

NLWJC- Kagan

Counsel - Box 004 - Folder 017

Amendments

President Clinton's Call for a Victims' Constitutional Amendment

June 25, 1996

*****DRAFT*****

- The Clinton Administration has a longstanding commitment to ensuring that our criminal justice system is responsive to the rights and concerns of victims.
- In furthering that commitment, President Clinton is today announcing his strong support for a constitutional amendment that will provide rights for the victims of crime. He is calling upon the Congressional Leaderships, House and Senate Judiciary Committee Members, and law enforcement to work with the Administration in crafting appropriate and effective language.
- The U.S. Constitution contains numerous rights for defendants in criminal proceedings -- such as a right to a fair trial; the right to counsel; the right to confront witnesses against them. But our Constitution does not provide one right for a crime victim.
- President Clinton wants a level playing field for victims in our criminal justice systems (federal, state, military, juvenile) -- and a constitutional amendment is the only guarantee that this goal can be fully achieved.
- It is time to ensure that victims are given constitutionally protected rights -- such as the right to have notice of, and not to be excluded from, public court proceedings; to be heard by the trial court on release of the accused, the sentence, and acceptance of any plea, if present at the proceedings; to have notice and to attend and be heard in relation to parole hearings; to be given notice of any release or escape from custody of the defendant; to restitution from the defendant; to reasonable measures to protect the victim from violence and intimidation by the defendant; and to notice of these rights.
- President Clinton believes that -- unlike any other constitutional amendment considered in the last few years -- no alternative short of a constitutional amendment will ensure that victims' rights are truly "rights." That is why he is once again speaking out for victims and offering his Administration's support and assistance to Congress and the states to ensure that together we enact the most effective constitutional amendment for victims.
- Today's announcement is another example of President Clinton's long-standing record on victims' rights. As the Arkansas Attorney General, he submitted legislation providing compensation for victims. As Governor, he signed legislation requiring notification of victims before parole hearings; established provisions for victim restitution; required hospitals to treat sexual assault victims; and guaranteed the rights of victims to be present in the courtroom. And as President, he signed the 1994 Clinton Crime Bill, which contained numerous pro-victim provisions

including the Violence Against Women Act, and he recently signed the 1996 Anti-Terrorism Act, which also contained important pro-victim provisions.

VICTIMS' RIGHTS Q&A
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- Q. Why is the President endorsing this amendment now? Isn't it plain that the President is announcing his support for an amendment for political reasons?
- A. No, it is not. The President's focus on victims' rights is not new. He has been fighting for victims' rights for nearly twenty years. As Arkansas Attorney General, he submitted two bills to provide crime-victim compensation. As Governor, he was able to pass laws that guarantee the right of victims to be present in the courtroom in all phases of the system; a Victim/Witness Coordinator assists victims and their families in coping with the criminal justice system; and a Victim Reparations Act allows compensation for victims and their families. These efforts prompted official recognition by the National Organization for Victim Assistance as an "ally" in the campaign for victims' rights.

President Clinton signed the Crime Act, the Anti-terrorism Act and Megan's Law, all of which recognized that victims need to be afforded a greater role in the criminal justice system. Specifically, the Crime Act provides victims of violent crime or sexual abuse the right to speak to the court before the imposition of a sentence in federal cases. The Crime Act also requires that state and local law enforcement be notified when federal inmates convicted of violent crime or drug trafficking are released, and encourages states to enact registration systems. Megan's Law added mandatory community notification procedures for criminals convicted of child abuse, rape, and other sexual crimes. The Anti-terrorism Act makes restitution mandatory in all violent crime cases.

Victims' rights and services increasingly have been the focus of public attention since the early 1970s when a few victim assistance programs were initiated by domestic violence and sexual assault victim advocates. Today there are more than 10,000 programs that provide services to crime victims across the country. Over the last 3 years, the Department's Office for Victims of Crime has provided more than \$564 million to help support these programs.

The first statutory protections for crime victims were enacted in the 1970s. By the 1980s, states enacted victims' bills of rights. Today, virtually every state has a victims' bill of rights, and 20 states have victims' rights constitutional amendments.

Throughout the country, however, various victims' protections have been struck down by courts that determined that the victims' rights were in conflict with, and inferior to, defendants' federal constitutional rights. Just last year, a New Jersey court struck down a newly enacted state law that would have allowed a murdered child's parents to speak to the jury during sentencing.

