

# Victims in Criminal Procedure



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FOURTH EDITION

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For the law students who would be crime victim lawyers.

— Douglas Beloof

To my wife, Trish.

— Paul Cassell

For Doug, Steve, and Paul for your mentorship.

For the team at the National Crime Victim Law Institute for fighting for victims  
each day to ensure the law advances and new cases can be added this book.

For Chris.

— Meg Garvin

With love to Mom and Dad, Shawn, Erik and J.P., Cassie and Caroline,  
Allison and Kristen, Carter, Mason, Cooper, Eliot, Steven, Leesy, Lily, and Henry,  
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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### *U.S. Courts of Appeal*

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- People v. Morrow, 542 N.W.2d 324 (Mich. Ct. App. 1995), 404
- People v. Ramirez, 55 Cal. App. 4th 47 (1997), 293
- People v. Stringham, 253 Cal. Rptr. 484, 206 Cal. App.3d (1988), 420, 618
- People v. Verkey, 185 A.2d 622 (N.Y. 1992), 148
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- State ex rel. Hance v. Arizona Board of Pardons and Paroles, 875 P.2d 824 (Ariz. 1993), 721
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- State ex rel. Romley v. Hutt, A Judge of the Superior Court of the State of Arizona, 987 P.2d 218 (Ariz. App.1999), 310
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- State v. Day, 715 P.2d 743 (Ariz. 1986), 586
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- State v. Harrison, 24 P.3d 936 (Utah 2001), 574
- State v. Houston, 900 S.W.2d 712 (Tenn. Cr.App. 1995), 460
- State v. Kent, 62 N.W. 631 (N.D. 1895), 570
- State v. Kman, 2017 WL 937575 (Del. Super. Ct. 2017), 278
- State v. Lozano, 616 So.2d 73 at 78 (1993), 226
- State v. McDonnell, 794 P.2d 780 (Or. 1990), 425
- State v. Morrow, 834 N.W.2d 715 (Minn. 2013), 586
- State v. Mullen, 503 S.W.3d 330 (Mo. Ct. App. 2016), 302
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- State v. Tetu, 139 Hawai'i 207 (Ha. 2016), 325
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- State v. Washington, 266, N.W.2d 597 (Wisc. 1978), 124
- State v. Zimmerman, 2010 WL 4550716 (N.M. Ct. App. 2010), 299

# Secondary Authorities

---

- Am. Jur. 2d, Arrest, Arrest by Private Person, vol. 5, § 56–58 (1995), 142–143
- Ann Althouse, *Thelma and Louise and the Law: Do Rape Shield Rules Matter?* 25 Loy. L. Rev. 757 (1992), 363
- David S. Ardia, *Privacy and Court Records: Online Access and the Loss of Practical Obscurity*, 2017 U. Ill. L. Rev. 1385 (2017), 308
- Susan Bandes, *A Reply to Paul Cassell: What We Know About Victim Impact Statements*, 1999 Utah L. Rev. 545, 625
- Susan Bandes, *Empathy, Narrative, and Victim Impact Statements*, 63 U. Chi. L. Rev. 361 (1996), 553, 691
- Susan Bandes, *Victim Standing*, 1999 Utah L. Rev. 331, 32
- Jayne W. Barnard, *Allocution for Victims of Economic Crimes*, 77 Notre Dame L. Rev. 39 (2001), 74, 717
- Margaret Martin Barry, *Protective Order Enforcement: Another Pirouette*, 6 Hastings Women's L.J. (1995), 514
- Douglas E. Beloof, *Constitutional Implications of Victims as Participants*, 88 Cornell L. Rev. 282 (2003), 617, 629
- Douglas E. Beloof, *Crime Victims' Rights: Critical Concepts for Animal Rights*, 7 Animal L. Rev. 19 (2001), 48
- Douglas E. Beloof, *Enabling Rape Shield Procedures Under Crime Victims' State Constitutional Rights to Privacy*, 38 Suffolk U. L. Rev. 291 (2005), 783
- Douglas E. Beloof, *The Third Model of Criminal Procedure: The Crime Control Model*, 1999 Utah L. Rev. 289, 6, 29
- Douglas E. Beloof, *The Third Wave of Victims' Rights: Standing Remedy and Review*, 2005 BYU L. Rev. 255, 36, 719, 727, 728, 754, 769, 773, 783, 789, 807
- Douglas E. Beloof, *Weighing Crime Victims' Interests in Judicially Crafted Criminal Procedure*, 56 Cath. L. Rev. 1135 (2007), 192
- Douglas E. Beloof & Paul Cassell, *The Crime Victim's Right to Attend the Trial: The Reascendant National Consensus*, 9 Lewis & Clark L. Rev. 481 (2005), 26, 545
- Douglas E. Beloof & Joel Shapiro, *Let the Truth Be Told: Proposed Hearsay Exceptions to Admit Domestic Violence Victims' Out of Court Statements as Substantive Evidence*, 11 Colum. J. Gender & L. (2002), 494
- Stephanos Bibas, *The Machinery of Criminal Justice* (2012), 28
- Jennifer Bjorhus, *Sexual Predator Flees Home After Fliers Go Up*, *The Oregonian*, Sept. 20, 1997, 695

