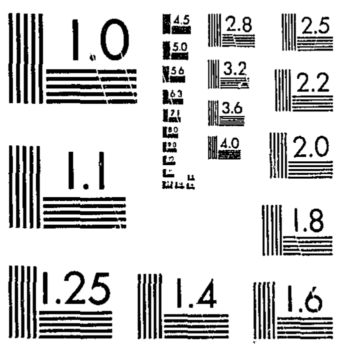

RESTITUTION IN JUVENILE JUSTICE: ISSUES IN THE EVOLUTION AND APPLICATION OF THE CONCEPT

By

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to Juvenile Justice Processing

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Chapter I

INTRODUCTION

The proliferation of diversionary and alternative programming in the juvenile justice system reflects the ascendancy over the past twenty years in the United States of a correctional philosophy supporting community-based, non-institutional programs at all stages in justice processing. The failure of traditional practices to check the rise in juvenile crime or to depress the rates of recidivism among juvenile offenders has served as a catalyst in the search for new and innovative approaches for intervening with violative behavior among juveniles. This spirit of reform has built upon a variety of assumptions but most notably has been grounded in the argument that more effective and meaningful ways of pursuing the rehabilitative ideal must be found and put into practice.

Yet, at the same time proponents of correctional reform in their search for more fruitful and humane methods to respond to youth crime have moved to shape priorities in the field of juvenile justice, other less moderate forces at work in the same arena have rallied support for a growing disaffection with the principle of rehabilitation; adherents to this cause have issued forceful calls for the use of more severe and restrictive approaches in the handling of many categories of youthful offenders. As McDonald (1977:101) has insightfully observed

> The attack on the rehabilitative ideal has gained momentum and prestige. It is grounded on two facts that are not easy to ignore: the cumulative lack of empirical evidence that existing therapeutic techniques succeed in bringing about rehabilitation, and the cumulative empirical evidence that the rehabilitative ideal with its emphasis on individualized justice has led to gross disparities in the sentencing of similarly situated defendents. For the foreseeable future rehabilitation will not enjoy the position of unquestioned dominance among alternative penal philosophies that it has had in the past. During this period of retrenchment one can expect that other penal philosophies will be given greater consideration.

In this setting where the prevailing paradigm of criminological theory and practice exhibits numerous cross-currents in motive and principle, a major resurgence of interest in a traditional and formerly widely practiced approach to criminal misconduct, namely restitution, has occurred.

Restitution is a term which has been defined in a variety of ways in relation to the field of criminal justice. Attempts to define the concept have ranged from rather broad, conceptual to quite narrow, practical ones. In discussing the confusion which surrounds the use of the term in a criminal justice framework, Galaway and Hudson (1975a:256) suggest

> In keeping with the definitions used by Stephen Schafer (1968:112) and the Canadian Corrections Association (1968:591), "restitution" will be defined here as payments by the offender to the victims of crime, made within the jurisdiction of the criminal justice system. This implies that the criminal justice system is able to identify and convict the offender.

This practice necessarily entails the offender's engaging in activities designed to make reparations for harm done to the victim as the result of criminal misconduct. These reparative activities may assume a number of specific forms; the four principal types are:

1. Monetary payment to the victim.
2. Monetary payment to the community--generally involving payment to a substitute victim such as public establishment.(1)
3. Direct service to the victim.
4. Service to the community--generally referred to as "symbolic restitution."

Together, these activities constitute the universe of reparative techniques employed in contemporary restitution programming and will be referred to in this report under the rubric of "restitutive justice."

In defining restitution, it is important to distinguish the term from another, closely related reparational approach, "victim compensation." Victim compensation involves the state's making a monetary payment to victims of criminal misconduct. As Galaway and Hudson (1975a:256-257) pointed out, "While compensation can be a part of the criminal justice system, it is more likely to be provided by an agency outside of this system, and payments are usually not contingent on the conviction of an offender." The basic dichotomy between these two kinds of reparative schemes reflects the differing goals and objectives of each approach. If the overall aim is simply to provide financial aid to as many victims of crime as possible, victim compensation is a more suitable mechanism since such programs can provide payment whether or not an offender is apprehended. In contrast, restitution is based upon the idea of bringing the offender to justice by involving him/her in the reparative act and is used on a selective basis as a tool for achieving the ends of punishment, deterrence, or rehabilitation within the confines of the criminal justice system.

FACTORS RESPONSIBLE FOR THE GROWTH OF INTEREST IN RESTITUTION

As might well be expected, the recent growth of interest in restitutive justice represents the convergence of a number of precipitating factors; these factors include:

A. Its widespread appeal to an ideologically mixed audience.
B. The search for new interventive approaches.
C. The renewed concern for victims of crime.
D. Its intuitive appeal as a way of achieving reciprocity.

Together, these factors have created a climate of inquiry in which steps are being taken by individuals from all sectors of the justice community--police officers, court intake workers, probation officers, judges, prosecutors, and correctional workers--to put many innovative ideas associated with restitution into practice.

RESTITUTION'S WIDESPREAD APPEAL to a MIXED AUDIENCE

In large part, the current interest being shown in restitution as a promising approach arises from its appeal to a very mixed audience. Restitution programs generate positive responses simultaneously from sectors of the population holding conflicting ideological positions with regard to the proper goals and overall mission of the justice system. This broad appeal is rooted in the multi-faceted nature of restitution. The eyes of beholders can perceive many things in restitutive justice.

> . . . in general, the proposition that some offenders should be required to undertake [restitution] should appeal to adherents of different varieties of penal philosophy. To some, it would be simply a more constructive and cheaper alternative to short sentences of imprisonment; by others it would be seen as introducing into the penal system a new dimension with an emphasis on reparation to the community; others again would regard it as a means of giving effect to the old adage that the punishment should fit the crime; while still others would stress the value of bringing offenders in close touch with those members of the community who are most in need of help and support. . . . These different approaches are by no means incompatible (The Wootton Report 1970:13).(2)

To both conservative and liberal elements in the population restitution offers hope of being an ideal form of justice sanction. On the right of the political spectrum, individuals and groups plead that harsher, more demanding measures be imposed on offenders. Here, restitution is viewed as an approach which punishes offenders by requiring them to compensate their victims. In addition, the argument is made that the public is relieved of the unfair expense of supporting idle offenders in prison. On the left of the spectrum, individuals and groups insist that many offenders do not need to suffer the harmful effects of incarceration and instead should be given opportunities to rehabilitate themselves in open, supportive settings. Here, restitution is viewed as an approach which provides offenders with an opportunity to engage in meaningful activities and which facilitates more speedy reintegration into the community. The feature of restitution championed by adherents of both points of view is its insistence on the offender's assuming a considerable degree of responsibility for his/her act of criminal misconduct. Although supported for the disparate motives of rehabilitation on the one hand and punishment on the other, this aspect of restitution, nevertheless, occupies a central role in its diverse, widespread appeal.

This kind of alluring appeal across a broad spectrum of opinion undoubtedly has important practical implications for politicians, planners, and administrations who must obtain public support before launching new programming efforts during the present era of budgetary constraint and fiscal cutback. This quality of restitution is in striking contrast to a number of other recent programming efforts which have failed to generate widespread appeal and have met instead with considerable opposition. This problem has especially plagued various community-based programs where considerable neighborhood and even community-wide resistance has emerged.

Restitution not only responds to competing points of view about the nature of appropriate intervention but also may provide a way out of a distressing dilemma created by governmental support of lessening social control and the public outcry for severer sanctions. The critical features of this mounting crisis have recently been detailed by Reamer and Shireman (1980:54-55).

> Attention to the community's willingness to support alternative programs is especially important in this current era, an era where, paradoxically, professional wisdom and Federal guidelines favoring the development of community-based alternative programs coincide with a particularly acute sense of fear among citizens about crime and delinquency and the enactment of "get tough" statutes by state legislatures. Proponents of alternative programs cannot afford to regard these two sentiments as independent phenomena that require separate responses. The fear of crime and delinquency itself represents one of the most serious threats to the future of alternative programs. Thus, while Federal legislation should continue to encourage the development of alternatives to formal processing

> of juveniles, legislators and administrators cannot afford to ignore the concern of citizens that public safety should be guaranteed first and foremost. The tension between the shift toward deinstitutionalization and low community tolerance is a precarious one that demands thoughtful attention.

Given its multi-facetedness, restitution may, in fact, be a programming option capable of bridging the gap between these conflicting sentiments.

THE SEARCH for new INTERVENTIVE APPROACHES

The intense search for new and innovative interventions with juvenile offenders as part of the ongoing reform movement has promoted the growth of interest in restitution. Three issues emerging from the debate about appropriate directions for reform in the juvenile justice system have been especially pertinent in the increased call for restitutive justice. The first issue, instilling a sense of responsibility on the part of the offender, reflects a concern with the frequently voiced opinion that many programmatic attempts to rehabilitate offenders have suffered from a persistent inability to obtain serious commitments from the juveniles participating in these efforts. In many educational and vocational programs operated both in training schools and in community-based facilities there is often the sense that the offenders are simply going through the motions. It is against this backdrop that restitutive justice, by requiring the offender to assume an active role in compensating his/her victim, is able to demonstrate a visible commitment on the part of the youth.

The second issue has been the plea to develop programming which embodies less arbitrary and more meaningful sanctions. An increasingly prevalent criticism of the justice system is that the kinds of dispositional outcomes rendered by the courts do not seem to be logically related to the injuries or damages arising from acts of criminal misconduct. Depending upon the circumstances of the individual case, this opinion may be expressed by either the victim or the offender. In addition, the sanctioning measures that follow in the wake of the adjudicative process are frequently thought not to be constructive or socially useful. In response proponents of restitution have argued that this type of programming is eminently suited to serve as a constructive sanctioning mechanism. For example, the psychologist, Eglash (1958a:20), uses the term "creative" when referring to restitution in a correctional context; he argues that the restitutive process is characterized by five essential elements:

(1) an active, effortful role on part of an offender
(2) the activity has socially constructive consequences
(3) these constructive consequences are related to the offense
(4) the relationships between offense and restitution is reparative and restorative
(5) the reparative effort may cause the situation to be better than before the offense was committed.

The third issue in this call for change centers on the search for ways to insure minimal penetration into the system by offenders who would benefit from being diverted at any early stage to settings where less severe sanctions would be imposed. The fact that restitution programming can be adapted for use at any stage in processing suggests its suitability for this kind of diversionary role. Frequently, the decision to place an offender in a restitution program is made for the ostensible purpose of avoiding further formal processing.

Collectively, these three dimensions of restitution represent a range of qualities rarely possessed by any single alternative sanctioning process.

THE RENEWED CONCERN for VICTIMS of CRIME

A concern for the plight of the victim has been a notable development in the field of criminology and criminal justice in the past several decades.(3) This shift in focus signals an abrupt reversal in a trend that has long dominated legal and administrative thought and practice in the justice system.

> Over the course of the last one thousand years in Western society, the interests of both the offender and the abstract entity "society" have received growing attention and concern in the administration of criminal justice while the situation of the victim has been increasingly ignored. Reflecting this concern has been the increased attention by the courts to the legal rights of the accused and confined and the emphasis upon the rehabilitation of the offender as the stated goal of correctional systems. . . . There now appears to be a growing concern that . . . just as the offender is seen as having the right to a fair trial and suitable defense, so society has the obligation of ensuring that victims of crime are fairly compensated for damages done (Hudson and Galaway 1975:IX-X).

The refocusing of attention on the victim has occurred largely as a result of the realization that all parties involved in and affected by the justice system--victims, offenders, justice professionals, and the general citizenry--appear to benefit from this practice. A necessary consequence has been the development of various mechanisms for making reparations. Restitution has emerged as one of the most intriguing and versatile approaches.

ITS INTUITIVE APPEAL as a way of ACHIEVING EQUITY

Perhaps the most compelling, yet infrequently stated factor favoring the development and use of restitution in justice processing is what Harland (1978:196) refers to as "the evident rationality of the restitutive sanction." This phrase points to the fact that all aspects of restitutive justice are ultimately expressions of a common sensical notion, namely that human interaction is grounded in the presumption of balanced exchange, or mutuality, between individuals and groups.

This concern for fairness and equity has long been a preeminent theme in the work of philosophers such as Kant and Hegel, who in the 18th and 19th centuries addressed themselves to problems associated with establishing universal principles of justice. For example, Kant (1887) in grappling with the question of just deserts states

> But what is the mode and measure of punishment which public justice takes as its principle and standard? It is just the principle of equality, by which the points of the scale of justice is made to incline no more to the one side than the other. It may be rendered by saying that the undeserved evil which any one commits on another is to be regarded as perpetrated on himself (Quoted in Ezorsky 1972:104).

It is this sense of reciprocation which seems to qualify restitution as an ideal social mechanism for restoring equity to a criminally disrupted setting. As Harland (1978:197) observes, "The central importance of claims for the manifest rationality of restitutive dispositions is reinforced when restitution is considered in the context of traditional theories of punishment."

The social predisposition toward equity is evidenced both by the historical and cross-cultural importance of systems of reparation to restore balance. This tendency to reciprocate seems to be rooted in a calculus of exchange where whenever imbalance is introducted into a system, there is inherent strain to restore a sense of balance to the social order.(4) The incidence and diversity of such restitutive practices through time and across space are detailed later in this report. (See The Evolution of Restitutive Justice: Historical and Cross-Cultural Perspectives, pp. 8-12.)

PURPOSE OF THE REPORT

The purpose of this report is to provide the reader with a survey and an analysis of those aspects of restitution critical for assessing its usefulness in formally sanctioning violative behavior among juveniles. Part of this inquiry will include a brief description of current programming efforts. This glimpse at juvenile restitution programs will convey some sense of (1) where in justice processing, i.e., at which stages, these programs have been instituted, (2) under what auspices they operate, (3) what kind of goals they seek to accomplish, (4) what kind of offenders they serve, and (5) what range of services are offered.

Five principal topical areas in restitutive justice will be reviewed and analyzed in this report:

1. Historical Issues
2. Cross-cultural Issues
3. Philosophical Issues
4. Legal Issues
5. Management Issues

Programmatically, a concern for historical and cross-cultural issues is important in any attempt to place the current proliferation of restitutive activities in a comparative perspective. An examination of the evolution of this approach to violative behavior provides some sense of what kind of actions might best be undertaken in contemporary programming efforts. Here, emphasis will be placed on specifying the actual forms of restitution which arose in a variety of settings in response to a variety of circumstances.

A consideration of the philosophical principles underlying the idea of restitution as an interventive approach to violative behavior is vital with respect to making decisions about what program goals and objectives should be and how they might best be achieved. Although always subject to debate and reinterpretation, these philosophical underpinnings provide the best guide for arriving at some tentative agreement about the type and degree of offender/victim/community changes which may be reasonably attempted through the use of this kind of programming.

Issues about due process and other constitutional safeguards must be addressed if one hopes to guarantee the legal rights of those offenders who are being considered for participation in these programs. In addition, these are a number of legal issues which arise from problems associated with the implementational process. Since so many of the legal issues discussed in this report are closely intertwined with matters of program management, these two topical headings are not treated separately. Legal issues are addressed as they arise.

Finally, issues associated with program management will be given extensive coverage in this report. Among all of the issues associated with restitution those of

management has received a disproportionately small amount of attention by students of this field.

> Despite the long history and extensive utilization of restitution within both criminal and juvenile justice systems, to date there has been a virtual absence of literature incorporating generally applicable technical information pertaining to restitution's implementation. Consequently, while theory relating to restitution has advanced dramatically in recent years, practical restitution programming documentation has not kept pace with these developments (NOSR ms:1).

This lack of any comprehensive and systematic treatment of factors vital to program implementation and operation has led us to place a special emphasis on this topical area.

The ultimate success or failure of any restitution program is largely determined by how skillful one is in identifying the key operational factors and in creating the structures and procedures necessary for expediting stated goals and objectives. Central to this endeavor is the precarious step from theory to practice. As Hudson and Galaway (1977:1) have insightfully pointed out, "The concept is deceivingly simple to state, but it presents enormous difficulties for operationalizing in programmatic form." To put the concept of restitution into practice requires engaging on a conceptual level those practical matters that constitute "the nuts and bolt" of such a programming effort.

Chapter II

HISTORICAL, PHILOSOPHICAL, AND CROSS-CULTURAL PERSPECTIVES

THE EVOLUTION OF RESTITUTIVE JUSTICE: HISTORICAL AND CROSS-CULTURAL PERSPECTIVES

Scholars (Berstein 1972; Edelhertz 1975; Laster 1970; Schafer 1968) have amply documented the evolution of restitution as a sanctioning mechanism. A convincing argument has been made for the presence of culturally patterned and socially approved modes of compensatory behavior across much of human experience; such practices were structured to restore balance and equity to the social order when acts of misconduct against persons and property have occurred. These systems of response are, in the broadest sense, referred to as compensatory practices and have assumed a fascinating variety of forms.

For students of criminology a notable characteristic of these practices is that they exhibit a clear pattern of development across time and space. A detailed recounting of these developments is unnecessary for present purposes, but a brief highlighting of the principal steps in this evolutionary process will be presented in order to place recent trends in restitution in perspective. Jacob (1976:37) has summarized the principal steps in this process which emerged with the appearance of the earliest hunting and gathering societies as follows.

> The ancient historical evolutionary process thus consisted of several stages: (1) private vengeance; (2) collective vengeance; (3) the process of negotiation and composition; (4) the adoption of codes containing present compensation amounts to be awarded the victim in the composition process; (5) the gradual intervention of lords or rulers as mediators and payment to them of a percentage of the composition-compensation award; and (6) the complete take-over of the criminal justice process and the disappearance of restitution from the criminal law. In this evolutionary process, the central government became stronger. Familial groups were replaced by the sovereign as the central authority in matters of criminal law. During this process the interests of the State gradually overshadowed and supplanted those of the victim. The connection between restitution and punishment was severed. Restitution to the victim came to play an insignificant role in the administration of the criminal law. The victim's rights and the concepts of composition and restitution were separated from the criminal law and instead became incorporated into the civil law of torts.

Forever shrouded by prehistory are the origins of the earliest compensatory systems, practices that exacted revenge for transgressions against persons and property. The tendency in any society to restore order to social relations disrupted by misconduct and to reciprocate for acts against the victim has found expression in compensatory practices on a world-wide basis (Nader and Combs-Schilling 1977). Although small-scale, pre-literate societies possess only extra-legal means for administering justice, a strong sense of wrong obviously exists in these settings, calling for culturally approved, corrective interventions. Examples of

these practices have been described repeatedly in the ethnographic literature of the 19th and 20th centuries (Barton 1919; Colson 1975; Evans-Pritchard 1940; Gellner 1969; Gluckman 1955; Hoebel 1954; Hobhouse 1951; Kennett 1925; Koch 1974; Kroeber 1925; Maine 1897; Malinowski 1940; Nader 1964; Pospisil 1967; Tyler 1901). As Hobhouse (1951:75) has noted

> In one form or another systems of [restitution] prevail or have prevailed almost to this day over a great part of the barbaric world, among the North American Indians, in the Malay Archipelago, in New Guinea, among the Indian hill tribes, among the Calmucks and Kirghis of the steppes of Asis, among the rude tribes of the Caucasus, the Bedouin of the Arabian desert, the Somali of East Africa, the Negroes of the West Coast, the Congo folk of the interior, the Kaffirs and Basutos of the South.

The form of compensatory practice seems to reflect two critical factors, the level of societal complexity, i.e., the degree of formal differentiation of institutions, and the dominant type of subsistence base. Ziegenhagen (1977:44) has observed that "[restitution] is rarely found among hunters and gatherers but finds wide acceptance among agriculturalists. As a general rule, it seems that crude and more violent practices tend to be the preferred approach among very rudimentary societies. Colson (1975) points out that in such settings responses to wrongdoing entail systems of redress where individual victims or their extended kin groups seek justice through personal or collective vengeance. Schafer (1968) has referred to these two primitive forms of compensatory practices (individual and collective acts of revenge) as "aggressive retaliation." They ideally embody the concept traditionally referred to as "lex talionis," that principle calling for "an eye for an eye and a tooth for a tooth." The difficulty, of course, with this sort of solution to misconduct is that the repercussions often far exceed the intent. These practices frequently trigger chain reactions of violence which not only threaten individual well-being but also pose the possibility of disrupting the established social order. Blood-feuding reveals the inherent limitations to the use of aggressive retaliation.

The drastic measures required by such a system have generally yielded to less disruptive, more conciliatory practices. An entirely new and distinctive compensatory approach emerges as societies develop more elaborate and highly differentiated social institutions. (For a detailed analysis of the relationship between social differentiation and social control, see Ziegenhagen 1977.) This more moderate system replaced personal vengeance with some form of payment to the victim by the offender for damages done. Exactly how this transition to the transfer of a valued commodity from the offender to the victim came to be an acceptable alternative to violence is not entirely clear. The most widely argued explanation is that the transition from physical vengeance to material compensation resulted from the evolution of more complex societies in which precise valuation began to be placed on commodities, allowing one to equate property with physical injury or even death (Bernstein 1972; Edelhertz 1975; Ziegenhagen 1977).

Compensatory systems providing material benefits to the victim still retained an air of harshness because the sanctions tended to place severe demands on the offender. Most early codes incorporating compensatory practices specified that each criminal act must be offset by the payment of damages amounting to many times the value of the original transgression. For instance, according to Mosaic Law, "If a man steal an ox, or a sheep, and kill it, or sell it, he shall pay five oxen for an ox, or a sheep, and kill it, or sell it, he shall pay five oxen for an ox, and four sheep for a sheep" (Quoted in Bernstein 1972:23). In a similar fashion, the

Code of Hammurabi repeatedly called for penalties that amounted to as much as thirty times the value of the goods stolen or the damages done. This custom of imposing monetary repayment several times the value of the loss inflicted persisted in western societies as late as the 19th century (Wolfgang 1965:229). Despite the punitive nature of these sanctions, Laster (1970:74) correctly points out that even at these early points in time restitution had multiple benefits.

> A plausible explanation for early communal composition in western and African culture, . . . is that settlement is a highly purposive act. There are benefits to the community in reduction of tension, benefits to the victim in monetary satisfaction, and benefits to the criminal in retrieving his lost security.

This argument only strengthens a critical point made repeatedly in this report, namely, restitution is a multi-faceted sanction inherently possessing qualities suited to the purposes of proponents of both punishment and rehabilitation.

Compensatory systems other than those involving blood feuds and individual acts of vengeance reached their most refined development in the European Dark Ages and came to be known as "composition." Schafer (1968:3) argues that, "The historical origin of restitution, in a proper sense, the so-called system of 'composition' lies in the Middle Ages." In Europe, composition came to assume several forms: the wer, the wite, and the bot.

> . . . the wer being a money payment to a family for the death of one of its members, the bot being a family payment for injuries less than death, and the wite a sum of money paid to the lords to cover the cost of over-seeing the system of compensation (Hudson and Galaway 1975:XIX).

Restitution probably reached its greatest elaboration in the early Anglo-Saxon codes of Kings Aethelred and Alfred where parts of the human body were assigned a compensable value. As Gillin (1945:338) has pointed out, authorities became so concerned with the listing of possible restitution that "every limb, every joint, every feature of the human body had its assessed value." However, in spite of this exaggerated regard for a detailed scaling of payments, "Composition functioned primarily to maintain social order through peaceful means" (Ziegenhagen 1977:44). Noteworthy is the fact that systems of composition came to serve largely as remedies for acts of physical violence against persons. Under all of these early codes settlement was urged between concerned parties for harmful acts such as homicide, rape, and other forms of personal injury while acts such as incest, adultery, witchcraft, and bestiality resulted in community punishment. These were acts against the entire established order, and restitution to a single person was not possible in such cases.

These highly sophisticated systems of compensation suddenly began to disappear from European societies in the late Middle Ages following the decline of feudalism. With the rise of the State, a single, centralized authority came to monopolize punishment, and criminal transgressions came to be viewed largely as offenses against this power. As the ruler's authority increased, he assumed exclusive right to punishment and exacted fines which were retained by him. Laster (1970:75) suggests, "the introduction of the system of fines payable to the Crown was a contributing factor in separating the law into its present civil and criminal components, effectively destroying the system of community composition." The victim had been relegated to a marginal role in the justice process.

