NACDL Testimony

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Proposed "Victims' Rights" Amendment: H.J. 173 & H.J. 174

Testimony by NACDL member, Elisabeth A. Semel, before the House Judiciary Committee

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Chairman Hyde and Members of the Committee:

Thank you for providing me this opportunity to testify on behalf of the members of the National Association of Criminal Defense Lawyers (NACDL) in opposition to H.J. 173 and H.J. 174.

The 9,000 direct and 30,000 state and local affiliated members of the National Association of Criminal Defense Lawyers are private defense attorneys, public defenders and law professors. They have devoted their lives to protecting the many provisions of the Bill of Rights concerned with fairness in the criminal justice system. NACDL's interest in, and special qualifications for understanding the grave dangers posed by H.J. 173 and H.J. 174 are keen. I am here today to explain why we stand in firm opposition to a "victims' rights" constitutional amendment.

My testimony begins with an observation: Although two criminal defense lawyers have been given a place at the table, those whose testimony you will hear today are almost exclusively proponents of the "victims' rights" amendment. The political currency of this movement at this time in our history appears to be gold. Indeed, it appears that those whose personal tragedies entitle them to wear the label "crime victim" have the ear of our law makers to the near-exclusion of experienced judges, defense lawyers and even prosecutors.

The rhetorical power of the phrase -- "victims' rights" -- is evocative of our cherished historical and traditional freedoms and, more currently, society's profound fears. Who could be "anti-victim"? Indeed, in today's culture, those supportive of the constitutional rights of the citizen accused are tarred as "anti-victim." This is apparently an intolerable position for many running for elected office.

Attached to this testimony is an insightful Stanford Law Review article by Professor Lynne N. Henderson, herself a rape survivor and rape crisis counselor. She knows very well of what she speaks:

[T]he symbolic manipulation of the victim successfully avoids a more serious debate about how the criminal justice process should be structured and disguises the truly revolutionary nature of the reforms proposed.[(1)]

But responsible legislators -- guardians of our constitutional tradition as well as the public purse -- are sworn to engage in reasoned and well-informed debate, and they owe it to the people to do so, including those who have been victims of crime.

Many proponents of this amendment insist that a "victims' rights" amendment will not "eliminate" defendants' rights. [(2)] Whether the correct verb choice is "destroy" or "dilute," such claims are disingenuous at best. The stated ambition of the movement is to see the rights of victims "elevated to the same status" as those of the accused.[(3)] By definition, this so nullifies the rights of the citizen accused as to effectively **write them out** of the Constitution. The purpose of a criminal trial is not the advocacy of the victim, who enjoys the tremendous sympathy of the community and whose painful story has indeed moved the enormous powers of the government against another, far less sympathetic citizen: The Accused. Rather, as University of Chicago Law and Criminology Professor Stephen J. Schulhofer teaches:

The purpose of the trial is to determine whether the defendant is factually and legally responsible for an offense. Indeed, the Supreme Court has sometimes implied that this truth-determining function should be virtually the **sole** task of the criminal trial. Presently, our society remains committed to a small number of devices that can sometimes interfere (mostly in modest ways) with the primary truth-seeking function of the trial. But we remain acutely aware of the costs of procedural rules that serve goals other than determining the truth, and we are rightfully suspicious of efforts to burden our trial process by adding more rules of that sort.

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Any thoroughgoing effort to reshape the criminal trial to serve the victim, at the expense of truth seeking, would have dramatic and totally unacceptable costs. [(4)]

A Government of the People, of Limited Powers

The core principle that runs through the Bill of Rights is that the federal government's power to act against the individual must be restrained. When the United States Constitution was ratified in 1789, it did not contain a citizen's Bill of Rights. But many of the states that ratified our Constitution did so **only** on the condition that additional protections against the power of government would be included as soon as possible. The first ten amendments to the Constitution

-- our Bill of Rights -- limiting government power over the inalienable rights of the people, were accordingly prompted added in 1791, only four years after the Constitution was ratified.

"The Bill of Rights was designed to protect personal liberties from governmental infringement, not to protect private individuals from each other." [(5)] The Constitution is **not** the place for affirmative entitlement promises from the government, such as those contained in H.J. 173 and H.J. 174. The fact that several of the various states that have contracted to the Republic under the federal constitution have seen fit to experiment with state constitutional amendments does not mean it is an appropriate amendment for the entire country's constitution. Such a reckless assumption sabotages the check and balance of federalism and thus further wreaks havoc upon our constitutional charter.

