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Next Step for a Maturing Victim Rights Movement: Enforcing Crime Victim Rights in the Courts

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The Next Step for a Maturing Victim Rights Movement: Enforcing Crime Victim Rights in the Courts

John W. Gillis* and Douglas E. Beloof**

TABLE OF CONTENTS

I. INTRODUCTION	689
II. THE COST OF THE LACK OF LEGAL ADVOCATES TO ENFORCE VICTIMS' RIGHTS.....	691
III. BARRIERS WITHIN THE CRIMINAL PROCESS TO VICTIMS' RIGHTS ENFORCEMENT	693
A. <i>Breaking Down Barriers: The Critical Role of the Trial Judge</i>	693
B. <i>Breaking Down Barriers: Prosecutors and the Enforcement of Victims' Rights</i>	695
IV. IT IS TIME TO BRING IN THE LAWYERS.....	696
A. <i>The Failure of Legal Education to Produce Lawyers Educated in Crime Victim Law</i>	697
B. <i>The Need for Continuing Legal Education</i>	698
V. THE PROBLEM OF PAYING LAWYERS	698
A. <i>The Inadequacy of Tort Suits as Enforcement of Victims' Rights</i>	699
B. <i>Some Movement Towards Remunerating Attorneys Who Enforce Victims' Rights</i>	700
1. <i>The Role of the Office for Victims of Crime</i>	700
2. <i>The Role of the National Crime Victim Law Institute</i>	701
VI. CONCLUSION.....	702

I. INTRODUCTION

The modern Crime Victims' Rights Movement began thirty years ago. Built on common law tradition that was once inclusive of crime victims in the criminal process,¹ the Crime Victims' Rights Movement (CVR Movement) has been one

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of the most successful civil liberties movements of recent times. Identified as a movement combining aspects of the general civil rights movement, the general victim law movement, the women's movement, and the law and order lobby, the CVR Movement cuts across conventionally drawn political lines.² The modern history of victims' rights can be traced back to the founding of the first victim assistance programs in the United States. Aid for Victims of Crime in Missouri opened its doors in 1972, along with two other programs: the Bay Area Women Against Rape in San Francisco, and the Washington, D.C. Rape Crisis Center.³ Collectively, these three programs helped launch the victims' right movement. The federal government voiced its support for victims' rights in 1982, when the Final Report of President Ronald Reagan's Task Force on Victims of Crime Final Report was published.⁴ This Final Report consists of sixty-eight recommendations to law enforcement officials, prosecutors, judges, clergy members, mental health providers, and people from other disciplines on ways to improve their responses to victims.⁵

Since 1982, thousands of federal and state statutes governing the rights and interests of crime victims have been enacted, and thirty-two states have amended their constitutions to guarantee basic rights for crime victims.⁶ These provisions include the right to be informed of hearings, trial dates, and the status of their case; the right to be heard at sentencing and parole hearings through victim impact statements; and the right to receive restitution from convicted offenders. The CVR Movement has been so successful that on April 16, 2002, President Bush announced his support for the proposed Federal Crime Victims' Rights Amendment.⁷

In the context of rights for crime victims in the criminal process, law development should be a cycle of enacted victim legislation leading to enforcement in the courts. Once the courts rule, the legislation should be evaluated to determine whether the right is effective. If the legislation is not effective, the cycle should begin again—back to the legislative drawing board to revise the

1. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 127-28 (1998) (Stevens, J., concurring); ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 96 (J.P. Mayer ed., Doubleday & Company, Inc. 1969) (1838).

2. Andrew J. Karmen, *Who's Against Victims' Rights? The Nature of the Opposition to Pro-Victim Initiatives in Criminal Justice*, 8 ST. JOHN'S J. LEGAL COMMENT 157, 159-60 (1992).

3. Aid for Victims of Crime, Inc., at <http://www.stlouis.missouri.org/avci/> (last visited Nov. 2, 2002) (copy on file with the *McGeorge Law Review*); Bay Area Women Against Rape, at <http://www.survivorship.org/html/bawar.html> (last visited Nov. 2, 2002) (copy on file with the *McGeorge Law Review*); *History of the D.C. Rape Crisis Center*, at <http://www.bookcase.com/DCRCC/history.htm> (last visited Nov. 2, 2002) (copy on file with the *McGeorge Law Review*).

4. PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME, FINAL REPORT (Dec. 1982).

5. *Id.*

6. Douglas Evan Beloof, *The Third Model of Criminal Process: The Victim Participation Model*, 99 UTAHL. REV. 289, app. at 328-29 (1999).

7. Eric Lichtblau, *The Nation Victims' Bill Gets Backing Politics: Bush and Ashcroft Give Rights' Advocates Key Support*, L.A. TIMES, Apr. 17, 2002, at A10. The Amendment's bipartisan sponsors are Senators Diane Feinstein (Democrat) of California and Jon Kyl (Republican) of Arizona.

right and make it meaningful and enforceable. The courts will again test the revised legislation for effectiveness. Another evaluation takes place, and the cycle continues until the right and remedy are meaningful.

To be successful, any rights movement must mature to the point where the promulgated civil rights are defended by lawyers and ultimately interpreted and enforced in appellate court rulings. Enacted civil liberties for crime victims are only as meaningful as the ability to enforce these rights in court. In the formative years of our country, Justice Marshall recognized that, “[w]here a specific duty is assigned by law, and individual rights depend upon performance of that duty, it seems equally clear, that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy.”⁸ A victim’s right is meaningless if there is no remedy for a violation of it.

Even after the successful enactment of victims’ rights laws, those rights remain at a critical developmental stage. Meaningful development of victims’ rights in the United States requires that both the victims’ statutory and state constitutional rights be tested for viability in the courts. Before the civil rights of victims in the criminal process can effectively be enforced by litigation, several barriers to judicial enforcement must be removed. The two most significant barriers to victims’ rights compliance addressed in this essay are: (1) the structural procedural problems that prevent challenges to rights violations; and (2) the lack of legal advocates for crime victims. From the unique vantage points of the co-authors, several significant issues are identified as potential barriers to enlisting civil rights attorneys in enforcement of victims’ rights. The barriers include the lack of legal education in victim law and the sparse or non-existent financial remuneration to victims’ lawyers. Without lawyers to pursue the rights of victims, courts are unable to participate in the development of crime victim law and remedies.

II. THE COST OF THE LACK OF LEGAL ADVOCATES TO ENFORCE VICTIMS’ RIGHTS

Co-author Professor Douglas Beloof asked the McGeorge School of Law’s Victim Resource Center volunteers if they could identify any lawyer enforcing victims’ rights in the state of California, the most populous state in the union. Not a single lawyer was identified. As a result of the dearth of lawyers trained in this field, few victims’ rights cases are litigated at the trial level, and even fewer cases make it to the appellate courts. Consequently, only educated guesses can be made about the meaning and enforceability of victims’ rights. Moreover, without appellate court opinions, there is no meaningful opportunity to amend and thereby perfect legislation. Naturally, only a few cases have been litigated. These cases have

8. *Marbury v. Madison*, 5 U.S. 137, 166 (1803).

been scattered throughout the country. As a result, there are remarkably few significant opinions involving victims' rights.

The lack of victims' rights attorneys results not only in limited enforcement of victims' rights, it also results in a lack of adequate victim advocacy. In the few victims' rights cases that do make it to the appellate court, there is typically no legal advocate for the victim. The only parties to the appeal are the defendants and the state, who do not usually adequately defend the rights of victims. The lack of legal advocates significantly reduces the chance that a victim's position will be sufficiently briefed or that the law supporting the right will be fully developed. Appellate and trial courts should consider asking attorneys familiar with victims' rights to brief the victims' positions. Typically, only with the participation of these lawyers will courts have the benefit of a thorough briefing that supports the victims' position.

John Gillis, co-author of this essay and Director of the Federal Office for Victims of Crime (OVC), has conducted crime victim roundtable meetings around the nation to listen to crime victims' concerns. In these meetings, the message was loud and clear: victims' rights are frequently violated and enforcement is needed. Co-author Professor Beloof enforces victims' rights through impact litigation around the country in his role as Director of the National Crime Victim Law Institute (NCVLI). NCVLI has also identified the critical need for rights enforcement. In case after case, NCVLI litigates the denial of rights to crime victims by government agencies and government actors.

