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To: Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])
Subject: : LRM IKK244 - - JUSTICE Testimony on SJR35 Crime VictimsProtection Rights bill
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From: Irene Kho on 07/16/2002 03:43:05 PM
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To: llr@do.treas.gov
cc: See the distribution list at the bottom of this message
Subject: LRM IKK244 - - JUSTICE Testimony on SJR35 Crime Victims
Protection Rights bill

This afternoon Justice sent the attached testimony for a hearing before the Senate Judiciary Committee's Constitution Subcommittee at 10:00 AM, tomorrow, July 17th. Please review and provide comments by 5:00 PM, today, July 17th.

Also, attached for your convenience is a text to SJRes 35.

- victims01.doc.wpd

LRM ID: IKK244
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Tuesday, July 16, 2002

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution
below
FROM: Richard E. Green (for) Assistant Director for
Legislative Reference

OMB CONTACT: Irene Kho
PHONE: (202)395-5858 FAX: (202)395-3109
SUBJECT: JUSTICE Testimony on SJR35 Crime Victims Protection
Rights bill

DEADLINE: 5:00 PM Tuesday, July 16, 2002
In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: This afternoon Justice sent the attached testimony for a hearing before the Senate Judiciary Committee's Constitution Subcommittee at 10:00 AM, tomorrow, July 17th. Please review and provide comments by 5:00 PM, today, July 17th.

Also, attached for your convenience is a text to SJRes 35.

We have e-mailed this Legislative Referral Memorandum (LRM) to you and have sent this fax transmission as an alert only. Please check your e-mail; if you have not received this LRM, please notify the OMB contact as soon as possible.

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Protection Rights bill
RESPONSE TO

SUBJECT: JUSTICE Testimony on SJR35 Crime Victims

LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

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The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

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ATT CREATION TIME/DATE: 0 00:00:00.00
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Department of Justice

STATEMENT

OF

THE HONORABLE JOHN W. GILLIS
DIRECTOR
OFFICE FOR VICTIMS OF CRIME

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

REGARDING

THE PROPOSED VICTIMS' RIGHTS AMENDMENT
TO THE UNITED STATES CONSTITUTION

ON

WEDNESDAY, JULY 17, 2002
WASHINGTON, DC

Good morning, Chairman Feingold, Senator Thurmond, and distinguished members of the subcommittee. Thank you for the opportunity to present the views of the administration on the proposed amendment to the Constitution of the United States to establish fundamental rights for victims of violent crime.

The administration strongly supports a federal Victims' Rights Amendment to the United States Constitution. There is broad-based support for the Amendment across the country. Democratic and Republican leaders, liberal and conservative scholars, and Americans of every persuasion have rallied in support of this important cause. Crime victims encourage your support in our struggle for human dignity and fair treatment.

Although the Administration supports the Victims' Rights Amendment, S.J. Res. 35, now being considered, the current version contains a technical but significant drafting error, which should be corrected before Congress approves the resolution and proposes the amendment to the states. As currently drafted, the proposing clause of S.J. Res. 35 states that the proposed constitutional amendment to protect crime victims "shall take effect on the 180th day after ratification." Placement of the effective date provision within the proposing clause, and outside the text of the proposed amendment, violates Article V of the Constitution because nothing in Article V authorizes Congress to set the effective date of an amendment once it has been ratified. Quite the contrary, Article V itself establishes the effective date of an amendment, when it states that a proposed amendment shall become valid "when ratified," and not at some future date to be determined by Congress. The Constitution does not prevent Congress, however, from giving states the opportunity to ratify a proposed amendment whose text includes an effective date provision, as Congress did with the Eighteenth and Twentieth Amendments. Such a provision, if ratified, would become part of the Constitution itself. Accordingly, we recommend that the effective date provision currently located in the proposing clause be moved into the text of the proposed amendment.

