



SC Crime Victim Legal Network (CVLN)

A program of the SC Victim Assistance Network

www.scvan.org

CVLN's Quarterly Newsletter is your source for up-to-date victim's rights information

NAVRA: The National Alliance for Victims' Rights Attorneys

The National Alliance of Victims' Rights Attorneys (NAVRA), an association of the National Crime Victim Law Institute, is an alliance of attorneys committed to the protection, enforcement, and advancement of crime victims' rights nationwide.

As of January 14, 2008, NAVRA membership includes:

393 members: 203 attorneys, 150 advocates, 26 members of the public, and 14 law students.

Opportunities for members include:

- A reduction in tuition for

NCVLI's annual Law & Litigation Conference;

- Victims' rights case updates. Each quarter, NCVLI combs court cases from the across the country and summarizes them in an index;
- Conference call trainings on issues affecting crime victims;
- A weekly digest on victims' rights stories across the world; and
- An email listserv to communicate with other members.

To promote the exchange of knowledge and resources to foster a national network of skilled attorneys to represent crime victims in the criminal justice system.

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.

Issue 6

January 2008

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Underserved Citizens 411

FACTS:

- Although there is no way to know *exactly* how many people with intellectual and physical disabilities are victimized in the U.S. each year, researchers have found that they have a 4 to 10 times higher risk of becoming victims of crime when compared to those without disabilities.

- Reports to Adult Protection Service agencies of elder abuse increased 150 percent between 1986 and 1996. This increase dramatically exceeded the 10 percent increase in the older population over the same period.
- South Carolina's Hispanic population is the State's largest and fastest growing population, with

a 211.7% increase since 1990. It is the 4th fastest growing population in the Nation, yet services to the State's immigrant population are minimal.

Even though research has shown that the physically and mentally disabled, the elderly, and members of immigrant groups are at substantially higher risk of becoming crime victims, services most of us

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Welcome CVLN's Newest Staff Members

The Crime Victim Legal Network would like to welcome two new employees who have joined the staff since the last issue of our newsletter.

Project Director Jason Buffkin, Esquire



Jason Buffkin has taken over as Project Director of the South Carolina Crime Victim Legal Network (CVLN) following the departure of Susan Quinn. In addition to his duties as Project Director, Jason

has a private practice focusing primarily on Legal Ethics and Professional Responsibility issues, including representation in attorney disciplinary proceedings, bar admissions and reinstatements, and attorney advertising consulting.

Jason is originally from Travelers Rest, South Carolina. He did his undergraduate

studies at the University of North Carolina, Chapel Hill where he majored in Political Science and concentrated in Political Philosophy and Political Psychology. Jason obtained his J.D. from the Washington and Lee University School of Law in Lexington, Virginia where he concentrated in Legal Ethics and Professional Responsibility.

Jason is admitted to practice in South Carolina and before the United States District Court for the District of South Carolina and the United States Court of Appeals for the Fourth Circuit. He is a member of the South Carolina Bar and serves on the Professional Responsibility Committee. He is also a member of the Lexington and Richland County Bar Associations, the Federal Bar Association, the National Alliance of Victims' Rights Attorneys (NAVRA) and the Association of Professional Responsibility Lawyers (APRL), a national organization of lawyers concentrating in the fields of professional responsibility and legal ethics.

Project Assistant Lucy Huddleston

Lucy Hobeika Huddleston grew up in



Dillon South Carolina graduating from Dillon High School. She continued her education at Winthrop University,

graduating with a BA in Biology. She then earned a Masters of Agriculture degree from Clemson University. She has been

married to her husband, Tommy of Gastonia, North Carolina, for thirty years. Tommy is a minister. They have three grown children, Rebecca, Stephen and Rachel.

For many years Lucy enjoyed teaching Adult Education in Rock Hill. Before coming to SCVAN she served the Sixteenth Circuit Solicitor's Office as the Juvenile Arbitration Coordinator for York

Underserved Citizens 411 (Continued from page 1)

take for granted – protection by law enforcement, protection from revictimization, the right to participate in the criminal justice process -- are often disregarded. Because the members of these groups are often unaware that they are entitled to certain rights and protections guaranteed by the state law, they are often further victimized by the criminal justice system and deprived of the right of meaningful participation in the legal process. To remedy this injustice, the South Carolina Victim Assistance Network (SCVAN) has created a Project known as *Underserved Citizens 411*.

Funded by a grant provided by *The South Carolina Bar IOLTA Foundation*, Underserved Citizens 411 reaches out to people with mental and physical disabilities, the elderly, and immigrant groups to:

- Provide free legal education about the constitutional and statutory rights of crime victims;
- Provide free legal advice and information to underserved populations about methods to assert and obtain their constitutional rights and mandated services within the criminal justice system.

- Insure that crime victims whose rights have been denied are aware of free legal representation available to them.

Please contact Veronica Swain Kunz at 888-852-1900 if you would like to schedule a presentation by Susan Quinn, Esquire, or if you would like more information about the project.

