a matter of administrative policy.

Outside of these areas -- sentencing hearings in violent crime and sexual abuse cases and parole hearings -- victims generally have no right to be heard. An exception is 18 U.S.C. 2263, which gives victims a right to be heard (regarding the danger posed by the defendant) in pretrial release proceedings in prosecutions for the interstate domestic violence offenses (18 U.S.C. 2261-62).

VICTIMS' RIGHT TO PROMPT PROCEEDINGS AND DISPOSITION:

There are no existing provisions of federal law which state that a victim has a right to a "speedy trial," or to a reasonably prompt conclusion or disposition of the case. However, there are provisions which have the effect of limiting unnecessary delay in federal criminal cases. The Speedy Trial Act (18 U.S.C. 3161-74) prescribes a definite set of time rules for trials. At the post-conviction stages, there is no comparably comprehensive or integrated system of time rules, but various statutes and rules regulate aspects of timing for sentencing, appeals, and collateral proceedings.

- 3 -

VICTIMS' RIGHT TO RESTITUTION:

The award of restitution for victims is mandatory in violent crime cases. In most other types of cases, the court is free to decline to order restitution if the court believes that doing so would unduly complicate or prolong sentencing. The Department has supported making restitution mandatory in all cases under the criminal code (title 18).

VICTIMS' RIGHT TO PROTECTION:

42 U.S.C. 10606(b)(2) provides that a victim has the right "to be reasonably protected from the accused offender." As indicated above, this is an essentially hortatory provision, whose effectuation depends on the will of the executive to carry it out, and the availability of adequate resources to do so.

Existing federal law provides a variety of tools for protecting victims. These include restraint and detention of dangerous defendants (18 U.S.C. 3141-56), criminal sanctions and civil remedies to protect victims and witnesses (18 U.S.C. 1509-15), and other forms of protection including relocation and provision of new identities (18 U.S.C. 3521-28).

THE WHITE HOUSE
WASHINGTON, D.C. 20500

DATE: 6/26/96

TO: David Fein
Rahm Emanuel Bruce Reed 216
Vicki Radd & Dennis Burke

FROM: Staff Secretary

Crime Victims Directive
with edits incorporated,
Please call me with
comments.

Syden
6-2702

Crime -
Victims Rts.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: Renewing our Commitment to Crime Victims

We have made tremendous progress over the last 3 years in reducing crime and making America safer. Nonetheless, crime continues to affect the lives of millions of Americans, greatly diminishing their sense of safety and security.

For too long, the rights and needs of crime victims and witnesses have been overlooked in the criminal justice system. Through the Violent Crime Control and Law Enforcement Act of 1994 and the Antiterrorism and Effective Death Penalty Act of 1996, we have begun to address this problem. But those important measures are not enough.

As important as the protections those laws provide are, they do not -- and cannot -- give victims equal status with the accused. That's the next step we need to take.

I strongly believe that victims should be central participants in the criminal justice system, and that it will take a constitutional amendment to give the rights of victims the same status as the rights of the accused. In the interim, I want my Administration to do everything possible to ensure that victims' rights are respected and that victims' participation in all stages of the criminal justice process is encouraged and facilitated. Our Federal investigators and prosecutors should not simply comply with the letter of the law, they should also fulfill the spirit of the law.

That is why I am directing you to take a number of important steps that will improve the treatment of victims in the Federal, State, military, and juvenile criminal justice systems.

First, I am directing you to undertake a system-wide review and to take all necessary steps to provide for maximum victim participation in all Federal criminal proceedings. In particular, I want you to adopt a nationwide automated victim information and notification system so that we can better inform and protect crime victims.

Second, I would like you to work with other Federal agencies whose missions involve them with crime victims in order to ensure that a common and comprehensive baseline of participation for victims can be achieved.

Third, I want you to review existing Federal statutes to see what further changes ought to be made. For example, I would like you to consider legislation that would prohibit employers from dismissing or disciplining employees who are victims of crime and whose participation in criminal proceedings requires them to take time away from their employment.

Finally, I want you to work with State officials -- governors, attorneys general, legislators, district attorneys, and judges -- to identify the needs, challenges, best practices, and resources necessary to help achieve a uniform national baseline of protections for victims. In addition, the Department of Justice should provide technical assistance to State and local law enforcement, as well as other Federal agencies, and serve as a national clearinghouse for information about the most effective approaches to realizing fully the rights of victims of violent crime.

To achieve these objectives, I expect you to identify funding needs where and as appropriate. Please report to me in writing as soon as possible on the specific steps you will take to achieve these goals.

Crime Victims Rh.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 6/25/96ACTION/CONCURRENCE/COMMENT DUE BY: 8:00 a.m. 6/26/96SUBJECT: Directive to AG re: Crime Victims

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCURRY	<input type="checkbox"/>	<input type="checkbox"/>
PANETTA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGINTY	<input type="checkbox"/>	<input type="checkbox"/>
McLARTY	<input type="checkbox"/>	<input type="checkbox"/>	NASH	<input type="checkbox"/>	<input type="checkbox"/>
ICKES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	QUINN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LIEBERMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RASCO	<input type="checkbox"/>	<input type="checkbox"/>
RIVLIN	<input type="checkbox"/>	<input type="checkbox"/>	REED	<input type="checkbox"/>	<input type="checkbox"/>
BAER	<input type="checkbox"/>	<input type="checkbox"/>	SOSNIK	<input type="checkbox"/>	<input type="checkbox"/>
CURRY	<input type="checkbox"/>	<input type="checkbox"/>	STEPHANOPOULOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
EMANUEL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STIGLITZ	<input type="checkbox"/>	<input type="checkbox"/>
GIBBONS	<input type="checkbox"/>	<input type="checkbox"/>	STREETT	<input type="checkbox"/>	<input type="checkbox"/>
HALE	<input type="checkbox"/>	<input type="checkbox"/>	TYSON	<input type="checkbox"/>	<input type="checkbox"/>
HERMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WALLEY	<input type="checkbox"/>	<input type="checkbox"/>
HIGGINS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>
HILLEY	<input type="checkbox"/>	<input type="checkbox"/>	<u>D. Fein</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KLAIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>D. Burke</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LAKE	<input type="checkbox"/>	<input type="checkbox"/>	<u>V. Radd</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LINDSEY	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Comments to this office.

RESPONSE:

THE WHITE HOUSE
WASHINGTON

Memorandum on Renewing our Commitment to Crime Victims

June 25, 1996

Memorandum for the Attorney General

Subject: Renewing our Commitment to Crime Victims

We have made tremendous progress over the last three years in reducing crime in this country and making America a safer country to live in. Nonetheless, crimes will continue to occur resulting in more and more victims. Crime in this country is a shattering experience affecting the lives of millions of Americans and greatly diminishing their sense of safety and security.

For too long, the rights and needs of crime victims and witnesses have been overlooked in the criminal justice system. Through the Violent Crime Control and Law Enforcement Act of 1994 and the Anti-Terrorism and Effective Death Penalty Act of 1996, we have begun to reverse this neglect. But those important measures are not enough.

Those laws contain protections for victims, but as important as those protections are, they do not -- and cannot -- give victims equal status with the accused. That's the next step we need to take.

I strongly believe that victims should be central participants in the criminal justice system. It will take a federal constitutional amendment to give the rights of victims the same status as the rights of the accused. In the interim, I want my Administration to do everything possible to ensure that victims' rights are respected and their participation in all stages of the criminal justice process is encouraged and facilitated. Our federal investigators and prosecutors should not just comply with the letter of the law but should also fulfill the spirit of the law.

