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Victim Assistance in the Age of Victims' Rights: A Study of California's County Victim-
Witness Assistance Programs

By

Judith Adele Randle

A dissertation submitted in partial satisfaction of the

requirements for the degree of

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in

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of the

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Committee in charge:

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Abstract

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This dissertation examines how crime victims' pleas for recognition by the criminal justice system have been answered through the formation of county victim-witness agencies (VWAs) in California. It tells the story of "victim advocacy" as an idea, a field, and an institutional development in California. In California as elsewhere in the United States, over its forty-year history victim advocacy and VWAs came to embody two often competing visions of how the state should respond to individual crime victims: one which seeks to enhance victims' participation in criminal trials, including the creation of special "rights" for victims, and one which seeks to provide recovery services to victims apart from the criminal process. Whether VWAs have managed to pursue these two very different agendas with equal force, or alternatively whether one is typically sought at the expense of the other, has become the basis of speculation, debate, and criticism among criminal justice scholars. Responding to claims that a VWA's institutional host encourages one agenda over the other, especially critiques that VWAs placed within District Attorney's offices have largely succumbed to prosecutorial and/or punitive agendas, this dissertation finds only mild variation in what California's diverse set of fifty-eight VWAs do. It finds that welfarism – helping victims to recover emotionally, physically, and financially from victimization – is the most consistent feature of victim advocacy in California, and that VWAs have not transformed the way victims participate in criminal trials. While the term "victim advocacy" embodied the hope that victims might gain an independent voice in criminal proceedings through "rights", the term "victim assistance" better describes the welfarist tasks that California's VWAs emphasize.

Table of Contents

Dedication ii

Acknowledgements iii

Introduction iv

Chapter One: Three Policy Themes in the Crime Victims’ Movement 1

Chapter Two: California’s Victim-Witness Agencies 12

Chapter Three: Variation in County Compensation and Restitution 26

Chapter Four: Variation in County Performance of Victims’ Rights and Services 40

Chapter Five: The Victim Advocate in Theory and Practice 56

Chapter Six: Angels or Accomplices? Advocates’ Construction of Victims as Clients
Rather than Causes 78

Chapter Seven: Victim Assistance in Theory and in Practice 94

References 103

For my husband, Tim

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Introduction

This dissertation examines how crime victims' pleas for recognition by the criminal justice system have been answered through the formation of county victim-witness agencies (VWAs) in California. It tells the story of "victim advocacy" as an idea, a field, and an institutional development in California. One of the most significant developments in contemporary American criminal justice policy has been a series of victim-centered reforms that began in the mid-1960s (Dubber 2002; Garland 2001; Sebba 1996; Weed 1995). Grassroots activists and state actors have sought a "rebalancing" of the modern criminal justice system, where victims serve as only witnesses in criminal trials and must recover losses in civil court (Dubber 2002; Sebba 1996; Weed 1995). Two contrasting sets of victim-oriented reforms in the United States, one emphasizing legal rights and one emphasizing social services, have sought to make victims more active participants in prosecuting and punishing offenders (legal rights) and to help victims recover their losses more easily (social services) (Sebba, 1996; Weed, 1995).

Over the last four decades in California, the delivery of these rights and services to victims has been institutionalized and professionalized within county victim-witness agencies (VWAs). Currently every California county has a designated VWA whose basic functions are enumerated in California Penal Code Section 13585. With fifty-eight local VWAs, California houses possibly the largest single network of VWAs in the country. Each VWA receives state and federal (and often local) funding to employ "victim advocates" who perform two types of tasks, case-related services and social services. These advocates are new additions to the criminal process that previous only considered the interests of two parties, the state and the defendant.

The dissertation's broad goal is to identify what California's VWAs do and what sorts of impact they have had on the criminal justice system in California. In doing so, this study is one attempt to discern whether and how the criminal justice system has been "rebalanced" to include victims where they were previously excluded. In their most aggressive forms, one branch of victim-centered policies, legal rights, seek to alter the balance of interests and powers in the criminal justice system, fundamentally changing the adversarial system that has been in place for centuries. Whether this has happened has been the focus of much debate; victim-centered policies have been praised (and disparaged) for creating a new role for victims, and alternatively, criticized for perpetuating their exclusion. Although VWAs are responsible for implementing reforms, they have received little empirical scrutiny – certainly far less scrutiny than is demanded by claims that victims have, indeed, secured a new place in the criminal justice system.

A related goal is to identify the role that VWAs have in the broader crime victims' movement, which legal scholars commonly associate with the conservative, punitive turn in American penal policy since the late 1970s. Lengthening prison terms and widening nets of those eligible for prison terms have resulted in an American incarceration rate four times higher today than it was in 1980 and at least that much higher than in most of the developed world. During this time the United States also renewed its commitment to capital punishment, while the rest of the developed world was strengthening its commitment against it. Political actors speaking for crime victims have

been at the forefront of many of these policy developments in the United States; crime victims' groups have directly lobbied for harsher penalties for crime, the victim is routinely offered as an unquestioned symbol of, or rationale for, ever more punishment. Yet, the crime victims' movement is comprised of multiple interest groups, and though they share a common grievance against the "forgotten victim," these groups have offered multiple policy solutions over the last 40 years, not all of which have sought to harm offenders. This dissertation explores whether and how VWAs, as one constituency within the crime victims' movement, can be considered part of the new punitive landscape.

To meet these goals this study seeks to do two things. First, it seeks to describe the new profession of crime victim advocacy. This study seeks to provide a portrait of the institutions and persons who advocate for victims, including the history of victim advocacy, current training standards for becoming a victim advocate, and the stated role of the victim advocate and of the victim in the criminal justice system. This portrait seeks to include perspectives from the victim advocates themselves on their profession, including the appropriate role(s) of the victim in the criminal justice system, the aim(s) of punishment, and state's role in assisting crime victims to recover from criminal victimization. Finally, this portrait seeks to document the daily routines of victim advocates and the meanings that advocates attach to what they do.

Second, the study seeks to identify and explain operational differences among California's fifty-eight county VWAs. Past research has shown that individual VWAs may operate quite differently from one another (Kilpatrick, Beatty, & Howley 1998; National Association of Attorneys General 2004; Newmark 2006; Travis 1998). Of particular importance are claims that individual VWAs place different emphases on the two categories of reform, rights and services. Claims of uneven performance in this regard are significant because these two tasks imply fundamentally different models of victim involvement in the criminal justice system. (See Dignan & Cavadino 1996 and Sebba 2000 for reviews of different models of victim involvement.) While rights envision victims as participants in the criminal trial, perhaps even third parties alongside defendants and the state, services such as counseling and compensation attend to victims' needs entirely apart from, and with no effect on, the process of convicting and punishing the offender. Thus, granted leeway to prioritize one reform over the other, VWAs have the potential to serve vastly different functions. On the one hand, VWAs can empower victims as rights-bearers who influence the outcomes of criminal cases. On the other, VWAs can create another category of disadvantaged persons for which the state provides services, alongside those such as the disabled and the unemployed.

Indeed, two early studies suggested that individual VWAs adopted one of two basic administrative models: a prosecutorial model emphasizing rights that aid the prosecution and punishment of offenders, and a welfarist model emphasizing social services that care for victims' physical, emotional, and financial needs outside of the criminal process (Vaughn 1979; Friedman 1985). While many factors explain the adoption of a particular model of operation, or an emphasis on some activities over others, a frequent factor discussed in the literature is the institutional location of VWAs: whether VWAs are housed within law enforcement agencies such as DA and probation

offices (“system-based”), or alternatively, within non-profit community agencies (“community-based”) (Dubber 2002; Elias 1993; Friedman 1985). It has been suggested, with only limited empirical evidence, that system-based VWAs are more likely to adopt a prosecutorial model while community-based VWAs are more likely to adopt a welfarist model (Friedman 1985). Accordingly, this study tests seeks to identify any administrative models and, more specifically, to test this hypothesis that system-based VWAs adopt a prosecutorial orientation of administration while community-based VWAs adopt a welfarist model of administration.

California is an admirable candidate for this kind of study because California’s system of VWAs is unique both in its scale and the longevity of its effort to assist crime victims. California’s current network of fifty-eight county VWAs – the largest single network of VWAs in the nation – grew out of its victim compensation program, which when erected in 1965 was the nation’s first in existence. A decade later, in 1974, the federal government selected Alameda County as one of eight national sites to have an experimental VWA. In addition to having the first compensation program and one of the first county VWAs, California was home to more “firsts” and to many activist groups that became central to the growth of VWAs and to the crime victims’ movement across the nation. For example:

- The nation’s first rape crisis center, Bay Area Women Against Rape, opened in Oakland, California, in 1971
- A probation officer in Fresno, CA, is reported to have designed and implemented the first “victim impact statement” in 1974
- Mothers Against Drunk Driving, one of the movement’s most visible citizen-activist groups, was founded in California in 1981
- California State University, Fresno started the nation’s first bachelor’s degree in victimology in 1981
- California was the first state to amend its constitution to include a “Victims’ Bill of Rights” in 1982
- Several of key players involved in the landmark 1982 President’s Task Force on Victims of Crime were from California’s criminal justice agencies

The nature of California’s VWA network also makes it an ideal study location. As I show in later chapters, the laws governing VWAs in California permit a significant amount of operational diversity among individual VWAs. The California Penal Code establishes twenty-four duties of VWAs, most of which are easily classifiable as welfarist or prosecutorial, but grants individual VWAs significant freedom to perform the duties they see fit. California has maintained impressive records of VWAs’ performance of these duties, making it also an excellent practical choice of study.

In sum, if there were a single, ideal jurisdiction to study VWAs, it would be California. No other state has such a large network of potentially diverse VWAs that has existed for over three decades. The potential to study VWAs both cross-sectionally and over time in California is unmatched elsewhere in the United States.

This study uses a “triangulation” approach to its methods, using both quantitative and qualitative analyses to study victim services in California. The aim of using multiple

methods to investigate a single question, or series of questions, is to compensate for the limitations inherent in any single research method. The hope is not simply for a more complete answer, but an answer that also finds support among multiple data sources. The chapters are as follows.

Chapter one, after describing the crime victims' movement, traces the history of California's network of VWAs starting in 1965. Chapters three and four examine data on the performance of statutory functions by all fifty-eight VWAs. Chapter two compares the rates at which crime victims are compensated for their losses, a welfarist task central to the 1965 reform and important throughout. Chapter three compares the performance of other statutory duties. Chapters five and six are qualitative ethnographic studies that document the perspectives and daily routines of employees within two VWAs, one system-based and one community-based. Chapter seven is a concluding chapter that discusses the relevance of these findings to various literatures and the current role of the victim in the criminal justice system.

Chapter One: Three Policy Themes in the Crime Victims' Movement

Introduction

The crime victims' movement consists of multiple constituencies that are united by a common grievance that the modern criminal justice, which positions the state against the defendant, ignores the needs of crime victims. This chapter outlines the movement's specific complaints and remedies sought, gleaned three themes that have dominated victim policy and discourse at the national level over the last forty years: compensation, advocacy, and punishment. These themes represent distinct ways of responding to the "forgotten victim," and to a large extent different constituencies have been behind the different policy alternatives. Underlying these policy alternatives have been two basic drives, often at odds with one another, behind the victims' movement: helping victims to recover from victimization, versus improving or enhancing the state's power to punish criminals in the name of victims (Roach 1999). The victim advocacy profession that emerged in the United States embodied both drives, created two very different sets of activities for victims, and has since occupied an unclear and heavily debated role in the criminal justice process – which later chapters attempt to discern.

The Crime Victims' Movement

The "victim problem" and its solution have been framed in multiple ways, reflecting diverse interests and policy proposals (Weed 1995). Collectively, policy developments have fallen under the banner of the "crime victims' movement" or the "victims' rights movement." Started in the mid-1960s to early 1970s, this movement (or series of movements, as some have argued; Elias 1993) expresses a grievance against the modern criminal justice system, and sometimes more broadly the modern state, for failing to respond to the needs and interests of crime victims. Captured by the popular phrase the "forgotten victim," this movement faults at least two things about the modern criminal justice system.

First, it faults the criminal justice system for excluding victims from the process of convicting the offender (Erez & Roberts 2007). In previous eras victims themselves brought actions against offenders (McDonald 1976). The modern state brought with it an adversarial criminal justice system in which the offense is considered committed against state or the community, rather than the individual victim. Accordingly, the state through a professional prosecutor, rather than the victim, prosecutes the offender. The offender holds rights that protect his liberty and property interests, while the victim is not a party to the case in any way, having no power to prosecute and no protected interests. The victim is at most a witness in the prosecutor's case – perhaps one witness among many – but most victims will not fulfill this role as ninety percent or more of trials are avoided through a plea bargain (Fisher 2003).

Second, the movement faults the criminal justice system for excluding victims from the process of punishing the offender, with three accompanying critiques. The first is that victims have no say over the type and/or amount of punishment offenders receive because the state, rather than the victim, determines the penalty: the legislature determines the range of sanctions for the particular crime, the prosecutor seeks a

particular sentence, and the judge or the jury decides the final sentence (Weed 1995). The defendant may also negotiate his punishment as part of a plea bargain, and the non-plea-bargained sentencing process often includes some consideration of the defendant's background and interests (Fisher 2003). By contrast, the victim's interests and preferences, if any, are officially irrelevant. The victim is not consulted, nor is the sentencer required to consider the unique harm suffered by the individual victim (as opposed to the harm assumed to be suffered by the average or generic victim of that particular crime).

The second critique is that victims do not directly benefit from punishment (Elias 1983). Sanctions in the post-Enlightenment period have focused either on the offender or the community; legitimate penal aims are retribution, rehabilitation, deterrence, and incapacitation. These do not seek or function to repair or restore the individual victim, but to give the offender what he or she morally deserves (retribution) or to prevent future crime (rehabilitation, deterrence, incapacitation). Instead, victims seeking repair or restoration must seek monetary damages in the separate civil system, often at great cost.

Finally, the third critique is that victims' absence from the punishing process leads to lenient penalties that put society at risk and are symbolically offensive to victims (Weed 1995).

Proponents of change have offered multiple policy alternatives that correspond to these grievances, each of which assigns different needs and roles of the victim, defendant, and State (Dignan and Cavadino 1996; Sebba 1996; Weed 1995). In the United States three types of policies have predominated crime victims' interest groups: social services, legal rights, and enhanced criminal penalties (Dignan and Cavadino 1996; Sebba 1996; Weed 1995). Social services tend to victims' physical, financial, and emotional needs as a result of victimization. They include domestic violence shelters, rape crisis hotlines, and financial compensation for such things as medical bills, lost wages, and mental health treatment. Social services construe victims as a vulnerable or disadvantaged population in need of assistance, and the state (or the community) as responsible for their care, much like state welfare programs for the poor, disabled, and unemployed.

Legal rights generally seek to incorporate victims' interests into the processes of convicting and punishing the offender. While some rights have little impact on case outcomes, such as the right to timely return of property that is used as evidence, others allow victims to participate in the trial process and seek decision-making power or influence on key outcomes. Victims have sought the right to confer with prosecutors on decisions to grant bail and to accept plea-bargains, and the right to speak at sentencing, parole, and clemency hearings. In contrast to social services, which are provided outside of (and with zero impact on) the criminal process, legal rights in their strongest form seek to alter the balance of power in the criminal process; victims are persons with recognized interests that the state and the defendant must accommodate.

Finally, enhanced criminal penalties have typically targeted specific crimes perceived as under-punished (e.g., drunk driving, domestic violence), repeat offenders (e.g., Three Strikes laws), or offenders perceived as especially dangerous (e.g., sex offenders). In contrast to social services and legal rights, enhanced penalties merely reinforce existing roles of the state and the defendant, but their victim-proponents do try

to cast victims as symbolic recipients of punishment (in contrast to society and the offender as targets of punishment).

The distinction between these three policy types has not always been clear for two reasons. First, policies under all three types have at one point or another been offered under the label “victims’ rights” or have been argued to be “rights.” For example, in California, policies that simply enhance penalties as well as policies that limit defendants’ rights have carried “victims’ rights” in their titles; the 1982 Victims Bill of Rights, which sought to eliminate plea bargain, is a prime example (McCoy 1993). Groups have also argued that access to social services should be a “right.” Moreover, the zero-sum language often used to promote victims’ legal rights suggests that legal rights’ ultimate aim is to harm offenders, much like enhanced penalties (Dubber 2002). These instances of overlap do not detract from the three policies’ distinct aims, at least in theory: to restore victims to their pre-victimization state, or to involve victims in the criminal process, or to enhance criminal penalties.

The next section shows that different constituencies have been behind these different grievances and policy proposals, that there have been disagreements among constituencies about proper solutions, and that some conclusions can be drawn about which constituencies have won out. Movement participants and supporters have included academics, direct and indirect victims¹, concerned (non-victim) citizens, law enforcement personnel, politicians, judges, and district attorneys.

A Brief History of the Crime Victims’ Movement

The crime victims’ movement’s chronological history in the United States can be divided into three overlapping policy phases: 1965 – 1980, during which most states created compensation programs; 1974 – 1995, during which the concept of victim advocacy emerged and was institutionalized in most states; and 1980 – 2000, during which citizen-activist groups became heavily involved in penal policy. In each phase the time frame designates the critical years in which interest groups and policies appeared and matured into (more or less) their current form, but the later year does not represent their cessation, as the interests and policies of each phase continue to exist and mature.

State Compensation: 1965-1980

The history of victim policy begins with state compensation programs, which were the movement’s first policy achievements (Elias 1983). In every state, the creation of a compensation fund predated the creation of its VWAs.² Legal scholars had begun discussing the idea of state compensation as early as the 1940s, but it wasn’t until 1965 that California created the first state compensation fund. Five other states followed by the end of the decade (Elias 1986). Most states created compensation funds in the 1970s, with only a few after 1980. These programs, which are still in place today, offer limited

¹ A direct victim is the person harmed by the offender. An indirect victim is a family member or friend of the direct victim.

² This refers to VWAs only, not to other service-oriented agencies, such as rape crisis centers or battered women’s shelters. In many states these latter programs predated the creation of a victim compensation program.

reimbursement for expenses related to criminal victimization. Eligibility guidelines became virtually uniform across states in 1985, after the passage of the 1984 Victims of Crime Act, which offered federal dollars with eligibility requirements attached. Typically, a state compensates victims of violent crime only, and for non-property losses only, with the exception of medically necessary property, such as eyeglasses. In addition to medical expenses, non-property losses may include mental health counseling, lost wages, and job retraining. Compensation programs offer an alternative to expensive and unpredictable civil suits; to restitution orders that often go unpaid; and to state assistance programs with financial need requirements.

Although the majority of compensation programs came about when rights and crime were established political issues in the 1970s, compensation was more a claim to state assistance than it was a rights claim or a response to rising crime. When most were established, claims that victims deserved more from the criminal justice system were in their infancy and political fanfare was at a minimum. Indeed, the earliest compensation programs were modeled after compensation programs in England (1957) and New Zealand (1965), both welfare states. Compensation funds were generally placed within or alongside other programs of state assistance, such as social services, unemployment, and disability – not criminal justice institutions (Elias 1983).

Compensation programs in the United States were different from those overseas in one important respect, however. Despite being a claim for state assistance, they were (and are) entirely funded by offenders through penalty assessments – a fee paid upon the conviction of a crime – not tax dollars, as they were (and are) overseas.³ This was a necessary condition for political support of compensation programs in the U.S., particularly from conservative legislators, and it is one reason that compensation programs have always struggled financially (Vaughn 1979). Payment ceilings and restrictions on eligibility have been strategies to limit disbursements, as much as they serve to distinguish deserving from undeserving victims. They have also been sources of criticism. Early reviews faulted compensation programs for failing to reach all eligible victims. Vaughn (1979) argued that California's failure to publicize its early program was at best tolerated and at worst an intentional strategy to preserve resources. In the most comprehensive review of compensation programs to date, Elias (1986) found these failures to be so universal and so significant that he concluded that compensation was better characterized as a symbolic gesture to the growing victims movement, rather than an effective form of assistance.

Victim Advocacy: 1974 – 1995

The second set of policy developments involved the emergence and institutionalization of the concept of “victim advocacy” from the mid-1970s to the mid-1990s. During this time the movement's grievance over the “forgotten victim” solidified,

³ See <http://www.ojp.usdoj.gov/ovc/help/interdir/great.htm> (Great Britain). Great Britain has a much higher award ceiling at 500,000 pounds; at \$150,000 Washington and Nevada have the highest ceilings in the U.S., but most states have far lower ceilings in the \$25,000 to \$50,000 range (<http://www.nacvcb.org/progdir/html>).

and alleged an abundance of rights and privileges for criminal defendants, as contrasted with nothing for victims. “Victim advocacy” became the practice of taking care of crime victims’ needs outside of the criminal justice system (social services) and giving a voice to victims inside of the criminal justice system (legal rights) (Weed 1995). This included two institutional developments: first, victim assistance agencies, including private agencies serving specific groups (e.g., battered women’s shelters) and state-sponsored VWAs serving all victim types; second, the passage of victims’ rights laws.

Advocacy’s Origins

Victim advocacy, the idea and the set of institutions, grew out of an unlikely convergence of law enforcement interests and the women’s movement in the late 1960s and early 1970s, and was supported by growing academic interest in crime victims in that early period (Erez & Roberts 2007). In 1974 the federal Law Enforcement Assistance Administration (LEAA) funded eight pilot programs across the nation that sought to make the system more accommodating to victims and witnesses, in order to encourage participation and ultimately increase conviction rates (Weed 1995). These early experiments targeted the needs of witnesses, or victims *as witnesses*, rather than victims per se, such as providing transportation to and from court, improving the intelligibility of subpoenas, and providing comfortable waiting rooms. The few services to victims were modest and tended to emphasize educating victims about the criminal justice and notifying them of case outcomes.

More expansive services to victims were proposed by the anti-rape and anti-domestic violence movements, which formed service-oriented agencies for women and children victimized by men, including rape crisis centers, 24-hour hotlines, and battered women’s shelters (Weed 1995). These women were also critical of the criminal justice system’s treatment of victims, but for slightly different reasons. Female victims faced more than inconvenience; they faced mistreatment by the insensitive, male bureaucrats who often blamed women for their victimization. Women voiced a more poignant critique of the criminal justice system as “revictimizing” female victims by taking power from them, and later activists would argue that participatory rights would buffer this second victimization.

In the 1970s academic discussions moved past compensation and toward broader services consistent with what LEAA and women’s groups were providing (Vaughn 1979). At the first annual “victimology” conference in 1973, Professor John Dussich of the University of Southern Mississippi proposed two institutional models of victim advocacy that would include the interests of witnesses and victims but emphasize one over the other. The two models were a social service (welfarist) model, emphasizing a victim’s immediate needs, and a criminal justice (prosecutorial) model, emphasizing witness services or “the victim’s role in the apprehension, prosecution and conviction of the offender” (Vaughn: 123). An individual VWA’s institutional location would determine its adoption of one model over the other. VWAs located in “helping” agencies, such as churches, welfare departments, and probation departments, would adopt a welfarist model, while VWAs located in police departments or district attorney offices would adopt a criminal justice model.

The 1980s and 1990s saw the spread of VWAs throughout the country, the growth of a “victim assistance field” dedicated to understanding and responding to trauma related to criminal victimization, and accompanying laws that codified the delivery of social services and legal rights. By the mid-1990s every state had a Victims’ Bill of Rights and VWAs designed to provide both rights and social services (Weed, 1995). The federal government facilitated widespread adoption of social services and legal rights through the 1982 Task Force on Victims of Crime and the 1984 Victims of Crime Act (VOCA) (Erez & Roberts; Weed 1995). The Task Force’s report provided a template for local VWAs, and VOCA provided states with federal funds to institutions following that template. But, more than providing the means for nationwide victim advocacy policies, the 1982 Task Force report legitimized and encouraged a particular brand of advocacy that was not just aimed at victims but at offenders as well.

1982 President’s Task Force on Victims of Crime

The 1982 report was issued when the idea of victim advocacy was just gaining ground; indeed the report was an important part of defining victim advocacy. It was also the product of a presidential administration that advocated and implemented conservative crime policy over two terms. Just a year earlier, the Attorney General’s office had held a Task Force on Violent Crime that issued a report recommending a series of “tough on crime” policies, and it had also recommended a separate study of crime victims that became the 1982 President’s Task Force on Victims of Crime (President’s Task Force on Victims of Crime 1982). Chaired by a local court judge in California, the eight-member Task Force on Victims of Crime interviewed about 180 people across the country, including crime victims, members of law enforcement, clergy, and early victim assistance professionals. Following in the footsteps of the LEAA pilot programs, its purpose was to investigate claims that victims are neglected and mistreated by the criminal justice system and to suggest ways to improve their plight. The 154-page Report issued sixty-eight recommendations to institutions within the criminal justice system and several outside of the system that deal directly with crime victims, such as hospitals and religious organizations.

The Report was part victim advocacy blueprint and part crime-control document, reflecting the Administration’s larger concern with crime as much as it did a new concern with crime victims. As a blueprint for victim advocacy, it documented the particular burdens crime victims face post-victimization and suggested several dozen ways to improve their treatment. According to the Report, the criminal justice system fails to assist victims to recover financially and emotionally, imposes burdens on them as witnesses, and provides little in return for their participation. The Report’s longest single recommendation laid out the case for assisting state victim compensation programs. Other recommendations tried to alleviate burdens imposed on witnesses and allow victims some say over certain outcomes. The burdens of trial include continuances, which force victims to appear in court multiple times; insensitive defense investigators and police officers who subject victims to multiple interviews; and property used as evidence being kept for weeks, months, or even years without consideration of the victim’s need for that property. In addition to being free (or almost free) of such burdens,

victims should have some say in trial outcomes, such as the conditions of a plea bargain. The Report listed ten characteristics of a model VWA that were left virtually in tact two years later when the 1984 Victims of Crime Act (VOCA) made funds available to states for VWAs.

As a crime control document, the Report declared violent crime to be a problem, faulted a defendant-oriented criminal justice system, and recommended changes to enhance public safety. Its claims and recommendations were similar, and in some cases identical, to those found in the 1981 report by the Task Force on Violent Crime: rights and policies that limit government's power to punish, such as the exclusionary rule, should be relaxed or abandoned. After compensation, the three next longest recommendations in the report were crime control measures: abolish the exclusionary rule, transfer more juvenile offenders to criminal court, and enhance judges' ability to deny bail. These recommendations did not seek to assist individual victims deal with the criminal justice system or recover from victimization, with two exceptions. The arguments for bail and parole reform did contend that individual victims needed protection from released defendants/offenders. However, those arguments are in addition to longer, public safety arguments.

About seventy percent of the Report was devoted to advocacy and thirty percent to crime control. The Report's dual purpose revealed the susceptibility of the victim cause to the growing law-and-order agenda and to an anti-defendant ideology that eventually captured a significant block of the victims' movement. The report's argument was not limited to stating that victims need attention, care, and rights; rather, it went a step further by problematizing the attention, care and rights given to defendants and offenders. Moreover, the problem was not simply that pro-defendant policies created more crime victims, but that they were also burdensome to individual victims. Beyond being burdensome, the system's concern for defendants created inequity between defendants and victims, with the criminal justice system lopsided in defendants' favor:

“[The] inequities [] are more than merely procedural. During trial and after sentencing the defendant had a free lawyer; he was fed and housed; given physical and psychiatric treatment, job training, education, support for his family, counsel on appeal” (13).

The victim, by contrast, must “try [himself] to repair all that his crime has destroyed.” Here the emphasis was not just on an inequity of resources but also moral or symbolic inequity: it is *unfair* to give to defendants without giving the same to victims, who are more deserving of attention, care, and rights. Because justice demands equality, the goal is “restoring balance” (vii). This concept of imbalance is essential to understanding how the Victims' Task Force was able to argue in a purportedly *victim*-centered report for *defendant*-oriented policy such as eliminating the exclusionary rule. With this depiction, equality could be accomplished either by giving to victims *or by taking from defendants*.

Beyond the 1982 Task Force: Victims' Rights

The grievance voiced by advocacy proponents was not that the criminal justice system ignored victims, but that it also benefitted defendants. “What about the victim?” became a common refrain among activists, and the imbalance was often depicted as Lady

Justice holding a lopsided scale (Weed 1995). Consistent with this particular grievance, some of the legal rights that emerged in the 1982 report and that states favored during the next decade evidenced a fuzzy line between helping victims and harming offenders (Erez & Roberts 2007; Henderson 1985). In particular, certain participatory rights were offered as counterweights to, or buffers against, defendants' rights and interests.

Victims' bills of rights spread like wildfire in the states between 1982 and 1996, passing with at least two-thirds support in almost every state (Weed 1995). The rights that appeared were based on the Task Force Reports and can be classified into three types.⁴ First, most bills of rights opened with a right "to be treated with dignity and respect." Second, many included rights that protected victims' property and privacy interests: the right to restitution, to have their property promptly returned to them, to keep their home addresses private. Finally, almost all bills of rights granted the right "to be informed, present, and heard at all proceedings," followed by individual participatory rights falling within those categories, including the right to consult with prosecutors about plea bargains, the right to attend parole hearings, and so on.

While the first two categories of rights were described as directly helping or protecting victims, victims' abilities to participate, such as by providing input on bail, plea-bargain, sentencing, and parole decisions, were almost universally celebrated as causing adverse outcomes for defendants: victim input could prevent releases on bail, disrupt plea-bargains, produce harsher sentences, and prevent releases on parole (Dubber 2002; Elias 1994; Kennard 1989). The 1982 report had called for victim input at sentencing by arguing that liberal judges ignore victims' interests in seeing offenders punished (President's Task Force on Victims of Crime 1982). Similarly, victim impact testimony at death penalty trials was justified as a counterweight against defendants' mitigating evidence. Punitive motivations were not always explicit, one thing is for sure: the potential for victim participation to produce more *lenient* outcomes was rarely, if ever, highlighted. As a result, proponents of victims' rights have regularly been accused of an ideological stance described as a "zero-sum game," whereby anything that helps victims harms offenders, and vice versa (Dubber 2002; Zimring 1997).

Most bills of rights also contained a significant restriction on rights that did not receive much political attention. This restriction was that failure to honor a victim's right would not grant that victim a cause of action, which means that unlike defendants, victims cannot seek new trials when their rights are violated. Some bills of rights stated further that defendants' rights reigned supreme when in conflict with victims' rights. Victims' challenges to rights violations have routinely failed in state courts and consequently there have been specific efforts to rewrite laws and to even establish a federal constitutional amendment to guarantee certain rights (Beloof 2005; Tobolowsky 1999).

