

RESTORING HUMAN TRAFFICKING VICTIMS THROUGH VICTIM-OFFENDER DIALOGUE

*Carina Patrilli**

INTRODUCTION

The criminal justice system focuses on punishing criminals for their wrongs, which often results in the victims of those crimes believing their needs have been unattended to or ignored.¹ Because this traditional view of the justice system is offender-focused, it has resulted in more harm to victims, to their families, and to communities.² A progressive theory that attends to the needs of victims instead of focusing solely on the offender that is gaining popularity in North America and Europe is called “restorative justice.”³ Restorative justice focuses on responding to and understanding the victims well as those affected by the crime, rather than focusing solely on the offender.⁴ One form of restorative justice is Victim-Offender Dialogue (VOD), which involves direct dialogue between the victim and the offender with one or more facilitators present as they discuss the crime committed.⁵ This Note will focus on the use of VOD as an option for “victims” of human trafficking who wish to have a dialogue with their trafficker or “offender.”

This Note will explore the pros and cons of using victim-offender dialogue in cases of human trafficking.⁶ In the first part of the Note, a background on human trafficking will be provided, including current statistics on human trafficking cases and the effects

* B.A. French Language and Literature, SUNY Stony Brook University, 2005; J.D. Candidate, Benjamin N. Cardozo School of Law, Yeshiva University, 2011.

¹ See Hon. Y. Bennett Burkemper, Jr., Nina Balsam & May Yeh, *Restorative Justice in Missouri's Juvenile Justice System*, 63 J. Mo. B. 128 (2007).

² See *infra* Part II, section A.

³ MARK S. UMBREIT, VICTIM OFFENDER MEDIATION TRAINING MANUAL 15 (June 29, 1998).

⁴ See Mark S. Umbreit, Betty Vos, Robert B. Coates & Elizabeth Lightfoot, *Restorative Justice: An Empirically Grounded Movement Facing Many Opportunities and Pitfalls*, 8 CARDOZO J. CONFLICT RESOL. 511, 511–64 (2007) (discussing the history and development of restorative justice and the different forms into which it has evolved).

⁵ See *id.* at 529.

⁶ The amount of written research on human trafficking is very limited and there is still much more to learn about these types of cases. However, the sources in this note are some of the most widely read in the area of human trafficking.

on victims. Restorative justice will be discussed in the second part of the note, with specific emphasis on VOD.⁷ The third part of the Note will explore how the criminal system has used VOD, beginning with low-level crimes and then exploring how VOD has been applied to serious and violent crimes. This Note will then propose the application of VOD to human trafficking cases, thereby expanding the use of VOD to these types of high-level crimes. It is proposed that VOD can be beneficial to both the victim and offender in certain human trafficking cases if applied effectively. VOD, however, should be applied cautiously on a case-by-case basis and limited to cases where it would be appropriate.

I. BACKGROUND ON HUMAN TRAFFICKING

Human trafficking has become more widely covered in the media only in the last couple of years. The trafficking of women and young girls, mainly for sex exploitation, has primarily taken on public notice. Human trafficking, however, entails not only sex exploitation, but also forced labor and other forms of debt servitude.⁸ Human trafficking involves an act of “recruiting, transporting, transferring, harboring or receiving a person through a use of force, coercion or other means, for the purpose of exploiting them.”⁹ Human trafficking invariably involves forcible movement of a person from one place to another and forcible utilization of their services with the intention of inducting them into trade for commercial gains.¹⁰ Human trafficking takes on many forms, such as forced prostitution where women and children are the primary

⁷ It is important to note that since VOD occurs behind closed doors, there are few sources available that illustrate in detail examples of VOD sessions.

⁸ See Polaris Project, For a World Without Slavery, *Human Trafficking*, <http://www.polarisproject.org/content/view/26/47/> (last visited Oct. 20, 2009) [hereinafter Polaris Project].

⁹ United Nations Office on Drugs and Crime, *Human Trafficking*, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited Oct. 10, 2009) (defining human trafficking and how the United Nations Office on Drugs and Crime responds to trafficking). Human trafficking is defined in this Note according to Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, which supplements the United Nations Convention against Transnational Organized Crime.

¹⁰ See United Nations Gift, *Global Initiative to Fight Human Trafficking*, <http://www.ungift.org/ungift/en/humantrafficking/index.html> (last visited Oct. 10, 2009). *But see* Polaris Project, *supra* note 8. “Forced transportation in the absence of slavery-like labor or commercial sexual exploitation is usually considered the crime of kidnapping. Human trafficking is modern-day slavery through labor or commercial sexual exploitation, and does not require transportation to occur, though transportation may be involved.” *Id.*

victims, domestic servitude, forced labor with little or no pay, organ trafficking, and fake adoptions.¹¹ Recent estimates of global profits from human trafficking are as high as thirty-two billion dollars, if both the sale of individuals and the value of their exploited labor or services are taken into account.¹²

It is important to understand that human trafficking is not the same as human smuggling. According to U.S. Immigration and Customs Enforcement, human smuggling is the illegal transportation of people into a country by purposely evading immigration laws.¹³ Human smuggling also includes the “harboring of aliens already in a country illegally.”¹⁴ “Migrant smuggling generally involves the consent of those being smuggled.”¹⁵ A person who is smuggled is free to leave once he or she is taken across the border; however, smuggling can become trafficking once a person is compelled to provide labor or services.¹⁶

A. Legislation

In 2000, the United States took a dramatic turn when it enacted the Trafficking Victim’s Protections Act (TVPA).¹⁷ This new legislation made it a federal offense to aid or benefit from human trafficking.¹⁸ The Act is comprehensive in addressing how to combat and prevent human trafficking, and includes government assistance and protection for victims.¹⁹ The Act also sets minimum standards for prosecuting traffickers.²⁰ Congress later passed the TVPA Reauthorization Acts of 2003 and 2005 (TVPRA), amend-

¹¹ See UNODC, *supra* note 9.

¹² See *id.*

¹³ See United States Immigration and Customs Enforcement, *Human Trafficking and Human Smuggling*, Mar. 25, 2009, <http://www.ice.gov/pi/investigations/publicsafety/humantrafficking.htm>.

¹⁴ *Id.*

¹⁵ ANTI-HUMAN TRAFFICKING MANUAL FOR CRIMINAL JUSTICE PRACTITIONERS: MODULE 1: UNODC UNITED NATIONS OFFICE ON DRUGS AND CRIME 12 (May 2009), available at http://www.unodc.org/documents/human-trafficking/09-80667_module1_Ebook.pdf.

¹⁶ See *id.* at 12–13.

¹⁷ See Trafficking Victim’s Protection Act, 22 U.S.C. §§7101–7110 (2000).

¹⁸ See *id.*

¹⁹ See *id.* §§ 7104–7105.

²⁰ See *id.* § 7108 (2000); see also United Nations Criminal Justice Information Network, *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, Nov. 15, 2000, available at http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (describing that the purpose of the protocol is to protect victims, to combat trafficking and to promote international cooperation).

ing the TVPA slightly and reallocating funding to achieve the goals of the original TVPA.²¹

The TVPA specifies that if death results from the crime of trafficking, or if the crime includes kidnapping, attempted kidnapping, aggravated sexual abuse, attempt to commit aggravated sexual abuse or attempt to kill, the defendant can be sent to prison for a term of any number of years or for life in prison.²² A person found to have used forced labor services or provided these labor services could serve up to twenty years in prison, provided that the crime did not include kidnapping, attempted kidnapping, aggravated sexual abuse, attempt to commit aggravated sexual abuse or attempt to kill.²³ If the crime included any of these additional offenses, the offender could serve additional time. Additionally, someone is guilty of sex trafficking when one recruits, harbors, transports or obtains a person for the purpose of a commercial sex act.²⁴ An offender may be sent to prison for up to twenty years or sentenced to life in prison depending, on the age of the person being trafficked, specifically whether or not the person is a “child.”²⁵

²¹ See HEATHER J. CLAWSON, NICOLE DUTCH, SUSAN LOPEZ & SUZANNA TIAPULA, PROSECUTING HUMAN TRAFFICKING CASES: LESSONS LEARNED AND PROMISING PRACTICES i, i (June 30, 2008), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/223972.pdf>.

