

Testimony of  
**Ms. Roberta Roper**

July 17, 2002

Chairman Leahy and members of the Senate Judiciary Subcommittee on the Constitution: I am Roberta Roper, Co-Chairperson of the National Victims' Constitutional Amendment Network (NVCAN) and Executive Director of the Stephanie Roper Committee and Foundation, Inc. NVCAN is the national coalition of victim advocates, legal scholars and victim service organizations, and the Stephanie Roper Committee and Foundation, Inc., is a Maryland non-profit victim advocacy and service organization bearing our slain daughter's name. Both organizations proudly express their strong support for the constitutional amendment for crime victims' rights as introduced in the Senate by Senators Dianne Feinstein (D-CA) and Jon Kyl (R-AZ).

It is with honor that I come before you today to speak for everyday Americans who place their trust in our system and their dependence on government to do the right thing for justice. Most importantly, I speak for those whose voices can no longer be heard ... our sons, and daughters, spouses, parents, brothers and sisters, friends. While our nation has been justifiably preoccupied with the terrorists attacks of September 11th, these evil acts also awakened the consciousness of America to the reality and consequences of random violence ... realities and consequences every crime victim in America knows ... that by chosen acts of criminal violence, innocent lives are turned upside down and forever changed or tragically ended. This is the important lesson you must remember ... that any one of us can become a victim of crime. Listen to my testimony as a parent, a spouse, a son or daughter. How you would you wish your loved one to be treated by our criminal justice system in the aftermath of crime?

Let us be clear. Providing crime victims with protected rights in our Constitution is not a complicated legal issue. It is about the human rights of American citizens who become victims of criminal violence, and ensuring that these basic human rights to fundamental fairness are protected under the Constitution of the United States. These are rights that every person accused of, or convicted of a crime deserves and enjoys. Yet everyday Americans are appalled and disbelieving to learn that, unlike criminal defendants, they have no similar rights. And that's what this amendment is about ... guaranteeing equal justice for all of us under the law of all of us, the U. S. Constitution.

In announcing his endorsement of the amendment before you, President Bush said that "The protection of victims' rights is one of those rare instances when amending the Constitution is the right thing to do." There are those who say the Constitution is a sacred document that should never be amended. I ask you to remember the wisdom of our founding fathers. The framers of our Constitution understood that the document they were creating would need to change as the needs of society required change. They were creating a "more perfect union," not a perfect one. That wisdom allowed our Constitution to abolish slavery and to give voting rights to women. Those human rights could not be sufficiently protected by state or federal laws. Likewise,

victims' rights cannot be sufficiently protected by state or federal law. This constitutional amendment is necessary to give them protection and balance.

There are those who say we should focus on strengthening existing laws. More than two decades of efforts in securing state and federal laws are evidence of the failure to provide victims with sufficiently protected rights. The laws enacted by this Congress are the best evidence of those failures. And federal laws, no matter how strong, will apply only to victims of federal crimes, not the vast majority of victims. Lawrence Tribe, Tyler Professor of Constitutional Law at Harvard Law School points out that a constitutional amendment is appropriate only when other means are not attainable such as a needed recognition of a basic human right. He believes that the language of this amendment meets that criteria. "The rights in question ... rights of crime victims not to be victimized yet again through the process by which government bodies and officials prosecute, punish, and/or release the accused or convicted offender ... are indisputable basic human rights."

The whole history of our country has taught us that basic human rights must be share the protection of our nation's fundament law ... our Constitution. The language of this amendment has been carefully crafted to preserve the protections of accused or convicted offenders, while enabling victims and survivors of criminal violence to have minimal rights not to be excluded from criminal proceedings that are the most important events in their lives! It will establish a basic national standard which will empower and enable individual states to build upon that foundation.

These rights include timely and reasonable notice of any public proceeding involving the crime and of any release or escape of the accused; to not being excluded from such public proceedings and reasonably to be heard at public release, plea, sentencing, reprieve and pardon proceedings; and to adjudicative decisions that consider the victim's safety, interest in avoiding reasonable delay, and just and timely claims for restitution from the offender.

I speak to the need for this amendment from personal experience, as well as after twenty years of advocacy and service to thousands of crime victims in my home state of Maryland. Like many advocates, the catalyst for advocacy and service was my family's experience with the criminal justice system when our oldest child, our beloved daughter, Stephanie, was kidnaped, brutally raped, tortured and murdered in 1982 by two strangers who came upon her disabled car on a country road near our home. Like countless victims and survivors of that era, we discovered that unlike our daughter's killers, we had no rights to be informed, no rights to attend the trial and no rights to be heard before sentencing. Place yourselves in the unbelievable nightmare we endured. Imagine how you would feel to be shut out of the trial of the accused of your loved one for no good cause. We were subpoenaed as the State's first witnesses, recalled a last family dinner we had with our daughter the night before, and identified a family car our daughter was driving. Did we know the individuals charged? Did we have knowledge of the events that led to our daughter's abduction and murder? Did the State advocate for our right to remain in the courtroom after testifying, or did the judge ask if we there were reasons to sequester us? The answer to all of those questions is no. Rather, the rule on witnesses was invoked, unchallenged and imposed. Instead of hearing the truth and seeing justice imposed, for six weeks we were banished from the most important event of our lives, and made to feel like second-class citizens. Finally, at sentencing, we hoped to use what was then being proclaimed as the first victims' rights law in

Maryland ... by telling the court the consequences of this crime in a victim impact statement. Instead, the defense objected on the grounds that anything I might say was emotional, irrelevant and was probable cause for reversal on appeal. After a lengthy bench conference, the court agreed. While our daughter's convicted killer had unlimited opportunities for himself and others to speak to the court on his behalf, we were silenced. We could not speak for Stephanie.

