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MMcVeigh case reshapes federal law through clout of victims

OKLAHOMA CITY (AP) From death penalty appeals to cameras in the courtroom and military burials, the Oklahoma City bombing case is reshaping federal law, and it's the victims' families who are pushing the process.

``They were an effective voice throughout this ordeal, and I suspect their losses and the bombing itself will continue to influence the way Congress addresses crime and terrorism issues,'' said Sen. Don Nickles, R-Okla., who has championed the victims' causes.

The latest example of Congress' sensitivity to the bombing of the federal building came this week after it was learned that Timothy McVeigh, who was condemned to die for the blast, is entitled to burial in a military cemetery.

Two days after the story broke, the Senate voted 98-0 to deny veterans benefits to anyone convicted of a federal capital offense. The House is considering similar legislation.

Legal experts said passing laws in response to a single case can be fraught with danger.

``Knee-jerk legislation comes with its own problems,'' said Laurie Levenson, associate dean of Loyola Law School in California. ``The law you pass will affect more than just this one case.''

But Levenson acknowledged it sometimes takes a big case to get people to re-evaluate laws and make them better.

The most sweeping legal change began only weeks after the blast. Victims' families began lobbying for death penalty reform, fearing the bombers might use appeals to stave off execution for more than a decade.

Among the amateur lobbyists was Diane Leonard, whose husband, Secret Service Agent Don Leonard, was among the 168 people killed in the blast. At first, she found Washington an unreceptive place.

``This was not an easy battle,'' Mrs. Leonard said. ``It took a lot of letters, a lot of faxes, a lot of phone calls, and several visits.''

But she soon gained allies in the Senate, including Nickles and Orrin Hatch, R-Utah, chairman of the Judiciary Committee.

Streamlining of federal death penalty appeals had already been in the works before the bombing. After the attack, the measure got bogged down in both houses. But victims' relatives helped revive it, and President Clinton signed it on April 24, 1996, just over a year after the bombing.

``They personally visited offices of senators and turned some very critical votes,'' said Oklahoma Attorney General Drew Edmondson.

As a result, McVeigh could meet the executioner within four years.

However, the changes in the death penalty law will mostly apply to state death penalty cases by limiting federal review of those cases.

``I don't believe that these kinds of issues should be decided in the heat of the case by legislative decree,'' said David Lane, a death penalty attorney in Denver.

Victims' families demonstrated their clout again after the trial was moved from Oklahoma to Denver. They persuaded Congress to amend the ban on cameras in federal courtrooms to allow a closed-circuit telecast of the trial.

The law allows telecasts only if trials are moved out of state

or more than 350 miles from the site of the crime a provision so restrictive that the law may never come into effect again.

The families got involved again when U.S. District Judge Richard Matsch banned those who might testify during the trial's penalty phase from attending the trial or watching the telecast. By that time, Mrs. Leonard said, the halls of power were more receptive.

Congress clarified the closed-circuit law to allow victims' families to watch regardless of their status as witnesses.

Weeks before she testified in the penalty phase, Mrs. Leonard watched in person and via closed-circuit television the case against the man accused of killing her husband.

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To: Jose Cerda III

cc:

Subject: RENO SUPPORTS CONSTITUTIONAL AMENDMENT FOR VICTIMS' RIGHTS

Date: 06/25/97 Time: 17:12

VReno supports constitutional amendment for victims' rights

WASHINGTON (AP) A constitutional amendment to require that crime victims are notified and permitted to attend court proceedings is the best way to protect their rights, Attorney General Janet Reno said Wednesday.

Reno said the Clinton administration believes such an amendment is needed to ``bring balance to the criminal justice system."

``There are too many victims in this country who feel like they are left out of the system," she told the House Judiciary Committee.

Witnesses who appeared later criticized the proposed amendment, saying that while the goal was worthy, the approach was unworkable.

Proponents note that the Constitution includes at least 15 specific rights for defendants but none for crime victims an omission they contend allows the system to disregard victims and their pain.

Under the amendment, victims would be told of court proceedings and allowed to attend, permitted to make statements about a release, plea bargain or sentence and be notified of a prisoner's escape or release.

It also would grant victims the right to restitution and require that their safety be considered before their assailants' release.

It is sponsored by Rep. Henry Hyde, R-Ill., in the House and Sens. Dianne Feinstein, D-Calif. and Jon Kyl, R-Ariz., in the Senate.

Reno said an amendment ensuring these rights is the ``best means" to correct the ``existing imbalance ... between defendants' constitutional rights and the current haphazard patchwork of victims' rights."

Some 29 states have added victims' rights amendments to their constitutions, but advocates of a federal amendment applicable to state and federal court proceedings say state protections aren't uniform and often are superseded by the defendant rights outlined in the U.S. Constitution.

Reno urged the inclusion of a provision stating that a defendant's right to a fair trial must not be impaired by any victims' right. And she said the success of the notification system would depend on adequate funding.

But U.S. District Judge George Kazen of Laredo, Texas, expressed numerous concerns, including about the types of crimes the proposal

would cover, the definition of a victim and remedies for violating the proposed rights.

The proposal would apply to victims of violent crimes or those for which the defendant faces more than a year in prison. ``It seems to me that if you combine those two things we're talking about every crime on the books," Kazen said.

Kazen, who represented the Judicial Conference of the United States, urged that the proposal be limited to violent crimes and that the definition of victim be narrowed to exclude those who claim ``emotional harm."

In defending his proposal, Hyde pointed to the problems states have had collecting overdue child support as an example of how state systems can fail those they are created to serve.

``There is a problem. The victims feel left out," he said. ``I don't want to encumber the system ... but at the same time I'm most sympathetic to victims who are the forgotten people."

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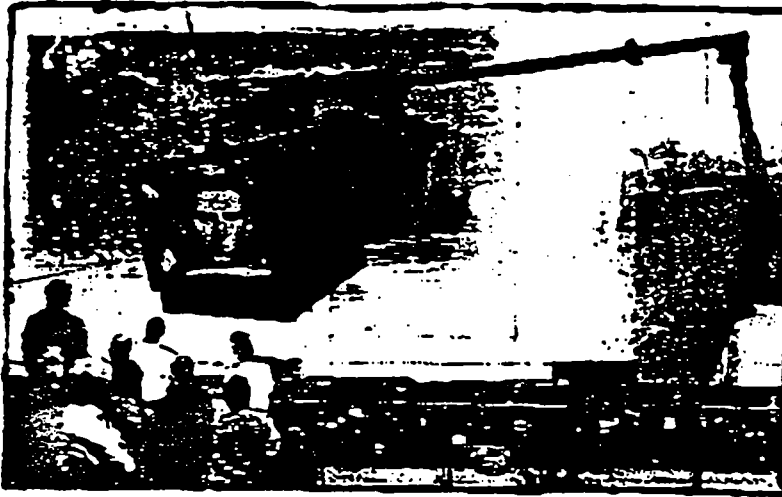
VICTIM POWER

How a new legal movement is shaping the Oklahoma City bombing trial.

BY JEFFREY TOOBIN

IN the pretrial hearings in the case against Timothy McVeigh and Terry Nichols on charges that they bombed the Alfred P. Murrah Federal Building, in Oklahoma City, on April 19, 1995, Judge Richard Matsch always ar-

filed papers (and held press conferences and gave television interviews), and now Matsch finally had her in front of him. "I had heard all these horror stories about him, about how he's always telling lawyers to behave themselves," Howick recalls.



If the victims wanted to see the trial on closed-circuit TV, they would need an act of Congress.

nives promptly, his cowboy boots briefly visible as he walks to the bench of his silent courtroom. More often than not, when the judge takes his seat—in a courthouse in Denver, where the two men will be tried separately—his large brown eyes are already flashing pique and impatience at resolving the difficult issues presented by the case. Matsch is hard on the lawyers for both prosecution and defense. Pressed for a ruling, he responds icily that counsel will get one "in the fullness of time." He scorns interlopers. More than once, Matsch has dismissed a lawyer for the news media covering the case with a curt "Sit down."

So what happened at the pretrial hearing on January 29th was surprising. For almost a year, an Oklahoma lawyer named Karen Howick had been filing motions and briefs before Judge Matsch on behalf of about a hundred of the victims of the bombing. The judge had already ruled several times that Howick's clients had no legal standing in the case, but still she

"But I figured I didn't usually practice in front of him, so I didn't care how much abuse I had to take."

But Matsch came in like a lamb. He did stand by his ruling that Howick's clients had no official status in the case (and thus no right to file briefs), but he made it clear that he had read every word she had submitted to him. The hearing on this day concerned the details of a closed-circuit broadcast of the trial back to Oklahoma City, which had come about only because of the efforts of Howick and her clients. Howick wanted the broadcast moved from a cramped room in Oklahoma City's federal courthouse to a more spacious auditorium, in a Federal Aviation Administration building near the airport. Matsch quickly agreed. "I was surprised," Howick says. "He couldn't have been nicer."

Matsch's dealings with Howick underline a paradox in the bombing case—and, increasingly, in all American criminal law. Over generations in our legal

STEVEN DANA/SYGMA

Despite law, investors' fraud suits rise in federal courts

BLOOMBERG NEWS

Investors' attorneys are again filing class-action fraud lawsuits against companies in federal rather than state court, a new study shows, despite a 1995 law that seeks to discourage use of U.S. courts for this purpose.

Congress passed the Private Securities Litigation Reform Act over President Clinton's veto in December 1995 in an attempt to curb frivolous suits by investors against companies whose stock prices fall. The law, which was supported by high-technology compa-

nies, brokerages and accounting firms, erected higher pleading standards and required that more specific allegations and evidence be filed.

In 1996, the first year the law went into effect, investors' attorneys tended to file more class-action suits in state courts in an attempt to circumvent the new federal restrictions, earlier studies found.

"It's not as easy to get a class certified in a state lawsuit" because the burden of proof is higher in most state courts, said Vinita

Juneja, a vice president of National Economic Research Associates (NERA), a White Plains, N.Y., economic consulting firm. Investors must first secure court certification if they intend to charge that corporate fraud affected a broad class of shareholders.

NERA, which conducted the study, found investors filed 78 class-action fraud suits in federal court from January to May. That's a 66 percent increase from the 47 suits filed in U.S. court in the same time period last year.

At the same time, the number of

suits filed in state courts declined, the NERA study found. Only 21 class-action fraud suits were filed in state court through May, a 60 percent drop from the 53 filed during the same period in 1996.

A separate study, by Stanford University law school, appears to confirm this trend. Investors had filed 87 suits in federal court as of last week, said Stanford law professor Joseph Grundfest. If the filings continue at that rate, 167 suits would be filed in federal court this year — a 36 percent increase over the 123 suits filed in U.S. courts last

year.

"[Attorneys] are discovering that federal courts tend to be more hospitable to claims of this sort," said Mr. Grundfest, a former Securities and Exchange Commission member who helps direct the Stanford project.

Mr. Grundfest's Stanford group found in February that many suits in state court were targeting smaller companies with more volatile stock prices, and accusing companies of more specific insider-trading and accounting violations.

history, trials have made room only for the prosecution and the defense, in what was rightly known as the adversary system. Now, however, the victims of crime are agitating for an ever more formal role in criminal trials. With his courtesy toward Howick, Judge Matsch implicitly recognized the moral authority of victims who seek a place in the courtroom, but he has struggled—as has the system as a whole—to define what that place would be. The Oklahoma bombing, with its toll of a hundred and sixty-eight dead and hundreds injured, left the largest and most politically powerful group of crime victims in American history. Among them are survivors of the attack as well as those who lost family members or, in some cases, their business or livelihood. When McVeigh's trial begins, on March 31st, it will bear the irrevocable stamp of the victims' efforts, and so may many other trials in years to come.

"**W**E generally date the movement from 1972," says John Stein, who is a historian of the victims'-rights movement and the deputy director of the National Organization for Victim Assistance, or NOVA, an advocacy group in Washington. That's when the first rape-crisis centers were established, which were followed by the first battered women's shelters. It was really an outgrowth of the women's movement—the focus, at first, was on learning how to be responsive to people in pain. Around 1980, you started to see the emergence of self-help groups and activist groups and self-identified victims of crime—most famously, Mothers Against Drunk Driving but also parents of murdered children. With all this, there was a much greater interest in victims' rights—mostly the right to be treated with dignity, which meant that the decision-makers would talk to you."

In recent years, victims'-rights advocates have expanded their priorities from services for individual victims to a political and legislative agenda. Politicians of all persuasions have long tried to associate themselves with crime victims in the public mind. So, as the crime victims' movement has evolved, its chief obstacles have been more institutional than ideological. Groups like NOVA have been trying to restructure laws so that victims of crime will have a permanent role at every stage of the criminal-justice pro-

cess—principally the rights to view legal proceedings and to participate in them. Notwithstanding broad political support, the victims' progress on these goals has been halting. "There is a real business-as-usual mind-set in the court system," says Paul Cassell, a professor at the University of Utah College of Law and a leader in the victims'-rights movement. "There are some things that are just never discussed, and one of those things is that a criminal case is a state versus a defendant, and you go from there. It's not just liberals or just conservatives who feel this way—it's how they all learned it in law school."

Karen Howick was, it turns out, the perfect person to take on this mind-set—enough of an outsider to feel a layman's outrage, yet enough of an insider to figure out how to challenge the status quo. Howick is an unlikely Oklahoman: a fifty-one-year-old Michigan native who spent a few years in the sixties as a flower child in San Francisco. However, she later went to law school in Oklahoma and developed an expertise in securities law, in which she now has a thriving practice. She is short and is built low to the ground, and she is pugnacious. Obviously, her success has not come from blending in with Oklahoma's white-bread legal culture. Her interest in the McVeigh case came about in a manner that, for Oklahoma City residents, is all too familiar: Robbin Huff, the sister of Howick's secretary, Rhonda Bartlebaugh, worked in the Murrah Building and was killed in the explosion. When Robbin Huff died, she was thirty-seven years old and seven months pregnant with her first child.

"**I** GOT mad when the trial was moved to Denver," Rhonda Bartlebaugh told me recently. On February 20, 1996, Judge Matsch granted McVeigh and Nichols's motion for a change of venue because there was some concern about finding an impartial jury for the case in Oklahoma. "They are accused of killing my sister," Bartlebaugh went on. "If someone shot my sister, I'd be able to go to the trial. I just want to see justice done. It's part of a closure for me." Bartlebaugh had therefore asked her boss what could be done about it.

"After Rhonda asked me about seeing the trial, I called up Court TV and asked them if they were putting it on

TV," Howick said. "They thought I was some kind of crazy woman. At that point, I didn't know there was a separate rule of criminal procedure that said you couldn't have cameras in federal courtrooms." Howick then spoke with Steven Brill, the chief executive of Court TV. "I told her it couldn't happen the way the law was at that point," Brill recalls. "But I got an idea. This is a wacky idea, and it probably won't work. I said, if you got the judge's permission or got an act of Congress passed, we at Court TV could send a closed-circuit feed back to Oklahoma City and only the victims would watch it. I said we'd do it free, as a public service, but I never really thought it had a chance of happening."

So in the spring of 1996 Howick, with Bartlebaugh as a lead plaintiff, filed a motion before Judge Matsch demanding that he permit a closed-circuit broadcast of the trial. Matsch eventually dismissed the motion, but Howick had also been pursuing Option 2—the act of Congress. "Before I knew it, Karen had the whole Oklahoma congressional delegation behind the law," Brill says. Two weeks before the first anniversary of the bombing, Howick was Bartlebaugh's guest at a reception with President Clinton for victims of the bombing. "He told me he had just heard about the idea of the closed circuit," Howick recalls. "But he was interested." After frantic weeks of lobbying by Howick, the law was attached

as an amendment to an antiterrorism bill that was working its way through Congress. It passed on April 18th.

Judge Matsch then had to work out the details of how the trial would be televised. Matsch is sixty-six years old, an intelligent, taciturn Coloradan, who is almost universally admired by lawyers who have practiced before him. Appointed to the bench by President Richard Nixon in 1974, he is known as a moderate. Indeed, he seems to be about as good a judge as the legal system has to offer, and his dedication no doubt partly explains why he has struggled so much with the issue of victims' rights in the Oklahoma City case.

By going over the judge's head and getting the act of Congress, the victims threw Matsch on the defensive, and he has responded by managing the details of the closed-circuit broadcast with a surprising intensity. For starters, Court TV's services were declined. "They told me that

they were worried that we were going to broadcast the trial," Brill says. "I told them that we wouldn't do that—and, of course, that it would be easy to tell if we did—but they said they would handle the technical side of it themselves." Matsch has insisted that the victims who watch the closed-circuit broadcast behave as if they were in his courtroom, and he has hired a retired Colorado state judge, Gaspar Perricone, to preside at the broadcast in the F.A.A. auditorium

and maintain decorum. As if that weren't enough, Matsch also decided to install a video camera trained on the Oklahoma audience, so that he can monitor both the closed-circuit broadcast and the people watching that broadcast at the same time that he runs the trial in Denver. According to people who are familiar with the plans for the broadcast, the National Security Agency—the nation's top-secret electronic-eavesdropping entity—was consulted on protecting the closed-circuit signal. This will be expensive. Brill says that it would have cost Court TV about thirty-five hundred dollars a day (and the government nothing) to operate the closed-circuit feed. Instead, it is estimated that, although some companies are providing services at reduced rates, the daily cost to the government will be between ten and thirty thousand dollars. (Court officials decline to disclose the cost of the broadcast.) "We can laugh at all the precautions he's taking, but he's an old-fashioned federal judge," says Vicki Zemp Behenna, a prosecutor who is monitoring relations with the victims in the case. "He really sees himself as a defender of the dignity of the process."

MOST judges in the country can recall one victim who did something inappropriate—some outburst in the courtroom—and, unfortunately, a lot of policies about victims are made on the basis of that grossly unfair stereotype,"

Paul Cassell says. "Nothing matters more to the victims' movement than simply guaranteeing that victims get a place in the courtroom. They're looking for answers, and their chance to get those answers is at the trial."

It is in this critical area—the right to be present in court—that Judge Matsch, despite his evident sympathy for the victims, has most disappointed them. He did so suddenly and without warning. Last June 26th, Matsch

convened a routine hearing in Denver on a defendants' motion to suppress evidence. About two dozen survivors and family members were in the audience, and the judge very casually announced that he was going to exclude from the courtroom all individuals who planned to testify during any part of either trial, even during the sentencing phase. Joseph Hartzler, the lead prosecutor, was clearly surprised by this ruling and asked the judge to

reconsider. Matsch brushed him off. He would allow the victims to stay for that morning's session, he said, but "at the noon recess" they would have to decide whether they wanted to return.

Matsch was invoking the rule of evidence that says witnesses are generally barred from attending any part of a trial except when they are giving testimony. As far as the guilt phase of the trial goes, the prosecutors—and the victims—had no quarrel with Matsch's ruling. Any witnesses, including victims, who intended to testify during this phase would forgo watching any other portion. But both McVeigh and Nichols would face the death penalty if convicted, and, during the sentencing phase of a trial, federal law allows victims to testify about the impact a crime has had on their lives. Matsch ruled that their testimony could be materially affected by what they heard from other witnesses. His decision meant that all the victims—including those who would watch the proceedings only on closed-circuit TV—had to decide whether they wanted to forfeit the chance to testify about the impact of the bombing on their lives. And the victims who were there that day had to make this decision during the lunch break.

"We just had to make a decision right quick, and it was a very emotional thing," said Martin Cash, who lost an eye and suffered other serious injuries in the bombing, and who was in Matsch's courtroom that day. "The judge said that watching the trial might affect our testimony. That's bull. It's not going to affect our testimony at all. I have a hole in my head that's covered with titanium. I nearly lost my hand. I think about it every minute of every day." Cash, for his part, decided to give up the chance to testify later and to watch the trial instead—or, as he put it, "use my one eye and stare at the turkey."

AIR SAFETY

What Really Happened?

The FBI prepares to close its books on TWA 800



Giving way: Kallstrom is peeling off

BY MARK HOSENBALL AND MATT BAI

LATER THIS MONTH A TEAM OF FBI agents and government scientists will drive out to a deserted military base two hours north of London. There they'll attach five tiny sophisticated bombs—the kind favored by international terrorists—to a fuel tank taken from a wrecked Boeing 747. Then they'll detonate the charges. If the first four explosions leave anything left to examine, the Feds will add propane to the tank for the grand finale. When it's all over, scientists will scrutinize every twisted shard of metal for some kind of telltale resemblance to the catastrophe that brought down TWA Flight 800.

They don't expect to find it, and with that loud bang, an ocean away from the crash site, the largest criminal investigation in American history is likely to end. The dramatic test is a last concession to those who still think a bomb may have killed 230 people in the sky south of Long Island, a possibility that seems increasingly remote. A year after the crash, investigators still can't tell the victims' families just what caused the plane to explode. But agents looking for killers abroad are now giving way to scientists looking for another kind of killer—a faulty wire, perhaps, or a random charge of static electricity. As horrific as a terrorist act would have been, a malfunction is equally unsettling. Already the two federal agencies charged with air safety

are feuding over how to prevent another disaster, with the lead investigator warning that more people will die if changes aren't made. Experts have always been quick to say that 747s don't just tumble from the sky. Apparently, Flight 800 did.

Investigators are testing four mechanical theories to determine what caused the explosion in the plane's center fuel tank, but they're not sure they'll ever have the answer (chart). That contrasts sharply with the bold predictions they made immediately after the crash. Back then it seemed so likely that terrorists were to blame that the National Transportation Safety Board actually offered to cede control of the investigation to the gumshoes. In the months that followed, the investigation was led by James Kallstrom, the FBI's plain-talking point man. Kallstrom piloted a massive investigation involving as many as 700 agents—and became something of a celebrity in the process. (On a shuttle flight from Washington to New York last week, crew members argued in the cockpit over whether Kallstrom was in fact

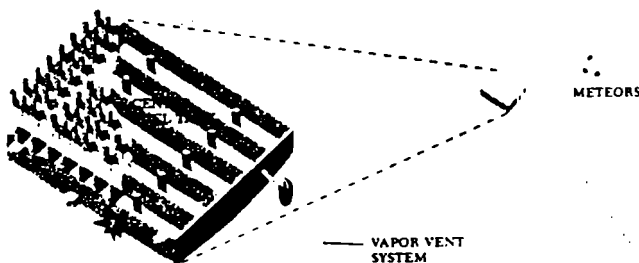
the famed Fed; to settle the dispute, Kallstrom gave them his card.) But even as a new batch of scientists examines the wreckage for clues, the FBI is preparing to close its case. If there is any proof of a bomb or missile, Kallstrom says, it's still sitting on the ocean floor.

The spotlight now shifts to Bernard Loeb, the brainy scientist who heads the NTSB's side of the investigation. Tall and bony with birdlike features, Loeb has investigated every major crash in the last 15 years, and he follows two guiding rules: "No. 1 is that we be right. No. 2 is that we don't miss anything." Edgy and determined, Loeb can be found pacing in his Washington office before 6:30 a.m. At home, he'll read a hundred e-mails and sift through a stack of documents while watching the Orioles on television. This is a big moment for Loeb and his agency; chronically overlooked by the media and the budget makers, the not-so-glamorous NTSB now has a chance to show the world what it can do. It expects to spend some \$27 million on Flight 800—more than half its annual budget. That bill may rise as Loeb chases new theories: he now believes that a small crack in the tank may have caused leaking fuel particles to form a cloud, which then discharged a deadly electric spark. He's been unable to prove it in the lab—so far.

Loeb's doggedness is causing a public rift between the NTSB and its more powerful counterpart, the FAA. The NTSB has been pushing the FAA to mandate costly changes that would prevent the buildup of explosive vapors on 747s and thousands of similar planes. The FAA has resisted, saying there's no proof of a hazard—a response the NTSB has characterized as "unacceptable." Tension peaked this month when Loeb warned publicly that the FAA's recalcitrance could cost more lives. For that, he was upbraided by several members of Congress. Meanwhile, NEWSWEEK has learned that Transportation Secretary Rodney Slater convened a meeting with officials from both agencies last week to try to stop the bickering. It may be futile. The FAA, after all, isn't yet inclined to put cumbersome new restrictions on the powerful airline industry. And nerves are likely to fray as investigators increasingly feel they're racing against the clock. They know that whatever happened on Flight 800—however improbable—may happen again.

The Many Theories of the Case

Investigators are still trying to determine what caused TWA 800's nearly empty center fuel tank to explode. The six suspects:



Static electricity: Sloshing or leaking fuel builds up a static charge, causing a deadly spark. NTSB's pick.

Fuel-probe residue: Mineral deposits on a fuel-level monitor reach dangerous temperatures, igniting the fuel.

'Shaped charge': A large bomb has been ruled out, but small explosives planted on the center fuel tank could have caused the blast.

Chafing wires: FAA's favorite. Rubbing wires near wing tank start a fire that blows back through vapor vent system to center tank.

Meteors: "Space junk," possibly small meteors or missile fragments, hits the jet. The least likely cause.

Scavenge pump: A pump that bails fuel residue from the center tank overheats, touching off hot vapors.

In the months since the ruling, the prosecutors—at the urging of the victims—have repeatedly asked Judge Matsch to reconsider his ruling barring penalty-phase witnesses from watching the trial. The judge has given the victims sympathy but little else. "I think it is often misunderstood when they talk about 'defendants' rights,'" Matsch said from the bench on October 4th. "We're not talking about defendants' rights as such. We're talking about the protection of the integrity of the process by which the de-

fendants are judged and the evidence is judged. And that's the responsibility of a judge. And that's the responsibility I'm attempting to meet by what seems a very hard-hearted rule."

Hard-hearted, to be sure—and also patronizing. Paul Cassell, who has represented a group of victims in the effort to overturn the ruling on penalty-phase witnesses attending the trial, says, "These are people who have lost husbands and wives and children in the bombing. It is the most shattering experience of their lives. To suggest that their testimony will be materially affected by watching the witnesses in this case—people like experts from the F.B.I. lab, or Ryder-truck-rental people—is ludicrous. Almost every psychologist who has looked at the issue says that it's generally a healing thing for those victims who want to see a trial to be able to attend. So the irony is that by excluding victims the judge may make them more angry, which wouldn't help the defendants."

Matsch's old-fashioned worries about the integrity of his courtroom have caused him to overcompensate and ban all victim-witnesses. Ironically, in response to perceived insults like this one, the victims' movement seems bent on an overcompensation of its own—in the form of an amendment to the Constitution. The movement's current top legislative priority is an amendment, backed by the Clinton Administration and co-

sponsored by Senators Jon Kyl, of Arizona, and Dianne Feinstein, of California, establishing the idea that victims of violent crimes would have "the rights to notice of, and not to be excluded from, all public proceedings relating to the crime," and also the right to be heard before the judge releases a suspect on bail or sentences a convicted defendant.

At one level, it's easy to see why victims' advocates, frustrated by institutional barriers like those seen in Matsch's court, want to change the system in a profound way. "The reason a judge is going to give a defendant reasonable accommodations on issues during a trial is that the Constitution says he has a right to due process," Cassell, who is, of course, a supporter of the amendment, says. "Defendants are now the only ones who can get a judge reversed on appeal. So now judges just say, 'Victims, you're

out of here.' They couldn't do that after a constitutional amendment. We want those reasonable accommodations for victims, too."

But the relatively narrow and reasonable changes that the victims' advocates seek could probably be accomplished with legislation rather than with the extreme step of amending the Constitution. According to Robert Weisberg, who is a professor at Stanford Law School, "At best, the amendment will be ineffectual rhetoric that won't make much difference, but more likely it will just contribute to more lawyering about things like the degree and the nature and the timing of notice to victims. This will just slow down the process of prosecuting criminals."

The Oklahoma City victims have certainly developed a mastery of the legislative process, even in the absence of a constitutional amendment. In fact, on the very eve of the trial the excluded victim-witnesses are attempting to adopt the strategy that worked for Howick and Bardebaugh on the closed-circuit broadcast. On March 12th, the day after the Court of Appeals for the Tenth Circuit refused to hear an appeal of Judge Matsch's ruling, the House Judiciary Committee approved a bill asserting that a district judge cannot exclude victims from federal criminal trials on the ground that they might later testify in the penalty phase of the case. The full house was expected to vote on the bill within days. So, remarkably, for the second time the Oklahoma

City victims may succeed in persuading Congress to pass a law overruling a decision by Judge Matsch while the case against McVeigh and Nichols is pending.

