

Point/Counterpoint on the Crime Victims' Rights Amendment: Responses to key objections raised by opponents.

by Steve Twist

National Network to End Domestic Violence

Position Statement on S.J. Res. 1 (undated)

1. While acknowledging the “very real problems victims face in seeking justice,” the Network concludes “[a] federal constitutional amendment ... is not likely to be the appropriate remedy... .”

The Network acknowledges, without enumeration, the “very real problems victims face.” Presumably the Network would not dispute the universal conclusion of the mainstream victims’ rights movement and every administration since Ronald Reagan’s, including the administration of Bill Clinton, that those “real problems” include the failure of victims to receive notice of proceedings, the exclusion of victims from proceedings that others may attend, the silence imposed on victims at critical stages including, release, plea, sentencing, and clemency proceedings, the failure of the courts to consider the victim’s safety, interest in avoiding unreasonable delay, and claims to restitution, and the victim’s lack of standing to address these “real problems.” These “real problems” result in *real* injustice and cause *real* harm to *real* people. Correcting these injustices is one of the core missions of the victims’ movement.

Despite acknowledging these problems, the Network concludes that a federal constitutional amendment “is not likely to be the appropriate remedy” to correct the “very real problems victims face.” It is curious that an American organization would take such a

view. Presumably the Network would agree that federal constitutional amendments were “appropriate remedies” for securing rights for accused and convicted offenders. Indeed, almost all of the constitutional rights of defendants and convicted offenders exist only by amendment to the United States Constitution. Nowhere does the Network articulate any sound reasons for concluding that victims’ rights should not be accorded a remedy equal to that of accused or convicted offenders.

In stark contrast to the Network’s silence, stand a myriad of well-respected, well-researched and intelligent persons and bodies that provide articulate and compelling reasons for a victims’ rights constitutional amendment.

First, more than 20 years ago the President’s Task Force on Victims of Crime concluded that a federal constitutional amendment was necessary to protect the rights of crime victims. Specifically, the Task Force noted,

The guiding principle that provides the focus for constitutional liberties is that government must be restrained from trampling the rights of the individual citizen. The victims of crime have been transformed into a group oppressively burdened by a system designed to protect them. This oppression must be redressed.

Second, a constitutional scholar, Professor Larry Tribe of Harvard Law School, has pointed out that the rights proposed for crime victims in S. J. Res. 1

are the very kinds of rights with which our Constitution is typically and properly concerned--rights of individuals to participate in all those government process that strongly affect their lives.

Third, the Committee on the Judiciary of the United States Senate concluded that the Crime Victims Rights’ Amendment was consistent with

the great theme of the Bill of Rights--to ensure the rights of citizens against the deprecations and intrusions of government--and to advance the great theme of the later amendments, extending the participatory rights of American citizens in the affairs of government.

The Committee concluded,

it is appropriate that victims' rights reform take the form of a Federal constitutional amendment. A common thread among many of the previous amendments to the Federal constitution is a desire to expand participatory rights in our democratic institutions. Indeed, the 15th Amendment was added to ensure African-Americans could participate in the electoral process, the 19th Amendment to do the same for women, and the 26th amendment expanded such rights to young citizens. Other provisions of the Constitution guarantee the openness of civil institutions and proceedings, including the rights of free speech and assembly, the right to petition the Government for redress of grievances, and perhaps most relevant in this context, the right to a public trial. It is appropriate for this country to act to guarantee rights for victims to participate in proceedings of vital concern to them. These participatory rights serve an important function in a democracy. Open governmental institutions, and the participation of the public, help ensure public confidence in those institutions. In the case of trials, a public trial is intended to preserve confidence in the judicial system, that no defendant is denied a fair and just trial. However, it is no less vital that the public--and victims themselves--have confidence that victims receive a fair trial.

Fourth, the National Governors Association, in a resolution supporting a Federal constitutional amendment observed:

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

Fifth, 42 State Attorneys General, in supporting the Crime Victims Rights

Amendment, wrote,

Despite the best intentions of our laws, too often crime victims are still denied basic rights to fair treatment and due process that should be the birthright of every citizen who seeks justice through our courts. We are convinced that statutory protections are not enough; only a federal constitutional amendment will be sufficient to change the culture of our legal system.

Sixth, Attorney General Reno, after careful study, reported that:

Efforts to secure victims' rights through means other than a constitutional amendment have proved less than fully adequate. Victims' rights advocates have sought reforms at the State level for the past twenty years, and many States have responded with State statutes and constitutional provisions that seek to guarantee victims' rights. However, these efforts have failed to fully safeguard victims' rights. These significant State efforts simply are not sufficiently consistent, comprehensive, or authoritative to safeguard victims' rights.

Similarly, a comprehensive report from those active in the field of crime victim rights prepared by U.S. Department of Justice during the Clinton Administration concluded:

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

Perhaps the Network knows more about our Constitution than Professor Tribe, every administration since Ronald Reagan, the Department of Justice, a bi-partisan majority of the Senate Judiciary Committee, the National Governor's Association, 42 State Attorneys General, and the mainstream of the victims' movement in the United

States. If so, the Network should articulate its rationale, because in the face of its silence, the reasons for the Network's opposition are indecipherable and incomprehensible.

2. We need “an evolving understanding of the needs of victims,” and “[a] constitutional amendment freezes in place, for all time, one set of solutions to the important issue of how to protect the rights of victims.”

Certainly the Network would not argue that because our understanding of the needs of defendants is “evolving,” that the constitutional amendments that provide defendant's rights improperly “froze” those rights and therefore, should not have been ratified. It is unclear why the Network is willing to protect defendants' rights by constitutional amendment yet not willing to protect victim's rights, thereby consigning victims to second class citizenship. Moreover, the fundamental victims rights that will be guaranteed by a constitutional amendment have been well-accepted and well-settled for decades; memorializing them in our national law will not proscribe their ability to evolve. Just as the defendants' rights that are memorialized in the constitution have evolved even post-amendment, so will the victims' rights.

3. “The amendment may destabilize the important constitutional balance protecting the rights of those accused of crime.”

Nothing in the amendment “destabilizes” rights of the accused.

- The right to notice of proceedings does not – There is no constitutional right for a defendant to prevent a victim, or anyone else, from receiving notice of court proceedings.
- The right to notice of releases or escapes does not – There is no

constitutional right for a defendant to prevent a victim from knowing when the defendant has escaped or is released.

