



NATIONAL CRIME
VICTIM LAW INSTITUTE

Victims' Rights: The Good & The Better

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Who is NCVLI?

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

Objectives

- Understand landscape of victims' rights
- Discuss the vision of victims' rights
- Analyze Minnesota law & vision together

Recent History & Current Landscape: How did we get here?



Step 1



PUBLIC RECOGNITION

Somewhere along the way, the American criminal justice system had become “appallingly out of balance,” “serv[ing] lawyers and judges and defendants, [while] treating the victim with institutionalized disinterest.” 1982 President’s Task Force on Victims of Crime, Final Report vi (1982).

Step 2





**And every
jurisdiction passed
statutes**

Step 3



**Reflect on whether laws are
achieving goals**

Discretionary (i.e., Illusory) Rights

The Statute

- Federal law 1997 – victims have the “the right” to be “present at all public court proceedings related to the offense”; the Justice Department shall make its “best efforts” to extend these rights to victims.

The Application

- United States v. McVeigh – these rights are unenforceable by appeal or mandamus because the “statute charily pledges only the ‘best efforts’ of certain executive branch personnel to secure the rights listed.” United States v. McVeigh, 106 F.3d 325 (10th Cir. 1997).

Compliance & Enforcement

Compliance

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

Enforcement

- Seeking a judicial order (either through the victim pro se, through a prosecutor, or a private attorney) that one must comply with victims' rights laws or that provides a remedy for the violation of those laws.