The victims' successes in the Oklahoma case herald the arrival of a major new force in American criminal law—one that has gone from powerless to nearly invincible in a generation. For Rhonda Bardebaugh, these successes bring a measure of satisfaction, if not of consolation. "At the very beginning, everyone said it couldn't be done," she remarked. "People said we were just spinning our wheels. But there were enough of us so that they couldn't ignore us. Since there were so many victims, it was brought out more in the public eye. People knew that we should have the right to watch the trial, be present, participate. It's the outcry from the victims that did it." •



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LRM ID: REJ158

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, June 23, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference
OMB CONTACT: Ronald E. Jones
PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: JUSTICE Testimony on HJR71 Constitutional Amendment to Protect the Rights of Crime Victims

DEADLINE: 5:00 PM TODAY Monday, June 23, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Justice says the attached testimony is very similar to the AG's testimony for the Senate Judiciary on SJRes 6 except for the pages 10-15, which recommends how certain issues should be resolved and describes the Administration's proposed bill (Victim's Rights Act)

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Michael F. Crowley
Ellen J. Balis
Victoria Wassmer

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

☐ **Concur**

☐ **No Objection**

☐ **No Comment**

☐ **See proposed edits on pages** _____

☐ **Other:** _____

FAX RETURN of _____ **pages, attached to this response sheet**

House Testimony
RRobinson 06/23/97 9:06am

Attorney General Testimony
Crime Victims' Constitutional Amendment

Good Morning. I appreciate the opportunity to appear before this Committee to express this Administration's views regarding an amendment to the United States Constitution to guarantee fundamental rights for the victims of ~~violence~~.

Mr. Chairman, I know that you and each member of this Committee share with the President and me a deep and abiding respect for the Constitution. That profound document reflects the true genius of this nation's Founders, and its enduring vitality over the last 200 years is a testament to that genius. This Administration does not lightly endorse any effort to amend the Constitution. In fact, we recognize that, as is the case with any treasure of enduring value, this Nation should proceed only with the greatest caution to alter its fundamental charter.

It is also important to recognize, however, that in their genius, those same Founders also anticipated that for a nation to survive and prosper, it must reserve the opportunity to alter its fundamental charter through a well-ordered process. Article V of the Constitution provides such a process. That process has been used successfully, but sparingly, throughout our nation's history. This Administration firmly believes that the guarantee of fundamental rights for the victims of violent crime requires that we employ that process once again.

I am here today to explain why the Administration believes that a constitutional amendment provides the best means to protect the rights of violent crime victims. I also would like to describe the progress that has already been made to achieve this goal, as well as the issues that remain unresolved.

The Rationale for a Constitutional Amendment

As the President said on June 25 of last year, in announcing his support for a constitutional amendment to protect the rights of crime victims:

Participation in all forms of government is the essence of democracy. Victims should be guaranteed the right to participate in proceedings related to crimes committed against them. People accused of crimes have explicit constitutional rights. Ordinary citizens have a constitutional right to participate in criminal trials by serving on a jury. The press has a constitutional right to attend trials. All of this is as it should be. It is only the victims of crime who have no constitutional right to participate, and that is not the way it should be.

The President and I have longstanding interests in and commitments to safeguarding and bolstering the rights of victims of crime. The President's involvement in this area dates back to his days as Attorney General for the State of Arkansas, and he has remained steadfast since then.

I, too, have long been an advocate of treating victims with the respect and dignity they deserve. While serving as State Attorney in Dade County, Florida, I had the opportunity to learn how important it is to give crime victims an opportunity to be heard. I also learned that we can accord victims dignity and respect without breaching the constitutional protections our system guarantees those who stand in criminal jeopardy. During my time in Dade County, I also supported a victims' rights amendment to the Florida Constitution. *When passed?*

Based on our personal experiences and the extensive review and analysis that has been conducted at our direction, the President and I have concluded that an amendment to the Constitution to protect victims' rights is warranted. We have come to that conclusion for a number of important reasons.

First, 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 for a crime anywhere in the United States knows that he is guaranteed certain basic minimum 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.

A victims' rights amendment would ensure that courts will give weight to the interests of victims. When confronted with the need to reconcile the constitutional rights of a defendant with

the statutory rights of a victim, many courts often find it easiest simply to ignore the legitimate interests of the victim. A constitutional amendment would require courts to engage in a careful and conscientious analysis to determine whether a particular victim's participation would adversely affect the defendant's rights. The result will be a more sophisticated and responsive criminal justice system that both protects the rights of the accused and accommodates, to the maximum extent possible, the interests of victims.

Second, efforts to secure victims' rights through means other than a constitutional amendment have proved less than fully adequate. Victims' rights advocates have sought reforms at the state level for the past twenty years, and many states have responded with state statutes and constitutional provisions that seek to guarantee victim's rights. However, these efforts have failed to fully safeguard victims' rights. These significant state efforts simply are not sufficiently consistent, comprehensive, or authoritative to safeguard victims' rights. Rather than form a minimum baseline of protections, the state provisions have produced a hodgepodge of rights that vary from jurisdiction to jurisdiction.

In addition, state efforts often have not been able to protect crime victims from feeling re-victimized by a criminal justice system that is at times insensitive to their needs. In one case, for example, the victim notified the court that she wished to provide a victim-impact statement in open court, as was her right under the state's constitutional amendment. The judge denied her request because he said he had a "busy docket." Similar instances of mistreatment of victims by the system have occurred across the country.

Rights that are guaranteed by the federal Constitution receive greater recognition and respect. If a victims' rights amendment is adopted, a permanent, uniform baseline of rights for crime victims will be in force in each and every state.

Third, the victims' rights amendment that the President and I envision will do no more than secure for crime victims the same type of rights that are secured for others elsewhere in the Constitution. The rights that we believe should be protected by a constitutional amendment primarily are intended to guarantee crime victims the opportunity to participate in proceedings related to the crimes committed against them.

By protecting the rights of free speech, free press, peaceable assembly and petition for redress of grievances, the First Amendment guarantees all Americans the opportunity to participate in our country's political and social discourse. The most basic participatory right in democracy -- the right to vote -- has been the subject of four constitutional amendments, which have guaranteed that right to adult citizens regardless of race, gender, financial means or age.

In the criminal justice context, all affected individuals, except for the victims of crime, are afforded some basic constitutional rights. The defendants have the right to be informed of the accusation against them, the right to be represented by counsel, and the right to confront those witnesses who testify against them. The Constitution provides the community affected by a crime both access to public court proceedings and the opportunity to participate as jurors in criminal trials. Ironically it is those most directly affected by a crime -- the victims -- who have no

guaranteed constitutional rights.

Fourth, the President and I have concluded that a victims' rights amendment would benefit not only crime victims but also law enforcement. To operate effectively, the criminal justice system relies on victims to report crimes committed against them, to cooperate with the law enforcement authorities investigating those crimes, and to provide evidence at trial. Victims will be that much more willing to participate in this process if they perceive that we are striving to treat them with respect and to recognize their central place in any prosecution.

Several of the rights we would guarantee in such an amendment would provide law enforcement with additional benefits on top of the benefit of victims' increased resolve to participate in the process. If victims are notified of public proceedings and allowed to attend, they will be able to alert prosecutors to distortions of fact in defendants' and defense witnesses' testimony. Allowing victims to be heard during critical phases of the trial will increase the likelihood that courts will engage in better decision-making. Victim testimony can provide courts with additional relevant information and impress upon them that an actual human being has suffered as a result of the defendant's conduct. Having had an opportunity to be heard, victims likely will be better able to accept a court's decision, whatever it may be. Notice of release of the defendant or offender will enable victims to take precautions that may prevent the commission of more crime. By holding offenders financially responsible through restitution for the harm they caused, they will be more clearly required to acknowledge and accept responsibility for that harm.

Moving Forward

Having made a commitment to seeing a constitutional amendment adopted, this Administration has been hard at work to deal with the range of important issues that must be addressed in moving forward to put such an amendment in place.

Last spring, Senators Kyl and Feinstein introduced in the Senate a resolution proposing language for a victims' rights amendment. Chairman Hyde introduced proposed amendments here in the House. In that way, and in so many other ways, Chairman Hyde, along with Senators Kyl and Feinstein, have demonstrated truly impressive leadership on this issue. Their commitment has served as a beacon for those in this nation who have a vision of a justice system which accords crime victims the respect they deserve. I hope other members of this Committee will join with the Chairman in this important effort.

In announcing his support for the amendment, the President stated that the amendment should guarantee certain basic rights for victims:

Right to notice of public court proceedings and to attend them;

Right to be heard;

Rights relating to parole hearings;

Right to notice of release or escape;

Right to an order of restitution;
Right to protection from the defendant; and
Right to notice of these rights.

The President made clear that the amendment should be drafted with great caution to ensure that it does not impede legitimate law enforcement functions or work inadvertently to provide defendants and convicted offenders with tools or arguments that could impair the criminal justice process. We must never lose sight of the fact that the very best way the criminal justice system can serve victims is to bring responsible criminals to justice.

Once the President announced his support for a victims' rights amendment, I in turn, asked then-Associate Attorney General John Schmidt and Assistant Attorney General Eleanor D. Acheson to review the proposed resolutions and discuss our concerns with Congressional staff. I know they have met on several occasions with Chairman Hyde and his staff. Those meetings helped to identify important issues that must be addressed in drafting an amendment and to educate everyone at the table. I commend the Chairman and his staff on the hard work that has taken place to date.

There is still much work to be done. Our efforts at the Department of Justice have included gathering input from a wide variety of sources, particularly the law enforcement community. We have sought guidance from not only the United States Attorney's Offices nationwide, but also state prosecutors through organizations like the National Association of

District Attorneys and the National Association of Attorneys General. I know that each and every member of this Committee has district attorneys and attorneys general in their states who have sought to meet the needs of victims, and I encourage you to work with them and to seek their input as you move forward with this important amendment.

In addition, we have met with representatives from a variety of key civil rights organizations to solicit their views. We will continue to consult with those leaders as we work to craft an appropriate victims' rights amendment that accords victims the participatory rights they deserve without eroding an essential aspect of what makes our system special -- the fundamental bedrock of constitutional protections for those who stand accused of a crime.

Our efforts at the Department also have included productive discussions with victims' rights organizations that cut across and through all partisan and ideological lines. These groups are not out to achieve any extraneous political objectives or to foster public relations victories. Rather, they are real people -- typically family members of victims -- who are driven by a wholehearted belief that the criminal justice system must neither disregard nor neglect the rights of crime victims. These groups have encouraged me, correctly so, to support a victims' rights amendment that protects victims and gives them a voice at critical stages of court proceedings.

The Administration is committed to continuing to work with Congress, state and local prosecutors, federal and state judges, victims and victims' groups, and others involved in the criminal justice system as we develop an amendment that gives real rights to victims and preserves

the protections accorded to the accused. Such an amendment must be flexible enough to permit prosecutors, judges, and other justice system actors to deal appropriately and effectively with the variety of difficult circumstances that arise in the course of a criminal case.

Issues to be Resolved.

During our discussions with members of Congress, their staffs, and others, some important outstanding issues have been identified. We have been seriously examining these difficult issues and have come to a position on two of them. First, the amendment proposals offered by Chairman Hyde and Senators Kyl and Feinstein each contain a provision relating to a victims' right to disposition of proceedings free from unreasonable delay. Those provisions reflect the view that crime victims have a powerful interest in the finality of proceedings; we share that view. We know from our discussions with victims groups that one of the most painful aspects of their experiences with the justice system is the lack of finality within a reasonable time. Completion and resolution of the criminal case can provide an opportunity for victims to achieve some healing from the crimes committed against them.

Under current law, courts resolve issues related to the timing of significant events within the criminal justice system by seeking to accommodate the need to ensure a fair trial for a defendant and the government's interest in mounting an effective prosecution. While we believe a victim's interest in finality must be considered, we are concerned that a victims' unqualified right to final disposition free from unreasonable delay could have adverse effects on law

enforcement. For example, an unqualified right could place victims in a position to force prosecutors to proceed to trial before they are fully prepared. Prosecutors may need to delay the proceeding to continue their investigation or to strengthen their existing case. In addition, delay may sometimes increase the likelihood of a favorable plea agreement.

In light of these and related concerns, and consistent with the Administration's fundamental position that this amendment should afford victims a "voice, not a veto," we believe that victims have a right to have their interest in a final disposition free from unreasonable delay considered by the court. In our view, this right most appropriately attaches to proceedings related to trial and sentencing dates. Victims appear to be most aggrieved by unexplained delays in trials. A provision that gives them a voice in the process brings victims' interests to the fore and guarantees that courts will hear and consider their concerns about the effect of a delay on them.

Another important issue for us relates to concern regarding whether the adoption of a victims' rights amendment would effectively undercut those rights guaranteed to those who stand accused of a crime. As I noted earlier in my testimony, the bedrock protections our Constitution accords to those who stand accused of a crime is among the most important aspects of our system. Among the challenges we face in the effort that draws us here today is to craft a victims' rights constitutional amendment that protects the rights of victims without eroding those fundamental protections. We believe this goal can be most effectively achieved if the amendment includes express language stating clearly that the rights the amendment creates shall not be applied in a manner that violates those irreducible rights to which a criminal defendant is constitutionally

entitled. I do not mean to suggest that defendants will always prevail if they challenge the victims' rights to participate in the process. On the contrary, I believe that the two can, for the most part, co-exist. However, on those rare occasions where the vindication of victims' rights will indeed violate on defendants' fundamental rights to a fair trial, a defendant's claim should prevail. This approach strikes the balance the Administration is seeking to achieve, and we look forward to working with you to craft language that produces this result.

Of course, there are other important issues to resolve and I look forward to working with you to resolve them. There is one issue in particular I would like to note for your attention this morning. Any attempt to create rights for individuals requires a commitment of resources. The problem with many state efforts to provide rights for victims is that they have not been accompanied by the resources required to make those rights meaningful. A federal constitutional amendment will require the creation of effective systems of notification and other efforts that could be costly. While the text of an amendment is not the place to address such resource concerns, we must recognize that these issues exist and commit ourselves to deal with them if we truly seek to achieve the full measure of what a victims' rights amendment can offer.

As a final, but certainly important, note, I want to address two things the Administration is doing now to make sure that the federal system is keeping its commitment to victims of crime.

First, last year the President directed that the Department of Justice take the lead on a number of fronts concerning victims' rights, one of which was to recommend legislation that may be necessary or desirable to identify and protect certain victims' rights. The Department has been hard at work with its own components, which constitute such a large part of the federal law enforcement and criminal justice system, and with other federal agencies whose missions involve them with victims. That work is described in a report I submitted to the President in April.

Second, the Administration [recently has transmitted or is transmitting] a legislative package that will do the following in federal cases:

- Establish a right of victims to be present throughout all public court proceedings to the maximum extent consistent with the Constitution.
- Give victims who miss work to attend proceedings the same protection accorded to jurors against adverse action by employers.
- Establish rights of victims to be heard both orally and in writing concerning release decisions, plea acceptance, and sentencing.
- Broaden victims' rights to be informed, to attend, and to be heard, in juvenile proceedings.

- Authorize prosecutors to enforce victims' rights to be present and to be heard through applications for mandamus and appeal.
- Authorize pretrial detention of defendants who seriously threaten victims regardless of the nature of the charge.
- Strengthen victims' rights to restitution and compensation, and the remedies for collecting and enforcing restitution.
- Authorize funding for an automated victim information and notification system, to ensure consistent notice to victims concerning proceedings and other important occurrences in their cases.

We look forward to working with you on this important legislation in the coming weeks.

None of this, however -- neither the renewed commitment of the federal system nor this discrete legislative package -- in any way undercuts the compelling need for a constitutional amendment.

Conclusion

I look forward to working with you and your staffs to address these and other important

issues. I am confident that we can achieve the balance that is so important in this area.

I would be pleased to answer any questions the Committee may have.

IV

105TH CONGRESS
1ST SESSION

H. J. RES. 71

Proposing an amendment to the Constitution of the United States to protect
the rights of crime victims.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 1997

Mr. HYDE (for himself, Ms. PRYCE of Ohio, Mr. BARCIA, Mr. ROYCE, Mr. STUMP, Mr. BONO, Mr. MORAN of Virginia, Mr. HORN, Mr. BRADY, Mr. FOLEY, Mr. STEARNS, Mr. GALLEGLY, Ms. ROS-LEHTINEN, and Mr. LOBIONDO) introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United
States to protect the rights of crime victims.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled (two-*
3 *thirds of each House concurring therein), That the follow-*
4 ing article is proposed as an amendment to the Constitu-
5 tion of the United States, which shall be valid to all intents
6 and purposes as part of the Constitution when ratified by
7 the legislatures of three-fourths of the several States with-
8 in seven years after the date of its submission for ratifica-
9 tion:

- 2

1 "ARTICLE —

2 "SECTION 1. Each individual who is a victim of a
3 crime for which the defendant can be imprisoned for a
4 period longer than one year or any other crime that in-
5 volves violence shall have the right—

6 "to notice of, and not to be excluded from, all
7 public proceedings relating to the crime;

8 "to be heard, if present, and to submit a writ-
9 ten statement at all public proceedings, relating to
10 the crime, to determine a release from custody, an
11 acceptance of a negotiated plea, or a sentence;

12 "to the rights described in the preceding por-
13 tion of this section at a parole proceeding that is not
14 public, to the extent those rights are afforded to the
15 convicted offender;

16 "to notice of any release or escape from custody
17 relating to the crime;

18 "to seek relief from an unreasonable delay of
19 the final disposition of the proceedings relating to
20 the crime;

21 "to an order of restitution from the convicted
22 offender;

23 "to consideration for the safety of the victim in
24 determining any release from custody; and

3 -

1 "to notice of the rights established by this
2 article;

3 however, the rights to notice under this section are not
4 violated if the proper authorities make a reasonable effort,
5 but are unable to provide the notice, or if the failure of
6 the victim to make a reasonable effort to make those au-
7 thorities aware of the victim's whereabouts prevents that
8 notice.

9 "SECTION 2. The victim shall have standing to assert
10 the rights established by this article. However, nothing in
11 this article shall provide grounds for the victim to overturn
12 a charging decision, a conviction, or a sentence; to obtain
13 a stay of trial; or to compel a new trial. Nothing in this
14 article shall give rise to any claim for damages, nor pro-
15 vide grounds for the accused or convicted offender to ob-
16 tain any form of relief.

17 "SECTION 3. The Congress and the States shall have
18 the power to enforce this article within their respective ju-
19 risdictions by appropriate legislation, including the power
20 to enact exceptions when required by the public interest.

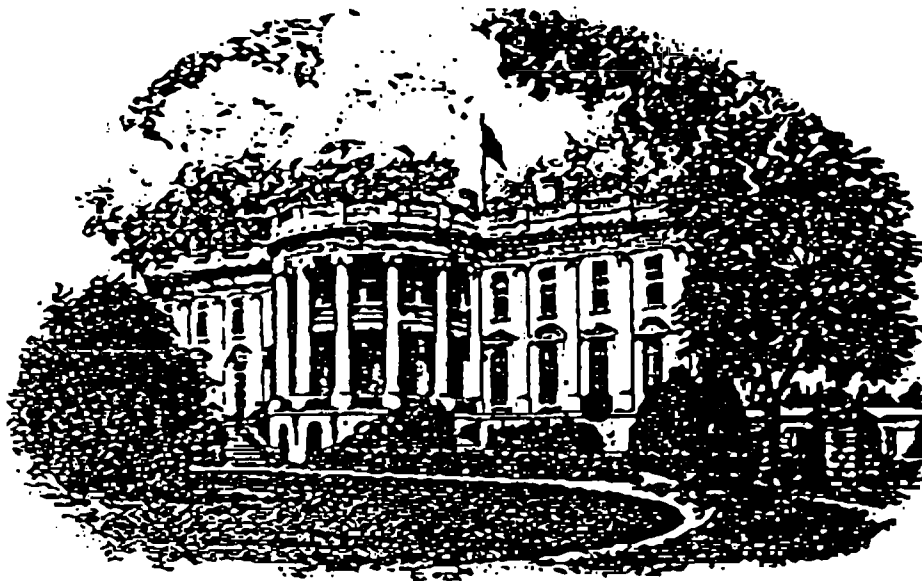
21 "SECTION 4. The rights established by this article
22 shall apply to all proceedings that begin on or after the
23 180th day after the ratification of this article.

24 "SECTION 5. The rights established by this article
25 shall apply in all Federal and State criminal proceedings,

4

1 including military proceedings, juvenile justice proceed-
2 ings, and collateral proceedings such as habeas corpus,
3 and including similar proceedings in any district or terri-
4 tory of the United States not within a State.”.

○



The White House
Office of Presidential Letters and Messages

TO: Jose Cerda
67028

Date: 5-22

FROM: Tracy Sisser
Presidential Letters and Messages
456-5516/456-5426
Room 93, OEOB

Request For: ☐ Draft
☐ Information
☒ Clearance
☐ Other -- See Below

Number of pages including cover: 7

Letter for Aileen Adams, OVC Director follows.

Thank you very much,

Tracy

TO: LORRAINE SIMMA-BLURD, DPL

700's

POTUS draft for Aileen Adams, Director of the Office of Victims of Crime @ DOJ

I have received your letter of May 12, and it is with regret that I accept your resignation as Director of the Office for Victims of Crime at the Department of Justice. Although I understand your reasons for leaving, I will sincerely miss your commitment and hard work.

You have served my Administration with distinction, helping to implement policies that put crime victims at the center of our nation's justice system. You should be proud of your efforts to protect and support crime victims by augmenting the amount of money available for the Crime Victims Fund, implementing the National Victim Assistance Academy, and developing the symposium on Victims of Federal Crime. I also applaud you for your work to help the victims of the bombing of the Alfred P. Murrah Federal Building rebuild after this tragedy. By doing so, you helped the entire nation heal after this ~~gruesome~~^{horrible} event.

Your work has been a crucial part of our plans to improve the lives of all Americans, and on behalf of all those who have benefitted from your service, I thank you for your compassionate leadership.

Best wishes to you, Geoffrey, and your children for every future success.

*Pres. should
cc & SSO*

Office of Justice Programs
Office for Victims of Crime

5/14/97

'97 MAY 13 PM 4:02

*To Jan
Dorland for reply
BC Sig
JPM*



May 12, 1997

Hunter

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

With a deep sense of gratitude and accomplishment, I write to inform you of my resignation as Director of the Office for Victims of Crime (OVC) in the Justice Department. As you know, my husband, Geoffrey Cowan, returned to Los Angeles last December to become Dean of the USC Annenberg School for Communication after serving as the Director of the Voice of America. While I love my job, it is time to reunite our family in the same city.

I will always be grateful to you for allowing me to culminate 20 years of work in California on behalf of crime victims by serving in a National position of such importance. It has been a true honor to be a part of your Administration which has advocated and achieved so many crucial criminal justice reforms benefitting victims of crime. To facilitate continuity, I will try to continue in my current position until my successor has been appointed by you and confirmed by the Senate.

I have especially appreciated the opportunity to work closely with White House personnel to advance a Victims' Rights Constitutional Amendment and to develop programs highlighted in your October 26, 1996, radio address, to provide comprehensive services to the often forgotten victims of gang violence. A few examples of OVC's other recent accomplishments include:

- **Unprecedented Funding for Crime Victims Programs** - The OVC-administered Crime Victims Fund, derived from fines against Federal criminal offenders -- not taxpayers -- reached an historic level of \$528.9 million in 1996, enabling OVC to distribute three times more Federal victim assistance dollars to States than ever before.

- **Comprehensive Support for Oklahoma City Bombing Victims** - The enactment of the Antiterrorism Law enabled OVC to provide major support for victims of terrorist acts, including funding for additional advocates, crisis counseling, safe havens, and travel expenses to court proceedings for Oklahoma City bombing victims.
- **National Crime Victims Agenda** - Within the next few months, we will release the *National Agenda for Victims' Rights and Services: An Action Plan for the 21st Century*, which has been compiled by leaders in the field and will serve as a guide to providing comprehensive victims' rights and services well into the next century. The Agenda will update the landmark 1982 *President's Task Force on Victims of Crime Final Report*, describe "promising practices" used around the country to facilitate implementation of victims' rights and services, and propose numerous recommendations to improve the system.
- **Federal System Improvements** - In response to your June 27, 1996, directive to the Attorney General to improve the treatment of victims in the Federal system, OVC has developed a comprehensive action plan that included convening the first National Symposium on Victims of Federal Crime, which provided intensive training to nearly 1,000 key Federal employees, and producing a training video on victim-witness issues to be viewed by all Department of Justice personnel.
- **National Victim Assistance Academy** - The OVC-funded National Victim Assistance Academy, the first Federal training center for victim advocates, is entering its third successful year by providing comprehensive state-of-the art training to hundreds of victim service providers across the country at four universities simultaneously.
- **International Leadership** - OVC is playing a major leadership role in the development of an International Victim Assistance Training Manual to implement the *U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and is working closely with the State Department to ensure quality services to Americans victimized abroad.

To me, the most extraordinary part of this job has been the constant interaction that I have had with crime victims themselves, some of whom you have met during National Crime Victims' Rights Week -- people like Cheryl Bess who, despite being raped, disfigured, and blinded by acid at the age of 12, has become a strong victim advocate in California, a radio talk show host, and a gospel singer; Marilyn Smith, who founded a comprehensive victim service program in Seattle for deaf and deaf-blind victims after trying unsuccessfully to find services herself as a deaf sexual assault victim; and Azim Khamisa,

who joined with the grandfather of the 13-year-old gang member that murdered his son to provide gang prevention programs in San Diego schools.

Countless crime victims across America have turned their agony into activism -- helping to establish effective prevention and treatment programs in their own communities. They will continue to be a constant source of inspiration to me throughout my life for they truly demonstrate that the human spirit can overcome any obstacle. I hope that, in the near future, their remarkable work will be highlighted at a White House ceremony or conference.

I was recently quoted in the attached front page *Washington Post* article as saying, "I think I have the best job in all of government." Thank you for this extraordinary opportunity to serve and for your dedication and commitment to ensuring justice and healing for victims of crime.

Respectfully,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Aileen Adams
Director

Enclosure

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The Washington Post

SUNDAY, FEBRUARY 2, 1997

How Penalties Become Pay-Back

Fines From Convictions Are Funding Aid for Victims

By Sharon Walsh
Washington Post Staff Writer

In Oklahoma City, 1,200 family members and survivors of the bombing of the Alfred P. Murrah Federal Building are kept posted on the progress of the criminal case and provided with counseling.

In Alexandria, a 23-year-old deaf woman who was abducted near the Braddock Road Metro station is provided with an interpreter for her interviews with prosecutors.

In California, a man whose son was murdered by a gang member and the grandfather of the killer join together to teach school children about the dangers of gangs and help victims of gang crimes.

What makes these activities remarkable is the way they are financed. The money comes from huge corporations and individuals convicted of federal crimes—not from taxpayers.

When Japanese financial giant Daiwa Bank paid a \$340 million criminal fine for failing to tell U.S. banking regulators about major bond trading losses, for example, the money went to the U.S. Treasury and was deposited into the Crime Victims Fund, a coffer authorized by the Victims of Crime Act of 1984.

The fund is overseen by Aileen Adams of the Justice Department, who doles out money to states according to population. It is state officials who are responsible for finding victims and easing their pain with financial help—



Justice Department's Aileen Adams oversees victims relief program.

about 2 million people benefit from the fund each year, Adams said.

The fund has grown by 250 percent over the past four years, reaching its highest level in 1996, \$528.9

million, which will be distributed this year. That amount does not include two recent penalties that will enrich the fund this year—a \$100 million fine paid by agricultural firm Archer Daniels Midland Inc. and a \$50 million fine to be paid by citric acid maker Haarmann & Reimer Corp., both for criminal price-fixing.

In addition to fines for corporate crimes, the fund receives money from penalties and bond forfeitures from individuals who are convicted of federal crimes.

"Thanks to a Japanese bank, we'll get three times as much money this year" as last year, said Virginia Coscia, the victim-witness program coordinator in Alexandria. "If big companies keep paying these huge fines, we won't have to worry about our funding."

Coscia said she had just returned from Alexandria federal court, where she accompanied the 23-year-old deaf woman to the trial of her accused abductor. He was convicted of abduction with intent to defile and could be sentenced to 20 years to life imprisonment. If the young woman had required medical treatment or counseling or if she couldn't work because of injuries from the crime, the fund also could pay those costs.

"There's just not enough I can say about the good these funds do," Coscia said.

The fund is administered by the Justice Department's Office for Victims of Crime (OVC). Under the

See VICTIMS, A25, Col. 1

Antiterrorism Act of 1996, the fund also provides money to help victims of mass crimes and terrorism, such as the Oklahoma City bombing.