- Jennifer Gerarda Brown, *The Use of Mediation to Resolve Criminal Cases: A Procedural Critique*, 43 *Emory L.J.* 1247 (1994), 470
- Sharon Cammack & Patric Pujo, *Domestic Violence: A National Epidemic*, *Houston Lawyer*, Oct. 2004, 475
- I. Bennett Capters, *Real Women, Real Rape*, 60 *UCLA L. Rev.* 826 (2013), 363
- Stephen L. Carter, *When Victims Happen to Be Black*, 97 *Yale L.J.* 420 (1988), 92, 95
- Paul G. Cassell, *Balancing the Scales of Justice: The Case for and the Effects of Utah's Victims' Rights Amendment*, 1994 *Utah L. Rev.* 1373, 146, 240, 590, 761
- Paul G. Cassell, *Barbarians at the Gates? A Reply to the Critics of the Victims' Rights Amendment*, 1999 *Utah L. Rev.* 17, 22, 31, 538, 621, 810
- Paul G. Cassell, *Freeing the Guilty Without Protecting the Innocent: Some Skeptical Observations on Proposed New 'Innocence' Procedures*, 56 *N.Y. L. Rev.* 1063 (2012), 110
- Paul G. Cassell, *Protecting Crime Victims in Federal Appellate Courts: The Need to Broadly Construe the Crime Victims' Rights Act's Mandamus Provision*, 87 *Denv. U. L. Rev.* 599 (2010), 58
- Paul G. Cassell, *Recognizing Victims in the Federal Rules of Criminal Procedure: Proposed Amendments in Light of the Crime Victims Act*, 2005 *BYU L. Rev.* 835, 56, 255, 520
- Paul G. Cassell, *The Guilty and the "Innocent": An Examination of Alleged Cases of Wrongful Conviction from False Confessions*, 22 *Harv. J.L. & Pub. Pol'y* 523 (1999), 75
- Paul G. Cassell, *The Mysterious Creation of Search and Seizure Exclusionary Rules Under State Constitutions: The Utah Example*, 1993 *Utah L. Rev.* 751, 291
- Paul G. Cassell, *Treating Crime Victims Fairly: Integrating Victims into the Federal Rules of Criminal Procedure*, 2007 *Utah L. Rev.* 861, 343
- Paul G. Cassell & Edna Erez, *Victim Impact Statements and Ancillary Harm: The American Perspective*, 15 *Can. Crim. L. Rev.* 149 (2010), 74
- Paul G. Cassell, Nathanael J. Mitchell & Bradley J. Edwards, *Crime Victims' Rights During Criminal Investigations: Applying the Crime Victims' Victims Act Before Criminal Charges Are Filed*, 104 *J. Crim. L. & Criminology* 59 (2014), 111
- Sharon Cohen, *A Mother's Mission: Ghost of Death Haunts Search for Daughter*, *L.A. Times*, Sept. 2, 1990, 218
- Tanya Asim Cooper, *Sacrificing the Child to Convict the Defendant: Secondary Traumatization of Child Witnesses by Prosecutors, Their Inherent Conflict of Interest, and the Need for Child Witness Counsel*, 9 *Cardozo Pub. L. Pol'y Ethics J.* 239 (2011), 591
- Kip Cornwell, *Protection and Treatment: The Permissible Civil Detention of Sexual Predators*, 53 *Washington & Lee L. Rev.* 1293 (1996), 686
- Kellina Craig, *Examining Hate-Motivated Aggression: A Review of the Social Psychological Literature on Hate Crimes as a Distinct form of Aggression*, 7 *Aggression and Violent Behavior* 86 (2002), 97