²² See Trafficking Victim’s Protection Act, 22 U.S.C § 7109 (2000).

²³ See *id.* Under Section 7109, “Strengthening Prosecution and Punishment of Traffickers,” forced labor is defined as:

[W]hoever knowingly provides or obtains the labor or services of a person (1) by threats of serious harm to, or physical restraint against, that person or another person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process, shall be fined under this title or imprisoned not more than 20 years, or both.

Id.

²⁴ See Trafficking Victim’s Protection Act, 22 U.S.C § 7102 (2000).

²⁵ *Id.* at § 7109. Sex trafficking of children is defined as follows:

Whoever knowingly (1) in or affecting interstate commerce, recruits, entices, harbors, transports, provides, or obtains by any means a person; or (2) benefits, financially or by receiving anything in value, from participation in a venture which has engaged in [a commercial sex act] knowing that force, fraud, or coercion . . . will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in commercial sex act, shall be punished as provided: (1) if the offense was effected by force, fraud, or coercion or if the person transported had not attained the age of 14 years at the time of such offense, by a fine under this title or imprisonment for any term of years or for life, or both; or (2) if the offense was not so effected, and the person transported had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title or imprisonment for not more than 20 years, or both.

Id.

It is important to note that the TVPA also provides victims with services such as medical care, food stamps, housing, cash assistance, and immigration relief.²⁶ Some critics, however, argue that the victim assistance is limited and can be difficult to obtain.²⁷ The TVPA also requires mandatory restitution to all victims; defendants are required to pay the full amount of the victim's losses as determined by court order.²⁸ Specifically, the restitution to the victim includes "the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act."²⁹

After the enactment of the TVPA "[b]etween 2001–2005, U.S. Attorneys investigated 555 suspects" for human trafficking.³⁰ Fifty-eight percent of those cases arose under the TVPA.³¹ Twenty-eight percent of the cases involved involuntary servitude; twenty-four percent were considered forced labor offenses; twenty-three percent involved sex trafficking of children, and nine percent of cases involved trafficking slaves.³² Almost half of the cases initiated by U.S. attorneys were brought in federal judicial district courts in California, Florida, Texas, and New York.³³ Between 2001 and 2005, 222 cases, or fifty-nine percent of all cases brought under the TVPA, were not prosecuted due to "lack of criminal intent, weak or insufficient admissible evidence, prosecution by other authorities or facing other charges in federal court, no federal offense evident."³⁴ Of the defendants convicted between 2001 and 2005, eighty-five percent received prison sentences, seven percent

²⁶ TRAFFICKING VICTIMS PROTECTION ACT OF 2000 FACT SHEET, RESCUE & RESTORE VICTIMS OF HUMAN TRAFFICKING 1 http://www.acf.hhs.gov/trafficking/about/TVPA_2000.pdf (last visited Oct. 24, 2009). The government offers victims of human trafficking the opportunity to become temporary permanent residents under the "T" visa program. The T visa authorizes up to 5,000 victims to become permanent residents after having a temporary permanent resident visa there after 3 years. *See id.*

²⁷ *See* NEW YORK STATE INTERAGENCY TASK FORCE, A REPORT BY THE INTERAGENCY TASK FORCE IMPLEMENTATION OF THE 2007 LAW 5 (Aug. 2008), available at http://www.criminaljustice.state.ny.us/pio/humantrafficking/human_trafficking_rpt_aug08.pdf. One victim waited eighteen months before receiving any assistance provided by the TVPA. *Id.*

²⁸ *See* 22 U.S.C. § 1593 (2000).

²⁹ *Id.*

³⁰ THE BUREAU OF JUSTICE STATISTICS: DATA BRIEF, FEDERAL PROSECUTION OF HUMAN TRAFFICKING 1 (2005), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fpht05.pdf>.

³¹ *See id.*

³² *See id.*

³³ *See id.* Seventeen percent of these cases were opened up in California, Florida opened fourteen percent, Texas had nine percent, and New York had eight percent of cases. *See id.*

³⁴ *Id.* at 1–2.

received probation-only sentences, and eight percent received fines or other sanctions.³⁵ From April 2006 to April 2007, there were 216 cases opened, of which only thirty-one convictions resulted.³⁶ Thus, many cases were not prosecuted, and in the few cases that were, sentences were light despite the seriousness of the offenses. Nonetheless, the TVPA has resulted in the conviction of major trafficking offenders.

The human trafficking case with the largest number of victims to date, *United States v. Kil Soo Lee*,³⁷ was prosecuted by the United States Department of Justice under the TVPA.³⁸ The investigation required the use of five languages and involved several states and countries.³⁹ In 2005, after a three month trial, the United States District Court of Hawaii sentenced Kil Soo Lee to forty years in prison for holding more than 200 people for forced servitude in American Samoa.⁴⁰ Two other co-conspirators were also sentenced.⁴¹ Many of the victims were Chinese and Vietnamese citizens who were subjected to minimal pay, mass beatings, and food deprivation.⁴²

In addition to authorizing the prosecution of these cases, the TVPA established regular national country reports to monitor trafficking and authorized assistance to foreign governments to meet minimum standards.⁴³ The TVPA also authorized actions against foreign governments failing to meet minimum standards set out in Section 7106 of the TVPA.⁴⁴ As a result of the TVPA, the U.S. Department of State categorizes countries according to their efforts in combating human trafficking in tiers.⁴⁵

³⁵ See *id.* at 1–2.

³⁶ UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO CONGRESSIONAL REQUESTERS: HUMAN TRAFFICKING, A STRATEGIC FRAMEWORK COULD HELP ENHANCE THE INTERAGENCY COLLABORATION NEEDED TO COMBAT TRAFFICKING CRIMES 50 (July 2007), available at <http://www.gao.gov/new.items/d07915.pdf>.

³⁷ *United States v. Lee*, 472 F.3d 638 (2006).

³⁸ See U.S. Department of Justice Civil Rights Division, Anti Trafficking News Bulletin 1 (Feb. 2004), available at <http://www.nlpoa.org/FEB%2004%20Trafficking%20Newsletter.pdf>.

³⁹ See UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 36, at 56.

⁴⁰ See U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION, *supra* note 38, at 1–2.

⁴¹ See *id.*

⁴² See *id.* at 2.

⁴³ See Trafficking Victim's Protection Act, 22 U.S.C. §§ 7106–07 (2000).

⁴⁴ See *id.* Actions against those governments that fail to satisfy the minimum standards include limiting non humanitarian, non-trade related aid. See *id.*

⁴⁵ See U.S. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 2009 TIER PLACEMENTS, <http://www.state.gov/g/tip/rls/tiprpt/2009/123132.htm>. Tier One includes countries whose governments are fully complying with the minimum standards set out in the TVPA for combating trafficking. Tier Two countries are those that do not fully comply with the TVPA standards,

New York implemented its own anti-human trafficking law seven years after the TVPA was enacted.⁴⁶ On June 6, 2007, New York passed New York Penal Law Section 230.34, the state's first law against human trafficking.⁴⁷ This law criminalized sex and labor trafficking.⁴⁸ It also toughened penalties for traffickers and established services for victims. New York is one of the few states, aside from Alaska, Hawaii, Missouri and Washington, that has criminalized the operation of sex tour businesses.⁴⁹ New York Public Law Section 135.35 specifically criminalizes labor trafficking by making it a class D non-violent felony with a maximum sentence of seven years imprisonment.⁵⁰ Sections 230.36 and 135.36 also combat human trafficking by precluding "the liability of human trafficking victims as accomplices to their traffickers in the prosecution of human trafficking crimes."⁵¹ Also, Section 700.05(8)(b) of the Criminal Procedure Law includes sex trafficking and labor trafficking as crimes for which eavesdropping and using electronic surveillance warrants can be obtained.⁵² Lastly, under New York Correction Law Section 168(a)(2)(i), any person found guilty of sex trafficking or attempted sex trafficking is now required to register as a sex offender in New York.⁵³ After the implementation of

but are undergoing significant efforts to come into compliance with the standards. There is also a Tier Two watch list. These countries have not met the minimum requirements of TVPA however are taking significant efforts to do so and a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; or b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year. Tier Three countries do not comply with the minimum standards and have no plans to undergo significant efforts to do so. *See id.*

⁴⁶ *See* New York Executive Chamber, <http://www.state.ny.us/governor/press/0606071.html> (last visited Oct. 24, 2009). The New York State Anti-Trafficking Law was signed by Governor Eliot Spitzer. *See id.*

⁴⁷ *See* New York State Interagency Task Force, *A Report By the Interagency Task Force Implementation of the 2007 Law 5* (Aug. 2008), available at http://criminaljustice.state.ny.us/pio/humantrafficking/human_trafficking_rpt_aug08.pdf.

