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February 16, 2007

The Honorable David F. Levi
Chairman
The Committee on Rules of Practice and Procedure
Judicial Conference of the United States
1 Columbus Circle, NE, Suite 4-170
Washington, DC 20544

Dear Chairman Levi:

I write to express my strong concern about your proposed changes to the Federal Rules of Criminal Procedure to implement The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act (CVRA). As a sponsor of the Act, I believe that passage by overwhelming majorities in both the House and the Senate signifies Congress's intent to provide crime victims with substantive rights and protections in federal court. But the proposed amendments do little more than reiterate limited parts of the statute. Crime victims have been mistreated by the federal criminal justice system for far too long. To comply with Congress's intent, the Advisory Committee must take decisive and comprehensive action to thoroughly amend the rules and fully ensure that crime victims are protected in federal courts.

As the Advisory Committee knows, the CVRA guarantees crime victims a series of rights. In its proposed amendments, the Committee promises to "incorporate, but not go beyond, the rights created [for victims] by the statute." Given that promise, I am surprised to see that many parts of the CVRA have been simply left out of the Committee's proposed amendments. In particular, I do not see any proposed amendments containing the following rights found in the CVRA: 1) the right to be reasonably protected from the accused; 2) the right to confer with the attorney for the Government in the case; 3) right to proceedings free from unreasonable delay; 4) the right to be treated with fairness and with respect for the victim's dignity and privacy; 5) the right for a victim and the victims representative to assert rights throughout the process; and 6) right for victims to assert rights, if no prosecution is underway, in the district court in the district in which the crime occurred.

Some of these omissions may have been accidental and, if so, I assume that the Committee will quickly correct the oversight. But, I am troubled that some of the omissions appear to be deliberate and would minimize crime victims' rights. For example, the CVRA promises that "the crime victim or the crime victim's lawful representative, and the attorney for the government . . . may assert the rights described in [the CVRA]." 18 U.S.C. § 3771(d)(1) (emphasis added). Yet, the Committee's proposed rule on this subject appears to undercut Congress' statutory mandate in two ways. First, for reasons not articulated, the Committee's

proposed amendment (proposed Rule 60(b)(2)) states that rights may be asserted by only “the victim or the attorney for the government” – seemingly deliberately excising the language permitted a crime victim’s representative to assert rights as well. Second, and more broadly, the Committee’s proposed amendment allows victims to assert only rights “under these rules” rather than all their rights listed in the CVRA. This has the effect of blocking a victim from being heard on many issues of vital importance to victims because the Committee has listed only a few rights in “these rules.” In particular, as I understand it, the Committee’s proposed amendments would only permit victims to be heard on issues relating to release, plea, and sentencing (covered by proposed Rule 60(a)(1)(3)) – not more broadly on issues directly relevant to crime victims. This is contrary to the CVRA’s language granting victims the power to “assert” all “the rights described in [the CVRA.]” For example, under the Committee’s proposed amendments, a crime victim would have no way to assert the right, as provided by the CVRA, to proceedings free from unreasonable delay (18 U.S.C. § 3771(a)(7)), even if a judge continued a trial for no good reason. The Committee should promptly add a rule allowing crime victims to be heard throughout the process on any matter directly affecting a victim’s right – including the right to fairness.

The bill’s proponents were clear in their support for the victim’s right to be heard on all issues of direct concern to them. On the Senate floor, Senator Feinstein described the CVRA as providing victims the right to participate “in the process where the information that victims and their families can provide may be material and relevant . . .” 150 C.R. S4260 (Apr. 22, 2004). Likewise, my support for a victim’s right to be heard is clearly stated in the Congressional Record:

[The CVRA] allows a crime victim to enter the criminal trial court during proceedings involving the crime against the victim, to stand with other counsel in the well of the court, and assert the rights provided by this bill. This provision ensures that crime victims have standing to be heard in trial courts so that they are heard at the very moment when their rights are at stake and this, in turn, forces the criminal justice system to be responsive to a victim's rights in a timely way. 150 C.R. S4269 (Apr. 22, 2004).

I cite these statements because I am troubled to see no evidence that, while preparing amendments related to the CVRA, the Committee examined the Congressional Record to determine legislative intent. Yet, many courts have indicated the usefulness of such history when determining Congress’ intent. The Ninth Circuit, for example, has noted that the views expressed by the Acts supporters are particularly significant because no other Congressional members registered any views contrary to our own. *Kenna v. United States District Court*, 435 F.3d 1011, 1015 (9th Cir. 2006); see also *United States v. Degenhardt*, 405 F.Supp.2d 1341, 1344 (D. Utah 2006). Moreover, unlike some other pieces of legislation, the CVRA was uncontroversial and enjoyed bi-partisan support. For the convenience of the Committee, and to facilitate that review, I have attached a copy of my remarks on the Senate floor explaining the CVRA.

Perhaps the most troubling feature of the Committee’s approach is its refusal to fully implement CVRA’s sweeping promise to crime victims that the federal system will treat them

“with fairness and with respect for the victim’s dignity and privacy.” 18 U.S.C. § 3771(a)(8). This right is, of course, one of the specific rights guaranteed for crime victims by the CVRA. I have been told that the Committee has declined to implement this provision because it somehow serves as a “springboard” to other rights. Yet, the Congress intended for this promise to serve as an independent, enforceable, and guaranteed right of crime victims. Again, the legislative history leaves no doubt on this subject. In my statement on the Senate floor, I explained that the “broad rights articulated in this section are meant to be rights themselves and are not intended to just be aspirational.” 150 C.R. S10911 (Oct. 9, 2004).

I am not the only one who believes that the right to fairness, dignity, and respect must be implemented in the federal rules. Judge Paul Cassell, a knowledgeable observer of crime victims’ issues, has written a lengthy law review article urging the Committee to implement the right to fairness, dignity, and respect, and providing illustrations of places in the rules where this needs to be done. I fully endorse his approach to these issues, although in some areas he has drafted proposals that are, if anything, too cautious. In general, I agree with Judge Cassell that the Committee must review each and every rule in the Federal Rules of Criminal Procedure and determine whether it comports with the CVRA’s promise to crime victims that they will be treated with fairness, respect, and dignity, and that they will be granted all other rights in the CVRA. This is the only way to bring the rules into compliance with the CVRA’s mandates. Thus, the Advisory Committee must answer, among others, the following questions:

1. Does Rule 11 treat crime victims fairly when it fails to even mention victims in the procedures regarding the taking of guilty pleas, even though the CVRA guarantees that victims will have a chance to heard before any plea is accepted?
2. Do Rules 12.1 and 12.3 reasonably protect victims from the accused by automatically turning over their addresses and phone numbers to defendants when an alibi or public authority defense is raised?
3. Does Rule 15 treat victims fairly and with respect in not giving victims the chance to attend criminal depositions?
4. Does Rule 17 treat victims fairly and with respect even though it allows confidential information about them to be turned over to defendants without a chance for a victim to even be heard on the issue?
5. Does Rules 21 treat victims fairly in allowing a case to be transferred to a distant location, far from where the crime was committed, without the victim’s views on the transfer even being considered?
6. Does Rule 32 treat victims fairly in failing to guarantee victims a chance to review the presentence report and the Sentencing Guideline calculation that will control the sentence and provide an opportunity to speak directly to the judge; rights that criminal defendants already enjoy?

7. Does Rule 46 treat victims fairly when it fails to require a judge to consider a victim's views in determining whether a defendant will be released on bail, even though the CVRA guarantees victims the right to be consulted on any decision involving release?
8. Does Rule 50 treat crime victims fairly when it fails to ensure that victims, no less than criminal defendants, will enjoy a right to a speedy trial?
9. Do the Federal Rules of Criminal Procedure treat victims fairly in failing to even acknowledge the well-established right of trial judges to exercise discretion when appointing counsel for victims in appropriate circumstances?

I respectfully suggest that the answer to all of these questions is "no." I further believe that the overwhelming majority of Americans would agree with my view. But, what I find most surprising is that the Advisory Committee has, so far as I can tell, decided to simply duck even considering most of these questions. In my view, the Committee must answer these questions – one way or the other. Congress is entitled to know the position of the federal courts on these issues, so that it may determine whether to pass any corrective legislation.

I have been told that the Advisory Committee decided not to answer these questions so that the development of crime victims' rights could occur on a case-by-case basis. Yet, the Advisory Committee must realize the inadequacy of that approach. Unlike criminal defendants, most crime victims lack legal counsel to defend their rights. Victims are often indigents, who after being emotionally and physically harmed by the defendant's crime, are ill-prepared to play a substantive role during complicated and unfamiliar legal proceedings. To expect that in these circumstances, crime victims are capable of undertaking the kind of sophisticated and path breaking litigation that would be necessary to establish victims' rights is unreasonable. I understand that Professor Douglas Beloof, who has extensive experience with victims' litigation, has explained this more fully to the Committee. I urge the Committee to consider his testimony carefully and remember that the main reason for the CVRA was to change a legal culture that has been hostile to crime victims. To expect that this legal culture will somehow, on a case-by-case basis, welcome crime victims is unlikely.

The Committee's approach is also troubling because it assumes that litigation will sufficiently clarify the rights of victims in the federal system. But the Federal Rules of Criminal Procedure serve as a template for states throughout the country. One of the main purposes of the CVRA was to create a model for protecting victims in the criminal justice system. Unless protections are provided to crime victims on the federal level, states will not have a model they can look to in drafting their own rules to guarantee the fair treatment of victims.

The only way to ensure crime victims are treated properly in the federal (and state) criminal justice systems is with a complete and comprehensive overhaul of the Federal Rules of Criminal Procedure. Even though I aided in securing passage of the CVRA more than two years ago, I have waited patiently to provide the federal courts an opportunity to implement procedural changes that provide protections to crime victims. Crime victims should not be forced to wait indefinitely for our promises to be fulfilled, and I intend to introduce legislation that will amend the rules to provide victims the protections set forth in the CVRA.

I trust that the Advisory Committee will not be offended by the direct way in which I have stated my concerns. As the Committee is aware, in our constitutional system, the last word on the drafting of the federal rules is left to Congress. As a strong supporter of our federal courts, I want the rulemaking process to proceed smoothly and to give the courts first opportunity to correct problems on their own. But, when Congress passes sweeping legislation guaranteeing that crime victims will be treated with “fairness and with respect for the victim’s dignity and privacy,” the courts must fairly implement that right – not minimize its reach. I remain optimistic that the Committee will do so swiftly, and send an appropriate set of rule changes on to the Supreme Court, so that crime victims will be provided adequate protections under the Federal Rules of Criminal Procedure.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jon Kyl", with a stylized flourish at the end.

JON KYL
United States Senator

JK:tjh

SCOTT CAMPBELL, STEPHANIE ROPER, WENDY PRESTON, LOUARNA GILLIS, AND NILA LYNN CRIME VICTIMS' RIGHTS ACT -- (Senate - April 22, 2004)

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The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 2329, which the clerk will report.

The bill clerk read as follows:

A bill (S. 2329) to protect crime victims' rights.

The PRESIDING OFFICER. Under the previous order, each of the following Senators control 30 minutes: Senators **KYL, HATCH, LEAHY, and FEINSTEIN.**

The Senator from California is recognized.

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Mr. REID. Will the Senator yield for a parliamentary inquiry?

Mrs. FEINSTEIN. Absolutely.

Mr. REID. Following the use or yielding back of the time, the Chair just announced we will vote on this measure; is that true?

The PRESIDING OFFICER. That is correct.