"I think I have the best job in all of government," said Adams, director of OVC and formerly legal counsel to the Los Angeles County Rape Treatment Center. Though states hand out the money, she and her staff visit sites, coordinate with state directors and help set priorities for the money.

In 1997 the District will receive \$1.4 million from the fund; Maryland, \$7.7 million; and Virginia, \$10 million.

This year, because outlays by the fund will be so much larger than in the past, mostly because of the Daiwa fine, Adams has met often with state officials. The priorities set by the Clinton administration are to provide money to people in rural areas where there are few services for crime victims, to Native Americans and to victims of gang violence.

"The fund serves about 2 million crime victims a year, but there are still millions who don't receive help because there are no services where they are," Adams said.

In San Diego recently, Adams introduced Attorney General Janet Reno to two men who have applied for a grant from the fund. Axim Khamisa's young son was murdered two years ago while delivering a pizza. Ples Felix is the grandfather of the 14-year-old gang member who was convicted of killing him.

"They feel they're victims of a crime from different sides of the gun," Adams said.

The two formed a gang prevention program and have applied for a grant from the fund for the portion of their work that deals with victims of gang violence.

Once OVC funds reach the state level, they are split between two different programs. One, victim compensation, is to pay individual victims of crime or their families for unreimbursed medical expenses, lost wages or funeral expenses.

For example, a man who was robbed and beaten in Northern Virginia last fall had serious injuries and still is unable to work. The fund provided him with an emergency grant for unreimbursed medical bills and lost wages.

Crime victims can apply for the funds, but few know about the program, so officials such as Coscia seek out recipients. In Alexandria, for example, Coscia gets daily police reports of every crime in the city and contacts the victims within a day

THE COST OF CRIME

Among the largest fines that have gone into the Crime Victims Fund in the last year are:

Name	Amount of fine, in millions	Reason
Daiwa Bank	\$340	Withholding information from U.S. regulators about huge trading losses.
Archer Daniels Midland	100	Price-fixing in the food additives business
Haarmann & Reimer	50	Price-fixing in citric acid markets
Damon Clinical Laboratories	35.3	For fraud in a billing scheme to overcharge Medicare
C.R. Bard	30.5	Billing the government for defective heart catheters
Caremark	29	Fraud in their medical care business
Lockheed	21.8	Role in case involving bribing the Egyptian government

SOURCE: Justice Department



ASSOCIATED PRESS/FILE PHOTO

Daiwa Bank President Akira Fujita, right, bows before a press conference in Tokyo last October announcing his resignation after taking responsibility for \$1.1 billion in hidden bond trading losses at its New York branch.

NOTE: Some of the fines were collected in fiscal 1996, others were levied in 1997.

or two to ask what kind of help they need or to refer them to counselors or social service agencies.

The second program, called victim assistance, helps victims mostly through grants to domestic violence shelters, rape crisis centers, child abuse programs and other community programs. The victim assistance program receives by far the bulk of the funds from the states.

Although it's been nearly two years since the Oklahoma City bombing, programs for its victims and survivors will receive more than \$600,000 from the OVC fund this year. Much of that money will be used to help those who wish to attend the trial of Timothy James McVeigh, scheduled to begin March 31. McVeigh is charged with carrying out the terrorist bomb attack there that left 168 dead.

"It's been very moving to interact with the victims of Oklahoma City and see how important it is for them to attend the trial," Adams said.

The money will help to provide transportation to the trial, because the tiny courtroom only will allow

for 24 victims, who will rotate on a weekly basis; counselors for those attending the trial in Denver; and those who stay behind in Oklahoma City, safe havens in both cities where the victims can have a meal and meet with counselors or ministers, and two additional victim assistance staffers in the U.S. attorney's office for the next year.

In the past year, the fund helped pay for children's medical bills and lost wages of workers who were injured in buildings near the blast. The fund also provided money to inform victims of their legal rights, the progress of the investigation and what services were available, said K. Lynn Anderson, an assistant U.S. attorney in Oklahoma City assigned to the victim assistance unit. (Much of the initial funding for counseling and other services right after the bombing was provided by the Federal Emergency Management Agency.)

"I will be there every day of the trial," Anderson said. "I've done hundreds of interviews with the families and I know how important this is to them. . . . We try to bring a friendly face and a sensitive soul to the people who've been truly traumatized."

Total Pages: _____

LRM ID: REJ161

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Monday, June 23, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: Ronald E. Jones
PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: JUSTICE Transmittal ^N Draft Bill on Victim's Right Act 

DEADLINE: 5:00 PM TODAY Monday, June 23, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS:
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_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

FAX RETURN of _____ pages, attached to this response sheet



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Newt Gingrich
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Enclosed for the consideration of the Congress is a draft legislative proposal and accompanying materials entitled, the "Victims' Rights Act of 1997." We request that it be referred to the appropriate committee or committees, introduced, and passed. We have forwarded an identical proposal to the President of the Senate.

This legislative package is but one of several steps that the Administration has taken to support fundamental rights for victims of violent crime, three of which are noted below. First, we have consistently and strongly supported an amendment of the Constitution to protect the rights of violent crime victims. Second, last year the President directed that the Department of Justice take the lead on a number of fronts concerning victims' rights, one of which was to recommend legislation that may be necessary or desirable to identify and protect certain victims' rights. The Department has been hard at work with its own components, which constitute such a large part of the federal law enforcement and criminal justice system, and with other federal agencies whose missions involve them with victims. That work is described in a report that the Attorney General submitted to the President in April of this year. Third, we have prepared the enclosed draft legislation, key provisions of which would:

- o Establish a right of victims to be present throughout all public court proceedings to the maximum extent consistent with the Constitution.
- o Give victims who miss work to attend proceedings the same protection accorded to jurors against adverse action by employers.

- o Establish rights of victims to be heard both orally and in writing concerning release decisions, plea acceptance, and sentencing.
- o Broaden victims' rights to be informed, to attend, and to be heard, in juvenile proceedings.
- o Authorize prosecutors to enforce victims' rights to be present and to be heard through applications for mandamus and appeal.
- o Authorize pretrial detention of defendants who seriously threaten victims regardless of the nature of the charge.
- o Strengthen victims' rights to restitution and compensation, and the remedies for collecting and enforcing restitution.
- o Authorize funding for an automated victim information and notification system, to ensure consistent notice to victims concerning proceedings and other important occurrences in their cases.

We look forward to working with the Congress in the days and weeks ahead to enact this important legislation, which is critical in ensuring that the rights of victims of violent crime are recognized and addressed in an appropriate fashion.

Thank you for your consideration of this matter. If we may be of additional assistance we trust that you will not hesitate to call upon us. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

Andrew Foia
Assistant Attorney General

Enclosures



U.S. Department of Justice

Office of Justice Programs

Office for Victims of Crime

March 19, 1998

MEMORANDUM TO: Rahm Emanuel
Senior Advisor to the President

Ron Klain
Assistant to the President and
Chief of Staff to the Vice President

FROM: Reginald L. Robinson *RJR*
Acting Director

SUBJECT: Recommendations for Presidential and Vice Presidential
Participation in the 1998 Commemoration of National Crime
Victims' Rights Week (April 19-25, 1998)

The Office for Victims of Crime (OVC) in the United States Department of Justice is preparing once again to coordinate the annual observance of National Crime Victims' Rights Week (NCVRW), scheduled for April 19-25, 1998. The purpose of this memorandum is to present you with options for the President and Vice President to participate in this commemoration.

During NCVRW, communities around the country commemorate the proliferation of crime victims' rights and services and reflect upon the impact of crime in many different ways, including through candlelight vigils in memory of those who have been killed or injured and award ceremonies for victim advocates. At the Federal level, traditionally about a dozen victim advocates are selected by the Attorney General to receive the Crime Victim Service Award, the highest Federal honor for victim advocacy.

This year's commemoration, the Crime Victim Service Award Ceremony, will be held on Wednesday, April 22 at 1:30, at the Ballroom of the Office of Justice Programs. The Attorney General has agreed to preside over the ceremony. Recipients of this award will include several victims themselves who have turned their agony into activism, several victim service organizations that have made significant impact in the lives of victims, and two heroes that stopped a rape in progress. Because this year's NCVRW observance coincides with the

anniversary of the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City, there will also be a special award honoring seven extraordinary efforts that assisted the bombing victims throughout the trials.

We would, of course, welcome participation by the White House in this year's awards ceremony and have identified the following four options for Administration involvement:

- The Vice President could join the Attorney General in presiding over the award ceremony. The award recipients could meet briefly with the President in the Oval Office after his radio address or otherwise in accordance with his schedule. The brief meeting and pictures with the President would take under 10 minutes. Preferably, the Presidential Radio Address during NCVRW would have a victim-related theme.
- The Administration could highlight a major victims' issue during NCVRW and invite award recipients to the White House event. For example, in 1996, the Attorney General presented the awards in the Great Hall, the award recipients attended the signing of the Anti-Terrorism Act, and they met briefly with the President and Vice President before the signing ceremony. The prior year, the recipients attended the President's weekly radio address and met with him after his broadcast.
- The President may want to host an event commemorating the 3-year anniversary of the bombing of Alfred P. Murrah building in Oklahoma City, and meet with the Award winners honored for their efforts in assisting the bombing victims. The event could showcase the extraordinary, collaborative efforts that were undertaken to help these victims.
- The President may want to host an event to announce the releases of a new publication on victims' rights, "New Directions from the Field: Victims' Rights and Services For the 21st Century." This publication will be released during Crime Victims' Rights Week, and highlights the progress and the momentous changes that have taken place across our nation's justice systems and in the private sector since the release of the historic 1982 report. *New Directions* identifies hundreds of innovative public policy initiatives and community partnerships that are revolutionizing the treatment of crime victims America today, and it recommends improvements that still need to be implemented on behalf of crime victims.

OVC would be happy to help White House staff develop a topic for a Presidential speech or radio address on victims' issues during NCVRW. Possible topics might include the release of the publication *New Directions*. Other topics might include, "From Agony to Activism," with specific examples of the accomplishments of past and present award recipients, or "Victims' Rights: Right for America," which national victims' organizations selected as this year's NCVRW theme.

Please let me know if any of the options outlined above interest you, or if you have other ideas for Presidential or Vice Presidential participation in the commemoration of NCVRW. I can be reached at 202/307-5983 and look forward to working with you to highlight this Administration's strong leadership and commitment to crime victims' issues.



U.S. Department of Justice

Office of Justice Programs

Office for Victims of Crime

FACSIMILE TRANSMISSION COVER SHEET

April 1, 1998

TO: Jose Cerda
Domestic Policy Council
Executive Office of the President

FAX: 456-7028

FROM: Reggie Robinson
Acting Director
Office for Victims of Crime

Phone #: (202) 307-5983

Fax #: (202) 514-6383

PAGES: 16 (including cover sheet)

NOTES:

Jose —

Thanks for calling yesterday. As per our conversation, I've attached a copy of the executive summary for the report we discussed, *New Directions from the Field: Victims' Rights and Services for the 21st Century*. I hope it's helpful for you.

I think, for what it's worth, that a radio address could announce the release of this report, and also commemorate the work of folks who focused on serving the victims of the Oklahoma City bombing (which will mark an anniversary that week as well). In many ways, the work of those folks stands as an example or a model of the kind of services and support that the report recommends. We will honor several of the Oklahoma City-related efforts in our Victim Service Award Ceremony on 4/22, so it would be easy to have them on-hand.

Thanks again for touching base, Jose. I look forward to talking with you further about this. Take care.

Reggie

New Directions from the Field: Victims' Rights and Services for the 21st Century

Executive Summary

"New Directions" is an important road map for comprehensive and consistent rights and services for all victims of crime in the 21st century.

Aileen Adams, former Director
Office for Victims of Crime

New Directions from the Field: Victims' Rights and Services for the 21st Century challenges the nation to renew and refocus its efforts to improve the treatment of victims of crime. It is the first comprehensive plan regarding how the nation should respond to crime victims since the 1982 President's Task Force on Victims of Crime identified the American justice system as "appallingly out of balance," and made 68 recommendations for how rights and services for crime victims in this nation could be substantially improved. *New Directions* highlights the progress and the momentous changes that have taken place across our nation's justice systems and in the private sector since the release of the 1982 report. It identifies hundreds of innovative public policy initiatives and community partnerships that are revolutionizing the treatment of crime victims in America today, and it recommends improvements that still need to be implemented on behalf of crime victims.

Today only a fraction of the nation's estimated 38 million crime victims receive much needed services such as emergency financial assistance, crisis and mental health counseling, shelter, and information and advocacy within the criminal and juvenile justice systems. This report presents more than 250 recommendations targeted to nearly every profession that comes in contact with crime victims—from criminal justice practitioners, to victim service, health care, mental health, legal, educational, religious, news media, and business communities—to redouble their efforts to enhance victims' rights and services.

New Directions reflects views from a broad cross-section of the criminal and juvenile justice, allied professional, and victim service fields. Contributors to this report include crime victims themselves and representatives of the agencies and organizations that serve them. Hundreds of individuals across the country proposed recommendations for this report by participating in public hearings; submitting background papers on diverse victims' issues; serving on working groups with representatives from law enforcement, prosecution, and corrections agencies as well

as the judiciary; and participating in focus groups with allied professionals. All who contributed to this report hope that it will serve as a catalyst to a dynamic and far-reaching discussion about how our nation can improve its response to victims of crime, and that it will precipitate practical steps toward making the ideas presented in this report a reality.

New Directions was developed by the field, and its recommendations do not necessarily reflect the views of the Justice Department or the Office for Victims of Crime. In addition, all of the recommendations may not represent the views of every contributor, as over 1,000 individuals provided input into this document.

Organization of *New Directions*

As an update to the 1982 *Final Report* of the President's Task Force Report on Victims of Crime, *New Directions* follows the format established in the original report in setting forth its recommendations. It begins with a discussion of important public policy issues affecting crime victims, and each section that follows discusses how individual justice agencies and allied professionals can implement these, as well as other, important initiatives.

Additional topics and issues have been added as a result of the tremendous growth in the field and in response to new problems that have emerged during the past 15 years. As in the original report, each section of *New Directions* contains individual chapters designed to serve as stand alone documents that present recommendations for specific issue areas or professions.

Summary of Recommendations

Five Global Challenges from the Field

In the course of compiling the hundreds of recommendations from the field and in listening to the voices of victims, their advocates, and allied professionals who work with crime victims throughout the nation, certain key recommendations emerged. The following five global challenges for responding to victims of crime in the 21st century form the core of the hundreds of ideas and recommendations presented in this report.

1. To enact and enforce consistent, fundamental rights for crime victims in federal, state, juvenile, military, and tribal justice systems, and administrative proceedings.
2. To provide crime victims with access to comprehensive, quality services regardless of the nature of their victimization, age, race, gender, ethnicity, sexual orientation, capability, or geographic location.

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3. To integrate crime victims' issues into all levels of the nation's educational system to ensure that criminal justice, allied professionals, and other service providers receive comprehensive training on victims' issues as part of their academic education and continuing training in the field.
 4. To support, improve, and replicate promising practices in victims' rights and services built upon sound research, advanced technology, and multidisciplinary partnerships.
 5. To ensure that the voices of crime victims play a central role in the nation's response to violence and those victimized by crime.

New Directions provides recommendations that point specifically to the implementation of these five global challenges. Each section and chapter is based upon papers submitted by leading experts in the field as well as the input of victim advocates, justice system and allied professionals, crime victims, and others who participated in public hearings, working group meetings, and those who provided individual comments and review as the document progressed towards completion.

Section I

New Directions in Victims' Rights

For many years, victims of crime were virtually invisible in the laws and policies that govern our justice systems. To the extent victims of crime had a role in the justice system, it was narrow; to the extent victims had rights, they were few.

Section I, *New Directions in Victims' Rights*, reviews the nation's progress over the past two decades toward establishing state and federal rights for victims of crime, including a proposed federal constitutional amendment to guarantee those rights. It also presents recommendations from the field for ensuring that victims' rights, including fundamental rights for victims of juvenile offenders, are expanded and enforced within the American justice system.

Tremendous strides have been made to enact victims' rights laws and deliver services to victims in the United States. Few movements in the history of this nation have achieved such success in igniting the kind of legislative response that victim rights activists have fostered over the past two decades. In the early 1980s, state laws addressing victims rights, services, and financial reparations numbered in the hundreds. Today, there are more than 27,000 crime victim-related state statutes, 29 state victims' rights constitutional amendments, and basic rights and services for victims of federal crimes.

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Nevertheless, serious deficiencies remain in the nation's victims rights laws as well as their implementation. The rights of crime victims vary significantly among states and at the federal level. Frequently, victims' rights are ignored. Even in states that have enacted constitutional rights for victims, implementation is often arbitrary and based on the individual practices and preferences of criminal justice officials. Moreover, many states do not provide comprehensive rights for victims of juvenile offenders. In tribal, military, and administrative proceedings, the rights extended to victims differ dramatically or do not exist at all. Many victims, including victims from diverse cultures and those with disabilities, are not informed of their rights nor given the opportunity to participate in criminal and juvenile justice proceedings.

In *New Directions in Victims' Rights*, the field strongly recommends that the enactment and vigorous enforcement of consistent, fundamental victims' rights should be a priority for the 21st century. The first recommendation from the field is for the passage of a Federal Victim's Rights Constitutional Amendment to establish a basic level of rights for crime victims in every state. These include the following fundamental rights:

- To notice of public court proceedings and to attend them.
- To make a statement to the court about bail, sentencing, and accepting a plea.
- To notice of parole hearings and to attend them and speak.
- To notice of a defendant or convict's escape or release.
- To an order of restitution from the convicted offender.
- To a final disposition of the proceedings relating to the crime free from unreasonable delay.
- To consideration for the safety of the victim in determining a defendant's release from custody.
- To notice of these rights.
- To standing to enforce these rights.

The report strongly recommends that these fundamental rights should be established and enforced not only in the criminal justice system, but also for victims in *all* juvenile justice hearings and military, tribal, and administrative proceedings. As a first step toward this goal, *New Directions* recommends that the federal government, states and tribes review their victims' rights laws to determine if these fundamental rights are extended to all crime victims.

This report also reflects the view of the field that states and the federal government should address the lack of implementation of many victims' rights laws by establishing effective enforcement mechanisms for victims, including victims' rights compliance programs. It recommends that audits of local, state and federal compliance with victims' rights laws be conducted frequently by justice agencies and independent auditors to determine the reasons for noncompliance and how enforcement of victims' rights can be improved.

Finally, a system of comprehensive services requires dedicated resources. A major step toward that goal was the enactment of the 1984 Victims of Crime Act, which established a creative federal funding mechanism that relies on the collection of fines and penalties from convicted federal

offenders rather than federal tax-based appropriations. That amount varies, however, and may not be enough to ensure consistent and comprehensive implementation of victims' rights laws and needed services. Many criminal justice officials and victim advocates continue to assert that there is a lack of comprehensive services *in every community* for victims of crime resulting in part from inadequate funding. New and creative sources of funding must be identified to ensure the implementation of rights and quality services for *all* crime victims.

Section II

New Directions for Criminal and Juvenile Justice System Agencies

When a person is harmed by a criminal act, the agencies that make up our criminal and juvenile justice systems have a moral and legal obligation to respond. It is their responsibility not only to seek swift justice for victims, but to ease their suffering in a time of great need. Section II, *New Directions for Criminal Justice System Agencies*, discusses the critical role that each agency within the criminal justice system—law enforcement, prosecution, judiciary, and corrections—must play in implementing and enforcing victims' rights and in improving the overall treatment of crime victims within our nation's justice systems.

Chapter Two addresses law enforcement's role as the frontline of victim assistance. As the first responders to most reported crimes, law enforcement agencies must ensure that victims are treated with sensitivity and provided with essential information and emergency assistance. This chapter addresses innovations including law enforcement-based victim assistance units; on-scene crisis units where specially trained counselors and law enforcement officers respond together to victims; and multidisciplinary programs which have been launched in hundreds of law enforcement agencies across the nation to respond to the needs of child, elderly, domestic violence and sexual assault victims. The field also advances a number of recommendations for the law enforcement community. For example, the law enforcement community should adopt a community policing philosophy that is both victim and crime prevention oriented. It should establish policies and procedures for the provision of legally mandated victims' rights and services such as notifying victims of the status of an investigation, arrests, and pretrial release of suspects in its custody. In addition, compliance with victims' rights policies and procedures should be included as a standard in officers' performance appraisals.

Chapter Three of *New Directions* addresses our nation's prosecutors. Today, prosecutors are recognizing that to most effectively prosecute a case, the victim must be part of the process. The chapter highlights programs such as special prosecution units for child abuse, sexual assault, and domestic violence; victim/witness assistance programs that provide comprehensive information, notification, advocacy, and support to crime victims; and community prosecution initiatives. This chapter contains several recommendations that specifically address the prosecutor's role in informing, consulting with, and notifying crime victims. For example, because the overwhelming

majority of felony cases are resolved through plea agreements, the field recommends that prosecutors consult with victims on the terms of any negotiated plea. The field also recommends that prosecutors confer with victims of violent crimes before declining to file charges. Other recommendations for prosecutors include the need to notify victims in a timely manner of public court proceedings and advocate for their rights to be heard on bail decisions, continuances, sentencing, and restitution. The field also recommends that prosecutors and leaders of victims' organizations develop protocols regarding how to ensure appropriate notification and consultation in cases involving large numbers of crime victims.

Chapter Four addresses the pivotal role that judges play in the justice process. The judiciary has initiated many victim-sensitive problem-solving efforts such as specialized courts for certain kinds of crimes and victims. Drug courts, domestic violence courts, community courts that handle "quality of life" misdemeanor crimes, unified family courts that handle all problems relating to the family including criminal, civil, and juvenile matters, and courts designed specifically for child victims stand as current examples of these innovative efforts. The report recommends that as leaders within the justice system, judges should ensure that victims' rights laws are fully implemented. *New Directions* contains suggestions that judges should advise victims of their rights as routinely as they advise defendants of their rights and should facilitate the input of crime victims regarding proposed plea agreements. In addition, judges should permit the victim to present a victim impact statement before imposing a sentence, and courts should utilize communications technology (audio/video) to facilitate victim communication. In addition, the field recommends that judges manage their cases and calendars to make victim involvement as feasible as possible, and that they order full restitution from offenders to help compensate victims for the harm they have suffered.

The last chapter in this section addresses corrections, including the adult and juvenile justice agencies responsible for the incarceration, detention, supervision, and surveillance of those accused or convicted of committing crimes. Over the past decade, the basic philosophy of correctional agencies has undergone radical change. Traditionally, correctional agencies viewed their role as limited to punishing and attempting to rehabilitate offenders. Today, serving crime victims is also widely accepted as an important part of the mission of many correctional agencies. This new role is reflected in their governing laws and internal policies and procedures, as well as in the attitudes of correctional personnel. More work is needed in this area, however. The field recommends, for example, that adult and juvenile correctional agencies open channels of communication with the community and with crime victims; that correctional agencies designate staff to provide information, assistance, and referrals to victims of crime; that they place a high priority on ensuring the protection of victims from inmate intimidation, threats, physical or other harm from offenders under their supervision; and that they inform victims of any change in the status of offenders that would give them access to victims or the community. To increase offender awareness of the consequences of their actions, correctional agencies for both adult and juvenile offenders should use victim impact panels and conduct courses on the effects of crime on victims.

New Directions for Criminal Justice System Agencies emphasizes the need for all criminal and juvenile justice personnel to ensure that the voices of victims are heard throughout the criminal

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justice process so that justice agencies are able to develop effective, victim-sensitive policies and programs. Education for these professionals should include presentations by victims about their justice system experiences. Crime victims are the “customers” of that system, and the agencies that interact with victims have an obligation to ask them to evaluate whether their needs are being met.

Section III

New Directions for Victim Assistance Providers and Allied Professionals

Members of many different professions work directly with crime victims or come into contact with them on a daily basis. In addition to victim service providers, primary among these are professionals in the health care, mental health, legal, education, religious, business, and the news media communities. *New Directions for Victim Assistance Providers and Allied Professionals*, describes the important roles that these professions can play in assisting victims. It identifies areas where services for victims of crime can be enhanced and highlights the innovative promising practices that each profession has developed to improve victim services.

Chapter Six addresses the very broad and diverse victim assistance field, including local, state and national programs. The chapter traces the roots of the victim assistance movement from the first state victim compensation program in the United States established in 1965 and the early victim assistance programs of the 1970s, to the full-fledged advocacy and service field that today is dedicated to meeting the physical, financial, and psychological needs of victim and their families. More than 10,000 victim assistance programs exist across the country, including over 2,000 community-based programs that assist battered women, over 2,000 rape crisis centers, and hundreds of programs that serve child victims, survivors of homicide victims, and drunk driving crash victims. These are extraordinary accomplishments for a movement that started less than three decades ago.

Yet for many victims in America, adequate services are still not available. Crime victims with disabilities, who are victimized at an unusually high rate, have great difficulty accessing services to meet their needs. Many victim assistance programs lack the ability to communicate effectively with deaf or blind victims, and most service providers are not trained to communicate with victims with cognitive or developmental disabilities. Criminal justice and other victim service providers are often not equipped to meet the needs of victims from diverse cultures or victims who speak languages other than English. As a result, these victims are not informed adequately of the services available to them or of their rights in the criminal justice system.

In this chapter, the victims’ movement seeks to define a comprehensive system of victim services for all crime victims that includes immediate trauma and emergency response, short- and long-term psychological counseling, shelter, and advocacy throughout the criminal, tribal, military, and juvenile justice systems. It addresses the issues facing specific types of victims—including victims of

domestic violence, sexual assault, stalking, gang violence, white collar crime, bank robbery, hate and bias crimes, survivors of homicide victims, elderly victims, and drunk driving crash victims—and makes recommendations for meeting their needs. Other recommendations in this section include conducting needs assessments; developing standards for victim assistance; providing basic training and continuing education for all victim assistance providers; and developing a national commission to establish certification and accreditation standards for victim advocacy and assistance.

The next chapter in this section, Chapter Seven, focuses on *New Directions for the Health Care Community*. In 1985, the Surgeon General declared violence in America to be a public health emergency. Today, this emergency has reached epidemic proportions. U.S. hospital emergency rooms treated an estimated 1.4 million individuals injured by interpersonal violence in 1994. Each year, gunshot violence costs \$4.5 billion in medical expenses alone. This chapter discusses creative initiatives that have been taken by the health community to reduce violence and to provide assistance to crime victims. Hospitals are reaching out to rural victims through telemedicine, to victims of gang violence through violence prevention programs, and to victims of sexual assault through sexual assault nurse examiners programs. However, many challenges still remain. Recommendations in this chapter include encouraging all medical professionals to adopt protocols for responding to domestic violence, child, elderly, and sexual assault victims developed by their professional associations and to provide professional education programs on crime victims issues.

Intense feelings of anger, fear, isolation, low self-esteem, helplessness, and depression are common reactions to victimization. Chapter Eight, *New Directions for the Mental Health Community*, addresses the many short- and long-term mental health problems that can result from experiencing trauma including acute- and post-traumatic stress disorder. Major advances have been made in furthering our understanding of crime-related psychological trauma and the best ways to provide treatment to crime victims. This chapter outlines a number of multidisciplinary programs which have been developed to address the mental health needs of crime victims. Recommendations address the need for the mental health community to develop linkages with crime victim compensation, victim assistance programs, and criminal and juvenile justice agencies to ensure that victims have access to adequate counseling or mental health treatment at each stage of the justice process; the continuing need for research on the mental health consequences of victimization and treatment of crime-related psychological disorders; and the importance of education and training for mental health professionals in providing appropriate mental health treatment to crime victims and their families.

Members of the legal profession play a variety of critical roles in the criminal and juvenile justice systems. They serve as judges, prosecutors, defense counsel, and victim advocates. Chapter Nine addresses the issue of lawyers serving in positions outside the justice system in private law firms, corporations, law schools, and government, who frequently come in contact with crime victims in their work. Attorneys and the organized bar associations to which they belong have worked to improve access to the justice system for crime victims by providing pro bono legal assistance to crime victims through community outreach programs such as the Navajo Nation DNA People's Legal Services; AYUDA, a legal advocacy program for low-income Latino families in Washington, D.C.; and "Operation Crackdown" of the Young Lawyers' Section of the Bar Association of the

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District of Columbia, which uses a network of trained volunteer attorneys to provide free legal assistance to local community organizations victimized by illegal drug activity. In this chapter, the field encourages state and local bar associations to follow the lead of the American Bar Association in establishing victim committees and to strongly support continuing legal education on crime victims' issues.

