



Why Crime Victims' Rights Matter to Victims of Violence Against Women

Presented By:
Meg Garvin, *Executive Director* and
Ali Wilkinson, *Violence Against Women Project Manager*

Our Approach

- **Advocacy** by lawyers fighting for individual victims and amicus curiae (“friend of the court”) fighting for the voices of all victims.
- **Training & Education** on rights enforcement because the lawyers representing victims can’t just be any lawyer – they need to be the best lawyers, well-trained on victims’ rights, and with access to expert technical assistance.
- **Public Policy** advances to ensure that no matter where in the country victimization happens, every victim has equal rights.

12th Annual Crime Victim Law Conference 2013 - *Register Now!*

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



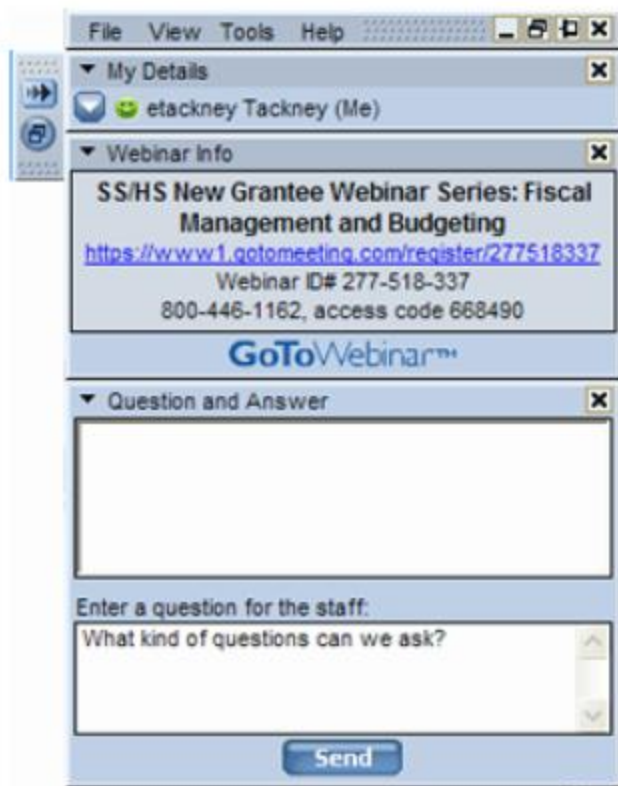
June 7-8, 2013 Portland, Oregon
at Lewis & Clark Law School

GoToWebinar Assistance

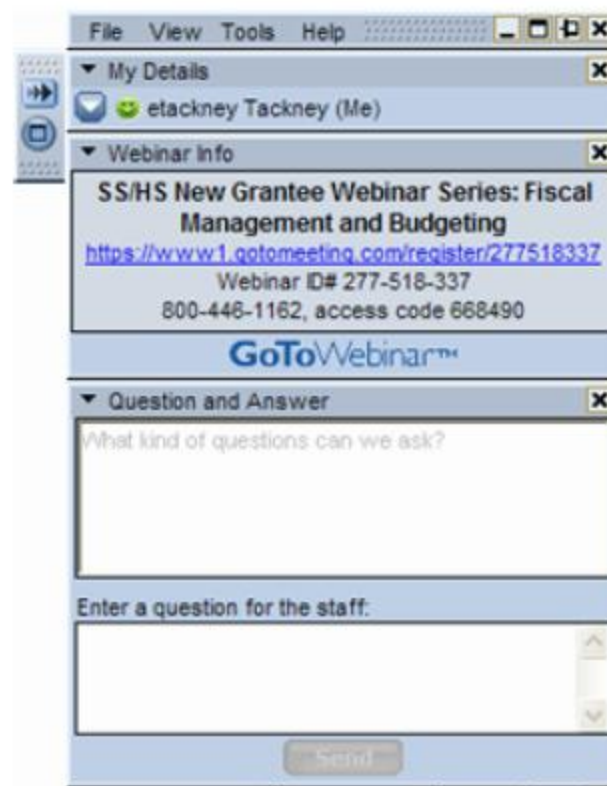
www.GoToWebinar.com

1-800-263-6317

How to Ask Questions During the Webinar



When you wish to ask a question, just write your question in the bottom box. Hit Send!



Your question, along with any other questions that have been asked by other participants, will appear in the Question and Answer box above.

Overview & Learning Objectives

After participating in this webinar, you will be able to:

- Tell a brief history of victims' rights in the United States
- Understand the difference between “compliance with” and “enforcement of” rights
- Discuss several key victims' rights relating to the field of violence against women, using examples

A Brief History in the United States



- **From prosecutor . . .**
- **To piece of evidence:**

Federal Rules:

Rule 615 of the Federal Rules of Evidence, as initially adopted in 1975, allowed for exclusion of crime victims from the courtroom unless their “presence is . . . essential to the presentation of a party’s cause.”

