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**Crime - Victims**



# National Victim Center

Crime-victims

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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

JOSE/EK-  
FYI  
B.R

enclosures

March 27, 1998

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**Executive Director**  
Susan Herman

<http://www.nvc.org>

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.

Page Two  
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 amendment<sup>1</sup> 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

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<sup>1</sup> “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 ENFORCEABILITY<sup>1</sup>**

**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.**

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<sup>1</sup> 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.<sup>2</sup> 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 offenses<sup>3</sup> 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..."<sup>4</sup>

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

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> *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.<sup>5</sup> 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

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<sup>5</sup> 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.<sup>6</sup> 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.”<sup>7</sup> 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.<sup>8</sup> 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.

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<sup>6</sup> 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).

<sup>7</sup> Arizona Code § 13-604.04 (1997).

<sup>8</sup> 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.<sup>9</sup> 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

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<sup>9</sup> 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.<sup>10</sup> 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

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<sup>10</sup> 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.<sup>11</sup> 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.

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<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>

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<sup>12</sup> 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.

<sup>13</sup> 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.

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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.<sup>14</sup>

**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.<sup>15</sup>

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.

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<sup>14</sup> 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.

<sup>15</sup> 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.<sup>16</sup>

**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.<sup>17</sup>

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<sup>16</sup> 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.

<sup>17</sup> 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.<sup>18</sup> 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

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<sup>18</sup> 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.

**MEMORANDUM**

**TO: BRUCE REED, ELENA KAGAN**

**FROM: TOM FREEDMAN, MARY L. SMITH**

**RE: VICTIM INFORMATION AND NOTIFICATION EVERYDAY  
("V.I.N.E.")**

**DATE: NOVEMBER 18, 1997**

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**SUMMARY**

In June 1996, in conjunction with his support for a Victims' Rights Amendment, the President directed the Department of Justice (DOJ) to "adopt a nationwide automated victim information and notification system." Following the President's direction, DOJ established a working group to look into the matter. The working group produced a report that outlines what the DOJ currently does to notify victims. In addition, as part of the FY98 Budget, DOJ has allocated \$8 million for the FBI to try to create a software system to track victims. However, there is no immediate plan for a solicitation to be issued regarding software development.

Earlier this month, Governor Patton and Mrs. Patton from Kentucky met with Rahm Emanuel, Mickey Ibarra, Craig Smith, and Sylvia Mathews. In particular, the Governor highlighted that Kentucky has a statewide automated victim notification system called "Victim Information and Notification Everyday (V.I.N.E.);" that notifies self-selected victims when offenders are scheduled to be released from the state's prisons and jails.

Following is background on steps DOJ has taken with regard to victim notification, how it might fit with other DOJ programs, a description of the V.I.N.E. system, statistics on V.I.N.E, and other considerations.

**I. BACKGROUND**

- In connection with the President's support for a constitutional amendment for victims' rights, the President directed the Attorney General in June 1996 to "adopt a nationwide automated victim information and notification system," to work with other agencies to ensure victim participation, to "consider legislation that would prohibit employers from dismissing or disciplining employees who are victims of crime and whose participation as victims in criminal proceedings requires them to take time away from their employment," and to work with state officials to "achieve a uniform national baseline of protections for victims."
- In July 1997, DOJ developed a package of legislation that was sent to the Hill. As part of

this package, DOJ proposed a bill entitled the "Victims' Rights Act of 1997." Section 2 of this proposed bill included a automated victim information and notification system. This bill was never introduced.

