

Answers to Senator Jon Kyl Questions
Submitted by Meg Garvin, MA, JD following
United States Senate Committee on the Judiciary
April 13, 2011 Hearing on
Fulfilling Our Commitment to Support Victims of Crime

1. What are the goals of NCVLI and its clinics? How are those goals being met? What independent analysis has there been of their performance?

In 2004, with funding from the Office for Victims of Crime, the National Crime Victim Law Institute (NCVLI) launched its Network of Victims' Rights Enforcement Clinics. The goal of NCVLI and its Network was (and is) to help ensure that the rights afforded to crime victims by law (whether those rights be in the federal Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, or the myriad of state constitutional and statutory provisions) will be meaningful rights. This need for this effort was well articulated by Senator Feinstein, one of your co-sponsors of the CVRA, who noted, "the scales of justice are out of balance – while criminal defendants have an array of rights under the law, crime victims have few meaningful rights. In case after case we found victims, and their families, were ignored, cast aside, and treated as non-participants in a critical event in their lives". 150 CONG. REC. S4262 (April 22, 2004) (statement of Senator Feinstein). To achieve this goal NCVLI designed the Network to provide free, expert legal and support services to crime victims as they asserted their rights and sought enforcement of those rights in the criminal cases involving their offender. The idea of providing legal assistance to ensure meaningful rights was not a novel one. As I noted in my prior testimony, the United States Supreme Court has recognized the important role attorneys play when it comes to protecting individual rights. *See Powell v. State*, 287 U.S. 45, 68-69 (1932) ("The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law He is unfamiliar with the rules of evidence He lacks both the skill and knowledge adequately to prepare his defense, even though he have [sic] a perfect one. He requires the guiding hand of counsel at every step in the proceedings.")

Since 2004, NCVLI has successfully launched and overseen 12 pro bono victims' rights clinics.¹ Since its launch, this Network has provided legal representation to more than 4,000 victims; filed more than 2,300 pleadings in courts on behalf of those victims; and supplied more than 100,000 hours of attorney time on behalf of crime victims. When looking at a snapshot of just the 12 months of calendar year 2010 more than 1,000 victims were directly represented by free attorneys (representation that included more than 20,000 hours of attorney time and more than 8,000 hours of pro bono attorney and law student time, and which resulted in more than 500

¹ The Network began with 5 Clinics in 2004, grew to 8 in 2005, and grew to 12 in 2009. In 2009-2010 the Clinics in operation were located in AZ, CA, CO, DC, ID, MD, NJ, NM, NY, OR, SC, & UT. In part because funding has been precarious, the California Clinic decided to close in August 2010. Today the remaining 11 Clinics are operating in the Network.

pleadings being filed to protect rights). To complement this direct service component of the Network, since 2004, NCVLI has provided intensive technical assistance in the form of in-depth legal research and writing in more than 500 victims' rights matters, trained more than 7,300 people on rights enforcement, and filed more than 50 amicus curiae briefs to help the courts of the country understand victims' rights. In addition, NCVLI has worked to build pro bono support for victims through its National Alliance of Victims' Rights Attorneys (NAVRA), which is a membership alliance of more than 918 attorneys, advocates, and students who work to protect victims' rights.

The legal work of NCVLI and its Network has had tremendous impact, which has been noted by this country's courts and by independent analysis of the Network itself. As one federal appellate court said (only after one of NCVLI's Clinics, Arizona Voice for Crime Victims, litigated on behalf of the victim), the CVRA is changing the modern criminal justice system's assumption "that crime victims should behave like good Victorian children—seen but not heard," and with these rights and their enforcement, victims are to be "full participants in the criminal justice system." *Kenna v. U.S. Dist. Court*, 435 F.3d 1011, 1013 (9th Cir. 2006). In the August 29, 2009, National Institute of Justice report, *Finally Getting Victims Their Due: A Process Evaluation of the NCVLI Victims' Rights Clinics Executive Summary*, an independent analysis of NCVLI's Network stated "the state clinics are on the road to fulfilling the intentions of their architects and funders. All of the Clinics have pushed the envelope of victims' rights in their state courts. Some have won significant victories in gaining standing for victims and expanding the definition of particular rights. Others are enjoined in the battle. But all have raised awareness of victims' rights with prosecutors, judges, defense attorneys, and police officials." In short, NCVLI and its Network of legal Clinics are achieving the goal of making victims' rights meaningful through provision of free legal and support services for victims.