Along with zero-sum ideology, unenforceability calls into question the purpose of participatory rights and the motivations of those who crafted the legislation. Unenforceability and zero-sum ideology draw opposite conclusions about the intent and

⁴ My summary is based upon studying all 50 Bills of Rights posted on the National Center for Victims of Crime's online database, at <http://www.victimlaw.info/victimlaw/>.

ability of participatory rights to harm offenders; however harmful they might be when enforced, they will have no impact if they are routinely ignored as statutes routinely permit. However, both suggest that they do not “empower” victims or otherwise elevate their interests or status, and both are consistent with the argument that participatory rights are the government’s symbolic concession to demanding victims and/or prosecutorial tools.

Victim-Offender Activism: 1980 – 2000

The final trend in victim policy was the emergence of politically active victims and “secondary victims” who, while supporting advocacy policy, broadened their target to enhanced criminal penalties. Descendants of constituencies who sought enhance penalties for violence against women in the 1970s, the new constituencies beginning in the 1980s represented additional aggrieved crime victims, beginning with drunk driving victims (Weed 1995). These groups became regular features of the tough-on-crime political landscape by working directly with legislators, officially supporting and sponsoring legislation, testifying at legislative hearings, issuing media statements, and issuing and attending press conferences.

Aggrieved-victim groups are run by victims for whom victimization is considered a necessary, and often sufficient, condition for commenting on penal policy (Weed 1987; Weed 1990; Weed 1993). Victims are by nature “experts” on the criminal justice system and on victimization, as opposed to non-victim criminal justice professionals and, especially, defendant sympathizers like defense attorneys and liberal academics. Victim-offender activists often do not focus exclusively on punishment by having a therapeutic or educational component (e.g., peer counseling, community outreach) and by generally supporting the components of victim advocacy (Weed 1987). However, supporting and/or lobbying for harsher penalties are defining features of these activists. They may focus on a particular penalty (e.g., capital punishment) or set of offenders and their penalties (e.g., sex offenders). Victim-offender activists also include groups of victims, not of any specific victimization type, that have lobbied for a variety of crime-control policies. They may form around support for particular penalties, such as Three Strikes laws or the death penalty, or they may be policy watchdogs that support of a variety of crime-control policies. In addition to formally organized non-profits (501c3) and political action committees (501c4), victim-offenders activists also include “celebrity victims,” typically parents of murder victims, who organize formal efforts around legislation but who may or may not create lasting organizations per se (Domanick 2004).

These activists are the most openly hostile toward defendants and their interests, relying heavily on zero-sum ideology and general animosity toward defendants. While the 1982 Task Force report was critical of, and even sought to eliminate, some defendants’ rights, it also carefully stated its support of the adversarial system in which defendants were protected from unwarranted governmental intrusion (President’s Task Force on Victims of Crime 1982). While the openness and degree of animosity varies among victim-offender activists, no-holds-barred assaults on defendants are not uncommon, where defendants are called names (e.g., “scum,” “monsters”) and the criminal justice system’s protections are excoriated as indulgent, unnecessary, and

dangerous. Their complaints are often indistinguishable from those of “tough on crime” politicians, with whom many have formed alliances (Dubber 2002; Page 2008).

Conclusion: The Legacy of Ideological Extremes within Victim Advocacy

Victim Advocacy emerged within a crime victims’ movement that agreed on one problem – the forgotten victim – but offered three different solutions. Compensation and victim-offender activism represented the two ideological extremes that motivated the movement: helping victims without touching the criminal justice process, and enhancing the state’s power to punish without helping individual victims. Victim advocacy, which had origins in both law and enforcement and grassroots activism, incorporated both of those ideals when it created two sets of tasks, social services and participatory rights. On the one hand, VWAs provided a wider array of social services to victims, not simply compensation. On the other, participatory rights provided a forum for victims’ punitive sentiments; while participatory rights were often alleged to not simply enhance the state’s punitive power, but to also benefit victims by giving victims some control in criminal proceedings, victim participation was always celebrated for its potentially punitive effects.

Consequently, academic literature has offered competing visions of what victim advocacy and VWAs accomplish. There is, on the one hand, consensus that social services to crime victims are under-funded, undeveloped, or otherwise limited in their reach (Dubber 2002; Elias 1983, 1984, 1986, 1993; Muscat & Wlsh 2007). To some, this is unfortunate but consistent with the general dearth of social services in the United States (Muscat & Walsh 2007). To others, it indicates more sinister motives behind advocacy today, namely the ascendance of punitive participatory rights and the law-and-order agenda in the profession (Dubber 2002; Elias 1983, 1984, 1986, 1993). The placement of most VWAs in District Attorney’s offices provides further evidence that VWAs are designed to buttress the state rather than help victims (Dubber 2002; Elias 1983, 1984, 1986, 1993), as does some research confirming that victim participation’s effect, if it has one, tends to be punitive (Erez & Tontodonato 1990; Morgan & Smith 2005; Smith, Watkins, & Morgan 1997).

Yet research shows that participatory rights are irregularly enforced and legally unenforceable (Beloof 2005; Howley & Dorris 2007; Tobolowski 1999), which dampens the force of claims that VWAs play a significant assisting role in criminal prosecutions. It also suggests that the state is ultimately resistant to giving victims an independent voice for fear that this voice might be counter to its own. The critique of rights, then, is not that participatory rights have a punitive effect but that they are merely a symbolic offering from the state (much like under-funded social services), which prefers to continue business as usual (Elias 1993).

Advocacy’s defenders claim that advocacy remains faithful to its welfarist mission of helping victims, that it is independent of law-and-order politics, and that any punitive effects of victim participation are defensible if they honestly represent victims’ experiences and viewpoints (Beloof 2005; Erez 1999). Its critics allege that VWAs do little to help victims and, if they help anyone at all, it is the state. These competing interpretations of what VWAs provide the background for investigating how California’s

network of VWAs has accommodated advocacy's dual orientations. The next chapter provides an overview of the history and structure of California's VWA network.

Chapter Two: California's Victim-Witness Agencies

Introduction

This chapter examines developments within California over time and in the national context. While the emergence of California's VWAs can be seen as consistent with a national trend, the precise form they took was a product of unique developments in California at the time. These local institutions were erected with little fanfare, having been initially conceived of as a way to boost the state's struggling Indemnity Fund and to improve conviction rates. They appeared before the crime victims' movement became heavily politicized and inundated by outside interests with more radical proposals, and as the movement did take off, they remained relatively isolated from the influences that were transforming the penal system at the same time. Today California's network of VWAs is probably one of the largest in the nation, receiving more federal grant money than any other state. However, it is not certain that this translates into better or more services per victim.

Victim Compensation

The history of California's VWAs begins with its compensation program. This section provides an overview of compensation in California, which continues to be a central component of local VWAs.

California created the nation's first compensation fund in 1965, then called the Indemnity Fund, and later renamed the Restitution Fund (Vaughn 1979). The use of "restitution" in the current title is somewhat of a misnomer, as restitution typically refers to reimbursement paid directly by offenders to their victims, while compensation comes from a pool of money collected by the state from a variety of offenders. Unlike a lot of later victim policy, the Indemnity Fund was created with little fanfare. In 1965, Judge Francis McCarty of San Francisco tapped a state legislator who drafted the legislation, which passed with little opposition, but little excitement either, as the "victim problem" had received no significant political attention at that time (Vaughn 1979). Rights talk was abundant, but the concept of crime victims' rights had not been born.

Crime victims had been receiving some attention, however. Prior to 1965, a handful of academics had discussed the idea of victim compensation and a handful of countries had created compensation funds, but neither victims nor politicians led organized efforts to help victims in California or the United States (Elias 1983). Describing his motivations years later, Judge McCarty argued that a state that cares for criminals should also care for victims, complaining that it was "incongruous ... that the state did so much for criminals ... and did nothing at all for their victims" (p. 31). Judge McCarty recalled that a single robbery victim, who faced significant medical bills, had inspired him: "The injustice of a 50-year-old, unmarried woman having to pay out of her life savings this amount of money [\$1280] shocked me" (Vaugh 1979: 30). As we saw in chapter one, this comparison of offenders and victims would become central to the movement's logic in later years.

The Fund was placed in the state's Department of Social Welfare (DSW) and local county welfare departments distributed the funds. DSW was chosen because that

department “was experienced in the establishment of aid criteria and possessed an abundant understanding of need in its most elementary and practical terms,” in addition to the lack of overhead (Vaughn 1979: 41). Eligibility for compensation mirrored that of the federal welfare program Aid to Families with Dependent Children (AFDC), particularly the financial “need” requirement. Claimants were required to apply for, and be rejected from, welfare before receiving payouts from the Indemnity Fund. Whatever criteria the statute did not specify, the Welfare Department construed the criteria and typically defaulted to AFDC guidelines.

What is significant to understanding the motivations behind compensation at the time was that, initially, no criminal justice agency managed or monitored the Indemnity Fund, and further, when its placement in DSW later became problematic, criminal justice agencies were not contemplated as potential locations; rather, other government assistance programs were. A spokesperson for the Fund explained during a time of transition:

We had to place it somewhere [initially]. This particular department [DSW] had a great deal of association with standards, so we gave it to them. It is entirely possible that we may ... give it to the unemployment people, give it to the workmen’s compensation people. We are not sure where it will rest eventually, but we had to place it somewhere. (Vaughn 1979: 41-42)

So, despite its framers’ use of language and logic that would later support reconsideration of criminal justice altogether, the compensation program that resulted had little if anything to do with the criminal process. Crime victims were not envisioned or treated as persons to be empowered, or as persons with competing interests in the criminal process. Rather, crime victims were needy persons to be cared for by the state just as were other needy persons, such as the unemployed.

Rather than garnering universal approval, in its early years the Fund received regular criticism and there were regular attempts at its overhaul (Vaughn 1979). Four criticisms in particular persisted. First, the financial need requirement was criticized both in principle and in application. Crime victims, many insisted, should be compensated for their losses regardless of personal finances, and the “need” requirement was subjectively determined anyway. Second, funding was inadequate, with claims payments always exceeding the penalty assessments collected by offenders. Third, directors failed to publicize the program, therefore failing to reach many eligible victims. Finally, lengthy waiting times burdened those victims who did apply. In 1974 the Attorney General, whose office had become responsible for reviewing claims, thought these problems reflected a larger lack of commitment to helping victims. He explained:

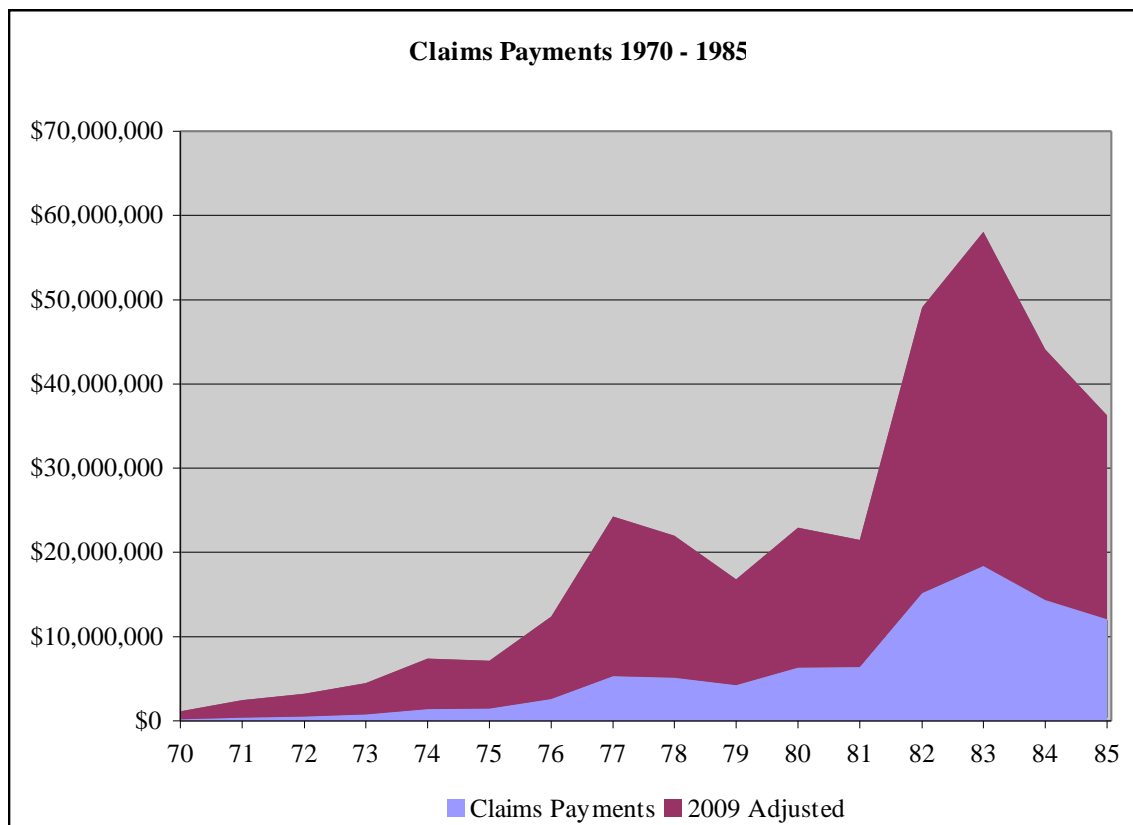
The primary weakness of California’s victim compensation program has been a lack of commitment on the part of all levels of government in California. Despite initial leadership in this area, we have not exerted the effort necessary to make the program work. This is most clearly evidenced by our failure to adequately fund

the program, and by the absence of serious effort to make the benefits of the program known to potential claimants. (Vaughn 1979: 49)

Still, the Fund's weaknesses were not limited to poor execution. Even if it had not been plagued by excessive wait times, claimants always faced some wait period while paperwork was processed, and funding was mostly provided on a reimbursement basis. Thus, financially needy victims, which were the very victims the Fund targeted, still could not acquire necessary goods and services soon enough to prevent the financial hardships imposed by criminal victimization. Additionally, the Fund served a restricted scope of victims, and in particular, did not address crime victims' non-financial needs.

Despite the Attorney General's grim assessment in 1979, the Fund grew substantially in later decades, particularly after federal assistance became available in 1985, and it now enjoys a more or less stable presence in the victim assistance landscape. Figures 2-1 and 2-2 below show the Fund's payments to crime victims from 1970 to 2008 (years 1965-1969 were unavailable).

Figure 2-1: Restitution (Indemnity) Fund Payments, 1970 – 1985



The lightly shaded area shows payments made at the time and the darker shaded area adjusts for inflation. Except where noted, the discussion below refers to the constant dollar figures. Figure 2-1 shows the Fund's extremely modest beginning, having distributed only \$171,000 in 1970. Payments rose steadily to \$5.71 million during the first half of the 1970s and about doubled twice during the second half, to just under \$10 million in 1976 and just under \$19 million the following year. From the 1981 to 1982, payments doubled for a third time from \$15 million to just under \$35 million. Payments increased the following year but declined steeply the next two years until 1986, when they shot up to \$82.7 million as a result of VOCA's matching federal funds.

Figure 2-2: Restitution (Indemnity) Fund Payments, 1970 – 2008

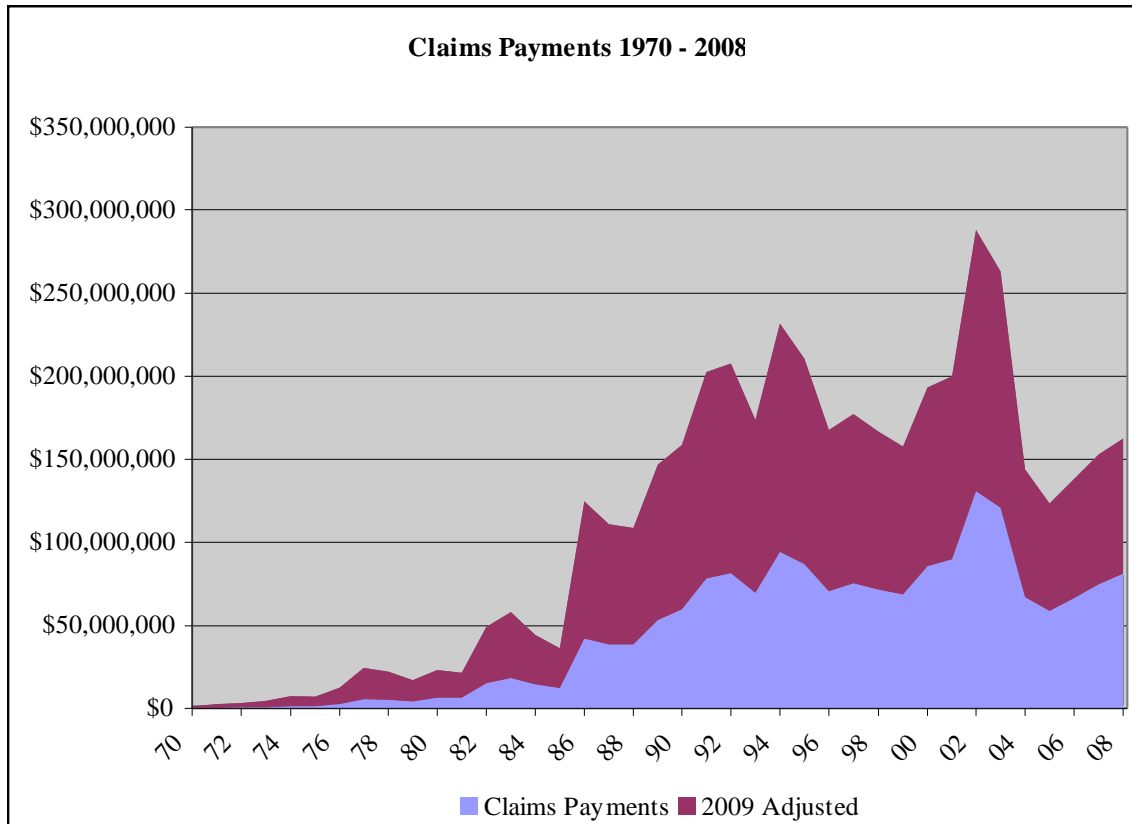
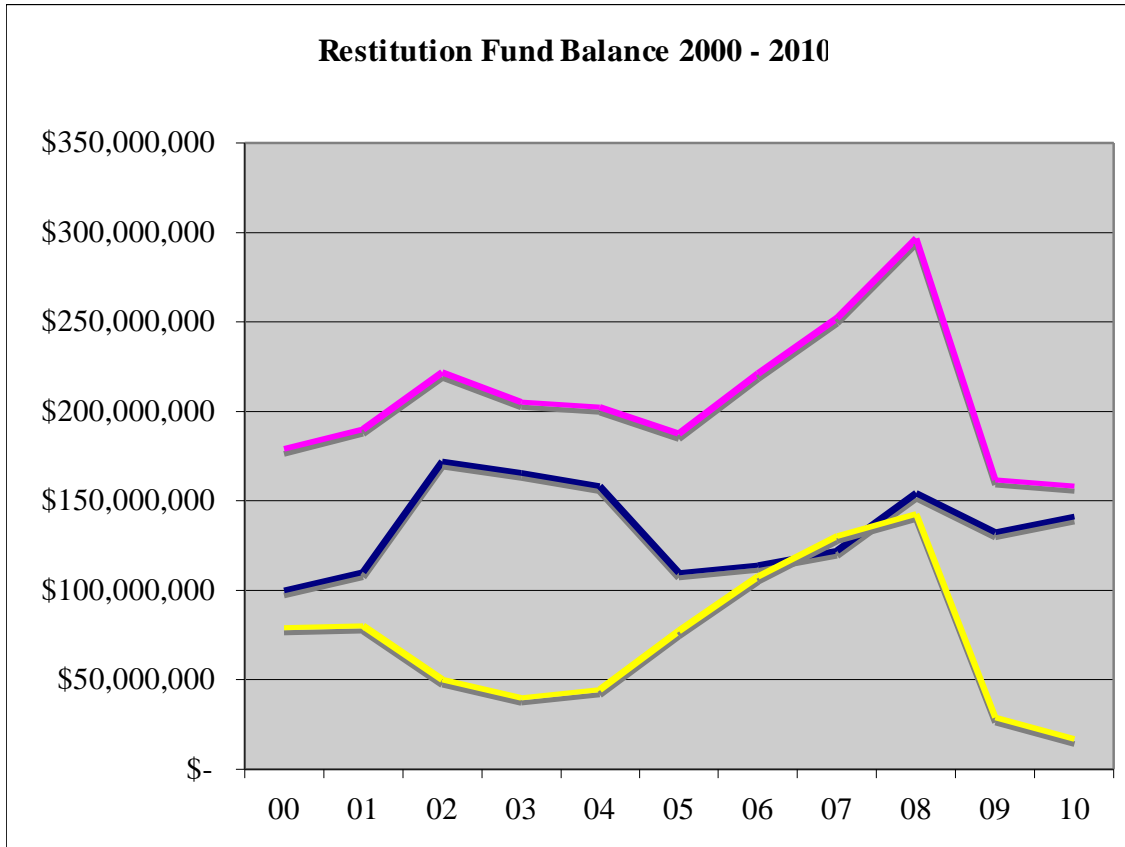


Figure 2-1 shows that payments rose gradually over the next decade to a peak of \$137.4 million in 1994, which it never again reached except following the September 11, 2001 terrorist attacks in 2002 and 2003. In those exceptional years payments totaled \$157 and \$142 million, but otherwise payments hovered between \$64 and \$110 million after 1994.

These numbers represent claims payments and do not show the Fund’s total budget, which may provide a more accurate representation of the program’s size. These numbers are only available since 2000 and are displayed in Figure 2-3 below (not in constant dollars).

Figure 2-3: Restitution Fund Balance, 2000 – 2010



Source: Legislative Analyst’s Office (2009).

The top line shows the Fund’s total budget in a given year, which includes the balance or reserves left over from the previous year, plus the revenue generated from penalty assessments. The middle line shows program costs, which include claims payments, administrative costs, and special appropriations (primarily intergovernmental contracts). The bottom line shows the balance or reserve left over after program costs are paid.

The Fund’s total budget in these years ranges between about \$180 and \$300 million, which is on average two to three times the amount of claims payments

distributed in those years. The Fund has always had a substantial balance or excess, between \$50 and \$150 million, that has carried over to the following year. That balance has been threatened twice in the last ten years, which has required the Fund to change its protocol to avoid insolvency. First, the spike in claims payments in 2002 and 2003 brought the Fund's balance down from approximately \$80 million in 2000 and 2001 to \$50 million for the next three fiscal years. Fearing insolvency, the Fund's board reduced claims payments by refusing to reimburse victim service providers for those claims (Interview 2008). As a result, the balance climbed steadily upward through 2008 to almost \$150 million. However, these prosperous years may be short-lived. The second threat occurred when the California legislature passed the 2009 budget, which re-routed \$50 million of those reserves to the state's general fund to help alleviate the state's historic deficit. (\$50 million is about the same amount that spiked in 2002 and 2003.) Writing in February 2009, the Legislative Analyst's Office predicted that this cut, in concert with steady claims payments and expanded special appropriations, would render the Fund insolvent by the 2013 (Legislative Analyst's Office 2009).

Dual Origins of Local VWAs

Despite moderate growth over its first decade, the Indemnity Fund struggled financially but also conceptually. It was distinct from other government assistance programs in important ways: it was funded by penalty assessments rather than tax dollars, it had no clear institutional home base, and it lacked uniform guidelines for eligibility (other than neediness, which was undefined) (Vaughn 1979). The Indemnity Fund moved around agencies restlessly in its first few years and though payments grew its future was never certain. That began to change in the mid-1970s when the Federal Government's Law Enforcement Assistance Administration (LEAA) gave states money to experiment with local programs to serve crime victims and witnesses.

In 1974, LEAA sponsored eight pilot programs across the nation to improve witness participation but to also investigate the needs of crime victims (President's Task Force 1982; Vaughn 1979; Weed 1995). Alameda County, which is in the east part of the San Francisco Bay Area and includes the cities of Oakland and Berkeley, received one of these pilot programs. Because of LEAA's desired emphasis on witness participation above all else, it was placed in the District Attorney's office (Vaughn 1979). Although Alameda's pilot program was clearly a forerunner to California's system of VWAs and might be considered California's first VWA, San Mateo county's program, founded in 1975, was the first to move beyond witness participation and adopt the model of advocacy described in chapter one, serving both victims and witnesses (Vaughn 1979). San Mateo's VWA was sponsored by the county's probation department and run by a probation employee with backgrounds in corporate insurance and data processing systems. Improving the compensation fund, by expanding coverage and speeding up payment, was one of the primary motivations for establishing San Mateo's VWA. Assistance in filling out compensation applications was the task that defined the early VWA, and all other activities were subsequently added to its program. San Mateo's new VWA took the idea of helping victims further, by striving to attend also to victims'

immediate physical, psychological, and financial needs not satisfied by compensation (Vaughn 1979).

As opposed to Alameda's narrower concern with witness participation, this new, broader function of San Mateo's VWA was dubbed "victim advocacy" or "victim assistance." This broader function took hold as VWAs emerged one by one, beginning in the mid 1970s, first in the San Francisco Bay Area, and spread to other parts of the state over in later decades. Erection of a VWA was initially by choice, and when VWAs were codified into the Penal Code in 1977 the statute did not mandate counties to erect VWAs but merely offered funding to those that chose to do so. By early 1979, twenty-three counties had VWAs, four of which (Los Angeles, Monterey, Sacramento, and San Francisco) had two VWAs, for a total of twenty-six. Fourteen VWAs were located in DA offices, six in private organizations, four in probation departments, and two in local government offices.

The two roots that formed California's early VWAs – the Indemnity Fund and LEAA's witness programs – were equally strong. LEAA provided initial funding for local victim-witness assistance programs, but compensation assistance likely kept the budding network of VWAs alive when LEAA withdrew all funds by the end of the decade (Vaughn 1979). The dual missions of helping victims and helping prosecutions had already made their mark on victim advocacy by 1979, when Vaughn (1979) observed that VWAs were already showing a propensity to emphasize one or the other. She determined that about half of them had a "social service" orientation and half a "criminal justice" orientation, labels that correspond with my "welfarist" and "prosecutorial" labels.⁵ These assignments roughly corresponded to their institutional locations, with the majority of DA-based programs assuming a criminal justice model and the majority of non-DA-based programs assuming a social service model, shown in Table 2-1 on the next page. Unfortunately, Vaughn provided little detail as to how she made these assignments, stating only that VWAs with a criminal justice orientation were far less likely to assist victims with obtaining compensation.

Vaughn identified six major services provided by VWAs in the late 1970s which again demonstrate the dual missions of advocacy, shown in Table 2-2 on the next page. The most prevalent was in-house counseling or referrals to outside counselors for psychological care. This included both crisis counseling by trained in-house advocates and long-term care by outside professionals. The next most prevalent were services relating to the witness role, excluding transportation, which mostly comprised of notifying witnesses of their need to appear and directing witnesses to courtrooms. Transportation, the next most prevalent service, was provided mostly to witnesses on trial dates. Compensation assistance, the fourth most available service, was performed differently in criminal justice- versus social service-oriented VWAs, in ways that were consistent with their priorities. Advocates in social service VWAs helped victims to prepare all compensation paperwork, while advocates in criminal justice VWAs merely

⁵ I use "welfarist" and rather than "social service" to be consistent with current penological and victimological literature. I use "prosecutorial" rather than "criminal justice" because I thought it better captured the end these tasks serve.

Table 2-1: Orientation and Location of California’s VWAs in 1979

Criminal Justice Model	Social Service Model
Alameda (DA)	Fresno (Probation)
Amador (DA)	Los Angeles (City)
Contra Costa (DA)	Los Angeles (Seminary)
Marin (DA)	Napa (County)
Monterey (DA)	Placer (Private)
Monterey (Private)	San Bernadino (Probation)
Orange (DA)	Sacramento (DA)
Riverside (DA)	Sacramento (Law School)
Santa Barbara (DA)	San Francisco (DA)
Sonoma (Probation)	San Francisco (Private)
Stanislaus (DA)	San Luis Obispo (DA)
Tulare (DA)	San Mateo (Probation)
	Santa Clara (Private)
	Sonoma (Probation)

Table 2-2: Top Six Services Provided by VWAs, 1979

Service	Number (of 26) Providing
In-house counseling or referrals (SS)	23
Services related to witness role (CJ)	20
Transportation (CJ)	19
Compensation assistance (SS)	18
Mediating Services (SS)	13
Emergency food and shelter (SS)	10

answered questions or obtained documents upon request. The next activity, mediating services, was offered by half of VWAs. As mediators, advocates would contact employers of victims who were unable to return to work and creditors of victims who fell behind on bills. Mediating services were provided mostly by agencies that provided no emergency services. Finally, emergency provisions of food and shelter were provided by less than half of VWAs. In addition to these defined tasks, most agencies provided a “service” that they called “emotional support,” that was described as simply “being there” for victims through a difficult experience. “‘We’re just glad that somebody’s here for them to talk to,’ one staff member commented. ‘We hold their hand and let them know somebody still cares’” (Vaughn 1979: 141).

Penal Code Section 13835

In 1977, apparently impressed by the new VWAs and the dual missions of helping victims and prosecutions, the California legislature passed CA Penal Code Section 13835, which called for more “pilot project centers” with goals of “improving attitudes of victims and witnesses toward the criminal justice system and to provide faster and more complete victim recovery from the effects of crime.” It established funds for a designated VWA in each county that provided “comprehensive services” to all types of crime victims, meaning that the VWA would strive to achieve both missions. Section 13835 did not establish the institutional location of VWAs, instead emphasizing a VWA’s ability to provide these comprehensive services, and it explicitly excluded agencies that focused on one particular crime or population. This contrast emerged likely in response to the rape and domestic violence agencies that had been in operation at the time, and it continues to distinguish county VWAs from the hundreds of local programs that assist victims throughout California (including those that also that receive OES funds). The open-endedness of VWA location was also likely a product of the patchwork appearance of VWAs within various institutions before the statute’s enactment.

By 1977, when section 13835 was passed, Alameda, San Mateo, and several other counties had VWAs. By 1979, there were 26 victim assistance programs; 35 by 1982; and 58 by 1995. The majority of VWAs have always been housed in DA offices, with a handful in probation departments and community organizations. Currently of the 58 counties, 40 are housed within District Attorney Offices, 13 are housed in probation departments, and 5 are housed in community agencies that contract to provide services.

