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VICTIM IMPACT STATEMENTS:

THEIR EFFECTS ON COURT OUTCOMES AND VICTIM SATISFACTION

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U.S. Department of Justice
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Final Report
Submitted to the National Institute of Justice

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ABSTRACT

An experiment was conducted to test the effects of victim impact statements on sentencing decisions and on victim satisfaction with the justice system. Two hundred ninety-three victims of felony crimes were randomly assigned to one of three treatments: (a) victims were interviewed and an impact statement was written and immediately distributed to the prosecutor, defense attorney, and judge on the case, (b) victims were interviewed to assess impact but no statement was written, and (c) a control condition in which no interview was conducted and no statement was written. Victims were interviewed one month after assignment to treatments and again upon case disposition to gauge their satisfaction with the justice system. Sentences, special conditions of sentences, and other case data were recorded from criminal justice files.

Contrary to the fears expressed by some, we found no evidence that the use of victim impact statements resulted in harsher sentences, nor that it slowed case processing. Neither, however, did we find that the use of impact statements enhanced victim satisfaction with the justice system or resulted in sentences that better-reflected harm done to victims.

I. INTRODUCTION

The role of crime victims in the criminal justice system has changed dramatically in recent years. Twenty years ago, crime victims' participation was nominal. Now, however, there is a movement to promote victim involvement in criminal justice proceedings. Many reforms have been initiated in an effort to assure victims the status of participants in the system. While these reforms represent, at least on paper, great strides for victims, it remains unclear how often and to what extent they are able to actually benefit victims. The present study looks at one widely heralded reform measure--victim impact statements--and seeks to determine whether they have given victims a meaningful form of participation in the justice process.

I. BACKGROUND: VICTIM PARTICIPATION

In colonial America, the criminal justice system functioned without either police forces as we now know them or public prosecutors (McDonald, 1976). Instead, victims paid for warrants, did their own investigative work, and retained a private attorney to write an indictment and prosecute the defendant. Restitution was emphasized over incarceration. In short, the victim was both a key decision-maker in, and a direct beneficiary of, the criminal justice system.

During the nineteenth century, the criminal justice system

made deterrence and punishment, rather than restitution, a priority. The powers and responsibilities that victims previously held were assumed by public prosecutors acting as society's advocates. Today, public prosecutors decide whether charges will be filed, what charges to file, and what sanctions to request that the court invoke.

Victims have lost the prerogative to control their cases. The formal role of victims in criminal proceedings is confined to testifying for the prosecution. Because most cases are disposed of without trial, however, many victims do not have a chance to tell their story on the witness stand. The victim has been aptly characterized as the forgotten person in criminal proceedings (Ash, 1972).

In recent years, however, this situation has begun to change again: there has been a movement to re-integrate victims into the system and to offer them the opportunity to voice their concerns and to express their opinions as to what course the prosecution should take. Over the past two decades efforts to increase victim participation have taken many shapes (Davis, Kunreuther, and Connick, 1984).

Reforms

In the early 1970s, the federal government began to fund programs to assist victims who were asked to testify as witnesses in criminal cases. These programs reduced needless trips to court, gave victims higher compensation for time lost from work as a result of going to court to testify, facilitated release of property held as evidence, protected victims from intimidation and reprisals by the defendant, notified victims of milestones in their cases and provided numerous other services. At the same time, grassroots victim service programs developed to provide crisis intervention and other services to victims regardless of whether or not they were involved in court cases. Today there are in excess of 5,000 victim service programs nationwide, both within and outside of the criminal justice system (Davis and Henley, 1990).

As "the victim movement" matured, authorities began to argue that victims deserved an opportunity to participate, specifically the chance to express their views, in decisions affecting their court cases (eg. DuBow and Becker, 1976; Goldstein, 1982).

The incentive for implementing service-oriented and participation-oriented reforms was not solely altruistic; the criminal justice system itself expected benefits. Research indicated that the low rates of reporting crimes and high dismissal rates of cases in criminal courts could be attributed in large

measure to frequent victim unwillingness to cooperate with authorities (Davis, Russell and Kunreuther, 1980). It was hypothesized that the situation could be remedied if the criminal justice system could demonstrate increased responsiveness to victims' concerns. Further, giving victims the opportunity to express themselves might result in judicial decisions more reflective of victim harm. In other words, increased victim participation could serve to improve the accuracy and fairness of decisions made at various stages throughout the process--from sentencing to parole hearings (eg. Goldstein, 1982; McDonald, 1976).

Another rationale for advancing and implementing these reforms was the expectation that they would benefit victims: specifically, that they would increase victim satisfaction with criminal justice proceedings. Several studies indicated the existence of a link between victim participation, particularly participation that might influence criminal justice proceedings, and victim satisfaction. A study of complaining witnesses in Brooklyn Criminal Court by Davis, Russell and Kunreuther (1980) revealed that victims who were consulted about their wishes by judges or prosecutors were more satisfied with case outcomes than victims who were not consulted. A study by Smith (1981) indicated that victims' satisfaction increased when they believed they had influenced the criminal justice process (whether or not they had). Hagan (1982), demonstrated that victims' evaluations of sentencing decisions

improved when they attended the sentencing. This study also indicated that "victims who attend court are more likely to reduce their demands for severe sentences, suggesting a link between involvement and acceptance of case disposition" (Villmoare and Neto, 1987a). Still another study showed that "a sense of participation [is] more critical to victims' satisfaction than how severely the defendant [is] punished" (Kelly, 1984).

Assessing the Reforms

The idea that victim participation could benefit both victims and the criminal justice system gave rise to pilot programs aimed at increasing involvement. In Dade County, Florida, victims were given the opportunity to attend pretrial settlement conferences along with judges, attorneys, arresting officers and defendants. At the conferences, all parties participated in discussing the incident and in determining an appropriate disposition (Kerstetter and Heinz, 1979). A few years later, the Vera Institute's Victim Involvement Project (VIP) stationed representatives in courtrooms to communicate victims' interests to officials in Brooklyn, New York Criminal Court. The advocates asked victims what outcomes they desired and made certain that this information was relayed to prosecutors (Davis, Kunreuther, and Connick, 1984).

Evaluations of these early experiments in victim

participation, however, were not particularly encouraging. Researchers at the University of Chicago Law School evaluated the Dade County experiment and obtained mixed results: only one-third of the victims attended the pretrial conferences. (Many victims, however, told researchers that they had not been notified that a conference was scheduled.) Most victims who came said little, but neither did they demand unreasonable punishment. Researchers found some evidence that victims whose cases went to conference were more satisfied with the way their cases were processed than were other victims. However, no differences were found between victims who did attend and those who did not with regard to their satisfaction with case outcomes or with the criminal justice system (Kerstetter and Heinz, 1979).

