

NCVLI Alumni Newsletter

Winter/Spring 2009

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NCVLI Needs Your Support

NCVLI is a nonprofit organization. To remain strong and independent, we rely on your support. You may give directly to NCVLI at <http://www.ncvli.org/donation.html>

The National Crime Victim Law Institute actively promotes balance and fairness in the justice system through crime victim centered legal advocacy, education, and resource sharing.

NCVLI provides subgrant funding to eight direct representation pro bono crime victim clinics throughout the country. NCVLI works closely with each clinic, providing legal research and writing as well as strategic consultation on how to litigate victims' rights. Recently, Lewis & Clark and NCVLI alumna Megan McGill sat down with Keli Luther, Senior Attorney at the Arizona Voice for Crime Victims, to learn more about the clinic.

Q: *Where is the clinic located?*

A: In Phoenix, Arizona. However, through the NCVLI enforcement grant, the clinic serves the entire Ninth Circuit, and can assist people as far away as California or even Hawaii.

Q: *What types of cases does the clinic work on?*

A: We run the gamut. Approximately 75% of our cases are homicides, and the remainder are sexual assault, child molestation, and white-collar crimes like fraud. My personal background is actually in complex court litigation. So we are able to serve basically all victims, although we tend to focus on major crimes.

Q: *How do you decide which cases to take?*

A: All of our cases are referred to us. We try to get some kind of help for all of the victims that we receive calls for, but due to limited resources, it's kind of a case-by-case basis. For the purpose of state victims' rights it is easier to have a case that has been charged, although we do have some federal cases that haven't been charged yet. If we can't take it, we try to refer it out. The demand for our services is pretty high. We don't ask any financial questions at all, the only prerequisite is that you are a victim of crime. We are really the only pro bono service for crime victims in Arizona, so we try to take as many cases as possible.

Q: *What is your approximate caseload?*

A: We have about 58 clients right now.

Q: *About what are the relative percentages of state, federal, and tribal cases?*

A: About 75% are state cases, and the remaining 25% are federal. Of the federal, about 60% are tribal.

Q: *What is your most memorable recent case/project?*

A: We recently won a special action with a mandamus remedy. There was a suspect out on bond, a really dangerous guy. There was all sorts of evidence he was trying to contact our client's seven year old daughter, he had threatened the life of a border patrol officer (the father), and he was a repeat felon with a history of stalking and domestic violence. A bond was set, the victim was not heard from, and he posted. We argued the victim's rights had not been complied with, and that the judge had not received enough information. We successfully argued that there should be a new hearing, and that he should be held non-bondable, as he was a danger to the victim. The court of appeals affirmed the ruling, and he was held non-bondable. That's an example of how the victims' rights act was able to keep victims safe.

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National Crime Victims' Rights Week 2009 April 26 - May 2

In honor of National Crime Victims Rights Week, NCVLI and the Oregon Department of Justice are offering a FREE CLE, taught by Professors Doug Beloof and Paul Cassell! Find out more and register online at <http://www.ncvli.org>

Spotlight on NCVLI Alumna: Melanie Kebler



Recent graduate Melanie Kebler ('08) is learning to put the practical skills and victims' rights knowledge she gained in the NCVLI Crime Victim Litigation Clinic to use in her new job. In October 2008, Melanie joined the Lincoln County District Attorney's Office as a Deputy District Attorney. So far, Melanie says, being a new prosecuting attorney has been a positive and rewarding experience.

Melanie reports that she finds herself in court almost every day, participating in everything from arraignments to trials, and working on a variety of cases. Thus far, she has worked on wide range of misdemeanor cases and prosecuted four criminal trials herself, which has been "invaluable experience for learning to prepare quickly and think on [my] feet."

What is Melanie's favorite part of the job? It turns out that it's the same as the most challenging part of the job - working with victims. While she enjoys her interactions with victims, Melanie says that "sometimes victims are helpful, but other times they aren't as helpful or want different things. It has been interesting learning how to respect victims' wishes." Melanie reports that what victims want varies from victim to victim - "Some people just want to move on and don't want to be notified or even take part in the sentencing, others want to be really involved in the whole process."

One memorable victim interaction for Melanie was in a domestic violence misdemeanor case she helped a coworker with. The victim didn't want to testify against her boyfriend and ended up speaking on his behalf. Melanie says that it was challenging going forward with the case and securing a conviction without the victim. Educating the court on victims' rights and issues, such as explaining to the jury possible reasons why a victim might not want to testify against someone she has a relationship with, was an important part of the case.