Cases presented to OVC and NCVLI by victims and advocates illustrate the serious and cruel repercussions that stem from a lack of enforcement. For example, a rape victim, in her pursuit for justice, overcame her fears and provided solid testimony resulting in the conviction of her attacker. The defendant was convicted and sentenced, but over a decade later he is yet to serve any time in jail despite the victim's right to "prompt disposition" of her case.⁹ The case was brought by a victims' rights attorney. Another example is a case in which a crime victim was not allowed to be present during court proceedings and did not get an opportunity to make an impact statement despite an unqualified state constitutional right to engage in this conduct. In contrast, the offender was allowed to be present throughout the trial of the case and speak at sentencing.¹⁰ A victims' rights attorney appealed the trial court's error. A final example is the case of an attempted homicide victim forced to wait two years between the conviction and sentencing of the defendant. The victim's state constitutional right to proceedings without unreasonable delay was ignored until it was enforced by a victims' rights

9. See *Hagen v. Commonwealth*, 772 N.E.2d 32, 35 (Mass. 2002) (noting that the prosecutor opposed the victim's position).

10. See *Rippeon v. Maryland*, Ct. Special App. Docket No. 2554 (argued and pending opinion 2002) (stating that the prosecutor opposed the victim's position).

attorney.¹¹ In all of these cases the victims' rights attorneys became aware of the violation long after the violation occurred. To varying degrees, the above case scenarios may leave victims exposed and unprotected against subsequent victimization—whether by their initial offender or by the legal system.

The anecdotal information gathered from the victims in the OVC round table meetings and from NCVLI cases is independently corroborated by a 1997 survey.¹² This survey revealed that a large percentage of victims do not receive proper notification of their rights, much less the opportunity to exercise these rights.¹³ Victims' rights laws are enacted to protect victims in a variety of situations. However, largely due to a lack of legal advocates victims' rights laws are not systematically enforced.

III. BARRIERS WITHIN THE CRIMINAL PROCESS TO VICTIMS' RIGHTS ENFORCEMENT

Typically, the only way to meaningfully enforce victims' rights is in the criminal case. There are barriers to rights enforcement in the procedures of the criminal courts. Several challenges arise in enforcing victims' rights because of the pre-existing structure of the criminal process. One such challenge is temporal because the criminal process moves rapidly. A rights violation may take place in a pretrial, trial, or sentencing hearing, and the opportunity to enforce the right in that hearing may be brief. Because the victim does not have an attorney, the opportunity to enforce the right may be missed. Furthermore, timely enforcement is needed because the defendant's right not to be exposed to double jeopardy may eliminate any future remedy. Because a victim is not typically represented at the time the violation occurs, the victim often will not know what the right is, when or how to exercise the right, or that an attorney can represent them. If the victim's right conflicts with the position of the public prosecutor, the unwillingness of the prosecutor to defend the right leaves the victim as a pro se person in a complex and intimidating procedural system. Even if the victim were comfortable enough to pursue the right pro se, it is unlikely that he or she would be as effective as an attorney.

A. *Breaking Down Barriers: The Critical Role of the Trial Judge*

The nature of the criminal process and the narrow time available for rights enforcement makes the role of the trial court judge critical. While courts act as a

11. *Arizona v. Rivas*, Maricopa County Arizona (Case No. 1-CA-CR01-0681, CR95-11-372 (1995)) (the prosecutor supported the victim's position).

12. National Victim Center, *Comparison of White and Non-White Crime Victim Responses Regarding Victims' Rights* (June 5, 1997), reprinted in part in DOUGLAS E. BELOOF, *VICTIMS IN CRIMINAL PROCEDURE* (1999).

13. *Id.*

check on the failure of public prosecutors to comply with victims' rights, the trial court does not act as a check on itself. The appellate courts have the authority to overrule the trial court's denial or misinterpretation of victims' rights. If the trial court fails to comply with a victims' right and the prosecutor is uninterested in enforcing the right, a pro se victim is likely to assume the trial judge is correct on the law. Pro se victims are unlikely to accurately identify a violation of a right if the trial court states that it is complying with the law. Pro se victims do not have the skill to lay the foundation for an appropriate record on review. As a result, the opportunity to enforce the right is lost. This result is unfair to victims because other parties to a criminal case are represented in court by an attorney who understands the legal options resulting from an adverse ruling.

