


VICTIM IMPACT STATEMENTS AND PERCEIVED VICTIM RACE/ETHNICITY:  
EFFECTS OF JUROR BACKGROUND CHARACTERISTICS

by

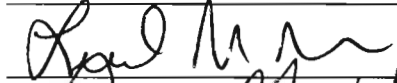
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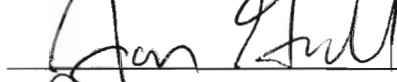
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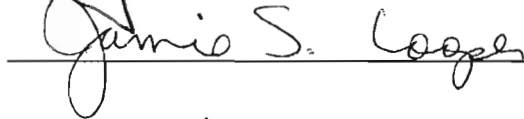
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Victim Impact Statements and Perceived Victim Race/Ethnicity: Effects of Juror  
Background Characteristics

A thesis submitted in partial fulfillment of the requirements for the degree of Master of  
Arts at George Mason University

By

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## ABSTRACT

### VICTIM IMPACT STATEMENTS AND PERCEIVED VICTIM RACE/ETHNICITY: EFFECTS OF JUROR BACKGROUND CHARACTERISTICS

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George Mason University, 2008

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Victim impact statements were introduced as a means to help victims heal through their participation in the adjudication process. Although victims do seem to benefit from the composition of these statements, when they are introduced at trial, defendants may not receive fair and impartial hearings. Impact statements may bring bias into sentencing decisions, as they may make jurors more aware of victim suffering and thus more likely to sentence the defendant more severely.

The present study examined whether mock jurors sentence defendants more harshly if they have read a victim impact statement, and whether the severity of the sentence is dependent upon the victim's race or ethnicity. These questions were examined with undergraduate students at George Mason University in Fairfax, Virginia. The study finds that victim impact statements do not directly relate to the severity of a defendant's sentence, and also that participants who did not read impact statements were as likely as



those who did to mention victim harm as a justification for their sentencing decision. Similarly, the victim's race or ethnicity did not seem to matter as it did not affect the suggested sentences for the defendant.

Some participants did, however, infer extra-legal characteristics from the victim statements, and others made racist remarks. Further, the participants' background and knowledge of criminal justice was evident in their sentencing, particularly through a focus on restorative justice, signifying the importance of exercising caution when selecting jurors.

## INTRODUCTION

Victim impact statements, “written or oral information about the impact of the crime on the victim and the victim’s family,” have become an integral element of courtroom processes (National Center for Victims of Crime [NCVC], 2004, n.p.). It is important that criminal justice practitioners and victim advocacy groups understand the effects these statements can have on sentencing decisions as an “estimated 90% of victims offer [them] if they are informed about [the] opportunity” (Szmania & Gracyalny, 2006, p.233). The criminal justice system typically allows the introduction of victim statements as aggravating factors, or “relevant circumstance[s], supported by the evidence presented during the trial that make [*sic*] the harshest penalty appropriate in the judgment of the jurors,” during the sentencing phase of a trial (Platania & Berman, 2006, p.87).

Victim impact statements were first introduced in an attempt to include victims in the adjudication process, though their effects on overall court processes today are unclear. It is possible that the statements introduce a form of bias into the system. When jurors consider victim impact statements they may also, either consciously or unconsciously, consider extra-legal factors such as the victim’s race or ethnicity, which could then influence their sentencing decisions by making the sanction either more or less severe, based on personal prejudices.

## CHAPTER ONE: Victim Impact Statements – History and Use

### *The origin of victim impact statements*

In the 1970s, the women's movement promoted an awareness of victimization and victim rights. Various factors influenced the victims' rights movement, including heightened consciousness of sexism and discrimination as well as increasing levels of crime across the nation. Together, the broad economic and political discrimination against women led to calls for equal opportunities and authority. Women used this newfound power to form victim assistance programs as well as various centers and shelters to help those suffering from abuse (Walker, 2000; Walsh, 1986).

Men also recognized that victims were often ignored and suffered from neglect, particularly in the criminal justice system, and also proved to be powerful advocates during this time. In Fresno County, California, Chief Probation Officer James Rowland was acutely aware of the extent of victim suffering. He noticed that victims suffer not only financially and psychologically, but also from neglect and a lack of information. He further recognized the extent of victimization in any given crime, in that it extends beyond the primary victim to include family members, friends, and employers as well. Rowland sought to give victims a more influential role in the criminal justice system in an attempt to help them heal (Rowland, 2002).

It was in 1976 in Fresno County that Rowland introduced the first victim impact statement (U.S. Office of Justice Programs [USOJP], 2005). Along with victim assistance, his original intent was to “provide the judiciary with an objective inventory of victim injuries and losses at sentencing” (USOJP, 2005, p.5). Since their origin, impact statements have typically contained information on the “financial, physical, psychological or emotional impact, harm to familial relationships, descriptions of any medical treatments or psychological services required... and the need for any restitution” (NCVC, 2004, n.p.).

Victim evidence is introduced in the pre-sentence report at the federal level, though state guidelines vary. The information is typically presented by the prosecution during the sentencing phase as an aggravating factor, “a relevant circumstance, supported by the evidence presented during the trial that makes the harshest penalty appropriate in the judgment of the jurors” (Platania & Berman, 2006, p.87). At this time, the defense is able to present mitigating factors, those “regarding the defendant’s character or the circumstances of the crime which would cause a juror to vote for a lesser sentence” (Platania & Berman, 2006, p.87). A number of jurisdictions also allow victims the right of allocution, the right to speak at trial, and some allow them to suggest what, in their mind, would be an appropriate sanction (NCVC, 2004). While policies vary, primary victims as well as their families and other secondary victims are usually able to contribute impact evidence.

Rowland took initiative and designed impact statements so that victims could “participate more meaningfully in the prosecution of the defendant” and have a voice in the criminal justice system, a field from which they were typically excluded (Slowinski, 1990, n.p.). He

hoped that through the completion and reading of a statement, victims would be restored and better able to overcome their losses and trauma (Rowland, 2002).

Rowland's ideas were based on his belief that "society has a responsibility to assist and restore the victim," integral elements of restorative justice (Rowland, 2002, n.p.). This form of justice "is based on a set of values that promotes healing, repairing harm, caring, and rebuilding relationships among the victim, the offender, and the community" (Kurki, 2000, p.237). It allows for equal involvement of "victims, offenders, and communities in participation in decision making" (Kurki, 2000, p.237). Rowland sees the statements as an important step in the victims' rights movement, and believes society needs to give equal attention to victims and offenders, including the provision of both help and education (Rowland, 2002, n.p.).

But while restorative justice may be beneficial for victims, impact statements and their apparent effects on sentencing may be detrimental to offenders. In the years since Rowland first initiated the use of victim statements with the goal of helping victims, their use and intent seem to have changed. The statements are now emphasized not as a form of release for victims, but as a more influential factor in the sentencing process, which could potentially lead to unwarranted discrimination in the courtroom. Historically, the bases for criminal sanctions have been incapacitation, retribution, rehabilitation, and deterrence, and in a system striving to achieve impartiality, many believe this focus on restorative justice and victims compromises the right to a fair trial for the accused (Eldridge, 1982).

### *What we know*

Research has failed to show what aspects of impact statements or physical characteristics of victims may influence defendants' sentences. However, research in other fields has consistently shown that, in a range of contexts, people are sensitive to and perhaps biased against individuals with characteristics different than their own (Hirsch & Schumacher, 1992; Saltman, 1979; Bertrand & Mullainathan, 2003). Given this, it is possible that jurors are unable to disregard their personal feelings, including any prejudices, to determine appropriate sentences based on the facts presented before them in any given case. As a whole, scholars are not confident of the overall effects of victim impact statements on juror sentencing decisions.

Generally, it seems the mere presence of a victim in the courtroom can produce harsher sentences for defendants (Erez & Tontodonato, 1990). Also, statements given by secondary victims tend to have greater effects on sentencing decisions than those given by primary victims, perhaps because these statements are more likely to be given in capital cases, where jurors may already be primed by the severity of the offense. Statements by a coworker or a family member, specifically a mother, as opposed to other secondary victims, have been shown to result in more severe sanctions for defendants. Studies have found this effect with both written statements and those heard via videotape. However, studies have not compared the formats, so it remains unclear which is more persuasive (McGowan & Myers, 2004; Gordon & Brodsky, 2007; Myers, Lynn, & Arbuthnot, 2002). On the other hand, written victim statements may have a greater influence on sentencing outcomes in bench trials as they are available via the case file to judges during their deliberations. When a victim reads

her statement at the sentencing hearing, it may be too late for consideration as the judge may have previously decided on an appropriate sentence, thus making the act more symbolic and ritualistic than functional and influential (Erez & Tontodonato, 1990). In regard to specific victim characteristics such as gender and emotionality and their impact on sentencing decisions, the literature yields no clear consensus.

The majority of the available research on victim evidence focuses on capital cases; the lack of attention to non-capital cases may be a result of various Supreme Court decisions that have consistently allowed for the potential use of victim impact statements in non-capital trials. Also, most of the research utilizes mock jurors that do not deliberate, and many studies use college students, limitations as the studies fail to simulate a true jury panel as exists in court. Interviews with court personnel may produce biased results, but court records and correlational studies of actual cases, while more difficult to access and conduct, are more reliable methods for this type of research. The best studies focus on one aspect of either the victim or the statement, and with more rigorous methods and this specificity, they tend to produce sound results.

#### *The use of victim impact statements*

Again, the use and intent of victim statements has evolved, and Roberts and Erez (2004) note “how the movement to provide victims with a voice has been derailed,” and “although victims in some jurisdictions are told that the impact statement will not affect the sentence imposed, they are simultaneously encouraged to write anything that they believe is important to the judge in determining sanction” (p.224, 229). Consequently, victims often focus on

their potential to influence the sentencing decision, typically hoping to achieve a more severe sanction for the defendant. One study found that the majority of victims (fifty-five percent) believed that their statement would influence the defendant's sentence (Erez & Tontodonato, 1992). Research has also found that "most victims expressed the hope that giving a victim impact statement would influence the sentence given to offenders, assert the 'rights of victims over offenders,' and generally ensure that justice would be done" (Giliberti, 1990, p.4). Speaking to this use of victim evidence as a sentencing tool, Erez and Tontodonato (1992) go on to say that the "impact model ignores the possible therapeutic or restorative benefits associated with communication involving other participants in the court proceedings," as in restorative justice (p.224).

It is not true, however, that all victims are focused on retribution and revenge; a study of felony cases in Ohio found that of the victims who submitted a statement, sixty percent requested incarceration for the offender, and those specific individuals made up only thirty-three percent of the total sample, though one can not be sure that all of the victims were aware of their right to submit a statement and thus had a chance to suggest a sentence for the defendant (Giliberti, 1990; Erez & Tontodonato, 1992). Another study found that the composition of a statement can be beneficial to victims, as the author found "no difference in the degree of victims' satisfaction when their statements were used in court and when they were not" (Giliberti, 1990, p.5). This finding emphasizes procedural justice, as "studies suggest that victims' grievances are more with the procedures of the criminal justice system, particularly lack of victim involvement in the decision-making process, than with the supposed injustice of the outcome" (Erez & Tontodonato, 1990, p.452). Scholar Tom Tyler



and others with supporting findings have demonstrated that the opportunity to speak with authorities or to voice one's harm in the courtroom is related to "satisfaction with justice" (Tyler, 1988, p.111, as cited in Erez & Tontodonato, 1990, p.452). On the other hand, studies have also found that victims with unfulfilled expectations are generally less satisfied, and so encouraging statements as sentencing tools can be misleading and can have detrimental effects on victims (Erez & Tontodonato, 1992).

### *The legal history of victim impact statements*

In the 1980s, President Reagan's Task Force on Victims of Crime sought to "change the Sixth Amendment to the Constitution, adding a victim's right to be present and heard at all critical stages of judicial proceedings in every criminal prosecution" (Mottley, Abrami, & Brown, 2002, n.p.). While the group was unsuccessful, victim rights advocates have continued to seek similar goals, often in the face of strong opposition.

In 1982, the Victim and Witness Protection Act was passed, legislation that afforded victims the right to include a victim impact statement in the presentence report. The research behind the act found that "victims suffer mental, financial, and physical hardship, are often left in the dark regarding the status of the proceedings, and are used as tools," and sought to remedy the situation, echoing the words and intent of Rowland. The Crime Victims' Rights Act of 2004 affirmed "the right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding," though as will be discussed, the meaning of 'reasonably heard' continues to be debated (Federal Judicial Center, 2005, n.p.)

The Supreme Court has considered the legality of victim impact statements on three separate occasions, the first in 1987 with a 5-4 decision in *Booth v. Maryland*. This ruling declared victim impact statements unconstitutional and in violation of the Eighth Amendment when used during the penalty phase of capital trials. The *Booth* court prohibited three forms of victim impact evidence: “accounts of the emotional and psychological impact of the crime on the family, descriptions of the [victims’] personal characteristics, and victims’ family members’ opinions and characterizations of the crimes and the defendant” (*Humphries v. Ozmint*, 2005). A central issue in the *Booth* case was the potential for sentencing decisions to be related to a victim’s family’s ability to articulate the harm they suffered as a result of the offense (Hill, 2005). More generally, the justices feared sentences based on emotion rather than reason, a clear violation of the Eighth Amendment, which dictates that the death penalty must not be imposed “in an arbitrary and capricious manner” (*Booth v. Maryland*, 1987). The court also noted the Fourteenth Amendment’s Equal Protection Clause and the government’s responsibility to “protect the life, liberty, and property of all citizens equally,” reasoning that victim impact statements unduly bias the court against defendants (Elbel, 2007, n.p.).

However, the court included a caveat in its decision: “information of the sort contained in the victim impact statement might be admissible in non-death penalty sentencing or if it is directly related to the circumstances of the crime” (*Booth v. Maryland*, 1987). Thus, a proposed interpretation of the *Booth* standard reads: “information regarding the character of the victim is inadmissible in capital sentencing unless it is within the defendant’s knowledge

and is closely tied to either the method of the killing or the intent of the killer” (Willmott, 1990, n.p.).

In 1989, the *Booth* ruling was upheld in *South Carolina v. Gathers*, the court concluding that “a sentence of death must be relevant to the circumstances of the crime or to the defendant’s moral culpability” (USOJP, 2005, p.9). The ban on victim impact evidence was further extended to include prosecutors’ “comments on the murder victim’s personal characteristics” (*Humphries v. Ozmint*, 2005).

In both cases, however, there were significant dissenting opinions, and in the latter Justice Scalia noted that *Booth* “did not have a basis in the common law background of the Eighth Amendment, social tradition, or present societal consensus” (*South Carolina v. Gathers*, 1989). He argued that “wrongly decided cases like *Booth*, which deal with evolving standards of decency should be overturned before society revamps its laws to comply with the erroneous decisions” (*South Carolina v. Gathers*, 1989).

More recently, the court has overturned its original decisions with a 6-3 ruling in the 1991 case *Payne v. Tennessee*. The court held that “the Eighth Amendment does not prohibit a jury from considering, at the sentencing phase of a capital trial, ‘victim impact’ evidence relating to a victim’s personal characteristics and the emotional impact of the murder on the victim’s family, nor does the Eighth Amendment bar a prosecutor from arguing such evidence at the sentencing phase” (*Payne v. Tennessee*, 1991). The justices recognized that “virtually no limits are placed on the relevant mitigating evidence a capital defendant may introduce concerning his own circumstances,” and thus saw no reason for such restrictions on victims and their families (*Payne v. Tennessee*, 1991).