From what she has seen, Melanie thinks that victims view the legal process as overwhelming and confusing. She

observes that most people don't know how the process works, how long it can take, and what can happen with the case, such as when a case proceeds to plea bargain. Informing and educating victims is a key piece of her practice.

When asked what her perspective is on how the legal community views victims' rights, Melanie says that although she hasn't had a great amount of experience yet, she generally sees that people aren't as aware of it as perhaps they should be. "People might think about 'justice being served' or perhaps speaking at sentencing, but they don't understand the larger list of things beyond that that are in the constitution or statutes." Melanie says that most people in her prosecutor's office deal well with issues of victims' rights as they arise in their cases, but that they are not specialists in victims' rights.

Melanie appreciates the perspective that her experience with the Crime Victim Law Clinic has given her, and says it has made her passionate about the issue of victims' rights and making sure that her office is compliant with those rights. She says she's glad she took the class, not only because the knowledge she gained is helpful when educating the court on the issues as they come up, but also because of the practical skills experience she gained. "NCVLI's clinic class did a good job of teaching real world writing skills, such as drafting briefs." As a new attorney, Melanie is especially cognizant of how essential these skills are after law school.

What are Melanie's suggestions for students who want to be prosecuting attorneys? She recommends building your professional skills by taking more practical classes and clinics, taking advantage of opportunities to participate in moot court competitions, and doing internships at the local DA's office. She also recommends that students "hook up with NCVLI - it's important because you work with victim issues every day."

WHERE IN THE WORLD?

Are you still in touch with any of your Victims' Rights classmates? If so, we'd love to know where they are and what they're doing. Please drop a line to cmerc@lclark.edu.

Arizona Clinic Interview, continued from page 1

Q: What is the best part of your job?

A: Definitely the clients. Working with just absolutely amazing people who have been through so much, and trying to make things a little easier for them. You just wish you didn't have to meet them by way of a crisis. We witness miracles here every day, just with the strength of our clients.

the path to progress:

8th Annual Crime Victim Law & Litigation Conference

June 30 - July 1, 2009

at the Benson Hotel
in downtown, Portland, Oregon

For more information, go to
<http://www.ncvli.org/conference.html>

Legislative Update Corner

New Legislation to Improve Victims' Rights in Oregon and California

California - This past November, Californians passed Proposition 9, or Marsy's Law. The bill was named after a college senior at U.C. Santa Barbara who was murdered in 1983 by her ex-boyfriend, and was "inspired by hundreds of thousands of victims of crime who have experienced the additional pain and frustration of a criminal justice system that too often fails to afford victims even the most basic of rights." Marsy's Law amends California's constitution and penal code to provide an extensive list of rights and protections for crime victims. Among the law's many provisions are:

- A requirement that restitution be paid to victims whenever the victim has suffered a loss, without exception;
- A "Truth in Sentencing" provision that prevents the current practice of substantially diminishing the originally imposed sentence due to prison overcrowding, and requires the legislature to ensure that sufficient funding is available to house inmates for their full sentences;
- Reform of the parole process, to reduce the frequency of parole hearings which can be unnecessary as well as stressful for crime victims, who need security and finality;
- Increased consideration for the safety of victims and their families;
- A right for victims to refuse to submit to interviews, depositions, and discovery requests by the defense; and
- Unequivocal standing for victims to enforce their rights in court.

The bill marks a major change in the law pertaining to crime victims in California, and may be an indicator of the future of victims' rights law for the country.

To view the bill, go to <http://www.lclark.edu/org/ncvli/objects/prop9text.PDF>

Oregon - In February, the Oregon Senate passed SB 233, which will provide a clear roadmap for how crime victims can exercise their constitutional rights. Measures 51 and 52, which passed overwhelmingly in May 2008, were the first step toward improving rights for Oregon victims, making clear that victims have independent standing to exercise their constitutional rights. SB 233 is the next step in the process. "This legislation completes the framework for victims to seek redress when they believe their constitutional rights have been violated," said Senator Floyd Prozanski (D-Eugene), chair of the Senate Judiciary Committee. "Oregonians have repeatedly demonstrated their commitment to protecting the rights of crime victims. The legislation we passed today honors that commitment." In his testimony to the Senate Judiciary Committee in early February, John H. Stein, Executive Secretary of the International Organization for Victim Assistance, said that when the Oregon Legislature passes SB 233 it will "put in place the most effective set of tools to give victims their due in any justice system in their world. It will place Oregon as the preeminent leader of the worldwide movement." SB 233, together with Measures 51 and 52, takes Oregon one step closer to affording victims the dignity and respect they are owed by our criminal justice system.

