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# Federal Probation

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Interagency Issues ..... *John S. Dierna*

The Presentence Report, Probation Officer Accountability, and  
Recruitment Practices: Some Influences of Guideline Sentencing ..... *Harry Joe Jaffe*

Prison "Boot Camps" Do Not Measure Up ..... *Dale K. Sechrest*

The Greatest Correctional Myth: Winning the War on Crime Through  
Incarceration ..... *Joseph W. Rogers*

Probation and Parole Malpractice in a Noninstitutional Setting: A Contemporary  
Analysis ..... *John C. Watkins, Jr.*

The Utilization of Technology in Correctional Institutions ..... *Lawrence F. Travis III*  
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Prison Overcrowding: The Case of New Jersey ..... *Edward W. Sieh*

Crime Victims Seeking Fairness, Not Revenge: Toward Restorative  
Justice ..... *Mark S. Umbreit*

SEPTEMBER 1989

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## This Issue in Brief <sup>ACQUISITIONS</sup>

**Guideline Sentencing: Probation Officer Responsibilities and Interagency Issues.**—The recent decision by the U.S. Supreme Court to uphold the constitutionality of the sentencing guidelines system has provided the impetus for further legitimization of the Federal probation profession; yet problematic issues and difficult guideline decisions confront probation officers as they carry out the guideline presentence investigation. This article by U.S. probation officer John S. Dierna focuses on the important, challenging responsibilities placed upon the Federal probation officer conducting guideline presentence investigations and introduces a three-step process to assist probation officers assigned to these investigations.

**The Presentence Report, Probation Officer Accountability, and Recruitment Practices.**—Under guideline sentencing, the probation officer has become the “fixer of punishment,” according to Federal probation officer Harry J. Jaffe. This new role affects the drafting of the presentence report, heightens the degree of accountability, and argues for a change in the hiring protocol of new officers. As punisher, the probation officer must now function as an evaluator of knowledge rather than as a presenter of simple facts. This untraditional role requires a diversity of analytical skills and competencies, extending beyond the vistas of the social sciences.

**Prison “Boot Camps” Do Not Measure Up.**—This article by Dale K. Sechrest is about prison “boot camps,” or shock incarceration programs, which are proliferating in the United States and have generated great interest from the public and media. Typical programs provide a 90- to 120-day period of military-style recruit training designed to instill discipline and improve the self-respect of the individual participants, thus leading to improved future behavior.

System goals include reducing prison populations, reducing costs, and perhaps reducing recidivism rates for these offenders. Recidivism evidence to date, however, shows little improvement over national norms for these offenders. In fact, they may be doing worse.

**The Greatest Correctional Myth: Winning the War on Crime Through Incarceration.**—Reiteration of the futility of trying to win the Nation’s war on crime through overreliance on incarceration is essential, asserts author Joseph W. Rogers. Taken to extremes, the imprisonment solution has become

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# Crime Victims Seeking Fairness, Not Revenge: Toward Restorative Justice

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**V**ICTIMS of crime are frequently portrayed as angry citizens who are demanding harsher punishment of criminals. The need for longer sentences, more prisons, and even the death penalty, for some, are frequent themes presented in the media and speeches of ambitious politicians. It is assumed by many that crime victims, and the general public, would have little interest in alternative nonprison punishments and even less interest in programs to rehabilitate offenders.

The notion of the angry vindictive victim or general public is particularly interesting to examine in the context of recent developments in social theory which identify two different paradigms of justice (Van Ness, 1988; Zehr, 1985). The old paradigm of "retributive justice" focuses upon the state being the victim and places the individual victim in a passive position with little, if any, participation in the justice process. Adversarial relationships and processes are normative, as is the imposition of severe punishment in order to deter or prevent future crime. The interpersonal character of criminal behavior is denied. Zehr (1985) argues that conflict between the victim and offender is heightened within the old paradigm of retributive justice.

The new paradigm of "restorative justice" defines crime as a violation of one person by another, not a violation of the state. Dialogue and negotiation are normative, with a focus upon problem-solving for the future rather than establishing blame for past behavior. Rather than the imposition of severe punishment, restorative justice emphasizes restitution as a means of restoring both parties; reconciliation and restoration of the parties is the goal. Instead of ignoring victims and placing offenders in a passive role, the new paradigm of restorative justice places both victim and offender in active and interpersonal problem-solving roles (Zehr, 1985).