The rights between "victim" and citizen accused **are supposed to be** "imbalanced." There were crime victims in 1789 and 1791 too. But the Founders recognized that only if "imbalance" was built into the criminal justice process -- cloaking the accused with the presumption of innocence and placing the burden of proof on the prosecution -- could the government's power to act against the individual (no matter how sympathetic or well-intentioned) be fairly controlled. Inasmuch as the "victims' rights" amendment will undo this historic "imbalance," politicians who embrace this proposal must be ready to tell Americans why they want to sacrifice the people's protections under the Bill of Rights in the bargain.

Proposed Amendment Procedural Entitlements: Mob Rules?

We do not live in an absolute democracy, of absolute majority rule, where majorities bestow individual rights or deny them, unchecked, at popular will or whim. Rather, in America, even minorities are constitutionally recognized to have inalienable rights, secure from majority or mob domination. That is our constitutional heritage as Americans.

In today's climate of crime hysteria, the accused is the consummate minority. Particularly when charged with a crime of violence, he often faces the power of the government alone save for his defense counsel, whose resources are almost always a minuscule fraction of those increasingly appropriated to the accusatory government. Infusing "victims'" advocates, who already carry an enormous cache of popular will, with constitutional might overwhelms the counter-majoritarian check reflected in the Constitution and the Bill of Rights, to the advantage of mob rule.

Lest anyone doubt the threat to rational, impartial justice (truth) posed by the inflammatory passions of unchecked victim advocacy, consider just two recent examples:

1. Last month, the conservative California Supreme Court unanimously held that the state's revolutionary "three strikes" statute, as enacted by the legislature and approved by the voters, still left judges with the limited power they have had since the state's founding in 1850, to dismiss prior convictions, "in the interests of justice," and thus exercise some discretion in sentencing. That court is composed of six Republican appointees and one Democrat. Indeed, the six Republicans all came to the court after Californians voted to unseat several justices whom "victims' rights" advocates accused of blocking executions. The California Supreme Court now

affirms some 98 percent of death penalty judgments, more than any other court in the nation. Rather than accept what was a conservative, straight-forward analysis of the constitutional provision, Mike Reynolds, the crime victim/architect of "three strikes," quickly and publicly condemned the court for its refusal to follow in line with what he Kafkaesquely decreed was the popular will.[(6)] The California legislature is now making haste to "fix" the law to Mr. Reynolds' satisfaction.

2. Mark Klaas, the father of Polly Klaas, whose daughter's killing provided the necessary political impetus for the rapid-fire enactment of "three strikes," has become an omnipresent commentator on a gamut of criminal justice issues. The jury in the trial of Richard Allen Davis, the man charged with Polly's murder, had the initial task of deciding whether Davis was actually guilty of the offense, and, if so, whether the prosecution had proved four special circumstances, each of which, if found true, could lead to a death sentence for Davis. The jury took but a few days to discharge its sworn responsibility to consider the evidence with due deliberation, but that was not fast enough for Klaas. Soon after they had retired todeliberate, Marc Klaas went on national television to chastise these twelve citizens for "failing" to instantly bring in the verdict he demanded. What message is this advocate of "victims' rights" sending to future jurors? What is in store for them if a "victim" is dissatisfied with the result or even the speed with which a verdict is rendered? Shall not they themselves be condemned as subversive traitors of the "new authority" of victim passion?

Government leaders who cherish historic constitutional protections should be gravely concerned that the ferocious momentum of the "victims' rights" movement has drastically altered public perceptions to a degree that seriously threatens the fair trial rights of the citizen accused. For example, in 1991, a research survey, commissioned by the California State Bar to explore the attitudes towards civil liberties in the year of the Bicentennial, revealed that 42 percent of the respondents believed it was up to the defendant to prove his or her innocence at trial.

Public Prosecution or Private Vengeance?

Ours is a system of public, not private prosecution. In America, the government may, on behalf of the entire citizenry, seek to take away the life, liberty or property of one of its constituents, based upon the evidenced allegation that the individual has violated a public law aimed at protecting us all. The law in question may or may not involve an accusation of specific harm to another member of society -- now popularly referred to as the "victim" (e.g., drug offenses). But fundamentally, the conflict in a criminal case is between the government (on behalf of the entire populous) and the citizen accused, not between two private individuals. By "emphasizing the conflict between the victim and the accused and placing the victim in the role of a quasi-prosecutor or co-counsel, the victim's rights amendment represents a dangerous return to the private blood feud mentality."[(7)] In other words, mob rule.