That is why I am directing you to take a number of important steps that will improve the treatment of victims in the federal, state, military, and juvenile criminal justice systems now.

First, I want you to further strengthen victims rights within the federal system and to hold the federal system to a higher standard than ever before. Accordingly, I am directing you to undertake a federal system-wide review and to take all necessary structural and systemic steps with respect to the federal criminal justice process, including our juvenile justice system, to provide for maximum victim participation in all federal criminal

proceedings. In particular, I want you to begin immediately to adopt for the federal criminal justice system a nationwide automated victim information and notification system so that we can better inform and protect crime victims.

Second, I would like you to work with other Federal agencies whose missions involve them with crime victims in order to ensure that one of the principal goals of a federal constitutional amendment -- a common and comprehensive baseline of participation and rights for victims -- can be achieved across the federal system.

Third, I want you to review existing federal legislation to see what further changes we ought to make. For example, I would like you to consider legislation that would prohibit employers from dismissing or disciplining employees whose crime victims whose participation in criminal proceedings requires them to take time away from their employment.

Finally, I want you to work with state officials -- governors, attorneys general, legislators, district attorneys and judges -- to identify the needs, the challenges, the best practices and the resources that may be necessary to help achieve a uniform national baseline of protections for victims. Adopting strategies and techniques that work wherever they have been developed and implemented, the Department of Justice should provide technical assistance to state and local law enforcement as well as other federal agencies and serve as a national clearinghouse for information about the most effective approaches to realizing fully the rights of victims of violent crime.

To achieve these objectives, I expect you to identify funding needs where and as appropriate. Please report to me in writing as soon as possible on the specific steps you will take to achieve these goals.

William J. Clinton

Crime -
Victims Rts

Draft
June 25, 1996 9:35am

Memorandum on Renewing our Commitment to Victims

June 25, 1996

Memorandum for the Attorney General

Subject: Renewing our Commitment to Victims

We have made tremendous progress over the last three years in reducing crime in this country and making America a safer country to live in. Nonetheless, crimes will continue to occur resulting in more and more victims. Each day crime in this country is a shattering experience affecting the lives of millions of Americans and greatly impacting their sense of safety and security.

For too long, the rights and needs of crime victims and witnesses were overlooked within the criminal justice system. Through the Violent Crime Control and Law Enforcement Act of 1994 and the Anti-Terrorism and Effective Death Penalty Act of 1996, we have made many improvements for victims. But those important measures are not enough.

Those laws contained protections for victims, and as important as those protections are, they do not -- and cannot -- give victims equal status with the accused. That's the next step we need to take.

I strongly believe that victims should be central participants in the criminal justice system. It will take a federal constitutional amendment to give the rights of victims the same status as the rights of the accused. In the interim, I want my Administration to take all possible steps to ensure that victims' rights are respected and their participation in all stages of the criminal justice process is encouraged and facilitated.

That is why I am directing you to take a number of important measures that will improve the treatment of victims in both the federal, state, military, and juvenile criminal justice systems now.

First of all, I want you to further strengthen victims rights within the federal system, which is already a model for the 50 states in this area. You should examine and revise federal practices and policies to ensure maximum victim participation in all stages of federal criminal proceedings. Federal investigators and prosecutors should comply not just with the letter of law but with the spirit. **From now on, we will [seek to] do everything in our power to ensure that before a plea bargain is entered, a criminal is sentenced or released, or other steps are taken in the federal system, victims will know about it and be consulted.**

In addition, you should adopt a nationwide automated victim notification system so that all crime victims are informed and secure. You should also take steps to enhance the safety of victims and witnesses in the federal system by providing immediate assistance to those who have real concerns about their short-term security.

Secondly, I would like you to work with other Federal agencies to ensure a coordinated and comprehensive stream of services to Federal crime victims.

Finally, I want you to work with state attorneys general, district attorneys, and other state and local law enforcement officials to enhance the implementation of victims' rights at the state level.

To achieve these objectives, I expect you to identify funding where and when appropriate. You should report to me in writing as soon as possible on the specific steps you will take to develop this policy.

William J. Clinton

BR —

would you
take a look
at this?

— DB

Crime -
Victims
Rts

President Clinton's Call for a Crime Victims Constitutional Amendment

June 25, 1996

- The Clinton Administration has a longstanding commitment to ensuring that our criminal justice system is responsive to the rights and concerns of victims.
- In furthering that commitment, today, President Clinton is announcing his strong support for a constitutional amendment that will provide rights for the victims of crime and he is urging Congress to move expeditiously in forwarding an amendment to the states for ratification.
- In addition, the President is directing the Attorney General to amend Federal guidelines so that victims in the Federal system are ensured that existing statutory protections are fully executed while Congress and the states move forward in passing and ratifying a constitutional amendment.
- Currently, the U.S. Constitution contains numerous rights for defendants in criminal proceedings -- such as a right to a fair trial; the right to counsel; the right to confront witnesses against them. But our Constitution does not provide one right for a crime victim.
- President Clinton wants a level playing field for victims in our criminal justice systems -- and a constitutional amendment is the only guarantee that this goal can be fully achieved.
- It is time to ensure that victims are given constitutionally protected rights -- such as the right to be informed when a convicted offender has been released; the right to attend a trial; the right to speak at sentencing hearings.
- President Clinton believes that -- unlike any other constitutional amendment considered in the last few years -- no alternative short of a constitutional amendment will ensure that victims' rights are truly "rights."
- That is why he is once again speaking out for victims and offering his Administration's support and assistance to Congress and the states to ensure that together we enact the most effective constitutional amendment for victims.
- Today's announcement is another example of President Clinton's long-standing record on victims rights. As State Attorney General, he submitted legislation providing compensation for victims. As Governor, he signed legislation requiring notification of victims before parole hearings; established provisions for victim restitution; required hospitals to treat victims of sexual assault; and guaranteed the rights of victims to be present in the courtroom. And as President, the 1994 Clinton Crime Bill contained numerous victim provisions including the Violence Against Women Act.

THE WHITE HOUSE
WASHINGTON

June 7, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN, COUNSEL TO THE PRESIDENT *Jm Q*
DAVID B. FEIN, ASSOCIATE COUNSEL TO THE PRESIDENT *DBF*

SUBJECT: PROPOSED CONSTITUTIONAL AMENDMENT FOR CRIME VICTIMS

Background

Last month, we sent to you a memorandum regarding the constitutional amendment proposed by Senators Kyl and Feinstein to establish rights for crime victims. At that time, we suggested asking the Justice Department to review the proposed amendment. You agreed and noted your support for victims' rights in the past. We have now received from the Department analyses of the Kyl-Feinstein proposal and other possible victims' rights amendments and statutory and executive initiatives.

There is a diversity of views within the Department of Justice about the wisdom of endorsing any constitutional amendment. Some offices, including the Associate AG's Office, the Office for Victims of Crime and the Violence Against Women Office, strongly support a victims' rights amendment. Others, such as the Office of Legal Counsel, the Criminal Division and the Office of the Solicitor General, strongly oppose any constitutional amendment. We understand that the Attorney General would like to talk to you about her experiences in Florida with that state's victims' rights amendment.

Options to Consider

We believe there are four real options at this time. We recommend that whichever option you choose, you simultaneously announce your support for an aggressive agenda of legislative and executive victims' rights initiatives to be acted on immediately.