- The right to not be excluded does not – There is no constitutional right for a defendant to exclude a victim from trial, even when the victim is also a witness.
- The rights to be heard at release, plea, sentencing, and clemency proceedings do not – There is no constitutional right for a defendant to silence a victim at these proceedings.
- The right to consideration for the victim’s safety does not – There is no constitutional right for a defendant to prevent a court from considering the victim’s safety when decisions are made. Indeed, victim safety is a legitimate and, according to the U. S. Supreme Court, a constitutional consideration when making release decisions.
- The right to consideration of the victim’s interest in avoiding unreasonable delay does not – It is undisputed that the defendant has a right to a fair and speedy trial and the right to counsel, which according to the U. S. Supreme Court, includes the right to an effective lawyer, meaning one that has had enough time to prepare a defense. But these rights do not prevent *consideration* of the victim’s interest in avoiding *unreasonable* delay.
- The right to consideration for the victim’s restitution claims does not – There is no constitutional right for a convicted offender to prevent the law

from ordering restitution for the victim.

- The right to standing to enforce these rights does not – There is no constitutional right for a defendant to prevent a victim from asserting his or her rights in court.

4. “Amending the United States Constitution should be a remedy of last resort. Efforts should be made to enforce statutes that currently exist... .”

The federal constitutional amendment was first proposed over 20 years ago. It was proposed after consideration of the decades of experience with a justice system that treated crime victims with increasing injustice. Importantly, however, instead of pursuing a federal amendment 20 years ago, the victim’s movement chose the exact path the Network urges – we sought state reforms. The result of those efforts are 33 states with state constitutional amendments providing victim rights and many statutory provisions providing victim’s rights. Unfortunately, most of these have proven difficult if not impossible to enforce. Consequently, victims are now pursuing the “last resort” – a federal amendment. After 20 years of experience fighting to bring the promise of state and local laws into reality, it is clear that only our fundamental charter has the power to change the culture of our criminal justice system and provide justice to victims.

5. “The proposed victim’s rights amendment provides little if any additional relief for victims. The amendment explicitly states that it creates no new grounds for a new trial and no additional claims for damages, making its passage an empty promise to victims dealing with the trauma and aftermath of crime.”

Despite the Network’s rhetoric minimizing the value of the rights established by the Crime Victims’ Rights Amendment victims properly see great hope in the

amendment. In study after study, victims report that participatory rights must be the core values of our justice system.

The Network's out of hand dismissal of the enforceability of rights indicates a lack of understanding of enforcement in the criminal justice system. First, the prohibition on seeking a new trial does not prohibit the victim from seeking reconsideration of every other proceeding where his or her right may be denied. Second, money damages have never been a way to enforce rights that can only be enforced in the criminal case itself. Money damages require a separate, collateral civil proceeding that could never protect and enforce a victim's right during a criminal case. The best, most direct, and only effective method of enforcement of victims rights exists in the amendment; it is the grant of standing in Section 3 of the amendment. Consequently, if the Network seeks to avoid "empty promises to victims," it should support the enforceable constitutional rights over statutory rights that have a 20 year track record of unenforceability.

Pennsylvania Coalition Against Domestic Violence

Letter to Senator Arlen Specter, April 7, 2003

1. "... S.J. Res. 1 would fundamentally alter the nation's charter with negligible benefits for victims... ."

The Coalition's characterization of the rights established in the Crime Victims Rights Amendment as "negligible benefits" is far outside the mainstream of the victims' rights movement.

· The Coalition may believe it is a "negligible benefit" for a domestic

violence victim to be informed of the release hearing and the subsequent release of her batterer – the vast majority of domestic violence victims do not.

- The Coalition may believe it is a “negligible benefit” for the mother of a murdered child to be allowed in the courtroom during the trial of the accused murderer – the vast majority of parents of murdered children do not.
- The Coalition may believe it is a “negligible benefit” for a rape victim to be heard on the matter of a plea bargain for her rapist – the vast majority of rape victims do not.
- The Coalition may think it is a “negligible benefit” for a battered woman to be able to speak, if she so chooses, at the parole proceeding for her batterer – most victims do not.
- The Coalition may think the right to consideration of restitution or interest in avoiding unreasonable delay is a “negligible benefit” – most victims do not.
- The Coalition may think that it is a “negligible benefit” to require a battered woman’s safety to be considered when release decisions are made – most battered victims do not.

2. “... victims’ rights can be sufficiently established through the development of state codes.”

The Coalition's position relegates crime victims to second-class citizenship. The history of this country demonstrates that fundamental rights can only be adequately provided and protected by inclusion in the federal constitution. This is true of defendants' rights and is true of victims' rights. This point is supported by the twenty years' experience with victims' rights statutes that have proven woefully inadequate in the face of the institutional inertia of the system. This is the universal conclusion of those who have studied the subject, including the U.S. Department of Justice. Consequently, just as defendants' rights required constitutional protection, so do victims' rights. Certainly the Coalition would not say that those constitutional amendments providing defendants' rights were in error. Victims are not less worthy of protection in the nation's fundamental charter.

3. *"S. J. Res 1 does not offer victims with adequate redress for a state's failure to act."*

S. J. Res. 1 confers standing on victims to enforce their rights in criminal cases. Standing is the only realistic means of enforcing rights and is exactly the method defendants use to enforce their rights.

4. *"[T]he Amendment will place enormous burdens on state and federal law enforcement agencies. ... Prosecutorial discretion could be seriously compromised if crime victims are given the ability to effectively obstruct plea agreements or require prosecutors to disclose weaknesses in their case in order to persuade a court to accept a plea."*

There is nothing in the language of the amendment that gives victims "the ability to effectively obstruct plea agreements or require prosecutors to disclose weaknesses in their case." The right to be heard included in the amendment does not equate to the right

to “obstruct.” Simply put, the right to be heard is a voice and not a veto. Presently, a number of states allow victims to be heard at court proceedings in which plea bargains are submitted for approval to the court and the evidence from those states undermines the Coalition’s fears. For instance, in Arizona, the right to be heard, which has been exercised for more than a decade, has not resulted in “obstruction,” nor forced prosecutors to disclose weaknesses in their case. In light of this, the Coalition’s fears are unfounded.

NOW Legal Defense and Education Fund

Position Statement Against Proposed Victims’ Rights Amendment, July 2003

1. Although NOW Legal Defense agrees with sponsors of victims’ rights legislative initiatives that many survivors of violent crime suffer additional victimization by the criminal justice system, we do not believe a constitutional amendment is the appropriate way to address those problems. We appreciate the injustices and the physical and emotional devastation that drives the initiative for constitutional protection. ... After... particularly considering the circumstances of women who are criminal defendants, NOW Legal Defense cannot endorse a federal constitutional amendment elevating the rights of victims to those currently afforded the accused.

