



NACDL Testimony

April 16, 1997

For More Information:

Leslie Hagin, Director of Legislative Affairs
202-872-8688, legis@nacdl.com

Victims' Rights Amendment, S.J. Res. 6

**Statement of Elisabeth Semel
on Behalf of NACDL
Before the United States Senate
Regarding S.J. Res. 6**

**Chairman Hatch, Ranking Member Leahy, and other Honorable Members of the
Committee:**

Thank you for providing me this opportunity to speak on behalf of the members of the National Association of Criminal Defense Lawyers (NACDL) in opposition to S.J. Res. 6.

The 9,000 direct and 30,000 state and local affiliate members of NACDL are private defense attorneys, public defenders, and law professors who have devoted their lives to protecting the provisions of the Constitution and the Bill of Rights concerned with fairness to the individual citizen accused. NACDL's interest in, and special qualifications for understanding the lack of necessity, unintended chaos and impracticalities, and grave dangers posed by S.J. Res 6 are keen.

INTRODUCTION

We are not "anti-victim." As I stated before the Judiciary Committee of the United States House of Representatives last Congress, I have personally had my faith in these provisions tested by my encounter with crime, including the loss of loved ones. *See* attachment. Within the membership of NACDL, there are scores of persons who have also been victims of crime -- who have also had their personal faith in our precious Constitution tested in this way. We agree that victims of crime should be treated with fairness, dignity and respect throughout the criminal justice systems of the nation, state and federal. Indeed, there have been many occasions, for example, when I, as

a criminal defense lawyer, had more friendly contact with the victims of crime than they enjoyed with law enforcement, prosecutors or judges. And now, largely thanks to the victims' rights movement, they are *increasingly* being treated with fairness, dignity and respect by the law enforcement officers, prosecutors and judges with whom they come in contact through the criminal justice system.

No longer can it be said that the legitimate concerns of crime victims go unheeded at either the state or federal level, certainly not by the politicians with the power to effectuate the comprehensive, specific statutory victims' rights and remedies that cover the landscape of both the state and federal systems. Twenty-nine states have amended their own constitutions to guarantee rights to crime victims, and virtually every state has adopted statutes to accomplish the same purpose. No state constitutional amendment has ever been defeated at the polls. Glance down the heading "Victims and Victims' Rights" in the index to the California Penal Code Senator Feinstein and I share, for example, and you will find more than 80 references covering topics as varied as notice of rights, support persons in court, protective orders, special procedures for child victims, prohibition against plea bargains and furnishing victim information to the defense, legal resource centers, "impact" statements, restitution, provisions to be heard on bail and parole release, and AIDS testing for defendants.

The federal code looks quite similar. There is the "victim and Witness Protection Act of 1982," as well as the "Victims of Crime Act of 1984," establishing the Office of Victims of Crime to administer the Crime Victims Fund that provides victim services nationwide. In 1990, Congress passed the "Victims' Rights and Restitution Act," followed in 1994 by the "Victims' Bill of Rights" provisions of the 1994 Omnibus Crime bill. It adopted mandatory restitution and other victims' rights as part of the "Effective Death Penalty and Anti-Terrorism Act of 1996." And just last month, at the special behest of the Oklahoma City bombing victims, Congress rushed in to overturn the trial judge's victim-witness sequestration order in that case by adopting the "Victim Rights Clarification Act." Giving this legislative onslaught still more teeth, in the past ten years nearly \$700 million in grants have been appropriated under the federal victims assistance program.

Simply put, we have never amended the Constitution to provide affirmative entitlements to one class of citizens, from the government and other citizens -- least of all to a class of citizens who are as politically powerful as are crime victims. This proposed "Victims's Rights Amendment" to the federal Constitution is unnecessary, and thus, trivializes the Constitution. It is unwise. *And it is dangerous.* Following are more specific points as to each of these overarching concerns about S.J. Res. 6.

I. A Federal Constitutional Amendment is Unnecessary, and Unwise

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.