⁴⁸ *See* N.Y. Penal Law § 230.34 (2007).

⁴⁹ New York State Interagency Task Force, *supra* note 47, at 9. A person commits the crime of sex trafficking when he or she intentionally advances or profits from prostitution by: (1) providing the victim with certain drugs; (2) making material false statements; (3) withholding or destroying government identification documents; (4) requiring repayment of a debt; (5) using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in prostitution by making that person fearful of one of eight actions or consequences against him or her. *See id.* For complete text, refer to N.Y. Penal Law §230.34 (2007).

⁵⁰ *See* N.Y. Penal Law § 135.35.

⁵¹ New York State Interagency Task Force, *supra* note 47, at 11.

⁵² *See* CODE CRIM. PROC. § 700.5(8)(b).

⁵³ New York State Interagency Task Force, *supra* note 47, at 12.

NYPL §230.34, the Queens County District Attorney, on June 18, 2008, indicted a twenty-two year old for using “intimidation and threats of murder to force a teenage girl to perform sex acts for approximately a dozen customers a day.”⁵⁴

Since the enactment of the TVPA, many other statutes in other states have been enacted with the goal of combating and criminalizing human trafficking. For example, many states have included labor trafficking and sexual trafficking as punishable offenses into their penal codes. This is a great initiative towards criminalizing human trafficking and punishing traffickers. Much work, however, still needs to be done with tending to victims and their families, such as expanding the scope of services and rights available to people who are currently in a trafficking situation, and to those who escaped from such situation.

B. General Psychological and Physical Reactions of Victims of Human Trafficking

Very little research has been conducted on the physical and psychological health of human trafficking victims,⁵⁵ making it difficult to understand both the short and long term effects on victims. Specifically, there is a lack of reliable research in the area of labor trafficking and its effect on the mental health of victims. The studies that do exist have focused on women who were exposed to sexual violence during trafficking.⁵⁶ This research has revealed that victims carry with them many painful memories, experience trauma, and have developed psychological problems, such as post-traumatic stress disorder.⁵⁷

Victims of human trafficking endure many types of abuse and torture. A victim can be physically abused, worked to exhaustion, forced to engage in prostitution, or deprived of food. “No two victims of trafficking are the same and the impact trafficking has upon

⁵⁴ New York State Interagency Task Force, *supra* note 53, at 2.

⁵⁵ See UNITED NATIONS OFFICE ON DRUGS AND CRIME, MODULE 3: PSYCHOLOGICAL REACTIONS OF VICTIMS OF TRAFFICKING IN PERSONS 1 (May 2009), available at http://www.unodc.org/documents/human-trafficking/09-80667_module3_Ebook.pdf.

⁵⁶ See, e.g., Cathy Zimmerman, Mazedra Hossain, Kate Yun, Brenda Roche, Linda Morison & Charlotte Watts, *Stolen Smiles: A SUMMARY REPORT ON THE PHYSICAL AND PSYCHOLOGICAL HEALTH CONSEQUENCES OF WOMEN AND ADOLESCENTS TRAFFICKED IN EUROPE 2* (The London School of Hygiene & Tropical Medicine 2006), [http://www.lshtm.ac.uk/hpu/docs/Stolen Smiles.pdf](http://www.lshtm.ac.uk/hpu/docs/Stolen_Smiles.pdf).

⁵⁷ See UNODC, *supra* note 55, at 1.

each individual varies. One cannot make assumptions about how individuals might or should act.”⁵⁸

A more recent tragedy that grabbed the media’s attention is the case of two Indonesian women who were held captive for five years and were forced to work as domestic servants in the home of a millionaire couple in Long Island, New York, after their passports were confiscated.⁵⁹ These women were beaten, had scalding hot water poured on them, were often deprived of food, were forbidden to go out of the house except to take out the garbage, and were required to sleep on the kitchen floor on a mat.⁶⁰ This situation illustrates the cruelty and the different types of abuse many victims suffer while in trafficking situations. Furthermore, the story of these women contradicts the idea that human trafficking only occurs in places that are vulnerable to extreme poverty.⁶¹

In another trafficking case, a fourteen-year-old girl and her fifteen-year-old cousin were kidnapped by a man and two prostitutes when they were walking in their hometown. They were taken to Toledo, Ohio where they were forced to have sex with men and to prostitute themselves at truck stops.⁶² After one day of being held captive the girls were sent to a hotel room, where one of them was picked to have sex with a man while the two prostitutes who helped kidnap the girls watched.⁶³ During their experience, the girls were beaten by their male captor, forced to engage in sexual acts with strangers and older prostitutes,⁶⁴ trained on how to be teen prostitutes, and locked up in an apartment when they were

⁵⁸ See *id.* at 2.

⁵⁹ See Paul Vitello, *From Stand on Long Island Slavery Case, A Snapshot of a Hidden U.S. Problem*, N.Y. TIMES, Dec. 3, 2007, <http://www.nytimes.com/2007/12/03/nyregion/03slavery.html>.

⁶⁰ See Associated Content, *Millionaire Long Island Couple Charged with Slave Labor*, ASSOCIATED CONTENT, May 29, 2007, http://www.associatedcontent.com/article/256920/millionaire_long_island_couple_charged.html. In one particular event, one of the women was forced to eat twenty five peppers. See also Vitello, *supra* note 59.

⁶¹ There is a misconception that trafficking occurs only in poverty stricken places and to victims who come from places considered to be poor. However, as illustrated by a case that occurred in Toledo, Ohio, which will be discussed *infra*, and the Long Island case just mentioned, trafficking occurs in many middle and upper class areas and the victims do not always come from a low socio-economic status.

⁶² See E! Entertainment Television Broadcast, *E! Teenage Trafficking*, Oct. 9, 2009, available at http://www.livedash.com/transcript/e!_investigates__teenage_trafficking/6528/EP/Friday_October_9_2009/93688/. The solicitation for sex was done through radio scans between trucks; each “prostitute” had her own channel where the “John” could ask for sex and could then arrange to meet at the parking space where he was located at. See *id.*

⁶³ See *id.*

⁶⁴ See *id.* These older prostitutes included the two prostitutes who helped kidnap the girls.

not working.⁶⁵ One of the girls was rescued when a truck driver called the police after witnessing her being solicited at a truck stop on a busy interstate highway in Toledo.⁶⁶ When police arrived, the girl gave a fake name and age fearing that her captor would hurt her cousin who was still with him.⁶⁷ Seven months after being caught, the victims' captors were indicted on various criminal charges.⁶⁸ One of the cousins decided to testify against her captors.⁶⁹ Subsequently, the male captor was sentenced to seven years in jail and the two prostitutes were sentenced to six years in jail.⁷⁰

Most traffickers strategically instill fear in the victims to gain control and to show them the price they will pay if they disobey, as evidenced by the way the cousins lied out of fear about their ages and gave false information.⁷¹ For example, victims are immediately put into situations where they think that the threat of death is very possible.⁷² The victim becomes submissive and obeys the trafficker, as the victim feels she lacks control of the situation.⁷³ Simultaneously, victims are driven to "psychological exhaustion" through long hours of work and being held in "tension-filled environments."⁷⁴ This combination of actual abuse or threats of abuse, and the physical exhaustion of victims, makes victims feel psychologically and physically trapped.⁷⁵ Continuous acts of intimidation on victims have a debilitating effect on their psychological and mental health.⁷⁶ Many victims are often beaten to make them obey, and other times are beaten for no apparent reason.⁷⁷ As a consequence, many victims will have suffered at least one traumatic event while being trafficked and subsequently develop psychological mechanisms to cope with these traumas.⁷⁸

⁶⁵ *See id.*

⁶⁶ *See id.*

⁶⁷ *See id.*

⁶⁸ *See id.*

⁶⁹ *See infra* Part II, Section D.

