length of time it takes. So there will not be any diminution or any erosion in the strength of feeling we have about our right to offer amendments. I am hopeful with that realization we can reach some compromise.

Mr. President, I yield 2 hours to the distinguished senior Senator from West Virginia under the cloture to be used as he deems appropriate during the debate on the marriage tax penalty.

The PRESIDING OFFICER. The leader has that right.

Mr. DASCHLE. I thank the President. I yield the floor.

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES TO PROTECT THE RIGHTS OF CRIME VICTIMS—Motion To Proceed—Resumed

Mr. KYL. Mr. President, we are in the process of attempting to work out an arrangement of time for the debate on the pending motion. I ask for all concerned if the Chair will describe the pending business of the Senate.

The PRESIDING OFFICER. The question is on the motion to proceed to S.J. Res. 3.

Mr. KYL. I thank the Chair.

We are in the process of determining just how much time speakers are going to need in order to conclude debate on the motion to proceed. Senator FEINSTEIN and I both have some preliminary remarks we would like to make in connection with that debate as the two chief proponents of the resolution. We understand Senator LEAHY and Senator BYRD wish to take some time, and Senator BIDEN as well a little later on.

As soon as we can confirm the amount of time people will need, we will probably propound a unanimous consent request in that regard.

Mr. LEAHY. Will the Senator yield?

Mr. KYL. I am happy to yield.

Mr. LEAHY. Mr. President, I am perfectly willing, from this side, to work with the distinguished Senator from Arizona and the distinguished Senator from California on time. I do not expect an enormous amount of time to be consumed. It has not been announced, but there is a certain sense that there may not be any more rollcall votes this week so a lot of people are probably going to be leaving. I will definitely try to accommodate them.

The distinguished Senator from West Virginia does have a statement he wishes to make. I have a statement I wish to make. I am simply trying to protect some others who may want to speak, as I am sure the Senator is on his side. But I will continue to work with the distinguished Senator to cut down this time any way we can.

Mr. KYL. We will announce to all Members, if we can work that time arrangement out, just exactly how this will proceed.

In the meantime, let me see if I can set the stage so everyone will know where we are in this debate. Then I would like to thank some people and then move on to a colloquy with Senator FEINSTEIN, if I might.

Because of the way the Senate works, we have moved back and forth in Senate business. But the pending business is the motion to proceed on S.J. Res. 3; that is, the crime victims' constitutional rights resolution sponsored by Senator FEINSTEIN and myself.

We gained cloture earlier this week so we could proceed, and the motion to proceed will certainly be agreed to, if we carry the debate that far. Senator FEINSTEIN and I, however, are of the view that because of various things that have occurred, it is unlikely that a cloture motion, if filed, would be supported by the requisite number of Senators to succeed early next week.

Therefore, what we are prepared to do is speak to the issue of the resolution, where we are with respect to the resolution, to thank the many groups and sponsors and other individuals who have been so supportive of this effort, and to seek permission of the Senate, when people have finished their comments, to withdraw the motion to proceed and to move to other business. That merely means a timeout in our efforts to secure passage of this constitutional amendment.

We recognize at this point in time that proceeding will simply encourage more Senators to use a great deal of the Senate's time in unproductive speeches that really do not go to the heart of our constitutional amendment but take time away from the Senate's important business. We have no intention of doing that.

So we will make some remarks that will set the stage for what we are about to do. But let me begin by noting the tremendous amount of support around the country that has accompanied our effort to bring this measure to the floor of the Senate. I have to begin by thanking two people in particular, Senator DIANNE FEINSTEIN and Majority Leader TRENT LOTT. We could not have brought this amendment, over the course of the last 4 years, to the bipartisan level of support it now enjoys without the ability to work on both sides of the aisle. No one could have carried this matter on the Democratic side more capably than Senator DIANNE FEINSTEIN. Before she came to the Senate, she was a passionate advocate for victims of crime. As mayor of San Francisco, she was a proponent of area residents who were victims of crime and carries that passion with her to this debate now.

She and I have worked closely with victims' rights advocates to shape the legislation. I might say, while some of our colleagues have suggested there is something wrong with the fact that we have conducted dozens of meetings with the administration, Department of Justice, and many others, and honed this amendment in 63 different drafts, we are very proud that we have included anyone who wanted to talk about this in our circle of friends working to get an amendment that could pass the Senate and that we have carefully taken their suggestions into account, thus accounting for the many different drafts as the 4-year progress of this resolution has brought us to this point.

The fact that we have taken their suggestions to heart and continually polished this amendment we think is a strong point. While we were criticized yesterday on the floor for engaging in yet more negotiations that might result in a final, 64th draft, I must say that was largely at the instigation of Senator FEINSTEIN, who said, given the fact the Department of Justice has four concerns still pending with regard to our specific proposal, let's meet with them and see if we can come to closure on those items.

Because of her leadership, we were able to come to closure on three of them. We believe we made more than a good faith effort with respect to the fourth, which had to do with the protection of defendants' rights. We were willing to acknowledge that the rights enumerated in this proposal take nothing whatsoever away from defendants' rights. I do not know how more clearly we can say it. That was not acceptable to the Department of Justice.

But it is not for want of trying, on the part of Senator FEINSTEIN, that we have been unable to secure the support of the Department of Justice for this amendment. So my first sincere thanks go to the person without whom we would not be at this point, my colleague Senator FEINSTEIN.

I also thank Leader LOTT. When I went to him with a request for floor time for this amendment, his first response was: You know all the business the Senate has to conduct. Are you sure you want to go forward with this? I said we are absolutely certain.

Despite all the other pressing business, he was willing because he, too, believes strongly in this proposal, as a cosponsor, to give us the floor time to try to get this through. It is partially out of concern for his responsibilities as leader that we recognize that to proceed would result in a vote that would not be successful, and therefore, rather than use that precious time, we are prepared to visit privately with our colleagues to further provide education to them about the necessity of this amendment since, clearly, the methodology we have engaged in thus far was not working. We would make strong arguments, but I daresay it didn't appear that anyone was here on the floor listening because when various opponents would come to the floor, they would repeat the same mantra over and over again that we had already addressed.

Part of that mantra was, Did you know this amendment is longer than the Bill of Rights? We would patiently restate that is not true, that all of the rights of the defendants in the Constitution are embodied in language of more words than this amendment that embodies the victims' rights and so on.

Then that individual would leave the floor, and another individual would come to the floor and repeat the same erroneous information, and we would have to patiently respond to that.

Rather than continue that process, we believe it is better that we visit with our colleagues when we are not using this time on the floor and explain all of this to them, with the hope they will then be better able to support us in the future.

So I thank Senator FEINSTEIN. We have gone through a lot together on this. There is nobody in this body for whom I have greater respect.

Again, I thank Senator LOTT, the majority leader, for his support for us as well.

The National Victims' Constitutional Amendment Network is one of the really strong victims' rights groups that has backed us throughout this process. Roberta Roper has been involved in that. She was in my office this morning. She was with us yesterday. She has been with us throughout the process, helping us evaluate these various proposals and assisting us.

The National Organization for Victim Assistance, known by the acronym NOVA, headed by Marlene Young and John Stein, and all the people on the NOVA board, we are enormously appreciative of their strong support and assistance throughout this effort. They are going to continue to fight for sure.

Marsha Kight, whom Senator FEINSTEIN and I have come to know and respect because of her advocacy as someone whose daughter was killed in the Oklahoma City bombing, brought the experience of that trial and the firsthand knowledge of how victims were denied their rights even to attend the trial. She has been an important witness for us before the Judiciary Committee and at various other forums.

One of the groups in the country that is most strongly in support, and has provided a lot of grassroots support, is Mothers Against Drunk Driving, or MADD. Also, Students Against Drunk Driving, SADD, a group of younger people, has been helpful. Tom Howarth, Millie Webb, Katherine Prescott, and others have been very helpful to us in that regard.

Parents of Murdered Children has been enormously helpful. Rita Goldsmith is from my State of Arizona, from Sedona.

We have had tremendous help from legal scholars such as Professor Laurence Tribe, Professor Doug Beloof, and Professor Paul Cassell. I thank them for their enormous help in this effort, including their testimony before the Judiciary Committee.

There are many prosecutors. I need to mention a couple from my own State. The two largest counties in Arizona are Maricopa and Pima Counties. Rick Romley, the Republican-elected attorney from Maricopa County, the sixth largest county by population in the country, and Barbara LaWall, a Democratic-elected attorney from Pima County, have been very strong supporters and helpful in our work.

Law enforcement has been very well represented by organizations and individuals. From the Law Enforcement Alliance of America, Darlene Hutchinson and Laura Griffith have been helpful.

Various attorneys general, such as Delaware Attorney General Jane Brady, Wisconsin Attorney General Jim Doyle, and Kansas Attorney General Carla Stovall. By the way, these are Democrats and Republicans alike. It is a totally bipartisan effort. As a matter of fact, the National Association of Attorneys General—we have a very good letter signed by the vast majority of attorneys general in support of our crime victims' constitutional rights amendment.

We also have support from former U.S. Attorneys General: Ed Meese, Bill Barr, and Dick Thornburgh are strongly supportive of our proposal.

From a show with which Americans are familiar, ''America's Most Wanted,'' John Walsh has been an early and strong supporter of our proposal.

From the Stephanie Roper Foundation—I mentioned Roberta Roper—but Steve Kelly of the Stephanie Roper Foundation has been very helpful.

Arizona Voice for Crime Victims; a person who helped Senator FEINSTEIN in the early years, Neil Quinter, a superb former Senate staff member and with whom I visited just this morning, continues his support for this.

Matt Lamberti and David Hantman of Senator FEINSTEIN's office; Jason Alberts, Nick Dickinson, and Taylor Nguyen of my office; and, most important, Stephen Higgins of my staff and Steve Twist, an attorney from Arizona, whose support and competence in helping us through this process was, frankly, simply indispensable.

Also, I will submit for the RECORD two things. One is a list of crime victims' rights amendment supporters. This list includes, in addition to those I mentioned, more than half a page of law enforcement organizations. I mention this because there has been some suggestion that law enforcement does not support us:

The Federal Law Enforcement Officers Association, Law Enforcement Alliance of America, American Probation and Parole Association, American Correctional Association, the National Criminal Justice Association, the National Organization of Black Law Enforcement Executives, National Troopers Coalition, Concerns of Police Survivors, and on and on.

This amendment is strongly supported by prosecutors, law enforcement, legal scholars, attorneys general, Governors, former U.S. Attorneys General, and many more. I ask unanimous consent to print this list of supporters in the RECORD.

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. Mr. President, finally, I ask unanimous consent to print in the RECORD a series of a dozen or so statements and letters from supporters of the amendment. Included in those, incidentally, is a strong statement of support for our specific amendment by Governor George Bush of the State of Texas. I ask unanimous consent to print these in the RECORD.

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

STATEMENT BY GOVERNOR GEORGE W. BUSH—APRIL 7, 2000

I strongly support passage of the Victims' Rights Amendment. Two years ago, I joined my colleagues on the National Governor's Association in calling for a national Amendment, like the one we have in Texas and 30 other states. For too long, courts and lawyers have focused only on the rights of criminal defendants and not on the rights of innocent victims. We need to make sure that crime victims are not forgotten, that they are treated fairly and with respect in our criminal process.

MARCH 14, 2000.

DEAR SENATORS KYL AND FEINSTEIN: During our years of service as Attorneys General of the United States, we saw first hand how the criminal justice system must command the respect of all our citizens if it is to be effective. That respect can only be eroded when the system unfairly treats those it is supposed to serve.

For victims, the system is neither fair nor just. Despite federal statutes and states constitutional amendments passed to ensure fair treatment of crime victims, in too many courtrooms across the country, crime victims continue to be excluded and silenced; they are neither informed of proceedings nor given a right to be present or heard.

We believe the only way to extend the fundamental fairness demanded of our system for crime victims, is to secure their rights in our fundamental law, the U.S. Constitution. That is why we are writing now to express our strong and unqualified support for the constitutional amendment you propose, the Crime Victims' Rights Amendment (S.J. Res. 3). This amendment, once ratified, will restore to our justice system the basic fairness necessary to command the respect of all our people. The rights spelled out in the amendment are simple, yet profound. They are practical and attainable, and they will transform our justice system so that it will truly protect the rights of the law abiding as well as the lawless.

Sincerely,

WILLIAM BARR.
EDWIN MEESE III.
RICHARD THORNBURGH.

OFFICE OF THE
MARICOPA COUNTY ATTORNEY,
Maricopa County, AZ, April 14, 2000.

Hon. JON KYL,
U.S. Senate,
Washington, DC.

DEAR SENATOR KYL: As the chief prosecutor for the sixth largest prosecutor's office in the nation, handling over 40,000 felony and delinquency prosecutions each year, I have first hand knowledge of the ramifications of providing constitutional rights for victims.

I have been a strong proponent for victims' rights for many years, having served on the Arizona Victim's Bill of Rights Steering Committee that was responsible for the passage of constitutional rights for victims in 1990. I also participated in subsequent legislative ad hoc committees charged with developing the enabling legislation. I strongly support S.J. Res. 3 and your efforts to see constitutional rights for victims become a reality in the United States Constitution.

I recently read the Minority views in the Judiciary Committee's Report on S.J. Res. 3. The ''worst case'' examples that were raised were for the most part extreme predictions which we in Arizona have not experienced, notwithstanding our long history with victims' rights. I would like to take this opportunity to address several of the Minority report concerns.

Victims' Rights Do Not Result in Substantial Costs To The System—

Providng victims with constitutional rights has not resulted in substantial costs to law enforcement, prosecutors, the courts, corrections or probation departments. My office provides victims' rights services to over 30,000 victims each year and although the ''exact cost'' is difficult to determine, our estimates are that it costs my office approximately $15.00 per victim.

While we have experienced an increase in trials, the increase cannot be attributed to our constitution amendment for victim rights. Any such increase has been in response to our mushrooming population and the resulting increase in case filings.

The Arizona Court of Appeals and the Arizona Supreme Court have not been besieged with appeals based on victim rights arguments.

Victim Rights Do Not Restrict The Discretion Of The Prosecutor—

A victim's right to be heard regarding a plea agreement does not mean a crime victim can veto a judge's final decision. Judges, of course, consider the victim's opinion when determining whether or not to accept a plea agreement, however that opinion is merely one factor among others which contribute to the deliberative process. In Arizona, the victim's right to allocution has not caused our judicial officers to abrogate their responsibility to render a decision free of bias. There is no reason to believe that federal judicial officers will act otherwise when weighing the appropriateness of accepting a negotiated plea.

I have implemented a policy in which prosecutors solicit the victim's opinion regarding the final outcome of the prosecution and take the victim's opinion into consideration when neogitating a plea agreement. In this way, the prosecutor considers the victim's wishes, including the harm caused by the crime, throughout the plea negotiation process and pretrial phase of prosecution. Consideration of the victim's views are again but one factor considered by the prosecutor. Our experience has been that my deputies are not inappropriately influenced by emotion. To presuppose otherwise does a disservice to these dedicated public servants who have sworn to strive for equal justice.

Prosecutors are responsible for informing victims of the plea agreement and the reasons for the negotiated settlement. It has been our experience that very few victims object to a plea agreement when fully informed of the reasons and benefits of the plea. However, in some instances, after considering the plea and victim's opinion, the judge will reject the plea agreement holding that the interests of justice are not served by the plea. When this happens, although rare in our experience, the court has fulfilled its function as an arbiter not an advocate.

Victim Rights Do Not Under Cut The Rights Of The Accused—

Victims desire to see justice, first and foremost. their natural desire to gain justice, is not something to fear. In our experience it has helped our office achieve that goal.

While victims have a right to be present throughout the course of trial in Arizona, it has been our experience that defendants and/or the friends and family of the defendants are much more likely than victims to become disruptive during trial. In the rare cases where a victim has been emotionally overwhelmed in court, he or she has either voluntarily left the courtroom to calm down, or is requested to do so upon instruction by the court. In every courtroom in our land, the judge has the responsibility of maintaining order and ensuring that the jury is not influenced by factors other than those presented from the witness box. To assume that the presence of a victim in the courtroom will somehow so prejudice a jury that they would disregard the evidence and return a verdict of guilty predicated and influenced by an individual sitting in the spectator section of the court, presupposes that juries will ignore the instructions of the court to be fair and impartial and to base their decision exclusively on the evidence. To adopt this position, one must conclude that juries will ignore the law. To do so, would be to conclude that our jury system is incapable of justice.

Defendants have a constitutional right to a speedy trial. Oftentimes defendants waive this right for strategy advantage—hoping for memories to fade, critical witnesses to relocate, or victims to die. Victims have as much an interest in the timely disposition of the criminal case as do the defendants and need to have equal consideration when a judge considers whether or not to delay the disposition of a case.

Federal Constitutional Rights Do Not Infringe On State's Rights—

While those victimized by crime in Arizona are afforded victim rights in state court, that same victim would not be afforded constitutional rights if that offense occurred on federal land, or if an Arizona resident were victimized in a state that does not have constitutional rights. These rights are too important to be left to a patchwork of rights from state to state. Consistency in the application of our laws are paramount if our citizens are to realize the benefit of a judicial system that is balanced between the accused and the interest of society at large. Inconsistency breeds contempt and cynicism. Adoption of a federal constitutional amendment will recognize that there is but one law for all.

My office has nearly a decade of experience championing in assisting victims in exercising their state constitutional rights. It would be disingenuous if I were to say that there had been no costs, yet the benefit to the victim, to the citizens of Arizona and our system of justice far outweighs those costs.

Our state constitutional amendment has increased cooperation of victims with police and prosecutors. Victims feel more of a part of the criminal justice process. I believe that this has enhanced the ability of law enforcemenet to put criminals behind the bars, and thus has been a factor in the decrease in crime that we have experienced in recent years.

The scales of justice must be balanced, providing victims with equal access to the courts, information and a voice in the criminal justice system. Our system of justice is dependent upon the voluntary participation of those who have been harmed by crime—without their participation, our country would see an increase in lawlessness and vigilantism. Balancing the scales of justice by providing for victim rights restores faith in our system without detracting from the rights of those accused.

Sincerely,

RICHARD M. ROMLEY,
Maricopa County Attorney.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,
Washington, DC, April 21, 2000.

Hon. JON KYL,
U.S. Senate,
Washington, DC.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATORS KYL AND FEINSTEIN: We are writing to express our strong and unequivocal support for your efforts to pass S.J. Res. 3, the proposed Crime Victims' Rights Amendment, and send it on to the States for ratification.

As Attorneys General from diverse regions and populations in our nation, we continue to see a common denominator in the treatment of crime victims throughout the country. Despite the best intentions of our laws, too often crime victims are still denied basic rights to fair treatment and due process that should be the birthright of every citizen who seeks justice through our courts. 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.

The rights you propose in S.J. Res. 3 are moderate, fair, and yet profound. They will extend to crime victims a meaningful opportunity to participate in each critical stage of their cases. At the same time, they will not infringe on the fundamental rights of those accused or convicted of offenses. Neither will these rights interfere with the proper functioning of law enforcement. Attorney General Reno spoke for many of us in law enforcement when she noted,

''[T]he President and I have concluded that a victims' rights amendment would benefit not only crime victims but also law enforcement. To operate effectively, the criminal justice system relies on victims to report crimes committed against them, to cooperate with the law enforcement authorities investigating those crimes, and to provide evidence at trial. Victims will be that much more willing to participate in this process if they perceive that we are striving to treat them with respect and to recognize their central place in any prosecution.''

Some have argued that federal constitutional rights for victims will infringe on important principles of federalism. We disagree. Each of our state criminal justice systems accommodates federal rights for defendants. To provide a similar floor of rights for victims is a matter of basic fairness.

Please share this letter with your colleagues so that they may know of our strong support for S.J. Res. 3.

(Signed by 30 attorneys general.)

STATEMENT OF MARSHA A. KIGHT, DIRECTOR, FAMILIES AND SURVIVORS UNITED, OKLAHOMA CITY, OK., MARCH 24, 1999

My daughter, Frankie Merrell, was murdered in the Oklahoma City bombing, and in tribute to her and all the others, I founded Families and Survivors United, which took a leading role in advocating for the victims and survivors before and during the trials which followed. This is now I first came to meet Beth Wilkinson.

Having attended every day of the McVeigh trial, I came to regard Beth Wilkinson as the most effective advocate on the prosecution team. More than that, I and others trusted her to bring the victims' perspective into the courtroom, and she lived up to that trust. So I believe that her statement before the Judiciary Committee today is from the heart—that she really believes that if our Victims Rights Amendment were in place, it might have jeopardized a very basic right—the ''right of just conviction of the guilty,'' as she puts it.

But she is wrong. As she describes so well, the prosecution team worked hard to earn our trust, and for the great majority of the 2,000-plus of us who were designated victims under the law, we gave them our trust. But on the one tactical issue she says argues against the Amendment, the prosecution team chose not to trust us for the reasons she describes, and in the process, that team broke both our trust and the law.

She claims that, had the Amendment been in place, its right for victims to be heard before a plea bargain is accepted might have harmed the prosecution. Specifically the suggestion that might have persuaded the judge to not accept the guilty plea of Michael Fortier—and thus might have jeopardized the eventual conviction of Timothy McVeigh and Terry Nichols. There are three things wrong with this conjecture.

First, Michael Fortier's testimony was not critical to either conviction, as several jurors later made clear to me.

Second, had the Justice Department taken us into its trust on the usefulness of the Fortier plea, the great majority of us would have reciprocated that trust and encouraged the judge to accept the plea. I think from everything else Beth Wilkinson describes about the trust-building between the prosecution and the victims confirms this belief. We were not blind sheep, willing to accept everything the prosecutors said was so—we were, most of the time, informed citizens who were persuaded by the prosectuors' reasoning. Beth Wilkinson as much as admits this when she notes that the victims overwhelmingly asked for a provable and sustainable case against the guilty.

And third, the prosecution team's mistrust of us over the Fortier plea agreement was so great that it chose not to notify us over the hearing in which the plea was offered, and it chose not to confer with any of us beforehand about the plea—both of which were in violation of existing federal law.

So when Beth Wilkinson says that statutory reform will meet our just demands, we must ask, what happened to the statutes already on the books?

I am increasingly persuaded that the most formidable enemy of crime victims' aspirations for getting justice under our Constitution are criminal justice officials—even well-meaning ones like Beth Wilkinson—who believe that only government lawyers know best. Her testimony is in fact Exhibit A in the case for the Amendment because it is the voice of a superior government extending handouts as an act of grace, not protecting legitimate rights of a free people. She says that the ''concerns'' of the victims must be balanced with the ''need for a just trial,'' as though these important values were somehow in conflict, and that only the government knows how to achieve this goal.

I cannot tell you how these words hurt me; they confirm my worst fears about the treatment of victims in our justice system and

how nothing will change without constitutional rights.

It is painfully obvious to me that she thinks of us as mere meddlers who must be kept out of this important government business for fear that we might break something. Beth Wilkinson may believe that she ''grew to understand my grief first hand,'' but clearly she does not. For me and so many of our families our grief was profoundly extended when our government minimized and discounted our interests by refusing to consult with us about this important development early in the case.

For example, consider the point Beth Wilkinson makes about grand jury secrecy. She says, ''Due to the secrecy rules of the grand jury, we could not explain to the victims why Fortier's plea and cooperation was important to the prosecution of Timothy McVeigh and Terry Nichols.'' Under existing federal law, however, courts are authorized to enter appropriate orders allowing for the disclosure of grand jury information in advance of a court proceeding. It apparently did not even occur to her then, nor does it today, to have sought such a court order for disclosure. Nor is clear that such an order would even have been necessary, as surely there would have been ways to explain the circumstances to the victims without going confidential grand jury matters.

Perhaps most disturbing of all to me is Beth Wilkinson's assertion that the Victims Rights Clarification Act of 1997 ''worked—no victims were precluded from testifying.'' In fact, I was precluded from testifying in the sentencing phase of the trial. As she is well aware, I very much wanted to be a penalty phase witness. But because of my philosophical beliefs in opposition to capital punishment, I was not allowed by the government prosecutors to testify. Clearly the statute did not work for me.

In addition, a number of victims lost their right to attend the trial of Timothy McVeigh because of legal uncertainties about the status of victims' rights. As I testified before the Senate Judiciary Committee in 1997, Judge Matsch rejected a motion made by a number of us to issue a final ruling upholding the new law as McVeigh's trial began. His reluctance led the prosecution team (including Beth Wilkinson) to tell us that, if we wanted to give an impact statement at the penalty phase, we should seriously consider not attending the trial. Some of the victims on the prosecution's penalty phase list followed this pointed suggestion and forfeited their supposedly protected right to attend McVeigh's trial. Our lawyers also sought further clarification from the judge (unsuccessfully), but had to do so without further help from the prosecution team. The prosecutors were apparently concerned about pressing this point further because the judge might become irritated.

Beth Wilkinson urges the Congress to ''consider statutory alternatives to protect the rights of victims.'' While she says that she opposes the Victim's Rights Amendment in its ''current form,'' the context of this statement makes it clear that she opposes any constitutional rights for crime victims. She concludes with the following prescription: ''We must educate prosecutors, law enforcement and judges about the impact of crimes so that they better understand the importance of addressing victims' rights from the outset.'' But the truth is that there will be no real rights to address, as my experience makes clear, unless those rights are enshrined in the United States Constitution. Only then will victim's rights be meaningful and enforceable.

Mr. KYL. Mr. President, I am going to make some concluding remarks about why we believe so strongly in this amendment, how we intend to pursue the amendment, and why supporters of this amendment should take heart about how far we have come in this process and not at all be dispirited by the fact that there will not be a final vote on the amendment at this time. I will make those comments after Senator FEINSTEIN has had an opportunity to make some comments that I know she strongly wishes to make.

Mr. SCHUMER. Mr. President, will the Senator yield?

Mr. KYL. Yes.

Mr. SCHUMER. Mr. President, I asked the Senator to yield for two quick requests. I forgot to do this yesterday. I mentioned a letter from the Judicial Conference on this amendment. I ask unanimous consent to print this letter in the RECORD.

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

COMMITTEE ON CRIMINAL LAW OF THE JUDICIAL CONFERENCE OF THE UNITED STATES,

Greenville, SC, April 17, 2000.

Hon. CHARLES E. SCHUMER,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Re: S.J. Res. 3, the Victims' Rights Amendment

DEAR SENATOR SCHUMER: Thank you for your letter requesting the views of the Judicial Conference of the United States regarding S.J. Res. 3, the Victims' Rights Amendment to the Constitution. On behalf of the Judicial Conference, I appreciate the opportunity to have its viewpoint considered as the Senate takes up this important legislation.

In March of 1997, the Judicial Conference resolved to take no position at that time on the enactment of a victims' rights constitutional amendment. However, if the Congress decides to affirmatively act in this area, the Judicial Conference strongly prefers a statutory approach as opposed to a constitutional amendment.

A statutory approach would allow all participants in the federal criminal justice system to gain experience with the principles involved without taking the unusual step of amending our nation's fundamental legal charter, with its concomitant application to the various state systems. Many of the principles contemplated in S.J. Res. 3 represent a significant change in our criminal justice system, literally realigning the interests of defendants and victims, as well as the process by which criminal cases are adjudicated. The rights and protections heretofore afforded to citizens under the Constitution were largely part of the fabric of the law well-known and understood by the Founding Fathers, while many of the concepts in the victims' rights area are largely untested, at least in the federal system. It could take years for a settled body of law and judicial administration to evolve. A statutory approach would accommodate this process.

A statutory approach would also vitiate the potential specter of significant federal court involvement in the operations of the state criminal justice systems under a victims' rights constitutional amendment. Finally, a statutory approach is more certain and immediate, an advantage to victims. Conversely, an amendment potentially would not be effective for many years, awaiting the ponderous and uncertain ratification process required under Article V.

While S.J. Res. 3 appears to have less potential adverse impact on the federal judiciary than some previous amendment proposals, there remain a number of fundamental concerns:

CLASSES OF CRIMES AND VICTIMS TO WHICH THE AMENDMENT WILL APPLY

Under S.J. Res. 3, the proposed amendment will apply to any person who is a ''victim of a crime of violence, as these terms may be defined by law.'' It is not clear from the proposed amendment whether these terms are to be defined by Congress, the states or through case law. The term ''crime of violence,'' which is commonly utilized in legal parlance, has many meanings under state and federal law. Thus, it is unclear as to which specific crimes this provision would actually apply. This problem is magnified by the fact that this provision applies to misdemeanor cases, the number of which is particularly large in the state courts. Failure to provide a clear and practical definition of this term may well result in protracted and unnecessary litigation that will likely take years and great expense to resolve.

Closely associated with this issue is the question of what classes of persons will qualify as a ''victim.'' We note that the proposed amendment includes no definition of victim. This leaves many fundamental questions unanswered, including:

Must a person suffer direct physical harm to qualify as a victim?

Is it sufficient if the person has suffered pecuniary loss alone?

What if the person is alleging solely emotional harm? Is that enough to qualify him or her as a victim?

Are family members of a person injured by a crime also victims?

Suppose that a defendant is accused of committing a series of ten violent armed robberies. Due to evidence strength and efficiency considerations, the prosecutor sends only six of those cases to the grand jury. Are the other four injured persons victims under the proposed amendment?

Suppose an agreement is reached whereby the defendant agrees to plead guilty to just one of the cases. Are the other nine injured persons victims under these circumstances? Will the answer affect a prosecutor's ability to obtain plea agreements from defendants?

Extending the definition of victim to those who claim emotional harm from criminal offenses dramatically exacerbates the potential impact of this proposal. The number of persons who could claim to be emotionally harmed by significant, well-publicized crimes could be quite large. Moreover, substantial litigation could result from the requirement of restitution, especially in cases involving non-economic injury. Finally, cases involving large numbers of victims, particularly victims of terrorist acts, are particularly troubling. Providing the rights

enumerated in the proposed amendment to large numbers of victims could overwhelm the criminal justice system's ability to perform its primary function of adjudicating guilt or innocence and punishing the guilty.

ENFORCEMENT

The proposed amendment states that nothing ''in this article shall provide grounds to stay or continue any trial, reopen any proceeding or invalidate any ruling.'' Unlike some previously introduced victims' rights constitutional amendment proposals, S.J. Res. 3 does not stipulate that a victim has no grounds to challenge a charging decision. This addition would be a significant and valid limitation. Allowing victims to challenge a prosecutor's charging decision could result in significant operational problems. We suggest that Congress also consider modifying the proposed amendment to prohibit a victim from challenging a ''negotiated plea.'' Permitting the challenge of a proposed plea interferes with the prosecutor's ability to obtain convictions of defendants whose successful prosecution may rest on the cooperation of another defendant. Guilty pleas are sometimes also negotiated because the prosecution witnesses are, for various reasons, not as strong as they appear to be on paper. Also, the sheer volume of cases would generally overwhelm any prosecutor's office and the courts unless the vast majority were settled. Permitting challenge to a prosecutor's judgment regarding an accepted plea could lead inadvertently to a failure to secure a conviction. The significance of this issue should not be underestimated.

FEDERALISM

The matter of victim enforcement raises significant federalism concerns. While the proposed amendment includes provisions that bar monetary damages as a remedy, it appears that victims may be able to seek injunctive relief against *state officials* for violation of their new constitutional rights. Such claims, almost inevitably filed in federal courts, could cause significant federal court supervision of state criminal justice systems for the purpose of enforcing the amendment. These conflicts between federal courts and state governments would be avoided by a statutory approach to victims' rights.

ADMINISTRATION OF JUSTICE EXCEPTION

S.J. Res. 3 permits Congress to create exceptions to the proposed amendment ''when necessary to achieve a compelling interest.'' While this is a very valid and useful provision, Congress should carefully consider the need for a further exception based on adverse impact on the administration of justice. Inevitably, courts will handle cases where the rights of victims collide with the functional administration of justice. Such cases might fall into two general categories. The first category relates to the very real practicalities of the administration of justice. One example would be an action involving exceptionally large numbers of possible victims wishing to attend the proceedings and overwhelming any available courtroom or other suitable location. A similar problem would be encountered if large numbers of victims wished to exercise their rights to allocution at sentencing, unduly prolonging the proceedings and pushing back other cases that need to be heard. The second category of cases are those in which the rights of victims, exercised under certain circumstances, may have a substantive effect upon the rights of defendants or others, impairing due process or the right to a fair trial. An example of such a case would be if a victim wished to both attend the trial and testify at the guilt phase, even though the trial judge had ordered all witnesses sequestered. This could impair the fundamental integrity of the trial.

Congress should consider modifying the proposed amendment to allow a judge, while recognizing the rights of the victims to the extent practicable, to provide for exceptions in individual cases when required for the orderly administration of justice. Congress may also wish to consider modifying the proposed amendment to additionally allow Congress to statutorily enact exceptions in ''aid of the administration of justice.'' At the very least, Congress should provide an exception permitting the sequestration from trial proceedings of a victim who will appear as a witness at the guilt phase of the trial. This could be accomplished through a general provision in the proposed amendment stating that the victim's rights should not ''interfere with the constitutional rights, including due process rights, of the person accused of committing the crime.'' It could also be accomplished through a more narrow provision, similar to that in the Wisconsin Constitution, by the addition of a phrase allowing sequestration when ''necessary to a fair trial for the defendant.'' Another approach, similar to that taken under the Constitution of Florida, would add a phrase allowing sequestration ''to protect overriding interests that may be prejudiced by the presence of the victim.''

SPEEDY TRIAL CONSIDERATIONS

The proposed amendment includes a victim's right to ''consideration of the interest of the victim that any trial be free from unreasonable delay.'' Determining the meaning of this phrase and how it interacts with existing speedy trial provisions should be a fertile source of diversionary litigation.

In federal court, the sixth amendment right to a speedy trial and the Speedy Trial Act, *see* 18 U.S.C. §§3161–3173, not only guarantee the defendant's right to a speedy trial, but also recognize the public's, and therefore the victim's, interest in swift justice. However, the Speedy Trial Act also recognizes several legitimate bases to postpone trial, including plea negotiations. *See* 18 U.S.C. §3161. This mechanism is an integral part of the criminal justice system, balancing the desirability of a speedy trial with the realistic requirements of a fair proceeding.

How is this right to consideration of the interest of the victim that any trial be free from unreasonable delay to be enforced? Will the victim have a right to seek relief from unreasonable delay? A motion to move the case faster would require a collateral hearing to determine the extent of the delay and whether it is unreasonable. The victim would then be in an adversarial position to the prosecutor and perhaps to the presiding judge. Would another judge be required to make the determination? Would a federal judge be asked to pass judgment on the efficiency of a state court?

With ever increasing criminal dockets and limited prosecutorial and judicial resources, victims in several cases on the same docket, insisting upon speedier proceedings, could potentially cause severe internal conflicts within units of the same court.

NOTICE

It is important that the responsibility for providing notice of proceedings and of the release or escape of a defendant be appropriately allocated to the prosecution, law enforcement agencies, or corrections agencies as is the law and practice in virtually all the states providing for victims' rights. Many of the rights under the proposed amendment must attach long before a defendant is formally charged in court. The judiciary would not have access to much of the information necessary to provide the required notice. It has neither the personnel nor resources to provide such notice to large numbers of victims or to provide the specialized types of victim assistance that is available from the first line of contact that victims have with the criminal justice system. The situation is likely no better—and possibly worse—in the state courts.

Once again, I thank you for the opportunity to express the views of the Judicial Conference on this important issue. If you have any questions regarding the matters discussed herein, please do not hesitate to contact me. I may be reached at 864/233–7081. If you prefer, your staff may contact Dan Cunningham, Legislative Counsel at the Administrative Office of the U.S. Courts. He may be reached at 202/502–1700.

Sincerely yours,

WILLIAM W. WILKINS, Jr.

Mr. SCHUMER. Mr. President, second, I thank both Senator KYL and Senator FEINSTEIN for the passion, the erudition, the conviction, and for the cause. It is, obviously, wise to delay this. I know we may be back for another day. Maybe we can all come together. I plead with them to consider a proposal of making this a Kyl-Feinstein statute, as opposed to a Kyl-Feinstein constitutional amendment, where I think it might get close to unanimous support on the floor.

I thought the debate we were having and may well continue to have, at least to my young years in the Senate, was one of the best times of the Senate, where we each talked about the issue with our concerns, our intelligence, and our passions. We tried to meet the issue head on. I thank both the Senator from Arizona and the Senator from California for their good work on this and hope we can come together on some sort of compromise on an issue about which we all care so much.

Mr. KYL. Mr. President, I reiterate what I said yesterday, and that is, the best part of the debate we had was the debate with Senator SCHUMER whose approach to this was serious and intelligent. He asked the best questions. I believe we answered them, but we did not come to agreement. Of course, we will be working with him in the future on this matter and, hopefully, persuade him that a constitutional amendment is the best way to go. The debate we had among Senator FEINSTEIN, Senator SCHUMER, and myself I thought was the highlight of this debate. I appreciate his remarks.

I yield to Senator FEINSTEIN for comments I know she wants to make.

