Roger Williams University
DOCS@RWU

Feinstein College of Arts & Sciences Faculty Papers | Feinstein College of Arts and Sciences

1-1-2006

The Moderating Effect of Judge's Instructions on Victim Impact Testimony in Capital Cases

Judith Platania
Roger Williams University, jplatania@rwu.edu

Garrett Berman
Roger Williams University, gberman@rwu.edu

Follow this and additional works at: http://docs.rwu.edu/fcas_fp

Part of the Psychology Commons

Recommended Citation
Platania, Judith and Garrett Berman. 2006. "The Moderating Effect of Judge's Instructions on Victim Impact Testimony in Capital Cases." *Applied Psychology in Criminal Justice* 2 (2): 84-101

This Article is brought to you for free and open access by the Feinstein College of Arts and Sciences at DOCS@RWU. It has been accepted for inclusion in Feinstein College of Arts & Sciences Faculty Papers by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.

The Moderating Effect of Judge's Instructions on Victim Impact Testimony in Capital Cases

Judith Platania
Garrett L. Berman

Roger Williams University

In this study, we addressed whether victim impact instructions served as a legal safeguard in a capital case involving victim impact testimony. We hypothesized that specific victim impact instructions would moderate the relation between victim impact testimony and death penalty recommendations. One hundred sixty-six participants viewed a simulated videotaped trial in which a victim impact statement was delivered in different emotional conditions. Judge's instructions were varied as either general instructions or with the addition of specific victim impact instructions. Participant-jurors who heard specific victim impact instructions were less likely to recommend death compared to participants who heard general jury instructions. The value of victim impact instructions as a legal safeguard in capital trials is discussed.

The victims' rights movement has gained tremendous momentum in recent years (Henderson, 1985). The force behind the movement was the contention that the criminal justice system was insensitive to the harm victims experienced. Traditionally, victims have been denied a formal role in the judicial process. Supporters of the movement insisted that the law provide victims a meaningful role in criminal proceedings. As a result, statutes were passed that allowed victims a greater degree of participation in the justice process.

Correspondence concerning this article should be addressed to Judith Platania, Roger Williams University, One Old Ferry Road, Bristol, RI 02809, email: jplatania@rwu.edu .

The Victim and Witness Protection Act (1982) enacted by Congress, requires the inclusion of victim impact statements as part of the pre-sentence report submitted to the sentencing authority. The Uniform Victims of Crime Act (1992) provides victims with a Constitutional right to be present at court proceedings. In general, victim impact statement legislation permits family members of the victim the right to inform the sentencer of the crime's impact on their lives. This type of evidence can include oral or written statements addressing personal characteristics of the victim as well as the emotional and financial impact of the victim's death on the family.

The constitutionality of victim impact evidence has been consistently called into question. Supporters feel that participation in court proceedings helps victims reclaim a sense of dignity (Mulholland, 1995; Monzo, 1990). To them, victim impact evidence more efficiently balances punishment with harm caused by the crime. Opponents express concern that victim impact evidence invites jurors to base their sentencing decisions on the victim's character rather than evidence or the relevant criminal circumstances (Stevens, 2000; Phillips, 1997). Regardless of one's position on this issue, the emotional nature of victim impact testimony raises a troubling question: Does the admissibility of victim impact evidence serve the psychological needs of victims' families or assist the jury in arriving at the most appropriate sentence?

The Supreme Court decision that allowed the introduction of victim impact evidence in capital sentencing hearings was *Payne v. Tennessee* (1991). In *Payne,* the victim and her two-year old daughter were murdered; her three-year old son survived. During the sentencing phase of the trial, the son's grandmother told the jury how the murders had affected him. Specifically, she spoke of how he constantly cries for his mother and sister:

> He cries for his mom. He doesn't seem to understand why she doesn't come home. And he cries for his sister Lacie. He comes to me many times during the week and asks me, Grandma do

> you miss my Lacie. And I tell him yes. He says, I'm worried about my Lacie (p. 815).