The prior decisions held that evidence regarding the harm to a victim or his/her family was not related to the “blameworthiness” of the defendant, and “only evidence relating to ‘blameworthiness’ is relevant to the capital sentencing decision” (*Payne v. Tennessee, 1991*). The *Payne* court justified its overruling of the decisions in *Booth* and *Gathers*, however, reasoning that “the assessment of harm caused by the defendant... has long been an important concern of the criminal law,” in the form of retribution (*Payne v. Tennessee, 1991*).

Although opinions by the court continually mention *stare decisis* as “the preferred course,” the majority of the *Payne* justices maintain that the *Booth* decision “had absolutely no basis in constitutional text, in historical practice, or in logic” (*Payne v. Tennessee, 1991*). The court also noted that “considerations in favor of *stare decisis* are at their weakest in cases involving procedural and evidentiary rules,” and that precedent is often “unworkable” or “badly reasoned” (*Payne v. Tennessee, 1991*). In this case, the justices thought *Booth* misinterpreted precedent;

We think the *Booth* court was wrong in stating that this kind of evidence (victim testimony) leads to the arbitrary imposition of the death penalty. *Booth* and *Gathers* were decided by the narrowest of margins, over spirited dissents challenging the basic underpinnings of those decisions. They have been questioned by members of the court in later decisions, and have defied consistent application by the lower courts (*Payne v. Tennessee, 1991*).

Further, the justices pointed to the 1987 Federal Sentencing Guidelines, that called for the “precise calibration of sentences,” including the consideration of “the subjective guilt of the defendant and [*sic*] the harm caused by his actions” (*Payne v. Tennessee, 1991*).

The *Payne* decision held that “testimony and prosecutorial arguments commenting on the murder victim’s good character, as well as how the victim’s death affected his or her survivors, do not violate the defendant’s constitutional rights in a capital case” (USOJP, 2005, p.10). The *Payne* court did not, however, “alter *Booth*’s holding that admitting evidence of the victims’ opinions of the crime and of the appropriate sentence for the defendant violates the Eighth Amendment” (*Humphries v. Ozmint*, 2005). Nor did the decision permit the consideration of the victim’s demographic characteristics such as gender race, or ethnicity. The court further set forth the idea that victims are not to be compared, “for instance, that the killer of a hardworking, devoted parent deserves the death penalty, but that the murderer of a reprobate does not” (*Humphries v. Ozmint*, 2005). Rather, as stated in Chief Justice Rehnquist’s opinion, the evidence “is designed to show instead each victim’s uniqueness as an individual human being, whatever the jury might think the loss to the community resulting from his death might be” (*Payne v. Tennessee*, 1991).

Although the court has ruled them admissible, the justices continue to appreciate critics of victim impact statements and recognize that “[i]n the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief” (Schneider, 1992, p.414). Thus, the current state of victim impact statements in capital trials has been decided in the courts, and the potential for bias is to “be considered on a case-by-case basis” (McGowan & Myers, 2004, p.358).

Because it is difficult to discern bias or discrimination in any given case, one might assume that this concern would lead to uniform procedures regarding the introduction of

victim evidence across jurisdictions. Since *Payne*, however, many lower courts have cited and applied the decision while others have defied it and limited the rights outlined in the ruling.

### *Interpretations of the Payne decision*

*United States v. McViegh* (1998) referenced *Payne* in declaring the admissibility of victim impact evidence “in order to allow the jury to understand the consequences of the crime committed.” In 1998, *United States v. Caruso* cited *Payne* and ruled that victim impact evidence is admissible as an aggravating factor even if the harm shown is that “implicit in any murder.”

In 1995, a Maryland appellate court upheld a ruling limiting the extent of victims’ participation in sentencing. The case involved the rejection of oral testimony from two relatives of victims as they had previously submitted written statements; the judge believed that there would be no new information gained, therefore “it would not be beneficial to take the additional court time to hear oral testimony” (Subar, 1996, n.p.). Since then, the passing of the Crime Victims’ Rights Act of 2004 has granted victims the “right to be reasonably heard,” the meaning of which continues to be debated (*Kenna v. District Court, 2006*).

In one case, victims were able to submit written statements and one victim, Mr. Kenna, was able to speak at the sentencing of the first of two co-defendants. Months later, at the second sentencing hearing, the judge denied Mr. Kenna that right and argued, “I listened to victims the last time... I can say for the record I’ve rereviewed all the investor victim statements... I don’t think there’s anything that any victim could say that would have any

impact whatsoever” (*Kenna v. District Court, 2006*). Mr. Kenna appealed the decision and the court ruled that “the district court erred in refusing to give Mr. Kenna and other victims the right to speak” (*Kenna v. District Court, 2006*). Many groups and individuals have defended victims’ right to allocute as they may be able to convey new information to the court, appeal to the defendant, and themselves be restored and healed, goals that waver between the communicative function of victim evidence and its use as a sentencing tool (Bierschbach, 2006).

In 2001, the U.S. Court of Appeals for the Fourth Circuit held that victim impact evidence can not be produced as rebuttal to a defendant’s testimony about his troubled upbringing and positive personal characteristics, rather such a rebuttal must contain direct information contradicting what the defendant testified (*United States v. Stitt, 2001*). In 2005, however, a Court of Appeals held that while *Payne* prohibits the comparison of victims, it does not prohibit victim-defendant comparisons, as, citing the case decision, the “state has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in” (*Humphries v. Ozmint, 2005*).

In 1996, the New Jersey Supreme Court restricted the use of victim impact testimony in capital cases and held that the “testimony be limited to one family member, be pre-approved by the trial court, be in written form, and not include any opinions about the defendant, the crime, or the sentence that should be imposed” (Platania & Berman, 2006, p.87). Citing *Payne*, in 2007 the U.S. District Court for the Western District of North Carolina, Charlotte Division reiterated the limits declared in *Booth* and stated that “a personal opinion about the

defendant or an appropriate sentence is not evidence relating to the victim or the impact of the victim's death on members of the victim's family" (*Blakeney v. Lee, 2007*).

Since the *Payne* decision, a number of lower courts have held that the prosecution must inform the defendant of the details of any aggravating factors, including victim evidence, that will be presented during trial, including information about the victims' family's suffering. These decisions are intended to help defendants prepare for the sentencing phase of their trial (*U.S. v. Llera Plaza, 2001; U.S. v. Caro, 2006*).

In 2005, in *United States v. Catalan-Roman*, a district court reasoned that victim impact evidence could unfairly affect one or more defendants in joint proceedings. Specifically, one of the defendants had strong mitigating factors regarding his background and personal character to counteract the victim impact testimony while another lacked such information. The court held that the defendants were permitted to "sequential penalty phase hearings" (*U.S. v. Catalan-Roman, 2005*).

These rulings demonstrate the continued debate over the use of victim impact statements. They signify that the content of the statements and characteristics of the victims appear to, or are suspected to, at least occasionally influence defendants' sentences. The specific mechanism that is related to sentence severity may be considered legitimate and proper under the decisions of previous cases, or it may be an unacceptable and unjust association, such as a victim's race or ethnicity.



## CHAPTER TWO: The Consideration of Extra-Legal Factors

In 1949, in a decision that has been cited many times since, the Supreme Court of California noted, "it cannot be doubted that a trier of fact has and often exercises the power, because of obvious extralegal factors or for no apparent reason, to find a defendant guilty of a lesser degree or class of crime than shown by the evidence" (*People v. Powell, 1949*). In such a situation when a jury "refuses to follow the law and convict in a particular case even though the facts seem to allow no other conclusion but guilt," it is referred to as "jury nullification," a right that jurors are often unaware of (Weinstein, 1992, p.239). When judges or juries consider other factors that should not, legally, be taken into consideration during decision making processes, however, including physical characteristics of either the defendant or the victim, they risk bringing unwarranted disparity into the criminal justice system.

The legal variables, also known as evidential factors, typically taken into consideration at the sentencing phase of a trial as evidenced by the majority of sentencing guidelines are the seriousness of the offense and the offender's prior criminal record (Mazzella & Feingold, 1994). On the other hand, studies of courtroom decision making often point to the influence of "extralegal" factors, including demographic characteristics of defendants or victims, on sentencing deliberations (Mottley, Abrami, & Brown, 2002). An extra-legal factor is "that

which is ‘extra’ to the law, i.e., not specifically prescribed in the relevant statutory law,” and therefore should not affect courtroom outcomes (Nagel, 1983, p.482).

### *Judges*

People often assume that “judges are trained to ignore testimony that has no probative value, and they are not easily moved by the affective demeanor of victims,” the latter an extra-legal consideration (Roberts & Erez, 2004, p.237). Specifically, people believe that “judges are surely capable of distinguishing legally relevant from irrelevant information... contained in victim impact statements,” (Roberts & Erez, 2004, p.238). It is possible, however, that victim impact statements “increase the likelihood that a judge’s objective approach will be substituted for the victim’s subjective one,” increasing the likelihood of a decision based on illegitimate concerns (Hill, 2005, p.217).

In a Texas district court in 1988, Judge Hampton sentenced the defendant Bednarski, guilty of double homicide, to thirty years. In defense of the relatively lenient sentence, he noted, “those two gays that got killed wouldn’t have been killed if they hadn’t been cruising the streets picking up teen-age boys. I don’t much care for queers cruising the streets picking up teen-age boys...I put prostitutes and gays at about the same level and I’d be hard put to give somebody life for killing a prostitute” (Willmott, 1990, n.p.). Although pre-dating it by three years, this reasoning represents a clear violation of the *Payne* declaration that victims and their relative worth are not to be compared. This case is a clear example of a decision based on extra-legal factors. Robert Flowers, the executive director of the Texas Commission

on Judicial Conduct at the time, believed that Judge Hampton's decision "did not violate the limits of judicial discretion," though the judge was later censured (Belkin, 1988, n.p.).

Researchers have found that decisions concerning the "release [of] a defendant on recognizance, the amount of bail required, and whether to offer a defendant a cash alternative to a surety bond" do differ significantly based on the "identity of the judge" (Nagel, 1983, p.482, 498). These findings suggest that judges can not always ignore their own personal beliefs and biases when making important justice-related decisions, and leave one to wonder whether the same might be true for jurors. The introduction of victim impact evidence into jury deliberations on sentencing may make these decisions more difficult as well as arbitrary.

### *Juries*

The United States Constitution guarantees the right to a trial by jury, and while few defendants take advantage and elect to have their case heard by one, juries can and do have a significant impact on the criminal justice system. In the American bifurcated court system, sentencing decisions are made separately from the determination of guilt. Jurors typically make the sentencing decision in capital cases, and several states allow them that authority in non-capital cases as well, as it is believed that "the ideals of juries (reflect) the common sense and community attitudes towards crime and punishment" (Mottley, Abrami, & Brown, 2002, p.6).

In comparison to judges, there are a number of limitations that jurors face, including a lack of instruction and guidance, which could lead to differential sentencing. Further, jurors have a weaker knowledge of sentencing and ignorance of any "going rates," or those

sentences that a courtroom workgroup, including the prosecutors and defense attorneys, have deemed appropriate and therefore use frequently for a given offense (Feeley, 1979). Jurors' lack of experience may lead them to overreact in certain circumstances, and there is often greater variation in sentences given by jurors compared to those handed down from judges in bench trials (King, 2004). Jurors also suffer from a lack of information regarding "the extent of credit for good-time," and judges may have "less apprehension about early parole release, less expectations that a sentence might be reduced, a better idea of what an average sentence is, and sometimes even more mitigating information" (King, 2004, p.6-7).

On the other hand, one study found judge and jury disagreement in only 34% of cases. Within those, "only 11% of the reasons for disagreement concerned 'sentiments about the defendant' – the prejudicial factors of age, status, and beauty..." (Wasserman & Robinson, 1980-1, p.99). This finding suggests that while jurors may consider extra-legal factors in their sentencing decisions more frequently than judges, their sanctions are not exceptionally different, and neither judges nor juries regularly consider such factors. But when jurors or judges do take this type of information into consideration during the sentencing phase of a trial they risk bringing "unwarranted disparity" into the criminal justice system (Bushway & Piehl, 2001, p.734).

Courtroom decision makers, especially jurors, must find a way to determine appropriate sentences, and they may turn to extra-legal factors for assistance. Two types of extra-legal influence have been identified – "sentiments about the case and the defendant," but victim impact statements seem to introduce a third form (Wasserman & Robinson, 1980-1, p.100).

Critics of the statements believe that they provoke emotions and beliefs irrelevant to the sentencing decision, but taken into consideration by jurors nonetheless.

Individuals might consider extra-legal factors when determining sentences for a number of reasons. One possibility is the frequent covariation of several personal characteristics, including being black, poor, male, or unattractive, with criminality (Mazzella & Feingold, 1994). Studies show that “race and other extra-legal factors [including age] can predict criminal history and crime severity,” and arrest data and victim reports demonstrate racial differences in “serious street crime” (Bushway & Piehl, 2001, p.741; Covington, 1995, p.550). Even if these studies have flawed findings, however, as critics believe, many people have the perception that a greater percentage of young, black males in a neighborhood relates to higher crime rates. This effect has been demonstrated even when controlling for actual crime rates, showing the pervasive nature of stereotypes and their power to influence perceptions of neighborhood crime and individuals of certain demographics (Quillian & Pager, 2000).

Due to general stereotypes or personal bias, people serving on a jury may have less sympathy for individuals of particular races, ethnicities, or backgrounds, and therefore sentence them to harsher punishments. Alternatively, if the victim has particular characteristics, jurors may sentence defendants to lesser punishments, based on the diminished worth they assign to him/her (Mazzella & Feingold, 1994). This could lead to differential sentencing in a system with sentencing guidelines designed to restrict such discretion and disparity.

Victim statements, while constitutional, may bring extra-legal factors to the forefront of sentencing decisions, as “vivid evidence can sometimes have an impact that is clearly not justified by its informative worth” (Wasserman & Robinson, 1980-1, p.137). The statements may be a form of “demonstrative evidence,” that which has “both informational value and emotional impact” (Wasserman & Robinson, 1980-1, p.136). More generally, demonstrative evidence encompasses “all phenomena that can convey a relevant first-hand sense impression to the trier of fact, as opposed to those which serve merely to report the second-hand sense impression of others” (Wasserman & Robinson, 1980-1, p.136). Victim impact statements provide a “close affinity of powerful sentiments to admissible evidence” that may “allow the jury to express its feelings within the etiquette of the law” (Wasserman & Robinson, 1980-1, p.139).

#### *The significance of these effects*

Considering the debate about victim impact statements and their potential to bias a judge or jury, research has continually tried to determine which elements of a victim or his/her statement to the court could lead to prejudicial sentencing. If juries are using non-traditional mechanisms to decide their verdicts and judges are not adjusting them, research needs to examine the intent and practice of jurors in an effort to reduce poorly-conceived sentences or those based on extra-legal factors, such as a victim’s physical characteristics.

