

**Statement of Steven J. Kelly, Victim**  
**Supporting H.J. Res. 45, the “Victims’ Rights Amendment”**

**BEFORE THE COMMITTEE ON THE JUDICIARY’S SUBCOMMITTEE ON THE CONSTITUTION AND  
CIVIL JUSTICE**

**FRIDAY, MAY 1, 2015, ROOM 2141, RAYBURN HOUSE OFFICE BUILDING**

Mister Chairman, and distinguished members of the Committee:

Such as many families you represent, my family has been thrust into the criminal justice system. My older sister, Mary, was raped and murdered in 1988. Mary was 28 years old and she had two daughters who were just 4 and 5 at the time. She was abducted from a convenience store 1 mile from our family home in Maryland. She was missing for six months. Her skeletal remains were found by construction workers just miles from the farm our family has owned and operated for generations. Police later informed us that the man who abducted Mary pushed her daughter’s car seats out of the way before raping her, killing her and throwing her body in the woods like a bag of garbage. The man who killed my sister was never brought to justice and my family had no legal recourse against the police and prosecutors, who treated us more like criminals than crime victims.

My family’s experience prompted me to get involved with the movement for crime victim rights. In 1994, under the leadership of Roberta Roper—a crime victim survivor and fierce advocate for victims—the people of Maryland overwhelmingly approved a constitutional victim rights amendment, with more than 92 percent in favor.

I became a lawyer, in large part, in the hopes of using Maryland’s robust laws to bring about real change in how victims are treated in the criminal-justice system. Sadly, I have been disappointed by the results. Even my state’s constitutional amendment has proved no match for

a criminal-justice culture that sees victims as outsiders with no meaningful rights. Here are a few examples of cases I have handled that illustrate that point:

- I represent the mother who sat in court and, after giving a victim impact statement, watched a trial judge sentence her son’s killer to 30 years in prison. Three years later, she ran into the convicted criminal in her local grocery store. It was later learned that, after the initial sentencing, the court held a secret reconsideration hearing—for which my client was given no notice—and the sentence was reduced to three years.
- I represent the family of a 51-year-old single mother of two who was killed by a drunk driver. Even though the Defendant pleaded guilty, the prosecutor *refused* to make a request for restitution. When the victim requested restitution directly, the prosecutor opposed the victim’s request and the court denied restitution to the grieving children, both of whom were in college and were left with no means of financial support.
- I represent a 21-year-old waiter who was severely beaten, left with permanent injuries and unable to work for nearly one year. Even though I had entered my appearance as the victim’s attorney, the prosecutor engaged in plea negotiations and reached a deal that prevented my client from seeking restitution. Despite my objection, the court accepted the plea.
- I have similar experiences in other jurisdictions—including this one. I represent more than a dozen victims of voyeurism in a case in the District of Columbia where, despite explicit requirements in the Crime Victim Rights Act, the

prosecutor entered a plea with the defendant and refused to disclose the terms of the plea to the victims.

My experience demonstrates crime victim rights are viewed as a matter of discretion that can be discarded at the whim of prosecutors and judges. I have observed, first-hand, that the same “isms” about which criminal defendants complain—racism, sexism, classism, etc., affect victims equally if not more so. The average victim of crime in Baltimore City, for instance, plays *no* meaningful role in the process. Plea deals are routinely struck at the arraignment stage and entered with no attempt to seek input from the victim and with no opportunity for the victim to present victim impact testimony, to seek restitution or to offer any position on the terms of the plea. Victims are routinely excluded from proceedings at which commissioners or judges make decisions about whether an offender is released pending trial. Victims’ privacy is routinely violated by prosecutors who agree to wide-ranging discovery requests by defense attorneys for medical, school-related and mental-health records.

As it stands, even the whisper of “defendants’ rights” prompts courts and prosecutors to disregard victim rights altogether. Nowhere is this more evident than at sentencing—where the contest is between the rights of a *convicted* criminal and an *innocent* victim. Courts have wide discretion in the type of evidence that judges hear at sentencing and in fashioning the conditions of the sentence.

While courts are liberal in permitting defendants to present endless mitigating testimony, trial judges in the jurisdictions in which I practice severely limit the testimony of victims and are reticent to impose other conditions of sentencing that account for a victim’s request. These same courts routinely deny reasonable requests for restitution—which ask the convicted criminal to pay the victim’s medical bills and other out-of-pocket expenses—upon findings that the

offenders, who often are able to hire expensive criminal-defense attorneys, purportedly lack “the ability to pay.” These rulings impose the costs the offender’s criminal choices on innocent victims.

The way victims are treated leads *directly* to the kinds of situations we have seen in Baltimore City this week. Treating victims as outsiders fosters distrust and creates a wall between the community and the criminal-justice system. Contrastingly, treating victims with dignity and respect and helping victims recover from the effects of the criminal act prevents crime and fosters trust between police, prosecutors and the communities they serve.

As a lawyer and advocate, I have had the great privilege to observe many instances where the system has worked—where a victim’s rights were respected. Based on my observations, I can say with confidence that victim inclusion leads to better outcomes. Prosecutors who take the time to explain the process to victims often find powerful allies who provide vital information that helps make the case against defendants. In addition, appropriately injecting the victim into the trial, and especially the sentencing, puts a human face on what is otherwise a contest between a real, live, defendant and an inanimate “state” or “government.”

Nearly 30 years ago, I made a promise to my nieces as we stood together at the graveside of their 28-year-old mother. I promised them I would always try to honor their mother’s memory. While I continue to honor Mary by standing up in courts nearly every day to fight for the rights of individual crime victims, I know to my core that real change requires this Congress to take the extraordinary step of enshrining crime victim’s rights in the U.S. Constitution.