

Directions for completing this form: Place the title of your workshop in the space indicated, followed by the name and contact information for each of the presenters. Provide a brief description of your workshop by placing the cursor on the line below “Brief Description” and commence typing. To complete the “Topical Outline”, place cursor next to each Roman numeral and begin typing. Then place the cursor next to the “a.” to begin listing sub-topics. To list more than one sub-topic, push “Enter” and “b.” should appear on the next line, and so on. Place the cursor on the line under “Notes” to begin providing your notes. To list bibliographic information, place the cursor next to “1.” and start typing. Push “Enter” to move on to “2.” and etc.

ABA / NLADA 2009 Equal Justice Conference

**Identity Theft: When Victims Need Legal Help
Presenters:**

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Brief Description: The workshop will cover the rights and remedies that victims of identity theft have under federal laws and the issue of when victims need direct legal assistance. The course will identify organizations and resources available to assist victim service providers and pro bono attorneys. Attendees will learn to how to help restore victims of financial account identity theft to their pre-crime status. The workshop will also cover rights of identity theft victims in the criminal justice system and the laws giving victims rights. Finally, the workshop will cover assisting victims of non-financial account types of identity theft, including clearing medical records,

criminal records, and tax records.

Topical Outline:

- I. Understanding Identity Theft and its Victims
 - A. Different forms
 1. Prevalence rates
 2. Consequences
 3. Motives
 - B. Scope of crime
 1. The Bureau of Justice Statistics' National Crime Victimization Survey
 2. The FTC Identity Theft Complaint Database
 - C. Impact of crime on victims
 1. Different degrees of harm
 2. Most serious types of harm

- II. When Victims Need Pro Bono Attorneys
 - A. Anyone can become a victim of identity theft; however, certain groups are more adversely affected because they have access to fewer resources to assist in recovery including:
 1. the elderly
 2. persons with limited English proficiency
 3. minors
 4. persons with disabilities
 5. the mentally ill
 - B. Many victims can recover on their own with mentoring
 - C. Victims need a lawyer when:
 1. their age, health, language proficiency, or economic situation prevents them from making disputes
 2. they are sued by creditors attempting to collect debts incurred by an impostor
 3. they are being harassed by creditors attempting to collect debts incurred by an impostor
 4. creditors or credit reporting agencies are uncooperative
 5. their identity thief is arrested

- III. Resources, Tips, and Tools for Assisting Victims of Identity Theft
 - A. Organizations that can assist civil legal service providers and pro bono attorneys in assisting identity theft victims
 - B. Proving that the victim is not responsible
 - C. Sample logs for recording recovery actions

- D. Sample dispute letters and authorization forms
 - E. Identity Theft Affidavit
- IV. General Steps for Assisting Victims of Financial Account Identity Theft Victims under the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.*, and other federal consumer protection laws
- A. Credit Reporting Agencies (CRAs)
 - 1. Placing fraud alerts
 - 2. Clearing credit reports
 - a. Blocking information caused by ID theft from appearing on credit report
 - i. Identity Theft Report (Police Report)
 - b. Correcting information in credit report without reporting to police, using general dispute process
 - B. Creditors, Banks, Debt Collectors
 - 1. Stopping companies from furnishing identity theft-related information to CRAs
 - 2. Preventing sale of fraudulent debt
 - 3. Obtaining business records relating to identity theft
 - C. Police
 - 1. Obtaining a Police Report
 - D. Federal Trade Commission
 - 1. Obtaining an Identity Theft Affidavit
- V. Enforcing the FCRA
- A. FTC Enforcement Actions
 - 1. Standards
 - 2. Remedies
 - B. Civil Liability
 - 1. Standards
 - 2. Damages
- VI. Rights of Identity Theft Victims in the Criminal Justice System
- A. Crime Victim Rights Act, 18 U.S.C. §3771 - Guarantees crime victims rights to:
 - 1. Be reasonably protected from the accused
 - 2. Reasonable, accurate, and timely notice of public court proceedings
 - 3. Not be excluded
 - 4. Be reasonably heard at any public proceeding
 - 5. Confer with the attorney for the government
 - 6. Full and timely restitution
 - 7. Proceedings free from unreasonable delay
 - 8. To be treated with fairness and respect for their dignity and privacy
 - B. Federal criminal statutes pertaining to identity theft/fraud
 - 1. identification fraud (18 U.S.C. § 1028)