Despite the mixed and uncertain findings to this point, it is important that scholars continue their attempt to understand the means by which victim impact statements influence these decisions as courtrooms are intended to be institutions of justice and the consideration

of “illegitimate” factors such as the race or ethnicity and economic status of a victim introduces discrimination into the system (Baum, 2001, p.188).

## CHAPTER THREE: Available Research

The majority of the available research on victim evidence has focused on capital cases, again likely a result of the controversy surrounding impact statements in these particularly powerful and emotional trials. The individuals charged with sentencing in capital cases face an inherently different task than in non-capital cases as they are forced to make the decision between life and death via sentencing defendants to life in prison or the death penalty. These studies of the influence of extra-legal factors, particularly victim characteristics, provide a proxy for how decisions might be made in non-capital cases. By understanding the effects in capital cases, research on non-capital cases will have a stronger foundation.

### *Extra-legal factors in capital cases*

Several studies have compared sentences in capital trials with a victim impact statement to those without. The results, however, are mixed, perhaps due to the modification of multiple variables. Some of this research has found that with mock jurors, victim impact statements seem to significantly increase the number of votes for the death penalty (Luginbuhl & Burkhead, 1995; Myers & Arbuthnot, 1999; Granados, 2003, Gordon, 2006).

Alternatively, a number of studies have found the opposite. Davis and Smith (1994) did not find a relation between the presence of a victim impact statement and the resultant sentence, though they suggest, as other scholars have, that the “greatest inconsistency in the



assessment of punishment takes place at the charging and bargaining stages of capital case, not at the sentencing phase itself” (Davis & Smith, 1994; King, 2004, p.212). One study found that “only 33 percent of the sample viewed the victim impact statement as being moderately influential” to the sentencing decision, and thus the authors concluded that many different factors contribute to courtroom outcomes (Gordon & Brodsky, 2007, p.50). A survey of former jurors in South Carolina failed to find a relation between the presence of a victim statement and the sentencing outcome (Eisenberg, Garvey, & Wells, 2003). One suggested reason for these findings is the potential for the impact statement’s humanization of “both the victim and the offender,” which could lead jurors to avoid sentencing the defendant to death (Szmania & Gracyalny, 2006, p.233).

#### *Defendant characteristics*

While there are studies of the effects of defendants’ personal characteristics on their sentences, the findings tend to be inconclusive. Granados (2003) found no difference between the sentencing patterns of individuals exposed to a “neutral” statement and a “defendant” statement, the latter of which contained testimony “that emphasize[d] the lack of humanity and viciousness associated with the defendant’s character” (p.58). The different levels of victim statements did, however, elicit different levels of emotions in mock jurors, though no link was established between greater levels of anger or fear and more retributive sentences (Granados, 2003). Although giving jurors a specific portrayal of the defendant has little or no effect on their judgments, studies show that most of the other personal characteristics of defendants do.

Past research on bias in sentencing has often focused on defendant characteristics, including race and ethnicity, and has tended to show that if the victim is white, black defendants receive harsher penalties than their white counterparts (Mazzella & Feingold, 1994). A number of these studies of the influence of defendant characteristics on sentencing outcomes have significant, yet small effect sizes, though the results have been relatively consistent through decades of research. Studies have continually demonstrated “evidence of differential sentencing... in inter-racial capital cases in the southern United States” (Hagan, 1974, p.378).

Research shows that “African Americans have twenty percent longer sentences than whites, on average, holding constant age, gender, and recommended sentence length from the guidelines” (Bushway & Piehl, 2001, p.733). African Americans face an average sentence length of over thirty-five months; whites face an average of less than twenty-eight months, a twenty-eight percentage point disparity. The same study found that African Americans are “5.3 percentage points more likely than whites to be sentenced to prison” (Bushway & Piehl, 2001, p.752). Thus, extra-legal factors seem to influence both the “in/out” decision and the determination of sentence length.

The Baldus Study, conducted in Georgia in the 1980s, found that prosecutors sought the death penalty for seventy percent of black defendants with white victims but for only fifteen percent of white defendants with black victims (American Civil Liberties Union, 2003). A more recent study in Maryland had similar findings, with defendants with a white victim 1.6 times more likely to be sentenced to death than defendants with a black victim, controlling for the jurisdiction of the offense and other specific case characteristics. Further, blacks who

kill whites are 2-5 times more likely to be sentenced to death than whites who kill whites, and 3-5 times more likely than blacks who kill blacks (American Civil Liberties Union, 2003). Another study found that “blacks who kill whites are two and one-half times more likely to be sentenced to death than whites who kill whites” (Paternoster & Brame, 2003, as cited in Wood, 2005, 142).

Once an individual is on death row, his/her likelihood of facing execution is also greater if the victim is white than if the victim is from a minority racial or ethnic group. African Americans convicted of killing whites are 1.7 times more likely to be executed than those with non-white victims. Hispanics with white victims are also more likely to be executed than other death row offenders, though to a lesser degree than African Americans (Jacobs, Qian, Carmichael, & Kent, 2007). Controlling for thirty-nine nonracial variables, including income and the mode of killing, the “odds of being executed were 4-3 times greater for defendants who killed whites than for defendants who killed blacks” (Baldus, Pulaski, & Woodworth, 2000, n.p.).

The rates differ, but these findings demonstrate that overall, “when the legal variables are controlled, nonwhites differ from whites in sentence severity” including length of jail term, likelihood of facing the death penalty, and likelihood of actually undergoing execution (Thomson & Zingraff, 1981, p.875). These recurrent inconsistencies suggest pervasive racial and ethnic discrimination throughout the criminal justice system.

It is not just race and ethnicity; courtroom decision makers have also been shown to consider other personal and physical characteristics of defendants. A study using mock jurors found that “the physical attractiveness, moral character, and sex of the parties, the extent of

the victim's and defendant's injuries, adverse pretrial publicity, and the jurors' own authoritarian leanings were shown to make a significant difference in trial outcome" (Wasserman & Robinson, 1980-1, p.101; Mazzella & Feingold, 1994). A study conducted in Australia found supporting evidence that the defendant's sex matters, specifically that victim impact statements result in more severe sentences for female offenders, seemingly the result of an increase in perceived deviancy, as measured through volition and future dangerousness. The study failed to find support for the idea that victim statements influence the severity of sentences handed down to males; the statements thus decrease the sentencing disparity between males and females, as males are typically sentenced more severely than their female counterparts (Forsterlee, L., Fox, & Forsterlee, R., 2004).

A meta-analysis of eighty studies supported these findings and found that a number of a defendant's personal characteristics can influence the severity of his/her sentence. The analysis looked at studies of defendants' socioeconomic status, and found that individuals of lower socioeconomic status were more likely to be found guilty and also faced harsher punishments than their higher socioeconomic status counterparts (Mazzella & Feingold, 1994). Lizotte (1978) looked at socioeconomic status and found occupational and racial differences in sentencing in Chicago trial courts due to "prejudice and economic discrimination" (p.564). Further, there were significant differences in the sentences of laborers and proprietors, and a finding that the failure to make bail leads to longer prison sentences (Lizotte, 1978).

Walsh (1986) found differences in statement influence based on the victim and the offenders' relationship, as young women victimized by their fathers or step-fathers were less

vindictive and frequently recommended the men be sentenced to probation. There were no racial or ethnic effects, however, as to whether or not the victim recommended a given sentence. In this study, judges overwhelmingly accepted the victims' recommendations for probation, although most jurisdictions do not legally allow victims to suggest appropriate sentences, following the early *Booth* decision.

#### *Victim characteristics*

As this research indicates, mock and actual jurors continually notice and often account for a defendant's personal characteristics, including his or her race or ethnicity. It is therefore likely that they may consider extra-legal factors of the victim as well, including his/her racial or ethnic background.

Several studies have found that defendants receive harsher punishments if the victim is white than if s/he is black (Mazzella & Feingold, 1994). Defendants with white victims are also more likely to have prosecutors that seek the death penalty as the case progresses, and "defendants of any race accused of murdering white victims are three times more likely to receive a death sentence than those accused of murdering black victims" (Paternoster & Brame, 2003, as cited in Wood, 2005, p.142).

As was the case with defendants, a victim's physical attractiveness and sex can also influence sentencing decisions. It has been found that "unattractive victims are perceived as having suffered less serious injuries," which leads to "less favorable verdicts" in the form of more lenient sentences for offenders (Wasserman & Robinson, 1980-1, p.108). The research is mixed, however, and a meta-analysis of eighty studies found no relation between the

victim's level of attractiveness and the sentence given to the defendant, again pointing to the need for further evaluation (Mazzella & Feingold, 1994).

This research shows that, as with defendant characteristics, juries and judges often tend to consider various victim traits when making their sentencing judgments. Specifically, the race or ethnicity of the victim seems to influence the severity of sentences handed down in capital cases, particularly with offenders with white victims receiving more severe sanctions than those with black or minority victims.

#### *The portrayal of the victim*

Not only do the personal characteristics of defendants and victims influence sentencing decisions, but a number of other studies have focused on the portrayal of homicide victims by their families and friends during their statements to the court, again with inconsistent findings.

As victim statements typically “include a description of the physical and/or emotional harm that a victim or family member [*sic*] suffered following the commission of a crime,” one would assume that they evoke a great deal of emotion and can “sensitize the deciding party to the victim's perspective” (Arrigo & Williams, 2003, p.608).

This is not always the case, however, as victim statements have been found to affect the victim's family's perceived level of suffering, but this is not necessarily related to sentencing outcomes. This finding suggests that, contrary to arguments by opponents of victim statements, “emotional judgments are not always irrational” (Granados, 2003, n.p.). Further, the admirability or respectability of victims, as measured by jurors' perceptions of the

community's view and their own personal beliefs, has not been found to influence sentencing decisions, particularly those regarding the death penalty (Eisenberg, Garvey, & Wells, 2003).

Then again, different portrayals of victims and their family's suffering can produce conflicting results. Greene, Koehring, and Quiat (1998) focused on the respectability of homicide victims as portrayed in statements given by their relatives. The respectable victims were portrayed as married for over fifty years, involved in their communities, and civic-minded, while those in the less respectable condition were characterized by divorce and remarriage, less prestigious jobs, and health problems. Mock jurors rated the victims on their "likableness, decency, and value to their community," and respectable victims "were rated more highly" on all three variables (Greene, Koehring, & Quiat, 1998, p.151-2). Again, under *Payne*, comparisons such as this should not be made, as they may lead to disparate sentences, particularly if people judge others' personal characteristics against their own internal beliefs and biases.

The study further showed evidence that compared to less respectable victims, jurors perceive the death of more respectable victims as having a greater emotional impact on their survivors, and the jurors themselves tended to have more compassion for those survivors. Even more, jurors rated the murders of the respectable victims as "more serious" than the murders of the less respectable victims. The researchers believe these effects on jurors' perceptions of victims, survivors, and the crime will in turn affect their sentence determination, which could lead to prejudicial sanctions (Greene, Koehring, & Quiat, 1998).

Based on these findings, it seems as though both the victim's race or ethnicity and respectability can influence sentencing decisions. Further, these factors may be considered

together, and a juror might associate the victim's race or ethnicity with his or her own prejudices about the inherent worth of individuals of that racial or ethnic group. This potential has serious implications for the criminal justice system and its intended neutrality.

*Who delivers the statement*

A number of studies have looked at sentence disparities that correspond with who delivers the impact statement to the court, be it the primary victim as is typical in non-capital cases, or various secondary victims or bystanders, the norm in capital cases. Based on who gives the victim impact statement, the members of the courtroom may be more or less receptive, an important issue as there are no federal guidelines restricting who is able to make a statement, rather "each state decides for [itself] who fits the definition of 'crime victim,'" (McGowan & Myers, 2004, p.360).

Studies show that "bystander victims," individuals with "no previous relationship to the direct victims and their families prior to the [crime]," can have a different and greater influence on mock jurors than individuals with closer relations to the primary victim (McGowan & Myers, 2004, p.358). Even a statement from a coworker, a nonprofessional bystander, has been found to lead to harsher penalties from a mock jury than statements from relatives or a fire-fighter, a professional bystander. The authors suggest that family members are expected to be suffering, and so their statements do not convey anything new or surprising to the jurors. Also, fire-fighters and other professional bystanders are accustomed to witnessing crimes, and typically do not distinguish between different victims or become particularly emotional for any of them. The authors conclude that although the coworker knew the victim, it was not a close, personal relationship, and thus s/he was not expected to



be suffering from the loss. There was no perceived difference in the emotionality of the testimony in the different conditions, thus the researchers suggest that there is some other link between victim statements and sentencing outcomes, and that it matters who delivers the statement to the court (McGowan & Myers, 2004).

### *International differences*

It seems to matter in other countries as well, and many of them do not allow victims the right to speak before the court. Across other common law jurisdictions that incorporate victim impact testimony, “the party responsible for preparing the victim impact information... varies, ranging from probation departments to prosecutors’ offices’ and victim service agencies” (Henley, Davis, & Smith, 1994, p.83).

Based on the nature of the presentation of victim evidence, there are inherent differences between capital and non-capital cases. Studies of who gives the statement look different when focused on this distinction, as in capital cases, where the offense was homicide, the primary victim is unable to speak before the court; rather it is left up to family and friends to communicate any victim statements on his/her behalf. In non-capital cases, however, it is usually the primary victim who presents information to the court. And while inconsistent, these studies show that extra-legal factors are often taken into consideration during the sentencing phase of capital trials, and thus it is likely that they also influence outcomes in non-capital cases.

### *Capital vs. Non-Capital Cases*

The majority of the legal cases and most of the available research on victim evidence have considered its impact in capital cases; little attention has been paid to the issue in non-capital cases despite that, “each year the combined number of defendants sentenced by jury in Arkansas, Kentucky, Missouri, Oklahoma, Texas, and Virginia,” those states that allow juries to sentence defendants in non-capital cases, “significantly exceeds the number of defendants sentenced by juries for capital crimes nationally” (King, 2004, p.195). Despite the low frequency of jury trials, “it is the background existence of the right to a jury trial, and predictions about how juries would decide cases were they to get them, that drive parties to settle or plea bargain in the first place” (Abramson, 1994, p.6).

Further, “juries in non-capital cases face wide-open choices that seem to allow even more room for arbitrary, even discriminatory, decision-making” (King, 2004, p.3). In fact, “states widely accept victim impact statements as sentencing tools in non-capital sentencing proceedings” (Slowinski, 1990, n.p.). In Maryland, non-capital sentencing judges are “accorded... virtually boundless discretion in conducting the sentencing proceeding” (Subar, 1996, n.p.). In civil trials as well, victim impact statements “may be relevant in determining the amount of damages to be awarded” (Hill, 2005, p.212). So while victim impact statements have become a staple throughout courtrooms across the nation, there is a lack of evidence regarding their effect on judge and juror decision making, particularly at the non-capital level.

This lack of empirical attention to extra-legal influence in non-capital cases is inconsistent with the potential sanctions in these cases, as juries make decisions that can have

strong implications for the lives of a number of people involved with a case. Jurors are left with little guidance and have a great deal of discretion in determining such sentences.

