

Testimony of

The Honorable Patrick Leahy

April 8, 2003

This past Sunday marked the beginning of National Crime Victims' Rights Week. For more than two decades, we have set this week aside each year to focus attention on the needs and rights of crime victims. Each year, this week reminds us of our longstanding commitment to afford dignity and recognition to crime victims, and challenges us to build on the tremendous foundation of victims' rights and services already established across our nation.

My involvement with crime victims began more than three decades ago when I served as State's Attorney in Chittenden County, Vermont, and witnessed first-hand how crime can devastate victims' lives. I have worked ever since to ensure that the criminal justice system is one that respects the rights and dignity of victims of crime, rather than one that presents additional ordeals for those already victimized.

Both Congress and the States have become more sensitive to the rights of crime victims since I was a prosecutor. We have greatly improved our crime victims assistance programs and made advances in recognizing crime victims' rights. But we still have more to do.

For example, we have unfinished business with respect to the annual cap on the Crime Victims Fund, which has severely limited the money available to serve victims of state crimes. In 2001, Congress passed - and then repealed - legislation that Senator Kennedy and I had proposed that replaced the cap with a self-regulating system. Such a system would ensure stability and protection of Fund assets while allowing more money to be distributed for essential victim services. We should not be imposing artificial caps on spending from the Fund while substantial needs remain unmet.

I am disappointed that the President's latest budget, for fiscal year 2004, does precisely that. Its proposed cap on spending from the Crime Victims Fund would reduce federal funding for state victim assistance programs for the second year in a row. This is particularly troubling at a time when both state funding and private charitable giving for victims' programs are drying up.

We also need to protect our most vulnerable victims - women and children who are victims of domestic violence. Yet for the second year running, the President's budget fails to fund any transitional housing programs, and severely underfunds grants for battered women's shelters. Both of these services are desperately needed nationwide.

On the other hand, one important program on which progress has finally been made is the Violence Against Women Office. Last year, we underscored the importance of that Office's work by passing legislation that required the Office to be moved to a more prominent position under the Attorney General. Yet for six months after the President signed that legislation into law, the Department willfully refused to follow it. Now, however, the Attorney General has reversed course and agreed to set up the Violence Against Women Office with the status that Congress

intended. I look forward to working with the President's nominee to head that Office, to ensure that she has the tools necessary to provide effective protection to women victimized by violent crime.

One further category of violent crime requires special attention: terrorism and mass violence. We need to focus on victims' rights in this particular context for three reasons. First, after September 11, this most savage type of crime is a growing concern. Second, terrorism and mass violence differs from other violent crime in its ability to devastate thousands of innocent lives and whole communities. And third, provisions for protecting victims' rights in this context need to be specially tailored to ensure that they are in harmony with the needs of national security and public safety.

Last year, Congress passed a bill to allow the families and survivors of the September 11 attacks to watch a closed circuit broadcast of the trial of Zacharias Moussaoui. Unfortunately, the judge in that case has severely limited the number of locations at which victims can watch those proceedings, which means that many victims will be denied the right that Congress sought to provide. There have also been reports that the White House may abandon the civilian prosecution of Mr. Moussaoui, remove him from the United States, and place him before a military tribunal in Guantanamo Bay. One of several concerns raised by that possibility is that the Defense Department's procedures for trials by military commission do not appear to give victims any role at all in the proceedings. I intend to be vigilant, and I urge my colleagues to join me, to ensure that neither judicial limitations nor military procedures unnecessarily impair the rights we promised last year to the victims of September 11.

In addition, as we prepare for the threat of more acts of terrorism on American soil by providing much-needed funding for first responders - the police officers, firefighters, and emergency medical professionals who are the first on the scene in any terrorist attack - we should not lose sight of the experience, expertise and assistance that our victims assistance organizations can contribute. These organizations increasingly provide direct crisis response services to communities in need. With our help, they could become an integral and invaluable part of our emergency preparedness.

The illustrations I have just given of areas for improvement for victims' rights may seem like a disparate group - funding for victims of state crimes, shelter for victims of domestic violence, strengthening enforcement against violence against women, giving victims of terror access to the justice system, and incorporating victims' assistance organizations into our first responder teams. But this diverse array of proposals all have one thing in common. They are practical means, tailored to the actual needs of real, specific groups of victims, of turning the promise of victims' rights into a reality.

I hope that we will soon hold a hearing - and, more important, take action - on such practical concerns as actually funding the commitments we have already made to victims. That would be a fine way to honor National Crime Victims' Rights Week. Sadly, however, today's hearing will not address such practical issues. Instead, the proposal before us is more symbolic in nature, and its consideration has become something of an annual ritual. Today, we consider once again whether to make victims more promises, in the form of a constitutional amendment.

