those here who believe that a 6-year-old boy whose father loves him should not be restored to the care of his father? If so, then let's have a long debate about parental rights. I suspect they do not want to restore this young boy to the care of his father because his father is a Cuban and he will go back to Cuba and that is a Communist country. But I do not see people coming to the floor of the Senate talking much about the fate of the children in Vietnam—that is a Communist country—or the fate of the children in China—that is a Communist country.

All of a sudden, this one 6-year-old child whose mother is dead and whose father wants him, because he comes from Cuba, does not have the right to be restored to the care of his father? Something is wrong with this.

I understand there is great passion on all sides. The Attorney General was faced with an awful choice, and she made a choice. The choice she made was to use whatever show of force was necessary—not force; show of force was necessary—to prevent violence while they were able to get this boy and restore him to the care of his father.

The fact is, it worked. In a little under 3 minutes, they were able to get this boy. This boy, now we see in a smiling picture, is in his father's arms where he ought to be.

I know we can criticize Janet Reno and others till the Sun goes down and every day thereafter, but it is not going to change the fact that this boy belongs with his father. We all know that. We should not use this boy for some broader political purpose of U.S.-Cuba relations, anti-Castroism, this, that, or the other thing. This is not about Fidel Castro. This is about a 6-year-old child and his father.

Mr. LEAHY. Will the Senator yield?

Mr. DORGAN. I am happy to yield.

Mr. LEAHY. I am pleased to hear both of my distinguished colleagues talking about the necessity to protect those who go into a situation such as that. In an earlier career in law enforcement I had the experience of going on raids or arrests or hostage situations, oftentimes in the middle of the night. They are a very frightening thing.

I suspect those immigration officers and marshals also have families who worry about whether they are going to come back alive. They are entitled to some protection, too. They talk about a frightening picture of a man so intimidating that everybody would stand still. His finger was not on the trigger of his gun. If you look at the picture, the safety was on the weapon. An unarmed female INS officer, with no body armor or anything else, came in there, putting her own life at risk so the little boy would not be frightened when she picked him up. And she spoke to him in Spanish.

The Miami relatives could have avoided this. The Miami relatives took a position they wanted to help little Elian and hurt Fidel Castro. They helped Fidel Castro and hurt little Elian. They should have given him back to his father long ago. Instead, they made this whole situation necessary.

The officers who went in there are entitled to protect themselves. If I were their spouse, if I were their child, I would hope that they would. Then to accuse them of brainwashing or drugging this little boy is scandalous. These marshals, who took the little boy into their custody, are sworn to give their own life, if necessary, to protect the person they have in their custody.

They were there to protect the little boy. They did protect the little boy. He is now back with his father where he belongs.

I resent the statement of some of the Miami relatives saying these pictures of a happy child with his father are doctored, that it is not really little Elian, that they substituted someone else for him, or that the marshals drugged him. One relative even said the only reason he called his father from the airplane was because they put a gun to his head. This is outrageous.

These brave men and women, who constantly put their lives on the line to protect the people of this country, including oftentimes Members of Congress, ought to be praised.

Mr. DURBIN. Mr. President, how much time is remaining?

The PRESIDING OFFICER (Mr. FRIST). Twenty seconds.

Mr. DURBIN. Let me close by saying I hope we will see the same passion, the same commitment, the same sense of urgency from the Republican side when it comes to gun safety legislation, when it comes to legislation for a Patients' Bill of Rights, when it comes to a prescription drug benefit, as we have seen in their passion to continue to investigate every member of the Clinton administration.

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO PROTECT THE RIGHTS OF CRIME VICTIMS—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The time until 12:30 p.m. shall be equally divided between the two leaders.

The Senator from Arizona.

Mr. KYL. Mr. President, this is a historic time because we are about to commence a debate on an amendment that has passed through the Senate Judiciary Committee but has not yet come to the floor of the Senate; that is, an amendment to the U.S. Constitution to protect the rights of victims of violent crime.

I am very pleased this morning, along with Senator DIANNE FEINSTEIN of California, to be making the primary case in support of this amendment.

I would like to make some opening remarks and then turn our opening time over to Senator FEINSTEIN for a discussion of the history of this amendment and much of the articulation of the need for it. But let me make a few preliminary comments.

First of all, we have heard a little bit about passion on a related matter. I can tell you there is nothing about which I am more passionate these days than supporting the rights of victims of violent crime.

According to the Department of Justice, there are over 8 million victims of violent crime in our society every year. Not enough is being done to protect the rights of these victims. They have no constitutional rights, unlike the defendants. Those accused of crime have more than a dozen rights which have been largely secured by amendments to the U.S. Constitution.

They, of course, trump any rights that States, either by statute or State constitutional provision, grant to the victims of crime.

It is time to level the playing field, to balance the scales of justice, and provide some rights for victims of crime. These are very basic and simple rights, as Senator FEINSTEIN will articulate in just a moment.

To secure basic rights to be informed and to be present and to be heard at critical stages throughout the judicial process is the least that our society owes people it has failed to protect.

Thirty-two State constitutional amendments have been passed by an average popular vote of nearly 80 percent. Clearly, the American people have developed a consensus that the rights of crime victims deserve protection.

Unfortunately, these State provisions have not been applied with sufficient seriousness to ensure the protection of these victims of crime.

Let me note some quotations, first from the Attorney General of the United States, and then from attorneys general—these are the law enforcement officials of our country—and the Governors, who, of course, are the chief executives of the various States.

Attorney General Reno explained, in testimony before the Senate Judiciary Committee:

> Efforts to secure victims' rights through means other than a constitutional amendment have proved less than fully adequate. Victims' rights advocates have sought reforms at the State level for the past 20 years. However, these efforts have failed to fully safeguard victims' rights. These significant State efforts simply are not sufficiently consistent, comprehensive, or authoritative to safeguard victims' rights.

Legal commentators have reached the same conclusion.

For example, Harvard law professor Laurence Tribe has explained that the existing statutes and State amendments ''are likely, as experience to date sadly shows, to provide too little real protection whenever they come into conflict with bureaucratic habit, traditional indifference, sheer inertia, or any mention of an accused's rights regardless of whether those rights are genuinely threatened.''

According to a December 1998 report from the National Institute of Justice, the victims are denied their rights. The report concluded that:

Enactment of state laws and state constitutional amendments alone appear to be insufficient to guarantee the full provision of victims' rights in practice.

The report went on to note numerous examples of how victims were not given rights they were already supposed to be given under State provisions.

For example, even in several States identified as giving strong protection to victims' rights, fewer than 60 percent of the victims were notified of the sentencing hearing, and fewer than 40 percent were notified of the pretrial release of the defendant. That can be a serious matter to a victim of crime. A followup analysis of the same data found that racial minorities are less likely to be afforded their rights under the patchwork of existing statutes.

According to a letter, dated April 21 of this year, signed by 39 of the State attorneys general:

We are convinced that statutory protections are not enough; only a federal constitutional amendment will be sufficient to change the culture of our legal system.

A 400-page report by the Department of Justice on victims' rights and services concluded that:

[t]he U.S. Constitution should be amended to guarantee fundamental rights for victims of crime.

The report continued:

A victims' rights constitutional amendment is the only legal measure strong enough to rectify the current inconsistencies in victims' rights laws that vary significantly from jurisdiction to jurisdiction on the state and federal levels.

For those who are concerned that somehow a Federal constitutional amendment would impinge upon States rights other than noticing, of course, that 75 percent of the States would have to approve such a constitutional amendment for it to go into effect, let me refer to a resolution of the National Governors' Association, which passed by a vote of 49–1, strongly supporting a constitutional amendment.

It stated:

Despite . . . widespread state initiatives, the rights of victims do not receive the same consideration or protection as the rights of the accused. These rights exist on different judicial levels. Victims are relegated to a position of secondary importance in the judicial process.

The resolution also stated:

The rights of victims have always received secondary consideration within the U.S. Judicial process, even though states and the American people by a wide plurality consider victims' rights to be fundamental. Protection of these basic rights is essential and can only come from a fundamental change in our basic law: the U.S. Constitution.

That is it. Despite the well-meaning intention of judges, prosecutors, and others who fundamentally agree that victims need these rights of basic fairness in our criminal justice system, as the evidence has overwhelmingly demonstrated, they are just not getting that kind of fair treatment, despite the best efforts of all these people. That is why, after 18 years, the conclusion has been reached by so many that the only way to guarantee these rights is by placing them in the U.S. Constitution where defendants' rights have also been amended into existence.

We all know it shouldn't be easy to amend the Constitution, but we have been very careful to communicate with prosecutors and others who are familiar with the issues. After 63 drafts, we think we have it right. We think we have a very tightly drawn amendment, which Senator FEINSTEIN will explain in just a moment, that protects these rights without denigrating whatsoever the rights of the defendants or those accused of crime.

Our amendment has 42 cosponsors in this body, a bipartisan group of Democrats and Republicans. We have 39 State attorneys general who have signed a strong letter in support. Our Presidential candidates, both current and past, have strongly supported a crime victims' rights amendment, as have groups such as Parents of Murdered Children, Mothers Against Drunk Driving, the National Organization for Victim Assistance, and others.

I thought it would be appropriate to recognize the President of the United States, who said in a very strong statement before a number of crime victims' rights groups:

I strongly believe that victims should be central participants in the criminal justice system, and that it will take a constitutional amendment to give the rights of victims the same status as the rights of the accused.

He also said the following, which I think represents the views of all of us in this body:

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.

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 weighed equally with defendants' rights in every courtroom in America.

Mr. President, that is all we ask.

I ask unanimous consent to print in the RECORD three pages of groups that strongly support our amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CRIME VICTIMS' RIGHTS AMENDMENT SUPPORTERS

PUBLIC OFFICIALS

42 cosponsors in the U.S. Senate (29R; 13D), Former Senator Bob Dole, Representative Henry Hyde, Texas Governor George W. Bush, California Governor Gray Davis, Arizona Governor Jane Hull, Former U.S. Attorney General Ed Meese, Former U.S. Attorney General Dick Thornburgh, Former U.S. Attorney General William Barr, The Republican Attorneys General Association, Alabama Attorney General Bill Pryor, Alaska Attorney General Bruce Botelho, Arizona Attorney General Janet Napolitano, California Attorney General Bill Lockyer, Colorado Attorney General Ken Salazar, Connecticut Attorney General Richard Blumenthal, Delaware Attorney General M. Jane Brady, Florida Attorney General Bob Butterworth, Georgia Attorney General Thurbert E. Baker, Hawaii Attorney General Earl Anzai.