There is a growing body of research (Clark, 1985; Galaway, 1984; Hough and Mayhew, 1983; Hudson and Galaway, 1974; Heinz and Kerstetter, 1979; Henderson and Gitchoff, 1981; Kigin and Novack, 1980;

\* This article is based upon research the author conducted while serving as the vice president for research and programs of the Minnesota Citizens Council on Crime and Justice in Minneapolis. The research was supported in part by a grant from the Conflict Project of the Humphrey Center at the University of Minnesota. Mike Schumacher, M.S.W., served as the research assistant for this study.

Maloney, Gilbeau, Hofford, Remington and Steensen, 1982; Mcquire, 1982; Public Agenda Foundation, 1987; Public Opinion Research, 1986; Shapland, 1981; Thomson and Ragona, 1987) that is beginning to question some of the underlying assumptions of the "retributive justice" paradigm. This research would suggest that the general public, including crime victims, is far less vindictive than commonly portrayed and far more concerned about the need for treatment programs to rehabilitate offenders.

A recent study of burglary victims conducted by the Minnesota Citizens Council on Crime and Justice (Umbreit, 1988) lends additional strength to the growing awareness that lengthy incarceration is not the primary justice concern of many people. Without question, nearly all citizens at large and crime victims specifically want criminals to be held accountable through some form of punishment. For many, however, their need for justice and fairness is grounded more in a deep concern that law violators, particularly juveniles, receive humane treatment and counseling that can lead to their rehabilitation, rather than a belief in the need for lengthy incarceration requiring an enormous commitment of public funds that could be used for other important public needs.

A nationwide network of programs in nearly 100 jurisdictions is applying mediation as a technique for increasing victim participation in the justice process, strengthening offender accountability, and promoting a more restorative type of justice through active involvement of crime victims and primarily young offenders in problem-solving and restitution negotiation.

While "fairness" is a major goal of the justice system and the theory and practice of victim offender mediation, little is known about what fairness actually means to crime victims themselves.

This study consisted of 50 face-to-face interviews with victims of burglary in Hennepin County, Minnesota (Minneapolis area), who were referred to the Victim Offender Reconciliation Program (VORP) of the Minnesota Citizens Council on Crime and Justice, during 1986 and 1987. Sixty-two percent of the victims who were interviewed for the study participated in a mediation session with their offender. The remainder chose not to enter the mediation process,

even though they were referred to VORP. Both qualitative and quantitative data were collected from all subjects in the study.

VORP presented these victims of burglary with the opportunity to confront their offender in the presence of a trained mediator, in order for both parties to talk about the offense, express their concerns and to negotiate a mutually acceptable restitution agreement. Experience in the field of victim offender mediation suggests a rather high level of client satisfaction with the program, although little is known about the various meanings of "fairness" as experienced by participants.

The study was guided by the following two questions: (1) What is the meaning of "fairness" to crime victims who have been referred to a victim offender mediation program? (2) To what extent are crime victims who participated in a victim offender mediation program satisfied with the mediation process?

The study generated the following findings. It is important to understand these findings in the context of burglary committed by juveniles and referral of the victim and offender to the Victim Offender Reconciliation Program (VORP) in Hennepin County (Minneapolis area), Minnesota. These findings cannot be generalized to a larger population, although they do suggest important themes that may be present in other jurisdictions.

## SUMMARY OF FINDINGS

### *Restorative Justice*

The dominant meaning of "fairness" to burglary victims in the study focused upon more of a "restorative" than a "retributive" sense of justice. The data that emerged from this study of burglary victims (Umbreit, 1988) offer a certain amount of empirical grounding for the theory of restorative justice. The process of victim offender mediation, which provided the context for examining the meaning of "fairness" for victims of burglary committed by juveniles, required very active, interpersonal roles for both victim and offender. The finding that active participation of crime victims in the justice process was a major concern across all categories in the typology on fairness that was developed supports the important role of active versus passive involvement of victims, as argued by restorative justice theory.

Problem-solving, negotiation, and restitution were normative in the victim offender reconciliation program. Additionally, understanding and responding to criminal behavior in a larger interpersonal context is seen in the dominant victim concern for helping the offender through some type of rehabilitative services.

Three dimensions of fairness emerged from the interviews with victims of burglary by juveniles: Punishment of the offender; compensation of the victim, and rehabilitation of the offender. These dimensions

were found for both victims who participated in mediation (62%) and those who were referred to the program but chose not to enter the mediation process (38%).

### *Fairness as Rehabilitation*

The most frequent and intense concern about fairness expressed by victims of burglary by juveniles was related to rehabilitation services for their offender, such as counseling, family therapy, or educational assistance. Both victims who participated in mediation (100%) and those who did not (90%) expressed this concern.

