

What this bill is about is expanding the support network available to our teachers; support for people in other professions seeking a second career as a teacher; support for teachers seeking to improve subject knowledge or classroom skills; support for teachers seeking new ways to teach math or science or history; and finally, support for new teachers from experienced teachers.

In short, with this bill, we provide the kinds of resources that enable the teaching profession to build upon its commitment to teaching excellence. Mr. President, as we debate the merits of the Educational Opportunities Act, the bottom line, I believe, is that we need to get back to basics: good teachers, safe schools. That is what this bill is about—good teachers, safe schools. Parents will not have peace of mind unless they know their children's teachers are qualified to teach, that they are good teachers, and that their children's schools provide safe learning environments. It is that simple. That is what parents expect.

Today, I have talked about teaching and what this bill does to assist the teaching profession. Tomorrow, I hope to have the opportunity to talk about the second component of this bill which is safe schools. Good teachers, safe schools. We need to get back to the basics, and that is what this bill does.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

(The remarks of Mr. GORTON pertaining to the introduction of S. 2464 and S. 2466 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. GORTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO PROTECT THE RIGHTS OF CRIME VICTIMS—Motion to Proceed—Resumed

The PRESIDING OFFICER. The clerk will report the unfinished business.

The legislative clerk read as follows:

Motion to proceed to S.J. Res. 3 proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I remind my colleagues of the status now of business on the Senate floor. It has been a little confusing, I know, particularly for those who might be watching who aren't familiar with Senate procedures. But sometimes we take something up and then lay it aside, take something else up, and then go back to the original matter, and so on. That is what we have been doing.

Yesterday, you will recall that we began the debate on S.J. Res. 3, which is an amendment to the U.S. Constitution that would provide rights to victims of violent crime. Senator FEINSTEIN of California and I are the primary sponsors of that resolution.

At the end of yesterday, we went to other matters. We are now going to resume debate on the motion to proceed to this resolution.

The Senate procedure is that we first have to decide to proceed, and then we can proceed. So later on this afternoon, hopefully, the Senate will vote to proceed to formal consideration of this constitutional amendment. Technically, for a while this afternoon we are going to be debating on whether or not we should proceed.

I am hopeful our colleagues will agree, whether they support the amendment or not, that they should permit us to proceed to make our case so they can evaluate it and decide at the end of that period whether or not they want to support a constitutional amendment.

I think it is a little difficult, given the fact that there hasn't been a great deal of information, for people who are not on the Judiciary Committee to decide what their position is on this until they have heard arguments.

Yesterday afternoon, Senator LEAHY primarily, but several other members of the Democratic side and one Republican, came to the floor and discussed at length, I think for at least 3, maybe 4 hours, reasons why they thought that constitutional amendment should not be adopted. Certainly there are legitimate arguments that can be adduced on both sides of this proposition.

But I would like to begin today by explaining a little bit why we believe that it is important, first, to take the amendment up, and, second, why we believe, if we do take it up, it should be supported by our colleagues.

Senator FEINSTEIN will be here shortly, and she will begin her presentation by discussing a case, the Oklahoma City bombing case, that in some sense is a metaphor for this issue generally, because in the Oklahoma City bombing case victims were denied their rights. Families of people who were killed were not permitted to sit through the trial. They were given a choice over a lunch break during the trial either to remain in the courtroom or to leave if they wanted to be present at the time of the sentencing and to say something to the judge at that time. There was enough confusion about the matter that many of them gave up their right

to sit in the courtroom in order to be able to exercise their right to speak to the judge at the time of the sentencing.

Congress was so exercised about that it actually passed a law—it was specifically directed to the Oklahoma City bombing case but it pertained to other similar cases—so that victims have the right to be in courtroom, and they shouldn't have to make a choice between the trial and sentencing. They should be able to appear at both.

Senator FEINSTEIN will discuss in a moment the details of how that case proceeded and why it stands for the proposition that we need a Federal constitutional amendment.

The bottom line is that even the Federal Government passed a statute designed to pertain to this exact case which was insufficient to assure that those people could exercise what we believe is a fundamental right to sit through that trial. They were denied that right.

What is worse, because the case was taken up on appeal, and because the U.S. Constitution clearly trumps any Federal statute, or any State statute, or State constitutional provision, it wasn't possible to argue that this Federal statute trumped the defendants' rights if those were bases for the rights asserted.

So you have at least seven States, or thereabouts, in the Tenth Circuit that are now bound by a precedent that says this Federal statute doesn't work, to let you sit in the courtroom during the trial. That has to be changed. There is only one way to change it. That is with a Federal constitutional amendment that says to the courts, from now on, these are fundamental rights and courts must consider these rights.

As Senator FEINSTEIN will point out, supporters of this amendment include a wide variety of people who had family and friends involved in the Oklahoma City bombing case. One is Marsha Kight, whose daughter was killed. Marsha has been a strong supporter of the victims' rights amendment because she had to sit through all that. That is what Senator FEINSTEIN will be talking about.

We listened to arguments yesterday from Senator LEAHY and others about the amendment. I understand they wish to talk this afternoon. I will be paying attention to what they have to say and try to respond as best I can. The arguments fall into two or three general categories. One notion they presented is that this is a complicated amendment, it is too long—even longer than the Bill of Rights. It is not longer than the Bill of Rights. We have counted the words. I will have my staff tell Members exactly how many words are in the Bill of Rights and how many words are in this amendment.

The point is, to find defendants' rights, one has to look all over the Constitution. We have amended the Constitution several times to give people who are accused of crime different rights. If you added up all rights of the

accused and put them into one amendment, it would be much longer than the amendment we have for victims' rights. We have all of our rights in one place.

I don't think it should be an argument against providing victims of crime certain fundamental rights because it takes up several lines of the Constitution. We either mean to give them our fundamental rights or we don't. Defendants have all of the rights now. That is fine. We take nothing away from the defendants. But this should not be based on whether there are more words describing the defendants' rights than there are describing victims' rights.

One reason we take a little longer to describe victims' rights—although it is shorter than the defendants' rights if we add them up—we have described them with great precision. They are very limited.

Defendants' rights are expressed in broad terms. Defendants have a "right to trial by jury." Does that mean in all cases? Does that mean just in felony cases? What kind of a jury? Defendants are protected from "unreasonable search and seizure." What does that mean? There is a basic "fair trial" right, and a right to counsel. All of these are expressed in very general terms.

There are thousands of pages of court decisions interpreting what "unreasonable search and seizure" means. I suppose the Founding Fathers could have written 10 pages describing exactly what they meant by "unreasonable search and seizure." They didn't do that.

In our proposal, we have described these victims' rights with great care so that there could be no argument the rights took anything away from defendants. That is why some of the wording is apparently a little bit longer than our friends on the other side desire.

I guarantee if they were shorter, if they merely said victims have a reasonable right to attend the trial, their argument would be: We haven't nailed this down; This is too broad and subject to interpretation. You have to state exactly what is meant or it might conflict with the defendants' rights. Those who oppose this will argue it either way. In effect, we are damned if we do and damned if we don't. We have tried to word it carefully.

I have the exact number of words for anybody who is interested. Without the technical provisions which concern the effective date, the amendment is 307 words. The victims' rights are described in 179 words. Defendants' rights in the U.S. Constitution consume 348 words.

OK, so if this is all about how many words there are, we win. However, that is not what this is about. Let's get serious.

The other argument from the opponents was, we have written 63 drafts of this amendment. Yes, indeed, we have.

In fact, we are proud of it. We have been making the point that this isn't some unthought-through proposition, written on the back of an envelope. We have written draft after draft after draft, as a good craftsman would polish a fine piece of furniture over and over and over until it was absolutely smooth and shiny. We have done the same thing with this amendment.

We have talked to prosecutors. We have talked to the U.S. Department of Justice. They have written a very nice letter complimenting the changes we made about concerns they expressed. We have accommodated many of their concerns. We talked to law professors; we talked to victims groups; we talked to lots of different people. As a result of all of these conversations, we have continued to modify the amendment to take into account their wonderful suggestions, to take into account concerns they have raised.

We are rather proud of the fact that we have been careful; we haven't just tried to slide this through. For 4 years we have been working on this through 63 different drafts. We now have a very carefully crafted, honed constitutional amendment. Frankly, we have written more drafts here than the Bill of Rights. People think that is a pretty good document. Of course, I would never hope to compete with our Founding Fathers. Understanding how much thought they put into their amendments, we have tried to be as careful in what we have written.

I daresay arguments can be made against our proposed constitutional amendment. There are some legitimate points to make. However, it is not legitimate to say we have tried to hurry this through, or we have not given it enough thought, or we have not had enough input, or we have not been willing to make changes. I think the fact we have gone through this number of changes illustrates the fact that we have been very open in the process.

That is why the amendment passed through the Senate Judiciary Committee with a very strong bipartisan vote of 12-5. Getting anything through this Judiciary Committee in the form of a constitutional amendment, I think all of my colleagues would agree, is a pretty sound testament to the care with which we have crafted this particular provision.

While there are arguments that can be made about the constitutional amendment, it is not fair to say we shouldn't do it because of the number of words in the amendment or we shouldn't do it because we have taken the pains to go through 63 drafts. We have tried to be very careful in what we have done. Those were two of the arguments raised against this yesterday.

A third argument was that we ought to give some time to allow a statutory alternative to work. With all due respect, it was in 1982, when President Reagan convened a group that was concerned with protecting victims' rights,

that the proposal for a constitutional amendment was first made. It was in 1996 when President Clinton held a ceremony in the Rose Garden with the Attorney General and many others expressing his strong support for a Federal constitutional amendment to protect the rights of victims of crime. He said: We have experimented with State statutes, Federal statutes, and State constitutional provisions long enough. They just don't work to secure the rights of victims. Well meaning prosecutors and judges have tried hard. In fact, the cause of victims' rights has gained a lot of support over the years. Victims are much better treated in the process now than they were many years ago.

I read yesterday statement after statement by President Clinton, by Attorney General Reno, by associate attorneys general, by law professors, by Laurence Tribe, a respected professor from Harvard, district attorneys and judges, all of whom say, unfortunately, when a right is not expressed as a fundamental right in the U.S. Constitution, it just isn't protected with the same degree of care and consideration and energy as those rights that are protected in the U.S. Constitution.

That is why, according to a recent study, 60 percent of the victims who are supposed to get notice of their rights don't receive notice. One cannot exercise a constitutional right if one is not aware of it.

With respect to defendants, we have made it the Holy Grail that they will be advised of their rights. This is what the Miranda warning is all about. Defendants have a right not to speak and a right to an attorney.

Victims ought to at least get some reasonable notice of their rights. It does not mean you have to track them all down and stick a statement right in front of their faces and tell them orally, but it does mean you at least have to keep them on a mailing list or phone list. Computerized telephone messages now can be sent.

We have had testimony. For example, the county attorney in the sixth largest county in the country by population has testified it is just no problem to notify victims of their rights. He says the entire cost of taking care of the victims' rights is about \$15, from beginning to end. It just is not a valid argument that it is going to be a real problem for prosecutors or the court system to provide this notice and to provide these rights to victims.

I have one final comment, since I think Senator FEINSTEIN is now ready, and I have given the introduction for her comments, I say to Senator FEINSTEIN, so our colleagues will be prepared to hear what she has to say. But I have a final comment about these rights.

