



## Legal Assistance for Crime Victims

An OVC Capacity Building Initiative

This webinar is part of the *Legal Assistance for Crime Victims: An OVC Capacity Building Initiative*.

As part of that *Initiative* 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.



**OVCTTAC**  
OFFICE FOR VICTIMS OF CRIME Training and Technical Assistance Center



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# Victims' Rights Year in Review: Top Cases from 2012

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NATIONAL CRIME VICTIM LAW INSTITUTE

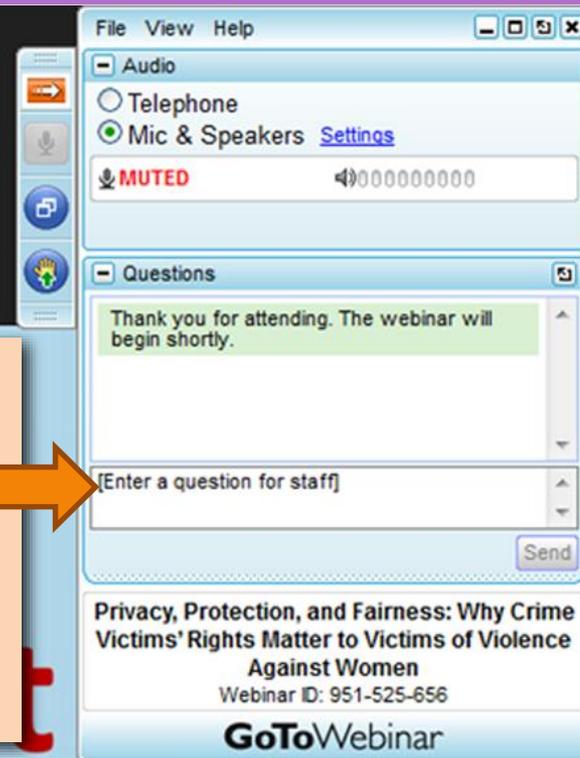


# Flow of the Webinar

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- You will receive an email with the powerpoint slides and the recording of the Webinar will be available online.
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# Goals for the Session

1. Provide an overview of some of the key victims' rights cases of 2012;
2. Identify strategies for responding to new legal landscape created by key victims' rights cases of 2012; and
3. Identify open questions of law or issues on the horizon illuminated in the wake of key victims' rights of 2012.

# *In re Amy Unknown (Paroline)*, 701 F.3d 749 (5th Cir. 2012)

- **Facts**

- Amy was raped by her uncle when she was 8 and 9 years old; he was arrested and convicted but now thousands of possession cases regarding the child abuse images that he distributed on the Internet are under way.
- Amy requested and received 3.4 million in damages from possessor of several of her images in one such case.

- **Discussion/Holding**

- Victims of the distribution/possession of child abuse images are entitled to full restitution under 18 U.S.C. § 2259.
- 2259's proximate result language only applies to the final catch-all category of loss.

- **Why it matters**

# *State v. Algeo*, --- P.3d ---, 354 Or. 236 (Or. Oct. 3, 2013)

- **Facts**
  - At D's restitution hearing (convicted of 1 count of driving under the influence of intoxicants and two counts of assault in the 4<sup>th</sup> degree) the court found that the victims were jaywalking and therefore mostly at fault for the collision. Applying civil comparative fault principles, court ordered D to pay restitution in an amount equal to 10% of victims' economic damages.
  - Victims sought appellate review.
- **Discussion/Holding**
  - Court held that there is no state constitutional right to "full restitution" but failed to reach whether civil principles of comparative fault are appropriate in a criminal restitution case.
- **Why it matters**

# Three “Accommodation” Cases

- *People v. Spence*, 151 Cal. Rptr.3d 374 (Cal. Ct. App. 2012)
  - *State v. Dye*, 283 P.3d 1130 (Wash. Ct. App. 2012);
  - *People v. Tohom*, --- N.Y.S.2d ---, No. 2011-07111, 2013 WL 3455673, (N.Y. App. Div. July 10, 2013)
- 
- Facts
  - Discussion/Holding
  - Why they matter

# *United States v. Jahani*, 2012 WL 6107097 (D. Colo. Dec. 10, 2012)

- **Facts**
  - Defendants were charged with a number of crimes and the government sought to move the trial from Denver to Grand Junction on the basis that untold number of victims would be inconvenienced (citing the Crime Victims' Right Act provision affording victims the right to be present).
- **Discussion/Holding**
  - Trial court denied the motion, noting that Rule 18 analysis controlled and victims were only one part of the analysis, that Ds had shown Denver was more convenient, but government had failed to specifically identify any victim who would be inconvenienced.
- **Why it matters**