For these reasons, victims need the opportunity to hire counsel or find pro bono legal assistance. Court rules should be promulgated requiring courts to advise victims that the court has denied the right or interpreted the victim's right in a particular way and that the victim can contact legal counsel to contest the ruling. To aid expeditious judicial administration of criminal matters, courts should require objections to victims' rights to be litigated before trial. For example, a defendant's or prosecutor's objection to the victim's right to attend the trial should be determined at a pretrial hearing. The victim would be notified of the hearing and of the fact that one of the parties sought to challenge his or her right to attend. The victim could then seek legal assistance for enforcement of the right. Pretrial rulings allow an opportunity for victims to prepare and obtain legal counsel.

Requiring prosecutor certification is another practical and simple solution for courts to ensure compliance with victims' rights. Judges should require prosecutors to certify that victims have been notified of and understand their rights. When victims are present in court, the court should be required to advise them of their rights. These procedures are mandated by statute in Indiana:

As a part of the recommendation submitted to the court, the prosecuting attorney must certify that he has offered to show the proposed recommendation to the victims of the felony, if any, and that they have been offered an opportunity to present their opinion of the recommendation to the prosecuting attorney and the court.

A victim present at sentencing in a felony or misdemeanor case shall be advised by the court of a victim's right to make a statement concerning the crime and the sentence. The court shall also offer the victim, if present, an opportunity to make a statement concerning the crime and the sentence.¹⁴

14. IND. CODE ANN. § 35-35-3-5(a), (b) (West 1998).

Courts in other states could readily achieve the same procedure utilized in Indiana's statute by court rule. Furthermore, courts could create a written form that the prosecutor must fill out and sign at critical stages. This form would advise the court that the victim was informed of his or her rights, whether or not the victim wished to exercise these rights, and whether the prosecutor and the victim are aligned in the exercise of such rights. Because misrepresentations by prosecutors to the court are serious matters that can lead to ethical discipline, the representations are likely to be accurate. When prosecutors fail to comply with these rights, courts can order them to comply before moving on to the next phase of the proceedings.

Trial court judges should be given continuing judicial education to better understand victims' rights and the basis of these rights. In addition to learning victim rights' law, courts should be educated about ways to enforce the rights. For example, through their inherent authority, courts can appoint attorneys to act as officers of the court and represent crime victims on a pro bono basis. Indeed, before the advent of government subsidized criminal defenders, this is how many criminal defendants obtained lawyers.

B. Breaking Down Barriers: Prosecutors and the Enforcement of Victims' Rights

One approach to enforcement would be for prosecutors to consistently enforce victims' rights. However, this is unrealistic. Prosecutors represent the people of their state, not the individual crime victim. When the interests of the prosecutor and victim merge, it may be a perfectly adequate enforcement solution to allow the prosecutor to litigate the rights violation. Some states explicitly give the prosecutor authority to enforce victims' rights.¹⁵ However, because conflicts between victims and prosecutors are commonplace, prosecutorial enforcement alone is inadequate. Furthermore, in some states, prosecutors may be precluded from representing the victim so the victim may be the only one with standing to enforce his or her rights.¹⁶

Because the public prosecutor may have a conflict with the victim, the prosecutor, unless required to do so, is unlikely to advise the victim to seek pro bono legal help to challenge a rights violation. At first blush, a potential solution would be for a victim advocate to advise the victim that his or her rights may have been violated and that legal counsel should be sought. Unfortunately, victim advocates are unlikely to so advise victims because they work for the public prosecutor's office. Thus, victim advocates have conflicting loyalties between the

15. See, e.g., ALA. CODE § 15-23-83 (Michie 1995); OHIO REV. CODE ANN. § 2930.19 (Anderson 2001); TEX. CONST. art. I, § 30 (Vernon 1997).