The Institute for Law and Social Research (INSLAW), which replicated the Dade County experiment in three additional sites (Clark et al., 1984), found the level of victim participation to be similar to that in the earlier study: approximately half of the invited victims attended, and victims who did attend usually only described the facts of the case. The authors did find, however, that victims who attended settlement conferences were more satisfied with case outcomes and with the idea of plea bargaining than were victims who did not attend.

An evaluation of Vera's Victim Involvement Project (VIP)

showed that it brought small but significant increases in restitution awards by the court and in the number of written admonishments warning defendants to stay away from victims. However, the project had no discernable effect on victims' satisfaction with case outcomes or on victims' beliefs that the court was responsive to their needs. Neither did VIP alter victims' convictions that their desires had little effect on the outcomes of their cases (Davis, Kunreuther, and Connick, 1984).

VIP's experience suggested to Davis et al. that programmatic action might not bring about change unless accompanied by legislative action mandating that victims be given the chance to express their opinions orally or in writing. Obviously, legislative action would not guarantee acceptance of change by local court officials. However, Davis et al. argued, conferring upon victims some measure of legal standing in court is a necessary precondition to serious consideration of their interests by officials.

II. VICTIM IMPACT STATEMENTS

The finding that programmatic reforms were not highly effective at instituting change, illustrated the need to explore alternative approaches to increasing victim participation.

During the 1980s, state and federal governments implemented legislative reforms to guarantee victims certain rights. In 1981, the federal government took the initiative by declaring a Victims' Rights Week, to focus national attention on victim issues. Soon after, provisions were made for victims to be informed of proceedings in their cases and, in some instances, to be consulted about the course of prosecution.

According to 1988 figures from the American Bar Association, seven states . . . have laws requiring consultations with the victims before a plea is presented to the court by the prosecution. Six other states . . . say the victim has the right to be consulted before the plea is accepted by the judge. Three states give the victim a right to be informed, but not consulted (New York Times, April, 1988).

In 1982 the federal government established a Presidential Task Force on Victims of Crime. The Task Force recommended that victim impact statements--assessments of the physical, financial and psychological effects of crime on individual victims -- be taken and distributed to judges prior to sentencing. That recommendation

was implemented when the 1982 Omnibus Victim and Witness Protection Act became law, mandating that victim impact statements be provided at sentencing in federal cases.

Victim impact statement legislation was devised in order to augment the role of victims in criminal justice proceedings. If effective, victim impact statements would offer victims the opportunity to relate the harm done to them by the crime, express their concerns, and feel assured that this information would be conveyed to criminal justice officials. The expected result would be court decisions that better reflect the harm done to victims and greater victim satisfaction with the courts.

By the mid-1980s, victim impact statements had become a popular vehicle for increased victim participation. Victim involvement at sentencing has been endorsed by the American Bar Association and the National Judicial College, as well as by the Presidential Task Force. Currently, the majority of states have comprehensive victim rights legislation. In 1982, 12 states had passed impact statement laws (Hudson, 1984), by 1984 (Davis, Fischer and Paykin, 1985), the number had climbed to 22. And, as of August, 1987, 48 states had "provisions authorizing some form of victim participation in conjunction with sentence imposition" (McLeod, 1988:3). Victim impact statements differ in content and form, ranging from simple checklists in some states to lengthy descriptive statements, both oral and written, in others (McLeod,

1988).

Victim impact statements have met with criticism on several fronts, however. Some researchers and advocates fear the possible dangers of raising victims' expectations by telling them that they may influence the defendants sentences, when those expectations may not be realized. Indeed, some research has shown that victims may be less satisfied when they expect to influence sentence decisions, but do not, than when they never believe there is a possibility of such influence (Villmoare and Neto, 1987; Erez, 1989). One clinical psychologist maintains that, "Providing rights without remedies would result in the worse of consequences, such as feelings of helplessness, lack of control, and further victimization Ultimately, with the crime victims' best interests in mind, it is better to confer no rights at all than "rights" without remedies" (Kilpatrick and Otto, 1987).

There has also been inquiry into the legality of victim impact statements. According to Kelly (1990), some legal scholars question the appropriateness of victim participation, given the structure of the criminal justice system. For instance, some have claimed that victim impact statements are harmful to defendants and others fear that victim impact statements, "unfairly influence the sentencing authority" (Talbert, 1989).

Court cases have also challenged the constitutionality of victim impact statements. In June, 1987, the United States Supreme Court ruled in a 5-4 decision, *Booth V. Maryland*, that victim impact statements are unconstitutional in capital cases. The court contended that "such information is irrelevant to a capital sentencing decision, and its admission creates a constitutionally unacceptable risk the jury may impose the death penalty in an arbitrary and capricious manner." The majority also maintained, citing a previous case, *Enmund V. Florida*, that the victim impact statements did not qualify as "evidence with some bearing on the defendant's 'personal responsibility and moral guilt'" (New York Times, June 13, 1989).

In a further development in June, 1989, the United States Supreme Court upheld a ruling by the South Carolina Supreme court, overturning a death sentence for the murderer of a "self-styled" minister. While this case, *South Carolina V. Gathers*, did not directly involve victim impact statements, the court's decision extended and reaffirmed the *Booth V. Maryland* decision by reiterating that "a sentence of death must be related to the moral culpability of the defendant." The Supreme Court upheld the lower court ruling which maintained that the prosecution's description of the religious articles found near the minister's body constituted information about the victim's personal character, and as such was irrelevant to the sentencing decision (New York Times, June 13, 1989).

The constitutional future of victim impact statements is unclear. While Booth V. Maryland specifically argued against the admissibility of victim impact statements in capital sentencing proceedings, Talbert and other legal scholars believe that the same reasoning should be applied in other cases and that, ". . . the courts should extend the rule announced in Booth to most non-capital sentencing proceedings" (Talbert, 1989:230). Still, the dissenters in Booth V. Maryland and South Carolina V. Gathers have indicated their willingness to overrule the Booth decision in a future case (New York Times, June 13, 1989).

The numerous and divergent perspectives on the rationale for and appropriateness of victim impact statements illustrate the need for empirical research examining the subject. Most important is the question of the impact of victim impact statements on sentencing decisions: Do judges consider victim impact statements in their decision making processes? It must also be ascertained whether victim impact statements actually benefit victims, and increase their sense of satisfaction and of having participated or instead represent "an undelivered promise" (Kelly,1990:1). Related issues include: Are court officials aware of and supportive of the legislation? Are victims aware of their rights and do they exercise them?

Several studies have been conducted to evaluate the feelings of victims and court officials about victim impact statements and

the extent to which they are actually used. McLeod (1988) conducted a study for the National Institute of Justice that examined the nature and extent of the utilization of victim impact statements in different jurisdictions. The project included a survey of enacted legislation authorizing victim participation and surveys of probation administrators, prosecuting attorneys and parole board personnel. McLeod documented the great variability in methods of preparation and presentation of victim impact statements and investigated criminal justice personnel responses to such statements.

