

# Gatekeeping or Gate-pushing Restorative Justice?

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## Abstract

Criminal justice officials use their discretion to refer cases to victim-offender mediation. Working with time constraints, however, they may limit case referral, or gatekeep mediation to maintain efficiency. Recent studies also report the purposeful use of mediation to manage demand. Drawing on street-level bureaucracy, this study analyzes how criminal justice officials in Finland implement mediation while coping with conflicts of interest. The data consists of semi-structured interviews (N=17) with police officers and prosecutors. The term gate-pushing is introduced to account for the excessive use of mediation. The results show that police and prosecutors cope with dilemmas related to knowledge maintenance, resource constraints, and assessing consent to mediation. Many coping strategies prioritize clients, implying access to mediation. However, others advocate either for the underuse or overuse of mediation, suggesting both gatekeeping and gate-pushing. This study highlights the importance of studying gate-pushing to understand the challenges involved in integrating restorative and criminal justice.

## Keywords

Criminal justice, restorative justice, criminal policy, street-level bureaucracy, coping, public service

## 1. Introduction

Victim-offender mediation (VOM) is one of the most widely used practices of restorative justice (Hansen & Umbreit, 2018). Emphasizing conflict resolution as an alternative to criminal justice, restorative practices such as VOM facilitate dialogue between victims and offenders. In many countries, police and prosecutors use case-by-case discretion in directing crime cases to VOM practitioners as part of criminal policy (Albrecht, 2010; Banwell-Moore, 2023; Jacobsson et al., 2018; Lappi-Seppälä & Storgaard, 2015). However, studies show that police may deprioritize case referrals due to resource and time constraints (Banwell-Moore, 2023, p. 13; Hoekstra, 2022; Rasmussen, 2020), thereby restricting access to, or *gatekeeping* VOM (Lotta & Pires, 2019; Rasmussen, 2020; Yngveson, 1988). As victims and offenders often rely on criminal justice officials for information about restorative justice practices (De Oliveira, 2021; Laxminarayan & Wolthuis, 2015), gatekeeping poses a continuous risk of denying them opportunities for restitution regarding crime-related harm (Banwell-Moore, 2023; D'Souza & Shapland, 2023).

Recent studies also indicate that police may coerce their clients to VOM or push VOM as an option to counter similar constraints (Marder, 2020; Zhang, 2021). Currently,

no studies have explored the excessive use of VOM, or what is introduced here as *gate-pushing*. Similarly to gatekeeping, gate-pushing VOM may limit victims' and offenders' ability to choose their path to justice in accordance with their right to due process, be it criminal or restorative justice. Scrutinizing gate-pushing is thus vital for victims' and offenders' agency concerning their own conflicts. Addressing this research gap, the current study explores how criminal justice officials in Finland cope with dilemmas arising from implementing VOM in practice. The data comprises semi-structured interviews (N=17) with police officers and prosecutors conducted during 2020–2021, and scrutinized by means of thematic analysis.

Focusing on the delivery of public services in less-than-ideal working environments, Michael Lipsky's (2010) concept of *street-level bureaucracy* is increasingly used to study the criminal justice official's challenges or dilemmas related to policy implementation (Evans, 2020). Scholars are currently calling for further research on responses to, or ways of *coping* with dilemmas of street-level bureaucracy (Chang & Brewer, 2023). Responding to this call, this study adapts Tummers et al. (2015) categorization of coping strategies to explore police and prosecutors' dilemmas with implementing VOM. The study first asks what kinds of dilemmas police and prosecutors experience when implementing VOM in practice. Second, the study explores which coping strategies they adopt in response. Third, the study examines whether public servants move toward, away from, or against clients in their ways of coping. Finally, the study explores whether these coping strategies indicate gatekeeping, gate-pushing, or the maintenance of access to VOM.

The article proceeds as follows. The theoretical framework is presented in the next section, and previous research is discussed. An overview of the process of VOM in relation to criminal proceedings follows, as well as a description of the research design. The findings, implications, and policy recommendations are addressed in the final sections.

## 2. Public service delivery and access to restorative justice

### 2.1 Street-level bureaucracy

Police and prosecutors regularly work under resource-constrained circumstances (Smith et al., 2011). The challenges arising from this include maintaining the aims of criminal policy on the one hand and dealing with the practical realities of public service on the other. Michael Lipsky (2010, xii) defines this discrepancy as dilemmas of street-level bureaucracy, arguing that decision-making on the frontlines of public service is subject to a bureaucratic "set of rules and structures of the authority." The theoretical framework on which street-level bureaucracy is based concerns the dilemmas public workers face when implementing top-down policy in action, including face-to-face and digital public service<sup>1</sup> (Busch & Henriksen, 2018). Two points should be acknowledged to understand what constitute dilemmas for public servants. First, they arise from multiple conflicting interests that often involve many parties (Smith et al., 2011), and second, public servants use their discretion in responding to these dilemmas in their everyday work (Evans, 2020).

On the first point, Lipsky argues that public policy is actively shaped from the bottom up, positioning public servants as key players in the actualization of public service (Evans

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1 Akin to desk bureaucracy, pre-investigation police and prosecutors communicate with their clients and make decisions among various more or less desirable outcomes, similarly to street-level bureaucrats (Høybye-Mortensen, 2019). To avoid confusion with terminologies, this study adopts street-level bureaucracy as its main framework in both digital and non-digital settings.

& Harris, 2004; Hassan et al., 2023; Zhang, 2021). Going beyond bottom-up and top-down perspectives, public policy is also shaped by other parties involved in the dilemmas, such as clients (Maynard-Moody & Musheno, 2012). As Lotta and Pires (2019) point out, a core aspect of street-level bureaucracy is the *relational* nature of the dilemmas (Hupe, 2019a, pp. 7–9; Shapiro, 2005; Slee, 2023). Indeed, common dilemmas within public service concern meeting the demands of clients while simultaneously struggling with limited resources, bureaucratic regulations, and personal performance goals (Eriksson & Johansson, 2022). Similarly, public servants such as the police and prosecutors manage their own interests, including those of their authorities, their clients, and their coworkers (Evans, 2016; Maynard-Moody & Musheno, 2012).