Idaho Attorney General Alan Lance, Illinois Attorney General Jim Ryan, Indiana Attorney General Karen Freeman-Wilson, Kansas Attorney General Carla Stovall, Kentucky Attorney General Albert Benjamin Chandler III, Maine Attorney General Andrew Ketterer, Maryland Attorney General J. Joseph Curran, Jr., Michigan Attorney General Jennifer Granholm, Minnesota Attorney General Mike Hatch, Mississippi Attorney General Mike Moore, Montana Attorney General Joseph P. Mazurek, Nebraska Attorney General Don Stenberg, New Jersey Attorney General John Farmer, New Mexico Attorney General Patricia Madrid, North Carolina Attorney General Michael F. Easley, Ohio Attorney General Betty D. Montgomery, Oklahoma Attorney General W.A. Drew Edmondson, Oregon Attorney General Hardy Meyers, Pennsylvania Attorney General Mike Fisher, Puerto Rico Attorney General Angel E. Rotger Sabat.

South Carolina Attorney General Charlie Condon, South Dakota Attorney General Mark Barnett, Texas Attorney General John Cornyn, Utah Attorney General Jan Graham, Virgin Islands Attorney General Iver A. Stridiron, Virginia Attorney General Mark Earley, Washington Attorney General Christine O. Gregoire, West Virginia Attorney General Darrell V. McGraw Jr., Wisconsin Attorney General James Doyle, Wyoming Attorney General Gay Woodhouse, Alaska State Legislature.

LAW ENFORCEMENT

Federal Law Enforcement Officers Association, Law Enforcement Alliance of American (LEAA), American Probation and Parole Association (APPA), American Correctional Association (ACA), National Criminal Justice Association (NCJA), National Organization of Black Law Enforcement Executives, Concerns of Police Survivors (COPS), National Troopers' Coalition (NTC), Mothers Against Violence in America (MAVIA), National Association of Crime Victim Compensation Boards (NACVCB), National Center for Missing and Exploited Children (NCMEC), International Union of Police Associations AFL–CIO, Norm Early, former Denver District Attorney, Maricopa County Attorney Rick Romley, Pima County Attorney Barbara Lawall, Shasta County District Attorney McGregor W. Scott, Steve Twist, former chief assistant Attorney General of Arizona.

California Police Chiefs Association, California Police Activities league (CALPAL), California Sheriffs' Association, Los Angeles County Sheriff Lee Baca, San Diego County Sheriff William B. Kolender, San Diego Police Chief David Bajarano, Sacramento County Sheriff Lou Blanas, Riverside County Sheriff Larry D. Smith, Chula Vista Police Chief Richard Emerson, El Dorado County Sheriff Hal Barker, Contra Costa County Sheriff Warren E. Rupf, Placer County Sheriff Edward N. Bonner, Redding Police Chief Robert P. Blankenship, Yavapai County Sheriff's Office, Bannock County Prosecutor's Office, Los Angeles County Police Chiefs' Association.

VICTIMS

Mothers Against Drunk Driving (MADD), National Victims' Constitutional Amendment Network (NVCAN), National Organization for Victim Assistance (NOVA), Parents of Murdered Children (POMC), Mothers Against Violence in America (MAVIA), Justice for Murder Victims, Crime Victims United of California, Justice for Homicide Victims, We Are Homicide Survivors, Victims and Friends United, Colorado Organization for Victim Assistance (COVA), Racial Minorities for Victim Justice, Rape Response and Crime Victim Center.

Stephanie Roper Foundation, Speak Out for Stephanie (SOS), Pennsylvania Coalition Against Rape (PCAR), Louisiana Foundation Against Sexual Assault, KlaasKids Foundation, Marc Klaas, Victims' Assistance Legal Organization, Inc. (VALOR), Victims Remembered, Inc., Association of Traumatic Stress Specialists, Doris Tate Crime Victims Bureau (DTCVB), Rape Response & Crime Victim Center, John Walsh, host of ''America's Most Wanted'' Marsha Kight, Oklahoma City bombing victim.

OTHER SUPPORTERS

Professor Paul Cassell, University of Utah School of Law, Professor Laurence Tribe, Harvard University Law School, Professor Doug Beloof, Northwestern Law School (Lewis and Clark), Professor Bill Pizzi, University of Colorado at Boulder, Professor Jimmy Gurule, Notre Dame Law School, Security on Campus, Inc., International Association for Continuing Education and Training (IACET), Women in Packaging, Inc., American Machine Tool Distributors' Association (AMTDA), Jewish Women International, Neighbors Who Care, National Association of Negro Business & Professional Women's Clubs, Citizens for Law and Order, National Self-Help Clearinghouse, American Horticultural Therapy Association (AHTA), Valley Industry and Commerce Association.

Mr. KYL. In terms of specific letters of support and so on, we will hear about that at a later time.

I conclude my statement by saying it has been a great pleasure for me to work on a bipartisan basis with Senator DIANNE FEINSTEIN who, as have I, has spent the better part of 4 years honing and crafting this amendment, working with victims' rights groups, visiting with fellow Senators, Members of the House of Representatives, representatives of the White House, the Department of Justice, and many others in an effort to ensure that the amendment we present to the Senate today is the very best possible product we could present.

We are always open to more suggestions. We have never closed the door to additional suggestions by people who in good faith wish to make sure this amendment will do what we want it to do, without, of course, taking away the rights of defendants. We remain committed to that proposition.

Over the next several days, obviously, we will hear from opponents. We are delighted to hear their comments and to visit with them about suggestions they may have. At the end of the day, as all of the statements I have read suggest, there is no alternative. There is only one way to protect the victims of violent crime; that is, through adoption of a Federal constitutional amendment.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, had the Senator from Arizona completed his remarks?

Mr. KYL. I have completed my opening statement. I don't think there is a specific agreement. The time is divided equally.

The PRESIDING OFFICER. The time is equally divided between Senator KYL and Senator LEAHY.

Mr. LEAHY. Mr. President, normally I would speak at this point, under the usual procedure, following the majority floor leader. I know the distinguished Senator from California wishes to speak. I will not follow the normal procedure and speak but allow her to go forward. Then I will claim the floor after her speech.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank our ranking member for this opportunity. It gives an opportunity for the Senator from Arizona and me to explain the amendment. I very much appreciate that.

Providing constitutional rights for victims of violent crime has been at the top of my list of priorities as a Senator from California. I will take a few moments to explain why.

I thank our colleague, Senator KYL, for his leadership in bringing this issue to the forefront and working so closely with me in a bipartisan way over the past 4 years through two Congresses. I believe this is what voters sent us here to do, to work together, Republicans and Democrats, House and Senate, to find solutions to the problems ordinary Americans face every day. Indeed, ordinary Americans do find problems in the criminal justice system.

There were about 9 million victims of violent crimes in 1996, when we began this effort, and each of the 4 years since that time in the United States. Many of these victims were actually victimized a second time by the criminal justice system. They were kept in the dark about their case. They were excluded at the trial. They were unable to express their concerns for their safety when a decision was made to release their attacker. It is for these victims we are fighting for this amendment to the Constitution of the United States.

There are those who say the Constitution is a static document; it is a perfect document; it should not be changed. There are those who say it should not be changed easily. There are those who say it should not be changed without need. We are in the latter two. We believe we have a serious amendment, and we believe we can demonstrate the need for this change.

The amendment we propose today meets a situation, the situation that when the Constitution of the United States was written in 1789, there were but 4 million people in 13 colonies. Today we are over 250 million people, and victims of violent crimes alone amount to over 9 million a year.

When the Constitution was written, it was a different day. In 1791, the Bill of Rights was written. Between the text of the Constitution and the text of the Bill of Rights, a number of rights were provided to the accused, rights to protect them against an overeager, overzealous, and overambitious Government. We all know what they are: The right to counsel, to due process, to a speedy trial, against double jeopardy, against self-incrimination, against unreasonable searches and seizures, the right to have warrants issued upon probable cause, the right to a jury of peers, the right to be informed, and so on.

Victims were entirely left out, and when the Constitution and the Bill of Rights were written in 1789 and 1791, there were essentially no rights provided to victims in the United States. There was good reason for it. I want to say why that took place.

When the Constitution was written, in America in the late 18th century and well into the 19th century, public prosecutors did not exist. Victims could, and did, commence criminal trials themselves by hiring a sheriff to arrest the defendant, initiating a private prosecution. The core rights of our amendment to notice, to attend, to be heard were inherently made available to a victim of a violent crime. As Juan Cardenas, writing in the Harvard journal of law and public policy, observed:

> At trial, generally, there were no lawyers for either the prosecution or the defense. Victims of crime simply acted as their own counsel, although wealthier crime victims often hired a prosecutor.

Gradually, public prosecution replaced the system of private prosecution. With the explosive growth of crime in this country in recent years, it became easier and easier for the victim to be left aside in the process.

As other scholars have noted:

> With the establishment of the prosecutor the conditions for the general alienation of the victim from the legal process further increased.

Mr. President, this began to happen in the mid 19th century, around 1850, when the concept of the public prosecutor was developed in this country for the first time.

> The victim is deprived of his [or her] ability to determine the course of a case and is deprived of the ability to gain restitution from the proceedings. Under such conditions, the incentives to report crime and to cooperate with the prosecution also diminished. As the importance of the prosecution increases, the role of victim is transformed [in our country] from principal actor to a resource that may [or may not] be used at the prosecutor's discretion.

Those aren't my words; those are words of Fredric Dubow and Theodore Becker in ''Criminal Justice and the Victim.''

So we see why the Constitution must be amended to guarantee these rights. There was no need to guarantee them in 1789 and 1791, when the Bill of Rights was added. We see that the criminal justice system has changed with the

evolution of the concept of the public prosecutor, and we see that America has changed. The prevalence of crime has changed. The number of victims has changed. So creating the need and circumstance to respond to these developments and to restore balance in the criminal justice system by guaranteeing certain basic rights of violent crime victims in the United States is what we seek to do.

Those rights would be as follows: The right to notice of proceedings; the right not to be excluded from proceedings; the right to be heard at proceedings, if present; the right to submit a statement; the right to notice of release or escape of an attacker. For me, that is a central point and how I got involved in this movement. Also, there is the right to consideration in ensuring a speedy trial; the right to an order of restitution ordered by a judge; the right to consideration of safety in determining any conditional release. Those are basic, core rights that we would give to a victim of violent crime to be balanced against the rights of the accused.

