

The author(s) shown below used Federal funds provided by the U.S. Department of Justice and prepared the following final report:

Document Title: Finally Getting Victims Their Due: A Process Evaluation of the NCVLI Victims' Rights Clinics, Executive Summary

Author: Robert C. Davis, James Anderson, Julie Whitman, Susan Howley

Document No.: 228390

Date Received: September 2009

Award Number: 2007-VF-GX-0004

This report has not been published by the U.S. Department of Justice. To provide better customer service, NCJRS has made this Federally-funded grant final report available electronically in addition to traditional paper copies.

Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Finally Getting Victims Their Due:
A Process Evaluation of the NCVLI Victims'
Rights Clinics

Executive Summary

Robert C. Davis

James Anderson

RAND Corporation

Julie Whitman

Susan Howley

National Center for Victims of Crime

August 29, 2009

Introduction

This report describes a process evaluation conducted by the RAND Corporation and National Center for Victims of Crime of the National Crime Victim Law Institute (NCVLI) state and federal victims' rights clinics. The clinics were conceived as a response to the fact that, in spite of burgeoning victims' rights legislation in all states, many victims still are not receiving the rights they are entitled to under law. The NCVLI clinics were intended to promote awareness, education, and enforcement of crime victims' rights in the criminal justice system.

In establishing the victims' rights clinics, NCVLI sought to change the legal culture with respect to observance of victims' rights. The vehicle for doing this was providing direct representation to individual victims in criminal court. By giving victims attorneys, NCVLI hoped that it could increase the observance of rights in those particular cases. But it also hoped that the presence of victim attorneys in some cases and trainings held for court officials would result in an increased attention to victims' rights by prosecutors, judges, and police officers in all cases – not just in the cases where victims were represented by attorneys.

Moreover, initiating strategic litigation at the appellate level was designed to expand judicial recognition of victims' rights in state and federal court. This could happen through published, or even unpublished, appeals court opinions (case law) or through changes to court rules. In NCVLI's view, even losing cases at the appellate level could result in long-term gain; cases that are lost can clarify the law and show what victims' rights statutes actually mean. The new clarity may impel legislators to enact new and broader statutes.

The NCVLI clinics work to promote observance of victim rights by representing victims in individual cases and by working to change the legal culture through example, trainings; and appellate decisions and court rules that acknowledge victim rights. When they become aware of a potential rights violation, the first step may be to place a call to a criminal justice official to see if the condition can be easily remedied. For example, they may try to convince police to file a case with the court or to convince a prosecutor to advance a trial date. Or they may ask a prosecutor to oppose a defense motion to order a victim to release medical records. Clinic attorneys also file motions in trial courts on behalf of their clients. In some states, clinic attorneys have filed motions to amend a plea to include restitution or other conditions based on statutory rights. Other attorneys have filed writs with appeals courts to get victims admitted into the courtroom after they were denied the right to be present by a trial court judge. Finally, clinic attorneys work at the appellate level to seek published rulings that clarify or expand the scope of victim rights on critical issues like victim standing and privacy.

While clinics share these common interests and activities, they differ in how they are structured and how they operate. Differences along these dimensions have potential implications for the number and geographic diversity of cases that clinics handle, sources of client referrals, types of cases handled, and funding sustainability.

Evaluation Objectives

NIJ's evaluation plan proposed a two part effort: A process evaluation that would be descriptive in nature, followed by an impact evaluation that would attempt to determine measurable benefits

of the clinics. For the process evaluation, we undertook an initial phase of work that developed case studies of NCVLI and the eight clinics.¹ The case studies of NCVLI and each of the eight clinics, presented in this report, examine the implementation process, the environments in which the clinics operate, problems encountered, and solutions. This report synthesizes commonalities of experiences among the eight clinics as well as differences in their approaches and environments. During the course of the process evaluation, we also constructed a logic model to describe the goals and measurable outcomes of the clinic's work, which was vetted with NCVLI. In the second phase of work, we will conduct theory-based evaluations of the effects that the clinics have had on enforcement of victims' rights in the criminal justice system in the states and localities where they are based. This phase of work will be based on the clinic logic model refined during the earlier phase of work. The impact evaluation will assess the impact of the clinics on the individual level, the system level, and the community level.

