

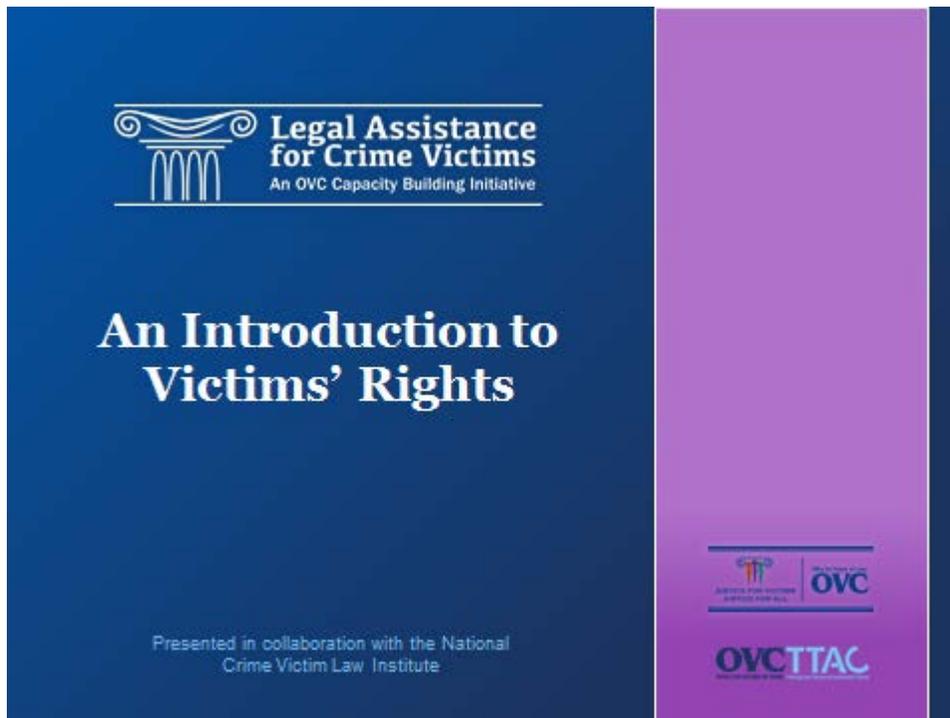


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**OVC**  
**Webinar Transcript**  
**An Introduction to Victims' Rights**

**June 27, 2013**





## Welcome

Meg Garvin: Good afternoon, everyone. This is Meg Garvin. I am the Executive Director here at the National Crime Victim Law Institute. And we are so excited for today's training. It is actually the second in a series of trainings that we are going to be doing in collaboration with OVC TTAC. I am going to have a start in just a second here because wonderfully we have about 250 people joining. And I can see a number of us are just joining right now. So hold on for just about another 10 or 15 seconds and then we will get started.

Meg Garvin: Okay, we are going to go ahead and get started. Again, my name is Meg Garvin. I am the Executive Director here at the National Crime Victim Law Institute. I am also a Clinical Professor of Law at Lewis and Clark Law School. I have the privilege of introducing this Webinar to all of you, although I am not an official presenter on it because the expertise is going to come from my two colleagues who are on the line. So I am going to start by introducing my two colleagues who will take you through the majority of this Webinar.

Meg Garvin: First, Karla Salp. I will save the personal part of the introduction of Karla until the end, but Karla has been a passionate advocate for crime victims' rights and services for over 10 years. She is the Founder and Executive Director of the Electronic Victim Assistance Network, which aims to transform victims' services through the use of technology. Her experience includes serving as a community-based advocate in Montana, and system-based advocate in Washington State. During her time as a system-based advocate in Washington State, she worked with the National Crime Victim Law Institute (NCVLI) to secure a court-appointed attorney for a victim of a homicide, for the family of a victim of a homicide. That was the first and only time in the country that that issue came up and Karla really took the lead on that. She has also run a statewide coalition for the improvement of crime victims' rights and services where she trained advocates, attorneys, and law enforcement about crime victims' rights. On a personal note, Karla has been an

amazing partner to NCVLI and has advocated for victims' rights at the local, state, and national levels. So you are in for a real treat hearing from her today.

Meg Garvin: The other presenter is Rebecca Khalil, who is one of my in-house colleagues here at NCVLI. Rebecca has been with NCVLI for nearly 3 years now and in that seemingly short time she has become an amazing expert on victims' rights. She has written amicus briefs for state courts, for federal courts. She has done legal technical assistance for attorneys and advocates all across the country. And she helped lead and develop trainings for child victim advocacy that became a national protocol, or national curriculum for training attorneys on how to represent child victims. So again, you are in for a real treat with the two of them over the next 75 minutes.

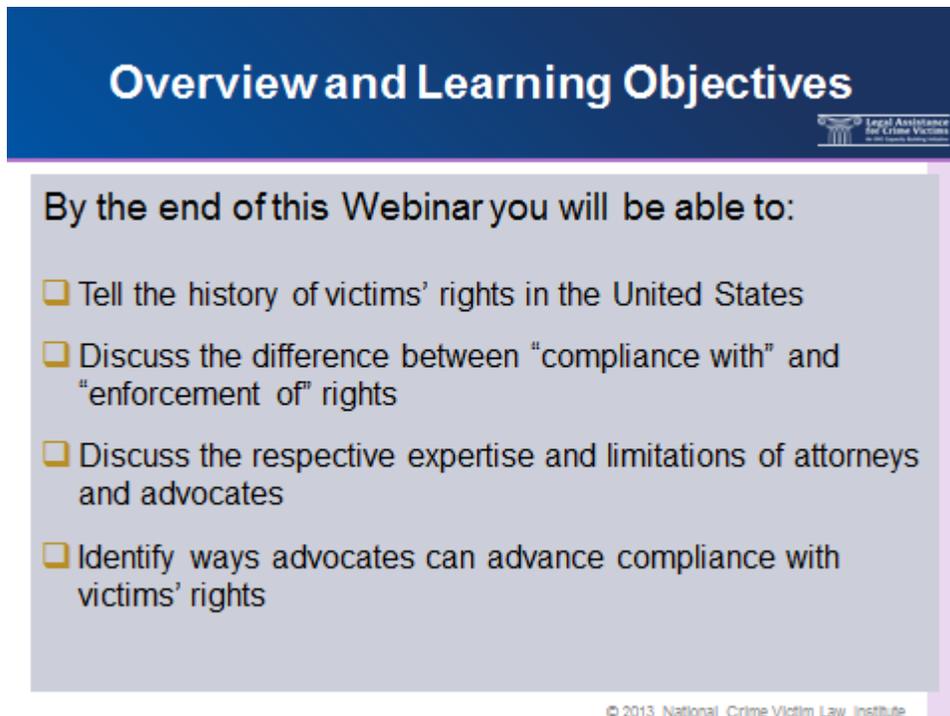
Meg Garvin: Before we go onto the substance I want to do a few housekeeping things. The first is to introduce you to this collaboration effort that we have with OVC TTAC. As part of the Legal Assistance for Crime Victims, OVC developed a Capacity Building Initiative. And that is the Legal Assistance for Crime Victims OVC Capacity Building Initiative. That is the name of it. Through that, OVC TTAC and the National Crime Victim Law Institute are working collaboratively to expand the availability of pro bono and no-cost legal assistance for victims of crime nationally. I said it on one of the other Webinars that we did this week, but for those of us who have been working for legal services for victims, this is a huge moment in the leadership by OVC TTAC and tackling this initiative is huge. The idea is that eventually we have no victims in this country who cannot access pro bono or no-cost legal assistance to help them with their rights. And you all, the 200-plus of you who have now joined us, are the first folks really digging in as part of this initiative to make sure that we grow the capacity of the country to serve victims through legal assistance. So thank you for joining us. We are really excited. And now I am going to talk to you about the flow of the training.

Meg Garvin: The flow of the training is that we are going to have you muted during the presentation. You will have a chance to ask questions. At the end of the Webinar we will look at those questions and answer them. And in just a minute I am going to walk you through how you can ask questions. You will also receive an e-mail with PowerPoint slides after the Webinar. We ask that you kind of take notes, listen, engage during the Webinar, and then at the end you will receive it because the content on it might be useful for later, but there is nothing so critical that you need it in advance. We promise you that. The Webinar will also be available online both at NCVLI's Website as well as TTAC's Website. And the e-mail you will receive will provide a little more information about that. And then we are going to ask you to provide us feedback. You will receive two surveys. One will happen as soon as you close out of the Webinar, you are going to get a survey. It is very short. It will take you maybe 30 seconds to a minute. The second will be e-mailed to you in that same e-mail and that one is a little more in-depth. But by that, I mean 3 minutes. It is not too much, I promise. But it is really critical to making sure that this Capacity Building Initiative flies, which is what we really want it to do. So we are really going to ask you to take those 3 to 4 minutes to fill in those surveys and give us some feedback.

Meg Garvin: Okay. So, we are going to move on now and talk about the technical components of things. The first technical component is [www.gotowebinar.com](http://www.gotowebinar.com). If you need technical assistance you are going to have to go to this Website or call the number that is on your line. They ask that you maybe jot that number down, 800-263-6317, as that is the number that can help you with the technical side of all this. We can help you with the substantive legal side and we can do some troubleshooting, but the real technical pieces, you have got to go to [www.gotowebinar.com](http://www.gotowebinar.com).

Meg Garvin: And I am going to go back one slide here because I inadvertently skipped it. And that is, how can you participate? How can you speak to us even though you are muted? And what

you see on your screen is how you can ask questions. It is a screen shot. On the side of your screen—usually it is on the right side unless you have it adjusted to the left—it is a chat box or a question box. You can enter a question right there and that will come to the presenters and the organizers and we will either integrate it as we go, or we will wrap it in at the end. And we promise that you will have at least 15 minutes or so, 10 to 15 minutes or so at the end to wrap in questions and we will get to yours. If we do not get to yours for some reason, then we will make sure that we get to it by e-mail afterwards. So please, please, please ask your questions.