Senator KYL mentioned that among our supporters are Prof. Laurence Tribe of the Harvard Law School. Professor Tribe is a noted constitutional expert. Let me quote portions of his testimony from the House hearing on the amendment:

> The rights in question—the rights of crime victims not to be victimized yet again through the processes by which government bodies and officials prosecute, punish, and release the accused or convicted offender—are indisputably basic human rights against government, rights that any civilized system of justice would aspire to protect and strive never to violate.
>
> Our Constitution's central concerns involve protecting the rights of individuals to participate in all those government processes that directly and immediately involve those individuals and affect their lives in some focused and particular way. . . . The parallel rights of victims to participate in these proceedings are no less basic, even though they find no parallel recognition in the explicit text of the U.S. Constitution.
>
> The fact that the States and Congress, within their respective jurisdictions, already have ample affirmative authority to enact rules protecting these rights is. . .not a reason for opposing an amendment altogether. . . . The problem, rather, is that such rules are likely, as experience to date sadly shows, to provide too little real protection whenever they come into conflict with bureaucratic habit, traditional indifference, sheer inertia, or any mention of an accused's rights regardless of whether those rights are genuinely threatened.

Now, some people would say, ''Let's pass another Federal statute.'' To them, I say: Been there, done that. We did that twice—in the case of the Oklahoma City bombing—and the judge ignored the Federal statute both times. According to the FBI, 98.4 percent of violent crimes are prosecuted in State courts. So why a Federal statute won't work is that even the broadest Federal statute would affect only 1 percent of the victims of violent crimes in this Nation. And then that statute could, in effect, be trumped at any time by the constitutional amendment provided to the accused.

The attorneys general of 37 States, Puerto Rico, and the Virgin Islands have all signed a letter with this statement:

> We are convinced that statutory provisions are not enough. Only a Federal constitutional amendment will be sufficient to change the culture of our criminal justice system.

Let me tell you, very personally, why I believe this to be very necessary. Let me take you back to my life in San Francisco in the 1970s. In 1974, in my home city, a man by the name of Angelo Pavageau broke into the house of Frank and Annette Carlson in Portrero Hill. Mr. Pavageau tied Mr. Carlson to a chair, murdered him by beating him with a hammer, a chopping block, and a ceramic vase. He then repeatedly raped Annette Carlson, who was 24 years old, breaking several of her bones. He slit her wrists and tried to strangle her with a telephone cord before setting their home on fire and leaving them to go up in flames.

But Mrs. Carlson survived the fire; she lived and she testified against her attacker. That testimony sent him to prison where he resides, I believe, to this day. But she has been forced to change her name. She lives anonymously and she continues to live in fear that one day her attacker may be released and come back after her.

When I was mayor of San Francisco, she called me several times to notify me that she had found out that he was up for parole, and she begged me to do what I could to see that she would know if he was released so she could protect herself. Amazingly, it was up to her to find this information. The system did not provide it.

I believe no American citizen should have to live out of fear that their attacker will be released from jail or from prison without their notice. That is a basic right provided by this measure.

In 1979, a killing occurred which galvanized the victims' rights movement in California. A young woman named Catina Rosa Salerno was murdered on her first day of school at the University of the Pacific in Stockton. The killer was an 18-year-old, Steven Jones Burns, Catina's high school sweetheart and a trusted family friend. After shooting her, Burns went back to his dorm room to watch Monday night football. He could see her as she bled to death outside his window.

During the trial, the family was not allowed in the courtroom and had to sit outside waiting for news. The murder of Catina had a profound and lasting effect on the family. Her mother, Harriet, and her father, Michael, cofounded Crime Victims United, one of California's more outspoken groups for victims' rights, and the family has since that day worked tirelessly to educate the public about the rights of crime victims.

These cases helped California become the first State in the Nation to pass a crime victims' constitutional amendment, an amendment to the State Constitution of California, Proposition 8, in 1982. It gave victims the right to restitution, the right to testify at sentencing, probation, and parole hearings, established a right to safe and secure public school campuses, and made various changes in criminal law. It was a good start.

Since that time, a total of 32 States have passed constitutional amendments to provide victims of crime with certain basic rights. All of them have passed by substantial margins—Alabama, 80 percent; Connecticut, 78 percent; Idaho, 79 percent; Illinois, 77 percent; Indiana, 89 percent; Kansas, 84 percent. Some States passed them by constitutional convention: South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

What is wrong with that? What is wrong is the paperwork quilt of different rights provided by different State Constitutions. The remaining States—18 of them—provide no basic rights for a victim of a violent crime. We provide a basic core of rights—of notice, of presence, to be heard, to be noticed of an attacker's release, to restitution if ordered by a judge—eight certain, basic, core rights that exist for every victim of a violent crime throughout the United States. For the first time in history, the Constitution would recognize a victim has core basic rights, that those rights are present in the Constitution, and that the victims are free to exercise those rights.

In summary, I know this amendment is controversial. I know there are those who will say these State amendments are enough. I want to give a few examples of why the State amendments are not enough.

Maryland has a State amendment. But when Cheryl Rae Enochs Resch was beaten to death with a ceramic beer mug by her husband, her mother was not notified of the killer's release 2½ years into the 10-year sentence. The mother was not given the opportunity to be heard about this release—in violation of the Maryland constitutional amendment.

Arizona has a State constitutional amendment, but an independent audit of victim-witness programs in four Arizona counties, including Maricopa County, where Phoenix is located, found that victims were not consistently notified of hearings; they were not conferred with by prosecutors regarding plea bargains; they were not consistently provided with an opportunity to request postconviction notification.

Ohio has a State amendment. But when the murderer of Maxine Johnson's husband changed his plea, Maxine was not notified of the public hearing and was not given the opportunity to testify at his sentencing as provided in Ohio law.

A Justice Department-supported study of the implementation of State

victims' rights amendments released earlier this year made similar findings:

Even in States with strong legal protections for victims' rights, the Victims' Rights study revealed many victims are denied their rights. Statutes themselves appear to be insufficient to guarantee the provision of victims' rights.

The report goes on:

Nearly two-thirds of crime victims, even in states with strong victims' rights protection, were not notified that the accused offender was out on bond.

Therefore, the victim had no opportunity to protect himself or herself.

Nearly one half of all victims, even in the strong protection states, did not receive notice of the sentencing hearing—notice that is essential if they are to exercise their right to make a statement at sentencing.

Finally:

A substantial number of victims reported they were not given an opportunity to make a victim impact statement at sentencing or parole.

State amendments are not enough. The reason a Federal statute will not work is that it has not worked before and our area of coverage is too small. The best Federal statute we could pass would cover but 1 percent of victims of violent crimes in this Nation.

That leaves but one remedy. It is a difficult remedy. It takes time. It imposes an act of conscience on every Member of this body and the other body who believes the Constitution of the United States should not be amended: Is it worthy to make this amendment to afford the victim of a rape attack, the victim of an attempted murder attack, with the notice as to when that individual is going to be released from jail or prison? I think it is.

Is this a worthy enough cause so that an individual can at least be noticed when a trial is going to take place, can at least be present, can at least make a statement, can at least have an order of restitution if ordered by a judge, and to at least have notice of these basic rights? I think so.

I don't believe the Constitution of the United States was written purposefully to exclude victims. The victim was part of the trial. The victim brought the trial. The victim brought the investigation. The victim was present in court. And our country functioned that way until the mid-19th century and the evolution of the public prosecutor.

The only way to remedy this significant omission, I contend, is to amend the Constitution of the United States and at long last show the Constitution is, in fact, a living document, that it does expand to take into consideration the evolution of circumstances within our country. This cannot be done, it cannot be achieved, without an amendment to the Constitution of the United States.

I reserve the remainder of my time, and I yield the floor.

Mr. HATCH. Mr. President, the people who have followed the victims' rights amendment closely know that I voted for this measure in the Judiciary Committee, and that I did so despite some reservations about its provisions and its language. No one has worked harder on this issue than the distinguished chairman of the Judiciary Committee's Subcommittee on Technology, Terrorism, and Government Information—Senator JON KYL. He has been a tireless advocate for victims rights, and has done more than most will ever appreciate to make the Senate's consideration of this proposed resolution a reality. Both he, and his lead cosponsor and ranking member on the Subcommittee, Senator DIANNE FEINSTEIN, are to be commended. Frankly, they—and the committed network of victims' advocates—are why we are here today. It is because of their tireless commitment to this measure that I will vote to invoke cloture on the motion to proceed to consideration of S.J. Res. 3. I should be clear, however, that I do so with some reservations concerning the proposed text of the amendment. But I hope my concerns can be addressed during the floor debate on the resolution.

Among my reservations are:

Its scope: the amendment's protections apply only to violent crimes;

Its vagueness: some of its definitions are unclear and will be subject to too much judicial discretion; and

Its effects on principles of federalism: the proposed amendment could pave the way for more federal control over state legal proceedings.

Given my reservations, some of my colleagues have asked how I could nevertheless approve the Senate's consideration of S.J Res. 3. I'd like to explain, beginning with a little background on the origins of the criminal justice system.

Our Constitution provides the backbone for what has unquestionably evolved into the best criminal justice system that has ever existed on Earth. Decent and thoughtful people have worked for over two hundred years writing and re-writing the statutes, case law, rules and procedures that guide the judges and lawyers who run the system. Those laws and rules have, by and large, kept the courts appropriately focused on the twin goals of seeking the truth and protecting the accused from arbitrary or unreasonable government actions.

Although our criminal justice system is the best, it is not perfect. There are many ways in which it could improve. One of the most important areas needing improvement is the manner in which the criminal justice system treats victims of crime.

The fact that the drafters of the Constitution did not include specific rights for victims of crime is not surprising. At that time, there was no need for such rights because victims were parties to the legal actions against their perpetrators. There was no such thing as a public prosecutor; victims brought cases against their attackers. When the Constitution was drafted, victims of crime were protected by the same rights given to any party to litigation.

The rights of victims were dramatically altered—along with the rest of the criminal justice system—with the advent of government-paid public prosecutors in the mid-1800s. Since then, the government, not the victim, has been the party litigating against criminals in court. Obviously this has been a tremendously important effect on society by ensuring that criminals are punished even when their victims could not, or would not, prosecute them. Today we would not have even a semblance of crime control without public prosecutors.