Concern about the need to help young offenders was expressed by the following victim statements. "I think it's important that they receive treatment . . . everybody can make a mistake." "You've got to look real close, especially with juveniles, at their home situation and try to figure out what's making them do those things." "I should get my stuff back, but I don't think that's a prerequisite . . . the main thing is to take care of this person and his problem."

Ninety-six percent (48) of all victims in the study, whether they participated in the mediation process or not, indicated that rehabilitation was an important part of their understanding of fairness. The strong concern about treatment and rehabilitation of the offender was found to be consistently present, regardless of other variables, such as type of burglary, gender, race or annual income.

Over and over, victims stated their concerns about rehabilitation of the offender. "I'm not certain that time does them any good . . . I'd rather deal with those alternatives which hopefully bring about a change in their behavior so that they can become productive people." "Our number one concern is how can we help the kid so he doesn't get involved in this sort of thing again . . . very often the kid is frustrated at school, at home, or whatever, and I'm sure that's a big part in that kid's behavior." "They need counseling and therapy rather than just the punishment of putting them away for awhile." "It isn't the physical damage, it isn't an apology, it's how can we help the kid." Minority victims of burglary were particularly concerned about treatment of the offender as an important element of their need for fairness. "We've got to look at these people and see what we can do . . . we're responsible for what our kids do, how they turn out . . . we owe it to them to try to correct some of their problems."

### *Fairness as Compensation*

Compensation of the victim for losses, through restitution by the offender, was the second most frequent concern about fairness. Ninety-four percent (47) of all subjects in the study group indicated that receiving restitution was important and 86 percent

(42) stated that it was important to be involved in determining the specific amount of restitution. Whether or not the subject participated in a mediation process with the offender had virtually no impact on the importance of being compensated for losses. Nor did other variables, such as type of burglary, gender, or annual income.

The theme of compensation was often articulated in the context of "consequences." A single parent who had her home burglarized by five juveniles stated the importance of consequences. "I think restitution is something that needs to happen to replace or pay for the losses . . . they need to personally make the restitution so that they can directly connect the consequences of it coming out of their pocket." She went on to express, "I think that a stronger connection between their action and the consequences of their action is probably going to be the most helpful thing for them to make a different decision next time." The theme of consequences is again articulated by another victim. "I would want the offender to somehow do the restitution himself, working for money that he can pay back to the victims because that way he learns the consequences of his actions."

*Fairness as Punishment*

Punishment of their offender through some type of incarceration was the least frequent concern about fairness. While the word "punishment" was not always used, its basic meaning was expressed over and over. "If they catch them they should have to pay something in time or monetary reimbursement." "If there's no dues to pay for breaking the rules, what is the deterrent?" "There has to be some consequences for their actions." Oftentimes, the need for punishment was expressed in terms of "accountability." "Justice to me requires some punishment." "It doesn't have to be severe but it has to be something that causes them to know they did something wrong and they have to pay for that." "Fairness to me would be to punish the offender in a way to make him think twice about doing it again."

For some victims, "punishment" meant compensation for the victim or even rehabilitation of the offender. "I don't feel that what they were given for punishment was going to teach them anything . . . I felt that the restitution, making them pay some money, was probably going to teach them something." "Putting them in prison isn't it . . . they just serve some time and then they're out to do it again . . . they should have to go out and get a job and pay people back."

For other victims, "punishment" meant "doing time" in some type of correctional facility. This perspective is expressed well by the following two victims: "I would be content if he would have to go to juvenile detention . . . at least I know something's being done." "I don't think the punishment has been

stiff enough many times . . . it's been the slap on the wrist and the guy is back out on the street."

For the purposes of this study and the typology described below, victim concern for punishment was coded as "very important" if, by "punishment," the subject meant doing some amount of time in a correctional facility.

*Typology of Victim Perspectives of Fairness*

After reviewing the qualitative data, the first stage of a typology of victim perspectives on fairness was developed. This focused on coding victims by the most dominant of three main dimensions of fairness that emerged from the qualitative data (punishment, compensation, rehabilitation). While many victims represented combinations of these "pure" types, the typology offered below clearly identifies the major dimensions of fairness that emerged from the data. As is so often the case, the use of metaphors captures the essence of a more complex phenomenon in a very brief and informative manner. As the chart below indicates, "the healer," "the fixer," and "the avenger" all represent the most dominant themes expressed by the 50 victims of burglary who were interviewed after having been referred to the VORP project in Hennepin County.