Concerning the second point, public servants have leeway in how they respond to dilemmas related to street-level bureaucracy, which means that their choice-making, or use of *discretion*, is vital to any research on public service delivery. Lipsky (2010, pp. 14–16) defines discretion in this sense as the ability among public servants to enforce independent choices relative to their given scope of authority. Using their discretion, they adapt various tactics to manage dilemmas, which Lipsky refers to as *coping strategies* (Lipsky, 2010, p. 19). Such strategies are commonly defined as “behavioral efforts frontline workers employ when interacting with clients, in order to master, tolerate, or reduce external and internal demands and conflicts they face on an everyday basis” (Tummers et al., 2015, pp. 1101–1102). These behavioral efforts are also shaped by the structural position of public servants, and their working conditions (Hupe, 2019c, p. 272).

### **2.1.1 Moving toward, away from, and against clients**

One of the most consistently identified coping strategies in public service concerns the control of supply (Baviskar & Winter, 2017; Davidovitz & Cohen, 2022; Lipsky, 2010, p. 107). These often include prioritizing and selecting client cases based on their estimated success, or limiting access to services to manage demand (Liljegren et al., 2021; Triandafyllidou, 2003, p. 275; Zedekia, 2017). As these ways of coping imply, given multiple demands and limited resources, some interests are prioritized over others (Evans, 2020; Lotta et al., 2023). Focusing on the demands of clients, Tummers et al.’s (2015), p. 1108) systematic review of coping strategies distinguishes three upper categories of “coping families” based on how the clients’ interests or demands are acknowledged. First, coping strategies “move toward clients” if discretion is required to meet them; second, they “move away from clients” when they indicate avoidance, and third, they imply “moving against clients” when discretion is used to override or actively transgress them (Tummers et al., 2015, p. 1103). These coping families allow for a structured exploration of ways of coping. Hence, this study adapts Tummers et al.’s categorization as follows: coping strategies are categorized based on whether they move toward, away from or against the possibilities of clients to be informed on VOM or their demands concerning VOM. The study then explores whether the coping families indicate gatekeeping, gate-pushing or maintaining access to VOM.

### **2.1.2 Gatekeeping and gate-pushing**

Having observed court clerks’ evaluations of complaint cases preceding criminal charges, Barbara Yngvesson (1988, p. 410) describes the potential restricting of access to the justice system for some cases as *gatekeeping*. On the subject of their use of discretion, she states: “In a setting that is literally at the doorway to the courthouse, the hearings both underscore and set in question the difference between ‘real law’ that belongs in the

court and ‘garbage’ that belongs in the community” (Maynard-Moody & Musheno, 2012, p. 21; Yngvesson, 1988, p. 446). In the context of street-level bureaucracy, gatekeeping is commonly identified as the use of discretion by public servants to deny access to services based on informal perceptions of eligibility (Brodkin & Majmundar, 2010; Lipsky, 2010, p. 129; Lotta & Pires, 2019). In practice, however, public servants may deny access to services such as restorative practices for many reasons, including a lack of resources, skepticism toward VOM, or a limited understanding of restorative justice (Laxminarayan & Wolthuis, 2015). In adapting Yngvesson’s (1988) conceptualization based on recent studies (Rasmussen, 2020), this study adopts a broader definition of gatekeeping, viewing it as a consequence of interest or aim prioritization that results in excessive denial of access to a public service.

On the other hand, concern has been raised about the use of restorative practices in the criminal justice system to manage resource constraints (Suzuki & Wood, 2017), or predominantly use such practices as a “garbage dump” (Iivari, 2010, p. 62) for crime cases deemed less important. Do public servants adopt coping strategies that involve the excessive use of VOM? Excessive enforcement could be indicative of what is introduced here as *gate-pushing*, defined as a consequence of interest or aim prioritization that results in excessive referral to a public service. In contrast to both gatekeeping and gate-pushing, *maintenance of access* is defined as a result of interest or aim prioritization that enables the client’s access to a public service. In identifying these phenomena methodically, this study draws on Tummers et al.’s (2015) systematic categorization of coping strategies, summarized in Table 1 below.

**Table 1** Families’ coping strategies and their implications for access to services<sup>2</sup>

Coping strategy	Definition	Indication of access to VOM
Moving toward clients	Strategies adopted to support clients’ demands concerning VOM and their access to relevant information	Maintenance of access
Moving away from clients	Strategies adopted to avert clients’ demands concerning VOM and their access to relevant information	Gatekeeping or gate-pushing
Moving against clients	Strategies adopted to override or actively flout clients’ demands concerning VOM and their access to relevant information	

Within the existing framework of coping families, strategies that move toward clients concerning case referral to VOM are interpreted as indicative of the maintenance of access, whereas those that move away from or against clients indicate either gatekeeping or gate-pushing.

<sup>2</sup> This table is adapted from Tummers et al. (2015, p. 1108) conceptualization of coping families.

### 3. Challenges related to implementing VOM in criminal policy

#### 3.1 Criminal justice officials' use of discretion and VOM

An overview of prior studies<sup>3</sup> points to several challenges concerning the discretion of the police and prosecutors regarding VOM. In line with research on street-level bureaucracy (Alcadipani et al., 2022; Baviskar & Winter, 2017; Hill, 2003; Jewell & Glaser, 2006), Finnish evaluation reports show that a lack of knowledge and time constraints challenge its implementation by police and prosecutors (Eskelinen, 2005; Iivari, 2010; Järvinen, 1993).

International studies report similar findings. Notably, Zhang (2021) found the police to redirect discretion regarding mediation to other officials as a form of coping with these challenges. Further, Hoekstra's (2022) findings imply that police cope by limiting access in certain cases based on their estimated success. Similarly, Marder (2020, p. 512) found that the police sometimes presented the possibility of VOM to clients as "carrots" and "sticks" depending on what would be cost-efficient, and what the clients would see as the most convincing option. Referring to the risk of police coercion in this respect, he claims that clients "have little choice but to accept the police's preferences in the administration of restorative processes, even if hastily arranged and performed with demand management as the primary goal" (Marder, 2020, p. 515).

