

ADMINISTERING RESTITUTION PAYMENTS
IN BROOKLYN AND BRONX CRIMINAL COURTS:
A REPORT ON ACTIVITIES OF THE
VICTIM SERVICES AGENCY

Robert C. Davis
Susan Schraga
Janet Chytilo
Lindley Huey

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ABSTRACT

The purpose of this research was to evaluate the Victim Services Agency's (VSA) restitution programs in Brooklyn and Bronx Criminal Courts. The restitution program, begun in 1978, manages cases in which judges order defendants to pay restitution to victims. Program staff work with both the victim and the defendant to draw up a payment schedule and then act as a liaison between the two parties, receiving money from the defendant and passing it along to the victim. Program staff also monitor defendants' compliance with restitution orders; if a defendant fails to fulfill his obligations, the violator is brought to the attention of the appropriate legal authorities, who may take steps to encourage the defendant to comply with the restitution order.

The report found that, in spite of VSA's efforts, non-payment remained a major problem in restitution cases in Brooklyn Criminal Court; the default rate was much lower, however, in Bronx Criminal Court which does not officially close cases until restitution is actually paid by defendants. In both boroughs, the programs appear to have gradually increased the frequency with which court officials order restitution. Finally, the report found that victims and defendants rated their experience with program staff highly. The report concludes with recommendations for further improvements that could be made in the administration of restitution.

INTRODUCTION

Restitution is a sanction that requires offenders to make a payment of money or services directly to individual crime victims or to the community as a whole. The issue of restitution as a dispositional alternative has recently received a great deal of attention and support from criminal justice scholars, policy-makers and practitioners. The current popularity of restitution is attributable to a number of factors discussed by Viano (1978), including the compatibility of restitution with certain sentencing aims of criminal courts and concern that victims of crime are compensated for their losses.

In sentencing convicted defendants, criminal courts seek to further one or more goals, including rehabilitation, deterrence, and retribution. Restitution is most obviously compatible with a rehabilitation theory of sentencing, which holds that sanctions must be meaningful to offenders and that sanctions must reduce their desire to commit additional crimes. Keve (1978) argues that restitution may be a means of rehabilitation where certain conditions are satisfied. In order to achieve a rehabilitative effect, the restitution payment of either time or money must entail both a true effort and a sacrifice on the part of the offender. In addition, the restitution effort must be clearly defined and achievable, without being easy.

To a lesser degree, restitution is also compatible with retributive and deterrence theories of sentencing. A retributive view of sentencing assumes that the state has a moral right to punish convicted defendants in order to restore justice (McAny, 1978). Sentencing based on retribution theory is act-based; that is, sentences are fixed in response to the particular crime, rather than in response to an offender's criminal history or the likelihood he will commit future crimes. Because restitution punishes offenders in proportion to the seriousness of the harm inflicted, it is also act-based and restores the defendant to a position of equality with others in society. Under certain circumstances, restitution may also be compatible with a deterrence theory of sentencing, which seeks to instill in offenders a recognition of the sanctions for continued criminal behavior. Since effective deterrence requires that penalties clearly outweigh the rewards of illegal behavior, Tittle (1978) argues that, for restitution to be effective in meeting this goal, it ought to be accompanied by a jail sentence or probation. Moreover, restitution orders must not be so extreme as to encourage offenders to commit new crimes in order to make payments.

The use of restitution as a criminal court sentence also fits in with the recognition of the problems experienced by crime victims that has emerged over the past decade (see, for

example, Stein, 1977). One way of viewing victimization is as an extreme disruption in the equity balance between two individuals. That is, each party to a relationship deserves equal benefits from their interactions with one another. But, as a result of a crime committed by one person against another, the balance of rewards and costs between the two parties is drastically tilted in favor of one individual at the expense of the other (Hatfield and Utne, 1978). Restitution restores equity by having the offender compensate the victim out of his undeserved profit. Thus it increases the victim's positive outcomes while at the same time decreasing the offender's positive outcomes and increasing his costs.

Traditionally, restitution has been considered a civil remedy. Anglo/American law maintains a strong distinction between criminal and civil proceedings. Criminal Courts are primarily concerned with establishing the guilt or innocence of defendants and meting out sentences designed to meet the objectives of rehabilitation, deterrence, or retribution. Victims seeking compensation for property losses or medical expenses incurred by the criminal act traditionally have had to make their claims in civil court. However, civil remedies have not been effective for many crime victims for a number of reasons, including the facts that many victims are not aware of their legal rights and that many cannot afford the cost of a lawyer or the time lost from work necessary in pursuing a civil suit. Thus, there is increasing interest in

affording victims the chance to obtain restitution through criminal proceedings.

Many programs have been implemented to promote the use of restitution as a sentencing alternative. Although these programs have different orientations, most have focused on restoration of equity between victim and offender as a means of promoting the offender's rehabilitation. The Winona County Court in Minnesota, for example, instituted a restitution program in 1972. The program, which is aimed at non-violent, first-time offenders, seeks to promote sentences that require offenders to a) repay victims with money or services; b) repay the community by working; and c) engage in activity aimed at improving their own self-esteem and social position (e.g., attending AA meetings) (Challeen and Heinlen, 1978). If offenders fail to carry out the sentence ordered, fines or jail sentences are imposed.

Another program with a similar orientation is Earn-It. This program was started in Quincy, Massachusetts for juvenile offenders and, because of its success, was subsequently extended to adult offenders as well. The program seeks to restore equity between the victim and offender and rehabilitate the offender through work restitution that lasts long enough for the offender to pay back the victim. If there are no individual victims, defendants are required to make up for their offenses by working for the community on

community service projects. An effort is made to provide work for defendants that matches their interests or needs. If the work assignments are successfully completed, offenders are often able to retain the jobs they were placed in by Earn-It. Those who fail to fulfill their obligations are returned to court.

The idea of community service adopted by these programs is particularly interesting since it extends the alternative of restitution as a sentence to defendants who cannot afford to make cash payments to victims. Programs of this nature began in England, and the Vera Institute of Justice now runs a program which is strictly community service in the Bronx. By extending the opportunity to pay restitution to indigent defendants as an alternative to incarceration, community service orders alleviate major legal problems associated with programs in which making restitution is only available to defendants who have financial assets.

Restitution Versus Compensation

Although restitution may be seen as a response by the criminal justice system to the needs of victims, some experts have argued that it is often an ineffective means of serving this end. The alternative offered is compensation - money paid to a crime victim by a state agency to cover losses resulting from the crime.

Whereas restitution may have multiple purposes, compensation is designed specifically as a response to the needs of the victim. It requires neither the apprehension nor the participation of the offender to achieve its purpose of making the victim "whole" again.

Stookey (1977) claims that restitution is an ineffective means of compensating victims because it enables only a relatively small number of victims to receive reparation. This is because payment is contingent first upon the offender's apprehension and then upon his willingness and ability to make restitution. Edelhertz (1977) concurs in this idea and in addition argues that a restitution program with a strong victim orientation would subvert the goals of deterrence and rehabilitation. The emphasis on achieving compliance with a restitution order would result in pressure capable of motivating an offender to commit further crimes in order to avoid penalties for failure to meet the restitution agreement.

Despite these arguments, there are problems in the practical applications of the concept of compensation as well. For example, in New York State the Crime Victims Compensation Board exists to compensate victims for medical expenses and loss of wages resulting from personal injury sustained during crimes. But it is available only to victims who sustain personal injury during the commission of a crime, and does not cover property losses; thus the

majority of crime victims are ineligible for compensation. Moreover, the application process is difficult to complete without competent assistance; consequently only a small percentage of claimants actually receive compensation. Even for those claimants who meet the requirements and complete the application process, a case may take as long as a year to be concluded.[2]

Because of the restrictions placed on the use of compensation in practice, it would seem that compensation and restitution have complementary roles to play in repaying victims for losses incurred.

VSA's Restitution Programs

In contrast to the multiple aims of the programs described above, VSA's aim in establishing restitution programs in Brooklyn and Bronx Criminal Courts was solely to assist crime victims in getting payment for losses through the criminal justice system. An earlier study conducted in Brooklyn Criminal Court (Davis, Russell & Kunreuther, 1980) found that 17% of complainants interviewed reported that restitution was their primary objective in cooperating in the prosecution of the defendant. Yet, according to the responses of the complainants, the court ordered restitution in only two percent of cases in the study.