16. Peggy M. Tobolowsky, *Victim Participation in the Criminal Justice Process: Fifteen Years After the President's Task Force on Victims of Crime*, 25 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 21, 21-23, 95-102 (1999).

prosecutor who employs them and the victim. One casualty resulting from this conflict may be the enforcement of victims' rights.

There are several partial solutions to the conflict problem. One partial solution, adopted by Arizona in the form of a court rule, requires prosecutors to advise victims to consult independent counsel concerning his or her rights whenever there is a conflict. "In the event of any conflict of interest between the state or any other prosecutorial entity and the wishes of the victim, the prosecutor shall have the responsibility to direct the victim to the appropriate legal referral, legal assistance or legal aid agency. . . ." ¹⁷ This requirement should extend to victim advocates as well. However, this solution is not perfect because a victim, unable to identify a conflict, is relying on the prosecutor's office to identify it.

Another potential solution is found in the emerging Office of Victim Advocates (OVA), which presently exist in only a few states. ¹⁸ So far, only the Connecticut OVA actively defends victims' rights in litigation. ¹⁹ The OVAs in other states do not possess the authority to litigate, and, as a result their effectiveness is quite limited. Even if an OVA litigates, the defense of a victim's right may, in certain circumstances, require the OVA to take a position adverse to the state's Attorney General. This raises a question regarding the structure of government: does the state Attorney General, as the ultimate legal representative of the state, have the authority to direct the OVA not to defend a victim's right in a particular case? If the ultimate answer is "yes," the OVA will not have the ability to meaningfully defend victims' rights when these rights conflict with state interests.

IV. IT IS TIME TO BRING IN THE LAWYERS

Overall, what emerges is a victims' rights movement that has made remarkable progress in enacting laws with only marginal progress in clarification, compliance, or enforcement of these rights in litigation. It is time to bring in the lawyers to ensure progress. To enable the third branch of government to meaningfully contribute to the healthy development of crime victims' laws there must be more cases brought in appellate courts, and victims' lawyers must participate in these appeals. The appellate courts must encourage briefing on behalf of the victim. In the meantime, a larger pool of qualified attorneys is needed.

17. ARIZ. REV. STAT. ANN. R. CRIM. P. 39(c)(3) (West 1998).

18. Interview with James Papillo, Director, Connecticut OVA (June 20, 2002) (notes on file with the author).

19. *Id.*

A. *The Failure of Legal Education to Produce Lawyers Educated in Crime Victim Law*

The failure of legal education to produce lawyers with any knowledge of crime victim law is a substantial barrier to enforcement of victims' rights. The course "*Victims in Criminal Procedure*" is presently taught in only a few law schools, and victim law is not significantly addressed in any other existing criminal procedure casebook. As a result, year after year law students who wish to practice criminal or civil rights law graduate from law schools around the nation with no awareness that the victim field within criminal procedure exists. As a result, few young lawyers with training in victim law are available to crime victims.

While unfortunate, the failure of legal academia to educate students about one of the most successful and dynamic civil rights movements of the last several decades is understandable. An indirect effect of the Warren Court, which aggressively extended federal constitutional law to the states, was that law school criminal procedure courses became almost exclusively about the federal constitution. Because federal constitutional law proscribes the boundaries of procedures within which states can formulate procedure, it does have relevance in the states. Because the only criminal law rights in the United States Constitution are defendants' rights, these are the only rights typically taught in law school. In trial procedure casebooks the focus is on the Federal Rules of Criminal Procedure. The difference in legal academia's distinction between a Supreme Court ruling which instantly dictates the nature of federal constitutional rights for the entire country and the incremental, albeit prolific, state-by-state development of victim statutes and state constitutional amendments is profound. Victims' rights are off the academic radar screen.

Unlike the expansion of criminal defendants' rights by the Warren Court, which was an expansion dictated from the United States Supreme Court to state jurisdictions, the victims' rights movement is a populist movement most vigorous in the states. The CVR Movement has accomplished quite a bit. To date there have been thirty-two state constitutional amendments and hundreds of statutes enacted. While there are many similarities among the states in the types of laws enacted, the courts have not, to any significant degree, fleshed out enacted legislation in case law. Court interpretation of victims' rights and court development of procedural and substantive remedies remain in an embryonic stage. The central reason for the dearth of case law is the lack of lawyers to enforce and ensure executive and judicial branch compliance with victims' rights. Appellate courts can only rule on cases brought to them, and without lawyers to bring these cases there are no victims' rights cases for the courts to interpret.

