Let's revisit Polly now that it has been a few days since she was victimized. Remember that Polly is a young undergraduate student who was accosted by two offenders as she was walking home. Her school bag was stolen, and she was assaulted. Unlike most victims, Polly called the police to report what had happened to her. She had to have 10 stitches at the hospital. Clearly a victim, she was still questioned by the police about why she was walking home alone at night. She very well may have felt victimized by this questioning—and we know that she had a hard time emotionally after being victimized. She found it hard to get out of bed, and she missed several classes—she even altered her schedule and stopped going out alone at night.

In Section 3, you considered the toll this victimization took on Polly—on her emotions and her lifestyle, and of course financially. As you know, Polly is not alone in suffering these costs. Many victims experience real costs and consequences. But how do victims deal with these outcomes? Are they left to recover on their own, or are services available to them? Whose responsibility is it to help crime victims? What happens when crime victims do not get the help they need and deserve? All these questions will be addressed in this section, and as you will see, a variety of rights and resources are available to crime victims today.

**Victims’ Rights**

Once essentially ignored by the criminal justice system and the law, victims are now granted a range of rights. These rights have been given to victims through legislation and, in 32 states, through victims' rights amendments to state constitutions (National Center for Victims of Crime, 2009). The first such law that guaranteed victims’ rights and protections was passed in Wisconsin in 1979; now, every state has at least some form of victims’ rights legislation (Davis & Mulford, 2008). Despite each state having laws that afford victims’ rights, they differ in whom the law applies to, when the rights begin, what rights victims have, and how the rights can be enforced. Common to all these state laws, however, is the goal of victims’ rights—to enhance victim privacy, protection, and participation (Garvin, 2010).

**Common Victims’ Rights Given by State**

Slightly less than half of U.S. states give all victims rights (Howley & Dorris, 2007). In all states, the right to compensation, notification of rights, notification of court appearances, and ability to submit victim impact statements before
sentencing is granted to at least some victim classes (Deess, 1999). Other common rights given to victims in the majority of states are the right to restitution, to be treated with dignity and respect, to attend court and sentencing hearings, and to consult with court personnel before plea bargains are offered or defendants released from custody (Davis & Mulford, 2008). Other rights extended to victims are the right to protection and the right to a speedy trial. Importantly, some states explicitly protect victims’ jobs while they exercise their right to participate in the criminal justice system. These protections may include having the prosecutor intervene with the employer on behalf of the victim or prohibiting employers from penalizing or firing a victim for taking time from work to participate (National Center for Victims of Crime, 2009). Some of these rights are discussed in more detail below, and others are discussed in separate parts of this section. To see an example of what rights a state grants, see the box on victims’ rights in Virginia.

**VICTIMS’ RIGHTS IN VIRGINIA**

The Victim Services Unit provides the following services to victims of crime:

- Advocacy on behalf of crime victims
- Notification of changes in inmate transfers, release date, name change, escape and capture
- Explanation of parole and probation supervision process
- Accompaniment to parole board appointments when requested by the victim
- Provide victims with ongoing support, crisis intervention, information, and referrals
- Training, education, and public awareness initiatives on behalf of victims of crime

Victims can register to be notified through Victim Information and Notification Everyday (VINE). VINE is a toll-free, 24-hour, anonymous, computer-based telephone service that provides victims of crime two important features, information and notification. Victims may call VINE from any touch-tone telephone, any time, to check on an inmate’s custody status. For inmate information, call 1-800-467-4943 and follow the prompts.

Victims may register with VINE for an automated notification call when an inmate is released, transferred, escapes, and to learn of an inmate’s parole status if the inmate is parole eligible.

Victims of crime can address the Parole Board if they have any concerns regarding the release of an offender. Victims have the option of voicing their concerns through letters or through an in-person appointment with the Parole Board.

If victims would like a staff member of the Department of Corrections, Victim Services Unit to accompany them to the appointment, they can contact the Department of Corrections, Victim Services Unit.

**SOURCE:** Virginia Department of Corrections (2010). Reprinted with permission.

**Notification**

The right to notification allows victims to stay apprised of events in their cases. Notification is important for victims at various steps in the criminal justice process. In some jurisdictions, victims have the right to be notified when their offender is arrested and released from custody after arrest, such as on bail. Victims may also have the
right to be notified about the time and place of court proceedings and any changes made to originally scheduled proceedings. Notification may also be given if the offender has a parole hearing and when the offender is released from custody at the end of a criminal sanction. Notification responsibilities may be placed on law enforcement, the prosecutor, and the correctional system. To make notification more systematic and reliable, some jurisdictions use automated notification systems to update victims (through letters or phone calls) about changes in their cases. These systems are often also set up so that a victim can call to receive updates. Victims of federal crimes can register to participate in the national automated victim notification system.

**Participation and Consultation**

One of the overarching goals of the victims’ rights movement was to increase participation and consultation by victims in all stages of the criminal justice system. One way victims are encouraged to participate is by submitting or presenting a victim impact statement, which is discussed later in this section under “Remedies and Rights in Court.” Other ways victims may participate is by consulting with judges and/or prosecutors before any plea bargains are offered or bail is set. Consultation may also occur before an offender is paroled or sentenced (Davis & Mulford, 2008).

**Right to Protection**

Victims may also need protection as they navigate the criminal justice process. Victims may be fearful of the offender and the offender’s friends and family. Participation in the criminal justice system may, in fact, endanger victims. In response to this potential danger, many states include safety measures in their victims’ rights, falling under the category of right to protection. For example, victims may be able to get no-contact or protective orders that prohibit the defendant from having any contact with the victim. Victims may also be provided with secure waiting facilities in court buildings. Victim privacy is also protected ever-increasingly in states; some disclose only minimal victim information in criminal justice records—such as law enforcement and court records (Davis & Mulford, 2008).

**Right to a Speedy Trial**

You have probably heard of offenders having a right to a speedy trial, but did you know that about half of all states also provide victims with this right? Although not as explicit as an offender’s right, this right given to victims ensures that the judge considers the victim’s interests when ruling on motions for continuance. In other words, in states that give victims this right, decisions about postponing a trial cannot be made without consideration of the victim. Some states also explicitly provide for accelerated dispositions in cases with disabled, elderly, or minor children victims (Davis & Mulford, 2008).

**Issues With Victims’ Rights**

While victims’ advocates have hailed the adoption of legislation and state-level amendments that give victims rights, the adoption of victims’ rights has also come with problems. There has been some resistance to states and the federal government giving victims formal rights. Remember that criminal law is written in such a way as to make crimes harms against the state rather than the victim. Also think about how the U.S. Constitution provides widespread rights to those persons suspected of committing crimes. The U.S. Constitution does not currently include any language that provides victims with rights—but it does for persons suspected of committing crimes. Although this omission has been identified by some as deserving remedy, others argue that victims’ rights do not
have a place in our Constitution (Wallace, 1997). Concerns have also been expressed that providing victims with rights will create a burden on our already overburdened criminal justice system (Davis & Mulford, 2008).

Also problematic is what to do when victims’ rights are not protected. Who is responsible? Does the victim have any recourse, legal or otherwise, when a right is violated? Many states do not have specific enforcement strategies in place in their victims’ rights legislation, although states that have constitutional amendments generally have enforceable rights in the event that a state official violates a victim’s constitutional rights. Victims may also seek a writ of mandamus, which is a court order that directs an agency to comply with a law (National Center for Victims of Crime, 2009). For other victims, although they are given rights on paper, there is little they can do if their rights are not protected. To remedy this, some states—such as California, in its passage of Marsy’s Law—have passed legislation that is more comprehensive and includes language that gives victims the right to enforce their rights in court, called legal standing (National Victims’ Constitutional Amendment Passage, n.d.). Some states have set up a designated agency to handle crime victims’ complaints (National Center for Victims of Crime, 2009). Despite these developments, many state victims’ bills of rights specifically note that when victims’ rights are violated, the crime victim does not have the ability to sue civilly a government agency or official. Whatever the redress allowed to victims, you can probably see that for victims, not having their rights protected may feel like an additional victimization and one that they can do little about—at least not easily.

**Federal Law**

Thus far, we have discussed common rights that states grant to victims of crime, but the federal government has also recognized the importance of protecting the rights of crime victims. (See Table 4.1 for a timeline and brief description of key pieces of federal legislation related to victims’ rights.) In 1982, the President’s Task Force on Victims of Crime published a report that included 68 recommendations for how victims could receive recognition and get the rights and services they deserve. These recommendations led, in part, to the development of legislation that would grant victims their first federal rights. The first such piece of legislation passed was the **Federal Victim Witness Protection Act** (1982). This act mandated that the attorney general develop and implement guidelines that outlined for officials how to respond to victims and witnesses. Two years later, the **Victims of Crime Act** (1984) was passed to create the Office for Victims of Crime and to provide funds to assist state victim compensation programs. The funds are generated from fines and fees and from seized assets of offenders who break federal law. A critical step in victims’ rights also occurred in 1990 with passage of the **Child Victims’ Bill of Rights**, which extended victims’ rights to child victims and witnesses. Child victims and witnesses were granted rights to have proceedings explained in language they can understand; to have a victims’ advocate present at interviews, hearings, and trials; to have a secure waiting area at trials; to have personal information kept private unless otherwise specified by the child or guardian; to have an advocate to discuss with the court their ability to understand proceedings; to be given information about and referrals to agencies for assistance; and to allow other services to be provided by law enforcement. Also in 1990, the **Crime Control Act** and the **Victims’ Rights and Restitution Act** were passed, creating a federal bill of rights for victims of federal crime and guaranteeing that victims have a right to restitution. Specifically, victims of federal crimes were given the right to

- be reasonably protected from the accused;
- reasonable, accurate, and timely notice of any public proceeding involving the crime or any release or escape of the accused and to not be excluded from such proceedings;
- be reasonably heard at any public proceeding involving release, plea, or sentencing;
d. confer with the attorney for the government in the case;

e. full and timely restitution as provided by law;

f. proceedings free from unreasonable delay;

g. be treated with fairness and with respect for the victim's dignity and privacy.

The acts also provide that the court ensures that crime victims are afforded these rights.

The '90s also saw the adoption of the **Violent Crime Control and Law Enforcement Act** (1994), which included the implementation of the **Violence Against Women Act** (VAWA) that gave more than $1 billion to programs designed to reduce and respond to violence against women. It also increased funding for victim compensation programs and established a national sex offender registry (Gundy-Yoder, 2010). In 1996, the **Antiterrorism and Effective Death Penalty Act** was passed, making restitution mandatory in violent crime cases and further expanding compensation and assistance to victims of terrorism. Victims were given the right to provide victim impact statements during sentencing in capital and noncapital cases, and the right to attend the trials of their offenders was clarified via the **Victims' Rights Clarification Act** (1997).

Victims’ rights were further expanded in the first part of the 21st century. The **Violence Against Women Act (2000)** was signed into law as part of the Victims of Trafficking and Violence Protection Act of 2000. It reauthorized some previous VAWA funding. This legislation also authorized funding for rape prevention and education, battered women’s shelters, transitional housing for female victims of violence, and addressed violence against older women and those with disabilities. This act also expanded the federal stalking statute to include stalking over the Internet. In 2004, Congress passed the **Justice for All Act**, thus strengthening federal crime victims’ rights and providing enforcement and remedies when there is not compliance. It also provided monies to test the backlog of rape kits.

Despite the provision and expansion of victims’ rights at the federal level, there is still not a federal constitutional amendment. This lack of adoption may be somewhat surprising since the National Victims’ Constitutional Amendment Network and Steering Committee was formed in 1987 and federal victims’ rights constitutional amendments were introduced in both the House and the Senate in 1996. Additional victims’ rights constitutional amendments were introduced in 1997, 1998, 1999, 2000, 2003, and 2004 (Maryland Crime Victims’ Resource Center, 2007). To date, such an amendment has not been adopted.

### Financial Remedy

In Section 3, you read about the substantial costs that victims face after being victimized. Some of these costs are financial. Victims may lose time from work, have hospital bills, seek and pay for mental health care, need a crime scene cleaned, or lose income from a loved one's death. To help assuage some of these costs, victims can apply for financial compensation from the state, receive restitution from the offender, or seek remedy civilly.
### Table 4.1 Federal Legislation Pertaining to Victims’ Rights

<table>
<thead>
<tr>
<th>Legislation Timeline</th>
<th>Key Provisions</th>
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| Federal Victim Witness Protection Act (1982)| • Provided for the punishment of anyone who tampers with a witness, victim, or informant  
• If victim provided address and telephone number, required notification for arrest of the accused, times of court appearances at which victim may appear, release or detention of accused, and opportunities for victim to address the sentencing court  
• Recommended federal officials consult with victims and witnesses regarding proposed dismissals and plea negotiations  
• Required that officials not disclose the names and addresses of victims and witnesses |
| Victims of Crime Act (1984)                 | • Established the Crime Victims Fund, which promoted state and local victim support and compensation programs  
• In 1998, amended to require state programs to include survivors of victims of drunk driving and domestic violence in eligibility for federal funds |
| Child Victims’ Bill of Rights (1990)       | Children who are victims or witnesses are provided these rights:  
• That proceedings be explained in language children can understand  
• A victims’ advocate can be present at interviews, hearings, and trial  
• A secure waiting area at trial  
• Certain personal information kept private unless otherwise specified by the child or guardian  
• An advocate to discuss with the court their ability to understand proceedings  
• Information provided about agencies for assistance and referrals made to such agencies |
| Victims’ Rights and Restitution Act (1990)  | Provided victims with the right to  
• be reasonably protected from the accused;  
• reasonable, accurate, and timely notice of any public proceeding involving the crime or any release or escape of the accused and to not be excluded from such proceedings;  
• be reasonably heard at any public proceeding involving release, plea, or sentencing;  
• confer with the attorney for the government in the case;  
• be given full and timely restitution as provided by law;  
• have proceedings free from unreasonable delay;  
• be treated with fairness and with respect for the victim’s dignity and privacy |
| Violent Crime Control and Law Enforcement Act (1994) | • Allocated $1.6 billion to fight violence against women  
• Included money for victims’ services and advocates and for rape education and community prevention programs |
| Violence Against Women Act (1994)          | • Provided $1 billion to programs designed to reduce and respond to violence against women  
• Increased funding for victim compensation programs and established a national sex offender registry |
| Antiterrorism and Effective Death Penalty Act (1996) | • Made restitution mandatory in violent crime  
• Expanded compensation and assistance to victims of terrorism |
| Victims’ Rights Clarification Act (1997)   | • Gave victims the right to provide victim impact statements during sentencing in capital and noncapital cases, and the right to attend the trial of their offender was clarified |

(Continued)
Victim Compensation

One way victims can receive financial compensation for their economic losses is through state-run victim compensation programs. First begun in 1965 in California, victim compensation programs now operate in every state. Money for compensation comes from a variety of sources. A large portion of funding comes from criminals themselves—fees and fines are collected from people who are charged with criminal offenses. These fees are attached to the normal court fees that offenders are expected to pay. In addition, the Victims of Crime Act of 1984 (VOCA) authorized funding for state compensation and assistance programs. Today, the VOCA Crime Victims Fund provides more than $700 million annually to states to assist victims and constitutes about one third of each program’s funding (National Association of Crime Victim Compensation Boards, 2009). Not only did VOCA increase funding for state programs, it also required states to cover all U.S. citizens victimized within the state’s borders, regardless of the victim’s residency. It also required that states provide mental health counseling and that victims of domestic violence as well as drunk driving be covered.