As a crime victim, a retired law enforcement officer, a former chair of the California Board of Prison Terms, and a citizen who works to uphold justice and advocates for victims' rights and services, I am honored by the confidence placed in me by President Bush and Attorney General Ashcroft to ensure that victims' rights and needs are addressed at the national and state levels as the Director of the Justice Department's Office for Victims of Crime. The Office for Victims of Crime (or OVC) is committed to enhancing the Nation's capacity to assist crime victims and to providing leadership in an ongoing effort to change attitudes, policies, and practices and with a determination to promote justice and healing for all victims of crime. OVC administers the Crime Victims Fund, which is the Justice Department's sole source of funding for services to crime victims. Through the Crime Victims Fund, OVC provides training and technical assistance for victim advocates and allied professionals, supports demonstration projects in communities, and disseminates information about victim issues.

Immediately following my confirmation by the U.S. Senate as Director of OVC, I began working diligently with other federal and state agencies and the private nonprofit sector to identify victims' needs and to establish an array of services and assistance to respond to the communities affected by the September 11th terrorist attacks. Since that time, our office has been meeting with crime victims, victim advocates, and representatives of national victim organizations to identify emerging issues and unmet needs of victims across the United States. These discussions have informed program funding decisions and policy development.

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 before you today with the unique advantage of understanding the plight that victims and their families face in the criminal justice system. I know the players and their responsibilities, and my experience has given me the ability to work within the system. More typically, however, 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. In 1982, when the Task Force on Victims of Crime, commissioned by President

Reagan, examined the plight of crime victims in America by surveying victims, victim advocates, and criminal justice professionals around the country, one victim lamented:

"They explained the defendant's constitutional rights to the *nth* degree. They couldn't do this and they couldn't do that because of his constitutional rights. And I wondered what mine were. And they told me, I haven't got any."¹

Chairman Feingold, as you know, on April 16, President Bush announced his support for an amendment to the United States Constitution to protect the rights of crime victims. As the President so eloquently stated:

"Too often, our system fails to inform victims about proceedings involving bail and pleas and sentencing and even about the trials themselves. Too often, the process fails to take the safety of victims into account when deciding whether to release dangerous offenders. Too often, the financial losses of victims are ignored. And too often, victims are not allowed to address the court at sentencing and explain their suffering, or even to be present in the courtroom where their victimizers are being tried. When our criminal justice system treats victims as irrelevant bystanders, they are victimized for a second time."

Although more than 27,000 victims' rights laws have been enacted, victims' bill of rights have been passed in every state, and 32 states have passed constitutional amendments protecting victims' rights, victims still struggle to assert basic rights to be notified, present, and heard. As one victim stated:

"We were thrown into the criminal justice system. We didn't do anything wrong, but we felt over and over again that it wasn't focused on Shannon being killed, but technical procedures—things that we really didn't care about.... We have to fight those urges and those feelings of trying to take justice in our hands and turn

¹ President's Task Force on Victims of Crime, Final Report, 1982

it over and let the criminal justice system do what they are supposed to do, and then we sit there and we feel victimized over and over again."²

Eighteen states lack constitutional victims' rights amendments. The 32 existing state victims' rights amendments, and other statutory protections, differ considerably across the country. Further, there is no uniformity in the implementation of victims' rights laws in these states. A recent study funded by the National Institute of Justice³ found that, even in states with strong victims' rights laws, only about half of all victims surveyed were notified of plea negotiations and sentencing hearings--notice that is critical if they are to exercise their rights to seek restitution and to inform the court of the impact of the crime on them.

The right to notification of an assailant's release can be a matter of life and death. John and Pat Byron of Kentucky are a vivid reminder of the importance of, not only having rights of notification established, but also implemented. Their daughter Mary was murdered in 1993 by a former boyfriend on her 21st birthday—a few days after he posted bail on a charge of raping her. He had also stalked and intimidated her in the past. Fearing for her life, Mary had asked authorities to notify her of his impending release. The notification never came. Mary was killed before she had the opportunity to take precautions she had planned.

Even in states with strong victims' rights laws or ratified victims' rights constitutional amendments, a victim's ability to assert his or her rights may be nullified by judicial decisions. State victims' rights laws lack the force of federal constitutional law and thus may be given short shrift. Federal law, however, directly covers only certain violent crimes, leaving non-federal crimes to state prosecutions and state law. Roberta Roper's case demonstrates how victims are often excluded from attending court proceedings in Maryland.