2. credit card fraud (18 U.S.C. § 1029)
 3. computer fraud (18 U.S.C. § 1030)
 4. mail fraud (18 U.S.C. § 1341)
 5. wire fraud (18 U.S.C. § 1343)
 6. financial institution fraud (18 U.S.C. § 1344)
 7. Each of these federal offenses are felonies that carry substantial penalties in some cases, as high as 30 years imprisonment, fines, and criminal forfeiture.
- C. Identity Theft Enforcement and Restitution Act, 18 U.S.C. §3663(b) - allows victims restitution for time spent repairing their credit and directs Sentencing Commission to review guidelines re: ID crimes to achieve consistency and allow for aggravating or mitigating circumstances

VII. Assisting Victims with Non-Financial Identity Theft

- A. Medical Identity Theft - use of another's personal identifying information or medical insurance to obtain medical care
1. Report to local law enforcement and get copy of report
 2. Victim must execute multiple originals of a HIPAA compliant authorization form
 3. Request copy of victim's medical record from the regular health care provider – can be given to providers who gave care to impostor in support of correcting records
 4. Request medical records and privacy policy from health care providers that gave care to impostor
 5. Review records, write providers, request that the impostor information be deleted from the victim's record and that the medical record be flagged due to identity theft, attach a copy of the police report, victim's ID, and relevant portions of victim's genuine medical record
 6. Review the corrected record.
- B. Employment Identity Theft – use of a victim's identifying information to get or keep employment
1. Victim usually discovers when a tax return is rejected or notice of tax due is received
 2. Get a copy of victim's earnings record from SSA, mark impostor activity, provide supporting information to SSA, and request corrected earnings record (fastest if victim does this in person)
 3. Provide corrected earnings statement to IRS, request that victim's records be flagged due to ID theft
 4. For additional assistance, contact Identity Protection Specialized Unit , 1-800-908-4490
- C. Criminal Identity Theft – use of false identifying information in connection with commission of a crime
1. Usually manifests to victim in failed background check, arrest, notice of outstanding warrants, or inability to renew drivers license

2. Contact law enforcement where the criminal activity occurred, provide proof of victim's identity and alibi information for the crime, and request a letter of clearance, provide letter of clearance to relevant businesses or agencies and data brokers
 3. Some states allow expungement of impostor activity from victim's criminal history
 4. A few states have ID theft passport programs
- D. Use of declaratory judgment statutes to assist victims

Notes:

Bibliography & Website Links:

1. Speaker Biographies

Joanna Crane is the Identity Theft Program Manager at the Federal Trade Commission. She is responsible for coordinating the FTC's implementation of its responsibilities under the Identity Theft and Assumption Deterrence Act of 1998 which focuses on assisting victims of identity theft, supporting law enforcement, and educating private industry. Ms. Crane is also involved in implementing identity theft victims' rights under the Fair Credit Reporting Act, developing regulatory and policy responses and bringing civil enforcement actions against entities that fail to comply with those requirements. Ms. Crane participates in a variety of governmental working groups, public-private partnerships, and training and research initiatives involving identity theft.

Ms. Crane served as Law Clerk to the Hon. Diane Gilbert Weinstein of the U.S. Court of Federal Claims. Ms. Crane holds a B.A. and an M.P.A. from Syracuse University and a J.D. from the George Mason University School of Law.

Russell Butler serves as Executive Director of the Maryland Crime Victims' Resource Center, Inc. Russell serves as an Adjunct Professor at the University of Baltimore Law School teaching "The Rights of Crime Victims."

From 1985 to 2002, Russell served as lobbyist for the Stephanie Roper Committee, Inc., and also as the legal counsel for the Stephanie Roper Foundation, Inc. Russell has also served as lobbyist for MADD Maryland from 1999 to 2003.

Russell served on a number of Maryland criminal justice advisory committees including the State Commission on Criminal Sentencing Policy and the Article 27 Revision Committee. Russell served as the 2004-2005 Chair of the Maryland State Bar Association's Section on Criminal Law and Practice. Currently, Russell is co-chair of the ABA Crime Victims Committee and a member of the Victim Advisory Group of the United States Sentencing Commission.

Russell is a graduate of the University of Maryland in College Park and the University of Baltimore Law School

Paula Pierce is the Managing Attorney of the Victims Initiative for Counseling Advocacy and Restoration of the Southwest, a federally funded program of the Texas Legal Services Center that provides free legal advocacy for victims of identity theft and financial fraud. Ms. Pierce is an honors graduate of Trinity University and the South Texas College of Law. She served as briefing attorney to Texas Supreme Court Justice James P. Wallace, and has practiced law for over twenty years. She is a frequent speaker on identity theft.

2. Web sites

- a. www.ftc.gov/idtheft
- b. www.onguardonline.gov
- c. <http://www.mdcrimevictims.org/>
- d. <http://www.idvictim.org/>
- e. <http://www.idtheftcenter.org/>

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