

Testimony of
Mrs. Patricia Perry

April 8, 2003

Thank you for the opportunity to share my views on the proposed Victims' Rights Amendment.

My name is Patricia Perry and I speak on behalf of my husband James, our daughter Janice Montoya and our son Joel, in memory of their brother, our son, John William Perry, a NYPD officer who volunteered to assist employees escaping the World Trade Center on September 11, 2001, and himself became a victim. My husband Jim and I are Midwesterners, Jim from Missouri and I from Salina, Kansas, and both graduated from the University of Kansas. Our children were raised on Long Island, New York; John attended the State University at Stony Brook and New York University School of Law. As a young man, John wanted the experience of being a police officer and when he received the opportunity to enter the NYC police academy, he left his partnership in law and eagerly trained to learn how to protect the public from those who would cause harm.

After eight years of service to the NYPD, which included nearly five years in a legal department, John decided that he would return to a law practice. On September 11, 2001, John went to One Police Plaza, completed his retirement papers, and turned in his badge. Then the first plane crashed through Tower One. He immediately retrieved his badge, bought a shirt with the police insignia, and ran to the World Trade Center, just minutes away. He met a friend, Captain Timothy Pearson and entered the underground plaza to help panicked workers find a safe way out of the area. But he did not find safety for himself and became a victim of the terrorists of 9-11.

Even while working full-time for the NYPD, John found the time to serve as a pro bono lawyer for individuals whose civil rights and civil liberties had been violated. He also used his legal knowledge to serve as a NYC Small Claim Court Volunteer Arbitrator and as a legal advisor to the Kings County Society for the Prevention of Cruelty to Children. He was also a Lieutenant in the New York Guard. He was serious about his goals but full of humor and possessed an infectious smile. He was proficient in several languages, interested in people and ideas and enjoyed long conversations about philosophy and religion. He also ran marathons and raced in Hudson River swims.

There are thousands of victims of the World Trade Center attack. Some died in the first hour; a larger number survived with physical and emotional injuries that heal slowly. The families and friends of all these victims continue to suffer. As parents, we are bereft. Even though John was the "middle" child, he was the mentor to both his siblings, encouraging them to follow his lead in all aspects of their lives. Both have been devastated by his loss. His friends also have continued to contact us with their feelings of loss and despair. The terrorists of 9-11 shattered the lives of our family and the lives of all who knew and loved John. Many questions linger on. What do I, what do we as a family and what do all John's friends want as justice for his murder? Each victim of 9-11 leaves family, friends and loved ones who mourn as we do.

John believed in the integrity of the Constitution and the Bill of Rights, and in the institutions of our government that are established to pursue the guilty through legal means. Our system is not infallible; it can, at times, be both insensitive to the needs of victims and incompetent in its prosecution of criminals. We all know that there are cases where the guilty have gone unpunished and where innocent people have been convicted and even executed. These are issues that need to be addressed, but we suggest that this amendment is not the appropriate tool, nor will it remedy these flaws. Our family agrees that John would appreciate the concern for victims, but would oppose the Victims' Rights Amendment.

Our family believes that the best way for Congress to support victims and their families is to promote and support a system of justice that provides for fair and just convictions of the criminals responsible for these crimes. We believe that this constitutional Amendment threatens the system of checks and balances in the current justice system and that it could actually compromise the ability of prosecutors to obtain the convictions of those responsible for the carnage on 9-11. We believe that to the extent that this amendment is effective, it is unworkable and even dangerous. And to the extent that it does nothing, it is an empty promise among many for victims that need real resources and real support.

Victims and family members are not dispassionate. We are angry, depressed and mourning. As families, we have a torrent of emotions that are not useful in preparing a legal case. We usually lack expertise and have a desire for vengeance that we claim is the need for justice. We are likely to quickly claim that an accused is guilty in our need to satisfy our loss and grief. We believe that criminal convictions should not be based on the emotions of victims and families, particularly in situations where we are not relevant witnesses to the crime. On the other hand, victims should clearly have the opportunity to participate in the penalty phases of a case, after a defendant has been found guilty of a crime.