Mrs. FEINSTEIN. Mr. President, 8 years ago the Senator from Arizona asked me if I would join with him in a pursuit to give victims basic rights under the Constitution of the United States. It was something I knew a little bit about and I was delighted to do it. What I didn't know a lot about was the drafting of a constitutional amendment and how difficult it was. The next 8 years actually proved to be one of the most rewarding times of my Senate experience.

First, I thank the Senator from Arizona for his collegiality, for the ease with which we have been able to work together, and for his leadership on this issue, which has been absolutely 100 percent unrelenting.

In a time of increasing partisan separation in this body, the friendship, the collegiality, and the leadership has been so appreciated by me. It has been one of the bright spots in my Senate career. I want him to know how much I appreciate it.

I also thank victims, about 30 or 40 of whom are present in the gallery. These are victims who have had terrible things happen to them, but rather than sink back into the

depths of despair, have decided they would fight for something so that anyone who had similar things happen to them could have a part in the criminal justice system. Particularly, I would like to acknowledge a few of those victims.

The first is Colleen Campbell. Colleen Campbell has lost two members of her family as a product of murder. Senator *Kyl*, in his remarks, will make that clear. She has become an ardent supporter of our efforts, and a small pin that Senator *Kyl* and I are wearing today is the pin which represents a group called "Force 100." These are victims who have been asking Congress to take this action. The pin depicts an angel holding a checkered flag. Her brother, Mickey Thompson, who was murdered, was a race car driver, and therefore the checkered flag. Her son, Scott Campbell, was also murdered. Colleen, a brilliant leader and a wonderful woman, has lost two members of her family--her son and her brother--to murder.

The other was Roberta Roper. Roberta is one of the first people I met. She hails from Maryland. Again, Senator *Kyl* will say more about the circumstances of that crime.

The third is Steve Twist, who has represented the victims with integrity and steadfastness over these past 8 years, to try to get for them as much as could be possible in the recognition of their rights.

Essentially, bottom line, what we have found after numerous Judiciary Committee subcommittee hearings, committee hearings, markups, putting the victims' rights constitutional amendment out on the Senate floor in a prior session, taking it down because we didn't have the votes, beginning anew in this session, going through the processes in committee, and recognizing that we didn't have the 67 votes necessary for a constitutional amendment--both Senator *Kyl* and I, as well as the victims and their advocates, decided that we should compromise. There are Members of this body who very much want a statute. There are Members of this body who very much want a constitutional amendment. We have drafted a statute which we believe is broad and encompassing, which provides enforcement rights for victims, provides funding for the Department of Justice victims' rights programs, for legal clinics, for enforcement to carry out this law federally and also to spread the word to local and State jurisdictions to enact similar laws.

We basically provide a set of eight rights:

The right to be reasonably protected from the accused; the right to reasonable, accurate, and timely notice of public proceedings so that you know what is happening as well as notice if the accused is released or escapes from custody--

I can't tell you how many victims who may have testified against their assailant live in dread of the fact that an assailant will be released, they won't know it, they won't be able to protect themselves, and the assailant will come after them. That is not theory. It has happened over and over again. There are cases of that, with which I am intimately, unfortunately, knowledgeable--

The right to be present at public proceedings, not to be barred from a court hearing, not to be barred by a public proceeding involving a plea agreement;

The right to be reasonably heard at critical steps in the process, those involving release, plea, or sentencing; the right to confer with the prosecutor;

The right to full and timely restitution, as provided by law;

The right to proceedings free from unreasonable delay;

And the right to be treated with fairness and with respect for the victim's dignity and privacy.

At one time the system of criminal justice in the United States of America provided these rights. Victims had rights until about the mid-19th century, the 1850s, when the concept of the public prosecutor was developed in our Nation. Up to that time, victims brought cases. Victims hired lawyers. Victims even hired sheriffs to prosecute cases. That changed in the mid-19th century, and in that change the victim became left out of the process.

Nowhere was the need for this legislation made more clear than during the trials over the Oklahoma City bombing.

Because we got involved, the Senate and the House, because victims were not being given the rights afforded to them by prior legislation, victims then went to a district court of appeals and victims were then subsequently still told that they had no standing.

A brief account of the trial in the Oklahoma City bombing case illustrates this point:

During pre-trial conference in the case against Timothy McVeigh, the District Court issued a ruling to preclude any victim who wished to provide victim impact testimony at sentencing from observing any proceeding in the case.

In a hearing to reconsider the issue of excluding victim witnesses, the trial court denied the victims' motion asserting standing to present their claims and denied the motion for reconsideration.

Three months later in February 1997, the Tenth Circuit Court of Appeals, rejected, without oral argument, the victims' claims on jurisdictional grounds finding they had no "legally protected interest" to be present at the trial and had suffered no "injury in fact."

Congress reacted the next month by overwhelmingly passing the Victims' Rights Clarification Act of 1997, which provided that watching a trial does not constitute grounds for denying the chance to provide a victim impact statement at sentencing. President Clinton signed the bill into law on March 20, 1997.

When the victims filed a motion with the District Court seeking a hearing to assert their rights under the new law, the District Court concluded "any motions raising constitutional questions about this legislation would be premature and would present issues that are not now ripe for decision."

The court then entered a new order on victim-impact witness sequestration, and refused to grant the victims a hearing on the application of the new law, stating that its ruling rendered the request "moot."

I believe the result would be different if the bill we are considering today was law then. The victims and the families would have had standing, and would have been able to avail themselves of the mandamus proceeding to get a timely ruling on the merits from the Court of Appeals. Perhaps that would not have been necessary--the District Court judge, armed with the standing provision of this bill, perhaps would have reached a different result during the trial.

We have written a bill that we believe is broad. We have written a bill that provides an enforcement remedy; namely, the writ of mandamus.

This part of the bill is what makes this legislation so important, and different from earlier legislation: It provides mechanisms to enforce the set of rights provided to victims of crime.

These mechanisms fall into four categories:

A direction to our courts that they "shall ensure that the crime victim is afforded the rights described in the law."

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A direction to the Attorney General of the United States to take steps to ensure that our Federal prosecutors "make their best efforts" to see that crime victims are aware of, and can exercise these rights.

A specific statement that the victim of a crime, or their representative, may assert these rights; the result is that, for the first time victims will have clear standing to ask our courts to enforce their rights.

And a new use of a very old procedure, the writ of mandamus. This provision will establish a procedure where a crime victim can, in essence, immediately appeal a denial of their rights by a trial court to the court of appeals, which

must rule "forthwith." Simply put, the mandamus procedure allows an appellate court to take timely action to ensure that the trial court follows the rule of law set out in this statute.

These procedures, taken together, will ensure that the rights defined in the first section are not simply words on paper, but are meaningful and functional.

The bill also has two separate resource provisions, which together will authorize the appropriation of \$76 million over the next five years to ensure that the federal government assist crime victims in asserting these rights, and to encourage states to do the same: The bill authorizes a total of \$51 million over five years for crime victim assistance grants administered by the Department of Justice to establish and maintain legal assistance programs throughout the nation.

These institutions are key to the success of this legislation, for this is how victims' rights will be really asserted and defended--by lawyers, standing up in court, and explaining to judges and prosecutors what the law means, and how it applies in the case at hand. Rights and remedies need articulation to work, and this money will help make that happen.

These grants, championed by my colleague Senator *Leahy*, provide a total of \$25 million over five years for a specific, and critical, purpose: to "develop and implement" the type of notification systems that take full advantage of modern technology.

Computers, linked to sophisticated telephone or automatic mailing systems, can help us ensure that the right to notice, set out in the first section of this bill, is not simply abstract, but is made real by a notification system that can provide "accurate, and timely" notice to victims' of crime and their families.

This act, of course, binds only the federal system, but is designed to affect the states also. First it is hoped that states will look to this law as a model and incorporate it into their own systems. This law encourages that by allowing both types of grants--legal assistance and victim notification--to be provided to state entities, and for use in state systems, where the state has in place "laws substantially equivalent" to this act.

Never before have these three critical components, rights, remedies and resources, been brought together. It has been said "a right without a remedy is no right at all," and this law would couple victims' rights with victims' remedies in a way that has never been done before in the federal system. I believe that taken together we have a formula for success, and this law will work, and hopefully become the model for our States.

So why is the law needed?

Senator *Kyl* and I have been working on this issue for the past 8 years. We offer this legislation because the scales of justice are out of balance--while criminal defendants have an array of rights under law, crime victims have few meaningful rights.

In case after case we found victims, and their families, were ignored, cast aside, and treated as non-participants in a critical event in their lives. They were kept in the dark by

prosecutors to busy to care enough, by judges focused on defendant's rights, and by a court system that simply did not have a place for them.

The result was terrible--often the experience of the criminal justice system left crime victims and their families victimized yet again.

Let me be clear. I am not talking about the necessary emotional and psychological difficulties which are almost inevitable in our adversary system. Cross examination can be hard. The legal system sometimes must seem complex and irrational to those who do not work in it. Sometimes judges and juries make decisions that victims of crime do not like. But that is not the problem that this law addresses.

That problem is one of process and fairness. The rights I have spoken about are basic, and do not come at the expense of defendant's rights.

Boiled down, they involve the simple right to know what is going on, to participate in the process where the information that victim's and their families can provide may be material and relevant, and the right to be safe from violence.

I mentioned earlier the dramatic disparity between the

rights of defendants in our constitution and laws, and the rights of crime victims and their families. My point is to illustrate that our government, and our criminal justice system, can and should care about both the rights of accused and the rights of victims. That is what this law addresses.

Some have said that current law is adequate. For instance, the Victim of Crime Act of 1984 sets out rights for victims--in fact the bill before us restates many of those rights. But prior laws did not have the critical combination of rights and remedies that we now offer.

In fact, a number of victims' rights laws have been passed:

1982, the Victim and Witness Protection Act, mentioned before, which provided for victim restitution and the use of victim impact statements at sentencing in federal cases;

1984, the Victims of Crime Act, which encouraged the States to maintain programs that serve victims of crime, and established a Crime Victims' Fund, which now matches up to 60 percent of the money paid by States for victim compensation awards;

1990, the Victims' Rights and Restitution Act, which increased funding for victim compensation and assistance, and codified a victims' Bill of Rights in the federal justice system;

1994, the Violence Against Women Act, which authorized over \$1.6 billion over six years to assist victims of violence and prevent violence against women and children;

1996, the Mandatory Victims Restitution Act, which required courts to order restitution when sentencing defendants for certain offenses;

1996, the Justice for Victims of Terrorism Act, which appropriated funds to assist and compensate victims of terrorism and mass violence;

And 1997, the Victim Rights Clarification Act, which reversed a presumption against crime victims observing any part of the trial proceedings if they were likely to testify during the sentencing hearing, an issue which developed during the Oklahoma City bombing case. Specifically, this legislation prohibited courts from (1) excluding a victim from the trial on the ground that he or she might be called to provide a victim impact statement at sentencing, and (2) excluding a victim impact statement on the ground that the victim had observed the trial.

All of these laws represent a step in the right direction. But they are not enough. They don't really work to protect victims' many had hoped. Why is this? I believe it because they fail to provide an effective procedure for victims to assert standing and vindicate their rights. The bill before us builds on these earlier attempts, and goes one very important step farther--linking rights to remedies, and, I hope, fixing the problem with these earlier laws.

Some have asked--why proceed with a statute, rather than a Constitutional amendment? Why a law and not a constitutional amendment?

