

SUMMARY REPORT

The Assessment of Restitution
in the Minnesota Probation Services

(Prepared for the
Governor's Commission on
Crime Prevention and
Control)

Steven L. Chesney
Minnesota Department of Corrections
January 31, 1976

32744

SUMMARY

By analysis of court records and interviews with judges, probation officers, victims and offenders this paper describes the use of restitution as a condition of probation in the State of Minnesota between October 1973 and September 1974.

This analysis shows:

1) Restitution existed as a condition of probation in nearly one-fourth of all probation cases;

2) Restitution was used in a straightforward manner by most courts. Full cash restitution was ordered to be paid by the offender to the victim in more than nine out of ten cases. Adjustments in the amount of restitution because of limited ability of the offender to pay were rare. In-kind, or service, restitution to the victim or community was ordered in only a few cases;

3) The most important factor determining whether an offender was ordered to pay restitution (assuming there had been a loss to a victim) was his predicted ability to pay. Thus those probationers ordered to make restitution were generally white, middle-class individuals;

4) White, middle-class individuals also had the best record for completing restitution. The characteristic of an offender most strongly associated with failure to make restitution was the existence of a prior criminal record;

5) The completion of restitution was aided by criminal justice services (such as regularly notifying the probationer of his progress in completing restitution) and hindered by sanctions added on to the probation order such as jail terms.

6) Most judges and probation officers favored the use of restitution. Similarly most judges and probation officers expressed the belief that restitution had a rehabilitative effect. However, many probation officers thought that the needs of the victims and the offenders would be best served if the supervision of restitution was separate from general probation supervision.

7) Although only a minority of victims were satisfied with the way restitution had been made at the time of data collection, most victims thought that the restitution ordered by the court had been fair. In addition, most victims believed that restitution by the offender to the victim is the proper method of victim compensation. Victims who were dissatisfied tended to be those who felt that they had not been involved in the process of ordering or aiding in the completion of restitution. The victims who were the most bitter were the nineteen percent who had not even been notified that they were to receive restitution.

8) Most offenders thought that restitution as ordered was fair.

The implications of these findings are:

1) Because most victims and offenders expressed the belief that restitution is an integral part of justice and because most

judges and probation officers believed that restitution aided rehabilitation, it seems desirable to extend its use to include more offenders and more types of offenses.

2) Because courts tend to order restitution to be made by only those offenders most able to bear the financial burden of restitution, discrimination against offenders from lower socioeconomic classes in the sentencing of alternatives to imprisonment may exist.

3) The use of restitution as a condition of probation for poorer or unemployed offenders probably will only be successful when special programs - such as restitution in the form of labor - or additional probation services are available. Experiences with a program which requires adult offenders to perform community service as restitution in Britain and with a program which may require juvenile offenders to perform services to their victims in Missouri have been overwhelmingly positive.

4) It may be desirable to separate the supervision of restitution completion from general probation supervision. Restitution, when collected by probation officers, was less successful than payments collected by clerks of courts, county attorneys or law enforcement personnel. In addition most probation officers thought that they were ill-equipped to collect restitution and that it interfered with their counseling and supervising functions.

5) It seems desirable to involve victims in the process of restitution. This may help to avoid present misunderstandings between victims and the courts and to aid the offender in completing restitution.

INTRODUCTION:

Restitution, defined as payments by the offender to the victim, has been described as a potentially important correctional tool. Irving E. Cohen, for example, advocated the use of restitution as a condition of probation in the 1940's (Cohen, 1944). While restitution is believed to be commonly used as a probation condition in America today, no systematic attempt to gather information on it has been reported. This paper reports on a major quantitative examination of the use of restitution as a condition of probation.

The study attempted to determine the extent to which restitution was used as a condition of probation in the District, County and Juvenile Courts of the State of Minnesota, the personal characteristics of the persons ordered to pay restitution, the circumstances of the offense, the ways in which the courts structured restitution, the amounts of restitution ordered and subsequently collected relative to reported losses, and those factors associated with the successful completion of restitution. In addition, the attitudes of judges, probation officers, victims and offenders toward the practice of restitution were examined.

It is expected that the results of this study will provide useful information to judges, probation workers and correctional planners. New insight into problem areas in the use of restitution as indicated by quantitative data on the attitudes and opinions of the producers and consumers of the criminal justice system may lead to an improvement in the ways in which restitution is structured and ordered.

SECTION ONE: BACKGROUND

A. What is Restitution?

When a crime is committed, there are three parties involved: the criminal, the victim and society. Society has taken the responsibility of dealing with the offender. The party most directly hurt by the crime, the victim, has been to a considerable extent ignored. When Stephen Schafer points out that "history suggests that growing interest in the reformation of the criminal is matched by decreasing care for the victim" (Schafer, 1970) he is delineating a trend that for the last one thousand years in Western society has made the victim subordinate to society's interests in the reformation of the offender. Joe Hudson and Burt Galaway have stated that just as the offender has a right to due process, a fair trial and humane punishment, the victim has the right to expect fair compensation for the harm caused him (Hudson and Galaway, 1975). Since society has usurped the victim's right to revenge and has failed to protect him, it may be society's duty to insure that he receives just compensation.

B. History

There are many references to state regulated systems of restitution in the ancient world. Its use in classical Greece and Rome were later examples of a tradition that may have gone back as far as the Code of Hammurabi in ancient Babylon. Restitution was included in the Mosaic Law of the Hebrews, the Roman Law of the Twelve Tables and early Anglo-Saxon codes (Schafer, 1970). The codes developed as a result of the state's interest in regulating the act of revenge.

The development of criminal law according to some scholars was as follows: Society consisted only of Family groups and each individual was dependent on himself or his kin for redress of wrongs. In this system the roles of victim and offender were interchangeable, retaliation led to further retaliation, and the result was often kinship groups at war in the dreaded blood feud. Composition, through negotiations between kinship groups, became the first attempt to limit the harmful effects of personal revenge. As the centralized state developed, restitution was institutionalized into monetary payments, often on a schedule of specific damages from each type of offense. Quite unlike the laws found today in most "civilized" communities, "the laws of primitive societies contained monetary evaluations for most offenses as compensation to the victim, not as punishment of the criminal" (Schafer, 1970).

Since these mechanisms combined compensation with punishment - the humiliation of the offender presumably satisfying the victim's needs for revenge - they were not applicable to crimes against the states. They were applied to private crimes only and depended on the satisfaction of all parties concerned to work. The codes were accordingly guidelines for the use of the mediating parties, or judges, in this system. From that time on the influence of the state increased further. The mediator, a representative of central authority, next demanded a commission for aid in bringing about reconciliation. Thus "In Saxon England the Wer or payment for homicide and the Bot, the betterment or compensation for injury, existed alongside the Wite or fine paid to the king or overlord." "By this twofold payment the offender could buy back the peace that he had broken" (Taster, 1970).

Compensation was a means by which the state asserted its place in the criminal justice system and thus enforced domestic peace. By gradually increasing

its share of the payment, the Wite, it removed the private aspect of punishment and replaced it with the money fine, all of which went to the state. A crime was then seen as a violation of the King's peace and the victim, in Schafer's words, became "the Cinderella of the criminal law." This development was due to the greed of feudal lords and to the king's desire to centralize his power over the populace. As a result the criminal law was separated from civil law by the latter half of the twelfth century. The victim could still use the civil law - by private suit - but only after the king was through with the offender, after which there usually was nothing left of the offender's property.

While Irving Cohen wrote in the 1940's that restitution had therapeutic potential, modern interest in restitution waited until 1951 when British penal reformer Margery Fry proposed restitution as first a rehabilitative technique and secondly a benefit to the victim. The practical difficulties of achieving the latter objective caused her to change her views in favor of a state-run victim compensation scheme. As a direct outgrowth of her concern, New Zealand, Britain, all Canadian provinces and some American states have enacted Victim Compensation Acts. The current interest in restitution owes much to the works of Stephen Schafer and Kathleen Smith. Based on a 1958 survey, Schafer concluded that in almost every country victim reparations were limited to the collection of civil damages. He advocated the increased systematic use of restitution as a punitive measure in correctional systems. Smith proposed the use of the "self-determinate sentence" as a way of achieving rehabilitation and compensation. She proposed that offenders be sentenced to compensate victims out of wages earned in confinement; when restitution is completed then so too would imprisonment. Galaway and Hudson have pointed out that this type of scheme will be impractical until prison wages are raised to a meaningful level.

