

UNIVERSITY OF UTAH
COLLEGE OF LAW

Crime Victims Rights
Professor Paul Cassell

Fall 2004
December 20, 2004

FINAL EXAMINATION

Instructions

This examination begins at 8:30 a.m. It is designed to be a two-hour examination with two questions of one hour each. Each of the two questions will be given equal weight in determining the final grade. You are given an extra hour to allocate as you see fit. You must turn in your examination by 11:30 a.m.

This is essentially an open book examination. You may have the following materials with you: your textbook, any supplemental materials distributed during the course, any outline that you may have prepared by yourself or with other students. You may not have the following materials: any commercial publications, hornbooks, or the like, in either printed or electronic form.

In accordance with standard law school procedure, do not write your name anywhere on your exam or any other information that could be used to identify you. Write your exam number on your exam. This permits evaluation without knowledge of the exam-taker's identity. If possible, please do not write in pencil (it is difficult to read).

Page limits: **if you are handwriting this exam, you are limited to a total of two bluebooks, one side of each page, every other line**. The two bluebook limit is a limit for the whole exam; for example, if you have space left over in the first bluebook after answering Question I, you can use that space for Question II, etc. **If you are typewriting this exam, you are limited to a total of 2900 words for the entire exam. (This word limit is roughly 8 and 1/2 pages.) On the last line of the exam, please type in the number of words that your word processing package shows for the test.**

QUESTION I (one hour)

Until her murder on June 1, 2004, Ms. Veronica Victim resided in Caledonia, the newest state in the United States. Caledonia follows the criminal justice approaches recognized in most other states. Her husband, Mr. Harold Victim, wishes to represent his wife by asserting crime victims' rights throughout the process. On June 2, 2004, Donald Defendant, a prominent politician in Caledonia, was arrested and charged with capital murder (a death penalty offense in Caledonia).

At a hearing on June 15, 2004, the judge set the trial for December 1, 2004. Defendant asked the judge to release him on his own recognizance (that is, without posting any bail) pending the trial. Mr. Victim wanted to lodge an objection to such release, but the judge refused to allow him to say anything. The judge then agreed with the Defendant and released Defendant on his own recognizance.

The prosecution and defense counsel then engaged in extensive discussions about a possible plea bargain in the matter. Defendant claimed that he killed Ms. Victim in the heat of passion. He was willing to plead guilty to voluntary manslaughter, provided that the prosecution recommended no more than a one-year prison sentence. The prosecutor told defense counsel that she was willing to accept the plea bargain, but that she would only agree to if Mr. Victim agreed. Mr. Victim refused to agree to the plea, so the matter proceeded towards trial.

Defense counsel then subpoenaed Mr. Victim to testify for the defense. Defense counsel also filed a motion with the judge asking that Mr. Victim be excluded from the courtroom under "the rule" on witnesses. Defense counsel explained that Mr. Victim would be needed to testify about Ms. Victim's identity. The judge denied the motion to exclude Mr. Victim.

At trial, Mr. Victim attended all the hearings and cried repeatedly during testimony about his wife's death. He did not testify during the guilt phase of the trial. The jury deliberated for one hour, finding Defendant guilty of capital murder.

At the penalty phase, Mr. Victim testified about what a wonderful person Ms. Victim was (the "nicest person in town") and how she was the President of her Church Relief Society (an organization for providing relief to impoverished persons in the community). Mr. Victim also testified that, in his opinion, Defendant should get the death penalty. After hearing all relevant defense evidence, the jury sentenced Defendant to death.

Mr. Victim then asked the judge to order restitution for the lost income of Ms. Victim. Caledonia's law on restitution is identical to federal law – specifically, 18 U.S.C. § 3663A and § 3664. Defendant has significant assets because of his prominent position. Ms. Victim was 50 years old at the time of her death and was earning \$20,000 per year as a cellular telephone salesperson.

Discuss the victim-related legal issues that arise under the legal principles discussed during the course.

QUESTION II (one hour)

Congress recently passed, and the President recently signed into federal law a crime victims' rights statute. The text of the legislation is reprinted below.

What are the advantages and disadvantages of the new federal law. How could the new law be improved?

* * * * *

18 U.S.C. § 3771. Crime victims' rights.

(a) **RIGHTS OF CRIME VICTIMS.**--A crime victim has the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(b) **RIGHTS AFFORDED.**--In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

(c) **BEST EFFORTS TO ACCORD RIGHTS.**--

- (1) **GOVERNMENT.**--Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).
- (2) **ADVICE OF ATTORNEY.**--The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

(3) NOTICE.--Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

(d) ENFORCEMENT AND LIMITATIONS.--

(1) RIGHTS.--The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

(2) MULTIPLE CRIME VICTIMS.--In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

(3) MOTION FOR RELIEF AND WRIT OF MANDAMUS.--The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

(4) ERROR.--In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

(5) LIMITATION ON RELIEF.--In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if--

(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;

(B) the victim petitions the court of appeals for a writ of mandamus within 10 days; and

(C) in the case of a plea, the accused has not pled to the highest offense charged.

This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.

(6) NO CAUSE OF ACTION.--Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

(e) DEFINITIONS.--For the purposes of this chapter, the term 'crime victim' means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense

in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

(f) PROCEDURES TO PROMOTE COMPLIANCE.--

(1) REGULATIONS.--Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

(2) CONTENTS.--The regulations promulgated under paragraph (1) shall--

(A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.