



TESTIMONY OF

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Before the United States Congress - Senate Judiciary Committee

RE: Victims' Rights Constitutional Amendment

April 16, 1997

As an elected state official and my state's chief lawyer, I am gravely concerned by the public's disenchantment with the judicial system and its belief that the system is imbalanced in favor of the defendants. The cynicism can almost be felt in the air of communities where a particularly offensive ruling seems unfairly to benefit a defendant. It is the duty of those of us who hold the public trust in elective and appointive office to do all within our power to restore faith and belief in the system. We are but one step away from tyranny when we govern with a deaf ear to the public we serve. Let the public speak on this most fundamental right.

Just six years ago, April 8, 1991, one of my best friends, Regina Faletti, a Methodist minister, was gunned down in the parking lot outside the church where she had just finished teaching Bible study. Although a lawyer, I would have been unable to explain to her children and her sister why they would have had fewer rights than Regina's murderer had they gone to trial. The words "Well, the Constitution guarantees the defendants the right to a fair trial and to an attorney..." fall without meaning on the ears of grieving family members. As it happened, her husband-murderer killed himself, thus alleviating the additional anguish of putting her family through the indecencies of a criminal trial at which his guilt would have been established. He established his guilt himself with the bullet he put through his own head. Few victims' families are afforded the swift, certain -- and ultimate -- justice that Regina's family received. They did not have to wonder why her killer was entitled to a lawyer to speak for him when she wasn't permitted anyone to speak for her as she faced the barrel of his .45. Her congregation did not have to wonder why he was protected from a sentence that could be construed as cruel and unusual, while her murder on the church grounds could be described as nothing but cruel and unusual. Her sons did not have to query why their step-father could be protected from having his life twice put in jeopardy, when their mother's life was put in jeopardy five separate times with five separate bullets.

Other families of violent crime victims must rely on the Constitution, a document they remember studying in high school civics -- never realizing its words would impact their lives so directly. The Constitution, and its interpretation, will govern their lives from the moment the investigation targets a suspect until the time the sentence is completed. They will tire of the prosecutors and police officers explaining to their various queries "It's his constitutional right...", and wonder why they never hear the words, "It's your constitutional right."

The United States Constitution is the most fundamental document of our government. It creates this very Congress, which is deliberating an amendment to it. It creates the Supreme Court, which is called upon frequently to interpret it. It creates the office of the President, who would be responsible for seeing that the amendment is enforced. But the Constitution is not static. The Constitution which governs us today is not identical to the form it took when initially adopted in 1787. Indeed, the framers never expected that it would remain untouched or unchanged and provided in Article V that Congress, when it "shall deem it necessary, shall propose Amendments to this Constitution...." Congress has deemed it necessary 27 times when legislatures of a sufficient number of states have concurred.

In those 27 amendments to the United States Constitution, no less than 15 separate and distinct rights are provided to individuals charged with crimes. I would not argue that even one of those rights extended to the

criminally accused be repealed. However, I do not believe it just, that within our system no rights are guaranteed by the very same document to the victims of the very acts for which the accused have been arrested and guaranteed rights.

It is no secret that in America members of the public in general, and crime victims in particular, feel the justice system is criminal and that it is the criminal's justice system. "What about the victim?" they cry. I am proud that my state answered that plea in 1992 by amending the Kansas Constitution to add the Victims' Bill of Rights. It did not eclipse, erase or diminish any of the rights of the accused, but merely extended the most basic of guarantees to the victims -- the right to be notified and heard. Surely, it is time for the United States Constitution to provide the same protections to all citizens of this country.

Who among us could justify to Gene and Peggy Schmidt that the murderer of their 19 year old daughter, Stephanie, deserves 15 specific constitutional protections and they deserve none? Who among us could justify to Barbara Daniels that the man who killed her son, Wally, was entitled to more rights than she? Who among us could justify to victims of violent crime that the Victims' Rights Constitutional Amendment is less important than the 15 rights specifically guaranteed to those accused of victimizing others.

IS ENSURING A VICTIM THE RIGHT TO BE NOTIFIED OF A HEARING ANY LESS IMPORTANT THAN THE MEDIA'S RIGHT TO REPORT ON THE HEARING, AS GUARANTEED BY THE 1ST AMENDMENT?