“Presently, jurors who select sentences in non-capital cases are simply asked to pick a sentence somewhere within the statutory sentencing range” (King, 2004, p.2). They are given neither instructions nor guidance in determining aggravating factors, including victim evidence, or mitigating factors that may influence their sentencing decisions; this lack of information may lead to unwarranted “variances in the sentences” (King, 2004, p.2).

#### *Extra-legal factors in non-capital cases*

Through their studies of non-capital cases, Erez and Tontodonato (1990) have found that a victim impact statement often has some effect on the decision between probation and incarceration, though they also note the importance of the offense and various offender characteristics. The authors suggest that the victim’s level of suffering and need for protection, as emphasized in the statement, lead to this effect. One study showed that victims’ requests for incarceration do not necessarily influence the court’s sentence; rather the sanction can be explained by legal considerations, but a statement in the case file does increase the likelihood the defendant will receive a prison sentence. On the other hand, once a defendant is sentenced to prison, neither the presence of a statement nor its content seem to affect the length of his/her sentence (Erez & Tontodonato, 1990).

#### *Defendant characteristics*

There is significantly less research on the effects of different defendant characteristics, particularly race and ethnicity, on sentence severity in non-capital cases compared to capital

cases. A study of case files showed that race and ethnicity were only associated with sentence length for three of ten offenses in Virginia, and did not correspond with any of nine offenses in Arkansas. Research has found that the race or ethnicity of the defendant and the victim are less important to jury sentencing decisions than the prosecutors' "charging and bargaining decisions" (King, 2004, p.212). One thing to keep in mind, however, is the "strong correlation between legal factors and race," including criminal history and crime severity (Bushway & Piehl, 2001, p.758). As previously mentioned, black offenders have longer criminal histories, and race and ethnicity as well as other extra-legal factors, including age and socio-economic status, "can predict criminal history and crime severity" (Bushway & Piehl, 2000, p.741).

#### *Victim characteristics*

Mazzella and Feingold (1994) conducted a meta-analysis of mock juror judgments based on victim characteristics. Across studies, the authors found that victims' physical attractiveness, race, socioeconomic status, and gender are "generally inconsequential" to sentencing decisions (p.1315). A limitation, however, is that the study did not address victims who supplied impact statements, and research has shown that those victims who do submit statements are inherently different from those who do not. In general, class, gender, cultural background, level of literacy, the costs of reports, and the available assistance relate to the likelihood that a particular victim will submit an impact statement (Booth, 2000).

#### *Who delivers the statement*

Research on non-capital cases has also looked at the portrayal of the victim and who delivers the statement before the court. Extra-legal factors may inadvertently be included in

victim impact statements, but in non-capital cases it is also likely that individuals in the courtroom will see the victim, as s/he may be present testifying or presenting the statement, and this may elicit their personal biases. That is, both the written statement and the victim can have different influences on sentencing outcomes. If this is the case and the presence of the victim in the courtroom leads to biased judgments, the standards for allocution may need to be changed, and it may be necessary to standardize the submission of victim evidence and the victim's role in courtroom proceedings.

Again, this is inherently different than in capital cases where the victim has been murdered and it is up to his/her family and friends to convey impact testimony to the court. In non-capital cases, jurors are able to see the victim and it is s/he who typically gives the statement. Studies have shown that the victim's presence in the courtroom can influence the length of a prison term, regardless of any statement to the court, seemingly out of a sympathetic and compassionate response to him/her (Erez & Tontodonato, 1990).

There have been numerous studies of victims' demeanor during the delivery of statements and any subsequent effect on sentencing outcomes. They have tended to show that the demeanor of the victim does not affect sentencing decisions, which has led the authors to conclude that "harsher judgments reflect a greater response to the content of victim impact statements than to the manner of presentation of this information" (Myers, Lynn, & Arbuthnot, 2002, p.2405).

However, other studies have focused specifically on the emotionality of the victim during the presentation of the statement (Tsoudis & Smith-Lovin, 1998; Platania & Berman, 2006; Myers, Lynn, & Arbuthnot, 2002), and some research has found that an emotional delivery

has a significant influence on sentencing due to inferences about the victim's identity. That is, a victim who appears to be sadder garners more positive views of her "fundamental identity," and "hurting a nice person elicits more retribution than hurting a more neutral actor" (Tsoudis & Smith-Lovin, 1998, p.710). There are conflicting results, however, and some studies show that while mock jurors have more of an emotional reaction to a victim's emotionality, that emotion does not necessarily result in a harsher sentence (Myers, Lynn, & Arbuthnot, 2002; Platania & Berman, 2006). Further, Gordon (2006) found no difference in juror's reactions to an angry statement compared to a sad statement.

The extent of harm the victim suffered, as depicted in the presentation of the statement, can also influence sentencing decisions. "Participants in the severe harm conditions rated the testimonies as significantly more influential than did participants in the mild harm conditions" (Myers, Lynn, & Arbuthnot, 2002, p.2404). A greater level of harm shown in the victim statement has been found to result in jurors sentencing defendants more severely, despite those individuals rating the victim testimony as "only moderately influential" (Myers, Lynn, & Arbuthnot, 2002, p.2404). These judgments were not mediated by the negative affect, or emotional state, experienced by the jurors in reaction to the statements. Thus, jurors were able to "continue to make judgments based on harm evidence rather than their emotional state," suggesting that while they elicit emotionality on the part of jurors, victim statements may not "necessarily lead to capricious judgments" (Myers, Lynn, & Arbuthnot, 2002, p.2406).

*The Views of Criminal Justice Officials in the U.S. and Abroad*

Given that a number of victim characteristics can influence sentence outcomes, it is likely that race or ethnicity and overall judgments of value will as well. If some aspect of victim testimony introduces bias into the system, then the process needs to be changed in order to maintain just and legitimate court outcomes. If bias is discovered and extra-legal factors are found to influence sentencing decisions, there are a number of potential options to address failures in the sentencing process, and some of them have been implemented in other countries with common law systems.

In England, it is the prosecutors' responsibility to "convey the content of the victim impact statement to the court" (Roberts & Erez, 2004, p.228). And a study in Australia found that "generally, the legal professionals objected to victims completing their own victim impact statement" (Erez & Roeger, 1995, p.6). Many officials feel that victims will include opinions that are "irrelevant to sentencing," while victims contend that statements "prepared by professionals may understate the impact of the crime and may not always reflect the true voice of victims," though this method reduces the possibility of a sentence based on a victim's personal or physical characteristics if s/he is absent from the courtroom (Roberts & Erez, 2004, p.228). On the other hand, preventing the victim from addressing the court may lead to further question and debate over the so-called "right to be reasonably heard." A study of judges in Canada demonstrated the perceived usefulness and uniqueness of victim impact statements, but also found a significant difference in practice in that Canadian law prohibits a victim from making a recommendation for a sentence. In the United States, the *Booth* court

addressed this issue but the later courts have not, and the debate continues over whether the practice adds value or harm (Roberts & Edgar, 2003).

Research in both Canada and Australia has failed to produce consistent results as to the influence of victim impact statements on sentencing decisions. Qualitative research in Australia has focused on the perceptions of justices, judges, magistrates, Crown prosecutors, police, prosecutors, adjudicators, and defense lawyers regarding victim testimony. The findings show “a consensus among the legal professionals that the introduction of victim impact statements did not result in sentence disparity either due to the absence of victim impact statements from some files or because of variations in victim impact statement quality” (Erez & Roeger, 1995, p.5). An analysis of records confirmed no “changes in sentence severity, as measured by incarceration and by the average length of a prison sentence” (Erez & Roeger, 1995, p.6).

A follow-up study of legal professionals in Australia found that prosecutors, defense attorneys, and judges do not believe that victim impact statements have increased sentence severity. A small fraction of the interviewees, however, did think that sentences had changed since the introduction of victim impact statements. Contrary to the belief that impact statements result in more severe sanctions for defendants, however, these individuals saw increases in both severity and leniency (Erez & Rogers, 1999). Increases in leniency may be attributed to evidence of “recovery, an attempt to [reconcile], or an injury that is less than would be normally expected” (Erez & Roeger, 1995, p.6). On the other hand, sentence reductions may be tied to evaluations of and judgments about a victim’s character or value, and may be based on extra-legal factors such as his/her race or ethnicity.



A recent Australian study focused on judges' perceptions of the factors that make victim impact statements persuasive. The researchers found that judges respond to new information on a case as well as requests for downward departures. Also, judges respect when victims are able to consider "what would be best for society" rather than focusing on themselves and their own personal needs or vengeance (Schuster & Propen, 2006, p.13). Further, judges are more likely to be affected when victims are candid about themselves and specific as to the effects of the crime. While they recognize the difficulty of this, judges believe that victims are most influential when able to balance their emotion and their objective insights (Schuster & Propen, 2006).

A study of New York City prosecutors found that the vast majority "felt that it is always or sometimes appropriate to consider the impact of the crime on the victim when sentencing" (Henley, Davis, & Smith, 1994, p.87). On the other hand, the majority of the prosecutors surveyed also felt that victim statements did not provide any new information, and some considered them unnecessary. Further, "about half of the prosecutors who received victim impact statements believed that judges seldom or never considered victim impact in sentencing decisions; the rest thought that the judges only sometimes considered victim impact" (Henley, Davis, & Smith, 1994, p.89).

Not only did they have different views on the utility of impact statements, but the prosecutors handled them in different ways as well. Some of the prosecutors who were interviewed failed to both distribute and read the statements. Further, a number of prosecutors believed "the statements contained information which they felt was inappropriate" (Henley, Davis, & Smith, 1994, p.89). The same study also consisted of

judicial interviews and showed that overall; judges believe the information provided in victim testimony is useful. Also, “some judges were also willing to examine victims’ opinions about sentences, although most were quick to emphasize that victims’ wishes are not relevant to sentencing,” in accordance with the early *Booth* decision (Henley, Davis, & Smith, 1994, p.90).

If victim impact statements are found to introduce bias and discrimination into sentencing decisions then it will be necessary to standardize these courtroom procedures. In order to ensure justice to all parties involved, there can not be variance in the practices regarding victim evidence, as studies of legal officials now demonstrate. It could easily lead to discrimination if some prosecutors read and distribute victim statements while others never open them, despite any beliefs that they may be useful and informative.

#### *Advancements in research regarding victim evidence*

This literature demonstrates the span of the research on victim impact evidence. Although past work has covered many aspects of the statements as well as numerous personal characteristics of victims and their relation to sentencing outcomes, it leaves one with a number of considerations for future research.

One of the limitations of past research on victim impact statements is the tendency of researchers to vary numerous, confounded aspects of the statements. This practice makes it difficult to discern which element of the written statement or the victim’s personality or physical appearance elicited the change in sentencing. Instead, researchers need to focus on maintaining orthogonality between the characteristics by using factorial research designs.

Also, the majority of the research has focused on capital cases, and while the severity of murder may reinforce stereotypes that jurors commonly hold and thus lead them to sentence defendants with victims of certain races or ethnicities more severely or leniently, the same may be true in other cases as well. Sentences in non-capital cases also have severe implications for those involved, and differential sanctions should be prevented.

Although some of the studies have touched on issues of race and ethnicity, including those that look at the race or ethnicity of the victim compared to the race or ethnicity of the defendant, this research is typically focused on differences between white and black individuals. Most studies of bias and discrimination focus on the distinction between these groups due to their unique past and long history of being the majority and minority, respectively. Due to this history, blacks in this country are expected to suffer more than other minority groups, and thus most of the research that focuses on stereotyping and prejudice concentrates on differences between blacks and whites.

While important, this research fails to capture the reality of racial and ethnic relations in America today. The immigrant population in America “reached a record of 37.9 million in 2007,” and the majority of these individuals are from Latin America, including Mexico, Central and South America, and the Caribbean (Camarota, 2007, n.p.). These numbers compel researchers to investigate the effects of sentencing practices on the many diverse races and ethnicities living in this country. This is all the more true because relations between Hispanics and individuals of other races and ethnicities are much less understood than those between blacks and whites.

There has also been an increase in prejudicial feelings and discrimination toward Arab-Americans since the terrorist attacks of September 11, 2001. These individuals have faced “hate violence and discrimination...in the Washington, D.C., metropolitan area, and across the United States” (Anthony, Patrick, & Sands Sr., 2003, n.p.). In the Council on American-Islamic Relations’ (CAIR) 2007 annual report, the group noted a twenty-five percent increase in complaints of anti-Muslim bias (Council on American-Islamic relations, 2007). Muslims in the United States report violence, discrimination, and harassment, particularly with delays in citizenship and naturalization procedures (Ho, 2007). Individuals from the Middle East living in the United States also report a great deal of racial profiling, wherein they are targeted by the police, immigration officials, and airport security (Council on American-Islamic Relations, 2007). This increased tension and bias may lead jurors or judges to sentence Arab-Americans more severely than similarly-situated Caucasians.

## CHAPTER FOUR: The Current Study

Because of such limitations and questions left unanswered, researchers need to continue to explore these topics. The present study is an attempt to gain a better understanding of victim evidence, and if and how a victim's race or ethnicity influences jurors' sentencing decisions. It is a threat to justice in the courtroom if jurors consider not only the legally-relevant information presented in victim impact statements, but also any physical characteristics of the victims, when making their sentencing decisions. If elements of victims or their statements are being construed as sentencing tools, the pervasive nature of prejudice makes it likely that personal bias will lead to discriminatory outcomes. And if this is the case, the timing of the delivery of the statement or the audience to which the statement is presented may need to be changed. It is important that scholars determine when victim impact statements should be given in order both to help victims to heal and to maintain the legitimacy of the trial process. This can also help future victims to understand their role and the purpose of and intent behind their statements.

This is a study of the effect of victims' race or ethnicity, as introduced through the admission of victim impact statements, on sentencing decisions. Specifically, the research is trying to determine whether or not mock jurors sentence similarly situated defendants differently if they have victims of different races or ethnicities. The study focuses on race and ethnicity as research in other areas continually demonstrates their importance and the

pervasive nature of bias and discrimination. Studies of employment practices (Bertrand & Mullainathan, 2003), labor market earnings (Hirsch & Schumacher, 1992), and housing practices (Saltman, 1979) indicate active discrimination against members of racial and ethnic minorities. The nature of prejudicial feelings makes it likely that they are not limited to a few specific domains, so it is likely that these effects extend to the criminal justice system, including courtroom sentencing practices. Research in this area has typically focused on differences between blacks and whites, but with increases in immigration and changing racial and ethnic relations due to fear, it is necessary to extend consideration to people of other backgrounds, including Hispanics and individuals of Middle Eastern descent. This study helps to assess the extent to which the race and ethnicity of a victim signals to jurors her worth and thus the appropriate severity of the sentence for the offender.

Participants in the study were given a packet of survey materials including a case summary of a drunken driving trial wherein the defendant was found guilty of driving under the influence, mock juror instructions, and a questionnaire. Some participants also received a victim impact statement, which was introduced as an aggravating factor for the sentencing phase of the trial. The participants were asked to read the materials and sentence the defendant as they deemed most appropriate, including a jail term and/or a monetary fine.

In the research materials, the victims' race or ethnicity is insinuated through ethnic-sounding names, including Maria Lopez and Amena Abdulla. The discrimination against these individuals was measured through differences in the severity of the sentence handed down to their respective defendants. A lesser sentence for a defendant whose victim was

seemingly Hispanic than for one whose victim was white was seen as discrimination against the former victim.

