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## Victims as Stakeholders: Research from a Juvenile Court on the Changing Roles of Victims in Restorative Justice

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**Abstract:** *This research analyzes changes made by a juvenile court over five years toward the progressive inclusion of victims as "stakeholders" within the implementation and development of restorative justice practices. Beginning in 1999, the Clark County Juvenile Court (CCJC) in Washington State introduced a Victim Offender Mediation (VOM) program. Subsequently, the court altered diversion and probation practices in ways that provided several significant services to victims, and afforded victims increased decision-making capacity. In doing so, the court also amended how offenders fulfilled their diversion or probation requirements at the court, particularly in relation to its use of VOMs. This research follows the initial inclusion of victims as "stakeholders" within the use of VOMs beginning in 1999, and explicates how and where these stakeholder roles were amended over time until 2005, when the court had largely finalized the structure of victim involvement and participation. The ensuing discussion describes the rationale for the court's changes, and the effects of these changes on how victims were able to participate and make decisions in both diversion and probation cases. The paper concludes by discussing the implications of these changes as they involve the role of victims as stakeholders within restorative justice as used in formal justice settings, and in particular the possible limits of such roles when enacted through justice agencies such as juvenile courts.*

**Keywords:** juvenile justice, restorative justice, stakeholders, victims

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### INTRODUCTION

The term "stakeholder" is often used within restorative justice to both identify and legitimate the inclusion of victims into specific restorative interventions and justice processes (c.f. McCold and Watchel 2003; Schiff 2007; Zehr and Mika 1998). The questions of who or what constitute stakeholders, and exactly how victims should and can be involved as "stakeholders," however, are more oblique within restorative justice (Ashworth 2002; Bazemore and Leip 2000; Miers 2001; Van Ness 1993). Empirical research on restorative justice interventions that involve victims as stakeholders is widespread (Bradshaw and Umbreit 1998; Coates and Gehm 1989; Griffiths 1999; Mika et al. 2004; Umbreit 1998; Umbreit, Coates, and Vos 2002), as is literature that

looks more directly at the theoretical implications of involving victims as stakeholders (McCold 2000; Schiff 2007; Zehr and Mika 1998). Among practitioners, there is consensus that victims should be able to meet and address their offenders and should be entitled to the benefits of restitution or other remunerations.. There is decidedly less empirical research in restorative justice on how victims become stakeholders, what this entails in terms of the agency and decision-making abilities of victims, the relationship between victims and justice agencies, and the auspices under which victims are able to act as stakeholders. Thus, if victims are indeed stakeholders within restorative approaches to justice, they are not all stakeholders in the same way or to the same extent across differing restorative interventions, programs, jurisdictions, and agencies.

This research explicates the changes made by one juvenile court over a period of five years toward the progressive inclusion of victims as stakeholders within its development and implementation of restorative justice. Beginning in late 1999, the Clark County Juvenile Court (CCJC) in Washington State introduced a Victim Offender Mediation (VOM) program. Over the next five years the court gradually altered diversion and probation practices in ways that provided several significant services to victims, and allowed victims increasing decision-making in aspects of their cases related to redress from offenders, restitution, and to a limited degree terms of diversion or adjudication.

### **Purpose of the Research**

A primary purpose of this research is the empirical investigation of the determinants of stakeholder involvement for victims involved in VOMs and other victim services at the CCJC between 1999 and 2005. During this time the court implemented the use of VOMs, expanded the services provided to victims through the development of a Victim Impact Program (VIP), and sought to expand or enhance the decision-making capacities of victims in VOMs and in other ways. The CCJC provides an opportunity to address questions regarding organizational changes in juvenile justice agencies that seek to include victims as stakeholders within restorative justice approaches. This research follows the initial inclusion of victims as stakeholders within the use of VOMs beginning in late 1999, and explains how and where these stakeholder roles were amended during this time in diversion and probation practices. The ensuing discussion describes rationale of the court's changes and the effects of these changes on how victims were able to participate as stakeholders in both diversion and probation cases.

A second goal of this research is to describe the court's change to victim roles as stakeholders within the larger framework of Washington State's juvenile justice system. Washington is the only state to use a comprehensive set of determinate sentencing guidelines for youth offenders, and these guidelines and accompanying due process restrict the purview and administration of justice practices for juvenile courts in significant ways. As this research will show, these guidelines and due process requirements also have important implications for the use of restorative youth interventions such as VOMs in Washington State, particularly for victims of crime.

## **METHODS, DATA COLLECTION, AND ANALYSIS**

### **Methods**

This research utilized qualitative methodologies, including interviews and participant and non-participant observation, appropriate for the study of organizations as well as the study of experiences, behaviors, and attitudes of organizational members or those served by organizations. The appropriateness of such methods in investigating these types of social settings and questions is well established in sociological literature. Creswell (2003:181) notes that qualitative research is "emergent rather than tightly prefigured," and is appropriate for research in cases where little is known about a particular social phenomenon or the setting itself. Neuman (2000:146) argues that qualitative methods are crucial for research into social settings in that such methods may "emphasize the importance of social context for understanding the social world." Finally, qualitative methods have long been recognized for their importance and contribution to interpretative studies of social behavior and social action. Researchers often seek to understand not only frequency or patterns of social action, but also meanings attached to social action by actors themselves, as well as how others make sense of and interpret such meanings (Weber 1975).

Semi-structured interviews were conducted with the court administrator, four court managers, several probation staff, the Restorative Community Service Coordinator, two mediation and victim staff members, and other participants as needed. These interviews used in the beginning of the research were limited to 12, as the formal interview setting was no longer necessary once the researcher had established relationships with court administrators, managers, and staff. Other semi-structured interviews were however conducted throughout the research in cases where there was not familiarity with participants, for example juvenile court judges.

Interviews conducted with court managers and the court administrator covered a broad range of issues, including the court's reasons for adopting restorative justice, its overall restorative framework, strategies for implementing and integrating restorative justice, changes in court protocols, and other related questions. Interviews with probation staff were focused primarily on how the court's adoption of restorative justice had altered or amended their roles at the court. Interviews with mediation and/or Victim Impact Program (VIP) staff focused on the use of VOMs, and on questions of how the court's victim services were integrated into the court itself.

A larger amount of data came from "informal interviews" and impromptu discussions carried out with those listed above that were focused on specific questions, outcomes of cases, etc. The researcher was present at the court or at peripheral sites on a weekly basis for extended

periods of time, and this allowed for extensive follow up and further discussions related to questions initially posed in earlier interviews, as well as new questions as they arose. Also, informal interviews were used in discussions with community volunteers working as part of the court's Restorative Community Service (RCS) program, with representatives from community organizations, and with individuals not employed by the court but involved in restorative justice in other ways. The number of informal interviews and/or discussions with those listed above numbered well over 100.

Participant observation research involved volunteer work at over a dozen RCS sites. Participant observation was also conducted in the court's Victim Impact Offender Competency Education Program (ICE), used by the court for offenses where there was no identifiable victim, or where probation staff believed that the curriculum's emphasis on "thinking errors," as they related to harms caused to victims and the community, might be useful for offenders. Non-participant research included numerous observations of court meetings (staff meetings, managerial meetings, meetings with other agencies), meetings between offenders and probation staff, VOMs, preparatory meetings with victims and offenders, and community outreach meetings.

### Data Collection

All work with participants was approved according to the ethical guidelines set forth by the CCJC and the researcher's university. All participants in settings determined by the IRB and/or the court to pose a risk beyond that of "daily life" were informed either verbally or in writing of the purpose of the research, and the risks posed to human participants. Consent from youth in such settings was also obtained by their parent or legal guardian. All participants were informed that they could choose to not participate, without reason, with no consequence. In the case of court staff, no staff requested to be excluded from this research. However, as part of the court's guidelines for research, court staff was told by the court administrator they could exclude the researcher from meetings that included offenders and/or victims at their discretion. The researcher was excluded from several meetings, for reasons either later explained or not.