IS ENSURING A VICTIM THE RIGHT TO BE PRESENT AT A HEARING AND TO CONFRONT THE DEFENDANT, EVEN IF ONLY FROM THE BACK OF THE COURTROOM, ANY LESS IMPORTANT THAN THE ACCUSED'S RIGHT TO BE PRESENT AND CONFRONT WITNESSES AGAINST HIM, AS GUARANTEED BY THE 6TH AMENDMENT?

IS ENSURING A VICTIM THE RIGHT TO BE PRESENT AT ALL PUBLIC PROCEEDINGS ANY LESS IMPORTANT THAN THE DEFENDANT'S RIGHT TO BE TRIED IN PUBLIC, AS GUARANTEED BY THE 6TH AMENDMENT?

IS ENSURING A VICTIM THE RIGHT TO BE HEARD REGARDING A CHARGE ANY LESS IMPORTANT THAN THE ACCUSED'S RIGHT TO HEAR THE CHARGE AGAINST HIM, AS GUARANTEED BY THE 6TH AMENDMENT?

IS ENSURING A VICTIM THE RIGHT TO SPEAK AT SENTENCING ABOUT THE DEFENDANT'S CRUEL AND UNUSUAL CONDUCT DURING THE CRIME ANY LESS IMPORTANT THAN THE ACCUSED'S RIGHT TO BE FREE FROM CRUEL OR UNUSUAL CONDUCT BY THE GOVERNMENT, AS GUARANTEED BY THE 8TH AMENDMENT?

IS ENSURING A VICTIM THE RIGHT TO A FINAL DISPOSITION FREE FROM UNREASONABLE DELAY ANY LESS IMPORTANT THAN THE ACCUSED'S RIGHT TO A SPEEDY TRIAL, AS GUARANTEED BY THE 6TH AMENDMENT?

IS ENSURING A VICTIM THE RIGHT TO AN ORDER OF RESTITUTION FROM THE CONVICTED ANY LESS IMPORTANT THAN THE DEFENDANT'S RIGHT TO BE FREE FROM EXCESSIVE FINES, AS GUARANTEED BY THE 8TH AMENDMENT?

IS ENSURING THAT A VICTIM'S LIFE AND LIMB ARE NOT AGAIN PUT IN JEOPARDY BY THE RELEASE OF THE ACCUSED ANY LESS IMPORTANT THAN THE DEFENDANT'S RIGHT NOT TO HAVE HIS LIFE OR LIMB TWICE PUT IN JEOPARDY, AS GUARANTEED BY THE 5TH AMENDMENT?

None of the rights which would be extended and guaranteed to the victims by this Constitutional amendment would lessen the rights guaranteed by the same document to the defendants. The amendment would simply attempt to balance the criminal JUSTICE system.

Who among us would say the Victims' Rights Constitutional Amendment is less important than the 27 other items that have gained legal significance by being included as amendments to our Constitution in these 210 years?

The 16th Amendment gave Congress the power to lay and collect income taxes. The 18th Amendment prohibited the manufacture, sale or transportation of intoxicating liquor, while the 21st Amendment repealed the 18th. The 22nd Amendment limited an individual from serving as President for more than two terms. The 27th Amendment prohibited Congress from giving itself a pay raise without first standing for election.

Each of these amendments served a purpose and was approved by Congress and the requisite number of state legislatures. But none really directly affected the basic rights of citizens of the United States. With one of four families predicted to be victims of crime in America, the Victims' Rights Amendment would directly affect the lives of more Americans in a positive way than any of these more recent amendments.

Other amendments to the Constitution have been fundamentally significant and changed the social development of our country. These amendments have attempted to correct unequal treatment of various categories of people. The 13th Amendment barred slavery and involuntary servitude. The 15th Amendment gave a voice on Election Day to all men without regard to race, color or previous condition of servitude. The 19th Amendment gave women a voice at the ballot box and the 26th Amendment gave the same voice to those 18 years and older. Is the proposed 28th Amendment giving victims of violent crime a voice with which to be heard less deserving than giving African Americans, women and 18-year olds a voice? NO! The 13th, 15th, 19th and 26th Amendments recognized disparate and discriminatory treatment that was no longer tolerable by the people of the United States. We demanded that the conditions no longer be condoned by our government. We demanded that the United States Constitution be amended to reflect the fundamental shift in our view of fairness and equality. The American people are now demanding that the same philosophy of fairness and equality be extended to victims of violent crime, and that state legislatures be allowed to vote to ratify the 28th Amendment to the United States Constitution.