Unfortunately, however, one side-effect of replacing victims with public prosecutors was to force victims to the sidelines of the criminal justice system. No longer are victims parties to the case. No longer do individual victims have legal representation in court. No longer are the victims an integral part of the process. Instead, victims have become relegated to the role of one-call witnesses who can be summoned—or not—by either side.

The distance between victims and the criminal process has grown greater over time. Prosecutors are overworked, courts face backlogs of cases, and prisons are overcrowded. These practical constraints, together with strategic legal considerations, has led to an increasingly institutional view of crime—a view that focuses on processing cases rather than involving victims.

In conclusion, Mr. President, I believe the time has come for the Senate to consider the victims rights amendment. The issue for the Senate should not be whether we pass a victims' rights amendment—I believe we should do so. But I believe we must ensure that whatever form our final product takes, we have fully debated and considered the matter. In the end, deliberations and our final passage of a victims' rights amendment will have profound, reaching effects on the criminal justice system. We need to be sure the results are as we would wish them to be.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I listened to my two distinguished colleagues. Not only are all colleagues ''distinguished'' colleagues, but these two are also personal friends. One is a Republican, one a Democrat. Both are individuals I like very much, individuals with whom I enjoy working on the Senate Judiciary Committee.

However, notwithstanding our friendship and our service on the same committee, I must disagree with them on this constitutional amendment.

I do not disagree with them at all on the intent of the amendment to give victims rights; to make sure they can be heard in sentencing, to make sure their views are sought out in every area from plea bargains to compensation. I know in the 8 years I was a prosecutor I did that. It was the standard

procedure in my office. I insisted that victims be heard in the pre-sentence report, victims be heard by the court, victims be heard by the prosecutor's office if a determination was made to either bring extra charges or to drop some charges—whatever the reason might be.

I must admit, I would have been very concerned had there been a constitutional amendment of this nature because I can almost picture the number of appeals, the number of delays, and the number of other issues that would come up. In many ways, it would create, in my view, just the opposite effect from that which the sponsors want; that is, so many appeals could come out of this that everybody would lose sight of who is being prosecuted and why.

Last Wednesday, we observed the fifth anniversary of the killing of 168 Americans in the horrific bombing of the Alfred P. Murrah Federal Building in Oklahoma City, and we opened the Oklahoma City National Memorial.

Every American was shocked at the initial bombing. Every American must have been moved by the speeches and the observance at the memorial. I remember, after that terrible incident, the Senate proceeded to consider antiterrorism legislation. The incident was in the spring, and by June, we were considering antiterrorism legislation. In fact, at that time the Senate accepted my amendment to include victims legislation in the antiterrorism bill. I worked with Senator MCCAIN to increase assessments against those convicted of crime, with the assessments to go to the Crime Victims Fund. When the matter was completed the following year, we preserved our legislative improvements to help victims of terrorism in the United States, in fact around the world, as the Justice for Victims of Terrorism Act of 1996. We moved very quickly to respond.

Last Thursday, we also observed the anniversary of the tragic violence at Columbine High School. That was one in a series of deadly incidents of school violence over the last few years. Scores of our Nation's children have been killed or wounded over the last 3 years from school violence, and that violence has shaken families and communities across our Nation. In the wake of the Columbine violence, the Senate moved to the consideration of juvenile crime legislation. We had one of the few real Senate debates in the past few years. We had a 2-week debate. During that 2-week debate, we greatly improved the bill with numerous amendments, including a number directed at commonsense, consensus gun safety laws.

On May 20 last year, within a month of the Columbine tragedy, the Senate acted to pass the Hatch-Leahy juvenile crime bill. We did it by a 3–1 margin, but since last May when we passed it, the Congress has kept the country waiting for final action on the legislation. Since last May, the Congress and the Senate have kept the country waiting for sensible gun safety laws. It has been now more than a year since the tragic event at Columbine High School in Littleton, CO; more than a year since 14 students and a teacher lost their lives in that tragedy on April 20, 1999. Still, the American people are waiting for action by this Congress.

It has been more than 11 months since the Senate passed the Hatch-Leahy juvenile justice bill by a bipartisan vote of 73–25. It had modest, but I believe effective, gun safety provisions in it. It has been more than 8 months since the House and Senate juvenile justice conference met. That was only a ceremonial meeting. We did it for the first and the last and the only time. Throughout the entire school year that has ensued, the Republican Senate chairman of the House-Senate conference and the Republican leadership of the Congress, have refused to call this conference back to work. The Senate and House Democrats have been ready for months to reconvene the juvenile justice conference and work with Republicans to craft an effective juvenile justice conference report that includes reasonable gun safety provisions. But the majority has refused to act.

I think the lack of attention, a lack of effective action is shameful, particularly in light of the fact that Congress has spent far more time in recess than in session since the first ceremonial meeting of the conference.

I spoke on the floor several times over the last year—on September 8, September 9, October 21, March 21, March 28, March 29, April 5, April 6, April 13, and today—urging the majority to reconvene the juvenile justice conference. I have joined with Senators, both in writing and on the floor, to request the Senate leadership let us complete our work on the conference and send a good bill to the President. We should not delay simply because some powerful gun lobbies do not want us to pass even the most modest gun safety legislation; even the modest provision that closes this huge loophole we now have for gun shows where somebody in a flea market can sell firearms to felons.

On October 20, 1999, all the House and Senate Democratic conferees sent a letter to Senator HATCH and Congressman HYDE, calling for an open meeting of the conference. On March 3 of this year, after another shocking school shooting involving 6-year-old classmates in Michigan, Representative CONYERS and I wrote again to Senator HATCH and Congressman HYDE requesting an immediate meeting of the conference. The response has been resounding silence.

Even a bipartisan letter on April 11 from the Republican chairman of the House Judiciary Committee, HENRY HYDE, and the Ranking Democrat, JOHN CONYERS, to the Republican Senate chairman of the conference, Senator HATCH, has not succeeded in getting the conference back to work. We have to find time, or at least the will, to pass balanced, comprehensive juvenile crime legislation. This is something that could be signed into law today, or within a day after being passed. This is legislation we passed by a 73–25 margin, and then we hold it in abeyance because the gun lobbyists said do not touch this.

What have we done in the meantime? We keep having a number of proposed constitutional amendments. Last month, it was a proposed constitutional amendment regarding the flag. I spoke at the beginning and end of that debate to urge the Senate to turn to completing our work on the juvenile crime bill, health care reform legislation, on minimum wage legislation, on privacy legislation, on confirming the Federal judges needed in our courts around the country, and all the other matters that have been sidetracked this year. But rather than doing the legislative work that we should do first and foremost, we are now going to turn our attention to another constitutional amendment, this one with regard to crime victims' rights.

I believe constitutional amendments, if they are brought up, should be approached seriously. The distinguished Senator from Arizona and the distinguished Senator from California have approached it seriously. But that means a real, serious debate. If we are going to amend the Constitution of the United States, we should do it seriously. Instead, late on Thursday, after we voted to adopt an adjournment resolution, and everybody had left for the airport, the majority leader came to the floor to move to proceed to this matter. I do not think constitutional amendments should be a time filler to be called upon when we do not want to proceed to legislative items. Nor is a constitutional amendment the type of item that should be rushed through Senate consideration. It should be explored and thoughtfully considered. If we are going to start having constitutional amendments rather than legislative matters, then let's set aside a good period of time—a few weeks—to talk about this one.

Let's talk about the others that should come up. I can think of at least two. Let's have a constitutional amendment debate on abortion. For those who think Roe v. Wade should be the law of the land, let's write it into the Constitution. For those who think it should not be, this is the chance to overrule the Supreme Court. Let's settle once and for all this whole constitutional issue on abortion. Let's have a constitutional amendment on that. I am perfectly willing to move forward with that. Even though I have stated my strong positions on this issue, let's have a debate on it.

There are those who are concerned about whether we have too many gun rights and those who think we do not have enough. Maybe we should have a gun amendment to clarify the second amendment. Maybe we should get these

issues out of the way once and for all. We can spend a few weeks on each one of these. We can be done by late August, and the Senate will have spoken as to how they think it should be done.

The last two times the Senate debated the so-called balanced budget amendment, those debates consumed a number of weeks, as they should. This was a palliative I happened to oppose. We were told that without a constitutional amendment to balance the budget, we could never balance the budget. Many of us said if we did our work and wrote the legislation the right way we could. Of course, that is exactly what happened. We did not need a constitutional amendment after all. We are now debating how to spend the budget surpluses because we balanced the budget without a constitutional amendment.

This proposed amendment is of similar length and additional complexity and will require some time to debate, as we did with the balanced budget amendment.

In addition, of course, this is the first time this amendment will be debated by the Senate. It has never been debated by the House. So there is a lot of new ground to cover. If we are to pass it, I know the House will want to look to our debate. I assume there will be weeks of debate on it, as there should be. It is a legitimate issue.

I think it can be handled statutorily, but if we are going to do it in the Constitution, we should spend the weeks necessary to make sure we get it right.

By way of illustration, the Judiciary Committee took more than 6 months to file its report on the proposed amendment, even though a similar measure had been the subject of a report last Congress. I note that the majority views in the committee report run over 40 pages. The principal sponsors, Senators KYL and FEINSTEIN, added a statement of their own additional views on top of those. I urge all Senators to read them because they are worth reading. I note that the minority views, in which I join with Senators KENNEDY, KOHL, and FEINGOLD, extend over 35 pages. I think they are well worth reading. There is a lot of discussion in them.

We will vote today on the majority leader's motion to invoke cloture on the motion to proceed. I will not oppose invoking cloture on the motion to proceed. In fact, I urge Senators to vote for cloture on the motion to proceed. I hope it will be a 100–0 vote. But once we proceed to consideration of this measure, my colleagues should understand that it is an important matter that will require some extensive debate, and we will see serious and substantial amendments to this proposal. I have heard from both sides of the aisle. I told the distinguished Senator from California that I will offer a statutory alternative in the days ahead that can move the cause of crime victims' rights forward immediately by a simple majority vote, without the additional complications and delays the constitutional amendment ratification process might entail, and without the need to return to Congress to draft, introduce, and pass implementing legislation. There will be other amendments, as I have said.