To view the bill, go to <http://www.leg.state.or.us/09reg/measpdf/sb0200.dir/sb0233.a.pdf>

Pro Bono Cases and Technical Assistance

Working Together, NCVLI and Arizona Voice for Crime Victims Protect a Child-Victim's Privacy

In mid-February, the United States Attorney's Office for the Eastern District of California provided the mother of a minor victim of sex trafficking with NCVLI's contact information so that we could help her protect the rights afforded her under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771. Shortly thereafter the mother contacted NCVLI. NCVLI quickly connected the victim with Keli Luther, senior attorney with the Arizona Voice for Crime Victims, who immediately entered a representation agreement with the victim and her mother. With critical technical assistance in the form of legal research and strategy analysis from NCVLI, Ms. Luther filed a motion to stay any order permitting defendant to issue a subpoena for the victim's records. Unfortunately, the District Court denied the victim's motion, finding the issue was moot because the subpoena had issued. Not accepting this answer, Keli Luther petitioned for a writ of mandamus to the Ninth Circuit Court, arguing that if the trial court reviewed the records it would violate the victim's rights to be treated with fairness and with respect for her dignity and privacy. In *In re Vicki Zito*, No. 09-70554 (9th Cir. Feb. 26, 2009) (order), the Ninth Circuit denied the petition (without prejudice), finding that the production of the subpoenaed materials to the district court for in camera review did not create a "cognizable harm" to the minor victim. Importantly, the court directed the district court to stay any turnover of subpoenaed materials to allow the victim "an opportunity to seek relief in this court." On Friday,

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Current Crime Victim Litigation Clinic Students

Siobhan Murphy, 3L



Siobhan participated in Lewis & Clark's Legal Clinic previously and was attracted to the opportunity to get more practical experience with NCVLI. She especially likes classes where she can work on real cases and practice real-life skills like writing briefs. Siobhan is interested in legal services for the underserved citizens in our community and has enjoyed her legal services work in the areas of family law, employment law, housing law, and elder law. Because it is important to Siobhan to work with those members of the community who couldn't otherwise get legal representation, she hopes to work in the non-profit world after law school. Siobhan's favorite work thus far with the clinic has been working with Terry Campos on a memo for a case in Maryland, and seeing how a motion gets filed and published.

Paula Padilla, 3L



Paula found the Crime Victim Litigation Clinic by looking in the course catalog - before this, she never knew this area of law existed! Paula is now sure that victims' rights issues will factor in her casework in her future law career in the areas of family and immigration law. Paula has already had experience with the Lewis & Clark Legal Clinic and has interned at Catholic Charities Immigration Legal Services and the Oregon Law Center Farm Worker Program. She is passionate about helping families and immigrants and enjoys the chance to look at law from a different perspective than that of the prosecution or defense. Paula's favorite assignment so far has been researching and writing a memo on whether a victim still has rights once a case has been dismissed without prejudice. She found out that even then, victims still have rights.

Katherine Marlink, 3L



Katherine has a special interest in working in appellate courts, and is glad for the opportunity that the Crime Victim Litigation Clinic provides to get some practical experience in that area of law. Katherine's most memorable assignment so far has involved researching the legality of polygraphing victims. The passage of the Violence Against Women Act meant that states had to adopt laws against polygraphing victims, but the practice is still legal in nearly 25 states. Katherine is working on legal arguments for why it should be outlawed in those remaining states.

Working with students

NCVLI works with law students by funding internships, providing lunchtime trainings, and teaching the Victim Litigation Clinic to second and third year students. This spring, students provided direct technical support to victims' rights attorneys, prosecutors, and advocacy organizations from all over the nation on a wide variety of victims' rights issues.

Technical Assistance, Continued from page 3

March 14th, Ms. Luther appeared on behalf of the victim in the trial court and, citing arguments crafted by NCVLI attorney Sarah LeClair, prevented any significant disclosures. The victim and her mother are incredibly pleased with the outcome!

To read the order, go to http://www.lclark.edu/org/ncvli/objects/In.re.Vicki.Zito_Order_02-26-09.pdf.

ARE YOU A MEMBER OF NAVRA?

The National Alliance of Victims' Rights Attorneys (NAVRA), an association of the National Crime Victim Law Institute, is an alliance of attorneys committed to the protection, enforcement, and advancement of crime victims' rights nationwide. Membership is also open to non-attorney victim advocates, crime victims, and individuals interested in legal developments that affect crime victims. To foster NAVRA's development, the membership fee is temporarily waived. You can join online at www.ncvli.org or by calling 503-768-6957. As a membership benefit, all NAVRA members receive discounted tuition at NCVLI's annual conference.

This newsletter is presented by:

NCVLI

protecting, enforcing, and advancing victims' rights

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