The original statute outlined only a handful of duties that were reflected in Vaughn’s evaluation in 1979: assistance obtaining state compensation, referrals to community service agencies, transportation and accompaniment to court, and notification of trial schedule changes. In 1982 leaders elaborated on service standards and these would later be codified into the statute (California Victim/Witness Assistance Program 1982). The report identified the following as “high volume services” carried out by VWAs: case disposition information, initial contacts, orientation to the criminal justice system, compensation forms assistance, follow-up counseling, restitution assistance, crisis intervention and emergency assistance, and crime prevention information. Although most local programs offered all services, the frequency at which these services were provided varied greatly among counties.

Today Section 13835 lists twenty-four “comprehensive services” and divides them into fourteen “mandatory” and ten “optional” services, which VWAs either must provide to all eligible clients who want them (mandatory) or provide at the VWA’s discretion (optional). Table 2-3 below places the mandatory and optional services into three categories of orientation: those that achieve welfarist ends, prosecutorial ends, or other ends.⁶

⁶ Several duties above arguably fit both categories. Restitution could be classified as prosecutorial because the criminal court orders it in addition to whatever criminal penalty it orders. Thus, it creates a new form of participation for the victim who is entitled to submit a statement of financial loss to the criminal court, and the final outcome includes both a criminal penalty and a restitution order. However, restitution’s

Table 2-3: Advocacy Duties under Penal Code Section 13835

	Welfarist	Prosecutorial	Other
Mandatory	<ul style="list-style-type: none"> • Compensation assistance • Emergency assistance • Restitution assistance • Crisis intervention • Direct counseling • Resource & referral • Family & friends notification • Employer notification • Property return 	<ul style="list-style-type: none"> • Court escort • VIS assistance • Case status • Orientation to the criminal justice system 	<ul style="list-style-type: none"> • Presentations to outside agencies • Temporary Restraining Order assistance • Crime prevention information
Optional	<ul style="list-style-type: none"> • Employer intervention • Creditor intervention • Funeral & burial arrangements 	<ul style="list-style-type: none"> • Transportation assistance • Childcare assistance • Witness notification • Court waiting area • Witness protection 	

Welfarist services reimburse or recover direct financial losses, seek to prevent future losses, and/or seek to mitigate the emotional effects of the crime. In addition to their old tasks of compensation assistance and emergency assistance, VWAs have two new tasks dealing with direct financial losses: helping victims recover restitution from the offender and getting victims' property promptly returned to victims when it is used as trial evidence. These two additions came from different constituents in the victims' movement. Restitution was declared a state constitutional right in the 1982 Victim Bill of Rights, which was authored and funded by state prosecutors but passed as a popular initiative when the victim was gaining ground as an important symbol in the war on crime (McCoy, 1993). Victims' desire for prompt property return, on the other hand, was a discovery made by early pilot projects in California that interviewed victims involved in criminal proceedings (Interview).

Early pilot projects, the State Compensation Board, and the President's 1982 Task Force, also discovered that victims sometimes face indirect financial consequences as a

overriding aim to make the victim whole, rather than to punish the offender, makes it more similar to the interventions in the welfarist category than the prosecutorial category. Second, transportation to court and childcare assistance might be classified as welfarist because they mitigate the financial losses associated with participating in a trial. However, their overriding aim to facilitate participation in the trial makes them more similar to others in the prosecutorial than the welfarist category. Finally, participation in the criminal process, especially through VISs, might be considered welfarist where participation facilitates victims' psychological healing. Although this is a common rationale it is secondary to prosecutorial aims.

result of their victimization, such as job and income loss from crime-related work absences and inability to pay existing debt when faced with crime-related expenses (California Victim/Witness Assistance Program 1982; President's Task Force 1982). To prevent larger financial ruin, VWAs are now directed, when requested by clients, to notify employers that the client has been the victim of a crime, and to intervene with employers and creditors by negotiating things such as un-penalized work absences and practical repayment schedules.

Finally, VWAs' newest tasks to mitigate the psychological trauma of criminal victimization are, upon request, to notify family friends of the victimization, which alleviates victims of the painful task of telling their story multiple times, and to help murder victims' arrange funeral and burial services (this is distinct from compensating victims for these services, which are indeed covered by the state compensation program). As before, VWAs may continue to refer clients to outside agencies, counsel victims experiencing an immediate crisis, or provide long-term therapy.

The Current Structure of Services to Victims

California has erected a large and somewhat confusing structure to implement victims' rights and services. At the state level at least eleven departments either provide direct services to victims or fund local agencies (California Performance Review 2004). Two departments have important relationships to VWAs: the Victim Compensation and Government Claims Board (VCGCB), which compensates some victim for some of their losses, and the Emergency Management Agency (EMA), which disburses funds to over five hundred local programs, including the fifty-eight county VWAs. The three agencies that are central to the network of county VWAs are summarized on the next page in Table 2-3. County VWAs receive funding from EMA to perform the duties specified under California Penal Code Section 13835. One of these duties is assisting victims with claims for compensation and submitting claims to VCGCB for review. (Victims may also submit claims directly to VCGCB.) In addition, twenty-one VWAs have subcontracts with VCGCB to evaluate claims.

Table 2-3: Organizational Structure of California’s VWAs Network

	Victim Compensation and Government Claims Board (VCGCB)	Emergency Management Agency (EMA)	Victim-Witness Agencies (VWA)
State/County	State	State	County
Major Victim-Witness Functions	<ul style="list-style-type: none"> • Oversees the Restitution Fund, which compensates some victims of crime • Evaluates all compensation claims and disburses compensation, except for claims submitted to subcontracting county VWAs 	<ul style="list-style-type: none"> • Distributes state and federal funds to 500+ local programs, including 58 VWAs 	<ul style="list-style-type: none"> • Performs duties specified under California Penal Code 13835 • Helps victims prepare paperwork to receive compensation • If a subcontract with VCGCB exists, evaluates compensation claims. If no subcontract exists, submits compensation claims to VCGCB

California in Context

In 2008-9 California’s 58 VWAs received a total of \$22,820,016 in state and federal funds. This included \$18,485,654 for normal operating costs (\$7,674,141 federal VOCA funds and \$10,811,513 from the state Restitution Fund) and an additional \$4,334,362 in mostly federal funds for special projects. These numbers do not include local funds that counties contribute to their VWAs.

Comparing relative sizes of states’ compensation programs and VWA networks is not straightforward because no agency has compiled state-by-state data on total expenditures on VWAs, which always include state and federal dollars and may include local dollars as well. Even if these figures were available, individual state figures may include expenditures on victim-service agencies that are not VWAs as I have defined them, such as battered women’s shelters.

One way to estimate relative size of states’ VWA networks is to compare VOCA grant sizes. Since VOCA dollars are matching funds they provide some relative indication of states’ spending on victim services generally. The two drawbacks to this

approach, as mentioned above, are that they do not include all dollars spent and they likely include dollars spent on victim-services agencies that are not VWAs as I have defined them.

States receive two VOCA grants, one to operate assistance programs and one to operate and replenish the state's compensation fund specifically.⁷ In 2009 VOCA assistance grant amounts ranged from a low of \$1.1 million in Wyoming to a high of \$40.6 million in California. At \$40.6 million, or 11.2% VOCA assistance dollars, California is in its own league; the next three largest grants are \$27.1 (Texas), \$21.8 (New York), and \$20.5 (Florida) million. The average award is \$7 million and the median is \$5.2 million, figures that demonstrate California's outlier status and the concentration of awards at the lower end of the range.

A similar trend was found in VOCA compensation grants. Awards ranged from a mere \$60,000 in Nebraska to \$30.1 million in California, with an average of \$3.6 million and a median of \$1.4 million. Texas is a close second to California at \$29.8 million, and the two states, which together account for one third of compensation dollars, are far ahead of the next three: \$11.7 in Florida, \$11.6 in New York, and \$10.8 in Illinois.

Finally, California's total VOCA dollars (combining compensation and assistance grants) soar above the other states at \$71.7 million, which is about thirteen percent of all VOCA dollars. Texas comes in second at \$56.8 (about ten percent of the total) and three more (New York, Florida, and Illinois) are between \$33 and \$25 million. The remaining forty-five steadily descend from \$20 million down to Vermont's mere \$1.4 million. The average total dollars received is \$10.6 million and the median is \$6.1 million.

Although California's network of VWAs receive the most federal money, this does not necessarily translate into more services per person or per victim. There was far less state variation when VOCA dollars per capita were calculated, and California's rank on these measures dropped significantly. It came out dead last in assistance dollars per person at \$1.11. In fact there was an inverse relationship between grant size and dollars per person. For example, Wyoming's \$1.1 million assistance grant, which ranked fiftieth, translated to \$2.03 per person, taking the number one spot at almost twice California's figure. California fared better in compensation dollars per person, coming in ninth place at eighty-five cents per person. In total VOCA dollars per person, California ranked 17th at \$1.95.

The findings were similar when VOCA dollars per eligible crime victim were calculated using violent crime arrests from the 2008 Uniform Crime Report. California ranked 15th in assistance at \$171.20 per victim, 41th in compensation at \$219.38 per person, and 34th in total VOCA dollars at \$397.15 per person.

⁷ Numbers were provided by the federal Office for Victims of Crime website, available at <http://www.ojp.usdoj.gov/ovc/grants/index.html>.

Table 2-4: 2009 VOCA Dollars

<i>Grant Size</i>				
	Range	Average	Median	CA (Rank)
Assistance	1.1 – 40.6	7	5.2	40.6 (1)
Compensation	60K – 30.1	3.6	1.4	30.1 (1)
Total	1.4 – 70.1	10.6	6.1	71.1 (1)
<i>Per Capita</i>				
Assistance	1.11 – 2.03	1.32	1.21	1.11 (50)
Compensation	.03 – 4.99	0.59	0.47	0.85 (9)
Total	1.28 – 6.93	1.91	1.76	1.95 (17)
<i>Per Victim</i>				
Assistance	134.68 – 1395.93	416.72	325.97	171.20 (15)
Compensation	11.08 – 523.46	145.65	115.34	219.38 (41)
Total	214.58 – 1658.96	562.37	459.89	387.15 (34)

* In millions except the low end of the compensation range, measured in thousands

Conclusion

Rather than born of a passionate political movement to overhaul the criminal justice system, California's VWAs were the product of two institutional developments that happened from within government and largely out of the public's sight: the state's compensation fund, whose idea came from a county judge, and federally-sponsored pilot programs to improve treatment of witnesses. Victim advocacy, and VWAs, in California came to embody these two general missions in Penal Code Section 13835 in 1977, which laid out two types of tasks: social services that helped victims to recover from the crime and case-related tasks to assist criminal prosecutions. This model was of victim advocacy implemented all throughout the United States once federal funding became available in 1984. California currently receives the largest block of federal funding for its fifty-eight VWAs, but this does not necessarily translate into more or better services to victims.

The next chapter begins a detailed look into what California's fifty-eight VWAs do on a daily basis, and in particular, whether and how they divide their time between social service and case-related services.

Chapter Three: Variation in County Compensation and Restitution

Introduction

The purpose of this chapter is to identify and explain variation, if any, in the amount of compensation and restitution paid to crime victims in each county. This chapter is divided into four parts. Part I discusses the institutional features of compensation and restitution in California and presents the hypotheses. Part II presents the methods and results of compensation comparisons, while Part III presents the methods and results of the restitution comparisons. Part IV discusses the results.

I. Background on Compensation and Restitution

Compensation and restitution are two forms of welfarist interventions into the lives of crime victims. Both reimburse the victim for her loss(es) incurred as a result of her victimization. These losses include many of the tangible damages a victim is entitled to in a civil suit, and these programs share the civil suit's logic of making the victim whole again through financial reparations. Indeed, the very existence of compensation and restitution programs highlights the limited utility of civil suits to the typical crime victim. First, civil suits are unavailable to victims whose offenders are unknown, which the FBI estimated occurred in about 82% of property victimizations and 55% of violent victimizations in 2008 (Federal Bureau of Investigation 2008). Second, findings of civil liability do not always lead to payment. The typical offender has limited financial resources from which to pay the victim, especially on top of the fines typically imposed upon conviction, and these resources become even more limited when the offender serves a jail or prison term (Elias, 1983). Third, victims may be reluctant to sue offenders who are relatives, such as in the case of domestic violence. Finally, civil suits can be costly and time consuming, which may deter a significant number of victims from pursuing damages against known offenders.

Table 3-1 summarizes how compensation and restitution operate in California. California's compensation fund is a pool of money that comes from fines that are levied on a wide variety of criminal and traffic offenses (CA Pen. C. § 1464(f)(2).)⁸ Funds then get redistributed to all victims who apply and qualify. Compensation holds the distinction of being available to victims whose offenders are unknown, who never appear in any court, and regardless of the individual offender's ability to pay. Still, there are restrictions on who can receive compensation and how much money victims can receive. A person is eligible to receive compensation if she meets four conditions: (i) she is the victim of a violent crime (or crime against the person), (ii) she did not contribute to her own victimization, (iii) she cooperates in any criminal investigation, and (iv) she is not on probation or parole at the time the claim is made (CA Gov. C. § 13955 – 13956). Reimbursement is limited to specific losses related to physical injuries, but it also

⁸ A recent study revealed that traffic offenses account for 86% of revenue, generating \$135.8 million of the \$158 million in FY 2005-06 (Neito 2006).

reimburses all violent crime victims for the cost of psychological counseling, even those who were not physically harmed (see below). Dollar limits are placed in each category of loss and there is a lifetime cap of \$70,000. Additionally, reimbursement is offset by payment from other institutions, such as private insurance policies, sick and vacation leave, and government benefits (CA Gov. C. § 13957 – 13958). These restrictions reflect the fund’s attempt to prioritize reimbursement in the face of limited resources (Interview, 2008).

Restitution is an older scheme in which offenders reimburse their individual victims for their specific losses.⁹ The court that determines a convicted offender’s criminal penalty also determines the victim’s losses and orders the offender to repay the victim for those losses. A legal institution serves as the intermediary collector of the money, but the payment is otherwise direct from the offender to the victim. In California, offenders pay money into accounts managed by the county probation department, the county collections office, the state Department of Corrections and Rehabilitation, or the Franchise Tax Board. When victims who have already been compensated by the Restitution Fund are then ordered restitution, restitution payments go to reimburse the Restitution Fund rather than to the victim. Unlike compensation, restitution is available to victims of all crimes, can reimburse for all financial losses connected to the crime, and there are no dollar limits on recovery.

VWAs have been central to the disbursement of compensation since their founding, while the same cannot be said of restitution. Assistance with compensation paperwork has always been a central task of victim advocates and in recent years many county VWAs (twenty-one today) have acquired joint powers agreements with the state compensation program to process compensation claims themselves. While victims can still apply directly to the state for compensation without the aid of the local VWA, I am told that the very few do. One might reasonably argue that neither entity – state compensation and the county VWA network – could exist without the other. By contrast, there is no historical relationship between VWAs and restitution orders, which are made by criminal courts. While compensation assistance is a universal and relatively uniform procedure across California’s VWAs, VWAs’ relationship with sentencing courts, and thus the presence and form of restitution assistance, is not predetermined. Although recently the state has sponsored pilot programs to streamline restitution assistance, this is only the first attempt to do so and counties are still granted broad discretion to develop – or not –relationships with court actors and internal cultures that are supportive of restitution.

This structural difference opens the door for different hypotheses about VWAs’ performance on compensation versus restitution, even though both are welfarist interventions. Since all VWAs have institutional and ideological ties to compensation, the hypothesis here is that, given the freedom to choose which duties to emphasize, community-based VWAs will choose this duty more often than will probation- and DA-based VWAs. On the other hand, community-based VWAs may in fact show the *lowest*

⁹ This summary of restitution is based upon the state’s pamphlet, *Financial Recovery: A Victim’s Guide to Restitution* (California Victim Compensation Program 2010).

outcomes on restitution for two reasons. First, restitution follows convictions, and the argument being made throughout this dissertation is that community-based VWAs are less likely than D.A.- and probation-based VWAs to work with victims who have active court cases. Second, community-based VWAs lack the institutional ties to restitution that probation- and DA-based VWAs have that may make assisting in the ordering of restitution rather simple. Restitution orders are based upon documented losses submitted by victims to the court at the time of sentencing, so D.A.-based VWAs that are already involving victims in court processes might expend only a little more effort getting victims to also complete this paperwork. Likewise, probation departments have always been responsible for preparing restitution paperwork as well as opening and monitoring restitution accounts – which was in fact one reason that they were considered natural locations for VWAs. Alternatively, community-based VWAs might have to forge new relationships with criminal courts in order to establish the volume of potential restitution cases that D.A.- and probation-based VWAs already see. Of course, the very purpose of erecting VWAs was to establish these kinds of new relationships, and indeed, an alternative hypothesis is that community-based VWAs go out of their way to do so because of their commitment to helping victims. However, the hypothesis here remains that the greater institutional access to potential restitution cases, and the longer histories of assisting in restitution orders, will produce higher restitution outcomes among D.A.- and probation-based VWAs than among community-based VWAs.

It might be argued that because restitution and compensation require similar paperwork, D.A.- and probation-based VWAs would also regularly file compensation claims along with restitution orders, resulting in high outcomes on both compensation and restitution. While it may be true that they regularly file compensation claims with the cases that they process. Because of the other demands associated with active court cases, D.A.- and probation-based VWAs may take on fewer cases overall, while community-based VWAs, less burdened with court processes, are free to reach out to the greater population of victims to help them get compensation. However, restitution is tied to the narrow sub-group of victims that I argue D.A.- and probation-based VWAs are more likely to work with – those with active court cases – while compensation is available to all victims of certain crimes who file police reports. As a result, community-based VWAs are expected to show more time spent assisting with compensation claims and more potential victims reached.

II. Evaluating County Variation in Compensation Outcomes

Methods

The hypothesis was that the performance of compensation-related duties, and the actual securing of compensation for victims, varied by VWA location. It was hypothesized that community-based VWAs show stronger compensation outcomes than DA-based VWAs, and that probation-based VWAs occupy a middle position.

Two measures were considered. The first measure, *compensation assistance*, was the proportion of all duties performed that were compensation-related. This frequency was calculated using annual reports containing advocates' tallying of the number of times

they performed each of the twenty-four duties, two of which involved preparing and filing compensation claims. Compensation assistance was expected to occupy the greatest proportion of activities at community-based VWAs, followed by probation-based VWAs, and lastly DA-based VWAs.

The second measure, *frequency of compensation*, was the percentage of eligible victims in the county who receive some compensation. Community-based VWAs were expected to show the highest percentage of eligible victims compensated, followed by probation-based VWAs, and finally DA-based VWAs. The population of eligible victims in the county was calculated using the California Department of Justice data on violent index crimes and domestic violence. All violent index crime (murder, rape, robbery, aggravated assault), domestic violence, child abuse, simple assault, and carjacking victims qualify for mental health counseling benefits at minimum (and other qualifying expenses if they exist) if the other three conditions (no contribution to victimization; cooperation with investigation; not on probation or parole) are present. To estimate the population of eligible victims, the number of violent index crimes and instances of domestic violence (which the California Department of Justice records separately), were tabulated. Carjacking, simple assault, and child abuse statistics are not available.

A more accurate calculation of eligible victims would use the number of victims rather than the number of crimes, since a single crime can have multiple victims. My calculation thus inflated the actual the percentage of victims compensated, but there is no reason to suspect that the rate of inflation will be unequal across counties. Additionally, the crime statistics used also include those victims who would have been disqualified under the three remaining conditions. The cooperation requirement does not pose a great problem here because it generally means that a police report must have been filed. According to my sources, only rarely are applicants disqualified for uncooperative behaviors. However, the number of victims ineligible due to victim participation and to probation or parole status is probably higher because offenders and victims are often drawn from the same populations. Although these conditions do not exclude otherwise “innocent” victims whom we might judge to have made bad choices, such as the late-night street robbery victim who could have avoided victimization by calling a taxi, this condition does exclude, for example, gang members shot by rivals and anyone on probation or parole at the time of filing.

Since the denominator in this calculation was the number of eligible victims in the calendar year, the ideal numerator in this calculation would be the number of claims paid in the calendar year, but the Victim Compensation and Government Claims Board records the number of claims paid in the fiscal year, which spans July through June. Claims figures including the later year were selected to represent the earlier year, so that, for example, 2002 data represented claims filed from July 2002 to June 2003. Although inexact, this approach may actually make up for some of the claims that would be lost by a strict annual comparison due to the filing lag time of up to one year. Still, the limitations of the method are demonstrated by the one instance where more than 100% of victims were compensated in that county in that year. Below I do calculate an aggregate

percentage over the five-year period for which I have data, which decreases the timing problems.¹⁰

Results

Compensation assistance

Table 3-2 shows compensation assistance by agency type for the years 2004 and 2005. Data from individual VWAs in each host agency category were aggregated to calculate frequency of assistance by all VWAs in that category. The number of VWAs in each category is shown in parenthesis below: five VWAs are community-based, nine are probation-based, and forty-four are D.A.-based. Variation was shown across VWA types, but in the opposite direction of the hypothesis. Over the two-year period, compensation assistance ranged from about one-tenth to one-fifth of advocates' activities. Contrary to the hypothesis, it was the smallest proportion at community-based VWAs, 12.3%. It was the highest proportion, 17.7%, at probation-based VWAs, and DA-based VWAs fell squarely in the middle at 14.9%.. This ordering held for both years, with larger gaps in 2004, when advocates at community-based VWAs spent 11.3% of their time assisting with compensation, compared to 14.1% at D.A.-based VWAs and 19.3% percent at probation-based VWAs.

Table 3-2: Compensation Assistance's Proportion of VWA Activities

	2004	2005	All Years
Community (n = 5)	11.3	13.6	12.3
Probation (n = 9)	19.3	16.2	17.7
D.A. (n = 44)	14.1	15.8	14.9

Table 3-3 below shows compensation assistance's proportion of activities at my two research sites, Santa Clara and San Francisco. Their differences were in the opposite direction, with San Francisco's D.A.-based VWA trailing behind Santa Clara's community-based VWA. Both VWAs had figures above the mean for their host locations. Compensation assistance at Santa Clara occupied about one-quarter of

¹⁰ Another potentially relevant measure of compensation performance, average dollar amount per claim, was considered but rejected. While higher average payouts might reflect more aggressive pursuits of compensation, it is just as likely that they simply reflect more severe injuries experienced by the victims processed by those VWAs.

activities, about double that of the community-based average and well above the probation- and D.A.-based averages. San Francisco was not far behind, with compensation assistance occupying about one-fifth of activities there.

Table 3-3: Compensation Assistance, Santa Clara and San Francisco

	2004	2005	All Years
San Francisco (D.A.)	17.9	20.6	19.4
Santa Clara (C)	20.0	26.1	24.4

Frequency of compensation

County-level data on compensation claims paid were available for five years, from 2002 to 2006. Data from individual VWAs in each host agency category were aggregated to provide a proportion of victims compensated by all VWAs in that category. Table 3-4 shows the results. As with compensation assistance, the results showed some variation, but the overall picture is one of notable similarity rather than difference. In the present case, the differences were greater and they were in the expected direction.

Over the entire five-year period, community-based VWAs compensated the highest percentage of eligible victims at 17.4%, D.A.-based VWAs compensated the lowest at 12.6%, and probation-based VWAs fell in between at 13.8%. This trend held for most of the individual years. Community-based VWAs compensated the highest percentage of victims in every year except 2002, and D.A.-based VWAs held the lowest position three out of the five years. Probation-based VWAs compensated the highest proportion of victims in 2002, the lowest in 2006, and held the middle position in the remaining three years.

Table 3-4: Percentage of Victims Compensated by Host Agency

	2002	2003	2004	2005	2006	All Years
Community (n= 5)	17.8	20.1	15.8	15.0	18.5	17.4
Probation (n = 9)	19.2	14.1	12.7	11.9	11.2	13.8
D.A. (n = 44)	14.3	11.9	11.9	12.4	12.7	12.6

Table 3-5 shows the percentage of eligible victims compensated in my two research sites, Santa Clara and San Francisco, over the five-year period. Although San Francisco is housed in a D.A. office, Vaughn had placed it in the welfarist category in 1979. However, the results below show that Santa Clara far outperforms San Francisco at compensating victims. Santa Clara's compensation rate ranges between 27.2% and 33.6% over the five years, and at 29.2% overall Santa Clara ranks fourteenth in the state. San Francisco's rate ranges between 15.8% and 17.2 % and ranks Nth at 16.6% overall. Although Santa Clara's rate is almost double that of San Francisco's, San Francisco's rate is above the D.A.-based average and closer to the community-based average than to the D.A.-based average.

Table 3-5: Victims Compensated, San Francisco and Santa Clara

	2002	2003	2004	2005	2006	All Years
San Francisco (DA)	16.9	15.8	16.0	17.0	17.2	16.6
Santa Clara (C)	28.3	28.1	29.1	27.2	33.6	29.2

Santa Clara does appear to stand out among large counties. Table 3-6, shown on the next page, shows that among the sixteen counties with populations exceeding half a million, it has the highest percentage of victims compensated, almost double that of the next highest county and about triple that of the lowest five. Additionally, all others in this category have percentages that fall below the median; by contrast, only about a third of smaller counties have percentages that fall below the median. Population may be a good predictor of percentage of victims compensated. This is not inconsistent with the suggestion that VWAs in large counties, typically facing high violent crime rates, tend to deemphasize welfarist duties like compensation.

Table 3-6: Percentage of Eligible Victims Receiving Compensation in Counties with Populations over 500,000

	All Years
Santa Clara (C)	29.2
San Mateo	17.0
San Francisco	16.6
San Juaqin	16.5
Alameda	15.3
Contra Costa	15.1
San Bernadino	15.1
Sacramento	13.0
Riverside	12.9
Kern (P)	12.3
Stanislaus	10.8
San Diego	10.3
Ventura	10.2
Orange (C)	9.3
Fresno (P)	8.7
Los Angeles	8.3

Orange County is an interesting comparison to Santa Clara because it also a large county with a community-based VWA, and also has a violent crime rate below the mean and median in the state. Yet Orange County’s aggregate compensation percentage is the sixth lowest in the state and less than a third of Santa Clara’s. Indeed, Orange County’s compensation rate of 9.3% falls well below the rates of the other four community-based VWAs, which range between 23% and 30%. From the Orange County VWA website it appears that, unlike Santa Clara, the VWA has multiple locations, including locations in the courthouse. Thus, in practice Orange County’s VWA may look more like a DA-based VWA or some kind of hybrid model.

III. Evaluating County Variation in Restitution Outcomes

Methods

The hypothesis was that the performance of restitution assistance, and the securing of restitution for victims, varies by VWA location. The hypothesis was that community-based VWAs will show lower performance outcomes than will D.A.- and probation-based VWAs. No differences were expected between D.A.-and probation-based VWAs.

Two performance measures were considered here. As with compensation, the first measure, *restitution assistance*, was the proportionate number of times that restitution assistance was performed out of all twenty-four duties. This frequency was calculated using annual reports containing advocates' tallying of the number of times they performed restitution assistance. Community-based VWAs were expected to show the least proportion of their time devoted to restitution assistance.

The second measure, *restitution reimbursement*, compared reimbursement dollars collected by VWAs from defendants whose victims had already received compensation. Coming up with a direct measure by which to compare victims' receipt of restitution as a result of VWA restitution assistance was impossible because no agency records the number of restitution victims VWAs assist or the number of restitution orders secured by VWAs. It was also not feasible to simply compare restitution orders made, or dollars collected, in each county since restitution orders are not reliably the products of VWA intervention, unlike compensation claims. Reimbursement dollars can be secured without actually assisting victims with restitution, and they replenish the compensation fund rather than victims, so they are imperfect approximations of VWAs' commitment to securing restitution. However, they do serve as approximations of VWAs' restitution activity because identifying and pursuing eligible cases (in which both compensation and restitution have been ordered), and then taking steps to have restitution money diverted to the compensation fund, is most likely at VWAs that are directly involved in the restitution process at the outset because they have a ready pool of restitution recipients whom they can crosscheck for compensation receipt in the statewide database. VWAs less involved in the restitution process face more hurdles to identifying eligible cases. They can ask victims filing compensation claims whether restitution has been ordered, but compensation claims can be filed long before restitution has been ordered. VWAs can follow up on past compensation claims, but checking every past claim would waste a lot of time because so many of those victims would not have received restitution. Non-VWA actors could somehow identify cases of double payment and specially refer them to VWAs, but it seems improbable that they would willingly add to their workload.

To compare reimbursement dollars across counties, I approximated the average restitution amount collected from each offender by dividing raw reimbursement dollars by the annual number of clearances in each county for nine crimes: homicide, rape, robbery, assault, burglary, motor vehicle theft, larceny – under \$400, larceny – over \$400, and arson. A crime is “cleared” when a suspect has been arrested, charged with a crime, and referred to the county prosecutor for prosecution. Each of these crimes is eligible for a restitution order, though not every cleared case results in a conviction and restitution order, making the measure again imperfect. It was hypothesized that DA-based VWAs, which are most likely to have institutional ties to criminal courts ordering restitution, will have the highest average reimbursement collected per offender, followed by probation-based VWAs and community-based VWAs.

Results

Restitution assistance

Restitution assistance was calculated for individually and collectively for the years 2004 and 2005, and the results are shown in Table 3-7. Restitution assistance occupied between two and five percent of advocates' activities at all VWA type. Variation was contrary to the hypothesis and instead was consistent with the general argument that community-based VWAs outperform D.A.- and probation-based VWAs on welfarist activities. In the two-year period, restitution occupied the largest proportion of activities at community-based VWAs (4.1%), while it was the smallest at D.A.-based VWAs (2.6%), and probation-based VWAs technically fell in the middle but were very close to D.A.-based VWAs (2.7%). Community-based VWAs outperformed the other VWA types in both 2004 and 2005, at 3.6 and 4.8% respectively. Probation- and D.A.-based VWAs alternated second and third place in those years. In 2004 probation-based VWAs performed the lowest anywhere in these years, at just 2%, but they jumped to 3.3% in 2005. D.A.-based VWAs remained steady at 2.6% during both years.

