



NATIONAL CRIME VICTIM LAW INSTITUTE

*Protecting, Enforcing, & Advancing
Victims' Rights*

310 SW 4th Ave., Suite 540, Portland, OR 97204

NCVLI'S NATIONAL CLINICAL NETWORK

providing free legal services to victims of crime in criminal cases

HOW DID WE GET HERE?

Despite victim participation since the founding, during the 1900s the criminal justice system shifted to a victim-exclusion model in which victims were witnesses or pieces of evidence in a case. This is evidenced by 1975 adoption of the federal rules of evidence, including Rule 615 of which allowed exclusion of victims/witnesses upon motion of either prosecution or defense. What this meant was that Roberta and Vince Roper, and thousands like them, were told that they had to sit outside the trial of the man who kidnapped and raped their daughter. Quite literally Roberta Roper was forced to peek through a crack in the courtroom door and strain to hear about the last days and hours of her daughter's life.

In 1982, a roadmap for a national approach to system change emerged with the issuance of the Final Report of President Ronald Reagan's Task Force on Victims of Crime. The Task Force, which had held public hearings, concluded that with the exclusion and poor treatment of victims the criminal justice system had "lost the balance that had been the cornerstone of its wisdom." The Final Report of the Task Force set forth 68 recommendations, including a proposal to amend the Sixth Amendment to provide that "victims, in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings."

Taking the recommendations to heart, more than 30 states amended their constitutions and every state passed victims' rights statutes. These provisions vary greatly, however, in the number of rights afforded, the stage at which rights apply, and the enforceability of the rights. The result is that you are treated extremely differently depending upon where you are victimized.

Efforts at the federal level have successfully included statutory reform. For instance, the Victims of Crime Act and the Violence Against Women Act. The most critical piece of rights legislation for victims of crime was passed in 2004 - the Scott Campbell, Stephanie Roper, Wendy Preston, Lourarna Gillis, and Nila Lynn Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, became law. The CVRA provides victims of federal offenses with eight rights; provides explicit standing for individual victims to assert rights in trial courts; and provides individual victims the ability to seek rapid and mandatory appellate review if a trial court denies a right. The CVRA secures for victims what was previously lacking – remedies if rights are violated.

So how are these rights asserted/protected? In the American legal system there are three ways that rights can be asserted in criminal courts and enforcement sought: a person can act *pro se* (meaning she represents herself); a defense attorney can act on behalf of defendant and a prosecuting attorney may, at times, assert rights on behalf of a victim; or an attorney representing the victim may assert the rights. History reveals that only the last has real potential to advance

rights because no one in the system (defense attorney, prosecution, judge) has the sole job of protecting the victim's rights and because non-lawyers are not skilled enough in the law to effectively protect their own rights. This fact has been long recognized for criminal defendants.

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law He is unfamiliar with the rules of evidence He lacks both the skill and knowledge adequately to prepare his defense, even though he have [sic] a perfect one. He requires the guiding hand of counsel at every step in the proceedings.

Powell v. State, 287 U.S. 45, 68-69 (1932).

Importantly, the CVRA authorized funding for free legal services to victims of crime. Since 2004 these services have been provided through a coordinated national network of free legal clinics overseen by the National Crime Victim Law Institute (NCVLI).

WHAT DO THE FREE LEGAL SERVICES OF NCVLI'S NETWORK LOOK LIKE AND WHY DO THEY MATTER?

Overview

Since 2004, NCVLI has successfully launched and overseen 12 pro bono victims' rights clinics.¹ Since 2004, the Network has provided legal representation to more than 2,000 victim; representation that has included more than 100,000 hours of clinic attorney time and more than 23,000 hours of pro bono attorney and student time to complement the work of the clinic attorneys. During this same time period, NCVLI has provided intensive technical assistance in the form of in-depth legal research and writing in more than 500 matters, trained more than 7,300 people, and filed more than 50 amicus curiae briefs.² In addition, to the clinics and NCVLI's technical assistance, NCVLI is working to build pro bono support for victims through its National Alliance of Victims' Rights Attorneys (NAVRA), which is a membership alliance of attorneys and advocates. As of September 2010, NAVRA had 779 members. This group includes 344 attorneys, 17 law students, 369 advocates, and 49 other individuals, hailing from from 48 states, the District of Columbia, and one member from Israel.

