

NATIONAL ALLIANCE OF VICTIMS'
RIGHTS ATTORNEYS & ADVOCATES

A Project of the National Crime Victim Law Institute

Fundamentals of Litigating Victims' Rights

Presenter:

Terry Campos, J.D.

National Crime Victim Law Institute

Facilitator:

Joshua Medina, J.D.

National Crime Victim Law Institute

Who is NCVLI?

Mission: To actively promote balance and fairness in the justice system through crime victim centered legal advocacy, education, and resource-sharing.

What is NAVRA?

A membership alliance committed to the protection, enforcement, and advancement of crime victims' rights nationwide.

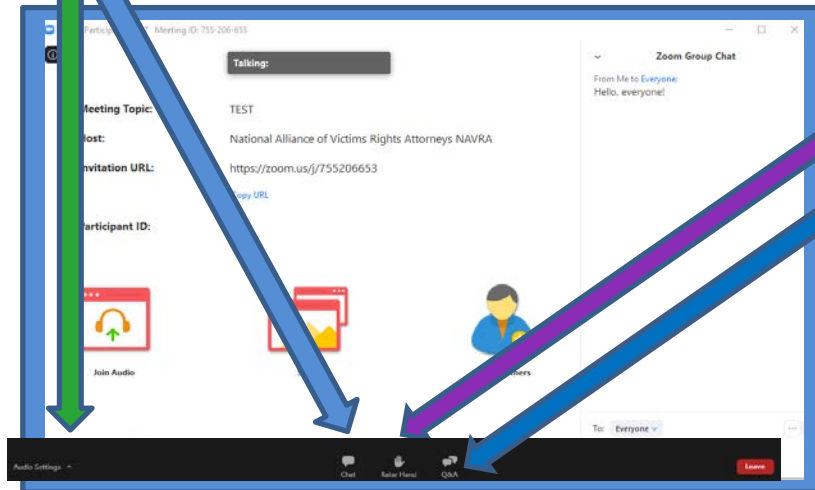
Housekeeping Matters

- This online training is being recorded
- A brief survey will follow at the end of the training; please provide feedback
- You will receive an e-mail with the link to the PowerPoint slides
- You are muted, but you can ask questions & participate – and we hope that you do
- Certificates of attendance will be emailed to you after the presentation.

Housekeeping Matters

How to Participate:

1. Select Audio Output
2. Use the Chat Box



3. Raise Your Hand
4. Q&A Box

Presenter and Facilitator

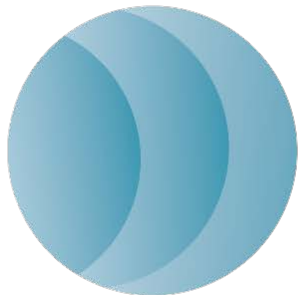
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Fundamentals of Litigating Victims' Rights

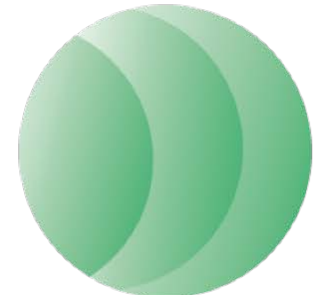
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Learning Objectives

- Identify three surmountable hurdles to rights enforcement.
- Describe rights enforcement case examples.
- Articulate three common motions that can be filed to seek enforcement of victims' rights.

