

## MEDIA ADVISORY

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IN RESPONSE TO THE TESTIMONY OF BETH A. WILKINSON  
BEFORE THE SENATE JUDICIARY COMMITTEE  
ON THE PROPOSED VICTIMS' RIGHTS AMENDMENT

MARCH 24, 1999

My daughter, Frankie Merrell, was murdered in the Oklahoma City bombing, and in tribute to her and all the others, I founded Families and Survivors United, which took a leading role in advocating for the victims and survivors before and during the trials which followed. This is how I first came to meet Beth Wilkinson.

Having attended every day of the McVeigh trial, I came to regard Beth Wilkinson as the most effective advocate on the prosecution team. More than that, I and others trusted her to bring the victims' perspective into the courtroom, and she lived up to that trust. So I believe that her statement before the Judiciary Committee today is from the heart --- that she really believes that if our Victims Rights Amendment were in place, it might have jeopardized a very basic right -- the "right of the just conviction of the guilty," as she puts it.

But she is wrong. As she describes so well, the prosecution team worked hard to earn our trust, and for the great majority of the 2,000-plus of us who were designated victims under the law, we gave them our trust. But on the one tactical issue she says argues against the Amendment, the prosecution team chose not to trust us for the reasons she describes, and in the process, that team broke both our trust and the law. She claims that, had the Amendment been in place, its right for victims to be heard before a plea bargain is accepted might have harmed the prosecution. Specifically she suggested that that might have persuaded the judge to not accept the guilty plea of Michael Fortier -- and thus might have jeopardized the eventual conviction of Timothy McVeigh and Terry Nichols. There are three things wrong with this conjecture.

First, Michael Fortier's testimony was not crucial to either conviction, as several jurors later made clear to me.

Second, had the Justice Department taken us into its trust on the usefulness of the Fortier plea, the great majority of us would have reciprocated that trust and encouraged the judge to accept the plea. I think from everything else Beth Wilkinson describes about the trust-building between the prosecution and the victims confirms this belief. We were not blind sheep, willing to accept everything the prosecutors said was so -- we were, most of the time, informed citizens who were persuaded by the prosecutors' reasoning. Beth Wilkinson as much as admits this when she notes that the victims overwhelmingly asked for a provable and sustainable case against the guilty.

And third, the prosecution team's mistrust of us over the Fortier plea agreement was so great that it chose not to notify us about the hearing in which the plea was offered, and it chose not to confer with any of us beforehand about the plea -- both of which were in violation of existing federal law.

So when Beth Wilkinson says that statutory reform will meet our just demands, we must ask, what happened to the statutes already on the books?

I am increasingly persuaded that the most formidable enemy of crime victims' aspirations for getting justice under our Constitution are criminal justice officials -- even well-meaning ones like Beth Wilkinson -- who believe that only government lawyers know best. Her testimony is in fact Exhibit A in the case for the Amendment because it is the voice of a superior government extending handouts as an act of grace, not protecting legitimate rights of a free people. She says that the "concerns" of the victims must be balanced with the "need for a just trial," as though these important values were somehow in conflict, and that only the government knows how to achieve this goal.

I cannot tell you how these words hurt me; they confirm my worst fears about the treatment of victims in our justice system and how nothing will change without constitutional rights.

It is painfully obvious to me that she thinks of us as mere meddlers who must be kept out of this important government business for fear that we might break something. Beth Wilkinson may believe that she "grew to understand my grief first hand," but clearly she does not. For me and so many of our families our grief was profoundly extended when our government minimized and discounted our interests by refusing to consult with us about this important development early in the case.

For example, consider the point Beth Wilkinson makes about grand jury secrecy. She says, "Due to the secrecy rules of the grand jury, we could not explain to the victims why Fortier's plea and cooperation was important to the prosecution of Timothy McVeigh and Terry Nichols." Under existing federal law, however, courts are authorized to enter appropriate orders allowing for the disclosure of grand jury information in advance of a court proceeding. It apparently did not even occur to her then, nor does it today, to have sought such a court order for disclosure. Nor is clear that such an order would even have been necessary, as surely there would have been ways to explain the circumstances to the victims without going confidential grand jury matters.

Perhaps most disturbing of all to me is Beth Wilkinson's assertion that the Victims Rights Clarification Act of 1997 "worked" -- no victims were precluded from testifying." In fact, I was precluded from testifying in the sentencing phase of the trial. As she is well aware, I very much wanted to be a penalty phase witness. But because of my philosophical beliefs in opposition to capital punishment, I was not allowed by the government prosecutors to testify. Clearly the statute did not work for me.

In addition, a number of victims lost their right to attend the trial of Timothy McVeigh because of legal uncertainties about the status of victims' rights. As I testified before the Senate Judiciary Committee in 1997, Judge Matsch rejected a motion made by a number of us to issue a final ruling upholding the new law as McVeigh's trial began. His reluctance led the prosecution team (including Beth Wilkinson) to tell us that, if we wanted to give an impact statement at the penalty phase, we should seriously consider not attending the trial. Some of the victims on the prosecution's penalty phase list followed this pointed suggestion and forfeited their supposedly protected right to attend McVeigh's trial. Our lawyers also sought further clarification from the judge (unsuccessfully), but had to do so without further help from the prosecution team. The prosecutors were apparently concerned about pressing this point further because the judge might become irritated.

Beth Wilkinson urges the Congress to "consider statutory alternatives to protect the rights of victims." While she says that she opposes the Victim's Rights Amendment in its "current form," the context of this statement makes it clear that she opposes any constitutional rights for crime victims. She concludes with the following prescription: "We must educate prosecutors, law enforcement and judges about the impact of crimes so that they better understand the importance of addressing victims' rights from the outset." But the truth is that there will be no real rights to address, as my experience makes clear, unless those rights are enshrined in the United States Constitution. Only then will victim's rights be meaningful and enforceable.

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