There is a culture in the legal community that has built up over the years that bends over backwards to protect the rights of defendants. We have no quarrel with that. Law school courses,

Law Review articles, everything is oriented toward that. When you go to law school and you are a second- or third-year law student, you can participate in a legal clinic representing indigent defendants and so on, but there is no similar culture to protect the rights of victims. That is one reason why you have people reflexively saying: We have to make sure we protect the right of defendants. If we are going to protect the right of victims, we just do not feel real good about that because it might hurt defendants.

As we pointed out yesterday and as I think Senator FEINSTEIN is about to point out today, nothing in our proposal takes away a constitutional right of a person standing accused of a crime. We would not permit that and we are willing to include language that makes it clear that the rights we enumerate here for victims do not in any way abridge the rights of the defendants. That should be clear. So this culture that has grown up in support of defendants' rights should not be an argument against the protection of victims' rights, which, after all, involve people whom society has failed to protect in the first instance. If there is anyone we want to help through the criminal justice process it is these people, these victims of violent crimes.

I think that is a shorthand summary of the arguments against some of the things that were said yesterday. I am very pleased, though, that Senator FEINSTEIN is here, as I said, to present information that specifically responds to an argument that was made yesterday with respect to the Oklahoma City bombing case. There is a great deal of misunderstanding about that.

If she is prepared at this time, I ask her now to supplement what I have said in the presentation of her remarks in that regard.

The PRESIDING OFFICER (Mr. BURNS). The Senator from California.

Mr. LEAHY. Will the Senator from California yield?

Mrs. FEINSTEIN. I certainly will.

Mr. LEAHY. Mr. President, I do not want to interrupt the discussion of the Senator from Arizona and the Senator from California. I am just curious, so we can have some idea of where we might be; yesterday, we had a problem. I understand the two proponents were out negotiating a new draft of this. But we had a situation where there were few on the floor.

I know the two proponents of this amendment, although they are on opposite sides from me, would agree that a constitutional amendment is far too consequential to be some kind of place holder on the Senate schedule. We have a number of Senators who will want to speak. They have asked me to speak. We have the distinguished dean of our party, my friend, the senior Senator from West Virginia, who will want to speak. We have had others who have.

I am just curious if the two Senators have some concept of where we may be on the schedule.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I will be delighted to respond to the ranking member of the Judiciary Committee. It was my intention to introduce Senator FEINSTEIN today. She was on her way over. I knew that. She has some prepared remarks she would like to give.

At the conclusion of that, I am fully prepared to allow the Senator from Vermont and the Senator from West Virginia to proceed. I know they both have statements they want to make.

It is true it is much better if we are here. The Senator from Vermont yesterday had to step out while I was making some remarks. I understood that completely. He noted we had to step out while he was speaking.

Mr. LEAHY. For legitimate reasons, I should say.

Mr. KYL. Certainly. We plan to be here for however much time the Senator feels is necessary to take on this motion to proceed. We are willing to listen. We are willing to offer comments in reply. I would say Senator FEINSTEIN may have roughly 20 or 30 minutes. I am prepared at that point to allow the minority to proceed with whatever comments they may have.

Mr. LEAHY. I thank my good friend from Arizona. As always, he is courteous and helpful, as is the Senator from California. That is fine with me. Obviously, they are entitled to all the time they want.

I should note, again, in my comments, the distinguished Senator from Arizona and the distinguished Senator from California were working, actually moving the ball forward. The debate was not lost because it gave people an opportunity to state their positions. They were working in an effort to move us closer to a vote. I appreciate that.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the ranking member and the distinguished Senator from Arizona. I am delighted the distinguished Senator from West Virginia is here. I will try to be as brief as I can. However, when I left the Democratic caucus at lunch yesterday, I felt, I might say, very lonely; that this, in a sense, was an insurmountable quest. As I went back to my office and as I considered what had been said in the caucus and what had been said on the floor of the Senate, I felt so strongly how worthwhile this fight is and how many people will be touched and protected if, one day, we do succeed.

Then I realized we were not alone. Later today, I will be submitting a raft of letters from a panoply of victims' rights organizations as well as law enforcement organizations that are in support of this measure. A few of them are up here on the board today: Mothers Against Drunk Driving, National Victims' Constitutional Amendment Network, National Organization for

Victims Assistance, Parents of Murdered Children; Colorado Organization for Victim Assistance; Stephanie Roper Foundation; Mothers Against Violence in America—and on and on and on.

Also, a group of 37 State attorneys general, the former U.S. Attorneys General, William Barr, Dick Thornburgh, Ed Meese; the Alabama Attorney General, and on and on and on; the Law Enforcement Alliance of America, the American Correctional Association, American Probation and Parole Association, Concerns of Police Survivors, the National Troopers' Coalition, the International Union of Police Associations, Los Angeles County Police Chiefs' Association, and on and on and on. Members can look at this. I will submit later individual letters.

However, I thought it might be useful to answer some of the questions that were asked on the floor yesterday. One of them was that we should not be doing this lightly; this is too precipitous; it comes too fast; Members have not had enough of an opportunity to study it. In fact, Senator KYL and I have been working on this for 4 years. We have had four hearings in the Judiciary Committee. We have heard from 34 witnesses. We have taken 802 pages of testimony. The House has had 32 witnesses and has 575 pages of testimony. So this is not a lonely quest in the sense that it has lasted for a short period of time, but it is a quest that will go on as well.

Yesterday, both in the Democratic caucus, as well as on the floor, one distinguished member of the Judiciary Committee, a Senator whom I greatly respect, made this statement. Hopefully he will be listening because I want to provide the answer. The statement is:

I have not received an answer, a good answer, from my colleague from Arizona and my colleague from California as to why not a statute. You can pass it more quickly and more easily. It fits the amendment. It fits what you are trying to do. No court, no Supreme Court, no final authority has thrown it out.

Let me take the biggest and broadest case and describe to my colleagues why a statute will not work. The reason I use this case is it is a case with which we are all familiar. It is a case in which this Senate has played a role twice in passing, in fact, two statutes. It is a case where the defendants had access to attorneys and could mount a legal challenge. It is the treatment of the Oklahoma City bombing victims.

I am going to read from a letter from a law professor who was one of the attorneys for the Oklahoma City bombing victims. His name is Paul Cassell. He is a professor of law at the University of Utah. He says:

This morning I had the opportunity to listen to the debate on the floor of the Senate concerning the Crime Victims Rights Amendment. During that debate, if I understood it correctly, the suggestion was made that federal statutes had "worked" to protect the rights of the Oklahoma City bombing victims. As the attorney who represented

a number of victims in that case, I am writing to express my strong view that this suggestion is simply not correct. To the contrary, the events of that case show that statutes failed. To be specific, the statutes failed to assure that all victims who wanted to were able to attend the trial of Timothy McVeigh. Indeed, the Department of Justice prosecutors handling the case advised a number of victims that they should not attend to avoid creating unresolved legal questions about their status in the case. A number of the victims reluctantly accepted that advice. In other words, they sat outside the courtroom despite the presence of two federal statutes specifically designed to make sure that they had an unequivocal right to attend. To add insult to injuries, the other attorneys and I who represented the individual victims were never able to speak a word in court on their behalves. . . .

Some might claim that this treatment of the Oklahoma City bombing victims should be written off as atypical. However, there is every reason to believe that the victims here were far more effective in attempting to vindicate their rights than victims in less notorious cases. The Oklahoma City bombing victims were mistreated while the media spotlight has been on when the nation was watching. The treatment of victims in forgotten courtrooms and trials is certainly no better, and in all likelihood much worse. Moreover, the Oklahoma City bombing victims had six lawyers working to press their claims in court, including a law professor familiar with victims rights, four lawyers at a prominent Washington, DC, law firm and a local counsel. In the normal case, it often will be impossible for victims to locate a lawyer willing to pursue complex and unsettled issues about their rights without compensation. One must remember that crime most often strikes the poor and others in a weak position to retain counsel. Finally, litigating claims concerning exclusion from the courtroom or other victims' rights promises to be quite difficult. For example, a victim may not learn that she will be excluded until the day the trial starts. Filing effective appellate actions in such circumstances promises to be practically impossible. It should, therefore, come as little surprise that the Oklahoma City litigation was the first in which victims sought federal appellate court review of their rights under the Victims Bill of Rights, even though that statute was passed in 1990.

What he is saying is that this was the first time victims under a statute passed 6 years earlier actually tried to use the court to enforce their rights.

He continues:

The Oklahoma City bombing victims would never have suffered these indignities if the Victims Rights Amendment had been the law of the land. It would have unequivocally protected their right to attend and their "standing" to assert claims on their behalf to protect that right. In short, the federal amendment would have worked to protect their rights.

Then he goes on to give a chronology, and I think this is very important because the issue is effectively standing and the fact that they have no standing in the Constitution to have these rights. I think it is important that I point out a chronology of exactly what happened. I want to take the time to do that:

During a pre-trial motion hearing in the Timothy McVeigh prosecution, the district attorney . . . issued a ruling precluding any victim who wished to provide victim impact

testimony at sentencing from observing any proceeding in the case. The court based its ruling on Rule 615 of the Federal Rules of Evidence the so-called "rule on witnesses." In the hour that the court then gave to victims to make this wrenching decision about testifying, some of the victims opted to watch the proceedings; others decided to leave Denver to remain eligible to provide impact testimony.

Thirty-five victims and survivors of the bombing then filed a motion asserting their own standing—

This is important—

then filed a motion asserting their own standing to raise their rights under federal law and, in the alternative, seeking leave to file a brief on the issue as amici curiae. The victims noted that the district court apparently had overlooked the Victims Bill of Rights, a federal statute guaranteeing victims the right (among others) "to be present at all public court proceedings unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial."

In other words, the court had flexibility to make that determination.

Continuing:

The District Court then held a hearing to reconsider the issue of excluding victim witnesses. The court first denied the victims' motion asserting standing to present their own claims, allowing them only the opportunity to file a brief as amici curiae. After argument by the Department of Justice and by the defendants, the court denied the motion for reconsideration. It concluded that victims present during the court proceedings would not be able to separate the "experience of trial" from "the experience of loss from the conduct in question," and, thus, their testimony at a sentencing hearing would be inadmissible. . . .

The victims then filed a petition for writ of mandamus in the U.S. Court of Appeals for the Tenth Circuit seeking review of the district court's ruling. Because the procedures for victims appeals were unclear, the victims filed a separate set of documents appealing from the ruling. Similarly, the Department of Justice, uncertain of precisely how to proceed procedurally, filed both an appeal and a petition for a writ of mandamus.

Three months later, a panel of the Tenth Circuit rejected—without oral argument—both the victims' and the United States' claims on jurisdictional grounds. With respect to the victims' challenges, the court concluded that the victims lacked "standing" under Article III of the Constitution because they had no "legally protected interest" to be present at the trial and consequently had suffered no "injury in fact" from their exclusion. The Tenth Circuit also found the victims had no right to attend the trial under any First Amendment right of access. Finally, the Tenth Circuit rejected, on jurisdictional grounds, the appeal and mandamus petition filed by the United States. Efforts by both the victims and the Department to obtain a rehearing were unsuccessful, even with the support of separate briefs urging rehearing from 49 members of Congress, all six Attorneys General in the Tenth Circuit, and some of the leading victims groups in the nation.