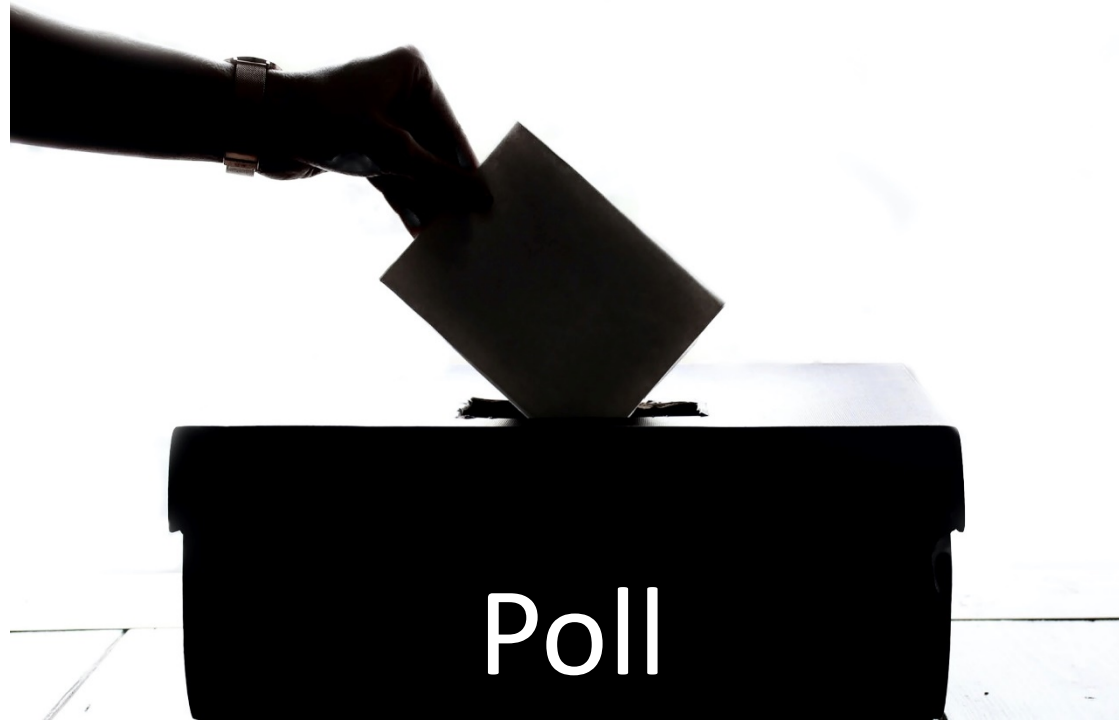
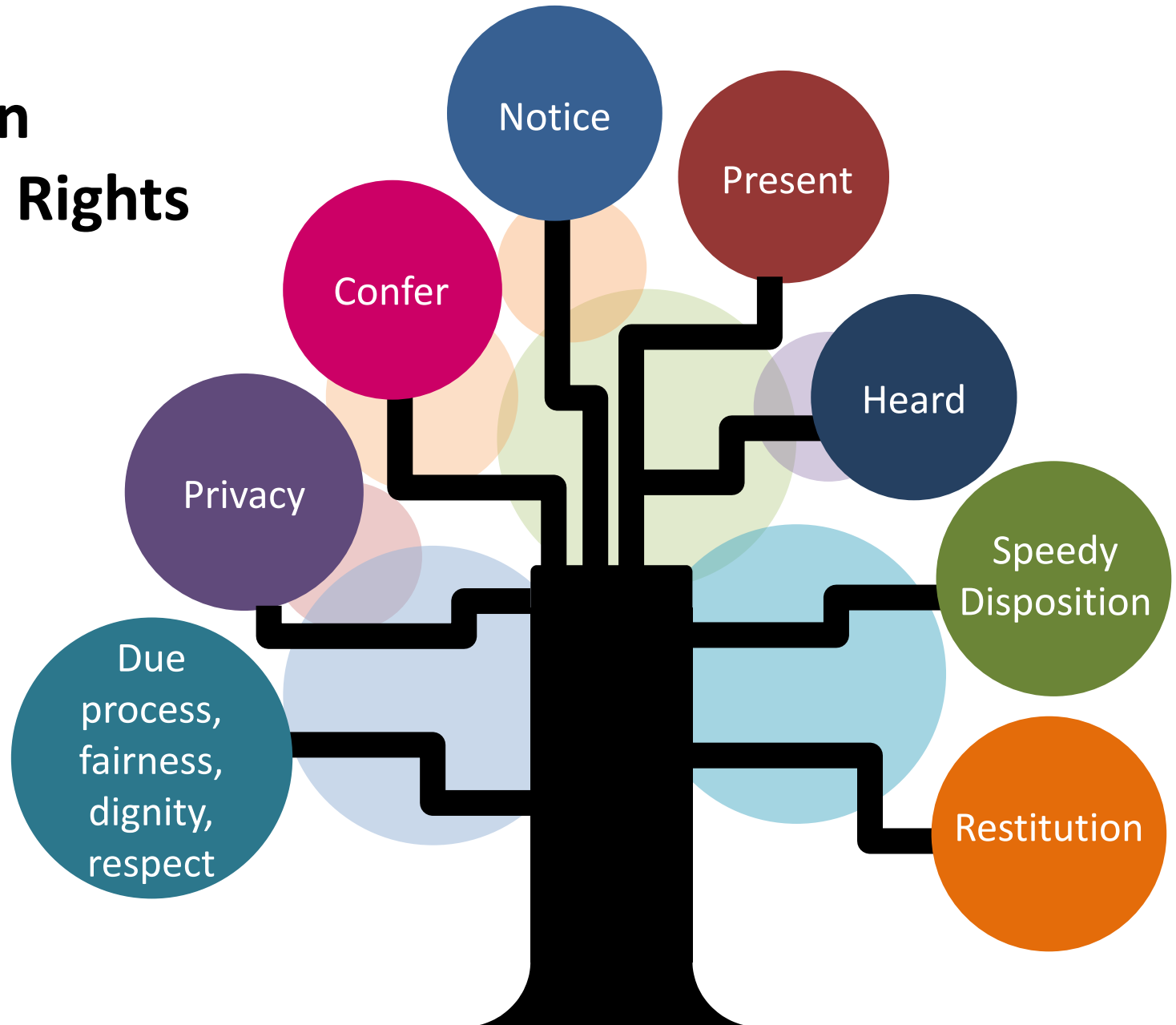
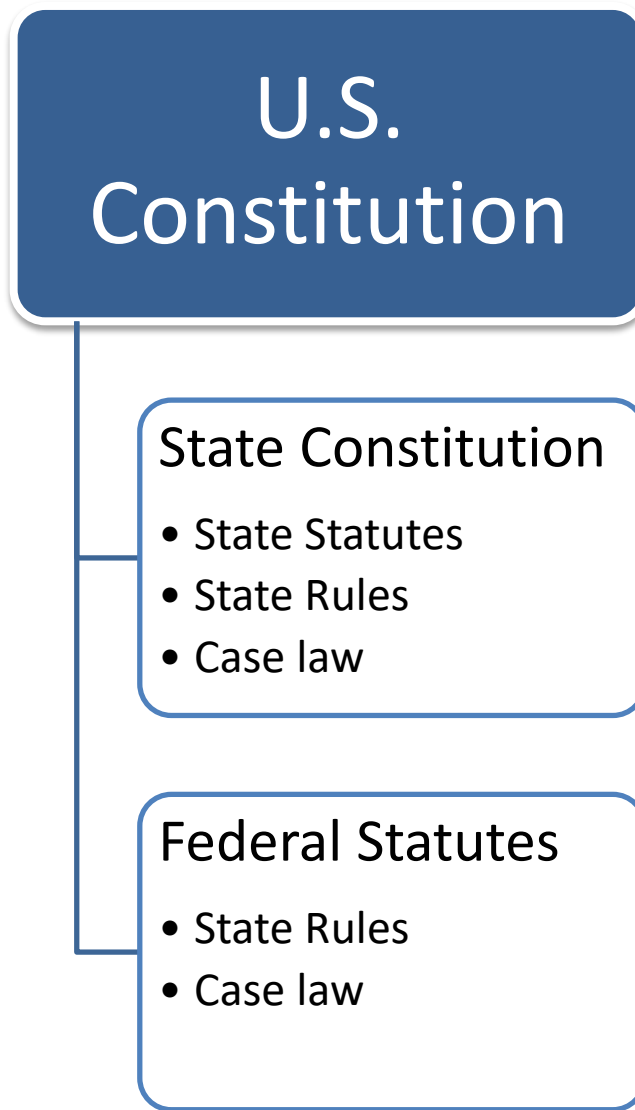


