



Testimony of Barbara LaWall Pima County Attorney

Before the Committee on the Judiciary
United States Senate

On a Senate Joint Resolution to create
A Victims' Bill of Rights in the
United States Constitution

April 16, 1997

Good morning, Mr. Chairman. Senators.

My name is Barbara LaWall and I am the elected prosecutor in Pima County, Arizona -- home of the University of Arizona Wildcats, the 1997 NCAA National Basketball Champions!

Thank you for giving me the opportunity to represent the thousands of citizens in my jurisdiction who are victimized by crime each year, and for providing me with an opportunity to give you an elected prosecutor's perspective on the impact of established legislation in a state that amended its constitution seven years ago to include rights for victims of crime.

First, I would like to tell you about my office and its commitment to helping victims. I am very proud to represent an office that developed one of the first victim witness advocacy programs in the nation -- implemented in 1975, by my predecessor, former United States Senator Dennis DeConcini, when he was the elected prosecutor for Pima County. Ours is an office that exemplifies dedication and commitment to providing extraordinary service to victims of crime.

Our Victim Witness Advocacy program is a unique program where trained volunteers provide crisis intervention assistance to victims of crime 24 hours a day, 365 days a year, at nominal cost to the taxpayers of Pima County. There is no other victim witness program in the nation quite like ours. It has been featured on numerous national television programs such as Good Morning, America; MacNeil/Lehrer News Hour; ABC Nightly News; and in national newspaper and magazine articles, including The New York Times, the Wall Street Journal, and Life magazine.

Our victim advocates are sought after for technical assistance and training locally, nationally and internationally. Our advocates train local police, prosecutors and volunteers. They serve on local and national boards and advisory committees serving victims. Additionally, a highly trained corps of volunteers includes critical incident stress debriefing teams -- who provided crisis debriefing to Oklahoma City bombing victims, and to ravaged victims of war in Bosnia. Additionally, these advocates provide critical services to victims and witnesses involved in the criminal justice system.

I would like to acknowledge the outstanding and exemplary work of Viki Sharp, the program director of our victim witness advocacy program. Ms. Sharp's remarkable career spans 21 years of providing services to victims. She is internationally recognized as an extraordinary trainer on victims issues, and is the 1997 recipient of the President's Award for Service to Victims of Crime. Additionally, our volunteer coordinator, Ms. Peggie Rodriguez was selected as the 1997 winner of the Blake award from the Volunteer Center of Tucson for her dedicated, caring and committed efforts as the Victim Witness program volunteer coordinator.

I am grateful for the opportunity to express my support for a national victims' rights constitutional amendment. This is an important addition to the fundamental rights which we enjoy as Americans. I bring to this committee's review, the perspective of an elected official, a career prosecutor of 20 years, and a zealous advocate for victims' rights who has seen those rights successfully integrated into the demanding work of a busy, urban prosecutor's office.

In 1990, when our state constitutional amendment for victims' rights passed, I was the Chief Deputy in my office and was responsible for drafting the office's policies and procedures for implementing the new rights for victims. I am proud to say that my office has been able to

effectively and efficiently implement these new constitutional standards into our daily operations with little difficulty or impediment. More important, I am here to let you know that they have enhanced our office practices, and have vastly improved and strengthened the quality of justice in my community.

The unfortunate reality is that the American criminal justice system is absolutely dependent upon victims of crime. Without the cooperation of victims and witnesses in reporting and testifying about crime, it is impossible in a free society to hold criminals accountable. Until recently in Arizona, and in states without victims' rights legislation, when victims of crime come forward to perform this vital function, they find little protection. They find themselves treated as appendages of a system appallingly out of balance, and they are victimized twice.

First they suffer irreparable damage from a crime, and then they agree to endure the indignity of the criminal legal process to prevent their assailants from victimizing the rest of us. Somewhere along the way, our criminal justice system lost track of the simple truth that it is supposed to be fair and just. Somewhere along the way, the criminal justice system has become the criminal *legal* system. Instead of protecting those who obey the law and punishing those who break it, it has become a process that serves lawyers, judges and defendants.