The process evaluation addresses a number of NIJ/OVC interests. First, an assessment of implementation problems faced by the clinics: How were they accepted by the state criminal justice community? How did they publicize their existence? From what sources did they get case referrals, and did the referral sources change over time? Second, an examination of ways that the clinics have been able to leverage federal resources, particularly through the use of law students and pro bono attorneys: How successful have efforts been to recruit low-cost or free sources of labor? Is training for students or pro bono attorneys on victims' rights issues useful when they go on to other endeavors? Third, an evaluation of how successful clinics have been in changing the legal landscape: What kinds of appellate decisions have they been involved in as a party or in an *amicus curiae* ("friend of the court") capacity, and what is the significance of the cases? Have appellate losses led to changes in victims' rights statutes? Have there been changes to court rules that promote victims' rights? A list of topics covered in the process evaluation is contained in Table 1.1 below.

¹ The original number was nine clinics, counting Arizona's state and federal work as two separate clinics. However, the state and federal sides of Arizona's Crime Victim Legal Assistance Project have since merged into a single clinic, hence this report deals with eight clinics.

Table 1.1: Process Evaluation Issues

Information about Clinic Activities

- Major clinic activities and approximate proportion of staff time devoted to each
- Changes over time in clinic goals and activities
- Number of individual clients represented, number of motions filed, numbers of court appearances on behalf of clients, number of trainings by clinic staff

Criminal Justice Context

- Geographic dispersion of courts in which clinic staff have represented clients
- Extent to which victims' rights statutes facilitate or hinder the work of the clinic
- Jurisdiction in which clinic has done the most work (target jurisdiction)
- Receptivity of judges, prosecutors to victims' rights and work of the clinic
- Principal victim service organizations; nature of cooperation with clinic

Pro Bono Staff

- How many pro bono attorneys has the clinic worked with?
- How successful have these arrangements been?

Recruiting and Screening Mechanism for Selecting Clients

- Eligibility criteria for representing victims (eg., types of cases, types of issues)
- Sources through which clients are referred and any changes over time
- Number of cases identified or referrals determined to be eligible for clinic services; numbers accepted
- Numbers of cases determined to be eligible that were not accepted for assistance; reasons for not taking cases
- Outreach mechanisms clinic staff use to identify and reach victims in need of assistance; any efforts made to reach underserved populations

Information for Impact Study

- What does clinic staff believe are the best ways to assess the impact of their clinic? What data do they have to evaluate these program effects? How do they define success?
- Ways in which the clinic has changed the climate for victims' rights in state
- Any unintended consequences (positive or negative) of the clinic
- Would they be willing to participate in an impact study?

Suggestions to Improve Clinic Operations

- Obstacles faced in meeting clinic goals; steps taken to overcome those obstacles
- Suggestions to improve the effectiveness of the local clinic or effectiveness of NCLVI program generally

Evaluation Methods

In order to gain information on the above topics to construct the series of case studies, we carried out site visits to each of the clinics. During the multi-day visits, our principal source of information came from interviews with the clinic director and staff. Clinic directors and their staff were all generous with their time and, we believe, forthcoming about their experiences and problems.

Each of the site visits included a focus group with victims who were past or present clients of the clinic. We requested that each clinic director attempt to recruit 6-8 of their clients to participate in a ninety-minute focus group. All were able to gather together a group of victims who provided a client perspective on the clinics and helped us further refine questions and measures for the subsequent impact study. Illustrative focus group topics included:

- How did they learn about the clinic?
- What types of services were provided by clinic staff?
- How did the services they received help them?
- Were they satisfied with the people who provided the services?
- What suggestions do they have for improving the criminal justice process?

