Protecting, Enforcing and Advancing Victims' Rights

NCVLI News

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National Crime Victim Law Institute at Lewis & Clark Law School

In This Issue:

Navigating the Perils of Pro Se: How to Protect your Client from Cross-Examination by a Pro Se Defendant

By Greg Rios

For the skilled trial attorney, one goal of a successful cross-examination is to establish control over the witness so that the attorney can shape the information that he or she wants the jury to hear. When a criminal defendant chooses to act as his or her own attorney to personally question a victim-witness, cross-examination is also about control, but often for a different purpose; cross-examination "provides one last opportunity for the defendant to torment the victim."[1] Cross-examination can be unsettling for any witness, but for crime victims the experience can be terrifying. Being subject to personal questioning by a pro se defendant can re-victimize a crime victim by forcing him or her to relive the trauma that thrust the victim into the criminal justice system.

The United States Supreme Court has held that criminal defendants have a constitutional right, under the Sixth Amendment, to act as their own attorney—also referred to as proceeding "pro se" (on one's own behalf). *See Faretta v. California*, 422 U.S. 806, 820 (1975). This right to self-representation includes the right to cross-examine witnesses. *See McKaskle v. Wiggins*, 465 U.S. 168, 174 (1984). Unfortunately, many defendants abuse that right, using it as a tool to traumatize their victims.[2] Fortunately, several courts have held that denying a pro se defendant the opportunity to cross-examine his or her victim does not violate defendant's Sixth Amendment right to self-representation where there is an important public policy or state interest justifying such a denial.[3] The most important case in this line of decisions, allowing a prohibition of direct pro se examination of victims, focuses specifically on child-victims. *See Fields v. Murray*, 49 F.3d 1024, 1036 (4th Cir. 1995) (en banc).

Preventing Pro Se Cross-Examination

According to the Fourth Circuit Court of Appeals, protecting child-victims from trauma is an "important state interest" that provides a basis for prohibiting a criminal defendant from cross-examining his or her child accusers. *Fields*, 49 F.3d at 1036. In *Fields*, defendant was on trial for multiple counts of sexual abuse stemming from allegations that he sedated and molested his daughter and several of her friends during sleepovers at his trailer. *Id.* at 1025-26. Prior to trial, defendant sought to dismiss his attorneys and to take charge of the case in large part so that he could personally question the girls, stating that "these kids cannot look me in the eye and lie to me." *Fields*, 49 F.3d at 1026. The

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Message From the Director

by Professor Doug Beloof

At its core, the victims' rights movement is about individuals – those persons most directly harmed by crime. It is about ensuring these individuals are afforded their rights to privacy, protection, participation and property; and most basically, it is about ensuring that these individuals are treated with dignity and respect as they endure the process that is our criminal justice system. This issue of *NCVLI News* includes two legal articles that discuss victims' rights to protection, focusing on how to protect victim-clients inside the courtroom; and one article that goes to the heart of all individual rights – personal autonomy.

First, in "Navigating the Perils of Pro Se: How to Protect Your Client from Cross-Examination by a Pro Se Defendant," Greg Rios discusses the terrifying reality many victims are faced with when called to testify in criminal court – the reality that their offender may want to personally question them. The article sets forth the legal limits on a defendant's right to represent himself, and it provides concrete arguments for victim attorneys to employ when trying to prohibit or limit such examination.

In "Visual Impact: Cameras in the Courtroom and Their Impact on Victims' Rights," Andrew Teitelman traces the history of media coverage of criminal cases, pointing out the lack of consideration courts have historically given to understanding the impact such coverage has on victims. The article identifies those victims' rights that can form the foundation for arguing against allowing cameras in the courtroom, and provides practical tips to victim attorneys to help protect their victim-clients when they are present and will testify at a proceeding.

Finally, in "No Means No: The Need for Vigilance in Sexual Assault Law," Meg Garvin and Megan McGill discuss the issue of "post-penetration" sexual assault, pointing out both the logical errors and cultural myths that allow this type of sexual assault to be perceived as something less than the crime it is. At the heart of the discussion is the idea that the criminal justice system, and society at large, must recognize what is central to victims' rights – the right of personal autonomy.

In addition to these legal articles are two guest articles. First, in the "Partner Spotlight," Danielle Sunday discusses the amazing services and activities of the Pennsylvania Coalition Against Rape (PCAR). PCAR is a resource for victims and victim advocates nationwide, and NCVLI is honored to be able to regularly partner with such an inspiring organization. Second, in "A Survivor's Story," Tracy Palmer shares the powerful reality of her own victimization and travels toward becoming a survivor. This article is a potent reminder of the ongoing battles survivors must face, and is a reminder to all of us that the fight for victims' rights is a necessary one to help individual victims with their trek toward becoming individual survivors. I hope you will be as inspired as I was.

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trial court denied defendant's request; instead, requiring him to submit his questions through an attorney. *Id.* at 1027 n.5. Defendant appealed the trial court's ruling on the grounds that it violated his Sixth Amendment right to self-representation; the Fourth Circuit Court of Appeals disagreed. *Id.* at 1034.

Practice Pointer 1
Argue that preventing the victim from trauma is an important state interest that justifies prohibiting pro se defendant from personally cross-examining the victim.

In reaching its conclusion, the Fourth Circuit explained that the core purpose of the Sixth Amendment's self-representation guarantee was "'to affirm [defendant's] dignity and autonomy' and to present what he believes is his 'best possible defense.'" *Id.* at 1035 (internal citations omitted). The court observed that the opportunity to personally cross-examine his victims was only one element of defendant's right to self-representation and, if denied that opportunity, he still could have controlled every other aspect of his defense, including specifying what questions should be asked of the victims. *Id.* The court concluded that by prohibiting defendant from conducting a face-to-face cross-examination of his victims, the trial court did not deny him the right to represent himself; it merely *limited* the right to self-representation, leaving its core purpose intact. That conclusion, however, did not end the inquiry. The court held that in order to justify limiting a defendant's right to self-representation by prohibiting defendant from conducting his or her own cross-examination, the state must show that there was an "important state interest" that outweighed the right to directly question a witness. *Id.* at 1036. According to the Fourth Circuit, protecting child-victims from emotional trauma qualified as an "important state interest."[4] *Id.* The Fourth Circuit's analysis provides a strong basis for denying a pro se defendant the opportunity to directly question a child-victim.

Only one state court has addressed the constitutionality of preventing a pro se defendant from personally cross-examining an *adult* victim. *See Partin v. Kentucky*, 168 S.W.3d 23, 27 (Ky. 2005) (explaining that defendant's right to self-representation did not include the right to personally cross-examine his adult victim). Nevertheless, a majority of the states, pursuant to statute and/or state constitutional provision, provides crime victims with the right to be treated with "fairness, dignity, and respect."[5] Because subjecting crime victims to personal cross-examination by the individual charged with harming them is an affront to their "fairness, dignity, and respect," those laws should constitute an "important state interest" that would justify preventing a defendant from directly cross-examining the victim. No court, however, has yet had the opportunity to address this issue.

There is also an important public interest in preventing traumatized victims (regardless of age) from experiencing further trauma as the result of being questioned personally by a criminal defendant. Describing the devastating impact of the trial process on survivors of sexual assault and domestic violence, Dr. Judith Herman stated that "[i]f one set out by design to devise a system for provoking intrusive post-traumatic symptoms, one could not do better than a court of law."[6] It stands to reason that a victim's trauma would be exacerbated if the "psychological attack" of cross-examination is personally mounted by a pro se defendant. Although current law only identifies preventing trauma to children as a justification for preventing pro se cross-examination, there is no reason that the same rationale could not be applied to adult victims who have experienced trauma as a result of crime.

Practice Pointer 2
Argue that state statutory and constitutional rights to be treated with "fairness, dignity, and respect" are important state interests that justify prohibiting pro se defendant from personally cross-examining the victim.