In his closing argument, the prosecutor implied that proper justice for the victim's son was for the jury to impose the death penalty:

> The people who loved little Lacie Jo, the grandparents who are still here. The brother who mourns for her every single day and wants to know where his best little playmate is. He doesn't have anybody to watch cartoons with him, a little one. These are the things that go into why it is especially cruel, heinous, and atrocious, the burden that that child will carry forever (p. 816).

In *Payne,* the Court overruled two prior decisions addressing victim impact testimony *(Booth v. Maryland,* 1987*; South Carolina v. Gathers,* 1989*)*. The *Payne* Court ruled that the Eighth Amendment does not prohibit admission of victim impact evidence and related prosecutorial argument at the sentencing phase of a capital trial. The Court specifically stated that evidence and argument relating to the victim's personal characteristics and the impact of the victim's death on surviving family members were legitimate means of informing the sentencer about the specific harm caused by the defendant's actions. Further, the Court suggested that when admission of such evidence was unfairly prejudicial, the defendant might obtain relief under the Fourteenth Amendment's due process clause. Since the *Payne* decision, all states allow victim impact statements taken from the victim in non-capital trials, and most states allow victim impact statements from a victim's family during the sentencing phase of capital trials (Field, 1991).

The crimes committed in *Payne, Gathers,* and *Booth* shared one commonality: each was a vicious attack against innocent, vulnerable victims. Additionally, in each case, the surviving family members actively sought the death penalty for the defendant (Stevens, 2000). The victim impact statements delivered in all three cases conveyed a heightened sense of emotionality,

enhancing the possibility of the maximum allowable sentence (Vital, 1994). The statements included well-articulated "good character" comments by the surviving family members as well as the prosecuting attorneys. The criminal culpability of each defendant was overshadowed by the harm caused to the family by the crime.

Since the United States Supreme Court decision in *Gregg v. Georgia* (1976), the procedural method used to safeguard the capital defendant against "arbitrary and capricious" decisions has been judicial instructions. When deciding the sentence for a defendant who has been found guilty, jurors in most states are asked to weigh the aggravating and mitigating circumstances of the case. Aggravating factors are any relevant circumstances, supported by the evidence presented during the trial that makes the harshest penalty appropriate in the judgment of the jurors. Mitigating factors are any evidence presented regarding the defendant's character or the circumstances of the crime, which would cause a juror to vote for a lesser sentence. Each state has its own laws regarding how jurors are instructed to weigh aggravating and mitigating circumstances. In order to sentence a defendant to death, a jury must return a unanimous decision.

While the court in *Payne* opened the door to victim impact evidence, they failed to set forth any specific guidelines on how this evidence should be used at the capital trial (Kreitzberg, 1998). The dissenting justices were gravely concerned that a jury's "unguided consideration" (p. 861) of victim impact evidence would lead to an increase in death penalty verdicts. In the absence of specific guidelines, the *Payne* Court placed the burden on individual states to decide how this evidence should be used in a capital trial. In New Jersey, the Supreme Court placed restrictions on the statute allowing victim impact testimony in a capital murder trial (*State v. Muhammed, 1996).* Specifically, the Court ruled that the victim impact 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 (Castellano, 1996). Results of social science research (McGowan & Myers, 2004; see also Luginbuhl &

Burkhead, 1995; Myers & Arbuthnot, 1999; Myers, Lynn, & Arbuthnot, 2002) concur with the Court in *Muhammed.* Studies reveal that participant-jurors are considerably influenced by information about the suffering of the victim and the victim's family. In both videotaped trial simulations and transcript summaries, death penalty recommendations increased in the presence of victim impact evidence. In addition, Greene, Koehring, and Quiat (1998) found individuals rendered more severe judgments when the victim was portrayed as a highly regarded member of the community. This result is not limited to statements made by surviving family members or coworkers of the victim. Participant-jurors exposed to statements made by the prosecutor detailing the effect of the crime on the victim's family, were significantly more likely to vote for the death penalty compared to those not exposed (Platania & Moran, 1999). These findings support the argument that direct exposure to victim impact testimony or through closing arguments can overwhelm the jury's ability to reach a sentencing decision based on reason. When adhered to, the above-mentioned restrictions can minimize the risk that sentencing decisions are the result of emotion rather than reason. However, despite the Court's efforts to limit the victim impact testimony in *U.S. v. McVeigh* (1997), witness statements were gripping: at times moving jurors to tears (Burr, 2003). The magnitude of this case has raised defense attorneys' awareness of the unlikelihood of limiting or excluding victim impact testimony.

