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Defense-Based Victim Outreach: 
Restorative Justice in Capital Cases

Kristen F. Grunewald* 
Priya Nath**

I. Introduction

Cary Stayner ("Stayner") brutally murdered nature guide Joie Armstrong ("Joie") in Yosemite National Park in July, 1999. Stayner was hiking through Yosemite when he saw Joie outside of her cabin. He "duct-taped her and gagged her" and put her into his truck. Joie fought Stayner and, at one point, jumped out of the truck and attempted to get away from him. In response, Stayner took a knife from his bag, slit Joie’s throat, and then decapitated her.1

Stayner was apprehended shortly after killing Joie and confessed to her murder.2 Stayner also confessed to the brutal murders of three female tourists outside of Yosemite.3 The national media focused its attention on the deaths of these four women and the public demanded a harsh punishment for Stayner.4 In the midst of this intense media attention, Joie’s family sent a letter to the United States Government supporting a plea agreement for Stayner.5 Despite their anger, sorrow, and grief, the Armstrong family recommended a life sentence

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2. Id.
3. Id.
4. See id.
5. E-mail from Tammy Krause, Associate, Institute for Justice and Peacebuilding, to Kristen Grunewald (Jan. 29, 2003, 15:39 EST) (on file with author) [hereinafter E-mail from Krause].
for Stayner. Through defense-based victim outreach, the Armstrong family looked past their emotions and used their power and influence to attempt to save the life of Cary Stayner.

Part II of this Article explores the origins of defense-based victim outreach. Restorative justice focuses on the effects of a wrongdoing on the victim, the community, and the offender. Part II also examines earlier forms of criminal justice and the origins and basic principles of restorative justice. Finally, Part II identifies the benefits of restorative justice programs, such as defense-based victim outreach, for the capital defendant, the survivors of the victim, the defense, the prosecution, and the judicial system generally. Through an examination of the history, principles, and advantages of traditional restorative justice, Part II introduces one of the Western world’s uses of restorative justice—defense-based victim outreach.

Part III of this Article outlines the practical and procedural implications of defense-based victim outreach. Moreover, Part III describes the work of a victim liaison, the relationships that a liaison develops, and the aspects of a defendant’s case that a liaison’s work may affect. In addition, Part III outlines the aspects of defense-based victim outreach that defense attorneys may practice without a victim liaison. Finally, Part IV provides a more detailed discussion of the effects of the victim liaison on Cary Stayner’s case.

II. The Principles of Restorative Justice Give Life to Defense-Based Victim Outreach

Priya Nath

A. Introduction to the Principles of Restorative Justice

Learning to forgive is much more useful than merely picking up a stone and throwing it at the object of one’s anger, the more so when the provocation is extreme. For it is under the greatest adversity that there exists the greatest potential for doing good, both for oneself and others. Channeling feelings of anger and resentment often remedies the infliction of pain, especially considerable pain. The need to hold someone accountable for a crime is as overwhelming as the need to equalize the harm done to us by imposing a counter-harm on another. A “political economy of relationship[s]” breeds the desire to ask someone to acknowledge the harm he or she did and to
stop the harmful action and/or apologize for the damage done. If apology and forgiveness follow a harm, then all individuals involved, including the community, begin the process of restoration. Recognizing that this apology will never undo what is already done is an important step toward restoring the community and disabling the lack of restraint that allowed the harmful act to occur.

Defense-based victim outreach programs stem from the restorative justice approach. Restorative justice and defense-based victim outreach programs embrace the concept that reactive, violent punishment, such as the death penalty, neither promotes restoration of personal well-being nor facilitates the re-connection of the harmed individual with the community. Such punishment attains submission, compliance, and sometimes a public acknowledgment of shame from the defendant, but because capital punishment has very little regard for the offender or the survivors of the victim, it often generates a void and resentment. An institutional bias in favor of the death penalty exists in our society. Thus, society embraces a “prescriptive attitude” towards survivors of murder victims that prescribes the execution of killers for recovery from the trauma of the murder. Defense-based victim outreach programs recognize that not all survivors want to impose the death penalty and that revenge in the form of capital punishment often exacerbates the emotional trauma survivors endure.

11. Id. at 3.
12. Id. at 4.
13. Id.
15. SULLIVAN & TIFFT, supra note 9, at 4-5.
16. Id. at 5. In this Article, “survivors” and “survivors of the victim” refer to family members and friends of the murder victim.
17. See Renny Cushing, A Welcome from Renny Cushing, Murder Victims’ Families for Reconciliation, ¶ 4, at http://www.mvfr.org/welcome.html (last visited Jan. 30, 2003) (explaining the basic premise of Murder Victims’ Families for Reconciliation as a community and as a victims’ rights movement against the death penalty).
18. Id.
19. See Margaret Vandiver, The Impact of the Death Penalty on the Families of Homicide Victims and of Condemned Prisoners, in AMERICA’S EXPERIMENT WITH CAPITAL PUNISHMENT 479 (James R. Acker, Robert M. Bohm, & Charles S. Lanier eds., 1998) (“It is a great mistake to assume that all victims’ families want the same thing from the criminal justice system.”).
These programs aim to address the needs of the survivors of the victim as well as of the offender.20

Subpart B of Part II of this Article examines the advantages of defense-based victim outreach programs and the evolution of such programs from restorative justice, including an exploration of earlier forms of criminal justice such as the battle between state and community justice. Subpart B also describes the development of restorative justice through various cultural viewpoints. Subpart C determines the advantages of restorative justice by exploring its basic principles and objectives. Subpart D examines the adversarial nature of our current criminal justice system and explains the various modifications that are necessary for defense-based victim outreach programs to flourish. Subpart E explains the benefits that may result from defense-based victim outreach programs.

B. Early Forms of Criminal Justice

Restorative justice is a process that benefits all members of society, yet it is a relatively new concept in the United States. Because of its Anglo-Saxon/European roots, when torts and crimes were separated, the United States criminal justice system was formed and founded on retributive justice. Retributive justice is a response to crime that fixes guilt to an individual and inflicts pain on this individual for committing a crime.21 While restorative justice aims to benefit society, retributive justice aims for offender accountability. Even though retributive justice developed during the same time as its restorative counterpart, it developed in different parts of the world and became a Western form of justice.22 Restorative justice, as it is practiced in the United States, has a distinctively Western flavor, but is based on cultures and religions that pre-date modern society.

1. Retributive Justice: A Historical Alternative

Early retributive punishment was more severe than its present form and a lack of guidelines often strained the relationship between the crime and the punishment.23 For example, the Mosaic Law of the Old Testament recognized thirty-six capital offenses, ranging from adultery to murder, and called for

22. JOHN BRAITHWAITE, RESTORATIVE JUSTICE & RESPONSIVE REGULATION 7 (2002).
23. ZEHR, supra note 21, at 92. The relationship developed from the Enlightenment notion that the punishment should fit the crime and, therefore, the relationship between the crime and the punishment should not be less arbitrary. Id.
execution by stoning, burning, decapitation, strangulation, and various other means. Therefore, the punishment for murder could be the same as for adultery. The intermingling of religion and society meant that religious law was criminal law. The Old Testament describes that in God’s covenant with Noah, God stated, “Whoever sheds the blood of man, by man shall his blood be shed, for God made man in His own image.” This covenant conveys the notion that the death penalty was a fitting punishment for certain crimes that resulted in the death of the victim and that a crime was a sin not only against man but also against God.

The New Testament, in places, seems to assume that the State has the right to punish criminals with death if necessary and does not specifically state that Jesus denied the State the authority to exact capital punishment. When Pilate calls attention to his power to crucify Jesus, Jesus states that God granted Pilate this power to punish. This form of State-enforced punishment created conflict between the early Christian practice that emphasized forgiveness and “rulers who sought to signify their power” by inflicting physical, including capital, punishment.

a. State Justice vs. Community Justice

The history of criminal justice follows two developments—state justice and community justice. An interpersonal violation is, and was in earlier times, a crime representing a wrong between people. In earlier times, justice also took the form of a kind of settlement, usually by converting the personal injury into a material compensation. Community justice allowed the offender and the person harmed to settle most harms outside of the courts with the aid of their emotions and mutual agreement.

25. Id. (quoting Genesis 9:6).
26. See id.
27. Id. at ¶ 5.
28. Id.; see also John 19:11 (King James) (stating: “Thou couldest have no power at all against me, except it were given thee from above . . .”). Pope Pius XII maintained that, when inflicting capital punishment, “[the State] does not exercise dominion over human life but only recognizes that the criminal, by a kind of moral suicide, has deprived himself of the right to life.” Dulles, supra note 24, at ¶ 25. Pope Pius XII claimed that the State does not discard an individual’s right to life but reserves the power to condemn a “person of the enjoyment of life in expiation of his crime when, by his crime, he has already dispossessed himself of his right to life.” Id. at ¶ 26. Today, however, Pope John Paul II and the Catholic Church note that “modern improvements in the penal system have made it extremely rare for execution to be the only effective means of defending society against the criminal.” Id. at ¶ 31.
29. BRAITHWAITE, supra note 22, at 7.
30. ZEHR, supra note 21, at 97-101.
31. Id. at 99.
32. Id.
community and church. The administration of justice was a process of mediation and negotiation rather than the imposition of a punishment. Wrongs against individuals collectively constituted a wrong against the community. Even though community justice gave much respect to negotiated, extrajudicial settlements, an alternative approach—state justice—also developed.

Retributive punishment in the hands of authorities, or state justice, "represented the wave of the future." The Enlightenment ushered in a new, secular form of law based on rational principles and natural law. Enlightenment thinkers formulated a new state and society based on an implied social contract. They argued that the larger portion of society should construct the laws while the government administers them. Thus, society came to view crimes as violations of the law rather than harms caused to individuals.