Table 3-7: Restitution Assistance's Percent of VWA Activities

	2004	2005	All Years
Community (5)	3.6	4.8	4.1
Probation (9)	2.0	3.3	2.7
D.A. (44)	2.6	2.6	2.6

An important aspect of the community-based restitution data is that the higher percentages were almost entirely determined by Santa Clara County's VWA. While Santa Clara's average for this time period was 13.8%, the four other community-based VWAs had averages of 0.8% or less and a collective average of 0.7%. As discussed in more detail in chapters five and six, Santa Clara has a streamlined process of restitution assistance that likely contributes to its high numbers here.

Table 3-8: Restitution Assistance at Santa Clara and San Francisco

	2004	2005	All Years
San Francisco (D.A.)	0.5	2.1	1.4
Santa Clara (C)	10.6	12.5	12.0

As with compensating eligible victims, Santa Clara was again the highest achieving of large counties, shown in Table 3-9 below. It was one of the highest achieving of all counties, ranking third overall behind only Mono County (22.6%) and Kings County (15.1%).

Table 3-9: Restitution Assistance’s Percent of VWA Activities in Counties with Populations over 500,000

County	All Years
Santa Clara (C)	13.8
Contra Costa (P)	7.9
San Bernadino	5.1
Ventura	3.0
Sacramento	2.8
San Diego	2.7
Riverside	2.2
Los Angeles	1.8
San Mateo	1.6
Fresno (P)	1.3
San Francisco	1.3
Stanislaus	1.2
Alameda	1.0
Orange (C)	0.6
Kern (P)	0.2
San Juaqin	<0.1

Restitution Reimbursement Dollars

Restitution reimbursement dollars were available for the years 2004 and 2005. During the two-year period the average collection amount was \$667,057, with a range of \$16,092 in Modoc County to \$9,413,651 in Los Angeles County. Table 3-10 on the next page shows the average collection amount collected per offender according to VWA agency location.

The results were consistent with the hypothesis. D.A.-based VWAs showed the highest average reimbursement amount per offender at \$516, followed by probation-based VWAs at \$236 and probation-based VWAs at \$222.

Table 3-10: Average Restitution Reimbursement Amount Collected per Offender

	2004	2005	All Years
Community (5)	223	221	222
Probation (9)	237	235	236
D.A. (43)*	451	584	516

*Alpine county was removed due to insufficient data

Table 3-11 shows average reimbursement amounts for my two research sites, showing results in the opposite direction and demonstrating the large variability in this measure across VWAs. San Francisco collected the least amount of reimbursement of all fifty-seven counties at \$25 per offender. At \$235 per offender, Santa Clara fell right above the median of \$232 per offender.

Table 3-11: Average Restitution Reimbursement Amount Collected per Offender

	2004	2005	All Years
San Francisco (DA)	27	24	25
Santa Clara (C)	248	223	235

I.V. Discussion & Conclusion

This chapter sought to identify and explain variation in the performance of two welfarist duties, compensation assistance and restitution assistance. I argued that the two duties, although both welfarist in orientation, presented two different possibilities based on institutional history and structure, as well as the demands of each activity.

Compensation assistance was essential to the birth of California's VWA network and early research indicated that it was one of the unifying activities among VWAs (Vaughn 1979). It is a duty that can be performed almost entirely outside of the criminal process and criminal justice agencies; the only link is the police report, which the victim must file and the advocate must retrieve. Advocates need only have a limited relationship with the police department to retrieve reports, and no interaction with District Attorneys is required because compensation is offered in the absence of an arrest or prosecution.

By contrast, restitution was the domain of criminal courts and probation departments before VWAs ever became involved with it. Restitution assistance was later included as one of the twenty-four duties in 1982, but unlike compensation assistance, no standardized process for restitution assistance was developed before the late 2000s. Because restitution assistance requires the cooperation of the criminal courts ordering restitution, it may have been thought difficult to develop and enforce a standardized process that was useful at the hundreds of local courts across the state, and consequently counties were left to develop their own individualized processes. It was only in 2008 that the state began experimenting with a standardized regime at select locations to improve performance of this duty.

As a result of these differences, it was hypothesized that community-based VWAs would show the highest outcomes on the compensation measures while D.A.-based VWAs would show the highest outcomes on restitution measures, even though restitution is a welfarist task.

The results on both compensation and restitution measures were mixed but generally suggested some interaction of activity orientation with agency location as suggested by the hypotheses. While community-based VWAs compensated the most victims, they also spent the least amount of time on compensation assistance. These two findings suggest that community-based VWAs may be more efficient than the other VWA types with their time, or they may also reflect a greater likelihood that compensation paperwork will be completed and submitted at community-based VWAs. In other words, D.A.- and probation-based VWAs may spend more time assisting victims with compensation paperwork that is never completed and submitted.

The results also showed that while restitution assistance occupied a greater proportion of activities at community-based VWAs than it did at probation- and D.A.-based VWAs, the higher community-based restitution figure reflects the aggressive restitution assistance efforts of Santa Clara, while the other four community-based counties have figures well below the averages at all VWA types. Community-based VWAs would have come in last place as hypothesized if Santa Clara were removed as an outlier, suggesting that in general closer institutional ties to criminal courts lead advocates at probation- and DA-based VWAs to perform restitution assistance more regularly.¹¹ As expected, D.A.-based VWA far outperformed probation- and community-based VWAs on restitution reimbursement dollars collected, collecting on average more than double the amount of the other two.

The differences observed in my two research sites, Santa Clara and San Francisco, tell a slightly different story. Santa Clara not only outperformed San Francisco on all measures, but the differences observed were much larger than the average differences for community- and D.A.-based VWAs. The restitution gaps are particularly large and particularly interesting because of the institutional requirements for accomplishing these

¹¹ Indeed, Santa Clara's outlier status may have been removed in early 2010, when the county's District Attorney Office dismantled the VWA's system of restitution assistance and erected its own system inside the DA Office that uses internal employees. A VWA manager described the transfer of restitution duties to me as part of an ongoing effort by the DA Office to take over the VWA, which the DA Office has expressed is more appropriately located in its office rather than a community-based agency.

tasks. Santa Clara County's VWA is an example of a community-based VWA developing a relationship with criminal courts in order to serve victims at the tail end of the criminal process. By contrast, San Francisco's VWA is an example of a D.A.-based VWA allocating almost no resources to restitution. The differences demonstrate individual variation among VWAs as well as alternative or more complex explanations for why individual VWAs choose some activities over others. As I show in chapters five and six, Santa Clara's restitution program can be described as a bureaucratic paper-pushing operation that requires no contact with district attorneys and no trips to court. The system that has been set up, in other words, maintains institutional boundaries.

The large differences between Santa Clara and San Francisco should not overshadow the much smaller differences observed generally between the VWA types. The results in this chapter suggest more similarity than difference among VWAs. Results from the first three measures were all within a few percentage points of each other. These are not the kinds of large gaps in performance that suggest entirely different systems of operation or prioritization according to institutional location, as has been suggested by the literature. Importantly, the results show that D.A.- and probation-based VWAs do not disregard welfarist tasks. The next three chapters provide further support for these two general conclusions that VWAs are more similar than different and that welfarist tasks are a significant aspect of operations at all VWA types.

Chapter Four: Variation in County Performance of Victims' Rights and Services

Introduction

This chapter reports on two studies investigating the range of duties that VWAs pursue and the varieties of emphasis found in VWAs. It is divided into three sections. Section I discusses the basic classifications used to distinguish VWAs and their activities. Sections II and III use VWAs' quarterly reports to explore differences in their performance of the Penal Code duties. Section II begins with an in-depth comparison of my two research sites, Santa Clara and San Francisco. The observed differences between those two sites are used to inform a broader survey of all counties in Section III.

Categories of Difference

The Penal Code lists twenty-four duties that VWAs can do, fourteen mandatory and ten optional duties (CA Pen. C. § 13835). This long activity list and its division into mandatory and optional activities reflect both the desirability and necessity of variety when it comes to serving victims. Variety is desirable because of the dual orientations, welfarism and law enforcement, that inform the profession and that compete for priority within the profession. It is also necessary because of the vastly different needs of the victim populations across the different locales. Providing funeral costs to homicide victims, for example, might be routine in Los Angeles County but rare in Napa County because of the vastly different incidence of homicide.

This chapter seeks to identify the factors that condition how much of each of the various duties a VWA does. These factors can be divided into two types: those that the Penal Code and bureaucratic efficiency anticipate, and those that are "external" to legal and bureaucratic demands. Two anticipated factors are the official prioritization provided by the labels "mandatory" and "optional," as well as the service needs of the victim population, as the homicide example shows. All things being equal, VWAs will perform mandatory duties more frequently than optional ones, and VWAs will also perform with the most frequency the tasks that are needed by the most victims at their locales. However, the weight of these factors is tempered by their relationship to each other, and also by the considerable discretion that VWAs have to recruit their own clients. First, if the client population needs comparatively few mandatory services, the VWA is freed up to deliver optional services and may in fact deliver more optional than mandatory services.

Second, "mandatory" simply means that the VWA must provide those services to victims who ask (and qualify) for them, and it does not mean that the VWA must recruit victims who have mandatory needs. Thus, a VWA's goal may not be to maximize performance of mandatory duties, or even to maximize performance of the duties most needed by the population. Rather, a VWA's goal may be to maximize performance of any duty, or set of duties, it chooses by recruiting a particular sub-population of victims with those needs. For example, a VWA's leader may determine that a sub-population of victims within her jurisdiction has a high need for one or more optional services, recruit those victims, and consequently perform optional duties at the expense of mandatory ones. So, while official labels and overall population needs are probably important

contributors to variation in VWA performance, their actual effect may not be straightforward.

We know from the vast literature on organizations, and law within organizations, that neither strict observance of black-letter law nor maximizing efficiency necessarily governs organizational choices and priorities (Edelman 2004). Cultural, political, historical, economic, and other “external” factors sometimes have equal or more influence over what organizations do. The external factor I have identified in this dissertation as potentially relevant is the VWA’s host agency: district attorney office, probation department, or non-profit community agency. In particular, the VWA’s host agency influences the VWA’s degree of commitment to prosecutorial versus welfarist duties. DA-based VWAs will spend a greater portion of their overall time on prosecutorial duties than will probation- and community-based VWAs (in that order), while community-based VWAs will spend a greater portion of their overall time on welfarist duties than will probation- and DA-based VWAs (in that order).

Organizations literature supports the claim that sub-organizations tend to adopt the basic goals and strategies of their host organizations, often as a matter of financial survival, and that government agencies may be especially vulnerable to this process (Frumkin and Galaskiewicz 2004; Morrill and McKee 1993). This chapter does not seek to identify the precise mechanism that explains any host agency differences. However, the most likely explanation would be that DA-based VWAs, committed to the DA’s goal of prosecuting and punishing offenders, recruit the most clients with active court cases, and thus deliver prosecutorial services with the most frequency. Unfortunately, VWAs do not uniformly collect data on recruitment methods and as a result this chapter cannot test this more detailed hypothesis.

Literature on victim advocacy supports the claim that host agency matters in this way. When victim advocacy was in its infancy, literature at the time suggested that variety within the budding profession could, should, or in some cases did lead to different organizational orientations or models of service based upon a combination of host agency and service emphasis (Friedman 1985; Vaughn 1979). VWAs hosted by law enforcement agencies would adopt a prosecutorial model of governance, emphasizing duties that facilitate the prosecution and punishment of offenders over duties that facilitate victims’ recovery. Alternatively, VWAs hosted by community-based agencies would adopt a “welfarist” model of governance, emphasizing recovery from victimization over prosecution of the offender. Later studies in several other states have suggested similar tendencies (Kilpatrick, Beatty, and Howley 1998; Newmark 2006; Travis 1998).

Recall Vaughn’s (1979) claim from chapter two that California’s network of VWAs had evidenced this kind of division by the time it was only five years old. Table 4-1 below agains shows her assignments of county VWAs. (Four counties had two VWAs in 1979, but today each county is only allowed one VWA.) Eleven of the twelve VWAs following a criminal justice model were hosted by DA offices, but only three of the fourteen VWAs following a social service model were hosted by DA offices. The remaining social service-modeled VWAs were hosted by a variety of agencies: four were

in probation departments, three in community agencies, two in other local government offices, and two in graduate education programs.

Table 4-1, Model Assignments Among California County VWAs, Vaughn 1979

Criminal Justice Model	Social Service Model
Alameda (DA)	Fresno (Probation)
Amador (DA)	Los Angeles City (Local Government)
Contra Costa (DA)	Los Angeles County (Graduate Theological Union)
Marin (DA)	Napa (Local Government)
Monterey (DA)	Placer (Community)
Monterey (Community)	San Bernadino (Probation)
Orange (DA)	Sacramento (DA)
Riverside (DA)	Sacramento (Law School)
Santa Barbara (DA)	San Francisco (DA)
Sonoma (DA)	San Francisco (Community)
Stanislaus (DA)	San Luis Obispo (DA)
Tulare (DA)	San Mateo (Probation)
	Santa Clara (Community)
	Sonoma (Probation)

Although these assignments suggest the importance of host agency to the model followed, the three counties with two VWAs each (Monterey, Sacramento, and San Francisco) suggest an additional factor or factors. In all three counties the two VWAs are hosted by different agency types, yet in all three counties, the two VWAs follow the same model. Thus, Monterey’s DA- and community-based VWAs both follow a criminal justice model, Sacramento’s DA- and law-school based VWAs both follow a social service model, and San Francisco’s DA- and community-based VWAs both follow a social service model. This consistent pairing suggests that something about the county itself or the particular institutional histories of the VWA pairs significantly influences model adoption. I come back to this observation in Section III.

Vaughn provided no supporting data for her model assignments. Vaughn listed the activities performed by each VWA but not their frequency or even whether an activity supported a criminal justice or social service model. In this chapter I first categorize each Penal Code duty and then use recent data from all fifty-eight VWAs to compare frequency of performance.

In chapter one I introduced the Penal Code duties and assigned each into one of three categories according to whether it predominantly serves the interest of recovery from victimization (welfarist), prosecution of the offender (prosecutorial), or some other purpose (other). Table 4-2 shows those assignments again and includes one duty that

does not appear in the penal code, “follow-up assistance,” which VWAs are required to report on and which appears in their reports as a mandatory duty. Follow-up assistance

Table 4-2: Penal Code Duties Supporting Welfarist, Prosecutorial, or Other Purposes

	Welfarist	Prosecutorial	Other
Mandatory	<ul style="list-style-type: none"> • Claims assistance • Emergency assistance • Restitution assistance • Crisis intervention • Direct counseling • Resource & referral • Notification of family/friends • Employer notification • Property return 	<ul style="list-style-type: none"> • Court escort/support • Victim impact statement (VIS) assistance • Case status/disposition • Orientation to the CJS 	<ul style="list-style-type: none"> • Public presentations • Criminal justice trainings • Follow-up assistance*
Optional	<ul style="list-style-type: none"> • Employer intervention • Creditor intervention • Funeral arrangements • Crime prevention information 	<ul style="list-style-type: none"> • Transportation assistance • Child care assistance • Witness notification • Court waiting area • Witness protection 	

*Not a Penal Code duty but included in VWAs’ performance reports

consists of any contact with a victim or witness regarding a previous contact with that victim or witness, so it can serve a welfarist or prosecutorial interest. I discuss its significance in the results sections.

In this chapter I also make a distinction between two types of prosecutorial duties, those that directly involve victims in criminal proceedings and those that simply provide victims information about the proceedings. Direct involvement means that the victim (or witness) is provided some service that facilitates actual participation in or attendance at the proceedings. These duties are: court escort/support, VIS assistance, transportation assistance, childcare assistance, witness notification, court waiting area, and witness

protection. The remaining duties, case status/disposition and orientation to the CJS, provide information but do not necessarily lead to actual participation or attendance, even though they can accompany them. Although we would expect advocates to provide case updates and descriptions of the greater processes at work to victims who show up to court, they can also give them to victims who do not.

While the crime victims' movement has championed all prosecutorial duties as forms of involvement in the criminal proceedings, their implications for victims and for the institutions that serve victims are quite different. To the extent that the movement has called for victims to have a "voice" in the proceedings, meaning that their presence has some influence over the proceedings, then only those that facilitate actual participation or attendance might help realize this goal. For VWAs, coordinating participation and attendance requires a closer relationship with court actors than do relaying updates about the case and describing the criminal justice process in general. Coordinating participation and attendance involves multiple in-person contacts with court actors, which we would expect to occur most readily at DA-based VWAs because of existing relationships between those persons and institutions. Relationships may be closest at VWAs that are physically stationed within or near DA offices and/or courthouses (rather than simply being overseen by DA offices) because no travel may be required for advocates to meet with DAs or to attend court. Advocates whose offices are off-site at community-based organizations lack these regular interactions with court actors and must travel to facilitate participation. As a result we would expect community-based VWAs to more often give information to victims than to facilitate direct involvement; describing the criminal process requires no relationship with court actors, and giving case updates can be retrieved over the telephone.

Unlike Vaughn, I do not attempt in this chapter to ultimately assign a performance model to each VWA. This is the case for two reasons. First, a numeric threshold might obscure or, alternatively, exaggerate differences. Second, the data themselves are limited representations of what VWAs do, which is why I include qualitative methods in later chapters.

I. Santa Clara and San Francisco

This section utilizes two sets of data: first, on both optional and mandatory duties in Santa Clara and San Francisco for the first two quarters of 2008, and second, on mandatory duties for ten quarters between 2003 and 2008.¹²

Optional and Mandatory Duties, 2008

Table 4-3 below shows the incidence of mandatory and optional duties in San Francisco and Santa Clara for the first two quarters of the 2007-08 fiscal year.

¹² Since 2003, each VWA has been required to submit quarterly reports documenting the number of times each of the enumerated duties was performed. Complete data (all duties, all counties, all quarters since 2003) are not available. In every quarter at least one county failed to submit data, and moreover, data on the optional duties are only sporadically reported. Section two utilizes the most complete data available for all counties, which are those on fourteen mandatory duties for the six quarters between X 2007 and X 2008.

Performance of twenty-five duties was reported: the twenty-four enumerated penal code duties plus an additional duty called “follow-up assistance.” Mandatory duties appear in **bold** and optional duties in *italics*. The percent of total services performed that each duty comprises appears in brackets next to its incidence.

Table 4-3: Performance of Mandatory and Optional Duties, 2008*

	SAN FRANCISCO	SANTA CLARA
WELFARIST		
Claims Assistance	18.0	24.8
Emergency Assistance	0.1	0.5
Restitution Assistance	1.6	13.4
Crisis Intervention	9.7	9.5
Direct Counseling	0	0
Resource & Referral	4.0	9.7
Notification of Family/Friends	0.2	0
Employer Notification	0.1	<0.1
Property Return	0.3	<0.1
<i>Employer Intervention</i>	0.1	<0.1
<i>Creditor Intervention</i>	5.4	<0.1
<i>Funeral Arrangements</i>	0.5	<0.1
<i>Crime Prevention Information</i>	4.2	0
TOTAL WELFARIST	44.4	58.1
PROSECUTORIAL		
Court Escort/Support	2.0	1.4
Victim Impact Statements	0.4	0.2
Case Status/Disposition	14.1	13.1
Orientation to CJS	13.1	14.8
<i>Transportation Assistance</i>	0.3	0
<i>Child Care Assistance</i>	<0.1	0
<i>Witness Notification</i>	0.9	<0.1
<i>Court Waiting Area</i>	2.1	0.2
<i>Witness Protection</i>	0.3	0
TOTAL PROSECUTORIAL	33.1	29.7
OTHER		
Follow-up Assistance	20.7	12.1
Presentations to Public	0.8	0.1
Criminal Justice Trainings	1.2	0.1
TOTAL OTHER	22.7	12.2

*Data are from the first two quarters of the 2007-08 fiscal year

Looking first at similarities, the frequency distributions for the two counties appear quite similar, showing that the two counties tend to generally emphasize and de-emphasize the same duties. Four of the top five duties performed at each VWA are the same: follow-up assistance, claims assistance, orientation to CJS, and case status/disposition. These results are shown in See Table 4-4 below.

Table 4-4: Top Services Performed in San Francisco and Santa Clara

	San Francisco	Santa Clara
1	Follow-up Assistance	Claims Assistance
2	Claims Assistance	Orientation to CJS
3	Case Status/Disposition	Restitution Assistance
4	Orientation to CJS	Case Status/Disposition
5	Crisis Intervention	Follow-up Assistance

These four duties comprise about two-thirds of all duties performed at both locations. Setting aside follow-up assistance, which we can not assume is similar at each location, the remaining three in common still comprise about half of all duties performed at each VWA. The least frequently performed duties are also very similar, with twelve duties performed less than one percent of the time at both locations: emergency assistance, direct counseling, notifying family/friends, notifying employers, property return, employer intervention, funeral arrangements, VIS assistance, transportation assistance, child care assistance, witness notification, witness protection, and public presentations. Additionally, the percentage gap between the two counties is very low for most duties: fifteen show less than a one percent gap and only two show more than a ten percent gap.

Although the emphases were generally alike, Santa Clara showed a more restricted range of duties than did San Francisco. Santa Clara’s frequency distribution contained two extremes of regularity and rarity, where a duty comprised at least 9.5% of the total (seven duties) or not more than 0.5% (seventeen duties), plus one exception: court escort/support at 1.6%. It neglected to perform six duties entirely, and eleven of the seventeen duties performed 0.5% of the time or less were performed five *times* or less (less than one-tenth of one percent). Thus, it is a fair statement that advocates Santa Clara really only concern themselves with eight duties: claims assistance, restitution assistance, crisis intervention, resource and referral, court escort/support, case status/disposition, orientation to CJS, and follow-up assistance. Showing greater variety, San Francisco performed every duty on the list at least once except for direct counseling, which both VWAs neglected. The least frequently performed duties in San Francisco still showed higher frequencies there than in Santa Clara, with only two duties comprising one-tenth or less of the total. Overall, San Francisco’s spread contained many more duties in the middle range: five were 9.7% and above, seven were between

1.2% and 5.4%, and thirteen were 0.8% and below. San Francisco's advocates concern themselves mostly with twelve duties: Santa Clara's eight, plus creditor intervention, crime prevention information, court waiting area, and criminal justice trainings.

I use frequencies noted above to help examine differences in the performance of individual duties and distinguish three categories: high-volume (9.5 % and above), mid-range (1.2% - 5.4%), and low-volume (less than 1%). Differences were generally in the expected direction, but several were in the opposite direction. I first examine welfarist duties. In the expected direction, Santa Clara outperformed San Francisco on three high-volume welfarist duties: claims assistance, restitution assistance, and resource and referral. Claims assistance actually occupied a significant place at both sites: over one in six duties in San Francisco and about one in four duties in Santa Clara. Referrals happened in Santa Clara at twice the rate of those in San Francisco, 9.7% versus 4%. The most substantial difference existed in restitution assistance, where it was a little less than one in seven duties in Santa Clara but about one in sixty in San Francisco.¹³ Santa Clara also outperformed San Francisco on one low-volume duty, emergency assistance, performing it 56 versus 12 times.

Against the expected direction for welfarist duties, the two sites performed evenly on crisis intervention and direct counseling (note that neither performed the latter at all), and San Francisco outperformed Santa Clara on the remaining seven. Five of the seven were low-volume but two were mid-range at San Francisco. Starting with the low-volume duties, property return might be higher in San Francisco because of San Francisco's closer involvement in court cases, and a much higher homicide rate in San Francisco likely explains the more frequent funeral arrangements made there. Less intuitive are the higher frequencies of notifying family and friends, notifying employers, and contacting employers, tasks that support victims' social and economic relationships and interests. Likewise, San Francisco substantially outperformed Santa Clara on the mid-range duty of creditor intervention. The greater frequency of telling victims how to prevent future victimization, the other high-volume duty, might be expected from those who associate more frequently with law enforcement.

Looking at prosecutorial duties, San Francisco outperformed Santa Clara on every prosecutorial duty except orientation to CJS. The two informational duties, case status/disposition and orientation to CJS, were performed with a lot of frequency and almost evenly by both San Francisco and Santa Clara – about one in seven duties at each VWA. Santa Clara performed reasonably well at prosecutorial tasks that require limited involvement with the DA office and/or the actual case being prosecuted: telling victims how cases in general proceed through the system and calling the district attorney's office for a case status update. (And, note that while there is almost no difference in orientation, the difference in status updates, which require actual communication with the

¹³ To clarify any confusion from chapter three, restitution assistance here refers to helping victims receive restitution directly from offenders. This duty is distinguished from the pursuit of reimbursement from offenders whose victims have been paid compensation by the Restitution Fund, an activity that was discussed in chapter three but is not a Penal Code duty and not discussed here.

DA office, might be considered pretty large.) Santa Clara does less well when more interaction with the DA office and/or the court case is required: taking victims to court, notifying witnesses, and providing victims and witnesses with a waiting area separate from defense witnesses. The smallest difference existed for escorting victims to court. Because witness notification includes notifying non-victim witnesses of their need to appear in court, its almost complete absence in Santa Clara reinforces the different degrees of involvement with prosecuting cases. The last of these tasks, providing a separate waiting area for victims, reflects structural differences at the two locations. San Francisco's VWA and DA share a building floor and a lobby where all victims and witnesses wait and from where defense personnel (including attorneys) are prohibited. Santa Clara's VWA is about one mile from the courthouse, so it cannot provide an immediate waiting area, and the courthouse contains no formal waiting area for any witnesses, prosecution or defense. The twenty-one times that Santa Clara provided a separate waiting area probably meant that the victim waited in the deputy DA's personal office across the street from the courthouse (I should find out exactly what it means).

The five remaining low-volume prosecutorial duties also require direct involvement in a case, and Santa Clara never performed three of them at all: transporting victims and witnesses to court, arranging childcare for victims or witnesses so they could appear in court (but to be fair, San Francisco only did this once), and arranging for witnesses and victims to be part of the witness protection program. Interestingly, neither San Francisco nor Santa Clara assisted victims with impact statements with much frequency. This is surprising because the victim impact statement has been a symbol of the victims' movement and particularly a symbol of victim participation in the criminal justice system. Perhaps the close numbers from the two VWAs reflect this elevated status, but based on rhetoric we would expect San Francisco to show much higher numbers here.

Finally, looking at the "other" category, the most important difference is in follow-up assistance. Follow-up assistance, listed as a mandatory duty in the "other" category, consists of any contact with a victim or witness that concerns a previous contact with that victim or witness. It can serve either a prosecutorial or welfarist function. It can, for example, consist of a phone call reminding a victim to submit her compensation paperwork (welfarist) or to show up to court in the morning (prosecutorial). This duty is very broadly defined and indeed somewhat problematic because of the potential overlap with other duties. It is not clear, for example, when a reminder phone call regarding a compensation claim would qualify as "follow-up assistance" rather than "claims assistance."

Looking at overall percentage of time devoted to welfarist and prosecutorial duties, the results are in the expected direction. Welfarist duties comprise 58.1% of Santa Clara's duties and 44.4% of San Francisco's, but the gap is much smaller for prosecutorial duties: 33.1% in San Francisco and 29.7% in Santa Clara.

A potential limitation of my categorizations and of the findings here is presented by the duty called "Orientation to the Criminal Justice System." This duty is categorized as prosecutorial because it is not essential to helping victims recover from crime – perhaps with the exception of obtaining a restitution order – and it appears designed to

prepare victims for participation in the criminal process. However, my participant observation of two VWAs revealed that Santa Clara used a much broader standard for marking this duty than did San Francisco, and a broader standard than the title seems to suggest. While San Francisco considered the duty as having been performed if the advocate described the various steps, processes, and actors in the criminal process, advocates Santa Clara marked this duty as having been performed simply after having described the system of compensation available to victims of crime – a policy that was eliminated during my residence because it was deemed overbroad. Since describing the system of compensation is welfarist in nature, by assisting victims to obtain compensation, that VWA's number of prosecutorial duties performed in Santa Clara are likely inflated, and the number of welfarist duties are underestimated.

A final observation is that mandatory duties occupied the bulk of duties at both sites. Six of the nine optional duties were low-volume, occupying less than one percent of duties both sites. However, optional duties comprised a significant portion of San Francisco's duties, fully 13.8%. By contrast, they occupied less than 0.3% in Santa Clara. Moreover, San Francisco's lead in performance of optional welfarist duties was unexpected, especially the greater occurrence of creditor intervention. The overall picture that emerges from these data is one in which both VWAs devoted a significant amount of time to welfarist duties, Santa Clara particularly to mandatory welfarist duties, but San Francisco engaged in greater variety of activities that includes more optional and prosecutorial duties.

Mandatory Duties, 2004-2008

Data on performance of mandatory duties between 2004 and 2008, shown in Table 4-5 below, revealed the same general tendencies with some more exaggerated differences. Although percentages changed, emphases and de-emphases did not. In the more expanded data set, the same eight duties dominated both VWAs – crisis intervention, resource and referral, claims assistance, restitution assistance, court escort/support, case status/disposition, orientation to CJS, and follow-up assistance – with the exception of court escort/support, which dipped below one percent in Santa Clara. Likewise, low-volume duties in the new data set were also low-volume duties in the previous one.

On welfarist tasks, Santa Clara still outperformed San Francisco at referrals, claims assistance, and most notably, restitution assists. San Francisco still outperformed Santa Clara on notifying family, friends, and employers, and then took the lead on emergency assistance. On prosecutorial tasks, San Francisco outperformed Santa Clara on every single one.

Table 4-5: Performance of Mandatory Duties, 2004-2008*

	SAN FRANCISCO	SANTA CLARA
WELFARIST		
Crisis Intervention	12.6	12.9
Emergency Assistance	0.4	0.2
Resource & Referral	7.4	16.3
Direct Counseling	0	0
Claims Assistance	19.4	25.4
Notification of Family/Friends	0.6	<0.1
Employer Notification	0.1	<0.1
Restitution Assists	1.4	13.1
TOTAL WELFARIST	41.4	67.9
PROSECUTORIAL		
Court Escort/Support	3.0	0.7
Victim Impact Statements	0.7	0.2
Case Status/Disposition	15.6	8.1
Orientation to CJS	15.4	11.9
TOTAL PROSECUTORIAL	34.6	21.0
OTHER		
Follow-up Assistance	23.2	11.0
Presentations to Public	0.5	0.1
Criminal Justice Trainings	0.2	<0.1
TOTAL OTHER	23.9	11.1

* Data were available from the following time periods: first quarter of 2004, second through fourth quarters of 2005, all quarters of 2006, first and second quarters of 2008.