**Overview and Learning Objectives**

Legal Assistance  
for Crime Victims

By the end of this Webinar you will be able to:

- Tell the history of victims' rights in the United States
- Discuss the difference between "compliance with" and "enforcement of" rights
- Discuss the respective expertise and limitations of attorneys and advocates
- Identify ways advocates can advance compliance with victims' rights

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### **Overview and Learning Objectives**

Meg Garvin: Okay, now on to the fun stuff. What are we going to do in the next 75 minutes, now 70 minutes? We are going to tell you the history of victims' rights in the United States. That is the one piece I am going to do. I am going to do that in just a few slides and give you basic foundations so we are all on the same page. We are going to discuss the difference between "compliance with" and "enforcement of" rights. We are going to discuss the respective expertise and limitations of attorneys and advocates. And I am going to pause here because we are going to tell you for both groups, meaning that we are going to tell you their expertise and their limitations. And yes, those of us who are lawyers know we have limitations. So we are going to put those right out there for you and talk through that with you a little bit. Then we are going to identify ways that advocates can help advance both compliance with rights and hint at how they can direct the enforcement efforts by getting victims to lawyers when they need them.

# Poll #1

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## **Poll #1**

Meg Garvin: So before we start with the history of victims' rights, I want us to take a poll. So we are going to launch a poll and it is really just to confirm who we have on the line because, like I said, there are more than 200 of you. So if you could just self-rate your expertise for your jurisdiction with victims' rights. And we are going to take a few seconds here.

(silence)

Meg Garvin: Okay, so let us go ahead and close out that poll and see kind of who is on the line of the 200-and-nearly-50 of you, and we will display those results. Okay, this is fantastic. We have a lot of expertise on the line, 48 percent of you are very familiar, 43 percent slightly familiar, and 8 percent not familiar. So welcome the folks who are perhaps starting on their victims' rights careers or entering a new component of their jobs. And those of you with a ton of expertise, please, please, please send some comments and questions over in that question box and we will try to integrate them because we know your expertise needs to be shared across the country, too.

## Brief History in the United States



- From prosecutor . . . .
- To piece of evidence:
  - “[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).
  - 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.

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### Brief History in the United States

Meg Garvin: So, okay, we are going to go back to the substance now and I am going to talk to you about the history of victims’ rights in the United States. And I actually did peek at the registrant list, so I know some of you know this stuff and can probably recite it because I know your level of expertise. But we are going to make sure that everyone on the line knows it. We start with the history of victims’ rights because, whether you know it or not, the legacy of where victims have come and the hurdles that are put in their place over the years impact your daily jobs. We came from a place of empowerment. We lost some level of empowerment when victims were relegated to being something other than full participants in the system. And now as a community pushing for victims’ rights and making sure that they are meaningful, we are kind of struggling our way back out of that legacy. So we want to make sure that everyone understands that history.

Meg Garvin: So the history in the United States, again—and I always give this caveat—this is the Anglo-Saxon history. Rather than understanding or being representative as we are experts on traditional or native cultures at all, this is definitely an Anglo-Saxon history of the founding of the United States and the Anglo-Saxon criminal justice system. But with that in mind, going back to the founding of our country, the Colonies—so even pre-Constitution—the Colonies drew from both the British and Dutch systems. And in those systems we had an incredibly victim-centered criminal justice system. And what we mean by victim-centered in that context is not the metaphoric victim-centered or the attitude victim-centered that we all talk about today, but quite literally it was victim-centered. The victim, him or herself, was the prosecutor in the case. In fact, they were the investigator and prosecutor in the case. So if you think about that, that means if my next-door neighbor at the time of the Colonies stole my cow, it was me who determined who had done it, who brought that person to justice, who presented an argument to the court that said,

Susie, my neighbor, stole my cow, and here is my evidence. And Susie would be there as the defendant. And the judge would adjudicate. And then at sentencing the judge would say, Meg, what do you need to be made whole or closer to whole? And I would say, I need A, B, or C. I need a cow, I need something else.

Meg Garvin: And I am using a very non-violent, non-personal crime intentionally here just to ground the ideas. It was the victim, literally, who was in the courtroom saying what he or she needed, saying here is the evidence, and then trying to move past that moment of justice system in their healing. And there were some really amazing benefits to that. I mean, we can all imagine victim voice, how strong it was at that time. But there were huge drawbacks, too, to that founding system. The idea that it was all about the individual victim certainly negates the idea that crime has any social component to it. It also does not factor in race, class, gender biases, that were certainly entrenched at our founding, and obviously in many places are still entrenched today that you have to overcome.

Meg Garvin: So the victim-centered component of the original system was great but not complete. And so right around the same time, lots of theory was being written and discussed about the social component of harm and that crime impacts society as a whole. And then also this idea of egalitarian justice, that you need a public prosecutor to really make sure everyone can access justice. So you have this conversion of the system that does not happen immediately. In fact, all the way through the drafting and adoption of the U.S. Constitution, the victim was the prosecutor. All the way up until the early 1900s, in fact, in many jurisdictions victims could still prosecute their own crimes. But eventually the professionalization of the investigation and prosecution process took root and the victim became excluded. They became an outsider, an interloper in the process. And most importantly, it became a piece of evidence in a case that was the state versus the defendant.

Meg Garvin: So by the 1970s, and what is on your screen, are just two moments in which we see that the victim is literally a piece of evidence in the case. They no longer have a voice in the system. And I am not going to walk through those. They are legal moments in some ways, but Rule 615 is a legal moment that also is just very clear for everyone, I think. So I will walk through that one. But the idea is that the Federal Rules of Evidence guide how the courtroom works. What evidence comes in and what does not. It is kind of the playbook by which lawyers operate if you want to think about it that way. It tells us what we are allowed to do. And in 1975, Rule 615 is adopted in the federal rules and everyone follows suit afterwards. And what that Rule said was, “upon motion of either party—that is the State or the defendant—any witness in a case can be excluded.” So really think about all that. All the prosecution or the defense had to do was say, Meg is on my witness list. They do not have to say anything more. And that meant I could not be in the courtroom. I could only be in the courtroom when they called me as a witness, when they asked me to come in. So it was a very literal manifestation of this idea that we have moved away from the victim-centered approach to being a piece of evidence.

## 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.

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### The 1970s to the 1980s

Meg Garvin: So that is the history, and the reality of that was really disturbing for a lot of grassroots folks, a lot of victims obviously. I mean, imagine if you were the survivor and someone said, “Yeah, yeah, yeah, this is not about you. This is about the State and the defense. We are going to call you as a witness, so just stay tuned. Hang in there. We will get back to you when we need you.” That feeling, that reality is not one that actually promotes recovery, obviously.

Meg Garvin: So the response was pretty fast and furious. Throughout the 1970s and 1980s, people started, nationwide, started organizing, grassroots organizations came into being. States passed amazing laws both at the statutory level and at the Constitutional level.



# Are Laws Alone Enough?



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## **Are Laws Alone Enough?**

Meg Garvin: So then we add this question of: Are laws alone enough? And the answer is what today is all about. The punch line is, no, laws alone are not enough.

## 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!

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### Bottom Line of Any Right

Meg Garvin: Really, the way law works is when you pass a law, it is just on the books. Words do not have meaning until you ask for the court to tell us what they mean. And that sounds a little backwards. But the truth of the matter is, even the U.S. Constitution, those words do not have meaning until you ask the court to tell us what they really mean. And whatever your political persuasion or personal beliefs are, the U.S. Supreme Court has just decided a handful of key cases this week that tell us what certain words in law mean. And up until now we have all had to argue about it. And now the U.S. Supreme Court has told us what some of the words mean. And it is not until then that it really has meaning.

Meg Garvin: So what we are going to do is now talk about, so how do we start getting there? How do you start ensuring that the words that our victims' rights have meaning? And this is where the expertise of our two presenters come in. And they are going to take it away from here with Rebecca talking about the legal side and Karla talking about the advocate side.

# Respective Expertise



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## **Respective Expertise**

Karla Salp: Thanks, Meg. I think I need a little help going back one slide there. This is Karla Salp, and it is a pleasure and an honor to be here today. And I just want to emphasize one thing. Meg had a very, very kind introduction for me. But no matter how experienced someone is, it is always a limited experience. So I want to encourage you to, as Meg said, put in your comments through the question or the chat box so that we can all learn from one another. And I will share with you some of the things that I have learned over these past 10 years.

## Expertise and Limitations



Advocates	Attorneys
Know victims.	Know the law.
Know victims' rights.	Know their case.
Know common sense.	Know criminal procedure.
Know resources.	Have "status."
Know how to explain system to victims.	Sometimes unfamiliar with victims' rights.
Sometimes unaware of system barriers.	

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### Expertise and Limitations

Karla Salp: So, first, we are going to talk about some of the expertise and limitations that both advocates and attorneys have. I am going to talk about the advocate side and then Rebecca is going to take you through the attorneys.

Karla Salp: First off, advocates, you know your victims. You spend a lot of time with them and you know the individual needs that each one has. Their needs, their desires, what they are passionate about, how much they care or do not care about a certain case or about certain rights, what they mean to them. You have that intimate knowledge and are able to spend a lot more time with them than an attorney may be able to.

Karla Salp: You are also the experts on victims' rights. The attorneys do not learn this stuff in law school, believe it or not. So it is our job as advocates to really become the experts in victims' rights and working to educate attorneys, law enforcement, prosecutors, our own communities, and victims about what rights our victims have in our own local jurisdictions.

Karla Salp: You also have that common sense piece, so you know what the rights are, you know what the system says, and you know how this is going to play out with your victim that you are working with. And I am sorry, I am going to use the term victim as a legal term, although you can substitute survivor. But victim is kind of the legal term that is used on the legal side, so I will be using that term throughout.

Karla Salp: You also know the resources that are in your community. You know about crime victims' compensation, you know about housing, you know about legal aid, all kinds of resources that exist out there in your community. And oftentimes, maybe I should say sometimes, attorneys

will try and help out victims with a lot of these other things that they need assistance with, but they do not know what resources are out there. So that is a great piece of knowledge that you have as an advocate. You know what resources are available in your communities and you know which ones apply to the victims that you are working with.