- Kim Lesnek, who is a member of the DOJ working group on victims' rights, reports that DOJ has done an assessment of current victim notification within the Department. The Bureau of Prisons currently notifies only victims of violent crime on escapes, parole hearings, and release dates.
- The DOJ working group considered the V.I.N.E. system, but did not pursue it. DOJ thought that the V.I.N.E. system did not meet its obligations under current law to make its "best efforts" to notify victims at various stages of federal proceedings. One of Ms. Lesnek's main concerns about the V.I.N.E. system was that it required victims to register in the system, and the working group had read current federal law restrictively to require the federal government to proactively contact victims. However, when questioned, Ms. Lesnek admitted that currently federal prosecutors rely on victims to return completed forms, acknowledging that they want to be notified. Accordingly, current federal practice is not that much different in concept from the V.I.N.E. system. Ms. Lesnek indicated that the working group would be willing to take another look at the V.I.N.E. system.
- As part of the FY98 appropriation, DOJ received \$8 million to look into developing a computerized victim-notification system that would link the Bureau of Prisons, the U.S. Attorneys' Offices, and the Executive Office of the U.S. Attorneys. However, the working group needs to meet again to actually decide how DOJ will spend the money for developing this system. It had been anticipated that the FBI would take the lead in the development. The FY98 budget also allocated funds for approximately 93 new positions to perform victim notification in the U.S. Attorneys' Offices. These positions perform much of the notification by mailing out notices.
- The Victims' Rights Working Group has discussed the possibility of working with the federal debt collection team at DOJ in the future. Kathleen Hegerty of the Justice Management Division at DOJ reports that it expects to award a contract for development of software to collect federal civil debt only in January 1998. This software would be installed at the Executive Office of the U.S. Attorneys, the U.S. Attorneys' Offices, Main Justice, and any Justice field offices. For instance, if these systems were able to talk to each other, the FBI could code in the victims' names at the investigation stage, which could then be used to notify them at later stages in the proceedings such as when judgment is awarded and when the defendant is released from prison.

## **II. DESCRIPTION OF V.I.N.E.**

- Information about inmates housed in local jails, adult correctional facilities, and certain juvenile facilities is available 24 hours a day, seven days a week. Through computer

generated telephone calls, all registered persons will be contacted a predetermined telephone number when an inmate is scheduled for release or if an inmate escapes from custody. In addition to victims, law enforcement agencies and the general public have access to housing locations and release information through the 24-hour telephone service.

- **Information available through V.I.N.E.**
  1. **Status:** If not in custody, the date the inmate was released will be given.
  2. **Location:** Current jail or institutional address and telephone number will be given for inmates currently in custody.
  3. **Parole eligibility:** If applicable, the next scheduled hearing date will be given.
  4. **Sentence description:** If applicable, the tentative release date will be given.
- **How a victim registers for V.I.N.E.** A person requesting to be notified calls a toll-free number. The system will call the victim for an established period of time or until the requesting party acknowledges the receipt of the release information.
- **Frequency of notification.** Notification regarding the release of an inmate will be made every 30 minutes for a 24-hour period or until the registered person acknowledges receipt of the information. Notification regarding the release of an inmate from a state institution will be made, if possible, 72 hours before the inmate's release. In cases of parole, changes in sentences due to immediate time credits, court-ordered discharges or escapes, the system will begin to call once the inmate is released.
- **System Security.** The V.I.N.E. system allows each person to register two telephone numbers. The system requires the victim to leave a four-digit, personal identification number (PIN). Use of the PIN is the only way to halt the notification calls.
- **Victim Confidentiality.** The inmate will not know who is registered under the system. Victims can register anonymously. The victims' names are never in the system.

### III. STATISTICS (from the V.I.N.E. materials)

- There are presently 3000 correctional facilities that would need to be connected to a computer system in order to achieve national coverage for victims that wish to be notified. A national system would include smaller county jails in addition to state penitentiaries and large jails. 50% of the jails in this country are small facilities.
- At present, Kentucky states that its V.I.N.E. system monitors approximately 170,000 of the country's approximately 1,000,000 inmates.
- Kentucky estimates that a national V.I.N.E. system would cost approximately \$14.5 million to connect all states' correctional facilities and \$24.8 million to operate annually

thereafter. This estimate seems low.

- Based on its own experience, Kentucky estimates that a national system could be operational within 24 to 36 months from the initiation of the funding.
- The development of a national database of inmates could be used for other purposes in addition to victim notification. For instance, the Social Security Administration could use this information to suspend benefits to inmates who are housed in county jails. In addition, the information could be used to alert states to collect child support payments when inmates are released.

#### **IV. OTHER CONSIDERATIONS**

- Kentucky reports that it has not experienced any complaints similar to those surrounding the notification in Megan's law, perhaps because here the notification occurs while the inmate is still incarcerated.
- Kentucky reports that it has experienced no liability problems such as victims suing the state or correctional facilities.