The Role of Standby Counsel

A trial court is authorized to appoint standby counsel to assist a pro se defendant "even over objection by the accused." *McKaskle v. Wiggins*, 465 U.S. 168, 176 (1984).

Victims' attorneys should request that the court appoint standby counsel as soon as defendant announces

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his or her intention to pursue self-representation. By doing so, standby counsel will be available to present the pro se defendant's cross-examination questions, if a victim's attorney successfully argues to prevent personal cross-examination.

Practice Pointer 3
Request that trial court appoint standby counsel as soon as defendant notifies the court that he or she is going to exercise the right to self-representation.

Protecting a Crime Victim from Harassment and Intimidation by a Pro Se Defendant

If a victim's attorney is unsuccessful in persuading the trial court to prevent a pro se defendant from personally cross-examining a victim-witness, the attorney can try to protect his or her client from harassment on the stand by appealing to a trial court's authority to preserve order in the courtroom. A defendant's right to self-representation does not include the right to abuse witnesses or disrupt court proceedings because judges have a legitimate interest in maintaining the safety and decorum of their courtrooms, which justifies placing limits on a criminal defendant's behavior.[7] With regard to a pro se defendant, a trial court can limit self-representation where defendant "deliberately engages in serious and obstructionist misconduct." *Faretta*, 422 U.S. at 834. The Federal Rules of Evidence also address a court's obligation where an attorney or pro se defendant behaves abusively towards a witness while conducting cross-examination: "The court shall exercise reasonable control over the mode . . . of interrogating witnesses [including] protect[ing] witnesses from harassment or undue embarrassment." Fed. R. Evid. 611(a).

These principles provide a basis for limiting a pro se defendant's cross-examination where defendant is abusing a witness or disrupting the courtroom. Notably, this limitation would apply to abusive questioning of *all witnesses*, not just victims.

Practice Pointer 4
Appeal to the court's authority to maintain courtroom safety and decorum to keep defendant from personally cross-examining any witness in an abusive manner.

Where a pro se defendant is harassing or intimidating a witness, a victim or witness's attorney should move the court to exercise its authority to protect his or her client.

Conclusion

Under *Faretta v. California*, a defendant has a constitutional right to self-representation, but the United States Supreme Court has made clear that this right is not absolute. *See Faretta*, 422 U.S. at 834. Defendants cannot use the Sixth Amendment as a sword to disrupt the courtroom or to intimidate their victims. If a court is unwilling to place appropriate limits on a pro se defendant on its own, it is important for victims' attorneys and prosecutors to request such limits. ■

(Endnotes)

1 Tom Lininger, *Bearing the Cross*, 74 Fordham L. Rev. 1353,1412 (2005).

2 *See id.*

3 *See, e.g., Fields v. Murray*, 49 F.3d 1024, 1025-26 (4th Cir. 1995) (en banc) (holding that trial court's ruling preventing pro se defendant from cross-examining his child accusers did not violate his Sixth Amendment right to self-representation); *Partin v. Kentucky*, 168 S.W.3d 23, 27 (Ky. 2005) (explaining that defendant's right to self-representation did not include the right to personally cross-examine his victims); *Rhode Island v. Taylor*, 562 A.2d 445, 454 (R.I. 1989) (concluding that defendant could be denied right to personally cross-examine child-victim of sexual abuse where such cross-examination would traumatize child); *Washington v. Estabrook*, 842 P.2d 1001, 1006 (Wash. Ct. App. 1993) (holding defendant's right to self-representation was not violated where defendant was prohibited from directly cross-examining victim but his questions were asked by the court, defendant had opportunity to follow up, and court explained to jury multiple times that defendant was representing himself).

4 The Fourth Circuit borrowed this two-part analysis from an earlier United States Supreme Court Case. *See Maryland v. Craig*, 497 U.S. 836 (1990) (explaining that, in the Confrontation Clause context, "the face-to-face confrontation requirement [of the Sixth Amendment] is not absolute" and protecting child-witnesses from trauma was an "important public policy" that outweighed a defendant's right to direct, physical confrontation).

5 *See* Nat'l Crime Victim Law Inst. *A Review of the American Bar Association's Guidelines for Fair Treatment of Crime Victims and Witnesses* 8 (2006), *at* http://www.ncvli.org/objects/guidelinereview2006.pdf.

6 Judith L. Herman M.D., *Trauma & Recovery* 72 (1992).

7 *See, e.g., Deck v. Missouri*, 544 U.S. 622, 628 (2005) (explaining that shackling a defendant during the guilt phase of a non-capital trial is constitutionally permissible where there is the need to maintain "security . . . or courtroom decorum"); *Holbrook v. Flynn*, 475 U.S. 560, 571 (1986) (holding that placement of four uniformed troopers around defendant at trial was not prejudicial and was justified given state's interest in maintaining a secure courtroom).

NCVLI's Technical Assistance & Brief Bank

NCVLI has recently analyzed these and other legal issues:

- Whether victims have the right to learn of their victimization in a grand jury proceeding involving the investigation of an anesthesiologist for sexual abuse of sedated patients.
- Whether consent is a defense to sexual assault of a minor in a civil case.
- Whether defendant's motion to strike the victim's participation on appeal should be denied in a case where the victim prevailed at the trial court on a motion to reconsider the reduction of defendant's sentence.
- The proper scope and use of a victim impact statement in a capital case.
- Whether the victim's right to be present is violated when the trial court schedules a critical court hearing during the victim's pre-scheduled vacation.
- Whether restitution properly includes full funeral costs and the victim's child care expenses.

- Whether a victim's constitutional right to be treated with fairness, respect, and dignity is violated when the prosecutor misinforms the victim of the nature of a plea agreement.
- Whether a court is required to order restitution to the victim when the victim and defendant have reached a civil settlement.

As part of its mission to advance crime victims' rights, NCVLI litigates nationwide and provides research and educational material in response to requests from attorneys across the country. The issues listed above are a sampling of some of NCVLI's work since our last newsletter. If you would like information on any of these issues, or if you are an attorney seeking technical assistance, please contact NCVLI at 503-768-6819, or at www.ncvli.org.

Case Spotlight

Maryland
***State v. Garnett*, 916 A.2d 393 (Md. Ct. Spec. App. 2007).**

Defendant was convicted of malicious destruction of property, but found not criminally responsible by reason of insanity. The intermediate appellate court concluded that an order of restitution, a penal sanction under Maryland law, violates state and federal constitutional provisions when levied against a defendant who is not criminally responsible.

No Means No: The Need for Vigilance in Sexual Assault Law

by Meg Garvin and
Megan McGill (Lewis & Clark Law Student)

Traditionally, the law has done more than reflect the restrictive and sexist views of our society; it has legitimized and contributed to them. In the same way, a law that rejected those views and respected autonomy might do more than reflect the changes in our society; it might even push them forward a bit.[1]

Sadly, on February 9, 2007, the Maryland Court of Special Appeals relied on and reinforced many antiquated and sexist views. In a "post-penetration" rape case, the Maryland court held that if a woman consents to penetration and then withdraws that consent there is no rape, even if force is used to continue the penetration. *Baby v. Maryland*, 916 A.2d 410, 425 (Md. Ct. Spec. App. 2007). This case is pending review by the Maryland Court of Appeals, so there is hope that the higher court will reject the views that underlie the court's decision. Even if the Maryland Court of Appeals rectifies the situation in Maryland, the decision is disturbing on a national scale because it reveals that contemporary law is still grappling with a woman's right to say no to sexual activity. Despite more than a century of hard-fought political, legal, and social victories for women, there remains a need for vigilance in law and society to ensure that women are recognized as persons with full and equal rights.

This article discusses the state of "post-penetration" rape law, looking at cases that recognize a woman's right to withdraw consent and those that hold to the contrary; it then identifies the myths that continue to permeate the law and society, which provide the misguided basis for reasoning such as that in *Baby*.

What is "post-penetration" rape?