Mrs. FEINSTEIN. Mr. President, I thank the distinguished Senator from Arizona. I also thank the Senator from New York, and I thank you, Mr. President, for allowing me to proceed.

I begin by thanking the Senator from Arizona. Mr. President, I say to JON KYL, working with him on this amendment has truly been one of the highlights of my 7 years in the Senate. He has worked with credibility and with integrity. He has been fulsome in his sharing of detail. We have gone shoulder to shoulder through virtually every rung of this, through 4 years of discussions, of conferences, of hearings, of 800 pages of testimony, some 35 witnesses.

I agree with everything he said about the inclusive nature of the process.

I must tell Senator KYL how much I admire him. We worked together on the Technology and Terrorism Subcommittee of the Judiciary Committee. I saw it there. I have never seen it with another Senator as pronounced as it was in these past 4 years in the work on this issue. I believe a friendship has developed in the process, one which means a great deal to me. His leadership has been superb, and there is certainly nothing either one of us has done for the misunderstanding out there still about what we are trying to do and the importance of it. We will come back another day; there is no question in my mind about that. I cannot thank him enough. From the bottom of my heart, I thank Senator KYL for his credibility, his intelligence, his integrity. He did his party proud. I am very happy to be a colleague of his and a friend as well.

Before I get into my remarks, I also echo the thanks Senator KYL provided to a whole host of victims, literally tens of thousands of them, to 37 State attorneys general, to many Governors, to all those across both party lines who support this and understand it. I particularly thank three legal scholars who were with us every step of the way.

I thank Larry Tribe, a professor of constitutional law at Harvard University, for his testimony, for the phone calls, for the advice he has provided and for the statements he has made.

I also thank one of the primary legal scholars in this country who has been a victims' rights representative, legal counsel—just a wonderful human being I have also gotten to know—and that is Professor Paul Cassell, professor of law at the University of Utah.

I would be remiss if I did not thank Steve Twist on behalf of both Senator KYL and myself. There are few people who have been as ardent in the cause as Steve Twist has been, with his knowledge, with his expertise, with his representation of victims throughout this entire process.

I know that none of the three abovementioned individuals is going to go away. We have them as part of this enormous victims coalition. We will come back, and we will fight again another day.

But today, Mr. President, I rise with a sad heart because we must postpone our battle for a crime victims' rights constitutional amendment.

This is a fight that actually began 18 years ago when the President's Task Force on Victims of Crime recommended an amendment to the Constitution of the United States which would address victims' rights. This isn't a new idea. It has been around. There is a track record to show why it is necessary.

As I said, Senator KYL and I introduced that amendment 4 years ago. We have worked long and hard. I think enough has been said about that.

What is unbelievable to me is that we have also been criticized for the hard work we have put into this amendment over the past 4 years.

Senators have come to the floor and told us that the fact that we put our amendment through so many drafts and consulted so many interested parties shows that our amendment does not deserve to be in the Constitution of the United States. Yet, in fact, drafting an amendment to the Constitution of the United States requires an uncanny kind of precision. Because this isn't 1791 when the Bill of Rights was written, or 1789 when the Constitution was adopted, there has been a whole panoply of case law and interpretations that have come throughout the ages that makes the drafting of a constitutional amendment such as this one very difficult. However, I believe we have developed a document that will, in fact, stand the test of time.

What we have tried to do, in essence, is very simple. I would like to show a chart, once again. We have tried to take the Constitution, which provides 15 specific rights to the accused, and no rights to victims of violent crimes—with a scale of justice which we believe is weighted in a certain way to exempt victims from the administration of criminal justice—and give victims some status and standing in the administration of criminal justice, so that the scale of justice would not be so badly tilted but would look something like this other chart where the accused would have certain basic rights, and victims would have certain basic, although limited, rights: The right to notice when a trial takes place; the right not to be excluded from a public proceeding; the right to be heard at that proceeding, if present; the right to submit a statement in writing; the right to notice of the release or the escape of an attacker; the right to consideration for the assurance of a speedy trial; the right to an order of restitution; and the right to consideration of their safety in determining any conditional release of an attacker—simple, basic rights of status and standing.

We have heard much about the fact that this should not be in the Constitution. There has been much talk on the floor about James Madison and other framers. Senators have suggested that our forefathers would not support the amendment.

I tried to point out why our forefathers did not have reason to consider the amendment because when both the Constitution and the Bill of Rights were written, victims had a role in the process. Up until 1850, victims had a role in the process. But it was with the development of the public prosecutors, when victims were no longer in the courtroom, that they became summarily excluded from the process.

I point out that if we look back in history, I find my views very commensurate with those of Thomas Jefferson. He was not among those who wrote the Constitution, but he thought deeply about the Constitution and how and when we should amend it. He was also the inspiration for our Bill of Rights, a document actually drafted by James Madison.

In 1816, 25 years after the Bill of Rights became the law of the land, Thomas Jefferson wrote to Samuel Kercheval, stating his views on amending the Constitution. I think it is important that the RECORD reflect these views. He said:

> I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them and find practical means of correcting their ill effects. But I know also that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times.

Similarly, 13 years earlier, he said in a letter to Wilson Nicholas:

> Let us go on perfecting the Constitution by adding by way of amendment, those forms which time and trial show are still wanting.

I believe very deeply that time and trial show that our amendment is still wanting and should be adopted.

I ask unanimous consent to have printed in the RECORD, in recognition of the widespread support we have received, letters from virtually every law enforcement agency and every crime victims group.

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

COUNTY OF SHASTA,
OFFICE OF THE DISTRICT ATTORNEY,
Redding, CA, April 17, 2000.

Re: Crime Victims' Rights Constitutional Amendment

Hon. DIANNE FEINSTEIN,
U.S. Senate, Senate HWA Office, Washington, DC.

DEAR SENATOR FEINSTEIN: I write to offer my wholehearted support for your efforts in sponsoring the Crime Victims' Rights Constitutional Amendment. Your proposed amendment would fill a gaping hole in the rights guaranteed to citizens in our Constitution by providing basic, essential rights to victims of crime in our nation. As a prosecuting attorney, I have all too often seen the rights of perpetrators of horrendous crimes protected at all costs while the basic human rights of victims and families of victims of those crimes are ignored and forgotten. It will be great day when our Constitution and criminal justice system work as hard to protect the rights of victims as they do the rights of criminals. I commend you on your efforts to make that day a reality. Do not hesitate to call upon me if there is anything I can do to support you with this work.

Thank you for your attention to this matter.

Sincerely,

MCGREGOR W. SCOTT,
District Attorney.

STATE OF NEVADA
EXECUTIVE CHAMBER,
Carson City, NV, May 24, 1996.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Senate Hart Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing to lend my support to your efforts to protect victims' rights. As one of the original nine members of President Reagan's Task Force on Victims of Crime, I have long supported a Constitutional Amendment to protect the rights of victims of crime.

As the vice-Chairman, and soon to be Chairman, of the National Governor's Association, I would like to assist you by raising this issue with our nation's governors.

In Nevada, we've made great strides in protecting victims' rights through legislative measure ranging from guarding consumers against auto repair fraud to expanding our domestic violence laws to cover people in dating or live-in relationships. Despite these efforts, more changes need to be made to ensure that victims are treated fairly. The criminal justice system should not overlook the interest of victims in light of protecting the rights of the criminals. I firmly believe that a speedy trial and information about the proceedings of the trial are minimal rights that the constitution should grant to all victims.

Please let me know what other ways I can help you with this cause.

Sincerely,

BOB MILLER,
Governor.

JUSTICE FOR MURDER VICTIMS,
San Francisco, CA, April 19, 2000.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

Regarding: Support of S.J. Res. 3, the Victims Rights Constitutional Amendment

DEAR SENATOR FEINSTEIN: On behalf of Justice for Murder Victims, I would like to inform you of our strong support of S.J. Res. 3, the ''Victims Rights Constitutional Amendment''

Criminals' rights are inherently included in America's criminal justice system, while crime victims, historically, have not had a place and/or voice within the criminal justice system. In fact, to add insults to injury, the majority of victims are violated and betrayed a second time by the system. S.J. Res, 3 will secure basic rights for countless victims of crime throughout our nation as they struggle to survive their victimization.

Under this legislation, victims would have a right to receive notice of public proceedings related to the crime perpetrated against them, notice of the offender's escape or release from custody, as well as notification of parole hearings and to have a voice at these hearings. Without the help and determination of so many crime victims, the system cannot hold criminals accountable and stem the tide of future crime.

Victims of crime need to have the same rights across this great nation. We ''THANK YOU'' for taking an active role in this very important legislation and for the concern and support that you continue to show victims of crime and their survivors.

Please feel free to call on us anytime we may be of help.

Sincerely,

HARRIET SALARNO,
President.

MAY 20, 1996.

Senator DIANNE FEINSTEIN,
U.S. Senate Hart Building, Washington, DC.

Attention: Neil Quinter

DEAR SENATOR FEINSTEIN: Thank you for meeting with me on such short notice last week and sharing the Crime Victims' Rights Amendment. As I am currently spending the majority of my days in court attending the trial of my daughter's killer, I know too well the inequities facing the families of victims.

For that reason I wish to offer my whole hearted endorsement and approval of your attempt to guarantee rights for the victims and families of victims of violent crime. If there is anything that I can do to promote your efforts, please feel free to call on me at any time.

Sincerely,

MARC KLAAS.

VICTIMS & FRIENDS UNITED,
Sacramento, CA, April 21, 2000.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

Re: Support of Crime Victims' Rights Amendment

Victims and Friends United (VFU), a California grassroots organization is the representative of nearly 20,000 members which consists of crime victims, their families, and other concerned citizens. We have been at the forefront of the fight for the rights of crime victims for nearly 20 years. We ensure that existing victims' rights laws are zealously enforced, and encourage the drafting of new legislation to further protect the rights of crime victims and improve public safety.

As President and Board member of VFU, I am writing to ask you and your co-sponsored Senators to urge the full Senate to pass the Crime Victims' Rights Amendment to the U.S. Constitution. In supporting this amendment, the Senate has an historic opportunity to take a stand for the millions of Americans who are victimized each year in this country.

For decades we have seen court decisions expanding the ''rights'' of criminals. Finally, it is encouraging to see legislators beginning to place equal emphasis on the rights of crime victims. The rights to be present, heard and informed throughout the criminal justice process are basic tenets guaranteed by our U.S. Constitution to those accused or convicted of crimes in our nation, yet the rights of their innocent victims are not articulated in our U.S. Constitution. The Crime Victims' Rights Constitutional Amendment is necessary to ensure that victims' rights are respected and enforced in our criminal justice process.

Thank you for all that you do for Californians, keep up the good work, and realize that you have our full support. If we can be of further assistance or you need someone from our organization to testify, please give us a call.

Sincerely,

PATSY J. GILLIS,
President and Co-Founder.

THE LAW ENFORCEMENT
ALLIANCE OF AMERICA,
Lynbrook, NY, April 12, 2000.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the Law Enforcement Alliance of America, I would like to inform you of our strong organizational support of S.J. Res. 3, the ''Victims Rights Constitutional Amendment.'' LEAA is asking for your active support of this important legislation that is expected to go for a Senate floor vote in late April. Additionally, LEAA asks that you oppose any attempts to dilute the intent of this critical legislation.

LEAA is the nation's largest coalition of law enforcement professionals, crime victims, and concerned citizens dedicated to finding solutions to the problems plaguing our country's criminal justice system. Fighting for passage of victims' rights legislation is of paramount importance in realizing just one of LEAA's many goals.

Paradoxically, criminals' rights are inherently included in America's most supreme document while crime victims, historically, have not had a place and/or a voice within the criminal justice system. In fact, to add insult to injury, the majority of victims are violated and betrayed a second time by the system. S.J. Res. 3 will secure basic rights for countless victims of crime throughout our nation as they struggle to survive their victimization.

Under this legislation, victims would have a right to receive notice of public proceedings related to the crime perpetrated against them, notice of the offender's escape or release from custody, as well as notification of parole hearings and a voice at these hearings. As the President's Task Force on Victims reported in 1982, ''The criminal justice system is absolutely dependent upon the cooperation of crime victims to report and to testify. Without their help, the system cannot hold criminals accountable and stem the tide of future crime.''

LEAA feels it is imperative to pass legislation to protect the country's violent crime victims. The high number of victims in this country (including the tens of thousands of officers assaulted each year and dozens murdered) indicates that we cannot afford to overlook this proposed amendment. Another reason to endorse this amendment is that in the 18 years we've discussed this provision, 32.4 million Americans have been victims of violent crime. And they simply deserve better treatment in the criminal justice system.

Once again, we urge you to take an active role in passing this very important legislation. If there is any information LEAA can provide on S.J. Res. 3, please don't hesitate to call me or LEAA's Crime Victims Advocate Darlene Hutchinson at (703) 847–2677.

Sincerely,

JAMES J. FOTIS,
Executive Director.

WEAVE,
Sacramento, CA, April 21, 2000.

Senator DIANNE FEINSTEIN,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of Women Escaping a Violent Environment, Inc. (WEAVE), I am happy to lend our support of your Crime Victims Rights Constitutional Amendment (Senate Joint Resolution 3). This amendment is supported throughout our nation by 49 of 50 governors as well as Mothers Against Drunk Driving, Parents of Murdered Children and the National Organizational for Victim Assistance.

While criminal defendants have almost two dozen separate constitutional rights, fifteen of which specifically provided as constitutional amendments, victims of crime have no constitutional rights. The Crime Victims Rights Amendment brings much needed balance to our justice system by granting victims the right to be informed, present and heard at critical stages throughout trials.

We should not forget that justice is an attempt to give back to victims the sense of closure and fairness taken by their perpetrators. This amendment is a long overdue step toward justice for victims.

Please convey WEAVE's strong support to your colleagues in the U.S. Senate. Thank you for your advocacy efforts on behalf of victims and victim advocacy organizations.

Sincerely,

MARY STRUHS,
Associate Director.

FEDERAL LAW ENFORCEMENT
OFFICERS ASSOCIATION,
East Northport, NY, April 21, 2000.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the National Executive Board of the Federal Law Enforcement Officers Association and out more than 17,000 members across America, I want to formally announce FLEOA's strong support for S.J. Res. 3, the ''Crime Victims' Rights Constitutional Amendment.''

FLEOA, the voice of America's federal criminal investigators, agents, and officers, is the largest professional association in the nation exclusively representing the federal law enforcement community. FLEOA, a non partisan, volunteer organization comprised of active and retired federal law enforcement members from the agencies listed on the left side of this document is dedicated to the advancement of the federal law enforcement community.

We are an organization comprised of individuals who have dedicated their lives to protecting and serving the American public. It is our belief that the time is right to amend the Constitution to correct the injustice that that has developed in this area. This amendment will ensure that those who have been touched by crimes of violence are not further victimized by laws that may prevent them from being notified, and provided the opportunity to be present and heard at critical stages of their cases. We believe that the Founders created the Constitution to be a living document and this proposed amendment is consistent with that principle.

FLEOA looks forward to working with Congress and the States in securing passage of the Crime Victims' Rights Constitutional Amendment. Please do not hesitate to contact me on this issue or on any other legislative matter impacting federal law enforcement. I can be reached at (202) 258–7884.

Respectfully,

BRIAN M. MOSKOWITZ,
Legislative Director, National Executive Board Member.

NATIONAL CENTER FOR
MISSING & EXPLOITED CHILDREN,
Arlington, VA, April 25, 1996.

Senator DIANNE FEINSTEIN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing on behalf of the National Center for Missing and Exploited Children to formally express our support and endorsement of the Victim's Rights Amendment you have introduced with Senator Kyl and Congressman Hyde. The passage of this resolution will go far to helping victims nationwide begin and continue the difficult healing process necessary after victimization.

The National Center for Missing and Exploited Children spearheads nationwide efforts to locate and recover missing children, and raise public awareness about ways to prevent child abduction, molestation and sexual exploitation. As you continue your work in support of children and others victimized by criminal offenders, please do not hesitate to contact us if we can be of assistance in any way.

Again, we strongly commend your efforts and thank you for your dedication to the interests of America's millions of criminal victims.

Sincerely,

TERESA KLINGENSMITH,
Manager, Legislative Affairs.

CALIFORNIA POLICE CHIEFS
ASSOCIATION, INC.
Sacramento, CA, April 18, 2000.

Hon. DIANNE FEINSTEIN,
Senate Hart Office Building,
Washington, DC.

Re: Crime Victims Rights Constitutional Amendment

DEAR SENATOR FEINSTEIN: The California Police Chiefs Association fully supports your Crime Victims Rights Constitutional Amendment (Senate Joint Resolution 3). This amendment is very much needed as demonstrated by the support of Mothers Against Drunk Driving, Parents of Murdered Children and the National Organization for Victim Assistance as well as 49 of 50 Governors.

Law Enforcement has long recognized that crime victims deserve to have a rightful place in our justice system. While criminal defendants have almost two dozen separate constitutional rights, fifteen of them specifically provided as constitutional amendments, victims of crime have zero constitutional rights. The Crime Victims Rights Amendment brings much needed balance to our justice system by granting victims the right to be informed, present and heard at critical stages throughout trials.

While many could claim that this legislation places burdens on the justice system, we should not forget that the spirit of justice is to attempt to give back to victims the sense of closure and fairness taken by their perpetrators. Unfortunately, we as a nation have often forgotten the victims of crime. With today's population increasingly living longer, we are seeing more and more victimization of our elderly. They, along with our children, are the least able to fight back against the criminal element and therefore need this amendment.

The California Police Chiefs Association is very pleased to stand with you on this amendment and fully supports your efforts.

Respectfully,

CRAIG T. STECKLER,
Chief, Fremont Police Department and President, California Police Chiefs' Association.

CALIFORNIA NARCOTIC
OFFICERS' ASSOCIATION,
Santa Clarita, CA, April 24, 2000.

Hon. DIANNE FEINSTEIN,
Hart Senate Office Building,
Washington, DC.

Re: Crime Victims Rights/Constitutional Amendment

DEAR SENATOR FEINSTEIN: The membership of the California Narcotic Officers' Association is in strong support of your Crime Victims Rights Constitutional Amendment (Senate Joint Resolution 3). As members of law enforcement community, we recognize that crime victims must have voice in the criminal justice system. Traditionally, they have been treated with less respect than those accused of terrible crimes.

The California Narcotic Officers' Association is very pleased to stand with you on this very important amendment and fully support your efforts.

Sincerely,

WALTER ALLEN,
President.

CALIFORNIA POLICE ACTIVITIES
LEAGUE (PAL),
Oakland, CA, February 8, 2000.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington DC.

DEAR SENATOR FEINSTEIN: The California Police Activities commends you on your efforts to protect the rights of crime victims. The California Police Activities League supports your Amendment to the Constitution of the United States. As law enforcement personnel, we understand the importance of this Constitutional Amendment to the many victims of crime that we meet during a criminal investigation. In many cases, it is youth, which are the victims. They should have the same rights as every citizen of the United States of America. A victim of a violent crime should have the following rights:

To reasonable notice of public judicial proceedings

To attend all public proceedings.

To be heard at crucial stages in the judicial process.

To receive reasonable notice of the offender's release or escape.

To consider in the interest of the crime victim that the trial is free from unreasonable delay.

To receive restitution from the convicted offender.

To consider for the safety of the victim any conditional release from custody.

The California Police Activities is only asking that the 8.6 millions victims of violent crime in our country receive fair treatment by the judicial system, which they deserve. For those accused of crimes in our country, the Constitution specifically protects them. However, nowhere in the text of the United States Constitution does there appear any guarantee of rights for crime victims.

The time has come for a Victim Bill of Rights. The California Police Activities in the name of its members support your drive for the passage of this Constitutional Amendment. Please call us if we can be of help in your effort to protect the rights of crime victims. CAL PAL commends you for taking up this cause in the name of 8.6 million Americans.

Sincerely,

RON EXLEY,
Government Relations Director.

CITY AND COUNTY OF SAN FRANCISCO, OFFICE OF THE SHERIFF,
San Francisco, CA, April 24, 2000.

Hon. DIANNE FEINSTEIN,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: I write to lend my support to Senate Joint Resolution 3, the proposed amendment to the Constitution intended to protect the rights of crime victims.

As Sheriff of San Francisco, I have witnessed the empowerment experienced by victims of crime when given the opportunity to speak about how their lives were impacted by violence. I have also witnessed the effect on violent offenders of hearing how their crimes harmed individuals and the entire community. As part of our Resolve to Stop the Violence Project, an in-custody treatment program for men with violent criminal histories, victims come to the jail to tell how the violence done to them changed their lives. For the first time, many offenders realize that their actions have serious and harmful consequences, and this is often the catalyst for real change. Not only does the experience give voice to crime victims, it gives both victim and offender the opportunity to work toward the common goal of the eradication of violence.

Participation of victims in the criminal justice dialogue is essential to their well being and that of the entire community. I am proud to support the Crime Victims Rights Constitutional Amendment.

Sincerely,

MICHAEL HENNESSEY,
Sheriff.

SAN DIEGO COUNTY
SHERIFF'S DEPARTMENT,
San Diego, CA, April 24, 2000.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: It is with great pleasure that I add my support to S.J. Res. 3, to provide constitutional rights for crime victims. There are rights articulated in the U.S. Constitution to provide rights for crime victims. Criminal defendants have almost two dozen separate constitutional rights, fifteen of them provided by amendments to the U.S. Constitution.

Your proposed Crime Victims' Rights Amendment will bring balance to the justice system, by giving crime victims the rights to be informed, present and heard at critical stages throughout their case.

The need for this measure is evidenced by the forty-two bipartisan senators who have agreed to cosponsor this amendment. I look forward to working with you on this and other legislation that we mutually agree upon.

If I might be of further assistance, please don't hesitate to call me.

Sincerely,

WILLIAM B. KOLENDER,
Sheriff.

SACRAMENTO COUNTY
SHERIFF'S DEPARTMENT,
Sacramento, CA, April 21, 2000.

Hon. DIANNE FEINSTEIN,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing to offer my support toward your efforts in sponsoring the Crime Victim's Rights Constitutional Amendment. Your proposed amendment would fill a void in the rights guaranteed to citizens in our Constitution by providing basic, essential rights to victims of crimes all across our nation.

Law Enforcement has long recognized that crime victims deserve a rightful place in the criminal justice system. While criminal defendants have nearly two dozen separate constitutional rights, fifteen of which are specifically provided as constitutional amendments, crime victims have no constitutional rights as it relates to being the victims of crimes. The Crime Victims Rights Amendment will bring much needed balance to our justice system by providing victims the right to be informed, present and heard at all critical stages throughout their respective trials.

The opponents of this legislation claim that the amendment would place burdens on the justice system, we cannot afford to forget the intent of justice is to give back to victims, the sense of security, closure and fairness, taken by the perpetrators of their crimes.

I applaud you for your efforts and I stand with you as you pursue this important issue. Please do not hesitate to call on me if I can provide any assistance. I can be reached at (916) 874–7146.

Sincerely yours,

LOU BLANAS,
Sheriff.

Mrs. FEINSTEIN. One of the unfortunate aspects of the debate in these hallowed Halls is the fact that many have chosen to ignore the fact that this amendment would actually help poor minority communities beset by crime. It would give victims in these communities rights our criminal justice system often deny them through bureaucratic neglect and casual racism.

Among the many supporters of the amendment, for example, is a group called Racial Minorities for Victim Justice. This group includes Norm Early, the former district attorney of Denver, CO, and the founding president of the National Black Prosecutors' Association. It includes Joseph Myers, executive director of the National Indian Justice Center; David Osborne, an Asian American who is assistant secretary of the State in California; Azim Khamisa; Christine Lopez; Steven Njemanze. The group includes minority victims such as Teresa Baker, whose rights were denied after her son was coldbloodedly murdered in Maryland; Clementine Garfield, whose two teenage sons were shot in Detroit; Sarah Fletcher, whose husband Reginald, son Ricky, daughter Crystal, and unborn granddaughter were all murdered. They wrote me an eight-page letter laying out their thoughts about the amendment. I will read some of that letter.

The undersigned are founding members of Racial Minorities for Victim Justice which strongly support Senate Joint Resolution 3, the Crime Victims' Rights Constitutional Amendment. We are aware that some groups that seek conscientiously to speak for the interests of racial minorities have expressed opposition to your proposed amendment. We claim some understanding of the fundamental concerns that guide their position—concerns we share—but we also believe that they have reached the wrong conclusion on this issue.

To put it in the simplest terms, no one in our society stands to benefit more from the adoption of the Victims' Rights Amendment than people of color—for it is our people that suffer the highest rates of victimization in the Nation.

Let us start with some common ground on which the great majority of racial minorities stand in this country. Historically, we have had deep suspicions of the agencies of criminal justice. Speaking specifically of the African American experience, it was the agents of criminal justice who were the enforcers of the Fugitive Slave Act and all the Jim Crow laws—often with lawless brutality.

While we are proud of recent progress to end this pattern of bigotry in the administration of justice—proud because African Americans and other minorities have led the way in reforming these practices—we are not so naive as to believe that our criminal justice system has grown altogether color-blind.

More than most Americans, we believe criminal justice has become too fearful of people of color, too punitive toward minority offenders, with too few opportunities for their treatment and rehabilitation.

This is where we share common ground with most members of the minority communities in America. What we cannot understand, however, is why some in those communities have concluded that one way to bring justice agencies into harmony with our higher ideals is to deny the victims of crime any effective and enforceable rights. To us, that makes no sense. We do nothing to improve the fair treatment of minority defendants by impeding the fair treatment of minority victims.

I couldn't agree with that more. They go on to say:

Leaders of America's criminal defense bar have testified frequently and heatedly against passage of the Crime Victims' Rights Amendment, citing amorphous dangers to defendants' rights and liberties. And how many cases did they cite where their millions of clients had run afoul of some overzealous, unfair and harmful interpretation of a crime victim's rights already provided in State Constitutions? Two hundred? Twenty? Two? Not even one!

It is important to understand that victims' rights statutes echoing those in the proposed Amendment are to be found on the books of every state—buttressed by constitutional amendments in 32 of them. While compliance with those laws is woefully spotty (more on that below) it is fair to estimate that in hundreds of thousands of cases, the victims rights were fully implemented, giving rise to not one single appeal as to the fairness of the application of those laws.

In our opinion, people of color should be especially outraged at these disproportionate deprivations of our legal and human rights, for it is our minority communities who disproportionately suffer the pain of criminal victimization.

I agree with that very much. There is perhaps none but, at most, very few minority victims of violent crime who can afford the counsel to process their rights under State constitutions, under State laws, or under the patchwork of laws to protect victims across this Nation at this time. Every time, if they do, they will eventually lose because the rights of the defendants or the accused are deeply embedded in the heart of this great Constitution. They will find that, in effect, as they press a case in court, they have no standing under the Constitution of the United States. That is what this is all about, to give victims standing in the Constitution of the United States. No case demonstrated that more clearly than the Oklahoma City bombing case.

As we sum up, I will quickly refresh why that is the case. We had passed two statutes—one in 1990—which allowed victims to watch the trial and testify at sentencing. The Victims of Crime Bill of Rights, a 1990 law, passed by the House, passed by the Senate, and signed by the President, references the right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at the trial. In spite of that statute, the court denied the prosecutors' request. The victims made a similar request, and the court denied that request, holding that victims lacked standing to raise their rights under that statute.

The prosecutors and the victims were not satisfied. They both had good attorneys, Washington attorneys, Paul Cassell, distinguished attorneys. They appealed that to the Court of Appeals of the Tenth Circuit. As Professor Cassell, one of the lawyers put it:

Three months later, a panel of the Tenth Circuit rejected—without oral argument—both the victims' and the United States' claims on jurisdictional grounds. With respect to the victims' challenges, the court concluded that the victims lacked ''standing'' under Article III of the Constitution because they had no ''legally protected interest'' to be present at the trial and consequently had suffered no ''injury in fact'' from their exclusion. The Tenth Circuit also found that victims had no right to attend

the trial under any First Amendment right of access. Finally, the Tenth Circuit rejected, on jurisdictional grounds, the appeal and mandamus petition filed by the United States. Efforts by both the victims and the Department to obtain a rehearing were unsuccessful, even with the support of separate briefs urging rehearing from 49 members of Congress, all six Attorneys General in the Tenth Circuit, and some of the leading victims groups in the nation.

We heard about that. We responded with alacrity. The House passed the Victims' Rights Clarification Act of 1997. That statute said, notwithstanding any statute, any rule or other provision of law, a U.S. district court shall not order any victim of an offense excluded from the trial of a defendant accused of that offense because such victim may, during the sentencing hearing, testify as the effect of the offense on the victim and the victim's family or as to any other factor for which notice is required. That is clear. We cleared it up. We gave them standing by law, passed by the House, passed by the Senate, signed by the President of the United States. But the district court then said that this statute might be unconstitutional and postponed a decision until after the trial. So the judge paid no attention to the House of Representatives, the Senate of the United States, or to the signature of the President of the United States.

This is why we press this cause today. This is why we do not believe that a statute will ever be adequate to give victims basic rights. Push sort of comes to shove. There is an old expression called ''carrying water on both shoulders.'' It is sometimes a way that people feel, in our business—that they can appease a group by saying, oh, something else will do. This case, to me, is irrevocable evidence that the challenge of making a statute work is extraordinarily difficult to give any minority or impoverished victim any meaningful right in real life. So we intend to continue to press this case.

I want to ask the distinguished Senator from Arizona now that he has heard the outline of what happened—some people have criticized me, I think, because I have used this case over and over again, but it is the only clearly definable case we have following the passage of two laws passed by our bodies to make a judgment—and, true, we are making that judgment just on the Tenth Circuit Court—nonetheless, does the Senator not believe it is an applicable judgment to add to this to confirm the fact that a statute probably won't work in this situation?

Mr. KYL. Mr. President, Senator FEINSTEIN is exactly correct. I think it illustrates the inconsistency of the opponents of the amendment. In the first place, they say we should try a statutory remedy. When we try the statutory remedy and the court says you lose, you still don't have the rights—and as Senator SCHUMER said, the court essentially ignored what Congress did, and that was offensive to him because he had been one of the authors of that legislation—we come back and say that illustrates the fact that you need a constitutional protection because until you have that, the courts can't continue to ignore these statutes. Then Senator SCHUMER said: But courts cannot ignore statutes; they are just like the Constitution. You have to apply statutes. The answer to that is, well, you should, but what is the remedy if you don't?

As the Senator pointed out, until we provide standing in a constitutional amendment, if the courts don't abide by the statutes, there is no recourse. That is the bottom line as to why a constitutional amendment is necessary in these kinds of cases.

The other inconsistency is the other side says you don't have a lot of court decisions overturning statutes for State constitutional protection, so we don't need a constitutional amendment.

That is an odd argument. Most of the constitutional protections are not the result of a Supreme Court decision to strike down a statute or a State provision. In fact, I don't know of any that are, frankly.

Most of the constitutional protections for defendants and other citizens have come about because of the recognition that there are certain fundamental rights that need to be protected, and we ought not to wait for courts to strike something down in order to assume that it is time to propose a constitutional amendment. But if that were the proper standard, then we have a clear reason to do so because as the Senator from California pointed out, the Tenth Circuit Court of Appeals has now ruled that is the precedent, and for at least, I think, seven States in the Tenth Circuit, they have a very bad ruling on their hands; namely, victims have no standing to assert the rights we provided for in statute. So if that is to be the standard—that you have to have a court decision that proves the need for a constitutional protection—we have it. So whichever way you want to argue it, I think the point is made that we need a constitutional amendment to provide real protection for victims of crime.

Mrs. FEINSTEIN. I thank the Senator for that comment. I would like to follow up with something. My staff has handed me a letter from Professor Tribe dated today. It is on this point. I think it adds some additional very distinguished credibility to what the Senator is saying. It says:

> I am writing to address one consideration in particular that is highlighted by the proposed Crime Victims Assistance Act, S. 934, whose sponsors—many of whom are my good friends—evidently hope that by this Federal statute they obviate the need for the proposed constitutional amendment. I favor S. 934's enactment, at least in principle. I assume that closer study of the detailed provision than I have been able to undertake would disclose ways in which it might be improved. But minor technical flaws, or even design defects in the contemplated statute would be beside the point and are not my focus. After all, detailed problems with the statute's terms could be cured by redrafting and would not in themselves explain why only an amendment to the Constitution could meet the need for fuller national protection of victims' rights.

Then he goes on to say this—and I am skipping some:

> The mere brandishment of the banners of defendants' rights or of prosecutorial needs too often suffices to push the needs and interests of victims—to be notified, to observe, to be heard, to have their views considered, to achieve closure, and to be compensated if possible—into the background. Rather than creatively and determinedly seeking ways to protect victims' rights in ways that manage fully to respect the genuine rights, privileges, and needs both of the accuser and the accused, state and local officials are understandably but unfortunately tempted to relegate victims and their rights to second-class status or to shelf them altogether, as merely hortatory and aspirational provisions of law enacted with something much stronger and more operational in mind.

He essentially goes on to say again why a statute won't work. He says:

> The argument is flawed first, because it fails entirely to come to terms with the basic reasons, set forth above, that merely statutory measures would be unable to combat the deeply rooted attitudinal problems confronting victims and their claims of right; and second, because insofar as it assumes broad congressional power to act under Section 5 of the Fourteenth Amendment, it is simply ignorant of the series of decisions in the 1990s and reaching into 2000, beginning with the invalidation of the Religious Freedom Restoration Act and continuing with the invalidation of provisions of the Patent Reform Act and the Age Discrimination Employment Act, in which the modern Supreme Court has dramatically curtailed the legislative authority of Congress to use its Section 5 power to protect interests that Congress, but not yet the Court, is prepared to recognize as constitutional rights, or even to protect Court-recognized constitutional rights in circumstances, or by means, not shown in the legislative record to be ''necessary.''

What Professor Tribe at this stage is adding to this is that any statute passed by us does not take into consideration the courts striking down of the Religion Freedom Restoration Act, the Patent Reform Act, the Age Discrimination and Employment Act. He is saying that the authority of Congress is now more limited to use its section 5 power to protect interests that we think are valid.

The striking down of these bills, in effect, makes the constitutionality of anything that we might pass by way of a Federal statute extraordinarily vulnerable. I think this is new information which we have not had a chance to analyze and consider which may enable us to come back and fight another day.

Mr. KYL. Mr. President, another point Senator FEINSTEIN made yesterday which people need to continue to focus on is that a Federal statute is going to apply to Federal crimes. A U.S. constitutional amendment applies to all cases in all courts in every State, whether at the trial court level in the county—we call it superior court in Arizona—all the way to any other court,

including Federal courts. But a statute that we pass applies to Federal court trials for the most serious crimes. In Federal law, that accounts for about 1 percent of the victims of violent crime in the entire country.

Almost always the local police catch the perpetrator, that perpetrator is tried by the local county prosecutor in the county courts, and the appeals go up through the State court process. Sometimes they can jump over to the Federal court because of a constitutional issue involved. But except on military reservations, Indian reservations, certain kinds of kidnapping cases, and things of that sort where it is not a Federal case, a Federal statute doesn't apply.

Mrs. FEINSTEIN. Of course that is right. I think the Senator from Arizona said it very well.

The PRESIDING OFFICER. The Chair notes that the time of the Senator from California has expired.

Mrs. FEINSTEIN. I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, the Senator from California may have time yielded to her from someone else in her party to advance the rest of her argument. She might find out how much time there is.

I inquire of the Chair. How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Arizona has 2 hours 13 minutes.

Mr. KYL. I shall not take nearly that much time. It is my understanding that I can't yield any of that time to Senator FEINSTEIN.

The PRESIDING OFFICER. The Senator has time under the cloture rule to yield time to other Senators.

Mr. KYL. I ask unanimous consent to yield 1 hour of my time to Senator FEINSTEIN.

The PRESIDING OFFICER. The Senator has that right as manager of the bill.

Mr. KYL. I appreciate it. I thank the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I thank the distinguished Senator from Arizona. I thank the Chair.

Let me briefly summarize. I sincerely believe that the only way to afford victims of violent crime standing under the Constitution to be able to assert a right that is provided is by amendment to the Constitution. I don't use my judgment. This is the judgment of the most distinguished legal scholars.

I know there are strong forces at work in this in front of the scenes and behind the scenes. I know there are some people who believe what we are trying to do is weaken defendants' rights. That is simply not correct. Defendants' rights, as I see them, are basically rights that do not come into collision with the rights we would afford the victims. They are totally different rights. If there is a collision, our view is that the judge then provides the balancing mechanism. This gives the victim a standing in law to assert the right that, in a sense, can't be trusted.

This issue goes down—let me be very candid—on one phrase. That one phrase is the addition of language that would say nothing in this Constitution would abridge the right of a defendant as provided by this Constitution.

That is a paraphrase of what it is.

The Department of Justice insists on that language. We will not get administration support, I believe, without that language. The victims movement believes they would not have sufficient standing in these rights to really assert them in a meaningful way unless they were able to be balanced against the rights of the defendant.

The question I wanted to ask my friend and colleague, Senator KYL, is I think our challenge in proceeding may be how we could reconcile this with the very real concern of victims that they once and for all—albeit for a limited right but nonetheless real rights—have standing for those rights in a court of law.