After each site visit, clinic staff abstracted information from their client files on the number of victims represented, types of cases and victims' rights issues the clinics were involved in, county and court in which cases originated, clinic actions on behalf of victims and the results of those actions, and demographics of victims represented.

We also developed with each clinic director a list of positional informants—people in the criminal justice community who were knowledgeable about their work. We requested that the list include both individuals supportive of the clinic's work and those who had been critics. Interviewing these individuals – judges, prosecutors, victim advocates, and defense attorneys – was an important way to corroborate or challenge what we learned from the clinic staff (who understandably want to portray their program in the best light). The interviews with positional informants asked about respondents' opinions on the need for the clinics, on the work that the clinics are doing, and on the extent to which criminal justice officials support victims' rights.

Research project attorneys prepared a compendium of victims' rights legislation in the states of each clinic visited. They also summarized any appellate cases and published opinions about victims' rights.

For each site visited, we prepared a report describing the operations of the clinic and what we learned from all components of the site visit. The site reports described the legal context within which the clinics work, clinic operations, obstacles encountered and responses to those obstacles, and measures that would best assess clinic impact.

Finally, we conducted two visits to NCVLI offices in Portland, once at the start of the process evaluation and another after the clinic site visits had been completed. The interviews with NCVLI's director gathered information about the motivation and history of the clinic program

and goals for the program. We also used the visits to gain feedback on our impressions and conclusions from the site visits.

Summary of Key Findings

- *There is great diversity in the way that clinics have been structured*

Clinics ranged in their organizational aegis from being housed within victim services programs to being located within a law school to being one component within a full service law firm. Each of these arrangements has implications for how the clinics function. Clinics with close connections with law schools gain stature from the affiliation; have access to free student labor; and have the potential to train students in victims' rights issues that they will carry with them into subsequent jobs as prosecutors, public defenders, guardians ad litem, or advocates for victims in civil cases. Clinics located within statewide victim service providers enjoy reduced staff and space costs, enjoy the stature of the parent organization, benefit from extensive referral networks, and can work cooperatively with staff of the parent agency engaged in lobbying efforts. One clinic is affiliated with a private law firm that may offer a unique path to institutionalization through time and proceeds donated by the firm's attorneys to victims' rights work.

- *Although there are problems with the use of pro bono attorneys, they hold potential for expanding the volume of cases that clinics handle and their geographic coverage*

Every clinic has made an effort to train pro bono attorneys and refer cases to them. The experience has not always been positive. Some clinic directors argued that pro bono attorneys seldom have the knowledge, commitment, or availability to be of significant help. However, there are obvious benefits to using pro bono help in a limited way to leverage the relatively small budgets that clinics operate on. The plans of some clinics to sponsor courses to train private attorneys who are seriously interested in victims' rights work should remove two of the objections to the use of pro bono attorneys: Taking a course will help ensure that volunteers are both interested and satisfactorily trained in victims' rights law.

- *While their primary focus has always been on addressing violations of clients' legal rights, most of the clinics also have developed a focus that includes addressing all of victims' crime-related needs, either directly or through referrals to other service providers.*

The fact that most clinics have concerned themselves with the totality of client needs – not just the potential value of cases in litigating rights issues – highlights the way that the clinics' and NCVLI's approaches complement one another. Clinic attorneys appropriately act as client advocates for many crime-related needs. NCVLI, meanwhile, maintains its focus on changing the legal landscape and keeping an eye out for the cases that are likely to push its reform agenda significantly ahead.