The democratic professionalization of the prosecutorial function -- largely completed in the last 25 years -- would be substantially diminished if untrained laypersons suffering emotional trauma are allowed to second-guess and effectively dictate the policy decisions made by lawyers accountable to the public.[(8)] Prosecutors representing the state (and not solely the alleged or actual victim) should certainly be sensitive to (but not controlled by) the concerns of an alleged or actual crime victim. No statute nor constitutional amendment can transform an insensitive prosecutor into one who is sensitive. Such radical legal surgery gravely risks overrunning the prosecutor's legitimate and ethical responsibility to uphold the public trust by maintaining objectivity in making the charging decision, and when pursuing a criminal case through to conviction and sentence.

California Experience

The "victims rights" amendment creates the illusion that by constitutionalizing a series of entitlements, a host of grievances will be redressed. As a California criminal defense lawyer for more than twenty years, I recall many occasions, particularly during the 1970's and early 1980's, when I had greater communication with alleged victims than did prosecutors. In my efforts to interview victim/witnesses I found, not infrequently, that I was the first, and sometimes the only, lawyer with whom they had contact. It was not uncommon for victim/witnesses to tell me that they felt uninformed and confused about the process and they were grateful when I advised them of upcoming court dates and the status of the case. I found that many alleged victims responded to my courtesy by agreeing to an interview and, on occasion, the relationship I formed assisted in reaching the most equitable resolution of the criminal case.

By the initiative process, California has enacted two constitutional amendments purporting to increase "victims' rights." The Crime Victims' Bill of Rights (Proposition Eight), passed by the voters in 1982, was among the first such measures adopted in the nation. Proposition 115, the Crime Victims' Justice Reform Act, was approved by the electorate in 1990. Now, it is the norm in California, particularly in a serious felony case, for prosecutors to develop what may be an **all-to-personal** bond with the complaining witnesses and their families. The good news is that there is a fairly routine mechanism by which victims are kept apprised of the progress of the prosecution. The bad news is that these individuals are routinely terrified to speak with "the other side." They are encouraged to see themselves as "belonging" to the prosecution and district attorneys frequently refer to them as "my victim." Indeed, prosecutors sometimes simply use the victims as a pretext by which to refuse a reasonable pre-trial disposition, by announcing to defense counsel that they cannot agree to a resolution of the case because "their victim" is opposed. Affording victims what is tantamount to a veto over plea negotiations, for example, is contrary to the public good, which must accommodate a host of important societal interests. It also interferes with the prosecutor's ethical responsibilities, including the prohibition that he or she not pursue a criminal conviction which is not supported by the evidence (no matter how heavily bolstered by victim emotion).

More general data confirms what we know about the California experience. The data on the over-emphasis upon "victim participation" in plea bargaining, for instance, suggests that it is far from the panacea that its advocates would lead us to believe. For example, a study of criminal

case settlement conferences found that those crime victims who particpated were, on average, no more satisfied by the process than those who did not.[(9)]

Forgotten Crime Victims: The Wrongfully Arrested, Prosecuted And/Or Convicted

It bears emphasis that whenever the government accuses an individual of crime, at stake is the conviction of an innocent person. It is already at least a weekly occurence to open our daily paper or tune into the evening news to learn of another man or woman released after dozens of years of wrongful incarceration -- finally freed because of the exposure of perjured testimony, the recantation of a jailhouse "confession," or the discovery through new technology (e.g., DNA)

of exonerating evidence. Just last week, three men were released from Illinois' death row, having spent 18 years in prison for a double murder they did not commit. As one of the men, Kenneth Adams, rightly said: "'We are victims of this crime too.' . . . 'I want people to know that this could happen to anybody and that's a crime.'"[(10)]

These are American tragedies. Do we really want to exaccerbate these all too frequent failures of our criminal justice system -- multiplying victims, out of a misguided sympathy for them? Do we want to return to the days of the Scotsboro Boys and Leo Frank? For instance, in the notorious Leo Frank case in 1915, an innocent Jewish man was denied a fair trial by a court and jury dominated by an anti-Semitic mob, inflammed by victim sympathies. He was lynched.

It should be obvious that the investment of crime victims who understandably have the least objectivity about the question of guilt with the central, effectively overriding voice in the judicial process is certain to multiply the number of criminal justice casualties. It unduly and dangerously **enhances** the risk of victimhood. It increases the danger of wrongful conviction. And it increases the danger of new crime victimization by actual perpetrators left unprosecuted by vice of the increased ease by which unfettered victim passion allows the first government target/accused to be convicted.