State and Federal Cases of interest

***State v. Fowlkes*, No. 17835, 2007 WL 2471797 (Conn. Sept. 11, 2007).**

Defendant pled guilty under the *Alford* doctrine (a doctrine that allows a defendant to consent to being punished without having to admit guilt) and was sentenced to a period of incarceration and probation. After defendant began serving his sentence, the state filed, and the trial court granted, a motion to modify the terms of defendant's probation to include restitution to the victim. On appeal, defendant argued that the trial court lacked jurisdiction to modify the terms of his probation as the court could only issue an order of probation, which includes restitution, at the time it imposed the original sentence. The court affirmed the trial court, holding that while the sentencing court could not take any action affecting defendant's sentence after defendant began serving his sentence, the inclusion of restitution as a term of probation was not punitive in nature and, therefore, did not affect defendant's sentence.

***People v. Giordano*, No. S138382, 2007 WL 4147029 (Cal. Nov. 26, 2007).**

The California Supreme Court ruled that restitution to homicide survivors can include the deceased victim's future lost wages. In *Giordano* the Defendant, convicted of vehicular manslaughter, was ordered to pay restitution in the amount of \$161,711.65 to the victim's spouse. Defendant argued the California Penal Code did not authorize restitution for a decedent's future lost wages. The Court held section 1202.4 of the California Penal Code, which requires restitution be "any economic loss" as a result of the commission of the crime, included the amount of lost economic support incurred due to a criminal act that resulted in the death of his or her spouse. Additionally, the Court held the sentencing court did not abuse its discretion in determining restitution in the amount of \$161,711.65.

***State v. Stravato*, Nos. 2005-101-CA, 2004-315-CA, 2007 WL 4270884 (R.I. Dec. 7, 2007).**

Defendant appealed his conviction on three counts of child molestation, arguing, inter alia, that the state's nondisclosure of the victim impact statement, which was authored before trial, was a deliberate violation of Rhode Island's discovery rule, warranting reversal. Noting that Rhode Island had adopted one of the most liberal discovery rules, the court agreed with defendant, vacating the conviction and remanding for a new trial. In reaching this conclusion the court rejected the state's argument that it did not need to disclose the statement because it did not contain any information not otherwise disclosed, noting that "[t]he fact that the state did not act in bad faith, or that the defense may have received the same information through other means, is not determinative."

***United States v. Serawop*, 505 F.3d 1112 (10th Cir. 2007).**

Defendant, convicted of voluntary manslaughter of his three-month old daughter, appealed the restitution order that required him to pay for the victim's future lost income. Defendant argued: 1) the Mandatory Victims Restitution Act (MVRA), 18 U.S.C. § 3663A, does not allow for the inclusion of future lost income in restitution orders; 2) an order for future lost income is improper because it is speculative; and 3) an order of this kind, if appropriate, must be based on gender and race-based statistics and because the trial court failed to incorporate these the order was impermissible. The court affirmed the order, holding that the plain language of the MVRA allows restitution orders to include future lost income, and that the trial court exercised its "abundant discretion" when it crafted a restitution order including the victim's future lost income using "well-recognized industry standards and norms." The court further held that the trial court was within its discretion in rejecting application of gender and racial distinctions.

***In re Sue Antrobus and Ken Antrobus*, No. 08-4002 (10th Cir. Jan. 11, 2008).**

Petitioners filed for a petition for writ of mandamus under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, seeking that their murdered daughter be recognized as a victim of the defendant in the underlying criminal action who had sold a firearm to the juvenile shooter. Disagreeing with both the Second and Ninth Circuits' conclusions that mandamus review under the CVRA be undertaken pursuant to normal appellate review, the court applied "traditional mandamus standards." Noting that the CVRA defines a crime victim as "a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the district of Columbia," the court recited the district court's conclusions that the daughter, while a victim of the shooting, was not a victim of the gun sale because the shooting was "independent, intervening cause" of her death. The court then held that the district court did not clearly err in this conclusion. In a concurring decision, Justice Tymkovich stated "the district court and the government erred in failing to permit the Antrobuses reasonable access to evidence which could support their claim. With this information, the Antrobuses may have been able to demonstrate the requisite causal connection between [the] crime and Ms. Quinn's murder."

South Carolina Crime Victim Legal Network

The Crime Victim Legal Network (CVLN) is a program of the South Carolina Victim Assistance Network that provides free legal representation to crime victims in both the state and federal criminal court system.

Through a grant awarded from the Department of Justice, CVLN provides free legal representation in South Carolina state criminal courts to victims of crime in asserting their constitutional and statutory rights by:

- Litigating victims' rights cases
- Enforcing victims' rights in criminal proceedings, and seeking a remedy when those rights are denied
- Serving as a research and information center for victims and criminal justice professionals
- Providing training seminars on South Carolina victims' rights law.