In terms of lacking knowledge, Stockdale (2015) reported that higher-ranking police officers appeared to have a more rigorous understanding of VOM. Banwell-Moore (2023) and Rasmussen (2020, p. 156) further found that some police officers were less likely to use it based on personal preferences or a lack of awareness, implying the prioritization of more arduous or "real" police work to meet performance requirements (Rasmussen, 2020, p. 148). Overall, previous results showing how the police limit VOM to prioritize efficiency imply gatekeeping (Hoekstra, 2022; Rasmussen, 2020). While no prior studies have explored the term gate-pushing, one could interpret Marder's (2020) results as exemplifying gate-pushing access to restorative justice. Furthermore, the overview revealed that Finnish academic literature on VOM is currently limited, with a lack of academic empirical research over the past decade. Thus, this study sought to offer an updated perspective on the discretionary dilemmas faced by Finnish police and prosecutors regarding its implementation.

#### 3.2 Victim-offender mediation in Finland

Finnish VOM services assist victims and offenders in personally addressing and resolving crime-related harm (Kinnunen et al., 2014). Based on the Act on Conciliation in Criminal and Certain Civil Cases<sup>4</sup>, or the Act on VOM, mediators drive the conciliation. The Finnish Institute of Health and Welfare is responsible for providing the service nationwide. With approximately 13,000 case referrals per year during criminal proceedings, VOM-assigned criminal cases most

3 Previous studies on police and prosecutor decision-making on VOM were included, regardless of their theoretical background, to provide a comprehensive overview of criminal justice officials' use of and perceptions on VOM. Previous literature searches covered studies concerning restorative justice, VOM and street-level bureaucracy. Searches included international peer-reviewed papers in English between the years 2019–2025, or from all time. Peer-reviewed papers, doctoral dissertations and evaluation reports conducted in Finnish or English by state ministries, universities, and their affiliated research institutions were included in the Finnish studies. Finnish papers from the years 1980–2021 were included. Citation searches were applied for relevant articles (Haddaway et al., 2022). The literature review is documented in Tables 8–11 of the appendix.

4 Act on Conciliation in Criminal and Certain Civil Cases 1015/2005. <https://www.finlex.fi/fi/laki/ajantasa/2005/20051015>. Accessed 7 June 2023.

commonly concern violent offenses, theft, and property offenses, and defamation (Elonheimo & Rimpilä, 2024, pp. 1–2).

VOM-related decision-making among criminal justice officials relies on legislation, official guidelines, and case-by-case discretion (Flinck, 2013, p. 35). Under the Act on VOM<sup>5</sup>, suspects and victims, and officials such as the police and prosecutors may suggest VOM for cases reported to the police. However, only criminal justice officials may recommend it in cases of domestic violence. The police initiate and refer around 90% of all cases to VOM annually, whereas prosecutors initiate and refer around nine percent (Elonheimo & Rimpilä, 2024). While criminal cases can be referred to VOM at any time during the criminal proceedings, police and prosecutors are guided by policy aims of procedural efficiency, and strive to manage and complete cases as early as possible (Frände et al., 2012).

Decisions on the suitability of cases for VOM depend on the circumstances and the nature of the suspected crime, as well as the relationship between the parties involved<sup>6</sup>. Concerning these factors, cases of domestic violence are mostly ineligible<sup>7</sup> for VOM. While no other type of crime is excluded from VOM<sup>8</sup>, VOM cannot be initiated if the victim is underage and in need of special protection. Furthermore, VOM requires confirmation of the events that occurred from all parties, and must be in the interests of the victim. Importantly, VOM requires consent to mediation from all parties involved. When the police or prosecutors deem a criminal case suitable for mediation, they must inform all parties involved about VOM<sup>9</sup>. According to police guidelines, consent should be obtained to send a criminal case to VOM officials (Flinck, 2013). In practice, the police and prosecutors usually assess the participants' consent to participate in VOM and to the case referral (Iivari, 2010).

Following referral, the VOM officials reassess the case and reconfirm the parties' consent. Once initiated, the VOM proceedings may be concluded with or without a written agreement, after which the police and prosecutors evaluate whether to close the case or to press charges (Lappi-Seppälä & Storgaard, 2015).

## 4. Methodology

Currently, we lack understanding of gate-pushing and what kinds of coping strategies may indicate it. Thus, a qualitative approach was chosen for this study due to its potential to cover the underlying complexities of everyday public service (Knott et al., 2022; Peretz, 2020). Since the locations and timing of coping strategies can vary, establishing an observational setting that allows the researcher to sufficiently explore them is difficult (Bardon et al., 2020). Hence, semi-structured expert interviews of police and prosecutors were chosen as the method of inquiry, as it allowed the combining of open-ended and structured questions to cover the vast experiences of justice officials in public service

5 Act on Conciliation in Criminal and Certain Civil Cases 1015/2005, Chapter 3, section 13. <https://www.finlex.fi/fi/laki/ajantasa/2005/20051015>. Accessed 1 October 2024.

6 Act on Conciliation in Criminal and Certain Civil Cases 1015/2005, Chapter 1, section 2–3. <https://www.finlex.fi/fi/laki/ajantasa/2005/20051015>. Accessed 1 October 2024.

7 Cases of domestic violence are eligible for mediation if the crime is less severe, its suspect is a minor, and the crime is directed at their guardian or relative.

8 Act on the Changes concerning the Act on Conciliation in Criminal and Certain Civil Cases 966/2024. <https://www.finlex.fi/fi/laki/alkup/2024/20240966>. Accessed 11.02.2025

9 Act on Conciliation in Criminal and Certain Civil Cases 1015/2005, Chapter 3, section 13. <https://www.finlex.fi/fi/laki/ajantasa/2005/20051015>. Accessed 1 October 2024.