Because of practical limitations, attempts to remedy the victim's plight are believed to be mainly limited to the probation services of many jurisdictions, most notably the juvenile court. Irving E. Cohen has advocated the use of restitution in probation since the 1940's (Cohen, 1944). He felt it has enough advantages to outweigh the extra burden it places on the probation officer. To the probationer it means avoiding the trauma of imprisonment and its degradation and it encourages the growth of self-discipline which may lighten the probation officer's task. In addition, he claimed it would foster a better relationship between officer and probationer and promote a deeper meaning or awareness in the offender of the wrong done. He stated that the opportunities for the probation officer to aid in money matters, budgeting, job training, should have positive effects on rehabilitation and should also help form a relationship of trust between probation officer and offender.

C. Current Theoretical Bases

Restitution is currently advocated as a rehabilitation tool rather than a victim compensation scheme because of the practical limitations discussed in the previous section. O. Hobart Mowrer has stated that "the essence of psychopathology lies in the fact that the afflicted person is socially alienated" (Mowrer, 1975). Applying this concept to the offender, Galaway and Hudson have defined crime as the estrangement of the victim from society. Restitution sanctions are directed towards providing the offender with opportunities to neutralize the damages done and thus become reintegrated into society. This is the "reconciliative model" of rehabilitation (Galaway and Hudson, 1975). Some beginnings have been made in the theoretical explanations of the effects of restitution. Galaway and Hudson have listed five basic advantages to its use.

1) The restitutive sanction is specific and thus easily understood. It provides feedback to the offender as to his progress. At all times the offender knows where he stands.

2) The punishment is clearly and logically related to the offense. It has been theorized that this affects the offender's perception of the justness of the sentence, a perception which has critical consequences for the rehabilitative effect of the sentence.

3) The restitutive act requires effort and thus increases self worth.

4) Restitution can provide the necessary preconditions for an expiation of guilt. Mowrer notes that the process of salvation as practiced by the early Christians required confession and the undoing of wrongs (Mowrer, 1975). Eglash pointed out the similar use of restitutive acts required in the Twelve Steps of Alcoholics Anonymous (Eglash, 1972).

5) The act of restitution may lead to a positive acceptance of the offender by society.

D. Remaining Issues

In their article "Restitution and Rehabilitation - Some Central Issues" (1972) Galaway and Hudson summarized several unresolved questions as to the proper and most effective use of restitution. One dilemma facing the correctional system is the issue of full versus partial (or "symbolic") restitution. A task force of the President's Crime Commission recommended restitution based on the individual's ability to pay so that he does not undergo excessive hardship. This may be necessary if any payment is to be made at all. Most theorists, Schafer included, argue that the victim's claim to full restitution is paramount and perhaps of greater significance than either the protection of society or the reformation of the offender. This view was shared by Galaway and Hudson and Eglash. The former two writers contended that in the act of undoing the wrong the more complete the restitution, the more complete the sense of accomplishment. This may also have a bearing on the perception of justness that some claim the offender must have towards his sentence for rehabilitation to occur. Should restitution be the sole penalty for a crime or should other penalties, such as fines or imprisonment, be imposed along with it? Opinion varies here, too. Schafer thought additional punishments fit well with the punitive uses of restitution. In addition this would make it more difficult for wealthy or professional criminals to buy their way out of punishment. The degree of contact to be encouraged between victim and offender on negotiating the amount of restitution or in its payment is another issue. Some schemes have stressed the reconciliative effects of such contact while others have thought that the victim should be spared further contact and the state should act as intermediary.

E. How Restitution is Used in Minnesota

Restitution has commonly been used as a condition of probation in Minnesota although no law permitting nor proscribing its use for adult offenders currently exists. The Minnesota Juvenile Court Act (Minn. Stat. Sec. 260.185, Subd. 1 (e).) allows courts to order juveniles to make "reasonable" restitution for property damage resulting from the violation of state or local law.

Regardless of the different ways restitution can be ordered, the various forms it may take are similar among jurisdictions and counties. Restitution may be made as cash payments from the offender to the victim (cash restitution) or as labor or service rendered to the victim (in-kind restitution). An example of the latter is the case in one urban county where two youths worked as janitors' assistants in a school for an entire summer to compensate the school district for the vandalism they had performed. Restitution may be ordered to compensate the victim for the cash value of the entire victim loss (full restitution) or for only a portion of that loss (partial restitution).

Restitution may be ordered to be paid to the actual victim of the offense or to a substitute victim. The latter procedure may be followed if the actual victim has been already compensated by a private insurance company or refuses to accept restitution. For example, in one urban county cash restitution is sometimes ordered to be paid to the Juvenile Court "Slush Fund" when victims have been compensated by insurance. (In contrast some jurisdictions may order restitution to be made to the insurance company on the grounds that the insurance company had subrogated the right of the victim to compensation from the offender by settling the victim's insurance claim.) A Northern Minnesota County has a "First Offender's Program" wherein juveniles and adults can have their first criminal offense struck from their record by performing in-kind restitution to the community. An offender under this program might work at a city zoo or work at a county nursing home.

If the probation is supervised, the probation officer is usually involved in the process of completing restitution. If the offender pays the victim directly, the probation officer may ask to see receipts given the offender to monitor the progress of restitution. Alternatively, the probation officer may actually receive the payments and pass the payments on to the victim. Other parties who can act as intermediaries in the payment of restitution are law enforcement officers, clerks of court and county attorneys.

The role of the victim in the process of restitution is not formalized. His involvement may be as little as the first report of loss to the police or as great as negotiations with the offender leading to a written contract which describes the terms of restitution. Often the restitution amount is based only on the first estimate of loss given the investigating police.

F. The Purpose of this Study

This study attempts to quantitatively describe both the use of restitution and the opinions held toward its practice by relevant parties so that conclusions may be drawn regarding its effects and ways its use might be improved can be suggested.

Questions that this study aims to explore include:

- 1) Restitution is ordered at the discretion of the court. How is this discretion operationalized in terms of the types of offenders who are ordered to make restitution?
- 2) Victims are involved in the process of restitution at the discretion of the court. What effect might different levels of involvement have on the attitudes of the victim?
- 3) Is the use of restitution favored by judges, probation officers, victims and offenders? Further, is restitution considered by these parties to have rehabilitative effects?

4) Of what importance is restitution as a condition of probation? What proportion of probation cases include conditions of restitution?

5) Restitution can be structured in a variety of ways: it may be full or partial, in cash or in-kind, paid directly to the victim or through an intermediary. What effect might these and other alternatives have on whether restitution is successfully completed? What other factors, such as the characteristics of the offender, might have influenced the outcome of the restitution order?

6) In addition, much baseline data on the practice of restitution in various Minnesota counties during a specific time were generated. Are there any major differences in the use of restitution, in its effects or in the attitudes held toward it between urban and rural areas?

SECTION TWO: DESIGN

A. Introduction

Because of the diversity of information sought by this study, the collection of data was divided into what amounts to four sub-studies: the determination of the extent of use of restitution by survey of all courts in the state, the description of its use through examination of court records, interviews with judges and probation officers and interviews with victims and offenders.

B. Court Surveys

Data concerning the extent to which restitution was used as a condition of probation were collected through the use of a questionnaire administered to all district courts and county courts within the State of Minnesota. All eighty-seven Minnesota counties were selected to ensure the generalizability of the results to the population of the State as a whole. A brief questionnaire was mailed to all clerks of county court and district court in the State. Questionnaires sent to the clerks of county court asked for the total number of juveniles sentenced to probation in the months of October 1973, January 1974, April 1974, and July 1974 as well as the total number of those juveniles also sentenced to pay restitution as a condition of probation in those same months. Similar information concerning adults was requested of the Clerks of District Court.