After admitting that victims “suffer” in the criminal justice system, NOW concludes that the suffering must continue because the rights of crime victims cannot be “elevated” to the rights “afforded the accused.” This position, in clear and unequivocal terms, abandons NOW’s self-appointed role to speak for all women, even women who are disproportionately victims of violent crime, and instead speaks only for women who are criminal defendants. The rights of these few women are seen to trump the “suffering” of the many women victims.

2. “It is true that survivors of violence often are pushed to the side by the criminal justice system. They may not be informed ... they are excluded. They often experience a loss of control that exacerbates the ... impact of the crime itself. ... [I]ncreased efforts to promote victims’ rights potentially could have a strong and positive impact on women who are victims of crime. ... notice of and participation in court proceedings, including the ability to choose to be present and express their views at sentencing, could be ... healing for victims. More timely information about release or escape and reasonable measures to protect the victim from future ... violence could improve women’s safety. Women could benefit economically from restitution. Nevertheless, because statutory protections and state constitutional provisions already may provide some or all of these improvements, because additional statutory and state level reform can be enacted, and because no reform will be effective absent strict enforcement, we do not support a federal constitutional amendment... .”

NOW concedes the benefits of securing rights for crime victims, but then relegates victims’ rights to second-class status by allowing those rights to be sought only through statutes or state constitutions. NOW does not articulate why crime victims rights are less deserving than the rights of accused and convicted offenders, nor how it is that second-class statutory rights are more subject to “strict enforcement” than federal constitutional rights. This assertion ignores that efforts to secure rights for victims through statutory reforms and state constitutional amendments have proven inadequate. NOW’s logically flawed position that victims “suffer” under the current system and that those same laws that create the current system are sufficient to stop the “suffering” must be rejected.

3. “Adding constitutional protections that could offset the fundamental constitutional protections afforded defendants marks a radical break with over two hundred years of law and tradition carefully balancing the rights of criminal defendants against the exercise of state and federal power against them.”

NOW simply does not know the history of our country. At the founding, and well into the 19th century, victims were their own prosecutors. As Alexis de Tocqueville

observed well into the 1830's, the "offices of the public prosecutor are few." Under the common law, victims had participatory rights. As the power to investigate and prosecute offenses became more and more concentrated in the state, victims were excluded and, in many jurisdictions victims have become mere pieces of evidence. The result of the status quo is the very injustice that NOW purports to want to fix by statute. Statutory fixes have failed and victims, whose interest in justice and fair treatment is every bit as deserving as that of the criminal defendant, deserve better than to be relegated to the second class status.

4. "The position of a survivor of violence can never be deemed legally equivalent to the position of an individual accused of crime. ... While the crime victim may have suffered grievous losses, she, unlike the defendant, is not subject to state control or authority."

It is undisputed that a criminal defendant may lose liberty or life as a result of the commission of a violent crime and his or her trial in the criminal justice process. This reality has nothing to do with the justness of providing victim's participatory rights. The criminal justice system is not a zero sum game. Importantly, victims too are subject to state control or authority. When a victim is given no notice of proceedings in her case, when she is excluded from the courtroom during those proceedings, when she is silenced at critical stages, when her safety is not considered, nor her claims to restitution or interest in avoiding unreasonable delay, it is the result of state action. It is the state that subverts the victim's basic human rights. This should not be ignored or attempted to be remedied by clearly ineffective means.

5. "A victims' rights constitutional amendment could undercut the constitutional

presumption of innocence by naming and protecting the victim as such before the defendant is found guilty of committing the crime.”

In this view of justice, a battered woman does not deserve to be “named” a victim before a verdict convicting her batterer is returned. This view is far outside the mainstream of advocacy for women who are victims of violent crime. The presumption of innocence is not “undercut” when a battered woman is identified as a victim, nor is it “undercut” when a woman’s safety is considered when release decisions are made, or when her claims to restitution or avoiding unreasonable delay are considered. The presumption of innocence is a clear legal standard with clearly defined contours.

The presumption of innocence properly requires the government to prove, by probative evidence, the defendant’s guilt beyond a reasonable doubt and does not require defendants to prove their innocence. When a woman is given the right to notice of proceedings, the right to attend those proceedings, or the right to be heard at release, plea, sentencing, and clemency proceedings, the presumption of innocence is not affected. The prosecution still has the burden. The only difference is that now the criminal justice system is also serving the victim.

6. “Amendment proposals leave undefined numerous questions ranging from the definition of a ‘victim’ to whether victims would be afforded a right to counsel, or how victims’ proposed right (sic) to a speedy trial would be balanced against defendants’ due process rights.”

These objections are red herrings. First, “victim” is defined by the statute creating an offense, or by other relevant state or federal statute. Loved ones are included in the phrase “lawful representative.” Second, the proposed amendment does not include a

“right to counsel” as does the 6th Amendment for criminal defendants, where the right is explicit. Third, The amendment does not propose a “right to a speedy trial” for crime victims, rather it provides a right to have the victim’s “interest in avoiding unreasonable delay” considered. There is no viable argument that such consideration is unfair or somehow compromises the rights of accused or convicted offenders.

7. The amendment would “inject an additional party (the victim and her attorney), to the proceedings against a defendant as a matter of right, increasing the power of the state and potentially diminishing the rights of the accused, particularly in the eyes of the jury.”

Nothing in the amendment makes a crime victim “an additional party” in the criminal case. The fact that a victim is present and may be heard at critical stages does not “increase the power of the state,” nor diminish the rights of the accused. The mere presence of the victim in the courtroom during trial does not infringe of the rights of the accused, as the case reported in NOW’s own statement (fn. 1) clearly shows. The amendment simply does not give the victim an independent right to speak at trial, before the jury, and fears to the contrary are unfounded.

8. “The demonstrated existing inequalities of race and class in the modern American criminal justice system only increase the importance of defendants’ guaranteed rights.”

Those same inequalities are magnified for victims who have no federal constitutional rights to protect them. NOW’s concern for equality should apply to all participants in the criminal justice system.

Letter from Law Professors

Regarding the Proposed Victim's Rights Constitutional Amendment, July 17, 2003

1. "There is no pressing need for a victim's rights amendment, as virtually every right provided victims by the amendment can be or is already protected by state or federal law."

