

Polyvictims: Victims' Rights Enforcement as a Tool to Mitigate "Secondary Victimization" in the Criminal Justice System¹

INDEX

- I. "Secondary Victimization" and Polyvictims
- II. Victims' Rights Enforcement as a Tool to Mitigate "Secondary Victimization"
- III. Conclusion

Persons who experience "polyvictimization"—multiple victimizations of different types²—share many of the same concerns as other victims when accessing justice and seeking to recover from their victimization. But it is important for practitioners who work with polyvictims to recognize that this group of victims may experience these shared concerns in a different or heightened fashion, as well as face challenges unique to their status. This is true, in part, because polyvictims as a class are especially vulnerable to mental and physical health repercussions as a result of their victimization.³ As a result, if polyvictims experience revictimization at the hands of the criminal justice system⁴—often referred to as "secondary trauma" or "secondary victimization"⁵—they may experience significant trauma symptoms.

Securing more consistent enforcement of polyvictims' rights may help improve the victims' experiences with the legal process, and thereby mitigate the victims' experience of secondary trauma and further the proper administration of justice. Therefore, it is important for practitioners to be prepared to address the challenges that their victim-clients may face when interacting with the criminal justice system.

I. "Secondary Victimization" and Polyvictims

In the aftermath of crime, participation in the criminal justice system can be beneficial for crime victims.⁶ But for some victims, interaction with the criminal justice system—through contact with law enforcement, defense attorneys, prosecutors, judges and other legal system personnel and processes—can cause secondary victimization,⁷ which has been associated with increased posttraumatic stress symptoms and other physical and mental distress.⁸ Secondary victimization can cause victims to feel frustrated with and alienated from the criminal justice system;⁹ it can also reduce the victims' "self-esteem, faith in the future, trust in the legal system, and faith in a just world."¹⁰

External factors that influence a victim's experience with the criminal justice system, which in turn may lead to increased (or decreased) mental and physical well-being, include: (1) the manner in which the victims are treated throughout the criminal justice process;¹¹ and (2) the amount of control that the victims are given as well as the extent to which they are able to participate within the system.¹² Victims who feel that they have been treated fairly and afforded their rights tend to experience less secondary victimization, and they have greater respect for and satisfaction with the justice system.¹³

Conversely, victims who feel they have been treated unfairly—e.g., confronted with victim-blaming or biased attitudes, behaviors and practices, faced with disbelief, forced to endure unnecessary delays, left uninformed, or denied the opportunity to exercise their rights—report experiencing more trauma symptoms.¹⁴ These victims are more likely to feel that they have been harmed by the legal system.¹⁵

Polyvictims are likely to have increased contacts with the criminal justice system, generating more opportunities to experience system-based victimization. Also, the consequences of secondary victimization may be amplified for polyvictims because research shows that they tend to experience higher general levels of physical and psychological distress—including injuries, illness, anger, depression, anxiety, substance abuse disorder, and posttraumatic stress disorder.¹⁶ Given this evidence, it is critical that practitioners who work with polyvictims take steps to mitigate the consequences of past secondary victimization and work to prevent further system-based revictimization.

II. Victims' Rights Enforcement as a Tool to Mitigate "Secondary Victimization"

Although the specific victims' rights guaranteed to victims across the nation vary, every state, the federal government, and the District of Columbia have enacted statutory and rule-based protections for victims.¹⁷ In addition, more than thirty states have adopted constitutional victims' rights.¹⁸ Common victims' rights include: the right to protection; the right to notice; the right to be heard; the right to be present; the right to privacy; the right to be treated with dignity, fairness, and respect; the right to confer with the prosecution; and the right to restitution.¹⁹

Despite the prevalence of victims' rights nationally, studies suggest that victims who are afforded these rights on paper, only to be denied them, are more likely to have a negative experience with the criminal justice system than they would have if no victims' rights existed.²⁰ It stands to reason, therefore, that consistent enforcement of victims' rights would help serve the goals of minimizing secondary victimization, increasing victim satisfaction with the legal process, and furthering the proper administration of justice. For these reasons, victims' rights can be a valuable tool to assist polyvictims with participating in criminal justice proceedings to the extent they

desire.