"Post-penetration" rape is a term used to describe a situation where both parties initially consent to sexual intercourse but during intercourse one party communicates to the other the revocation of consent, and that other party forces the continuation of intercourse against the will of the non-consenting person.[2] Under this definition, "post-penetration" rape is sexual intercourse accomplished without consent of the victim – which is also the modern definition of rape. Thus, although "post-penetration" rape is something other than rape in name, it is in fact rape. To characterize "post-penetration" rape as something less than rape is to denigrate the dignity, autonomy, and humanity of the non-consenting woman, and to be complicit in a society that does not adequately recognize all forms of victimization.[3] Fortunately, the majority of courts faced with the question of whether "post-penetration" rape constitutes rape have held that it does; unfortunately, two states (Maryland and North Carolina) have held otherwise.

The State of the Nation

The majority of courts addressing whether "post-penetration" rape legally constitutes rape have held that it does.[4] In reaching their conclusions, these courts have employed a variety of analytical tactics, most of which can be classed into one of three categories. First, a number of courts have pointed out the absurdity of holding that "post-penetration" rape is something less than rape, noting that "[i]f rape occurs only when a male's entry of the female sexual organ is made as a result of compulsion, rape cases such as this would turn on whether the prosecutrix, on revoking her consent and struggling against the defendant's forcible attempt to continue intercourse, succeeds at least momentarily in displacing the male sex organ." *State v. Robinson*, 496 A.2d 1067, 1071 (Me. 1985). *See also McGill v. State*, 18 P.3d 77, 84 (Alaska Ct. App. 2001) (citing *Robinson* approvingly and noting that if rape depended on proof of non-consent to penetration, there could be no rape when a male penetrated a sleeping victim); *State v. Siering*, 644 A.2d 958, 962-63 (Conn. App. Ct. 1994) (stating that if no "post-penetration" lack of consent could constitute rape this would "protect . . . from prosecution a defendant whose physical force is so great or so overwhelming that there is no possibility of the victim's causing even momentary displacement of the male organ."). Second, a number of courts have engaged

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in textual analysis of their state's statutes, analyzing the definition of "intercourse" and finding that it necessarily extends beyond initial penetration. These courts have held that to find otherwise would mean that "intercourse begins and ends at same time," which "fails to comport with the ordinary meaning and understanding of sexual intercourse, which includes the entire sexual act." *State v. Bunyard,* 133 P.3d 14, 28 (Kan. 2006). *See also State v. Crims*, 540 N.W.2d 860, 865 (Minn. Ct. App. 1995) (stating that "Minnesota law provides a broader reference point than the moment of slightest intrusion."). Finally, a number of courts have noted that because "outrage" of the victim is not an element of the offense of rape, differentiation between pre-penetration withdrawal of consent and post-penetration withdrawal of consent upon the basis of relative outrage is unfounded. *See, e.g., In re John Z.*, 60 P.3d 183 (Cal. 2003) (finding "outrage" reasoning unsound because "we have no way of accurately measuring the level of outrage the victim suffers from being subjected to continued forcible intercourse following withdrawal of her consent," and noting that outrage is not an element of the offense of rape); *State v. Jones*, 521 N.W.2d 662, 672 (S.D. 1994) (rejecting "outrage" reasoning, and stating "[t]his court has never held that initial consent forecloses a rape prosecution.").

Despite this substantial case law, two states deny a woman the right to withdraw consent to intercourse once it has commenced – North Carolina and Maryland. The first of these is a now 28-year-old decision in which the North Carolina Supreme Court held, without citation to any authority, that once a woman consents to penetration there can be no rape, even if the penetration continues by force. *State v. Way*, 254 S.E.2d 760, 762 (N.C. 1979). Then, just this year in *Baby v. Maryland*, the Maryland Court of Special Appeals reached a conclusion in line with the archaic decision in *Way*. The court spent considerable time detailing outdated common law roots of the crime of rape, noting:

> [T]he initial 'deflowering' of a woman [was the] real harm or insult which must be redressed by compensating, in legal contemplation, the injured party – the father or husband. . . . [T]he act of penetration was the essence of the crime of rape; after this initial infringement upon the responsible male's interest in a woman's sexual and reproductive functions, any further injury was considered to be less consequential. . . . It was this view that the moment of penetration was the point in time, after which a woman could never be 're-flowered,' that gave rise to the principle that, if a woman consents prior to penetration and withdraws consent following penetration, there is no rape.

Baby, 172 Md. Ct. Spec. App. at 426-27 (internal citations omitted). Instead of disavowing these principles that relegate women to being mere chattel, the court, claiming to rely on *stare decisis*[5], stated, "Maryland adheres to this tenet." *Id.* at 617. Law both allows for and demands that *stare decisis* be abandoned in circumstances where society has moved beyond the law. *See, e.g., Bozman v. Bozman*, 830 A.2d 450 (Md. 2003) (abrogating the doctrine of inter-spousal immunity as outdated). "Post-penetration" rape is exactly one of these circumstances, yet the Maryland Court failed in its duty.

Cultural Myths that Must be Re-Overcome to Counter *Baby*

While significant progress has been made in reforming rape law,[6] many rape myths persist that allow courts such as *Baby* to conclude that "post-penetration" rape is something less than rape. A few of these myths and the counter-arguments to them are identified below.

The Unstoppable Male

In the myth of the "unstoppable male," once a man engages in sexual activity it is physically impossible for him to stop. In legal argument this myth manifests in the position that a man should be allowed reasonable time to withdraw following a woman's communication of non-consent. *See, e.g., Bunyard*, 133 P.3d at 413; *John Z*, 60 P.3d at 187. While there may be a place for some reasonable time analysis, such an analysis should not preclude a finding of rape. At most, the question of whether a man ceased intercourse within a reasonable time following withdrawal of consent is a question for the jury; to allow otherwise removes all culpability from a man, and places the onus on women to avoid provoking and then frustrating the male's primal urge, or to be prepared to suffer any and all consequences.

Promiscuous Women Suffer Less Harm

At one time, rape was perceived as a property crime – the victim was not the woman assaulted, but

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her father, husband or brother, and greater harm was seen to be caused to virgins.[7] Many modern rape law reform has been targeted at dismantling this myth. Unfortunately, in "post-penetration" rape cases the myth persists through the argument that the woman who puts herself in a compromised position is not harmed. *See, e.g., People v. Vela*, 172 Cal. App. 3d 237, 243; 218 Cal. Rptr. 161 (Cal. Ct. App. 1985) (frequently negatively cited) (reasoning that because the essence of the crime of rape is the outrage, "If [a woman] withdraws consent during the act of sexual intercourse and the male forcibly continues the act without interruption, the female may certainly feel outrage because of the force applied or because the male ignores her wishes but the sense of outrage to her person and feelings could hardly be of the same magnitude as that resulting from an initial nonconsensual violation of her womanhood."). Not only is "outrage" not an element of the crime of rape, but this idea that a woman is more harmed if she has not been a sexual being previously rests on antediluvian notions of womanhood and ignores the reality of rape victims.[8]

Initial Consent Waives Autonomy

In the waiver myth, once a woman consents to intercourse she has consented to all conduct perpetrated against her thereafter. At its core, this means that once a woman consents she is diminished to being merely a vessel for the receipt of a man's semen. This same myth formed the basis of the marital rape exception, which historically exempted husbands from prosecution for raping their wives.[9] The myth fails to recognize that women are autonomous beings with the cognitive abilities and the legal right to consent, and withdraw consent, at any time.

Conclusion

If courts or society determine "post-penetration" rape anything other than rape, then the moment a woman consents to penetration she is converted into something less than human, losing even the basic human rights; her personal autonomy, bodily integrity, and all basic human rights exist only so long as the vaginal opening is not pierced. While most courts confronted with the issue of "post-penetration" rape are not subscribing to these antiquated notions, it is disturbing that at least two courts have taken a backward step. It is perhaps even more disturbing that outdated sexist myths continue to permeate society and allow for something less than complete outrage at the result in *Baby*. Simply put -- "post-penetration" rape <u>*is*</u> rape. The Maryland Court of Appeals is set to review *Baby* in the coming months. This presents a unique opportunity for the court to reject antiquated and sexist reasoning, and instead recognize and push forward positive social change. Hopefully the court will rise to the challenge and help advance rights, and hopefully society will hold the court to this duty.