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Common Victims' Rights



Where to Find Victims' Rights



State Case



Federal Case

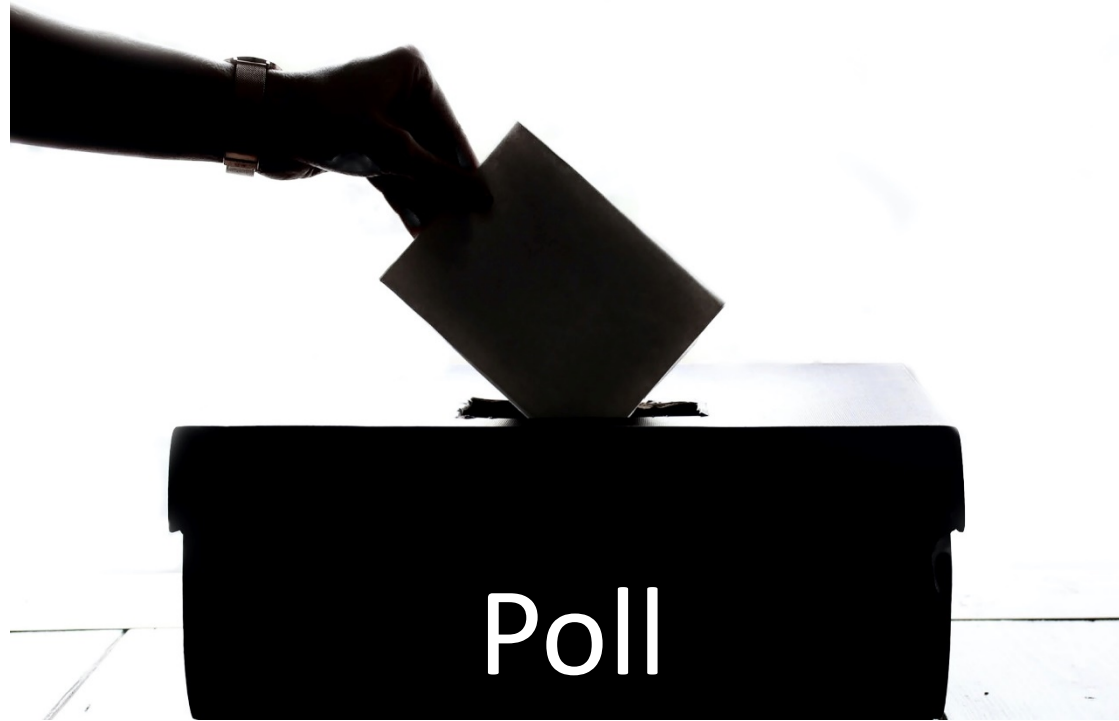


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State Example: CA Marsy's Law

To be Treated with Fairness & Respect for Privacy and Dignity, and to be Free from Intimidation, Harassment & Abuse Throughout the Criminal/Juvenile Justice Process

Reasonable Protection	V & Family's Safety Considered in Bail and Release Conditions	Prevent Disclosure of Confidential Information or Records	Refuse Interview, Deposition, or Discovery Requests	Notice of & Conferral with Prosecutor Re: Arrest, Charges, Other Pretrial Matters	Notice of and Presence at Public Proceedings, Parole, Other Release Proceedings	Be Heard at Proceedings Involving Release, Plea, or Sentencing, or One in Which a V's Right is at Issue	Speedy Trial and Prompt Conclusion
Provide Victim Impact Information to Probation Department Before Sentencing	Receive Pre-Sentence Report	Be Informed of Conviction, Sentence, Disposition, Release, or Escape	Restitution	Prompt Return of Property	Notice, Information, & Participation Involving Parole	Safety of the V, Family & Public Considered Before Parole or Other Post-Judgment Release	Be Informed of These Rights

Cal. Const. art. I, § 28(b)

