

The *Ellenburg Shift*: A New Era for Federal Restitution

The Supreme Court's unanimous decision in *Ellenburg v. United States* reclassified federal restitution under the Mandatory Victims Restitution Act (MVRA) as a "criminal penalty." This single change dismantled the old system and triggered a cascade of new constitutional protections for defendants, transforming every stage of the criminal process.

BEFORE *Ellenburg*: Restitution as a Civil Remedy

Judge Determined Loss Amount at Sentencing



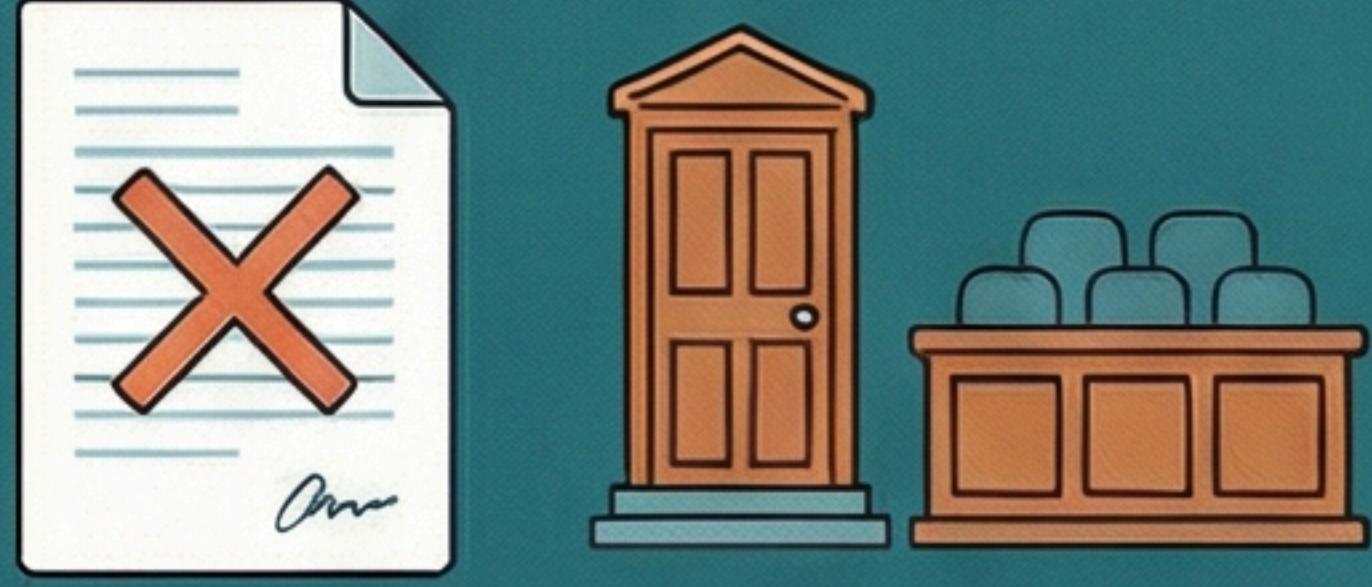
Courts treated restitution as a simple way to compensate victims, avoiding strict criminal rules.

Low Burden of Proof: "Preponderance of the Evidence"



A judge only needed to be 51% sure of the loss amount to impose it.

Excluded from Indictment and Jury



Restitution was handled as a sentencing afterthought, not an essential element of the crime.

AFTER *Ellenburg*: Restitution as a Criminal Penalty

Jury Determines Loss Amount at Trial



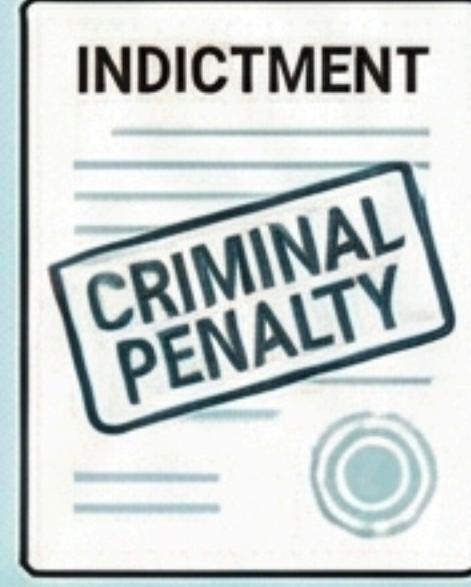
Defendants now have a Sixth Amendment right to have a jury decide the amount.

High Burden of Proof: "Beyond a Reasonable Doubt"



The prosecution must now prove the specific loss amount with near certainty.

Must Be Charged in the Indictment



The specific loss amount is now an essential element of the offense that must be charged.

What This Means for Defense Attorneys & Defendants



New Leverage in Plea Negotiations

The difficulty of proving loss gives the defense a powerful new bargaining chip.



Right to Challenge the Indictment

If a specific loss amount is not charged, the defense can move to dismiss restitution claims.



Power to Demand a "Restitution Trial"

Defendants can force prosecutors to prove the exact loss to a jury, a complex and resource-intensive task.