While not the most readily available solution, one certain way to achieve education in crime victim law would be the enactment of the federal Crime Victims' Rights Amendment. The Amendment would provide the top-down

imposition of rights by the Constitution, and ultimately the United States Supreme Court, that garners the attention of criminal procedure professors. Another solution to the inattention academics pay to crime victims' rights is for state bar examiners to include these rights on the state bar exam. Many law schools are attuned to the need to provide students the academic content they need to pass the bar. Inclusion of crime victims' rights would provide pressure on schools to offer courses in victim law or, at a minimum, to supplement existing criminal procedure courses. Finally, lawyers with familiarity in victims' rights law could approach the curriculum committees of law schools and request to teach the course *Victims in Criminal Procedure* as an adjunct faculty member. Student interest is an important component of a successful effort to have the course taught. Lawyers can contact student associations involved in criminal law and women's issues to garner support. The fact that the course is a permanent part of the curriculum at several law schools may provide security to the curriculum committee. The existence of the casebook *Victims in Criminal Procedure*²⁰ also provides assurance that the course will have appropriate structure and context.

B. The Need for Continuing Legal Education

Law school courses alone are not enough. There is also a need for continuing legal education in crime victims' rights for current lawyers, who are potential legal advocates for crime victims, and for judges, who will rule on these issues.

Continuing legal education should be provided to prosecutors because they are often in a position to enforce victims' rights. They are often present at critical procedural stages and are capable of objecting to victims' rights violations in court. However, prosecutors represent the public, not the victim, and they are under no obligation to enforce the victim's right. Nevertheless, prosecutors frequently have an interest in ensuring compliance with victims' rights. Prosecutors may represent victims on an important rights issue because they believe it is the right thing to do, are defending a conviction, or are seeking a perceived advantage for the state in a trial proceeding. The potential for effective advocacy by prosecutors is great enough that continuing legal education about victims' rights should be readily available.

V. THE PROBLEM OF PAYING LAWYERS

Lawyers must eat. For a variety of reasons, enforcement of victims' rights in criminal courts is unlikely to be very remunerative. Absent a wealthy victim, there is no financial incentive for lawyers to enforce victims' rights.

20. BELOOF, *supra* note 12.

A. *The Inadequacy of Tort Suits as Enforcement of Victims' Rights*

There are two main types of tort causes of action that are available to crime victims. These causes of action are statutory civil rights actions and personal injury suits. However, these causes of action are not very helpful in enforcing victims' rights.

In other contexts, statutory civil rights violations by the government can result in civil damages and attorney's fees. Such remuneration provides incentive for attorneys to pursue government violations of rights. However, the vast majority of victims' rights laws face a restriction barring recovery for violation of victims' rights.²¹ Even if such civil damages were available, the nature of victims' rights violations is much harder to quantify than other damages. For example, damages for failing to allow a victim to speak at sentencing are harder to quantify than damages for an assault by police. Moreover, there is no liability if the law, in statute or case law, does not clearly proscribe the act. Once again, the absence of court interpretation of victims' rights stands in the way of progress, even in those few states where a civil rights action is available to the victim.

Another civil law option is for the victim to bring a civil personal injury suit against the perpetrator. But these suits are not really about enforcement of victims' rights in the criminal process. Instead, these suits seek to recover monetary damages from the defendant for the harm caused by the criminal act itself. Virtually all victims' rights violations are government violations; therefore, seeking money damages from the defendant does not address rights enforcement in the criminal process. Moreover, in the vast number of cases the defendant has no assets to attract the interest of a civil lawyer. Many of these lawyers make a living by taking a percentage of assets after a successful civil verdict. There has been some effort to get civil tort lawyers to enforce victims' rights in criminal court.²² However, few courts have identified that ethical problems may exist for an attorney representing the victim in tort and simultaneously enforcing the right in the criminal courts. This conflict exists because a civil advantage may be indirectly obtained by representation of a victim in the related criminal case.²³ Thus, a civil lawyer cannot comfortably enforce victims' rights in the criminal process because an ethical conflict of interest may exist. As a result, the best remaining option is to enforce victims' rights in the criminal case itself immediately after the rights violation.