Totals in the three categories showed starker differences between the two counties. About two-thirds of Santa Clara's services performed were welfarist, one-fifth prosecutorial, and one-tenth other. San Francisco's were more evenly distributed with about two-fifths welfarist, one-third prosecutorial, and one-quarter other. The absence of optional duties in this data set poses a problem for San Francisco because they comprised almost 14% of all duties, with optional welfarist duties comprising 10.2% of San Francisco's total. However, large differences remain even if we approximate their presence using their percentages from Table 4-3, i.e., adding 10.2% of San Francisco's current total to its welfarist total, 3.6% of the total to its prosecutorial total, and so on. When we do this, San Francisco's welfarist portion rises from 41.4% to 45.3%, its prosecutorial portion goes down one percentage point to 33.6%, and its other category lowers from 23.9% to 20.4%. Santa Clara's percentages change by one-tenth of a percent or less, to 67.8%, 21.2% and 11%.

Section II: All Counties

Table 4-6 shows all VWAs' performance of mandatory duties in 2008. The distributions are similar to those in Tables 4-4 and 4-5. Crisis intervention, resource and referral, and claims assistance dominate all three VWA types, accounting for about one-of all duties at probation- and DA-based VWAs and slightly under half of all duties at community-based VWAs. The informational tasks dominate prosecutorial duties at all VWA types, accounting for one quarter of all duties at community-based VWAs and two-fifths of all duties at probation- and DA-based VWAs.

The three largest point spreads occurred in the intended direction: community-based VWAs performed the most crisis interventions and outside referrals, while DA-based VWAs provide victims with case status updates the most often. Direct counseling, absent from the previous tables, appeared in the mid-range at community- and probation-based VWAs. Since chapter three already looked at the other big welfarist functions, compensation and restitution, I focus here on prosecutorial tasks.

Table 4-6: Performance of Mandatory Duties by VWA Type, 2005-2008

	COMMUNITY	PROBATION	DA
WELFARIST			
Crisis Intervention	17.8	10.4	10.0
Emergency Assistance	0.7	0.6	1.2
Resource & Referral	16.0	11.9	11.8
Direct Counseling	3.4	2.1	0.4
Claims Assistance	14.1	16.1	15.8
Notification of Family/Friends	0.1	<0.1	0.4
Employer Notification	<0.1	<0.1	0.1
Restitution Assists	4.7	3.1	2.5
TOTAL WELFARIST	56.8	44.3	42.2
PROSECUTORIAL			
Court Escort/Support	2.4	5.2	3.9
Victim Impact Statements	1.3	1.9	2.3
Case Status/Disposition	10.2	16.0	16.7
Orientation to CJS	16.3	15.9	15.8
TOTAL PROSECUTORIAL	32.8	39.1	38.8
OTHER			
Follow-up Assistance	10.3	16.1	18.5
Presentations to Public	0.1	0.4	0.2
Criminal Justice Trainings	<0.1	0.1	0.2
TOTAL OTHER	10.4	16.5	18.9

What is again striking about the two direct participatory functions, court escort/support and VIS assistance, is how infrequently they were performed at all VWAs given their symbolic significance to the crime victims' cause. To be sure, the low numbers are probably due in part to the greater time needed for these tasks than many of the others on this list; an advocate might make half a dozen referrals in the same time it takes to accompany one victim to court. So, the amount of time spent on these two tasks may be higher than the numbers here suggest, and a comparison of actual hours spent might yield a less dramatic contrast. However, the better explanation for the low numbers is simply that all VWA types serve a lot of victims without active court cases, since over ninety percent of cases are plea-bargained and thus do not call for victim participation.¹⁴ Indeed, a VWA could prioritize those victims with active court cases so that court accompaniment and VIS assistance consumed a significant portion of advocates' time, leaving far less time for other things. The percentages we would expect to see are hard to estimate because of the time issue, but the low numbers seen here – 3.7, 6.2, and 7.1 – coupled with high numbers of welfarist tasks than can be equally time-consuming, such as crisis intervention and claims assistance, suggest that no one is doing this.

Looking at overall percentages of each task type, the results were in the expected direction. Community-based VWAs devoted the most time to welfarist tasks and the least time to prosecutorial tasks. Community-based VWAs spent 56.8% of their time on welfarist tasks, compared with 44.3% and 42.4% at probation- and DA-based VWAs, respectively. The point spread for prosecutorial tasks was about half that of welfarist tasks: community-based VWAs spent 32.8% on prosecutorial tasks, compared with 39.1% and 38.8% at probation- and DA-based VWAs, respectively.

At least three things are notable about these results. First, all VWAs types spend a considerable portion of their time on welfarist tasks, around half. Second, probation- and DA-based VWAs perform similarly: there is less than a two point spread for both types. Finally, the other category shows differences that may be related to differences in the welfarist and prosecutorial categories. The other category, as I explained, consists mostly of “follow-up services” related to any duty type. If follow-up services were evenly distributed among welfarist and prosecutorial tasks, the differences in welfarist and prosecutorial tasks in Table 4-6 would be sustained. However, the sizable differences in the other category outcomes may suggest that “follow-up services” are not evenly distributed among prosecutorial and welfarist tasks in all VWA types. The particular threat to the results is the possibility that the other category compensates for the differences observed: that, for some unknown reason, probation- and DA-based VWAs more often report welfarist tasks as “follow-up services,” and/or community-based VWAs more often report prosecutorial tasks as “follow-up services.”

III: Discussion

This chapter has shown differences in the performance of Penal Code duties by California's VWAs. This section responds to three issues regarding difference: first,

¹⁴ VWAs do not report on the number of victim served with and without active court cases.

differences in performance of welfarist and prosecutorial duties; probation departments as distinct host agencies; and assigning operational models to VWAs. The conclusion discusses the broader implications that these findings hold for VWAs' role in the crime victims' movement and for their impact on the criminal justice system.

Prosecutorial versus Welfarist Duties

All data sets showed that welfarist duties were performed more frequently in community-based VWAs than DA-based VWAs. However, welfarist duties were the most frequently performed at all locations: between two-fifths and two-thirds at all locations. This is an important finding that squarely opposes claims that VWAs are merely third arms of prosecutors. VWAs of every type devoted a significant portion of their time helping victims become whole again, particularly helping them to receive compensation for their injuries, including mental health counseling to reduce the psychological trauma that can accompany criminal victimization. Section one also showed that both community- and DA-based VWAs spent quite a bit of time on crisis intervention, which is similar to what Vaughn identified as providing a shoulder for victims to lean on.

Prosecutorial duties were performed more frequently at DA-based VWAs than community-based VWAs, although the differences were greater at the two research sites than when all fifty-eight VWAs were compared. In all data sets, prosecutorial duties comprised less than half of the duties performed and occupied a smaller presence than did welfarist duties. Moreover, the vast majority of prosecutorial duties performed were informational, not participatory. Court escorts and VIS assistance, the duties that would most directly create a prosecutorial function for VWAs, are far from the priority at any VWA type. VIS assistance, the most directly punitive function that has been celebrated by the movement and feared by movement observers, was at most one of forty-five other duties performed. Again, it is hard from these data to support a claim that VWAs are designed purely or primarily to facilitate prosecutions and enhance punishment, or that victims' recovery interests have been hijacked by prosecutors who want convictions. What these data suggest instead is that the dual orientations that informed victim advocacy from the beginning have persisted and that the profession continues to reflect both a desire to help victims and to enlist them in prosecuting cases. In fact, the balance achieved here might be considered remarkable in the face of the unprecedented punitive wave that could have subdued welfarist duties everywhere. What we have is the opposite: welfarist duties persisting everywhere, with greater fluctuation of prosecutorial duties among VWAs.

An important consideration is that I have examined my VWAs not at the beginning of the process but 30 years in. One of the reasons for the similarities in function is that there could have been organic development and convergence over time.

Probation-Based VWAs

Host agencies have traditionally been divided into two types: system-based, which includes DA- and probation-based VWAs, and community-based VWAs. I suggested here that, rather than imitate DA-based VWAs, probation-based VWAs might occupy a middle ground between DA- and community-based VWAs. I suggested this because probation departments, while law enforcement agencies, historically have been

responsible for restitution accounts and thus familiar with helping victims. Also, because they deal with offenders after conviction, they also are not readily involved in the prosecution process as are DA offices. The data here show few differences between DA- and probation-based VWAs, however. Table 4-6 suggests that there are indeed two groups: system-based and community-based.

Operational Models

I stated from the outset that these data would not confirm or deny the existence of welfarist and prosecutorial operational models but rather demonstrate differences in the performance of duty types. To the extent that numbers could have suggested wholesale differences in orientation, the differences discovered here probably do not meet an appropriate threshold. Despite higher performance of prosecutorial duties among system-based VWAs, calling any of them prosecutorial in nature would be patently unwarranted because welfarist duties always outnumber the prosecutorial ones. Santa Clara's numbers in Table Y do show a significant emphasis on welfarist duties – two-thirds – and so would most support a conclusion that it operates under the guise of a welfarist model.

IV. Conclusion: Politics, Punishment, and Institutional Insulation

This chapter has shown some differences in the degree to which VWAs serve welfarist or prosecutorial functions, but that at all VWA types (i) prosecutorial functions occur less frequently than do welfarist functions and (ii) the vast majority of prosecutorial functions amount to giving victims information rather than directly enlisting them in participating in the process. These results speak to two larger and related issues: the fractured nature of the movement discussed in chapter's one and two, and the impact or effectiveness of the crime victims' movement in general.

I argued in chapters one and two that the crime victims' movement's most vocal and visible proponents have been those associated with conservative punitive politics, but that California's VWA network gained ground in the early 1970s in response to a welfarist concern, i.e., to increase claims payments when the Restitution Fund was collapsing. The network was then given a boost by prosecutorial functions, i.e., the LEAA's attempts to make the criminal process more victim- and witness-friendly with small courtesies like explaining the criminal process to witnesses, telling victims of case outcomes, and getting property back to victims in a timely fashion. The end goal of these "prosecutorial" functions was indeed to encourage participation but not to necessarily give victims power or control. Later in the 1980s, only after over two dozen VWAs had already been established in California, a full-fledged movement was underway to "rebalance" the criminal justice system by giving victims participatory "rights," and which made punishment a central concern if not *the* central concern.

This chapter's results reflect these varied interests and, notably, their successive diminishing priority within VWAs. It seems that history dictates what VWAs do. Welfarist tasks, the original focus of VWAs, still dominated all VWA types. Assisting with claims payments, giving victims a shoulder to lean on, and sending victims to other agencies for financial and emotional help – the three largest welfarist tasks at all VWA types – are the same functions that Vaughn identified as dominating VWAs in 1979.

The next most practiced tasks were the informational prosecutorial ones that LEAA brought to the table: giving victims updates and explaining the process to them. Direct involvement, the latest goal to appear from the movement, was the least practiced at all three VWA types.

These outcomes do demonstrate at least some insularity of VWAs throughout the tidal wave of punitive penal policy from the 1980s onward. Over this time period the victims' cause and the war on crime became virtually synonymous. More striking, so-called "victims' rights" – the participatory tasks that VWAs became responsible for enforcing – were enlisted in the war on crime to achieve punitive ends. Attendance in court and especially victim impact statements were causes for which the movement vigorously fought and championed, and which symbolized victims' renewed relevance to the criminal justice outcomes, particularly as counterweights to lenient, defendant-centered sentences. Yet, VWAs spend little time doing these things. Put simply, VWAs are not in the punishment business. Their degree of involvement in the prosecuting business is uncertain from these data. They are in the prosecuting business to the extent that case and CJS information accompany requests to appear in court or assistance with VIS, but the data do not tell us how often this happens.

In sum, the data from this chapter show some, but not necessarily striking, differences between agencies. The next two chapters try to flesh out differences using qualitative data from Santa Clara and San Francisco.

Chapter Five: The Victim Advocate in Theory and Practice

Introduction

Victim advocacy is a new profession that has been consciously and carefully constructed from within and relatively unstudied by outsiders. Building on the welfarist/prosecutorial duality that has informed the previous chapters, chapter five uses qualitative data to show how the profession integrates these two perspectives on responding to victims, first in the ideal and second at each of my two sites. I show how host agency does seem to impact the balance of welfarist and prosecutorial duties assumed by advocates. Still, I argue that in all instances the victim advocate can be described as a social worker with some legal knowledge but little legal power, at least within criminal trials. Consistent with chapter four's findings that welfarist tasks predominate advocates' time, the advocate's professional training centers on managing psychological trauma and fostering/maintaining supportive social networks specific to crime victims. Despite the profession's apparent desire to secure an independent, respected, and reliable place among law enforcement professionals, case studies at my two sites show that relationships with these professionals vary somewhat according to institutional structure, and even when these relationships are strong, advocates are ultimately subservient to other law enforcement professionals, and pose no clash or competition with law enforcement goals.

Research Methods

The ideal or on-paper version of the victim advocate presented in section one is derived from four sources: participant observation at California's first statewide victim advocate certification training, the California Victim Assistance Academy (hereinafter "CVAA") (including all of the attendant data sources such as informal interviews, analysis of training materials, etc.); formal interviews with ten key informants; primary literature sources that included nationwide and statewide training materials, professional and organizational websites, and articles written for professionals in the field; and secondary literature sources. The two real-life versions of the victim advocate are based upon one year of participant observation in Santa Clara and San Francisco's VWAs.

Ethnographic Methods

Ethnography is an established method of studying institutions and has been used to study the work of criminal justice agencies (Lynch 1998, 2000). Its value over other research methods lies in the extended, close observation of everyday operations, as well as interactions with people, which provide an "insider's" view of the institution and the people who are part of it (Lofland, Snow, Anderson, and Lofland 2006). The ethnographer attempts not only to understand the routines and rituals of the population under study, but also the collective meanings attached to these routines and rituals (Lofland, et al. 2006). Ethnographic research offers unique opportunities to show how VWAs have interpreted and applied victim policy, and more specifically how and why institutional location may play a role in these processes. Past research on VWAs has been largely conducted from a distance, primarily through survey research, which is an

essential but limited tool for understanding victim policy (Friedman 1985; Kilpatrick, Beatty, and Howley 1998; National Association of Attorneys General 2004; Newmark 2006; Travis 1998). Observations of VWAs “in action” provide a critical but largely untapped resource for understanding what the criminal justice system is doing for and to crime victims. Do workers at system-based and community-based VWAs imagine different roles for victims in the criminal justice system? To what extent do they agree, or disagree, about the function of VWAs? What happens on the average day for workers at each kind of VWA?

The ethnographic portion of this study included participant observation at the two main VWAs as well as one off-site training. A year and a half prior to starting my participant observation at the two sites, I attended a 40-hour training for VWA employees (“victim advocates”), upon the recommendation of one of my informants. Since 2001 an independent body called the Victim Services Training Institute (VSTI) has been developing and refining a curriculum for victim advocates and has offered trainings and certificates in the bay area. In June 2006 I attended the first ever state-wide training, held at the California State University, Fresno campus, which has a victimology department that is working with VSTI to professionalize victim advocacy. The training is now mandatory for county-level employees. Because I was not an employee, and because of the \$1000 entry fee, I had originally requested to only observe parts of the training. However, the program directors graciously permitted me to participate fully in the training at no cost, and at the end of the training I received a certificate of completion along with the 100 other attendees from around the state. I became a certified Victim Advocate.

The training took place over 5 days (8am to 5pm, Monday through Friday), included two meals a day, and attendees lodged in several campus dormitories. Each day we attended two lectures, one in the morning and the afternoon, and each lecture typically required an activity carried out in groups of 5 to 8. Each attendee received a large three-ring binder containing 25 chapters (approximately 500 pages) of material that mapped onto the lecture topics. I attended nine of the ten lectures (by my informal observation, many attendees skipped one or more as ‘burn out’ set in), and digitally recorded and took notes on the lectures I attended. I participated in all of the group activities accompanying the lectures. During breaks and meals I chatted informally with other attendees and the program directors, sometimes scribbling notes onto a pad I carried with me. Before going to sleep I skimmed the binder and typed up notes for the day.

Participant observation of two VWAs was carried out between March and November 2008. I visited Santa Clara’s VWA, a community-based VWA which currently goes by the name Silicon Valley FACES (hereinafter “FACES”) from March to October, beginning at 10 hours per week through July and cutting down to 7 hours per week from August through October. I spent a total of 250 hours at FACES. Between March and May I was permitted to engage in limited advocacy duties. The unit supervisor trained me to assist telephone and walk-in clients, an activity known as performing “intakes.” I spent the first several weeks observing other advocates perform these intakes, after which they and my supervisor observed me perform several intakes, and eventually, I was permitted to do them on my own. Unlike the paid advocates, I was

not directly assigned any cases that were not intakes (e.g., clients referred by the District Attorney). Nearly every case I assisted, I reported my actions to my supervisor to ensure I had responded appropriately. In April I began attending the county Family Court for three hours a week where I accosted potential clients and returned back to FACES with contact information of those who were interested in our services. In June, both advocacy unit managers resigned and my new manager, citing discomfort with me having direct contact with clients, replaced my advocacy duties with paperwork on restitution files. From June to October I maintained my recruitment position in Family Court and spent the remaining hours working on restitution files. I maintained a daily log of my intake clients, noting the type of victimization, the client's request, and my response. This was modeled after the official paperwork FACES requires for each client contact, which contains a list of duties. I also kept a log of the restitution files I worked on containing the type of victimization and whether I was able to complete the file. At family court I received from the clerk a court calendar, containing the names of my potential recruits, and next to their names I jotted down demographic information, whether I had approached them, and whether they had expressed interest in the program if I did approach them.

I visited San Francisco's VWA, located within the District Attorney's office (hereinafter "SFDA"), from March through November 2008, for eight hours per week, for a total of 275 hours. I was permitted to engage in and observe all advocacy duties for the entire period, but my restricted availability limited the type of advocacy work I actually performed. Similar to my training at FACES, for the first few weeks I watched paid advocates perform intakes with walk-in clients. This was followed by a role reversal, where the paid advocates watched, assisted, and critiqued me, and eventually I performed them on my own. After about four weeks my supervisor began assigning me referrals from outside sources, so that my caseload during my period of study consisted of both walk-in clients and referrals. For the first three months I reported my actions to my supervisor to ensure I had responded appropriately. After that period I performed my duties independently, except when new situations arose and I was unsure how to respond (which happened throughout the entire period). I kept a log of my clients at SFDA indicating age, race, gender, type of victimization, referral source, whether there was an active court case, whether the client had previously been a client at SFDA, and whether the client had ever been arrested in that county.¹⁵

At both locations, I wrote fieldnotes following my shifts detailing the shift's events. Due to my schedule about half of the time I had to postpone writing my fieldnotes until several hours or sometimes several days later. At both locations I kept an open notebook and periodically jotted down salient information, such as quotes or analytic insights I did not want to risk forgetting. At both locations I engaged in informal discussions with my co-workers about their work and took notes following those discussions as I deemed appropriate.

¹⁵ Because it is located in the DA's office, SFDA has access to much more information about victims than does FACES, such as the victim's criminal history in that county. I gathered criminal history data because of research tending to show that victims frequently are offenders as well. My data confirmed this, though I will not be discussing this phenomenon in this paper.

Formal Interviews

Formal interviews were conducted with ten employees or former employees from around the state in 2006, most of whom had been involved with the formation of VWAs in California in the 1970s. I asked my initial informant at the State Attorney General Office for a list of names of important people in the field, contacted those people on the list, and asked them for the same. I interviewed those people whose names showed up multiple times on people's lists, eventually gaining a sense through my interviews who was deemed important to the construction of VWAs and the profession. Most now were retired but were still active in the profession, for example by consulting on internal projects, designing curriculums, and making policy recommendations. Several of my informants also came from the statewide training I attended, below. I questioned my informants about the following general topics: their work history with VWAs and victim policy, including how they came to be involved/interested in victim policy; which policies they thought were most important to furthering their goal of helping victims; and, what obstacles they faced in achieving their goals. I asked some of my informants directly about the relationship between VWAs and prosecutorial goals.

Primary Source Materials

Like all professions, victim advocacy has produced materials used to train its professionals and to field discussions about the profession's history, boundaries, controversies, trends, strengths, weaknesses, and the like. The three primary source materials are used in this chapter were training materials, websites, and published literature.

Methodological Limitations

While the goal was to experience a cross-section of duties performed by victim advocates, my own advocacy work was skewed at both locations. At FACES, when I was permitted to perform advocacy duties, my cases were limited to walk-in and call-in clients. Some days no one called or came in. I was also physically placed in the back of the office, away from the paid advocates, as it was the only available space for me until personnel changes happened in June. My contact with paid advocates was severely restricted during that time, so I could not easily supplement my limited caseload with observations of the paid advocates. In June I was moved to the front of the office with the other advocates, and although my new manager attempted to include me in "the team" by inviting me to their monthly meetings, he assigned me very few tasks. While I was able to better observe the paid advocates at the front of the office, I spent a lot of time "hanging out" rather than working, and not knowing quite what to do, and this made it difficult to bond with others (I always suspected that they wondered just what I was doing with my time). To get more involved, I eventually began asking the advocates whether they had any work I could assist them with, and they did only about half of the time. Although I observed and engaged in a significant amount of the daily operations at

FACES, I felt as if I never quite “fit in,” and some of my conclusions about FACES are probably limited because of this.¹⁶

My activities at SFDA more closely mirrored those of the paid advocates, but I was assigned far fewer clients with active court cases because those cases demanded more availability than I could give. Although I did get a sense of what delivering court-related services involved, I did not frequently experience it first-hand. My client population was also skewed because SFDA assigns sex crimes, homicides, and elder abuse cases to specialized advocates only. (FACES also assigns homicides to one advocate only.) However, I did get to assist each of these kinds of cases at least once. And, unlike FACES, I had no problems finding work to do – on the contrary, I often felt overwhelmed with work – and I had no problems fitting in, eventually feeling that I was a valued member of their team. Advocates at SFDA frequently invited me to go with them to court, to observe their interactions with clients, and generally to involve me in office events.

Finally, the generalizability of findings from case studies is limited. FACES and SFDA were chosen for study because of proximity to the University of California, Berkeley and ease of access. Several other VWAs in the San Francisco Bay Area turned down my requests for observation. My first choice for a D.A.-based VWA was Alameda County, as several informants told me that it is the most prosecution-oriented VWA in the area, but my request there was denied. Located in a notoriously liberal county and notoriously liberal D.A. office (where the most recent District Attorney campaigned on a promise *never* to seek death sentences), SFDA may have stronger welfarist leanings than a typical D.A.-based VWA. Indeed, in 1979 Vaughn placed San Francisco’s then-VWA in the social service category over the criminal justice category.

Additionally, I was unable to observe a probation-based VWA due to resource and time restrictions. Whether the probation-based VWA operates in some middle ground between community- and D.A.-based VWAs is left for future studies.

Constructing the Ideal Advocate

Two Key Players in Professional Development

While victim policies were the products of many constituents within the crime victims’ movement, fewer people have been involved in the development of victim advocacy as a profession, which includes producing and organizing knowledge bases, developing training materials, and creating professional standards and credential programs. Professional development has been dominated by two groups, academics and law enforcement insiders, who have emphasized welfarist tasks over prosecutorial ones that challenge existing power arrangements. Academics with less politicized, more

¹⁶ Two years after leaving FACES I spoke to a former volunteer, a retired licensed counselor, who described a very similar experience of having very little to do, leading to feelings of purposelessness and disconnectedness. She stopped volunteering at FACES as a result. It could be, as she suggested, that my experience was the typical volunteer experience at FACES rather than a product of anything specific I was doing.

neutral interests in trauma studies and victimization statistics played a substantial role in developing professional training materials and standards that victim advocates use and follow today (see generally Davis, Lurigio, and Herman 2007). Law enforcement insiders – lawyers, police chiefs, and judges – with commitments to existing structures formed the other large force behind professional development. As a result, advocates’ professional training centers on managing psychological trauma and fostering/maintaining supportive social networks specific to crime victims, while assisting – not challenging – law enforcement goals.

A profession is a shared body of exclusive knowledge, and the profession of victim advocacy has been accompanied by the emergence of the academic discipline called “victimology.” Academic interest in victimization appeared as early as the 1930s when criminologist Benjamin Mendelson coined the term “victimology,” but it wasn’t until the 1970s that victimology became a recognized sub-discipline within criminology, precisely at the time that the victims’ movement took off (Young, Herman, Davis and Lurigio 2007). While traditional criminological studies gathered data on and from criminals as the primary method for explaining the incidence of crime and how to prevent crime, early victimological studies gathered data on and from victims for these purposes. Empirical studies in the 1980s expanded into two more areas, psychological trauma experienced by crime victims, and the effects of victim policy, both on victims and on criminal justice outcomes (Young et al. 2007).

Ideally victimological studies serve the profession identifying victims’ needs and the policies that best serve those needs. Indeed, the post-1970s academic discipline of victimology is married to victim activism, or to furthering the victim’s cause through policy change and professional development (Mawby & Walklate 1998). In addition to making policy evaluations and recommendations in their research papers, many victimologists are also members and leaders of professional organizations that advocate for policy change and develop professional training standards. For example, the leading US non-profit professional organization, The National Organization for Victim Assistance (NOVA), was founded by several PhDs in 1975, one of whom (Robert Denton) is a university professor.¹⁷ Likewise, empirical research is a central activity of professional societies, which emphasize research-based policy and consider expanding knowledge a central purpose. Professional associations include both academics and professionals, and their activities range from hosting research databases to lobbying. For example, The World Society of Victimology (WSV) has memberships that include “victim assistance practitioners, social scientists, social workers, physicians, lawyers, civil servants, volunteers, university academics of all levels, and students,” and its stated purpose is to “advance victimological research and practices around the world; to encourage interdisciplinary and comparative work and research in this field, and to advance cooperation between international, national, regional and local agencies and other groups who are concerned with the problems of victims.”¹⁸

¹⁷ See www.trynova.org

¹⁸ See <http://www.worldsocietyofvictimology.org>

What is important here is that researchers with circumscribed interests (crime causation/prevention, trauma studies, and law/policy) have played and continue to play a central role in professional development. Two of these three interests – crime causation/prevention and trauma studies – have not and are not likely to lead to professional guidelines that challenge the traditional law enforcement apparatus. Instead, this kind of research, and the professional training that it supports, focuses on the causes and consequences of specific crimes (domestic violence, elder abuse, child abuse, stalking), trying to discover how best to prevent these crimes and to meet the psychological and social needs of particular crime victims, often outside of the legal system.

The legal system provides some responses, of course, and it is this third area of research that has the potential to challenge traditional law enforcement goals. As members and leaders of professional organizations, victimologists have lobbied for and participated in the policies that VWAs carry out, including those, like participatory rights, that have the potential to disrupt traditional law enforcement practices. There is no doubt that victimologists consider themselves and their research as part of a victims' movement that seeks to "rebalance" the criminal justice system to be more in victims' favor (see, e.g., Davis et al. 2007). However, whatever criticisms they have of traditional law enforcement operations, their calls to action are generally more subdued than those of victim-activists. Victimologists have long led debates about what the government's response to victims should be, and policies that challenge the traditional adversarial system are among a variety of policy changes that have been proposed – and, importantly, have been problematized on a number of fronts. Key victimologists have criticized participatory rights for failing to meet victims' needs, inciting victims' least desirable sentiments, and encroaching upon defendants' rights (Elias 1983, 1986, 1993, 2005; Fattah 1997). Academic journals and edited volumes have, for example, hosted exchanges over the purpose and value of VISs (Erez 1999; Kelly & Erez 1997; Fattah 1989, 1997). More broadly, victimologists have broader concepts of victimization and broader reform agendas that include addressing corrupt governments (e.g., genocide) and even natural disasters (Elias).

Law enforcement insiders make up the other key group involved in professional development. As we saw in chapter one, academics were not the star players in the 1982 Task Force Report, which served as a template for local programs and has provided a framework for the profession ever since. The report makes little mention of academic developments, debates, or findings (though it does engage in its own fact-finding process). Instead the key players in that report were law enforcement insiders: police chiefs, district attorneys, and judges. People from these professions continuously play a central role in professional development by publishing articles, running workshops, etc. What chapter one showed us, however, is that law enforcement insiders are as much anti-criminal defendant as they are pro-victim.

The California Victim Assistance Academy

The CVAA was California's first statewide training providing certification for victim advocates. Its origins, leadership, and location reflect the strong influence of

academics on professional development in California. The CVAA was the joint effort of the California Victim Services Training Institute (CVSTI), a professional association founded in 2001 to provide centralized training standards across the state, and the Victimology Department at California State University, Fresno, which has offered victim service certificates since 1985. Over the last decade, and with the help of both institutions, state and local trainings for multiple and growing aspects within the field have become widespread. The new certification program, and particularly the conference's placement at a university, was described in part as a strategy to bring victim advocacy one step closer to becoming a customary occupation in California. Leaders expressed hope that the next decades would see the spread of university programs that channeled undergraduates directly into VWAs and other victim service organizations such as rape crisis centers. Those who designed the program and assembled the materials included faculty from CSU Fresno's victimology program, district attorneys, current county VWA directors, and some original directors of VWAs in California.

The Two "Hats" of Victim Advocacy

One of the most consistent messages throughout the CVAA was that advocates "wear many hats," meaning that they engage in diverse activities that do not collectively fall under one existing professional identity. Consider the following excerpts from the training manual:

Victim advocacy covers a multitude of tasks including pleading, educating, problem solving, listening, speaking, supporting, empathizing, and helping the victim regain some sense of control. (California Victim Assistance Academy 2006: 32)

An advocate wears many hats... We are the shoulder to cry on or vent frustration. Advocates help people navigate a system that doesn't recognize them as active participants. It's a juggling act. (CVAA 2006: 34)

Advocacy defines itself as a profession that does a variety of things that seem at times to be unrelated – hence the "juggling act." The juggling act that the advocate above refers to is between the two types of duties that advocates undertake, welfarist and prosecutorial. Advocates' training consists of two types of information and skill sets, one on victimization and the other on the legal system. Consider the stated goals of the training manual chapters on homicide and child abuse:

This chapter examines the immediate and long-term effects [of homicide] on the family, the response of the criminal justice system, the role of victim services providers, and the legal definition of homicide.

Upon completion of this chapter, students will understand the following concepts:

- Federal initiatives for crimes dealing with child victimization.
- The types of child abuse and neglect most commonly reported.

