

mination: Gerald Posner's Case Closed (Federal Bar News & Journal, *March-April 1994*), and *James H. Fetzer's Murder in Dealey Plaza* (The Federal Lawyer, *May 2001*).

Federal Criminal Restitution

By Catharine M. Goodwin, Jay E. Grenig, and Nathan A. Fishbach

Thomson-West, Eagan, MN, 2008. 626 pages, \$125.00.

REVIEWED BY DEAN A. STRANG

Restitution in a criminal case is like sales tax on the purchase of a used car: the participants in the main transaction—the criminal case or the used car sale—do not focus on the restitution or the sales tax. Those items are after-thoughts. The government actors—the judge and the prosecutor—have strong incentives to want restitution to be calculated correctly, just as taxing authorities do with respect to a sales tax. The parties on other side of the transaction—the criminal defendant or the used car buyer—want to pay as little as possible and to avoid payment altogether if lawful. In both settings, few participants really understand the rules entirely or wish to invest a great deal of time in mastering the rules.

This is unfortunate, because both federal and state statutes provide for restitution to victims in a wide array of criminal cases. Restitution is separate from fines, and may be imposed in addition to them. Not infrequently, judges impose restitution obligations at the same time that victims pursue civil remedies, and the two may overlap. Plaintiff and defense lawyers in such civil actions must understand the relationship between criminal restitution and civil damages.

Those grappling with sales taxes in atypical settings remain on their own, but, in *Federal Criminal Restitution*, Catharine Goodwin, Jay Grenig, and Nathan Fishbach offer aid to lawyers and judges struggling with restitution. The book takes a practical approach to restitution problems, reflecting the deep experience and broad perspectives of its authors, who collectively

have worked as prosecutors, with private law firms, and in teaching.

The heart of the book consists of four successive chapters that walk the reader through assessing prospects for restitution, identifying compensable victims, sorting compensable from noncompensable harms, and measuring compensable harms. The book helpfully concludes with a chapter on practice pointers and strategies from the differing vantage points of prosecutors, the defendant and his lawyer, and the victim. Among the book's other useful features, the concluding chapter candidly considers advantages and disadvantages of criminal and civil remedies for victims.

The writing is lucid throughout. The book provides checklists, and, because Thomson-West is the publisher, each short section begins with research references to West's key numbers. Although this tool is not as valuable as it once was, given database and public domain research options now available online, it nonetheless supplements the book's value as a secondary source when a lawyer wants to dig deeper.

Although *Federal Criminal Restitution* focuses on federal law, state practitioners ought not rule it out. The concepts it introduces and its step-by-step approach to resolving issues of restitution may offer real help to state court practitioners even in states with restitution rules that differ from federal law. On close calls, too, where state law may be unclear, comparisons to the federal approach to restitution may prove persuasive. In all, judges, prosecutors, defense lawyers, and (not to be overlooked) plaintiffs' lawyers who represent victims of securities fraud, other swindles, or personal injuries will find this book a good purchase. And Thomson-West will figure out the sales tax. **TFL**

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Arbitrary Justice: The Power of the American Prosecutor

By Angela J. Davis

Oxford University Press, New York, NY, 2007. 248 pages, \$29.99 (cloth), \$19.95 (paper).

REVIEWED BY HARVEY GEE

It has become almost a cliché that prosecutors—the most powerful officials in the criminal justice system—too often seek convictions instead of justice. They also prosecute more vigorously when a crime victim is educated or upper-income than when he or she is poor or uneducated, and they offer more lenient plea bargains to wealthy defendants than to disadvantaged ones. In this timely and well-written book, Angela J. Davis, a professor at American University's Washington College of Law, examines the expanding power of prosecutors. She discusses the causes of this development—such as mandatory minimum sentencing laws—that enhance prosecutorial control over the outcome of cases, and she discusses the increasing politicization of prosecutors. Davis knows her subject well, having gained trial experience and practical knowledge as a public defender and then agency director at the Public Defender Service for the District of Columbia, one of the leading indigent defense offices in the country.

Davis sees a serious problem in the lack of accountability for the everyday decisions of prosecutors; they hold vast power, according to Davis, because they are under-regulated and are rarely punished when they engage in misconduct. In fact, Davis asserts, they are often rewarded with promotion and career advancement as long as their conviction rates remain high. In her work as a public defender, Davis learned that prosecutors held and dealt almost all the cards and that prosecutors' decisions are largely discretionary and virtually unreviewable. Prosecutors generally answer only to other prosecutors.

The decision to seek the death penalty, Davis writes, "is far too arbitrary, often depending on the philosophy and