

STATEMENT OF TESTIMONY

ON

The Victims' Bill of Rights Amendment

Respectfully Submitted

to the

SENATE COMMITTEE ON THE JUDICIARY

The Honorable Orrin Hatch, Chairman

by

Rita Goldsmith

National Spokesperson

PARENTS OF MURDERED CHILDREN, INC.

April 23, 1996

I am appearing today on behalf of Parents of Murdered Children, Inc., and our more than one hundred thousand members who are survivors of homicide victims. POMC was founded in 1978 and is open to anyone who has had a family member or friend who was murdered. The purpose of POMC is to provide self-help support and other assistance to our members as well as advocacy on behalf of our members.

Because of our organization's specific focus, we have avoided taking positions on legislative initiatives. In view of the large number of POMC members, we did not want to endorse positions that some of members might find objectionable. For the first time in our history, however, we are making an exception to endorse the proposed Victims Bill of Rights Amendment. The Amendment will make such an improvement in the treatment of survivors of murdered children -- a central concern of our organization -- that we felt an obligation to our members to endorse it and urge its prompt passage. We are confident that each of our members would endorse it enthusiastically, as the amendment will begin to focus some long overdue attention on crime victims. Indeed, we are confident that the Congress and the states will endorse it as well because it makes so much sense.

I am here personally because everyone in this country regardless of their position or social status can become a victim. I know because I became one. On September 18, 1985, at 2:30 in the afternoon, I received a telephone call. A hysterical voice, crying, informed me my little girl was lying on the floor covered with blood. I dropped the telephone and raced to the scene. My nineteen year-old, five-foot one-inch, one hundred-pound, blonde hair, blue-eyed little girl was dead -- she had been brutally murdered. The murderer had not only attempted to strangle her, which made it appear her throat had been cut, but had beaten her so severely that one of the blows to her head pierced her skull and punctured her brain. She and her family became the victims, now we are her only voice.

Her case remains unsolved. For the past ten and one-half years I have worked with other murder victim/survivors on both a local and a national level. I know first-hand how important this Amendment is, and I would hope when my daughter's case is solved this Amendment would assure me constitutionally protected rights to partially balance the scales of justice with those constitutional rights which will be afforded her accused murderer.

I know from my work with POMC that constitutional rights for victims are needed. Each week at our national office, we receive more than 1,000 murder-related calls. Of these calls, about half involve homicide survivors who believe that they have been treated unfairly by some part of the criminal justice system. Some of our members even have as much anger about their unfair treatment by the criminal justice system as they do about the murder. As one mother in our organization said, "I can accept what has happened to my daughter. I will never accept what the system has done to me."

Many of the concerns arise from not being informed about the progress of the case. Victims families often know little about what is being done to arrest the murderer or to bring him to justice. In other cases, victims are not informed about when a case is going to court or whether the defendant will receive a plea bargain. Of course, in some cases there are legitimate reasons for withholding or delaying information. But in many cases, the failure to provide information arises simply from indifference to the plight of the surviving family members or a feeling that they have no right to the information.

Because they do not know what is going on, victims frequently must take it upon themselves to call the police, the prosecutor, or the courts for information about their case. All too often, such calls have to be made when victims' families are still in a state of shock or are grieving from the loss of their loved one. Victims' families should not have to bear the added burden of trying to obtain information. It should be their automatic right.

Even when victims know what is happening in their case, they face further injustices. In many cases that we hear about, victims have been subpoenaed out of the courtroom in ways that create gross injustice. This is not just our opinion but the conclusion of the President's Task Force on Victims of Crime. The Task Force held hearings around the country in 1982 and concluded:

The crime is often one of the most significant events in the lives of victims and their families. They, no less than the defendant, have a legitimate interest in the fair adjudication of the case, and should therefore, as an exception to the general rule providing for the exclusion of witnesses, be permitted to be present for the entire trial.

President's Task Force Report at p. 80.

We believe that this recommendation should be adopted across the country. From my work at POMC, I know that the right to attend the trial may be critical in allowing the victim family to begin to heal from the psychological damage of a murder. Keeping the family outside of the courtroom may make that impossible.