In settings involving qualitative methods discussed above data were collected via note-taking, usually contemporaneously. The primary exceptions to this were several off the cuff conversations at the court, and the researcher's participation at community service sites. In both settings, visible note-taking would have been disruptive or impossible, and in such cases notes were taken as soon as possible thereafter. At the request of the court, electronic recording devices were not used for collection of data.

The research presented in this article also includes data provided to the researcher by the court. This includes court documents such as protocols, mission statements, best-practice guidelines, and minutes and notes from court meetings and working groups. The court also provided information on youth diversion and adjudication numbers, victim participation rates in restorative programs, and significant services provided to victims. Data that were provided by the court for purposes of this article were stripped of personally identifying information, in particular victim and offender data.

### Data Analysis

Qualitative data from interviews and observations within the first six months of the research were coded using an emergent coding approach. The result of this early "pilot" analysis led to the recognition of several more defined research questions – one of which was how victims were able to more directly participate as "stakeholders" in their own cases as a result of changes in the court's implementation of its "restorative framework."

Descriptive categories were thus refined, and analytical codes were developed to analyze settings such as VOMs where victims were afforded varying degrees of decision-making capacity. The development of more refined research questions also led to the realization that much of the "story" or analysis (which was indeed unfolding over the course of the research) regarding the inclusion of "victims as stakeholders" was to be found in other places. Data from the court, including court meeting minutes, written communications, formal texts (i.e. victim form letters, diversion form agreements, etc.), changes in court protocols and practices, and victim and offender data, shed light on how, why and when victim involvement and decision-making capacity was implemented or amended. These data were eventually also converted into electronic format for coding and analysis.

## REVIEW OF LITERATURE

Restorative justice is both a philosophy of justice as well as a loosely-aligned set of interventions focused on addressing and rectifying harms caused to individuals and local communities by crime (Zehr 1990). Emerging in the 1970s and 1980s as a response to shortcomings in adult and youth justice practices, restorative interventions such as victim-offender reconciliation programs (VORPs), victim-offender mediation (VOMs), family group conferences (FGCs), and sentencing circles are organized in ways that allow victims to meet with offenders, allow victims to voice harms caused to them to the offender, and allow offenders the possibility of making amends and redressing harms they have caused (Strang and Sherman 2003; Umbreit 1985, 1995, 1998; Van Ness and Strong 1997). Restorative approaches also frequently stress the

importance of community participation, either directly, as in the case of sentencing circles or conferences where community members may participate (Bazemore and Griffiths 1997; Stuart 1996), or indirectly such as providing support for victims and offenders (McCold 2000; Umbreit 1998) or providing input into the shaping of justice policies (Bazemore 1997).

The term restorative justice is generally attributed to Albert Eglash (1977), who contrasted “retributive” “distributive” and “restorative” forms of restitution and argued that the latter provided more creative and meaningful possibilities for both victim and offenders beyond that of financial restitution (cf. Van Ness and Strong 1997). However, the origins of restorative justice are more diverse (Van Ness and Strong 1997). In the 1970s, meetings were used in Canada and the United States which brought offenders together with victims in informal settings, and evolved into more fully-developed “victim-offender reconciliation” programs” (VORPs) and “victim offender mediation” (VOM) programs in the late 1970s and 1980s (Umbreit 1985; Van Ness and Strong 1997). In 1989, New Zealand implemented the use of FGC for most youth offenders (Umbreit 2000), and in the 1990s Australia saw the implementation of forms of youth justice conferencing in all states (Hayes and Daly 2004). Other restorative interventions such as sentencing circles also emerged in Canada in the 1990s (Stuart 1996).

Within the growth of restorative interventions in the last thirty years, the larger question of *what is restorative justice* is not a straightforward one. Braithwaite (1999:4) noted over a decade ago that restorative justice had emerged “most commonly defined by what it is an alternative to.” By the late 1980s, restorative justice advocates had set forth a number of criticisms or deficits of contemporary criminal justice practices that they argued could be better addressed through restorative approaches, namely: 1) the excluding of victims from participation and knowledge of their own cases (Christie 1977; Umbreit 1985; Van Ness 1989; Van Ness *et al.* 1989; Zehr 1985, 1990), 2) the lack of meaningful redress for victims (Christie 1977; Van Ness 1989; Zehr 1989, 1990), 3) the re-victimization of victims by law enforcement and/or prosecutors (Umbreit 1989), 4) the lack of incentive in adversarial justice systems for offenders to take accountability for harms they have caused (Braithwaite 1989; Zehr 1989, 1990), 5) the lack of means for offenders to make amends to victims outside of restitution (Braithwaite 1989; Eglash 1977), 6) poor rates of offender re-integration (Umbreit 1989), and 7) the growth of justice policies that reflected the interests of the state and policy makers over those of local communities (Christie 1977; Van Ness 1989).

Many of these criticisms were not unique to restorative justice. In particular, victims’ rights organizations, which had gained visibility and political influence by the late 1970s, had many similar criticisms of

the justice system. Feminist organizations critical of the treatment of women (especially rape victims) by the criminal justice system played a pro-generative role in the rise of the victim rights’ movement (Abrahamson 1985), as did Civil Rights organizations critical of the overrepresentation of Blacks and other minorities as victims and the relative lack of interest or enforcement by criminal justice agencies (Karmen 1992). These groups found common ground with more conservative organizations focused on victims’ rights in relation to the rise in crimes rates since the early 1960s (Karmen 1992), and the attention, services, and rights afforded to offenders at the expense of victims (Carrington 1975). The 1973 Supreme Court decision *Linda R.S. v. Richard D.* (410 U.S. 614) enhanced the perception of many victims’ rights advocates that victims were in fact no more than “just another piece of evidence, a mere exhibit to be discarded after the trial” (Karmen 1992:158). The efficacy of victims’ rights organizations resulted in the passing of legislation on federal and state levels, including the federal Victims and Witness Protection Act in 1982 and 2004 Crime Victims Rights Act, as well as victims’ rights legislation in some form in all U.S. states.

The victims’ rights movement and restorative justice shared common criticisms of many of the problems facing victims. However, they also diverged in notable ways. From the outset, restorative justice advocates were critical of what they termed “punitive” or “retributive” forms of justice (Umbreit 1989; Zehr 1985). For supporters of restorative justice, the problem was (and remains) not simply one of victims being excluded or re-victimized (Achilles and Zehr 2001), but, equally one of barring offenders from any way to make amends for harms they have caused and be accepted back into their communities. As Zehr (1985:2) argued, “During the past several decades, the U.S. has experienced . . . a major shift in the philosophy of punishment. Rehabilitation is now out of fashion; punishment is definitely in. An unholy alliance of liberals and conservatives made possible the victory of a just deserts philosophy.” Such a philosophy, argued Zehr, did not eliminate the excesses of judicial discretion as much as it shifted these excesses to other parts of the justice system, with the result of a continued overrepresentation of minority offenders, growing prison populations, and not much to show for it in terms of recidivism rates. Moreover, Zehr (1985:2) argued that such a system was not only ineffective in reducing crime, but was not “holding offenders accountable” in a way that allowed them to “understand the real human consequences of their actions . . . [and] take responsibility for making things right, for righting the wrong.”

Nevertheless, given the growth of restorative justice throughout North America, Europe, Australia, New Zealand, and other regions in the last quarter century, the case today is perhaps less a lack of definition than it is one of multiple and even competing definitions. Johnstone and

Van Ness (2007:6) have argued, for example, that there is currently a lack of any “single clear and established meaning” of the concept of restorative justice. In one sense, this lack of any single definition reflects the fact that restorative practices have emerged distinctly in different local and global regions. On another level, the lack of any single clear definition also reflects larger theoretical and philosophical debates regarding, as Sharpe (2004:17) has termed it, the question of how large the “restorative justice tent” should be, reflecting a lack of “consensus on what restorative justice is . . . and how wide a range of activities should be included under the term ‘restorative justice’.” Within this growing tent, the tendency, as Van Ness (2005:3) has argued, has been for definitions of restorative justice to be either “process-based” or “justice-based,” with the former focusing on “the importance of encounters between the stakeholders in the crime and its aftermath,” and the latter on “outcomes and/or values of restorative justice.”