VSA's restitution programs were established largely in response to this finding. Specifically, the programs seek to 1) increase the frequency of defendant compliance with restitution orders and 2) encourage the courts to award restitution to more victims. Of the theories discussed above, the goals of VSA's restitution programs are closest to those of the equity restoration theory. Program operations began in January, 1978 in Brooklyn and in June, 1979 in the Bronx.

EVALUATION OBJECTIVES

The evaluation examined several issues related to program impact and an understanding of the reasons for that impact. Originally the following questions were to be addressed:

- (1) How does the restitution program function?
 - a. How does VSA function as an intermediary between the victim and the defendant? How is its role perceived by the victim and defendant - as a purely clerical one or as a part of the criminal justice system? How are payments and disbursements made?
 - b. How are restitution payments scheduled? What is the average length of time it takes to complete restitution payments? What problems arise to delay payment? How does the victim feel about the delay?

- c. How are restitution agreements monitored?
 - d. How are restitution agreements enforced? What are the defendant's and victim's attitudes toward the VSA staff?
 - e. How does VSA inform judges and prosecutors of its restitution program and the services provided by the program? How does VSA attempt to increase the court's confidence in restitution?
 - f. From the perspective of the victim, the defendant and the court system, how does work restitution (e.g., community service or direct service to the victim) differ from cash payments? Is work restitution considered a less desirable disposition than cash payments? If so, why?
- (2) How is the nature of the relationship between the victim and the defendant in the payment of restitution altered by VSA's restitution program? What specific services does the program provide to the victim and the defendant?
- a. Does VSA play a different role as intermediary between victim and defendant than the courts traditionally have? How does it differ? What are the characteristics of VSA staff who administer restitution?
 - b. Do defendants who have been ordered to pay restitution honor their obligations? For those who do not, why not? What are the characteristics of defendants who don't make the payments?

c. How do victims and defendants evaluate VSA's efforts in the area of restitution? Are some types of victims and defendants more satisfied than others? If so, what are their characteristics? Are victims who are granted partial restitution awards for losses less satisfied than those who receive full restitution?

(3) How does VSA's role as intermediary in restitution alter the perceptions of criminal justice officials about restitution as an equitable outcome and their willingness to use restitution?

a. Has VSA's program increased the court's confidence in restitution? Is restitution used more often as a result of the program? In what kinds of cases is the court more likely to order restitution and why?

b. What proportion of the court's caseload consists of cases with restitution potential?

1. In what proportion of potentially eligible cases is restitution actually awarded, i.e., what is the 'ceiling' for restitution awards?

2. Could an active screening process result in more restitution awards than are currently ordered? What would the barriers be to adopting an active posture? Would it change VSA's role?

3. To what extent is indigency of defendants a preventive factor in increasing the use of restitution? Would a

significant proportion of defendants and victims agree to some form of work restitution in lieu of cash payment to the victim? If so, what are the characteristics of victims and defendants who agree to work restitution? Would victims be less satisfied with work restitution than monetary payments?

- (4) The following questions in restitution program design would be addressed in light of the evaluation of the program in Brooklyn and interviews with program administrators:
- a. Who should determine the amount of the victim's losses? How should this determination be made?
 - b. How often would the victim refuse monetary restitution? Why? How often would the victim refuse work restitution? Why? How often would the defendant refuse work restitution? Why?
 - c. Should restitution awards be discussed prior to an adjudication of guilt or after the plea of guilty? What are the consequences for the victim, defendant, and the court system?
 - d. Does negotiating the amount of the restitution award delay case disposition? If so, would this inhibit its use? How could this be avoided?
 - e. Prior to the implementation of a restitution program, were the court awards being honored? Why or why not? How could the program improve the current system?

METHOD

To address the issues raised above, a number of different tasks were carried out both in Brooklyn and in the Bronx. In each borough, evaluators produced a description of program operations based on interviews with program administrators and personal observations. In Brooklyn, the description was supplemented with data collected from the 480 cases handled by the program in 1978. These data included information on case and defendant characteristics, compliance with restitution orders, and on the response of program administrators and court officials to non-compliance.

To ascertain programmatic effects on victims and defendants and their perceptions of the program, 28 victims and 25 defendants were interviewed in Brooklyn and 26 victims and 25 defendants were interviewed in the Bronx.

Finally, to determine the way in which the Brooklyn program had altered policies and practices of court officials regarding restitution, an effort was made to compare pre- and post-program use of restitution. In addition, interviews were conducted with eight judges, a supervisor in the District Attorney's Office and a supervisor in the Legal Aid Society.

Other tasks scheduled as part of the evaluation proved impossible to carry out. For example, a survey was to have been conducted with victims and defendants in recently arraigned, open cases. The data collected were to have been used to determine the potential for the use of restitution in Brooklyn Criminal Court. The estimate of the potential was to have been based on the number of cases in the sample in which victims had suffered financial losses, the number of cases in which victims and defendants were willing to accept restitution as the outcome of their court case and the number of cases in which defendants had the means to pay restitution. However, both prosecution and defense were reluctant to permit participants in active cases to be interviewed. As a result, some of the evaluation questions pertaining to the potential for the use of monetary restitution and work restitution in the court (questions 3.b.1 through 3.b.3 on page 11) could not be addressed.

In addition, the task of determining whether VSA's programs had increased the use of restitution in Brooklyn and Bronx Criminal Courts (question 3.a, p. 11) was complicated by the fact that court records (which were to be the data source for this task) were frequently sealed in cases which had been adjourned in contemplation of dismissal. In Brooklyn this problem was circumvented by comparing the frequency of restitution among two comparable samples of cases in which victims had been interviewed for other purposes (one sample had been drawn prior to the beginning of VSA's restitution program and

the other sample after; victims in each sample had been asked whether the court had ordered restitution in their case). No comparable data were available, however, to assess program impact in Bronx Criminal Court. For both courts, post-program data were available on the change over time in the number of restitution cases handled by VSA's programs; these data assisted in drawing inferences about trends in the frequency of each court's use of restitution.

Finally, it was impossible to determine the extent to which restitution payments were being completed by defendants prior to the start of VSA's programs (question 4.e). It proved that, prior to VSA's program, no records were kept either by the court or the prosecutor's office to indicate whether restitution payments were ever completed.

Greater detail on the methods used in the evaluation is provided in Appendix A.

FOOTNOTES

1. Testimony of the Honorable Albert L. Kramer before the Subcommittee on Human Resources, Committee on Education and Labor. U.S. House of Representatives. March 20, 1979.
2. Between April 1977 and March 1978 the CVCB rendered a total of 4,539 decisions. Of these, 3,063 or 67% disallowed the claim. Inadequate information was the reason for disallowance in 1,580, or 52% of the cases disallowed.

Chapter 2

PROGRAM DESCRIPTION

VSA's restitution programs were set up in response to two concerns of Agency staff and criminal court officials. The first concern was a belief that defendants often failed to comply with restitution orders with impunity. Once restitution had been ordered by the court, no set procedures existed for monitoring compliance with the order. (This belief was confirmed by evaluators who found no records in court papers indicating whether restitution payments had actually been made.) Thus, defendants' non-compliance often went undetected. Defendants escaped the punishment intended by the court, and victims' losses were not reimbursed. VSA hoped to discourage non-compliance by instituting procedures for monetary payments and for initiating court action when payments were not made.

The second concern was related to the first. It was believed that because the rate of non-compliance with restitution orders was high, judges and prosecutors were reluctant to order restitution. Consequently many victims who suffered property loss or medical expenses as a result of crime were failing to be awarded restitution by the court. It was hoped that with VSA administering restitution payments, court officials would develop greater confidence in restitution as a dispositional alternative and use it more frequently.

In the fall of 1977, staff of the Victim/Witness Assistance Project (which, in July, 1978, became the Victim Services Agency) began discussions with the administrative judge of Brooklyn Criminal Court, the Criminal Court Bureau Chief of the Kings County District Attorney's office and the Attorney in Charge of the Brooklyn Criminal Court section of the Legal Aid Society. As a result of these discussions, VSA began administering restitution payments in Brooklyn Criminal Court in January, 1978. After the program opened, VSA staff continued to work with criminal justice administrators to educate court personnel about the program by explaining its activities at regular meetings of judges and prosecutors.