> By the latter part of the twelfth century the State - in the person of the King - came to be defined as the offended party in matters of criminal law and as a result, the State's right to punish and collect damages superseded the individual's right to recover damages (Hudson and Galaway 1975:XIX).

The extent to which compensation to the victim was retained was in its incorporation into the civil law of torts.

Only occasional calls for the use of restitution were voiced during the long interlude between its decline in European societies in the late Middle Ages and its revival during the present century. An important exception was the persistence of restitutive justice on a society-wide basis under Germanic law where the "adhesive process" permitted the victim to interpose his claim for compensation in the course of the criminal trial for his assailant (Bernstein 1972:69). Even here, the practice fell into disfavor early in the 19th century.

Among those arguing for the increased use of restitution in this era of little interest in compensatory practices was Thomas More who suggested that offenders work on public projects and make reparations to the victim instead of to the King (Hudson and Galaway 1975:xx). Somewhat later, in the 18th century, the social philosopher, Jeremy Bentham, in arguing the virtues of restitution, "took the position that, whenever possible, satisfaction should be provided by the offender as part of the penalty for the crime . . . [and] that both restitution in money and restitution in kind be mandatory for property offenses" (Jacob 1976:38). In essence, Bentham's argument emphasized the punitive aspects of the sanction and was in keeping with the precept of offender responsibility underlying the penal theories of that day. This position reflected the values of the dominant, "classical" paradigm in criminology. Arising in the 18th century in the wake of the Enlightenment(1) this approach stressed the need for individual responsibility on the part of offenders whose behavior represented deliberate and willful acts against the established order. Adherents of this paradigm assumed

> . . . that humans are rational beings who calculate the pleasures and pains associated with different courses of action and freely choose that one which will maximize their personal advantage over social cost. But, because they are rational beings, humans are also inclined to be law-abiding if an enlightened system of justice is designed to control them (Empey 1978: 198).

An important manifestation of this outlook was the commitment of classical criminologists to the ideological position that criminal misconduct should be sanctioned in a reasoned fashion with punishment reflecting the seriousness of the transgression. The few supporters of restitutive justice during this period felt that such a compensatory practice offered some hope of achieving this goal. In spite of scattered calls for reconsidering the use of restitution, virtually no official action was undertaken to initiate actual planning or implementation of this approach.

With the advent of the 19th century, changes began to occur both in the frequency of calls for the use of restitution and in the perceptions of criminologists and administrators who guided the planning and implementation of criminal justice sanctions. Certainly, the latter change represented a fundamental shift in the way in which persons concerned with crime and punishment thought about the causes of and responses to criminal misconduct. This alteration in values and outlook signaled

the emergence of a new criminological paradigm, positivism. In contrast to the preceding, classical approach, positivists placed a greatly increased emphasis on the role of forces, internal as well as external, that cause deviant behavior. Galaway and Hudson (1975b:59-64) have referred to this positivist perspective as the "sickness" mode of criminology as opposed to its antecedent, the classical "sin" model; they argue that within the positivist paradigm causal explanations for crime were sought in various psychological, psychiatric, and sociological factors. A logical outcome of this approach was that official attention focused on the proper treatment of the offender who was viewed to be largely a victim of circumstances.

In 1847, Bonneville de Marsargy, a leading French criminologist and reformer, proposed a program of restitution for victims of violent crime. This was followed by a series of similar proposals made by leading criminologists at a number of important international conferences (Stockholm 1978, Rome 1885, St. Petersburg 1890, and Paris 1895) where pleas were made for "a return to ancient practices of our barbarian ancestors" by making reparations to victims of crime (Ruggles-Brise 1924; Teeters 1949). A theme continually appearing in these proposals was that such an approach would not only help to provide aid to the victim but would also help to rehabilitate the offender. An important proponent of this position, Raffaele Garofalo, argued that enforced reparation, or restitution, "was less destructive than imprisonment, which acts only to demoralize and debase the offender . . . by the associations of the prison and . . . by the idleless of its regimen" (Quoted in Edelhertz 1975:21). Again, however, calls for the use of restitution fell on deaf ears, and no official actions followed from the suggestions of progressive, 19th century criminologists.

Restitution suffered another half-century of dormancy before interest was again revived by a prominent British magistrate and penal reformer, Margery Fry. In her book, Arms and the Law (1951), Fry argued the criminal justice system should again focus attention on the victim. She proposed that presiding judges require convicted offenders to pay restitution to victims out of their resources and earnings. In addition, she stressed the rehabilitative value of this kind of sanction.

> Repayment is the best first step toward reformation that a dishonest person can take. It is often the ideal solution (Fry 1951:126).

Although Fry's subsequent proposals assumed a slightly different form by calling for state administered compensation programs,(2) her call for equity for the victim was the first step in the relatively recent rekindling of interest in the use of restitution as a sanction. This spark was responsible for the ensuing theoretical debates and programmatic efforts that will be explored in some detail in the remainder of this report.(3)

RESTITUTION and PRINCIPLES of JUSTICE

The preceding discussion has shown repeatedly that compensatory practices have been instituted through time and across cultural boundaries either as some form of direct retaliation (individual acts of revenge and kin-based acts of blood-feuding) or as a system of reparation (composition, victim compensation, and restitution). The latter approach has persisted as one of the major, acceptable avenues in the justice arena for redressing violations of societal norms. Underlying all reparational schemes are a set of philosophical principles that reflect established values and beliefs concerning the most efficacious way to achieve the goal of justice. These concepts provide the rationale for all actions threatened or actually undertaken

for the purpose of righting and/or preventing criminal wrongs. Broadly referred to as principles of justice, these notions include punishment, deterrence, and rehabilitation.

With this report's focus on one specific form of reparation, i.e., restitution, we shall confine our discussion to the relationship between this concept and the principles of punishment, deterrence, and rehabilitation. This relationship has always been complex since the inherent versatility of restitution as an intervention has caused proponents at various times and places to emphasize the different aspects of the sanction.

Punishment, often used synonymously with the concept of retribution, is perhaps the most widely employed intervention in seeking to obtain justice. As a philosophical principle, punishment rests on the assumption that to insure justice offenders must be penalized in accordance with what they are deemed to deserve for their misdeeds. Exactly what a particular offender deserves is largely determined by two factors: (1) the extent of harm to the victim and (2) the extent to which the offender intends to cause harm. The degree and type of response depends upon whether those meting out punishment believe that it is an end in itself, i.e., non-utilitarian, or is purposive in intent, i.e., utilitarian (Ezorsky 1972:xi-xxvii).

We have already traced how restitution through much of its evolution has to varying degrees been used to inflict punishment on the offender. Although composition, the first truly restitutive practice, marked a shift to a less violent mode of responding to violative behavior, it was nevertheless frequently punitive in nature. As suggested earlier, this quality of harshness is especially evidenced by the severity of reparational sanctions spelled out in early codes such as the Code of Hammurabi, the Torah, the laws of the Greek city-states, Rome, and the early Anglo-Saxons (Edelhertz 1975; Hobhouse 1951; Jacob 1976; Laster 1970; Schafer 1968). Although guaranteeing indemnification for the victim, these codes were obviously appealing to a principle other than reciprocity by demanding restitution that amounted to many fold the value of harm done.

With the revival of interest in restitution in contemporary, Western, industrialized societies the call for retribution is still heard and is in fact used as a justification in launching restitution programs. Retributivists insist that offenders must be made aware of the repercussions of their unlawful acts by assuming responsibility for what they have done. Proponents of retribution find in restitution an appropriate mechanism for making this point. Also, in a retributivist framework restitution provides a way of assuring that similar offenses will be treated in a similar fashion thereby eliminating much of the arbitrary variation now present in sentencing. Likewise, adherents of a punishment philosophy find restitution to be an excellent tool for guaranteeing that the punishment be related to the offense by assigning fixed monetary values to specific acts of misconduct. Together, these features of the restitutive sanction have been championed by retributivists as leading to a more logical, more forceful, and generally fairer system of criminal justice; restitution is seen as a corrective to many of the excesses, misdirections, and shortcomings of the present system.

Turning to the second principle, deterrence, we readily see that a powerful linkage necessarily exists between punishment and this other underpinning to justice. When punishment is imposed for utilitarian reasons, it is usually employed for the purpose of providing deterrence. Deterrence is grounded in the dual notions that offenders should be punished in order to discourage them from future violative acts for fear of the consequences and to discourage other potential offenders on the

basis of retribution meted out to convicted offenders. The former motive is commonly referred to as general or secondary deterrence. In both cases the fear of future punishment is the key to generating a deterrent effect. For this reason deterrence of any type has always been closely interwoven with theories of punishment and has usually been thought to be served by an entire system of sanctions rather than by the decision to impose a particular sanction in a particular case. In this sense restitution is only rarely viewed as an approach designed to deter criminal behavior through the threat of its imposition. Only in its most punitive interpretations when being imposed as severe punishments under early codes was restitution employed largely for its deterrent effect.

The remaining principle, rehabilitation, is a relatively recent addition to the intellectual arsenal of criminal justice. As a concept, rehabilitation stresses the virtues of changing the values, priorities, and behavior of the offender. Within this framework, the offender is the principal beneficiary of actions taken by representatives of the justice system rather than the victim or the community at large. As Thorvaldson (1978:40) has observed

> This aim postulates that offenders should be given emotional support, advice in the general management of their affairs, or assistance in coping with specific economic, social or inter-personal problems.

This redirection of attention to matters of intraphysic change and social reintegration can be traced to the rise of positivism. As suggested earlier, proponents of this paradigm asserted that "criminal behavior is sought in forces that are at least partially beyond the rational control of the individual" (Galaway and Hudson 1975b:62). Programmatically, this focus led to the development of techniques for treating the "illness" of the offender.

It is this, the rehabilitative principle, that has been evoked most often in the resurgence of interest in restitution. In calling for a return to restitutive justice in the context of treating the offender, 19th century penal reformers such as Bonneville de Marsangy, Enrico Ferri, and Raffaele Garafalo planted the seed that was to be nurtured by later generations of criminologists strongly committed to the reform of the offender. In describing the relationship that has developed between restitution and rehabilitation, McDonald (1978:101) has stated

> The current programs of restitution are tied to the rehabilitative ideal. They arose out of a search for new and more successful ways to rehabilitate offenders. . . . They operate on the assumption that by paying restitution and participating in the associated program an offender's prospects of real rehabilitation are enhanced.

Using the framework of rehabilitation, Galaway (1977a) has summarized the beneficial effects of restitution for the offender: (1) the relationship between the sanction and the amount of damages done being perceived as more just by the offender who must make restitution, (2) the clear sense of accomplishment for the offender in completing the restitution requirements, (3) the involvement of the offender providing a socially appropriate and concrete way of expressing guilt and atonement, and (4) the sanction addressing the strengths of the offender and assuring that he either has or can acquire the skills and abilities necessary to redress the wrongs done. This listing somewhat resembles the elements identified by Eglash in his advocacy of the potential reformative benefits of restitution (see p. 4).

> The familiar penal or retributive theory looks to the act and seeks to make the miscreant pay for his misdeed; the rehabilitative theory on the other hand, sees the purpose of the law as recreating the person, or improving the criminal himself so that any impulses toward misconduct will be eliminated or brought under internal control (Fuller 1969:17, quoted in Laster 1970:97).

Among other issues that have emerged in support of the rehabilitative value of restitution is the notion that the sanction is an invitation to the offender to be reconciled with the victim and society at large rather than to remain alienated and isolated on the margins of his/her society. This conciliation model of restitution has been elaborated in some detail by Hudson and Galaway. They argue that the restitutive sanction should be "imposed on the criminal actor . . . neither to deter by punishment nor to rehabilitate through treatment. Instead, restitutive sanctions are directed towards providing the offender with opportunities to neutralize the damages done and in this way to become reintegrated with the community" (1975:65). The point of this strategy is that offenders should be taken out of passive roles as recipients of corrective action and instead involved in constructive efforts to restore justice.

Closely related to this reintegrative formulation is Schafer's notion (1968) that in contemporary, complex societies there is a lack of remorse on the part of the offender for what he/she has done to his/her victim. By involving both the victim and the offender in a reparational system of justice this problem might be remedied. On a psychological level this meshes with Eglash's claim that "restitution provides a substitute outlet for the same conscious needs and unconscious emotional conflicts which motivated the offense . . . and may bring release to an impulse-ridden individual" (Quoted in Laster 1970:81).

In summary, the historical and cross-cultural documentation of the incidence and evolution of restitution in response to a limited set of principles of justice provides some indication of the range of ways in which this sanctioning approach can be employed. One is left with the overriding impression that restitution's inherent multi-facetedness allows for its adaptation to a number of different purposes and ends. Whether employed in a harsh manner where the intended goal was simply to seek retribution by imposing a very burdensome level of reparations on the offender or in a more equitable fashion where the offender's obligation only approximated the amount of the victim's loss, restitution seems to be equally suited. It is this demonstrated versatility which appears to qualify restitution as an approach which can simultaneously respond to the current call in the juvenile justice arena for both more stringent and more lenient measures for intervening with youthful offenders.

Chapter III

CURRENT PROGRAMMING EFFORTS IN RESTITUTION

THE CONCEPTUAL FRAMEWORK

Identifying those factors essential in the design and development of restitution programs provides some basis for examining critically programs actually in operation. Conceptually, these factors relate on the one hand to issues arising from the internal management of programs and on the other hand to issues arising from the way in which programs articulate with the wider justice system. Although these matters will be addressed in great detail in the management section of this report, it is useful at this point to list these factors and to define them briefly as an introduction to our examination of recent programming efforts in restitution in the U.S.

The set of factors which must be considered in restitution programming include: auspices, stages of implementation, types of restitution, goals and objectives, eligibility criteria, services provided, and form of restitution plan. Auspices refers to the specific agency, or organizational body, which ultimately exercises control over the program, its staff, and its funding. Stages of implementation refers to the various points in justice processing at which programs can be placed. Types of restitution refers to the four principal forms of reparative activity which may be used in programs. Goals and objectives refers to the overall aims which programs strive to achieve in working with offenders and victims. Eligibility criteria refers to the process of deciding which offenders to allow to participate in programs. Services provided refers to the range of activities brought into use for offenders and/or victims in programs. Form of restitution plan refers to the development of the restitution obligation which will be imposed upon the offender.

It is important to point out that the way in which these specific factors are manipulated and combined into a workable arrangement determines the kind of program model which will be put into operation. Although it is hypothetically possible to develop a virtually endless series of program models by linking design factors in all possible combinations, in practice only a limited number of actual models have been developed. (This matter of model building will also be explored in considerable detail in the management section of this report; see Models in Restitution Programming, pp. 29-30.)

During the past decade the launching of a wide range of juvenile justice programs has included efforts to develop various kinds of restitution programs. Two recent surveys (Bryson 1976; Schneiders et al., 1977) have shed considerable light on the occurrence, structure, and practices of juvenile restitution throughout the United States. While the Schneiders et al., confine their search to programs developed by juvenile courts and Bryson is interested in examining programs developed in a variety of juvenile justice contexts, both inquiries reveal a surprising array of organizational arrangements and program procedures.

One of the most important findings of both surveys was that among all official efforts to involve juvenile offenders in restitutive activities proportionately only

a small number of formal programs had emerged. By formal programs is meant those efforts which involve some type of specified administrative structure and utilize staff who are assigned responsibility for directing some form of restitution activity. As the Schneiders (1979:1) point out, "Only a few jurisdictions, however, have developed the procedures, resources, and capacity that would permit restitution to become a major alternative to the traditional dispositions of probations or incarceration." In most instances restitution is handled quite informally, usually at one of the initial points of contact by the youth with representatives of the juvenile justice system, e.g., police or court intake workers. Typically, the intention is to minimize formal processing when one of several mitigating factors such as nature of the presenting offense, offense history, clinical diagnosis, or family history offers the option of imposing a more immediate and less severe sanction.

In those jurisdictions where restitution is being undertaken in a formal program setting, the activity has been placed at all stages in processing. This breadth in program placement is not entirely surprising since the impact of the reform movement has been to generate experiments in programming which serve either to divert offenders from further penetration into the system or to provide an alternative to incarceration and other dispositional outcomes for adjudicated offenders.(1)

A cautionary note should be sounded about the practical consequences of trying to use restitution as a diversionary mechanism. In this regard, Hudson and Galaway (1977:13) have raised a disquieting question.

> Given the recent popularity of the diversion concept and the growing interest in restitution, one would expect to find an increasing tendency to link the two concepts in operational programs. Whether, in fact, such programs actually act to reduce penetration into the criminal justice system is an open question. Such programs may be diversionary in little more than name only and actually perform as supplements to more traditional sanctions.

Only additional empirical research on restitution programs and the ways in which they are implemented will provide an informed answer to this question. Thus far, one can only state that, in theory, this approach appears to be an excellent candidate for this role.

THE NATIONAL JUVENILE RESTITUTION INITIATIVE

The emphasis being placed on the use of restitution programs as an alternative to incarceration has received a powerful stimulus within the past several years from the entrance of the federal government into this programming arena. In February of 1978 the Special Emphasis Section of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) announced a discretionary grant program designed "to support sound cost-effective projects which will help assure greater accountability on the part of convicted juveniles towards their victims and communities" (LEAA 1978:i). This call for a new direction in juvenile justice programming grew out of the Juvenile Justice and Delinquency Prevention Act of 1974 (amended through October 3, 1977) where Section 224 (a) (3) states the need to

> develop and implement effective means of diverting juveniles from the traditional juvenile justice and correctional system, including restitution projects which test and validate selected arbitration models, such as neighborhood courts or panels, and increase victim satisfaction while providing alternatives to incarceration for detained or adjudicated delinquents.

A major departure in the Federal initiative from previous juvenile restitution programming concerns the intended target population. In contrast to the offenders involved in programs such as those described above in which most participants were charged with misdemeanors, the target population includes some youths who have been adjudicated for felonious offenses and/or are chronic recidivists. The critical criterion is that these youths, as a result of their presenting offenses and/or offense histories, are indeed destined for incarceration under the auspices of a correctional agency (LEAA 1978:101). OJJDP extended the categories of qualifying offenses to serious crimes against persons as well as to more serious property crimes.

Designated "Restitution By Juvenile Offenders: An Alternative to Incarceration," this grant program represents the first large-scale, nation-wide attempt to test the appropriateness of restitution as a treatment intervention for more serious juvenile offenders.(2) The initiative is a three-year, $30 million effort in which 41 separate grants have been awarded. This includes six grants to state agencies for implementation of programs on a state-wide basis at a total of 50 separate sites (for example, Restitution by Juvenile Offenders Project in the State of Delaware; Adjudicated Delinquent Restitution Project in the State of New York; and Restitution: An Alternative to Incarceration in the State of Nevada) and 35 grants to local agencies (for example, the Juvenile Restitution Project in Charleston, South Carolina; the Restitution Alternative in Portland, Maine; the Hennepin County Restitution Program for Juvenile Offenders in Minneapolis, Minnesota; and the Correction Services Agency Juvenile Restitution Project). Altogether 85 different restitution programs are being implemented in 26 states, Puerto Rico, and the District of Columbia (See Appendix C). Initial awards were made for a two-year period with a subsequent year's funding available if the initial efforts were considered to be worthy of continuation.(3)

Although a number of programs are not yet fully operational and have not begun to submit data to the Institute of Policy Analysis (IPA),(4) preliminary information about the initiative is available from two sources, the Monthly Reports (issued by IPA) and the original proposals submitted to OJJDP by grantees. These preliminary data provide some perspective on program structure and practices, client characteristics, and restitution order outcomes(5).

Most of the programs are part of different administative units within juvenile court services. However, several organizational arrangements are being utilized. Of the 85 program sites originally funded under the initiative, eleven (28%) are part of court probation; ten (26%) are part of the court administrative structure but not formally attached to probation; eighteen (44%) are totally independent of the juvenile court. Among the independent programs there is a roughly even division between eight non-profit agencies and nine other programs embedded within government agencies other than the juvenile court.(6) Independence from juvenile courts and probation departments is the prevailing arrangement among local programs, while the opposite pattern was characteristic of the state-wide programs.

Programs in the initiative vary in the types of restitution assignments they provide for participants. Based upon program designs in the original proposals, most grantees intend to use all three forms of restitution (community service, monetary payment to victims, and direct service to victims). Monetary payment was the most common arrangement, followed by community service alone, then a combination of the two, and finally victim service was the least preferred form. In the 12,278 restitution plans ordered through August 31, 1980, monetary payment to victims (6,762 cases) has been ordered approximately twice as often as community service (3,778 cases). A combination of monetary payment and community service has been ordered

in 437 cases. Direct services to victims has been ordered only infrequently (31 cases). More than one-half of the programs have made arrangements with the juvenile courts in their jurisdictions to develop the restitution plans which are presented at the dispositional hearings. The plans are submitted to the judges or referees as recommendations concerning the amount of restitution, types of restitution, and in some instances the actual schedule of payments as well as the proposed work site and job slot. In addition, only a few of the programs are confining their activities to restitution. Seventy-five of the programs plan to provide at least one additional service to the offenders. Additional services extended to program participants include counselling, vocational training, special education, and recreation.

One of the most common problems facing these programs is that the majority of offenders who are referred are indigent and are unable to locate employment themselves. They usually possess neither work skills nor experience. To cope with the difficulties of placing youthful offenders in both paid and unpaid work slots, programs in the initiative have devised several approaches, namely, job development, job assistance, and subsidized work. Job development is an approach where the program locates employment opportunities in the community and arranges with employers to reserve a specific number of these jobs for offenders. Job assistance is an approach where the program assists offenders in finding employment but does not guarantee the job. Subsidized work is an approach which can follow either the job development or the job assistance model. It departs from both, however, in that the program subsidizes, from project funds, part or all of the offender's salary. A majority of the programs that have been implemented are indeed subsidizing jobs in order to aid the offenders in earning money to meet restitution orders.(7) Fewer programs are attempting to utilize the job development and job assistance models without the incentive of subsidized work. Regardless of approach, most programs have arranged for employment to terminate with the completion of the restitution order.

Throughout August 31, 1980, approximately 12,278 juvenile offenders had participated in programs at 59 different sites (December Monthly Report).(8) Approximately two-thirds of all referrals have been White, twenty-two percent have been Black, and less than fifteen percent have been other including Mexican-American, Puerto Rican, and American Indian. Through August, 1980, the following pattern of offense referrals have been made. Eighty-three percent of all referrals have been for property crimes; ten percent of all referrals have been for personal offenses; the remainder of all referrals have been for victimless offenses (four percent) and other minor offenses (two percent).(9)

Collectively, 12,278 offenders have been ordered to pay more than $2,100,000 in monetary restitution, to work nearly 267,000 hours of community service, and to perform more than 4,500 hours of direct service to victims (November, 1980, Monthly Report). For those offenders making monetary payments to victims, restitution orders have averaged $247 per youth; for those performing community service, restitution orders have averaged 52 hours per youth; and for those performing direct services to victims, restitution orders have averaged 33 hours per youth. To date, 9,261 offenders have had their cases closed and have paid a total of $825,000 in restitution; they have worked 138,000 hours in community service; they have completed 3,700 hours of direct service to victims.(10) This represents reparations made thus far through restitutive activities ordered by the courts against a total loss of approximately $7.5 million experienced by 13,888 victims.(11) Approximately one-fourth of this loss has been recovered through procedures other than restitution and initiated outside the context of these programs.