Not all victims, however, are eligible for compensation from the Crime Victims Fund. Only victims of rape, assault, child sexual abuse, drunk driving, domestic violence, and homicide are eligible, since these crimes are known to create undue hardship for victims (Klein, 2010). In addition to the type of victimization, victims must meet other requirements to be eligible:

- Must report the victimization promptly to law enforcement; usually within 72 hours of the victimization unless “good cause” can be shown, such as being a child, incarcerated or otherwise incapacitated
- Must cooperate with law enforcement and prosecutors in the investigation and prosecution of the case
- Must submit application for compensation that includes evidence of expenses within a specified time, generally 1 year from the date of the crime
- Must show that costs have not been compensated by other sources such as insurance or other programs
- Must not have participated in criminal conduct or significant misconduct that caused or contributed to the victimization

Victims can be compensated for a wide variety of expenses, including medical care costs, mental health treatment costs, funeral costs, and lost wages. Some programs have expanded coverage to include crime scene clean-up, transportation costs to receive treatment, moving expenses, housekeeping costs, and child-care costs (Klein, 2010). Other expenses for which victims may be able to be compensated include the replacement or repair of eyeglasses or...
corrective lenses, dental care, prosthetic devices, and forensic sexual assault exams. Note that property damage and loss are not compensable expenses (Office for Victims of Crime, 2010) and only three states currently pay for pain and suffering (Klein, 2010). States have caps in place that limit the amount of money a crime victim may receive from the Crime Victims Fund, generally ranging from $10,000 to $25,000 per incident.

Although compensation clearly can provide a benefit for victims, there are some problems with current compensation programs. One problem is that only a small portion of victims who are eligible for compensation actually receive monies from these funds. The programs also do not seem to encourage participation in the criminal justice system. There is little evidence that persons who receive compensation are any more satisfied than others (Elias, 1984) or that they are more likely to participate in the criminal justice process (Klein, 2010).

**Restitution**

Unlike monies from crime victims’ funds, restitution is money paid by the offender to the victim. Restitution is made by court order as part of a sentence—the judge orders the offender to pay the victim money to compensate for expenses. Much like compensation programs, expenses that may be recovered through restitution include medical and dental bills, counseling, transportation, and lost wages. Restitution can also be ordered to cover costs of stolen or damaged property, unlike in crime victim compensation programs. Restitution cannot be ordered to cover costs associated with pain and suffering; it is limited to tangible and documentable expenses.

Restitution has its benefits. It is based on the notion of restorative justice, which seeks to involve the community, the offender, and the victim in the criminal justice system. Paying restitution helps restore both the offender and the victim to their precrime status. Problematic, however, is that the offender must first be caught for restitution to be ordered. Often, crimes go unreported and offenders remain free from arrest. Even if an offender is arrested, it may be difficult for the court to determine an appropriate amount for restitution. How much money should be paid in restitution to a victim whose mother’s engagement ring was stolen? The ring’s worth to the victim may far outweigh the dollar amount a judge would require the offender to pay in restitution. In addition, many offenders lack sufficient funds to pay victims immediately, even when court ordered. As a result, restitution may not be met.

**Civil Litigation**

Although compensation and restitution programs may significantly aid victims in recouping crime victimization costs, not all economic costs may be covered. Recall, too, that neither program addresses pain and suffering costs (except for the three states that allow compensation for pain and suffering). To seek redress for these uncompensated costs, victims may pursue civil litigation against the offender. There are some key advantages afforded to a plaintiff (the person filing the lawsuit) in a civil suit. That person is a party to the lawsuit and is allowed to make key decisions regarding whether to accept a settlement—unlike in criminal court, where it is the state versus the defendant (National Crime Victim Bar Association, 2007). Persons can seek money for emotional as well as physical harm.

In addition, the burden of proof is different in the civil justice system. Liability must be proven by a fair preponderance of the evidence, not beyond a reasonable doubt, which is the standard of proof in the criminal justice system. If the court finds that the defendant is in fact liable, then the offender is held financially accountable for the harm caused to the defendant. Much like with restitution, however, the likelihood of the victim actually receiving the money awarded is tied to the offender being identified and the offender’s ability to pay. Accordingly, it may be quite difficult for the victim to recover damages awarded. Also, the costs of entering into a civil lawsuit must be borne by the victim and can be quite expensive. The victim may have to hire an attorney, and civil lawsuits can sometimes drag on for years.
Rights are also afforded to crime victims in other phases of the criminal justice system. In the article included in this section, Meghan Stroshine Chandek and Christopher O. L. H. Porter (1998) discuss their findings from a study examining crime victims’ satisfaction with the police. Although not discussed in detail in this section, police are often the first level of criminal justice with which crime victims interact. The response that victims receive from them may shape how they view the criminal justice system as a whole and may impact their future dealings (or not) with the system should they be victimized again. In addition to the police, the prosecutor and the courts also provide crime victims with rights. These rights are discussed below.

**Victim Impact Statements**

As previously discussed, the criminal trial involves two parties in an adversarial system that reflects crime as a harm against the state. As such, historically, victims seldom played more than the role of witness in the criminal trial. Not until the 1970s did victims receive rights that guaranteed them at least some voice in the criminal trial process. One of these rights was first adopted in 1976 in Fresno, California, and it gave the victim an opportunity to address the court through a **victim impact statement (VIS)**. The VIS can be submitted by direct victims and by those who are indirectly impacted by crime, such as family members. The VIS is either submitted in writing or presented orally (victim allocution).

In the VIS, the harm caused is typically detailed, with psychological, economic, social, as well as physical effects included. Depending on the jurisdiction, the victim or others presenting a VIS may also provide a recommendation as to what the offender's sentence should be. Not only may the victim enter a VIS at sentencing, but most states allow for the victim to make a VIS at parole hearings as well. In some cases, the original VIS is included in the offender's file and will be considered during the parole process. In others, the victim is allowed to update the original VIS and include additional information that may be pertinent to the parole board. Less common, the victim may be allowed to make a VIS during bail hearings, pretrial release hearings, and plea bargaining hearings (National Center for Victims of Crime, 1999). Importantly, despite the victim's wishes, the VIS is used only as information and may impact the court's decision, but not always. As noted by the Minnesota Court of Appeals in *State v. Johnson* (2008), although the victim's wishes are important, they are not the only consideration or determinative in the prosecutor's decision to bring a case to trial.

There are many reasons to expect VISs to benefit victims. They give victims a right to be heard in court and allow their pain and experience to be acknowledged in the criminal justice process. As such, VISs may be therapeutic, especially if a victim's statement is referred to by the prosecutor or judge and if the victim's recommendation is in accordance with the sentence the offender receives. In addition to this potential therapeutic benefit, VISs may also provide valuable information to the court and criminal justice actors that allows them truly to understand the impacts criminal behavior has on victims. It may help the judge give a sentence that is more reflective of the true harm caused to the victim. Also it may prove beneficial to offenders to hear the impact of their crimes. Hearing the extent to which their actions hurt another person makes it more difficult for offenders to rationalize their behavior.
Despite these proposed benefits, not all victims utilize the right to make a VIS. For example, recent data from Texas show that only 22% of VIS applications distributed to crime victims were returned to district attorney’s offices (Yun, Johnson, & Kercher, 2005). The type of victimization for which VISs were submitted was most commonly sexual assault of a minor, followed by robbery (Yun et al., 2005).

Nonetheless, the reasons that victims in general do not make VISs are varied. They may not feel comfortable putting their feelings in writing or going to court and making a public statement; they may fear the offender and being retaliated against. Others may not be fully aware of their right to make a VIS or not know how to go about utilizing this right. Although it is certainly a victim’s choice to make or not make a VIS, it may have an impact on the sentence the offender receives. Recent research shows that when VISs are made in capital cases, there is an increased likelihood that the offender will be sentenced to death (Blumenthal, 2009). Although a clear impact on noncapital offenses is not evident, research suggests that when VISs do impact sentencing, they do so in a punitive fashion (Erez & Globokar, 2010).

This may be good for the victim, but it does raise the issue of equal justice for offenders. Does an offender deserve a more severe penalty because a VIS is made? Conversely, do victims not deserve to have their offenders penalized as severely as others if they are not able or willing to make a VIS? This issue underlies some of the debate surrounding the use of VISs. The constitutionality of VISs has been questioned, particularly in capital cases. Current case law makes it constitutional for VISs to be made in capital cases. In *Payne v. Tennessee* (1991), the U.S. Supreme Court found that how the victim is impacted does not negatively impact the rights of the
defendant—VISs are a way to inform the court about the harm caused. This decision allowed states to decide whether to allow VISs in capital cases.

The positive benefit for victims may be overstated in that making a VIS can be traumatizing for victims (Bandes, 1999). Victims may also be dissatisfied if their recommendations are not followed (Davis, Henley, & Smith, 1990; Erez, Roeger, & Morgan, 1994; Erez & Tontodonato, 1992). Furthermore, victims who make a VIS may not be likely to use and participate in additional criminal proceedings if they are victimized again, one of the key considerations in granting victims’ rights (Erez & Globokar, 2010; Kennard, 1989).

Victim/Witness Assistance Programs

Victim/witness assistance programs (VWAPs) provide victims with assistance as they navigate the criminal justice system. These programs are designed to ensure that victims know their rights and have the resources necessary to exercise these rights. At its heart, however, is a goal to increase victim and witness participation in the criminal justice process, particularly as witnesses, with the notion that victims who have criminal justice personnel assisting them will be more likely to participate and to be satisfied with their experience.

These programs first began in the 1970s, with the first program established in St. Louis, Missouri, by Carol Vittert (Davies, 2010). Although not sponsored by the government, Vittert and her friends would visit victims and offer them support. Two years later, the first government victim assistance programs were developed in Milwaukee, Wisconsin, and Brooklyn, New York. Not long after, in 1982, the Task Force on Victims of Crime recommended that prosecutors better serve victims. Specifically, the task force noted that prosecutors should work more closely with crime victims and receive their input as their cases are processed. It also noted that victims need protection and that their contributions should be valued—prosecutors should honor scheduled case appearances and return personal property as soon as possible. To this end, VWAPs have been developed, most commonly administrated through prosecutors’ offices but also sometimes run through law enforcement agencies. At the federal level, each U.S. attorney’s office has a victim witness coordinator to help victims of federal crimes.

Today, these programs most commonly provide victims with background information regarding the court procedure and their basic rights as crime victims. Notification about court dates and changes to those dates is also given. They also provide victims with information regarding victim compensation and aid them in applying for compensation if eligible. A victim who wishes to make a VIS can also receive assistance from the VWAP in doing so. Another service offered by VWAPs is making sure the victims and witnesses have separate waiting areas in the courthouse for privacy. In some instances, VWAP personnel will attend court proceedings and the trial with the victim and their family.

Despite the efforts of VWAPs, research shows that some of the first of these programs did little to improve victim participation. The Vera Institute of Justice’s Victim/Witness Assistance Project, which ran in the 1970s, provided victims with a wide range of services—day care for children while parents were in court, counseling for victims, assistance with victim compensation, notification of all court dates, and a program that allowed victims to stay at work rather than come to court if their testimony was not needed—to little “success” (Herman, 2004). An evaluation of the project showed that victims were no more likely to show up at court than those without access to these services. It was not until the Vera Institute developed a new program that provided victim advocates to go to court with victims that positive outcomes emerged. This program did, in fact, then have a positive influence on attendance in court (Herman, 2004). Few of the programs provide services identified in the research literature as most critical; instead, VWAPs are largely oriented toward ensuring that witnesses cooperate and participate in court proceedings rather than that crime victims receive needed services (Jerin, Moriarty, & Gibson, 1996). Victims’ rights and the challenges that arise when trying to ensure that crime victims’ rights are provided are discussed by Robert C. Davis and Carrie Mulford (2008) in their article in this section.
Family Justice Centers

Family Justice Centers have recently begun opening throughout the United States to better serve crime victims. Because crime victims often need a variety of services, family justice centers are designed to provide many services in “one stop.” These centers often provide counseling, advocacy, legal services, health care, financial services, housing assistance, employment referrals, and other services (National Center on Domestic and Sexual Violence, 2011). The advantages of providing these services in one place are many—primarily, victims can receive a plethora of services without having to navigate the maze of health and social service agencies in their jurisdiction.

Restorative Justice

The traditional criminal justice system is adversarial, with the state on one side and the defense on the other attempting to determine if the offender did in fact commit a crime against the state. It is largely offender-centered—the offender’s rights must be protected from investigation to conviction—and the victim traditionally has not been recognized as having a role beyond that of a witness, since crimes are considered harms against the state. Beginning in the 1970s, as discussed in Section 1, the victims’ rights movement sought to garner a larger role for victims in the justice process and to ensure that victims are provided the services they deserved from the state and community agencies. Also during the 1970s, there was a movement in the criminal justice system to get “tough on crime.” In doing so, more people were sentenced to prison and for longer and our correctional system moved away from a rehabilitation model to a justice model. No longer was the correctional system dedicated to “fixing” offenders—rather, its main focus became public safety by reducing crime. This reduction was thought to be achieved through the use of tough criminal sanctions rather than treatment for the offender. Although this experiment in incarceration is not over, another movement less focused on being punitive toward offenders within the criminal justice system also emerged during the 1970s—the **restorative justice** movement.

The restorative justice movement formally began in Canada in the 1970s, but some of its principles were in place long before. Our first “systems” of justice did not define crimes as harms against the state. As such, if a person was victimized, it was up to him or her or the family to seek reparation from the offender (Tobolowsky, 1999). It was essentially a victim-centered approach. As crimes were redefined as harms against the state (or the king), the system of justice that emerged was more offender-focused. Such a system was in place until the 1970s in the U.S., when people began to advocate for an increased role for the victim and for victims to receive rights similar to those of offenders. The restorative justice movement was an outgrowth of the attention given to the need for victims’ rights and also the push-back from adoption of a crime-control model exclusively focused on punishment.

The restorative justice movement is based on the belief that the way to reduce crime is not by solely punishing the offender or by adhering to a strict adversarial system that pits the defendant against the state. Instead, all entities impacted by crime should come to the table and work together to deal with crime and criminals. In this way, the restorative justice movement sees crime as harm to the state, the community, and the victim (Johnstone, 2002). Accordingly, instead of offenders simply being tried, convicted, and sentenced without the victim and community playing more than a cursory role, the system should develop and adopt strategies to deal with crime that include all relevant parties. Instead of a judge or jury deciding what happens to the offender, the restorative justice movement allows for input from the offender, the victim, and community members harmed by the offense in making a determination of how to repair the harm caused by the offender. In this way, justice is not just handed down and does not just “happen;” it is a cooperative agreement. Simply stated, restorative justice is a process “whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future” (Marshall, 1999, p. 5).
What types of programs meet this objective? Many of the programs in use today in the United States and throughout the world were adapted from or based on traditional practices of indigenous people, who, given their communal living situation, often have a stake in group members’ ability to collaboratively resolve issues (Centre for Justice and Reconciliation, 2008). The most common types of programs are victim-offender mediation or reconciliation programs and restitution programs. Victim-offender mediation is discussed below, and restitution was discussed earlier in this section as a financial remedy for victims. Another program that is restorative in nature is face-to-face meetings between the victim and offender that do not involve formal mediation. **Family or community group conferencing** is also restorative. In this type of program, the victim, offender, family, friends, and supporters of both the victim and offender collectively address the aftermath of the crime, with the victim addressing how the crime impacted him or her, thus increasing the offender’s awareness of the consequences of the crime (Centre for Justice and Reconciliation, 2008). Because supporters of both sides are present, it allows additional people with a stake in the process and outcome to give input. Victims and offenders report high levels of satisfaction with group conferencing (Centre for Justice and Reconciliation, 2008). Restorative justice is also practiced through peacemaking or sentencing circles. A circle consists of the victim, the offender, community members, victim and offender supporters, and sometimes members of the criminal justice community such as prosecutors, judges, defense attorneys, police, and court workers. The goals of the circle are to “build community around shared values” and to “promote healing of all affected parties, giving the offender the opportunity to make amends” and giving all parties a “voice and shared responsibility in finding constructive resolutions” (Centre For Justice and Reconciliation, 2008, p. 2). The circles are also designed to address the causes of criminal behavior. In sentencing circles, the parties work together to determine the outcome for the offender, while peacemaking circles are more focused on healing.