² Interview with a victim for the Council of State Governments survey of Crime Issues in the Northeast.

³ "Statutory and Constitutional Protection of Victims' Rights: Implementation and Impact on Crime Victims," funded by the National Institute of Justice and prepared by the National Center for Victims of Crime.

In April 1982, 22-year-old Stephanie Roper was kidnaped, brutally raped, tortured, and murdered by two men. Her parents, Roberta and Vincent Roper, wanted to be involved in every aspect of the judicial proceedings, not wanting to read about what was taking place in the newspapers. During the testimony in the death penalty phase, Roberta's right to provide a victim impact statement was denied. Under a year-old Maryland law, the court could (but did not have to) allow victim impact evidence at the time of sentencing. The State's Attorney put Roberta on the stand to talk about her daughter's life and the impact of her death on the family. But the defense attorney objected, arguing that the testimony would be unfairly prejudicial to the defense. The judge agreed and told Roberta to step down, ruling that the impact of the murder on her family was "irrelevant." Roberta listened as the defendants were able to provide a host of witnesses, including family members, to testify on behalf of the man who had kidnaped, brutally raped, tortured, and murdered her daughter.

In the Oklahoma City bombing case, a U.S. district court judge presented victims with the choice to either attend the trial or speak at sentencing, despite federal law which provides victims a right to be present at "all public court proceedings related to the offense...." The victims and several national organizations filed an appeal to reverse the judge's ruling. However, the U.S. Court of Appeals for the 10th Circuit affirmed the judge's ruling, which effectively barred from the courtroom victims who intended to speak at sentencing. Congress thereafter intervened, passing legislation⁴ prohibiting the U.S. district judge from ordering victims excluded from the trials of the defendants because the victim may testify or make a statement during the sentencing about the effect of the offense on the victim and the victim's family. [18 U.S.C. § 3593].

In 1980, Wisconsin was the first state to enact a victims' bill of rights. However, legislators and policymakers soon realized that the mere passage of statutory rights for victims

⁴ See Victims' Rights Clarification Act of 1997 (Public Law 105-6)

did not yield the full force of the law that they had intended. In 1993, with 84% ratification by the voters, the Wisconsin legislature acted to correct this problem by passing a victims' rights amendment to the state constitution. In 1991, the state created a Victim Resource Center, where officials intervene on behalf of victims and present the victim's concerns and their findings to the agency in question. However, Victim Resource Center officials had no authority to prescribe remedies for violations of a victims' statutory or constitutional rights. In response, the legislature in 1997 created a Crime Victim Rights Board to enforce victims' rights. The result is that the Board has the authority to impose sanctions for violations of victims' rights, though it cannot guarantee victims' rights will not be abridged. Despite the elaborate mechanisms to protect the rights of crime victims in Wisconsin, the State Attorney General and other victim advocates recognize the need to support those efforts with a federal amendment to the Constitution.

Even with the progression of efforts to secure fundamental rights for crime victims in Wisconsin, victims' rights are not uniformly observed. Sadly, Wisconsin is not unique in its experience to make victims' rights meaningful. Similarly, other states have experienced challenges in fully implementing victims' rights laws.

A federal constitutional amendment is the only legal measure strong enough to rectify the current imbalance and inconsistencies among victims' rights laws and can establish a uniform national floor for victims' rights. A federal amendment to the United States Constitution will be the vehicle by which compliance with victims' rights laws can be enforced. The passage of a federal constitutional amendment will provide the means to make victims' rights a reality.

The Constitution of the United States should never be amended for transient reasons. There is compelling reason, however, to amend the Nation's basic charter to protect the rights of crime victims. Specifically, the amendment would give crime victims the rights to be notified, present, and heard at critical public stages throughout their cases. It would ensure that the views of crime victims are considered and that crime victims are treated fairly throughout the process.

This amendment would ensure speedy resolution of their case, promote victims' safety, and safeguard victims' claims for restitution.