I know the distinguished sponsors of this amendment have been through more than 60 drafts to date. This is not an easy issue. It is hardly fixed in stone. It has not had Senate scrutiny. In fact, a number of Senators told me when they came back from the recess that they were surprised to know this was coming up because it was added to the agenda after we had voted to adjourn for the Easter recess. Many Senators are surprised it is before us. I have told them the proposed constitutional amendment is important. I think its meanings and mandates have to be explored.

In my personal view—and I actually note this with some sadness—the focus on the constitutional amendment has actually had the unintended consequence of slowing the pace of victims' rights legislation over the past several years. I am reminded of the debate we had year after year of the need for a balanced budget amendment to the Constitution. President Reagan, who submitted budgets with the biggest deficits in the Nation's history, would always give great speeches about needing a constitutional amendment to balance the budget. Of course, I used to tell him: There you go again. All you had to do was introduce a balanced budget and let us vote on it. Instead, he introduced budgets, as was his right as President, with enormous deficits, and then a few days later gave a speech saying: I wish we had a constitutional amendment to balance the budget so we could balance this budget.

A President came along who did balance the budget. It was a very tough vote. I remember that vote in 1993. By a 1-vote margin in the House—no Republicans voted to balance the budget, which means cutting a whole lot of programs—no Republicans voted for it. It passed by a 1-vote margin in the House. It was a tie vote in the Senate. Vice President GORE had to preside and cast the deciding vote for a balanced budget.

It was tough. A lot of special interest groups from the right to the left saw their programs nailed, but it was the only way to balance the budget, and we balanced it. The stock market and the various financial markets took note: This is serious; they really are serious. That vote began this huge economic surge in this country. I do recall some on the other side saying: Why, if we vote to balance the budget, we are going to have enormous layoffs, 20 percent unemployment, we are going to have a depression, we are going to have a recession—all these things. Instead, the economy has created the most jobs ever in the history of our Nation. We have had the greatest economic expansion in our Nation's history and an enormous budget surplus. That is what happened, but it took a tough vote, not a palliative of a constitutional amendment to balance the budget; a tough vote.

A lot of Democrats who were courageous enough to actually vote to balance the budget were defeated the next year because they had to cast such unpopular votes to balance the budget. They did the right thing, and their children and grandchildren will bless them for it.

I have argued that rather than look again, in this case victims' rights, to a constitutional amendment, we should be looking at a statutory way, the same way we did with the balanced budget. I wish the Senate was considering the Victims Assistance Act, S. 934, and its extensive provisions to improve crime victims' rights and protections now and do that during this debate. Instead of during the next several weeks debating the constitutional amendment, why don't we debate S. 934?

I wish we would consider our Seniors Safety Act, S. 751, that helps protect our seniors from nursing home fraud and abuse and creates protections for victims of telemarketing fraud. These senior citizens who are abused in nursing homes and who are ripped off from telemarketing frauds are victims also.

I wish the Senate would consider a number of the scores of additional legislative proposals that would assist crime victims. Instead of the weeks we will spend on this constitutional amendment, why don't we debate the Violence Against Women Act II, S. 51, that my friend, Senator BIDEN, has championed? That bill will continue and improve important and effective programs for domestic violence victims and other victims of crime. The aid to those victims of crime would be immediate.

Senator WELLSTONE has introduced the International Trafficking of Women and Children Victim Protection Act, S. 600. It has received little attention, but it should be debated. He also sponsored the Battered Women's Economic Security and Safety Act, S. 1069, and the Children Who Witness Domestic Violence Protection Act, S. 1321. These bills were introduced to improve the safety and security of these victims, but they are not being considered.

It is said that we do not have time, but we are going to spend several weeks on a constitutional amendment that would still have to go through the other body, and would still have to go to the States for approval and ratification. During those several weeks, we could be debating those pieces of legislation for victims.

Senators SNOWE, HUTCHISON, GRAMS, ASHCROFT, SMITH, ABRAHAM, HATCH, EDWARDS, DURBIN, TORRICELLI, and others have sponsored legislation to help crime victims, but I do not think we are going to consider them. We are

going to debate a proposed constitutional amendment. We will spend several weeks on something that is not self-executing but would require additional follow-on legislation in any event, but we are told we do not have time to debate, again, legislation which could apply help to victims this summer.

So as we turn to this constitutional debate, I observe it is not a matter on which the immediate filing of a cloture motion would be appropriate. I urge all Senators—Republicans and Democrats alike—to vote for cloture on the motion to proceed. But if we are serious about debating this measure, then we should debate it. The distinguished Senator from Arizona should have all the time he needs to talk about it. The distinguished Senator from California should have all the time she needs to talk about it. Other Senators who strongly support it should have all the time they need. But a number of Senators who disagree with them ought to have time to speak, too.

If it means setting aside other legislative agenda, then let's do so. We have a short legislative calendar filled with recesses as it is. Do away with a couple of the recesses and devote a significant portion of that time to this. It is not my first choice. I would prefer to go to legislative matters on the calendar. But if we are going to bring up a constitutional amendment, let's do it right.

I hope once we turn to the measure, the majority leader will recognize the inappropriateness of filing a cloture motion on this unexplored, proposed constitutional amendment. When that course was followed in 1995 in connection with the constitutional amendment to impose term limits on Congress, it short circuited the debate and prevented any serious consideration or amendment.

But then I suspect in that case it was because a lot of the people who said they were for term limits never wanted to actually vote on term limits. We have had people in this body who have been for term limits before I was born, people who have come back here 20 and 30 and 40 years to the Congress saying: We have to do something about term limits. They are so determined they will stay here if it takes them 100 years. If they have to serve for 100 years to get term limits, they will do it. It is probably why we have never voted on term limits, because it is a lot easier to talk about it than to vote on it. It is like a balanced budget; it is a lot easier to talk about it than to vote on it.

But we have a serious matter here. It has never been considered by the Senate, so we should talk about it. I think it could erect technical problems for important amendments such as proposals of statutory alternatives. But both the supporters and the opponents should know that we should have debate on it.

We have had a number of people, conservative commentators such as George Will and Stewart Taylor, who have spoken out strongly against it. We have had liberal commentators who have spoken out against it.

We have editorials from the New York Times, the Washington Post, and others who have opposed it—people ranging from Chief Justice William Rehnquist to Bud Welch, the father of one of the victims of the Oklahoma City bombing.

I ask unanimous consent that a partial list of those opponents be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LIST OF OPPONENTS OF S.J. RES. 3

Bill Murphy, Past-President of the National District Attorney's Association, in his personal capacity;

The Judicial Conference of the United States;

The National Center for State Courts (State Chief Justices Association);

Cato Institute;

Bruce Fein, former U.S. Deputy A.G. under President Reagan;

Second Amendment Foundation;

Chief Justice William Rehnquist';

Chief Justice Robert Miller, South Dakota Supreme Court;

David Nelson, State's Attorney and Beck Hess, Victim Witness Assistant, Office of the Minnehaha County, South Dakota, State's Attorney;

County of Carbon Montana County Attorney;

Victim Services, the largest victim assistance agency in the country;

The Judicial Conference of the United States;

The National Center for State Courts (State Chief Justices Association);

Over 300 Law Professors;

NOW Legal Defense Fund;

National Association for the Advancement of Colored People;

National Clearinghouse for the Defense of Battered Women;

Murder Victim's Family Members for Reconciliation;

Louisiana Foundation Against Sexual Assault (Louisiana);

North Dakota Council on Abused Women's Services;

Arizona Coalition Against Domestic Violence;

Iowa Coalition Against Domestic Violence;

North Dakota Council on Abused Women's Services;

Hawaii State Coalition Against Domestic Violence;

New Mexico Coalition Against Domestic Violence;

Virginians Against Domestic Violence;

West Virginia Coalition Against Domestic Violence;

Pennsylvania Coalition Against Domestic Violence;

Wisconsin Coalition Against Domestic Violence;

Justice Policy Institute;

Center on Juvenile and Criminal Justice;

National Center on Institutions and Alternatives;

American Friends Service Committee;

Friends Committee on National Legislation;

National Association of Criminal Defense Lawyers;

American Civil Liberties Union;

Federal Public Defender, Western District of Washington;

Beth Wilkinson, Prosecutor Oklahoma City bombing;

Bud Welch, Father of victim of Oklahoma City bombing;

SAFES (Survivors Advocating for an Effective System).

Mr. LEAHY. Mr. President, I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER (Mr. ENZI). Who yields time?

Mr. KYL. Mr. President, let me take a few minutes to respond to the distinguished ranking member of the Judiciary Committee, Senator LEAHY.

He is absolutely correct that constitutional amendments should not be rushed. We have taken a long time to get to this point—4 years. As a matter of fact, in the Judiciary Committee alone we have heard from 34 witnesses and have had 802 pages of testimony and submissions. In the House, there have been hearings. They have had 32 witnesses and about 575 pages of testimony and submissions. In other words, there have been about 66 witnesses and nearly 1,400 pages of testimony.

I commend the report of the Judiciary Committee to anyone who would like a really good read on this entire subject and the reasons why we need a Federal constitutional amendment.

The bill passed out of the Judiciary Committee 12–5. We took our time getting it to the Senate floor to make sure everybody had their say. The distinguished ranking minority member needed additional time to file his comments to the report. That was granted. He did so.

We agree there should be adequate time for the debate of this constitutional amendment, but we disagree that there should be a filibuster to use unnecessary time of the Senate.

Senator LEAHY talked about a lot of things. He talked about abortion, gun control, a balanced budget amendment and Ronald Reagan, the juvenile crime bill, nursing home fraud, and term limits. I would suggest that we ought to stick to the subject.

We all know one good way to defeat a good idea is to talk it to death and threaten to delay other business of the Senate.

I would suggest we stick to the exact question before us, and that is whether there should be a constitutional amendment protecting victims of crime.

Senator FEINSTEIN and I have laid out the case for this.

As I heard Senator LEAHY, there was only one fleeting reference to an argument in opposition. That was that the Senate had acted with alacrity in dealing with the problems that the victims of the Oklahoma City bombing case were suffering because the judge there did not permit the victims to attend the trial. Basically, he gave them a choice, over a lunch hour one day, saying: You can either attend the trial or be present at the time of sentencing and speak to that issue, but you cannot do both. Take your pick. What a Hobson's choice. The prosecutor really could not help advise the victims.

Some of them chose not to attend the trial. Others chose to attend.