⁷⁰ *See El Teenage Trafficking, supra* note 62.

⁷¹ *See ZIMMERMAN ET AL., supra* note 56, at 31.

⁷² *See id.*

⁷³ *See id.*

⁷⁴ *See id.*

⁷⁵ *See id.*

⁷⁶ *See ZIMMERMAN ET AL., supra* note 56, at 31.

⁷⁷ *See id.* at 32. Victims are physically assaulted by their traffickers, pimps, madams, clients, club owners and significant others. The physical abuse they endure includes instances of being kicked, burned with cigarettes, being hit with objects and bats, getting their heads slammed against floors or walls, and being dragged across a room and being punched in the face. *See id.*

⁷⁸ *See UNITED NATIONS OFFICE ON DRUGS AND CRIME, supra* note 55, at 2.

Before attempting to understand the types of psychological problems victims experience, it is important to define trauma. Trauma is “an experience that is emotionally painful, distressful, or shocking, which often results in lasting mental and physical effects.”⁷⁹ Traumatic events suffered by victims of human trafficking are complex and difficult because the trauma may occur over a long period of time.⁸⁰ Trauma experienced by these victims sometimes is so severe that they can never testify in court against the traffickers.⁸¹ Some victims will not cooperate with the prosecution and decide that it is best to avoid seeing their traffickers. In contrast, however, some victims are able to testify or give a detailed account of what happened to them.⁸²

Two factors that are said “to be most predictive of a strong reaction to ongoing trauma” are unpredictability and uncontrollability of events.⁸³ Many trafficking victims are restricted from going anywhere; they have no control of when to sleep, when to use the bathroom, when they can eat, and who they can be with.⁸⁴ These traumatic events can trigger many symptoms related to depression, anxiety and hostility.⁸⁵ Many women victims, after three months of care in non-governmental organizations, reported high levels of depression that were “still at the level of the top ten percent of the most depressed women in an average female population.”⁸⁶ Victims also show symptoms of post-traumatic stress disorder.⁸⁷ Symptoms include recurrent memories of terrifying events, the inability to feel emotions, and trouble sleeping.⁸⁸ Other victims also suffer from memory loss and the inability to recall details as a result of these recurring traumatic events.⁸⁹ This is important because the victims who do block out these events will not be able to testify or give witness accounts and will be unable to assist in the prosecution of their traffickers.⁹⁰

⁷⁹ Net.com, *Medicine*, <http://www.medterms.com/script/main/art.asp?articlekey=8171> (last visited Oct. 22, 2009).

⁸⁰ See UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 55.

⁸¹ See *id.* at 3.

⁸² See *id.* One of the girls trafficked into Toledo eventually decided to testify in court; furthermore, she gave a victim statement, which she recited out loud to the offender. See *id.*

⁸³ See *id.* at 4.

⁸⁴ “Only three percent of victims reported that they were ‘always free.’” *Id.*

⁸⁵ See *id.* at 4.

⁸⁶ See UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 55, at 8.

⁸⁷ See *id.*

⁸⁸ See *id.* at 9.

⁸⁹ See *id.* at 10.

⁹⁰ See *id.*

II. RESTORATIVE JUSTICE AND VICTIM OFFENDER MEDIATION

A. Moving From a Traditional Retributive Perspective to a Restorative Theory of Justice

The U.S. justice system has traditionally been offender-centered and retributive in nature.⁹¹ A retributive justice system is a system of “institutionalized vengeance,”⁹² which is “accomplished by assigning blame and administering pain.”⁹³ In this retributive system, the needs of victims and society are often overlooked after a crime has been committed. Many times, a victim is actually harmed and ignored by the criminal justice system.⁹⁴ For example, a victim can be a witness for the state in a prosecution and the defendant’s attorney may try to shift blame from his client to the victim.⁹⁵ The system is preoccupied with responding to what will happen to the offender, such as how the offender will be punished, instead of responding to the harm done to the victim and the victim’s needs.

“Restorative justice recognizes that crime results in harm to the victims, communities and the offenders.”⁹⁶ It shifts the focus away from the offender to the people and communities harmed. It is also a type of mediation that is concerned with “healing victims’ wounds, restoring offenders to law-abiding lives, and repairing harm done to interpersonal relationships and the community.”⁹⁷ Restorative justice seeks to involve the victim, offender, victim’s families and communities by providing “opportunities for those most affected by the crime to be directly involved in the process of responding to the harm caused.”⁹⁸

⁹¹ See Burkemper, Jr. et al., *supra* note 1.

⁹² Marty Price, *Personalizing Crime: Mediation Produces Restorative Justice for Victims and Offenders*, DISPUTE RESOLUTION MAGAZINE, Fall 2001, available at <http://vorp.com/articles/crime.html>.

⁹³ *Id.*

⁹⁴ See Burkemper, Jr. et al., *supra* note 1.

⁹⁵ See *id.* at 128–34.

⁹⁶ Marty Price, *Victim Offender Mediation: The State of the Art*, 7 VOMA Q. 3 (Fall–Winter 1996), available at <http://www.vorp.com/articles/art.html>.

⁹⁷ Michelle Maiese, *The Aims of Restorative Justice*, Oct. 2008, http://www.beyondintractability.org/essay/restorative_justice (introducing restorative justice and its aims and benefits).

⁹⁸ *Id.*

Restorative justice takes on many forms,⁹⁹ but one of the most popular forms is referred to as “Victim-Offender Mediation” (VOM), or alternatively, Victim-Offender Dialogue (VOD).¹⁰⁰ It involves face-to-face dialogue between the victim and the offender.¹⁰¹ VOD “[i]s a distinct form of mediation, which involves the victim and his offender, who has already admitted to committing the crime.”¹⁰² In such a setting, communication is the main objective, and the goal of determining proper retribution is not at issue.¹⁰³ The goal is to “hold offenders directly accountable for their behavior while providing important support and assistance to victims.”¹⁰⁴ The victims have an opportunity to express their emotions and ask the offender questions. VOD is a way for the offender to apologize and to have a dialogue with the victim. VOD is widely used in petty and misdemeanor criminal cases, such as shoplifting and assault.¹⁰⁵ Recently, however, VOD has expanded to cases involving burglary, rape, and murder.¹⁰⁶

B. Background on VOD

VOD first originated in Canada in 1974¹⁰⁷ after two intoxicated boys, ages eighteen and nineteen, destroyed twenty-two cars.¹⁰⁸ Their probation officer suggested to the judge that these young offenders face their victims in person.¹⁰⁹ The judge first dismissed the recommendation, but later at the sentencing hearing ordered the boys to face their victims.¹¹⁰ They went to each victim,

⁹⁹ See Burkemper, Jr. et al., *supra* note 1 (discussing different forms of restorative justice such as family group conferencing, community accountability boards, where community boards decide how to address the offense, victim impact panels, etc.).

¹⁰⁰ See A DESCRIPTION OF VICTIM OFFENDER MEDIATION, http://www.ovc.gov/publications/infores/restorative_justice/bulletin1/rjmc_2.html#how (last visited Oct. 1, 2009).

¹⁰¹ For the purposes of this Note, VOM will be referred to as VOD because the name “victim offender dialogue” applies more appropriately to the nature of this type of restorative justice.

¹⁰² Maiese, *supra* note 97.

¹⁰³ See *Ilyssa Wellikoff*, Victim-Offender Mediation and Violent Crimes: On the Way to Justice, 5 CARDOZO J. CONFLICT RESOL., available at <http://www.cojcr.org/vol5no1/note02.html> (last visited Oct. 5, 2009) (discussing the use of VOM following violent crimes).

¹⁰⁴ A DESCRIPTION OF VICTIM OFFENDER MEDIATION, *supra* note 100.

¹⁰⁵ See Price, *supra* note 96.