Later, in June of 1979 VSA began a second restitution program in Bronx Criminal Court. The program in the Bronx was a replica of the model VSA had developed and tested in Brooklyn, but with one important difference; the District Attorney in the Bronx felt that defendants would be more likely to comply with restitution orders if they were required to pay restitution while their case was still open (this difference is discussed more fully below).

In the Bronx initial interest in establishing a program was strongest among members of the District Attorney's office and the head of the Court Clerk's office. Unlike in Brooklyn, there were no organized efforts to introduce the new program to judges, prosecutors, or defense attorneys.

In both boroughs the programs initially sent to each judge regular rosters of cases in which the judge had ordered restitution and indicated whether defendants had completed payments. This procedure not only gave judges feedback on their decisions, but served to remind judges of the existence of VSA's programs.

Because the programs in the two boroughs are similar, and because most of the information gathered for the evaluation was collected on the Brooklyn program, the discussion of program operations which follows focuses on VSA's Brooklyn restitution program. Significant differences between the two programs are mentioned where appropriate.

Program Operations

VSA's Brooklyn restitution program operates out of VSA's victim/witness reception center in Brooklyn Criminal Court and administers restitution for all cases meeting the programs' criteria. These criteria are as follows: 1) The complainant must be an individual or a small business; large institutions, supermarket chains and department stores are not accepted. (In most cases these institutions have their own procedures for collecting court-ordered restitution.) 2) The restitution ordered must be financial. The program does not manage agreements that involve property or services. 3) The defendant must not have been sentenced to probation. (the Probation Department handles those cases.) However, the program will accept cases in which the defendant is paroled awaiting sentence on condition that he makes restitution payments.

Restitution may be suggested by the complainant, the prosecutor, the defense attorney, the judge or the arresting officer in the complaint room, at arraignment or during post-arraignment hearings. If prosecution, defense, and the court agree to restitution, payment is ordered as part of a case disposition. Most often, restitution is ordered as part of a conditional discharge following a guilty plea (30% of restitution

cases handled by the program) or an adjournment in contemplation of dismissal (63% of restitution cases handled by the program) [1].

In Bronx Criminal Court, the procedure for ordering restitution is different; restitution is ordered prior to granting the defendant an adjournment in contemplation of dismissal or a conditional discharge. After all parties have agreed to restitution, the case is adjourned for 8-10 weeks to give the defendant an opportunity to pay. Defendants must complete payment five working days before they are scheduled to appear in court again, or the offer of an adjournment in contemplation of dismissal or a conditional discharge may be retracted. This procedure eliminates the need for restoring cases to the court calendar if defendants fail to comply. As will be shown later, the difference in restitution procedures between Brooklyn and Bronx has important implications for compliance with restitution orders and participant satisfaction.

Once restitution is ordered by the court, the VSA restitution program is contacted. Case intake takes place in the victim/witness reception center. Before the program accepts a case for restitution, several conditions must be met. First, all the complainants in the case must agree to the conditions of restitution as specified in the court order. Second, the

defendant must appear in person at the restitution program office and must indicate his ability to pay restitution in full, either by showing that he is currently employed or by simply stating that he is able to pay. Third, the court must set either the exact amount of the restitution order or a ceiling amount (e.g., an amount not to exceed \$250). [2] Finally, the court order must contain a final payment date within five months from the date of the order to provide sufficient time to get a case restored to the court calendar if the defendant fails to pay. (For cases adjourned in contemplation of dismissal, action against defaulters must begin before six months have passed from the date of the order of restitution or the case will be finally dismissed.) If a payment schedule has not been mandated by the court, a VSA restitution specialist works out a schedule agreeable to both victim and defendant.

The program requires that defendants make payments in person to the restitution specialist. Payment is accepted in the form of money order, certified check or bank check made payable to VSA (cash is not accepted) and the defendant is given a receipt. A record is kept of each check received including the date payment was made, the amount of the check, the number of the receipt given to the defendant, the name of the person to whom payment is being made, and the balance due. The check is deposited in a special VSA account.

After a payment has been made by the defendant, the restitution specialist makes an appointment for the complainant (or an authorized second party) to pick up a check for the same amount, drawn against VSA's account, within 30 days. The money is returned to the defendant if the complainant does not claim it within that period. When a check is issued, a receipt form is completed by a staff person and placed into the case file.

As mentioned, in most cases restitution is ordered as part of a conditional discharge (CD) or an adjournment in contemplation of dismissal (ACD). When payment is made after a CD, VSA's restitution specialist notifies the Administrative Judge, the court clerk's office, and the District Attorney's office. When payment is made after an ACD, the restitution program does not need to notify the court since the charges are automatically dropped after six months unless the case is restored to the calendar.

If a defendant who has received an ACD has not completed payment by the end of the fifth month (one month prior to expiration of the ACD), non-payment procedures are begun. The first procedure implemented by the restitution specialist when a defendant defaults is to send him a letter of warning. If payment is not received within five days following issuance of a warning and the defendant fails to contact the program office, procedures

are begun to restore the case to the court calendar.

In preparation for getting the case restored to the calendar, a notice of non-payment is sent to the Administrative Judge and the clerk of the court part in which restitution was ordered. The restitution specialist then contacts the District Attorney's Office and asks that the case be restored. After consideration, the prosecutor may either ask the court clerk to restore the case to the calendar or take no action.

Conditional discharge cases are handled similarly, except that, because a CD is generally not reconsidered by the court for a year, the final payment date may be longer than five months from the date of the order. For the same reason the period of time the defendant is given to pay after a warning letter is issued may go beyond the sixth month.

In cases where the court has specified payments in installments, [3] the program can only initiate proceedings to restore a case when a defendant defaults in completing payments by the final payment date. If the total amount of restitution ordered is not paid by the final payment date, the regular non-payment procedures are implemented.

TABLE 2.1

AMOUNTS OF RESTITUTION ORDERS

<u>Dollar Amount</u>	<u>Percent</u>
\$0 - 50	13
\$51 - 100	33
\$101 - 200	18
\$201 - 300	15
\$301 - 500	11
\$501 - 1000	5
\$1,001 and above	5
	<hr/>
TOTAL	100%
	(N = 614)

A Profile of Restitution Cases

During 1978, the Brooklyn restitution program handled 480 cases. This represents a total of \$139,787 in restitution orders of which approximately \$97,000 was collected and distributed. The amounts of restitution orders ranged from a low of \$10 for one defendant to a high of \$4,000 to be paid by three defendants. However, nearly two-thirds of the orders were for under \$200; the median order was \$136 (see Table 2.1)

Cases in which restitution was ordered differed somewhat from a sample of all cases arraigned in Brooklyn Criminal Court. Restitution cases were more likely to involve charges of criminal mischief or assault and less likely to involve charges of robbery or weapons (see Table 2.2). The proportion of property crimes (burglaries and larcenies) was no higher among restitution cases than among all cases.

Defendants in restitution cases did not differ significantly from the overall defendant population in Brooklyn Criminal Court in terms of age or ties to the community (as measured by the bail recommendation of the Criminal Justice Agency) [4]. Further, though it was expected that the court would be unlikely to order defendants to pay restitution unless they had

TABLE 2. 2

TOP CHARGE AT ARRAIGNMENT
IN RESTITUTION CASES

	Burglary/ larceny	Assault	Conduct/ Criminal mischief	Robbery	Weapons	Vehicle & traffic violations	Other drugs/obstructing justice/ forgery/ theft related
Restitution Defendants	39%	21	15	8	3	4	9
							100% (n=484) 1
General ² Defendant Population	38%	18	9	11	7	4	13
							100% (n=390)

Chi² = 17.73
Df = 6
p < .01

¹Information was missing for 129 defendants

²Population drawn from all cases arraigned in Brooklyn Criminal Court between March 1 and March 7, 1976
(Information provided courtesy of the New York City Criminal Justice Agency)

jobs, there was no difference in employment status between defendants who were ordered to pay restitution and all defendants. Defendants in restitution cases were, however, significantly less likely to have been arrested previously than other defendants (42% of defendants in restitution cases had no previous arrests compared to 31% of defendants overall) [5].