In the meantime—

And now it gets even more critical—the victims, supported by the Oklahoma Attorney General's Office, sought remedial legislation in Congress clearly stating that victims should not have to decide between testifying at sentencing and watching the trial. The Victims' Rights Clarification Act of 1997 was introduced to provide that watching a

trial does not constitute grounds for denying the chance to provide an impact statement. The 1997 measure passed the House by a vote of 414 to 13. The next day, the Senate passed the measure by unanimous consent. The following day, President Clinton signed the Act into law, explaining that "when someone is a victim, he or she should be at the center of the criminal justice process, not on the outside looking in."

The victims then promptly filed a motion with the district court asserting a right to attend under the new law. The victims explained that the new law invalidated the court's earlier sequestration order and sought a hearing on the issue. Rather than squarely uphold the new law, however, the district court entered a new order on victim-impact witness sequestration. The court concluded "any motions raising constitutional questions about this legislation would be premature and would present issues that are not now ripe for decision." Moreover, the court held that it could address issues of possible prejudicial impact from attending the trial by conduct[ing] a voir dire of the witnesses after the trial. The district court also refused to grant the victims a hearing on the application of the new law, concluding that its ruling rendered their request "moot."

After that ruling, the Oklahoma City victim impact witnesses—once again—had to make a painful decision about what to do. Some of the victim impact witnesses decided not to observe the trial because of ambiguities and uncertainties in the court's ruling, raising the possibility of exclusion of testimony from victims who attended the trial. The Department of Justice also met with many of the impact witnesses, advising them of these substantial uncertainties in the law, and noting that any observation of the trial would create the possibility of exclusion of impact testimony. To end this confusion, the victims filed a motion for clarification of the judge's order. The motion noted that "[b]ecause of the uncertainty remaining under the Court's order, a number of the victims have been forced to give up their right to observe defendant McVeigh's trial. This chilling effect has thus rendered the Victims Rights Clarification Act of 1997 . . . for practical purposes a nullity."

So the effort of this Congress to write one statute, and to clarify it with a second statute, was rendered a nullity.

Unfortunately, the effort to obtain clarification did not succeed, and McVeigh's trial proceeded without further guidance for the victims.

After McVeigh was convicted, the victims filed a motion to be heard on issues pertaining to the new law. Nonetheless, the court refused to allow the victims to be represented by counsel during argument on the law or during voir dire about the possible prejudicial impact of viewing the trial. The court, however, concluded (as the victims had suggested all along) that no victim was in fact prejudiced as a result of watching the trial.

This recounting of the details of the Oklahoma City bombing litigation leaves no doubt that statutory protection of victims rights did not "work." To the contrary, for a number of the victims, the rights afforded in the Victims Rights Clarification Act of 1997 and the earlier Victims Bill of Rights were not protected. They did not observe the trial of defendant Timothy McVeigh because of lingering doubts about the constitutional status of these statutes.

The undeniable, and unfortunate, result of that litigation has been to establish—as the only reported federal appellate ruling [to date]—a precedent that will make effective

enforcement of the federal victims rights statutes quite difficult. It is now the law of the Tenth Circuit that victims lack "standing" to be heard on issues surrounding the Victims' Bill of Rights and, for good measure, that the Department of Justice may not take an appeal for the victims under either of those statutes. For all practical purposes, the treatment of crime victims' rights in federal court in Utah, Colorado, Kansas, New Mexico, Oklahoma, and Wyoming has been remitted to the unreviewable discretion of individual federal district court judges. The fate of the Oklahoma City victims does not inspire confidence that all victims rights will be fully enforced in the future. Even in other circuits, the Tenth Circuit ruling, while not controlling, may be treated as having persuasive value. If so, the Victims Bill of Rights will effectively become a dead letter.

This is the reason we pursue our case with such ardor. We do not believe it is possible, under any statute drafted to cover victims of violent crimes, to provide them with certain basic rights because any Federal statute would only cover 1 to 2 percent of the victims of violent crimes in the United States; and, secondly, because the one noteworthy case, in the sense of public knowledge, in the sense of major representation of victims by attorneys of major quality, resulted in two laws, passed by this Senate and the other House, being rendered a nullity.

That is the reason we pursue our quest here today.

I thank the Chair and yield the floor.
The PRESIDING OFFICER. Who seeks time?

Mr. KYL. Mr. President, I know Senator LEAHY and Senator BYRD want to make a presentation. I would certainly be prepared to yield to them as soon as they are ready to make their remarks. In the meantime, I thought perhaps I could engage Senator FEINSTEIN in some conversation and maybe make a couple points myself. But as soon as Senator LEAHY or Senator BYRD arrive, I will be happy to relinquish the floor to them.

One of the arguments that has been raised by some opponents of the amendment, including a prominent columnist whom I respect greatly, George Will, derives from a superficial reading of our amendment. It is said that this kind of an amendment, which grants rights to victims of crime, would be discordant with the general purpose of the Constitution, which is not to grant entitlements to people that the Government would provide but, rather, protects people's natural rights, some of which are enumerated in the Bill of Rights, some of which are assumed to exist outside the Constitution and are more expressed in terms of prohibitions on bad government conduct.

I want to make clear—and seek Senator FEINSTEIN's view on this—that in both cases the Constitution has prevented deleterious Government action. In neither case does the Constitution grant rights. In our case, for example, the right to attend the trial that we talk about in the Oklahoma City bombing case is really not expressed as the

right to attend the trial. There is no right to Government access to the trial. We express this as a prohibition on the Government denying access to the trial so if a victim or victim's family is able to get to the courtroom, nobody has to bring them there, but if they are able to get there and they want to attend the trial, the Government may not deny them that right.

In this regard, it is the same as the right to free speech. We all talk about the right to free speech. We really don't have an entitlement to free speech in the Constitution. We believe that is a natural right. As the Constitution says, the Government shall not abridge our right to free speech. It cannot constitutionally enact any laws that would inhibit the free exercise of speech.

I urge my colleagues and wise people, such as George Will, to read this carefully. It is just as the existing Constitution. We speak in common terms of protecting the right of free speech, the right to attend the trial about which Senator FEINSTEIN has been talking. But in reality, both constitutional provisions are prohibitions on the Government infringing upon this right.

Is that a distinction the Senator finds important in describing the Oklahoma City case?

Mrs. FEINSTEIN. Mr. President, I think Senator KYL has stated it very well. Not only do I find that to be a correct distinction—it is not only Senator KYL and I—it is legal scholars who we have worked with and trusted throughout this process. Let me quote the professor from Harvard with whom we worked, Larry Tribe.

These are the very kinds of rights with which our Constitution is typically and properly concerned, rights of individuals to participate in all those government processes that strongly affect their lives. Congress and the states have already provided a variety of measures to protect the rights of victims.

Senator KYL and I have heard that said on this floor and outside of this floor. That certainly is true. Yet, as Professor Tribe goes on, the reports from the field are that they have all too often been affected. Rules to assist victims frequently fail to provide meaningful protection whenever they come into conflict with bureaucratic habit, traditional indifference, sheer inertia, or the mere mention of an accused's rights, even when those rights are not genuinely threatened.

I read the chronology of the Oklahoma City bombing case and the rights that those victims were afforded by two statutes, not one statute. We couldn't get it done right in 1990. We tried again 7 years later. Both of those were effectively declared a nullity by the Tenth Circuit because the victims had no standing under article III of the Constitution. So the question of standing and harm all enter into this. Everything I have been able to deduce is, the only way to provide standing to be a party at issue in the situation is

through the Constitution of the United States. Would my colleague agree with that?

Mr. KYL. Yes. I thank Senator FEINSTEIN for that statement. It is a confirmation that scholars of law, not only she and I, have reached this conclusion.

I was just reminded of another place in which this conclusion is found. The U.S. Department of Justice volume "New Directions from the Field, Victims Rights and Services for the 21st Century." Among the statements in this report is the following:

Granting victims of crime the ability to participate in the justice system is exactly the type of participatory right the Constitution is designed to protect and has been amended to permanently ensure. Such rights include the right to vote on an equal basis and the right to be heard when the government deprives one of life, liberty or property.

What we have provided here is a set of rights, some expressed in terms of "not to be excluded from," some expressed as a right such as a right to vote, as has been noted. In each case, the fundamental basis is that the Government cannot deprive one of their ability to participate in the criminal justice process to the extent we have defined it here. I think that is a very important distinction. As the Senator pointed out, without the standing to assert the right, it would be hollow. It would be merely an oratory statement. That is precisely why the people in the Oklahoma City bombing case couldn't vindicate their rights. The court said they didn't have any standing.

Mrs. FEINSTEIN. The point made by the Oklahoma City case is that these were not indigent victims. They had Washington counsel, distinguished counsel of very high quality. They tried to assert the rights under the statute, and the court essentially turned them down. This isn't what we think; this is what happens. I will quote a bit more from Professor Tribe on this very subject, until Senator BYRD, who is next, comes to the Chamber.

Larry Tribe makes this statement:

Beginning with the premise that the Constitution should not be amended lightly and should never be amended to achieve short-term partisan or purely policy objectives, I would argue that a constitutional amendment is appropriate only when the goal involves (1) a needed change in government structure, or (2) a needed recognition of a basic human right, where (a) the right is one that people widely agree deserves serious and permanent respect, (b) the right is one that is insufficiently protected under existing law, (c) the right is one that cannot be adequately protected through purely political action such as state or federal legislation and/or regulation, (d) the right is one whose inclusion in the United States Constitution would not distort or endanger basic principles of the separation of powers among the federal branches . . . (e) the right would be judicially enforceable without creating open-ended or otherwise unacceptable funding obligations.

Professor Tribe goes on to say:

I believe that S.J. Res. 3 meets these criteria. The rights in question—rights of crime

victims not to be victimized yet again through the processes by which government bodies and officials prosecute, punish, and/or release the accused or convicted offender—are indisputably basic human rights against government, rights that any civilized system of justice would aspire to protect and strive never to violate.

Mr. SCHUMER. Will the Senator yield for a question?

Mrs. FEINSTEIN. I am happy to yield when I have concluded my thought. I am in the middle of a quote from a very distinguished law professor, whom I know Senator SCHUMER respects greatly.

Mr. SCHUMER. I do, and I know him well. I thought the quote was finished. His quotes do go on.

Mrs. FEINSTEIN. They do go on. And once more, they are worth listening to.

Mr. SCHUMER. Indeed.

Mrs. FEINSTEIN. Continuing the quote:

To protect these rights of victims does not entail constitutionalizing the rights of private citizens against other private citizens; for it is not the private citizen accused of crime by state or federal authorities who is the source of the violations that victims' rights advocates hope to address with a constitutional amendment in this area. Rather, it is the government authorities themselves, those who pursue (or release) the accused or convicted criminal with insufficient attention to the concerns of the victim, who are sometimes guilty of the kinds of violations that a properly drawn amendment would prohibit.

I think that well states what we are trying to do.

I am delighted to yield to Senator SCHUMER.