Chapter Ten, *New Directions for the Educational Community*, examines the pervasive problem of crime on school and college campuses, as well as how the educational community can assist crime victims. Our nation's schools provide the richest opportunity to teach children about victims' rights and services and crime prevention strategies. Education on these issues should begin in grade school and continue through college and graduate school. On many college campuses, where sexual assault and other crimes affect large numbers of students, information about these crimes and prevention strategies are rarely incorporated into classes or student activities beyond student orientation. Many victims turn first to their friends for assistance, and it is critical to educate those most likely to be called upon for advice. Since the release of the 1982 report, attention to school violence has increased greatly, and scores of programs have been developed to protect the safety of students, teachers, and administrators. The recommendations in this chapter focus on the continuing need for schools and universities to establish comprehensive programs to assist students, faculty, and staff who are victimized by crime or who witness violence. In addition, the report calls upon all school districts, colleges, and universities to design and implement a standardized system for documenting, analyzing, and reporting crimes to law enforcement. Equally important, *New Directions* encourages colleges and universities to establish undergraduate and graduate programs with a concentration in victims rights and services, as well as to develop specialized education and training programs for faculty, administrators, and staff on crime victim issues.

In times of crisis, many individuals turn to clergy and religious leaders for spiritual guidance, support, and information. Chapter Eleven challenges the religious and faith community to recognize that the victim, no less than the victimizer, is in need of aid, comfort, and spiritual ministry. It reviews the range of faith-based victim assistance programs that have been developed over the past decade, including providing shelter for battered women and camps for abused children. Training on victims issues for those in the faith community is recommended as a priority so that they are able to recognize signs of violence, understand critical issues of confidentiality, and make appropriate referrals for services.

Chapter twelve includes a discussion about how and why the business community should respond to crime victims. Employers have begun to recognize that it is good business to offer employees a full spectrum of assistance programs to help them deal with problems, including criminal victimization, that affect job performance and the safety of the workplace. Employee assistance programs are now routinely offered in many workplaces. Some enlightened employers and unions are implementing policies to prevent violence in the workplace and to assist employees who become victims. This chapter, *New Directions for the Business Community*, highlights innovative corporate approaches to improve the response to victims of workplace violence, including monetary and in-kind donations to individual victims and community victim services, and memorable programs that

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the television industry has produced to increase public awareness about crime victims' issues, particularly in the area of child abuse, sexual assault, gun violence, stalking, and domestic violence. The field recommends that all workplaces educate their employees about victimization and its impact. Such education should promote compassionate responses to the needs of these victims and encourage victims to seek services available in the workplace and their communities.

The final chapter in this section, *New Directions for the News Media*, addresses the longstanding tension between the public's right to know versus the victim's right to privacy. The media's coverage of many high profile cases and emerging crimes has contributed to positive changes in public policy, such as recognition of the need for community notification of sex offenders and anti-stalking statutes. News coverage has also helped to change public attitudes about the seriousness of violent crimes such as drunk driving and rape. But the media can have a negative impact on individual lives when victims are thrust, often unwillingly, into the media limelight in the aftermath of crime. This chapter encourages the media to adopt guidelines for sensitively covering victims' issues, such as protecting the privacy of sexual assault and child victims.

Section IV

New Directions in Financial Recovery

The costs to crime victims of medical expenses, mental health counseling, and lost wages alone are estimated at \$105 billion annually. The fourth section of this report, *New Directions in Financial Recovery*, addresses the three major avenues that victims can pursue to recover their financial losses due to crime: compensation, restitution, and civil remedies.

The first chapter of this section, Chapter Fourteen, addresses the great progress that has been made to establish victim compensation programs in every state and to expand program benefits. Crime victim compensation programs can pay for expenses such as medical care, mental health counseling, lost wages, funeral expenses, and crime scene cleanup. However, the recommendations in this chapter suggest that the circle of victims who qualify for compensation should be widened, and artificial barriers that prevent victims from applying for compensation, such as mandated time limits for reporting to law enforcement or submitting a claim, should be removed. The recommendations for compensation programs address issues such as improving claims management, expanding benefits for crime victims, and utilizing technology to facilitate program initiatives.

Chapter Fifteen addresses restitution, which can be ordered in juvenile and criminal courts to hold offenders financially accountable for their crimes against victims. This chapter calls for mandatory, full, and consistent restitution orders nationwide. Communities should establish more effective restitution programs, requiring a coordinated effort among officials across the entire justice system to increase collections.

The final chapter of this section addresses the potential financial remedies that crime victims can seek through the civil justice system. In the area of civil remedies, recommendations focus on informing victims and victim service providers of the legal rights of crime victims to pursue reparations through the civil justice system. Victims should be provided with information regarding their options within the civil justice system as another means of holding offenders accountable.

Each chapter in this section also addresses the importance of education and training for all who serve victims, as well as victims themselves, about these potential avenues of financial recovery. In addition, the section explores the use of technology, which offers exciting possibilities for improving claims processing and restitution collections so that crime victims no longer will be forced to wait several months or even years to receive critical financial support.

Section V

New Directions for Child Victims

Each year in America, millions of children directly experience or witness violence in their homes, neighborhoods, and schools. The impact of such crime and violence on our nation's youth is undeniably profound. Section V, *New Directions for Child Victims*, addresses the unique needs of young victims and outlines the legal rights and protections that have emerged at the federal and state levels for child victims of physical and sexual abuse, exploitation, abduction, and other types of crimes. It reviews the long-term impact of crime on child victims and presents examples of programs and services that have been developed across the nation to address their health and mental health needs, and to help them through the criminal justice process in sensitive and comprehensive ways. Such services include children's advocacy centers, court-appointed special advocates, and other multidisciplinary approaches.

This section also contains a number of recommendations to improve services for child victims, to develop training programs for all professionals who come into contact with child victims, and to enhance data collection and research initiatives in the area of child victimization.

Section VI

New Directions in International Victim Assistance

Individuals throughout the world—in large urban cities and in small villages—face problems with crime and violence, and much can be gained from examining the unique approaches to addressing the rights and needs of crime victims that have been undertaken by diverse communities and nations. Increasing numbers of people travel and live abroad, and are victimized in countries where they may be unfamiliar with the language and legal and social service systems. Crimes such as international

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terrorism and commercial sexual exploitation of children are well documented, highlighting the need for countries to look beyond their national boundaries to share information and assist victims.

The final chapter of this report, Chapter Eighteen, discusses global issues facing the field of victim services today and briefly highlights approaches that have been taken in other countries to address crime victims' needs. In addition to serving their own victims domestically, many countries are participating in international collaborative efforts to improve the rights and treatment of crime victims worldwide. Recommendations in this section include improving services to American citizens who are victimized abroad and foreign citizens who are victimized in the United States, as well as continued collaboration and reciprocity in the provision of victim services worldwide.

Conclusion

SIDEBAR QUOTE: I discovered long ago that among the most effective advocates I have seen are the survivors, those who have channeled their pain and anger into activism to achieve lasting reforms.

-- Attorney General Janet Reno, August 15, 1996

The victims' movement owes its beginning and many of its accomplishments to the activism of crime victims and their families and supporters. Many crime victims have struggled not only to survive and heal after their own victimization, but also to bring much needed legal reforms, financial relief, and services to other victims. In charting *New Directions*, the field emphasized that it is important to recognize the needs, desires, and potential contributions of crime victims themselves. Victims' voices should remain a powerful guiding force in developing new directions.

Since 1982, a substantial number of the 68 recommendations in the President's Task Force on Victims of Crime have been enacted and implemented. From the enactment of the Victims of Crime Act in 1984 to the landmark Crime Act of 1994, from the passage of countless state statutes that strengthen victims' rights and hold offenders accountable to their victims, to the enactment of 29 state victims' rights constitutional amendments, many of the most important successes of the victims' movement are in large part due to the efforts of crime victims.

Throughout this report, the field urges representatives of criminal justice agencies, including law enforcement officials, prosecutors, and corrections administrators, to recognize the important role that crime victims play in helping to guide public policy. Crime victims are an essential resource in developing and participating in victim assistance and crime prevention programs such as school-based gang violence and drunk driving prevention programs. Community activism and service are often part of the healing process for many crime victims. Their contributions to groups that provide

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support for other crime victims and to programs in schools and communities that provide education about the impact of crime and how to prevent victimization in the future have been invaluable.

The many contributors to this report hope that communities around the country will benefit from the many "promising practices" highlighted throughout *New Directions*, and that the dialogue on improving the response to victims continues in a spirited and visionary fashion. The Office for Victims of Crime is committed to facilitating this dialogue and to assisting communities everywhere with implementing innovative, comprehensive programs that provide victims with even greater opportunities for justice and healing.

Sampling of Promising Practices that are Transforming Victim Services

In the last two decades, many innovative promising practices in victim services have been developed across the nation. Many innovative programs use a multidisciplinary or team approach to respond to the needs of diverse crime victims, incorporating community police, prosecutor, court, and corrections programs. Others utilize technology to deliver high-quality services to victims more quickly and effectively.

An important objective for the Victims' movement in the 21st century should be to support and replicate these innovative ideas, with the goal of improving the quality of programs nationwide. In the new millennium, it is hoped that every community can adopt these promising practices in victim services to ensure that victims are provided services in specialized settings by agencies that work together and utilize technology to bring services to victims with greater efficiency.

Over 100 promising practices are highlighted throughout *New Directions*. These are just a few examples of the range of excellent services and multidisciplinary partnerships that have been established to assist crime victims:

- **Children's Advocacy Centers.** The first children's advocacy center was initiated in Huntsville, Alabama in 1984 by a dynamic district attorney who wanted to change the traditional system in which sexually abused children were revictimized by having to retell their stories to numerous agency officials in frightening settings. Children's advocacy centers are designed especially for kids, allowing law enforcement officers, social workers, medical and mental health personnel, and prosecutors to work together to reduce the number of interviews and coordinate cases. Today, there are more than 350 children's advocacy centers in 48 states.
- **Community Criminal Justice Partnerships.** In 1989, the sheriff of St. Martin Parish, Louisiana began a program to help his department respond to the needs of elderly crime victims. Called Triad, this collaborative program between law enforcement and senior citizens has been duplicated in communities across the country. Today, there are more than 500 programs in 46 states, Canada, and England. In Bridgeport, Connecticut, for example, the chief of police provides a bus and officers to

help seniors living in a high-crime area go to the market and conduct their banking safely. Services offered by Triad programs include transportation to medical services and criminal justice proceedings, courtroom escorts, and repairs to damaged residences. The program is cosponsored by the American Association of Retired Persons, the International Association of Chiefs of Police, and the National Sheriffs Association.

- **Crisis Response Teams.** The nation's first crisis response teams for victims were organized by the National Organization for Victim Assistance (NOVA) following the 1986 Edmond, Oklahoma post office shooting in which more than a dozen employees were killed. Since that galvanizing event, with NOVA's leadership and training and a growing interest among some states, response teams comprising professionals from a variety of disciplines, including psychologists, law enforcement officers, doctors, social workers, victim advocates, and religious leaders, have been assembled around the country. These teams provide assistance to communities in the aftermath of major crimes and acts of terrorism such as mass murders and bombings. In the wake of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City, NOVA organized three crisis response teams to debrief and train more than 1,000 emergency responders, teachers, and school children.

- **Technologies to Benefit Crime Victims.** Emerging technologies hold great promise for improving services to crime victims. In Kentucky, following the murder of a woman who was *not* notified of the release of her accused assailant, the state developed a computerized system to inform victims when their accused or convicted offenders are released. Similar systems are being adopted around the country. Technology can be used to help victims participate in proceedings, to view trials moved to other communities using closed-circuit television, or to participate by satellite hookups during parole proceedings. In addition, telemedicine can be used to provide assistance from physicians in other locations to nurse examiners in rural areas during sexual assault or child abuse forensic examinations. Technology can also provide increased protection for victims of crimes such as domestic violence and stalking by utilizing cellular phones, house perimeter alarms, and electronic bracelets.

- **Community Police, Prosecutors, and Court Programs.** Community policing, prosecution, and court programs are excellent vehicles for ensuring victim assistance. Law enforcement officers based in neighborhoods are uniquely situated to identify underserved crime victims and help them obtain needed assistance. In San Diego, California for example, community police officers are informed through a computerized database 24 hours a day of shelters that have available space and other information that helps them respond more effectively to victims of crime. Community prosecution programs such as the community drug impact program in the Eastern District of Wisconsin permit prosecutors to advise citizens of drug arrests in their neighborhood and request their participation in submitting community impact statements. A community court, like the Midtown Community Court in Manhattan, can address misdemeanor, quality-of-life crimes such as graffiti, prostitution, minor drug offenses, and shoplifting, and become an important victim service institution by enforcing immediate and meaningful restitution to victims and the community.

- **Initiatives of Allied Professionals.** The efforts of allied professionals have greatly improved services to crime victims in many areas. Working with law enforcement and others in the criminal justice system, hospitals in some communities have created programs that provide a safe and secure atmosphere in which to conduct sexual assault examinations. Schools are presenting special violence awareness courses on topics ranging from child abuse and dating violence to gang awareness and

prevention. Bar associations are establishing special trainings for attorneys who want to donate their services to crime victims and to represent them in civil litigation. The religious and spiritual community has established camps for abused children and broad-based educational programs and has provided locations for many victim assistance programs. The business community has not only provided millions of dollars to support victim assistance programs, but also over the past decade has increased public awareness of victimization among employees through new training programs and advertising campaigns about victims' issues. The mental health community is playing a pivotal role by establishing multidisciplinary teams to respond to victims of crime in a more coordinated way. In addition, many allied professionals contribute their services to crisis response team efforts around the country.

- **Comprehensive Victim Service Centers.** This concept originated in Jacksonville, Florida where a comprehensive victim center provides a wide range of services in one location for *all* crime victims. Center staff operate an emergency fund for victims, and counselors provide immediate crisis counseling and accompany law enforcement to all homicides. A staff member representing the state compensation program processes compensation claims onsite, and chapters of self-help groups such as Mothers Against Drunk Driving and Parents of Murdered Children operate in the center to provide emotional support to victims and survivors of victims of violent crime.

- **Specialized Programs for Diverse Crime Victims.** Many of the innovative programs described in *New Directions* provide comprehensive services to underserved crime victims and encourage victims to participate in the criminal and juvenile justice systems. The Seattle Abused Deaf Women's Advocacy Services, established by a deaf victim for whom there were no services when she was sexually assaulted as a child, provides comprehensive assistance to deaf and deaf-blind victims who began reporting crimes in record numbers after this organization was founded. Victims of gang violence in Orange County, California, receive extensive services from the Gang Victim Services Program, in which multicultural, bilingual staff provide assistance with crime scene cleanup, funeral arrangements, victim-witness protection issues, interaction with the media, referrals to counseling, court advocacy, and victim compensation applications.



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April 3, 1998

Mr. Jose Cerda
Domestic Policy Council
Executive Office of the President
West Wing, 2nd Floor
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Cerda:

I wanted to let you know that the National Victim Center has sent the enclosed letter and materials to President Clinton explaining our concerns with respect to recent developments on the proposed crime victims' rights constitutional amendment. The revised amendment referred to in these materials was introduced in the Senate as SJR 44, on April 1, 1998.

The National Victim Center does not support the revised crime victims' rights constitutional amendment, for the reasons articulated in the enclosed materials. We do, however, remain committed to securing meaningful and enforceable constitutional rights to all victims of crime.

Should you personally have any questions regarding these developments, or would like to discuss the issues further, please do not hesitate to contact me at 703-276-2880. If I am unavailable, please feel free to talk to my Director of Public Policy, David Beatty, who can be reached at the same number.

Thank you for your attention to this matter.

Sincerely,

Susan Herman
Executive Director

enclosures



March 27, 1998

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Jay A. Shapiro

Beverly Sills

Eric Smith

Marianna S. Smith

The Honorable William Jefferson Clinton
President of the United States
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Clinton:

On behalf of the staff and Board of the National Victim Center, I would like to thank you for the support, attention and time you and your staff have spent working with us in our collective effort to secure passage of a federal crime victims' rights amendment to the U.S. Constitution. You may be aware that the National Victim Center, as a member of the National Victims Constitutional Amendment Network (NVCAN), has been a leading advocate for the victims' rights amendment (Senate Joint Resolution 6).

As you know, since the amendment's introduction, the efforts to pass this measure have primarily involved a lengthy process of negotiation and compromise between all interested parties. Until recently, the National Victim Center believed that while many of the concessions made during this process weakened the amendment somewhat, none seriously undermined the establishment and protection of the basic rights we sought for crime victims.

However, as you may already be aware, over the past several months, the National Victim Center has been wrestling with the question of whether to accept certain additional proposed changes to the amendment.

The two proposed language changes are:

1. To limit the amendment to violent crime victims; and
2. To add language in Section 2 of the amendment, stating that violation of rights gives no grounds to overturn a sentence or negotiated plea.

After careful consideration, the staff and Board of Directors of the National Victim Center, along with several other members of NVCAN, have concluded that we cannot support the proposed changes. While a majority of NVCAN Board members, and thus NVCAN as an organization, has decided to go forward with this proposal, we wanted to let you know that the National Victim Center will not be supporting those efforts. We do not believe these language changes are in the best interests of crime victims. We want to assure you, however, that the National Victim Center remains committed to passing a federal constitutional amendment that guarantees protection for the rights of all crime victims.

Executive Director

Susan Herman

<http://www.nvc.org>

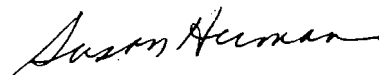
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National Victim Center
March 27, 1998

The National Victim Center did not come to this decision lightly. It was with extreme reluctance that the National Victim Center chose to select a course that diverges from that chosen by colleagues and fellow amendment advocates with whom we have worked closely for more than a decade and whom we greatly respect and admire. However, given the profound and permanent consequences involved in the passage of an amendment to the U.S. Constitution, we cannot in good conscience support an amendment that we believe is not in the best interests of crime victims.

We believe that a new version of the crime victims' rights constitutional amendment, incorporating the proposed language changes which we do not support, will be introduced into Congress imminently, perhaps as early as the week of March 30th. You will likely be asked for your opinion regarding this new legislation. We have enclosed several discussion papers and legal analyses that were distributed to NVCAN Board members which may inform your thinking at this point. If you or your staff would like to discuss these papers or these issues further, please feel free to contact me or David Beatty, the Center's Director of Public Policy at (703) 276-2880.

Again, we appreciate the thoughtful participation of you and your staff throughout this entire process. We look forward to working with you on this and other victim-related matters in the near future.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Herman".

Susan Herman
Executive Director

enclosures

The National Victim Center Does Not Support the Proposed Changes to the Crime Victims' Rights Constitutional Amendment

I. Introduction

Advocates for the proposed federal crime victims' rights constitutional amendment were recently asked to agree to new language in order to gain the co-sponsorship of Senator Joseph Biden, a key democratic member of the Senate Judiciary Committee.

The two language changes are:

1. To limit the amendment to violent crime victims; and
2. To add language in Section 2 of the amendment, stating that violation of rights gives no grounds to overturn a sentence or negotiated plea.

After much deliberation, the Board of Directors and staff of the National Victim Center have determined that they cannot support the new version. A brief summary of our reasons is set forth below.

II. The Scope of the Amendment Should Not Be Limited to Victims of Violent Crime.

A. There is no principled reason to deny any victim of crime constitutional rights to participate in the criminal justice system. The National Victim Center is unwilling to say that victims of non-violent offenses are less entitled to justice and less entitled to basic participatory rights than are victims of violent crime. We believe that victims' rights are fundamental rights, and they are not somehow less fundamental for victims of property offenses, who comprise the overwhelming majority of crime victims. The proposed change establishes classes of crime victims and a caste system of constitutionally franchised and constitutionally disenfranchised victims. It is not only legally unsound, it is unfair.

When the National Victims Constitutional Amendment Network (NVCAN) decided last year to agree to change the scope of the amendment from all victims of crime to the language currently contained in SJR 6 ("...crimes of violence and other crimes as defined by Congress"), it represented a *major* concession in the minds of several Board members. Not only were we concerned about preserving the possibility of adding victims of non-violent offenses at a later point, but there was also considerable fear that crimes we call "borderline cases" (i.e., statutory rape, burglary, child exploitation, child molestation, drunk driving, neglect of children or vulnerable adults, exploitation of vulnerable adults, emotional abuse in the context of domestic abuse, etc.) might not be considered "violent," and thus, victims of those crimes would not be protected by the amendment. And while we hoped that utilizing vehicles such as the legislative history of the amendment would secure coverage for the "borderline cases," we took comfort in the fact that if we were wrong, the "...other crimes as defined..." language could be used to insure

their inclusion. The new proposal would remove the phrase “and other crimes as defined by Congress,” thus eliminating the safety net for borderline cases and any window to later include victims of non-violent offenses.

B. There is no practical reason to deny any victim of crime constitutional rights to participate in the criminal justice system. Those in Congress who want to limit constitutional protections to violent crime victims argue that to do otherwise would place intolerable burdens on the system. They fear that the added burden of non-violent victims (particularly mass victimizations, with potentially hundreds of victims), would prove too costly and would overload the system. We know this is not so.

In the case of mass victimizations, the exceptions language in section 3 of the amendment¹ would allow legislatures to provide practical limitations on certain rights. Under that provision, implementing legislation might provide, for example, that the right to be heard would be limited to representative oral statements of a few victims and written statements by any other victims interested in making those statements — in effect the same way legislatures address mass victim cases currently. In addition, the right to notice remains the right to “reasonable” notice: notice that is reasonable under the circumstances of a mass victim case would likely include large meetings, televised notice, etc., means that are not overly burdensome.

Thus, there is no sound policy reason for limiting the amendment to victims of violent offenses, and the National Victim Center has decided it could not in good conscience accept this limitation.

III. The Proposed Language Prohibits Remedies Necessary to Adequately Protect Victims’ Rights.

A. If courts cannot overturn a sentence or negotiated plea where a victim’s rights at those proceedings were violated, that victim is left with no effective remedy. A victim who was not notified of the sentencing or plea agreement hearing, was not given an opportunity to speak or was not awarded restitution would never have adequate recourse for a denial of those rights unless s/he has the right to demand rehearings. The compromise provision would render this remedy an impossibility for some of the most important of the victims’ rights.

While it might be possible to get a *post facto* order against an offending official ostensibly to prevent the *next* victim from being denied their basic rights, that does nothing to remedy the denial of rights of the prior victim(s). Are we willing to accept an amendment which, *by design*, sacrifices the constitutional rights of some for the benefit of others? By contrast, offenders who are denied important procedural and due process rights are not precluded from seeking a new

¹ “Congress and the States shall have the power to ... enact exceptions when required for compelling reasons of public safety or for judicial efficiency in mass victim cases.” SJR 6, Section 3.

hearing. If we are committed to protecting the procedural rights of victims, why should they not have similar remedies available to them when those rights are denied.

B. Congress and state legislatures would not be able to create a *statutory* right of enforcement, such as a right to appeal violations of rights, under the language being proposed. The language limiting enforcement, which states in part that “Nothing in this article provides grounds to,” encompasses the list of rights in section 1. The *rights* will never provide grounds to overturn a sentence or negotiated plea. Proponents of accepting the new language argue that this language merely means that the amendment *standing alone* does not provide that remedy. Our legal analysis has led us to conclude that this language would prohibit *any such remedy*.

IV. Accepting the New Language Actually Harms our Chances to See an Amendment Passed by Congress and Ratified by the States.

Not only does the National Victim Center believe that these changes are bad for crime victims, we believe that these changes harm our chances to pass an amendment. The amendment is already too complicated in the minds of many victim advocates and even members of Congress. It will be harder to sell the public an amendment for “*some* victims” than an amendment for “*all* victims,” and harder to sell advocates an amendment that we *hope* will be enforceable than one that is *automatically* enforceable.

V. There is no Necessity to Compromise.

A. Even with the new language changes, there is not a strong chance the amendment would be passed in Congress this year. In recent months, as NVCAN debated the acceptability of the changes currently before us, many members stated that they could support those changes if and only if it ensured passage of the amendment. It now appears that we are further away from congressional passage than we believed last fall. Even those working most closely with this issue in Congress have indicated we have a long way to go to secure passage of this amendment, and that there are more compromises ahead. If we are now being told we are still far away from passage, why make a compromise that we don’t like, especially when that new compromise would likely form the new starting point for any efforts toward an amendment in the next year or so?

B. This is not our last chance in Congress; there will be similar political dynamics, and more favorable grassroots support, in the future. Yes, we have people in very high places that are supportive of an amendment now. But the victims movement keeps growing stronger with the passage of time, and we are successfully convincing more and more political leaders to support strong victims’ rights. Time works *for us* in the long run.

We have seen the victims movement grow in strength. We have also seen the once strident opposition to victims' rights begin to decrease in the criminal justice system, as members of that system develop experience with victims' rights and come to see that, rather than hindering them in their work, victims' rights can actually improve the system's ability to investigate, prosecute, and punish offenders. Why rush to pass an amendment we are less than enthusiastic about, when waiting may allow us the opportunity to get the amendment we really want? Why negotiate from a position of relative weakness today when we could negotiate from a stronger position tomorrow?

The National Victim Center intends to continue to work to secure a federal crime victims' rights constitutional amendment. We will continue to educate criminal justice officials, public officials, the victims movement, and the general public about the importance of a victims' rights amendment. But we will not be working to pass the latest version of the amendment which unacceptably limits the scope and enforcement of victims' rights.

At the National Victim Center, we have spent the past decade monitoring the progress of the victims' rights movement. In particular, we have worked with states amending their own constitutions. We know that the process to secure a strong amendment can take years. We also know from experience at the state level that advocates can compromise on amendments too early, and regret it in the years to follow. If we accept the latest language changes, it will be a mistake that generations of victims may regret as a missed opportunity to secure meaningful and enforceable rights for all victims of crime.

This document consists of excerpts from longer position statements that more fully discuss the points for and against accepting the latest proposed changes. For copies of those longer statements, please contact the National Victim Center's Public Policy Department, at (703) 276-2880, or e-mail Liz Wohlken (Liz@mail.nvc.org) or Susan Howley (Susan@mail.nvc.org).

WHY THE NATIONAL VICTIM CENTER DOES NOT SUPPORT PROPOSED LANGUAGE CHANGES TO THE VICTIMS' RIGHTS CONSTITUTIONAL AMENDMENT LIMITING SCOPE AND ENFORCEABILITY¹

I. INTRODUCTION.

The National Victim Center remains committed to a constitutional amendment for all crime victims that is meaningful and enforceable. Our support for the rights listed in section 1 of the proposed federal crime victims' rights constitutional amendment (SJR 6) remains strong. We believe, however, that the latest proposed language changes compromise our basic principles and do not serve the best interests of crime victims.

Those changes would:

1. Limit the amendment to violent crime victims; and
2. State that a violation of rights gives no grounds to overturn a sentence or negotiated plea.

Many significant officials, including the President and the Attorney General, have not yet addressed these language changes, and we have no indication whether or not they would support them. However, after much deliberation, the National Victim Center has determined that it cannot support these changes to the victims' rights amendment for the reasons set forth below.

II. THE SCOPE OF THE AMENDMENT SHOULD NOT BE LIMITED TO VICTIMS OF VIOLENT CRIME.

It is unacceptable to exclude victims of non-violent offenses from the protection of the Constitution. There is neither a principled reason nor a practical reason to exclude such victims from the purview of the amendment. We do not believe that victims of non-violent offenses would enjoy the effect of such rights as a matter of practice, now or in the future.

¹ This document is a reworking of two internal National Victims Constitutional Amendment Network (NVCAN) memoranda written by the National Victim Center on February 27 and March 9, 1998.

Founded in 1986, NVCAN is a coalition of crime victim advocates and organizations dedicated to the support of constitutional rights for crime victims at the state and federal levels. The National Victim Center has been a member of NVCAN since its inception.

We can find no principled reason for denying to any victim of crime constitutional rights to participate in the criminal justice system. It has always been our assumption that the victims' movement advocates for all crime victims and that all crime victims are our constituents. We have not defined the status of "victimhood" by the nature of the crime committed against an individual, nor the relative harm an individual suffered as a result of a crime. Most victim professionals do not make their advocacy and assistance contingent on such distinctions. Most state victims' rights constitutional amendments are not restricted to certain classes of crime victims.² Our movement has always been one of inclusiveness, reaching out to underserved populations. The particular circumstances of a crime (his life savings were wiped out at gunpoint, hers via computer) do not make one victim more entitled than another to rights to participate in a governmental process that significantly affects their interests. The National Victim Center believes that victims' rights are fundamental rights, and they are not somehow less fundamental for victims of non-violent offenses.