A. General victims' rights tips for practitioners representing polyvictims.

At the outset, it may be helpful for practitioners to discuss with the polyvictim the role of a victims' rights attorney and how he or she might assist the polyvictim, particularly if the polyvictim did not previously have the benefit of legal counsel. Past experiences, especially those that resulted in secondary victimization, may make polyvictims more reluctant than other victims to participate in criminal justice proceedings or assert their victims' rights, particularly if their rights were not afforded or enforced previously.²¹

B. Consider requesting accommodations.

Polyvictims may benefit when practitioners think creatively about accommodations to request on the victims' behalf. Although statutory or rule-based provisions explicitly addressing accommodations may be useful, victims' rights may provide a separate basis for requesting accommodations that can assist victims with more easily accessing the criminal justice system and participating in the process to the extent they desire. Among the rights to invoke that may support motions for accommodations are the rights to protection,²² to be treated with fairness, dignity, and respect,²³ and to due process.²⁴ Further, practitioners should consider requesting a wide range of accommodations—including presence of support persons, electronic means to facilitate the polyvictims' exercise of the right to be present or heard, and the use of facility dogs during testimony—to help polyvictims participate in the criminal justice proceedings and assert their rights more effectively, while reducing the risk of secondary victimization.²⁵

C. Anticipate privacy concerns.

Privacy is often a paramount concern for crime victims, and polyvictims may have heightened concerns about protecting private information and records. Information and records relating to prior victimizations or services received following a prior victimization—as well as other private information—may be sought by defendants or the prosecution pretrial, during trial, and post-conviction.²⁶

Practitioners need to prepare polyvictims in advance for the possibility that a party may subpoena such records and be ready to file motions to quash,²⁷ if the victim chooses to oppose disclosure of the information.²⁸ Victims can often invoke their rights to

privacy,²⁹ to refuse defense-initiated discovery requests,³⁰ and to protection,³¹ among others, in support of motions to quash such discovery requests. To further protect victims' privacy, practitioners may also wish to discuss the use of pseudonyms or initials instead of the victims' names in court documents.³²

D. Prepare for restitution requests.

Restitution serves many purposes, including helping to ensure that the victim is not saddled with the financial consequences of the offender's unlawful conduct.³³ Not only may restitution be crucial to supporting a victim's recovery, but it may also be necessary to ensure the victim's financial health.

As such, it is important to think broadly when composing restitution requests, and polyvictims in particular may have incurred additional or different expenses when compared to those of other victims. But if the expenses requested are in an amount or of a type likely to be perceived by the court or by the prosecutor as being out of the ordinary, it can be helpful to have an expert educate the court by providing information regarding the need for these resources, in addition to having the victim's attorney make legal arguments in support of the requested restitution. Under some circumstances, polyvictims may also face challenges in establishing that the offenders are the legal cause of their losses. In the coming months, NCVLI will dedicate a Bulletin exclusively to addressing challenges faced by polyvictims when seeking restitution in the full amount of their losses—including challenges related to establishing legal causation.

III. Conclusion

Polyvictims share many of the same concerns as other victims, but recognizing that this class of victims may experience these same concerns in a different or heightened fashion, as well as face some unique challenges when interacting with the criminal justice system—and preparing to address these challenges—is of great importance to ensuring victim access to justice. Additionally, more widespread recognition of secondary victimization and its impact on victims, including polyvictims, may help facilitate the adoption of better practices and more consistent enforcement of victims' rights, while increasing victims' satisfaction with the criminal justice process and improving victims' faith in the legal system.

¹ Although this *Bulletin* refers to the crime victim's interactions with the criminal justice system, the discussion applies equally to interactions with other justice systems, including juvenile, civil, military, immigration, and administrative.