The Enlightenment thinkers did not question whether pain should be administered when people committed wrongs. New mechanisms were introduced to induce the necessary pain. As technology developed, so did the types and severity of the punishments administered. Prisons became the perfect tool for delivering painful punishment without the physical harm. Prisons allowed for graded terms according to the degree of the offense and became the primary form of punishment. The establishment of public prosecutors, combined with the widespread use of prisons, demonstrated the necessity for offender account-

33. Id. at 100.
34. Id.
35. Id. at 101.
36. ZEHR, supra note 21, at 101.
37. Id. at 116.
38. Id. at 117.
39. Id.
40. Id.
41. Id. at 119.
42. ZEHR, supra note 21, at 119.
43. Id.
44. Id. at 120.
45. See Elizabeth Linehan, Retribution and Restoration: The Two Paths, in BLUEPRINT FOR SOC. JUST., Vol. LVI, No. 5, ¶ 2 (Jan. 2003), http://www.loyno.edu/twomey/blueprint/Jan03.htm (describing a prison that punished a prisoner's bad behavior by feeding the prisoner nutritious but bad-tasting food, thus depriving the prisoner of "even the simple pleasure of the good tastes of food").
46. ZEHR, supra note 21, at 119.
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ability. This form of accountability, at best, allows an individual to take ownership for the wrongdoing through understanding the consequences of a crime.

b. The Present System of Retributive Justice

State justice prevails today. A “system of corrections,” allocating pain in “units of misery in response to units of lawbreaking,” evolved into modern retributive justice. This system continues today as society views criminal punishment as justice intended to cause the criminal to suffer, particularly from an emotional standpoint. Society is so accustomed to the assumption that criminal punishment should cause anguish to the criminal that the establishment considers itself a “paragon[] of social justice when . . . [it] object[s] to excessively harsh punishments.”

Our present system of retributive justice is one of “payback.” The popularity of the system stems from its service of three values. First, society views its ancient belief that an individual who wrongs another deserves to suffer a consequence for that offense as a matter of justice. Second, society is concerned with victims taking private revenge that often is excessive and prone to retaliation by the offender. Third, an expectation exists that society must take the side of the victim, and it does this through the severity of the punishment it inflicts on the wrongdoer. Society believes this form of justice demonstrates respect for the victim and shows that it takes the offender seriously.

The idea that offenders must get what they deserve is so prevalent that our system absorbs the notion that the professionals, to whom we delegate the

47. See id. at 120-21 (examining presumptions of crime and justice and proposing a restorative model); Marty Price, Personalizing Crime: Mediation Produces Restorative Justice for Victims and Offenders, DISP. RESOL. MAG., Fall 2000, at 8. The United States is the largest per capita jailer in the world. Price, supra, at 9. The United States also has the highest violent crime rate of any industrialized nation. Id. The prison culture in which offenders are immersed rewards meanness and denial. Id. The result is that ex-offenders, upon release, re-enter society as antisocial and bitter persons, which increases the probability of recidivism. Id.

48. ZEHRSUPRA NOTE 21, AT 78, 120. However, in our society, concepts of guilt and punishment not only fail to encourage ownership but also increase the difficulty of so doing. Id.

49. Id. supra note 45, at ¶ 3; ZEHRSUPRA NOTE 21, AT 120.

50. Linehan, supra note 45, at ¶ 3.

51. Id.

52. Id. at ¶ 24.

53. Id.

54. Id.

55. Id.

56. Linehan, supra note 45, at ¶ 24.

57. Id.
responsibility of punishment, understand what is “needed to settle the score.”

In turn, society encourages offenders to believe that punishment is their repayment to society. However, according to Howard Zehr (“Zehr”), director of the Mennonite Central Committee, United States Office of Criminal Justice, offenders are rarely fulfilled with this form of repayment to our society. The community rarely benefits because this repayment often does not include a public resolution.

2. The Materialization of Restorative Justice

John Braithwaite argues that restorative justice is “a major development in human thought grounded in traditions of justice.” Ancient cultures produced traditions of justice that accepted restorative approaches to crimes, even crimes as grave as taking another’s life. For example, the Sulha, an ancient Palestinian restorative justice institute still in operation today in Galilee, continues “the ideal of using the lesser evil of crime to build the greater good of a loving community.” When a serious crime, such as murder, is committed, the Sulha follows specific steps that focus on repentance to remedy the situation and restore peace to the community.

The Vedic civilization (6000-2000 B.C.) of the Hindus provides another example. This civilization believed that forgiveness follows “he who atones.” The principle of penance in Hinduism is derived from the laws of Karma, the principle of cause and effect. The whole system of reincarnation rests on the principle of penance, which must be performed after every sin is committed.

58. ZEHR, supra note 21, at 74-75.
59. Id. at 75.
60. Id.; see also id. at 279 (describing Zehr and his work).
61. Id. at 75.
62. BRAITHWAITE, supra note 22, at 3.
63. Id.
64. Id.

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65. See id. at 4 (describing the steps of the Sulha). In the Sulha, the first step is that the offender’s family requests help from individuals known as peacemakers. Id. These peacemakers are respected for their mediation and peace-restoring abilities. The peacemakers visit the victim’s family and offer the repentance and sorrow of the offender’s family. Id. They also ask the victim’s family how they can restore peace. Id. After peace is attained between the two families, a ceremony is performed that signifies that the violence has brought the community closer together by channeling communication and sharing the suffering. Id. Cf infra Part II.D (describing the role of the victim liaison in defense-based victim outreach).
66. BRAITHWAITE, supra note 22, at 3.
68. Id. Ancient Scriptures stated that, through forms of penance such as confession and austerity, a sinner is freed from guilt. Id. at ¶ 8 (quoting Manu Dharma Shastras 11.228-34). When an individual repents for his sins, that individual is freed from the bad Karma associated with the crime committed. Id. However, unless an offender resolves not to commit further sins, he is not
Through penance, an individual can expiate his sins so that, when born again, the individual will not bear the disgraceful marks of the sin committed in a previous life. The dharma shastras detail a long list of actions for which penance is advised; the list includes serious capital crimes such as murder.

In Hindu dharma, the law of Karma dictates that every action one commits, whether good or bad, has a consequence. This consequence may present itself in the lifetime in which the action occurred or in a subsequent lifetime. A transgression against an individual creates bad Karmic energy, negatively affecting the community and the transgressor. In order to prevent bad Karmic reaction, one must repent for the transgression he committed. However, some Hindu scholars argue that penance does not rid an individual of “bad Karma,” but, rather, makes the offender “fit for transaction with society.” Ancient Hindus believed that there were three sources of punishment: the king, an assembly of wise men, and the individual himself. Nonetheless, many communities recognized self-correction as the best form of punishment. Therefore, the objective of repentance was to deter future bad Karma from one’s act from pervading through the individual and entering the current of the community at large.

Through the Quran, Islam also discourages capital punishment for murder. The tenet of strict equivalence between the crime committed and the punishment that follows has clear exceptions. That is, the Quran prefers that the murderer compensate the victim’s family and acknowledges that killing the murderer neither benefits the survivors nor brings the victim back. The compensation must be sufficient to act as a deterrent for others. Islam dictates that the victim’s family judges the crime and decides a proper punishment with the help of an individual in the community who is well-versed in Islamic law.
A similar system developed in Christianity with the universalization of personal penance. In Christianity, the institutionalization of restorative justice occurred in the late sixth century as Celtic monks developed a new approach of reconciliation with God. The new method involved personal penance coupled with confession. This concept of private penance heightened notions of responsibility for one's actions and countered the idea that failure by the victim's family to exact revenge was shameful.

In modern times, restorative ideas persist in many non-European countries that remain untouched by central state power. These ideas are a source of cultural diversity and counter the homogeniety found in nations of central state power. For example, in 2001, white South Africans welcomed "a new youth justice bill" that included the "[i]ndigenous restorative notion of ubuntu—the idea that our humanity is relationally tied to the humanity of those we live with—as the fundamental objective of the legislation." This notion of ubuntu allowed Nelson Mandela "to construe even the supporters of apartheid as inextricably its victims."

In Buddhism, rehabilitation is the primary focus of punishment. Through rehabilitation, a convicted criminal defendant can realize his or her mistakes and attempt to avoid future crimes. In Buddhist terminology, a rehabilitated offender will remember "Buddha-nature," which is the concept that all sentient beings are capable of realizing bodhi, an enlightenment and/or awakening. Society benefits from a wrongdoer's rehabilitation because the wrongdoer becomes a productive member of society and contributes to the general welfare of the community.

Western cultures are in a process of relearning from Buddhists such as the Dalai Lama that the "more evil the crime, the greater the opportunity for grace to inspire a transformative will to resist tyranny with compassion." The implications of this teaching on our legal system are that, if crime is tackled with grace and compassion, the opportunity to transform lives prevents greater evils in the

and comparing it with the aid received from an individual well-educated in Islamic law).

80. BRAITHWAITE, supra note 22, at 5.
81. Id.
82. Id.
83. Id.
84. Id.
85. Id.
86. BRAITHWAITE, supra note 22, at 5.
88. Id.
89. Id. at 275, 282.
90. Id. at 282.
91. BRAITHWAITE, supra note 22, at 3.
Restorative justice takes a very different approach than traditional notions of justice that deal with deterrence, crime prevention, incapacitation, and rehabilitation. By bringing the offender back into the community, the traditional goals of criminal justice are also fulfilled because the offender is less likely to commit additional crimes and may even give back to the community that he once harmed. Thus, the concepts of freedom, democracy, and community create a stage on which criminal jurisprudence is altered.

C. The Principles of Restorative Justice

1. The Objective: Restoration of Violated Relationships

Crime represents a broken relationship between a victim and an offender. If a relationship did not exist prior to the crime, the crime creates a hostile relationship. The hostility in the relationship affects the well-being of the victim and the offender. Although crime causes injury to the victim, the offender also suffers. Injury, whether physical or mental, breeds crime. Many offenders seek ways to validate and empower themselves and view crime as a means to achieve those desires. Often they commit harms because harm was perpetrated on them. The justice system in operation today may further their harm and, in turn, the injuries of crime on others.