Another NIJ-sponsored study, conducted by Villmoare and Neto (1987b), studied the impact of California's Proposition 8. Proposition 8, the Victim's Bill of Rights, provides crime victims with the right to allocution--the right to appear and express their views--at felony sentencing hearings. Villmoare and Neto studied both the implementation of the right by state and local agencies and victim knowledge and use of the right. They found that fewer than 3% of eligible victims appeared at the hearings. Of those who did avail themselves of the right to allocution, most felt satisfied at having done so, but less than half felt that their involvement influenced the sentence.

Another study examined the effects of victim rights legislation in South Carolina. Overall, the results were discouraging. Researchers found that the promise of victim rights

was seldom realized in practice. Specifically, even though state legislation requires victim impact statements to be prepared in all cases, that requirement is seldom met.

Erez (Erez, 1989; Erez and Tontodonato, 1989) focused on the two most important policy issues: Do victim impact statements affect case outcomes? And do they increase victim satisfaction? Erez looked at 500 felony cases, some of which had victim impact statements taken and some of which did not, according to prosecutor files.

Erez did not find greater satisfaction among victims who said they completed a victim impact statement than among victims who did not complete one. But she did find some association between completing a victim impact statement and sentences: cases in which a victim impact statement was taken were more likely than others to result in a prison sentence rather than probation.

The New York Research

While Erez's study did address the key issues regarding victim impact statements, it contained major methodological problems that make the results difficult to interpret. It had a low response rate, calling into question the representativeness of its findings. And, most significantly, the study used a correlational approach, relying on natural variation in whether an impact statement was

completed or not. However, it is highly unlikely that completing an impact statement was a random occurrence: factors such as the seriousness of the case and prosecutors' perceptions of victims are likely to have determined which cases did and did not have statements prepared. Thus, the group of victims who had impact statements taken and those who did not probably differed in important ways before they got to court.

More readily interpretable results would be obtained from research in which two groups of victims were judged to be comparable and then subjected to experimental manipulation -- one group having impact statements taken and one not. The two groups would then be compared to determine victim satisfaction and the extent to which sentencing was influenced by the extent of harm to victims. This is the line of research pursued at New York's Victim Services Agency.

The first such study was conducted in 1984-1985 on the Victim Impact Demonstration Project (VIDP), a cooperative effort between VSA and the Brooklyn District Attorney's Office to prepare victim impact statements and link victims to needed services.

An evaluation of VIDP (Davis, 1985) compared outcome measures for those victims in the single court part served by VIDP with victims in a similar court part that was not. (Cases were assigned to the two parts on alternate days, and checks verified that the

two groups of cases were comparable in terms of charges and victim characteristics.) With regard to victim satisfaction, this study's findings were not encouraging: there was no evidence to demonstrate that victims in the experimental court part felt better informed or a greater sense of participation, or increased satisfaction than those in the control part.

The VIDP evaluation was also intended to compare case dispositions for victims in the two court parts. But that idea had to be abandoned when researchers discovered that prosecutors in the experimental court part often failed to have impact statements prepared or failed to distribute the statements to judges. As a result, it was estimated that judges were receiving impact statements in only one in ten cases in the experimental court part.

The implementation problems seemed to stem from prosecutors attitudes: while ADAs believed in impact statements in principle, none of the ADAs who received impact statements felt that they usually contained information of which they otherwise would have been unaware. Fifty-five percent reported that they would discontinue impact statements, were it their prerogative. Further, 64% of ADAs felt that judges seldom or never took victim impact into consideration when sentencing.

The present study was an attempt to improve on the earlier experiment by using a true experimental design, rather than a quasi-experimental design. In the current study, implemented in the Bronx County, New York Supreme (felony) Court, cases were randomly assigned to one of these treatments: (a) impact statements taken and distributed to officials; (b) impact statement interview done, but no statement prepared; and (c) no interview conducted.

The current research was designed to examine whether there is a closer correspondence between victim harm and offender sentences when impact statements are distributed to officials than when they are not. Through interviews with criminal justice personnel, and through checking case records, we attempted to determine how often impact statements were consulted, and what the system's response to their presence was.

We anticipated that although there were not likely to be any changes in the overall distribution of various types of outcomes and sentences as a result of the impact statements, sentences on a case-by-case basis might more accurately reflect victim harm. In particular, we expected that restitution awards might be affected by victim impact information, since this was suggested by a finding in an earlier study (Davis, Kunreuther and Connick, 1984).

This study also aimed to determine what effect the process of making an impact statement had for the victims: would victims sense that they had participated in the court process --particularly in the decision-making process? Would victims be more satisfied, either because they had participated, or simply because someone asked them how the crime affected them?

The remainder of this report will detail the methods and the findings as follows: Chapter II will describe the sampling method, procedures for data collection and interview schedule, as well as discuss some of the obstacles we encountered in establishing the project. Chapter III compares the satisfaction levels of victims in the different treatment groups. Chapter IV reports our findings with regard to the effects of impact statements on sentencing decisions, including data on the frequency with which impact statements were consulted by court officials and the ways in which they contribute to dispositions. Chapter V relays the findings of interviews with criminal court officials, including assistant district attorneys and judges. Finally, Chapter VI discusses the implications of the research findings and outlines suggestions concerning the future of victim impact statements.

II. RESEARCH DESIGN AND METHODOLOGY

I. OVERVIEW

The experiment was conducted in the Bronx Supreme Court, Bronx, New York. We had considered conducting the research in the King's County Criminal Court in Brooklyn where there is an established program for taking victim impact statements, and where we had conducted our earlier research on this topic. However, precisely because victims in Brooklyn are routinely offered the opportunity to make a victim impact statement, and because our research design included a control group of victims who would not have impact statements taken, to have conducted the study in Brooklyn would have posed the ethical dilemma of withholding potentially beneficial services. Thus, we chose to start up an impact statement program in the Bronx, and were confronted with several challenges as a result.

Two hundred and ninety-three victims were interviewed by a VSA caseworker after they testified at the grand jury in the Bronx Criminal Court. Victims were randomly assigned to receive one of three treatment conditions: 1) victims were interviewed, and an impact statement was written and immediately distributed to the assistant district attorney, defense attorney and judge on the case; 2) victims were interviewed to assess impact, but no statement was written; 3) only the names and addresses of these

victims were recorded.

Victims were contacted by phone or letter for follow-up interviews approximately one month after their initial interview and a second time upon disposition of their cases. During the interviews, the victims were asked about their perceived involvement in the court process and about their satisfaction with the handling of their cases and with the defendants' sentences.

II. BACKGROUND AND IMPLEMENTATION PROBLEMS

Our original design called for four treatment groups: (a) an impact statement distributed to officials shortly after indictment, (b) an impact statement distributed to officials immediately prior to sentencing, (c) victim interviewed, but no statement distributed to officials, (d) no victim impact interview conducted. However, we were required to make changes because the DA's office expressed concern that aspects of our original design would lead to the creation of Rosario material, victim impact statement information that they were bound by discovery laws to share with the defense.