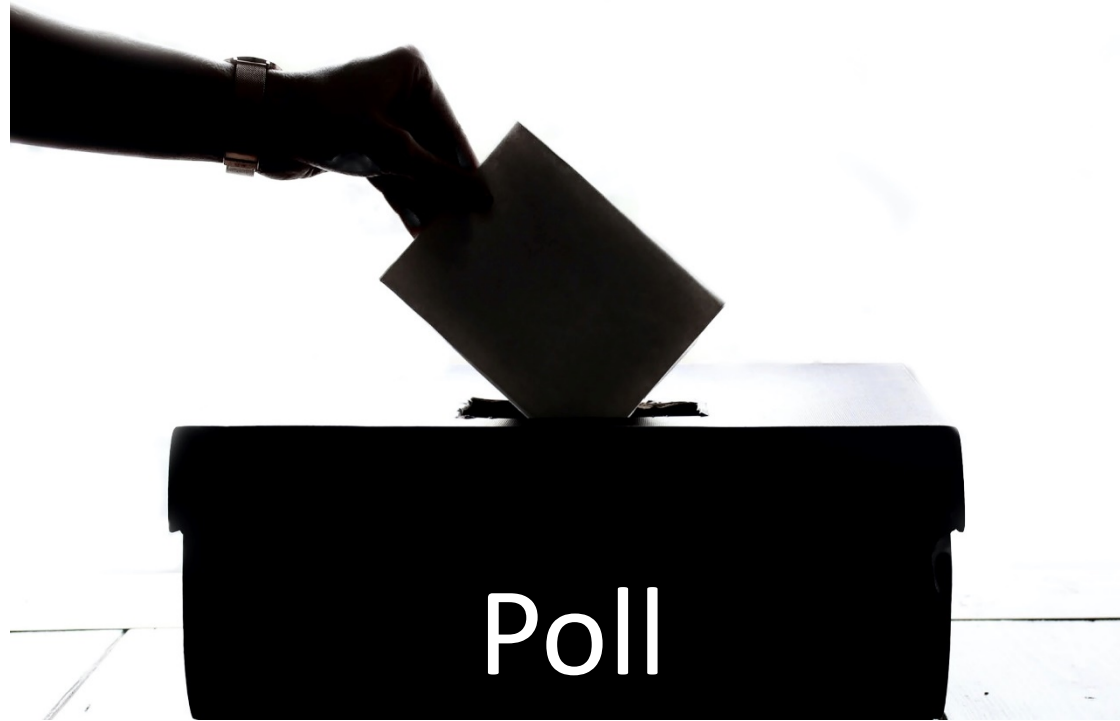


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Federal Crime Victims' Rights Act

Be reasonably protected from the accused

Reasonable, accurate and timely notice of court proceedings

Not be excluded

Full and timely restitution as provided in law

Confer with the attorney for the government

Be reasonably heard at any proceeding

Proceedings free from unreasonable delay

Be treated with fairness and with respect for their dignity and privacy

Be informed of plea bargain or deferred prosecution agreement

18 U.S.C. § 3771

Compliance v. Enforcement

Compliance

- Fulfilling legal responsibilities to victims
- Making efforts to reduce willful, negligent or inadvertent failure to fulfill legal responsibilities to victims

Enforcement

- Seeking a judicial order that (1) **directs others to comply** with victims' rights laws and/or (2) **provides a remedy** for a violation of those laws

Litigation
now



The Steps to Enforcement of Rights

Notice of Appearance

- Notice of representation
- Assertion of Rights

Motion Practice

- Proactive or preemptive motions
- Responsive pleadings

Appellate Practice

- Petition for review using appropriate device
- May be a writ or an appeal depending on the law

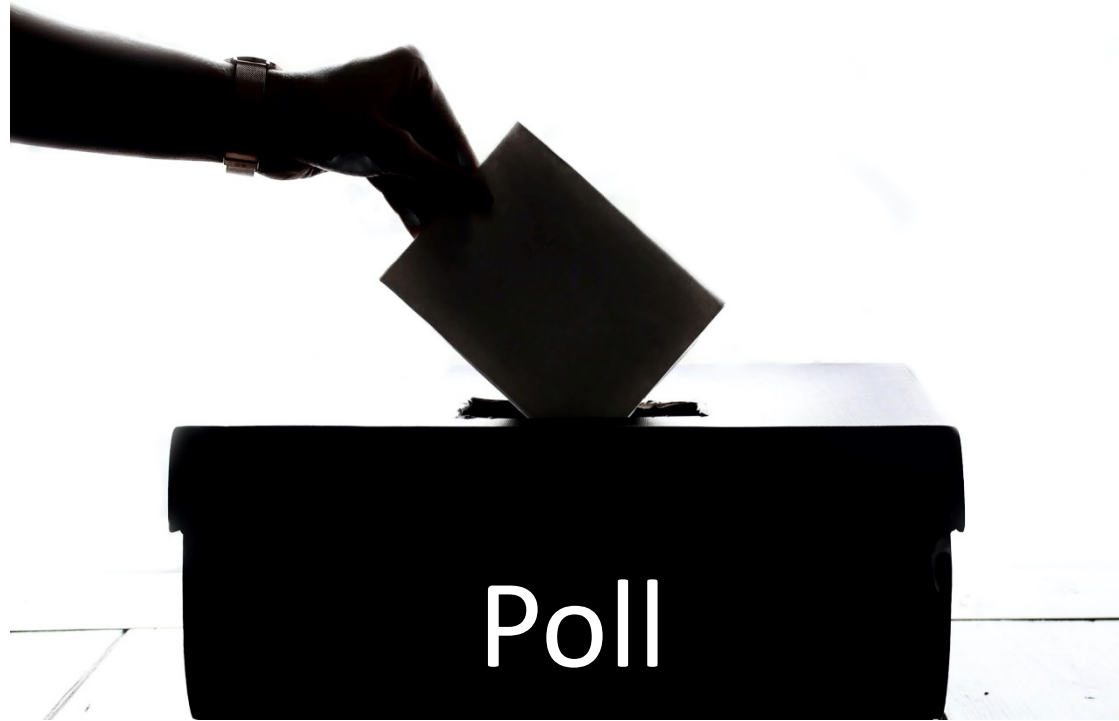


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Standing

What

- Allows a person to present their issue to the court
- Allows the court to hear it
- Allows the judge to resolve it