Mr. SCHUMER. I thank my colleague. Before I ask my question, I commend Senator FEINSTEIN. We strongly disagree on the proposal before us. But I know that for years and years she has been concerned about victims. I know also of the passion, hard work, and diligence she brings to the debate. I commend her for that. Our strong disagreement on the issue does not in any way lessen my respect for her or the Senator from Arizona for the job they have done in moving this amendment to the floor.

Mrs. FEINSTEIN. We are eagerly awaiting the "but."

Mr. SCHUMER. There is no "but" about my respect for the Senator. However, there is a "but" about Professor Tribe's remarks in the whole. What bothers me most about this amendment—and I have expressed this to the Senator—is as follows. Of the five criteria Professor Tribe lays out, I think I would agree with four of them. I think that amendments should not be done lightly. But I think there are times when we have to amend the Constitution, although reluctantly. I certainly believe the rights of victims are extremely important. As the Senator knows, we worked on the crime bill of 1994 together. I worked diligently in the House to add the right of allocation and other things to the bill. I understand why the statute didn't work in Oklahoma City although I would like to debate another point.

But Professor Tribe, I think, goes off base when he says a statute would not take care of this problem. So I have a two-part question. First, why is it not better, if this particular statute does not work, to redesign it? Why is it not better to take the basic amendment that the Senator from Arizona and the Senator from California have offered and make it a statute, given the fact that we have not had a single State supreme court—in some States, such as mine, they are not called a supreme court—but the highest court of any of the 50 States throw out a victims' rights amendment on the basis of unconstitutionality. Given the fact that the Supreme Court has not rejected such an amendment, it seems to me that given that the language proposed—which is still being worked on, so it may change—is longer than the entire Bill of Rights and is not the language of a constitutional amendment—at least any that I have seen—why don't we try to refine the statute rather than move to a constitutional amendment with such alacrity?

Professor Tribe said a statute would not work. I have not seen that. I have seen, in my State and many others, victims' rights statutes work and work very well. That is my question to the Senator from California. I thank the Senator for her graciousness.

Mrs. FEINSTEIN. First, I think the Senator knows I have very deep respect for him. If I am fighting a battle, he is certainly one I would like to have in the trench with me.

Mr. SCHUMER. And usually I am there.

Mrs. FEINSTEIN. There is always room in the trench to change his mind, if the Senator cares to. I do appreciate his concern and his testimony does carry weight with me. As a matter of fact, it was Senator SCHUMER's comment in the RECORD that I referred to last night when I addressed and talked with the attorneys in Oklahoma City today who represented the victims—Professor Cassell was one of them—and got that chronology.

To me, the reason the statute won't work is because it hasn't worked. Both Houses of Congress, and even the redoubtable intelligence of the Senator in working on both the 1990 and the 1997 statute, rendered both a nullity by the Tenth Circuit. Therefore, they were victims in that entire circuit and are effectively left without a remedy, and the belief is that it would be difficult in that circuit, based on the precedent that has been set, without providing standing for victims in the Constitution under article III, to have a successful statute.

Now, I don't believe many victims have the wherewithal to get a professor of law at a distinguished university and a Washington law firm. The people who are going to be the most impacted by this are poor, are minorities, where most of the crime victims, after all, really are in the Nation. So the ability for them to get redress under a statute, I think, is effectively quite limited.

Addressing the second part about the drafting of this article, we have been at this for 4 years. There are 800 pages of testimony, as I have mentioned. I ask Senator KYL, how many meetings does the Senator believe we have had with the Justice Department in the last 4 years over the wording in this?

Mr. KYL. Mr. President, if you count all of the informal meetings and various meetings back and forth with staff, certainly it would be well over a dozen.

Mrs. FEINSTEIN. So we have had at least a dozen meetings with Justice. The concepts are the authors', and much of the writing is actually a product of those meetings with the Justice Department. In fairness, staff has changed over the years. We worked with one assistant U.S. Attorney General, and that person has changed, and so on and so forth. We have also worked with White House staff. The basics of the amendment that the Senator questions as being burdensome in verbiage is really very simple: to reasonable notice of, and not to be excluded from any public proceedings relating to the crime; to be heard, if present; to submit a statement at all such proceedings to determine a conditional release from custody and acceptance of a negotiated plea or sentence.

I might say that this was gone over with precision and detail with Justice as to whether a plea bargain would be effected; the foregoing rights in a parole proceeding that is not public to the extent these rights are afforded to the convicted offender; the reasonable notice of and an opportunity to submit a statement concerning any proposed pardon or commutation; reasonable notice of escape or release from custody. I will say the pardon has not been worked out with Justice, and there are some negotiations going on about that right now. But notice of release or escape; consideration for the interest of the victim; that any trial be free from unreasonable delay—there was considerable discussion through Senator KYL, ourselves, attorneys for the victims, victims' rights groups, as to not to create a problem there. And the words "to consideration of the interest" were added to avoid any problem. To order restitution, to consideration for the safety of the victim in determining any conditional release from custody, and to notice of the rights: that is essentially the bulk of the basic rights. The rest sets up a vehicle.

Now, we have heard two Senators come to the floor and say: "Who would define a victim?" We have to write in this that the Congress shall have the power to enforce this article by appropriate legislation. So the Congress would enforce the article. And some of that language, by way of clarification, is added.

This is not 1791; it is the year 2000. Fortunately, since 1791, there is court precedent. There is now definition of

language in the law that has been predetermined, and it is much more complicated, I think, to write this kind of language than it was way back when.

Mr. SCHUMER. Mr. President, I thank the Senator for her answer, and I simply make three points. Before I do, I want to refer to a letter from Chief Justice Rehnquist in opposition saying that a statute would be far preferable to a constitutional amendment. This letter is to Judy Clarke, President of the National Association of Criminal Defense Lawyers. I will read it:

I have received the letter of March 21, commenting on various measures pending in Congress relating to the judiciary. The Judicial Conference has recently taken a position in favor of making provision for victims' rights by statute, rather than by constitutional amendment; this would have the virtue of making any provisions in the bill which appeared mistaken by hindsight to be amended by a simple act of Congress.

It makes the very point. The Senator admitted that negotiations are still ongoing. We are debating a constitutional amendment that must be passed by two-thirds of each Chamber and then three-quarters of the States. We are still debating the language.

Mrs. FEINSTEIN. Will the Senator permit me to respond?

Mr. SCHUMER. I will in one second. I want to finish my statement.

First, the kind of definitions that the Senator has talked about of appeals procedures has never been in the U.S. Constitution. In fact, what happened before is there would be a two- or three-line sentence that the rights of victims should be protected, and then we would work out by statute what the details were.

I have never seen a constitutional amendment such as this. It is the 21st century. I agree with that. But that doesn't mean the elegance of thought and language in the Constitution of the 18th century should be thrown out the window, and we are doing that here.

I ask the Senator, why, if she believes in a constitutional amendment with a two- or three-line amendment talking about victims' rights, would she not be far more in keeping with constitutional thought and theory than a 15-page document which clearly is written in statutory and not constitutional language? Second, if the detailed definitional language that the Senator is talking about works, it will work as a statute.

The reason the Oklahoma City case didn't work is the statute was poorly drafted, at least in terms of what the Senator is saying. I will have more to say about that later. I don't want to occupy her time on this, but if the language works as a constitutional amendment, the very language that we have before us admittedly being rephrased or redrafted, why doesn't it work as a statute?

The problem that is pointed to in the Oklahoma City case is not the amendment. If the very same language were a constitutional amendment, God forbid, it still wouldn't have been applied be-

cause the judge didn't throw it out on an unconstitutional basis. He basically ignored it, which meant it wasn't clear enough.

No. 1, do we have any amendment in the Constitution that compares in detail and outlines procedurally what we have here?

No. 2, if this language works as a constitutional amendment, why wouldn't it work as a statute?

No. 3, if a constitutional amendment is necessary, although again it has not been thrown out by the Supreme Court, or any lower court, why wouldn't we have a simple, elegant three-line statement talking about the rights of victims, and then let the details of legislative engineering be worked out in statute as it has been done in this country, regardless of whether Democrats, Republicans, Whigs, or Free-Soilers, or anybody else has been in charge?

I thank the Senator for her patience. I feel as passionately on our side as she does on her side.

Mrs. FEINSTEIN. I am going to defer to the distinguished Senator from Arizona to give the opening response, and then I would like to finish up, if I might.

The PRESIDING OFFICER (Mr. HAGEL). The Senator from Arizona.

Mr. KYL. Mr. President, before she arrived at noon, I had shared some specific comments that go directly to Senator SCHUMER's questions. I thought I would repeat what I said here in brief.

The first objection is that this is too wordy. It is not 15 pages. It is about 2½ pages. But the total number of words that describe victims' rights is 179. The total number of words in the amendment, except for the technical provisions regarding the effective date, is 307. If you add them all up, it is 394 words. Again, 179 of those words describe the victims' rights. The defendants' rights consume 348 words in the U.S. Constitution. The Bill of Rights is 462 words. If you add it up word for word, we win, as I said this morning. But that, obviously, is hardly a way to evaluate.

Mr. SCHUMER. It shouldn't be 2½ pages, it should be 2½ lines in keeping with the way the Constitution is written.

Mr. KYL. That is the second point. We are criticized on two accounts. We literally can't win. On one hand, the Senator from New York and others have said it is subject to interpretation. What does "reasonable" mean? On the other hand, we have written too much. We ought to just say "reasonable rights" and then flesh it out in statute. We can't win, if that is the argument.

What we have done, I submit, is the compromise that the Founding Fathers did. They expressed general terminology in order to keep it short and succinct, understanding that it would have to be fleshed out. But what we have done is to describe in enough additional detail to ensure that there could never be a contention that we are

infringing on a defendant's rights and to be sure there would never be a criticism that we weren't specific enough about what these rights were. So we have actually enumerated these eight specific rights. But I think we have struck the right compromise in that regard.

Two other quick points, if I may: The Senator correctly pointed out that it appears one of the reasons for the judge's decision in the Oklahoma City bombing case was that he just ignored it. I think it is hard to figure out exactly why he didn't apply it. He couldn't ignore a U.S. constitutional provision as he could ignore a Federal statute, which is precisely why we need a Federal constitutional amendment. It may also be that the Oklahoma City statute was not well enough drafted. I think that is exactly correct as well. It is no answer to say that a statute would be the way to go here, that it is better than a constitutional provision.

The bottom line is this: In words somewhat similar to those words that protect the rights of the accused, we have identified eight specific rights. I have yet to see anybody say those eight specific rights should not be guaranteed. Rather, the argument is that they should be put in statute. Senator SCHUMER has just pointed out why putting it in statute doesn't work.

Mr. SCHUMER. If the Senator will yield, I think this should be a debate that goes on for some time. That is what we are having here as opposed to everyone making speeches periodically. I very much appreciate that and would be happy when I come to the floor to yield time to opponents of the bill to continue this debate.

But I would simply say to my good friend from Arizona that a statute is no less the law of the land than a constitutional amendment. The idea that a constitutional amendment should be taken into account more than a statute doesn't hold up in terms of jurisprudence. I am sure even my good, mistaken friend in this case, Larry Tribe, would agree with that. But for whatever reason, one judge ignores a statute. The Senator is right. It is murky. It is hard to figure out why. We then leap to a constitutional amendment, one with almost as many words as the entire Bill of Rights. It doesn't make any sense to me.