A majority of states then adopted rules that were similar or identical.

Case law:

“[I]n American jurisprudence . . . a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.”

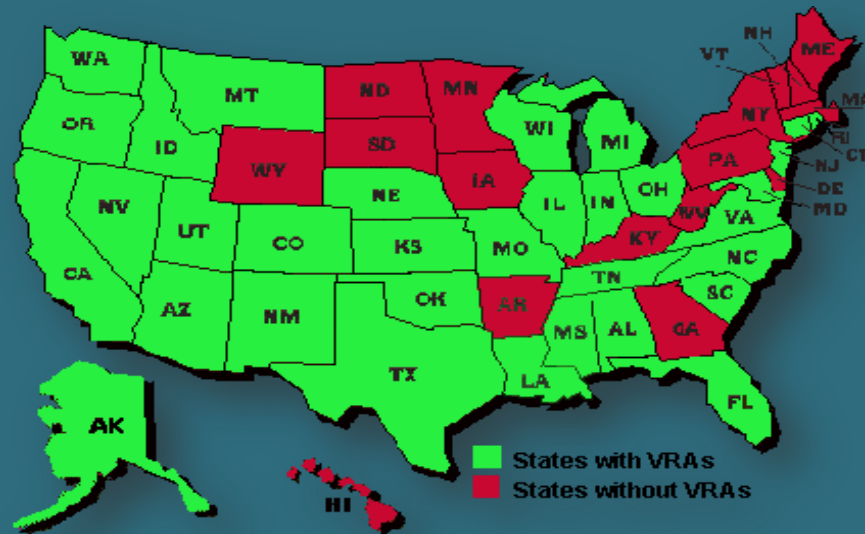
Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973) (dictum).

The 1970s to the 1980s

- States enact victim compensation programs and rape shield legislation.
- Somewhere along the way, the American criminal justice system had become “appallingly out of balance,” “serv[ing] lawyers and judges and defendants, [while] treating the victim with institutionalized disinterest.” 1982 President’s Task Force on Victims of Crime, Final Report vi (1982).
- Growing crime victims’ rights movement in the U.S.
- Changes to state constitutions, statutes, and rules, as well as federal statutes and rules, to define and afford explicit legal status to crime victims.

Today

- Several federal acts protect victims, including the Crime Victims' Rights Act, 18 U.S.C. § 3771.
- Every state (and the District of Columbia) has adopted statutory and/or rule-based protections for crime victims.
- More than 30 states have adopted constitutional victims' rights provisions.

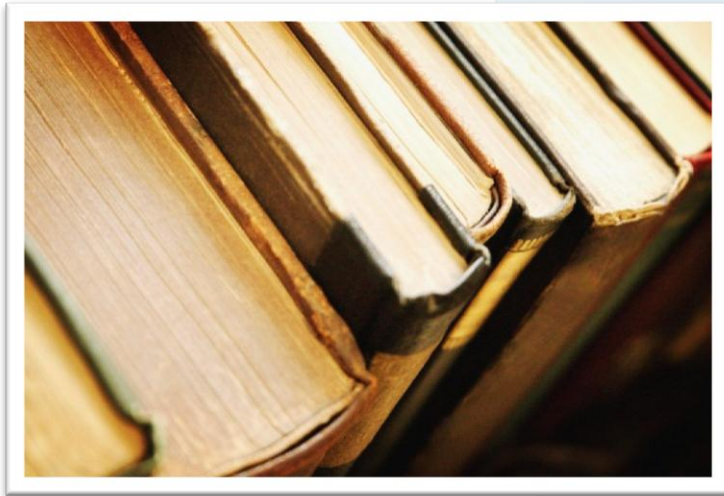


Poll #1

Are Laws Alone Enough?

Compliance Versus Enforcement

Bottom Line of Any Right



**Rights in the law books
are mere words.**

**Meaning comes when people ask for their rights
and courts enforce them and when systems begin
routinely complying with them**

What's the Difference?

Compliance

- Fulfilling legal responsibilities with respect to victims
- Making efforts to reduce the willful, negligent, or inadvertent failure to fulfill legal responsibilities

Enforcement

- Seeking a judicial order (either through the victim pro se, through a prosecutor, or a private attorney) that one must comply with victims' rights laws or that provides a remedy for the violation of those laws

What does this mean for victims?

Compliance

- Improves systematic affording of rights
- Future victims benefit

Enforcement

- *This* victim has redress right now
- Future victims and practitioners benefit because of legal precedent

How Can Enforcement Happen?