Who

- The “victim”
- The victim’s attorney
- The victim’s lawful representative
- The prosecutor (sometimes)

When

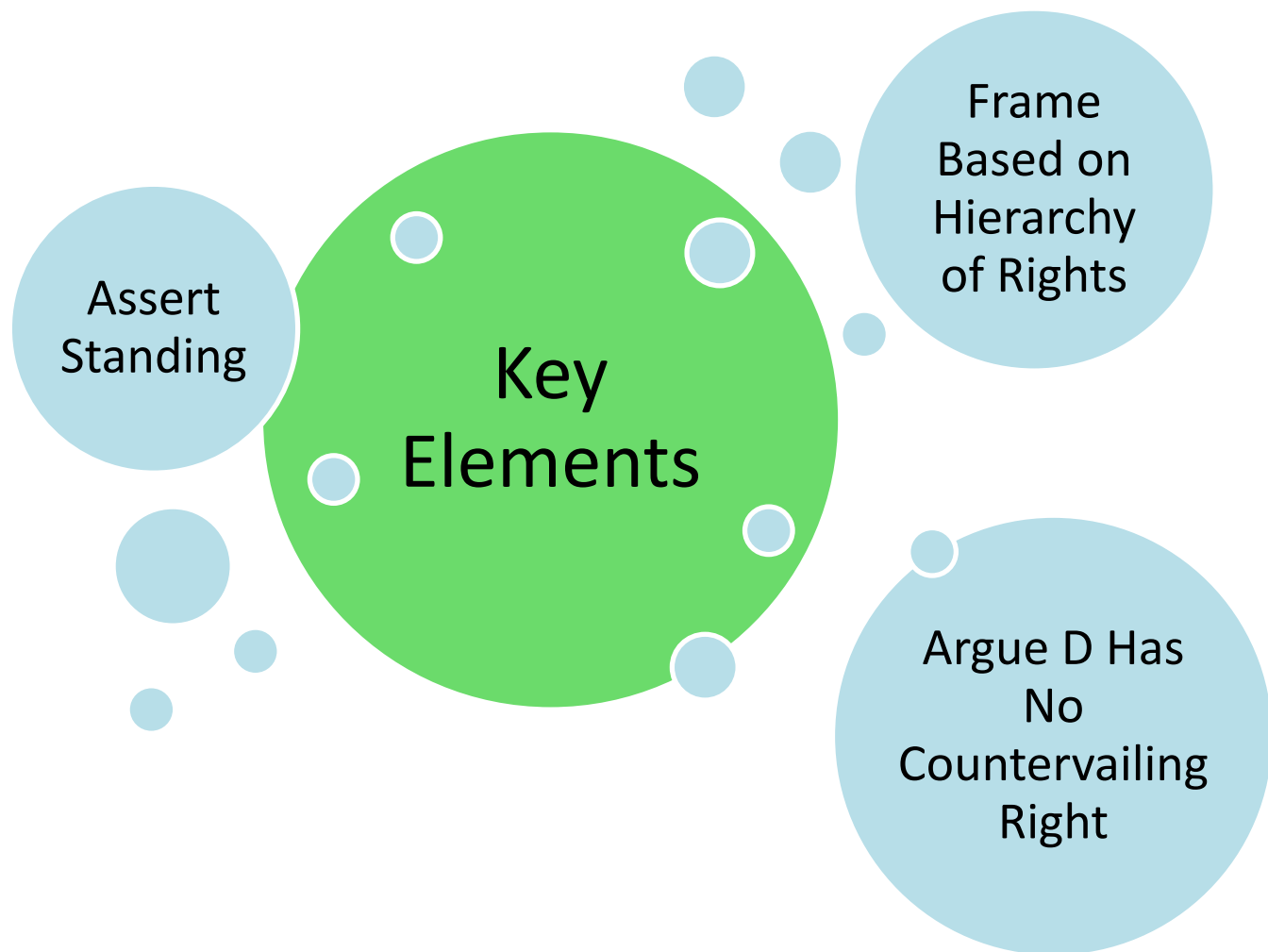
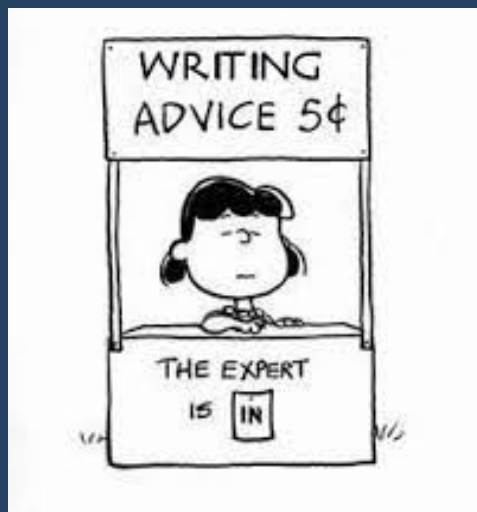
- Fact/timing specific
- Does this person have the ability at this moment to do what it is they are trying to?