A central concern for the initiative is that the types of offenses resulting in referrals to the programs should coincide with these specified in the guidelines issued by OJJDP. As stated above, one of the principal goals of the project has been to encourage local courts to use these programs as dispositional alternatives to incarceration for serious juvenile offenders. Having emphasized that participating jurisdictions should include in their programs youths who would otherwise have been incarcerated,(12) OJJDP anticipated that juveniles being served would represent a mix of offender types including youths adjudicated for felonious crimes against persons and property, repeat offenders, and chronic recidivists. Since first offenders are rarely incarcerated, the high percentage of such referrals to these programs (60%) led the evaluators to investigate whether the proposed target population was being served.(13)

To determine the seriousness of offenders in the programs and their appropriateness for referral IPA developed a seriousness scale for both property and personal crimes (see Appendix C). For the purpose of this inquiry IPA suggests

> It is reasonable, however, to propose that the seriousness of an offender increases with the number of prior offenses committed by the juvenile and with the seriousness of the current offense. Thus, first offenders would be appropriate referrals to accept from the court if their current offenses were serious, while chronic offenders whose immediate offenses are less serious also would be appropriate. Conversely, first offenders whose crimes are rather trivial would not be appropriate referrals but chronic offenders referred for less serious immediate crimes probably would be (May, 1979, Monthly Report:4-5).

The analysis of seriousness utilized offense data drawn from only 23 programs and representing client referrals only through April 15, 1979. Based on the distribution of offenses and their scaling criteria, IPA (May, 1979, Monthly Report:8-10) states

> One might say that all referrals are "serious offender" except for the following categories:
> (a) Referrals for traffic and victimless offenses, regardless of the number of prior offenses (five percent of the 302 referrals with complete data);
> (b) Referrals on minor property offenses if the youths have only one (or fewer) priors (five percent of the total);
> (c) Referrals on minor personal offenders if the youth is a first offender (two percent of the total).

If first offenders whose presenting offenses are moderate property crimes are added to this category of not serious offenders, then current referrals to programs include 66% "serious offenders" and 34% "not serious offenders."

Chapter IV

RESTITUTION MANAGEMENT: DESIGN, IMPLEMENTIVE, AND OPERATIONAL ISSUES

The design, implementation, and operation of restitutive activities require a clear, concise sense of what should be done and how to best do it. Geiss (1977:155) has framed these concerns succinctly in the form of a question by asking, "Who does what to whom with what intent and with what result?" With the resurgence of interest in restitutive justice, attention has been increasingly directed toward such critical, practical concerns and has focused on (1) developing an appropriate framework for carrying out restitutive activities, and (2) identifying the set of organizational, fiscal, and legal issues which might arise in expediting these activities. The importance of proper, thoughtful management cannot be overstated in interventive programming of this type. As we suggested in the Introduction to this report (See p. 7), the ultimate success or failure of any program is dependent upon how skillful one is in identifying, understanding, and resolving key organizational problems and issues.

This section of the report is critical in that we will attempt to isolate and explore the principal dimensions of restitution program management. In this effort we will build upon the work of various students of restitution who have arranged programmatic issues into a number of organizational schemes (Harland et al., 1979; Newton 1979; Schneiders 1979).

For the purposes of our report, the array of issues and various organizational schemes developed by these authors have been grouped under six topical headings. Collectively, these topical headings constitute the range of structural and processual features which must be addressed in the development and operation of virtually all juvenile restitution programs. They are:

1. Stages of Implementation

This concerns the various points in the formal system where restitution programs may be placed.

2. Goals and Objectives/Benefits Derived

This concerns the various aims which programs attempt to achieve and the kinds of positive results which follow from these efforts.

3. Scope of Eligibility

This concerns determining what kinds of offenders are best suited for participating in these programs.

4. Victim/Offender Relations

This concerns determining the extent to which, if any, victims and offenders should be brought into direct contact as a part of their participation in these programs.

5. Development of Restitution Plan

This concerns the complex process of deciding what kind of obligations should be imposed on offenders and how to ensure that these obligations are met. Entailed in this process are issues such as determination of full or partial restitution, arrangements for fulfilling payment/service obligations, conditions/sanctions for failure to comply, and provisions for job counseling and placement.

6. Case Management

This concerns the steps to be taken in monitoring the performance of offenders trying to meet the requirements of these programs. A discussion of these organizational aspects of restitution programming and all issues entailed by them will constitute the focus of this key section of the report.

STAGES OF IMPLEMENTATION

As a sanctioning mechanism, restitution has been implemented at all principal stages in juvenile justice processing. Of course, the approach has been used traditionally much more extensively at some stages than at others. The selection of the point at which to introduce restitution is based upon the specific goals and objectives of the program being implemented. In addition, there will always be advantages and disadvantages wherever restitution is invoked in the system.

Most students of restitution argue that the juvenile justice system can best be conceptualized in terms of four principal stages: (1) pre-administration, (2) police intake, (3) court intake, and (4) adjudication. An additional stage, corrections, where restitution has been used in conjunction with incarceration or some form of parole arrangement, seems not to be very well suited to the purposes for which the sanction has been employed with youthful offenders. Although the use of restitution is theoretically possible at this stage in the juvenile justice system attempts at programming have not been very successful at these advanced steps in processing. Consequently, the system, vis-a-vis, juvenile restitution programs, is usually defined as consisting of the four aforementioned stages.

RESTITUTION at the PRE-ADMINISTRATIVE LEVEL

The notion of a pre-administrative level of activity refers to any negotiations or steps undertaken in response to violative behavior prior to contact with law enforcement or judicial officials. The imposition of restitution at the earliest points of contact for juveniles with the justice system can involve either formal or informal procedures. Regarding the informal use of restitution, Sutherland and Cressey (1955:278) have stated

> It is probable that the system of restitution and reparation is used much more frequently than official records indicate. One of the prevalent methods used by professional thieves when they are arrested is to suggest to the victim that the property will be restored if the victim refuses to prosecute. This results in release in a large proportion of cases, for most victims are more interested in regaining their stolen property than in "seeing justice done." Also, many persons are protected against crime by insurance. The insurance company is interested primarily in restitution, and in many cases the crime probably is not reported, or criminal prosecution is not urged, if restitution is made. Similarly, there are thousands of cases of shoplifting, embezzlement, and automobile theft annually which are not reported to the police by the victim because restitution or reparation is made (Quoted in Wolfgang 1965:229).

Similar practices extend to the realm of the juvenile offender where informal agreements are made between victims and offenders, or more commonly between victims and offenders' parents. These negotiations would qualify as pre-administrative since the actions taken occur prior to any police intervention.(1) In summarizing the utility of restitution at this early stage of response to misconduct, Laster (1970: 83-84) has suggested, "There are advantages to pre-administrative restitution because it is quick and does not tie the courts or the parties up over a minor dispute." A major stumbling block to the use of this type of restitution is that in most jurisdictions in the U.S., it is a felony for a victim to negotiate an out-of-court settlement with the offender in return for an agreement not to prosecute, especially if the offense is a serious one (Polish 1973).

RESTITUTION at the POLICE INTAKE LEVEL

In terms of informally arranged restitution, a situation comparable to pre-administrative practices can also exist at the police stage of processing. In apprehending youthful misdemeanants, police frequently extend the opportunity to the offender either to make reparations on the spot or to agree to make reparations in the immediate future. In either event the police can then decide not to take the youth to the police station for further processing. Such a procedure clearly constitutes an informal handling of violative behavior albeit usually for a minor offense. Laster (1979:84-85) has enumerated some of the benefits and problems arising from the use of restitution in this fashion.

> The advantages of a scheme of restitution at the police level include the benefits of immediate payment to the victim and practical benefits to the police force. . . . If the police did not employ a system of restitution, much more of their time would be spent in court for trials involving minor offenses. The disadvantages of [informal] restitution at the police level pertain to the entire system of criminal justice. Allowing a policeman to mediate a dispute places too much discretion in untrained hands. There are no criteria to guide the policeman in determining when or what kinds of restitution should be ordered, nor is there an adversary proceeding to determine the exact amount of the victim's loss. Without proper training and necessary criteria, the police officer is a poor substitute for most judges, and the officer may find himself dispensing justice only to those who can afford it. Despite these disadvantages, . . . restitution at the police level will continue as a practice while the present system of criminal justice is in operation because it is a practical necessity and because the average person finds it an acceptable and purposive practice.(2)

In contrast to the informal usage of restitution at the police stage, there also exist formal, administrative practices at this point of contact. Here, police involvement with the juvenile is recorded, but the decision is made at the police station to divert the youngster to an alternative, restitution program in order to avoid his/her further penetration into the justice system. In these kinds of programs the youth is usually required to admit some degree of guilt or responsibility for his/her misconduct. Once this has occurred, a restitution settlement is negotiated between the youth and those persons operating the program.

In these more formal police diversionary programs much of the discretionary power of the police is removed since the possible participation of the youth is carefully evaluated at the point of intake into the program. Of course, this procedure can always be abused. In addition, the problem of potential coercion still lingers

since the options available to the juvenile in this situation may be either referral to the restitution program or further processing by the juvenile court.

RESTITUTION at the JUVENILE COURT INTAKE LEVEL

The next stage at which restitution can be employed is court intake. In most juvenile courts intake proceedings are a responsibility of the probation department. Restitution at this stage is still not legally enforcable--participation being purely voluntary--as is the case at the police stage although in both instances the threat of further processing is present and is frequently used to insure participation. In restitution programming at court intake it is standard for a probation officer, often at the advice of prosecutors or police, to suggest to a first-time offender or the "good kid who made a mistake" the option of participating in such a program. As with restitution at the police stage, the use of this alternative at court intake has the advantage of minimizing contact with the formal system and promoting a quick and amiable settlement between the offender and the victim.

Legally, the problem with the use of restitution at any stage in pre-administrative and pre-adjudicative processing is that close attention must be paid to the constitutional rights of the juvenile offender. As Feinman (1977:2-3) has pointed out

> A juvenile who is required to pay restitution is denied his property in that the juvenile must pay monies to victims of crimes or some other third person, and is denied liberty in that the juvenile is required to perform certain acts he otherwise would not have to perform in order to meet the restitution requirement. The Fifth and Fourteenth Amendments of the U.S. Constitution provide that persons will not be denied property or liberty without due process of law. It seems clear that due process requires a judicial determination of a youth's responsibility for committing certain acts, before that youth is required to meet a restitution requirement. Thus, it may raise serious constitutional problems to require restitution during an informal stage of the proceedings.

Further, questions of involuntary servitude may be raised when a youth is required to work in order to comply with a restitution requirement before there has been a judicial determination of that youth's responsibility for committing an offense. The Thirteenth Amendment to the U.S. Constitution provides;

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The argument could be made that the Thirteenth Amendment prohibits labor ordered as part of restitution when the youth has not been convicted of a crime or found to be legally responsible for committing an offense. However, if restitution is ordered at a post-adjudication stage, this problem should be eliminated, since at that point the youth would be considered to be a ward of the court. . . . In order to avoid any Thirteenth Amendment challenges, the restitution program should focus on rehabilitating offenders or compensating victims rather than on obtaining a cheap source of labor.

The problems posed by Fifth, Thirteenth, and Fourteenth Amendment issues concerning the imposition of restitution at pre-adjudicative stages in processing have led many students of restitutive justice to recommend that all restitution programs be confined to adjudicative and post-adjudicative situations. For instance, the National Office for Social Responsibility (ms:2) states in its report on restitution, "restitution as a sanction for juvenile offenders is only appropriate for those juveniles who have been found guilty through a formal fact finding hearing or counseled plea before a judge or his designee." A somewhat less restrictive yet careful approach has been suggested by Edelhertz (1975), who recommends that participation in programs be confined to juvenile offenders who have at least been charged, convicted, or sentenced. As part of this procedure to narrow participation, Edelhertz would limit those persons who could make such a decision to enroll an offender in a program to prosecutors, judges or court referees, and members of parole boards. In spite of this concern about constitutional rights a substantial number of juvenile restitution programs operate at each of the pre-adjudicative stages of processing.(3)

RESTITUTION at the ADJUDICATIVE and POST-ADJUDICATIVE LEVELS

The restitutive sanction is most often used at the adjudicative stage of processing. Here, restitution may be ordered by the judge during the adjudicatory hearing or at the time of disposition.(4) The usual outcomes are that either the offender is required to accept restitution as a condition of probation or else is directed to participate in a special restitution program serving as an alternative to incarceration. In the former case, when the court--in the person of the judge--orders restitution, the most common practice is for the offender to be turned over to the probation department where staff members see that the youth is placed in a work situation and that the restitution order is enforced. When employed in this context, restitution is rarely used as a sole sanction but instead is almost inevitably combined with supervised probation. One consequence of this situation is a tendency for the youth's period of probation to be lengthened (Newton 1979).

Perhaps the most important reason restitution has been so widely used in the juvenile court is the way in which the sanction seems to reflect what has traditionally been the spirit of the juvenile court movement. Laster (1970:89) has made the following comment concerning this quality of restitution.

> In juvenile proceedings, where the actor is often tried as well as his act, restitution as a condition of probation seems a necessary part of that court's structure. The machinery is there to implement a reconciliation between the parties because the proceedings are somewhat more informal than in adult court, and the philosophy of the juvenile court staff, from police officer to judge, is one designed to help the juvenile, not to punish him.

It should be noted, however, that although judges frequently order offenders to make restitution to victims, relatively few of these situations involve formal programs. Sometimes, the probation department will, in fact, have a formally structured program to which the judge can refer an offender, but more often restitution as a condition of probation simply entails an offender's making restitution to a victim under the supervision of a probation officer.

A troublesome legal problem arises from the use of restitution as a condition of probation, namely what penalties can and should follow from failure to comply with the restitution agreement. The most common response is revocation of probation, a

step frequently leading to further processing and eventual incarceration. One can argue that this progression is tantamount to imprisonment for failure to pay one's debts, an unconstitutional penalty. Debate continues about the various interpretations of this response to noncompliance with restitution as a condition of probation. Examples of contradictory court decisions on this dispute have been pointed out by Feinman (1977:15).

> In People v. Kay the court held that it was improper to incarcerate a defendant for not meeting a restitution requirement, since there was no showing prior to the entry of the order that the defendant would be able to meet the restitution requirement. The court reasoned that ordering restitution when a defendant is unable to meet the requirement and is likely not to be able to meet in the future is the same as imposing a fine, and that it is improper to incarcerate that defendant. Other courts have held that an offender might be incarcerated for failure to comply with a restitution requirement provided that the restitution order can be shown to be fair and reasonable.

In the use of restitution as an alternative to incarceration, the offender is placed under the supervision of persons operating special, post-adjudicative programs. To date, those kinds of program are still few in number in comparison with programs operating out of the courts themselves. However, the federal government's search for ways to divert larger numbers of juvenile offenders from incarceration offers the prospect of far greater use of post-adjudicative restitution programs.

GOALS AND OBJECTIVES/BENEFITS DERIVED

A critical step in the planning and implementing of restitution programs is the act of determining what these programs can realistically hope to achieve. Stated as goals and objectives, such aims play an integral part both in shaping the key organizational features of the program and in setting the tone for all restitutive activities undertaken. The allocation of resources, the assignment of staff duties, the design of program components, and the development of operating procedures are all fundamentally affected by the selection of the goals and objectives to be pursued by the program. As such, program goals and objectives constitute one of the principal concerns planners and administrators must face when designing restitution programs. Indeed, as the Schneiders (1979:4) have suggested, "Selection of the major goals and purposes of a restitution program is perhaps the most important decision the jurisdiction will make."

Underlying all attempts to specify restitutive goals and objectives are certain assumptions about the steps to be taken in obtaining justice (see Restitution and Principles of Justice,pp. 12-15). These principles constitute the legitimate avenues of redress for acts of criminal misconduct and thereby serve to constrain the range of goals and objectives available for restitutive practices. The design of any restitution program reflects a basic commitment to one or several of these principles; this commitment, in turn, necessarily leads to the selection of particular kinds of goals and objectives.

The way in which goals and objectives are selected is further conditioned by the fact that restitution is a multi-faceted approach for intervening with violative behavior. Although this quality of restitution has already been noted several times in this report, it needs to be especially emphasized at this point since this multifacetedness readily lends itself to the deliberate decision to specify several simultaneous, yet distinct goals for a particular restitution program. For example,

as the Schneiders (1979:4) note, "It is generally the case, however, that no restitution program can be exclusively offender-oriented because the payment of restitution or even unpaid community service work has some benefits for the victim and/or the community."

POSSIBLE RECIPIENTS of RESTITUTIVE ACTIVITY

Thus, restitution programs have been designed to benefit a number of groups (AIR 1977; Bryson 1976; Edelhertz 1975; Harland et al., 1979; Hudson 1977; Hudson and Galaway 1974; Lewis 1978; NOSR 1979; Read 1977b; Schneider and Schneider 1977). Whether stated in terms of rationales, benefits, or purposes, four possible recipients of restitutive activity have included (1) the victim, (2) the offender, (3) the community at large, and (4) the juvenile justice system itself. Although the principal continuum along which goals and objectives tend to fall extends from victim-oriented to offender-oriented purposes, all four categories of recipients regularly benefit in one of several ways from the aims of restitution.

The beneficiary which most readily comes to mind when the issue of goals and objectives is raised is the victim. If the object is simply to repay the victim for injuries and losses suffered, there is an important limitation on the use of restitution. Only small numbers of victims are ever provided with benefits by restitution programs. Concerning this shortcoming, Galaway (1977a:82) has observed

> Promoting restitution as a program to help crime victims is popular but questionable. The vast majority of crimes go unsolved, many of those that are solved through the arrest of an offender do not result in conviction, and for many offenders for whom convictions are secured, restitution may not be considered an appropriate sanction. Thus a comparatively small number of crime victims will ever receive redress as a result of restitution programs.

When the central issue is solely the financial welfare of the victim, another, more comprehensive and satisfactory approach to this problem is available, namely public victim compensation programs. (For a fuller account of this approach, see Introduction, pp. 1-2).

Benefits, other than monetary ones, can accrue to victims. Restitution programs may be valuable in favorably altering the outlook of victims who sense the justice system is neglectful and abusive rather than responsive, helpful, and protective (NOSR 1979: 7). These attitudinal changes result from the fact that restitution programs offer settings where various kinds of services and information are provided to the victim. In addition, in some programs the victim may join the decision-making process which determines the type and amount of restitution to be made by the offender.

The other focus receiving primary attention in terms of restitutive goals and objectives is offender rehabilitation. This aim has been advocated as the most reasonable goal of this approach by many students of restitution (Eglash 1958a; Hudson and Galaway 1975a; Mower 1977; Shafer 1970). As Edelhertz (1975:59) has noted, "The political impetus for restitution programs is thus victim-oriented while the programs which are actually established are invariably focused on correction or rehabilitation of offenders." This claim is partially substantiated by the findings of a survey conducted by Hudson, Galaway, and Chesney (1977) in which ten out of nineteen programs reported that the rehabilitation of offenders was the major goal.

At the pre-adjudicatory stages of processing the use of restitution as a diversionary measure deflects the offender from penetrating deeper into the juvenile justice

system and eliminates the possibility of additional stigmatization. At the post-adjudicative stages of processing the use of restitution allows the offender to remain at liberty in order to meet the conditions of the restitution plan, thereby saving the offender from imprisonment and all of the negative effects of that experience. Commenting on the benefits of the rehabilitative ideal, Hudson and Galaway (1974:317) have noted

> The agreement for restitution is rationally and logically related to the damages done. . . . The contract for restitution is clear and explicit, and the offender knows at all times where he stands with respect to attaining goals. He can experience ongoing successes as he moves toward his goals.

The third beneficiary of restitutive goals and objectives is the community at large. As suggested, the way in which the community benefits from restitutive practices is largely as a result of the structuring of program goals and objectives for victims and offenders. In some ways there is a close correspondence between the impact of restitution on the victim and on the community at large. For example, the general public may develop a sense of fair play with the consistent use of restitution; this perception, in turn, may lead to increased satisfaction with the justice system and a renewed confidence in its effectiveness. Another similarity in the impact of restitution on victim and community perceptions is the possible reduction in fear of and hostility toward offenders. In turn, this might aid in the eventual reintegration of the offender into the community. Finally, the public may benefit if a program imposes community service since this practice often leads to the restoration or improvement of physical conditions in the community.

The fourth and last, principal beneficiary of the restitutive process is the juvenile justice system itself. Generally, restitution may aid the system both by improving the quality and efficiency of operations and by making more credible its role as a dispenser of justice. The latter category has already been discussed under the topics of victim and community at large benefits. With regard to the former, a frequent charge leveled against the juvenile justice system is that it has largely failed in its mission to achieve the rehabilitative ideal. If restitution programs are, indeed, able to rehabilitate juvenile offenders, the system will benefit by reduced rates of recidivism and a restoration of faith in its ability to salvage troubled youths. Likewise, the use of restitution serves to reduce the intrusiveness of juveniles into the system by decreasing the number of offenders overcrowding the system at all stages of processing. The diversionary effect of restitution helps to relieve overburdened court calendars, to reduce the size of both probation and parole caseloads, and to limit the number of juveniles entering correctional facilities. As Edelhertz (1975:25) has noted, "in [this] case, the taxpayers would also benefit from the reduced costs associated with maintaining a smaller prison population." Finally, by encouraging victims to report criminal acts to law enforcement officials restitution would aid the juvenile justice system in becoming more responsive. The possibility of reparations serves to create a more vocal public and resultingly a more active justice system.

An important point which has been made regarding the aims of restitution is the need, when formulating goals and objectives, to determine the program's main purpose (Harland et al., 1979; NOSR 1979). This necessity points to one of the potential problems in the multifacetedness of restitution. As Harland et al., (1979:4) have insightfully observed

> . . . at least two reasons exist to suggest that priorities be set. First, . . . purposes can at times give rise to conflicting demands

> upon program personnel. What is best for the offender, for example, may be antithetical to the needs of the victim. In this situation decisions may have to be made to subordinate one outcome in favor of the overriding program purpose. Second, limited resources available to accomplish the various steps in program planning and operations . . . may dictate decisions about division of energies among competing purposes.

Determining the primary focus of the program and ordering the way in which the program will respond to the perceived needs of all possible beneficiaries--the victim, the offender, the community at large, and the juvenile justice system--will allow staff, resources, and operating procedures to achieve a maximum effect.

MODELS in RESTITUTION PROGRAMMING

Ultimately, restitution is an intervention for achieving certain specified aims. Based upon the choice of primary goals and objectives, restitution programs can be organized in a number of ways. These organizational forms constitute the set of workable models found in restitution programming. In the most comprehensive discussion of model building in restitution programming to date, the Schneiders (1979) delineate seven models currently in use. These models represent the various arrangements of key organizational dimensions essential to the operation of any restitution program (For a discussion of these organizational dimensions, see Appendix E).

The set of models described by the Schneiders include:
(1) Basic Restitution Model
(2) Expanded Basic Restitution Model
(3) Victim Assistance Model
(4) Victim Assistance/Offender Accountability Model
(5) Employment/Restitution Model
(6) Social Services/Restitution Model
(7) Community Accountability/Deterrence Model

The following discussion of these models borrows heavily from the Schneiders' (1979: 9-14) analysis.

(1) Basic Restitution Model

This model is directed simply to the problem of providing a procedure whereby financial transactions between the offender and the victim can be facilitated. Based upon a reliable documentation of the amount of losses by the victim, the judge orders the offender to make payments to the court; the victim is notified how he/she may obtain these payments from the court. Programs of this type are characterized by the absence of activities providing assistance other than restitution to the victim and by the absence of activities accentuating the therapeutic value of restitution to the offender. The primary goal of this model is to place equal emphasis on offender rehabilitation and victim assistance.

(2) Expanded Basic Restitution Model

This model is distinctive only to the extent to which it possesses a special capability to assist indigent offenders in obtaining employment and/or in providing subsidized employment for them. The primary goal of this model--in addition to rehabilitating the offender--is to provide full restitution to the victim if possible.

(3) Victim Assistance Model

This model places a special emphasis on assisting the victim in a variety of ways in his/her effort to obtain full restitution. To facilitate this goal, programs of this type provide additional services to the victim; these include: (1) assisting the victim in documenting losses, (2) assisting the victim in recovering stolen property, (3) advocating for the victim during the court hearing when the amount of restitution is being established, (4) providing transportation for the victim to the court proceedings, and (5) providing the victim with information about remedies available in civil court.