² See generally David Finkelhor et al., *Polyvictimization: Children's Exposure to Multiple Types of Violence, Crime, and Abuse*, U.S. Dep't of J., Office of Justice Programs, OJJDP Juv. Just. Bulletin 1-4 (Oct. 2011) (hereinafter "OJJDP Bull.") (defining "polyvictimization" as "having experienced multiple victimizations of different kinds, such as sexual abuse, physical abuse, bullying, and exposure to family violence"; identifying studies that examined polyvictimization experienced by an individual over a period of one year versus a lifetime; and observing the lack of consensus in the field regarding the minimum number of different types of victimizations that one must experience to qualify as a polyvictim); see also Jessica M. Richmond, et al., *Polyvictimization, Childhood Victimization, and Psychological Distress in College Women*, 14 Child Maltreatment 127, 127-28 (2009) (referring to "polyvictimization" as "high cumulative levels" of multiple categories of victimization and examining the mental health impact of 34 types of victimization that fall within six categories); Ann N. Elliott, et al., *Childhood Victimization, Poly-Victimization, and Adjustment to College in Women*, 14 Child Maltreatment 330, 331 (2009) (observing that studies that have examined exposure to multiple categories of victimization vary in the terminology used, with "poly-victimization" used to "describe children's cumulative exposure to multiple forms of victimization," "multi-type maltreatment" used to describe "the coexistence of one or more of the following . . . : sexual abuse, physical abuse, psychological maltreatment, neglect, and witnessing family violence," and "cumulative adversity" used to "describe lifetime trauma experience that is 'indexed by a count of lifetime exposure to a wide array of potentially traumatic events'"). To date, research on polyvictimization focuses predominately on the impact of childhood victimization. See, e.g., *id.* For purposes of this *Bulletin*, the term "polyvictims" refers generally to all persons who have experienced polyvictimization at any time during their lifetime.

³ See, e.g., Finkelhor, et al., OJJDP Bull., *supra* note 2, at 7; Finkelhor, et al., *Lifetime Assessment of Poly-victimization in a National Sample of Children and Youth*, 33 Child Abuse & Neglect 403, 404 (2009).

⁴ See, e.g., Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. of Traumatic Stress 159, 159 (2003) (referring to the potential for victims to experience “revictimization” by the criminal justice system).

⁵ See, e.g., Pamela Tontodonato & Edna Erez, *Crime, Punishment, and Victim Distress*, 3 Int’l R. of Victimology 33, 34 (1994) (defining “secondary victimization” as “the wounds suffered by victims when they come in contact with the criminal justice system as complainants or witnesses”); U.N. Office for Drug Control & Crime Prevention, *Handbook on Justice for Victims* 9 (1999), available at <http://www.uncjin.org/Standards/9857854.pdf> (defining “secondary victimization” as “victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim”); see also Malini Laxminarayan, *Procedural Justice and Psychological Effects of Criminal Proceedings: The Moderating Effect of Offense Type*, 25 Soc. Just. Research 390, 392 (2012) (describing “secondary victimization” as “negative experiences” caused by criminal proceedings or “societal reactions in response to a primary victimization that may be perceived as a further violation of rights or entitlements by the victim”).

⁶ For those victims, participation in the justice system may assist with the healing process, empower them, and provide them with greater safety and protection, public validation of the harm caused by the offenders, and financial compensation through restitution. See, e.g., Herman, *supra* note 4, at 160-61 (discussing the potential benefits of participating in the justice system); Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims’ Mental Health*, 23 J. of Traumatic Stress 182, 182 (2010) (same); Margaret E. Bell, et al., *Battered Women’s Perceptions of Civil and Criminal Court Helpfulness: The Role of Court Outcomes and Processes*, 17 Violence Against Women 71, 72 (2011) (noting that some studies “have in fact found that positive experiences in the justice system are associated with less physical and psychological distress and better posttraumatic adjustment”).

⁷ See, e.g., sources cited *supra* note 5.

