



Pretrial Publicity: Friend and Foe Views From Experts

Pretrial publicity can present both challenges and opportunities for crime victims and the attorneys who represent them. NCVLI asked two experts who work with crime victims regularly and help them navigate legal systems, for their thoughts about managing pretrial publicity. The responses of those experts—Steve Kelly and Amanda Grady Sexton—provide important insight into this topic and can help inform practitioners' work with crime victims.

1. How does pretrial publicity intersect with your work with crime victims?

“The biggest challenge with pretrial publicity relates to the criminal proceedings. Prosecutors are generally prohibited from commenting publicly but defense attorneys are much less restrained. The result is that the defendant’s side of the story gets considerable public airing with no perspective from the victim. Victims are often unfairly attacked and have historically been unable to respond. I find it critical to have independent experts who can comment on the trauma associated with the criminal process, false reporting in sex assault cases, victim blaming, etc.”

- *Steve Kelly*

“The NH Coalition Against Domestic and Sexual Violence often hears from victims and their attorneys who are heading into court and are looking for advice about pretrial publicity and ways to influence media coverage throughout the trial. In recent years, New Hampshire has had a number of sexual assault and domestic violence cases that have captured the attention of the national news media. As a result, the Public Affairs team at NHCADSV has developed strategies for proactively working to shape the media’s coverage of crime. Publicity of any kind can be a mixed-bag, but when used effectively, pretrial publicity can be a powerful tool for creating a narrative and controlling a message.”

- *Amanda Grady Sexton*

2. What are examples of ways that pretrial publicity can be used to benefit victims?

“Two main things. First, public education. The media can shine a light on the appalling way in which victims have been treated and expose common defense tactics involving intimidating, bullying and harassing victims in an attempt to get them to ‘back off’ of criminal or civil cases. Having experts, like those at NCVLI, talk about delayed reporting, the effect of trauma on the brain, and the importance of victim privacy, protection and procedural rights is critical. The media can also expose systemic problems for victims such as suppression/reclassification of crimes, low prosecution rates, etc. Second, the media can give life to the victim by getting perspectives from advocates or others better equipped to tell the victim’s side of the story. Even if the victim cannot speak, getting the advocacy perspective helps victims feel less alone.”

- *Steve Kelly*

“Holding a pretrial press conference or issuing a release to the media can be effective ways to relay messages to the public. Messages that speak to the impact of crime on survivors (generally or specifically) followed by a plea to the media to respect the privacy rights of victims can help reduce secondary victimization caused by inappropriate, aggressive or inaccurate reporting. Pretrial publicity can also be used as a way to stop the defense from creating the public narrative.”

- *Amanda Grady Sexton*

3. In your experience, what individuals, agencies or other entities are effective partners in successfully managing pretrial publicity to ensure it benefits rather than hurts victim?

“NCVLI, the Victim Rights Law Center and state and local advocacy organizations. Also individual subject matter experts—like David Lisak—are critical.”

- *Steve Kelly*

“In cases where a prosecutor or the victim’s attorney cannot engage with the media, it’s helpful to work with 3rd parties such as influential groups or individuals who can effectively relay your messages. Victim advocacy groups, family members, survivors, retired law enforcement or prosecutors, or experts in the field may be useful in helping to manage messages. However, it’s critical that the attorney and the victim in the case work closely to craft their messages.”

- *Amanda Grady Sexton*

4. Are there steps you would recommend practitioners take if they are thinking of leveraging the media? Who do you contact/where do you go? Local news? Elected officials? The Internet? Social Media?

“In my experience, getting to know the AP contact in the jurisdiction is key. Also providing media with leads, background and other information to build a relationship is very helpful.”

- *Steve Kelly*

5. Do you ever have third parties contact media regarding a case? For example, asking someone within a nonprofit organization whose work is related to the victimization to contact or respond to the media. What, if any, are the benefits of this approach?

“Yes, all the time. This gets around the ethical and other limitations imposed upon the victim in the criminal case. This also allows the victim to protect his/her privacy while having some voice in the public dialog.”

- *Steve Kelly*

6. What are some ways that victims may be harmed by pretrial publicity and what steps can be taken to prevent or mitigate the harm?

“Web trolls are terrible! They will post private information and try to humiliate the victim. Victims can prevent this by protecting their identity (not using name, being in shadow) and by using third parties to get their perspective out.”

- *Steve Kelly*

“Defense attorneys routinely use pretrial publicity in high profile cases involving interpersonal violence. Crime reporters often receive copies of the defense’s pretrial motions in their inboxes – motions that are drafted with the sole intent of reducing the credibility of the victim or a witness. In these cases, it may be best not to draw any more attention to defense’s claims. Instead, it may be helpful to have an off-the-record conversation with reporters who have taken their bait, and to help them understand the tactics the defense is using and will likely use throughout the trial.”

- *Amanda Grady Sexton*

7. Describe a case that you have worked on in which the victim-client benefited from your use of pretrial publicity and what lessons might be drawn from that experience to help other practitioners in best representing victims and their interests.

“In 2013, Nathaniel Kibby kidnapped a 15-year-old held her hostage in a storage container for more than 9 months. During those 9 months, posters with the missing girl’s name and image were plastered across New England in hopes of locating her. When the girl was found alive, her name and images were circulated nationwide. When Kibby was later indicted on more than 200 charges including multiple counts of sexual assault, threatening, and kidnapping, the details of the crime made international news.