Mr. KYL. Mr. President, Senator FEINSTEIN has touched on a central point because none of the advocates for victims have ever sought to deny one single right to the defendant. In point of fact, the victims' rights that we protect do not deny or abridge the defendants' rights under the Constitution. It is not our intention, and it doesn't happen. We have been willing to acknowledge that in a variety of ways and in a variety of words in the Constitution.

We are not willing to say if there is ever a case in which the defendant asserts a right under the Constitution then that right automatically wins over any of these victims' rights. What we said, and what people in the Department of Justice and the President and others have agreed with, is there should be a balancing just as there is a balancing of two constitutional rights, defendants' rights to a speedy and public trial, a fair trial, and the right of free press.

When the press wants to get into the courtroom, sometimes, as we all know, the judges say: No. We are only going to allow a limited number of certain kinds of media in the courtroom. We don't want a media circus in the courtroom. That wouldn't be fair to the defendant.

The media says: Wait a minute. We have a first amendment right.

The defendant says: I have a constitutional right, too, which amounts to a right for a fair trial.

The judge says: You are both right, and you are both going to get your rights vindicated, but neither of you have an absolute right that excludes any other consideration. The judge says to the defendant: I am not going to allow your case to be prejudiced by a media circus. Media, you are going to have to restrain yourselves to the following conditions. Judges say that every day.

The defendant has a right to sit at his trial. But he can't sit there if he is going to be yelling, screaming, and jumping up and down and threatening people. The judge has a way to control his courtroom, and so on.

We are perfectly willing to make it crystal clear in our language that the enumeration of these rights for victims does not abridge any rights guaranteed in the Constitution for defendants or those accused of crime. We are unwilling to say, if there has to be any balancing, the defendant always wins. That would deny exactly what we are trying to achieve for the victims, which is some equal consideration under the Constitution for their fairness given all of the things we have rightly done for defendants.

Mrs. FEINSTEIN. I thank the Senator. I think the analogy is actually a very good one. I know defendants' rights are extraordinarily privileged, and well they should be. Senator KYL and I have discussed this. We believe that our amendment does not collide, and we understand how victims feel.

I think one of the points is that throughout all of this we have communicated with victims groups. We have been their advocates. We have tried to march to the sound of their drum.

The tragedy for me, today, is that we are so close that, if we could bridge that one gap, getting the support of the Justice Department, the President's support, the Vice President's support, perhaps we might, on our side, pick up some votes. That one inability to reach this kind of consensus within the timeframe we have, in view of the feelings of our colleagues, is really the necessity of what we are doing here this afternoon. But I think at this stage there is an impasse. Does my colleague agree?

Mr. KYL. I do. If I may read one paragraph from a piece written by Professor Paul Cassell, I think it helps to elucidate what we are talking about, if the Senator would not mind.

We are talking about potentially conflicting rights under the Constitution. Senator BIDEN has made this point. Hopefully, he will be here a little bit later to speak to this, but he made the point he can't see there ever being an irreconcilable conflict between the defendant's rights and the victim's rights, and in one sense I think he is absolutely correct because you can vindicate two conflicting rights through a balancing test. But the fact is, there is only one situation I can think of in which you even have that conflict, and that is the right to attend a trial, where the defendant would say, it is not fair to me if the victim or the victim's family attends the trial, and the victim's family or the victim says, wait a minute, that's one of my most fundamental rights, and the Senator guaranteed that in this provision.

There are ways to accommodate both the defendant's and victim's rights, of

course. At least the Senator and I understand that, but there are some who find that very difficult and troubling. But here is the analogous situation which I think makes our case. This is what Professor Paul Cassell says:

Confirmation of the constitutional worthiness of victims' rights comes from the judicial treatment of an analogous right: the claim of the media to a constitutionally protected interest in attending trials. In Richmond Newspapers v. Virginia, the Court agreed that the First Amendment guaranteed the right of the public and the press to attend criminal trials. Since that decision, few have argued that the media's right to attend trials is somehow unworthy of constitutional protection, suggesting a national consensus that attendance rights to criminal trials are properly the subject of constitutional law. Yet the current doctrine produces what must be regarded as a stunning disparity in the way courts handle claims of access to court proceedings. Consider, for example, two issues actually litigated in the Oklahoma City bombing case. The first was the request of an Oklahoma City television station for access to subpoenas for documents issued through the court. The second was a request for various family members of the murdered victims to attend the trial, discussed previously. My sense is that the victims' request should be entitled to at least as much respect as the media request. Yet under the law that exists today, the television station has a First Amendment interest in access to the documents while the victims' families have no First Amendment interest in challenging their exclusion from the trial. The point here is not to argue that victims deserve greater constitutional protection than the press, but simply that if press interests can be read into the Constitution without somehow violating the ''sacredness of the covenant,'' the same can be done for victims.

That is the end of Professor Cassell's quotation, the point being—to those who say the Constitution is sacred; we cannot change it—it includes rights of the media to attend trials, but somehow it would be wrong to grant those same rights to victims. That, indeed, is a disparity. To the extent a defendant might say, ''but I don't want the victim or the victim's family in the courtroom,'' just as the Constitution says, but there is a right that we have to balance with your concerns—and that is the media's right—we would be saying here: The victim also has some consideration here, and the court needs to take that into account in deciding the circumstances under which victims and victims' families would be present.

If we were to somehow insert language that made it possible for courts to rule that the defendant would always win in the case of such an assertion, then we would have, I think, perpetrated a cruel hoax on victims who would think they had something that in fact they would not have. It would be similar to what victims experienced when they proudly went into court with their new statute that the Congress had passed, saying: ''Now, judge, we have a right to attend the trial,'' and he ignored it. If we put it in the Constitution, the judges can't ignore it.

But if we said in the Constitution: However, the defendant is always going to prevail in the case of a conflict, then that would be a cruel hoax. I think we have gone so far as to suggest we are willing to acknowledge that the rights enumerated for victims do not abridge rights guaranteed in the Constitution to defendants. I do not know how much more clearly we can say that. It leads us, and those who are supportive, to conclude, if that is not good enough, that perhaps there really is not a desire on the part of those on the other side to come to an agreement here in a way that could permit us to have a chance of succeeding in this debate this week or next.

That is the unfortunate state of play. Senator FEINSTEIN is absolutely correct. Perhaps in the ensuing weeks we will have an opportunity to explore other ways of expressing this that make it clear we are not taking anything away from defendants. But by the same token, we have to give meaningful rights to victims.

Mrs. FEINSTEIN. If I may, I think the Senator has summarized it very well. I retain the remainder of my time and yield the floor. I know there are some other distinguished Senators who wish to come to the floor and speak.

Mr. KYL. Mr. President, until those in opposition wish to be here, then, I will speak to close out, really, what I have to say about this. I would like to do two things: Just to reiterate a couple of circumstances why this is necessary, and, second, to respond to some of the arguments that have been adduced against what we propose.

Why do we need these rights? Suppose your daughter was raped and murdered and you wanted to attend the trial and you were told that, under the law, you were going to have to sit outside the courtroom every day. The defendant, the defendant's family and friends, they can be in the courtroom, they can watch the trial, but you are going to have to sit outside on the bench in the hallway. That is not fair. It tears at the gut of those who have been victimized already by the commission of the crime that hurt or killed their loved one.

Suppose you pick up the newspaper someday and read that the person who raped you, or assaulted you, is out on the street. He had been incarcerated. Your testimony helped put him there. You have no idea he is running free. His may be the knock on your door or the person at the other end of the telephone which rings. You did not get notice of his parole hearing. You could not even go down and tell the parole board how vicious a person this was and why they ought to think twice before releasing him on parole. You did not even have a chance to go down and say, ''Will you please consider my safety in establishing conditions for his release, that he has to stay away from me,'' for example.

We are talking about things that are serious, not frivolous. These are real cases. Both of the examples I cited are real cases—multiple cases, I might add. What are the arguments against it? One argument is it is too long and specific. Right after that, we heard it is too general. Senator SCHUMER said we should just have a general statement about the fairness that victims are entitled to and leave it at that. Others say that would be far too general. How would we ever define ''unreasonable,'' which is one of the words in our amendment here? Of course, one could have argued that same thing about some of the protections for defendants in the Bill of Rights. How will we define ''unreasonable search and seizure,'' it could have been argued. We have done all right on that.

We were fairly specific about the enumerations of these rights because we didn't want to take anything away from defendants. We wanted it to be crystal clear exactly what the rights were so nobody could contend they went further than they go, so that nobody could argue we might be stepping on the toes of a defendant. We didn't want to step on the defendant's toes.

We wanted to make sure the government wouldn't deny victims access to certain points in the criminal justice process. We were very careful to define this. Indeed, the Department of Justice met with us on numerous occasions and said we would have to be more precise in our description because they could envision possible problems if we do not nail it down. We nailed it down. That took a few words.

Then we were criticized for having too long an amendment; it is longer than the Bill of Rights. We pointed out, it is not longer than the Bill of Rights. Indeed, our amendment is shorter than all of the rights guaranteed to defendants in the Constitution. The defendants' rights consume 348 words; the victims' rights consume 179 words. There are 307 words in our amendment, excluding the purely technical provision.

Isn't it amazing we have gotten down to a word count, if that is one of the big objections of opponents? ''It is a little too long.'' It is not too long. If it were shorter, their argument would be it is not specific enough, we need to be more specific—and that takes more words.

Perhaps the least argument—and there will be others propounding this argument—is that because the Constitution is sacred, it should not be amended. Maybe it is appropriate to read something in the sacred document, article V: Whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution . . . when ratified by the legislatures of three-fourths of the several States, it becomes effective as part of this Constitution.

Thomas Jefferson said: I am not an advocate for frequent changes in laws in the Constitution, but laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and

opinions change, with the change of circumstances, institutions must advance to keep pace with the times.

Indeed, Thomas Jefferson also said: Happily for us, when we find our Constitution is defective and insufficient to secure the happiness of our people, we can assemble with all the coldness of philosophers and set them to rights, while every other nation on Earth must have recourse to arms to amend or restore their constitutions.

It is certainly a reflection of our wonderful United States of America and our Constitution that from time to time we have found it necessary to grant rights in this sacred document: the right to vote, the right to vote when you are 18, the right to vote and not to be defined by one's sex, the right to a speedy trial. These are rights that were granted by amendment to citizens after this sacred document was written. We all agree with the proposition that it is a wonderful document, a sacred document, a document that ought not lightly be added to, which has a wonderful and glorious history. Indeed, I submit that some of the most profound and glorious aspects of the history of this Constitution are found in its amendments.

To suggest that somehow those who propose an amendment to the Constitution are doing a great disservice and are assaulting the Constitution is itself a great disservice to the process set forth in the Constitution.

It is said that the Constitution ordinarily precluded the government from affecting the rights of citizens, whereas we are granting rights to people. I talked about three or four amendments that granted rights to people: the right to vote if you are 18, the right to vote if you are a woman, the right to a speedy trial. Those were rights granted to citizens. Other rights are expressed in terms of preventing the government from intruding on your rights. For example, the government will not preclude you from having a speedy trial. They will not deny you the right to a speedy trial. They won't deny you the right to counsel.

You can express it either way—as a grant of a right or the government not denying you the ability to do these things. We say the government cannot exclude you from the courtroom. They can't exclude you from the trial. We are not really saying you have a right to attend the trial; we are saying you have a right not to be excluded from the trial. There is a difference. The former could lead to assertions that the government should pay for your getting to the trial, that your employer should have to let you off work or pay. We don't address that. We only say if you show up, you get to attend; the government cannot exclude you.

Some of the other rights are expressed in terms of direct rights. However, they all infer that the government can't exclude you from these proceedings. We are doing exactly what other amendments to the Constitution have done. They are similar rights. The right of the press to be able to cover a trial, it seems to me, should be no greater than the right of a victim to be present at the trial. What is the difference? I conclude by challenging anybody to tell me what the difference is between granting the media the right to attend a trial and granting the victim in the case the right to attend the trial.

I don't understand why there is such a visceral negative reaction to what we are trying to do. If you have ever been a victim or been part of a tragedy that has affected others, you know how much they want to bring closure to the event, why they want to witness the criminal justice process that brings the matter to a close, why they want to participate at a couple of the stages, particularly at the time of sentencing and also at the time of a conditional release so that their safety can be considered, as well as the safety of others.

No one opposing our amendment has suggested that those are unworthy of protection. Rather, they have said we can do it by statute. But what did we find yesterday when we looked at the data according to the National Institute of Justice? After 18 years of Federal and State statutes and State constitutional provisions, looking at the statistics from the States that do it the best, that have the most stringent requirement for notice, fewer than 60 percent of victims were notified of the sentencing hearing and fewer than 40 percent were notified of the pretrial release of the defendant.

As I said yesterday, would we consider those adequate percentages for defendants being given their Miranda warnings, something which isn't even in the Constitution? No. But somehow we think it is OK that statutes provide notice to only 40 percent of the people who want to be present at the parole board, or at least have the opportunity to be present, to say, please, don't let my assailant go; he will hurt someone. We are no longer talking about somebody accused of a crime; we are talking about somebody who has been convicted and who has been serving time for the commission of that crime.

I mentioned the case of Patricia Pollard—because it is a case from Arizona—who was brutally raped and left to die. She wasn't told that the parole board was meeting to consider and then eventually decided to let her assailant out of prison on a home arrest kind of program. By accident, she was made aware of it. When she went back to the parole board and asked them to reconsider their decision, after hearing her story, they kept him in prison.

When I asked her if she thought her life was in danger had he gotten out, she said: Maybe he would have tracked me down, but, frankly, I was a random opportunity for him. I came along at just the time he wanted to do this to somebody, and he did it to me. Mostly I was concerned what would happen to somebody else because if he got out he would be sure to do this to somebody else.

This is what we are talking about. This is not frivolous. This is not trivial. This is people's lives we are talking about. When opponents say, we can protect it by statute, we say, the State of Arizona had a very good statute. In fact, it was better than a statute; it was a constitutional provision in the State. She still didn't get notice. In fact, 60 percent of people don't get notice under these constitutional provisions and State statutes.

Opponents say: That is good enough; maybe we can pass a Federal statute.

We say a Federal statute can only affect 1 percent of all of these cases, and there is little reason to believe a Federal statute would be observed any better than State constitutional provisions are, as the Oklahoma City bombing case reveals.

I am at a loss. I agree with Senator FEINSTEIN. We are moved by these cases. We are moved by the people. We want to help. Everybody wants to help. Even opponents, I am convinced, want to help. So let's do something about it. It is not doing something effective about it to fall back on the notion: Well, we will just rely on another statute; let's pass another law. That is not the answer.

We are at this point now because we have not done enough to educate our colleagues, and I will accept part of the blame for that. I should have spent a lot more time—although I must confess my colleagues got tired of me coming around saying: Are you sure you wouldn't like to hear a little bit more about this? Maybe we should have tried a little harder to say: Will you please listen one more time to our plea?

What has happened is a very superficial mantra of inaccuracies and falsehoods have persuaded colleagues to oppose this to the extent they would not be willing to allow it to come to a vote. In other words, when we would seek to bring this to a final vote, we would not be able to stop the talking, to stop the filibuster, in effect, to get 60 of our colleagues to agree to bring the matter to a vote or to prevent nongermane amendments. There had been a suggestion by some that if we proceed, then we can expect a whole flurry of amendments that have nothing to do with what we are talking about.

Obviously, we do not want to tie up our colleagues' time with that, so we come to the unhappy conclusion that we have more work to do.

The good news is that we prevailed with 80-some votes—perhaps the Senator can recall exactly how many votes we got on the cloture motion to proceed. But it was over 80, as I recall. We have 41 cosponsors of our amendment now, which is real progress. We got a good bipartisan vote out of the Judiciary Committee.

This is the first time this Federal constitutional amendment has been brought to the floor of either House. We have reached a real milestone. We

have done well. Most constitutional amendments never pass. All of them take a long time. I do not know of any, at least in modern history, that passed the first time they were presented on the floor of the Senate.

The fact we have been thwarted part way down the road temporarily, while a setback of sorts, should not dissuade those advocates or crime victims in their efforts. As Senator FEINSTEIN said, we will be back, and hopefully next time when we are back, more of our colleagues will have had an opportunity to study this carefully, more victims and victims' rights organizations will have had an opportunity to visit with Senators and Representatives, and we will have been able to persuade a sufficient number of them to allow us to proceed to a final vote.

While there is some sorrow in our inability to bring this to conclusion today, I am buoyed by the prospect and the fact we have at least gotten to this point.

Mrs. FEINSTEIN. Mr. President, will the Senator yield for a moment?

Mr. KYL. I yield.

Mrs. FEINSTEIN. Mr. President, I also am buoyed by the prospects. As we go through this more and more, I understand more and more what is happening behind the scenes. I do want to enter into the record this latest letter from Professor Larry Tribe. Senator KYL will be interested in one quote. He says deep into his letter:

I can count on the fingers of one hand the number of ostensibly ''liberal'' lawyers and scholars who do not look askance when they learn of my support for this amendment. Friends who otherwise respect me and admire my work have a difficult time, it seems, assimilating the notion that a liberal champion of defendants' rights—something I think I have been all my life—should take seriously the idea that the victims of violent crime actually have ''rights'' that the Constitution should compel government to take seriously and to treat with respect, rather than merely being the unfortunate—well, victims—of criminal predations that the state is charged with combating, in a system where the only ''rights'' worth naming and treating as such of course belong to those unfortunate enough to find themselves on the wrong end of the machinery of criminal justice. With all respect, I do not share that perspective. Rather, I regard its deeply ingrained nature as the principal argument for the conclusion that statutory measures will never fully suffice.

Mr. President, I ask unanimous consent to print Professor Tribe's letter in the RECORD.

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

HARVARD UNIVERSITY
LAW SCHOOL,
Cambridge, MA, April 27, 2000.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: I have previously set forth my reasons for supporting S.J. Res. 3, the proposed Victims' Rights Amendment now under consideration in the Senate, and little purpose would be served by my repeating those reasons here. I understand the objections some have raised to the proposed amendment and have enormous respect for many who oppose the measure, but on balance I am persuaded that the considerations favoring the amendment outweigh those against it, even placing an appropriately skeptical thumb on the scale's negative side.

I am writing to address one consideration in particular that is highlighted by the proposed Crime Victims' Assistance Act, S. 934, whose sponsors, many of whom are my good friends, evidently hope by this federal statute to obviate the need for the proposed constitutional amendment. I favor S. 934's enactment, at least in principle. I assume that closer study of its detailed provisions that I have been able to undertake would disclose ways in which it might be improved, but minor technical flaws or even design defects in the contemplated statute would be beside the point and are not my focus here. After all, detailed problems with the statute's terms could be cured by redrafting and would not in themselves explain why only an amendment to the Constitution could meet the need for fuller national protection of victims' rights.

My concerns are different ones. First, I am concerned that, as the authors of S. 934 doubtless realized given how they wrote their bill, it does nothing directly for the vast majority of crime victims—those victimized by violations of state or local rather than federal law. To be sure, S. 934 would offer the states money for pilot projects and the like, and money of course helps, but the basic reasons for the dramatic underprotection of state crime victims are more attitudinal than fiscal: Even when states enact victims' rights measures of their own in response to pressures from constituents, there is a tendency to ignore or underenforce such rights whenever they appear to rub up against either the rights of the criminally accused or the needs or wishes of the prosecution. And I do mean to say ''appear to rub up against,'' for the problem I have in mind arises in those situations where a careful analysis would reveal that the seeming conflict between victims' rights and the rights of the accused or the interests of the state is a false or a readily avoidable one. The mere brandishment of the banners of defendants' rights or of prosecutorial needs too often suffices to push the needs and interests of victims—to be notified, to observe, to be heard, to have their views considered, to achieve closure, to be compensated if possible—into the background. Rather than creatively and determinedly seeking ways to protect victims' rights in ways that manage fully to respect the genuine rights, privileges, and needs both of the accuser and of the accused, state and local officials are understandably but unfortunately tempted to relegate victims and their rights to second-class status or to shelve them altogether, treating as merely hortatory and aspirational provisions of law enacted with something much stronger and more operational in mind.

State statutory and constitutional provisions cannot overcome this phenomenon so long as the only parties whose rights receive federal constitutional recognition, recognition that reinforces and amplifies traditional habits of mind at the state and local levels, are the defendants in criminal prosecutions. And S. 934, which obviously could not touch the actual conduct of state and local criminal investigations, prosecutions, and adjudications, is manifestly incapable of affecting this pervasive tendency.

Indeed—and this is my second major concern—even in the federal criminal context within which S. 934 would operate, the proposed statute would take effect against the background of a legal culture in which the very notion of ''victims' rights'' has traditionally been dismissed either as a vague metaphor or as an atavistic throwback to a primitive era of private justice. In a federal universe within which victims are pervasively perceived as mere passive beneficiaries of government protection—as bystanders to the majesty of the criminal process rather than as entitled participants in that process—a merely statutory codification of certain ''rights,'' removable by the grace of the same Congress that bestowed them, is most unlikely to effect the pervasive attitudinal change that is so badly needed. When push comes to shove, even where adequately protecting victims does not in truth entail any abridgment of the federal constitutional rights of criminal defendants or of the needs of government prosecutors to protect the public and vindicate the law, any superficially plausible protest from either the prosecution's table or the defense bar is likely to shove victims and their S. 934 rights back into the shadows, from which a federal judiciary steeped in precisely the same legal culture is unlikely to rescue them.

Evidence of the depth and pervasiveness of this basic attitude, and of the view that to defend the rights of victims is to engage in a primitive exercise in emotionalism, incompatible with the structure of our adversary system of justice and with the rational character of the modern bureaucratic state, is the ferocity and generality of the opposition to a constitutional amendment to protect victims' rights, at least among the elite and especially in the supposedly enlightened circles with which I like to think I associate. I can count on the fingers of one hand the number of ostensibly ''liberal'' lawyers and scholars who do not look askance when they learn of my support for this amendment. Friends who otherwise respect me and admire my work have a difficult time, it seems, assimilating the notion that a liberal champion of defendants' rights—something I think I have been all my life—should take seriously the idea that the victims of violent crime actually have ''rights'' that the Constitution should compel government to take seriously and to treat with respect, rather than merely being the unfortunate—well, victims—of criminal predations that the state is charged with combating, in a system where the only ''rights'' worth naming and treating as such of course belong to those unfortunate enough to find themselves on the wrong end of the machinery of criminal justice. With all respect, I do not share that perspective. Rather, I regard its deeply ingrained nature as the principal argument for the conclusion that statutory measures will never fully suffice.

Permit me to add one point before closing: I want to address the argument that S. 934 should not be faulted for failing to reach state proceedings because, after all, it is designed only to operate at the federal level, and because either state statutes or state constitutional provisions or perhaps federal civil rights-like legislation enacted under Section 5 of the Fourteenth Amendment could fill the state and local gap that S. 934 necessarily leaves unfilled. That argument is flawed first, because it fails entirely to come to terms with the basic reasons, set forth above, that merely statutory measures would be unable to combat the deeply rooted attitudinal problems confronting victims and their claims of right; and second, because, insofar as it assumes broad congressional power to act under Section 5 of the Fourteenth Amendment, it is simply ignorant of the series of decisions in the 1990s and reaching into 2000, beginning with the invalidation of the Religious Freedom Restoration Act and continuing with the invalidation of provisions of the Patent Reform

Act and the Age Discrimination in Employment Act, in which the modern Supreme Court has dramatically curtailed the legislative authority of Congress to use its Section 5 power to protect interests that Congress, but not yet the Court, is prepared to recognize as constitutional rights, or even to protect Court-recognized constitutional rights in circumstances, or by means, not shown in the legislative record to be ''necessary.''

In sum, although S. 934 represents an intelligent step in the much-needed strategy of operationalizing and institutionalizing the rights of victims, neither by itself nor as part of a series of measures, both federal and state, can it hope to provide a satisfactory substitute for the more fundamental constitutional step represented by S.J. Res. 3, a step that I consider not only wise but necessary despite—and (paradoxically) in part because of—its current lack of appeal for ''the usual suspects'' on the criminal justice scene, both in the defense and civil liberties bars and among prosecutors and their champions.

I hope you find these observations to be of some use, and I apologize for my inability to get them to you sooner. I wish you well in the difficult effort to obtain passage of this amendment by the requisite two-thirds vote and, should you succeed in that respect, in the onerous effort to win its ratification by the requisite three-fourths of the state legislatures.

Sincerely yours,

LAURENCE H. TRIBE.

Mrs. FEINSTEIN. Mr. President, I extend my deepest thanks to Professor Tribe for his letter and for his support. We will certainly be consulting both he and Professor Cassell again and come back to fight again another day.

I want to say something to the victims who have been so heartrending in this process. Those of us who are political come to grips with the sophisticated lobbying around this place. One of the things I have seen in the people whom we represent is they are real people. They have been maimed, they have been harmed, they have been hurt, and with this—I have seen this in the past when I was active in the criminal justice system—victims almost become catatonic. They almost become unable to go out and do the lobbying that is necessary to move something such as this.

I want them to know how much we identify with their cause, how much we intend to continue to pursue this cause. It is a just cause. It is a cause that deserves remedy and recognition in the Constitution of the United States. It is a cause where, once victims have these rights, they lost them.

This Congress—the other body and our body—should provide these rights again. I am hopeful that in the coming years, we will be able to continue our work on this. Perhaps we will be able to solve this one dilemma of the balancing. It is interesting; anytime one reads a statement by the President or by the Attorney General, it mentions the balancing of these rights. Yet when we write something in the Constitution which, in effect, would provide for this, it brings out the criminal defense bar; it brings out the liberal scholars; it brings out people who say: You can't do this. You can't give victims these rights.

The cause is just that they have these rights. A statute, we believe, will be unable to provide them, but as to their standing in the Constitution, there is a time and there is a place, I predict, when that standing will happen and take place.

Mr. KYL. Mr. President, I want to add something to a point Senator FEINSTEIN just made. I do not think she would take offense at my mentioning what occurred in my office about 4 hours ago.

We were summarizing the events and what led to the inability to get this across the goal line this week. I said it is partially my fault for not bringing more victims to the Senate to talk directly with Senators and share their personal stories.

I told that to Roberta Roper, who heads up the Stephanie Roper Foundation. Stephanie Roper was brutally murdered, and Roberta, her mother, has carried this cause in Stephanie's name. They do a lot of good in terms of victim support, in addition to victim advocacy.

She said: You have to understand, though, we are conditioned not to present these stories in an emotional, personal way. We have been told over and over again in the court that ''there can be no display of emotion.'' Those are the words the judges used. I have been told that a display of emotion would be wrong.

Now, think about that. Part of what makes us great as a people is the willingness to act out of our heart as well as our mind. We should never do incorrect things or unintelligent things, acting purely on the basis of emotion, but nor should we deny that emotion can be a potent force in developing public policy.

I tried to tell Roberta that I think it was a mistake, on my part, not to appreciate what she was telling me, not to understand it in advance, and not to counsel her to go ahead in this environment and express it in emotional terms. This is not a court of law. This is where the people's business is done.

I believe that until one fully appreciates what a victim goes through, it is hard to appreciate the necessity for what we are doing here.

Perhaps I could conclude by reading a paragraph again from the remarks of Professor Paul Cassell before the Judiciary Committee.

He said:

The available social science research suggests that the primary barrier to successful implementation of victims' rights is ''the socialization of [lawyers] in a legal culture and structure that do not recognize the victim as a legitimate party in criminal proceedings.''

He is talking about a professor, a colleague of his, who disagrees with our position, Professor Mosteller.

He says:

Professor Mosteller seems to agree generally with this view, explaining that ''officials fail to honor victims' rights largely as a result of inertia and past learning, insensitivity to the unfamiliar needs of victims, lack of training, and inadequate or misdirected institutional incentives.'' A constitutional amendment, reflecting the instructions of the nation to its criminal justice system, is perfectly designed to attack these problems and develop a new legal culture supportive of victims. To be sure, one can paint the prospect of such a change in culture as ''entirely speculative.'' Yet this means nothing more than that, until the Amendment passes, we will not have an opportunity to precisely assay its positive effects. Constitutional amendments have changed our legal culture in other areas, and clearly the logical prediction is that a victims' amendment would go a long way towards curing official indifference. This hypothesis is also consistent with the findings of the National Institute of Justice study on state implementation of victims' rights. The study concluded that ''[w]here legal protection is strong, victims are more likely to be aware of their rights, to participate in the criminal justice system, to view criminal justice system officials favorably, and to express more overall satisfaction with the system. It is hard to imagine any stronger protection of victims' rights than a federal constitutional amendment. Moreover, we can confidently expect that those who will most often benefit from the enhanced consistency in protecting victims' rights will be members of racial minorities, the poor, and other disempowered groups. Such victims are the first to suffer under the current, ''lottery'' implementation of victims' rights.

I think that expresses well the reason for the frustration we have shared, the reason so many of our colleagues have come here repeating the mantra of the legal profession that it has never been this way before. Maybe it is time to change the way things have been. That is why we have been so strongly in support of this amendment.

I see one of the opponents of the amendment is here. I know he wishes to speak. Therefore, let me conclude my remarks by again thanking Senator FEINSTEIN for her stalwart, effective support and her desire to continue this battle on behalf of the victims of crime.

I assure you, Mr. President, that even though we will be withdrawing our motion to proceed on S.J. Res. 3, we will continue to meet with, and work with, anyone who wishes to work with us on this—opponents and proponents—to try to get it into the condition that will finally be approved by two-thirds of this body and two-thirds of the other body. That is our challenge. That is our commitment. It is our promise that we will continue in this effort.

Mr. LEAHY. Mr. President, I am pleased that the sponsors of S.J. Res. 3 have decided to withdraw their proposal to amend the Constitution. One of the reasons they gave for their decision is that the many Senators who came to the floor to oppose their amendment have not, in their view, engaged on the merits of their specific language. Because of this, and because they have vowed to continue in their efforts to amend the Constitution to address victims' rights, I feel obliged to say a few words about some of the most glaring defects of S.J. Res. 3.

One of the most fundamental responsibilities of United States Senators is to make sure that we understand what

we are enacting into law. That duty is heightened when we are considering a constitutional amendment. Justice John Marshall said that the Supreme Court ''must never forget, that it is a constitution we are expounding.''

We, too, must never forget that it is a constitution—the Constitution of the United States of America—that we are being urged to amend.

I could speak for hours about the defects of this proposed amendment, but I trust that Senators have had an opportunity to consider the minority views in the Committee report that I submitted, along with Senators KENNEDY, KOHL, and FEINGOLD.

The minority views run about 40 pages, and identify several specific problems with the drafting of this amendment.

I would also direct Senators to the additional views to the Committee's 1998 report, submitted by our distinguished Chairman. Senator HATCH's views subject this amendment to penetrating criticism. He reiterated such concerns just yesterday in his statement to the Senate in which he indicated the following reservations about the proposed constitutional amendment:

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.

For the moment, I will just focus on a few fundamental flaws.

Let us start with the first, and most important, seven words of the amendment. The amendment gives rights to ''a victim of a crime of violence.'' Supporters of this amendment have often compared it to the fifth and sixth amendments, which give rights to those accused of crimes. So let us compare them.

The most basic point about any constitutional right is, whose right is it? The fifth and sixth amendments are clear on that point: They give rights to people who have been charged with committing crimes, and we know who those people are. Of course, the other amendments to our present Constitution are no less clear, since they apply without exception to ''the people,'' or to ''citizens of the United States,'' or, in the case of the fourteenth amendment, to ''all persons born or naturalized in the United States and subject to the jurisdiction thereof.'' But do we know who would have rights under the proposed victims' rights amendment?

The answer in the text of the amendment is ''a victim of a crime of violence.'' Who is that? Let us make it easy by taking the most obvious crime of violence—murder. Who is the victim of a murder? The last time I prosecuted a murder case, the victim was the dead person. But that answer, what Justice Scalia might call the plain language approach to interpretation, will not do here, unless the purpose of the amendment is to enable the corpse to attend the trial.

So who, if anyone, gets the benefit of the proposed constitutional rights in a murder case? Maybe nobody. Or maybe the reference in section 2 to ''the victim's lawful representative'' refers to the trustee of the victim's estate in a murder case, although I do not see what the trustee of a murder victim's estate would have to contribute to a bail or parole hearing. Or maybe the amendment's supporters are banking on what I believe are called ''activist judges'' to add words to the amendment that are not there and extend rights to a murder victim's family.

This would raise other questions, like what happens when members of the victim's family hold different views about parole, or each wants a share of the mandatory restitution order? Would unmarried couples, be they heterosexual or homosexual, count as families? Would the six-year-old son of a victim be entitled to make arguments in connection with a negotiated guilty plea?

Okay, you may say, so murder is a problem. What about other crimes of violence? Let us take robbery. Let us say there is an armed robbery of a bank. A gun is pointed at a lot of people, tellers and customers. A security guard is shot and injured. The bank loses a lot of money. A pretty simple factual story, and one that I know, from my time as a prosecutor, happens all too often.

Pretend I am the prosecutor in this bank robbery. Tell me who are the victims I have to notify. The security guard? The 20 customers who were uninjured but had a gun pointed at them? The 10 bank tellers? The CEO of the bank? And while you are at it, tell me who gets the mandatory restitution—the bank that lost the money, the security guard who was injured, or the customers and tellers who were scared, or the teams of plaintiffs'—or, I guess, victims'—lawyers who are fighting out these questions.

And who gets to reopen the restitution hearings? Or the bail hearings? Feel free to assume that I am a competent prosecutor who can figure out some administrative details. But, if you are going to pass this amendment, do not pass the buck to me to decide who has constitutional rights and who does not. That is your job if you want to be a Framer of the Constitution; it is not the job of individual courts and prosecutors.

I have talked about two of the most infamous crimes of violence, murder and robbery. Other crimes, such as compound crimes under the federal RICO statute that can include lots of different criminal acts, some violent and some non-violent, over an extended period of years, will involve even harder problems when we try to identify who is and who is not a ''victim of a crime of violence.'' But we should also consider the most common form of violence that afflicts our society, domestic violence.

Here is a typical scenario. The police get a call from neighbors who hear shouting and screaming and pots and pans being thrown. They reach the house and find the husband and wife hysterically angry at one another and a young child cowering in the corner. It is not entirely clear who attacked whom, but the husband is injured and the police arrest the wife and charge her with assault. The wife's bail hearing comes up, or maybe there are plea negotiations. The wife claims it was self-defense; the husband claims she attacked him without provocation.

The wife claims she is a victim of a crime of domestic violence; so does the husband. Maybe the child is too. The proposed amendment leaves us with no clue whether a witness to violence who is psychologically but not physically injured by the violence has the new constitutional status of ''victim''.

Under current law, it is up to the jury to determine who is the victim and who is the criminal in this sad domestic scenario, and the jury makes that determination after hearing all the evidence from both sides at trial. Under the proposed amendment, that determination must be made before the wife's bail hearing or plea negotiation. If the husband can persuade the prosecutor that he is the victim, and not the instigator of the violence, he gets the special new constitutional rights of a crime victim at the bail and plea bargaining stage, before the wife has even had a chance to present her evidence to the jury that the husband is really the guilty party.

Or maybe the wife can insist on extra-judicial proceedings to contest the husband's status as a victim—although I do not know how you would squeeze in extra proceedings before bail or indictment hearings.

Assuming that the husband is the ''victim'' for purposes of our new constitutional amendment, what does that get him? Maybe he will push for bail or for a plea with a minimum sentence conditioned on his getting custody of the child, perhaps accompanied by a new kind of child support called ''restitution.''

Or maybe the husband will be satisfied with his new constitutional right to notice of his wife's release from custody, which will help him track her down and exact revenge.

In some cases, the right end result may be reached. But the process that the proposed amendment seem to involve bypassing a trial on the merits and potentially bypassing family court. By creating pre-trial rights for an undefined category of victims, it requires someone—I guess the prosecutor—to decide who is the victim of a given crime, and who gets special constitutional rights before there has been a trial or even an indictment.

Deciding who has constitutional rights and who does not before there has been even an ex parte judicial proceeding is un-American. Doing so in a

case, like a domestic violence case, where there are likely to be self-defense issues, risks giving special constitutional rights to the criminal instead of the victim.

One more comment on this half-baked, undefined term ''victim of a crime of violence.'' Thus far, I have discussed the easy cases in terms of what constitutes a ''crime of violence''—murder, robbery, and assault. But there are a lot of hard cases, too.

Is drunk driving a crime of violence if the driver physically injures a pedestrian? What if the driver runs over the pedestrian's dog, or crashes into a parked car? Can the same offense be a crime of violence if someone is physically injured, but not otherwise?

What about elder abuse or child abuse? We have all heard heart-breaking stories of seniors and disabled people who have suffered horrible abuse and neglect at the hands of their so-called care-givers, and of children locked up in squalid conditions and subjected to appalling psychological abuse by their parents.