Case Law Develops

Step 4



Federal Crime Victims' Rights Act, 18 U.S.C. § 3771

**Be reasonably
protected from the
accused**

**Reasonable,
accurate & timely
notice of public
court proceedings**

Not be excluded

**Full and timely
restitution**

**Confer with the
attorney for the
government**

**Be reasonably
heard at any public
proceeding**

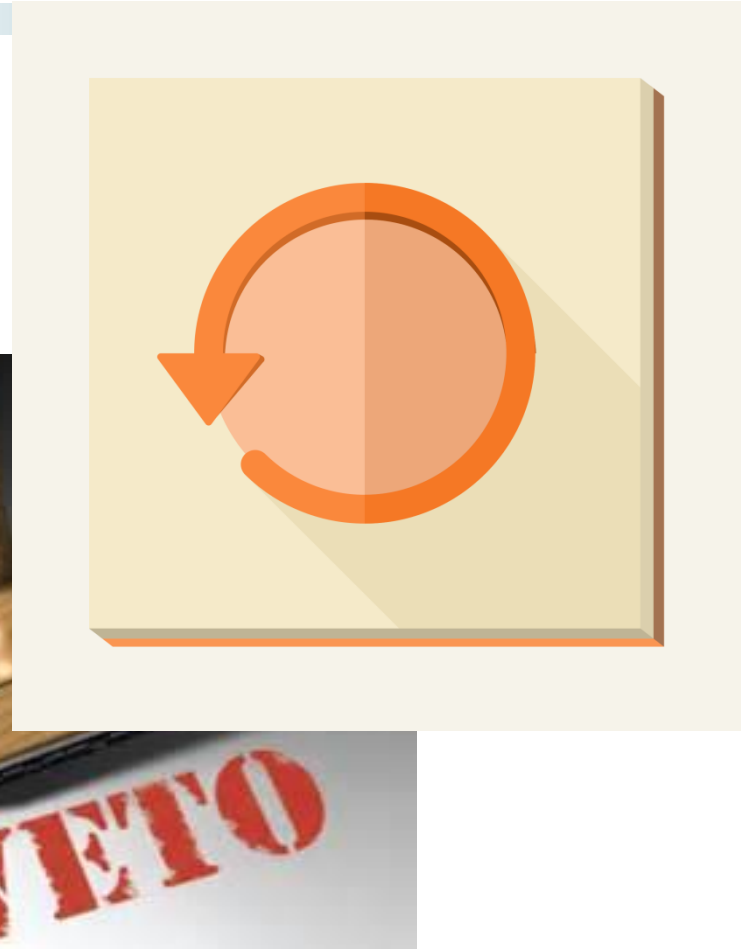
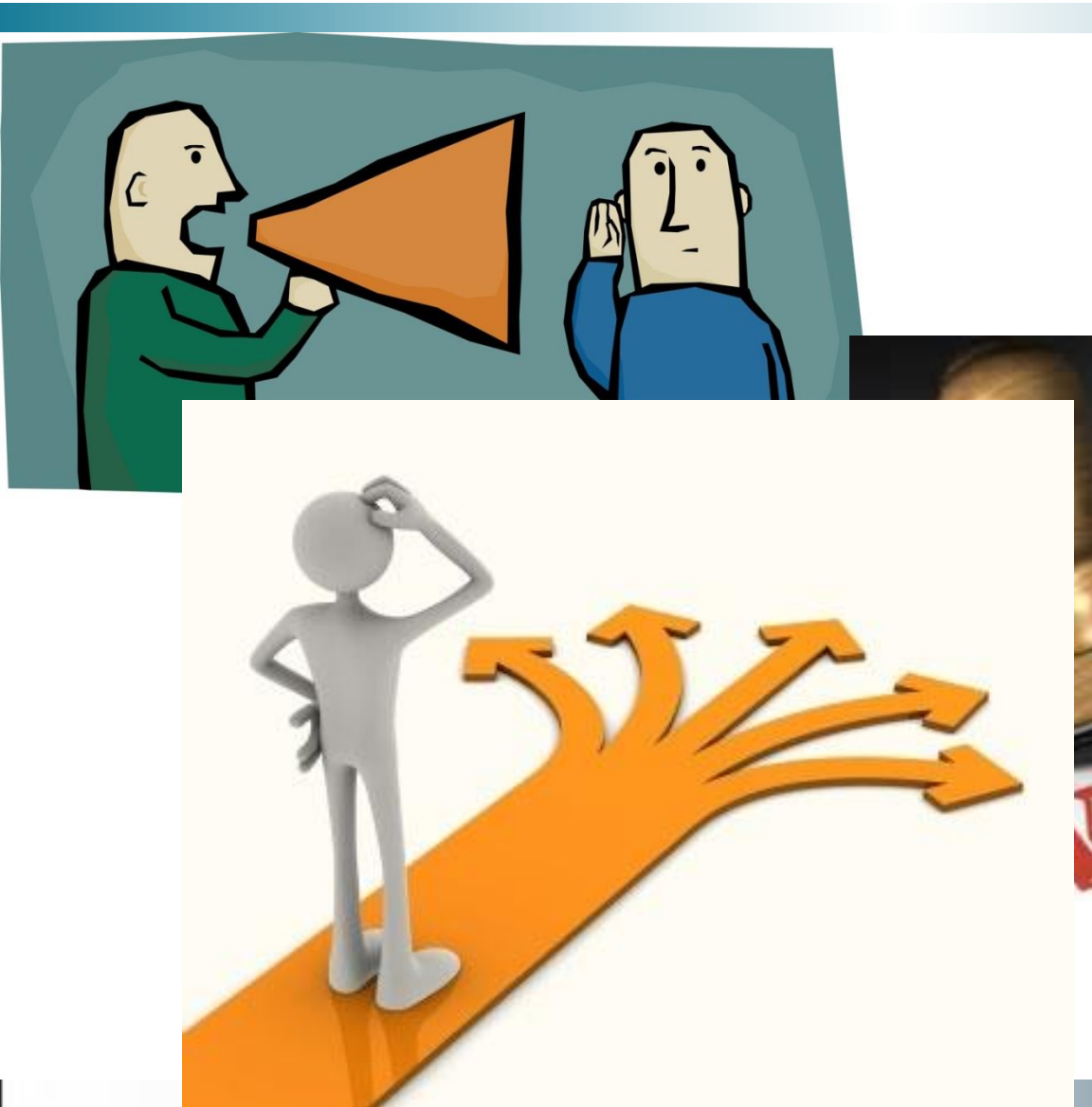
**Proceedings free
from unreasonable
delay**

