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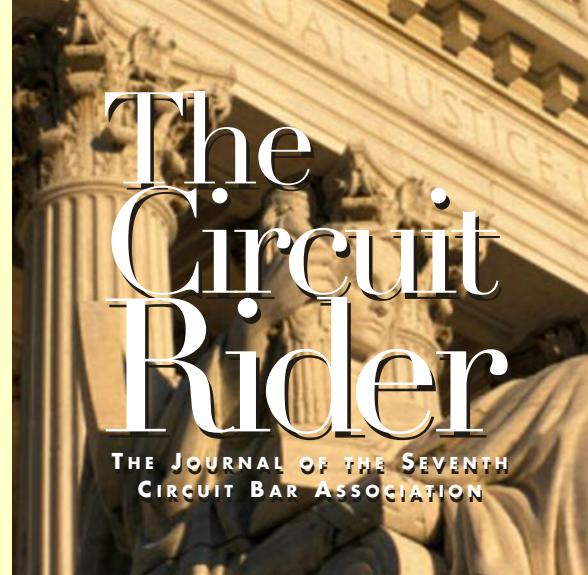
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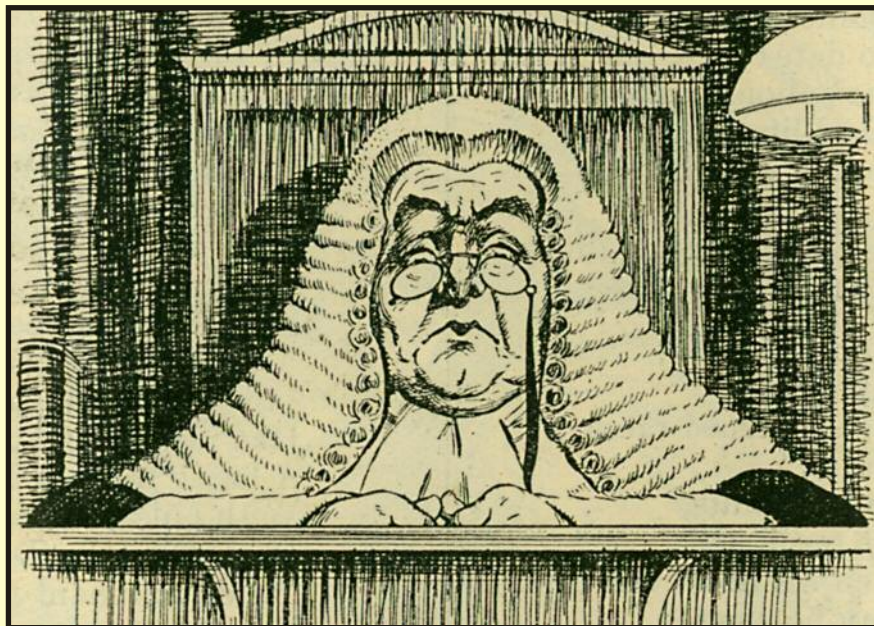
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*Legal Landscape Changing in Wisconsin Federal Courts*



# Reflections





FEDERAL CRIMINAL RESTITUTION *(by Goodwin, Grenig, and Fishbach)*

# Book Review

*By Anne Reed \**

Does a civil trial lawyer need a book about restitution? *Federal Criminal Restitution*, a new handbook by Catherine M. Goodwin, Jay E. Grenig, and Nathan A. Fishbach, turned out to be the most useful book to hit our office in a long time.

“Federal restitution has become an increasingly important issue at sentencing for most federal crimes,” say the authors. One of the many things that means is that business lawyers’ clients increasingly face restitution issues – because they are victims of financial crimes. “Victims and their counsel are increasingly involved” in restitution decisions and procedure, the authors continue, and the work isn’t easy: “New rights of allocation and unresolved issues of the role of the victim at sentencing” are “an area of legal development.”

True to that prediction, our office recently had a problem that felt as structured and unfamiliar as a law school exam question. A convicted felon was ordered to pay restitution to a business creditor, but in the meantime the creditor collected the debt from our client. Should the restitution stop, or did our client step into the creditor’s restitution-receiving shoes, and if so, what was the right procedure to make this happen?

These are the kinds of questions that can badly confuse a civil lawyer, except that *Federal Criminal Restitution* had arrived a few days earlier. It took about a minute to find the section on point. (It’s section 15.14, “Changes to named restitution recipients,” and it soothingly says, “commonly, it might be learned that a victim has been paid by a third party.”) The section gave a two-paragraph procedural roadmap to put a solution in place.

Prosecutors and criminal defense lawyers will value this book for its breadth, depth, and authority. In a paperback volume no bigger than a rulebook, they cover the history of restitution and its implementation at all levels, from broad constitutional challenges to the minutiae of payment plans and multiple victims. The discussion of both statutory and case law is thorough and clear.

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What anxious victims' lawyers may value even more, though, is the organizational framework these authors have developed. Restitution, they explain, can often be conceptualized more clearly and accurately in sequential "steps," which break up the analysis into separate parts. The analytical construct is similar to a narrowing funnel, or flow chart, guiding the analysis from the broadest perspective, that of the offense, down through the range of victims, then through the victims' harms, and then focusing ultimately only on those victims' harms that are statutorily compensable as restitution.

The authors model that clarity in the structure of the book itself. The first three chapters cover overview issues, history, and constitutional aspects of restitution:

1. Overview of Federal Criminal Restitution
2. Statutory History
3. Constitutional Challenges

Then the authors begin their "step by step" process, discussing in detail the law and applicable considerations at each step:

4. Step One: Identifying the Offense of Conviction and the Nature of the Restitution
5. Step Two: Identifying the Victims of the Offense of Conviction
6. Step Three: Victims' Harms Caused by the Offense of Conviction
7. Step Four: Measuring Compensable Harms

The next three chapters address specific substantive issues that come up in restitution analysis:

8. Plea Agreements Involving Restitution
9. Defendant's Financial Resources
10. Determining the Manner of Payment

A series of chapters reviews common procedural issues:

11. Sentencing Procedures
12. Changing Role of the Victim in Restitution
13. Court's Determination of Restitution
14. Relationship to Sentence and Other Proceedings
15. Post-Sentencing Adjustments to Restitution Orders
16. Enforcement of a Restitution Order

And in a final chapter, "Practice Pointers and Strategies," the authors separately address the challenges for prosecutors, defense lawyers, and victims' counsel at each stage. The chapter contains a section on perhaps the most common question victims face, whether to bring a civil suit or look to criminal restitution for compensation.

Business lawyers will probably turn first to Chapter 12, on how the victim's role has changed in restitution analysis. There's a comprehensive review here of the 2004 Crime Victim's Rights Act, and how it – and the still developing caselaw interpreting it – have made victims into "quasi-parties" to criminal proceedings, with new rights and standing.

From its historical roots to its newest developments, restitution is covered here with practicality and precision. The result is that rarest and most valuable of legal volumes – a book you can actually use.

## Writers Wanted!

The Association publishes *The Circuit Rider* twice a year. We always are looking for articles on any substantive topic or regarding news from any district — judges being appointed or retiring, new courthouses being built, changes in local rules, upcoming seminars.

If you have information you think would be of interest, prepare a paragraph or two and send it via e-mail to: Jeffrey Cole, Editor-in-Chief, at [Jeffrey\\_Cole@ilnd.uscourts.gov](mailto:Jeffrey_Cole@ilnd.uscourts.gov) or call 312.435.5601.