"FEDERALIZING" VICTIMS' RIGHTS TO HOLD STATE COURTS ACCOUNTABLE

by
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Although they've been around for more than twenty years in many states, victims' rights laws have only recently acquired a significant seat at the table of justice.[1] Pro bono legal services are now widely available.[2] Victim care providers and the media have helped make the public more aware of victims' rights laws, and some judges recognize that victims' rights are not mere words on paper but laws that deserve respect.[3]

As victims gain legal voice, opposition forces are growing and new challenges are evolving. Some defense attorneys openly mock victims' rights, as when the lawyer for convicted Massachusetts kidnapper Stephen Fagan invaded the privacy rights of the victims' mother during a sentencing hearing by gratuitously divulging irrelevant personal information.[4] Others are devising new strategies to use the very idea of victims' rights as a tool to disempower victims.[5]

Even certain judges, for political reasons or out of concern for systemic efficiency, simply refuse to give any meaningful weight to victims' legal interests. This is true whether the victim asserts her rights under relatively new

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[1] John W. Gillis & Douglas E. Beloof, *The Next Step for a Maturing Victim Rights Movement: Enforcing Crime Victim Rights in the Courts*, 33 MCGEORGE L. REV. 689, 689−90 (2002).

[2] Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1 (2004).

[3] *See, e.g.*, Hagen v. Commonwealth, 772 N.E.2d 32, 34 (Mass. 2002) (holding that victims may directly and independently address judge to enforce right to "prompt disposition"); United States v. Eight Autos., 356 F. Supp. 2d 223, 226 (E.D.N.Y. 2005) (holding that crime victims have standing, independent of the government's, to intervene in criminal cases to contest any "unreasonable delay" in a federal trial and to appeal unfavorable rulings by way of a writ of mandamus).

[4] Rob Nelson, *Kin Says Fagan Team's Allegations Took Kurth Off Guard*, BOSTON GLOBE, May 31, 1999, at B3.

[5] *In re* Lawrence, 98 P.3d 366, 369 (Or. 2004) (criminal defense attorney cited Oregon's constitutional victims' rights amendment to assert the "right" of a victim to get the prosecutor to dismiss criminal charges against a defendant who was accused of attacking and injuring the victim in front of her children).

"victims' bill of rights" laws[6] or well-settled common law, statutory, and even constitutional principles of privacy and due process.[7]

Similarly, many prosecutors are not taking appropriate steps to deter defense attorneys from violating victims' rights.[8] Nor are they appealing judges' erroneous decisions on victims' rights with enough consistency to make judges worry about ruling against victims. Well-intentioned prosecutors with heavy caseloads have little economic incentive to spend time and resources filing interlocutory appeals on issues that will not significantly affect the integrity of the criminal case. Prosecutors also know that defendants gain an advantage when criminal trials are delayed because witnesses may move away or get worn down and memories and emotions fade. Thus, prosecutors may decline to take interlocutory appeals on behalf of victims' rights to avoid the pitfalls of delay. Some prosecutors refuse to enforce victims' rights for political reasons, even taking affirmative steps to undermine effective enforcement.[9]

Even so-called "victim assistance" organizations are not only failing to zealously stand up for victims' rights, but are also taking steps to cause harm as victims gain independent legal strength. For example, after the Supreme Judicial Court of Massachusetts ruled that victims can independently address a criminal court judge to enforce their right to a "prompt disposition," the Massachusetts Office on Victim Assistance (MOVA) drafted legislation to effectively overturn the ruling.[10] MOVA proposed a change to the Massachusetts "victims' bill of rights" statute that would obligate victims to first seek and obtain permission from the prosecutor before addressing the judge to seek enforcement of their right to a prompt disposition.[11] Even if the prosecutor granted permission to the victim, MOVA's proposal provided that victims should not have a right to a prompt disposition but only a right against

[6] *See Hagen*, 772 N.E.2d at 34 (reversing lower court's ruling that victims do not have a right to be heard in seeking enforcement of "victims' bill of rights" laws).