Some states, however, utilize cautionary instructions in capital cases when victim impact evidence is introduced (*Turner v. State,* 1997; *Cargle v. State,* 1995). Defense attorneys believe detailed instructions have the potential to serve as an effective procedural safeguard: protecting the defendant from "arbitrary and capricious actions" on the part of the sentencer *(*Adams, 2003). However, research finds that jurors lack a general understanding of the function and application of judge's instructions in death penalty studies (Haney & Lynch, 1994; Luginbuhl & Howe, 1995). In order for victim impact instructions to be an effective safeguard, they must not be confusing to capital jurors. One example of victim impact instructions follows:

> The prosecution has introduced what is known as victim impact evidence. Victim impact evidence is not the same as evidence of a statutory aggravating circumstance. Introduction of victim impact evidence does not relieve the state of its burden to prove beyond a reasonable doubt the existence of a statutory aggravating circumstance. This evidence is simply another method of informing you about the harm caused by the crime in question. To the extent that you find that this evidence reflects on the defendant's culpability, you may consider it, but you may not use it as a substitute for proof beyond a reasonable doubt of the existence of a statutory aggravating circumstance and limit the scope of the evidence presented *(Turner v. State,* 1997, p. 843).

This instruction guides jurors to a clear understanding of the role of victim impact testimony in sentencing decisions. However, the differential impact of judicial instructions in capital trials involving victim impact statements has not been established.

The present study addressed whether victim impact instructions act as a legal safeguard in a capital case involving victim impact testimony. Specifically, we examined the effect of varying levels of emotional victim impact testimony and judge's instructions on sentencing recommendations. We hypothesized that specific victim impact instructions (similar to the instructions in *Turner)* would moderate the relation between victim impact testimony and death penalty recommendations. In addition, we predicted a moderating effect of specific instructions on participants' perceptions of the victim impact statement. Finally, we examined differences in sentencing recommendations as a function of attitudes toward the victim and defendant.

METHOD

Participants

The sample consisted of 166 participants (72 males, 94 females) who were students from general education or introductory

psychology classes attending a northeastern university. Participants were predominantly Caucasian (97%) between the ages of 18 to 24. Seventy-six percent considered themselves either slightly liberal or liberal compared to 24% of the sample who rated themselves as slightly conservative or conservative. Participants were randomly assigned to one of six experimental conditions.

Materials

The videotaped trial was based on an actual transcript from the murder trial of William Anthony Brooks (B*rooks v. State*, 1979). The trial was approximately 40 minutes in length and included: a summary of the guilt phase, a victim impact statement, closing arguments by the prosecuting and defense attorneys, and judges' instructions. The victim impact statement was taken from the sentencing phase of the capital trial of Napoleon Beazley *(Beazley v. State,* 1997). Napoleon Beazley was found guilty of the first degree murder of John Luttig. During the sentencing phase, Michael Luttig, the decedent's son and an appeals court judge, gave a victim impact statement to the jury prior to sentencing. We edited the statement as delivered by the victim's mother; a more suitable fit with the *Brooks* case. Actors from a local theatre played the roles of attorneys, judge, and the mother of the victim.