The law professors' arguments are oddly reminiscent of the critics of James Madison and the Bill of Rights. When James Madison took to the floor of the U.S. House of Representatives and proposed the Bill of Rights, during the first session of the First Congress, on June 8, 1789, he was met with severe criticism. The critics claimed the twelve amendments were unnecessary because the states had bills of rights. Madison responded with the observation that "not all states have bills of rights, and some of those that do have inadequate and even 'absolutely improper' ones."

Victims' rights are no different. Not all states have constitutional rights, nor even adequate statutory rights. Further, the existing laws, state constitutional and statutory have failed, despite the victims' movement's best efforts to protect victims. Harvard Professor Larry Tribe, perhaps the nation's pre-eminent scholar of constitutional law, has observed this failure : ". . . there appears to be a considerable body of evidence showing that, even where statutory or regulatory or judge-made rules exist to protect the participatory rights of victims, such rights often tend to be honored in the breach" As a consequence he has concluded that crime victims' rights "are the very kinds of rights with which our Constitution is typically concerned."

Recognizing the importance of placement of rights in the constitution, James

Madison observed that the constitution would "have a tendency to impress some degree of respect for [the rights], to establish the public opinion in their favor, and rouse the attention of the whole community . . . as [they] acquire, by degrees, the character of fundamental maxims. . . as they become incorporated with the national sentiment"

History makes clear that the only way to make respect for the rights of crime victims "incorporated with the national sentiment," is to make them a part of "the sovereign instrument of the whole people," the Constitution.

2. *"The Amendment could lead to burdens on courts and prosecutors"*

The amendments that established rights for criminal defendants led to "burdens on courts and prosecutors" that they should be repealed and yet this not sufficient reason to assert that those rights should not have been created. There is no rationale basis for why victims are to be accorded an inferior status in our law. If the professors' logic carried the day "burden on courts and prosecutors" would be a trump card to all constitutional amendment, even if otherwise necessary to establish fairness and justice. The reality is that justice often requires burdens to be borne and the burden of injustice imposed on crime victims is far greater than any administrative burden that theoretically would befall the courts.

3. *"Th[e] adjudicative decisions provision appears to create a right to special hearings on these issues (safety, delay, and restitution), separate from other proceedings. It also appears to require additional judicial orders and decisions. This could result in separate substantive proceedings, burdening an already burdened court system."*

The law professors are wrong about the "appearance" and the substance of the

adjudicative decisions clause. It does not create a right to “special hearings.” As the text explicitly reads, the right provided is the right to decisions, when made, that reflect “due consideration” for the identified victim’s interests. The emphasis in the text is on “due consideration” for the victims interests whenever those interests are already implicated in proceedings throughout the case. The legislative history also makes this clear.

4. “The [adjudicative decisions clause] may involve the courts in monitoring the choices of police and corrections officers in the interest in safety. It could lead to standardless determinations of an accused’s dangerousness throughout the process as well.”

On page one of the law professors’ letter the professors state that a reason the proposed amendment is unnecessary is because “Victim safety as a consideration in pretrial release already exists under federal and state law.” Presumably then, for the law professors, it is acceptable for this right to be in statute, just not in the constitution. There is no reason to believe that the phrase “due consideration for the victim’s safety” could lead to “standardless determinations of an accused’s dangerousness” any more than the current law, which the professors do not criticize, and therefore, implicitly approve. Further, the courts have standards to decide such cases. *See U. S. v. Salerno*, 481 U.S. 739 (1987). Despite this, the professors misread the plain text. Under no circumstances could the phrase “adjudicative decisions” (“adjudge:” to determine or decide judicially, as a case) be properly construed to cover decisions by police or corrections officers. Not even the most ardent exponents of a “living constitution” doctrine of interpretation could stretch the meaning of these words that far.

5. Under Section 2 as written, a victim could demand a special judicial hearing whenever the victim asserted an interest in “avoiding unreasonable delay.”

The right proposed is a right to “due consideration” when issues comes before the court for “adjudicative decisions” that implicate the victim’s stated interests. The emphasis in the text is on “due consideration” for the victims interests whenever those interests are already implicated in proceedings throughout the case. The legislative history makes this clear. The text does not create a right to demand “special judicial hearings” but rather simple a right to ask that consideration be given to the victim’s interests when already scheduled decisions are to be rendered. There may be extraordinary circumstances of delay that would allow a victim to bring an independent motion regarding his or her rights but even in that proceeding the victim’s right is to “due consideration” in the face of the defendant’s and the state’s ability to adequately prepare.

6. [The ‘avoiding unreasonable delay clause’] could be used to deny defendants needed time to gather and present essential evidence in order to demonstrate their innocence of the crime charged. It could also impair a prosecutor’s ability to develop the evidence necessary to prove guilt beyond a reasonable doubt.”

No intellectually honest assessment of the plain meaning of the proposed text could lead to these conclusions. Here is the text in full: “A victim of violent crime shall have the right to ... adjudicative decisions that duly consider the victim’s ... interest in avoiding unreasonable delay... .” The words, “duly consider” and “unreasonable delay,” simply cannot be read to mean “**deny**” to an accused “needed time” to present “essential evidence” to demonstrate “innocence.” The right to have an interest in avoiding

unreasonable delay **duly** considered is not the right to veto or force anything.

7. “The right of victims to be ‘reasonably heard’ at plea proceedings could hamper prosecutorial efforts. How much weight judges must give to a victim’s objection to a plea is uncertain, because the Amendment is not clear whether the state must demonstrate a ‘compelling’ or ‘substantial’ interest in the bargain and how a judge should evaluate valid prosecutorial concerns. ... Even a small increase in trials because of victim objections would impose heavy burdens on prosecutor’s offices and the courts.”

The manifest errors in this passage are many. First, evidence from those few jurisdictions where the victim’s right to be heard during plea proceedings has been a part of the system entirely rebut the argument that the amendments rights “could hamper prosecutorial efforts.” For instance, in Arizona victims have exercised such a right for more than a decade and it does not “hamper” prosecutions. Perhaps that is why, reporting on their experiences, both the Pima County Attorney (a Democrat) and the Maricopa County Attorney (a Republican) have testified in support of the amendment.

Second, the weight judges give to the views of the victim will be up to the judge’s evaluation of what is in the “interest of justice.” This is the universal standard the courts follow in determining whether to accept or reject a plea agreement. A victim should be one of the voices that the court hears on what is or is not in the “interest of justice.”

Third, the amendment’s restrictions clause identifies two standards for restricting the rights of victims, “substantial interest” and “compelling necessity.” Application of either standard depends on the interest to be balanced, the lower standard of “substantial interest” applying to matters of “public safety” and the “administration of criminal justice.” Importantly, each of these standards is well-known to the courts and their

inclusion in the text of the amendment will alleviate years of litigation requiring the court to identify the proper standards.