Senator *Kyl* and I have been working for many years towards a constitutional amendment to establish these rights. I have always believed that amending the Constitution is the best way to ensure victims' rights are protected in the criminal justice process. But many have disagreed, arguing that we should try, once again, a legislative approach.

It is clear to me that passage of a Constitutional amendment is impossible at this time. If we tried, and failed, it could be years before we could try again. Victims of crime have waited years for progress, and a compromise approach, resulting in the bill now under consideration, will result in meaningful progress.

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Will it work? I hope so. The bill before us is a new and bolder approach, than has ever been tried before in our Federal system.

The standing provision, coupled with the mandamus provision, may have the desired effect. This will be a test, and I, for one, will be watching it closely.

I think for both Senator *Kyl*, and now for Senator *Hatch*, the distinguished chairman of the Judiciary Committee, and Senator *Leahy*, the distinguished ranking member, who join us as major cosponsors of this bill, that we will follow this bill carefully and we will see

whether the enforcement rights contained in this bill are adequate. If not, you can be sure as the Sun will rise tomorrow, we will be back with a constitutional amendment.

This bill is named after some of the victims. Both Senator *Kyl* and I briefly want to state the story of the victims after whom the bill is named. I would like to tell the Senate a little bit about Louarna Gillis, who was 22 years old when she was slain on January 17, 1979, as part of a gang initiation. Her murderer wanted to enter the world of narcotics as part of the Mexican Mafia and was told the quickest way to do so was to murder the daughter of a Los Angeles Police Department officer. Can you believe it? It is true.

Louarna Gillis was targeted by the killer. He knew her in high school. That was the reason he targeted her. The murderer picked her up a few blocks from her home, drove her to an alley in East Los Angeles where he shot her in the head as she sat in the car. He pushed her into the alley and fired additional shots into her back.

Louarna's murderer was apprehended 6 months later. He had a long history of violence, including felony convictions.

Louarna's family was not notified of the arraignment, nor were they notified of other critical proceedings in this case. Her family's rights were largely ignored. The first trial resulted in a hung jury, 11 for first-degree murder, 1 not guilty. Louarna's father, John Gillis, was not allowed in the courtroom.

At the second trial, the murderer pled guilty to second-degree murder to avoid the death penalty. He was sentenced to 17 years to life. Parole for Louarna's murderer has successfully been blocked by her family to this day. He will be eligible for parole again in the next 6 to 8 months. Louarna's father, a former homicide detective with LAPD, had just left an intelligence assignment working against street gangs and the Mexican Mafia at the time of her murder. Can you imagine?

Mr. Gillis was later appointed by President George W. Bush as the Director of the Justice Department's Office for Victims of Crime. He testified before Congress on July 17, 2002. I said:

I know firsthand the personal, financial, and emotional devastation that violent crime exacts on its victims. As a survivor of a homicide victim, I testify with the unique advantage of understanding the plight that victims and their families face in the criminal justice system When a person is victimized by crime, he or she is thrust into a whole new world in which the State's or the government's needs take priority.

This is the most devastating time in a person's life, when they have lost a loved one to homicide or violent crime; they need protection.

They need to let the court know how this crime has impacted their lives, because it will have a long-lasting, traumatic impact in their lives. It's important that they have the opportunity to say something to defend their loved one.

This terrible story took place in my home State of California. This bill will help fathers like Mr. Gillis: he would be notified of key proceedings, and be able to participate in a meaningful way.

I would like to tell you about Nila Ruth Lynn. Here is her picture. She was 69 years old. She was murdered at a homeowners association meeting on April 19, 2000, when an angry man stormed into the meeting and announced: "I'm going to kill you."

He was unhappy with the way the association had trimmed the bushes in his yard the previous month. Nila and another woman were killed and several other men were injured during the rampage. She died on the floor in the arms of her husband Duane. They had been married 49 years and 9 months. Nila left behind Duane and six children. The money the children had been saving for a 50th wedding anniversary gift was instead used to pay for her casket.

Duane Lynn suffered through long delays and continuances in this case. Despite clear State constitutional and statutory rights, Duane was not allowed to make a sentencing recommendation for his wife's murderer. Nila's killer was sentenced to death. Duane wanted the defendant to be sentenced to life imprisonment without the possibility of parole, rather than deal with the continuing appeals involving the death sentence.

The U.S. Supreme Court has denied its petition for a review of the Arizona Supreme Court's refusal to protect the right. He testified before the Senate Judiciary Committee on April 8. Here is what he said:

We, as a family of the victim, which was my wife, my love, the person I still expect to walk through my front door every day--she was a real person, not just a name and a number on a document. We could say nothing about the consequences of that man who took all this away from me. You have no idea what this feels like. The evil done by a murderer inflicts tragedy, and that is bad enough. But injuries inflicted by our legal system are even harder to take. I felt kicked around and ignored by the very system the government has in place to protect law-abiding citizens.

This is not the way criminal justice should be practiced in the United States of America. The time has come to give victims of crime the right to participate in the system, the right to notice of a public hearing, the right to be present at that public proceeding, the right to make a statement when appropriate, the right to have restitution, if ordered by a judge, the right to know when your assailant or attacker is released from prison, and the right to be treated by our prosecutors and by our criminal justice system with respect and dignity. That is not too much for the Congress of the United States to strive energetically to achieve for the 22 million victims in this country.

It is with great pleasure that over the years I have worked with Senator *Kyl* to achieve this. Once again, I cannot thank him too much.

I thank the Chair. I yield the remainder of my time to the distinguished Senator from Arizona.

The PRESIDING OFFICER (Mrs. **DOLE**). The Senator from Arizona.

Mr. KYL. Madam President, it isn't always possible for us to schedule matters in the Senate in a convenient way. I am aware Senator *Feinstein* must leave to attend another meeting. It is my hope she will be able to be here before we vote.

While she is still here, I must say I share her sentiment that some of the most gratifying work I have done in the Senate has been my work with Senator *Feinstein* and her good staff in putting together a constitutional amendment and working hard to try to get it passed and preparing for the hearings--speaking with the victims, meeting with the Justice Department--literally hundreds of hours of time we have spent together working on this issue. It has helped to foster a bond of trust and friendship between us that I think could be used as a template for our colleagues in this body to work together in a bipartisan way.

I can never thank Senator *Feinstein* enough for her work on this amendment. I know the many victims who are here in the gallery share that sentiment.

This legislation would not be before us today without Senator *Feinstein*. That is simply a fact. For all of the hard work we have put in with her cooperation and her commitment to this, I thank Senator *Feinstein* deeply. She knows that bond of trust will continue to exist between us.

Mrs. FEINSTEIN. Madam President, I thank the Senator. I do appreciate those words. They mean a great deal to me.

If I might, I ask unanimous consent to add the Senator from Maryland, Senator *Mikulski*, as a cosponsor of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Madam President, I would like to retain the remainder of my time.

Mr. KYL. Madam President, I ask unanimous consent that Senators **NICKLES** and **INHOFE** be added as original cosponsors of the legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. Madam President, I join Senator *Feinstein* in supporting S. 2329, which is the statutory version of the constitutional amendment we have prepared and about which Senator *Feinstein* has spoken.

The legislation, as I will describe in a moment, will attempt to accomplish as much as possible the same goals the constitutional amendment which has been pending before us would have accomplished.

But before I discuss the details of that, there are several people I would like to thank. In addition to Senator *Feinstein*--again it is impossible to express my appreciation enough for all of the hard work she put into this effort. We simply couldn't be here, because in order to get things passed in the Senate it is critical there be a bipartisan consensus, especially so for something that requires a supermajority. Without Democrats and Republicans working together, we would have never gotten to this point. Certainly Senator *Feinstein* was largely responsible for the work on the Democratic side of the aisle.

I appreciate all of my colleagues' understanding and support on this as well.

Senator *Frist*, who is willing to trust us in scheduling this for time on the floor--and there is very little time to take up matters, as the Presiding Officer knows--understood this was a very important commitment we had made to the victims of crime. During Crime Victims' Rights Month was the time to try to accomplish this. I appreciate his support.

I appreciate the support of Senator *Hatch* who throughout the years has never stood in the way but always lent us a hand in setting up a hearing and getting a time and a room for markup on the constitutional amendment and supporting its passage.

Again, it is not easy to get a constitutional amendment through even the Judiciary Committee, let alone to get it adopted. But Senator *Hatch* was supportive of that effort. I very much appreciate his cosponsorship of the statutory version of this amendment, as well as the support of Senator *Leahy*.

I think I would be remiss if I didn't make the point that the first cosponsors of this legislation were Senator *Feinstein*, myself, and Senators **HATCH** and **LEAHY**, chairman and ranking member of the Judiciary Committee.

Obviously this legislation has very strong support. We anticipate it will pass overwhelmingly and will be quickly sent to the House for action there, and hopefully to the President, who I am confident will be supportive of it and will sign it.

Let me at this point thank some of the victims' rights organizations. Again, they were responsible for bringing the issue to our attention and for providing a lot of the information we needed to be able to make the cases and for, frankly, the moral support to keep going. When Senator *Feinstein* and I would get discouraged, after meeting with victims' rights groups we were no longer discouraged; we were even more committed to pursue this head on. Some of them are headed by remarkable people. There is a whole page of groups I will thank.

Specifically, I thank Mothers Against Drunk Driving, the National Organization for Victim Assistance, Parents of Murdered Children, and Force 100, and especially Colleen Campbell for her leadership of Force 100. Senator *Feinstein* has already spoken of Colleen Campbell, and this pin in memory of Mickey Thompson speaks volumes about her leadership of this effort.

The fact this is Crime Victims' Rights Month and week I think is important. President Reagan actually had the first recognition of crime victims in a week that was designated for that purpose.

I think it is important at this time we especially recognize the victims of crime all over America; that with this year's memorial of victims' rights, America's values will be vindicated to some extent with the passage of this legislation.

It is especially poignant we would be waiting at this time to recognize these rights of victims of crime. Indeed, it is right to take up this issue. The right to fairness for crime victims and the right to notice and presence and participation are deeply rooted concepts in the United States of America. This country is all about fair play and giving power to the powerless in our society. It is about recognizing the values of liberty of the individuals against encroachments of the Government.

Fair play for crime victims, meaningful participation of crime victims in the justice system, protection against a government that would take from a crime victim the dignity of due process--these are consistent with the most basic values of due process in our society.

I was involved in Arizona issues for victims of crime even before I ever ran for the U.S. House of Representatives, so this was to some extent a cause for me before I became a public official. It was after I became a public official and people really came to me with these stories that I realized I had an opportunity to do more than the things I had done before. I have come to see the need for these protections as critical for our country.

While engaged in all of the other important activities, at bottom, it is a country about individuals who have inherent rights recognized and given to us by God. That is the basis for the creation of this country. Human dignity and the right that all people are made in God's image is such an important part of the foundation of our country that we would be remiss if we did not recognize that concept, that value, especially for those who have been victimized in our society because we could not as a government provide adequate protection for them.

I came to realize in many cases these victims were being victimized a second time because while we were asking them sometimes to come into court and testify against the perpetrators of the crime so they could be incarcerated or dealt with in an appropriate way for the further protection of society, we were not helping these victims at all. They were suffering through the trauma of the victimization and then being thrown into a system which they did not understand, which nobody was helping them with, and which

literally prevented them from participation in any meaningful way. I came to realize there were literally millions of people out there being denied these basic rights, being victimized by our criminal justice system.