Standing

How

- Explicit in the law
 - *e.g.*, 18 U.S.C. § 3771(d)(1) (“The crime victim . . . may assert the rights described [here].”), § 3771 (d)(3) (“The district court shall take up and decide any motion asserting a victim’s right forthwith.”).
- Standing test
 - *e.g.*, “injury + causation + redressability = standing” three prong-test

Motion Practice Pointer



Motions That May Need to be Filed

1

The charging instrument reveals the victim's identity.

Motion to Proceed via Pseudonym (if the prosecutor will not file an amended charging instrument)

D was released on bail without notice to the victim. And the victim has special concerns due to history with D.

Motion for Reconsideration of Release; Motion for Release Conditions (or Motion to Modify Release Conditions)

Motions That May Need to be Filed

2

Defendant or the State issue a pretrial subpoena seeking the victim's hospital or counseling records.

Motion to Quash

Defense counsel or the State say they intend to introduce the victim's text messages showing evidence of past sexual history.

Motion to Exclude
Rape Shield Evidence

Motions That May Need to be Filed

3

The victim will likely be uncommunicative due to anxiety/fear or otherwise traumatized if forced to testify in D's physical presence.

Motion for Accommodations (requesting CCTV or live video-conference; support person; facility dog; or comfort item)

The victim is anxious about testifying via Zoom because the court proceedings are live-streamed via YouTube; they don't want the world watching while they testify.

Motion to Limit Streaming; Motion for Accommodations (requesting: no camera when testifying; audio only during testimony; exclude public during testimony; stipulation to evidence in advance)

Motions That May Need to be Filed

4

The Vs have put their lives on hold for years while the proceedings kept getting continued by the parties. The Vs finally scheduled a family vacation; the parties suddenly moved up the sentencing date, and it conflicts with the trip.

Motion for a
Continuance

The prosecutor does not intend to seek future lost income because the teen sex trafficking victim comes from a poor and broken family, has a history of drug abuse, and frequently skips school.

Motion for
Restitution

Motions That May Need to be Filed

5

So many more!

Motion Practice Checklist

File Motion—Include:

- Victim has standing
- Arguments based on hierarchy of victims' rights
- Defendant's constitutional rights will not be harmed

Motion Is Denied And Client Wants To Continue:

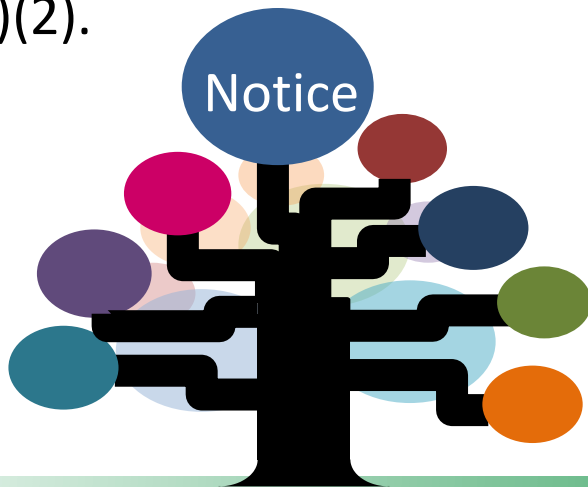
- Seek reconsideration
- Seek clarification
- Seek appellate relief (*e.g.*, petition for a writ of mandamus / prohibition or interlocutory appeal)

Successful Rights Enforcement

1

Example of Law

A victim has “[t]he right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding involving the crime or of any release or escape of the accused.” 18 U.S.C. § 3771(a)(2).



Examples of Enforcement

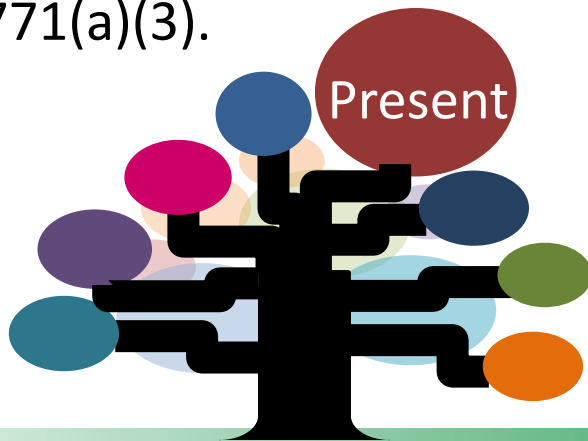
- *State v. Barrett*, 350 Or. 390, 255 P.3d 472 (2011) (holding, on the victim’s interlocutory appeal, that the victim’s constitutional rights to advance notice of and be present at sentencing had been violated and resentencing would be a reasonable remedy).

Successful Rights Enforcement

2

Example of Law

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



Examples of Enforcement

E.H. v. Slayton in & for Cty. of Coconino, 468 P.3d 1209 (Ariz. 2020) (finding, on the victim’s petition for review, that a victim’s attorney has a presumptive right to sit in the well of a courtroom during hearings related to the victim’s rights in order to maintain fidelity to the victim’s right to be present and heard).

Successful Rights Enforcement

3

Example of Law

A crime victim has “[t]he right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.” 18 U.S.C. § 3771(a)(4).

Examples of Enforcement

Kenna v. District Court, 435 F.3d 1011 (9th Cir. 2006) (finding that the victim had indefeasible right to be heard at sentencing akin to defendant’s right to allocution).