¹⁰⁶ See *id.*

¹⁰⁷ AMERICAN BAR ASSOCIATION ENDORSEMENT OF VICTIM-OFFENDER MEDIATION/DIALOGUE PROGRAMS, Aug. 1994, available at <http://www.vorp.com/articles/abaendors.html>.

¹⁰⁸ See Price, *supra* note 96.

¹⁰⁹ See *id.*

¹¹⁰ See *id.*

admitted their crimes, and worked out a restitution agreement to pay back the victims losses. By the third month, they had paid their victims over \$2,000.¹¹¹ Shortly thereafter, the first VOD program in the United States was created by Indiana.¹¹² As of 1998, 293 VOD programs existed in the United States.¹¹³ The American Bar Association (ABA) has also endorsed “restorative justice through the practice of victim offender mediation, its most widely used and empirically validated practice.”¹¹⁴ The ABA states that federal, state and local governments should:

[c]ontinue to use mediation to resolve criminal matters, specifically at a time prior to actual case filing and with adequate constitutional protections except in cases in which any of the participants deemed to be susceptible to coercion, manipulation, or re-traumatization as in a case of violent crime or domestic abuse.¹¹⁵

Each court system uses VOD in different ways.¹¹⁶ For example, some court systems use VOD instead of filing criminal charges, while other jurisdictions use VOD during, before or after sentencing.¹¹⁷ The “majority of referrals come through informal adjustments for diversion of status offenses and delinquency cases while other offenders are ordered by judges to go through the VOD program post-adjudication.”¹¹⁸ Thus, VOD may be used in conjunction with, or as an alternative to, judicial proceedings. Many times during these VOD programs, restitution agreements and/or community service are also agreed upon by the parties involved.¹¹⁹

¹¹¹ *See id.*

¹¹² *See id.*

¹¹³ *See* Umbreit, *supra* note 3. The number of VOD programs has more likely than not increased in the past ten years. *See id.*

¹¹⁴ *See* Mark S. Umbreit, Robert B. Coates & Betty Vos, *Victim-Offender Mediation: Three Decades of Practice and Research*, 22 *CONFLICT RESOL. Q.* 1, 1–2 (Fall–Winter 2004), available at <http://www.castonline.ilstu.edu/krienert/CJS%20412/412umbreit.pdf>.

¹¹⁵ American Bar Association, *Adopted by the House of Delegates*, Feb. 16, 2009, http://www.abanet.org/domviol/ABA_Policies/134_1_2.pdf (discussing the use of mediation as diversion from filing criminal charges and the need to acquire adequate training for mediators).

¹¹⁶ *See* Burkemper et al., *supra* note 1, at 132.

¹¹⁷ *See id.* at 137. Victim Offender Mediation is not suitable if the offender does not admit to the offense at least on some level. *See* Marty Price, *Comparing Victim Offender Mediation Program Models*, 6 *VOMA Q.* 1 (Summer 1995).

¹¹⁸ Burkemper et al., *supra* note 1, at 137. Generally, prosecutors are less supportive of using VOD as an alternative to formal adjudication compared to defense attorneys. *See* Leanne Fital Alarid, Leslie A. Hernandez & Christine S. Schloss, *Utilization of Community Based Programs: Which Sanctions do Attorneys Recommend?* 45 *CRIM. L. BULL.* 5, 5 (Fall 2009).

¹¹⁹ *See* Burkemper et al., *supra* note 1, at 131. These authors are of the opinion that restitution agreements would not be appropriate where the victim would “arguably” get double recov-

Studies have shown that ninety-five percent of restitution agreements initiated through VOD are completed successfully.¹²⁰

C. Application of VOD in Low Level Crimes

The majority of VOD programs work with juvenile offenders and apply to non-violent offenses,¹²¹ including crimes against property.¹²² Other jurisdictions apply VOD to “minor assaults” as well.¹²³ As an example, VOD was applied to a nonviolent offense in a case referred to as the B.B. gun scenario. Two boys in a passing car pointed a gun and shot a woman who was sitting on her porch with her children.¹²⁴ The gun was actually an unloaded B.B. gun and the sound the women heard was the popping of air coming from the gun.¹²⁵ The woman retrieved the license plate number, called the police and was able to confront these offenders through a diversion program.¹²⁶

Missouri is one of the states that endorses VOD in juvenile cases.¹²⁷ Missouri juvenile courts use VOD after a careful screening process is used to determine if VOD is appropriate for that case.¹²⁸ VOD has been utilized in status offenses, misdemeanors; delinquency, vandalism, shoplifting, auto theft, property damage, assault and burglary cases.¹²⁹ Missouri does not, however, use VOD for sexual offenses.¹³⁰

ery. *See id.* However, it could be argued that sometimes the court system does not fully compensate victims for the harm done to them and thus, these restitution agreements would be able to compensate these victims the way the court system has not.

¹²⁰ *See* Ariel Brugger, *Victim Offender Dialogue: Who Really Benefits?*, 26 VER. B.J. & L. DIG. 37, 38 (Sept. & Oct. 2000).

¹²¹ *See* Price, *supra* note 96.

¹²² *See id.*

¹²³ *See id.*

¹²⁴ *See* Brugger, *supra* note 120, at 37.

¹²⁵ *See id.*

¹²⁶ *See id.* The offenders in this case wanted to apologize and let the victim know that the noise she heard coming from the B.B. gun was from air pockets and that the offenders knew the B.B. gun was not loaded and did not intend to frighten the family.

¹²⁷ *See* Burkemper et al., *supra* note 1, at 129.

¹²⁸ *See id.* at 131.

¹²⁹ *See id.* at 131–32.

¹³⁰ *See id.* Telephone interview with the Center for Dispute Resolution, Missouri State University (Nov. 24, 2009). The Center stated that it did not use VOD in sex crimes because these cases need specialized training and the center is concerned about the re-victimization of the victim. *See id.*

Research on victim satisfaction in Missouri shows that seventy-nine percent of juvenile crime victims were satisfied with the outcomes of their cases, and eighty-three percent of the victims felt the mediation process was fair;¹³¹ nine out of ten victims would recommend VOD to others. Victims were also significantly less fearful of being re-victimized by the offender after meeting them face-to-face.¹³² Furthermore, ensuring that many juvenile offenders do not become repeat offenders is an important objective of VOD in low-level crimes.¹³³ Generally, many restorative justice practices have produced lower recidivism rates.¹³⁴ In a U.S. study comprised of 1,300 juvenile offenders, those who had taken part in VOD were about one-third less likely to re-offend compared to their counterparts who did not take part in VOD.¹³⁵ Those participants who did re-offend within a year normally committed lesser crimes than the crimes committed by non-VOD participants.¹³⁶

D. Application of VOD in High Level Crimes

A woman from Louisiana who was gang-raped by four men wanted to confront her assailants, but the state justice system barred her from doing so.¹³⁷ She managed, however, to reach out to her assailants by writing them letters after they were sent to prison.¹³⁸ She was finally able to meet her assailants in prison with no facilitator present.¹³⁹ This woman described her experience as being positive and wished there was such a program available to her from the start.¹⁴⁰ In another case, a woman who was shot in the head wanted to confront the offender, a fourteen-year-old boy with a very low IQ.¹⁴¹ She wanted to know what he had been thinking, why he pulled the trigger and why he wanted to rob

¹³¹ See Burkemper et al., *supra* note 1, at 129.

¹³² See *id.*

¹³³ See *id.*

¹³⁴ See *id.*

¹³⁵ See *id.* The offenders matched in age, sex, offense and racial/ethnic backgrounds. See *id.*

¹³⁶ See Burkemper et al., *supra* note 1.

¹³⁷ See Janet M. Harrison, *Mediation in Criminal Cases? Interviews with Four Prominent Players in the Criminal Justice Arena*, 44 LA. BAR J. 116, 116 (Aug. 1996). It is likely that the jurisdiction the woman was in did not allow VOD in sex-based crimes. See *id.*

¹³⁸ See *id.*

¹³⁹ See *id.*

¹⁴⁰ See *id.* at 116–19 (discussing the use of victim offender mediation in criminal cases).