### Who or what are Stakeholders in Restorative Justice?

While much of the debate within restorative justice has been around which type of interventions or processes may be rightly considered restorative, equally important are questions of who counts as a “stakeholder” within restorative practices, and in what capacity? Arguably, the origins of stakeholder theory as they relate to restorative justice stem from an influential article by Nils Christie, published in the *British Journal of Criminology*. In this work, Christie (1977) argued that modern criminal justice systems effectively usurp “ownership” of conflict more rightly owned by victims of crime themselves in lieu of other state interests such as crime control, offender rehabilitation, monetary gain, and the “professionalization” of a class of people whose livelihoods were vested in laboring in or managing criminal justice systems. His argument was in some ways literal insofar as he proposed that under the auspices of modern criminal justice systems, “Not only has [the victim] suffered, lost materially or become hurt, physically or otherwise. And not only does the state take the compensation. But above all [the victim] has lost participation in his own case” (Christie 1977:7). In short, Christie argued that criminal justice systems had divested victims in particular from rightful participation in systems that directly “concern” them directly, financially and otherwise.

Christie’s (1977:10) concept of what he termed a “victim-oriented” form of justice organization provided a significant theoretical justification for the inclusion of victims into justice processes such as VOMs and other restorative interventions that allow victims a participatory role in the determination of financial remunerations. Yet his argument of “conflicts as property” was also directed at questions beyond financial aspects of such ownership, allowing as well for “ownership” of less material aspects

of victimization such as emotional suffering and victims’ exclusion from knowledge from and participation in their own cases. Such nonmaterial aspects of “conflict ownership” were expanded upon by Howard Zehr (1990:29), who acknowledges in his work *Changing Lenses* a recognition of the victim’s right to reclaim less calculable losses such as the violation of trust, the trauma that often accompanies victimization, fear of personal safety, and the need to explain to the offender and others the effects of these harms.

The premise of Zehr’s (1990) argument was not simply that there are nonmaterial effects of victimization, but more broadly that crime itself can be better addressed and redressed by focusing on the concept of “harm” instead of “crime.” Crime is, by its very definition, “owned” by the state both conceptually and legally – i.e. the state both defines “crime” as well stands as the sole legitimate plaintiff. The concept of “harm,” on the other hand, denotes a broader understanding of the effects of crime, particularly in the lives of victims. It also opens up a conceptual and even potential legal space for the attribution of “ownership” of the harms caused by crime, as well as other harms not recognized by the state as such.

Both Christie’s and Zehr’s work were central in the development of the concept of victims as “stakeholders” within restorative justice. As discussed above, even within conflicting definitions of restorative justice there remains a primary recognition that victims must be afforded an opportunity to directly seek amends from offenders for harms caused to them, and conversely that offenders should be afforded an opportunity to make such direct amends whenever possible. Yet to the degree that the term has become part of the restorative justice lexicon, what people mean by the term “stakeholder” is less in agreement than its general use might suggest. Overwhelmingly, the term is used in restorative justice literature with no accompanying definition beyond that of identifying who, or what, stakeholders are in restorative justice. Zehr and Mika (1998) identify victims, offenders, and affected communities as “stakeholders” – a position echoed by many more well-known scholars or advocates of restorative justice (Bazemore 1999; Bazemore and Walgrave 1999; Strang and Braithwaite 2002). This is arguably the most common understanding of the term as used in restorative justice, but even this relatively straightforward identification of “stakeholders” is not without debate. Crawford and Clear (2001:134) ask, for example, “Is a *stakeholder in restorative justice* someone who either provides, uses, or benefits from a service, or has relevant expert or local knowledge? If so, what does stakeholding entail?” Zehr and Mika’s (1998) definition of stakeholder would suggest that stakeholding entails participation based on relationships of harms, but others such as Cornwell (2007) also include “the state” as a stakeholder – even though the state arguably has no vested interest in one case more than another. Beck, Britto, and

Andrews (2007) have expanded the definition of the term stakeholder to include the family of offenders in capital punishment cases.

Without belaboring the point too much, it is not difficult to find widely differing and even contradictory definitions of the term. This imprecision or ambiguity has led several scholars to develop or refine the concept of stakeholder as used within restorative justice. Arguably, the most well-known has been McCold and Wachtel's (2003) work on "stakeholder roles," where the authors build upon the notion of ownership of harms to distinguish between "primary" and "secondary" stakeholders roles. "The primary stakeholders are, principally, the victims and offenders, because they are the most directly affected," argue McCold and Watchel (2003:2), adding that "All primary stakeholders need an opportunity to express their feelings and have a say in how to repair the harm." Conversely, McCold and Watchel (2003:2) argue "The secondary stakeholders include those who live nearby or those who belong to educational, religious, social or business organizations whose area of responsibility or participation includes the place or people affected by the incident . . . their needs are aggregate, not specific, and their most restorative response is to support restorative processes in general." For McCold and Watchel (2003:2-3), "The most restorative response for the secondary stakeholders is to support and facilitate processes in which the primary stakeholders determine for themselves the outcome of the case," meaning in effect that secondary stakeholders do not have an ownership of harms as much as they have an opportunity at "enhancing social cohesion and empowering and improving the citizenry's ability to solve its own problems."

## **VICTIM-STAKEHOLDER ROLES IN DIVERSION**

Diversion was mandated by Washington State law for all first time juvenile misdemeanor offenders.<sup>1</sup> For youth cases referred to the prosecuting attorney's office between 1999 and 2005, about a third of youth each year received diversion, another third received community supervision (i.e. probation), and about a third of the referrals were dropped (i.e. no charges filed or charges dismissed). The final 10% or so consisted of offenders sent to state youth facilities (JRA), youths sentenced to specialized dispositions, and remands to adult criminal court, etc.

Prior to the implementation of restorative justice in late 1999, the CCJC used a diversion program not unlike others in Washington State and in many juvenile courts. Upon receiving a case, the juvenile court manager responsible for intake and diversion made the decision to proceed with a case or to drop the charges. When cases proceeded, juveniles eligible for diversion were required to meet with probation staff, where they were asked to participate in the court's diversion program. If a youth did

not agree, the case was returned to the intake manager and charges could then be filed. If the youth agreed, the terms of the diversion were set by a probation staff in a meeting with the offender. These terms included possible conditions such as no further offending, no drug or alcohol use, and so on. They also included possible outcomes such as community service or restitution. The use of diversion at the court during this time was largely focused on the offender, with minimal possibility for victim involvement and participation in any sense. The only exception to this was the use of restitution, but restitution was set by the court, so victim involvement consisted mostly of providing the court with information in hopes of recompense.

### **2000-2002: Victim-Offender Mediation**

Beginning in late 1999, the CCJC instituted a Victim Offender Mediation (VOM) program in conjunction with the City of Vancouver, where a small number of diverted offenders and victims were asked to participate in mediation as an "outcome" of diversion. Mediation was also used for a small number of adjudicated cases as well. At the same time, the CCJC developed an alternative course for youth offenders called Victim Impact Offender Competency Education (ICE), to be used as a substitute for VOM when there was no identifiable victim, when victims were not able not meet with offenders, or as deemed necessary by probation staff. Beginning in 2001, the court also changed its community service program to what it called "restorative community service" (RCS).