(Endnotes)

1 Susan Estrich, *Rape*, 95 Yale L. J. 1087, 1093-94 (1986).

2 *See* Amy McLellan, Student Author, *Post-Penetration Rape – Increasing the Penalty*, 31 Santa Clara L. Rev. 779, 780 (1991) (coining the term "post-penetration rape"). *See also* Amanda O. Davis, *Clarifying the Issue of Consent: The Evolution of Post-Penetration Rape Law*, 34 Stetson L. Rev. 729 (2005).

3 While rape can be, and is, perpetrated against both men and women, because the majority of rape victims continue to be women and because of the unique gender-politics at issue in establishing women's socio-political autonomy, this article assumes a female victim.

4 In addition to the court cases discussed here, one state, Illinois, has explicit legislation criminalizing "post-penetration" rape. *See* Ill. Comp. Stat. ch. 720 5/12-17(c) (2004 Supp.) ("A person who initially consents to sexual penetration or sexual conduct is not deemed to have consented to any sexual penetration or conduct that occurs after he or she withdraws consent during the course of that sexual penetration or sexual conduct.").

5 *Stare decisis* literally means "to stand by things decided;" the idea "under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation." Blacks Law Dictionary 1414 (7th ed. 1999). In determining it was bound by precedent, the *Baby* Court relied on *Battle v. State*, 414 A.2d 1266, 1270 (Md. 1980), which held that "ordinarily, if [a woman] consents prior to penetration and withdraws the consent following penetration, there is no rape."

6 Significant progress in rape law in recent decades includes the move away from the "utmost resistance" requirement, the diminished existence of a marital rape exception, and the passage of rape shield statutes. For a more in-depth discussion of both rape reform and persisting rape myths *see* Dana Vetterhoffer, *No Means No: Weakening Sexism in Rape Law By Legitimizing Post-Penetration Rape*, 49 St. Louis U. L.J. 1229 (2005); Amanda O. Davis, *Clarifying the Issue of Consent: The Evolution of Post-Penetration Rape Law*, 34 Stetson L. Rev. 729 (2005).

7 *See* Donald A. Dripps, *Beyond Rape: An Essay on the Difference Between the Presence of Force and the Absence of Consent*, 92 Colum. L. Rev. 1780, 1781 (1992) (observing that the rape of virgins had "unmistakable characteristics of a crime against property").

8 *See* Erin G. Palmer, *Antiquated Notions of Womanhood and the Myth of the Unstoppable Male: Why Post-Penetration Rape Should be a Crime in North Carolina*, 82 N.C. L. Rev. 1258 (2004).

9 *See* Sarah M. Harless, *From the Bedroom to the Courtroom: The Impact of Domestic Violence Law on Marital Rape Victims*, 35 Rutgers L.J. 305, 315 (2003).

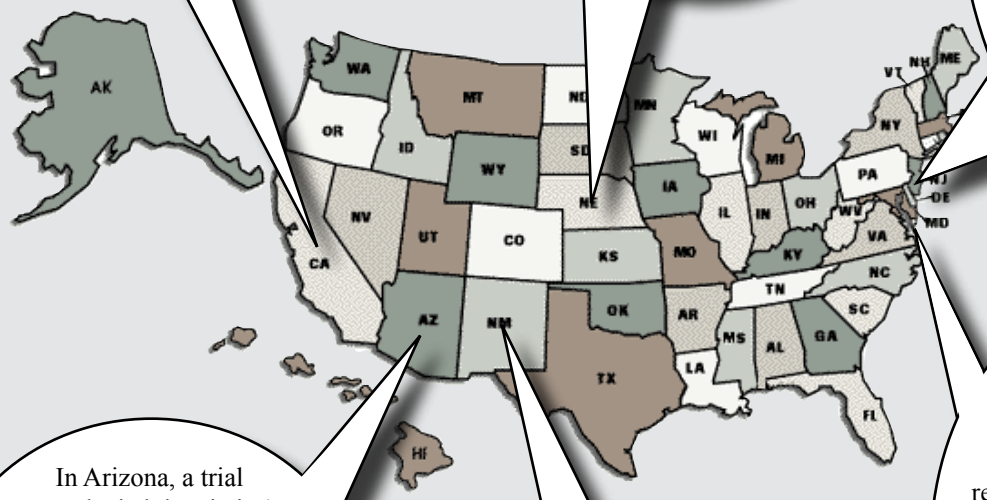
In the Trenches

In this column, NCVLI publishes news from the frontlines of the crime victims' rights movement – information about cases we all want and need to know about but which are not published in any of the reporters. Several of these cases are still pending and will be updated in future columns as information is available. If you know of a victims' rights case that should be included in our "In the Trenches" column, please e-mail us at ncvli@lclark.edu.

In California, the victim's attorney is assisting a victim in obtaining restitution in a case where the victim had thousands of dollars of property stolen but does not want to testify at a restitution hearing.

In Nebraska, a trial court ordered a sexual assault victim to refrain from using certain terms, including "rape" and "sexual assault," during her trial testimony. The victim's attorney filed a motion for reconsideration, which was denied. The victim's attorney is pursuing other relief prior to the trial, which is scheduled for fall.

In New Jersey, a defense attorney added the victim's thirteen family members to the defense witness list and requested that the trial court exclude all witnesses from the courtroom. The victim's attorney obtained affidavits from the family members and convinced the trial court that the family members were victims and not merely witnesses. The trial court issued an order allowing the family members to attend the trial.



In Arizona, a trial court denied the victim's motion to prevent a pro se defendant from cross-examining the victim or to present questions through standby counsel or in writing. The victim's attorney is seeking appellate review.

In New Mexico, despite the fact the parents were on the defendant's witness list, the victim's attorney prevailed on a motion to permit the parents of a minor child to be present during their child's testimony.

In Maryland, the victim's attorney prevailed on a motion to reconsider the reduction of a defendant's sentence. The defendant appealed and moved to strike the victim's participation in that appeal. The victim's attorney is responding on the victim's behalf.

Visual Impact: Cameras in the Courtroom and Their Impact on Victims' Rights

by Andrew Teitelman

Sensationalized coverage of criminal trials by print and electronic media is commonplace in today's society and often causes harm to victims of the crimes.[1] Historically, judges have not considered the rights of victims and witnesses when determining whether cameras should be permitted in the courtroom to record criminal proceedings. This article details the beginning of press coverage of the judicial system, through an era where the press' desire to record trials was first balanced with a defendant's right to due process, to the present – a time when courts are beginning to examine the effect of press coverage on victims' rights.

THE EARLY HISTORY

Conveying the facts, circumstances and results of trials to those outside the courtroom has occurred since biblical times.[2] In this tradition, England had complete freedom of the press in 1694, paving the way for that right to appear in the United States Constitution,[3] and providing the American press the authority to report on trials.