**The Clinton Administration's Victim Protection Initiative**  
April 15, 1997

**Announcement:**

Today, the Attorney General submitted a report to the President that outlines a comprehensive strategy to advance the rights of victims. The report is in response to the President's June 27, 1996 directive and contains several new measures that assist and protect the interests of victims.

**Background:**

On June 27, 1996, President Clinton announced his support for a victims rights amendment to the United States Constitution. For the interim before an amendment is ratified, he also directed the Attorney General to take immediate action to improve the treatment of victims in the federal, state, military and juvenile criminal justice systems. Specifically, he directed her "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."

**Report:**

The Report describes measures that the Justice Department has taken over the last year to improve victims' rights and proposes a legislative package that includes:

- A national automated victim information and notification system so that a victim can know the status of a case at any time.
- President Clinton's proposal to provide employment protections to victims who wish to attend proceedings in their case without fear of reprisals at work.
- Key additions to the Federal victims' bill of rights including the right to speak with the court at pertinent proceedings.
- The right of victims to have their interests considered in decisions regarding the site of a trial.
- Authorization of up to \$500,000 from the Crime Victims Fund to assist victims of the Oklahoma City bombing.
- A presumption that victims are entitled to attend juvenile delinquency proceedings and the proceedings will be open to the public.
- Stronger federal restitution provisions for victims including granting them the authority to enforce a restitution order in the same manner as a civil judgment.
- Broader authority to seek detention of defendants who seriously threaten victims.



Office of the Attorney General  
Washington, D. C. 20530

April 15, 1997

The President  
The White House  
Washington, DC 20500

Dear Mr. President:

As we begin National Crime Victims' Rights Week, I want to underscore the major steps your Administration has taken in support of victims of crime and, in particular, to report to you on the steps the Department of Justice has taken to implement your memorandum of June 27, 1996, regarding the rights of victims of crime. I am pleased to tell you that the Department of Justice has made great progress on this initiative and is fully engaged in renewing our commitment to crime victims.

Mr. President, you and your Administration have made an historic commitment to the rights of victims. You called for a victims' rights amendment to the federal constitution to make victims full participants in our criminal justice system. You directed your Administration to make victims a priority and signed critical protections into law.

You led the fight for the 1994 Crime Act, which significantly expanded victims' rights. The Crime Act gives victims of violent and sexual crimes the right to be heard in court at sentencing. It strengthens victim restitution provisions in federal law and provides for payment of sexually transmitted disease testing for sexual assault victims. The Act mandates notice to state and local law enforcement concerning the release of federal violent criminals and drug traffickers, and it promotes the establishment of state sex offender registration systems. It requires states to give "full faith and credit" to interstate protection orders and provides \$1.6 billion for programs to combat violence against women.

Building on these landmark initiatives, you successfully fought for victim-related provisions in the 1996 Anti-Terrorism Act, which made restitution mandatory in all federal violent crime cases, increased compensation and assistance services for victims of terrorism, and provided \$1 billion in funding to strengthen anti-terrorism efforts.

Mr. President

Page 2

You have continued to lead our country in the fight against child abuse and sexual assault by signing *Megan's Law* and the *Pam Lychner Act*, which strengthen state sex offender registration systems and require states to notify communities about the location of registered sex offenders. You also supported legislation last year that made interstate stalking a federal crime.

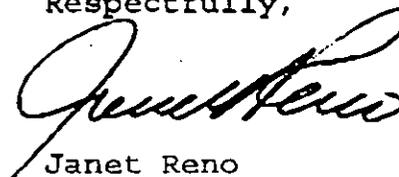
In addition to fighting for these legislative initiatives, this Administration has ensured substantial financial support for victims' initiatives. For example, approximately 2,500 local victim service programs, as well as state compensation programs, receive funds from fines and penalties paid by federal criminal offenders--not taxpayers. Since fiscal year 1993, we have collected over \$1 billion in fines and penalties (including a record \$528 million in fiscal year 1996) from criminals for use to assist crime victims.

Your June 27 memorandum stressed the need for a federal constitutional amendment to secure certain rights for victims of crime, but also recognized the need for more immediate action to enhance the treatment of victims and ensure victims' participation in the criminal justice process. We have moved forward on a number of related fronts.