**Victim-Offender Mediation Programs**

Some victims may not wish to sit in the background and interact only on the periphery of the criminal justice system. Instead, they may wish to have face-to-face meetings with their offenders. As a way to allow such a dialogue between victims and offenders, **victim-offender mediation programs** have sprouted up throughout the United States, with more than 300 such programs in operation today (Umbreit & Greenwood, 2000). With the American Bar Association endorsing the use of victim-offender mediation and what appears to be widespread public support for these programs, victim-offender mediation is likely to become commonplace in U.S. courts (Umbreit & Greenwood, 2000). Victim-offender mediation is already widely used in other countries, with more than 700 programs operating in Europe (Umbreit & Greenwood, 2000).

Mediation in criminal justice cases most commonly occurs as a **diversion** from prosecution. This means that if an offender and victim agree to complete mediation and if the offender completes any requirements set forth in the mediation agreement, then the offender will not be formally prosecuted in the criminal justice system. In this way, offenders receive a clear benefit if they agree to and successfully complete mediation. Mediation can also take place as a condition of probation. For some offenders, if they formally admit guilt and are adjudicated, they may be placed on probation by the judge with the condition that they participate in mediation. In all instances, the decision to participate in victim-offender mediation programs is ultimately up to the victim (Umbreit & Greenwood, 2000). Most victims who are given the opportunity to participate in victim-offender mediation do so (Umbreit & Greenwood, 2000).

Victim-offender mediation programs are designed to provide victims—usually those of property crimes and minor assaults—a chance to meet with their offenders in a structured environment. The session is led by a third-party mediator whose job it is to facilitate a dialogue through which victims are able to directly address their offenders and tell them how the crime impacted their lives. The victim may also ask questions of the offender. To achieve
the objectives of restorative justice, mediation programs in criminal justice use humanistic mediation, which is dialogue-driven rather than settlement-driven (Umbreit, 2000). The impartial mediator is there to provide unconditional positive concern and regard for both parties, with minimal interruption. As noted by Umbreit (2000), humanistic mediation emphasizes healing and peacemaking over problem solving and resolution. He notes,

the telling and hearing of each other’s stories about the conflict, the opportunity for maximum direct communication with each other, and the importance of honoring silence and the innate wisdom and strength of the participants are all central to humanistic mediation practice. (p. 4)

One tangible outcome often but not always stemming from victim-offender mediation is a restitution plan for the offender, which the victim plays a central role in developing. This agreement becomes enforceable in court, whereby an offender who does not meet the requirements can be held accountable.

What happens after an offender and victim meet? Do both offenders and victims benefit? What about the community? It is important to evaluate programs in terms of their effectiveness in meeting objectives, and victim-offender mediation programs have been assessed in this way. Collectively, this body of research shows many benefits to victim-offender mediation programs. Participation in victim-offender mediation has been shown to reduce fear and anxiety among crime victims (Umbreit, Coates, & Kalanj, 1994), including posttraumatic stress symptoms (Angel, 2005), and desire to seek revenge against or harm offenders (Sherman et al., 2005; Strang, 2002). In addition, both offenders and victims report high levels of satisfaction with the victim-offender mediation process (McCord & Wachtel, 1998; McGarrell, Olivares, Crawford, & Kroovland, 2000; see also Umbreit & Greenwood, 2000). Victims who meet with their offenders report higher levels of satisfaction than victims of similar crimes whose cases are formally processed in the criminal justice system (Umbreit, 1994a). In addition to satisfaction, research shows that offenders are more likely to complete restitution required through victim-offender mediation (Umbreit et al., 1994). More than 90% of restitution agreements from victim-offender mediation programs are completed within 1 year (Victim-Offender Reconciliation Program Information and Resource Center, 2006). Reduction in recidivism rates for offenders also has been found (Nugent & Paddock, 1995; Umbreit, 1994b). To learn more about victim-offender mediation programs, read the article by Patrick Gerkin (2009) in this section. In it, he discusses impediments for victim-offender mediation programs.

As you can see, our system has changed from victim-centered to entirely offender-focused and is now bringing the victim back into focus. Crime victims are afforded many rights in the criminal justice system. But, as you have seen, it is sometimes difficult for victims to exercise these rights, and they often have little recourse if their rights are not protected. These issues will certainly continue to be addressed as victims’ voices are heard and their needs met.

**SUMMARY**

- Victims were first granted rights in the law in 1979. All states give the right to compensation, notification of rights, notification of court appearances, and ability to submit victim impact statements before sentencing.
- Other states may give the right to restitution, to be treated with dignity and respect, to attend court and sentencing hearings, and to consult with court personnel before plea bargains are offered or defendants released from custody. Other rights will also protect victims’ employment status so they can testify against their offenders.
- There has been some resistance to states and the federal government giving victims formal rights. Although numerous federal acts have been passed with victims’ rights in mind, there still is no victims’ rights amendment in the U.S. Constitution.
To help assuage some of the financial costs of a crime, victims can apply for financial compensation from the state, can receive restitution from the offender, or can seek remedy in civil court.

A victim impact statement can be submitted by direct victims and by those who are indirectly impacted by crime, such as family members. In the victim impact statement, the harm that was caused is typically detailed, with psychological, economic, social, as well as physical effects included.

Victim/witness assistance programs provide victims with guidance as they navigate the criminal justice system. These programs are designed to ensure that victims know their rights and have the resources necessary to exercise these rights. Another goal of these programs is to increase the likelihood that a witness or victim will interact with the criminal justice system.

The restorative justice movement is based on the belief that the way to reduce crime is not solely by punishing the offender or by adhering to a strict adversarial system that pits the defendant against the state. Instead, all entities impacted by crime should come to the table and work together to deal with crime and criminals.

To increase dialogue between offenders and victims, victim-offender mediation programs have emerged throughout the United States.

**DISCUSSION QUESTIONS**

1. Do you think it is the role of the criminal justice system to provide victims with rights? How else could we ensure that victims receive help?

2. What rights does the state in which you reside provide to crime victims? What rights do you think are most important?

3. Why would offenders be more likely to complete restitution in victim-offender mediation? Could it be used for other types of programs? Why or why not?

4. What types of services would Polly be eligible to receive? Explain.

**KEY TERMS**

- victims’ rights
- notification
- participation and consultation
- right to protection
- right to a speedy trial
- Child Victims’ Bill of Rights (1990)
- Crime Control Act (1990)
- Victims’ Rights and Restitution Act (1990)
- Violent Crime Control and Law Enforcement Act (1994)
- Violence Against Women Act (1994)
- Antiterrorism and Effective Death Penalty Act (1996)
- Victims’ Rights Clarification Act (1997)
- victim compensation
- restitution
- civil litigation
- victim impact statement (VIS)
- victim/witness assistance programs (VWAPs)
- restorative justice
- family or community group conferencing
- peacemaking circle
- sentencing circle
- victim-offender mediation programs
- diversion
INTERNET RESOURCES

Restorative Justice Online (http://www.restorativejustice.org/)

The restorative justice movement is concerned with repairing harm caused by crime. Restorative Justice Online provides information for criminal justice professionals, social service providers, students, teachers, and victims. It includes links to research as well as more general information. It also provides information for restorative justice around the world.


The Center disseminates information online for crime victims and people working with crime victims or in the area of policy. In its resource library, you can find information on victim impact statements, statistics regarding the extent of various kinds of victimization, and information on how to assist lesbian, gay, bisexual, transgender, and queer victims, among other topics.

KlaasKids Foundation (http://www.klaaskids.org/vrights.htm)

States differ in the rights they provide to crime victims. This website provides links to information on each state's victims' rights.


This website provides links to federal agencies and resources, national victim organizations, national and state criminal justice victim-related organizations, victim-related education links, state crime victim compensation boards, federal and state correctional agencies, victim service units, sex offender registries, and other resources. It is your go-to website for links related to crime victims.
The authors used the theory of expectancy disconfirmation to understand victim satisfaction with the police. To do so, they conducted telephone surveys and collected official complainant records from a medium-sized Midwestern police department. The survey included 118 victims who experienced burglary or robbery and who reported their victimizations between May 15 and August 14, 1995. They found that crime victim expectations of the police role impacted satisfaction. In particular, they found support for expectancy disconfirmation theory—when victims felt that police did not meet their expectations, they were less satisfied than when their expectations were exceeded.

The Efficacy of Expectancy Disconfirmation in Explaining Crime Victim Satisfaction With the Police

Meghan Stroshine Chandek and Christopher O. L. H. Porter

The importance of studying crime victim satisfaction cannot be overstated, particularly in light of the community policing “revolution” of the 1980s and 1990s. This philosophy of policing encourages a police role that encompasses not only the more traditional crime-fighting mandate of the police, but also one that emphasizes service-oriented functions. Under a philosophy of community policing, it may be argued that the police are seen as having a “business orientation” (Ericson and Haggerty 1997). The police come to be viewed as consumer-oriented, providing a variety of services to their clientele—the public. As such, measures of police performance change to incorporate this dual emphasis on crime-fighting and service-oriented functions.

Under a crime-fighting mandate, measures of police performance are most often quantitative in nature. These quantitative indices of success may include the number of arrests made, the number of citations issued or clearance rates. When a police organization embraces a philosophy of community policing, however, other subjective and qualitative measures of performance must be considered to determine police effectiveness. Satisfaction with the police constitutes one such measure. As MacKenzie and Uchida (1994:286) state,

> It is evident that one important factor in effective policing is community acceptance of and interaction with the police. It is no longer considered appropriate to judge police effectiveness only by the number of arrests or convictions.

Put in the context of community policing, the study of satisfaction with the police takes on greater importance than it has had in the past.

The Philosophy of Community. Since the 1970s and early 1980s, a renewed interest in the plight of the crime victim has emerged (Karmen 1990). Criminologists and victimologists are particularly concerned that crime victims are not only being victimized by the perpetrator, but also by the very criminal justice system designed to assist them (Mann 1993). As a result, criminologists and victimologists have dedicated much of their efforts to studying the experiences of crime victims as their cases are processed by the criminal justice system. Through this research, many programs and initiatives have originated with the hope that crime victims not be further victimized, but rather treated with dignity and respect by the criminal justice system (Karmen 1990).

The theoretical basis of community policing also highlights the importance of studying crime victim satisfaction with the police. Under a philosophy of community policing, it is widely assumed that if the police can satisfy citizens (and thus crime victims), a variety of positive outcomes will result. A cornerstone of community policing is the belief that an improved relationship between the police and the public would ensue by forging a relationship that is cooperative rather than antagonistic—although recent research has not borne out this hypothesis (Frank et al. 1996; Reisig and Giacomazzi 1998).

The public may become a valuable resource by calling the police more frequently, providing the police with information and cooperating with police activities. If the police and the public work together, the police may become more effective and the public may become less fearful, more trusting and more willing to turn to the police when victimized. As Martin (1997:521) states,

When victims perceive that their needs are met, police gain legitimacy, as does the criminal justice system. Victims are willing to use police as a resource…The principles of community policing underscore the importance of police accountability to constituents which is reflected in victim satisfaction.

Literature Review

Crime Victim Satisfaction Research

Four primary studies have exclusively examined crime victim satisfaction with the police (Brandl and Horvath 1991; Poister and McDavid 1978; Shapland 1983). These studies have examined a variety of variables, such as crime victim demographic characteristics, type of crime, police response and case status variables, and the expectations of crime victims. This portion of the literature review is organized by the variable (or group of variables) under examination and summarizes both the consistency and inconsistency of the findings.

Crime Victim Demographic Characteristics. Studies that have examined the influence of age on satisfaction with the police have produced conflicting results. Poister and McDavid (1978) found that age was not related to reported levels of satisfaction with the police. Other studies, however, have shown that age significantly affects the levels of satisfaction with the police that are reported by crime victims (Brandl and Horvath 1991; Percy 1980). In Brandl and Horvath’s (1991) study, older victim of serious property crimes (burglary or motor vehicle theft) were more likely to report higher levels of satisfaction with the police than were younger respondents. Percy (1980) also found older respondents more likely to report higher levels of satisfaction with the police.

Studies including the victim’s race as an independent variable have likewise produced contradictory results. Poister and McDavid (1978) found race not to be significantly related to crime victim satisfaction with the police. Yet Percy’s (1980) study found Whites to be significantly more likely to report higher levels of satisfaction than minority crime victims.

Of the studies exploring crime victim satisfaction with the police, only one found a statistically significant relationship between the gender of crime victims and their reported level of satisfaction with the police (Percy 1980). In this study, males were more likely to report higher levels of satisfaction with the police than were female crime victims.

Poister and McDavid (1978) explored the influence type of crime had on reported satisfaction levels
of crime victims and found a significant relationship. In their study, higher levels of satisfaction were reported by persons who had fallen victim to more serious crimes. In addition, they found that “overall satisfaction varies with type of crime…more than with [the] socioeconomic characteristics [of the victims]” (Poister and McDavid 1978:133).

**Police Officer Investigative Activities/Effort.** Two of the four studies discussed in this literature review examined the effect of certain police officer activities on crime victims’ levels of satisfaction with the police (Brandl and Horvath 1991; Percy 1980). Brandl and Horvath (1991) found that when victims of property crimes perceived a greater degree of investigative effort, they were more likely to report being satisfied with the police.

Percy (1980) was also interested in the effect certain police officer activities—which could also be construed as indicators of police investigative effort—had on crime victims’ satisfaction levels. This researcher found that some, but not all, of the actions he examined were significantly related to crime victims’ reported level of satisfaction (making an arrest, comforting the victim and providing crime prevention information all significantly and positively influenced crime victims’ satisfaction levels).

**Police Officer Conduct.** Brandl and Horvath (1991) measured police officer conduct using a “Professionalism Index.” These authors found that police professionalism, as measured in their study, had the greatest impact on levels of crime victim satisfaction. As they stated,

Thus, for all three crime types there was a strong and dependable relationship between the degree of professionalism perceived to have been exhibited by the investigating police officer and victim satisfaction; the more professional (courteous, understanding, concerned, and competent the officer was seen to be), the greater the likelihood of victim satisfaction. (Brandl and Horvath 1991:298)

Shapland (1983) also found police officer behavior crucial in determining levels of victim satisfaction. The major determinant of satisfaction for the crime victims in this study was attitude of the police officer(s). “Those police officers who appeared to be interested in what the victims said, took time to listen to them and seemed to take them seriously, promoted feelings of satisfaction in the victims” (Shapland 1983:235).

**Expectations.** Crime victim satisfaction studies that have looked at crime victims’ expectations have done so in a very narrow and limited fashion. Percy (1980) examined the effects of response time on satisfaction levels in terms of the crime victims’ expectations as they compared to the actual police response time. Results showed that when the response time of the police was faster than expected, the crime victim was more likely to be satisfied with the police. Brandl and Horvath’s (1991) study produced concordant results finding that when police response time was faster than expected, the crime victim was more likely to report being satisfied with the police.

**The Expectancy Disconfirmation Model**

Attempts to understand the factors that play a role in consumer satisfaction with products have led consumer and marketing researchers to propose a model of consumer satisfaction: the Expectancy Disconfirmation model. Simply stated, this model postulates that consumer satisfaction is both a function of expectations regarding the attributes of a product and the actual attributes of the product (Cadotte, Woodruff and Jenkins 1987; Churchill and Surprenant 1982; Oliver 1977, 1980; Oliver and DeSarbo 1987). In other words, satisfaction is determined by how well a product measures up to consumers’ expectations. The extent to which expectations are met or not met determines the extent to which expectations are disconfirmed—and thus the extent to which the consumer is satisfied (Oliver 1977).

According to Expectancy Disconfirmation theory, expectancy disconfirmation occurs when a consumer’s expectations are not met. Three types of expectancy
disconfirmation may be differentiated (Oliver 1980). Consumers experience negative disconfirmation when a product’s attributes are less than expected. Consumers experience zero disconfirmation (or confirmation) when there is equality between a product’s attributes and their expectations. Finally, consumers experience positive disconfirmation when a product’s attributes exceed expectations. It is further proposed that a positive relationship exists between disconfirmation and satisfaction. In other words, the more a consumer’s expectations are exceeded, the more highly satisfied he or she will be with the product.