After much discussion, we were required to drop the treatment in which distribution of the impact statement to officials was delayed until sentencing. We did this because the DA's office believed that the information contained in victim impact statements was subject to discovery rules: If we gathered such information

with the knowledge and cooperation of the DA's office, but did not immediately share it with the defense, the DA's office could conceivably be held to be in violation of discovery rules.

We also had to modify the treatment in which victims were interviewed but no statement would be written. Our intention was to record information about impact for use in subsequent data analysis. (It would not be distributed to the court officials because we did not want it to be able to influence the proceedings.) However, again, we were not permitted to record any information that would not be disclosed to the assistant district attorney (ADA) and defense attorney. Thus, instead of recording information about the physical, economic, and psychological impact of the crime in writing, we recorded only a series of numerical ratings of impact. These ratings were shared with court officials but, of course, had meaning only to the research staff. The rating system will be discussed in more detail in the procedures section.

We began intake in early July, 1988, with the intent to accumulate a pre-test sample of cases in which we recorded and distributed impact statements from all the victims. Intake progressed very slowly; in six weeks we interviewed 20 victims (we should have seen 3-5 per day). Given the volume of cases in the courthouse, it was clear that we were not seeing some victims appropriate for our sample. We attribute this, in part, to the fact that the project office was located on a side corridor and

thus we were not visible reminders to ADAs to bring us their witnesses. Also, ADAs were openly against the project and others simply forgot or found it inconvenient to bring us their victims. The situation was made worse by the fact that we weren't allowed to approach ADAs to inquire about getting cases.

We ceased intake and renegotiated, this time with the head of the Supreme Court Bureau. After two months of discussion, we began intake again, having expanded the scope of victims that would be eligible to participate. Our original design had designated as eligible all robbery cases involving civilian victims that were presented to the grand jury. This was modified so that all civilian violent crime victims, (robbery, physical assault, attempted murder) as well as transit crime victims were eligible. Intake went much better this time: each day we worked with a supervisor who helped to ensure that ADAs brought us their cases. Still, the process went slowly, and intake took three times longer than projected and we were forced to include the initial pre-test sample in order to attain a sufficient victim population.

III. SUBJECTS

Between July, 1988 and April, 1989, 315 victims went through the intake procedure, and were assigned to one of the three treatments. Twenty-two cases were eventually dropped, primarily because cases were pled and sentenced on the same date (see below).

Of the 293 remaining victims, 69% were victims of robbery, 21% were victims of physical assault or attempted homicide, and 10% were victims of burglary. Twenty percent of the victims knew the offender prior to the crime. Only one in two of the victims had completed high school and 52% had household incomes of less than \$15,000 per year. The median age of the sample was 25 years.

IV. DESCRIPTION OF TREATMENTS

The three treatments were as follows: 1) The victim was interviewed and a victim impact statement was written and distributed (104 victims); 2) The victim was interviewed but no statement was written (100 victims); 3) Only the victim's name and address were recorded (89 victims).

Victims were Interviewed - Statement Written

Victims who received victim impact statements were told by a

caseworker (hired by the research project, specifically to prepare impact statements) that they would be interviewed and that a statement, based on the answers they gave to the questions in the interview, would be written up and distributed to the judge, defense attorney and ADA. It was explained to these victims that because an impact statement would be prepared for them, court officials might have more information about how they were affected by the crime. Victims were also told that judges would have this information during sentencing.

In addition, the victims were told that someone from VSA would try to contact them by phone or letter in about one month in order to ask them about what coming to court had been like and in order to update the information in their victim impact statement if necessary. They were told we would also contact them when their case ended, so that we could ask them how they felt about the final disposition.

The victim impact interview typically took 5 - 10 minutes. Victims were asked about the impact the crime had in five areas of their lives: physical impact, property loss or damage that occurred as a direct result of the crime, any subsequent financial loss (such as hospital bills, or pay lost from time missed from work), psychological impact, and behavioral impact (any changes in routines or habits as a result of the crime-- for example if they now had trouble sleeping, or took a different route to work). (See

Appendix A for a copy of the interview.) The victims' responses to the interview questions were rated on a scale of 1-3 according to the relative magnitude of the impact of the crime (from no impact to much impact, in each category of response).

Victims in the impact statement group (as were all the victims regardless of their treatment group) were given a pamphlet from the Crime Victim's Assistance unit located in the Bronx Criminal Court and were told that they could go to the CVAU office if in need of information, referrals or counseling.

A copy of the impact interview, with the ratings of victim harm recorded on it, was immediately xeroxed and turned over the ADA assigned to the case. The caseworker then wrote a victim impact statement, based on the victim's responses to the interview questions, and distributed it to the ADA and to the defense attorney through the head of the Supreme Court Bureau. (Some sample statements are included in Appendix B). In general, the statements were given to him 5-10 days after the interview with the victim took place.

Copies of the statement were also forwarded to the appropriate judge for each case. One copy was sent through the mail as soon as a judge was assigned to the case; another copy was delivered to the chief clerk of the Supreme Court Bureau who enclosed the statement with the file containing the pre-sentence report and

delivered it to the judge just prior to sentencing.

Victims were Interviewed - No Statement Written

This treatment was included in order to evaluate whether the victim impact interview itself had a therapeutic effect for the victim. This treatment also provided a comparison group for determining whether the impact statement procedure resulted in sentences that better reflected the harm done to the victim.

The victims in this treatment group were administered the same interview as the victims who did have statements written. The caseworker explained to them that Victim Services Agency was interested in learning more about the experiences of crime victims and that we would like some background information about the effects of the crime on their lives. The interview questions were posed but none of the descriptive responses were written down; victims' responses were rated using the same scale as used for victims who went through the impact statement procedure.

These victims were also told that someone from VSA would try to reach them by phone or mail in about one month and a second time, when their case ended, in order to ask them how they felt about the case outcome. The victims were given a CVAU pamphlet. The ADA received a copy of a form which reflected only the victim and defendant's name, the charge and docket number, and the ratings

of victim harm. The ADAs required this form, defining the victims role in the study, in order to ensure that they had documentation of the fact that the victims had not disclosed discoverable information to the VSA caseworker.

Victims in the Control Group

The caseworker told these victims that Victim Services Agency was trying to learn more about the experiences of crime victims and that someone from VSA would contact them by phone or by mail in about one month in order to ask them about what coming to court was like, and a second time when their case ended, in order to ask them how they felt about the case outcome. Like victims in the other two treatment groups, these victims were given a CVAU pamphlet.

Only the names and addresses of these victims were recorded. The ADA received a memo saying that this victim was a control in our study, and that only his/her name and address were recorded.