In the initial joint program between Clark County and the City of Vancouver, victim-offender mediation was offered as an "outcome" for diverted cases, with the condition that any agreements between offenders and victims could be referred back to the youth's probation counselor and included in the terms of diversion. According to the court administrator, the screening process for mediation was conducted by the probation staff member responsible for overseeing the diversion agreement with the offender. Court records show that the court developed "screening criteria" for probation staff, who then referred appropriate cases to mediation staff. Mediation staff then contacted victims to inquire into their willingness to participate in mediation. Mediation staff would initially meet with both offenders and victims in preparation meetings, which were utilized as a means to answer questions and explain the mediation process, including the court's position regarding conditions of possible agreements between victims and offenders. When and if agreements were reached between victims and offenders in a VOM, the agreement was then returned to the probation staff and entered into the amended diversion contract. According to court data, in 2000, the first full year that the court used VOM, 85 victim-offender mediations were conducted out of a total diversion caseload of 1,140 cases.

The introduction of VOM created stakeholder positions for both victims and offenders that had not existed previously. This involvement was structured to some degree by court protocols and state laws. For example, by 2001 the court had generally limited the number of hours of community service a diverted youth could be asked to perform to 24, and this was carried over into any agreement between victims and offenders as well. Observations of VOMs and preparatory meetings reveal that victims and offenders were made aware of the parameters of possible outcomes of the diversion contract, usually in the preparatory meeting, and when agreements were reached in VOMs these guidelines were further explained by the mediator.

Observation of dozens of VOMs found, however, that mediators generally did not stress the need for an agreement as part of the mediation, nor did they use any pre-set formula for outcomes, outside of the limitations of court practice and state law for offenders. Most observed VOMs lasted from one to two hours, and most of this time was usually spent allowing victims to explain the harms caused to them and to voice concerns, in addition to hearing responses from offenders, answering questions, and discussion. This allowed for flexibility in terms of the needs or concerns of victims and offenders, but VOMs were also structured to a large extent, with victims speaking first, offenders responding, and the mediator facilitating discussion.

Only after these parts of the VOM were finished did the mediator ask victims what they “want to see happen to make things right.” In this regard, victims were afforded several possibilities that had not been possible before this program was implemented including direct service from the offender (usually as a type of restitution to repair harms related to the offense), specific community service work (in a particular setting), work in lieu of restitution, and information about the case itself from the offender through the mediation process. Agreements were often reached, but sometimes not, or in some cases victims expressed that there was no need for further action.

Finally, the court’s adoption of what it called “restorative community service” (RCS) in 2001 allowed victims one further possibility. It allowed victims to ask offenders to complete their community service work in a specific type of setting, or in some cases for the victim directly. RCS was implemented as a means of replacing “work crews” with service sites where youth could work with community volunteers in non-profit or community organizations. This led to the development of several dozen “partnerships” with a broad array of community organizations (Wood 2012). It also led to an expanded decision-making capacity for victims. Several VOMs observed by the researcher resulted in victims asking youth to fulfill their community service obligations at a particular location related to the offense. In one VOM, for example, the victim owned a house that has been vandalized by two

young people. After explaining that it was his elderly parents who lived in the house, and that they had been shaken by the event, he asked the offender to complete his community service at a retirement home or similar facility.

### **2003-2005: The Victim Impact Program**

In 2003, the CCJC implemented a program designed to assist victims of juvenile crime called the Victim Impact Program (VIP). Prior to this, mediation staff at the court had served primarily as support staff for probation and diversion, where VOM functioned as one outcome of diversion. Thus, VIP effectively created a separate unit within the court. Two full-time staff members were now responsible not only for planning and overseeing mediations, but also for contacting all victims of diverted cases at the CCJC, and for assisting victims and providing them with services and resources.

According to VIP staff, this change was significant for two reasons. It substantially increased the number of victims contacted and assisted by the court. It also changed the status and job responsibilities for the staff who had previously been mediators, but were now VIP staff. Prior to the implementation of VIP, mediation staff did not conduct the screening for appropriate VOM cases, which had been the responsibility of probation staff. Nor at this point did mediation staff have the authority to include victims’ concerns or input into diversion agreements without a completed mediation agreement between victims and offenders.

Once VIP was implemented, however, VIP staff was responsible for screening appropriate cases for VOMs. They were also responsible for communicating concerns or requests to be included into the diversion contract from victims who did not participate in VOMs. According to the court manager who oversaw these changes, in cases where victims requested VOMs, the determination of the terms of the diversion contract was now in effect split between the probation staff and the agreement between the victim and offender. Probation staff was still responsible for what the court called “conditions regarding competency” (i.e. treatment, counseling, and intervention/prevention) in the setting of the diversion contract according to the protocols adopted by the CCJC. However, court records (e.g. “Protocols from VIP/CJS Cases”) show that at this point, “issues related to offender accountability to the victim and the community (i.e. where the offender will perform community service) [were] left open for determination through the meeting process.”

This shift was significant. As mentioned above, it was now VIP staff, not probation staff, responsible for screening cases and making the determination to afford victims an opportunity to meet with offenders. Second, according to court records, the court now required that the agreement between offenders and victims be entered into the diversion contract in lieu of community service or



other “offender accountability” requirements previously decided by probation staff – meaning, in effect, that VOM agreements now took precedence over “issues related to offender accountability to the victim and the community.” In a small number of cases, this created conflicts between VIP and probation staff. However, as expressed by the court administrator, this change was crucial in terms of solidifying and ensuring that victim participation and input, either in mediations or by way of victim contact from VIP staff, were reflected in the final diversion agreements. The protocol for VIP issued to staff by the court noted, “The understood intent is that through direct interaction with the victim the offender will make amends both to the victim and to the community.” When this was not possible, victim input by means of contact with VIP staff was to be included when possible in the diversion agreement.

According to interviews and discussions with the court administrator and the court manager in charge of VIP/VOMs, VIP also signified a change in the court’s use and philosophy toward mediation itself, which until this point had been a central focus of its overall growing “restorative framework.” VIP was implemented in part from the recognition of mediation staff that many victims did not want or request mediation even when it was offered, but did benefit from other services offered by these staff. With the implementation of VIP, the court changed the use of the word “mediation” to “meeting.” According to the court administrator and restorative manager, this change reflected both a deliberate de-emphasizing of the centrality of mediation at the court in terms of identified victim needs, as well as the growing recognition that “mediation” was perhaps not an appropriate term for these interventions. Mediation invoked a type of “meeting between equal parties,” and not a “victim-driven” intervention between parties that had been harmed and parties that had incurred obligations to make amends.

With additional victims’ services offered by the court under its VIP program (discussed below in more detail), victim requests for meetings in fact decreased over time, even though the number of victim contacts increased. With the exception of a small number of victims of sexual assault, stalking or harassment offenses, incarcerated youth, or those who were overtly hostile towards victims or VOM, victims were offered the possibility of VOMs as part of the court’s larger VIP program. This was expressed to the researcher by the court’s restorative manager, but also observed in many cases of initial victim contact by VIP staff (usually over the phone). Interviews and discussions with VIP staff and the court’s restorative manager also revealed that they did not decide to “de-emphasize” VOMs because they were opposed to its use. Indeed, as trained mediators, VIP staff was of the opinion (expressed to the researcher) that VOMs were one of the most useful services offered to victims. Rather, there was

wariness – expressed on numerous occasions – on the part of VIP staff, the restorative manager, and the administrator towards cajoling or pushing victims toward mediation regardless of whatever positive “restorative” outcome such a meeting might yield.

In terms of changes to stakeholder participation, implementing VIP did several things for victims. It allowed for victim input into the diversion agreement itself, importantly now *without* the requirement that victims participate in mediation. According to the restorative manager at the court, this change signified an attempt to further refine the use of VOM only for victims who had a desire to meet with offenders, while making available the option of victim input into specific outcomes regardless of whether or not they chose to meet. Specifically, victims no longer had to agree to mediation to be able to suggest or ask for specific outcomes related to community service and restitution, although the use of “direct service” to victims in lieu of restitution or as part of their community service (in some cases) were things that could still only be done in VOMs.