(4) Victim Assistance/Offender Accountability Model

This model emphasizes activities which can maximize the therapeutic value of restitution. Programs of this type focus attention on victim-offender interaction. Steps are taken to encourage face-to-face meetings, to reach agreement with both parties feel the settlement was fair and equitable, and to promote direct service on the part of the offender to the victim.

(5) Employment/Restitution Model

This model emphasizes the importance of obtaining employment for offenders and presents a dual rationale for stressing this objective: (1) aiding the offender in making restitution to the victim, and (2) reducing unemployment among juveniles for the purpose of lowering the rate of recidivism. Programs of this type expand considerable resources in job assistance and development with hope of obtaining long-term employment for these offenders.

(6) Social Services/Restitution Model

This model is based on the notion that while restitution is therapeutic to the offender, this type of intervention benefits from requiring offenders to participate in other ancillary activities such as counselling, special education, and job training. Programs of this type place much greater emphasis on rehabilitating the offender and direct less attention to the issues of the amount of restitution imposed and the level of victim assistance.

(7) Community Accountability/Deterrence Model

This model resembles closely several of the others in that it stresses the need for holding offenders accountable and responsible for their violative behavior. But, programs of this type possess several distinctive features which include:

(a) The program is located in the offender's neighborhood or community and requires the offender to perform community service there.

(b) The procedure for establishing the restitution plan involves the participation of a panel of community volunteers.

(c) The program requires that the restitution settlement involve a specified amount of community service work in addition to any monetary restitution which might be imposed.

(d) The program attempts to promote deterrence by utilizing a highly visible, community-oriented response to youth crime.

PROGRAM EFFECTIVENESS

The development and use of various program models to achieve the aims of restitution logically leads one to raise the question of how effective these models are in achieving their stated goals. The problems involved in the evaluation and measurement of program outcomes have long been a central concern among juvenile justice researchers, planners, and administrators. The same kind of concerns have been voiced with regard to restitution programs. As Harland et al., (1979:66) have indicated:

> Three reasons may be given for providing a restitution program evaluation:
> (1) To assess the extent to which program goals are being achieved
> (2) To provide feedback information valuable in making program changes
> (3) To provide a measure of accountability.

With regard to the first reason, it is important to evaluate both process goals and outcome goals. The former refers to whether the program is operating as was specified in the original design (whether stated eligibility criteria are being followed, whether victims are participating in the intended manner, whether the staff is successfully completing their assigned tasks, whether the individual restitution plans are being formulated consistent with the goals of the program, and whether appropriate payments are being made to victims). The latter refers to the degree of success the program is experiencing in achieving its primary stated goals. For example, if primary consideration in the program is being given to offender rehabilitation, outcome measures should provide information about the program's impact on recidivism, the offender's overall social stability in the wake of participating in the program, and the extent to which the offender met his/her restitution obligation. Likewise, if primary consideration in the program is being given to the concerns of the victim, outcome measures will provide information about satisfaction with the amount of restitution received and with the level of other services provided.

With regard to the second reason, program evaluation should be addressed to how programs can be improved in their internal operations. This effort should focus on identifying those aspects of the program which are not working well and providing information to the staff and program administrators about how these difficulties might best be corrected.

With regard to the third reason, program evaluation should provide concerned individuals and groups such as funding agencies, legislative bodies, victims, and other organizational participants in the justice system with a sense of how well the program is handling its mandate for intervention with youthful offender and its fiscal affairs.

Although the scope of evaluative issues in restitution has been delineated, actual efforts to evaluate programs are still in their infancy. As the NOSR staff (1979: 4) points out

> With the possible exceptions of the evaluation conducted on the Minnesota Restitution Center [an adult program] and the intensive evaluation presently being conducted on the LEAA adult programs, most of the research conducted to date has been of a survey type nature.

This evaluative picture should change somewhat in the near future as a result of the work of the Institute of Policy Analysis, which is serving as the program evaluator for the National Juvenile Restitution Initiative (See Current Programming Efforts in Restitution, pp. 16-20). IPA will produce an intensive outcome evaluation of six selected sites. But, these findings will not be readily available for several more years.

The current quality of program evaluation in this area results from a lack of clarity about exactly what these programs are trying to achieve. The fact that restitution programs frequently pursue various, oftentimes conflicting goals and objectives poses serious research problems for evaluators. Until priorities are clearly established about what the primary goal of a program is, it is virtually impossible to measure outcomes. In addition, the fact that restitution can impact across such a wide range of beneficiaries presents major difficulties in determining what measures of outcome would even be.

SCOPE OF ELIGIBILITY

Essential to the successful operation of any program of intervention in the justice system is a clear sense of which offenders are most appropriate for inclusion in the particular program. This question of appropriateness and eligibility is an issue of critical importance in efforts to develop restitution programs. What kind of juvenile offenders who have committed which kinds of criminal acts are best suited for participation in these programs? As Edelhertz (1975:77) has stated in regard to participation in restitution programs, "Judicial and program decisions have been based upon ad-hoc determinations that offer no evidence of differential effectiveness which might serve as lessons to others." Given the current state of research on this problem, it is impossible to give a definitive answer to this question. However, a considerable amount of attention is being directed to the issue both by researchers and program planners. In addition, a wealth of practical experience shared by program administrators and staff provides some indication about how best to choose offenders for these programs. Based upon these sources of information, we are able to offer some tentative insights about the scope of eligibility for restitution programs.

The problem of appropriate referrals should probably be engaged on three levels. First, there is a need to discover if some absolute limits exist regarding the participation of some kinds of offenders in these programs. Are there certain presenting offenses, offense histories, or personality types which lend themselves to automatic exclusion? Second, is there some general category of offenders or offenses which are ideally suited for inclusion? Third, are there certain kinds of offenders and offenses which are better suited for inclusion in restitution programs with particular formats as opposed to other restitution programs operating with different assumptions and procedures? An attempt to provide at least a preliminary answer to these key questions will be made in this section of the report.

All three questions tie into a general point which is made repeatedly in this report, namely, the specific goals and objectives of a particular program will determine to a large extent what is being done in that program. Just as the question of how much restitution should be ordered for an offender is largely answered by the objectives of that program, the question of who should be allowed to participate in a program will be substantially influenced by exactly what that program hopes to accomplish regarding offender rehabilitation and/or victim compensation. This general qualification should be kept in mind whenever assessing the issue of eligibility.

Currently, the principal criterion employed in deciding if an offender should be considered eligible for a restitution program is whether that person has committed a crime against property or against a person. Although some programs allow persons to participate who have committed either type of crime, offenders who have committed crimes against persons are frequently excluded from restitution programs. The other crime category which deserves consideration regarding its suitability for the restitutive process is the so-called victimless crime. But, as Edelhertz (1975:75) has noted, crimes which do not result in property loss or harm to the victim are especially unmanageable for the task of determining the amount of restitution. This problem is further complicated by the fact that selecting an appropriate victim to whom restitution might be paid in these cases poses another major obstacle.

The tendency to exclude offenders who have committed crimes against persons usually represents a decision based on two issues which arise from this kind of misconduct. These issues are the potential dangerousness of offenders who commit crimes against persons and the difficulty of determining what kind of monetary/service value to assign to acts of personal violence entailing pain and suffering. As a preliminary step to screening offenders for program participation, Galaway and Hudson (1975a: 258-259) suggest that all offenders be classified into two categories, dangerous and non-dangerous. They define dangerous offenders as, "those who have inflicted or attempted to inflict serious bodily harm, seriously endanger the life or safety of another, or engaged in organized criminal activity" (Quoted in Edelhertz 1975: 76). The emphasis on screening out dangerous offenders has also been emphasized by Read (1977:2-3), who states, "the basic problem facing any restitution program is how to separate the non-dangerous offender from the dangerous offender." Of course, the basic difficulty which arises when one becomes involved in excluding certain categories or types of offenders on the basis of potential dangerousness is that one must necessarily move into the troublesome area of prediction of future behavior. Research into this topical area continues to be one of the least rewarding in terms of substantive results in all of criminology (Wenk et al., 1972; Wolfgang et al., 1972). As Reamer and Shireman (1980:50) point out, "The prediction with any satisfactory surety of which youths will in the future repeat their violative behavior and which will not defies present technology."

The rationale behind the second reason for excluding crimes against persons--namely, the difficulty of affixing value to these kinds of criminal acts--is more difficult to understand. This procedure should theoretically be no more complex than the sentencing process which supposedly reflects the severity of the criminal act. Obviously, some degree of arbitrariness and subjectivity always accompanies the judicial process of converting pain and suffering into time or money. But, the possibility of human error has never in the past halted meting out justice to offenders who have committed crimes against persons. Yet, as Harland (1978:53) has noted, "Although it is theoretically possible to place an acturial value on all forms of harm resulting from crime (Wilkens 1965), restitution has been restricted to less serious offenses involving property loss and minor personal injury [and] offenses such as murder, rape and armed robbery are usually excluded." However, some interest continues to be shown in the possibility of converting pain and suffering into monetary terms for purposes of restitution; one approach is discussed later in this report (See Assessment of Losses, pp. 44-47).

There is an ironic note to the current, widespread resistance to including offenders responsible for crimes against persons in restitution programs. This irony extends both to the issue of the dangerousness of these offenders and to the issue of the difficulty of assigning monetary/service value to these kinds of criminal misconduct. Historically, this category of offender, the perpetrators of serious crimes against

persons, was thought to be one of the most appropriate groups upon whom restitution should be imposed. Few limitations were recognized in terms of the seriousness of a criminal act which could qualify for a restitutive sanction. As Harland (1978: 53) notes, "During different periods in history and across a variety of cultural settings, restitution has been employed in connection with almost every conceivable offense, ranging from a minor property crime to the most heinous form of murder." In addition, the problems currently posed in affixing value to crimes against persons were met head-on in earlier legal codes in which monetary values were readily placed on any conceivable type of damage to all bodily parts. Exactly why these kinds of procedures have been abandoned in modern restitutive programming is inexplicable since, as Harland (1978:53) insightfully points out, "in [contemporary] tort law, a financial value has been placed on everything from a damaged reputation to the loss of life or limb." A more detailed discussion of the wider use of restitution in terms of offense types occurs earlier in this report (See The Evolution of Restitutive Justice, pp. 8-12).

Another factor exercising a limiting effect on client eligibility and selection is the nature of state statutory guidelines. For instance, the way in which state statutes set the upper end and lower age limits for youthful offenders to be processed as juvenile affects fundamentally who can participate in a juvenile restitution program. In a similar fashion many states have established procedures for automatically waiving certain categories of youthful offenders to criminal court; none of these juveniles is eligible for referral to juvenile programs.

Ultimately, however, the most important constraint being exercised with regard to the scope of eligibility involves the strong support voiced by planners, administrators, and scholars for confining restitution primarily to offenders charged with crimes against property. As Edelhertz (1975:75) has observed, "A review of programs discloses that restitution has heretofore been limited almost exclusively to cases involved with property crimes." One of the most avid supporters of this practice is Galaway (1977e:4) who has argued against including offenders responsible for perpetrating crimes of violence against persons.

> To what extent should victims receive reimbursement for nontangible losses such as pain, suffering, and emotional distress? The predominant pattern among present restitution programs is to limit restitution to out-of-pocket losses sustained by the victims. For the most part, restitution is used with property offenders; with property offenses nontangible losses are sufficiently rare and, if present, extremely difficult to quantify which may account for their omission from present restitution schemes. The future development of restitution programming should build on past experience and not attempt to include pain, suffering, and other nontangible losses in restitution agreements. If victims feel strongly that they should be reimbursed for these damages they should, of course, be free to pursue the matter in civil proceedings.

The other important factor which plays a role in determining who participates in restitution programs has already been mentioned briefly in the introduction to this section of the report. This factor is the nature of the specific goals and objectives of particular programs. In discussing the issue, Geis (1977:158) states, "Defining eligibility for participation in restitution programs constitutes one of the less troublesome program issues since the nature of the participating population will be determined largely by the character of the program itself--its ethos, its aims, and its approach." For example, if the program is concerned primarily with

compensating the victim (rarely the case with juvenile restitution programs), less attention will be focused on the kinds of offenders being referred to the program; resultingly, a wider range of offender and offense types will be included. If, however, the program is concerned primarily with offender rehabilitation, much closer attention will be directed to the kinds of offenders participating in the program.

A number of specific eligibility criteria have been suggested, which take into account all of the aforementioned issues. Harland et al. (1979:15-16) have discussed the appropriateness of referral in terms of "risk characteristics" exhibited by offenders. They are: (1) previous record, (2) evidence of psychological disturbance, (3) drug/alcohol history, and (4) inability to pay. The Schneiders (1979) include on this list the youth's being a first-time offender. The NOSR report on restitution (ms:23) adds several additional criteria: (1) age of offender, (2) presenting offense, and (3) location of offense.

Although most of these characteristics are self-explanatory in terms of being impediments to program participation, several require some examination. Steps are often taken to deflect first-time offenders from any formal contact with the system. Unless the presenting offense is somewhat serious in nature, law enforcement officers frequently make station adjustments for this category of offender. The age of offender as a basis for discouraging program participation is usually associated with problems of employability. Most states have enacted statutes designating minimum age requirements for employees. Extremely youthful offenders who satisfy the age guidelines for processing in the juvenile justice system but do not meet the minimum age guidelines for employment pose serious problems for programs which rely upon monetary restitution. Location of offense is an important criterion if the youth's residence is considerably removed from the jurisdiction where the crime was committed. Since there are no residential, juvenile restitution programs, participation would be extremely difficult.

Among these criteria the one which has received the most attention is inability to pay. Lewis (1978:7) claims it is the single-most important problem associated with the use of restitution as a sanction. Hudson and Chesney (1977:135) have also noted that in the past, "the court decision to order restitution appears to be most commonly based upon the perceived ability of the offender to pay." A problem which has come to plague this practice is the question of constitutionality. When an indigent offender is denied access to a program because of inability to make restitution payments, equal protection issues are immediately raised.

Recent praxis in restitution programming has aimed at rendering the problem of inability to pay a meaningless factor in selecting offenders for programs. Of course, this decision may necessitate the program's assuming responsibility for job development/training/and placement, but allowing the factor of inability to pay to affect a program's selection process severely limits eligibility, especially in the case of juveniles. In addition, it is frequently this kind of youth who is prone to becoming involved in some form of criminal misconduct and is most in need of an innovative and meaningful intervention on the part of the juvenile justice system.

Taking steps to resolve the problem of inability to pay raises several additional issues which must be addressed in order to avoid other pitfalls. In becoming involved with the juvenile employment market which is periodically depressed, restitution programs must avoid conveying the impression that youths are being rewarded with jobs for getting into trouble. This misperception could have calamitous implications for other segments of the youth population. As Lewis (1978:7) emphasizes, "restitution employment programs must not be seen as a reward for committing an offense.

Perhaps the best way to avoid this dilemma is by placing indigent juvenile offenders in community service jobs where their labor will not be rewarded monetarily. Another option is to develop the restitution plan in such a way that when offenders are placed in salaried positions, they retain only a percentage of this income for their own use. The majority of this money will be used to meet the conditions of the restitution order. Both approaches should vividly demonstrate to other youths that juvenile offenders are not being rewarded for their violative behavior.

A very practical consideration has been raised by Harland et al. (1979:17) when they assert all restitution programs should develop written offender eligibility criteria. They offer two reasons: (1) maintaining program stability and integrity in terms of the types of offenders served, and (2) guaranteeing the equal protection of similarly situated offenders, i.e., helping to guard against equal protection violations in offender selection. The NOSR report on restitution (ms:23) takes the matter of written eligibility criteria a step further by emphasizing that all programs should include a statement guaranteeing there will be no discrimination in the selection process on the basis of race, sex, creed, or ability to pay. (See Appendix E for a sample of the written eligibility statement developed by NOSR.)

Finally, it appears that the criteria used to admit juveniles into programs have a direct effect on which juveniles actually participate in these programs. For example, based upon their survey of the use of restitution in juvenile courts, the Schneiders (1977:52) state, "It is reasonable to presume that courts which use restitution only for a small proportion of the cases would have higher compliance rates and a greater belief in the effectiveness of restitution." Regarding the composition of the younger population served by restitution programs, Bryson (1976: 11-14) claims that these juveniles parallel the racial and socioeconomic profiles of the general population of offenders caught up in the juvenile justice system. This conclusion varies markedly from the findings of Chesney (1976) in his study of the use of restitution as a condition of probation where he discovered that the target population was heavily skewed in the direction of white, and middle class, first-time offenders. Commenting on this finding, Hudson and Chesney (1977:136) suggest that these characteristics may be the direct result of screening offenders for restitution on the basis of their perceived ability to pay. Much more greatly detailed information about offender profiles will be forthcoming from the Institute of Policy Analysis' evaluation of the National Juvenile Restitution Initiative. Preliminary data on this subject are already available from IPA's Monthly Reports and have been discussed earlier in this report (See The National Restitution Initiative, pp. 17-20).

VICTIM/OFFENDER RELATIONS

Although many students of restitution have argued that victim/offender interaction during the restitutive process is basic to the spirit underlying this entire sanctioning approach, a debate continues over the value of this particular procedure. Widely differing opinions exist about whether victim/offender contact should occur, ranging from adamant support for highly personalized relationships to the demand for no direct contact whatsoever. What has emerged from this continuing debate is a series of important issues, both theoretical and practical, argued by proponents of all positions along the continuum of victim/offender interaction.

The revival of interest in restitution during the present century has been marked in many quarters by arguments pointing to the positive effects of victim/offender interaction, especially by proponents of rehabilitation. A common theme among the advocates of this position has been the apparent humanizing effect of such interaction. They have claimed that it is the act of personal contact which sets restitution apart from many other highly impersonal, thoroughly bureaucratized sanctions, often functioning as impediments rather than as aids to the rehabilitation of the offender. For instance, the psychologist Eglash, in talking about the benefits of restitution for the offender, states, "Reconciliation with the victim of an offense creates a healthy, giving relationship" (1958b:620). In a similar vein, Galaway and Hudson (1975c:353) in their discussion of the operating procedures of The Minnesota Restitution Center(5) stress that

> . . . the collaboration between victim and offender will bring about changed attitudes and lead to mutual perceptions of each other as people with similar needs and problems as opposed to formally labelled and qualitatively different types of human beings.

Galaway and Hudson's statement of the virtues of fostering victim/offender interaction is representative of the thought behind attempts to promote this procedure in some recent restitution programs. In setting forth the positive aspects of victim/offender relations, Edelhertz (1975:79) has stated

> Many of the innovative restitution programs require such interaction, because the personalization of the crime and its consequences is thought to be rehabilitative for the offender and healing to the victim. Rather than the court, the victim and the offender negotiate a "contract" which specifies the amount (or kind) of restitution and the schedule of payment or service to be rendered.

Ironically, however, surveys of restitution programs over the past several years (Bryson 1976; Edelhertz 1975; Hudson et al., 1977; Schneiders et al., 1977) have indicated that only a few programs have actively promoted close contact between victim and offender. For instance, the Schneiders' examination of the use of restitution in juvenile courts found that generally the courts preferred to limit the offender's involvement with the victim. Out of the 114 courts which utilized restitution and responded to the Schneiders' questionnaire, only 14 of them required that offenders make monetary payments directly to the victims; only five of them required that the offenders perform work assignments directly for the victim. The most common procedure the Schneiders encountered was when monetary payments were required, the youth made the payment to the court or a probation officer for disbursement to the victim; if work was required, it most frequently involved community service or some combination of community service and work for the victim.

In a similar fashion, Bryson (1976:6) in summarizing operational issues from her survey states, "most of the juvenile programs do not encourage victim-offender contact, and direct restitution (either in service or money) to the victim is rare." In addition, Bryson claimed that in many cases the extent to which a victim is involved in the restitutive process is limited to participation in determining the amount of restitution due; such activity is frequently carried out without any direct contact with the offender.

If there is indeed a tendency in numerous current programs not to develop victim/offender relationships, what are the factors that have led to this aversion for one of the traditional tenets of restitutive justice? Perhaps, the strongest argument has been made by Edelhertz (1975:79) in defending the privacy and mental well-being of the victim.

> It seems questionable whether a victim should be twice penalized; first by the crime and then by being asked to assume a burden because he has already been wronged. In addition, however, it may force the victim into a situation which is uncomfortable, or even fear producing.

It is not surprising that the prospect of direct contact with the offender is often rejected by the victim who feels he/she has already been sufficiently inconvenienced and traumatized by the actual criminal act, without further impositions being added.

Another problem which might arise concerning the victim's feelings and perceptions is that lingering hostility the victim might harbor toward his/her assailant could lead to violence or at least to a disruption of the restitution contract. An example of this kind of complication has been documented in the difficulties that arose in a court-administered, restitution program in Cincinnati, Ohio (Schneider and Schneider 1979:28). Here, the program had originally encouraged the offender to work directly for the victim. However, this practice was discontinued in large part because the court became fearful that certain victims might retaliate against their youthful offenders. Clearly, the personal feelings of the victim about and toward the offender must be a critical factor in determining the extent of victim/offender interaction, if any.

A quite different type of obstacle to achieving meaningful relationships between victims and offenders in the restitutive process has been pointed out by, among others, Bryson (1976:6).

> Although there is a natural tendency to picture an individual person as the victim, many of the actual victims encountered in these programs are schools, public property, national chain stores, and small businesses; and when the victim is insured, it is the insurance company.

The point is that in many cases the victim is not a person but a corporate entity; this situation raises special problems if one is operating a program which is encouraging victim/offender contact. Hudson and Galaway (1975c:353) have suggested that one way to handle this corporate victim problem is to have the negotiation with the offender include a representative of the victimized organization in the contracting process. However, a possible problem with this solution is that the impact of the victim's involvement on the offender may be markedly different when the victim is the representative of a large corporation. The chemistry of victim/offender relations is undoubtedly influenced by the participation of a victim who has experienced a personal loss as a result of the offender's behavior and conveys intense feelings about this loss to the offender.

On a more practical level, whether or not direct contact between victim and offender is encouraged as a facet of the restitutive process is determined considerably by an important organizational factor, the stage of justice processing at which restitution is actually implemented. The nature of the victim's involvement with the program in general and specifically with the offender is frequently affected by where in processing the program is located. As a rule of thumb, pre-adjudicative programs are more likely to involve the victim in arbitration proceedings with the offender; court administered and other post-adjudicative programs tend not to do this. Examples of pre-adjudicative programs where this occurs are the Community Arbitration Project (CAP) in Anne Arundel County, Maryland (See Appendix A), and the Community Youth Responsibility Program in East Palo Alto, California (Bryson 1976; Edelhertz 1975). Of course, a problem which inherently plagues these pre-adjudicative programs

where victims and offenders are involved in negotiations is disinterest on the part of the offender. Since enforcement of the restitution order is not legally binding at this stage, compliance is often difficult to obtain.(6) This can be especially distressing to a victim who has invested considerable time and energy in negotiating a restitution settlement with the offender and sees his efforts count for naught.

Another possibility, one already suggested, is to involve the victim in the program without having direct contact between this person and the offender. This seems to be the preferred approach to actively involving the victim in a reconsideration of loss. This approach has been strongly endorsed by Chesney (1976:29), who is reporting his findings about the use of restitution as a condition of probation in Minnesota stated

> It is recommended that victims be offered greater involvement with the process of restitution. Victims who have been involved with the determination of whether restitution should be ordered or in the determination of its amount and form were more likely to be satisfied with the restitution as ordered by the court. The victims who were least satisfied with the restitution as ordered, regardless of whether it had been completed, were those who were not notified whether restitution was ordered, and those who felt that the police, court, or probation officer had not adequately <u>communicated</u> with them.