C. The Examination of Court Records

The more detailed data required for the description of offenders, victims, and circumstances of restitution conditions required the examination of court and probation officer files. Ideally, one would randomly select restitution cases from the population of probation cases in the State during a specified time. Because of the excessive amounts of travel required to visit all eighty-seven counties of the State this approach was rejected. As an alternative to the random selection of cases, counties were randomly selected from three groups, or strata, of counties.

The strata were defined on the basis of county population. A random selection of cases was then made from the population of each stratum in order to

ensure that the number of cases sampled from Metropolitan Minnesota would be proportionate to the number of cases drawn from the sample of Rural Minnesota counties. Table One contains a listing of the counties chosen for all three strata and a summary of the sampling design.

The next step was to design an instrument - in the form of a checklist - to extract the desired information from court records and probation files. The checklist had to contain data on the circumstances of the offense for which the offender was sentenced, the personal characteristics of the offender, how the restitution obligation was structured by the court, and some indication of its relative completion. Each office of the Clerks of County and District Court in the sample of seventeen counties was then visited. Further information on the offender and the outcome of the probation sentence was gathered from inspection of the files of the counties' probation officers.

D. Attitudes Towards Restitution:
Judges and Probation Officers

All judges and probation officers in counties chosen from the rural strata of the sample were chosen for interviews along with a random selection of half the judges and probation officers from the urban counties' stratum. The total number of judges to be interviewed was as follows: twenty-two rural county court judges (out of a state total of one hundred judges), nineteen urban county court judges and juvenile court referees (out of a total thirty-five) and thirty-four district court judges (out of one hundred). The proportions of probation officers were similar: nineteen rural county court agents (out of a state total of sixty-nine), twenty urban juvenile court agents (out of a total eighty-eight), eighteen rural district court agents (out of forty-one) and twenty-five urban "adult" agents (out of one hundred fifteen). Thus nearly one-third (31.9%) of Minnesota judges with criminal court responsibilities and over one-fourth (26.2%) of all Minnesota probation officers were included in these samples.

After mailed notification of the study, each judge and probation officer was contacted by telephone for a fifteen minute standardized interview. For judges, these questions included the proportionate use each judge made of restitution as a condition of probation, what factors they considered when deciding whether to order restitution as a condition of probation and the value they placed on restitution as a correctional tool. The sample of probation officers was asked similar questions, as well as items concerning the fairness and workability of restitution sentences and a description of their role both in determining whether restitution was to be ordered and in its supervision.

E. Attitudes Toward Restitution: Victims and Offenders

We turned to the ultimate consumers of the criminal justice system, offenders and victims, for further insight into restitution. The original sample of court cases (see Table One) served as the pool from which victims and offenders were selected. A stratified random sample of offenders was drawn from each court jurisdiction of each county to form a new stratified random sample of probationers. The sample of probationers drawn contained one hundred seventy-two persons.

One victim from the case record of each offender was randomly chosen to form the sample of victims to be interviewed. Thus the total number of victims in the sample was one hundred seventy-two. We attempted to first contact each victim and offender by mail and then follow up with a standardized telephone interview.

TABLE ONE

SAMPLE CHOSEN TO DETERMINE EXTENT AND FORM OF RESTITUTION

	<u>STRATUM A</u>	<u>STRATUM B 1</u>	<u>STRATUM B 2</u>
<u>CASES FROM WHAT COUNTIES:</u>	(METROPOLITAN) Hennepin Ramsey St. Louis	(POPULOUS OUTSTATE) Olmsted Kandiyohi Morrison Steele Douglas Faribault Sherburne	(NON-POPULOUS OUTSTATE) Koochiching Sibley Pipestone Murray Lac Qui Parle Wilkin Mahnomon
<u>WHAT JURISDICTIONS:</u>	District Court County Court Juvenile Court	District Court County Court Juvenile Court	District Court County Court Juvenile Court
<u>FROM WHAT TIME PERIODS: (CASES SENTENCED IN:)</u>	October 1, 1973 through September 30, 1974	October 1, 1973 through September 30, 1974	October 1, 1973 through September 30, 1974
<u>WHAT DISPOSITION:</u>	Probation with Restitution to victim required	Probation with restitution to victim required	Probation with restitution to victim required
<u>WHAT PROPORTION OF CASES TO BE CHOSEN:</u>	15% (random selection)	100%	100%

In addition to further information on personal characteristics of each victim and the circumstances of each case, probationers and victims were asked to relate whether they considered the restitution ordered to have been fair, and whether they approved of restitution as an alternative to other forms of punishment.

SECTION THREE: RESULTS

A. Court Survey Results

A total of sixty-eight clerks of district court (78.2% of those surveyed) and sixty-nine county court clerks (79.3% of those surveyed) responded to the mailed questionnaire. Each clerk listed the number of adults or juveniles who received a sentence of probation and the number of offenders for whom restitution was ordered as a condition of probation during the months of October 1973, January 1974, April 1974 and July 1974. Tables Two and Three provide summaries of this information.

TABLE TWO
THE USE OF RESTITUTION AND PROBATION

	District Court		Juvenile Court	
	Probation Totals	Restitution Totals	Probation Totals	Restitution Totals
Minimum	0	0	0	0
Maximum	292	41	456	89
Mean	12.6	3.0	31.7	6.4
Standard Deviation	37.3	6.2	70.7	13.7
No. of Counties Responding (out of 87)	68	68	69	69

Table Two demonstrates that restitution existed as a condition of probation in this sample in about one-fourth (24.2%) of all adult felony probation cases and in about one-fifth (19.9%) of all juvenile probation cases. This indicates the relative importance of restitution as a condition of probation during the time covered by this study. Restitution was by no means an unusual condition of probation. Table Three summarizes the urban/rural differences in the proportion of probation cases with restitution provisions.

TABLE THREE
URBAN/RURAL DIFFERENCES IN RESTITUTION USE
AMONG COURT JURISDICTIONS, JUVENILE AND ADULT

Proportion of Probation Cases with Restitution Conditions	Adult and Juvenile Urban Courts (Hennepin, Ramsey, St. Louis)	Adult and Juvenile Rural Courts
0% to 30%	5 (83.3%)	85 (65.4%)
31% to 100%	1 (16.7%)	45 (34.6%)
TOTAL	6 (100%)	130 (100%)

Chi-square analysis of the data revealed that the urban/rural differences in the use of restitution summarized in Table Three were not statistically significant. Therefore the hypothesis that real urban/rural differences might have existed in the overall proportion of probationers ordered to make restitution was not supported.

C. Examination of Court Records

Review of court records and probation files of the sampled counties yielded a total of five hundred twenty-five cases from the time period chosen for this examination (October 1973 through September 1974). Juvenile courts and county courts (which are responsible for adult misdemeanors) produced most of the cases in the sample; County Courts produced two hundred nineteen cases (41.7% of sample) while Juvenile Courts produced two hundred fifteen cases (41.0% of sample). State District Courts (primarily responsible for adult felony cases) account for only eighty-one cases (15.4%).

Urban/Rural Differences in the Use of Restitution

Analysis of the data revealed that restitution was more common in rural as opposed to urban counties. Because the number of cases sampled from both the metropolitan stratum and the two rural strata was proportionate to the population of these strata and because the urban counties contain over half the population of the State, it follows that at least half of the cases selected for the sample should have been from the metropolitan stratum if the occurrence of restitution cases was distributed equally throughout the population of the State. In fact, less than one-fourth of the cases came from metropolitan areas. The difference between urban and rural counties in the number of restitution cases for the time period covered by the study was statistically significant and further evidence of urban/rural differences in either the use of restitution or the use of probation. Reference to Table Three (above) reveals that no statistically significant difference was found in the proportional use of restitution in probation cases between urban and rural counties - although the data display a tendency for metropolitan counties to order restitution in fewer probation cases. Since there was a statistically significant difference in the absolute use of restitution, the significant difference between urban and rural jurisdictions seemed to be in the lower urban use of probation not restitution.

Offenses for which Restitution Was Ordered

It has been previously noted that restitution is believed to be most commonly ordered for crimes in which there has been a loss of or damage to a victim's property. While some theorists have advocated the use of restitution in other types of crimes and some jurisdictions will order a form of "in-kind" restitution to be made to the community even for victimless crimes, a preponderance of property crimes was expected in the cases sampled for this study. Table Four summarizes the types of crimes for which restitution was ordered in this sample.