Senator LEAHY is correct about one thing. The Congress did act quickly to pass a law basically telling the Federal judge that they did have a right to attend the trial and the right to attend the sentencing and to speak at that time and that he should not deny them that right.

We passed that. The day after the Senate passed it, the President signed it into law. We were so concerned that these victims of that horrible tragedy have their rights protected that we passed a Federal statute—exactly what Senator LEAHY is suggesting as an alternative to the Federal constitutional amendment that Senator FEINSTEIN and I have presented.

What has happened? What has happened is that we are worse off than we were before we passed the statute. The judge did not apply the statute to protect the victims of crime. In effect, what happened was that the defendant's right to exclude them, based in the U.S. Constitution, trumped the Federal statute which, of course, is subservient to the Federal Constitution. If that was the basis on which the court ruled, it would have been a correct basis. If he really felt the defendant's rights required that the victims not be present in the courtroom, and that those rights are in the U.S. Constitution, then he would be correct that that would trump a Federal statute—the one that the Congress passed.

Clearly, the Oklahoma City bombing litigation leaves no doubt about the difficulties that victims face with mere statutory protection of their rights. For a number of the victims, the rights afforded in the act Congress passed in 1997 and the earlier victims' rights bill were not protected. They did not observe the trial of the defendant in that case, Timothy McVeigh, because of lingering doubts about the constitutional status of the statutes.

The interesting thing is that because that case was later taken up on appeal, the case of these victims, and the Tenth Circuit ruled in that case denying the victims the rights notwithstanding the Federal statute, you literally have a situation in which it would have been better if Congress had not acted by statute because there is now a precedent on the books. This was the first time victims sought Federal appellate review of their rights since the Victims Bill of Rights was passed in 1990, the underlying statute on which the 1997 statute was based.

Quoting now from Professor Paul Cassell:

> The undeniable, and unfortunate, result of that litigation has been to establish—as the only reported federal appellate ruling—a precedent that will make effective enforcement of the federal victims rights statutes quite difficult. It is now the law of the 10th circuit that victims lack ''standing'' to be heard on issues surrounding the Victims' Bill of Rights and, for good measure, that the Department of Justice may not take an appeal for the victims under either of those statutes. For all practical purposes, the treatment of crime victims' rights in federal court in Utah, Colorado, Kansas, New Mexico, Oklahoma and Wyoming have been remitted to the unreviewable discretion of individual federal district court judges.

Professor Paul Cassell of the University of Utah Law School concludes:

> The fate of the Oklahoma City victims does not inspire confidence that all victims rights will be fully enforced in the future.
>
> . . . the Oklahoma City case provides a compelling illustration of why a constitutional amendment is necessary to fully protect victims' rights in this country.

The sad truth is that Congress's efforts to protect the rights in a very specific case by Federal statute not only didn't protect their rights but made matters worse. The statutory alternative Senators KENNEDY and LEAHY have proposed is not the answer. There has been no refutation of the point I tried to make in my original 10-minute statement that authority after authority after authority—the Attorney General, the Governors, the attorneys general—have all said that despite their best efforts, the statutory and State constitutional remedies simply have not worked to provide protections to victims of violent crime. After 18 years of experimenting, of trying, of doing their best, it is obviously now necessary to move forward with the next step, which is to elevate these rights to the same Constitution that protects the rights of the defendants. Nothing less is going to work.

I submit the arguments that Senator FEINSTEIN and I made have not been refuted. If the only response is that we are going to have to take a long time talking about extraneous matters, then my suggestion is that there is no real argument by those who oppose this amendment. There is no real substance to the notion that we shouldn't move forward.

I reiterate, I am pleased that Senator LEAHY will encourage all of his colleagues, as I certainly will encourage mine, on both sides of the aisle to support the motion to proceed. We do need to proceed. When we proceed, we can have that debate. Senator FEINSTEIN and I will renew our offer to continue to meet with the Department of Justice to get more suggestions from them. We have, in fact, incorporated many of their suggestions into the current text of the amendment. But it is time to move on. We can't keep putting it off. That is why we filed the cloture motion. That is why we want to proceed.

I appreciate what Senator LEAHY said, but I suggest that we need to move on with the debate on this amendment. Senator FEINSTEIN and I are prepared to do so.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, if I may, I would like to have an opportunity to ask the Senator from Arizona a couple of questions. I thought he pointed out very ably the problem of a statute filling the void, the first problem being that the rights of the accused will always trump the rights of the victim. He pointed out very well and very ably and very specifically the situation that took place with respect to Oklahoma City.

Then we turned to the FBI to try to get the amount of coverage that could be achieved in the statute for victims across this great land. We were told that really the best we could do would be to protect by statute the 1 to 2 percent of victims who were victimized by violent crimes.

I think it is important that we discuss a little bit more why the Constitution will always trump a State law. I ask the Senator to lay that out once again.

Mr. KYL. I thank the Senator. I am pleased to do so.

I think she makes three very important points. One very important point she made is that if you have a Federal statute, you are only dealing with 1 to 2 percent of the victims of violent crime—those 8 million victims each year. Of course, that is the number of Federal crimes. There aren't very many serious Federal crimes that would carry the penalties necessary to invoke this constitutional provision. A Federal statute would be very small and of no comfort to the millions of victims of crime involved in State court proceedings.

Secondly, there are occasions when, as in the Oklahoma City bombing case, a defendant's rights are asserted based on an amendment to the Constitution. Sometimes, for example, the judge will say: Well, I am going to exclude witnesses. I will exclude victims from the courtroom because the defendant thinks it will create undue emotion, that it will jeopardize his right to a fair trial if the jury sees the victim or the family of the victim. That was the case in the Oklahoma City bombing case and in scores of others Senator FEINSTEIN has brought to the attention of the Senate.

Of course, the defendant and his family are permitted to sit there all dressed up and supportive of the defendant at the time of sentencing and to stand up and say what a fine fellow he is. The judge takes that into consideration. We are simply saying the victims ought to be able to stand before the judge and recount the horror, the tragedy, the weakness, the loss they have suffered for the judge to take into account as well at the time of sentencing. If the defendant's constitutional rights are deemed always to be superior because they are embodied in the U.S. Constitution and the victim's rights are always secondary, then the victim's rights will be honored in the breach rather than the observance, to quote one of the people I quoted earlier.

That is why the third point is so important. Even when there isn't a direct conflict—and there will rarely be a direct conflict—the primary situation will be presence in the courtroom at

the time of trial. But in most situations there won't be the direct conflict between the defendant's right and the victim's right. It simply is a matter of inertia.

Perhaps Senator FEINSTEIN can find the quotation she read before. I think it was Professor Tribe whom the Senator quoted, who talked about judicial indifference, inertia. Well-meaning judges and prosecutors don't mean to deny victims the notice of the proceedings and the right to be present, but it becomes a secondary matter. We give the Miranda warning to the defendant. We make sure the defendant has legal counsel that people hire on his behalf, and we make absolutely certain that none of the defendant's rights are intruded upon, because if they are, the case will be overturned on appeal. And that is as it should be. But because of that attention to the constitutional rights of the defendant, we forget the victim. It is in that sense that the victims' rights are simply not being honored, why 60 percent—even in the States with good provisions—of the victims do not even get notice. That is a horrible statistic. What if we said 60 percent of the defendants didn't get their court-appointed lawyer, that it was too inconvenient or too costly? Sixty percent is a pretty good percentage. Clearly, we would find that inadequate. Fundamental rights are fundamental rights and they need to be protected.

So I think the Senator from California is correct that even though we don't mean to deny these rights, either because of the attention paid to the defendants or simply because of the fact there are other things more important to do than make sure victims have notice of these proceedings, they are denied their rights and the ability to participate.

A final point. There has been the contention that somehow it is going to become very expensive if—as we do with defendants—society has to pay for their rights. We do that for defendants; we pay for their attorneys, for their transcripts, and everything they need for their appeals. What we did here was not guarantee that victims have the right to attend the trial. For example, as are most of the provisions of the Constitution, we have said that the Government may not deny them the right to participate. They have to get there. They have to get there on their own. It is just that the Government can't deny them the right to sit on the bench in the courtroom if they show up.

Mrs. FEINSTEIN. Let me stop the Senator on that point because I think he has very well expressed what we are trying to do. We have discussed this before. I think the whole body should hear this. We know that those who are accused have basic rights. We know that the prosecution usually wants to try to get the victim in the courtroom. The defense attorney wants to keep the victim out of the courtroom. Supposing a situation arises where you have an emboldened or abusive victim, or one who is overly emotional, under our amendment, how would this work? What rights would the judge have in this situation?

Mr. KYL. I thank the Senator for that question because people not familiar with the process inside a courtroom may wonder if this amendment would permit a victim to cause a big scene in court, thus disrupting the trial and working to the disadvantage of the defendant. Of course, as the Senator knows, a judge has total control of the courtroom and has the ability to set whatever rules are necessary to maintain decorum and dignity within the courtroom and certainly to ensure the protection of the fair trial rights of the defendant. That is why a judge can always say—and we have seen it on TV hundreds of times—''order in the court,'' in effect saying, if you can't sit there quietly and unemotionally watching what is occurring, then you have to leave. Because in the court we cannot have undue displays of emotion. So the judge has within his total authority the ability to control either the defendant from his or her outbursts or any emotional outbursts of anybody else in the courtroom, including victims.

Mrs. FEINSTEIN. I thank the Senator. The Senator and I worked extensively with both Laurence Tribe, a professor of constitutional law at Harvard University, and Paul Cassell, a professor of law at the University of Utah College of Law. Both are very skilled and knowledgeable in this area. I happened to find an article that they wrote together in a newspaper. I thought it might be interesting to hear their view. I would like to read it to you and ask for your response:

> We take it to be common ground that the Constitution should never be amended merely to achieve short-term, partisan, or purely policy objectives. Apart from a needed change in governmental structure, an amendment is appropriate only when the goal involves a basic human right that by consensus deserves permanent respect, is not and cannot adequately be protected through State or Federal legislation—

I think we have shown why that can't happen—

> would not distort basic principles of the separation of powers among the Federal branches or the division of powers between the national and state governments or the balance of powers between government and private citizens with respect to their basic rights.
>
> The proposed Victims Rights Amendment meets these demanding criteria. It would protect basic rights of crime victims, including their rights to be notified of and present at all proceedings in their case and to be heard at appropriate stages in the process. These are rights not to be victimized again through the process by which government officials prosecute, punish and release accused or convicted offenders.