Concern about psychological trauma becomes even more pronounced when coupled with findings that defense attorneys have, in some cases, used broad witness exclusion rules to harm victims. The President's Task Force reported:

[T]his procedure can be abused by advocates and can impose an improper hardship on victims and their relatives. Time and again, we heard from victims and their families that they were unreasonably excluded from the trial at which responsibility for their victimization was assigned. *This is especially difficult for the families of murder victims* and for witnesses who are denied the supportive presence of parents or spouses during their testimony. . . .

Testifying can be a harrowing experience, especially for children, those subjected to violent or terrifying ordeals, or those whose loved ones have been murdered. These witnesses often need the support provided by the presence of a family member or loved one, but these persons are often excluded if the defense has designated them as witnesses. Sometimes those designations are legitimate; *on other occasions they are only made to confuse or disturb the opposition*. We suggest that the fairest balance between the need to support both witnesses and defendants and the need to prevent the undue influence of testimony lies in allowing a designated individual to be present regardless of his status as a witness.

President's Task Force Report at p. 80.

No one should be surprised to discover that victims are often appalled to learn that they may not be allowed to sit in the courtroom during hearings or the trial. As Marlene Young, has written, victims "are unable to understand why they cannot simply observe the proceedings in a supposedly public forum." Marlene A. Young, *A Constitutional Amendment for Victims of Crime: The Victims' Perspective*, 34 Wayne L. Rev. 51, 58 (1987). As one crime victim put it more directly, "All we ask is that we be treated just like a criminal." *Ibid* at 59 (quoting crime victim). Of course criminals have a right -- a constitutional right -- to attend the trial. Crime victims deserve equal treatment.

In recent years, some states have made progress towards protecting the rights of victims to attend trials. But we still receive many calls at POMC from victims families who do not have such rights. And even in some states which supposedly protect a victims' right to attend a trial, victims are often "strongly advised" not to go in because of the possibility that it might create an issue for the defendant to appeal. The only way to guarantee victims these rights -- once and for all -- is to add an amendment to the United States Constitution. As the proposed Victims Bill of Rights states, a victim should have the right to "to be present at every proceeding in which those rights are extended to the accused or convicted offender"

Victims also deserve the right to make statements at sentencing. The sentencing of a convicted murderer is a critical event in the lives of our members, at least for those fortunate enough to have seen the perpetrator apprehended and convicted. A number of states have made positive steps in this direction over the last several years. But we still receive many calls about victims who are shut out of the sentencing process. Victims deserve the right to speak at sentencing, not to dictate the outcome but to participate in the outcome. The proposed Victims Bill of Rights Amendment will do this by guaranteeing victims the right to be "heard at any proceeding involving sentencing"

We strongly support the Amendment in its current form, and would like to make one point about our interpretation of the existing language. Clearly Congress and the states intend for surviving family members of homicide victims to be considered to be "victims" entitled to the protections of the Amendment. If anyone has any doubts that the members of our organizations are true crime victims, they need only spend a few minutes with any of them to put those doubts to rest. While surviving victims can speak for themselves, those who have been murdered can only rely on their family members or other close friends to speak for them.

While we believe the current language already covers surviving family members of homicide victims, it might be useful for Congress and the states to specifically provide in the implementing statutes that survivors of homicide victims are also considered to be "victims." Under section 2 of the amendment Congress and the states "shall have the power to implement further this article by appropriate legislation." We would strongly suggest that appropriate legislation would include protection for survivors of homicide victims. Some of the state victims' rights amendments do this directly. For example, the Arizona amendment provides that "'victim' means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative" Similarly, in Florida, the amendment protects "victims of crime or their lawful representatives, including the next of kin of homicide victims" This kind of language would be a good addition to the implementing statutes.

We strongly support this Constitutional Amendment because it will help bring needed and necessary balance to the scales of justice between victim/survivors and the accused. Further, it will make vital and often otherwise unattainable information available to victim/survivors, thus enabling them to have knowledge which is a necessary step on the road to healing. Without knowledge we cannot heal. In supporting this amendment we respond to the horrors we have heard and the aftermath of murder we have witnessed with our victim/survivors across the United States. We cannot truly assist in addressing their needs without supporting this Amendment; through which we seek - JUSTICE FOR ALL VICTIMS.