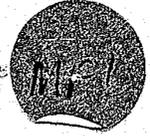


# The Justice System Journal



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**Yea, Verily, There is An Established Body of Science**

*Edward Gerjuoy*

**Restitution: The Victim's Viewpoint**

*Robert C. Davis*

*Barbara Smith*

**The Importance of Victim Satisfaction: A Commentary**

*Kevin O'Grady, Jeff Waldon, Wayne Carlson,*

*Scott Streed, and Cassandra Cannizzaro*

**The Impact of Form on Substance:**

**Court Reform and the Work of the Maryland Court of Appeals**

*Michael C. Tolley*

**Studying Federal District Courts Through Published Cases: A Research Note**

*Susan M. Olson*

**Distance from the Bench and Retention Voting Behavior:**

**A Comparison of Trial Court and Appellate Court Retention Elections**

*William K. Hall*

*Larry T. Aspin*

**Trying Juveniles as Adults: A Note On New Mexico's Recent Experience**

*G. Larry Mays*

*Marilyn Houghtalin*

**A Guide to Allocating Resources Between Mediation and Adjudication**

*Walter Horn*

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# The Justice System Journal

Volume 15/3 ■ 1992

- From the Editor** 741
- N CJRS**
- Yea, Verily, There is An Established Body of Science** 743  
*Edward Gerjuoy*
- Restitution: The Victim's Viewpoint** 746  
*Robert C. Davis*  
*Barbara Smith*
- The Importance of Victim Satisfaction: A Commentary** 759  
*Kevin O'Grady, Jeff Waldon, Wayne Carlson,*  
*Scott Streed, and Cassandra Cannizzaro*
- The Impact of Form on Substance:** 765  
**Court Reform and the Work of the Maryland Court of Appeals**  
*Michael C. Tolley*
- Studying Federal District Courts Through Published Cases:** 782  
**A Research Note**  
*Susan M. Olson*
- Distance from the Bench and Retention Voting Behavior:** 801  
**A Comparison of Trial Court and Appellate Court Retention Elections**  
*William K. Hall*  
*Larry T. Aspin*
- Trying Juveniles as Adults: A Note On New Mexico's Recent Experience** 814  
*G. Larry Mays*  
*Marilyn Houghtalin*
- A Guide to Allocating Resources Between Mediation and Adjudication** 824  
*Walter Horn*
- Judicial Jeremiads: A Review of** 842  
**Rudolph Gerber's *Lawyers, Courts, and Professionalism***  
*Stephan Landsman*
- Legal Notes** 848  
*Stephen L. Wasby*

# Restitution: The Victim's Viewpoint\*

Robert C. Davis\*\*

Dr. Barbara Smith\*\*\*

Susan Hillenbrand\*\*\*\*

*One of the recent changes that has made criminal courts more responsive to victims is a renewed emphasis on restitution. However, evidence suggests that, while judges now order restitution far more frequently, rates of collection are low. For many victims restitution becomes a hollow promise. This paper looks at the experience of victims with restitution and with the programs designated to collect restitution. It finds that victim satisfaction with the restitution process is very low, but that it could be increased by better collection efforts and better efforts to keep victims informed.*

## Introduction

In colonial America, victims and restitution both occupied important roles in the criminal justice system. Victims, rather than public prosecutors, paid for warrants, did their own investigative work, and retained private attorneys to write indictments and prosecute offenders. The objective of these actions was restitution, viz., to restore to victims that which the offender had taken from them (McDonald, 1976). Thus victim participation in the justice process and restitution were inextricably linked.

As time passed, a distinction was gradually drawn between offenses against the social order (crimes) and offenses between individuals (civil wrongs). In the former cases, the state replaced victims as the wronged party in criminal proceedings. Public prosecutors assumed the powers and responsibilities previously held by victims (Schafer, 1968). The goals of the criminal justice system were redefined as deterrence and punishment, and penitentiaries came into being. Incarceration replaced restitution as the customary punishment of guilty offenders

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(Harland, 1983; Jacobs, 1977). And, when restitution was ordered, it was for correctional reasons, rather than for restoring equity (Hillenbrand, 1990).