Neglect of the weak and vulnerable in our society by those who have taken the responsibility of being their caregivers can cause as much harm as almost any violence, without a hand ever being lifted against them. But are neglect and non-physical abuse ''violence''? What about the horrifying slavery case involving more than 50 Mexican immigrants in New York a few years ago? Is enslavement a crime of violence? And what about kidnapping? If a parent who has been denied legal custody of a child kidnaps the child, is that a crime of violence, and if so, who is the victim, the child, the custodial parent or both?

The words of the proposed amendment do not answer these questions. The majority report suggests answers, some of which seem to stretch the concept of a ''crime of violence'' to the breaking point. It suggests, for example, as possible crimes of violence burglary, driving while intoxicated, espionage, stalking, and the unlawful displaying of a firearm—very serious crimes, but crimes that usually do not involve ''violence'' in the normal sense of the word.

Last year, Senator HATCH criticized the proposed amendment's reliance on the term ''crime of violence'' as ''arbitrary.'' I can do no better than to quote his language:

> I believe we must tread carefully when assigning constitutional rights on the arbitrary basis of whether the legislature has classified a particular crime as ''violent'' or ''non-violent.'' Consider, for example, the relative losses of two victims. First, consider the plight of an elderly woman who is victimized by a fraudulent investment scheme and loses her life's savings. Second, think of a college student who happens to take a punch during a bar fight which leaves him with a black eye for a couple of days. I do not believe it to be clear that one of these victims is more deserving of constitutional protection than the other. While such distinctions are commonly made in criminal statutes, the implications for placing such a disparity into the text of the Constitution are far greater.

It is interesting to note that in their additional views in this year's Committee report, Senators KYL and FEINSTEIN do not in any way disagree that the scope of their proposed amendment is arbitrary. Instead, they explain it as a political compromise.

I do not recall Madison and Jefferson saying at the constitutional convention that the provisions they drafted were not great, but politics are politics and you should not expect too much. I believe that we owe the American people something more than arbitrary political compromises when we amend their Constitution.

For anyone who shares Senator HATCH's and my concerns about the arbitrariness of focusing on ''crimes of violence,'' there is, by the way, a solution at hand. Vote against the proposed constitutional amendment and, instead, pass the Crime Victims Assistance Act, which provides strong and effective rights for all crime victims.

I have said a lot about the first, and most important, seven words of the proposed amendment; and I could identify many more problems. But let us sum up where we are so far. We are not sure whether the amendment applies at all to the most obvious ''crime of violence,'' murder, and we have no idea who gets the new constitutional rights for ''victims'' in a murder case if it does. In other fairly common crimes of violence such as robbery, the amendment appears to apply, but even assuming clear and simple facts, we are not sure which type of person affected by the crime gets to exercise the ''victim's'' rights, and the answer may well be a large number of people affected in vastly different ways—some physically, some emotionally, and some financially—who have vastly different views and interests. In what is probably the most common violent crime scenario, domestic violence, the amendment appears to require the prosecutor to decide who is the criminal and who is the victim as a constitutional matter, without the benefit of evidence at trial and without participation of judge or jury. And then we have what perhaps we should call ''borderline crimes,'' a wide range of crimes that may or may not be classified as crimes of violence.

On the ''of violence'' issue, Senator HATCH has raised troubling concerns that it is arbitrary as a matter of principle. I agree, and add the further concern that it is yet another huge point of uncertainty as to the meaning of this amendment. On this and other points, the answer of the amendment's supporters appears to be ''don't worry, someone else will figure this out later.''

''Don't worry, someone else will figure this out later.'' I think we can all agree that is not a principle that Congress should ever follow, especially not in the context of a constitutional amendment. Supporters of the amendment will no doubt contend that it is an unfair characterization of their position. Well, let us see what their amendment says.

The amendment seems quite candid in admitting that its central terms are yet to be defined. Section 1 says that the new constitutional rights created by the amendment go to ''A victim of a crime of violence, as these terms may be defined by law.'' I take it that ''these terms'' mean the two terms that we have identified as hopelessly vague: (1) ''victim'' and (2) ''crime of violence.''

The phrase ''as these terms may be defined by law'' is a new one for the United States Constitution. There is a reason for this. Our Constitution was conceived as, and is, ''the supreme Law of the Land.''

As Chief Justice John Marshall explained in Marbury versus Madison in 1803, our Constitution, as interpreted by the U.S. Supreme Court, is the law by which our other laws, State and Federal, are to be judged; it is not whatever our other laws, enacted by shifting political majorities from time to time, say it is.

Take, for example, the fourteenth amendment guarantee of equal protection of the laws. That does not mean equal protection ''as defined by law.'' If it did, the legislature and Governor of Arkansas might have been entitled to do what they did in 1957, when they ''defined'' the equal protection rights of public school students to be rights to a ''separate but equal,'' racially segregated education. But our Constitution has never worked that way, and in 1958, in Cooper versus Aaron, the Supreme Court rightly ruled that Arkansas' attempt to redefine the fourteenth amendment was unconstitutional, and desegregated Arkansas' schools.

Our Constitution has a provision, and a process, for defining new constitutional rights or for redefining existing constitutional rights. That provision, the amendment provision, is in Article V. Article V provides for two-thirds of the members of both Houses of Congress, plus three-fourths of the State legislatures, to amend the Constitution when ''necessary''. It does not provide for us to pass the buck to bare majorities in State legislatures or in a future Congress to define or redefine constitutional rights as we go along.

As a matter of principle, therefore, I believe that an ''as may be defined by law'' provision is an abdication of our duty, sitting as we do today as constitutional Framers, to provide clear constitutional standards against which other laws may be judged. In a constitutional democracy, the rule of law means that constitutional rights are to be found in the Constitution, not in ordinary statutes passed from time to time.

If we are going to pass the buck, we should at least be clear about who we are passing it to. Who gets to write the ''law'' that ''define[s]'' the critical terms of this constitutional amendment? This is yet another basic question that the amendment itself does

not answer. So I have studied the Committee report for an answer.

In a statement that must be profoundly troubling to those Senators who complain regularly about ''activist judges'' making law, the report first says that ''[t]he 'law' which will define a 'victim' (as well as 'crime of violence') will come from the courts interpreting the elements of criminal statutes until definitional statutes are passed explicating the term.'' This, I suppose, is the ''don't worry, the courts will figure it out'' theory. Anyone who subscribes to this theory should be prepared to confirm the most activist judges this country has ever seen, because that is certainly the vaguest, blankest check that has ever been written to the judiciary.

The Committee report ''anticipates'' that judicial law-making under this constitutional amendment may be short-lived—that Congress and the State legislatures would quickly step in and enact ''definitional laws'' for purposes of their own criminal systems.

It is worth pausing for a moment to consider what this means. One of the main arguments that we have heard in support of this amendment is that we need to eliminate the current ''patchwork'' of victims' rights.

We are told we need this amendment because even though all 50 States provide rights for victims, the rights vary from State to State. A constitutional amendment that may be defined differently from State to State would not correct this situation —it would simply replace one patchwork with another. The superficially simple concept of basic baseline rights for victims will fracture into more than 50 different schemes of rights. I do not think that there is anything wrong with such diversity; indeed, I believe that the present system of defining crimes and the rights of crime victims and enforcing criminal justice primarily at the State level has served this country well throughout our history. But I do object to a shell game that dresses up rights defined by State law as Federal constitutional rights, thus trivializing the United States Constitution and casting doubt on the rights that it currently protects.

Finally, I should note that the ''as these terms may be defined by law'' provision is not the only delegation in this proposed amendment. Section 3 provides that ''The Congress shall have the power to enforce this article by appropriate legislation.'' In their additional views, Senators KYL and FEINSTEIN note that they originally proposed to give enforcement power to the States as well as to Congress, but then reached another of this amendment's political compromises.

I am, however, mystified as to what function the section 3 enforcement power could possibly serve. Similar provisions are contained in the fourteenth amendment and in the various amendments that protect voting rights. In the fourteenth and voting rights amendments, the Federal enforcement power against the States was justified by the long history of resistance of certain States to the Federal constitutional mandates for equal protection of law and equal voting rights. But there is no such history of State abuses with respect to victims' rights. In fact, many States provide more protections for crime victims than Federal law provides.

The majority report alleges no conflict between States and the Federal Government that would necessitate a Federal enforcement power. Rather, the reason given by the amendment's principal sponsors for putting victims' right in the Federal Constitution at all is that the States supposedly need Federal help to protect them effectively. They claim that:

> States have had difficulty extending rights to victims of crime through State statutes and constitutional amendments precisely because courts are used to considering, first and foremost, Federal constitutional rights. By extending Federal rights to victims throughout the States, it will then become easier for State criminal justice systems to protect the rights of victims.

I frankly do not understand this explanation. If you want to empower State courts to take State statutes and constitutional amendments seriously, the last thing you do, I would think, is impose a complex new Federal mandate on them. If you want to help willing States protect victims, the last thing you do, I would think, is to place their criminal justice systems under congressional supervision and subject them to Federal enforcement through the Federal courts.

We are left, therefore, with an enforcement provision that mimics other amendments, but without any suggestion of the need to coerce recalcitrant States that justified such provisions elsewhere. Coercing the States here because we have done it before in other contexts is harmful to State sovereignty. And empowering Congress to enforce against the States constitutional rights which it is up to the States to define is likely to be futile. If the goal is, as asserted, to help the States protect victims' rights, we should not be piling new constitutional duties on the States; we should be providing assistance. Instead of threatening them with the stick of federal enforcement, I believe that we should offer the States the carrot of funding for the protection of victims' rights. If you agree with me, you should reject this amendment and, instead, support the Crime Victims Assistance Act.

Senators KYL and FEINSTEIN urge us not to make perfect the enemy of the good. If this amendment responded to an urgent need that could not be met by statute, and if it were well-drafted but imperfect, I would give that argument serious consideration. I have explained before why I believe the goals of this amendment are not merely adequately served, but better served, by statute. But I want to highlight briefly the other problem with this amendment. Not only is it not perfect; it is not well-drafted. In fact, it is remarkably sloppy.

I have just discussed the two major problems with the text of the amendment. Section 1 creates a complex scheme of new federal constitutional rights without saying with any clarity who is entitled to those rights, then says ''don't worry; someone, somewhere, in a court or in Congress or in the States, will make a law that will identify who gets these rights.'' Section 3 then empowers Congress to enforce those rights on behalf of these yet-to-be-identified people against the States, not because the States are unwilling to recognize those rights, but because Congress has been empowered to enforce other constitutional rights in the past, so ''why not here.''

I do not want to skip section 2. Let me read you a sentence:

> Nothing in this article shall provide grounds to stay or continue any trial, reopen any proceeding or invalidate any ruling, except with respect to conditional release or restitution or to provide rights guaranteed by this article in future proceedings, without staying or continuing a trial.

Let us call that ''the tax lawyer's provision,'' since it is so obscure that I think only someone who has spent half their life plumbing the depths of the tax code could understand it. It would certainly be the first triple negative in the United States Constitution. I think that ''Nothing in this article shall provide grounds to stay or continue any trial'' should be a sentence on its own, since I do not think that this rule ends up being subject to the exception, in light of the exception to the exception, but frankly I am not sure.

I am also puzzled by the exception that appears to allow victims to reopen proceedings or invalidate rulings ''to provide rights guaranteed by this article in future proceedings.'' If the concern is with future proceedings, I see no need for the exception to allow the reopening of present proceedings. But maybe I missed a turn somewhere in the drafters' maze.

Regardless of how it is ultimately interpreted, this intricate web of exceptions is not the stuff of a Constitution. One of the great virtues of our Constitution is that it speaks with a clear voice, articulating principles of justice that ordinary Americans can understand. The proposed amendment fails to meet that standard.

Finally, let me say a few words about section 5, which states that the new constitutional rights for victims shall apply ''in Federal and State proceedings, including military proceedings to the extent that the Congress may provide by law, juvenile justice proceedings, and proceedings in the District of Columbia and any commonwealth, territory, or possession of the United States.'' This section is truly an enigma. No provision of the current Federal Constitution goes into detail about its geographic scope. There is a reason for that.

The purpose of the Bill of Rights, as envisioned by the Framers, was to provide a fundamental uniform platform of rights enjoyed by all people throughout the United States. Of course every provision of the Constitution applies throughout the United States. The fact that the drafters of this amendment felt the need to state that here suggests a fundamental confusion about the nature of the Federal Constitution, which is, by definition, the supreme law of the land. It was, perhaps, that same confusion that led them to provide for the key phrase of this federal constitutional amendment, ''a victim of a crime of violence,'' to be defined by a patchwork of State and Federal statutes.

A degree of uncertainty at the margins on questions of law and fact may be inevitable in legislation. But, despite the fact that it would be one of the longest-ever amendment to the Constitution, the half-baked proposal before the Senate is hopelessly vague on the basics. I do not know from looking at this amendment and listening to its supporters when it applies and who it applies to, or how that will be figured out.

Senator HATCH has made many of the same points about this proposed constitutional amendment. At our last Committee markup in September 1999, however, the distinguished Senator from Utah said that he intended to vote for this amendment, even though he has ''real questions'' about it, ''because of the hard work that has been put into it.'' I cannot go along with that reasoning. I commend the efforts of those who have worked on this amendment, as I commend the efforts of Federal and State legislators across the country who have worked to provide rights for victims of crime.

But ''A'' for effort is not good enough if it means subjecting the American people to a ''C''-grade Constitution.

As a Senator, I believe I have a constitutional duty not to inflict on the American people and our busy courts a new constitutional provision when I and they have no idea what it means in the most obvious type of case to which it theoretically might apply. And I have a constitutional duty as a Senator not to pass the buck to the courts by saying, ''Here's a new constitutional provision that no one understands. Go make something up.''

When Madison, Jefferson and their compatriots wrote the original Constitution, they did not settle for ''don't worry, someone else will figure this out later.'' Nor should we.

I ask unanimous consent to include in the RECORD, a letter to me from the NAACP dated April 10, 2000, opposing the proposed constitutional amendment, and a letter to Senators LOTT and DASCHLE dated April 19, 2000, from over 300 law professors opposing the proposed amendment as unnecessary and dangerous.

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

WASHINGTON BUREAU—NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Washington, DC, April 10, 2000.

Hon. PATRICK J. LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: Since this nation was first founded, Americans of color have been the victims of all types of crimes—both violent and non-violent—in disproportionately high numbers. It is for this reason that the National Association for the Advancement of Colored People (NAACP) has always had a keen interest in seeing that crime victims are treated honorably, fairly and compassionately by the American judicial system, and that in the end they feel that justice has been served.

Yet people of color have also historically been wrongly accused in this nation of crimes varying from the very minor to the most heinous. It is for this reason that the NAACP has also been a strong and steadfast supporter of the Constitution, the Bill of Rights, and the concept of due process in the American judicial system. It is our deeply held belief in the need to protect the innocent and allow every American the right to a fair trial that leads us to oppose S.J. Res. 3, the proposed constitutional amendment to protect the rights of victims of crimes.

While we are very sympathetic to the rights and the needs of crime victims throughout this nation, and while we agree that victims are often not treated as compassionately as they should be by the judicial system, the NAACP does not believe that S.J. Res. 3 is the answer. Rather than expend the time and energy necessary for the enactment of an amendment to the Constitution, the NAACP urges you to work together and with state legislatures to develop comprehensive packages of laws that address the specific and diverse needs of crime victims. The statutory route is preferable as it is easier to update laws and to fit them to the changing yet very specific needs of victims, and laws, as opposed to a broadly worded constitutional amendment which is less likely to have long-lasting negative repercussions on the rights of the accused.

The NAACP appreciates and commends the attempts of the members of the Senate to improve the way in which the American judicial system treats crime victims, and we agree that we can and should do more to see that victims feel safe and have closure after their ordeal. We support efforts to pass laws that help victims of crimes, and we would like to work with you to develop a more narrowly tailored and effective package. Yet we cannot support S.J. Res. 3 for, as well meaning as it is, we have grave concerns that the negative effects this amendment would have on the rights of the accused seeking a fair and impartial trial would outweigh the benefits it bestows upon victims.

Thank you in advance for your attention to the concerns of the NAACP. If you have any questions or comments, I hope that you will feel free to contact me at (202) 638–2269. I look forward to working with you on this serious and important issue.

Sincerely,

HILARY O. SHELTON,
Director.

April 19, 2000.

Hon. TRENT LOTT,
Senate Majority Leader, Russell Senate Office Building, Washington, DC

Hon. TOM DASCHLE,
Senate Minority Leader, Hart Senate Office Building, Washington, DC.

DEAR SENATORS LOTT AND DASCHLE: We are law professors and practitioners who oppose adding a ''Victims' Rights Amendment'' to the Constitution (S.J. Res. 3). Although we commend and share the desire to help crime victims, amending the Constitution to do so is both unnecessary and dangerous. Indeed, ultimately the amendment is likely to be counter-productive in that it could hinder effective prosecution and put an enormous burden on state and federal law enforcement agencies.

The Constitution has been amended only 17 times since ratification of the Bill of Rights in 1791. Amendments should be added to our basic charter of government only when there is a pressing need that cannot be addressed in any other way. No such necessity exists in order to protect the rights of crime victims. Virtually every right contained in the proposed Victims' Rights Amendment can be safeguarded by statute.

Thirty-three states have passed constitutional amendments and every state has either a state constitutional amendment or statute that protects victims' rights. Many of the rights offered by the VRA are already protected by these laws. For example, restitution for crime victims is required in federal court by the Antiterrorism and Effective Death Penalty Act of 1996 and in every state by statute or constitutional amendment. Similarly, the right of victims to attend proceedings can be protected by statute as shown by laws that exist in many states and by the recent federal legislation that mandates that victims be allowed to attend even if they will be testifying during the sentencing phase of the proceedings. Victim impact statements are now a routine part of sentencing proceedings at both the federal and state levels. There is every reason to believe that the legislative process will continue to be responsive to protecting crime victims so that there is simply no need to amend the Constitution to accomplish this.

Not only is the VRA unnecessary, there are grave dangers in amending the Constitution. The framers were aware of the enormous power of the government to deprive a person of life, liberty and property in criminal prosecutions. The constitutional protections accorded criminal defendants are among the most precious and essential liberties provided in the Constitution. The VRA will undermine these basic safeguards. For example, the proposed Amendment would give a crime victim the right ''[t]o a final disposition of the proceedings relating to the crime free from unreasonable delay.'' Any victim of a violent crime has standing under the Amendment to intervene and assert a constitutional right for a faster disposition of the matter. This could be used to deny defendants needed time to gather and present evidence essential to prepare their defense, resulting in innocent people being convicted. It could also be used to force prosecutors to trial before they are ready, leading to guilty people going free.

Section three of the proposed Amendment authorizes Congress to enact legislation to enforce the Amendment. This authority could be used to negate the rights of criminal defendants in an effort to protect crime victims. Courts would then face the enormously difficult task of determining the extent to which legislation to implement the new Amendment can undermine the rights of those accused of crimes.

Moreover, the Amendment is likely to be counter-productive because it could hamper effective prosecutions and cripple law enforcement by placing enormous new burdens on state and federal law enforcement agencies. Prosecutions could be hindered by the creation of an absolute right for crime victims to attend and participate in criminal

proceedings. In many instances, the testimony of a prosecutorial witness will be compromised if the person has heard the testimony of other witnesses. Yet, the proposed Amendment creates a constitutional right for a victim to be present at criminal proceedings even over defense or prosecution objections.

Prosecutorial efforts could also be hampered by the ability of crime victims to ''submit a written statement . . . to determine . . . an acceptance of a negotiated plea or sentence.'' It is unclear how much weight judges will be required to give to a crime victim's objection to a plea bargain. Over 90 percent of all criminal cases do not go to trial but are resolved through negotiation. Even a small increase in the number of cases going to trial would unduly burden prosecutors' offices. There are many reasons why prosecutors enter into plea agreements such as allocating scarce prosecutorial resources, concerns about weaknesses in the evidence, or strategic choices to gain the cooperation of one defendant to enhance the likelihood of convicting others. Prosecutorial discretion would be seriously compromised if crime victims could effectively obstruct plea agreements or require prosecutors to disclose weaknesses in their case in order to persuade a court to accept a plea.

The Amendment would impose tremendous financial costs on state and federal law enforcement agencies. These departments would be constitutionally required to make reasonable efforts to find and notify crime victims every time a case went to trial, every time a criminal case was resolved, and every time a prisoner was released from custody. Additionally, the Amendment can be interpreted as creating a duty for the government to provide attorneys for crime victims. The term ''victim's representative'' in section two might well be seen as creating a right to counsel in order to adequately protect these newly created rights. Criminal defendants do not receive adequate counsel in many cases. Adding the financial burden of providing counsel to victims will likely further limit defendants' access to counsel.

Protecting crime victims by federal and state statutes provides flexibility that is absent in a federal constitutional amendment. Moreover, amending the Constitution in this way changes basic principles that have been followed throughout American history. Principles of federalism always have allowed states to decide the nature of the protection of victims in state courts. The ability of states to decide for themselves is denied by this Amendment. Also, no longer would protecting the rights of a person accused of crime be a preeminent focus of a criminal trial.

Crime victims deserve protection, but that must not be accomplished at the expense of the rights of the accused. As law professors and practitioners we urge the rejection of the proposed Victim's Rights Amendment as unnecessary and dangerous.

Sincerely,

Prof. Richard Abel, University of California, Los Angeles School of Law; Prof. David Abraham, University of Miami School of Law; Prof. Catherine Adcock Admay, Duke University School of Law; Prof. Albert W. Alschuler, University of Chicago Law School; Prof. Scott Altman, University of Southern California Law School; Prof. Anthony G. Amsterdam, New York University School of Law; Prof. Roger Andersen, University of Toledo College of Law; Prof. Ellen April, Loyola Law School, Los Angeles, CA.

Asst. Prof. John A. Barrett, Jr., University of Toledo College of Law; Prof. Elizabeth Bartholet, Harvard University Law School; Prof. Katharine T. Bartlett, Duke University Law School; Prof. Robert Batey, Stetson University College of Law; Prof. Christopher L. Blakesley, Louisiana State University Law Center; Prof. Jack Charles Boger, University of North Carolina School of Law; Prof. Jean Boylan, Loyola Law School, Los Angeles, CA; Prof. Ralph Brill, Chicago-Kent College of Law.

Prof. Peter Arenella, University of California, Los Angeles School of Law; Prof. David Baldus, University of Iowa College of Law; Prof. Fletcher N. Baldwin, Jr., University of Florida College of Law; Prof Susan Bandes, DePaul University College of Law; Prof. Stephen F. Barnett, University of California, Berkeley School of Law; Prof. Donald F. Clifford, University of North Carolina School of Law; Prof. Donna Coker, University of Miami School of Law; Prof. David Cole, Georgetown University Law Center; Prof. John O. Cole, Mercer University Law School; Prof. Doriane L. Coleman, Duke University School of Law; Prof. George Copacino, Georgetown University Law Center; Prof. James D. Cox, Duke University School of Law; Prof. Jerome McCristal Culp, Duke University School of Law.

Prof. Mark Brown, Stetson University College of Law; Prof. John Burkoff, University of Pittsburgh School of Law; Prof. Paul D. Carrington, Duke University School of Law; Prof. George C. Christie, Duke University School of Law; Prof. C. Antoinette Clarke, University of Arkansas at Little Rock School of Law; Prof. Christine Desan, Harvard University Law School; Prof. Norman Dorsen, New York University School of Law; Prof. Donald W. Dowd, Villanova University School of Law; Prof. Joshua Dressler, McGeorge School of Law, University of the Pacific; Prof. Robert F. Drinan, Georgetown University Law Center; Assoc. Prof. James Joseph Duane, Regent University School of Law; Prof. Melvyn R. Durchslag, Case Western Reserve University Law School; Prof. Fernand N. Dutile, Notre Dame Law School.

Prof. Harlon L. Dalton, Yale Law School; Prof. Wes Daniels, University of Miami School of Law; Prof. Richard A. Danner, Duke University School of Law; Prof. George C. Christie, Duke University School of Law; Prof. Derryl D. Dantzler, Mercer University Law School; Prof. James J. Fishman, Pace University School of Law; Prof. Catherine Fisk, Loyola Law School, Los Angeles CA; Prof. Alyson Floumoy, University of Florida College of Law; Prof. Judy Fonda, Loyola Law School, Los Angeles CA; Prof. Eric M. Freedman, Hofstra University School of Law; Prof. Monroe H. Freedman, Hofstra University School of Law; Prof. Richard D. Friedman, University of Michigan Law School; Prof. Edward McGuinn Gaffney, Jr., Valparaiso University School of Law.

Prof. Phoebe Ellsworth, University of Michigan; Prof. Anne S. Emanuel, Georgia State University College of Law; Prof. Deborah Epstein, Georgetown University Law Center; Assoc. Prof. Bryan K. Fair, University of Alabama School of Law; Prof. Roger Findley, Loyola Law School, Los Angeles CA; Prof. Richard K. Greenstein, Temple University School of Law; Prof. Ariela Gross, University of Southern California Law School; Prof. Phoebe A. Haddon, Temple University School of Law; Prof. Eva Hanks, Yeshiva University, Benj. Cardozo, School of Law; Dean Joseph D. Harbaugh, Nova Southeastern University, Shepard Broad Law Center; Prof. David Harris, University of Toledo College of Law; Prof. Lynne Henderson, Stanford Law School; Prof. Susan N. Herman, Brooklyn Law School.

Prof. William S. Geimer, Washington and Lee University School of Law; Prof. Bennett L. Gershman, Pace University School of Law; Prof. Daniel J. Goldberger, Ohio State University College of Law; Prof. Phyllis Goldfarb, Boston College Law School; Prof. Robert D. Goldstein, University of California, Los Angeles School of Law; Prof. Ken Graham, University of California, Los Angeles School of Law; Prof. Samuel Gross, University of Michigan Law School; Prof. Martin Guggenhein, New York University School of Law; Prof. Paul M. Kurtz, University of Georgia School of Law; Prof. David L. Lange, Duke University School of Law; Prof. Richard Lempert, University of Michigan Law School; Prof. David Leonard, Loyola Law School, Los Angeles CA.

Prof. Randy Hertz, New York University School of Law; Lecturer Kenneth E. Houp, Jr., University of Texas School of Law; Prof. Alan Hyde, Rutgers University School of Law; Prof. Stewart Jay, University of Washington School of Law; Prof. Paul R. Joseph, Nova Southeastern University Law Center; Prof. Yale Kamisar, University of Michigan Law School; Prof. Mark Kelman, Stanford Law School; Prof. Bailey Kuklin, Brooklyn Law School; Prof. Brenda Jones Quick, Detroit College of Law at Michigan State; Assoc. Prof. Kathleen Ridofi, Santa Clara University School of Law; Prof. Dean H. Rivkin, University of Tennessee College of Law; Prof. Robert Rosen, University of Miami School of Law.

Prof. Christine A. Littleton, University of California, Los Angeles School of Law; Prof. Holly Maguigan, New York University School of Law; Prof. Mari Matsuda, Georgetown University Law Center; Prof. Christopher May, Loyola Law School, Los Angeles CA; Prof. Carolyn Mc Allaster, Duke University School of Law; Prof. Andrew McClurg, University of Arkansas, Little Rock School of Law; Prof. Joel S. Newman, Wake Forest University School of Law; Prof. James O'Fallon, University of Oregon School of Law; Prof. Robert Popper, University of Missouri-Kansas City School of Law; Assoc. Prof. Grayfred B. Gray, University of Tennessee College of Law; Prof. Clyde Spillenger, University of California, Los Angeles School of Law; Prof. Joan Steinman, Chicago-Kent College of Law.

Prof. Thomas D. Rowe, Jr., Duke University School of Law; Prof. Susan Rutberg, Golden Gate University School of Law; Assoc. Dean Rob Saltzman, University of Southern California Law School; Prof. Michael Meltsner Northeastern University School of Law; Prof. Wallace J. Mlyniec, Georgetown University Law Center; Prof. Andre Moenssens, University of Missouri-Kansas City School of Law; Prof. Emeritus Melvin G. Shimm, Duke University School of Law; Prof. Kenneth W. Simons, Boston University School of Law; Prof. J. Clay Smith, Jr., Howard University School of Law; Prof. Girardeau A. Spann, Georgetown

University Law Center; Prof. H. Richard Uviller, Columbia University School of Law; Prof. William W. Van Alstyne, University of California, Los Angeles School of Law.

Prof. Margaret Stewart, Chicago-Kent College of Law; Prof. Allen Sultan, University of Dayton School of Law; Prof. Nkechi Taifa, Howard University School of Law; Prof. J. Alexander Tanford, Indiana University School of Law Bloomington; Prof. Andrew E. Taslitz, Howard University School of Law; Prof. David C. Thomas, Chicago-Kent College of Law; Prof. Jack L. Sammons, Mercer University Law School; Prof. Jane Schacter, University of Wisconsin Law School; Prof. Stephen Schnably, University of Miami School of Law; Prof. Peter Tillers, Yeshiva University, Benj. N. Cardozo School of Law; Prof. Laura Underkuffler, Duke University School of Law; Prof. Charles Ogletree, Harvard Law School.

Prof. Michael Vitiello, McGeorge School of Law, University of the Pacific; Prof. Welsch S. White, University of Pittsburgh School of Law; Prof. Donald E. Wilkes, Jr., University of Georgia School of Law; Prof. Gary Williams, Loyola Law School, Los Angeles CA; Prof. Bernard Wolfman, Harvard University Law School; Prof. Larry W. Yackle, Boston University School of Law; Prof. George C. Thomas III, Rutgers, S.I. Newhouse Center for Law and Justice; Prof. Larry Alexander, University of San Diego; Assoc. Dean Fred G. Slabach, Whittier Law School; Prof. William Wesley Patton, Whittier Law School; Assoc. Prof. Rachel Vorspan, Fordham University School of Law; Prof. Alyson Cole, University of Michigan.

Prof. Angela Jordan Davis, Washington College of Law America University; John Payton, Wilma, Cutler & Pickering Washington, DC; Assoc. Prof. Paulette J. Williams, University of Tennessee College of Law; Prof. Susan Looper-Friedman Capital University Law School; Asst. Prof. Mellissa Cole, St. Louis University School of Law; Prof. Beatrice Moulton, University of California Hastings College of the Law; Prof. Victor Romero, Pennsylvania State University, Dickinson School of Law; Prof. Peter Edelman, Georgetown University Law Center; Prof. Richard B. Bilder, University of Wisconsin Law School; Prof. Robert P. Schuwert, University of Houston Law Center; Prof. Ellen Suni, University of Missouri-Kansas City School of Law; Prof. Nancy Levit, University of Missouri School of Law.

Prof. James G. Wilson, Cleveland State University Law School; Lecturing Fellow Brenda Berlin, Duke University Law School; Prof. Gilbert Paul Carrasco, University of Oregon Knight Law Center; Prof. Douglas J. Whaley, Ohio State University College of Law; Dean McClindon, Howard University; Dean Michael Newsom, Howard University; Prof. Morell E. Mullins, University of Arkansas-Little Rock Law School; Prof. Joseph F. Smith, Jr., Nova Southeastern University Law Center; Prof. Dan Simon, University of Southern California Law School; Assoc. Prof. Gary L. Anderson, University of Tennessee College of Law; Prof. Derrick Bell, New York University Law School; Prof. Leroy D. Clark, Catholic University Law School.

Prof. Sarah Welling, University of Kentucky College of Law, Prof. Sally Frank, Drake University Law School; Prof. Kevin W. Saunders, University of Oklahoma; Prof. Elizabeth Samuels University of Baltimore School of Law; Prof. Anne Schroth, University of Michigan Law School; Prof. David M. Skover, Seattle University of Law School; Prof. Paul H. Brietzke, Valparaiso University School of Law; Prof. Christopher D. Stone, University of Southern California Law School; Prof. Theodore J. St. Antoine, University of Michigan Law School; Prof. Paul Finkelman, University of Tulsa College of Law; Prof. Robert A. Sedler, Wayne State University, Detroit Michigan; Prof. Joseph Dodge, University of Texas Law School; Prof. David E. Vandercoy, Valparaiso University School of Law.

Prof. Glenn Harlan Reynolds, University of Tennessee College of Law; Prof. Peter Linzer, University of Houston Law Center; Prof. Robert A. Burt, Yale Law School; Prof. Jerome H. Skolnick, New York University Law School; Prof. Jordan Paust, University of Houston Law Center; Prof. Speedy Rice, Gonzaga University School of Law; Prof. Larry Yackle, Boston University; Prof. Stanley Fisher, Boston University; Prof. Thomas Baker, Drake University Law School; Prof. Lee Pizzimenti, University of Toledo College of Law; Prof. Howard M. Friedman, University of Toledo College of Law; Prof. Daniel J. Steinbock, University of Toledo College of Law; Prof. Alexander M. Capron, University of Southern California Law Center.

Prof. Gary S. Gilden, Pennsylvania State University; Prof. Gary Blasi, University of California, Los Angeles Law School; Prof. Stephen C. Yeazell, University of California, Los Angeles Law School; Prof. Kenneth Brown, University of North Carolina Law School; Prof. John Copacino, Georgetown University Law Center; Prof. James Klein, University of Toledo College of Law; Prof. Jane R. Wettach, Duke University Law School; Prof. Naomi Mezey, Georgetown University Law Center; Brian Wolfman, Public Citizen Litigation Group, Washington, DC; Prof. Kimberley Hall Barlow, University of California at Los Angeles Law School; Prof. Diane Dimond, Duke University Law School.

Prof. Eugene Volokh, University of California, Los Angeles Law School; Prof. James G. Pope, Rutgers State University S.I., Newhouse Center for Law and Justice; Prof. Mary Ellen Gale, Whittier Law School; Prof. Susan H. Herman, Brooklyn Law School; Prof. Nadine Strossen, New York Law School; Prof. Richard Klein, Touro College Jacob D. Fuchsburg Law Center; Prof. Lori Andrews, Chigago-Kent College of Law; Prof. Craig Bradley, Indiana University-Bloomington School Law; Prof. Christine Goodman, University of California, Los Angeles School of Law; Prof. Peter Lushing, Yeshiva University, Benj. N. Cardozo School of Law; Prof. John Scanlan; Indiana University-Bloomington, School of Law.

Prof. David L. Chambers, University of Michigan Law School; Prof. Stewart J. Schwab, Cornell University Law School; Prof. Bridget McCormack, University of Michigan Law School; Prof. Natsu Taylor Saito, Georgia State University Law School; Prof. Patricia Bryan, University of North Carolina Law School; Prof. Harlon L. Dalton, Yale Law School; Prof. Diane Geraghty, Loyola University-Chicago; Prof. Susan Herman, Brooklyn Law School; Prof. Marina Hsieh, University of Maryland; Prof. Martha Moran, University of Alabama; Prof. Susan Poser, University of Nebraska; Prof. David Rudovsky, University of Pennsylvania; Prof. Stanley Fisher, Boston University; Prof. Sarah Burns, New York University School of law.

Prof. Roger Goldman, Saint Louis University; Prof. Frank Askin, Rutgers School of Law-Newark; Prof. Vivian Berger, Columbia Law School; Prof. Louis D. Bilionis, University of North Carolina School of Law; Prof. Ronald Chen, Rutgers School of Law-Newark; Prof. Margaret Russell, Santa Clara University; Prof. Phillipa Strum, Wayne State University Law School,; Prof. Leland Ware, Saint Louis University; Prof. Gary Williams, Loyola University-Los Angeles; Prof. Emeritus Eugene Feingold, University of Michigan; Prof. Frances Ansley, University of Tennessee College of Law; Prof. Gerald E. Uelmen, Santa Clara University; Prof. Elizabeth M. Schneider, Brooklyn Law School; Prof. David R. Dow, University of Houston Law Center.

Prof. Michael Kent Curtis, Wake Forest University School of Law; Assoc. Prof. Morris Bernstein, University of Tulsa College of Law; Prof. John M. Levy, William and Mary Law School; Prof. Denise Morgan, New York University Law School; Assoc. Prof. Stephen C. Thaman, Saint Louis University; Prof. Lefty Becker, University of Connecticut School of Law; Prof. Ira C. Lupu, George Washington University Law School; Assoc. Dean Ralph G. Steinhardt, George Washington University Law School; Prof. Judith T. Younger, University of Minnesota; Prof. Ruti Teitel, New York Law School; Assoc. Prof. Sibyl Marshall, University of Tennessee Law School; Prof. Janet Cooper Alexander, Stanford Law School; Prof. Arnold H. Loewy, University of North Carolina School of Law; Mr. Norman Dorsen, New York University Law School.

Prof. Joel M. Gora, Brooklyn Law School; Prof. David Weissbrodt, University of Minnesota; Prof. David Kairys, Temple University School of Law; Prof. Don Doernburg, Pace University School of Law; Prof. Lois Cox, University of Iowa College of Law; Prof. Emeritus Samuel Mermin, University of Wisconsin; Prof. Steven G. Gey, Florida State University College of Law; Prof. Aviam Soifer, Boston College Law School; Prof. Arthur S. Leonard, New York Law School; Prof. Emeritus Ted Finman, University of Wisconsin-Madison; Prof. Lawrence M. Grosberg, New York Law School; Prof. Eric Janus, William Mitchell College of Law; Assoc. Prof. Michael J. Gilbert, University of Texas-San Antonio; Prof. Jordan J. Paust, University of Houston Law Center.

