

# Bipartisanship Tour Takes Bush to N.C.

## Praise for Gov. Hunt, Barbs for Gore

By DANA MILBANK  
Washington Post Staff Writer

GREENSBORO, N.C., April 27—George W. Bush took his show of comity and bipartisanship on the road today, bringing good cheer (and only the occasional barb for Vice President Gore) to the teachers and political donors of North Carolina.

Fresh from his record-setting haul at a Republican fundraiser Wednesday night in Washington, Bush was greeted as he boarded his plane by reporters calling him the "\$20 million man."

Arriving in Greensboro, Bush invited supporter Sandy Kress, a lawyer and a former Democratic county chairman, to join him in front of the camera. Bush, speaking to nearly 1,000 people at a North Carolina Department of Public Instruction conference, also went out of his way to praise North Carolina Gov. Jim Hunt, a Democrat and a possible Gore running mate. "He's an education governor," Bush said of Hunt, adding, "We need to check partisanship at the door when it comes to the education of our children."

He told the educators that he and Hunt and their states were "part of a new movement in education." A Bush press release noted that "Texas and North Carolina have been praised by Clinton Education Secretary Richard Riley."

Bush aides also noted that Bush was being introduced by Phil Kirk, a Republican appointed by Hunt to chair the state's board of education, though Kirk's introduction was perfunctory and faint, leading Bush to quip, "I always like a short introduction." Bush's remarks received a polite but not enthusiastic greeting from the teachers.

Even in this week of Bush's bipartisanship tour, Bush showed that comity has its limits. He asked guests at a luncheon fundraiser whether they wanted "a man who trusts the people or a man who trusts government," and

a "man who grew up in West Texas or a man who grew up in Washington." Later, at a news conference, he cited a decade-old remark by Gore that he would "rip the lungs out" of his opponent. Bush vowed that "I'll respond" to what he perceives as Gore's attacks. Asked what he would do if Gore accused him of hypocrisy, Bush said he would "laugh."

When a reporter noted that the Republicans attending Wednesday night's fundraiser in Washington gave him energetic applause for his partisan attacks but a lukewarm response to his peace overtures, Bush shrugged it off. "I made the right statements, applause or no applause," he said.

In the session with reporters, Bush confirmed that he had met with Teamsters President James Hoffa on Wednesday in Washington and asked for his endorsement. Hoffa, Bush said, told him he "hadn't made up his mind yet," which Bush took "to be the beginning of a good sign."

At the fundraiser, Bush raised \$250,000 for his campaign from diners who listened to the usual Bush stump speech over chicken plates. Bush used both events to decry the "soft bigotry of low expectations" and demanded strong accountability standards in schools.

Meanwhile, aides to John McCain said the Arizona senator is upset about comments attributed to Bush advisers and described the planned May 9 meeting between the two rivals as "tenuous." McCain spokesman Todd Harris said McCain wants to talk issues—campaign finance and Social Security reform, the size of tax cuts—not the vice presidency, which Bush said a week ago he planned to raise.

Aides to both men will meet Friday to discuss what will be on the agenda.

Staff writer Terry M. Neal in Washington contributed to this report.

# Crime Victims Measure Stalls on Senate Floor

## Constitutional Amendment Needs 67 Votes

By HELEN DEWAR  
Washington Post Staff Writer

Senate sponsors of a proposed constitutional amendment to protect the rights of crime victims shelved the proposal yesterday after conceding it lacked the two-thirds majority needed for approval.

The decision was announced by Sens. Jon Kyl (R-Ariz.) and Dianne Feinstein (D-Calif.), who vowed to continue their fight for the amendment in the future, although it is clearly dead for the rest of this Congress.

Sen. Patrick J. Leahy (Vt.), ranking Democrat on the Senate Judiciary Committee and a leading opponent of the proposal, said efforts will continue to enact the protections by statute rather than constitutional amendment.

The proposed amendment would have assured that crime victims and their families of rights to receive notice of court and parole proceedings, to be heard or submit statements at the proceedings, to be notified in case of a criminal's release or escape and to receive restitution from the convicted offender. It also would have made victims' safety a factor to be considered in determining conditional release from custody and victims' interests a factor in ensuring speedy trials.

Proponents argued it is needed because statutory protections are insufficient to protect victims. But opponents, arguing an amendment is unnecessary, said their statutory alternative would accomplish the same goals without tampering with the nation's basic charter.

Although the amendment had bipartisan support, the fight against it was led by leading

Democrats, including Minority Leader Thomas A. Daschle (D-S.D.) and Sen. Daniel Patrick Moynihan (D-N.Y.), who contended that it was so complicated and detailed that it was "longer than the Bill of Rights."

A two-thirds majority of both houses is required to submit a proposed amendment to the states for ratification. The victims' rights amendment was short of the mark Tuesday when debate opened and appeared to lose ground as time went on.

The Clinton administration had supported the amendment but withdrew its backing from the Kyl-Feinstein proposal after negotiators failed to resolve a dispute involving several critical points.

It was the second proposed amendment to the Constitution to fail in the Senate so far this year, even though both embodied popular causes and this is an election year. Earlier, the Senate rejected a proposal to permit legislation banning desecration of the American flag. The House had passed the flag amendment but has not acted on the victims rights proposal.

Senators said reluctance to tamper with the Constitution, especially the Bill of Rights, was a major factor in rejection of both the flag and victims' rights amendments. Sen. Robert C. Byrd (D-W.Va.) decried what he called a "cavalier spirit which seems to say that, if it sounds good politically... if it will get votes, let's introduce an amendment to the Constitution."

Crime -  
Victims Rights  
And

# Car Air Bags Must Pass 25-Mph Test

*U.S. Standard to Begin  
With 2003 Model Year*

By CINDY SKRZYCKI  
*Washington Post Staff Writer*

Federal regulators have decided that, starting in 2003, automakers must install a new generation of air bags that will protect occupants in a 25-mph crash, a standard designed to safeguard women and children.

The final rule, which is expected to be issued next week, is the product of intense lobbying by the industry and consumer groups, which are at odds over the speed of crash tests and the protection the standard will provide.

Consumer groups, who have been pushing for a 30-mph standard, said the rule will not offer unbelted drivers and passengers enough protection, especially in high-speed crashes. They contended that automakers could use sensors and dual-speed air bags to make sure the safety devices would not deploy too forcefully and harm smaller-size occupants.

"This is engineering malpractice," Joan Claybrook, president of Public Citizen, a consumer advocacy group, said of the new rule.

The National Highway Traffic Safety Administration was alarmed at the number of women and children killed by the air bags, often in low-speed accidents. As of April 1, there have been 158 air-bag fatalities, 92 of them involving children. Air bags also have saved lives: Some 5,000 fatalities have been avoided since the 1980s, according to government statistics.

In response to the deaths, NHTSA told automakers in 1997 to decrease the speed of the test from 30 mph to prevent deaths to passenger-side occupants.

The auto industry complied and started producing depowered air bags. It said that the depowered bags have cut the rate of fa-

talities for children and smaller adults. A return to the old 30 mph standard would, once again, endanger smaller occupants, the industry predicted.

Regulators originally were not convinced that this would be the case. When they sent their first draft of the controversial rule to the Office of Management and Budget for review, they asked for a return to the 30-mph standard by the year 2008. There would have been an initial phase-in, which would have let automakers use the slower speed until 2003.

Sources said NHTSA officials had a difficult time convincing OMB, which reviews all major rules, that the higher speed wouldn't harm the very people they were trying to protect. The agency missed its deadline for issuing the rule on March 1, and intense behind-the-scenes lobbying at the OMB began.

The auto industry put together a coalition of groups, including the National Safety Council, AAA, insurers, the American Trauma Society and medical professionals to plead their case. Most important,

James Hall, chairman of the National Transportation Safety

Board, sent a letter to Transportation Secretary Rodney E. Slater that was in sync with the auto in-

dustry's position.

Claybrook, who also had audiences at the OMB, was outraged that the OMB changed the fundamental thrust of the rule after NHTSA made its initial decision.

"Not since Dan Quayle has the White House on behalf of the auto industry overruled an agency's safety decision," she said last night. "This means 200 to 400 more people will die annually in high-speed crashes, and many more seriously injured."

An auto industry source said he assumed that OMB officials were not persuaded by NHTSA's initial position but were impressed by the arguments made by the auto industry and the insurance and medical coalition it put together.

"It will be a major advancement in occupant protection," he said.

Under the rule, automakers will phase in the new air bags starting with 2003-model cars and must be in full compliance by the 2006 model year. The rule also will require the automaker to reduce the severity of crash injuries in tests, run tests on a whole family of dummies rather than just an average-size male, and include new tests for lower-speed crashes.