Karla Salp: You also know how to explain not only the system, but victims' rights to victims in language that they can understand. And this is especially true, I will not say especially true, but it is true for children, too. Sometimes attorneys get caught up in the language which is very important and they are taught so much about language through law school, and it is important. But sometimes that language side kind of gets lost just on your average victim going through a case. Advocates know how to explain what is going on, what their rights are in everyday language that they can understand.

Karla Salp: And one of the limitations is sometimes advocates are not aware of some of the barriers that exist in the system, or some of the processes. An example of that might be perhaps a community-based advocate who tries to go right to the top of the chain. Maybe go right to the elected prosecutor and try to get something done. But that attorney might not even be working on that case and you may have stepped on a lot of toes in the process. So just being aware of what barriers exist, how the process exactly works, can make you a much more effective advocate. So, Rebecca, do you just want to tell us about attorneys, their expertise and their limitations?

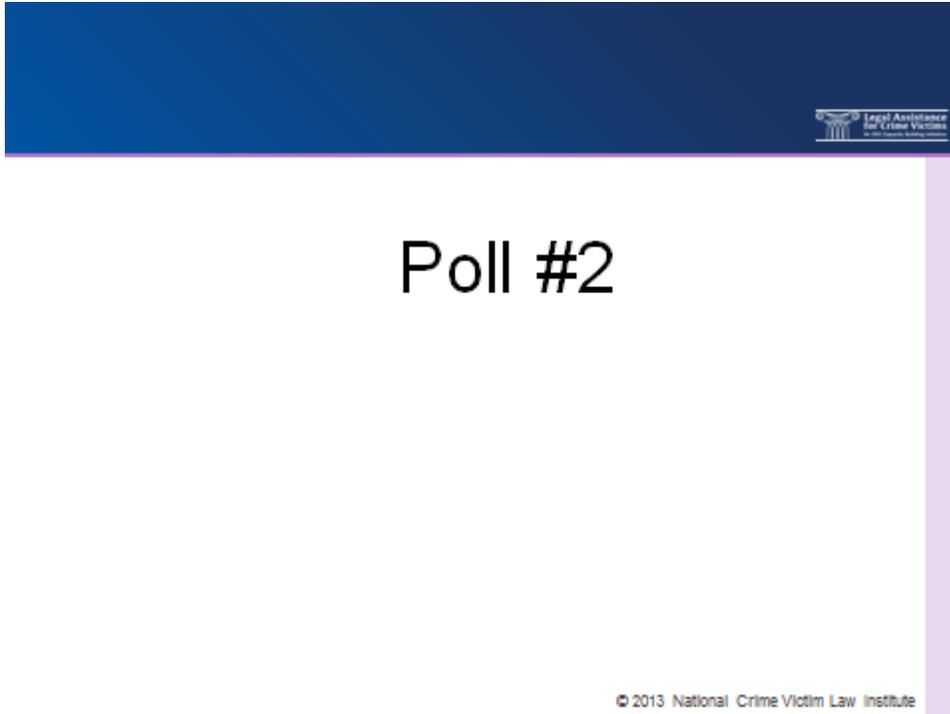
Rebecca Khalil: Sure. We will go back to the attorneys slide. And as I am sure most of you have noticed, I am an attorney. And one thing that is conspicuously absent from our side of the box is common sense, which kind of makes me laugh and it sort of goes along with the use of language. As we go through law school and we learn the very technical ideas, we learn the technical/legal concepts and how to argue them and how to research the cases and how to engage in oral advocacy in a really effective sense. And sometimes what does get lost in the process is the common sense and the ability to talk to people in language that they understand, which is often a drawback, not just talking to child victims, but talking to any victims, that attorneys tend to use language that nobody uses in real life. Lots of "heretofores" and "what nows" and language that nobody understands and nobody uses. So it is good for us to keep in mind that we do not need to speak like it is a case that is decided in 1820. We can actually talk to people using real words even if they are specific terms of art that we have to use in a specific way if we are filing a brief.

Rebecca Khalil: So attorney strengths, we know the law. And even if we do not know the law off the top of our heads, we know where to find the law and how to research it and figure out how to use it to our advantage.

Rebecca Khalil: We know our cases very well and we know criminal procedure with respect to that case and just generally. So we know what is going to be happening, what is coming down the pike, what sort of tools a defendant or a prosecutor might use in a case and can explain that.

Rebecca Khalil: And we have got the status, which I like to think of more as not so much the JD after our name, or calling ourselves Esquire or something. But we have the ability to go in front of the Bar. So when you hear about attorneys being admitted to the Bar, and that really means that you are able to go into a courtroom and pass through those little doors that lead to the tables right in front of the judge. And you can file papers, you can speak to the court, and you have got the degree and the credentials that it takes to get past that point and to make those arguments to the court in a really formal sense, which is something that an advocate cannot do and would need an attorney to help with if you reach a point where you need to be filing papers and be speaking directly to a court.

Rebecca Khalil: And it is true. Karla is right. Sometimes attorneys are very unfamiliar with victims' right. When I was in law school this was not a topic that made any of our courses. And, fortunately, that is changing and now it is being taught in a number of law schools. And the more that I think that attorneys start becoming familiar with victims' rights in the context of a criminal proceeding, the more hopefully this bullet will go away and at least attorneys will have heard of victims' rights, know they are there. Even if they have to go look them up the way they might have to look up other specific aspects of law, it will be on their radar so they will know to keep an eye out for it. And with that, I will turn it back to Karla to launch us into Poll #2.



Legal Assistance  
for Crime Victims

# Poll #2

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## **Poll #2**

Karla Salp: We are going to go ahead and launch our second poll here, and we are going to talk about increasing compliance. So for the advocates in the audience, have you ever had to confront a prosecutor or a judge or another attorney about the meaning or application of a victim's right? So if you can take a moment to vote on that poll and see what the experience is here in the room. I know I have had to do that and it is not a very fun position to be in sometimes. But, okay, we will give you another 5 seconds to complete the poll and then we will go ahead and see those results.

(silence)

Karla Salp: Okay, so it looks like about half and half roughly. We have got half that have had to confront and another half that have not. It will be interesting also to see how many of you have thought about it but have not yet done it. So thanks for answering that poll. And we are going to move onto our next slide after that.

## ONLY WORKING TOGETHER DO WE GET BOTH COMPLIANCE WITH AND ENFORCEMENT OF VICTIMS' RIGHTS!

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### **Only Working Together Do We Get Both Compliance With and Enforcement Of Victims' Rights!**

Karla Salp: So when we talk about compliance, the really important thing to remember, as we have in big caps here, is that only by working together, both advocates and attorneys, are we going to have both compliance and enforcement of victims' rights. Advocates cannot do it on their own. Attorneys cannot do it very effectively on their own either. So it is really important for us to build relationships and work on it together. And Rebecca is going to talk to us more about that.

## So What's the Difference?



### Compliance

When governments fulfill legal responsibilities with respect to victims, they are in *compliance* with crime victims' rights. Efforts to reduce the willful, negligent, or inadvertent failure to fulfill those duties by making systemic changes are properly termed *compliance* efforts.

### Enforcement

Ability of victims (pro se, through prosecutor, or through private attorney) to seek a judicial order that governmental personnel must comply with victims' rights laws or that provides a remedy for a violation of those laws.

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### So What Is the Difference?

Rebecca Khalil: And one of the goals of this Webinar is to provide you with some vocabulary that can help you interact with the attorneys and prosecutors on victims' rights-related issues. So when we attorneys lapse into legalese, you will know what we are talking about and be able to yank us back into the discussion in a way that attorneys will be able to participate in it and a way that is even a little bit more comfortable for them. So on the last slide we mention compliance and enforcement. So what is the difference? So both compliance and enforcement are very important. And compliance happens when all the actors, all the State actors and all the players in the system make sure that victims' rights are being enforced. So it means you have got systems in place. You have got processes. You have got trainings. You have got a flowchart of what happens when, to make sure that victims' rights are being afforded and they are being afforded almost in a way that is automatic. So a victim does not have to worry about whether they are going to get noticed, because they are going to get noticed and this system has made sure that it is going to happen. So that is sort of the essence of compliance.

Rebecca Khalil: And when we talk about enforcement we are talking about what happens when things are not going the way they ought to. It is the ability of victims either on their own, through a prosecutor, through a private attorney, to look to the courts or other government personnel for a remedy to make people do the things they are supposed to do under the victims' rights laws. So to force them to comply with the victims' rights provisions or that gives them a remedy to help make up for the violations that have already occurred.

Rebecca Khalil: So ideally compliance will one day be the norm. Victims' rights will be commonplace, they will be common knowledge sort of the way all of us can recite the Miranda warnings that you hear on NYPD or any of the cop shows. I am sure every single one of us can

start out with, “You have the right to remain silent.” And only when victims’ rights sort of get that same cultural embedded-ness, once folks start to realize them and recognize their importance, that is when compliance really comes into play. But even once that is the case, enforcement is still necessary. Even though defendants’ rights, the defendants have a Fifth Amendment privilege or they have these Miranda rights, even though those are very commonplace and the system recognizes them and is structured to try and honor them, enforcement is still necessary because occasionally things go wrong and occasionally things are not as clear as they might seem. So you still need to litigate these issues and fight about them in the courts to sort of set out where the boundaries are and the remedies for any kind of violations.

## The Difference (continued)



<b>Compliance</b>	<b>Enforcement</b>
Improves systematic affording of rights.	This victim has redress right now.
Future victims benefit.	Future victims and practitioners benefit because of legal precedent.

*We will focus on this for rest of time.*

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Rebecca Khalil: And bottom line, what is the difference? Whether we focus on compliance or we focus on enforcement, the overall goal is to try and make sure that victims’ rights are afforded in the system, and that victims have the ability to choose which rights they want to exercise and do not have to worry about any kind of systemic barriers or blockades to exercising those rights. So what compliance does, it corrects the flaws in the system to afford the rights sort of in a universal way so that all future victims benefit. So if one victim is not receiving their right to notice, a compliance remedy will go back and make sure the computer system is set up so that it does these things automatically, for example. And the difference between compliance and enforcement is that compliance might not help that victim right then. That victim already did not get notice of a proceeding. The fact that the computer system was changed will benefit other victims in the future so they should get notice of a proceeding. But that victim, it is sort of too late for the compliance effort to help them specifically with that particular issue, which is why we have enforcement.