The reporting on trials in America expanded beyond print media in 1925 with the Scopes trial,[4] which was broadcast over the radio.[5] News photographers were also permitted to take photographs during critical junctures of the Scopes trial.[6] In 1935, the first visual recording of a trial occurred; a newsreel camera was hidden in the courtroom during the trial of Bruno Richard Hauptmann (who was subsequently convicted of kidnapping and murdering the baby of Charles Lindbergh), making the Hauptmann trial "the first to show trial proceedings by audio-visual technology to a remote viewing audience."[7]

As a result of the media presence in the Hauptmann trial, in 1937 the American Bar Association (ABA) adopted Canon 35 of the Canons of Judicial Ethics, declaring that all photographic and broadcast coverage of courtroom proceedings should be prohibited. All but three states followed this recommendation of the ABA. Despite this, the first live televised trial occurred in Waco, Texas in 1955,[8] where defendant, Harry Washburn, when asked whether he objected to live television coverage, replied, "Naw, let it go all over the world."[9]

THE SUPREME COURT ADDRESSES CAMERAS IN THE COURTROOM

The issue of whether the United States Constitution entitles the press to broadcast or videotape judicial proceedings was first presented to the United States Supreme Court in *Estes v. Texas*, 381 U.S. 532 (1965). By plurality vote, the Court held that the right to access does not include the right to televise proceedings. Justice Harlan's concurring opinion clearly enunciated the limits of the First Amendment with respect to cameras in the courtroom:

> Once beyond the confines of the courthouse, a news-gathering agency may publicize within wide limits, what its representatives have heard and seen in the courtroom. But the line is drawn at the courthouse door; and within, a reporter's constitutional rights are no greater than those of any other member of the public. Within the courthouse the only relevant constitutional consideration is that the accused be accorded a fair trial. If the presence of television substantially detracts from that goal, due process requires that its use be forbidden.

Id. at 589.

In *Estes*, the justices extensively discussed the rights and interests of the defendant and the press. They failed, however, to even note the impact that televising trials would have on victims of crime.

In 1981, the United States Supreme Court revisited cameras in the courtroom in *Chandler v. Florida*, 449 U.S. 560 (1981). The

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Court held that television coverage of a criminal trial does not result in a per se violation of a defendant's due process rights. *Id*. at 574. Again, the Court's analysis focused solely on the constitutional rights of defendants, not on the impact that cameras in the courtroom would have on victims.

Since the Court's decisions in *Estes* and *Chandler*, every state has established constitutional or statutory rights for victims, and a federal victims' rights statute was enacted. The establishment of rights for victims has changed the landscape of the criminal justice process. The legal analysis required to determine whether cameras should be permitted in the courtroom or whether a portion of a criminal proceeding may be broadcast must now include the constitutional and statutory rights of the victim in addition to the rights of the press and defendants.

PRACTICE POINTER 1
Move to exclude cameras from the courtroom as early in the case as possible.

VICTIMS' RIGHTS TO PRIVACY AND TO BE TREATED WITH FAIRNESS, RESPECT, AND DIGNITY

In many jurisdictions, victims have been afforded constitutional and statutory rights to privacy[10] and to be treated with fairness, respect, and dignity.[11] A victim's rights to privacy and to be treated with fairness, respect, and dignity may be uniquely invaded by television broadcast because "in many trials, a witness is asked questions of a personal nature during examination by counsel."[12] It is within the realm of courts and legislatures to protect victims from the harmful effects of cameras in the courtroom as "[c]ertain individuals participating in a criminal prosecution, such as victims and witnesses, would prefer to not have their involvement publicized."[13] Although by 1985 at least 40 states allowed cameras in their courtrooms,[14] subsequent legislation and court rulings have helped protect victims from having their rights violated.

Protection for victims from cameras in the courtroom exists in many forms, including a state supreme court guideline prohibiting certain proceedings from being recorded and/or broadcast in their entirety, such as prosecutions for sexual offenses,[15] and a statute prohibiting audio-visual coverage of victims in prosecutions for rape and other criminal sexual acts.[16] In addition, the majority of states allow judges to use discretion when determining whether to permit cameras in the courtroom at all.[17] Courts have also allowed for images of victims to be obscured during the broadcasting of criminal trials;[18] however, while the concept of masking a victim appears to protect the victim's image from being displayed, such protection is not a certainty, and "if a witness' face were inadvertently televised, the harm cannot be undone."[19]

While the protections mentioned above aid only some victims – those that fall within the specific categories covered by the legislation – other victims may still be subject to the privacy invasion of being on camera. Nonetheless, of the states that permit cameras in the courtroom, "fourteen wisely allow witnesses to bar the televising of their own testimony."[20]

PRACTICE POINTER 2
Should the court deny a motion to exclude cameras from the courtroom, seek alternative relief that will protect the victim, including requesting: 1) exclusion of only the victim from media coverage; 2) distortion of the image and voice of the victim so that the victim is not recognizable; and 3) placement of the camera behind the victim so that the victim's face is not visible.

This "flat rule requiring judges to ban the televising of an objecting witness' testimony is preferable" because it assures the witness that their privacy will be protected, "it enables attorneys to assure reluctant witnesses before trial that they will not be televised against their will,"[21] and it provides comfort to testifying victims that, at least with respect to cameras in the courtroom, their rights to fairness, respect, and dignity will be enforced.

CONCLUSION

The press does not have a constitutional right to broadcast criminal trials, nor do defendants have a constitutional right to have their trial broadcast. Conversely, in several states, victims do have an explicit right to prevent the broadcast

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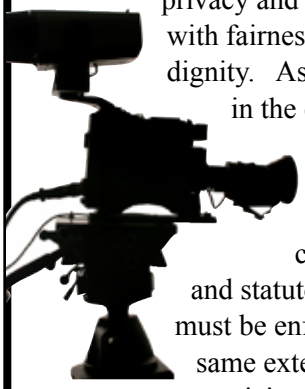
of that portion of a trial in which they are participating. Additionally, protection from cameras in the courtroom is implicit in victims' constitutional and statutory rights to privacy and to be treated with fairness, respect, and dignity. As a participant in the criminal justice process, victims' constitutional and statutory rights must be enforced to the same extent as other participants. Thus, compliance with rights requires that any decision regarding cameras in the courtroom include consideration of the legal rights of the defendant, the media, and the victim. ■



(Endnotes)

1 *See* Cotsirilos & Jenner, *Cameras in the Courtroom -An Opposing View,* Ill. Trial Law. J. 24, 59-60 (Fall-Winter 1982) (noting that television coverage magnifies the trauma of crime victims); Note, *Televised Trials: Constitutional Constraints, Practical Implications, and State Experimentation,* 9 Loy. U. Chi. L.J. 910, 918 (1978) (noting, "The camera's unique ubiquitousness dictates a reconsideration of conventional notions of privacy when evaluating that medium's impact on a judicial proceeding.").

2 Daniel Friedmann, *From the Trial of Adam and Eve to the Judgments of Solomon and Daniel*, 5 Rutgers J.L. & Religion 3 (2003).

3 *See* U.S. Const. amend. I (providing, "Congress shall make no law . . . abridging the freedom . . . of the press.").

4 Frequently referred to as the "monkey trial," John T. Scopes, a teacher, challenged Tennessee's Butler Act, which prohibited the teaching of evolutionary theories that denied the biblical version of Divine Creation. Paul Thaler, The Watchful Eye: American Justice in the Age of the Television Trial 20 (1994).

5 *Id*.

6 *Id*.

7 Christo Lassiter, *TV or Not TV – That is the Question*, 86 J. Crim. L. & Criminology 928, 936 (1996).

8 Stephen D. Easton, *Whose Life is it Anyway?: A Proposal to Redistribute Some of the Economic Benefits of Cameras in the Courtroom from Broadcasters to Crime Victims*, 49 S.C. L. Rev. 1, 10 (1997).

9 *Id.* at 11.

10 *See, e.g., Roe v. Wade*, 410 U.S. 113, 152 (1973) (recognizing "that a right of personal privacy, or a guarantee of certain areas or zones of privacy do exist under the Constitution"); Cal. Const. art. I, § 1; Idaho Const. art. I, § 22; Mont. Const. art. II, § 10; Wis. Const. art. I, § 9m.

11 *See, e.g.,* Ariz. Const. art. II, § 2.1; Idaho Const. art I, § 22; Ill. Const. art. 1, § 8.1; La. Const. art. I, § 5; Mich. Const. art. I, § 24; Miss. Const. art. III, § 26A; N.M. Const. art. II, § 24; Ohio Const. art. I, § 10A; Okla. Const. art. II, § 34; S.C. Const. art. I, § 24; Tex. Const. art. I, § 30; Wis. Const. art I, § 9m; Va. Const. art. I, § 8-A.