At the core of crime is a violation of a person by another person, who might be a victim or survivor himself. However, the victim and the offender are not the only people harmed; there exists “a larger social dimension to crime.” The ripple effect of crime demonstrates that society has an investment in crime and, therefore, a function to perform. Restoration may define justice. If crime is an injury to particular individuals and the community at large, then justice, or

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92. Id.
93. Id.
94. Id. at 3-5.
95. Id. at 181.
96. Id. at 181-82.
97. Id. at 182.
98. Id.
99. Id.
100. Id.
101. Id. at 182.
102. Id. This statement can be true for many, if not all, crimes. While murder is an obvious example of a violation of a person by another person, Medicaid fraud is a less obvious example. When an individual commits Medicaid fraud, he or she is taking the benefits of medical services from individuals who are in need. This sort of fraudulent behavior affects those people who expect to receive Medicaid funding, and it also affects our health care system.
103. Id.
104. Id.
105. Id. at 186.
acts of restoration, will counterbalance the injury by promoting healing. True justice aims to provide a context in which this process can begin.

The first goal of justice is to return emotional balance to the victims through healing. Those who are violated must attain closure and begin to believe that they have control over their lives and their safety. In addition, the violator needs encouragement to change. Ideally, he or she should have the freedom to start life again.

The second goal is reconciliation between the victim and the offender. Reconciliation implies complete repentance and forgiveness and involves the development of a positive relationship between the victim and the offender. Zehr acknowledges that reconciliation in all circumstances is not feasible and that not all cases will result in positive relationships. All people involved must overcome the barrier of emotion in order for reconciliation to begin.

Restoration for the community is also a necessary goal of justice. Crime erodes the community’s sense of wholeness. The community has an integral role in the healing of the victim and, in turn, of itself. If an offender refuses to account for the wrongdoing, the community can provide “an experience of justice.” The community can empathize with the victim and agree that the wrong was indeed harmful, in which case, at least partial justice can exist.

Restorative justice programs of this nature encourage the reintegration of an offender into society as a functioning citizen who will address the needs of the victims and the community. The current response to crime does not acknowledge the community as a victim, even though the community fabric is often harmed severely after crimes are committed. The community generally is not involved in creating appropriate resolutions. The treatment of crime as an

106. Id.
107. ZEHR, supra note 21, at 186.
108. Id.
109. Id.
110. Id.
111. Id. at 186-87.
112. Id. at 187.
113. ZEHR, supra note 21, at 187.
114. Id.
115. Id.
116. Id. at 188.
117. Id.
118. Id.
119. ZEHR, supra note 21, at 189.
120. Id.
122. Id. at 3.
123. Id.
individual occurrence, instead of as a continuous pattern, ignores the long-term health of the community.\footnote{124}

2. Arguments for Restorative Justice Programs

Proponents of restorative justice argue that it "reinforces the social cognitive principles that have been shown to be hallmarks of effective rehabilitation programs."\footnote{125} Restorative justice aims to challenge harms caused by crime and to communicate why that action was wrong through a discussion of its consequences.\footnote{126} A pro-social alternative encourages family and friends of both the victim and the offender to take responsibility for such communications and to enlist the help of professionals who will foster a restorative approach.\footnote{127} This theory of rehabilitation theorizes that the combination of professional healing and community outreach will be more effective than professional help alone.\footnote{128}

The current criminal justice system has components that weaken connections between the offender, the victim, and the community.\footnote{129} Proponents of this system argue that a "retributive justification for punishment respects limits," but the reality is that "in practice it does not."\footnote{130} This response to crime continues the cycle of isolation and weakens the community bonds described in the preceding subsection.\footnote{131} The community deliberately severs ties with the offender and, through neglect, inadvertently cuts off ties with the victims.\footnote{132} Our system "is approaching practical and moral bankruptcy" because it is unable "to meet the requirements of respecting criminal offenders as persons," it fails to address the offender's guilt, and the proportion between offense and punishment does not preserve human dignity throughout.\footnote{133}

The first argument for proponents of restorative justice is that it is an "alternative to a system that does not work."\footnote{134} While retributive justice views crime as a violation against the state, restorative justice views crime as a violation of relationships.\footnote{135} It seeks to repair relationships through reconciliation and reassurance.\footnote{136} Unlike retributive justice, restorative justice affords "all stake-

\begin{itemize}
\item \footnote{124} Id.
\item \footnote{125} Braithwaite, supra note 22, at 98.
\item \footnote{126} Id. at 99.
\item \footnote{127} Id.
\item \footnote{128} Id.
\item \footnote{129} Linehan, supra note 45, at ¶ 42.
\item \footnote{130} Id. at ¶ 43.
\item \footnote{131} Pranis, supra note 121, at 3; see supra Part II.C.1 (discussing the objective of restorative justice).
\item \footnote{132} Pranis, supra note 121, at 3.
\item \footnote{133} Linehan, supra note 45, at ¶ 43.
\item \footnote{134} Id. at ¶ 44.
\item \footnote{135} Id. at ¶ 46.
\item \footnote{136} Id.
\end{itemize}
holders affected by a breach of the law . . . an opportunity to participate in deciding what to do about it. 137 The present system discourages offender accountability by encouraging pleas of not guilty in capital cases. 138 Restorative justice requires accountability for the crime committed and the resulting harm. Therefore, it respects the victim and the offender and eventually repairs the damage suffered by the community.

D. The Adversarial Nature of the Criminal Justice System

Our society engages in an adversarial criminal justice system that encourages conflict between parties. 139 It assumes that, through conflict, the truth will emerge and the "interests of the parties will be safeguarded." 140 This cultural view is traditional dispute resolution. 141 Fundamental fairness and the truth are integral to the Anglo-American judicial process and are embraced in another, broader Anglo-American concept, "justice." 142 Traditional dispute resolution presupposes incompatible interests and intends for those interests to become reconcilable, thereby laying the cornerstones of fairness, truth, and justice. 143

The primary goal of the adversarial system is the determination of guilt and the imposition of punishment through rules and processes. 144 The rules and processes are dependent only on professionals who represent the defendant and the State. 145 As a result, individuals and communities are removed from the process. 146 Victims and survivors become bystanders because the State acts as the victim. 147 The State represents the community and assumes that its interests are served through the fixing of a punishment. The wounds of the community are not properly healed. The needs of the victims are thought to be met through the imposition of harsh sentences.

Prior to 1980, any victims' rights programs operated through prosecutors who had the discretion to grant and enforce victims' rights. 148 In the late 1970s,

137. Id.
138. The conventional wisdom within the capital defense bar is that capital defendants should never plead guilty absent an absolute assurance of a sentence less than death. JOSHUA DRESSLER & GEORGE C. THOMAS, III, CRIMINAL PROCEDURE: PRINCIPLES, POLICIES AND PERSPECTIVES 1014 (1999). The difficulty in obtaining such agreements frequently forces the defendant to plead not guilty and hope for a jury-imposed life sentence.
139. ZEHK, supra note 21, at 78.
140. Id.
142. Id.
143. Id.; ZEHK, supra note 21, at 78.
144. ZEHK, supra note 21, at 78.
145. Id. at 79-80.
146. Id. at 80.
147. Id. at 82.
victims' rights movements gave rise to victims' rights programs, which made victims' rights a regular component of criminal proceedings.\textsuperscript{149} The goal of these programs was to enable victims to be "informed, present, and heard throughout the criminal justice process."\textsuperscript{150} Nonetheless, family members who oppose the death penalty may continue to feel that the criminal justice system does not meet their real needs and that they continue to be "silenced, marginalized, and abandoned, even by the people who are theoretically charged with helping them."\textsuperscript{151} They probably have these feelings because victims' rights programs are founded on the assumption that victims favor the imposition of death.\textsuperscript{152}

According to Renny Cushing, Executive Director of Murder Victims' Families for Reconciliation, when prosecutors learn that the family of a victim opposes the death penalty, prosecutors often deny the family information regarding court dates, upcoming hearings, or other important events.\textsuperscript{153} The denial can be explicit or indirect, through incomplete, inaccurate communication.\textsuperscript{154} Concern about prosecutor reaction stems arguably from the high degree of discretionary power prosecutors exercise when charging offenders with a crime.\textsuperscript{155} Prosecutors may ignore the needs of victims who oppose the death penalty in order to bolster their conviction record, gain a political advantage, or satisfy a supervisor compelling them to seek death.\textsuperscript{156} In such cases, prosecutors show more concern for a death verdict than for the victims or the community prosecutors are supposed to represent.

The framework of the system must become less adversarial and should work to address the needs of the victims, survivors, and even the offender.\textsuperscript{157} In the case of capital punishment, studies indicate that the death penalty does not deter individuals from committing crimes.\textsuperscript{158} Rather than teaching potential offenders that all killing is wrong, the criminal justice system sends the very different message that all murderers deserve to die.\textsuperscript{159} The message that
offenders must get their due, and that what they are due is punishment, may teach a lesson quite different than what [society] intend[s].\footnote{160}

The current participation of survivors in capital cases is mostly passive, with the exception of a possible request by the prosecutor for victim-impact testimony.\footnote{161} At best, victim impact testimony provides a sort of catharsis for survivors to voice their loss and feel less isolated from the community.\footnote{162} In reality, victim impact testimony “exploits the immense pain suffered by survivors” in order to produce a death sentence.\footnote{163} Some capital defense practitioners challenge prosecutors’ “lethal concession” that survivors want to impose the death penalty.\footnote{164} Many of these concessions are unverified and invoked hastily.\footnote{165} These realities should force capital defense attorneys to view survivors not as vindictive individuals, but as individuals deserving of compassion and inclusion.\footnote{166} Survivors need to be familiar with both the defense team and the prosecutorial team, because this familiarity will allow for working relationships to develop on both sides.\footnote{167}