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

Most fundamental Difference



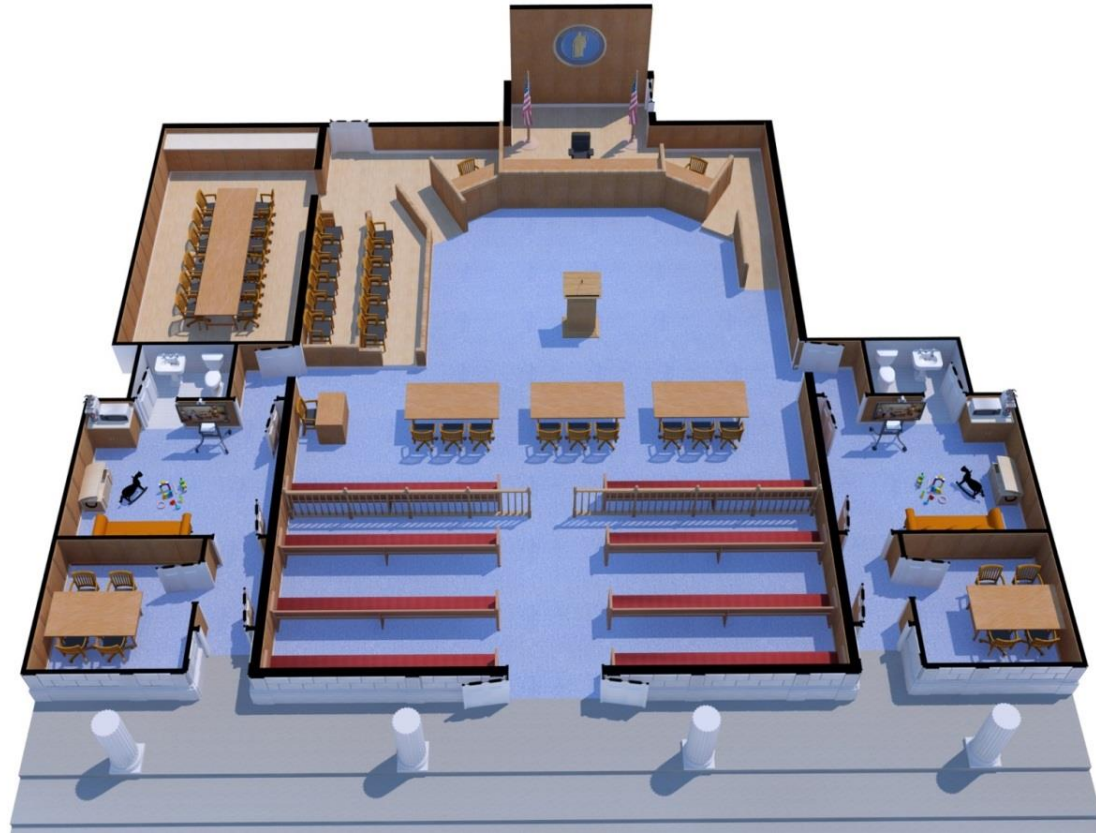
The Change





What Is Your Vision of Criminal Justice?

Kenna v. United States Dist. Court, 435 F.3d 1011, 1013 (9th Cir. 2006) (“The criminal justice system has long functioned on the assumption that crime victims should behave like good Victorian children—seen but not heard. The Crime Victims’ Rights Act sought to change this by making victims independent participants in the criminal justice process.”).

