

Racial Minorities for Victim Justice
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April 17, 2000

The Honorable Jon Kyl
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
United States Senate
Washington, DC 20510

Dear Senators Kyl and Feinstein,

The undersigned are founding members of Racial Minorities for Victim Justice which strongly supports Senate Joint Resolution 3, the Crime Victims' Rights Constitutional Amendment. We are aware that some groups that seek conscientiously to speak for the interests of racial minorities have expressed opposition to your proposed amendment. We claim some understanding of the fundamental concerns that guide their position – concerns we share – but we also believe that they have reached the wrong conclusion on this issue.

To put it in the simplest terms, no one in our society stands to benefit more from adoption of the Victim Rights' Amendment than people of color – for it is our people who suffer the highest rates of victimization in the Nation.

Let us start with some common ground on which the great majority of racial minorities stand in this country. Historically, we have had deep suspicions of the agencies of criminal justice. Speaking specifically on the African-American experience, it was the agents of criminal justice who were the enforcers of the Fugitive Slave Act and all the Jim Crow laws – often with lawless brutality.

While we are proud of recent progress to end this pattern of bigotry in the administration of justice – proud because African-Americans and other minorities have led the way in reforming these practices – we are not so naïve as to believe that our criminal justice system has grown altogether color-blind.

Like most other people of color, we are deeply troubled that so many young men of our racial heritage are under correctional supervision in one form or another – indicating, at the very least, that suspected wrongdoing among Blacks, Latinos, and Native Americans, among others, gets far closer scrutiny than among others in society.

Like other people of color, we are deeply troubled by a fairly recent pattern of incarcerating, often for excessively long periods, non-violent drug offenders – a harsh law enforcement policy that falls especially hard on people of color.

Perhaps some of these patterns are simply the result of the fair application of the criminal law on poor people, whose rates of criminal conduct have historically been higher among all ethnic groups who suffer from high rates of poverty. (The fact that so many racial minorities stay trapped in poverty raises separate grievances we will not address here).

But personal and institutional racism also still plays a part – a significant part, we believe – in how people of color are treated by criminal justice officials. For many of us, bitter personal experience has taught us that Driving While Black remains a serious crime in too many parts in our country today.

African-Americans hold no monopoly on maltreatment by the justice system. Non-Caucasians of every description – in the inner city, in rural America, in the barrio, in Indian Country – have faced virtually all the injustices their Black brothers and sisters have endured. So Americans of color come by their common suspicions of the intentions and performance of criminal justice agencies with ample justification. Even those of us who have devoted our lives to making law enforcement, prosecution, the courts, and corrections worthy of the trust of all our fellow citizens retain a certain unease over their treatment of minorities. More than most Americans, we believe criminal justice has become too fearful of people of color, too punitive toward minority offenders, with too few opportunities for their treatment and rehabilitation.

This is where we share common ground with most members of minority communities in America. What we cannot understand, however, is why some in those communities have concluded that one way to bring justice agencies into harmony with our higher ideals is to deny the victims of crime any effective and enforceable rights. To us, that makes no sense. We do nothing to improve the fair treatment of minority *defendants* by impeding the fair treatment of minority *victims*.

We well understand that a passion to protect the rights of criminal defendants arises almost instinctually among our brothers and sisters whenever systemic change is proposed in the criminal justice system. But the notion that the fair implementation of victims rights comes at the expense of defendants' rights is only that – a notion.

Leaders of America's criminal defense bar have testified frequently and heatedly against passage of the Crime Victims' Rights Amendment, citing amorphous dangers to defendants' rights and liberties. And how many cases did they cite where their millions of clients had run afoul of some overzealous, unfair, and harmful interpretation of a crime victim's rights already provided in state constitutions? Two hundred? Twenty? Two?

Not even one!

It is important to understand that victims' rights statutes echoing those in the proposed Amendment are to be found on the books of every state – buttressed by constitutional amendments in 32 of them. While compliance with those laws is woefully spotty (more on that below), it is fair to estimate that in hundreds of thousands of cases, the victims' rights were fully implemented – giving rise to not one single appeal as to the fairness of the application of those laws.

In truth, granting victims some of the rights long accorded defendants does not diminish in any way the rights of the accused – this is not a zero sum game, where to honor the humanity of the accuser somehow dilutes the humanity of the accused. Nor does it significantly affect the bottom line, from the defendant's perspective. In countless studies on the use of "victim impact statements" in sentencing hearings, the findings show that this right has given a measure of gratification to the victims who use it – and to the judges who consider the statements – but it has led to marginal, if any, differences in sentences imposed compared to ones where no impact statement was submitted.

It especially distresses us to hear those who share our heritage and views when they sing the same refrain as other opponents, "I'm all for victim rights, but . . ." That is a sentiment that, we believe, needs a cold-water shower of facts.

First, we need to examine the ordinary way opponents complete that sentence: "I'm all for victim rights, but Congress can do that with a statute." True – but for the one or two percent who are victims of crime in the Federal court system – and then only if the Federal authorities do a better job of obeying victims' rights laws than their counterparts in the states.