Prof. Carlin Meyer, New York Law School; Prof. Lawrence O. Gostin, Georgetown University; Prof. Mark Strasser, Capital University Law School; Prof. Bruce J. Winick, University of Miami School of Law; Prof. Brian Bix, Quinnipiac Law School; Prof. Ronald D. Rotunda, University of Illinois College of Law; Assoc. Prof. Kathleen Wait, University of Tulsa College of Law; Prof. Donald N. Bersoff, Villanova Law School; Prof.

Emeritus Donald P. Rothschild, George Washington University Law School; Mr. Paul Lawrence, Preston Gates & Ellis, Seattle, WA; Ms. Wendy C. Nakamura, San Diego, CA; Luz Buitrago, Berkeley, CA; Ms. Marjorie Esman, Adjunct, Tulane Law School.

Prof. Kenneth Lasson, University of Baltimore; Prof. Jayne W. Barnard, William and Mary Law School; Prof. Colin S. Diver, University of Pennsylvania; Asst. Prof. Judge Steve Russell, University of Texas-San Antonio; Prof. A. Michael Froomkin, University of Miami School of Law; Ms. Alice Bendheim, Phoenix, AZ; Mr. Roland O'Hare, Detroit, MI; Mr. William Hinkle, Hinkle & Smith, P.C., Tulsa, OK; Mr. John Burnett, Little Rock, AR; Ms. Sandra Michaels, Atlanta, GA; Mr. Jeremiah Gutman, New York, NY; Mr. Paul Grant, Juneau, AK; Prof. David Rudovsky, University of Pennsylvania Law School.

Ms. Gwen Thomas, Aurora, CO; Ms. Allison Steiner, Hattiesburg, MS; Ms. Candace M. Carroll, Sullivan, Hill, Lewin, Rez & Engel, San Diego, CA; Prof. Donald N. Bersoff, Villanova Law School; Ms. Jeanne Baker, Miami, FL; Ms. Denise LeBoeuf, Adjunct Prof, Loyola Law School, New Orleans; Prof. Rodney Uphoff, University of Oklahoma Law Center; Prof. Paul Bergman, University of California, Los Angeles School of Law.

The PRESIDING OFFICER (Mr. L. CHAFEE). The Senator from West Virginia.

Mr. BYRD. Mr. President, I have been asked by the two distinguished principal proponents, as I understand it, to allow the motion to proceed to be withdrawn by unanimous consent, after which I and others who are opposed to the constitutional amendment could proceed to make our speeches.

I am opposed to that procedure. I think that if we are going to call up constitutional amendments around here—and certainly Senators have a right to offer constitutional amendments—but if they are going to be called up, I think we ought to take the full time and discuss them, the full time allowed to us under the rules and discuss those amendments—pro and con—and not allow them to be withdrawn and then, afterwards make our speeches.

That does not make sense to this Senator. They have a perfect right—the proponents—to seek consent to have the amendments withdrawn. But I say, let's have a full discussion of them and then give consent to their being withdrawn.

I honor those proponents who have worked hard, especially the two principal ones, Mr. KYL of Arizona and Mrs. FEINSTEIN of California. They are very dedicated, very worthy, very formidable protagonists. I respect them and respect their viewpoints. They have as much right to disagree with me as I have with them. They certainly have the right to their viewpoints. I do not quarrel with that right at all.

Let me also say to the victims of crime, wherever they may be, if they be watching, listening or reading the congressional record of these statements, I certainly am not against victims' rights. I am sure I speak for all of those in this body who oppose this constitutional amendment. We are not against victims' rights. I am for victims' legitimate rights. As one who has been about as firm as any other Senator could be when it comes to dealing with criminals, as one who believes in capital punishment, as one who believes in the death penalty, as one who has seen a public execution, as one who believes in making the criminals pay, I certainly do not take a back seat to anyone when it comes to supporting legitimate victims' rights. I am for that. But I am not for this amendment to the Constitution of the United States.

I think victims' rights can be secured, are being secured, and will continue to have my support, when statutes are devised to protect those rights. But when it comes to amending the Federal Constitution, that is something else. That is entirely another matter. We don't need to amend the Federal Constitution to secure victims rights.

I saw them tearing a building down,
A group of men in a busy town;
With a ''Ho, heave, ho'' and a lusty yell,
They swung a beam and the sidewall fell.

I said to the foreman, ''Are these men skilled
The type you'd hire if you had to build?''
He laughed, and then he said, ''No, indeed,
Just common labor is all I need;
I can easily wreck in a day or two,
That which takes builders years to do.''

I said to myself as I walked away,
''Which of these roles am I trying to play?
Am I a builder who works with care,
Building my life by the rule and square?
Am I shaping my deeds by a well-laid plan,
Patiently building the best I can?
Or am I a wrecker who walks the town,
Content with the labor of tearing down?''

That is the picture we have before us. We are talking about the higher law of our land, the Constitution of the United States of America. It was centuries in the making, but it can be trivialized in a day.

We are talking about the Federal Constitution, the Constitution of the United States of America, the Constitution that was signed by 39 delegates on September 17, 1787.

Listen to them: New Hampshire, Nicholas Gilman and John Langdon; Massachusetts, Nathaniel Gorham and Rufus King; Connecticut, Roger Sherman and William Samuel Johnson; New York, Alexander Hamilton; New Jersey, William Paterson, David Brearley, William Livingston, Jonathan Dayton; Pennsylvania, Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Jared Ingersoll, Thomas FitzSimons, Gouverneur Morris—the tall man with the peg leg—and James Wilson; Delaware, George Read, John Dickinson, Jacob Broom, Richard Bassett; Maryland, Daniel of St. Thomas Jenifer, Daniel Carroll, James McHenry; Virginia, George Washington, John Blair, James Madison; North Carolina, William Blount, Richard Dobbs Spaight, Hugh Williamson; South Carolina, Charles Pinckney, Charles Cotesworth Pinckney, John Rutledge, Pierce Butler; Georgia, William Few and Abraham Baldwin.

What would they think? What would they think of this amendment? Not what professor so-and-so of such-and-such university may think, but what would those framers of the Constitution say if they were here?

Most Americans can recall seeing the statue of ''Blind Justice'' holding aloft a balance scale in a courthouse or as a logo for a favorite TV crime show. It is an impressive and powerful representation with roots in Greek and Roman mythology.

The scale symbolizes the impartial weighing of evidence, while the blindfolded figure, the goddess Themis, symbolizes equal justice under the law for the accused.

But in a larger sense, the scale symbolizes something even more significant. It symbolizes competing interests—universal tensions, if you will—such as innocence versus guilt, truth versus falsehood, personal privacy versus the public welfare, the power of the State versus the rights of the individual. When those scales are put into equilibrium, they are said to be in balance, the right side weighed to be exactly at level with the left.

When it comes to human affairs, balance is a very difficult state to achieve. But once achieved, the sweet harmony of balance—one tension offset by just the right measure of the competing tension—allows for the calmest, most rational functioning of man's institutions of order.

Nowhere is the example of beautiful and near-perfect balance, despite competing and conflicting ambitions, goals, and passions more profoundly demonstrated than in that venerable charter, the U.S. Constitution, which I hold here in my right hand.

Our Constitution embodies the accommodation of such difficult-to-rectify aspirations as the National Government's need for supremacy and the individual State's need for autonomy. Our Constitution satisfies the States' desire to maintain order without trampling on the individual's right to enjoy liberty. Liberty. That is the key word. Liberty. Our Constitution bestows power on the institutions and offices of Government in such a way as to allow them to adequately carry out their duties and yet be curbed and checked by the duties and responsibilities of other officials and institutions. Such is the brilliance and the genius of our national charter that it has been amended only 27 times in our more than 200-year history. Ten of those 27 amendments, of course, comprise the Bill of Rights, leaving only 17 amendments in these 212 years. Seventeen amendments.

One of those—the prohibition amendment of 1919—was repealed, wiped out—that was the 18th amendment; it was wiped out by the 21st amendment. So take one away—the 18th amendment—and that leaves only 16 amendments.

One might say: How about the 21st amendment, which wiped it out? Don't subtract that one because there is a portion of that amendment that is still in the Constitution, and it will remain there until such time as it may be repealed. But you might say there are 16 amendments. Over 11,000 amendments to the Constitution have been introduced in both Houses.

The men who created this amazing—and it is amazing. One may read Shakespeare and one may read the Bible time and time and time again, and each time one reads that Holy Writ, he or she will find something new—every time. But think of this truly amazing, durable Constitution. It is a durable crucible for liberty. The men who created this durable, amazing, wonderful crucible for liberty were students of history and students of various methods of governing going back, back, back, back, back into the misty centuries of antiquity, long before 1787. They were students of the philosophies of the various methods of government. These men who wrote the Constitution came fresh from the mistakes of the experience of the Articles of Confederation, the first Constitution of the United States. They lived under the Articles of Confederation; they knew what the flaws of the Articles were. They knew where they fell short. They knew where those provisions were lacking. The memory of the Revolutionary War and the bloodshed in that struggle for freedom were at the forefront of their minds. They—the framers—God bless their names—bequeathed to me, to us, something very profound—something strong, yet something also quite delicate. Over the years, I have come to believe that we should tinker with their magnificent work only very, very rarely.

Each Member of this body takes an oath when he or she becomes a U.S. Senator, and there have only been 1852 men and women who have taken that oath to be Members of this great body. Think—just think—for a moment about that oath. Think about the words: ''Support and defend the Constitution of the United States against all enemies, foreign and domestic.'' Then think, if you will, about the extreme difficulty of the procedure laid out in that same Constitution for changing that Constitution in any way. I do believe that the framers were quite wary of injudicious disruptions to, and even the meddling, piddling, tinkering, and tampering with the careful balance that they had so laboriously achieved. As in most things, they were only too right.

In the 106th Congress, as of April 17 of this year, there had been 63 constitutional amendments proposed—63 constitutional amounts proposed. The Senate has only been in session 43 or 45 days this year. In the 105th Congress, there were 107 constitutional amendments proposed. I think that it is clear the framers' fears were quite well founded. These amendments are proliferating at an unalarming level.

That is why I have taken the floor on yesterday, that is why I have taken it today, and that is why I shall take it, the Lord willing, time and time again in the days to come.

These amendments are proliferating at an alarming level. It seems that we are almost intent on disrupting what has served us and continues to serve us so well—the elegant wisdom and the very careful balance inherent in the Constitution. For the second time within 30 days, the U.S. Senate—that remarkable body which Gladstone, who had been Prime Minister of Britain four times, remarked about—''that remarkable body,'' the U.S. Senate, ''the most remarkable of all of the inventions of modern politics,'' the U.S. Senate is being called upon to adopt an amendment to the U.S. Constitution.

It would be laughable if it weren't so serious.

Who are we to conjure up all of these myriad amendments to that great document?

So I say the Senate perhaps had better adopt a resolution designating April as ''Amend the Constitution Month.''

Let's have at it. Let's have a resolution calling April, the fourth month of this year of our Lord, the year 2000, the last year in the 20th century, the last year in the second millennium.

Fie on the media, and fie on politicians who try to hand the American people all of this flimflam about this year's being the first year of the 21st century—this year's being the first year of a new century. Take the old math, take the new math, whatever math you want to take. It all comes out the same.

There are 100 years in every century, and 1,000 years in every millennium. We are today in the last year of the 20th century.

I was invited down to the White House a few days before the beginning of the new year. I don't go down very often. I don't get invited down as much as I used to, but it doesn't bother me. I went down when I was majority leader, when I was minority leader, and when I was majority leader again, and when I was President pro tempore of the Senate—all too much. I got tired of going down there.

I must say they were very kind to invite me down to what I think they called the New Millennium party.

I said to my fine staff person, you tell that nice lady that the new millennium hasn't begun yet, and it won't begin until the year 2001, January.

Now we have the latest constitutional amendment—something called the crime victims' rights constitutional amendment, with the Senate poised to consider it following, you guessed it, ''National Crime Victims' Rights Week,'' a week during which the Senate was in recess.

Does this suggest something to us? To me, it suggests a less than serious, dare I say somewhat frivolous, view of the gravity and far-reaching nature of constitutional amendments in general, and of this constitutional amendment in particular.

To those victims out there who are watching over that electronic eye, let me assure you again that I am for your legitimate rights. But I am not for adding an amendment to the Constitution. It isn't necessary.

The amendment which is being proposed is intended to restore and preserve—although I understand there were some negotiations going on with respect to this amendment as to how it might be changed and altered from what it is in the printed amendment upon the desks of Senators, negotiations going on with the White House, I understand. Why the White House? What do they have to do with it? The President of the United States doesn't sign a joint resolution that carries a constitutional amendment. That is a joint resolution that doesn't go to the President's desk. He can't veto it. He can't sign it. Why negotiate with him?

The amendment which is being proposed is intended to restore and preserve, ''as a matter of right for the victims of violent crimes, the practice of victim participation in the administration of criminal justice that was the birthright of every American at the founding of our Nation.''

This is a very impressive goal for the amendment, and, if the matter only stopped there, undoubtedly it would enjoy the sympathy and the support of every Member of this body because who is there who would be opposed to the legitimate rights of victims of violent crime? The title and the substance of the measure are certainly worthy of consideration.

The Committee on the Judiciary recommended that victims' rights under nine general headings be protected in the amendment to the Federal Constitution. These nine rights are set forth as follows: (1) a right of victims to receive notice of criminal justice proceedings; (2) a right of victims to attend criminal justice proceedings related to crimes perpetrated against them; (3) a right of victims to be heard at five points in the criminal justice process, namely, plea bargains, bail or release hearings, sentencing, parole hearings, and pardon or commutation decisions; (4) a right of victims to notice of, and an opportunity to submit a statement concerning, a proposed pardon or commutation of sentence; (5) a right of victims to notice of release or escape of the accused; (6) a right to consideration of the victims' interest in a trial free from unreasonable delay; (7) a right of victims to an order of restitution; (8) a right of victims to have their own safety considered whenever an accused or convicted offender is released from custody.

These sound like good things, good amendments. They are good.

No. 9, notice to the victims of these rights inasmuch as such rights are of little use if the victims remain unaware of them.

What is wrong with that? Nothing is wrong with that. We can all be for that.

These participatory rights of victims are laudable and are worthy of consideration, certainly in the instance of legislation, but not when it comes to amending the Federal Constitution.

Such rights can already be assured—here is the problem—such rights, as those we are talking about, can already be assured to victims by Federal or State legislation.

The majority states in the committee report that the first Federal constitutional amendment to protect the rights of crime victims was introduced with hearings thereon in 1996 and that additional hearings were conducted in 1997, 1998, and 1999. The report also indicates that over these years, many changes were made to the original draft, several of which responded to concerns expressed in the hearings.

The fact that so many changes were made over the years indicates to me that the subject matter could be better dealt with by legislation than by a Federal constitutional amendment. If it needs changing, if it needs modifying, if it needs altering, it can be done by legislation. And if we find that something is wrong and it isn't working right, we can change that law again the next session. We can even change it during this session. Congress can change, can alter, can modify, can amend the law almost overnight, if necessary, but not a constitutional amendment. That would take years to do. Statutes can be modified and refined by subsequent legislation during a single session of the legislative branch. But once a constitutional amendment is set into place, the only way to refine or amend that constitutional amendment is to further amend the Constitution of the United States, a procedure which necessarily requires years to do. The Prohibition amendment was on the books from January 1919 to December 1933. It took years.

What are we talking about? This Constitution may not be perfect, but this amendment wasn't perfect. It was changed, and then it was changed, and then it was changed again, and now it is being pulled back because there need to be further changes. What does that tell us? What if it had been welded into the Constitution of the United States and then they would have found, lo and behold, this ought to be changed, this isn't right, this is wrong, we need to change it. That is a long process.

I was interested, as I scanned the committee report, to note that the two legal experts who testified in support of the amendment in the first hearing in 1996 testified again and again and again in the subsequent three hearings. Professor Paul Cassell—I have never had the pleasure of meeting that gentleman—Professor Paul Cassell of the University of Utah College of Law and Steve Twist, former chief assistant attorney general of Arizona, were the chief legal experts. They may have been the best in the Nation; I don't know. Professor Cassell appears at all four hearings in support of the amendment. It seemed to me there was a paucity of expert academic witnesses who appeared in furtherance of the amendment.

This duo—and I say it with great respect for them; they may be the best two in America—the same duo were heard over and over again. Wouldn't it have been well to have a few more? Wouldn't it have been well to add to the list of experts?

It should not go unnoticed that the committee report states that the U.S. Judicial Conference favors a statutory approach because it ''would have the virtue of making any provisions in the bill which appeared mistaken by hindsight''—that is 20/20, you know—''to be amended by a simple act of Congress.''

The report also says that the State courts favor a statutory approach to the protection of victims' rights, citing the fact that the Conference of Chief Justices—we only have one Chief Justice of the United States, but there are many chief justices of the 50 States—citing the fact that the Conference of Chief Justices has underscored ''the inherent prudence of a statutory approach'' which could be refined as appropriate.

Other major organizations, including several victims' groups, opposed the amendment, as is stated in the Committee report. For example, the National Clearinghouse for the Defense of Battered Women takes the position that statutory alternatives are ''more suitable'' than an amendment to the Federal Constitution. Victim Services, the nation's largest victim assistance agency, also opposes S.J. Res. 3, arguing that the proposed amendment ''may be well intentioned, but good intentions do not guarantee just results''. The National Network to End Domestic Violence, as well as the National Organization for Women Legal Defense and Education Fund, and Murder Victim's Families for Reconciliation, a national organization of family members of murder victims, are united in opposing the joint resolution. Moreover, prosecutors and other law enforcement authorities all across the country ''have cautioned that creating special Constitutional rights for crime victims would have the perverse effect of impeding the effective prosecution of crime.''

It seems to me that one of the foremost rights of a victim of crime would be to see the perpetrator of that crime brought to justice, tried, convicted, and punished. That is the first and foremost right of the victim.

The National District Attorneys Association has cautioned that the proposed amendment would ''afford victims the ability to place unknowing, and unacceptable, restrictions on prosecutors while strategic and tactical decisions are being made about how to proceed with the case.''

Prosecutorial discretion over plea bargaining ''is particularly at risk'' if S.J. Res. 3 were to be adopted. While I personally believe, and have long believed, that there is entirely too much plea bargaining—I believed that for a long time—the committee points out that a prosecutor may need to obtain the cooperation of a defendant who can bring down an entire organized crime ring, or may need to protect the identity of an informant-witness, or may think that the evidence against the defendant will not convince a jury beyond a reasonable doubt, in which case the accused killer, or whatever he might be, would go scot-free. Will the victim's rights have been upheld? Will the victim's rights have been secured if the killer goes free? If the robber goes free? If the burglar goes free?

In any event, I support the main objectives in the measure for the protection of victims' rights, but such protection can be afforded by legislation at the Federal and State levels, and there is absolutely no need for a Federal constitutional amendment to meet the needs set forth in the resolution.

The chief justices of the States have expressed grave concerns that the proposed constitutional amendment would lead to ''extensive lower federal court surveillance of the day to day operations of state law enforcement operations.''

Now, get that. How many times have we heard it said, ''Get the Government off our backs! Get the Government off our backs!'' Wasn't that one of the complaints in the great, so-called—what was it called?—contract, the great contract they talked about some few years ago, the Contract With America. Why, of course, that was one of the great things they talked about—Get the Government off our backs; Contract With America. Whoopee. Well, I will tell you, I have my Contract With America right here in my pocket. I know this Senator here, from Vermont, he had two men from Vermont who signed this Constitution, John Langdon and Nicholas Gilman. He has his Contract With America in his pocket—I have. It is called the Constitution of the United States.

Here we have grave concerns expressed by the chief justices of the States, grave concerns that the proposed constitutional amendment would lead to ''extensive lower federal court surveillance of the day to day operations of state law enforcement operations.'' Get the Government off our back, they say on one hand. Then they say, Oh, let's adopt this constitutional amendment.

The minority view on the Senate Judiciary Committee shares these concerns, but states that the laudable goal of making State and law enforcement personnel more responsive to victims should not be achieved by establishing Federal court oversight of the criminal justice and correctional systems of the 50 States. They do not want the Government on their backs, so they do not

support this proposed constitutional amendment.

The minority on the committee states that there is no pressing reason to displace State laws in an area of traditional State concern, and that there is no compelling evidence pointing to the need for another unfunded mandate.

They passed a bill here a few years back dealing with unfunded mandates. That was one of the first great so-called great plaints in the Contract—what was it? The Contract With America?

Mr. LEAHY. Mr. President, if the Senator will yield, I called it the Contract On America. They called it the Contract With America. I think it was a Contract On America.

Mr. BYRD. The Contract On America. All right. Call it a Contract On America.

The minority also states that there is no need for more Federal court supervision and micromanagement of State and local affairs, when every State is already working hard to address the issues in ways that are best suited to its own citizens and its own criminal justice system.

There have been some 63 drafts of the proposed amendment, and it remains both excessively detailed and decidedly vague. The level of detail provided in this amendment is inconsistent with the structure and the style of our country's great governing document, and, indeed, the resolution reads like a statute, which suggests that that is, in fact, how the problem of protecting the rights of crime victims should be addressed.

The majority report cites examples of overwhelming popular support and demonstrates that change toward better implementation of victims' rights is occurring now, already, in the States. The majority admits that ''there is a trend''—the majority in this subcommittee report issued by the Judiciary Committee of the U.S. Senate—admits that ''there is a trend toward greater public involvement in the process, with the federal system and a number of states now providing notice to victims.'' Hence, it is my belief that we, here at the Federal legislative level, should avoid the adoption of a Federal constitutional amendment and that we should allow the States to continue to come up with innovations of their own without undue Federal intervention in a matter which, basically, is in the purview of the States.

Our illustrious friends who are the chief cosponsors of the amendment, very honorable Members of this body, one from the Democratic side and one from the Republican side, have told us that they will be back. ''We'll be back,'' they say.

In the meantime, I hope we can educate ourselves a little better with respect to the constitutional principles that we are here to defend and to protect. I hope that during this interim, while they are preparing to come back, that we will be educating ourselves a bit further and helping to educate others as to the history of American constitutionalism so that Senators, in the future, may be a little better prepared to take on this new amendment when it is brought back before the Senate, as we are assured that it will be.

I have heard, during this debate, that you can include these victims' rights in statutes, but they won't be enforced. Some of them are already in statutes, but they are not being enforced. That is what we heard the proponents say. They are not being enforced. They won't be enforced. They are in the laws of various States, but they are not being enforced so what we need is a constitutional amendment. How about that? How can be assured that a constitutional amendment will be enforced?

Let's return to the Book our fathers read:

19 There was a certain rich man, which was clothed in purple and fine linen, and fared sumptuously every day:

20 And there was a certain beggar named Lazarus, which was laid at his gate, full of sores.

21 And desiring to be fed with the crumbs which fell from the rich man's table: moreover the dogs came and licked his sores.

22 And it came to pass, that the beggar died, and was carried by the angels into Abraham's bosom: the rich man also died, and was buried;

23 And in hell he lift up his eyes, being in torments, and seeth Abraham afar off, and Lazarus in his bosom.

24 And he cried and said, Father Abraham, have mercy on me, and send Lazarus, that he may dip the tip of his finger in water, and cool my tongue; for I am tormented in this flame.

25 But Abraham said, Son, remember that thou in thy lifetime receivedst thy good things, and likewise Lazarus evil things: but now he is comforted, and thou art tormented.

26 And beside all this, between us and you there is a great gulf fixed: so that they which would pass from hence to you cannot; neither can they pass to us, that would come from thence.

27 Then he said, I pray thee therefore, father, that thou wouldest send him to my father's house:

28 For I have five brethren; that he may testify unto them, lest they also come into this place of torment.

29 Abraham saith unto him, They have Moses and the prophets; let them hear them.

30 And he said, Nay, father Abraham: but if one went unto them from the dead, they will repent.

31 And he said unto him, If they hear not Moses and the prophets, neither will they be persuaded, though one rose from the dead.

That is the lesson. If the people in the States will not be persuaded by the statutes of the States that are already on the books, if they cannot be enforced, then will they listen to Moses and the prophets even if they rose from the dead? Will they hear even if it is a Federal constitutional amendment?

Why should we think they will hear better, that they will see better, that they will honor more, that they will abide more by words that are written into the Federal Constitution than they will those words that are already written in the statute books of the States and the Federal statutes as well? If they will not hear them, they will not hear Moses and the prophets, even though they were brought from the dead.

If they will not abide by the statutes, if they will not enforce them, what is there to ensure us that they would enforce the strictures of a new constitutional amendment? And if they did not, what would we be doing to the Federal Constitution? We would trivialize it; we would minimize it; we would lower it in the estimation of the people.

When it comes to amending the highest law in our constitutional system, it behooves us to step back and behold the forest, not just the trees.

Once before in our history we amended the Constitution without carefully thinking through the consequences. That was when the 18th amendment, dealing with prohibition, was ratified on January 16, 1919.

I can remember as a boy seeing those revenue officers come around to the coal company houses. I can see them climbing the hills of the coal mining community going to various houses, going into the woods, looking for the moonshine stills. Those were the revenuers, as they used to say—the revenuers. That was under prohibition. That amendment opened a Pandora's box, or as Senator JEFF BINGAMAN says, a box of Pandoras. That amendment opened a Pandora's box of unintended and unforeseen consequences, and it was not until almost 15 years later that the 21st amendment repealing the 18th amendment was ratified on December 5, 1933. It took a long time to get the genie back into the bottle, and we should have learned a lesson from that experience.

As a principle of simple prudence, we should be ever cautious about amending the organic law of our Nation. Justice Cardozo was explicit in his warning, uttered in the case of Browne v. City of New York, and we should heed that warning. Here it is:

The integrity of the basic law is to be preserved against hasty or ill-considered changes, the fruit of ignorance or passion.

Mr. President, the Constitution itself in article V, the article that provides for amendments to the Constitution, carries such an implication. Here is what it says—listen carefully—as an implication against hasty or ill-considered changes:

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, . . .

There is the warning, ''whenever two-thirds of both Houses shall deem it necessary.'' The word ''necessary'' is not just a throwaway word that was just inserted to fill up space in article V of the U.S. Constitution. We can be sure that the constitutional framers chose the word carefully, as they did all other words in that unique document.

It was the word chosen by Governor Edmund Randolph when he presented the Virginia Plan to the Constitution

on May 29, 1787. That is my wedding anniversary date. My wife and I were married on May 29. It will be 63 years ago on May 29. I will never forget it. And that is the date in 1787 that Edmund Randolph rose at that Constitutional Convention and laid down his plan containing 15 resolves, 15 resolutions. The 13th of the 15 resolutions, according to Madison's notes, read as follows:

Resolved that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary, . . .

William Paterson of New Jersey laid the New Jersey Plan before the Convention on June 15, and with respect to amending the Constitution, he used the words that the Congress be authorized ''to alter & amend in such manner as they shall think proper''—''in such manner as they shall think proper.''

When one compares the pertinent language in the two plans, it is readily apparent that Randolph's language in the Virginia plan was the stronger and more exacting upon those who would undertake to amend the Constitution. Paterson's proposal provided for constitutional amendments in such manner ''as they (the Congress) shall think proper.'' In other words, there is no requirement of necessity. The standard, ''as they shall think proper,'' can vary with whim or caprice or political motivation. Thus, without any firm anchor, what may be thought ''proper'' one day, might very well not be thought ''proper'' on the next. But on the contrary, Randolph's language, ''whenever two-thirds of both Houses shall deem it necessary,''—''whenever two-thirds of both Houses shall deem it necessary''—provides a surer anchor and firmer foundation, and like the warning sign at a railroad crossing, ''stop, look, and listen'', commands not only the rapt attention, but also the considered judgment and focus of those who would alter, modify, add to, or repeal the fundamental law of the Nation.

Needless to say, Randolph's language weathered the scrutiny of the Committee of Style and Arrangement; the Committee of Detail; the Committee of the Whole; and survived the storms and changing vicissitudes of the Convention itself.

The word ''necessary'' made it through all the committees, all the disputations, all the disquisitions, all the arguments, and came out at the end in that almost immortal document, the Constitution of the United States.

That word ''necessary'' is not just an empty word. It is not just a place holder. It is not just a word to be thrown in to fill out the whole. It meant something. It required something. The word was ''necessary.'' ''Whenever two-thirds of the States shall deem it necessary to amend.''

Supreme Court Justice Campbell, in Marshall versus Baltimore & O.R.R., offered these words which we might do well to ponder in this instance. Here is what he said: ''The introduction of new subjects of doubt, contests and contradiction, is the fruit of abandoning the Constitutional landmarks.''

We would profit greatly by reviewing the constitutional landmarks as we are confronted today with this proposed constitutional amendment.

Madison, in The Federalist No. 43, alluded to ''that extreme facility which would render the Constitution too mutable''; and he proceeded to implore against appeals to the people that were too frequent.

This was Madison talking. In The Federalist No. 43, he alluded to ''that extreme facility which would render the Constitution too mutable'' and proceeded to implore against appeals to the people that were too frequent.

Here we have 11,000 of these proposed amendments to the Constitution that have been floating around in one or both Houses throughout the years—11,000.

In the Federalist No. 49 Madison warned: ''. . . As every appeal to the people would carry an implication of some defect in the government, frequent appeals would in great measure deprive the government of that veneration which time bestows on everything, and without which perhaps the wisest and freest governments would not possess the requisite stability.''

That was James Madison. He was only 36 years old, less than half my age. Listen to him. Let me say it again. He warned: . . . ''As every appeal to the people''—as we are being asked to appeal to the people here with S.J. Res. 3—''. . . As every appeal to the people would carry an implication of some defect in the government, frequent appeals would in great measure deprive the government of that veneration which time bestows on everything, and without which perhaps the wisest and freest governments would not possess the requisite stability.''

In this same Federalist paper, Madison went on to say: ''The danger of disturbing the public tranquility by interesting too strongly the public passions, is a still more serious objection against a frequent reference of Constitutional questions to the decision of the whole society.''

Ah, what if Madison were here today to speak. The galleries would be filled. The media galleries would be crowded. There would not be a seat vacant. They would be all ears, all eyes, because this would be Madison, 36 years of age, purported to be the father of the Constitution, speaking.

Listen to him.

''But the greatest objection of all is, that the decisions which would probably result from such appeals, would not answer the purpose of maintaining the Constitutional equilibrium of the government.''

Finally, Madison clinched his point, when he said: ''It appears in this, that occasional appeals to the people would be neither a proper nor an effectual provision, . . .''

Mr. President, an overriding question, therefore, as we examine the proposed Constitutional amendment, is simply this: ''Is it necessary?''

''Is it necessary?'' That is the standard that is set forth in the verbiage of the Constitution: ''Is it necessary?''

Penetrating light has been shed upon this question by the minority views of Senators LEAHY, KENNEDY, KOHL, and FEINGOLD, who, in the committee report, beginning on page 57, set forth a litany of major laws recently enacted by Congress to grant broader protections and provide more extensive services for victims of crime. Among these laws are the Victim and Witness Protection Act of 1982; the Victims of Crime Act of 1984; the Victims' Rights and Restitution Act of 1990; the Violence Against Women Act of 1994; the Mandatory Victims Restitution Act of 1996; the Victim Rights Clarification Act of 1997; the Crime Victims with Disabilities Awareness Act of 1998; the Identity Theft and Assumption Deterrence Act of 1998, as well as the Torture Victims Relief Act; and the Child Abuse Prevention and Enforcement Act, of March 10, 2000.

These are public laws. They have already been passed by both Houses. They have been signed into law.

Obviously, as the minority on the Senate Judiciary Committee point out, there is nothing in the U.S. Constitution that currently constitutes a barrier, that currently inhibits the enactment of State or Federal laws that protect crime victims.

With 33 States having adopted state constitutional amendments dealing with victims' rights, and while every State and the District of Columbia already have some type of statutory provision providing for increased victims' rights, including some or all of the rights enumerated in S.J. Res 3, what is needed is better enforcement of State laws and increased funding, not a Federal constitutional amendment.

This should be ''as clear,'' as our former illustrious and dear colleague, the late Sam Ervin, used to say, ''as the noonday sun in a cloudless sky.''

Chief Justice Oliver Wendell Holmes once stated: ''In my opinion, the Legislature has the whole lawmaking power except so far as the words of the Constitution expressly or impliedly withhold it.'' There is no indication whatsoever that the Federal Constitution of today provides any barrier—either expressly or impliedly—to the lawmaking power in the subject area of victims' rights. It would, therefore, be far better for lawmakers at the Federal and State levels to exert their talents toward enactment of any further legislation that may be needed—I will be there to join them—rather than pursuing a course of amending the U.S. Constitution.

Hamilton, in the Federalist No. 85—this is the final Federalist paper—states: ''It appears to me susceptible of absolute demonstration, that it would be far more easy to obtain subsequent than previous amendments to the Constitution.'' How right he was. In the

light of Hamilton's wise words, members of the Senate should proceed with the utmost caution in proposing and supporting Constitutional amendments.

It is more than noteworthy to again reflect upon the fact that during the 212 years of the American Republic, its organic law has been amended only 27 times—including the first time in which all ten amendments were ratified in one fell swoop. Those ten amendments constituted the Bill of Rights. During this period of over two centuries, more than 11,000 constitutional amendments have been proposed in Congress, but Congress has withstood the pressure behind this flood. Pheobe Cary's I long ago read poem about the lad who put his finger in the hole in the dyke: he ''held back the sea by the strength of his single arm''. The Senate must once again act to prevent a hole in the dyke which, if exploited here, might, in time, become a virtual flood.

Hamilton, in the Federalist Essay No. 85, states: ''For my own part, I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government, not to the mass of its powers; . . .'' It should be preeminently clear to all observers that the amendment we are considering at this time, would not, as Hamilton had noted, ''be applicable to the organization of the government,'' but, instead, pertains ''to the mass of its powers.''

The Founders departed from practically all historical precedents by producing the system known as American federalism, and they did this with great care and skill, for the issue of the States' sovereignty was a flashpoint upon which the endeavor at Philadelphia could very quickly have disintegrated.

The Constitution really consists of two types of provisions. One set of provisions is concerned with structure—the separation of functions and powers, the departments of administration, the House of Representatives, the Senate, the President, the Judiciary, and their relations to one another. The other set of provisions is concerned with the relation of the States to the general government. The powers of the general government are limited and the powers of the States are also under certain restrictions.

This federalism was entirely new. There was nothing like it in the colonial charters or in the state Constitutions of 1776 and 1777. The development of federalism went through similar stages and took almost as long in its processes as the development of the structural parts of the Constitution. It had been an important and a much debated question for more than a 100 years before 1776, and more than 20 plans of power-sharing had been suggested and discussed.

As the Articles of Confederation clearly demonstrated, the protection of the States' prerogatives continued to be held very dear, even in the face of the exigencies of newly claimed independence and armed conflict with Britain. What the Framers successfully crafted in 1787 was a system which retained enough sovereignty for the States to keep them from rejecting the new Constitution, while at the same time providing sufficient power to the national government so that it could be effective at home, and establish a credible presence in international affairs—quite an achievement!

The minority on the Judiciary Committee—headed by my illustrious friend, the very able Senator from Vermont the 14th State—indubitably are of the view that the amendment before us constitutes a significant intrusion of Federal authority into a province traditionally left to State and local authorities. The minority viewpoint States a truism: ''Under our federal system the administration of criminal justice rests with the states except as Congress, acting within the scope of those delegated powers, has created offenses against the United States.'' Screws vs. United States

Mr. President, let us view, therefore, with a jaundiced eye, this proposal to amend the Constitution. As I have already indicated, there is nothing in the Constitution which currently inhibits the National and State legislatures from enacting legislation and providing the necessary funds to deal with the many problems surrounding victims' rights.

Let me say again, for the benefit of those victims who may not be sitting nearby but who may be out there on the plains, in the Alleghenies, in the forests, on the lakes of this great country, let me say to them: There is nothing, absolutely nothing, in this Constitution which currently inhibits the National and State legislatures from enacting legislation and providing the necessary funds to deal with the many problems surrounding your rights, victims' rights—nothing!

All needful legislation at the national and local levels should be considered and should be exhausted before we embark upon a course that leads to a further amendment of the Constitution. That is what we are saying. Let's try all the others, and let's enforce the laws if they are not being enforced. Once we go down that road of amending the Constitution, one amendment leads to another amendment, and then to another amendment, and as Hamilton predicted in Federalist No. 85, ''it would be far more easy to obtain subsequent than previous amendments to the Constitution.'' Willy-nilly amendments to the Constitution can only serve to trivialize it.

As Hippocrates admonished physicians everywhere, ''Do no harm,'' we Senators who have taken an oath to support and defend the Constitution of the United States should measure our actions likewise: Let us do no harm to the Constitution. When amendments to the Constitution become a political way of life, when they dovetail with hortatory national weeks for this or for that, then we have transcended mere bumper sticker politics and entered the very shaky world of bumper sticker amendments to the U.S. Constitution. As a result, the public respect for that venerable document will certainly diminish. Just amend it enough and the public veneration for that unique document, the Constitution of the United States, will certainly diminish.