\textbf{E. Defense-Based Victim Outreach}

Defense-based victim outreach asks the principal questions of restorative justice: (1) “Who was hurt?” (2) “What are their specific needs?” and (3) “Who is obligated to meet those needs?”\footnote{168} In addition, this needs-based emphasis asks the survivors what is most important to them and what are their judicial needs.\footnote{169} It is the responsibility of the defense attorney to establish contact with the survivors of the victim.\footnote{170} The defense team can hire a victim liaison, who will meet with the survivors and learn about any questions that are on their minds.\footnote{171} The victim liaison then meets with the defense attorney, who retrieves the answers to those questions from the defendant. The defense team may negotiate a plea agreement with the prosecution with the stipulation that, if the sentence

\begin{footnotes}
\footnote{160}{Id.}
\footnote{161}{See Burr, supra note 14, at 517 (explaining the role of survivors in capital cases).}
\footnote{162}{Id.}
\footnote{163}{Id.}
\footnote{164}{Interview with Krause, supra note 20.}
\footnote{165}{Id.}
\footnote{166}{Burr, supra note 14, at 517-18.}
\footnote{167}{Burr & Krause, supra note 7.}
\footnote{168}{Id.}
\footnote{169}{Id.}
\footnote{170}{Id.}
\footnote{171}{Id.; see supra note 65 and accompanying text (describing the peacemakers of the Sulha and noting their similarity with victim liaisons). These roles bear a striking resemblance because both individuals accept “the anger of victims with love no matter what they do” and both “absorb that anger” which “may bring victims to a state of grace.” Braithwaite, supra note 22, at 4. See also supra text accompanying note 79 (describing the role of an individual who is well-versed in Islamic law in murder cases).}
is reduced from death to a lesser punishment, then the defendant will provide the survivors with the answers to their questions.\footnote{172}{See, e.g. Burr, supra note 14, at 528-29 (describing plea agreement in Cary Stayner's case).} When the survivors receive the information they requested, then a plea agreement results.\footnote{173}{See id.} Alternatively, as part of his restorative process, the defendant may provide answers freely, not as part of any agreement. When the survivors work with victim liaisons they can expect information about the case, the opportunity to be heard, input into the case, and a large scope of involvement.\footnote{174}{Id. at 528-29.} Defense-based victim outreach requires accountability from the defendant in the form of commitments to address the harm caused to both the survivors and the community.\footnote{175}{Burr & Krause, supra note 7.}

1. Benefits of a Victim Liaison to the Survivor and the Defendant

The benefits of victim liaison involvement extend to the survivors.\footnote{176}{See id. at 528.} By seeking to learn the needs of survivors, the victim liaison offers an option for the survivors besides retribution through capital punishment.\footnote{177}{See id. at 528-29.} The survivors gain a better understanding that their trauma often will continue even if the offender is punished with death.\footnote{178}{Burr, supra note 14, at 528.} The answers to the questions they ask the victim liaison bring a peace of mind that is seldom found after a court imposes a death sentence.\footnote{179}{Id. at 527; Burr & Krause, supra note 7.}

The interaction between the victim liaison/defense team and the survivors empowers the survivors and releases them from focusing on the morality of whether the death penalty is appropriate or heinous.\footnote{180}{Burr & Krause, supra note 7; see Vandiver, supra note 19, at 498 (noting that some victims' families "absolutely reject the death penalty for their relatives' murders").} The survivors are released from the religious and political debate concerning the death penalty because restorative justice presents another option. They gain an understanding of, and can take an active role in, the judicial process.\footnote{181}{Burr, supra note 14, at 527-28.} The creation of a professional relationship with the defense team allows the survivors to relate to both legal teams and affords the most beneficial result for all concerned.\footnote{182}{Id.}
A victim liaison also can benefit the defendant by forcing him to act responsibly and take accountability for his crime. The defendant then can recognize and address the obligations and harms caused by his wrongdoing. The defendant and his family also benefit from the defendant's acknowledgment that the crime he committed was morally reprehensible. Additionally, defendants are more likely to evaluate their involvement in capital cases. Instances of ineffective assistance of counsel claims following capital trials may decrease if a victim liaison is hired.

When the defense team hires a victim liaison to facilitate a plea agreement, the defendant is active in reducing the sentence from capital punishment. From the point of view of capital defense attorneys, the chances of ineffective assistance of counsel claims being raised decreases because the defendants are empowered and make decisions about their future.

2. Other Benefits Provided by a Victim Liaison

A victim liaison brings additional benefits to defense attorneys. The defense attorneys present themselves as models of compassion on behalf of the defendant and the survivors with whom they develop professional relationships. The victim tells the story in a non-adversarial way, lessening the adversarial nature of the judicial process.

The prosecutors benefit because the ways in which survivors relate to the prosecution improves. Society may not only view prosecutors as defending "the people," but on a more individual note, prosecutors may be seen as defenders of those personally harmed. A plea agreement saves time and money for all parties and guarantees that the prosecutor receives a conviction.

The victim liaison also benefits the judicial system by facilitating an outcome of justice.

183. Id.
184. Id.
185. Id.
188. See id.
189. Id.
190. Id.
191. Id.
192. See infra Part II.D (explaining relationships between prosecution and survivors of victims).
tempered with compassion. Defense-based victim outreach shortens the judicial process, and, if a plea agreement results, the court saves money and time spent on trials and appeals.

F. Conclusion

The possibility of engaging in restorative relationships exists in every situation and is not limited to those relationships created by crime or, more specifically, murder. Responses to the world are based on choices made and reflect perspectives on justice and morality. The pursuit of justice through a restorative process is a step toward the development of restorative communities. These communities are those that neither shy away from power nor respond to violence with violence. Capital punishment is one such violence. Inflicting death on an individual who murdered, only continues the cycle. What is achieved through restorative justice and defense-based victim outreach programs is not only a healing of severed relationships but also a serving of the needs of all members of the community.

III. The Capital Applications of Defense-Based Outreach Through a Victim Liaison

Kristen F. Grunewald

A. Introduction to Defense-Based Outreach in Capital Cases

The family and friends of a murder victim have suffered an extreme trauma. They feel anger, sorrow, and fear. These emotions, especially this anger, can lead survivors in one of two directions. First, the survivors can seek vengeance on the offender. In the capital context, survivors can place all of their influence behind the imposition of the death penalty. Alternatively, survivors can seek restoration and reconciliation. They need not forgive the offender; they simply may recognize that killing the offender will not restore balance to their lives. A victim liaison, through the relationships that he develops with survivors, works to demonstrate to survivors the advantages that accompany the latter choice.

Victim liaisons possess an understanding of the procedural aspects of the capital criminal justice system. Liaisons also understand the emotional stresses

194. Id.
195. Id.
196. SULLIVAN & TIFFT, supra note 9, at 179. See generally id. at 179-87 (describing other situations in which restorative relationships can be used).
197. Id. at 179.
198. Id. at 187.
199. Id.
200. Id.
that survivors face after the loss of a loved one. This combination of skills allows a liaison to advise survivors and guide them through the capital justice system. The tenets of restorative justice and defense-based outreach guide a liaison's work at every stage.

Subpart B of Part III of this Article provides a basic definition of a victim liaison. Subpart C explores the advantages of a liaison's pre-trial work. Subpart D provides guidance for counsel drafting a Motion to Appoint a Victim Liaison. Subpart E describes the complexity of the relationships that develop between a liaison and the prosecution, the survivors, and the defendant. Subpart F analyzes a victim liaison's work toward a plea agreement. Subpart G describes the effect of a liaison's work on victim impact evidence. Finally, Subpart H outlines the aspects of defense-based outreach that can be applied without a victim liaison.

B. What is a Victim Liaison?

Defense-based survivor outreach, based upon the principles of restorative justice, asks a series of questions about a criminal offense. It asks: (1) "Who was hurt?" (2) "What are their specific needs?" and (3) "Who is obligated to meet those needs? A victim liaison, as part of the defense team, uncovers the answers to these questions by reaching out to the survivors.

Defense-based outreach takes on a number of forms. In its most basic form, defense counsel introduce themselves to the survivors and keep them informed as the judicial proceedings progress. When a victim liaison joins the defense team, however, defense-based outreach draws from the relationship between the liaison and the survivors. A victim liaison seeks to uncover the survivors' wants and needs by reaching out to them. A liaison may find that the survivors need an explanation or timeline of the capital justice system. Survivors often want to know when they will have the opportunity to participate in the judicial process. They often want to know "what happened, why, and what is being done about it." On a more emotional level, a liaison may find that survivors want to meet with the defendant or have the defendant provide them with answers. An experienced victim liaison individualizes his approach

202. Id. (citing Burr & Krause, supra note 7).
203. See id.
204. See Russell Stetler, Working with the Victim's Survivors in Death Penalty Cases, THE CHAM- PION, June 1999, at 44-45, LEXIS 23 Champion 42 (describing steps defense counsel can take to approach survivors).
205. See Burr & Krause, supra note 7 (discussing the "needs-based emphasis" that restorative justice places on each offense).
206. See ZEHR, supra note 21, at 203-04.
207. Interview with Krause, supra note 20.
208. ZEHR, supra note 21, at 194.
209. Burr, supra note 14, at 528.
to the survivors based on the individual circumstances of the case. Although restorative justice and defense-based outreach focus on restoring the lives of the survivors and the defendant, in order to best facilitate the needs of these individuals, the liaison also works to develop relationships with the prosecution and other members of the community.\footnote{Restorative justice seeks to reconcile all of the relationships that were damaged by the offender's actions, including the relationship between the community and the offender. \textit{See} Zehr, supra note 21, at 194 (explaining that communities are also affected by crime).}

C. Advantages of the Early Entrance of a Victim Liaison

A victim liaison works most effectively when brought into a case during its early stages.\footnote{Interview with Krause, supra note 20. A liaison's early involvement with a case facilitates the development of a trusting relationship with the survivors. \textit{Id}. Krause stated that she had a notably higher rate of success when she worked with a defense team beginning pre-trial. \textit{Id}.} A liaison achieves greater results when the defense team provides him with sufficient time to connect with the prosecutors, the survivors, and, if appropriate, the defendant.\footnote{\textit{Id}; see infra Part III.E.1-3. In many cases neither the liaison, nor the survivors, meet with the defendant. \textit{See} Marty Price, \textit{Can Mediation Produce Restorative Justice for Victims and Offenders?}, Victim-Offender Reconciliation Program Information and Resource Center, ¶ 11, at http://www.vorp.com/articles/crime.html (last visited Jan. 14, 2003) (indicating that it is not always appropriate for the survivor and offender to meet).} The early entrance of a victim liaison influences plea agreements, victim impact evidence, and the overall effectiveness of restorative justice.\footnote{\textit{See infra} Part III.F- G.} Due to the advantages of a liaison's early entrance, defense counsel should file a Motion to Appoint a Victim Liaison at the earliest possible opportunity.\footnote{\textit{See infra} Part III.D.}

