

## DEVELOPING VICTIMS' RIGHTS LAW: A STUDY OF PRECEDENT AND *DICTA* by Kim Montagriff

The first state constitutional victims' rights were passed in the 1980's. *See, e.g.*, Cal. Const. art. I, § 28 (amended in 1982 to add victims' rights to restitution); Fla. Const. art. I, § 16 (amended in 1988 to add victims' rights); R.I. Const. art. I, § 23 (amended in 1986 to add limited victims' rights). Over twenty years later, the development of victims' rights case law remains in its infancy as courts grapple with the task of outlining the contours of state constitutional and statutory victims' rights. The careful development of this case law is critical to create precedent<sup>1</sup> that advances victims' rights and encourages stability and predictability in the law.

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Adherence to precedent is the cornerstone of judicial decision-making: "It promotes the evenhanded development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). Especially where a court is presented with an issue of first impression – such as the construction of newly enacted constitutional provisions granting

rights to crime victims – courts seek guidance from prior court decisions.

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In most states, a victim's attorney seeking enforcement of state constitutional or statutory rights is likely breaking new ground. As victims' attorneys seek to represent their individual clients' interests, they should be mindful that their state-specific case law may be used – or misused – in victims' rights cases in other jurisdictions. In seeking enforcement of victims' rights, these attorneys must carefully parse through courts' decisions in prior victims' rights cases, seeking arguments and holdings that support their case while vigilantly guarding against the unwarranted extension of negative *dicta*.<sup>2</sup>

This article summarizes a number of key victims' rights cases decided over the past 35 years. In these summaries are each court's use of precedent and *dicta* in resolving the victims' rights issue presented, and recommendations for future litigation by victims' rights attorneys.

### *Misuse of Persuasive Precedent and Dicta*

In 1973, prior to the passage of federal statutory victims' rights, the United States Supreme Court considered whether an unmarried woman could seek to enjoin the prosecutor's office from discriminately applying a statute criminalizing the non-payment of child support by refusing to prosecute fathers of children born to unmarried women. *Linda R.S. v. Richard D.*, 410 U.S. 614 (1972). The Court's narrow holding in *Linda R.S.* was that the victim could not demonstrate a nexus between the prosecutor's alleged discriminatory enforcement of the child support statute and the woman's failure to secure child support payments, and as such, the victim did not have standing to seek the relief she requested. The Court reached this conclusion because even if the criminal statute was equally enforced against fathers of children born to unmarried women, those prosecutions would not necessarily result in the payment of child support.

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At this point in the opinion, the Court had resolved the issue before it. In *dicta*, however, the Court acknowledged the prevailing view that a crime victim cannot compel a criminal prosecution because “a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.” Highlighting the absence of any crime victims’ rights, the Court opined that its analysis might be different where a statute created a legal right, the violation of which would provide standing.

Following the passage of explicit victims’ constitutional and statutory laws, when faced with the question of enforcement of those laws, some courts have selectively quoted the *Linda R.S.* Court’s *dicta* regarding a victim’s lack of interest in a criminal prosecution and ignored the Court’s *dicta* regarding recognizing victim standing pursuant to the creation of new legal rights. This selective use of *dicta* has thwarted the enforcement of victims’ rights law.

The court’s reliance on *dicta* from *Linda R.S.* to unnecessarily vitiate all enforcement of victims’ rights in Massachusetts is illustrative of the misuse of precedent and the abuse of *dicta* . . .

For example, in 1983, Massachusetts passed statutory rights for

victims, including the right to a “prompt disposition.” See MASS. GEN. LAWS ch. 258B, § 3(f). Almost 25 years after *Linda R.S.*, and faced with an explicit law granting a right as suggested by the Court in *Linda R.S.*, the Massachusetts Supreme Court considered whether a crime victim had standing to seek to enforce her right to a prompt disposition. See *Hagen v. Commonwealth*, 722 N.E.2d 32 (Mass. 2002). In 1987, the defendant in *Hagen* was convicted of rape but the execution of his sentence was stayed until early 2001, when the prosecution finally requested revocation of the stay. Citing the victim’s right to a prompt disposition, attorney Wendy Murphy also requested revocation of the stay. The defendant objected to the victim’s motion, claiming she lacked standing, and the trial court sustained the defendant’s objection insofar as the victim’s presence would confer “party status” on the victim.

On appeal, the Massachusetts Supreme Court held that the victim’s right to a prompt disposition did not extend beyond sentencing and certainly did not apply to post-sentencing proceedings. The court’s holding, based on a narrow construction of the right to prompt disposition, was not overly burdensome to victims’ rights in general. Inexplicably, however, the court went on in *dicta* to opine that even if the right did apply to

post-sentencing proceedings, the victim would still lack standing. Citing cases that referenced a victim’s inability to compel a criminal prosecution, relying on *dicta* from *Linda R.S.* as if it was the holding of that case, and ignoring that the victim was not seeking to compel a prosecution, the court explained that creation of victims’ rights did not alter its long-standing jurisprudence that a victim is not a proper party to a criminal proceeding. The court’s reliance on *dicta* from *Linda R.S.* to unnecessarily vitiate all enforcement of victims’ rights in Massachusetts is illustrative of the misuse of precedent and abuse of *dicta* of which victims’ attorneys need to be leery.

