

Victim Impact Statements: Do they make a difference?

Executive Summary

A collaborative study between WATCH and
the University of Minnesota. Authors are:

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Victim impact statements constitute a most unusual and perplexing form of communication in the legal arena. Few previous scholarly or public policy studies have attempted to understand the roles of two seemingly opposite parties in the sentencing process: the judge as decision-maker, who is assumed to maintain emotional distance and neutrality in the courtroom, and the advocate as victim supporter, who is assumed to establish emotional closeness with the victim and maintain support for her throughout the legal process.

Judges make sentencing decisions or accept plea negotiations based on factors such as criminal history and severity of offense, and, in felony cases, judges are restricted by legislated sentencing guidelines. Victims in their impact statements, however, may want to influence the duration and disposition of the sentence and often seek emotional closure by describing the psychological and physical affect of the crime on their bodies and lives. Judges vary in whether they think impact statements should and do affect the terms of a sentence and whether the courtroom is the best place for a victim to reach emotional closure.

This study began by asking to what extent victim impact statements affected or should affect sentencing decisions and acceptance of plea negotiations, particularly in domestic violence or sexual assault cases, and what features make an impact statement persuasive or memorable. At the outset, we sent letters to all judges in the Fourth Judicial District (Hennepin County) in late 2004 informing them of the project and inviting them to participate in an interview. Twenty-two judges agreed to a 45-minute face-to-face interview between November 2004 and January 2006. In spring 2006 we conducted similar interviews with 15 community and county-based domestic violence and sexual assault victim-witness advocates in Hennepin and Ramsey counties to determine what motivates victims to offer impact statements and what the advocates believe makes an impact statement persuasive.

In addition, WATCH volunteers observed 74 sentencing hearings from November 2004 through April 2006 in which victim impact statements were offered. They recorded the content of the statement and what effect the statement seemed to have on the sentence on a supplementary observation template we created for the project. Finally, two University of Minnesota researchers personally attended an additional 15 sentencing hearings to observe the dynamics in the courtroom and the judge's verbal and nonverbal responses to the impact statement. The hearings we observed involved domestic violence, sexual assault, homicides, or other person crimes because we learned that often these hearings draw a number of people who want to speak.

Whether or not victim impact statements directly affect a sentence, they have value in the sentencing process. They may convey which treatment plans might work for a defendant, offer new information to a judge, educate the whole courtroom about the nature of crime, or affirm how the sentence will work best in stopping violence or rehabilitating an offender. Certainly victim impact statements may help a victim reach emotional closure, and they bring a human face into the courtroom. However, fear of the perpetrator or of the public setting of the courtroom, and distrust of the system might prevent a victim from writing or delivering an impact statement. A domestic violence victim might have a hard time achieving credibility, especially if she recants or pleads for mercy for her abuser. And to be persuasive, all victims may be challenged to distinguish their assault from the “average” assault and to give a balanced but detailed account of the effects of the crime on their lives. Judges, however, as we observed and as advocates convey, can help empower victims by being aware of the dynamics of their courtrooms and their own judicial demeanor.

Some specific recommendations for how to handle victim impact statements follow:

1. Victim impact statements should be submitted well in advance of the sentencing hearing to give judges time to read and respond to them.
2. Victim input into the pre-sentencing investigation is very important, particularly requests for restitution. Judges express willingness to require restitution for such things as ongoing therapy for victims and their families.
3. Prosecutors as well as advocates should solicit impact statements, and if the victim chooses not to attend the hearing, the prosecutor should assure the victim that the statement was read by the court and, if possible, share the judge’s comments with her after the hearing.
4. Advocates and prosecutors should continue to explain to victims the purpose and nature of plea negotiations so that their expectations are realistic.
5. Prosecutors and advocates should remember that community impact statements also help change perceptions about the nature of domestic violence. Community impact statements focus on overall social effects of domestic violence and challenge perceptions that it only affects individuals.
6. More conversation and education are needed on the issue of victims of domestic violence who recant, ignore no-contact orders or ask to have them lifted, or plead for mercy for the perpetrator, and on the perception of the domestic violence victim as complicit in the crime. Advocates, prosecutors, and judges might find it interesting to share strategies and perceptions in handling these cases.
7. To be most persuasive, victim impact statements must achieve a difficult and delicate balance between emotion, reason, and insight.
8. Judges should remember to thank the victim for coming forward, and if they are comfortable, to compliment the victim on her courage in doing so. Given how healing and empowering this might be for the victim, judges should also consider mentioning the impact statement and any specifics from that statement when handing down the sentence.
9. Judges should be aware that explaining how they reached a sentencing decision or why the terms of a plea agreement make sense in this crime often helps victims heal.
10. Judges should avoid reading or writing during an impact statement and maintain eye contact with the victim. Such a stance assures her that she is being heard.