This great country of ours deserves a better brand of justice than Leo Frank, the Scotsboro Boys, Kenneth Adams and his recently exonerated co-convicted, and numerous other wrongfully convicted (victims) received. Adherence to the Founders' vision of our **constitutional** democracy ensures that better brand of justice.

Full Employment For Personal Injury Lawyers Act?

These amendment proposals are a personal injury lawyer's dream come true. They are rife with litigation-spawning ambiguity. And the ambiguity is un"fixable."

Start with the title, for example. Consider those whom the amendment is intended to benefit: crime victims. Proponents of the amendment would have this Committee believe that the use of the word "victim" is self-defining. But even in providing for mandatory restitution to victims of offenses under the recently enacted Anti-Terrorism and Effective Death Penalty Act of 1996,

Congress had to craft a highly specific statutory description of the term.[(11)] The proposed amendments, H.J. 173 and H.J. 174, contain no such qualifying language. Moreover, even if it **were** appropriate to engraft such highly specific terminology onto a constitutional amendment, the definition would still be inadequate for purposes of achieving the wholesale victim empowerment envisioned by the proposals.

Indeed, because the term "victim" would be the "key" to a litany of victim entitlements, there would be endless legal contests over claims of such status and for such entitlements. Thus, the first judicial issue in every case, standing (that is, who may legitimately stand before the court with a claim), will itself be a highly litigious battleground.

Who is a victim? **Which** victims count? While the amendment's supporters might disagree, many Americans would concur with Kenneth Adams's assertion that he and his two co-defendants who were released last week after losing 18 years of their lives to wrongful conviction and imprisonment are indeed victims. Their wrongful convictions and 18-year deprivation of liberty, were certainly **proximately caused** by the original crime commission and the passions aroused by it. What about the wife who finally attacks her husband after years of being brutalized? The woman who pulls a gun on the man after he stalked and terrorized her relentlessly for months? The neighbor who torches the crack house to protect his children? Given the levels of domestic violence, child sexual abuse and drug addiction that plague our nation, it is not at all uncommon to be a victim one day and a defendant the next. Likewise, given the numbers of wrongful accusations and convictions, many crime victims of today may well be tomorrow's wrongly accused and/or incarcerated.

When is someone a victim? Under the traditional American system of justice there really is no victim until it is determined that: (1) a crime was committed; and (2) the defendant is guilty of the crime. By their sweeping language, H.J. 173 and H.J. 174 immediately rush to give these complaining witnesses the "victim" label, so that the accused becomes "the perpetrator" **at the inception of the criminal justice proceedings**. For instance, in effect seating the complaining witness at counsel table, he or she has a co-equal position from which to oppose the release of the defendant on bail. Thus, the government's burden of proof has been lightened; indeed it has been removed.

The identification of the defendant is nowhere as tricky. At least after the government's formal charge, it is obvious who the defendant is. As a matter of fact, rightly or wrongly, he or she is often instantly notorious due to the mere accusation of crime. Was it not in part for this very reason that the Founders drafted a Bill of Rights to correct for the abuse of power when the government targets the individual? As discussed throughout my testimony, by reallocating power to ambiguous private interests, safeguards of the Fifth, Sixth, Eighth and Fourteenth Amendments are effectively eliminated by this proposal.

What **will** our courts make of this amendment, which cobbles together an extraordinary mix of global rights (e.g., "fairness," "dignity," and "respect"), with a litany of entitlements (e.g., notice; presence and comment at most stages of the process; resolution of the proceedings "in a prompt and timely manner;" "protection from physical harm or intimidation;" "restitution").[(12)] For instance, does the constitutional promise of "speedy" proceedings empower the "victim" to

effectively run the court's docket and determine the time in which a case must go to trial, to the detriment of the prosecution's readiness to present its evidence and the ability of the accused to defend against the charges?

Further, what would be the "remedies" for breach by the government of these victim entitlements created by the proposed amendment? A Section 1983, civil rights suit, "overturning" **DeShaney** and a long line of Supreme Court cases following **DeShaney**?[(13)] For example, when the county prosecutor fails to notify a victim of a court hearing, is he or she to be subject to suit for violation of the plaintiff-victim's federal civil rights? As anyone who has passed the first year of law school knows, **injunctions** cannot remedy after-the-fact constitutional violations. And there can be no constitutional rights without remedies.