And, the amendment would not abridge the rights of defendants or offenders or otherwise disrupt the delicate balance of our Constitution. Victims' rights will never fundamentally become a reality unless we change the *culture*. James Madison recognized that the Constitution is the only document that can command influence over the culture of the country. The Constitution's commanding influence that President Madison acknowledged is best exemplified in the cultural shift that followed passage of the 13th and 19th Amendments to the Constitution—respectively, abolishing slavery and granting women the right to vote. Truly, the Constitution remains an enduring beacon of hope in our pursuit of "a more perfect Union." An amendment to the Constitution is the only vehicle that will exert the necessary influence to affect a shift in our national culture towards a renewed respect for the rights of victims of violent crime.

The proposed amendment makes some basic pledges to Americans. Our legal system properly protects the rights of the accused in the Constitution. But it does not provide similar protection for the rights of victims, and that must change. We must guarantee these rights for all victims of violent crime in America.

The protection of victims' rights is one of those rare instances when amending the Constitution is the right thing to do. With bipartisan support, we can balance the scales for victims of violent crime by establishing in the U.S. Constitution our basic rights.

This concludes my statement, Mr. Chairman. I would welcome the opportunity to answer any questions you or members of the subcommittee may have.

107TH CONGRESS
2D SESSION

S. J. RES. 35

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

IN THE SENATE OF THE UNITED STATES

APRIL 15, 2002

Mrs. F EINSTEN (for herself, Mr. K YL, Mr. B AYH, Mr. L OTT, Mr. B REAUX, Mr. A LLARD, Mr. C LELAND, Mr. B UNNING, Ms. L ANDRIEU, Mr. C RAIG, Mrs. L INCOLN, Mr. D EWINE, Mr. W YDEN, Mr. F RIST, Mr. H AGEL, Mr. HELMS, Mr. H UTHCHINSON, Mrs. H UTHCHISON, Mr. I NHOFE, Mr. M CCAIN, Mr. S HELBY, Mr. S MITH of Oregon, and Mr. W ARNER) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

JOINT RESOLUTION

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

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*
3 *(two-thirds of each House concurring therein),* That the fol-
4 lowing article is proposed as an amendment to the Con-
5 stitution of the United States, which shall be valid to all
6 intent and purposes as part of the Constitution when
7 ratified by the legislatures of three-fourths of the several

1 States, and which shall take effect on the 180th day after
2 ratification of this article:

3 “ARTICLE —

4 “SECTION 1. The rights of victims of violent crime,
5 being capable of protection without denying the constitu-
6 tional rights of those accused of victimizing them, are
7 hereby established and shall not be denied by any State
8 or the United States and may be restricted only as pro-
9 vided in this article.

10 “SECTION 2. A victim of violent crime shall have the
11 right to reasonable and timely notice of any public pro-
12 ceeding involving the crime and of any release or escape
13 of the accused; the rights not to be excluded from such
14 public proceeding and reasonably to be heard at public re-
15 lease, plea, sentencing, reprieve, and pardon proceedings;
16 and the right to adjudicative decisions that duly consider
17 the victim’s safety, interest in avoiding unreasonable
18 delay, and just and timely claims to restitution from the
19 offender. These rights shall not be restricted except when
20 and to the degree dictated by a substantial interest in pub-
21 lic safety or the administration of criminal justice, or by
22 compelling necessity.

23 “SECTION 3. Nothing in this article shall be con-
24 strued to provide grounds for a new trial or to authorize
25 any claim for damages. Only the victim or the victim’s

1 lawful representative may assert the rights established by
2 this article, and no person accused of the crime may obtain
3 any form of relief hereunder.

4 “SECTION 4. Congress shall have power to enforce
5 by appropriate legislation the provisions of this article.
6 Nothing in this article shall affect the President’s author-
7 ity to grant reprieves or pardons.

8 “SECTION 5. This article shall be inoperative unless
9 it shall have been ratified as an amendment to the Con-
10 stitution by the legislatures of three-fourths of the several
11 States within seven years from the date of its submission
12 to the States by the Congress.”.

Æ