Let me mention two circumstances, but we will discuss all of the rights in a moment. The one circumstance that seemed to be the most frequent is: My mother was murdered, my daughter was murdered--whatever the situation--and I could not attend the trial. That is what our system says today.

While there are statutes in States and even some State constitutional provisions that purportedly guarantee a victim will not be denied access to the courtroom, it is still the case today that the victims, the victims' families, cannot even go into the courtroom. The defendant is there, the defendant's family is there seated in a reserved row seats, but the victim and the victim's family cannot be present. That is fundamentally wrong. We are not talking even about them saying anything. Obviously, everyone in the courtroom has to behave. The judge can throw anybody out if they do not behave or if they express

emotions or try to communicate with the jury. That is not the issue.

They could not attend sometimes because the defendant's lawyer would say: It would be prejudicial to my client if the victims are seen in the courtroom. This was one of the circumstances that I could not believe our criminal justice system was imposing. It is one of those things that is fixed in this statute.

The other circumstance--and there is an especially telling, emotional case in Arizona I became familiar with which induced me to pursue this with all the vigor I could--is the circumstance where a crime has been committed, the perpetrator has been convicted and is in prison or jail, but unbeknown to the victim and the victim's family, the individual gets out of jail. The individual escapes, has some kind of a parole hearing or in some other way is able to leave before the sentence is up, and the victims are not even notified, let alone given an opportunity to appear before that parole board and say: Wait a minute, this person has a 15-year sentence and you are letting him out after 8 years. Let me tell you what he did to me.

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Not to go into detail but to finish that story, in one of the Arizona cases with which I am familiar, the woman having been brutally raped and slashed and left to die recovered. Her perpetrator was convicted and put into prison. He had a parole hearing and the parole board decided to release him prematurely. She got no notice of that. She got no opportunity to be present.

By not quite coincidence but enormous alertness and compassion on the part of an individual in the Governor's office at the time routinely reading through the notices of the parole board, a staff person saw this and again almost coincidentally thought, Wait a minute, I don't think that is right under our law. He tracked down this individual who had by then moved to California and asked her if she would like an opportunity to appear

before another parole board hearing if that could be arranged. She said yes. The parole board agreed to revisit the issue in a subsequent hearing and she testified. She told her story. After she told her story, the parole board reversed its opinion.

I asked her later: Were you afraid he would come after you if he were released? She said: No. My victimization was random. I was trying to hitchhike. I should never have done it.

He--and, by the way, his wife--picked her up and she was then brutalized as I described it. She said: It was random. I don't think he would come after me again. What I was concerned about was knowing the nature of the kind of individual that commits this kind of crime, he would do it again to somebody else. I didn't want him to have that opportunity to hurt somebody else like he hurt me.

That tells you about the motivation of these victims of crime who are willing, despite the hurt that it causes them, to participate in the criminal justice system--not just for themselves because they get nothing out of it--because they know what it is like and they want to prevent that harm to others.

Those are the kind of people whose portraits are behind me and who Senator *Feinstein* was talking about. That is why we are trying to do something about righting this wrong, about balancing the scales of justice. Rightly, defendants in this country are protected better than in any country in the world through constitutional amendments that give them rights. We are not trying to take one single right away from any defendant. That would be wrong under our system. But we do think it is time to balance the scales of justice. That was the motivation for Senator *Feinstein* and me.

Let me talk about some of these individuals. Senator *Feinstein* talked about Duane Lynn. Duane is from Arizona. I will not repeat the entire story, but he enjoyed the Navy as a young man. He performed in the military. He had a successful career as a highway patrolman upholding the laws of the State of Arizona. He and his wife Nila literally fell in love as teenagers and had been married 49 years and 9 months, just 3 months shy of their 50th anniversary when she was brutally murdered as Senator *Feinstein* talked about. They had left their home to attend this homeowners' meeting and just happened to be in the wrong place at the wrong time because the murderer, who was a disgruntled and enraged former resident of the community, burst into the room saying, I am going to kill you, and he started shooting.

As I said, Duane and Nila had been married not quite 50 years when she was brutally murdered. In anticipation of the golden anniversary of their parents, the Lynn children had secretly been saving money to throw a surprise anniversary party, and that money was used to pay for Nila's casket.

It is at this point that Duane's journey through the legal system really started. As Senator *Feinstein* recounted, he did not really understand what it meant to participate in

the judicial system at that time but at least understood that he would have some voice in what happened.

Under the Arizona law and constitution, he had a right, for example, to make a recommendation to the judge when the judge sentenced the perpetrator. But despite having that right in the Arizona Constitution--and, by the way, Arizona judges are pretty good about enforcing these rights--he was denied the right to even appear at the time of sentencing to tell the judge the sentence he thought the perpetrator should get.

He lost an appeal to the Arizona Supreme Court and a petition for certiorari to the U.S. Supreme Court. They all told him his rights were unenforceable because for him to speak would violate the defendant's eighth amendment rights against cruel and unusual punishment.

Now, that is one of the reasons that Senator *Feinstein* and I believed that a constitutional amendment was necessary, because as long as the defendant's rights are always asserted as Federal constitutional rights, a mere statutory right, such as we are creating today, is going to be subservient to that. It will be very difficult for victims to win in cases where the defendant's right is asserted under the U.S. Constitution.

Even as a State constitutional right, Duane Lynn was denied the right to speak because the court perceived that the Federal eighth amendment superseded the Arizona State Constitution. So we may still have problems, even with the adoption of a statute here. But Senator *Feinstein* and I are committed to moving the cause forward, to see whether it is possible to make statutes work, so that we do not need a Federal constitutional amendment. If, as it turns out, we do, then we will revisit the issue, as she said. Hopefully, we will not need to do that.

Just a final I think paradoxical or ironic ending in the Duane Lynn matter. He wanted to speak at the time of sentencing, not to urge the court to impose the death sentence but to impose life without parole. That recommendation was denied because, as I said, the court held that the defendant's rights outweighed his rights.

Let me talk about some of the other victims. I just briefly want to mention Louarna Gillis, because John Gillis, her father, who was a Los Angeles police officer at the time, is now a very important person in our Government in protecting victims' rights because he heads up the Office for Victims of Crime in the Department of Justice.

One of the reasons the Attorney General and the President wanted him in that position is because he felt firsthand the sting of being a crime victim when his daughter was killed, picked out at random by a gang member because the gang member, to be initiated in the gang, had to kill the child of a cop. She just happened to be a child of a cop and she was killed.

John could not be here today, but his wife Patsy is in attendance. I commend her for her support of this effort as well.

Their family has suffered further tragedy in the very recent death of their only other child, their son John. So it reminds us that it is important not only for people to have rights as victims of crime, but to recognize that these

very people are the people who are willing to take up the cause here to right this injustice.

By John Gillis' efforts, he literally became the person in charge of this issue in our Government. He is doing an incredibly great job. Part of this legislation is to give him some additional responsibility and a little bit more in the way of resources to see to it that our Federal Government, through the Department of Justice, the Attorney General, and the Office for Victims of Crime, can continue to support the effort of crime victims. I applaud John Gillis very much and appreciate his wife Patsy being with us today.

Let me mention three other people, because this legislation is named for five people--the two I mentioned and then the other three I will mention. Let me discuss each of them.

Roberta Roper is also in attendance. There is nobody who has pursued the cause for victims' rights more strongly than Roberta Roper. She has made numerous trips to Washington. She has testified before the Judiciary Committee in support of the constitutional amendment. She has given us incredible advice and strength. What she did, after her victimization, when her daughter Stephanie was murdered at the age of 22, was to start a foundation in her daughter's name, and that Stephanie Roper Foundation has been a tremendous asset in pursuing the cause of victims around the country.

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Her daughter, on April 3, 1982, was kidnapped and raped, tortured and dismembered by two men. The killers had just come upon her when Stephanie's car had been disabled. They had kidnapped her and over a period of 5 hours had repeatedly tortured her. She tried to escape but was caught and killed in a most brutal manner.

Her parents were not even notified of the many continuances that were granted in this case. They were excluded from the courtroom for the entire first trial that occurred. They could not even go into the courtroom. In 1982, the defense convinced the court that the victims would be emotional, irrelevant, and probable cause for a reversal of an appeal. The court agreed and, therefore, denied Vince and Roberta Roper the right to be a voice for their daughter.

That is one of the things that will be corrected by this legislation. We hope a statutory correction will serve to be sufficient.

Roberta Roper is in attendance, and I thank her from the bottom of my heart. She and Collene Campbell--who I will mention next--have been two of the real troopers in this battle.

I also want to say, with regard to Collene Campbell, when Senator *Feinstein* discussed the death of her son Scott, it is unfortunately the case in many of these situations that more than once people are victimized. Collene and Gary Campbell have been victimized twice. Collene's brother was killed as well and that has been discussed as well.

One of the killers of their son Scott was released from prison. By the way, the circumstances of Scott's murder were especially gruesome. He met an individual who was going to fly him to North Dakota, and somewhere between Los Angeles and Catalina Island, Scott Campbell was killed. His body was literally thrown out of the airplane into the ocean and has never been located.

His parents were not permitted to enter the courtroom during the trials for the men who murdered their son. They were not even notified of a district court of appeals hearing. When one of the killers was released, as I said, the Campbell family was not notified. They only learned of the developments through the newspaper.

You can argue that a defendant might be prejudiced in certain situations by victims having certain rights, but to treat victims this way is not to treat them with the fairness and dignity any American deserves under our values as a nation. Even when these rights exist in statute, when they are not observed, it is time for the Congress to act. That is why we act here, so that no one else will have to suffer through this kind of unfair treatment.

Scott Campbell is shown in this picture. I mentioned Nila Lynn before, as shown in this picture. Roberta Roper's daughter Stephanie is this beautiful young lady shown in this picture right here. As I said, her mother is with us today.

I would also like to mention Robert Preston. In the case of Bob Preston's 22-year-old daughter, Wendy--the beautiful young lady shown in this picture right here--she was murdered in his home on June 23, 1977. She was killed when a man broke into the home to steal money to buy drugs. Her body was found 6 days later. Wendy's murderer was arrested and charged with first-degree murder. Her parents were told that the State of Florida was the victim in the case and they would be notified if and when they were called as witnesses. That was it.

After nearly 6 years, the murderer was allowed to plead to a second-degree murder charge, and he was sentenced to life in prison. In 1987, the Florida Supreme Court overturned the killer's conviction, and in the decision also held that the victims had no rights. This is the kind of example that needs to be brought to light so Americans can appreciate that it is time for Congress to act.

This is Wendy Preston, yet another example of victims being treated unfairly.

There are a lot of other cases we could talk about. Wendy Preston and Stephanie Roper, Scott Campbell, Mickey Thompson, Nila Lynn, and Louarna Gillis are the best of America. We owe them our best. Our best is to ensure the families of future victims will not suffer through the same indignity their families have had to endure.

That is why Senator *Feinstein* and I began the effort to try to persuade our colleagues a constitutional amendment was necessary to protect these rights, because the defendant's right was always constitutional. Unless we had an equal constitutional right, there was no chance in a conflict the court would ever afford the victim an equal right. That is why we still have reservations about a statutory remedy.

But a lot of our colleagues have said, try a statutory remedy and let's see if by bringing these situations to light, by providing incentives for States to follow the Federal example, by embodying these same rights that were in the constitutional proposal in a statute and giving the victims a right to sue, a remedy, a mandamus remedy, let's see if that can work.