According to VIP staff, this shift allowed them to focus more time and resources on victims’ needs or concerns not related to VOMs or direct victim input into diversion agreements – what the CCJC called “significant victim services.” The court defined significant service as, “A victim (direct or secondary) who, if asked, would self-report that VOM staff provided service to them that was meaningful in addressing issues of importance to them.” The CCJC listed the following as examples of significant services provided to victims at the CCJC:

- Acknowledgement of their having been the victims of a crime
- Concerns and important issues are acknowledged and validated
- The message is communicated that the community has a responsibility to, and is interested in, supporting victims of crime in meeting their needs
- Victims are given the opportunity to share feelings about impacts of crime
- Information is provided to victims about the justice system
- Information is provided to victims about how the offender is being held accountable
- Information is provided about community resources

The court estimated the increase of overall “significant services” provided to victims in diverted cases between 2000 and 2003 at about 350%. The number of significant services provided to victims of both diverted and adjudicated misdemeanor cases, as well as a smaller number of victims of No Charges Filed (NCF), increased

from 83 in 2000 to 324 in 2003, an increase of about 290%.

## VICTIM-STAKEHOLDER ROLES IN PROBATION

In many ways the changes to probation practices paralleled changes made to diversion cases at the CCJC between late 1999 and 2004. In other ways, however, there were significant differences as they impacted the ability of victims to act as stakeholders, in particular as these differences related to due process, which applied to youth who had been formally charged in a manner different from diverted cases. These differences extended as well to Washington State's use of determinate sentencing for youth offenders.

Offenders agreed to participate in diversion to have the charges against them eventually dropped and sealed. They were not pleading guilty to a crime, and their acceptance of the terms of diversion constituted in effect a circumventing of due process, insofar as it was not the criminal charge itself but rather the acceptance of the diversion agreement that allowed the court to require or request that offenders participate in certain restorative interventions or programs. In cases where offenders either pled guilty or were adjudicated however, due process as set forth under federal and state law applied throughout the adjudication process, up until the terms of probation were set by a juvenile court judge. These terms moreover constituted a court order that in many ways was less flexible than a diversion agreement, particularly in Washington State, where determinate sentencing guidelines for youth offenders limited judges' ability to alter or amend dispositions outside the guidelines.

These differences also extended to victims in terms of how and to what extent they were able to be involved in adjudicated cases. Victim input, while allowed at disposition hearings in the form of a victim impact statement, could not inform the terms of probation to the same degree as in diverted cases. This again was a legal difference; where due process applied to offenders throughout the adjudication proceedings and disposition, and where Washington State's use of determinate sentencing guidelines for youth offenders required judges to adhere to these guidelines unless they could show "manifest" reasons for not doing so. For example, the use of VOMs assumed that an offender was willing to "take responsibility" for his or her actions, something that was possible in diversion cases prior to the setting of the diversion agreement, but impossible in cases prior to adjudication where the offender was presumed "innocent" until adjudicated otherwise.

The distinction between diversion and probation was thus fairly pronounced in terms of how the court legally amended diversion and probation processes in implementing restorative justice. Diversion was decidedly

less formal, and more flexible, both in terms of the process itself (i.e. meetings between offenders and court staff), as well as in terms of the setting of the diversion contract. Probation was decidedly more formal and less flexible in terms of due process and recommending the terms of probation.<sup>2</sup>

Like diversion, these changes did not happen at once, but rather in a series of progressive organizational and procedural changes between late 1999 and 2005. Prior to late 1999 the prosecuting attorney's office generally filed charges for felony offenses. In the case of most misdemeanors, the filing of charges was ceded to "intake" probation staff. When charges were filed, youth could either elect to be tried as a juvenile or to plead guilty. After a youth pled or was found guilty, the disposition was by and large proscribed by the state's determinate sentencing guidelines for youth offenders in terms of placement either to JRA or to "local sanctions."<sup>3</sup> In cases where the disposition resulted in local sanctions, such sanctions could include community supervision, local detention, community service, or fines. At the court, terms of probation were guided in part by an "intake screening" process, administered by intake probation staff to all adjudicated youth in Washington State.<sup>4</sup> Restitution, when applicable, was also set by the judge.

Where the juvenile court judge set the terms of probation, court probation staff nevertheless had some latitude in terms of how these terms were implemented. This latitude came from the dual role afforded them as both officers of the court, as well as caseworkers for youth offenders. As officers of the court, they could function in a law-enforcement capacity insofar as they had discretion as to whether or not to charge a youth for a probation violation. As caseworkers and advocates, they were able to provide social services and other support to offenders, including at their discretion services beyond those determined in the risk assessment. In both roles, probation staff was able to decide how strictly they would monitor and supervise particular offenders.

Yet while diversion and probation were different for offenders, prior to 1999 they were markedly less so for victims. As with diversion, the primary way that victims were involved in probation was through the use of restitution. In Washington State, victims also had at this point the right to submit a victim impact statement prior to the disposition hearing. However, the influence of such statements was usually minimal, as the disposition itself was largely proscribed by the state's sentencing guidelines for youth offenders. Secondly, such statements did not provide the victim with any more decision-making power over the outcome of any particular case, although in an exceedingly small number of cases (approximately 2 percent of all adjudicated cases) statements may have been used in part to justify a "manifest up" or "manifest down" decision (i.e. a sentence outside of the guidelines) on the part of the judge.

In the case of victims as well, the prosecuting attorney's office was also responsible for victim contact and information for felony cases. This process generally involved contacting victims to determine restitution, to collect further information about the crime, and to provide information about victim's rights in Washington State. For victims of felony crimes, these rights included the right to be informed as to the status and outcome of their case, the right to be present at trial and sentencing, the right to submit a victim impact statement to be presented at the disposition hearing, and the right to notification of release of an offender.

### **Probation 1999-2003: The Addition of Victim-Offender Mediation**

The implementation of VOMs in late 1999 was aimed at both diverted, as well as adjudicated, offenders who had committed less serious misdemeanor offenses.<sup>5</sup> Mediation staff noted that in a small number of cases VOM was used during this time for felonies, but in all cases the referral process for VOM was the same as for diverted offenders (discussed above), with probation staff selecting appropriate cases for referral to mediation staff.

The inclusion of victims as stakeholders in the addition of VOM to adjudicated cases created stakeholder roles for victims in some of the same ways as it had for those in diverted cases. Victims in adjudicated cases were, like those in diverted ones, able to request to meet with offenders. They were also able to enter into VOM agreements with offenders, as well as request specific types of RCS work from offenders. However, victims' roles in probation cases differed from that of the diversion process in at least two important ways. Firstly, agreements between victims and offenders were not entered into the "terms of probation" in the same manner as they were included into diversion agreements. This difference was due to the fact that the terms of probation were set by the juvenile court judge, and could not generally be further amended or changed by court staff.

According to victim staff at the court, this difference limited the decision-making ability of victims in using mediation agreements when compared to victims participating in diverted cases. To the extent that victims were afforded a broader stakeholder role, this was most commonly reflected in their ability to offer offenders the option of direct service in lieu of restitution, or to ask that community service be performed at a specific location. Even in the case of the latter however, discussions with the court's restorative manager and VOM staff revealed that the referral process from probation to VOM staff was often slow, and many offenders had already started or completed their service hours prior to the VOM itself. Thus, while mediation in adjudicated misdemeanor cases ideally allowed for "negotiations" in terms of restitution payments and the type of community service performed, as one VIP

staff remarked in many VOM cases there was "nothing left" to be figured out by the victim as they "[had] little or no stake in participation."

A second difference between victims' roles as stakeholders in diverted and adjudicated cases was in the enforcement of the so-called "joint and several" law in Washington State. This law applied to cases involving two or more offenders, where each offender was held individually accountable for the full amount of victim restitution until the restitution was paid off in its entirety. It applied to both diverted and adjudicated offenders, and was originally implemented to afford victims more recourse in collecting unpaid restitution in cases with multiple offenders.