I ask the Senator: Because a judge in Oklahoma City, a case I care very much about, ignored statutory language, why don't we try once again? Why don't we try, whether that case was on appeal, or in another way, to make sure that judges can't? You could easily write a statute that says the right of allocution is not granted. You can't proceed with sentencing. If some judge somewhere—I doubt there would be one—should refuse to apply that law, you would win on appeal, pardon my saying, in a "New York minute." A constitutional amendment doesn't give any more authority for a judge to apply than a statute. The whole reason

we have constitutional amendments, as laid out by Larry Tribe, is for restructuring the Government. It is guaranteeing a basic right that couldn't be guaranteed otherwise.

I yield to the Senator from California to answer. But because a judge ignores a statute in one case, how do we then leap to a constitutional amendment?

Mrs. FEINSTEIN. I think that is a very important question. I am sure I cannot answer as adequately, but let me try. I think any statute lasts a "New York minute." Let me state why.

I think there is bureaucratic inertia. At our caucus yesterday, to be very frank, I was amazed at Members' reactions. We are trying to give victims certain basic rights. I almost came out of the caucus feeling somewhat un-American because I am trying to do something that can stand the test of universal time to improve a very convoluted, difficult administration of justice process in this country, to ensure victims a certain participation in the process.

Mr. SCHUMER. We all want to do that. The question is the method. The issue is not whether we want to give victims' rights or not.

Mrs. FEINSTEIN. I grant that the 1997 clarification act, which, as I understand it, meant to say that a victim could both be present in court and make a statement, was simply not answered; it was ignored.

The 1990 victims' rights amendment was a more considered bill, developed over a period of time, and was the one with which the Tenth Circuit essentially said that victims lack standing under article III because they had no legally protected interest to be present at the trial and had suffered, therefore, no injury.

I don't know how one remedies by statute to withstand the test of time, the bureaucratic inertia, the equivocation that goes on.

From 1850, we have a century and a half in this country where victims have had no rights in the process. The process has locked itself. The Senator is right, some district attorneys don't want to be responsible to send a victim or say, Give me your address and phone number if you want to come to court; I will notify you. Then it is up to the victim to provide that and be there at the appropriate time. Many don't want to do that.

What makes me very suspect is, that reaction is disproportionate to what we are trying to achieve, which is basically status rights. It is not like the right to counsel, not like a right of a jury of your peers, it is not like protection against double jeopardy or unreasonable search and seizure. Those are very "meaty" rights that defendants have that should be provided, including the right to be present, the right to make a statement—pretty simplistic rights.

Mr. SCHUMER. No question; I agree with the Senator, those are simplistic and they should be enshrined in law. I

have spent a good number of years in the other body trying to make that happen.

When the Senator asks, why is there such passion against this amendment, please do not mistake it for the substance of the amendment. There may be some who believe that, but not me, and I don't think that is the mainstream of the opposition for both Republican and Democrat.

Mr. KYL. If I might interrupt, all of this is on my time, which is fine with me. It is a good exchange, and I agree with the Senator from New York, this is the right way to debate the subject. I am happy to have the Senator finish his thought, but I want to respond to a question asked some time ago.

Mr. SCHUMER. Mr. President, I ask unanimous consent to respond using 3 minutes of my time.

Mr. KYL. That is fine.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New York.

Mr. SCHUMER. Mr. President, I say to the Senator, passion is passion. There is not a lack of passion for victims' rights but a passion for this wonderful, noble document, the Constitution of the United States. I say this in all due respect.

I think if this amendment were added, it would cheapen the Constitution—not cheapen the issue of victims' rights, which is important, but we have never done this before. The passion goes to the beauty of the Constitution, to the fact that we have never added a constitutional amendment, because two judges failed.

The Senator was good enough to mention that 1990 case. One lower court judge said it might not fit with article III. Again, don't leap to a constitutional amendment. If we were to have constitutional amendments every time a lower court judge ruled that something was unconstitutional, we would have a Constitution of the United States that would be 10 volumes long. We would spend all of our time revising that Constitution. I daresay the structure of government could fall because we need two-thirds, two-thirds, three-quarters to do it.

The passion here is on a fundamental difference about what the Constitution of the United States means. I would be the first to join the Senator if the U.S. Supreme Court said the same thing that lower court said in 1990. But one lower court in 1990, one lower court in 1997, and now we say let's double virtually.

Mrs. FEINSTEIN. Circuit court.

Mr. SCHUMER. A circuit court in 1990, two lower courts, but no U.S. Supreme Court.

I would join the Senator if the Supreme Court said the same thing. I agree with her that victims' rights should receive a higher elevation in the pantheon of criminal justice. But now the issue is not ripe. The Supreme Court hasn't ruled defendants' rights trump victims' rights. We have had two poor attempts to draft legislation.

To their credit, the Senator from California and the Senator from Arizona have come up with a better proposal. They have still not addressed, to my satisfaction, why we need to do a constitutional amendment when I think a statute would do exactly the same job and could be passed more quickly. One would not need the two-thirds. We could get this done. If then someone fought the statute and the Supreme Court of the United States ruled it unconstitutional, we would all be on the floor supporting this amendment.

The passion, to answer the Senator, was a passion for the way of the Constitution, a passion that we do not amend the Constitution unless we absolutely have to. That does not go to the need to give victims more rights. That goes to the fact that none of these victims' rights laws has been declared unconstitutional by the highest court of this land or where it would still be legitimate by State supreme courts.

I think my 3 minutes have expired. I will continue the debate with the Senator from Arizona and the Senator from California. Again, I respect their motivations, I respect their substantive position, but please, God—please, God—let us not be precipitous in amending this great U.S. Constitution when there is another, quicker, and just as efficacious way to accomplish the well-thought-out goal of our Senators.

I reserve the remainder of my time.

Mr. KYL. Mr. President, I think the Senator from New York has made an excellent presentation. As a matter of fact, that is the presentation I made about 4 years ago when a very fine attorney in Arizona came to me and said these State constitution provisions in statute are not working, we need a Federal constitutional amendment. I made essentially the same argument, probably not as eloquently as the Senator from New York.

I share with the Senator both the concern for victims' rights and a concern for the U.S. Constitution not being unduly tampered with. We all acknowledge that it can and sometimes should be amended. However, it should be done only when necessary. In that we all agree.

He made the case to ask the question, Why not a statute? I respond to that in three quick ways.

First, let's get one thing out of the way. We do not want to amend the Constitution only when there has been a finding by the U.S. Supreme Court that some action we want to take is unconstitutional. Of course, there are not findings that State constitutional provisions or statutes are unconstitutional. There would be no reason for that. None of them conflicts with defendants' rights. That is the only basis on which I can think they would be declared unconstitutional. No one wants to conflict with or hurt defendants' rights.

There is no reason to expect any provision will be declared unconstitutional. There is a problem with respect to precedent, and that is, the Tenth Circuit has held there is no standing to enforce a Federal statute that the Senator from New York helped to draft. That is a problem.

Now I believe in seven different States victims do not have the standing to assert rights we provided in a Federal statute. That is bad. That is a precedent we need to overturn and can overturn with a constitutional amendment.

The third point in this respect is that the problem is not that there has been or ever would be a finding of unconstitutionality with respect to these statutes or provisions. It is, rather, that they are just not enforced. As somebody said, they are enforced more in the breach than in the observance. That is the problem. Not that there is unconstitutionality.

Let me do the other two things I wanted to do. I see the Senator from Vermont is standing.

Mr. LEAHY. I wonder if the Senator will be willing to yield just for a moment to the Senator from Hawaii.

Mr. KYL. I yield to the Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I rise to yield my time under the present measure to the Senator from Vermont, Mr. LEAHY.

The PRESIDING OFFICER. The Senator has that right.

Mr. KYL. As soon as I conclude these two points, again I am happy to allow the Senator from Vermont to speak. I was waiting for this last hour or so and thought we would take up the time, and Senator SCHUMER has provided a very important challenge. Why not a statute? I provided the first answer.

Second, let me provide the answer from a piece Paul Cassell wrote, offered earlier by Senator FEINSTEIN. He said:

In theory victims' rights could be safeguarded without a constitutional amendment. It would only be necessary for actors within the criminal justice system—judges, prosecutors, defense attorneys, and others—to suddenly begin respecting victims' interests. The real world question, however, is how to actually trigger such a shift in the Zeitgeist. For nearly two decades, victims have obtained a variety of measures to protect their rights. Yet, the prevailing view from those who work in the field [including the Justice Department in this fine volume, *New Directions from the Field*] is that these efforts "have all too often been ineffective." Rules to assist victims "frequently fail to provide meaningful protection whenever they come into conflict with bureaucratic habit, traditional indifference, or sheer inertia . . ." The view that state victims provisions have been and will continue to be disregarded is widely shared, as some of the strongest opponents of the Amendment seem to concede the point. For example, Ellen Greenlee, President of the National Legal Aid and Defender Association, bluntly and revealingly told Congress that the State victims' amendments "so far have been treated as mere statements of principle that victims

ought to be included and consulted more by prosecutors and courts. A state constitution is far . . . easier to ignore than the federal one."

A fortiori, as we lawyers say, a statute is far easier to ignore than the Federal Constitution.

Just citing a couple of more points in Paul Cassell's piece, he quotes from the Department of Justice, the Attorney General herself. The Department finding that these various efforts—the State and Federal and statutory and constitutional provisions:

. . . have failed to fully safeguard victims' rights. These significant state efforts simply are not sufficiently consistent, comprehensive, or authoritative to safeguard victims' rights.

I would intersperse that a Federal statute, of course, is in the same category. In fact, it is of a slightly lower category than a State constitutional amendment in the State courts. In any event, with respect to the number of crimes of violence in the Federal system, you are only talking about approximately 1 percent of the crimes. So clearly a Federal statute does not give you anything that these State statutes do not.

But here is the point, and I continue to quote here:

Hard statistical evidence on non-compliance with victims' rights confirms these general conclusions about inadequate protection.

In other words, now let's go to the tape. Let's look at the numbers, not just the conclusions reached by scholars.

. . . the National Institute of Justice found that many crime victims are denied their rights and concluded that "enactment of State laws and State constitutional amendments alone appears to be insufficient to guarantee the full provision of victims' rights in practice."

Here are the statistics. For example:

. . . even in several States identified as giving "strong protection" to victim's rights [like my State of Arizona and Senator FEINSTEIN's State of California] fewer than 60 percent of the victims were notified of the sentencing hearing and fewer than 40 percent were notified of the pretrial release of the defendant.

Fewer than 40 percent. Would we consider that a good enough job in notifying defendants of their right to counsel? Would we consider, if the police in 40 percent of the cases remembered to give the Miranda warnings, that that would be OK? Absolutely not. That is the fundamental difference between a constitutional right and a statute, or a State constitutional provision. They just are not enforced with the same degree of vigor and consistency and care as the U.S. Constitution must be and is. So we find that 40 percent of the people who ought to be notified that their assailant is about to be released from prison never get the notice. That is in the good States. That is not good enough. After 18 years of experience with this, we ought to appreciate that statutes and State constitutional provisions just have not done the job.

That is the second reason. I will get to the third one. But that is the second key reason why the Senator's question, Why not a State statute or State constitutional amendment or Federal statute? just has not worked. I will be happy to yield to the Senator from New York.

