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## Victims' Rights Amendment

### SUMMARY

President Clinton joined the long list of politicians calling for a constitutional amendment to protect victims' rights. The amendment would also extend to victims' families and could impact the trial and punishment of criminals. Two constitutional experts debate adding a 28th amendment to the U.S. Constitution.



## Transcript

ELIZABETH FARNSWORTH: Now, two law professors with different views on the proposed constitutional amendment: Laurence Tribe of Harvard Law School and Jonathan Turley of George Washington Law School. Thank you both for being with us. Mr. Tribe, you were at the Rose Garden today. Why do you support this amendment?

LAURENCE TRIBE, Harvard Law School: I support it because it would help to fill a void in the federal Constitution. There is now specific protection for the rights of the accused, as there should be, but what happened to Ms. Roper in Maryland is not atypical, that is, when those who are victims and their families try to assert the most minimal human right, the right to see justice done, the right to be heard, the right to know when the person convicted of attacking you is released, they often encounter a kind of stone wall, even in states that have provided legal protection, and they encounter it because, of course, federal law trumps state law.

And federal law, providing as it does, explicit protection for the accused, makes judges quite cautious. They, for example, told another woman in Maryland she couldn't watch the trial of the people who were accused and ultimately convicted of murdering her husband. Why not?

Because the defense said she might be called as a witness. Of course, one doesn't want to take any chance of compromising the rights of the defense. Well, she wasn't called as a witness, and the judge had no pressure under the federal Constitution to explore alternatives, maybe calling her first in order to avoid problems.

ELIZABETH FARNSWORTH: And you think a constitutional amendment is necessary to correct his?

LAURENCE TRIBE: I'm afraid I do. I've been very reluctant to see the Constitution amended. I'm one of those people who thinks it should be amended only in very rare circumstances, but we're dealing here with a fundamental principle of human rights, unlike just a policy preference, and we're dealing with something that isn't just like a wish list, you know, wish the budget to be balanced. We're dealing with a thing that can be written, and it has to be written with care so that it is enforceable in a practical way, without distorting the structure of our government or trampling on other people's rights. So I do think it belongs in our fundamental national law.

ELIZABETH FARNSWORTH: Mr. Turley, you're opposed. Why?

JONATHAN TURLEY, George Washington Law School: Well, I think this is a rare circumstance where we disagree, and I understand that Laurence has been an advocate for restricting amendments, and I respect that, but I disagree.

ELIZABETH FARNSWORTH: You mean an advocate for not having constitutional amendments--

JONATHAN TURLEY: Right.

ELIZABETH FARNSWORTH: Okay.

JONATHAN TURLEY: Restricting the number of amendments. Yeah.

ELIZABETH FARNSWORTH: Okay.

JONATHAN TURLEY: And I disagree that this is a common event. While I'm sympathetic to Ms. Roper, I think it's important to remember that people that oppose this amendment are not anti-victims' rights. And this idea that there are anti-victims judges is something of a legal mythology. Most judges in this country are elected. If you go to most cities, you look at these commercials of judges running and it looks like a DA's campaign. I mean,

this is a very conservative country when it comes to protection of victims. There are 20 states that have these constitutional amendments that are virtually identical to this one.

ELIZABETH FARNSWORTH: Just for a minute, let me interrupt you. What about Roberta Roper's case, what happened there? Why couldn't she be at the trial?

JONATHAN TURLEY: Well, in most cases, the victims can be at the trial, and I think that as Laurence said, and I think it was accurate, that one of the reasons the victims are sometimes prohibited from being in, in the trial is that someone who is likely to give testimony is often kept from witnessing the trial by both parties, by the prosecution or by the defense. It's important that the witness not be influenced. Now that's a painful reality. It's tough to put on a trial. But there's somebody in there who's accused. That person may be innocent--may be guilty.

LAURENCE TRIBE: But, you know, there is one person--I believe deeply in the presumption of innocence, but there is one person in most of these cases who is definitely innocent, and that is the victim or the mother or father of a little child who's been murdered and raped.

And I don't agree with Jonathan that it happens so rarely, but even if it didn't happen often, when you're talking about a fundamental human right, you don't have to count noses. It's a basic principle of having the government treat decently people who ought not to be sort of at the periphery of the system. Just a couple of years before what happened to Ms. Roper occurred I argued a case in the Supreme Court establishing--and happily we won--the basic right of the press and the public to be present at trials.

And that point, I argued in part, that victims too should have a right. It turns out that in many places, victims were treated quite exceptionally even when all of the fears about their testimony being influenced by hearing other witnesses could be dealt with in other ways. The accused--

JONATHAN TURLEY: But--

LAURENCE TRIBE: Let me just add one little point.

JONATHAN TURLEY: Sure.

LAURENCE TRIBE: The accused, after all, is present throughout, has a right to be present throughout, even though the accused may decide to take the stand and tailor his or her testimony to everything heard. So I think the idea that there may be reasons in some exceptional cases not to protect victims is not a reason to keep out of the Constitution this fundamental principle that would balance what is now a system out of balance.

ELIZABETH FARNSWORTH: Let me just interrupt one second. You don't disagree with this, except you don't think it should be a constitutional amendment, is that right?

JONATHAN TURLEY: That's right.

ELIZABETH FARNSWORTH: Okay.

JONATHAN TURLEY: I mean, the threshold question is why. I mean, this amendment really came to us by people asking, why not. We can draft this. This is a great idea. And there's a temptation to say that if these aspirational values that we all believe in are compelling enough, we should turn them into an amendment. There have been 11,000 amendments to the Constitution that have been suggested, 11,000, twenty-seven ultimately ratified. Only 33 went through the House and the Senate. But, you know--

ELIZABETH FARNSWORTH: You think the states can protect this, is that right?