In the guilt phase summary, the judge stated the defendant was convicted on charges of kidnapping, armed robbery, rape, and first degree murder. The judge then informed participant-jurors that they would hear testimony provided by the victim's mother and decide which penalty was appropriate for this crime. The mother of the victim provided the victim impact statement which lasted approximately 8 minutes. The victim impact statement described the effects of the crime on the victim's mother and family. Participants in the high emotion victim impact statement condition witnessed the mother sobbing while reading the statement. Participants in the low emotion victim impact condition witnessed the mother reading the same statement in a calm, fairly unaffected manner. Participants in the control condition viewed each aspect of the trial minus the victim impact statement. In order to maintain the ecological validity of our study, participants who were not exposed to the victim impact statement did not respond to

measures assessing various aspects of the statement (i.e., emotionality and importance on reaching verdict).

In his closing argument, the prosecuting attorney argued that jurors should sentence the defendant to death. In contrast, the defense attorney's closing argument asked jurors for leniency and to spare the defendant's life. Participants in the victim impact instruction condition heard the standard judge's instructions along with specific victim impact instructions stating that, inter alia, victim impact statements can never serve as the basis for making a defendant eligible for the death penalty. The specific victim impact instructions used in our study were prepared by a Maryland public defender (O'Donnell, 1997) and submitted to the Court as proposed instructions in a death penalty case. The standard judge's instructions were taken verbatim from the *Brooks* trial. See Appendix for the specific victim impact instructions.

After viewing the videotaped simulated trial, jurors responded to a number of demographic items including: gender, age, ethnicity, political affiliation, and previous experience as a juror in a criminal or civil proceeding. In addition, participants were asked whether or not they agreed that sympathy for the victim, victim's family, and defendant should be taken into consideration when deciding sentence (0 = *completely disagree* to 7 = *completely agree*). Participants were asked whether their views of the death penalty would prevent or substantially impair their ability to follow the judge's instructions in the case *(Wainwright v. Witt,* 1985*).* This standard is referred to as "death qualification" and is used to ensure that prospective jurors are able to consider the death penalty. The primary dependent variable was sentence recommendation for the defendant measured dichotomously (life imprisonment vs. death by lethal injection).

Design and Procedure

Our study investigated the combined effects of emotional victim impact testimony and judge's instructions on capital sentencing decisions as a 2 (Instruction type: general vs. general and specific victim impact instructions) *X* 3 (Emotionality of victim impact statement: high vs. low vs. none) between subjects

factorial design. Participants were tested in groups ranging in size from 10 to 28. They were instructed to read all the materials carefully because they would be serving as participant-jurors in the death penalty phase of a capital trial. Upon obtaining informed consent, participants viewed the 40-minute videotape and responded to a 45-item questionnaire assessing: demographics, sentence recommendation, victim and defendant attitude items, and perceptions of the victim impact statements. The entire study took one hour.

RESULTS

Manipulation Checks

A one-way ANOVA was conducted to determine if participants in the high emotion condition perceived the victim impact statement as significantly more emotional than the low emotion condition. Results indicated the manipulation was effective: $F(1, 88) = 22.90$, $p = .000$: (Ms = 5.58 vs. 3.23, respectively). Ratings were made on a scale of 1 = *not at all emotional* to 6 = *very emotional.* In addition, participants in the specific instruction condition rated victim impact instructions as significantly more useful (1 = *not at all useful* to 6 = *very useful*) in understanding victim impact evidence compared to participants in the general instruction condition: $F(1, 127) = 18.75$, $p = .000$: (Ms = 3.86 and 2.56), demonstrating the effectiveness of the instruction manipulation.

Witt Removals

Thirty-seven jurors (22%) indicated their views on the death penalty would either prevent or substantially impair their ability to consider both penalties (*Wainwright v. Witt*, 1985). A chi-square test of independence revealed a significant association between sentencing recommendation and participant-jurors identified as *Witt*: χ^2 *(1, N* = 166) = 15.41, $p = .000$. Twenty-four of 37 (65%), were significantly more likely to recommend life compared to death ($n = 13$, 35%). Data were removed from further analyses for those jurors identified as *Witt.*

Sentence Recommendation

A log-linear analysis revealed a significant instruction by sentence (*IV – DV*) association: χ^2 *(1, N* = 129) = 7.53, *p* = .006. Of 38 participant-jurors who recommended life, 25 (66%) heard both general and specific instructions, compared to 13 (34%) who heard general instructions. Conversely, of 91 participant-jurors who recommended death, 55 (60%) heard general instructions, compared to 36 (40%) who heard specific instructions. There was no significant effect of emotionality of victim impact statement on sentence recommendation, nor was there a significant emotion * instruction interaction.

