

Testimony of

The Honorable John Gillis

July 17, 2002

Good morning, Chairman Feingold, Senator Thurmond, and distinguished members of the subcommittee. Thank you for the opportunity to present the views of the administration on the proposed amendment to the Constitution of the United States to establish basic rights for victims of violent crime.

The administration strongly supports S.J. Res 35, the Victims' Rights Amendment. There is broad-based support for the Amendment across the country. Democratic and Republican leaders, liberal and conservative scholars, and Americans of every persuasion have rallied in support of this important cause. Crime victims encourage your support in our struggle for human dignity and fair treatment.

As a crime victim, a retired law enforcement officer, a former chair of the California Board of Prison Terms, and a citizen who works to uphold justice and advocates for crime victims' rights and services, I am honored by the confidence placed in me by President Bush and Attorney General Ashcroft to ensure that crime victims' rights and needs are addressed at the national and state levels as the Director of the Justice Department's Office for Victims of Crime. The Office for Victims of Crime (or OVC) is committed to enhancing the Nation's capacity to assist crime victims and to providing leadership in an ongoing effort to change attitudes, policies, and practices and with a determination to promote justice and healing for all victims of crime. OVC administers the Crime Victims Fund, which is the Justice Department's sole source of funding for services to crime victims. Through the Crime Victims Fund, OVC provides training and technical assistance for victim advocates and allied professionals, supports demonstration projects in communities, and disseminates information about victim issues.

I know firsthand the personal, financial, and emotional devastation that violent crime exacts on its victims. As a survivor of a homicide victim, I testify before you today with the unique advantage of understanding the plight that crime victims and their families face in the criminal justice system. I know the players and their responsibilities, and my experience has given me the ability to work within the system. More typically, however, when a person is victimized by crime, he or she is thrust into a whole new world in which the state's or the government's needs take priority. In 1982, when the Task Force on Victims of Crime, commissioned by President Reagan, examined the plight of crime victims in America by surveying victims, victim advocates, and criminal justice professionals around the country, one victim lamented: "They explained the defendant's constitutional rights to the nth degree. They couldn't do this and they couldn't do that because of his constitutional rights. And I wondered what mine were. And they told me, I haven't got any."

Chairman Feingold, as you know, on April 16, President Bush announced his support for the Feinstein-Kyl amendment to the United States Constitution to protect the rights of crime victims. As the President so eloquently stated:

"Too often, our system fails to inform victims about proceedings involving bail and pleas and sentencing and even about the trials themselves. Too often, the process fails to take the safety of

victims into account when deciding whether to release dangerous offenders. Too often, the financial losses of victims are ignored. And too often, victims are not allowed to address the court at sentencing and explain their suffering, or even to be present in the courtroom where their victimizers are being tried. When our criminal justice system treats victims as irrelevant bystanders, they are victimized for a second time."

Although more than 27,000 victims' rights laws have been enacted, victims' bill of rights have been passed in every state, and 32 states have passed constitutional amendments protecting victims' rights, crime victims still struggle to assert basic rights to be notified, present, and heard. As one victim stated:

"We were thrown into the criminal justice system. We didn't do anything wrong, but we felt over and over again that it wasn't focused on Shannon being killed, but technical procedures-things that we really didn't care about.... We have to fight those urges and those feelings of trying to take justice in our hands and turn it over and let the criminal justice system do what they are supposed to do, and then we sit there and we feel victimized over and over again."

Eighteen states lack constitutional victims' rights amendments. The 32 existing state victims' rights amendments, and other statutory protections, differ considerably across the country. While we respect the work done by the states on crime victims' rights issues - and many have gone beyond what is proposed in S.J. Res. 35 - the only way to provide a basic level of consistent and uniform crime victims' rights across the country is to amend the Constitution through the passage of the Victims' Rights Amendment.

Further, there is no uniformity in the implementation of crime victims' rights laws in these states. A recent study funded by the National Institute of Justice found that, even in states with strong victims' rights laws, only about half of all victims surveyed were notified of sentencing hearings--notice that is critical if they are to exercise their rights to seek restitution and to inform the court of the impact of the crime on them.

The right to notification of an assailant's release can be a matter of life and death. John and Pat Byron of Kentucky are a vivid reminder of the importance of, not only having rights of notification established, but also implemented. Their daughter Mary was murdered in 1993 by a former boyfriend on her 21st birthday-a few days after he posted bail on a charge of raping her. He had also stalked and intimidated her in the past. Fearing for her life, Mary had asked authorities to notify her of his impending release. The notification never came. Mary was killed before she had the opportunity to take precautions she had planned.

Even in states with strong crime victims' rights laws or ratified victims' rights constitutional amendments, a victim's ability to assert his or her rights may be nullified by judicial decisions. State crime victims' rights laws lack the force of federal constitutional law and thus may be given short shrift. Federal law, however, directly covers only certain violent crimes, leaving non-federal crimes to state prosecutions and state law. Roberta Roper's case demonstrates how crime victims are often excluded from attending court proceedings in Maryland.