The moment that a trial begins, the likelihood of the defendant receiving a plea agreement drastically decreases. A victim liaison who begins work pre-trial enjoys more time to develop relationships with the survivors and to determine whether a plea agreement meets their needs. By providing survivors with accurate information regarding the possible length of trial and subsequent appeals, along with other details about the judicial process, a victim liaison increases the likelihood that survivors will support a plea agreement.\footnote{\textit{See} Burr, supra note 14, at 528-29 (listing several of the reasons that the Armstrong family chose to support a plea agreement for Stayner).}

If a victim liaison joins the defense team post-trial, he may be less effective for several reasons. First, the survivors may have watched a full trial and some may have testified. Second, the media may have begun to report the trial, and thus the details of the crime and the reactions of the survivors are placed in the spotlight.\footnote{\textit{See} Burr & Krause, supra note 7 (presenting several quotes from the Armstrong family regarding their interest in having the case leave the media spotlight).} This attention on the survivors may cause additional trauma or
stress, which increases the level of emotion that they feel toward the defendant.\textsuperscript{217} In addition, by the time the trial begins, the prosecution already may have promised the public that it would seek a death sentence. The prosecution likely worked for months to obtain the guilty verdict.\textsuperscript{218} These factors each weigh against the survivors opposing the imposition of the death penalty or the prosecution respecting their opinion.

It should be noted that, while the early entrance of a victim liaison is particularly advantageous, the entrance of a liaison at any stage of the proceedings may benefit both parties. Post-conviction attorneys often assume that “too much water has gone under the bridge” by the time they represent the defendant, but victim liaisons have proven their work to be invaluable at any stage of a case.\textsuperscript{219} The procedural posture of a case should not dissuade counsel from seeking the assistance of a liaison.\textsuperscript{220}

\section*{D. Motion to Appoint a Victim Liaison}

Capital defense attorneys have not applied the principles of restorative justice to capital cases with enough frequency for attorneys to assume that the trial judge will be familiar with the emerging field or the work of victim liaisons.\textsuperscript{221} Thus, in order to be effective, a Motion to Appoint a Victim Liaison should include a general description of restorative justice followed by the more specific goals that defense counsel hope to achieve through the appointment of a victim liaison.\textsuperscript{222} This motion should also include any available authority for the appointment of a victim liaison.\textsuperscript{223}

In a Motion to Appoint a Victim Liaison, counsel may phrase the principles of restorative justice simply and concisely. This description should include the

\begin{itemize}
\item \textsuperscript{217} Survivors often do not want the media to focus its attention once again on the victim and the survivors. In addition, survivors often want to avoid having to “re-live” the crime during a trial.
\item \textsuperscript{218} See Judith L. Maute, “In Pursuit of Justice” in High Profile Criminal Matters, 70 FORDHAM L. REV. 1745, 1747 (2002) (noting that when a case has caught the attention of the American public, the law-enforcement system feels pressured to obtain a conviction).
\item \textsuperscript{219} Telephone Interview with Richard Burr, Federal Death Penalty Resource Counsel (Jan. 29, 2003). According to Burr, many habeas attorneys believe that it is too late for defense-based outreach or a liaison to work effectively on their cases. \textit{Id.}
\item \textsuperscript{220} \textit{Id.} Although restorative justice may not affect the judicial disposition of the case as effectively post-trial, the survivors and the defendant may still be able to meet their mutual needs.
\item \textsuperscript{221} \textit{Id.; Interview with Krause, supra note 20.}
\item \textsuperscript{222} See generally Stock Declaration in Support of the Appointment of a Victim Liaison (on file with Richard Burr) [hereinafter Stock Declaration] (explaining the principles and goals of restorative justice and detailing how a liaison puts them into effect). This declaration clearly explains the basic aspects of restorative justice and defense-based victim outreach. \textit{See id.} Counsel may choose this framework for their Motion to Appoint a Victim Liaison if certain that the court is unfamiliar with a liaison’s role.
\item \textsuperscript{223} See Stock Motion to Authorize the Services of a Defense-Based Victim Liaison, at 5-6 (on file with Richard Burr) [hereinafter Stock Motion] (listing precedents for the appointment of a victim liaison).
\end{itemize}
basic principles of the field. These principles include: (1) restorative justice's focus on the harm caused by the crime, as opposed to the rule that the offender broke;\(^\text{224}\) (2) its encouragement of offenders to take responsibility for their actions;\(^\text{225}\) and (3) its goal of reconciling victim and offender in order to restore order to both lives.\(^\text{226}\) Other principles of restorative justice that may influence the court's decision include its consideration of the harm that the offense caused to the community and its empowerment of victims.\(^\text{227}\)

Counsel should provide the court with the victim liaison's specific goals and the means by which the liaison applies the principles of restorative justice to capital cases.\(^\text{228}\) These goals may vary as the facts of the case demand. However, several aspects of restorative justice typically will apply to capital cases. First, a victim liaison provides the survivors with an advocate for those needs that only the defense team can address.\(^\text{229}\) The liaison, experienced in communicating with survivors, acts as an intermediary between the survivors and defense counsel.\(^\text{230}\) Second, a victim liaison provides the defense team with personal information about the survivors. This information allows defense counsel to avoid further traumatizing the survivors, whether on the witness stand or upon meeting in person.\(^\text{231}\) Third, through his relationship with the survivors, a victim liaison may uncover needs or interests of the survivors that neither the defense nor the prosecution ever would have realized.\(^\text{232}\) Counsel's phrasing of these goals

\(^{224}\) ZEHR, supra note 21, at 184.

\(^{225}\) Id. at 201-2.

\(^{226}\) Id. at 181.

\(^{227}\) See id. at 184, 204. Survivors are given few opportunities to play an active role in the judicial process. A victim liaison, by keeping the survivors informed and asking them about their needs, allows survivors to have their needs heard and recognized outside of these limited judicial opportunities.

\(^{228}\) See Stock Motion, supra note 223, at 5 (providing a basic description of the work of a victim liaison). Victim liaisons developed a mission statement that sets forth the general goals of a liaison in a capital case. Id. at 6-7. This statement succinctly presents the mission that a victim liaison hopes to accomplish. See id.

\(^{229}\) See id. at 4 (emphasizing that only the defense team can meet some of the survivors' needs).

\(^{230}\) See Tammy Krause, Walking Through the Judicial System with Families of Murder Victims, FOOTPATHS, Spring 2000, http://www.emu.edu/ctp/footpaths/vol2no3/page4.html (stating that “[a]torneys don’t know how to deal with the emotions, so they force the proceedings on to the intellectual levels”). Attorneys usually are not trained to handle the level of emotion felt by the survivors. One goal of a victim liaison is to avoid traumatizing the survivors during the judicial process. By acting as an intermediary between defense counsel and the survivors, the liaison ensures that defense counsel do not approach the survivors in such a way that causes further trauma. The liaison, through training and experience, also can provide emotional support that defense counsel does not have the time or training to provide.

\(^{231}\) See Stock Declaration, supra note 222 (listing the avoidance of further traumatization of the victims as a goal of a victim liaison).

\(^{232}\) See Stock Motion, supra note 223, at 4. In addition, the stock declaration in support of the appointment of a victim liaison uses the example of the survivors' interest in avoiding trial. The
should illustrate the benefits that restorative justice and the work of a victim liaison bring to the survivors, the community, and the defendant. In addition to a general description of restorative justice and the goals of a victim liaison, counsel should include in the motion authority for the appointment or work of a victim liaison. If there are no cases from the jurisdiction in which the case will be tried, counsel may either outline the experience of the victim liaison whom they are requesting or include descriptions of high-profile cases in which a victim liaison worked with the defense team. For example, victim liaison Tammy Krause ("Krause") worked with the defense team of Timothy McVeigh, the man convicted of bombing the Alfred P. Murrah Federal Building in Oklahoma City. Additionally, Krause worked on the defense team of Cary Stayner. As part of a plea agreement, Stayner pleaded guilty to killing naturalist Joie Armstrong in Yosemite National Park in exchange for a life sentence. These high-profile examples, regardless of whether the liaison ultimately removed death from consideration, provide the court with cases in which the defendant utilized a victim liaison whose work was scrutinized carefully by the court and the media.

The Federal Death Penalty Resource Counsel Project encourages both the use of victim liaisons and the application of the principles of restorative justice to capital cases. In addition, attorneys from the Federal Death Penalty Resource Counsel Project have worked to develop further the work of victim liaisons in the capital context.

declaration noted the traumatizing nature of trial. See Stock Declaration, supra note 222. It then stated that the work of a victim liaison allows defense counsel to better understand the survivors' positions, and thus better "advocates with the prosecution for settling the case." Id.

233. See ZEH, supra note 21, at 184.

234. Interview with Krause, supra note 20.

235. Id.; see Stock Declaration, supra note 222 (listing United States v. Timothy James McVeigh, No. 96-CR-68-M (June 6, 2001 D.Colo) as a case in which a victim liaison was appointed).


237. Peter Hartlaub, Yosemite Naturalist's Fight for Life Described: Court Ruling Unseals Stayner's Confession, S.F. CHRON., Dec. 12, 2000, at A24, 2000 WL 6499669; see discussion infra Subpart D.

238. Other cases in which a victim liaison has worked include: United States v. Usama Bin Laden, No. 98-CR-1023(S-6) (S.D.N.Y. hearing denied Oct. 2, 2001); United States v. Christopher Dean, No. 00-1150 (2d Cir. affirming conviction and sentence Sept. 19, 2000); U.S. v. Kofi Orleans-Lindsay, No. 00-692M-01 (D.D.C detaining defendant Dec. 1, 2000).