In some programs where the decision was made not to directly involve the victim, steps were undertaken to communicate with the victim about important issues such as: (1) the status of his/her case as the restitution agreement is being negotiated, (2) how much he/she can expect as a settlement once the negotiation has been completed, and (3) what kinds of civil actions he/she can pursue if not completely satisfied with the conditions of the restitution plan. Sometimes, this approach is taken one step further by requesting that the victim be involved in much of the decision-making for the restitution plan, again without allowing direct contact between the victim and the offender. The central point in this approach is that the victim has first-hand knowledge of program methods and goals. Otherwise, without proper communication the expectations of the victim can be raised to an unrealistic level. In addition, he would not gain the benefits of having a sense of helping to obtain justice.

DEVELOPMENT OF RESTITUTION PLAN/AGREEMENT

Once the decision has been made about who is eligible to participate in the program and steps have been taken to screen potential candidates, the next procedure is actually to develop the restitution plan/agreement. This procedure typically includes (1) deciding the degree of involvement of the offender and the victim in these negotiations, (2) selecting the type of restitution to be used, (3) determining the amount of restitution to be imposed, (4) arranging a payment/service schedule, and (5) providing whatever additional services are available. Each of these steps is open to being structured in various ways, reflecting the aims of the specific programs and the constraints of the social environment in which these programs are operating. Regarding this variation, the National Office of Social Responsibility (1979:20) states, "The manner in which different restitution programs resolve these issues [factors in restitution plan formulation] varies according to the unique characteristics of the juvenile justice systems and communities with which they interact, and the specific purposes and objectives of the programs." In fact, the NOSR report on restitution notes that the single most important step in this planning process is the determination of the restitution program's main purpose.

Perhaps, the most ambitious and insightful effort to describe and analyze the key issues which emerge in developing restitution plans has been a recent publication, A Guide To Restitution Programming (1979), prepared at the Criminal Justice Research Center in Albany, New York, by Harland, Warren, and Brown.(7) Although the information presented in this guide represents the result of several years' experience with adult restitution programs, the majority of issues addressed are equally relevant to the management of juvenile programs. The findings of this guide have been used as a framework for much of what follows in this section of our report.

INVOLVEMENT of OFFENDER in DEVELOPMENT of RESTITUTION PLAN

Individuals especially concerned with the rehabilitation of the offender, i.e., most contemporary proponents of restitution, stress the necessity of involving the offender in the development of the restitution plan. We have already examined Eglash's recommendation for involving the offender in all aspects of the restitutive process (See p. 4), a concept which he terms "creative restitution." He argues that for the sanction to have beneficial effect, the offender must be actively involved in determining the nature of the restitution process; this step is the beginning of a growth process leading to the rehabilitation of the offender.

Eglash's thesis corresponds closely to Schafer's (1970b) theory of responsibility which states that an important part of rehabilitation is the offender's recognizing his/her role in damaging the victim. Restitution is seen as an important factor in the expiation of the offender's sense of guilt; involvement in devising a plan to reparate his/her victim is essential.

In advocating the participation of the offender in the development of the plan, Keve (1977) has emphasized a slightly different issue. He suggests that such an approach, especially in the case of juvenile programs, can have a valuable educational impact.

> The basic idea [is to require] the offender himself to carry all the responsibility he can for the planning and development of the restitution project. This principle must be applied skillfully, of course, so that success is virtually guaranteed. If the client is required to do some planning that he is unable and unprepared to do, then we are just setting him up for one more failure experience and defeating our therapeutic goals. But to the extent that he is capable, let him do the planning and arranging. We thus encourage the possibility that he will learn something and that he will have more commitment to the endeavor because he has had a part in shaping it (1977:64).

Proponents of offender involvement make the assumption that the offender is willing both to enter voluntarily into the restitution arrangement and to participate in the planning of this arrangement. As The American Institute for Research has indicated, this is not always so easy.

> Entering into a restitution arrangement within the criminal justice process is, however, not likely to be a totally voluntary act on the part of the offender. . . . The most appropriate course is probably to make explicit the coercive aspect of the restitution arrangement, and thereafter to maximize offender involvement in the shaping of the actual program (1977:16).

In his description of the development of the restitution plan in restitution programs(8) operated by the Department of Offender Rehabilitation in Georgia, Read (1977b:11-12) has shed light on one way in which the offender can be involved in the process, especially with regard to the court's involvement in these negotiations:

> The restitution plan consists of a performance agreement which specifies the extent of restitution--both the amount and the type--which the offender agrees to make. The Restitution Specialist develops this plan together with the offender and District Attorney and submits it for court approval, at which time the Restitution Specialist functions as an offender advocate. If the court requires any modification of the plan which the offender is unwilling to accept, the offender can choose not to participate in the grant program. If acceptable, the restitution agreement is made a part of the conditions of probation.

INVOLVEMENT of VICTIM in DEVELOPMENT of RESTITUTION PLAN

As a general procedure, involving the victim in the restitutive process has been strongly recommended. The extent of the victim's involvement will reflect the goals and objectives of the program. For instance, this involvement can range from (1) simply informing the victim about the purposes and operations of the program, to (2) encouraging the victim to establish interpersonal contact with the offender, to (3) requesting that the victim participate in formulating the plan. The first and second options have already been discussed in detail earlier in this report (See Victim/Offender Relations, pp. 36-39). Here, we will focus only on the third and remaining option, the role of the victim in the development of the restitution plan.

The participation of the victim in the formulation of the restitution plan can itself take a variety of forms. As the Schneiders (1979:6) point out

> The victim's role can range from none at all (other than a letter asking for documentation of the loss) to a series of involvements in developing the plan. Programs could conduct personal interviews with victims during the time when the details of the restitution plan are being developed, could encourage victim participation in face-to-face meetings with the offender to negotiate the amount, and could hold a special accountability hearing attended by the victim.

Based upon their survey of the use of restitution in juvenile courts, the Schneiders have proposed a general scheme of how the development of the restitution plan might best proceed with regard to the involvement of both the offender and the victim.

> Typically, the victim and offender are both interviewed by the restitution coordinator. The purposes of the interview are (1) to establish the amount of loss, (2) to assess the offender's ability to make restitution, (3) to discuss with the victim whether the offender can work for him or her to make restitution, (4) to determine whether the victim would be willing to meet face-to-face with the offender, and (5) to determine whether (or how) the victim wishes to be involved in other aspects of developing the restitution plan. Most of the accountability programs [See Models in Restitution Programming, pp. 29-30] invest considerable resources in this part of the restitution process and attempt to develop (or negotiate) a plan that both the offender and victim accept as fair and equitable. In most of these programs, it is considered very important that the offender and victim meet

face-to-face, but program personnel acknowledge that this is difficult and that it requires time, discussion, and persuasion to convince victims that some purpose will be served by their future participation in the restitution process (1979:24).

Before moving into an examination of the next principal area in the development of the restitution plan, namely, the determination of the type of restitution obligation to be imposed, it is important to consider briefly the matter of community involvement in the development of the restitution plan. This issue does not lend itself to a detailed review since the procedure rarely occurs in the operation of actual programs. Perhaps, the primary reason why this practice is not more widely used is the difficulty involved in obtaining community participation in any crime-related program. When employed, this practice is found most frequently in programs based on the community arbitration process. In these settings, "One procedure is to identify and train a group of community volunteers who attend a special accountability hearing with the offender and persons from the restitution program (and sometimes the victim) to establish the amount, type, and schedule of restitution" (Schneider and Schneider 1979:6). These participants are active in developing the plan, especially regarding the selection of community service placements for offenders. Since community arbitration programs extensively utilize symbolic restitution as their principal form of sanctioning, community involvement is given a high priority in these programs.(9)

DETERMINATION of the TYPE of RESTITUTION/SERVICE OBLIGATION

We have already noted in the Introduction to this report (See p. 2) that juvenile restitution programs have usually employed one of three types of payment/service obligations, or some combination of the three. The three types commonly in use are monetary payment to the victim, direct service to the victim, and service to the community. Some programs are set up so that they utilize only one of the types; other programs have more flexibility and will assign different types of restitution obligations to different offenders depending upon the circumstances encountered in each case. On occasion, an offender in such a program will be required to make more than one type of payment in order to satisfy the terms of the restitution agreement.

There are advantages and disadvantages in the use of each type of restitution. In addition, special problems arise in the case of both monetary and service obligations for juvenile offenders due to restrictions pertaining to their age. Difficulties include, "finding jobs within their abilities, getting employers to accept them [a problem shared by many offenders], providing supervision, scheduling around school work, obtaining liability coverage, arranging transportation, etc." (Bryson 1976:8). Because these kinds of problems are especially pronounced in attempts to locate salaried jobs for juvenile offenders, many programs are increasingly turning to the use of symbolic restitution where youths are placed in community service positions (The American Institute For Research 1977). However, greater emphasis is still placed on monetary restitution than on services to either the victim or the community.

The advantages offered by the use of symbolic restitution for juvenile offenders must be weighed against the problems inherent to the approach. Harland et al. (1979:44) point out that one of the major difficulties concerns the practical matter of finding and/or maintaining an adequate number of appropriate service slots in which youths can be placed. They suggest as a possible solution to this problem that programs relying on symbolic restitution place special emphasis on their public relations. Only by maintaining good relations with sources of support in the community can this kind of restitution program survive.

In commenting on the advantages of monetary restitution, the same authors point out that from the perspective of the justice system such programs will be able to capitalize on the political appeal of helping victims who have been financially damaged by criminal misconduct. They (1979:42) also present a strong argument for the use of direct service to the victim.

> Strictly from the standpoint of achieving program objectives, the most generally acceptable type of obligation might be direct service to the victim. This option can relate the sanction directly to the offense, while offering a positive contribution by the offender, compensation to the victim and possible reconciliation between the two.

However, as has already been pointed out in this report (See Victim/Offender Relations, pp. 36-39), a number of problems may emerge when victims and offenders are brought together for whatever reason. Probation officers, prosecutors, judges, program administrators, and other individuals active in formulating conditions for the restitution plan seem, as a general rule, not to favor this approach. In addition, victims seem to be overwhelmingly opposed to the practice of direct service by the offender. The one situation in which this approach might work well is when the victim is a corporate entity such as a business or a school. Under these circumstances the opportunities for interpersonal conflict are diminished.

DETERMINATION of AMOUNT of RESTITUTION PAYMENT

Determining the amount of monetary/service obligation to be ordered as a part of the restitution plan is a complex process. For instance, in reaching a decision about the restitution settlement for a particular offender, one has to engage a series of issues which include: age of offender, employment history and skills of offender, type of offense, and type of victim (individual, corporate entity, or community).

Reaching an agreement on the amount of restitution to be imposed is clearly one of the most delicate issues emerging from the procedures carried out in any restitution program. The restitution settlement is generally determined with consideration for both the offender and the victim. Given the inherent difficulties in reaching a decision about this settlement, both the offender and the victim can easily be dissatisfied with the outcome of this procedure. Although the victim always has the option of pursuing further civil action, unresolved ill feelings about this aspect of the restitution plan virtually guarantees the venture's ending in failure. Consequently, one can readily argue that the settlement process lies at the very heart of restitution programming and merits special attention.

When restitution programs are located at the adjudicative level, an important legal question can arise regarding the settlement process. This concerns determining the extent of judicial involvement necessary to meet the constitutional requirements of due process. Simply stated, this question centers on who can legally do what in ordering restitution for an offender at this point in processing. Often, the court in the interest of efficiency will request that the probation department undertake the preliminary investigation in determining the amount, type, and method of restitution for a specific offender. What are the limits to the use of the probation department for making these decisions? Regarding this question, Feinman (1977:4) refers the reader to an important, state court decision.

> The New Jersey Supreme Court, in In the Interest of D.G.W., held that the juvenile court judge has ultimate responsibility for ordering the amount and terms of restitution and it cannot delegate this responsibility to the probation department of the court. . . . The New Jersey Supreme Court stated that it was proper for the trial court to allow the probation department to investigate the situation and make a recommendation for restitution, but it was improper for the court to delegate its responsibility for making the final order of restitution to the probation department.

As indicated in the introduction to the section of the report focusing on the development of the restitution plan (See p. 39), the work of Harland et al. (1979) has been especially valuable in laying out the critical dimensions in this area of restitution programming; their thoughtful analysis extends to the question of how to determine the amount of restitution settlement. The following discussion has borrowed freely from their work on this troublesome topic.

Assessment of losses--Regardless of the nature of the loss inflicted by criminal misconduct, the assessment process generally entails three steps: investigation, documentation, and verification. In addition, it should be noted that loss assessment is especially important in those programs where the type and amount of the payment/service obligation is being influenced by the estimation of the total harm done to the victim. In some symbolic restitution programs no connection is made between the nature of the losses and the restitution agreement; most programs, however, rely heavily upon the assessment process in helping to make the decision about the amount of restitution to be imposed. Before detailing this process, however, we want to lay out quickly the principal types of losses to which a monetary value can be affixed for the purposes of restitution. Harland et al. (1979) have suggested that a convenient way of classifying losses in order to establish a scale of monetary value is to divide all losses into two categories: unliquidated damages and material injury. The former category represents losses from "pain and suffering or other claims for which no common standard of value is used" (1979:20). Some of the difficulties that result from trying to set a monetary value on these kinds of losses, usually arising from crimes directed against persons, have already been explored earlier in this report (See Scope of Eligibility, pp. 32-36). Most courts which have addressed the question of restitution for pain and suffering have ruled that a victim is entitled to restitution only for losses having a direct and easily measurable dollar value (Feinman 1977:11).

The problems posed by working with this category of losses have led most proponents of restitution to focus on property offenders. However, if a program decides to include offenders who have committed acts of violence against persons, one possible approach for converting pain and suffering losses into monetary terms is through the use of some kind of seriousness scale. In discussing reparations to victims of personal, violent crime, Wolfgang (1965) has suggested the use of the Sellin-Wolfgang Index(10) for this purpose.

The other category of losses suggested by Harland et al. (1979), material injury, consists of the various kinds of criminal acts against property which are commonly handled in restitution programs. These include:(11)

1. Actual Losses

(a) Stolen Cash
(b) Stolen Property

(c) Damaged Property
(d) Fraudulently Obtained Services

2. Consequential Losses

(a) Medical Costs
(b) Lost Work Time
(c) Miscellaneous Losses

The most persistent problem one encounters in attempting to assess damages falling into either category of losses is the level of distortion introduced by the victim and the offender. The problem usually assumes two forms: overestimation of the loss by the victim and underestimation of the loss by the offender. Regarding these tendencies, Galaway (1977c:3-4) has pointed out

> Many of the presently operating pilot restitution programs report some concerns that victims may inflate loss claims and, in effect, attempt to victimize the offender.(12) No evidence exists as to the extent to which this occurs and an equally plausible and theoretically sound rival hypothesis is that in many cases offenders may underestimate the extent of damage done. The neutralization strategies hypothesized by Sykes and Matza [1957:664-670] as well as the justification strategies formulated by the social equity theorists suggest that offenders may frequently deal with their own sense of guilt and distress by minimizing the extent of damages caused to the victim. Additionally, many offenders are unlikely to have an experience base from which to make realistic estimates of repair costs and damages done to property and thus may tend, from their own lack of knowledge and experience, to underestimate the damages resulting from their criminal behavior. Differences between the victim and offender estimates of damages resulting from the criminal offenses may be as likely to result from offender underestimation as the victim overestimation of losses.

The possibility of having frequently to face these obstacles has caused most programs to develop workable procedures for ascertaining as closely as possible the amount of loss actually incurred in any particular case. Harland et al. (1979: 30-38) have outlined three approaches to the assessment of loss which encompass all principal avenues of inquiry into these matters. They refer to the three approaches as the convenience model, the insurance model, and the negotiation model.

The convenience model utilizes information that has become available during the course of the justice process, such as official reports, the victim's statements, and the offender's statements. This reliance upon the most readily available information causes this model to have the advantage of requiring the program to expend little time and energy in investigating the loss. As such, it is well suited for programs where assessing the exact amount of loss is not essential to the goals of the programs. Programs in which symbolic restitution is usually imposed might, under certain circumstances, find this model to be quite satisfactory. The principal drawback to this approach is, of course, the possibility that the information about the loss will not be very accurate. The accuracy of official reports will vary markedly from jurisdiction to jurisdiction. We have already pointed out the problems of distortion in offender and victim reports.

The insurance model, the approach most frequently used in restitution programs, attempts to obtain a broader base of information secured by the program's staff on both a first- and second-hand basis. Harland compares the approach to the one employed by an insurance claims' adjuster who consults with a large number of information sources representing a wide spectrum of opinions. For the purposes of restitution these sources might include direct victim (sometimes in person, but more often by telephone and/or mail), relevant third parties (victim's insurance company, hospital financial departments, doctor's billing clerks, ambulance services, automobile repair stations), reference materials (standard sources for determining the value of stolen or damaged property), and the offender (whose participation is often restricted to the right to contest the program's conclusion).

This model aims for a more objective assessment of losses than is possible with the convenience model. It is especially useful to programs seeking to hold offenders strictly accountable for all losses. As Harland et al., suggest, "this model might be used in programs in which the offender is ordered to make restitution, rather than a more voluntary or negotiated arrangement" (1979:35). A possible disadvantage to using this model concerns the possible restriction of the offender's role. This difficulty would be especially pronounced in programs where offender participation is stressed since the more voluntary and negotiated aspects of developing the restitution plan would be minimized. In this case the use of the insurance model could lead to increased frustration and resentment on the part of the offender toward the justice system. In addition, this model might demand an exorbitant amount of staff time to assess losses. As a practical consideration, this problem is quite important since most juvenile restitution programs tend to have small staffs.

The negotiation model is based upon an interactive process in which the feelings of both the victim and the offender about the nature of the restitution settlement are presented. Based upon the exchange which occurs, an arbitrated settlement is reached. This model can employ two kinds of interaction: face-to-face and third-party. In the former case negotiations are carried out directly between offenders and victims or representatives of victims when corporate entities such as businesses or schools are involved. In this setting a member of the program staff usually serves as a mediator/arbitrator. In the latter case negotiations are carried out by a third party (usually a member of the program staff) who serves as a go-between for offenders and victims. This person attempts to resolve any discrepancies in the estimates of the amount of loss and thereby to help the offenders and victims arrive at a mutually agreed upon settlement.

As Harland et al. (1979:37) point out, "Face-to-face negotiation is probably the most frequently suggested and infrequently implemented model of loss assessment." The various theoretical advantages offered by this approach are usually negated by the practical consideration of victims' being unwilling to become involved in such negotiations. The third-party approach represents a modified attempt to achieve the impact of direct, personalized negotiations without having actual contact between offenders and victims.

Burt Galaway (1977c:4) has also proposed two models for assessing the amount of losses incurred from various kinds of criminal misconduct. The two approaches, an arbitration model and a negotiation model, are offered as ways of avoiding the problem of underestimation/overestimation of losses and have been employed in recent restitution programs. Both closely resemble one or the other versions of the negotiation model developed by Harland et al., and described above. Specifically,

Galaway's arbitration model is a form of Harland's Third-Party model in that, "A neutral expert (usually a judge but frequently a probation officer) receives information from victims and offenders and arrives at a restitution amount which is then binding upon the offender" (1977c:4). Likewise, Galaway's negotiation model, "which brings the victim and offender together with a staff member of the restitution project to negotiate a restitution agreement: (1977c:4), is a form of Harland's Face-to-Face variant.

In pointing out the advantages of each model, Galaway (1977c:4) states

> The arbitration model may have the advantage of efficacy and will involve minimal criminal justice staff time at arriving at a restitution decision. The mediation model is more likely to produce a restitution decision which is acceptable and perceived as just by the parties involved due to their own input into the decision making process. This model further has the advantage of bringing the victim and offender into direct communication and should reduce stereotypes which they may have held of each other.

Note should be taken of the fact that in the arbitration/negotiation models of loss assessment presented by both Harland et al., and Galaway not only is the problem of loss assessment being resolved but also the next step in the development of the restitution plan, namely, determining the amount of restitution to be imposed, is being addressed. In many programs employing one or both of these models, loss assessment and amount of restitution to be imposed are engaged simultaneously. But, this procedure should not cloud over or conceal the kinds of considerations which are frequently entertained in the process of deciding the amount of restitution to be paid.(13) Sometimes, such considerations are present as stated guidelines in programs and must be addressed for each offender. Once the loss itself has been assessed, a complex decision-making process may be necessary to determine how much restitution should be imposed. In fact, this is usually what occurs. And, it is this set of considerations that will now be examined.

Magnitude of restitution settlement--Entailed in the process of establishing the level of the restitution/service obligation are a number of procedural issues which must be resolved in order to ensure successful compliance with the plan. Not only is it necessary to decide exactly how large the restitution payment should be but it is also necessary to consider a number of related problems which include:

(1) determining the range of victim types who should be eligible for restitution
(2) deciding whether or not parents can aid in making restitution payments
(3) making arrangements for the way in which payments will be made to the victim
(4) resolving various legal issues arising from the payment process

A variety of proposals for determining the magnitude of monetary/service obligations have been offered (AIR 1977; Bryson 1976; Feinman 1977: Galaway 1977c; Harland et al., 1979; Lewis 1978; NORS 1979; Read 1977a). Suggestions range from calls for only a token gesture on the part of the juvenile offender to demands for reparations far exceeding the amount of loss or injury suffered by the victim. Historically, legal codes emphasizing the principles of punishment and deterrence often required that exorbitant restitution settlements be made (See The Evolution of Restitutive Justice, pp. 8-12). Although such extremes in payment are no longer sought, contemporary restitution programs seek a surprisingly wide range of payments.

The following discussion will examine the principal approaches to payment, i.e., excessive, full, or partial restitution, and will explore specific issues and problems relating to each form. First, however, it is important to state an important qualifier, namely, the goals and purposes of a particular program will always affect substantially the way in which the decision about payment is made. For example, if the primary purpose of the program is the rehabilitation of the offender, the primary consideration in determining the amount of restitution will be the impact this decision has on the offender. Consequently, this kind of program usually requires something less than full restitution.

°Excessive restitution--Excessive restitution refers to a practice in which the offender's obligation exceeds the amount of loss or injury suffered by the victim. The extent to which consideration has been giving to imposing restitution settlements above the amount of damages has generally reflected concern with compensating the community at large for expenses incurred in apprehending and processing the offender. The key question is whether the offender should be responsible for sharing the burden of these costs. Another instance in which excessive restitution may be considered involves its use to pay "indirect victims" who are also being compensated to some degree by the restitution settlement. The term, indirect victims, refers to those parties injured indirectly as a result of the offender's conduct. This issue will be explored more fully later in this report when the concept of the indirect victim is examined in considerable detail (See Third party payments, pp. 50-51). A third possibility has been pointed out by Galaway (1977c:5), who in commenting on the complexities that surround the idea of excessive restitution, makes the insightful observation that many serious crimes of personal violence actually involve insignificant financial losses; if no attempt is made to require payment to cover intangibles such as pain, suffering, and mental anguish, the offender would perceive restitution as a very mild sanction. For example, armed robberies which can be extremely brutal and traumatizing experiences frequently involve the loss of only a few dollars or less. To require robbers to make reparations only equal to the amount of the financial loss would distort the significance of such acts of criminal misconduct. Galaway also notes, "without the possibility of excessive restitution, major class injustices may occur in which wealthy offenders [in the case of juvenile offenders, their wealthy families] might easily make restitution whereas poor offenders would find the restitution obligation more burdensome" (1977c:5). Together, these reasons have led some students of restitution to advocate the use of excessive restitution.

The principal difficulty that has arisen in attempts to impose excessive restitution centers on the legality of such practices. The American Institute For Research (1977:18) has stated, "Federal appeals courts have usually required that . . . restitution be related to the offense and limited to the actual amount suffered." Similarly, Edelhertz (1975:75) points out, "Adequate legal precedent exists which clearly limits restitution to the harm committed, i.e., the victim cannot enrich himself beyond the actual losses incurred as a result of the offense." Of course, if the purpose of excessive restitution is to reimburse the community at large for expenses incurred in apprehending and processing the offender, the critical legal issue is not one of the victim's enriching himself beyond the actual losses. Existing legal praxis has clearly refuted the use of exorbitant restitution settlements to the victim, but has not apparently addressed the problems involved in extending restitution to additional expenses arising from criminal misconduct.