Mr. SCHUMER. Just a quick question. One thing we obviously do, and we have gotten much better enforcement on a whole lot of Federal statutes, is say that they will lose all Federal crime money if they do not notify the victim.

Mr. KYL. I am sorry?

Mr. SCHUMER. What I was proposing—I think the present statutes are not working. I think they were poorly done. One way to get enforcement, a good way that we have used in this body over and over again, which has not even been tried yet, is to say the State would not get crime money, whether it be for Cops on the Beat, for building prisons, for Byrne money for the DAs, if they don't notify the victims. The State would do much better than 40 percent.

The reason this statute has not worked is no one has put any teeth into it. Why do we not put some teeth into it before jumping to the Constitution? I yield.

Mr. KYL. First of all, the Federal statute applies to Federal crimes which constitute about 1 percent of what we are talking about. Even if you could put good teeth in the Federal statute, you would be dealing with 1 percent of the cases. That leaves, what, 59 percent to go, by my calculation.

Second, these State constitutional provisions are very well written. The one that we have in Arizona was adopted with between 70 and 80 percent of the vote, the one that has been adopted in California and these other States—they are very good. It is not that they are not well written. The question is, Why should you have to have a penalty for somebody, for a judge who fails to provide the notice, for example? Why should we deny Federal law enforcement support when everybody knows that is really needed? It is not a good enforcement mechanism. The best enforcement mechanism, of that which we consider to be fundamental rights, is the recognition that they are embodied in the U.S. Constitution and nobody wants to deny those. If 40 percent of the people who should get notice under State constitutional provisions get notice, something is drastically wrong. Until you put that in the U.S. Constitution, it is not going to change.

Mrs. FEINSTEIN. If the Senator will permit me, because I think he so well outlined that, I want to add one thing. No matter what we craft—we have taken two cracks at it and missed. Maybe the third time will either be another strike or a home run. I don't know. But, nonetheless, no matter how the statute is crafted, it will affect just 1 to 2 percent of the victims of violent crime all across this great land. For me, that is a very great problem.

Mr. SCHUMER. If the Senator will yield for a second, we have crafted many other criminal justice laws where we told the States, unless they did A, B, and C, we would take away their Federal money, and they did it. Drunk driving laws, sex offender laws—we can affect all 100 percent by using the tool of Federal money.

I yield back.

Mrs. FEINSTEIN. Then I think it is the wrong tool for what is a basic human right against government because it is government that refuses these people access. I think then you have to monitor government, and it would take a whole new bureaucracy to monitor government to see every notice was sent out and every change of address and that kind of thing. But I want to read a statement from someone who you do respect. I know you respect Professor Tribe. In addition, I know you respect the Attorney General of the United States. Just before you leave, I want to read a statement:

Unless the Constitution is amended to ensure basic rights to crime victims, we will never correct the existing imbalance in this country between defendants' irreducible constitutional rights and the current haphazard patchwork of victims' rights. While a person arrested or convicted of a crime anywhere in the United States knows he is guaranteed certain basic protection under our Nation's most fundamental law, the victim of that crime has no guarantee of rights beyond those that happen to be provided and enforced in the particular jurisdiction where the crime occurred.

This is similar to the discussion of how many angels dance on the head of a pin. I supported the first State constitutional amendment in 1982. It is now 18 years later. Even by constitutional amendments, what Senator KYL said about 60 percent and 40 percent of victims being responded to is really correct. We believe it is never going to be enforceable, it is never going to be carried out. The bureaucratic inertia is too great, the system is too ingrained, and the Constitution of the United States should not be so static and so immutable that people who have suffered violence do not have a right in a court of law. That is what we are about. Thank you.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I thank the Chair. Mr. President, I wish to start by acknowledging the outstanding statements that were made during the course of yesterday's debate. Senators DORGAN, FEINGOLD, SCHUMER, DURBIN, MOYNIHAN, and THOMPSON each made a significant contribution to this debate. I thank them for sharing their views on the Constitution.

Before we go on in this debate, and before we get to the actual vote on the motion to proceed, I want to mention a couple issues that need to be considered:

One, who is a victim for purposes of the proposed constitutional amendment, and secondly, what does the amendment mean to prosecutions?

We asked the Congressional Research Service. This is what they said:

[S.J. Res. 3 leaves] to another day the definition of "victim" for purposes of the amendment. . . . It is yet unclear whether S.J. Res. 3 . . . will wipe the slate clean or simply supplement existing law and whether it will trump conflicting defendant constitutional rights or if the need to accommodate both will in rare instances preclude prosecution in order to avoid conflict.

Think about that. CRS says under this amendment there are times when one might not be able to prosecute at all because of a conflict in its wording.

I do not know how stopping a prosecution with this amendment helps a victim in any way, shape, or manner.

What I wish instead is for those who share the concerns as I do for the victims of crime to join with me in finding a way to achieve progress without damaging our Constitution. I hope that even the most ardent proponents of this proposed constitutional change will try to find the best language possible. As Senator TORRICELLI said during debate on the so-called balanced budget amendment in 1997: "Good is simply not good enough when we are amending the Constitution of the United States." I agree. Constitutional amendments should be held to a much higher standard than simply what is good.

Every one of us begins a Congress by swearing that we "will support and defend the Constitution and bear true faith and allegiance to the same." We are honored by the constituents of our States. They allow us to serve here. We have that duty, if they allow us to serve, to honor and defend the Constitution.

But the oath does more than that. It recognizes our obligation to the great constitutional tradition of the United States and for those who forged this wonderful document. Our oath recognizes our responsibility to those who sacrificed to protect and defend our Constitution, but it is also our legacy to those who will succeed us.

No Member of this body owns a seat in the Senate. One-hundred of us are privileged to represent 250 million Americans. In days and years to come, others will take our places. Not only do we have to honor the commitment of those who put us here now, but we have to make sure we preserve the legacy for those who come after us.

I am afraid, as we see more and more constitutional amendments come down the pike—we have had 11,000 proposed since this country began—that we run the risk of our Constitution, which has served this Nation so well for over 200 years, being treated by the Senate as a rough draft rather than as the fundamental charter of this great and good Nation.

Over the last 6 years, this institution, the Senate, has been acting as though the Constitution is no longer serviceable, as though it needs some kind of major overhaul, as if we fortunate few who have been chosen to represent the people of our States since

coming to Washington have acquired some special wisdom that makes us smarter than all the patriots and all the public servants who preceded us and wiser than the legislatures of all of our States, and certainly more knowledgeable than the founders of this Nation.

In 1995, the Senate debated and rejected three proposed constitutional amendments—H.J. Res. 1 on budgeting, S.J. Res. 21 on congressional term limits, on which cloture was immediately filed but was not invoked, and S.J. Res. 31 regarding the flag. Since that time, the Senate Judiciary Committee has continued to report proposed amendments at a record clip, and the Senate has been called upon to reaffirm its rejection of a proposed constitutional amendment on budgeting and to debate and vote on a proposed constitutional amendment on campaign finance.

Last year, the Senate devoted several weeks to an event of truly constitutional magnitude. That was the impeachment trial of the President. This year the pace of constitutional proposals has accelerated again. This is the third proposal to amend the Constitution that the Senate has been asked to debate in the last 30 days alone—the third constitutional amendment in the last 30 days. We could turn ourselves into another country, as referred to on this floor yesterday when the distinguished senior Senator from New York said that country's constitution changes so rapidly that the libraries should find it under periodicals.

In 1995, when he was to cast the decisive vote against a constitutional amendment on budgeting, Senator Mark Hatfield of Oregon came to the Senate floor to explain how he would vote. My dear friend of over 20 years said:

The debate on the balanced budget amendment is not about reducing the budget deficit, it is about amending the Constitution of the United States with a procedural gimmick. . . . As I stated during the debate on a balanced budget amendment last year, a vote for this balanced budget amendment is not a vote for a balanced budget, it is a vote for a fig leaf.

Then Senator Hatfield concluded by saying:

Voting for a balanced budget amendment is easy, working to balance the budget will not be. The Congress should not promise to the people that it will balance the Federal budget through a procedural gimmick. If the Congress has the political will to balance the budget, it should simply use the power that it already has to do so. There is no substitute for political will and there never will be.

My friend from Oregon was right. But the same could be said about crime victims' rights. Supporting a crime victims' rights constitutional amendment is easy, but working to ensure that crime victims are afforded their rights and that the protective provisions of law are implemented, that is something else again. That takes real effort. It takes on-the-ground implementation and the dedication of the necessary resources and effort.

We have had profiles in courage on constitutional amendments on this floor. Last month, the distinguished senior Senator from West Virginia, Senator ROBERT C. BYRD, showed courage and commitment to constitutional principles when he voted against S.J. Res. 14, a constitutional amendment regarding the flag. I was fortunate to be present during his extraordinary statement on March 29. During that statement he counseled the Senate, but he also counseled the Nation on how to approach proposals to amend the Constitution.

I said then that his statement was a great history lesson and example of political courage because Senator BYRD was reconsidering his vote. I must admit, much as I enjoyed his observations, much as I learned from them, I did not know they would be so instructive again so soon.

With respect to this proposed constitutional amendment on crime victims' rights, there is an open secret in this body; and that is, a number of Senators have begun conceding privately, many over the last several weeks, that they have personal misgivings about voting for this proposed amendment. They know that it is not necessary. They know that it does not meet the standard of Article V of the Constitution to justify constitutional amendments. It is not that necessary amendment of which Article V speaks.

Some of these Senators, people I respect greatly, on both sides of the aisle, admit they joined as cosponsors because it is popular, because there seemed little reason not to, or because another one of the sponsors had persistently urged them to do so.

But as one who has served a long time, as one who has certainly made his share of mistakes in votes or positions, but as one who has had the privilege to vote on this floor more than 10,000 times, I say to each of those Senators, including those who cosponsor this proposed constitutional amendment, that you have succeeded by your efforts in bringing this matter to debate before Congress. I say this most sincerely to the cosponsors, this debate can result in greater recognition of crime victims' rights. They could do that without amending the Constitution.

I also say, respectfully, that now it is time to debate and to consider that debate and decide how you will vote, whether you are a cosponsor or not, because how each of us votes and how the Senate acts is what is now the question. Each Senator is responsible for his or her own vote. Nobody can tell any one of us how we must or must not vote.

But for each of us, we should understand that if we vote on a constitutional amendment, that is one of the most important responsibilities we will ever exercise as an elected representative. It is a significant factor in the Senate legacy that each of us creates, but it is also what contributes to the lasting legacy of our Constitution.

As Senators—the 100 of us—we are custodians of the Constitution. It is a responsibility we should allow to weigh heavily on our shoulders, not to be exercised lightly. Each of us should take seriously our responsibility to defend the Constitution.

I have often said that rather than amending the Constitution we should conserve the Constitution. No Senator should rely on 34 others to do the right thing and preserve the Constitution. Senators should cast their votes only for a constitutional amendment that they can wholeheartedly support, that they can honestly say they understand, and whose implementation and impact they are confident they can fully anticipate. I say to my colleagues, with all due respect, very few of us could answer that challenge and vote for this constitutional amendment.