According to the court administrator, in the use of VOMs this law proved more problematic in adjudicated cases than diverted ones. This was apparently related less to legal differences between diversion and probation and more simply to the fact that a larger number of diverted offenders fulfilled the requirements of their respective agreements. In several VOMs where there had been multiple offenders, some adjudicated offenders had met with victims and completed their agreements, and others had not. This posed problems for offenders who had met with victims and completed restitution as part of a VOM agreement, but were nevertheless still legally responsible for the debts of others who had not met with the victim or had not completed their restitution. More to the point, according to VOM staff, this posed problems for victims as well, in terms of the willingness of offenders to enter into such agreements with victims, and in the victim's ability or capacity to decide what was appropriate for them regarding restitution payment or service from each offender.

In 2002, the joint and several law was amended for VOM cases. According to the court administrator, the court sought permission from state to make these changes only in the case of VOMs, and only where the victim requested it. Thus, the joint and several was dissolved at the request of victims for offenders who had met with victims and who had completed their restitution as part of the VOM agreement. If the agreement was not completed, the joint and several was reinstated. According to VOM staff, this change was notable in terms of affording the victim more decision-making power in terms of agreements with youth offenders, particularly in terms of allowing victims the possibility of offering or negotiating different types of work that could be done in lieu of monetary compensation – something observed in VOMs on several occasions by the researcher. Particularly in cases where the amount of restitution was significant, and where many youth offenders in Clark County were unable to or unlikely to repay such restitution, this change ensured that the completion of work for the victim would "conclude" the offender's required restitution.

## Probation 2003-2004: The Victim Impact Program

The addition of the Victim Impact Program had several immediate effects for probation. Primarily, according to court data, it substantially increased the number of victim referrals and subsequent victim contacts by VIP staff. In 2000, for example, mediation staff had contacted 176 victims. In 2003, with the implementation of VIP, these staff contacted 436 victims of both diverted and adjudicated offenders. In 2004, the first full year of VIP, victim contacts increased to 659.

Within these numbers moreover, VIP also represented a change in terms of using VOMs for misdemeanor probation cases. This shift was discussed above in relation to diversion cases, but according to the court administrator, the use of VIP for misdemeanor probation cases signified a larger decision on the part of the court to devote resources to victims regardless of whether or not they requested VOMs. According to court data, in 2000 mediation staff offered some other form of “significant service” to victims other than (or along with) mediation in 83 out of a total of 176 victim referrals. Out of these referrals, 48% went to mediation (85 of 176). By 2003, the number of “other significant services” had grown to 324 out of 580 victim referrals, yet only in 50 cases did victims request to meet with offenders. Indeed the number of VOMs decreased from every year after 2000 as shown below in Table 1.

**Table 1: CCJC VIP Victims Services, 2000-2005**

Year	Victim Referrals	VOMs	Other Significant Services
2000	176	85	83
2001	239	83	104
2002	316	62	117
2003	580	50	324
2004	987	33	456
2005	1149	28	644

Before the automatic referral of victim cases to VIP in early 2003, misdemeanor cases deemed appropriate for VOM had been screened by probation staff and then sent to VOM staff. In effect, this process constituted a choice on the part of probation staff as to whether or not to afford victims the opportunity to meet with offenders. It also constituted in effect the *only* option for victims who wanted to be included in some sense in their own cases. In the implementation of VIP, however, victims of all misdemeanor offenses were now contacted by VIP staff directly.

This change was explained by the court administrator and the restorative manager as a move towards a more “victim-driven” approach. Victims were now to be contacted prior to initial meetings between probation staff

and diverted or adjudicated offenders to “better represent” what the victim wanted to see happen, as well as to allow the victims to choose whether or not they wanted to meet with the offender without the intervening “screening” by probation staff. The goal of the court was to remove, as much as possible, the intermediate screening steps between what the court administrator cited as “what police, prosecutors, probation, and even VOM thinks is best for victims,” and to begin to provide victim services that met needs as identified by victims themselves, beginning from the initial point of contact by VIP staff.

According to VIP staff and the court’s restorative manager, this change represented a shift in the purpose of victim services at the court. Instead of asking victims if they wanted to meet with offenders, the court was now focused on asking victims what they needed from the court and the offender to “make things right.” This shift was carried over into the change of personal contact scripts for victims used by VIP staff, where instead of contacting victims as representatives from “mediation services,” VIP staff now initiated contact as representatives of the court’s “Victim Impact Program.” Observations of victim contact reveal that the possibility of meeting with offenders was now usually brought up after the VIP staff had inquired about the harms caused to victims, and how the court and offender could help to make things right for the victim. At this point, at the discretion of the VIP staff, as well as screening criteria from the court, the possibility of meeting with offenders was offered as part of a larger possible set of services and rights afforded by both the court and Washington State law. VOM became, in this sense, one option for victims among several services offered by the VIP program.

The biggest change in victim involvement and participation with the addition of VIP was the point at which victim contact was initiated and victim input was inserted into the probation process. Victim contact was now made prior to adjudication and setting the terms of probation. According to VIP staff, this generally allowed them to contact victims before adjudication, in effect enabling them to inform victims of their rights and options in the case before the case itself was over. This included the right to be present at adjudication and disposition hearings, the right to have knowledge about the outcome of the case, the right to present a victim impact statement, the right to restitution (importantly including how to document and provide proof of losses to the court), and the right to notice of release offenders who may have been sentenced to state youth facilities. It also allowed for victim contact and an opportunity to offer certain services even where charges were later dropped or the offender was found to be not delinquent.

Another effect of VIP was the ability of the court to have victim information and requests available to probation staff prior to their initial meeting with adjudicated youth offenders. In most cases, VIP reports

regarding victim input and possible VOMs were now sent back to probation staff to be included in the initial meeting between the offender and probation counselor, although according to the court's restorative manager this took some time and significant effort to implement. This change was similar to that in diverted cases where victim information was also now collected before setting the diversion agreement. In adjudicated cases, however, this change was perhaps more important where victim input could not be reflected in the terms of probation (set by the judge) to the same degree as in diversion agreements. Thus, according to VIP staff, victim input was more important in probation cases because it could now be addressed in the initial meeting between the probation staff and offender and, ideally, could inform decisions within the probation staff's capacity in meeting out the terms of probation.

Observations of probation meetings with offenders found that, in practice, victim input was acknowledged in these meetings in varying ways, and the alignment of victim requests with the terms of probation was not always consistent. This was most prevalent in the case of restorative community service, where some probation staff expressed that they understood RCS as a "community" service and not necessarily as a victim's service – with the result that in several cases made known to the researcher that community service was assigned to offenders prior to victim input and/or VOM agreements. In observations of probation meetings with offenders after 2003, it was also the case that individual victims were discussed in almost every meeting that involved identified victims, where they had not necessarily been discussed before this.

Thus, if the change was not entirely consistent, it was nevertheless noticeable to the researcher insofar as probation staff generally presented victim input in these meetings and, when appropriate, allowed them to incorporate this input and/or VOM agreements into the terms of probation. Formally, this requirement was communicated to probation staff in a change of protocol for offender meetings, specifically in the altering of the language of the "responsibility agreement" used by the court to now include discussion of harms caused to victims. As the court administrator noted this was necessary to provide victims with as much involvement as possible, within the state's use of determinate sentencing and due process, so that victim input and/or VOM agreements could in turn shape restitution, community service, and other victim requests that fell within the purview of the court itself following adjudication.

#### **2004: Integrating Felony Cases into the Victim Impact Program**

According to court records, by late 2003 the court was referring almost all victims of diverted and misdemeanor probation cases to VIP. While the changes in referral processes for diversion and misdemeanor probation were

in some cases difficult due to new court protocols, and in some cases conflict within court culture, these changes were "in-house" insofar as the court administrator needed only the approval of the county's superior court judges. The addition of referrals to VIP for juvenile felony cases, however, beginning in 2004, was more complex, particularly because the Prosecuting Attorney's (PA) office already had its own victim services unit and was wary of ceding victim services to another agency, particularly in cases involving more serious and high profile crimes.