For example, in 1983, when Debby and Ron's seven year old daughter was kidnaped, brutally murdered, and buried in a shallow grave in the desert, they had to face a criminal justice system that treated them with institutionalized disrespect and disinterest. This was a system where the defendant had all the rights, and where they had none.

They had no right to be informed of any of the proceedings and no right to be present. The defendant had these rights. The judge often set hearings giving prosecutors no opportunity to notify the family, and required the hearings to go forward without them. And although they were not witnesses to their daughter's kidnaping and murder, they were excluded by the judge from the courtroom, and were not permitted to attend the trial of the man who took their daughter's life. It goes without saying, the defendant had this right.

Victims of crime have the same *constitutional rights* as criminal defendants. The trouble is, you have to be a defendant to use them. Constitutionally, victims of crime as *victims* have virtually no rights. We have somehow forgotten that while few of us will ever be formally accused of a crime, nearly all of us will fall prey to criminals. It is time we remembered.

Most victims suffer irreparable damage from a crime and then agree to endure the indignity of the criminal legal process to prevent their assailants from victimizing the rest of us. If a federal constitutional victims' rights amendment passes, several possibilities, currently inconsistently enforced across the country, such as the right to restitution, or to be notified of and testify about release of the accused, will be secured for all victims all the time. It is as important to have victims' rights as to have defendants' rights spelled out in our Constitution if we intend that they be enforced.

Another example from Tucson before the victims' rights amendment illustrates this need.

In 1989, while asleep, Mary's home was invaded by an intruder. She was brutally attacked and endured hours of intimidation, beatings, and was repeatedly and savagely raped. Her attacker shattered any chance for Mary to feel safe in her home or her world. During the trial, Mary was again terrorized, brutalized and raped. This time it was the criminal legal system that victimized Mary. It was the criminal legal process that failed to protect Mary from her attacker. It was the criminal legal system that failed to protect her from additional violence and intimidation from the accused offender.

Before trial, the rapist fired his attorney and undertook his own defense. Over the prosecutor's strenuous objection, he was permitted to interrogate his horrified victim. Forced by the court to sit opposite him for hours as he questioned and badgered her under the guise of a "defense interview," Mary was again terrorized and revictimized. She had no right to refuse this interrogation. The defendant, however, had the right to remain silent.

Stories like Debbie's, Ron's and Mary's, which scream out injustice, no longer happen in Tucson or the rest of Arizona. They are occurring, however, in states where victims have no constitutional rights. If we take the justice out of the criminal justice system, we leave behind a system that serves only the criminal. All victims are asking for is the right to be treated the same as common criminals.

In 1990, Arizona, through voter initiative, established constitutional rights for crime victims. It was a struggle, with fierce opposition from defense attorneys convinced that the rights of the accused would suffer.

This has simply not occurred.

The judiciary fought these rights, concerned that giving victims' rights would cripple the judicial system and cause a massive reduction in plea agreements and, a dramatic increase in trials.

This has not occurred.

The ever-changing arguments against passage of Arizona's constitutional amendment were concocted by criminal defense attorneys and the occasional judge, then blown out of proportion by a few of the same journalists who relentlessly exploit crime (and victims) to sell newspapers. The arguments made to frighten the citizenry from voting for the passage of the amendment were perpetrated by those not noted for their sensitivity to the plight of the victimized. Their fears did not come to pass.

Their contention that victims' rights would "endanger the Constitution," "cause defendants to be presumed guilty," and "deprive the accused of the right to a fair trial by jury" have repeatedly been proven unfounded. Their ultimate threat that providing rights to victims would cost the system "millions in hidden costs" has been shown to be just plain ridiculous.

Treating victims with fairness, dignity and respect has not over burdened the criminal justice system. Treating victims of crime impartially and with justice -- the same treatment we give the common criminal -- has not proven misdirected or intolerably expensive. The right to be informed of proceedings is simply fundamental to the notions of fairness and due process.