Rebecca Khalil: Enforcement comes in because it helps this victim right now. And future victims and practitioners also benefit from enforcement because the courts write opinions, and then there is precedent, and then systems start to change in response to that precedent. So enforcement and compliance really talk to each other. But enforcement can try and help this victim right now with this particular issue in this case. And enforcement is really what we are going to be focusing on for the rest of this Webinar.

## What Relief is Available in Enforcement?



When seeking enforcement, what should you ask for?



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### What Relief is Available in Enforcement?

Rebecca Khalil: So now that we know we are going for enforcement, we are trying to help this victim with this right in this case. What can you ask for? What can you do with it? And this slide really sets out in the non-legalistic, non-lawyer words we love to use. You have got basically two options. You can ask for a “stop” or you can ask for a “do over”. So they are simplistic terms and they cover a really wide variety of examples. So I am going to provide you with just one to sort of illustrate what we are looking at. And those who have a lot of experience in victims’ rights I am sure have seen this stuff already. But it is helpful because we are using terms that are so broad to at least take a look at an example.

Rebecca Khalil: So say you are with a victim and there is a status conference scheduled in a case for a defendant. And the victim knows about it, the victim got notice in advance. The victim

decided that he or she did not want to attend and it was not important for them to attend that status conference, so they did not plan to. And the victim happened to live out of state. Well, the night before, you get a call from the prosecutor saying, "I just heard from defense counsel, tomorrow's status conference is now going to be a change of plea hearing." And so that victim now has 1-day notice, they live out of state, they cannot get in on time. So the remedy you are going to ask for is a stop. You want to stop that hearing and set it out for a different date so that the victim has time to get there and exercise their rights in connection with that proceeding. Because now it is not just a status conference. It is not the thing the victim decided they did not want to attend. Now it is something that the victim may very well want to attend and will need time to prepare for. So you are going to ask the court to stop it.

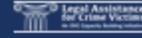
Rebecca Khalil: So another example would be the do over. So say we have got a proceeding going forward and the victim does not get notice of a sentencing hearing. In violation of the victim's rights, the sentencing goes forward, nobody realizes that the victim did not get notice, they just assumed the victim did not want to be there, no one stood up, no one confirmed with the victim. Ultimately, the judge imposes a sentence and has a sentence hearing and the victim finds out about this and says, "Wait a second. I had a right to notice, to be present, to be heard, and I wanted to be at that sentencing hearing and nobody gave me the opportunity." So the remedy you are going to ask for there is a do over of the sentence. You want to reopen the sentencing hearing, let the victim exercise their rights. Give them time to prepare and attend and be heard, and then do it again.

Rebecca Khalil: So a brief note on limitations of what you can ask for. We have got the stop. We have got the do over. The one thing that most jurisdictions are not going to let you do is seek money for damages. So if a victim's rights are violated, most jurisdictions specify in their laws using nice legalese saying "a violation of these rights provides no basis for an action for damages." And basically, "action for damages" is attorney code for money. So that is a limitation on what you are going to be able to ask for. And other jurisdictions will say things like, "the remedy for a violation of a victim's rights cannot violate a defendant's Constitutional rights." So that we are going to talk about a little bit more later. But really there is one absolute rule, one no-no. You are not going to be able to redo a trial. Defendants have double jeopardy right and that is something that victims are not going to be able to change. So trial is over. A remedy you are seeking is not going to include a redo of the trial because the defendants do have those rights.

Rebecca Khalil: So we have stops, we have do overs, we have no money, we have no retrial. But basically, within the stop and do over context, there is a lot of flexibility about what victims can do and how advocates and attorneys can help them do it.

Rebecca Khalil: So at this point I am going to turn it back over to Karla to talk a little bit more about how advocates can exercise their role in this process.

# Advocates Advancing Rights



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## Advocates Advancing Rights

Karla Salp: Thanks. And I know a couple slides ago we did say we were going to focus on enforcement for the rest of the Webinar, but as advocates, we really work on the compliance side directly and we have to partner with the attorneys for the enforcement side. So some of the things I am going to share about really are more about compliance. But as far as advocates advancing rights, I have what I call my four Ps. You need to be present. You need to be persistent. And you need to be positively passionate.

Karla Salp: First being present. One of the things that is most important to enforcing victims' rights is that you and/or the victim is present for those key times when their rights might be in jeopardy. So, for example, one of the things that really went a long way for advancing victims' rights in Washington State when I worked directly with victims as a citizen-based advocate was when I started going up in the courtroom all day during docket days. And it is amazing what does not happen to victims when there is a victim advocate sitting there. So sort of a preventative measure, but just being present, just the mere presence really changed the atmosphere for how victims' rights were enforced.

Karla Salp: And there are also the times when there are going to be victims' rights violations. But because of the relationships that I had established with the prosecutors, if I knew something was going to happen, for example, they were doing a plea and sentencing and the victim had not been notified, I was able to go and actually contact the prosecutor and say, "This victim has not been notified. If you are going to take this plea, you have to at least continue the sentencing so that they can come and exercise their right to make a victim impact statement if they would like to do that." If I had not been present in the courtroom, they would have lost that right because in Washington State we have not very good avenues for enforcing victims' rights.

Karla Salp: And also being present is that building relationships and making friends, building relationships, professional relationships with the players, with the attorneys that are involved, with the judges, with the court personnel, so people know who you are. You know who they are. You all respect one another. And that kind of handshake professionalism, you might say, goes a long way to moving forward victims' rights, especially in areas where enforcement is not as easy as it might be in some other areas that have clearer language.

Karla Salp: Also, being persistent. Do not give up. It took me 4 years in the Grant County Prosecutor's Office to get them to stop sentencing cases without notifying victims. And this is also a message about creativity, but what I ended up doing was I sent memos, talked to the main prosecutor, and nothing was happening to stop this from going on. And eventually what I ended up doing was I started keeping track of every case that was going through and being sentenced without notifying the victim. And then after a month of that, I sent out an e-mail to all of the attorneys and said, "Congratulations to you, Attorney So and So, you had the fewest cases that were sentenced without notifying the victim." But then it also showed what everyone else had done. And so I was celebrating the good, but also showing where we stood. And like that, things turned around and the number of cases that were sentenced without notifying the victim went down dramatically and stayed low. So that is a message about persistence and also creativity.

Karla Salp: And then the positively passionate. You need to know victims' rights. You need to be passionate about them. And you have to convey those to the people who are less familiar in a positive manner. So it can be very, very, very frustrating when somebody violates a victim's right and you have spoken with them about that, you know, seven times before. But if you become angry and bitter and have a negative attitude, that is not going to help the situation. So I always try to assume good intentions whenever possible and just continue to work on those. And that persistence and that positive attitude and the passion for victims' rights will eventually transcend and really help with the enforcement and compliance of victims' rights in your jurisdiction.

## System-Based Advocates



- Have ready access to case status/information.
- Have increased ability to influence a case.
- Have the ability to train prosecutors.
- Can serve as victims' rights experts for DA.
- Are in the best position to prevent or quickly address victims' rights violations.
- Have the ability to make local system change.
- Can facilitate victim issues between law enforcement / prosecution.
- Have no confidentiality / privilege with the victim.
- Are subject to *Brady* obligations.

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### System-Based Advocates

Karla Salp: Now we are going to talk about some of the differences between system-based advocates and community-based advocates. So if you are unaware, a system-based advocate is located within the system. So this might be a victims' advocate in a prosecutor's office or a law enforcement office, something like that. A community-based advocate, which we will get to next, is somebody who is based in the community and they are not specifically working within the system itself.

Karla Salp: So let us talk about system-based advocates first. First, system-based advocates, they have very, very ready access to case status and information. Usually they can just look that up on their own computer. So they are a great person to partner with if you need to know exactly what the status of the case is, they will have the most up-to-date information possible. And they are a lot easier to get hold of than an attorney or sometimes court personnel, that kind of thing.

Karla Salp: They also have an increased ability to influence a case. So because they are part of the system, they, I like to say, are working to transform the system from within. So as part of a system, they have a voice within that system and oftentimes are more trusted or sometimes respected even than an "outsider" who might be a community-based advocate or something else. So they have that ability to influence the case a little bit more easily than some other people.

Karla Salp: They also have the ability to train prosecutors. I know at least one prosecutor's office in Washington State where the victim witness coordinator has—I do not remember if it is 2 hours or a half a day or something—but every new attorney that comes into that office has to go for a training with the victim witness coordinator. So they get baptism by fire, but they get a good understanding what victims' rights are and who the victim witness coordinator is and what their

role is within the office. I mean, I know a lot of people who are advocates within prosecutors' offices and many of the attorneys do not know or do not understand what they are doing there. So it is really important that they have the ability to train prosecutors and make sure that everybody is on the same page.

Karla Salp: They oftentimes also serve as victims' rights experts for the District Attorney's office. And this was definitely true in my case where you are studying it day in and day out, you are working with these victims and you are seeing their rights being violated. You know not only what the rights are, but oftentimes especially system-based advocates have very good information on any case law that surrounds the decisions about those rights and have very extensive information about that. So I know, again, in my experience where the prosecutors will come to me and say, you know, "This is the situation I have. Do you have any case law on this issue?" And I would say, "Yes, I do," and whip it up. So that is another advantage that system-based advocates have.