Using restitution to cover other costs such as apprehension of offender and court proceedings leads to a situation in which the practice exhibits characteristics typical of imposing a fine. Either the restitution order contains a provision

specifying additional costs for which the offender is responsible or other costs are simply tacked onto the restitution order as an added obligation. A form of this approach has been proposed by Smith (1977), who has suggested a scheme in which the offender pays a fine imposed by the judge and based on the seriousness of the offense. This would serve as a supplement to the regular restitution settlement. Regardless of the form, however, excessive restitution seems to push the practice markedly in the direction of a punitive sanction, a step not favored by many of the current supporters of the approach.

°Full restitution--Underlying most arguments in favor of full restitution is the notion that only through the act of total reciprocation is the sense of justice and fairness restored. The offender has committed an act resulting in a certain degree of loss or harm to the victim and should be responsible for righting this misdeed.(14) For many victims this is the only solution viewed as being completely acceptable as a response to the losses experienced. In addition, the effort to fully compensate the victim can be the most rewarding form of restitution for the offender as well. As Galaway and Hudson (1975a:257) have observed, "Full restitution would seem preferable to partial or symbolic payment. Since restitution provides the offender with an opportunity to undo, to some extent, the wrong he has done, the more complete the restitution, the more complete the sense of accomplishment the offender gains." This sense of accomplishment has been borne out in laboratory testing of certain equity theory formulations; the findings have indicated that offenders are actually more willing to make full restitution on a voluntary basis than either partial or excessive restitution (Walster, Berscheild, and Walster 1973). Finally, the imposition of full restitution may eliminate the arbitrariness which always arises when a partial settlement is decided upon. With full restitution no question can be raised about whether the amount of payment is actually commensurate with the criminal act.

One of the major arguments made against imposing full restitution is that in many cases such an obligation creates an undue hardship for the offender. This problem has been especially emphasized regarding juvenile offenders since they tend to experience greater difficulty in obtaining well paying jobs than do adult offenders. However, accumulating evidence suggests that on the average the losses incurred by the victim are relatively small (Harland et al., 1979:23; NOSR 1979:41). This claim is supported by Chesney (1976:164), who in his examination of restitution in the Minnesota Probation Services found the mean amount of losses sustained by victims to be two hundred and fourteen dollars. In keeping with this finding, Galaway (1977c: 4) has stated

> The experience of restitution programs today indicates that full restitution can be made in most cases without creating an unjust hardship on the offender. This experience tends further to be confirmed by available data indicating that the losses sustained in most victimizations are sufficiently modest that offenders can reasonably be expected to make full restitution.(15)

Occasionally, an obstacle will arise in spite of the fact that most offenders are not overwhelmed by full restitution settlements. For example, a situation can arise in which a juvenile who has committed an offense involving an extremely large financial loss(16) is referred to a restitution program. One solution is to establish an upper limit to restitution settlements; the offender is expected to make full restitution up to a specified amount. As the NOSR Report on Restitution (1979:41) suggests, "This limit should be set at a level which balances juveniles' earning abilities with attempts to hold these youths fully and directly accountable for their acts while providing reasonable compensation to victims."

°Partial restitution--The principal argument put forth in favor of partial restitution is that the practice is a much more realistic approach when dealing with juveniles. They usually possess limited earning powers and are frequently unable to pay large restitution settlements regardless of their intentions. No matter how just the ruling may be that requires full restitution, if the juvenile offender is unable to meet the conditions of the settlement, the decision becomes pointless and potentially destructive. Concern over this kind of unintended consequences of full restitution has been voiced by the Schneiders (1979:25), who state, "many programs believe it is quite important that the youth be successful in his or her efforts to restitute the victim [and] we must not just set the youth up for another failure."

If the decision is made to assign only partial restitution, a number of factors can be brought into play in settling on the amount of monetary or service restitution to be imposed. Based upon her survey, Bryson (1976:7) states that factors considered frequently in programs include (1) gravity of offense, (2) amount of damage/loss, and (3) resources, attitudes, and abilities of the youthful offender. The role of these factors in determining the amount of partial restitution should be self-evident. Harland et al. (1979:45-47) have suggested several other important factors including (1) co-offender liability, (2) victim culpability, and (3) full loss not ascertainable. The factor of co-offender liability can lead to a reduction in the amount of restitution imposed if the relative responsibility of other offenders involved in the act of criminal misconduct is established. The factor of victim capability can lead to a reduction in the amount of restitution imposed if it can be shown that the victim contributed to the incident leading to the offender's involvement in the restitution program. The factor of full loss not ascertainable can lead to a reduction in the amount of restitution imposed if it can be shown that an estimate of the total value of losses is based upon unreliable and sketchy information. Based upon an appropriate combination of these factors, it is possible to make a determination of an acceptable amount of restitution reflecting the circumstances of each case.

Third party payments--Three categories of victims relevant to the development of a restitution plan have already been described. They are (1) direct, individual victims, (2) corporate victims such as businesses or schools, and (3) the community at large. Another category, "indirect victims," who can under certain circumstances also be important in making decisions about restitution settlements have been described by Harland et al. (1979:24-30). Indirect victims are parties experiencing monetary losses or expenditures indirectly as a result of an offender's criminal misconduct. Usually, they provide some service for the victim in the aftermath of the crime.

> Examples include insurance companies who pay claims or stolen or damaged property or for medical expenses; hospitals or doctors who provide emergency medical care; service agencies such as ambulance companies, garages, and fire companies that provide service in connection with arson offenses, traffic offenses such as hit-and-run, or drunken driving leading to an accident (Harland et al., 1979:24).

Conceivably, any or all of these indirect victims have the right to claim compensations from the restitution settlement under certain circumstances. Excessive restitution is one approach which has been suggested in order to provide payment to indirect victims. By imposing excessive restitution on the offender, expenses incurred by a variety of indirect victims could be covered.

There are readily apparent arguments against including indirect victims in the determination of the restitution settlement. In the case of restitution programs

operating at the pre-adjudicative stages of processing, it would be a highly questionable practice to have an offender make payments to parties other than the direct victim when a finding of guilt had not been made. Even when a finding against the juvenile offender has been made, one must question the wisdom of including indirect victim compensation in the restitution settlement. This reluctance usually involves a special indirect victim category, the insurance company.

Although arguments can be made for and against the inclusion of insurance companies in the restitution settlement, both the NOSR Report on Restitution (1979) and Harland et al. (1979) counsel against this practice. In addition to the general problem facing all indirect victim payments, namely, increasing the offender's resentment and alienation by enlarging the scope of restitution settlement, the NOSR report on restitution (NOSR 1979:42) observes that insurance companies are in the business of taking risks and should not be considered eligible for restitution. Another reason offered is the belief that repayment to the insurance company would not have an effect on premiums and would constitute double profits for the company. As a general principle it appears that making payment to indirect victims and especially to insurance companies creates a number of problems.(17)

Parental responsibility--A quite different kind of payment issue must be faced when considering whether parents should be allowed to aid the offender in satisfying the conditions of his/her restitution agreement. In contrast to the preceding discussion of the complexities encountered in extending the restitution payment to include various third parties, the parental payment issue examines the opposite side of the restitution settlement. In this case one must decide whether someone, namely the offender's parents, should assume responsibility for paying part or all of the restitution obligation. The dilemma becomes one of underburdening rather than overburdening the offender.

The principal impetus leading to the possibility of parents' becoming involved in paying restitution is that legislation in most states contains statutes stipulating parental liability for the actions of their children. In states possessing such statutes the degree of liability varies from being responsible for a specified percent of damages caused by a child to being completely liable for all damages. This situation has on occasion caused parents to feel that they should/must assume responsibility for meeting the restitution obligations of their children.

Restitution program planners and administrators generally view parental payment quite unfavorably since parental intervention renders meaningless a critical program feature, namely, the offender's assuming a tangible responsibility for his/her misconduct. As the NOSR Report on Restitution (1979:43) has stated, "although the source of restitution may be irrelevant to victims, from the perspective of holding juveniles accountable for their delinquent acts the practice of allowing parents to make restitution for their children may be detrimental to juveniles' rehabilitation." In determining the adverse effects of parental intervention one must always keep the goals of the particular program in mind. If the program is designed purely to benefit the victim, i.e., victim compensation being the principal goal, the ultimate source of payment is hardly a key issue. However, when the program is designed either to facilitate offender rehabilitation or to punish the offender, the possibility of parental payment may become a major obstacle. Since the vast majority of contemporary restitution programs are concerned with rehabilitating and/or sanctioning the offender, considerable opposition to parental payment has developed. Most of these programs try to discourage parents from meeting the monetary

obligations of the offender. Occasionally, this opposition will reach the level of not allowing a juvenile offender to participate in a program if his/her parents insist on playing a role in satisfying the restitution obligation.(18)

The Schneiders (1979:30) have described one way in which parental payment is handled when it is allowed. The option they describe involves encouraging the offender to work for his/her parents in order to compensate them for whatever expenses the parents incurred in paying restitution. Apparently, this arrangement is not very satisfactory because the procedure is difficult both to set in motion and to enforce. Trying to verify whether parents are adhering to this kind of agreement is virtually impossible since there is no legal basis for monitoring and/or controlling their actions. The other principal approach to parental payment is simply to allow the parents to shoulder the burden and to let the offender avoid any responsibility for meeting the restitution obligation. The drawbacks to this option are obvious. Ultimately, there appears to be no satisfactory way to prevent parents from deciding to aid their children in making restitution payments.

ARRANGEMENTS for PAYMENT

Harland et al. (1979:50) suggest three important considerations which must be addressed in the restitution plan when making arrangements for monetary payment. They are form of payment, mechanics of payment delivery, and the scheduling of payments. These procedures are relatively straightforward and generally do not pose any special difficulties for formulating the restitution plan. Arrangements are even simpler when community service restitution is imposed since no cash payments are involved. Information about work performance can be easily conveyed back to the program staff. Problems can, however, emerge with monetary payments once the restitution plan has been set in motion. These difficulties will be discussed later in this report when issues relating to monitoring and enforcing the restitution plan are examined (See Case Management, pp. 56-59).

Form of payment concerns the specific way in which the offender pays the installments of his/her restitution settlement. Payment can take the form of cash, personal check, money order, or certified bank check. Each program should decide which form is preferred for its own purposes. The principal consideration is usually one of convenience although the problems of large cash payments for reasons of security and personal checks for reasons of insolvency ("bouncing a check") might discourage the use of these two forms of payment.

Mechanics of payment delivery entail basically minor, logistic details related to insuring that the victim is actually compensated. Arrangements can be made for the offender to deliver payments either to the program or directly to the victim. Payment to the program is generally the preferred procedure since direct payment to the victim might produce added distress and trouble. For instance, if the offender failed to make regular payments, the victim might find himself/herself in a monitoring and even perhaps policing role with respect to the payment plan. This experience could be especially unpleasant to some victims. On the other hand, if one of the stated goals of the program is to promote interpersonal contact between offender and victim, emphasis will probably be placed on direct delivery of payments to the victim by the offender.

Scheduling of payments is simply concerned with determining the number of payments to be made during the time frame of the restitution plan. The simplest method for arranging this schedule is to divide the amount owed by the number of payment periods which will occur while the offender is in the program. The payment periods usually coincide with the offender's salary schedule.

ADDITIONAL LEGAL ISSUES

A perplexing legal question arises in determining the scale of the restitution settlement when it is necessary to decide whether a defendant should be required to pay restitution for losses and injuries resulting from other crimes he/she has not yet been tried for but has admitted being involved in. Feinman (1977:9) claims that state courts throughout the U.S. have not answered this question with any degree of uniformity. In the most widely cited case of this type, People v. Miller, the California state court after having developed a restitution plan for the offender modified this plan to include compensation for damages suffered by victims of the offender's other criminal acts. These crimes were not related to the act for which the defendant had been convicted. This modification was upheld by the state appeals court on the grounds that a restitution order exceeding the losses caused by the crime for which the defendant was convicted is valid if it can be shown that the restitution order is likely to rehabilitate the defendant. Most state courts which have faced this situation, however, have not chosen the California solution and instead have limited the offender's restitution order to losses and injuries which are a direct consequence of the act for which the offender has been convicted.

Another complicated legal question which has arisen in setting the amount of restitution concerns the assessment of responsibility for a loss caused by multiple offenders. In pointing out that state courts have not reached a uniform resolution to this issue, Feinman (1977:12) has described some of the solutions which have been reached.

> Some courts state that multiple offenders are jointly and individually liable for all injuries which result from their criminal activities. Thus each offender is individually liable for the entire amount of loss and all offenders are jointly liable for the entire loss. Other states have decided that when there are multiple offenders, each offender should be required to pay his pro rata share of the losses. Thus, if there are four offenders, each offender would be required to pay one fourth of the victim's loss. Still other states have indicated that where there are multiple offenders it is appropriate for the trial court to conduct a fact finding hearing to determine the degree of responsibility each of the offenders must bear for purposes of the restitution order.

Feinman suggests that the most logical approach is for the court to presume in the case of multiple offenders that they should be equally liable for the losses and injuries caused by their criminal acts unless it can be shown that one of the offenders is more responsible for the crime than the other offenders.

ANCILLARY SERVICES

In addition to providing a mechanism through which the offender can compensate the victim or the community, some restitution programs offer various "ancillary services" extended to both victims and offenders. Ancillary services refer specifically to additional activities which relate either to some aspect of the restitutive function itself or to certain identified needs which seem to be obstacles to successful completion of the program. These services are intended to enhance and facilitate the primary goals and objectives of the program.(19) The kinds of ancillary services offered will reflect the extent to which the program's goals and objectives are focusing primarily on the victim or the offender. More often than not, there will

be a mix of additional services since most current programs address themselves to the needs of both offenders and victims in the restitutive process.

In restitution programs the majority of ancillary services are provided for the benefit of the offenders. Special offender needs are pinpointed by program staff either during intake or while the restitution plan is being developed. Depending upon what the specific need may be, the actual service can be initiated at any one of a number of stages in the operation of the program. For example, if staff notice that an offender is unable to complete applications for employment due to inadequate reading and writing skills, they can immediately initiate an educational enrichment service before any attempt is made to proceed with job placement and victim repayment. In considering the possible array of ancillary services, one necessarily encounters the question of how wide a range of additional services should restitution programs try to develop. In describing possible designs for model programs, Edelhertz (1975:91) warns against the tendency to pursue other activities in the context of a restitution program.

> Restitution should be the primary purpose of the program. The energies of the program staff should be directed toward facilitation of the restitution obligations (development of employment opportunities, etc.). The program should resist the temptation to rely or "fall back" on more traditional methods of treatment of offenders.

The principal danger in a program's offering a wide array of additional services seems to be the possibility of overextending the staff into supervising activities where they do not possess requisite skills.

Ancillary services for offenders can assume two general forms: voluntary or required. In some programs offenders are allowed to decide whether they want to participate in any activities other than those tied directly to the restitutive process. In other programs offenders are required to participate in the entire battery of services offered. In some instances programs require offenders to participate in certain activities such as group or individual counseling and allow participation in other activities to be optional.(20)

One particularly troublesome problem can arise regarding the provision of ancillary services for offenders. This difficulty revolves around the potentially discriminatory aspects of such services. The Schneiders have pointed out that in providing a wide range of social and psychological services to offenders, a program can appear to discriminate against nonoffenders who are not eligible for such services. As is the case with offender employment where stringent conditions must be imposed on the use of salaries, efforts must be exerted to show that ancillary services are not rewards for breaking the law. A quite similar problem has already been discussed in this report in connection with program's obtaining employment for offenders (See Scope of Eligibility, pp. 32-36).

The other recipients of ancillary services, although on a much less frequent basis, are victims. Such services usually entail some form of victim advocacy where someone from the program staff speaks on behalf of the victim during the development of the restitution plan. Other services which are sometimes extended to victims include developing documentation to specify amount of losses suffered, providing transportation to the court, and providing assistance in recovering stolen property. In addition, restitution programs will on occasion refer victims to other agencies for social services such as psychological counseling and legal advice.

RESTITUTION as SOLE SANCTION/PART of MULTIPLE SANCTIONING

The question of whether restitution should be used as a sole sanction or in conjunction with other sanctions has been a subject of continuing debate among many students of restitution. Lewis (ms:9) has suggested that restitution is most appropriate as a sole sanction in pre-adjudicative cases and can be justified as a sole sanction for minor offenses in post-adjudication cases. Galaway and Hudson (1972) have argued that restitution as a sole sanction should be restricted to nondangerous offenders. In contrast, Schafer (1968) has indicated that society should always reserve the right to impose sanctions in addition to restitution as an offender if circumstances dictate.

As a practical consideration, Harland et al. (1979:56) in their analysis of adult restitution programs point out, "In almost every restitution program studied to date, restitution has been used in an add-on fashion, even where the original program objectives included reducing the intrusiveness of the system." Much the same situation has been shown to exist with respect to juvenile restitution programming where the sanction is utilized most frequently in conjunction with court probation. It has long been a standard practice in juvenile courts for judges to link restitution orders with probation (Schneiders et al., 1977).

In summarizing this complex subject, Schneider and Griffith (1980:1) have pointed out that three principal arguments have been made for the combination of restitution with other penalties. They are:

A. Restitution as the sole sanction may constitute "insufficient punishment."
B. For restitution to be "constructive," it needs to be guided by other formal sanctions.
C. Unless restitution is made a condition of probation or some other sanction, it cannot be enforced.

On the other hand, these authors suggest that two general categories of arguments against the use of restitution in combination with other sanctions exist. They are:

A. Restitution should not be required as a condition of probation because it increases the likelihood of failure of probation; it is too costly; and it places too great a burden on probation officers.
B. Restitution should be used as a sole sanction, where appropriate, because it is suitable for some offenders; it is cost-effective; and it will generate knowledge about the feasibility of restitution as a sentence on its own right.

In the most important research on these issues to date, Schneider and Griffith (1980:23-27) have presented some fascinating findings. Based upon preliminary data drawn from the current National Juvenile Restitution Initiative, Schneider and Griffith compared restitution as a sole sanction with restitution combined with other sanctions in terms of (1) offender types most likely to be assigned each type of restitution and (2) the likelihood of reoffendering if assigned each type of restitution. Regarding the second issue, they conclude that juveniles making restitution as a sole sanction are less likely to reoffend and are also more likely to complete their restitution requirements than are juvenile offenders saddled with restitution as part of a multiple sanction. Although these findings may be subject to some revision, they will undoubtedly have important policy implications for future restitution programming.

CASE MANAGEMENT

Once the restitution plan has been developed and all concerned parties--program administrators and staff, victim, offender, court personnel, law enforcement officials, etc.--have reached agreement about the conditions imposed by the plan, the next major stage in the restitutive process is the actual management of the case. This responsibility is usually assumed by various members of the program staff(21) although certain procedures may be shared with individuals and agencies outside the program (ways in which they may occur will be discussed below). Case management entails (1) routinely monitoring the progress of the offenders, (2) enforcing the conditions of the restitution plan if problems arise, and (3) closing the case either upon successful completion of the restitution agreement or upon failure to meet the obligations.

ROUTINE MONITORING

At the outset the procedures for monitoring the restitution order usually focus on activities such as aiding the offenders in preparing for, seeking, obtaining, and maintaining employment. Difficulties arise sometimes in this area because many of these juveniles do not possess the requisite skills nor have they had previous training. If these offenders were easily employable and were able to establish and maintain good relations with fellow workers and supervisory personnel, they would not have found their way into restitution programs in the first place.

Later, once offenders are employed, monitoring activities will be directed more toward money management issues in the case of monetary restitution or performance issues in the case of community service. Monitoring monetary obligations should be a routine procedure where an accounting system is used for any missed, late, or partial payments. Monitoring service obligations is somewhat more complex. Here, key issues include the number of hours of service performed, the number of specific tasks completed, the number of times the offender was late or absent, and the level of supervisory satisfaction/dissatisfaction with the offender's work performance. In discussing how this information might best be obtained, Harland et al. (1979: 63) point out a potential difficulty in relying upon employers or victims as the principal source.

> Unless independent supervision is provided by program staff or other criminal justice agents, the recipient/work supervisor can be placed in an awkward policing role; as a result, fear of reprisals, threats, or empathy with the offender can lead to inaccurate reports of the offender's performance. Conversely, placing supervision duties in the hands of non-criminal justice personnel, especially victims, might lead to overzealously critical reports for personnel or vindictive reasons. Independent checking through occasional site visits and adherence to objective performance criteria can minimize this problem.

In the case of both monetary and service obligations, the program, as part of its monitoring procedures, should maintain contact with all parties who have an interest in the progress of the offender, especially the victim and the referring agency. From an organizational standpoint the wide range of responsibilities entailed in case management can frequently give rise to a major problem, namely manpower shortages. Short of obtaining additional funding to secure more staff, the most readily available solution appears to be the use of volunteers. Bryson (1976:9) notes that seven of the eleven programs in her survey claimed to use volunteers for various aspects of case management. However, a drawback to this solution is that extreme

demands can be made upon regular staff's time and energy in the recruiting and training of these volunteers.

ENFORCEMENT MEASURES

In order for a restitution program to remain effective, it must maintain a sense of credibility. Confidence in program performance results in large part from the ability to enforce the conditions of the restitution order. As Harland et al. (1979: 14) point out, a program which imposes but is unable to enforce restitution sanctions is susceptible to victim disillusionment and offender disdain. In general, pressures against non-compliance and default are present because most restitution plans, especially those enacted at post-adjudicative stages, are bolstered by the threat of additional sanctions if the offender does not comply with the conditions of the agreement. Strongly supporting this position, Galaway (1977c:6) has argued that if restitution programming is to succeed, the criminal justice system must retain the option of imposing a more severe sanction when the offender defaults on his obligation.

Whether a program can, in fact, enforce the conditions of the restitution order is dependent upon the way in which authority over the offender is delegated at the time of referral to the program. The structuring of legal authority over the offender can assume several forms. The program may possess sole responsibility for enforcing the obligation and can initiate actions for further processing if default occurs; the program may share authority for enforcement with the referring agency and will have to confer with it before initiating further processing; the program may possess no powers of enforcement--serving only as a monitor of restitutive activities--and will have to rely upon another source of authority to initiate steps toward further processing. The last of these three possibilities occurs usually when restitution is ordered by the judge as a condition of probation. Additional legal steps can be taken only at the discretion of the court; if the judge decides that the conditions of probation have been violated, he may decide to revoke probation and to make another, more severe disposition.

The decision to void the restitution agreement and to proceed with additional formal processing can, in some instances, raise serious legal questions. These questions are especially pronounced in situations where restitution has been imposed as a condition of probation. When restitution has been imposed at a pre-adjudication stage, there are, in contrast, no binding legal controls which may be exercised over defaulting offenders. The only control is the threat of referring the offender to the courts for formal processing (Feinman 1977:14-15).

If it becomes apparent to program staff and other concerned parties that the offender is either unwilling or unable to comply with the conditions of the restitution order, several responses are available for trying to avoid terminating the agreement and referring the offender back for additional formal processing. Both the NOSR report on restitution management (1979:37) and Harland et al. (1979:63-64) suggest possible remedies, short of the drastic step of termination, to the problems of non-compliance. These interventions assume two forms: sanctioning procedures and plan re-evaluation. With the former approach where unwillingness to comply is the central issue, the staff might first issue an informal, in-house reprimand and not notify other concerned parties; if the violation is more serious, the program staff might decide to contact all concerned parties and hold a formal meeting where a severe reprimand would be issued and notice would be served of possible termination. With the latter approach where inability to pay for whatever reason is the central issue the thrust

of staff efforts will center on helping the offender who has experienced difficulties in meeting the conditions of the original restitution plan.