⁸ See, e.g., Parsons & Bergin, *supra* note 6, at 183 (observing that some studies indicate that “contact with the justice system can lead to a ‘secondary victimization,’” and that the experience may “exacerbate the initial trauma,” “leave victims feeling embittered and disappointed,” and cause anxiety); Rebecca Campbell

& Sheela Raja, *The Sexual Assault and Secondary Victimization of Female Veterans: Help-Seeking Experiences with Military and Civilian Social Systems*, 29 Psych. of Women Quarterly 97, 98 (2005) (describing that “[p]rior research has found that experiencing secondary victimization is associated with increased posttraumatic stress (PTS) symptomatology, physical health distress, and sexual health risk taking behaviors”); see also Herman, *supra* note 4, at 159 (explaining that “involvement in the justice system may compound the original injury” suffered by the victims and describing this experience as a “revictimization”); Dean J. Kilpatrick & Randy K. Otto, *Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning*, 34 Wayne L Rev 7, 18-22 (1987) (discussing the potential for additional victimization caused by the victims’ interactions with the criminal justice system).

⁹ Tontodonato & Erez, et al., *supra* note 5, at 34.

¹⁰ Uli Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 Social Justice Research 313, 314 (2002).

¹¹ See, e.g., Parsons & Bergin, *supra* note 6, at 183 (reviewing research showing that sexual assault victims’ negative interactions with law enforcement and prosecutors were associated with increased posttraumatic stress); Rebecca Campbell, *What Really Happened? A Validation Study of Rape Survivors’ Help-Seeking Experiences with the Legal and Medical Systems*, 20 Violence and Victims 55, 56 (2005) (finding that sexual assault victims experience secondary victimization when they are confronted with victim-blaming attitudes, behaviors, and practices); see also Orth, *supra* note 10, at 315-16, 319, 321 (finding the victims’ perception of procedural and interactional justice—i.e., whether the victims perceived they were treated with fairness and respect and whether there were victim blaming attitudes, behaviors and practices—was a “powerful predictor[] of secondary victimization”); cf. Bell et al., *supra* note 6, at 81 (finding that positive treatment—“or at least not antagonistic or apathetic” responses—by court personnel was a frequently identified factor associated with a victim’s positive experience with court processes).

¹² The importance of victim agency is rooted in the inherently out-of-control nature of a crime; when a person becomes a “victim,” he or she often feels robbed of control. See, e.g., Alan N. Young, *The Role of the Victim in the Criminal Process: A Literature Review—1989 to 1999*, at 11, Ottawa, Canada: Department of Justice, Research and Statistics Division,

available at http://www.justice.gc.ca/eng/pi/rs/rep-rap/2000/rr00_vic20/rr00_vic20.pdf; Kilpatrick & Otto, *supra* note 8, at 17 (explaining why giving victims input into the criminal justice system proceedings and providing them with information about the justice process helps to increase victims' perceptions of control, decrease their feelings of helplessness, and reduce psychological distress). One key way in which victims may regain a sense of autonomy is through the choice of participation in the criminal justice process. *See, e.g.*, Herman, *supra* note 4, at 162-63 (discussing research that shows that victims' "overall satisfaction with the criminal justice system was directly related to their sense of inclusion and empowerment" and victims who were given a chance to participate in the criminal justice process "appeared to have better mental health outcomes"); Tontodonato & Erez, *supra* note 5, at 36 (observing that research indicates that "[v]ictim participation in the criminal justice process reduces feelings of alienation developed when victims believe that they have neither control over, nor 'standing' in, the process"); *see also* Dean G. Kilpatrick et al., *The Rights of Crime Victims—Does Legal Protection Make a Difference?*, U.S. Dep't. of Just., Nat'l Inst. of Just. Res. in Brief (1998), available at <https://www.ncjrs.gov/pdffiles/173839.pdf> (finding that victims in states with strong victims' rights protections were more satisfied with the criminal justice system than those in states with weaker victims' rights protections).