Although the court gave defendants from one day to six months to complete restitution payments, Table 2.3 reveals that 44% of the defendants had between one day and eight weeks in which to complete payments. The length of time given to pay increased with the amount defendants were ordered to pay.

Despite the efforts of VSA staff to encourage defendants to complete payments, only 59% of the defendants in the Brooklyn sample successfully completed payments. Of those defendants who did complete the restitution payments, 89% paid early or on time. Conversely, only 17% of defendants who did not pay on time completed payment at all. The payment rate in the Bronx appears to be considerably higher. Of all program cases to be closed in the Bronx as of March 1980, 76% of defendants had completed payments. (The Bronx payment rate may be a slight overestimate because it is likely that the population of closed cases is somewhat biased towards defendants who complete payments).

TABLE 2.3

AMOUNT OF RESTITUTION ORDERED BY HOW MUCH TIME
THE COURT GAVE DEFENDANT TO PAY

	<u>Time Given to Pay</u> (in weeks)						ROW
	same day	1-4	5-8	9-12	13-24	26+	TOTAL
\$0-50	4%	51	27	12	5	1	100% (n=78)
\$51-100	2%	26	18	8	13	33	100% (n=203)
\$101-200	0%	27	19	21	28	4	100% (n=113)
\$201-300	1%	20	14	17	31	17	100% (n=90)
\$301-500	0%	11	11	6	61	12	100% (n=66)
\$501-1000	0%	23	3	3	47	23	100% (n=30)
\$1001+	0%	3	12	21	38	26	100% (n=34)
	COLUMN TOTAL 1%	26%	17%	13%	26%	18%	100.0% (n=614)

Tau = 0.21 p < .001

Brooklyn cases in which defendants had defaulted were examined to determine the actions taken against them by the program and by court officials. The results are presented in Table 2.4. In nine percent of default cases, VSA staff did not request that the case be restored. Among cases which were forwarded to court officials to be restored, 48% were, in fact, restored to the calendar. (Court officials and program officials failed to take action to restore cases for similar reasons; those cited most often were that complainants wished to drop the matter and/or had settled with defendants out of court, and administrative oversights.) But even when cases were restored, 51% resulted only in bench warrants outstanding against defendants who failed to appear in response to the court's request. Thus, it seems that there is little that VSA or the court was able to do in instances in which defendants were intent on avoiding payment.

Because of the high rate of defendant non-compliance and low case restoration rate, arrangements were made during the last half of 1979 with the Administrative Judge and the District Attorney's Office in Brooklyn to improve the process of restoring cases in which defendants had not paid restitution. The new agreement worked out between VSA's program, the Administrative Judge, and the District Attorney's Office provides for separate processes for restoring ACD's and CD's. Upon notification by the restitution program that restitution has not been made in cases

TABLE 2.4

RESPONSE OF PROGRAM AND COURT OFFICIALS TO
DEFENDANT NON-COMPLIANCE

A.	<u>Cases in which defendants failed to complete payments:</u>	253 (100%)
	1. Cases closed by the program despite default:	24 (9% of defaults)
B.	<u>Cases forwarded for court action:</u>	229 (100%)
	1. Cases sealed (information unavailable):	46 (20% of cases forwarded)
	2. Cases not restored:	95 (42% of cases forwarded)
C.	<u>Cases restored to the calendar:</u>	88 (100%)
	1. Conditional discharge:	12 (14% of restored cases)
	2. Adjourned in contemplation of dismissal:	4 (5% of restored cases)
	3. Dismissed	13 (15% of restored cases)
	4. Jail sentence imposed:	4 (5% of restored cases)
	5. Paid/case closed	1 (1% of restored cases)
	6. Bench warrant issued ¹	45 (51% of restored cases)
	7. Outcome unknown/case pending	9 (10% of restored cases)

¹ A bench warrant is issued when a defendant fails to appear for a scheduled court appearance.

where a conditional discharge had been ordered, the Administrative Judge sends a letter to the defendant asking that payment be made. If there is no response, or a negative response, the Judge's office assumes responsibility for restoring the case by contacting the court clerk and asking that the case be placed on the calendar. An agreement with the District Attorney's office calls for the designation of one person in the office to serve as a liaison with the restitution program. This person is responsible for restoring all ACD's and for notifying the Restitution Specialist of court dates for restored cases.

Determinants of Defendant Compliance

Because defendant non-compliance is a significant problem, one of the aims of the evaluation was to develop a model to enable advance prediction of which defendants were unlikely to comply with restitution orders. Eventually, it was thought, such a model could enable the program to focus its enforcement efforts on those defendants least likely to comply, and thereby increase payments rates.

The associations between a number of case and defendant characteristics and the likelihood of defendant compliance with restitution orders were examined using multiple regression analysis. This technique determined the independent effect of

each variable on compliance (that is, the effect of each variable controlling statistically for the effects of other variables). The results of this analysis are presented in Table 2.5.

The factor that was most strongly related to compliance was the defendant's ties to the community, as measured by the bail recommendation made by the Criminal Justice Agency (this recommendation incorporates measures of defendants' employment status, residential stability, and family ties); the stronger a defendant's community ties, the more likely he was to complete restitution payments. It can be conjectured that community ties imply stability and the existence of persons in the defendant's social network who can provide pressure, as well as support, to complete payments.

The data also indicate that there is greater likelihood that a defendant with fewer prior arrests will comply with restitution orders. It may be that defendants who have had more experience with the court and know its limitations are less convinced of the court's ability to enforce compliance with restitution orders.

Surprisingly, the results suggest that the more time defendants are given to pay and the less the amount of money they are ordered to pay, the less likely they are to pay. These

paradoxical results may suggest that defendants take the court's action more seriously and are more intimidated by the threat of additional sanctions being imposed when the court sets harsh terms for the payment of restitution. Whatever the reason, these data suggest that leniency in setting the terms of restitution tends to work against victims.

Finally, the data indicate that a defendant sentenced by a judge more experienced in the use of restitution is more likely to pay. A judge more versed in the use of restitution may have a better sense of which defendants are likely to complete restitution payments if given a chance, and/or may have a better feeling for setting a reasonable amount or payment schedule than a less experienced judge.

FOOTNOTES

1. Cases adjourned in contemplation of dismissal are automatically dismissed in six months, provided that the defendant has not violated the law or conditions established by the judge in the meantime. Conditional discharges are sentences imposed following guilty pleas. Under a conditional discharge, a defendant is bound to terms set by the judge for one year in misdemeanor convictions and three years in felony convictions. Violation of these stipulations can become grounds for rearrest, revocation of conditional discharge, and imposition of a sentence.
2. If a maximum is indicated, the complainant is expected to provide VSA with a bill for the exact amount of loss or damage. When the program receives this information, the defendant is notified of the exact amount due. If the amount of restitution exceeds \$500, the case must be approved by a supervisory prosecutor.
3. i.e., where the amount of restitution ordered is \$400 or more and the date on which final payment is due in three months or more from the date of the order.
4. The Criminal Justice Agency is New York City's pretrial release agency. Based on verified information from interviews with persons arrested the Agency attempts to assess each individuals' ties to the community. The index of community ties used by the Agency includes such factors as who the defendant lives with, whether he or she is employed, how long he or she has lived in the community, and so forth. Persons who are found to have strong community ties are recommended by the Agency for release on their own recognizance at arraignment.
5. Chi-square = 16.06, df=1, p .01

CHAPTER 3
PROGRAM EFFECTS UPON THE COURT

As stated earlier, an aim of VSA's restitution program was to encourage greater use of restitution by court officials. It was believed that by relieving court officials of the responsibility for monitoring compliance with restitution orders, and by instituting more regular and effective compliance procedures, prosecutors and judges would request or order restitution more often. As the system had operated prior to VSA's intervention, compliance with restitution orders was thought to be low. Therefore, restitution as a case outcome was favorable to the defense (because defendants often failed to pay and thereby escaped any sanction) but not necessarily to the prosecution or to the court (because, when defendants defaulted, they usually escaped sanction and victims were unsatisfied).

It was assumed by VSA that a major reason for the infrequent use of restitution as a dispositional alternative was that judges and prosecutors perceived it as usually benefitting only the defense, but (when defendants defaulted) not satisfying their own aims of rehabilitation, deterrence, or retribution. Moreover, effective monitoring of defendants' payment of restitution was an administrative burden that neither the prosecutor's office nor the court was able to manage effectively.