How will we explain to 27 million victims of non-violent offenses³ the political necessities that required us to compromise away their constitutional rights? How do we explain it to the elderly victim who was bilked out of her life savings?

As was noted many years ago, "[I]n the view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens..."⁴

The proposed language limiting the scope of the amendment establishes classes of crime victims and a caste system of constitutionally franchised and constitutionally disenfranchised victims. While the distinction here between groups of crime victims does not involve a traditional constitutionally protected class, it is no less inappropriate. The new limitation is not only legally unsound, it is unfair.

When those of us who advocate for crime victims at the national level put ourselves in the position of making decisions on behalf of a very large group of people — in this case, crime victims — the decision making process must be deliberate and fair, and must take into account

² The overwhelming majority of state crime victims' rights constitutional amendments apply to crime victims "as defined by law," and thus do not foreclose by their terms the extension of rights to all victims of crime. The only states that *do* restrict constitutional rights to certain groups of crime victims are Maryland, New Mexico, and Washington.

³ According to the latest government figures, there are almost 37 million crime victims in America each year; 27 million are victims of non-violent offenses. Cheryl Ringel. (1997) *Criminal Victimization 1996: Change 1995-96 with Trends 1993-96*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics. Page 3.

⁴ Plessy v. Ferguson, 163 U.S. 537, 559 (1896).

the legitimate interests of everyone we represent. We believe that deliberately excluding the vast majority of crime victims is unfair and ignores the legitimate interests of such victims, particularly when it is not clear that the political circumstances require us to do so.⁵ To ignore the wishes of a majority of our constituency would seem contrary to our inherent role as leaders and simply undemocratic.

Arguably, one of the most fundamental goals shared by all victim advocates, service providers and counselors is the empowerment of victims; to provide victims, to the maximum extent possible, the means to recover the power of self-determination and control that is so often ripped from their lives in the aftermath of a crime. The victims' need to satisfy their own sense of justice is often essential in their quest to recover. This desire also serves as the basis for most victims' rights statutes and amendments enacted to date. But an amendment that empowers some victims to a greater degree than others runs contrary to the fundamental principle of empowering *all* victims to the maximum extent possible.

In fact, agreeing to limit for all time the extension of constitutional rights to victims of violent offenses restricts the future evolution of our movement. While it is true that the focus of the movement in recent years has been the violent crime victim, this is itself an expansion from the movement's genesis twenty years ago, when the focus was on women victimized by crime, and from thirty years ago, when there was no focus on victims whatsoever. Many of us envision a growing movement and an inclusive movement, expanding rather than narrowing the classes of persons to whom these rights are provided.

When NVCAN decided over a year ago to accept the alternative language currently contained in SJR 6 ("victims of crimes of violence and other crimes as defined by Congress"), it represented a *major* concession in the minds of several Board members. Not only were we concerned about preserving the possibility of adding victims of non-violent offenses at a later point, but there was also considerable fear that crimes we call "borderline cases" (i.e., statutory rape, burglary, child exploitation, child molestation, drunk driving, neglect of children or vulnerable adults, exploitation of vulnerable adults, emotional abuse in the context of domestic abuse, etc.) might not be considered "violent" and thus those victims would not be protected by the amendment. And while we hoped that utilizing vehicles such as the legislative history of the amendment

⁵ It has been stated that the proposed limitation of the scope of the amendment to victims of crimes of violence is sufficient because it would encompass 95% of the cases in which victims' rights have been litigated. The implication is that only the violent crime cases are important, because they are the only ones in which victims' rights have been litigated. This conclusion is groundless. At best there are only a few dozen cases that have actually been litigated and virtually all of those have occurred in the last decade. We know from our years of experience and research that the number of litigated victims' rights cases is minuscule when compared to the total number of cases where victims of both violent and non-violent offenses have been denied their basic rights. The issue is not the relative percentages of violent and non-violent victims who *have* litigated, but rather those who one believes *should* have the right to assert constitutional rights through litigation.

would secure coverage for the “borderline cases,” we took comfort in the fact that if we were wrong, the “...other crimes as defined...” language could be used to ensure their inclusion. *With this language removed, there would be no such safety net.*

Some proponents of the language changes argue that “violent crime” has broad definitional context and has been judicially interpreted to include many crimes that, at first blush, might not be thought of as “violent.” Thus, the argument continues, we are giving up the rights of comparatively few victims. For instance, it is argued that the “broad” definition of crime of violence contained in the United States Code is instructive.⁶ That may be. However, we find other statutory definitions of crime of violence even more instructive. For instance, Arizona defines violent crimes as any “criminal act that results in death or physical injury or any criminal use of a deadly weapon or dangerous instrument.”⁷ This definition, which is mercifully short and easy to comprehend, unfortunately includes very few crime victims. What is more problematic, however, is a crime of violence definition like the one used in Maryland. In Maryland, crime of violence includes abduction, arson in the first degree, kidnapping, manslaughter (except involuntary manslaughter), mayhem and maiming (but not always), murder, rape, robbery, carjacking, certain sexual offenses (but not all), use of a handgun in the commission of a felony, an attempt to commit any of the previously listed crimes, and certain, but not all, assaults.⁸ Virtually no “property crime” is included and some obvious crimes of violence are also not included. The Maryland statute is so inclusive of some crimes and exclusive of others, that an unlisted crime is almost certainly not a crime of violence.

⁶ 18 U.S.C. 16. Several cases have been cited in support of the argument that the definition of crime of violence under the United States Code encompasses many borderline crimes. We do not find those cases very strong. The *Reyes-Castro* case cited was an attempted sexual abuse case presented in the context, not of crime victims’ rights, but rather a deportation hearing of the offender who was an alien — and the court found that the act itself, sexual assault of a child, obviously carried with it the *risk* of violence — hardly a novel theory (*United States v. Reyes-Castro*, 13 F.3d 377 (10th cir. 1993)); *Aragon* involved the definition of a crime of violence in the context of The Travel Act (18 U.S.C. Sec. 1952) and the question of whether the jury should decide, for Travel Act prosecution purposes, whether the crime is one of violence (*United States v. Aragon*, 983 F.2d 1306 (4th Cir. 1993)); and *Flores* is a Federal Sentencing Guidelines case and concerns the question of whether six prior convictions for burglary meets the definitions of a “career offender” — with the court forced to look to a 1925 Texas statute definition of a crime of violence; in short, none of these cases are remotely connected to the issue of whether a crime *victim* has suffered a crime of violence for the purposes of the *victim*’s constitutional rights. (*United States v. Flores*, 875 F.2d 1110 (5th Cir. 1989).

⁷ Arizona Code § 13-604.04 (1997).

⁸ Maryland Annotated Code Art. 27, § 643B (1997).

The point of all this, however, is not to dispute the legal analysis of the proponents of the language changes but rather to suggest that what constitutes a crime of violence can and almost certainly will be subject to judicial interpretation, with some of the decisions giving victims of nonviolent crime constitutional protections and some decisions denying such victims constitutional protections.

It has been stated that in accepting the limitation to victims of crimes of violence we would be “....doing the best we could for the overwhelming majority of crime victims....” When the overwhelming majority of crime victims are *non-violent crime victims*, we believe they would say that accepting a compromise version of an amendment that excludes them is far less than the best we could do. We believe the “best we could do” for them is to choose not to accept the new language.

There is no practical reason to exclude non-violent crime victims from the protections of the constitutional amendment. Those in Congress who want to limit constitutional protections to violent crime victims argue that to do otherwise would place intolerable burdens on the system. They fear that the added burden of non-violent victims (particularly mass victimizations with potentially hundreds of thousands of victims), would prove too costly and would overload the system. We know from experience that this is simply not the case.

First, the most “burdensome” aspect of the amendment would be the requirement to keep crime victims informed. More and more jurisdictions are beginning to use automated notification systems, for which the largest expense is the startup cost. The cost of adding other crime victims to such programs once they are in place is very modest. Congress is already considering providing funding for more such automated systems.

In the case of mass victimizations, the exceptions language in section 3 would allow legislatures to provide limitations on rights.⁹ In fact, one of the primary reasons for including the exceptions language has been the mass victim cases. Under that provision, we anticipate that implementing legislation will provide, for example, that the right to be heard would be limited to representative oral statements of a few victims and written statements by any other victims interested in making those statements — in effect the same way legislatures address mass victim cases currently.

In addition, the right to notice remains the right to “reasonable” notice: notice that is reasonable under the circumstances of a mass victim case would likely include large meetings, televised notice, etc. — means that are not overly burdensome. Finally, as a further safeguard for those concerned about the burdens of instantly encompassing all crimes, current language already

⁹ That language provides that “The Congress and the States shall have the power to ... enact exceptions when required for compelling reasons of public safety or for judicial efficiency in mass victim cases.” SJR 6, Section 3.

provides that victims of violent crimes are covered immediately and victims of other crimes are to be added over time.

Thus, there is no sound policy reason for limiting the amendment to victims of violent offenses.

Victims of non-violent offenses will not be given the same rights as victims of violent crimes as a matter of practice. It has been stated that after constitutional rights are guaranteed for victims of violent crime, those responsible for implementation will choose to extend those rights to victims of other crimes as a matter of policy or by statutory mandate. Thus, it is argued, even though non-violent crime victims will not enjoy the benefits of such provisions as a matter of constitutional right they will be afforded such advantages as a practical matter.¹⁰ We disagree.

Proponents of the new language assert that we can rely on statutes to rectify the deficiencies in the constitutional amendment and protect the interests of victims of non-violent offenses. Again, we disagree. The primary reason crime victim advocates have pursued a constitutional amendment for victims' rights, rather than settling for statutory equivalents, is that a constitutional amendment is qualitatively and quantitatively different than statutes. To support the proposed limitation of rights for non-violent crime victims is the equivalent of suggesting that we can address victims' rights by statutes alone. In contrast to the proposed limitation, the current language of SJR 6 would allow Congress to extend *constitutional* rights to victims of non-violent offenses, rights that are qualitatively different from statutory rights.

It has also been argued that court challenges to denials of victims' rights will be brought by victims of violent crime, and that the precedents set by those cases will "probably be readily extended to victims of property crimes." There is nothing to indicate this result is likely. In many of these anticipated cases, courts will be ruling on the constitutional rights of crime victims, and will probably balance victims' constitutional rights against the constitutional rights of the accused. Those decisions will not likely encompass victims of crime who are not within the purview of the constitutional amendment.

While we may disagree on the practical effect of this amendment on victims of non-violent offenses, there can be no doubt that those victims would never have true constitutional rights. Since their rights and interests would not enjoy the same constitutional protection as those granted to violent crime victims, their "rights" under an amended Constitution would be little

¹⁰ It was also suggested that the implementation of a violent crime victims' rights amendment would create a "mindset" favorable to non-violent victims, as, for example, judges "become used to ordering full restitution." To expect judges to voluntarily extend to non-violent crime victims restitution rights they have often ignored and even actively resisted belies experience. It would be the equivalent of expecting the courts to extend jury trials to offenders of petty thefts simply because offenders of more serious crime have that right as a matter of constitutional law. As we know, this has not occurred.

better than they are now: i.e., rights that are defined and exist at the whim of the state legislatures or Congress and local criminal justice officials.

It has also been argued that in the fullness of time, all crimes, including those currently considered non-violent crimes, will be considered violent crimes. While the meaning of words does evolve over time, particularly through judicial interpretation, there are limits to the likely evolutionary process. To assume that words will take on their opposite meaning seems overly optimistic.¹¹ If non-violent and violent crime were to be interpreted as the same, the word “violent” would have no meaning as used in the constitutional amendment. Whatever meaning may be attributed to it by popular culture or even policy leaders, judges will assume that, when written, the word violent had some meaning and at the very least was not used as a synonym for its opposite “non-violent.” And of course there would be considerable legislative history and contextual evidence to support that contention.

III. THE REMEDIES AVAILABLE UNDER THE PROPOSED LANGUAGE CHANGES DO NOT ADEQUATELY PROTECT VICTIMS’ RIGHTS.

“It is a vain thing to imagine a right without a remedy...” *Ashby v. White*, 2 Ld. Raym. 938, 953 (1703).

The proposed language would insert, “Nothing in this amendment shall provide grounds to ... overturn a sentence or negotiated plea.” This language leaves a victim with no effective remedy for many important rights. In addition, Congress and state legislatures would not be able to create a statutory right of enforcement, such as a right to appeal violations of rights, under the language being proposed.

If courts cannot overturn a sentence or negotiated plea where a victim’s rights at those proceedings were violated, that victim is left with no effective remedy. A victim who was not notified of the sentencing hearing, was not given an opportunity to speak and was not awarded restitution would never have adequate recourse for a denial of those rights unless s/he has the right to demand rehearings. The new language would render this remedy an impossibility for these important victims’ rights. Unless victims have a constitutional right to a rehearing to balance the offender’s due process rights to have the outcomes of such proceedings stand, victims who are initially denied their rights at sentencing or at the acceptance of a plea will be forever precluded from exercising those rights.

¹¹ There are countless examples of courts refusing to compromise on the fair and appropriate meaning of a word. As one example, courts have found that “shall” does not mean “may” or “should.” See *Carter v. Commissioner*, 784 F.2d 1006, 1009 (9th Cir. 1986); *CSX Corporation v. United States*, 926 F. Supp. 223, 226 (E.D.Va. 1996); *Occidental Petroleum Corp. v. Commissioner*, 82 T.C. 819, 819 (1984).

In principle, victims could be granted other dispensations or compensation for having been denied their rights (i.e., legislation creating ombudsman offices that can investigate complaints against criminal justice system officials, etc.) but that would not alter the fact that those victims were denied their basic rights at the point and the time when it mattered most. What is the value of a constitutional right that denies its intended beneficiary the one remedy that would guarantee that the right is fully enforced?

It has been argued that victims could still file injunctive actions against officials who have a record of denying victims' rights, but injunctions rely upon documenting patterns of abuse, are time consuming and are often expensive and procedurally difficult class actions. Moreover, while it might be possible to get a *post facto* order against an offending official ostensibly to prevent the *next* victim from being denied their basic rights, that does nothing to remedy the denial of rights of the prior victim(s). Are we willing to accept an amendment which, *by design*, sacrifices the constitutional rights of some for the benefit of others?

We believe using writs of mandamus as a preventive measure when a violation of rights is anticipated is not an adequate substitute for a post-violation remedy, since such actions depend on receiving advance warning that a judge will violate the victim's rights. While this was fairly easy to anticipate in the Oklahoma City bombing case, with expert legal counsel for the victims and aggressive victim advocacy coupled with a drawn-out time frame for the court proceedings, what opportunity will the average victim have to bring these advance petitions for writs of mandamus? Furthermore, seeking such writs beforehand is tantamount to an aggressive preemptory strike. We have already seen instances where crime victims were reluctant to fight strenuously for their rights because they were unwilling to risk antagonizing the court or the prosecutor by challenging denials of their rights. Why should victims have the burden of protecting their rights before the fact of violation? Will they be obliged to take such actions in every case?

Proponents of the new language argue that enforcement is not vital because the remainder of the amendment will provide sufficient education of officials to prevent violations. We know from experience that training is insufficient to prevent many violations. For victims' rights to be meaningful, training must be coupled with enforcement. Furthermore, only a portion of the violations of victims' rights are due to ignorance. What about the far more common case when a victim is denied a right purely due to an oversight? Victims fall through the administrative cracks for a wide variety of fairly innocent reasons: their address was lost, a clerk forgot to inform them of a schedule change, the person in charge of notice was out sick, etc., etc. What about the official who intentionally disregards the victims' rights? The "rehearing remedy" serves as a safety net to ensure victims are eventually granted their rights, no matter what the reason those rights were initially denied. Nothing will give those charged with implementing such rights more incentive to comply than ensuring that they will have to revisit the issue again if they fail in their duty to provide those rights. Offenders who are denied important procedural and due process rights are not precluded from seeking a new hearing. If we are committed to protecting the

procedural rights of victims, why should they not have similar remedies available to them when those rights are denied?

It has been noted that the proposed new restrictions on enforcement do not impact the enforcement of many of the rights in the amendment, such as the right to speedy trial. However, the proposed limitation of enforcement affects those rights which are at the core of victims' interests: the right to participate in that proceeding where decisions are made regarding the disposition of the case.¹²

It has also been argued that judges could hold an additional hearing without affecting the sentence or plea, just to give victims a chance to speak. We do not believe this remedy would satisfy many victims. Victims want to be heard when it counts, not just heard. Victims deserve meaningful participation in the criminal justice system, not simply a cathartic experience.

Congress and state legislatures would not be able to create a statutory right of enforcement, such as a right to appeal violations of rights, under the language being proposed. From our reading, the language in section 2 limiting enforcement, which states in part that "Nothing in this article provides grounds to," encompasses the list of rights in section 1. The *rights* will never provide grounds to overturn a sentence or negotiated plea. Proponents of accepting the language changes argue that this language merely means that the amendment *standing alone* does not provide that remedy. We believe this language prohibits *any such remedy*.

We believe this enforcement limitation leaves no possibility that violations of these core rights can result in overturning a sentence or negotiated plea. Congressional proponents of the change apparently do not want to allow the possibility of Congress passing a similar remedy by statute, since NVCAN's request to include language providing that this restriction stands "except as provided by appropriate legislation" has already been rejected. Because a draft of the amendment with that "exceptions" language was previously circulated, the legislative history will reflect that language creating the possibility of legislative action was rejected. This can and will be used against us in any situation in which we attempt to correct the denial of these core rights. It is highly unlikely we will get strong legislative history in our favor on this point, because those who oppose such a remedy will include their statements in the record.¹³

¹² We disagree with those who argue that the limitation on enforcement (i.e., "Nothing in this article shall provide grounds for the victim to ... overturn a sentence or negotiated plea...") will not prevent a trial court from correcting its own errors. Since the term "overturn" is not defined in Black's Law Dictionary, we are not confident that it will be interpreted as limited to the actions of an appellate court, but fear it might also encompass a trial court's reversal of its own ruling. Even if the term "overturn" is eventually determined to exclude a trial court's action with regard to its own ruling, we are unwilling to leave the matter in the hands of the very court that originally denied the right.

¹³ It has been implied that friends of the amendment in Congress will dominate if not monopolize the creation of the amendment's legislative history and that any "contrary views will be likely few and far between." We have several responses. First, the legislative history of the amendment is already in the making. Previous versions are a

Even if our interpretation is wrong, and the language of the amendment would not preclude such statutory remedies as a right to appeal a sentence or plea agreement, those remedies will still be merely statutory. NVCAN has always argued that statutes are insufficient to protect victims' rights. Statutes lack permanence, and they lack strength. Congress and state legislatures can easily limit or change such statutory remedies in the future. When a victim's statutory right to a rehearing on a sentence comes up against a defendant's constitutional right to due process, when the legislative history clearly reflects that Congress rejected such rehearings as an automatic remedy, how can we have the confidence that courts will ever rule in favor of the crime victim?

Moreover, if we can't get Congress' approval, or the approval of even certain key Senators, for such a remedy in the amendment, why are our chances so much greater to get approval of the remedy in the form of a statute? While we would need only a simple majority for passage of a statute, rather than 2/3 needed for the amendment, strong opponents will continue to be strong opponents. If some in Congress believe they have to have this limitation because of the objection of the prosecutors, we must assume prosecutors will fight equally hard to prevent a statutory version of this remedy. Those opponents will point to the language of the amendment to prove that such a remedy is not desirable policy.

Reliance on statutory remedies will also lead to further inequities between the states. Since the amendment prohibits civil suits for damages, the most powerful remedy remaining is the right to a rehearing where one's rights were denied. Victims would clearly have stronger rights in states that provided a remedy of rehearing than in states where they were limited to filing complaints with ombudsmen. We would in effect still have the "patchwork quilt" of crime victims' rights that the amendment is supposed to resolve.

The existence of the limitations on enforcement of crime victims' constitutional rights will in itself mean that victims' rights are not of equal merit with other constitutional rights. It has been argued that other constitutional rights are honored in the absence of specific enforcement provisions. It must be noted that those other amendments (providing the right to freedom of speech, freedom of the press, etc.) do not contain *restrictions* on the enforceability of those rights. It would be a great victory to have an amendment that only included a list of rights, under which complete enforceability would be presumed.

key component of legislative history. Already those versions will show that this restriction on enforcement was specifically added, and that language allowing for the creation of statutory exceptions was specifically rejected. Secondly, it would be false to assume that senators and representatives who are hostile to the bill will not be doing everything in their power to use the legislative history to limit the purview of the amendment. We remember strong testimony by congress members in opposition to the amendment during congressional hearings — with C-Span and national network cameras rolling. We also know that legislators will be able to make floor statements and press releases lauding victims' rights, generally, while clearly outlining the limitations of this amendment.

We have long argued that supporters of a federal victims' rights constitutional amendment want meaningful and enforceable rights for victims of crime. Now some seem to be arguing that as long as the rights are listed, enforcement is not significant.¹⁴

IV. ACCEPTING THESE CHANGES ACTUALLY HARMS OUR CHANCES TO SEE AN AMENDMENT PASSED BY CONGRESS AND RATIFIED BY THE STATES.

Not only does the National Victim Center believe that these changes are bad for crime victims, we believe that these changes harm our chances to pass an amendment. The amendment is already too complicated in the minds of many victim advocates and members of Congress, and difficult to articulate to the public. To add the further encumbrance that the amendment only applies to "some" victims and that there is no automatic right of enforcement for the individual victim makes this amendment a very tough sell. We already have indications that the movement will not accept these limitations.¹⁵

Limiting the remedies as proposed would mean that victims in states that already have strong laws and a strong constitutional amendment would be no better off than they are currently. Limiting the scope of the amendment would likely mean that we could not count on the non-violent crime victim constituency to assist with the passage and ratification of the amendment. It will be harder to sell the public an amendment for "*some* victims" than an amendment for "*all* victims," and harder to sell an amendment that we hope will be enforceable than one that is automatically enforceable.

¹⁴ Proponents of accepting the language changes also argue that the ability to have a rehearing on the acceptance of a negotiated plea, or a rehearing on a sentence is already prohibited by the language of SJR 6, which states that violation of rights does not provide grounds to "challenge ... a conviction ... or to compel a new trial." This is not an indication that we should compromise further, but rather an indication that we should conduct more legal research before agreeing to any limitations on the victims' rights.

¹⁵ In an attempt to determine whether NVC's position opposing these changes accurately reflected the consensus of our constituency, we polled a small sample of active state coordinators about the proposed limitations. They were all opposed to the changes, some so strongly they felt they could no longer continue to advocate for the amendment if these changes were incorporated.

IV. THERE IS NO NEED TO COMPROMISE.

There is no need to accept the proposed language changes. Acceptance of this language will not ensure that the amendment passes Congress this year. In addition, we believe there will be similar political and more favorable grassroots support in the future.

Even with the language changes, passage of the amendment is not likely this year. In recent months, as NVCAN debated these new language changes, many members stated that they could support these changes only because they thought it would go a long way toward ensuring passage of the amendment. It now appears that we are further away from congressional passage than we believed last fall. Many of our strongest supporters on the Hill have indicated that many more compromises will be necessary to gain the support the amendment will need to pass in the current Congress. Even if we accept this and other compromises to come, some of our congressional supporters still predict that the amendment faces an uphill battle in both the House and the Senate. Some have even raised the possibility that some of our current co-sponsors might withdraw their support if we weaken the amendment.

If we are now being told we are still far away from passage, why make such a huge compromise which not only won't get us close to passage but will also form the basis of any new lobbying efforts? Once a deal is struck to accept these language changes, it will be difficult to retract from this language even if the amendment does not move forward until next year or the year after.¹⁶

This is not our last chance in Congress; there will be similar political dynamics, and more favorable grassroots support, in the future. Yes, we have a President, an Attorney General, and many congress members who are supportive of an amendment now. But the victims movement keeps growing stronger with the passage of time, and we are having considerable success convincing more and more political leaders to support strong victims' rights. Time works *for us* in the long run.¹⁷

¹⁶ It has been suggested that some of our allies in the Senate who favor the new language will resent us for not accepting this compromise. We believe that they are reasonable and experienced lawmakers who understand the strength of our commitment to our cause, and will not hold it against us. While they may be reluctant to champion our cause because they cannot support it as fully as we would want them to, they are not likely to become our adversaries over this issue. They have been supporters of crime victim issues for many years, and we can expect to continue to work together on other such issues in the future.

¹⁷ It has been argued that if we do not move forward with an amendment in this session, we will receive negative press that will make it more difficult for us to return next year or in the next few years. This is not necessarily so. As an example, the balanced budget amendment, which generally received more media attention than the victims' rights amendment, was raised and defeated a number of times, and was generally stronger each time it was raised, despite headlines decrying a loss of steam or even defeat.

We have seen the victims movement steadily grow in strength since its beginning over two decades ago.¹⁸ We have also seen the once strident opposition to victims' rights begin to decrease in the criminal justice system, as members of that system develop experience with victims' rights and come to see that, rather than hindering them in their work, victims' rights can actually improve the system's ability to investigate, prosecute, and sentence offenders. Why rush to pass an amendment we have such strong reservations about, when waiting may allow us the opportunity to get an amendment we really want? Why negotiate from a position of relative weakness today when we could negotiate from a stronger position tomorrow?

It is also important to remember that to secure passage and ratification of an amendment, we must have strong support both in Congress *and* in the states. The process of educating victim advocates about the amendment has been slow, but it is now beginning to take hold. When the amendment was first introduced in 1996, only a small group of advocates had heard of the amendment or knew why it was important. In 1997, more advocates learned about the amendment. Today the National Victim Center is still receiving calls from crime victim advocates who, for the first time, realize the importance of the amendment and want to get involved. The victims movement is therefore not only growing in strength, but also still growing in its understanding of the need for the federal amendment. With more time to build grassroots support, and to organize and lobby lawmakers, we may be in a position to secure an amendment that does not compromise victims' rights. Our inability to do so up till now sends a clear message that we are not ready.

At the National Victim Center, we have spent the past decade monitoring the progress of the victims' rights movement. In particular, we have worked with states amending their own constitutions. We know that the process to secure a strong amendment can take years. We have also seen states compromise too early, and regret it in the years to follow. Advocates in Virginia have come to believe that they acted too hastily in agreeing to a weak amendment. Advocates in Texas are having to live with what in retrospect proved to be an unnecessary concession — eliminating the right to be heard at sentencing from their constitutional amendment.

It is true that NVCAN has supported state amendments even when they were weaker than we would want. However, we had three good reasons for providing such support. The first is that

¹⁸ We have also heard arguments that with time, we will become victims of our own success: that states will pass strong statutes and constitutional amendments which will then be used to show a federal constitutional amendment is not needed. If strong statutes will indeed make the case that a federal amendment is not needed, then so be it. We should all be satisfied with any outcome that means victims have meaningful and enforceable rights. However, that outcome is unlikely. Rather, in states with strong victims' rights, many victims will continue to be denied their rights, just as they are now. If states make victims' rights stronger and more enforceable, we anticipate the development of case law pitting victims' statutory rights against the constitutional rights of the accused, and those court decisions would definitively prove that a federal amendment is needed to give the courts the ability to balance the rights of the victims with the rights of defendants.

we knew there was some possibility that states themselves could go back and strengthen them later (as California is currently considering). We also thought the form of the state amendment should be finally determined by advocates in that state, rather than NVCAN. But most importantly, no matter how weak any amendment was, we knew we always had the chance to adopt a strong amendment to the United States Constitution that would protect victims' rights where state amendments fell short.

Unlike the state experience, if we get it wrong the first time, there is no going back. Victims would for the foreseeable future be limited to a constitutional amendment that is weaker than we might otherwise have obtained. It will be a mistake that generations of victims may regret as a missed opportunity to secure meaningful and enforceable rights for all victims of crime.

V. CONCLUSION.

Finally, we take exception to the characterization of the National Victim Center's position in support of SJR 6 as support for an "ideal" or "perfect" amendment. We are already far from the "ideal amendment" with SJR 6. For the National Victim Center this is not a choice between the *ideal* amendment and a *less than ideal* amendment; it is the choice between a *less than ideal* amendment and a *bad* amendment — one that disenfranchises a majority of victims and denies the rest the ability to enforce the specific rights it grants by its terms.

Conversely, those advocates who support the new language argue that the choice is between the *less than ideal* and *nothing*. To espouse that view, you must assume not only that it is "this or nothing" but also that it is "now or never." As we have argued above, we believe that our movement will continue to grow in strength, and as it does, we will be in a better position to secure meaningful and enforceable rights for all victims of crime.