### **Renewed Interest in Victims**

With the resurgence of interest in victims in the 1970s, criminal justice experts and researchers began to scrutinize the role of victims in the courts. They looked at what victims wanted from the courts and what they actually got.

They found that what victims wanted was often surprisingly reasonable. A study of victims in Brooklyn Criminal Court reported that only a quarter of victims sought punishment of defendants; the remainder were primarily interested in protection for themselves or their families, in restitution, in rehabilitation or in other goals (Davis, Russell, & Kunreuther, 1980). An experiment in Dade County, Florida in which victims were given the opportunity to participate in pretrial conferences, similarly reported that few victims came to the conferences looking for unreasonable punishment of the accused (Kerstetter & Heinz, 1979).

What victims usually got from the courts, however, was to be shut out of the decision process. Dubow & Becker (1976) argued that:

If the victim is interested in retribution he may be frustrated by the imposition of a low sentence without explanation of the reasons for leniency or the opportunity to participate meaningfully.... If the victim is not interested in retribution, there is little other satisfaction to be gained. Victims seldom get an apology, seldom are reconciled with the offender, and seldom receive restitution. (1976:150)

Studies reported high rates of victim dissatisfaction with criminal courts, with failure to get restitution as one of the leading complaints of victims (Smith, 1979; Davis, *et al.* 1980).

Researchers also began to discover evidence that increased victim participation in the adjudication process could enhance satisfaction with the criminal justice system. Hagan (1982) reported that victims' satisfaction with sentencing decisions was greater when they were present at sentencing than when they were not. Increased victim satisfaction with sentences was also reported when victims were consulted about their wishes by judges or prosecutors (Davis, *et al.* 1980), and when victims *believed* they had influenced the criminal justice process (Smith, 1981). Herson and Forst (1984) found that victim satisfaction was higher when

victims had been kept informed and had had an opportunity to influence case outcomes.

The implication was clear: If victims' satisfaction with the courts was to be improved, courts would have to find ways to listen and respond to their concerns. That finally began to happen during the 1980s.

### **A Decade of Changes for Victims**

During the past decade, victims have been afforded once again a degree of participation in — if not control over — criminal prosecutions. In April, 1982, President Reagan established a Task Force on Victims of Crime, which made 68 recommendations for empowering victims and improving their treatment in the courts. In 1982, the Omnibus Victim and Witness Protection Act gave many of these recommendations the force of law in the federal courts: victims were guaranteed more involvement in decisions made about their cases, greater protection from intimidation, and the right to present to officials a statement about how the crime affected them (Davis, 1987). Today, virtually all states have passed legislation guaranteeing victims similar rights (Kelly, 1990).

One of the victories victims have won is the right to restitution. The federal Victim and Witness Protection Act authorized restitution in addition to, or in lieu of, any other penalty imposed on convicted offenders, and further mandated that judges who fail to order restitution state on the record their reasons for not doing so. And, by the end of 1987, restitution was authorized or required in all states as a condition of probation; 26 states also provided for restitution in addition to or in lieu of other sentences (Hillenbrand, 1990).

While there are no national statistics on the frequency of use of restitution, expert opinion suggests that its use increased dramatically as the victims' movement gained strength (Galaway, 1988).<sup>1</sup> For example, Davis, Smith, and Hillenbrand (1991) report that, in Brooklyn, New York Criminal Court, the use of restitution increased 1000% over a ten-year period. The dramatic increase can be largely attributed to an aggressive effort by New York's Victim Services Agency to screen all cases for restitution potential, and to bring eligible cases to the attention of court officials.

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<sup>1</sup>To be sure, there are other reasons as well for the increased popularity of restitution, most notably jail overcrowding (see Lurigio and Davis, 1990).

Once again, victims and restitution both occupy respected roles in the justice process. But the situation is not completely harmonious. Because, while victims may take comfort in the fact that restitution is ordered, the orders are often poorly enforced, offenders frequently fail to pay, and victims often are ill-informed about attempts to collect restitution awards.

Thus, the promise of restitution may be far greater than the reality for victims. It may actually be worse to hold out to victims a false promise of restitution than never to make the promise at all. One clinical psychologist has argued that, "Providing rights without remedies would result in the worst of consequences, such as feelings of helplessness, lack of control, and further victimization" (Kilpatrick and Otto, 1987: 27).