(Galletta, 2013). Interview items were grouped under themes reflecting the research questions, as well as previous research on prosecutors' and police officers' VOM-related decision-making throughout the criminal proceedings. The broad thematic framework helped to reduce possible confirmation bias between the interviewer and the interviewees. The semi-structured setup allowed new follow-up questions to emerge during the interviews. It needs to be noted that the data produced on the basis of the interviews is not representative of the actions or perceptions of all criminal justice officials in Finland. Further, their reported ways of actions and perceptions may not reflect the full extent of their behavior regarding the topics discussed in the interview. This limitation requires careful consideration when discussing the results.

The author of this article was responsible for collecting and analyzing the data used in the study. The interviewees were purposefully selected to capture VOM-related experiences. The selection focused on variation, expertise, and intensity (Creswell & Poth, 2017, pp. 160–161). The selected prosecutors covered departments in Finland's four prosecution districts, and the police officers represented nine of the 11 main police departments, providing interviewees from a variety of counties. Interviewees were chosen based on their expertise, harboring an intensive scope of experience on case management. Most of them were selected internally by the police and prosecutor staff. Snowball sampling was also applied to ensure expertise, with two prosecutors and one police officer participating on the recommendation of other interviewees, and one prosecutor upon a suggestion from a colleague of the author. Altogether, there were 17 interviews with 10 police officers and seven prosecutors, summarized in Table 2 below.

**Table 2** Data of interviewed police and prosecutors

Interviewee	Job title	Experience of leading groups or units within the police	Region	Career length	Interview length
P1	Police Officer	Yes	Southern/Eastern Finland	10–20 years	1h
P2	Police Officer	Yes	Southern/ Eastern Finland	20–30 years	1h
P3	Police Officer	Yes	Southern/ Eastern Finland	10–20 years	1 h
P4	Police Officer	No	Southern/ Eastern Finland	1–10 years	3h
P5	Police Officer	Yes	Northern /Western Finland	20–30 years	2h
P6	Police Officer	Yes	Northern /Western Finland	20–30 years	2h
P7	Police Officer	NA	Northern /Western Finland	NA	2h
P8	Police Officer	Yes	Northern /Western Finland	10–20 years	1h
P9	Police Officer	Yes	Northern/ Western Finland	10–20 years	2h
P10	Police Officer	Yes	Northern/Western Finland	1–10 years	1h
DP1	District Prosecutor		Southern/ Eastern Finland	1–10 years	1h
DP2	District Prosecutor		Northern/Western Finland	1–10 years	2h
DP3	District Prosecutor		Northern /Western Finland	10–20 years	2h
DP4	District Prosecutor		Southern/ Eastern Finland	1–10 years	2h
DP5	District Prosecutor		Southern/Eastern Finland	10–20 years	1h
DP6	District Prosecutor		Northern /Western Finland	1–10 years	2h
DP7	District Prosecutor		Northern/Western Finland	30–40 years	1h

The interviewees included males and females in lower- and higher-ranking positions within their field. Given the small number of interviewees and the need to maintain participant anonymity, the individual background data included in Table 2 is limited.

The police and prosecutor district agencies received materials prior to the interview, including a form requesting informed consent, the research plan and the interview questions, as well as a privacy-policy plan. A summary of the signed informed consent document was read aloud before each interview, and the participants were asked to reconfirm their wish to participate.

The interviews took place in 2020 and 2021 by phone and were transcribed during 2022. They commonly lasted between 60 and 120 minutes.

The analysis combined deductive and inductive reasoning (Bernard et al., 2016, p. 104). In particular, the research questions, previous research and the interview data provided the basis for constructing the coding framework. The coding framework included primary and secondary categories. The interview framework served as the primary category upon which the secondary codes were based. A description was provided for each code. Ultimately, the coding frame consisted of eight primary categories, presented in Table 3 below.

**Table 3** Primary coding categories

Number	Name
1	Management of VOM cases
2	Evaluation of VOM suitability
3	Post-VOM procedures
4	Education and teamwork regarding VOM
5	Documentation of information in the data system
6	Role of officials regarding VOM
7	Restorative justice
8	VOM-related challenges and advantages

Whereas the first seven categories were identical to the thematic interview framework, the eighth was added to capture VOM-related challenges arising throughout categories 1–7.

The application of *thematic analysis* in this study allowed for the exploration of themes emerging from the data and the similarities and differences within them (Rivas, 2018). Reflecting grounded theory, the study allowed for the data to interconnectedly shape the coding frame and the research questions (Corbin & Strauss, 2008; Strübing et al., 2018). Each interview was thoroughly viewed three times after transcription; once prior to finalizing the codes, and twice during the coding. Following the grouping of the coded sections in accordance with the interview themes in Atlas.ti, a draft analysis was constructed from the material, alongside selected quotations. Both the coded interviews and the analysis draft were revisited throughout the study.

Atlas.ti software facilitated the data coding, the focus being on themes that captured dilemmas and coping strategies relating to street-level bureaucracy. These appeared to



emerge in coding categories one and two, and six. A code-to code co-occurrence test further showed that category eight mainly co-occurred with these categories, and with a secondary category code covering *procedural efficiency* in category six (Appendix, Tables 6–7). These categories were the predominant focus of the analyses reported in this study.

Ensuring trustworthiness or *rigor* is a necessary process within qualitative research (Patton, 2015, p. 427; Strübing et al., 2018). The transparent reporting of the research process, analysis triangulation, and participant validation served to assess rigor in the study. In addition to presenting the methods and analysis in detail, transparency was further enhanced by including documentation of the literature review (Tables 8–11) and of the code categories (Tables 5–7) to the appendices. Analysis triangulation entailed locating emerging themes in the data by means of both qualitative analysis and quantitative code-to-code co-occurrence tests. To ensure participant validation, following acceptance of the article the participants received a draft copy with their citations visible, allowing for comments prior to publication.