Thus, for all of the reasons stated above, the National Victim Center believes it is not in the best interests of crime victims to support the new language changes to the federal crime victims' rights constitutional amendment.



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April 3, 1998

Mr. Bruce N. Reed
Assistant to the President for Domestic Policy
Executive Office of the President
West Wing, 2nd Floor
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Reed:

I wanted to let you know that the National Victim Center has sent the enclosed letter and materials to President Clinton explaining our concerns with respect to recent developments on the proposed crime victims' rights constitutional amendment. The revised amendment referred to in these materials was introduced in the Senate as SJR 44, on April 1, 1998.

The National Victim Center does not support the revised crime victims' rights constitutional amendment, for the reasons articulated in the enclosed materials. We do, however, remain committed to securing meaningful and enforceable constitutional rights to all victims of crime.

Should you personally have any questions regarding these developments, or would like to discuss the issues further, please do not hesitate to contact me at 703-276-2880. If I am unavailable, please feel free to talk to my Director of Public Policy, David Beatty, who can be reached at the same number.

Thank you for your attention to this matter.

Sincerely,

Susan Herman
Executive Director

enclosures

JOSE/EK -
FYI
B.F



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March 27, 1998

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Alberta Davis Hogg

Martha Rowan Hyder

Ralph H. Isham

Howard M. Lorber

Pamela C. Murrin

Hon. Ilene H. Nagel

Jay A. Shapiro

Beverly Sills

Eric Smith

Marianna S. Smith

The Honorable William Jefferson Clinton
President of the United States
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Clinton:

On behalf of the staff and Board of the National Victim Center, I would like to thank you for the support, attention and time you and your staff have spent working with us in our collective effort to secure passage of a federal crime victims' rights amendment to the U.S. Constitution. You may be aware that the National Victim Center, as a member of the National Victims Constitutional Amendment Network (NVCAN), has been a leading advocate for the victims' rights amendment (Senate Joint Resolution 6).

As you know, since the amendment's introduction, the efforts to pass this measure have primarily involved a lengthy process of negotiation and compromise between all interested parties. Until recently, the National Victim Center believed that while many of the concessions made during this process weakened the amendment somewhat, none seriously undermined the establishment and protection of the basic rights we sought for crime victims.

However, as you may already be aware, over the past several months, the National Victim Center has been wrestling with the question of whether to accept certain additional proposed changes to the amendment.

The two proposed language changes are:

1. To limit the amendment to violent crime victims; and
2. To add language in Section 2 of the amendment, stating that violation of rights gives no grounds to overturn a sentence or negotiated plea.

After careful consideration, the staff and Board of Directors of the National Victim Center, along with several other members of NVCAN, have concluded that we cannot support the proposed changes. While a majority of NVCAN Board members, and thus NVCAN as an organization, has decided to go forward with this proposal, we wanted to let you know that the National Victim Center will not be supporting those efforts. We do not believe these language changes are in the best interests of crime victims. We want to assure you, however, that the National Victim Center remains committed to passing a federal constitutional amendment that guarantees protection for the rights of all crime victims.

Executive Director

Susan Herman

<http://www.nvc.org>

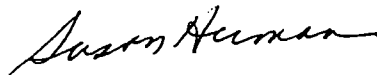
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National Victim Center
March 27, 1998

The National Victim Center did not come to this decision lightly. It was with extreme reluctance that the National Victim Center chose to select a course that diverges from that chosen by colleagues and fellow amendment advocates with whom we have worked closely for more than a decade and whom we greatly respect and admire. However, given the profound and permanent consequences involved in the passage of an amendment to the U.S. Constitution, we cannot in good conscience support an amendment that we believe is not in the best interests of crime victims.

We believe that a new version of the crime victims' rights constitutional amendment, incorporating the proposed language changes which we do not support, will be introduced into Congress imminently, perhaps as early as the week of March 30th. You will likely be asked for your opinion regarding this new legislation. We have enclosed several discussion papers and legal analyses that were distributed to NVCAN Board members which may inform your thinking at this point. If you or your staff would like to discuss these papers or these issues further, please feel free to contact me or David Beatty, the Center's Director of Public Policy at (703) 276-2880.

Again, we appreciate the thoughtful participation of you and your staff throughout this entire process. We look forward to working with you on this and other victim-related matters in the near future.

Sincerely,



Susan Herman
Executive Director

enclosures

The National Victim Center Does Not Support the Proposed Changes to the Crime Victims' Rights Constitutional Amendment

I. Introduction

Advocates for the proposed federal crime victims' rights constitutional amendment were recently asked to agree to new language in order to gain the co-sponsorship of Senator Joseph Biden, a key democratic member of the Senate Judiciary Committee.

The two language changes are:

1. To limit the amendment to violent crime victims; and
2. To add language in Section 2 of the amendment, stating that violation of rights gives no grounds to overturn a sentence or negotiated plea.

After much deliberation, the Board of Directors and staff of the National Victim Center have determined that they cannot support the new version. A brief summary of our reasons is set forth below.

II. The Scope of the Amendment Should Not Be Limited to Victims of Violent Crime.

A. There is no principled reason to deny any victim of crime constitutional rights to participate in the criminal justice system. The National Victim Center is unwilling to say that victims of non-violent offenses are less entitled to justice and less entitled to basic participatory rights than are victims of violent crime. We believe that victims' rights are fundamental rights, and they are not somehow less fundamental for victims of property offenses, who comprise the overwhelming majority of crime victims. The proposed change establishes classes of crime victims and a caste system of constitutionally franchised and constitutionally disenfranchised victims. It is not only legally unsound, it is unfair.

When the National Victims Constitutional Amendment Network (NVCAN) decided last year to agree to change the scope of the amendment from all victims of crime to the language currently contained in SJR 6 ("...crimes of violence and other crimes as defined by Congress"), it represented a *major* concession in the minds of several Board members. Not only were we concerned about preserving the possibility of adding victims of non-violent offenses at a later point, but there was also considerable fear that crimes we call "borderline cases" (i.e., statutory rape, burglary, child exploitation, child molestation, drunk driving, neglect of children or vulnerable adults, exploitation of vulnerable adults, emotional abuse in the context of domestic abuse, etc.) might not be considered "violent," and thus, victims of those crimes would not be protected by the amendment. And while we hoped that utilizing vehicles such as the legislative history of the amendment would secure coverage for the "borderline cases," we took comfort in the fact that if we were wrong, the "...other crimes as defined..." language could be used to insure

their inclusion. The new proposal would remove the phrase “and other crimes as¹ defined by Congress,” thus eliminating the safety net for borderline cases and any window to later include victims of non-violent offenses.

B. There is no practical reason to deny any victim of crime constitutional rights to participate in the criminal justice system. Those in Congress who want to limit constitutional protections to violent crime victims argue that to do otherwise would place intolerable burdens on the system. They fear that the added burden of non-violent victims (particularly mass victimizations, with potentially hundreds of victims), would prove too costly and would overload the system. We know this is not so.

In the case of mass victimizations, the exceptions language in section 3 of the amendment¹ would allow legislatures to provide practical limitations on certain rights. Under that provision, implementing legislation might provide, for example, that the right to be heard would be limited to representative oral statements of a few victims and written statements by any other victims interested in making those statements — in effect the same way legislatures address mass victim cases currently. In addition, the right to notice remains the right to “reasonable” notice: notice that is reasonable under the circumstances of a mass victim case would likely include large meetings, televised notice, etc., means that are not overly burdensome.

Thus, there is no sound policy reason for limiting the amendment to victims of violent offenses, and the National Victim Center has decided it could not in good conscience accept this limitation.

III. The Proposed Language Prohibits Remedies Necessary to Adequately Protect Victims’ Rights.

A. If courts cannot overturn a sentence or negotiated plea where a victim’s rights at those proceedings were violated, that victim is left with no effective remedy. A victim who was not notified of the sentencing or plea agreement hearing, was not given an opportunity to speak or was not awarded restitution would never have adequate recourse for a denial of those rights unless s/he has the right to demand rehearings. The compromise provision would render this remedy an impossibility for some of the most important of the victims’ rights.

While it might be possible to get a *post facto* order against an offending official ostensibly to prevent the *next* victim from being denied their basic rights, that does nothing to remedy the denial of rights of the prior victim(s). Are we willing to accept an amendment which, *by design*, sacrifices the constitutional rights of some for the benefit of others? By contrast, offenders who are denied important procedural and due process rights are not precluded from seeking a new

¹ “Congress and the States shall have the power to ... enact exceptions when required for compelling reasons of public safety or for judicial efficiency in mass victim cases.” SJR 6, Section 3.

hearing. If we are committed to protecting the procedural rights of victims, why should they not have similar remedies available to them when those rights are denied.

B. Congress and state legislatures would not be able to create a *statutory* right of enforcement, such as a right to appeal violations of rights, under the language being proposed. The language limiting enforcement, which states in part that “Nothing in this article provides grounds to,” encompasses the list of rights in section 1. The *rights* will never provide grounds to overturn a sentence or negotiated plea. Proponents of accepting the new language argue that this language merely means that the amendment *standing alone* does not provide that remedy. Our legal analysis has led us to conclude that this language would prohibit *any such remedy*.

IV. Accepting the New Language Actually Harms our Chances to See an Amendment Passed by Congress and Ratified by the States.

Not only does the National Victim Center believe that these changes are bad for crime victims, we believe that these changes harm our chances to pass an amendment. The amendment is already too complicated in the minds of many victim advocates and even members of Congress. It will be harder to sell the public an amendment for “*some* victims” than an amendment for “*all* victims,” and harder to sell advocates an amendment that we *hope* will be enforceable than one that is *automatically* enforceable.

V. There is no Necessity to Compromise.

A. Even with the new language changes, there is not a strong chance the amendment would be passed in Congress this year. In recent months, as NVCAN debated the acceptability of the changes currently before us, many members stated that they could support those changes if and only if it ensured passage of the amendment. It now appears that we are further away from congressional passage than we believed last fall. Even those working most closely with this issue in Congress have indicated we have a long way to go to secure passage of this amendment, and that there are more compromises ahead. If we are now being told we are still far away from passage, why make a compromise that we don’t like, especially when that new compromise would likely form the new starting point for any efforts toward an amendment in the next year or so?

B. This is not our last chance in Congress; there will be similar political dynamics, and more favorable grassroots support, in the future. Yes, we have people in very high places that are supportive of an amendment now. But the victims movement keeps growing stronger with the passage of time, and we are successfully convincing more and more political leaders to support strong victims’ rights. Time works *for us* in the long run.

We have seen the victims movement grow in strength. We have also seen the once strident¹ opposition to victims' rights begin to decrease in the criminal justice system, as members of that system develop experience with victims' rights and come to see that, rather than hindering them in their work, victims' rights can actually improve the system's ability to investigate, prosecute, and punish offenders. Why rush to pass an amendment we are less than enthusiastic about, when waiting may allow us the opportunity to get the amendment we really want? Why negotiate from a position of relative weakness today when we could negotiate from a stronger position tomorrow?

The National Victim Center intends to continue to work to secure a federal crime victims' rights constitutional amendment. We will continue to educate criminal justice officials, public officials, the victims movement, and the general public about the importance of a victims' rights amendment. But we will not be working to pass the latest version of the amendment which unacceptably limits the scope and enforcement of victims' rights.

At the National Victim Center, we have spent the past decade monitoring the progress of the victims' rights movement. In particular, we have worked with states amending their own constitutions. We know that the process to secure a strong amendment can take years. We also know from experience at the state level that advocates can compromise on amendments too early, and regret it in the years to follow. If we accept the latest language changes, it will be a mistake that generations of victims may regret as a missed opportunity to secure meaningful and enforceable rights for all victims of crime.

This document consists of excerpts from longer position statements that more fully discuss the points for and against accepting the latest proposed changes. For copies of those longer statements, please contact the National Victim Center's Public Policy Department, at (703) 276-2880, or e-mail Liz Wohlken (Liz@mail.nvc.org) or Susan Howley (Susan@mail.nvc.org).

**WHY THE NATIONAL VICTIM CENTER
DOES NOT SUPPORT PROPOSED LANGUAGE CHANGES TO THE
VICTIMS' RIGHTS CONSTITUTIONAL AMENDMENT
LIMITING SCOPE AND ENFORCEABILITY¹**

I. INTRODUCTION.

The National Victim Center remains committed to a constitutional amendment for all crime victims that is meaningful and enforceable. Our support for the rights listed in section 1 of the proposed federal crime victims' rights constitutional amendment (SJR 6) remains strong. We believe, however, that the latest proposed language changes compromise our basic principles and do not serve the best interests of crime victims.

Those changes would:

1. Limit the amendment to violent crime victims; and
2. State that a violation of rights gives no grounds to overturn a sentence or negotiated plea.

Many significant officials, including the President and the Attorney General, have not yet addressed these language changes, and we have no indication whether or not they would support them. However, after much deliberation, the National Victim Center has determined that it cannot support these changes to the victims' rights amendment for the reasons set forth below.

II. THE SCOPE OF THE AMENDMENT SHOULD NOT BE LIMITED TO VICTIMS OF VIOLENT CRIME.

It is unacceptable to exclude victims of non-violent offenses from the protection of the Constitution. There is neither a principled reason nor a practical reason to exclude such victims from the purview of the amendment. We do not believe that victims of non-violent offenses would enjoy the effect of such rights as a matter of practice, now or in the future.

¹ This document is a reworking of two internal National Victims Constitutional Amendment Network (NVCAN) memoranda written by the National Victim Center on February 27 and March 9, 1998.

Founded in 1986, NVCAN is a coalition of crime victim advocates and organizations dedicated to the support of constitutional rights for crime victims at the state and federal levels. The National Victim Center has been a member of NVCAN since its inception.

We can find no principled reason for denying to any victim of crime constitutional rights to participate in the criminal justice system. It has always been our assumption that the victims' movement advocates for all crime victims and that all crime victims are our constituents. We have not defined the status of "victimhood" by the nature of the crime committed against an individual, nor the relative harm an individual suffered as a result of a crime. Most victim professionals do not make their advocacy and assistance contingent on such distinctions. Most state victims' rights constitutional amendments are not restricted to certain classes of crime victims.² Our movement has always been one of inclusiveness, reaching out to underserved populations. The particular circumstances of a crime (his life savings were wiped out at gunpoint, hers via computer) do not make one victim more entitled than another to rights to participate in a governmental process that significantly affects their interests. The National Victim Center believes that victims' rights are fundamental rights, and they are not somehow less fundamental for victims of non-violent offenses.

How will we explain to 27 million victims of non-violent offenses³ the political necessities that required us to compromise away their constitutional rights? How do we explain it to the elderly victim who was bilked out of her life savings?

As was noted many years ago, "[I]n the view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens..."⁴

The proposed language limiting the scope of the amendment establishes classes of crime victims and a caste system of constitutionally franchised and constitutionally disenfranchised victims. While the distinction here between groups of crime victims does not involve a traditional constitutionally protected class, it is no less inappropriate. The new limitation is not only legally unsound, it is unfair.

When those of us who advocate for crime victims at the national level put ourselves in the position of making decisions on behalf of a very large group of people — in this case, crime victims — the decision making process must be deliberate and fair, and must take into account

² The overwhelming majority of state crime victims' rights constitutional amendments apply to crime victims "as defined by law," and thus do not foreclose by their terms the extension of rights to all victims of crime. The only states that *do* restrict constitutional rights to certain groups of crime victims are Maryland, New Mexico, and Washington.

³ According to the latest government figures, there are almost 37 million crime victims in America each year; 27 million are victims of non-violent offenses. Cheryl Ringel. (1997) *Criminal Victimization 1996: Change 1995-96 with Trends 1993-96*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics. Page 3.

⁴ Plessy v. Ferguson, 163 U.S. 537, 559 (1896).

the legitimate interests of everyone we represent. We believe that deliberately excluding the vast majority of crime victims is unfair and ignores the legitimate interests of such victims, particularly when it is not clear that the political circumstances require us to do so.⁵ To ignore the wishes of a majority of our constituency would seem contrary to our inherent role as leaders and simply undemocratic.

Arguably, one of the most fundamental goals shared by all victim advocates, service providers and counselors is the empowerment of victims; to provide victims, to the maximum extent possible, the means to recover the power of self-determination and control that is so often ripped from their lives in the aftermath of a crime. The victims' need to satisfy their own sense of justice is often essential in their quest to recover. This desire also serves as the basis for most victims' rights statutes and amendments enacted to date. But an amendment that empowers some victims to a greater degree than others runs contrary to the fundamental principle of empowering *all* victims to the maximum extent possible.

In fact, agreeing to limit for all time the extension of constitutional rights to victims of violent offenses restricts the future evolution of our movement. While it is true that the focus of the movement in recent years has been the violent crime victim, this is itself an expansion from the movement's genesis twenty years ago, when the focus was on women victimized by crime, and from thirty years ago, when there was no focus on victims whatsoever. Many of us envision a growing movement and an inclusive movement, expanding rather than narrowing the classes of persons to whom these rights are provided.

When NVCAN decided over a year ago to accept the alternative language currently contained in SJR 6 ("victims of crimes of violence and other crimes as defined by Congress"), it represented a *major* concession in the minds of several Board members. Not only were we concerned about preserving the possibility of adding victims of non-violent offenses at a later point, but there was also considerable fear that crimes we call "borderline cases" (i.e., statutory rape, burglary, child exploitation, child molestation, drunk driving, neglect of children or vulnerable adults, exploitation of vulnerable adults, emotional abuse in the context of domestic abuse, etc.) might not be considered "violent" and thus those victims would not be protected by the amendment. And while we hoped that utilizing vehicles such as the legislative history of the amendment

⁵ It has been stated that the proposed limitation of the scope of the amendment to victims of crimes of violence is sufficient because it would encompass 95% of the cases in which victims' rights have been litigated. The implication is that only the violent crime cases are important, because they are the only ones in which victims' rights have been litigated. This conclusion is groundless. At best there are only a few dozen cases that have actually been litigated and virtually all of those have occurred in the last decade. We know from our years of experience and research that the number of litigated victims' rights cases is minuscule when compared to the total number of cases where victims of both violent and non-violent offenses have been denied their basic rights. The issue is not the relative percentages of violent and non-violent victims who *have* litigated, but rather those who one believes *should* have the right to assert constitutional rights through litigation.

would secure coverage for the “borderline cases,” we took comfort in the fact that if we were wrong, the “...other crimes as defined...” language could be used to ensure their inclusion. *With this language removed, there would be no such safety net.*

Some proponents of the language changes argue that “violent crime” has broad definitional context and has been judicially interpreted to include many crimes that, at first blush, might not be thought of as “violent.” Thus, the argument continues, we are giving up the rights of comparatively few victims. For instance, it is argued that the “broad” definition of crime of violence contained in the United States Code is instructive.⁶ That may be. However, we find other statutory definitions of crime of violence even more instructive. For instance, Arizona defines violent crimes as any “criminal act that results in death or physical injury or any criminal use of a deadly weapon or dangerous instrument.”⁷ This definition, which is mercifully short and easy to comprehend, unfortunately includes very few crime victims. What is more problematic, however, is a crime of violence definition like the one used in Maryland. In Maryland, crime of violence includes abduction, arson in the first degree, kidnaping, manslaughter (except involuntary manslaughter), mayhem and maiming (but not always), murder, rape, robbery, carjacking, certain sexual offenses (but not all), use of a handgun in the commission of a felony, an attempt to commit any of the previously listed crimes, and certain, but not all, assaults.⁸ Virtually no “property crime” is included and some obvious crimes of violence are also not included. The Maryland statute is so inclusive of some crimes and exclusive of others, that an unlisted crime is almost certainly not a crime of violence.

⁶ 18 U.S.C. 16. Several cases have been cited in support of the argument that the definition of crime of violence under the United States Code encompasses many borderline crimes. We do not find those cases very strong. The *Reyes-Castro* case cited was an attempted sexual abuse case presented in the context, not of crime victims’ rights, but rather a deportation hearing of the offender who was an alien — and the court found that the act itself, sexual assault of a child, obviously carried with it the *risk* of violence — hardly a novel theory (*United States v. Reyes-Castro*, 13 F.3d 377 (10th cir. 1993)); *Aragon* involved the definition of a crime of violence in the context of The Travel Act (18 U.S.C. Sec. 1952) and the question of whether the jury should decide, for Travel Act prosecution purposes, whether the crime is one of violence (*United States v. Aragon*, 983 F.2d 1306 (4th Cir. 1993)); and *Flores* is a Federal Sentencing Guidelines case and concerns the question of whether six prior convictions for burglary meets the definitions of a “career offender” — with the court forced to look to a 1925 Texas statute definition of a crime of violence; in short, none of these cases are remotely connected to the issue of whether a crime *victim* has suffered a crime of violence for the purposes of the *victim’s* constitutional rights. (*United States v. Flores*, 875 F.2d 1110 (5th Cir. 1989).

⁷ Arizona Code § 13-604.04 (1997).

⁸ Maryland Annotated Code Art. 27, § 643B (1997).

The point of all this, however, is not to dispute the legal analysis of the proponents of the language changes but rather to suggest that what constitutes a crime of violence can and almost certainly will be subject to judicial interpretation, with some of the decisions giving victims of nonviolent crime constitutional protections and some decisions denying such victims constitutional protections.

It has been stated that in accepting the limitation to victims of crimes of violence we would be “....doing the best we could for the overwhelming majority of crime victims....” When the overwhelming majority of crime victims are *non-violent crime victims*, we believe they would say that accepting a compromise version of an amendment that excludes them is far less than the best we could do. We believe the “best we could do” for them is to choose not to accept the new language.

There is no practical reason to exclude non-violent crime victims from the protections of the constitutional amendment. Those in Congress who want to limit constitutional protections to violent crime victims argue that to do otherwise would place intolerable burdens on the system. They fear that the added burden of non-violent victims (particularly mass victimizations with potentially hundreds of thousands of victims), would prove too costly and would overload the system. We know from experience that this is simply not the case.

First, the most “burdensome” aspect of the amendment would be the requirement to keep crime victims informed. More and more jurisdictions are beginning to use automated notification systems, for which the largest expense is the startup cost. The cost of adding other crime victims to such programs once they are in place is very modest. Congress is already considering providing funding for more such automated systems.

In the case of mass victimizations, the exceptions language in section 3 would allow legislatures to provide limitations on rights.⁹ In fact, one of the primary reasons for including the exceptions language has been the mass victim cases. Under that provision, we anticipate that implementing legislation will provide, for example, that the right to be heard would be limited to representative oral statements of a few victims and written statements by any other victims interested in making those statements — in effect the same way legislatures address mass victim cases currently.

In addition, the right to notice remains the right to “reasonable” notice: notice that is reasonable under the circumstances of a mass victim case would likely include large meetings, televised notice, etc. — means that are not overly burdensome. Finally, as a further safeguard for those concerned about the burdens of instantly encompassing all crimes, current language already

⁹ That language provides that “The Congress and the States shall have the power to ... enact exceptions when required for compelling reasons of public safety or for judicial efficiency in mass victim cases.” SJR 6, Section 3.

provides that victims of violent crimes are covered immediately and victims of other crimes are to be added over time.

Thus, there is no sound policy reason for limiting the amendment to victims of violent offenses.

Victims of non-violent offenses will not be given the same rights as victims of violent crimes as a matter of practice. It has been stated that after constitutional rights are guaranteed for victims of violent crime, those responsible for implementation will choose to extend those rights to victims of other crimes as a matter of policy or by statutory mandate. Thus, it is argued, even though non-violent crime victims will not enjoy the benefits of such provisions as a matter of constitutional right they will be afforded such advantages as a practical matter.¹⁰ We disagree.

Proponents of the new language assert that we can rely on statutes to rectify the deficiencies in the constitutional amendment and protect the interests of victims of non-violent offenses. Again, we disagree. The primary reason crime victim advocates have pursued a constitutional amendment for victims' rights, rather than settling for statutory equivalents, is that a constitutional amendment is qualitatively and quantitatively different than statutes. To support the proposed limitation of rights for non-violent crime victims is the equivalent of suggesting that we can address victims' rights by statutes alone. In contrast to the proposed limitation, the current language of SJR 6 would allow Congress to extend *constitutional* rights to victims of non-violent offenses, rights that are qualitatively different from statutory rights.

It has also been argued that court challenges to denials of victims' rights will be brought by victims of violent crime, and that the precedents set by those cases will "probably be readily extended to victims of property crimes." There is nothing to indicate this result is likely. In many of these anticipated cases, courts will be ruling on the constitutional rights of crime victims, and will probably balance victims' constitutional rights against the constitutional rights of the accused. Those decisions will not likely encompass victims of crime who are not within the purview of the constitutional amendment.

While we may disagree on the practical effect of this amendment on victims of non-violent offenses, there can be no doubt that those victims would never have true constitutional rights. Since their rights and interests would not enjoy the same constitutional protection as those granted to violent crime victims, their "rights" under an amended Constitution would be little

¹⁰ It was also suggested that the implementation of a violent crime victims' rights amendment would create a "mindset" favorable to non-violent victims, as, for example, judges "become used to ordering full restitution." To expect judges to voluntarily extend to non-violent crime victims restitution rights they have often ignored and even actively resisted belies experience. It would be the equivalent of expecting the courts to extend jury trials to offenders of petty thefts simply because offenders of more serious crime have that right as a matter of constitutional law. As we know, this has not occurred.

better than they are now: i.e., rights that are defined and exist at the whim of the state legislatures or Congress and local criminal justice officials.

It has also been argued that in the fullness of time, all crimes, including those currently considered non-violent crimes, will be considered violent crimes. While the meaning of words does evolve over time, particularly through judicial interpretation, there are limits to the likely evolutionary process. To assume that words will take on their opposite meaning seems overly optimistic.¹¹ If non-violent and violent crime were to be interpreted as the same, the word "violent" would have no meaning as used in the constitutional amendment. Whatever meaning may be attributed to it by popular culture or even policy leaders, judges will assume that, when written, the word violent had some meaning and at the very least was not used as a synonym for its opposite "non-violent." And of course there would be considerable legislative history and contextual evidence to support that contention.

III. THE REMEDIES AVAILABLE UNDER THE PROPOSED LANGUAGE CHANGES DO NOT ADEQUATELY PROTECT VICTIMS' RIGHTS.

"It is a vain thing to imagine a right without a remedy..." *Ashby v. White*, 2 Ld. Raym. 938, 953 (1703).

The proposed language would insert, "Nothing in this amendment shall provide grounds to ... overturn a sentence or negotiated plea." This language leaves a victim with no effective remedy for many important rights. In addition, Congress and state legislatures would not be able to create a statutory right of enforcement, such as a right to appeal violations of rights, under the language being proposed.

If courts cannot overturn a sentence or negotiated plea where a victim's rights at those proceedings were violated, that victim is left with no effective remedy. A victim who was not notified of the sentencing hearing, was not given an opportunity to speak and was not awarded restitution would never have adequate recourse for a denial of those rights unless s/he has the right to demand rehearings. The new language would render this remedy an impossibility for these important victims' rights. Unless victims have a constitutional right to a rehearing to balance the offender's due process rights to have the outcomes of such proceedings stand, victims who are initially denied their rights at sentencing or at the acceptance of a plea will be forever precluded from exercising those rights.

¹¹ There are countless examples of courts refusing to compromise on the fair and appropriate meaning of a word. As one example, courts have found that "shall" does not mean "may" or "should." See *Carter v. Commissioner*, 784 F.2d 1006, 1009 (9th Cir. 1986); *CSX Corporation v. United States*, 926 F. Supp. 223, 226 (E.D.Va. 1996); *Occidental Petroleum Corp. v. Commissioner*, 82 T.C. 819, 819 (1984).

In principle, victims could be granted other dispensations or compensation for having been denied their rights (i.e., legislation creating ombudsman offices that can investigate complaints against criminal justice system officials, etc.,) but that would not alter the fact that those victims were denied their basic rights at the point and the time when it mattered most. What is the value of a constitutional right that denies its intended beneficiary the one remedy that would guarantee that the right is fully enforced?

It has been argued that victims could still file injunctive actions against officials who have a record of denying victims' rights, but injunctions rely upon documenting patterns of abuse, are time consuming and are often expensive and procedurally difficult class actions. Moreover, while it might be possible to get a *post facto* order against an offending official ostensibly to prevent the *next* victim from being denied their basic rights, that does nothing to remedy the denial of rights of the prior victim(s). Are we willing to accept an amendment which, *by design*, sacrifices the constitutional rights of some for the benefit of others?