- *Clinics differ substantially in their approaches and methods of operating*

The number of cases opened annually differs substantially among the clinics, with the most prolific clinic handling a caseload eight times larger than the least prolific clinic. The cases of most clinics are concentrated in one or two counties, but one clinic demonstrated wide dispersion of cases across the state. Referral sources vary significantly, with some clinics receiving most referrals from prosecutors, others from victim advocates, and still others from

their websites or word of mouth. Clinics specialize in different types of cases, some in sexual assault, others in homicide or child abuse. Clinics also differ in their approach to representing clients, with some more inclined to use litigation as a first option and others more likely to try letters or phone calls first before resorting to litigation.

- *Standing has been the threshold issue that clinics have had to confront at the trial court level*

Clinics have dealt with a range of victims' rights issues in trial courts including the right to be present, right to be consulted about plea offers, right to make an impact statement, right to be notified of changes in defendants' detention status, right to restitution, right to privacy, and so forth. However, the principal issue has been victim standing before the court. In some states, standing has been acknowledged, at least in limited ways. In other states, clinics have made or are making steps toward such recognition, or have been successful in representing victims without the issue being directly confronted. In one state, the ability of clinics to represent victims is currently in serious question.

- *Some clinics have won significant gains at the appellate and federal court levels*

The Maryland clinic has had three appellate cases related to victim standing that ultimately resulted in a newly expanded court rule giving victims the right to participate in a criminal appeal in the same manner as a party regarding issues that directly and substantially affect the victim's rights. The New Mexico clinic had one successful appellate case in 2006 on victim standing, and although it resulted only in an unpublished opinion, the clinic has been successful in citing it as persuasive authority in other cases. Other clinics have been involved in appellate cases seeking relief for victims not properly notified of plea agreements, limits on defense efforts to subpoena victim counseling records, and latitude to make specific sentencing recommendations in victim impact statements. The Arizona clinic won a federal decision that affirmed that victims have "an indefeasible right to speak, similar to that of the defendant."

Conclusions

Based on the information we gathered during the course of the process evaluation, we believe that 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.

How far the clinics have managed to alter the legal culture remains to be determined through the second, or impact, phase of this evaluation. Two significant parts of that effort will be to (a) determine how court officials' opinions and observance of victims' rights has changed and (b) assess the extent to which basic victims' rights such as being informed of rights or receiving restitution has increased since the clinics opened. We plan to assess the former issue through systematic surveys with judges, prosecutors, victim advocates, and defense attorneys who deal with felony cases and the latter issue through examination of case files before and after the clinics opened their doors.

One of the good things about how NCVLI has gone about setting up the state clinic program is that it has funded different clinic models, as defined by where the clinics are housed, what kinds of cases they tend to specialize in, whether they are issue-focused or client-focused, whether they use litigation as a first or last resort, and how much use they make of pro bono attorneys or student help. This diversity creates the ability to compare the kinds of outcomes achieved by different models, in terms of the numbers and types of clients served, in terms of getting favorable published opinions or changes to court rules, and in terms of changing observance of victims' rights by court officials. It may prove that different clinic models are appropriate for certain things and other models appropriate for other things. For example, it may be that a successful pro bono program is associated with a greater number of clients served, while a focus on litigation is associated with successes in obtaining favorable published opinions on victims' rights.

One thing that the process evaluation has made clear is that clinics that build on the networks and reputations of experienced clinic directors and boards have an easier time of it than clinics that have to start from a zero point. Clinics with directors and boards that are well-connected gain more referrals and have more success getting prosecutors and judges to accede to their desired outcomes, even without having to litigate. A good part of their success may also result from trust that the directors have built up with local officials in their years of victims' rights work. It will be instructive to see whether the clinics starting from a zero point are able to make up ground over time and develop the same kinds of respect and relationships that the Maryland, New Jersey, and Arizona clinics enjoy as a result of their directors' contacts or the Utah clinic enjoys as a result of contacts of board members.

The vision of NCVCLI is being implemented by the clinics. It remains for further evaluation work to determine the extent to which the clinics have succeeded in changing the legal culture regarding victims' rights and encouraged greater observance of victims' rights in cases in which victims are unrepresented by counsel as well as those in which they are.