## 5. Findings

### 5.1 Overview

Analysis of the data revealed multiple dilemmas and coping strategies related to decision-making concerning VOM. These were regrouped into three thematic categories, including the dilemma of knowledge maintenance, the dilemma of lacking time and resources, and the dilemma of assessing clients' consent. Various coping strategies emerged as responses to these dilemmas in the data, summarized in Table 4. The dilemmas, the respective coping strategies, and the implications for access to VOM are discussed in the following sections.

**Table 4** Ways of coping, coping families, and implications regarding access to the service<sup>10</sup>

Dilemmas	Coping strategies	Coping family	Access to VOM
Knowledge maintenance	Use personal resources Instrumental action	Moving toward clients	Maintenance of access
	Getting your share	Moving away from clients	Gate-pushing
Lack of time and resources	Enduring rule following	Moving toward clients	Maintenance of access
	Getting your share	Moving away from clients	Gatekeeping
	Rationing		
Assessing consent	Rule bending	Moving toward clients	Maintenance of access
	Rule breaking	Moving against clients	Gate-pushing

### 5.2 Coping with knowledge maintenance

All the police officers and prosecutors expressed support for VOM on multiple occasions during the interviews. When asked about its purpose in their work, they emphasized both restorative benefits for their clients and benefits related to procedural efficiency. The restorative aspects included the opportunity for victims to receive damage reparations, for the offender to accept accountability, and for both to discuss their conflicts face to

<sup>10</sup> This table is adapted from Tummers et al. (2015, p. 1108) and their conceptualization of coping families.

face. Regarding procedural efficiency, many of them said that VOM compensated for the slowness of the criminal justice system. Some added that this especially concerned less severe crime cases.

In general, police representatives and prosecutors noted that remembering to use VOM was not always easy:

P2: I haven't seen any bigger quarrels on whether mediation is or isn't a good thing, the premise is that it's good and the police favors it. More so than that it's about whether we in the police are able to evaluate what's suitable for it and be aware of the possibility that "hey, this one could be a good case to mediate."

As P2 observes, one concern was whether the police lacked awareness of or the ability to consider VOM in practice, as reported in previous studies (Banwell-Moore, 2023; Järvinen, 1993; Rasmussen, 2020). Many police interviewees shared this concern, despite the availability of instructions on evaluating case suitability for VOM. Most of them described the instructions as "drowning in the masses" rather than being actively used, illustrating the emerging "rule piling" in public service noted by Hupe (2019b, p. 8).

Similarly to police in previous Finnish reports (Iivari, 2010, pp. 31–33), both police officers and prosecutors discussed difficulties in maintaining knowledge about VOM among their staff. Similarly to Järvinen's (1993, pp. 75–76) findings, a notable difficulty concerned continuous policy changes, including the changeability among the staff and the loss of "key persons" who were especially active in maintaining VOM. Building on previous Finnish reports, this indicates that dilemmas of knowledge maintenance constitute a persisting challenge concerning the implementation of VOM.

The interviewees responded varyingly to dilemmas involving knowledge maintenance. The police and prosecutors addressed the problem through regular local visits to VOM centers, joint working groups with criminal justice officials and mediators, and verbal maintenance among their staff members. Similarly to how Banwell-Moore (2023, p. 230) described "prompting" or "nudging," police and prosecutors issued regular reminders and directly suggested the option of VOM to their peers. The interviewees pointed out the need to maintain these strategies continuously to keep VOM as an option for their clients:

DP2: Every time when new generations come and the staff changes, you have to keep this idea at the forefront quite literally so that this practice (VOM) is truly in our minds as decision makers as an alternative instrument to manage these cases, so it doesn't drown under some other policy change or such.

Interviewer: Do you think there is a risk that it drowns, or is difficult to keep at the forefront?

DP2: I do. I think that when we have had these policy changes over the years, it has to do with my worry that hopefully other goals or performance targets don't get to eat the practice, away from alternative solutions. That's why you need to keep them at the front, so they are remembered.

Verbal reminders were perceived as necessary for integrating VOM into policy practice, exemplified by DP2. Police officers and prosecutors have no obligation to utilize these strategies to this extent, as VOM's use is already directed by law and official guidelines. Yet, along with law and regulations concerning VOM, the additional energy used to

maintain knowledge on VOM appeared crucial to maintain policy aims. This may suggest that police and prosecutors cope by “using personal resources” to maintain the use of VOM (Tummers et al., 2015, p. 1110). As stated by Tummers et al. (2015, p. 1104) this coping strategy involves public servants providing their clients with help beyond work-regulated requirements, such as additional time, energy or financial aid (cf. Dubois, 2016). Furthermore, both police and prosecutors strived to adapt these verbal reminders into lasting routines of practice that would keep clients informed about VOM. This indicates a strategy of “instrumental action,” which Tummers et al. (2015, p. 1109) describe as initiating long-lasting strategies to persisting dilemmas of street-level bureaucracy<sup>11</sup>. Together, these strategies appeared to move toward clients, implying the maintenance of access to VOM.

In addition, one police officer with leadership experience noted that their staff members did not always understand the restorative aspects of VOM. This lends support to previous findings indicating that lower-ranking police personnel are lacking in knowledge of restorative justice (Stockdale, 2015). Instead, P5 said they felt motivated to send cases if the leading investigators informed them about the merits of VOM in terms of efficiency:

Interviewer: In your unit, do you think they understand that they can utilize VOM in their everyday work?

P5: Not all investigators get it, but they do grasp that if they get cases off the table with a few swift moves, it's always worth it. But that's not directly as telling the investigators, “Hey, isn't it nice that the complainant and the suspect of the crime get to an agreement and the suspect knows and feels they have done wrong” – they don't get that, but when I've told them you'll get it off your desk, it has been sent to mediation.