240. Telephone Interview with Richard Burr, supra note 219.
Counsel since 1998, supports the use of victim outreach in every capital case. Counsel may make reference to the Federal Death Penalty Resource Counsel Project's support of victim liaison work in a Motion to Appoint a Victim Liaison or may seek a declaration of support for such an appointment from a Federal Death Penalty Resource Counsel.

The information included in a Motion to Appoint a Victim Liaison familiarizes the court with both restorative justice and the means by which a victim liaison applies its principles in the context of capital defense. Each time an attorney files a Motion to Appoint a Victim Liaison, regardless of its ultimate success or failure, he informs one more judge of the existence of such an application of restorative justice. As judges grow more comfortable with the work of victim liaisons and defense-based outreach, the appointment of liaisons to defense teams may become more common.

Due to the initial reluctance of the court system to appoint victim liaisons, some individuals who work in the field have received grants or fellowships to develop their work and provide defense counsel with precedential authority. This funding allows liaisons to work without court appointment and, thus, without court funding. As victim liaisons' work with capital defense teams increases in frequency, and the courts become more familiar with their work, the need for such funding should decrease.

E. Relationships Developed by a Victim Liaison

1. Relationship with the Prosecution

Prosecutors' reactions to the involvement of victim liaisons in capital cases vary considerably from case to case. Prosecutors may be supportive, hostile, or, in the majority of cases, indifferent to the involvement of a liaison. Some prosecutors now realize that the defense team can meet some of the survivors' needs. This realization eventually will lead to increasing support for defense-

241. Id.
243. See generally Stock Motion, supra note 223.
244. As more victim liaisons are trained and attorneys become more familiar with their work, defense-based outreach may be employed in capital cases with increasing frequency. Currently, Tammy Krause and Richard Burr conduct annual defense-based victim liaison training sessions at Eastern Mennonite University. Stock Declaration, supra note 222, at 5.
246. Telephone Interview with Richard Burr, supra note 219. According to Tammy Krause, prosecutors occasionally have instructed the survivors not to cooperate with her. E-mail from Krause, supra note 5. However, some prosecutors have encouraged the survivors to cooperate with her. Id. The level of support from the prosecution varies and is highly dependent upon the case and the specific interests of the prosecutor.
based outreach and the work of victim liaisons.247

Defense counsel working with a victim liaison may want to ensure that the prosecution understands the goals and strategies employed in defense-based outreach. A prosecutor who understands the benefits that restorative justice brings to the survivors, as well as to the community, may be more amenable to proposals of the victim liaison, the defense counsel, and the survivors. According to Tammy Krause, "[t]he organic relationship is between the defense and the victim, not between the prosecution and the victim. The prosecutors are, at best, very interested observers, who can do little to meet the survivors' needs within the criminal justice system without the interest and cooperation of the defense." 248 A prosecutor may not recognize the needs of the survivors until the work of a liaison brings them to the prosecution's attention.249

Regardless of the interests of the survivors, the prosecution retains the right to seek a death sentence in a capital case.250 The importance of a working relationship with the prosecution is illustrated by a situation in which the liaison finds that the interests of the survivors would not be best served by a death sentence for the defendant.251 A prosecutor who understands the work of a victim liaison and is kept informed about the needs of the survivors will be more likely to agree to a lesser sentence or a plea agreement if the survivors express an opposition to imposition of the death penalty.

Finally, a working relationship between the liaison and the prosecution decreases the likelihood that the prosecution will advise the survivors not to cooperate with the liaison.252 Such advice from the prosecution creates an additional hurdle that the victim liaison must overcome in order to develop a working relationship with the survivors. Survivors may never fully trust the liaison if the prosecution, viewed by them as their advocate in the judicial system, has instructed them not to cooperate.253

248. Burr, supra note 14, at 527 (quoting Burr & Krause, supra note 7).
250. Interview with Krause, supra note 20. Due to the nature of the crime and the amount of media attention that Cary Stayner's case was receiving, former United States Attorney General Janet Reno insisted that she approve any proposed plea agreement for Stayner. Id.; see infra Part IV.
251. See LeBaron, supra note 236 (discussing the Armstrong family's decision to support a plea agreement for Cary Stayner).
252. See E-Mail from Krause, supra note 5.
253. See Caplow, supra note 249, at 21 (stating that "most victims cede control to their 'lawyer,' acquiescing to decision making by the authoritarian prosecutorial figure because they have no choice if they want their interests vindicated"). Caplow also noted that "[o]verworked prosecutors. . . rarely are trained in psychology or interpersonal sensitivity so they are discomforted by the intense feelings of some victims and cannot sensitively or effectively respond." Id. at 24. A victim liaison has experience dealing with the emotions of survivors. This experience allows survivors to speak to an individual who is comfortable with the level of emotion involved and may have the
2. Relationship with Survivors

Defense-based survivor outreach concentrates on the needs of the survivors. In order to uncover and meet these needs, a victim liaison must develop a trusting relationship with the survivors. Regardless of whether strong emotional bonds develop between the survivors and the liaison or whether their relationship focuses only on the survivors' practical needs, a victim liaison's work depends on effective communication with the survivors. Counsel must note, however, that a victim liaison cannot pressure survivors to cooperate with her. The cooperation of the survivors must be entirely voluntary.

The connection that a victim liaison develops between herself and the survivors of a crime is not established easily and requires a building of trust between the liaison and the survivors. Victim liaisons face a number of obstacles while building this trust. The first obstacle is that the liaison is a member of the defense team; this may cause survivors to question the liaison's true motives. Second, the prosecution may instruct the survivors not to cooperate with the liaison. The pain and anger felt by the survivors, whether expressed in the media, in trial testimony, or in victim impact evidence, increase the prosecution's chances of successfully imposing the death penalty. By opposing the survivors' cooperation with a victim liaison, the prosecution seeks to decrease the risk that the survivors will support a plea agreement or speak out against the imposition of the death penalty on the defendant.

As part of the trust-building process, survivors will often make requests of the liaison. According to Tammy Krause, survivors "will test the victim liaison and they have every right to do that. [Survivors] need to test the victim liaison because they have been so harmed by the crime and ignored by the court, and it is the defense team (who represents the person who harmed them) approaching them." The natural hesitancy felt by survivors can be overcome by a liaison who is reliable and does not violate the trust that develops between the liaison and the survivors. In order to maintain this trust, a liaison must follow through

ability to help the survivors deal with their intense level of emotion.


255. Interview with Krause, supra note 20.

256. See Stock Declaration, supra note 222, at 6 n.1 (noting that the liaison would refrain from contacting survivors if they desire no further contact).

257. Interview with Krause, supra note 20.

258. E-mail from Krause, supra note 5.


260. E-mail from Krause, supra note 5.

261. Id.
with his promises to the survivors. Liaisons, as well as defense counsel, must always avoid violating the survivors' trust.

A victim liaison places no conditions on his relationship with the survivors. This relationship remains unconditional for its duration. A victim liaison does not approach the survivors with any type of agenda or for a hidden purpose. All encounters between the survivors and the liaison must be focused singularly on the needs of the survivors. As part of the defense team, however, the liaison remains aware of the needs and interests of the defendant and considers how these needs intersect with the needs of the survivors.

A survivor's decision to advocate for a life sentence for the defendant, forgive the defendant, or simply support the most efficient judicial resolution of the case, may not be met with great enthusiasm from the prosecution. Under these circumstances, a victim liaison's work becomes critically important to both the survivor and the defendant. A survivor, acting against the interests of the prosecution, often needs emotional support for his decision. A liaison can provide this support while also acting as a practical resource about the workings of the judicial system.

A survivor may also be acting against the interests of other survivors. This makes the liaison's support for the survivor's decision even more essential.

3. Relationship with the Defendant

Victim liaisons who work with capital defense teams do not always meet the defendant on whose behalf they are working. Such a meeting is not always appropriate or necessary. Whether or not the liaison develops a relationship

262. Id.
263. Telephone Interview with Richard Burr, supra note 219.
264. Id.
265. See Adrienne N. Barnes, Reverse Impact Testimony: A New and Improved Victim Impact Statement, 14 CAP. DEF. J. 245, 254-59 (2002) (describing the prosecution's reaction to a victim's mother who chose to oppose the imposition of the death penalty on the man who killed her daughter).
266. See id. at 254-60 (discussing a case in which the victim's mother looked to defense counsel for support after deciding to oppose the decision of the prosecution to seek the death penalty).
267. See Sara Rimer, Victims Not of One Voice On Execution of McVeigh, N.Y. TIMES, Apr. 25, 2001, at A1 (describing the views on the death penalty held by victims and survivors of the bombing of the Oklahoma City federal building). The majority of the victims and survivors of the bombing supported Timothy McVeigh's execution. Id. There were, however, very outspoken survivors who opposed the imposition of the death penalty on McVeigh. Id. Several of these survivors admitted that in the immediate aftermath of the bombing they would have wholeheartedly supported McVeigh's execution. Id. It took time for their emotions to calm and their moral beliefs and values to return. Id. Strong emotion, such as that felt after losing a family member, takes time to release. Due to this delayed release, a survivor's view of the death penalty may change in the time between the commission of the crime and its final judicial resolution.
268. Interview with Krause, supra note 20.
269. Id.
with the defendant, counsel must inform the defendant of the work of the liaison for several reasons.

First, as a result of the work of a liaison, a defendant may be asked to provide information, consent to restrictions on his freedom, or agree to the specific request of a survivor. More emotionally, the survivors may seek an apology or an expression of remorse. The gravity of these requests demands that the defendant possess an understanding of the possible implications of the liaison's work. By keeping the defendant informed as the case progresses, the defendant will be better prepared to participate in making critical decisions about his case. Information about the survivors, the impact of the offense on the survivors' lives, and the needs that the offense created for the survivors, even if presented through an intermediary, may cause the defendant's restorative process to begin. The defendant's healing process may parallel that of the survivors.

Second, as an ethical matter, defense counsel have an obligation to inform their client about developments in his case. Rule 1.4 of the Virginia Rules of Professional Conduct requires defense counsel to keep the defendant “reasonably informed” and “explain a matter to the extent reasonably necessary to permit the client to make informed decisions.” As discussed, survivors may have requests for the defendant that may limit his freedoms in the future. For the defendant to determine the course of action that is in his best interest, he must have all of the necessary information. Information that a victim liaison uncovers through his work may affect a defendant's decisions and thus should be shared with the defendant.