In particular, the philosophy reflected in the Bill of Rights that has served us so well for over 200 years, and which is the envy of the free world, is this: "[T]o protect personal liberties from governmental infringement, not to protect private individuals from each other."⁽¹⁾ The fact that many states have seen fit to experiment with constitutional "victim's rights" 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 wreaks havoc upon our national constitutional charter.

As stated above, in 1982, Congress enacted the "Victim and Witness Protection Act." Also that year, the first state constitutional "victim's rights" amendment was passed by the voters in California. Since then, the country has been swept by state and federal legislation, and the passage of 29 state constitutional amendments, solely designed to protect the interests of crime victims. These measures cover the spectrum of the criminal justice system and include, e.g, the right to notice, presence and comment at various pretrial, trial, sentencing, and post-conviction proceedings, access to the prosecution, entitlement to restitution, and the right to be informed about the release of a defendant from custody.

In stark contrast, the citizen accused remains the consummate social and political minority. Particularly when charged with a crime of violence, he often faces the awesome power of the government and a hostile community literally 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 and statutory powers with *constitutional might* gravely weakens the counter-majoritarian check reflected in the Constitution and the Bill of Rights.

The President of the Board of Directors of the Conference of State Court Chief Justices, Iowa Supreme Court Chief Justice Arthur A. McGiverin, recently expressed his concerns about this one-size-fits-all, sweeping *federal* amendment:

"All states have statutory provisions involving victims' rights and 29 states have constitutional provisions, most of which have been enacted recently. What is wrong with the implementation of these laws in the state system that justifies an overriding federal constitutional amendment?"

Also of significant concern to most state courts is the implementation of such an amendment, if ratified. For instance, would we revert to the oversight by the federal district courts reminiscent of federal *habeas corpus* procedures, that were just modified because they were found to be unacceptable?

What remedies will be available for violations of these new federal constitutional rights?

Who will pay the administrative costs of any new federal remedies?

Many other questions will probably arise. I want to emphasize that the states are concerned with victims' rights. The extensive state activity in this area is evidence of that concern. The philosophical debate is whether state and local governments are able to fashion appropriate relief or whether the U.S. Congress should design a "one size fits all" approach."⁽²⁾

II. The False Premise of "Equal Constitutional Rights for Crime Victims": Constitutionally mandated "victim" participation and effective veto power at the *accusatory stage* eviscerates the presumption of innocence as a cornerstone of our system of criminal justice.

The historic "imbalance" in the constitutional scales of criminal justice -- to safeguard the accused -- is a fundamental "check" in America's democratic system of justice. Like all the other rights in the federal Constitution, this is a right *checking against* the otherwise overwhelming, freedom-infringing power of the government, and majority will, over individual, relatively unpopular citizens. This restraint on the power of the government should not be abandoned; not even in favor of the deceptively innocuous, and certainly sympathetic concept of affirmative entitlements for victims of crime.

Opposition to the proposed constitutional amendment comes from a number of respected authorities who are not part of the criminal defense community -- such as Murder Victims Families for Reconciliation, the National Network to End Domestic Violence, and the President-Elect of the American District Attorneys' Association, Staten Island District Attorney William Murphy. All recognize, as does the NOW Legal Defense and Education Fund in its statement on the subject, that:

". . . [T]he position of a survivor of violence can never be equivalent to the position of an individual accused of a crime. The accused -- who must be presumed innocent, and may in fact be innocent -- is at the mercy of the government, and faces losing his or her liberty, property, or even life as a consequence. While the crime victim may already have suffered similarly grievous losses, she is not comparably subjected to state authority. A victims' rights amendment would undermine the presumption of innocence by naming and protecting the victim before a crime is proven. It would also add another party to the prosecution with interests opposed to those of the defendant -- vastly increasing the power of the state and unacceptably diminishing the rights of the accused. Particularly when a jury is involved, elevating the victim's status has great potential for unfair prejudice to the defendant."⁽³⁾

Despite efforts in S.J. Res. 6 to immunize governmental actors in the system from civil suit and appellate court reversals, such an amendment would still usher in very active "victim" involvement, and *effective* veto power over various defense, prosecutorial and judicial decisions at the critically important, *accusatory and trial stages of proceedings*. And as a very real, practical matter, this would frequently overwhelm the accused's right to a fair trial.