The variation in victim names was an attempt to understand if racial or ethnic prejudices affect juror sentencing. This technique has been used before, notably in employment applications and offers, and has been shown to reveal biased responses based solely on the names of individuals (Bertrand & Mullainathan, 2003).

### *Hypotheses*

Consistent with past research, it was hypothesized that participants who read a victim impact statement would sentence defendants more harshly compared to participants who did not receive a statement. The severity of the sanctions would be demonstrated by decisions regarding both the length of jail time and the amount of the monetary fine assessed. Second, those participants who received a victim statement depicting a Hispanic or Middle Eastern victim would sentence the offender less severely than those in cases in which the victim appeared to be a Caucasian. This too, would be shown with both the length of the prison sentence and the amount of the monetary fine. These hypothesized effects were based on commonly-held prejudices; it was believed that participants would infer the victims' race or ethnicity, and therefore value, from their names.

## *Method*

### *Participants*

The participants were 135 undergraduate students enrolled in various Administration of Justice courses at George Mason University, located in Fairfax, Virginia. In order to more effectively simulate community jurors, only those individuals age eighteen and older were recruited to participate. Students were approached during a class session and were asked to participate in the research. The selection of this population was out of convenience. The student body at George Mason is not necessarily representative of the general Fairfax County population, as it has been named the second most diverse school in the nation, with 44.9 percent non-white students, compared with the general population of 25.9 percent non-white individuals, according to the 2000 census (Wan Ko, 2007; U.S. Census Bureau, 2001).

The sample was representative of the greater racial and ethnic diversity at the university; just over fifty percent of the participants self-described themselves as Caucasian or white, fourteen percent African American or black, thirteen percent Asian, and another thirteen percent Hispanic. The sample also included small numbers of Native Americans, Arab Americans, and Pacific Islanders.

The increased diversity of the sample may mask any bias toward individuals of different backgrounds and descents, as students at George Mason are regularly exposed to individuals with a different cultural heritage than their own. Living in a relatively diverse community may lead individuals to be more accepting of others, and may make them less aware of individual or cultural differences. On the other hand, classic studies have shown that mere exposure may not be enough to overcome prejudice against others; rather it is suggested that



it takes interaction with common goals to surmount bias (Katz & Braly, 1933). That is, working together toward a mutual purpose can help individuals of different backgrounds to overcome prejudiced sentiments. While it is difficult to discern if participants have had ample opportunity to engage in this type of interaction with individuals of different backgrounds, education, as well, is “negatively associated with bias,” thus the use of college students, particularly those at a diverse university, may inhibit prejudicial racial or ethnic effects (Hewstone, Rubin, & Willis, 2002, p.584). If these effects are found, however, their existence in a diverse sample may signify greater cultural prejudice in a more traditional population.

Forty-four percent of the participants were female, with two percent of the sample declining to provide their sex. Participants in the sample supported a variety of political parties, with the majority (43%) describing themselves as Democrats. The sample consisted of twenty-six percent of both Republicans and Independents with a small number of students supporting the Libertarian, Communist, and Green Parties.

#### *Design and procedure*

With permission from the professors of each course, survey packets were distributed in eight undergraduate classes including “Introduction to Criminal Justice” and “Research Methods.” Participants signed consent forms acknowledging that they would be participating in a study on juror sentencing decisions.

The participants were randomly assigned to one of five conditions. Random assignment was achieved by mixing together, in no order, the different survey packets. The materials were passed out with a participant taking one survey from the pile and passing the rest on.

The front page of each questionnaire was the same, so there was no way of telling which participants were in which condition. The groups consisted of a control group that was presented with a case summary that did not include a victim impact statement and also a condition with a case summary and a victim impact statement that did not mention the victim by name. These two conditions allowed for the comparison of sentencing practices of mock jurors with and without an impact statement, and also for the exploration of the humanization effects of adding victims' names. Three experimental conditions tested the influence of victim race and ethnicity, as operationalized through ethnic-sounding names, on sentencing. Participants in these conditions received case summaries and victim impact statements, both of which mentioned the victim's name: one contained a woman with a traditional Hispanic name, Maria Lopez; one involved a woman with a name of Middle Eastern descent, Amena Abdullah; and the last presented a woman whose name did not suggest a particular race or ethnicity, Caitlyn Johnson. The different conditions made it easier to determine if knowledge of a victim's name or her presumed race or ethnicity mattered for sentencing decisions.

The case summaries were the same, with the exception of the presence or absence of the victim's name, across all five conditions, and were modeled after an existing mock case used in previous research studies (see Horowitz 1980, 1985) (See Appendix 1 for a copy of the survey materials). The summaries described a car accident in which the driver at-fault was driving while intoxicated, as defined by Virginia Code 18.2-266, and "swerved off of the road and hit and seriously injured a pedestrian... at 1:00 a.m. on a neighborhood street" (Virginia General Assembly, 2008). Further, "the defendant's car was going at a high rate of speed as indicated by the fact that the victim was thrown over 50 feet from the point of

impact.” The existing summary portrayed a male driver, consistent with studies that show that males are about two times as likely as females to drive under the influence of alcohol or drugs, and did not identify the sex of the victim (National Survey on Drug Use and Health, 2005). In the present study, the victims were limited to females as studies show that women are more likely to be victimized than men, and that people consistently view victimization as both feminine and feminizing (Howard, 1984). The use of a male defendant and a female victim may lead to cross-gender effects as defendants tend to face a greater likelihood of being found guilty and sentenced more severely if the victim is female than if the victim is male (Mazzella & Feingold, 1994). This tendency has cultural roots, and the focus and intent of this study was not the interaction of the two sexes, so the male defendant/female victim dichotomy was maintained throughout. The materials also included the court’s determination of guilt in the case.

Participants were given a set of jury instructions and were informed of their role to read the materials and decide, individually and without deliberation, on an appropriate sentence for the defendant. They received instructions about mitigating and aggravating factors as well as the sentencing range for driving under the influence as stated in the Code of Virginia. The participants were instructed that “the judge does not have the authority to override or reject the jury’s sentencing decision,” and so they were cautioned to “approach the sentencing decision with the utmost care and attention.”

The participants who received a victim impact statement learned of the victim’s numerous surgeries, “enormous medical bills,” attendance at physical therapy, inability to

attend work, sleepless nights, and desire for the defendant to be “held accountable for his actions.”

After reading the materials, each participant filled out a questionnaire assessing his/her beliefs about the appropriate penalty using a Likert scale, wherein a range with set intervals is provided to select from, and individuals circled their response within the range of both jail time (0-12+ months) and monetary fine (\$0-2500+). Participants were instructed that they could select either one or both sanctions, and they were also able to suggest a different sentence, outside the range of sanctions listed in the Virginia Code. They were also asked to record what factors led to their sentencing decision. Further, they filled out a section concerning their own demographic characteristics including sex, race, and political affiliation. Lastly, and on a separate page, participants were asked to describe, without looking back through their materials, the race or ethnicity of the victim they read about. This was an attempt to determine if the participants consciously recognized the victim’s name and interpreted the implied race or ethnicity. After finishing the questionnaire, the participants returned them to the researcher, were thanked for their participation and offered to be informed of the results, and finally were excused from the research study. The entire procedure lasted less than twenty minutes.

### *Analyses*

The hypotheses were tested using one-way ANOVAs and *a priori* contrast tests to determine any significant differences in the mean severity of sentence, both jail time and fine, related to survey condition. As ANOVAs and contrast tests are parametric tests, they assume the dependent variables are continuous, interval data with normal distributions. The

dependent variables in this study are ordinal in nature. Although the ANOVA is robust to violations of the normality assumption, this robustness is dependent on large sample sizes (e.g., greater than 50) within each condition. Because the dependent variables in this study are ordinal and non-normally distributed and the sample sizes within conditions are uneven and relatively small, I also tested the main hypotheses with the Mann-Whitney U and Kruskal Wallis non-parametric tests, the former for the planned comparisons and the latter for the overall test across conditions. These tests make minimal assumptions about the distribution of the data. Again, these checked for differences in sentence severity between participants who did not receive an impact statement and those who did. Also, they were used to find differences in sentencing between participants who received a statement by Caitlyn Johnson and those with one written by Maria Lopez or Amena Abdulla. Chi-square tests of independence were also used to assess differences in participants' stated reasoning for their sanctions, based on which survey condition they were in. For all of the statistical tests, it was *a priori* assumed that significance would be based on an alpha of 0.05.

## CHAPTER FIVE: Findings

### *Results*

Regardless of which condition they were in, participants overwhelmingly chose relatively severe sanctions for the defendant in terms of both the monetary fine and the length of the jail sentence; eleven of the one-hundred and thirty-five participants mentioned a difference in sanctions depending on whether or not it was the defendant's first offense.

While the overall mean jail term selected was around nine months (See Table 1), twenty-five percent of the sample thought the defendant should serve time for longer than the maximum amount listed in the Virginia Code, with many proposing two years, or twice as long as the suggested maximum (See Figure 1). As shown in Table 2, individuals in each of the survey conditions tended to select longer jail terms, and the descriptive statistics in Table 3 show the similar sentencing patterns across groups. A one-way ANOVA showed no significant differences in the selected jail sentence between groups (See Table 4).

Table 1. Descriptive Statistics for the Selected Sentences

	Mean	SD	Minimum	Maximum	N
Jail (in months)	9	4	0	12+	135
Fine (in dollars)	2500	750	0	2500+	135

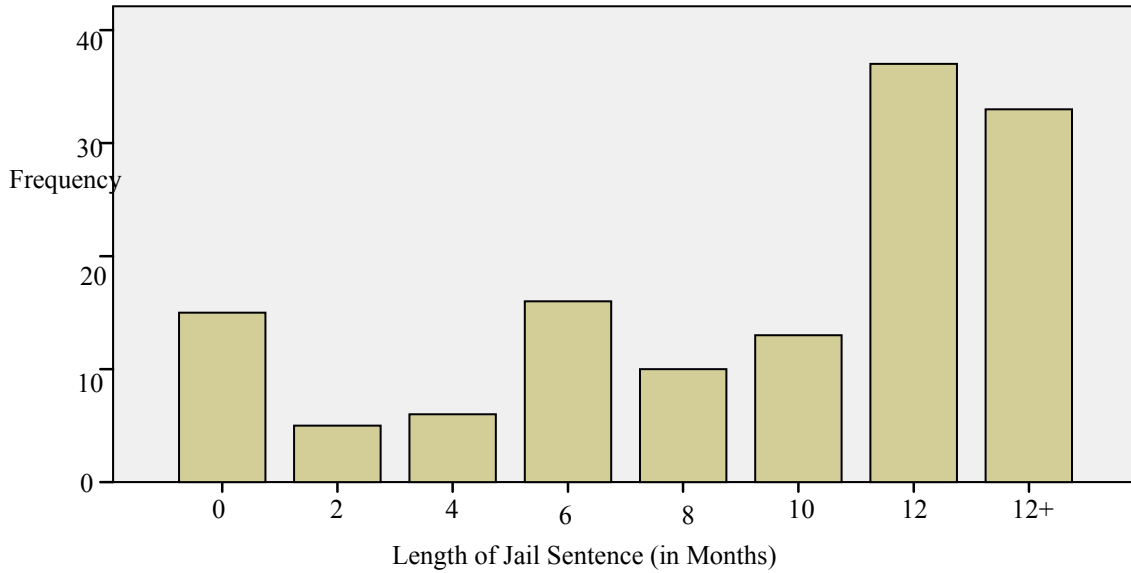


Figure 1. Frequency of Each Jail Term as Recommended Sentence

Table 2. Cross-tabulation of Survey by Jail Term

Jail Term (in months)	0	2	4	6	8	10	12	12+
Survey								
No Statement	3	2	1	2	3	4	4	8
Pedestrian	4	0	1	4	1	2	9	4
Amena Abdulla	3	1	2	3	3	1	13	5
Maria Lopez	2	2	2	4	2	3	8	5
Caitlyn Johnson	3	0	0	3	1	3	3	11
Total	15	5	6	16	10	13	37	33

Table 3. Descriptive Statistics for Jail Term (in months)

Survey	Mean	N	Std. Deviation
No Statement	9	27	4
Pedestrian	9	25	4
Amena Abdulla	9	31	4
Maria Lopez	9	28	4
Caitlyn Johnson	10	24	4

Table 4. Analysis of Variance for Jail Term

Jail	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	8.65	4	2.16	.389	.816
Within Groups	723.32	130	5.56		

Forty-one percent of the sample recommended that the defendant pay a fine larger than the maximum suggested in the Virginia Code, often twice as much (\$5,000) (See Figure 2), though the overall mean fine was between \$2,000 and \$2,500 (See Table 1). Across each condition, the mean fine and standard deviation were also very similar (See Table 5). As with the jail sentence, participants across all of the survey conditions tended to recommend a relatively higher fine (See Table 6). Participants who did not receive a victim impact statement sentenced the defendant to a larger fine more often (48%) than those who did receive victim statements (40%), though this difference was not statistically significant ( $p = .47$ ) (See Table 7).



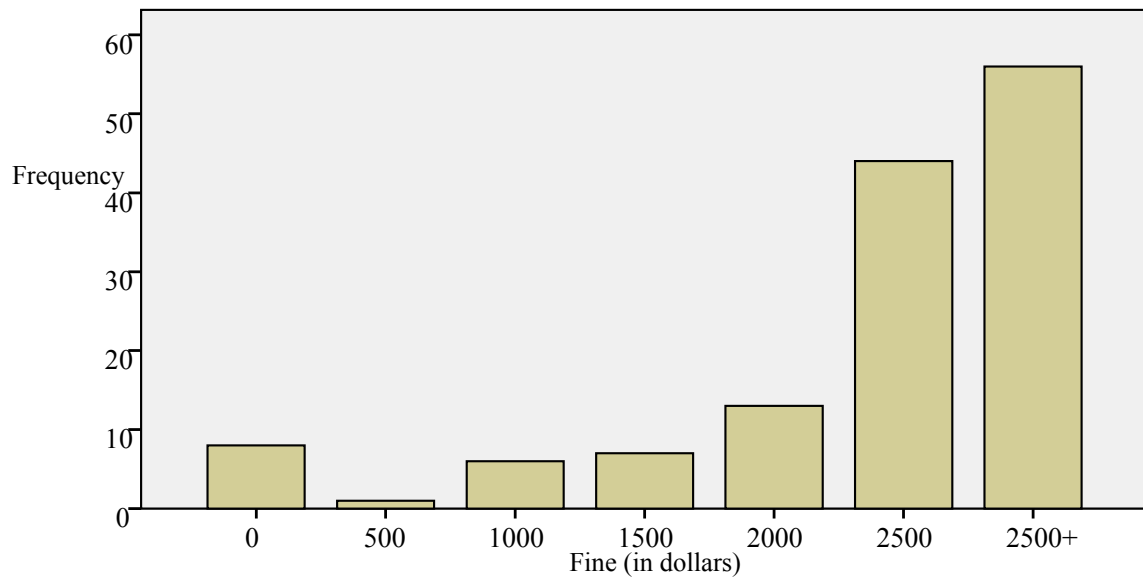


Figure 2. Frequency of Each Monetary Fine as Recommended Sentence

Table 5. Descriptive Statistics for Monetary Fine (in dollars)

Survey	Mean	N	Std. Deviation
No Statement	2500	27	500
Pedestrian	2500	25	750
Amena Abdulla	2000	31	750
Maria Lopez	2250	28	750
Caitlyn Johnson	2250	24	750

Table 6. Cross-tabulation of Survey by Monetary Fine (in dollars)

Monetary Fine	0	500	1000	15000	2000	25000	2500+
Survey							
No Statement	0	0	1	3	3	7	13
Pedestrian	1	0	2	0	1	11	10
Amena Abdulla	3	1	0	2	7	10	8
Maria Lopez	2	0	2	0	2	9	13
Caitlyn Johnson	2	0	1	2	0	7	12
Total	8	1	6	7	13	44	56

Table 7. Analysis of Variance for Monetary Fine

Fine	Sum of Squares	df	F	p
Between Groups	9.678	4	0.901	0.47
Within Groups	349.256	130		

Contrast tests comparing the results from participants in the condition without victim statements to the results from the other four conditions show no significant differences in either the suggested length of jail time or the amount of the monetary fine, assuming equal variances, thereby failing to support the hypothesis that participants who read impact statements sentence defendants more harshly than participants who do not receive the statements (See Table 8). Further contrast tests failed to find significant differences ( $p > 0.05$ ) in either the suggested jail time or monetary fine between participants with impacts statements written by Caitlyn Johnson and those with statements by Maria Lopez or Amena

Abdulla, thus failing to find support for the hypothesis that participants with a statement depicting a Hispanic or Middle Eastern victim sentence defendants more leniently than those with a Caucasian victim, assuming equal variances (See Contrast 2, Table 4).