In terms of coping with a lack of knowledge, P5 implies that it is easier to “sell” the idea of VOM based on its merits for one's work rather than its benefits to clients. In their potential use of VOM, the police officers' motive of getting cases off their back appeared to promote a pursuit of personal interests over an understanding of restorative values. The discrepancy between restorative values and policy practice resembles the findings of Loyens's study (2015, p. 1), which explored police officers' and labor inspectors' experiences of their work being “meaningless,” or insufficient for fulfilling policy aims. The study found that experiencing detachment to the values of their work, some officials sought purpose in instead utilizing their discretion for personal gain. Loyens (2015, p. 9) describes this coping strategy as “getting your share.” In the case of this study, the police officers' aim of getting cases off their back suggests getting your share as a coping strategy to the dilemma of knowledge maintenance. Drawing on Tummers et al. (2015), this strategy suggests a move away from clients (Marder, 2020; Suzuki & Wood, 2017). Since the staff members in this case appear assumed to understand the motive of procedural efficiency, but not VOM's restorative aspects, there is a risk that they may refer cases to VOM for personal gain without assessing the cases' restorative potential. This indicates a possibility of gate-pushing.

11 Illustrated by Wagenaar's study (2004), an example of instrumental action includes setting up temporary housing facilities for immigrants who were unable to leave an airport due to legal challenges.

### 5.3 Coping with a lack of time and resources: Killing cases and cutting corners

Similarly to previous studies (Hoekstra, 2022; Iivari, 2010; Marder, 2020; Rasmussen, 2020; Zhang, 2021), police officers and prosecutors noted that time and resource constraints challenged their use of VOM in practice. Many police officers mentioned struggling with the “case jam,” expressing frustration over the unending pile of cases on their desk. Exemplifying goal conflicts between public servants and their authorities due to mass processing (Lipsky, 2010, p. 73), the requirement to obtain the client’s permission to send their case to VOM while maintaining their time quotas was described as a challenge by various police officers.

Strategies for coping with the shortage of time and resources varied. While acknowledging these challenges, some police officers nonetheless affirmed the clients’ consent to VOM as required. In support of studies revealing the perseverance of public servants in service delivery (Ningrum & Lotta, 2024; Walls & Seashore Louis, 2023), these results imply a commitment to rule abidance despite the hardships of policy practice. Rule abidance is generally described as intentionally conforming to rules when delivering public policy (Henderson, 2013, p. 801). Within the context of coping strategies, the rule abidance identified in this case appears to constitute a conforming response to the dilemmas of lacking time and resources. As a coping strategy intended to maintain policy standards despite lacking sufficient time and resources to do so, it appears appropriate to describe the submission to rule abiding as “enduring rule following.” This coping strategy builds from Tummers et al.’s strategy of “rigid rule following,” which consists of abiding by rules in uncompromising ways that contradict the demands of clients<sup>12</sup> (Tummers et al., 2015, p. 1104, 110). Whereas rigid rule-following usually moves against clients, the enduring rule-following exemplified in this case appeared to move toward clients, suggesting the maintenance of access to VOM.

In contrast, other police officers opted to simply discontinue the investigation of cases if they lacked the time and resources to confirm the clients’ consent to VOM. Several of them pointed out that “killing cases” was constantly used as a legal means to reduce the case jam. As noted by Iivari (2010, p. 32), killing cases is a technical term among police and prosecutors which refers to the act of closing the case and diverting it from criminal proceedings as early as possible. This commonly concerns less serious cases, which can be concluded by police and prosecutors on the ground of insignificance<sup>13,14</sup>. In this case, P6 noted that many less serious cases where it could be fruitful for the parties to mediate ended up being killed if police did not get the cases to VOM fast enough. P6 further noted that such cases were usually killed due to a lack of time and resources:

Interviewer: Is there a risk that that’s how it goes, that if you can’t get the mediation (to the case), you rather kill the case even though there would be a possibility to continue with the case?

P6: It’s not a risk, it’s a hard fact. Because we are trying within a few days to get these things here, then if you can get one thing done in a few days you do it, you have to do it, otherwise

12 Examples of rigid rule following includes welfare workers being unexceptionally strict with clients’ application deadlines (Wright, 2003, pp. 137–138) or teachers imposing excessive sanctions on students who don’t fulfill the schools’ dress code (Anagnostopoulos, 2003, pp. 308–309).

13 Criminal procedure act 689/1997. <https://www.finlex.fi/fi/laki/ajantasa/1997/19970689>. Accessed 25.02.2015.

14 Pre-trial investigation act 805/2011. <https://www.finlex.fi/fi/laki/ajantasa/2011/20110805>. Accessed 25.02.2025.

the cases keep piling up and if the investigator starts having over 150 cases on their desk, they won't remember what was at the bottom of the pile. In that situation the work pressure and either way the whole well-being and humor at work is being tested, so one just has to get the cases off oneself and then this mediation – if you can't get to it and get it sent there, you just get it done some other way.

Killing cases in response to resource and time constraints indicates the use of discretion in taking the quickest path to fulfilling managerial duties (Raaphorst & Groeneveld, 2019, p. 118). These findings align with the results reported in Banwell-Moore's (2023, pp. 228–229) study, namely that police officers' limited resources may lead them to limit the use of VOM. In this case, killing cases appears to limit the access to both VOM and criminal justice to “get it done” and get the cases off one's desk. As a response to time and resource constraints, this indicates a strategy for getting your share, and what Lipsky (2010) refers to as “rationing.” Often used to maintain procedural efficiency amid work pressures, the coping strategy of rationing involves decreasing or denying the availability of service for clients to meet policy aims (Tummers et al., 2015, p. 1108)<sup>15</sup>. Overall, these strategies imply moving away from clients, indicating gatekeeping access to VOM. As these strategies indicate that crime cases might either be killed or referred to VOM to manage resource constraints, these strategies also imply the gatekeeping of cases to criminal justice.

Some prosecutors also raised concerns over maintaining policy aims of procedural efficiency. In response to these concerns, one of them observed that efficiency-related policy aims could influence decision-making concerning VOM:

DP3: [...] if, for example, you apply for a higher position and they assess how much and how well and how fast you are able to put things forward, then in that case, the fact that someone uses the option of mediation may impact on what the image of efficiency looks like on paper [...]

