

The Work of the National Crime Victim Law Institute

A Report to the Board of Directors
This 22nd Day of March, 2010

NATIONAL
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protecting, enforcing & advancing victims' rights

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Appendix A: Highlights of Substantive Legal Work

This Report to the Board of Directors of the National Crime Victim Law Institute (NCVLI), dated March 22, 2010 (Report), highlights the programmatic and development work, as well as staffing updates, of NCVLI during the period of December 1, 2009, through March 22, 2010 (Period).

I. PROGRAMMATIC REPORT

A. NCVLI News¹

NCVLI continued compiling and editing articles for the 12th Edition of *NCVLI News* during this Period. The 12th Edition includes pieces on a wide range of victims' rights issues, including the legal issues surrounding calculating and awarding restitution in child pornography cases, an excerpt from the statement of Paul Cassell before the United States Sentencing Commission on protecting victims' rights in the sentencing process, and the admissibility of expert testimony regarding "Battered Women's Syndrome." This edition will feature a new design, incorporating NCVLI's new logo and colors. The 12th Edition of *NCVLI News* was submitted to OVC early in March and received final approval for publication on March 22nd. Publication will occur early in next period.

B. National Alliance of Victims' Rights Attorneys (NAVRA)²

As previously reported, in 2009 a strategic review of NAVRA was undertaken to determine the best paths to enhance its pro bono capacity and to create support for NCVLI's work. The result of that review was a list of short-term and long-term goals and objectives to further NAVRA's mission of increasing the availability and effectiveness of legal services for crime victims. Those goals and objectives have been summarized in a project plan and plan calendar; achievement of the plan will continue to be managed by attorney Sarah LeClair. Many of the goals and objectives have begun to be implemented, including the design and development of the website. A detailed review of key pieces of NAVRA follows.

1) Membership

NAVRA membership increased by 27 members this Period. NAVRA currently has 697 members. This group includes 324 attorneys, 9 law students, 7 non-law students, 319 advocates, and 38 other individuals. The membership contains representatives from 47 states, the District of Columbia, and one member from Israel.³ Among NAVRA's primary goals are to continue to grow membership and to use a partial fee-based membership structure to help make NAVRA self-sustaining. It was last

¹ Currently funded by Enforcement 3.

² NAVRA is currently funded, in significant part, by Enforcement 3; small aspects of NAVRA are being funded on unrestricted monies to ensure the ability to advance the project most effectively.

³ Notably, the member from Israel proposed and was accepted to present at the upcoming Conference.

reported to the Board that because of the advantages associated with making NAVRA self-sustaining, a membership fee would be imposed on current and future members as of the end of 2009. After several discussions with the Office for Victims of Crime (OVC), it has been decided that NAVRA will impose its new membership structure at the time of the NAVRA website launch during the first half of 2010. The new membership structure will provide NAVRA members with both unpaid and paid options, each which will allow differing levels of access to the members-only website and NAVRA trainings.

After fees are imposed, the short-term goal will be to retain the current membership numbers, recognizing that an initial decrease may occur upon imposition of fees. It is believed that the plan to continue to offer an unpaid membership option will increase the likelihood of retaining members, with the hope that some or all of those members will become paying members over time. Both the short-term goal of retaining members and the long-term goal of growing NAVRA are to be accomplished through general and targeted marketing to attorneys in cooperation with groups, such as: 1) pro bono committees of federal, state, and local bar associations; 2) law schools and undergraduate criminal justice programs; and 3) federal, state, and local law enforcement. Marketing materials will include a description of benefits associated with NAVRA membership, including access to the members-only website with enhanced features (described in greater detail below), access to teleconference and webinar trainings on important victim law topics, participation in the email listserv, and reduced tuition for NCVLI's annual Crime Victim Law Conference.

2) Members-Only Website

The first phase of the design of the new members-only website is nearly complete, and when fully operational the website will offer select 1) workshops and sessions from past Crime Victim Law & Litigation Conferences, 2) teleconference trainings from past years, 3) webinar and other video-recorded trainings, 4) pleadings, amicus briefs, and legal memoranda, and 5) the complete compilation of the quarterly *Crime Victim Law Update*, which NCVLI began compiling in 2004. NAVRA had planned to launch the website during the first quarter of 2010, but has delayed the launch based on the recommendation of the website designer that NAVRA first transition to a new website host at www.wildapricot.com, which is a membership-focused host. Based on this recommendation, and after its own investigation, NCVLI decided to transition to www.wildapricot.com before the launch. The new website host will provide cost-effective member-management software that will reduce the maintenance burden on NAVRA administrative staff going forward.

3) Trainings

NAVRA hosted two trainings this Period.

NAVRA held its first webinar training. The training was held on January 26, 2010, and was entitled “Rape Shield: Using Victims' Rights Laws to Enforce Privacy Rights.” The training was presented by Keli Luther, senior attorney at the Arizona Voice for Crime Victims legal clinic, along with NCVLI attorneys Meg Garvin and Alison Wilkinson. The presenters provided an overview of rape shield laws and their connection to victims' statutory and constitutional rights under states' victims' bills of rights. The presenters also discussed the case of *Doe v. United States*, 666 F.2d 43 (4th Cir. 1981), and how victims' rights provisions can be leveraged to allow victim participation in rape shield proceedings and to create avenues for appellate review. There were 46 people registered, and of those who participated, 6 completed a satisfaction survey. The responses were very positive—with all strongly agreeing or agreeing that they were satisfied with the quality of the session and that the session improved their understanding of the topic. Notably, the only critique was of the webinar technology itself. In response to this, NCVLI is investigating competitors to determine which will provide better services at a cost-effective rate.