V. PROCEDURES

Intake

All victims were brought by the ADA assigned to their case to the Victim Services Agency project office, set up specifically for the purpose of conducting the study. There they were interviewed by the VSA caseworker, their "treatment" having been predetermined through random assignment.

Assignment of victims to treatments was done using a log sheet that was pre-numbered with victim ID numbers and a corresponding treatment group for each ID number. The treatments were pre-assigned based on a random numbers table. The random assignment was not begun, however, until after the first 45 victim were interviewed; the first 45 (including the initial 20 of the pre-test) all had impact statements taken.

For purposes of follow-up with the victim and for tracking the defendant's case, the caseworker recorded the victim's name, address and telephone number as well as the defendant's name, docket number, the charge against him or her, and the ADA's name.

Rating System

As explained above, we developed a rating system (see Appendix C) in order to "rank" the severity of the various effects of the

crime. There were five categories for which the victim received a rating (physical injury, immediate property loss or damage, subsequent financial loss, psychological impact and behavioral change). Victims in the impact statement and interview only groups were rated in these five categories on a scale of 1-3, with 1 representing no impact or not applicable, 2 representing some impact and 3 representing major impact. For example, a victim who reported that they had no physical injury received a rating of "1" for the injury category, while a victim with minor injuries would receive a "2" and a victim who had been hospitalized would receive a "3."

After much debate over how to rank psychological distress, we decided to have the victims rate themselves. As part of the interview we asked victims if they had been feeling upset since the crime. If they said "no," they received a 1 on the rating scale. If they said, "yes," we asked them to say if they would describe themselves as "somewhat" or "very" upset, and would subsequently give them a 2 or 3 on the scale, depending on their answer. ¹

Tracking the Cases

Each week, we checked case activity in the Office of Court Administration computer. By entering the defendants'

¹ The first forty victims in the impact statement group who responded affirmatively to the question on psychological distress, were not asked to distinguish major versus minor distress. These subjects were assigned a rating of 4 for the psychological distress.

docket/indictment numbers, we tracked court appearances, as well as milestones in the case proceedings such as guilty pleas and sentences. The computer was checked for every court date of each case. It was essential to check regularly, because we used the computer to monitor distribution of impact statements. When the computer indicated that a defendant had pled guilty and that a sentencing date had been set, we forwarded a copy of the impact statement with a cover letter to the judge assigned to that case. We found that we sometimes missed the opportunity to distribute the impact statement because in several of the cases a plea was made and the case was disposed on the same date. Not being able to distribute an impact statement accounted for nearly all the cases discarded from the study.

In order to avoid further attrition from the impact statement treatment group, we began, in January, to send copies of the statements to judges as soon as a post-indictment judge had been assigned to the case (when this occurred, the judge's name appeared in the computer). In addition, in our interviews with some of the judges, they indicated that getting the statements earlier, before the plea, would be more helpful, because they were very unlikely to overturn a negotiated plea. Thus most judges (all but those on cases disposed before January) received the impact statement twice: once via US mail as soon as a post-indictment judge was assigned to the case, and once, enclosed with the pre-sentence report, after the plea was entered.

Follow-up

Contact for first follow-up interviews was attempted approximately one month after the initial interview.²

We reached 202 of the 293 victims: one hundred sixty three were contacted by phone and 39 by letter.³

The first follow-up interview was very short; it took approximately 2 minutes. The victims were asked questions about their experiences going to court: Did they have a chance to express their concerns about their case to the ADA?; Did they feel that the ADA understood how the crime affected them?; Did they feel that they had been treated respectfully? In addition, the victims were asked a few questions about their background, such as their age, highest level of education and approximate annual income.

Victims who had victim impact statements taken were also asked questions to update the information in their statements. The impact statements were subsequently revised and, although they were not redistributed to the ADA and defense attorney, the judge

² This is true for all but the first 20 victims of the pre-test, they were contacted approximately 3-4 months after the initial interview.

³ Some cases were ineligible for first follow-ups, either because their cases were disposed before the month between their initial interview and the scheduled first follow-ups had elapsed, or because they did not respond to a mailed version of the first follow-up before their cases were disposed.

received an updated version at the time of sentencing.⁴

Victims were contacted for a second follow-up interview when their cases were disposed. One hundred fifty seven were reached: One hundred thirty by phone and 27 by mail. The second follow-up interview generally took 5 - 10 minutes. Having established that the victims knew the disposition their cases the interviewer asked them questions concerning their satisfaction with the outcome and handling of their cases: Do you think that court officials were aware of how you were affected by the crime when they sentenced the defendant?; Are you satisfied with the outcome of your case?; Do you feel that you had a chance to participate in the sentencing?; Do you think that victims should have a greater say in how the courts decide cases?

In some instances, the second follow-up interview was conducted even though the case had not received a final disposition. Specifically, when a bench warrant had been issued and the defendant had failed to appear for four consecutive months, we interviewed the victim about their satisfaction with the current status of their case. When this occurred, several of the interview

⁴ We did not begin the practice of updating the victim impact statement information at the time of the first-follow up until mid-January, thus, at the end of March, we mailed a copy of the victim impact statement to all those victims (n=42) who had not had an update at the time of their first follow-up interview and asked them to write and let us know if they had experienced further problems since we last spoke. Three victims described that they had had further problems.

questions were not applicable (such as, "did you feel that you had a chance to participate in the sentence?"), and thus were omitted from the interview.⁵

We continued to track defendant's cases until mid-February 1990, at which time fifty defendants' cases were still pending. We did not attempt second follow-up interviews with the victims in these cases. We did collect information on charges, sentences, prior convictions, and victim/offender relationship from DA files and other sources. We also noted whether impact statements were present in DA files and, if so, whether the envelopes containing the statements had been opened.

⁵ At the beginning of April, we re-evaluated the effectiveness of the second follow-up interview. Victims were responding to several questions such as, Did you get a chance to express your concerns to the judge? and Do you think that the judge was interested in how you were affected by the crime?, with the statement, "I didn't see a judge." Because of the wording of the questions, victims interpreted them very literally, and did not, as we had anticipated, make their own judgement about what the judge had thought based on the sentence delivered. Thus, we revised the interview form. 36 victims had received the old version of the interview at the time of the revision. All but 13 were re-contacted and had a revised interview administered.

VI. INTERVIEWS WITH CRIMINAL JUSTICE OFFICIALS

We designed a survey to be filled out by the ADAs in the Violent Crime Bureau. The survey consisted of ten questions, six of which asked ADAs about victim impact statements in principle, while the remaining four dealt specifically with the impact statements taken by Victim Services Agency. We gave the surveys to the head of the Supreme Court Bureau, and he distributed them to the ADAs in the unit. Twenty-two surveys were completed and returned to us.