¹ Notably, the effort to provide legal services started with only 5 clinics in 2004, grew to 8 in 2005, and grew to 12 in 2009. In 2009-2010 the clinics in operation were located in AZ, CA, CO, DC, ID, MD, NJ, NM, NY, OR, SC, & UT. Funding has been precarious, however, and this precarious nature resulted in the shutdown of the California Clinic in August 2010.

² Among the issues NCVLI has addressed in its amicus work related to the CVRA are the appropriate standard of appellate review for rights violation claims to avoid improper narrowing the Act, the right of a crime victim to be heard at sentencing, the requirement that rights be afforded to victims even in multiple victim crimes, the right of crime victims to have access to information necessary to accurately calculate restitution claims, and application of the Act to victims victimized in the District of Columbia.

When looking at a snapshot of last 12 months of the Network's work (July 2009-June 2010), more than 700 victims have been represented nationwide; representation that included more than 20,000 hours of attorney time and more than 8,000 hours of pro bono attorney and law student time, and which resulted in more than 400 legal briefs (exclusive of entries of appearance) being filed on behalf of crime victims.

NCVLI and its clinics are having tremendous impact; as one court said after litigation by one of NCVLI's clinics, Arizona Voice for Victims, victims are becoming "full participants in the criminal justice system." *Kenna v. U.S. Dist. Court*, 435 F.3d 1011, 1013 (9th Cir. 2006). The success of the Network was noted in the August 29, 2009, National Institute of Justice report *Finally Getting Victims Their Due: A Process Evaluation of the NCVLI Victims' Rights Clinics Executive Summary*, which stated "the state clinics are on the road to fulfilling the intentions of their architects and funders. All of the clinics have pushed the envelope of victims' rights in their state courts. Some have won significant victories in gaining standing for victims and expanding the definition of particular rights. Others are enjoined in the battle. But all have raised awareness of victims' rights with prosecutors, judges, defense attorneys, and police officials."

Highlights from first six months of 2010

- *Arizona Voice for Crime Victims (AVCV)* provided direct legal representation to 57 victims, and general assistance to more than 140 victims. This included representation of the parents of a young college student who was murdered. Shortly after the clinic was retained, defense counsel objected to victim standing and made numerous unfounded allegations against the victim's family. The Clinic responded and successfully won an order striking the unfounded allegations and holding that the family had standing to file motions relating to victims' rights issues.
- *California Voice for Crime Victims (CVCV)*, a new clinic, directly represented 4 victims, and filed 10 legal submissions to courts on behalf of these victims. The clinic was able to assist several co-victims of homicide from harassment on the part of defense counsel. Specifically, the clinic was able to be heard in chambers on several occasions regarding these defense tactics and because of the clinic's efforts, the rights to be present and to dignity, fairness, and respect were protected, and the victims were able to testify when it fit their schedule rather than that of the defense team.
- *Rocky Mountain Victim Law Center (RMVLC)* in Colorado, a new clinic, represented 4 victims. The Clinic worked extensively representing a child sexual assault victim in a rural jurisdiction in eastern Colorado, helping to ensure that an appropriate sentence was given to the perpetrator and assisting the family in giving a victim impact statement.
- *District of Columbia Crime Victims' Resource Center (DCCVRC)*, an affiliate of Maryland Crime Victims' Resource Center Inc. and a new clinic, directly represented 5 victims and was able to secure more than 100 hours of pro bono services to crime victims in the DC area. The clinic represented the family of a homicide victim and ensured the family member's presence during the trial.