Option #1 Do not support any constitutional amendment and, instead, propose additional statutory and executive initiatives.

Option #2 Support the Kyl-Feinstein proposed amendment.

- Option #3 Support an Administration alternative amendment based on language drafted by Walter Dellinger.
- Option #4 Endorse amending the Constitution to protect victims' rights without endorsing particular language; propose a bipartisan process to arrive promptly at appropriate language; and state your view of the essential elements that should and should not be in the amendment.

Recommendation

Our recommendation, which is identified as Option #4 above, is that you endorse the adoption of a victims' rights constitutional amendment, offering to work with the Congressional leadership and others to arrive at appropriate language that you could support. We recommend that you not endorse Kyl-Feinstein and that you not announce support for alternative amendment language at this time. Rather, we recommend that you instruct appropriate members of the Administration to meet with the Congressional leadership on a bipartisan basis to agree upon appropriate language that will provide victims with federal constitutional protection. In doing so, we recommend that you state with specificity those elements that should be in the amendment and those that should not be in the amendment.

We also recommend that you announce your support for an aggressive agenda of legislative and executive victims' rights initiatives to be acted on immediately while we work toward adoption of a constitutional amendment. The Justice Department has drafted a menu of possible initiatives, and it is attached to this memorandum at Tab I.

As you will see from the discussion that follows, there are compelling arguments both for and against amending the Constitution to protect victims' rights. We do not believe that the arguments for a constitutional amendment overwhelmingly outweigh those against an amendment. Rather, we think that a decision to not endorse an amendment, but instead to support an aggressive agenda of legislative and executive initiatives, is entirely defensible. For these reasons, we believe Option #1 deserves serious consideration.

The Arguments for a Victims' Rights Amendment

Proponents of a victims' rights constitutional amendment argue that the criminal justice system suffers from a great imbalance in that persons accused of crime have a wide array of legal rights, many of which are constitutionally guaranteed, while persons who are victims of crime have no constitutional protection and few rights at all in practice. Although quite broad statutory rights for victims are present in the federal system and in almost all states (including 20 states that provide state constitutional protection), victims' rights are not generally appreciated or enforced.

Embodying victims' rights in the Constitution would confer a participatory right in the criminal justice system to the persons most affected by crime and most deserving of

protection. In that way, a victims' rights amendment would resemble various constitutional rights to participate in democratic processes, e.g., the First Amendment's right to petition the Government.

After some 20 years of work on state law reform, the victims' rights movement has mobilized around the issue of a federal constitutional amendment. The leaders of that movement appear unlikely to support any initiative that does not include the endorsement of a proposed amendment of some type. These groups are hostile to the idea of further study of the problem, because they believe they have "been there" and "done that", without having made real gains. In fact, a Presidential Task Force on Victims of Crime was formed in 1982, and it recommended a victims' rights provision to be added to the Sixth Amendment of the Federal Constitution.

By elevating victims' rights to constitutional status, proponents believe that victims are more likely to be treated with fairness, dignity and respect and to gain enforcement of their already existing statutory or state constitutional rights. Moreover, they believe that conflicts between their rights and defendants' rights would then be fought on a level playing field: courts would have to balance the two sets of rights, rather than simply side with the defendants' rights because they, alone, are of constitutional standing.

While there is quite limited case law holding that a victim's statutory or state constitutional rights were in conflict with, and therefore must yield to, a defendant's federal constitutional rights, victims' rights advocates report that courts may, in practice, be rejecting victims' claims in light of defendants' constitutional rights. For example, a victim's right to a speedy trial could be at odds with a defendant's right to a fair trial or to effective assistance of counsel if the defendant demonstrated his need for a delay. Of course, even if victims' rights were constitutionally based, courts might still balance the rights to require a victim's rights to yield to a defendant's rights. But the balancing would proceed from a level playing field if both sets of rights were constitutionally based.

Victims' rights groups also hope that a federal constitutional amendment would create a baseline of victims' rights nationwide. Currently, victims are protected to significantly varying degrees, depending on whether their assailant is prosecuted in federal, military or state court, as a juvenile or as an adult, and, if in state court, in which state. For this reason, proponents seek a self-executing amendment that actually creates a uniform set of rights, rather than one that merely empowers Congress to enact legislation.

Your endorsement of any of the options supporting a constitutional amendment would likely be received enthusiastically by the victims' rights groups, such as the National Organization for Victim Assistance. John Schmidt emphasized in his comments to the Attorney General that these groups and this issue cut across partisan and ideological lines and that the issue is driven by diverse, grass roots constituencies, overwhelmingly family members of victims of violent crime, who are attempting to correct the criminal justice system's long-standing neglect of victims' rights.

The Arguments Against a Victims' Rights Amendment

The most powerful argument against a victims' rights amendment is the negligible substantive need for such an amendment, as opposed to legislative and executive action. In his comments to the Attorney General, Walter Dellinger stated that virtually all the specific rights in any amendment proposed so far either already exist in or could easily be achieved through state and federal legislation. Walter identified, therefore, the tension between supporting such an amendment and Administration statements on other proposed constitutional amendments. For example, in January 1995, Walter testified before Congress regarding a proposed Balanced Budget constitutional amendment: "Before taking the drastic step of amending the Constitution, every other reasonable alternative should be explored."

Opponents of an amendment emphasize that federal legislation could achieve a consistent baseline of victims' rights among all the states just as well as would a federal constitutional amendment. As for doubts about Congress' authority under the Commerce Clause to force the states to adhere to such federal legislation, it is widely agreed that Congress could exercise its spending power to require states to adopt and implement a fully effective victims' rights program as a condition for receiving federal criminal justice funds.

According to amendment opponents, the alleged disparity between a defendant's rights being protected by the Constitution and a victim's rights left unprotected reflects a misunderstanding of the purpose of the Bill of Rights. The Bill of Rights, they point out, exists to protect citizens from government action, which explains why it addresses the interests of the accused and not of victims. Crime victims, the argument goes, do not need to have their rights in the Constitution because the Government is not seeking to restrain their liberty. Rather, the Government can act to protect them without any specific constitutional provision, which would be the equivalent of an unfunded benefit program.

Walter Dellinger cautions that a victims' rights amendment risks damage to the Constitution. If, in fact, the problems faced by victims can be solved by legislative and executive action (as many believe they can), amending the Constitution for merely symbolic purposes arguably conflicts with the Constitution's present status as real and binding positive law. If, in contrast, a far-reaching amendment with potentially enormous resource costs and unknown consequences for criminal justice is ratified, the Constitution could become a hindrance, rather than a tool, in the fight against violent crime.

Similarly, opponents warn of unintended and unwanted consequences of amending the Constitution to satisfy politically popular objectives. Would members of a violent gang, who can be both offenders and victims of violent crime, be entitled to all the rights in the amendment? Could victims seek to overturn convictions collaterally if they were not provided notice of certain proceedings, by arguing, for example, that a plea bargain was too lenient? Could victims obtain court orders requiring government protection for a potentially unlimited duration? We cannot know how courts will interpret the broad language of some

of the proposed amendments, and these uncertainties will become a permanent part of the Constitution, not susceptible to remedy by a quick statutory fix.

Finally, a decision to endorse a constitutional amendment may diverge from the Administration's previously consistent public positions against amending the Constitution for measures that we otherwise support, such as balancing the budget, prohibiting flag-burning and permitting prayer in school. In the case of school prayer, in particular, the Administration developed a persuasive argument based on the rights available under existing law (legislation and court decisions) and earned great praise for providing an alternative to amending the Constitution that actually achieved as much, if not more, than the proposed amendment. Walter Dellinger and others are concerned that we would leave ourselves exposed on this point if we supported a victims' rights amendment.