Participant-jurors who recommended life (*n* = 38), were not significantly different from those who recommended death (*n* = 91) with respect to gender, political views, and familiarity with law enforcement. All participants reportedly took their roles as jurors seriously (*M* = 5.57, on a scale of 1 = *not at all serious* to 6 = *completely serious*).

Reliability Analysis

Participant-jurors who heard victim impact statements rated the eight statements made by the victim's mother during her testimony. Ratings were made on 8-point scales (0= *not at all important in reaching my decision* to 7 = *completely important in reaching my decision).* As Table 1 indicates, the means on the statements ranged from 4.97 to 5.59 for our entire sample. The eight statements revealed inter-item correlations ranging from .30 to .83, $p < .001$ (one-tailed). Cronbach's alpha indicated that the eight statements were internally consistent, $\alpha = .91$. Based on this result, we combined the items to form the "Victim Impact Statement Importance Scale" (VISIS). Scores on the scale were computed across the 89 participants who heard the victim impact statements. There was a significant difference between jurors who recommended life vs. those who recommended death on VISIS: $t(87) = -2.57$, $p = .012$ (*Ms* = 38.00 v. 44.40, respectively). Jurors who voted for death rated the statements as significantly more important in their decision compared to those who voted for life.

Instructions as a Moderator of VIS Importance

To examine whether instructions moderated the relation between emotionality and participants' ratings of the eight statements, we conducted a 2 (Instruction type: general vs. general and specific victim impact instructions) *X* 2 (Emotionality of victim impact statement: high vs. low) between subjects factorial design. We found a significant instruction * emotion interaction on VIS Importance: $F(1, 85) = 4.28$, $p = .04$; $\acute{\eta}^2 = .05$. Specific instructions significantly lessened overall importance of the statements in the high emotion condition, compared to general instructions. In addition, we found a significant main effect of instruction: $F(1, 85) = 7.72$, $p = .007$. Participant-jurors in the specific instruction condition rated the importance of statements lower compared to participant-jurors exposed to general instructions: (*Ms* = 39.21 and 45.48 for specific vs. general instructions, respectively). Table 2 displays the interaction means of this analysis.

A significant positive relationship was found between overall importance of statements in death penalty recommendation and: the amount of suffering participants felt the victim experienced: $r = .41$, compassion for the victim: $r = .32$, and compassion for surviving family members: $r = .31$. All correlations were significant at $p = .000$.

Life vs. Death Attitudes

Participant-jurors recommending life reported significantly different attitudes toward the defendant compared to those who recommended death. Table 3 displays the differences in attitudes toward the defendant as a function of life vs. death sentence recommendation. More favorable attitudes toward the defendant were reported by participant-jurors who recommended life compared to those who recommended death. Participant-jurors who recommended death rated six of the eight statements read by the victim's mother as significantly more important in reaching their decision compared to those who recommended life. Table 4 displays these differences.

DISCUSSION

Overall, we obtained partial support for our moderating hypotheses. While we did not find that victim impact instructions reduced the influence of emotion on sentence recommendation (Baron & Kenney, 1986), we did find a moderating effect of instruction on participants' perceptions of the victim impact testimony. After hearing specific instructions, participant-jurors in the high emotion condition rated the eight statements as significantly less important in reaching their decision, compared to those who heard general instructions. The introduction of instructions specifically tailored to organizing and applying this type of evidence apparently reduced the affective significance of victim impact statements. Additionally, exposure to specific victim impact instructions resulted in an overall increase in life sentences, and a decrease in death sentences. These findings provide a baseline of empirical support for defense attorneys' contention that properly worded victim impact instructions can serve as an effective safeguard in capital trials when victim impact evidence is presented (Castellano, 1996).

