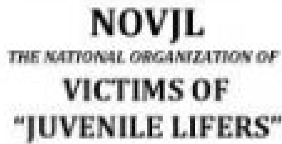

National Organization of Victims of "Juvenile Lifers" (NOVJL)
Testimony to the United States Congress
Re: HR 2289
"The Juvenile Justice and Accountability Act of 2009"
June 9, 2009

NOVJL's website : www.jlwopvictims.org
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I. ORAL TESTIMONY

My name is Jennifer Bishop-Jenkins and I am one of the founders of the National Organization of Victims of "Juvenile Lifers."

In 1990 my sister Nancy, her husband Richard, and their unborn child were brutally murdered in Winnetka, Illinois by a young man four weeks before his legal adulthood. He planned the murders alone -and reportedly did it for the "thrill" of it. He shot Richard in the back of his head, and then turned the gun on my beautiful young sister, who begged him not to kill her baby. He fired directly at her abdomen – exploding the baby - leaving Nancy bleeding to death. Nancy's last act in life was to draw a heart and a "u" in her own blood.

I have devoted the relative peace and legal finality that his three natural life sentences brought us to the prevention of violence and advancing human rights.

And I have come here to tell you that the bill before us is deeply flawed.

It is the antithesis of due process and a violation of fundamental victims' rights to even consider retroactively changing life without parole sentences without informing and involving the victims.

Our family's experience illustrates the rank unfairness.

We were promised life without parole by a judge who chose to exercise a discretionary Life sentence for such a heinous crime because of his privileged upbringing and complete lack of remorse.

Relying on that promise, we believed this part of our ordeal was over.

We don't have transcripts of the sentencing. The court reporter with his stenographic tapes cannot be found.

We can't contact the jurors.

My father –the best witness to the carnage of the crime scene – has died.

We can't get statements from prosecutors, evidence technicians, and police who had direct contact with the case.

Witnesses cannot now be found, such as Nancy's next door neighbor who heard her terrified pleas for help, and the friend of the killer to whom he confided details of the awful crime.

All that we could have gathered to arm ourselves for a parole hearing someday is lost.

Lost because we were promised that parole or early release for this killer was not possible.

This is a sickening bait-and-switch.

I have used my own limited resources to notify a few other victims of this well-funded national effort to free these killers. All were told the same thing.

"Don't worry; this guy can never get out."

This new uncertainty renders our situation entirely different from other victims like Linda White's (whose story you will hear in a few minutes).

Though she and I worked together for a long time as fellow murder victims devoted to human rights, I am sad to say she literally has no standing in this specific discussion because her offenders did not receive this sentence.

The temerity of anyone to propose something that so profoundly affects us without notifying us is appalling.

If you have not gone through it, you cannot understand the impact of the proposal before us.

Parole hearings are incredibly re-traumatizing and deprive victims of legal finality. To re-open this pain- every three years, for the rest of our lives, and perhaps those of our children - is quite literally TORTURE.

Proponents of this legislation will be hard pressed to produce ONE victims' family like ours where the offender had no relation to the victim, who wants to endure a lifetime of parole hearings.

They will no doubt give you some rare legitimate stories of injustice that - like all problems in the criminal justice system – can be addressed. But we can easily well outmatch them with horror stories.

Such as:

- 12-year-old Victoria Larson's killer dug her grave three days before raping her and killing her. He had already been given his "second chance", and was out on a juvenile parole that he used to rape and murder her.
- And the 16-year-old, who took a 5-year-old girl into an abandoned housing project, raped her, then threw her out a 14- story window. As she clung with fingertips to the windowsill screaming for her mother, he went to the window and lifted off her hands, sending her to her death.

This is NOT impulse.

It is callous disregard for human life - with cool advance planning - by people old enough to know that killing is wrong.

I note this room isn't filled with the victims' families of these crimes.

It is not because they do not care.

It is because no one has bothered to tell them you are doing this - despite our pleas to this committee for victim notification and our pleas to the advocates, who have spent millions supporting the offenders, that they devote a nominal portion to reaching out to the victims' families of these crimes.

My written testimony will detail other important issues pertaining to this legislation.

- How brain development research is being misapplied.
- How a one-size-fits-all parole mandate cannot work when each state has a different sentencing scheme, including half with determinate sentencing, and many with no parole structures at all.
- Ways that the "juvenile life" sentence could be "reformed" without any negative impact on victims.

We need a real conversation about reforming the process - before the filing of any more such legislation -and with ALL the stakeholders at the table.

In the meantime, this bill as it stands, only transfers the life sentences from the guilty offenders to the innocent victims' families left behind.

WRITTEN SUBMISSION TESTIMONY

II. Short Bio on Mrs. Bishop-Jenkins

Jennifer Bishop-Jenkins is the sister of Nancy Bishop Langert who, along with her husband Richard Langert and their unborn child, was brutally shot to death in a highly publicized and calculated torture and "thrill kill" murder in Winnetka, Illinois in 1990. The offender is now serving three life without parole sentences in the Illinois Department of Corrections. Inspired by Nancy's final message of love - scrawling a heart and "U" in her own blood as she lay dying - Jennifer has been a tireless advocate for violent crime victims, troubled youth, Restorative Justice and Human Rights, and violence prevention.

In 2007 Jennifer, and several other murder victims' families in 8 states, that found each other through their own efforts, co-founded NOVJL, the National Organization of Victims of "Juvenile Lifers", to protect victims' rights in the discussion about teenaged murderers tried as adults and sentenced to life without parole for killing their loved ones.

NOVJL seeks to respect all victims' rights of the families of these crimes to be fully present, if they so choose, at the policy discussion table fully in any legislation that would retroactively change the natural life sentences being served in their loved ones' murder cases. NOVJL also seeks to call attention to the significant resources being expended on the convicted murderers, most of whom are guilty and often unrepentant of some of the most horrific and aggravated murders in the nation, by various non-profit organizations who support only the offenders, while no resources have been devoted to find, inform, support, educate, and listen to the victims' families of these crimes.

Jennifer has received several awards from humanitarian organizations, such as CONCERN Worldwide and the Rainbow PUSH Coalition, for her work against violence and for restorative justice and victim-related issues. She travels the nation speaking in workshops alongside her husband Bill Jenkins, also the father of a murder victim, who is a university professor and the author of the acclaimed book ***WHAT TO DO WHEN THE POLICE LEAVE****: A Guide to the First Days of Traumatic Loss* (WBJ Press).

After retiring from a 25 year high school teaching and administration career, Jennifer worked as a National Program Director for Victims and Survivors of gun violence, and has served as an advisor and on several national and international boards of directors of victim organizations, including Murder Victims Families for Human Rights, and the National Coalition of Victims in Action. She serves on the National Leadership Council for Crime Victim Justice, and founded IllinoisVictims.Org. Jennifer is a member of the Advisory Board to the bi-partisan United States Congressional Victims Rights Caucus.

III. WHY NOVJL OPPOSES HR 2289

We do not oppose all reforms, either to JLWOP (the juvenile life without parole sentence) or to the Criminal Justice system.

We stand for Victims Rights. We stand to be fully notified of and included in any retroactive proposal that would change the life sentence of the offenders in our cases.

First, Victims are genuinely IN DANGER from this particular proposal.

Many offenders, if released, would go right back to where their victims were, and either seek vengeance or cause a highly volatile situation to become worse. Victims have a right to be protected from such threats.

One example: the national automated victim notification system, now in place in over 43 states, run with government contracts by Appriss Technologies of Louisville, KY, was founded by a family whose daughter, a domestic violence victim, was killed within ONE hour of her offender's release from prison. She was supposed to have been notified if they were to release him. They did not, and she was dead almost within minutes of his release. This case lead to the creation of the SAVIN system of automated victim notification. And there are, sadly, thousands of other examples.

And second, we oppose ANY periodic review model that would require victims' families to regularly re-engage legally with the offenders in parole hearings. This re-traumatization is torture, literally, to victims' families.

There are many ways to reform and address any concerns with this sentence without balancing the bulk of the reform primarily on the backs of the victims.

Regular parole review is the WORST possible "solution" to this perceived "JLWOP problem".

Advocates and officials who have any concern that the laws are currently inadequate to protect the special considerations appropriate for younger offenders.

IV. VICTIMS ARE KEY STAKEHOLDERS

In the national debate generated by advocates for these younger killers, we are here primarily for one reason only **- to assert our right to be included in the discussion** - something, surprisingly, that generally is not happening.

In the several states where there are proposals to abolish JLWOP, victims' families of those crimes have not been found and informed and supported to be part of the discussions. In fact, they have often been even deliberately ignored, excluded, or in some cases outright demonized.

Victims of these crimes are a relatively VERY small population of people who could be easily found, for the most part, by a few weeks of work by clerical level employees of prosecutors' offices.

Resources to do this MUST accompany any proposal for retroactive change to a sentence such as LIFE WITHOUT PAROLE that victims walk away from believing and told is permanent.

Victims for the most part in LWOP cases do not even register for victim notification in their states because they are told or believe it is not necessary in their cases.

This single fact alone requires an extraordinary response by anyone who wishes to retroactively change LWOP.