April 21, 2000

## MEMORANDUM FOR THE PRESIDENT

FROM: Beth Nolan  
Bruce Reed  
Chuck Brain

SUBJ: Victims' Rights Amendment

## I. SUMMARY

The Department of Justice is preparing a "views letter" on S.J. Res. 3, the version of a Victims' Rights Amendment now before the Senate. Senators Kyl and Feinstein sponsor this amendment, and a cloture vote on the motion to proceed is scheduled for Tuesday, April 25th. Although you and the Attorney General have historically strongly supported a victims' rights amendment, the particular version before the Senate is seriously flawed. The DoJ views letter, therefore, will note the Administration's support for a "good" constitutional amendment, but express our opposition to Kyl-Feinstein.

## II. BACKGROUND

You first announced your support for a constitutional amendment for victims' rights in June 1996, at a Rose Garden event attended by victims and Senators Feinstein and Kyl. Your remarks laid out the basic elements needed in a victims' amendment: the right to be told about public court proceedings and to attend them; the right to make a statement to the court about bail and about sentencing; the right to be heard prior to acceptance of a plea bargain; the right to be told about parole hearings and to attend and speak; the right to notice when the defendant or convict escapes or is released; the right to restitution from the defendant; the right to reasonable protection from the defendant; and notice of these rights.

The victims' community applauded you for supporting a constitutional amendment. Since then, the Administration, including Attorney General Reno, has repeatedly voiced its strong support for an amendment. In addition, last July, the Vice President expressed his commitment to lead a "national fight" for a victims' rights amendment, but he has not commented on Kyl-Feinstein in particular.

At the time of your remarks, you did not offer your specific support for the Kyl-Feinstein amendment. Initially, the Justice Department had concerns with the amendment language, some of which the sponsors worked to fix. As a general matter, the Kyl-Feinstein amendment

addresses your principles. But there are four significant concerns with this particular version:

- (1) The rights provided crime victims by Kyl-Feinstein could conflict with the constitutional rights afforded the accused, including the rights set forth in the 5<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup> Amendments. And as a latter ratified Amendment, it is possible that a court will construe the victim's rights created by Kyl-Feinstein to trump the accused's rights. Our position, therefore, is that any amendment must include language stating it should not be construed to deny or diminish the rights of the accused as guaranteed by the Constitution.
- (2) Kyl-Feinstein would create an improper incursion on the President's (and governors') executive pardon power. Kyl-Feinstein does more than simply diminish the control over pardons that the Framers vested in the President, it does so in particularly significant ways. The proposed language would require the President to give victims notice and an opportunity to submit a statement, and would arguably permit a court to reopen a pardon, commutation, or remission of restitution. It also seemingly would authorize Congress to regulate the pardon power in some respects. We would eliminate the clemency provisions entirely.
- (3) Kyl-Feinstein would unnecessarily impinge upon law enforcement by permitting exceptions from victims' rights guarantees only where there is a "compelling" governmental interest, a constitutional standard that could effectively prevent law enforcement interests from ever prevailing. We believe that the standard should be "significant" government interest. And,
- (4) The restitution provisions in Kyl-Feinstein undercut both finality and law enforcement interests. The current language would appear to permit a victim to reopen the restitution portion of a sentence for any reason at all, at any time, even after a sentence has been served in full. We would, therefore, eliminate the restitution provisions.

### III. ANALYSIS

As previously noted, DoJ is preparing a "views letter" on Kyl-Feinstein. This letter will outline the four concerns outlined above. In addition, the letter will clearly note that we would support a constitutional amendment that addresses our concerns, but that we oppose this particular version of the VRA. Specifically, the DoJ letter well read in pertinent part:

[a]lthough we continue to strongly support a victims' rights amendment to the Constitution and would support S.J. Res. 3 if the concerns detailed in this letter were addressed, we oppose it in its current form. We urge the Senate to continue to work with the Department in improving the constitutional amendment, while, in the interim, continuing to assist crime victims through the enactment of appropriate legislation.

DPC, Counsel's Office, Legislative Affairs, and Justice have agreed on the above position, because, as outlined above, the amendment is seriously flawed. More importantly, however, Kyl-Feinstein may actually pass the Senate. There is no definite vote count, because no VRA has ever been addressed by the full Senate. However, our estimates suggest that there are at least 56 solid "yes" votes with 20 Senators still undecided. Perhaps more telling is the fact there are currently 13 Democratic cosponsors of Kyl-Feinstein, and it is unlikely that many Republicans will oppose. In addition, if the Senate passes this version of the VRA, the House will almost certainly pass the same version by a wide margin. And Finally, Senator Daschle has emphatically requested that the Administration express its opposition to the amendment, because he believes this will spur enough Democrats to vote against it.

We have couched our "opposition" to Kyl-Feinstein, however, with a reiteration of our support for a "good" constitutional amendment and our interim support for a statutory alternative. We have done so in order to mitigate the antagonism the victims' rights groups, to whom we have promised support for an amendment, are likely to feel. As noted above, you and the Attorney General have historically supported a victims' rights constitutional amendment. To remain consistent, therefore, it is imperative that we highlight the fact that the Administration is opposing *only this particular version*, that we would support Kyl-Feinstein if the sponsors addressed our four concerns, and that we will work with those committed to the issue to craft a constitutional amendment around which we all can rally.

April 21, 2000

The Honorable Henry Hyde  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20510

Dear Chairman Hyde:

As you know, yesterday marked the anniversary of the tragic shootings at Columbine High School -- and the date by which I had called on Congress to enact common sense gun safety legislation. The passing of this deadline is a deep disappointment. When nearly 12 of our nation's children killed by gunfire every day, we have an urgent responsibility to do all we can to reduce gun violence. That is why I am grateful for your good-faith efforts to seek agreement, despite tremendous pressure on Congress from the gun lobby. I was also glad to see that you joined Representative Conyers last week in urging Chairman Hatch to promptly convene the juvenile justice conference and to move forward at last on this legislation. And I appreciated receiving your most recent proposal to reach a compromise.

I still have serious concerns about aspects of your latest proposal that I fear would create new loopholes for criminals to buy guns. But I am confident that if we can keep working together in good faith, we can reach agreement on a strong, common-sense bill that I can sign into law.

I was especially encouraged by your recent commitment on "Meet the Press" and in your letter to Mr. Conyers to ensure that persons under felony indictments remain subject to full, three-day background checks. It is critical that we make the same effort to stop criminals from buying guns at gun shows that we already make at gun stores.

In order to prevent fraud, protect privacy, and fully enforce the nation's gun laws -- goals we both share -- I believe we must continue to give law enforcement sufficient time to review NICS records rather than destroy them immediately. However, as a gesture of good faith, I am willing to meet you halfway on this important issue, by requiring records to be destroyed within 90 days, instead of 180 days. With this compromise, we can address your concerns while preserving this significant law enforcement tool. I hope this step will help break the current logjam, and bring your colleagues back to the conference table.

We still have other important issues to resolve. I remain concerned about aspects of your proposal that would leave open the gun show loophole by letting criminals buy guns at flea markets and by cutting short existing background checks on persons with certain mental health histories and domestic violence restraining orders; undermine the ban on importation of high-capacity ammunition clips; weaken longstanding controls on interstate firearms sales; and fail to

require vital recordkeeping provisions needed by law enforcement to trace guns sold at gun shows that later turn up in crimes.

Despite these significant outstanding issues, I believe we can reach an agreement. It is my sincere hope that in the coming weeks, we can work together to address our common goal of closing the gun show loophole and ensuring that our nation's gun laws are fully enforced. Neither of us is interested in a compromise that would serve only to compromise public safety and the effectiveness of law enforcement. I look forward to working with you to pass this common sense legislation, and encourage you to continue urging Chairman Hatch to allow the conferees to meet and consider this legislation. As you have stated, our efforts will come to nothing until that happens. Only by allowing an open and honest debate in conference and by working out our differences can we do right by the American people on this vital issue. We owe it to the families of Littleton, and the thousands more who lose their lives in gunfire each year in America, to get this done now.

# Fix of Section 3

Proposed new exceptions language:

*The second sentence of Section 3 would be deleted.*  
Add a new section 4 which states:

“Congress and courts may make exceptions to the rights established by section 1 of this article when necessary to achieve a substantial interest.”

Proposed changes to S. J. Res. 3 to deal with exceptions clause concerns:

Delete the second sentence within Section 3.

Add a new second sentence which states:

“Congress and courts may make exceptions to the rights established by section 1 of this article when necessary to achieve a substantial interest.”