Review of the Options

Option #1: No Constitutional Amendment

A compelling case has not been made that victims' rights cannot be thoroughly protected without a federal constitutional amendment. At the federal level, it appears that aggressive implementation of current federal victims' rights law through an agenda of executive action and some gap-filling federal legislation, along with a significant allocation of resources, could achieve most, if not all, of the amendment objectives. With respect to the states, priorities on block grant money and directed discretionary resources could build on current state efforts to great effect. Moreover, amending the Constitution could create unintended and unwanted consequences for the proper administration of criminal justice.

Yet there is no doubt that the goal behind a victims' rights constitutional amendment is salutary. Many of the rights sought by victims groups cannot reasonably be disputed: the right to have notice of, and to attend, public court proceedings; the right to be heard concerning the release of the accused; the rights to notice and attendance and to be heard in relation to parole hearings; the right to be given notice of any release or escape from custody of the accused or convicted offender; and the right to restitution from the convicted offender.

Victims claim that despite state and federal pronouncements of these rights, they are not regularly recognized or enforced in practice because they do not have federal constitutional status and parity with defendants' rights. Amending the Constitution to include these rights would, it seems to us, greatly enhance the likelihood of a more consistent nationwide fulfillment of these rights. Federal and state legislation and even state constitutional amendments have been tried and appear to have provided only limited positive results in the treatment of victims in the criminal justice system. For these reasons, we recommend that you support a victims' rights amendment.

That said, we recommend endorsing an amendment only if it is carefully crafted so that it does not (1) jeopardize the ability of prosecutors to investigate, bring and resolve

criminal cases successfully; (2) expose local, state and federal governments and law enforcement officials to civil damage suits brought by victims seeking to enforce rights; and (3) allow criminals, illegal aliens, prisoners and others with "unclean hands" to take advantage of protections intended for innocent victims of crime. An amendment obviously needs to be drafted with the utmost care to avoid unintended and unwanted results.

Option #2: Kyl-Feinstein

The proposed Kyl-Feinstein constitutional amendment, which is attached as Tab II, is self-executing, meaning it does not require implementing legislation, and it authorizes Congress to further implement the amendment in federal cases and state legislatures to do so in state cases, thus avoiding federalism objections.

Its language defining rights, however, is the most far-reaching of any proposals we have seen, and it does not have limiting language. It could have adverse implications for (1) prosecutors' ability to secure and uphold convictions in violent crime cases; (2) local, state and federal governments and law enforcement officials' ability to fend off civil damage suits; and (3) victims with unclean hands seeking to take advantage of protections intended for innocent victims.

For example, Kyl-Feinstein provides -- as a matter of constitutional right with no provision for exceptions -- that victims of violent crime shall be given the opportunity to be present at every proceeding at which the accused is afforded such right. Would a court interpret "opportunity to be present" to require that presentment following arrest be delayed until a victim was able to attend? Would that apply to victims who were prisoners, or illegal aliens, or foreigners? What about a case with multiple victims? Likewise, could Kyl-Feinstein's equally absolute right to a final conclusion free from unreasonable delay be used by a court to decide whether the prosecutor's decision to take an appeal during a criminal case is unreasonable? Although some of these interpretations are debatable, the amendment's language does not clearly foreclose them.

Even proponents of a victims' rights amendment have criticized Kyl-Feinstein for its possible adverse impact on law enforcement, criminal prosecution and the courts. Rep. Hyde, a House sponsor of Kyl-Feinstein, has introduced his own proposed amendment, which attempts to fix some of the problems of Kyl-Feinstein and provides, accordingly, much more limited rights. Senators Hatch and Brown expressed some concerns about the language of Kyl-Feinstein at the recent Senate Judiciary hearing on this subject. Professor Tribe has written to Senator Dodd, criticizing Kyl-Feinstein for, among other things, creating "a real hornet's nest of problems for law enforcement at all levels." Professor Tribe may well endorse a victims' rights amendment and is working on alternative constitutional language to propose.

Option #3: Possible Administration Alternative

Walter Dellinger is working on alternative amendment language, the current draft of which is attached as Tab III, which we strongly prefer to Kyl-Feinstein. It is similar in form to Kyl-Feinstein in that it actually creates rights, rather than merely empowering Congress to enact legislation, and it, too, reserves for states the power to further legislate in this area for state court proceedings. The alternative is superior to Kyl-Feinstein in that it is much more finely tuned and would, in our view, have significantly less adverse consequences on effective law enforcement and be less susceptible to the uncertainties of judicial interpretation. On the other hand, it is subject to the criticism that it limits the broad rights contained in Kyl-Feinstein.

Option #4: Recommended Approach

We recommend that you announce your support for amending the Constitution to protect victims' rights without endorsing particular language, offering instead to work with the Congressional leadership in a bipartisan fashion to arrive at appropriate language. In particular, we recommend that you instruct your staff to gather a small group of Administration representatives and Congressional members of jurisdiction (and possibly outside experts) to be tasked to agree upon recommended amendment language and to move it forward toward enactment.

Assuming that you do not support one of the existing Congressional proposals, an Administration proposal would likely be criticized in the ensuing months by some as going too far to protect victims' rights and by others as not going far enough. We do not, however, recommend that you merely endorse the concept of an amendment generally. Rather, we suggest that you describe with some specificity what you would support and what you would not support in a victims' rights amendment. Specifically, you could state your support for an amendment that:

- (1) is self-executing;
- (2) contains the following rights: to have notice of, and not to be excluded from, public court proceedings in the case; to be heard by the trial court concerning the release of the accused, the sentence, and acceptance of any plea, if present at the proceedings relating to those determinations; to be afforded like rights to notice and attendance and to be heard in relation to parole hearings; to be given notice of any release or escape from custody of the accused or convicted offender; to restitution from the convicted offender; to reasonable measures to protect the victim from violence or intimidation by the accused or convicted offender; and to notice of these rights; and
- (3) preserves for the States the right to enforce the foregoing victims' rights in state cases.

Likewise, you could state your opposition to an amendment that would:

- (1) adversely affect prosecutors' ability to secure and uphold convictions in violent crime cases;
- (2) expose local, state and federal governments and law enforcement officials to civil damage suits; and
- (3) permit victims with unclean hands (such as prisoners and co-conspirators) to take advantage of protections intended for innocent victims.

We believe, by the way, that by endorsing the notion of amending the Constitution and stating clearly what important elements should and should not be included, you will be in the best position later to oppose an unacceptable version of the proposed amendment. If, for example, a proposed victims' rights amendment with truly perilous consequences for the criminal justice system or the Bill of Rights, for example, gained momentum in Congress, you would be better able to oppose it if you made clear now that you support an amendment that intelligently and appropriately addresses victims' problems.

Support for an Aggressive Legislative Agenda

As previously stated, we also recommend your endorsing at the same time an aggressive agenda of legislative and executive victims' rights initiatives to be pursued immediately. (See Tab I). These initiatives can be enacted without any change to the Constitution, and, accordingly, we should urge that there be no delay in affording these rights to crime victims.

Acknowledgement of Resource Needs

Lastly, we believe that whatever approach is taken toward improving the protection of victims' rights, we should acknowledge that protecting victims' rights costs money. The objectives of a victims' rights constitutional amendment and other initiatives cannot be achieved without a significant allocation of resources. Indeed, most objectives require money more than constitutional, statutory or executive authorization.