Consistent with McGowan and Myers (2004), participants in our study did not differ in sentence recommendation as a function of level of emotion. Highly emotional statements appeared to have the same affect on sentence recommendation as less emotional statements. The victim impact evidence in the present study was based on an actual statement written and presented by a federal appeals court judge whose father was murdered in a carjacking (*Beazley v. State,* 1997*).* As a result, the victim impact statement was powerful, articulate, and persuasive. Given the magnitude of the victim impact evidence in the present study, we may have unknowingly mirrored Justice Powell's concerns when writing for the majority in *Booth*. Specifically, Justice Powell stated that admitting victim impact evidence in a capital sentencing hearing "creates a constitutionally unacceptable risk that the jury may impose the death penalty in an arbitrary and capricious manner" (p. 2536). In our study, the strength and articulation of the statement may have overshadowed any distinguishable differences in level of emotion when determining

sentence. The type of statement chosen for our study may also explain why we did not find a moderating effect of victim impact instructions on verdict. Perhaps instructions are most effective when limits are placed on the type and manner in which victim impact evidence is presented in capital sentencing hearings (Burr, 2003; Myers & Greene, 2004).

It is important to point out that the magnitude of participant-jurors' responses to various victim issues in this type of research study can be exaggerated due to the limited amount of trial information made available to them. This type of problem is not atypical in laboratory research simulating complex trial procedures. In our study, we attempted to minimize this problem by using a number of ecologically valid materials including: a victim impact statement, closing arguments, and judge's instructions taken from actual cases. In addition, we utilized videotaped stimuli, which are accepted as the standard for realistic trial simulations compared to written transcripts and audio presentation. Although we are confident that our approach to examining this topic drew on the strengths of both internal and external validity, we echo other researchers' concerns regarding generalizing results involving life and death decisions (Myers & Greene, 2004). The value of this study is the insight offered into the use of instructions as a procedural safeguard in minimizing the effect of emotionality in capital trials.

To our knowledge, this study is the first to examine victim impact instructions as a procedural safeguard in capital sentencing decisions. Since the *Payne* decision, procedural safeguards in cases involving victim impact testimony have generally been in the form of restrictions; i.e., the type of allowable witnesses providing testimony (*Wesley v. State*, 1996), the form of the testimony (*U.S. v. McVeigh*, 1997), or the amount of time allowed to deliver a victim impact statement (*State v. Biechele*, 2005). There is little empirical evidence that these types of safeguards remove the possibility that victim impact statements are unduly prejudicial (Greene, 1999; Greene, et al., 1998). The decision-making process in a capital trial should be guided by a reasoned assessment of the magnitude of the defendant's actions. Victim impact testimony

makes this assessment much more difficult to achieve. Victim impact instructions have the potential to minimize the risk to decision-making caused by emotional victim impact testimony. Future studies are needed to address the differential effects of the various safeguards imposed in cases involving victim impact evidence.

REFERENCES

Adams, C. (2003, August). Death watch: Update: No victim impact testimony without specific legislative authorization. *The Champion,* 43-44.

Beazley v. State, No. 72,101 (Tex. Crim. App. 1997).

Baron, R. & Kenny, D. (1986). The moderator-mediator variable distinction in social psychological research: Conceptual, strategic, and statistical considerations. *Journal of Personality and Social Psychology, 51*, 1173-1182.

Booth v. Maryland, 482 U.S. 496 (1987).

Brooks v. State, 238 GA 529 S.E. 2d. (1977).

Burr, R. (2003). Litigating with victim impact testimony: The serendipity that has come from *Payne v. Tennessee. Cornell Law Review, 88,* 41-53.

Cargle v. State, 909 P.2d 806 (Okla. Crim. App. 1995).

Castellano, M. (1996, July). Fine-tuning the death penalty in New Jersey: Victim impact testimony allowed, but Court adds strictures to law. *New Jersey Law Journal.*

Field, R. P. (1991). Constitutional law - Payne v. Tennessee: The admissibility of victim impact statements: A move toward less rational sentencing. *Memphis State University Law Review, 22*(1), 135-156.