TABLE FOUR:

OFFENSES

<u>Offense Class</u>	<u>All Cases (Adults + Juveniles)</u>
1. Homicide	0
2. Crimes against the person (assault, armed robbery)	14 (2.4%)
3. Theft related crimes (theft, receiving stolen property, unauthorized use of motor vehicle, embezzlement, shoplifting, theft by check)	306 (53.3%)
4. Forgery (forged checks, welfare fraud, other forms of fraud).	37 (6.4%)
5. Damage or trespass to property (arson, vandalism, burglary)	210 (36.6%)
6. Sex offenses (rape)	1 (0.2%)
7. Traffic offenses (careless driving, leaving scene of accident)	6 (1.0%)
TOTAL	574* (100%)

Victims

Crime victims in the sample were grouped into five categories: Individuals (victimized at their homes or by personal injury); Owner-Operated Business (typified by the "mom and pop" grocery store and including farmers); Other Businesses (including corporations); Government Agencies (including welfare departments and schools) and Non-Profit Organizations (primarily charities). The distribution of victims is summarized in Table Five.

TABLE FIVE
VICTIMS

Type of Victim	Number of Victims of the Actual Offense	(Frequency)	Number of Victims Receiving Restitution (includes substitute victims)	(Frequency)
Individual	179	28.5%	156	24.8%
Owner Operated Business	82	13.1%	79	12.5%
Corporate Business	247	39.2%	237	37.7%
Government Agency	62	9.8%	59	9.3%
Non-Profit Agency	13	2.1%	13	2.1%
Other or Unknown	46	7.3%	85	13.6%*
TOTAL	629*	100%	629*	100%

*Total is greater than total number of cases or offenses due to the existence of multiple victims of single offenses.

Offenders

The "typical offender" (based on mean and modal values of each variable) was a twenty-one year old, single, white male, from the lower middle class, with approximately one prior court contact. He was a high school graduate and was employed at the time of sentencing in an unskilled or semi-skilled occupation, and he resided in a small town. This "white, middle class, rural" predominance contrasts markedly with what is known about the prison population of the State and the "consumers" of the criminal justice system in general (Doleschal and Klapmuts, 1973).

Most offenders in this sample were rural; the largest number of offenders lived in small towns and the smallest number were from the cities of Minneapolis, Saint Paul and Duluth. Most offenders were youthful; the mean overall age was 20.6 years. The mean age of juveniles was 15.3 years; the mean age of adults was 25.9 years. More adult offenders (68.8%) of the sample for which marital status was known) were single than either married, widowed or divorced. The vast

majority of offenders for whom race was known (92.0%) were white. Most individuals (81.6%) were male.

Against expectation, this sample of offenders was well educated. The majority (58.0%) of those for whom information was available had a high school diploma or better. Similarly the occupational level of these offenders was relatively high. While the largest percentage (38.6%) of those for whom information was available were "unskilled or semi-skilled" laborers, nearly one in ten (9.2%) was a white-collar worker or a professional.

Most individuals for whom information was available had been to court as a criminal defendant previously. However few had been previously convicted of a felony. It appears that a slightly greater number of offenders from rural jurisdictions had serious criminal records than those offenders sentenced in urban jurisdictions. Since the tendency was for rural jurisdictions to order restitution in a higher proportion of cases, one might conclude that rural jurisdictions were more likely to order an offender with a previous criminal record to make restitution than were urban jurisdictions.

Amounts of Restitution

Table Six summarizes the average amounts of victim loss and restitution ordered for the cases in this sample.

TABLE SIX
LOSSES AND RESTITUTION

	<u>Urban Jurisdictions</u>	<u>Rural Jurisdictions</u>	<u>Total</u>
Victim Loss	Mean = \$220.00 (Standard Deviation = \$686.80)	Mean = \$331.83 (Standard Deviation = \$987.38)	Mean = \$203.73 (Standard Deviation = \$334.44)
Cash Restitution Ordered	\$164.76 (\$388.90)	\$208.77 (\$361.75)	\$167.02 (\$566.19)
Proportion of loss to be compensated by restitution	0.75	0.63	0.82

The losses reported by victims ranged from zero to thirteen thousand dollars. Cash restitution was ordered in amounts ranging from one to ten thousand dollars. The urban/rural distribution described in Table Six shows that rural jurisdictions ordered restitution in greater amounts for offenses (which tended to have greater victim losses) than did urban jurisdictions. The mean proportion of victim loss to be repaid in rural counties was, however, less than in urban counties. This suggests that greater use was made of partial restitution (repaying victims for only part of their total loss) in rural counties. This may help explain why the mean amount of victim loss was greater in rural counties; rural courts might have ordered partial restitution for cases involving such high victim losses that urban courts might have ordered no restitution. However, most probation

dispositions in which restitution was ordered required reparation for the full amount of victim loss (92.4%). Only twenty-eight (4.5%) of the six hundred twenty-nine restitution obligations examined involved partial restitution.

In-Kind Restitution

Restitution was ordered in the form of service to fifteen actual victims (2.4%) and twenty-two (3.5%) "substitute victims" (usually the community or some government or social service agency). The mean amount of "in-kind" restitution rendered to an actual victim was one hundred and fifty-two hours (ranging from ten to three hundred hours) and the mean amount of service rendered to the community was twenty-three hours (ranging from ten to forty-eight hours). Seven out of fifteen (46.7%) services rendered to the original victim were judged to be clearly related to the original offense. In one case an adult repainted the side of a barn that he had splattered with a thrown can of paint. The alternative is a service to the victim which was unrelated to the offense. These accounted for three (20.0%) of the fifteen cases. A good example of this type of arrangement was an incident in which two young boys vandalized a farmers' cooperative grain elevator. They each worked on a farm owned by that co-op for about ten hours to partially compensate the organization for the damages. Not surprisingly, when services were rendered to a substitute victim the services performed were never even remotely related to the offense or to the losses resulting from it. A good example of in-kind restitution rendered to a substitute victim was the practice in one county of sentencing juveniles to pick up litter along highways instead of compensating victims.

Additional Sanctions

Courts did not always limit the conditions of probation to restitution. In addition, the offender was sometimes ordered to pay a fine, serve time in jail or detention, or compensate the county for court costs or the fee of the public defender. Thirty defendants (5.7%) were ordered to spend up to one year in jail or detention, eighty-three (15.8%) were ordered to pay a fine, eight (1.5%) were ordered to pay court costs or public defender's fees, five (1.0%) were ordered to spend at least part of their probation period in a residential probation facility and five (1.0%) were ordered to undergo residential drug, alcohol, or psychiatric treatment. Two juveniles (0.4%) were ordered to apologize to their victims. The remaining three hundred ninety-two offenders (74.7%) were given either no further conditions or only minor conditions on the sentence of probation.

Outcomes

Probation was revoked for only twenty-five offenders (4.7%). At the time of data collection - between seven and twenty-two months after sentencing - four hundred seventy-six restitution obligations (75.7%) had been completed to the satisfaction of the judge or probation officer. With information lacking on thirty-five cases (mostly misdemeanor cases involving minor crimes and slight amounts), there were one hundred eighteen victims (18.8%) who had not been fully compensated. Of these one hundred eighteen, thirty-two (27.1%) were considered by the court to be receiving restitution on a "satisfactory" basis. This is interpreted as meaning he or she was receiving installments on time. However, it could also mean that the offender was making a sincere but futile attempt to pay. There were eighty-six restitution obligations (13.7%) the courts considered late or overdue. Approximately three-fourths (76.3%) of the restitution obligations had been completed or were being paid in a satisfactory manner at the time of data collection. Therefore it appears that most victims received the court ordered restitution within two years of the probation order.

Factors Relating to Successful Completion of Restitution

While there is a need to determine the relative outcome effects of restitution as a correctional tool, such an objective remains beyond the scope of this study. Such an inquiry would utilize comparisons between groups, using matched samples or a control group to approximate an experimental design. In contrast the data presented here are purely descriptive, listing the circumstances of cases and outcomes for essentially only one group of subjects, those who were ordered to pay restitution.