2. Why are the clinics closing? What will be the consequence?

As was noted in testimony, all 11 Clinics in NCVLI's Network are slated to close this calendar year. The consequences of these closures are significant for crime victims nationwide. As of March 31, 2011, NCVLI's Clinical Network had 235 open criminal cases in which lawyers are providing legal services to victims and NCVLI is helping on nearly 50 additional cases nationwide. With Clinic closures the victims in these cases will be without legal counsel, which means they will be left without independent champions of their rights. Further, because the threat of closure is imminent, even as I write this, most Clinics are unable to take any additional cases due to legal ethics which would preclude them from starting representation that they will not be able to continue. Together what all of this means is that despite the promise of the CVRA to make rights meaningful, victims in this country will once again have their rights left to the discretion of others and will be at risk of being "ignored, cast aside, and treated as non-participants in a critical event in their lives". One example out of the 235 open cases – is the case of *U.S. v. Loughner* in which Jared Loughner is charged with shooting at dozens of individuals in Tucson, Arizona at a grocery store parking lot during a political meet and greet for Representative Gabrielle Giffords. Six people were killed and 13 physically injured. The defendant has been indicted on 49 charges including murder, attempted murder, and willful injury. Arizona Voice for Crime Victims, one of NCVLI's legal Clinics, is representing of one

of the victims in the case who was shot and injured during this attack. Because of threatened closure of the Clinic, this victim will be without counsel. Other victims, including victims of interstate stalking, domestic violence, child-sexual assault, homicide, and fraud, are all similarly facing the reality of being without counsel.

Put most simply - the “why” of the closures is lack of funding. In 2004, when the CVRA was first passed it authorized funding for “the support of organizations that provide legal counsel and support services for victims in criminal cases for the enforcement of crime victims’ rights.” Initially, the authorization was for \$7,000,000 for the first year of the CVRA and \$11,000,000 for each of four years thereafter. Upon the re-authorization of the CVRA, this category of authorized funding was established at \$11 million for each fiscal year 2010-2013. Not once has the full amount of funding authorized been appropriated, and in fact only three times has an appropriation issued. The last federal appropriation to support the Network came in 2008. In that year, the Senate Appropriations CJS Subcommittee Report, regarding funding for Title I of the Justice for All Act (Pub. L. No. 108-405) provided “The Committee recommends \$5,000,000 to the National Crime Victim Law Institute for its administration and operation and for its clinic organizations that provide legal counsel and support services for victims in criminal cases for the enforcement of crime victims’ rights and other services”; the final House Rules Committee Explanatory Statement for funding of Title I of the Justice for All Act (Pub. L. No. 108-405) included \$4,465,000 for the National Crime Victim Law Institute. All told only \$7,822,611 in appropriated funds have reached NCVLI to protect victims’ rights in the last almost 7 years since passage of the CVRA.²

Notably, NCVLI has not relied solely on appropriations to try to keep the Network operational. We actively pursue (and have received) federal grant funding through the Office for Victims of Crime (OVC), the Office on Violence Against Women (OVW), the Bureau of Justice Assistance (BJA), as well as private funding streams, and we have succeeded in securing funding from OVC for the Network. 42 U.S.C.A. § 10603(c)(A), part of VOCA, authorizes the Director of OVC to fund grants “for demonstration projects, program evaluation, compliance efforts, and training and technical assistance services to eligible crime victim assistance programs.” Funding from OVC over the years has been, in part, through this funding stream, but a narrow interpretation of the scope of the term “compliance” as not including victims’ rights legal work may be impeding future grant funding for the Network. Each Clinic has also sought state VOCA dollars to support its efforts but these funding streams have been modest at best. Further, efforts to secure private foundation support for the Network by NCVLI have not proven fruitful, in part because the idea of victims having attorneys is still relatively novel and in part because the economic downturn has caused significant decreases in private giving, which in turn makes funding of “new” ideas challenging.

² This funding total stands in stark contrast to funding for protection of other individual’s rights. The American Bar Association has noted that for just FY 2011: “The federal judiciary’s FY 2011 proposed budget included a request for \$1.082 billion for indigent defense services.” See http://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/criminal_justice_system_improvements_protection_of_rights/indigent_defense_services.html.

In short, it is because there is not a dedicated funding stream for the rights enforcement efforts of the Network that the Clinics are slated to close and victims will be without representation once again.

3. **In your testimony, you stated that “since the passage of the CVRA only approximately \$10 million has issued to fund the promise made to crime victims that they would no longer be viewed as interlopers in the system but would instead be participants with enforceable rights. Perhaps most importantly, as of today, no funding is slated to continue this effort.” Please discuss the need to increase the VOCA cap.**

Since 1984, the Victims of Crime Act fund (VOCA), which is not financed by taxpayer dollars but instead by fines, forfeitures, and other penalties paid by federal criminal offenders, has supported victim services. By statute, VOCA is dedicated solely to supporting victim services. The balance in the Fund continues to grow each year, yet release of funds to the field has not kept pace with victim need, nor with the evolution of services (such as legal rights enforcement services) to support victims. As noted above, a few of the Clinics in the Network have secured funding for legal services for victims but that funding has been minimal, in part because this seemingly “new” service is not prioritized when other services that have existed for years are also in dire funding situations. With the increased need for funding, and the ample balance in the Fund, now is the time to raise the cap on the Crime Victims Fund and release additional money for the purpose for which it was collected – victim services. There are more than sufficient dollars in the fund to release more to ensure victims have adequate services, including legal services for rights enforcement. Without an increase in the VOCA cap insufficient funding will make it out to the field in general and the funding for victims’ rights work will be essentially nonexistent. The true result of this will be that the gains made to make victims’ rights meaningful through the enforcement efforts of the Network over the last nearly seven years will be lost and the promise to crime victims by the CVRA will be broken.