By relieving the prosecutor's office and the court of the responsibility for monitoring restitution payments and by increasing compliance with restitution orders, VSA hoped to change court officials' perceptions of restitution orders from an outcome which favored the defense to one which satisfied goals of both prosecution and defense. This section examines court officials' perceptions of VSA's program, the program's effects on officials' perceptions of restitution, and data which measures the program's effects on the frequency of restitution orders.

Interviews With Court Officials

Interviews were conducted with ten officials from Brooklyn Criminal Court. Those interviewed included eight judges, one Legal Aid Attorney, and one Assistant District Attorney. In addition, interviews were conducted with five VSA program administrators.

Judges and attorneys were asked about their attitudes toward restitution and about problems they had observed in the restitution process. Program administrators were asked about program procedures and the relationship of the program to the court. All respondents were asked about their ideas for changes in the program.

Perceptions of Restitution As a Case Outcome

Restitution was seen by all judges interviewed as an appropriate case outcome in many situations. As one judge put it: "The sentence the defendant would get for this type of case is 30-90 days and that could never have a rehabilitative effect; restitution is the best thing we [the court] have". Five of eight judges regarded restitution as serving both the victim and the defendant. They viewed restitution as a means of restoring to the victims what was lost, thereby making the victims whole again. Restitution was seen as beneficial to defendants because they do not

get a criminal record (if used in conjunction with an ACD) and because it may help them to "expiate [their] guilt". But several judges expressed reservation about the use of restitution in criminal court, regarding it as a remedy that should be pursued by the victims in civil court.

Several judges expressed the belief that restitution may be used as a means of furthering the court's goal of expeditious case processing. Restitution is a relatively quick case outcome; in many cases the order can be completed with only one continuance. Unless the case needs to be brought back to court due to defendant non-payment, that case is then off the court calendar. Because a restitution case is off the court calendar so quickly it is also relatively inexpensive. As one judge put it "a conditional discharge costs the court money, probation costs the court money, but restitution is cheap".

The Assistant District Attorney concurred with those judges who saw restitution as benefiting the victim. He felt restitution gives the victim something significant from the court process. The Legal Aid Society representative, on the other hand, had a defendant-oriented view of restitution. He felt that restitution benefited defendants because it was a relatively lenient court outcome, and reported that Legal Aid attorneys often propose it to their clients. But he also cautioned that use of restitution puts

the court in danger of being seen as a collection agency. When asked if restitution could have either a rehabilitative or deterrent effect on a defendant, both attorneys agreed that restitution probably would not have such an effect.

The Restitution Process

a) When Should Restitution be Ordered?

Four of eight judges felt restitution should be limited to cases in which there was no clear societal interest in incarcerating defendants. That is, they felt that restitution should be reserved for less serious cases where there may have been property loss or damage or minor injury, rather than cases involving crimes of violence (especially crimes where a weapon had been used) and/or defendants with extensive prior records. On the other hand, three judges said they would order restitution whenever a victim wanted it or the judge felt the victim needed it.

Judges differed in the extent to which they considered the defendant's means in deciding whether to order restitution. Two of the judges reported they would definitely not order restitution for a defendant on welfare, but two other judges stated that they would order restitution even if they weren't convinced a defendant had the ability to pay. Finally, two judges considered whether the

defendant has paid restitution in the past; if the defendant had, these judges would be more likely to order restitution again.

Both attorneys interviewed agreed with the judges that restitution should be ordered in less serious cases. While the assistant district attorney agreed that the victim's desires should be considered when contemplating an order of restitution, he felt the defendant's prior record, the relationship between victim and defendant, and the effect on the community of prosecuting the case compared to ordering restitution to be equally important. Both attorneys agreed that a defendant's willingness to pay restitution was not enough, but that there must also be a realistic assessment of the defendant's ability to pay. The Legal Aid attorney in particular cautioned that a defendant must not be compelled to use money to meet restitution payments that would otherwise pay for necessities such as food or shelter.

b) How Should the Amount and the Payment Schedule be Determined?

The interviews suggested that there was no consistent procedure for setting the amount of restitution payments. Judges reported that they consult with victims when setting the amount of restitution if the estimate of the damage is unclear from bills or the court's record. One of the judges and the Legal Aid

attorney felt that it was important for the victim to submit documentation of the extent of his losses prior to setting the amount of the award.

All judges agreed that defendants should be given a reasonable time to comply with restitution orders. One judge and the prosecuting attorney felt that VSA's restitution program should determine the payment schedule.

Program administrators agreed with the judges who felt victims should be consulted in setting the amount of the damages, and that the final decision should be made by the attorneys with advice from program personnel. Several program administrators thought documentation was unnecessary to set an amount if an estimate sounded reasonable

Views of VSA's Restitution Program

The two attorneys and all but two judges felt that VSA's program had made them more willing to agree to restitution. One judge related that the program had simplified case follow-up and enforcement. The attorney from the Legal Aid Society felt restitution was more acceptable now that payments can be made through a third party.

Although generally enthusiastic about VSA's program, court officials expressed concern about the high rate of non-compliance with restitution orders despite the program's efforts. To help deal with the problem, four judges suggested that reports on cases in which defendants had not completed their obligations be written up periodically by program staff; the reports would contain information on defendants' financial situation and whether they needed more time to pay. This information would give judges some basis for further actions in a restored case. The judges also felt that such information would also enable them to better form opinions about when to order restitution in the future.

Both attorneys thought that to increase compliance the restitution process should be restructured so that defendants would have to appear before the judge a second time, after the payments were due. In other words, they proposed a model for handling restitution that was similar to that used in Bronx Criminal Court.

Several court officials suggested an expanded role for VSA's program. They felt that program staff could play a part in setting the amount of the orders and verifying victims' claims.

TABLE 2.5
 PREDICTORS OF DEFENDANT COMPLIANCE
 WITH RESTITUTION ORDERS

<u>Variable</u>	<u>Beta</u>	<u>F Value</u>
Defendant's Community Ties	-0.234	22.718*
Experience of the Judge	0.113	5.741*
Defendant's Prior Arrests	-0.100	4.021*
Length of Time Given To Pay	-0.156	8.551*
Amount of Restitution Ordered	0.129	5.797*
Defendant's Age	0.058	1.412
Arrest Charge	0.113	0.736

$R^2 = .12$

* For these variables $p < .01$.

Attitudes Towards Changes that Would Broaden the Scope of Restitution

Court officials were asked whether they would welcome efforts by VSA staff to screen cases for restitution in the complaint room and make recommendations to the court. Six judges and the two attorneys felt that such a procedure would benefit the court; both prosecuting and defense attorneys cautioned, however, that the subject of restitution not be broached with victims too soon after the crime while they are still emotionally distraught and unlikely to favor the idea. Suggested criteria for screening included: the type and severity of the offense; the defendant's ability to pay; likelihood of defendant compliance with a restitution order; and the victim's interest in restitution.

Officials were also asked their opinions of orders to perform community service, in lieu of restitution paid to victims, for defendants who do not have the means to pay restitution. (Under such a work restitution scheme, defendants would be required to perform a specific amount of supervised community work either without compensation or with earnings being paid to victims.)

Five of the judges and the prosecuting attorney favored work restitution in theory, but were concerned about the practicality of running such a program (citing problems such as arranging work assignments, supervision, and lack of funds). The

representative of the Legal Aid Society questioned what would happen to a defendant if he refused to do the work restitution. He was also concerned that giving a defendant a job for a limited period and then discharging him might have negative effects on the individual.

Analysis of Program Impact On The Frequency of Use of
Restitution by the Court

As previously mentioned, court officials held favorable views of VSA's restitution program and believed that the program's operations had given them more confidence in ordering restitution. To ascertain whether the court had, in fact, increased its use of restitution, an impact study was undertaken in which the frequencies of restitution orders were compared between a sample of cases disposed before the restitution program began and another sample disposed after the program was in operation.

Originally it was intended to draw the two samples from court papers (and, in fact, such samples were collected). However, due to unforeseen problems (described in Appendix A), this method of comparison proved untenable. Consequently, program impact was measured by comparing a pre-program and post-program sample that were each drawn for other studies of victims and services for victims in criminal court. The pre-program sample consisted of 295 cases collected in the summer of 1976 for a study about victims' satisfaction with the court process (Davis, Russell, and Kunreuther, 1980). The post-program sample consisted of 249 cases collected in the winter of 1978 and early 1979 for a study of an experimental program to give victims a greater voice in the court process. (Davis, Tichane, and Connick, 1980).