Table 8. Contrast Tests between Conditions for Jail Term and Monetary Fine

Contrast	Diffs. btwn. Means	Std. Error	t	df	p
<b>Jail</b>					
Statement vs. No Statement	.13	.508	.258	130	.797
Caitlyn vs. Amena & Maria	-.59	.571	-.1029	130	.305
<b>Fine</b>					
Statement vs. No Statement	-.33	.353	-.938	130	.350
Caitlyn vs. Amena & Maria	-.24	.397	-.594	130	.554

The lack of significant relationships between which survey an individual received and either the suggested fine (See Figure 3) or jail term (See Figure 4) can also be seen visually. As these box-plot figures show, the responses for the fine and jail term are similar across the different conditions with only a few outliers. The solid lines in the middle of the boxes represent the medians while the edges of the boxes indicate the first and third quartiles. The boxes, then, represent the inter-quartile range. The lines extending from the boxes indicate responses of extreme values while the asterisks represent potential outliers, as they indicate responses at a distance from the median of greater than 1.5 times the inter-quartile range.

One caution in interpreting these box plots, however, is the potential of a ceiling effect, wherein the response set for participants to select from was not broad enough. This could have caused the boxes representing the inter-quartile range to become flattened against the highest available response for the jail term and monetary fine.

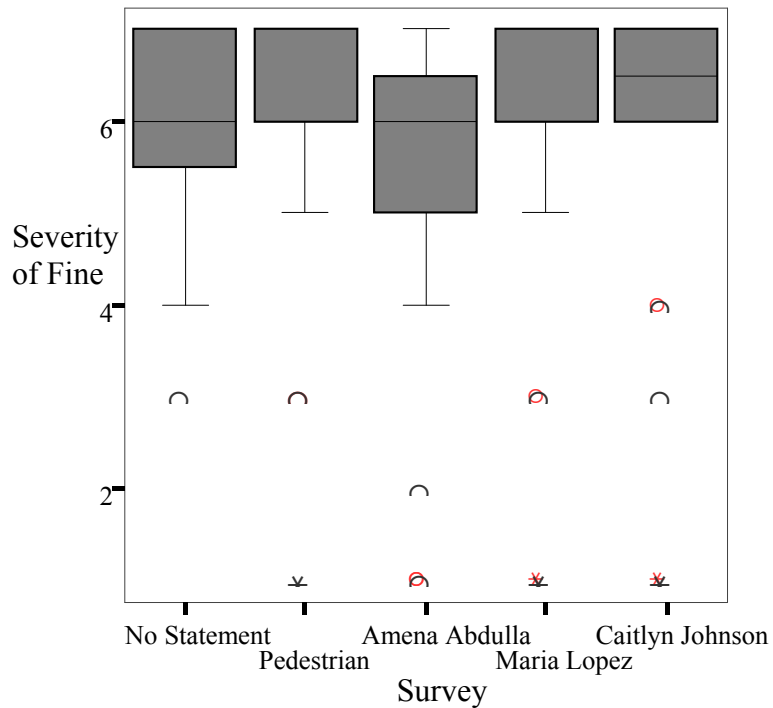


Figure 3. Relation between Survey Condition and Fine

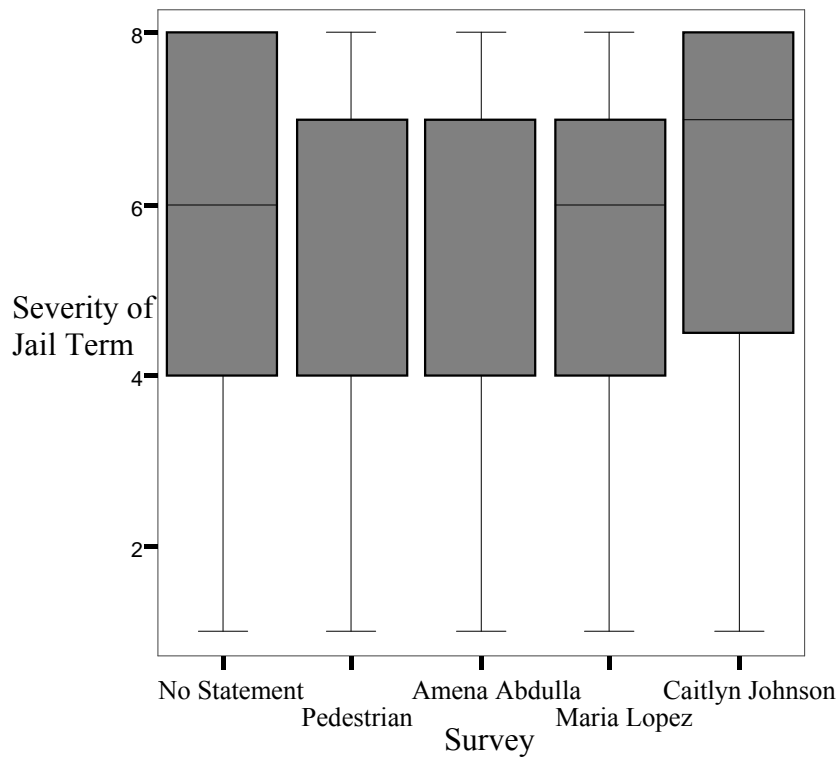


Figure 4. Relation between Survey Condition and Jail Sentence

When the data were analyzed with nonparametric tests, a Mann-Whitney U analysis failed to show a significant difference ( $p > 0.05$ ) between participants who received a statement and those who did not and either the jail term ( $p = .924$ ) or fine ( $p = .483$ ) they selected. Another Mann-Whitney U test showed no significant differences ( $p > .05$ ) in either the suggested jail term ( $p = .111$ ) or monetary fine ( $p = .274$ ) based on whether or not the victim was implied to be Caucasian, Caitlyn Johnson, or a minority, either Amena Abdulla or Maria Lopez.

One participant wanted to charge the defendant with criminal negligence, as s/he believed that the defendant had to have known that he was driving while under the influence. Further,

two individuals thought the defendant should be charged with manslaughter, and one suggested a corresponding sentence of 5 – 40 years in prison. This recommendation was consistent with almost twenty percent of the sample who either believed that the victim was killed or that given the situation, it was possible for her to have been killed, and thus decided on more severe sanctions for the defendant. One noted, “When you drink and drive I believe that these two actions create a murder weapon. Whether he intended to kill or not, he had the power to.”

The participants who believed that the victim *had* been killed in the accident made serious and erroneous assumptions about the situation as the case summary only noted that the victim had been thrown fifty feet and gave no further description of her condition or any other consequences of the accident. It would seem more likely that participants who did not receive a victim impact statement would assume that the victim had died as the statement was written in first person by the primary victim and explained her physical and emotional injuries as well as her financial strain. Twenty of the twenty-five participants who mentioned the likelihood of death, however, did receive a victim impact statement with this information. This suggests that the participants may not have been giving the survey materials their full attention, though their conscious awareness of the victims’ race or ethnicity may prove otherwise.

That the majority of the sample sentenced the defendant relatively severely may be a result of the survey materials, or it may be a consequence of using undergraduate students from administration of justice courses, many of whom aspire to be police officers and other criminal justice officials. Neither the case summary nor the victim statement were intended to

lead participants to be particularly vengeful, though in the statement the victim did note that “the defendant needs to be held accountable for his actions, and it is the jury’s duty to ensure that justice is served.” It is more likely that, given the composition of the sample, the students were aware of the different conceptions of justice, including retributive and restorative justice. Again, James Rowland introduced victim impact statements out of a concern for restorative justice, though today many see them as introducing a more retributive element into the courtroom. These results can not necessarily be attributed to either, as both participants who received impact statements and those who did not sentenced the defendant particularly harshly. The participants may have sentenced the defendant the way they did due to their overall familiarity with victim’s rights, as several electives in the Administration of Justice program touch on victimization.

Instead of jail time and/or a fine, a number of participants recommended sentences outside of the Virginia Code. These individuals wrote in their preferred sanctions, and they included suspending the defendant’s license; probation; driving class; attendance at Alcoholics Anonymous meetings/help with substance abuse; speaking publicly to alert others to the dangers of driving under the influence; community service, including one suggestion that the service be at the local morgue; a written apology to the victim; working (without pay) at a location where the defendant could see the effects of drunk driving; and public humiliation. Many of the participants thought that these different sentences would have more of an effect on the defendant’s life, and that they would enable him to continue working so that he could pay the victim’s medical bills and restitution. Others simply had different views

about the strength of the case, “If I was the judge and the defense attorney argued the case better than the Commonwealth attorney, I would dismiss the case.”

While most of the participants blamed the defendant for his actions --“Everyone knows that you should not drink and drive,” they said -- some of them blamed other individuals in the scenario. One noted that the employees of the bar should have taken his keys, and s/he considered this a mitigating factor. Another individual commented, “someone should have stopped him.” Some participants suggested what the defendant *should* have done: either called a cab or asked a friend for a ride home. And one participant, in trying to decide upon the appropriate sentence, indicated that s/he would like to know the contents of the defendant’s driving and criminal records, while another wondered “what kind of person [he is],” and was interested in the defendant’s age and background. While some of these factors are appropriate considerations in sentencing, others are extra-legal components of the defendant’s person that should not be taken into account during sentencing in a criminal trial.

Participants were prompted to give an open-ended response dictating the factors that led to their sentencing decision. Through traditional content analysis, four common themes emerged: the defendant’s extreme Blood Alcohol Level, the victim impact statement, personal feelings about driving under the influence, and the level of harm caused to the victim. Chi-square tests of independence were conducted to determine if any of these reasons varied by survey condition, and they did not.

Eighteen participants mentioned the defendant’s Blood Alcohol Level (BAL), which was over twice the legal limit, as the basis for their chosen sentence. The cross-tabulation in Table 10 shows the distribution of responses across conditions. A chi-square showed that this



justification did not vary significantly between survey groups; participants in one group were no more likely to base their sentence on the defendant’s BAL than those in any other group ( $p = .715$ ).

Table 9. Frequency Table of Survey by High BAL Sentiments

Mentioned High BAL			
Survey	Frequency Yes	Percent Yes	Total
No Statement	5	19	27
Pedestrian	2	8	25
Amena Abdulla	3	10	31
Maria Lopez	5	21	24
Caitlyn Johnson	3	13	24
Total	18	13	135

*Note.*  $\chi^2 = 2.11$ ,  $df = 4$ ,  $p = .715$

While the majority of participants (108 of 135) received a victim impact statement, only nine specifically mentioned it as a factor related to their sentencing decision. Table 10 shows the distribution of those who mentioned the statement by condition. Again, a chi-square failed to find a significant difference between those who mentioned the impact statement and those who did not by survey condition ( $p = .489$ ).

Table 10. Frequency Table of Survey by Mention of Victim Impact Statement

Survey	Mentioned Impact Statement		
	Frequency Yes	Percent Yes	Total
No Statement	0	0	27
Pedestrian	2	8	25
Amena Abdulla	3	10	31
Maria Lopez	3	11	28
Caitlyn Johnson	1	4	24
Total	9	7	135

*Note.*  $\chi^2 = 3.43$ ,  $df = 4$ ,  $p = .489$

Thirty participants, or about twenty-two percent of the sample, based their selected sentence on personal feelings about driving under the influence. Their comments ranged from “drinking and driving is wrong and it is not a joke or a game,” to “drunk driving equals murder,” to insights about their own friends and family members who had been victimized by drunk drivers in the past. A chi-square found no significant difference between participants who based their sentence on their own negative attitudes toward drunk driving and which survey condition they were in ( $p = .292$ ), and Table 11 provides the distribution across conditions. The tendency for participants to cite their feelings toward drunk driving may be related to the prevalence of education regarding driving under the influence and its effects and the messages they have received about drinking and driving, or it may be due to their residence in Fairfax County, the county with the highest number of alcohol-related traffic fatalities in Virginia (National Highway Traffic Safety Administration, 2006).

Table 11. Frequency Table of Survey by Anti-DUI Sentiments

Mentioned Drunk Driving Sentiments			
Survey	Frequency Yes	Percent Yes	Total
No Statement	7	26	27
Pedestrian	2	8	25
Amena Abdulla	9	29	31
Maria Lopez	5	18	28
Caitlyn Johnson	7	28	25
Total	30	22	135

*Note.*  $\chi^2 = 4.06$ ,  $df = 4$ ,  $p = .292$

The majority of the sample (54%) cited the harm caused to the victim as a reason for their chosen sentence, though again, this did not significantly differ between survey conditions ( $p = .480$ ) (See Table 12). Participants who received a victim impact statement detailing the victim’s injuries and suffering were just as likely as those who did not to mention the harm caused to the victim as a basis for their sentence, despite only a minimal description of her injuries in the case summary. One participant cited that the victim was “thrown fifty feet,” and another, drawing his/her own inferences, said, “I’m assuming she lived, but she has to be in bad shape.” Participants who read an impact statement, while they learned more details of the victim’s suffering, did not cite her injuries more frequently than those in the control group.

Table 12. Frequency Table of Survey by Victim Harm Sentiments

Survey	Mentioned Victim Harm		Total
	Frequency Yes	Percent Yes	
No Statement	16	60	27
Pedestrian	16	64	25
Amena Abdulla	13	42	31
Caitlyn Johnson	14	58	24
Maria Lopez	14	50	28
Total	73	54	135

*Note.*  $\chi^2 = 3.49$ ,  $df = 4$ ,  $p = .480$

In regard to the victim’s race or ethnicity, nearly fifty percent of the sample stated that it was not mentioned in the survey material. The true percentage of case summaries that did not mention a name and thus imply a race or ethnicity was thirty-nine. These numbers indicate that participants did not always recognize the victim’s name, or that they did not always associate a given name with a particular race or ethnicity.