The only practical indication we have concerning the effects of restitution is the relative extent to which it was completed. Certainly from the victim's standpoint the value of restitution is maximized when it is collected. It does not seem to be too presumptive to infer from the various theories concerning restitution that its rehabilitative, reconciliative or punitive effects are related to its payment, and not simply to the fact that it was ordered.

The influence that the variables of restitution - the characteristics of the offender, the circumstances of the case or the ways restitution was structured - might have had on its rate of completion was measured by the construction of contingency tables. The strength of the relationship between any one variable and successful completion of restitution was measured by Gamma and by correlational analysis. Pearson's chi-square test of association was utilized to test statistical association between each variable and successful completion of restitution. This test gives the odds (expressed as alpha) that the observed relationship was due to the operation of chance alone. One may then be confident that the observed relationship did or did not exist within the limits of statistical significance set by alpha. The lowest level of statistical significance acceptable was set at alpha= 0.05 (five chances in one hundred that the relationship was accidental). The results are summarized in Table Seven.

TABLE SEVEN
FACTORS ASSOCIATED WITH SUCCESSFUL COMPLETION OF RESTITUTION

<u>VARIABLE</u>	<u>GAMMA</u>	<u>STATISTICAL SIGNIFICANCE</u>
<u>Characteristics of Offender</u>		
Age	-0.36	0.05
Offender was under the jurisdiction of the juvenile court	0.45	0.001
Marital Status (Single)	0.32	0.05
Sex (Male)	0.32	0.05
Residence (rural vs. all urban residences)	0.06	*
Residence (Metropolitan vs. all other locations)	-0.12	0.01

TABLE SEVEN--continued

	<u>PEARSON CORRELATION</u>	<u>STATISTICAL SIGNIFICANCE</u>
<u>Circumstances of the Case</u>		
Race (Non-white)	-0.71	0.0001
Occupation level	0.55	0.01
Education level	0.10	*
Number of prior court contacts	-0.56	0.01
Number of prior juvenile dispositions	-0.63	0.01
Number of previous felony convictions	-0.44	*
Type of victim (personalized vs. non-personalized)	-0.10	*
Amount of victim loss	-0.13	0.01
Amount of restitution	-0.10	0.03
Restitution was full and not partial	0.38	*
	<u>GAMMA</u>	<u>STATISTICAL SIGNIFICANCE</u>
<u>Circumstances of the Sentence</u>		
Restitution was ordered for payment within the full probation period	0.33	0.01
Payments were ordered to be in regular installments	-0.45	0.01
Payments were made directly to the victim	0.14	*
Those payments not made directly to the victim were made through a probation officer rather than some other intermediary	-0.51	0.05
Additional jail sentence	-0.60	0.01
Additional fine	-0.18	*
*Not statistically significant		

Characteristics of the Offender and Completion of Restitution

Inspection of Table Seven reveals that the relationship between increasing age of the offender and completion of restitution was generally negative. However, the age group of offenders most likely to fail was the eighteen through twenty-four year old group. In addition, juveniles completed restitution successfully more often than adults. Apparently the relationship between age and completion of restitution was non-linear. The marital status of the offender was also strongly related to successful completion of restitution; single persons completed restitution more often than married persons. However this relationship was computed by including juveniles, all of whom were single. Since juveniles had better completion rates than adults, this relationship seems to be more due to age than marital status. Females did not complete restitution as often as males. Many of these women were dependent upon welfare or AFDC money at the time of the offense and during their probation; welfare payments were not increased to enable the women to make restitution.

Urban/rural differences in the proportion of probation cases that included restitution indicated that residents of suburban and metropolitan areas were less likely to be sentenced to make restitution. Inspection of Table Seven indicates that residents of these urban areas were not less likely than rural residents to complete restitution. However, urban residents residing within Minneapolis, Saint Paul or Duluth rather than suburbs or large outstate cities were the least likely to successfully complete restitution. Restitution was successfully completed most often by suburbanites and farm residents.

Social class was represented in this analysis by race, occupation and educational level. The data shows that this was an important determinant in the payment of restitution, as one might hypothesize from its supposed relationship to financial ability. Non-whites defaulted in nearly half (42.3%) of the cases. While the occupational level of a person or a juvenile's parent was an important predictor of his or her ability to pay his or her education was not.

The offender's prior record was a strong predictor of future ability to repay restitution. In general, those who had faced criminal charges before were much less likely to successfully complete restitution than those offenders who had no record of prior court contacts. While this finding might be interpreted as an argument against the use of restitution for repeating offenders, it must be noted that this relationship may have been a by-product of the lower social class or lack of employment experienced by most repeat offenders in this sample.

Circumstances of the Case and Completion of Restitution

As one might expect, the larger the loss and the restitution to be made, the less frequently restitution was completed. This may be interpreted as an argument for the more extensive use of partial restitution in cases where losses are great, especially for those offenders with limited financial ability. However, partial restitution was more frequently associated with failure to complete restitution than full restitution. It may be speculated that partial restitution had less meaning for offenders since it did not truly "make the victim whole" and thus did not completely undo the wrong. From inspection of the raw data it appears that most cases of partial restitution involved large amounts of losses and correspondingly large amounts of restitution to be repaid even though the proportions of loss to be repaid was small. In these cases it seems reasonable to conclude that the amount of restitution to be repaid was still too high. Thus the lack of success of partial restitution obligations may have been at least partially due

to the negative relationship between size of restitution and its successful completion as noted above.

Circumstances of the Sentence and Completion of Restitution

Restitution was more frequently completed when the offender was allowed to pay over the range of his full probationary period rather than a more restricted time for payment. Surprisingly, a formalized installment plan whereby payments of a specified sum were to be paid at regular intervals seemed to be highly counter-productive in collecting restitution. Perhaps its use was reserved to only the poorer or more irresponsible offenders or for larger amounts of restitution.

While inspection of Table Seven reveals that restitution made directly to the victim was not completed more frequently than restitution made through an intermediary, it also shows that the identity of that intermediary was highly related to the successful completion of restitution. Probation officers were less likely to collect restitution ($\text{Gamma} = -0.60$) than law enforcement officers, clerks of court or county attorneys. It can be hypothesized that the role of bill collector conflicted with the role of counselor to the detriment of the collection of restitution. However, it is also conceivable that probation officers were assigned the responsibility of collecting restitution from only the more difficult offenders.

The effect of additional punishments on successful payment of restitution is also revealed in Table Seven. Jail was highly related to non-completion of restitution. Whether it was due to the effect of jail on the offender or a pre-selection whereby the poorer or more embittered individuals were incarcerated, when a sentence to the county jail was "piled on" to a restitution obligation, the probability of completing restitution was low. The effects of jail sentences may be further examined by the Pearson correlation between the number of days to be served in jail and the successful completion of restitution. This relationship, although not significant, was negative and of moderate strength (-0.18). Fines also tended to be associated with the noncompletion of restitution, although the relationship was not statistically significant.

D. Attitudes Toward Restitution, Judges and Probation Officers

The attitudes of judges and probation officers toward the use of restitution were examined by the use of structured interviews administered by telephone to a sample of judges and probation officers from the State of Minnesota.

1. Judges

A total of seventy-two judges (96.0% of the total sample of seventy-five) participated in the interview. Not every judge was eager to be interviewed. It is an open question as to how much their attitudes affected the validity of these results.

Proportional Use of Restitution

Fourteen judges (20.3%) noted that they ordered restitution in every probation case in which an identifiable victim suffered an out-of-pocket loss. Twenty-nine judges (42.0%) reported the use of restitution in most such cases, eight in only half such cases (11.6%) and seven reported the use of restitution in few such cases (10.1%). No judge reported no use of restitution, one stated he ordered restitution whenever the probation officer recommended it, ten judges

(14.5%) refused to answer. No judge reported ordering restitution for non-tangible losses such as pain or suffering.

Factors Considered when Ordering Restitution

The factor reported as the most important to judges when determining whether restitution should be ordered was the offender's "ability to pay." This was listed by forty judges (55.6%) as one of the most important personal characteristics of the defendant. Other characteristics reported as important when deciding whether to order restitution were the age of the offender - seven judges (9.7%) order younger offenders to make restitution while four (5.6%) reserve its use to older offenders - and whether the individual was a first offender (6.9%). Fourteen judges (20.3%) noted they didn't consider personal characteristics when ordering restitution.