When seeking enforcement, what can a victim get?



Examples

Stop:

- Defendant subpoenas the victim's private information
- Victim doesn't receive notice of a hearing until the morning of the hearing, but lives out of town

Do Over:

- Victim doesn't receive notice of a sentencing proceeding and, consequently, doesn't have the chance to talk to the court at sentencing

So What Do Victims' Rights Look Like?

Example: The Federal Crime Victims' Rights Act, 18 U.S.C. § 3771

- **Guarantees crime victims rights to:**
 - Be reasonably protected from the accused
 - Reasonable, accurate & timely notice of public court proceedings
 - Not be excluded
 - Be reasonably heard at any public proceeding
 - Confer with the attorney for the government
 - Full and timely restitution
 - Proceedings free from unreasonable delay
 - Be treated with fairness and with respect for their dignity and privacy

Poll #2

Although all these rights are applicable to victims of stalking, domestic violence, and sexual assault, we will focus on the following four: Protection; privacy; restitution; and fairness.

The Right to Protection



Photo courtesy of RidiculousDream

Protection: Examples of Law

- “The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding involving the crime or of any release or escape of the accused.” 18 U.S.C. § 3771 (a)(2).
- “The right to be reasonably protected from the criminal defendant or the convicted criminal throughout the criminal justice process” Or. Const. art. I, § 42(1)(a).

Protection: Case Examples

- *Edens v. Oregon Bd. of Parole of Marion County*, Case Nos. 07C22594 & 07C22595 (Or. 2008) (issuing writ of mandamus and ordering parole board to conduct new parole hearing to give victim sufficient notice and opportunity to participate in release decision)
- *Douglass v. State*, 195 P.3d 189 (Ariz. Ct. App. 2008) (finding victim of domestic violence could refuse pre-trial interview in criminal case involving violation of protective order)
- *Bunn v. State*, 729 S.E.2d 569 (Ga. 2012) (finding that a child hearsay statute that permits the admission of hearsay statements of a child who witnesses acts of sexual abuse upon a child victim but was not a victim did not violate equal protection)

The Right to Privacy



Photo courtesy thenextweb

Privacy: Examples of Law

- A crime victim has “[t]he right to be treated with fairness and with respect for the victim’s dignity and privacy.” 18 U.S.C. § 3771(a)(8).
- A crime victim has “the right to be treated with fairness and with respect for the victim’s dignity and privacy throughout the criminal justice system.” Tex. Const. art. I, § 30(a)(1).
- Right to privacy under the federal Constitution.
- Privacy found in other statutes – such as rape shield.

Privacy: Examples of Enforcement

- *United States v. Spensley*, No. 09-CV-20082, 2011 WL 165835 (C.D. Ill. Jan. 19, 2011) (noting that referring to victim as “victim” was not prejudicial to defendant and helped protect the victim’s right to be treated with dignity and privacy under the CVRA)
- *United States v. Kaufman*, Nos. Crim.A. 04-40141-01, Crim.A. 04-40141-02, 2005 WL 2648070 (D. Kan. Oct. 17, 2005) (prohibiting display of graphic videos to persons other than the jury and restricting sketch artists’ activities in sexual assault case involving mentally ill patients based on dignity and privacy provisions of the CVRA)
- *Gagne v. Booker*, 680 F.3d 493 (6th Cir. 2012) (rejecting defendant’s argument on habeas that refusing to admit evidence under rape shield amounted to an unreasonable application of federal law)