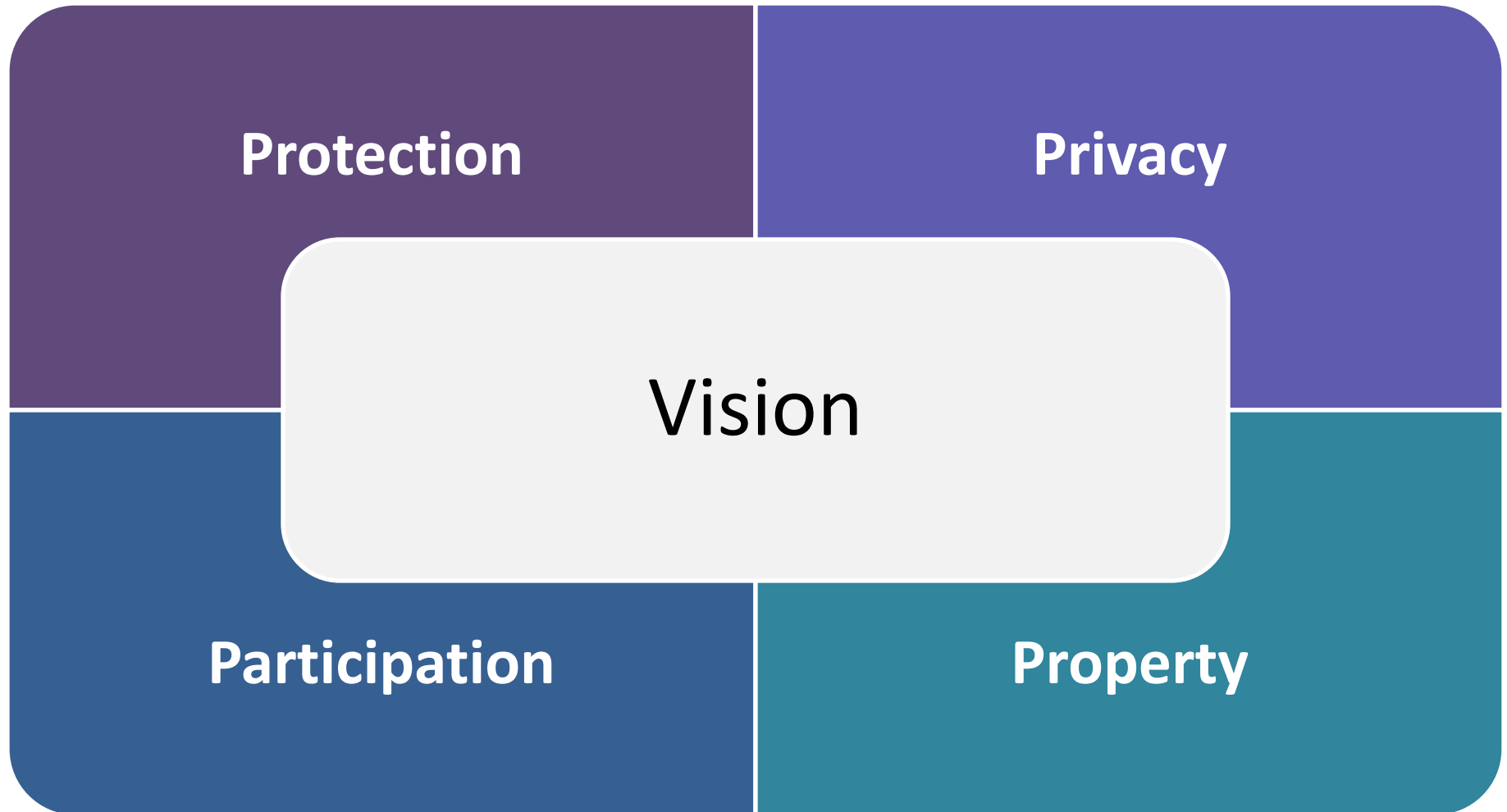


“Law is most usefully seen . . . as a branch of rhetoric; and that the kind of rhetoric of which law is a species is most usefully seen not, as rhetoric usually is, either as a failed science or as the ignoble art of persuasion, but as the central art by which community and culture are established, maintained, and transformed.”

James B. White, *Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life*, 52 U. Chi. L. Rev. 684, 684 (1985).

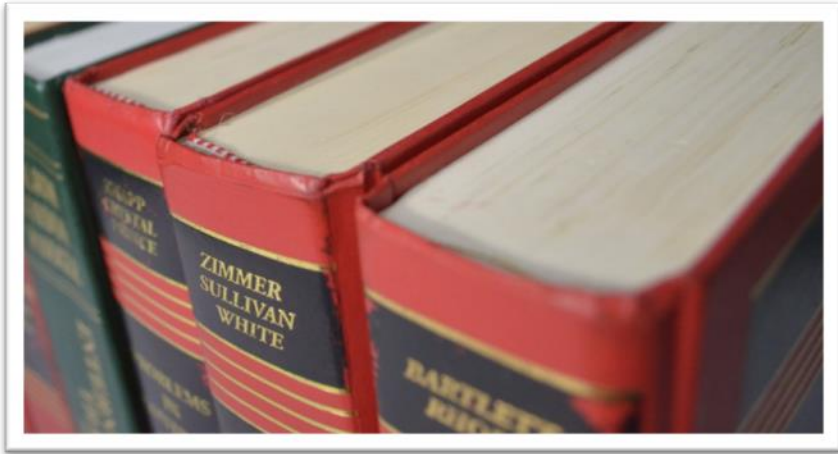
What Rights Do You Want?

Crime Victims' Rights



What Remedies Do You Want?

The Bottom Line of Any Right



Rights in the law
books are mere words
on paper.

Meaning only comes when people ask for their rights, when courts **enforce** them, and when systems (and system actors) begin routinely **complying** with them.

Enforcement Efforts

“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 knowledge of the science of law He is unfamiliar with the modes of proof and the rules of evidence He lacks both the skill and the 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.” *Powell v. State*, 287 U.S. 45, 68-69 (1932).

Don't shy away from this!

What Limitations Do You Have?

Some “limitations”

...

AKA

...

Law school
101

- “May”
- To the extent “practicable”
- “As provided” or “defined by” law
- Nothing “shall *limit* any right of the accused”
- Violation “is not a ground for an appellate relief”
- No “cause of action”
- “Upon request”
- “Or”