After 8 years of work on the Federal constitutional amendment, supported by President Bush and the Attorney General, we were able to schedule, after we passed the bill through the Judiciary Committee, that constitutional amendment for floor action today. Knowing we would not have the 67 votes to pass it, we decided it was time to get something tangible in statute to protect the rights of victims, and accompanying it could be a modest appropriation of money to help actually support these victims in court when that was necessary and called for. We believed despite the potential that it would not serve adequately, it was time to try something, to be successful, and to at least move the ball forward.

As Senator *Leahy* said in a press conference we had earlier: The Judiciary Committee of the Senate will provide very strong oversight of implementation of this statute so we will know if it is not working. If it does not work, we will be able to come back and pursue the constitutional remedy. But we consulted with the victims' rights groups that have been most active in support of this. They concurred it was time to pursue the statutory remedy, if we could get some assurance we would be successful in that pursuit and that it would not be simply a fool's errand.

Through the significant help of an individual who I am sure all would acknowledge has been the national leader of this effort, Steve Twist, a lawyer from Phoenix, AZ, communicating with the various victims' rights groups, the consensus was reached it was time for us to convert the constitutional proposal into a statute. This occurred within the last 48 hours. Through the cooperation of Senator *Leahy*, Senator *Hatch*, staff, and several other Senators, but most importantly because of the very hard work done by Senator *Feinstein's* staff and mine, they were able to literally convert these rights in the constitutional proposal into the statutory proposal for submission. That is what is before us today and what we will be voting on.

These are the rights that are set forth in the new statute: That the victim would be reasonably protected from the accused; afforded reasonable, accurate, and timely

notice of any public proceedings involving the crime or any release or escape of the accused; included in public proceedings; ensured proceedings are free from unreasonable delay; that they could confer with the attorney for the government in the case; that they

would be given a voice to be heard at any public proceeding involving release or plea or sentencing.

I ask unanimous consent to take time from the time under the control of Senator *Feinstein*.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. I noted in a rather inaccurate Washington Post editorial of yesterday that somehow victims would have a right to speak to the jury. That is what the Washington Post thought. They were very wrong, as they were in other comments in the editorial. There is nothing in here about anything like that. It is only during the time of a release, like the parole hearing I talked about earlier, or sentencing or pleading there would be an opportunity to speak.

They would have a right to full and timely restitution in appropriate cases, and the right to be treated fairly, with respect for their dignity and privacy. Most importantly, they would be granted the right to enforce these rights. They would have legal standing to enforce their rights in court with the appropriate writ procedure to be able to take the court's decision to the higher court. That is one of the problems with existing Federal law which

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the Tenth Circuit Court of Appeals noted did not grant the victims the standing to sue. So that had to be corrected here.

Finally, we authorized an appropriation of funds to assure the proper oversight of these rights is exercised, that moneys would be made available to enhance the victim notification system, managed by the Department of Justice's Office for Victims of Crime, and the resources additionally to develop state-of-the-art systems for notifying crime victims of important states of development.

To pursue that a moment, all courts notify attorneys for the defendant, the prosecutor's office, and it is a relatively simple matter to add another name and telephone number or address to that list. That is what we are talking about here. It is now being done electronically. It is very easy. So the notice to victims of crime is not something that should be seen as an impediment.

I would like to conclude by thanking some people. Since I know Senator *Feinstein* did have to attend another meeting, let me thank some folks. Before I do that, I ask unanimous consent to add Senators **LOTT** and **NICKLES** as original cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KYL. As soon as Senator *Leahy* is here, I will relinquish the floor to him.

I do want to thank President Bush and Attorney General Ashcroft; the Office for Victims of Crime Director John Gillis and the administration for their help; Colleen Campbell and her husband Gary; Roberta Roper; Bob Preston; Duane Lynn; Earlene Eason from Indiana, whose son Christopher was murdered; Sally Goelzer from Arizona, whose brother was murdered; Myssey Hartley from Arkansas, whose brother was murdered; Dee Engles, also from Arkansas, a

family member murdered; the National Organization for Victim Assistance, especially Beth Rossman, president, Marlene Young, executive director, and John Stein, deputy director, who has been a tremendous help; the National Organization of Parents of Murdered Children, Nancy Ruhe-Munch, executive director; Mothers Against Drunk Driving, Wendy Hamilton, president, and Stephanie Manning; Professor Douglas Beloof, director of the National Crime Victim Law Institute, one of the entities integral to ensuring these rights are enforced--he has done a tremendous job in Oregon in setting up the programs and the lawyers who can defend victims' rights--Attorney Meg Garvin, lead staff attorney at NCVLI; Attorney General Jane Brady and the National Association of Attorneys General--this has been a bipartisan effort and almost every attorney general in the country has signed on; the National District Attorneys Association; the Fraternal Order of Police, strongly in support of what we are doing; the International Association of Chiefs of Police; the National Restaurant Association; U.S. Chamber of Commerce; Maricopa County attorney Rick Romely and county attorney Barbara LaWall in Arizona, who have helped me a lot in this effort; District Attorney Josh Marquis; the Arizona Voice for Crime Victims.

On Senator *Hatch's* staff, I thank Grace Becker, and on Senator *Cornyn's* staff, Jim Ho. On Senator *Feinstein's* staff, I can't thank enough Steve Cash and David Hantman who have been tremendously helpful in providing great advice and counsel, particularly in the last 3 or 4 days, helping us to convert the amendment to a statutory provision and in working on the Democratic side to make this a truly bipartisan process.

Without their assistance, we would not have the statute before the body either.

I have a couple legal interns, Tom Stack and Kevin Wilson, who provided tremendous help to me, and finally I wish to thank my chief person on my staff, Stephen Higgins and I mentioned Steve Twist.

All of these organizations and individuals have been of tremendous help in getting to this point and ensuring we will be able to get this statutory provision passed and sent over to the House for action.

Madam President, I am going to conclude with a couple of points. As soon as Senator *Leahy* arrives, I am going to relinquish the floor to him because Senator *Feinstein* has the remainder of the time, and I advise colleagues, if anyone wishes to speak, they should do so right away because I suspect at the conclusion of Senator *Leahy's* remarks and anything Senator *Hatch* and Senator *Feinstein* wish to say, we will proceed to the final passage vote.

The act before us, in addition to setting forth the rights and providing a remedy for the victims of crime, has an authorization of funding. Let me describe that authorization.

In the first year, fiscal year 2005, \$16.3 million will be available to the U.S. Attorney's Victims Witness Office for the Victims of Crime Office in the Department of Justice; \$300,000 is for the Office of Victims of Crime to administer these new rights; \$7 million to the Office of Victims of Crime for the National Crime Victim Law Institute to provide grants and assistance to lawyers to help victims of crime in court. It is the only entity in the country that provides lawyers for victims in criminal cases, and it will provide for two new regional offices and nine specific clinics. Finally, borrowing a provision from a bill Senator *Leahy* had earlier, there is \$5 million for grants to States to develop and implement state-of-the-art victim notification systems.

In the following 4 years, there will be each year authorized an appropriation of \$26.5 million generally to the same entities and offices to ensure that these programs are carried out, that victims will have the support they need, and that the notice that is guaranteed in the legislation will be provided. Those are the authorizations for the funding. That is a description of the legislation.

I will close by again referring to the people who have driven this effort, the people who represent the families and who are themselves victims of crime, who did not simply retreat into a shell following the tragedy that befell them but who were willing to muster the courage and the strength to do something about the issue, not necessarily so that they could receive any particular kind of vindication, but so future victims would not have to suffer through the same kind of problems and the same indignities they did.

This is the real spirit of great people, of leaders, and it is the spirit of America. I commend all of these victims for the leadership role they have played in being willing to step out in very difficult circumstances to prod those of us in the legislative body to move this process forward and to get this legislation adopted. They are the ones who deserve the primary thanks today.

The victory, when we pass this legislation, will be largely a victory for them and all of the future victims who will never have to suffer the same kind of indignities that they did.

Mr. President, as the sponsor of this bill, I would like to enter into a colloquy with the Senator from California. She is the primary cosponsor of this bill. After extensive consultation with our colleagues, we have drafted a bill with a broad bipartisan consensus. It is not the intent of this bill to limit any laws in favor of crime victims that may currently exist, whether these laws are statutory, regulatory, or found in case law. I ask Senator *Feinstein* if she agrees.

Mrs. FEINSTEIN. Yes, it is not our intent to restrict victims' rights or accommodations found in other laws. I would like to turn to the bill itself and address the first section, (a)(1), the right of the crime victim to be reasonably protected. Of course, the Government cannot protect the crime victim in all circumstances. However, where

reasonable, the crime victim should be provided accommodations such as a secure waiting area, away from the defendant before and after and during breaks in the proceedings.

Mr. KYL. I would like to address the notice provisions of section 2, (a)(2). The notice provisions are important because if a victim fails to receive notice of a public proceeding in the criminal case at which the victim's right could otherwise have been exercised, that right has effectively been denied. Public proceedings include both trial level and appellate level court proceedings. It does not make sense to enact victims' rights that are rendered useless because the victim never knew of the proceeding at which the right had to be asserted. Simply put, a failure to provide notice of proceedings at which a right can be asserted is equivalent to a violation of the right itself.

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Equally important to this right to notice of public proceedings contained in this subsection is the right to notice of the escape or release of the accused. This provision helps to protect crime victims by notifying them that the accused is out on the streets.

For these rights to notice to be effective, notice must be sufficiently given in advance of a proceeding to give the crime victim the opportunity to arrange his or her affairs in order to be able to attend that proceeding and any scheduling of proceedings should take into account the victim's schedule to facilitate effective notice.

Restrictions on public proceedings are in 28 CFR Sec. 50.9, and it is not the intent here today to alter the meaning of that provision.

I ask Senator *Feinstein*, if she can comment on her understanding of section (a)(2)?

Mrs. FEINSTEIN. My understanding of this subsection is the same the Senator's. Too often crime victims have been unable to exercise their rights because they were not informed of the proceedings. Pleas and sentencings have all too frequently occurred without the victim ever knowing that they were taking place. Victims are the persons who are directly harmed by the crime and they have a stake in the criminal process because of that harm. Their lives are significantly altered by the crime and they have to live with the consequences for the rest of their lives. To deny them the opportunity to know of and be present at proceedings is counter to the fundamental principles of this country. It is simply wrong. Moreover, victim safety requires that notice of the release or escape of an accused from custody be made in a timely manner to allow the victim to make informed choices about his or her own safety. This provision ensures that takes place.

I would like to turn to section 2, (a)(3) of the bill, which provides that the crime victim has the right not to be excluded from any public proceedings. This language was drafted in a way to ensure that the government would not be responsible for paying for the victim's travel and lodging to a place where they could attend the proceedings.

In all other respects, this section is intended to grant victims the right to attend and be present throughout all public proceedings.

This right is limited in two respects. First, the right is limited to public proceedings, thus grand jury proceedings are excluded from the right. Second, the Government or the defendant can request, and the court can order, judicial proceedings to be closed under existing laws. This provision is not intended to alter those laws or their procedures in any way. I ask the Senator is that is his understanding of this section.

Mr. KYL. Yes. That it is my understanding as well. There may be organized crime cases or cases involving national security that require procedures that necessarily deny a crime victim the right not to be excluded that would otherwise be provided under this section. This is as it should be. National security matters and organized crime cases are especially challenging, and there are times when there is a vital need for closed proceedings. In such cases, the proceedings are not intended to be interpreted as "public proceedings" under this bill. In this regard, it is not our intent to alter 28 CFR Sec. 50.9 in any respect.