Some legal experts tell us in fact that retroactive changes in LWOP may be legally so problematic in most cases as to make them nearly impossible.

In any such significant public policy discussions, such as what to do with the "worst of the worst" among us, no key stakeholders should be kept away from the table. The Victims of these crimes are, without a doubt, key stakeholders.

We were made as such through no choice or fault of our own by the very offenders that the advocates to end JLWOP are now working so hard to defend.

V. MYTHS AND FACTS ABOUT JLWOP

Many advocates for the offenders now serving JLWOP sentences have made some fundamental errors, we feel, in the early years of their movement to reform the JLWOP sentence across the nation. Painful as it has been for us victims of these crimes to reading the many well-funded and published materials from the offender advocates, there is an inaccurate picture of the whole situation being put out we feel an obligation to correct:

1. MYTH: That the real "problem" with the whole JLWOP situation is the age of the offender.

FACT: The real problem is that someone, or several someone's are dead - murdered - and that an offender or offenders chose to commit acts of unspeakable evil against other innocent living human beings.

And there is nothing but devastation in the wake of a murder.

What is at issue in all these cases are horrible, horrible murders and in all these cases tragedy surrounds the entire scenario. The problems go SO much deeper than just the age of the offender. Advocates against JLWOP need to do a much better job of embracing the full complexity of all these cases and talking about the CRIMES, not just the age of the offender. Reading their materials one could almost miss that these offenders are all convicted murderers, no matter what other circumstances surround the cases.

2. MYTH: We solve this "problem" with a discussion focused on the offenders in prison.

FACT: We solve this "problem" by focusing on the crimes, the larger social and criminal justice picture, the staggering and life-changing harms done (to victims) in these tragic situations, and the need to prevent violence in our society.

The focus of those who support HR 2289 has been, up to this point, almost entirely ***offender-centered***.

And their messaging has been too much about "the poor kids in prison". This will not help them build the broad public support needed to make fundamental changes in law. They need to change their approach to one built on not only strong partnerships with law enforcement and violence prevention professionals, but to one that is all about inclusive restorative justice principles.

Restorative Justice is an approach that addresses the harms caused the victims. The victims and accountability for the crime is the focus. Some offender advocates have attempted to hijack the restorative justice process and turn it into something that is simply this: the victim forgives and the killer gets out.

That is not restorative justice.

Restorative Justice is incredibly hard work – a long, slow process that is RARELY even possible because both offender and victim have to be BOTH willing and able, and there has to be an infrastructure to support it.

And Restorative Justice is not possible in these kinds of crimes in PLACE of the criminal justice system – when it happens it is only in addition to the legal system.

And victims, the key stakeholders, are completely at the table, where they choose to be, in any public policy discussions about the sentence being served by the offender.

3. MYTH: The offenders in these cases are CHILDREN.

FACT: 53% of all the offenders serving what these offenders called "juvenile life without parole" were 17 at the time of their offenses - hardly "children". And 17 in many states is the legal age of adulthood anyway.

The vast majority of the remaining (about 35%) were 16. Only the smallest numbers of cases - and the ones they of course love to publicize the most - were younger at the time of their offenses - single digit numbers.

Legally every one of these offenders was found in a court or by state law to be legally an adult. Many states define adulthood at 17 or even 16. States vary on ages assigned for adult criminal culpability.

And while the American Criminal Justice system can and does make errors, and needs reform in many areas, the debate about their being "children" or not is not one in American Law - it is in international standards set up against the expertise of those closest to these crimes – and the experiences of those who actually participated in the crimes themselves.

Neither "side" is wrong but they both come from a very different perspective and valid perspective on what is factually so. Many of us judge "children" versus adult in the context of their own individual abilities, maturity, choices, and behavior.

It is clear that horrific murder cases call for extraordinary case by case examination of the individual facts of the case and the culpability of the offender. “Bright lines” drawn normally by the law must be set aside to look instead at the facts of the powerfully important individual circumstance of each such brutal crime.

Most of the JLWOP cases are from the 1990's and are gang members, most with previous records of violence, often having been previously imprisoned as juveniles for violent crimes, even murder. States define adulthood by age differently - for many states it is, indeed, 18. But for other states it is 19, 17 and even 16. JLWOP conviction have dropped dramatically in the last decade now that much of the gang leadership infrastructure has been locked up, and much better prevention mechanisms have been put in place.

Also, advocates who continually call them “children” need to consider the impact of this argument on the victims of these crimes, not just use it for its propaganda impact on the public, and publishing pictures of the offenders (as they have many times) when they were MUCH younger than when they actually committed the crimes. Calling these murderers "children" constantly in their advocacy work is incredibly emotionally troubling to many victims' families - some have described it to us as a dagger into them each time the offender is called that. It is worst when the actual murder victim was a REAL child. Many of these cases were 17 year olds killing, for example, 5 year olds. To hear the offenders called "children" all the time to the mother of a murdered young girl is beyond painful.

"Children" is not a term teens themselves would accept. Those who use this term to describe these offenders are only using it for one purpose – to paint an inaccurate picture of the crimes to propagandize for support for the offenders.

The most accurate is the legal term juvenile, or the social terms teen, youth, or adolescent. Their basis for using the term is derived from the International Treaty of the Child which applies to those under 18. But the political and legal messaging in the United States needs to be applied in ways that are meaningful to our system.

4. MYTH: The ages of the offenders is not considered in their legal process.

FACT: In most states there are layers of review afforded these offenders that are extra and aimed to look at the factors associated with their ages. Also, there are often extra avenues of appeals open in their cases. Many teens that are guilty of murder do not end up in the adult system in the United States. There are also processes in place in courts and in prosecutors' offices that review and evaluate appropriate charges and avenues of prosecution to the individual situation and often there is some discretion afforded prosecutors and judges in these cases. However, we do agree that one possible area of examination for reform might be in the areas of the law where mandatory transfers to adult court are less flexible and allow for less discretion by expert judges and prosecutors who are familiar with the individual facts of the case.

5. MYTH: Many of the JLWOP cases are innocent of their crimes.

FACT: Most of the offenders serving JLWOP sentences are guilty of their crimes, and were the actual "trigger men", though some are convicted as direct accomplices with equal legal responsibility.

A smaller percentage of the JLWOP cases were accomplices, serving life for felony murder counts.

But it is important to consider, if the proposal becomes to reform the felony murder counts for JLWOP, that there are actually some cases where accomplices could be seen as even more culpable than the "trigger men" if they directed or ordered the shooting, as is often the case in some gang killings.

In fact, any proposal that would lessen juvenile penalty for murder like this ACTUALLY ENDANGERS any potential juvenile offenders more because it will most certainly increase the number of older gang members who order the younger members to commit the crimes.

Ask any law enforcement official who works up close with these situations.

Keeping the penalties the same based on the ACT and culpability of the offender, and not just the age of the offender, actually serves to protect many juvenile gang members from serving out their lives in prison by removing the incentive to send them to do the dirty work for the older gang members.

6. MYTH: One of the favorite arguments of those who want to abolish JLWOP is that the brains of these offenders are not fully developed, and therefore they are not fully culpable.

FACT: The argument of the brain's frontal lobe development is generally not applicable in these matters.

Yes, recent studies show the frontal lobe of the brain continues to develop into the 20s. But if this argument were all that was relevant, no one should be allowed to do anything - drink, join the military, own a gun, drive, marry, sign contracts, vote, until they were close to 30. And legal culpability for all crimes as adults would have to be raised to 25 at least.

In fact, people learn right from wrong at a very young age and have the ability, generally, at a very young age to conform their behavior to what they know is right and wrong.

Moral and emotional and cognitive development is by far advanced enough in early adolescence, if not before, to adequately keep anyone from killing another human being. The fully aware CHOICE to kill, knowing full well that killing is illegal and immoral with permanent life consequences, is often completely demonstrable in most of these cases.

The real issue in SO many of these cases, tragically, by the way, is the easy access the young offenders have to guns. In this way, all American lawmakers who support easy access to guns are responsible for the high rate of murder committed by our teenagers compared to other nations. No one under age in the United States should be able to access a gun except under direct adult supervision for legal purposes such as hunting. And adults who allow them to access guns for illegal purposes are themselves culpable for what happens. Guns render the offender deadly from a distance, easily able to ambush the victim,

and make them superior to any victim in physical force. Addressing the easy access to guns in this nation will do more to end the “problem” with JLWOP than any other step advocates could take.

7. MYTH: Victims families will oppose any and all reforms and therefore should not be consulted in or informed of this discussion about the sentences of their offenders.

And there are some who argue that victims should not be informed of and included in this public policy discussion because they are too "emotional" and too adversarial, and unreasonably so.

FACT: First, Victims have a fundamental right in all 50 states and in Federal Law, either by Constitutional Amendment (33 states) or by extensive statute (all states) to be NOTIFIED of and HEARD in matters pertaining to the disposition of their cases. (www.victimlaw.org). Retroactive proposals that become law without victim notice and participation are, we believe, illegal based on those established rights.

Second, many of us who are victims strongly support some real reforms to the criminal justice system.

And NOVJL does not oppose, for example, the recent decision by the US Supreme Court to decide the JLWOP issue for non-murder cases.