Finally, there have been no increases in the rate of cases going to trial in Arizona because of the victim's right to be heard at plea proceedings. Indeed, in no jurisdiction has such an increase been documented.

Simply put, the argument of the law professors is, at best, a straw man.

8. *“The right to be heard might well create a right to... state-provided counsel... .”*

The *right to counsel* is explicit in the 6th Amendment and therefore creates the *right to state-provided counsel* for accused and convicted offenders. There is **NO right to counsel** written into the Crime Victims Rights Amendment, and none can be inferred.

9. *“There are serious dangers in amending the Constitution in the manner provided by S. J. Res. 1.”*

Despite the breadth of this attack, there is only one “serious dangers” identified by the law professors – that the language of the amendment “does not explicitly protect defendant's rights from abridgement under the Amendment. ... At best [the language of the amendment] suggests that courts would have to engage in a case-by case balancing of the rights of the accused and the rights of the victim.”

Nothing in the proposed amendment will “abridge” the fundamental rights of defendants. Basic constitutional law dictates that the proposed amendment cannot diminish other constitutional rights.

· Giving to the victim the right to notice infringes on no constitutional right

of a defendant.

- Allowing the victim the right not to be excluded does not "abridge" any constitutional right of a defendant.
- Allowing the victim the right to a voice at release, plea, or sentencing proceedings does not deny a constitutional right to a defendant, but does allow the court to make more informed and just decisions.
- Allowing restitution for the economic losses caused to victims does not deny a constitutional right of defendants.
- Requiring consideration of the victim's interest in avoiding unreasonable delay does not infringe upon a defendant's right to effective counsel or any other constitutional right.
- Requiring consideration of the safety of the victim when making release decisions does not deny any constitutional rights of defendants.

Vague assertions that "fundamental constitutional rights will be undermined," have little value other than to inflame the debate. The amendment is not an assault on the fundamental rights of the defendant. The Constitution and its rights are not "a zero-sum game." Rights of the nature proposed by the amendment do not subtract from those rights already established, they merely add to the body of rights that all Americans enjoy.

Professor Tribe concurs in this analysis when he writes, "no actual constitutional rights of the accused or of anyone else would be violated by respecting the rights of

victims in the manner requested."

The courts of our nation are fully capable of and regularly do balance the constitutional rights of victims and the constitutional rights of defendants and offenders, giving full effect to the rights of each. This amendment does not fundamentally alter that role of the court.

10. "Section 3 explicitly forbids courts or Congress to provide money damages to victims for violations of their rights. The creation of a constitutional right without a meaningful remedy for many contradicts one of the very principles of justice – that for violation of a right there must be a remedy. Injunctive relief for denial of rights, while possible under the amendment, may often provide an inadequate remedy, and bringing injunctive actions against courts and prosecutors would create additional uncertainty in the criminal justice process."

The preferred remedy is expressly included in the text of the proposed amendment: standing. The grant of standing in Section 3 means that victims will have the right to "stand" in court and ask for orders to protect their rights. While the law professors dismiss this remedy as "inadequate," that position ignores the fact that standing is the exact way in which defendants' rights are enforced. Further, money damages would not be an effective means of enforcing rights - those of the victim or the accused – recognizing this, the amendment does not make them a remedy.

11. "Section 3 of the amendment not only subjects state criminal proceedings to congressional oversight, but also creates new burdens on the federal courts to interpret and apply the Amendment."

The power to "enforce" the rights in the amendment is not the power to "oversee" state criminal proceedings, nor is it the power to define or implement. The defendant's rights to due process and equal protection, grounded in the 14th Amendment, are subject

to the very same enforcement clause language found in the victims' rights amendment and that language has not led to "congressional oversight" of state proceedings. Federal courts daily make decisions interpreting the rights established; and the "burden," if indeed any, of such decisions must be borne when the demands of justice require it. Justice demands it now for crime victims.

12. "Victims of economic crimes ... would have no constitutional rights."

...nor would the law professors support them. Enough said.

Letter from Safe Horizons

April 7, 2002

1. "Victim's rights are critical but not the same as defendant's rights."

Safe Horizon's admits that "participatory rights [for victims] are essential to help them achieve justice." Historically this country had ensured "essential" "participatory rights" through the U. S. Constitution. As Prof. Tribe has explained, the rights proposed for crime victims in S. J. Res. 1 "are the very kinds of rights with which our Constitution is typically and properly concerned--rights of individuals to participate in all those government process that strongly affect their lives."

It is undisputed that defendants "face the loss of fundamental rights and liberty at the hands of the government." This fact alone does not diminish the fact that victims are denied notice of proceedings, excluded from proceedings, silenced at proceedings, and when their victims' interests in safety, delay, and restitution are ignored, at the hands of

the government. Essentially, the government denies “fundamental rights and liberty” sometimes of defendants and sometimes of crime victims. Both of these denials need remedies. As Attorney General Reno earlier testified in the House, “[U]nless the Constitution is amended to ensure basic rights to crime victims, we will never correct the existing imbalance in this country between defendants' constitutional rights and the haphazard patchwork of victims' rights.”

2. “Constitutionally recognized rights for victims and defendants inevitably will clash. One of Safe Horizon’s fundamental concerns with S. J. Res. 1 is that it could erode the rights of the accused, particularly when they are in tension with the rights of the asserted victim. ... For example, in New York State (as elsewhere), potential witnesses are routinely excluded from the courtroom so that their testimony will not be tainted by that of other witnesses and unfairly prejudice the defendant. The proposed amendment squarely poses a conflict because it grants a victim the right not to be excluded from the proceedings which is particularly problematic where the victim is also a witness, forcing the judge to weigh the defendant’s right to a fair trial against a victim’s newly created right not to be excluded.”

No passage could better expose the challenges that victims face and the need for a national threshold of rights for crime victims. A criminal defendant has no constitutional right to exclude a victim from the courtroom during trial, even if the victim is also a witness. Despite this, the practice of “invoking the rule” of exclusion of witnesses is so pervasive that it is perceived as a right. The courts have held otherwise. *See e.g. Bellamy v. State*, 594 So.2d 337 (Fla. 1992) (cited in NOW’s fn. 1, supra, “mere presence of the victim in the courtroom in a sexual battery case would not prejudice the jury against the defendant.”); *State v. Beltran-Felix*, 922 P.2d 30 (Utah Ct. App. 1996). Additionally, in those jurisdictions that permit victims, even as witnesses, to be in the courtroom

throughout the trial, there is no evidence that defendants have been “unfairly prejudiced.”