TABLE 1. TYPOLOGY OF VICTIM PERSPECTIVES OF FAIRNESS: STAGE ONE (N=50)

	Type A "The Healer" N=24	Type B "The Fixer" N=14	Type C "The Avenger" N=12
Focus:	Offender	Victim	Society
Primary Concerns:	(1) Kids need help, counseling, and guidance. (2) Rehabilitation can reduce future criminal behavior. (3) Punishment is important but as taking responsibility for their lives.	(1) Need to face consequences by repairing damage. (2) Full compensation to victim is required. (3) Direct accountability to victim is important.	(1) CJS too lenient, most often just a slap on the hand. (2) Firm punishment is needed, jail or institution. (3) Rehabilitation restitution often important, but secondary concern.
Examples:	(1) "I'm not so worried about the money, as the kids." (2) "If choice was for restitution or help for the kid, I would go for the betterment of the kid." (3) "Fairness is consequences. Those who make mistakes should get the help they need so that they stop doing it."	(1) "I didn't want any vindictiveness, all I wanted was restitution." (2) "It's only fair that I should get what was wrongfully taken from me returned." (3) "Restitution is the major thing, they need to personally make restitution—strong connection between their actions/consequences."	(1) "The punishment isn't harsh enough—it was too lenient." (2) "It's been a slap on the wrist, he should serve time in a prison." (3) "A good-sized deterrent is the only thing that is going to make these people take notice."

Note: Each category in this typology is not mutually exclusive. Rather, each group represents the dominant or primary characteristic expressed by victims of burglary in this study. For example, while the primary concern of most victims fits Type A, these same individuals may also be concerned about some of the characteristics in Type B or Type C, but at a more secondary and less intense level.

The second stage of the typology development focused upon validation of the stage one typology that emerged from the qualitative data by examining some of the related quantitative data. It required that the four elements of fairness which emerged from the quantitative data be examined within the framework of table 1. This was done in order to determine which elements of fairness were actually dimensions of fairness, with greater or lesser frequency within each of the three categories in table 1. Victim participation in the justice process, including mediation for 62 percent (31) of the subjects, was a dominant and major element of fairness that these victims expressed across all of the categories mentioned below. Participation was not a dimension with greater or lesser degrees of concern. There was virtually no variability in the importance of participation in the justice process across the three categories.

While the first stage of the typology is helpful in presenting rather "pure" categories of victim perceptions of fairness, it masks the complexity of the meaning of fairness for some victims. From the second stage of the typology development it becomes evident that the importance of the three dimensions of fairness for subjects are often combined in ways that would suggest a more complex, multidimensional understanding of fairness, thereby requiring further discrimination. The third and final stage of the typology construction (table 2) attempts to discriminate more clearly victim concerns about fairness and resulted in the identification of six combinations of the three dimensions that emerged from cross validation of the qualitative and quantitative data.

TABLE 2. TYPOLOGY OF VICTIM PERSPECTIVES ON FAIRNESS: FINAL STAGE (N=50)

Fairness Dimension	Type A N=5 10%	Type B N=8 16%	Type C N=3 6%	Type D N=10 20%	Type E N=7 14%	Type F N=17 34%
Punishment (P)	X	X	X			
Compensation (C)		X		X	X	
Rehabilitation (R)			X		X	X
Dimension Combinations	P	PC	PR	C	CR	R

*Fairness as Victim Participation*

Participation by crime victims in the criminal justice process was found to be a major element of fairness across all categories of victims. The importance of victim participation in the justice process was expressed by nearly all victims and included both passive forms (information provision by letter) and active forms (court appearance and/or mediation). As one victim stated, "I think the more involved you are, the more satisfied you are that it has been taken care of properly." The specific type of participation, however, could take on several forms. Three out of four victims wanted to be able to express their

concerns about the crime to either the judge or other court officials, such as the county attorney or even probation staff. Some victims expressed their need for participation in the justice process in terms of simply being kept informed about precisely what was happening in their case.

Most victims (62%) expressed their need to participate in a far more direct and active manner, through a process of mediation which allowed them to confront their offender, express their concerns, get answers to questions and to negotiate a restitution plan. Having direct involvement in determining restitution was important to 86 percent (42) of all victims in the study. Meeting with the offender was important to 66 percent (33) of all victims and expressing their concerns to the offender was important to 78 percent (39), even though 62 percent (31) of the victims actually chose to enter the mediation process. Getting answers about the crime directly from the offender was important to 76 percent (38) of all victims involved in the study.