The second NAVRA training was held at Lewis & Clark Law School on March 12, 2010, from 9am-3:15pm and was entitled “Securing Access to Justice for Victims of Human Trafficking: A Training on Victims' Rights and Immigration Protections.” This CLE training was offered in partnership with Catholic Charities. The CLE was designed to educate attorneys and others about how they can assist the staggering numbers of men, women, and children trafficked into and within the U.S. annually for sexual exploitation or forced labor. The CLE provided an overview of the crime of human trafficking; identified the enforceable state and federal rights that these victims have in the criminal investigation and prosecution of their offender, and how attorneys can help assert these rights; and explained the core immigration protections and social services available under state and federal law, and how attorneys can help victims access these protections. Included in the CLE was a lunch session teaching attorneys how to recognize whether a client they are serving is a victim of human trafficking, and about the barriers victims face both in seeking services and once they obtain services. 38 people registered for the event, 37 of whom paid to attend the event (1 registrant did not pay and did not end up attending), and 34 paid registrants attended the event. Also present were 5 speakers, several law students from Lewis & Clark and Willamette law schools, and members of NCVLI staff. Survey results are still being tallied, but overall, trends show that attendees were satisfied with the event, and would like future trainings with covering the issues in more detail. Registrations brought in \$1155.00, more than offsetting event expenses of \$884.09⁴ (exclusive of personnel costs), giving a net income of \$270.91.

⁴ Expenses for this CLE were kept particularly low because the event was held on the Lewis & Clark Law School campus, eliminating costs for meeting space and ensuring lower catering prices than the industry norm.

4) Digest 101

As previously reported, NAVRA distributes the *Victims' Rights Digest 101: an anthology of global news & media (Digest)* weekly. The *Digest* is an electronic publication of national and international news stories and legal articles affecting crime victims. The *Digest* is disseminated via email to NAVRA's listserv and select stories are highlighted on NCVLI's website. This Period, staff changed the *Digest* slightly by adding a brief summary about each article below the article title, to put the issues into context for readers. It is hoped that this improvement will make the *Digest* a more valuable resource for NAVRA members.

5) Crime Victim Law Update

Production of the *Crime Victim Law Update*, a quarterly publication that summarizes recent cases affecting victims' rights on a national scale, continued this Period. In February 2010, NCVLI published the fourth and final issue of *Crime Victim Law Updates* for the 2009 calendar year. This issue was the first release of a redesigned look and layout that incorporated NCVLI's new logo and color scheme. Work is progressing on the first issue for 2010, scheduled to be published in April. NCVLI has also revised all previously published case summaries that involve the federal Crime Victims' Rights Act (CVRA), and has compiled those summaries into two separate formats, one by jurisdiction and one by topic. A searchable version of these documents will soon be available on the NAVRA Members-Only Website. In addition to the compilation of CVRA-related case summaries, the NAVRA Members-Only Website will include a master compilation of all case summaries that have appeared in prior issues of *Crime Victim Law Update*, as well as critical victim law cases that pre-date the first publication of *Crime Victim Law Update*. NCVLI is currently compiling, writing, and revising these case summaries.

C. FY 2008 CRIME VICTIMS' RIGHTS ENFORCEMENT PROJECT (ENFORCEMENT 3)

As previously reported, NCVLI was awarded \$4,248,155 from Office of Justice Programs, Office for Victims of Crime (OVC) for the 2008 Crime Victims' Rights Enforcement Project (Enforcement 3). This Project runs from October 1, 2008 – September 30, 2010, although a no cost extension will be requested to extend the project through December 2010. The elements of the Project are described below.

1) Subgrant to Legal Clinics to Provide Pro Bono Representation

i. Non-Competitive Awards to Partner Clinics

During this Period, all eight Partner Clinics continued their victims' rights enforcement work in Arizona, Colorado, Idaho, Maryland, New Jersey, New Mexico, South Carolina, and Utah. Subgrants to these Partner Clinics, as previously reported, were issued in amounts ranging from \$127,500 to \$590,000 for grant periods of 12 – 18 months. In January, NCVLI attorneys Ali Wilkinson and Carol Schrader performed a site visit at the Maryland Clinic. NCVLI also conducted regular telephone calls, processed monthly reimbursement requests and reviewed written quarterly reports submitted by the clinics. These efforts revealed that all eight Partner Clinics are in full compliance with their subgrant obligations.

ii. Competitive Awards to New Enforcement Clinics

During this Period, the four Clinics (California, New York, Oregon, and Washington, D.C.) continued their work under the subawards that had been finalized by NCVLI this past summer. These clinics were each awarded \$100,000 for grant periods of 12 months. In January, NCVLI attorneys Carol Schrader and Alison Wilkinson conducted a site visit at the District of Columbia Clinic. In February, NCVLI attorneys Carol Schrader and Terry Campos conducted a site visit at the California Clinic. NCVLI also conducted regular telephone calls, processed monthly reimbursement requests and reviewed written quarterly report submitted by the clinics. These efforts revealed that all four new Clinics are in full compliance with their subgrant obligations.

2) Technical Assistance, Training, Collaboration and Support

NCVLI continued providing legal technical assistance, resource-sharing and support to attorneys, advocates and others both within and outside of the NCVLI-Clinic Network under this grant. Highlights of NCVLI's legal work are contained in **Appendix A**.

3) Educate Criminal Justice System Participants

i. Law & Litigation Conference

NCVLI's Crime Victim Law Conference, originally scheduled to be held June 3 – June 4, was re-scheduled to June 10 - 11, 2010. The change was initiated at the request of the Marriott Waterfront Hotel, the venue of the event, which had overbooked its facilities. NCVLI agreed to this request in exchange for numerous concessions by the Marriott. The concessions will result in substantially reduced costs for the event, as well as contributions to offset costs of two events to be held at later dates during the year. NCVLI immediately marketed the date change, including sending a postcard about the date change to more than 1500 individuals.