- Kenneth Davis, *Discretionary Justice: A Preliminary Inquiry* (1969), 151
- Peter Davis, *Rodney King and the Decriminalization of Police Brutality in America: Direct and Judicial Access to the Grand Jury as Remedies for Victims of Police Brutality When the Prosecution Declines to Prosecute*, 53 *Maryland L. Rev.* 263 (1994), 221
- Developments in the Law: Legal Responses to Domestic Violence*, 106 *Harvard L. Rev.* 1498 (1993), 486, 500
- Markus Dirk Dubber, *Recidivist Statutes as Arational Punishment*, 43 *Buff. L. Rev.* 689 (1995), 641
- Markus Dirk Dubber, *Victims' in the War on Crime: The Use and Abuse of Victims' Rights* (2002), 46, 47, 626
- Markus Dirk Dubber & Bernd Schunemann, *Symposium: Victims and the Criminal Law: American and German Perspectives*, 3 *Buff. Crim. L. Rev.* 1 (1999), 585
- The Family of Ron Goldman, His Name is Ron: Our Search for Justice* (1997), 625
- Peter Finn & Kerry Murphy Healey, *Relocating Intimidated Witnesses: An Underutilized Protection Approach*, 30 *Prosecutor* 24 (1996), 276
- George P. Fletcher, *With Justice for Some: Protecting Victims' Rights in Criminal Trials* (1995), 24, 249, 447, 531, 551
- Christopher R. Frank, *Criminal Protection Orders in Domestic Violence Cases: Getting Rid of Rats with Snakes*, 50 *Univ. Miami L. Rev.* 919 (1996), 502
- Margaret Garvin & Douglas E. Beloof, *Crime Victim Agency: Independent Lawyers for Sexual Assault Victims*, 13 *Ohio St. J. Crim. L.* 67 (2015), 30, 227, 228
- Mary Margaret Giannini, *Redeeming an Empty Promise: Procedural Justice, The Crime Victims' Rights Act, and the Victim's Right to Be Reasonably Protected from the Accused*, 78 *Tenn. L. Rev.* 47 (2010), 258
- Mary Margaret Giannini, *The Procreative Power of Dignity: Dignity's Evolution in the Victims' Rights Movement*, 9 *Drexel L. Rev.* 43 (2016), 30
- Donald G. Gifford, *Equal Protection and the Prosecutor's Changing Decision: Enforcing an Ideal*, 49 *Geo. Wash. L. Rev.* 65, 711–17 (1981), 195
- Josephine Gittler, *Expanding the Role of the Victim*, 11 *Pepperdine L. Rev.* 117 (1984), 157
- Abraham Goldstein, *Defining the Role of the Victim in Criminal Prosecution*, 52 *Mississippi L.J.* 1 (1982), 17
- Abraham Goldstein, *Converging Criminal Justice Systems: Guilty Pleas and the Public Interest*, 49 *SMU L. Rev.* 575 (1996), 432
- Abigail L. Grimm, *An Examination of Why Permitting Therapy Dogs to Assist Child-Victims When Testifying During Criminal Trials Should Not Be Permitted*, 16 *J. Gender, Race & Justice* 263 (2013), 560
- Dena M. Gromet et al., *A Victim-Centered Approach to Justice? Victim Satisfaction Effects on Third-Party Punishments*, 36 *Law & Hum. Behav.* 375 (2012), 463
- Amos N. Guiora, *The Crime of Complicity: The Bystander in the Holocaust* (2017), 260