III. Who's the Victim? S.J. Res. 6 fails to delineate who is the "victim of a crime" with sufficient particularity to avoid endless litigation in our state and federal, civil and criminal courts.

S.J. Res. 6, which speaks in terms of victims of "a crime of violence" (and other crimes yet to be defined by the federal Congress), will only lead to confusion and conflict among the separate state and federal jurisdictions. The proposal's open invitation to Congress, to add to the offenses covered by the amendment statutorily, is especially hostile to the Republic's fundamental concept of federalism. Given the trend toward the politicization of crime legislation, best exemplified by the "federalizing" of dozens of crimes that were historically left to the states, we might well expect an annual expansion of the list of crimes covered by this one-size-fits-all, over-riding Amendment.⁽⁴⁾

The number of crimes encompassed by S.J. Res. 6 itself remains enormous. For example, the use of the word "violence" in the draft is ambiguous, and will cast a huge and tangled net over state and federal criminal justice systems. Not all jurisdictions define crimes of violence in their penal codes. In some states the term is judicially determined and, most importantly, there is no consistency between the 50 states. Responding to the failure of earlier draft amendments to offer a particularized and workable definition of the term "victim," the Honorable Maryanne Trump Barry, then-Chair of the Federal Judicial Conference's Criminal Justice Committee, wrote to leaders of the Judiciary Committee last year: "this issue is not merely rhetorical"⁽⁵⁾ Indeed not. It is rather a matter of critical importance in terms of the courts' ability to function so as to administer justice in a manner providing meaningful access for *all* users of the system, *including crime victims*.⁽⁶⁾ When state and federal courts are overwhelmed with new federal causes of action, and new federal questions of legal ambiguity in need of resolution, the entire universe of cases is delayed, and real access to justice for all users of the system, including, most tragically, crime victims, is substantially diminished.

Because the term "victim" would be the "key" to a litany of constitutional 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 (the basic question of who may legitimately stand before the court with a cognizable claim), will itself be a highly litigious battleground.

Who is a victim? *Which* victims count? For example, in a homicide case, what relationship must those claiming victim status have to the decedent? Regarding this question of *who is a victim?*, Murder Victims Families for Reconciliation has well-asked:

"Would a battered woman convicted of assaulting her batterer be required to provide financial compensation to the batterer? Would the surviving family members of a murder victim be

considered victims? If so, which family members? What about cases where victims of the same convicted offender disagree on sentencing or release issues? . . . "⁽⁷⁾

When is someone a victim? Under the traditional American system of justice there really is no victim until it is determined that: (a) a crime was committed; and, at least frequently, (b) the defendant is guilty of the crime. But by its sweeping language, S.J. Res. 6 gives complaining witnesses the "victim" label, so that the accused immediately becomes the "victim's" symbolic and practical opposite, "the perpetrator," *at the inception of the criminal justice proceedings -- upon mere accusation.*

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 imbalance of power when the government targets an individual?

All of these issues remain unresolved in S.J. Res. 6, leaving the extraordinary task of sorting out these ambiguities up to the state and federal courts -- to the disadvantage of all court users, in terms of cost and time-efficient access to justice. And the extraordinary systemic operational costs will be borne by a necessary, *constitutionally mandated* increase in federal, state, and local tax revenues.