[7] *See* Memorandum of Law in Opposition to Defendant's Motion for Pretrial Discovery of the Victim's Private, Confidential and/or Privileged Records at 2–4, Commonwealth v. Munkenbeck, No. 2001-237 (Mass. Super. Ct. Mar. 25, 2002) (Without providing notice and hearing rights, the trial judge ordered several third parties to produce whole files of privileged and confidential medical and other private information pertaining to the minor victim as well as her parents.).

[8] *See generally* Wendy J. Murphy, *The Victim Advocacy and Research Group: Serving a Growing Need to Provide Rape Victims with Personal Legal Representation to Protect Privacy Rights and to Fight Gender Bias in the Criminal Justice System*, 11 J. SOC. DISTRESS & HOMELESS, 123 (2001).

[9] *See Hagen*, 772 N.E.2d at 34 (The prosecutor took no steps to enforce victim's right to "prompt disposition" and argued against victim having standing to enforce her rights.); Brief for National Crime Victim Law Institute Amicus Curiae Supporting Petitioner at 3, Cooper v. Cooper, (Alaska Ct. App. Dec. 27, 2004) (No. A-8835) (The prosecutor approved request for unlawful sentence by agreeing that defendant can avoid mandatory "approved" batterers' treatment in violation of victims' constitutional right to be treated with fairness and dignity.).

[10] *Hagen*, 772 N.E.2d at 34.

[11] E-mail from Wendy J. Murphy, Adjunct Professor, New England School of Law, to Massachusetts Governor's Commission Against Sexual Assault and Domestic Violence (Feb. 8, 2005) (on file with author).

"unreasonable delay."[12] Clearly, an affirmative right to "promptness" is far better than a right against "unreasonable delay." Finally, under MOVA's proposed changes, victims would have been limited in what they could say to the court. As it stands now, victims can address the court on any matter relevant to their right to a "prompt disposition," including, for example, asking a judge to set a speedy trial date.[13] MOVA wanted to limit the scope of victims' statements so that victims could only inform a judge as to the "impact" of "unreasonable delay."[14]

As violations of victims' rights become more visible and opposition forces grow, advocates must increase their efforts to ensure that state court judges respect victims' rights. Without some form of oversight, state court judges will take the path of least resistance, which is to give only a meaningless nod to a victim's legal interests.

Ignoring victims' rights affords judges the best protection against reversal on appeal, given that defendants typically complain that any weight on the victim's side of the scale necessarily violates a defendant's fair trial rights. Though such an argument is usually wrong, judges who worry about reversals on appeal can ignore the victim's argument just to play it safe.

A judge has an added incentive to rule against a victim who does not have her own lawyer because unrepresented victims almost never even know they *have* rights. Thus, a judge may think he can violate a victim's rights with impunity because "what the victim doesn't know won't hurt her," and in any case, "nobody will complain."

Even when victims have their own lawyers, many judges ignore victims' rights because they assume victims have no real "standing" to do anything about it if their rights are violated. This idea stems from a narrow application of a United States Supreme Court decision, *Linda R.S. v. Richard D.*,[15] coupled with the fact that victims' rights statutes typically state that the rights listed are "unenforceable."[16] A more careful analysis of these factors would reveal that *Linda R.S.* has nothing to do with victims' rights laws, and the "unenforceability" language in most statutes is limited to enforcement by means of a lawsuit against the state. Injunctive and declaratory remedies remain viable enforcement options and should be utilized. Likewise, judicial review through special writs or their statutory equivalent can and should be sought as most states allow for appeals whenever "cognizable legal interests" can be shown. Thus, even if no specific right of appeal has been created as a matter of rule or statute, a special writ doctrine or analogous statute often exists to provide an avenue of judicial review when no other express opportunity is

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] Linda R.S. v. Richard D., 410 U.S. 614, 624 n.6 (1973) (holding that victims have no cognizable legal interest in the prosecution of another).