First, we have been working with the Congress and the criminal justice and victims communities to develop a sound constitutional amendment, and are recommending a legislative package to enhance victims' rights. Second, we have implemented administrative reforms within the Department of Justice and are working with other federal agencies so that, together, we may raise the federal system to a higher standard than ever before. Third, we are reaching out to state and local officials in an effort to achieve a uniform national baseline of protection for victims. This report discusses each of these undertakings in greater detail.

Mr. President, as you know, our criminal justice system too often fails to treat victims of crime with the dignity, fairness, and respect they deserve. As a result of your leadership, we have taken important steps toward promoting victims' rights by making the federal system better and more responsive to the needs of all victims and doing as much as we can to support the states in their commitment and delivery of services to crime victims.

Respectfully,



Janet Reno

Enclosure

# ATTORNEY GENERAL'S REPORT TO THE PRESIDENT



## THE CRIME VICTIMS' RIGHTS INITIATIVE

APRIL 1997

## The Crime Victims' Rights Initiative

### INTRODUCTION

This Administration has an extraordinary record of protecting and expanding rights for crime victims. The President called for a victims' rights amendment to the federal constitution to make victims full participants in our criminal justice system. The President also has enhanced the rights of crime victims by directing the Administration to make victims a priority and by signing critical protections into law.

For example, the *1994 Crime Act* significantly expanded victims' rights, by giving victims of violent and sexual crimes the right to be heard in court at sentencing, and strengthening restitution provisions; by providing for payment for sexually transmitted disease testing of sexual assault victims; by mandating notice to state and local law enforcement concerning the release of federal violent criminals and drug traffickers; by promoting the establishment of state sex offender registration systems; and by requiring states to give "full faith and credit" to interstate protection orders, among other things. The 1994 Crime Act also included \$1.6 billion for programs to combat violence against women, and banned the manufacture, transfer, or possession of 19 kinds of assault weapons and certain high-capacity ammunition magazines to reduce victimization by these lethal weapons.

Building on these landmark initiatives, the Administration successfully fought for victim-related provisions in the *1996 Anti-Terrorism Act*, which made restitution mandatory in all federal violent crime cases, increased compensation and assistance services for victims of terrorism, and provided \$1 billion in funding to strengthen anti-terrorism efforts. In the last year, the Administration supported *Megan's Law* and the *Pam Lychner Act*, to strengthen state sex offender registration systems and require states to notify communities about the location of registered sex offenders. In response to a related Presidential directive, the FBI has been working with the states to include their data in a national sex offender registry system. The Administration also supported legislation last year that made interstate stalking a federal crime.

Fulfilling the Administration's commitment to making our streets safer, the *Brady Act* has prevented approximately 6,600 felons, fugitives from justice, persons subject to certain domestic restraining orders, and other prohibited persons from buying handguns each month. Recent legislation supported by the Administration will advance this goal by prohibiting persons convicted of misdemeanor domestic violence offenses from purchasing or possessing firearms.

In addition to fighting for these legislative initiatives, the Administration has provided substantial financial support for victims initiatives. For example, approximately 2,500 local victim service programs, as well as state compensation programs, receive funds from fines and penalties paid by federal criminal offenders--not taxpayers. Since fiscal year 1993, over \$1 billion in fines and penalties has been collected by the Department of Justice and our United States Attorneys from criminals and used by the Department's Office for Victims of Crime to assist crime victims, including a record \$528 million in fiscal year 1996. In

connection with the Oklahoma City bombing, the Federal Emergency Management Agency has provided more than \$36 million in funding, and the Small Business Administration has made more than 150 related loans totalling over \$7 million. The Justice Department's Office for Victims of Crime has made available more than \$600,000 to supplement Oklahoma's compensation programs, to assist victims in travelling to the Denver trial, and to ensure that victims receive appropriate assistance services during the trial.

The President's June 27 memorandum stressed the need for a federal constitutional amendment to secure certain rights for victims of crime, but also recognized the need for more immediate action to enhance the treatment of victims and ensure victims' participation in the criminal justice process. We have moved forward on a number of related fronts. First, we have been working with the Congress and the criminal justice and victims communities to develop a sound constitutional amendment, and are recommending a legislative package to enhance victims' rights. Second, we have implemented administrative reforms within the Department of Justice and are working with other federal agencies so that, together, we may raise the federal system to a higher standard than ever before. Third, we are reaching out to state and local officials in an effort to achieve a uniform national baseline of protection for victims. This report discusses each of these undertakings in greater detail.