In addition, CVLN represents victims involved in **federal** criminal cases arising in the 4th Circuit through the Federal Victims' Rights Enforcement Project. The Enforcement Project is made possible through a subgrant awarded from the National Crime Victim Law Institute in Portland, Oregon. CVLN's representation of victims may involve in-court appearances and the filing of motions or other pleadings to protect the victim's rights under the federal Crime Victims' Rights Act (CVRA). In addition to providing legal representation to federal crime victims in South Carolina and North Carolina, CVLN will also provide trainings to federal prosecutors, law enforcement, victims' service professionals and the general public on the rights of federal crime victims pursuant to the CVRA.

Recently, U.S. News and World Reports featured an article entitled, Giving Crime Victims More of Their Say: A federal law has created tensions in the legal system. "Crime victims began winning rights at the state level decades ago, but the 2004 legislation brought the protections to the federal level for the first time. Victims now must be notified about court developments. They must be allowed to speak during bail and sentencing hearings. And most important, the law gives them the ability to appeal rulings when they think their rights are being violated, as Kenna* did. The Justice Department is even funding three legal clinics, in Maryland, Arizona, and South Carolina, to help victims assert these rights in court". --U.S. News and World Reports*

**CVLN does not handle divorce cases, child custody cases,
or any case outside the Criminal Court System.**

*Kenna v. United States District Court: The First Test Case. In January 2006, the U.S. Court of Appeals for the Ninth Circuit ruled in *Kenna v. United States District Court* that victims have the right to speak at sentencing hearings. The case was filed under the Crime Victims' Rights Act (CVRA), 18 U.S.C. Section 3771, and involved a father and son who pled guilty to wire fraud and money laundering. More than 60 victims submitted victim impact statements. At the father's sentencing hearing, several victims spoke about the effects of the crimes. At the son's sentencing hearing, however, the judge refused to allow victims to speak. The Court of Appeals held that the district judge had made a mistake. (<http://www.ojp.usdoj.gov/ovc/help/cvra.html>).

*For the full U.S. News and World Reports, *Giving Crime Victims More of Their Say*, go to <http://www.usnews.com/articles/news/national/2007/12/13/giving-crime-victims-more-of-their-say.html>

South Carolina Victim Assistance Network (SCVAN)

(CVLN's Parent Organization)

For over twenty years, the South Carolina Victim Assistance Network's mission has been:

- to insure crime victims receive access to, and assistance from, the criminal and juvenile justice system, and related social service providers -
- to improve the quality of services provided to all crime victims -
- to insure the criminal justice system adequately serves crime victims.

SCVAN grant-funded programs include:

- Crime Victim Legal Network (CVLN)
- Crime Victim Information Service System (CVISS)
- Emergency Fund (VIP)
- Underserved Citizens 411

On our website, you will find more information about these programs as well as other research to help you understand the criminal justice process, victims' rights and laws, and resources available to enhance victim service programs.

Visit www.scvan.org

SAVE THE DATE

January is National Stalking Awareness Month, please visit www.ncvc.org/src/main.aspx?dbName=Home

National Victims' Rights Week 2008: *Justice for Victims. Justice for All* is April 13 - 19, 2008. For more information visit the www.ojp.usdoj.gov/ovc/ncvrw/

TRAINING OPPORTUNITIES

South Carolina's 21st Annual Victims' Rights Week Conference 2008 is being held March 26-28, 2008 at the Embassy Suites Airport Convention Center, North Charleston, South Carolina. For more information please visit the South Carolina Victim Assistance Networks website at www.scvan.org.

The National Children's Advocacy Center invites you attend the **24th National Symposium on Child Abuse**, March 17-20, 2008, in Huntsville, AL. More than 130 state-of-the-art workshops will be presented by nationally renowned experts. For information visit the website www.nationalcac.org.

7th Annual Crime Victim Law & Litigation Conference will be held May 30-31, 2008 at the Marriott Waterfront, Portland, Oregon. Visit www.ncvli.org for further information.

The National Center for Victims of Crime announces it's **Third National Conference, *Responses, Rights, and Resources for Victims of Crime***, scheduled for June 2-4, 2008, in Portland, Oregon. Co-hosted by the Oregon Attorney General's Sexual Assault Task Force. For more information visit www.ncvc.org

National Organization for Victim Assistance will hold its Annual **North American Victim Assistance Conference** at the Galt House in Louisville on September 28 - Oct 2, 2008. They are accepting Proposals for Presentations until March 28. Application at www.trynova.org/conference/2008/presenterinfo.html

ANNOUNCEMENTS

A note from the New Jersey Crime Victims' Law Center (NJCVC) - The **Victim Voice Magazine** fall edition is hot off the press. You may read it online at www.njcvlc.org.

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Please email Shannon Geary, Program Manager at shannon@scvan.org if you...

- Received this email as a forward and would like to start receiving the newsletter from CVLN
- Do not wish to continue receiving this newsletter
- Have any comments, questions, or concerns regarding the newsletter or CVLN services.

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