In fact, in Alabama, where victims sit at counsel table with the prosecutor throughout the proceedings, there is no evidence of prejudice to defendants. Sadly, the predominant culture of the criminal justice system assumes the prejudice and on the basis of that erroneous assumption denies victims rights. Only the constitution, the law of the land, has the power to change culture.

3. “Victims of domestic violence are especially at risk. ... Under S. J. Res. 1, the batterer whose false accusations result in prosecution of the victim could be accorded ‘victim’ status and could benefit from all the proposed Constitutional rights. The same concern applies to cases in which domestic violence victims strike back at their batterers... .”

Victims of domestic violence have much to gain and nothing to fear from the Crime Victims Rights Amendment.

- A battered woman needs the right to notice of release proceedings and release.
- A battered woman should not be forced to endure the dehumanizing experience of waiting outside the courtroom doors during a public court proceedings.
- A battered woman needs the right to choose whether to speak about her victimization at release , plea, and sentencing proceedings.
- A battered woman needs the right to demand that her safety be considered when release decisions are made.
- A battered woman needs the right to have her claims for restitution

considered.

- A battered woman needs the right to have her case not be unreasonably delayed.

Despite these critical needs, Safe Horizons tilts at windmill fears that arise from a small number of odd cases. The fear that victims' rights might be used against victims of domestic violence who strike back at their batterers or who are falsely accused of crimes, is unfounded in jurisdictions where these rights are established. Moreover, the text of the amendment makes it clear that even victims rights may be restricted when public safety concerns are an issue. The issue of the application of a restriction would arise as the right was invoked and would be resolved accordingly and no waiver of a 5th Amendment right would ever be required for a battered woman to assert a substantial interest in safety.

4. "We believe that considerable progress with respect to victims' rights has been made in New York and elsewhere in recent years... ."

This comment is reminiscent of the famous *New Yorker* magazine cover where, from Manhattan, the rest of the country looks compressed and trivial. "Considerable progress" remains elusive in the country and the injustices done to victims, which continue "in New York and elsewhere" are neither compressed nor trivial.

5. Citing the experiences of the September 11 attacks, Safe Horizons writes, "These experiences reinforce the importance of carefully balancing defendant's rights and victim's rights."

It is unclear just how the experiences of September 11 reinforce the importance of

balancing defendants' and victims' rights, and Safe Horizons does not elaborate on the point.

6. *"...the proposed amendment would at best be symbolic, and at worst harmful,... it could prove meaningless for the majority of victims whose cases fail to be prosecuted."*

The rights proposed are neither mere symbol, nor are they harmful. Instead the rights are meaningful and enforceable, embodying the participatory rights that have been the core values of the mainstream victims' movement for more than 20 years. Further, the rights will not abridge the rights of the accused, nor hurt innocent victims. The fact that some cases may not go forward to prosecution is no basis for denying all victims basic and fundamental rights.

ACLU

Statement in Opposition, June 9, 2003

1. *"This amendment would fundamentally alter the nation's founding charter and would apply to every federal, state, and local criminal case, profoundly compromising the Bill of Rights protections for accused persons."*

Nothing in the proposed amendment "compromises" the Bill of Rights. The Amendment would, as is the nature of amendments, "alter the nation's founding charter" by providing new civil liberties to all citizens. Further, the Amendment would "apply to every... criminal case" because the extension of civil liberties must exist in every criminal case. As an organization that promotes civil liberties, the ACLU should hail the extension of new "civil liberties" to criminal cases.

2. *"Many of these provisions reflect laudable goals, but it is unnecessary to pass a*

constitutional amendment to achieve them. Every state has either a state constitutional amendment or statute protecting victims' rights and the proponents have not made the case that those measures do not protect victims' interests. More importantly, providing these 'rights' to defendants will compromise the rights of the accused. It would be the first time in our nation's history that the Constitution was amended in a manner that restricted individual rights."

The ACLU acknowledges that the goals of the amendment are "laudable," but asserts that the goals may be achieved without a constitutional amendment and that state laws are sufficient. In the very next sentence the ACLU says these very same "laudable goals" will compromise the rights of the accused and "restrict individual rights." The ACLU cannot have it both ways. If the goals (participatory rights for crime victims) are "laudable," they should be worthy of inclusion in the U. S. Constitution because, as Prof. Tribe says, "are the very kinds of rights with which our Constitution is typically and properly concerned--rights of individuals to participate in all those government process that strongly affect their lives." The case to include the rights in the constitution has been made with sufficient force to convince most of the country, including every Administration since Ronald Reagan's, the Department of Justice, a bi-partisan majority of the Senate Judiciary Committee, the National Governor's Association, 42 State Attorneys General, and the mainstream of the victims' rights movement.

The rights proposed do not "compromise" the rights of the accused, they add to the civil liberties that we all enjoy as Americans and it is strange to characterize this as "restricting individual rights." The amendment's Section 2 begins: "A victim of violent crime shall have the right... ." By its plain terms the amendment extends rights, it does

not “restrict” them.

3. “If passed, the Amendment would erode the presumption of innocence; jeopardize the right to a fair trial; hamper the ability of law enforcement to effectively prosecute cases; discriminate between victims and impose legal liability on the states.”

“...erode the presumption of innocence...”

The ACLU contends that the amendment “undermines the presumption of innocence by conferring rights to the accuser at the time a criminal case is filed when the accused is still presumed to be innocent. ... But giving the accuser the constitutional status of victim will impact the judge and jury, making it extraordinarily difficult for fact finders to remain unbiased when the ‘victim’ is present at every court proceeding giving his or her opinion as to what should happen. The VRA makes the accuser a third party in the criminal case, even before a judge or jury has determined that the accuser is actually a ‘victim.’”

The ACLU displays a lack of understanding both about the nature of the presumption of innocence as well as about human nature. First, the Supreme Court has said, the presumption of innocence “lies at the foundation of the administration of our criminal law.” The court has held that while use of the particular phrase “presumption of innocence” may not be constitutionally mandated, it is clear that the Due Process Clause of the Fourteenth Amendment must safeguard against dissolution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt. *See Estelle v. Williams*. The presumption of innocence is a principle that demands that guilt be established by the government “beyond a reasonable doubt.” Nothing in the proposed

amendment lessens the government's burden of proof.