12 Note, *Televised Trials: Constitutional Constraints, Practical Implications, and State Experimentation*, 9 Loy. U. Chi. L.J. 910, 918 (1978).

13 Scott M. Matheson, Jr., *The Prosecutor, the Press, and Free Speech*, 58 Fordham L. Rev. 865, 884 (1990).

14 Easton, *supra* note 8, at 13.

15 N.J. Directives Dir. 10-03.

16 N.Y. Jud. Ct. Acts. Law § 218(7)(f).

17 Christo Lassiter, *An Annotated Descriptive Summary of State Statutes, Judicial Codes, Canons and Court Rules Relating to Admissibility and Governance of Cameras in the Courtroom*, 86 J. Crim. L. & Criminology 1019 (1996).

18 Paul Thaler, The Watchful Eye: American Justice in the Age of the Television Trial 39 (1994) (describing the blue-dot used by CNN to mask the identity of the victim in the rape trial of William Kennedy Smith).

19 *United States v. Moussaoui*, 205 F.R.D. 183, 187 (E.D. Va. 2002) (discussing harm to witnesses by televising trials and that certain remedial precautions to protect a witness' privacy are not guaranteed).

20 Nancy T. Gardner, *Cameras in the Courtroom: Guidelines for State Criminal Trials*, 84 Mich. L. Rev. 475, 496 (1985). *See, e.g.*, Md. Rules, Rule 16-109(e)(1).

21 *Id*. at 496.

Case Spotlight

Minnesota
***State v. Wright*, 726 N.W.2d 464 (Minn. 2007).**

Defendant pointed a firearm at his girlfriend and her sister; the women called 911, reported the incident, identified defendant, and then detailed the crime to the police officer who responded to the 911 call. On remand from the United States Supreme Court, the Minnesota Supreme Court, applying *Davis v. Washington*, 126 S. Ct. 2266 (2006), held that the victims' statements to the 911 operator were not testimonial since they were made to meet an ongoing emergency, but that the victims' statements to the police officer were testimonial since they were made pursuant to a police interview conducted for purposes of a future prosecution.

Lewis & Clark Law School's Crime Victim Litigation Clinic

NCVLI staff continue to teach the Crime Victim Litigation Clinic, which is a popular addition to Lewis & Clark Law School's clinical curriculum. The Clinic provides students with the unique opportunity to learn about both the practical aspects of the criminal justice system as well as the complex legal issues that can arise when a victim asserts or seeks to enforce his or her legal rights within that system.

As a part of the Clinic, each student undertakes a significant research project focused on a cutting-edge topic of national significance to crime victims. During spring semester, Clinic students wrote papers:

- Analyzing state constitutional "open courts" provisions to determine whether they encompass a crime victim's right to a speedy trial;
- Determining whether laws allowing law enforcement and government informants to use pseudonyms at trial can extend to sexual assault victims;
- Analyzing the parameters of a victim's right to be heard in federal capital proceedings; and
- Surveying state and federal law addressing a crime victim's right to fairness, and analyzing the existing contours of this right.

Students in the spring Clinic were also exposed to guest lecturers with rich practical experience in the area of victims' rights law including: Erin Olson, a Portland attorney who represents victims in civil matters, who spoke about the intersections of the civil and criminal systems; a teleconference with Keli Luther, Lead Counsel for Arizona's Crime Victim's Legal Assistance Program, who spoke on the practice of representing victims in criminal proceedings at the trial court and appellate level; and Carol Schrader, Director of the Oregon Department of Justice's Crime Victims' Rights Compliance Implementation Project, who described efforts to encourage actors within the criminal justice system to comply with Oregon's victims' rights laws.

The work of Clinic students contributes to the ongoing efforts of NCVLI, and other victims' attorneys and advocates, to advance the rights of crime victims nationwide.

Case Spotlight

Arizona
***State ex rel. Thomas v. Klein*, 150 P.3d 778 (Ariz. Ct. App. 2007).**

In an assault case, the trial court concluded that because the original charge was reduced from a felony to a misdemeanor, the victim no longer met the statutory definition of victim and, therefore, was not entitled to the constitutional and statutory victims' rights prohibiting a defendant from deposing a victim. On review, the court of appeals reversed, concluding that the legislature impermissibly narrowed the definition of victim set forth in the constitution, Ariz. Const. art. 2, § 2.1.

A Survivor's Story

by Tracy Palmer

Where has the time gone? His parole hearing is quickly approaching, and though I am fairly confident he will not be paroled, it brings all the past fears and worries rushing back. It seems like a lifetime ago that I was in the courtroom hoping and praying again that this time they would realize how dangerous he was and lock him up.

My story began in 1992, when I met a man I thought was my perfect mate. Little did I know at that time he would turn out to be my life's biggest battle and my children's constant turmoil.

I first had him arrested in 1994 after he had been abusing me for a little over a year. We had a young son in common and I had a son by my previous marriage. This was no way I wanted to raise my children so I decided to start fighting back. I believed I could turn the tables and take back control by having him locked up. I believed he would realize I was serious and I wasn't going to take it anymore. How easily we can fool ourselves.

I fell for his "I'm so sorry, I never meant to hurt you, I LOVE you and we can make this work" song so many times I'm almost embarrassed to admit it. I so desperately wanted a family after the failing of my marriage. I believed I could help him or better yet "save him," and at the same time save us. As time marched on I had him locked up time and time again. Sometimes I appeared in court and testified, only to have him slapped on the wrist and told to stay away from me. Other times I took advantage of him being detained and moved. This option was always a short reprieve because it was only a matter of time before he found me again, and in the meantime I spent all my time looking over my shoulder waiting for the next attack. During these periods he harassed my friends, my family and my co-workers. They would call me and beg me to make him stop, which of course I couldn't. All I could do to protect them was to contact him myself and try to reason with him. Ever beat your head against a brick wall? That was what I was doing, "trying to reason with him," thinking he just wanted to see the kids, to talk to me, nothing more.

It was always the same story; in no time at all he was stalking me again, terrifying the kids and so on and so on. Each attack was becoming worse and worse. I knew one of these days he was going to kill me. I couldn't go out with friends, do anything with my kids, or have any type of life whatsoever. We lived like prisoners. If he was not around we feared he would show up. When he showed up we feared what kind of mood was he in. If he was in a bad mood we feared how far he would go this time. I had had enough. I wanted a life for me and my kids and I was determined to have it. The one thing he never counted on was pushing me too far, pushing me to the point of no return. I was at the point that I was ready to die to keep from living this way any longer. The thought hit me one day, "if I die then what will happen to my two beautiful boys?" And that was all it took.

After fighting for so many years the boys and I were now living on our own. It was late 1997. He still showed up every once in a while, tried a few tricks and got sent away with the threat of another court appearance. He knew he had pushed the courts far enough after eight-to-twelve appearances, so he would leave. Then one night he snapped; he broke in and this time I almost died. The beating was the worse I had ever experienced, and as he was choking me he was yelling at me to die. The only thing that gave me the strength to fight him off that night was the thought of what would happen to my children. I physically survived that assault, but mentally I will never be the same. Little did I know, the person I had been before that night was murdered and what emerged was a much stronger individual.

He was charged with 1st degree assault "attempted murder," 1st degree attempted rape and various other charges. However, the true battle for survival was just beginning. After my minor nervous breakdown, I tried to put the pieces of my life back together. He was in jail on no bond status, and I was being harassed by his family, his lawyers and friends. I still was not strong enough to do what needed to be done. He wrote us constantly, and stupid me read the letters and got weak. He was facing some serious time and did I want to be responsible for him doing that time? I had Victim Guilt. Maybe somehow I am responsible for this, maybe I did deserve it, maybe if I had not done anything to upset him and on and on. Here's the clincher: I wasn't responsible for the time; I didn't commit the crime, he did. But

I learned that lesson too late. I once again backed down and let him plead to first degree assault; he was to be on five years supervised probation with fifteen years back up time if he violated probation in any way.