NCVLI worked extensively on developing the program for the conference, which was reviewed and approved by OVC in February. NCVLI has also been making

arrangements with the more than 30 faculty members that will be participating at the event, developing marketing and outreach for the event, and confirming conference logistics. As of this Report, 15 attendees have registered for the event.

ii. Train Nationally on Victims' Rights

NCVLI conducted several trainings over the reporting period. These trainings are summarized below in Section III of this Report - **NCVLI STAFF**.

iii. Create, Disseminate and Maintain Victims' Rights Resources

This Project goal includes publication of *NCVLI News*, and continued work on the quarterly *Crime Victim Law Update*. These elements are reported on elsewhere in this Report.

**D. FY 2009 CRIME VICTIMS' RIGHTS ENFORCEMENT PROJECT
(ENFORCEMENT 4)**

In September 2009, NCVLI was notified that it was awarded \$710,000 in OVC discretionary funds for the 2009 Crime Victims' Rights Enforcement Project (Enforcement 4). With OVC's approval of a grant time period adjustment, Enforcement 4 will run from October 1, 2009 – June 30, 2011. The elements of Enforcement 4 are described below.

1) Subgrant to Legal Clinics to Provide Pro Bono Representation

This element of Enforcement 4 was designed as "bridge funding" to the clinics to aid their viability until the next federal budget cycle. Under this element, NCVLI will subgrant to the eight Partner Clinics that are currently funded under Enforcement 3 (but not the Start-Up Clinics). Each Partner Clinic is eligible to receive \$20,000 to \$150,000 for time periods ranging from 2-8 months. This Period, NCVLI reviewed the applications submitted by the Partner Clinics and worked with those Clinics on necessary revisions. After this review, NCVLI submitted applications and sole source justifications to OVC for the Arizona, Maryland, New Jersey, New Mexico, South Carolina and Utah Clinics; each application was approved by OVC in early March 2010. Subawards will issue to each Clinic shortly. The Idaho Clinic declined to apply for this funding. NCVLI will be reviewing its project budget to propose an acceptable use for these declined funds. In light of challenges that the Colorado Clinic, operated by the Colorado Organization of Victim Assistance (COVA) has faced over the past year (e.g., changes in attorney staff and difficulty replacing such staff), NCVLI recommended (with COVA's concurrence), and OVC agreed, that rather than re-contract with COVA, a competitive grant application for Colorado only would be beneficial. The request for proposals was distributed in late February and applications are now under review. NCVLI hopes a subaward will issue for a May start date later this spring.

2) Provide Services to Domestic Victims of Foreign Online and Computer-related Crimes

With this part of the Enforcement 4 grant, NCVLI is entering the arena of international victims' rights by ensuring that domestic crime victims of online fraud perpetrated by foreign offenders are supported in criminal prosecutions undertaken by foreign sovereigns, and that they are provided support domestically. NCVLI will also increase awareness and understanding of the needs and rights of these victims through education, training, and outreach. NCVLI will specifically focus facilitation of legal services on cases that emerge from Romania and serve as the liaison between domestic victims and Romanian attorneys.

During this Period, NCVLI continued conversations with industry representatives (e.g., Google, Western Union) and Department of Justice experts both by phone and email to further develop its understanding of the needs of these victims, the structure of foreign justice systems, and to create a plan for facilitation of legal and support services, as well as education and outreach. These conversations have revealed that there is currently no system of notification to victims of investigation and prosecution by foreign sovereigns, no communication regarding any rights the victims may have, and no targeted services for these victims.

Fortunately, after interviewing a number of candidates for a victim advocate position, NCVLI hired Jo Borkan in March to lead this aspect of Enforcement 4. Immediately upon hire, Jo delved into research on this relatively unexplored area and has started to compile and organize resources for victims. This information will be used to develop victim-accessible educational materials to be posted on NCVLI's website and when working directly with victims. NCVLI has also participated in conversations with a representative from the Office of International Affairs (OIA) and OVC, regarding creating a victim referral process from OIA to NCVLI so that NCVLI can begin to help victims in accessing legal representation in Romania.

E. VICTIMS' RIGHTS ENFORCEMENT: REPRESENTATION, TRAINING, TECHNICAL ASSISTANCE (Byrne Project)

In September 2009, NCVLI was notified that it was awarded \$1,689,600 from Office of Justice Programs, Bureau of Justice Assistance (BJA) for the Victims' Rights Enforcement: Representation, Training, Technical Assistance Project (Byrne Project). This is a competitive grant. The project period is August 1, 2009 – July 31, 2011. Although the awarding agency of the grant is BJA, the grant is monitored by OVC. The elements of the Project are described below.

1) Subgrant to Legal Clinics to Provide Pro Bono Representation

Under the Byrne Project, NCVLI will subgrant to the eight Partner Clinics currently funded under Enforcement 3 (but not the Start-Up Clinics). Each Partner Clinic is eligible to receive \$150,000 for time periods ranging from 12-18 months. This Period, NCVLI reviewed the applications submitted by the Partner Clinics and worked with those Clinics on necessary revisions. OVC has approved applications and sole source justifications for subawards to the Arizona, Idaho, Maryland, New Jersey, New Mexico, South Carolina and Utah Clinics. As with Enforcement 4, NCVLI analyzed the challenges that the Colorado Clinic (operated by COVA) has faced over the past year (e.g., changes in attorney staff and difficulty replacing such staff), and recommended (with COVA's concurrence) that rather than re-contract with COVA, a competitive grant application for Colorado should issue. OVC agreed, and the request for proposals was distributed in late February. Applications are now under review. NCVLI hopes a subaward will issue for a May start date later this spring.

2) Train On Victims' Rights To Create A Pro Bono Pool

NCVLI's Legal Team will develop a series of "trial-advocacy" trainings that teaches attorneys the "how to" of victims' rights motion practice. These trainings will be packaged as "continuing legal education" courses (CLEs) and will be implemented in each of the Partner Clinic jurisdictions. Work on the trainings will begin in the second half of 2010.