Karla Salp: They are also, again, in the best position to prevent or quickly address those victims' rights violations. And that is what I talked about before. I was up in the courtroom. I was able to quickly address a victim's rights violation. Another example of that was I worked very closely with our community-based advocates and one time they contacted me and said a victim, they were not going to be able to make it to court but they wanted to make sure there was a no-contact order at the arraignment hearing. And so I went up there and the defense attorney said the victim does not want a protection order. So I popped up there and talked to the prosecutor and said, "I have been contacted by the community-based advocate, this victim wants a protection order." And what had happened in that case was that the victim's mom was benefitting financially from the offender. So the victim's mom said she did not want a protection order. But because of that good network that I had and that professional relationship with the community-based advocates, we were able to work together to be present and make sure that that victim had a protection order when she, in fact, did want one.

Karla Salp: They also have the ability to make local system change. So again, because they are a part of the system, they can work together with other entities in the system to improve victims' rights. Whether that is the judges, the corrections or jail staff, the prosecutors. And the other community-based advocates, they are really in a great position to bring that together.

Karla Salp: They can also work out victims' issues between law enforcement and/or the prosecution. And I would frequently get calls from a victim whose case had not made it to the prosecutor's office yet and it was still hanging out at law enforcement. And oftentimes as a system-based advocate, if you call up law enforcement and say, you know, "This is So and So calling from the DA's office," you might get more of a response than what the victim had received. Or you are able to speak with those law enforcement officers that you have a relationship with, you get a deeper understanding why the case is held up, what is going on, and you are able to explain that to the victim in language that they can understand. They might not like the actual answer, but it may be legitimate and you are able to explain that to them.

Karla Salp: One of the limitations, of course, of a system-based advocate is that almost everyone has no confidentiality or privilege with the victim. And that means that it is important as a system-based advocate to share with a victim, when you start having communication, what you are telling me, think of you are telling to the prosecutor. So I have no confidentiality here. And if you tell me this crime did not happen, I am going to have to tell the prosecutor that and they are going to have to tell the defense attorney. So anything you do not want the defense attorney to know, do not tell me. It is good to have that conversation upfront.

Karla Salp: And again, system-based advocates are subject to Brady obligations. So if a victim tells, or an advocate comes across exculpatory evidence, so evidence that tends to prove that someone is innocent, that has to be given over to the prosecutor's office. So again, that same example. The victim comes in and says this did not happen, the system-based advocate has to report that to the prosecutor's office. Now, just as a side note, what I would do in these situations, this would often be the case in domestic violence where a victim would come in and say, no, this did not happen. I have literally had people say they ran into the door. I would bring out the file and talk about, "Okay, this is what the file says. You tell me about what is going on." And the victim would say, "Well, you know, it really happened but I need them to support me financially. Or their family is coming after me. They are going to hurt me, etc." Or "I just want him to get help. I do not want him to go to jail." So we talk about what they really want, and oftentimes they just did not want him to go to jail. So they would say, "I want them to get anger management." So I would say, "Okay, that is great. We can work with you on this, but we cannot make him get anger management, for example, if we drop this case. If we keep the case going, then we can have some enforcement mechanism to make sure that happens." And then they say, "Okay, we are going to go along with this case." Then I would document all of that in a memo and send it to the prosecutor. So I would say, "They changed their story. Then we talked about it. And then they reaffirmed their story and explained why." So sometimes it is worth digging in deeper if somebody does come into your office and says the crime did not happen.

## Community-Based Advocates



- ❑ Generally have more time with victim.
- ❑ Are available to assist *before, during, and after* criminal case – regardless of whether the crime is reported.
- ❑ Have increased ability to provide / facilitate resources.
- ❑ Provide additional support in criminal or civil hearings.
- ❑ Facilitate communication between prosecutor and victim.
- ❑ Have confidentiality and may have privilege with the victim.
- ❑ Not subject to *Brady* obligations.

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### Community-Based Advocates

Karla Salp: Now, moving on to community-based advocates. Community-based advocates are just great partners for system-based advocates. I mean, both types of advocates work really well together and complement one another. Generally, community-based advocates have a lot more time than a system-based advocate. I know as a system-based advocate—I have been both—but as a system-based advocate I usually had over 600 victims a year that I was working with. Some

took more time than others, But without those community-based advocates to really have more time to work with the victims who needed more assistance than I was able to provide as a system-based advocate, victims would have really suffered. So community-based advocates have that time to spend with victims.

Karla Salp: They are also available for some continuity. So they are available before, during, and after a criminal case. As far as a system-based advocate is generally just focused during the actual prosecution of a case.

Karla Salp: They also have an increased ability to provide facilities and resources. They can assist with travel. Again, we talked about advocates knowing what resources are out in the community. Community-based advocates often have more time to actually help people go obtain those resources or fill out more of the forms that are necessary than a system-based advocate would have.

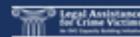
Karla Salp: They can also provide additional support in criminal or civil hearings. A system-based advocate very likely will not be going to a civil hearing, but a community-based advocate can go to both. And as a system-based advocate, I was one advocate for the entire county, so it was impossible for me to be everywhere at once. So oftentimes, for example, jeez, if I went on vacation and I would talk to the community-based advocates and say, you know, “Just to let you know, I am not going to be there. You may want to make sure that you are able to attend the hearing with your victim if that is something that they are looking for.” So we really supported one another in that way.

Karla Salp: They also can facilitate communication between the prosecutor and the victim much like the system-based advocate can. And one of the beauties of the community-based advocate is they can do that oftentimes with more—I do not know if objectivity is the right word—but oftentimes more in following with what the victim actually wants. Sometimes system-based advocates are limited because their mandate is to help cases actually come to completion through prosecution. And so they may have kind of that focus. They may. I am just saying that. Where a community-based advocate is really about, what does the victim want, and able to communicate that very effectively to the prosecutor.

Karla Salp: And depending upon what type of advocate you are and what state you live, you may have confidentiality and more privilege with the victim. And you are not subject to Brady obligations. So a victim may be able to share anything they want with you and that does not have to be reported to prosecutors or law enforcement usually unless it is some sort of mandatory reporting requirement.

Karla Salp: So that is community-based advocates. And I think Rebecca is going to turn it over to tell us more about attorneys.

# Attorneys



- Prosecutors
  
- Victims' Rights Attorneys
  
- Civil Attorney

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## Attorneys

Rebecca Khalil: So this is just a really quick slide sort of providing a differentiation between the types of attorneys who might be involved in any particular criminal case. So prosecutors, you guys all know, and they have a lot of the same limitations as the system-based advocates because the Brady obligations, the obligation to turn over exculpatory information to a defendant falls on them. So with prosecutors conflicts can often arise. Prosecutors may have standing—which we will mention a little bit later—they may have the ability to file motions in support of a victim's right, but the prosecutor's obligation is to the state. They represent the people and the state and the prosecution. And those interests might not always align with what the victim wants to do. So there is an inherent ability for a conflict to arise if a victim's only attorney-type person that they think they can rely on in the system is a prosecutor as opposed to some outside attorney. And again, prosecutors, like system-based advocates, do not have any privilege relationship. The victim is not their client. The state is their client. So a lot of times it can be easy for a victim to get confused, especially if their interests seem to align with the prosecution in many instances about who the prosecution really represents. And the reality is, it is not the victim, even if their interests sometimes do happen to align.

Rebecca Khalil: Victims' rights attorneys, they have a representation agreement with the client, they have privilege, they have the confidentiality. There should be no conflicts there. They should be checking for conflicts. And their representation might be pretty limited. A victims' rights attorney might be limited to just representing a victim on one particular victims' rights issue. Say, for example, a subpoena comes in for a victim's Facebook page. That victims' rights attorney might only be representing them with respect to their right to privacy, or their right to refuse a defense subpoena request. And it might not extend to every right in a case. It might. But it might not. So that representation might be a little more limited.

Rebecca Khalil: And then there are civil attorneys. A civil attorney, again, will have privilege, confidentiality. They should have already prescreened for conflicts, so that should not happen. They are there also to represent the interests of the victim or the victim's position. And they might not know about victims' rights. So they might be representing a victim in a related or unrelated civil case. They might be suing the defendant in civil court to get money. Or they might be representing the victim in another capacity and agree to take on a victims' rights representation for that victim as well. So we highly suggest you send them our way. Send these folks. If you have a civil attorney working with a victim who is willing to do the victims' rights work, NCVLI is happy to help them and provide them with resources, guidance, if this is not an area of law that they are particularly familiar with.



### **Enforceable Rights in Practice...A Few Examples and the Hurdles We Face**

Rebecca Khalil: So let us take a look at how victims' rights play out in practice and how courts have handled the question of the enforcement of those rights. So just a quick note. We are going to have a sample statute in a few cases. We are not going to go over all of them. They are here as resources for you to take a look at and turn back to once you get your hands on the PowerPoint. But these just highlight some of the instances of how victims' rights play out and how enforcement works in practice. This is the evidence-based portion of how victims' rights show up. This is how we see them in case decisions. This is how we see them in court decisions. And this is how we see stuff working nationwide.

## The CVRA – Model Legislation



### Guarantees crime victims' rights to

- Be reasonably protected from the accused.
- Reasonable, accurate, and 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.

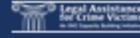
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### The CVRA – Model Legislation

Rebecca Khalil: So on the screen, I imagine many of you are already familiar with the Crime Victims' Rights Act (CVRA), the federal Act which provides sort of model legislation. And the rights you see on the screen are rights that are commonly included for other jurisdictions nationwide. Many states have adopted a variation of some or all of these rights. Some states have added additional rights to them. And you heard me mention earlier a right to refuse a defense discovery request. A number of jurisdictions have added that right. But these are sort of the core rights that form the basis of a number of victims' rights statutes and victims' rights Constitutional amendments around the country.

Rebecca Khalil: And in addition to setting out the rights, victims' rights statutes and legislation and Constitutional amendments also provide the definition of who constitutes the victim. And a victim might not just be one person in a case. There may be many victims who were hurt by the same criminal act. There might be a deceased victim, a homicide victim whose family has been included in the definition of victim. And jurisdictions vary on this. Some jurisdictions will specify how many family members have been a victim if it is a victim of homicide. Others will say that it is just family members. So this is one of those things that you have got to look at very closely at how your jurisdiction's law is set out because it is not uncommon for there to be more than one victim. In the case of homicide victims, almost always family members are included. And in the case of children, almost always some other individual, a family member's representative, somebody else is also included as a victim in the case in addition to the individuals you might expect to be victims of the crime. So if you fall within the definition of victim, then you are entitled to victims' rights.