The principle of case by case decision-making about which offenders should be held to which level of accountability, depending on the facts of the case, is one we generally support. We invite a national discussion about mandatory transfer of juvenile offenders to adult courts. We believe in extra layers of legal protection being afforded younger offenders, and encourage extra layers of review.

And even if we do not support abolishing JLWOP altogether because we know it to be sadly necessary in some cases, we have experience and evidence that has to be examined in the process nonetheless.

To proceed in a conversation about these crimes and their consequences without fully including those closest to the crime, the victims, is to enter the effort severely disabled, without access to all the information one would need.

We can actually provide evidence to the contrary about who in the process is overly emotional. We have found ourselves in recent hearings in several states that they emotion, hostility, and "unreasonableness" is all coming from the offender advocacy side, sadly enough. Contact us if you want specific and several examples, but we have yet to see a hearing on bills in state legislatures where the few victims "lucky enough" to know about the hearings and be able to attend, were anything other than honest in telling the facts of their cases and respectful of all present. And we have stunning and several examples of out and out hatefulness and rudeness openly leveled at victims’ families by advocates for the offenders -- including some legislators.

8. MYTH: That everyone convicted of murder deserves the sentence they get (this supports definitely the need for some reforms, and throughout the criminal justice system, not just for "juvenile lifers").

FACT: We know, and often victims know this better than anyone, that the criminal justice system is not perfect. Many people in prison are fully innocent. Many are over-sentenced or less guilty than what

their sentence describes. Many guilty people go free, or are not sentenced as they should be. The "system" is far from perfect and needs reform.

And so while we all talk together as a society about what reforms we genuinely need to make, we must bring all stakeholders to the table - and victims are key to that discussion. Offender advocates and family members cannot make the case for reform on their own. Everyone involved can bring much that will enlighten and inform to the discussion.

But the way to RIGHT these WRONGS is NOT by balancing the repairs on the backs primarily of the victims' families and make across the board changes in how often they have to go back - over and over - to hearings on the sentence of the offenders in their cases. Victims deserve as much legal finality in their cases as they can possibly have.

The way to right the wrongs in ALL cases of error and injustice in the criminal justice system is to address each case, protect avenues of appeal, raise the standards for rules of evidence and review prior to going to trial, maximize quality defense resources, make sure penalties are appropriate to the crimes and situations, and make strong systemic reforms in all aspects of the criminal justice system, not just for this one group of offenders.

There are innocent and over-sentenced men and women serving in America's prisons of every age. That there is such massive attention being paid to 2400 cases of mostly guilty murderers, mostly 17 years old, because of their "youth" is a serious injustice for the entire vital movement for criminal justice reform in the United States. It raises questions about whether or not the younger killers' cases are being exploited for mainly PR purposes, or because this cause is particularly capable of increasing the funding for organizations who champion it.

9. MYTH: That the JLWOP sentence is commonly and overly given.

FACT: The JLWOP sentence is almost never given. It is extremely rare and constitutes a very small number of cases nationally. Many juvenile-aged murderers are never tried as adults, and most of those who are do not receive anywhere near an LWOP sentence. Considering the number of violent offenders in the United States, this is a very small issue. The few genuine cases of miscarriage of justice, an issue not limited to JLWOP but pervasive in the criminal justice system, can easily be addressed through opening new avenues of legal appeals and improving the executive clemency process. While it could be true that some states need to reform their mandatory transfer mechanisms by which juveniles can be tried as adults for serious crimes, explaining why some states have a disproportionately larger JLWOP population, these reforms can easily be accomplished without requiring devastated victims' families across the United States to be re-traumatized in constant legal re-engagement with the offenders in unending parole hearings.

And to say that the United States compares so unfavorably with the rest of the world on this issue begs many questions, such as why aren't we comparing our easy access to guns with other nations as an explanation? Why isn't an effective life sentence that is a long term of years, and has the same net effect as a life sentence, being considered as a comparison? Why isn't the overall percentage of violent juvenile offenders compared with the makeup of the rest of the larger prison population being compared across the board with the rest of the world? There are many aspects of the American prison

population that when compared with the rest of the world shows some dramatic differences. These need to be seen in a holistic way as interconnected.

10. MYTH: Offenders can be accurately judged as to their rehabilitation while in prison.

FACT: Such evaluations at best are an art, not a science, and often demonstrated, time after time, and all over the nation, can be sadly, and often tragically WRONG. The numbers nationally of repeat offenders, even violent repeat offenders, is staggering.

We have an obligation to keep our communities safe. And to assume that how an offender acts while in the confines of a prison is a good indicator of how they would act once free again is just irresponsible and silly.

11. MYTH: Offenders in prison cannot have a “life”.

FACT: In fact offenders can still see family, learn, grow, experience spiritual awakening and comfort, be a friend and supporter to those both in the prison and outside, have relationships, laugh and experience pleasure, read, create and a whole host of other activities.

And we support fully prison reforms in all states that would better allow inmates who demonstrate rehabilitation to transfer to medium and minimum security facilities to serve their sentences, where warranted. This would allow them to work, earn money for their upkeep, their victims, and their families. It would allow them to educate themselves, build relations with the community in some programs, and to mentor other troubled youth. This nation has a large prison population that needs to do MUCH more of this kind of thing. And often these transfers and programs actually pay for themselves many times over.

VI. VICTIM RE-TRAUMATIZATION

The neurological information available to experts about the special way that traumatic memories are laid down in the brain for victims of violent crime is now well known.

Trauma actually opens up the brain, a survival mechanism that is deeply biologically ingrained in our species, to receive massive amounts of data quickly and in ways that are NOT stored like memories – there is not time and too much to store. So the brain simply rapidly absorbs it, and it is stored anywhere the brain can literally stick it into, in a primitive, powerful and disorganized fashion. And ANY prompt (a familiar smell, someone who looks like their loved one, or the killer, or any other reminder) can much easier re-awaken that trauma because of the way it is stored in the brain.

When such memories are re-awakened they do not FEEL like memories – because they were not stored like memories. They feel to the victim like they are happening NOW. The heart races, they sweat, they get nauseous, they get scared, they can’t concentrate, and they lose sleep. They are re-traumatized.

Any “reform” that attempts to balance its “corrections” to “flaws” in the criminal justice system by requiring the victims’ families to regularly re-engage with someone who murdered their loved ones , perhaps for the rest of their lives on a regular basis, is LITERALLY TORTURING the victims.

Regular parole hearings can NOT be the primary solution for flaws in the criminal justice system. This only transfers the life sentence from the victims to the offenders.

VII. THE VARIETY OF SENTENCING SCHEMES IN ALL 50 STATES

One serious flaw with HR 2289 is that it relies on parole hearings after 15 years, and every three years, to “evaluate” offenders now serving life without parole for horrific murders, to correct perceived problems in the system.

To restate the obvious: all 50 states have different sentencing systems. It is a fundamental part of our Constitutional and Federal structure as a nation.

And this bill certainly raises questions of states ‘rights in sentencing that will be legally problematic in a whole separate constitutional law discussion that we will not attempt here in these pages.

But the most glaring problem is:

Approximately half the States in the USA do not have parole built into their current systems – or they have some version of determinate sentencing, actually better for the offender because it sets formulas for release based NOT on the judgments of some politically appointed parole board, but on the offenders’ own good behavior.

The number of JLWOP cases in most states is extremely low – a few dozen at most. Only a few states, large ones, have over 100. To require a state, as HR 2289 does, to set up an entire parole bureaucracy (boards, officers, infrastructure, etc) to address a handful of cases is RIDICULOUSLY not cost effective.

Why would any state spend millions to establish a parole bureaucracy to address a handful of cases in order to protect 10% of their federal matching crime funds?

Why would the US Congress ask such a thing of states?

The answer is clear: Parole requirements for JLWOP to states are not feasible or desirable. Those who wish to address the need to reform JLWOP must look to other protections for younger offenders in states where the laws are deemed too harsh, if such a determination can be made.

VIII. SOME OTHER LEGAL ISSUES

Recently the US Supreme Court announced its intention to rule on two Florida JLWOP cases for NON-murder. It is important for all in this discussion about JLWOP to remember that the Supreme Court’s ruling, when it comes down next year, has already been announced by the SCOTUS blogs and other sources to address the use of the JLWOP sentence in non-murder.

Advocates for the JLWOP offenders who have been claiming that the recent Supreme Court decision to hear these Florida cases as a rationale for claiming that JLWOP will be undone nationally for all cases, the vast majority of which are horrific murder cases, are simply wrong.

Also, in another case of note, this last year the Connecticut Supreme Court ruled in detail on the JLWOP case before them and said, in absence of a constitutional amendment prohibiting it, state legislatures have the right to determine life sentences for offenders and where to draw those lines.

Finally, my oral testimony above addressed the very serious legal issue of Due Process being denied for these cases where no records were saved because of the life without parole nature. For victims to be able to make a case before a parole board that is legitimate (it's bad enough they should even be asked to do this at all after a conviction – victims deserve legal finality) they need to have documentation about the original crime and case that will often NOT be available to them because it was not retained in an LWOP case where it was assumed it would never be needed.

