A New Approach to Victim Services: The Common Justice Demonstration Project

I. The Genesis of Common Justice

Common Justice, the newest demonstration project of the Vera Institute of Justice, was developed in response to the recognition of two significant shortcomings in the criminal justice field: first, that serious and violent crime remains among the most central and intractable challenges facing both the criminal justice system and low-income communities in the United States; and second, that the traditional adversarial court process is poorly equipped to address many of the material, emotional, and social needs of victims of serious crime. At the same time, Vera also recognized that an overreliance on incarceration results in high financial costs and an insufficient impact on improving public safety, as evidenced by persistently high recidivism rates. Vera therefore set out to build an integrated and effective response to these interconnected limitations of current practice.

Common Justice is a participatory justice project based in Brooklyn, New York, launched in partnership with District Attorney Charles Hynes. Participatory justice (often called restorative justice) brings together those most immediately affected by a crime—the victim, the perpetrator, and family and community members with a stake in the outcome—for a face-to-face dialogue to determine an appropriate response to the harm caused. Common Justice engages younger adults (ages 16 to 24) facing felony charges in Brooklyn Supreme Court and those they have harmed. If the perpetrator (whom the program calls the responsible party) meets certain criteria, and if both the district attorney and the victims (whom the program calls harmed parties) agree, these cases are diverted into a dialogue process that gives participants the power and opportunity to collectively identify and address impacts, needs, and obligations, in order to promote healing and put things as right as possible. During this process, all parties agree on sanctions other than incarceration to hold the perpetrator accountable in ways meaningful to the person harmed.

Project staff closely monitor responsible parties’ compliance with the resultant agreements—which may include extensive community service, rehabilitative and educational programming, violence intervention classes, and restitution, among other sanctions unique to each case—and connects the harmed parties with appropriate services. These agreements replace the lengthy prison sentences the responsible parties would otherwise have served, and the felonies are removed from their records when they complete the program.

Substantial research in Australia, Canada, the United Kingdom, and the United States has demonstrated that participatory justice can be an effective response to violent crime, in terms of both public safety and the impact it has on victims. Research proves that participatory justice programs can reduce recidivism rates by as much as 34 percent and help break the cycle of violence. In addition, participatory justice has been shown to leave both those harmed and those responsible for harm more satisfied with outcomes. Crucially, the evidence consistently indicates that participatory processes deliver the best results in terms of both reduced recidivism and reports of satisfaction when they are used in response to more serious offenses, such as robbery and assault (as opposed to shoplifting or quality-of-life crimes). Most recently, participatory justice programs have also been shown to significantly reduce post-traumatic stress symptoms in victims. A recent University of Pennsylvania study examining participatory programs in Australia and the United Kingdom found that robbery, assault, and burglary victims who took part in the programs reported 37 percent fewer symptoms of post-traumatic stress than those who participated in standard court processes.

Despite the potential of participatory justice to make an important contribution to both the administration of justice and the healing of trauma victims, the restorative and criminal justice fields in the United States have been slow to implement programs that respond to the latest research in the field. Only a few projects in the United States focus on serious cases, in which the stakes—and the possibility for positive outcomes—are highest for the victim, the person responsible for the harm, and the community alike. Many of the existing projects operate alongside traditional sentencing processes and are designed neither as true alternatives to incarceration nor in a way that provides victims with real influence over the outcome.

In addition, most projects in the United States operate in fairly homogenous, nonurban, primarily White
Even existing victim services do not reach certain victim populations. Among those most disproportionately underserved by current practice are young men of color, who are harmed by violent crime at a higher rate than any other group. Contrary to popular assumption, the person most likely to be harmed by violent crime nationally is a 16- to 24-year-old Black man. In New York State, for example, Black men are six times more likely than White women, three times more likely than Black women, and more than twice as likely as White men to become victims of robbery. However, few young men of color receive any services when they are harmed. A number of New York victim service agencies—including the Kings County District Attorney’s Office of Victim Services, the Office of Victim Services, and other member agencies of the Downstate Coalition for Crime Victims—report that they reach only negligible numbers of young male victims of color.

As a result of the current system’s failure to adequately engage this population, it is likely that these young men are living with unaddressed symptoms of trauma and are less likely to recover from the harm they have suffered. What more, people who are harmed by crime and do not heal are more likely to commit violence themselves, a pattern that drives cycles of violence. Therefore, the lack of targeted services for this population is not only an ethical concern but also one of public safety.