Then it goes on to say:

> These are the very kinds of rights with which our Constitution is typically and particularly concerned—rights of individuals to participate in all those government processes that strongly affect their lives. ''Participation in all forms of government is the essence of democracy,'' President Clinton concluded in endorsing the amendment.

Now, what we come down to, essentially, is how do you express these things in a way that gives victims these certain basic rights? I think we have tried to do that. We put it up on a schedule here of crime victims' rights. I wish to quickly go over this. The rights of the accused are on the left. The rights we would afford victims are on the right. In a sense, we achieve a kind of balance. Now, the question comes when and if these rights come into conflict. The fact is, I think we both believe it will be rare that these rights come into conflict. As was said, with an emotional victim, there is in the law already the opportunity for a judge to handle this situation.

I have had a very hard time, because the Senator and I have had a number of critics on this; we have had a number of newspapers that have editorialized and said that what we are trying is trivial, not important. But let me tell you something. If you are a rape victim and you have reason to believe that individual may come back after you, it is not unimportant that you have notice when that individual is released from prison or from jail. It is not unimportant at all. I indicated earlier a case of an individual who has had to change her name and live in fear and anonymity because of this. The Constitution should protect that victim, and that is what we try to do. So I have had a very hard time seeing instances where there is actual conflict.

My question of the Senator is, Can the Senator expand on this more and indicate where there is conflict? People have said, ''You diminish the rights of the accused.'' I don't see us diminishing the rights of the accused. Their rights are very specific. We don't touch on these. There is the right to counsel, the right to due process, the right to a speedy trial. We want that, as well, because we know that the speed of the trial is an important deterrent to violence. We know that if a trial is not speedy, evidence grows cold, witnesses disappear. It is much more difficult to make a case if there is a long hiatus between arrest and trial. In fact, Federal law recognizes that by moving trials along in an expeditious way.

Double jeopardy. We certainly don't interfere with that. We certainly don't interfere with the prohibition against self-incrimination or against unreasonable search and seizure, probable cause, a jury of peers, the right to be informed, the right to confront witnesses, to subpoena witnesses, a prohibition against excessive bail, the right to a grand jury. There are a few other rights written into the Constitution. But our rights are so basic for a victim, such as the right to have notice when a trial takes place, the right to be present in the courtroom, the right to make a statement at an appropriate

place in the trial, the right to have notice if your assailant is released. These are certain basic, core rights that in no way, shape, or form, it seems to me, interfere with the constitutional rights granted to a defendant or to an accused to protect them from excessive government under the Constitution of the United States.

So I have been very perplexed as to why we see bubbling out there this argument that we are setting up some collision of rights. We are simply trying to provide a victim with certain basic rights that are spelled out and are specific.

Would the Senator care to elaborate on that?

Mr. KYL. I agree it is perplexing how one could conclude a defendant's rights would be trampled on in any way by our proposal. It does not do that.

The article in the Los Angeles Times, quoting Professors Tribe and Cassell, makes the point that ''a victims' rights amendment must, of course, be drafted so the rights of victims will not furnish excuses for roughshod treatment of the accused. The Senate Resolution is such a carefully crafted measure, adding victims' rights that can exist side by side with defendants'.''

Precisely the point. There is only one conceivable circumstance I know of in which there could actually be an assertion of two constitutional rights, one by the defendant and one by the victim, which could theoretically come in conflict, and that is the right to be present at the trial. Courts deal with that today. They would balance the interests tomorrow. We have the same thing existing with respect to the press. We have the right of free press. Say victims want to attend the trial. Sometimes, as we know, judges don't permit that, but it is in the Constitution. That is right. But the defendant has a right to a fair trial as well.

The courts will balance those two interests and generally come to an accommodation that enforces both rights.

Mrs. FEINSTEIN. Would the Senator finish reading that? I think the next points are very important to our cause. They should be heard.

Mr. KYL. I think the two distinguished law professors make a very important point. They point out the example of paralleling a defendant's constitutionally protected right to a speedy trial. Our amendment confers on victims the right to consideration of their interest in a trial, free from unreasonable delay.

By definition, the professors note, these rights could not collide since they are both designed to bring matters to a close within a reasonable time. If any conflict were to emerge, courts retain ultimate responsibility for harmonizing the rights at stake.

We have also gone one other step. That is, whereas the defendant had an absolute right to a speedy trial—and frequently, also, courts determine he has a right to delay things—we have provided for victims merely that the judge must ''consider'' their desire to bring the trial to a speedy conclusion.

In this case, we have created a right of victims which, indeed, is subservient to the right of the defendants. Theirs is absolute. The victims have a right to have their views considered. We have been very careful to ensure we don't trample on defendants' rights.

I make one more point because the Senator reminded me of something that is very important. In the statement by Professor Mosteller, he makes a relative point that relates to this. ''In theory, victims' rights could be safeguarded without a constitutional amendment. It would only be necessary for actors within the criminal justice system—judges, prosecutors, defense attorneys, and others—to suddenly begin fully respecting victims' rights. The real world question, however, is how to actually trigger such a shift in the Zeitgeist. For nearly two decades, victims have obtained a variety of measures to protect their rights. Yet, the prevailing view from those who work in the field is that these efforts have 'all too often been ineffective.' Rules to assist victims 'frequently fail to provide meaningful protection whenever they come into conflict with'''—and here I break the quotation—not the defendant's rights. They are not conflicting with defendant's rights. That is not why they are denied, but rather ''whenever they come into conflict with bureaucratic habit, traditional indifference, or sheer inertia.''

That is what is preventing these rights from being fully affected—not that they conflict with the defendant's rights.

Here is the conclusion: The view that State victims provisions have been and will continue to often be disregarded is widely shared, as some of the strongest opponents of the amendment seem to concede the point. For example, Ellen Greenlee, president of the National Legal Aid and Defenders Association, bluntly and revealingly told Congress that the State victims amendments, ''so far have been treated as mere statements of principle that victims ought to be included and consulted more by prosecutors and courts. A State constitution is far . . . easier to ignore than the Federal one.''

That is the bottom line point.

State constitutions, even Federal statutes, as we found in the Oklahoma City bombing case, are far easier to ignore than the U.S. Constitution. That is something no judge and no prosecutor can ignore. That is why we want to elevate these rights—not because they conflict with the defendant's rights, not because they take anything away from any accused in the courtroom, but rather because these elemental rights of fairness are not currently being enforced by the judges and prosecutors because they just don't have the stature of the U.S. Constitution.

Mrs. FEINSTEIN. I thank the Senator.

If the Senator recalls, in our earlier discussions with the Justice Department, we were very concerned that the rights of the accused not be violated, not be diminished, and we quite consciously left out any specific remedy in this situation so that if someone doesn't exercise their right either to be present or to make a statement, in effect, they have no remedy, or after they make their statement, if the facts in the trial are such and the jury comes in with a decision, they have no right of a remedy.

So the basic core rights we provide are, in a sense, certain procedural rights that give them a place in the process.

Let me read what these two law professors have said on this point:

> The framers of the Constitution undoubtedly assumed the rights of victims would receive decent protection, but experience has not vindicated this assumption. It is now necessary to add a corrective amendment. Doing so would neither extend the Constitution to an issue of mere policy, nor provide special benefits to a particular interest group, nor use the heavy artillery of constitutional amendment where a simpler solution is available, nor would it put the Constitution to a purely symbolic use or enlist it for some narrow partisan purpose. Rather, the proposed amendment would help bridge a distinct and significant gap in our legal system's existing arrangements for the protection of basic human rights against an important category of government abuse.

This, I think, goes right to the question of remedy. We don't provide for a remedy, we simply say you have these basic rights to participate in this manner.

Mr. KYL. If I could put an exclamation point on that.

The point Senator FEINSTEIN makes is this: During the pendency of the proceedings, the victim has the right to assert these rights. For example, if you have a week-long trial and the victim finds out about the trial after the second day, the victim can't go back and say you have to start the trial all over again. All the victim can do is say, hey, I have a right to be there for the rest of the trial.

That is unlike the defendant's rights. Here is the exact language we included: ''Nothing in this article shall provide grounds to stay or continue any trial, reopen any proceeding, or invalidate any ruling''—and there are only two exceptions—''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 . . .''

There are only two exceptions. One is prospective, so long as it does not continue or delay the proceedings. In other words, you have the right to say: Judge, this trial is starting, and I have a right to be there. And the other one is with respect to a conditional release.

I close with this point: You need the right to enforce it with respect to a conditional release.

Here is a true story. Here is how it would work. Patricia Pollard of Flagstaff, AZ, was picked up one night by a man and his wife, ironically, and the man brutally raped her, sliced her up with an open beer can, and left her to die. She lived. He was eventually prosecuted. After the Arizona legislature passed the provision which enabled victims to be notified, the parole board held a hearing on his conditional release. They decided to conditionally release her assailant from the Arizona State Penitentiary, but they did not give her notice.

The Governor's office found out about this, located Patricia Pollard in California, brought her back, and arranged for another meeting of the parole board after they had already made their decision. They agreed to hear her. She spoke about what he had done to her and what she feared he would do to others. The parole board reversed its decision.

I asked Patricia Pollard whether she did that because she feared for her life, that he would come after her again. She said: Well, he might have tried to track me down. But in truth, his crime against me was a random kind of crime. I was available for him to victimize. I simply could not have lived with myself if I had not gone there and told these people what he could do to someone else because I know that had he gotten out, he would have done it to somebody else.

That is why we provide this limited exception, the only situation, really, where something can be done retroactively—where a person was not given notice to attend the parole or conditional release proceedings and the individual has not yet been released, you can go back in and tell your story and just maybe it will make a difference. That is what this amendment is all about, protecting the rights not only of the victims of crime but of the rest of society as well.

Mrs. FEINSTEIN. I thank my colleague, yield the floor, and reserve the remainder of our time.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Dakota.

Mr. DORGAN. Mr. President, I have listened to the presentations on the floor. Let me say the passion with which the Senator from California, Mrs. FEINSTEIN, and the Senator from Arizona bring this issue to the floor is a passion I understand. I certainly respect their views.

I have studied this issue at some length. I must say the Senator from California visited with me, I guess, half a dozen times about this issue over the past year or so. But I have reached a different conclusion. It is a difficult trail to get to this point, but my view is the issue is not whether victims in this country have rights in court proceedings, but how we achieve those rights.