That is one of the criteria related to our salary, so in a way how efficiently you can act it's one thing that goes all the way to our salary, so when the mediation automatically delays our decisions on these cases because it goes to the mediation office for a while, so if the prosecutor gets a case that they think I can resolve in a day and my consideration of the charges amounts to one day, but if I put this to mediation it is maybe four to six weeks before I get a decision from there, then in some cases that can be what weights the prosecutor's decision not to put it to mediation.

Interests of procedural efficiency and aims relating to personal career advancement appeared to shape the use of discretion regarding VOM in DP3's hypothetical example. This exemplifies strategies related to rationing and getting your share, which indicates moving away from clients to prioritize procedural aims and career prospects (Triandafyllidou, 2003; Tummers et al., 2015). As such, the coping strategies mentioned in this scenario indicate possibilities of gatekeeping.

15 Police declining to take on new citizenship applications to meet efficiency demands constitutes an example of rationing (Triandafyllidou, 2003).

#### 5.4 Dilemmas on assessing consent: What is in the best interests of victims and offenders?

Aligning with policy recommendations concerning procedural efficiency (Frände et al., 2012), police officers generally sent cases to VOM during the pre-trial investigation. Similarly, the prosecutors tended to refer cases while considering charges. In contrast with the guidelines, however, some police and prosecutors raised concerns over the early timing of such referrals. In line with previous research results (Banwell-Moore, 2023; Holmberg et al., 2021; Sandbye et al., 2023), they thought that suggesting VOM immediately after the conflict might, in some instances, further provoke tensions between victim and offender. In these cases, early referral was viewed as a risk that could decrease rather than encourage victims' and suspects' willingness to mediate.

The police and prosecutors coped with this dilemma in various ways. Some police and prosecutors opted to reassess consent after some time had passed if the parties had refused initially, thinking that giving additional time to put the conflict "on the back burner" would allow the parties to reassess their options. Some prosecutors said they maintained VOM as a possibility throughout the criminal proceedings, noting that they could refer cases even after charges had been raised if the parties changed their minds about VOM. Prolonging the timing of suggesting VOM despite the recommendations concerning procedural efficiency to help clients may constitute a coping strategy of "rule bending" (Tummers et al., 2015, p. 1109), indicating a move toward the clients to maintain access to VOM. Coined by Evans (2013), rule bending involves pushing the limits of regulations within the bounds of laws and regulations to help clients<sup>16</sup>.

However, other prosecutors said that they sent some cases to VOM despite their clients' initial opposition to mediation. They explained that if they personally still deemed the case suitable, they could refer it despite their client's lack of consent. Similarly to the police and prosecutors repeatedly suggesting VOM, many prosecutors defended this act by emphasizing that the parties might change their minds later. Some of them also pointed out that they generally applied this praxis when dealing with less serious crimes:

DP6: Sometimes when the interrogation has been conducted immediately after the event, the parties can be so upset about it and say, "there's no way I'm agreeing to mediation," and at times we may still send it if it seems like a less serious act. However, the starting point is that their consent should be part of it.

DP3: In some cases, complainant cases, the people haven't consented to mediation during the pre-trial investigation. If the prosecutor then sees that this case could really fit mediation, they could put it there, and the mediation office checks the consent anyway. Let's say it's a defamation case, and the prosecutor reads it and sees that clearly, the person got upset about this specific incident, their honor is now hurt in their view, and the perpetrator also

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16 For example, social workers may use their discretion within official guidelines to recommend access to services to clients even when the clients' may not fulfill all criteria for eligibility to service. (McDonald & Marston, 2008, p. 322).

thinks something occurred – but there is no consent to mediation, then sometimes time takes its course.

As DP6 and DP3 indicate, some prosecutors appeared to prioritize their own judgment over that of their clients. Based on their clients' emotions, they appeared to perceive them as lacking the emotional capacity for independent decision-making right after the conflict. They also appeared to justify their interpretative prerogative over their client in less serious cases. This indicates that the threshold for claiming the interpretative prerogative over their clients may be lower in both "emotional" and less serious cases.

In addition, a few prosecutors said that they drew the line at a stern refusal from the parties, and that if they clearly stated their unwillingness to mediate, the case was deemed unsuitable:

DP4: Even if the parties stated that they would refuse mediation during the pre-trial investigation, if I thought that this could be a case that would nonetheless be good that they could mediate, I might have sent it, but if the injured party has unequivocally indicated that they in no way want to mediate and do not consent to it during the pre-trial investigation, then I haven't sent it.

These results call into question the weight of a client's refusal of VOM during criminal proceedings. DP4's citation implies that there may be room for interpretation following a refusal, whereby potential for VOM could still be identified in a "soft refusal," whereas a hard "no" is not negotiable. These prosecutors appeared to cope by obstructing the guidelines concerning the assessment of consent and providing of information on VOM to their clients prior to case referral, suggesting "rule breaking" (Fleming, 2020, p. 1191). As defined by Evans (2013), whereas rule bending involves shifting or pushing the limits of regulations to help clients, rule breaking involves actively going against them. Previous studies provide examples of rule breaking that move toward clients (Tummers et al., 2015, p. 1108). Notably, Charbonneau et al. (2023) found that police officers issued smaller fines than mandated by law to civilians violating health regulations, deeming the required fines unreasonably high. In contrast, the rule breaking identified in this study appears to go against rather than toward the client's demands, suggesting gate-pushing.