- The short- and long-term emotional consequences of children who witness or experience victimization.
- A multi-disciplinary approach to administering victim services for child abuse.
- Child victims in the criminal justice system.
- Promising practices that improve services to child victims and witnesses and their families. (CVAA 2006: 145)

Advocates are at once supposed to know, for example, the psycho-social dynamics of families coping with child sexual abuse as well as how juries are selected in capital trials. The results in an apparent duality of roles, one related to caring for victims and the other to being a kind of legal assistant. Thus, three days into the conference I made the following observation:

I'm beginning to develop a bigger picture of who the advocate is. Advocacy takes elements of social work, psychotherapy, and law enforcement and tries to put them into one profession. The victim advocate is part social worker, part law enforcement worker.

Looking at the two hats more closely, the predominant "hat" throughout the training, which I labeled the psychotherapist/social worker hat, centered on the welfarist duties that involve intervening in the lives of needy people within their communities. First, much of the training focused on meeting victims' emotional and psychological needs using psychotherapeutic techniques. To say that advocates simply "provide a shoulder to lean on" minimizes their training in trauma research and crisis intervention. Advocates learned research findings on trauma associated with criminal victimization and techniques for communicating with traumatized persons. This included crisis intervention techniques for comforting freshly wounded victims, which occupied the initial unit of the conference and reminded me of my prior training as a suicide hotline volunteer. These techniques

aim to provide the victim a safe and secure environment for the discussion of what happened and how the victim is reacting. It is the role of the advocate to provide victims with initial reassurance. Common phrases used to reassure victims include: "I am sorry this happened to you. "You're safe with me now." "I am interested in hearing your story of what happened." (CVAA 2006: 78)

The goal of crisis intervention is to talk about the crime, but importantly, not to serve law enforcement ends even though the advocate may work for a law enforcement agency. As opposed to a police officer or district attorney, who wants to gather facts to build a case against the defendant, the advocate encourages the victim to describe her feelings and reactions as an avenue toward healing from the trauma.

This process [Critical Incident Stress Debriefing, one of several techniques for getting victims to talk about the crime] allows the victim to think through what happened, which often decreases the fear associated with unfamiliar emotions. After the victim has had the opportunity to describe his emotions, he is asked to describe any stress symptoms he has been experiencing. This provides the advocate an opportunity to explain acute post-traumatic stress reactions and to educate the victim about potential responses to victimization. The final step of this model is to help victims think about ways of coping with their concerns. (CVAA 2006: 175)

Two sections, totaling one of the five days of training, were devoted to crisis intervention as well as education on general aspects of trauma and relating to crime victims, such as stages of grief and listening skills.

Advocates' psychotherapeutic training was not limited to these two sections but rather permeated almost every other section of the training, including the sections on the criminal justice process. Three of the remaining four days of the training were devoted to advocates' duties related to specific crimes: sexual assault, homicide, domestic violence, child abuse, etc. As I showed above in the stated goals of the trainings on homicide and child abuse, this included understanding the specific, typical psychological reactions that victims have to these crimes and how to respond to victims in a positive, therapeutic manner. Even their prosecutorial duties were presented to advocates as opportunities to respond therapeutically, which harkens back to the movement's complaint that victims are "twice victimized" – once by the offender, and then by the system. Advocates were coached on how victims might respond emotionally to the criminal justice process, how to respond to victims' feelings about the process, and how to communicate to victims about the system in positive ways.

Second, in addition to therapeutic training focused on individual victims, advocates were educated on social aspects of victimization: social causes and consequences of crime as well as techniques for community interventions. In contrast to the politicized crime victims' movement, which tends to blame individual pathology for crime, advocacy circles often present crime as a community or societal problem, both in terms of crime's causes and its effects. This seems to be one of the influences that academic victimology has had on the profession. Advocacy circles acknowledge, for example, that street crime occurs disproportionately in low-income, minority communities. Advocates were training and that victims and offenders tend to be drawn from the same population.

If communities are breeding crime, then communities – not simply individual offenders – require intervention. Further, community intervention requires familiarity with different cultural communities, particularly since crime can be concentrated among immigrant communities. More generally, cultural, generational, and gender differences exist in responses to crime. Advocates are trained to respect diverse responses to victimization.

Advocates' other hat related to their legal knowledge. Since advocacy entails educating victims about the criminal justice system and helping facilitate their

participation in criminal trials, advocates were expected to hold a high degree of knowledge about criminal justice operations and civil remedies for crime victims. At the training advocates were provided an overview of the criminal justice system, the contents of which mirrored that of an introductory textbook on the administration of justice: processes of convicting and punishing offenders, juvenile justice, historical trends, crime statistics, roles of each profession, etc. Chapters on specific crimes described aspects of the justice system specific to those crimes.

The Victim Advocate at Two Research Sites

The rest of the chapter examines victim advocacy at two sites, community-based FACES and D.A.-based SFDA. After brief descriptions of the two VWAs, I describe in detail three points of contrast between the two VWAs: their disparate recruitment strategies of clientele, which lead to clientele with different needs, and in turn to different activities and roles for advocates at each site.

Silicon Valley FACES (FACES)

FACES was founded in prior to the advent of VWAs in 1965, as a religious community center committed to issues of social justice. Now a secular non-profit, FACES currently it describes itself as “a human relations organization committed to ending bias, bigotry and racism in the Bay Area and Northern California” and strives to “build communities based on understanding and respect for diversity, and justice for all of us.”¹⁹ In addition to housing the county VWA, FACES engages in eight other educational, diversity, and leadership programs that take place in local schools, workplaces, and religious communities. FACES is located on one floor of a private business building that sits about two city blocks from the county courthouse and jail.

FACES assumed the contract for the county VWA in 1975 and it has been the only contractor for the county’s VWA since then (unlike some counties, whose VWA locations have changed over the years). FACES was one of the first VWAs in California, and three managers with whom I initially worked had been there since it opened in 1975. FACES holds a joint powers contract with the Compensation Board and has a separate claims unit that processes compensation claims, in addition to its advocacy unit. The claims unit, which is a set of cubicles in one corner of the office, employs 6 full-time “claims processors” under state contract who evaluate and process compensation claims. The advocacy unit has one part-time and eight full-time advocates; one full-time administrative assistant who performs limited advocacy duties; two part-time administrative assistants; three part-time volunteers (including myself); and two unit managers. Among the advocates, five have offices at FACES, one at the largest city police station in the county, one at the county probation department, and two at the District Attorney’s office.

San Francisco Victim Witness

¹⁹ See <http://www.svccj.org/victim-witness.html>.

San Francisco's VWA (SFDA) is located in San Francisco's District Attorney's office and has been there since 1979. The District Attorney's office is located on one floor of the courthouse building, a 12-story building occupying an entire city block, which also houses a police station and the county jail. SFDA also has separate claims and advocacy units, but the claims unit is located in a warehouse one block from the courthouse. The claims unit employs six full-time claims processors and one unit manager. The advocacy unit employs eleven full-time advocates, one unit manager, and has four part-time volunteers (including myself). Ten of the advocates have offices at SFDA and one has an office at an off-site location.

Two Agency Contrasts

Sources and Recruitment of Clientele

The two locations had considerably different client recruitment strategies, shown in Table 5-1. While most of SFDA's referrals came from the police and District Attorney's office, FACES relied heavily on walk-in clients and referrals from the county Restitution Court.

I divided the sources of clientele into primary and secondary based upon the frequency of referrals received from the source (e.g., daily versus weekly or monthly) and the overall proportion of cases from that source. Primary sources referred at least one client per day and at least one-tenth of the total client population; secondary sources referred fewer clients than this. Table 5-1 shows the division of sources into primary and secondary.

At both locations clients were either self-referred, called "walk-ins," or else recruited through a VWA's established relationship with an outside agency, which included the VWA's host agency. Walk-ins were clients who had not been sent to the VWA by an established channel. Walk-ins typically heard about the VWA from an outside agency or from the police officer at the scene. The process of assisting walk-ins was similar at both locations. Advocates were on a rotating schedule to assist walk-ins. Although an advocate may have normally assisted only a certain victim population, such as sexual assault victims, the "on-duty" advocate assumed responsibility for the walk-ins on this shift regardless of the victims' needs. Walk-ins were a primary source of clientele at both agencies. At SFDA, they comprised about one of every seven clients.

The two VWAs had substantially different recruitment strategies for their clientele from outside sources. Both received regular referrals from outside agencies, but the proportion of clients that came through those channels, and the ways that they came through, differed. I divided outside agencies into criminal justice and non-criminal justice categories, and the style of recruitment as "active" or "passive," denoted by (A) or (P) in Table 5-1. "Active" recruitment means that an advocate was stationed at, regularly visited (one or more times per week), or regularly contacted (one or more times per week) that agency for potential clients. "Passive" recruitment means that the VWA initiated few contacts with the agency, but the agency sent occasional referrals, perhaps several per month or less.

Table 5-1: Sources of Clients and Advocate Activities at SFDA and FACES

	Sources of Clientele	Advocate Activities
San Francisco Victim Witness (DA-based)	<p><u>Primary:</u></p> <ul style="list-style-type: none"> • Police (A) • District Attorney (A) • Walk-in <p><u>Secondary:</u></p> <ul style="list-style-type: none"> • County Hospital (P) • Child/Family Serv. (P) • Domestic Violence TRO services (P) • 	<p><u>Primary:</u></p> <ul style="list-style-type: none"> • Compensation claims • Referrals to outside agencies • Crisis Intervention • Orientation to criminal justice system • Case status/disposition • Court accompaniment • Witness notification • Court waiting area <p><u>Secondary:</u></p> <ul style="list-style-type: none"> • Restitution • Transportation assistance • Victim impact statements
Silicon Valley FACES (Community-based)	<p><u>Primary:</u></p> <ul style="list-style-type: none"> • Walk-in • Restitution Court (A) <p><u>Secondary:</u></p> <ul style="list-style-type: none"> • Family Court (A) • Police (A) • Probation Dept (A)* • DV Court (A) • District Attorney (A)* 	<p><u>Primary:</u></p> <ul style="list-style-type: none"> • Compensation claims • Referrals to outside agencies • Crisis intervention • Restitution <p><u>Secondary:</u></p> <ul style="list-style-type: none"> • Case status/disposition • Court accompaniment • Witness notification • Victim impact statements

Recruitment at SFDA

The District Attorney's office and the police provided the majority of clientele at SFDA, shown also in Table 5-2 below. SFDA funneled potential clients in daily from these sources and in the first half of 2010 they brought in roughly two-thirds of all victims seen at SFDA (ADA Direct and Police on Table 5-2). These recruitment strategies were possible because of SFDA's status as a subunit of the D.A.'s office, which created a close-knit relationship between Assistant District Attorneys (A.D.A.s) and advocates and gave advocates access to all police reports filed – thus all potential clients – in the county.

Table 5-2: Sources of Clients at SFDA, January – June 2010

Source	Clients	Percent
ADA Direct	536	46
Police	215	18
Walk-in	175	15
Program Initiated	151	13
Public Agency	80	7
Hospital	8	<1
Other	5	<1
Total	1170	

Almost half of all clients at SFDA were directly referred by A.D.A.s who requested that advocates initiate contact and communicate with the victims on their behalf for court-related services. A.D.A.s simply attached a "Request for Services" form to the police report and either walked it over or had it couriered to the VWA. A.D.A.s did not place requests for assistance in all cases, and while no one keeps figures on their referral practices, it was my impression that most (possibly all) requested assistance at some point; some placed requests more frequently than others, and whether one placed one is a function of many factors, including his or her personality, length of time working at the office, number of victims and witnesses, type and severity of injuries, type of crime, and the length of the trial.

The second largest category of referrals was labeled by SFDA as "Police" and consisted of police reports provided by the D.A.'s office and referrals from the county police department. First, the misdemeanor and felony units of the D.A. office each maintained a stack of police reports for all cases in which the offender was arrested and awaiting arraignment. Two to three times per week someone at SFDA selected potential clients from that stack. When I visited SFDA, the newest advocate and the volunteers (including myself) were the ones who performed this task. We gathered only those police reports in which there was an identified victim and the crime was not simple theft. Simple theft was excluded because those victims do not qualify for state compensation

and because those cases were unlikely to go to trial, and thus not likely to need court-related services. If a case of simple theft did go to trial, the A.D.A. could send a direct request to SFDA. By my judgment, the majority of these were incidences of domestic violence (including threats without assault) and non-gunfire assaults by acquaintances, including lots of bar fights. The sorting stack typically contained two to four dozen police reports, and we typically walked away with a dozen cases to assign to advocates, for a total of about two dozen per week.

The second Police source was an email report that SFDA's manager received from the police chief several times per week that contained a list of serious, violent crimes reported in the last 24 to 72 hours with unknown offenders. The list usually contained five or less cases for each day, and typical cases were robberies and gunfire assaults. The manager assigned to advocates cases with injured victims, which she prioritized because of victims' possible medical bills. Because court-related services were unlikely in these cases, these cases were often assigned to volunteers; during October and November my caseload was drawn entirely from these lists. To contact these victims, I pulled up the police reports and located the victim information. Often the victim's information was incomplete or the victim declined services.

SFDA's secondary sources included local medical, social service, and other non-profit agencies, including the county hospital, the county's department of Children and Family Services, and the local non-profit agency that assisted domestic violence victims with temporary restraining orders against batterers. A few times per month the county hospital's Social Services department referred seriously injured victims to SFDA, while the county's Children and Family Services department referred child abuse cases to SFDA several times per month, primarily for counseling expenses.

Recruitment at FACES

FACES had no comparable referral system with either the Santa Clara County D.A. Office or the police department. Instead, it had a referral system from the criminal courts that ordered restitution. The steady stream of cases that the police and D.A. office funneled into SFDA can be compared to the steady stream of restitution files that sentencing courts funneled into FACES. Prior to the offender's sentencing hearing the court sent case information to FACES. FACES sent the victim a letter notifying him or her of the restitution hearing and requesting an itemized list of financial losses. FACES then forwarded either that information to the court or a message that the victim was unable to be reached. Many if not most of these crimes were property crimes, in contrast to the personal crimes that made up the majority of cases funneled into SFDA. In a typical week, FACES received several dozen restitution referrals.

Four full-time advocates were stationed at outside agencies that made up most of FACES's secondary sources. One advocate was stationed in the D.A.'s Domestic Violent unit, and two days a week she attended criminal restraining order hearings in misdemeanor domestic violence cases, where she accosted victims present in these cases. The other three days she followed up with victims she recruited in court and with domestic violence cases that the A.D.A.s referred to her. A second advocate was located in the D.A.'s office and a third in the San Jose police station; I had little contact with

these two advocates. Finally, the Probation Department housed a fourth advocate who served a steady stream of clients referred by probation officers. During my time there the D.A. and Probation Department positions were eliminated; the D.A. advocate assumed a management position at FACES and the Probation advocate assumed normal duties at FACES and, like the other in-house advocates, spent the majority of her time processing restitution files.

FACES also sent one to two persons to civil restraining order hearings in the Family Court one to two times per week. This position was initially developed specifically for me by my first manager, who said that budget cuts had prevented them from sending a paid advocate over there, which they had done in the past. For first few months I did this alone and eventually one of the administrative assistants joined me. Like the advocate in the domestic violence court, we took down contact information for interested victims and brought this information back to FACES, where those cases were assigned to advocates. On a typical day, we returned back to FACES with two to four referrals from Family Court.

The Impact of Recruitment Strategies on Client Population and Client Needs

The different client recruitment strategies at SFDA and FACES drew clients in at opposite ends of criminal trials: SFDA at the front end and FACES at the tail end. SFDA's largest referral sources, the police and D.A.'s office, brought victims in as proceedings against the defendant were getting started, opening the door for SFDA to provide prosecutorial services to their steadiest sources of clients. About half of SFDA's clients, those who were directly referred by A.D.A.s, were contacted for prosecutorial services specifically. Walk-ins, by contrast, were unlikely to be associated with any criminal trial because those associated with trials typically had already been reached through one of the law enforcement channels.

By contrast, FACES's restitution referral system drew victims in after the trial's conclusion, thus closing the door for prosecutorial services for those clients. As at SFDA, walk-ins were unlikely to be associated with any criminal trial because those associated with trials typically had already been reached through one of the law enforcement channels. Clients from its secondary sources – police, D.A.s, and the courts – were more likely to be associated with a criminal trial.

In sum, SFDA's population of clients with active court cases and/or who received prosecutorial services was most likely larger than that population at FACES, but figures were not available.

Advocates' Activities

I divided advocates' activities into primary and secondary based upon the frequency that the advocates performed that duty. The largest difference between the two locations was that prosecutorial tasks were performed frequently at SFDA – daily or almost daily by every advocate – but not at FACES. However, despite the diverse methods of recruiting victims, and the different categories of clientele that they received because of this, advocates at both locations spent a large portion of their time performing the welfarist tasks that were highlighted in chapter four: helping victims get

compensation and referring them to outside social service agencies. The similarities and differences are shown by the chronological process that advocates go through with victims at each VWA. Figures 5-1 and 5-2 depict flowcharts of encounters with victims at SFDA and FACES, respectively.

Activities at SFDA

Because the majority of clients at SFDA were D.A. and police referrals with active court cases, advocates began the process by investigating the criminal case status associated with the victim. Prior to meeting every potential client the advocate checked the A.D.A. database to determine whether there was an active court case and, if so, whether the assigned A.D.A. had already referred the victim (there is occasional overlap). For walk-ins, the advocate gathered this information prior to meeting the victim while the victim waited. When a victim was already referred, the advocate first contacted the A.D.A. for more details before contacting the victim. If there was an active court case that had not been referred, the advocate asked the assigned A.D.A. whether witness services were needed. Thus, at SFDA, the advocate was already briefed on the criminal case status before even meeting the victim. As a result, relaying that information – and, when appropriate, beginning to coordinate trial participation – was part of the advocate’s initial encounter with the victim.

The other aspect of the advocate’s initial encounter involved conducting a two-part needs assessment that determined the victim’s eligibility for and interest in the three types of compensation – medical/dental expenses, counseling, and relocation – and second, whether the victim was in immediate need of food, shelter, or police protection. When the victim qualified for compensation the advocate would begin that paperwork. The advocate sat with the victim while he completed the state’s five-page form listing personal information, crime information, and insurance providers.

Determining eligibility for compensation could be complicated because many if not most of SFDA’s clients were eligible for or already received some public benefit that disqualified the client from compensation. SFDA’s client population consisted largely of lower class minorities with preexisting social, medical, mental health, and/or economic problems that advocates encountered because these problems either impacted compensation eligibility or they created one or more immediate needs. Consequently, SFDA’s advocates were experts on local, state, and federal social services. Navigating the ocean of public services and agencies – from Medicare to unemployment insurance to the local food closets – was the most laborious part of my job, and my lack of expertise in this area required me to constantly seek assistance from paid advocates. Fully and properly serving clients at SFDA required what seemed to me like mountains of detailed information that came from day-to-day experience with public services and agencies, such as whether Medicare covered dental implants, how long certain disability benefits last, and how to request a new social security number. Advocates often maintained personal contacts with representatives from outside agencies with whom they consulted and to whom they referred clients. While advocates’ first priority was to take care of crime-related needs, advocates routinely addressed needs that are indirectly or even unrelated to victimization, such as referring homeless clients to local charities and

Figure 5-1: SFDA Advocate Flowchart

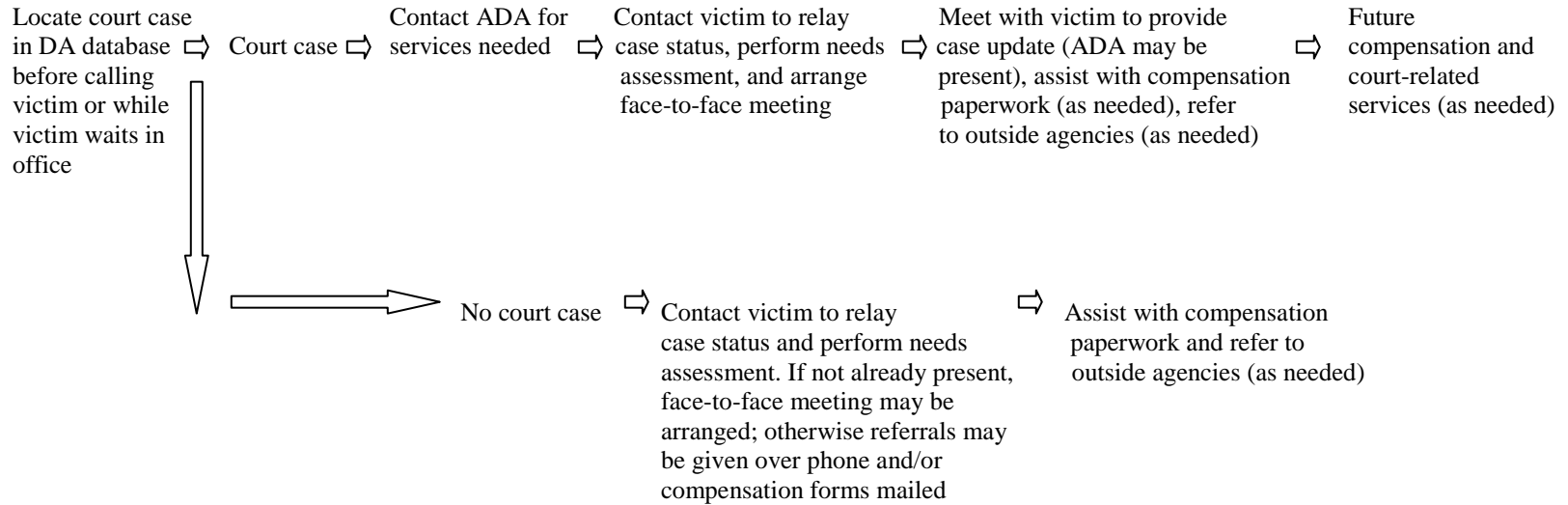
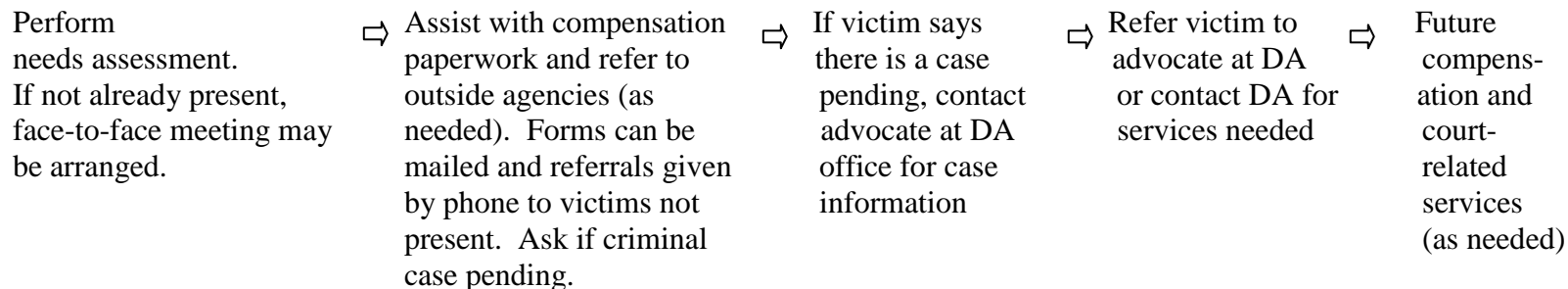


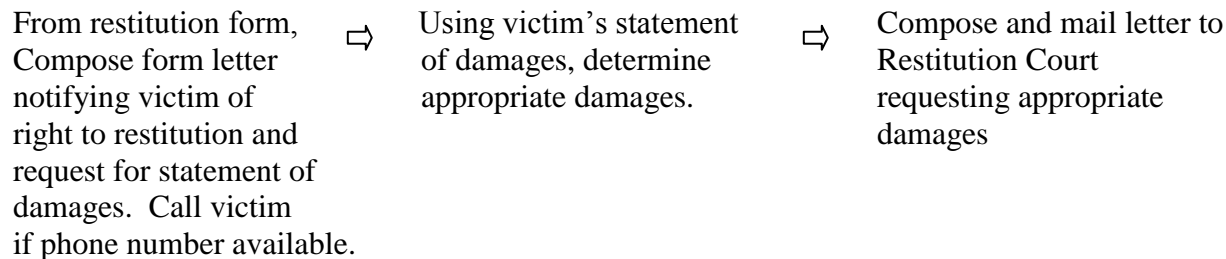
Figure 5-2: FACES Flowchart

A: Non-Restitution Walk-ins and Referrals



74

B: Restitution Cases



shelters. In this capacity, advocates were part of the broader social services network for the disadvantaged and disaffected portion of the population – not just *victim* advocates.

Completing the compensation packet required follow-up work once the victim left. A police report or a restraining order must accompany the application, along with copies of any bills for which compensation was sought. At SFDA, advocates had electronic access to the county's police reports and simply pulled them up on their computers or got printouts from the police department upstairs. Once victims provided medical bills and other necessary paperwork – typically several days or weeks later, and often not at all – advocates sent completed applications to the claims unit for processing. The claims unit took over the claim at this point, contacting the client directly to rectify problems or to request follow-up paperwork. Once an application was sent to Claims the advocate initiated no more contact with the client, but she would forward bills that the client sent to her or answer any follow-up questions.

When clients were associated with court cases, the amount and type of follow-up varied. Most clients were contacted because their participation was desired, but there were clients with court cases whose participation was not requested. After the initial contacts with those clients, advocates would respond to inquiries but would not initiate further contacts. Instead advocates' proactive efforts were directed at clients whose participation A.D.A.s sought. In this capacity, advocates performed largely informational and clerical tasks for and on behalf of A.D.A.s. Advocates were the preferred contact for victims, relieving A.D.A.s of the task of telling victims how the process works, what to next expect, possible outcomes, and so on. Advocates were responsible for telling victims when to appear in court and for telling A.D.A.s when victims were not available to appear in court.

Direct communication between A.D.A.s and clients was sometimes necessary, however, because of the expertise, experience, and authority that only A.D.A.s had. Advocates could not prepare witnesses, discuss testimony, or provide legal opinions or legal advice. Because of this, A.D.A.s sometimes meet with clients on their own, but just as often they asked advocates to arrange meetings between the three parties (A.D.A., advocate, victim) for these purposes. During these meetings, a few of which I sat in on, advocates mostly listened and generally spoke only when spoken to. After the A.D.A.s adjourned the meeting, advocates sometimes stayed with victims a while longer to repeat pertinent information, such as court dates or room locations, or to comfort victims who are upset.

Advocates were also self-described “support persons,” frequently accompanying witnesses to their court appearances for technical purposes (e.g., showing them where the courtroom was, making sure they were on time) but also for emotional support. Especially in domestic violence, sexual assault, and homicide trials, clients were believed to benefit from someone being there to “hold their hand,” literally or figuratively, because of trauma associated with appearing in court.

I estimated that advocates spent up to half of their time assisting A.D.As. On a typical day about half of advocates were away from their desks, which usually meant that they were in court or meeting with some law enforcement person. These tasks were most

often accompanying victims to court, providing case updates, and notifying victims of their need to appear as witnesses.

Activities at FACES

At FACES there were two tracks, one for victims seeking non-restitution assistance and one for the restitution cases that came in from the Restitution Court. The process for non-restitution victims began with conducting the two-part needs assessment – not investigating the case status, as at SFDA – and followed with assisting with compensation forms and providing referrals. This procedure at FACES was indistinguishable from those at SFDA, with the only difference that advocates at FACES ordered police reports from the police department or from the one advocate stationed at the police station.

Any inquiry into to the criminal case took place after the victim has been assisted in these ways, if it took place at all. Since advocates stationed at FACES did not have access to prosecution files, they could not easily look up criminal cases and, in my judgment, investigating whether a criminal case was pending was not a priority. Advocates were trained to ask victims whether there was a case pending, and if the victim said there was, the D.A.-stationed advocate was contacted for case information. If prosecution services were needed, the advocate either assisted the victim herself or referred the victim to the D.A.-stationed advocate. As part of my training I sat in on multiple initial contacts and advocates did not always ask victims whether a criminal case was pending.

Unlike at SFDA, where advocates were frequently away from the office to attend court and meet with A.D.A.s, I rarely saw advocates at FACES leave the office for these purposes, nor did I ever accompany an advocate to court. When I asked two in-house advocates how often they performed a court-related service, one said once a week and the other said once a month or less. The advocate stationed in the D.A.'s domestic violence unit did not provide court-related services to her clients, either. Rather, she typically counseled victims on how to leave abusive relationships and referred them to FACES for compensation assistance. In addition to the advocate assigned to homicide, the only other advocate providing regular court-related services was the advocate stationed at the probation department, who contacted victims to testify at probation and parole hearings – and her position was eventually eliminated.

When the in-house advocates were not assisting with compensation or providing referrals, they were completing restitution files. Once a week the criminal court sent a pile of restitution forms containing case information that the office assistant assigned randomly to advocates. Advocates contacted victims by mail and phone, if a phone number was available. Advocates mailed victims a form letter alerting the victim to her right to restitution and a form to be filled out by the victim listing the victim's crime-related expenses. Typically the victim had between several weeks and two months to return the form. If the advocate did not hear back from the victim within a few weeks, the advocate mailed a reminder letter. When the victim returned the forms, the advocate forwarded the forms to the court along with a typed summary of the victim's losses.

Discussion

Although some constituents within the crime victims' movement may have wanted to overhaul the criminal justice system and empower victims, the profession of victim advocacy that emerged was relatively passive in its linkage to criminal litigation, posing neither a threat to prosecutorial power nor a leg up for victims in the criminal justice system. The product of law enforcement insiders and victimologists, professional training has centered on managing psychological trauma and learning about the criminal justice process so that this information can be passed on to victims. My observations at two VWAs showed that advocacy in practice largely entails, on the one hand, welfarist tasks that were independent of the criminal prosecution and punishment, and on the other, informational and clerical tasks that A.D.A.s might have assigned to assistants or secretaries in previous times. While I argued that the ideal advocate was part social worker and part law enforcement expert, the advocate's role at both locations was largely administrative: compensation assistance and restitution assistance consisted of mostly paperwork completion, while "prosecutorial" duties consisted largely of giving and receiving case status information and arranging appearances in court.

Although welfarist duties were a priority at both VWAs, the balance between welfarist and prosecutorial duties was different at each location. At FACES, advocates' time was almost entirely devoted to compensation and restitution assistance, with only occasional delivery of court-related services for most advocates. At SFDA, advocates' time was divided equally between compensation assistance and court-related services. The different activities carried out at SFDA and FACES were largely attributable to their different recruitment strategies for clientele, which in turn produced populations of victims with different needs.