We believe using writs of mandamus as a preventive measure when a violation of rights is anticipated is not an adequate substitute for a post-violation remedy, since such actions depend on receiving advance warning that a judge will violate the victim's rights. While this was fairly easy to anticipate in the Oklahoma City bombing case, with expert legal counsel for the victims and aggressive victim advocacy coupled with a drawn-out time frame for the court proceedings, what opportunity will the average victim have to bring these advance petitions for writs of mandamus? Furthermore, seeking such writs beforehand is tantamount to an aggressive preemptory strike. We have already seen instances where crime victims were reluctant to fight strenuously for their rights because they were unwilling to risk antagonizing the court or the prosecutor by challenging denials of their rights. Why should victims have the burden of protecting their rights before the fact of violation? Will they be obliged to take such actions in every case?

Proponents of the new language argue that enforcement is not vital because the remainder of the amendment will provide sufficient education of officials to prevent violations. We know from experience that training is insufficient to prevent many violations. For victims' rights to be meaningful, training must be coupled with enforcement. Furthermore, only a portion of the violations of victims' rights are due to ignorance. What about the far more common case when a victim is denied a right purely due to an oversight? Victims fall through the administrative cracks for a wide variety of fairly innocent reasons: their address was lost, a clerk forgot to inform them of a schedule change, the person in charge of notice was out sick, etc., etc. What about the official who intentionally disregards the victims' rights? The "rehearing remedy" serves as a safety net to ensure victims are eventually granted their rights, no matter what the reason those rights were initially denied. Nothing will give those charged with implementing such rights more incentive to comply than ensuring that they will have to revisit the issue again if they fail in their duty to provide those rights. Offenders who are denied important procedural and due process rights are not precluded from seeking a new hearing. If we are committed to protecting the

procedural rights of victims, why should they not have similar remedies available to them when those rights are denied?

It has been noted that the proposed new restrictions on enforcement do not impact the enforcement of many of the rights in the amendment, such as the right to speedy trial. However, the proposed limitation of enforcement affects those rights which are at the core of victims' interests: the right to participate in that proceeding where decisions are made regarding the disposition of the case.¹²

It has also been argued that judges could hold an additional hearing without affecting the sentence or plea, just to give victims a chance to speak. We do not believe this remedy would satisfy many victims. Victims want to be heard when it counts, not just heard. Victims deserve meaningful participation in the criminal justice system, not simply a cathartic experience.

Congress and state legislatures would not be able to create a statutory right of enforcement, such as a right to appeal violations of rights, under the language being proposed. From our reading, the language in section 2 limiting enforcement, which states in part that "Nothing in this article provides grounds to," encompasses the list of rights in section 1. The *rights* will never provide grounds to overturn a sentence or negotiated plea. Proponents of accepting the language changes argue that this language merely means that the amendment *standing alone* does not provide that remedy. We believe this language prohibits *any such remedy*.

We believe this enforcement limitation leaves no possibility that violations of these core rights can result in overturning a sentence or negotiated plea. Congressional proponents of the change apparently do not want to allow the possibility of Congress passing a similar remedy by statute, since NVCAN's request to include language providing that this restriction stands "except as provided by appropriate legislation" has already been rejected. Because a draft of the amendment with that "exceptions" language was previously circulated, the legislative history will reflect that language creating the possibility of legislative action was rejected. This can and will be used against us in any situation in which we attempt to correct the denial of these core rights. It is highly unlikely we will get strong legislative history in our favor on this point, because those who oppose such a remedy will include their statements in the record.¹³

¹² We disagree with those who argue that the limitation on enforcement (i.e., "Nothing in this article shall provide grounds for the victim to ... overturn a sentence or negotiated plea...") will not prevent a trial court from correcting its own errors. Since the term "overturn" is not defined in Black's Law Dictionary, we are not confident that it will be interpreted as limited to the actions of an appellate court, but fear it might also encompass a trial court's reversal of its own ruling. Even if the term "overturn" is eventually determined to exclude a trial court's action with regard to its own ruling, we are unwilling to leave the matter in the hands of the very court that originally denied the right.

¹³ It has been implied that friends of the amendment in Congress will dominate if not monopolize the creation of the amendment's legislative history and that any "contrary views will be likely few and far between." We have several responses. First, the legislative history of the amendment is already in the making. Previous versions are a

Even if our interpretation is wrong, and the language of the amendment would not preclude such statutory remedies as a right to appeal a sentence or plea agreement, those remedies will still be merely statutory. NVCAN has always argued that statutes are insufficient to protect victims' rights. Statutes lack permanence, and they lack strength. Congress and state legislatures can easily limit or change such statutory remedies in the future. When a victim's statutory right to a rehearing on a sentence comes up against a defendant's constitutional right to due process, when the legislative history clearly reflects that Congress rejected such rehearings as an automatic remedy, how can we have the confidence that courts will ever rule in favor of the crime victim?

Moreover, if we can't get Congress' approval, or the approval of even certain key Senators, for such a remedy in the amendment, why are our chances so much greater to get approval of the remedy in the form of a statute? While we would need only a simple majority for passage of a statute, rather than 2/3 needed for the amendment, strong opponents will continue to be strong opponents. If some in Congress believe they have to have this limitation because of the objection of the prosecutors, we must assume prosecutors will fight equally hard to prevent a statutory version of this remedy. Those opponents will point to the language of the amendment to prove that such a remedy is not desirable policy.

Reliance on statutory remedies will also lead to further inequities between the states. Since the amendment prohibits civil suits for damages, the most powerful remedy remaining is the right to a rehearing where one's rights were denied. Victims would clearly have stronger rights in states that provided a remedy of rehearing than in states where they were limited to filing complaints with ombudsmen. We would in effect still have the "patchwork quilt" of crime victims' rights that the amendment is supposed to resolve.

The existence of the limitations on enforcement of crime victims' constitutional rights will in itself mean that victims' rights are not of equal merit with other constitutional rights. It has been argued that other constitutional rights are honored in the absence of specific enforcement provisions. It must be noted that those other amendments (providing the right to freedom of speech, freedom of the press, etc.) do not contain *restrictions* on the enforceability of those rights. It would be a great victory to have an amendment that only included a list of rights, under which complete enforceability would be presumed.

key component of legislative history. Already those versions will show that this restriction on enforcement was specifically added, and that language allowing for the creation of statutory exceptions was specifically rejected. Secondly, it would be false to assume that senators and representatives who are hostile to the bill will not be doing everything in their power to use the legislative history to limit the purview of the amendment. We remember strong testimony by congress members in opposition to the amendment during congressional hearings — with C-Span and national network cameras rolling. We also know that legislators will be able to make floor statements and press releases lauding victims' rights, generally, while clearly outlining the limitations of this amendment.

We have long argued that supporters of a federal victims' rights constitutional amendment want meaningful and enforceable rights for victims of crime. Now some seem to be arguing that as long as the rights are listed, enforcement is not significant.¹⁴

IV. ACCEPTING THESE CHANGES ACTUALLY HARMS OUR CHANCES TO SEE AN AMENDMENT PASSED BY CONGRESS AND RATIFIED BY THE STATES.

Not only does the National Victim Center believe that these changes are bad for crime victims, we believe that these changes harm our chances to pass an amendment. The amendment is already too complicated in the minds of many victim advocates and members of Congress, and difficult to articulate to the public. To add the further encumbrance that the amendment only applies to "some" victims and that there is no automatic right of enforcement for the individual victim makes this amendment a very tough sell. We already have indications that the movement will not accept these limitations.¹⁵

Limiting the remedies as proposed would mean that victims in states that already have strong laws and a strong constitutional amendment would be no better off than they are currently. Limiting the scope of the amendment would likely mean that we could not count on the non-violent crime victim constituency to assist with the passage and ratification of the amendment. It will be harder to sell the public an amendment for "*some* victims" than an amendment for "*all* victims," and harder to sell an amendment that we hope will be enforceable than one that is automatically enforceable.

¹⁴ Proponents of accepting the language changes also argue that the ability to have a rehearing on the acceptance of a negotiated plea, or a rehearing on a sentence is already prohibited by the language of SJR 6, which states that violation of rights does not provide grounds to "challenge ... a conviction ... or to compel a new trial." This is not an indication that we should compromise further, but rather an indication that we should conduct more legal research before agreeing to any limitations on the victims' rights.

¹⁵ In an attempt to determine whether NVC's position opposing these changes accurately reflected the consensus of our constituency, we polled a small sample of active state coordinators about the proposed limitations. They were all opposed to the changes, some so strongly they felt they could no longer continue to advocate for the amendment if these changes were incorporated.

IV. **THERE IS NO NEED TO COMPROMISE.**

There is no need to accept the proposed language changes. Acceptance of this language will not ensure that the amendment passes Congress this year. In addition, we believe there will be similar political and more favorable grassroots support in the future.

Even with the language changes, passage of the amendment is not likely this year. In recent months, as NVCAN debated these new language changes, many members stated that they could support these changes only because they thought it would go a long way toward ensuring passage of the amendment. It now appears that we are further away from congressional passage than we believed last fall. Many of our strongest supporters on the Hill have indicated that many more compromises will be necessary to gain the support the amendment will need to pass in the current Congress. Even if we accept this and other compromises to come, some of our congressional supporters still predict that the amendment faces an uphill battle in both the House and the Senate. Some have even raised the possibility that some of our current co-sponsors might withdraw their support if we weaken the amendment.

If we are now being told we are still far away from passage, why make such a huge compromise which not only won't get us close to passage but will also form the basis of any new lobbying efforts? Once a deal is struck to accept these language changes, it will be difficult to retract from this language even if the amendment does not move forward until next year or the year after.¹⁶

This is not our last chance in Congress; there will be similar political dynamics, and more favorable grassroots support, in the future. Yes, we have a President, an Attorney General, and many congress members who are supportive of an amendment now. But the victims movement keeps growing stronger with the passage of time, and we are having considerable success convincing more and more political leaders to support strong victims' rights. Time works *for us* in the long run.¹⁷

¹⁶ It has been suggested that some of our allies in the Senate who favor the new language will resent us for not accepting this compromise. We believe that they are reasonable and experienced lawmakers who understand the strength of our commitment to our cause, and will not hold it against us. While they may be reluctant to champion our cause because they cannot support it as fully as we would want them to, they are not likely to become our adversaries over this issue. They have been supporters of crime victim issues for many years, and we can expect to continue to work together on other such issues in the future.

¹⁷ It has been argued that if we do not move forward with an amendment in this session, we will receive negative press that will make it more difficult for us to return next year or in the next few years. This is not necessarily so. As an example, the balanced budget amendment, which generally received more media attention than the victims' rights amendment, was raised and defeated a number of times, and was generally stronger each time it was raised, despite headlines decrying a loss of steam or even defeat.

We have seen the victims movement steadily grow in strength since its beginning over two decades ago.¹⁸ We have also seen the once strident opposition to victims' rights begin to decrease in the criminal justice system, as members of that system develop experience with victims' rights and come to see that, rather than hindering them in their work, victims' rights can actually improve the system's ability to investigate, prosecute, and sentence offenders. Why rush to pass an amendment we have such strong reservations about, when waiting may allow us the opportunity to get an amendment we really want? Why negotiate from a position of relative weakness today when we could negotiate from a stronger position tomorrow?

It is also important to remember that to secure passage and ratification of an amendment, we must have strong support both in Congress *and* in the states. The process of educating victim advocates about the amendment has been slow, but it is now beginning to take hold. When the amendment was first introduced in 1996, only a small group of advocates had heard of the amendment or knew why it was important. In 1997, more advocates learned about the amendment. Today the National Victim Center is still receiving calls from crime victim advocates who, for the first time, realize the importance of the amendment and want to get involved. The victims movement is therefore not only growing in strength, but also still growing in its understanding of the need for the federal amendment. With more time to build grassroots support, and to organize and lobby lawmakers, we may be in a position to secure an amendment that does not compromise victims' rights. Our inability to do so up till now sends a clear message that we are not ready.

At the National Victim Center, we have spent the past decade monitoring the progress of the victims' rights movement. In particular, we have worked with states amending their own constitutions. We know that the process to secure a strong amendment can take years. We have also seen states compromise too early, and regret it in the years to follow. Advocates in Virginia have come to believe that they acted too hastily in agreeing to a weak amendment. Advocates in Texas are having to live with what in retrospect proved to be an unnecessary concession — eliminating the right to be heard at sentencing from their constitutional amendment.

It is true that NVCAN has supported state amendments even when they were weaker than we would want. However, we had three good reasons for providing such support. The first is that

¹⁸ We have also heard arguments that with time, we will become victims of our own success: that states will pass strong statutes and constitutional amendments which will then be used to show a federal constitutional amendment is not needed. If strong statutes will indeed make the case that a federal amendment is not needed, then so be it. We should all be satisfied with any outcome that means victims have meaningful and enforceable rights. However, that outcome is unlikely. Rather, in states with strong victims' rights, many victims will continue to be denied their rights, just as they are now. If states make victims' rights stronger and more enforceable, we anticipate the development of case law pitting victims' statutory rights against the constitutional rights of the accused, and those court decisions would definitively prove that a federal amendment is needed to give the courts the ability to balance the rights of the victims with the rights of defendants.

we knew there was some possibility that states themselves could go back and strengthen them later (as California is currently considering). We also thought the form of the state amendment should be finally determined by advocates in that state, rather than NVCAN. But most importantly, no matter how weak any amendment was, we knew we always had the chance to adopt a strong amendment to the United States Constitution that would protect victims' rights where state amendments fell short.

Unlike the state experience, if we get it wrong the first time, there is no going back. Victims would for the foreseeable future be limited to a constitutional amendment that is weaker than we might otherwise have obtained. It will be a mistake that generations of victims may regret as a missed opportunity to secure meaningful and enforceable rights for all victims of crime.

V. CONCLUSION.

Finally, we take exception to the characterization of the National Victim Center's position in support of SJR 6 as support for an "ideal" or "perfect" amendment. We are already far from the "ideal amendment" with SJR 6. For the National Victim Center this is not a choice between the *ideal* amendment and a *less than ideal* amendment; it is the choice between a *less than ideal* amendment and a *bad* amendment — one that disenfranchises a majority of victims and denies the rest the ability to enforce the specific rights it grants by its terms.

Conversely, those advocates who support the new language argue that the choice is between the *less than ideal* and *nothing*. To espouse that view, you must assume not only that it is "this or nothing" but also that it is "now or never." As we have argued above, we believe that our movement will continue to grow in strength, and as it does, we will be in a better position to secure meaningful and enforceable rights for all victims of crime.

Thus, for all of the reasons stated above, the National Victim Center believes it is not in the best interests of crime victims to support the new language changes to the federal crime victims' rights constitutional amendment.



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<http://www.nvc.org>

April 3, 1998

Mr. Bruce N. Reed
Assistant to the President for Domestic Policy
Executive Office of the President
West Wing, 2nd Floor
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Reed:

I wanted to let you know that the National Victim Center has sent the enclosed letter and materials to President Clinton explaining our concerns with respect to recent developments on the proposed crime victims' rights constitutional amendment. The revised amendment referred to in these materials was introduced in the Senate as SJR 44, on April 1, 1998.

The National Victim Center does not support the revised crime victims' rights constitutional amendment, for the reasons articulated in the enclosed materials. We do, however, remain committed to securing meaningful and enforceable constitutional rights to all victims of crime.

Should you personally have any questions regarding these developments, or would like to discuss the issues further, please do not hesitate to contact me at 703-276-2880. If I am unavailable, please feel free to talk to my Director of Public Policy, David Beatty, who can be reached at the same number.

Thank you for your attention to this matter.

Sincerely,

Susan Herman
Executive Director

enclosures

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FYI
B.R



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March 27, 1998

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The Honorable William Jefferson Clinton
President of the United States
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Clinton:

On behalf of the staff and Board of the National Victim Center, I would like to thank you for the support, attention and time you and your staff have spent working with us in our collective effort to secure passage of a federal crime victims' rights amendment to the U.S. Constitution. You may be aware that the National Victim Center, as a member of the National Victims Constitutional Amendment Network (NVCAN), has been a leading advocate for the victims' rights amendment (Senate Joint Resolution 6).

As you know, since the amendment's introduction, the efforts to pass this measure have primarily involved a lengthy process of negotiation and compromise between all interested parties. Until recently, the National Victim Center believed that while many of the concessions made during this process weakened the amendment somewhat, none seriously undermined the establishment and protection of the basic rights we sought for crime victims.

However, as you may already be aware, over the past several months, the National Victim Center has been wrestling with the question of whether to accept certain additional proposed changes to the amendment.

The two proposed language changes are:

1. To limit the amendment to violent crime victims; and
2. To add language in Section 2 of the amendment, stating that violation of rights gives no grounds to overturn a sentence or negotiated plea.

After careful consideration, the staff and Board of Directors of the National Victim Center, along with several other members of NVCAN, have concluded that we cannot support the proposed changes. While a majority of NVCAN Board members, and thus NVCAN as an organization, has decided to go forward with this proposal, we wanted to let you know that the National Victim Center will not be supporting those efforts. We do not believe these language changes are in the best interests of crime victims. We want to assure you, however, that the National Victim Center remains committed to passing a federal constitutional amendment that guarantees protection for the rights of all crime victims.

Executive Director

Susan Herman

<http://www.nvc.org>

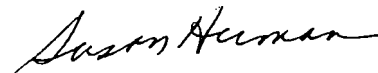
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National Victim Center
March 27, 1998

The National Victim Center did not come to this decision lightly. It was with extreme reluctance that the National Victim Center chose to select a course that diverges from that chosen by colleagues and fellow amendment advocates with whom we have worked closely for more than a decade and whom we greatly respect and admire. However, given the profound and permanent consequences involved in the passage of an amendment to the U.S. Constitution, we cannot in good conscience support an amendment that we believe is not in the best interests of crime victims.

We believe that a new version of the crime victims' rights constitutional amendment, incorporating the proposed language changes which we do not support, will be introduced into Congress imminently, perhaps as early as the week of March 30th. You will likely be asked for your opinion regarding this new legislation. We have enclosed several discussion papers and legal analyses that were distributed to NVCAN Board members which may inform your thinking at this point. If you or your staff would like to discuss these papers or these issues further, please feel free to contact me or David Beatty, the Center's Director of Public Policy at (703) 276-2880.

Again, we appreciate the thoughtful participation of you and your staff throughout this entire process. We look forward to working with you on this and other victim-related matters in the near future.

Sincerely,



Susan Herman
Executive Director

enclosures

The National Victim Center Does Not Support the Proposed Changes to the Crime Victims' Rights Constitutional Amendment

I. Introduction

Advocates for the proposed federal crime victims' rights constitutional amendment were recently asked to agree to new language in order to gain the co-sponsorship of Senator Joseph Biden, a key democratic member of the Senate Judiciary Committee.

The two language changes are:

1. To limit the amendment to violent crime victims; and
2. To add language in Section 2 of the amendment, stating that violation of rights gives no grounds to overturn a sentence or negotiated plea.

After much deliberation, the Board of Directors and staff of the National Victim Center have determined that they cannot support the new version. A brief summary of our reasons is set forth below.

II. The Scope of the Amendment Should Not Be Limited to Victims of Violent Crime.

A. There is no principled reason to deny any victim of crime constitutional rights to participate in the criminal justice system. The National Victim Center is unwilling to say that victims of non-violent offenses are less entitled to justice and less entitled to basic participatory rights than are victims of violent crime. We believe that victims' rights are fundamental rights, and they are not somehow less fundamental for victims of property offenses, who comprise the overwhelming majority of crime victims. The proposed change establishes classes of crime victims and a caste system of constitutionally franchised and constitutionally disenfranchised victims. It is not only legally unsound, it is unfair.

When the National Victims Constitutional Amendment Network (NVCAN) decided last year to agree to change the scope of the amendment from all victims of crime to the language currently contained in SJR 6 ("...crimes of violence and other crimes as defined by Congress"), it represented a *major* concession in the minds of several Board members. Not only were we concerned about preserving the possibility of adding victims of non-violent offenses at a later point, but there was also considerable fear that crimes we call "borderline cases" (i.e., statutory rape, burglary, child exploitation, child molestation, drunk driving, neglect of children or vulnerable adults, exploitation of vulnerable adults, emotional abuse in the context of domestic abuse, etc.) might not be considered "violent," and thus, victims of those crimes would not be protected by the amendment. And while we hoped that utilizing vehicles such as the legislative history of the amendment would secure coverage for the "borderline cases," we took comfort in the fact that if we were wrong, the "...other crimes as defined..." language could be used to insure

their inclusion. The new proposal would remove the phrase “and other crimes as defined by Congress,” thus eliminating the safety net for borderline cases and any window to later include victims of non-violent offenses.

B. There is no practical reason to deny any victim of crime constitutional rights to participate in the criminal justice system. Those in Congress who want to limit constitutional protections to violent crime victims argue that to do otherwise would place intolerable burdens on the system. They fear that the added burden of non-violent victims (particularly mass victimizations, with potentially hundreds of victims), would prove too costly and would overload the system. We know this is not so.

In the case of mass victimizations, the exceptions language in section 3 of the amendment¹ would allow legislatures to provide practical limitations on certain rights. Under that provision, implementing legislation might provide, for example, that the right to be heard would be limited to representative oral statements of a few victims and written statements by any other victims interested in making those statements — in effect the same way legislatures address mass victim cases currently. In addition, the right to notice remains the right to “reasonable” notice: notice that is reasonable under the circumstances of a mass victim case would likely include large meetings, televised notice, etc., means that are not overly burdensome.

Thus, there is no sound policy reason for limiting the amendment to victims of violent offenses, and the National Victim Center has decided it could not in good conscience accept this limitation.

III. The Proposed Language Prohibits Remedies Necessary to Adequately Protect Victims' Rights.

A. If courts cannot overturn a sentence or negotiated plea where a victim's rights at those proceedings were violated, that victim is left with no effective remedy. A victim who was not notified of the sentencing or plea agreement hearing, was not given an opportunity to speak or was not awarded restitution would never have adequate recourse for a denial of those rights unless s/he has the right to demand rehearings. The compromise provision would render this remedy an impossibility for some of the most important of the victims' rights.

While it might be possible to get a *post facto* order against an offending official ostensibly to prevent the *next* victim from being denied their basic rights, that does nothing to remedy the denial of rights of the prior victim(s). Are we willing to accept an amendment which, *by design*, sacrifices the constitutional rights of some for the benefit of others? By contrast, offenders who are denied important procedural and due process rights are not precluded from seeking a new

¹ “Congress and the States shall have the power to ... enact exceptions when required for compelling reasons of public safety or for judicial efficiency in mass victim cases.” SJR 6, Section 3.

hearing. If we are committed to protecting the procedural rights of victims, why should they not have similar remedies available to them when those rights are denied.

B. Congress and state legislatures would not be able to create a *statutory* right of enforcement, such as a right to appeal violations of rights, under the language being proposed. The language limiting enforcement, which states in part that “Nothing in this article provides grounds to,” encompasses the list of rights in section 1. The *rights* will never provide grounds to overturn a sentence or negotiated plea. Proponents of accepting the new language argue that this language merely means that the amendment *standing alone* does not provide that remedy. Our legal analysis has led us to conclude that this language would prohibit *any such remedy*.

IV. Accepting the New Language Actually Harms our Chances to See an Amendment Passed by Congress and Ratified by the States.

Not only does the National Victim Center believe that these changes are bad for crime victims, we believe that these changes harm our chances to pass an amendment. The amendment is already too complicated in the minds of many victim advocates and even members of Congress. It will be harder to sell the public an amendment for “*some* victims” than an amendment for “*all* victims,” and harder to sell advocates an amendment that we *hope* will be enforceable than one that is *automatically* enforceable.

V. There is no Necessity to Compromise.

A. Even with the new language changes, there is not a strong chance the amendment would be passed in Congress this year. In recent months, as NVCAN debated the acceptability of the changes currently before us, many members stated that they could support those changes if and only if it ensured passage of the amendment. It now appears that we are further away from congressional passage than we believed last fall. Even those working most closely with this issue in Congress have indicated we have a long way to go to secure passage of this amendment, and that there are more compromises ahead. If we are now being told we are still far away from passage, why make a compromise that we don’t like, especially when that new compromise would likely form the new starting point for any efforts toward an amendment in the next year or so?

B. This is not our last chance in Congress; there will be similar political dynamics, and more favorable grassroots support, in the future. Yes, we have people in very high places that are supportive of an amendment now. But the victims movement keeps growing stronger with the passage of time, and we are successfully convincing more and more political leaders to support strong victims’ rights. Time works *for us* in the long run.

We have seen the victims movement grow in strength. We have also seen the once strident¹ opposition to victims' rights begin to decrease in the criminal justice system, as members of that system develop experience with victims' rights and come to see that, rather than hindering them in their work, victims' rights can actually improve the system's ability to investigate, prosecute, and punish offenders. Why rush to pass an amendment we are less than enthusiastic about, when waiting may allow us the opportunity to get the amendment we really want? Why negotiate from a position of relative weakness today when we could negotiate from a stronger position tomorrow?

The National Victim Center intends to continue to work to secure a federal crime victims' rights constitutional amendment. We will continue to educate criminal justice officials, public officials, the victims movement, and the general public about the importance of a victims' rights amendment. But we will not be working to pass the latest version of the amendment which unacceptably limits the scope and enforcement of victims' rights.

At the National Victim Center, we have spent the past decade monitoring the progress of the victims' rights movement. In particular, we have worked with states amending their own constitutions. We know that the process to secure a strong amendment can take years. We also know from experience at the state level that advocates can compromise on amendments too early, and regret it in the years to follow. If we accept the latest language changes, it will be a mistake that generations of victims may regret as a missed opportunity to secure meaningful and enforceable rights for all victims of crime.

This document consists of excerpts from longer position statements that more fully discuss the points for and against accepting the latest proposed changes. For copies of those longer statements, please contact the National Victim Center's Public Policy Department, at (703) 276-2880, or e-mail Liz Wohlken (Liz@mail.nvc.org) or Susan Howley (Susan@mail.nvc.org).

WHY THE NATIONAL VICTIM CENTER DOES NOT SUPPORT PROPOSED LANGUAGE CHANGES TO THE VICTIMS' RIGHTS CONSTITUTIONAL AMENDMENT LIMITING SCOPE AND ENFORCEABILITY¹

I. INTRODUCTION.

The National Victim Center remains committed to a constitutional amendment for all crime victims that is meaningful and enforceable. Our support for the rights listed in section 1 of the proposed federal crime victims' rights constitutional amendment (SJR 6) remains strong. We believe, however, that the latest proposed language changes compromise our basic principles and do not serve the best interests of crime victims.

Those changes would:

1. Limit the amendment to violent crime victims; and
2. State that a violation of rights gives no grounds to overturn a sentence or negotiated plea.

Many significant officials, including the President and the Attorney General, have not yet addressed these language changes, and we have no indication whether or not they would support them. However, after much deliberation, the National Victim Center has determined that it cannot support these changes to the victims' rights amendment for the reasons set forth below.

II. THE SCOPE OF THE AMENDMENT SHOULD NOT BE LIMITED TO VICTIMS OF VIOLENT CRIME.

It is unacceptable to exclude victims of non-violent offenses from the protection of the Constitution. There is neither a principled reason nor a practical reason to exclude such victims from the purview of the amendment. We do not believe that victims of non-violent offenses would enjoy the effect of such rights as a matter of practice, now or in the future.

¹ This document is a reworking of two internal National Victims Constitutional Amendment Network (NVCAN) memoranda written by the National Victim Center on February 27 and March 9, 1998.

Founded in 1986, NVCAN is a coalition of crime victim advocates and organizations dedicated to the support of constitutional rights for crime victims at the state and federal levels. The National Victim Center has been a member of NVCAN since its inception.

We can find no principled reason for denying to any victim of crime constitutional rights to participate in the criminal justice system. It has always been our assumption that the victims' movement advocates for all crime victims and that all crime victims are our constituents. We have not defined the status of "victimhood" by the nature of the crime committed against an individual, nor the relative harm an individual suffered as a result of a crime. Most victim professionals do not make their advocacy and assistance contingent on such distinctions. Most state victims' rights constitutional amendments are not restricted to certain classes of crime victims.² Our movement has always been one of inclusiveness, reaching out to underserved populations. The particular circumstances of a crime (his life savings were wiped out at gunpoint, hers via computer) do not make one victim more entitled than another to rights to participate in a governmental process that significantly affects their interests. The National Victim Center believes that victims' rights are fundamental rights, and they are not somehow less fundamental for victims of non-violent offenses.

How will we explain to 27 million victims of non-violent offenses³ the political necessities that required us to compromise away their constitutional rights? How do we explain it to the elderly victim who was bilked out of her life savings?