Under this conciliatory approach, attempts to salvage the process might involve either re-negotiating the restitution agreement or temporarily halting it. In both instances all parties concerned with the restitution plan should be contacted to determine if these changes are acceptable. Precipitating factors for taking either step might include something as innocuous as the offender's employment being altered significantly or cancelled for reasons outside his/her control or in a more serious vein the offender's being charged with a new offense and receiving a disposition which precluded compliance with the restitution order. In commenting on the problems associated with defaulting on the restitution order, Edelhertz (1976: 67) comments

> Defaults in payment should not be treated simply as enforcement matters. They may indicate recalcitrance on the part of offenders, but may also be indicators of the inappropriate nature of original restitution bargains. Default hearings should therefore be an occasion for review of the continued desirability of the original restitution order, as well as for the review of the narrow reasons for the defaults themselves.

If all of these interventive steps fail and the offender refuses to co-operate with efforts to salvage the process, termination procedures must be initiated.

CASE CLOSURE

The final stage in case management, case closure, has two possible outcomes: (1) the offender's successfully meeting his/her restitutive obligations and being released from program supervision, or (2) the offender's failing to meet the conditions of restitution and being terminated from the program. In the case of successful completion, program staff should inform all concerned parties, especially those who initially referred the offender and/or are still exercising some form of legal authority over him/her, about the offender's completion of program requirement. At that point, the juvenile may or may not be subject to additional supervision from other agencies, but from the standpoint of the restitution program, the offender is freed from all obligations.

In the case of default, program staff should inform all concerned parties about the failure of the offenders to comply with program requirements. There are a number of possible conditions under which the offender may be considered to have failed to fulfill his/her obligations. As Harland et al. (1979:57) suggest

> These might include an unjustified failure:
> (1) to meet a certain number of payment/service appointments (e.g., missing three consecutively);
> (2) to meet a certain level or standard of payment/service (e.g., below 80 percent of the payment per period for three periods);
> (3) to meet a certain consistency of payment/performance (e.g., more than two hours late for four service appointments; or more than one week late for four payments periods).

At that point, depending upon which agency is exercising final authority over the juvenile, the decision must be made whether to extend the existing supervision conditions or period or to seek further, formal processing. Regarding the advisability of termination, Harland et al. (1979:65) have offered the following insightful comment.

> No matter what objective is being pursued through the use of restitution/community service, unsuccessful terminations for willful non-performance can have very limited utility. Beyond the possible deterrent effect upon other offenders considering default, termination can only frustrate victim compensation objectives and increase the level of costs and intrusiveness of the system. Consequently, actions short of termination must be considered extensively by program planners.

Chapter V

CONCLUSIONS: SUMMARY, RECURRING PROBLEMS, AND RECOMMENDATIONS

SUMMARY

The preceding survey and analysis of issues associated with restitutive justice have attempted to explore and illuminate the principal dimensions in the evolution, incidence, and practice of this sanctioning approach in juvenile practice. A wide range of theoretical and practical concerns have been addressed in this survey effort. The following summary of restitution issues will focus on the major topical areas examined in this report.

HISTORICAL, CROSS-CULTURAL and PHILOSOPHICAL PERSPECTIVES

As one approach in the set of compensatory practices for righting criminal misconduct, restitution is a rather ancient, reparational means for intervening with socially violative behavior. Its origins reside in the attempts of early societies to resolve disruptive situations by restoring equity to victims of crime. The earliest use of compensatory practices sought to achieve social equilibrium through confrontational and conflictive acts of vengeance; these practices always contained the possibility of setting off chain reactions of violence. Out of this rudimentary approach emerged more moderate and less disruptive measures for compensating victims. This transformation witnessed the emergence of true restitution.

The practice of restitution reached its zenith in the European Middle Ages under a system referred to as "composition." This approach was characterized by elaborate schemes for assessing the compensatory value for any offense for which restitution could be imposed. During this period particular emphasis was placed on the use of restitution in crimes against persons. In a similar fashion, the occurrence of systems of restitution in non-Western societies was marked by the use of this sanctioning approach in situations of transgressions against persons.

Eventually, these systems of compensation disappeared from European societies as the State came to monopolize all authority for official response to criminal misconduct. Occasional calls for the use of restitutive justice were voiced over the centuries following this decline in interest by the 15th century. These pleas met with little response. Only with the revival of interest in restitution during the present century have serious attempts been made to employ the approach.

Those calls which were issued between the 16th and 19th centuries for a return to restitutive justice clearly reflected the dominant values for responding to criminal behavior. The limited interest expressed in restitution centered on obtaining retribution or some utilitarian form of punishment. In contrast, the recent revival of interest has largely grown out of a concern for the rehabilitation of the offender as well as from the desire to provide reciprocity to the victim.

The myriad of ways in which restitution has been viewed over the ages as an intervention in criminal behavior reflects the inherent multifacetedness of the sanction.

By its nature, restitution can in principle be used to satisfy any of the common objectives of justice--punishment, deterrence, and rehabilitation. This quality has led to the phenomenon of various dimensions of the approach being stressed at different times in history when various criminological paradigms were in ascendancy. This versatility which has withstood the trials of historical and cross-cultural testing suggests a unique capability for restitution to satisfy adherents of many, diverse, interventive positions during the current eclectic era of criminal justice. This era is characterized by calls for diversion and community-based treatment as well as demands for determinate sentencing and maximum incapacitation.

CURRENT PROGRAMMING EFFORTS

Although the resurgence of interest in restitution reflects to a slight degree a desire to punish offenders and to deter future criminal misconduct through example, the major impetus for programming has centered on the rehabilitation of the offender. With this as a primary objective, planners, administrators, and criminal justice practitioners have developed a number of different kinds of programs representing the various combinations of components which seem to be workable in practice. These efforts suggest the possible range of program forms which can result from different auspices, stages of implemtnation, types of restitution, eligibility criteria, services provided, and form of restitution plan.

The level of interest in developing and implementing formal programs has received an important boost from the federal government's sponsorship of juvenile restitution programming. The recent national juvenile restitution initiative has sparked considerable interest both in the practical issues associated with operating such programs and in the various theoretical and evaluative questions which arise. Especially noteworthy is the attention which this initiative has generated concerning the possible inclusion of more seriously delinquent youths in these programs. This aim is in striking contrast to the emphasis which has traditionally been placed on confining restitutive justice in the U.S. to less serious, property offenders.

MANAGEMENT ISSUES

The final test of the various ideas and concepts associated with restitutive justice occurs in the attempt to put this sanctioning approach into practice. As has been pointed out in considerable detail in the management section of this report, a myriad of "nuts and bolts" issues must be addressed in order to successfully design and operate a restitution program. The range of organizational, fiscal, and legal concerns which have been examined were grouped under six topical headings: stages of implementation, goals and objectives/benefits derived, scope of eligibility, victim/offender relations, development of restitution plan, and case management.

Restitution programs can be located at any point in juvenile justice processing. Most current efforts, however, have tended to place these programs at the adjudicative and post-adjudicative stages in processing. Restitution is most commonly found to be used by juvenile court judges as a condition of probation. Although a number of benefits can be derived from locating programs at earlier stages in processing, the legal and enforcement problems associated with its use prior to adjudication raise some doubts about the efficacy of pre-adjudicative placement.

A number of separate goals and objectives can be chosen as appropriate for restitution programs. Programs frequently attempt to achieve several goals simultaneously. Sometimes, this selection of multiple goals will lead to program conflicts and confusion since such aims may work at cross-purposes. These aims, whether pursued

singularly or in combination, are always directed toward obtaining certain benefits. Four possible recipients of restitutive activities can be identified: the victim, the offender, the community at large, and the juvenile justice system itself. Based upon which goals and objectives are selected as important for a particular program, a number of program models can be constructed. These models represent the various arrangements of key organizational dimensions which can be combined into workable programs. At this point in time considerable difficulty exists with regard to determining which of these models are the most effective in achieving their aims and why this is the case.

The decision regarding which offenders are most appropriate for inclusion in restitution programs is still open to debate. Recent programming has almost exclusively focused on accepting property offenders on the grounds that juveniles adjudicated for serious crimes against persons would pose too many problems for treatment in these programs. Arguments favoring the inclusion of more serious offenders in these programs are, however, warranting more consideration.

One of the most hotly contested issues in restitution programming concerns the possibility of victim/offender relations. Strong arguments have been presented both in support and in opposition to contact between these parties as part of the restitutive process. Although evidence demonstrating that offenders and victims benefit from developing personal relationships has been offered, practical experiences in encouraging this kind of interaction have indicated that serious difficulties often arise. These difficulties suggest that under certain circumstances either the victim or the offender may encounter considerable personal pain in maintaining such relationships. As a result, most current programs are minimizing the importance of direct victim/offender relations.

The development of the restitution plan is perhaps the most complex task which must be handled by program planners and administrators. Among the issues which must be addressed are: determining the type of restitution, determining the amount of victim loss or damage, determining the amount of the restitution payment, and arranging for the payment of restitution to the victim. Each of these items can be managed in several ways, and the decision as to exactly how to proceed depends upon factors such as the nature of the offender, his victim, the kind of crime committed, and the expectations and resources of the community in which the program is located.

The final, yet essential task which must be dealt with in restitution programs is the actual management of the case. If no particular problems develop, this procedure usually involves a routine monitoring of the offender's compliance with the conditions of the restitution plan and the closure of the case at the appropriate time. If, however, problems emerge at any point with the offender's performance, a number of corrective measures may be undertaken. When no acceptable resolution to compliance problems can be worked out, procedures for termination and possible further processing of the offender in the formal system should be available.

RECURRING PROBLEMS

In reviewing the issues involved in the evolution and practice of restitutive justice, several potentially troublesome, problem areas for program development and operation become apparent. For the most part, these concerns relate to the set of benefits discussed at length in the management section of this paper (See Goals and Objectives/Benefits Derived, pp. 26-29). The following discussion concerns these possible impediments and obstacles to program success.

In the area of offender rehabilitation, one encounters difficulty with the set of assumptions about what the restitutive process can do for the offender. The notion that a restitution program will increase a juvenile's employability by providing him/her with valuable job training and/or experience can be very misleading. In practice, these youths are frequently placed in menial job settings; instead of decreasing the alienation of the offender from the wider society, restitution may in some cases increase these feelings of alienation. To avoid this possibility serious efforts must be made by staff to have the employment experience be meaningful and serve as a catalyst for future employment.

Somewhat related to this matter of meaningful employment is the problem of how inability to pay affects the selection of offenders for participation in programs. A number of the issues linked to this have already been discussed (See Scope of Eligibility, pp. 32-36). The most pressing problems arising from inability to pay are legal in nature. If offenders are denied access to programs on this basis, the issue of equal protection is immediately raised. Furthermore, youthful offenders who are indigent may indeed be that part of the delinquent population most in need of the kind of intervention provided by restitution programming. Programs should avoid these problems by not allowing inability to pay to be an important consideration in selecting offenders for participation. This may necessitate the program's taking on additional job-related responsibilities, but these duties are manageable and even logical given the juvenile population being dealt with.

In the area of victim satisfaction, one should be sensitive to the possibility that some victims expecting to receive full monetary reparations as a result of being involved in a restitution program will undergo marked disillusionment when this does not happen. This disappointment might follow their discovery that they are going to receive only partial monetary compensation. This problem can be solved by the staff's quickly providing the victim with detailed information about what participation in the program will entail. A variation on this theme of victim disillusionment can arise when in the course of the actual payment process the offender fails to comply with the payment schedule. Victims may react strongly to the act of non-compliance. Only by keeping the victim informed of the progress of the offender in meeting the conditions of his/her restitution order and by describing the various difficulties which may arise in this process will the victim be prepared to deal with all possible outcomes.

In the area of justice system benefits, one encounters the problem associated with whether these programs lower the overall costs of processing offenders. Although the argument can correctly be made that restitution is less expensive than a number of other dispositional interventions, this fact is only true if restitution is being used as a sole sanction. If, instead, it is being used as an add-on sanction (for example, as a condition of probation), it only serves to add greater expense to the other sanctions being imposed on the offender. Planners and administrators in the justice system should be sensitive to the fact that restitution only provides a significant saving in funds if it is used as a sole sanctioning mechanism.

In the area of community benefits, the suggested advantages of an offender's undertaking community service can be misleading. As just suggested, if the youth is performing rather menial tasks, the actual benefit to the community may be minimal. Unless these offenders are placed in work slots which are actually accomplishing something of importance in the community, these "make-work" jobs are going to benefit neither the offender nor the community at large.

A final problem which has plagued a number of alternative programming efforts including juvenile restitution programs is the so-called "widening the net" effect.

This refers to the tendency for programs which have been developed to provide services for a specified delinquent population to be used for other youths who would otherwise not be the recipients of such services. The possibility of this kind of effect surfaced in the National Juvenile Restitution Initiative when it appeared that a number of offenders being referred did not possess as serious arrest histories as had been intended for this initiative. Although this issue is still being examined, concern over it points out the possibility of the "widening the net" effect spilling over into juvenile restitution programming.

RECOMMENDATIONS

Based upon the issues which have been examined in this report and with possible problem areas in mind, a number of recommendations about the planning, implementation, and operation of juvenile restitution programs can be made.

1. The set of legal issues, mostly concerning the enforcement of the restitution obligation, strongly suggests that the sanction should be imposed following a formal judicial finding. This decision about program placement would eliminate all of the problems associated with the use of restitution as an informal, pre-adjudicative practice.

2. The issue of indigent offender and their inability to pay as an obstacle to program participation should be eliminated. Procedures should be established in programs to insure that such offenders be prepared for employment and be placed in regular jobs or community service slots for the purpose of satisfying restitution orders. The major problem which may arise from the program's assuming considerable employment responsibility is the need under certain circumstances to subsidize the offender's employment.

3. Restitution should be imposed on as wide a group of offenders with respect to their arrest histories as possible. The designation of an appropriate target population should not be confined to property offenders but should be extended, when possible, to juveniles who have been adjudicated for crimes against persons. There is ample historical and cross-cultural evidence for the sanction being used for crimes against persons to warrant its use. These precedents are further supported by the currently existing level of technical expertise for translating pain and suffering factors into quantitative form.

4. Planners and administrators should make special efforts to establish and state what the primary goal of a particular program is. In this way, much of the confusion and even conflict over what staff are actually trying to accomplish can be eliminated. This step will also aid in the attempts to determine how effective programs are. The goals of the program should also be clearly communicated to both the offender and the victim.

5. Planners and administrators need to establish a set of procedures for responding to the problem of non-compliance. In addition, offenders at the point of entrance into these programs should be informed about exactly what steps will be taken if they do not comply with the requirements of the program; special emphasis should be placed on the issue of meeting the conditions of the restitution order.

6. Great caution is advised in any effort to bring victim and offender into direct contact as part of the restitutive process. This should be the case whether such an act involves the mediative process in developing the restitution plan, involves the offender's providing direct service to the victim, or involves the offender's making direct payment to the victim. Although strong theoretical arguments have been presented favoring victim/offender interaction, most recent experiments with these practices have revealed numerous practical difficulties, some sufficiently severe to threaten program success.

7. Advice about due process issues should be provided to all offenders who agree to participate in restitution programs. In addition, legal counsel should be made available to these individuals. These steps are especially important when the restitutive sanction is being imposed at any of the pre-adjudicative stages of processing where some confusion may exist regarding enforcement issues. Of course, legal counsel should be available anytime there is a chance that program participation will be terminated and the offender will be subject to further processing.

NOTES

Chapter I.

1. This type is rarely used in juvenile restitution programs in the U.S. and will not be explored in any detail in this report.

2. In 1970, the Advisory Council on the Penal System in Great Britain issued a report of its subcommittee recommendations on non-custodial and semi-custodial penalties. This report is popularly referred to as The Wootton Report.

3. A large literature has emerged in response to the expanded interest in victims, usually referred to under the rubric of victimology, or victimization studies. This inquiry represents a major turning point in the orientation of contemporary criminological theory. Sparked by the publication of Von Hentig's study, The Criminal and His Victim (1948), a plethora of reports, articles, and books have appeared. Focus has centered on two major areas of interest: the difficulties of the victim in dealing with the machinery of the justice system and the victim's relationship to the criminal offender. It is in the latter that one finds the discussion of systems of reparation to the victim.

4. This assertion appears to have been well substantiated by recent research in the field of Equity Theory (For an overview, see Walster et al. 1978) which "views social interaction as a process of reciprocal exchange, governed by a norm of distributive fairness" (Uthe and Hatfield 1978: 74).

Chapter II.

1. This philosophical movement stressed the importance of human rationality in all decision-making and argued for the perfectability of social institutions. For penologists this shift in orientation led to an assault on the use of unusually cruel and oppressive practices, but at the same time continued to champion the use of appropriate punishments as a means for obtaining justice.

2. Fry soon discovered that while restitution might serve as an important factor in the rehabilitative process, this approach did not generate enough money to aid large numbers of victims. Consequently, she advocated a system where compensation would come from a government fund raised by general taxation. Her efforts led to the development of several important national programs of victim compensation, namely the New Zealand Act of 1963 and the British Compensation Program of 1964.

3. In the United States the scheduling of numerous public, professional, and academic forums where restitutive justice has been the focus exemplifies the growth of interest in the concept. For instance, four International Symposia on Restitution have been held in Minnesota over the past five years (1975, 1977, 1979, 1980). These symposia have been jointly sponsored by the Law Enforcement Assistance Administration and the Minnesota Department of Corrections. The proceedings of the first two symposia have been published (Hudson 1976; Hudson and Galaway 1977; Hudson and Galaway 1978), and the papers from the third symposium are being prepared for publication. A similar conference, jointly sponsored by the Governmental Services Institute at Louisiana State University and the Institute of Urban Studies at the University of Texas at Arlington, was held in Louisiana in 1977, focusing on restitution and victims of crime. The proceedings of this conference have also been published (Bradshaw and English 1977). Perhaps even more noteworthy is the

fact that restitution has been included as an innovative sanctioning approach in numerous model sentencing proposals such as those offered by the American Law Institute, the American Bar Association, and the National Advisory Commission on Criminal Justice Standards and Goals; in addition, restitution was recommended in the President's Commission Task Force Report on Corrections (1967).

Chapter III.

1. For purposes of illustration, we have included descriptions of both pre-adjudicative and post-adjudicative programs, operating on the one hand as a diversion to further formal processing prior to adjudication (See Appendix A) and on the other hand as an alternative to incarceration and other dispositional outcomes (See Appendix B). In the former case, the selected example is the Community Arbitration Project (CAP) in Anne Arundel County, Maryland (Blew and Rosenblum 1979); in the latter case, the selected example is The Victims Program in Tulsa, Oklahoma (Galaway et al., 1979).

2. Surprising is the fact that although the initiative was designed primarily as an alternative to incarceration, to date (December, 1979, Monthly Report) about 75% of the referrals are being placed on probation in addition to receiving a restitution order.

3. OJJDP has chosen the Institute of Policy Analysis (IPA) in Eugene, Oregon, to be the national evaluator for this project. Headed by Peter and Anne Schneider, the evaluation effort is entitled the National Juvenile Restitution Evaluation Project. IPA has selected six program sites - Seattle, Washington; Ventura County, California; Oklahoma County, Oklahoma; Dane County, Wisconsin; Clayton County, Georgia; and Washington, D.C. - to be the focus for "intensive" evaluation.

Beginning in June of 1979, surveys aimed at four groups: juvenile offenders, victims of juvenile crime, juvenile justice professionals, and members of the community-at-large, were initiated at the six sites. In the juvenile offender and victim surveys IPA hopes to determine the impact of involvement in the restitution programs on attitudes and behavior. The survey of juvenile justice professionals will collect opinions concerning the goals, objectives, organizations, and procedures of these programs. The survey of members of the community-at-large (200 persons in each jurisdiction being randomly selected from current telephone directories) will measure attitudes concerning the threat of juvenile crime and the types of dispositions appropriate for different types of juvenile offenses.

Eventually, the evaluations as a whole will provide findings about the programs, their staff, the offenders, and the local communities in which these restitutive activities are being carried out. IPA is also responsible for implementing the information system required by OJJDP. Each month IPA issues a report presenting a summary of information derived from Management Information System (MIS) forms which are filled out by all offenders entering the programs. In addition, the monthly reports present preliminary findings from the local evaluations as they become available. The technical assistance contract for the initiative was awarded to the National Office for Social Responsibility (NOSR).

4. Through December of 1979, 59 programs had begun to submit summaries to IPA. Information in these summaries represented on-site data collection through September 30th.

5. The following description of program implementation is incomplete since a number of programs are yet to be put into operation. But, we feel it is important that the reader leave this report with some sense of the principal directions that this nation-wide effort is taking.

6. The programs in this listing do not total 100%. Within the State of Washington, where the grant is administered state-wide, organizational arrangements vary from site to site.

7. Based on information in the September monthly report, 69% of the local programs, 62% of the state-wide programs, and 66% of the programs overall are utilizing subsidized employment.

8. A handful of programs had begun to provide services to offenders as early as January of 1979.

9.

Types of Offense	Percent of Total Referrals
1. Crimes Against Property	83%
Burglary	34.2%
Larceny	18.7%
Vandalism	12.7%
Motor Vehicle Theft	9.8%
All Other Property Crimes	9.6%
2. Crimes Against Person	10%
Assault	5.2%
Robbery	2.6%
Rape	0.2%
All Other Personal Crimes	1.5%
3. Victimless Crimes	4%
4. Minor Crimes	2%

10. Cases where the youth completed the restitution agreement as ordered by the court comprise about 80% of all closed cases. The remainder of closed cases were problem cases that were terminated by programs after attempts to modify and adjust restitution orders proved to be ineffectual.

11. Persons rather than households, public property, or businesses, tend to be the most frequent victim type.

12. OJJDP's Program Announcement did state that programs could accept juvenile offenders from the courts who would have been on probation rather than incarcerated.

13. One important consideration in describing a project not yet fully implemented is that certain client, staff, and organization characteristics may change as additional programs become operational. For instance, several of the state-wide programs containing a number of separate program sites are only now beginning to provide services to offenders and have not forwarded client statistics to IPA. These programs are the principal ones that will be serving inner-city areas where according to official data large numbers of serious juvenile offenders reside.

The likelihood is that serious offenders will constitute a larger proportion of the client population in the restitution initiative as time passes.

Chapter IV.

1. Edelhertz (1975:28) refers to these endeavors as "private restitution" since the acts of misconduct are never brought to the attention of the police or prosecutive agencies, and the disputes are resolved entirely in a private manner.

2. The difficulties posed by Laster are not an important concern for this report since these informal negotiations fall outside the context of established guidelines and structured programs, the area of our primary interest.

3. The Bryson survey (1976) mentions a number of such programs including the Community Youth Restitution Program in East Palo Alto, California; the Seattle Community Accountability Program in Seattle, Washington; and the Community Arbitration Program in Anne Arundel County, Maryland.

4. The act of disposition may serve as the culmination of the adjudicatory hearing itself or may require a separate hearing held later and presided over the same judge.

5. The Minnesota Restitution Center, which became operational in September, 1972, represents the first attempt to develop and implement an offender/victim program within the context of a community-based, residential facility. The Center focuses only on convicted, adult offenders; these offenders are diverted into the program out of Minnesota State Prison four months after their admission into the prison.

6. Juvenile offenders referred to restitution programs at this stage of processing have not appeared in court before a judge or magistrate and consequently have not had any judicial finding rendered against them. They are not subject to any legal constraints which might have arisen from the particular act of criminal misconduct involving them at this point in time with the justice system.

7. This document was prepared as part of a larger project, the National Evaluation of Adult Restitution Programs, funded by a grant from the U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice.

8. Although these programs have been designed to be used solely with adult offenders, the procedures for developing the restitution plan could just as easily be employed with juveniles.

9. For example, community panels and hearings play a key role in developing the restitution plan in the Community Accountability Program in Seattle, Washington, the Urban Court in Dorchester, Massachusetts, and the Juvenile Restitution Program in Lowell, Massachusetts.

10. In seeking to provide a more valid index of crime and delinquency, Sellin and Wolfgang developed a ratio scale of seriousness for a variety of criminal acts. The results of these efforts were initially published by the two authors in The Measurement of Delinquency (1964).

11. For a more detailed description of exactly what constitutes each of these types of losses, see Harland et al. (1979:21-23).