## Right to Notice The Gateway Right



“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).

### Examples:

- *United States v. Keifer*, No. 2:08-CR-162, 2009 WL 414472 (S.D. Ohio Feb. 18, 2009) (victim sought to unseal the case or be put under the seal because no one would talk with him about rights).
- *Edens v. Oregon Bd. of Parole Marion County*, Case Nos. 07C22594, 07C22595 (granting V’s petition for writ of mandamus asking that board be directed to vacate order reducing term after finding violations of victim’s rights, including of the 30-day notice requirement which resulted in failure to afford the victim “adequate opportunity to prepare for the hearing and to obtain counsel,” and by limiting time to be heard, which “has a chilling effect on the full exercise of the victim’s rights”).

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### Right to Notice – The Gateway Right

Rebecca Khalil: So the Right to Notice. You noticed on the other slide—and we just want to pause here for a minute to highlight this. Because the Right to Notice is really the Gateway Right. It is the Gateway Right and we call it that because without notice, it can be virtually impossible for a victim to exercise any of their other rights. So without notice of a proceeding, you might not be able to be present. You might not be able to be heard. So all of these things hinge on the Right to Notice which is why it is so important that the notice be reasonable, accurate, and timely, as the CVRA language shows up here. It needs to be reasonable to permit the exercise of the rights. That is the first case example we have got there. Because without information, a victim cannot exercise their rights in a really meaningful way. And it needs to be reasonable in terms of timing as well. We mentioned before day of notice or day before notice. And that is often just insufficient for allowing a victim the opportunity to prepare and to decide how they want to exercise their rights, or even to confer with an advocate or an attorney about their rights in advance of any hearing. So that Right to Notice really is the Gateway Right that gets you in the door to exercise all of your other rights. It sort of underlies all of them.

## Right Not To Be Excluded



“The right to not be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.” 18 U.S.C. § 3771(a)(3).

### Examples:

- ❑ *State v. Williams*, 960 A.2d 805 (N.J. Super. Ct. 2008) (rejecting D’s argument that allowing V to remain in courtroom after testifying and be recalled to make in-court voice identification violated rights; court noted that D has no constitutional right to exclude witnesses, yet victim has a state constitutional right to be present).
- ❑ *U.S. v. Edwards*, 526 F.3d 747 (11<sup>th</sup> Cir. 2008) (criminal D has no constitutional right to exclude witnesses from the courtroom).

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## Right Not To Be Excluded

Rebecca Khalil: The next slide we are going to highlight is the Right Not to be Excluded. A number of jurisdictions phrase this right in the positive. The right to be present in the courtroom. So the case law here really contrasts what can happen when you have a victim’s affirmative right to be there and a defendant who wants them out. So both of these cases highlight the fact that the criminal defendants do not have a Constitutional right to exclude victims from the courtroom. So unless a victim is doing something incredibly prejudicial—and we are going to set that aside. If anyone is in the courtroom screaming prejudicial things during a trial, they are going to be excluded. They are not going to be allowed to bias a trial like that. But if a victim wants to be present in a courtroom, assuming they are acting appropriately, the defendant has no Constitutional right to exclude them, which is why a victim’s statutory or Constitutional right to be present is so important, because that right is there. And even if a defendant can point to a Rule that might say a defendant can request that a victim who is also a witness be excluded from the courtroom, there is a hierarchy of laws that attorneys go through. So there is Constitution at the top which have the strongest laws. Statutes in the middle which are a little below in the hierarchy than the Constitutional rights. And then there are Rules at the bottom. So if somebody has a Rule-based right and somebody else has a statutory or a Constitutional-based right, those rights are going to trump the Rule-based right. So it is really important when victims have statutory rights and Constitutional rights to take a look at what other rights a defendant or another participant in the proceeding might be asserting to see sort of how a court is going to balance them and weigh them and how these rights are going to play out for this purpose in that particular case.

## Right To Be Heard



"The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding." 18 U.S.C. § 3771(a) (4).

### Examples:

- *Kenna v. District Court*, 435 F.3d 1011 (9th Cir. 2006) (finding victim had infeasible right to be heard akin to defendant's right to allocution).
- *United States v. Wood*, CR. No. 05-00072DAE (D. Haw. July 17, 2006) (recognizing right of a victim to be heard at sentencing impacted scheduling).

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### Right To Be Heard

Rebecca Khalil: So the next one we are going to highlight is the Right to be Heard. So the first case down there, and you see the language of the Right to be Heard in the CVRA, the first case down there has some really great language. So the Ninth Circuit looking at a victim's right to be heard observed that before the CVRA was passed, before the federal Crime Victims' Rights Act was passed, crime victims were expected to behave like good Victorian children, seen and not heard. And they recognized that the victims' rights sought to change this by making victims independent participants in criminal proceedings. So this is really important because it is recognizing that victims do have an important role in criminal proceedings, and when they have a right to be heard, that is a real right. It is not a right that can be shunted to the side.

Rebecca Khalil: And the second case is a really good example of how a right to be heard can have impacts beyond just their hearing. So that case recognized that a right of a victim to be heard meant that the victim's schedule needed to be taken into consideration when sentencing was being scheduled. Because if the victim had a right to be heard there, it would not be right for the court to schedule it on a day that they knew the victim could not make it. So it means that other players in the process need to work together to make sure that a victim's right to be heard can be exercised in a real meaningful way.

Rebecca Khalil: And before we get to hurdles I just want to mention another one, another right that is of crucial importance which we see in practice all the time, and which I am sure you see in practice all the time. It is the victim's right to privacy. And this one comes out in a big way when victims want to use pseudonyms to proceed as a Jane Doe or John Doe, or to use initials to identify them in court documents, or when a defendant is subpoenaing their private information, when a defendant is looking for Facebook messages, e-mail messages, when they are trying to get

a hold of medical records or counseling records. A victim's right to privacy is often one that comes up in practice on a very real basis. And even though there are avenues to challenge these things outside of victims' rights, there may be a privilege statute that practitioners can use to protect that information, victims' rights are another tool that is there to help victims maintain their privacy when that is something that is important to them in connection with criminal proceedings.

## The Hurdles: Cultural Resistance and Legal Obstacles

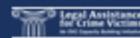


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### **The Hurdles: Cultural Resistance and Legal Obstacles**

Rebecca Khalil: So just a very quick note on a few cultural hurdles and legal obstacles. Because these rights seem really straightforward. And when you look at the hierarchy of rights, when you have a Constitutional or a statutory right that is really strong, it just almost seems like a no-duh moment. For those of us who are in the victims' rights, who promote victims' rights, these things are important and they need to be enforced in the court. But it is not always that straightforward, as I am sure you have seen, and I know Karla has seen and Karla has talked about. It is not always that easy in practice. There is a number of cultural hurdles.

## Misperception of History



- Despite the fact that history reveals a victim-centric criminal justice system at the founding, people believe that a shift from the current two-interest system is a threat to the way it has “always been.”
- Recognizing the origins of our criminal justice system is useful in overcoming this first cultural resistance.

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### **Misperception of History**

Rebecca Khalil: There is a misperception of history. So Meg went over sort of the history of victims’ rights in the United States, and that really the system has not always been State versus defendant with no one else involved. Folks do not always know that. So recognizing that the origins of the criminal justice system started out involving victims is often really important to try and debunk this misperception of how the system is, always has been, and always should be, that comes up as sort of opposition to victims’ voice in proceedings.

## Misperception of Scope of Rights



### Opponents believe victims' rights:

- Infringe on prosecutorial discretion.
- Convert the justice system into a system of personal vengeance.

### Fundamental flaws in objection:

- Victims' rights are predominately due process rights.
- Victims' rights inject just one more interest into analysis.

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### Misperception of Scope of Rights

Rebecca Khalil: Similarly, there is a misperception about the scope of victims' rights. Folks will say that victims' rights infringe on prosecutorial discretion. They convert the justice system into one of vengeance. But that is simply not the case. Most of victims' rights just provide victims with a voice in the proceedings, not a veto over the proceeding. They do not infringe on prosecutorial discretion. When victims have a right to confer with the prosecutor, that is informing prosecutorial discretion, not taking it over. And the fact that the victim's voice can be heard in the system and that the victim's interests and rights are recognized does not change the system from one giving victims participatory rights into one promoting vigilante justice. Meaningful participation is really a due process issue and victims' rights just inject one more interest in a voice into the mix that courts are required to look at when a criminal case is involved.

## Misperception That Rights are a Zero Sum Game



- ❑ Opponents believe affording a victim rights means taking a right from a defendant.
- ❑ Fundamental flaw in objection:
  - More than one participant can have rights!
  - Judiciary is regularly tasked with affording multiple rights in same case.

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### Misperception That Rights are a Zero Sum Game

Rebecca Khalil: Which really leads into the misperception that rights are really a zero sum game. That if you give a victim rights, you have to be taking a right away from somebody else. You have to be taking a right away from a prosecutor, you have to be taking a right away from a defendant, and that is just not the case. And it is not the case in civil court. It is not the case in criminal court. And these are things the judges are used to dealing with in context other than victims. We have got media going into court asserting First Amendment rights, wanting access to information, wanting access to the courtroom. And judges are very used to dealing with other third parties in connection with the criminal justice system. But victims' rights are not as familiar to them, so it is a misperception or a hurdle that has to be overcome. And I think folks recognize it when you talk about a media example or balancing rights in any kind of context. It is not about whose rights are taken away. The question in a case is whose rights take priority in this case, right now, under these circumstances, for this purpose. And that is the same thing courts are tasked with doing in every single case, civil or criminal, when they are asked to be the judge.