Use of Partial Restitution

The use of partial restitution was reported by only thirty-two judges (46.4%). It should be noted, however, that while many judges did not order partial restitution they did not necessarily expect full restitution to be completed in every case. Remarks made during the course of the interviews indicated that a sincere but futile attempt to make full restitution would have been considered by some judges to be satisfactory if the probationer had made a "good adjustment to society" while on probation.

Use of In-Kind Restitution

"In-kind" restitution, service performed by the offender to the victim, was ordered by only fourteen (19.5%) of the judges within one year prior to the interview. Most judges who had not ordered it (37.5%) stated that a situation for this kind of sentence "never came up." Thirteen judges (18.1%) stated that in-kind restitution would be forced labor and thus unconstitutional under the Bill of Rights.

Personal Contact Between Victim and Offender

Only ten judges (13.9%) reported encouraging personal contact between the victim and offender either in determining the amount of restitution or its payment. Fifty judges (69.4%) thought such contact was a poor idea. Some judges reported that most victims do not want such contact while other judges commented that such contact could lead to further victimization by the offender.

The Possible Rehabilitative Effects of Restitution

Most judges were moderately optimistic about the possible rehabilitative effects of restitution. Sixty-one (84.7%) stated that they believed restitution could help to strengthen the sense of responsibility in some offenders, and fifty-three (73.6%) thought it could help to reduce recidivism (although many of these fifty-three thought its effect was small).

The Value of Restitution

Only one judge out of the seventy-two judges interviewed chose to "actively discourage" the use of restitution when asked if its use in the probation services should be "actively encouraged" or "actively discouraged." He stated that all such compensation belongs in the civil courts. Fifty judges (70.8%) would "actively

encourage the use of restitution." There were several reasons given for favoring the encouragement of restitution. Twenty-five judges (18.0%) explained that restitution is needed because victims deserve compensation. Thirty (41.7%) judges mentioned the usefulness of restitution in rehabilitation. Seven judges note that restitution was a matter of "simple justice" and that it should be used for that reason. Fourteen judges (19.4%) stated that they wouldn't encourage or discourage the use of restitution but would continue its present use.

2. Probation Officers

Caseload

All eighty-two probation officers included in the sample participated in the interview. The average estimated caseload at the time of interview was approximately forty-seven (46.5) clients. Of these, the average number of clients who had been required to make restitution was approximately fourteen (13.7). Restitution thus had been ordered for approximately one-fourth (29.5%) of all offenders in the caseloads of this sample of probation officers at the time of the interview.

The difference between the mean size of caseload between urban and rural agents (40.6 and 51.7, respectively) and the difference between the mean number of restitution cases between urban and rural agents (9.5 and 17.4) were statistically significant. Rural agents therefore had both significantly more clients and more restitution cases. The difference between urban and rural agents in the proportion of restitution cases per caseload was also statistically significant. Therefore rural agents did have a significantly greater proportion of restitution cases in their caseloads than did urban agents.

Most cases involved full rather than partial restitution. The mean number of partial restitution cases per caseload was approximately one (1.1). There was no significant difference in the proportion of partial restitution cases between urban and rural caseloads.

Collection of Restitution

Sixty-nine agents (84.1%) reported that they personally monitored the progress of restitution payment on a regular basis. Only six (7.3%) did not and one agent reported doing so "sometimes." Agents were also asked what sort of measures they would take if payments were late. Sixty-seven (81.7%) would call or write clients to notify them of their tardiness. Four agents (4.9%) would threaten to send probationers to jail or to lengthen probation periods. Others would tighten probation rules or rearrange payment schedules. Thirty-nine agents (47.6%) would, as a second step, notify the courts of the fact that restitution was late. Nineteen agents (23.2%) would ask the court to lengthen probation periods. Only two agents (2.4%) would attempt to have offenders' wages garnished. One agent reported that he would do "absolutely nothing" if restitution payments were late since the juvenile court he served did not enforce restitution conditions. Fifty-eight agents (70.7%) expressed the opinion that the measures available to them to enforce payment of restitution were adequate. Most agents who termed the tools available to them as inadequate were agents with metropolitan or inner-city caseloads who also reported high rates of noncompletion of restitution in their caseloads.

Possible Rehabilitative Effects of Restitution

In proportions similar to those noted for judges, most agents (89.0%) reported a belief that restitution helps to strengthen the sense of responsibility in some offenders. Sixty-one agents (74.4%) believed it helps to reduce recidivism as well. Only ten agents (12.2%) believed that restitution does not help to reduce recidivism.

The Fairness of Restitution as a Condition of Probation

Sixty-nine agents (84.0%) expressed the belief that restitution obligations in their jurisdiction have been "in general, fair and just." Only four (4.9%) saw them as having been too lenient. Six agents (7.3%), all having inner-city or metropolitan caseloads, considered most restitution obligations to have been either "too harsh" or "unrealistic" in view of the financial abilities of clients. The role of financial ability in determination of the fairness of restitution was indicated by several comments to the effect that restitution is fair if it is within the financial ability of the offender to pay. One would thus expect that most restitution obligations would be within the financial abilities of the offenders. In addition, this might be expected from the fact that most judges used the offender's supposed ability to pay as the primary factor in deciding whether to order restitution. This hypothesis was tested by asking the agents to estimate the number of cases in their present caseload in which restitution was causing a financial hardship for the offender or his family. Seventy-two agents (87.8%) said "none." Some further explained that this fact was due to the screening process which selected only those offenders who could pay restitution. A few inner-city agents reported that restitution caused financial hardship for most or all of their clients.

The Value of Restitution

While faith in restitution as a rehabilitative tool was as firmly established among probation officers as among judges, a greater proportion of agents (11.0%) than judges would "actively discourage the use of restitution in the probation services. The reason given for this attitude was usually that restitution was "a pain in the ass" for the agent. Agents reported the belief that acting as bill collectors and hounding clients for money was harmful to the "helping role" they must take towards clients. Many agents reported that they were ill-equipped to handle the financial aspects of restitution. Some agents reported that they handled thousands of dollars a year of other people's money without benefit of training in bookkeeping or without even being bonded. One rural agent reported a political "tug of war" that he played with the county attorney over who should collect restitution. He reasoned (as did other agents) that other offices are better equipped to handle collection and bookkeeping operations. It should be noted that the same kinds of attitudes toward "the bill collecting" aspects of restitution were also held by most of the sixty-two (75.6%) agents who would have "actively encouraged" restitution. These agents also would rather not collect the money but either saw no alternative or found it worthwhile regardless. One agent thought restitution should be encouraged but only if "the system commits itself to restitution consistently."

E. Attitudes Toward Restitution, Victims and Offenders

The attitudes of victims and offenders toward the use of restitution were examined by the administration of structured telephone interviews to samples of victims and offenders randomly selected from the court records of seventeen Minnesota counties.

1. Victims

Characteristics of Victims Responding

A total of one hundred thirty-three out of one hundred seventy-two victims (77.3%) were successfully located and interviewed. Thirty-four (20.0%) could not be located and five (3.0%) refused to be interviewed. The individuals who responded (excluding the representatives of organizations or businesses) were well educated, thirty-seven (28.1%) were high school graduates and seventy-nine (59.4%) were college educated. They were of higher occupational levels than offenders; fifty (57.8%) were white collar workers and only fifteen (11.1%) were unskilled or semi-skilled laborers. In short, victims who were to receive restitution were significantly higher in social class than offenders ordered to pay restitution.

Victim Involvement with the Restitution Sentence

Twenty-five victims (18.8%) were unaware, until the interview, that they were supposed to receive restitution. This points to a lack of communication between the criminal justice system and the victim, a lack spoken to by more victims than just these twenty-five. Many victims complained that nobody told them what was going on concerning the case or what their rights and expectations were concerning compensation. Some victims expressed the belief that the court and probation officers only looked out for the interests of the offender. Some of these victims praised the police as the only element of the criminal justice system concerned with the welfare of the victim.

Only forty-three (32.3%) reported having been actively involved in determining the size and form of restitution. Face-to-face negotiations with the offender to determine the size and form of restitution occurred in only seven (5.3%) cases while formal contracts spelling out the terms of restitution were only written in eight (6.0%) cases.