U.S. Department of Justice  
Office of the Associate Attorney General

Principal Deputy Associate Attorney General

Washington, D.C. 20530

**FACSIMILE TRANSMITTAL COVER SHEET**

**DATE:** 4-26-00

**TO:** Bill Marshall

**FACSIMILE NO:** 456-6279

**TELEPHONE NO:** \_\_\_\_\_

**FROM:** Michael Greenberger

**FACSIMILE NO:** (202) 514-0238

**TELEPHONE NO:** (202) 305-3481

**NO. OF PAGES:** 2 (w/cover)

**COMMENTS:**  
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Proposed changes to S. J. Res. 3 to deal with exceptions clause concerns:

Delete the second sentence within Section 3.

Add a new section 4 which states:

"Congress and courts may make exceptions to the rights established by section 1 of this article when necessary to achieve a substantial interest."

Renumber the sections following the new section 4 accordingly.

The enumeration of rights in this Article shall not be construed to abridge rights guaranteed to the accused in this Constitution.

DF: Quote from BC, AG

'82 fight in Calif.

If we're to have an amdt, it's on shoulders of BC, VP, AG. & where matters in Okla statute

KYL: DOJ '98 letter, cooperation  
63 drafts

How ~~up~~ enthusiastic would Admin

Concessions - only worth it if Admin goes all out - otherwise save for a better day.

Quotes BC back to us on balancing rts

DF: Where are these rts in conflict?

KYL: ① No rt. is absolute - free press example (trouble w/default

- In case of a tie, the defendants win.

- We can say the  $\Delta$ s rts are as strong as before

Ties rare - Sp. Court vs. HS

② Pardon [KYL will check w/Hatch. How quickly will we do these?]

- Heather: we're revising DOJ pardon guidelines (happy to share language)

- KYL: can we say, "but we're not taking anything away from Pres's power"  
- no judicial review unless victims know about but get no notice

- DF: can we agree just to delete this? (in light of regis)

(but ~~can~~ Pres doesn't have to if no petition is filed)

- KYL: would we support anything else?

e.g., Nothing would deny or diminish/abridge the Pres's authority

- Bill M: probs w/construction

- KYL: no philosophical dispute ~~at~~ here

- taking this out will lose us votes

All of but 2 of these rts cannot be enforced.

③ - DF: can't we just take it out

③ Restitution - DROP

- Greenberger.

- KYL: If states do this, we don't need it

④ OK w/ "substantial" (but CTS vs. Congress)

- Put in separate Section?

KYL: If we're going to get enthusiastic, lobbying support  
- 9th Amdt phrase

→ GET DIF  
AN ANSWER  
ON TIMING



SJ 3 RS

Calendar No. 299

106th CONGRESS

1st Session

S. J. RES. 3

Proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

**IN THE SENATE OF THE UNITED STATES**

**January 19, 1999**

Mr. KYL (for himself, Mrs. FEINSTEIN, Mr. BIDEN, Mr. GRASSLEY, Mr. INOUE, Mr. DEWINE, Ms. LANDRIEU, Ms. SNOWE, Mr. LIEBERMAN, Mr. MACK, Mr. CLELAND, Mr. COVERDELL, Mr. SMITH of New Hampshire, Mr. SHELBY, Mr. HUTCHINSON, Mr. GREGG, Mr. THOMAS, Mr. CRAIG, Mr. GRAMS, Mr. INHOFE, Mr. THURMOND, Mr. WARNER, Mr. TORRICELLI, Mr. BRYAN, Mr. HAGEL, Mr. CAMPBELL, Mr. MURKOWSKI, Mr. BUNNING, Mr. VOINOVICH, Mr. HELMS, Mr. FRIST, Mr. GRAMM, Mr. LOTT, and Mrs. HUTCHISON) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

**October 4, 1999**

Reported by Mr. HATCH, with an amendment

**[Insert the part printed in italic]**

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**JOINT RESOLUTION**

Proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid for all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:*

**Article--**

SECTION 1. A victim of a crime of violence, as these terms may be defined by law, shall have the rights:

to reasonable notice of, and not to be excluded from, any public proceedings relating to the crime;

to be heard, if present, and to submit a statement at all such proceedings to determine a conditional release from custody, an acceptance of a negotiated plea, or a sentence;

to the foregoing rights at a parole proceeding that is not public, to the extent those rights are afforded to the convicted offender;

to reasonable notice of and an opportunity to submit a statement concerning any proposed pardon or commutation of a sentence;

]

to reasonable notice of a release or escape from custody relating to the crime;

to consideration of the interest of the victim that any trial be free from unreasonable delay;

to an order of restitution from the convicted offender;

to consideration for the safety of the victim in determining any conditional release from custody relating to the crime; and

to reasonable notice of the rights established by this article.

SECTION 2. Only the victim or the victim's lawful representative shall have standing to assert the rights established by this article. Nothing in this article shall provide grounds to stay or continue any trial, reopen any proceeding or invalidate any ruling, except with respect to conditional release or restitution or to provide rights guaranteed by this article in future proceedings, without staying or continuing a trial. Nothing in this article shall give rise to or authorize the creation of a claim for damages against the United States, a State, a political subdivision, or a public officer or employee.

SECTION 3. The Congress shall have the power to enforce this article by appropriate legislation. Exceptions to the rights established by this article may be created only when necessary to achieve a compelling interest.

*(significant)*

SECTION 4. This article shall take effect on the 180th day after the ratification of this article. The right to an order of restitution established by this article shall not apply to crimes committed before the effective date of this article.

SECTION 5. The rights and immunities established by this article shall apply in Federal and State proceedings, including military proceedings to the extent that the Congress may provide by law, juvenile justice proceedings, and proceedings in the District of Columbia and any commonwealth, territory, or possession of the United States.

Calendar No. 299

106th CONGRESS

1st Session

S. J. RES. 3

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

October 4, 1999

Reported with an amendment

END



## U.S. Department of Justice

## Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 25, 2000

The Honorable Trent Lott  
Majority Leader  
United States Senate  
Washington, D.C. 20510

Dear Mr. Majority Leader:

I write to convey the views of the Department of Justice on S.J. Res. 3, a resolution setting forth the text of a proposed Victims' Rights Amendment (VRA) to the Constitution, which was voted out of the Committee on the Judiciary on September 30, 1999, and sent to the full Senate. The Department continues to have significant concerns with four aspects of S.J. Res. 3. Although we continue strongly to support a victims' rights amendment to the Constitution, and would support S.J. Res. 3 if the concerns detailed in this letter were addressed, we oppose the amendment in its current form. In the interim, we hope you will continue to help crime victims through the enactment of appropriate legislation.

As you know, the President and the Attorney General both strongly support a victims' rights amendment that will ensure that victims have a voice in the criminal justice system. See Pres. Proc. No. 7290, 65 FR 19823 (Apr. 10, 2000); Speech of Attorney General Janet Reno to the National Organization for Victim Assistance (Apr. 7, 2000). At the same time, this Administration believes that our constitutional system, which the Framers established after much deliberation and debate, has served our nation well for more than 200 years and should not be altered without the most cautious deliberation. See Statement of President Clinton in Support of Victims' Rights Constitutional Amendment (June 25, 1996). Our support for the VRA has rested on the premise that the Amendment would not undermine existing constitutional provisions; thus, our first concern has been that the resolution lacks an express provision preserving the rights of the accused. In light of our role as the chief federal law enforcement agency, our support has also depended on the Amendment not hampering effective law enforcement; accordingly, our second concern has been the unduly stringent standard for creating exceptions to the Amendment's applicability where necessary to promote the interests of law enforcement. We are committed to an amendment that gives real rights to victims while satisfying these basic criteria. This letter augments our previous letter of June 17, 1998 (enclosed), regarding the then-current S.J. Res. 44, in which we noted the above-mentioned concerns. This letter also reflects further concerns we have about the Amendment's application to the pardon power and the reopening of restitution

that we discussed with committee staff before markup in September.

### Preserving the Existing Constitution

As we stated in our previous letter, we believe that, to ensure the protection of existing constitutional guarantees, the VRA should contain language that expressly preserves the rights of the accused. To that end, we urged that the following language be added: "Nothing in this article shall be construed to deny or diminish the rights of the accused as guaranteed by the Constitution."