Greene, E. (1999). The many guises of victim impact evidence and effects on jurors' judgments. *Psychology, Crime, and Law, 25,* 331-348.

Greene, E., Koehring, H., & Quiat, M. (1998). Victim impact evidence in capital cases: Does the victim's character matter? *Journal of Applied Social Psychology, 28,* 145-156.

Gregg v. Georgia, 428 U. S. 153 (1976).

Haney, C., & Lynch, M. (1994). Comprehending life and death matters: A preliminary study of California's capital penalty instructions. *Law and Human Behavior, 18,* 411-436.

Henderson, L. N. (1985). The wrongs of victim's rights. *Stanford Law Review, 937,* 949-950.

Kreitzberg, E. (1998, January). How much *Payne* will the courts allow? *The Champion,* 31-34.

Luginbuhl, J. & Burkhead, M. (1995). Victim impact evidence in a capital trial: Encouraging votes for death. *American Journal of Criminal Justice, 20*(1), *1-16.*

Luginbuhl, J., & Howe, J. (1995). Discretion in capital sentencing instructions: Guided or misguided? *Indiana Law Journal, 70,* 1161-1181.

McGowan, M. G., & Myers, B. (2004). Who is the victim anyway? The effects of bystander victim impact statements on mock juror sentencing decisions. *Violence and Victims, 19,* 357-374.

Monzo, J. (1990). *State v. Huertas* The final indignity: The reluctance of courts to allow victim impact statements in death penalty cases. *Ohio Northern University Law Review, 17,* 211-217.

Mulholland, C. L. (1995). Sentencing criminals. *Missouri Law Review, 60,* 731-748.
Myers, B., & Arbuthnot, J. (1999). The effects of victim impact evidence on the verdicts and sentencing judgments of mock jurors. *Journal of Offender Rehabilitation, 29,* 95-112.
Myers, B., & Greene, E. (2004). The prejudicial nature of victim impact statements: Implications for capital sentencing policy. *Psychology, Public Policy, and Law, 10(4),* 492-515.
Myers, B., Lynn, S. J., & Arbuthnot, J. (2002). Victim impact statements and juror judgments: The effects of harm information and witness demeanor. *Journal of Applied Social Psychology, 32,* 2393-2412.
O'Donnell, K. C. (1997, February). Victim impact motions: *State of Maryland, Office of the Public Defender – Capital Defense Division,* 17(C) and (D).
Payne v. Tennessee, 111 S. Ct. 2597 (1991).
Phillips, A. K. (1997). Thou shalt not kill any nice people: The problem of victim impact statements in capital sentencing. *American Criminal Law Review, 35,* 93-118.
Platania, J., & Moran, G. (1999). Due process and the death penalty: The role of prosecutorial misconduct in closing argument in capital trials. *Law and Human Behavior*, *23,* 471-486.
Stevens, M. (2000). Victim impact statements considered in sentencing: Constitutional concerns. *California Criminal Law Review 3, 2.*
South Carolina v. Gathers, 490 U.S. 805 (1989).
State v. Biechele, 653 A.2d (R.I. 2005).
State v. Muhammad, 678 A.2d 164 (N.J. 1996).
Turner v. State, 486 S.E. 2d 839 (Ga. 1997).
Uniform Victims of Crime Act 216 (1992).
U.S. v. McVeigh, Doc. No. 96-CR-68-M (D. Colo. 1997).
Victim and Witness Protection Act 1982, Pub. L. No. 97-291, 96 Stat. 1248.
Vital, V. (1994). Payne v. Tennessee: The use of victim impact evidence at capital sentencing trials. *Thurgood Marshall Law Review,* 497-534.
Wainwright v. Witt, 469 U.S. 412 (1985).
Wesley v. State, 112 Nev. 503, 916 P.2d 793 (1996).