The Constitution is not a bulletin board. It is not an automobile bumper on which to affix currently popular slogans. A vote on a constitutional amendment is not something to be cast blithely. When it comes to amending the Constitution, the popular vote is not necessarily the right vote. The founders of this Nation knew that. That is why they put various hurdles before us to amend the Constitution.

Let us not sacrifice the traditional guarantee against an overreaching Federal Government that our Constitution provides and sacrifice it to a popular siren song. Rather, let us turn to the work needed to be done to provide those rights that crime victims need in the Federal system and provide the incentives for their implementation in the States' criminal justice systems. There is no need for a constitutional amendment to achieve these goals. We can achieve these goals without amending our Constitution.

A constitutional amendment is not like an ordinary statute. A statute you can revisit. You can say next year: We were a little bit wrong in that. Let's redo it. You can tweak it. You can revise it. You can amend it. You can change it. You can repeal it.

It is not so with an amendment to the Constitution. Here we are dealing with something else. This is not a commemorative resolution. This is not one of those things we rush down to the floor and say to somebody: Which amendment is this? Oh. And then voting yes or no. This is a constitutional amendment.

I think if we are going to change the fundamental charter of this great Nation, we ought to step back a little bit, step back from the political passions of the moment. We are debating a constitutional amendment. We are not endorsing the popularity of a notion or a goal.

The Constitution of the United States is a good document. It is not a sacred text. But I would say in a democracy it is as good a law as has ever been written. That is probably why our Constitution is the oldest existing Constitution today. It has survived as the

supreme law of this land with very few alterations over the last 200 years.

Just think, more than 11,000 amendments have been proposed—many very popular at the time—but only 27 have been adopted; only 17 since the Bill of Rights was ratified over 200 years ago.

What have we gotten out of this? We have a Constitution that binds this country together rather than pushes it apart. It contains the Great Compromise that allowed small States, such as my State of Vermont, and large States, such as the State of the distinguished Senator from California, to join together in a spirit of mutual accommodation and respect.

I believe the State of Vermont may have had more population when it was admitted than the State of California. How much changes over time. That Great Compromise guaranteed that every State would have a voice in this wonderful body, the Senate, this place I love so much and will miss so greatly when I leave.

The Constitution embodies the protections that make real the pronouncements in our historic Declaration of Independence and give meaning to our inalienable rights to life, liberty, and the pursuit of happiness.

These are not just simply words we hear in Fourth of July speeches. These are the words that make up the bedrock of this great Nation.

The Constitution requires due process. It guarantees equal protection of the law. It protects our freedom of thought and expression, our freedom to worship as we want, or not, if we want. It also protects our political freedom. It is the basis for our fundamental right of privacy and for limiting Government's intrusions and burdens in our lives.

The provisions incorporated in the Bill of Rights ensure that Government power is not used unfairly against anyone. These provisions have protected us for over 200 years.

Mr. DURBIN. Will the Senator yield for a question?

Mr. LEAHY. Of course.

Mr. DURBIN. I first commend the Senator from Vermont for his leadership on the Senate Judiciary Committee and the fact that he has taken this debate over this proposed constitutional amendment so seriously. Senator LEAHY has been a leader not just in terms of the Democratic side but in terms of the Senate, to make certain that although a handful of Members have come to the floor to consider a matter of this gravity, he has been here day in and day out.

My question to him goes to a point he has made so eloquently today in his statement and before. It is about the nature of this amendment. Is it true that this proposed constitutional amendment before us is longer in length, has more words in it, than the entire first 10 amendments to the Constitution known as the Bill of Rights?

Mr. LEAHY. It comes very close to those first 10 amendments. The example I used: When we look at copies of

the Constitution, going to the Bill of Rights, the 4 or 5 lines in the first amendment, this goes 66 or 67 lines. This is a long, complicated statute. This should not be a constitutional amendment.

Mr. DURBIN. Is it true that the handiwork of James Madison and Thomas Jefferson in crafting the first 10 amendments to the Constitution, the Bill of Rights, the wisdom that has endured for over two centuries, is going to be rivaled, or is at least close to being rivaled, in length by this one amendment that is being proposed?

Mr. LEAHY. The Senator from Illinois is absolutely correct. That has been the case through the 63, 64, or 65 drafts of it, as it has worked its way through here.

Mr. DURBIN. I further ask the Senator from Vermont, it is my understanding that at least 63 different drafts of this amendment have been circulated around the Senate before it came to the floor today. Word has it that draft No. 64 is on the way, which we might get a chance to see before we vote on it. My question to the Senator is, in terms of victims' rights, does this not suggest that it would be better for us to have a statute rather than to amend the Constitution of the United States, if it takes so many pages of wording to address the concerns of the sponsors of this amendment?

Mr. LEAHY. I would much prefer a statute because, as the distinguished Senator from Illinois and the distinguished Senator from West Virginia know, a statute could be easily changed. It could easily be repealed, if we are wrong. In fact, if the Senator from Illinois will bear with me, I want to follow up on what he was saying. As an old printer's son, I made sure we had the same typeface on both sides of this chart. On the left side is the Bill of Rights; on the right side is the proposed constitutional amendment. Here is the Bill of Rights, all 10, and here is the constitutional amendment. They are just about the same length.

Mr. DURBIN. Will the Senator yield for another question?

Mr. LEAHY. Of course.

Mr. DURBIN. Despite the length of this amendment, the fact that it has been through 63 or 64 different versions, it is characterized as a constitutional amendment to protect the rights of crime victims. In this proposed amendment to the Constitution, is the word "victim" defined? Do we know what we are talking about in terms of what is a crime victim or who is a crime victim?

Mr. LEAHY. Mr. President, I say to my friend from Illinois, there is no definition of the word "victim." I must admit, as a former prosecutor, that is the first thing I look for. We all know that "victim" means different things to different people. It is not in here.

Mr. DURBIN. I ask the Senator from Vermont, is it not true that under Federal statute there are at least two or three different definitions currently of what "crime victim" might be?

Mr. LEAHY. The Senator from Illinois again is absolutely correct. They are defined very carefully in the statute because you have different remedies for different situations. You have different situations in which victims are defined differently. That is why we need a statute.

Mr. DURBIN. Is it not interesting that if we are going to give a constitutional right to a crime victim without defining who that victim might be, we are giving, under this proposed amendment, such things as the right to notice of criminal proceedings, so that the Government has a responsibility to notify people, without a definition of who those people might be or what class of people might be included?

Mr. LEAHY. The Senator from Illinois is absolutely right. It is one of the reasons why so many prosecutors have opposed this, but also why many victims groups have opposed this. They believe it is unworkable.

Mr. DURBIN. Will the Senator from Vermont also give me his thinking about section 1 of this proposed constitutional amendment which outlines and specifies the constitutional right to "consideration of the interest of the victim that any trial be free from unreasonable delay"?

People such as George Will, a conservative commentator, have asked what in the world this could mean, to give to a victim "consideration." My question is, if you are going to add wording to amend the Constitution, if I am not mistaken, since the passage of the Bill of Rights, which would be the 18th or 19th amendment we have enacted in Congress, whether such vague wording as "consideration" of victims is adequate to stand the test of time and trial before the Federal court system.

Mr. LEAHY. I say to my friend, you could probably have 25 constitutional experts who would give you 25 different interpretations of what that word means.

Mr. DURBIN. I thank the Senator from Vermont. Most people, when they think of a crime victim, can obviously identify the victim of an assault or battery or robbery, of course. In a murder situation, does the victim of the crime include the family of the murder victim? You might think it would. But if it is going to include family and relatives of the actual victims of crimes, how large of a net is being cast here to require the Government to give notice of trial to accommodate the scheduling of trials and hearings for this group, that may be rather large if you consider everyone affected by a crime?

Mr. LEAHY. I say to my friend from Illinois, in different cases I prosecuted, especially sometimes in family crimes of incest, rape, of beatings, of murders, sometimes we have a little bit of difficulty to make at least an initial determination of who the victim was and who the perpetrator was. It creates all kinds of problems.

Mr. DURBIN. Is it not true that every State in the Union has at least a

statute or a provision in their constitution protecting the rights of crime victims?

Mr. LEAHY. Yes. I say to my friend from Illinois, we may consider sometimes as necessary, under Article V, a constitutional amendment, if the States or Federal Government are unable to do these things otherwise. The fact is, they are doing it very well without a constitutional amendment. Thus, it removes the test of necessity we see in Article V.

Mr. DURBIN. Exactly the question I was going to ask. If we are going to amend the Constitution of the United States to take on this awesome responsibility, a document which all of us have sworn to uphold and defend, should we not be in a situation where there is no other recourse, where we have a situation where State statutes are being stricken, where there is some controversy at hand as to whether or not crime victims across the United States are being accommodated? The test of necessity seems to me to be the threshold test which we should meet before we come together on the floor of the Senate to consider an amendment to the Constitution of the United States.

Would the Senator from Vermont comment on that, please?

Mr. LEAHY. I say to my friend from Illinois that they should meet the test of necessity. I have always felt it meant in the Constitution that the test of necessity should be a high bar. In this case, I don't even think it is a low bar. There is no test of necessity here.

Mr. DURBIN. Is the Senator aware Mr. Will reported in a column recently that this is the fourth time in 29 days that Congress is voting on an amendment to the Constitution of the United States?

Mr. LEAHY. Yes, absolutely; one in the Senate and three in the House.

Mr. President, I know the Senator from Nebraska wishes to yield his time to the Senator from Arizona. I yield for that purpose.

Mr. HAGEL. Mr. President, I ask unanimous consent that my 1 hour of debate be allocated to the distinguished Senator from Arizona, Mr. KYL.

The PRESIDING OFFICER (Mr. GREGG). Is there objection?

Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I thank my dear friend from Illinois for the questions he has asked. He has worked so hard on this. He has spoken, as I said, brilliantly on this matter and I appreciate him coming here.

Earlier this week, I was honored to join in a Dear Colleague letter with the senior Senator from West Virginia. I have referred to Senator BYRD as the Senate's constitutional sage. Senator BYRD has played a leading role in protecting our Constitution over the last several years as it has weathered assault after assault. He counseled the Senate on the so-called balanced budget amendment, which would have been

a travesty. He was right. He has preserved the protection of our separation of powers against the line-item veto. Again, he was right. He showed great courage and wisdom with his vote and statement on the flag amendment on March 29. As I said, I was fortunate enough to join with the distinguished Senator from West Virginia on a Dear Colleague letter. We sent it out on April 24.

I ask unanimous consent that this Dear Colleague letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, April 24, 2000.

DEAR COLLEAGUE: On Tuesday, April 25, 2000, the Senate will begin its consideration of S.J. Res. 3, the proposed victims' rights amendment to the United States Constitution. We are writing to urge you to consider this matter carefully and protect the Constitution by voting against this unnecessary amendment.

Article V of the Constitution establishes the process for constitutional amendment. The process is cumbersome because the Framers intended it to be. Under Article V, Congress shall only propose an amendment to the States if two-thirds of both Houses deem it "necessary." James Madison, one of the principal architects of the Constitution, cautioned that constitutional amendment should be reserved for "certain great and extraordinary occasions," when no other alternative is available.