IV. Victim Entitlements in the Form of a Federal Constitutional Amendment Increase the Risk of Wrongful Conviction.

As has already been highlighted, whenever the government accuses an individual of crime, at stake is the conviction of an innocent person. It is already an all-too-frequent occurrence 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, luckily, 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.⁽⁸⁾

It is no small irony that the only response to the questions raised during the 104th Congress regarding who is a "victim" under the proposed Amendment is a new *proviso* that expressly excludes the wrongfully accused or convicted from the class of victims to be protected. The litany of affirmative constitutional entitlements that would be created by S.J. Res. 6 permits the *private interests* of "victims" to dominate *public* criminal proceedings *at the accusatory stage*. And this gravely increases the likelihood of wrongful convictions.

Moreover, given the numbers of wrongful accusations and convictions, many crime victims of today may well be tomorrow's wrongly accused and/or incarcerated. We need only look as far as

the recent experiences of Richard Jewell to be reminded of the horrific stigma attached to wrongful accusation. And yet his damages -- emotional and financial -- pale in comparison to those suffered by the wrongfully convicted and imprisoned. Congress has a responsibility to reject this, or any other proposal that so undermines the fundamental rights of the accused to due process and a fair trial.

V. A Federal "Victims' Rights" Amendment Would Interfere With the Public's Interest in the Legitimate and Necessary Exercise of Prosecutorial Discretion.

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, the victim. But fundamentally, the conflict in a criminal case is between the government (on behalf of not just a particular victim in the case, but also the entire populous) and the citizen accused. It is not a contest between two private parties. But 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."⁽⁹⁾

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.⁽¹⁰⁾ Affording victims what is realistically tantamount to a veto over plea negotiations, for example, is too often contrary to the public good, which must accommodate a host of important societal interests. It also threatens to overrun the prosecutor's ethical responsibilities, including the prohibition that he or she not pursue a criminal conviction that is not supported by the evidence (no matter how heavily bolstered by victim emotion).

Prosecutors representing the state (and not just a victim) should certainly be sensitive to (but not controlled by) the concerns of an alleged crime victim. Yet, no constitutional amendment can transform an insensitive prosecutor into one who is sensitive.

VI. The Proposed Amendment Interferes with the Independence of the Third Branch of Government and Undermines the Ability of Trial Judges to Administer Criminal Court Proceedings with Fairness and a Reasonable Degree of Efficiency.

S.J. Res. 6 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" forums.

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;⁽¹¹⁾ 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.⁽¹²⁾ The Sixth Amendment requires that our tribunals remain "free of prejudice, passion, excitement and tyrannical power."⁽¹³⁾ Without these safeguards, the presumption of innocence so crucial to a fair trial would be abrogated.

It is judicial independence that *ensures these safeguards*.

Contrary to disclaimers by "victim's rights" advocates, their active 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 such conduct by victims and their supporters can subvert the presumption of innocence, if not barred.⁽¹⁴⁾

Such active involvement by crime victims also threatens to *administratively overwhelm* the state and federal trial courts to such a degree as to subvert their ability to function -- on behalf of all, including crime victims. Doesn't the amendment's enumeration of "victim" participatory rights at all these accusatory and trial stages mean that *indigent victims* are to be likewise entitled to court-appointed counsel, in order to fully and equally exercise these rights? But this would interject another layer of *private party lawyering* at all stages of the *public* criminal trial court process -- a fundamental, costly, time and resource-consuming alteration of the nation's criminal justice system.

VII. A Constitutional Amendment will Create a System of Unfunded Mandates that is an Anathema to the Tenth Amendment.

The costs of the federally mandated notice requirements *alone* are staggering -- without regard to the expenses that will flow from other victim entitlements (e.g., the tax dollar-funded right to counsel for indigent "victims" apparently dictated by the various victim participatory rights enumerated in the proposal). S.J. Res. 6 still mandates, without funding, the expenditure of state tax dollars to enforce numerous federal constitutional benefits. And the open-ended "victim"

label, along with the open-ended number of crimes and proceedings that may be covered by these provisions, surely will cause the tab to state and local governments to escalate dramatically over time.