JONATHAN TURLEY: That's right. The--

ELIZABETH FARNSWORTH: The states can legislatively with laws or amendments.

LAURENCE TRIBE: You know, that's the argument that was made--

JONATHAN TURLEY: But, you know, many of the witnesses in Congress testified how successful they were under those states with these protective rights. There's no reason why every victim should not be protected in that way, but this is a state issue. It's a quintessential state issue.

LAURENCE TRIBE: It seems to me, first of all, as long as it's written correctly, it can respect states' rights. Only 20 states have such amendments. Witnesses have said that they do work but the fact is that they believe they've gone about as far as they can through the state process and in any event, if we agree that the principle exists that there's a national value that victims ought not to simply be side-lined and marginalized and not even informed when the person convicted of attacking them is released, then the case for building a national safety net, a national minimum--

JONATHAN TURLEY: Sure.

LAURENCE TRIBE: --is very powerful. Otherwise--you know, people argued during the Warren years why have federal constitutional protection for specific rights of the accused? States can do it. Many state constitutions have. The reason is it's a basic, basic human value, unlike many of the thousands of amendments that are thrown in, into the hopper for purely political reasons.

JONATHAN TURLEY: But that's the point, isn't it? The Constitution is a unique document. It's a document that often protects the people we don't like. It's easy to protect the people we like. It's easy to protect the majoritarian values. I don't--I assume you don't disagree that it's hard to defeat a victims' rights amendment when it's offered in the state. The success rate has been enormous. But people support that.

LAURENCE TRIBE: But when they're passed, they are often overridden by the explicit federal protection.

ELIZABETH FARNSWORTH: Mr. Turley, why shouldn't there be a constitutional amendment? What's the problem? I understand that it's a unique document and you, you only amend it, in your view, very carefully and not very often, but why not in this case? What's the problem?

JONATHAN TURLEY: Because that's part of the sort of structure that's been put forward by the White House and by Congress. Why shouldn't there be? Well, why shouldn't there be any one of a number of things? What happens is that the Constitution becomes an impulse by item. The 104th Congress, this Congress, has suggested 120 amendments ranging from flag burning to victims' rights to school prayer.

ELIZABETH FARNSWORTH: Before you go any further, why do you think this is happening?

JONATHAN TURLEY: I think--

ELIZABETH FARNSWORTH: And now in particular with this amendment.

JONATHAN TURLEY: I think it's happening because we are running out of ways to get tough on crime. You know, every politician is falling over himself to say I'm tougher on crime, I'm taking away the TV, I'm taking away the weight room. I'm hanging them on meat hooks. Now, we have to have a juvenile crime bill that says we've been mollycoddling these, these juveniles, so we're going to put them in the cells with adult criminals. We're running out of options to prove that I'm tougher than the next guy.

ELIZABETH FARNSWORTH: It's about politics basically.

JONATHAN TURLEY: Oh, but the Constitution is a wonderful option for a politician. After all, this is what James Madison helped create, and I'm going to get involved in it. You know the 104th Congress is not exactly the most redeeming example of democratic process. They have the world as their oyster. They can shut down the government. They can foul up any number of laws. They can even sell national parks. All they have to do is keep their hands off of one enclave.

ELIZABETH FARNSWORTH: But on this question, is this about politics, in your view? Is this President Clinton trying to be like Bob Dole?

LAURENCE TRIBE: Well, I think everything, everything in an election years is about politics, but when President Clinton was attorney general and governor of Arkansas, he favored this. And the fact is that talking about the foolishness of the 104th Congress is just changing the subject. This is a fundamental problem. It's a fundamental--

JONATHAN TURLEY: But Laurence--

LAURENCE TRIBE: No, let me finish. You talked about Jonathan-- I want to make one basic point. The idea of solving the crime problem just by taking away the TV sets and hanging them up, as you put it, on meat hooks, misses the point that the ultimate concern of the criminal justice system ought to be with the victim.

That's why we're doing all of this. And it seems to me that even though it might be politically popular and I hope it's popular enough to pass, even though it might be popular to deal directly with the problem of the victim. If we can't deny that it's a fundamental right, that it reflects a national value, that state efforts to protect it will often founder on hypothetical conflicts with federal protections for the accused.

Then I think the case has been made, and it's just not true to say that those who argue for it do so on the back-handed ground that there's no good reason not to do it. They make a compelling argument and starting from the premise that we should amend the Constitution, only very rarely I have, myself, been persuaded by the case for amendments.

ELIZABETH FARNSWORTH: Very briefly.

JONATHAN TURLEY: But this is a problem of whose ox is being gored. While you can't point to this Congress, apparently you're unhappy with state legislators. They're not moving fast enough. When you say they're floundering apparently because they haven't enacted those other 30 states a constitutional amendment.

LAURENCE TRIBE: Because federal law gets in the way.

JONATHAN TURLEY: It hasn't interfered with 20 states.

LAURENCE TRIBE: That's not--

JONATHAN TURLEY: They are fully--

LAURENCE TRIBE: right. That's not right.

JONATHAN TURLEY: --enforceable constitutional rights.

LAURENCE TRIBE: When the states provide these rights, a recent case in New Jersey found the court saying I really can't fully protect it.

ELIZABETH FARNSWORTH: That's all we have time for, gentlemen. We'll come back to it some time. Thank you very much.

LAURENCE TRIBE: Thank you.

JONATHAN TURLEY: Thanks.

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