Of the more than 11,000 constitutional amendments introduced in Congress, only 27 have been adopted. The first 10 were ratified as our Bill of Rights in 1791, 209 years ago. There have been just 17 additional amendments. Despite all of the political, economic, and social changes this country has experienced over the course of more than two centuries; despite the advent of electricity and the advent of the internal combustion engine; despite one civil war and two world wars and several smaller wars; despite the discovery of modes of communication and transportation beyond the wildest fancies of the most visionary framers, this document, the Constitution of the United States, has been amended only 17 times since the Bill of Rights.

No "great and extraordinary" occasion calls for passage of this proposed amendment, S.J. Res. 3. Tremendous strides have been made in the past 20 years toward ensuring better and more comprehensive rights and services for victims of crime. Today, there are over 30,000 laws nationwide that define and protect victims' rights, as well as over 10,000 national, State, and local organizations that provide assistance to people who have been hurt by crime. There is no evidence that these laws and organizations are failing to protect victims.

The Constitution creates no impediment to the enactment of State and Federal laws to protect crime victims. Indeed, the proponents of this constitutional amendment cannot cite a single judicial decision that was not eventually reversed in which a victims' rights statute or State constitutional amendment was not given effect because of a right guaranteed to the accused in the Federal Constitution. Moreover, given the extraordinary political popularity of the victims' movement, there is every reason to believe that the legislative process will continue to be responsive to enhancing victims' interests.

Tinkering with the careful system of Federalism established by the Constitution can have far reaching and unexpected consequences. When it comes to our founding charter, history demands our utmost prudence.

Sincerely,

ROBERT C. BYRD,
U.S. Senator.

PATRICK LEAHY,
U.S. Senator.

Mr. KYL. Mr. President, the Senator from South Carolina has asked that I ask unanimous consent, on his behalf, that he may yield his hour of debate to me.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I see the distinguished senior Senator from Connecticut. I yield to him.

Mr. DODD. Mr. President, I will speak briefly, as I know our colleague from West Virginia is going to return to the floor to speak momentarily. As soon as he arrives, I will be glad to yield immediately. At some later point, I will take a little more time to express my views on this issue.

I want to begin with these brief remarks by, first of all, commending my colleague from Arizona and my colleague from California. This is a legitimate issue, in my view. I don't know how many of my colleagues last evening—or in the last two evenings—I can't remember whether it was last night or the night before—saw a news program about the families of the victims in the Starbucks shootings in this city. It was very moving to see these families being considered and their presence during the court proceedings in the disposition of this matter. It was heartwarming for me to see the families have an opportunity to express how they felt about what had happened and what the sentences were going to be regarding those charged with this crime. It is not something that we have seen with great frequency over the years, but it exists because there is a provision within the law in the District of Columbia that gives victims some rights.

To that extent, I begin these brief remarks by saying to my good friends from Arizona and California, I have great respect for the issue they are trying to address—that victims of crime be given the opportunity to be involved in the proceedings where loved ones, family members, people they cared about deeply, who have been victimized, are going to have a chance to be heard and to be involved.

The concern I have is not that they have failed to identify a problem. They have. My concern is with the solution to the problem they have sought. The solution that my good friends from Arizona and California have offered to address this issue is to amend the Constitution of the United States before considering the opportunity of writing statutory language, which might achieve the very same result without amending the cornerstone, the most fundamental document each and every one of us cherish as Americans.

A statute can be changed in a minute if there are problems with it, as time may prove. When you consider the Constitution of the United States, our Founding Fathers wrote the document and made it difficult to amend because they didn't want this to become a statute, an ordinance, a collection of wishes, a place where we would write party platforms. They wanted it to be the embodiment of the fundamental principles we embrace as Americans, and to change it would take herculean efforts.

My concern is that there are already on the books numerous statutes that give victims the right to be heard in this process, as we saw just last evening in the case of the Starbucks crime here in this city. And across the country, such statutes exist. I happen to revere, as I know my colleagues do, the Constitution of the United States. I carry with me every day in my pocket a copy of the Constitution. It was given to me by my seatmate, the distinguished senior Senator from West Virginia. I carry it with me every single day everywhere I go. I constantly remind myself of what I was elected to do, what purpose I am supposed to serve as a Member of the Senate.

The first and foremost of my responsibilities is to protect and defend this Constitution. That is my first responsibility. So when efforts are made to change this document—this thin document which—to protect and defend this Constitution is, in my view, our primary responsibility. We have before us a proposal for a constitutional amendment, which is represented on the left side of this chart. Here is the proposed constitutional amendment.

It is nearly longer than the entire Bill of Rights. The first 10 amendments—the Bill of Rights is shorter than this proposed constitutional amendment. That in and of itself ought to give us pause and cause us to be concerned, to wait and ask: Are we really going to add a provision, given the one issue, and write it into the cornerstone document of this country which has more sections and more words than is included in the Bill of Rights on which all of our individual freedoms are grounded?

I say to my good friends from Arizona and California that I could not agree with them more in identifying for the country in this forum the issue of victims' rights. It deserves and it demands attention, from State legislatures to the United States Congress. But the solution I suggest must first be sought in statutory language. If at the end of the day the statutory language is found to be unconstitutional, then you might consider amending the Constitution. But you don't seek the solution to that problem by amending the cornerstone document of our Nation first. Try the statute first. Let's see if we cannot address this problem through that vehicle and through that process, and if that fails, then come to the Constitution. But don't begin the process there. That, to me, is too dangerous.

We have an obligation to protect victims. We also have an obligation to protect the Constitution of the United States.

For those reasons, with all due respect to my colleagues whom I highly respect and have a great regard for—I have worked with my colleague from California on numerous issues, and with my colleague from Arizona, not as many, but I have a high regard for him, for his abilities, and for his contribution to the Senate—I urge them to take the language they proposed, and let's work with it. Let's see if we can't draft a statute that would allow us to address the legitimate concerns of victims. Write it into the ordinances of our land. Test it in the courts, if you will, but do not tamper at this juncture with the Constitution of the United States.

I see the arrival of my good friend whom I just referred to by thanking him publicly for giving me my copy of the Constitution, which I carry with me.

I yield the floor.

Mr. LEAHY. Mr. President, earlier I put into the RECORD the letter that I was honored to sign with the distinguished Senator from West Virginia explaining why we should not go forward with this amendment to the Constitution.

Let me say one last thing on this. Ours is a powerful Constitution. It is inspiring because of what it allows. It is inspiring because it protects the liberty of all of us.

Think of the responsibility the 100 of us here have. Let us be good stewards. Let's keep for our children and our children's children the Constitution with protections as well considered as those bequeathed to us by the founders, the patriots, and the hard-working Americans who preceded us. Work together to improve crime victims' rights in legislation. Let the States do the same. But let us remember that the 100 of us are the ones who must reserve constitutional amendments for those matters for which there are no other alternatives available, and this is not such a matter.

I yield the floor.

ORDER OF PROCEDURE

Mr. KYL. Mr. President, on behalf of the majority leader, I ask consent that when the Senate receives the veto message to accompany the nuclear waste bill, it be considered as read by the clerk and spread in full upon the Journal and then temporarily laid aside, with no call for the regular order returning the veto message as the pending business in order.

I further ask consent that at 9:30 a.m. on Tuesday, May 2, the Senate proceed to the veto message and there be 90 minutes under the control of Senator MURKOWSKI and 90 minutes under the control of Senators REID and BRYAN.

I further ask consent that the Senate stand in recess for the weekly party

conferences between the hours of 12:30 and 2:15 p.m. on Tuesday, May 2, 2000.

I further ask consent that at 2:15 p.m. on Tuesday, there be an additional 30 minutes under the control of Senators REID and BRYAN and 30 minutes under the control of Senator MURKOWSKI and at 3:15 p.m. the Senate proceed to vote on the question "Shall the bill pass, the objections of the President to the contrary notwithstanding?" all without any intervening action.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Chair notes for the record the receipt by the Senate of the President's veto message on S. 1287, which, under the previous order, shall be considered as read and spread in full upon the Journal and shall be laid aside until 9:30 a.m. on Tuesday, May 2, 2000.

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO PROTECT THE RIGHTS OF CRIME VICTIMS—Motion to Proceed—Continued

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I ask unanimous consent to yield my time to the distinguished senior Senator from West Virginia.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I have listened to the comments by my colleagues, those who are proponents of the proposed constitutional amendment before the Senate, and I have listened to the comments of many of my colleagues who have spoken in opposition to the proposed amendment. I compliment both sides on the debate. I think it is an enlightening debate.

I will have more to say if the motion to proceed is agreed to.

In view of the statements that have been made by several of those who are opposed to the amendment—the Senator from New York (Mr. SCHUMER), the Senator from Illinois (Mr. DURBIN), and the Senator from Connecticut (Mr. DODD), and others, they have cogently and succinctly expressed my sentiments in opposition to the amendment.

I congratulate the Senator from Vermont, Mr. LEAHY, on his statements in opposition thereto, as well as the leadership he has demonstrated not only on this proposed constitutional amendment but also in reference to other constitutional amendments before the Senate in recent days and in years past. He is a dedicated Senator in every respect. He certainly is dedicated to this Federal Constitution and very ably defends the Constitution.

I do not say that our Constitution is static. John Marshall said it was a Constitution that was meant for the ages. I will go into that more deeply later. At a later date, I will address this particular amendment.

But having been a Member of the Congress now going on 48 years, I may not be an expert on the Constitution, but I have become an expert observer of what is happening in this Congress and its predecessor Congresses, and an observer of what is happening by way of the Constitution. I consider myself to be as much an expert in that regard as anybody living because I have been around longer than most people. I have now been a Member of Congress, including both Houses, longer than any other Member of the 535 Members of Congress today.

I must say that I am very concerned about the cavaliness which I have observed with respect to the offering of constitutional amendments. There seems to be a cavalier spirit abroad which seems to say that if it is good politically, if it sounds good politically, if it looks good politically, if it will get votes, let's introduce an amendment to the Constitution. I am not saying that with respect to proponents of this amendment, but, in my own judgment, I have seen a lot of that going on.

I don't think there is, generally speaking, a clear understanding and appreciation of American constitutionalism. I don't think there is an understanding of where the roots of this Constitution go. I don't think there is an appreciation for the fact that the roots of this Constitution go 1,000 years or more back into antiquity. I do not address this proposed constitutional amendment as something that is necessary, nor do I address this, the Constitution today, as something that just goes back to the year 1787, 212 years ago.

The Constitution was written by men who had ample experience, who benefited by their experience as former Governors, as former members of their State legislatures, as former members of the colonial legislatures which preceded the State legislatures, as former Members of the Continental Congress which began in 1794, as Members of the Congress under the Articles of Confederation which became effective in 1781. Some of the members of the convention came from England, from Scotland, from Ireland. Alexander Hamilton was born in the West Indies. These men were very well acquainted with the experiences of the colonialists. They were very much aware of the weaknesses, the flaws in the Articles of Confederation. They understood the State constitutions. Most of the 13 State constitutions were written in the years 1776 and 1777. Many of the men who sat in the Constitutional Convention of 1787 had helped to create those State constitutions of 1776 and 1777 and subsequent thereto. Many of them had experience on the bench. They had experiences in dealing with Great Britain during and prior to the American Revolution. Some of them had fought in Gen. George Washington's polyglot, motley army. These men came with great experience. Franklin was 81 years