When asked about the victim’s race or ethnicity eleven participants, or eight percent of the sample, stated that it either does not or should not matter. One noted that “justice would not be done” if such factors were relevant to sentencing decisions. Table 13 portrays the cross-tabulation of those who noted the relevance of the victims’ race or ethnicity by survey condition. Although participants who did not receive an impact statement mentioned this sentiment more than participants in the other conditions, a chi-square shows no significant difference ( $p = .225$ ) based on whether or not an individual received a statement and how s/he responded to the race/ethnicity prompt.

Table 13. Frequency Table of Survey by Presence of Statement Regarding Relevance of Race/Ethnicity

Survey	Mentioned Relevance		Total
	Frequency Yes	Percent Yes	
No Statement	5	19	27
Pedestrian	2	8	25
Amena Abdulla	1	3	31
Maria Lopez	1	4	28
Caitlyn Johnson	2	8	24
Total	11	8	135

Note.  $\chi^2 = 5.67$ ,  $df = 4$ ,  $p = .225$

Of those who did acknowledge the victims race or ethnicity, a chi-square shows that they were overwhelmingly accurate at identifying the victim's implied race or ethnicity ( $p > 0.0001$ ) (See Table 14). Table 15 shows how participants in each condition responded to the question regarding the victims' race or ethnicity. While not statistically significant, 8 of 25 participants with a "pedestrian" statement and 5 of 27 participants without a statement identified the victim as Caucasian or white, suggesting that even a highly diverse sample automatically infers whites as the normative group.

Table 14. Chi-Square of Identification of Victim Race/Ethnicity

	Pearson Chi-Square Value	df	Asymp. Sig.
Identification of Race/Ethnicity	183.211	20	0.000*

Note. \* $p < 0.05$

Table 15. Frequency Table of Survey by Identification of Victim Race/Ethnicity

Survey		Frequency	%
No Statement	African American/Black	0	0
	Caucasian/White	5	19
	Hispanic	0	0
	Middle Eastern/Arab/Indian	0	0
	Not Mentioned/Don't Know	22	81
	Other	0	0
Pedestrian	African American/Black	0	0
	Caucasian/White	8	32
	Hispanic	1	4
	Middle Eastern/Arab/Indian	0	0
	No Answer/Don't Know	16	64
	Other	0	0
Amena Abdulla	African American/Black	1	3
	Caucasian/White	0	0
	Hispanic	0	0
	Middle Eastern/Arab/Indian	19	61
	No Answer/Don't Know	8	26
	Other	3	10
Maria Lopez	African American/Black	0	0
	Caucasian/White	1	4
	Hispanic	21	75
	Middle Eastern/Arab/Indian	0	0
	No Answer/Don't Know	5	18
	Other	1	4
Caitlyn Johnson	African American/Black	0	0
	Caucasian/White	9	38
	Hispanic	0	0
	Middle Eastern/Arab/Indian	0	0
	No Answer/Don't Know	15	63
	Other	0	0

Although the majority of the participants did not necessarily relate the victim's race or ethnicity to her worth and therefore the defendants' sentence, there were variations in the additional sanctions proposed based on which survey condition a participant was in.

Only those participants who received victim impact statements mentioned that the defendant should be held responsible for the victim's medical bills and other restitution (See Table 16). This effect was statistically significant across survey conditions ( $p = .004$ ), although only a few of those participants who did receive statements mentioned this as the defendants' responsibility. The *Payne* court held that the harm to a victim could be considered during sentencing, and in this case it seems only those participants who read impact statements were able to comprehend the full extent of the harm to the victim. An implication of this could be either injustice to victims, if some are not made aware of their right to submit an impact statement and especially if they are treated differentially based on a demographic characteristic, or to defendants, if equally-situated offenders are not treated similarly based on inconsistencies in the submission of victim impact statements.

Table 16. Frequency Table of Survey by Mention of Medical Bills

Survey	Mentioned Bills		
	Frequency Yes	Percent Yes	N
No Statement	0	0	27
Pedestrian	5	36	25
Amena Abdulla	0	0	31
Maria Lopez	4	14	28
Caitlyn Johnson	0	0	24
Total	9	7	135

Note.  $\chi^2 = 15.61$ ,  $df = 4$ ,  $p = .004^*$

Note. \* $p < .05$ .

Of the demographic information collected on the participants, sex, race, and political party, none were significantly related to sentencing outcomes ( $p > 0.05$ ).

Table 17 presents descriptive data for the jail sentence, including the mean, median, and standard deviation, based on the sex of the participant, while Table 18 provides the same data for the monetary fine. These findings suggest that men and women are equally retributive and fair when determining sentences; one-way ANOVAs failed to find differences across sex for either jail time ( $p = .433$ ) or the monetary fine ( $p = .113$ ) (See Tables 19 and 20).

Table 17. Descriptive Statistics for Jail by Sex (in months)

Sex	Mean	Median	SD	N
Male	9	12	4	73
Female	9	12	4	60



Table 18. Descriptive Statistics for Fine by Sex (in dollars)

Sex	Mean	Median	SD	N
Male	2250	2500	750	73
Female	2500	250	500	60

Table 19. Analysis of Variance for Jail by Sex

Jail	Sum of Squares	df	Mean Square	F	p
Between Groups	9.227	2	4.613	0.843	0.433
Within Groups	722.744	132	5.475		

Table 20. Analysis of Variance for Fine by Sex

Fine	Sum of Squares	df	Mean Square	F	p
Between Groups	11.663	2	5.832	2.217	.113
Within Groups	347.270	132	2.631		

Descriptive statistics for participants' race and ethnicity and the severity of the jail term and monetary fine they selected are shown in Tables 21 and 22. The lack of any significant relation between the participants' race and ethnicity and the severity of the sentence they selected suggests that individuals of one particular cultural descent are not more punitive than another. This too, was shown with both the jail sentence ( $p = .423$ ) and the fine ( $p = .903$ ) (See Tables 23 and 24).

Table 21. Descriptive Statistics for Jail Sentence by Race/Ethnicity (in months)

Race/Ethnicity	Mean	Median	SD	N
Caucasian/White	9	11	4	70
Asian	9	10	5	17
Hispanic	10	12	5	17
African American/Black	10	12	3	19
Middle Eastern	8	8	8	2
Mixed Race	9	12	4	3
Pacific Islander	6	6	8	2

Table 22. Descriptive Statistics for Fine by Race/Ethnicity (in dollars)

Race/Ethnicity	Mean	Median	SD	N
Caucasian/White	2250	2500	750	70
Asian	2500	2500+	500	17
Hispanic	2250	2500+	1000	17
African American/Black	2250	2500+	1000	19
Middle Eastern	2250	2250	1000	2
Mixed Race	2250	2000	500	3

Table 23. Analysis of Variance for Jail by Race/Ethnicity

Jail	Sum of Squares	df	Mean Square	F	p
Between Groups	50.383	9	5.598	1.027	.423
Within Groups	681.587	125	5.453		

Table 24. Analysis of Variance for Fine by Race/Ethnicity

Fine	Sum of Squares	df	Mean Square	F	p
Between Groups	11.354	9	1.262	0.454	0.903
Within Groups	347.580	125	2.781		

Descriptive statistics for the severity of the jail term and monetary fine by participant political affiliation are in Tables 25 and 26. Democrats and Republicans, although the former are typically seen as more rehabilitative in nature, sentenced the defendant to relatively similar sanctions for both the jail term ( $p = .689$ ) and the fine ( $p = .684$ ), neither group being statistically more retributive (See Table 27 and 28).

Table 25. Descriptive Statistics for Jail by Political Affiliation (in months)

Political Affiliation	Mean	Median	SD	N
Libertarian	7	6	6	5
Democrat	9	10	4	58
Republican	10	12	4	35
Independent	9	12	4	35

Table 26. Descriptive Statistics for Fine by Political Affiliation (in dollars)

Political Affiliation	Mean	Median	SD	N
Libertarian	2500	2500+	750	5
Democrat	2250	2500	750	58
Republican	2500	2500	500	35
Independent	2250	2500	750	35

Table 27. Analysis of Variance for Jail by Political Affiliation

Jail	Sum of Squares	df	Mean Square	F	p
Between Groups	17.013	5	3.403	0.614	0.689
Within Groups	714.957	129	5.542		

Table 28. Analysis of Variance for Fine by Political Affiliation

Fine	Sum of Squares	df	Mean Square	F	p
Between Groups	8.443	5	1.689	.622	.684
Within Groups	350.490	129	2.717		

The sample in this study was comparatively small and homogenous, so there may not have been enough statistical power to detect differences based on individuals' sex, race or ethnicity, or political affiliation. A larger sample with more participants of different descents

and political ideologies may reveal more differences in sentencing based on these various demographic characteristics.

### *Discussion*

A number of participants inferred facts well beyond the information presented in the case summary and victim statement. Not only did several participants believe that the victim had been killed, but based on their responses to the open-ended items, it seems that seven of the participants also inferred that the victim was male. Of these, three did not receive a victim statement, one had a statement with no name, two had statements from Amena Abdulla, and one from Caitlyn Johnson. Two other participants inferred the victim's age, one placing her as a teen, and another between her teens and early twenties. Although the majority of the survey participants correctly identified the race or ethnicity of the victim or noted that the information was not given, others inferred different information from the names. One of the individuals in the "Amena Abudlla" condition thought the victim was not only black, but Muslim as well, thereby inferring her religion from her name.

These findings imply that jurors may draw their own conclusions and inferences based on the information presented to them, which is where discretion can lead to disparity and discrimination. Jurors are intended to examine the facts of a given case, and no more. Comments on this survey, however, demonstrate that mock jurors, and perhaps true jurors, can not be completely reliable, and this is unacceptable in a court of law, intended to deliver justice.

Based on these findings, one could conclude that individuals may not only infer facts beyond those given, but they may rely on stereotyped knowledge as well. A participant who self-identified as Asian and received the “pedestrian” condition, when asked the race or ethnicity of the victim, wrote, “I’m not sure, because she may be any! But since her statement was written eloquently she may be Caucasian.” This comment clearly points to stereotypes about different races and ethnicities and their capabilities and characteristics. While it was only one participant who made such a strong remark, the implications of an actual juror with similar beliefs that may become salient during a trial will be discussed, as it may lead to disparate sentencing.

It was this issue, that there might be differences in the quality or clarity of a victim statement, that alarmed the *Booth* court. The justices worried that courtroom decisions might be based on the victim’s family’s ability to articulate the harm they suffered, and that helped lead the court to its decision to prohibit victim impact statements in capital cases (Hill, 2005). Although this study did not depict a capital case, this participant considered not only the content of the victim statement, but also how well it was written. Although *Booth* has been overturned, it seems this may continue to be a problem that court administrators and victim assistance agencies should consider. The court has concluded that the potential for bias is to “be considered on a case-by-case basis,” but the reasoning behind jurors’ decisions does not typically come out in the courtroom, which makes bias difficult to assert (McGowan & Myers, 2004, p.358).

Together, these various inferences and stereotypes about the victim suggest that individuals will read in to the information presented to them, and may reach conclusions that

are inaccurate based on the facts. It is not inherently easy for individuals, even those on a jury, to immediately and fully disregard any prior notions they may have about others, though this may be less of a problem in a real trial where more information is explicit, leaving less to be inferred.

There are various reasons for why a participant in this study or a juror on an actual panel might infer information from the facts given or make presumptions about what is in front of them. Based on limited cognitive capacity, it is human nature to rely on heuristics, or mental shortcuts that “reduce the effort associated with decision processes” (Shah & Oppenheimer, 2008, p.207). Echoing the literature on jurors’ unpreparedness, several participants mentioned wanting a more complete picture in order to more accurately sentence the defendant. Since the participants did not have a great deal of information on the defendant, it may have been easy for them to fill in the gaps themselves, relying on heuristics and stereotypes to do so.

This has implications for the delivery of justice to both victims and defendants. Although there were no significant findings that participants related the defendant’s sentence to the suggested race or ethnicity of the victim, their written comments are evidence of their conscious recognition of inconsequential factors of the case. These inferences, made about both the defendant and the victim, indicate that jurors may consider various extra-legal factors during their decision making and these factors may, in some contexts, relate to the final decision or sentence.

Once jurors become aware of personal or physical characteristics of a victim or defendant, their reactions and thoughts can not be monitored or controlled. Court

administrators often make efforts to sequester jurors in order to limit their exposure to news media, but salient personal stereotypes represent a different type of “jury tampering” that could lead to unjust outcomes. Although it was a small portion of the sample that inferred extra-legal facts from the materials or made stereotypical comments, juries typically consist of only twelve or fewer individuals, and that may not be enough to correct and overcome such misjudgments. If a few members of a jury mistakenly believe a fact of the case or if a few individuals hold biased viewpoints, then these factors may impact the verdict, without the rest of the jury being able to stop it.

Another implication of victim statements in the courtroom is shown by the tendency for those participants who read statements to sentence the defendant to pay restitution and/or the victim’s medical bills, seemingly a trend toward restorative justice. Participants who received victim impact statements were about eighteen percent more likely than those without statements to sentence the defendant to pay the victim restitution. Further, restitution was suggested more often if the impact statement named the victim, rather than referred to her as a pedestrian.

It seems the presence of a victim statement made it easier for the participants to comprehend the effects of the crime on the victim. Once they were aware of her suffering, many of the participants must have felt that she deserved justice beyond the defendant serving time in jail and/or paying a monetary fine for his actions. Having the defendant pay the victim’s medical bills and support her through restitution are indices of the participants’ interest in restorative justice. The findings suggest differences among the participants in their understanding of or interest in restorative justice, though due to their enrollment in criminal



justice courses, it is likely that the majority of them are at least more aware of the concept than the average individual.

If victims are more likely to receive more compensation for their suffering if they submit an impact statement then they should be aware of that probability so that all victims have an equal opportunity for assistance. Based on these findings, however, it seems victim impact statements have turned sentencing to be too focused on the victim, and less about the defendant's actions. Of the participants who did not receive impact statements, none of them mentioned the defendant's role in paying restitution or medical bills for the victim, which leads one to question whether the defendants are being sentenced equally. It could be that more of the students in the condition that did not receive statements knew that these fines would be addressed in a civil suit and therefore saw it unnecessary to mention them, but based on the random distribution of the surveys to individuals in the administration of justice courses, this is unlikely. It seems that victim statements may enable jurors to make a more complete analysis of the crime and its effects. The courts presently allow for the consideration of this information, but these results suggest it might prevent a fair trial and equal justice for the accused.

Particularly in this scenario, jurors should not be considering factors that would be settled in a civil suit. Perhaps the victim's statement would be more effective if introduced not at the criminal trial, but at a civil trial instead. The justice system is designed to have separate criminal and civil cases, and each serves a unique function. It would be excessive and unjust if victims were compensated for the same harm at different occasions by different judges or juries.

Criminal justice administrators need to restrict what jurors consider at each trial, which could be done through more detailed and thorough jury instructions. Jurors need to be aware of their specific purpose and how their role fits into the greater adjudication process.