Supervised probation, I thought that was control. He would never do anything to risk violating and doing fifteen years. Ha! Another lie I told myself. It took him less than twenty-four hours to try and locate me upon his release, two months to find me, and less than two years to put himself back in jail. He had returned this time for burglary and attempted arson; he tried to burn down my house! Oh the rage I felt: the home where my children lived, slept, ate. The only home they had ever had where he had not lived.

So back in jail he went, and this time by God I wasn't backing down. I talked to every State's Attorney, every victims' rights group and even wrote to the judges. I was going to be heard. This time I wasn't going to slink away with my tail between my legs. I did nothing wrong and I was tired of being punished. To make a long story short, he was sentenced to ten years for burglary and then given his fifteen years back up time from the original charge. I went to every court appearance and told my story with my head held high. This battle I was going to win. I was going to win my freedom and my children's freedom, our freedom to live free and safe.

Well, off he went to PRISON, not county jail, the Big House, where real criminals like him should go. However my strength would be tested time and time again by our system. He called constantly, even with a no contact order in effect. I took him back to court, and won that one—his phone privileges were revoked. He wrote letters. I wouldn't even let my kids check the mail for fear they would find one and it would upset them. Normal things that all kids do, mine were not allowed to do because of him. It made me angrier and angrier. So I once again contacted the State's Attorney's office and demanded he be charged again. I used every letter he wrote against him in court. I had never felt so powerful, each and every time I stood up for my children and myself I could feel my life returning. My self esteem was re-emerging, my ability to hold my head high and walk out my door without fear was overwhelming. There was no way on this earth I was ever going to let him take that away from us again. I was going to fight and fight hard with everything I had to protect our way of life. But of course every time I turned around he was trying something else. Prison obviously allows a lot of time for inmates to harass people, but it's okay because for every door he tried to open I slammed it shut hard, and if I could catch him in the doorway while slamming it I did.

He tried to have the courts force me to turn over our son to his family to take for visitation to see him in prison. Slam! I obtained full custody with no visitation. Round one goes to me. He tried to be transferred to a mental health facility instead of prison where he would not have done the same time. Slam! Round two. He tried to be released due to his sister needing an organ transplant. Slam! Round three. He requested numerous sentence reduction hearings, which under the victims' rights laws in my state, I was to be notified. One county did, and I called to make sure there would never be a hearing without me reminding them of what he had done. Slam! I kept in contact with the Parole Board so I could be updated on everything that happened to him while incarcerated.

I did everything I was told to do but somehow he managed to slip through a crack in the system. Actually, it wasn't a crack but a failure in the system. I found out late in 2005 that the other county he had been charged in had granted him a sentence reduction and took over eight years off of his sentence. They had done this in April 2005, without even notifying me that there was going to be a hearing. He was on his way to freedom, and I was on my way back to fear. I contacted attorneys, the State's Attorneys office, prosecutors in both counties as well as the Parole Board. They all told me the same thing, that the case was closed, his time had been reduced, and there was nothing I could do about it.

Well, after yelling at everyone, crying, screaming and panicking (this all took a few days for me to calm down), I decided that the system had railroaded me enough and I wasn't going to take it again, at least not peacefully and quietly anyway. Women were being beaten every day and I had enough of the system. I knew in my heart if he got out he was coming for us, maybe not to hurt us at first, but when he didn't get what he wanted from us it would only be a matter of time. So against everyone's recommendations I called the judge who had originally sentenced him and then turned around and took time off his sentence. I demanded an appointment with the judge; I wanted to see him face to face to tell him what he had done. I was told I couldn't talk to the judge, so I ranted at his innocent law clerk. Well I got his attention anyway. He told me to write a letter to the judge explaining everything I just had told him, about all the attempts to harass me while he was in prison that somehow had never made it into the file or were just overlooked. The clerk told me he would see to it that my letter was placed into the judge's hands. I wrote and rewrote a letter to the judge trying to simplify my life and the danger we would be in.

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Well anyway I managed to have the closed case reopened and a new hearing date set. With a lot of help from the Maryland Crime Victim Resource Center and Laura Martin, Esq. we had the original sentence reduction vacated and all the time re-added to his sentence. He was so close to freedom, just like I used to think I was, and had it ripped away. It has been five months since that hearing and his side has appealed the new decision, so we will be going to the appellate court next year. I look forward to this round too; yet another chance to exercise my rights. In the meantime he is now eligible for parole, but I will never quit fighting. I personally went to the Parole Board and met with a commissioner to explain the entire story to them, not just what is in the files. I will also attend the parole hearing and state every objection I have to his release.

With each and every time I go up against him I get stronger, and with each year that passes while he is away my children become stronger and more secure. They still attend therapy for what they experienced, witnessing the abuse upon me, but all in all we are better, stronger people. We are no longer running and hiding, we are here and we are going to stay and fight for our right to live our lives on our terms and no one else's. The bruises healed but the scars remain forever; I will never forget what we experienced and that is why I keep fighting. That which did not kill me only made me stronger, and I keep getting stronger and stronger every time. I don't think he ever expected me to fight back. He believed he could beat me into submission forever; little did he realize by doing what he did to me, he made me his worst nightmare. This is my Justice…. ■

NAVRA News Corner

Mission Statement: NAVRA promotes the exchange of knowledge and resources to foster a national network of skilled attorneys to represent crime victims in the criminal justice system.

NAVRA statistics as of June 4, 2007:

- 373 members from 40 states: 193 attorneys, 139 advocates, 27 members of the public, and 14 law students.

NAVRA News

- Hosted its third and fourth teleconference trainings in October 2006 and February 2007, respectively.
  - ◊ In October 2006, Teresa Scalzo, then Director of the National Center for the Prosecution of Violence Against Women (NCPVAW) at the American Prosecutors Research Institute (APRI), identified the prosecutor's role in protecting privacy, and how victim privacy can best be protected by prosecutors versus when such privacy may be better served by victim attorneys or other private victim advocates.
  - ◊ In February 2007, Sandy Ortman, Director of Special Programs at the California Coalition Against Sexual Assault (CALCASA), provided an overview of campus judicial policy and philosophy, and student codes of conduct.
- Hosted its 3rd annual member event on May 19, 2007.

Upcoming News & Events

- In summer/fall 2007, NAVRA will host its next teleconference training - details forthcoming..
- Later this year, NAVRA will launch a members' only website, that will includes crime victim law updates, NCVLI amicus curiae briefs, and audio/video of former trainings.
- In 2008, NAVRA will host its 4th annual member event.

NAVRA encourages attorneys, law students, victim advocates, and crime victims to lend support to the ongoing movement towards justice for victims of crime. Currently, the NAVRA membership fee is waived. To become a member, fill out the online form at www.navra.org.

2007 Crime Victim Litigation Conference

Jamie Mills accepts her award for legal advocacy from Douglas Beloof.

Thank you to everyone who attended the Sixth Annual Crime Victim Law & Litigation Conference in Portland, Oregon. Themed Architecture of Justice: An Integration of Victims' Rights, the conference was attended by over 125 individuals who participated in workshop/plenary sessions, visited exhibits, and acknowledged the 2007 award winners. Lydia Loren, Interim Dean of Lewis & Clark Law School, opened the conference, followed by John W. Gillis, Director of the Office for Victims of Crime (OVC), who provided insights into the work of OVC. Veraunda Jackson, attorney and author, delivered the morning keynote speech, inviting everyone into the private world of victims. Key speakers at the conference included Mary Beth Buchanan, Interim Director for the Office on Violence Against Women (OVW), who presented on the current priorities of OVW; attorneys Jamie L. Mills, Diane Moyer, and Lyn Schollett, who discussed the current issues that affect victims of sexual violence; and Diane Humetewa, Senior Litigation Counsel and Tribal Liaison for the Arizona United States Attorney's Office, who discussed victims' rights in the federal system.