Despite these limitations, this bill allows crime victims, in the vast majority of cases, to attend the hearings and trial of the case involving their victimization. This is so important because crime victims share an interest with the government in seeing that justice is done in a criminal case and this interest supports the idea that victims should not be excluded from public criminal proceedings, whether these are pretrial, trial, or post-trial proceedings.

This right of crime victims not to be excluded from the proceedings provides a foundation for the next section, section 2, (a)(4), which provides victims the right to reasonably be heard at any public proceeding involving release, plea, or sentencing. This provision is intended to allow crime victims to directly address the court in person. It is not necessary for the victim to obtain the permission of either party to do so. This right is a right independent of the Government or the defendant that allows the victim to address the court. To the extent the victim has the right to independently address the court, the victim acts as an independent participant in the proceedings. When a victim invokes this right during plea and sentencing proceedings, it is intended that the

he or she be allowed to provide all three types of victim impact--the character of the victim, the impact of the crime on the victim, the victims' family and the community, and sentencing recommendations. Of course, the victim may use a lawyer, at their own expense, to assist in the exercise of this right. This bill does not provide victims with a right to counsel but recognizes that a victim may enlist counsel on their own.

It is not the intent of the term "reasonably" in the phrase "to be reasonably heard" to provide any excuse for denying a victim the right to appear in person and directly address the court. Indeed, the very purpose of this section is to allow the victim to appear personally and directly address the court. This section would fail in its intent if courts determined that written, rather than oral communication, could generally satisfy this

right. On the other hand, the term "reasonably" is meant to allow for alternative methods of communicating a victim's views to the court when the victim is unable to attend the proceedings. Such circumstances might arise, for example, if the victim is incarcerated on unrelated matters at the time of the proceedings or if a victim cannot afford to travel to a courthouse. In such cases, communication by the victim to the court is permitted by other reasonable means. Is this the understanding of the Senator of this provision?

Mrs. FEINSTEIN. Yes. That is my understanding as well. The victim of crime, or their counsel, should be able to provide any information, as well as their opinion, directly to the court concerning the release, plea, or sentencing of the accused. This bill intends for this right to be heard to be an independent right of the victim, and thus cannot prevent the victim from being heard.

It is important that the "reasonably be heard" language not be an excuse for minimizing the victim's opportunity to be heard. Only if it is not practical for the victim to speak in person or if the victim wishes to be heard by the court in a different fashion should this provision mean anything other than an in-person right to be heard.

Of course, in providing victim information or opinion it is important that the victim be able to confer with the prosecutor concerning a variety of matters and proceedings. Section 2, (a)(5) provides a right to confer with the attorney for the Government in the case. This right is intended to be expansive. For example, the victim has the right to confer with the Government concerning any critical stage or disposition of the case. The right, however, is not limited to these examples. I ask the Senator if he concurs in this intent.

Mr. KYL. Yes. The intent of this section is just as the Senator says. This right to confer does not give the crime victim any right to direct the prosecution. Prosecutors should consider it part of their profession to be available to consult with crime victims about concerns the victims may have which are pertinent to the case, case proceedings or dispositions. Under this provision, victims are able to confer with the Government's attorney about proceedings after charging.

I would like to turn now to the section on restitution, section 2, (a)(6). This section provides the right to full and timely restitution as provided in law. This right, together with the other rights in the act to be heard and confer with the Government's attorney in this act, means that existing restitution laws will be more effective.

I am interested in the Senator's views of this restitution provision.

Mrs. FEINSTEIN. I thank the Senator. I join his comments.

I would like to move on to section 2, (a)(7), which provides crime victims with a right to proceedings free from unreasonable delay. This provision does not curtail the Government's need for reasonable time to organize and prosecute its case. Nor is the provision intended to infringe on the defendant's due process right to prepare a defense.

Too often, however, delays in criminal proceedings occur for the mere convenience of the parties and those delays reach beyond the time needed for defendant's due process or the Government's need to prepare. The result of such delays is that victims cannot begin to put the crime behind them and they continue to be victimized. It is not right to hold crime victims under the stress and pressure of future court proceedings merely because it is convenient for the parties or the court.

This provision should be interpreted so that any decision to continue a criminal case should include reasonable consideration of the rights under this section.

I am eager to hear the Senator's view on this.

Mr. KYL. I concur in the Senator's comments. I would add that the delays in criminal proceedings are among the most chronic problems faced by victims. Whatever peace of mind a victim might achieve after a crime is too often inexcusably postponed by unreasonable delays in the criminal case. A central reason for these rights is to force a change in a criminal justice culture which has failed to focus on the legitimate interests of crime victims, a new focus on limiting unreasonable delays in the criminal process to accommodate the victim is a positive start.

I would like to turn to section 2, (a)(8). This provision contains a number of rights. The broad rights articulated in this section are meant to be rights themselves and are not intended to just be aspirational. One of these rights is the right to be treated with fairness. Of course, fairness includes the notion of due process. Too often victims of crime experience a secondary victimization at the hands of the criminal justice system. This provision is intended to direct Government agencies and employees, whether they are in executive or judiciary branches, to treat victims of crime with the respect they deserve.

Does the Senator agree?

Mrs. FEINSTEIN. Yes.

It is not the intent of this bill that its significance be whittled down or marginalized by the courts

or the executive branch. This legislation is meant to correct, not continue, the legacy of the poor treatment of crime victims in the criminal process. This legislation is meant to ensure that cases like the McVeigh case, where victims of the Oklahoma City bombing were effectively denied the right to attend the trial and to avoid federal appeals courts from determining, as the Tenth Circuit Court of Appeals did, that victims had no standing to seek review of their right to attend the trial under the former victims' law that this bill replaces.

I would also like to comment on section 2, (b), which directs courts to ensure that the rights in this law be afforded and to record, on the record, any reason for denying relief of an assertion of a crime victim. This provision is critical because it is in the courts of this

country that these rights will be asserted and it is the courts that will be responsible for enforcing them. Further, requiring a court to provide the reasons for denial of relief is necessary for effective appeal of such denial.

Is that the understanding of the Senator?

Mr. KYL. Yes, it is.

Turning briefly to section 2, (c), there are several important things to point out in this subsection. First, where there is a material conflict between the Government's attorney and the crime victim, this provision protects crime victims' rights. This means that if Government lawyers interpret a right differently from a victim, urge a very narrow interpretation of a right, or do not believe a right should be asserted, they are in conflict with the victim and this provision requires that they inform the victim of this and direct the victim to independent counsel, such as the legal clinics for crime victims contemplated under this law. This is an important protection for crime victims because it ensures the independent and individual nature of their rights. Second, the notice section immediately following limits the right to notice of release where such notice may endanger the safety of the person being released. There are cases, particularly in domestic violence cases, where there is danger posed by an intimate partner if the intimate partner is released. Such circumstances are not the norm, even in domestic violence cases as a category of cases. This exception should not be relied upon as an excuse to avoid notifying most victims.

Is that the Senator's understanding of this section?

Mrs. FEINSTEIN. Yes.

I would now like to address the enforcement provisions of the bill, specifically section 2, subsection (d)(1). This provision allows a crime victim to enter the criminal trial court during proceedings involving the crime against the victim and assert the rights provided by this bill. This provision ensures that crime victims have standing to be heard in trial courts so that they are heard at the very moment when their rights are at stake and this, in turn, forces the criminal justice system to be responsive to a victim's rights in a timely way. Importantly, however, the bill does not allow the defendant in the case to assert any of the victim's rights to obtain relief. This prohibition prevents the individual accused of the crime from distorting a right intended for the benefit of the individual victim into a weapon against justice.

The provision allows the crime victim's representative and the attorney for the Government to go into a criminal trial court and assert the crime victim's rights. The inclusions of representatives and the Government's attorney in the provision are important for a number of reasons. First, allowing a representative to assert a crime victim's rights ensures that where a crime victim is unable to assert the rights on his or her own for any reason, including incapacity, incompetence, minority, or death, those rights are not lost. The representative for the crime victim can assert the rights.

Second, a crime victim may choose to enlist a private attorney to represent him or her in the criminal case--this provision allows that attorney to enter an appearance on behalf of the victim in the criminal trial court and assert the victim's rights. The provision also recognizes that, at times, the Government's attorney may be best situated to assert a crime victim's rights either because the crime victim is not available at a particular point in the trial or because, at times, the crime victim's interests coincide with those of the Government and it makes sense for a single person to express those joined interests. Importantly, however, the provision does not mean that the Government's attorney has the authority to compromise or co-opt a victim's right. Nor does the provision mean that by not asserting a victim's right the Government's attorney has waived that right. The rights provided in this bill are personal to the individual crime victim and it is that crime victim that has the final word regarding which of the specific rights to assert and when. Waiver of any of the individual rights provided can only happen by the victim's affirmative waiver of that specific right.

Does all of this correspond with Senator *Kyl's* understanding of the bill?

Mr. KYL. Absolutely. The enforcement provision the Senator addressed is critical to this bill. Without the ability to enforce the rights in the criminal trial and appellate courts of this country any rights afforded are, at best, rhetoric. We are far past the point where lip service to victims' rights is acceptable. The enforcement provisions of this bill ensure that never again are victim's rights provided in word but not in reality.

I want to turn to section 2, subsection (d)(2) because it is an unfortunate reality that in today's world there are crimes that result in multiple victims. The reality of those situations is that a court may find that the sheer number of victims is so large that it is impracticable to accord each victim the rights in this bill. The bill allows that when the court makes that finding on the record the court must then fashion a procedure that still gives effect to the bill and yet takes into account the impracticability. For instance, in the Oklahoma City bombing case the number of victims was tremendous and attendance at any one proceeding by all of them was impracticable so the court fashioned a procedure that allowed victims to attend the proceedings by close circuit television. This is merely one example. Another may be to allow victims with a right to speak to be heard in writing or through

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other methods. Importantly, courts must seek to identify methods that fit the case before that to ensure that despite numerosity of crime victims, the rights in this bill are given effect.

Does the Senator agree with this reading of the bill?

Mrs. FEINSTEIN. Absolutely. It is a tragic reality that cases may involve multiple victims and yet that fact is not grounds for eviscerating the rights in this bill. Rather, that fact is grounds for the court to find an alternative procedure to give effect to this bill.

I now want to turn to another critical aspect of enforcement of victims' rights, section 2, subsection (d)(3). This subsection provides that a crime victim who is denied any of his or her rights as a crime victim has standing to appellate review of that denial. Specifically, the provision allows a crime victim to apply for a writ of mandamus to the appropriate appellate court. The provision provides that court shall take the writ and shall order the relief necessary to protect the crime victim's right. This provision is critical for a couple of reasons. First, it gives the victim standing to appear before the appellate courts of this country and ask for review of a possible error below. Second, while mandamus is generally discretionary, this provision means that courts must review these cases. Appellate review of denials of victims' rights is just as important as the initial assertion of a victim's right. This provision ensures review and encourages courts to broadly defend the victims' rights.

Mr. President, does Senator *Kyl* agree?

Mr. KYL. Absolutely. Without the right to seek appellate review and a guarantee that the appellate court will hear the appeal and order relief, a victim is left to the mercy of the very trial court that may have erred. This country's appellate courts are designed to remedy errors of lower courts and this provision requires them to do so for victim's rights. For a victim's right to truly be honored, a victim must be able to assert the rights in trial courts, to then be able to have denials of those rights reviewed at the appellate level, and to have the appellate court take the appeal and order relief. By providing for all of this, this bill ensures that victims' rights will have meaning.