3) Technical Assistance, Training, Collaboration, and Support

NCVLI will continue to provide legal technical assistance, resource-sharing and support to attorneys, advocates and others both within and outside of the NCVLI-Clinic Network. This work will be accomplished through NCVLI's preexisting infrastructure for receipt, delivery and evaluation of technical assistance. While the majority of NCVLI's technical assistance this Period was undertaken under Enforcement 3, NCVLI did launch this piece of the Byrne Project this Period. Highlights of NCVLI's legal work are contained in **Appendix A**.

F. OVW Legal Technical Assistance Project

As previously reported, NCVLI received a \$150,000 grant from the Office for Violence Against Women (OVW) for its Legal Technical Assistance Project. This grant has a project period of July 1, 2008 - June 30, 2010. NCVLI is in the process of drafting a no-cost extension that we anticipate will continue the Project through December 2010. Under the project, NCVLI conducts trainings and provides legal technical assistance to OVW grantees who provide direct services to victims of domestic violence, sexual assault, stalking and dating violence. Ali Wilkinson is the lead attorney on this project.

NCVLI continued to focus on training this Period. NCVLI hosted a teleconference on privacy rights in connection with rape shield laws in December entitled “Rape Shield: Using Victims’ Rights Laws to Enforce Privacy Rights.” The teleconference was hosted by Meg Garvin, Ali Wilkinson, and Keli Luther of the Arizona clinic. 37 people registered for the teleconference. Responses to the training were positive. This Period, NCVLI also began preparations for its next training scheduled for April, a webinar, which will be entitled “Navigating Victims’ Rights in Campus Sexual Assault Cases.” Shelley Mactyre, a private civil attorney located in Portland, will be the primary presenter. The webinar is scheduled for Sexual Assault Awareness Month, and will highlight the lack of legal support currently available for victims of sexual assault on campus.

This Period, NCVLI also had telephone calls with its two collaborative partners on the OVW grant –the Victims’ Rights Law Center (VRLC), and the American Bar Association’s Commission on Domestic Violence (ABA). Assuming OVW approval of the no-cost extension, NCVLI will co-present a training with the VRLC in late summer/early fall, tentatively to be on the ways that civil and criminal attorneys can help victims. Additionally, NCVLI is coordinating with the ABA to insert itself into a training opportunity the ABA will be unrolling later this year on helping *pro se* victims navigate protective orders.

NCVLI also continued distribution of its biweekly email collecting cases and legal news stories about domestic violence, sexual assault, and stalking in an effort to promote name recognition.

G. Self-Help Website and Victim-Accessible Materials⁵

This Period, NCVLI continued collaborating with Lewis & Clark Law School’s Web Developer to create a self-help page for victims on NCVLI’s webpage. The self-help page(s) will feature links to information and resources relating to specific types of victimization, as well as general services and resources available for all victims. Some victim information has been moved to the self help pages and is under review. An interactive map of the United States, offering links to victim resources for each state, is scheduled to be added to the victims’ self-help pages in the near future. NCVLI Paralegal Jeff Hanson has taken the lead on developing this project. Moving forward, Jeff Hanson will work with Johanna Borkan, NCVLI Victim Advocate, to complete this project and continue developing victim-accessible resources.

⁵ Funded by Enforcement 3 and Enforcement 4.

H. WORKING WITH STUDENTS & VOLUNTEERS

1) Crime Victim Litigation Clinic at Lewis & Clark Law School

NCVLI Attorneys Meg Garvin, Terry Campos, Alison Wilkinson, and Sarah LeClair are teaching the Spring 2010 Crime Victim Litigation Clinic at Lewis & Clark Law School. Five students are enrolled this semester, including one former NCVLI volunteer. Following each semester, the clinic instructors meet and evaluate the prior semester's curriculum and make revisions to improve the clinic. As a result of the previous review, this semester's in-class component was revised to include more guest presentations and to omit the general research and writing skills lectures. This modification recognized the fact that students were building their research and writing skills during the in-clinic component and that they could benefit from hearing from other individuals with various connections to victims' rights jurisprudence. This semester's guest lectures include: Janine Robben, project director of Oregon Crime Victims Law Center, and one of her clients discussing their experience with the criminal justice system; Brandon Simmons, attorney with the Utah Crime Victims Legal Clinic, discussing what being a victims' rights attorney entails; and a criminal justice panel that will bring together a victims' rights attorney, victim advocate, prosecutor, judge and defense attorney for a frank discussion of victims' rights and the role victims play and should play in criminal proceedings. The students also participated in the NAVRA CLE on trafficking noted above. The in-office component of the clinic is providing each student the opportunity to conduct legal research and writing on several projects encompassing a wide range of issues. Examples of the projects students are working on include: researching canons of statutory interpretation for use in a United States Supreme Court amicus brief; writing a legal memorandum on whether disqualification of a judge due to bias against a prosecutor and a subsequent mistrial would bar retrial of defendant on double jeopardy grounds; analyzing whether a court may order a juvenile delinquent to remain in his home during certain hours of the day when his neighbor, the minor victim, travels to and from school; and providing research on victim autonomy and rights to access justice for an amicus curiae brief NCVLI will file in the Eleventh Circuit Court of Appeals.

2) Law Student Interns

Tara Moore continues to work at NCVLI. She is working approximately 8 hours per week while attending classes. Tara is working on a project analyzing the states' victims' rights and other laws to determine whether probation and parole hearings are properly considered part of the "criminal justice process" such that rights attach. Tara has also researched and prepared a legal memorandum on whether Department of Justice personnel have a duty to report known undocumented victims who come to their attention to ICE.