Presently, only the state and the defendant have state-paid attorneys in criminal cases. As a result, victims' attorneys typically take the case on a pro bono basis. However, there is room for optimism that the pool of victim lawyers will expand because of increasing pressure from state bars for attorneys to

21. *Id.*

22. National Crime Victim Bar Association, at <http://www.victimbar.org> (last visited Nov. 2, 2002) (copy on file with the *McGeorge Law Review*).

23. See, e.g., *Cantrell v. Commonwealth*, 329 S.E.2d 22, 28 (Va. 1985).

engage in pro bono work. In the experience of NCVLI, large law firms are open to the idea of adopting the defense of crime victims' rights as their pro bono work.

B. Some Movement Towards Remunerating Attorneys Who Enforce Victims' Rights

1. The Role of the Office for Victims of Crime

To successfully address the challenges of the present, OVC has returned to the principles that successfully guided it in the past: reaching out and listening to the voices of the victims. Through one such initiative, co-author Professor Gillis personally conducted a series of Victims' Roundtable Discussions at various sites across the nation, inviting victims, victim survivors, and grassroots victim advocates, to discuss their needs, concerns, and ideas for furthering the progress of victims' rights and services. OVC plans to continue the exchange of ideas and information within the victims' rights field. The findings and recommendations of these roundtables will help guide the efforts and focus of OVC in the coming years. From the onset of the Victims' Roundtable Discussions, OVC was very encouraged by the victims' interest and responsiveness. Victims are voicing their fears, needs, and frustrations as they struggle to mend their lives after being victimized. Roundtable attendees shared the positive and negative aspects of their criminal justice system experiences. OVC also heard some frustrations voiced from various victims, victim advocates, and service providers. One frustration raised is the perceived lack of continuity among state legal provisions on victims' issues. Indeed, while victims' rights have been enacted in every state, all too often crime victims are left without adequate legal remedies to enforce their rights when they are violated. This particular barrier is a source of considerable frustration for victims and their advocates.

OVC published the 2002 Discretionary Program Plan, which reflects its commitment to giving communities access to the tools and resources they need to help themselves.²⁴ The Program Plan is organized according to five global challenges that were set forth in the 1998 OVC report, *New Directions from the Field: Victims' Rights and Services for the 21st Century*, a publication rooted in feedback collected from the victim service field.²⁵ The first of these five global challenges is "[t]o enact and enforce consistent, fundamental rights for crime victims in federal, state, juvenile, military, tribal justice systems, and administrative

24. U.S. DEP'T OF JUSTICE, OFFICE FOR VICTIMS OF CRIME, FISCAL YEAR 2002 DISCRETIONARY PROGRAM PLAN (2002), available at <http://www.ojp.usdoj.gov/ovc/fund/2002programplan/505705.pdf>.

25. U.S. DEP'T OF JUSTICE, *NEW DIRECTIONS FROM THE FIELD: VICTIMS RIGHTS AND SERVICES FOR THE 21ST CENTURY* vii (1998).

proceedings.”²⁶ To meet this victims’ rights challenge, several key projects will be implemented beginning in 2002.

OVC provides leadership in several projects designed to improve legal advocacy and compliance with victims’ rights. In one landmark project, NCVLI and the State and Federal Demonstration Program will allow OVC to support NCVLI as a national model and provide legal assistance to victims asserting their statutory and constitutional rights. This project is of prime significance for OVC, and it anticipates that it will have a multi-year span. Anticipated objectives include: developing a planning and implementation guide targeting attorneys and others in the legal field, replicating the national model in several states, and supporting access to continuing education via the National Alliance of Victim Rights Lawyers. Funding priority within this project will be given to states that have passed constitutional amendments affording rights to victims. This project will have far-reaching effects as it offers crime victim lawyers resources to better serve their clients.