The Right to Be Treated with Dignity, Respect, and Fairness



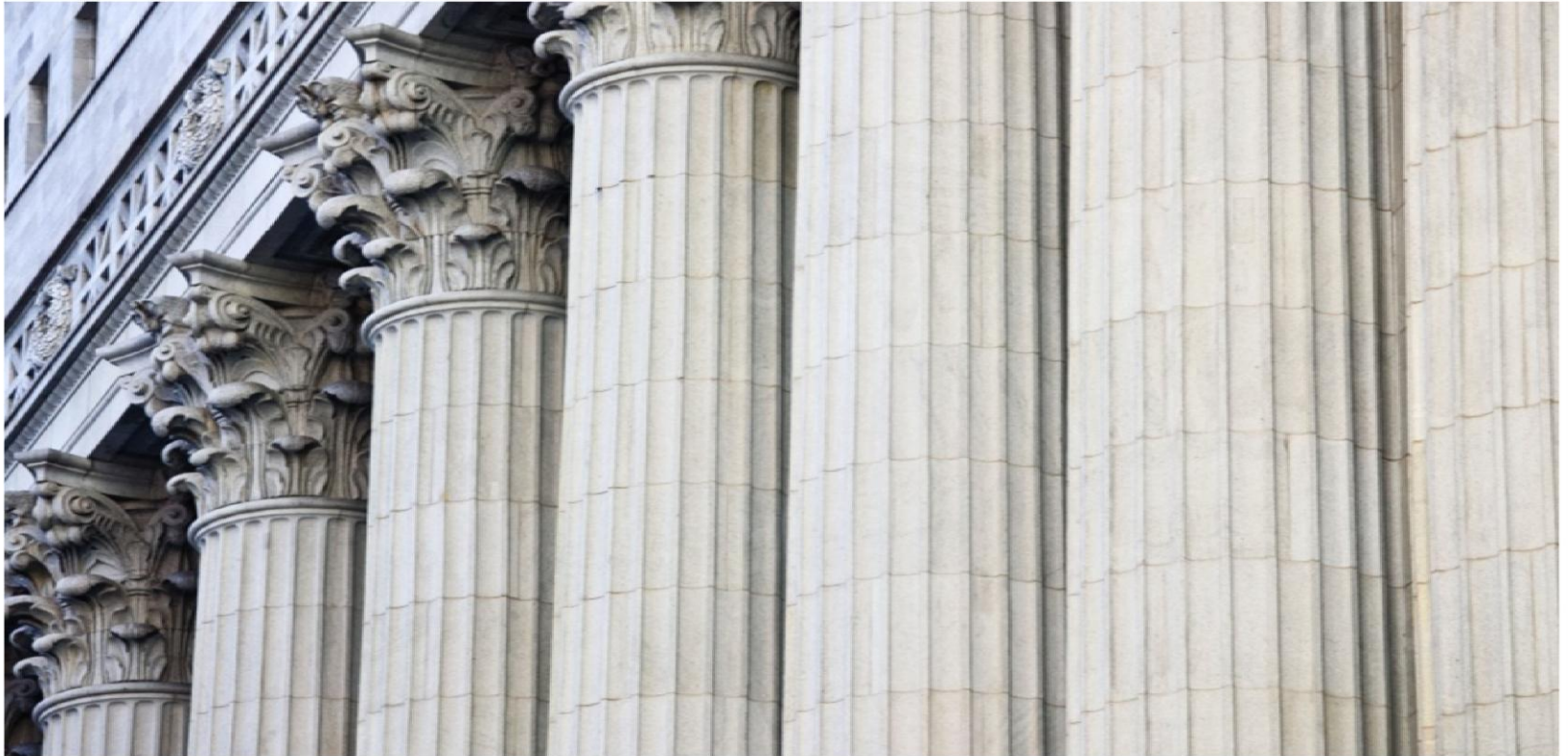
Fairness: Examples of Law

- “The right to be treated with fairness and with respect for the victim’s dignity and privacy.” 18 U.S.C. § 3771(a)(8).
- The right “To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.” Cal. Const. Art. I, § 28(b)(1).

Fairness: Examples of Enforcement

- *Carter v. Bigelow*, 869 F. Supp. 2d 1322 (D. Utah 2011) (relying on, inter alia, victims' right to be treated with fairness and to proceedings free from unreasonable delay under the CVRA in striking defendant's motions to amend and to stay)
- *United States v. Rand*, No. 11-600088-CR, 2011 WL 4949695 (S.D. Fla. Oct. 18, 2011) (overruling defendant's objection to court order denying defendant access to victim's phone and memory card based on victim's right to protection and to be treated with fairness, dignity, and respect)

The Right to Restitution



Restitution: Examples of Law

- The right to “full and timely restitution as provided in law.” 18 U.S.C. § 3771(a)(6).
- The right “[t]o receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.” Ariz. Const. art. II, § 2.1.

Restitution: Examples of Enforcement

- *People v. Graham*, 947 N.E.2d 294 (Ill. App. Ct. 2011) (allowing guardian of victim of sexual assault to collect restitution for travel expenses incurred in driving the victim to anger management classes)
- *In re Isiah F*, 2005 WL 3047954 (Cal. Ct. App. Nov. 15, 2005) (upholding award of restitution for one year weekly psychotherapy sessions; self defense training; purchase of a guard dog; train ticket for victim's mother to attend proceedings; psychotherapy sessions for victim's parents; and payment for parent's missed work)

How Can NCVLI Help?

Receive free technical assistance (e.g., legal research & memoranda).

www.ncvli.org | 503-768-6819 | ncvli@lclark.edu

Stay Up-To-Date on Victim Law



Join Our Membership Alliance!

Benefits Include:

- Access to a database of case summaries and amicus briefs
- Free webinars
- Exchange knowledge and ideas with other practitioners through our online forum and NAVRA listserv

www.navra.org

Questions?

This project was supported by Grant No. 2012-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.