¹³ *See, e.g.*, Parsons & Bergin, *supra* note 6, at 184-85; Stephanos Bibas, *Transparency and Participation in Criminal Procedure*, 81 N.Y.U. L. Rev. 911, 929 (2006); Herman, *supra* note 4, at 163.

¹⁴ *See, e.g.*, Herman, *supra* note 4, at 163 (reviewing research that shows victims who sought help from the criminal justice system experienced high levels of psychological distress when their cases were not prosecuted); Kilpatrick & Otto, *supra* note 8, at 15 (observing that victims who perceive the offenders to have received better treatment than themselves experience the most psychological distress), and 19 (predicting that "victim perceptions of helplessness and lack of control are maximized by raising the expectation that a right of participation exists, the victim electing to exercise that right, and then being denied that right"); Bell, et al., *supra* note 6, at 79 (observing that undue delays encountered by the victims reduced their faith in the system); Orth, *supra* note 10, at 321 (finding that victims' perceptions of procedural unfairness was a strong predictor of secondary victimization symptoms); *see also* Gerda Koper et al., *Procedural Fairness and*

Self Esteem, 23 European Journal of Social Psychology 313, 323 (1993) (finding that individuals' perceptions of procedural unfairness lowers their self-esteem).

¹⁵ *See, e.g.*, Herman, *supra* note 4, at 163.

¹⁶ *See, e.g.*, Finkelhor, et al., OJJDP Bull., *supra* note 2, at 5 (finding that polyvictims experience a "far greater level of additional lifetime adversities and levels of distress"—including anxiety, PTSD, depression, anger, physical illnesses, accidents, and mental illness—than non-polyvictims). Research further indicates that polyvictimization may be more detrimental to a person's overall health than repeat victimizations of a single type. *See, e.g.*, Heather A. Turner et al., *Poly-Victimization in a National Sample of Children and Youth*, 38 Am. J. Prev. Med. 323, 327 (2010) (observing that the "findings suggest that multiple victimization involving different types is more detrimental to child mental health than repeat victimization of a single, even serious, type"); Finkelhor, et al., OJJDP Bull., *supra* note 2 at 5-6 (finding that polyvictims who experienced different types of victimization had considerably greater trauma symptoms than victims who suffered a single type of victimization multiple times); Julian D. Ford, et al., *Poly-Victimization and Risk of Posttraumatic, Depressive, and Substance Use Disorders and Involvement in Delinquency in a National Sample of Adolescents*, 46 J. of Adolescent Health 545, 548-49 (2010) (finding polyvictim adolescents had "double the risk of depression, triple the risk of PTSD, three to five times increased risk of [substance use disorders], and five to eight times increased risk of comorbid disorders compared with adolescents who had trauma histories who were not poly-victimized"); Richmond, et al., *supra* note 2, at 144 (studying adult survivors of childhood victimization; finding polyvictimization has an impact on psychological distress beyond the impact of the combination of the six aggregate categories of victimizations studied; and observing that "[t]his finding is consistent with the growing body of literature concerning cumulative adversity or cumulative risk . . . which suggests there is a relationship between the number of lifetime adversities a person experiences and subsequent mental health problems").

Polyvictims also tend to experience "more serious victimizations." Finkelhor, et al., OJJDP Bull., *supra* note 2, at 4 (observing that the "levels of serious victimization [for the polyvictims] were four to six times greater than the levels for other victimized children"). Even one victimization experience places a victim at greater risk for subsequent victimizations. Finkelhor et

al., *Re-victimization Patterns in a National Longitudinal Sample of Children and Youth*, 31 Child Abuse & Neglect 479, 480 (2007) (describing prior research). Polyvictims are also more likely to be victimized again in the future. *Id.* at 492 (finding children who are polyvictims had “high levels of vulnerability to every specific kind of victimization” and “are two to seven times more likely than non-victimized children to be victimized again”).