3) NCVLI Alumni Group

The fourth edition of the electronic *NCVLI Alumni Newsletter* was published in February. As previously noted, this edition featured an interview with alumna Nicole Robbins, a private attorney who recently moved to private practice after working for several years at the Multnomah County District Attorney's office, the work of the fall 2009 Crime Victim Litigation Clinic students, and criminal and civil practice tips for practitioners. At the recommendation of alumni, this edition also incorporated a new section. The new section provides an update on cases on which alumni have worked. Continued review of the newsletter will be undertaken to ensure it continues to serve the alumni, and move them toward increased involvement with NCVLI. The next Alumni Newsletter is due to be published in mid-April.

Initial planning for an informal spring alumni event, as well as a late summer alumni event to be held in coordination with Lewis & Clark's Small Business Clinic, were initiated this Period.

4) Community Volunteers

Jessica Ventura, a student at Portland State University, continued working with NCVLI approximately 4 hours per week this Period. Jessica has worked on a number of administrative and research projects, including helping with preparations for NCVLI's CLE on Human Trafficking and NCVLI's Conference.

G. OTHER WORK UNDERTAKEN BY NCVLI

1) Small Contracts⁶

There are five small contracts to report on this Period.

First, as previously reported, NCVLI continued to work with the Oregon Department of Justice (ODOJ) to collaborate on ODOJ's Crime Victims' Rights Program (previously the Crime Victims' Rights Compliance Project). The 2009-10 contract has been fully negotiated. The contract amount is \$4,850 (\$350 more than originally anticipated), and will again require NCVLI to perform research and writing on issue-specific questions raised by ODOJ. This contract will be signed in March 2010, with performance to continue through September 2010.

Second, NCVLI has contracted with the Office for Victims of Crime's Training and Technical Assistance Center (TTAC) for Meg Garvin to again teach the two-day curriculum NCVLI previously produced, entitled *Enforcing Victims' Rights*, in Milwaukee,

⁶ In NCVLI's annual budget teaching of the Victim Litigation Clinic on campus is also considered a "small contract." Activities undertaken to teach the Clinic are reported elsewhere in this Report.

Wisconsin in June 2010. This contract will cover costs, and pay for 3 days of time at the federal rate of \$450.00/day.

Third, NCVLI has contracted with TTAC for Meg Garvin to be a plenary speaker during Crime Victims' Rights Week, and to facilitate a day long victims' rights symposium on advancing victims rights in Vermont. Payment covers the cost of expenses incurred in travelling to and presenting at the event.

Fourth, NCVLI contracted with the Wyoming Coalition Against Domestic Violence & Sexual Assault to teach a session in April at their annual Sexual Assault Summit in Laramie, Wyoming. Attorney Terry Campos will be the presenter. Payment covers the cost of expenses incurred in travelling to and presenting at the event.

Finally, as previously reported, NCVLI contracted with the Nicholas Foundation for a CLE held at UC Irvine School of Law in January 2010. Meg Garvin and Doug Beloor were presenters. This Period NCVLI billed a total of \$7,355.19. The breakdown of the amount billed was \$5,000 plus \$2,355.19 to reimburse expenses. NCVLI is working on securing funding from the Nicholas Foundation for additional events.

2) Law Development

On non-grant funded time NCVLI continued to participate in law development efforts nationwide. During this Period this work predominately involved providing consultation to victim advocate groups in Illinois as they continued to move toward a proposed constitutional amendment. Unfortunately, work previously done with Alabama did not result in a legislative package of enforceable victims' rights.

II. Development Report

This section of the Report provides a progress update on the 8 development goals (framed in light of NCVLI's Strategic Plan), that staff identified for the Board in September 2009.

A. Increase NCVLI's visibility to communicate mission more broadly and to raise awareness of the need for community support of NCVLI.

NCVLI has completed several of its planned initiatives related to raising visibility of the organization; some steps remain this year. The most notable progress has been in creation and increased distribution of publications:

- the first Annual Report was published in fall 2009;
- as of December 2009, the electronic newsletter is published monthly (rather than quarterly);

- the Alumni Newsletter has continued and now features content suggested by alumni at the December alumni gathering;
- a new organizational brochure was finalized and printed in February 2010, and is in use;
- 4 “hot sheets” describing the work of the organization have been drafted, although not yet completed for publication; and
- In collaboration with Lewis & Clark Law School’s web developer, NCVLI’s website is being updated with a projected April 2010 launch. After this update, the site will better incorporate NCVLI’s colors and other branding, and make it easier for readers to subscribe to updates, for staff to update stories about our work weekly, and for events to be calendared. After launch, NCVLI will undertake to track website traffic so that we can better evaluate the site, and determine whether an independent site is still necessary.

There are a number of items that have had initial steps taken but will be the focus of upcoming months:

- The plan is to launch on social media outlets by April 2010. Initial steps have been taken, including a first draft of a Wikipedia article.
- Work on a case statement or “elevator speech” will be undertaken at the staff level in April and May, 2010, and brought to the board for the June 2010 meeting.
- We continue to need board and staff to identify award/recognition nomination possibilities; and
- Meg Garvin and Cassandra Mercer will begin targeting corporate sponsors to cover the cost of the Annual Report during the coming months.

B. Increase and retain individual donors, including major gifts.

1. Annual Fund

NCVLI coordinated its website, physical mailings, and email communications to ensure its entire mailing list was asked to contribute during the 2009 Annual Fund campaign. The hope was to generate new donors and increase donations. The result was the highest total donations to date – \$4610.00, with 22 people donating and an average gift size of about \$209.50. This represents a 90% increase in total money raised over the 2008 campaign, a 47% increase in the number of donors, and a 30% increase in average gift size. While this is a success, an evaluation of the campaign revealed donor attrition from past campaigns. Specifically, 12 donors from years past did not renew their contribution this year. Cassandra Mercer and Meg Garvin will be making personal contact with each of these donors during the upcoming period.