For those victims who participated in mediation, their desire to participate in the justice process in a direct manner focused upon the need to let the offender know how the crime affected them as people and to have direct input into shaping a portion of the offender's punishment (e.g., restitution). According to one victim, "my goals were to have the offender see face to face that it was a person he had violated, not just an object, an empty house, so that he had to deal with the person he had hurt, and to be able to have him understand that it was a loss and a hurt."

*Victim Satisfaction With Mediation*

The victims who participated in a mediation session with their offender indicated a very high level of satisfaction with the mediation process. Ninety-seven percent (30) indicated that they were treated fairly in the mediation session and 94 percent (29) indicated that the mediator was fair. Common themes related to their sense of fairness in the mediation process were: making the parties feel comfortable; stating clear expectations for the mediation process; allowing both parties to express their feelings; presenting options; and, not siding with either the victim or offender. One specific victim felt the mediation process was very fair because "he just let us negotiate and gave us some guidance." Another stated "we were both allowed to speak . . . he didn't put words into anybody's mouth." Those who did not experience the mediation process as fair were most likely to indicate that the mediator sided with the offender.

Victims found it helpful to meet with their offender in 86 percent (24) of the cases interviewed in this study. A number of different reasons were given. For many, simply getting answers to questions like, "why

me?" and "were you watching me?," in addition to learning other information about the crime and the offender, was important. Some victims indicated their need to "let the kid know he hurt me personally, not just the money. . . . I felt raped."

For a number of victims, meeting the offender helped reduce their fear of being revictimized. After the mediation session, the offender seemed less scary and more human. "It put my mind at ease because we had conjured up the big thugs breaking in . . . they were small kids." Many victims indicated that participation in the Victim Offender Reconciliation Program was helpful because it let them get personally involved in the justice system; they no longer felt completely left out and on the sidelines. One victim stated that VORP was the only part of the justice system that presented her with options for direct participation.

Participating in the mediation session with their offender was not found to be helpful to some victims because of the negative, nonrepentent attitude of their specific offender. "I felt he wasn't owning up to it." "He just slouched all the way down and just sat and half-heartedly gave answers."

The restitution agreements that were negotiated in the victim offender mediation sessions were perceived as fair by 93 percent (28) of the victims. A number of reasons were given. "I think restitution is something that needs to happen to replace or pay for the losses . . . they need to personally make restitution." "I don't see how anything can better point out what the extent of the damage was then to have them participate in making it right again."

When examining the issue of why victims of burglary even agreed to meet with their offender, as well as what they found to be the most satisfying element in the mediation process, some interesting data emerge. The hope of gaining restitution for their losses was the most commonly identified reason that victims agreed to participate in the mediation process, with their concern to directly participate in the justice process being the second choice. When asked what they found to be the most satisfying element of their experience in the victim offender mediation process, gaining restitution for their losses was not identified as either their first, second, or third choice. Meeting the offender was found to be the most commonly identified reason for their satisfaction with the victim-offender mediation process, with the care of the mediator being the second choice. These findings are remarkably similar to the earlier findings of Coates and Gehm (1985) related to their evaluation of several programs in Indiana.

TABLE 3. VORP CLIENT/VICTIM SATISFACTION  
N=31

Item	Number	Percent
Restitution agreement was fair	(28)	93%
Treated fairly in mediation	(30)	97%
Mediator was fair	(29)	94%
Mediation was helpful	(24)	86%

The client satisfaction data from this study would suggest that the mediation process, including an empowering style of mediation, employed by the VORP project in Minnesota contributes to crime victim experience of fairness, although the precise nature and degree of that contribution cannot be determined by the limitations of this study.

#### *Victim Experience of Fairness in Justice System*

There was an important relationship between involvement of victims in the victim offender mediation process and the experience of fairness. As table 4 indicates, victims who were referred to VORP and participated in a mediation session with their offender were far more likely (by 2 to 1 margin) to have experienced fairness (80%) with the manner in which the criminal justice system dealt with their case than those victims who were referred to VORP but chose not to enter mediation (38%).

TABLE 4. EXPERIENCE OF FAIRNESS BY PARTICIPATION IN MEDIATION  
(N=46)

Experience of Fairness	Participation in Mediation			
	No		Yes	
	Number	Percent	Number	Percent
No	(10)	62%	(6)	20%
Yes	(6)	38%	(24)	80%
Totals	(16)	100%	(30)	100%

The data from this study suggest that placing certain victims in a far more active role in the criminal justice process, including negotiating a portion of the penalty (restitution) incurred by their offender, may need broader consideration by criminal justice policymakers.

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