- *Idaho Victims' Rights Clinic* (VRC) at the University of Idaho directly represented 11 victims. VRC is a leader in educating and engaging law students at the University of Idaho College of Law, securing more than 730 hours of time from law students to help victims.
- *Maryland Crime Victims' Resource Center, Inc.* (MCVRC) directly represented 37 victims, and provided general victim assistance to more than 370 victims. Among the victims represented was the mother of a homicide victim after she learned, at the last minute and without any prior consultation, that the state's attorney had offered defendant a plea where he would likely serve seven years, and there was no request for restitution. The clinic quickly intervened and was able to assist the victim in working with the state's attorney to come up with a mutually acceptable plea agreement.
- *New Jersey Crime Victims' Law Center, Inc.* (NJCVLC) provided assistance to several hundred crime victims. The clinic successfully assisted a victim when defense counsel objected to the victim's use of a video at sentencing at the time the victim impact statement was to be given. In a victory for the victim, defense counsel withdrew his motion, thus allowing the victim to play the video at sentencing.
- *New Mexico Victims' Rights Project* (NMVRP) directly represented 5 victims, filing 11 legal submissions with courts on behalf of these victims. The clinic represented a domestic violence and rape victim in a case where both the defense attorney and prosecuting attorney indicated that they were going to seek production of medical and psychological records of the victim. The clinic filed a Motion in Limine to Protect the Confidential and Privileged Medical and Psychological records of the victim.
- *Women's Clinic for Victim Protection* (WCVP), an affiliate of New York Legal Assistance Group and a new clinic, provided direct legal services to 9 victims and trained more than 200 criminal justice professionals on victims' rights.
- *Oregon Crime Victims' Law Center* (OCVLC) directly represented 21 victims, including a victim of rape whose perpetrator was up for parole. The victim was a minor at the time of the crime, and while she had testified at prior parole board hearings, she was too traumatized to testify at the current hearing. The victim requested that her parents testify on her behalf and the parole board objected. The clinic successfully argued that against the parole board, and the victim was allowed to have her parents testify at the hearing.
- *South Carolina Crime Victim Legal Network* (CVLN) directly represented 11 crime victims. CVLN is a leader in educating criminal justice professionals, training more than 700 attorneys, advocates, and victims on victims' rights.
- *Utah Crime Victims' Legal Clinic* (UCVLC) provided legal services to 69 victims, and general victim assistance to more than 290 victims. The clinic worked with a victim in an aggravated assault case where the prosecuting attorney requested a material witness warrant for the arrest of a victim because she had not been maintaining contact with counsel and the state. The victim was taken into custody, and then a motion by the defendant to continue the trial was granted, without advance notification to the victim. After the continuance was granted, the clinic requested a hearing, and requested the victim's release. After argument and then stipulation, the victim was released.

Sample Cases

Clinics represent victims of all crimes and who range in age from children to those over 75 years old. Here are 5 examples of what the legal services provided from the clinics look like.

Child Victims. Child victims face significant hurdles in the criminal justice system. Attorneys representing these victims secure protections for the children to help diminish trauma, and work to ensure they have the resources necessary to recover.

- In Idaho, a child-victim of sexual assault was terrified to testify in open court against her perpetrator. On a Thursday, NCVLI's Idaho victims' rights clinic located a pro bono attorney to represent the child-victim. That attorney immediately contacted NCVLI, and by the following Monday this legal team was able to file an entry of appearance and a motion seeking alternative means of testifying and/or permission to have a support person with the child-victim during testimony. The court granted the request to have a support person. A three-year-old sexual assault victim was protected from confronting her offender alone and risking re-victimization.
- In Maryland, the court appointed an attorney to represent a child-victim in a federal child pornography case. Although the attorney had experience representing child victims as a guardian ad litem in state court, she was completely unfamiliar with the rights of child victims in the federal system. The attorney worked with NCVLI drafting the victim's impact statement and sentencing memorandum so that the child would be protected and served today and well into the future.