Amounts of Victim Loss and Restitution

According to this sample of victims, court ordered restitution compensated them for approximately 22.5% of the total losses while insurance companies reimbursed them for 19.3% of these losses. Victims reported the actual restitution collected at the time of data collection to be only eleven percent of their losses. Therefore, at the time of the interview (nine to twenty-four months after sentencing) victims reported total compensation (restitution plus insurance) of 30.2% of their losses. Table Eight summarizes this information.

TABLE EIGHT
MEAN LOSS AND COMPENSATION

	<u>MEAN</u>	<u>SD</u>	<u>N</u>	<u>TOTAL</u>
Losses known to victims	\$775.95	\$1,766.96	\$119	\$92,338.05
Compensations received from insurance companies	773.04	1,186.67	23	17,779.92
Amount of court ordered cash restitution known to victims	247.02	417.63	84	20,749.68
Dollar equivalent of court ordered in-kind restitution known to victim	15.00	0	1	15.00
Total cash value restitution ordered by court, known to victim	244.29	-	85	20,764.68
Total cash value restitution received by victim by time of interview	190.55	299.47	53	10,099.00

Who Should Compensate the Victims?

Despite the low proportion of reimbursement received from restitution, seventy-eight victims (58.6%) believed that the offender is the appropriate party to compensate victims. Only twenty-two (16.6%) would not hold the offender responsible for making restitution, while twenty-five (18.6%) would give the offender a role in conjunction with government or private insurance companies. Only twenty-five victims (18.6%) would favor the operation of victim compensation schemes by the government.

The Fairness to the Victims of Restitution

While only sixty-two victims (46.6%) expressed satisfaction with the way restitution was completed in their cases, eighty victims (60.2%) thought that the restitution sentences as ordered by the court were fair. One hundred eight victims (81.3%) explained that restitution as ordered was fair because the restitution equaled their loss. Three victims (2.3%) noted that their restitution was fair because the offender paid what he or she was able, while two victims (1.5%) were happy with whatever compensation they could get. For those thirty victims (22.5%) who thought their restitution was unfair, twenty-one (15.7%) reported that restitution was less than the value of their loss, while three victims (2.3%) were dissatisfied because they were given no money for the expenses incurred in going to court or negotiating restitution.

Even though many victims wished that the offender had received more punishment, those victims whose offenders had received a fine or jail term were no more likely to think that restitution was fair than those victims with offenders who

were not so punished. The existence of a written contract between victim and offender was always associated with a judgement by the victim that restitution was fair.

As a final measure of consumer satisfaction, victims were asked if they would prefer to have seen offenders punished by fines or jail sentences rather than ordered to pay restitution. Despite the wording of this question, fifty-eight respondents (43.6%) wanted to see both restitution and other punishments. The reconciliative potential of restitution may not have been apparent to these victims. Fifty-seven victims (42.9%) reported being satisfied with their money back; while only seven (5.3%) would have foregone restitution if it had meant that the offender would have been sentenced to jail. Thus, the use of restitution as an alternative to punishment appealed to only a minority of victims.

2. Offenders

Only seventy-one offenders (44.0%) out of the sample of one hundred seventy-two were interviewed. One reason for the low response rate was the inability to receive permission to interview approximately thirty juveniles. The remaining missing offenders simply could not be located. The problem was compounded by the lack of good record keeping in some county courts.

Characteristics of Offenders

While the characteristics of the missing offenders were unknown, the personal characteristics of those who responded did not differ in any marked way from those of the original pool of offenders. Few individuals - only three (3.9%) - in the sample of seventy-one offenders interviewed had committed violent crimes. This should be compared to the seventy-four offenders (14.0%) who had committed such crimes in the original pool of five hundred twenty-five offenders. The difference in the proportion of violent offenders between the sample of offenders interviewed and the pool of offenders from which this sample was drawn was statistically significant and indicates that the sample from which the following data were collected was deficient in offenders who had committed violent offenses.

Amount of Victim Loss and Restitution

The mean amount of victim loss as reported by offenders was \$381.14. Mean dollar restitution ordered was \$278.25. Thus offenders reported restitution of nearly three-fourths (73.0%) of the loss, while victims as previously noted had estimated that same proportion to be less than one-third (31.5%). In short, there was a clear difference between the perceptions of victim and offenders concerning the proportion of loss compensated by restitution.

Fairness to the Offender of Restitution

Most offenders (62.0%) thought that restitution, as ordered by the court, was fair. While seventeen offenders (23.9%) thought of it as having been too harsh, four (5.6%) thought of it as having been too lenient. As with victims, most offenders who termed restitution as having been fair (61.4%) thought so because the amount of restitution equaled the amount of victim loss. Seven offenders (9.9%) thought restitution had been fair because they had "deserved it," seven (9.9%) thought so because the punishment "could have been worse," and one offender thought restitution had been fair because he enjoyed the in-kind restitution he had made to the victim. For the seventeen (2.4%) who thought that restitution had been too harsh, five (7.0%) claimed that they had paid for things

that they hadn't done, three offenders (4.3%) thought that a fine or jail term plus restitution was unfair and two (2.8%) thought restitution was unfair because the offense was the fault of the victim. Two of the four offenders who thought restitution was too lenient explained that restitution hadn't fully repaid the victim's loss, while one thought that the restitution had not been enough punishment. Only one offender claimed that his victim had "inflated" his estimate of loss.

Only ten offenders (14.4%) would have preferred punishment by a fine or jail sentence instead of restitution. Of these, two would have preferred jail, four a fine, and one a residential probation commitment. Support for the concept of making the victim whole as an alternative to punishment seemed to be the majority opinion for this sample of offenders who had been ordered to pay restitution.

Factors Related to Successful Completion of Restitution

Analysis of the interviews with offenders revealed that for the most part the conclusions reached above as to the negative influence of social class and ability to pay on the successful completion of restitution tended to be supported from these interviews with this small sample of offenders. The amount of the victim loss and the amount of restitution ordered were among the few factors to be significantly related with failure to complete restitution. Clearly, restitution set at a high amount was far less likely to be paid than that set at a small amount. The importance of ability to pay in the successful completion of restitution is further validated by these findings. This factor was clearly stronger in its effect than offender attitudes. The perception of fairness of the sentences tended to be weakly associated with successful completion of restitution; however the strength of this association was less than that of most indicators of social class. In addition the relationships of offender attitudes with successful completion of restitution were not statistically significant. The factors most strongly associated with successful completion of restitution were external to the offender and his attitudes. The "piling on" of additional punishments, adding jail terms or fines to conditions of restitution, significantly decreased the chance that restitution would be completed. In addition, those probationers who while paying restitution were regularly reminded of their progress were more likely to complete restitution successfully. The existence of a written contract formalizing the terms and form of restitution also tended to have a favorable effect on the payment of restitution. It appears that the investment of positive criminal justice resources (regular reminders of payment progress, formal contracting procedures between victim and offender) into the restitution process increased the chances that restitution would be paid. Conversely negative resources (jail terms and fines) had negative influences on the payment of restitution.

SECTION FOUR: SUMMARY AND RECOMMENDATIONS

By analysis of court records and interviews with judges, probation officers, victims and offenders this paper has attempted to describe the use of restitution as a condition of probation in the State of Minnesota between October 1973 and September 1974.

This analysis has shown:

- 1) Restitution existed as a condition of probation in approximately one-fourth of all probation cases;

2) Restitution was used in a straightforward manner by most courts. Full cash restitution was ordered to be paid by the offender to the victim in more than nine out of ten cases. Adjustments in the amount of restitution because of the limited ability of the offender to pay were rare. In-kind, or service, restitution to the victim or community was ordered in only a few cases;

3) The most important factor determining whether an offender was ordered to pay restitution (assuming there had been a loss to a victim) was his supposed ability to pay. Thus those probationers ordered to make restitution were generally white, middle-class individuals;

4) White middle-class individuals had the best record for completing restitution. The characteristic of an offender most strongly associated with failure to make restitution was the existence of a prior criminal record;

5) Other factors which seemed to be associated with the successful completion of restitution included the involvement of the victim through formal contract with the offender and regular feedback to the offender concerning his or her progress in the completion of restitution. Factors which were associated with the failure to complete restitution included restitution set at large sums of money and the existence of a jail term or fine as well as restitution in the sentence;

6) Most judges and probation officers favored the use of restitution as a condition of probation. Similarly most judges and probation officers expressed the belief that restitution had a rehabilitative effect;

7) Although only a minority of victims were satisfied with the way restitution had been made at the time of data collection, most victims thought that the restitution ordered by the court had been fair. However, many victims were dissatisfied with their experiences with the courts. Most victims believed that restitution by the offender to the victim is the proper method of victim compensation;

8) There were only relatively minor urban/rural differences in the use of restitution or in the attitudes held towards it by judges, probation officers or offenders. In general restitution appears to have been used in a slightly greater proportion of rural probation cases.