[16] Don Siegelman & Courtney W. Tarver, *Victims' Rights in State Constitutions*, 1 EMERGING ISSUES ST. CONST L. 163, 168 (1988).

available.[17] Even with the possibility of judicial review, state court judges may be unconcerned about appeals by victims because, while some victims have access to attorneys at the trial court level, few such attorneys have the skill and experience to do appellate work and fewer still have the necessary funds to write and file proper appellate briefs with enough regularity to cause trial court judges to be concerned about victim appeals. Without at least a fairly predictable possibility of judicial review, state court judges have a disproportionate incentive to rule against victims' rights. This could become an even more substantial problem if state appellate courts fall in line behind jurisdictions that have declined to recognize appellate rights for victims.[18]

This anticipated problem can be remedied by amendments to state victims' rights laws to provide an explicit right of appeal, which is likely to occur in at least some states given Congress's recent enactment of the "Justice for All" Act of 2004, a law that provides for judicial review of victims' rights violations in federal cases and rewards states with federal dollars if they enact similar legislation.[19] In the meantime, and for victims in states with no political will to give victims an opportunity for judicial review, the only real option is to develop mechanisms through which there will at least be a threat that federal courts may provide remedial relief for state court violations of victims' rights.

The separation of powers doctrine and other restraints on federal court authority over states' rights limit the breadth of potential federal court review. However, there can be no doubt that federal courts have the constitutional authority under the supremacy clause to review state court judgments to ensure that they do not violate a victim's federal constitutional rights.[20] The federal constitutional rights most commonly at risk for victims in criminal cases include procedural due process[21] and privacy.[22] Even relatively benign

[17] *See, e.g.*, MASS. GEN. LAWS ANN. ch. 211, § 3 (1989) (providing for appellate review by the Supreme Judicial Court to "prevent errors and abuses" in inferior courts when no other avenue of appeal exists).

[18] *See* Schilling v. Wis. Crime Victims Rights Bd., 692 N.W.2d 623, 632 (Wis. 2005) (Crime victims' constitutional right to be treated with "fairness, dignity and respect" is "a statement of purpose that describes the policies to be promoted by the State and does not provide an enforceable, self-executing right."); People v. Green, 22 Cal. Rptr. 3d 736, 750 (Cal. Ct. App. 2004) (stating that victim as "passive beneficiary" has no right to participate in appellate proceedings where state challenges lawfulness of restitution order).

[19] *See* 18 U.S.C.A. § 3771 (West Supp. 2005); 42 U.S.C.A. § 10603 (West Supp. 2004).

[20] Malloy v. Hogan, 378 U.S. 1, 8−10 (1964) (State constitutional rights can exceed those provided under federal constitutional law, but not to the extent they violate another person's federal constitutional rights.).

[21] Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (Minimum due process means notice and a meaningful right to be heard.).

[22] *See, e.g.,* Daury v. Smith, 842 F.2d 9, 13 (1st Cir. 1988) (stating that the constitutional right to privacy in therapeutic counseling communications is "now well established"); Caesar v. Mountanos, 542 F.2d 1064, 1067−68 (9th Cir. 1976); *In re* August, 1993 Regular Grand Jury, 854 F. Supp. 1375, 1378 (S.D. Ind. 1993); Nat'l Transp. Safety Bd. v. Hollywood Mem'l Hosp., 735 F. Supp. 423, 424 (S.D. Fla. 1990); Haw. Psychiatric Soc'y v. Ariyoshi, 481 F. Supp. 1028, 1039 (D. Haw. 1979); *see also* Crosby v. Reynolds, 763 F. Supp. 666, 668−69 (D. Me. 1991) (citing Roe v. Wade, 410 U.S. 113, 152−54

"private" information may implicate a constitutionally protected privacy interest if it reflects information that reveals a person is seeking medical or mental health care. Public dissemination of such information may impact the victim's reputation and personal integrity.[23] Most rights under "victims' bill of rights" laws will not be seen as falling under general definitions of privacy and due process. However, all rights deemed "liberty interests" are entitled to minimum procedural due process protections, and "liberty interests" include "entitlements" created by state law. One can and should argue that victims' rights laws are "entitlements," and thus are "liberty interests" worthy of the protections afforded by minimum federal procedural due process. Federal law makes clear that the right to be heard applies to any individual who faces the forced deprivation of a constitutionally protected liberty interest.[24]

If a state legislature expressly enacts a statute giving crime victims a "right," such as a right to a "prompt disposition" of their case, advocates should argue that this is a protected liberty interest because it was created in the context of a broad set of rights whose purpose is to provide victims a meaningful role in the criminal justice system. In Massachusetts, the legislature wrote that such rights are "basic and fundamental" and that victims "shall be afforded [such] rights to the greatest extent possible."[25] This strong language focused on "rights" reflects an intent to create a liberty interest worthy of procedural due process protection.