## 6. Discussion

### 6.1 Findings

The findings from this study show that knowledge maintenance, lack of time and resources, and the assessment of consent remain relevant dilemmas concerning the implementation of VOM among police officers and prosecutors (Hoekstra, 2022; Iivari, 2010; Marder, 2020; Rasmussen, 2020; Stockdale, 2015; Zhang, 2021). Contributing to these studies, the coping strategies adopted in response to these dilemmas imply not only gatekeeping and maintaining access to, but also gate-pushing VOM. Building on previous restorative justice research, this study thus argues that introducing new terms such as gate-pushing constitutes a necessary step forward in understanding the challenges involved in the integration of restorative and criminal justice. The results also make a relevant contribution to street-level bureaucracy research. In contrast to prior research (Charbonneau et al., 2023; Evans, 2013; Fleming, 2020; Tummers et al., 2015), the findings

illustrate that strategies that commonly move toward clients, such as rule breaking, can also move against clients. Overall, three implications and policy recommendations arise from the results of this study.

First, the study finds that in coping with the maintenance of knowledge on VOM, police and prosecutors move toward clients by use of personal resources and instrumental action. Responding to a lack of time and resources, this study also identifies enduring rule following among police officers as a coping strategy moving toward clients. These coping strategies illustrate that to implement policy aims, public servants simultaneously stretch their own limited resources (Hill, 2003; Tiggelaar et al., 2023). Indeed, coping strategies are often influenced by the structural conditions of the officials' organizations (Brodkin, 2011; Davidovitz & Cohen, 2022, p. 280), and the emotional strain they impose (Taylor, 2021). Underscoring this, the findings indicate that knowledge on VOM has not been adequately assimilated for VOM to be implemented purposefully (Stark, 2020), possibly in part due to the increasing rule piling (Hupe, 2019b, p. 8). Hence, one policy recommendation is to develop more structured training on VOM and support the establishment of informal routines, such as local visits to VOM centers for police and prosecutors across Finland.

Second, this study finds that police and prosecutors adopt various coping strategies that either move away from, or against clients in response to all dilemmas identified. Responding to dilemmas of knowledge maintenance and a lack of time and resources, police officers' and prosecutors' coping strategies of getting your share indicate both gatekeeping and gate-pushing access to VOM. Notably, police officers' practice of concluding or "killing cases" on the one hand, and sending them to VOM to get them off one's desk on the other, appears to result in both the overuse and underuse of VOM to meet efficiency demands. Expanding upon previous restorative justice research (Marder, 2020; Rasmussen, 2020), the findings imply that efficiency aims may influence not only gatekeeping but also gate-pushing. The results also indicate that to maintain efficiency aims, gate-pushing cases to VOM may risk gatekeeping them from criminal justice. Furthermore, this risk appears more likely for less serious crime cases, which can often be legally "killed" in contrast to more severe cases (Iivari, 2010, p. 32). Overall, aligning the use of VOM predominantly with the criminal justice systems' demands for procedural efficiency risks mitigating its restorative incentives, instead turning VOM into a "trash bin" for less serious crime (Iivari, 2001, p. 472). To develop a criminal policy that is purposeful for the victims and suspects' access to justice, yet sustainably implementable for public servants, one policy recommendation is to provide additional funding or reassess case-management quotas for criminal justice officials.

Third, this study finds that some prosecutors cope with dilemmas related to assessing consent to VOM by rule breaking. Moving against clients by disregarding policy guidelines, some prosecutors refer cases to VOM despite their clients' contrary wishes, indicating gate-pushing. The results indicate that such responses may be more likely if victims are perceived as overly emotional or if the crime is less serious.

Previous studies on street-level bureaucracy commonly find that public servants break rules to help clients (Charbonneau et al., 2023; Tummers et al., 2015). As highlighted by Evans (2013, p. 754), these contrasting results showcase the risks of public servants' well-intended, non-compliant discretion. Notably, the findings imply that their discretionary ability to act upon their clients' behalf may lead some officials to act as gate-pushers of restorative justice. This risk appears more prominent in less serious crime cases and for victims who express emotional distress. Building on Yngvesson (1988, p. 410), this may suggest that in



justice officials' prioritization of "real law," clients of such cases might be viewed as less deserving of being heard. Acknowledging these risks, a policy recommendation is to increase the opportunities of clients to become more informed about their possibilities of justice, including criminal and restorative justice. To address discrepancies in criminal justice officials' assessment of consent to VOM, developing more systematic guidelines for prosecutors regarding case referral is also recommended.

## 6.2 Limitations

Concerning limitations, the sample is limited to 17 semi-structured interviews and cannot therefore merit generalizations based on the data. However, the expertise of police and prosecutors captured by the qualitative methods provides valuable insights into the challenges of street-level bureaucracy that may be useful in the development of future quantitative studies in public administration (Hendren et al., 2023).

Furthermore, the coping strategies identified in this study are limited to the criminal and restorative justice systems in Finland. Thus, when comparing the findings of this study to international studies, it is important to take into account differences in law and regulations related to VOM in other countries. The study is also limited to dilemmas of street-level bureaucracy as perceived among the police and prosecutors. This restricts the options to account for factors that unconsciously influence gatekeeping, such as personal interests and attitudes (Banwell-Moore, 2023; Hoekstra, 2022). Hence, there is a need for further research focusing on gatekeeping and gate-pushing resulting from unconscious bias (Maynard-Moody & Musheno, 2012).

Finally, the results are limited to findings that illustrate clear examples of gatekeeping, gate-pushing, and maintenance of access to VOM. Hence, instances of coping strategies with unclear implications concerning access were not included in the findings. Future studies are needed to further analyze and distinguish the interrelation among these concepts.

## 7. Conclusion

For victims and offenders, access to restorative practices often depends on the police and prosecutors, who refer cases to VOM based on case-by-case discretion. Exploring the discretion of criminal justice officials is thus paramount to understanding and developing the coexistence of criminal and restorative justice. The aim in introducing the term gate-pushing in this study was to facilitate a more thorough exploration of access to restorative justice. The identified examples of both gatekeeping and gate-pushing enhance current knowledge about the challenges involved in integrating systems of criminal and restorative justice (Evans, 2020; Smith et al., 2011). As the first study to explore gate-pushing, the findings underline the need for further research to explore its extent in policy practice (Chang & Brewer, 2023). Future studies should focus more strongly on police negotiations with clients on VOM-related matters.

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