¹⁴¹ See Brugger, *supra* note 120, at 37.

her.¹⁴² After he was sentenced and sent to a juvenile corrections facility, she decided to write to his attorney.¹⁴³ Despite the absence of a third party facilitator, the offender and the woman finally met and, as a result, the woman felt that she was able “to start to let go of her pain and begin healing.”¹⁴⁴ These two crimes illustrate different types of violent offenses where VOD has been used and where the victim emerged with a positive experience. Yet, many jurisdictions hesitate to permit victims and offenders to meet in cases of severe violence such as rape.¹⁴⁵ A growing number of programs, however, show that VOD can work in cases of severe or violent crimes.¹⁴⁶ VOD is now being used in cases of murder, rapes, and other violent assaults.¹⁴⁷

Fortunately, some jurisdictions have expanded the use of VOD to be used in sex crimes. In those crimes, victims of rape and sexual assault, more so than victims of other crimes, feel that the criminal justice system does not address their needs. For example, one rape survivor named “Molly” stated that she pressed charges, but they were ultimately dismissed. She was told it would not be a successful case because the offender was a college professor, and as the crime was considered an acquaintance rape, it would be a harder case to prove.¹⁴⁸ As a result, Molly felt that the criminal justice system had failed her.¹⁴⁹

A possible remedy for the failure of the criminal justice system is to use VOD, when appropriate and desirable.¹⁵⁰ For example, many victims of sex crimes do not want to testify in court because of the extreme and sensitive nature of the assault or crime. VOD affords the victim an opportunity to speak directly with the offender, thereby giving the victim a chance to express to the offender how she feels, how she has been emotionally affected, and to ask the offender questions about the crime.¹⁵¹

¹⁴² See *id.* at 39.

¹⁴³ See *id.* at 38.

¹⁴⁴ *Id.* Meeting your offender without a facilitator present is not recommended.

¹⁴⁵ For example, as mentioned previously, Missouri does not allow VOD in sex based crimes.

¹⁴⁶ See Price, *supra* note 96.

¹⁴⁷ See *id.* Ohio, New York, Utah, California, Pennsylvania and Texas are some of the states that use VOD in violent crimes. See *id.* Telephone Interview with Mark Collins, New York State Unified Court System’s Office of Alternative Dispute Resolution (Oct. 21, 2009).

¹⁴⁸ See Interview with “Molly,” a rape survivor (Nov. 16, 2009).

¹⁴⁹ See *id.*

¹⁵⁰ See *infra* Part III.

¹⁵¹ Telephone Interview with Mark Collins, New York State Unified Court System’s Office of Alternative Dispute Resolution (Oct. 21, 2009). New York uses VOD in sex crimes.

Murder is another violent crime where VOD is now applied in certain jurisdictions. VOD is available to family members who lost a loved one, and is also available to people who were victims of attempted murder.¹⁵² In one case, “John” wanted to confront one of his father’s murderers after one of the other accomplices was executed.¹⁵³ John did not feel any “relief from the hate and bitterness which had been burning inside him for so many years.”¹⁵⁴ After months of preparation with the facilitator, John met “Ralph” in prison and learned that Ralph lived with daily shame and pain, and wished that he had been executed with the other murderer.¹⁵⁵ John was finally able to release the thoughts and feelings that “had seemed inescapable,” and was able to move on with his life.¹⁵⁶ This case is a prime example of how VOD benefits both victim and offender, and how VOD can have lasting, positive effects on a person.

If “John” were in New York, he would have the possibility of meeting his offender through the state’s VOD program. New York uses VOD in sex crimes and murder crimes as well as many other types of cases.¹⁵⁷ Mark Collins, the head of the Alternative Dispute Resolution programs in New York State’s court system, states that other jurisdictions hesitate to use VOD in such sensitive crimes including rape and murder.¹⁵⁸ Collins believes state corrections departments sometimes have issues about having offenders and victims getting together.¹⁵⁹ The departments may be concerned about what VOD does to the offenders when they go back to their prison cell.¹⁶⁰ Specifically, departments of corrections may be concerned about the offenders harming themselves.¹⁶¹ Another reason for prisons’ reluctance to use VOD could be that the correction system might be outdated and might have not been exposed to the idea of VOD or restorative justice.¹⁶²

¹⁵² *See id.*

¹⁵³ *See Price, supra* note 96.

¹⁵⁴ *Id.*

¹⁵⁵ *See id.*

¹⁵⁶ *Id.*

¹⁵⁷ *See Collins, supra* note 151.

¹⁵⁸ *See id.*

¹⁵⁹ *See id.*

¹⁶⁰ *See id.*

¹⁶¹ *See id.* However, other jurisdictions may be concerned for the victim as well as the offender, and fearful that the victim will be victimized again.

¹⁶² *See id.*

New York, however, fully endorses the use of VOD in the court system.¹⁶³ The New York court system has three facilitators in the VOD program.¹⁶⁴ A person who wants to meet an offender is sometimes referred by the offender's probation officer or a victim can contact the New York State Victims Services office.¹⁶⁵ VOD is always done post-conviction and most of the time after appeals are exhausted.¹⁶⁶ Also, VOD is always victim-initiated.¹⁶⁷ Once the facilitator meets the victim and studies the case, the facilitator meets the offender at the correctional facility and tells him why he is there and what the process is about.¹⁶⁸ At that point, the offender can choose whether or not to participate.¹⁶⁹ Once there is an agreement to proceed, the victim comes to the prison and meets the offender.¹⁷⁰ The meeting usually lasts at least one hour and on average lasts two-and-a-half hours with two facilitators in the room.¹⁷¹ After the session is over, two facilitators debrief the offender and victim separately.¹⁷² It is completely voluntary and confidential for both victim and offender.¹⁷³ For the New York court system, the number one type of case referred to VOD is murder cases, followed by assault cases.¹⁷⁴

New York is one of the states that has embraced restorative justice and has successfully incorporated VOD into the state's court system. New York has effectively used VOD in attaining satisfaction for both victim and offenders in serious and violent crimes. Other jurisdictions should incorporate VOD into their court systems, similar to the way New York has done for such crimes.

¹⁶³ *Id.*, *supra* note 147.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* VOD in the NY state's court system does not allow an offender to reach out to his victim because of fear for re-victimization. *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ It is also important to note that the victim may risk being disappointed if the offender does not agree to have VOD.

¹⁷⁰ Collins, *supra* note 151. The victim is encouraged to have someone drive him back and forth from prison because of the intense and emotional process of confronting the offender.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* There is no benefit concerning the offender's parole or potential transfer or treatment. Everything is confidential, thus no one knows about the VOD at a parole hearing.

¹⁷⁴ *Id.*

III. APPLICATION OF VOD TO HUMAN TRAFFICKING

A. Benefits of Using VOD in Human Trafficking Cases

Victims of human trafficking who feel VOD will be beneficial to them are probably the minority of trafficking victims, as it seems difficult to comprehend why victims of trafficking would ever want to confront their traffickers. However, those victims, though they may represent the minority,¹⁷⁵ should be able to have the option available to them. To say that VOD should only be available to victims of low-level crimes, or certain serious crimes, but exclude VOD for victims of heinous and complex crimes, ignores that these unique victims probably need the most healing, need to hear explanations, or need a chance to explain to the offender how they feel and how they were affected by the crimes.

One must ask “what it mean[s] to heal from a serious violent offense.”¹⁷⁶ Traumatic events produce certain brain chemicals that help victims cope with the trauma.¹⁷⁷ Thus, these victims often cope with their traumas by way of psychological and biological mechanisms. In a study of women and children who were trafficked in Europe, it appeared that only after three months of treatment or assistance that “women are most capable of offering recollections of past events and making well considered decisions about their future.”¹⁷⁸ If women are unable to remember past events, it will be more difficult for them to express clearly how they felt at that particular time. Furthermore, if victims are fresh out of the trafficking situation, they are more vulnerable to drastic emotional reactions that may further harm them. Instead of having a dialogue with the offender, the victim may end up bashing the offender. This is why it is important to allow only those victims who are psychologically stable to participate in VOD.