A victim's specific right to a "prompt disposition" is particularly worthy of status as a liberty interest, for the notion of a "prompt disposition" reflects society's interest in promoting peace of mind and feelings of safety and repose for crime victims. That a victim may suffer emotional anxiety, fear, and related harm as a direct result of delay in the final resolution of her case is strong evidence that some victims' rights laws deserve respect as liberty interests, at

(1973)); Doe v. Bolton, 410 U.S. 179, 189 (1973); Griswold v. Connecticut, 381 U.S. 479, 484−85 (1965); Whalen v. Roe, 429 U.S. 589, 599−600 (1977); Planned Parenthood League of Mass., Inc. v. Blake, 631 N.E.2d 985, 992 (Mass. 1994); Commonwealth v. Tripolone, 681 N.E.2d 1216, 1218 (Mass. 1997). *See generally* Wendy J. Murphy, *Minimizing the Likelihood of Discovery of Victims' Counseling Records and Other Personal Information in Criminal Cases, Massachusetts Gives a Nod to a Constitutional Right to Confidentiality*, 32 NEW ENG. L. REV. 983 (1998).

[23] Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971) (An individual is constitutionally entitled to procedural due process "where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him."). *Cf.* Sterling v. Borough of Minersville, 232 F.3d 190, 192−93, 196−97 (3d Cir. 2000) (stating that police threat to disclose sexual orientation of individual to his family violated constitutional right to privacy sufficient to justify cause of action under § 1983); *see also* Doe v. Town of Plymouth, 825 F. Supp. 1102, 1107−08 (D. Mass. 1993).

[24] Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950); *Mathews*, 424 U.S. at 333; Aime v. Commonwealth, 611 N.E.2d 204, 209−10 (Mass. 1993); Opinion of the Justices to the Senate, 668 N.E.2d 738, 753−54 (Mass. 1996); Roe v. Farwell, 999 F. Supp. 174, 195 (D. Mass. 1998) ("A protected liberty or property interest devolves from either the Due Process Clause of the United States Constitution or the laws of the state." (citing Sandin v. Conner, 515 U.S. 472, 483−84 (1995) and Wolff v. McDonnell, 418 U.S. 539, 558−60 (1974)).

[25] MASS. GEN. LAWS ANN. ch. 258B, § 3 (2004).

least where the underlying goal is to promote the physical and psychological safety and well-being of victims. Courts have found liberty interests in somewhat analogous situations. In *Doe v. Attorney General*, the Supreme Judicial Court of Massachusetts held that a constitutionally protected "liberty" interest exists under Part 1, Article XII of the Massachusetts Constitution because of the registration and public notification provisions of the statute commonly referred to as the "Sex Offender Registry Law."[26] Though a different type of "liberty" interest, it is significant that the court found a constitutionally protected interest in avoiding public disclosure of information about convicted sex offenders even though the conviction occurs in a public forum so that "most, if not all, the information . . . is available from other public sources" and even though "one does not have a constitutional right to privacy in information that is readily available."[27] The Court reasoned that the public availability of private information "does not dispose of the . . . claim that [a convicted sex offender's] constitutionally protected privacy interests are violated" because their home addresses would be divulged in the registry and "the disclosure of a home address presents particular privacy concerns."[28]

Despite the somewhat weak nature of the "liberty" interest accorded convicted sex offenders, the *Doe* court concluded that the interest was worthy of substantial procedural due process protections—individualized determination of risk and specific findings—beyond mere notice and hearing rights.[29] If convicted sex offenders may claim such a high degree of "liberty" in their publicly available records of conviction, then victims of crime should be seen as having a "liberty" interest in an explicit statutory "prompt disposition" right worthy of, at least, the right to be heard.