Received: June 2006
Accepted: October 2006

Suggested Citation:

Plantania, J., & Berman, G. L. (2006). The Moderating Effect of Judge's Instructions on Victim Impact Testimony in Capital Cases [Electronic Version]. *Applied Psychology in Criminal Justice, 2*(2), 84-101.

APPENDIX

Victim Impact Instructions

During the course of this proceeding, you have heard evidence which pertains to the personal characteristics of the victim, and you have heard evidence which pertains to the impact of the victim's death on her family and community. This evidence is referred to as victim impact evidence and is intended to show each victim's uniqueness as a human being and the impact of her loss upon her family. This evidence should be given whatever weight you feel it deserves, in accordance with the law and pursuant to my instructions, in determining whether to impose a sentence of life imprisonment or death. I instruct you, however, that victim impact evidence can never serve as the basis for making a defendant eligible for the death penalty. This evidence is not to be considered by you as an aggravating circumstance - as a reason to impose the death penalty. No matter how emotionally compelling you have found this evidence to be, you are instructed that you may not consider evidence concerning the personal characteristics or impact of the victim's death on her family or community during the weighing of aggravating and mitigating circumstances. When weighing aggravating and mitigating circumstances you may only consider those aggravating circumstances, if any, which you have unanimously found proven beyond a reasonable doubt, and those mitigating circumstances, if any, which you have found proven by a preponderance of the evidence. During this process, you may not consider any evidence which pertains to the personal characteristics or the impact of the victim's death on her family or community. If you determine during the weighing of aggravating and mitigating circumstances that the mitigating circumstances outweigh the aggravating circumstances, then you will enter a sentence of life imprisonment. It is only in accordance with these instructions that you may consider victim impact evidence in your determination of the appropriate sentence in this case.

Table 1
Mean Importance of Eight Victim Impact Statements Read by Victim's Mother (N=89).

Statement	Overall Mean
"…watching the re-enactment of her murder on television."	4.97
"…wondering what those final moments must have been like."	5.26
"…living with the horror, agony, despair, emptiness, confusion."	5.14
"…hearing your daughter's body has just been found."	5.26
"…hearing the autopsy report of this grotesque crime."	5.51
"…living the rest of your life with these horrible facts."	5.38
"…a strange man in your driveway with a gun."	5.59
"…hearing your daughter has been gunned down."	5.35

Note: Ratings were made on 8-point scales (0= *not at all important in reaching my decision* to 7 = *completely important in reaching my decision).*
Each statement was prefaced with the word: "Imagine…."

Table 2
Mean VIS Importance Score by Emotion and Instruction (N=89).

	Emotionality	
Instructions	High	Low
General	48.68	42.27
General + Specific	37.75	40.67

Note. Higher scores indicated greater importance placed on the eight statements in reaching their decision. Maximum Importance Score = 56.00. Range = 54.00, Mean = 42.53, Median = 44.00.

Table 3
Attitude Differences as a Function of Sentence Recommendation

	Sentence recommendation	
Attitude item	Life[a]	Death[b]
I feel sympathy for the defendant.	3.53	2.19
I feel the defendant is dangerous.	4.94	5.83
I feel the defendant could be rehabilitated.	3.00	1.58
I favored the defense closing argument.*	4.58	3.91

Note. Ratings were made on 8-point scales (0=*completely agree* to 7 = *completely disagree).*
[a]$n = 38$. [b]$n = 91$.
*$p < .05$. The three remaining mean differences significant at $p < .01$.

Table 4
Importance of Statements as a Function of Sentence Recommendation (N=89).

	Sentence recommendation	
	Life[a]	**Death**[b]
Statement		
". . . living with the horror, agony, despair…."*	4.48	5.41
". . . hearing your daughter's body has just been found."**	4.29	5.67
". . . hearing your daughter has been gunned down."*	4.81	5.58
". . . seeing the re-enactment of the murder on TV."**	4.14	5.33
". . . what the final moments must have been like."**	4.59	5.54
". . . hearing the autopsy report."*	5.00	5.73

Note. [a]$n = 27$. [b]$n = 62$.
*$p < .05$. **$p < .01$.