In April 1982, 22-year-old Stephanie Roper was kidnaped, brutally raped, tortured, and murdered by two men. Her parents, Roberta and Vincent Roper, wanted to be involved in every aspect of the judicial proceedings, not wanting to read about what was taking place in the newspapers. During the testimony in the death penalty phase, Roberta's right to provide a victim impact statement was denied. Under a year-old Maryland law, the court could (but did not have to) allow victim impact evidence at the time of sentencing. The State's Attorney put Roberta on the stand to talk about her daughter's life and the impact of her death on the family. But the defense attorney objected, arguing that the testimony would be unfairly prejudicial to the defense. The

judge agreed and told Roberta to step down, ruling that the impact of the murder on her family was "irrelevant." Roberta listened as the defendants were able to provide a host of witnesses, including family members, to testify on behalf of the man who had kidnaped, brutally raped, tortured, and murdered her daughter.

In the Oklahoma City bombing case, a U.S. district court judge presented victims with the choice to either attend the trial or speak at sentencing, despite federal law which provides crime victims a right to be present at "all public court proceedings related to the offense...." The victims and several national organizations filed an appeal to reverse the judge's ruling. However, the U.S. Court of Appeals for the 10th Circuit affirmed the judge's ruling, which effectively barred from the courtroom victims who intended to speak at sentencing. Congress thereafter intervened, passing legislation prohibiting the U.S. district judge from ordering crime victims excluded from the trials of the defendants because the victim may testify or make a statement during the sentencing about the effect of the offense on the victim and the victim's family. [18 U.S.C. § 3593].

In 1980, Wisconsin was the first state to enact a victims' bill of rights. However, legislators and policymakers soon realized that the mere passage of statutory rights for victims did not yield the full force of the law that they had intended. In 1993, with 84% ratification by the voters, the Wisconsin legislature acted to correct this problem by passing a victims' rights amendment to the state constitution. In 1991, the state created a Victim Resource Center, where officials intervene on behalf of victims and present the victim's concerns and their findings to the agency in question. However, Victim Resource Center officials had no authority to prescribe remedies for violations of a victims' statutory or constitutional rights. In response, the legislature in 1997 created a Crime Victim Rights Board to enforce victims' rights. The result is that the Board has the authority to impose sanctions for violations of victims' rights, though it cannot guarantee victims' rights will not be abridged. Despite the elaborate mechanisms to protect the rights of crime victims in Wisconsin, the State Attorney General and other victim advocates recognize the need to support those efforts with a federal amendment to the Constitution.

Even with the progression of efforts to secure fundamental rights for crime victims in Wisconsin, victims' rights are not uniformly observed. Sadly, Wisconsin is not unique in its experience to make victims' rights meaningful. Similarly, other states have experienced challenges in fully implementing victims' rights laws.

A federal constitutional amendment is the only legal measure strong enough to rectify the current imbalance and inconsistencies among crime victims' rights laws and can establish a uniform national floor for crime victims' rights. A federal amendment to the United States Constitution will be the vehicle by which compliance with crime victims' rights laws can be enforced. The passage of a federal constitutional amendment will provide the means to make crime victims' rights a reality.

The Constitution of the United States should never be amended for transient reasons. There is compelling reason, however, to amend the Nation's basic charter to protect the rights of crime victims. Specifically, the amendment would provide victims of violent crime the right to:

- ? reasonable and timely notice of any public proceeding involving the crime or the release or escape of the accused;

- ? not be excluded from these public proceedings;

- ? reasonably be heard at public release, plea, sentencing, reprieve and pardon proceedings, and

- ? decisions that duly consider the victim's safety, interest in avoiding unreasonable delay, and just and timely claims to restitution from the offender.

In short, the amendment would ensure that the views of crime victims are considered and that crime victims are treated fairly throughout the process. It would also ensure speedy resolution of their cases, promote victims' safety, and safeguard victims' claims for restitution.

The proposed amendment makes some basic pledges to Americans. Our legal system properly protects the rights of the accused in the Constitution. But it does not provide similar protection for the rights of crime victims, and that must change. We must guarantee these constitutional rights for all victims of violent crime in America.

The protection of crime victims' rights is one of those rare instances when amending the Constitution is the right thing to do. With bipartisan support, we can balance the scales for victims of violent crime by establishing in the U.S. Constitution our basic rights.

I would note that the Department is continuing to review the text of the joint resolution, and that we look forward to working with the Committee to ensure its sufficiency in all respects. The Department's views letter will be forthcoming shortly.

This concludes my statement, Mr. Chairman. I would welcome the opportunity to answer any questions you or members of the subcommittee may have.