- Paul Gustafson, *Star-Tribune Newspaper of the Twin Cities, Mpls.-St. Paul*, June 24, 1997
- Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 *Harvard L. Rev.* 1849 (1996), 493, 495
- Hilary Hanson, *Murderabilia Has Andy Kahan, Victim Advocate, Up in Arms*, *Huff. Post*, Oct. 8, 2012, 676
- Lynne Henderson, *Whose Justice, Which Victims*, 94 *Mich L. Rev.* 1596 (1996), 448
- Lynn N. Henderson, *The Wrongs of Victim's Rights*, 37 *Stanford L. Rev.* 937 (1985), 288
- Gabriel Hallevy, *Therapeutic Victim-Offender Mediation Within the Criminal Justice Process—Sharpening the Evaluation of Personal Potential for Rehabilitation While Rights Wrongs Under the Alternative Dispute Resolution Philosophy*, 16 *Harv. Negot. L. Rev.* 65 (2011), 467
- Gail Heriot, *An Essay on the Civil Criminal Distinction with Special Reference to Punitive Damages*, 1 *J. Contemp. Legal Issues* 43 (1996), 18
- Kathleen Howe, *Comment, Is Free Speech Too High a Price to Pay for Crime? Overcoming the Constitutional Inconsistencies in Son of Sam Laws*, 24 *Loyola L.A. Entertain. L. Rev.* 341 (2004), 675
- Human Rights Watch, *Mixed Results: U.S. Policy and International Standards on the Rights and Interests of Victims of Crime* (2008), 5
- Heidi M. Hurd & Michael S. Moore, *Punishing Hatred and Prejudice*, 56 *Stan L. Rev.* 1081 (2004), 100
- Tom Jicha, *The Risk of Forgiveness on 48 Hours, Mercy Raises Troubling Questions*, *Sun. Sentinel*, Oct. 2, 1997, 627
- Matti Joutsen, *Listening to the Victim: The Victim's Role in European Criminal Systems*, 34 *Wayne L. Rev.* 95 (1995), 580
- Matthew Kaiser, *Sit ... Stay ... Now Beg for Me: A Look at the Courthouse Dogs Program and the Legal Standard Pennsylvania Should Use to Determine Whether a Dog Can Accompany a Child on the Witness Stand*, 60 *Vill. L. Rev.* 343 (2016), 560
- Alice R. Kaminsky, *The Victim's Son* (1985), 625
- Andrew A. Karmen, *Who's Against Victims' Rights? The Nature of the Opposition to Pro-Victim Initiatives in Criminal Justice*, 8 *St. John's J. Legal Comment.* 157 (1992), 32
- Deborah P. Kelly, *Victim's Perceptions of Criminal Justice*, 11 *Pepperdine L. Rev.* 15 (1984), 26
- Drew Kershen, *Justice Denied in Oklahoma*, *N.Y. Times*, Feb 28, 1996, 247
- Marsha Kight, *Forever Changed: Remembering Oklahoma City*, April 19, 1995 (1998), 625
- Gary Kinder, *Victim: The Other Side of Murder* (1980), 625
- Jon Krakauer, *Missoula: Rape and the Justice System in a College Town* (2015), 123

- Wayne R. LaFave, 1 Search and Seizure § 1.8 (3d ed. 1996), 141
- Maureen E. Laflin, Criminal Mediation Has Taken Root in Idaho's Courts, 56 Advocate 37 (2013), 472
- Nancy Lamb and the Children of Oklahoma City, One April Morning: Children Remember the Oklahoma City Bombing (1996), 625
- George Lardner, Jr., The Stalking of Kristin: A Father Investigates the Murder of His Daughter (1995), 625
- Cory R. Lepage & Jeff D. May, The Anchorage Alaska Municipal Pretrial Diversion Program: An Initial Assessment, 34 Alaska L. Rev. 1 (2017), 450
- Andrew D. Leipold, Why Grand Juries Do Not (and Cannot) Protect the Accused, 80 Cornell L. Rev. 260 (1993), 220
- Letter from Law Professors Regarding the Proposed Victims' Rights Constitutional Amendment, in A Proposed Constitutional Amendment to Protect Victims of Crime: Hearings Before the Sen. Judiciary Comm., 105th Cong., 1st Sess. (1997), 801
- Lisa Locher, "U Visa" Relief for Undocumented Victims of Crime, 61 Boston Bar J. 25 (2017), 110
- Katie Long, Note, Community Input at Sentencing: Victim's Right or Victim's Revenge?, 75 Boston Univ. L. Rev. 195 (1995), 63, 641
- Michael Luttig, Statement reprinted in Texas Lawyer, Mar. 20, 1995, 600
- Paul Marcus & Tora McMahon, Limiting Disclosure of Rape Victims' Identities, 64 S. Cal. L. Rev. 1019 (1991), 295
- William F. McDonald, Towards a Bicentennial Revolution in Criminal Justice: The Return of the Victim, 13 Am. Crim. L. Rev. 649 (1976), 9, 419
- Maureen McLeod, Victim Non-Cooperation in the Prosecution of Domestic Violence, 21 Criminology 395 (1983), 478
- Veronica Michel & Kathryn Sikkink, Human Rights Prosecutions and the Participation Rights of Victims in Latin America, 47 Law & Soc'y Rev. 873 (2013), 585
- Frank W. Miller, Prosecution: The Decision to Charge a Suspect with a Crime (1969), 150
- Linda G. Mills, Killing Her Softly: Intimate Abuse and the Violence of State Intervention, 113 Harv. L. Rev. 550 (1999), 498
- Robert P. Mosteller, Essay, Victim's Rights and the United States Constitution: An Effort to Recast the Battle in Criminal Litigation, 85 Geo. L. Rev. 1691 (1997), 235, 541
- Wendy Murphy, Cameras in the Courtroom: Serving the Public's Right to Know or Boosting the Media Profits?, 3 Crime Victims Rep. 33 (1999), 378
- Wendy Murphy, Rape Shield Laws Wrongly Protect Interrogation of Victims, Daily Journal Newswire, April 2, 2004, 363
- Angela Nascondiglio, The Cost of Comfort: Protecting a Criminal Defendant's Constitutional Rights When Child Witnesses Request Comfort Accommodations, 61 N.Y.L. Sch. L. Rev. 395 (2017), 560