### ***Using Persuasive Authority***

Victims’ attorneys are not without favorable precedent at their disposal. The following two cases demonstrate courts’ careful examination of the victim’s interests and proper participatory role in a criminal justice proceeding. These cases should be cited in future victims’ rights cases to establish positive precedent regarding a crime victim’s standing to assert his or her rights.

In *United States v. Doe*, 666 F.2d 43 (4th Cir. 1981), a federal appeals court considered whether it had jurisdiction to entertain the victim’s appeal of a district court’s decision to admit evidence arguably

prohibited by the federal rape shield law, FED. R. CRIM. P. 412. The court first noted that the purpose of the rape shield law was “to protect rape victims from the degrading and embarrassing disclosure of intimate details about their private lives.” (internal quotations omitted).

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The court explained that the victim is the proper champion of her own privacy interests and stated that “the congressional intent embodied in rule 412 will be frustrated if rape victims are not allowed to appeal an erroneous evidentiary ruling . . . ” and seek “to protect their privacy from invasions forbidden by the rule.” The court held, therefore, that it had jurisdiction to hear the victim’s appeal. While this case is binding only in the Fourth Circuit, the court’s analysis of the purpose of rape shield laws and victim standing is persuasive authority in other jurisdictions and should be used accordingly by victims’ rights attorneys nationwide.

Similarly, in a case of first impression following the 1991 passage of the Rights of Victims of Crime

Amendment to the New Jersey Constitution, in *In re K.P.*, 709 A.2d 315 (N.J. Super. Ct. 1997), a New Jersey court considered whether a minor-victim had standing to oppose a newspaper’s motion to open a delinquency proceeding where the juvenile was accused of sexually assaulting the victim. In resolving this case, the court was not sidetracked by the novelty of the issue with which it was presented, and it implicitly rejected the idea that standing in court turns on whether the litigant is a party to the underlying proceeding. Instead, the court reviewed well-established legal principles of standing, seeking to determine whether the victim had a “personal stake in the outcome of the controversy. . . .” (internal quotations omitted). The court found “no question” that the victim would be directly affected if the juvenile proceeding was opened to media coverage, and concluded, therefore, that the victim had standing to oppose the newspaper’s motion. The reasoning of the court in *In re K.P.* is persuasive and victims’ rights attorneys should encourage other jurisdictions to engage in the same standing analysis.

In addition to providing useful persuasive precedent on the appropriate analysis of victim standing, both *Doe* and *In re K.P.* demonstrate that “party status” is not necessary to assert, enforce, or defend victims’ rights. Victims’ attorneys should be regularly distinguishing

between “party status” and standing to establish additional precedent regarding victims’ proper role in the criminal justice process.

### ***Overruling United States Supreme Court Precedent***

In 1987, the United States Supreme Court considered the constitutional effect of the admission of a written victim impact statement (VIS) at a capital sentencing proceeding. *Booth v. Maryland*, 482 U.S. 496 (1987). The VIS at issue in *Booth* “described the personal characteristics of the victims and the emotional impact of the crimes on the family[,]” and “set forth the family members’ opinions and characterizations of the crimes and the defendant.” The Court explained that this information was irrelevant and created an “unacceptable risk that the jury may impose the death penalty in an arbitrary and capricious manner.” In a 5-4 decision, the Court held, therefore, that the statute requiring the admission of a VIS violated the Eighth Amendment’s prohibition of cruel and unusual punishment.

A mere four years later, in 1991, the Court again considered the constitutional effect of the admission of a victim impact statement in *Payne v. Tennessee*, 501 U.S. 808 (1991). Reconsidering its holding in *Booth*, the Court concluded that the Eighth

Amendment did not erect a *per se* bar to the admission of victim impact evidence during a capital sentencing proceeding. According to the Court in *Payne*, there is no constitutional prohibition against admitting evidence concerning a victim's personal characteristics or the impact of the crime on the victim's family or community.

The Court's reversal signaled its approval of the recognition of the unique characteristics of the victim in a capital sentencing proceeding. This holding, based on the federal constitution, is applicable to all state court cases. The decision, however, is also replete with *dicta* about the victim's proper

role as participant in criminal justice proceedings more generally. Victims' attorneys should not only continue to cite the *Payne* Court's holding about the admissibility of victim impact statements at capital sentencing proceedings, but should recognize the utility of the Court's *dicta* in enforcing victims rights beyond those at capital sentencing proceedings.

### ***Development of case law through precedent***

These cases are just a few examples of important moments in the development of victims' rights case law. Victims' attorneys must continue to carefully navigate available

precedent, remembering that a single case can have far reaching effects on the development of victims' rights law and the resulting enforcement of victims' rights nationwide. ■

### **(Footnotes)**

<sup>1</sup>Precedent is a decision of another court that is used as "an example or authority for an identical or similar case afterward arising or a similar question of law." BLACK'S LAW DICTIONARY 1176 (6th ed. 1991).

<sup>2</sup>*Dicta* is merely the "[o]pinions of a judge which do not embody the resolution or determination of the specific case before the court." BLACK'S LAW DICTIONARY 454 (6th ed. 1991). These expressions of opinion "go beyond the facts before the court and therefore are individual views of [the] author of [the] opinion and not binding in subsequent cases as legal precedent." *Id.*