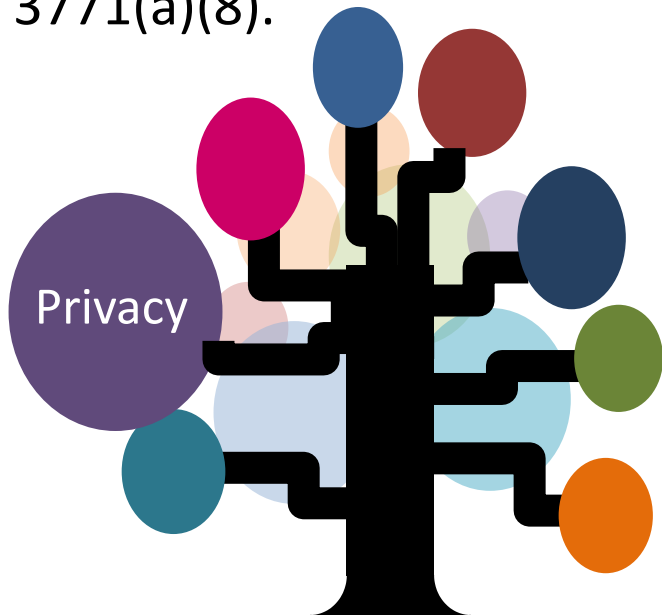


Successful Rights Enforcement

4

Example of Law

A crime victim has “[t]he right to be treated with fairness and with respect for the victim’s dignity and privacy.” 18 U.S.C. § 3771(a)(8).



Examples of Enforcement

In re State, 599 S.W.3d 577 (Tex. App. 2020) (finding that the victim had a state constitutional right to be treated with fairness and respect for her privacy as well as a reasonable expectation of privacy in her cell phone; and holding the trial court lacked statutory, constitutional and inherent authority to order the victim to turn over her cell phone to allow defense expert to extract data).



But Appellate Case Law Says

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E.H. v. Slayton, 468 P.3d 1209 (Ariz. 2020).

- Overruled three four-decade old cases that stood for the principle that a voluntary and intelligent plea requires D to know a specific or maximum amount of restitution at the time of plea; and concluded the restitution cap violates the victim’s right to full restitution.



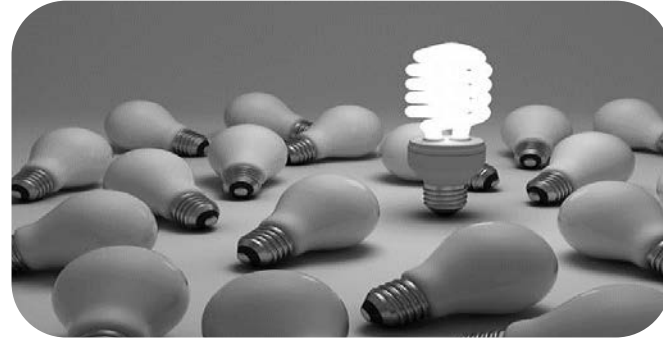
State v. Carlin, 249 P.3d 752 (Alaska 2011)

- Overruled a four-decade old decision that recognized the doctrine of abatement *ab initio*—which “abates” all proceedings and allows for a criminal conviction to be vacated when a convicted criminal dies while their appeal is pending—on the ground that the doctrine is no longer sound as a result of the changing landscape in victims’ rights law.