We also interviewed seven judges--three in-person and four by telephone--who had received impact statements from Victim Services Agency. Each judge had received between four and six impact statements, and was asked both about the concept of impact statements and about the statements we prepared. The interviews were open-ended, and averaged 20-30 minutes in length. All judges who were approached for an interview agreed to participate.

VII. SUBGROUP DIFFERENCES

We ran tests to determine whether there were differences between various subgroups of our sample. We wanted to verify, first, that there were no differences between the first 45 impact statement victims taken into the sample before random assignment was begun and the 42 subsequent victims in that group. (It was our

original intent to use the first 45 victims for pretesting only. However, it eventually became apparent that the slow rate of intake would necessitate including these victims in the main study.) Fortunately, there proved to be no differences between early and late victims in terms of nature of the charge (chi-square = 1.90, df = 3, n.s.); severity of the charge (F = 2.49, df = 1,284, n.s.); victim/offender relationship (chi-square = 0.64, df = 1, n.s.); offender's prior record (F = 0.57, df = 1,287, n.s.); victims age (F = 2.03, df = 1,213, n.s.); victim education (F = 0.53, df = 1,210, n.s.); or victim income (F = 0.01, df = 1,104, n.s.). Based on these results, and necessity, therefore, we included the first 45 victims in the impact statement group.

We also examined difference between victims who did, and did not, complete follow-up interviews. Here, we were limited to comparisons based on data in DA files, since we obtained information on victim characteristics from the follow-up interviews. We compared victims who never completed an interview with victims who completed the first follow-up interview only with victims who completed the second follow-up interview. We found no differences between the three subsamples in term of nature of charge (chi-square = 4.16, df = 6, n.s.); offender's prior record (F = 1.12, df = 2,286, n.s.); or victim/offender relationship (chi-square = 2.13, df = 2, n.s.). However, we did find a difference according to charge severity (F = 3.21, df = 2,283, p = .04): Persons who completed the second follow-up interview

tended to be victims of somewhat less serious crimes than victims who completed neither follow-up interviews or who completed the first follow-up interview only. A probable explanation for this difference is that the cases that were still open at the study's conclusion -- i.e. those where no second follow-up interviews with the victim were attempted -- are likely to be more serious cases.

Finally -- and most importantly -- we examined the three treatment groups to ensure that they were comparable prior to undergoing the experimental manipulation. We found no differences between the three conditions in terms of charge type (chi-square = 8.10, df = 6, n.s.); charge severity ($F = 0.78$, df = 2,283, n.s.); victim/offender relationship (chi-square = 0.26, df = 2, n.s.); offenders' prior record ($F = 0.29$, df = 2,286, n.s.); victim age ($F = 0.13$, df = 2,212, n.s.); victim education ($F = 1.66$, df = 2,209, n.s.); or victim income ($F = 0.67$, df = 2,103, n.s.). We further compared the impact statements group with the interview only group on ratings of crime impact, based on information provided by victims during the interview to assess crime impact at the grand jury. We found no differences between the two groups on behavioral impact ($F = 0.48$, df = 1,201, n.s.); immediate financial impact ($F = 0.09$, df = 1,201, n.s.); subsequent financial impact ($F = 0.05$, df = 1,201, n.s.); or psychological impact ($F = 1.26$, df = 1,200, n.s.). The differences between the two groups on physical impact was marginally significant ($F = 3.59$, df = 1,201, $.05 < p < .10$).

III. THE EFFECTS OF VICTIM IMPACT STATEMENTS ON VICTIM SATISFACTION

In our earlier quasi - experiment in Brooklyn, we found no effect of impact statements on measures of victim satisfaction with the justice system (Davis, 1985). We noted, however, that, in order for victim impact statements to change the way victims perceive the courts, the victims must understand why an impact statement is being taken and what use will be made of it. In the Brooklyn experiment, prosecutors took impact statements from victims who came to testify before a grand jury. It is not certain, however, whether prosecutors made clear to victims why they were being asked about how the crime affected them. Without such an explanation, the impact statement interview may have appeared to victims as just another in a long series of questions they were asked on the day they appeared before a grand jury.

Erez (1989) also found no effect of impact statements on victim satisfaction when ADAs conducted the impact interviews. She too, wondered whether the experience was meaningful to victims:

If the purpose of filling out a victim impact statement is to provide the psychological gratification of being heard, it should be conducted in a more ceremonial fashion so that it is distinctively remembered by the victims as the occasion during which they voiced their feelings, concerns, and wishes (1989:14).

One of the attractions of setting up a new impact statement program for the current research was the potential to create a distinctive impact statement interview process. We had the opportunity to

hire, train, and supervise the staff who were responsible for conducting the interviews in an empathetic fashion. We were able to develop a protocol that emphasized the reasons why the questions were being asked and what would be done with the information that victims provided. And, to make the treatment even more potent, we added a telephone follow-up thirty days later to verify that the impact information collected from the victim at the grand jury remained accurate. We tried everything possible, in other words, to ensure that victims would understand the purpose of the impact statement procedure.

In this section of the report, we examine how the impact statement procedure affected victim perceptions of the court process. We look first at the results of an interview conducted about a month after impact statements were taken at the grand jury: This interview was done shortly after the impact interviews were conducted to ensure that the process was still fresh in the minds of victims. Then we turn to the results of interviews conducted immediately following sentencing, which took place as much as 15 months after impact interviews were conducted and impact statements drawn.

Thirty Day Interview

On the interview administered one month after victims

testified before a grand jury, we asked respondents a series of questions about their perceptions of involvement in the court process and their treatment by court officials. The answer to those questions are displayed in Figure 3.1, broken down by treatment groups.

Overall, respondents felt quite positively about their experience with the justice system. Respondents were undecided about whether coming to court was a waste of time. But they felt that they had been "very much" or "somewhat" able to express their concerns to DA staff and that DA staff had treated them "very much" or "somewhat" with respect. And victims thought that ADAs were "somewhat" likely to understand and show interest in the effect of crime on the victims.

Differences in perceptions by treatment groups were minimal, and none were significant ($F = 2.58$, $df = 2,196$, $.05 < p < .10$ for belief that coming to court was a waste of time; $F = 0.86$, $df = 2,195$, n.s. for ability to express concerns to DA staff; $F = 1.35$, $df = 2,194$, n.s. for belief that DA staff understood the impact of crime on the victim; $F = 0.24$, $df = 2,196$, n.s. for belief that ADAs were interested in the effect of crime on the victim; and $F = 1.39$, $df = 2,195$, n.s. for belief that ADAs treated the

VICTIM PERCEPTIONS OF THE COURT PROCESS
ONE MONTH AFTER IMPACT STATEMENTS WERE TAKEN

	<u>Very Much</u>			<u>Not At All</u>	
	1	2	3	4	5
Coming to court a waste of time?					
VIS	(3.29)				
INTERVIEW ONLY	(3.79)				
CONTROL	(3.76)				
Able to express concerns?					
VIS	(1.67)				
INTERVIEW ONLY	(1.60)				
CONTROL	(1.44)				
ADAs understand how the crime affected you?					
VIS	(2.24)				
INTERVIEW ONLY	(2.00)				
CONTROL	(1.89)				
ADAs interested in how the crime affected you?					
VIS	(2.09)				
INTERVIEW ONLY	(2.06)				
CONTROL	(1.94)				
ADAs treating you with respect?					
VIS	(1.62)				
INTERVIEW ONLY	(1.37)				
CONTROL	(1.40)				

NOTE: 1= Very Much; 2=Somewhat; 3=Unsure; 4=Not Really; 5=Not At All

victim with respect).⁶ In fact, the minimal differences that exist between the treatment groups run contrary to expectation: on all measures, the victim impact statement groups gave the least positive responses.