The Expectance Disconfirmation model has received overwhelming support (Cadotte et al. 1987; Churchill and Surprenant 1982; Oliver 1977, 1980; Oliver and DeSarbo 1987). More recently, other variables have been added to provide a more comprehensive approach to examining consumer satisfaction (Oliver 1993; Spreng, Mackenzie and Olshavsky 1996). In addition, researchers have extended this model beyond product satisfaction to service satisfaction (Bitner 1990; Bolton and Drew 1991; Boulding et al. 1993). These efforts have produced findings similar to those for product satisfaction.

As potential “consumers” of police service, crime victims are believed to have expectations about such services. It is further believed that the police, through their performance, will confirm or disconfirm these expectations just as a product’s attributes confirm or disconfirm consumers’ expectations. It is hypothesized that the extent to which the police meet victims’ expectations will, at least in part, determine victim satisfaction with the police. Expectancy Disconfirmation theory thus provides a promising framework for examining crime victim satisfaction with the police.

**Hypotheses**

Since crime victim satisfaction literature has produced contradictory findings as to the role that crime victim demographic characteristics and types of crime have on levels of satisfaction with the police, no specific hypotheses can be made with regard to the role these variables may play in determining overall satisfaction with the police.

Crime victim research has highlighted the importance that police officer activities and conduct play in crime victims’ satisfaction levels (Brandl and Horvath 1991; Shapland 1983). For the current study, two hypotheses can be made:

H1: The more investigatory activities the police perform, the more likely it is that crime victims will be satisfied.

H2: The more courteous the police are, the more satisfied crime victims will tend to be.

Both crime victim and consumer research have highlighted the role that the confirmations of expectation have in determining satisfaction levels (Brandl and Horvath 1991; Cadotte et al. 1987; Churchill and Surprenant 1982; Oliver 1980; Oliver and DeSarbo 1987; Percy 1980). Two specific hypotheses follow from using the Expectancy Disconfirmation model to understand the relationship between victim expectations and satisfaction:

H3: When crime victims’ expectations are negatively disconfirmed, it is less likely they will be satisfied.

H4: When crime victims’ expectations are positively disconfirmed, it is more likely they will be satisfied.

**Measurements**

Description, coding and values of the independent and dependent variables used in the analyses are shown in Table 1. Operationalizations of these variables are described below.

**Police Officer Activities.** Variables measuring police officer activities asked crime victims about their perceptions of officer investigative effort. During the telephone interview, respondents were asked whether the initial responding officer(s) did the following:
Each question was asked separately; crime victims could answer each question with a response of yes, no or uncertain.

For the current analyses, the responses were summed to create a police Activity Scale that ranged in value from a low score of 0 to a high score of 5. Each value represents the number of affirmative responses crime victims gave. For example, a value of 1 on the police Activity Scale represents a case where the crime victim perceived the police officer to have done one of the five activities (e.g., takes notes, make out a report while on the scene). As evidenced in Table 1, 80.90
percent of surveyed victims answered that police officers performed some, but not all, of the activities.

**Police Officer Conduct.** In order to measure police officer conduct crime victims were asked whether the initial responding police officer(s)

1. was courteous or respectful,
2. was understanding,
3. was concerned,
4. took you seriously, and
5. listened to you.

Again, each question was asked separately, and subjects could reply yes, no or uncertain.

Responses were summed to create a police Conduct Scale ranging in value from 0 to 5. Zero represents a case where the police were not seen by the crime victim to have exhibited any of the above behaviors, and a value of 5 represents a case where the police were perceived to have exhibited all five behaviors. The descriptive statistics provided in Table 1 demonstrate that most crime victims (70%) perceived the police as exhibiting all the behaviors.

**Crime Victim Expectations.** Crime victims were asked a set of questions about their expectations that paralleled those regarding police activities, specifically whether they expected the police to

1. take notes;
2. make out a report;
3. attempt to find, locate or question additional witnesses;
4. search for or collect evidence (e.g., fingerprints); and
5. provide information on available services or offer advice.

Each question was asked independently, and respondents could answer yes, no or uncertain.

Reponses were summed to create an Expectation Scale that ranged in value from a low of 0 to a high score of 5. The fewer expectations the crime victim had with regard to police activities, the lower his or her score on the Expectation Scale. The frequencies for this variable show that, as a group, crime victims in this study tended to expect a lot from the police in terms of investigative activities: More than 62 percent of crime victims expected four or more activities from the police.

**Expectancy Disconfirmation.** To create this variable, the Expectation Scale was subtracted from the Activity Scale. This created values ranging from −5 to +5. In cases where the number of activities performed by the police were fewer than the number of activities expected by the victim, the result was negative disconfirmation. In other words, in these cases the police performed fewer activities than were expected by the crime victim. These instances are represented by negative values on the expectancy disconfirmation variable.

When the police performed exactly the same number of activities as the crime victim expected, crime victims experienced zero disconfirmation. These cases are represented by a zero value on the expectancy disconfirmation variable. In cases where the number of activities performed by the police exceeded the number of activities expected, the crime victim experienced positive disconfirmation. These cases are represented by a positive value on the expectancy disconfirmation variable. In these cases, the victim expected fewer activities than the police actually performed.

In this study (see Table 1), most crime victims (41.8%) experienced negative disconfirmation—they expected more investigatory activities than the police actually performed. Roughly 34 percent of victims experienced zero disconfirmation; their expectations and perceptions of police activity were the same. A little more than 24 percent of victims experienced positive disconfirmation, where their expectations were exceeded by the police.

**Dependent (Y) Variable: Overall Satisfaction With the Police.** The dependent variable in this study was operationalized as the crime victim’s overall level of
satisfaction with the police. This variable was measured by asking the respondent the following question: Overall, how satisfied were you with the way the police officer(s) handled the [entire] incident? The response options were very satisfied, satisfied, uncertain, dissatisfied or very dissatisfied. For analytic purposes, this variable was then recoded into a dichotomous variable consisting of the categories satisfied and dissatisfied. Neutral cases \((n = 8)\) were dropped from the analyses. In this study, the great majority of crime victims (80%) were satisfied with the police.

**Results**

An analysis of variance (ANOVA) procedure was used to determine the difference between the mean levels of satisfaction across different values of the independent variables. The results of this analysis are contained in Table 2. In this study, the ANOVA procedure was used to determine whether satisfaction levels varied according to the different values of crime victim demographic variables, police response variables, and crime victim expectation and disconfirmation variables.

According to the results, analysis of crime victim demographic variables resulted in no significant findings. In other words, mean satisfaction levels of crime victims did not vary according to gender, race, age or type of victimization. There were, however, statistically significant differences in the means for the Activity Scale and the Conduct Scale.

The mean satisfaction levels of crime victims differed depending upon the level of investigative effort perceived to be demonstrated by the police. This was captured in the Activity Scale, where the police could be categorized as having performed between 0 and 5 of the following activities:

1. Taking notes
2. Making out a report
3. Attempting to find, locate or question additional witnesses
4. Searching for or collecting evidence
5. Providing information on available services or offering other advice

Table 2 portrays a distinct linear relationship between different values of the Activity Scale and satisfaction with the police. Crime victims were significantly more likely to be satisfied when the police were perceived as performing a greater number of activities.

Mean satisfaction levels of crime victims also differed depending upon how the crime victims perceived they were treated by the police. This was captured in the Conduct Scale, where police could be categorized as having exhibited between 0 and 5 of the following behaviors:

1. Acting courteous or respectful
2. Showing understanding
3. Being concerned
4. Taking the crime victim seriously
5. Listening to the crime victim

With the exception of the first category (in which all crime victims reporting that the responding officer exhibited none of the behaviors were satisfied), a general linear relationship was found between the Conduct Scale and satisfaction with the police. As the number of behaviors exhibited by the police increased, so too did the likelihood of crime victim satisfaction with the police.

It should be noted that the analysis of variance did not reveal a significant bivariate relationship between crime victim expectations (as measured in the Expectation Scale) and satisfaction with the police. While this may initially appear counterintuitive, the finding does not contradict the theoretical bases of this study. This study hypothesizes that it is expectations in conjunction with police officer activities that influence crime victims’ satisfaction—not expectations alone.

This relationship is captured in the expectancy disconfirmation variable, which according to the ANOVA results was significantly related to crime
The Efficacy of Expectancy Disconfirmation in Explaining Crime Victim Satisfaction With the Police

Table 2  Analysis of Variance (ANOVA) Results: Relationship Between Independent Variables and Satisfaction With the Police

<table>
<thead>
<tr>
<th>Variable</th>
<th>Values</th>
<th>% Satisfied</th>
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<tbody>
<tr>
<td>Crime Victim Demographic Variables</td>
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<tr>
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<tr>
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</tr>
<tr>
<td>Age</td>
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<td>18–24 yrs.</td>
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*p(F) < .05

victims’ satisfaction with the police. The impact of expectancy disconfirmation for satisfied crime victims was difficult to discern. Satisfied crime victims were distributed fairly evenly among the categories of the expectancy disconfirmation variable. The majority (39.8%) of satisfied crime victims fell in the confirmation group, where the police performed exactly the same number of activities as the crime victim had expected. Approximately one-third (30.7%) of crime victims whose expectations were exceeded by the police were satisfied. Surprisingly, almost 30 percent of crime victims who got less than they had expected (cases of negative disconfirmation) were still satisfied with the police. It would appear that for this group of crime victims, other variables played a larger role in determining their satisfaction with the police than did expectancy disconfirmation.

The utility of a theoretical framework lies in both its ability to predict and explain (Bacharach 1989). This study sought to determine whether using the Expectancy Disconfirmation model significantly increased our ability to predict crime victim satisfaction with the police. To make this determination, a multivariate regression analysis was necessary.

The dependent variable used in the current analyses comprised two categories—satisfied and dissatisfied. As such, the dependent variable was a dichotomous, categorical, ranked variable with no
quantifiable difference between categories. Since the dependent variable was binary, linear regression models such as Ordinary Least Squares (OLS) were deemed inappropriate for use in the present endeavor. The data simply did not meet the assumptions required by linear regression models. According to Long (1997), when OLS is used with data with a binary dependent variable, possible consequences include: (1) heteroscedasticity, (2) residuals that are not distributed normally and (3) nonsensical probabilities. As such, it is much more appropriate to use a model designed for use with binary dependent variables. The Binary Probit regression is one such model.

Binary Probit analyses were conducted on two different models. Overall satisfaction with the police was regressed on crime victim demographic characteristics (race, gender, age and type of victim), the Conduct Scale and the expectancy disconfirmation variable. In this model, crime victim demographic characteristics were again found to be unrelated to satisfaction with the police. On the other hand, both the conduct of the police (as captured in the Conduct Scale) and the type of expectancy disconfirmation that crime victims experienced were significantly related to satisfaction levels. The more crime victims perceived the police to exhibit positive behaviors (e.g., being courteous and understanding), the more likely they were to be satisfied with the police. In addition, the more crime victims’ expectations were exceeded by police activities, the more likely victims were to be satisfied.

Conclusions

Community policing has been characterized as having a “business orientation” (Ericson and Haggerty 1997). According to this analogy, members of the public are viewed as consumers of a variety of police services, and satisfaction with police service becomes an important means of measuring police effectiveness. One important group of police service consumers are crime victims.

The current study extended previous research in an attempt to reach a greater understanding of the factors influencing crime victim satisfaction with the police. Using the Expectancy Disconfirmation model as a conceptual guide, this study was the first to specifically examine the central role that expectations play in determining satisfaction with the police. The statistical findings shed new light on satisfaction with the police and support each of the four hypotheses posited earlier in this paper. The first two hypotheses pertained to the perceived level of investigative effort and police conduct. According to the results, when police performed more activities at the scene (e.g., making a report, searching for evidence), crime victims were more likely to be satisfied, supporting Hypothesis 1. An increase in the number of positive behaviors exhibited by the police (e.g., being courteous, taking the victim seriously) led to the increased likelihood that crime victims would be satisfied, supporting Hypothesis 2.

Crime victim expectations about police officer investigatory activities and their subsequent type of disconfirmation appeared to exert significant influence on satisfaction levels. These data supported Hypothesis 3, which postulated that crime victims who experienced negative disconfirmation (or who received less than they expected) were less likely to be satisfied with the police. By the same token, crime victims whose expectations were positively disconfirmed (exceeded) tended to be more satisfied, providing support for Hypothesis 4.

The findings of this study clearly support previous research findings that police activities and conduct are important determinants of crime victim satisfaction (Brandl and Horvath 1991; Poister and McDavid 1978; Percy 1980; Shapland 1983). Furthermore, this study establishes that crime victim expectations and disconfirmation play an important role in determining reported levels of satisfaction with the police. It would appear that, as other researchers have discovered, using the Expectancy Disconfirmation model to explain satisfaction with service is efficacious (Bitner 1990; Bolton and Drew 1991; Boulding et al. 1993).

Implications

It is clear from the findings of this research that the conduct and activities of the police, as well as victim
expectations of police investigatory activities, are related to crime victim satisfaction with the police. Police departments committed to practicing community policing may take several actions to improve satisfaction with the police.

This study, as well as previous ones (Brandl and Horvath 1991; Percy 1980; Poister and McDavid 1978; Shapland 1983), has demonstrated that police conduct is a crucial determinant of victim satisfaction. Police departments might implement training practices to encourage certain behaviors (being courteous or respectful). Generally speaking, police departments should develop training programs that help officers better interact with their consumers, particularly crime victims. These training programs could take the form of classes aimed at improving police officers’ interpersonal skills or emphasizing the importance of interpersonal relations in policing. More specifically, these classes could educate police about the physical, economic and psychological hardships that victims experience and how they play an instrumental role in helping crime victims deal with such adversities.

Changing the means by which police departments evaluate (and by extension, reward) police officers might reinforce the training. The criteria by which officer performance is evaluated should be broadened to incorporate qualitative measures as well as traditional quantitative measure (such as arrests made or citations issued). Police organizations might actively seek citizen input regarding their dealings with police officers. Crime victims would be one logical source of such information. This change would certainly be in line with the goals of community policing (MacKenzie and Uchida 1994; Martin 1997). By changing evaluation systems in this way, police managers and administrators would send a strong message to the rank and file that their services, and the manner in which those services are delivered, is of vital importance. Though the rank and file may be strongly opposed to such “outsider scrutiny,” the potential benefits may make it a risk worth taking.

Although this and other studies (Brandl and Horvath 1991; Percy 1980; Poister and McDavid 1978; Shapland 1983) have found police investigatory activities to influence levels of crime victim satisfaction, it is unrealistic to assume that the police should alter their manner of investigating crimes. The results of this study do indicate, however, that police departments might better satisfy crime victims by altering victim expectations of investigatory activities. The victims in this study tended to expect a great deal in terms of the investigative effort demonstrated by the police (62.7% expected the police to perform four or more investigatory activities). While research shows that certain police officer activities do not increase the likelihood of apprehending a suspect (Greenwood, Chaiken and Petersilia 1977), crime victims may well expect these activities to occur anyway and make satisfaction decisions based on whether the police perform them.

To alter crime victim expectations, the police who respond to a call might immediately inform victims what to expect in terms of their investigation. Furthermore, the police could provide victims with the reasoning behind their choices, which might also include a realistic assessment of their ability to solve the crime. By providing crime victims with clear instructions as to what to expect, it is possible that the police could create cases of confirmation or positive disconfirmation that may not have otherwise occurred.

References


**DISCUSSION QUESTIONS**

1. In addition to expectancy disconfirmation theory, what else may impact how victims feel regarding how the police handle their cases? Do you think other factors may be more important?

2. What can police do to secure better victim satisfaction? Do you think police departments have placed much premium on achieving victim satisfaction?

3. The authors refer to crime victims as clients of the police. Given what you have read about crime victims, do you think this reference is accurate? Why or why not?