The only major research undertaken to track compliance with victims' rights laws in the states (National Institute of Justice, "Statutory and Constitutional Protection of Victims' Rights: Implementation and Impact on Crime Victims," 1996) found that states with relatively weak victims' rights laws enforced them at lower rates than states with stronger laws, buttressed by a state constitutional amendment. Here are some of the key findings:

Measures of rights granted by, or of satisfaction with, the justice system

	<i>Strong states</i>	<i>Weak states</i>
Informed about opportunity to make victim impact statement	75%	42%
Informed in advance about parole hearing	70	35
Informed about opportunity to make impact statement at parole	61	36
Notified about availability of victim services	72	47
Notified of right to discuss case with prosecutor(s) before or during trial	70	41
Informed about sentencing hearing	56	30
Informed about offender's earliest possible release date from incarceration	72	38
Informed in advance about hearing on offenders' conditional release	65	35
Informed in advance about parole hearing	70	35
Made an impact statement at parole hearing	58	15

Victim's perceived fairness of the trial:		
Adequate to more-than-adequate	59	49
Support services made available for victim or victim's family:		
Adequate to more-than-adequate	52	40

To all of us who “believe in victims’ rights” – from whatever part of our society we come – the survey results tell us that our beliefs will be recognized less than half the time if they are expressed only in statutes, that they will gain greater force if they’re backed up with a state amendment, but that all of them are likely to be capriciously enforced until they are written as a uniform, national platform in the U.S. Constitution.

Second, we need to examine how minority victims fare under our current victims’ rights efforts. Obviously, from the NIJ research findings, whenever there is a failure of full compliance (which is always), someone in the justice system is deciding not to do something in “Case C” that the same person did in Cases A and B. Most likely, those are unconscious decisions. But whatever the motives behind a particular action or inaction, the results put minority victims at a disadvantage. Here are some race-based tabulations from the same survey:

Measures of rights granted by the justice system, by race

	Strong states		Weak states	
	<i>nonwhites</i>	<i>whites</i>	<i>nonwhites</i>	<i>whites</i>
Informed of bail hearing	56%	72%	na*	na*
Opportunity to speak at bail hearing	44	61	na*	na*
Informed of bail release	32	55	19	38
Notice of a possible plea bargain	43	63	44	56
Notice of continuances	78	87	69	73
Informed of sentencing hearing	83	95	49	78
Opportunity to speak at parole hearing	41	80	na*	na*

*na = no statistical significance in the differences in the rates

Few of these rates of compliance should be satisfactory to any racial group of victims. At the same time, the fact that, whenever racial disparities crop up, nonwhites always lag behind whites – in figures that almost reach a gap of 40 percentage points – is to us repugnant and unacceptable.

In our opinion, people of color should be especially outraged at these disproportionate deprivations of our legal and human rights. For it is our minority communities who disproportionately suffer the pains of criminal victimization.

The media have used victimization data to portray the prototypical felon as a relatively young black male. Many of us take offense at that stereotype and its harmful, sometimes deadly, effects on a whole generation of African-American youth. At the same time,

none of us would deny that the prototypical *victim* of violent crime fits a very similar demographic pattern.

According to the 1998 National Crime Victimization Survey, the comparative violent crime victimization rates are 36 for every 1,000 white Americans and 42 for every 1,000 Black Americans, a very significant increase in the vulnerability of African-Americans to criminal attack. However you run the math on those figures, for those of us who seek to protect the special, legitimate interests of people of color, we need to develop a heightened interest in protecting their rights as victims of crime.

We confess that, up to now, we have done a poor job in enlisting our civil rights leaders to the cause of victims' rights. To both them and their supporters in the United States Senate, we say, restore to *all* Americans certain basic rights that were the ordinary prerogatives of our citizens when the Bill of Rights was adopted. For as you know, before the widespread use of paid law enforcement and prosecution, crime victims had to serve as their own police officers and prosecutors, or hire them – a practice that lasted about a century after the Nation's founding.

So what we seek is the *restoration* of certain, fundamental rights – such as the victim's right to be informed of, to be present, and to be heard at every critical stage of the criminal justice process.

In a larger context, this issue is not just about subgroups of crime victims in our country alone. Though born in the USA, the victims' rights movement now belongs to all the nations of the world.

A major impetus in the globalization of the victims' movement was the United Nations General Assembly's adoption of the "Declaration of Basic Principles of Justice for Victims for Crime and Abuse of Power." It is noteworthy that the 1985 Declaration, strongly backed by the U.S. delegation, speaks not only to just aspirations of the victims of crime but also to victims of the abuse of power. That is a dimension of our movement that speaks to just claims of persecuted minorities everywhere. It is a worldview we embrace.

The principles embodied in the U.N. Declaration and the proposed Constitutional amendment are now legally recognized in much of Europe, and are struggling for recognition, often with success, in such disparate societies as those of Mexico, South Africa (notably through its Truth and Reconciliation Commission), Japan, and Nigeria. That movement speaks to a basic human plea from everyone who has been marginalized in their society, a plea that the Reverend Jesse Jackson has eloquently captured in just three words: "I am somebody!"