In the ACLU's view of justice, a battered woman does not deserve to be "named" a victim before a verdict convicting her batterer is returned. This view is far outside the mainstream of advocacy for women who are victims of violent crime. The presumption of innocence is not "undermined" when

- a battered woman is given the right to notice of proceedings, the right to attend those proceedings, or the right to be heard at release, plea, sentencing, and clemency proceedings; The presumption of innocence is not "undermined"
- a woman's safety is considered when release decisions are made, or when her claims to restitution or avoiding unreasonable delay are considered;

There is no evidence that giving victims participatory rights undermines the process to fairly determine guilt or innocence. In the small number of jurisdictions where victims have had these rights for years, they have never been found to undermine the right to a fair trial. Victims are not "third parties," merely because in selected proceedings they have the right to be heard on limited matters affecting their constitutional interests.

Merely because victims would have the right to be present during court proceedings, they would not, have the right to give their opinion about what should happen at "every court proceeding." The amendment does not give a victim the right to "input into each stage ... from bail through parole." The amendment reserves the right to be heard to release, plea, sentencing proceedings primarily, as well as those that might implicate the victim's interest in avoiding unreasonable delay.

The ACLU writes “...battered women are often charged with crimes when they use force to defend themselves against their batterer. Under the VRA, the battering spouse is considered a ‘victim’ and will have the constitutional right to have input into each stage of the proceeding from bail through parole. *Why should batterers who have spent years abusing their partners be given special constitutional rights?*” (emphasis added.) Here the hypocrisy of the ACLU is astonishing, for it is the very same ACLU that defends the very same batterer’s “special constitutional rights” when that “batterer” is a criminal defendant. The truth is that a batterer who has “spent years abusing their partner” should be in prison. Under the ACLU’s odd calculus of who qualifies for constitutional rights, it is only the accused or convicted batterer, never the crime victim. The “VRA” by its terms allows for “restrictions” when necessary to protect the safety of any battered woman, a fact the ACLU conveniently ignores in its analysis.

“...jeopardizes the right to a fair trial...”

The right to attend a trial, even for victims who will also be witnesses, does not “jeopardize the right to a fair trial.” The bald assertion to the contrary does not make it so. No court has held that a victim’s general right to attend is a denial of the rights of an accused. Such rights have been in the laws of several states for many years without diminishing the fair trial rights of the accused.

The “interest in avoiding unreasonable delay” in no way threatens defendant’s rights to effective assistance of counsel. Time needed for preparation of a defense is not “unreasonable delay.” Moreover, the amendment merely requires that the victim’s interest

be “considered.” The ACLU regularly champions the ability of the courts to decide cases fairly; yet in the case of victims’ rights they say the right to “consideration” of “avoiding unreasonable delay” could “compromise the prosecution’s case if it is not ready to proceed to trial but must do so at the victim’s insistence.” “Consideration” is not “insistence.”

“...hamper law enforcement...”

Perhaps the best judge of what will “hamper law enforcement” is law enforcement itself. 42 of the state Attorneys General, the International Association of Chiefs of Police, The National Association of Police Organizations, the American Probation and Parole Association, the American Correctional Association, the National Troopers Coalition, the California Correctional Peace Officers Association, the International Union of Police Associations (AFL/CIO), the California District Attorneys Association, the National Criminal Justice Association, Concerns of Police Survivors, and have all endorsed the amendment. They would not have done so had the dire consequences which are the subject of our opponents speculation been credible. They are not. There is simply no evidence anywhere in America that participatory rights for victims hurt either defendants’ rights or law enforcement. Assertions to the contrary are hollow. Giving victims the right to speak at plea proceedings has not led to more trials, nor have the rights “backfired” on victims.

“... impose inflexible mandates on the states...”

“Inflexible mandates” are lauded when they enforce the rights of accused and

convicted offenders, but condemned when it comes to victims. The Amendment simply asks for rigorous protection of civil rights for all Americans, defendant or victim.

Letter from 5 Republican Law Professors
Statement in Opposition, July 11, 2003

1. “We have no doubt that the law should protect crime victims, and the laws of all states do in considerable measure do that.”

Simply put, the evidence reveals that the laws of all states “in considerable measure” do not “protect victims.” Justice Department studies have reached this conclusion and victims’ stories support this conclusion.

2. “But it seems to us that the matter should be left precisely there: in the states.”

The leave it to the states approach condemns crime victims to second-class status, where victims’ rights always exist in the shadow of the defendant’s superior rights and the government’s unrestrained power.

- No government should refuse to tell a battered woman when her batterer is given a release hearing or is released.
- No government should silence a battered woman on the matter of the defendant’s release or her safety.
- No government should exclude the parents of a murdered child from the courtroom during the public trial of those accused of the murder.
- No government should force a victim to stand silent during the sentencing of her attacker, unable to offer an opinion on the sentence.

- No government should silence the parent of a murdered child when the murderer is given a plea bargain.
- No government should force crime victims to endure years of delays without any consideration for their interests.
- No government should ignore a woman, raped and beaten and left for dead, when she makes a just claim for restitution from her attacker.
- No government should deny crime victims the right to stand in court and seek their rights.

Federalism exists to advance liberty. Federalism is preserved and the cause of liberty is advanced, when rights are written into the Constitution. When James Madison first proposed the Bill of Rights, he was met with criticism that the proposed amendments claimed were unnecessary, especially so in the United States, because states had bills of rights. Madison responded with the observation that "not all states have bills of rights, and some of those that do have inadequate and even 'absolutely improper' ones."

Our experience in the victims' rights movement is no different. Not all states have constitutional rights, nor even adequate statutory rights. There are 33 state constitutional amendments of varying degrees of value. Madison knew that only the U. S. Constitution had the power to change culture. By including the Bill of Rights in the Constitution, Madison correctly observed, "the Constitution will have a tendency to impress some degree of respect for [the rights], to establish the public opinion in their favor, and rouse the attention of the whole community . . . as [they] acquire, by degrees, the character of

fundamental maxims. . . as they become incorporated with the national sentiment"

3. *"... where fundamental human rights are in imminent jeopardy, the Constitution might need to be amended to provide a national standard."*

The 5 Law Professors may not think that "fundamental human rights are in imminent jeopardy" when the government denies to a woman the right to speak at her batterer's release hearing, or when it excludes the parents of a murdered child from a public proceeding, or in any of the other circumstances the amendment would address, but before they make this observation final they might want to talk to crime victims who have been treated this way by their government.