A major reason why restitution often falls short of its promise for victims stems from the fact that restitution occurs most often as a condition of probation (Galaway and Hudson, 1978). Typically, it is not afforded as high a priority by probation officers as other probation conditions. With large caseloads to monitor, probation officers often can do little more than worry about whether probationers are committing new crimes. Probation officers often fail to monitor restitution payments and ignore whether offenders are paying restitution until their probation is nearly over. Moreover, revocation of probation solely for failure to pay restitution is virtually unheard of (Smith, Davis, and Hillenbrand, 1989) because judges are concerned about jail overcrowding or about the fairness of jailing poor offenders.

Moreover, probation agencies have put little effort into developing effective enforcement systems (Smith, Davis, and Hillenbrand, 1989; Wheeler, Rudolph, and Hissong, 1989). The result is that compliance with restitution orders is frequently poor. Lurigio and Davis (1990) report that, across a range of jurisdictions where reliable data are available, less than half of the restitution dollars awarded by courts are ever collected.

Because probation agencies are offender-focused, the needs and concerns of victims may be virtually ignored during the collection process. The goals of probation agencies are expressed in terms of rehabilitation or punishment of *offenders* (Edelhertz, 1977). To meet these goals, probation officers are trained to work with offenders, not with the victims of crime. Consequently, there may be little effort to tell victims when to expect payment; to explain to them why payments are not forthcoming or what efforts are being made to collect; or even to inform victims that restitution was awarded at all.

Our research looked at restitution from the perspective of victims of crime. We wanted to know what part they played in the process. We wondered how satisfied victims were with the amount of restitution awards, with the timeliness of payments, and with the amount of money actually received. And we wanted to understand better what made victims satisfied or dissatisfied with restitution in order to discover ways to enhance satisfaction.

### Method

This research was part of a larger study of enforcement of restitution orders (see Smith, *et al.* 1989 for report on the complete study). That study took an in-depth look at four restitution programs —probation-run programs in Minneapolis and Salt Lake; a district attorney program in Montgomery, Alabama; and a program run by a victim agency in New York.

The four programs intensively studied were selected from among a national telephone survey of 75 restitution program directors. Based on the phone interviews, we tried to identify programs that were well-organized and could document that they had a relatively high rate of success in collecting restitution. In addition, we sought to achieve in our selections diversity in the criminal justice agencies administering the programs. Most restitution programs are run by probation departments, a handful by district attorneys' offices, and a handful by victim service programs.

Accordingly, we chose two probation programs, one prosecutor program, and one victim service program. Because these programs had respectable compliance rates and generally appeared well organized, we anticipated that they might also be more conscientious than others in their dealings with victims.

At each of the four sites, 100 cases were sampled from records of the restitution program. Sampling methods varied somewhat from site to site due to variations in filing and record-keeping procedures of the four programs. But in each site, we followed the same basic principle: we selected a date exactly two years prior to the date we visited the site. Then, working backwards, we sampled all cases until our quota of 100 was reached. If we failed to reach our quota after working backwards for six months, we began sampling forward from the selected date until the quota was filled. No sampled case at any of the sites was more than 30 months old or less than 21 months old.

We attempted to conduct telephone interviews with 50 victims from the cases sampled at each site. In fact, interviews were conducted with 49 victims in New York, 55 in Minneapolis, 49 in Salt Lake, and 45 in Montgomery for a total of 198 over the four sites. Fifty-nine percent of the respondents were victims of larceny or burglary; 21 percent were victims of assault or robbery; 15 percent suffered injury or damaged property in traffic related offenses; and 5 percent were victims of bad checks and other assorted crimes. The median amount of restitution awarded to respondents was \$249.