2. Workplace Giving

NCVLI had better visibility in the most recent Combined Federal Campaign (CFC), than in prior years. This season we featured our CFC number in newsletters, on the web site, and in email signatures. Development staff also took advantage of invitations to market NCVLI by appearing in person at a Portland event and by responding to requests for marketing materials from another nearby campaign event. To date, NCVLI has received \$866.34 in pledges from the 2009 fall CFC. This amount of pledged money is on par with last year (the 2008 Campaign reported \$864.23 in pledges), although there is currently a decrease in the number of campaigns reporting pledges, from 15 for the 2008 season to 12 for the 2009 season. Because NCVLI continued to receive pledge reports from the 2008 CFC through May of 2009, more pledge reports for the 2009 CFC may be received yet this spring.

Cassandra Mercer is investigating a national charity association that may allow NCVLI to access state and local workplace campaigns. This research and any outcomes from it will be reported in the next period.

3. Other Types of Contributions

Attention on these pieces, specifically in creating and marketing opportunities for pro bono and in-kind contributions, and twice-yearly email donation requests tied to our cause, will be a focus in the coming period.

Related to this goal, Cassandra Mercer is tailoring a new online donation website, hosted by Razoo.com, that will have multiple benefits for NCVLI. 1) Razoo.com will reimburse NCVLI for the processing fee that is collected when an online donation is collected, so that NCVLI can keep the full amount of the donation; 2) NCVLI's fundraising site on Razoo.com is customizable, and includes the ability for NCVLI to fundraise for different, specific campaigns using separate web pages for each campaign; 3) Razoo.com has the ability to easily link up with the social media tools that NCVLI will implement this spring.

4. Contributor Acknowledgment & Recognition

NCVLI has undertaken focused efforts to acknowledge all contributors, and to determine appropriate recognition mechanisms for each. All contributors, whether individual or corporate, financial, in-kind, or volunteer, were recognized in the 2008-2009 Annual Report. Corporate and pro bono attorney donors are now recognized in *NCVLI News* (printed twice yearly); moving forward all contributors (including volunteers) will be recognized in this publication. With the NCVLI website re-design, as well as the planned launch of the NAVRA website, NCVLI will increase public recognition of all contributors (donors/business partners/pro bono contributions/volunteers).

5. Board participation in Fundraising

There are several components to this aspect of the plan.

First, as proposed in September 2009, Meg Garvin was to work with each director to identify prospects with whom to meet. Sean Beers identified a number of prospects for cultivation in January 2010. Two of these prospects agreed to lunch meetings in January, and each is being follow-up with by Meg Garvin. Doug Beloof is the next director scheduled for prospect cultivation. The schedule for the remaining outreach efforts is as follows:

- Beloof – March/April 2010 (rescheduled from fall at Doug Beloof's request)
- C. Davis – May/June 2010
- H. Davis – June/July 2010
- Newland-Holley – July/August 2010
- Houser – August/September 2010

Second, each director was asked to send out copies of the Annual Report and/or Annual Fund information to contacts. From this outreach, at least one donor has emerged and met with Meg Garvin as follow-up.

Finally, each director has been asked to continue to identify ways that they can aid the effort. This piece will be an ongoing conversation at all Board meetings.

C. Government grants

NCVLI has put a system in place whereby Cassandra Mercer checks, grants.gov (the government grants website) daily to identify new federal grant opportunities. These opportunities issue from all government entities.

Since January, NCVLI has investigated grants from the National Institute of Justice (NIJ) and the Office for Victims of Crime (OVC). The NIJ grant was discussed with Portland State University as a possible partnership, but after several meetings it was determined that it was not the right vehicle for the partnership. Agreement was made to look at other options. Historically, OVC's grants issue early in a calendar year, but as of now OVC has just issued one request for proposals (Hope III). NCVLI will apply for this grant by April 20, 2010. This is a multi-part grant to undertake a comprehensive analysis of the current state of the crime victims field in the United States, and develop a consensus document that provides a philosophical and strategic framework for defining future priorities for the field. In addition, after working on funding issues with Senators Kyl and Feinstein, as well as OVC, NCVLI has been notified that OVC will be issuing \$800,000 competitive grant to fund a network of legal services for victims. While the deadline is not yet known, it is anticipated to be within the next 4-6

weeks. NCVLI will apply for this OVC grant in partnership with its current subgrant partners.

D. Private Foundations

NCVLI has worked on two private foundation funding opportunities this Period. First, a letter of intent was sent to the Multnomah County Bar Foundation. Unfortunately, the Bar Foundation declined to invite NCVLI to participate in a full application process. Second, as noted above, NCVLI worked with the Nicholas Foundation to host a CLE in California. Examination of other foundation opportunities is continuing, as is identification of grant administrators from private foundations who will meet with us. This will be the focus of summer 2010 efforts.

E. Events

NCVLI has hosted 1 of its 3 planned organizational development events this year. The one event was an informal alumni gathering in December. Originally, a formal auction was planned for Spring 2010, but after further investigation it was decided that more planning and personnel was needed to be successful than was available. NCVLI has moved plans for a more formal event/auction to fall 2010 and has secured a donated space from the Marriott in which to host this event. Cassandra Mercer will turn to this event planning within the coming 4-6 weeks. Board members will also be asked to personally invite 10-20 persons to this event, and to solicit donations to for the auction.

In addition, NCVLI will host an informal gathering/fundraising event at the June Conference. This event will be held in a donated space at the Marriott and will include a raffle and silent auction items. A band has donated its time to the event.

F. Fees-for-Services

NCVLI's plan proposed identification of a variety of funding streams NCVLI is expanding its ability to perform fee-for-service work. As per the proposed plan, Attorneys Terry Campos and Ali Wilkinson are now qualified, along with Meg Garvin, to train as OVC TTAC Consultants.

As per the proposed plan, NCVLI hosted its first CLE with paying attendees on March 12, 2010. The CLE, "Securing Access to Justice for Victims of Human Trafficking: A Training on Victims' Rights and Immigration Protections," was a great success, generating of income over costs (exclusive of staff time). A second CLE on this same topic, but to be presented in Seattle, is being planned now.