Moreover, we are concerned that new language that has been added to the proposed VRA would further alter our existing constitutional framework. Section 1 of S.J. Res. 3 has been amended to grant victims the right "to reasonable notice of and an opportunity to submit a statement concerning any proposed pardon or commutation of a sentence." This provision would create an unprecedented incursion on the President's exclusive power to grant pardons, commute sentences and remit restitution. See U.S. Const. art. 2, § 2, cl. 1 (pardon power); Schick v. Reed, 419 U.S. 256, 263-64 (1974) (commutation power falls within the pardon power); see also Knote v. United States, 95 U.S. 149, 153-155 (1877) (pardon power includes authority to remit unpaid financial obligations imposed as part of a sentence). The Supreme Court has observed that "the draftsmen of [the pardon clause] spoke in terms of a 'prerogative' of the President, which ought not be 'fettered or embarrassed.'" Schick, 419 U.S. at 263. The Court has also observed that "whoever is to make [the pardon power] useful must have full discretion to exercise it." Ex parte Grossman, 267 U.S. 87, 121 (1925). In addition, we note that this provision could encroach upon the clemency powers of governors in states where their authority is also plenary.

S.J. Res. 3 does more than simply diminish the control over pardons that the Framers vested in the President; it does so in particularly significant ways. The proposed language would require the President to give victims notice and an opportunity to submit a statement (Section 1), and would arguably permit a court to reopen a pardon, commutation, or remission of restitution (Section 2). It also seemingly would authorize Congress to regulate the pardon power in some respects by granting Congress "the power to enforce [the VRA] by appropriate legislation," rather than reserving enforcement authority to the President (Section 3). By contrast, under our existing constitutional framework, the President has both the responsibility and authority to determine the procedures for his Administration's handling of executive clemency requests so that he may receive the information he deems necessary, including input from victims and others. The current procedures are set out at 28 C.F.R. §§ 1.1-1.10. The Department is presently exploring how, and under what circumstances, additional victim interests can be best integrated into the Department's advisory role in counseling the President as he makes decisions about clemency.

Furthermore, the pardon provision differs from the rest of the VRA, which focuses on criminal proceedings. Although other provisions of the VRA would give victims rights in

proceedings in which defendants have rights, the pardon provision would grant victims rights in a setting in which no one – including defendants – has ever possessed rights, and that has always been controlled entirely by the President. The Framers assigned this power wholly to the President, and we oppose any amendment that would encroach upon it.

### Law Enforcement Concerns

As we have noted previously, we are concerned that the very high standard for exceptions to the Amendment's victims' rights guarantees in Section 3 of S.J. Res. 3 would render the government unable to remedy the practical law enforcement problems that may arise under the Amendment. We believe that the authority to create exceptions should exist where necessary to promote a "significant" government interest, rather than the "compelling" interest required by the current draft. It is important that the VRA be flexible enough to permit effective and appropriate responses to the variety of difficult circumstances that arise in the course of implementing the Amendment. This concern is explained in more detail in our letter of June 17, 1998.

Our last issue concerns the addition of restitution to the list of proceedings and rulings subject to retrospective relief. We believe that any remedies provision should strive to make rights of victims real and enforceable, while ensuring that society's and victims' interests in finality and effective law enforcement are not undermined. Measured against these objectives, we believe Section 2 of S.J. Res. 3 is overly broad and would unduly disrupt the finality of sentences. The current language would appear to permit a victim to reopen the restitution portion of a sentence for any reason at all, at any time, even after a sentence has been served in full. The problems for law enforcement that could be caused by this provision include, for example, the possibility that because of the limited economic means of many defendants, restitution awarded to some victims at sentencing might have to be decreased to accommodate subsequent claims by victims who come forward after sentencing; the potential that defendants will litigate the reopening of a restitution order without the reopening of other parts of the sentence; and the difficulty in reaching and defending plea agreements in light of possible reopenings of and changes in the terms of restitution. In our view, these issues constitute serious obstacles to including restitution among the matters subject to retrospective relief.

Further, we believe the inclusion of restitution in Section 2 is not necessary in light of existing legislation providing relief for victims who are denied restitution or whose restitution is inadequate. If a federal court fails to impose restitution in accord with controlling statutes, the government can appeal the unlawful sentence without impairing the defendant's Double Jeopardy rights. See 18 U.S.C. § 3742(b); United States v. DiFrancesco, 449 U.S. 117, 137 (1980). Likewise, the States can legislatively protect victims in this regard by authorizing state prosecutors to appeal criminal sentences that do not satisfy state restitution statutes. Congress and the States can also enact legislation to address perceived gaps in current laws without going so far as to amend the Federal Constitution.

### Doing More For Victims While Improving the Amendment

This Administration, with Congress, has kept its commitment to victims of crime, even as it has pushed aggressively for a victims' rights amendment. We have witnessed historic reductions in violent crime over the past seven years, and through our efforts, criminal victimization is at its lowest point in twenty-five years.

Even with the significant drop in violent crime, we have not become complacent. In 1994 the President signed into law the Violent Crime Control and Law Enforcement Act, which gives victims of violent crime and sexual abuse the right to speak out in court before sentencing, providing them the opportunity to describe the impact such victimization has had on their lives.

The Department, working with Congress, has also provided unprecedented levels of funding for victims' services. Since 1993, we have received over \$2.2 billion in the Crime Victims' Fund, over 90 percent of which has been distributed to the states and victims' compensation and assistance funds. The Violence Against Women Act has also infused new dollars into victim services: under that act, the Department has funded nearly \$1 billion in new domestic violence programs for states, communities, and tribes since 1995.

In addition to funding, the Department has taken other steps to improve the way it provides services to victims. We are auditing every component that has any responsibility for our contact with victims to assure appropriate staffing, improve practices and address problems. We have also revised and updated the Attorney General's guidelines for victim assistance.

There is more yet that can be done while we continue to strive for an appropriate constitutional amendment. For example, as then Associate Attorney General Raymond Fischer testified before the Senate Judiciary Committee in 1998, we can enact federal legislation that will improve victims' rights and services in the federal system while at the same time providing funds and other incentives to states to improve their own victims' rights laws and policies.<sup>1</sup> By passing such legislation, we can build a crucial bridge to the victims' rights amendment.

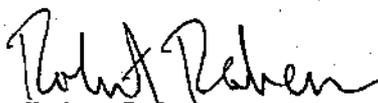
We appreciate the Judiciary Committee's willingness to work with the Department on issues relating to the Victims' Rights Amendment over the last four years. Although we continue strongly to support a victims' rights amendment to the Constitution, and would support S.J. Res. 3 if the concerns detailed in this letter were addressed, we oppose the amendment in its current form because it fails to do so. We urge the Senate to continue to work with the Department in

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<sup>1</sup> In this regard, it is worth noting that, thanks to the concerted efforts of crime victims' advocates and governmental bodies at all levels, all fifty States have now enacted laws safeguarding crime victims' rights in the criminal justice process, and 32 States have amended their constitutions accordingly.

improving the constitutional amendment, while, in the interim, continuing to assist crime victims through the enactment of appropriate legislation. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Robert Raben  
Assistant Attorney General

Enclosure



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 17, 1998

The Honorable Orrin G. Hatch  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

On June 2, 1998, I wrote to outline the position of the Department of Justice on S.J. Res. 44, the Victims' Rights Amendment. My letter attached a list of legislative recommendations designed to ensure that the amendment accomplishes the following goals: (1) provides certain enumerated rights to victims of crime; (2) eliminates the existing patchwork of victims' rights and establishes a national baseline; (3) does not give unintended advantages to defendants and does not hinder law enforcement, and; (4) preserves the constitutional rights of the accused.

Since my last letter, the lead sponsors of S.J. Res. 44, Senators Jon Kyl and Dianne Feinstein, have worked to incorporate a number of the Department's proposed changes into the most recent draft of the amendment. We very much appreciate their willingness to consider the views of the Department, and believe that the changes they have adopted have made a substantial improvement in the amendment.

Two issues described in the attachment to my earlier letter remain of concern to the Department, and we are reviewing a recent addition to the remedies provision, related to restitution. The two issues of continuing concern are preserving the rights of the accused, and ensuring adequate exceptions authority.

First, the current draft of S.J. Res. 44 does not contain language that preserves the fundamental protections of those accused of crimes. While conflicts between victims' rights and the protections accorded the accused under the Constitution

likely would be rare, the Attorney General has testified that in those rare instances "we must as a society ensure that a fair trial is not jeopardized." For that reason, S.J. Res. 44 should contain the following language:

Nothing in this article shall be construed to deny or diminish the rights of the accused as guaranteed by this Constitution.