## “Legal” Obstacles



We won't really cover, but in brief:

❑ Non-party Status

➤ *It's a red herring*

❑ Double Jeopardy

➤ *This is not really a bar 99% of time*

❑ Mootness / Ripeness

➤ *This is about thinking ahead*

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### “Legal” Obstacles

Rebecca Khalil: And finally, just a few highlights of legal obstacles, which we are not really covering here, but I want to throw out. So there is a non-party status thing. This is a red herring. This is the only two people with a voice in the proceeding are the defendant and the prosecutor. And that is just not the case. And if you have folks having trouble with this, definitely give us a call because we have a lot of information that we can provide you with to help deal with this objection.

Rebecca Khalil: Double jeopardy, like we mentioned before, 99 percent of the time, unless you are asking to redo a trial, this is not going to be a real bar, even if it is an objection that is raised by the defendant. So contact us and we can help you out with that.

Rebecca Khalil: And Mootness and Ripeness, two more terms that attorneys use all the time. Really what it comes down to is thinking ahead, making sure you are asking for things, asking for your victims' rights at the right time.

Rebecca Khalil: So now that we have covered some of these rights and obstacles, I am going to turn it back over to Karla so we can talk a little bit about how attorneys and advocates can work together more effectively.

# So How Can We Work Together?



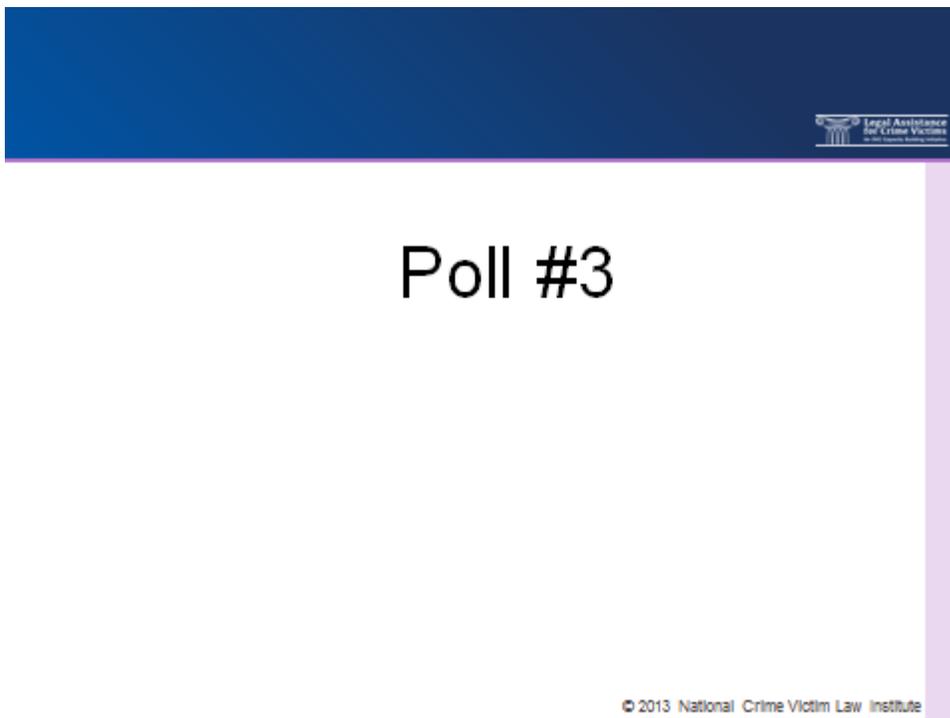
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## So How Can We Work Together?

Karla Salp: Thanks. It is all about relationships, folks. We really need to start working on building our relationships with the attorneys, whether that is prosecutors, judges, or specifically talking about victims' rights attorneys. It is finding out people in your community that, at a minimum, are interested. Because, quite frankly, there are just not nearly enough people who are trained in enforcing victims' rights. So as advocates, we also need to be sort of victims' rights attorneys' ambassadors. Sometimes we know better than many other people why it is important to have a third party, independent attorney, for a victim to enforce their rights. It is not necessary in every case, but for those cases where it is important it is usually very critical. So start establishing those relationships with attorneys in your area. Find ones that are interested in working on victims' rights. Many attorneys are interested because it is kind of a new area of law. They like the idea of getting involved and sort of forging new ground, a new challenge for them. And others are just, they have a real heart for victims themselves. So start building those relationships and finding people in your community that either do this work or are interested in doing this work. And if they are interested, make sure you connect them with NCVLI. It is your best resource.

Karla Salp: Also, when you are working with attorneys, if you do not have a victims' rights attorney and you are working with a prosecutor, whether you are a system-based advocate or a community-based advocate, it is always important to remember that this case, this victim, is very critical and the case is very important to the victim that you are working with. But every issue is bigger than just the victim that you are working with. Do not win the battle and lose the war, where you go hardcore for your victim but in the process trample over other people and really ruin those relationships. Whether you are talking about enforcement or compliance, if you have positive relationships established with people in your community, it is a lot easier to get things done.

Karla Salp: So those are kind of the two things I really wanted to talk about. Really, actually one thing is just relationships. Building those relationships so you can work together. And then I will say one other piece and that is education. Making sure that whether it is a victims' rights attorney, prosecutor, etc., making sure that everybody knows what each other's roles are so they have the right expectations about what you are going to do, for example, as a community-based advocate, what your resources are, what your role is in the process so they know what to expect, and when to call on you if they need something. Same thing for a system-based advocate. What is your role? Make sure that is clearly defined for the attorneys that you are working with. And then once you establish those relationships and they found you to be a positive, a great partner to work with, you are going to have a lot more of that going on.



Legal Assistance  
for Crime Victims

## Poll #3

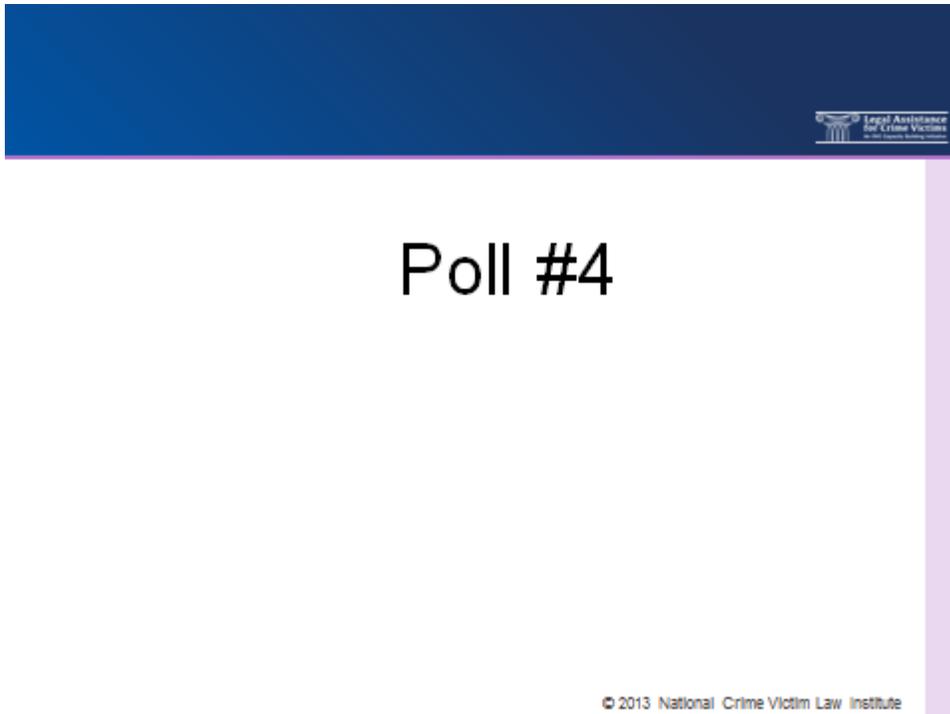
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### **Poll #3**

Karla Salp: So let us move on to another poll. I know you guys are waiting for another poll. So the next poll is: How many advocates—just talking to the advocates in the audience here—how many of the advocates think that the attorneys in your jurisdiction, whether they are prosecutors or judges or maybe even civil attorneys, know enough about working with victims and victims' rights? So advocates, do the attorneys know anything about victims' rights? And we will just give you another couple of seconds. So if you were dozing off there while I was talking, now is the time to pick up your mouse and click.

(silence)

Karla Salp: Okay, and if we want to go ahead and close the poll, let us see what the advocates think. So about 60 percent of you think the attorneys could learn a little bit more about victims' rights. That should tell you something. That is an opportunity for you to go out and work on building those relationships again as well as educating your attorneys about victims' rights. So now if we want to go ahead and close that poll and move on to the next one.



#### **Poll #4**

Karla Salp: And now, attorneys, it is your turn. I am not sure how many attorneys we have on the line, but attorneys, how many in the audience think...Pardon me, I have this backward. So this is for everyone. How many in the audience think attorneys, themselves, feel comfortable asking for advice about victims and/or victims' rights from an advocate? So would the attorneys that you work with feel comfortable asking you for advice about victims' rights?

(silence)

Karla Salp: Okay, if you want to go ahead and close that poll. Okay, so we have a perception ourselves that attorneys would be unwilling to ask us for advice. I would be interested actually in hearing Rebecca's perspective because my experience has been that attorneys generally are very open to hearing from advocates, as long as it is done in a positive manner, about educating them about victims' rights. Because they recognize that, although as Rebecca said, it is starting to be taught in law schools, most of the attorneys that we are working with are not fresh out of law school and they have not had any education about victims' rights at all. So many of them are very willing to have a resource that they can go to, I have found, to have a local expert about victims'

rights. So it is really important that you know what your local laws are about victims' rights. And then help share that information with the attorneys that you work with in your jurisdiction.

Rebecca Khalil: Yes, and I think a lot of attorneys are definitely open about learning about victims' rights, and perhaps really reluctant to admit that they did not know enough to start with.

## "In the Moment"



### Tips for when you see a rights violation:

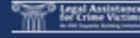
- Be present.
- Be knowledgeable.
- Have established process.
- Call for backup.
- Go up the chain of command.
- Always ask: what action will have the best (or least bad) result for the victim?
- Contact NCVLI. Get representation for the victim.