If the amendment succeeds, Congress would impose upon the states and their citizens, including those many not ratifying an amendment, the astronomical cost of guaranteeing federal benefits to millions of "victims of crime." Among those entitlements is the right to notice of the dates of *no fewer than three* separate proceedings in the trial court -- bail hearing, settlement conference and sentencing. Practically speaking, the "victim" must be notified of each court appearance because at the very least, two of the matters in which alleged "victims" have "standing" to be heard -- release from custody and plea negotiation -- can and often do occur at stages of the case that cannot readily be predicted. Thousands of misdemeanors, including those involving crimes of violence, are settled at arraignment, i.e., first appearance. The defendant is charged, enters a plea and is sentenced, all in one proceeding. Because of last-minute developments, felony crimes of violence are sometimes resolved at motion hearings or other proceedings where a negotiated plea was not otherwise anticipated. Not infrequently, the defendant will be sentenced immediately. The notice requirements of the proposed amendment *alone* would necessitate that cases otherwise capable of being settled quickly and cost-efficiently (indeed, so that other criminal cases can actually be resolved in some semblance of a timely fashion) will have to be continued one or more times, to the compounding delay of all others.

The increased *federal court* workload levels that would be caused by the proposed amendment are also unfunded mandates -- upon the Third Branch . And as discussed above, these unfunded mandates would exacerbate a federal court case-overload that already threatens to bring justice in America to a grinding halt, at least for most individual and business users of the courts, including victims.

VIII. An Empty Promise for Crime Victims, or a Mere Chimera of Governmental Immunity for Violating Victims' Constitutional Rights?

The amendment appears intended to confer a series of government guaranteed benefits upon crime victims. However, S.J. Res. 6 seeks to insulate governmental agencies and representatives from civil liability when they fail to provide notice of proceedings, an opportunity to be heard, a speedy disposition, or other enumerated entitlements. Indeed, it appears that criminal defense lawyers and their clients, the citizens and corporations accused, are the only ones the latest "fix" leaves un-immunized from liability litigation. This is certain to have a chilling, if not freezing impact upon the Sixth Amendment right to zealous defense counsel, and concomitantly the life, liberty and property interests of the individual or business accused.

And yet, despite the language of S.J. Res. 6, it also seems clear the Supreme Court will reject an attempt by Congress like that represented here -- to confer constitutional rights upon the people

of this nation empty of any practically meaningful remedy for violation. By insisting upon a constitutional amendment rather than a more appropriate, much more manageable and efficient statutory vehicle like that proposed by the Federal Courts' Judicial Conference Chair, Judge Trump Barry, and many others, Congress would actually invite federal court determinations of the appropriate remedies for violation of these new constitutional rights and entitlements. A national amendment also invites federal court oversight of state court compliance with the federal courts' view of these rights, entitlements, and appropriate remedies. Should Congress more wisely elect to make some changes statutorily, it can better limit, and, if appropriate over time, revise, the manner in which victims' may assert their interests.

Section 2 of S.J. Res 6 also appears to preclude victims from seeking injunctive and direct appellate relief to actually enforce their constitutional rights. Still, to the extent one intends to create a bar against injunctive and direct appellate relief as broad as the draft's prohibition against suits for money damages, the new language does not achieve that result. For example, under the draft, alleged victims would still have standing to challenge a defendant's release on bail, a negotiated plea between the parties (as distinct from a "charging decision"), or to insist that the court force a case to trial, or a *habeas* petition to "final disposition," without "unreasonable delay." For instance, does the latter empower the "victim" to effectively run the court's docket and determine the time in which a case must go to trial, or by which it is to be "disposed," to the detriment of the readiness of the prosecution and the defendant? It is inevitable that thousands of victims will petition for writs of mandamus or prohibition, insisting that the courts enforce these and other enumerated guarantees because Congress has not cut off those avenues of relief. Thus, the recent revisions to the amendment reflected in S.J. Res. 6 will not significantly diminish the added costs, delays and complexity of litigation about which Congress has been warned in the letters on behalf of scores of the most esteemed law professors in the country; and about which the Committee on Criminal Law of the Federal Courts' Judicial Conference, and the President of the Conference of State Court Chief Justices have cautioned.