For example, at the federal level, Victim-Witness Coordinators are critical in ensuring that victims are notified of, and are treated fairly at, court proceedings. Their numbers and duties should be increased. At the state level, an automated victim information and notification service has proven its worth. Regularly updated, current information about a criminal case is available by telephone 24 hours a day, and victims are notified by a recording informing them when an offender is being released. States should be required to allocate some portion of federal criminal justice funds for such a program, and the federal government should adopt it as well.

In short, we suggest that resource needs be a part of any announcement you make on victims' rights, and that the Department of Justice be asked how to best address those needs.

POSSIBLE EXECUTIVE AND LEGISLATIVE INITIATIVES

FEDERAL SYSTEM

- Establish a Presidential Task Force on Victims Rights including federal, state, and local law enforcement representatives to comprehensively review victim issues, identify best practices and model laws and procedures and develop reform recommendations. (Last such task force was in 1982.)
- Take immediate executive action directing all federal agencies (DOD, DOJ, Interior, Treasury, HHS, etc.) that deal with victims' rights reinvigorate their commitment to assuring the rights of, and serving the needs of, victims. Agencies would be directed to thoroughly and promptly review current policies and practices, to implement certain specific recommendations and to report within a short time frame to the President with an action plan to improve the treatment of victims.
- Seek increased resources as necessary to better implement existing law and to improve procedures and training to ensure that federal victims are consistently notified and, consistent with law enforcement needs, consulted regarding all case proceedings and other significant occurrences (such as release of the offender), and that they consistently receive other assistance and services.
- Adopt consistent policy that victims should not be excluded from trials or other public court proceedings in their case except for the most compelling reasons. Subject to reasonable court set conditions, give victims the right to address the court concerning such matters as pretrial release of the defendant, and the sentence to be imposed on a convicted offender.
- Strengthen restitution for victims, including making the award of restitution mandatory in all cases under federal criminal code, and enabling the government to seek court orders to preserve the assets of a defendant that may be subject to restitution.
- Give victims of acts of juvenile delinquency comparable rights to those that are accorded to victims in adult criminal cases.

Prosecutorial guidelines no plea bargain w/o consent

NATIONWIDE, STATE, AND LOCAL

- Establish a Presidential Task Force
- Call on the governors to join the President in acknowledging the compelling government interest in protecting victims rights. Urge state adoption of victim-oriented reforms for state criminal cases comparable to those adopted or proposed for federal cases. Call on state legislatures to adopt statutes and/or state constitutional provisions affording victims the same rights and services as those provided for or proposed in federal cases and to provide adequate funding to make these promises a reality.
- Encourage and assist states in adopting victim-oriented reform through technical assistance and incentive programs.
- Establish a national crime victims information and referral hotline.
- Support development and implementation of cost-effective means to enable states to adopt victims' rights measures more broadly (e.g., automated systems for providing victims with notice of proceedings).

104TH CONGRESS
2D SESSION

S. J. RES. 52

Proposing an amendment to the Constitution of the United States to protect the rights of victims of crime.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 1896

Mr. KYL (for himself, Mrs. FEINSTEIN, Mr. HATCH, and Mr. CRAIG) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to protect the rights of victims of crime.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled (two-*
3 *thirds of each House concurring therein), That the follow-*
4 *ing article is proposed as an amendment to the Constitu-*
5 *tion of the United States, which shall be valid to all intents*
6 *and purposes as part of the Constitution when ratified by*
7 *the legislatures of three-fourths of the several States with-*
8 *in seven years after the date of its submission for ratifica-*
9 *tion:*

"ARTICLE —

1
2 "SECTION 1. To ensure that the victim is treated with
3 fairness, dignity, and respect, from the occurrence of a
4 crime of violence and other crimes as may be defined by
5 law pursuant to section 2 of this article, and throughout
6 the criminal, military, and juvenile justice processes, as
7 a matter of fundamental rights to liberty, justice, and due
8 process, the victim shall have the following rights: to be
9 informed of and given the opportunity to be present at
10 every proceeding in which those rights are extended to the
11 accused or convicted offender; to be heard at any proceed-
12 ing involving sentencing, including the right to object to
13 a previously negotiated plea, or a release from custody;
14 to be informed of any release or escape; and to a speedy
15 trial, a final conclusion free from unreasonable delay, full
16 restitution from the convicted offender, reasonable meas-
17 ures to protect the victim from violence or intimidation
18 by the accused or convicted offender, and notice of the
19 victim's rights.

20 "SECTION 2. The several States, with respect to a
21 proceeding in a State forum, and the Congress, with re-
22 spect to a proceeding in a United States forum, shall have
23 the power to implement further this article by appropriate
24 legislation."

○

POSSIBLE ADMINISTRATION ALTERNATIVE

Section 1

In all cases that involve crimes of violence, or other crimes as specified by law, the victim shall have the following rights, which shall be accorded the same respect and dignity as the rights of those accused or convicted of crimes: to have notice of, and not to be excluded from, public court proceedings in the case; to be heard by the trial court concerning the release of the accused, the sentence and acceptance of any plea, if present at the proceedings relating to those determinations; to be afforded like rights to notice and attendance and to be heard in relation to parole hearings; to be given notice of any release or escape from custody of the accused or convicted offender; to a timely disposition of the case; to restitution from the convicted offender; to reasonable measures to protect the victim from violence or intimidation by the accused or convicted offender; and to notice of the rights secured by this article.

Section 2

With respect to cases brought under the authority of the United States, Congress shall have the power to enforce these rights and make appropriate exceptions and regulations. With respect to cases brought under the authority of the states, the state legislature shall have the power to enforce these rights and to make appropriate exceptions and regulations.



The Associate Attorney General

Washington, D.C. 20530

FACSIMILE TRANSMITTAL COVER SHEET

DATE: May 28, 1996

TO: Bruce Reed

FACSIMILE NO. 456-5557

TELEPHONE NO. 456-6515

FROM: John R. Schmidt

FACSIMILE NO. 202/514-0238

TELEPHONE NO. 202/514-9500

NUMBER OF PAGES INCLUDING COVER SHEET: 3

COMMENTS:



Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

May 28, 1996

TO: Ron Klain
Rahm Emanuel
Bruce Reed

FROM: John R. Schmidt

TRV

I just heard that Dole endorsed a Victim's Rights Amendment to the Constitution. Attached is what I would say in response.

Attachment

A Victim's Rights Amendment to the U.S. Constitution is something the President is strongly inclined to support. The Department of Justice has been looking closely at the various proposals that have been made, including the amendments introduced by Senators Feinstein and Kyl and by Congressman Hyde. As you know, Attorney General Reno is a strong advocate of victim's rights and was a leading supporter of the Victim's Rights Amendment to the Florida Constitution. The Attorney General is expected to report to the President shortly on the precise amendatory language the Department of Justice would favor. We hope it will be possible to move forward on this matter on a bipartisan basis.

5/4
Crime -
Victims Bill of Rights

NOTE TO JACK QUINN

FROM: RON KLAIN

I am not sure I agree with the attached, and would urge you to take a second look at this matter.

On the one hand, the memo suggests that statutory protection of victims rights is adequate. On the other hand, the memo suggests that victims rights might conflict with judicial prerogatives or defendants rights. Yet the latter fact is precisely why statutory protections are inadequate, and why a constitutional amendment to protect crime victims may be necessary. At present, whenever victims' rights and defendants' rights clash, the former always give way to the latter, as the former are statutory and the latter are based in the constitution. But if victims rights obtained constitutional status, those rights would then have to be balanced equally with defendants rights in the court room -- just as currently, the media's First Amendment rights and the defendant's Sixth Amendment rights are balanced in courtrooms.