**Introduction to Reading 2**

In their article, Davis and Mulford (2008) provide an overview of the most common victims’ rights provided to crime victims in the United States. The authors note the challenges that victims face as they try to assert these rights. They also discuss current developments in victims’ rights and remedies, including compliance programs and victim law clinics, which are designed to increase agency compliance.
During the last two decades, federal and state governments have dramatically expanded the rights of crime victims. Many forces have spurred this change, including activism by crime victims as well as national crime victimization surveys documenting surprisingly high rates of crime, yet low levels of crime reporting by victims (Tobolowsky, 1997; Young, 1999). In the early 1980s, President Reagan convened a Presidential Task Force on Victims of Crime to investigate crime trends and the treatment of victims by the criminal justice system. The Task Force’s 1982 final report defined an agenda for restoring a balance between the rights of defendants and victims. It called for increased participation by victims throughout criminal justice proceedings and restitution in all cases in which victims suffer financial loss.

Even before the Task Force issued its report, however, Congress anticipated many of its recommendations in the 1982 Victim Witness Protection Act. This act authorized victim restitution and the use of victim impact statements at sentencing in federal cases. It also required the attorney general to issue guidelines for the development of further policies regarding victims and witnesses of crimes. Soon after, the 1984 Victims of Crime Act (VOCA) implemented more of the Task Force’s recommendations on victim compensation. This second act by Congress redistributed monies levied from federal offenders to states, funding local aid to victims (Smith & Hillenbrand, 1999).

Recommendations by the Reagan Task Force regarding procedural rights for crime victims were at least as influential as those regarding restitution. First, Congress revised the Federal Rules of Criminal Procedure to require pre-sentence reports to include “any harm done to or loss suffered by any victim of the offense” along with “any other information that may aid the court in sentencing.” Then, in the 1990 Victim Rights and Restitution Act, Congress gave crime victims in federal cases the right to notification of court proceedings and the right to attend them, the right to notice of changes in a defendant’s detention status, the right to consult with prosecutors, and the right to protection against offender aggression. Under President Clinton, the 1994 omnibus Violent Crime Control and Law Enforcement Act gave victims in federal cases the right to speak at sentencing hearings, made restitution mandatory in sexual assault cases, and expanded funding for local victim services (Kelly & Erez, 1999; Kilpatrick, Beatty, & Howley, 1998).

In 2004, the Victim Rights Act, which provides for crime victims’ rights in federal courts, was signed into law. As part of the 2004 act, victims of crime were given significantly expanded rights, including the right to be present and heard at public court proceedings involving release, plea, sentencing, or parole. The act also placed on the federal courts a duty to ensure that victims are afforded those rights. Previous federal law did not provide any means of enforcement and only recognized the right to be heard in federal district court for victims of violent crimes or sexual abuse.

The Rights of Victims Under State Laws

During the past 30 years, victims who previously had no rights to be notified or to participate in the criminal justice process have acquired statutory basic
rights and protections in every state, the first of which was passed in Wisconsin in 1979. Although every state has some form of victim rights legislation, the states differ in their definitions of who is eligible for rights, with some limiting rights only to victims of violent felonies or other subcategories of victims. About 40% of states extend rights to all classes of victims of crime (Howley & Dorris, 2007). States also differ in the types of rights provided. A study by researchers at the Vera Institute analyzed victim rights legislation from every state and then coded it using a standardized evaluation form (Deess, 1999). The study showed that rights to compensation, notification of court appearances, and submission of a victim impact statement before sentencing were provided in all states (at least for some victims). A majority of states also gave victims the right to restitution, to attend sentencing hearings, and the right to consult with officials before offers of pleas or release of defendants from custody. States vary widely in their eligibility requirements and organizational responsibility for the implementation of the rights (Goddu, 1993).

Notification

The right to notification is perhaps the most basic. Victims unaware of their rights and available services, or of the proceedings themselves, will be unable to exercise any rights they may have (Kilpatrick et al., 1998). Kilpatrick and his colleagues (1998) asked more than 1,300 victims to rank, in order of importance, 13 different rights. Three rights to notification ranked among the five most important, with the right to notification of suspect’s arrest seen as “very important” by more than 97% of the victims interviewed—the highest rating overall. The researchers also categorized states as either strong-protection states or weak-protection states on the basis of the specificity, strength, and comprehensiveness of their victim rights to notification, participation, and restitution. They found that victims from strong-protection states were more likely to receive notification throughout criminal justice proceedings, including notice of arrests, trials, and parole hearings. Nonetheless, stronger legislation did not guarantee notification. Even in strong-protection states, 25% to 35% of victims did not receive required notification (Kilpatrick et al., 1998).

Participation and Consultation

The best-known form of participation by victims is the submission of a victim impact statement at the time of sentencing. Most states also authorize submission of a victim statement of opinion, a more subjective assessment by victims of the appropriate sentence. By 1997, 40 states had mandated that criminal justice officials consult victims before making decisions on bond, plea, sentencing, or parole (Kelly & Erez, 1999).

According to Kilpatrick et al.’s (1998) study, victim impact statements are the most frequent form of victim participation, submitted by more than 90% of people informed of their right to do so. In strong-protection states, the survey found that participation frequently went beyond these statements, with victims significantly more likely than those within weak-protection states to have input during bond hearings, provide testimony in court, and submit victim impact statements at parole hearings (Kilpatrick et al., 1998).

One fear voiced by opponents of expanded victim rights has been that more participation by victims would lead to harsher sentencing by judges. Injecting personal statements into the sentencing decision would reduce uniformity in sentencing, introduce a greater degree of arbitrariness, and result in harsher treatment of convicted offenders across the board (Abramovsky, 1986; Talbert, 1988). There is little research on this question, and the few studies that have examined it have produced inconsistent results (Erez & Tontodonato, 1990; Davis & Smith, 1994). This inconsistency may be the product of weak commitment to the use of these statements and other input from victims. For example, the study by Davis and Smith (1994) found that although prosecutors and judges endorsed victim impact statements in theory, many resisted integrating them into their established routines.

Compensation and Restitution

Crime victims can incur medical costs associated with physical or emotional trauma, repair, and replacement
costs associated with property crime, and opportunity costs of time they lose, measured in lost income. In theory, victims can recover these costs either from offenders required to pay restitution or through public compensation. Nearly all states authorize corrections officials to require restitution from offenders as a condition of parole. In addition, officials in a majority of states have the authority to order offenders to pay restitution as part of a suspended sentence or work release (Smith & Hillenbrand, 1999).

Likewise, public victim compensation programs in the large majority of states are funded by fees or charges paid by the offender. Since 1984, the federal VOCA legislation has encouraged states to institute victim compensation programs, and in 1988, VOCA was amended to ensure that victims of domestic violence and drunk driving were not excluded from compensation. States whose programs meet VOCA requirements can draw on federal subsidies that cover up to 40% of their payments to victims. All states limit eligibility to victims who report crime to the police and help prosecute offenders (Smith & Hillenbrand, 1999).

In practice, a minority of victims appear to receive compensation or restitution. A 1991 study found that less than a third of victims of violent crime were encouraged by a criminal justice official to file for compensation (McCormack, 1991). Kilpatrick et al.’s (1998) survey found that fewer than 20% of people eligible for restitution received it. Moreover, contrary to expectation, judges in states with stronger victim protections were significantly less likely to order victim restitution for economic losses than were judges from states with weaker victim rights protections.

**Right to Protection**

Criminal justice officials are increasingly concerned with the safety of victims and witnesses, especially in cases involving intimate partner violence or gang crimes. A majority of states provide victims with some right to protection including information about measures to take in the event of intimidation by the defendant, no contact orders, and separate and secure waiting facilities in court buildings. An increasing number of states are protecting victims from possible intimidation by limiting disclosure of victim information in law enforcement or court records or by not requiring that they provide their address or place of employment in testimony given in open court (Howley & Dorris, 2007).

**Right to a Speedy Trial**

Approximately half of states provide victims the right to a speedy disposition or trial. Generally, such legislation requires the court to consider the interests of victims in ruling on motions for continuance (Howley & Dorris, 2007). In some states, the law also provides for accelerated dispositions in cases involving victims who are elderly, disabled, or minor children.

**The Challenge of Implementing Victim Rights Legislation**

One of the most frequent conclusions from empirical research in victim rights is that despite the scope of federal and state legislation, criminal justice systems do not honor these rights. Consequently, some states began to develop state-level victim services offices that serve as both oversight agencies monitoring compliance and centers for referrals and linkages to victim services organizations. In the early 1990s policymakers in Wisconsin created the Wisconsin Victim Resource Center, a body that functions to enforce the new victims’ rights laws (Office for Victims of Crime, 1998). Still, as Kilpatrick and his colleagues observed after their 1998 survey, even within states with strong victim rights legislation, many victims are not notified about key hearings and proceedings, many are not given the opportunity to be heard, and few receive restitution. Although victims in these states generally fared better than those in states with weak victim rights legislation, as many as one third of victims in strong-protection states were not afforded the opportunity to exercise certain rights.

Kilpatrick et al.’s (1998) findings have been echoed in other recent studies. A study of Texas law enforcement officers revealed that only 25% fulfilled their
statutory obligation to notify victims of the state compensation program (Fritsch, Caeti, Tobolowsky, & Taylor, 2004). An audit conducted in Florida found that between one quarter and one half of victims did not receive information on victim rights from first responders and that agencies were not consistently documenting compliance with victim notification requirements (Auditor General, 2001). Similarly, a survey of Oregon crime victims found that 30% to 60% were denied rights to be notified of court dates, parole hearing dates, and restitution (Regional Research Institute for Human Services, 2002).

Officials in criminal justice agencies responsible for victims argue that state legislatures often do not provide funding to implement victim rights statutes. Criminal justice officials surveyed by the American Bar Association in 1989 were quite happy with their state’s victim rights legislation, believing that it increased victims’ satisfaction with officials and the criminal justice system, increased victims’ willingness to cooperate, increased information for making case decisions, and improved their job satisfaction. But a major source of dissatisfaction was with the lack of resources provided to implement the legislation (Smith & Hillenbrand, 1999). These complaints were echoed in the Kilpatrick et al. (1998) study; in which, state and local officials indicated that inadequate funding, training, and enforcement of rights still present problems. According to this study, only 39% of local officials from strong-protection states and 27% of those from weak-protection states felt that funding for victim rights implementation was sufficient. A more recent study by the Vera Institute found that a majority of prosecutors believed that victim rights laws had imposed significant costs on their offices and other criminal justice agencies, requiring them to hire new staff and spend more money to contact victims by mail and by phone (Davis, Henderson, & Rabbitt, 2002).

Few states provided some form of remedy in their original victim rights legislation for victims whose rights were not honored by criminal justice officials. In fact, at one point, more than 15 states banned legal challenges to case resolutions or other redress for denial of victim rights by including clauses stating that the violation of a right did not create a civil cause of action against any government agency or official and that the failure to provide a right to a victim could not be used as a ground for appeal (Tobolowsky, 1997).

Those concerned with the rights of victims have come to realize that it is not enough to grant rights to victims: These rights must be backed up with ways to ensure that the agencies and officials responsible for informing victims of rights actually provide that information to victims. Beloof (2005) argues that there are three obstacles to full ability of victims to exercise their rights: government discretion to deny rights, lack of a way to enforce rights, and appellate court discretion to deny review. He further argues that victims will achieve real rights when they get legal standing to defend their rights, when appellate courts can void court decisions made in violation of victim rights, and when review of violations is a matter of right. These remedies have been the focus of new legal and programmatic efforts on behalf of victims.

### Constitutional Amendments

In 1982, California was the first state to pass a constitutional amendment enumerating crime victims’ rights that included the right to public safety. The Reagan Task Force helped to spur the adoption of constitutional amendments by other states with its recommendation for a federal constitutional amendment to ensure victim rights. As a step toward building support for a federal constitutional amendment, members of the Task Force helped launch a 1986 National Victims’ Constitutional Amendment Network of crime victim advocacy groups pursuing state-level victim rights and state constitutional amendments (Young, 1999). Today, 32 states have adopted constitutional amendments regarding victim rights (Howley & Dorris, 2007).

Constitutional amendments provide greater assurance that victim rights will actually be observed. Because amending a state constitution is more difficult than passing a statute, this approach gives victim rights a greater degree of permanence. Also constitutional amendments take precedence over conflicting statutory provisions; courts have generally honored rights
contained in constitutional amendments as indicative of the public will (Howley & Dorris, 2007). Finally, constitutional protection for victim rights makes enforcement potentially more likely. Court decisions in some states have held that victim rights amendments give victims' legal standing to pursue their rights. However, Beloof (2005) argues that constitutional amendments alone are inadequate because most state constitutional rights of victims are silent about available review and remedies. Moreover, government discretion typically curtails victim standing to enforce constitutional rights. Contrary to the intent of constitutional amendments, Beloof cites cases in some states in which state court judges have declared victim constitutional rights to be advisory rather than mandatory.

**Compliance Programs**

Victim rights compliance programs are responsible for educating criminal justice agencies and often the public about victims’ rights. Crime victim compliance programs currently exist in 13 states. In most of the states where compliance programs exist, the programs were established as part of the enabling legislation that accompanied the state constitutional amendments. However, there is a great deal of variety in the autonomy and authority among the programs. Most of the compliance programs are located in either the governor’s office or in the state’s Department of Justice. At least a couple of states (e.g., Alaska and Connecticut) created independent “watchdog” agencies to oversee the enforcement of victims’ rights. Most states rely on legislative appropriations and or VOCA funds to support their victim rights compliance programs.

Many programs conduct trainings, either on their own or in conjunction with other mandatory training programs. The programs also field calls from victims and the general public and provide information about victim rights and referrals to other victim services, including compensation. All the crime victim compliance programs receive complaints from victims when an individual feels that his or her rights have been violated. Most of the programs have a formal complaint process, whereby the victim fields a complaint and the compliance officer (also known as compliance coordinators or ombudsman) communicates the complaint to the individual or agency against whom the complaint was directed. Usually, the complaint is investigated by the compliance officer or a compliance board, and the officer or board determines if the compliance programs differ in how violations are handled. In most states, the compliance officer communicates the violation to the agency against whom the complaint was made and attempts to educate the agency about victims’ rights. Some states file annual reports to the legislature or other commissions or boards in which the offending agencies are named, whereas other are not permitted to name specific agencies (e.g., South Carolina). Mandated training (e.g., Maryland) and corrective action plans (e.g., Colorado) are available to some compliance programs. Alaska is the only state that has the authority to set fines or apply for criminal misdemeanor charges for serious infraction. Connecticut has used press conferences and public release of infractions as mechanisms to gain compliance.

Several victims’ rights compliance programs provide an arbitration role and do not consider themselves to be either victim advocates or agency advocates, whereas others consider themselves to be victim advocates (Edwards, Myrus, & Felix, 2006). In only a couple of states (e.g., Connecticut and Alaska) are the compliance programs given the authority to appear in court on behalf of victims.

**Victim Rights Clinics**

In an effort to promote the enforcement of victims’ rights, as well as awareness and education in the area of crime victim rights, the National Crime Victim Law Institute (NCVLI) was established in 2000. In 2002, to help address the enforcement of victims’ rights through direct pro bono representation of victims in the court process, the Office for Victims of Crime within the U.S. Department of Justice entered into a cooperative agreement with NCVLI to establish legal clinics in several jurisdictions. The clinic demonstration project was created to advocate for the expansion of the enforcement of victims’ rights in the criminal justice system.
and to educate legal professionals about victim rights law. Then in 2006, Congress appropriated monies to support NCVLI in its efforts to enforce crime victims’ rights in federal jurisdictions through federal clinics.

The first state clinic was funded in Arizona, followed by clinics in California, Maryland, New Mexico, and South Carolina the following year. In 2005, four additional clinics were added, including state clinics in Idaho, New Jersey, and Utah and a federal clinic in Arizona. Two additional federal clinics, one in South Carolina and one in Maryland, were added in 2007. NCVLI continues to expand and provide funding to the existing clinics. NCVLI serves as an umbrella organization and, in addition to funding the clinics, provides them with training and technical assistance, including programmatic and financial monitoring, and legal support and research.