Since the participants were not instructed to consider the harm to the victim when making their sentencing decisions, these findings may represent the rising influence of victim evidence, particularly its importance in sentencing decisions. Prior to the *Payne* decision, information on the harm caused to the victim was not admissible, but the *Payne* justices reasoned that the victim's harm and injuries can be related to the 'blameworthiness' of the defendant, and are therefore relevant (*Payne v. Tennessee, 1991*). This type of evidence has long been recognized by victim advocacy groups as an important tool for victims, but it seems that jurors are now considering victim evidence without being prompted or instructed to do so, evidence of a shift toward a more holistic restorative justice. This may be particularly true for the participants in this study, as they are relatively young, liberal, and well-versed in the American criminal justice system and its nuances.

### *Policy Implications*

These findings have implications for the distribution of justice in the courtroom. In order for defendants to receive fair trials and for victims to feel included in the process, the procedures regarding the submission of victim impact statements may need to be changed. If research continues to show evidence of unequal sentencing, the American system could be altered to mirror that of England or Australia, where the victim is not typically permitted to write his/her own statement and the prosecutor has the responsibility of relaying the relevant

information to the judge (Erez & Roeger, 1995; Roberts & Erez, 2004). This might be necessary given participants' tendency to gather extra-legal information from the victim.

Another implication of the use of victim statements concerns those victims who do typically complete them. Individuals of different races, ethnicities, and socioeconomic status, among other factors, do not complete impact statements at the same rate. In this study, it is more likely that the victim Caitlyn Johnson would produce a statement than either Amena Abdulla or Maria Lopez. In general, class, gender, cultural background, level of literacy, the costs of reports, and the assistance that is made available relate to the likelihood that a particular victim will submit an impact statement. Studies show that “typically, only those primary or family victims who are white and middle/upper class will submit a [victim impact statement]” (Booth, T., 2000, p.303). The implications of this unequal justice are great, especially in a criminal justice system that already has unequal access and treatment for individuals of different races, ethnicities, and socioeconomic status. Since the results of this study suggest that those victims who submit impact statements are more likely to benefit from restorative justice, minority victims may not be compensated adequately for their losses. When only middle-to-upper class white victims submit impact statements, the disparity between different groups and their access to the justice system increases. Certain victims will continue to feel like outsiders and will consistently fail to have their voices heard and their needs met.

In order to address this disparity investigators, court officials, and victim service agencies need to ensure that all victims are made aware of their rights within the criminal justice system. The knowledge that they are able to participate in the proceedings in some manner

may help victims and other individuals of different races or ethnicities to feel more engaged with and thus comfortable with the criminal justice system. These victims could also help one another to engage with the system as they become more accustomed to the procedures.

As noted before, juries suffer from a lack of information, experience, and knowledge of any sentencing trends for particular offenses. Further, they are typically unaware of a defendant's prior record which, given the comments on the surveys, they often want to know in order to make their sentencing decision. Since some of the participants wanted to know the defendant's "character," it is possible that they may consider extra-legal factors of victims and defendants. Since the consideration of these extra-legal factors is what the justice system is hoping to prevent, administrators should give clear and concise instructions and guidance to jurors in order to assist in their decision making processes. Furthermore, judges could alert jurors as to what is appropriate to be taken into consideration at each stage in the adjudication process.

### *Limitations*

An inherent difficulty in conducting research of this type is the use of college students as study participants. Based on the participants' demographics, including racial and ethnic diversity, socio-economic status, and age, the sample does not mirror the general population that a Fairfax County jury would be drawn from.

The majority of the students were recruited from an introductory level criminal justice class, and so they may have greater interest in or knowledge of the criminal justice system and courtroom procedures than both the average student and juror. Further, students were not

required to participate in the research so there may have been a self-selection bias if the more engaged students were the ones to complete the study while those who declined had less interest and knowledge of the criminal justice system.

Some of the participants made reference to different laws or court cases, which they likely knew as a result of their criminal justice classes. One individual was not satisfied with choosing a sentence within the Virginia Code guidelines, as “DWI laws change all the time [and] vary from state to state.” This individual also cited a Virginia Beach case wherein the Supreme Court of Virginia found that if a defendant is not arrested at the scene, authorities would have to physically place him/her in custody. Another noted that people do not typically serve jail time for a DUI, and that although the victim’s case was emotional, the defendant would most likely not go to jail, or serve two months at the most if he did.

Not only were the participants a unique group, but the sample was not particularly large. If there were more participants in each of the conditions, the findings would be more robust. If there are small differences in the sentences based on which condition an individual was in, it might take a larger sample to show the effects, as the statistical power in this sample was not necessarily large enough.

An additional consideration is that the participants in this study did not deliberate to determine an appropriate sentence, as a traditional jury would. The findings are mixed, however, as to the relation between individual decisions and those reached after deliberation. Some suggest that jurors go into deliberations with ideas based on extra-legal factors, but that group deliberations produce legally-relevant decisions based on the evidence presented during trial (Wasserman & Robinson, 1980-1). Alternatively, research has shown that the

opposite may be true, and juries may produce decisions with greater emphasis on extra-legal factors than an individual juror would without deliberating (Mazzella & Feingold, 1994). The current study did not have deliberations, so it can not be discerned whether or not the participants focused more or less on extra-legal factors than they would have had they deliberated with one another. Since the American justice system calls for jury deliberations, researchers trying to understand jury reactions and decisions should ideally conduct research wherein the participants do deliberate, so that they are able to study that group dynamic.

#### *Future Research*

Since most of the participants were aware of the victim's race or ethnicity, there is still a chance that it may become one aspect of jurors' considerations when determining sentences. Given this, and other inferences people made from the victim statements, including age, it is imperative that researchers continue to study the effects of potential extra-legal factors of a victim or victim statements.

The present study could be replicated in a different population, ideally one more representative of a typical jury pool. George Mason University's exceptional diversity may have masked the potential for discrimination, and the use of a younger cohort may lead to participants who represent different ideals than a cross-section of community members that would more likely form potential juries. This study could be replicated, with permission of the chief judge, at a local circuit courthouse with individuals called in to serve jury duty. Participants could be approached upon dismissal from the courthouse.

Given the increased diversity in the general population and changing racial and ethnic relations, researchers should revisit studies with findings of differences between black and white defendants or victims and conduct them with more of the races and ethnicities represented in the population today. This would create a more complete picture of how different stereotypes or conceptions relate to various criminal justice processes.

Studies should also focus on ways to bring victims of minority races and ethnicities into the adjudication process and look for what factors, other than personal characteristics, make a victim more likely to submit an impact statement. Since the completion of a statement typically yields benefits to an individual victim, including helping the healing process, it is important that the opportunity is available and acknowledged in all cases (Giliberti, 1990).

## CONCLUSION

This study has shown the evolving views toward victims, impact statements, and restorative justice in today's criminal justice system. Contrary to prior findings, it demonstrated the declining influence of impact statements on sentencing decisions as participants mentioned victim harm as the basis for their sentence whether or not they received an impact statement, particularly among young, diverse individuals educated in criminal justice, though this group may not be the only population that sees an emphasis on victims as commonplace and not particularly noteworthy. Restorative justice, however, is a newer concept, and one that the participants in this study may know more about due to their participation in administrative of justice courses.

While they may be more familiar with restorative justice and its components, some of the participants in the study were more supportive of its ideals than others, and that support was manifest through sentencing the defendant to pay the victim restitution and to reimburse her medical bills.

While this study was intended to address some of the controversy surrounding victim impact statements and their potential to influence defendants' sentences, its results suggest that the debate may be irrelevant, and that opponents need not worry that the statements unduly punish defendants. Perhaps jurors are now accustomed to considering a crime's



effects on victims, and instead, restorative justice should be of greater concern to researchers, as more and more individuals learn of its components and intent.

When determining sentences, judges and jurors often focus on retribution, and this study suggests that victim statements may no longer provide courtroom decision makers with new and additional information as it seems consideration of the victim and his/her injuries happens with or without a statement to the court. Further, this study has demonstrated some individuals' propensity to consider restorative justice, specifically through sentencing the defendant beyond the Virginia guidelines and assigning him restitution and medical reimbursement. This effect points to the importance of the background characteristics of the individuals charged with sentencing.

Further, whether the victim was presumably Caucasian, Hispanic, or Middle Eastern had no bearing on the recommended sentence for the defendant. Since the defendant's sentence was independent of the victim's racial and ethnic background, the findings clash with previous research on racial and ethnic relations that point to the pervasive nature of stereotypes.

On the other hand, the data does show that jurors may infer a number of characteristics from a victim statement or the victim herself, which might be an area of concern. Since several participants assumed the victim's age and other factors from the information given, that knowledge may, in turn, affect sentencing decisions. While researchers continue to study the effects of victim testimony in the courtroom, victim advocates and courtroom officials need to consider this potential for bias and conduct procedures accordingly. A victim's right

to be heard should not interfere with the administration of justice and a defendant's right to a fair trial.

## APPENDIX

Thank you for agreeing to participate in this research. As a reminder, you can withdraw from the study at any time.

You have received a packet of information regarding a case in which the defendant has been charged and convicted with driving under the influence (DUI). You will be asked to determine the appropriate sentence for the defendant. Please read the materials in order, without looking back at previous pages or ahead to future ones, and respond to the statements.

When you are finished please give the packet back to the researcher.

A male, while driving home from a party during which he was seen to have had a number of alcoholic drinks, swerved off of the road and hit and seriously injured a pedestrian. The accident took place at 1:00 a.m. on a neighborhood street. The pedestrian, Caitlyn Johnson, was out walking on the sidewalk with her dog. The defendant's car was going at a high rate of speed as indicated by the fact that the victim was thrown over 50 feet from the point of impact.

The defendant was charged with driving under the influence (DUI), as a breath test at the scene showed his Blood Alcohol Level (BAL) to be .16, significantly higher than the legal limit of .08. This was proven at trial and within one hour of deliberations, the jury convicted the individual of driving under the influence.

**Please read the following juror instructions carefully.**

You are about to sentence the defendant in this case, who has been found guilty of driving under the influence.

The judge gives you the following instructions, and directs you to pay careful attention to them. You are to make the sentencing decision on your own, without consulting with other individuals.

Members of the jury, we are now about to begin the sentencing proceeding. At this sentencing proceeding, you will decide what sentence the defendant will receive.

The jury's sentencing decision in this case must be imposed. The judge does not have the authority to override or reject the jury's sentencing decision.

The crime of driving under the influence (DUI) is punishable by 0-12 months in jail and/or a fine of \$0-2,500.

In the course of this sentencing proceeding you may hear the terms "aggravating factor" and "mitigating factor."

An aggravating factor is a fact or circumstance, relating to the crime, that the prosecutor will ask you to consider in the sentencing decision.

A mitigating factor is any fact or circumstance relating to the crime, or to the defendant's state of mind or condition at the time of the crime, or to his/her character, background, or record, that the defendant will ask you to consider in the sentencing decision.

There will not be deliberations in this case; rather it is up to each individual juror to decide what he/she thinks is an appropriate sentence.

I ask that you approach the sentencing decision with the utmost care and attention.

Please turn to the next page.

**Please read the following.**

In this jurisdiction, victims are permitted to submit a statement of how they have been affected by the crime. In this case, the victim has submitted the following:

The actions of the defendant have greatly affected my life. Physically, I have had numerous surgeries, and, as a result, I am facing enormous medical bills. Because of the initial hospitalization and my current physical therapy I have been unable to go to work. This has proven to be a substantial financial burden. Some days are better than others, but usually I just want to stay home and avoid the stares. I am scarred for life as a result of the defendant's carelessness.

I have trouble sleeping at night because I constantly worry about being injured again. I have relived the accident over-and-over in my sleep. Sometimes I wake up screaming the way I did that night.

People like the defendant need to be punished for their actions. They should not be allowed to forget; rather they need to be constantly reminded that their actions have hurt others in ways they cannot even imagine. The defendant needs to be held accountable for his actions, and it is the jury's duty to ensure that justice is served.

**Please respond truthfully to the statements below.  
Remember, your answers are confidential.**

Under Virginia law, a sentence for driving under the influence (DUI) can range from 0-12 months in jail and/or a fine of \$0-2,500.

The most appropriate sentence for the defendant in this case is: (Circle Choice)

Jail time (in months)

0      2      4      6      8      10      12      12+ months

Monetary fine (in dollars)

\$0      \$500      1,000      \$1,500      \$2,000      \$2,500      \$2,500+

If you would prefer to sentence the defendant differently, please state your preferred sentence below.

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Please describe the factors that led to your sentencing decision.

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Please turn to the next page.

**Please fill out the following information regarding your background.**  
(Circle Choice)

Have you previously served on a jury?

- (2) Yes
- (1) No

What is your gender?

- (2) Male
- (1) Female

What is your racial/ethnic background? Circle all that apply.

- (6) American Indian or Alaska Native
- (5) African American/Black
- (4) Hispanic
- (3) Asian
- (2) Caucasian/White
- (1) Other (please specify)

What is your political affiliation?

- (1) Libertarian
- (2) Green Party
- (3) Democrat
- (2) Republican
- (1) Independent

Please turn to the next page.



**Please respond to the following statement without looking back through your materials.**

What is the victim's racial/ethnic background?

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Thank you very much for your time.  
Please hand your materials to the researcher.

*A Look at Juror Sentencing Decisions*

**INFORMED CONSENT FORM**

**RESEARCH PROCEDURES**

This research is being conducted to gain a better understanding of juror decision-making. If you agree to participate, you will be asked to read a case summary and decide on an appropriate sentence for the defendant. The entire study should last less than 20 minutes.

**RISKS**

There are no appreciable risks for participating in this research.

**BENEFITS**

There are no benefits to you as a participant other than to further research in the area of juror decision making. This research will add to general knowledge and help advance the field.

**CONFIDENTIALITY**

The data in this study are confidential. The surveys are confidential, and no names or other identifying information will be collected at any point.

**PARTICIPATION**

Your participation is voluntary, and you may withdraw from the study at any time and for any reason. If you decide not to participate or if you withdraw from the study, there is no penalty.

**ALTERNATIVES TO PARTICIPATION**

If you choose to not participate in this study, you may leave the classroom; class is over and this research is not in any way connected to course-work or your grade in the class.

**CONTACT**

This research is being conducted by Colleen Sheppard, a student in the Justice, Law, and Crime Policy Master's Program at George Mason University. The research is headed by Dr. Jon Gould of the Administration of Justice Program at George Mason University. He may be reached at (703) 993-8481 for questions or to report a research-related problem. You may contact the George Mason University Office of Research Subject Protections at 703-993-4121 if you have questions or comments regarding your rights as a participant in the research.

This research has been reviewed according to George Mason University procedures governing your participation in this research.

**CONSENT**

I have read this form and agree to participate in this study

\_\_\_\_\_

Name

\_\_\_\_\_

Date of Signature

Approval for the use  
of this document  
EXPIRES

MAR 03 2009

Protocol # 5720  
George Mason University

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## CURRICULUM VITAE

Colleen E. Sheppard graduated from the University of Virginia in 2006 with a Bachelor of Arts in Psychology. She received her Master of Arts in Justice, Law, and Crime Policy from George Mason University in 2008.