This particular amendment appears to contemplate rewriting the criminal justice code and placing that rewrite into the Constitution. If we wish to rewrite the criminal justice code, that is one thing. Let us have at it, let us be about it, and while we are about it, scan this proposed amendment for its best provisions to incorporate. Certainly, victims' rights, or rather protections, as I prefer to call them, are a cause that I can enthusiastically support. I can embrace them and hold them close to my heart. But why, oh why, do we need to take the step of pinning such a measure to the Constitution itself, rather like some sort of artificial tail? It would be quite funny if it weren't so serious.

The material which has been circulated in support of the need for this constitutional amendment seems to cite two primary reasons as its justification—the first being that the criminal justice system does not give adequate protection to the interests of victims of crimes, and the second being that existing statutory and State provisions are not uniform. While both may be true, neither is a reason for a constitutional amendment.

In the first instance, these concerns can be addressed through statutory means. In the second instance, the concern can also be addressed through statutory means, and to achieve it via the route of amending the Constitution could be deleterious to a very important bedrock principle in the Constitution. That principle is one of the main thrusts and achievements of the framers coming out of the experience of the Articles of Confederation, and one which is a central pillar of our Republic. What is that? Federalism!

Each of the States in its wisdom, through its legislature and its electorate, has the power and the right to protect and accommodate the interests of victims within its own criminal justice system. All of these decisions—those that have been made, and those that will be made in all 50 States—would become subservient to a constitutional standard if we were to adopt this amendment, which in all likelihood no one State would have chosen for its own particular citizens.

Obviously, the proposed amendment mandates a significant intrusion of the Federal Government into an area traditionally left to State and local authorities. Nearly 95 percent of all the crimes are prosecuted by the States. The Federal Government does not have general

police power. As the Supreme Court reminded us in United States v. Lopez:

Under our Federal system, the states possess primary authority for defining and enforcing the criminal law.

This proposed amendment could drastically shift the responsibility by forcing States to put consideration of these new victims' rights and protections on an equal footing with the rights of the accused. Furthermore, in the majority report accompanying this amendment, concerns about disruptions to federalism are deflected by the incredible assertion that States will have ''plenary authority'' to tailor the amendment to fit the needs of their various criminal systems—that they may flush out such definitions as ''victims of crime'' and ''crimes of violence.'' So much for uniformity. They talk about uniformity. Well, so much for uniformity.

The result of such a reading of this amendment is, again, the very patchwork of laws that the proponents say they are trying to avoid. Moreover, for the first time, we will have turned the concept of federalism on its head by saying that States and various State laws may be allowed to implement the intent of a constitutional amendment. This is pure folly. What we will achieve if this poorly conceived amendment manages to end up as part of our Constitution is a serious aberration regarding the crowning achievement of the framers—federalism—and a recipe for a very nasty little stew of conflicting interpretations of what is and what is not a victim's right. I shudder to think of where that can lead us.

The term ''victim'' is undefined and could be interpreted to mean any number of individuals—some quite removed from the usual understanding. In the case of a murder, couldn't an entire family be considered ''victims''? Take the tragedy at Columbine High School; could not the entire town of Littleton be considered ''victims''? If a battered spouse, finally driven to retaliate to repeated violence, strikes back, is the abuser then also a ''victim'' and therefore entitled to a victim's protections?

An ''exceptions'' clause is included in this constitutional amendment. Consider that. Unlike any other part of the Constitution, we are inviting exceptions without stating who can make the exceptions. Are we suggesting that Federal constitutional rights can mean different things from State to State?

Please let us come to our collective senses. Let us come back down to earth again. Let us not shred the concept of federalism with one ill-considered vote in the frenzy of an election year.

Let us pay attention to what we are about to do, remembering John Marshall's words:

We must never forget that it is a Constitution we are expounding.

This resolution, S.J. Res. 3, consists of 403 words. I counted them. I learned to count by the old math. Yes, I memorized my multiplication tables back in that little two-room schoolhouse in southern West Virginia more than 75 years ago. But it is still the same multiplication tables; it hasn't changed, and it won't change. This resolution consists of 403 words. I am including, of course, the headings. In itself, it exceeds the number of words in 9—not the first 9, but 9 of the 10 amendments comprising the Bill of Rights. Now, many of us have participated in that little game of counting the words. I did so, also. Why not? Why should I not?

According to the committee report accompanying this constitutional amendment, over 450 law professors expressed opposition to this amendment to the Constitution. Why weren't they invited to the hearings? In addition, the Cato Institute, the National Sheriffs' Association, the National Association of Criminal Defense Attorneys, the National Legal Aid and Defenders Association, the NAACP, the ACLU, the Justice Policy Institute, the Center on Juvenile and Criminal Justice, the Youth Law Center, the National Center on Institutions and Alternatives, the American Friends Service Committee, and the Friends Committee on National Legislation—among others—have expressed opposition to such an amendment. They take the position that statutes work, statutes are more flexible and are more easily enacted and more easily corrected and are more able to provide specific, effective remedies on behalf of victims of crimes.

The majority report cites President Clinton as having endorsed the constitutional amendment. Well, so what! President Clinton also supported the line-item veto, but the U.S. Supreme Court knocked it down. Presidents can be wrong and so can majorities.

The majority also cites the National Governors' Association as having passed a resolution in 1997 supporting a Federal constitutional amendment on victims' rights. So what?

As I recall, the National Governors' Association not too long ago also supported a constitutional amendment to balance the budget. Yes—a constitutional amendment to balance the Federal budget. The National Governors' Association supported that. The Federal Government has since balanced the budget, at least on paper, without resorting to a constitutional amendment.

We didn't need it. We didn't need it all along. But what if we had written it into the Constitution?

I submit that the rights of victims of crimes can be clarified and enhanced by legislation at the Federal and State levels without resorting to an amendment to the Federal Constitution.

For, as Madison cogently stated in the Federal No. 49, ''A Constitutional road to the decision of the people, ought to be marked out, and kept open for certain great and extraordinary occasions.'' The occasion for this amendment falls far short of being either ''great'' or ''extraordinary,'' and does not measure up to Madison's prescription. Congress can immediately pass a statute and provide the financial resources necessary to assist the states in giving force to their own locally-tailored statutes and Constitutional provisions, thus avoid tampering with our national charter.

Jesus said it well, when he sat at meat in the house of Levi: ''No man also seweth a piece of new cloth on an old garment: else the new piece that filled it up taketh away from the old, and the rent is made worse.'' Let us not add this piece of clashing new cloth to the venerable and beautiful garment of the Constitution, lest the new piece trivialize the old and a rent is made in the carefully coordinated system of federal and state relations.

The Constitution of the United States was not meant to be a politician's plaything. It is not mine to play with. It is not yours to play with. It is not ours to play with. It is a sad commentary that we find ourselves having to prepare in haste, without adequate notice and under the strictures of possible cloture, to fend off this proposed change in our Federal Constitution. Think of it!

I do not question the sincerity of the proponents of the measure, but I do question the necessity for a constitutional amendment to achieve their goals and our goals. I also question the necessity, which is being forced upon us, to make such a basic decision under the Damocles' sword of limited debate. That is not what our forefathers had in mind for this great Senate.

Surely no Senator needs to reread history in order to remember how much blood and treasure it has cost throughout the long centuries, dating back to the Magna Carta and beyond, to establish the greatest document of its kind that was ever written—the Constitution of the United States, a Constitution which, in the words of Chief Justice Story, is ''not intended to provide merely for the exigencies of a few years'' but ''to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence.''

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I wish to do what I have done several times on the floor this week, and that is to thank my good friend and colleague, the distinguished senior Senator from West Virginia. He is to all our colleagues not only a dear friend but a great mentor. As I have said—and I realize I repeat myself—I have learned so much history not only this week but in the 25 years I have served with him.

Senator BYRD was one of the very first Senators I met after I was elected to the Senate. We chatted at a dinner, in Boston, which he will recall, at the residence of the then-mayor of Boston—he and I and a classmate of mine from law school, John Durkin. John and I had both graduated from law school 10 years before, and probably of hubris, chutzpah, or foolishness, we

were both running for the Senate—10 years later, in 1974. We met with Senator BYRD at that time.

I began my practice of keeping a journal. I recently went back to read it. The Senator from West Virginia told of his childhood—not being one born with a silver spoon in his mouth. There probably wasn't a silver spoon in the house. He told me what he had done—self-taught, went on to school, learned more, and learned history as few men in this country ever have. But then he had the opportunity not only to learn history but to live history, as he has done day after day after day for over 40 years in the Congress of the United States, in both bodies.

I wrote down some of the things he said that night. I even wrote down the music we heard that evening.

When I came to the Senate as a 34-year-old—I was going to say ''former prosecutor'' but the first time I met him was before I was sworn in. I was still a prosecutor. I recall meeting with him during the lame duck session. I don't want to embarrass my good friend from West Virginia, because he met so many young Senators. But I remember so well that it was a lame duck session. I sat in the reception room and Senator BYRD came out. I started to reintroduce myself—after all, he meets so many—and he immediately referred to having met me and Senator-elect Durkin. He had absolute, total recall of that time.

I think about this because recently in an unpleasant and unfortunate constitutionally necessary event in this body a year ago when all 100 Members of the Senate sat at the impeachment trial. I recall a member of the other body made disparaging remarks about the Senate and that the House Managers would have to simplify things so we Senators could understand it. He came over to introduce himself to the distinguished Senator from West Virginia. I was sitting here.

He said: Senator BYRD, I may have somewhat overstated that.

Senator BYRD looked at him and said: I want you to understand two things: I pay close attention and I have a long memory.

I repeated that to my oldest son and he said: Dad, Senator BYRD's right on both accounts.

I know that long memory and we benefit by it.

I was thinking today when I came to work how fortunate I am. I have said many times on the floor of the Senate, we serve at the wishes of our State, but service is a privilege. Every time I come to the Capitol I feel privileged. I have felt no more privileged in my 25 years than in the past few days in this debate on the constitutional amendment. We can not debate anything more significant on this floor, anything that will affect history, long after we have gone. Some day, all 100 Senators who now serve will be gone and others will take our place. I hope they revere the Constitution, too.

I have not enjoyed any debate more than I have the past few days, partly because of my friend from West Virginia. We stood on many battles together on constitutional amendments. The Senator mentioned the balanced budget. I am sure we could go to West Virginia, Vermont, or anywhere else and take a poll on whether voters want a balanced budget amendment to balance the budget and, resoundingly, yes would be the answer. Senator BYRD, myself, and others had to go back and explain to the people of our States: You have trusted us with this vote. If we pander to you on this, we misplace your trust. We have to do it the right way.

We have a dear friend, a former colleague, a man for whom we both have respect and great affection, the distinguished former Senator from Oregon, Mark Hatfield. He and the Senator from West Virginia have served alternately as chairman and ranking member and then as ranking member and chairman of the Senate Appropriations Committee. I have quoted Senator Hatfield on this floor, and I believe my friend from West Virginia remembers very well that balanced budget vote under enormous pressure on the Senator from Oregon, especially when he knew it would be a 1-vote margin. He said he would vote to protect the Constitution and do what was right. Both the Senator from West Virginia and I complimented him afterwards. I remember the steadfastness of Senator Hatfield.

That is what we have to do on this floor. We have stood together on very difficult treaty matters. We have stood side by side casting votes that at the time were unpopular. History has proven us right.

The Senator from West Virginia has cast well over 15,000 votes; I became the 21st person to cast 10,000 votes, so I have a long way to catch up. We can all go back and find votes we might do differently today. But if it is a statute, if it is an amendment, if it is a procedural motion we usually get a chance to vote on it again.

If it is a budget matter, whatever the issue might be, it is going to come up again and again. Use your experience to make sure you do it right—maybe modify it, maybe change it, maybe repeal it, maybe add to it. There is one exception—a constitutional amendment. Write a constitutional amendment. If that is then ratified, if that goes into effect, we do not come back and change it.

Look at the example the distinguished Senator from West Virginia mentioned about prohibition, a bad mistake in the Constitution. A lot happened. Finally it was changed, but only after a great battle.

That is why we should always hesitate. That is why the dean of our party, the No. 1 in seniority in our party, has opposed this proposed constitutional amendment. From one who is No. 6 in seniority to the Senator who is No. 1, I applaud what the Senator has done.

This is not a party issue. The Senator from West Virginia knows we have had Senators from both sides of the aisle, even some who were cosponsors, say, ''You are right, let's back up.'' This proposed amendment will be withdrawn some time today. I hope the United States has learned the Constitution is not something to treat in a cavalier fashion.

I thank my friend from West Virginia.

Mr. BYRD. Mr. President, I thank the able senior Senator from Vermont for his overly charitable words concerning me. I thank him for his steadfast support on the Constitution. I thank him for the positions he has taken on many occasions during the years we have served together—positions that were in the best interest of the Constitution, best interest of this institution, and in the best interest of our country.

I join with the Senator in recalling the new profile in courage that was established by our former colleague, Senator Hatfield. He stood as a rock under the pressures of colleagues. Those were difficult pressures, in the party conference. He was threatened with his position as chairman of the Appropriations Committee. That took courage. And he had it. He had the real stuff. I hope he is listening today. We don't forget men such as Mr. Hatfield.

Again, I thank my friend; he is my friend, and I think of him as my friend. He is a very generous person, a person whom I would think of as a Good Samaritan in this journey of life.

I thank him for his work here. He will be here, he will be, long after the good Lord has taken me away. But he will be there holding the torch, holding the Constitution, holding up this institution. And there will by others, and I hope there will be more, day by day.

I thank the Senator, and I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, in my capacity as ranking member of the Senate Judiciary Committee, I also think it is necessary, as we wind down this debate, that I take care of a couple of misconceptions that occurred during the debate.

My late father, a man who had so much to do with shaping my views, a man who was a self-taught historian—a very good one, I might say—always told me if somebody misstates history, it is wise that someone else stands up and states it correctly so the mistake does not go down to the next generation.

There was a popular misconception behind the proposed constitutional amendment. The distinguished Senator from California, Mrs. FEINSTEIN, touched on this on the first day of the debate, and actually again today, when she discussed her theory as to why victims are not specifically mentioned in either the original Constitution or the Bill of Rights.

According to Senator FEINSTEIN, when the Constitution and the Bill of Rights were written in the late 18th century, public prosecutors did not exist. I should quote exactly what the distinguished Senator, my good friend, told us on this point. She said:

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.

She then quotes the following passage from an article by Juan Cardenas, in the ''Harvard Journal of Law and Public Policy'':

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.

She then continued:

Gradually, public prosecution replaced the system of private prosecution. . . . [T]his 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.

She then argued the Constitution must now be amended to rebalance the criminal justice system and ''restore'' rights to crime victims.

The distinguished chairman of the Judiciary Committee, also my friend, Senator HATCH, told us on Tuesday that he draws the same conclusion from history. He said that when the Constitution was drafted:

There was no such thing as a public prosecutor; victims brought cases against their attackers.

He then said:

When the Constitution was drafted, victims of crime were protected by the same rights given to any party to litigation.

Not surprisingly, the majority views in the report of the Senate Judiciary Committee are likewise predicated on the notion of ''restoring''—''restoring'' rights to crime victims that they enjoyed at the time the Constitution and Bill of Rights were being ratified. The majority views said the following:

The Crime Victims' Rights Constitutional Amendment is intended to restore and preserve, as a matter of right for the victims of violent crimes, the practice of victim participation in the administration of criminal justice that was the birthright of every American at the founding of our Nation.

At the birth of this Republic, victims could participate in the criminal justice process by initiating their own private prosecutions. It was decades after the ratification of the Constitution and the Bill of Rights that the offices of the public police and the public prosecutor would be instituted. . . .''

When I heard my distinguished colleague say there was no such thing as a public prosecutor in this country when the Constitution was drafted, I was surprised. I had been a public prosecutor. I was the vice president of the National District Attorneys Association at the time I was elected to the Senate. The fact is that, had I not opted for the anonymity of the Senate, I was next in line to become president of that association, one of my few regrets in having to leave to come here, but the Senate would not wait. And, frankly, I did not want to wait.

But as a former public prosecutor and one who studied a great deal of history of prosecution, I was quizzical. So I did a little research.

I might say, when I state that, you understand, of course, we Senators are often times but constitutional impediments to our staff. But, by the same token they deserve a lot of credit, Julie Katzman, in my office, an able lawyer, did a lot of research as did Bruce Cohen from the Judiciary Committee. They found this article by Mr. Cardenas that Senator FEINSTEIN quoted, which does appear in volume 9 in the ''Harvard Journal of Law and Public Policy.'' In fact, if you take the passage the distinguished Senator from California quoted and relied upon, from page 367, about how victims of crime used to act as their own counsel, it is describing the general practice in this country in the 17th century, not in the late 18th century when the Constitution was written.

Mr. Cardenas discusses what happened at the time of the American Revolution on page 371, a few pages after the passage quoted by the sponsor of this proposed constitutional amendment. He writes:

Whatever its derivation, the American system of public prosecution was fairly well established at the time of the American Revolution.

Mr. Cardenas notes that Connecticut was the first colony to establish a system of public prosecutors, in 1704, over 80 years before the Constitution was written.

In Vermont, the Office of the State's Attorney is established in chapter II, section 50 of the State constitution of 1793. Even before Vermont joined the Union as the 14th State, it had a system of public prosecutions run by the State's Attorneys. Samuel Hitchcock was State's Attorney for Chittenden County, VT, from 1787 to 1790, during the time that the Federal Constitution and the Bill of Rights were being written. Samuel Hitchcock was State's Attorney in Chittenden County, from 1787 to 1790, some time before I became State's Attorney, in the last century—or, this century, depending upon how we do this. In May of 1966, until 11:59 in the morning on January 3 of 1975, I served as State's Attorney, also, of Chittenden County. At 12 noon, January 3, I took a different job. I have held it ever since.

Now, private prosecutions may not have been eliminated in all the colonies by the time the Constitution was written. They were, however, eliminated in Virginia, home of some of the foremost architects of the Constitution. Mr. Cardenas writes:

[B]y 1711, the attorney general [of Virginia] appointed deputies to each county in the state, and these deputies began exercising their authority to prosecute not only in important cases, but in routine ones as well. . . . By 1789, the deputy attorney general had complete control over all prosecutions within his county.

There was a place that had the sort of criminal justice system that the distinguished chairman of the Senate Judiciary Committee and others attributed to the time the U.S. Constitution was written, but that place was not the United States. Mr. Cardenas describes it on page 360 of his article:

The right of any crime victim to initiate and conduct criminal proceedings with the paradigm of prosecution in England all the way up to the middle of the 19th century.

It was England that had a system of private prosecution in the 18th and 19th centuries, not the United States, not even New England in the United States.

To make sure I had my facts straight, I had to look through some other historical source material. I looked at an essay in volume 3 of the ''Encyclopedia of Crime and Justice'' by Professor Abraham S. Goldstein on the history of the public prosecutor in America. Professor Goldstein tells us essentially the same thing as Mr. Cardenas.

Most American colonies followed the English model of private prosecutions in the 17th century, but as Professor Goldstein tells us, that system ''proved even more poorly suited to the needs of the new society than to the older one.'' For one thing, victims abused the system by initiating prosecutions to exert pressure for financial reparation. These colonies shifted to a system of public prosecutions because they viewed the system of private prosecutions as ''inefficient, elitist, and sometimes vindictive.''

According to Professor Goldstein, some of the colonies have no history at all in private prosecutions. In the areas settled by the Dutch in the 17th century, consisting of parts of what are now Connecticut, New York, New Jersey, Pennsylvania, and Delaware, the Dutch brought public prosecutions with them.

In any event, Professor Goldstein comes to the same conclusions as Mr. Cardenas. On page 1287, he writes:

[B]y the time of the American Revolution, each colony had established some form of public prosecution and had organized it on a local basis. In many instances, a dual pattern was established within the same geographical area, by county attorneys for violations of state law and by town prosecutors for ordinance violations. This pattern was carried over into the states as they became part of the new nation.

Actually, for almost 200 years that was the system in my own State of Vermont. Now prosecutions are done by the State's Attorneys of the 14 counties and, in some instances, by the Attorney General.

Professor Goldstein goes on to discuss the fact that the Federal system of prosecution was always a system of public prosecution. Under the Judiciary Act of 1789, enacted the same year

the Constitution was ratified, the U.S. Attorney General was ''to prosecute and conduct all suits within the Supreme Court of the United States in which the United States might be concerned.'' The general authority to ''prosecute in each district'' for Federal crimes was vested in local U.S. district attorneys appointed by the President.

Professor Goldstein is a highly respected scholar. He is the Sterling Professor of Law at Yale Law School. In fact, at one time he was the dean of that prestigious institution. He is widely regarded as an authority on criminal law and criminal procedure. When Professor Goldstein says every American colony had established some form of public prosecution by the time of the Revolution, I think we Senators can probably take that to the bank.

To be on the safe side, since we heard Senators say otherwise about this, I thought we should check further. We checked another source, a 1995 article by Professor Randolph Jonakait of the New York Law School. It appears in volume 27 of the Rutgers Law Journal beginning on page 77. Not surprisingly, it says much of the same thing about the history of public prosecutions as I had already learned from Mr. Cardenas and Professor Goldstein.

I quote from page 99:

Although the American colonies initially followed the English prosecutorial pattern, a different process began to emerge around 1700. Public officials took responsibility for the prosecution of crimes generally or just for the limited set of offenses that directly affected the sovereign. As public prosecutors emerged, private prosecutions in the colonies disappeared. This evolution of the American criminal justice system was quick and thorough. By the time of the Revolution, public prosecution in America was standard, and private prosecution, in effect, was gone. Indeed, it was so established and taken for granted at the inception of the new Federal Republic that public prosecutors, although not mentioned in the Constitution, were, without debate, granted exclusive control over prosecutions in Federal courts.

Mr. Cardenas, Professor Goldstein, and Professor Jonakait are all quite clear that the concept of government-paid public prosecutors did not develop in this country for the first time ''around 1850,'' as the Senate was mistakenly told on Tuesday. All these authorities agree that public prosecutors have been around in this country for much longer—about 150 years longer—and that they were the rule, not the exception, by the time Mr. Madison and Mr. Hamilton and all the other framers of our Constitution got together in Philadelphia in 1787 to draft our Nation's founding charter.

If the Bill of Rights, which was written a few years later, makes no specific mention of crime victims, it is not because the framers thought victims were protected by a system of private prosecutions.

My point, of course, is the proposed constitutional amendment on victims' rights cannot be justified as ''restoring'' victims' rights enjoyed at the time the Constitution and the Bill of Rights were drafted. Rather, if we are to draw any lesson from history, it is that the framers believed victims were best protected by the system of public prosecutions that was then, and remains, the American standard for achieving justice.

Mr. President, I ask unanimous consent to print in the RECORD a letter dated April 25 from Assistant Attorney General Robert Raben opposing the proposed constitutional amendment.

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

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, April 25, 2000.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate, Washington, DC.

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

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

PRESERVING THE EXISTING CONSTITUTION

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

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

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

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

LAW ENFORCEMENT CONCERNS

As we have noted previously, we are concerned that the very high standard for exceptions to the Amendment's victims' rights guarantees in Section 3 of S.J. Res. 3 would render the government unable to remedy the practical law enforcement problems that may arise under the Amendment. We believe

that the authority to create exceptions should exist where necessary to promote a ''significant'' government interest, rather than the ''compelling'' interest required by the current draft. It is important that the VRA be flexible enough to permit effective and appropriate responses to the variety of difficult circumstances that arise in the course of implementing the Amendment. This concern is explained in more detail in our letter of June 17, 1998.

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

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

DOING MORE FOR VICTIMS WHILE IMPROVING THE AMENDMENT

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

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

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

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

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

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

Sincerely,

ROBERT RABEN,
Assistant Attorney General.

Mr. LEAHY. Mr. President, I have said over and over that no one in the Senate is against crime victims. I care deeply about the rights of crime victims, just as I care about the rights of all Americans.

I established one of the first formal systems in my State to make sure crime victims are heard. It is something that is done all the time now. In fact, one of the distinguished family court judges, Judge Amy Davenport, was in town yesterday and listened to part of this debate. She said: There is nothing you talked about here that we just don't do automatically. In Vermont, we do not need a constitutional amendment to do it.

We all care about the rights of crime victims. This is not a case of for or against amending the Constitution. We establish whether we care about crime victims. We all do. I care about their rights. I also care about the rights of mothers and expectant mothers, the rights of immigrants, the rights of workers, the rights of farmers, the rights of hospital patients, the rights of the young, the rights of the old, the rights of people seeking housing, the rights of students, the rights of artists, journalists, and scientists, the rights of those people who care about the environment, and the rights of families.

I do not know anybody in this body, Democrat or Republican, who does not care about the rights of all these people.

We all care about the rights of all law-abiding Americans. We could easily pass unanimous resolutions to that effect. But Americans want practical solutions to practical problems from their Government, not just expressions of concern. They certainly do not want us to try to define every one of these rights in a separate constitutional amendment.

So the issue is not whether we care about the rights of crime victims. I point out that a couple weeks ago my dear friend Senator FEINGOLD voted against a constitutional amendment to limit campaign contributions. Anyone who would infer from that vote that Senator FEINGOLD is not passionate about campaign finance reform knows nothing about Senator FEINGOLD and his attitude about campaign finance reform. In all the years I have been here, I have never seen anybody as passionate about it as he.

Recently we voted on a constitutional amendment to criminalize physical destruction of the American flag. Senators BOB KERREY, ROBERT BYRD, MITCH MCCONNELL, BOB BENNETT, DANIEL INOUYE, DANIEL PATRICK MOYNIHAN, and many others voted against that constitutional amendment. Many of them are decorated war veterans. BOB KERREY, for example, is the only Member of this body to hold the Congressional Medal of Honor. The vote did not mean they do not respect the flag.

When Gen. Colin Powell and Senator John Glenn opposed the flag amendment, it was not because they lack devotion to this country. Anybody would be hard pressed to find two people more patriotic than they. Far from it, they are American heroes who showed their patriotism by standing up for the Bill of Rights. Frankly, that is ultimate patriotism.

There have been studies over time in which people are asked about different parts of our Bill of Rights that we all rely upon, and the study would say: Would you vote for the right of free speech today, the right of assembly, or some of these others? People say: Yes, all except this or all except that. Thank goodness people had the courage to write and vote for it earlier. Our country has it. And then others made sure we did not go back and change it because we might have some problems.

In my years in public life, I cannot think of more times that devotion to the first amendment has been tested or that any area in the Constitution has been tested more than the first amendment. We do not need the first amendment to protect popular speech; we need it to protect unpopular speech.

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

That really is the crux of why we should care about amending our Constitution and carving exceptions or making changes in our Constitution.

We had a Member of Congress in Vermont who was prosecuted under the Alien and Sedition Act in a way that we all know would be highly unconstitutional. Why? Because he criticized the Federal Government. They locked him up. You know what? This is why I love my native State of Vermont: We do not let other people tell us what to think. While he was locked up, what did we do? We reelected him and sent him right back down to Congress. And the shame was on those who supported the Alien and Sedition Act, they were soon gone.

It was a Vermonter, I think the most outstanding Vermont U.S. Senator of the 20th century, who stood on the floor of this body—a quintessential conservative—Republican Ralph Flanders of Vermont, who introduced a motion of censure against Joseph McCarthy, the late Senator from Wisconsin. Joseph McCarthy ran roughshod for too long over the first amendment of the United States, and lives and careers were ruined because of his accusations. Ralph Flanders stood up and called a halt to that. Then other Senators came forward and joined with him. That reign was over.

I would say to anyone who visits the United States, from whatever country, if you want to guarantee a democracy, guarantee two things: Guarantee the freedom of speech, including the freedom to say things that might be unpopular at the moment because you may find within a few years they will be the popular ones; and, secondly, guarantee the right to practice any religion you want, or none, if you want. Because if you protect those two rights, you protect diversity. If you protect diversity in your country, you protect democracy.

I say that those who have opposed this constitutional amendment are not doing it because they lack concern for victims' rights. Decent and sincere people in both parties who serve in this Chamber respect victims' rights, but many of us oppose this amendment. I support crime victims' rights. I do not support a victims' rights constitutional amendment.

The issue before the Senate is whether to amend the U.S. Constitution—and almost double the length of the entire Bill of Rights—by adding a complex listing of constitutional victims' rights and limitations that may diminish the Constitution and do little to protect victims. It is not like passing a commemorative resolution.

Do we have to pass constitutional amendments to prove we care about people? We care about victims, but we also care about mothers, immigrants, workers, farmers, hospital patients, the young, the old, artists, journalists, scientists, nature lovers, and families.

We have heard complaints in this Chamber more than a few times about ''group entitlements.'' We are not going to have a constitutional amendment for every group.

Stuart Taylor recently wrote in the National Journal about this amendment. He wrote:

> Most of us agree, of course, that prosecutors and judges should be nice to crime victims (as they usually are). Most of us also agree that parents should be nice to their children. But would we adopt a constitutional amendment declaring, ''Parents shall be nice to their children''? Or ''Parents shall give their children reasonable notice and an opportunity to be heard before deciding whether and how to punish older children who have pushed them around''? Would we leave it to the courts to define the meaning of terms like ''reasonable'' and ''nice''?
>
> A ban on spanking, perhaps? A minimum of one candy bar per day? Would we let the courts override all state and federal laws that conflict with their interpretations?
>
> We don't need constitutional amendments to embody our broad agreement on such general principles. And we should leave it to the states (and Congress) to detail rules for applying such principles to the messy realities of life.

There is no precedent in a national constitution for a victims' rights amendment. But there is precedent for treating constitutional provisions as group entitlements. For most of the 20th century, there was a nation that rejoiced in criticizing America for not caring about the rights of various groups of law-abiding people because we did not have such provisions in our Constitution. That nation had special constitutional provisions for mothers, immigrants, workers, farmers, hospital patients, the young, the old, artists, journalists, scientists, nature lovers, and families.

I would have brought a copy of its 1977 constitution along with me today if I could carry it. But some of our visitors today know that country is no longer here, the former Union of Soviet Socialist Republics. Back then, I felt confident that Mr. Madison and his compatriots had done a better job of drafting a Constitution than Mr. Lenin, Mr. Stalin, or Mr. Brezhnev, and I am no less proud to be an American today. Madison, Jefferson, Washington, and the other founders understood three key lessons other countries are only learning now, 200 years later.

First, in a democracy, it is better to have a short constitution everyone can read and understand rather than a long one full of symbolic declarations, legalese, and procedural details. I hold the Constitution, including the Bill of Rights and the Declaration of Independence in this little booklet.

The distinguished senior Senator from New York mentioned a country we all respect, a democracy, France, which amended its Constitution so many times to fit in every single little thing they could possibly think of so that, as the story goes, in the libraries they do not file it under ''constitution,'' they file it under ''periodicals.'' Well, I do not want that to be the U.S. Constitution.

Secondly, in a free society, the purpose of a constitution is to constrain the government, to establish a government of limited powers, with the rest of the powers to the people, not a government of expanding responsibilities. Jefferson and Madison trusted to the States and the American people to care for the rights of victims of crime and of other misfortunes by means of the democratic process and by using the tool at hand to solve problems as they arose. They did not mandate a set of procedures for relief of every problem by calling them rights and then tacking them on to the Constitution. Instead, they reserved the Constitution for the protection of the people from the government itself.

Thirdly, in a nation of ordinary practical people, what is needed are practical responses to practical problems, not symbols of concern that at the end of the day are empty. Madison and Jefferson designed the original Bill of Rights to respond to actual government abuses such as suppression of unpopular speech or unpopular religion or unpopular newspapers, that the States and the Federal Government could not be otherwise trusted to remedy in the normal course of events.

Likewise, the Reconstruction Amendments did not enact a long litany of procedural rights without substance. Instead, they responded to a real, practical history of abuse by State governments of the rights of African-Americans. Even then our Nation was shamefully slow in implementing the anti-slavery amendments.

The proposed amendment under consideration is fundamentally misconceived. It would be the most procedurally complex provision of the entire Constitution, within just a few words of doubling the length of the entire Bill of Rights. Every school child, every senior citizen, every American can pick up this Constitution and read it and understand it. That is the beauty of it. That is the strength of it. That is why a quarter of a billion people live in such freedom.

We have referred to the last American precedent for a constitutional amendment to increase the power of government over law-abiding citizens. That was prohibition. It was well intentioned but, my word, what a disaster. It ended up staining the reputation of Senator Volstead and others who championed its cause. It was so ill suited to the framework of our Constitution that it bears the distinction of being the only constitutional amendment that had to be repealed.

I still remember the stories I was told as a child, many in Vermont, of good, upright citizens who prospered greatly during prohibition, perhaps because of the fortuitous aspect of our geographical location bordering on Canada.

If I could digress for a moment, we have a large lake in the northern part of Vermont, Lake Memphremagog. My wife was born on the shores of Lake Memphremagog, as she quickly points out, on the Vermont side. Her parents,

of French Canadian descent moved there to take up life as new American citizens. She became a first-generation American.

Lake Memphremagog is a magnificent lake that is half in Vermont and half in Canada. During prohibition time, some of the farmers who had little farms, one or two cows and a falling down barn along the lake, had very expensive Chris-Craft speedboats. I mention this because the local Customs official had a slower boat with an outboard motor. Every evening about dusk, these farmers would go out with their high-powered speed boats and they would have their fishing rod and a couple worms and they would head out across the lake toward Canada to go fishing, their speedboats riding high.

About 2 o'clock in the morning, you would hear this awful roar across the lake as several of these came back, obviously the ''fishing'' having been very successful because the boats are now riding much, much lower. You can imagine the chagrin of the poor Customs agent who had to try to fulfill the prohibition provision of the Constitution, as he wondered which one of these fishing boats he should try to intercept, knowing he could not intercept any of them because he could not catch them.

Whether it was because of the ''fishing'' or not, for at least a generation thereafter, the two most popular brands of alcohol in Vermont were the two that are also the most popular in the Province of Quebec, right across the lake.

As I said, I digress. But prohibition caused such a disrespect for the law. It really made us look foolish, but it took forever to change it because it was in the Constitution. If we made the mistake of doing it as a statute, we could have amended it. We could have changed it within a year. Everybody knew it was not working. Everybody knew it was increasing the power of organized crime. Everybody knew it was bringing about corruption and bribery and everything else. But worse than that, a democracy can enforce its laws only if people respect the laws. A democracy can work only if we know that these laws are fair and these laws are just.

We do not have a police officer in everybody's house. We do not have a police officer on every corner. We expect people to obey the laws. But if they have no respect for them, then they do not. In all the years it took to repeal this, for over a decade, the laws in this country and the people's respect for the laws of this country diminished every single year. Nobody could do anything about it because it takes so long to repeal a constitutional amendment.

So let us look at statutes when we can. Let us think of article V of the Constitution, which says you amend only when necessary.

Last, but by no means least, the proposed amendment is not a practical response to a practical problem. Many States are ahead of the Federal Government in protecting victims' rights. Recent years have seen huge advances in protection of victims' rights in State constitutions and State legislation, in the provision of restitution or other compensation where practical, and in improvement of law enforcement resources and techniques to ensure proper regard for victims.

While Congress has been focusing its attention on more than 60 drafts of a constitutional amendment on victims' rights, it has actually slowed us down from doing real improvement to the way crime victims are treated in Federal courts and by Federal prosecutors. Our legislative achievements of the period from 1994 through 1997 have not been matched in the last several years. I fear this debate on the proposed constitutional amendment will be in lieu of consideration of scores of significant legislative proposals introduced by Senators on both sides of the aisle to help victims.

Violent crime is a serious practical problem in our society—far more than it was even when I was a prosecutor. As a parent, as a grandparent, that troubles me greatly. But there is not a fundamental problem—certainly not one requiring a rigid, one-size-fits-all set of constitutionally mandated procedures—in how the States treat victims of violent crimes today.

We have visitors in the gallery today from Russia, the successor to the former Soviet Union. The old Soviet Constitution demanded the obedience of Russians. It really was not very subtle about it. Article 59 declared that every citizen was ''obliged to observe the Constitution and comply with the standards of socialist conduct.''

Well, the U.S. Constitution does not command; instead, it counsels humility. It is humbling to consider the great minds that drafted it, its clarity and simplicity in laying down a framework to protect law-abiding people by ensuring limited, democratic government. It is also humbling to think how it has stood the test of time. It remains extraordinary what was achieved in 4 short months in Philadelphia in 1787, when communication meant walking from one building to another to talk to somebody, or sending a letter by horseback. In 4 short months, look at what they wrote.

By contrast, we have been waiting twice that long for the House-Senate conference on the juvenile crime legislation to meet and complete its work—something that could really help victims of crime in this country, something that could be done now and something that could be sent down to the President and signed into law and it would be the law of the land immediately. But we do not meet because the gun lobby said do not meet.