The eight state clinics all have the same basic mission and goals but operate through a variety of models. Two of the clinics, California and Idaho, are operated as law school clinics, with supervision of law students by the clinic director. Several clinics were developed within existing victim service organizations and employ staff attorneys to represent victims (e.g., Maryland, South Carolina, and Arizona). Two other clinics developed within nonprofit organizations that serve targeted victim populations (e.g., Utah’s clinic was initially located within the Salt Lake Rape Recovery Center and New Mexico’s clinic is located within the DWI Resource Center). New Jersey is the only clinic that was developed independently, specifically to enforce the rights of crime victims. The various models offer different strengths and weaknesses (Small, Roman, Owens, & Shollenberger, 2006). For example, the clinics that are operated through law schools have better access to law students, so are better able to fulfill the goal of educating future lawyers in victim rights law. However, it is more difficult for these clinics to access client populations in need of representation in victim rights law cases. On the other hand, a state clinic that is located in a reputable victim service organization, such as Maryland that has well-established relationships with victims and other victim serving organizations, has ready access to victims but less interaction with law students.

One of the goals of the clinics is to represent victims in cases that have the best chance of making a significant impact to future victims. Some of the clinics have embraced this goal more fully than others (Small et al., 2006). Some of the clinic directors find it difficult to turn away any victims in need of representation, whereas other clinics would like to be more selective, but do not have a large enough case load to justify turning cases away. NCLI provides training and assistance to the clinics in selecting the most significant cases. The issues involved in the selection of significant cases are jurisdiction specific, but include such things as rights to be present, be heard, receive notice, and rights to privacy.

The NCVLI organization also hosts an annual conference on crime victim rights law, a cluster meeting of the clinic directors, and a membership organization, the National Alliance of Victims’ Rights Attorneys (NAVRA). As indicated on NCVLI’s Web site, NAVRA is an “alliance of attorneys committed to the protection, enforcement, and advancement of crime victims’ rights nationwide.” NAVRA membership allows attorneys to use the list server, receive conference call training on crime victim rights issues, and receive case updates. A federally funded evaluation of NCVLI and the state clinics began in January 2008.

**Conclusion**

The process of securing rights for crime victims has been a long and uneven one. Federal and state government efforts to pass legislation providing rights to crime victims helped to give victims greater involvement in criminal cases. However, legislation was not enough to guarantee victims’ rights in the process. It soon became clear that those charged with assisting victims to exercise their rights were not always complying with statutes and that there was little recourse when they did not.

To try to ensure that victims received rights in practice, new approaches were adopted. Constitutional amendments were efforts to make victim rights fundamental and more enforceable. Compliance programs and victim rights clinics are more recent initiatives designed to improve compliance with victim rights statutes. These programs attempt to ensure that more
victims are able to exercise their rights through training of criminal justice officials, representation of victims in individual cases, and filing complaints against agencies or individuals who deny victims their rights. A current evaluation will examine the extent to which the clinics are making the exercise of victim rights more universally accepted.

References


DISCUSSION QUESTIONS

1. Why are the victim rights granted in most states the ones that are most common? What rights are not commonly provided but should be?

2. Why do you think so few victims receive compensation?

3. What barriers are in place to prevent agency personnel from meeting the requirements of victim rights legislation or victim rights amendments?

4. What else can be done to ensure that agencies provide victims’ rights that are guaranteed to them?

One of the programs derived from the restorative justice movement is victim-offender mediation. At its heart, restorative justice requires that offender, community, and victim needs be accounted for in programs. Gerkin (2009) investigates whether victim-offender mediation programs are truly restorative, given the roles each party plays. He addresses the barriers to successful programs through observing victim-offender mediations and examining agreements reached. His is a particularly useful piece in that it outlines the process of victim-offender mediation, includes questions typically asked by mediators, and contains documents presented to participants.

**Participation in Victim-Offender Mediation**

**Lessons Learned From Observations**

Patrick M. Gerkin

Restorative justice, in its many forms, has emerged as one of several competing philosophies to the approach of crime and justice in numerous countries throughout the world (Van Ness & Strong, 2006). An often cited definition provided by Tony Marshall (1996) states that restoratives justice is “a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future” (p. 37). There are many programs that claim to be part of the restorative justice movement, and as many if not more names to denote these different varieties. Restorative justice is used as an umbrella term to describe any number of programs that view crime and the response to crime through a restorative lens. Victim-offender mediation programs (VOMP), victim-offender reconciliation programs (VORP), family group conferencing, community reparative boards, sentencing circles, and sentencing panels are just a few of the names now used to denote restorative programs. In addition to these, there are a number of multiform programs that might include some combination of aspects from the programs previously listed. Declan Roche (2003) states, “Although this range illustrates confusion about the meaning and application of restorative justice, there remain four fundamental ideals: personalism, reparation, reintegration, and participation” (p. 60). According to Roche, the programs that attempt to integrate all four basic ideals represent the driving force of restorative justice.

One form of restorative justice that has seen continued growth is victim-offender mediation. In the United States, cases may be referred to victim-offender mediation programs from a variety of sources, including judges, law enforcement officers, probation officers, victim advocates, prosecutors, and defense attorneys.

The goals of victim-offender mediation as reported by Bazemore and Umbreit (2001) include

Supporting the healing process of victims by providing a safe, controlled setting for them to meet and speak with offenders on a strictly voluntary basis.

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Allowing offenders to learn about the impact of their crimes on the victims and take direct responsibility for their behavior.

Providing an opportunity for the victim and offender to develop a mutually acceptable plan that addresses the harm caused by the crime. (pp. 2–3)

This list of goals put forth by Bazemore and Umbreit is far from exhaustive. The outcomes and processes compiled in this list do not speak to the restorative nature of the intended mediation outcomes such as meeting needs, empowering victims and offenders, recognition, and reintegration. These are the outcomes that make justice restorative.

The goal of this research is to extend the knowledge about victim-offender mediation as a restorative process. The findings are derived from the amalgamation of data collected through observations of the victim-offender mediation process and analysis of agreements produced within.

Dennis Sullivan and Larry Tifft (2001) liken restorative justice to needs-based justice. In needs-based justice, “we seek to create and apply restorative values and meet needs in a harm situation” (p. 101). Meeting the needs of the parties involved is how the situation is made right. This includes meeting the needs of not only the victims but also the offenders and the community. Thus, restorative justice represents a shift from a rights-based or deserts-based justice system to a needs-based justice system. Sullivan and Tifft state:

When we examine what is required to embrace a restorative approach to justice, we see a political economy in which the needs of all are met, but met as they are defined by each person. Such an approach towards justice puts a great premium on the participation of everyone, and on the expression of the voice of each. In other words, the well-being of everyone involved in a given social situation is taken into account: that is, everyone involved is listened to, interacted with, or responded to on the basis of her or his present needs. (pp. 112–113)

Justice begins with identifying the needs of the persons involved. This concept can be difficult to grasp because it lies outside of the dominant retributive paradigm. In a needs-based system the thoughts and feelings of all people are vital. The psychological and emotional needs of victims and offenders are going to vary from person to person, which is part of the reason why participation in the restorative process is so significant. The only way to uncover victim and offender needs is to provide them with opportunities to communicate exactly what those needs are.

Another goal of restorative justice is to empower the participants. This is accomplished by involving the participants in the process of achieving justice. Harris (2003) states:

Empowerment is achieved in part through active participation in the creation of the outcome produced by the restorative justice response to harm. Everyone needs to feel that they are in control of their own lives. Only then can they give to others, participate in intimate relationships, make contributions to community life, engage in cooperative activities, and exercise leadership. These capacities are to be valued and nurtured in everyone. Learning to accept responsibility for ourselves and our actions only when we have opportunities for choice and occasions to find and use our power. (p. 134)

The literature contained herein demonstrates why participation is so vital to restorative practices and needs to be examined as a topic of research in the evaluation of restorative justice. The four fundamental ideals of restorative practices—personalism, reparation, reintegration, and participation—identified by Roche (2003) implicitly suggest that the individuals who are all too often only subjects of the justice process need to participate in the restorative vision of justice. Furthermore, the goals of empowerment, recognition, and meeting needs cannot be met without the active participation of the individuals involved in the social practice of restorative justice.
Recently, several critiques have emerged with specific focus on the power dynamics evident in restorative practices. One such work (Pavlich, 2005) examines the designations of victim and offender, suggesting that participants are encouraged by the mediators and in some ways by the mediation process to play particular roles in restorative justice. Pavlich is concerned with the ways in which one’s response to the events that bring them to mediation is governed by the process.

Victims do not exist *sui generis*, in and of themselves; that is, they do not exist in any absolute abstract sense, but are produced through rituals, rules and techniques of power embedded in such social practices as restorative justice techniques. One is not, in essence, a victim; more contentiously, one becomes a victim by participating in contexts designed to create particular forms of the victim identity. (p. 52)

According to Pavlich, these governmentalities create roles for both victims and offenders that dictate not only what is expected of them as participants but also what is not acceptable. Consequently, Pavlich suggests that participants are limited in terms of the types of participation allowed in mediation.

Arrigo, Milovanovic, and Schehr (2005) claim that master signifiers in the restorative process, such as reconciliation, healing, restitution, community, and responsibility, force victims to explain their experiences within this master discourse. “For victims and offenders, VOM discursive practices only offer the opportunity to locate experiences of pain, hurt, confusion, regret, retribution, and the like, within a master discourse” (p. 105). Caging the participants within this master discourse means the participants are robbed of the opportunity to fully articulate their experiences with the harm produced. They go on to state, “Lost in this more scripted process is the opportunity for more genuine self-disclosure, more authentic healing; occasions that would otherwise facilitate the subject to speak his or her own ‘true’ words” (p. 106).

We are suggesting that to conceive and speak of others in terms of identity-fixing and identity-separating categories such as offender and victim is itself a source of harm because these designations are personally deconstructive and non-integrative. By using them, we force upon the person harmed and the person responsible of the harm a fixed, false identity. (Sullivan & Tifft, 2001, p. 80)

Defining the situation in this way creates power relationships that must be acknowledged and that shape the behavior of the parties involved. Perhaps restorative justice is more coercive than conventional justice. “A far worse imbalance will emerge with the offender finding himself or herself not only lined up in defense against the state but also against the victims and perhaps some new entity or presence put there to represent the ‘community’” (Harris, 2004, p. 34).

Finally, Howard Zehr (1990) states, “In the aftermath of crime, victims’ needs form the starting point for restorative justice. But one must not neglect offender and community needs” (p. 200). The process of achieving justice begins with the needs of the parties involved, including victims, offenders, and the community. However, Sullivan and Tifft (2001) have noted that victim and offender needs exist on two separate levels. We pay close attention to the victim’s psychological and emotional needs, and yet we often do not recognize the
offender's psychological and emotional needs. Instead we focus on needs such as employment, housing, and education. There is little doubt that these needs are significant; however, as Sullivan and Tifft (2001) note, by focusing on this level of needs alone we do not show the same level of concern for them as those who have been harmed. This is true even when the former might also be suffering from isolation and disorientation, and require the same psychological care and emotional support that those they harmed require. (p. 83)

By addressing offender needs in this fashion, the retributive justice system often neglects the offender's other needs and as a result does little to address the issues that may cause one to engage in the harm-producing behavior in the first place. Often we find offenders are victims themselves in many ways. They are victims of violence, aggression, and neglect and may lack the emotional support and care networks that support their own psychological and emotional needs.

Harris (2004) acknowledges this as one significant challenge to restorative practices. She states:

Equality refers to the basic, yet radical, idea that all persons have equal value as persons. Once we develop a true comprehension of the basic sameness that flows from equality, we find it impossible to justify doing to others what we do not want done to ourselves. A commitment to equality thus carries with it a commitment to mutual care for the growth and welfare of all. (p. 132)

To deny that offenders also have needs would be to deny offenders the opportunity to heal and to have their harms repaired. As such it would cease to be a true needs-based justice. This research examines impediments to victim and offender participation in the social practice of restorative justice. One of the key elements in the restorative justice process is meaningful participation. The ability of restorative practices to achieve the desired outcomes depends in part on the ability of the parties involved to act as participants in the restorative process. Roadblocks to participation represent roadblocks to the practice of restorative justice and consequently to restorative outcomes. Yet this aspect of restorative justice remains a largely unexamined research topic. This research extends the body of knowledge about victim and offender participation in restorative justice. This research fills another void as it joins only a handful of studies reporting results from research based on observations of restorative processes (see Karp, 2001).

Specific attention is paid to the extent that the mediators and/or the mediation process itself encourage the participants to play a particular role in the processing of their case through a victim-offender mediation program. Through an examination of the agreements produced within the mediations observed, this research also examines the power that the participants have to determine the outcomes of the mediation process.

Methods

The unit of analysis for this research includes mediations processed at a Balanced and Restorative Justice (BARJ) Center. The BARJ center opened in 2000 and today they operate a victim-offender mediation program for the delivery of restorative justice to local communities. With an average caseload of more than 400 cases per year, 409 in 2003 and 405 in 2004, this center is an exceptional site for the evaluation of victim-offender mediation as a form of restorative justice.

This BARJ center serves four counties, although a vast majority of the cases come from the county where the BARJ program is located. This county has a population of approximately 175,000. The U.S. Bureau of the Census data from the year 2000 indicate that the population was 81% White, 14% African American, 2% multiracial, and the remaining population was composed of less than 1% American Indian or Alaska native, Asian Indian, Chinese, Filipino, and Korean, or some other race. The population in the year 2000 was 49% male and 50% female. The median age in years was 36, with those 18 and older constituting 72% of the population.
The BARJ center handles mediations for both juvenile and adult cases, although a majority of the cases, more than 90%, involve juvenile offenders. All mediations occur at the BARJ center located in the heart of the downtown area adjacent to the county courthouse.

The program receives referrals from two sources. The first source of referrals is the court system. In court-referred cases, the mediation is used as a form of diversion. The second source of referrals is city police officers. These types of referrals are on the rise, accounting for approximately 25% of all cases processed by the BARJ center. The process is voluntary for both victim and offender. On referral to mediation, the BARJ center director establishes contact with the determined victim by telephone to inquire about participation in mediation. If the determined victim agrees to participate, the BARJ center director establishes contact with the offender to inquire about participation. If both parties agree to participate, the BARJ center director determines the appropriate program for the participants.

Referrals to the BARJ center are assigned to either a victim-offender mediation or a family group conference. Assignment into one of these two programs is made at the discretion of the BARJ center director, who screens the cases using the police reports, comments from the juvenile court or the arresting officer, and discussion with the victim and offender over the phone. According to the director, typical considerations for determining assignment include the seriousness of the harm, the restitution amount, the number of victims and offenders, and the perceived level of preparation required for the participants. The most significant variables of consideration are the seriousness of the harm and the need for participant preparation.

In some cases the BARJ center director determines that one or both participants need to be prepared before their case can be processed. These cases are referred to the family group conference program and involve more contact time between the BARJ center staff and the individual participants. Victims can be emotionally distraught, hostile, or simply have many questions about the restorative process. The extra preparation time allows the BARJ staff members to answer questions and to explain the mediation process and rules in more detail on a day prior to the scheduled conference. Offenders may also be curious about the process. Other offenders receive extra preparation time when the staff wants to ensure the individual is willing to take responsibility and that he or she will not be disrespectful to any of the individuals involved or to the restorative process. The need for preparation with either victim or offender is evaluated over the phone by the BARJ center director.

In family group conferences, a member of BARJ center staff, not the assigned mediator, meets with the offender and/or victim individually on a day prior to their scheduled mediation. This meeting allows for one of the BARJ center case managers to spend time preparing the participation(s) for the mediation. On the day of the mediation, the victim and offender start the mediation together, as they have already been briefed about the mediation process and are prepared to participate.

Cases in which the BARJ center director determines that the participants require less preparation are scheduled for the victim-offender mediation program. In the case of victim-offender mediations, the victim and offender will attend their premediation session with the assigned mediator, on the same day as their mediation. Offenders are asked to arrive ½ hr earlier than the victims for their premediation meeting. The premediation meetings are held individually and then the participants are brought together to start the mediation.