In both samples, cases examined were limited to (a) cases in which an adjournment in contemplation of dismissal or a conditional discharge had been ordered and (b) cases which (according to the victim's report) involved property loss, property damage or injury requiring medical attention. In other words, the samples were restricted to those cases which appeared eligible for restitution. The number of orders of restitution in each sample was tallied and the percentage of restitution orders among eligible cases was obtained. These two percentages were then compared to determine whether the use of restitution had increased over time.

The results of this examination showed that, both before and after the program, restitution was ordered in only a small proportion of apparently eligible cases. In the sample drawn prior to the start of the program, restitution was ordered in 15% of cases meeting the criteria defined above; in the sample drawn after the program began, restitution was ordered in 12% of the cases meeting the criteria specified. The difference between these proportions is not statistically significant.

However, data from VSA's quarterly reports, (summarized in Figure 3.1) show that, since the time the post-program sample was drawn, restitution orders increased substantially in Brooklyn (and in the Bronx as well). If these increases are indeed attributable to VSA's programs, it seems that program effects on the

Number of Restitution Orders

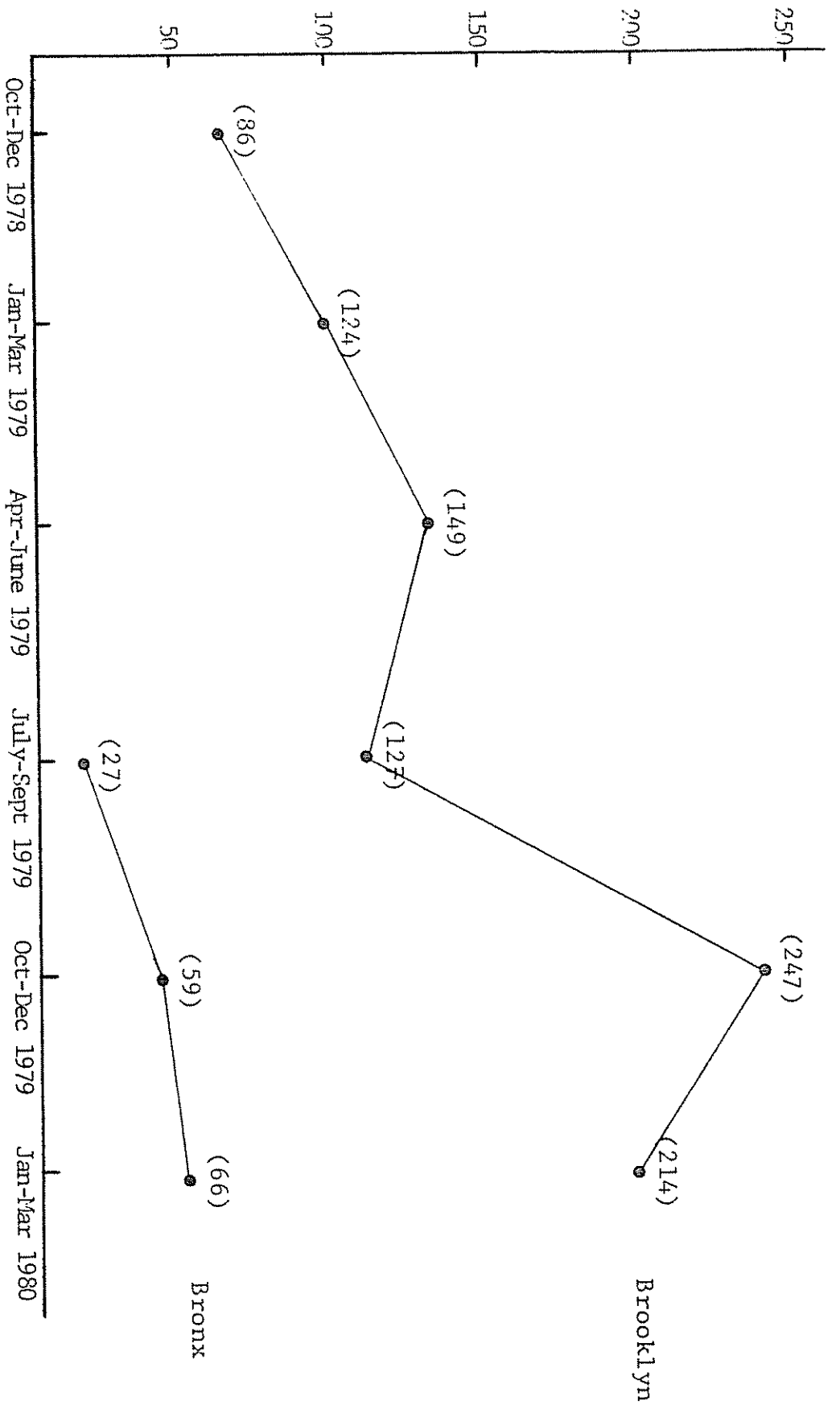


Figure 3.1

Restitution Orders in Brooklyn and Bronx by Quarters

frequency of restitution orders took time to develop. That would not be surprising since the effects depended on VSA's ability to generate greater confidence among court officials in the use of restitution -- a process that might well happen only gradually. The efforts VSA made to increase officials' awareness of the program (providing feedback to judges on the status of cases in which they had ordered restitution in both boroughs and promoting the program at judges' and prosecutors' meetings in Brooklyn) seemed in the long run to pay off. It may also be that the assumption of responsibility for monitoring restitution payments resulted in prosecutors and judges spreading to their colleagues by word of mouth the idea that restitution was now a more acceptable dispositional alternative.

The observed increase in restitution orders in both boroughs following introduction of VSA's programs is a good illustration of a point made by Lenihan (1977). That is, that reform programs are most readily accepted and successful when they are compatible with the goals of persons in the institution in which the program is introduced. VSA's programs offered prosecutors and judges greater assurance that restitution orders would be complied with. In a time of heightened public concern about victims of crime, this created an opportunity for court officials to be more responsive to the needs of victims by suggesting or ordering restitution more often.

CHAPTER 4

PROGRAM EFFECTS UPON VICTIMS AND DEFENDANTS

Because defendants often failed to make restitution payments, restitution orders created an unfair balance of rewards and costs between victims and defendants. In not complying with restitution orders defendants avoided sanctions entirely, while victims' losses remained unreimbursed. The inequitable cost/reward ratio between the two parties that stemmed from the crime was perpetuated. VSA hoped that by lending its authority and the authority of the court to the side of victims, defendants would be encouraged to pay the amounts they had promised. Through VSA's action, then, the balance of rewards and costs between victims and defendants would be more equitably distributed.

In order to determine victims' and defendants' perceptions of the program and of the program's effect on their satisfaction with the court process, interviews were conducted with 28 victims in Brooklyn and 26 victims in the Bronx; and with 25 defendants in Brooklyn and 25 defendants in Bronx. In areas where the perceptions of Brooklyn and Bronx program participants differ, data are reported separately for the two boroughs and the reasons for the differences explored; otherwise the data have been combined for Brooklyn and Bronx participants.

Description of the Samples

Most of the victims and defendants interviewed in both boroughs were males, but males made up a relatively smaller proportion of the victim sample (73%) than of the defendant sample (94%) [$p < .05$]. The majority of complainants and defendants from both boroughs fell in the 19-35 year old age range. Relative to defendants, more complainants fell in the 56 and above age range and fewer in the under 18 range (the difference in age distributions was not, however, statistically significant).

Indicators of economic stability such as occupation, annual income, and length of time employed during the past year were measured for all respondents. By each of these measures, complainants enjoyed a greater degree of economic stability than defendants. Fifty seven percent of complainants interviewed held white collar jobs compared to only 14% of defendants [$p < .01$]. Complainants also had higher annual incomes (\$12,600) than defendants (\$5,260) [$p < .01$]. Finally, 87% of complainants were employed full-time, while only 49% of defendants had worked full time during the last year [$p < .01$]. Taken together, these data suggest that many defendants may have difficulty in being able to make restitution payments ordered by the court.