This is a serious legal issue regarding the retroactivity of any such proposal in LWOP cases, no matter the age of the offender. Nationally the legal community will have to make systemic changes in how proceedings are accomplished and protected if retroactive changes like this are to be made while attempting to protect Due Process Rights.

IX. REFORMS WE COULD SUPPORT

Since we know that there are problems in the juvenile justice system, surely as in the entire criminal justice system, we know there must be dialog about solutions. We know that there are many problems, and actually many solutions as well. One of our main concerns with the approaches advocated by those who support ending the JLWOP sentence is their often too-narrow focus. There is not one solution - there is not one problem - and there is not even clear right and wrong answers.

We also know that there are times when human rights may be in actual conflict with each other.

So, hang on - this is a somewhat complicated example of the argument:

If a prisoner is argued to have a "right" (and this is by no means established, in fact, we are sure there is NO such "right") to a periodic review for early release or parole from a long term sentence, as some prisoner advocates argue; but there is a thorough and rigorous legal case made, given full due process of law and then some, and that offender is found to be fully guilty of a horrific mass or multiplied aggravated murder, and whose life circumstances are such that he or she will highly likely never qualify for early release under any parole system; and since we know it is true that periodic re-engagement with the offender continues to re-traumatize already horribly damaged and innocent victims families, and that such damage is clearly a violation of their rights . . . well then, what does one do? It cannot be advocated that the rights of victims should be constantly re-violated in order to advance the "right" of a prisoner found to merit a life sentence to possible periodic review for release.

One cannot trade one human rights violation for another. Especially when the offender's violations of the victims lives and rights is what created this problem in the first place.

And no one who understands the nature of trauma and victimology would ever argue that victims can simply choose not to care about or participate in such periodic reviews for early release of the killers of their loved ones. While there may be that rare case of a victim survivor able to completely "move on" in their lives, and not give the fate of the killer a second thought, largely that is not even neurologically possible for most people, much less desirable, for a whole host of reasons. Many of us come to see our grief and our memories as a positive and vital link to those we love take violently from us.

We believe that ultimately the key argument in this national debate over the JLWOP sentence may come down to a recognition that, while the fact that some teenagers are actually capable of such horrors in our beloved nation, and we do not like what that means about us as a nation and a people that such a thing is possible (and how we address that we believe IS the KEY discussion we should be having!) we are in fact a nation that has younger people capable of such horrors. They are here and they are, sadly, among us. And tragic as it is (and no one knows the depth of the tragedy better than we do) that they are capable of committing such crimes, the worst tragedy might be to continue to hurt those same victims' families over and over and over again, to no end other than allowing access of that offender to frequent reviews for release that will never predictably be granted.

And all this does not even begin to discuss the cost, and the risk to public safety entailed in such legal processes.

Many states that have chosen a system of determinate sentencing have already made this decision not to engage in this highly problematic process. They have set sentences for certain crimes at certain lengths, and even built in mechanisms for automatic sentence reduction based on good behavior. In so doing they have eliminated an incredibly racist, discriminatory, uneven, costly and ineffective parole system.

One only has to look at the states like California that still use parole to see how wildly problematic the system is.

We also grant that it is obvious that the younger a person is, the less they are capable of consistently good decision-making, and that laws must be written rationally to build in such understandings. But the problem runs along a spectrum and cannot be judged along distinct lines. And knowing that it is wrong to kill, and being able to keep oneself from doing just that, comes pretty early in life for most young people.

Ultimately we believe that *reforms must focus on the transfer mechanisms in states - HOW DOES A JUVENILE OFFENDER BECOME CERTIFIED AS AN ADULT?*

We know that mandatory transfers can be problematic as it eliminates the ability of courts and experts on the individual facts of the cases to make decisions most responsive to the situation.

We know, better than anyone else in this entire conversation, that this is all a very complex problem, and does require a significant public policy discussion.

But this public policy discussion cannot be had without all the key stakeholders at the table and the victims of these crimes and their families are not just stakeholders, they are *the issue.*

There would not be the crime, the sentence, or the debate unless there were first innocent victims, targeted for death by killers. There cannot now be a discussion as to the fate of those killers, sentenced through Due Process to Life Without Parole without the most important people at the table - the Victims' Families.

X. THE MISAPPLICATION OF BRAIN RESEARCH

We recommend that anyone concerned with the rationale that the lack of complete frontal lobe brain development until the mid-20s excuses criminal liability read this article published in the *New York Times Magazine* about neuroscience and the law, called “The Brain on the Stand” by Jeffrey Rosen:

http://dericbownds.net/uploaded_images/NeuroscienceLaw.PDF

Here is a select quotation from that article that gives some sense of our concern and I pick up the article from a point where it is discussing the debate about neurological “excuses” for criminal behavior that began with a historic understanding a different issue – mental illness – and then moves to our point about juvenile brains:

“Since the celebrated M’Naughten case in 1843, involving a paranoid British assassin,English and American courts have recognized an insanity defense only for those who are unable to appreciate the difference between right and wrong. (This is consistent with the idea that only rational people can be held criminally responsible for their actions.) According to some neuroscientists, that rule makes no sense in light of recent brain-imaging studies. ‘You can have a horrendously damaged brain where someone knows the difference between right and wrong but nonetheless can’t control their behavior,’ says Robert Sapolsky, a neurobiologist at Stanford. ‘At that point, you’re dealing with a broken machine, and concepts like punishment and evil and sin become utterly irrelevant. Does that mean the person should be dumped back on the street? Absolutely not. You have a car with the brakes not working, and it shouldn’t be allowed to be near anyone it can hurt.’ Even as these debates continue, some skeptics contend that both the hopes and fears attached to neurolaw are overblown. ‘There’s nothing new about the neuroscience ideas of responsibility; it’s just another material, causal explanation of human behavior,’ says Stephen J. Morse, professor of law and psychiatry at the University of Pennsylvania. ‘How is this different than the Chicago school of sociology,’ which tried to explain human behavior in terms of environment and social structures? ‘How is it different from genetic explanations or psychological explanations? The only thing different about neuroscience is that we have prettier pictures and it appears more scientific.’ Morse insists that ‘brains do not commit crimes; people commit crimes’ — a conclusion he suggests has been ignored by advocates who, ‘infected and inflamed by stunning advances in our understanding of the brain . . . all too often make moral and legal claims that the new neuroscience . . . cannot sustain.’ He calls this ‘brain overclaim syndrome’ and cites as an example the neuroscience briefs filed in the Supreme Court case *Roper v. Simmons* to question the juvenile death penalty. ‘What did the neuroscience add?’ he asks. If adolescent brains caused all adolescent behavior, ‘we would expect the rates of homicide to be the same for 16- and 17-year-olds everywhere in the world — their brains are alike — but in fact, the homicide rates of Danish and Finnish

youths are very different than American youths. Morse agrees that our brains bring about our behavior — 'I'm a thoroughgoing materialist, who believes that all mental and behavioral activity is the causal product of physical events in the brain' — but he disagrees that the law should excuse certain kinds of criminal conduct as a result. 'It's a total non sequitur,' he says. 'So what if there's biological causation? Causation can't be an excuse for someone who believes that responsibility is possible. Since all behavior is caused, this would mean all behavior has to be excused.' Morse cites the case of Charles Whitman, a man who, in 1966, killed his wife and his mother, then climbed up a tower at the University of Texas and shot and killed 13 more people before being shot by police officers. Whitman was discovered after an autopsy to have a tumor that was putting pressure on his amygdala. 'Even if his amygdala made him more angry and volatile, since when are anger and volatility excusing conditions?' Morse asks. 'Some people are angry because they had bad mommies and daddies and others because their amygdalas are mucked up. The question is: When should anger be an excusing condition?'"

This article highlights our concern about the reasoning for changing JLWOP is that these offenders' brains are not yet fully developed. In sum:

1. If this were the determination of legal culpability – a FINISHED frontal lobe – then virtually no one under 30 could be held criminally liable for anything.

2. People are well aware of right and wrong and are able to comport themselves to those standards well before adolescence even – most at a very early age. Moral development is also key in understanding this process in the brain.

3. We still hold accountable and punish children who make mistakes, in fact we must – to help them grow.

4. We hold accountable as full adults many older age offenders who have other diminished capacity issues that make them far less culpable than a healthy adolescent who commits a violent crime.

5. All behavior has biological causation, but we have decided, correctly, as a society that does not mean that all behavior is excusable.

6. Dr. Morse's point in the article above makes reference to adolescents in other countries who clearly do not commit murder at anywhere near the rates in the United States, which should be the case if the brain is the cause for the juveniles committing murder. In fact, it is primarily easy access to guns and a violent gang culture that is a direct cause of most of the JLWOP cases in the United States.

7. Laws regarding punishment of offenders internationally cannot compare to the United States until our laws about easy access to guns are judged comparably to other nations as well.

In conclusion, the frontal lobe of the brain may not be finished developing in the average adolescent, but culpability for a violent crime in an offender who is mentally healthy is still fully present.

