Victims in Criminal Procedure

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Victims in Criminal Procedure

Third Edition

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Carolina Academic Press
Durham, North Carolina

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ISBN 978-1-59460-738-7
LCCN 2010926389

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

For the law students who would be crime victim lawyers.
—Douglas Beloof

To my wife, Trish.
—Paul Cassell

With love to Mom and Dad, Shawn, Erik and J.P., Cassie and Caroline, Allison and Kristen, Carter, Mason, Cooper, and Elliot, each of whom is surely evidence of God's grace in my life, and to the victims whose voices the nation still must hear.
—Steve Twist

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Preface to the Third Edition

We are excited about the new, Third Edition of the casebook, which contains several significant changes. The Third Edition includes the federal Crime Victims' Rights Act. Many cases have resulted from this Act, which are bringing into sharper focus the role of victims' in the criminal justice process. As the Ninth Circuit stated in *Kenna v. District Court*, 435 F.3d 1011 (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 system."

We have also added new federal and state cases in lieu of narrative in many places. The new edition contains a separate chapter on domestic violence criminal procedures, as these are rather unique. Also included are excerpts from the Human Rights Watch Report, U.S. Policy and International Standards on the Rights and Interests of Crime Victims, which provides: "While there can be tensions between the legitimate interests of victims and defendants, a criminal justice system based on human rights standards can safeguard the rights of both while advancing justice and the rule of law."

We are also very grateful to the contribution of the many academics who have joined to the dialog concerning victim law in the years since the second edition, these efforts have made for a better edition. There now seems to be an increasing interest in the education of law students on crime victim issues. Victim law is truly coming of age.

Preface to the Second Edition

In the Preface to the First Edition I (then the sole author) wrote that "the role of the victim is expanding" and that the state of victim law education in the legal academy was "unfortunate" in that few academics or law students were educated or receiving education on the topic.

Professor Erin O'Hara of Vanderbilt has recently written: "Given that virtually all law professors were trained in criminal law classes that ignored victim involvement in the criminal justice process, it is perhaps not surprising that it is considered heretical to suggest that direct participation by victims might be warranted. Indirect participation by victims and even the attendance of victims at criminal proceedings are likewise viewed by many as problematic. In the legal academy, any other state of affairs threatens the very foundations of justice."

The marginalization of crime victim law by criminal procedure legal academics remains astonishing. By way of analogy, it would be as if civil procedure professors failed to teach the laws of intervention. In the real world, for prosecutors, defense counsel, victim lawyers, legislatures, judges, it is simply impossible to ignore the significance and expanding role of victims in criminal procedure. The academy is not meeting their educational needs.

I am joined in this Second Edition by two co-authors who are among the nation's foremost experts in the field, United States District Court Judge and Professor of Law at Utah — Paul Cassell, and Steve Twist, crime victim lawyer, adjunct Professor of Victim Law at Arizona State University and Counsel for many years in drafting and redrafting the proposed Victims' Amendment to the United States Constitution. I am grateful for their willingness to contribute. The Second Edition is much improved as a result.

Finally, I would like to acknowledge our publisher Carolina Academic Press and its Board of Advisors for perceiving that the topic Victims in Criminal Procedure is an important area of criminal procedure.

Professor Douglas Beloof

Preface to the First Edition

Criminal procedure cannot be truly understood without understanding the victim's role. This book is the product of a seminar I have taught for several years at Northwestern School of Law, Lewis and Clark College. The seminar has become so popular with the students that the seminar will soon become a criminal procedure class.

The book is divided up into procedural stages. This structure mimics conventional criminal procedure casebooks. Contrary to conventional criminal procedure casebooks, which have ignored or minimized the significance of the victim, this book consciously focuses on the victim's role in the criminal process. As a result, almost none of the material is found in conventional criminal procedure casebooks. I have taught the course both to students who had, and had not, taken other criminal procedure courses and no problems arose.

The role of the victim is expanding. In terms of legal evolution, this expansion is occurring quite rapidly. It probably represents the single greatest "revolution" in criminal procedure in twenty years. In most fields of law one would expect such a new and dynamic set of laws to have a prominent place in the education of law students. Yet, this has not proven to be true in the education of criminal procedure students. I have found that many legal academics, including those who teach criminal law and procedure, remain uniformed about the role of the victim. Most law students, including those who intend to practice criminal law and procedure, graduate from law schools having had no significant exposure to the law of victims in criminal procedure. This state of academic affairs is unfortunate.

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