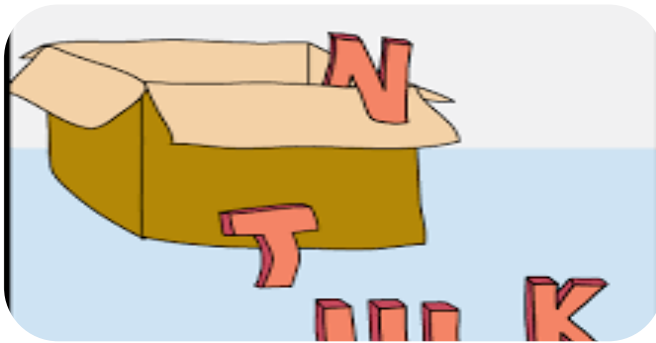
Final Pointers



**Build
Relationships**



Be Proactive



**Think Outside
The Box**



Think Big



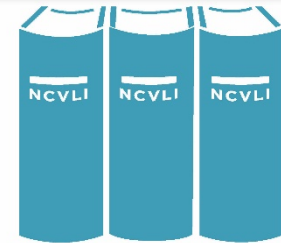
when you fail,
fail *forward*



**RIGHTS ENFORCEMENT
TOOLKIT** that guides
practitioners through
the steps of asserting
victims' rights



Basic victims'
rights information
in short video
QUICKTOOLS



**VICTIM LAW
LIBRARY** filled with
innovative legal
articles



National, regional,
local, and online
TRAININGS on
victim law

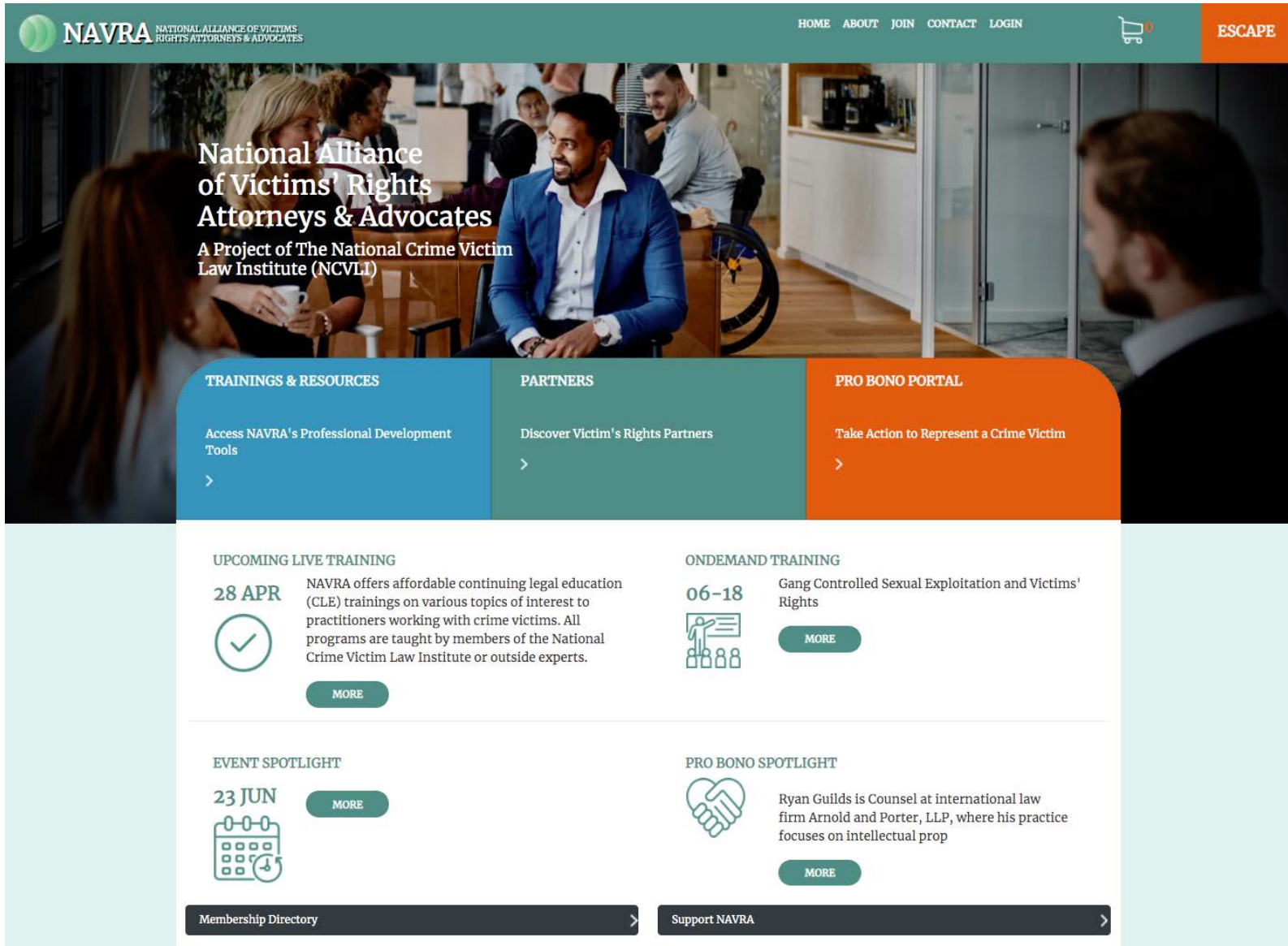


**TECHNICAL
ASSISTANCE** in
the form of legal
research, writing,
strategic advice,
and amicus curiae
briefing



Listings of victims'
rights and resources
by location and topic
in an online **VICTIM
RESOURCE MAP**

The Upgraded NAVRA.org



The image shows a screenshot of the NAVRA.org website. The header is dark teal with the NAVRA logo on the left, navigation links (HOME, ABOUT, JOIN, CONTACT, LOGIN) in the center, a shopping cart icon on the right, and an orange 'ESCAPE' button on the far right. Below the header is a large hero image of a group of people in a meeting. Overlaid on the left side of the hero image is the text: 'National Alliance of Victims' Rights Attorneys & Advocates' and 'A Project of The National Crime Victim Law Institute (NCVLI)'. Below the hero image are three colored buttons: 'TRAININGS & RESOURCES' (blue), 'PARTNERS' (teal), and 'PRO BONO PORTAL' (orange). Each button contains a short description and a right-pointing arrow. Below these are four sections: 'UPCOMING LIVE TRAINING' (28 APR), 'ONDEMAND TRAINING' (06-18), 'EVENT SPOTLIGHT' (23 JUN), and 'PRO BONO SPOTLIGHT'. Each section includes a date, a brief description, an icon, and a 'MORE' button. At the bottom are two dark teal buttons: 'Membership Directory' and 'Support NAVRA', both with right-pointing arrows.

NAVRA NATIONAL ALLIANCE OF VICTIMS RIGHTS ATTORNEYS & ADVOCATES

HOME ABOUT JOIN CONTACT LOGIN

ESCAPE

National Alliance of Victims' Rights Attorneys & Advocates

A Project of The National Crime Victim Law Institute (NCVLI)

TRAININGS & RESOURCES

Access NAVRA's Professional Development Tools

PARTNERS

Discover Victim's Rights Partners

PRO BONO PORTAL

Take Action to Represent a Crime Victim

UPCOMING LIVE TRAINING

28 APR NAVRA offers affordable continuing legal education (CLE) trainings on various topics of interest to practitioners working with crime victims. All programs are taught by members of the National Crime Victim Law Institute or outside experts.

06-18 Gang Controlled Sexual Exploitation and Victims' Rights

EVENT SPOTLIGHT

23 JUN

PRO BONO SPOTLIGHT

Ryan Guilds is Counsel at international law firm Arnold and Porter, LLP, where his practice focuses on intellectual prop

Membership Directory

Support NAVRA