As was noted many years ago, "[I]n the view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens..."⁴

The proposed language limiting the scope of the amendment establishes classes of crime victims and a caste system of constitutionally franchised and constitutionally disenfranchised victims. While the distinction here between groups of crime victims does not involve a traditional constitutionally protected class, it is no less inappropriate. The new limitation is not only legally unsound, it is unfair.

When those of us who advocate for crime victims at the national level put ourselves in the position of making decisions on behalf of a very large group of people — in this case, crime victims — the decision making process must be deliberate and fair, and must take into account

² The overwhelming majority of state crime victims' rights constitutional amendments apply to crime victims "as defined by law," and thus do not foreclose by their terms the extension of rights to all victims of crime. The only states that *do* restrict constitutional rights to certain groups of crime victims are Maryland, New Mexico, and Washington.

³ According to the latest government figures, there are almost 37 million crime victims in America each year; 27 million are victims of non-violent offenses. Cheryl Ringel. (1997) *Criminal Victimization 1996: Change 1995-96 with Trends 1993-96*. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics. Page 3.

⁴ Plessy v. Ferguson, 163 U.S. 537, 559 (1896).

the legitimate interests of everyone we represent. We believe that deliberately excluding the vast majority of crime victims is unfair and ignores the legitimate interests of such victims, particularly when it is not clear that the political circumstances require us to do so.⁵ To ignore the wishes of a majority of our constituency would seem contrary to our inherent role as leaders and simply undemocratic.

Arguably, one of the most fundamental goals shared by all victim advocates, service providers and counselors is the empowerment of victims; to provide victims, to the maximum extent possible, the means to recover the power of self-determination and control that is so often ripped from their lives in the aftermath of a crime. The victims' need to satisfy their own sense of justice is often essential in their quest to recover. This desire also serves as the basis for most victims' rights statutes and amendments enacted to date. But an amendment that empowers some victims to a greater degree than others runs contrary to the fundamental principle of empowering *all* victims to the maximum extent possible.

In fact, agreeing to limit for all time the extension of constitutional rights to victims of violent offenses restricts the future evolution of our movement. While it is true that the focus of the movement in recent years has been the violent crime victim, this is itself an expansion from the movement's genesis twenty years ago, when the focus was on women victimized by crime, and from thirty years ago, when there was no focus on victims whatsoever. Many of us envision a growing movement and an inclusive movement, expanding rather than narrowing the classes of persons to whom these rights are provided.

When NVCAN decided over a year ago to accept the alternative language currently contained in SJR 6 ("victims of crimes of violence and other crimes as defined by Congress"), it represented a *major* concession in the minds of several Board members. Not only were we concerned about preserving the possibility of adding victims of non-violent offenses at a later point, but there was also considerable fear that crimes we call "borderline cases" (i.e., statutory rape, burglary, child exploitation, child molestation, drunk driving, neglect of children or vulnerable adults, exploitation of vulnerable adults, emotional abuse in the context of domestic abuse, etc.) might not be considered "violent" and thus those victims would not be protected by the amendment. And while we hoped that utilizing vehicles such as the legislative history of the amendment

⁵ It has been stated that the proposed limitation of the scope of the amendment to victims of crimes of violence is sufficient because it would encompass 95% of the cases in which victims' rights have been litigated. The implication is that only the violent crime cases are important, because they are the only ones in which victims' rights have been litigated. This conclusion is groundless. At best there are only a few dozen cases that have actually been litigated and virtually all of those have occurred in the last decade. We know from our years of experience and research that the number of litigated victims' rights cases is minuscule when compared to the total number of cases where victims of both violent and non-violent offenses have been denied their basic rights. The issue is not the relative percentages of violent and non-violent victims who *have* litigated, but rather those who one believes *should* have the right to assert constitutional rights through litigation.

would secure coverage for the “borderline cases,” we took comfort in the fact that if we were wrong, the “...other crimes as defined...” language could be used to ensure their inclusion. *With this language removed, there would be no such safety net.*

Some proponents of the language changes argue that “violent crime” has broad definitional context and has been judicially interpreted to include many crimes that, at first blush, might not be thought of as “violent.” Thus, the argument continues, we are giving up the rights of comparatively few victims. For instance, it is argued that the “broad” definition of crime of violence contained in the United States Code is instructive.⁶ That may be. However, we find other statutory definitions of crime of violence even more instructive. For instance, Arizona defines violent crimes as any “criminal act that results in death or physical injury or any criminal use of a deadly weapon or dangerous instrument.”⁷ This definition, which is mercifully short and easy to comprehend, unfortunately includes very few crime victims. What is more problematic, however, is a crime of violence definition like the one used in Maryland. In Maryland, crime of violence includes abduction, arson in the first degree, kidnaping, manslaughter (except involuntary manslaughter), mayhem and maiming (but not always), murder, rape, robbery, carjacking, certain sexual offenses (but not all), use of a handgun in the commission of a felony, an attempt to commit any of the previously listed crimes, and certain, but not all, assaults.⁸ Virtually no “property crime” is included and some obvious crimes of violence are also not included. The Maryland statute is so inclusive of some crimes and exclusive of others, that an unlisted crime is almost certainly not a crime of violence.

⁶ 18 U.S.C. 16. Several cases have been cited in support of the argument that the definition of crime of violence under the United States Code encompasses many borderline crimes. We do not find those cases very strong. The *Reyes-Castro* case cited was an attempted sexual abuse case presented in the context, not of crime victims’ rights, but rather a deportation hearing of the offender who was an alien — and the court found that the act itself, sexual assault of a child, obviously carried with it the *risk* of violence — hardly a novel theory (*United States v. Reyes-Castro*, 13 F.3d 377 (10th cir. 1993)); *Aragon* involved the definition of a crime of violence in the context of The Travel Act (18 U.S.C. Sec. 1952) and the question of whether the jury should decide, for Travel Act prosecution purposes, whether the crime is one of violence (*United States v. Aragon*, 983 F.2d 1306 (4th Cir. 1993)); and *Flores* is a Federal Sentencing Guidelines case and concerns the question of whether six prior convictions for burglary meets the definitions of a “career offender” — with the court forced to look to a 1925 Texas statute definition of a crime of violence; in short, none of these cases are remotely connected to the issue of whether a crime *victim* has suffered a crime of violence for the purposes of the *victim’s* constitutional rights. (*United States v. Flores*, 875 F.2d 1110 (5th Cir. 1989).

⁷ Arizona Code § 13-604.04 (1997).

⁸ Maryland Annotated Code Art. 27, § 643B (1997).

The point of all this, however, is not to dispute the legal analysis of the proponents of the language changes but rather to suggest that what constitutes a crime of violence can and almost certainly will be subject to judicial interpretation, with some of the decisions giving victims of nonviolent crime constitutional protections and some decisions denying such victims constitutional protections.

It has been stated that in accepting the limitation to victims of crimes of violence we would be “....doing the best we could for the overwhelming majority of crime victims....” When the overwhelming majority of crime victims are *non-violent crime victims*, we believe they would say that accepting a compromise version of an amendment that excludes them is far less than the best we could do. We believe the “best we could do” for them is to choose not to accept the new language.

There is no practical reason to exclude non-violent crime victims from the protections of the constitutional amendment. Those in Congress who want to limit constitutional protections to violent crime victims argue that to do otherwise would place intolerable burdens on the system. They fear that the added burden of non-violent victims (particularly mass victimizations with potentially hundreds of thousands of victims), would prove too costly and would overload the system. We know from experience that this is simply not the case.

First, the most “burdensome” aspect of the amendment would be the requirement to keep crime victims informed. More and more jurisdictions are beginning to use automated notification systems, for which the largest expense is the startup cost. The cost of adding other crime victims to such programs once they are in place is very modest. Congress is already considering providing funding for more such automated systems.

In the case of mass victimizations, the exceptions language in section 3 would allow legislatures to provide limitations on rights.⁹ In fact, one of the primary reasons for including the exceptions language has been the mass victim cases. Under that provision, we anticipate that implementing legislation will provide, for example, that the right to be heard would be limited to representative oral statements of a few victims and written statements by any other victims interested in making those statements — in effect the same way legislatures address mass victim cases currently.

In addition, the right to notice remains the right to “reasonable” notice: notice that is reasonable under the circumstances of a mass victim case would likely include large meetings, televised notice, etc. — means that are not overly burdensome. Finally, as a further safeguard for those concerned about the burdens of instantly encompassing all crimes, current language already

⁹ That language provides that “The Congress and the States shall have the power to ... enact exceptions when required for compelling reasons of public safety or for judicial efficiency in mass victim cases.” SJR 6, Section 3.

provides that victims of violent crimes are covered immediately and victims of other crimes are to be added over time.

Thus, there is no sound policy reason for limiting the amendment to victims of violent offenses.

Victims of non-violent offenses will not be given the same rights as victims of violent crimes as a matter of practice. It has been stated that after constitutional rights are guaranteed for victims of violent crime, those responsible for implementation will choose to extend those rights to victims of other crimes as a matter of policy or by statutory mandate. Thus, it is argued, even though non-violent crime victims will not enjoy the benefits of such provisions as a matter of constitutional right they will be afforded such advantages as a practical matter.¹⁰ We disagree.

Proponents of the new language assert that we can rely on statutes to rectify the deficiencies in the constitutional amendment and protect the interests of victims of non-violent offenses. Again, we disagree. The primary reason crime victim advocates have pursued a constitutional amendment for victims' rights, rather than settling for statutory equivalents, is that a constitutional amendment is qualitatively and quantitatively different than statutes. To support the proposed limitation of rights for non-violent crime victims is the equivalent of suggesting that we can address victims' rights by statutes alone. In contrast to the proposed limitation, the current language of SJR 6 would allow Congress to extend *constitutional* rights to victims of non-violent offenses, rights that are qualitatively different from statutory rights.

It has also been argued that court challenges to denials of victims' rights will be brought by victims of violent crime, and that the precedents set by those cases will "probably be readily extended to victims of property crimes." There is nothing to indicate this result is likely. In many of these anticipated cases, courts will be ruling on the constitutional rights of crime victims, and will probably balance victims' constitutional rights against the constitutional rights of the accused. Those decisions will not likely encompass victims of crime who are not within the purview of the constitutional amendment.

While we may disagree on the practical effect of this amendment on victims of non-violent offenses, there can be no doubt that those victims would never have true constitutional rights. Since their rights and interests would not enjoy the same constitutional protection as those granted to violent crime victims, their "rights" under an amended Constitution would be little

¹⁰ It was also suggested that the implementation of a violent crime victims' rights amendment would create a "mindset" favorable to non-violent victims, as, for example, judges "become used to ordering full restitution." To expect judges to voluntarily extend to non-violent crime victims restitution rights they have often ignored and even actively resisted belies experience. It would be the equivalent of expecting the courts to extend jury trials to offenders of petty thefts simply because offenders of more serious crime have that right as a matter of constitutional law. As we know, this has not occurred.

better than they are now: i.e., rights that are defined and exist at the whim of the state legislatures or Congress and local criminal justice officials.

It has also been argued that in the fullness of time, all crimes, including those currently considered non-violent crimes, will be considered violent crimes. While the meaning of words does evolve over time, particularly through judicial interpretation, there are limits to the likely evolutionary process. To assume that words will take on their opposite meaning seems overly optimistic.¹¹ If non-violent and violent crime were to be interpreted as the same, the word "violent" would have no meaning as used in the constitutional amendment. Whatever meaning may be attributed to it by popular culture or even policy leaders, judges will assume that, when written, the word violent had some meaning and at the very least was not used as a synonym for its opposite "non-violent." And of course there would be considerable legislative history and contextual evidence to support that contention.

III. THE REMEDIES AVAILABLE UNDER THE PROPOSED LANGUAGE CHANGES DO NOT ADEQUATELY PROTECT VICTIMS' RIGHTS.

"It is a vain thing to imagine a right without a remedy..." *Ashby v. White*, 2 Ld. Raym. 938, 953 (1703).

The proposed language would insert, "Nothing in this amendment shall provide grounds to ... overturn a sentence or negotiated plea." This language leaves a victim with no effective remedy for many important rights. In addition, Congress and state legislatures would not be able to create a statutory right of enforcement, such as a right to appeal violations of rights, under the language being proposed.

If courts cannot overturn a sentence or negotiated plea where a victim's rights at those proceedings were violated, that victim is left with no effective remedy. A victim who was not notified of the sentencing hearing, was not given an opportunity to speak and was not awarded restitution would never have adequate recourse for a denial of those rights unless s/he has the right to demand rehearings. The new language would render this remedy an impossibility for these important victims' rights. Unless victims have a constitutional right to a rehearing to balance the offender's due process rights to have the outcomes of such proceedings stand, victims who are initially denied their rights at sentencing or at the acceptance of a plea will be forever precluded from exercising those rights.

¹¹ There are countless examples of courts refusing to compromise on the fair and appropriate meaning of a word. As one example, courts have found that "shall" does not mean "may" or "should." See *Carter v. Commissioner*, 784 F.2d 1006, 1009 (9th Cir. 1986); *CSX Corporation v. United States*, 926 F. Supp. 223, 226 (E.D.Va. 1996); *Occidental Petroleum Corp. v. Commissioner*, 82 T.C. 819, 819 (1984).

In principle, victims could be granted other dispensations or compensation for having been denied their rights (i.e., legislation creating ombudsman offices that can investigate complaints against criminal justice system officials, etc.) but that would not alter the fact that those victims were denied their basic rights at the point and the time when it mattered most. What is the value of a constitutional right that denies its intended beneficiary the one remedy that would guarantee that the right is fully enforced?

It has been argued that victims could still file injunctive actions against officials who have a record of denying victims' rights, but injunctions rely upon documenting patterns of abuse, are time consuming and are often expensive and procedurally difficult class actions. Moreover, while it might be possible to get a *post facto* order against an offending official ostensibly to prevent the *next* victim from being denied their basic rights, that does nothing to remedy the denial of rights of the prior victim(s). Are we willing to accept an amendment which, *by design*, sacrifices the constitutional rights of some for the benefit of others?

We believe using writs of mandamus as a preventive measure when a violation of rights is anticipated is not an adequate substitute for a post-violation remedy, since such actions depend on receiving advance warning that a judge will violate the victim's rights. While this was fairly easy to anticipate in the Oklahoma City bombing case, with expert legal counsel for the victims and aggressive victim advocacy coupled with a drawn-out time frame for the court proceedings, what opportunity will the average victim have to bring these advance petitions for writs of mandamus? Furthermore, seeking such writs beforehand is tantamount to an aggressive preemptory strike. We have already seen instances where crime victims were reluctant to fight strenuously for their rights because they were unwilling to risk antagonizing the court or the prosecutor by challenging denials of their rights. Why should victims have the burden of protecting their rights before the fact of violation? Will they be obliged to take such actions in every case?

Proponents of the new language argue that enforcement is not vital because the remainder of the amendment will provide sufficient education of officials to prevent violations. We know from experience that training is insufficient to prevent many violations. For victims' rights to be meaningful, training must be coupled with enforcement. Furthermore, only a portion of the violations of victims' rights are due to ignorance. What about the far more common case when a victim is denied a right purely due to an oversight? Victims fall through the administrative cracks for a wide variety of fairly innocent reasons: their address was lost, a clerk forgot to inform them of a schedule change, the person in charge of notice was out sick, etc., etc. What about the official who intentionally disregards the victims' rights? The "rehearing remedy" serves as a safety net to ensure victims are eventually granted their rights, no matter what the reason those rights were initially denied. Nothing will give those charged with implementing such rights more incentive to comply than ensuring that they will have to revisit the issue again if they fail in their duty to provide those rights. Offenders who are denied important procedural and due process rights are not precluded from seeking a new hearing. If we are committed to protecting the

procedural rights of victims, why should they not have similar remedies available to them when those rights are denied?

It has been noted that the proposed new restrictions on enforcement do not impact the enforcement of many of the rights in the amendment, such as the right to speedy trial. However, the proposed limitation of enforcement affects those rights which are at the core of victims' interests: the right to participate in that proceeding where decisions are made regarding the disposition of the case.¹²

It has also been argued that judges could hold an additional hearing without affecting the sentence or plea, just to give victims a chance to speak. We do not believe this remedy would satisfy many victims. Victims want to be heard when it counts, not just heard. Victims deserve meaningful participation in the criminal justice system, not simply a cathartic experience.

Congress and state legislatures would not be able to create a statutory right of enforcement, such as a right to appeal violations of rights, under the language being proposed. From our reading, the language in section 2 limiting enforcement, which states in part that "Nothing in this article provides grounds to," encompasses the list of rights in section 1. The *rights* will never provide grounds to overturn a sentence or negotiated plea. Proponents of accepting the language changes argue that this language merely means that the amendment *standing alone* does not provide that remedy. We believe this language prohibits *any such remedy*.

We believe this enforcement limitation leaves no possibility that violations of these core rights can result in overturning a sentence or negotiated plea. Congressional proponents of the change apparently do not want to allow the possibility of Congress passing a similar remedy by statute, since NVCAN's request to include language providing that this restriction stands "except as provided by appropriate legislation" has already been rejected. Because a draft of the amendment with that "exceptions" language was previously circulated, the legislative history will reflect that language creating the possibility of legislative action was rejected. This can and will be used against us in any situation in which we attempt to correct the denial of these core rights. It is highly unlikely we will get strong legislative history in our favor on this point, because those who oppose such a remedy will include their statements in the record.¹³

¹² We disagree with those who argue that the limitation on enforcement (i.e., "Nothing in this article shall provide grounds for the victim to ... overturn a sentence or negotiated plea...") will not prevent a trial court from correcting its own errors. Since the term "overturn" is not defined in Black's Law Dictionary, we are not confident that it will be interpreted as limited to the actions of an appellate court, but fear it might also encompass a trial court's reversal of its own ruling. Even if the term "overturn" is eventually determined to exclude a trial court's action with regard to its own ruling, we are unwilling to leave the matter in the hands of the very court that originally denied the right.

¹³ It has been implied that friends of the amendment in Congress will dominate if not monopolize the creation of the amendment's legislative history and that any "contrary views will be likely few and far between." We have several responses. First, the legislative history of the amendment is already in the making. Previous versions are a

Even if our interpretation is wrong, and the language of the amendment would not preclude such statutory remedies as a right to appeal a sentence or plea agreement, those remedies will still be merely statutory. NVCAN has always argued that statutes are insufficient to protect victims' rights. Statutes lack permanence, and they lack strength. Congress and state legislatures can easily limit or change such statutory remedies in the future. When a victim's statutory right to a rehearing on a sentence comes up against a defendant's constitutional right to due process, when the legislative history clearly reflects that Congress rejected such rehearings as an automatic remedy, how can we have the confidence that courts will ever rule in favor of the crime victim?

Moreover, if we can't get Congress' approval, or the approval of even certain key Senators, for such a remedy in the amendment, why are our chances so much greater to get approval of the remedy in the form of a statute? While we would need only a simple majority for passage of a statute, rather than 2/3 needed for the amendment, strong opponents will continue to be strong opponents. If some in Congress believe they have to have this limitation because of the objection of the prosecutors, we must assume prosecutors will fight equally hard to prevent a statutory version of this remedy. Those opponents will point to the language of the amendment to prove that such a remedy is not desirable policy.

Reliance on statutory remedies will also lead to further inequities between the states. Since the amendment prohibits civil suits for damages, the most powerful remedy remaining is the right to a rehearing where one's rights were denied. Victims would clearly have stronger rights in states that provided a remedy of rehearing than in states where they were limited to filing complaints with ombudsmen. We would in effect still have the "patchwork quilt" of crime victims' rights that the amendment is supposed to resolve.

The existence of the limitations on enforcement of crime victims' constitutional rights will in itself mean that victims' rights are not of equal merit with other constitutional rights. It has been argued that other constitutional rights are honored in the absence of specific enforcement provisions. It must be noted that those other amendments (providing the right to freedom of speech, freedom of the press, etc.) do not contain *restrictions* on the enforceability of those rights. It would be a great victory to have an amendment that only included a list of rights, under which complete enforceability would be presumed.

key component of legislative history. Already those versions will show that this restriction on enforcement was specifically added, and that language allowing for the creation of statutory exceptions was specifically rejected. Secondly, it would be false to assume that senators and representatives who are hostile to the bill will not be doing everything in their power to use the legislative history to limit the purview of the amendment. We remember strong testimony by congress members in opposition to the amendment during congressional hearings — with C-Span and national network cameras rolling. We also know that legislators will be able to make floor statements and press releases lauding victims' rights, generally, while clearly outlining the limitations of this amendment.

We have long argued that supporters of a federal victims' rights constitutional amendment want meaningful and enforceable rights for victims of crime. Now some seem to be arguing that as long as the rights are listed, enforcement is not significant.¹⁴

IV. ACCEPTING THESE CHANGES ACTUALLY HARMS OUR CHANCES TO SEE AN AMENDMENT PASSED BY CONGRESS AND RATIFIED BY THE STATES.

Not only does the National Victim Center believe that these changes are bad for crime victims, we believe that these changes harm our chances to pass an amendment. The amendment is already too complicated in the minds of many victim advocates and members of Congress, and difficult to articulate to the public. To add the further encumbrance that the amendment only applies to "some" victims and that there is no automatic right of enforcement for the individual victim makes this amendment a very tough sell. We already have indications that the movement will not accept these limitations.¹⁵

Limiting the remedies as proposed would mean that victims in states that already have strong laws and a strong constitutional amendment would be no better off than they are currently. Limiting the scope of the amendment would likely mean that we could not count on the non-violent crime victim constituency to assist with the passage and ratification of the amendment. It will be harder to sell the public an amendment for "*some* victims" than an amendment for "*all* victims," and harder to sell an amendment that we hope will be enforceable than one that is automatically enforceable.

¹⁴ Proponents of accepting the language changes also argue that the ability to have a rehearing on the acceptance of a negotiated plea, or a rehearing on a sentence is already prohibited by the language of SJR 6, which states that violation of rights does not provide grounds to "challenge ... a conviction ... or to compel a new trial." This is not an indication that we should compromise further, but rather an indication that we should conduct more legal research before agreeing to any limitations on the victims' rights.

¹⁵ In an attempt to determine whether NVC's position opposing these changes accurately reflected the consensus of our constituency, we polled a small sample of active state coordinators about the proposed limitations. They were all opposed to the changes, some so strongly they felt they could no longer continue to advocate for the amendment if these changes were incorporated.

IV. **THERE IS NO NEED TO COMPROMISE.**

There is no need to accept the proposed language changes. Acceptance of this language will not ensure that the amendment passes Congress this year. In addition, we believe there will be similar political and more favorable grassroots support in the future.

Even with the language changes, passage of the amendment is not likely this year. In recent months, as NVCAN debated these new language changes, many members stated that they could support these changes only because they thought it would go a long way toward ensuring passage of the amendment. It now appears that we are further away from congressional passage than we believed last fall. Many of our strongest supporters on the Hill have indicated that many more compromises will be necessary to gain the support the amendment will need to pass in the current Congress. Even if we accept this and other compromises to come, some of our congressional supporters still predict that the amendment faces an uphill battle in both the House and the Senate. Some have even raised the possibility that some of our current co-sponsors might withdraw their support if we weaken the amendment.

If we are now being told we are still far away from passage, why make such a huge compromise which not only won't get us close to passage but will also form the basis of any new lobbying efforts? Once a deal is struck to accept these language changes, it will be difficult to retract from this language even if the amendment does not move forward until next year or the year after.¹⁶

This is not our last chance in Congress; there will be similar political dynamics, and more favorable grassroots support, in the future. Yes, we have a President, an Attorney General, and many congress members who are supportive of an amendment now. But the victims movement keeps growing stronger with the passage of time, and we are having considerable success convincing more and more political leaders to support strong victims' rights. Time works *for us* in the long run.¹⁷

¹⁶ It has been suggested that some of our allies in the Senate who favor the new language will resent us for not accepting this compromise. We believe that they are reasonable and experienced lawmakers who understand the strength of our commitment to our cause, and will not hold it against us. While they may be reluctant to champion our cause because they cannot support it as fully as we would want them to, they are not likely to become our adversaries over this issue. They have been supporters of crime victim issues for many years, and we can expect to continue to work together on other such issues in the future.

¹⁷ It has been argued that if we do not move forward with an amendment in this session, we will receive negative press that will make it more difficult for us to return next year or in the next few years. This is not necessarily so. As an example, the balanced budget amendment, which generally received more media attention than the victims' rights amendment, was raised and defeated a number of times, and was generally stronger each time it was raised, despite headlines decrying a loss of steam or even defeat.

We have seen the victims movement steadily grow in strength since its beginning over two decades ago.¹⁸ We have also seen the once strident opposition to victims' rights begin to decrease in the criminal justice system, as members of that system develop experience with victims' rights and come to see that, rather than hindering them in their work, victims' rights can actually improve the system's ability to investigate, prosecute, and sentence offenders. Why rush to pass an amendment we have such strong reservations about, when waiting may allow us the opportunity to get an amendment we really want? Why negotiate from a position of relative weakness today when we could negotiate from a stronger position tomorrow?

It is also important to remember that to secure passage and ratification of an amendment, we must have strong support both in Congress *and* in the states. The process of educating victim advocates about the amendment has been slow, but it is now beginning to take hold. When the amendment was first introduced in 1996, only a small group of advocates had heard of the amendment or knew why it was important. In 1997, more advocates learned about the amendment. Today the National Victim Center is still receiving calls from crime victim advocates who, for the first time, realize the importance of the amendment and want to get involved. The victims movement is therefore not only growing in strength, but also still growing in its understanding of the need for the federal amendment. With more time to build grassroots support, and to organize and lobby lawmakers, we may be in a position to secure an amendment that does not compromise victims' rights. Our inability to do so up till now sends a clear message that we are not ready.

At the National Victim Center, we have spent the past decade monitoring the progress of the victims' rights movement. In particular, we have worked with states amending their own constitutions. We know that the process to secure a strong amendment can take years. We have also seen states compromise too early, and regret it in the years to follow. Advocates in Virginia have come to believe that they acted too hastily in agreeing to a weak amendment. Advocates in Texas are having to live with what in retrospect proved to be an unnecessary concession — eliminating the right to be heard at sentencing from their constitutional amendment.

It is true that NVCAN has supported state amendments even when they were weaker than we would want. However, we had three good reasons for providing such support. The first is that

¹⁸ We have also heard arguments that with time, we will become victims of our own success: that states will pass strong statutes and constitutional amendments which will then be used to show a federal constitutional amendment is not needed. If strong statutes will indeed make the case that a federal amendment is not needed, then so be it. We should all be satisfied with any outcome that means victims have meaningful and enforceable rights. However, that outcome is unlikely. Rather, in states with strong victims' rights, many victims will continue to be denied their rights, just as they are now. If states make victims' rights stronger and more enforceable, we anticipate the development of case law pitting victims' statutory rights against the constitutional rights of the accused, and those court decisions would definitively prove that a federal amendment is needed to give the courts the ability to balance the rights of the victims with the rights of defendants.

we knew there was some possibility that states themselves could go back and strengthen them later (as California is currently considering). We also thought the form of the state amendment should be finally determined by advocates in that state, rather than NVCAN. But most importantly, no matter how weak any amendment was, we knew we always had the chance to adopt a strong amendment to the United States Constitution that would protect victims' rights where state amendments fell short.

Unlike the state experience, if we get it wrong the first time, there is no going back. Victims would for the foreseeable future be limited to a constitutional amendment that is weaker than we might otherwise have obtained. It will be a mistake that generations of victims may regret as a missed opportunity to secure meaningful and enforceable rights for all victims of crime.

V. CONCLUSION.

Finally, we take exception to the characterization of the National Victim Center's position in support of SJR 6 as support for an "ideal" or "perfect" amendment. We are already far from the "ideal amendment" with SJR 6. For the National Victim Center this is not a choice between the *ideal* amendment and a *less than ideal* amendment; it is the choice between a *less than ideal* amendment and a *bad* amendment — one that disenfranchises a majority of victims and denies the rest the ability to enforce the specific rights it grants by its terms.

Conversely, those advocates who support the new language argue that the choice is between the *less than ideal* and *nothing*. To espouse that view, you must assume not only that it is "this or nothing" but also that it is "now or never." As we have argued above, we believe that our movement will continue to grow in strength, and as it does, we will be in a better position to secure meaningful and enforceable rights for all victims of crime.

Thus, for all of the reasons stated above, the National Victim Center believes it is not in the best interests of crime victims to support the new language changes to the federal crime victims' rights constitutional amendment.