Common Justice began with a commitment to serve victims equitably—that is, in proportion to victimization rates. After an extensive review, project planners concluded that no nationally viable, victim-centered model addressed the needs arising from serious violence or equitably facilitated the recovery of underserved crime victims, particularly young men of color. Project staff concluded after careful study that few young men of color seek assistance from victim service organizations for three primary reasons: (a) these young men often do not see themselves as victims when they are harmed, (b) the services that are available do not meet their needs, and (c) their negative experiences of the criminal justice system, both generally and in response to a given crime, reduce the likelihood of their seeking care or trusting service providers.

**A “brother from the block.”**

It should come as no surprise that the term victim does not resonate with many young men of color, especially given their age and the influence of cultural norms about what it means to be a man. In addition, young men of color probably share popular misconceptions about what a victim looks like—they, like many others, typically imagine a victim to be a middle-class White woman in her 30s or 40s. As a result, they are unlikely to see themselves as victims even when they are harmed.

The planning process for Common Justice included conducting a focus group with ten participants at the Adolescent Reentry Initiative, a Vera project for young men returning home from jail. When asked if any of them had been the victim of a crime (in that language), all said no.

**II. Services to Victims**

Victims’ advocates have long recognized that many victims of crime experience the adversarial court process as one that centers around defendants, overlooks victims’ need to be heard, fails to give victims a role in influencing the outcome, and neglects to provide support for victims’ suffering. The typical court setting fails to adequately provide the space for victims to share their experience of the incident, ask their lingering questions, have their suffering acknowledged by the person who harmed them, be directly repaired in any way by that person, or play an active role in their own healing. Meanwhile, among those victims who do receive support, many experience symptoms of depression, anxiety, and post-traumatic stress, and a full 28 percent to 45 percent of victims of violent crime manifest those symptoms to a degree that constitutes posttraumatic stress disorder. (And these estimates reflect only a fraction of crime victims—95 percent of all victims of robbery and 91 percent of victims of assault received no assistance after the crime.)

The project was developed to take advantage and test the potential of participatory justice. It targets more serious crimes and diverts these cases from the traditional sentencing process. The project aims to do the following:

- prevent those responsible for crime from committing further harm or criminal acts
- improve the mental health of crime victims
- provide a model for more equitable service delivery for underserved crime victims
- avert the damaging effects of incarceration when it does not serve the public interest
- increase people’s experience of fairness and safety in the aftermath of harm

The project is the first of its kind in this country and, just as with the Manhattan Bail Project in 1961, Vera hopes that its demonstration and evaluation will contribute crucial and unprecedented knowledge to the field. This article focuses specifically on the project’s work with victims (whom it calls harmed parties).
When asked whether they had been seriously hurt or injured in a fight (assault), 9 of the 10 said yes. When asked whether they had had something taken from them by force (robbery), 8 of the 10 said yes. When asked whether something had been taken from their home by someone who didn’t live there (burglary), 10 of the 10 said yes. Similarly, when one participant who had served two separate jail terms for robbery was asked who he thought was most likely to be the victim of a crime, he responded that it would be a White woman of about 35. When asked who he robbed the first time, he answered, “A brother from the block.” The second time? “A Spanish kid.” Not even his own experience—both as a perpetrator and as a survivor of serious violence—could pierce the media and other messaging he had received about who victims in the United States really are.

B. “He has no right.”

A compounding barrier to young men of color receiving appropriate and helpful services is the overall unsuitability of existing services due to cultural competence issues. Because the vast majority of victim service agencies serve so few young men of color, service providers are often unprepared to address their unique needs or provide the services that young men of color want. In several focus groups conducted by Common Justice project staff, young men were asked what kinds of services they thought they might need in the aftermath of a crime. The answers included the following: a facilitated dialogue with the person who harmed them, answers to questions about motivations and details surrounding the crime, financial restitution, help in securing employment, help in advancing their education, and help in relocating. For the most part, existing agencies are neither prepared nor equipped to provide these types of services, particularly to this population.

Focus group participants were also asked about the services that existing agencies typically deliver. None of the participants said they would want counseling from a victim service agency. Very few said they would want help securing orders of protection. (In fact, many expressed grave concerns about orders of protection. They explained that before such orders were issued, the perpetrators often knew them only by their neighborhood nicknames; because the order included their full legal name, it gave the perpetrator additional information about both their identity and that of their family, making them feel at greater risk.)

All but one responded negatively when asked whether they wanted help participating or making their voices heard in court. Further, many said that their required participation (typically testifying in the grand jury) had diminished their sense of safety and failed to advance their sense of justice. The handful of participants who had actually visited a victim service agency said that the images of victims portrayed on posters and in public places did not reflect their identities. One young man stated:

I saw one poster about victims once that had a man on it that looked just like me. Above his head it said, “He has no right.” I know they meant he was the one that committed domestic violence, but I’m not trying to go to a place where that’s what they’re going to think of someone like me.