We ought to be very slow in this Chamber to presume that we know better than the founders how to balance the power of government and the rights of the accused. We should be reluctant to presume that we can draft a one-size-fits-all set of detailed procedural rules that will work to protect different people who are victims of different crimes in cases in different States—the kind of constitutional micromanagement of the judicial process the framers were too wise to attempt. These 400-odd words of the 63rd draft of this proposed amendment do not fit with the size and style, the limited Government vision, or the practical approach of the U.S. Constitution and the Bill of Rights.

I hope when we finish this debate all Senators will join in efforts to improve victims' rights through the States and through Federal legislation.

I see the distinguished Senator from Delaware on the floor. As chairman and as the ranking member of the Senate Judiciary Committee, Senator BIDEN has worked very hard on legislation to help victims of all kinds of crime. The distinguished Senator from Delaware has helped write laws that can take effect and have money and teeth in them to help victims. I have done some, as have others. Usually, we join in bipartisan efforts to do it. But they have been pieces of legislation that, once signed into law, we could watch. We could see if they were working, and if they did, fine, we could expand them and give them more money. If they did not work, we could change them. We cannot do that with a constitutional amendment.

I ask those who are for victims' rights to support congressional action on S. 934, the Crime Victims Assistance Act.

Mr. President, we have editorials in opposition to this constitutional amendment from the Asheville Citizen-Times, the Baltimore Sun, the Chicago Tribune, the Herald, the Philadelphia Inquirer, the Richmond Times-Dispatch, the San Francisco Chronicle, the San Francisco Examiner, the San Jose Mercury News, the Seattle Post-Intelligencer, the St. Petersburg Times, the Washington Times, the Collegiate Times, the Pittsburgh Post-Gazette; and the South Bend Tribune.

I ask unanimous consent that several of these articles be printed in the RECORD.

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

[From the Washington Times, Feb. 15, 2000]

AN UNCLUTTERED CONSTITUTION

(By Bruce Fein)

What keeps our Constitution sacred and accessible to the ordinary citizen is majestic brevity and a confinement to essentials.

Amendments should thus be limited to issues of great and enduring moment that cannot be safely entrusted to popular majorities. The pending Victims' Rights Amendment, under active consideration by the House and Senate and lukewarmly supported by the Clinton administration, falls short of that historically exacting standard.

The amendment, House Joint Resolution 64, would dictate an array of victims' rights in federal or state criminal or auxiliary proceedings. The motivation is irreproachable:

to guarantee crime victims a minimum opportunity to be heard or to be otherwise involved when the disposition of their predators in question. But good motivation, without more, does not justify a constitutional coronation. If it did, the 1964 Civil Rights Act, the 1965 Voting Rights Act, the 1968 Fair Housing Act, Title IX of the Higher Education Act, the American With Disabilities Act, and an endless list of companion federal laws would be elevated to constitutional status and the document would smack more of Edward Gibbon's ''Decline and Fall of the Roman Empire'' than of Lincoln's Gettysburg Address.

VRA crusaders have cobbled together an assortment of unpersuasive reasons for their constitutional cause, as though adding zero to zero repetitively may eventually equal something. It is said criminal defendants and prisoners enjoy constitutional rights that trump victims' rights enumerated in scores of statutes and state constitutions. But nothing in the constitutional text or United States Supreme Court precedents even hints at a conflict with victims' rights that command lower statutory status: the right to notice and to have views considered in prosecutorial, sentencing, parade, or commutation decisions and to attend criminal trials. Amendment proponents have searched in vain for a single court decision that supports their fretting.

Crime victims have demonstrated stunning success in majoritarian politics who need no constitutional protection from potentially hostile legislation. As a chief sponsor of the Amendment, Rep. Steve Chabot, Ohio Republican, testified last Thursday before the House Judiciary Subcommittee on the Constitution, ''In 1982, California became the first state to pass a Victims' Rights Amendment to its constitution. Since that time, 32 states, including my home state of Ohio, have passed similar amendments . . . ratified [by an average of] 79 percent of the vote in state-wide referendums.''

That is no surprise. Crime victims evoke almost universal sympathy, and no one campaigns boasting, ''I will vote against victims' rights.''

Amendment apostles also urge that state laws are disrespected by state judges or prosecutors. But that is unvariably true of new laws during their childhoods. Legal training and habits are customarily backward-looking, and legal bureaucracies lie midpoint between sclerosis and rigor mortis. But troglodyte judges, prosecutors, and clerks will die or retire; their replacements will be victims' rights enthusiasts indoctrinated in the new gospel. The problem of inattention to state or victims' rights laws will solve itself, in the same way that unionization rights flowered in the legal system in the 1930s after decades of crabbed interpretations and applications of statutes.

Amendment champions retort that victims' rights would command more prosecutorial and judicial respect if enshrined in the Constitution. But prosecutors and judges take oaths to defend state laws every bit as much as they vow to enforce the Constitution. If they would honor the first more in the breach than in the observance, the second would fare no better. History also speaks volumes. The 1866 Civil Rights Act protecting freedom leaped into the Constitution with the 1868 14th Amendment, but the civil rights of blacks were routinely ignored by courts, including the United States Supreme Court, for almost a century during the ugly era of Jim Crow. Similarly, did the Roman Catholic creed induce greater compliance with the proclamation of Papal infallibility in 1870?

Victims' rights paladins wrongly equate their cause with the constitutional protections of persons accused of crime. But criminal defendants, unlike crime victims, are generally pariahs who need safeguards against an infuriated public clamoring for instant justice. Further, what is at stake for the accused is his life or liberty, the most precious of our natural rights.

* * * * *

Every constitutional amendment dents our system of federalism. It removes an issue from the agendas of state governments that can more closely tailor solutions that satisfy constituents and serve as laboratories for sister states and the federal government without risk to the entire nation. Errors can be corrected by simple legislation, which is nimble compared to overcoming a constitutional misstep, like the Prohibition Amendment. Deference to stale choice additionally offers citizens greater opportunities to participate directly in the responsibilities of self-government, indispensable to sustaining a robust democratic culture.

In sum, the Victims' Rights Amendment has nothing to commend and much to deplore.

[From the San Francisco Chronicle, April 25, 2000]

A VICTIMS' RIGHTS PLAN THAT GOES MUCH TOO FAR

Victims of crime deserve consideration and compassion, but a constitutional amendment giving them a new category of ''rights'' goes too far.

The U.S. Senate will attempt this week to alter the Constitution again, this time with a Victims' Rights Amendment drafted on the premise that victims should have more say about the trials and dispositions of defendants.

Specifically, it would give victims the right to attend all proceedings, to make their views known about sentencing and plea arrangements, to be notified whenever an offender is released from custody, to demand a speedy trial and to get restitution from the offending party.

Considering the often deep pain they suffer, victims deserve to be heard and protected by the criminal justice system, but tinkering with the Constitution is no way to do it. Many of these concerns can and have been addressed through legislation, which can be amended as problems and unintended consequences are identified.

One of the problems with this amendment is that its definition of ''victim'' is too vague, creating a financially onerous and otherwise impossible mandate. For example, in the Oklahoma City bombing, who would the victims be? The office workers who survived the bombing, the family members and friends of the hundreds killed or maimed, or anybody in town still suffering the horrifying aftermath?

As such, all would have to be notified about trial proceedings, have the right to speak and to push for specific prosecution. And if they didn't agree on sentencing or the way the case was adjudicated, what would the court do then?

Meanwhile, advocates for battered women dread what would happen if a women is arrested for responding to domestic abuse—namely that the abuser could become the victim with rights to oppose her bail and seek restitution. Perhaps that's why a slew of victims' rights groups is among those most opposed to the amendment.

Although a grand gesture, this proposed constitutional change is clumsy and cumbersome, destroying the very core of our justice system—the right to a speedy trial and the presumption of innocence. Both Congress and state legislatures have the ability to strengthen victims' rights without trying to alter the principles of justice set forth in the U.S. Constitution.

[From the San Francisco Examiner, April 14, 2000]

NO VICTIMS IN THE CONSTITUTION

Dianne Feinstein is wrong on this one. The usually astute Democratic U.S. senator from California is leading a campaign to get a victims' rights amendment added to the federal Constitution.

Along with Sen. John Kyl, R-Ariz., and 40 other senators, she is sponsoring legislation that would allow the states to vote on ratification of the 28th amendment. The votes of 67 senators are needed for passage. Three-quarters of the states must ratify the amendment before it goes into effect.

Victims' rights is an idea that's seductive by its very simplicity. Of course victims should have rights. Who can deny that? But enshrining them in the Constitution is a feel-good exercise of dubious value that carries potential harm.

''The Constitution,'' argues Feinstein, ''gives 15 specific rights to the accused, but victims have no basic rights under the Constitution.''

That misses the point of what the Constitution and the Bill of Rights are about. The rights enumerated are protections for individuals against the awesome power of the government. They are not intended to referee fights between citizens or redress the grievances of victims of private action, no matter how terrible the consequences.

Littering the Constitution with other matters cheapens it and opens the door to inclusion of the flotsam and jetsam of some citizens' oddball desires. If you think this overstates the case, just look at the junk foisted on the California Constitution by an overactive initiative process.

This is not to say there shouldn't be a law. In fact, legislation is exactly where victims' rights belongs.

As a bill in Congress, the planks of victims' rights would be unobjectionable. Consider the constituent parts of the amendment. Among other features, it would give some 9 million victims of violent crimes and their families the right to notice of criminal proceedings in their cases and the right to attend them; the right to testify or submit statements at trials, parole hearings and other proceedings; the right of notice if the felon escapes or is released, and the right of restitution from the perpetrator of the crime.

So far, 32 states have passed legislation or constitutional amendments specifying victims' rights. But Feinstein complains that until the U.S. Constitution is changed, a defendant's rights trump a victim's rights when there's a conflict between the two.

We're glad she's not also proposing to change the standard of criminal guilt from ''beyond a reasonable doubt'' to a ''preponderance of the evidence.'' Presumably that would also make trials more fair for victims. But the American system of criminal justice is built on the sane principle that letting a possibly guilty defendant go free is a thousand times preferable to convicting an innocent person.

The 13 men released from death row in Illinois after new exonerating evidence was uncovered would be glad to tell Sen. Feinstein why legal protections for the accused are splendid ideas. Anyway, the guts of a sensible victims' rights program wouldn't conflict with legal protections for defendants.

Victims and their families sometimes do get poor treatment from prosecutors and courts. Trying to remedy that by amending the Constitution is a grandstand play that generates a lot of publicity. But it is unnecessary and wrong. It would dilute the time-

tested and trusted document that defines relations in this nation between citizens and their government.

Don't make us all victims of an ill-considered crusade.

[From the San Jose Mercury News, April 20, 2000]

VICTIMS OF CRIME DON'T NEED CONGRESS' CONSTITUTIONAL MEDDLING

(By Joanne Jacobs)

You have the right to remain silent, when accused of a crime.

You have the right to speak up, when victimized by a criminal. California and 31 other states have passed victims' rights amendments to their constitutions; all the rest have statutes.

So why do we need to amend the Constitution of the United States of America to include a Crime Victims' Rights Amendment?

Because it's an election year.

Next week, on April 25, the Senate will debate the victims' amendment, sponsored by California Senator Dianne Feinstein, a Democrat, and Arizona Senator John Kyl, a Republican. The vote may be April 27 or 28.

Some 46 senators have signed on to the bill, but it will take a two-thirds majority (67) and two-thirds of the House (291) for passage, plus three-fourths of state legislatures to ratify.

The Constitution shields Americans—especially the unpopular—from governmental power.

The amendment grants rights to a politically popular and sympathetic group, victims. But no legislation can guarantee sensitivity by prosecutors and judges or competence by clerks assigned to notify victims about changing court dates. No amendment or law can give Americans what we really want: freedom from killers, rapists and robbers.

Instead, the amendment would federalize rights already offered by the states: Victims must be notified about bail, plea bargains, trials, sentencing and parole hearings, and about a prisoners' release or escape. They're entitled to a restitution order, which is usually uncollectible.

Feinstein-Kyl also includes ''consideration of the interest of the victim that any trial be free from unreasonable delay,'' which means the victim could ask for a speedy trial but the judge wouldn't have to grant it.

Victims would have a right to attend the entire trial, even if they're going to be called as witnesses and might tailor their testimony to fit an earlier witness's statement.

However, the judge could decide the defendant's constitutional right to a fair trial outweighs the victim's constitutional right to attend.

Other than adding a symbolic statement—''Pols (hurt) Victims''—to the U.S. Constitution, this wouldn't change much. Except to provide more ways to file lawsuits, which isn't going to make justice any swifter.

Both presidential candidates are pro-victim.

''I will lead the fight to pass a Victims' Rights Amendment to the United States Constitution—so our justice system puts victims and their families first again,'' Al Gore said in a Boston speech last July.

Apparently, he hasn't started yet. Gore's ''Fighting Crime'' agenda on his *www.gore2000.org* site doesn't mention victims rights, and the vice president hasn't endorsed the Feinstein-Kyl amendment.

The Clinton administration is wavering on the amendment, worried about interfering with prosecutors, denying defendants' rights and impinging on the president's power to grant executive clemency. (If President Gore wanted to pardon ex-President Clinton's perjury, who'd be the victim: Paula Jones? Ken Starr? 275 million Americans?)

George W. Bush ''strongly supports'' the Feinstein-Kyl amendment. It's not on his Website, *www.georgewbush.com* however; there's no issue statement on crime.

Most victim's groups are for it, but not all.

Bud Welch, whose daughter was killed in the 1995 Oklahoma City bombing, chairs Citizens for the Fair Treatment of Victims, which opposes the amendment. Emotional relatives might hamper prosecutors, Welch argues. Many relatives of victims objected to a plea bargain made to secure testimony of an accomplice of Timothy McVeigh and Terry Nichols, Welch Writes. ''Had this amendment been in place, the judge may have refused the plea agreement, making it significantly more difficult for the government to convict McVeigh and Nichols.''

Furthermore, consulting all the family members of all the victims—168 were killed and many more injured—would have created chaos, delaying the trial.

Feinstein cites the Oklahoma City bombing as proving the need for the amendment. The judge told victims' families they couldn't sit through the trial if they wanted to testify at the sentencing hearing. When Congress passed a law allowing it, the judge said the Constitution, guaranteeing a fair trial to the defendants, trumped the law.

This is Feinstein's only example of a conflict that would require a constitutional amendment.

The amendment also gives victims rights before a court has determined they're really victims, noted Robert P. Mosteller, a Duke law professor, in testimony before the House Judiciary Committee.

Imagine the Rodney King case, with no videotape, Mosteller said. The police officers charge King attacked them. As victims, the officers could ''sit in the courtroom during the testimony of all other witnesses as a matter of federal constitutional right. This provision would permit the true perpetrators of the crime to coordinate their false version of the facts'' and convict the real victim.

A judge could weigh witness-victims' right to attend and the defendant's right to a fair trial, Feinstein argues. The defendant might win.

Or be convicted by tainted testimony, leading to more appeals.

It's not worth it.

My bottom line is simple: Don't mess with the U.S. Constitution. Since the Bill of Rights was added 209 years ago, only 17 amendments have been added to the Constitution. It should not be changed unless absolutely necessary. It's not necessary in this case, not even close. Leave the Constitution alone.

[From the Chicago Tribune, April 25, 2000]

THE WRONG WAY ON VICTIMS' RIGHTS

Some national issues of grave importance can be dealt with adequately only by amending the United States Constitution. That was true of slavery, women's suffrage, and the income tax. But the same can't be said about the treatment of crime victims.

Their needs are real and worthy of concern. The Victims' Rights Amendment due for a Senate vote this week, however, is overdoing a good thing.

Every state has a law or constitutional provision assuring that crime victims may attend judicial proceedings that concern them, be notified of the impending release of their attackers, sue the offender for restitution, and the like. Many of these measures are relatively young and, according to victims' rights advocates, have not fulfilled the hopes lodged in them.

That's an argument for better funding and more meticulous implementation. It's grounds for electing prosecutors and judges who will take them seriously. It's also grounds for realistic expectations: Some goals are not likely to be realized no matter what. Restitution, for example, is largely a vain hope simply because most criminals are poor and thus lack the money to pay it.

The proposed constitutional amendment, however, threatens to do more harm than good. Its guarantees could sometimes conflict with the rights of defendants, as when it gives victims the right to demand a speedy trial. In such instances, the suspect's right to defend himself could be compromised, increasing the risk that innocent people will go to jail. Or the defendant's right could trump—in which case the new amendment would amount to little more than empty symbolism.

In either case, the decision will be made by judges, not legislators or voters. The advantage of protecting victims' rights by law is that different states can experiment with different approaches to see which are most effective and affordable. Once this amendment is entrenched in the federal Constitution, though, the entire nation will have to live with a ''one size fits all'' approach—and we may find that one size fits none.

Someone once said that a vice is often just a virtue taken too far. The Senate shouldn't make that mistake on victims' rights.

Mr. LEAHY. Mr. President, I have so much respect and affection for two key sponsors, Senator KYL of Arizona and Senator FEINSTEIN of California. They, as the other 98 Senators of both parties, care deeply about the rights of victims. Anybody who has seen some of the violent crimes in this country could not feel otherwise. A great, powerful, wealthy nation ought to care about the victims of child abuse, or fraud, and victims of all crime. That is not the issue. The issue, I say to my friends, is the legacy we leave to the next generation. So much of that legacy as Senators is what is in the Constitution.

We will not vote on anything more important than constitutional amendments, unless it is a declaration of war. There have been thousands of votes I have cast, and many that I can remember were inconsequential. Virtually all of them were on issues on which, if we did not like the results we could come back and revisit it the next Congress and change it. You cannot do that with a constitutional amendment. You do it with practical, pragmatic legislation that actually helps people—legislation that the Senator from Delaware has passed, legislation that I have passed, legislation that Senators on both sides of the aisle have passed, including Senators NICKLES, DEWINE, and others. I do not mean to exclude other people who have joined in on real legislation that really works for victims.

Mr. President, how much time is still available to the Senator from Vermont?

The PRESIDING OFFICER (Mr. HELMS). There are 48 minutes remaining.

Mr. LEAHY. I yield the floor to the Senator from Delaware.

Mr. BIDEN. Mr. President, is the Senator from Delaware under a time constraint?

The PRESIDING OFFICER. Under the cloture situation, the Senator has up to 1 hour.

Mr. BIDEN. I thank the Chair. Mr. President, I thank my friend from Vermont for his kind comments. It is rare on matters of constitutional law and matters of civil rights and civil liberties that the distinguished Senator from Vermont and I end up on opposite sides of the issue. We are on opposite sides of this issue. I, as the Senator from Vermont, have been very reluctant over my 28 years in the Senate to support constitutional amendments. I think they are a matter of significant concern and should not be undertaken without significant need and only after it is concluded that the same result could not be accomplished statutorily. So it is after some considerable thought—and, I might add, a considerable amount of work with the two primary sponsors of this amendment—that I have arrived at the point where I support this amendment.

Before I begin to discuss the details of the amendment, let me suggest to the Senator from Vermont that I came in at the tail end of his initial comments regarding public prosecution as opposed to privately going out and hiring a prosecutor to redress a criminal wrong that had been done to you, and his discussion about whether or not it was an established principle that the founders thought public prosecution was appropriate at the time of the Constitution. He is dead right on the facts. But I suggest to him, and others, that I suspect the points being made—and I have been in Colombia spending a good deal of time with President Pastrana on the drug and narcotrafficking problem he faces, so I missed a day of debate on this. So I may be mistaken in what I am about to say. But I expect that those who talked about public prosecution versus private prosecution were trying to make the generic point—I hope they were—that at one point in our English jurisprudential history, and for a number of centuries early on, the issue of moving forward to prosecute a wrong against you was totally in the hands of the victim. The victim made that judgment.

Early on, to overstate it, in the 14th, the 15th, the 16th and 17th century, if I were mugged in the stable, it would be Biden v. Jones. It would not be the Crown v. Jones. I was not represented by anyone but myself. This process evolved. The only good part of that process was that the victim controlled his or her own fate to a significant degree.

All of the years and years that I was chairman of the Judiciary Committee and the ranking member, we held hearing after hearing about how victims feel disenfranchised. One of the things that victims of violent crime need to be able to come to closure with is the dilemma and the horrible position in which they were placed. They have to see it come to fruition. They have to be able to know that they had some hand in the idea that the person who did bad things to them was pursued, and they got their day in court—''they,'' the victim.

Also, there is an overwhelming amount of evidence that began to pile up in the 1960s, 1970s, and then in the 1980s it reached a high pitch. In the 1990s it pertained as well. That is where people lost respect for the government and lost respect for the law because they believed they were not treated with respect—where victims found themselves, in their view, victimized not only by the criminal but victimized by the system.

That is why, I note parenthetically, when I wrote the Violence Against Women Act I provided for a means by which a woman who was a victim of violent crime could, if the prosecutor chose not to go after her assailant, after the person who did those bad things to her, she could at least go into the civil court and sue that individual.

Again, there was overwhelming testimony from psychiatrists and psychologists that there is a need for healing. Part of the catharsis in healing is to be able to go through the process and believe you are getting fair and decent treatment.

There are two things at stake when this cause of victims' rights begins to arise.

The public prosecutors, not because they were no longer caring, but because of the overwhelming burden, found themselves becoming increasingly callous about the plight of the victims.

I used to be a public defender. When I was a young lawyer, I would be assigned three or four or five cases to be tried in 1 day. The prosecutor would be assigned five, six, seven, or eight cases to be tried in 1 day. Everyone knew that plea bargaining process was necessary.

Often, looking back on it, the victim, or the alleged victim of the crime, found himself or herself showing up for court and learning from some prosecutor that they had dismissed the case. We didn't think there was sufficient evidence, or we decided to allow them to plead to petty larceny rather than robbery or burglar, or we decided so on and so on.

The impact upon victims and their faith in the system and their notion of whether or not government worked was always damning—always impacting upon them in a negative way.

To make a long story not quite so long, the Senator from Vermont is correct. Public prosecution did take place when our Republic became a republic. There were not, for example, in the city of Philadelphia, 25,000 felonies tried a year in one little city. There were not 68,000 habeas corpus out there. There was not the need for a prosecutor to find himself or herself in the position where they dismissed a large number of cases just because they didn't have time to get to them. There were not circumstances where the victims of crime who were so callously treated that they weren't even informed, and the person against whom they had sworn out the warrant they found sitting in the trolley car with them on the way home. They were not in that position.

What are constitutional amendments about?

Constitutional amendments are about dealing with serious concerns of the public that come about as a consequence of changed circumstances. One of the circumstances changed—and I suspect what previous speakers have been speaking to when they talked about how the system used to work—is that there is a feeling on the part of the vast majority of the victims of crimes that they have no control over the situation. They have no control. Not only were they victimized by the criminal, but they go in and either find themselves in the circumstance where there has been a deal made which they were no part of, or there was a sentencing that took place and they didn't get a chance to tell the judge how badly this guy beat them up, or that money that was stolen from them was the last money they had in the whole world, and they lost their home. Just the need to cry out and say: Listen to me, listen to me. Just listen to me. That is all I am asking you to do.

It is not that the prosecutors are bad guys or bad women. They are incredibly overloaded.

As the Presiding Officer knows, we have an incredible amount of time, notwithstanding the fact it has dropped the last 7 years in a row.

This is about going back to a time when public prosecutors had the time and exercised judgment to make a decision relative to moving forward against a defendant in conjunction with the concerns of the needs of and the desires of the victims.

That is what is missing.

We are here today to discuss two matters that I have cared about for many years. The first is crime—more specifically, the victims of violent crime. The second is the Constitution of the United States of America.

As the Presiding Officer knows, we came at the same time, and both of us dedicated a significant portion of our life in the Senate to various issues. We developed different interests, expertise, and/or assignments. In my case, it has been both the plight of crime victims and the preservation of our constitutional liberties. That is why I have thought long and hard about amending the Constitution to guarantee the victims of crime the elemental rights that they deserve, but too often are denied.

Time and again, I wrote and supported many statutory protections for victims. To cite just a few examples:

The 1990 Victims Bill of Rights gave victims a number of important procedural rights, including the right to notice of court proceedings, the right to confer with the prosecutor, and the

right to information about the conviction, sentencing, imprisonment, and release of the offender.

The 1994 Biden crime law:

Gave federal victims of sexual and child abuse the right to mandatory restitution;

Gave victims of violent crimes and sexual abuse the right to be heard at the sentencing of their assailants;

Provided special court-appointed advocates for child victims of crime;

And it also included the piece of legislation closest to my heart: the Violence Against Women Act, which provided ground-breaking and sweeping assistance to victims of family violence and sexual assault—and which, I might add, needs to be re-authorized this year through my Violence Against Women Act II bill, which has 46 cosponsors.

The 1996 Anti-Terrorism Act included HATCH-BIDEN provisions guaranteeing mandatory restitution to all victims of violent federal crimes;

And, now, I am pleased to support—and urge all of you to support—a constitutional amendment to protect victims' rights.

I am proud of my track record on victims' rights. But I am convinced that federal statutory guarantees are not enough. Judges are simply too quick to conclude, almost reflexively, that the defendant's constitutional rights trump the victim's mere statutory rights, even when conflict is illusory or could readily be resolved. You heard about the difficulties we had after the Oklahoma City bombing with a federal statutory approach to help the victims and their families. Senator FEINSTEIN outlined in detail the chronology of events there, and so I will not repeat them.

But equally important, because more than 95 percent of all crimes are handled at the state level, our federal statutory rights simply do not reach the great majority of crime victims.

Regrettably, the hodge-podge of protections for victims in place at the state level is spotty and inadequate. There is no common denominator of rights that victims are guaranteed in every state of the union. As a December 1998 report by the National Institute of Justice found:

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

This report found numerous instances in which victims were not afforded the rights to which they were entitled.

For example, even in states identified as providing ''strong protection'' to victims' rights, more than 40 percent of victims were not notified in advance of the defendant's sentencing hearing. And more than 60 percent of victims in these strong-protection states did not receive notice of a defendant's pre-trial release.

And so, I have come to the conclusion that it is time to write a basic charter of victims' rights into our Constitution setting a national, uniform baseline of rights for all victims of violent crimes.

Now, one of reasons there were more than 60 drafts of this constitutional amendment is because I insisted on a number of basic changes before I would agree to support it. And with the help of Professor Larry Tribe, I proposed these changes, and the sponsors accepted them.

My three key specific ''principles'' for drafting the language of the amendment were as follows:

Principle No. 1: The amendment must set out the specific rights to be accorded constitutional status—the core of which should be rights of participation. Victims should be entitled to the following rights of participation:

The right to be informed about, and not excluded from, any public proceedings involving the crime;

The right to make a statement to the court about bail, the acceptance of a plea, and sentencing;

The right to be informed about, and to participate in, parole proceedings to the same extent as the convicted offender; and

The right to be informed of an escape or release from custody.

Principle No. 2: The amendment must not unintentionally hamstring criminal prosecutions. We cannot forget: the best thing for victims is to catch and convict the bad guys; we have to make sure that nothing in the amendment would make that job more difficult.

Principle No. 3: The amendment must not abridge the rights of the accused. The protections in our Constitution for the accused—such as the right to counsel, the right to a jury of one's peers, and the right against self-incrimination—are there, above all, so that our system does not convict an innocent person. Locking up an innocent person benefits no one—except the guilty.

Let me describe for you a few of the changes on which I insisted, and which I believe makes this an amendment everyone can and should support:

Originally, the constitutional amendment would have covered the victims of all crimes. But prosecutors worried that the extension of rights to non-violent crimes—particularly those crimes affecting massive numbers of victims, such as may be the case with mail fraud or environmental crimes—would backfire, making it too difficult, too burdensome, to bring these cases. I insisted that the amendment be limited to the victims of violent crimes, and that change was made.

Earlier drafts of the amendment gave victims the right to ''a final disposition of the trial proceedings free from unreasonable delay.'' Prosecutors believed that this could allow victims to force them to proceed to trial before they are prepared.

Defense lawyers believed that the language created the risk that the defendant might be forced to proceed to trial without sufficient time to prepare a defense. In other words, this language would have made it both more difficult for prosecutors to get convictions and easier for those defendants who are convicted to overturn their convictions on appeal.

We want to make sure—above all—that we get the right criminal, and that we don't convict an innocent person. And we also want to make sure that the great police power of the government is not exercised in heavy-handed, over-reaching ways that threaten the constitutional liberties of all of us.

And so I insisted on modifying that language so that victims have the right ''to consideration of the interest of the victim that any trial be free from unreasonable delay.''

This is an important change. This means—in plain English—that before granting a third, fourth, or fifth continuance, judges in every state—from Delaware to Utah to California—must take into account the inconvenience and hardship to a victim and must proceed with the trial unless there is a good reason to wait.

What this does not mean is that judges must push lawyers to try cases before they're ready.

Next change: prosecutors and others worried that with the old drafts, a defendant could withdraw his plea or a judge could be forced to throw out a sentence after it had been accepted, jeopardizing the government's ability to get a conviction of guilty defendants.

I insisted on new language that makes it clear that nothing in the amendment provides grounds to overturn a sentence or negotiated plea.

Finally, I was concerned with earlier drafts that the amendment could be perceived as giving a victim's rights a higher constitutional standing than those of the criminal defendant—in other words, that victims' rights would be perceived as trumping defendants' rights. Section 2 of an earlier draft stated that nothing in the amendment would ''provide grounds for the accused or convicted offender to obtain any form of relief.''

I insisted that we change that language, and with the help of Professor Tribe, we redrafted Section 2 and removed that restriction on the rights of the defendant.

While the language is clear that nothing in the amendment itself gives rise to a claim of damages against the United States, a State, a political subdivision, or a public officer or employee, at the same time, it does nothing to bar defendants from obtaining relief for violations of their own constitutional rights.

And let me comment further about the rights of the accused—an issue that I know gives some of you pause about this amendment. I have spent my entire career in the U.S. Senate looking

out for the rights of the criminal defendant. There is an obvious and natural tension in the system between protecting the rights of the criminal defendant and ensuring that law enforcement is effective, and I have always worked to achieve a balance between these competing interests.

I say to you that this constitutional amendment, with the changes upon which I have insisted, strikes that balance. Judges will have the power under this amendment to strike a balance.

I keep hearing critics of the amendment say that defendants' rights will not be adequately protected if this amendment becomes part of the fabric of our Constitution.

For example, we heard testimony before the Judiciary Committee and statements on the Senate floor giving examples of how judges routinely—almost reflexively—exclude victims from the courtroom when they are potential witnesses in the case. Critics of the amendment contend that maybe that is how it should be, and they complain that the amendment would change that presumption of exclusion.

These critics argue that the presence of victim-witnesses at trial will undermine the defendant's right to a fair trial by giving the victims the opportunity to observe the other witnesses testify and tailor their testimony accordingly.

I submit to you that that is not as it should be. That is not how it needs to be. The witness sequestration rule is a prophylactic measure rather than a constitutional imperative. The purpose of the rule can be accomplished through defense cross-examination of fact witnesses, defense argument about the opportunity to tailor, and jury instructions, without categorically excluding victims from the trial.

There is nothing that remarkable about the scenario of one witness having the opportunity to listen to the testimony of others: the defendant who is a witness has that opportunity. And the defendant who is a witness is also open to cross-examination and argument by the prosecutor that he had the opportunity to tailor his testimony.

Just last month, the Supreme Court ruled in a case called Portuondo v. Agard, that despite the fact that a defendant has the constitutional right to be present at his trial, the prosecutor was entitled to comment in her closing argument on the fact that the defendant had the opportunity to hear all other witnesses testify and to tailor his testimony. This same type of argument would be available in cases where the victim-witness is present during the trial.

The constitutional amendment takes away nothing from the rights of the defendant. If the defendant's constitutional rights actually conflict with the participatory rights the amendment would guarantee the victim—and I submit to you that these conflicts would be few and far between—the judge is permitted under this amendment to balance these competing interests and grant exceptions where necessary.

Let me repeat: a constitutional amendment for victims does not mean that victims' rights will take precedence over defendants' rights.

Both the criminal defendant and the victim can and should have the chance to participate at trial and at other related public proceedings. There should be a balance. This amendment permits courts to balance.

A constitutional amendment is needed to set a national floor of rights for all victims of violent crimes. In every state—as well as in the federal system—the doors of the criminal justice system must be opened to victims—to make sure that they are meaningful participants, and not just spectators, in a system that has for too long kept them on the outside looking in.

With a victims' constitutional amendment, we will be telling prosecutors and judges, loud and clear: victims must be respected and included. They have rights—constitutional rights—that must be taken into account during the entire case.

I believe that the contradiction that many people see between the rights of defendants and the rights of victims is a false one. Our Constitution is not a zero-sum game. We do not diminish the rights of defendants by recognizing the rights of victims.

That is why I cosponsored this amendment. This amendment will give the victims of crime a voice and a measure of dignity and respect in the criminal justice process.

Mr. BINGAMAN. Mr. President, before I discuss my position on Senate Joint Resolution 3, the crime victims rights constitutional amendment, I would like to briefly talk about my views on amending the Constitution.

A recent letter each of use received from our colleagues Senator BYRD and Senator LEAHY provides some of the history of our Constitution and efforts to amend it.

They note that, since its ratification, over 11,000 amendments have been proposed to the Constitution. In the last month alone, the Senate has voted on three constitutional amendments. However, while thousands of amendments have been proposed, only 27 amendments have been adopted. Of those, the first 10, the Bill of Rights, were ratified in 1791. Therefore, since ratification some 200 years ago, we have generally heeded the caution of James Madison, one of the architects of the Constitution, that amendments to the Constitution should be reserved for ''certain great and extraordinary occasions''. In other words, amending the Constitution should not be done in response to what is politically popular at the moment or because of passions of the moment. If it was, I'm afraid many of those 11,000 amendments would now clutter our Constitution and undermine the very foundation of the freedoms and liberties it gives each of us.

Mr. President, the victims of violent crime are a compelling group of Americans and deserve our supports and our attentions. Nothing is more devastating to a family than loosing a loved one through a senseless, random act of violence. Nothing is more devastating to a community than the kind of violence we see in our schools and on our streets almost daily. Yet it is only in the past few years, perhaps 15 or 20, that our laws and lawmakers have begun to focus on the group of people we now refer to as ''crime victims''.

During those years, however, the states have not ignored the legitimate calls of crime victims and their families for more protection and more participation in the criminal justice process. Thirty-three states, including my own, have passed either crime victims rights amendments to their constitution or statutes intended to provide many of the same rights contained in S.J. Res. 3.

In New Mexico, the voters passed a constitutional amendment in 1992 that is very similar to S.J. Res. 3 and the legislature subsequently passed enabling legislation. This, I think is appropriate and I am glad that New Mexico recognizes the rights of crime victims to more fully participate in the criminal justice system. In fact, it is particularly appropriate that the states have acted in this area because the states are responsible for approximately 99 percent of the criminal prosecutions in this country.

From many indications, these amendments and statutes have worked. Not perfectly perhaps, but they have at least begun to bring victims of violent crime into the judicial process in a meaningful way.

Because New Mexico has acted to protect the rights of crime victims, district attorneys who I've spoken with often ask why we need to amend the United States Constitution when New Mexico has already addressed this issue? That, Mr. President, is an extremely important question to ask ourselves before we vote on S.J. Res. 3.

Mr. President, the Constitution provides a process for amendment when ''both Houses deem it necessary . . .'' Today I would argue that only when absolutely necessary or, in the words of Madison, for great and extraordinary occasions, should we vote to amend the Constitution. I would also argue that, where doubt exists as to the absolute necessity of the occasion, the Senate should defer on amending that document.

While I support the participation of crime victims in our judicial process Mr. President, and support the efforts of New Mexico and other states to give those rights to crime victims, I simply do find the evidence of a great occasion or compelling need to amend the Constitution in the arguments made by the sponsors of the amendment and therefore will vote no on S.J. Res. 3.

As others have pointed out, S.J. Res. 3 is almost as long as the entire Bill of

Rights. It reads like a statute and not a constitutional amendment. This is significant and more than simply a matter of form. Part of the reason why our Constitution and republican form of government have survived largely intact for over 200 years while virtually every other in the world has undergone radical, revolutionary change is the wisdom of the drafters in setting out clear principles and a coherent system to ensure the liberties that the Constitution guarantees. However, as I read the amendment before us today, I do not see the clarity or the simplicity of principle that I see in the Bill of Rights or the other amendments we've adopted. Because this amendment lacks clarity, I am concerned about the litigation this amendment could potentially spawn and the additional costs to an already overburdened legal system. Litigation over who is a ''victim'' alone would likely fill volumes.

Mr. President, one of the biggest concerns with this amendment is that, because of its vagueness, it will inevitably lead to a result which I think none of us, even the proponents, want, the diminishing of the rights of the accused.

No where in the amendment does it guarantee that it will not be construed to interfere with the rights of the accused. I understand that an amendment was offered in the Judiciary Committee that would have made that clear but was rejected. That to me is very troubling because, as important as the rights of victims are, we absolutely have to keep in mind that the rights of the accused must be paramount. That is because it is the accused that stands to lose life and liberty at the hands of the government. This is a bedrock principle of our judicial system, without argument the best system in the world, and we must not diminish that principle even in the name of a good cause.