By including such language, Congress would ensure that courts always seek to accommodate the constitutional rights of both the accused and the victim. However, in cases of irreconcilable conflict, where accommodation cannot protect both the rights of the accused and the rights of the victim, we believe that the accused's historical constitutional right to a fair trial must be preserved. The attachment to my earlier letter also included alternative language to achieve this goal. We have been, and remain, open to other legislative proposals that will ensure that the fundamental rights of the accused are preserved.

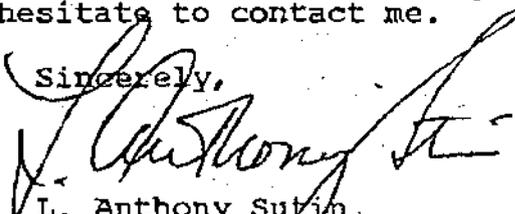
Second, the current draft of S.J. Res. 44 provides that exceptions may be enacted only where necessary to achieve a "compelling" interest. The Department believes that the authority to create exceptions should exist where necessary to promote a "significant" government interest. Adequate exceptions authority is crucial to ensuring that the government has sufficient flexibility to deal with circumstances involving, for example, culpable victims, potentially violent victims, cooperating defendants, or incarcerated victims. We believe that the current language may impose too high a burden to permit the necessary flexibility.

The requirement that governmental action be "necessary to achieve a compelling interest" is drawn from case law under the First and Fourteenth Amendments applying "strict scrutiny." Strict scrutiny is the most rigorous test of government action under the Constitution. Given existing Supreme Court case law, we cannot predict with certainty whether courts would interpret the compelling interest standard as affording the appropriate degree of flexibility. Moreover, by constitutionalizing the compelling interest standard, the amendment likely would require courts to apply strict scrutiny even in contexts, such as the prison setting, in which the Supreme Court has found that test inappropriate. While we would prefer that the amendment authorize the creation of exceptions that are "necessary to promote a significant government interest," we believe that eliminating the reference to the exceptions power altogether would be preferable to retaining the "compelling interest" language.

Finally, we note that the most recent draft of S.J. Res. 44 contains new language in the remedies clause (Section 2) that would make proceedings and rulings related to restitution subject to retrospective relief. As we have previously stated, our goal in crafting remedies language has been to strike an appropriate balance between making victims' rights real and effective and ensuring that law enforcement interests and society's interest in finality are not adversely affected. Accordingly, we have recommended inclusion of retrospective relief only for bail and parole decisions, and where necessary to vindicate rights in future proceedings. We are currently reviewing the addition of restitution to the category of decisions subject to retrospective relief, and will advise the Committee of our position on this issue once our review is complete.

We look forward to continuing our discussions with the Committee and to resolving the issues that remain of concern to the Department. Should you have any questions about these or other issues, please do not hesitate to contact me.

Sincerely,



L. Anthony Sutin  
Acting Assistant Attorney General

cc: The Honorable Patrick J. Leahy  
Ranking Minority Member

The Honorable Jon Kyl

The Honorable Dianne Feinstein

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: vra views letter

Four things:

(1) I just received a call from Feinstein's Chief Counsel. She is going to call Podesta and ask for us to delay the DoJ views letter (See #2);

(2) We met with Feinstein's and Kyl's staff earlier this afternoon. They did not reject our four concerns out of hand and wanted to take the matter back to their bosses. To this end they asked if we could delay the DoJ views letter. This, of course, is difficult due to our promise to Daschle and others to get the letter up there as soon as possible. In an effort to allow for good faith negotiations, however, we told Feinstein and Kyl that they had until midnight tonight to agree to our four concerns in whole, or that we would have to send the letter first thing tomorrow morning. We emphasized, of course, that this did not mean that we did not want to continue to negotiate on the substantive issues, but that with the initial cloture vote and the Democratic Caucus lunch occurring tomorrow, we couldn't hold up the letter any longer. We also noted that the language in the letter as currently drafted specifically notes that we would support their amendment if they agreed to these four changes, so even if the letter does go up before a deal is cut, it does not preclude us continuing to work together;

(3) Justice would like to make an additional change to the views letter. They would like to change the first paragraph to note our position on the amendment (currently our position is not stated until the last paragraph). I think this is a very good idea. We don't want to make folks read a 4 or 5 page letter to figure the Admin's position. However, they want to change the pertinent part of the letter to read, "The Department continues to have significant concerns with four aspects of S.J. Res. 3. For this reason, we cannot support S.J. Res. in its confirm, but urge the Senate to continue to work with the Department to improve the constitutional amendment." I feel that we should be absolutely consistent with the "compromise language" we agree to last Friday. In other words -- at the risk of being redundant -- we would put the exact compromise language in the first paragraph and then restate it -- if necessary -- in the concluding paragraph. The compromise language was too heavily litigated to reopen that issue.

(4) Bill and I thought it best to circulate the latest version of the views letter for final check off from everyone (see attachment). It includes -- as outlined above -- the new DoJ language in the first paragraph and the compromise language in the last paragraph. Other than that, I've been told it is exactly the same. It has also been sent by DoJ to go to OMB. Please weigh in

ASAP. Thanks.

----- Forwarded by Joel K. Wiginton/WHO/EOP on 04/24/2000 04:09 PM -----



"Pearlman, Heather" <Heather.Pearlman@usdoj.gov>  
04/24/2000 04:57:15 PM

Record Type: Record

To: "Jones, Gregory M" <Gregory.M.Jones@intmail.usdoj.gov>, Joel K. Wiginton/WHO/EOP

cc:

Subject: vra views letter

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Greg:

Here is the latest draft of the VRA (S.J. Res. 3) views letter that needs to go through OMB/WH clearance ASAP. There are only a couple of changes since the one from last week. We want to send this out first thing tomorrow, so anything that can be done to expedite this would be much appreciated. The WH knows this is coming. Also, if you could let me know who at OMB is handling this and their phone number, I will pass it along to the WH so that this gets done tonight.

Thanks,  
Heather



- vra.views.letter

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Message Sent To:

maria echaveste/who/eop@eop  
beth nolan/who/eop@eop  
eric p. liu/opd/eop@eop  
lauren m. supina/who/eop@eop  
bruce n. reed/opd/eop@eop  
sarah wilson/who/eop@eop  
emily karcher/who/eop@eop  
anna richter/opd/eop@eop  
cathy r. mays/opd/eop@eop  
angela blake/who/eop@eop  
charles m. brain/who/eop@eop  
karen robb/who/eop@eop  
rebecca hunter/who/eop@eop  
bobby d. conner/who/eop@eop  
david w. beier/ovp@ovp  
ian p. alberg/ovp@ovp  
paul thornell/ovp@ovp  
leanne a. shimabukuro/opd/eop@eop  
leslie bernstein/who/eop@eop  
marjorie tarmey/who/eop@eop  
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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

DATE

The Honorable Trent Lott  
Majority Leader  
United States Senate  
Washington, D.C. 20510

Dear Mr. Majority Leader:

I write to convey the views of the Department of Justice on S.J. Res. 3, a resolution setting forth the text of a proposed Victims' Rights Amendment (VRA) to the Constitution, which was voted out of the Committee on the Judiciary on September 30, 1999, and sent to the full Senate. The Department continues to have significant concerns with four aspects of S.J. Res. 3. For this reason, we cannot support S.J. Res. 3 in its current form, and urge the Senate to continue to work with the Department to improve the constitutional amendment. In the interim, we hope you will continue to help crime victims through the enactment of appropriate legislation.

As you know, the President and the Attorney General both strongly support a victims' rights amendment that will ensure that victims have a voice in the criminal justice system. See Pres. Proc. No. 7290, 65 FR 19823 (Apr. 10, 2000); Speech of Attorney General Janet Reno to the National Organization for Victim Assistance (Apr. 7, 2000). At the same time, this Administration believes that our constitutional system, which the Framers established after much deliberation and debate, has served our nation well for more than 200 years and should not be altered without the most cautious deliberation. See Statement of President Clinton in Support of Victims' Rights Constitutional Amendment (June 25, 1996). Our support for the VRA has rested on the premise that the Amendment would not undermine existing constitutional provisions; thus, our first concern has been that the resolution lacks an express provision preserving the rights of the accused. In light of our role as the chief federal law enforcement agency, our support has also depended on the Amendment not hampering effective law enforcement; accordingly,

our second concern has been the unduly stringent standard for creating exceptions to the Amendment's applicability where necessary to promote the interests of law enforcement. We are committed to an amendment that gives real rights to victims while satisfying these basic criteria. This letter augments our previous letter of June 17, 1998 (enclosed), regarding the then-current S.J. Res. 44, in which we noted the above-mentioned concerns. This letter also reflects further concerns we have about the Amendment's application to the pardon power and the reopening of restitution that we discussed with committee staff before markup in September.