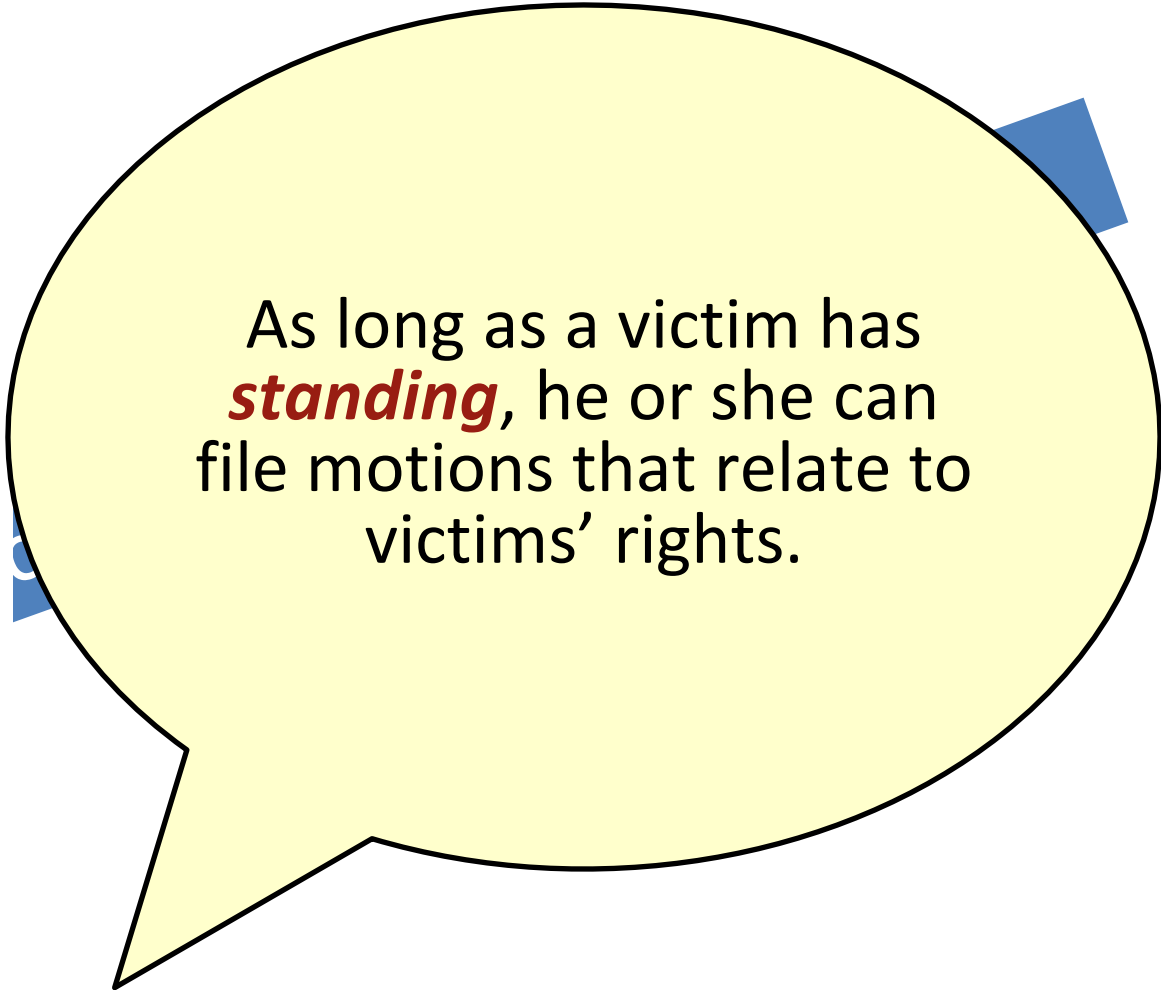
Hierarchy of Law



What Opposition Exists?

Legal “Hurdle”

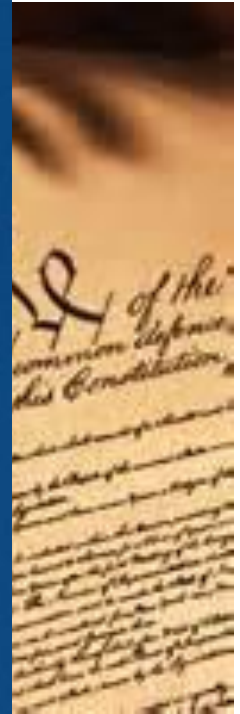
Injury +
Causation +
Redressability =
STANDING



As long as a victim has ***standing***, he or she can file motions that relate to victims' rights.

Cultural Hurdle #1

Work
h
defer
rig



Cultural Hurdle #2



Practical Hurdles





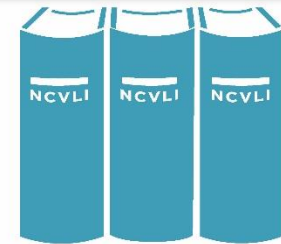




**RIGHTS ENFORCEMENT
TOOLKIT** that guides
practitioners through
the steps of asserting
victims' rights



Basic victims'
rights information
in short video
QUICKTOOLS



**VICTIM LAW
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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**