In April, Senators Kyl and Feinstein introduced a proposed constitutional amendment. The President then asked the White House Counsel and the Attorney General to study the amendment and make detailed recommendations to him. This process has recently been completed.

Q. Isn't this just another case of "Me, too", as President Clinton is following Bob Dole's support for a victims' rights amendment?

No, throughout his political life, as state attorney general, Governor and President, Bill Clinton has repeatedly proposed and signed legislation to protect victims' rights.

And the President's response to the Kyl-Feinstein amendment is anything but "Me, too." The President is not simply endorsing it, as others have done. Rather, the Administration has studied it carefully, and the President is supporting the elements of it that work and those that need further attention.

The President has been consistent and unwavering in his efforts to fight violent crime. From the Crime Bill to the Brady Bill to the Antiterrorism Bill, we are making a difference. Those laws contained protections for victims, and as important as those protections are, they do not -- and cannot -- give victims equal status with the accused. That's the next step we need to take.

Q. If you support amending the Constitution in this area, why not support amendments for other policies you support, such as prayer in school, anti-flag burning, and balanced budget?

It is important to take each proposed amendment on its own terms. The President has never taken the position that we should never amend the Constitution. What he has said is that amending the Constitution is a serious matter that should not be undertaken unless and until we are sure that all other alternatives short of amending the Constitution have been attempted. There most certainly has been exhaustion in this area.

As for prayer in school, the President did not support an amendment even though he believed that the right to free exercise of religion includes voluntary prayer in school. The First Amendment was carefully crafted to construct a balance between protecting the free exercise of religion and prohibiting the establishment of religion. The President does not believe that we should alter the balance that the Founders struck and that has served us well throughout history.

Flag-burning is also a question of existing language in the First Amendment. Although the President may not agree with particular decisions in this area, he does not believe a constitutional amendment for a particular type of expression is warranted.

Both the school prayer and flag burning amendments would have opened up the First Amendment, which the President has said is a dangerous proposition. In contrast, a victims' rights amendment is consistent with existing constitutional provisions that guarantee the right of citizens to participate in their government. Prior amendments have afforded American citizens the right to vote, sit on juries, and petition the government for redress of grievances. A victims' rights amendment similarly will give victims of crime the right to participate in the criminal justice process.

As for the balanced budget amendment, amending the Constitution would be a hollow gesture because it would not bring us any closer to a solution. It is essentially unenforceable, or, worse, it would give unelected judges the power to make economic decisions for the country. In contrast, we believe that a victims' rights amendment can be drafted that is both enforceable and effective.

Q. What effect will a victims' rights amendment have on defendants' rights?

It will change things in that a defendant's assertion of a constitutional right will no longer be a trump card that automatically and without consideration defeats the victim's lesser right. But neither will the victim's right automatically defeat a defendant's recognized right. With a victims' rights amendment, their respective rights will have to be balanced, just like the rights to a fair trial and free press are now balanced. This amendment will give defendants' and victims' rights the same constitutional status and will ensure that they are on equal footing during the balancing process. In essence, it will give equal dignity and respect to victims and defendants with regard to participation in the criminal justice process.

Q. Does the Administration support Kyl-Feinstein? Why not?

The Administration supports much of Kyl-Feinstein. It is substantially self-executing, meaning it does not require further legislation.

We support an amendment that gives victims the right to have notice of, and not to be excluded from, public court proceedings; to be heard by the trial court concerning the release of the accused, the sentence, and acceptance of any plea, if present at the proceedings; to have notice and to attend and be heard in relation to parole hearings; to be given notice of any release or escape from custody of the defendant; to restitution from the defendant; to reasonable measures to protect the victim from violence or intimidation by the defendant; and to notice of these rights. Most of those rights parallel Kyl-Feinstein.

We also support permitting, as Kyl-Feinstein does, Congress to pass further legislation for federal proceedings and the state legislatures to pass further legislation for state proceedings.

We do not support, however, an amendment that could adversely affect prosecutors' ability to get convictions of violent criminals. We do not support permitting fellow criminals, such as gang members, who happen also to be victims of their associates' crimes, to take unfair advantage of these protections. We also do not support exposing local, state and federal governments and officials to civil damage suits.

Q. What has the Administration done for victims?

A. [See Above.]

Q. What process did the Administration undertake in determining its position on this matter?

The President asked the White House Counsel and the Attorney General to study Kyl-Feinstein and to report back to him with their assessments. They have been engaged in that process since the day Kyl-Feinstein was introduced.

Q. Is it true that within the Department of Justice there was widespread disagreement about whether to endorse amending the Constitution?