- National Victim Center, *Victims Rights Sourcebook* (1996), 8, 23, 42
- Erin Ann O'Hara, *Victim Participation in the Criminal Process*, 13 *J.L. & Pol'y* 229 (2005), 8, 23, 42
- Rafael Olmeda, *Cooper City Teen Who Shot and Killed Friend Sentencing to Probation in Plea Deal*, *Sun Sentinel*, Jan. 25, 2017., 156
- R.P. Peerenboom, *The Victim in Chinese Criminal Theory and Practice: A Historical Survey*, 7 *J. Chinese L.* 105 (1993), 581
- William T. Pizzi, *The Need to Overrule *Mapp v. Ohio**, 82 *U. Colo. L. Rev.* 679 (2011), 286
- William T. Pizzi & Walter Perron, *Crime Victims in German Courtrooms: A Comparative Perspective on American Problems*, 32 *Stan. L. Rev.* 37 (1996), 582
- Dorris D. Porch & Rebecca Easley, *Murder in Memphis: The True Story of a Family's Quest for Justice* (1997), 625
- Dana Pugach & Michal Tamir, *Nudging the Criminal Justice System into Listening to Crime Victims in Plea Agreements*, 28 *Hastings Women's L.J.* 45 (2017), 420, 442
- Elizabeth Rappaport, *The Death Penalty and Gender Discrimination*, 25 *Law & Soc'y Rev.* 2 (1991), 105
- Jim Redden, *Hired Gun, Neighborhood Crime Got You Down? Buy Yourself a Prosecutor*, *Willamette Week*, Dec. 13, 1990, 138
- Mike Reynolds & Bill Jones, *Three Strikes and You're Out ... A Promise to Kimber: The Chronicle of America's Toughest Anti-Crime Law* (1996), 625
- Dennis Saccuzzo, *How Should the Police Respond to Domestic Violence: A Therapeutic Jurisprudence Analysis of Mandatory Arrest*, 39 *Santa Clara L. Rev.* 765 (1999), 487
- Geoffrey Sant, *Victimless Crime Takes on a New Meaning: Does California's Victims' Rights Amendment Eliminate the Right to Be Recognized as a Victim?*, 39 *Legis. J.* 43 (2013), 47
- Gregory Sarno, *Validity, Construction, and Application of "Son of Sam" Laws Regulating or Prohibiting Distribution of Crime-Related Book, Film, or Comparable Revenues to Criminals*, 60 *A.L.R.* (4th 2010), 675
- Stephen J. Schulhofer, *The Trouble with Trials; The Trouble with Us*, 105 *Yale L.J.* 825 (1995), 21, 249, 449
- Stephen J. Schulhofer, *Rethinking Mandatory Minimums*, 28 *Wake Forest L. Rev.* 199 (1993), 641
- Larry J. Siegel, *Criminology: The Core* (2017), 109
- Leonore M.J. Simon, *A Therapeutic Jurisprudence Approach to Domestic Violence Cases*, 1 *Psychol. Pub. Pol'y & L.* 43 (1995), 499
- Milton J. Shapiro with Marvin Weinstein, *Who Will Cry for Staci? The True Story of a Grieving Father's Quest for Justice* (1995), 625
- Danny Shaw, *Victims' Right of Review Sees 146 Charged*, *BBC New*, July 19, 2014, 186