For someone who has never been abused, degraded or sexually assaulted, thinking about confronting his offender seems like a traumatic event in itself. It is for this reason that only those victims who are carefully screened beforehand, most likely thorough psy-

¹⁷⁵ This is assuming that victims of serious crimes, such as human trafficking, prefer not to confront their offenders.

¹⁷⁶ A HEALING RIVER, Restorative Justice, <http://www.youtube.com/watch?v=nhw2llNdYeQ> (last visited Nov. 2, 2009).

¹⁷⁷ See *id.* The main purpose of these chemicals is to survive the trauma, and to get away from the trauma with as little damage as possible. See *id.*

¹⁷⁸ ZIMMERMAN ET AL., *supra* note 56, at 94.

chological evaluation, should be given the opportunity to participate in VOD. Significantly, facilitators screen each case carefully to see whether or not the case would be appropriate for VOD.¹⁷⁹ “A victim who is too intimidated to speak to the offender is probably not a good candidate” for VOD.¹⁸⁰ Neither is the victim who wants to lash out or bash the offender appropriate for VOD.¹⁸¹ It is important, however, to note that forty to sixty percent of those victims studied who were offered the opportunity to participate in VOD refused.¹⁸² This study shows that VOD is a “highly self-selective process.”¹⁸³ The fact that victims and offenders get to choose whether or not to participate contributes to the overall potential for satisfaction of VOD for victims and offenders alike.¹⁸⁴

Generally, victims of serious crimes who undergo VOD have a positive experience.¹⁸⁵ The New York State Office of ADR program has been assisting victims of violent crimes in VOD since 1990 and reports that “every case since 1990 has been extremely positive for the victim and offender alike without exception.”¹⁸⁶ Victims who choose to participate feel a greater sense of relief or closure and “feelings of gratitude for not being forgotten and unheard.”¹⁸⁷ The feeling of not being forgotten or ignored that is obtained through VOD can greatly benefit human trafficking victims since many of them are vulnerable to being harmed by the justice system. For example, the victims who do testify at court might be cross examined and can be harassed or embarrassed by the defense counsel who may try to downplay the offender’s role in the crime. Many trafficking victims have not had the opportunity to be heard or tell their stories in front of the court without feeling re-victimized by the justice system. Other times, the case may not have enough evidence to prosecute the alleged traffickers, and the case is dismissed. VOD offers these victims the opportunity to be heard in a safe setting when they are ready.

¹⁷⁹ See Collins, *supra* note 147.

¹⁸⁰ Price, *supra* note 96, at 2.

¹⁸¹ See *id.*

¹⁸² See Mark Umbreit, Robert B. Coates & Betty Vos, *The Impact of Victim Offender Mediation: Two Decades of Research*, 65-DEC FED. PROBATION 29, 3 (2001).

¹⁸³ *Id.*

¹⁸⁴ See *id.*

¹⁸⁵ See Collins, *supra* note 147.

¹⁸⁶ *Id.* One particular case involved a serial killer, and the victim found VOD very beneficial. See *id.*

¹⁸⁷ Umbreit et al., *supra* note 182, at 9.

Victims typically decide to partake in VOD because they want to hear what the offender has to say about the crime, or that the offender is remorseful, and also to tell the offender their own story.¹⁸⁸ Other victims may want to meet their offenders because they have recurrent nightmares, and for them to move on with their lives, they need to confront their worst fear, which is meeting their offenders.¹⁸⁹ This can, in turn, help the victims feel disconnected from the offenders, enabling the victim to move on and end nightmares or flashbacks.¹⁹⁰

Part of the VOD process is opening up dialogue to the possibility of apologizing and forgiving. Although the victim can accept apologies, “forgiveness is a process, not a goal, and it must occur according to the victim’s own timing, if at all. For some victims, forgiveness may never be appropriate.”¹⁹¹ If approached in a sensitive and nonjudgmental manner, many women benefit from having the opportunity to tell their trafficking stories.¹⁹² Participation most “often eliminates the victim’s anxiety and fears that their offender will victimize them again in the future.”¹⁹³ Telling their stories can be empowering and healing for victims. Victims finally have a sense of control of the situation, something most did not have when they were in the trafficking situation. This is a way for them to show the offender that they are psychologically healthier and finally have control of their bodies and minds. For example, as one victim who is no longer in a trafficking situation explains, “[t]he worst memories are gone. I am emotionally healthy.”¹⁹⁴ Furthermore, victims get to hear and understand why the offenders did what they did. At the end of the session, most victims realize that the offenders have their own stories and explanations for their actions. Specifically, the offenders have a “human story” for their actions.¹⁹⁵

Benefits of VOD are not limited to victims. There are also benefits that an offender can obtain through VOD. Because the

¹⁸⁸ See Collins, *supra* note 151.

¹⁸⁹ See *id.*

¹⁹⁰ See *id.*

¹⁹¹ Price, *supra* note 96.

¹⁹² See Cathy Zimmerman, Charlotte Watts, W.H.O. ETHICAL & SAFETY RECOMMENDATIONS 3 (World Health Organization 2003), available at <http://www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf>.

¹⁹³ Victim Offender Reconciliation Program Information and Resource Center, *American Bar Association Endorsement of Victim Offender Mediation/Dialogue Programs 2* (Aug. 1994), available at <http://www.vorp.com/articles/abaendors.html>.

¹⁹⁴ ZIMMERMAN ET AL., *supra* note 56, at 79.

¹⁹⁵ See Collins, *supra* note 151.

process is voluntary,¹⁹⁶ the offender already has his reasons as to why he has agreed to meet the victim. Since the offender has already spoken to the facilitator about the process, the offender understands that VOD is about “restorative justice.” The offender may want to meet the victim for various reasons: to let the victim know exactly what he was thinking when he committed the crime, to have a chance to express his remorse, to have an opportunity to listen to the victim, to express empathy for the victim, and to help answer any of the victim’s questions.¹⁹⁷ During the session, the offender is able to understand how his crime has affected the victim. Normally the offender will show remorse for the crime committed and sincere apologies can be made.¹⁹⁸ The offenders get a chance to “right their [*sic*] wrongs and to redeem themselves [*sic*].”¹⁹⁹ Offenders can better understand the impact they have caused in moral, social and economic areas. In addition, offenders have the opportunity to explain how they came to commit the crime and speak about their pasts and the victimizations they experienced, if any.

Furthermore, when the offenders meet their victims in this type of setting, seeing the effects of their crimes may help deter them from committing future crimes if they are released. Their belief systems and behaviors could change for the better. As seen in juvenile cases, there is generally a decrease in recidivism rate and if they re-offended, it was for a lesser offense.²⁰⁰ Thus, VOD may help decrease recidivism rates for even the most violent crimes, like trafficking.

Not only can VOD be beneficial to victims and offenders in human trafficking cases, but it can also be helpful in understanding human trafficking cases generally. From the preliminary meeting with a facilitator, to learning more about each case and the psychological effects on victims, each stage can be used as an important research tool. The research gathered can be used as a basis for training and educating officials in non-governmental organizations, governments and police forces in combating trafficking. If society

¹⁹⁶ The use of VOD in serious crimes is voluntary. This means that no one is forced to engage in VOD and if one does not want to participate, then VOD does not occur. Thus, VOD occurs when both victim and offender voluntarily agree to participate. *See id.*

¹⁹⁷ There are no “hidden” incentives for offenders to participate in VOD as VOD is completely confidential. For example, there is no benefit as to parole or potential transfer or treatment. *See id.*

¹⁹⁸ *See id.*

¹⁹⁹ Price, *supra* note 96.