In the case of the tragedy on 9-11 there were thousands of deaths and tens of thousands of victims. And, as we have seen in the aftermath of this tragedy and others, victims do not always agree on the best way a case should be handled. Under the Victims' Rights Amendment the prosecution would be required to try to weigh the opinions of different victims, leaving those victims with whom the prosecution does not agree feeling left out of the process.

Under this amendment as we understand it, victims would have the right to give input in the criminal case even before a conviction, including "consideration for the interest of the victim in a trial free from unreasonable delay," bail decisions and plea agreements. This could really compromise the government's prosecution of its case. Moreover, if the amendment passes, who will be entitled to these new constitutional rights? If a victim survives a wrong by an accused, it is simple to understand the meaning of "victim" for the purposes of such an Amendment, but defining "victim" is not always easy and can present a problem that cannot be ignored.

Even the most well intentioned efforts cannot always anticipate the problems that might arise. Just look at the on-going dissension that has been caused in defining "victim" under the Victims Compensation Act for the families of 9-11 victims. In a criminal case, it seems that defining victim will be even more challenging, particularly when the victim cannot represent him or herself. How does the government, local, state or federal, decide who is the true representative to be heard? How long will that take if every family member of every victim of 9-11 is allowed to

input a position on procedure of a case against someone like Zacharias Moussaoui, now awaiting trial as a conspirator in the 9-11 tragedy? I was interviewed, as were many family members, by the Justice Department, in order for the prosecution to choose a sample of family members to testify during the penalty stage of the Moussaoui trial. The Justice Department has already determined that not all families are necessary in the penalty stage of the pending trial of Zacharias Moussaoui.

This proposed Amendment allows for the waiving of the right of all families to be heard in such cases, but with large numbers of victims, who passes the test for inclusion? How much more complicated will such a presentation pose if thousand of families are involved in the preparation for trial? How will different viewpoints be reconciled if all must be heard? In cases such as Moussaoui's, where there are countless victims and victim's families, the issues are endless. And, even if Congress can, under the VRA, waive the constitutional rights of victims in cases like Mousaoui's, the problems do not disappear. In fact, if our newly found constitutional rights are waived, like they most likely would be for victims of 9-11 or other mass tragedies, the intended relief the VRA supposedly provides to victims becomes meaningless.

We would suggest that instead of focusing on this Amendment, Congress should ensure that resources are offered as needed to help heal the pain and loss of victims and victims' families. Families need more than what the VRA promises: dealing with loss intensifies the need for emotional and financial support. The response of the American and foreign populations to our loss on 9-11 has been a great support to families. The caring that has been expressed through school children's letters, stuffed animals, contributions, and gifts--all have said plainly, "We share your loss." Most victims do not receive such love and support and we believe this is more helpful than the invitation to practice law without a license. Our hope is that we all consider the benefits of turning our attention to providing real help, not the tools of vengeance, to victims, and that we do so without compromising the integrity of our criminal justice system and our Constitution.

Amending the Constitution is a very great responsibility of Congress and the legislatures of the 50 states. We suggest that victims' rights can be ensured by the states and, if need be, by the Federal Government. Many states have begun to provide funds to assist victims of crime. There's more work to be done at the state and federal legislative level, and this VRA effort is not only distracting legislators from doing it, but it's also causing hurtful and needless divisions within the victim community. Can you imagine how wrenching it is for our family to find ourselves at odds with other victims' families over this political issue--which will in any event do so little for crime victims?

We want justice for the death of my son and the daughters and sons, husbands and wives, partners, mothers and fathers who are victims of every crime. As citizens, we deserve that our government and law enforcement personnel protect us as much as possible from harm. My son believed strongly in the rule of law and the right of the people to direct our elected representatives, like you, to use good judgment in establishing sound laws.

Thank you.