Adding felony cases to the VIP referral process took several months of negotiations between the court and the PA's office. In an initial meeting observed by the researcher in February 2004, the prosecuting attorney expressed concerns regarding whether or not it would be "appropriate" to contact victims prior to "proving the case." He was especially concerned about giving victims "false expectations." He was also concerned about extending the process of collecting restitution to the juvenile court, as restitution in felony cases was often substantial. "Victims need money," he noted, "it's usually their biggest concern."

The juvenile court administrator stated in this meeting that it was the court's position that they were now focused on contacting victims, regardless of the outcome of cases. He also noted that "early contact" also helped to "focus on the offender later on," in terms of better understanding the effects of his or her actions and how to best approach making things right for victims. As an afterthought, the prosecuting attorney asked the restorative manager how long victim contact and support continues in VIP. The restorative manager answered, "As long as they need it." This answer seemed to be particularly important to the prosecuting attorney and his staff. The meeting concluded with a general agreement to pursue the possibility of referring victim cases to VIP.

An agreement was reached in mid-2004 that allowed the prosecuting attorney's office to dissolve its victim services program and refer victims of felony cases to VIP. Part of the reason that the prosecuting attorney's office made this shift was related to restitution. According to the court administrator, the CCJC had apparently made an effective case that the VIP program could increase the accuracy and timeliness of restitution assessments. Part of the reason was related to the fact that the referral of victims of felony youth crimes to VIP would free up financial and staff resources at the PA's office. According to one VIP staff member, the involvement of VIP in "some cases [that] presented problems for the PA's office" had helped this decision as well. This staff member noted that in one case, one offender had received diversion, and a second offender was prosecuted by the PA, and in this case "the PA's office saw value in doing victim work with both cases jointly."

The addition of victim referrals from the prosecuting attorney's office to VIP was also seen as particularly important for both VIP staff and the court's restorative manager in terms of the seriousness of many of the offenses. The restorative manager noted in one meeting that, "the addition of the PAs office will allow for earlier victim contact," arguing that such contact was important for the continuation and success of restorative justice at the court because "the quality of contact will be stronger and include feelings of inclusion for the victim," and because earlier contact for victims of felony crimes would also "allow for a less defensive posture from VIP staff," who would not have to explain why the court had taken so long to contact victims.

The addition of felony cases did not significantly alter victim stakeholder roles further. It did, however, substantially increase the number of victim referrals to the CCJC. In 2005 for example, the first full year that VIP received victim referrals from the prosecuting attorney's office, victim referrals for felony, misdemeanor and diverted cases reached 1149 (see Table 1). By the end of 2004, the CCJC estimated that more than 50% of all cases referred to the CCJC went through VIP for victim contact and services.

## DISCUSSION OF FINDINGS

The implementation of restorative justice and subsequent changes to victim stakeholder positions in diversion and probation practices at the CCJC involved quite a bit of "groping along," to borrow from Lemley and Russell's (2002) description of an adult restorative justice program in Spokane, Washington. On the one hand, the ability of the court to implement and effect changes as they related specifically to the inclusion of victims as stakeholders came from various aspects of Washington State law that allowed for, but also limited, victim participation and restitution in juvenile justice services. On the other hand, these laws regarding victims' rights to restitution and participation in mediation programs were ambiguous as to how restitution could be remunerated, whether or not mediation could be concluded with an "agreement" between the victim and offender, or how victims could be involved in the justice process outside those victims' rights specifically identified in state law.

Thus, while the CCJC did have some latitude in terms of its ability to implement VOMs and other "restorative justice" approaches, between 1999 and 2005 it was regularly adapting these in response to both organizational needs and identified victims' needs. There was no clear initial formula for how to best include victims as stakeholders within the limits set forth by due process and Washington State law, and in choosing to implement a fairly "traditional" VOM program in 1999, the CCJC was almost immediately presented with two sets of interrelated

problems that were worked out over the course of five years, largely through trial and error.

Primarily, the court recognized that the use of VOM merely as an outcome of diversion or probation left victims with little actual input into their cases, outside of being able to meet with offenders and express harms they had caused. Research on restorative justice has recognized the importance of such meetings to victims in terms of being able to express harms caused by offenders and engage in questions or dialogue (Coates and Gehm 1989; Strang 2002; Strang and Sherman 2003; Umbreit and Coates 1992; Umbreit 1995, 1998). The restorative manager had significant experience with VOMs, so both he and the court's mediation staff viewed VOMs as significant in this regard. However, from the outset it also seems clear that there was recognition by the court administrator, restorative manager, and mediation staff that no "alternative" justice processes in Washington State could be conducted outside of the state's use of determinate sentencing and due process. In this regard, the goal thus became one focused not only on affording victims an opportunity to meet with offenders, but on how to provide victims more decision-making capacity.

The second problem, which is related to the first, was recognition on the part of the court administrator, restorative manager, and mediation staff that victim needs were not necessarily best being met by probation staff specifically, and the court more generally. As discussed above, probation staff was initially responsible for screening appropriate cases for mediation. At the same time, probation staff was usually in a position of having to advocate for offenders in the same cases –in effect leaving probation staff in a position of having to make decisions regarding different needs or rights for victims and offenders. The decision to have mediation staff screen appropriate cases for mediation, and to provide this and other services to victims, was a result of this recognition.

In turn, this led to the growing perception that the court was not meeting victims' needs by relying on VOMs as the only option for victim involvement in diversion and probation cases. As mediation staff began to be the primary point of contact for victims, and as victims were contacted more quickly by the court, over time it became clear to these staff that: 1) a larger number of victims did not want to meet with offenders, while for a smaller number this was important, 2) victims identified many other problems or needs that were not being met, particularly about their rights as victims, restitution, and information about the process and outcomes of their cases, 3) the CCJC could provide these significant services to a larger number of victims by shifting towards a "victim-driven" approach that involved early contact for all victims of juvenile crime, and 4) by utilizing this early contact, victims were able to have input into the outcome of cases *prior to* the setting of diversion agreements and input into

some elements of how the probation agreement was structured by the court.

### **Between the Ideal and the Possible**

More generally, the CCJC represents an important case study of the attempt to integrate the use of restorative justice into formal juvenile justice practices at a municipal or local level. In this regard, questions of what restorative justice, and in particular victim involvement in such practices, should ideally look like from the point of view of the court administrator, court managers, and victim staff at the CCJC were tempered and limited by larger considerations – namely due process (which extends to all youth offenders) as well as aspects of Washington State’s use of determinate sentencing guidelines for youth offenders, which involve legislative attempts to standardize youth dispositions. To the degree that determinate sentencing for youth offenders, adopted initially in 1977 and amended in 1994, had shifted decision-making power away from juvenile court judges and probation officers in Washington State (a move clearly intended by the state legislature in the initial passing of the 1977 Juvenile Justice Act),<sup>6</sup> it also had the effect of limiting the degree to which victims were able participate as stakeholders in the ways discussed above.

In this respect, implementing restorative justice generally, and broadening victim involvement in individual cases more specifically at the CCJC, can arguably be conceptualized as a type of “pushing back” on the part of the court against certain aspects of the standardization of youth justice practices at both a state and federal level. The concept of pushing back here is not meant to suggest that the court administrator and other court staff were seeking to undermine or circumvent the use of determinate sentencing or due process per se. Rather, the term “pushing back” is used here in part to indicate the degree to which the CCJC, and specifically the court administrator, were able to interpret ambiguities present in Washington State law regarding the use of restorative justice practices as they pertained to the question of victim involvement in individual cases. For example, in 1999, the Washington State code allowed for restitution and mediation, but in 2004 it was revised to allow for, “Provid[ing] opportunities for victim participation in juvenile justice processes, including court hearings on juvenile offender matters” (Wash. Rev. Code RCW 13.40.010). This change in 2004 afforded the court administrator some latitude in interpreting these allowances for restitution and victim involvement in juvenile justice processes, especially where the court could justify contacting victims for reasons other than mediation, and include victim input into diversion contracts or initial probation meetings after adjudication.