Progress converting NAVRA membership to a paid membership is reported in the programmatic section of this report.

G. Corporate sponsorships and donations

NCVLI sought, but did not obtain, sponsorship of the 2008-09 Annual Report. Securing corporate sponsorships for events and publications will be a high priority during spring and summer.

H. Securing Board/personnel time for fundraising

On the limited funds available for development, NCVLI was able to move Cassandra Mercer into a development position at ~ 30% of her time. In addition, Cassandra Mercer and Meg Garvin will be interviewing several potential contract grant-writers in late March. To enhance her capacity to perform her new development duties, Cassandra Mercer will be attending a workshop on strategies for pursuing foundation and corporate grants in April 2010.

A top recommendation of staff continues to be that a Board fundraising committee or advisory committee be established to assist in fundraising efforts.

III. NCVLI STAFF

A. Staff Changes

Three staff changes occurred this Period. First, in February, Sean-Michael Riley joined NCVLI as an administrative assistant. Sean-Michael graduated from the Portland Community College paralegal program with highest honors. Before coming to NCVLI, he worked for the Los Angeles and Multnomah County District Attorneys providing audio/video analysis and trial support for criminal cases. Second, in early March, NCVLI welcomed Johanna “Jo” Borkan as a victim advocate. Prior to joining NCVLI, Jo worked as a social worker, program administrator, and Spanish interpreter at a non-profit Federally Qualified Health Center providing medical and social services to youth and adults experiencing homelessness. Finally, NCVLI hired Marti Long as a new staff attorney in March. Ms. Long is licensed in Oregon and has previously practiced law in both Washington and Maryland. She has experience in criminal cases (both prosecution and defense) as well as a background in commercial and family law litigation. Before moving West, Ms. Long worked on public policy advocacy for a non-profit in Washington, D.C. Ms. Long has a B.A. in Psychology from the University of Maryland and a J.D. from Georgetown University Law Center.

B. Presentations by Legal Staff

During this Period the following staff presented at the following events:

Meg Garvin

- In January, presented CLE training entitled “Crime Victims’ Rights After Passage of SB 233” to Washington County Bar Association members in Hillsboro, Oregon. 20 individuals attended, including 12 prosecutors, 3 defense attorneys, and 5 victim advocates.
- In January, presented CLE training entitled “Crime Victims’ Rights in California” at the University of California Irvine School of Law with Board Member Doug Beloof. 100 individuals attended, including 75 attorneys and 25 victim advocates.
- In March, presented “The National Landscape of Victims’ Rights” at Fordham University Forum on Domestic Violence, New York, New York. 150 individuals attended, including 25 prosecutors, 75 other attorneys, 25 law and undergraduate students, 25 victim advocates.

Ali Wilkinson

- In December, and then again in January, presented a teleconference entitled “Rape Shield: Using Victims’ Rights Laws to Enforce Privacy Rights,” as described above in section VI. This training was repeated as a webinar for NAVRA in January, as described in above in section II.C.

C. Professional Development

In addition, staff undertook the following professional development during this Period:

All NCVLI Staff

- In January, all staff members attended “Workplace Sexual Assault of Indigenous Farmworkers,” presented by Mavel Morales. The presentation was from 10:00 a.m. – 12:00 noon at the NCVLI Office Conference Room in Portland, Oregon.

Jeff Hanson

- In January, attended the Willamette Valley Higher Education HR Consortium 2010 Leadership Program, presented by Robin Rose. The presentation was at Willamette University in Salem, Oregon and covered a) The Physiology of Leadership; b) Managing Performance; and c) Working Through Others.
- In February, attended Lewis & Clark IT Dept. Advanced Excel Class.
- In February, attended Employment Law, presented by Karen O’Connor, Employment Attorney and Partner, Barran Liebman LLP.
- During the week of Sunday, February, 28th – Friday, March 5th, attended U.S. Dept. of Justice 2010 NVAA- National Victim Assistance Academy Track 2, Professional Skill-Building Institute.

Sarah LeClair

- In February, attended a teleconference on interstate custody issues for victims of domestic violence, hosted by the Legal Resource Center on Violence Against Women.

Cassandra Mercer

- In December, attended a workshop on planning Fundraising Auctions hosted by Auction Pay, Inc. Director Candace Newland-Holley accompanied Cassandra to the workshop.

Ali Wilkinson

- In December, attended a webinar on stalking awareness month hosted by the Stalking Resource Center.
- In December, attended a webinar on violence against women in the media, hosted by the Washington Coalition of Sexual Assault Programs.
- In February, attended a teleconference on minor victims of sexual assault, hosted by the Victims' Rights Law Center.