XI. VICTIMS RIGHTS IN RETROACTIVE LEGISLATIVE PROPOSALS

A. Victims' Rights to notification

Victims' Rights to be heard, to be consulted, to be protected, etc (see www.victimlaw.org) are well-established in two of the three branches of government in all 50 states and in Federal Law.

First, in the Judicial Branch, in hearings, trials, sentencing – victims' rights are generally observed, if not always enforced, in virtually every aspect of their cases through the courts.

Second, in the Executive Branch of Government – in the executing of the law – in incarceration, parole release, clemency matters, etc., - Victims can and often do REGISTER in states to be kept notified either through automated systems (43 states) or some other method, of the movements and releases of offenders.

But victims' rights to be notified of LEGISLATIVE Branch activities that could have the same net effect as a new sentencing hearing or a clemency release have NOT been established in the United States yet because up to now it simply has NOT been an issue.

Victims' Rights to be notified of any retroactive legislation that would affect their cases MUST be the same as any judicial or executive function with the same protections.

Significant work to protect victims' rights must accompany any such legislative proposal.

The following summary was recently submitted to the Webb Commission for his work in the US Senate to undertake a comprehensive study of the nation's prison system:

Overview

After decades of "tough on crime" sentencing, a burgeoning and aging prison population, and a nation now facing a severe economic crisis, states are considering various kinds of early release and retroactive sentence reduction measures for many of the nation's incarcerated offenders. While this trend can be seen as a natural historical cycle and genuine reform, retroactively reducing some prison sentences can, in some cases, pose a serious concern. It also gives rise to a new issue regarding Victims Rights.

Questions

Are Victims Rights (i.e. the right to be notified, heard and to consult, etc.) protected in the Legislative Branch of Government, as they are in the Judicial (trial/sentencing, etc) and Executive Branches (prison/parole/clemency) of Government? Or are victims rights limited to the functioning of only two branches?

If a piece of legislation would essentially have the same effect as a new trial -- a clemency or parole release, or a new sentencing hearing -- does the victim have a right to know that the Legislature could release the offender? Should victim notification be mandated when proposed legislation would

retroactively undo the sentence in their cases? If there is no such right for victims, what should the national victim advocate profession and prosecutors offices be telling victims of crime about this aspect of their cases? Should SAVIN efforts include legislative matters such as these?

Complications

1. Early release of violent offender can pose a direct safety threat and a re-traumatization risk to the victims/families. These offenders upon release could return to the victims' community, and could seek vengeance.

2. Half the states have Determinate sentencing with little to no parole bureaucracies in place. All 50 states have different "sentencing schemes". And victims are often told the offender can never get out in cases where they receive natural life.

3. Some offender advocates are claiming that "periodic review" for possible release is a "right" that offenders have. Periodic review is re-traumatizing to victims and robs them of legal finality in their cases. Can the victim community allow this claim to go unchallenged, especially with so many determinate sentences nationally?

4. States are not always focusing on non-violent offenders first and foremost, as they consider these steps.

    a. Many states are actually proposing retroactive and early release legislation with the *most violent offenders* as their target population: long term prisoners, aging offenders, for the most aggravated and heinous offenses.

    b. Life without Parole sentences for juvenile offenders tried as adults (JLWOP) is a primary target for retroactive change. These families should be informed of the immediate threat to the sentences in their cases.

Recommendation

We believe that the national victims' rights community should address this trend head on and take a legally supported stance on all retroactive sentence reduction legislation. We should articulate Victims' Rights in legislative matters affecting our cases. And we believe it is now time for the victim advocacy profession to talk proactively with all victims and clients about the very real possibility that a sentence by a court may not be the final word with respect to time served.

B. ***Victims' Rights Are Human Rights***

The Life Without Parole sentence is widely regarded as the appropriate sentence for those who show an exceptional disregard for human life. Many believe they have simply lost the right to walk among us. And while most of us believe that this sentence should be incredibly rare, and only reserved for the proverbial "worst of the worst", sadly, there are such truly bad actors among us human beings on planet Earth.

The most complicated aspect of the JLWOP issue is the human rights question – the interpretation of international treaty, not signed by all nations, that no matter the act, no one under that "magic" age of 18 according to some international treaties should receive a life sentence.

In fact, legal interpretations of those treaties and laws and global legal practice that balance the entire picture of violence, victimization, offender behavior and public safety, and victims' rights can present a different picture.

Victims' rights are human rights also.

And one cannot merely trade one human rights violation for another.

The founder of NOVJL, Jennifer Bishop-Jenkins, was instrumental in conversations with Human Rights Watch (www.HRW.org) a leading advocate to end JLWOP, to address this very question.

And in fact, all international law and treaty and national law affirm that Victims' Rights are Human Rights also.

Here is a link to the HRW report on the subject: http://www.hrw.org/en/reports/2008/09/23/mixed-results-0

Here is the KEY POINT: if a reasonable determination can be made - with full due process - by many fine expert legal minds functioning in full integrity that the killer would never meet the standards of the state for parole, then the victims' rights to not have to be tortured by re-engaging constantly with the offender in hearings and reviews for release *should take precedence.*

Justice requires that we weigh in balance the rights of the offenders and the rights of the victims and deliver justice. See the diagram at the end of this document that illustrates the point that after conviction the burden to protect the victim should outweigh the constitutionally appropriate rights of the accused that exist before conviction.

But after conviction, when the offender is declared legally guilty, the rights of the victims to be kept safe, to not be re-traumatized unnecessarily must and should outweigh any perception that the offender has any kind of "right" to be periodically reviewed for early release.

NO SUCH RIGHT exists in law.

Advocates for JLWOP reform would be wise to stop talking about periodic review as the solution to their concerns about the sentence. The law has balanced the rights of the offenders against the right of the public to be safe and unnecessarily re-victimized. The Life without parole sentence is appropriate in sadly a few very rare, worst cases.

And if a determination can be reasonably and lawfully made that the offender will never qualify for early release anyway, as if often the case with these thankfully few but horrifically high level violent offenders, then the victims' rights to not have to constantly legally re-engage with them in regular parole hearings is PRIMARY.

And if the offender advocating for change in the law do not find and notify every victims family member of their proposed legislation while they can still have a voice in the process then they are guilty of violating the most innocent and injured of all people - the victims - in order to help the guiltiest - the killers. This set of priorities makes no sense.

Ultimately their decisions to do the right things by the victims in these cases, if they ever do finally make those choices, may be motivated by political pragmatism. Because with public sentiment towards guilty murderers being what it is, it seems clear that they do not stand a chance of passing any major legislation with significant victim opposition.

We do not question the motives of those who advocate for juvenile aged killers. We all love children. We all want to help raise the best children we can. We should not be criticized in any way for not loving and valuing and caring about young people as much, or more, than they do who advocate for these young offenders. We say "care more" because we understand some advocacy groups take on the JLWOP issue because of access to funding for their organization.

We do believe that they see the world as they would like it to be, however. With regards to the dangers inherent in human nature and what some people are capable of, we sadly have been forced to see the world as it IS.

And we have paid the highest price imaginable to learn that lesson.

C. ***An example of how Retroactive Sentence Reduction Legislation in States Can Violate Victims Constitutional Rights***

The following legal brief (EXHIBIT 1) is just ONE example for ONE state (Illinois) was prepared by the National Crime Victims' Law Institute at Lewis and Clark University for victims of juvenile lifers in the state of Illinois who were concerned about legislative proposals in the state legislature to retroactively bring parole to JLWOP cases. It demonstrates how retroactive sentence changes via legislative fiat can be a serious legal violation of victims' rights. See exhibit 1.

XII. CONCLUSION

Remember, these are not "routine" murders. Many juvenile offenders commit murder – far too many – and never are tried as adults.

And for those who are tried as adults, they are rarely sentenced to life.

"Juvenile" Life Without Parole is RARE.

It is given to highly aggravated crimes and with offenders who demonstrate the highest levels of culpability to the worst kinds of crimes – multiple murders, rape and murder of children, murders of law enforcement, torture murders, etc.

And while there are some poster cases for reform – as there clearly are throughout EVERY area of the criminal justice system – the vast majority of those serving a "JLWOP" sentence are incredibly guilty of incredibly heinous crimes.

The few cases of miscarriage of justice can and should be handled, as everywhere else in the criminal justice system, by the appeals process and the executive clemency process.

And we would not oppose prospective changes in the law (because those would not violate victims' rights to know) that would eliminate, or make much more protected for the young offender, the mandatory transfer of juvenile offenders to the adult system in such serious cases. Judges and prosecutors should have discretion to place the offender in the system that is appropriate for the facts of the individual case, and younger offenders should have the right to appeal and demonstrate their case for where they appropriately should be adjudicated.

The victims' families of these crimes walked away from the horrifying process of the murder of their loved ones, the investigation, arrest, trials and appeals, and sentencing of the offenders with at least the promise that the offender would never get out.

Life without parole should mean life without parole when the crime is highly aggravated, committed by an offender who knows that the act is criminal, and due process has been respected.

And these victims' families MUST be notified of any legislative effort such as HR 2289.