- Elizabeth Anne Stanko, *The Impact of Victim Assessment on Prosecutors' Screening Decisions: The Case of the New York County District Attorney's Office*, 16 *Law & Society Rev.* 225 (1981), 82
- Bryan Stevenson, *Close to Death: Reflections on Race and Capital Punishment in America*, in *Debating the Death Penalty: Should America Have Capital Punishment* (Hugo Bedau & Paul G. Cassell eds. 2004), 96
- Samantha Swindler, *Victim Questions Why Judge Cut Off Statement*, *The Oregonian*, Feb. 25, 2018, 481
- Laurence H. Tribe, *A Black Hole for Victims' Rights*, *Boston Globe*, March 29, 2002, 238
- Statement of Professor Laurence H. Tribe, Harvard University Law School, "A Proposed Constitutional Amendment to Protect Victims of Crime: Hearings Before the Senate Judiciary Committee," 105th Cong., 1st Sess. (1997), 797, 801, 804
- Deborah Tuerkheimer, *Underenforcement As Unequal Protection*, 57 *B.C. L. Rev.* 1287 (2016), 76, 122, 123
- Steve Twist, *Letter to Supporters of S.J. Res. 1* (Apr. 28, 2004).
- Steven J. Twist & Daniel Seiden, *The Proposed Victims' Rights Amendment: A Brief Point/Counterpoint*, 5 *Phoenix L. Rev.* 341 (2012), 812
- Mark S. Umbreit, Ph.D., *Survivors of Homicide Victims Confront Offenders*, *The Crime Victims Report*, (1997), 698
- U.S. Department of Justice, *Attorney General Guidelines for Victim and Witness Assistance* (2012), 438
- Bruce Vielmetti, *Wisconsin Supreme Court Slaps Down Crime Victims' Rights Board on Judicial Sanctions*, *Milwaukee Journal Sentinel*, June 28, 2017, 763
- John Walsh, *Tears of Rage: From Grieving Father to Crusader for Justice: The Untold Story of the Adam Walsh Case* (1997), 625
- Sarah N. Welling, *Victim Participation in Plea Bargains*, 65 *Wash. U. L.Q.* 301 (1987), 419, 420, 422, 427
- Sarah Welling, *Victims in the Criminal Process: A Utilitarian Analysis of Victim Participation in the Charging Decision*, 30 *Ariz. L. Rev.* 85 (1988), 31, 37, 41, 153, 436, 768
- Jack Wenik, *Forcing Bystanders to Get Involved: Case for Statute Requiring Witnesses to Report Crime*, 94 *Yale L.J.* 1787 (1985), 264
- Wharton's *Criminal Law*, Vol. 1, § 15 (5th ed. 2017).
- Joan Zorza, *Mandatory Arrest for Domestic Violence: Why It May Prove the Best Step in Curbing Repeat Abuse*, 10 *Criminal Justice* 2 (1995), 484



# Preface to the Fourth Edition

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Joining us in this edition is Meg Garvin, Clinical Professor of Law and Director of the National Crime Victim Law Institute. As a result, the book has a new chapter concerning privacy, a needed improvement.

There are more legislated laws and case law than ever before as crime victim law matures in many jurisdictions. Where possible, we have chosen materials post-2000 to give an up-to-date experience to law students.

As victim interests and participation become legitimate, the conversation is changing from whether victims' rights are a good idea to how to blend the rights into existing procedures. In some states and the federal government, victims' enforceable rights have existed for quite some time. In other jurisdictions, such rights are new. These rights, coupled with other legal sources of victim participation are reshaping the experience of victims in the criminal process.

We are grateful for the contributions of courts, legislators and academics, which make this edition of the casebook the most robust yet.



# Preface to the Third Edition

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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

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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

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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 uninformed 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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