Whether it can be said that advocates occupy different roles in the criminal justice system as a result of the different balance of activities is a matter of perspective. SFDA advocates indeed have become integral to criminal prosecutions at SFDA, such that A.D.A.s rely on them to perform tasks on a daily basis and on most criminal cases. This is simply not the case at FACES. However, the different balance of prosecutorial duties does not necessarily lead to different functions for victims within the criminal justice system. The roles that victims play looked virtually identical at each VWA and, moreover, identical to their pre-movement role. At both VWAs advocates largely served non-prosecutorial functions by helping victims get compensation, listening to their problems, and referring them to outside agencies for social services. At both VWAs, advocates arguably gave victims a "louder voice" somewhere in the criminal process: at FACES, this occurs at the end of the process when advocates pursued restitution for victims, and at SFDA, this occurred during the criminal process when victims maintained a dialogue with the A.D.A. about the case, attended court, and on occasion, submitted VIS. But, aside from the occasional VIS, things were business as usual in the criminal courts at both locations. Restitution pre-dated the victims' movement and in California is still largely controlled by county probation departments. Although FACES managers claimed that they were the most successful among VWAs at securing restitution, and while it is true that they forged a new method of securing restitution orders, they did not create something new for victims or for the criminal justice system. Indeed, a year after I

left, the county removed all restitution duties from FACES and gave them back to the county probation department.

At SFDA, prosecutorial duties made A.D.A.s' lives easier, not harder or different. While some constituents have celebrated victim participation's potential to create clashes between what victims wanted and what prosecutors wanted, this was simply not the case at SFDA. Advocates recruited victims to participate in what was still the A.D.A.'s game, looking like A.D.A.s' personal assistants by doing the mundane and least favored non-courtroom tasks: answering messages, relaying information, and coordinating appearances. Victims arguably stood to gain emotionally from more open communication, as constituents and advocates have claimed, but advocates were hardly helping them "fight the system" by doing these things. If anything, advocates at SFDA made the existing criminal process function more smoothly. To this extent, claims that VWAs can aid the prosecution, when integrated into the D.A.'s office, are true.

The absence of a "fight the system" approach among advocates at either VWA is what makes VWAs government agencies, and it is what distinguishes them from other victim constituencies. It is true that advocates at both places adopted the rhetoric that the criminal justice system needed reforming to accommodate victims. It is also true that advocates at FACES in particular saw themselves as outsiders, believing that their non-profit home-base helped to maintain independence from the system. However, in all cases, nothing that advocates did actually fought the system. FACES advocates tended to avoid the system, while SFDA advocates helped it function more smoothly. Their passivity and acceptance can be contrasted with rape crisis and domestic violence organizations that have historically been critical of business as usual.

This does not mean that victims were not helped by VWAs or that VWAs serve no valuable function for victims. On the contrary, the real consistent gain for victims has been securing compensation for their injuries. Compensation claims assistance is the first activity outlined in the Penal Code and was the first designated activity in the mid-1970s, before the Penal Code codified VWAs' activities (Vaughn 1979). Advocates at both VWAs prioritized compensation assistance and spent half or even more of their time helping victims to fill out forms and following up with compensation claims. These findings contradict claims that VWAs generally fail to address victims' financial needs and merely assist in the prosecution of offenders (Dubber, 2002; Elias, 1986, 1993).

The next chapter examines in more detail how advocates spend their time and how they perceived their clientele.

Chapter Six: Angels or Accomplices? Advocates' Construction of Victims as Clients Rather than Causes

Introduction

This chapter describes how victim advocates see their clients and, consequently, what constitutes help for victims from their perspective. While the public face of the crime victims' movement portrays victims and offenders as polar opposites on a moral continuum of good/evil and innocent/blameworthy, victim advocates routinely construct victims in ways that depart from innocent victimhood by taking into account victims' crime experiences and their broader life stories, both of which often include moral and social failings. I argue that the social distance between advocates and victims at SFDA in particular leads advocates to harbor love-hate feelings toward many of their clients. At FACES victims' social and moral failings are acknowledged but less relevant to advocacy because so much of advocates' time is spent on restitution paperwork. At both locations advocates are not equipped to change victims' life circumstances – including victims' own behaviors and life circumstances – or to control criminal prosecutions, and advocates define help in monetary terms: getting victims compensated for their injuries. Ultimately, to victim advocates, victims are clients of their agencies rather than causes for change.

The next section describes the dimensions of victimhood that have been behind victim-activism since the 1980s, the same period that VWAs became widespread. This symbolic victim represents innocence tattered by violent victimization and has accompanied the support of mostly punitive legislation during this period. But as I argued in chapter two, California's foreunner to VWAs, the Indemnity Fund, and California's early VWAs came into existence without the powerful images that dominate today's movement. After delineating the symbolic victim, I show the much different images of victims that advocates use in their everyday work, and how these less-than-idyllic perceptions impact how advocates treat victims. Finally, I offer some concluding thoughts on victims as angels versus accomplices, and victims as causes versus clients.

The Crime Victim as Angel: The Symbolic Crime Victim as a Cause for Legal Change

One of the most criticized aspects of the crime victims' movement has been the selective representation of victimization that activists have tended to use to justify legislation, largely punitive, for and on behalf of victims (Dubber 2002; Chermak 1995; Elias 2005). Sensational victimization stories have been essential to stirring up community sentiments and to drafting legislation that responds to whatever shortcoming in the law a particular story highlights. The similarities among the victimization stories that have been politically compelling have been documented on multiple occasions (e.g., Chermak 1995) and are embodied in what I call the symbolic victim. The symbolic victim's identity centers on being entirely blameless for his or her victimization, and there are several dimensions to her innocence.

First, her immediate actions in no way provoked the crime or made her especially vulnerable to being victimized. She did not taunt the offender, was not intoxicated, was

not wandering through a bad neighborhood at night, etc. Typically she was minding her own business or otherwise engaged in normal, expected, everyday activities.

Second, she led a general lifestyle that was considered legitimate, i.e. not connected to miscreants or criminal activity, such as being a gang member or a drug user or homeless, so that there is no claim that her lifestyle or past behaviors eventually “caught up with her.”

Third, she the offender was at most an acquaintance, not a relative or a close friend. The implication is, again, that she did not associate with criminals or expose herself to criminal activities.

Fourth, she was from a Caucasian middle- or upper-class family, and therefore free of stereotypical associations of poor non-whites, especially Blacks and Latinos, with criminals and criminal activities.

Finally, she was female and/or a child and therefore at a physical power disadvantage against the typical adult male offender. Femininity and youth also represent moral purity.

Together these features depict the symbolic victim as innocent in a legal sense but also in a moral sense. As a “good” person leading a lawful and moral life, the symbolic victim is wholly undeserving of the losses and suffering that she sustained, which importantly, are severe: the symbolic victim was also the victim of a violent crime and has suffered severe injuries or death. The symbolic victim dominates the mainstream media and it dominates efforts to change law in the name of victims and especially in the name of particular victims who fit this mold (Gottschalk 2006).

What kinds of legal changes does the symbolic victim call for? How might a victim advocate approach and serve the symbolic victim? Both questions might be rephrased as asking how proponents of this image of victimhood imagine the problem(s) and solution(s) that motivate them. As discussed in chapter two, the movement’s participants have expressed three grievances: the earliest, starting in the 1960s, against the legal system for failing to help victims to recover from victimization; a second in the 1970s against the criminal process for intimidating, ignoring, and mistreating victims and witnesses; and a final one blossoming in the 1980s, against offenders for the harm they cause but also directed at a “lenient” penal system that allowed offenders to commit crime. Three solutions have dominated the response to these grievances: helping victims to recover physically, emotionally, and financially from the crime (welfarist policies); facilitating victims’ greater involvement in the criminal process (prosecutorial policies); and enhancing penalties for offenders.

The symbolic victim has mostly accompanied the latter two grievances against the criminal process, offenders and lenient punishment, and the latter two policy types seeking greater involvement and punishment. The symbolic victim has been most visibly associated with a broader law-and-order agenda. This agenda, when tied to the victim cause specifically, relies on opposites, contrasting the victim’s total innocence with the offender’s total culpability. Offenders are the moral opposites of victims – put simply, evil people – and as a result deserve no compassion, understanding, or leniency. This duality is effective at inciting passions and, in particular, feelings of unfairness and imbalance, and support for solutions that “even things out.” Where victims and offenders

are in a status competition, zero-sum ideology underscores policy choices, according to which policies that hurt offenders are thought to automatically benefit victims. Accordingly, victims' participatory rights are praised for their potential to cancel out the (allegedly) lenient effects of offenders' rights, and more directly, enhanced penalties dominate the policy agenda.

That the symbolic victim, evil offenders, and zero-sum ideology have persisted among one subgroup of movement participants does not necessarily mean that is absent from the victim advocacy profession. In order to be considered part of the same movement (by themselves and by others) some grievances and solutions must overlap. Advocacy professionals have, like victim-activists, rallied against the "unfair" traditional criminal process and argued for a "rebalancing" of the system (e.g., President's Task Force 1982). Like victim-activists, advocacy professionals have supported legal rights because they provide that balance, at least in theory. The 1982 Task Force, which provided the blueprint for VWAs around the country, was as much a product of law-and-order professionals as advocacy professionals. As we saw in chapters two and five, the variety of interests behind the formation of VWAs lead them to embrace, in addition to the welfarist agenda of helping victims to recover, the "empowering" and "rebalancing" – at least in theory – agenda of victim rights.

If the symbolic victim were alive and well within advocacy circles, what would an advocate's treatment of her look like? Certain qualities about victims that affect their treatment would accompany their highly regarded innocence. The symbolic victim would, in the first instance, be receptive to advocates' help and appreciative of it. What innocent victim would not welcome assistance recovering what she lost, and getting back onto her feet? In addition to wanting help, she would have qualities that would enable her to receive help, such as being approachable, responsible, and reasonable. The symbolic victim would also be cooperative and available during the investigation and trial of the offender. There is a good chance that she would even be angry at the offender and personally motivated to see justice carried out.

Because victims would be blameless, receptive, and cooperative, advocates would harbor mostly positive feelings toward them, such as compassion, empathy, and understanding. As sympathetic characters, victims would be easy to identify with and harbor feelings of concern for. Advocates would be motivated by the deep injustice presented by innocent victimhood, yet they would also harbor conflicting feelings toward the criminal justice system that, on the one hand, has not historically been kind to victims but, on the other, with advocacy's newfound place might be reformed to serve victims. The advocate would not just serve victims but also advocate for and on behalf of victims: by seeking changes in laws, maybe even by sometimes validating and expressing victims' viewpoints that are contrary to those working on their cases.

Serving the symbolic victim would not be easy by any means – she might be severely traumatized and require a lot of comfort, attention, and patience – but it would feel productive and rewarding to the advocate. The advocate would define success as having helped the victim become whole again, as comforting her during a highly stressful time, as giving her an independent, respected voice in the criminal process, and as helping give the offender his just punishment.

The Crime Victim as Accomplice

Victimization statistics have long told a far different story of victimhood, one in which the kinds of victimization stories that have made the movement politically popular are few and far between. Victimization statistics tell us that most crimes happen against people who violate one or more dimensions of innocence outlined above. They tell us that many victims have been offenders at some point in their lives. They tell us that non-whites are victimized at much higher rates than whites, especially for violent crimes, that males are more likely to be victims than females, and that people from low-income households are more likely to be victimized than people from middle- and upper-income households. If one could describe a “typical victim,” his profile would fit that of a “typical offender”: he would be a non-white male in his late teens to early twenties from a low-income, urban household and have one or more past brushes with the law. He would likely be related to, associate with, or be neighbors with people who break the law. Even those without criminal records are more likely to be victimized by people whom they know than by strangers. For example, incidences of domestic violence, including spousal abuse and child abuse, far outnumber violent index crimes. Studies of sexual assault tell us that assaults by boyfriends and acquaintances are far more common than attacks by strangers.

Violating one or more dimensions of innocence, real victims may be considered partly to blame (except, perhaps, child abuse victims). Aware of the reality of victimization, those behind the formation of VWAs in California have never fully embraced the symbolic victim. The next section shows how the compensation scheme in California has balanced this reality of against the compelling symbolism of innocent victimhood.

Victimhood and Compensation

The symbolic victim, a product of 1980s victim-activism, had not yet been thrust into the limelight when compensation was made law in California. It was not that the seeds of the symbolic victim were not there at all. Compensation’s original promoter, Judge Brenner, did use the familiar tactic of describing a sympathetic victim whose neglect by the criminal justice system represented a patent unfairness: in that case, an elderly woman who could not pay her medical bills, and whose offender had received rehabilitative treatment from the state. The logic of evening things out – if offenders get something, victims should get something too – has been a rhetorical strategy employed by all constituents in the crime victims’ movement. However, the symbolic victim in full form has not always been used strategically by movement participants, and advocacy’s initial and enduring focus on compensation as opposed to other solutions highlights the symbolic victim’s limited relevance to advocacy professionals.

This is because compensation presupposes a different type of victim than the symbolic victim, one with different life circumstances and needs. Middle- and upper-class victims often have the social and economic resources to recover from victimization without government assistance. They are likely to have medical and property insurance plans that cover their losses and they can absorb small costs like co-payments and

deductibles. To make any social or economic impact in victims' lives, to have a *Raison d'Etre*, compensation must be directed at a less wealthy population of victims. In other words, if compensation schemes were to have their own symbolic victim, it would not be the insured person facing a ten-dollar co-pay; rather, it would be the uninsured person facing financial ruin. Success would be defined as preventing financial hardship, which was precisely the requirement imposed on applicants to the original Indemnity Fund. Compensation schemes were designed with poorer victims in mind whose primary need was financial. Offenders would be responsible for footing the bill, but the motive there was more practical than it was punitive or ideological. Those who were in favor of compensation most likely would have been happy with a compensation scheme funded by tax dollars rather than penalty assessments because the focus was on getting money to needy victims, not lowering the status of offenders. Needy victims were not angels that were contrasted with demonic offenders, but just another category of financially needy and deserving persons, alongside the disabled and the unemployed.

This is not to say that compensation's champions were and are intent on helping the "typical victim" that has a sordid past, lifestyle or associates. To the contrary, from the start compensation in California has been reserved for "deserving" victims, a restriction that started to look a little like the symbolic victim beginning in the 1980s once the financial hardship requirement was dropped. Even when financial hardship was the only official requirement to receive compensation in the early years, the governing body had wide discretion to reject applications, and early advocates and claims processors almost certainly used their discretion to deny compensation to victims with morally questionable behavior and backgrounds. But, in 1984 two new restrictions were put in place that explicitly focused on the victim's degree of innocence, both at the time of the crime and with respect to her general lifestyle.

First, the victim must not have "contributed" to her victimization. "Contribution" has never been defined in the statute, and part of my training at both sites included how to identify circumstances where the victim was considered to have contributed to her victimization. Three ways of contributing were described to me:

- The victim was in the process of committing a crime at the time she was victimized. This includes, for example, co-conspirators who turn on each other and drug dealers and prostitutes whose customers victimize them.
- The victim was involved in gang-related activities or associating with gang members at the time of the crime, even if the victim was not committing a crime. Because presence among gang members implies support for gang activities, these victims are not considered "innocent bystanders."
- The victim provoked the offender. This aspect of contribution was the murkiest to me because it involved a subjective judgment about whether the offender's actions might be considered reasonable, defensible, or understandable even if his actions were still criminal and his target was still considered a "victim." It was particularly salient when examining victims involved in bar fights where the victim said or did something that upset the offender, who then responded with physical violence. For example, in one of my cases at SFDA a lesbian victim at a

bar threw her beverage in a man's face after he called her a "dike" several times. The man then punched her, which led to emergency medical treatment including several stitches on her face. The ADA decided to prosecute the man for committing a hate crime, and although the punching might have been clearly criminal to the ADA, the victim's decision to throw the drink in the man's face rather than pursue other options (e.g., leave the bar, call management, ignore him) called her eligibility for compensation into question. My supervisor told me that several factors weighed in her favor – the man's initial harassment, the ADA's decision to prosecute the case, and the severe injuries she sustained – and so I had her apply for compensation, but with the warning that she might be rejected because she provoked the man. After my supervisor and I made a subjective assessment that she was more in the right than in the wrong, the claims processor would weigh the same evidence and draw his or her own conclusion.

The contribution requirement leads to a difficult topic among advocates, discussed in greater detail below, which is the degree to which domestic violence victims might be considered to have contributed to their victimization by continuing to have relationships with their batterers. California's compensation scheme provides moving expenses for domestic violence victims only once every two years, and only once ever per batterer, and the victim must sign a contract agreeing not to divulge her new address to her batterer. Thus, these rules place a burden on domestic violence victims to remove themselves from their victimizing circumstances, in other words to not contribute to continuing victimization by staying with batterers.

The second restriction placed in 1984 was that compensation may not be given to a victim who was on probation or parole at the time of the crime. This is a blanket restriction based on the victim's legal status only and, unlike the first restriction, has nothing to do with her behavior or location at the time of the crime. I raised with my supervisor at SFDA several rejection possibilities under this rule that struck me as denying "deserving" victims compensation, such as a woman who is gang-raped by strangers but is on probation for writing some bad checks years ago. My supervisor agreed that the rule might deny compensation to some sympathetic victims, but that the general logic behind the exclusion, which she thought was both fiscally and morally sound, was that offenders should not be taking back the money that they put into the system for victims. (Presumably the bad check writer had paid a fine that went to the compensation fund.)

While the increased focus on innocence suggests a specific merging of constituencies or interests across the crime victims' movement in recent decades, it must be remembered that many government benefits are denied to those with past criminal behavior. Compensation in this instance is no more restrictive than, for example, food stamps or federal student loans, and in fact it may be more generous; a past felony conviction that prevents someone from receiving food stamps will not, on its own, prevent her from receiving compensation. The newer restrictions placed on compensation are likely the result of the law-and-order movement's broad impact on all government operations rather than an effort to reform compensation specifically.

In sum, compensation as an idea and an institution does not wholly reject the moral character assessments that victim-activism makes central to its cause. However compensation, which is at the heart of victim advocacy in California, does concern itself with a larger, more diverse and overall less sympathetic or inspiring population of victims than victim-activism. With this population in mind, victims' proponents in California were originally moved to create another government bureaucracy to do what government does best – dispense money – and victims were clients of this new agency rather than causes for legal change. The next section shows how, even with the addition of “prosecutorial” duties seemingly inspired by the crime-victim-as-cause, the reality of victimhood helps to keep crime victims as clients of government bureaucracy. I start with constructions of victims at SFDA and then compare and contrast those to victims at FACES.

Imperfect Victims

SFDA

I arrived to SFDA one day with a post-it note in my mailbox stating that Mr. Brown had called needing further assistance. My eyes rolled back into my head and I let out a huge sigh. *Here we go again*, I thought. I called Mr. Brown, reminded him who I was, and then listened to him tell me that I had lied to him, that I was incompetent, and that he would never get compensation so long as I was assigned to his case.

Mr. Brown was an elderly man with Alzheimer's disease who had been attacked by some men who were breaking into his neighbor's car. Mr. Brown approached the men and told them to stop, and they hit him several times, breaking his eyeglasses and several of his teeth. The assailants were not caught, but Mr. Brown's replacement eyeglasses and dental bills would be covered by the compensation program. The elder abuse advocate was on vacation, so my manager assigned me the case, which in theory was a simple case of compensation paperwork: secure the police report, have Mr. Brown fill out the form, have Mr. Brown send in the bills. But, because of his medical condition, Mr. Brown had no driver license and could not easily come into the office. He preferred all communication to be done over the phone and fax machine, which still would not have been a problem except for his failing memory and two special circumstances. First, his broken eyeglasses were not mentioned in the police report, and they would not be reimbursed until they were. This required him to go back to the police station and file an addendum to the original report, placing three burdens on him: to remember to do this, to travel to the station, and to remember to call me after he had done it so I could get the new report. Second, he claimed to need dental implants specifically, which because of their high cost and possibility of alternative treatments, required a letter from his dentist explaining the lack of alternative treatments. This required him to remember to request that letter or to call the dentist to give me permission to request it myself.

Because of his condition, he routinely forgot to do these things, even though he consistently remembered that he needed compensation. Every week (and sometimes more) for over a month I received the same phone call from him asking me why he had

not yet been compensated. Every week I reminded him that these two things had to be resolved before we could move forward, and he promised to follow through. Sometimes he was embarrassed for forgetting, sometimes he said angrily that I never told him about these requirements, and sometimes he claimed he had already done them. When he became accusatory and angry I disliked him on top of being frustrated with the situation. I was trying to help, he was unable to help himself, and I was getting called incompetent in return. It also crossed my mind that Mr. Brown's injuries (and his insults) could have been avoided if he had called the police rather than attempted to intervene. Perhaps because his insults were trying my patience and sympathy, or perhaps because I too held the symbolic victim in the highest regard, I partly blamed Mr. Brown for his own victimization.

My interactions with Mr. Brown, and my perceptions of and feelings toward him, were far from what I had imagined they might be before working as an advocate. For starters, he was one of what felt like a conveyor belt of compensation clients that ruled my work life. For him, like the majority of my clients, compensation was the only thing I could offer him. I was a paper-pusher or an administrative assistant with a sympathetic shoulder as needed, which wasn't as often as I would have thought – most victims did not show obvious signs of distress, such as crying, or even nervousness. My meetings with victims were routine and predictable and revolved around filling out compensation forms: gathering documents, asking victims about their injuries, filling in bubbles. Of course, I felt good about the idea of compensation, but I just did not anticipate doing that for the majority of my time.

Second, I had imagined that victims would have the kinds of character traits that would make helping them easy or at least enjoyable. These were the traits that I argued in the first section would be associated with the symbolic victim: pleasant, eager, reliable, good communicators. Although Mr. Brown was a sympathetic character, an elderly man who got hurt trying to do good, his medical condition coupled with the cumbersome paperwork rendered us both unable to help him in the only way that I could. And though out of his control, his illness made him behave in ways that frustrated and irritated me. Despite the frustrations I encountered helping him, Mr. Brown was much more sympathetic than a lot of my clients. I quickly discovered that advocates, including myself eventually, adopted a very different set of expectations about their clients based upon frustrating and disappointing interactions with them, and based upon the reality of victimization. The typical client at SFDA resembled the typical victim described above – low-income minorities, mostly African Americans, with either criminal backgrounds or ties to criminals – and compensation paperwork in particular created an arena in which differences between the lifestyles and life circumstances of victims and advocates became starkly apparent. As much as providing compensation was rewarding in the ideal, it was routinely disappointing in practice.

It was disappointing because clients were habitually disorganized and unreliable when it came to completing compensation paperwork. Of the ninety-six clients I initiated contact with during my time at SFDA, fully forty-three had unreturned or incomplete applications. Some clients took applications home to complete and never returned them; sometimes the applications stayed in my file cabinet awaiting a social security number or

supporting documentation. I followed up with clients who failed to follow up with me, but it never once lead to a completed application. One advocate explained to me that paid advocates do not generally chase after clients because it is so unlikely to be fruitful. SFDA does not keep track of how often this happens, but it happens often enough that the unreliability of clients was part of the collective understanding of what advocacy at SFDA entails. I was told about it during my training and reminded of it several times when talking to other advocates about my clients as well as during my performance review with my boss.

There was a larger reason for this disorganization that even more quickly became apparent to me. I was a middle-class white woman with a college degree, no criminal record, and full-time employment. The paid advocates all had college degrees, presumably (in order to work in a DA office) no significant criminal histories, and full-time employment. Whatever else we didn't share, we did share a particular socioeconomic status that, for the most part, the clients at SFDA did not. Clients were routinely – and I would say the vast majority of my clients were – unemployed, disabled, living in public housing, or otherwise receiving government benefits or social services that signified a lack of self-sufficiency that we, as educated working people, had. As a result, there was the general understanding at SFDA that clients lead disorganized *lives*, and that failure to follow through with compensation paperwork was consistent with a general lack of motivation, discipline, and self-care.

This understanding did not prevent advocates from initiating compensation claims, but it did govern their interactions with clients. For instance, rather than have clients complete the applications themselves, advocates sat with victims and filled in the applications for them. The two main reasons given to me for this time-consuming process were that clients routinely made mistakes that required follow-up anyway, and that clients who took applications home were unlikely to return them. In the first instance, clients could not be trusted to decipher the document, which by my estimation required about a high school reading level. In the second, the understanding was not that clients' busy lives made compensation a low priority but that the application and the motivation to complete it would get lost amongst the disorder that governed their lives. My boss did offer a third, customer-service-type rationale that completing the application relieved victims of the burden of doing so. But, she offered it last and it came across as an afterthought rather than a governing concern, and none of the advocates I spoke with mentioned this as a reason that they complete the forms for clients.

Clients' socioeconomic backgrounds signaled not only disorganization but also the potential for more sinister and potentially criminal behaviors. In one encounter, I was warned that clients are well versed in government benefits and sometimes take advantage of them. One of my clients, a Black woman in her 40s, was seeking relocation assistance after her apartment had allegedly been set on fire. I could not locate a police report describing this incident, only one showing her as the victim of gang-related threats, and records showing that she had previously received assistance at our office. I called my boss for help, and she immediately asked the woman whether she received public housing vouchers (a question I should have asked but was not yet in the routine of asking, which evidence of my own biases), to which the woman replied she was. My boss proceeded to

call the representative, and that conversation revealed that the woman's apartment had flooded due to the woman's own negligence – she had never been the victim of arson. When the client left, my boss pulled me into her office and explained to me that this client was “one of the kinds of people that work the system.” She explained that, “because so many of our clients are in the system, they know what's out there and they try to take advantage of it. That's not the majority of them, by any means, but you have to be careful because they're out there.” She had called the representative directly, moreover, because she did not trust whatever explanation the client might have given as to why the public housing authorities were not handling her relocation.

A second encounter involved a walk-in client and was more indicative for what people in the office did *not* do rather than what they did. A short, portly Black woman dressed in jeans and a raggedy t-shirt was in front of the line at the glass window that separates the help desk from the waiting area. Two advocates, the office secretary, and I were in the immediate area. When one advocate asked the woman, “Can I help you?” she responded with soft, mumbled words. After making a few incoherent sounds her speech stopped completely and a glassy stare came over her face. The advocate, appearing annoyed, repeated, “Can I help you?” After a few seconds the woman began to drool onto the counter. My first aid training lead me to believe at this point that she was experiencing a seizure that needed immediate medical attention. The advocate, however, sighed and repeated loudly, as if the woman had not heard her, “CAN I HELP YOU?” The woman continued to stare and drool, and the secretary repeated, “Can we help you?” The advocate rolled her eyes and said to the woman, as if she were willfully ignoring her, “There are people in line behind you. If you can't say anything we can't help you and so we'll help the next person.” I then said that I thought the woman might be having a seizure, to which the advocate replied, “Maybe, I don't know, whatever” and walked away. The others went back to their work, so I dialed 911 and I called the manager over, at which point the woman started speaking coherently and confirmed that she had epilepsy. What was striking about the reaction of others in the office was the likely reason for their inaction. My sense was that the problem was not that they lacked first aid training but that they came to the interaction with a general picture of victims as largely disorganized, dependent, and possibly manipulative, and so they interpreted her behavior as deliberate and/or due to a general inability to behave appropriately.

FACES

Garnering perspectives of victims from everyday work was more challenging at FACES because I witnessed and participated in fewer interactions with FACES clients. Two related reasons for this were unfortunate methodologically: I was not given full access to clients and I did not develop the close working relationships that I did at SFDA that permitted me to see and experience clients through advocates' eyes.

However, just as importantly, developing a sense of who victims were at FACES and how advocates felt about them was more challenging at FACES because a large portion of FACES clients were absent in the flesh. Recall that in-house advocates at FACES spent about half of their time processing restitution claims and that this involved very limited contact with victims. The “victim” arrived to the advocate as a name and

address on a court document that was dominated by information about the restitution hearing: the defendant's name, the judge's name, the date and location of the hearing, and the crime. Sometimes the victim's name or contact information was not even there, magnifying the victim's absence from the initial encounter. A police report or a simple list of injuries was also absent, which might otherwise provide information with which to develop the victim's identity initially in the advocate's mind. Then, communication with these victims was at a distance, mostly by mail. Advocates mailed forms to victims that victims filled out themselves, listing their injuries and their expenses, and much of the time these forms, like the compensation forms at SFDA, were unreturned. FACES does not keep track of how many forms are unreturned, but twenty of the fifty-three restitution forms I mailed were unreturned. Typically the forms were returned completed (that is, when they were returned), and when this was the case the advocate simply forwarded the information to the restitution court, having no further contact with the victim unless the victim contacted the advocate. Advocates only spoke to victims when victims called asking for help or information, or when forms were returned incomplete. The conversations between victim and advocates were pleasant but brief and directed. There were typically no discussions of feelings, needs, justice, or even compensation. Instead, advocates tried to get specific information as quickly as possible because they had dozens of active restitution cases with court dates looming near.

The impersonal nature of this interaction is made apparent by considering alternative ways that FACES could structure restitution assistance. FACES could instead request that a personal interaction accompany every restitution assist: a phone call at the least, or even a personal meeting. The restitution assist could provide the advocate an opportunity to perform a needs assessment, to provide some crisis counseling, or to help victims get connected to other recovery resources. Because the offender has been convicted, the restitution assist could also provide advocates the opportunity, when relevant, to educate victims about their rights to be present and heard at parole hearings.

That FACES advocates did not structure restitution assistance in these ways did not signify that they lack care or concern for their clients or, as I concluded at SFDA, that they often harbor pessimistic feelings about victims or about helping them. But, it does indeed reflect the ways that advocates construct victims and how they define help for victims. When describing their mission at FACES, my two managers at FACES repeated often and proudly that their highly efficient system of restitution at FACES embodies its commitment to "help *all* victims." My managers contrasted their commitment to "all victims" with what they perceived as a commitment to a much narrower population of crime victims served by most other VWAs and especially at DA-based VWAs. Their system of restitution assistance filled in gaps left first by the compensation program, which is limited to victims of violent crime, does not cover property losses, and has other restrictions outlined above, and second by ADAs, whom they believed contacted very few victims since most cases are plea-bargained, and whom they believed contacted those victims solely for the purpose of getting convictions. By channeling into their office every restitution hearing in the county, they dealt with, in their words, a much more "accurate" and "everyday" population of crime victims that included victims of strictly property crimes and victims with small to moderate property losses. My managers were

immensely proud of the fact that restitution reached run-of-the-mill victims of property and low-level personal crimes who were not the most glamorous victims or the victims most in need. Their job as advocates, they told me, was not to judge victims but to help them, and that all victims – from rich victims with co-pays to poor victims with criminal histories – are entitled to recover their losses when victimized. Their “symbolic victim” was neither the activist-inspired angel, nor the poor victim facing financial ruin, nor the “typical” victim lacking innocence. Rather, it was the “everyday” victim whose particular identity was supposed to matter less than her experience of property loss.