Interview at Time of Case Disposition

Victims were interviewed by phone again shortly after their cases were disposed. They were asked questions about perceptions of involvement and treatment by officials that were similar to those asked in the interview 30 days after their grand jury appearance. They were also queried about their satisfaction with the outcome of their case.

We first asked victims whether anyone in court had asked if they had been affected by the crime. We reasoned that this measure would tell us whether the treatments had been implemented successfully: Victims in the group which received victim impact statements and those who were just interviewed about the effect of the crime (but had no impact statement drawn up) should state that they had been asked about the crime's impact on them. We expected that some control victims would also answer the question affirmatively since ADAs might sometimes ask victims about how they were affected by crime. But clearly the percentage should be much

⁶ A posteriori comparisons between means using Duncan's Multiple Range Test similarly showed no difference between pairs of means on any measures of victim perceptions.

lower than in the other two treatment groups.

Table 3.1 shows that there were, in fact significantly higher proportions of victims in the victim impact statement and interview only groups that recalled being asked how the crime affected them than in the control group. But it is disturbing that only about half of the victims in the treatment conditions in which our staff asked victims about the crime's impact remembered the event. This is especially troubling since, as mentioned earlier, we tried to ensure that the impact interview process was distinct and memorable.

Keeping in mind the distressing news about the potency of the treatments, we turn to the effects of treatment upon victim perceptions of the justice process. Figure 3.2 shows the effect of treatments on victim's perceptions of involvement in the court process. On average, respondents were somewhat likely to feel that officials were concerned about how the crime affected them and that officials were aware of the impact of crime on the victim at the time of sentencing. And victims generally did not agree that coming to court was a waste of their time: There were no differences between treatment groups that approached statistical significance on any of these measures ($F = 0.29$, $df = 2,152$, n.s. for belief that officials were concerned; $F = 0.08$, $df = 2,139$, n.s. for belief that officials were aware of the crime's impact; and $F = 0.02$, $df = 2,147$, n.s. for belief that coming to court was a waste of time).

DID ANYONE AT COURT ASK HOW THE CRIME AFFECTED YOU?

<u>Treatment</u>	<u>Yes</u>	<u>No/Don't Know</u>
VIS (n=55)	56%	44%
INTERVIEW ONLY (n=58)	48%	52%
CONTROL (n=41)	32%	68%

Chi-square= 5.8, df=2, p=.05

VICTIM PERCEPTIONS OF INVOLVEMENT IN THE COURT PROCESS
AT THE TIME OF DISPOSITION

	<u>Very Much</u>			<u>Not At All</u>	
	1	2	3	4	5
Were officials concerned about how the crime affected you?					
VIS	(2.51)				
INTERVIEW ONLY	(2.31)				
CONTROL	(2.47)				
Were officials aware of impact on you when sentencing?					
VIS	(2.65)				
INTERVIEW ONLY	(2.67)				
CONTROL	(2.55)				
Did you have a chance to participate in sentencing?					
VIS	(3.55)				
INTERVIEW ONLY	(3.46)				
CONTROL	(2.97)				
Coming to court a waste of time?					
VIS	(3.67)				
INTERVIEW ONLY	(3.66)				
CONTROL	(3.72)				

NOTE: 1=Very Much; 2=Somewhat; 3=Unsure; 4=Not Really; 5=Not At All

Victims were less enthusiastic in their response to a question about whether they had a chance to participate (refer back to Figure 3.2). On average, they felt that they had not really had much opportunity. Again, there were no significant differences between treatment groups ($F = 1.52$, $df = 2,137$, n.s.).⁷

Figure 3.3 depicts responses to questions about victim perceptions of treatment in court. Overall, respondents were quite satisfied with the way their cases were handled by officials, and respondents believed that they had been treated fairly by officials. Again, however, there were no significant differences in these measures according to treatment groups ($F = 1.32$, $df = 2,140$, n.s. for satisfaction with handling; $F = 0.60$, $df = 2,152$, n.s. for perceptions of fair treatment).⁸

Finally, Figure 3.4 displays victim satisfaction with case outcomes. Across treatments, most victims were somewhat satisfied with case dispositions and were somewhat satisfied that officials had made a fair decision. Differences between treatment groups were only minor, and failed to approach statistical significance ($F = 0.25$ $df = 2,141$, n.s. for belief that officials made a fair decision; $F = 0,10$, $df = 2,152$, n.s. for satisfaction with case outcomes).⁹

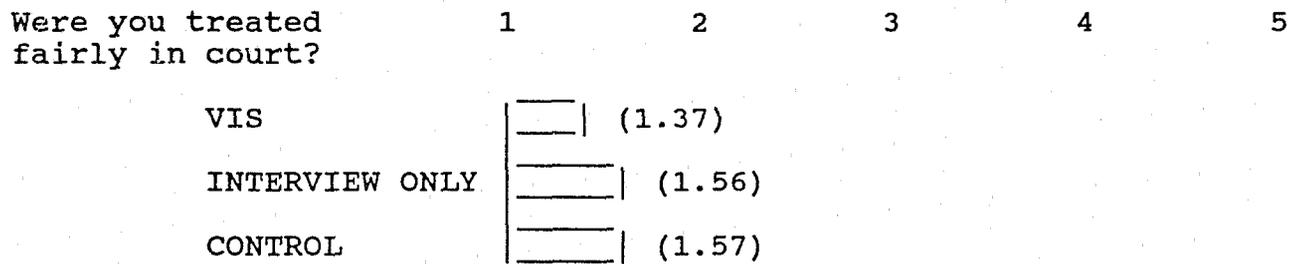
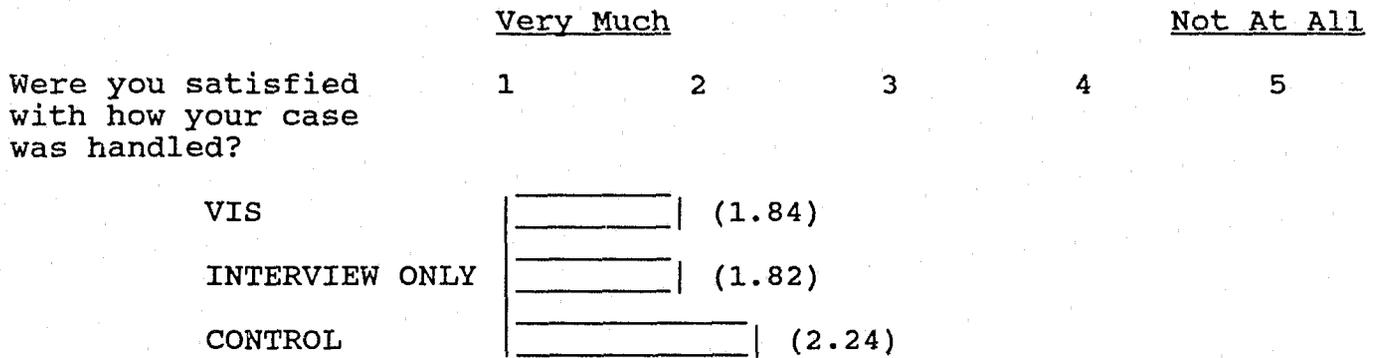
⁷ See footnote 6.