## LAW REFORM

### Victims' Rights Constitutional Amendment

Over the last year, we have been working closely with White House Counsel and Congress to craft a victims' rights constitutional amendment. Our objective has been to guarantee certain fundamental rights for victims of crime while avoiding adverse effects on law enforcement. We hope to reach a consensus in this session of Congress.

### Federal Statutory Reform

We have reviewed existing federal law to determine what improvements should be made to provide further protections and assistance for victims in the federal criminal justice process. The legislative proposal includes authorization for a national automated victim information and notification system, key additions to the federal victims' bill of rights, stronger restitution provisions, and the reform the President endorsed to provide employment protections to victims who wish to attend proceedings in their case without fear of reprisals at work.

## ADMINISTRATIVE REFORM

### Department of Justice Victims' Rights Initiative

In July of 1996, every component of the Department with responsibility for criminal investigation, prosecution, custody or detention of defendants or offenders participated in a system-wide review. This review demonstrated a need for renewed awareness and fuller, more consistent execution of our obligations to victims of crime.

In response, we initiated a series of actions to renew the Department's commitment to victims, make comprehensive and consistent our practices with respect to victims, and raise the level of our implementation of victims' rights and the provision of services to crime victims. These actions include:

1. Revising the *Attorney General's Guidelines for Victim and Witness Assistance (AG Guidelines)* to assure achievement of a higher standard of compliance with our victims' rights responsibilities, clarify all victims' rights and services the Department will provide, and define responsibilities for implementation. We have assigned an Assistant United States Attorney to the Office for Victims of Crime, whose principal responsibility is to complete the annual "best efforts" report and to work closely with each component to ensure that the highest possible level of victims services is achieved.
2. Convening a Department of Justice victims' rights working group on which every relevant component will be represented by a senior official. This group will supervise components' implementation efforts, establish relevant policies, review and approve the revised *AG Guidelines*, and review and approve victims' rights training curricula.
3. Developing and providing appropriate victims' rights and services training curricula to all personnel with victims' rights responsibilities. We developed a training video for all employees, describing the scope of victims' rights under federal law and the *AG Guidelines*, as well as employees' responsibilities for implementing these rights.
4. Holding the first National Symposium on Victims of Federal Crime in February 1997 for all federal agencies and other training meetings. We distributed victims' rights training kits to over 800 federal victim-witness coordinators from among the 70 federal agencies with responsibility to crime victims at the Symposium. Numerous other conferences have taken place to train personnel on their responsibilities to victims, including the Sixth Indian Nations Conference, entitled "Strengthening Indian Nations: Justice for Victims of Crime" (January 1997), and the National Symposium on Child Sexual Abuse (March 1997), to which the Department sent multidisciplinary teams, including Assistant United States Attorneys and federal law enforcement officials.

5. Developing and implementing a comprehensive automated victim information and notification system. This system, called for in the President's June 27 directive, will be available for use by the investigative components, prosecutorial components, and, to the extent feasible, the Bureau of Prisons. A Department of Justice Working Group has convened and is developing a comprehensive victim information and notification system to address the needs of victims throughout the criminal justice system from investigation to prosecution to incarceration. Our agencies are coordinating efforts relating to compatible computer systems and funding sources to implement a system that will inform and protect crime victims.
6. Developing and making available to all components appropriate informational materials for routine distribution to victims. In conjunction with its training efforts, the Office for Victims of Crime is working with each component to develop or revise victim-witness brochures, including the FBI and Bureau of Prisons victim-witness brochures, the Victim-Witness Handbook used by United States Attorneys, various specialized brochures for victims of white-collar crime, sexual assault, and domestic violence, and resource packages for child victims.
7. Including compliance with victims' rights responsibilities in the review and evaluation criteria of all field offices with victims' rights and services responsibilities.
8. Including compliance with victims' rights responsibilities in the workplans and performance appraisals of all personnel with victims' rights responsibilities.