National Clearinghouse for the Defense of Battered Women

Position Paper on Proposed Victims' Rights Amendment, April, 2003

1. *"We, like the proponents of the amendment, are extremely disturbed by the way in which crime victims are treated by our criminal justice system. ... we see firsthand the tragic consequences that result from society's and the criminal justice system's devaluing and misunderstanding of the experiences of victimization."*

The way to change the way crime victims are "treated" by the system; the way to stop the "devaluing" of victims is to give victims "value" in the U.S. Constitution, where they now have none.

2. *"[The amendment] would permit a husband who has repeatedly beaten his wife to stand before a judge and object to her release on bail, even when she is the only parent who has cared for their minor children."*

A husband who has repeatedly beaten his wife should be in prison. The fact that he isn't is reason to fight for reforms that will put him there. It is not reason to oppose

rights for all victims of violent crime.

3. “... the Amendment would require her to pay restitution to her abuser because he is considered a ‘victim.’”

The Amendment does not “require” the payment of restitution, merely that just claims for restitution be duly considered where they are created by state or federal law.

4. “...statutory alternatives and state remedies are more suitable.”

The Clearinghouse is apparently content that the rights of battered women remain second-class rights in our justice system. Their faith that these second-class rights, which clearly have not worked, can “truly assist victims of crime,” bespeaks a confidence in statutes that real-world experience has not confirmed.

5. “Unfortunately, the grave injustices of being victimized probably cannot be fully addressed or remedied in the criminal justice system.”

Among the “grave injustices” of being victimized are those injustices inflicted by the government during the criminal justice process, but the criminal justice system itself can remedy these through a constitutional amendment.

6. “We urge, instead, ... additional time, money and energy... .”

These things, especially money are no substitute for justice.

7. “It is entirely unclear how the proposed amendment would increase basic courtesies and respect for victims (particularly in light of the amendment’s explicit provision for governmental immunity from civil actions).”

Just as the participatory rights of defendants are more than “courtesies,” the rights established by the amendment are enforceable and are more than “basic courtesies.” The amendment does not create “governmental immunity for civil actions,” it simply says that

as a matter of the text of the Constitution, not right for money damages is created. Congress, or the states for that matter, would remain free to authorize enforcement actions in statute. But lawsuits for money damages are not an effective means of enforcing constitutional rights. The best means is provided in the amendment itself; it is the express grant of standing in Section 3.

8. “...*there are particular problems with the mandatory restitution clause.*”

There is no “mandatory restitution clause” in the amendment.

9. “... *it provides virtually no remedies for victims whose rights are violated.*”

The Bill of Rights provides “no remedies” for defendants whose rights have been violated, except the inherent right to standing to assert those constitutional rights. Here the grant of standing is explicit. Moreover, Congress has the power to “enforce” the amendment through appropriate legislation, just as the 14th Amendment is enforced.

10. “... *the constitutional financial mandate this amendment imposes upon the states would require their already overburdened governments to divert funds from agencies that provide meaningful assistance to battered women...*”

The Clearinghouse does not identify the “financial mandate” imposed upon the states.

11. “*Defendants are facing a loss of liberty and life at the hands of the state, and their rights must not be eroded. ... the harsh reality is that the victim has very little to lose as a result of the trial.*”

This view bespeaks a shallow and callous understanding about victimization and the consequences of injustice. A defendant’s potential loss of liberty is no justification for unnecessary injustice toward the victim. The Clearinghouse asserts, “the role of the

criminal justice system is to determine whether or not the defendant committed the offense he or she is charged with, not to restore the victim.” The goal of the system is to do justice, which includes discovering the truth and restoring the victim.

12. “[The amendment will mean] jurors will be far less likely to receive independent, truthful testimony and the possibility of a fair, reliable, and just verdict will be diminished.”

This assertion is demonstrably false. In no state where victims are given the right to be present during trial is there any evidence of the results the Clearinghouse fears.

13. “... the Amendment would make it much more difficult for judges to limit testimony of ‘victims’ at all stages of the proceeding, even if their testimony is not relevant or is so inflammatory that justice would be undermined.”

This assertion is simply wrong as a matter of law. First, nothing in the amendment gives victims the right to “testify.” The right to be heard is not the right to call yourself, or be called as a witness. It is the right of allocution, not testimony. Nothing in the amendment changes the rules of testimonial relevancy. Moreover, inflammatory statements that are unduly prejudicial would remain prohibited by the due process clause. *Payne v. Tennessee*, 501 U.S. 808 (1991).

14. “The proposed Amendment says victims have the right to ‘a final disposition of the proceedings...free from unreasonable delay.’

This is false. The amendment has no such language. An earlier version of the proposed amendment had this provision but it has been altered. None of the consequences the Clearinghouse fears could result from the current version, or from the earlier version for that matter. The present right is to have the victim’s interest in avoiding

unreasonable delay “duly considered.” This provision cannot be objected to if one is still to speak for battered women.

15. “As victim advocates, we need to be in the forefront of advocating for justice – which includes supporting the right of defendants to get fair trials and this Amendment will erode this right.”

As “victim advocates” we need ... to be “advocating for justice” and support the “right of defendants... .” As victim advocates we need to say, “Justice for all – even the victim.”

16. “The structural integrity of our entire justice system depends on this equation – between the accused and the government, not the accused and the individual victim of crime.”

This assertion misses the forest for the trees. The structural integrity of the judicial system is only strengthened when the court has before it all information about an alleged crime and its consequences. A system that allows for victim participation at certain moments helps the court understand the full scope of the case before it and then to proceed as justice requires. Nothing about this inclusion lessens the structural integrity, but in fact strengthens it.

National Legal Aid & Defender Association

Letter in Opposition, June 2, 2003

1. “ There is no reason that the entirety of the Victims Rights Amendment cannot be achieved through other means.”

No reason other than more than two decades of history with “other means” being inadequate, and the fact that statutory rights will always be second-class rights.

2. Despite nationwide research, the proponents of the amendment have been unable to produce any case in which such ‘trumping’ [of victim’s rights by defendant’s rights] has actually occurred and been upheld on appeal.”

False. *Lynn v. Reinstein* is one of many examples. And most of the cases never get to the appellate stage because victims lack standing.

3. “..rights without remedies.”

Standing is the remedy.

4. “...massive federal court oversight of the day-to-day functioning of state criminal justice systems and actors.”

Has this already happened because defendants’ rights are in the U. S. Constitution? No, and the result would not be different for victims’ rights.

5. “ ...the system will be substantially distracted from the fundamental business of adjudicating criminal responsibility and determining sanctions.”

The fundamental business is to do justice. In the view of most of the country, even if not criminal defense attorneys, this does not require excluding the victim. Indeed justice requires that victims be treated justly also.