

# Victims in Criminal Procedure



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FIFTH EDITION

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CAROLINA ACADEMIC PRESS

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Durham, North Carolina

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ISBN 978-1-5310-3056-8  
eISBN 978-1-5310-3057-5  
LCCN 2024943706

Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
(919) 489-7486  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

For the law students who would be crime victim lawyers.

*Douglas Beloof*

For those who fight the good fight, including 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 Carter, Mason, Cooper, Eliot, Steven, Leesy, Lily, Henry, Reagan, and Brooklyn, and to the victims whose voices the nation still must hear.

*Steve Twist*

To justice for all.

*Bill Montgomery*

For Meg Garvin who has taught and inspired me and countless others on the value and importance of victims' rights. For my parents who taught me the importance of hard work and thinking of others before myself. For my children who are my whole world. Most importantly, for my husband whose unwavering faith in me has pushed me to reach for the stars.

*Mariam El-menshawi*



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# Preface to the Fifth Edition

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In 1996, Professor Douglas E. Beloof conceived a law school casebook on crime victims' rights, which resulted in the first edition of this book. Professor Beloof recently retired after teaching crime victims' rights and other subjects at Lewis and Clark Law School for many years. The rest of us are proud to build on the foundation that he so ably laid more than a quarter of a century ago.

Two distinguished new co-authors join us in the edition. William G. Montgomery previously served as the Maricopa County Attorney in Arizona. For many years before joining the bench, he was involved in efforts to protect crime victims' rights in Arizona.

Also joining us is Mariam El-menshawi. She is the Executive Director of the California Victims Legal Resource Center and Adjunct Professor of Law. Ms. El-menshawi has been a practicing victims' rights attorney in California for over twelve years and has trained and provided technical assistance to hundreds of victim advocates, attorneys, and allied professionals on victims' rights issues.

Both Mr. Montgomery and Ms. El-menshawi have taught crime victims' rights courses at the Sandra Day O'Connor College of Law at Arizona State University and the McGeorge School of Law, respectively.

We also appreciate the proofreading assistance of Sheila Sybrant, who helped to reduce typographical errors. As part of the editing process for this edition, minor changes have been made for the purposes of readability in republished material. Of course, most of the republished material was not republished in full and we have not specifically noted when such material is an extract.

We believe that this edition of the casebook is the most robust yet. This edition has been significantly updated with new cases and other recent materials incorporated into all chapters. We have not significantly changed the structure of the chapters but have tried to capture the expansion of crime victims' rights that is taking place in the federal and state criminal justice systems across the country.

In the preface to the first edition of this casebook, Professor Beloof noted that American criminal procedure cannot be truly understood without understanding the victims' role. That admonition is even more true today. We hope that this latest edition will aid judges, lawyers, and law students in obtaining that understanding.



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# 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.





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# 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.



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# 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



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# 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 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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