Moreover, the argument that requiring "reasonable measures to protect the victim from violence by the ... convicted offender" could create a constitutional right to police protection seems like a stretch. I doubt that this is the case, anymore than a constitutional right to privacy requires the government to build people houses. And some simple language changes could easily clean up any ambiguities or problems.

I am, of course, not against a DoJ study to determine the necessity of this amendment -- i.e., to determine whether existing protection for victims is adequate, and whether the objectives of the amendment could be met by additional statutes, rather than by constitutional amendment. But I would hope that: (1) this inquiry would be genuinely open-minded, and not aimed at finding against the constitutional amendment; (2) not looking to nit-pick this specific draft of such an amendment; and (3) time-limited in its scope, so that the President could make a decision on supporting such an amendment within a reasonable period.

In addition, we should consider whether we should do a public launch of this study, as a positive move to supporting the amendment and/or crime victims in general: i.e., "I am asking the Justice Department to study the proposed amendment, and report back to me in 60 days on what additional protections for crime victims are needed, to give them the full rights they deserve." Such an announcement could also provide a good platform to trumpet the President's achievements for crime victims, such as those pro-victims provisions of the 1994 Crime Bill and the 1996 Terrorism Bill.

Finally, I should note that the above views are my personal views only; I have not yet discussed this matter with the Vice President.

cc: Bruce, Rahm

THE WHITE HOUSE

WASHINGTON

May 1, 1996

96 MAY 3 P2:52

MEMORANDUM FOR THE PRESIDENT

FROM: JACK QUINN, Counsel to the President *Ja*
DAVID B. FEIN, Associate Counsel to the President *DSF*

SUBJECT: Proposed Constitutional Amendment for Crime Victims

On April 22, 1996, Sens. Feinstein and Kyl introduced a proposed constitutional amendment to establish a bill of rights for crime victims. For the reasons that follow, we recommend that our response to questions about whether or not you support the proposed amendment be as follows: "I have asked the Justice Department to review the proposed amendment, with an eye toward determining what, if anything, it offers that is not already provided for by statute or that could not be provided for by additional statutes." We do not recommend that you endorse the proposed amendment.

The proposed amendment would confer upon crime victims the following constitutional rights:

- to attend proceedings;
- to be heard regarding sentencing, pleas, and release;
- a speedy trial of the defendant;
- a final conclusion free from unreasonable delay;
- full restitution from the offender; and
- reasonable measures to protect from violence by the offender.

Many of the rights listed in the proposed amendment are already provided for in federal statutes, regulations and policy, most notably, the Victims' Rights and Restitution Act of 1990, the Crime Act of 1994, and the Antiterrorism and Effective Death Penalty Act of 1996. Protecting victims' rights by statute is preferable to amending the Constitution because statutes achieve most of the goals of the proposed amendment with greater clarity and specificity without clashing with the constitutional powers of the judiciary and defendants' constitutional rights. For example, a victim's constitutional right to a speedy trial may interfere with the powers granted by Article III of the Constitution to the judiciary, as well as with a defendant's right to effective assistance of counsel.

Moreover, the language in the proposed amendment is confusing and ambiguous as to what right is being created and

what remedy would accompany it. The right to "reasonable measures to protect the victim from violence or intimidation by the accused or convicted offender" could be read to give a victim the constitutional right to demand government protection under any circumstances and the opportunity to sue the government to recover damages for any subsequent harm to the victim by the offender.

Constitutional amendments have been rare in our nation's history, and for good reason. Without evidence that a particular problem cannot be resolved through legislative means under our existing constitutional system, we should be reluctant to tamper with the fundamental charter of our government. We recommend that the Department of Justice study whether the proposed amendment offers any important rights that are not already provided by statute, regulation or policy. Then, specific legislative proposals can be developed to address any rights not already protected.

Recommendation

As indicated above, we recommend handling this issue by referring it to the Justice Department for a review of the proposed amendment, with an eye toward determining what, if anything, it offers that is not already, or could not be, provided for by statute.

_____ AGREE _____ DISAGREE _____ DISCUSS

A Bill of Rights for Crime Victims

How shocking it would be to describe a criminal justice system in which a defendant had no constitutional right to be treated fairly, no right to information about the progress of the case, no right to notice of when critical proceedings would be held, no right to be present and heard at those proceedings, and no right to a speedy trial or reasonable finality to the matter—in short, no constitutional rights at all. Yet this precisely describes the plight of a victim of crime. While the Bill of Rights enumerates extensive rights for criminal defendants, it contains not even a single word on behalf of crime victims.

Rule of Law

By Paul G. Cassell
And Steven J. Twist

On Monday a bipartisan group of senators and congressmen introduced a constitutional amendment that would extend these basic rights to crime victims. The Victims' Bill of Rights Amendment would bring balance to a system whose scales of justice are tipped decidedly in favor of the accused.

How did we arrive at a system that gives so little consideration to the interests of victims? The problem is traceable to the peculiar evolution of the office of public prosecutor. The first colonists imported the English common law tradition of private prosecutions, which gave the victim of a felony the right to initiate and prosecute a criminal case against the offender. The Framers of the Constitution probably saw little need for separate "victims' rights" because victims could act on their own.

Over time, public prosecutors gradually displaced the system of private prosecutions. While the reasons for this

transformation are disputed, the undeniable effect was to exclude crime victims from meaningful participation in the criminal justice process. They lost any status as parties to the case. Their primary role became to report crimes to police and serve as witnesses if called. Meanwhile, it became accepted that prosecutors represented only the public interest, not the victims' interest.

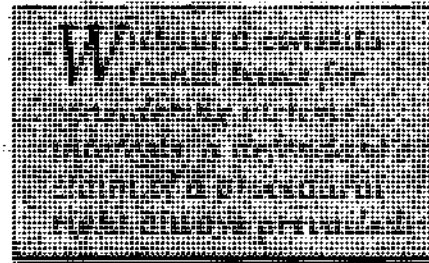
This imbalance was exacerbated in the 1960s, when the Warren Court expanded the rights of criminal defendants and constitutionalized most aspects of criminal procedure. Trial judges who had previously accommodated victims' concerns informally within their courtrooms now found they had to follow prescribed formulas. Without a constitutional basis for considering victims' interests, a defendant's claim of a procedural right always prevailed. The court's one-sided expansion of defendants' rights slid victims out of the picture.

These developments leave us with a criminal justice system that pays scant attention to victims. Often victims do not even find out about critical proceedings, such as hearings about releasing a defendant on bail or allowing him to cop a plea to a reduced charge. When victims do learn about these proceedings, they frequently have no right to speak about why releasing the defendant is a bad idea or why the proposed plea bargain is undesirable. In many trials, victims are told that while the defendant is entitled to be present, they must leave the courtroom and sit outside in the room reserved for witnesses. Even after the conviction of the defendant, victims have often been denied the right to speak at sentencing or parole hearings.

Every year, 43 million Americans are the victims of violent or property crimes. The need for constitutional protection of their rights was first recognized by the

President's Task Force on Victims of Crime, whose 1982 report concluded that "the criminal justice system has lost its essential balance." The Task Force proposed a constitutional amendment guaranteeing crime victims the basic rights to be present and heard at critical stages of the proceedings.