When defense counsel informs the defendant that a victim liaison has joined the defense team, he should present the goals of the liaison very practically. Counsel should explain to the defendant that if the defense team does not reach out to the survivors, then the prosecution will be the only party reaching out to

270. See LeBaron, supra note 236 (stating that Joie Armstrong's survivors had input into the conditions of the plea agreement under which her killer served his life sentence).

271. Telephone Interview with Richard Burr, supra note 219.

272. See Zehr, supra note 21, at 197 (remarking on the reluctance of offenders to accept responsibility and the importance of “strong encouragement or even coercion to accept their obligations”). Zehr notes that offenders cannot be forced to accept responsibility. Id. at 198. However, ensuring that the offender realizes the full impact of his offense may lead him to acknowledge his obligations.


274. For example, defendants have been asked to cease making public statements or giving interviews, to give up the right to make any money from the commission of the offense, and to provide information for the survivors on demand. See Burr, supra note 14, at 529; Burr & Krause, supra note 7.

them and looking out for their interests. A defendant may find this presentation persuasive.

F. Plea Agreements

If the prosecution and the defense agree upon a plea bargain, it is unlikely that a survivor will receive an apology from the offender, reconcile with the offender, or receive restitution from the offender. Thus, in order to reconcile the needs of the survivors and the defendant and gain support from the survivors, a plea agreement should balance their respective interests. The relationship that the liaison develops with the survivors gives him an understanding of the survivors’ needs. As a part of the defense team, the liaison also understands the needs of the defendant. The liaison possesses a unique understanding of both parties’ needs, including conflicts and common ground. The liaison brings this invaluable perspective to the negotiation of a plea agreement that best serves the parties’ respective interests.

Through his relationship with the survivors, a victim liaison has the opportunity to highlight pertinent information about the capital criminal justice system that may affect the survivors’ decision whether or not to support a plea agreement. For example, a liaison may explain that a plea bargain will bring finality and closure to a process that would otherwise continue for years. Death row inmates executed in 2000 served an average of eleven years and ten months on death row before they were finally executed. The average length of stay on death row for the years 1977-2001 was 123 months. By providing survivors with this information, liaisons allow them to make a fully informed decision regarding whether to support a plea agreement for the defendant.

In certain capital cases, survivors may have an interest in avoiding trial to

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276. Id.
278. Neither the prosecution, representing the state, nor the liaison, representing the defendant, consider only the interests of the survivors. It has been proposed that the victims of a crime be provided with independent counsel to ensure that their interests are represented in plea negotiations and other strategic decisions. See generally Walker A. Matthews, III, Proposed Victims’ Rights Amendment: Ethical Considerations for the Prudent Prosecutor, 11 GEO. J. LEGAL ETHICS 735 (1998).
279. Stetler, supra note 204, at 45.
281. Id.
protect the reputation of the victim.\textsuperscript{282} The public release of personal information regarding the victim’s life or the circumstances that surrounded the victim’s death may destroy the reputation of the victim.\textsuperscript{283} The survivors may prefer to avoid trial so that this information either remains private or does not re-enter the media spotlight during trial.\textsuperscript{284} In cases in which the victim’s reputation is not at risk, the survivors may still want to avoid trial so that they will not be subjected to the public release of details surrounding the offense, both in the courtroom and in the media.\textsuperscript{285} If either of these circumstances exists, a liaison can explain to survivors that a plea agreement may best protect both their interests and the interests of the victim.

If survivors agree to support a plea agreement for the defendant, they often have input into its content.\textsuperscript{286} Survivors typically request that the defendant act for their benefit.\textsuperscript{287} Alternatively, they may ask that he cease certain actions that cause them grief or pain.\textsuperscript{288} Provisions that survivors have requested in the past include: (1) the defendant must cease giving public statements or interviews; (2) the defendant must relinquish his right ever to make a profit from the crime; and (3) the defendant must agree to meet with a family member of the victim if that family member should ever want to meet.\textsuperscript{289}

\textsuperscript{282} Interview with Krause, supra note 20.

\textsuperscript{283} Id.

\textsuperscript{284} A case in which the survivors hoped to avoid trial and, thus, the increased publicity, was the so-called “bodies-in-barrels” case. Id. John E. Robinson Sr. lured women to his home to become his “sex slaves” and engage in sadomasochistic sexual relations. \textit{Jury Sees Sex-Slave Tape}, \textit{ORLANDO SENTINEL}, Oct. 15, 2002, at A13, 2002 WL 100896127. During his trial, jurors watched a video of a sex session between one of the victims and Robinson. Id. Despite some of the survivors’ wishes, Robinson was tried, convicted, and sentenced to death in Kansas for killing two women and stuffing their bodies into barrels. \textit{See Lara Weber & Mike Morgan, Death Penalty for Man Who Killed 2 Women}, CHI. TRIB., Jan. 22, 2003, at 8, 2003 WL 9695181 (describing method of murder). Robinson was also convicted of first-degree murder for killing a third woman whose body was never found. Id.

\textsuperscript{285} Burr & Krause, supra note 7 (quoting the letter from the Armstrong family in regard to Stayner’s plea agreement).

\textsuperscript{286} Telephone Interview with Richard Burr, supra note 219.

\textsuperscript{287} Id.

\textsuperscript{288} Id.

\textsuperscript{289} Burr & Krause, supra note 7; Interview with Krause, supra note 20; Telephone Interview with Richard Burr, supra note 219. Burr foresees that the provision that the defendant agree to meet with the family of the victim, if the family ever so chooses, will become a mainstay provision in plea agreements in which the survivors’ interests have been taken into consideration. Telephone Interview with Richard Burr, supra note 219. Such a provision does not require any immediate action by either defendant or survivor. Id. It simply leaves open the opportunity for future action. Id.
G. Victim Impact Evidence

Victim impact testimony can be “lethal for capital defendants and often illusory for the witnesses who provide it.” Survivors often view this testimony as their opportunity to participate in the judicial process, their opportunity to be heard, and their opportunity to finally express their anger or sorrow in the presence of the defendant. As a practical matter, defense counsel cannot ignore the influence of victim impact evidence on a capital sentencing jury.

In Virginia capital murder cases, victim impact evidence enters the penalty phase through a victim impact statement and victim impact testimony. First, victims have the opportunity to prepare a written victim impact statement. The sentencing jury, however, will not see this statement. Under Virginia Code Section 19.2-264.5, the impact statement is included in the post-sentence report that is reviewed by the court after a jury has sentenced a defendant to death and prior to the court’s imposition of a sentence. In addition, Section 19.2-11.01(A)(4)(c) provides that, upon motion by the Commonwealth, a survivor will be given the opportunity to testify at the sentencing proceeding regarding the

290. Burr, supra note 14, at 517; see also Peggy M. Tobolowsky, Victim Participation in the Criminal Justice Process: Fifteen Years After the President’s Task Force on Victims of Crime, 25 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 21, 90 (1999), WL 25 NENGJCCC 21 (discussing the effect of victim participation on a victim’s satisfaction with the offender’s sentence and the criminal justice system generally).

291. See Burr, supra note 14, at 517 (stating that “victim impact testimony provides a momentary opportunity for survivors to give voice to their loss, be heard, and feel less isolated”). The provision of victim impact evidence may be the survivors’ only opportunity to participate actively in the judicial process. Survivors are typically passive observers of the remainder of the system. Interview with Krause, supra note 20.

292. See Burr, supra note 14, at 517 (discussing the importance of overcoming the “instinct that survivors are unreachable and inherently joined to the prosecution”). It should be noted that in addition to survivors providing victim impact evidence, members of the community may seek the opportunity to address the court regarding the impact that the offense had on their lives. Katie Long, Note, Community Input at Sentencing: Victim’s Right or Victim’s Revenge?, 75 B.U. L. REV. 187, 195-96 (1995) (discussing the recent increase in communities’ participation in the sentencing of defendants); see also Shanker, supra note 259, at 728-29 (describing McVeigh’s challenges to the classes of individuals the court permitted to provide victim impact testimony).

293. See VA. CODE ANN. § 19.2-11.01(A)(4)(c) (Michie Supp. 2002) (allowing victims the opportunity to testify as to the impact of a crime prior to the defendant's sentencing); VA. CODE ANN. § 19.2-264.5 (Michie 2000) (stating that the post-sentence report of a defendant whose punishment has been fixed at death shall include a Victim Impact Statement); VA. CODE ANN. § 19.2-299.1 (Michie 2000) (describing the preparation and submission of a Victim Impact Statement).

294. §§ 19.2-264.5, -299.1.

295. See § 19.2-264.5 (stating that the Victim Impact Statement shall be included in the post-sentence report for review by the court).

296. Id.
impact of the crime.297

The work of a victim liaison may critically influence both victim impact statements and victim impact testimony. A liaison reaches out to the survivors and asks them what they need and what they want.298 This provides them with a “forum for the expression of their suffering.”299 This release of emotion to a member of the defense team can impact the tone and content of the victim’s impact statement or testimony.300 This emotional release prior to the provision of impact evidence may decrease the level of emotion in the evidence, thus decreasing the emotion felt by the judge or jury when presented with the impact evidence.

In Virginia, statutes preclude a victim from recommending a specific sentence, life or death, for the defendant in the victim impact statement.301 However, survivors can make their interest very clear without specifically stating the sentence they consider proper. Realistically, if the prosecution calls the survivor to testify at sentencing, then jurors can assume that he supports the imposition of the death penalty.302 The wide leeway that courts grant victims in their impact evidence re-emphasizes the potential influence of the survivors’ release of emotion to the liaison.303

H. Application of the Principles of Restorative Justice by Defense Attorneys

Defense counsel should apply the principles of restorative justice with or without the assistance of a victim liaison. “Every capital defense team, at whatever stage of litigation, has a responsibility to approach the victim’s survivors.”304 Counsel should not look at the survivors as “impassioned and embittered

297. §19.2-11.01(A)(4)(c); see Paige McThenia, The Role of Forgiveness in Capital Murder Cases, 12 CAP. DEF. J. 325, 337-44 (2000) (outlining several strategies for bringing before the court evidence that the victim’s family has forgiven the defendant).

