

## **CVRA SYMPOSIUM OUTLINE**

Brian P. Comerford

Supervisory Assistant Federal Public Defender

Federal Public Defender's Office, Western District of New York

### The Defense Perspective

1. Victim rights at proceedings with defendant - 18 U.S.C. § 3771 - right to be present, right to be informed of plea agreement, right to be heard, right to restitution.
2. Plea bargaining - victim has right to be informed of a plea. Typically prosecutor consults with victim when an offer is made. Victim does not have veto power, but in practice prosecutor wants victim to approve of the plea resolution — can complicate negotiations in a difficult case.
3. Right to be heard at any proceeding involving release/plea/sentencing
  - a. In practice, victim statements used most often at sentencing
  - b. Victim impact statements: received prior to sentencing – under seal
  - c. Importance of reviewing victim impact statements with defendant prior to sentencing
4. Experience representing defendant in case with a represented victim.
5. Restitution to victims
  - a. Fraud cases: monetary restitution to victims for financial losses
6. CP cases: restitution for compensable losses such as counseling, treatment, lost wages
  - a. Victim may be seeking restitution in 100s or 1000s of cases with different defendants - all of whom has images of that victim and caused them psychological harm.
  - b. Total restitution paid cannot exceed loss amount
  - c. Requirements under 18 USC § 3663a