Since that recommendation, more than 20 states have adopted victims' amendments. In 1994 alone, voters in Alabama, Alaska, Idaho, Maryland, Ohio and Utah gave their overwhelming approvals. While the amendments vary in



form and effect, they have generally improved the treatment of crime victims throughout the criminal justice process. The federal Victims' Bill of Rights Amendment would draw upon the successful experience with the state amendments and require protection for victims under the federal Constitution.

The core of the amendment would guarantee victims of violent and other serious crimes the rights to be informed of and to attend court hearings. At proceedings concerning bail, plea bargains and sentencing, victims could speak—not to dictate the court's decision but to suggest what the decision should be. The amendment also would guarantee victims protection, including the right to a warning if a defendant escapes from custody.

The amendment would further grant victims a right to a speedy trial. Defendants have always had such a right but

are often the only ones with no interest in seeing it enforced. Victims also deserve an end to interminable delays in capital and other cases. The defendant's right to appeal should be protected, but under the amendment courts would be required to rule finally and without unreasonable delay.

While victims have won many state legislative victories in recent years, the overall protection of their interests is piecemeal and inadequate. A federal amendment would establish a basic package of victims' rights, a floor below which states could not go and which defendants could no longer automatically trump. Victims' rights, no less than defendants' rights, would apply in state proceedings under current constitutional doctrine, because the rights would be incorporated into the 14th Amendment's nationally applicable guarantees of due process of law. This works no new violence to the important value of federalism. Rightly or wrongly, the Supreme Court has already federalized many aspects of criminal procedure and extended substantial rights for defendants throughout country. The proposed amendment simply adopts the view that victims deserve equal treatment.

A 1991 national public opinion poll found that 89% of Americans would support an amendment to their state constitution guaranteeing victims' rights. In recent years, state voters have given such amendments approvals as high as 92%. The American public recognizes what many criminal justice professionals seem to ignore—that the system must protect the rights of victims, too.

Mr. Cassell, a professor at the University of Utah College of Law, and Mr. Twist, a Phoenix attorney, are on the executive board of the National Victims' Constitutional Amendment Network.

Crime—
Victims Bill of Rights

WEDNESDAY, APRIL 24, 1996

REVIEW & OUTLOOK

Row Your Own Boat

The business of kicking people out of one's country can get tricky. No, we're not talking about Republican immigration policies, but about one of the world's great unwanted groups: the boat people. After years of eyeing each other across barbed wire, the citizens of Hong Kong and the colony's population of Vietnamese boat people are tumbling toward a final confrontation.

Hong Kong's Legislative Council finds itself under enormous pressure to support the colonial government's plan to further deny Vietnamese boat people some basic rights now enshrined in international covenants. Defending such rights is not a popular cause. Most Hong Kongers long ago dropped any sympathy they may have had for the Vietnamese, of whom some 20,000 remain in the colony. Hong Kong government officials have helped paint a picture in the public mind of the boat people—many of them women and their children, labeled "migrants" and imprisoned in maximum security camps—as a seething mass of criminals and bums addicted to drugs or living off the fat of Hong Kong taxpayers.

So when boat people facing forced repatriation to Hanoi took such desperate measures as stabbing themselves, the Hong Kong press complained about the waste of valuable hospital resources needed to patch them up. Such is the antipathy to the boat people that one local member of an NGO team monitoring police behavior in the camps made the extraordinary recommendation that when the police use tear gas on the inmates they should first turn off the water supply so the "VMs" (industry-speak for Vietnamese migrants) can't use water to wash the gas out of their eyes.

No wonder then, that there was an outcry in Hong Kong recently when London's Privy Council ruled that the colony's law allows authorities to keep boat people in detention only, because they are going to be repatriated to Vietnam. Otherwise, there is no legal basis for locking some of them up.

This ruling seriously gummed up Hong Kong's master plan to have the colony cleansed of boat people before the handover to China next year. Because not all boat people can go back, Hanoi has explicitly refused to take hundreds, either because they are ethnic Chinese or because the state

doesn't want the burden of looking after them. Thousands more have yet to be screened by Hanoi.

Their hands temporarily tied, Hong Kong authorities have had to let a few handfuls of boat people go free. There is every reason to believe that they will settle down to lives as quiet and industrious as the few families released into the local community in the past. But the government wants the legislature, Legco, to rubber stamp a bill that would close the "loophole" in the law before more boat people manage to escape their fate. What makes this decision so intriguing is that the so-called loophole is actually a protection that the people of Hong Kong themselves may dearly need after 1997. Basically, legislators are being asked to legalize arbitrary, indefinite detention. What a nice present that would be for Beijing. Today the boat people, tomorrow Hong Kong trade unionists and democratic members of Legco itself?

The choice just put to the boat people themselves is not so clear cut. The Clinton Administration announced this week that people who sign up to go back to Vietnam by June 30 this year can apply for an interview with U.S. immigration authorities in Vietnam about the possibility of getting a visa for the U.S. It's all pretty vague and hedged with caveats. Many boat people will suspect the whole thing is part of a trick to get them to go back to Vietnam without protest. They know that when members of Congress tried to bring some "old soldiers" and others out of the camps directly to America last year, the Clinton Administration fought hard to prevent that.

Distasteful and widely publicized scenes are sure to come as the last thousands of protesting boat people are dragged back to Vietnam this year. Whatever Washington's motive, here's hoping that the boat people who do place their trust in Uncle Sam and go home without a fuss are rewarded with a fair chance at starting a new life in America. As to Hong Kong, with luck, its people will never find themselves at sea in search of asylum. But if they decide that their only policy option in this case is a law against the rights of Vietnamese boat people, they must be prepared to wake up one day and find that law turned on themselves.

What the President Signed

If Republicans scored a victory inside the Beltway, would anyone hear about it? Probably not these days. In fact, President Clinton on March 29 signed into law important provisions reining in the bureaucrats who impose a heavy tax on American productivity with rules and regulations.

The amendments, attached to a debt-ceiling extension, put some teeth into the 1980 Regulatory Flexibility Act, which requires federal agencies to assess the impact of their regulations on small business. The law has been largely a dead letter, but thanks to the debt-ceiling bill small businesses can now take non-complying agencies to court. Second, and more important, the bill mandates Congressional review of all regulations, even "routine" ones, before they're adopted.

Under the legislation, a proposed rule-making won't take effect for 60 days, during which time Congress can override the bureaucrats' wishes. There's nothing controversial about this provision. It was unanimously adopted by both houses of Congress and endorsed by President Clinton. But the White House apparently didn't read the fine print.

While regulations will be stalled for only 60 calendar days, Congress will be able to override them under expedited procedures for 60 session days. That's a big difference. Since Congress often isn't in session, 60 session days can stretch out into six months or longer. And during that whole period Congress can veto proposed regulations under rules that, for example, bar filibusters in the Senate.

Some conservatives opposed this measure on the grounds that it would distract attention from the larger regulatory reform bill, which mandates lengthy cost-benefit studies, and which has stalled in the Senate because of a filibuster. But Congressman David McIntosh, a longtime warrior against regulatory excess who

crafted this provision, says it "allows us to codify 90% of what we were trying to do in the Contract with America with regard to regulatory reform." He says it could prevent President Clinton, should he lose the November election, from issuing myriad "midnight regulations," the way Jimmy Carter did in his final hours.