The interviews lasted about 30 minutes, and covered the following issues:

- Extent of victim participation in determining the size of the award
- Whether the award covered the victim's losses
- Extent of victim contact with staff of the restitution program
- Victims' perceptions of the use of payment schedules and timeliness of payments
- Satisfaction with the size of the award, speed of payment, and amount of money actually received

In addition, data collected from case records were used to examine correlates of victim satisfaction. That information included:

- Size of the restitution award
- Whether an installment plan was used
- Time given the offender to pay
- Percentage of award paid by offender
- Time offender took to pay

The three measures of victim satisfaction (satisfaction with award size, with speed of payment, and with amount of money received), each of which ranged from "very satisfied" to "somewhat satisfied" to "not at all satisfied", were summed to create a composite satisfaction measure. Since the individual measures ranged from 1 to 3, the composite index ranged from 3 to 9. A score of 3 would indicate that victims were not satisfied on any of the three individual measures, while a score of 9 would indicate that victims were very satisfied on all three individual measures. The mean on the composite measure was 5.36 and the standard deviation was 2.31.

## Results

*Victims' Experience with Restitution.* A large majority of victims felt that it was important for them to provide information about their losses to officials prior to a determination of the size of the restitution award: eighty percent of those interviewed felt that it was "very important" and 11 percent felt that it was

"somewhat important." Yet only 52 percent of respondents reported that they had been asked about the extent of their losses by officials. The large percentage of victims not asked about their losses takes on greater significance when it is considered that a majority of the sample (56%) reported that the restitution award was not sufficient to cover their losses. In fact, the average discrepancy between what the court awarded and what victims felt they should have received was substantial — \$400.

One respondent's horror story illustrates what can happen when victims are ignored. This victim's car was stolen and later recovered by the police, but it had been damaged. According to the victim, the police officer had estimated the damage to the car when he filled out his report. This estimate proved to be too low, but the court had used it to set a restitution amount without ever asking the victim for actual damages. On top of that, the police had impounded her car for several days, and the victim had to pay a fee for the time it was impounded.

Just over half (52%) of the victim sample reported that staff of the restitution program had contacted them after the award. Most of those notified — 77 percent — were told the amount of the award (some victims, of course, were made aware of the award through being present in court or through the efforts of the prosecutor's office or victim service program). But only two-fifths of those contacted by program staff were told when to expect restitution payments or given the name of a contact person in the event that problems or questions arose. (In fact, some victims who had received checks from their county representing partial restitution payments had had no idea what the checks were for until we called them!) Overall, respondents reported that program staff did a dismal job of keeping them informed. Indeed, only 19 percent of the victims believed that they had been kept well-informed about issues pertaining to their restitution award. According to one victim,

I just received one letter explaining how it works. I never knew if money was collected from the defendant when I finally managed to get in touch with someone to find out what was going on, I was told the case had lapsed.

Satisfaction with various aspects of the restitution process was generally low. Fifty-six percent of victims were "very" or "somewhat" satisfied with the size of restitution awards; 37 percent were "very" or "somewhat" satisfied with the

timeliness of restitution payments; and 33 percent were "very" or "somewhat" satisfied with the amount of money actually recovered from the offender.

Most victims (78%) believed that officials could have done more to collect their restitution. Common ideas about what more could have been done included:

- Better follow-up with offenders
- Garnishing wages or attaching assets
- Jailing offenders delinquent in payments, and
- Having offenders pay restitution *before* court costs are paid

One victim summed up the feelings of many respondents when she said:

They should develop a system to contact the victim every month.

They should get the defendant in court if he doesn't pay, and put him in jail if he doesn't pay a second time. If they can't collect, they should give the victim the name of the defendant so victims can go to small claims court to get their money back.

*Explaining Victim Satisfaction.* Bivariate correlations between victim satisfaction and the variables created from victim interviews and case records are presented in Table 1. It is notable that neither the actual dollars awarded nor payment time (time given offender to pay and time taken to pay) had an impact on victim satisfaction with the restitution process: victims in cases where judges ordered smaller amounts of restitution or where offenders were given lengthier times to pay were as satisfied as victims in cases where larger amounts were ordered and payment times shortened.

In contrast, the percentage of the award actually paid by the offender by itself accounted for a third of the variation in the satisfaction measure. Victim satisfaction also increased when victims felt that the amount awarded was sufficient to cover their losses and when victims were given more information by officials about the collection process.