¹⁷ For a discussion of the history of victims’ rights and citations to a number of victims’ rights provisions, see *Fundamentals of Victims’ Rights: A Brief History of Crime Victims’ Rights in the United States*, NCVLI Victim Law Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), Nov. 2011, available at <https://law.lclark.edu/live/files/11822-fundamentals-of-victims-rights-a-brief-history-of>.

¹⁸ *Id.*

¹⁹ See, e.g., *Fundamentals of Victims’ Rights: A Summary of 12 Common Victims’ Rights*, NCVLI Victim Law Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), Nov. 2011, available at <https://law.lclark.edu/live/files/11823-fundamentals-of-victims-rights-a-summary-of-12>.

²⁰ See, e.g., Kilpatrick & Otto, *supra* note 8, at 10 (predicting that “victim perceptions of helplessness and lack of control are maximized by raising the expectation that a right of participation exists, the victim electing to exercise that right, and then being denied that right”); Herman, *supra* note 4, at 163 (observing that “dissatisfaction appears to be highest among victims who are denied a chance to participate in the legal system, in spite of their expressed wish to do so”), and 162 (finding that “[t]he quality of the encounter with the legal system may be the factor that ultimately determines whether participants fare better or worse than nonparticipants”); Young, *supra* note 12, at 6 (explaining that the victim “is a sort of double loser; first vis-à-vis the offender, but secondly and often in a more crippling manner by being denied rights of full participation in what might have been one of the most important ritual encounters in life”) (citing N. Christie, *Conflicts as Property*, 1 British J. of Criminology 1, 6-7 (1977)).

²¹ See, e.g., sources cited *supra* note 20.

²² See, e.g., Cal. Const. art. I, § 28(b)(2) (guaranteeing victims the right “[t]o be reasonably protected from the defendant and persons acting on behalf of the defendant”); Conn. Const. art. I, § 8(b)(3) (victims have the right,

inter alia, to “be reasonably protected from the accused throughout the criminal justice process”); 18 U.S.C. § 3771(a)(1) (providing that victims have the right “to be reasonably protected from the accused”).

²³ See, e.g., N.J. Const. art. I, ¶ 22 (“A victim of crime shall be treated with fairness, compassion and respect by the criminal justice system.”); N.M. Const. art. 2, § 24(A)(1) (the right “to be treated with fairness and respect for the victim’s dignity and privacy throughout the criminal justice process”); 18 U.S.C. § 3771(a) (8) (guaranteeing victims the “right to be treated with fairness and with respect for the victim’s dignity and privacy”); 725 Ill. Comp. Stat. 120/4(a)(1) (articulating “[t]he right to be treated with fairness and respect for [victims’] dignity and privacy throughout the criminal justice process”); see also *United States v. Heaton*, 458 F. Supp. 2d 1271, 1272 (D. Utah 2006) (quoting Senator Kyl’s observation that “[o]f course, fairness includes the notion of due process”).

²⁴ See, e.g., Ariz. Const. art. 2, § 2.1(A) (acknowledging victims’ “rights to justice and due process”); Cal. Const. art. I, § 28(b) (same); Utah Const. art. I, § 28(1) (same).

²⁵ For additional information relating to accommodations, see *Practical Tips and Legal Strategies for Protecting Child-Victims While Testifying*, NCVLI News, 10th Ed. (Nat’l Crime Victim Law Inst., Portland, Or.), 2008, available at <https://law.lclark.edu/live/files/12549-practical-tips-and-legal-strategies-for-protecting>; see also *Confronting the Confrontation Clause: Finding the Use of Closed Circuit Television to be “Necessary” Under Maryland v. Craig*, NCVLI Child-Victims’ Rights Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), May 2012, available at <http://law.lclark.edu/live/files/11680-confronting-the-confrontation-clause-finding-the>; *Allowing Adult Sexual Assault Victims to Testify at Trial via Live Video Technology*, NCVLI Violence Against Women Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), Sept. 2011, available at <https://law.lclark.edu/live/files/11775-allowing-adult-sexual-assault-victims-to-testify>. Please contact NCVLI directly for additional assistance with requesting specific accommodations.