Submitted by NOVJL

The National Organization of Victims of 'Juvenile Lifers'
www.jlwopvictims.org
Jennifer Bishop-Jenkins, Secretary
847-446-7073

EXHIBIT 1

MEMORANDUM

TO: IllinoisVictims.Org

FROM: NCVLI

RE: Victims' Rights & Retroactive Sentencing

DATE: March 14, 2007

The information in this memorandum is educational and intended for informational purposes only. It does not constitute legal advice, nor does it substitute for legal advice. Any information provided is not intended to apply to a specific legal entity, individual or case. NCVLI does not warrant, express or implied, any information it may provide, nor is it creating an attorney-client relationship with the recipient.

Pursuant to your request, the National Crime Victim Law Institute (NCVLI) has prepared an independent analysis of what rights of Illinois crime victims would be affected if the legislature passed a statute retroactively reducing offenders' sentences.

NCVLI is a nonprofit educational organization located at Lewis & Clark Law School, in Portland, Oregon. NCVLI's mission is to actively promote balance and fairness in the justice system through crime victim-centered legal advocacy, education, and resource sharing. NCVLI accomplishes its mission through education and training; technical assistance to attorneys;

promotion of the National Alliance of Victims' Rights Attorneys; research and analysis of developments in crime victim law; and provision of information on crime victim law to crime victims and other members of the public. In addition, NCVLI actively participates as *amicus curiae* in cases involving crime victims' rights nationwide.

DISCUSSION

With the passage of Article I, Section 8.1 of the Illinois Constitution (the "Victims' Rights Amendment"), and other statutory provisions, the citizens of Illinois endowed crime victims with rights in the criminal justice system. Those rights include the rights to be treated with fairness and respect for victims' dignity, to timely disposition, to be reasonably protected, to be present at all court proceedings and to restitution. The Victims' Rights Amendment was enacted as part of a national movement to ensure that crime victims are not treated as second class citizens in the criminal justice system, but instead are treated as participants in that system who are to be respected, protected and heard. As noted by the Ninth Circuit Court of Appeals in discussing the passage of the federal victims' rights act, victims' rights law overturns the longstanding "assumption that crime victims should behave like good Victorian children—seen but not heard." *Kenna v. United States Dist. Ct. for the Cent. Dist. of Cal.,* 435 F.3d 1011, 1013 (9th Cir. 2006).

This memorandum discusses how the rights in the Victims' Rights Amendment will be implicated if the sentences of violent criminals are retroactively reduced.

A) Victims' Right to be Treated with Fairness

Illinois victims have a state constitutional right "to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process." Ill. Const. art I, § 8.1(a)(1). This right ensures that victims are treated properly within the criminal justice system. As stated by Justice Cardozo, "justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true." *Snyder v. Massachusetts*, 291 U.S. 97, 122 (1934).

While fairness, with respect to victims' rights, has not been defined by an Illinois court, other state and federal courts have discussed the meaning of fairness within the context of victims' rights.[1] As noted by a federal district court, "[t]o treat a person with fairness is generally understood as treating them 'justly' and 'equitably.''' *United States v. Heaton*, 458 F.Supp.2d 1271, 1272 (D. Utah 2006). Fairness also includes fundamental precepts of due

[1] *See, e.g., Romley v. Schneider*, 45 P.3d 685, 688 (Ariz. Ct. App. 2002) (holding that fingerprinting victim violates victims' rights under the Arizona Constitution, statutory law and Rule 39(b)(1), including the rights to fairness, dignity, and respect and to be free from intimidation, harassment and abuse); *State v. Timmendequas*, 737 A.2d 55**,** 75-82 (N.J. 1999) (holding that constitutional requirements of fairness and dignity for victims dictate that the needs of the victim and defendant should be balanced in determining venue); *State in the Interest of K.P.,* 709 A.2d 315, 321 (N.J. Super. Ct. 1997) (holding that the language of "fairness, compassion and respect" create mandatory and self-executing rights for victims); *State v. O'Neil*, 836 P.2d 393, 394 (Ariz. Ct. App. 1991) (holding that requiring the state to record witness interviews violates the right to fairness, dignity and respect and the right to be free from intimidation, harassment and abuse, as well as other constitutional rights of the victim); *State v. McDonald*, 839 S.W.2d 854, 858-59 (Tex. 1992) (holding that the right to "fairness" in the Texas Constitution gives victims of crime access to the prosecutor but does not grant victims civil discovery of contents of prosecutor's file). *But cf. Schilling v. State Crime Victims Rights Bd.*, 692 N.W.2d 623, 631 (Wis. 2005) (holding that the fairness and dignity language in victims' rights amendment was not mandatory); *Bandoni v. Rhode Island*, 715 A.2d 580, 587 (R.I. 1998) (holding that the fairness provisions were not self-executing but rather statements of general principle).

process. *See* 150 Cong. Rec. S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl) ("Of course, fairness includes the notion of due process.").

While no published opinion has applied a victim's right to fairness to the retroactive reduction of offenders' sentences, a retroactive reduction of violent criminals' sentences risks causing more harm to victims, an effect that would implicate common sense notions of fairness. At a minimum, fairness requires taking the interests of victims into account in any decision to retroactively change the sentence that was given at conviction. Additionally, as a matter of procedural fairness, victims should be given due process – notification and an opportunity to be heard before their offender's sentence is reduced.

B) Victims' Right to Timely Disposition

Victims in Illinois have a right to "timely disposition following the arrest of the accused." Ill. Const. art I, § 8.1(a)(6). In part, this right ensures that victims have closure of the criminal case so that they can begin the recovery process. *See* Paul Cassell, *Balancing the Scales of Justice: The Case for and the Effects of Utah's Victims' Rights Amendment*, 1994 Utah L. Rev. 1373, 1405 (1994) ("Victims cannot heal from the trauma of the crime until the trial is over and the matter has been concluded."). In the habeas context, the Supreme Court has affirmed the importance of finality in the criminal process:

> Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out . . . to unsettle these expectations is to inflict a profound injury to the "powerful and legitimate interest in punishing the guilty," an interest shared by the State and the victims of crime alike.

Calderon v. Thompson, 523 U.S. 538, 556 (1998) (citation omitted). Retroactively reducing sentences harms the victims' sense of finality, implicating the right to timely disposition.

C) Victims' Right to Protection

The Victims' Rights Amendment provides victims "[t]he right to be reasonably protected throughout the criminal justice process." Ill. Const. art I, § 8.1(a)(7). The release of an offender directly implicates the safety and protection of the victim:

> Victims and witnesses share a common, often justified apprehension that they and members of their family will be threatened or harassed as a result of their testimony against a violent criminal. This fear is quite understandable. Victims and witnesses have seen personally what the defendant is capable of doing. In addition, threats and actual retaliation are not uncommon.

President's Task Force 19. For example, victims make safety planning decisions based on the release date of offenders. As noted by a survivor of sexual assault:

> What are my concerns regarding my core rights as a victim/survivor relevant to this issue of offender reentry? Ensuring my safety and that of my family is, and always should be, first and foremost. Discussing my safety concerns with local law enforcement and the community should occur long before the offender is released.

Anne K. Seymour, *The Victim's Role in Offender Reentry*: *A Community Response Manual* 19 (U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime 2000). The

release of offenders by any means, including a retroactive reduction in sentence, directly affects victims' right to protection, and victims' safety must be taken into account in any decision to release offenders prior to their original sentence release date.

D) Victims' Right to Information Regarding Sentence, Imprisonment & Release

Victims have a constitutional right to information about "conviction, sentence, imprisonment, and release of the accused." Ill. Const. art I, § 8.1(a)(5). At a minimum, this means that victims must be notified if their offender's sentences are to be retroactively reduced. For this notification right to have meaning it must occur prior to the reduction in sentence.

E) Victims' Right to Be Heard at Sentencing

In addition to the right to information regarding an offender's sentence, victims also have the right to be heard at sentencing. Victims have a constitutional right to "make a statement at sentencing," Ill. Const. art I, § 8.1(a)(4), and a statutory right to "address the court regarding the impact that the offender's criminal conduct . . . has had upon . . . the victim." 725 Ill. Comp. Stat. Ann. 120/6(a). This statutory right to present a victim impact statement also includes the right to have the statement considered by the court in determining the sentence: "The court shall consider any impact statement admitted along with all other appropriate factors in determining the sentence of the offender . . . ." *Id.* These rights to participate in the sentencing process reflect the victim's interest in the sentence:

> The imposition of a criminal penalty may be the most difficult kind of decision a judge is called on to make. In addition to affecting

> the defendant, the sentence is a barometer of the seriousness with which the criminal conduct is viewed. It is also a statement of social disapprobation, a warning to those tempted to emulate the offender's actions, and a step that must be taken for the protection of society. Finally, it is a statement of societal concern to the victim for what he has endured.

President's Task Force 76. The right to have a victim impact statement considered by the judge when deciding on the sentence recognizes the importance of the harm to the individual. As the Supreme Court stated in the context of capital sentencing, victim impact information "is designed to show . . . *each* victim's 'uniqueness as an individual human being,'" *Payne v. Tennessee*, 501 U.S. 808, 823 (1991).