The BARJ center uses a standard introduction for the premediation sessions for both the victim-offender mediations and the family group conference. An outline of the process can be found in Appendix A. In addition to covering the information contained in the introductory outline, all participants are afforded the opportunity to ask questions about the process, restorative justice, their case, or any concerns they have about their scheduled mediation.

At the mediation itself, the participants are seated with their supporters on either side of a table with the mediator seated between the parties, at the head of the table. Procedurally, there is no difference between the victim-offender mediations and the family group conferences once the mediation begins. In late 2006,
the BARJ center combined these programs and now offers a single program that they refer to as victim-offender mediation.

The BARJ center receives referrals for a wide array of criminal behavior; however, more than 60% of the cases processed are property crimes. The second leading cause of referral is for assaults, including young children and siblings. The BARJ center does not handle retail fraud cases, domestic violence cases between partners, or child abuse cases. They do process cases in which a child is abusive toward his or her parent(s) or sibling(s). Felony cases are extremely rare but have been referred to the center for mediation.

The BARJ center currently has 73 active mediators. All 73 have completed a 40-hr mediator training module following the BADGER model of mediation, and approximately half of them have additional victim-offender mediation training (see Appendix B). BADGER is an acronym that suggests an outline for the mediation process.

The 73 mediators who volunteer at the BARJ center come from six counties in this Midwestern state, although a large majority of them reside in the BARJ center’s home county. There are 35 male and 38 female mediators, with a median age of approximately 55. The ages range from 32 to 80. However, the youngest and oldest are both extremes. The vast majority of the mediators are White; less than 10% of the mediators are of a racial or ethnic minority, mostly African Americans.

All mediations were observed by one researcher, who compiled detailed notes. All premeditation sessions were also observed for each case processed as victim-offender mediation but not for those processed as a family group conference, as they occurred on different days than the conference itself. The observations were completed between May and July 2005.

Participant consent was obtained by the researchers on the date of the scheduled mediation. For victim-offender mediations, consent was gained prior to the premeditation meeting between the mediator and the participants. In the case of family group conferences, consent was obtained prior to the beginning of the mediation itself. In the case of juvenile participants, both the juvenile and their adult guardian were invited to participate and asked to provide consent. All participants were given the opportunity to raise questions before signing the consent document. The consent document was created and approved as part of a proposal submitted to the Human Subjects Institutional Review Board at Western Michigan University. To alleviate some apprehension, the participants were told the researcher was there to observe the process and its outcomes, not the individual participants involved. Each participant invited to participate in the study gave consent for the researcher to observe their mediation.

The researcher was not seated at the same table as the participants during the mediation and did not participate in any of the mediations in any way. A total of 14 mediations were observed in which 17 agreements were produced and collected. In addition to the observations, post mediation survey data from 119 victims and 130 offenders were collected. The findings reported herein are derived from the observations and agreements produced by the respective mediations.

I must express some caution about the conclusions of this research because of the study’s limitations. In particular, the small number of cases observed at this BARJ center makes it rather difficult to draw generalizable conclusions about this program, let alone about restorative practices as a whole. However, to the extent that all of these mediators were provided the same training and that each mediator follows the same procedural guidelines, one can assume these mediations would be representative of the mediation process at this BARJ center.

Despite these limitations, the results have much to offer. As Presser (2006) suggests about her observations of mediation, “It provides much-needed qualitative data on what goes on during victim-offender mediation, and thus offers a snapshot of restorative justice practice in situ” (p. 317). We must continue to evaluate restorative practices beyond the level of participant satisfaction and the ability to create agreements. Just because a program claims to be restorative, we cannot simply regard it as so and assume the outcomes will be restorative in nature. Restorative practices are a work in progress. Evaluations such as these
can help shape the future of restorative justice. They can inform practitioners about what works and about the obstacles that stand in the way of achieving a justice that satisfies and restores people, repairs relationships, reintegrates participants, and meets needs. This research offers a firsthand examination of the interactions that take place in victim-offender mediations.

Findings

The findings of this research have been divided into three separate sections. The first section, titled The Mediations, includes background information about the participants, the process, and the mediations themselves. The second section, titled Participation, delineates the levels of participation observed in the mediations for victims and offenders and offers some explanation for the levels observed. This is followed by the section titled Effects of Power Imbalance on Level of Participation, which discusses the ability of the participants involved to influence the stipulations of the agreements produced by their respective mediations. The final section, titled Barriers to Participation, addresses one of the obstacles to participation for both victims and offenders and explains how traditional notions of justice can account for a lack of participation.

The Mediations

Twenty offenders and 16 victims participated in the 14 mediations observed. Eighteen of the 20 offenders were juveniles and 14 of the 16 victims were adults. Three of the cases observed had multiple offenders and two of the cases had multiple victims. Table 1 provides the demographic information of the mediation participants in the mediations observed.

Sixteen of the 20 offenders were accompanied by at least one supporter for their mediation. Twelve of the offenders had one supporter present. In 10 of those 12 cases the supporter present was the offender’s mother, whereas the other two included a brother and a father. All of these offenders were juveniles. Four of the offenders had two members of their social network present. In each of these cases, the members present were the offender’s mother and grandmother. All of these offenders were juveniles. The remaining four offenders had no members of their respective social networks present. This includes two mediations involving family members as both victim and offender and two other cases in which the offenders had no supporters present.

Victims were far less likely to have supporters present. Of the 17 victims involved in the mediations, only two had supporters present. In both of these cases the victim was a juvenile and the supporter present was the victim’s mother. In three other cases there were two victims present, thus creating an opportunity for the victims to support one another, but no other supporters were present.

The crimes for which the individuals came together for mediation ranged from property crimes to violent personal crimes, including one status offense also. There were seven cases of breaking and entering, five cases of arson, three cases of assault, two cases of larceny and malicious destruction of property, and one case each of mail fraud, trespass, receiving stolen

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NOTE: For further information, including a case-by-case breakdown of demographic information regarding both victim and offender, see Appendix C.
property, and truancy. The five cases of arson and five of the seven cases of breaking and entering were the result of one case involving multiple offenders. The two cases of malicious destruction were also part of one case involving multiple offenders. One other offender was charged with two offenses, trespass and assault.

Five of the 14 mediations observed were considered family group conferences by the BARJ center and the remaining nine were considered victim-offender mediations. There were no differences in terms of the number of participants or the mediation process used in the family group conferences and the victim-offender mediation programs. For this reason, each of the encounters observed are referred to as mediations.

**Participation**

Following the lead of Karp, Sweet, Krishenbaum, and Bazemore (2004), I have categorized victim and offender participation into three groups: high, medium, and low. My classifications into one of these three categories were based on my observations of the mediations, with specific attention to the participants’ contributions. The specific characteristics of participation identified and used to determine one’s level of participation are outlined in Appendix C.

**Victim Participation.** There were a total of 16 victims in the 14 mediations observed. Eight of the victims were observed as having a high level of participation. Three of the victims were placed in the medium participation category and the remaining five victims were categorized as having a low level of participation. A further examination of these results revealed several interesting patterns of behavior.

Of the eight victims observed to have participated at a high level, seven of them had a preexisting relationship with their identified offender. A preexisting relationship was identified when the victim and offender knew one another and had some form of social relation prior to the mediation. In two of the mediations, the victim and offender were family members. Other examples include juveniles who were patrons of the business they harmed and were on a first-name basis with the owners or managers; a juvenile in mediation with an adult administrator from the school the boy attended; and a juvenile who was part of the same circle of friends with the girl who harmed her. A preexisting relationship between the victim and offender appears to be one source of strong victim participation.

A preexisting relationship was also an indicator of victim lecturing in the mediations observed. Victim lecturing was identified when the victims talked down to the offenders and addressed the offender as a superior or authority figure. This included reprimands and disapproval of what victims had identified as bad behaviors and warnings about consequences for further bad behavior. The victims were found to have lectured the offender in four different mediations. All four of these mediations involved adult victims and juvenile offenders, and three of the four involved a preexisting relationship. The school administrator lectured his former student as though he was in his own office, talking down to the juvenile and issuing numerous warnings. Another victim of a breaking and entering lectured for several minutes at his juvenile offenders about the value of hard work, and one of the parents involved with her child spent a significant portion of the mediation lecturing her child about responsibility. The victim’s sex was not a predictor of lecturing, as two of those who lectured were male and two were female.

Victim lecturing is a powerful indicator of the power differentials within the relationship between the participants in the mediation. Victim lecturing sends a message to the offender that he or she is occupying a subservient status in the mediation process.

Of the four victims who demonstrated a low level of participation, one was a juvenile. Two of the other participants identified as having a low level of participation were involved in cases with multiple victims. In fact, there were only two cases that involved multiple victims and each of these cases had one victim who showed a low level of participation. In each of those cases, the other victim involved showed a higher level of participation, one high level and the other a medium level, respectively.

Juveniles were identified as victims in only two of the mediations. In one of those mediations, the juvenile
demonstrated a high level of participation. This mediation involved juvenile girls as both victim and offender. The other case involved two juvenile males and both parties demonstrated a low level of participating. In this mediation, the juvenile victim's mother participated in the mediation extensively, even contributing to the stipulations of the agreement produced within the mediation.

There was only one mediation involving adults in the roles of victim and offender. This mediation involved two adult victims and one adult offender. The offender was a male and the identified victims were male and female. In this mediation, neither victim showed a high level of participation. The male victim demonstrated a medium level of participation whereas the female was observed to have participated at a low level.

Despite the relatively modest participation levels demonstrated by victims in the mediations observed, one stage of the mediation was dominated exclusively by victims. In the mediation's agreement-writing stage, victims were provided more opportunities to participate and consequently to identify needs and to have those needs addressed within the agreements produced. One of the tactics used to accomplish this end was selective facilitation. Selective facilitation is a tactic used by mediators to steer the mediation in one direction or another. It was used in virtually all of the mediations observed, to maneuver toward some issues and away from others. The use of selective facilitation can be accomplished in numerous ways. For example, the mediation can be moved into the agreement-writing stage when the mediator is satisfied with the interaction that has occurred by asking a series of questions. These questions are also indicative of what the mediators seek from the mediation participants. Selective facilitation was used in the mediations observed to elicit specific contributions from the victims, particularly in the late stages of the mediation where the participants are asked to identify their respective needs and to contribute to the creation of an agreement that will help them meet those needs. Typical questions posed by the mediators to the victims included

1. What can we do to make this right?
2. What would you like to see done in this situation?
3. What needs to be done to repair this situation?
4. What needs have been created by this harm?
   and
5. What would you like to see done here?

Although these questions are not standard, they are examples of the questions posed to the victims during the agreement-writing stage. This is not a criticism of the mediations observed. It demonstrates a commitment to identifying and meeting the victims' needs. Without this line of questioning it would be difficult to identify victim needs and to create an agreement that addresses them. These questions direct victim responses to issues that are important in the mediation's agreement-writing stage and demonstrate to the victims their ownership in the agreement created in response to harm they experienced.

Offender Participation

Seven offenders from four mediations were placed in the high participation category. In each of these cases, the offenders spoke at length about their involvement in the case. Each of these offenders answered questions and contributed significantly to the substance of the mediation, providing detail and even initiating conversations. In each of these mediations, there was very little parental involvement in the mediation process.

In five other mediations, the six offenders were placed in the medium participation category. These offenders contributed, but largely responded to questions, and rarely initiated conversations. When these offenders did respond to questions, they often provided very little detail. Significant parental involvement was noted in one of these mediations. The parent answered questions about the minor involved and offered information about the child, the offense, and the believed causes of his or her actions.

Finally, seven offenders from five mediations were placed in the low participation category. These offenders
were virtually nonparticipatory. These offenders often responded to questions with one-or-two-word answers, if at all. They spent most of the time staring at the table or floor, looking out the window, and/or doodling on the scraps of paper provided by the BARJ staff.

Despite the high level of participation observed in cases of seven offenders, their participation was not consistently demonstrated throughout the various mediation stages. The high level of participation was common in the early stage where offenders spoke about their involvement in the harm and provided answers to the questions posed by their victims, but disappeared in the later mediation stages. Specifically, offender participation dissipated with the start of the agreement-writing stage.

Victim lecturing also affected the offender's level of participation. In three of the four cases in which the victim lectured the offender, the offender's participation was low. In all three cases, juvenile offenders had a visible response to the victim's lecture. Each of these offenders responded by lowering their head and falling completely silent, only responding to questions posed. In each of these cases there was a preexisting relationship with clear power differentials among the participants. In each case, the dominant party in the preexisting relationship delivered the lecture.

In one other case, the offender was observed to have a medium level of participation. In this case, the victim did not lecture the offender throughout the case but only during the agreement-writing stage. Despite the victim lecture, there was no preexisting relationship. However, this mediation, like the others involving victim lectures, involved an adult victim and a juvenile offender.

None of the offenders identified or expressed any needs in their own words or from their own perspective. Others, including parents and victims, spoke about what they believed the offenders needed, most often citing a lesson to be learned from the situation. In these cases, after mediation the agreement-writing stage was dominated almost without exception by the victims. As previously suggested, the questions posed to the participants are crucial. They indicate what the participants’ responses and contributions should be in the various mediation stages. The line of questioning used to address the offender in the agreement-writing stage was very different from what was used with the victims. Questions posed to the offenders included

1. Can you do this?
2. Does this sound fair to you?
3. Do you think you can do this?

These questions hardly amount to participation and certainly do not allow offenders to identify needs of their own; they simply ask the offenders to acquiesce to the victims’ needs. Consequently, offender needs go unacknowledged and unaddressed, and offender participation in this mediation stage is rather limited.

In just two instances, the offender offered his or her own plan for how to repay his or her victim, to make the situation right. In one of the mediations, a boy wanted to work for a local marina to pay the restitution his victim was seeking. The offender had been apprehended by the police at the marina after stealing items from another business. In this instance, no damage was done at the marina and nobody was present as a marina representative to field such a request, so the offender’s idea was dismissed. In another instance, two offenders requested to work off their restitution for the victim at his business. The business owner denied their request noting that such an arrangement would violate state labor laws. He further noted that it would be too dangerous. Eventually the participants left the BARJ center with the case unresolved and no agreement completed. The parties could not agree on the amount of restitution to be paid.

The point is not that the decisions to refuse these suggestions were wrong, for they appear to be quite logical. The point is that the ideas were rejected without exploring the more broad implications of the offer to make the victims whole again in hopes of repairing the situation. Each of the juveniles was trying to express what each believed to be the right thing. They hoped to work to repay the individual they harmed, and the ideas they suggested were not given full consideration.

The mediators’ actions were directly responsible for the levels of participation exhibited by the offenders.
The mediators’ questions were used by the offenders as an indication of the level of involvement they should have in the mediation process. The offenders responded to the questions with varying levels of detail, but because they were never asked to provide input to the agreements, they were unable to do so.

**Effects of Power Imbalance on Level of Participation**

Perhaps nowhere was the victim's power in the mediation process more evident than in the agreement-writing stage. A pattern that emerged within the agreements produced was that the victims often created stipulations in the agreement that far exceeded the scope of the harm they experienced. They often acted as the victim and judge. I am not suggesting they imposed guilt, but many took advantage of the opportunity to impose a sentence. Many of the victims created stipulations within the agreements that appear to go beyond making the situation right or meeting their needs.

One case involved a juvenile who had stolen some money from her mother’s purse. Contained in the agreement was a laundry list of items, including the following:

1. (Offender’s name) agrees that her friends will not call after 9:00 p.m.
2. (Offender’s name) will respect the curfew hour established by her mother.
3. (Offender’s name) agrees she will perform chores in a timely manner when requested to do so by her mother.
4. (Offender’s name) agrees there will be no visitors in the home unless (Mother’s name) is present.