In Table 1, we found a number of factors to be significantly related to victim satisfaction. Many of these factors are also related to each other; for example, most victims who were told about the size of their restitution award were also told when to expect to receive their money. In situations where many factors are interrelated, simple correlations, such as those presented in Table 1, can be misleading. Multivariate analysis is necessary to isolate the *independent* contribution of the various factors to victim satisfaction. Multivariate analysis enables us to look at the effect of each factor on victim satisfaction while holding constant the effects of other factors. It also tells us how much of the total variation in satisfaction levels can be explained by all the factors measured.

**Table 1.**  
**Correlates of Victim Satisfaction With Restitution**

Data from records	Correlation
Amount awarded to victim	.05
Time given offender to pay	.03
Installment plan used?	.15*
Percentage of award paid by offender	.58*
Time offender took to pay	.06
Data from victim interviews	
Did amount awarded cover losses?	.43*
Did anyone ask you to tell about losses?	.11
Were you told about award?	.23*
Were you told size of award?	.20*
Were you told when you'd get money?	.16*
Were you given a contact name?	.30*
Were you kept informed?	.46*

Correlations range from 0 to 1. the larger the correlation, the stronger a relationship between two variables.

\* Indicates that correlation was significant at .05 level or better by a two-tailed test

The method we used was step-wise multiple regression. In this technique, factors significantly related to victim satisfaction are assessed one at a time and added to a predictive statistical model, based on their ability to explain variation in satisfaction not explained by factors already in the model. When no significant benefit is gained by adding more factors to the model, the process stops.

Factors from Table 1 that were significantly correlated with satisfaction were entered into a step-wise multiple regression procedure. The results of this procedure are presented in Table 2. Overall, the modelling procedure was quite successful, accounting for more than half the variability in victim satisfaction scores. The best individual predictors of satisfaction were variables pertaining to the financial remuneration received by the victim — the percentage of the award actually paid by the offender and whether the award covered the victim's losses.

But even after these factors were taken into account, program contact with victims — whether victims felt they had been kept informed and whether they had been given a contact name — still significantly increased victim satisfaction.

**Table 2.**  
**Predicting Victim Satisfaction**

Variable	B	Std Error	Beta	t	p
Percent of award paid by offender	2.38	.29	.47	8.10	.00
Did amount cover losses?	1.60	.26	.35	6.21	.00
Were you kept informed?	1.20	.38	.20	3.15	.00
Were you given contact name?	0.65	.28	.14	2.29	.02

Adjusted R(2) = .55

F (4,143) = 46.62 p < .001

Betas range from 0 to 1. The larger the beta, the stronger a relationship between two variables.

### Discussion

We began this study with the suspicion that, although victims are increasingly winning restitution awards from judges, they are getting short shrift in the collection process. As it turned out, the situation was even worse than we expected. We found that victims often had little involvement in decisions about the size of awards, received little information about the collection process, and were largely dissatisfied with various aspects of their restitution experiences.

It should be noted also that the four programs we studied were chosen because they were especially well-run programs. It is likely that victims in these programs had more positive experiences than victims in more typical programs. (Indeed, one of our restitution programs was one of just a few in the country run by a victim service agency.) Our data, in other words, understates the problems that most victims face in trying to secure restitution.

Staff in the four study sites were keenly aware of their programs' shortcomings with respect to victims. We often heard arguments that they could not do more for victims because they just did not have sufficient staff and money to contact

victims in order to refine loss estimates, in order to notify them of awards, or in order to inform them about progress in collecting money from offenders.

Our analysis indicates that the single best predictor of victim satisfaction with restitution is offender compliance with awards. If compliance is to be increased significantly, substantial increases in program resources are needed in order to improve (and automate) payment tracking systems and in order to hire specialized staff to track and monitor delinquent offenders (see Schnieder and Schnieder, 1985 for a description and impact analysis of such a program).

But our analysis also suggests that, with only minimal funds, victim satisfaction could be significantly enhanced if greater attention was given to victims by the programs that administer restitution. Reaching out to victims to notify them of payment schedules set by the court or programs, giving them the name of someone to call when questions arise, and letting victims know periodically the success of collection efforts would not have to cost a lot —especially for programs that could generate such contact via computer.

To restitution staff often frustrated by the difficulties of collecting money from intransigent offenders, it should be good news that there is something they can do that will make a difference to victims. And greater involvement of victims would help to ensure once again that restitution serves victim interests as well as society's interests in rehabilitation and punishment.

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