It is hoped that this report will be of use to judges, probation officers and correctional planners in improving the utilization of restitution. Relationships with the one measure of success provided in this study may help to extend the use of restitution through provision of new support mechanisms and social programs to increase the ability to pay of more offenders. This is recommended despite the cost in correctional resources since it may help to extend the benefits of compensation to more victims and to extend any rehabilitative effects of restitution to those offenders who need it most. Any discrimination against lower class offenders can be reduced by making this humane alternative to imprisonment available to all despite their social class or yearly income.

It is clear that the most important determinant of whether an otherwise eligible defendant was to be ordered to make restitution was his presumed "ability to pay." As evident from both interviews with judges and the examination of case records, this criterion was generally operationalized by choosing offenders who were white, well-educated, and from the working and middle classes. This contrasted markedly with what is known about the criminal justice system in general. Those caught up in the system are overwhelmingly the poor, the lower class and members of minority groups. Clearly, a large group of offenders, in whom the courts had little faith that restitution would be completed, were not ordered to make restitution.

Considered in terms of the successful completion of restitution only, the preselection of middle class offenders was one way to ensure that restitution ordered was restitution collected. Generally, the groups favored to receive restitution as a condition of probation were the same groups who later successfully completed restitution. The court thus did not put itself into the position of ordering something it could not enforce. However, in terms of the use of restitution as a rehabilitative tool and as a method of victim compensation the real needs may not have been addressed. Since most judges and probation officers viewed restitution as rehabilitative and since most victims and offenders saw restitution as an important component of justice, this limitation on the use of restitution may be serious.

One might assume that the well-educated and middle class individuals or large and impersonal businesses that provided the bulk of the sample of victims were the victims least in need of compensation. Perhaps the relatively well-educated and well-employed group of offenders that was able to pay restitution was the group of offenders for whom restitution had the least meaning.

Most victims displayed strong support toward the concept of restitution, even when their individual experiences were unsatisfactory. In addition most victim dissatisfaction was due to their perceptions that the courts were either not concerned about their victimization or did not adequately communicate with them. These findings indicate that increased use of restitution, even if the overall rate of successful completion was lowered, would probably result in increased victim satisfaction with their experiences with the criminal justice system. For this reason and for the extension of the possible rehabilitative effects of restitution to those offenders most in need, it is recommended that the use of restitution be increased.

In addition, restitution may be one way that members of the more affluent social classes avoid prison. Since some judges in the interviewed sample expressed approval of restitution as an alternative to prison sentences, some offenders may have gone to prison because the court assumed they couldn't earn enough money to pay restitution. In contrast, other judges made it clear that restitution was only considered after the individual was determined to be suitable for probation. In these cases the poor and unemployed may have escaped the sentence of restitution to the economic disadvantage of those in the higher social classes. If the use of restitution is to be extended for its rehabilitative and compensatory benefits we must think of new ways to enable the poor to make restitution. There are several methods that have been advocated to enable the less affluent probationer to successfully complete restitution. One such technique involves the use of "partial restitution," restitution set at an amount the offender can be realistically expected to pay regardless of the extent of victim loss. Although the evidence as to the effectiveness of partial restitution

was mixed, the fact that higher amounts of restitution were significantly less likely to be paid than small amounts suggests that this procedure should be tried more extensively. Since the victim would receive less compensation under such procedures, in fairness he or she could be involved in the determination whether partial restitution should be ordered and if so what should be its size.

Greater use could be made of "in-kind restitution", restitution performed as service to the victim or to the community. In general, the judges and probation officers interviewed did not favor the use of in-kind restitution. However, those victims and offenders who had experienced it were very favorable in their attitudes towards it. The successful experience of the "Community Service by Offenders" program in England speaks to many of the potential problems seen by judges and probation officers with the use of "in-kind" restitution. John Harding has found that volunteer service by offenders as an alternative to short custodial sentences has been favorably received by both offenders and those recipients of service (Harding 1974).

It is recommended that more support mechanisms be developed and utilized by probation offices to aid offenders in making restitution. It has been shown that regular reminders to probationers as to how much restitution was still due was positively associated with the successful completion of restitution. Also those offenders who had made a formal contract with their victims specifying the amount and form of restitution were far more likely to be successful. Perhaps agents should not be required to collect restitution (there is evidence that probation officers were less likely to successfully collect restitution than clerks of court, county attorneys or law enforcement personnel) but instead provide for job counseling, budget help, feedback to the offender and victim as to the progress of restitution and other supports for the completion of restitution. More counties may find it advantageous to allow some agents to specialize in restitution cases, allowing those agents to develop the programs and skills needed to help probationers complete restitution. It may be necessary in some jurisdictions to completely separate restitution supervision from general probation supervision. Factors that are under the control of the criminal justice system that may act to decrease the likelihood that restitution will be made, such as fines or jail terms, could be eliminated to increase the chances that victims will be compensated.

It is also recommended that victims be offered greater involvement with the process of restitution. Victims who had been involved with the determination whether restitution should be ordered or in the determination of its amount and form were more likely to be satisfied with the restitution as ordered by the court. The victims who were least satisfied with the restitution as ordered, regardless of whether it had been completed, were those who were not notified whether restitution was ordered, and those who felt that the police, court or probation officer had not adequately communicated with them. It is evident that great amounts of victim dissatisfaction over restitution might be avoided if the courts would do a more thorough job of notifying victims of what they can and cannot expect in regard to restitution. If restitution payments are late, the courts should explain to victims the reasons why they will not receive restitution as ordered. Victim involvement was also positively associated with the successful completion of restitution.

In summation, this paper has attempted to show that restitution is an important probationary condition and has the support of the producers and consumers of the criminal justice system. It has argued that its use can and should be encouraged

and extended. The corrections personnel interviewed believed that it has rehabilitative potential. This potential may be largely unrealized since its use is limited by the lack of financial ability of many offenders. Greater support mechanisms to enable more offenders to make restitution in some form are discussed and recommended. It is also recommended that victims be involved more closely with the restitution process.

WORKS CITED

- Irving E. Cohen. "The Integration of Restitution in the Probation Services", Journal of Criminal Law, Criminology and Police Science, Volume 34, (1944) pp. 315-326.
- Eugene Doleschal, Nora Klepmuts. "Toward a New Criminology", Crime and Delinquency Literature, (December, 1973) pp. 607-626.
- Burt Galaway and Joe Hudson. "Restitution and Rehabilitation, Some Central Issues", Crime and Delinquency 18 (4) (October 1972) 403-410.
- John Harding (Assistant Chief Probation Officer, Devon Probation and After-Care Service). "The Offender and the Community", Social Work Today, 5:16 (November 1974) pp. 478-481.
- Joe Hudson and Burt Galaway. Considering the Victim, Readings in Restitution and Victim Compensation. Springfield, Illinois: Charles C. Thomas, 1975.
- O. Hobart Mowrer. "Loss and Recovery of Community", Innovations to Group Psychotherapy. Edited by George M. Gazda. Springfield, Illinois: Charles C. Thomas Publisher, 1975.
- Stephen Schafer. Compensation and Restitution to Victims of Crime (Second Edition). Montclair, New Jersey: Patterson Smith, 1970.
- Richard E. Taster. "Criminal Restitution: A Survey of its Past History and an Analysis of its Present Usefulness", University of Richmond Law Review, Volume 5 (1970) pp. 71-80.

END

7 11 1944