# *People v. Holmes*, No. 12CR1522 (Colo. Arapahoe Cnty. Dist. Ct. Aug. 28, 2013) (order)

- **Facts**
  - D is charged with shooting and killing or injuring a large number of victims at a movie theatre; charges name 82 different victims.
  - Pursuant to state rule of evidence 615, D moved the court to sequester all of the state witnesses.
  - Separately the state moved to allow all of the victims to be present based upon the victims' state constitutional right to be present.
- **Discussion/Holding**
  - Noting that defendants do not have a constitutional right to exclude witnesses from the courtroom, the court held that excluding victims from the courtroom during criminal stages is not necessary to protect defendant's fair trial rights.
  - Court used a broad definition of "victim."
- **Why it matters**

# *State v. Valle*, 298 P.3d 1237 (Or. Ct. App. 2013)

## Facts

- D appealed from his conviction on charges of 1st degree sodomy and 2nd degree sexual abuse, arguing that the trial court erred in excluding evidence that the child-victim had applied for a U Visa.

## Discussion/Holding

- Court agreed with D and remanded for a new trial.
- Court noted that a party is entitled to impeach a witness with evidence regarding bias or interest and that this is “particularly true for a defendant in a criminal case[.]”
- The court stated “Simply put, [the child-victim] had applied for an opportunity to stay in the country on the ground that she had been abused; based on that fact, a jury could reasonably infer that she had a personal interest in testifying in a manner consistent with her application for that opportunity.”

## Why it matters

# Scope of Prosecutorial Control

# Scope of Prosecutorial Control

# *United States v. Meregildo*, 2013 WL 364217 (S.D.N.Y. Jan. 31, 2013)

- **Facts**

- D and other members of gang were indicted. While incarcerated and awaiting trial one of the co-D's, who had become a cooperating witness, posted status updates on Facebook. Defendant moved to compel the government to obtain the posts, arguing that now that co-D was a cooperating witness he was part of the prosecution team and Brady applied.

- **Discussion/Holding**

- Court rejected the argument saying law “does not require the gov’t to act as a private investigator and valet of the defendant, gathering evidence and delivering it to opposing counsel.”

- **Why it matters**

# Barnett v. Antonacci, --- So. 3d ---, No. 4D12-2939, 2013 WL 4525322 (Fla. Dist. Ct. App. Aug. 28, 2013)

- **Facts**

- D was charged with 3 counts of fraudulent transactions and 1 count of 2nd degree grand theft.
- The state filed a nolle prosequere, dismissing all 4 counts.
- Victim filed a petition for a writ abating the nolle prosequere based upon rights to be informed, present, and heard.

- **Discussion/Holding**

- Writ Denied.
- To harmonize victims' constitutional rights with the separation of powers doctrine the court concluded "a prosecutor's decision to file charges or discontinue prosecution with a nolle prosequere is not a 'stage' of the criminal proceeding".

- **Why it matters**

# *United States v. Castleman*, 695 F.3d 583 (6th Cir. 2012)

- **Facts**

- D pleaded guilty to misdemeanor domestic assault under TN law, which requires as an element bodily injury; subsequently he was charged with a violation of 18 U.S.C. § 922(g)(9), which prohibits anyone “who has been convicted in any court of a misdemeanor crime of domestic violence” from possessing a gun. The misdemeanor crime of DV is defined as requiring the “use or attempted use of physical force.”
- The district court dismissed the count in the indictment, reasoning that the misdemeanor domestic assault conviction did not qualify under 922(g)(9) because “bodily injury” could be caused without physical force.
- The government moved for reconsideration and appealed.

- **Discussion/Holding**

- The court determined that TN’s domestic assault statute didn’t categorically qualify as a misdemeanor crime of DV; and affirmed.