²⁶ See, e.g., *State v. Munoz*, 546 N.W.2d 570 (Wis. Ct. App. 1996) (defendant sought mental health treatment records relating to prior sexual assaults committed against the victim, which were unconnected to the sexual assault charges filed in defendant’s case, and the court denied access, observing: “That the ‘prior sexual

conduct' may have occurred during an assault, and that the assault may have led the victim to counseling certainly would not open the door to discovery or introduction of the records of such counseling[.]"). Practitioners must be vigilant about protecting the polyvictims' privacy interests throughout the justice process. Although demands for a victim's private information commonly occur pretrial, proceedings during other stages of the process may be used by a party as an opportunity to pry into a polyvictim's past victimization or other private information. For example, during post-conviction restitution proceedings, defendants may use a polyvictim's restitution claim for counseling expenses as a justification for compelling disclosure of all of the polyvictim's past therapy records. Therefore, a cautionary step when seeking restitution is to redact personal information from receipts and other supporting documentation.

²⁷ See, e.g., *Refusing Discovery Requests of Privileged Materials Pretrial in Criminal Cases*, NCVLI Violence Against Women Bulletin (Nat'l Crime Victim Law Inst., Portland, Or.), June 2011, available at <https://law.lclark.edu/live/files/11779-refusing-discovery-requests-of-privileged>. For more information about opposing subpoenas or other pretrial discovery requests, please contact NCVLI directly for assistance.

²⁸ As previously discussed, regaining agency and a sense of autonomy is important to crime victims given the out-of-control nature of crime. See sources cited *supra* note 12. Victims having some control over their stories—including the choice of disclosure or litigation to fight disclosure—matters. Hence, victims' attorneys should always consult with their clients to determine whether and to what extent the victims want to challenge subpoenas of their personal information and records.

²⁹ It has long been recognized that individuals, including and especially crime victims, have an interest in maintaining their privacy. See e.g., *Roe v. Wade*, 410 U.S. 113, 152 (1973) ("[A] right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution."); *Whalen v. Roe*, 429 U.S. 589, 599 (1977) (observing that the right to privacy encompasses an "individual interest in avoiding disclosure of personal matters" as well as "the interest in independence in making certain kinds of important decisions"); *Michigan v. Lucas*, 500 U.S. 145, 150 (1991) (recognizing that rape shield laws "represent[] a valid legislative determination that rape victims deserve

heightened protection against surprise, harassment, and unnecessary invasions of privacy"); Ilene Seidman & Susan Vickers, *The Second Wave: An Agenda for the Next Thirty Years of Rape Law Reform*, 38 Suffolk U. L. Rev. 467, 473 (2005) ("For most sexual assault victims, privacy is like oxygen; it is a pervasive, consistent need at every step of recovery. Within the context of the legal system, if a victim is without privacy, all other remedies are moot."); U.S. Dep't of Justice, Office of Justice Programs, Office for Victims of Crime, *New Directions From The Field: Victims' Rights and Services for the 21st Century*, 21 (1998), at 21 available at https://www.ncjrs.gov/ovc_archives/directions/pdf/txt/direct.pdf ("Privacy remains a critical concern of victims of sexual assault, and a primary factor in non-reporting."). Many jurisdictions have granted victims explicit constitutional and/or statutory rights to privacy. See, e.g., Cal. Const. art. I, § 1 ("All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety, happiness, and privacy."); Cal. Const. art. I, § 28 (b)(1) (granting victims the right to be treated "with fairness and respect for his or her privacy and dignity"); 18 U.S.C. § 3771(a)(8) (victims have the right "to be treated with fairness and with respect for the victim's dignity and privacy"); Idaho Code Ann. § 19-5306 (providing that "[e]ach victim of a criminal or juvenile offense shall be: Treated with fairness, respect, dignity and privacy throughout the criminal justice process"); N.M. Stat. Ann. § 31-26-4 (providing that "[a] victim shall have the right to: be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process").