C. “Where’s your gun?”

Devon, a Common Justice participant, was shot at in broad daylight in a public park in front of his 8-year-old sister by someone known to him. He ran for his life and hid for several hours while deciding whether to go to the police. He finally decided to report the crime, knowing that he would leave New York City immediately after filing the report for fear of retaliation. He went to the precinct and told them that he had been shot at, did not know where his sister was, and knew the person who shot him. The first question the officer asked was, “Where’s your gun?” When Devon asked why the officer was asking, he replied, “Well, he didn’t shoot you for nothing.” The officer did not know Devon previously and knew only what Devon had just shared with him about the incident; his reaction failed to affirm for Devon, as a police response should, that what happened to him was wrong and that his victimization mattered and would be taken seriously. Devon said the experience indicated to him that the criminal justice system did not value his life as it valued the lives of others. In the immediate aftermath of serious trauma, the system’s failure to affirm his humanity and rights was likely especially damaging to his recovery and would almost certainly shape his future decisions about engaging law enforcement.

It is unfortunately all too likely that a young man of color is likely to experience a situation like Devon’s by the time he reaches adulthood. Such experiences inevitably shape young people’s perspectives on the justice system and on that system’s capacity to deliver them safety and justice in the aftermath of being harmed. Any response to victimization of young men of color must therefore include, in addition to access to services, an opportunity for them to meaningfully shape the criminal justice outcome in a manner consistent with both public safety and their dignity and deservedness as victims of crime. By doing so, the system may be able to recuperate some portion of the trust lost through the cumulative effects of young people’s negative encounters with law enforcement.

III. Looking Forward

One of the aims of Common Justice is to help harmed parties move forward from the experience of the crime so they feel safer, stronger, happier, and healthier. The project supports them in their healing and recovery and also in their lives more broadly so they can accomplish their goals, experience pride and self-worth, integrate their experiences in a way that supports their well-being and the well-being of those around them, and participate in stopping cycles of violence. Many of the harmed parties live in
communities where violence is all too common, and many have survived a variety of harm in addition to the incident that brings them to Common Justice. In this context, the project aims to support them in reversing the normalization of violence and advancing their recovery.

Common Justice follows a six-tiered approach that guides its work with harmed parties, regardless of their race, class, gender, age, or other factors: (a) affirming dignity and deservedness, (b) acknowledging the wrongfulness of violence, (c) normalizing symptoms and reactions, (d) empowering those harmed, (e) offering practical strategies, and (f) engaging support. Common Justice uses empowering outreach practices, targeted exploratory dialogue, persistent and caring engagement, culturally competent provision of information and services, voluntary involvement in the preparatory and circle processes, and concretely demonstrated respect for participants’ boundaries and stated desires and needs.

As with any demonstration project that carves new territory in its field, Common Justice is driven by research, guided by best practices, informed by experts in the field, and supported by experience. It is, in the end, an experiment. If the assumptions are right, if the practices are well targeted, and if the project learns effectively from its participants and its work on the ground, Common Justice stands to contribute a model that will significantly improve the field’s capacity to rectify a long-lasting and harmful inequity in the criminal justice system, as well as increase the likelihood that a greater portion of those harmed by crime will be met with a response that advances their sense of justice and feeling of safety in the aftermath of what they endured.

Notes
3. PAUL MCCOLD & BENJAMIN WACHTEL, RESTORATIVE POLICING EXPERIMENT: THE BETHLEHEM PENNSYLVANIA POLICE FAMILY GROUP

5. Id.
6. Herman, supra note 1, at 163.
7. Dr. Mark Umbreit of the Center for Restorative Justice and Peacemaking has said that the project stands to make a "profound and essential contribution to the field and to the people it will serve," and has spoken hopefully about the prospects for national replication of the model. Dr. Paul McCold of the International Institute for Restorative Practices has called the project a potential "watershed for criminal justice policy nationwide."
10. Based on self-reported data by agency representatives in interviews conducted in January–March 2008 with Sarah Ellis (director, Victims’ Services, Kings County District Attorney’s Office), Tina Stanford (chairwoman, Crime Victims Board), Susan Xenarios (cochair, Downstate Coalition for Crime Victims), and other Coalition members; cross-checked against data provided by the Crime Victims Board for Original Decisions Awarded (April 1, 2006–March 31, 2007) broken down by race and gender; provided by Sue Malatesta, Crime Victims Board, February 20, 2008.
12. Names and locations have been changed to protect the identities of people described.