It is important to recognize that crime victims in all cultures throughout history have found themselves marginalized. For there is a human instinct to end communication with

our neighbor who has become a victim, even to shun or ostracize that person. "Blaming the victim" appears to be as old as humankind itself. The worldwide victims' movement is battling, with remarkable success, to defeat those uncharitable human instincts. Those of us who are called to a special duty to speak for people who already face social stigma in our societies have an added duty, we believe, to speak for the crime victims among our already-stigmatized brothers and sisters.

That is precisely why the proposed Crime Victims' Rights Amendment has the unqualified, enthusiastic support of the founding members of Racial Minorities for Victim Justice.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman S. Early, Jr.", with a long horizontal line extending to the right.

Norman S. Early, Jr.
Convenor

Teresa Baker
Clementine Barfield
Aurelia Sands Belle, M.Ed
Ralph H. Hubbard
Sarah Fletcher
Azim N. Khamisa
Christine Lopez
Joseph A. Myers, Esq.
Steven Njemanze
David Osborne
Oliver W. Smith, Sr.

Norman Early is the President of the Board of Directors of the National Organization for Victim Assistance, which has agreed to serve as the secretariat for Racial Minorities for Victim Justice. He is also the former District Attorney of Denver, Colorado, and the founding President of the National Black Prosecutors' Association.

Teresa Baker is a member of the Stephanie Roper Foundation's Support Group for Homicide Survivors in Maryland. Her only son was murdered on May 8, 1991, in St. Mary's County. She supports the Amendment because the justice system did not work for her.

Clementine Barfield – “organizer, consultant, lecturer, trainer” – is the founder and President of Save Our Sons And Daughters (SOSAD), started in 1987 in the aftermath of her two teenage sons being shot the year before in Detroit – a year when 363 other children under 16 were also shot. In addition to assisting victims, SOSAD also helps reintegrate ex-convicts into community life.

Aurelia Sands Belle served for twelve years as the founding Director of the Victim-Witness Assistance Program in Atlanta, during which time she also served as President of Georgians for Victim Justice and was the first victim advocate to serve on the Governor’s Criminal Justice Coordinating Council. After a family move to North Carolina, she served as Executive Director of the Rape Crisis Volunteers of Cumberland County, where, among other accomplishments, she increased minority participation and inclusion.

Sarah Fletcher – joined by her children, Kenneth and LaKeesha Larry – are members of the Stephanie Roper Foundation’s Support Group for Homicide Survivors in Maryland. Her husband Reginald was murdered on June 20, 1987. Her son Ricky was murdered on June 20, 1998. Her daughter Crystal and Crystal’s unborn son were murdered on February 11, 1999. She supports the Amendment because, without it, she fears she will not receive equal justice.

Ralph Hubbard, a victim advocate, is a member of Parents of Murdered Children (national) and a Board Member of New Yorkers Against Gun Violence. A retired New York City Police Officer, he is also Second Vice President of the 24th Infantry Regional Association, Northeast Division – the last all-Negro Army unit, which was disbanded in Korea in 1951.

Azim Khamisa – a naturalized citizen whose family came “out of India, out of Africa, out of Canada, into America” is a successful investment banker. He is also the founding President of the Tariq Khamisa Foundation, dedicated to reduce the kind of youth violence that claimed the life of his son, Tariq. His mission in support of “restorative justice” models have generated much national media attention and an award of the National Crime Victim Service Award from Attorney General Janet Reno and President Bill Clinton.

Christine Lopez is a Senior Victim Advocate who has been nationally recognized (a National Crime Victim Service Award from Attorney General Janet Reno) for her expertise in assisting Hispanic victims and witnesses of gang violence. She was also the recipient of the first annual “Doris Tate Award” for exceptional service to victims in California.

Joseph Myers, a member of the Pomo Tribe of northern California, is Executive Director of the National Indian Justice Center, a nonprofit institution he helped create in 1983 to help improve tribal court systems and the administration of justice in Indian Country. In

1993, his work to bring victim assistance into reservation life led to his receiving the National Crime Victim Service Award from Attorney General Janet Reno.

Steven Njemanze, a victim advocate, manages Federal grants for victim assistance programs in Mississippi. He is a member of the Board of the National Organization for Victim Assistance and a member of the Mississippi Coalition for Crime Victims. He is also the survivor or many relatives killed in civil wars in his native Nigeria.

David Osborne is the Assistant Secretary of State and Consumer Services Agency in California, which oversees civil rights enforcement through the Department of Fair Employment and Housing. Mr. Osborne formerly served as a White House appointee in the Office for Victims of Crime at the U.S. Department of Justice during the first term of the Clinton Administration. A Japanese-American, Mr. Osborne was a member of the advance team of crisis counselors who responded to the 1995 Kobe Earthquake.

Oliver Smith is Vice President of the Washington, DC, Chapter of Concerns of Police Survivors (COPS). In February, 1997, three police officers were killed in the line of duty, including his only son, Oliver W. Smith, Jr. One of his vivid memories of the trial was just how few rights the victims have – and that victims should be given the same rights as the accused.