### Preserving the Existing Constitution

As we stated in our previous letter, we believe that, to ensure the protection of existing constitutional guarantees, the VRA should contain language that expressly preserves the rights of the accused. To that end, we urged that the following language be added: "Nothing in this article shall be construed to deny or diminish the rights of the accused as guaranteed by the Constitution."

Moreover, we are concerned that new language that has been added to the proposed VRA would further alter our existing constitutional framework. Section 1 of S.J. Res. 3 has been amended to grant victims the right "to reasonable notice of and an opportunity to submit a statement concerning any proposed pardon or commutation of a sentence." This provision would create an unprecedented incursion on the President's exclusive power to grant pardons, commute sentences and remit restitution.

See U.S. Const. art. 2, § 2, cl. 1 (pardon power); Schick v. Reed, 419 U.S. 256, 263-64 (1974) (commutation power falls within the pardon power); see also Knote v. United States, 95 U.S. 149, 153-155 (1877) (pardon power includes authority to remit unpaid financial obligations imposed as part of a sentence). The Supreme Court has observed that "the draftsmen of [the pardon clause] spoke in terms of a 'prerogative' of the President, which ought not be 'fettered or embarrassed.'" Schick, 419 U.S. at 263.

The Court has also observed that "whoever is to make [the pardon power] useful must have full discretion to exercise it." Ex parte Grossman, 267 U.S. 87, 121 (1925). In addition, we note that this provision could encroach upon the clemency powers of governors in states where their authority is also plenary.

S.J. Res. 3 does more than simply diminish the control over

pardons that the Framers vested in the President; it does so in particularly significant ways. The proposed language would require the President to give victims notice and an opportunity to submit a statement (Section 1), and would arguably permit a court to reopen a pardon, commutation, or remission of restitution (Section 2). It also seemingly would authorize Congress to regulate the pardon power in some respects by granting Congress ~~the~~ the power to enforce [the VRA] by appropriate legislation, ~~rather~~ rather than reserving enforcement authority to the President (Section 3). By contrast, under our existing constitutional framework, the President has both the responsibility and authority to determine the procedures for his Administration's handling of executive clemency requests so that he may receive the information he deems necessary, including input from victims and others. The current procedures are set out at 28 C.F.R. §§ 1.1-1.10. The Department is presently exploring how, and under what circumstances, additional victim interests can be best integrated into the Department's advisory role in counseling the President as he makes decisions about clemency.

WHAT'S  
OUR  
LANGUAGE?

Furthermore, the pardon provision differs from the rest of the VRA, which focuses on criminal proceedings. Although other provisions of the VRA would give victims rights in proceedings in which defendants have rights, the pardon provision would grant victims rights in a setting in which no one - including defendants - has ever possessed rights, and that has always been controlled entirely by the President. The Framers assigned this power wholly to the President, and we oppose any amendment that would encroach upon it.

#### Law Enforcement Concerns

As we have noted previously, we are concerned that the very high standard for exceptions to the Amendment's victims' rights guarantees in Section 3 of S.J. Res. 3 would render the government unable to remedy the practical law enforcement problems that may arise under the Amendment. We believe that the authority to create exceptions should exist where necessary to promote a "significant" government interest, rather than the "compelling" interest required by the current draft. It is important that the VRA be flexible enough to permit effective and appropriate responses to the variety of difficult circumstances that arise in the course of implementing the Amendment. This concern is explained in more detail in our letter of June 17, 1998.

substantial

Our last issue concerns the addition of restitution to the list of proceedings and rulings subject to retrospective relief. We believe that any remedies provision should strive to make rights of victims real and enforceable, while ensuring that society's and victims' interests in finality and effective law enforcement are not undermined. Measured against these objectives, we believe Section 2 of S.J. Res. 3 is overly broad and would unduly disrupt the finality of sentences. The current language would appear to permit a victim to reopen the restitution portion of a sentence for any reason at all, at any time, even after a sentence has been served in full. The problems for law enforcement that could be caused by this provision include, for example, the possibility that because of the limited economic means of many defendants, restitution awarded to some victims at sentencing might have to be decreased to accommodate subsequent claims by victims who come forward after sentencing; the potential that defendants will litigate the reopening of a restitution order without the reopening of other parts of the sentence; and the difficulty in reaching and defending plea agreements in light of possible reopenings of and changes in the terms of restitution. In our view, these issues constitute serious obstacles to including restitution among the matters subject to retrospective relief.

Further, we believe the inclusion of restitution in Section 2 is not necessary in light of existing legislation providing relief for victims who are denied restitution or whose restitution is inadequate. If a federal court fails to impose restitution in accord with controlling statutes, the government can appeal the unlawful sentence without impairing the defendant's Double Jeopardy rights. See 18 U.S.C. § 3742(b); United States v. DiFrancesco, 449 U.S. 117, 137 (1980). Likewise, the States can legislatively protect victims in this regard by authorizing state prosecutors to appeal criminal sentences that do not satisfy state restitution statutes. Congress and the States can also enact legislation to address perceived gaps in current laws without going so far as to amend the Federal Constitution.

Any  
response  
from  
them?

#### Doing More For Victims While Improving the Amendment

This Administration, with Congress, has kept its commitment to victims of crime, even as it has pushed aggressively for a victims' rights amendment. We have witnessed historic reductions in violent crime over the past seven years, and through our efforts, there are fewer victims in this country than ever.

Even with the significant drop in violent crime, we have not become complacent. In 1994 the President signed into law the Violent Crime Control and Law Enforcement Act, which gives victims of violent crime and sexual abuse the right to speak out in court before sentencing, providing them the opportunity to describe the impact such victimization has had on their lives.

The Department, working with Congress, has also provided unprecedented levels of funding for victims' services. Since 1993, we have received over \$2.2 billion in the Crime Victims' Fund, over 90 percent of which has been distributed to the states and victims' compensation and assistance funds. The Violence Against Women Act has also infused new dollars into victim services: under that act, the Department has funded nearly \$1 billion in new domestic violence programs for states, communities, and tribes since 1995.

In addition to funding, the Department has taken other steps to improve the way it provides services to victims. We are auditing every component that has any responsibility for our contact with victims to assure appropriate staffing, improve practices and address problems. We have also revised and updated the Attorney General's guidelines for victim assistance.

There is more yet that can be done while we continue to strive for an appropriate constitutional amendment. For example, as then Associate Attorney General Raymond Fischer testified before the Senate Judiciary Committee in 1998, we can enact federal legislation that will improve victims' rights and services in the federal system while at the same time providing funds and other incentives to states to improve their own victims' rights laws and policies.<sup>1</sup> By passing such legislation, we can build a crucial bridge to the victims' rights amendment.

We appreciate the Judiciary Committee's willingness to work with the Department on issues relating to the Victims' Rights Amendment over the last four years. Although we continue

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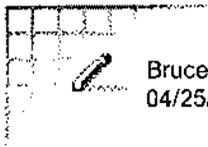
<sup>1</sup> In this regard, it is worth noting that, thanks to the concerted efforts of crime victims' advocates and governmental bodies at all levels, all fifty States have now enacted laws safeguarding crime victims' rights in the criminal justice process, and 32 States have amended their constitutions accordingly.

strongly to support a victims' rights amendment to the Constitution, and would support S.J. Res. 3 if the concerns detailed in this letter were addressed, we oppose the amendment in its current form because it fails to do so. We urge the Senate to continue to work with the Department in improving the constitutional amendment, while, in the interim, continuing to assist crime victims through the enactment of appropriate legislation. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Robert Raben  
Assistant Attorney General

Enclosure



Bruce N. Reed  
04/25/2000 12:48:47 PM

Record Type: Record

To: bruce reed

cc:

Subject: vra amdt

"Such rights and immunities shall be given full effect, except that these rights and immunities shall not be applied so as to [diminish or deny / abridge] any rights of the accused [individuals] as guaranteed by the Constitution."

Record Type: Record

To: Bruce N. Reed/OPD/EOP@EOP, Eric P. Liu/OPD/EOP@EOP

cc: Deanne E. Benos/OPD/EOP@EOP, Anna Richter/OPD/EOP@EOP, Sarah C. Lucas/OPD/EOP@EOP

Subject: victims rights

I've attached the draft DOJ views letter that will be discussed at tomorrow's meeting with Maria. The current draft says we generally support a VRA but have "significant concerns" with four aspects of the Kyl/Feinstein amendment: (1) does not contain express language preserving rights of the accused; (2) pardon provisions create "unprecedented incursion" into President's pardon authority; (3) "compelling" interest standard for exceptions to the amendment would create practical problems for law enforcement; and (4) restitution provisions are overbroad and could disrupt finality of sentences.