³⁰ See, e.g., Ariz. Const. art. II, § 2.1(A)(5) (guaranteeing victims the right "[t]o refuse an interview or deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant"); Cal. Const. art. I, § 28(b)(4) (providing victims with the right to "prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclosure confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law"), and (5) (providing victims with the right to "refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other

person acting on behalf of the defendant”); Or. Const. art. I, § 42 (1)(c) (guaranteeing victims the “right to refuse an interview, deposition or other discovery request by the criminal defendant or other person acting on behalf of the criminal defendant”).

³¹ See sources cited *supra* note 22.

³² Cf. *Protecting Victims’ Privacy Rights: The Use of Pseudonyms in Civil Law Suits*, NCVLI Violence Against Women Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), July 2011, available at <http://law.lclark.edu/live/files/11778-protecting-victims-privacy-rights-the-use-of>. Contact NCVLI for additional assistance relating to the use of pseudonyms or initials in civil or criminal proceedings.

³³ See, e.g., *Fundamentals of Victims’ Rights: A Victim’s Right to Restitution*, NCVLI Victim Law Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), Nov. 2011, available at <http://law.lclark.edu/live/files/11821-fundamentals-of-victims-rights-a-victims-right-to>.

Publication of this Bulletin was supported by Grant No. 2012-VF-GX-KO13, awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, and conclusions or recommendations expressed in this Bulletin are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.

12th Annual Crime Victim Law Conference

June 7-8, 2013 | Lewis & Clark Law School | Portland, Oregon

Join NCVLI for the only national conference focused on the rights and legal issues impacting crime victims. The Conference, now in its 12th year, is designed for attorneys, advocates, and other professionals serving victims. Attendees will gain the knowledge and practical skills necessary to best protect the rights of victims.

Session topics include:

- Child-victimization in the aftermath of the Sandusky case
- Victim privacy in the era of Facebook
- Mass victimization in light of the Sandy Hook shooting and other mass tragedies
- And more!

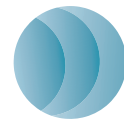
CONSTRUCTING JUSTICE
**MAKING VICTIMS’
RIGHTS A REALITY**



visit www.NCVLI.org for registration and more details!



Follow Conference updates on social media!



LEGAL ADVOCACY. We fight for victims' rights by filing amicus curiae (friend of the court) briefs in victims' rights cases nationwide. Through our National Alliance of Victims' Rights Attorneys (NAVRA), we also work to pair crime victims with free attorneys and work to ensure that those attorneys can make the best arguments possible. We do this by providing the attorneys with legal technical assistance in the form of legal research, writing, and strategic consultation.

TRAINING & EDUCATION. We train nationwide on the meaning, scope, and enforceability of victims' rights through practical skills courses, online webinars, and teleconferences. We also host the only conference in the country focused on victim law.

PUBLIC POLICY. We work with partners nationwide to secure the next wave of victims' rights legislation — legislation that guarantees victims substantive rights and the procedural mechanisms to secure those rights.

GET INFORMED & GET INVOLVED

ACCESS RESOURCES

Visit our online Victim Law Library, containing victims' rights laws from across the country, summaries of the latest court cases, and a variety of victims' rights articles and resources.

ATTEND A TRAINING

Join us at one of our online or in - person trainings on topics ranging from introduction to victims' rights to advanced litigation practice. We host trainings across the country and around the world.

STAY INFORMED & SPREAD THE WORD

Sign up to receive our updates and follow us on social media.   

GIVE

Sponsor one of our victims' rights events or publications; give through your workplace campaign (CFC # 48652); or donate by mail or online.

VOLUNTEER

Fill out our online volunteer form for notifications regarding upcoming volunteer opportunities ranging from legal work to event organizing to outreach.

JOIN US

Become a member of our National Alliance of Victims' Rights Attorneys (NAVRA) - a membership alliance of attorneys, advocates, law students, and others committed to protecting and advancing victims' rights. Visit www.navra.org to learn more.