- **Why it matters**

# *State v. MacBale*, --- P.3d ---, No. CC CR1100933, SC S060079 (Or. July 25, 2013)

- **Facts**
  - D, who was charged with sexually assaulting a former employee, requested an evidentiary hearing under state rape shield statute and asked that such hearing be held in open court.
- **Discussion/Holding**
  - Concluding that rape shield statute's in camera procedure does not violate state constitution's open courts clause nor does it violate defendant's rights to a public trial.
  - Court observed that "a rape victim who is examined about the details of her personal sexual background may be less likely to be forthcoming if forced to discuss the matter in open court."
- **Why it matters**

# Standing – oh standing

# *People v. Brothers*, --- P.3d ---, No. 12SA156, 2013 WL 2340633 (Colo. May 28, 2013)

- **Facts**

- D was charged with a number of offenses, including sexual assault on a child by one in a position of trust.
- Prior to the preliminary hearing, defendant subpoenaed the child-victim's parents, seeking that they appear at the preliminary hearing and bring the child-victim with them. The prosecution moved to quash but the trial court refused to consider the motion until the preliminary hearing. The prosecution sought review in the supreme court.

- **Discussion/Holding**

- Court affirmed that the prosecution had standing to move to quash the subpoena and held that when a child-victim could suffer harm "simply by being required to attend the preliminary hearing," it is an abuse of discretion to fail to consider the motion in advance of the hearing.

- **Why it matters**

# *Airman First Class (E-3) LRM v. Lieutenant Colonel Kastenberg*, NO. 13-5006 (C.A.A.F. July 18, 2013)

- **Facts**

- D was charged with raping a female Airman.
- Victim was appointed counsel who entered appearance and asked for copies of motions filed under Rules 412, 513, and 514. Military judge held that the victim had no standing to move for copies of motions, to be heard through counsel, or to seek any exclusionary remedy.
- Victim sought appellate review first to the Air Force Court of Criminal Appeals and then the US Court of Appeals for the Armed Forces

- **Discussion/Holding**

- Noting that there are “many examples of civilian federal court decisions allowing victims to be represented by counsel at pretrial hearings,” held that the victim had the right to be heard through counsel on legal issues rather than as a witness at 412 and 513 hearings.

- **Why it matters**

# Questions? Comments?



# For More Information

[www.ncvli.org](http://www.ncvli.org)



**NCVLI** National Crime Victim Law Institute  
*protecting, enforcing and advancing victims' rights*

## Technical Assistance

NCVLI provides technical assistance in the form of legal research and educational writing to attorneys, advocates, judges, legislatures, and victims. NCVLI does not provide legal advice, nor does it directly represent victims.

NCVLI encourages you to view and download the educational materials in its library.

If the Library does not contain the information you are seeking, you can obtain additional technical assistance by clicking on the appropriate link.

- If you are a professional victim advocate, click here.
- If you are an attorney, click here.
- If you are a victim, click here.
- If you would like to request a training, click here.

**Are you working on a case with a victims' rights issue?**

NCVLI provides legal technical assistance to practitioners serving crime victims.

**NCVLI** NATIONAL CRIME VICTIM LAW INSTITUTE  
**Newsletter** of Crime Victim Law  
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**Interpreters: A Requirement for Meaningful Exercise of Victims' Rights by Non-English Speaking Victims**  
by Scott A. Larkin, J.D.

For non-English speaking victims, accessing courts and obtaining their rights can be daunting. According to a 2007 American Community Survey conducted as part of the U.S. Census Bureau, more than 60 million of the active population in the United States are of an ethnic or racial origin that is not of the majority race in the United States. In addition, 10 million of these individuals are of a language other than English and have active participation in the country's legal system. This population is growing in the structural sense of most jurisdictions to a great extent due to the use of legal services, legal proceedings when important outcomes are at stake. Thus, to achieve the promise of

Consistent with the United States' commitment to affirming the rights of all individuals, the National Crime Victim Law Institute (NCVLI) is committed to the English language. The Institute's mission is to provide non-English speaking victims with the legal resources they need to access the justice system and to ensure that they are not disadvantaged by language barriers. Through the Institute's efforts, non-English speaking victims are able to access the justice system and to ensure that they are not disadvantaged by language barriers. Through the Institute's efforts, non-English speaking victims are able to access the justice system and to ensure that they are not disadvantaged by language barriers.

# Contact Information

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# Completion Code

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As part of the *Legal Assistance for Crime Victims: An OVC Capacity Building Initiative*, OVC TTAC and the National Crime Victim Law Institute (NCVLI) are working collaboratively to expand the availability of pro bono and no-cost legal assistance for victims of crime nationally.

Part of that collaboration includes developing and delivering a series of Webinar trainings designed to assist attorneys around the country with the tools needed to increase their knowledge base about crime victim issues, and increase their capacity to provide pro bono or no-cost legal representation to crime victims.

For additional information about the Initiative and to register for upcoming Webinars, please visit: <https://www.ovcttac.gov/>