Federal law enforcement's implementation of victims' rights must be viewed as a continuum, beginning with the investigative agencies and working through the prosecutorial and litigating components to the prison system. Consequently, our recent efforts on victims' rights have focused on enhancing the provision of victim assistance by law enforcement and prosecutors.

The FBI has embarked on a new plan to include in its protocols procedures to ensure that crime victims are afforded their rights at the earliest possible stage in the criminal justice process--the investigation. By making aggressive implementation of victims' rights a top priority, the FBI will see that victims receive the services to which they are entitled, regardless of whether the case ever reaches the prosecutorial stage. Moreover, by providing services to victims at their first point of contact with the system, the FBI will encourage continued participation by victims throughout the criminal justice process. Such participation, in turn, will improve the Department's overall investigative and prosecutorial abilities. Ensuring victims' rights is critical to strong, effective law enforcement.

The FBI's comprehensive plan contains five basic elements: providing leadership for victims' rights implementation at the highest levels of the FBI; ensuring adequate staffing and support for the victim assistance program; providing appropriate training for FBI management, agents, and victim-witness staff; working closely with prosecutors, the Office for Victims of Crime, and state and local victim assistance programs, among others, to

develop necessary programs and policies; establishing mechanisms to ensure accountability; and implementing an automated case-tracking system. We are already observing tangible results from the FBI's efforts.

The INS has begun a similar process to reform and enhance the services it provides to victims in the many capacities in which it serves: investigatory, prosecutorial, and administrative. INS has designated a victim-witness program coordinator at its Headquarters, and the Office for Victims of Crime is funding a full-time position at INS to assist with training and technical assistance.

During the last year, the United States Attorneys have continued their longstanding commitment to victims of crime. For example, United States Attorneys' offices have worked hard to enhance services for underserved victims of crime, including Native American violent crime and domestic violence victims. Federal prosecutors also administer a newly created Emergency Witness Assistance Program, which assists victims and witnesses who fear retaliation if they testify. In addition, federal prosecutors now will be evaluated on--and in some measure, their advancement will depend on--their success in meeting their obligations to victims.

Working in coordination with investigative agencies and correctional facilities, victim-witness coordinators in United States Attorneys' offices have been instrumental in our efforts to ensure a seamless approach to justice for victims from investigation to prosecution and incarceration. For example, teams of coordinators from United States Attorney's offices and investigative agencies have been trained, and national protocols have been developed, to respond to victims in crisis situations.

Enthusiasm for and progress toward implementing our victims' rights initiative already are visible. For example, in October 1996, more than 300 United States Attorneys, victim-witness coordinators, and law-enforcement coordinators attended a three-day Justice Department training conference. It was the first time that a joint training exercise of this type focused largely on our victims' rights and services obligations.

Full and effective implementation of these reforms depends on the commitment of personnel in all components and functions and at all levels throughout the Department. Accordingly, we have directed all Department component heads to provide leadership in this endeavor and to take all steps necessary to fulfill our responsibilities to victims. In addition, we have written to all Department employees to inform them about our victims' rights initiative and to underscore that the cooperation of all personnel in each component is essential to its success.

### Coordination with other Federal Agencies

Pursuant to the June 27 directive, we are coordinating with other federal agencies to ensure the establishment of a common baseline of participation for victims. The Department will assist other federal agencies in developing and implementing plans to achieve full compliance with their victims' rights obligations. For example, we plan to work with all federal investigative agencies to help them develop enhanced victim-assistance strategies. We are asking all United States Attorneys to coordinate the delivery of victim assistance in their districts with other federal agencies and with state and local law enforcement representatives. United States Attorneys' offices will help to ensure the development of close working relationships in the field.

As another example, we intend to work closely with federal judges in an effort to maximize victim participation in the federal criminal justice system. We have advised the federal judges of our renewed commitment to full implementation of federal victims' rights, and the Department has provided them with materials to use in judicial trainings. In addition, we convened a working group of judges in February 1997, to identify current promising practices in the judiciary on victims' issues, and are working to develop an action plan for enhancing the judiciary's response to victims and understanding of victims' issues.