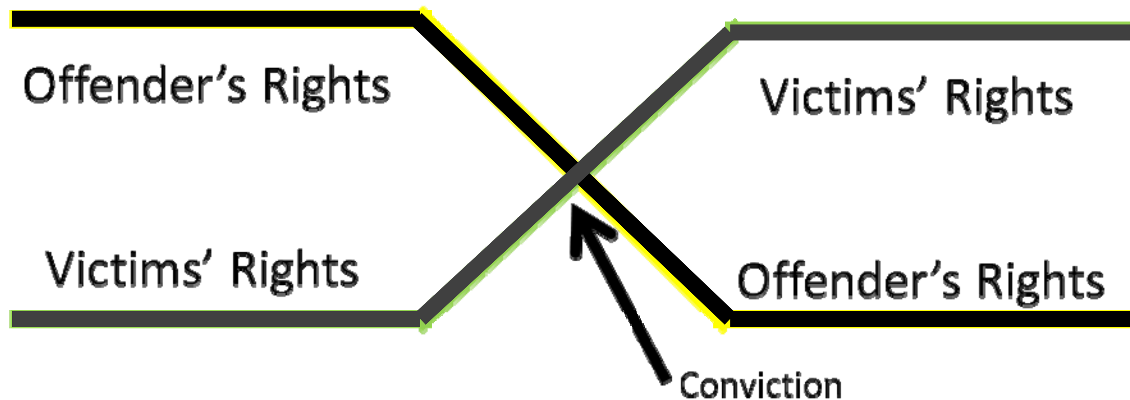
A retroactive reduction in sentence essentially erases the victim's right to participate at the original sentencing. Victims gave statements at the sentencing and the judge used that information to impose a sentence based on existing law. Imposing a new sentence, automatically and retroactively, contravenes the right of victims to give victim impact statements prior to sentencing, violates the trust the victims placed in the system, and fundamentally undermines the purpose of a victim's original victim impact statement.

CONCLUSION

A retroactive reduction in the sentences of violent offenders implicates at least five rights held by victims in Illinois: the rights to fairness, timely disposition, protection, information about sentence, imprisonment and release, and to make statement at sentencing. Any change in existing sentencing law must take into account these rights.

EXHIBIT 2

Victim Rights in Balance



Prior to the trial, it is understandable that the offenders' constitutional rights to be protected with a higher priority than the victims' when necessary.
However, post-conviction, it is essential that the victims' rights then be protected at a higher priority, especially in the areas of protection from intimidation, the right to be heard, and the right to be notified of factors that would affect the offender's legal status.

EXHIBIT 3

IN MEMORIAM

RICHARD LANGERT, NANCY BISHOP LANGERT and their unborn BABY

Pictured here on the happy day in 1990 that they found out they were expecting their first baby. Nancy's glow was only to last a few months.

Richard was 28 and Nancy was 25 and so happy to be having their first baby.

Their killer brutally shot Richard execution style point blank in the back of his head with a .357 magnum, and then turned the gun on Nancy.

She cowered in the corner of her basement floor, begging for the life of her unborn child by holding her arms over her pregnant abdomen.

"Please don't kill me, please don't kill my baby" she begged, but the killer fired directly into her belly. Later autopsy revealed that the bullet hit the young baby and exploded it.

The killer fled and left her there to die. He reported to friends that he just "wanted to see what it would feel like to shoot someone." He had plotted the murders for weeks, picked them because their home was directly across from the police station, and he could brag about what he did just under the noses of the local police.

This offender was not impulsive – he plotted the killings for weeks. He did not act under peer pressure – he told no one of his secret plans, until after the murders when he bragged about them. He did not come from a disadvantaged home – his parents were millionaires. He was not mentally deficient in any way – he had superior grades and test scores and attended one of the finest high schools in the United States. He was a varsity athlete. He did not lack a developed maturity or morality. He was highly functional, organized, and incredibly effective. And he spoke many times of how he knew killing was wrong, illegal, but wrote that it gave him a thrill to break these social mores. This offender was not a victim of racism in his prosecution. He was white, wealthy, well-educated, fully mature and well aware of the law and right and wrong. But he thought that criminals were smart, and he wanted to see what he could get away with. He wanted to see what it would feel like to shoot someone.

Nancy's last act of life was to draw a heart and a "u" in her own blood - her last act in life was to tell us she loved us.

Their killer was four weeks shy of his 17th birthday, at which point he would be tried as an adult for all crimes in Illinois. He was certified and tried as an adult, and duly sentenced to three life without parole sentences that he is currently serving in the Illinois Department of Corrections.

RUEBEN PULIDO and MARK LOPEZ

Young Ruben Pulido who was shot and killed alongside his good friend, Mark Lopez in 2000. Both boys had been playing basketball in their front yard and were sitting in the front porch in suburban Chicago.

The parents of these two fine young men were very proud of the fact that they were good and stayed out of gangs and yet they were targeted by two killers who were simply looking for someone to shoot.

The 19 year-old killer ordered a 16 year-old to "light them up." They both died with a single bullet each in their hearts. One of the killers is a juvenile lifer.

Rueben and Mark's parents, siblings, and extended family have stood together in both devastation and tears that they want to make sure that these murderers never walk free, and that they do not have to spend the rest of their lives fighting to keep them where the law has sent them - to prison for life - for taking deliberately and casually the lives of these two promising young men who were greatly loved by their families.

ROSS ELVEY

April 28, 1993 - My husband Ross V. Elvey was murdered, leaving me alone in what should have been our happy retirement years. Instead, I still have to work, and have lost my home and all savings, and am barely scraping by. Our children have never fully recovered from this trauma.

Ross was closing his place of business when one juvenile (DM) came in the front door and distracted Ross while another juvenile (KK) came in the back door with a metal pipe. KK proceeded to beat Ross over the head with the metal pipe; they held him down on the floor and continued to beat him. They then stole the guns they had came for and stupidly ran out the front door where one of Ross's customers (LB) was driving by.

LB jumped out of his truck and started to chase them. The 2 juveniles ran through the neighborhood stopping to ask many people to give them a ride home as a gang was chasing them. When LB could not catch them he went back to the shop and called 911. The Sheriff's Department drove through the neighborhood and found a lady who had put them in her son's car and had him drive them home. Knowing the color and type of car these two where in, they were caught within 45 minutes.

Ross was in a coma for 41 days before he passed away on June 7, 2007.

DM was 4 month short of 16 so he could not be tried as an adult. Their gang was called 187 Crips…DM's street name was "NINE" as he could get 9mm hand guns for others. At 14 he supplied handguns to two other 14 year old juveniles who committed 2 murders. Maybe if something had been done to DM when he first started passing out guns, my husband may still be alive.

DM was in the Youth Authority until the day before he turned 25. I don't think he ever learned a thing. I attended 8 yearly progress hearings for DM. KK was 2 months over 16 and was tried as an adult. His street name was 187 insane. The Prosecutor and Judge on the case were great. KK was found guilty in a day and a half trial of First Degree Murder with Special Circumstances and the Judge gave KK a LIFE WITHOUT THE POSSIBILITY OF PAROLE (LWOP) SENTENCE in September 1994.

Since then KK has tried to kill another inmate and received a 25 to life sentence for attempted murder. I hope that with his two sentences, he won't ever be released.

It is hard to describe the pain, sorrow and troubles this brutal murder of our loved one has caused our family. Sit down and write a list of all the things you would lose if your SPOUSE is brutally murdered, what you and your family would go through. I still find new things everyday that I have lost and have to work though all because of two juvenile's bad choice.

One example that we don't think of, when married we file our tax return as married-joint return, when you lose that spouse, you go down to single, which means you now pay more in taxes unless you have small children. It would take many pages to tell you what our family lost and goes through each and every day. We must make sure those homicide victims survivors of juvenile killers have their voices heard across the country when it comes to discussing changes in juvenile sentences past and future. Maggie Elvey and Family.

IN MEMORY OF JIMMY

My brother, Jimmy, was 28 at the time of his brutal death

He was one of 7 children. His father was a successful business person; we grew up on a beautiful lake in Oakland County. Our mother was a stay at home Mom. All seven of us graduated from Waterford schools, many of us went on to College and we are all productive and successful members of society. My mother has since passed away but my Dad now enjoys his time with his, 11 grand children and proudly has one more on the way. My youngest brother is about to adopt his second child. I tell you all this because I often sit and wonder what my Brother Jim's life would have been like. He was an automotive mechanic and enjoyed working on cars. He told me once that he enjoyed spring because people would roll down their windows and be able to hear that their cars needed attention and his shop would get busy. He loved to help people, often working on cars for free. I imagine that Jimmy could have owned his own business. I will never know there are no second chances given here!

Jim left his house to go to K-Mart on Mother's Day, 1990, to buy our mother a card. Barbara Hernandez had been at that same K-Mart the day before to purchase the knife that would kill Jim. It was never determined in court how Barbara was able to convince my brother to let her into his car but he did and she took him to the house, where she knew her boyfriend was waiting, with the knife she had purchased the day before. Jim was just a random victim in a scheme to steal a car. It was brought out in court that Barbara had concocted this "pre-meditated" scheme to lure someone to the house to steal their vehicle so that she and her boyfriend could go to New Mexico, get off of drugs, put their lives back together and live with her father. Yes this would be the same father the ACLU states physically and mentally abused Barbara. She wanted to live with him.