Like countless other families, then and now, we struggled not only with the devastating effects of the crimes committed against our loved one, but with consequences that were in many ways worse ... being shut out of a criminal justice system we believed in and depended upon. In trying to rebuild our broken lives, the greatest challenge was trying to give hope to four surviving children ... children whom we had taught to respect and trust the criminal justice system that had now failed us! That challenge is forever etched in my mind by the memory of the day one of our sons came home from school, explaining that he could no longer pledge allegiance to the flag with his classmates because "liberty and justice for all" didn't include us.

You may conclude that because this happened twenty years ago, this surely would not happen today. You also could correctly conclude that great progress has been made with the passage of good laws, both on the state and federal level and constitutional amendments passed in 33 states. The sad reality, however, is that victims' rights continue to be ignored and denied. None of the state or federal laws are able to match the constitutionally protected rights of offenders. Studies demonstrate that the system's bias against victims is even more pronounced against racial minorities and the poor, who constitute the largest group of victims of violence. As a result, many victims believe that our criminal justice system is more criminal than just. The Constitutional Amendment proposed by Senators Feinstein and Kyl will ensure that both victims' and defendants' rights are given fullest effect. Neither one will be superior, but both will be given equal consideration. Without a constitutional amendment, crime victims will remain second class citizens in our justice system.

Some Maryland victims and survivors whose rights were violated are here today. One is Dawn Sawyer Walls, whose parents, I might add have dedicated their lives to serving communities; Dawn's father was a police officer for 22 years, and her mother is the Executive Director of Concerns of Police Survivors (COPS). Dawn was 6 months pregnant and the manager of a convenience store when a robber with a sawed off shotgun ordered her to lie face down as he emptied the store's cash drawer. In violation of Maryland laws, Dawn was not notified when a plea agreement was struck. As a result, and in violation of Maryland law, she was not present in court to give a victim impact statement, and was not able to request restitution from the offender. This disposition was characterized as a "good outcome"... and besides, she was told, "you didn't suffer physical injuries." The trauma of this event had a severe financial impact for her young family because she was unable to return to work.

Teresa Baker is also present. When her only son was murdered, she too, fulfilled the victim's requirement to request notification regarding the right to be informed. She was in court when her son's killer pleaded guilty to 2nd degree murder and was sentenced to thirty years. The judge, in fact, stated that he was imposing the maximum sentence; however, no one explained to Teresa that under the terms of an American Bar Association (ABA) plea, the convicted offender would be released in less than three years! She only learned about his release by chance. That painful

discovery led Teresa to ask why she wasn't told the terms of the plea agreement? Didn't she deserve to know the truth of the plea agreement and release?

Cecelia and Dexter Sellman's son was an honor roll high school student when he was shot down and killed by two young men. The Sellmans trusted the criminal justice system and relied on it to bring some justice to their family through restitution from the offender... not for revenge, not to replace their loss, but for some of their out of pocket expenses and to hold the offenders accountable for their actions. The State flatly told Cecelia that they would not request restitution! This is a violation of a right under Maryland law not only for the victim, but is an obligation of the prosecuting attorney. Like the other victims here today, the Sellmans believe that the system their family depended upon failed them.

Sherri Rippeon and John Dobbin also sit behind me. Their experience is a powerful example that demonstrates why this amendment is needed. Two and one half years ago, their infant daughter, Victoria Rose, died of blunt force trauma inflicted by their babysitter's boyfriend. Seeking to ensure compliance with Maryland law regarding their rights to attend the public trial, Sherri and John filed a Crime Victim Notification Request Form. Nevertheless, the trial court excluded them from the courtroom, and even after they filed a pro se Demand for Rights Form, the judge continued to deprive them from observing the trial. They then took remedial action that is provided by Maryland law by filing a leave to appeal to Maryland's Court of Special Appeals. As a result of an (unreported) opinion (1) on July 9, 2002, Sherri and John have now suffered another failure. The Court of Special Appeals says, that on the one hand, the victims are the proper parties and have sought enforcement of their rights in the only way provided under Maryland code, that is by filing for leave to appeal in a separate proceeding. At same time, the court says there can be no effective remedy that they can supply, so therefore, the case should be dismissed as moot! How would a victims' rights amendment have helped them? First of all, history has shown that once a right is in the Constitution, it is applied. Currently, federal courts are not available to enforce Maryland law. But with an amendment and if their rights were not applied, Congress and the States could provide emergency proceedings.

It is important to stress that the proposed constitutional amendment before you has little to do with the punishment of offenders, or increasing or decreasing funding for victim services, but everything to do with how our system of justice treats innocent victims of crime. Certainly, law abiding citizens expect that those who violate the law will be held accountable for their actions; however, treating crime victims with respect and not excluding them from proceedings arising from the crimes against them are separate and distinct issues. Just as those accused or convicted of crimes deserve to be treated justly and fairly, crime victims deserve no less.

And finally, I ask that you listen to the law-abiding citizens of our nation. Look at the people seated behind me. Like your constituents, they will tell you that it is time to approve this victims' rights amendment. When the people have been given a voice, state constitutional amendments have won overwhelming approval in 33 states. In 1994, the Maryland amendment had voter support of 92.5%! Senators Feinstein and Kyl are to be commended for their collaborative, bi-partisan efforts for this amendment. Senate Joint Resolution 35 has the ability to make a significant difference in the lives of so many Americans every year. We ask you to remember that the Constitution belongs to the people ... let the Constitution protect all the people of this nation

with equal justice.

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1 Sherri Rippeon and John Dobbin, Jr. v State of Maryland No. 2554 Unreported in the Court of  
Special Appeals in Maryland, Filed July 9,2002

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