Basic common sense, not to mention high school civics, tells us that giving victims the opportunity to be present at any stage of the criminal process at which the defendant has that same right does not diminish a defendant's rights. It merely enhances the respect with which we treat victims. Not a sentence, not a word, not a punctuation mark in the proposed amendment attempts to cancel any criminal defendant's rights to be presumed innocent, to a jury trial, or to anything else provided by the Constitution. Likewise, Arizona's experience does not support their claim that implementation of these rights will be unaffordable.

Arizona gave victims the right to refuse pretrial inquisition. This was a right already enjoyed by victims in a majority of other states who steadfastly refused to impose on crime victims the judicial tyranny of compulsory pretrial interrogation by defense attorneys. Arizona's amendment expressly overturned the witness exclusion rules that result in victims being barred from the courtroom. It simply permits the same standard to be used for victims as we use for defendants. These are rights that should be shared by all victims regardless of where they reside, regardless of the state in which they are victimized.

Many groups still fight against a federal constitutional victims' rights amendment. I invite them to visit my office. The reasons they give in opposition are simply not supported by our experiences in Pima County. Critics claim that a constitutional amendment giving victims a voice in the process will permit them to veto plea agreements. They claim prosecutors' offices will be tied in knots by victims' undue influence. This is simply not so.

In Arizona, for the last seven years victims have had the constitutional right to consult with prosecutors regarding negotiated pleas. They don't "block" plea agreements. The truth is that our prosecutors consult with victims before offering a plea bargain. This gives victims the knowledge of

how their case is being handled, and the assurance that they will have input before any final decisions are made. A large measure of respect and dignity for the victim is conveyed when they know that their opinion counts.

Permitting victims to be present in the courtroom during testimony does not take away the right of the defendant to be there too. Refusing defense attorney interrogations of victims does not prevent them from getting police reports or victim statements. It also does not prevent cross examination of the victim. A defendant is not denied due process under the law because we are now giving victims of their crimes the right to be seen and be heard. Victims' rights in no way diminish a defendant's rights.

Clearly, the claims made by those opposed to the Arizona amendment have proven to be unfounded.

For those who say, "we cannot do this, it's impractical" . . . I invite them to come to Tucson.

For those who say, "we cannot bear the costs" . . . let them come to Tucson.

For those who say, "it will diminish the rights of defendants" . . . let them come to Tucson

Let them talk to my staff, let them talk to the victims and their families.

Conclusion:

Mr. Chairman and members of this committee, thank you again for the opportunity to express these views. It has been an honor and a privilege to come before you and address the most important and critical issue of criminal justice reform to be presented to any Congress on behalf of the American people.

Victims of crime in America are entitled to be treated with decency, dignity, respect and fairness. They are entitled to be free from intimidation, harassment and abuse. Victims of crime in America are not demanding any more rights than those now held by criminal defendants.

Before Arizona's Victims' Bill of Rights, victims had no rights to justice and due process; no right to be present in the courtroom; no right to be heard or be informed of a defendant's condition of release; no right to give input to the court; no right to refuse to give their address or other locating information; no right to a speedy trial; no right to be heard at sentencing; no right to refuse an interview by a defendant's lawyer (or by the defendant representing himself).

The U.S. Constitution, the United States Supreme Court, as well as each states' courts, constitutions, criminal rules and procedures, the zealous advocacy of criminal defense lawyers, and the professionalism of police and prosecutors across this country have worked together for decades to ensure that defendants' rights are fully protected.

We must now work for victims whose lives are shattered daily by crime. We must work relentlessly as committed advocates on behalf of the millions of citizens and their families who are victimized by crime in our country every year. We must seek to ensure that they are afforded full and meaningful participation in the process, and that the system does not treat them with institutionalized disinterest.

We must listen to, hear and recognize victims' pleas for justice. We must remember that across this nation without cooperation from victims of crime, we cannot protect ourselves from the criminals.

Common decency dictates that we now return the courtesy, and protect the victims as well.