During the trial we heard all the brutal details of the crime. You see my brother was not just stabbed once or twice. He suffered 25 wounds in all. 10 stabs and 15 incised. But the brutality did not stop here. Jim had suffered many lacerations to his neck to the point of almost decapitation. Just writing this makes me cringe and brings back the horrible thoughts of my brother's endless suffering and his horrible death. The pain had to be tremendous; to this day I can imagine him bleeding to death. All for his car!

Of greatest interest to the prosecutor were the defensive wounds present to Jimmy's hands. In Jim's hand they found hair - forensic scientist testified that "it was forcibly removed from Barbara Hernandez

head therefore she must have been near him during the time of his struggle." Not likely that he pulled her hair out while she sat innocently in another room?

The medical examiner testified that Jim was a big guy at 175 lbs and compared to James Hyde, Barbara's boyfriend, my brother was almost twice his size. The medical examiner testified that Hyde could not have fought with Jim and proceeded to stab him alone. Barbara either held him down or stabbed him while Hyde held him down. Hyde admitted himself to a hospital in Finlay, Ohio. Hyde had suffered a stab wound to the stomach. When admitted to the hospital the police were called and both he and Barbara where apprehended. I can imagine my brother fighting for his life.

Hyde and Hernandez would not speak to the police. It took three days for them to tell the police were to find Jim's body. If Barbara did not kill and if she was innocent and just afraid for herself, why would she not have told the police were my brother was dying? Why did she make us suffer for three days? We Searched for Jim for days, fearing the worst and hoping for the best as we held vigil at our mother's house. I had not slept for 3 days when they had found Jim… Our worst nightmare had come true, my brother, my friend, gone, he was DEAD. How could this be?

During the trial, my Mother's Health went frail. It was so difficult for her to bury her son. She loved us all so much. After her death, as I was cleaning out her dresser, I found a doctors record that indicated that my Mother, several years early had had a scare with cancer. After speaking with her doctor, I believe the cancer was in remission and the stress of Jim's murder resurfaced it. Jim died on May 12, 1990, Mother's Day and my sister's wedding anniversary. My mother died the next year on April 27th we had the funeral on April 29th the same sister's birthday.

We remember vividly calling my Mom from the pay telephone at court house in Oakland County, she was in the hospital in Detroit, We promised her we would call her and give her the verdict. We told her that they had been charged with first degree murder and that they were going away to prison for the rest of their life. The court was nice enough to schedule the sentencing around my mother's funeral.

The sentencing for James Hyde was first, his was easy because he was considered an adult. Sentencing for Barbara was a little more difficult. It had been decided after several hearings that she would be tried as an adult but there needed to be another hearing to determine if she would be sentenced as an adult. Prior to the hearing, she was seen by Doctor Holden to evaluate her and see if she had "diminished capacity" - the inability to form the intent to commit murder. After 5 hours of interviewing Barbara, Dr. Holden found that Barbara did not have diminished capacity. She did form the intent to commit murder.

Second she was evaluated by Mark Mudd - probation manager with Oakland County Circuit Court Department of Corrections. He evaluated her and found that due to "the gravity and brutality of the offense, the serious nature of such offense, and for the long term protection of society." she should be sentenced as an adult.

Then she was evaluated by Ms. Tansil from the Michigan State Department of Social Services who also found that she should be sentenced as an adult. Then at the hearing the judge, based on the evidence, found that she should be sentenced as an adult.

Unlike the ACLU we think the courts did a great job evaluating the physiologic, and psychological and emotional capabilities of the killer and gave full consideration of the circumstances surrounding the crime – before they sentencing her to LWOP.

After Barbara was sentenced, we worked hard to pick up the pieces of our lives, although nothing in our lives seemed right anymore. My brother was gone, my Mother was gone. I found myself as a grown married woman, needing to sleep with a nightlight so when I woke up scared from the nightmares that raced through me I could be assured that no one was in my room. I cried myself to sleep. We had not had time to mourn my brother's brutal death or my mother. The healing process took years.

Now my family and I have learned to accept the things that we cannot change. We have learned to never take each other for granted. The one good thing that has come from all of this is our family unit is as strong as anyone could hope for. The bad thing for the supporters of this legislation is that you can rest assured that we won't rest until these bills are dead!

Tell the truth ACLU. Barbara Hernadez did not hide in another room while my brother was murdered; her hair was in his hand. He was held down by her. Go to the court house and read the transcripts. No one ever denied that she purchased the knife and then took Jim to the house to be killed!

Remorse is not a ticket to the chance for freedom! Rehabilitation is not a get out of jail free card!

As I sit here tonight, once again completely consumed with this horrible crime that has been done to my family, I realize that once again, I am being victimized. I am being forced to relive this horrendous time in my life, at the expense of all the other productive things I should be doing with this time.

As long as legislatures introduce and support bills that provide criminals sentenced to LWOP the opportunity for parole, my family will be sentenced to LIFE WITH NO CHANCE OF PAROLE we will be a victim for life!

We love you Jim - From his sister Jody

Danni Reese Romig

From mother Dawn Romig: Our daughter was 12 years old when she was beaten, raped and murdered. The young man who did all this was 17 years old. He is now serving a life sentence with no parole in Pennsylvania. Here is a picture of her. This picture was taken 2 weeks before she died. We got them back 1 week after she died.

MADDIE CLIFTON

Jacksonville, Florida -Maddie Clifton's family, law enforcement officials and religious figures involved in the case speak out.

Former Sheriff Nat Glover: "I remember the number of days she was missing, the media coverage and the level of attention, both here and nationally. ..."

Mark Foxworth, who lead the Clifton case: "Tuesday, Nov. 3, 1998, is a day I will never forget."

Maddie's older sister, Jessie Clifton: "As an 11-year-old, you think about toys, games, and most of all, your family and friends."

Monsignor John Lenihan: "Not a day goes by without some memory of Maddie Clifton, her mother, father and sister, Jessica."

VICTORIA LARSON

Vicki smiled all the time. That smile was contagious and could light up a room. On July 12, 1979, Scott Darnell murdered that smile.

Victoria Joelle Larson was born February 8, 1969. She was brought home to a town of 500 and two siblings. As Vicki grew she made lots of friends, good grades and because she was so tiny she could out run any kid in town.

Everyone loved Vicki . . . expect for one person.

Vicki was walking home from her brother's Little League game when Darnell told her he had a pony for her. She had no reason not to trust this 15 year old, as he had been to our home many times while 'visiting' his grandparents. He was handsome, smart and polite telling us he had a crush on Vicki's sister. We had no idea of his chilling past.

He took Vicki to a spot in a corn field, where he had dug her grave 3 days earlier. Vicki must have tried to run away when she saw the stakes and leather straps near the grave sight for she was strangled from behind with his bandana. He raped her, threw her small, lifeless body in the shallow grave. Before his night long flight he buried his wallet, watch and murder weapon so that when found he told the police that a gang of bikers stole his things before taking Vicki. As the county and state officers talked to him, his eyes kept going to a spot of fresh, turned dirt. Hand by hand the police removed the dirt and found my 10 year old child.

Darnell was taken into custody and confessed to every part of the crime, but said he had heard voices, "to kill". It was Friday, July 13, when Sheriff Cady came to our house, they had found Vicki earlier that morning; she was dead.

His trial was held, the verdict came on Vicki's 11th birthday, GUILTY on all counts, his insanity plea was denied. He was to serve 30 years for the rape and natural life for the murder.

Later, his long criminal record was published; torturing small animals at an early age, progressing, to sticking his hand down little girls panties, threatening young girls, stealing guns and leaving frightening letters, again for an under developed girl. He used knives to scare girls and raped small girls. He began to dig graves in the snow or plotted them in dirt. Darnell was incarcerated in every juvenile prison in

Illinois. The last time for planning another girl's murder, he'd gone as far as digging her grave, but, that time he changed his mind and didn't follow out the killing. His so called 'visit' was a summer release, the state said he was safe to go to his grandparent's home, even though, he'd promised several times he would KILL!

Even 30 years later, I have nightmares, especially since I heard about the effort to free Darnell. The thought of having to face him again, perhaps many times, in a parole hearing, has been torture to me.

I can never have my child back, but I will do whatever it takes to keep Darnell behind bars, as he is a chronic pedophile and my greatest fear is if he is ever released, there will be more little girls found dead in shallow graves.

And there are thousands more . . .

The precious lives lost to those who choose to commit murder have exacted on toll on us too large to measure. We can only work with our every breath to remember and honor them by working to make sure no one else has to go through what we have gone through.

We want to give no more place to their murderers in our lives. We have been through the trials, the agony, and we deserve legal finality in our cases. We want them to serve out their life sentences, permanently and anonymously.

Many of us are praying that they grow to learn to be better human beings, but also that they serve their sentences - for even in prison they get to live, love, learn, laugh, be with family, and experience pleasure and life.

Our loved ones are gone forever.

There are thousands of innocent people who have been murdered in horrific acts of violence deliberately caused by teenage offenders who were found to be adults in their states for the purposes of criminal culpability and sentenced to life without parole.

Their families do NOT know about HR 2289.