The letter also signals our support for victims legislation in general (while skirting any specific mention of Leahy/Kennedy legislation which has problematic provisions) in the interim. The letter closes by saying "we cannot support" the amendment in its current form but urge them to work with the Department to improve it. I agree that we should not backslide past "cannot support" -- as it is, it will be a huge disappointment to the victims groups. My preference is to say support with changes or emphasize that we want to work with them on changes without saying support or oppose (neither of which we could probably get away with). I also attached as a refresher for all of us the President's remarks when he originally supported the concept of the VRA. Reading the remarks, the President sounds like a guy who would probably support this amendment, if you ask me...

Draft letter



victimsrights.wp

THE WHITE HOUSE

Office of the Press Secretary

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For Immediate Release

June 25, 1996

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

The Rose Garden

12:11 A.M. EDT

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

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

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

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

When someone is a victim, he or she should be at the center of the criminal justice process, not on the outside looking in. Participation in all forms of government is the essence of democracy. Victims should be guaranteed the right to participate in proceedings related to crimes committed against them. People accused of crimes have explicit constitutional rights. Ordinary citizens have a constitutional right to participate in criminal trials by serving on a jury. The press has a constitutional right to attend trials. All of this is as it should be. It is only the victims of crime who have no constitutional right to participate, and that is not the way it should be. (Applause.)

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

defendant, reasonable protection from the defendant and notice of these rights.

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

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

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

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

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

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

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

public, a criminal is sentenced, a defendant is let out on bail, the victim ought to know about it and ought to have a say.

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

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

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

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

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

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

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

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

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

But this is different. This is not an attempt to put legislative responsibilities in the Constitution or to guarantee a right that is already guaranteed. **Amending the Constitution here is simply the only way to guarantee the victims' rights are weighted equally with defendants' rights in every courtroom in America.**

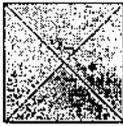
**Two hundred twenty years ago, our Founding Fathers were concerned, justifiably, that government never, never trample on the rights of people just because they are accused of a crime. Today, it's time for us to make sure that while we continue to protect the rights of the accused, government does not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

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

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

END

12:25 P.M. EDT



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

DATE

The Honorable Trent Lott  
Majority Leader  
United States Senate  
Washington, D.C. 20510

Dear Mr. Majority Leader:

I write to convey the views of the Department of Justice on S.J. Res. 3, a resolution setting forth the text of a proposed Victims' Rights Amendment (VRA) to the Constitution, which was voted out of the Committee on the Judiciary on September 30, 1999, and sent to the full Senate. The Department continues to have significant concerns with four aspects of S.J. Res. 3. For this reason, we cannot support S.J. Res. 3 in its current form, and urge the Senate to continue to work with the Department to improve the constitutional amendment. In the interim, we hope you will continue to help crime victims through the enactment of appropriate legislation.

As you know, the President and the Attorney General both strongly support a victims' rights amendment that will ensure that victims have a voice in the criminal justice system. See Pres. Proc. No. 7290, 65 FR 19823 (Apr. 10, 2000); Speech of Attorney General Janet Reno to the National Organization for Victim Assistance (Apr. 7, 2000). At the same time, this Administration believes that our constitutional system, which the Framers established after much deliberation and debate, has served our nation well for more than 200 years and should not be altered without the most cautious deliberation. See Statement of President Clinton in Support of Victims' Rights Constitutional Amendment (June 25, 1996). Our support for the VRA has rested on the premise that the Amendment would not undermine existing constitutional provisions; thus, our first concern has been that the resolution lacks an express provision preserving the rights of the accused. In light of our role as the chief federal law enforcement agency, our support has also depended on the Amendment not hampering effective law enforcement; accordingly, our second concern has been the unduly stringent standard for creating exceptions to the Amendment's applicability where necessary to promote the interests of law enforcement. We are committed to an amendment that gives real rights to victims while satisfying these basic criteria. This letter augments our previous letter of June 17, 1998 (enclosed), regarding the then-current S.J. Res. 44, in which we noted the above-mentioned concerns. This letter also reflects further concerns we have about the Amendment's application to the pardon power and the reopening of restitution that we discussed with committee staff before markup in September.

Preserving the Existing Constitution

As we stated in our previous letter, we believe that, to ensure the protection of existing constitutional guarantees, the VRA should contain language that expressly preserves the rights of the accused. To that end, we urged that the following language be added: "Nothing in this article shall be construed to deny or diminish the rights of the accused as guaranteed by the Constitution."

Moreover, we are concerned that new language that has been added to the proposed VRA would further alter our existing constitutional framework. Section 1 of S.J. Res. 3 has been amended to grant victims the right "to reasonable notice of and an

opportunity to submit a statement concerning any proposed pardon or commutation of a sentence." This provision would create an unprecedented incursion on the President's exclusive power to grant pardons, commute sentences and remit restitution. See U.S. Const. art. 2, § 2, cl. 1 (pardon power); Schick v. Reed, 419 U.S. 256, 263-64 (1974) (commutation power falls within the pardon power); see also Knote v. United States, 95 U.S. 149, 153-155 (1877) (pardon power includes authority to remit unpaid financial obligations imposed as part of a sentence). The Supreme Court has observed that "the draftsmen of [the pardon clause] spoke in terms of a 'prerogative' of the President, which ought not be 'fettered or embarrassed.'" Schick, 419 U.S. at 263. The Court has also observed that "whoever is to make [the pardon power] useful must have full discretion to exercise it." Ex parte Grossman, 267 U.S. 87, 121 (1925). In addition, we note that this provision could encroach upon the clemency powers of governors in states where their authority is also plenary.

S.J. Res. 3 does more than simply diminish the control over pardons that the Framers vested in the President; it does so in particularly significant ways. The proposed language would require the President to give victims notice and an opportunity to submit a statement (Section 1), and would arguably permit a court to reopen a pardon, commutation, or remission of restitution (Section 2). It also seemingly would authorize Congress to regulate the pardon power in some respects by granting Congress "the power to enforce [the VRA] by appropriate legislation," rather than reserving enforcement authority to the President (Section 3). By contrast, under our existing constitutional framework, the President has both the responsibility and authority to determine the procedures for his Administration's handling of executive clemency requests so that he may receive the information he deems necessary, including input from victims and others. The current procedures are set out at 28 C.F.R. §§ 1.1-1.10. The Department is presently exploring how, and under what circumstances, additional victim interests can be best integrated into the Department's advisory role in counseling the President as he makes decisions about clemency.

Furthermore, the pardon provision differs from the rest of the VRA, which focuses on criminal proceedings. Although other provisions of the VRA would give victims rights in proceedings in which defendants have rights, the pardon provision would grant victims rights in a setting in which no one - including defendants - has ever possessed rights, and that has always been controlled entirely by the President. The Framers assigned this power wholly to the President, and we oppose any amendment that would encroach upon it.

#### Law Enforcement Concerns

As we have noted previously, we are concerned that the very high standard for exceptions to the Amendment's victims' rights guarantees in Section 3 of S.J. Res. 3 would render the government unable to remedy the practical law enforcement problems that may arise under the Amendment. We believe that the authority to create exceptions should exist where necessary to promote a "significant" government interest, rather than the "compelling" interest required by the current draft. It is important that the VRA be flexible enough to permit effective and appropriate responses to the variety of difficult circumstances that arise in the course of implementing the Amendment. This concern is explained in more detail in our letter of June 17, 1998.

Our last issue concerns the addition of restitution to the list of proceedings and rulings subject to retrospective relief. We believe that any remedies provision should strive to make rights of victims real and enforceable, while ensuring that society's and victims' interests in finality and effective law enforcement are not undermined. Measured against these objectives, we believe Section 2 of S.J. Res. 3 is overly broad and would unduly disrupt the finality of sentences. The current language would appear to permit a victim to reopen the restitution portion of a sentence for any reason at all, at any time, even after a sentence has been served in full. The problems for law enforcement that could be caused by this provision include, for example, the possibility that because of the limited economic means of many defendants, restitution awarded to some victims at sentencing might have to be decreased to accommodate subsequent claims by victims who come forward after sentencing; the potential that defendants will litigate the reopening of a restitution order without the reopening of other parts of the sentence; and the difficulty in

reaching and defending plea agreements in light of possible reopenings of and changes in the terms of restitution. In our view, these issues constitute serious obstacles to including restitution among the matters subject to retrospective relief.