The Department of Justice supports a victims' rights constitutional amendment. It is true that some of the goals of the amendment can be achieved with non-constitutional measures. And the Attorney General has been directed to identify and implement them. But some things just can't be accomplished without an amendment. For example, an amendment is necessary to give parity to defendants' and victims' rights, and to ensure that victims have a basic set of rights consistent throughout the federal and state criminal justice systems, including in military and juvenile proceedings.

Q. Isn't it inconsistent on the one hand to declare that nothing short of a constitutional amendment will suffice and on the other hand to announce a series of executive actions to help victims?

A. No, both announced measures are necessary to fulfill the fundamental goal of protecting victims of violent crime. It is true that some of the goals of the amendment can and must be achieved with non-constitutional measures, such as the victim notification system. The Attorney General has been directed to implement some of them. But some things just can't be accomplished without an amendment. For example, an amendment is needed to give parity to defendants' and victims' rights, and to ensure that victims have a basic set of rights throughout the federal and state criminal justice systems.

July 8, 1996

MEMORANDUM TO DISTRIBUTION

FROM: ANN WALKER

RE: NYT Questionnaire

We are working with Carolyn Curriel on responses to the NYT Magazine's request for the President's thoughts on the following questions. It would be very helpful if each of you could provide us with your thoughts (in the areas indicated). We need to have the draft responses by Thursday July 11th.

T. O'Donnell, B. Reed, G. Sperling, T. Blinkin, L. Voles

- If you are re-elected, what two or three accomplishments do you think you'll be most remembered for into the next century?

J. Quinn

- By the year 2096, what three amendments to the Constitution are most likely to have been added?

Thanks for your help. Please call if your have questions x62428.

Distribution

JQuinn
TO'Donnell
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The New York Times
229 WEST 43 STREET
NEW YORK, N.Y. 10036

JACK ROSENTHAL
Editor
The New York Times Magazine

June 11, 1996

President William J. Clinton
The White House
Washington, D.C. 20050

Dear Mr. President,

Would you help us look backward from the year 2096?

As you may know, The New York Times Magazine this year celebrates its 100th birthday, with special issues so far on articles and photography from the past. In September, we plan to publish a third, more ambitious special issue whose purpose is to provoke examination about America's future.

We have approached a number of thoughtful authorities in various fields. For instance, Paul Krugman, the economist, will tell us about the four great economic trends that observers in 1996 should have expected but didn't. We're asking others for thoughts on subjects that range from America's place in the world to the kitchen of the future. What we hope for most of all, for an issue to come in the heart of the campaign on Sept. 29, is contributions from you and from Senator Dole, in response to the same questions, reflecting two presumably quite different perspectives on the future.

These are our questions:

If you are re-elected, what two or three accomplishments do you think you'll be best remembered for into the next century? If Senator Dole is elected, what two or three accomplishments will he be remembered for?

By the year 2096, what three amendments to the Constitution are most likely to have been added?

What will be the role of spirituality in the lives of Americans in the 21st century?

We would need a response by Friday, July 12. If you have any questions, I can be reached at (212) 556-7740.

Cordially,

Jack Rosenthal

THE WHITE HOUSE
WASHINGTON

Cheryl -

Is the attached political?
If so, can I work on it?
I'd appreciate your letting
me know ASAP; The deadline
is this Thursday. Many thanks.

Elena

- ① IT IS POLITICAL
- ② YOU MAY NOT USE GOVT
RESOURCES TO DO ANY WORK
ASSOC W/ RESPONDING TO THIS
INQUIRY (POL AFF HAS
CAMPAIGN RESOURCES)

C-

I hope that the next amendment to be added is a
~~the~~ Victim's Rights Amendment, which I recently endorsed.
After carefully studying all the alternatives, I became con-
vinced that the only way to safeguard fully the rights
of victims ~~proceedings~~ is to amend the Constitution to
guarantee that ~~they~~^{victims} receive notice of public court proceedings;
that they have an opportunity to present their views to
the court on such matters as ^{bail,} sentences, and plea bar-
gains; that they get restitution from the criminal; and
that they ~~be notified~~^{receive notice} if the criminal is released or
escapes from custody. The Constitution today protects
the rights of the accused, but not the rights of
victims. If we wish to create a level playing field,

we must give victims an equal place in the Constitution.

I am convinced that we will do so within the next few years, and with bipartisan support.