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### "In the Moment"

Rebecca Khalil: So we are going to turn for a minute just to make sure we get a chance to answer some of your questions. We have gotten a lot of really good questions from you throughout the entire Webinar. And so we are going to take a moment while you look at this "In the Moment" tips to go through a few of those questions.

## QUESTIONS?



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Meg Garvin: Great, Rebecca. This is Meg. I am going to pose the questions that have come in from our attendees. We received way more than we are going to be able to get through right on the call. But what we are going to do is maybe create a little FAQ sheet because these are great questions and we will put that up on our Website because I think these are terrific. But you guys can answer a few of them.

Meg Garvin: So, Rebecca, I think this is a legal question for you. When is a victim a victim of crime? I have been serving victims since the time of the crime but some people are telling me they are not a victim until the charges have been filed.

Rebecca Khalil: That is a really great question. The complicated answer is this is really still a legal fight in the courts. Some jurisdictions recognize the victims' rights attach and exist the moment the crime occurs. And other jurisdictions have taken the position that they do not attach until the time of an indictment or a charging instrument or a grand jury has done their work and charges have actually been filed against the defendant. So if you are in one of those jurisdictions, definitely contact us because we can help you with those arguments. But also take a look at the laws themselves. A victim has a right to confer with the prosecution about the charges. It does not make a whole lot of sense to say that the victim only gets that right after the charges have been filed, because then their right to confer with the prosecution is rendered pretty meaningless. And that is not something courts like to do and that is not the way the laws were written and designed to be used. So many of the rights may attach pre-charging. But across the country it is still a really open debate in a number of jurisdictions and folks are working to try and make sure that victims' rights do attach from the time of the crime and attach at the appropriate parts of the proceedings.

Meg Garvin: Great. Thanks, Rebecca.

Karla Salp: This is Karla. Can I insert a little piece there? So as advocates who oftentimes are involved in a lot of things besides the legal piece, I have always taken the position even when I worked in the prosecutor's office that a victim is a victim when they identify themselves as such, and have helped them regardless, even if I was a system-based advocate. So I may not be able to enforce all of their rights depending upon what the law says about when the rights attach, but I am able to provide them a lot of assistance. And I go forward as if those rights do attach at that time until somebody tells me in that case they do not.

Meg Garvin: Great. Another question that we received. What happens if the head—so I imagine that means elected—prosecutor actually is denying victims access to all victim advocates in their office? So it sounds like a case-specific question, but maybe Karla, let us have this go to you and maybe you could generally respond. What happens when your elected DA is not quite as supportive of these things?

Karla Salp: Yikes. Luckily I have normally worked with DAs that are very supportive of victims' rights. I have, however, heard of a lot of people who do not have quite that support. So I think there are a couple of things. One, make sure that you have a really good established relationship with your community-based advocates. And, if possible, make sure that your community-based advocates have a system for finding out who victims are and making sure those victims are aware of the services that are available in your community. So I know some advocates kind of get...they watch the police blotter or whatever and find out what crimes are going on or have an established relationship with law enforcement, that law enforcement will give information to the victims and let the victims self-select if they want to contact a victim advocate or not. That is one way to work on it. Another piece for the victims' advocate, system-based advocate in the office, again, this is one of those things where patience and persistence really comes in in helping the prosecutor understand. And sometimes you do not need to go directly to the head prosecutor. Working with other attorneys in your office that are supportive of victims' rights, and sometimes when it comes from another attorney and not from a quote/unquote "advocate" or victim witness coordinator, an elected prosecutor may be more open to hearing the benefits of making sure that victims' rights are enforced. And that is really the key is helping attorneys to understand that this is really a win-win situation for everyone. Usually, not always, but usually I can convince an attorney that what is best for a victim was what was best in this case for the prosecution as well. So they really started to have an appreciation for what an advocate could do to help them actually, frankly, win cases. Some people, some attorneys—and I am not going to say most—but some attorneys, that is very important to them. So again, it is relationships, patience, persistence, and that education piece where you let them know why these rights exist. So that is my little piece right off the top of my head.

Meg Garvin: Great. Let us see. Gosh, I have a long list. How about his one? How can I best explain victims' rights to victims without giving them legal advice? Wow, that is a good one and actually I think you guys might have had a slide. But why do not we start with you, Rebecca, on that?

## A Last Thought



**We need to be careful of the unlawful practice of law since it is a real issue that advocates confront, but it is best saved for another Webinar so stay tuned . . .**

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Rebecca Khalil: This one? This is a great, tricky question. And this is a question that is going to come up all the time because we have to be really careful—and I say “we” when I mean advocates, I do not know why. Advocates have to be very careful because there are a lot of rules governing the unlawful practice of law. Because unless you have taken and passed the Bar and have been admitted to the Bar in that state, you cannot give legal advice. So then the question becomes, where is drawing the line between giving legal information, which is fine, and where do you draw the line between that and giving legal advice? And the really legalistic answer is not all that helpful. Legal advice comes when you apply the facts to the law. That is the short lawyer answer. But what does that mean? So that means in the really practical sense that if you have got a victim asking for your advice, saying, “What should I do?” That is legal advice. If you have a victim asking for information like, “I have a right to be present and a right to notice, what do I have a right to be present and notice of?” And if you are lost, I will tell you. You have a right to be present at this kind of proceeding. You have a right to notice about this kind of proceeding. All that stuff is legal information that is A-OK to pass along to victims. But really the line is not always that straightforward, and NCVLI is really committed to making sure that we sort of flesh out those boundaries a little bit better. And we can provide trainings directly on this topic because it is a very important one, and it is important to understand where to stop and where information stops and where advice begins.

Meg Garvin: Great. Karla, do you have any practical tips, too, on words you have used or how you chose to tackle this problem?

Karla Salp: I do not know if I have crossed the line or not with this, but I might need some more education on it. But I think one thing that I also try to do and still in a sort of generic sense was also...You can tell them what the law is and you can tell them in layman’s terms what it is so they kind of understand at least what it is saying. I think another important piece—and I hope I am not...that I have done in the past and you can correct me if I have been wrong in this—is let them

know what some consequences can be, in general. For example, if you elect not to go to this hearing that you have the right to attend, they may plead out the case. Not in this particular case, but if one were to avoid going to this hearing, here are some things that could happen. Defendant could be released, the case could be dismissed, etc. But you will not really know what those things might be. So there are a lot of consequences if you do not attend, if you decide not to attend, that may or may not happen. And I cannot tell you about what will happen in this case, but those are some general things. Now, I may have been crossing the line.

Meg Garvin: I will not chime in on that but I think Rebecca summed it up, facts to law. If you are talking generically, Rebecca, I think you said it pretty well. I am going to add one thing to everyone's answer just because I know, Rebecca, when we do the trainings we say this pretty aggressively. It is never legal advice to refer a victim to a lawyer. So feel free to do that as you talk to survivors. I am going to have us ask one more question of you guys because I want to make sure that we give you a chance for final thoughts. So the last question is: Are campus crime proceedings, so proceedings that happen with crimes that happen on campus, is there a difference? Are they different than others? So maybe, Rebecca, if we start with you on that.

Rebecca Khalil: So, crimes that happen on campus can be different in a social sense, and can be different in terms of who responds to the crime because it might be an on-campus security officer who ends up talking to a victim before a police officer is called. But that is still a crime. So the victims' rights would still attach in that situation. Campus security officers might see it differently, but what you are dealing with is still a crime victim. There is no carve-out for offenses that take place on a university. There are a lot of considerations that might come into play because there might be related proceedings. There might be campus disciplinary procedures or some kind of an honor board violation. So there are other campus-related proceedings that can come up. And in those administrative proceedings you might have different rights. And a victim might have different rights in those proceedings. But the underlying criminal case, they would have the same rights they would have if the offense occurred two blocks off campus as on campus. But definitely, you are right. Be aware that those related proceedings are likely to occur in a campus setting because those institutions have other administrative procedures that are set up that you need to be aware of, too.

Meg Garvin: Karla, do you have anything to add to that one?

Karla Salp: No. I think that is pretty well covered. I would just say, yes, the same. The social aspects as well as the other administrative functions that might happen, but I think Rebecca covered that very well.

Meg Garvin: Great. So a call for last thoughts from each of you guys as we wind this up. Karla, any last thoughts for the folks on the line?

Karla Salp: You know, speaking to the advocates, again, just I encourage you to share your passion for victims' rights in a positive fashion. Get out there and educate the community, attorneys, everyone about what victims' rights are. And if you are having a problem attorney, it is always great to do some universal education where you are educating everybody and not singling somebody out and they can still benefit from that. And from my perspective, I just want to thank you for the work that you are doing. You know you change people's lives every day and you seldom get a thank you. So this is my thank you to you for the work that you do. And, of course, I am happy if people want to contact me or e-mail me with any questions, I am happy to help anyone at any time. I think NCVLI has my contact info.

Meg Garvin: Great. Rebecca, thoughts from you?

Rebecca Khalil: In terms of final thoughts, I wholeheartedly on behalf of NCVLI, although that is Meg's job, echo the thanks that Karla just sent out. And when it comes to dealing with attorneys, I think most attorneys are willing to learn and want to know about victims' rights. And if they are at that point where they are recognizing they do not have the knowledge that they need, or do not know how practically to go about doing these things--how do I file the papers, what laws can I use, what has been effective in my jurisdiction—go ahead and have them contact NCVLI. And we can provide them with sample motions, sample pleadings with the directed, targeted, legal research that might help them to better represent victims and help them enforce their rights when an attorney needs to be involved to help do that.

Meg Garvin: Great. And thank you on behalf of NCVLI to all of you out there doing the work in the trenches, but also a huge thank you to Karla and Rebecca for navigating us through this. It could be a 3-day training, I think, but they did a great job in the hour and a half we had together. As part of the initiative that I mentioned early on, the Legal Assistance for Crime Victims, the Capacity Building Initiative, we are going to have a series of Webinars this summer, about two a month actually, and continuing into the fall. So we hope you will tune back and we will talk with you then. Send us questions. You have our Website there. And thank you, Rebecca, and thank you, Karla.

(End.)