Another program included in OVC’s 2002 Program Plan is the Victims’ Rights Education Project. This project focuses on the development of informational and educational materials offering details and explanations on the rights available to crime victims. The project’s basis lies in the realization that citizens and victims of crime often do not understand the nature and extent of their legal rights. Before we can successfully implement victims’ rights laws, crime victims must be made aware of what these rights are, both at the state and federal levels. To address this awareness gap, OVC plans to support a consortium of victims’ rights organizations whose mandate is to provide education and outreach about crime victims’ rights. A series of interviews with victims’ rights groups around the country will serve as the basis for the development of educational brochures and other training materials and the implementation of a public education campaign targeting crime victims and the general public.

2. The Role of the National Crime Victim Law Institute

Located at Lewis and Clark Law School in Portland, Oregon, NCVLI is an educational organization dedicated to promoting a fair and balanced criminal justice system through legal education, scholarship, information resources, and legal advocacy. NCVLI holds an annual conference to train crime victim lawyers and others. The conference brings together victims’ rights litigators and educators to network and provide ongoing legal education and training. Through its Appellate Legal Clinic, NCVLI engages in victim impact litigation nationwide in the related areas of victims’ rights and anti-violence against women. NCVLI provides legal support to victims’ lawyers and to state-based legal advocacy organizations. NCVLI is also home to the National Alliance of Victims’ Rights

26. *Id.* at viii.

Attorneys, an association of lawyers dedicated to the enhancement of victims' civil liberties.

With the generous assistance of OVC in a cooperative agreement, NCVLI will undertake the State and Federal Demonstration Project (Project). The Project embarks into a cutting edge area in an effort to serve the legal needs of crime victims. Over a period of five years, this Project will establish sites for legal services to crime victims. In so doing, the Project fills a void for services to crime victims. NCVLI will work in cooperation with OVC to develop the instrument and target eligible states for the demonstration project. Education, technical assistance material, and personnel will be established at NCVLI to develop and deliver training and technical assistance to the states selected as demonstration sites.

There are several potential funding sources that should follow the lead of OVC and begin providing funding for victims' rights attorneys. State sources include Victim Compensation programs, state Victims of Crime Act (VOCA) funding administrators, and Legal Aid. Presently, state victim compensation programs fund services like funerals, psychological treatment, and medical services. Because compensation programs are concerned with the welfare of victims, they should also fund attorneys to defend victims' rights. Richard Pompelio of the New Jersey Crime Victim Compensation Commission is exploring the idea. The California Compensation program is considering using attorneys to ensure the payment of restitution to victims. Even though state VOCA funding may properly be used for legal services to enforce victims' rights, few do so. VOCA funds presently pay for legal services in Arizona²⁷ and New Jersey.²⁸ Finally, Legal Aid services should encompass the defense of victims' rights. Presently, the Stephanie Roper Foundation in Maryland receives Legal Aid funds for the representation of crime victims.²⁹

VI. CONCLUSION

There is no denying that the enactment of crime victim laws is the result of unrelenting promotion of victims' rights by grassroots advocates and organizations. Today, legal advocates must ensure that these grassroots investments yield far-reaching returns and that victims' rights laws achieve their potential through consistent and systematic enforcement. This challenge can be met with individual and collective efforts. Moving forward, victims' rights will become meaningful

27. Interview with Stacy Klick, Director, Victims Legal Clinic, Arizona State University Law School (June 2002) (notes on file with the author).

28. Telephone interview with Richard Pompelio, Former Director, New Jersey Crime Victim Center (May 20, 2002) (notes on file with the author).

29. Interview with Steve Kelley, Former Director, Stephanie Rope Foundation (June 26, 2002) (notes on file with the author).

as attorneys become educated, forge strategic linkages, develop necessary resources, litigate cases, and improve legislation.

As we look to the future of crime victims' rights in America, there is no doubt that crime victim attorneys are in a unique position. These attorneys hold the keys to opening the doors of justice for many crime victims. Based on the prevalence of victims' rights violations, it is apparent that attorneys have many opportunities to ensure the compliance and enforcement of victims' rights. Attorneys can set precedent simply by taking these laws off the shelves and breathing life into them through legal advocacy. By engaging in this work, attorneys will join in the noble tradition of devoting their skills and time in the defense of civil liberties.