I do not know what other amendments will follow this one -- because ~~I do not know~~ ^{no one can know} what pressing problems the nation will face ^{over the next century} that cannot be addressed through other means. I do not support amending the Constitution lightly. It is a sacred document, which should be changed only with caution and after much deliberation. We should not do by constitutional amendment what we can do ~~to~~ by legislation -- such as balancing the budget. Neither should we guarantee ~~to~~ rights that are

already guaranteed -- such as the right of school-
children to express their religious convictions in
an appropriate manner. We should save the
amendment process for those ~~extraordinary occasions~~
~~times~~ times when a crucial interest of the
American people is going unprotected, and the
Congress and President can do nothing ^{within their usual powers.} to remedy
the situation. I hope that these times do
not often occur in the next one hundred years -
and so I hope that our ~~the~~ most fundamental law
will look in 1996 much as it does today.

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THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

June 25, 1996

REMARKS BY THE PRESIDENT
AT ANNOUNCEMENT OF VICTIMS' RIGHTS CONSTITUTIONAL AMENDMENT

The Rose Garden

12:11 A.M. EDT

THE PRESIDENT: Good morning, ladies and gentlemen, and let me thank you all for being here. Thank you, Senator Kyl and Senator Feinstein, for your ground-breaking work here. Thank you, Senator Exon; my longtime friend, Senator Heflin. Thank you, Congressman Frost, Congressman Stupack, Congressman Orton.

I thank all the representatives here of the victims community, the law enforcement community. I thank the Attorney General and John Schmidt and Aileen Adams and Bonnie Campbell for doing such a fine job at the Justice Department on all criminal justice issues. I thank the Vice President and, especially, I want to thank Roberta Roper and the other members of the National Movement for Victims' Advocacy. And, Mr. Roper, thank you for coming. Thank you, John and Pat Byron; thank you, Mark Klaas; and thank you, Pam McClain. And especially, John Walsh, thank you for spending all of these years to bring these issues to America's attention. Thank you, sir. (Applause.)

I'd also like to say a special word of thanks to the person who did more than any other person in the United States to talk me through all of the legal and practical matters that have to be resolved in order for the President to advocate amending our Constitution: former prosecutor and a former colleague of mine, Governor Bob Miller of Nevada. Thank you, sir, for your work here. (Applause.)

For years, we have worked to make our criminal justice system more effective, more fair, more even-handed, more vigilant in the protection of the innocent. Today, the system bends over backwards to protect those who may be innocent, and that is as it should be. But it too often ignores the millions and millions of people who are completely innocent because they're victims, and that is wrong; that is what we are trying to correct today.

When someone is a victim, he or she should be at the center of the criminal justice process, not on the outside looking in. 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. (Applause.)

Having carefully studied all of the alternatives, I am now convinced that the only way to fully safeguard the rights of victims in America is to amend our Constitution and guarantee these basic rights -- to be told about public court proceedings and to attend them; to make a statement to the court about bail, about sentencing, about accepting a plea if the victim is present, to be

MORE

told about parole hearings to attend and to speak; notice when the defendant or convict escapes or is released, restitution from the defendant, reasonable protection from the defendant and notice of these rights.

If you have ever been a victim of a violent crime, it probably wouldn't even occur to you that these rights could be denied if you've never been a victim. But, actually, it happens time and time again. It happens in spite of the fact that the victims' rights movement in America has been an active force for about 20 years now.

The wife of a murdered state trooper in Maryland is left crying outside the courtroom for the entire trial of her husband's killers, because the defense subpoenaed her as a witness just to keep her out, and never even called her. A rape victim in Florida isn't notified when her rapist is released on parole. He finds her and kills her.

Last year in New Jersey, Jakiyah McClain was sexually assaulted and brutally murdered. She had gone to visit a friend and never came home. Police found her in the closet of an abandoned apartment; now, her mother wants to use a New Jersey law that gives the murder victims' survivors the right to address a jury deciding on the death penalty. She wants the jury to know more about this fine young girl than the crime scene reports. She wants them to know that Jakiyah was accepted into a school for gifted children the day before she died. But a New Jersey judge decided she can't testify even though the state law gave her the right to do so. He ruled that the defendant's constitutional right to a fair trial required him to strike to law down.

Well, Jakiyah's mother had the courage to overcome her pain to be with us today. We have to change this for her and for other victims in America. Thank you, and God bless you. (Applause.)

The only way to give victims equal and due consideration is to amend the Constitution. For nearly 20 years I have been involved in the fight for victims' rights since I was attorney general in my home state. We passed laws then to guarantee victims' rights to attend trials and to get restitutions, and later to get notice and to participate in parole hearings.