CONCLUSION

Sensitivity to the legitimate concerns of crime victims does not require a federal constitutional amendment.

We think the responsible course for national lawmakers is to thoroughly and objectively analyze the various, relatively new experiments in "victims' rights reforms" taking place in the nation's legal "laboratories," i.e., at the state and local level, as well as the results of study and federal financial encouragement *just stepped up* by the Administration in its executive power. Only in this way can Congress determine whether, and to what extent, this is a matter that requires more intervention by the national Congress.

In the event Congress then concludes the federal government should become more involved, it must carefully assess what costs can be borne by already-overburdened state and local coffers, and state and federal courts. In that case, a well-targeted statutory measure provides much quicker relief for crime victims, without opening a Pandora's Box of unintended and unmanageable consequences for the nation's justice system. This limits the intrusion of the federal government into the jurisdiction and powers of the states, in better recognition of Tenth Amendment concerns. And it narrows the range of issues the courts must resolve with regard to *who* is a victim. Moreover, the statutory vehicle allows Congress to provide necessary balance in recognizing the important needs of the average citizen suffering wrongful accusation and conviction.

Thank you again for the opportunity to speak to our profound concerns about S.J. Res. 6. We look forward to assisting the Committee in its efforts to attend to the legitimate concerns of crime victims in any way we can.

Elisabeth Semel
Director and Co-Chair, Legislative Committee
National Association of Criminal Defense Lawyers

Footnotes:

1. 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) (emphasis added here).
2. Administrative Office of the United States Courts, *The Third Branch*, "Head of Chief Justices Clarifies States' Views", at 11 (December 1996).
3. December 10, 1996, Memorandum of National Organization for Women Legal Defense and Education Fund Regarding Proposed Victims' Rights Amendment, at 2-3.
4. *See e.g.*, Hon. Edwin Meese III and Rhett DeHart, "How Washington Subverts Your Local Sheriff," *Policy Review* (Jan./Feb. 1996).
5. Letter of July 16, 1996, to the Judiciary Committee, United States House of Representatives.
6. *See e.g.*, Civil Justice Reform Act of 1990, 28 U.S.C. sec. 471; William H. Rehnquist, *1991 Year-End Report on the Federal Judiciary*, in "The Third Branch" (Administrative Office of the Courts), Jan. 1992, at 2 (remarking on the federal courts' caseload crisis: "Unless actions are taken to reverse current trends, or slow them down considerably . . . [t]he circumstances will

lead judges to have less of a sense of personal responsibility and accountability for the work they produce. Unless checked, the result will be a degradation in the high quality of justice the nation has long expected of the federal courts.").

7. Statement by Murder Victims Families for Reconciliation on the Proposed Victims' Rights Constitutional Amendment, August 30, 1996 (specifically renewed, with regard to S.J. Res. 6, April 15, 1997).

8. See e.g., U.S. Department of Justice, Office of Justice Programs, *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial* (June 1996); Don Terry, "After 18 Years in Prison, 3 Are Cleared of Murders," N.Y. Times (July 3, 1996) (quoting one of the men finally exonerated, Kenneth Adams: "We are victims of this crime too I want people to know that this could happen to anybody and that's a crime.").

9. Dolliver, *supra* note 1, at 90, n. 7.

10. 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).

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

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

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

14. 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).

[Introduction](#) | [Table of Contents](#) | [Home](#)
[Criminal Justice News/Issues](#) | [The Champion Magazine](#)
[About NACDL](#) | [Membership](#) | [Upcoming Events/Education](#)
[Legal Research](#) | [Publications & Tapes](#)
[Members Only](#)

National Association of Criminal Defense Lawyers (NACDL)

1627 K Street NW, Ste. 1200, Washington DC 20006

www.criminaljustice.org / www.nacdl.org

(202) 872-8688 / FAX(202) 331-8269 / assist@nacdl.com