12. The motives which seem generally to drive victims to overestimate their losses are simply greed and/or the desire to obtain maximum revenge by placing as great a burden on the offenders as possible.

13. This is not to suggest by any means that these considerations are automatically ignored in programs utilizing negotiation/arbitration models. The point is that in these situations a distinction between the two processes is not always made.

14. One approach which attempts to approximate full restitution as closely as possible has been suggested by Read (1977b:12). In describing the operation of the Non-Residential Sole Sanction Restitution Program in Georgia, he states that when an offender is unable to make full monetary restitution, community service restitution is substituted; the dollar value of restitution owed is converted to equivalent hours of service restitution hopefully reflecting fair market value.

15. The reader should realize Galaway's comments are made with reference to restitution programs serving both adult and juvenile offenders. If he were talking only about juvenile programs, he would probably be somewhat less optimistic in his argument in favor of full restitution.

16. An example of this kind of extraordinary loss is exemplified by an offender who is participating in one of the programs launched by the current National Juvenile Restitution Initiative. This offender committed an act of vandalism resulting in the derailment of a train with a resulting monetary loss of $272,000.

17. This reluctance to consider insurance companies for the third party payment has been supported by a recent Oregon case (1976), State v. Getsinger, which concluded that insurance companies are not eligible to recover restitution payments. The Oregon court argued that the state statute only permitted the direct victim of a crime to receive restitution (Feinman 1977:11).

18. An example of this approach is the Community Accountability Program in Seattle, Washington, where a community panel asks the parents of the offender to agree not to pay restitution. If the parents refuse to agree to this condition, the program may refuse to take the case.

19. The area of job training, assistance, and placement is classified by some students of restitution (Harland et al., 1979; Schneider and Schneider 1979) as an ancillary service. However, in this report when employment-related issues are discussed, they are not considered to be ancillary. Programs which assume responsibility for subsidizing, training, or assisting offenders in their employment efforts do this as part of their primary objective. Consequently, these activities represent part of the key process of developing and implementing the restitution order.

20. The juvenile restitution programs in Dorchester and Lowell, Massachusetts, require all offenders to participate in counselling sessions and often require other types of social service treatment for particular juveniles. In contrast, other programs such as the Community Accountability Program in Seattle, Washington, never require an offender to participate in ancillary services but do inform the juveniles about the types and purposes of additional services available. In the Seattle program these services are kept separate from the restitutive function (Schneider and Schneider 1979).

21. The Schneiders (1979:26) point out, based on their survey of programs, that, "Jurisdictions which have full-time staff for the restitution program normally permit the person or group who developed the plan to implement, monitor, and close the restitution requirement."

APPENDIX A: THE COMMUNITY ARBITRATION PROJECT

The Community Arbitration Project (CAP), a police diversion program in Anne Arundel County, Maryland, is a well-documented example (ABT Associates 1976; Blew and Rosenblum 1979; Bryson 1976; State of Maryland, Department of Health and Mental Hygiene 1976; Schneider and Schneider 1976) at this early stage in processing. This program was developed by the Anne Arundel County Office of the State Juvenile Services Administration with a three year grant from LEAA and has been in operation since June, 1974. It serves as a voluntary alternative for juvenile misdemeanants who would otherwise be referred to the court for adjudication. As ABT Associates point out in their evaluation (1976:1), "CAP was designed to alleviate the misdemeanor burdern on the court, while still impressing the offender with the consequences of his or her behavior."

CAP maintains a relatively small staff, consisting of a project coordinator-director, two community arbitrators, a social work consultant, a research assistant, three work site supervisors, a secretary-clerk/typist, and a docket clerk. Between June of 1974 and February of 1976, this staff processed 4,233 offenders through arbitration (ABT Associates 1976:10). The objectives of the program are pursued through the combined efforts of a number of concerned groups such as the police, court intake personnel, and members of the community.

For a number of minor offenses (See Appendix G), city, county, and state police officers located in Anne Arundel County have been authorized to issue citations or "tickets" (See Appendix H) to suspected juvenile offenders, requesting them to appear approximately one week later at a community arbitration hearing. Copies of this citation are also given to both the parents of the offender and the victim. Victims are encouraged to attend the hearings. Bryson (1976:6) reports that victim attendance at the hearings has been approximately 50%. The hearing is conducted in a courtroom and is presided over by an arbitrator who is an attorney with juvenile court experience. The arbitrator explains the voluntary nature of the proceedings to the parents and the youth. He asks the family whether they would like to proceed with arbitration or would prefer to have the case referred back to court intake for formal evaluation and processing. If they agree to participate, the arbitrator has several options: close the case for insufficient evidence; forward the case to the State's Attorney for the filing of a petition; informally adjudicate the case; and continue the case for additional evidence after which time one of the above three alternatives is chosen.

At the heart of the program is the informal adjudication process in which the offender participates. The program only has meaning if the offender agrees voluntarily to submit to this process. Before informal adjudication can occur, the youth must admit culpability for the presenting offense. This admission of guilt is applicable only for the purposes of this informal hearing and is not binding in any actions taken at future civil or criminal hearings. At that time the arbitrator points out that the offense, if committed by an adult, would result in criminal prosecution. However, the arbitrator agrees to leave the file open for 90 days and not to forward it to the State's Attorney. He then directs the youth to perform community service for a

specified number of hours (10 to 60) and assigns him/her to a work site supervisor. Factors involved in the arbitrator's decision to assign a certain number of hours are the severity of the presenting offense and the amount of time the youth has available to work. At this point in the negotiation the youth and the parents are required to sign a document agreeing to the conditions of the hearing and its finding.

The work site supervisor is a crucial link in the arbitration process. This individual helps the youth to identify the kind of work placement in which he/she demonstrates the greatest interest and tries to place him/her in that setting. Once the youth is placed in an appropriate assignment, the supervisor monitors his/her progress. At the conclusion of the 90-day period, the supervisor delivers a progress report to the arbitrator. If the assignment has been successfully completed, the offender's case is closed. If the work assignment has not been completed, the case remains open, and the arbitrator decides whether to subject the offender to further arbitration or to refer this case to the State's Attorney for the possible filing of a formal juvenile court petition.

In addition to the more usual disposition of community service, arbitrators frequently assign other kinds of sanctions to the offenders. These include counselling, monetary payments to victims, educational programs, holdover for future consideration. Sometimes, more than one service will be assigned. Of the 1137 offenders who were referred to the program and had received informal adjudication through November 30, 1975 (ABT Associates 1976:12), the following dispositions had been made.

Type of Disposition	Number Assigned	Percent of Total
1. Community Service	416	36.5%
2. Counselling	354	31.1%
3. Payment to Victim	99	8.7%
4. Educational Programs	125	10.9%
5. Holdover	44	3.9%
6. Multiple Referrals	99	8.7%

Through November 30, 1975, 845 offenders (85% of all youths arbitrated) had successfully completed their assignments and had had their files for the presending offenses closed (ABT Associates 1976:12).

In evaluating the program, ABT Associates claim that CAP, in trying to achieve the six separate goals set forth in the original program design, had demonstrated varying degrees of success in each area except in reducing recidivism. CAP set the following six goals:

(1) to increase the speed of handling misdemeanor cases in the courts
(2) to facilitate the reintegration of troubled youth in the community
(3) to involve the community in the problems of juvenile crime
(4) to better the victim's feelings about the juvenile justice system
(5) to prevent more serious criminal activities among juveniles by intervening quickly with minor offenses
(6) to facilitate certain research on the effect of the program on other actors in the system

The evaluators examined the impact of the program on recidivism by using a six-month follow-up period and dividing the clients into two groups, first-time offenders and offenders with prior records. In neither case was the correlation of participation in the program with reduction in recidivism significant. However, the evaluators point out that their findings about recidivism are inconclusive and should be considered equivocal.

APPENDIX B: THE VICTIMS PROGRAM

In April 1975, at the request of the juvenile court judge in Tulsa, Oklahoma, a victims program was established. The project was intended primarily for youth at first adjudication. Consequently, the referral is made after guilt is determined at an adjudicatory hearing.

The program is staffed by two full-time coordinators, and youth are referred by either the judge or referee. Typically, once a referral is made a coordinator meets with the youth and his/her parents; this frequently happens after the adjudicatory hearing. The coordinator explains the program requirements and attempts to establish a restitution plan whereby full payment is sought. If the full payment is an excessive amount, however, the coordinator may negotiate for a partial payment agreeable to the victim and offender. If the restitution is community service, the youth and parents are encouraged to find a church, school, or neighborhood organization for which the youth might do volunteer work. The coordinator, if necessary may help but his primary responsibility is to set the total hours of service allowing the youth and parents to determine the type of service and location.

The plan is presented at the dispositional hearing where the judge can make a "strong influence" for the restitution plan, although making restitution is not considered a condition of probation. Galaway et al. (1979), point out in their description of the program that no motion has ever been filed against a youth for not complying. Rather, unsatisfactory progress on restitution is usually accompanied by other violations of probation conditions which are the basis for reporting to the court. The so-called restitution inference may supplement formal probation or an informal disposition, and in most situations the offenders are responsible for paying victims directly.

It is the job of the coordinator to maintain contact, almost always by telephone, with the youth, victim, and community agency. Violations may be discussed with the probation counselor or youth, and review hearings will be held every three to six months. In short, there are six goals for the program:

1. To determine the financial loss to the victim and to bring about some payment of restitution.
2. To develop a vehicle through which recovered property may be returned to the victim from the property of the Tulsa Police Department.
3. To personalize crime by bringing the victim and the offender together so that the offender sees that people are affected by their actions and for the victim to see that the offender is a person of worth.
4. To develop through personalizing crime, treatment techniques that may be utilized so that the offender is not a recidivist.
5. To be a resource person for the victim to aid him in receiving help from legal sources, counseling or treatment.
6. To develop better public relations by showing an increased concern about the victim.

In order to provide a detailed description of victims and offenders who participated in the program, Galaway et al., collected data from official agency files for all victim cases which were opened and closed between December 1, 1975 and November 30, 1978. A total of 251 victims and 291 offenders were identified. In addition, data

were analyzed for all youth who received their initial adjudication during 1978 so that it would be apparent which offenders were referred to the program and which were not referred.

The offenders served by the program during the three-year period were predominantly male (80%), caucasian (79%), and a majority (60%) had no previous court referrals. Twenty-four percent of the youths had two or more previous referrals, and 84 percent had no previous adjudications. The referral offenses were predominantly property offenses (94%), and generally the youth committed the delinquent act with one or more co-defendants (92%). Approximately, half of the youth came from intact families and 56 percent came from families with an annual income of less than $10,000.

Sixty percent of the 251 victims were individuals or households with the rest including businesses, schools and organizations. The mean loss per victim was $207; the mean amount of restitution ordered was $127, and the mean amount actually paid to victims was $90.

About a third of the youth had a community service obligation which averaged 40 hours and of the 218 youths who had monetary restitution obligations, 201 of them made payments averaging $129 each. Thirteen victims received personal service restitution averaging 28 hours and although 71 percent of the victims were willing to meet their offenders, only 54 percent actually did.

In terms of what type of youth were referred to the program, it was found that of the 367 youths who received their first adjudication in 1978, 99 were referred. The vast majority were property offenders (95), although it is important to keep in mind a sizeable number of property offenders (63%) before the court were not referred to the program. Upon examination of the property offenders referred and non-referred, age, race and income had no effect, but cases with previous referrals to court were somewhat more likely to be referred to the program. Boys predominated in the program, and Galaway et al., speculate this may be due to the greater likelihood of girls committing status and other offenses for which there are no victims. Finally, judges were found to refer a higher proportion of initial adjudications to the program than referees. When specifically examined for property offenders, the likelihood of referrals by judges was even greater.

Although Galaway et al., caution about over-generalizations, they draw the following conclusions regarding the operation of this program: (1) the wide-spread use of the telephone over labor intensive interviews and home visits appeared to contribute to the program's efficiency; (2) while not fully utilized in this program, victims did experience a willingness to become involved with their offenders; (3) victim losses were generally modest, but full repayment was not met due to the amount ordered being less than the total loss and the amount actually paid being less than that ordered; (4) there was no apparent bias in program referrals based on family income, age or race; and (5) community service obligations, although a relatively small number of cases, appeared to be completed possibly because the youths were actively involved in selecting the sites and types of service.

APPENDIX C: PROGRAMS INVOLVED IN NATIONAL JUVENILE RESTITUTION INITIATIVE

Site	Project Name	Project Address
1. AK, Fort Smith	Juvenile Restitution Program	Comprehensive Juvenile Services, Inc. 51 South Sixth Fort Smith, AK 72901
2. CA, Ventura	Correction Services Agency Juvenile Restitution Project	501 Poli St., Room 302 Ventura, CA 93009
3. CT, Norwith	Project Detour	317 Main Street Norwich, CT. 06360
4. DC, Washington	Division of Social Services Juvenile Restitution Program	DC Superior Court 409 "E" St. N.W. Washington, DC 20001
5. FL, Broward County	Broward County Juvenile Restitution Project	201 SE 6th St. Fort Lauderdale, FL 33001
6. GA, Clayton County	Clayton County Juvenile Restitution Project	Clayton County Juvenile Court Clayton County Courthouse Jonesboro, GA 30236
7. ID, 4th Judicial District	Juvenile Work Restitution in the 4th District	6300 Denton Street Boise, ID 83704
8. IL, City of Chicago	Restitution for Juvenile Offenders	Dept. of Human Services 640 North LaSalle Street Chicago, IL 60610
9. KY, Jefferson Co.	Jefferson County Juvenile Restitution Project	Dept. of Human Services 835 W. Jefferson Suite 201-A Louisville, KY 40202
10. LA, New Orleans	Orleans Parish Juvenile Court Restitution Project	102 Civil Courts Bldg. 421 Loyola Avenue New Orleans, LA 70012
11. ME, Cumberland Co.	The Restitution Alternative	193 Middle St. Portland, ME 04101
12. MD, Prince George's County	Community Project for Restitution by Juvenile Offenders	Temporary: Office of Youth Coordination 4321 Hartwick Rd. Suite 318 College Park, MD 20740
13. MA, Lynn	Lynn Youth Resources Bureau Individualized Restitution Project for Juveniles	1 Market St. Lynn, MA 01901
14. MA, New Bedford	New Bedford Juvenile Restitution Project	166 William St. New Bedford, MA 02740

Site	Project Name	Project Address
15. MA, Quincy	Juvenile Restitution Project	Dist. Court of East Norfolk 50 Chestnut Avenue Quincy, MA 02169
16. MA, Westfield	Westfield Youth Restitution Program	Assoc. for the Support of Human Services P.O. BOX 1132 Westfield, MA 01085
17. MI, Wayne County	Positive Action for Youth (PAY)	County of Wayne Juvenile Division 1025 East Forest Detroit, MI 48207
18. MN, Hennepin Co.	Hennepin Co. Restitution Program for Juvenile Offenders	Temporary: 915 South 5th St. Minneapolis, MN. 55415
19. MN, Red Lake Reservation	Restitution for Juvenile Offenders	Red Lake Tribal Court System Red Lake Band of Chippewa Red Lake, MN 56671
20. MN, Washington Co. (Forest Lake)	Washington Co. Juvenile Restitution Alternative	Forest Lake Youth Services 256 SW Fifth Street Forest Lake, MN 55025
21. NH, Concord	Friends Restitution Project	Friends, Inc. P.O. Box 1331 Concord, NH 03301
22. NJ, Camden County	Camden County Juvenile Restitution Program	Camden Co. Probation Dept. 327-329 Market St. Camden, NJ 08101
23. OH, Adams & Brown Counties	Adams-Brown Co. Juvenile Offender Restitution Project	15-1/2 Main Street West Union, OH 45692
24. OH, Geauga County	Geauga County Juvenile Restitution Program	12480 Ravenwood Dr. Chardon, OH 44024
25. OH, Hamilton Co. (Cincinnati)	Probationary Restitution Work Detail Program	Hamilton Co. Juvenile Court 222 East Central Park Way Cincinnati, OH 45202
26. OH, Lucas County	Lucas County Restitution Program	Lucas Co. Juvenile Court Family Court Center 429 Michigan St. Toledo, OH 43629
27. OH, St. Clairsville	Belmont-Harrison Juvenile Restitution Project	Sargus Juvenile Center Rouge 1, Hammond Road St. Clairsville, OH 43950
28. OH, Summit County	County Responsibility Project	Summit Co. Juvenile Court 650 Dan St. Akron, OH 44310
29. OK, Oklahoma County	Oklahoma Co. Juvenile Restitution Program	Oklahoma Co. Juvenile Bureau 321 Park Avenue, Room 214 Oklahoma City, OK 73102

	Site	Project Name	Project Address
30.	PR, Rio Piedras	CARISMA (Community Action for Restitution in Services for Minor's Achievements)	Dept. of Addiction Services SEMIT Division P.O. Box B-Y, Rio Piedras Sta. Rio Piedras, PR 00928
31.	SC, Charleston	Juvenile Restitution Project	P.O. Box 2696 Charleston, SC 29403
32.	TX, El Paso	Youth Gap, Inc.	2000 Texas El Paso, TX 79901 City County Bldv. Rm 214 El Paso, TX 79901
33.	VA, Newport News	Juvenile Restitution Program	137498 Warwick Blvd. Newport News, VA 23602
34.	WA, Snohomish	Youth Restitutional Services Project	Snohomish Co. Juv. Ct. 2801 10th St. Everett, WA 98201
35.	WI, Dane County	Youth Restitution Program	1245 E. Washington Ave. Suite 76 Madison, WI 53705
36.	State of Delaware	Family Court of DE Restitution by Juvenile Offenders Project	P.O. Box 2359 Wilmington, DE 19899
37.	State of Nevada	Restitution: An Alternative	250 Park St. Reno, NV 89502
38.	State of New Jersey	State of NJ Juvenile Restitution Program	349 State House Annex Trenton, NJ 08625
39.	State of New York	Adjudicated Delinquent Restitution Project	NYS Div. of Probation Towers Bldg. Empire St. Plaza Albany, NY 12223
40.	State of Washington	State of Washington Post-Adjudicated Restitution Program	LDJP Office of Financial Management House Office Blvd. Olympia, WA 98504
41.	State of Wisconsin	Wisconsin Juvenile Restitution Project	Bureau of Children, Youth and Families State of WI Dept. of Health and Social Service 1 West Wilson Madison, WI 53702

APPENDIX D: SCALING OF SERIOUSNESS OF OFFENSES

Seriousness Category	Definition
Property	
Minor	Property offenses with loss/damage of $10 or less and no forcible entry.
Moderate	Property offenses without forcible entry but with a loss of $11 to $250; forcible entry burglaries with losses of $10 or less.
Serious	Property offenses without forcible entry but with loss/damage exceeding $250 and forcible entry offenses in which the loss is $10 to $250.
Very Serious	Forcible entry burglaries with loss/damage of $250 or more.
Personal	
Minor	Resisting or obstructing an officer, coercion, hazing, intimidation, threat, other similar Part II personal offenses.
Serious	Unarmed robberies and non-aggravated assault (except those named above) with loss of $250 or less.
Very Serious	Unarmed robberies and non-aggravated assaults with losses exceeding $250 and all UCR Part I personal crimes including rape, armed robbery, aggravated assault, etc.
Other	
Victimless	Drugs, alcohol, prostitution, other "vice" offenses; status offenses (runaway, ungovernable, etc.) vagrancy; other similar categories of offenses.
Traffic	Traffic violations include speeding, reckless driving, and other violations involving no loss or damage, injuries, or fatalities are itemized separately within the traffic category.

APPENDIX E: ORGANIZATIONAL DIMENSIONS OF RESTITUTION PROGRAMS

Based upon their survey of juvenile restitution programs in 15 juvenile court jurisdictions, the Schneiders identified seven key organizational dimensions. For conceptual clarity they represented each of the following dimensions as a continuum along which a particular program could be located at any point.

1. GOALS, PURPOSES	victim-oriented	both		offender accountability
1a. Offender Treatment	social services			deterrence
2. TYPES OF RESTITUTION/ EMPLOYMENT	financial types	types	types	all types
3. SCOPE (ELIGIBILITY)	limited			broad
4. DEVELOPMENT OF THE RESTITUTION PLAN				
4a. Victim Role	high			low
4b. Community Role	high			low
4c. Victim/Offender Interaction	high			none
4d. Amount of Negotiation	high			none
5. OFFENDER SERVICES	required	available voluntary		none
5. VICTIM SERVICES	many			only restitution
7. SOURCE OF CONTROL				
7a. Case Management Coordination	by restitution program	dual control		by other
7b. Court Control	in the court			independent of the court
7c. Administrative Autonomy	high			low

APPENDIX F: MODEL FOR WRITTEN ELIGIBILITY CRITERIA

The X County Juvenile Restitution Program, in conjunction with the X County Juvenile Court agrees to accept for participation juveniles meeting the criteria listed below. No juvenile referred by the court who meets these criteria will be refused admittance to the program on the basis of race, sex, creed, or ability to pay. Participation of all referred juveniles is contingent on the availability of program resources to effectively manage these juveniles while in the program.

Juveniles participating in the X County Juvenile Restitution Program must:

* Be between the age of thirteen and eighteen years;
* Have been adjudicated for a crime involving theft, damage and/or loss of property (Note: Status offenders, juveniles adjudicated for victimless crimes, and juveniles who have not been adjudicated are excluded from participating);
* Have no more than five prior delinquent offenses (excluding status offenses);
* Have committed the presenting offense against the property of an individual or organization of X County.

APPENDIX G: OFFENSES SUBJECT TO HEARING BEFORE COMMUNITY ARBITRATION

1. Assault
2. Assault and Battery
3. Auto Tampering
4. Concealed Weapons Violation
5. Conspiracy
6. Cruelty to Animals
7. Desecration of State or National Flags
8. Destruction of Property
9. Disorderly Conduct
10. False Alarm
    a) Fire
    b) Burglary
    c) Other
11. False Statements to Police
12. Firearms Violations
    a) Discharging, 300 ft. of residential area
    b) Other
13. Forgery and Uttering
14. False Pretense
15. Hitchhiking
16. Interfering with Public Servant in Line of Duty
    a) Police Officer
    b) Fireman
    c) Other

17. Indecent Exposure
18. Larceny under $100
    a) Shoplifting
    b) Other
19. Littering
20. Loitering
21. Phone Misuse/Harassment
22. Possession of Fireworks
23. Receiving Stolen Goods
24. Removing or Defacing Serial Numbers
25. Resisting Arrest
26. Traffic Violations
    a) Driving without license
    b) Reckless driving
    c) Unregistered vehicle
    d) Driving intoxicated
    e) Other
27. Trespassing
28. Unauthorized Use
29. Vandalism

APPENDIX H: CITATION FOR COMMUNITY ARBITRATION HEARING

ANNE ARUNDEL COUNTY-JUVENILE CITATION No.

Juvenile's Last Name First Middle Alias

Full Address

Phone Date of Birth

Race Sex Age Hgt. Wgt. Hair Eyes Comp.

School and Grade and/or Place of Employment

Father's Last Name First Middle I. Phone

Father's Full Address (if different)

Mother's Last Name First Middle I. Phone

Mother's Full Address (if different)

Offense /Case No.

Date of Offense Date Citation Issued

Complainant Address

YOU ARE HEREBY NOTIFIED TO APPEAR ON THE _____day of _____ _____, 19____, at _____at the Dept. of Juvenile Services, 50 Cathedral St., Annapolis, Maryland, Phone 224-1362.

Your failure to appear may result in filing a petition for Formal Court Action.

I HEREBY ACKNOWLEDGE RECEIPT OF THIS CITATION AND PROMISE TO APPEAR ON THE DATE AND TIME SPECIFIED.

I FURTHER HAVE BEEN ADVISED OF MY RIGHT TO HAVE COUNSEL APPEAR WITH ME.

I FURTHER STATE THAT THE ABOVE INFORMATION IS TRUE TO THE BEST OF MY KNOWLEDGE.

MSP AACoPD APD

Other:

Juvenile's Signature

Parent/Guardian Signature

Issuing Officer

ID No.

District Beat Division

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