Over all those years, I learned what every victim of crime knows too well: As long as the rights of the accused are protected but the rights of victims are not, time and again, the victims will lose.

When a judge balances defendants' rights in the Federal Constitution against victims' rights in a statute or a state constitution, the defendants' rights almost always prevail. That's just how the law works today. We want to level the playing field. This is not about depriving people accused of crimes of their legitimate rights, including the presumption of innocence; this is about simple fairness. When a judge balances the rights of the accused and the rights of the victim, we want the rights of the victim to get equal weight. When a plea bargain is entered in public, a criminal is sentenced, a defendant is let out on bail, the victim ought to know about it and ought to have a say.

I want to work with the Congressional leadership, the House and Senate Judiciary Committees, including Senators Kyl and Feinstein and Chairman Hyde and law enforcement officials, to craft the best possible amendment. It should guarantee victims' rights in every court in the land -- federal, state, juvenile, and military. (Applause.) It should be self-executing so that it takes effect as soon as it's ratified without additional legislation. Congress will take responsibility to enforce victims' rights in federal courts, and

the states will keep responsibility to enforce them in state courts, but we need the amendment.

I also want to say, just before I go forward, again I want to thank Senators Kyl and Feinstein and the others who have approached this in a totally bipartisan manner. (Applause.) This is a cause for all Americans. When people are victimized, the criminal almost never asks before you're robbed or beaten or raped or murdered: Are you a Republican or a Democrat? This is a matter of national security just as much as the national security issues beyond our borders on which we try to achieve a bipartisan consensus. And I applaud the nonpolitical and patriotic way in which this manner has been approached in the Congress, just like it's approached every day in the country -- and we ought to do our best to keep it that way.

We know that there can be, with any good effort, unforeseen consequences. We think we know what they would likely be and we believe we know how to guard against them. We certainly don't want to make it harder for prosecutors to convict violent criminals. We sure don't want to give criminals like gang members, who may be victims of their associates, any way to take advantage of these rights just to slow the criminal justice process down.

We want to protect victims, not accidentally help criminals. But we can solve these problems. The problems are not an excuse for inaction. We still have to go forward.

Of course amending the Constitution can take a long time. It may take years. And while we work to amend it, we must do everything in our power to enhance the protection of victims' rights now. Today I'm directing the Attorney General to hold the federal system to a higher standard than ever before, to guarantee maximum participation by victims under existing law and to review existing legislation to see what further changes we ought to make.

I'll give you an example. There ought to be, I believe, in every law, federal and state, a protection for victims who participate in the criminal justice process not to be discriminated against on the job because they have to take time off. That protection today is accorded to jury members; it certainly ought to extend to people who are victims who need to be in the criminal justice process. And we shouldn't wait for that kind of thing to be done. (Applause.)

I want investigators and prosecutors to take the strongest steps to include victims. I want work to begin immediately to launch a computerized system so victims get information about new developments in a case, in changes in the status or the location of a defendant or a convict.

I do not support amending the Constitution lightly; it is sacred. It should be changed only with great caution and after much consideration. But I reject the idea that it should never be changed. Change it lightly and you risk its distinction. But never change it and you risk its vitality.

I have supported the goals of many constitutional amendments since I took office, but in each amendment that has been proposed during my tenure as President, I have opposed the amendment either because it was not appropriate or not necessary. But this is different. I want to balance the budget, for example, but the Constitution already gives us the power to do that. What we need is the will and to work together to do that. I want young people to be able to express their religious convictions in an appropriate manner wherever they, even in a school, but the Constitution protects people's rights to express their faith.

But this is different. This is not an attempt to put legislative responsibilities in the Constitution or to guarantee a right that is already guaranteed. Amending the Constitution here is

simply the only way to guarantee the victims' rights are weighted equally with defendants' rights in every courtroom in America.

Two hundred twenty years ago, our Founding Fathers were concerned, justifiably, that government never, never trample on the rights of people just because they are accused of a crime. Today, it's time for us to make sure that while we continue to protect the rights of the accused, government does not trample on the rights of the victims. (Applause.)

Until these rights are also enshrined in our Constitution, the people who have been hurt most by crime will continue to be denied equal justice under law. That's what this country is really all about -- equal justice under law. And crime victims deserve that as much as any group of citizens in the United States ever will.

(Applause.) Thank you, God bless you, and God bless America.

END

12:25 P.M. EDT