Finally, Mr. President, I am concerned by the lack of case law to support the arguments of the proponents of S.J. Res. 3. As I understand it, the proponents are unable to point to any cases in which victims' rights laws or State constitutional amendments were not given effect because of defendants' rights in the Federal Constitution. Nor, as the committee report noted, is there any case law where a defendant's conviction was reversed because of victims' rights legislation or a State constitutional amendment. Why then are we amending the Constitution when there is no body of law that justifies the extraordinary step of amending the U.S. Constitution? This is very different from the situation we were in a few weeks ago when the Senate voted on an amendment to the Constitution on the issue of the desecration of the flag on campaign finance limits. In both of those instances, at least we had a final determination by the Supreme Court with which we could take exception. Without such a body of law I do not find the arguments in favor of a Federal constitutional amendment compelling.

Mr. President, I strongly support the right of victims of violent crime to be included in the criminal justice system in a meaningful way. I think it helps bring closure to the inured victims and provides an important balance to a system that admittedly has not always been sympathetic to the rights of victims. I would support additional funding and resources for victims rights programs and to properly train the judiciary in the need to be sensitive to the rights of crime victims. However, before we take the drastic and, for all intents and purposes, irreversible step of amending our Constitution for only the 28th time in our history, I believe we must be absolutely certain that we have exhausted all other avenues. As the National Clearinghouse for the Defense of Battered Women argues:

> The Federal constitution is the wrong place to try to ''fix'' the complex problems facing victims of crime, statutory alternatives and state remedies are more suitable. Our Nation's constitution should not be amended unless there is compelling need to do so and there are no remedies available at the state level. Instead of altering the U.S. Constitution, we urge policy makers to consider statutory alternatives and statewide initiatives that would include the enforcement of already existing statutes, and practices that can truly assist victims of crimes, as well as increased direct services to victims.

Mr. President, I believe we should give the states additional time to implement their victims rights amendments and statutes. Change occurs slowly, but I am convinced that real change for the victims of crime will be addressed more effectively by the states and that the federal government should not impose a one-size-fits-all, the federal government knows best, solution on the states. Additionally, if we determine that action at the federal level is absolutely necessary, I believe we should try to fashion a legislative solution before we amend the Constitution. I believe that we can do that and provide meaningful rights to victims of crime.

If, failing that, we find that victims are still not being afforded reasonable and real participation in the criminal justice system, then perhaps only a constitutional amendment will work but I am not convinced that we have done all that we can do short of that.

Mr. President, good intentions do not necessarily produce good results. The intentions of the supporters of S.J. Res. 3 are certainly good and just and I share those intentions, as well as their belief that we should be doing more for the victims of violent crime. However, I do not believe that this amendment will produce good results and may actually harm those it is intended to help and for that reason, I will vote against S.J. Res. 3.

Mr. DASCHLE. Mr. President, I rise to recognize all the Senators who participated in this important and healthy debate. In particular, I thank Senator LEAHY and Senator BYRD for their tireless defense of the Constitution.

In addition, however, I also want to recognize Senator FEINSTEIN for her commitment to victims of violence and for working to ensure that they are treated with fairness and decency and respect. While I strongly disagree with the approach the proponents of this amendment have taken, I completely agree with the sentiments they express. Victims should have a strong voice in our criminal justice system. Senator FEINSTEIN has been committed to this cause for decades and I believe her passion has brought new focus to this important issue.

Like many of us, I know what it is like when violence strikes your own family. I would not wish that pain on anyone. And I certainly do not want to see any victim's grief compounded by a needlessly callous or insensitive judicial system.

The question we have been debating, however, is not whether victims should have a voice in the criminal justice process. The question before us is whether we must amend our nation's Constitution to achieve that goal. I believe the answer is ''no.''

On September 17, 1789, as our new Constitution was about to be signed—after four long months of debate—Benjamin Franklin announced with typical irony: ''I consent, sir, to this Constitution because I expect no better, and because I am not sure it is not the best.''

Two-hundred and 12 years later, Mr. President, the United States Constitution is still the best constitution this world has ever known. It is, in my opinion, nearly sacred. James Madison, who penned most of our Constitution, urged that it be amended only in—quote—''certain great and extraordinary occasions.''

For 212 years, Americans have heeded his words of caution. As Senator LEAHY and Senator BYRD remind us, our Constitution has been amended only 17 times since 1791, when the first 10 amendments—Our Bill of Rights—was added.

More than 11,000 amendments have been offered during that time. But only 17 have actually been added to our Constitution. Because of the genius of the Framers, and the wise restraint of those who came after them, we have today a document that we can fit in our pockets . . . that we can understand . . . that we can refer to, and live by.

This beautiful document contains fundamental, unifying principles that protect our individual liberties and guarantee our democratic rights. The amendment we have been considering—while clearly well-intentioned—does not belong in this document.

With all due respect to its authors, it is not a constitutional amendment. It does not describe universal and eternal truths about human nature, or set forth the broad working of government. It is a statute.

Last month, we debated another Constitutional amendment—to make flag-

burning a crime. During that debate, some members of this Senate said it was right to take that extraordinary step because Americans had died to defend our flag.

Mr. President, this Constitution is why Americans have fought and died for more than 200 years—not to protect a flag, but to protect the principles enshrined in this document. As United States Senators, we take an oath to defend the Constitution. It is our most important obligation, our most sacred duty.

There is no ''great and extraordinary occasion'' requiring us to adopt this Victims' Rights Amendment. This amendment is popular. But it is not necessary. Every state—every single state—has some type of statute that identifies and protects victims' rights. Thirty-two states have passed state constitutional amendments protecting victims' rights. Not one of those statutes has been overturned. Not one of these state constitutional amendments has been found to conflict with our federal Constitution.

Amending—re-writing—our Constitution—is a remedy that ought to be tried only when we have exhausted every other possible means, and they have been found inadequate. When it comes to protecting victims' rights, there is much we can do, short of amending the Constitution.

Indeed, in my home state of South Dakota, every single protection identified in this proposed amendment is guaranteed by state law. In South Dakota, victims are included in every stage of the criminal justice process. They have the right to be notified about every court proceeding involving their case. They are told in advance about bond hearings, plea offers and sentencing hearings, and they have the opportunity to have their opinions heard on these matters.

Crime victims in South Dakota are told about all of these rights, and offered help, if they need it, to exercise them. These state laws provide South Dakotans with wide-ranging and effective protections. They may not, however, be a blueprint for Massachusetts, or Mississippi, or California.

There is another reason we should reject this amendment, Mr. President. Not only is it unwarranted. But also, ironically, this amendment could actually weaken victims' rights by making it harder for police and prosecutors to do their jobs. That is not simply my opinion.

This is a letter from the Chief Justice of the South Dakota Supreme Court. ''Victims' rights will not be furthered by SJR 3—and may indeed be harmed—as past state efforts in this area run headlong into an ethereal national standard that is incapable of responding to the constantly changing circumstances of the justice system.''

Here is another letter—this one from the State's Attorney and the Victim Witness Advocate representing my most heavily populated county. Quote—''While victims' rights are a very important issue, this amendment would make it difficult for us to do our jobs and make appropriate decisions regarding the prosecution of criminal cases.''

Many of my fellow Senators have voiced similar concerns. Senator THOMPSON has said—quote—''This constitutional amendment will make the procedure by which the District Attorneys around the country are trying to prosecute defendants more complex, more costly, more time-consuming in many respects, and ultimately will harm [the goal] that the victim is the most interested in—seeing justice done and a guilty defendant found guilty by our court system.''

The federal government should encourage states to set minimum standards for victims' rights. But we should not trample the principles that have served us so well for so many years. Under our system of government, police powers are reserved for the states. That is why 95 percent of all crimes are prosecuted at the state and local level.

Do we really believe it is time to rewrite this fundamental division of responsibility? Do we really believe we need to supercede state and local police powers with a national standard? A standard that can only be enforced by an act of Congress? Wouldn't the wiser, more prudent course of action be to encourage or require states to devise and enforce their own victims' rights standards?

In addition to the threat this amendment poses to our constitutional framework, I am also concerned it may erode the rights of the accused. I know full well that accused criminals are not a popular group. But the cornerstone of our justice system is the belief that we are all presumed innocent until proven guilty. If we undermine that basic principle in any way, we are all hurt.

Our Bill of Rights reflects our framers deeply held belief that the enormous power of the government to deprive persons of life, liberty and property in criminal prosecutions must be checked. Thus, the document I hold in my pocket protects us all from unreasonable searches . . . guarantees us all impartial juries, and protects us all against cruel and unusual punishments.

When these rights are diminished for some, they are diminished for all. For that reason, they should not be compromised lightly—no matter how politically popular it might be to do so. What crime victims need is real hope, not paper promises. For that reason, I strongly support both the Leahy ''Crime Victim Assistance Act'' and the Biden ''Violence Against Women Act'' re-authorization. Let's pass these bills.

Let's also look at making certain federal funds contingent on states' implementation of meaningful victims' rights at the state level. In fact, I declare today that I will work tirelessly with any member of this Senate who wishes to enact legislation to bolster the rights of victims. But let us stop treating our Constitution so cavalierly.

I am deeply troubled by the increasing tendency of this Congress to turn to constitutional tinkering to solve problems, rather than taking up the hard job of legislating. This is the second constitutional amendment we have debated in this Senate in a month!

In his final speech to the Constitutional Convention, just before the Constitution was signed, Benjamin Franklin said something that pertains here. After calling the Constitution very likely ''the best'' human beings could hope for, he told his fellow signers: ''I hope for our own sakes and for the sake of our posterity, we shall act heartily and unanimously in recommending this constitution and turn our future thoughts and endeavors to the means of having it well administered.''

That is our real responsibility as members of this Senate—not to second-guess the genius of this document not to alter and undermine it but to see that it is well administered. In that regard, we have much work to do. Let us do that work.

Again, I say to the sponsors of this amendment, I am as committed as anyone in this body to working with you to strengthen victims' rights. Indeed, I would consider every option—even conditioning federal funds on state implementation of basic protections for victims. I cannot, however, and will not—as much as I respect the Senators from California and Arizona—amend our great Constitution unless absolutely necessary.

By withdrawing their amendment, I believe the sponsors have acted responsibly, in Senatorial fashion. The Senate should be proud that one more time we have resisted the urge to tamper with the miracle created in Philadelphia in 1787—our Constitution.

At this time, I ask unanimous consent that letters from United State District Judge Lawrence Piersol, Chief Justice Robert Miller, State's Attorney Dave Nelson, Victim Witness Assistant Becky Hess and Marshal Lyle Swenson be inserted into the RECORD following my remarks.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. DISTRICT COURT,
DISTRICT OF SOUTH DAKOTA,
Sioux Falls, SD, April 19, 2000.

Hon. TOM DASCHLE,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR DASCHLE: I was surprised to learn that Senate Joint Resolution 3 would be up on the calendar next week in the Senate. I am very much opposed to this proposed constitutional amendment. To begin with, I think it diminishes our Constitution to attach to it what amounts to legislation. That proposition is true not only of this proposed constitutional amendment but also some other amendments that have been promised but failed.

I realize at first impression that the public might find such a resolution attractive because the rights of victims of crime have

sometimes in the past not received the attention that they should. I know from my day-to-day experience as the Chief Judge for the District of South Dakota that victims' rights are considered. I have had victims testify on various occasions in my Court at the time of sentencing and I regularly consider the views of victims both in their letters as well as in comments that are made in the presentence investigative reports as a result of the interviews of victims by the presentence report writers. The writers of those presentence reports are Court personnel and a part of my staff. In addition, when restitution is paid, it is paid first to the victims and then applies to other monetary obligations that are paid to the government after the victim has been monetarily compensated. I say ''monetarily compensated'' because I recognize that in some instances money alone cannot compensate a victim. In other instances, in an attempt to compensate victims, I have had Defendants, as a part of their sentence, write to victims and I have reviewed the letters before they went to the victims so that I could make sure that the letter was appropriate. As you know, Congress has done much in recent years by legislation to enhance the rights of crime victims. If Congress would choose to do more it would do so by legislation.

On the other hand, a constitutional provision as broad and as sweeping as this one is, especially without limiting definitions in the language, poses many problems. Once those problems come to light upon implementation, the problems will not be able to be solved because it would be a constitutional amendment. On the other hand, when legislation is passed and it turns out upon implementation that there are problems or that the solution should be addressed in a different way, then the legislation can be amended. After I have drafted this letter to you, I received a copy of a letter to Senator Charles Schumer from Judge William Wilkins, Chair of the Committee on Criminal Law for the Judicial Conference of the United States. I am attaching his letter because it considers in detail various problems with the proposed amendment. In addition, it does make some suggestions for its improvement if it is to be passed.

Legislation enhancing victims' rights can be passed now—the amendment process and then its implementation if passed by the states will take more than seven years.

Finally, from my point of view and experience as a trial judge, and that experience includes 180 sentencings last year, the amendment would prevent many guilty pleas in state and federal court. With all of the additional criminal trials, the courts would virtually be brought to a standstill, affecting civil and criminal cases.

I urge that victims' rights continue to be addressed by Congress by legislation.

Thank you for considering my views.

Sincerely yours,

LAWRENCE L. PIERSOL.

SUPREME COURT,
STATE OF SOUTH DAKOTA,
March 14, 2000.

Hon. THOMAS DASCHLE,
U.S. Senate, Office of the Democratic Leader, Capitol Building, Washington DC.

DEAR SENATOR DASCHLE: I want to thank you for taking time from your busy schedule to meet with me on Thursday, March 2. I truly appreciated the time I was able to spend with you and your staff. I am also deeply thankful for your interest in our juvenile intensive probation program (JIPP) and your efforts to secure more funding for it. The JIPP program clearly demonstrates that community corrections can work for certain juveniles who would otherwise be committed to expensive institutions.

There is one other matter that I need to bring to your attention. As you may know, the Senate has under consideration Senate Joint Resolution 3 ''Proposing an amendment to the Constitution of the United States to protect the rights of crime victims.'' It is difficult, on principle, to argue against SJR 3. We are all clearly concerned that victims of crime receive proper treatment by the justice system. It is senseless for the system to re-victimize the victims of crime through inattention to their needs and concerns. In South Dakota, for example, we have built our probation programs around a restorative justice philosophy that seeks to restore victims of crime while working with offenders to reduce recidivism. Regardless of how we consider crime in the hypothetical world of legal theory, crime produces real victims whose needs must be addressed by the justice system.

The fact remains, however, that SJR 3 will not radically change things for victims. Most if not all states in this country have victim rights provisions. South Dakota law provides a long list of victim rights, including the right to restitution, notices of scheduled hearings and releases, an explanation of the criminal charges and process, the opportunity to present a written or oral victim impact statement at trial, etc. There is little in SJR 3 that is not already in place in most if not all states.

On the other hand SJR 3 creates a national standard against which every aspect of the state and federal criminal justice systems will be measured, regardless of local efforts to address crime victim needs. In essence, SJR 3 would produce federal oversight of state court operations far beyond what may be in the interests of victims. For example, Congress, believing that unreasonable delays in court proceedings are harming the interests of victims, could pass national legislation imposing time processing standards that may be completely inapplicable to the peculiar circumstances of state and local courts. Victims who do not believe proper notice is being provided could seek a federal court injunction to compel or prohibit certain state court practices.

I cannot emphasize enough that the criminal justice system in South Dakota is committed to restoring victims of crime. We have not always done this as well as we should have, but we have always had it as a focus of our efforts. We continue to work on improving victim access to the court system while maintaining our independence, neutrality and impartiality. It is important for everyone to understand that our courts must balance the interests of victims with the interests of the accused, the interests of the state, and the constitutional rights we all possess. This is a delicate and difficult balance. I believe setting a single legal standard—as a matter of our national constitution—is ill advised. it can too easily be used in the future to upset this delicate balance.

I hope you will give very careful consideration to SJR 3 before casting your vote. Clearly our response to the needs and interests of victims should be and must be improved. But I believe those needs and interests are best addressed at the state and local level through new programs and state laws recognizing victim rights. Victims' rights will not be furthered by SJR 3 and may indeed be harmed as past state efforts in this area run headlong into an ethereal national standard that is incapable of responding to the constantly changing circumstances of the justice system.

Most sincerely,

ROBERT A. MILLER,
Chief Justice.

OFFICE OF THE STATE'S ATTORNEY,
Minnehaha County, SD, April 21, 2000.

Re Victim's Rights Amendment.

Senator TOM DASCHLE,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR DASCHLE: As you ponder your vote on the Victim's Rights Amendment, we would like to express our concerns about a Constitutional Amendment of that nature being passed. We would strongly urge you to vote against this amendment.

Under our law in South Dakota, the victims' are afforded many, if not all, of the rights contained in the amendment. We currently have victim/witness assistants in many of the prosecutor's offices across the state and are actively working with victims on a daily basis. Each morning, our office contacts by phone, if possible, all victims of crimes against persons from the evening or weekend prior. We make our attorneys aware of the victims' wishes and concerns regarding the cases prior to arraignment. Following arraignment, victims are notified of the next phase of court either by phone or by letter. As the case proceeds, victims are advised of any plea offers or possible issues or concerns the attorneys may have with the case and are kept appraised of the ongoing procedures. Additionally, victims are invited to attend bond hearings, motion bearings, plea hearings, sentencing hearings and any other hearings relevant to the case. Victims are also encouraged to write victim impact statements or letters to the court regarding their thoughts and feelings about how this crime has affected them or their family. Victims are also invited to speak at sentencing hearings regarding these same issues.

In 1999, we averaged approximately 85–90 cases per month involving crimes against persons. We attempted contact with all of these except when the victim is transient and has no phone or address of any kind. Of those cases, an average of 51 cases per month were domestic assaults. Our office has adopted a 'victimless' prosecution position in that the victim does not need to be cooperative on a domestic case for our office to prosecute. Due to the nature of domestic violence, our concerns have been that the defendant has a great deal of power over the victim and can often convince the victim to be unavailable for court or to ask that we dismiss the charges. While our victim's input is important, we hesitate to allow it to become the driving force in the prosecution of these cases. Our fear is that given the influence of the defendant in domestic violence, we would be doing defendant driven prosecution. Typically, our victims report assault many more times than they actually agree that prosecution is necessary or important. Consequently, our ability to get convictions on domestic cases would be greatly hindered if the victim were allowed to run the case or make the final plea negotiation decisions. Our ability to prosecute without the victim makes it possible to get conditions on defendants and keep our victims and our community safe.

I have enclosed copies of the letters that are sent to all victims of every crime against persons. While there may be an occasional victim that we fail to locate, we make every effort to find them whenever possible. Occasionally, a victim may ask that we stop notifying them of the next phases of court and we honor that request.

Please consider these concerns and understand that while victim's rights are a very important issue, this amendment would make it difficult for us to do our jobs and make appropriate decisions regarding the prosecution of criminal cases.

Sincerely,

BECKY HESS, LSW,

Victim Witness Assistant.
DAVID R. NELSON,
State's Attorney.

U.S. DEPARTMENT OF JUSTICE,
U.S. MARSHALS SERVICE,
District of South Dakota, April 24, 2000.

Hon. THOMAS DASCHLE,
U.S. Senator, Office of the Democratic Leader, Capitol Building, Washington, DC.

Re Senate Joint Resolution 3, Proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

DEAR SENATOR DASCHLE: As you are well aware, prior to my current position as the United States Marshal for the District of South Dakota, I served as the elected Sheriff of Davison County for 32 years where I dealt directly with victims of crime on a day to day basis. That experience created a great deal of empathy towards victims on my part and caused me to wonder about our system of justice at times. I do have very strong feelings of support for victims of crime and wish to help them in anyway possible.

That said, I strongly believe that amending the Constitution is absolutely the wrong way to correct the problem and will accomplish nothing other than a ''feel good'' attitude and cost the American taxpayers endless dollars! We already have many laws to protect victims so that all that is needed is enforcement by prosecutors and the Courts to correct any problem areas. If it is found that more laws are necessary to better protect them, pass those laws as needed but setting a national standard for all states to follow may cause many more legal problems in the future than we can imagine today.

In addition, consider the problems that will immediately occur within all of our penal institutions, city and county jails throughout the country. Many of the victims of crimes are in those same institutions and/or are becoming victims within those places. This amendment will bring on transportation nightmares for those various institutions as they try to get each prisoner to their necessary hearings creating great cost problems and worse yet possible escape situations.

Having 40 years experience dealing directly with prisoners at the county jail level to the state penitentiary, I know that most every one of them will attempt to use the system if for no other reason than it would be a chance to abuse and misuse the system! As an administrator now charged with the responsibility of transporting prisoners to courts, to and from institutions, I believe the associated problems would be endless besides being very expensive.

I ask for your kind consideration in this matter and I stand ready to work with you to ensure that all victims rights are preserved and they are fairly represented in all criminal proceedings. I believe that can be best accomplished at the state and local level without tampering with the Constitution.

Sincerely,

LYLE W. SWENSON,
United States Marshal.

Mr. DASCHLE. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. STEVENS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, I read the committee report relative to this constitutional amendment from beginning to end. I did so because of the extraordinarily important issue which has been raised by Senators KYL and FEINSTEIN, and others: an effort on their part to provide some compassion and some relief to victims of crime. I have tremendous respect for their effort and those of their cosponsors.

After reading the committee report and giving a lot of thought to this issue, I have decided to oppose the amendment for a number of reasons.

First of all, we all start with the proposition that we want victims to have rights and Congress and the State legislatures should act to provide those rights. I do not think there is a lot of dispute about that issue. The question that is before us in this constitutional amendment is whether or not the way to achieve that goal is through an amendment to our basic document.

I believe it is fundamentally wrong to amend the Constitution for a number of reasons. First, the desired goals can be achieved by statute. Every State has a constitutional amendment or a statute which protects victims' rights. I do not believe there is one statute or one constitutional amendment in any State protecting victims' rights that has been held to be unconstitutional.

One of the complaints seems to be that State statutes and State constitutional provisions are not being enforced adequately. Take, for example, a story that Marlene Young, executive director of the National Organization for Victim Assistance, brought to the attention of the House Judiciary Committee Subcommittee on the Constitution in February. This is what she said:

> Just within the past 2 weeks, our office received a copy of a letter published in the Sumter (Georgia) Free Press. It reads in part: ''I write this letter as a victim, not only of the person who violated me but as a victim of a system gone bad. . . . I was sexually battered here in Sumter County. I chose to press charges. Several days after the arrest and release of the accused, I received a packet from the court which included a list of my rights as defined by Georgia State law. I should have received this information from (the detective) the day I gave my statement. Georgia Law states that the investigator will provide the victim with a copy of Georgia Victims Bill of Rights in plain English upon initial contact. . . . Victims are everywhere and we have the right to be protected under Georgia Law. How many other victims are there who don't know what their rights are because the agencies are not working together? Lucky for me, to date, I have not been further injured by the accused. Others in this country may not be as lucky as I have been. It is time the victims of crimes be treated with respect and the laws set forth by the State of Georgia be followed. At what point are the laws of this state important to the authorities?''

So, the problem in that case, and in so many other cases, was not that the law in Georgia was incapable of protecting the victim; the problem was that the law was not carried out or enforced. Georgia has a State statute guaranteeing victims' rights, and the officials in Sumter County did not abide by that statute or implement it in her case. Is that a reason for a Federal constitutional amendment? Or is it, instead, a plea to the Georgia attorney general—who supports a constitutional victims' rights amendment, by the way, as is documented by his signature on a letter to us—to enforce the laws of his State? I argue that it is the latter.

Then we have the extraordinary testimony of Professor Laurence Tribe. Professor Tribe starts our with the proposition that:

> The States and Congress, within their respective jurisdictions, already have ample affirmative authority to enact rules protecting these rights,

referring to the rights of victims.

Then he says:

> The problem . . . 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. . . .

What Professor Tribe is saying is that it is justifiable to amend the Constitution of the United States because statutes that are on the books are not enforced. That argument not only falls short of Madison's test that there be a ''great and extraordinary'' need before the Constitution is amended, it does not even come close.

It is particularly inappropriate to amend the Constitution when the interests sought to be protected are so complex and are still in formation. The question of who is a victim alone is a subject of much discussion.

We have had tragic instances in recent history, in New York City and in Oklahoma City, where the bombings of buildings created literally hundreds of victims—the families of those who were killed and the survivors.

Are all of them to be given the protection that is set forth in this constitutional amendment? What restrictions can be put on their rights by statute? What about persons making false claims against others, charging others with a crime? That person, an alleged victim, is given standing to argue against bond in order to keep the person he falsely accused in jail, without bond, awaiting a trial.

We have had too many instances of false accusations, including one recent notorious story of schoolteacher of 32 years, who taught not too far from here, and was falsely accused by his students of sexual harassment and sexual assault.

The possibility for injustices of many varieties should be explored, as they are currently being explored in the 50 States, all of which have either statutes or constitutional amendments that provide various means of protection for victims.

The pending amendment will be implemented by congressional enactment. Congress will be legislating for 50 State criminal court systems, which handle

95 percent of the criminal cases in this country. Far better for us to pass legislation that will strengthen victims' rights in Federal criminal cases, over which we have jurisdiction, and test the dozens of critical concepts which are involved in the effort to provide victims with rights, including: Who victims are? What is the impact on prosecutions? Is it negative, as some in law enforcement believe? Will there be undue delays caused by the meaning of the many issues that are open to litigation?

The Conference of Chief Justices of the States of the United States wrote a very compelling letter, part of which reads as follows:

. . . all states have some type of statutory guarantee for the protection of victims' rights, most of which have been enacted recently. At least 31 of the states also have constitutional provisions and these enactments provide victims with the opportunity to be heard at the various stages of criminal litigation, particularly at the point of sentencing and in respect to release on bail or on parole. Most states are considering further constitutional changes. If the sponsors of S.J. Res. 3 are searching for a single settled law governing victims, the goal will not be achieved through a Federal Constitutional Amendment. Preempting each State's existing laws in favor of a broad Federal law will create additional complexities and unpredictability for litigation in both State and Federal courts for years to come. We believe that the existing extensive state efforts provide a significantly more prudent and flexible approach for testing and refining the evolving legal concepts concerning victims rights.

When the chief justices of our State courts make such a compelling argument, it seems to me that this body—always sensitive to the fact that we live in a Federal system—should give it great attention.

Supporters have argued in the report at one place that the reason for this constitutional amendment is to ''establish consistent, uniform rights'' for crime victims in this country. On the other hand, in the same report the sponsors talk about giving the 50 different States the authority to ''flesh out the countours of the amendment by providing definitions of victims' and crimes of violence.'' They cannot have that argument both ways.

The subject of trying to provide rights for victims in Federal criminal cases is ripe for Federal statute, but it is wrong—it is simply wrong—to treat the Constitution as though it were a statute book.

This amendment does not meet the test of Federalist No. 49. This great document, written by James Madison, said that a constitutional amendment provision should be reserved ''for certain great and extraordinary occasions.''

This is an occasion where the cause is surely important and great, but the cause may be achieved by statutory means. It is not appropriate to amend the Constitution for this occasion.

As a student and as a young lawyer, I grew to revere the Constitution. As an American, I thank God for it every day. Amending this hallowed document should be done when a great interest cannot otherwise be protected and when it can be described simply and in transcendent language. The amendment before us does not meet that test.

Mr. President, I yield the floor.

Mr. KENNEDY. Mr. President, over the past few days, there has been a great deal of discussion on the rights of victims and the need for increased participation of victims in the criminal justice system. I believe that all of us support victims' rights, greater federal recognition of these rights. Clearly, they deserve enforceable rights that are guaranteed by law. But, just as clearly, these rights can be achieved without taking the extraordinary step of amending the Constitution of the United States.

The Constitution is the foundation of our democracy, and it reflects the enduring principles of our country. The framers deliberately made it difficult to amend the Constitution, because it was never intended to be used for normal legislative purposes. Chief Justice Rehnquist captures the essence of why this proposed amendment is misguided, when he states that a statute, rather than a constitutional amendment, ''would have the virtue of making any provisions in the bill which appeared mistaken by hindsight to be amended by a simple act of Congress.''

The Constitution is not a billboard which to plaster amendments as if they were bumper sticker slogans. In this Congress alone, over a dozen constitutional amendments have been introduced. With every new proposed amendment of this kind, we undermine and trivialize the Constitution and threaten to weaken its enduring strength.

One of the guiding principles that has served the nation well for two hundred years is that if it is not necessary to amend the Constitution, it is necessary not to amend it. We have amended the Constitution only 17 times in the two centuries since the adoption of the Bill of Rights. We should consider such amendments only in rare instances, when the enactment of a statute is clearly inadequate.

We do have a responsibility to act to assure victims of crime that their rights in the criminal justice system will not be ignored. But amending the Constitution is not the appropriate remedy, and the debate over such a remedy in recent years has, as a practical matter, delayed the implementation of basic protections that are needed and that should be accomplished by statute.

For too long, our criminal justice system has neglected the hundreds of thousands of victims of crime whose lives are shattered by violence or threats of violence each year. I believe, along with every other member of the Senate, that the rights of victims deserve better from our criminal justice system.

Another irony is worth emphasizing in this debate. Many of the Senators who support the rights of victims and feel so strongly about this constitutional amendment are the same Senators who refuse to allow federal action, even by statute, to protect victims of hate crimes. For the past two years, the Senate has failed to send hate crimes legislation to the President's desk for signature. I hope that this debate will at least have the beneficial affect of encouraging Congress to take action to protect victims of hate crimes. Their needs too can no longer be ignored.

Too often, the legal system does not provide adequate relief for victims of crime. They are not given basic information about their case—such as the case status, scheduling changes of court proceedings, and notice of a defendant's arrest and bail status. Victims deserve to know about their case, They deserve to know about hearings and other proceedings. They deserve to know when their assailants are being considered for parole. And they certainly deserve to know when their attackers are released from prison.

Victims of crime and their families deserve legislation that will guarantee their basic rights and provide urgently needed support. However, particular provisions in the proposed constitutional amendment are of grave concern. It is no surprise that victims' rights groups and domestic violence groups oppose the constitutional amendment for a very practical reason. If a victim of domestic violence acts in self-defense, the batterer would be entitled to all of the constitutional rights created by S.J. Res. 3, including the right to attend court proceedings and the right to be heard.

Clearly, we can deal with this problem by statute, and I urge the Senate to do so. I would welcome the opportunity to work with my colleagues to enact bipartisan legislation to accomplish the goal we share of genuine protections for victims' rights.

Finally, I commend all of my colleagues who have so eloquently defended the Constitution and opposed this misguided amendment, especially Senator BYRD and Senator LEAHY. They have given Congress and the country an excellent lesson in the role of the Constitution in protecting our liberties. Rarely has there been a better example of Senators living up to our oath of office ''to support and defend the Constitution.''

When we began this debate earlier this seek, the conventional wisdom was that the proposed constitutional amendment was within a vote or two in the Senate of obtaining the two-thirds majority needed for passage. The debate has so clearly demonstrated the fundamental flaws of this amendment that the amendment is likely to be withdrawn. It is a proud moment for the Senate, and I believe the founders who wrote the Constitution would be proud of us too.

Mr. LEAHY. Mr. President, I do not want to conclude this debate without, again, acknowledging the commitment to crime victims of the Senator from Arizona and the Senator from California. I know that they are sincere in their support for crime victims. I compliment them as well for the manner in which they have conducted themselves throughout this debate and throughout the Judiciary Committee's work on this matter. I view them not as opponents but as allies in our mutual efforts to assist crime victims.

I also want to acknowledge the extraordinary efforts of the senior Senator from West Virginia and the thoughtful guidance of the Democratic Leader. Senators DORGAN, DURBIN, SCHUMER, DODD, MOYNIHAN, FEINGOLD, MURRAY, THOMPSON, WELLSTONE, LEVIN, and BINGAMAN each contributed greatly to the debate.

I thank Senators from both sides of the aisle—Senators who supported preserving the Constitution and those who supported the proposed constitutional amendment. I commend the Senate for doing its duty and upholding the Constitution and Bill of Rights.

I would also like to thank Rachel King and her colleagues at the ACLU; Sue Osthoff, Director of the National Clearinghouse for the Defense of Battered Women; John Albert, Public Policy Director of Victims Services; Donna Edwards, Director of the National Network to End Domestic Violence; Renny Cushing, Director of Murder Victims' Families for Reconciliation; Arwen Bird; Scott Wallace; Beth Wilkinson; Emmet Welch; and Professor Lynne Henderson. As always, I thank my staff, as well as the hard-working staff of our distinguished Democratic Leader.

Finally, my special thanks to Professor Robert Mosteller of the Duke Law School, who has given so generously of his time, over many years, to many of us on the Judiciary Committee and in the Senate. Professor Mosteller is a leading scholar in this field, and his expertise and counsel have been invaluable.

Mr. FEINGOLD. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, first, I compliment the wonderful statement by the Senator from Michigan in opposition to this amendment. On all issues I appreciate his knowledge and his understanding, and particularly his extremely clear way of presenting his views on this very important issue.

Mr. LEVIN. I thank my friend.

CALLING OF THE BANKROLL KICK-OFF

Mr. FEINGOLD. Mr. President, as many of my colleagues may remember, during the first session of this Congress I initiated the Calling of the Bankroll. It is a time when I come to the floor to chronicle the massive amount of PAC and soft money pumped into the campaign finance system by donors looking to influence the work we do here on this floor.

I called the bankroll many times last year—19 times, to be exact.

And I included not just donations by business interests but from interests on both sides of these debates, including trial lawyers and gun control advocates.

Last year when I began my Calling of the Bankroll effort, I did so because I thought it was time for someone in this body finally to talk about what we all think about and what the American people really are quite angry about; and that is, how money can influence what we do here and how we do it.

I know that this is an uncomfortable topic, and I know full well that there are some who would prefer that I stop Calling the Bankroll—that there are those who wish that I would stop putting the spotlight on facts that reflect poorly on our system, and in turn on the Senate, and on both major political parties.

I have to tell you, Mr. President, no one wishes I could stop Calling the Bankroll as much as I do.

I wish wealthy interests with business before this body didn't have unlimited ability to give money to our political parties through the soft money loophole, but they do.

I wish these big donors weren't able to buy special access to our political leaders through meetings and weekend retreats set up by the parties, but they can.

I wish fundraising skills and personal wealth weren't some of the most sought-after qualities in a candidate for Congress today, but everyone knows that they are.

Most of all, I wish that these facts didn't paint a picture of Government so corrupt and so awash in the influence of money that the American people, especially young people, have turned away from their Government in disgust, but every one of us knows that they have.

But I also know something else: that we have the power to change this embarrassing state of affairs.

Here in the Senate we have the power to show the American people that we have the will to shut down the soft money system.

As I said, I Called the Bankroll 19 times last year—and I could have done it even more times.

Unfortunatey there is never a shortage of material.

When I Call the Bankroll I describe how much money the various interests lobbying on a particular bill have spent on campaign contributions to influence our decisions.

I Called the Bankroll on: A mining rider to emergency supplemental appropriations, the gun control amendments to the juvenile justice bill, the Super Hornet amendment to DoD authorization, the Y2K liability legislation, the Patients' Bill of Rights—we did it twice on that, China/NTR, the tobacco industry, last summer's tax bill, agriculture appropriations, the FCC rule on the siting of telecommunications towers, oil royalties—we did it twice on that one, consolidation in the railroad industry, the Passengers' Bill of Rights, the F–22 program, the Africa Growth and Opportunity Act, the Financial Services Modernization bill, and finally the Bankruptcy Reform Act.

As I said, there was no shortage of material for calling the bankrolls.

This year, it's time again to examine legislation before this body with an eye to the interests that seek to influence the legislative process.

I have already begun that effort—I recently called the bankroll during the debate on the budget resolution. Of course, the budget process itself is tainted by the flood of money that flows to those of us who decide the nation's spending priorities. During that debate we addressed the question of whether or not we should drill for oil in the Arctic National Wildlife Refuge, and I called attention to the significant contributions by the companies with an interest in the outcome of that debate.

Before that I also called the bankroll on the interests lobbying both sides of the nuclear waste debate.

I talked about phony issue ads, PAC contributions, unlimited soft money contributions—the money that's always here, just beneath the surface of our debates.

It's our unwillingness to discuss it or even acknowledge the influence of this money that speaks volumes about how uncomfortable so many of us are with the current campaign finance system.

The purpose of the Calling of the Bankroll is to force this body to face up to the appearance of corruption the system causes and face up to our responsibility to do something about it.

So I can assure my colleagues that I will keep Calling the Bankroll until we do something about the campaign finance system that causes the American people to question our motives when we act on legislation, and, I am afraid, to question the very integrity of this body and our democracy.

And today they have more reason than ever to take a cynical view of our work.

Because last year was another record-breaker in the annals of soft money fundraising—the national political party committees raised a record $107.2 million during the 1999 calendar year—81 percent more than they raised during the last comparable presidential election period in 1995, according to Common Cause.

An 81 percent increase is astounding, especially considering that the year it's compared with—1995, the last off-election year preceding a presidential election—which was itself a record-breaking year for soft money fundraising.