Certainly this whole new range of entitlements is contrary to the preservation of judicial independence, the efficient administration of justice, and a Tenth Amendment concern about excessive "federal" causes of action. The amendment takes traditional and historic state power over criminal justice matters and federalizes it, both as a matter of procedures **and** substantive criminal law. As already discussed, a "victims' rights" amendment would surely produce an increasingly litigious society -- carrying with it economic costs; and on this scale of "private prosecution" by "victims," very significant ones at that.

Consider, for example, that the amendment would subject both state and federal governments to its broad set of "victim rights" and entitlements (e.g., to "reasonable protection"). Conflicts in the interpretation of the amendment's provisions -- between state and federal courts and among the many state jurisdictions -- would abound, and a chaotic of body of law invites litigation, and more chaos.[(14)] Courts are public resources. And irrational litigation is a great drain on tax dollars and the economy.

The costs of the federally mandated notice requirements alone -- without regard to the expenses that will flow from other victims' entitlements -- are staggering. By its language, these proposals appear to mandate (**without funding**) the expenditure of state tax dollars to enforce federal constitutional benefits. This creation of affirmative duties on the part of the states is surely the "big government," "welfare state" conservatives have decried.

In short, the distortion of the courts undermines impartiality, judicial administration and the rule of law to the risk of us all. This open-ended list of promised protections, well-being, and empowerment to those claiming victim status raises scores of interpretation questions, and no certain answers. And no amount of "technical" tinkering with amendment language will stave off the litigation debacle to be spawned by the attempt to offer such rights and entitlements by way of constitutional amendment.

We respectfully submit that this Committee and the Congress would better serve the people, including all types of victims, current and potential, were it to order a thorough and objective study of the costs and impacts of "victims' rights reforms" currently being tested at the state level. Such a careful study should certainly be undertaken before this Committee moves forward in its consideration of a federal magnification of the "victims' rights" phenomenon through an

amendment to the United States Constitution.

Judicial Independence: Another Forgotten Victim?

More specific, the proposed amendment threatens not only the rights of the accused and the system of public prosecution. It also deprives the judiciary of its independence and impartiality, by aiming to convert judges into "victims' rights" advocate-adjuncts, and courts into "victims' rights" fora.

The Fifth, Sixth and Fourteenth Amendments guarantee all criminal defendants, in both state and federal courts, the fundamental rights to a fair trial and an impartial jury. The basic components of a fair trial include a presumption of innocence; [(15)] and the requirement that one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial.[(16)] The Sixth Amendment requires that our tribunals remain "free of prejudice, passion, excitement and tyrannical power."[(17)] Without these safeguards, the presumption of innocence so crucial to a fair trial would be abrogated. And judicial independence **ensures these safeguards**.

Contrary to disclaimers by "victim's rights" advocates, their participation during a trial is not a neutral or benign force vis-a-vis the constitutional protections for the citizen accused. Already, the appearance of large groups visibly identified with the alleged victim inside courtrooms has become commonplace throughout the country. And often these contingents do not merely observe the proceedings in a respectful manner, but make themselves known to the judge and jury in a way that threatens undue influence over the decision-makers. Courts have long held that conduct by victims' supporters may indeed subvert the presumption of innocence.[(18)]

CONCLUSION

Sensitivity to the legitimate concerns of victims of crime does not require a constitutional amendment. To the extent these issues require a federal government response, it could be (and largely has been) accomplished through straight-forward legislation.[(19)] Any reforms in this area should be focused on the states, not the federal government. The overwhelming number of crimes, especially violent ones, are rightly handled in state court systems.[(20)]

Criminal defense lawyers are fully supportive of legal reforms that would require law enforcement and prosecutorial agencies to treat crime victims with sensitivity and respect, as well as those that include restitution as a sentencing option, especially when it is used intelligently, in lieu of a lengthy sentence for a non-violent offender. However, the greatest good we all can do for victims is to **decrease their numbers**. We certainly should not be **increasing** their numbers, as these amendment proposals seem sure to do. Rather than wasting our limited tax dollars on a costly and probably dangerous constitutional amendment process, all Americans would be better served by careful study. Such a study should include thorough and objective assessment of the costs and consequences upon our justice system of the current plethora of so-called "victims' rights reforms." And it should focus on the inevitable costs and consequences of

federalizing such measures through our precious Constitution.

Elisabeth Semel
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Footnotes:

[1] Lynne N. Henderson," The Wrongs of Victim's Rights," 37 Stanford Law Review 937, 952 (1985).