We also are working closely with the Departments of Health and Human Services, Education, Transportation, State, and Defense to develop materials and policies, including training, that will benefit crime victims for whom those agencies have responsibilities in this country and abroad. Finally, the Department is improving its collection of data and information on victim needs and services within the federal system through enhanced work on the annual victims services report. An Assistant United States Attorney has been assigned to work full-time on this project with the Office for Victims of Crimes.

### **OUTREACH TO STATE AND LOCAL OFFICIALS**

Every state has some type of victims' rights law on the books -- state constitutional amendment, statutory rights, or both. We conducted an extensive review of these laws and related state implementation efforts. This review revealed wide disparities in the extent and nature of rights provided and states' progress in meeting their obligations to victims under their own laws.

Pursuant to the directive, this review also included a set of recommendations for helping state and local officials achieve a uniform national baseline of protection for victims. These recommendations include:

1. Convening a conference or set of meetings with representatives of state officials, judges, victims' groups, and others to identify the needs of crime victims, best practices, and resources necessary to achieve a national baseline of victims' rights.

2. Conducting research to identify best practices and disseminating the findings.
3. Providing training and technical assistance to state and local law enforcement and other agencies.
4. Supporting the development of comprehensive service centers for victims.
5. Increasing services to underserved areas, such as rural communities and housing projects, and underserved populations, such as victims of gang violence.
6. Enhancing data collection on victims' needs and services.
7. Urging the adoption of appropriate legal reforms at the state level.

To implement these recommendations, we are identifying "promising practices" in serving victims (for law enforcement, prosecution, corrections, probation and parole), victim assistance in rural areas, professional education, and workplace violence, as well as on such issues as stalking, hate and bias crimes, and gang violence. We have convened meetings to address victims' rights and services in law enforcement, corrections, prosecution, and the judiciary, and in such areas as hate and bias crimes and gang violence, including gang violence in Indian Country. We will continue to develop and disseminate information on "promising practices" through conferences and published materials.

We also provide training and technical assistance to state and local entities, and have developed grant programs specifically designed to increase services to victims in underserved areas. For example, we have encouraged states to use their Federal Victims of Crime Act (VOCA) victim assistance funds to serve underserved victims, and have revised our Victim Assistance Guidelines to ensure that states are free to define underserved victims in terms of demographic characteristics, including rural or inner-city location, or minority status. Through discretionary grant programs, we also are encouraging the development and enhancement of comprehensive service centers for victims.

The Department is evaluating the effectiveness of state VOCA programs, and has amended the VOCA guidelines to permit states to use a portion of their VOCA administrative funds for evaluation of program effectiveness. We also have funded the production of a legislative source book that compiles all victim-related legislation in each state. This unique resource will allow states to assess and compare the legislative protections they provide for crime victims.

Our criminal justice system has too often failed to treat victims of crime with the dignity, fairness, and respect they deserve. As a result of Presidential leadership, we have taken important steps to promote victims' rights, provide necessary services, adequately and appropriately include victims' interests in the criminal justice process, and advance victims' quest for justice and healing. We have also tried to make victims' rights a reality by improving the federal system, making it more responsive to the needs of all victims, and doing as much as we can to support the states in their commitment and delivery of services to crime victims.

From: Leanne A. Shimabukuro on 04/11/97 02:58:46 PM

Record Type: Record

To: Michelle Crisci/WHO/EOP, Elena Kagan/OPD/EOP, Bruce N. Reed/OPD/EOP, Dennis K. Burke/OPD/EOP  
cc:  
Subject: highlights from victims report

This is a really short description of the report, FYI. Report is going to the AG COB today. They are still finalizing the legislative proposal. Report also details our accomplishments on victims, as Rahm suggested.

#### 1. Law Reforms:

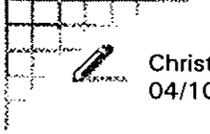
*Constitutional Amendment:* Justice is working on Constitutional amendment with WH Counsel and Congress and hope to reach consensus in this session of Congress.

*Legislative Proposal:* Includes authorization for national automated victim information and notification system, additions to Federal victims' bill of rights and stronger restitution provisions. Also includes employment protections for victims attending proceedings on their case.