Trafficking & Sexual Assault Victims. Because privacy considerations are crucial for victims and because defendants routinely try to discover the private and protected records (i.e. counseling records and juvenile records), a victim represented by counsel is better situated to assert her rights and stop intrusive discovery practices.

- In California, the U.S. Attorney's Office for the Eastern District of California called NCVLI looking for help enforcing a young girl's rights under the federal Crime Victims' Rights Act. The AUSA was prosecuting a sex-trafficking case where the victim was a minor when she was trafficked and, despite his significant efforts the government had been unsuccessful in defeating defendant's subpoena of her confidential juvenile records. NCVLI connected the victim with an attorney from its Arizona victims' rights clinic. Working together this legal team crafted arguments to the trial court and then took the matter all the way up to the Ninth Circuit Court of Appeals to protect the victim's privacy. Eventually, the court reversed direction, and agreed with the victim's attorney, ruling that defendant was not entitled to see anything other than what *Brady* required—witness priors. This victim and her family were saved the re-victimization of having her private life paraded before her offender.

Fraud Victims. Given the complexity of the legal issues involved fraud cases, victims face significant hurdles when trying to secure their rights.

- A victim in Ohio, who was defrauded of more than \$40,000, was unable to exercise any of his rights (the rights to notice, to confer, to be present, to restitution, etc.) because the information and subsequent plea agreement were under seal. The Network's Maryland crime

victims' rights clinic, with technical assistance from NCVLI, helped the victim filed a motion to unseal the case with the district court. After 3 months passed without the district court ruling on the motion, the clinic, with additional help from NCVLI, filed a petition for writ of mandamus in the United States Court of Appeals for the Sixth Circuit. The Sixth Circuit granted the writ directing the trial court to rule. The district court unsealed the case and ordered all rights be afforded the victim. The victim required legal counsel just to get a court to recognize that he was entitled to the protections afforded to him under federal law.

Homicide Victims. The survivors (or co-victims) of homicide often need to hear the story of the death of their loved one. Unfortunately, they are often put on the witness list and told to stay out of the courtroom. Not only does this practice violate state and federal law, but it inflicts severe trauma and re-victimization on these families.

- In California, the mother of a homicide victim was told for the first time on the eve of the trial of the murderer that the defense "might" call her as a witness at the penalty/sentencing phase of the trial, and therefore she would be kept out of trial. The local prosecutor tried, in vein, to get the judge to reconsider the next morning (the day trial started), and when that failed he called NCVLI. NCVLI secured pro bono counsel for the woman the same day. The victim had waited years for the trial, and now she was put to an excruciating decision: does she ask for a stay of the proceedings in order to try to exercise her state constitutional right to be present, or does she let the trial proceed while she fights for that right but risk losing it all together because the trial could end. She chose the latter because she wanted both her rights and justice and was afraid of years more delay. The pro bono attorney worked closely with NCVLI to seek a reversal in the trial court, and then to seek review in the California Supreme Court. Based on the victim's pleadings and NCVLI's *amicus curiae* brief the California Supreme Court directed the trial court to either allow the presence or show cause why it had not afforded the right. Sadly, the trial court delayed answering the appellate court and by the time the issue was fully presented the trial was over and the victim lost forever her right to be present. NCVLI is looking at ways to prevent this from happening to another victim.

Homicide Victims Enduring the Long Post-Conviction Process. The appellate rights of defendants often result in years of court proceedings following an initial conviction. During these years the victims of crime need to know what is happening.

- In Utah, the Maryland and Utah Clinics partnered to seek justice to the survivor of a homicide victim during federal habeas corpus proceedings. With the advice and counsel of NCVLI, the Maryland Clinic successfully advocated for the survivor's right to proceedings free from unreasonably delay after defendant had sought further continuances in a nearly 20 year old homicide case.

For more information on the Network visit

www.lclark.edu/law/centers/national_crime_victim_law_institute/clinical_network/