[2] See e.g. Statement of Paul G. Cassell, Assoc. Prof. of Law, Univ. of Utah Coll. of Law, Before the Comm. on the Judiciary, United States Senate, Concerning the Victims' Bill of Rights Amendment, April 23, 1996, at 26.

[3] Sen. John Kyl (R-Ariz.) quoted in "Victims' Ultimate Revenge," Legal Times, July 11, 1996, at 17.

[4]Stephen J. Schulhofer, "The Trouble With Trials: The Trouble With Us," 105 Yale L.J. 825, 840-841 (emphasis in original; citations omitted).

[5] James M. Dolliver, "Victims' Rights Constitutional Amendment: A Bad Idea Whose Time Should Not Come," 34 Wayne L. Rev. 87, n. 7, at 91 (1987).

[6] Press release from the Office of Bill Jones, California Secretary of State, June 20, 1996.

[7] Dolliver, supra note 5, at 90, n. 7.

[8] See e.g., ABA Standards of Criminal Justice: Prosecution Function and Defense Function, Standard 3-2.1 (Prosecution Authority to be Vested in a Public Official), at 19-20 (3rd Ed. 1993).

[9] Anne M. Heinz and Wayne A. Kerstetter, "Pretrial Settlement Conference: Evaluation of a Reform in Plea Bargaining," 13 Law and Society Review, 349, 363 (1979).

[10] A fourth individual, Verneal Jimerson, spent 11 years on death row before he was exonerated. Don Terry, "After 18 Years in Prison, 3 Are Cleared of Murders," N.Y. Times, July 3, 1996.

[11] Title II, Sec. 204; 18 U.S.C. section 3663A (a)(2).

[12] See e.g., H.J. Res. 173, Section 1.

[13] See DeShaney v. Winnebago County Dept. Of Social Serv., 489 U.S. 189 (1989) (Rehnquist, J.) (construing 42 U.S.C. sec. 1983, et seq., in light of the Due Process Clause of the Fourteenth Amendment) ("The Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual.") ("If the [constitutional amendment; here, the due process clause] does not require the State to provide the citizens with particular protective services, it follows that the States cannot be held liable under the [amendment] for injuries that could have been averted had it chosen to provide them.") (emphasis added here). Compare the very affirmative entitlement promises in H.J. 173 and H.J. 174; which would, according to DeShaney, result in sec.1983's applicability to "failures" by the government to confer such security to victims . " " " " ""

[14] See e.g. Judge Gerald Bard Tjoflat, "More Judges, Less Justice: The Case Against Expansion of the Federal Judiciary," 79 A.B.A.J. 70 (July 1993) (explaining that when the law is unstable, parties cannot know what to expect: their rights and entitlements then depend largely on the "luck of the draw" -- "on the trial judge (and ultimately on the appellate panel).").

[15] See e.g. **In re Winship**, 397 U.S. 358, 363 (1970); **Coffin v. United States**, 156 U.S. 432, 453 (1895).

[16] See e.g. **Taylor v. Kentucky**, 436 U.S. 478, 485 (1978).

[17] **Chambers v. Florida**, 309 U.S. 227, 236-237 (1940).

[18] See e.g. **Norris v. Risley**, 918 F.2d 828, 833, n.5 (9th Cir. 1990) (Boochever, J.) (Holding that button-wearing NOW "Task Force" advocates, "anxious for a [rape] conviction," admittedly believing the accused to be guilty even before hearing any evidence, and seeking a far broader and more active role in his trial in order to "make a statement" about his presumed guilt, threatened to overwhelm his ability to get a fair trial). See also **State v. Franklin**, 327 S.E.2d 499, 455 (W.Va. 1985) (MADD activists).

[19] See e.g. Title II, Sec. 204; 18 U.S.C. sec. 3663A (a)(2) ("Justice for Victims" (including mandatory restitution); 18 U.S.C. sec. 3555 ("Notice to Victims"); 18 U.S.C. sec. 1514 ("Civil Action to Restrain Harassment of a Victim or Witness"); 18 U.S.C. sec. 3525 ("Victims Compensation Fund"). See also the numerous state and federal provisions cited and discussed in Professor Henderson's Stanford Law Review article, attached (e.g., at nn. 308, 315, 335, 340, 348, 357, and accompanying text).

[20] See e.g. Hon. Edwin Meese III and Rhett DeHart, "How Washington Subverts Your Local Sheriff," Policy Review (Jan./Feb. 1996).

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