#### 2. Administrative Reforms:

- Revised AG guidelines for victims and witness assistance to assure higher standard of compliance with victims' rights responsibilities.
- Convening a victims' rights working group.
- Developing and implementing a comprehensive automative victims information and notification system.
- Including compliance with victims' rights in workplans and performance appraisals of personnel who deal with victims.
- Coordinating with other Federal agencies to ensure baseline of participation for victims. Plan to work with all Federal investigative agencies to develop victim-assistance strategies; will work with Federal judges to maximize victim participation in Federal criminal justice system.
- Providing outreach to state and local officials (conferences, research, training). Identifying promising practices for victim assistance in areas like gang violence and hate crimes.

Crime-Victims

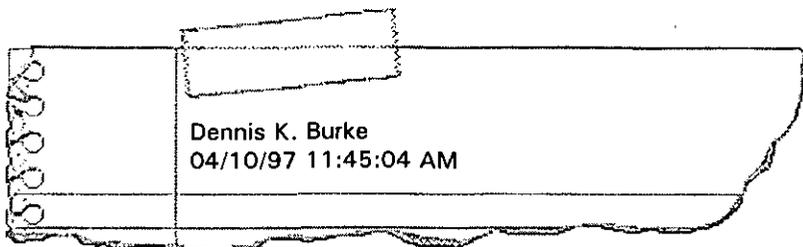


Christa Robinson  
04/10/97 11:52:26 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Dennis K. Burke/OPD/EOP  
Subject: Victims

Just wanted to make sure you were aware that we did submit three scheduling requests for the President to do something for victims rights weeks and they were all turned down. We asked for him to do a ceremony, a photo, and then a video. The VP has agreed to do a photo-op on Friday, April 18th, but it is a closed press event. Also, that day the Attorney General is holding a ceremony at DOJ.

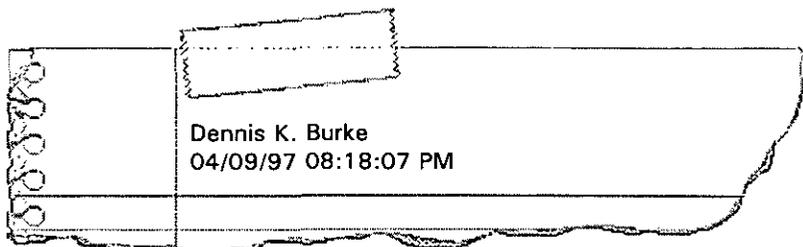


Record Type: Record

To: Bruce N. Reed/OPD/EOP  
cc: Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP  
Subject: Few things coming up....

Christa said that you asked about victims week this morning -- I sent this to Rahm last night because he was asking about what Justice was up to. I will send over a copy of the victims report for you to take a look at.

----- Forwarded by Dennis K. Burke/OPD/EOP on 04/10/97 11:47 AM -----



Record Type: Record

To: Michelle Crisci/WHO/EOP  
cc: Leanne A. Shimabukuro/OPD/EOP  
Subject: Few things coming up....

I will not be here Thursday or Friday, but here are a few things that might come up. Leanne is working on all of them.

1. BJS Crime Victimization Numbers --- DoJ has yet to send it over. We will hopefully get it tomorrow and we will draft a POTUS quote to give to Barry for White House release and DoJ for their press release. We will have that to you by COB Thursday.
2. Victims Directive Report -- The Report looks pretty good; they are going to add our accomplishments in the front of it. We will get you some talking points so you at least know what is in it. It is interesting but not earth-shattering.

AG is testifying on Wednesday before Senate Judiciary on Victims Bill of Rights. Monday Justice announces their independent counsel decisions, and Tuesday they release the IG Report on the FBI lab.

It seems to us that the only way we can get any story on the victims directive report is to

give someone an exclusive for Wednesday's paper -- it will have to compete with the FBI lab story but it needs to get out before her hearing.

3. Bomb-making Report --- We will find out from Justice what Feinstein thinks of it and when we can release it.

4. Clips -- did you ever talk to Feinstein? Dingell's guy told Jacoby that the President made a personal commitment to Dingell on this issue (which you would assume he would say). It seems to me that doesn't preclude us from supporting legislation now that will not be going anywhere.

5. Dates on:

4473 Form

Safety Locks

Juvenile Justice Conference

Leanne will be pushing Treasury and Justice to get these COB Thursday.