I would like to turn our attention to section 2, subsection (d)(4) because that also provides an enforcement mechanism. This section provides that in any appeal, regardless of the party initiating the appeal, the government can assert as error the district court's denial of a crime victim's right. This subsection is important for a couple of reasons. First, it allows the Government to assert a victim's right on appeal even when it is the defendant who seeks appeal of his or her conviction. This ensures that victims' rights are protected throughout the criminal justice process and that they do not fall by the wayside during what can often be an extended appeal that the victim is not a party to.

Is that the Senator's understanding of the bill?

Mrs. FEINSTEIN. Yes.

I would like to turn to the next provision, section 2, subsection (d)(5). This subsection provides that a failure to afford a right under the act does not provide grounds for a new trial. This provision demonstrates that victim's rights are not intended to be, nor are they, an attack on defendants' protections against double jeopardy. This provision is not intended to prevent courts from vacating decisions in nontrial proceedings in which victims' rights were not protected and ordering those proceedings to be redone. It simply assures that a trial will not be redone. Thus, defendants' and victims' rights are both protected.

Is that the Senator's understanding?

Mr. KYL. Yes, it is. We have, over the years, tried to reassure those that oppose victims' rights that they are not an attempt to undermine defendants' rights. This provision reiterates that. It is important for victims' rights to be asserted and protected throughout the criminal justice process, and for courts to have the authority to redo proceedings other than the trial such as release hearings, pleas, and sentencings where victims' rights are abridged, but to not tread upon defendant's rights against double jeopardy in the process. Victims' rights are about a fair and balanced criminal justice system--one that considers defendant's rights as well as victims' rights. This provision protects that careful balance.

I want to turn to the definitions in the bill, contained in section 2, subsection (e). There are a couple of key points to be made about the definitions. A "crime victim" is defined as a person directly and proximately harmed as a result of any offense, felony or misdemeanor. This is an intentionally broad definition because all victims of crime deserve to have their rights protected, whether or not they are the victim of the count charged. Additionally, crime victims may, for any number of reasons, want to employ an attorney to represent them in court. This definition of crime victim allows crime victims to do that. It also assures that when, for any reason, crime victims are unable to assert rights on their own, those rights will still be protected.

Is that the Senator's understanding of the bill as well?

Mrs. FEINSTEIN. It is.

Now I would like to turn to the portion of the bill concerning administrative compliance with victims' rights, section 2, subsection (f). The provisions of this subsection are relatively self-explanatory, but it important to point out that these procedures are completely separate from and in no way limit the victim's rights in the previous section.

Is that Senator *Kyl's* understanding?

Mr. KYL. Yes.

Let me comment briefly on section 4, Reports. Subsection (a) requires the Administrative Office of the U.S. Courts to report annually the number of times a right asserted in a criminal case is denied the relief requested, and the reasons therefore, as well as the number of times a mandamus action was brought and the result of that mandamus.

Such reporting is the only way we in the Congress and other interested parties can observe whether reforms we mandate are being carried out. No one doubts the difficulty of obtaining case-by-case information of this nature. Yes, this information is critical to understanding whether Federal statutes really can effectively protect victims' rights or whether a constitutional amendment is necessary. We are certain that affected executive and judicial agencies can work together to implement effective administrative tools to

record and amass this data. We would certainly encourage the National Institute of Justice to support any needed research to get this system in place.

Is this Senator *Feinstein's* understanding?

Mrs. FEINSTEIN. Yes.

One final point. Throughout this act, reference is made to the "accused." Would the Senator also agree that it is our intention to use this word in the broadest sense to include both those charged and convicted so that the rights we establish apply throughout the criminal justice system?

Mr. KYL. Yes, that it is my understanding.

Mr. President, I anticipate Senator *Leahy's* arrival. I suggest the absence of a quorum.

INNOCENCE PROTECTION ACT OF 2004 -- (Senate - October 09, 2004)

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Mr. HATCH. Mr. President, I ask unanimous consent that the Senate immediately proceed to the consideration of H.R. 5107, the DNA bill, which is at the desk; further, that the bill be read a third time and passed and the motion to reconsider be laid upon the table; provided further, that when the Senate receives from the House a correcting enrollment resolution relating to H.R. 5107, the Senate proceed to its consideration and the resolution be agreed to and the motion to reconsider be laid upon the table. Finally, I ask unanimous consent that if the House does not adopt the correcting enrollment resolution by the end of this Congress, then the Senate action on H.R. 5107 be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The bill (H.R. 5107) was read the third time and passed.

Mr. HATCH. Mr. President, this is the very important DNA bill which will help resolve the difficulties with over 400,000 rape kits in this country, some of which are 20 years old or older.

Mr. President, I would just like to compliment Debbie Smith and Kirk Bloodsworth, who are two of the initiating people who have helped bring this about, but also all the people who worked so hard: Senator *Leahy*, Senator *Biden*, Senator *Specter*, Senator *Feinstein*, Senator *DeWine* and, of course on the House side, Chairman *Sensenbrenner* and Representative **BILL DELAHUNT** for their dogged determination, and to Senators **KYL**, **SESSIONS**, and **CORNYN** who did a really great job on this bill; also staff on both sides, in both Houses.

With that, I yield the floor.

Mr. KYL. Mr. President, as the primary drafter of Title I of H.R. 5107, I would like to make a few comments. After extensive consultation with my colleagues, broad bipartisan consensus was reached and the language in Title I was agreed to.

I would like to make it clear that it is not the intent of this bill to limit any laws in favor of crime victims that may currently exist, whether these laws are statutory, regulatory, or found in case law. I would like to turn to the bill itself and address the first section, (a)(1), the right of the crime victim to be reasonably protected. Of course the government cannot protect the crime victim in all circumstances. However, where reasonable, the crime victim should be provided accommodations such as a secure waiting area, away from the defendant before and after and during breaks in the proceedings. The right to protection also extends to require reasonable conditions of pre-trial and post-conviction relief that include protections for the victim's safety.

I would like to address the notice provisions of (a)(2). The notice provisions are important because if a victim fails to receive notice of a public proceeding in the criminal case at which the victim's right could otherwise have been exercised, that right has effectively been denied. Public court proceedings include both trial level and appellate level court proceedings. It does not make sense to enact victims' rights that are rendered useless because the victim never knew of the proceeding at which the right had to be asserted. Simply put, a failure to provide notice of proceedings at which a right can be asserted is equivalent to a violation of the right itself.

Equally important to this right to notice of public proceedings is the right to notice of the escape or release of the accused. This provision helps to protect crime victims by notifying them that the accused is out on the streets.

For these rights to notice to be effective, notice must be sufficiently given in advance of a proceeding to give the crime victim the opportunity to arrange his or her affairs in order to be able to attend that proceeding and any scheduling of proceedings should take into account the victim's schedule to facilitate effective notice.

Restrictions on public proceedings are in 28 CFR Sec. 50.9 and it is not the intent here today to alter the meaning of that provision.

Too often crime victims have been unable to exercise their rights because they were not informed of the proceedings. Pleas and sentencings have all too frequently occurred without the victim ever knowing that they were taking place. Victims are the persons who are directly harmed by the crime and they have a stake in the criminal process because of that harm. Their lives are significantly altered by the crime and they have to live with the consequences for the rest of their lives. To deny them the opportunity to know of and be present at proceedings is counter to the fundamental principles of this country. It is simply wrong. Moreover, victim safety requires that notice of the release or escape of an accused from custody be made in a timely manner to allow the victim to make informed choices about his or her own safety. This provision ensures that takes place.

I would like to turn to (a)(3), which provides that the crime victim has the right not to be excluded from any public proceedings. This language was drafted in a way to ensure that the government would not be responsible for paying for the victim's travel and lodging to a place where they could attend the proceedings.

In all other respects, this section is intended to grant victims the right to attend and be present throughout all public proceedings.

This right is limited in two respects. First, the right is limited to public proceedings, thus grand jury proceedings are excluded from the right. Second, the government or the defendant can request, and the court can order, judicial proceedings to be closed under existing laws. This provision is not intended to alter those laws or their procedures in any way. There may be organized crime cases or cases involving national security that require procedures that necessarily deny a crime victim the right not to be excluded that would

otherwise be provided under this section. This is as it should be. National security matters and organized crime cases are especially challenging and there are times when there is a vital need for closed proceedings. In such cases, the proceedings are not intended to be interpreted as "public proceedings" under this bill. In this regard, it is not our intent to alter 28 CFR Sec. 50.9 in any respect.

Despite these limitations, this bill allows crime victims, in the vast majority of cases, to attend the hearings and trial of the case involving their victimization. This is so important because crime victims share an interest with the government in seeing that justice is done in a criminal case and this interest supports the idea that victims should not be excluded from public criminal proceedings, whether these are pre-trial, trial, or post-trial proceedings.

When "the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding," a victim may be excluded. The standards of "clear and convincing evidence" and "materially altered" are extremely high and intended to make exclusion of the victim quite rare, especially since (b) says that "before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the

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criminal proceeding." It should be stressed that (b) requires that "the reasons for any decision denying relief under this chapter shall be clearly stated on the record." A judge should explain in detail the precise reasons why relief is being denied.

This right of crime victims not to be excluded from the proceedings provides a foundation for (a)(4), which provides victims the right to reasonably be heard at any public proceeding involving release, plea, or sentencing. This provision is intended to allow crime victims to directly address the court in person. It is not necessary for the victim to obtain the permission of either party to do so. This right is a right independent of the government or the defendant that

allows the victim to address the court. To the extent the victim has the right to independently address the court, the victim acts as an independent participant in the proceedings. When a victim invokes this right during plea and sentencing proceedings, it is intended that the he or she be allowed to provide all three types of victim impact: the character of the victim, the impact of the crime on the victim, the victims' family and the community, and sentencing recommendations. Of course, the victim may use a lawyer, at the victim's own expense, to assist in the exercise of this right. This bill does not provide victims with a right to counsel but recognizes that a victim may enlist a counsel on their own.

It is not the intent of the term "reasonably" in the phrase "to be reasonably heard" to provide any excuse for denying a victim the right to appear in person and directly address the court. Indeed, the very purpose of this section is to allow the victim to appear

personally and directly address the court. This section would fail in its intent if courts determined that written, rather than oral communication, could generally satisfy this right. On the other hand, the term "reasonably" is meant to allow for alternative methods of communicating a victim's views to the court when the victim is unable to attend the proceedings. Such circumstances might arise, for example, if the victim is incarcerated on unrelated matters at the time of the proceedings or if a victim cannot afford to travel to a courthouse. In such cases, communication by the victim to the court is permitted by other reasonable means. In short, the victim of crime, or their counsel, should be able to provide any information, as well as their opinion, directly to the court concerning the release, plea, or sentencing of the accused. This bill intends for this right to be heard to be an independent right of the victim.

It is important that the "reasonably be heard" language not be an excuse for minimizing the victim's opportunity to be heard. Only if it is not practical for the victim to speak in person or if the victim wishes to be heard by the court in a different fashion should this provision mean anything other than an in-person right to be heard.

Of course, in providing victim information or opinion it is important that the victim be able to confer with the prosecutor concerning a variety of matters and proceedings. Under (a)(5), the victim has a reasonable right to confer with the attorney for the government in the case. This right is intended to be expansive. For example, the victim has the right to confer with the government concerning any critical stage or disposition of the case. The right, however, is not limited to these examples. This right to confer does not give the crime victim any right to direct the prosecution. Prosecutors should consider it part of their profession to be available to consult with crime victims about concerns the victims may have which are pertinent to the case, case proceedings or dispositions. Under this provision, victims are able to confer with the government's attorney about proceedings after charging. I would note that the right to confer does not impair the prosecutorial discretion of the Attorney General or any officer under his direction, as provided (d)(6).