298. Burr, supra note 14, at 528.

299. Id. at 526-27.

300. See Stetler, supra note 204 (concluding that giving the survivors an opportunity to vent “rage away from the courthouse—and the eyes and ears of jurors—facilitates a fairer trial”).

301. See § 19.2-264.4 (limiting a victim’s testimony at a sentencing proceeding to the factors set forth in § 19.2-299.1); § 19.2-299.1 (limiting the scope of victim impact statements).

302. Markus Dirk Dubber, The Victim in American Penal Law: A Systematic Overview, 3 BUFF. CRIM. L. REV. 3, 25 (1999), WL 3 BFCRIMLR 3 (noting that while a victim is precluded from recommending a death sentence or a life sentence for a defendant, his opinion is clear by virtue of whether the defense or the prosecution called the victim to testify).

303. See Burr, supra note 14, at 520-21 (discussing a court’s failed efforts to control the level of emotion presented in victim impact testimony).

304. Stetler, supra note 204, at 42.
adjuncts to the prosecution team."305 In defense-based survivor outreach, the defense understands that it is the party that can most effectively determine and respond to the needs of the survivors.306 Much like a victim liaison, defense counsel is capable of providing the answers and explanations that survivors seek.307 The prosecution or the media may have misinformed or underinformed the survivors regarding the capital criminal justice system.308 Alternatively, the survivors may not have been given any explanation of the capital system. Defense counsel, by reaching out, has an opportunity to develop a relationship with the survivors through very simple gestures.309 Such acts may soften the anger that the survivor commonly feels.310 This softening allows survivors to consider their wants and needs in a more rational manner.

Simple gestures by defense counsel may impact the resolution of their client’s case.311 Through a simple introduction or an inquiry into the needs of the survivors, defense counsel may uncover interests that the prosecution may have known, but that the defense may never have discovered. For example, the survivors may want the judicial proceedings to end quickly in order to avoid the years of trauma that accompany trial and appeals.312 If defense counsel reaches out to the survivors, counsel will be aware of this interest in efficient judicial closure and they can work toward fulfilling this need because it is likely in the best interest of both the survivors and the defendant.313 Despite counsel’s lack of formal sensitivity training, small gestures can create a relationship between the survivors and the defense team and impact the lives of all parties involved.

If defense counsel chooses to apply the principles of restorative justice, counsel must “understand the principles and that reaching out to people is not a means to an end, it is the end in itself.”314 Defense counsel, like victim liaisons, must not reach out with any hidden agenda.315 Counsel should let survivors know that they are available to them but should not pressure them into developing a relationship.316 Defense counsel may be tempted to reach out to survivors with the interests of their client in mind. Attorneys should not seek a relation-

305. Burr, supra note 14, at 526.
306. Id. at 527.
307. Stetler, supra note 204, at 46.
308. Id. at 45.
309. Id. at 44.
310. Id.
311. Burr, supra note 14, at 528.
312. See id. (citing the Armstrong family’s desire to avoid the trial and appeals process).
313. See id. at 528-29 (describing the wishes of the Armstrong family).
314. Telephone Interview with Richard Burr, supra note 219.
315. Id.
316. See Stock Declaration, supra note 222, at 6 n.1.
ship with survivors for this reason. The survivors have endured a tremendous loss and defense counsel should not approach them for any reason except to meet the survivors’ needs. Ideally, by meeting the needs of the survivors, the needs of the defendant, whether they be support for a plea agreement or softened victim impact evidence, will be met as well.

The relationship between defense counsel and the survivors must be unconditional, but defense counsel cannot forget their ethical obligation to act as a zealous advocate for their client. True “diligence includes not only an adversarial strategy but also the vigorous pursuit of the client’s interest in reaching a solution that satisfies the interests of all parties.” The goals of restorative justice parallel this aspect of the Virginia Rules of Professional Conduct. The strategy that best serves the interests of the defendant is often the same strategy that serves the interests of the survivors and the community. Counsel should recognize this parallel and consider how their strategies affect these other parties.

IV. Case Study: United States v. Stayner

Cary Stayner murdered naturalist Joie Armstrong (“Joie”) in Yosemite National Park in July, 1999. As part of Stayner’s defense team, victim liaison Tammy Krause contacted Joie’s mother, Leslie Armstrong (“Armstrong”). When Krause originally called Armstrong to speak about restorative justice, Armstrong said, “Whatever the hell that is... not that I even believe there can be justice in Joie’s case. Nothing will bring her back.” Despite protests from Joie’s father and from her friends, Armstrong agreed to meet with Krause. Krause visited Armstrong at her home in Florida. After speaking to Krause about the wants and needs of Joie’s family and whether a plea bargain for Stayner met any of these needs, Armstrong claimed that she “didn’t want anything at that point, except to have Joie back.”

After careful research and several conversations with Krause, Armstrong...
penned a letter to the rest of Joie’s family, including Joie’s fiancé. She also sent this letter to the Carringtons, Sunds, and Pelossos—the families of Stayner’s other victims. In this letter, Armstrong described the statistical odds of Stayner’s actual execution, the potential length of Stayner’s trials and subsequent appeals in state and federal courts, and the conditions that the families could request in addition to the assurance that Stayner would remain in prison for life. The Carringtons, Sunds, and Pelossos chose not to support a plea agreement for Stayner in California state court. However, most of the Armstrong family did support a plea agreement for Stayner in federal court, and a letter from the family accompanied Stayner’s plea bargain to then-Attorney General Janet Reno.

The Armstrong family’s letter in support of a plea agreement for Stayner stated: “Joie’s death at the hands of Cary Stayner cannot be changed. Given this reality, we find the media attention centered on Stayner unbearable.” It also stated: “We want Cary Stayner to agree to cease making public statements or giving interviews.” In addition, the Armstrong family included the condition that Stayner meet with any family member that wished to meet with him and

325. Id.
326. LeBaron, supra note 236.
327. Id. The judicial disposition of Stayner’s crimes would continue for longer than the average capital case due to the fact that Joie’s murder, because it occurred in a federal park, was a federal offense and the murders of the other three victims were state offenses. See id. In her letter to the rest of Joie’s family, Armstrong estimated that it might take up to twenty-five years to reach a final decision. Id. Between 1977 and 2002, seventy-two California death row inmates had their sentence overturned, were resentenced, or released; thirteen inmates committed suicide. Death Penalty Focus, California Death Penalty Statistics, at http://208.55.30.156/facts/other/facts_statistics.shtml (last visited Jan. 31, 2003). Nineteen inmates died of other causes. Id. California executed ten inmates during this twenty-five year span. Id.
328. A California jury found Stayner guilty and sentenced him to death for the murders of Carole Sund, Juli Sund, and Silvina Pelosso. Stacy Finz, Yosemite Killer Sentenced to Death; Terrible Details of Stayner Case Stun Even the Judge, S.F. CHRON., Dec. 13, 2002, at A1, 2002 WL 4037993. The families of these victims did not support a plea bargain for Stayner. In fact, these families supported the imposition of the death penalty. Interview with Krause, supra note 20. Carole Carrington, the mother and grandmother of two of Stayner’s victims said, “[i]n the world there are a few people who don’t deserve to be around, and I think he’s one of them.” Burr & Krause, supra note 7 (quoting A.C. Thompson, Is it Worth $3 Million to Kill This Man?, S.F. BAY GUARDIAN, Apr. 24, 2002, http://www.sfbay.com/36/30cover_carystayner.html (last visited Mar. 24, 2003)). Krause did communicate with the Carrington, Sund, and Pelosso families. Interview with Krause, supra note 20. However, they resisted cooperation and Krause was unable to develop the type of trusting relationship that she developed with Leslie Armstrong. Id.
329. LeBaron, supra note 236.
331. Id.
that any such meeting be kept confidential. The wants and needs of the Armstrong family shaped the plea agreement under which Stayner pleaded guilty in federal court in November, 2000.

At Stayner’s sentencing, Stayner apologized to Joie’s family. According to the Los Angeles Times, “a weeping Cary Stayner turned to face the family, friends, and fiancé of Joie Armstrong . . . to seek their forgiveness.” Stayner and Leslie Armstrong held each other’s gaze while Stayner said:

If there is a God in heaven, I pray for his forgiveness. I cannot expect any forgiveness from Mrs. Armstrong or her family for taking Joie from them. . . . I cannot even ask forgiveness from my own family who I have hurt so deeply and who have already suffered so much. I have to live with the terrible reality of what I have done. I am very sorry that everyone else must live with it too.

Stayner’s plea agreement and apologies illustrate the dual-focus of restorative justice. First, by choosing to support a plea agreement for Stayner, the Armstrong family took an active role in the judicial process and gained judicial closure. Second, the Armstrong family demonstrated their ability to channel their anger and resentment into a fulfillment of their practical and emotional needs.

V. Conclusion

Defense-based victim outreach focuses on the emotional and judicial needs of the survivors. This approach empowers the survivors and provides them with an active role in the judicial process. Defense-based victim outreach also helps the defendant to take responsibility for his crime, thereby beginning the restorative process for both the defendant and the survivors.

A victim liaison assists the defense team by developing relationships with the survivors, the prosecution, and, when appropriate, the defendant. These relationships provide the liaison with a unique perspective on the needs of these groups and the ideal means of meeting these needs. Defense counsel, even in the

332. Id.
334. Id.
335. See text accompanying notes 329-35 (describing the contents of Stayner’s plea agreement). The Armstrong family received judicial closure through the assurance that Stayner would remain in prison for life. Emotionally, Leslie Armstrong stated that she would never have “closure” because that term implies that she could move on and forget about what happened. Hanley, supra note 333. However, she did state that she would “save room in her heart to forgive him some day.” Id.
absence of a victim liaison, should consider the effect that the survivors may have on the disposition of each case. Counsel should always consider approaching the survivors, both for the benefit of the survivors and for the benefit of their client.