Victims also have a liberty interest under a second, independent section of the federal Due Process Clause: the right to meaningful access to judicial protection. An illustration of this principle is *Bounds v. Smith*, which held that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law."[30] This right is a logical "consequence of due process."[31] In cases such as *Ingraham v. Wright*, *Parratt v. Taylor*, and *Hudson v. Palmer*, the United States Supreme Court relied on the availability of a judicial proceeding by which an injured party could seek relief to hold that the failure to conduct preliminary administrative hearings did not

[26] Doe v. Attorney Gen., 686 N.E.2d 1007, 1014 (Mass. 1997).

[27] *Id.* at 1012.

[28] *Id.* (citing United States Dep't of Def. v. Fed. Labor Relations Auth., 510 U.S. 487, 501 (1994)).

[29] *Id.* at 1014.

[30] *See* Bounds v. Smith, 430 U.S. 817, 828 (1977); *see also* Lewis v. Casey, 518 U.S. 343, 350 (1996) (reviewing "right of access to the courts"); Cacicio v. Sec'y of Pub. Safety, 665 N.E.2d 85, 91 (Mass. 1996) (discussing "constitutional right of access to the courts").

[31] Murray v. Giarratano, 492 U.S. 1, 11 n.6 (1989) (plurality opinion) (citing Procunier v. Martinez, 416 U.S. 396, 419 (1974)).

violate due process.[32] This reflects an apparent willingness on the part of the Supreme Court to hold that access to the courts is guaranteed by the Due Process Clause. As Professor Laurence Tribe has observed, "the more the Court relies on the availability of state judicial relief as a basis for concluding that due process has been accorded, . . . the stronger will be the argument that access to such relief is independently presupposed by the due process clause."[33] According to Professor Tribe, the Supreme Court's cases effectively recognize meaningful access to judicial protection as a "separate strand" of due process doctrine.[34] Just as convicted criminals may assert a fundamental constitutional right of "access to the courts" to seek enforcement of their rights, so may crime victims.

Many states have also granted their citizens the right to certain remedies in the judicial process. For example, the Certain Remedies Clause in the Massachusetts Constitution provides:

Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrong which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.[35]

Under the first sentence of this clause, individuals are guaranteed "a certain remedy" for any "injury" or "wrong" that might be committed.[36] If a victim has suffered a violation of her right to a "prompt disposition," she is entitled to seek a remedy. To be sure, the legislature is free to create or abolish various rights without violating the Certain Remedies Clause.[37] But once a right is established, a court may not deny all remedies for vindication of that right.[38]

Under the second sentence of this clause, individuals are entitled "to obtain right and justice . . . promptly, and without delay."[39] This sentence confers on defendants a right to a speedy trial,[40] and a right to a speedy conclusion of the appellate process.[41] Crime victims, no less than criminal defendants, are entitled to the same protections, and nothing in the Certain Remedies Clause suggests otherwise. If it exists, advocates must identify and

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[32] Ingraham v. Wright, 430 U.S. 651 (1977); Parratt v. Taylor, 451 U.S. 527 (1981); Hudson v. Palmer, 468 U.S. 517 (1984).

[33] LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW §§ 10-18 (2d ed. 1988).

[34] *Id.*

[35] MASS. CONST. pt. 1, art. XI.

[36] *Id.*

[37] *See, e.g.,* Decker v. Black & Decker Mfg. Co., 449 N.E.2d 641, 647 (Mass. 1983).

[38] *See* Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803) (stating that "where there is a legal right, there is also a legal remedy"); Gabriel v. Borowy, 85 N.E.2d 435, 438 (Mass. 1949) ("Where a statutory right is conferred upon a class of individuals as distinguished from the public at large but no remedy is provided by the statute for the enforcement of the right, the right may be asserted by any appropriate common law remedy that is available. Otherwise, the right would be useless and illusory.").

[39] MASS. CONST. pt. 1, art. XI.

[40] Commonwealth v. Hanley, 149 N.E.2d 608, 610−11 (Mass. 1958).

[41] Bishop v. Commonwealth, 225 N.E.2d 345, 346 (Mass. 1967).

utilize the Certain Remedies provisions in their state constitutions to argue that victims' rights statutes are "liberty interests," because if a liberty interest is at stake, minimum procedural due process requirements entitle the victim to notice of her rights and a meaningful opportunity to be heard.[42] If a victim is denied these rights at the criminal trial court level, she should file appropriate appeals within the state court system. If these are unsuccessful, she should have an opportunity to seek review in federal court to ensure that the state court decisions have demonstrated proper respect for federal constitutional law principles.