²⁰⁰ *See* Burkemper et al., *supra* note 1, at 129.

is better able to understand why human trafficking occurs, then trafficking can be combated more effectively.²⁰¹

B. Drawbacks of Using VOD in Human Trafficking Cases

Many human trafficking victims, most of whom are children and women, cannot imagine confronting the offender without becoming emotionally overwhelmed. This could potentially cause additional harm to the victim.²⁰² Many trafficking victims have undergone so many traumatic events that these experiences have left them unable to confront their offenders without experiencing extreme emotional discomfort. Victims who experience repeated abuse from their traffickers feel helpless and unable to protect themselves.²⁰³ The victims who are deeply affected by the trafficking experience may have profound hateful feelings for their traffickers, the very feelings that could be exacerbated if victims meet their offenders privately.²⁰⁴ Many victims are scarred for their lives and have recurrent flashbacks of their trafficking situation.²⁰⁵ One woman stated “I try not to remember them. If those thoughts come, I hug my child and get [those thoughts] away, or try to be among people and not alone.”²⁰⁶ Another woman expressed, “I wish to forget, but this is impossible. These memories will stay for the rest of my life.”²⁰⁷

It is important to understand that victims also include children and teenagers. For a child to meet an offender who in the past forced the child into prostitution or forced her to work endless hours, the meeting should be handled very carefully.²⁰⁸ Guy Jacob-

²⁰¹ For example, (“[i]n Greece, research was helpful in drafting a legal commentary on a proposed anti trafficking law and argue for improvements to the protection provisions for trafficked women.”). ZIMMERMAN ET AL., *supra* note 192, at 28.

²⁰² See Interview with Guy Jacobson, Founder, The Redlight Children Campaign (Oct. 16, 2009).

²⁰³ See ZIMMERMAN ET AL., *supra* note 56, at 40.

²⁰⁴ Not every victim feels hate for her offender. Some victims may feel sorry for their offenders. Also, those victims who get the appropriate support may be able to overcome some of these hateful feelings.

²⁰⁵ See ZIMMERMAN ET AL., *supra* note 56, at 79.

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 75.

²⁰⁸ One teenage girl who was trafficked into Toledo was forced to have sex with many men. She finally testified in court. She wanted to let the offender know what he had done to her and how she was affected. She gave a victim impact statement in court. Thus, not every child or victim is afraid to confront their offenders. See E! Teenage Trafficking, *supra* note 62.

son, founder of a not-for-profit organization called The Redlight Children Campaign, expressed that he cannot imagine putting a child, twelve to fourteen years old or younger who was raped twenty times a day, in front of her offender.²⁰⁹ Nor could he imagine why the child would want to meet the offender.²¹⁰ These victims “don’t even want to testify in court. Imagine going beyond that . . . [o]ut of those [whom] I’ve met, it’s not one percent that would want to confront their offenders.”²¹¹ These victims are afraid to go to trial and testify; they are afraid of the judges and afraid of the police, let alone of their offenders.²¹²

Another problem with allowing trafficking victims to confront their offenders is that in many cases, there were many victims whom the offender might have recruited and, as a result, the offender may not even recognize the victim.²¹³ Many times these offenders do not know the victims’ situations, where they came from, what their real names are.²¹⁴ If a victim meets an offender and the offender does not recognize the victim or know who he is, this can further harm the victim.²¹⁵ With “most other crimes, it’s likely the perpetrator knows the victim. This [human trafficking] is a mass crime.”²¹⁶

On the other hand, VOD may also not be an option for those victims who are known to their offenders. Many other victims who would not benefit or be qualified for VOD would be those victims who experienced “Stockholm Syndrome,”²¹⁷ otherwise known as “traumatic bonding.”²¹⁸ These victims have positive feelings towards their abuser and are supportive of the abuser’s behaviors.²¹⁹ These victims identify with their captors, or look up to them in order to protect themselves “against the reality of [their] actual

²⁰⁹ Jacobson, *supra* note 202.

²¹⁰ *See id.*

²¹¹ *Id.*

²¹² *See id.*

²¹³ *See id.*

²¹⁴ *See id.*

²¹⁵ *See* Jacobson, *supra* note 202.

²¹⁶ *Id.*

²¹⁷ Joseph M. Carver, *Love and Stockholm Syndrome: The Mystery of Loving an Abuser* (Feb. 3, 2009), available at http://www.mental-health-matters.com/index.php?option=com_content&view=article&id=167. Victims of Stockholm Syndrome include: children of abuse, battered women, criminal hostages, incest victims, and people in controlling or intimidating relationships. *See id.*

²¹⁸ ZIMMERMAN ET AL., *supra* note 56, at 40.

²¹⁹ *See* Carver et al., *supra* note 217.

powerlessness.”²²⁰ These victims are not good candidates for VOD and should not be encouraged to see the offenders. Furthermore, these “bonds” are very hard to break.²²¹ Allowing a victim who is affected by this syndrome to see his offender is, in a troubling way, re-victimizing them. The victims may “fall back in love” with these traffickers who most likely abused them physically and/or psychologically, or the victims will try to rekindle this so-called “bond.”²²² If the purpose of VOD is to restore the emotional losses to victims and to provide them with a range of opportunities for dialogue for a greater sense of healing, closure, and safety,²²³ allowing these “Stockholm Syndrome victims” to confront their offenders could result in their re-victimization.

For those victims who do get approval for VOD, there are also a number of possible problems that could arrive the day the victim confronts his offender. A real concern is the possibility that the victim decides unexpectedly to vent and bash the offender. Victims may feel calm and collected with the facilitators beforehand, but could react differently when confronted with the offender face-to-face. If the victim does so abruptly, the facilitators would be there to stop it; however, the harm has been done. This can make the offender uneasy and regret meeting with the victim, resulting in an unintended effect for both the victim and offender. This negative effect is not what VOD is supposed to accomplish. The victim is supposed to explain how he feels without lashing out at the offender. These victims can be struck with sudden emotional or physical reactions when reminded of the trafficking situation.²²⁴ Many times, the victims last saw the offenders when they were in the trafficking situation or at court. Furthermore, some victims may want to have a dialogue with the offender, but may react differently if the offender does not say what the victim expects or wants to hear,²²⁵ and thus, the possibility of being “re-victimized” is very real.

²²⁰ ZIMMERMAN ET AL., *supra* note 56, at 40.

²²¹ *See id.*

²²² In the documentary *Very Young Girls*, one of the girls has fallen in love with her pimp. This girl is a teenage prostitute who wants to get out of her situation; however, she always returns because of the feelings she has for her pimp.

²²³ *See* Mark S. Umbreit, *The Handbook of Victim Offender Mediation, An Essential Guide to Research and Practice* (Jossey-Bass Inc. 2001), available at http://media.wiley.com/product_data/excerpt/18/07879549/0787954918-1.pdf.

²²⁴ *See* ZIMMERMAN ET AL., *supra* note 56, at 79.

²²⁵ This is why victims and offenders should have extensive preparation for these meetings. They should talk to a facilitator and explain what they will be saying.

In human trafficking cases, the potential for decreased rates of recidivism for the offenders is not clear. Unlike those offenders who have committed lesser crimes, these offenders were human rights violators, abusers, torturers and manipulators. It is less likely that these types of offenders could drastically change after participating from VOD. They may have been trafficking people for many years; thus, they may not see it as a violation of human rights, but simply as a “job.” Perhaps offenders’ evil mentality is one that cannot be changed.

There are a number of disadvantages to having a victim confront her offender through VOD. If a specific human trafficking case is approved for VOD, there are still many uncertainties as to how the dialogue may evolve, perhaps further harming the victim as well as the offender. In addition, these traffickers may never change the way they think about their actions or their victims.

CONCLUSION

Human trafficking cases are very complex. There is still a great deal to learn about these types of crimes. VOD, however, could be applied in certain human trafficking cases, provided that each case is carefully studied through the perspectives of the victims and the offenders, victims are carefully screened for mental conditions that would make them vulnerable for re-victimization, victims and offenders are extensively prepared for the session, and facilitators are carefully and highly trained in handling human trafficking cases. These victims are fragile; thus, VOD should be approached cautiously and selectively.

Evaluations as to whether a case is appropriate for VOD should not be based on the type of crime that has occurred, but based on the people involved and how they were affected by the crime. There is always research that may state that different crimes result in creating a certain type of victim who suffers from certain kinds of psychological and physical trauma. Yet, there are victims who fall outside of these trends, who now live normal lives and would want to participate in VOD. There are many people who believe that human trafficking cases are not appropriate for VOD and this may be true in certain cases. However, the determination of whether or not VOD would be appropriate should be evaluated on a case-by-case basis. While VOD is not appropriate for everyone or every case, it is important to note that it is available to those

victims who will benefit from VOD and those victims should have the opportunity to know about VOD and access these types of programs where available.