It is possible that advocates’ limited interactions with restitution clients helped to curb the relevance of restitution victims’ identities. Face-to-face meetings with clients at SFDA allowed advocates frequent opportunities to see and experience real-life victims’ moral and social failings. Face-to-face meetings also allowed advocates to invest significant time into helping victims, which led to disappointment and lowered expectations when victims did not follow through. Restitution clients were protected from these judgments to a significant degree because their particular crime stories and their broader life stories were largely hidden to advocates. The criminal courts had already labeled these victims as “deserving” and advocates were there to support that label.

The court’s positive label of restitution clients may also provide an additional reason that imperfect responses from restitution clients (no response, slow response, incorrect response) did not seem to produce the same frustrations and judgments that were expressed by SFDA advocates when their clients failed to follow through with compensation paperwork. At FACES imperfect responses from restitution clients were expected and so advocates built into their process various measures to pursue these clients: when there was no initial response, the victim received a follow-up postcard and a telephone call; when a victim responded too closely the court date to get all the materials forwarded properly, the advocate requested a postponement from the judge; when materials were returned with errors, the advocate guided the victim through the corrections over the phone. I was warned about imperfect responses but they were never accompanied by sighs, eye rolls, or any other expressions of frustration or disappointment. For example, one advocate described restitution clients’ failure to follow through properly as unfortunate, but not because of wasted advocate time, but because those victims missed out on money that they deserved. Likewise, the three reasons given to me for victims’ failures to respond properly showed far more sympathetic images of victims than did the disorganization that purportedly governed SFDA clients’ lives. The reasons given for clients’ failures were that (i) the inquiry was mailed to the wrong address; (ii) the inquiry arrived to the right address but the client threw it out because she thought it was junk mail or because she did not read English; and (iii) the client already recovered most or all of her losses from insurance policies and saw no need to recover them through restitution. The first reason was totally out of the client’s control, and the second and third reasons were hardly character assassinations; taken to their extremes, perhaps there was potential to paint clients in broadly negative strokes – clients were careless, or not “one of us,” or ungrateful – but I heard none of

those things from advocates when they talked about restitution assistance and restitution clients.

Although I feel less comfortable drawing conclusions about FACES advocates' views of their compensation clients, whatever frustrations or aversions they might have harbored toward them did not bleed over to their views of restitution clients. It is possible that FACES advocates felt these things about some or all of their clients but were simply not as forthcoming as SFDA advocates were, because their internal culture discouraged such expressions or because they wanted to project a particularly positive image of advocacy to me.

It is also possible that the volume and makeup of the clientele at FACES led to less intense feelings, and particularly less divisive feelings, toward their clients. The contrast in volume of face-to-face clients at the two VWAs was stark, and the different physical spaces allocated at each for waiting clients and for meetings with clients reflected this. SFDA had a large waiting room separated from the office by a glass partition – perhaps 20' x30' with three couches, a dozen chairs, several tables, and a computer terminal – that had multiple clients in it almost every moment of the day. The volume waxed and waned throughout the day and week (afternoons were busier than mornings, Fridays were the quietest), but clients were a constant presence and there were even days when the waiting room was so full that the buzz of conversation could be heard at the back of the office. Two rooms inside the office were designated for private advocate-client meetings, and several times per week both were occupied and advocates assisting additional clients had to find alternative locations to do so.

FACES had a waiting area in front of the reception desk that was about one third of the size of SFDA's waiting room and the two couches in it were almost always empty. The office was so quiet that whoever was waiting could be heard and tended to immediately. No rooms were specifically designated for private meetings, so advocates could choose between the main conference room, if it was not in use, or their shared offices. Their shared offices were not ideal locations because they became easily cramped, especially if clients came with children or support persons, and because privacy was compromised. The FACES office, in sum, was not designed to accommodate more than few clients at once – it certainly could not have physically accommodated the volume of clients regularly present at SFDA – and this was not a problem because only three or four at most visited the office over the entire day.

FACES clients also belonged to a different population demographic. Many of FACES' clients belonged to an underclass, as the city of San Jose contains a large population of poor Asians and Latinos, but Santa Clara County is also home to a large population of wealthy whites, Asians, and East Indians who work in Silicon Valley. It is home to very few African Americans, rich or poor. Because I saw so few clients in the flesh and because FACES does not record client demographics, I cannot give a picture of who the average compensation client there was demographically. However I can say, and what might be more important here is, that FACES clients did not belong to the particularly disadvantaged and disparaged group to which SFDA's clients belonged: the African American underclass. This demographic has historically been associated with precisely the kinds of stereotypes and negative images – welfare dependence, criminality,

unreliability – that SFDA advocates projected. The constant stream of clients from this population through SFDA produced more consistent and obvious expressions of frustration and disapproval. Even if San Jose’s Latino and Asian underclasses are similarly stereotyped, it is possible that there were simply fewer opportunities by FACES advocates to validate and reinforce those stereotypes.

Victims of Domestic Violence

While the previous sections have shown differences between advocates’ impressions of their clients at SFDA and FACES, their impressions did converge on one specific population of clients, domestic violence victims. Domestic violence victimization presented routine opportunities at both VWAs to highlight the insignificance of the symbolic victim the everyday lives of victim advocates at both VWAs. Domestic violence victims were among the most frustrating and least attractive clients to advocates because of clients’ enduring ties to their victimizers. To advocates, domestic violence clients were untrustworthy not because their lives were disorganized but because there was a strong likelihood that they would eventually return to or side with their batterers. Domestic violence victims were the ones advocates believed they were least able to help in a grander sense of improving their lives, since these victims had a high likelihood of being complicit in their future victimization. Several advocates even expressed resentment at them for “wasting their time.” One advocate explained to me, “I hate working with DV victims. DV is the worst because they always go back. Not always, but most of the time. It’s a waste of my time. And it’s really depressing.” The advocates FACES assigned to probation department hearings described her assignment as “mostly pointless” because her clients would use VISs to help their batterers rather than protect themselves from being assaulted again.

Discussion: Helping Imperfect Victims

This chapter began by describing the dimensions of innocence that govern the most politically popular depiction of criminal victimization within the crime victims’ movement. The symbolic victim is not just disconnected from criminals and criminal activity but also comes from favored social and economic backgrounds. Debilitated by victimization, and engaged in a status competition with offenders, the symbolic victim inspires policies that harm offenders.

Violating one or more dimensions of innocence and suffering comparably less harm, typical crime victims, I argued, could never win a status competition against offenders – many of them have been offenders themselves, after all – they do not inspire zero-sum logic, and they do not inspire policies that harm offenders. Yet they became beneficiaries of the most enduring feature of victim advocacy in California, compensation. Advocacy was designed with a broader spectrum of victims in mind, one that includes the reality that victims tend to lack one or more aspects of innocence, and victims who might be considered to some degree complicit in their own victimization – accomplices in other words. Compensation, which dominates advocacy work, has never been a cause around which many people have rallied, but instead appeared rather quietly compared to later victim policy. The emergence of advocacy before the symbolic

victim's mass popularity, coupled with the enduring influence of law enforcement insiders and left-leaning academics on the profession (discussed in chapter five), produced a civil-service profession that treats victims like other clients of government bureaucracy. Unlike victim-activism, this profession does not demand perfection from its clients. Rather, it allocates money to those who meet its minimum guidelines and who complete the proper paperwork.

I further showed that the victim advocates are keenly aware that real-life victimizations can involve less sympathetic victims. These imperfect victims were imperfect clients, and at SFDA, compensation assistance was arena in which clients' social and moral failings, as measured against the symbolic victim, were most distinctly highlighted. Clients' routine receipt of government benefits were revealed during eligibility determinations, marking them as members of an underclass distinct from the advocates who served them. Clients' habitual failure to complete compensation paperwork properly produced and reinforced perceptions of this population as disorganized and unreliable. At worst, these clients demonstrated manipulative and potentially criminal behavior that advocates had to remain vigilant to detect. Further, my experience with Mr. Brown represented the frustrations and judgments that arose even from serving more compassionate characters whose circumstances prevented the friendly, smooth exchange of paperwork that compensation ideally was. Moreover, my judgment that Mr. Brown could and should have avoided being victimized is precisely the blame-the-victim mentality that the crime victims' movement has fought against. Yet I found myself doing it more than once, particularly after being confronted with late-night street robbery victim after late-night street robbery victim. *You shouldn't be walking San Francisco streets late at night with that much cash* became my knee-jerk thought toward these clients. This blame-the-victim approach was universally directed at domestic violence victims.

Domestic violence victims as the exceptions, FACES advocates did not express frustration over victims' shortcomings. While this finding cannot be extended to other in-person clients because my observations and interactions were limited, it was true about restitution clients. I found this particularly interesting given that there were similar opportunities to paint restitution clients as disorganized and unreliable for regularly failing to complete restitution paperwork properly. I gave five possible reasons that advocates did not. First, these clients had already been vetted by the restitution courts and assigned a positive label as "deserving." Second, advocates had no face-to-face contact that might allow advocates to project negative stereotypes onto victims. Third, advocates had very little information about the crime that might allow them to judge the victim's behavior as contributory or the victim as less than innocent. Fourth, there was a general belief that one's right to restitution mattered less than one's distinct identity that included past social, moral, or personal failures. Finally, FACES advocates were not confronted with the same volume of in-person clients whose shortcomings and identities, particularly their racial identities, might have been projected onto their restitution clients.

Advocates' constructions of victims as flawed individuals should not suggest that advocates dislike their clients or perceive their profession as futile. On the contrary, advocates believe that they chose a helping profession, and one on the right side of the

law. But, the imperfections that advocates regularly perceive and confront highlight the difference between the work that activists versus advocates do. Activists concern themselves with a narrow category of rare victims who represent innocence/good on a spectrum where guilt/bad is at the other end. Victims are causes to rally around whose morality tales inspire passionate speeches, public vigils, and television commercials. Their victimization stories depend on victims being entirely blameless in the ways I outlined. The impressions that advocates hold of many of their clients as disorganized and even complicit in their victimization would surely fail as symbols in a social movement seeking to help victims, and yet these are the clientele that the profession has chosen to serve. As such they have selected a remedy – giving them money, and in particular money out of offenders’ pockets rather than taxpayers’ – that is non-controversial and performed out of the public’s eye.

In other words, advocates experience social and emotional distance from their clients, and the mostly bureaucratic work that they do reflects and reinforces this distance. While the distance does not prevent advocates from assisting clients in particular ways – mostly financial – it does demonstrate a contrast with (in addition to victim activism) advocates who work specifically with domestic violence victims outside of VWAs. Though they share the professional title of “advocate,” there is a world of difference between what advocates in VWAs and so-called domestic violence advocates do. Dividing their time between holding offenders accountable and preventing future victimizations, domestic violence advocates engage in a wider variety of activities: lobbying for increased penalties and mandatory arrest policies, representing battered women in legal proceedings, drafting restraining orders, running shelters, and so on (Erwin 2006). These different activities demonstrate at least two important differences between VWA and domestic violence advocates. First, their relationships with victims are governed by the overarching priority of preventing future victimization, and not just hypothetical victimization but the real imminent danger that batterers pose. While research has shown that domestic violence advocates, like the VWA advocates in my study, are frustrated by women who return their batterers, the phenomenon of repeat victimization among domestic violence victims is also precisely what motivates domestic violence advocates to pursue their line of work (Erwin 2006). By contrast, most of the victims that go through VWAs are not in immediate danger that can be prevented by VWA services.

Second, many domestic violence programs still operate outside of the government system, even though they may receive government funds or tax breaks. This allows them to retain an oppositional or critical stance against government operations that must be more subdued within VWAs, whose orders and paychecks come from the government. VWA advocates are paid by the government to carry out specific, non-threatening tasks and risk losing all of their funding if they step too far outside of the box.

Chapter Seven: Victim Assistance in Theory and Practice

This dissertation examined the history and current operation of California's network of county victim-witness assistance programs (VWAs) as a case study of government involvement in crime victim interests and welfare. The particular history and current functions of victim assistance California-style provides a rich empirical context for evaluating three claims frequently encountered about victims' rights and the crime victims' movement:

- 1) The crime victims' movement and victims' rights have been an integral part of expanding penalty in the U.S. over the last thirty years.
- 2) The profession of victim advocacy operates largely to enhance the prosecutorial and punitive powers of District Attorneys, rather than to help victims to recover from the effects of victimization.
- 3) VWAs housed in District Attorney offices are especially likely to enhance prosecutorial and punitive powers, while VWAs housed in non-profit agencies are more able to focus on rehabilitating victims.

This chapter summarizes my empirical findings and then uses these findings to respond to the claims made in the literature.

Chapter one showed three distinct policy responses that emerged over time from within the crime victims' movement: compensation, victim advocacy, and victim-offender activism. Although united by a common grievance that the criminal justice system ignores victims, these policy responses represent different solutions to this problem and different constituencies behind these solutions. Victim advocacy or victim assistance, which was the focus of this dissertation, accommodated two solutions: recovery assistance for victims, which had begun already with compensation, and criminal case-related services for victims and witnesses.

Chapter two showed that California's earliest VWAs, which were among the first in the nation, were founded with two purposes in mind that were consistent with the direction that advocacy would take in the coming decades: to rescue California's struggling compensation program and to experiment with case-related services for victims and witnesses. Two findings were important from this chapter. First, VWAs and their direct descendant, the compensation program's Indemnity Fund, came into being largely out of the political spotlight. This distinguishes VWAs from the highly publicized victim-offender activism that came to dominate crime policy discourse starting in the 1980s. VWAs have remained largely out of the political spotlight even as they have grown and assumed a more or less stable presence in state and local governments.

Second, there is evidence that as early as 1979, only five years after the founding of California's first VWA, individual VWAs tended to emphasize the delivery of either recovery assistance or case-related services. California's VWAs have always enjoyed some freedom to pursue some tasks at the expense of others, even after the Penal Code

enumerated fourteen “mandatory” VWA tasks in 1982. Variation within California’s VWAs, and allegedly within others, was said to result from competing purposes: helping victims versus helping prosecutions. Many scholars alleged that, given such freedom, the VWA’s host agency led the VWA down one path versus the other. Empirical evidence of this kind of variation, however, was sorely lacking.

To investigate this kind of variation, chapters three and four divided the Penal Code’s duties into recovery assistance (welfarist) and case-related tasks, and used recent quantitative data to show mild county variation in their performance by host agency. Chapter three compared performance of two key welfarist tasks, compensation and restitution assistance, and showed that community-based VWAs in California perform slightly better than DA-based and probation-based VWAs on several measures. Chapter four compared the overall balance of duties (welfarist versus case-related) and found that, as expected, community-based VWAs devoted the most time to welfarist tasks, followed by probation-based VWAs and then DA-based VWAs. Both chapters also compared output measures of my two observational sites, Santa Clara (community-based) and San Francisco (DA-based), which showed more exaggerated differences in the same directions.

However, the conclusion I drew from both chapters was that performance of duties across VWAs looked more similar than different, and in particular that all VWA types prioritized giving victims monetary assistance, crisis counseling, and outside referrals for further recovery assistance. The picture that emerged was not of two distinct orientations across VWAs, emphasizing one duty type over the other, but of a general welfarist orientation at all VWAs, with DA- and probation-based VWAs performing case-related tasks somewhat more frequently than community-based VWAs.

Moreover, the case-related duties performed most frequently were educational and clerical – explaining the process to victims/witnesses and recruiting witnesses – rather than activist [not sure if activist is the right word], which further suggested more similarity than difference in what advocacy entails across VWAs.

Chapters five and six used qualitative data to examine similarities and differences in how advocacy was defined and practiced by advocates at my two observational sites. Chapter five showed that drastically different recruitment strategies at each location led to client populations with different needs, and therefore differential performance of activities. However, consistent with the quantitative findings in chapters three and four, advocacy again ultimately looked more similar than different at both sites. San Francisco’s VWA’s placement in the D.A. office provided easy and welcomed access to clients with active court cases, and advocates there divided their time about equally between case-related and recovery services. Santa Clara’s VWA maintained a limited relationship with its D.A. office and relied heavily on walk-in clients and restitution court referrals, creating far fewer opportunities for advocates to perform case-related tasks. While the offices demonstrated two different ways of performing advocacy work, they were united on two things. First, they were united on the importance of monetary assistance to victim advocacy. Every victim served at both agencies was offered and/or provided assistance with compensation or restitution. Second, they were united on what they were not doing, which was to alter the criminal justice process in ways that provided

victims or advocates with new powers, or divested powers from A.D.A.s or offenders. When performing case-related services SFDA's advocates were educators, liaisons, and sympathetic shoulders, but their actions were neither prosecutorial nor revolutionary.

Chapter six showed that advocates at both agencies construct victims in ways that acknowledge victims' imperfections, and contrasted advocates' images with what I called the "symbolic victim" that drives victim-offender activism. The morally pure, deeply wounded women and children that dominate most public policy debates were absent from either VWA. The typical client in San Francisco was a disorganized, unreliable welfare recipient who could not be counted on to participate easily or fully in the self-help process of receiving compensation. The typical client in Santa Clara was an "every day" or "run-of-the-mill" or a low-level crime victim whose background might reveal imperfections, but whose imperfections were not supposed to matter. The imperfections that advocates perceived make victims most suitable for what advocates do – serve them as clients of government bureaucracy – rather than what activists do.

I now respond to the three claims made in the literature. I respond to them in reverse order.

A VWA's institutional location affects the balance of duties (welfarist versus case-related) it performs

The profession of victim advocacy incorporates two potentially competing perspectives on responding to victims of crime. Whether VWAs should or would emphasize one perspective over the other was first raised by academics when the profession was in its infancy in the 1970s. By 1979 one observer of California's VWAs argued that each indeed adopted a service model providing one at the expense of the other (Vaughn 1979). Starting in the 1980s a number of critical observers argued that placement of VWAs in D.A. offices signaled the ascendancy of the prosecutorial model over the welfarist model (Dubber 2002; Elias 1986, 1993).

Exactly why performance differences of this nature would be expected has not received much discussion in the literature. Law and society scholarship broadly provides an explanation of first resort, by assuming a general position that black-letter law is not a static, top-down force but rather one that is actively constructed and reconstructed by the actors who are responsible for carrying it out (Cotterrell 2002). The literature on law and organizations in particular provides multiple examples of organizational interpretations of laws that were not necessarily predicted or predictable from the written mandates that allegedly governed them (Edelman 2002). One key finding in this literature is that organizations take the most liberties where there are ambiguities in legal texts (Edelman 1992). If this is the case, California's VWAs were particularly suited to pursue disparate paths because of two freedoms afforded to them (or ambiguities) by the Penal Code discussed in chapter two: the freedom to choose among the duties despite "mandatory" labels, and the freedom to choose clientele. Thus, even given identical victim populations, two VWAs could still end up doing different things.

They might end up doing different things in part because the law affords them a third freedom, which is the freedom to choose the host agency. Indeed, a second finding in the law and organizations literature is that organizational subsidiaries tend to adopt the

organizational values and goals of their controlling organizations (Morrill and McKee 1993). Again, VWAs would seem particularly suited for pursuing disparate paths because the basic values and goals of the two host agency types matched the two perspectives on serving crime victims that the Penal Code embraces. Overall, absent explicit directives to do so, it is hard to imagine more ideal conditions under which VWAs would end up emphasizing the delivery of one type of services over the other.

But, the differences found in these chapters are modest at best. Although my qualitative data in particular clearly demonstrated that VWAs can run very different businesses, evidence of a welfarist-prosecutorial divide among all VWAs was limited. There was certainly no evidence that VWAs adopt wholesale models of operation that are either welfarist or prosecutorial, as Vaughn's earlier study suggested.

Why weren't there greater differences in this regard? Putting aside methodological limitations there are at least two answers: that host agency does not matter, or that other factors matter more. Discuss.

The profession of victim advocacy operates largely to support and/or enhance the prosecutorial and punitive powers of District Attorneys

As I discussed in chapter one, there were at least two motives behind the emergence of case-related duties that advocates perform: increasing witness participation and "empowering" victims. In the first instance, the separate profession dedicated to recruitment and education of witnesses was hoped to produce more frequent prosecutions than when other actors – secretaries, legal assistants, prosecutors themselves – performed these tasks. This was the LEAA's intent when it funded pilot programs in the 1970s. In the second instance, victims' participatory rights – to be present, to confer with prosecutors, and to present VISs – provide opportunities for victims to suggest or directly express mostly punitive sentiments to district attorneys and to courts. While these rights do not inherently produce more punitive outcomes for defendants, it is their ability to do so that has been celebrated – and criticized. Numerous victimologists, criminologists, and legal scholars have commented on the punitive impact of participatory rights or claimed that D.A.-based VWAs control advocates and victims' rights in ways that only benefit prosecutions. In both cases, advocacy serves prosecutorial functions, whether victims themselves want it to or whether prosecutors are taking advantage of them.

My data question whether either avenue for enhancing prosecutorial power has actually accomplished this. First, my data showed that welfarism was the consistent feature of victim advocacy across California's VWAs. Compensation assistance, crisis counseling, and referrals to outside agencies were performed with regularity at all VWA types. The same cannot be said for any of the case-related duties.

Second, it is not clear that advocates perform the case-related tasks any better than do other actors, particularly when their time is equally or more occupied by welfarist tasks. Moreover, my observations in San Francisco, where that function was central to advocacy, showed that prosecutors still performed this function a lot of the time, sometimes with advocates present and sometimes on their own. Advocacy was not a substitute for direct communication between prosecutors and witnesses, minimizing any independent impact it has above and beyond what prosecutor offices normally do.

Third, the educational and clerical duties that comprised the bulk of case-related duties do not invest either prosecutors or victims with new powers. The scant performance of Victim Impact Statement assistance, which is the only task that can be said to enhance punitive powers, is a case in point.

The crime victims' movement has been an integral part of expanding penalty in the U.S. over the last thirty years

Among criminal justice scholars it is generally accepted that the crime victims' movement has been an important factor that helps explain the increased punitiveness seen in the United States since the late 1970s (Garland 2001; Gottschalk 2006; Simon 2007). The particular impact the movement has had on criminal justice policy has been described in at least three ways.

The first point of impact is a shift in the rhetoric and logic behind penal politics and policy to include the symbolic victim, zero-sum ideology, and the victim's presumptively punitive desires. These "rise of the victim" perspectives claim that the victim and her interests, once virtually ignored in policymaking discussions, now occupy a central and undeniable role in these discussions. In this new political arena, penal policy must be pro-victim, and to be pro-victim is to be anti-offender. As Garland summarizes, "The new political imperative is that victims must be protected, their voices must be heard, their memory honored, their anger expressed, their fears addressed." (Garland 2001: 11) Its significance not to be underestimated, the symbolic victim's blatantly punitive agenda represents the shedding, and in some ways the reversal, of the penal welfarist ideology that governed penal policy for most of the twentieth century. Whereas penal welfarism kept vengeance at bay and hoped to rehabilitate individual offenders, the new era celebrates victims' outrage and responds to the suffering of individual victims.

The second point of impact is direct lobbying by victim constituencies for punishment-enhancing policies. Lobbying efforts began in the 1970s by women's groups targeting enhanced penalties for rape and domestic violence. Since then there have been numerous victim-run lobbying efforts organized around particular crimes or particular penalties. Participation of these constituencies, which ranges from simple presence at press conferences to drafting legislation, is seen as key to the passage of particular policies (Domanick 2004). The third point of impact is the enforcement of victims' participatory rights, which was discussed above.

What do my findings suggest about each of these points of impact? One way to answer this is to contrast the narrative that this third claim presents with the narrative that this study presents. The claim, which is typical among criminologists who study punishment, presents a story of the victim's return with a vengeance. The victims' movement, with the aid of law-and-order politicians and the media, has successfully convinced the American public and American politicians that victims' interests are relevant and overwhelmingly punitive. Not only did the movement lobby for and help legitimate some of the most draconian penal policies in the country, such as three strikes and sex offender registries, it also secured participatory rights for victims that threaten more punitive outcomes. VWAs and prosecutor offices operate in tandem to enforce

rights that allow victims to express punitive sentiments at trial. The prosecutorial function that advocacy serves is made most obvious by the placement of most VWAs in D.A. offices.

The story my dissertation presents begins with the national story of the crime victims' movement that unfolded with three policy responses over several decades. The three responses provided very different ways of resurrecting the "forgotten victim": rehabilitating victims, inserting victims into criminal proceedings, and punishing offenders. The intellectual architects behind VWAs were academics and law enforcement insiders who sought the first two (rehabilitating victims and case-related services) and who were distinct from the later victim-activists whose sole focus became punishing offenders. The local story of California's VWAs describes a set of institutions that emerged outside of the limelight and has remained relatively encapsulated from the politics of punitiveness, neither influencing or being influenced by victim-activism. VWAs' potential to create more punitive trial outcomes through the enforcement of participatory rights is tempered by two findings: that advocates perform welfarist duties with the most consistency, and that their case-related duties are largely informational and clerical.

The finding that the crime victims' movement is fractured along these lines is not new (Weed 1995) nor is the finding that a single social movement can consist of distinct and often competing ideas and constituencies. But, the punitive potential of participatory rights has tended to blur the distinction between activist and advocacy circles. In a literature that generally puts those who lobby for rights in the same category as those who lobby for the death penalty, this study reaffirms the distinction between the two and further explains in detail how advocates' activities and perspectives are divorced from the politics of punitiveness. It repudiates claims that advocacy has been hijacked by law-and-order politics and does little to improve the lives of crime victims. On the contrary, if there is one thing that advocates across California seem to be good at, it is helping victims to get compensation for their injuries (or trying to at least).

However, this story would not be as interesting if there had never been any hope or possibility that VWAs would assume a more punitive or prosecutorial role. There are two reasons to believe that advocacy could have turned out differently.

The first reason is that participatory rights have always been celebrated, even in advocacy circles, as giving victims a "voice" in the proceedings. Allowing victims to make their opinions known, and having those opinions matter in criminal proceedings, have always been significant rationales for participatory rights. While law enforcement insiders may have simply wanted more convictions, many within advocacy circles wanted to create a new significance for crime victims in the criminal process, and the VIS stood as the symbol of the victim's new presence. Not always aligned with the prosecution, and having a unique experience of the crime being prosecuted, the victim offered a third voice independent of the prosecutor's and the defendant's.

The second reason that advocacy could have evolved into a more punitive profession is that the politically successful symbolic victim might have made its way into the advocacy agenda. Laws or guidelines might have been rewritten to emphasize case-related duties over welfarist ones or to encourage more frequent usage of VISs.

Compensation and restitution might have fallen by the wayside and while advocacy restricted itself to case-related duties. Based on the public's overwhelming support of punitive policy, and the virtual invisibility of the state's compensation anyway, there probably would have been little public opposition to doing so.

Neither of these possibilities materialized, and why not? What happened as the movement's most radical propositions were translated into black-letter law and then interpreted by institutions? Why does compensation continue to have a strong, if not the strongest, presence among advocacy duties? Why has the profession remained relatively insulated from the politics of punitiveness? To summarize all of these questions, why aren't advocates *advocates* for either victims *or* prosecutors?

The answer is that California's VWAs began on a welfarist trajectory from which they were never dislodged for two reasons: because their status as government agencies has subdued radical propositions to change power relations within the criminal process, and because conservative victim-activism dominates the reformist agenda within the crime victims' movement.

Past research has shown the taming effects that government funding had on rape crisis and domestic violence agencies that had been founded by radical feminists in the 1970s (Weed, 1995). With government funding came restrictions on what these agencies could do, and ultimately how activists envisioned the problems and solutions available to victims of these crimes. Specifically, government funding silenced the feminist critique upon which these agencies were founded that blamed a patriarchal society, including a patriarchal law enforcement profession, for crimes against women. Contracts specifically prohibited lobbying activities and restricted agencies to recovery assistance, such as crisis counseling and shelter provision.

Likewise, VWA contracts mostly limit advocates to performing the Penal Code duties, which embody the least radical efforts to reform the criminal justice system. The significance of these limits is most apparent in the contracts that govern community-based VWAs, which attempt to restrict the amount of co-mingling that the VWA may do with other programs in the non-profit host (Interview, 2008). These contracts prohibit community-based VWAs from sharing supplies and from spending funds on activities that mostly or solely benefit the host agency, such as fund-raising drives and other non-Penal Code duties. In Santa Clara, co-mingling was limited to managerial board meetings and to occasional all-hands meetings that included all employees. In sum, government contracts that limit advocates to Penal Code duties explain in part why advocates themselves are not in the position to challenge status quo power relations.

In addition, those who work around the profession have stakes in keeping advocacy a low-profile, non-controversial, and non-disruptive profession. The most important law enforcement insiders – prosecutors, defense attorneys, police officers, and judges – are likely invested in maintaining the status quo as much as possible. As I showed in chapter five, the advocate manual spoke to this issue directly: none of these professionals wants added responsibilities or power taken away. The most radical propositions that would have disrupted this process either never made it into the Penal Code – for example, victims have no right to veto plea bargains – or, as my research showed, they were practiced with little frequency – namely, victim impact statements.

The second reason that advocacy has not changed power dynamics within the criminal justice system is that the crime victims' movement's reformist urges are satisfied by the victim-activist wing of the movement that lobbies for punishment. By using zero-sum ideology, policies like Three Strikes provide the status elevation for victims that participatory rights were alleged to have brought but did not. Indeed one downside of California's low-profile advocacy profession is that it has not seemed to prevent, thwart, or satisfy those who want to "help" victims by punishing offenders. As a result it might be accurate to argue that the crime victims' movement has indeed been hijacked by law-and-order interests because the government gets the best of both worlds: a low-profile advocacy profession that performs a lot of clerical work for prosecutors, and an activist circle that lobbies for expanding state penal powers.

However, the upside to this division of labor is that advocates do enjoy a relatively stable existence outside of public and serious legislative scrutiny. As a result, they are likely to continue on their welfarist path in the near future, focusing on helping victims to recover from the aftermath of victimization.

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