Confirmation, of a sort, comes from the Administration, which reportedly is experiencing buyer's remorse. The Bureau of National Affairs, in its Washington newsletter, says that some Democratic insiders are calling President Clinton's signing of this law "a big mistake." According to the bureau, "One agency official said the review provisions may have a similar impact as the White House Council of Competitiveness in the Bush Administration, which reviewed major rules. That is, this official said, agencies may have to moderate their positions on issues pertaining to environmental and safety concerns just to ensure the rules pass the review process."

This unnamed official laments that the effect of all this "may be a compromise in environmental, health and safety protections" and that "it will give special interests the opportunity to lobby Congress on rules they find troublesome, creating still more delay." Translation: This measure will force bureaucrats to consider the economic impact of their rulings, and it will allow those affected by government actions to make their voices heard.

Those, of course, are goals endorsed by President Clinton. But whenever it comes time to implement his rhetoric, Mr. Clinton balks. Last fall, he vetoed an earlier debt ceiling bill in part because it contained even more far-reaching regulatory reforms. It's a tribute to the Republican Congress that on this occasion, at least, it got Mr. Clinton to act like a New Democrat—despite himself.

Asides

Qaddafi Goes Too Far

Muammar Qaddafi has had a long and dark career, no doubt about it. He has trained and funded terrorists, provided safe haven to assassins like those who blew up Pan Am Flight 103, attacked the Achille Lauro and bent every effort to destabilize neighboring Arab states. In addition to all this, we now discover yet more about the Libyan dictator's interests. According to Judith Miller's new

book about the Middle East ("God Has Ninety-Nine Names"), Qaddafi worked himself into such a fever over Margaret Turweiler, spokeswoman for the Bush State Department, that he considered sending word that she should "wear something green at her next press conference"—to signal if she was interested. That should about finish it for the terror-loving Libyan. With sexual harassment now added to the list of offenses, Qaddafi has finally gone too far.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

LRM NO: 4335

FILE NO: 2275

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): _____

TO: Legislative Liaison Officer - See Distribution below:

FROM: James JUKES

(for) Assistant Director for Legislative Reference

OMB CONTACT: Ronald JONES, 395-3386 Legislative Assistant's Line: 395-3454
C=US, A=TELEMAIL, P=GOV+EOP, O=OMB, OU1=LRD, S=JONES, G=RONALD, I=E
jones_re@a1.eop.govSUBJECT: OMB Request for Views RE: *and HJR 173* SJR52, Amendment to the Constitution to protect
the rights of victims of crime.**DEADLINE: Monday, May 13, 1996**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: SJR 52 is also identical to HJR 174, a third resolution proposing a Constitutional amendment dealing with victims' rights.

DISTRIBUTION LIST:

AGENCIES: 29-DEFENSE - Samuel T. Brick, Jr. - 7036971305
52-HHS - Sondra S. Wallace - 2026907760
59-INTERIOR - Jane Lyder - 2022086708
61-JUSTICE - Andrew Foia - 2025142141
114-STATE - Julia C. Norton - 2026474463
117-TRANSPORTATION - Tom Herlihy - 2023664687
118-TREASURY - Richard S. Carro - 2026221146
126-US Postal Service - Stanley F. Mires - 2022682958EOP: Tracey Thornton
Peter Jacoby
Dennis Burke
Bruce Reed
Elena Kagan
Bob Damus
Jim Murr
Ken Schwartz
David Haun
Ed Chase
Julie Haas
Alan Rhinesmith
Harry Meyers
Mark Schwartz
Bruce Beard
Tony Chavez
Mary Jo Siclari
David Worzala
Claire Jacobi
Tom Riley

LRM NO: 4335
FILE NO: 2276

Please include the LRM number shown above, and the subject shown below.

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

Crime - Victims Bill
of Rights
n

104TH CONGRESS
2D SESSION

S. J. RES. 52

Proposing an amendment to the Constitution of the United States to protect
the rights of victims of crime.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 1996

Mr. KYL (for himself, Mrs. FEINSTEIN, Mr. HATCH, and Mr. CRAIG) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United
States to protect the rights of victims of crime.

- 1 *Resolved by the Senate and House of Representatives*
- 2 *of the United States of America in Congress assembled (two-*
- 3 *thirds of each House concurring therein), That the follow-*
- 4 *ing article is proposed as an amendment to the Constitu-*
- 5 *tion of the United States, which shall be valid to all intents*
- 6 *and purposes as part of the Constitution when ratified by*
- 7 *the legislatures of three-fourths of the several States with-*
- 8 *in seven years after the date of its submission for ratifica-*
- 9 *tion:*

1 "ARTICLE —

2 "SECTION 1. To ensure that the victim is treated with
3 fairness, dignity, and respect, from the occurrence of a
4 crime of violence and other crimes as may be defined by
5 law pursuant to section 2 of this article, and throughout
6 the criminal, military, and juvenile justice processes, as
7 a matter of fundamental rights to liberty, justice, and due
8 process, the victim shall have the following rights: to be
9 informed of and given the opportunity to be present at
10 every proceeding in which those rights are extended to the
11 accused or convicted offender; to be heard at any proceed-
12 ing involving sentencing, including the right to object to
13 a previously negotiated plea, or a release from custody;
14 to be informed of any release or escape; and to a speedy
15 trial, a final conclusion free from unreasonable delay, full
16 restitution from the convicted offender, reasonable meas-
17 ures to protect the victim from violence or intimidation
18 by the accused or convicted offender, and notice of the
19 victim's rights.

20 "SECTION 2. The several States, with respect to a
21 proceeding in a State forum, and the Congress, with re-
22 spect to a proceeding in a United States forum, shall have
23 the power to implement further this article by appropriate
24 legislation."

○

LA

104TH CONGRESS
2D SESSION

H. J. RES. 173

Proposing an amendment to the Constitution of the United States to protect the rights of victims of crime.

IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 1996

Mr. HYDE introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to protect the rights of victims of crime.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled (two-*
3 *thirds of each House concurring therein), That the follow-*
4 *ing article is proposed as an amendment to the Constitu-*
5 *tion of the United States, which shall be valid to all intents*
6 *and purposes as part of the Constitution when ratified by*
7 *the legislatures of three-fourths of the several States with-*
8 *in seven years after the date of its submission for ratifica-*
9 *tion:*

1 "ARTICLE —

2 "SECTION 1. To insure that victims of crime are
3 treated with fairness, dignity, and respect, in each pros-
4 ecution by the United States or a State, for a crime either
5 involving violence or for which the defendant can be im-
6 prisoned for a period longer than one year, any victim of
7 the crime shall have the right to receive notice of, and
8 to be present at, every stage of the public proceedings,
9 unless the court determines there is good cause for the
10 victim not to be present; to comment at any such proceed-
11 ing involving the possible release of the defendant from
12 custody, the acceptance of any plea agreement with the
13 defendant, or the sentencing of the defendant; to be in-
14 formed of any release or escape of the defendant; to re-
15 ceive reasonable protection from physical harm or intimi-
16 dation relating to the proceedings; to have the proceedings
17 resolved in a prompt and timely manner; and to have the
18 court order restitution from the defendant upon convic-
19 tion.

20 "SECTION 2. The rights established in section 1 shall
21 be made available to victims upon request to the prosecut-
22 ing authority and in the manner provided by law under
23 section 3.

24 "SECTION 3. The legislatures of the States, with re-
25 spect to a proceeding in a State forum, and the Congress

3

- 1 with respect to a proceeding in a United States forum,
- 2 shall have the power to enforce this article by appropriate
- 3 legislation."

○