Further, we believe the inclusion of restitution in Section 2 is not necessary in light of existing legislation providing relief for victims who are denied restitution or whose restitution is inadequate. If a federal court fails to impose restitution in accord with controlling statutes, the government can appeal the unlawful sentence without impairing the defendant's Double Jeopardy rights. See 18 U.S.C. § 3742(b); United States v. DiFrancesco, 449 U.S. 117, 137 (1980). Likewise, the States can legislatively protect victims in this regard by authorizing state prosecutors to appeal criminal sentences that do not satisfy state restitution statutes. Congress and the States can also enact legislation to address perceived gaps in current laws without going so far as to amend the Federal Constitution.

#### Doing More For Victims While Improving the Amendment

This Administration, with Congress, has kept its commitment to victims of crime, even as it has pushed aggressively for a victims' rights amendment. We have witnessed historic reductions in violent crime over the past seven years, and through our efforts, there are fewer victims in this country than ever.

Even with the significant drop in violent crime, we have not become complacent. In 1994 the President signed into law the Violent Crime Control and Law Enforcement Act, which gives victims of violent crime and sexual abuse the right to speak out in court before sentencing, providing them the opportunity to describe the impact such victimization has had on their lives.

The Department, working with Congress, has also provided unprecedented levels of funding for victims' services. Since 1993, we have received over \$2.2 billion in the Crime Victims' Fund, over 90 percent of which has been distributed to the states and victims' compensation and assistance funds. The Violence Against Women Act has also infused new dollars into victim services: under that act, the Department has funded nearly \$1 billion in new domestic violence programs for states, communities, and tribes since 1995.

In addition to funding, the Department has taken other steps to improve the way it provides services to victims. We are auditing every component that has any responsibility for our contact with victims to assure appropriate staffing, improve practices and address problems. We have also revised and updated the Attorney General's guidelines for victim assistance.

There is more yet that can be done while we continue to strive for an appropriate constitutional amendment. For example, as then Associate Attorney General Raymond Fischer testified before the Senate Judiciary Committee in 1998, we can enact federal legislation that will improve victims' rights and services in the federal system while at the same time providing funds and other incentives to states to improve their own victims' rights laws and policies.<sup>1</sup> By passing such legislation, we can build a crucial bridge to the victims' rights amendment.

We appreciate the Judiciary Committee's willingness to work with the Department

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<sup>1</sup> In this regard, it is worth noting that, thanks to the concerted efforts of crime victims' advocates and governmental bodies at all levels, all fifty States have now enacted laws safeguarding crime victims' rights in the criminal justice process, and 32 States have amended their constitutions accordingly.

on issues relating to the Victims' Rights Amendment over the last four years. Although we continue strongly to support a victims' rights amendment to the Constitution, and would support S.J. Res. 3 if the concerns detailed in this letter were addressed, we oppose the amendment in its current form because it fails to do so. We urge the Senate to continue to work with the Department in improving the constitutional amendment, while, in the interim, continuing to assist crime victims through the enactment of appropriate legislation. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Robert Raben  
Assistant Attorney General

Enclosure



U.S. Department of Justice  
Office of Legislative Affairs

*Crime -  
Victims Rights*

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Orrin G. Hatch  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

I write to convey the views of the Department of Justice concerning S.J.Res. 3, the current draft of the Victims' Rights Amendment (VRA). As you know, the President and the Attorney General have both expressed strong support for a victims' rights amendment that will bring balance to the criminal justice system. We are committed to continuing to work with Congress, state and local prosecutors, federal and state judges, victims and victims' groups, and others involved in the criminal justice system as we develop an amendment that gives real rights to victims and preserves the protections of the accused. Such an amendment must be flexible enough to permit prosecutors, judges, and other justice system actors to deal appropriately and effectively with the variety of difficult circumstances that arise in the course of a criminal case. This letter augments our previous letter of June 17, 1998 (enclosed) concerning the then-current S.J.Res. 44, in which we noted our serious concerns regarding two issues.

First, we believe the VRA should contain language that expressly preserves the rights of the accused. To that end, we urged that the following language be added: "Nothing in this article shall be construed to deny or diminish the rights of the accused as guaranteed by the Constitution." Second, we believe that the authority to create exceptions should exist where necessary to promote a 'significant' rather than a 'compelling' government interest. We appreciate the Committee's willingness to work with the Department on these issues last year, and feel

we must reiterate our concerns. We enclose and incorporate by reference our previous letter, in which the Department's position on these two issues is set out in detail.

We also informed you in that letter that the Department was in the process of reviewing new language in Section 2 of the VRA, which added restitution to the list of proceedings and rulings subject to retrospective relief. On the basis of our review of S.J.Res. 3 restitution language, and, for the reasons outlined below, we recommend that the words "or restitution," appearing on page 3, line 6, of S.J. Res. 3 as introduced in the Senate, be deleted from the amendment.

Finally, we recommend that the language in Section 1 regarding right to notice and an opportunity to submit a statement concerning any proposed pardon or commutation of a sentence be deleted. This language has been added since last year, and we have not previously had an opportunity to comment.

#### Restitution

After careful review of this issue, the Department recommends deleting the words "or restitution" from Section 2 of S.J.Res. 3. We believe that the amendment's remedies language should strike an appropriate balance between making the rights of victims real and enforceable, and ensuring that society's and the victims' interests in finality and effective law enforcement are not adversely affected. Accordingly, the Department proposed language that allowed for retrospective relief only for bail or parole proceedings, which are subject to reopening under current law, or where necessary to vindicate rights in future proceedings. The language included in S.J. Res. 3 risks upsetting that delicate balance by allowing sentences to be reopened, potentially years after they were imposed, to remedy violations of the right to an order of restitution.

Deleting the words "or restitution" from section 2 of S.J. Res. 3 overturn current law providing legislative relief to victims who are denied restitution, or whose restitution is inadequate. In addition, Congress or the states also could enact legislation providing additional relief to such victims. Under current federal law, if a sentencing court fails to impose restitution in accord with controlling statutes, the government can appeal the unlawful sentence without impairing the defendant's Double Jeopardy rights. See 18 U.S.C. § 3742(b);

United States v. DiFrancesco, 449 U.S. 117, 137 (1980).

Likewise, the states can legislatively protect victims in this regard by allowing the prosecution to appeal criminal sentences that do not satisfy state restitution statutes.

#### Pardon Authority

Section 1 of S.J.Res. 3 has been amended to grant victims the right "to reasonable notice of and an opportunity to submit a statement concerning any proposed pardon or commutation of a sentence." The Department opposes this language because it would unduly restrict the President's pardon authority. This provision would constitute an unprecedented incursion on the President's power under the Constitution to grant pardons and commute sentences. See U.S. Const. art. 2, § 2, cl. 1 (pardon power); see also Schick v. Reed, 419 U.S. 256, 263-64 (1974) (commutation power falls within the pardon power). The amendment also potentially could affect the President's power under the Pardon Clause to remit unpaid restitution. See Knote v. United States, 95 U.S. 149, 153-155 (1877); Osborne v. United States, 91 U.S. 474, 477-478 (1875); Memorandum for Margaret Colgate Love, Pardon Attorney, Office of the Pardon Attorney, from Walter Dellinger, Assistant Attorney General, Re: Effect of a Presidential Pardon (June 19, 1995) (remission of restitution falls within pardon power). The Supreme Court has observed that "the draftsmen of [the pardon clause] spoke in terms of a 'prerogative of the President, which ought not be 'fettered or embarrassed.'" Id. at 263. The Court has also observed that "whoever is to make [the pardon power] useful must have full discretion to exercise it," Ex parte Grossman, 267 U.S. 87, 121 (1925), and that "[o]ur Constitution confers this discretion on the highest officer in the nation in confidence that he will not abuse it." Id. The requirement that victims be identified, notified, and then given an opportunity to submit a statement before the President grants a pardon (or commutes a sentence or remits restitution) could significantly restrict the time and manner in which he exercises his authority. It is also worth noting that, although other provisions of the VRA would give victims rights in settings in which defendants have rights, the pardon provision grants victims rights in a setting in which no one - including defendants - has ever possessed rights. We also note that because S.J.Res. 3 is a constitutional amendment, the restrictions on pardon authority also apply to the governors of the fifty states.

We look forward to continuing our discussions with the

Committee on these concerns. Should you have any questions,  
please do not hesitate to contact me.

Sincerely,

Jon P. Jennings  
Acting Assistant Attorney General

Enclosure

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On the Technical  
Fix, DOT now  
says a new  
section is not  
necessarily needed. The  
new provision could be  
added as a  
second ~~section~~ sentence  
to section 3  
(This is no big deal  
either way)

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