I would like to turn now to restitution in (a)(6). This section provides the right to full and timely restitution as provided in law. We specifically intend to endorse the expansive definition of restitution given by Judge Cassell in *U.S. v. Bedonie* and *U.S. v. Serawop* in May 2004. This right, together with the other rights in the act to be heard and confer with the government's attorney in this act, means that existing restitution laws will be more effective.

I would like to move on to (a)(7), which provides crime victims with a right to proceedings free from unreasonable delay. This provision does not curtail the government's need for reasonable time to organize and prosecute its case. Nor is the provision intended to infringe on the defendant's due process right to prepare a defense. Too often, however, delays in criminal proceedings occur for the mere convenience of the parties and those delays reach beyond the time needed for defendant's due process or the government's need to prepare. The result of such delays is that victims cannot begin to put the criminal justice system behind them and they continue to be victimized. It is

not right to hold crime victims under the stress and pressure of future court proceedings merely because it is convenient for the parties or the court.

This provision should be interpreted so that any decision to schedule, reschedule, or continue criminal cases should include victim input through the victim's assertion of the right to be free from unreasonable delay.

I would add that the delays in criminal proceedings are among the most chronic problems faced by victims. Whatever peace of mind a victim might achieve after a crime is too often inexcusably postponed by unreasonable delays in the criminal case. A central reason for these rights is to force a change in a criminal justice culture which has failed to focus on the legitimate interests of crime victims, a new focus on limiting unreasonable delays in the criminal process to accommodate the victim is a positive start.

I would like to turn to (a)(8). The broad rights articulated in this section are meant to be rights themselves and are not intended to just be aspirational. One of these rights is the right to be treated with fairness. Of course, fairness includes the notion of due process. Too often victims of crime experience a secondary victimization at the hands of the criminal justice system. This provision is intended to direct government agencies and employees, whether they are in executive or judicial branches, to treat victims of crime with the respect they deserve and to afford them due process.

It is not the intent of this bill that its significance be whittled down or marginalized by the courts or the executive branch. This legislation is meant to correct, not continue, the legacy of the poor treatment of crime victims in the criminal process. This legislation is meant to ensure that cases like the McVeigh case, where victims of the Oklahoma City bombing were effectively denied the right to attend the trial and to avoid federal appeals courts from determining, as the Tenth Circuit Court of Appeals did, that victims had no standing to seek review of their right to attend the trial under the former victims' law that this bill replaces.

I would also like to comment on (b), which directs courts to ensure that the rights in this law be afforded and to record, on the record, any reason for denying relief of an assertion of a crime victim. This provision is critical because it is in the courts of this country that these rights will be asserted and it is the courts that will be responsible for enforcing them. Further, requiring

a court to provide the reasons for denial of relief is necessary for effective appeal of such denial.

Turning briefly to (c), there are several important things to point out. First, this provision requires that the government inform the victim that the victim can seek the advice of the attorney, such as from the legal clinics for crime victims contemplated under this law, such as the law clinics at Arizona State University and those supported by the National Crime Victim Law Institute at the Law School at Lewis and Clark College in Portland, Oregon. This is an important protection for crime victims because it ensures the

independent and individual nature of their rights. Second, the notice section immediately following limits the right to notice of release where such notice may endanger the safety of the person being released. There are cases, particularly in domestic violence cases, where there is danger posed by an intimate partner if the intimate partner is

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released. Such circumstances are not the norm, even in domestic violence cases as a category of cases. This exception should not be relied upon as an excuse to avoid notifying most victims.

I would now like to address the enforcement provisions of the bill in (d). This provision allows a crime victim to enter the criminal trial court during proceedings involving the crime against the victim, to stand with other counsel in the well of the court, and assert the rights provided by this bill. This provision ensures that crime victims have standing to be heard in trial courts so that they are heard at the very moment when their rights are at stake and this, in turn, forces the criminal justice system to be responsive to a victim's rights in a timely way. Importantly, however, the bill does not allow the defendant in the case to assert any of the victim's rights to obtain relief. This prohibition prevents the individual accused of the crime from distorting a right intended for the benefit of the individual victim into a weapon against justice.

The provision allows the crime victim's representative and the attorney for the government to go into a criminal trial court and assert the crime victim's rights. The inclusions of representatives and the government's attorney in the provision are important for a number of reasons. First, allowing a representative to assert a crime victim's rights ensures that where a crime victim is unable to assert the rights on his or her own for any reason, including incapacity, incompetence, minority, or death, those rights are not lost. The representative for the crime victim can assert the rights. Second, a crime victim may choose to enlist a private attorney to represent him or her in the criminal case--this provision allows that attorney to enter an appearance on behalf of the victim in the criminal trial court and assert the victim's rights. The provision also recognizes that, at times, the government's attorney may be best situated to assert a crime victim's rights either because the crime victim is not available at a particular point in the trial or because, at times, the crime victim's interests coincide with those of the government and it makes sense for a single person to express those joined interests. Importantly, however, the provision does not mean that the government's attorney has the authority to compromise or co-opt a victim's right. Nor does the provision mean that by not asserting a victim's right the government's attorney has waived that right. The rights provided in this bill are personal to the individual crime victim and it is that crime victim that has the final word regarding which of the specific rights to assert and when. Waiver of any of the individual rights provided can only happen by the victim's affirmative waiver of that specific right.

In sum, without the ability to enforce the rights in the criminal trial and appellate courts of this country any rights afforded are, at best, rhetoric. We are far past the point where lip service to victims' rights is acceptable. The enforcement provisions of this bill ensure that never again are victim's rights provided in word but not in reality.

I want to turn to (d)(2) because it is an unfortunate reality that in today's world there are crimes that result in multiple victims. The reality of those situations is that a court may find that the sheer number of victims is so large that it is impracticable to accord each victim the rights in this bill. The bill allows that when the court makes that finding on the record the court must then fashion a procedure that still gives effect to the bill and yet takes into account the impracticability. For instance, in the Oklahoma City bombing case the number of victims was tremendous and attendance at any one proceeding by all of them was impracticable so the court fashioned a procedure that allowed victims to attend the proceedings by close circuit television. This is merely one example. Another may be to allow victims with a right to speak to be heard in writing or through other methods. Importantly, courts must seek to identify methods that fit the case before that to ensure that despite the high number of crime victims, the rights in this bill are given effect. It is a tragic reality that cases may involve multiple victims and yet that fact is not grounds for eviscerating the rights in this bill. Rather, that fact is grounds for the court to find an alternative procedure to give effect to this bill.

I now want to turn to another critical aspect of enforcement of victims' rights, (d)(3). This subsection provides that a crime victim who is denied any of his or her rights as a crime victim has standing to seek appellate review of that denial. Specifically, the provision allows a crime victim to apply for a writ of mandamus to the appropriate appellate court. The provision provides that court shall take the writ and shall order the relief necessary to protect the crime victim's right. This provision is critical for a couple of reasons. First, it gives the victim standing to appear before the appellate courts of this country and ask for review of a possible error below. Second, while mandamus is generally discretionary, this provision means that courts must review these cases. Appellate review of denials of victims' rights is just as important as the initial assertion of a victim's right. This provision ensures review and encourages courts to broadly defend the victims' rights.

Without the right to seek appellate review and a guarantee that the appellate court will hear the appeal and order relief, a victim is left to the mercy of the very trial court that may have erred. This country's appellate courts are designed to remedy errors of lower courts and this provision requires them to do so for victim's rights. For a victim's right to truly be honored, a victim must be able to assert the rights in trial courts, to then be able to have denials of those rights reviewed at the appellate level, and to have the appellate court take the appeal and order relief. By providing for all of this, this bill ensures that victims' rights will have meaning. It is the clear intent and expectation of Congress that the district and appellate courts will establish procedures that will allow for a prompt adjudication of any issues regarding the assertion of a victim's right, while giving meaning to the rights we establish.

I would like to turn our attention to (d)(4) because that also provides an enforcement mechanism. This section provides that in any appeal, regardless of the party initiating the appeal, the government can assert as error the district court's denial of a crime victim's right. This subsection is important for a couple of reasons. First, it allows the government to assert a victim's right on appeal even when it is the defendant who seeks appeal of his

or her conviction. This ensures that victims' rights are protected throughout the criminal justice process and that they do not fall by the wayside during what can often be an extended appeal that the victim is not a party to.

I would like to turn to the next provision, (d)(5). This provision is not intended to prevent courts from vacating decisions in non-trial proceedings, such as proceedings involving release, delay, pleas, or sentencings, in which victims' rights were not protected, and ordering those proceedings to be redone.

It is important for victims' rights to be asserted and protected throughout the criminal justice process, and for courts to have the authority to redo proceedings such as release, delay, pleas, and sentencings, where victims' rights are abridged.

I want to turn to the definitions in the bill, contained in (e). There are a couple of key points to be made about the definitions. A "crime victim" is defined as a person directly and proximately harmed as a result of a federal offense or an offense in the District of Columbia. This is an intentionally broad definition because all victims of crime deserve to have their rights protected, whether or not they are the victim of the count charged. Additionally, crime victims may, for any number of reasons, want to employ an attorney to represent them in court. This definition of crime victim allows crime victims to do that. It also assures that when, for any reason, crime victims unable to assert rights on their own--those rights will still be protected.

Now I would like to turn to the portion of the bill concerning administrative compliance with victims' rights. The provisions of (f) are relatively self-explanatory, but it important to point out that these procedures are completely separate from and in no way limit the victim's rights in the previous section.

I also would like to make it clear that it is the intention of the Congress

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that the money authorized in 1404D for the Director of the Office for Victims of Crimes "for the support of organizations that provide legal counsel and support services for victims in criminal cases for the enforcement of crime victims' rights in Federal jurisdictions, and in States and tribal governments" is intended to support the work of the National Crime Victim Law Institute at the Law School at Lewis and Clark College in Portland, Oregon, and to replicate across the nation the clinics that it is supporting, fashioned after the Crime Victims Legal Assistance Project housed at Arizona State University College of Law and run by Arizona Voice for Crime Victims. The Director of OVC should take care to make sure that these funds go into the support of these programs so that crime victims can receive free legal counsel to enforce their rights in our federal courts. Only in this way will be able to fully and fairly test whether statutes are enough to protect victims' rights. There is no substitute for testing these rights in our courts to see if they have the power to change a culture that for too long has ignored the victim.

Let me comment briefly on the provision on reports. Under (a), the Administrative Office of the U.S. Courts to report annually the number of times a right asserted in a

criminal case is denied the relief requested, and the reasons therefore, as well as the number of times a mandamus action was brought and the result of that mandamus.

Such reporting is the only way we in the Congress and other interested parties can observe whether reforms we mandate are being carried out. No one doubts the difficulty of obtaining case-by-case information of this nature. Yes, this information is critical to understanding whether federal statutes really can effectively protect victim's rights or whether a constitutional amendment is necessary. We are certain that affected executive and judicial agencies can work together to implement effective administrative tools to record and amass this data. We would certainly encourage the National Institute of Justice to support any needed research to get this system in place.

One final point. Throughout this Act reference is made to the "accused." The intent is for this word to be used in the broadest sense to include both those charged and convicted so that the rights we establish apply throughout the criminal justice system.

TITLE IV