It is true that criminals are accorded a whole series of rights in this country. I do not quarrel with that. I do not want us to put innocent people behind bars. It is difficult to convict in this country, and our Constitution establishes certain rights. We try, as a country, to make certain we only put those guilty of crimes, behind bars.

It is also true—and I say this to the Senator from California and the Senator from Arizona—it has been a longer process and a more difficult track, to make certain that victims and victims' families have their rights protected in our court system. I have offered legislation on this issue previously. In fact, I authored language included in the 1994 crime bill, which is now law, that gives crime victims the right to testify at federal sentencing hearings. My provision gives crime victims and their families the right in Federal court to present testimony about ''What this crime meant to me or to my family'' and ensures that judges and parole boards formally consider the impact of a crime on its victims when making sentencing and parole decisions.

I sat in a court at the manslaughter trial of the man on trial for the death of my mother. I am very sensitive to this issue. I understand—being a family member, sitting in a court, watching the trial of the man who was responsible for the death of my mother—I understand the concern a family member has about the rights of the victim and the rights of the victim's family to be present in that court. I understand the desire to present testimony during the sentencing phase, to have an understanding about when someone is let out of prison. I understand all that, and I am very sensitive to it because I have been through it personally, as a result of the tragic death of my mother.

I come to the floor of the Senate today saying I strongly support victims' rights. We are moving in this country in a variety of ways to achieve those rights. Thirty-three States have now amended their state constitutions to specifically describe the rights of victims and their families. Some say that approach does not work very well and is not universal; that sometimes it does not achieve our goal. I understand that argument. I understand the argument that the perpetrator of a heinous and violent crime is brought into the court, now some months later after the crime was committed, and his or her hair is combed, they are in a new suit, they look as if they just finished singing in a church choir, and all their acquaintances testify to what a remarkable person this is. It happens all the time in trials.

This animal who committed the violent murder on a Saturday night, in court 1 month or 2 or 6, or a year later, looks completely different and has a whole set of rights. I understand all that.

My concern is about the Constitution of the United States, and whether we should address this by changing the U.S. Constitution, or whether we should address it by continuing to make the changes, both with respect to Federal law and also mandating changes with respect to State law and State constitutional changes that accomplish the same result.

I have in my hand three pages of constitutional amendments that have been introduced in this session of Congress. We have had several of them, frankly, on the floor of the Senate. These are very important issues. Amending or changing the Constitution of this country ought to be done rarely and then only in circumstances where it is the only opportunity to achieve the change we want as a society. These are three pages of constitutional amendments that are proposed by my colleagues now.

We have had over 11,000 proposals to change the Constitution since it was written; 11,000 proposals. One of them, for example, said let's have a constitutional amendment that provides the Presidency of our country should be rotated. One term it shall be held by someone who is a southerner, from the southern States, and the next term followed by someone who comes from a northern State. That was a proposed constitutional amendment. I could describe more, of course. 11,000 times, the Members of Congress have felt the need to change the U.S. Constitution—this document which begins:

> We the People of the United States, in Order to form a more perfect Union. . . .

We all understand the words. It was written by 55 white men just over two centuries ago in a room called the Assembly Room in Constitution Hall. My colleagues have heard me talk about it before, but I will say it again. In that room, George Washington's chair is still sitting at the front of the room where he presided over the Constitutional Convention. Go there today in Philadelphia and look at his chair. Ben Franklin sat over there; there James Madison. Thomas Jefferson was in Europe at the time so he didn't participate except through his writings, which then became, as we know it, the Bill of Rights.

But since those 55 men wrote the Constitution of the United States over two centuries ago, we have had so many proposals for change. I have mentioned to my colleagues on the 200th birthday of the writing of the Constitution, I was one of the 55 people who were authorized to go in for a ceremony, into this Assembly Room. This time, it was 55 men, women, minorities. I got chills sitting in this room because I had studied in a very small school the history about Ben Franklin, Madison, Mason, George Washington—the father of our country—and now I was sitting in the Assembly Room in Constitution Hall in Philadelphia where they wrote the Constitution of the United States.

Since that experience, I have had difficulty coming to the conclusion that we can improve upon the basic framework of the Constitution of the United States. Other countries try to replicate

this Constitution; we try to amend it. Some of my colleagues apparently think it is a rough draft available for amendment at the whim of someone's interest in the House or the Senate. It is much more important than that, and we ought to amend the Constitution, in my judgment, rarely, and then when it is the only solution.

As I mentioned, 33 States have amended their Constitution to provide for victims' rights. We can provide for the Federal portion, and the Senators from Arizona and California are absolutely right, that is a very small portion of crime in the criminal justice system. We can also mandate—and I am perfectly prepared to do that—that the States must do the same in exchange for a certain number of incentives which we in the Congress provide. I am perfectly prepared to do that.

I do want to clear up a couple of misconceptions that have been part of the discussion with respect to the victims' rights amendment. The proposal to change the Constitution, in some measure, rests on the discussion about, among other things, the folks who were convicted in the Oklahoma City bombing case.

I want to describe what happened in that case because like many others, I saw the initial ruling and comments of the judge in the Federal court in Denver, and was appalled. He essentially said that those who were victims or family members of victims who wanted to witness the trial would not necessarily then be granted the opportunity to testify during the sentencing phase of the trial. I was concerned about that. I felt that was an abrogation of victims' rights.

What happened as a result of that is Congress passed a piece of legislation called the Victim Rights Clarification Act of 1997. We did that almost immediately. It reversed a presumption against crime victims observing any part of the trial proceedings if they were likely to testify during the sentencing hearing.

This piece of legislation that was passed almost immediately after the judge's ruling prohibited courts from excluding victims from the trial on the grounds they might be called to provide a victim's impact statement at sentencing. The result of the legislation was that the victims in the Oklahoma City bombing trial were allowed to observe both the trial of Timothy McVeigh and Terry Nichols and to provide impact statements through testimony.

In this circumstance, the legislation we passed in Congress worked exactly as Congress intended it to work. The testimony by a former prosecutor at the Oklahoma City bombing trial, Ms. Wilkinson, is something I want to recount because it is important to understand what happened, inasmuch as this example has been used.

It is important to look at how the Victim Rights Clarification Act was actually applied in the Oklahoma City case.

On June 26, 1996, Judge Matsch held that potential witnesses at any penalty hearing were excluded from pretrial proceedings and the trial itself to avoid any influence from that experience on their testimony.

That is what I described earlier, and I felt the same revulsion about that judge's decision as I think my colleagues did, and the result was that we passed the Victim Rights Clarification Act almost immediately. The President signed it into law on March 19, 1997. One week later, Judge Matsch reversed his exclusionary order and permitted observation at the trial proceedings by potential penalty-phase impact witnesses. In other words, the judge changed his mind immediately after the President signed the legislation.

Beth Wilkinson, a member of the Government team that successfully prosecuted, said:

> What happened in [the McVeigh] case was once you all had passed the statute, the judge said that the victims could sit in, but they may have to undergo a voir dire process to determine whether rule 402. . .would have been impacted and could be more prejudicial.

This is what the prosecutor said. It is important to say this:

> I am proud to report to you that every single one of those witnesses who decided to sit through the trial survived the voir dire, and not only survived, but I think changed the judge's opinion on the idea that any victim impact testimony would be changed by sitting through the trial. [T]he witnesses underwent the voir dire and testified during the penalty phase for Mr. McVeigh.
>
> It worked in that case, but it worked even better in the next case. Just 3 months later when we tried the case against Terry Nichols, every single victim who wanted to watch the trial either in Denver or through closed-circuit television proceedings that were provided also by statute by this Congress, were permitted to sit and watch the trial and testify against Mr. Nichols in the penalty phase—all without having to undergo a voir dire process.

The point is, when the judge in the Oklahoma City bombing trial, which was conducted in Denver, made his initial ruling, there was a great amount of press about it, and all of us, including myself, was aghast at this ruling. Congress passed a piece of legislation almost immediately, the President signed it, and the judge reversed his ruling, and every single one of the victims or victims' families who wished to testify during the penalty phase was allowed to testify. That is critically important to be on the record.

The urge to amend the Constitution ought to be an urge based on all of the information available, and there is plenty of information available, it seems to me, based on this case and also based on the fact that 33 States have now changed their constitution and more will do so. In fact, all could do so if we decided to provide a mandate that would require them to do so. We are making significant progress in this area.

I understand, as I said when I started, the passions of the Senator from Arizona and the Senator from California. I have those same passions, and I want victims to have the same rights. I believe, however, that amending the Constitution should always be a last resort, not a first resort. I do not believe, despite all that has been said, that it serves this document very well to bring a piece of legislation to the floor of the Senate on a Tuesday and have a cloture vote on the motion to proceed. Presumably, we will have a cloture vote on the bill itself and probably have 8 hours, maybe 10 hours, maybe 14 hours, which would be a lengthy period of time for discussion in this Senate, and an attempt, I am sure, to stifle amendments, and then we would say: All right, now the Senate has considered changing the U.S. Constitution.

I do not think that is what Washington, Franklin, Madison, Mason, or others would have wanted us to do in consideration of changing this sacred document.

My hope is we will have an interesting and significant discussion about this and we will, from this debate, not only turn back the constitutional amendment but probably stimulate a great deal more activity on the part of the States. As I said before, I am willing to either offer an amendment or join others in offering an amendment that will require the States to make these changes. That would accomplish exactly the same thing without amending the U.S. Constitution. We can, in any event, make certain all this applies with respect to the Federal statute and Federal crimes.

My hope is, at the end of it, we will not only have denied the impulse to change the Constitution, but we will have created new energy and new incentives to make certain that victims' rights gain ground in State after State across this country. I will be happy to join others in the coming days, weeks, and months in an effort to accomplish that, because I have strong feelings about this issue. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Iowa.

ABORTION

Mr. HARKIN. Mr. President, I wish to depart from the debate on the issue before us, which is an important issue. I appreciate the remarks made by my colleague from North Dakota. I listened intently to what he had to say, and I can understand his deep feelings about this issue.

I want to talk about another issue because today, across the street from where we sit in the Halls of the Senate, the U.S. Supreme Court is hearing arguments on a case involving the so-called partial-birth abortion law of the State of Nebraska. That law, passed by the Nebraska Legislature, is quite similar to the version the Senate and the House have debated over the years. In fact, it is very similar to the one passed by the Senate last October.