To increase the likelihood that a federal court will even consider correcting an error of federal constitutional dimension made by a state court judge, victims' attorneys must protect the record by describing with precision the federal constitutional interest at stake and the nature of the judge's erroneous ruling. For example:

The victim's constitutional right to privacy in her confidential counseling records has been violated or is at risk of being violated because the judge denied the victim's right to a meaningful hearing by ordering production of the records during a hearing at which the victim was not present and about which the victim had not been notified.[43]

Too often, victim attorneys advance only policy arguments and cite only the plain language of victims' rights statutes. This is inadequate legal representation. Victim lawyers should identify and argue the underlying constitutional principles and object to the process itself if legitimate questions are raised about the constitutional propriety of the system's handling of victims' rights matters from the trial court level up to, and including, any review by appellate courts.

Victims' rights lawyers must take advantage of the constitutional restraint imposed on state courts not only by federal law, but also by the very nature of a balanced federal democracy. The independence of states and respect for states' rights are important, as is the authority of states to interpret their own constitutions to provide even better individual rights for their citizens than the minimum rights guaranteed by the federal constitution. But when state courts overstep their independence and interpret their statutory laws or even their own constitutions in a manner that violates victims' federal constitutional rights, the balance of power is threatened. To protect against this imbalance, federal courts should be granted jurisdiction over unconstitutional state court judgments. Congress can and should enact such a law, as it did in the Terri Schiavo case, to procedurally open a door to federal courts so that victims can seek review—without the constitutional problems in the Schiavo matter attendant to enacting a law to benefit only one person.[44] Such a procedural federal law would be similar to the rules that allow criminal defendants convicted in state court

[42] Mathews v. Eldridge, 424 U.S. 319, 333 (1976).

[43] Daury v. Smith, 842 F.2d 9, 13 (1st Cir. 1988) (stating that the constitutional right to privacy in therapeutic counseling communications is "now well established").

[44] Relief of the Parents of Theresa Marie Schiavo, Pub. L. No. 109-3, 119 Stat. 15 (2005).

proceedings to seek habeas corpus review in federal court. Habeas corpus proceedings allow federal judges to make sure that state court judges are not violating a defendant's constitutional rights.[45] Victim lawyers should also consider filing a § 1983 legal action in federal court against a state appellate court if a state court ruling violates the federal constitution. While a state appellate court is immune to a lawsuit for money damages, it is possible to sue a state court to obtain injunctive or declaratory relief under § 1983.[46]

Until Congress enacts such a law, victim lawyers should routinely file petitions for certiorari with the United States Supreme Court citing the federal constitutional doctrines outlined above. As this option is discretionary with the court, it will prove largely unsuccessful given the small percentage of cases the Supreme Court agrees to review, but a regular and systematic effort by victim lawyers to inform the Supreme Court that victims are not receiving due process when their rights under "victims' bill of rights" laws are at stake, and that victims' federal constitutional privacy rights are frequently violated with impunity by state court judges, will at least start to call attention to the systemic problems experienced by crime victims in state court proceedings. In time, if state courts continue to violate victims' rights, the data reflected in numerous certiorari petitions will either provoke the Supreme Court to grant review or will serve as the basis for large scale reform, perhaps reinvigorating efforts to create federal constitutional rights for crime victims.

For now, victim lawyers must do what they can to think and advocate creatively to inject a federal perspective into every state court proceeding involving victims' rights. By "federalizing" advocacy for crime victims, victims' rights lawyers greatly increase the likelihood that state court judges will give proper weight to the rights and interests of crime victims. In a collegial yet competitive federal/state legal system, state court judges will want to avoid even a small risk that a federal court might one day write an opinion showcasing a state court judge's ruling on a victims' rights issue as the model example of how NOT to run a civilized criminal justice system.

[45] 28 U.S.C. § 2254 (2000).
[46] 42 U.S.C. § 1983 (2000).