These stipulations were in addition to finding a job, paying restitution, and a host of other items. The scope of this agreement goes beyond the harm the parties came together to discuss and it demonstrates the power victims hold in mediation, particularly in the agreement-writing stage. The purpose of the agreement is to repair the harm inflicted by the offender's action, to make the victim whole again. In this case, the mother used the agreement as a means to address a number of issues with her daughter's behavior, issues that have little to do with the harm created by her daughter's actions.

In another agreement produced by the mediation, the stipulations included the following:

1. (Offender’s name) will fill out five job applications until he gets a job.
2. At the end of the week, (Offender’s name) will send (Victim’s name) copies of these applications (by way of parole officer).
3. Once a full-time job is obtained, (Victim’s name) would like to see (Offender’s name) maintain that job for at least a six-month period without any absence or tardiness.

If the offender was able to accomplish these tasks, he would not have to pay restitution to the victim. If he failed to do so, the offender was expected to pay the restitution in full.

Stipulations in various other agreements included to maintain a certain grade point average, enroll in the school band, perform various chores whenever asked by one's parents, read 20 books, flush the toilet, provide food and water to the dog daily, and keep one's room clean. Overall, I found the agreements went beyond the scope of the harm created in 7 of the 17 agreements produced.

The point here is not whether these stipulations are good or bad for the offenders. In fact, most of these stipulations appear to be suggested and written into the agreement with the offenders’ best interest in mind. These stipulations may be in line with the current juvenile justice philosophy of promoting prosaic activities to help rehabilitate the juvenile offender and to insulate them from further trouble, but they also demonstrate the victim's power in the mediation process. In many ways this cements the practice of mediation alongside other forms of state-sponsored justice—a justice system in which the individuals involved do not participate.

Many of these stipulations go well beyond the harm created by the offenders' actions. They do not stem from
any need identified by the victims but rather from the victims’ personal feelings about what they believe the offender needs. What these data demonstrate is that victims hold too much power in the agreement-writing stage. They can effectively impose their will on the offender by individually creating the agreement and including stipulations that extend beyond the scope of the harm created by the offenders’ actions.

There was only one case where the participants failed to reach an agreement. In this case it was the parents of the two juvenile offenders involved who disputed the victim’s request for financial compensation. During the agreement-writing stage, the two parents actually went so far as to tell their children to be quiet as they negotiated the amount of restitution with the victim. The two boys sat silently as their parents debated with the victim to reach a dollar amount acceptable to each party. The victim and the offenders’ parents could not agree on an amount of restitution and the individuals eventually left without an agreement in place. This was the only case where the victim’s requests were not agreed to by the individuals responsible for the harm. However, it was not the offenders themselves who rejected the victim’s request; it was their parents, acting on their behalf.

**Barriers to Participation**

In his book titled *Changing Lenses* (1990), Howard Zehr argues that for one to envision the use of restorative justice, one must first be able to examine crime through a restorative lens. This requires that one “change lenses” that allows one to see crime and the potential responses to crime in a new way. The problem, however, is that many people are not even aware that such a lens exists, thus making it virtually impossible for those people to view crime and responses like restorative justice in this fashion.

I noted throughout my observations that both juvenile and adult participants were relatively unclear about the purpose and goals of mediation. The individuals were skeptical of participation and juvenile offenders often expressed an interest in the notes that mediators made throughout the mediation. They appeared to perceive the mediators as an authority figure, similar to a judge, able to make decisions and hand out judgments. One participant, when asked what the worst possible outcome of the mediation would be, stated, “To go to juvie [juvenile detention].” Her answer is very telling about her knowledge of the restorative vision of justice. Her bigger fear was to be sent to juvenile detention, a common result of a juvenile’s interaction with the retributive criminal justice system. This suggests she assumed that the mediators of her case had the authority to make such a determination, which they did not. It is also an indication of the girl’s beliefs about restorative justice and its home within the criminal justice field. The girl sat unprepared to be part of creating the justice herself—waiting for justice to be done to her and for someone to send her to juvenile detention.

Situating restorative justice within the criminal justice field gives victims and offenders an expectation about the process and outcomes. The restorative vision of justice shares very little with traditional forms of criminal justice, yet the participants’ only knowledge of restorative justice is that of criminal justice. Because they have knowledge about criminal justice, they often believe this knowledge to be accurate about restorative justice as well. In some ways they are right. After all, the participants are appearing for mediation because of state intervention in their lives, for a crime as defined by the state. It does not matter how restorative justice practitioners choose to define their actions. Offenders are still referred to mediation because they have violated a rule or law, and therefore the state has intervened in their lives. Would these people be in mediation if not for the order of the state or a referral from the police? How can restorative justice stand in opposition to a system that it is a part of and in some ways strengthens?

Of the 20 offenders involved in the 14 mediations, only 7 were considered to have provided a high level of participation and these offenders demonstrated a high level of participation in only a portion of the mediation. Six others were placed in the medium category and the remaining seven offenders were considered to have participated at a low level. What causes such minimal participation in a process that is designed for and encourages offender participation? I argue one cause is
they are not aware of the principles of restorative justice and that they are supposed to be actively involved in creating the mediation’s outcome.

Victims are also unprepared and unaware of what the restorative process entails. They often consider the mediator to be the administrator of justice. The victims I observed commonly questioned the mediators or looked to them for guidance about decisions regarding the agreement. In two of the three cases involving community service, the victims asked the mediators to help them provide a number of hours to be completed.

Both victims and offenders lack a restorative vision of justice. We cannot assume that one premediation meeting is going to be enough to overcome years of experience with retributive forms of justice. For many, the retributive form has been internalized and it may take more than one day or one meeting to provide victims and offenders with a restorative vision that is so essential to their participation in restorative justice. When participants lack an understanding of the principles of restorative justice, they become subjects of the process rather than participants. This adds yet another layer to the power dynamics within victim-offender mediation. Both victims and offenders appear to perceive the mediator as an authority figure: offenders waiting for the mediator to hand out justice and victims looking to the mediator for guidance in producing the mediation’s outcome. However, restorative justice is about ownership of the problem and the solution resting with the individuals involved. Yet without this knowledge, both victims and offenders perceive the mediator as an authority figure and the power obstacle to individual participation. The participants appear overpowered by the process. This can be attributed to their experiences and knowledge about traditional criminal justice processes within the United States’ retributive criminal justice system and their belief that restorative justice is a part of it.

**Conclusion**

Meaningful participation is central to restorative processes like victim-offender mediation. Low levels of participation make it difficult for victim-offender mediation to achieve the fundamental goals of empowering, recognizing, repairing the harm, meeting needs, and reintegrating the participants. I attribute the low level of participation exhibited by the participants to two underlying causes. The first cause is a problem in the implementation of victim-offender mediation as a restorative process. The second and closely related cause is the power dynamics evident in the mediations observed that are the result of the aforementioned flaw in the mediation process implementation. One other form of domination that appears to affect both victims and offenders equally is their expectations about restorative justice.

My observations exemplify part of the criticism lodged against restorative justice by Pavlich (2005). Pavlich suggests restorative justice communicates to offenders that they are responsible for their harms and limits their involvement to an account of their responsibility in the harm produced. They can participate all they want in answering questions for their victims, explaining their involvement in the harms, and even offering an explanation for their actions. In a sense we ask the individual to acknowledge their responsibility and then sit idly by as the victim tells what they believe will make the situation right. This puts the offender in a difficult situation. They are not asked to contribute to the agreement, and having accepted responsibility for the harm they are given few viable options but to agree.

The agreement-writing stage of the mediation is perhaps the most important stage for participation on both sides. It is here that the individuals involved in the mediation come to own the response to the harm produced and ensure their needs are considered in the response. Maintaining a high level of participation throughout the mediation process is essential for the mediation to achieve the intended outcomes. An offender’s agreement to the stipulations put forth in the agreement hardly amounts to full participation in the creation of the agreement.

Sustaining a high level of meaningful participation among the individuals involved requires a process that encourages and elicits participation throughout the process. This explains the higher level of participation among the victims in the agreement-writing stage.
as there is a premium placed on their participation. A high level of participation is elicited from the victims by the mediators through the questions posed, yet the same concern for the level of participation among offenders is not apparent.

Not only is victim participation elicited by the mediators but their authority also goes unchallenged. The victims have broad discretion to create restrictions on the behaviors of the offenders, who appear to be powerless in their ability to influence the agreement produced by their mediation. Moreover, the restrictions placed on the offenders go well beyond the harm experienced by the victims and appear to be a rather simple diagnosis of offender needs from the victim's point of view.

Offenders should not feel as though they are present only to accept responsibility and feel obliged to acquiesce to the victim's desires. The consequences of this are devastating for the practice of restorative justice. Without participation, offenders are less likely to feel empowered and to identify their needs, and consequently are less likely to have their needs addressed. This means restorative justice cannot be conceived of as needs-based justice. When it fails to identify and meet the offenders' needs, even when succeeding to do so for victims, the process is not needs based. In a needs-based response, the needs of one are not placed before another.

The power dynamics found in victim-offender mediation are further complicated by preexisting relationships in which there is a clear subordinate. The dynamics of the preexisting relationship carry over into the interaction between the participants in the mediation. When the participants enter the mediation with a preexisting relationship and the previous relationship is defined by a clear power imbalance, the power dynamics do not disappear. Instead, the parties enter the mediation in those same positions, and the individual with less power becomes less able to fully participate and influence the mediation's outcome.

Finally, both victims and offenders perceive restorative justice as a form of criminal justice. Because participants do not possess a restorative lens to look through, they are often misguided by their assumptions about the restorative process. Their views are confirmed or strengthened in some way by the mediation process itself. The designation of the individuals involved as victim and offender is familiar to the participants and helps establish their views of restorative justice as criminal justice.

Furthermore, restorative justice processes are only initiated in the wake of some behavior identified by the state as crime. Restorative justice then does not challenge the state's authority to define crime but strengthens it. “Restorative justice thus conceptually and practically subordinates itself to the very criminal justice system it claims to escape” (Pavlich, 2005, p. 35).

Much has already been communicated when they retain their retributive notions of criminal justice that have been internalized by years of living within a society that chooses to deal with crime in this fashion. They expect to be a spectator as someone, usually a judge, makes decisions about their fate.

Thus, what we have are participants who are largely unprepared in way of participation in a process that necessitates their participation for success. The situation is akin to placing someone into a foreign culture where common practices stand very much outside their own cultural norms (of which they know very little about) and asking them to participate. As in the situation described, full and knowledgeable participation is unlikely. It would take weeks, if not months, for the individual to learn about the culture, to disassociate from their own culture, and to be resocialized before meaningful participation could occur. Yet there is an expectation within the practice of restorative justice for people to be prepared to examine the situation through a restorative lens when they simply do not possess one. Perhaps this expectation is unreasonable.

Implications

The implications of this research for restorative justice practitioners are many. This research suggests that all participants need to be prepared to participate in restorative processes. Participants must first come to see crime and the response to it through a restorative lens. If one is not able to view the situation through a restorative lens, he or she will be unable to view the
restorative outcomes that are desired. Preparation involves helping individuals develop a restorative lens, making restorative outcomes a reasonable solution in the participant’s eyes.

A second policy implication deals with the administration of restorative practices. The restorative approach to justice entails a political economy in which the needs of all individuals are met, but met as they are defined by each person (Sullivan & Tifft, 2001). Insofar as the victim’s needs become the sole focus of restorative practices, without concern for the offender’s needs, a needs-based justice is not achieved. When this happens, the restorative process makes possible—and even encourages—victim domination. In the practice of mediation, this translates into victims being asked to contribute more and to victims’ desires becoming the sole focus of the agreements produced. This was evident in the mediations observed, particularly in the agreement-writing stage. Consequently, restorative outcomes like empowerment and meeting needs are less likely for offenders. A process or strategy that encourages offender participation, at least to the extent that it encourages victim participation throughout the mediation, is necessary.

One final implication for practitioners would be to acknowledge the power dynamics inherent in social practices such as restorative justice. Specifically, this research has discovered that preexisting power differentials among individuals tend to be reconvened in the restorative justice setting. When the power differentials manifest themselves in a reduced level of participation for the overpowered, it reduces the potential for restorative outcomes.

Finally, this research demonstrates a need for further inquiries about levels of participation in restorative practices and the need for preparation before participation. Ideally, this research will involve both observation and interviews with participants in restorative practices. Restorative practices are social events. They are very amenable to observation as a method of inquiry. Observations allow for an examination of these social events in their natural environment, and interviews provide an opportunity for those who have participated to use their own voice to articulate their experience with the restorative process.

Appendix A. The Restorative Justice Center

Victim-Offender Mediation and Family Group Conferencing: Introduction

Welcome. . . Thank you for participating. . .

(Check name and address)

____________________________ and I are unpaid volunteers trained through the SCAO.

We are nonjudgmental.

We do not tell you what to do.

We assist you in coming to an agreement.

Explain CONFIDENTIALITY (Sign forms)

Our purpose here today is sixfold:

1. Examine what happened. (Victim first)
2. Help the offender understand the harm done to:
   a. the victim
   b. the victim’s family
   c. the community
   d. the offender’s family
   e. the offender
3. Help the victim understand the offender’s motives.
4. To the extent possible, identify what needs to be done to repair the harm.
5. To the extent possible, arrange compensation for the victim and the community.
6. To the extent possible, reconnect the offender to the families and the community.

RULES:

1. No interruptions
2. Civility
3. Destruction of notes to ensure confidentiality
Questions?
Do you accept these rules?

Appendix B

B—Begin the mediation discussion
   Case intake
   Room preparation
   Who participates
   Opening statement

A—Accumulate the information
   Assumption
   Bias awareness
   Listening/questioning/note-taking skills

D—Develop the agenda
   Identify the issues

G—Generate movement
   Process the issues
   Persuasive techniques

E—Escape to caucus (if necessary)
   Purpose
   Order
   Closing

R—Resolve the conflict
   Writing the agreement
   No agreement
   Closing the mediation

Appendix C. Summary of Mediation Participants

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### Section 4 Victims’ Rights and Remedies

(Continued)

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There were adult victims and juvenile offenders in 11 of the 14 mediated cases. Furthermore, the victim and offenders had a previous relationship in that the victim held a superior position over the offender in four of the cases. Males were the offenders in all but two cases, although there was much greater variation among the victims. The victim was a female in nine of the mediated cases, and males were the victims in seven.

### Appendix D

#### High Participation

Those individuals identified as having a high level of participation demonstrated conscious participation in the mediation by making and maintaining eye contact with the other participants. They demonstrated focus to the events and questions they were being asked by contributing not only often, but at length in the mediation process. Their contributions included both detail and substance in the mediation process. They responded to questions with direct answers that provided relevant information about the subjects of the questions. Above and beyond their level of responsiveness to questions posed, these individuals took an active role in determining the subject and direction of the mediation by initiating conversations.

#### Medium Participation

Those participants identified as providing medium participation were less attentive in the mediation and in the substance provided. They made eye contact sporadically throughout the mediation, but never consistently. These participants responded with limited detail and were less likely to initiate dialogue if at all. They responded to questions, although they offered little detail and often failed to address the subject of the question posed. These individuals acted almost exclusively in a responsive fashion, speaking only when asked to do so.

#### Low Participation

Those offenders characterized as having low participation were almost nonparticipatory. Despite their presence in the room, they showed no interest and offered very little in terms of substance to the mediation. These offenders responded only to questions and failed at times to even do this. Their eyes remained fixed on the table for most of the mediation, they doodled on the pads of paper provided, looked out the window, and generally showed a lack of interest in the mediation. When these offenders contributed it was often with one-or-two-word answers, and they offered very little detail and substance to the mediation.

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\(^{a}\) Indicates lecturing present in the mediation and is placed by the individual who lectured.
DISCUSSION QUESTIONS

1. Based on Gerkin’s findings, do you think that victim-offender mediation is truly restorative in nature? Why or why not?

2. How can the impediments to successful programs be addressed to better improve victim-offender mediation?

3. After reading this article, do you think that victim-offender mediation may be more useful for certain victims and for certain crimes? Which ones?

4. Do you see any issues surrounding offender rights in the victim-offender mediation programs that were observed? What about issues with victim rights? Explain.