To the degree that the court was able to make changes related to the level of involvement of victims as

stakeholders, it thus did so at the local level of the auspices of the county juvenile court itself. The level to which victims were increasingly afforded stakeholder roles paralleled in large part the level to which the CCJC could claim authority over “local sanctions” within the state’s youth sentencing guidelines, to the degree that such sanctions overlapped with state law on victims’ rights and restitution. Thus, by thinking of restorative justice at the CCJC as a type of “pushing back,” what this meant in essence was that the court was attempting to bring as broad as possible interpretation of the state’s laws regarding victim involvement and restitution into the local purview of the court. For example, the changes to diversion practices discussed above began precisely at the point where the court administrator had authority to do so, with the signing of the diversion contract and the subsequent “waiver of rights” signed by diverted youth. With the exception of Community Accountability Boards, which for the most part remained unchanged between 2000 and 2004, and state-required interventions Functional Family Therapy Aggression Replacement Training, the changes in outcomes represent almost the entire scope of the court administrator and managers’ ability to alter justice practices as they pertained to victims’ roles in diversion cases in the court.

At the same time, it is within changes to localized probation practices at the CCJC that the limits of the court’s ability to involve victims as stakeholders were most apparent. Juvenile justice practices set at the state level, including standardized dispositions, state mandated programs such as ART and FFT, and due process as it applies to all youth offenders, remained relatively unchanged. On the other hand, localized practices were changed, in some cases substantially, in new programs that widened the overall number of victim-stakeholder positions in these practices (i.e. VIP and VOM), as well as modified practices that altered the way in which existing victim stakeholders were involved.

In this respect, it is difficult to imagine that victims’ roles as stakeholders in the manner described throughout this article can be amended much further within the limitations of the state’s standardization of youth dispositions and within the strictures of due process. Allowing victims, for example, to use VOM agreements as a way to participate in the determination of an adjudication would violate Washington State’s Juvenile Justice Act, as well as invoke a host of due process problems – not the least of which would be concern over the possible use of self-incrimination in the case that VOM agreements were not upheld or charges were filed against youth for other reasons.

To the degree that municipal justice agencies, such as juvenile courts, increasingly seek to involve and utilize restorative justice practices to benefit and involve victims, they are likely to encounter similar problems. While Washington is the only state that has a comprehensive

determinate sentencing scheme for youth offenders, it is not the only state to use such practices for juvenile delinquents. States such as Texas, Utah, and Wyoming use determinate sentencing guidelines for certain categories of youth offenders (Office of Juvenile Justice and Delinquency Prevention 1998; Texas Juvenile Probation Commission 2006), and all states must adhere to both federal due process laws as well as to their respective state laws on due process. In the case of adult criminal justice systems, there are at least 40 states that use some form of determinate and/or mandatory sentencing, and the application of due process for adult offenders is more rigid and comprehensive than for youth offenders. Although formal (i.e. part of a formal criminal justice agency) restorative justice interventions or programs that seek to include victims as stakeholders are frequently referred to as embracing a “victim-driven” approach to justice, in the case of the CCJC, victims were not quite “drivers” as much as they were navigators, able to determine specific trajectories for certain outcomes, but only within a largely predetermined course.

On the other hand, even within Washington State, which has the most standardized juvenile justice system of all states, victims’ roles as stakeholders at the CCJC, were amended and enhanced. Victims were afforded a larger stakeholder role in both diverted and adjudicated cases in several ways. They were able to request VOMs, which as earlier research at the court suggests were markedly important and useful for most victims (Wood 2007). Victims who participated in VOMs were able to request outcomes such as direct service in lieu of restitution as part of VOM agreements. They were also able to request other offender outcomes pertinent to their victimization – participation in anger management classes, letters of apology, and so on. Beginning in 2003, victims were able to determine the conditions of restitution in VOM agreements as they pertained to the state’s joint and several law.

Victim participation in VOMs was not the only way that victim-stakeholder roles were changed. After the implementation of VIP in 2003, victims were able to request conditions of restitution and community service as part of diversion agreements. In adjudicated cases, victims were able to have their input into the conditions of probation (as they related to “conditions of offender accountability”) included in initial probation meetings following adjudication. In many probation meetings observed by the researcher, this input was included in conditions of community service, restitution, and in a smaller number of cases into more “creative” requests, such as stressing the importance of completing school or even offering employment as part of the offender’s restitution requirements.

That victim-stakeholder roles were amended and enhanced at a local level (i.e. the juvenile court) in Washington State suggests there is room for juvenile

courts to maneuver in pursuit of further victim involvement in their own cases. One primary limitation of this study is the inability to generalize about other state juvenile justice systems, and their amenability to restorative justice practices and victim involvement as stakeholders. Nevertheless, Washington State is arguably the most standardized juvenile justice system in the country, and the use of restorative justice at the CCJC within the limited influence of local juvenile courts was notable in terms of the degree of involvement afforded many victims, and the growth of the number of victims the court was able to contact and provide opportunities for involvement. In this regard, the CCJC’s use of the VIP program in particular represents a concrete example of the larger problem facing restorative justice programs in terms of looking beyond mediation towards the integration of victims’ services and victim involvement in the criminal justice system.

## Notes

<sup>1</sup> Washington State code RCW 13.04.170 notes, “Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender’s first offense or violation.”

<sup>2</sup> In its common usage, the “juvenile court” is comprised of the actual courthouse, detention facility, and probation and units. Legally, however, the “juvenile court” in Washington State means only the application of juvenile jurisprudence to criminal proceedings. In Washington, the juvenile court judges and commissioners are overseen by the corresponding superior court, and decisions made on charging youth offenders, adjudication, and dispositions are made by the juvenile court judge. In certain cases, probation staff may submit recommendations, but the judge is not bound to these recommendations. Everything that happens after the disposition hearing becomes the responsibility of the different probation units, including decisions to “violate” offenders who have broken the terms of their probation.

<sup>3</sup> For these guidelines as they are used in Washington State, see Washington State code RCW 13.40.0357. They are available online at

<http://apps.leg.wa.gov/rcw/default.aspx?cite=13.40.0357>. In certain cases, judges could adjudicate outside these guidelines in a “manifest up” or “manifest down” decision, where an argument was made that the determinate disposition was not appropriate. These cases were rare however, and between 2000 and 2004 constituted between two to three percent of all cases at the CCJC.



4. This screening process was actually two-step process that included a “pre-screen” comprised of a shorter number of questions, and a longer series of questions administered by the probation caseworker in a lengthier interview for offenders who scored “moderate” or “high risk” on the pre-screen. This screening process was used to determine eligibility and referrals to social services and state-level intervention programs.

5. These cases included at the time Malicious Mischief I, Malicious Mischief II, Malicious Mischief III, Forgery, Assault IV, Cruelty to Animals, Theft I, Theft II, Theft III, Harassment, False Reporting, Arson I, Residential Burglary, Burglary II, Possession of Stolen Property, Display of Weapon, Taking Motor Vehicle, Trespass I, Trespass II, Reckless Endangerment II, Vehicle Prowl, and Minor in Possession.

6. As Representative Mary Becker, chair of the House subcommittee responsible for drafting the 1977 Juvenile Justice Act noted, the legislation:

“Is meant to limit the courts to their judicial function, to require them to deal more consistently with youngsters who commit offenses, and to identify social resources outside the court for handling non-criminal behavior. In terms of the philosophical polarities that have characterized the juvenile court debate for a century, the bill moves away from the *parens patriae* doctrine of benevolent coercion, and closer to a more classic emphasis on justice [WBA Report 1978:6]” (Schneider and Schram 1986:215).

The original source for this quote (WBA 1978) could not be located.

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