I would like to begin my contribution to that debate by suggesting two general guidelines to which I hope we can all agree. First, remembering the debates we have had over the years about "unfunded mandates," I propose that we start with an agreement not to make any "unfunded promises." Insofar as the amendment makes victims promises that we lack the ability, or the political will, to turn into practical realities, we should reject it. Otherwise, we will just be tacking on to the Constitution what Shakespeare called "words, full of sound and fury, signifying nothing." We owe crime victims more than empty politicking, and the very least we owe them is candor.

My second principle is, "if it ain't broke, don't fix it." We should not amend the Constitution unless and until we identify problems in the Constitution itself that need to be fixed.

Amending the Constitution is a very serious matter, and I know the distinguished sponsors of this amendment have approached it as such. Indeed, they have been through nearly 70 drafts to date. Every time the language changes, they assure us that "this time, we've got it right." I do not doubt their sincerity, and their devotion, which I share, to the cause of victims' rights, and I commend their diligent work and their responsiveness to criticisms. But to me, the history of all these drafts is not at all reassuring. If Congress had passed an earlier version, like the version that the Senate debated three years ago, we could now be stuck with that version, with both the flaws that its sponsors now concede and the inevitable limitations that arise from the fact that it was drafted before September 11 radically changed the nature of the violent criminal threats that we face. It could be enshrined in the Constitution, with all its flaws and limitations, and fixing it would require another constitutional amendment.

Our disagreement is not about the importance of victims' rights. I completely endorse the stated goals of the proposed amendment, which are to enhance victims' rights by ensuring that they can be heard, and that their views will be sought, at every stage of the prosecution. In fact, I have worked for years, with Senator Kennedy and other members of this Committee, to secure in a practical way many of the rights promised in the proposed amendment. Our current bill, the Crime Victims Assistance Act, would provide enhanced rights and protections for victims of federal crimes, and establish innovative new programs to help States provide better services to victims of State crimes. It also proposes a new alternative to the cap on the Crime Victims Fund that is supported by national crime victims' organizations.

I urge all of my colleagues, on both sides of the aisle, to take a careful look at the Crime Victims Assistance Act. I hope our witnesses today will also take a look at this bill, and get back to me after the hearing with any thoughts they might have as to how it might be improved. I believe we can accomplish our goals far more quickly and effectively with legislation than with an amendment to the Constitution.

I look forward to hearing from each of our witnesses this morning. I am sorry that Senator Kyl, who is chairing this hearing, refused my request to allow one additional witness to testify. When I chaired this Committee, I had several requests from my Republican colleagues to call more witnesses than the rules permitted them. I tried to honor those requests as did our Democratic subcommittee chairs. At the June 2001 hearing on the Innocence Protection Act - one of my top legislative priorities - I accommodated Chairman Hatch's request for a third witness. At the July 2002 hearing on class action litigation, the witnesses were evenly split.

We should always strive to hold balanced hearings, at which all opposing views can be aired and all arguments made. That is especially true when we are considering an amendment to the Constitution that could preempt the legislative efforts of both Republican and Democratic majorities, and impose mandates on both Republican and Democratic law enforcers, for decades to come.

Let me say a little about the witness who was not permitted to testify this morning, a man named Bud Welch, whose daughter was killed in the Oklahoma City bombing. I find it ironic that at this hearing about providing victims a greater voice, the Committee would not allow Mr. Welch the opportunity to be heard. His testimony is compelling. It is deeply moving, in expressing the anguish of a victim of the very worst form of violent crime. And it is deeply practical, in examining in concrete terms the implications of entrenching the proposed amendment as a one-size-fits-all solution to the problems of victims' rights -- problems that take on a very particular and difficult form in the emerging context of terrorism and mass violence. I will submit his statement for the record, and I urge my colleagues on the Committee to read it.

Mr. Welch opposes S.J. Res. 1 because he believes it could have harmed, rather than helped, the prosecution of the Oklahoma City Bombing case. One of the prosecutors in that case will be testifying this morning, and I know that he shares Mr. Welch's concerns.

Turning to the witnesses who are appearing before us today, I have the same question for all of them: Why is this amendment necessary? Why are federal and state laws - both the laws on the books and those that we could pass tomorrow in the Crime Victims Assistance Act - inadequate to protect the rights of crime victims? One of the leading academic proponents of the proposed constitutional amendment, Harvard law professor Laurence Tribe, has acknowledged that "the States and Congress, within their respective jurisdictions, already have ample authority to enact rules protecting [victims'] rights." So, then, why do we need to amend our federal Constitution?

Amending the Constitution should be an extraordinary action of last resort. The normal way that laws are made in this country is by legislation, and those who insist on amending the Constitution bear a heavy burden of justification. I do not believe that the proponents of this constitutional amendment have met their burden of justifying why we should amend our Constitution for just the 18th time in more than 200 years. In this Senate, we have previously rejected proposed amendments, such as the balanced budget amendment, that, whatever their merit, at least attempted to do things that could not be done by statute. The same cannot be said of this amendment.

I also hope that our witnesses will share their views about the text of this year's version of the amendment. We must not forget that this is a constitutional amendment we are considering, and every single word counts.

I thank the witnesses for coming.

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