At the annual awards ceremony, NCVLI paid tribute to four distinguished individuals:

- Lifetime Achievement Award - John W. Gillis, Director of OVC, for years of leadership in victims' rights;
- Legal Advocacy Award - Jamie L. Mills, retained counsel for Connecticut Sexual Assault Crisis Services, for steadfast representation of crime victims;
- Victim Advocacy Award - John Stein, Executive Secretary for Policy and Administration of the International Organization for Victim Assistance, for resolute advocacy in advancing victims' rights; and
- Victims' Rights Partnership Award - Hardy Myers, Attorney General of Oregon, for advancing victims' rights through statewide partnership.

Please visit the NCVLI website at www.ncvli.org/2007conference.html to read the biographies and achievements of the award winners.

Please stay tuned for more announcements on the 7th Annual Crime Victim Law & Litigation Conference., which will be held in Portland, Oregon in 2008.

Pro Bono Thank you

NCVLI would like to specially recognize two lawyers who have dedicated pro bono time to serving crime victims:

- Wyatt Rolfe, an associate at Shroeder Law Offices, P.C., for his efforts to help crime victims in Oregon. Mr. Rolfe, an alumni of Lewis & Clark Law School and former NCVLI intern, represented a victim of crime pro bono in response to a NAVRA listserv query.

- Steven J. Kelly, an associate at Miles & Stockbridge P.C., for his efforts to help crime victims in Maryland. Mr. Kelly, who won the Governor's Award for Service to Crime Victims in 2000, served as local counsel to NCVLI in a case in front of the Maryland Court of Special Appeals.

The pro bono services of these attorneys not only help the victim in the case being litigated, but also help victims nationwide by advancing victims' rights generally, and setting a standard of legal service for others to follow.

Partner Spotlight

by Danielle Sunday

PENNSYLVANIA COALITION AGAINST RAPE

Founded in 1975, the Pennsylvania Coalition Against Rape (PCAR) is the oldest anti-sexual violence coalition in the United States and is widely respected at both the state and national levels for its leadership to prevent sexual violence. Over the past thirty years, PCAR has successfully worked as an agent of change to educate society about the severe and long-lasting impact of sexual violence, to confront victim blaming attitudes, to challenge injustice, to advocate for legislation, and to provide sexual assault victims with the compassion and dignity they deserve.

PCAR's innovative public awareness campaigns have set a new standard. The creative and compelling campaign materials have served as a model for many other states.

PCAR helps a broad constituency of sexual assault service providers at the local, state, and national levels. The coalition's efforts are reflected through its active involvement in the following areas:

Public Awareness

PCAR's innovative public awareness campaigns have set a new standard. The creative and compelling campaign materials have served as a model for many other states. The Coalition's award winning Teen Sexual Violence Prevention Campaign has received accolades from teachers, parents, prevention educators, and most importantly, teens.

Components of the campaign include:

- RYOT (Rallying Youth Organizers Together) Against Rape – More than 60 teen advocates develop and implement plans to prevent sexual assault among their peers, engaging a new generation to carry on PCAR's mission.
- Teens Think What? – PCAR's newest campaign helps parents talk to their teenagers about sexual violence. A brochure and website teensthinkwhat.com offer parents startling statistics, quotes from teens, and resources.
- Whatcha Gotta Know – J.Saint's hit single "It Stops With Us" is featured on the CD, "Whatcha Gotta Know." The song empowers teens with anti-sexual violence messages that are reinforced with a ten panel CD insert.
- Internet Safety Campaign – A twelve-question interactive quiz on teenpcar.com helps tech-savvy teens make smart decisions about online activity. Teens who visit the website and take the quiz then have the opportunity to win an iPod Nano during quarterly drawings.

PCAR also won an Emmy for its "Gonna Make It" prevention-oriented music video. Since it was first launched in 2002, PCAR has sold more than 1,500 videos to programs across the country.

Additionally, the coalition works to keep the topic of sexual violence at the forefront of the public consciousness by hosting media events, publishing the *PCAR Pinnacle*, a biannual newsletter (among many other publications and brochures), and maintaining several websites including www.pcar.org, www.nsvrc.org, www.menagainstsexualviolence.org, www.teenpcar.com, www.theirhope.org, www.teensthinkwhat.com, and www.wherestheoutrage.org.

Public Policy

Actively involved in shaping public policy at the state and national levels, PCAR was instrumental in the drafting and passage of the federal Violence Against Women Act (VAWA) of 2000 and 2005.

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PCAR is actively working alongside other national partners to advocate for full funding of the Sexual Assault Services Program, which would provide the first federal funding stream for direct services and make resources available to state, territorial and tribal sexual assault coalitions who work to provide training and technical assistance to and advocacy for local rape crisis centers.

On the state level, PCAR worked with the General Assembly to achieve statutory standardization of forensic evidence collection kits and will be collaborating with allied stakeholders led by the Department of Health on implementation and training. Additionally, PCAR is working to ensure that hospitals and healthcare facilities throughout the Commonwealth provide medically accurate information about and access to emergency contraception when a victim goes to the hospital emergency room.

Training

Committed to improving cross-disciplinary responses to sexual assault survivors in every way possible, PCAR develops and sponsors a variety of training programs for sexual assault service providers and allied professionals. In addition, PCAR's Association of Sexual Assault Counselors, a statewide network of sexual assault service providers, offers semi-annual training institutes. These institutes help staff members of sexual assault centers improve their skills and stay abreast of current issues.

As part of its ongoing commitment to improve the quality of sexual violence services statewide, PCAR offers a variety of technical assistance and resources to sexual violence centers.

Technical Assistance

As part of its ongoing commitment to improve the quality of sexual violence services statewide, PCAR offers a variety of technical assistance and resources to sexual violence centers. The coalition helps local centers with contract survivor services, risk management, evaluations, board governance, fiscal management, fundraising, medical advocacy, and prevention education.

National Sexual Violence Resource Center

In 1999, the Centers for Disease Control and Prevention (CDC) awarded PCAR a multi-year grant to establish the first federally funded resource center on sexual violence. The National Sexual Violence Resource Center (NSVRC) officially opened its doors in July 2000. It provides resources and technical assistance to state, tribal, and territory sexual assault coalitions; community-based sexual assault programs, anti-oppression groups, and federal and state agencies; researchers, healthcare and education professionals; and the general public. In 2004, PCAR was awarded a five-year cooperative agreement from the CDC to continue to develop and enhance the prevention work of the NSVRC.

Preventing Child Sexual Abuse

In July 2005, PCAR launched Vision of Hope, a national campaign designed to protect children from sexual abuse. Chaired by former Pennsylvania First Lady Michele M. Ridge, Vision of Hope is raising $2 million by 2008 to create multi-level responses that promote effective prevention, critical intervention and adult responsibility for the safety and well being of our children. Since the campaign's inception, Ridge has assembled a distinguished advisory council of thirty-two professionals and launched an educational media campaign. On April 28, the council hosted the inaugural Vision of Hope Gala & Silent Auction, a successful evening of awareness and fundraising with proceeds of $100,000. For more information, the campaign includes an informational Web site at www.theirhope.org.

Pennsylvania Sexual Violence Centers

While PCAR serves as a resource for the communities across the Commonwealth, the core of the coalition's success happens within its statewide network of fifty-two sexual violence centers that provide counseling, crisis intervention, referral services, prevention education, community outreach and accompaniment to hospitals, courts and police stations. PCAR centers offer crisis support and counseling twenty-four hours a day, seven days a week.

For more information about PCAR or any of our activities, please visit our Web site at www.pcar.org or call 1.800.692.7445.

NCVLI welcomes story ideas and suggestions for future articles that spotlight an attorney, service provider, advocate, or public or private citizen working on behalf of crime victims.

Please send newsletter ideas and/or stories to:

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