In most of the cases in the sample (93%), restitution was ordered for property loss or damage; restitution was ordered for medical bills in only 21% of the cases (the percentages sum to more than 100% because in some cases restitution was ordered for both property loss and medical expense).

According to reports of both victims and defendants, in most of the cases they had not been acquainted prior to the crime. But victims were even less likely to report that a prior relationship existed (only 14% of victims responded affirmatively) than defendants (32% responded affirmatively). It is not known which is the more accurate figure.

Participants' Perceptions of Fairness of Restitution Awards

Victims and defendants differed in their opinions of the fairness of the restitution awards ordered by the court. Sixty-seven percent of victims felt that the amount ordered was fair, but among defendants only 38% felt that the amount was fair. Defendants who believed that the amount was unfair tended to express skepticism about the extent of victims' losses, sometimes stating that greater efforts ought to be made by the program and court officials to investigate and verify claims. Although defendants often felt that the amount was unfair, most (75%) believed the time allotted to make payments had been adequate. Still, in some cases

defendants had difficulty finding the funds to meet payment schedules; 28% said that getting the money to pay to the victim had been a problem.

Participants' Attitudes Toward the Program

Program participants felt well-treated by restitution program staff. Ninety percent of all victims and 100% of Bronx defendants felt that they had been treated well. This opinion was shared by somewhat fewer (76%) Brooklyn defendants, some of whom felt that program staff had been unfriendly.

Only seven percent of Bronx victims and defendants reported difficulties with program procedures. Although most Brooklyn victims and defendants similarly reported no difficulties, the proportion was higher (29%) than among Bronx participants. The problems most frequently cited by participants were (a) the inconvenience of having to bring in or pick up payments at the courthouse during working hours, (b) the inconvenience of having to obtain the required money order or certified check (many said they would prefer to pay cash), (c) having to wait to pick up checks, and (d) trouble cashing the checks issued by the restitution program.

Participants' Feelings About Restitution in Retrospect

Victims and defendants were asked about their view of restitution as a case outcome in retrospect; victims were asked whether they regretted that restitution had been ordered, while defendants were asked whether, if they had had a choice, they would rather have paid restitution to the victim or a fine to the court. Responses of victims and defendants differed between the two boroughs.

In Brooklyn, victims were less enthusiastic and defendants more enthusiastic about restitution than in the Bronx. Forty-three percent of Brooklyn victims, but only fifteen percent of Bronx victims, regretted that restitution had been ordered. Conversely, 54% of Brooklyn defendants, compared to 35% of Bronx defendants, favored payment of restitution over payment of a fine to the court.

Victim dissatisfaction with restitution was unrelated to whether defendants had completed payments, to victims' assessments of the fairness of the amount of the award, or to their evaluation of the treatment they received from VSA staff. Rather, dissatisfaction seemed to stem from a concern that restitution, in and of itself, was an insufficient punishment for the crime committed; 69% of victims who were dissatisfied reported that they

felt that way because the defendant had gotten off too easily. That fact may help explain why restitution was seen more positively by victims, and less positively by defendants, in Bronx than in Brooklyn. As reported earlier, the cases of defendants in the Bronx (but not in Brooklyn) are not closed until and unless restitution is actually paid. It may be that victims in the Bronx were more satisfied than in Brooklyn because defendants who failed to pay in the Bronx received (or victims believed they would receive) another sentence when they returned to court after defaulting. In contrast, Brooklyn defendants who defaulted often escaped with no sanctions at all.

Participants' Suggestions for Changes in the Administration of Restitution

The most common suggestion for change among victims was for the program to develop better means to enforce defendant compliance with restitution orders (mentioned by eight Brooklyn and Bronx respondents). This concern of victims echoes the concerns expressed by both court officials and program administrators.

Both victims and defendants voiced suggestions to facilitate the process of making and distributing restitution payments. Victims felt that the program should mail their checks to eliminate the need for victims to take time off to pick up their

checks during working hours. Defendants felt that they should be allowed to mail in checks, also to avoid taking time off from jobs (program administrators, however, opposed the idea of defendants mailing in checks because defendants would not receive receipts for payments).

Other suggestions made by victims included:

- Reduce the time allotted defendants to complete payments and grant less liberal extensions
- Consult victims more regularly about the costs of damages incurred
- Give defendants additional punishment
- Give clearer explanations of restitution payment procedures

Predictably, defendants' ideas about changes were often opposed to suggestions from victims. Defendants thoughts included:

- Give defendants more time to pay and grant extensions when needed
- Investigate victims' claims more thoroughly.
- Accompaniment of defendants to court by program administrators to testify that payment had been received.

Both victims and defendants were asked if they favored community service for defendants who did not have the financial means to pay restitution to victims. Both groups of respondents were favorable to the idea. Sixty-five percent of victims were in favor

of it, expressing the thought that it was a reasonable sanction which could instill in defendants a respect for justice, while avoiding the need to send defendants to jail -- an outcome which some victims felt would benefit no one. Eighty-seven percent of defendants favored the idea, feeling also that it was a reasonable way for them to pay for what they had done.

Chapter Five

CONCLUSIONS

This evaluation has suggested that restitution has an important role to play in the efforts of criminal courts to promote case resolutions that serve the needs of victims, defendants, and the community. It has also suggested that VSA's programs to administer restitution payments are providing an important service previously lacking in the courts.

The concept of restitution was endorsed by judiciary, prosecution, defense, victims, and defendants. It allows victims to recoup losses suffered as a result of crimes. It permits defendants to make up for their offenses in a meaningful way and to avoid the extreme hardships that accompany incarceration. And it permits court officials the relatively rare satisfaction of being able to meet the needs of both victim and defendant, as well as those of the community.

VSA's program to administer restitution was viewed as an important part of making restitution orders work by court officials. According to their reports (and to data from VSA's quarterly reports), the program has increased their willingness to use restitution. Victims and defendants who had contact with VSA's program rated staff highly.

But despite the generally positive feedback on VSA's program, this evaluation suggested improvements that could be made in the administration of restitution. Areas that remain problematic include determination of the amount of restitution awards, defendant compliance with restitution orders, and acceptance and disbursement of restitution payments by the program.

Determining the Amounts of Restitution Awards

Interviews with court officials, program personnel, victims and defendants indicated lack of uniform procedures for deciding upon a "fair" amount of restitution. Victims and defendants are sometimes consulted but sometimes not. Some victims are asked to submit verification of the extent of their losses but others are not. Defendants' means to pay are sometimes considered in determining the amount but sometimes not.

It would seem to make sense for restitution awards to be based upon the victim's statement of losses, either as agreed to by the defendant or as documented by the victim. This procedure could be followed either by the judge ordering restitution or by VSA program staff in conjunction with the prosecutor and defense attorney.

Such a procedure would not be effective, however, for cases in which victims had to undergo prolonged medical treatment. In these cases the total cost is not known ahead of time and the costs of restitution may be prohibitively high for defendants; restitution might be ordered for some or all expenses incurred by the victim at the time of case disposition, with the remainder made up by the Crime Victims Compensation Board.

Court officials often do not view restitution orders as appropriate in cases where defendants do not appear to have the means to pay. Yet it surely is unfair to impose harsher sentence on indigent defendants simply because they are indigent. Although there clearly are problems in administering community work programs for indigent defendants as an alternative to restitution, the positive reactions of court officials, victims, and defendants to the idea of community service orders suggest that it would be a worthwhile avenue to explore.

Defendant Compliance with Restitution Orders

One of VSA's primary aims in establishing its restitution program was to increase defendant compliance with restitution orders. It was not possible to determine whether the program in fact reduced defaults. But whether it did or not, the more important point is that two of five defendants in Brooklyn still fail to pay.

It is possible that tightening program controls could help to reduce the default rate. For example, defendants could be given less time to make payments (which, independent of the amount of the award, was found in this study to decrease defaults), extensions could be granted less liberally, and cases could be restored with greater regularity when defendants have not met their obligations. If the administrative judge established a policy for judges to follow when defendants default, then judges could warn defendants at the time restitution is ordered of sanctions for noncompliance. Further, the criteria found in this report to predict the likelihood of compliance (in particular the defendant's community ties, as measured by the Criminal Justice Agency's bail recommendation) could be used to target defendants most likely to default; greater efforts could then be put into following up on that subgroup.