Prior to the release of the indictments, NHCADSV partnered with the family and the Department of Justice to make a public plea to reporters: please stop using the name of the victim – she is a sexual assault victim and a child who deserves an opportunity to rebuild her life.

I remember being told by an executive at a major national media outlet that I was ‘crazy’ to think that the media would stop using the victim’s name. She told me that you can’t ‘un-ring the bell’, and that the public had an interest in knowing her identity. Fortunately, after a persuasive press conference, that national media outlet and every other media outlet in the nation heard our plea and refrained from using the victim’s name. Many other outlets agreed to scrub any history of her name from their prior online publications.”

- *Amanda Grady Sexton*



Steven J. Kelly

Steve Kelly is a partner at the law firm of Silverman|Thompson|Slutkin|White in Baltimore, Maryland, and is a nationally recognized lawyer who seeks justice for crime victims in both criminal and civil cases. Mr. Kelly has a lifelong commitment to improving the plight of crime victims and their families. He became a victim advocate at age 14, shortly after his older sister was sexually assaulted and murdered. Prior to graduating from Georgetown Law with honors in 2003, Mr. Kelly lobbied the U.S. Congress and various state legislatures for victims' rights legislation and provided training to victim advocates, prosecutors, and judges throughout the country. Mr. Kelly has developed a practice focused on enforcing crime victims' rights in criminal cases and obtaining significant compensation from offenders and third parties in civil cases. In criminal cases, he has achieved landmark rulings furthering crime victims' rights to privacy, protection, and full participation in all aspects of the prosecution. In civil matters, Mr. Kelly regularly has obtained seven-figure judgments and settlements in high-profile cases against offenders and third parties in actions ranging from homicide, wrongful death, child sexual abuse, sexual assault, child exploitation and pornography, drunk and impaired driving, illegal videotaping and Internet voyeurism, identity theft, fraud, stalking, elder abuse, home invasion, and various types of assault. Recognizing Mr. Kelly's expertise in crime victims' rights, Maryland Gov. Larry Hogan in 2015 appointed him to serve as the chair of the State Board of Victim Services, the leading advisory board to the governor on issues relating to crime victims. In 2009, then-Gov. Martin O'Malley appointed Kelly as a commissioner to the state Criminal Injuries Compensation Board. Mr. Kelly also serves on the Advisory Board of the National Crime Victim Law Institute, the Advisory Board for the state Mothers Against Drunk Driving chapter, and the Board of Directors for the Maryland Crime Victims' Resource Center. Mr. Kelly regularly testifies to the U.S. Congress and Maryland General Assembly about issues important to crime victims and speaks on those topics nationally.

Mr. Kelly's legal training has also prepared him to represent crime victims in high-stakes cases. Mr. Kelly began his career as an associate for the international firm of DLA Piper in its complex-commercial-litigation group. In 2005, Mr. Kelly was selected to serve as a law clerk to the Hon.

Richard D. Bennett of the U.S. District Court for the District of Maryland. From 2005 through 2012, Mr. Kelly litigated complex commercial matters at Miles & Stockbridge, P.C., handling matters involving product liability, intellectual-property disputes, anti-trust, securities fraud, class actions, and civil actions under the federal Racketeer Influenced and Corrupt Organizations Act. Mr. Kelly has obtained significant trial experience and argued cases in state and federal courts throughout the country. At Silverman|Thompson|Slutkin|White, Mr. Kelly has used his training to develop a one-stop-shop where victims of crime receive seamless and vigorous representation throughout the criminal case and any civil case that may follow.

Amanda Grady Sexton

Amanda Grady Sexton is Director of Public Affairs for the New Hampshire Coalition Against Domestic & Sexual Violence. In this role, she leads the organization's strategic communications, government relations, and stewardship programs.

Amanda works with crime victims and their families to advance the legal rights of victims on the local, state, and federal levels. She has worked to strengthen NH's domestic and sexual violence statutes, to extend the statute of limitations for sexual assault victims, and to pass laws to criminalize human trafficking and non-fatal strangulation. Amanda advises New Hampshire's congressional delegation and has assisted Congress with the reauthorization of the Violence Against Women Act and the passage of the Sexual Assault Survivors' Rights Act.

Amanda also specializes in media relations and has worked with some of the nation's top PR professionals to help crime victims and their families share their stories in an effort to educate the public and to advance societal change. She has provided national training to prosecutors, civil attorneys, law enforcement officials and victim advocates on crisis communications, message development, and effective strategies for working with the media.

In 2016 Politico named Amanda one of "the most plugged-in activists and elected officials" in NH, and the Boston Globe called her one of NH's "most desirable endorsements for candidates seeking the Presidency." In 2009 Amanda was named one of the New Hampshire Union Leader's "40 Under Forty" and received the NH Governor's Commission on Domestic and Sexual Violence's top honor, the "Honorable William B. Paine II Award." Amanda has been appointed to serve on state commissions and oversight committees by Governors Shaheen, Benson, Lynch, and Hassan.

In addition to her work at the Coalition, Amanda is serving as a 3rd term City Councilor in Concord, NH where she lives with her husband and their two children.

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