Appendix A: Highlights of NCVLI's Substantive Legal Work

Amicus Curiae Participation

1. *Robertson v. United States ex rel. Watson* (United States Supreme Court). NCVLI participated as amicus curiae in support of the respondent in this case, Wykenna Watson, a victim of domestic assault. Ms. Watson had a protective order issued against her assailant, but the assailant violated the protective order. As a result, Ms. Watson, personally and in her own name, initiated a proceeding for criminal contempt as allowed under Washington, D.C. statute. The defense in the case argued that it was improper for a private individual to bring a criminal contempt action in her own name, and the Supreme Court granted review. The question presented on review is whether an action for criminal contempt in a congressionally created court may constitutionally be brought in the name of and pursuant to the power of a private person, rather in the name of and pursuant to the power of the United States. NCVLI's amicus curiae brief describes the history of private prosecution generally, criminal contempt specifically, and how this history fits into the victims' rights movement. Attorney Ali Wilkinson took the lead on this brief, which was submitted on behalf of NCVLI and Professor Doug Beloof.
2. *Ryan v. Nash* (United States Supreme Court). NCVLI filed an amicus curiae brief in the United States Supreme Court in support of the petitioner. The case involves the question of whether indigent capital defendants pursuing federal habeas corpus relief are entitled to the appointment of an attorney. NCVLI's brief argued that the lower court was mandated to consider victims' rights in its decision-making, and that part of that consideration must include consideration of harm to victims from delay of process. Contracting Attorney Professor Paul Cassell took the lead on the brief with support from Attorney Ali Wilkinson.
3. *Plaintiffs B, J, S, and V v. Francis* (United States District Court of Northern Florida). NCVLI was asked to write an amicus brief in support of plaintiffs in the case. Plaintiffs filed suit against Joe Francis, founder of Mantra Films, Inc., which produces the Girls Gone Wild DVD series. The girls, then minors, were filmed in a sexually explicit manner and their images distributed as part of the DVD series. The civil suit involves claims of sexual exploitation and intentional infliction of emotional distress. Due to the widely publicized nature of the trial, the victims moved to proceed anonymously, using pseudonyms in the place of their real names. NCVLI prepared an amicus brief focusing on the plaintiff-victims' privacy interests and the re-victimization that occurs when sexual assault victims' personal information is revealed. The District court denied plaintiffs' motion and NCVLI is preparing an amicus brief for filing in the Eleventh Circuit Court of Appeals, in support of the plaintiff-victims.

Technical Assistance

1. Arizona

NCVLI's Arizona Clinic (AVCV) requested assistance in a case where the trial judge was making negative comments about the prosecutor and victim in front of the jury. The prosecutor asked the judge to recuse himself, but the judge refused. In determining whether the victim should move for recusal, AVCV wanted to determine whether double jeopardy would bar a retrial if the judge was disqualified and a mistrial resulted. NCVLI's memorandum concluded that double jeopardy would not bar retrial. NCVLI and AVCV discussed strategies, beyond filing, including attendance at the trial to perceive the violations personally. AVCV did not proceed on the disqualification motion, because the judge corrected his behavior in light of AVCV's presence, and the victims did not want to pursue the matter.

2. California

NCVLI responded to several technical assistance requests from its California Clinic.

First, NCVLI helped the clinic with questions about when the California Penal Code allows for charges to be either felonies or misdemeanors. These charges are known as "wobblers". The questions had to do with the impact on victims when wobblers are charged or declared as misdemeanors rather than as felonies. NCVLI identified issues relating to a victim's right to restitution and notice when wobblers are charged or convicted as misdemeanors. NCVLI also identified issues about appealing a wobbler determination. NCVLI sent a written legal memorandum addressing these points to the Clinic.

Second, NCVLI assisted the clinic a case in which it represents a victim who is seeking restitution following the defendant's conviction for her son's murder. The clinic requested a legal memorandum regarding whether a probation officer has legal duty to investigate and include a defendant's financial worth in a presentence report. The clinic wanted to ensure that the restitution order properly reflected the defendant's worth, and allow the victim to request seizure of assets for satisfaction of restitution order and to set maximum restitution payment amounts.

3. Oregon

NCVLI responded to requests for technical assistance from its Oregon Clinic, but also from other practitioners. Two examples of assistance provided to non-clinic requesters follow.

First, NCVLI prepared a legal memorandum for the Sexual Assault Task Force on whether a crime victim may use a pseudonym during criminal trial in cases involving sex crimes. The resulting memorandum concluded that because sexual assault victims have a strong privacy interest in the nondisclosure of personal information related to the crime, victims should be allowed to proceed pseudonymously.

Second, an assistant district attorney (ADA) wanted assistance in a case where a probationer filed a motion to reverse the court's finding of a probation violation. The probationer alleged that the court's order was invalid because the victim was not present at the probation violation hearing in violation of the victims' right to be present. NCVLI provided the ADA with a legal memorandum on whether the defendant had standing to bring a victims' right violation claim to invalidate the court's ruling. NCVLI concluded that the defendant lacked standing.

4. Pennsylvania

NCVLI provided technical assistance to a 2005 Lewis & Clark Law School graduate who lives in Pennsylvania. The Lewis & Clark Law School alumnae contacted NCVLI asking for assistance in a case where the victim suffers from dissociative disorder (also known as multiple personality disorder), and who had been raped by her ex-boyfriend. The victim cannot remember the details surrounding the rape because of her disorder, and has not reported the rape because she believes it cannot be prosecuted due to her lapses in memory. The requester wanted to know whether prosecution was possible under these circumstances. NCVLI researched the rape laws and pertinent case law in Pennsylvania and concluded that the victim's memory lapses were not a per se barrier to the prosecution of her perpetrator. To the contrary, NCVLI's research revealed that under the plain meaning of Pennsylvania's felony rape statute, the legislative intent to broaden the coverage of the statute by amendment, and as supported by relevant case law, a person with dissociative identity disorder is a victim of rape if her disorder causes her to be "unconscious" such that she is "unaware that the sexual intercourse is occurring." NCVLI sent the completed research memorandum to the requester in December 2009.

5. Utah

NCVLI provided technical assistance to its Utah Clinic (UCVLV), regarding whether the victim bears the burden of proof on the defendant's ability to pay restitution. The defendant had been ordered to pay restitution to the victim within 30 days, but failed to do so. On the victim's motion, the court issued an order to show cause to the defendant to explain why he should not be held in contempt for failure to comply with the restitution order. A UCVLV attorney requested assistance determining whether it was the victim or the defendant that would bear the burden of proof on ability to pay at the show cause hearing. NCVLI researched the issue and concluded that the Utah courts have made it clear that it is defendant's burden to prove inability to pay as a

defense, and that the victim need not aver anything in his or her affidavit seeking a show cause hearing on that issue. If defendant offers evidence on ability to pay at the hearing, then the burden shifts back to the plaintiff to rebut that evidence. The order to show cause hearing is scheduled for March 22, 2010.