The Bronx model for ordering restitution - which seems to produce a lower default rate - also might be examined in greater depth and considered for use in Brooklyn. In the Bronx, the cases of defendants ordered to pay restitution are adjourned and are only closed when restitution has been paid by the next scheduled court date. It is probable (although it cannot be known with certainty based on data collected for the evaluation) that defendants' knowledge that cases are not closed, and that a stiffer sentence may be imposed if payment is not completed, increase their incentives to comply with restitution orders. Moreover, even when defendants do

default in this system, an alternative sentence may readily be imposed. In Brooklyn, on the other hand, taking additional measures against defaulters requires the restitution program, the prosecutor's office, and the court to initiate and coordinate action -- a process that appears to be somewhat erratic.

Acceptance and Disbursement of Restitution Payments

Many of the complaints and suggestions of victims and defendants in restitution cases centered on the difficulty of making and collecting payments, which had to be done in person and during working hours. Since the time the interviews were conducted, the program has allowed victims to make appointments to pick up payments in the evening and has begun mailing checks to victims who are unable to come to program offices. A plan to extend similar considerations to defendants is being explored.

APPENDIX A

METHOD

Four samples of data were collected to assist in answering questions pertaining to (a) the operations of the program, (b) its effects on the court system, and (c) its effects on victims and defendants. These tasks are described in detail below.

Descriptive Data Concerning Program Operations

To assist in describing operations of the Brooklyn program, data from all 480 cases handled by the program in 1978 were collected. From program files, information was gathered on charges, type of disposition, amount of restitution awarded, time allotted to pay, defendant compliance, and action taken by the program in response to non-compliance. From records of the New York City Criminal Justice Agency, information was collected on defendants' criminal records, community ties, and demographics. Finally from court records, information was gathered to determine whether default cases had been restored to the calendar, and if so what action the court took.

Data Concerning Program Impact on the Frequency of Restitution Orders

The task of obtaining comparable pre-program and post-program data to assess changes in the frequency of restitution orders proved to be difficult. One problem hindering the selection of comparable samples was that the frequency of restitution was not documented in any consistent manner before the program began. It was, therefore, not possible to get a simple accounting of the numbers of restitution cases or the percentage of all cases in which restitution was ordered before and after the existence of the restitution program.

Moreover, even drawing a sample from court records, from which to aggregate the frequencies of restitution orders before and after the program, proved unfeasible due to a sealing law which went into effect in September, 1977. This law resulted in the automatic sealing after six months of court records for all ACDs not restored to the calendar. Because ACDs comprise a large proportion of restitution orders, the sealing of these records precluded the possibility of drawing a random sample of cases from court records to compare the percentages of restitution cases before versus after the start of the restitution program.

Fortunately, there was a third way to obtain estimates of the use of restitution before and after VSA's program began. In this method, both the pre-program and post-program samples were drawn from cases collected for other studies in which victims with cases in Brooklyn Criminal Court had been interviewed.

The pre-program sample was drawn from cases collected for a study of the role of the victim in criminal court (Davis, Russell, and Kunreuther, 1980). Cases sampled for that study entered the court in the summer of 1976, and thus all of the 295 cases were disposed before the restitution program began. Victims in that study were interviewed once when their case was brought to the complaint room and a second time after their case had been disposed. In these interviews, it had been determined (a) whether they had suffered property loss or medical expenses, and (b) whether restitution had been ordered to cover their losses.

The post-program sample was selected from cases collected for an evaluation of the Victim Involvement Project (VIP), a VSA program which communicates the interests of victims to court officials (Davis, Tichane, and Connick, 1980). All cases contained in the VIP sample of 249 cases were disposed between May, 1978 and January, 1979, after the restitution program began operation. As in the Davis, Russell, and Kunreuther study, victims on cases in the VIP evaluation had been interviewed, and in the interviews it was

determined (a) whether they had suffered property loss or medical expenses, and (b) whether restitution had been ordered by the court.

In both pre- and post-program samples, cases were only included in the final analysis if (a) they had been adjourned in contemplation of dismissal or a conditional discharge and had been ordered and (b) they involved injury requiring medical attention, property loss, or property damage. These were the cases considered eligible for restitution awards. The final pre-program sample included 34 pre-program cases, in five of which restitution had been awarded. The final post-program sample included 52 cases, in six of which restitution had been awarded.

Interviews with Victims and Defendants

Brooklyn Program Participants

Twenty-eight victims and 25 defendants whose cases were handled by the Brooklyn restitution program were given structured interviews over the telephone to learn their attitudes toward restitution. In order to insure an eventual sample size of 25 victims and 25 defendants, 75 victims and 75 defendants were chosen from the Brooklyn restitution program files. There were several criteria used in selecting these individuals. First, the final payment date in the case, as set by the judge, had to fall between

November 1, 1978 and March 31, 1979. (This was to make sure the case would be closed at the time of the interview.) Secondly, each individual had to have a telephone number listed in the program files. Once these criteria were met, every fifth victim and every fifth defendant were included in the sample. No effort was made to insure that victims and defendants from the same cases were interviewed; thus the victim and defendant samples were essentially separate.

Letters were sent to the participants explaining VSA's interest in speaking with them and asking them to call the VSA office to be interviewed. Three days after the letters were mailed, phone contacts were attempted with individuals who had not yet responded to the letter. Attempts were made to contact respondents by telephone at several different times of the day, including at least one call during the evening hours. When necessary, interviews were conducted in Spanish. If a respondent refused to be interviewed or the telephone number was incorrect, attempts to conduct that interview ended. The interviews took place during March, 1979.

Forty letters were sent to victims to obtain the 28 completed interviews. Fifty-five letters were sent to defendants before interviewers were able to complete 25 interviews.

Interviews were designed to elicit victims' and defendants' perceptions about restitution as a condition of the case outcome as well as their respective attitudes toward VSA's Brooklyn restitution program.

Bronx Program Participants

Victims and defendants from the Bronx restitution program were given interviews similar to those conducted with Brooklyn program participants. Because at the time the entire caseload of the Bronx program consisted of 59 cases (open and closed), no sampling was needed. The same procedures for contacting victims and defendants in Brooklyn were followed in the Bronx.

Interviews With Court Officials

Interviews With Judges

Eight judges from Brooklyn Criminal Court were given unstructured interviews which elicited their ideas on restitution and on VSA's program. Four of the judges were permanently assigned to Brooklyn Criminal Court. The remaining four judges were assigned to Brooklyn Civil Court but were called upon to serve in Criminal Court on a rotating basis, usually during holidays and to replace judges on vacation. The judges were interviewed

during May, 1979.

The sample of judges was selected from all of the judges who had ordered restitution through VSA's Brooklyn restitution program. A tally was made of all of the judges whose names appeared in the restitution program files and they were grouped according to how many times they had ordered restitution. The names were divided into three groups: 1) those judges whose name appeared on the files thirty or more times; 2) those judges who had ordered restitution between 20 and 29 times; and 3) judges whose names appeared between one and 19 times. A total of 25 selected judges was then chosen out of the 57 listed. Since only five judges were in the "frequent user" group, all were included in the sample. Of the two remaining groups, 10 judges were randomly selected from each. Letters were sent to each of the 25 judges explaining VSA's interest in speaking with them and asking them to contact the VSA office to set up an appointment. A total of eight judges responded to the letter and were interviewed. Of the eight, three ordered restitution frequently, one ordered it occasionally, and four infrequently.

Interviews with Attorneys

During September, 1979, interviews were conducted with the attorney in charge of the Brooklyn Criminal Court Division of the Legal Aid Society and the Criminal Court Bureau Chief of the

Kings County District Attorney's Office. These interviews were unstructured, and focused on policies of each office regarding restitution, personal opinions of each attorney on specific issues pertaining to restitution, and thoughts about VSA's program.

Interviews with Program Administrators

The final group interviewed were VSA's restitution program administrators. Structured interviews containing 18 questions were conducted with five program administrators during June and July of 1979. The administrators were asked about their ideas on restitution and on changes in program procedures. The administrators interviewed included VSA's director of court operations, the past and present heads of VSA's reception center in Brooklyn Criminal Court, VSA's restitution specialist in Brooklyn Criminal Court, and VSA's borough director in the Bronx.

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