⁸ See footnote 6.

⁹ See footnote 6.

FIGURE 3.3

VICTIM PERCEPTIONS OF TREATMENT BY OFFICIALS
AT THE TIME OF DISPOSITION



NOTE: 1=Very Much; 2=Somewhat; 3=Unsure; 4=Not Really; 5=Not At All

FIGURE 3.4

VICTIM PERCEPTION OF CASE OUTCOMES
AT TIME OF DISPOSITION

	<u>Very Much</u>			<u>Not at All</u>	
	1	2	3	4	5
Did officials make a fair decision?					
VIS	_____				(2.27)
INTERVIEW ONLY	_____				(2.49)
CONTROL	_____				(2.42)
Were you satisfied with the outcome?					
VIS	_____				(2.38)
INTERVIEW ONLY	_____				(2.52)
CONTROL	_____				(2.50)

NOTE: 1=Very Much; 2=Somewhat; 3=Unsure; 4=Not Really; 5=Not At All

In sum, we found no evidence that impact statements affected victims' perceptions of involvement, or satisfaction with the court process.

IV. THE EFFECTS OF VICTIM IMPACT STATEMENTS ON CASE DISPOSITIONS

In this section of the report, we will look at the effects of victim impact statements on sentencing. It turns out that how victim impact statements might be expected to influence sentences is a bit of a tricky question. The most obvious way to approach the question is by comparing sentences in cases where court officials had access to victim impact statements with cases where they did not have access. Framing the question in this way addresses the defense issue of whether impact statements may lead officials to make harsher sentencing decisions. And this is the approach taken by Erez (1989), who reports that incarcerations increased and sentences of probation decreased when victim impact statements were present in court papers, relative to when they were not.

But, upon reflection, it seems unlikely that cases with victim impact statements would receive more severe sentences than those without impact statements. In the cases with impact statements, court officials will know more about the effect of crime on the victims. Sometimes that effect will be major, and sometimes minor, so impact statements could enhance or detract from officials' perceptions of the seriousness of a crime. The only way that impact statements could, on average, induce officials to impose harsher sentences is if -- in the absence of impact statements -- officials normally assumed that the effect of crime on victims was minimal:

If impact statements, in other words, awakened officials to the fact that the cases they had been sentencing were actually considerably more heinous than they had imagined.

We think this unlikely. We believe that, if victim impact statements do affect sentences, their influence is likely to be more subtle. We think that impact statements have the potential to produce greater congruence between the harm done to victims and sentences. That is, the effects of crime on victims ought to be a better predictor of sentences when officials have impact statements available than when they are not available. In cases where the effect of crime on victims is serious, impact statements may induce officials to impose stiffer sentences than they would have otherwise: Conversely, in cases where the effect of crime on victims is slight, impact statements may induce officials to impose lesser sentences than they would otherwise have done. So the net effect of impact statements on the overall harshness of sentences may be nil, while at the same time impact statements may result in sentences that better reflect the harm done to victims, be that large or small.

Initially, we will look at the issue of whether impact statements altered the distribution of sentences -- how many offenders were sentenced to conditional discharges versus probation versus short or long terms of incarceration. Then we will turn to the question of whether impact statements result in sentences that

better reflect the harm done to victims.

Effect of Victim Impact Statements on the Overall Distribution of Sentence

Table 4.1 compares sentences for cases in the three treatment groups. The table shows that there are only minor variations between the groups in the frequencies of conditional discharges, sentences of probation, and various lengths of prison terms. The differences in the distribution of sentences between the groups did not approach statistical significance ($\chi^2=11.89$, $df=10$, n.s.). Thus, we conclude that taking and distributing victim impact statements does not induce officials to mete out generally harsher sentences.

We thought that, if impact statements had any effect on the overall distribution of sentences, the most likely effect would be an increase in special conditions of sentences: that is, in the frequency of restitution orders, written admonishments to offenders to stay away from victims, or treatment programs for offenders. What we found, however, is that special conditions were almost never imposed. There were no indications in DA or court records that restitution was ordered in any case in our entire sample. Further, we encountered just two judicial admonishments warning offenders to keep away from victims, and one order for an offender to undergo drug rehabilitation. Thus, there are no indications

TABLE 4.1

EFFECTS OF TREATMENTS ON SENTENCES*

52

	<u>Victim Impact Statement</u>	<u>Interview Only</u>	<u>Control</u>
Conditional Discharge	3%	1%	8%
Probation	13%	10%	15%
0-1 years jail	24%	25%	13%
1-3 years jail	10%	7%	4%
3-6 years jail	42%	35%	40%
6+ years jail	10%	22%	21%
	<hr/> 100% (n=72)	<hr/> 100% (n=69)	<hr/> 100% (n=48)

* Excludes open cases, bench warrants, dismissals and acquittals.

that victim impact statements increased the use of special conditions in sentencing.

Effect of Victim Impact Statements on the Congruence Between Victim Harm and Sentence Severity

To determine whether impact statements result in sentences that better reflect harm to victims, we sought to compare treatment groups in terms of the relationship between victim harm and sentence severity, after controlling for other factors related to sentencing. If impact statements affected sentencing, we would expect to see a stronger relationship between victim harm and sentence severity in the group where impact statements were taken than in the other two treatments where no statements were drawn or distributed to officials.

First, we wanted to identify and control statistically in the analysis extraneous variables that might also influence sentence severity. We examined seriousness of the charge, type of charge, offenders' prior records, and victim/offender relationship. Seriousness of the charge had a significant association with sentence severity ($r=-0.38$, $p<.001$) and prior record had a marginally significant association with sentence severity ($r=0.15$, $p=.09$). Nature of the charge was not significantly related to sentence for all cases ($r=-0.07$, n.s.), but it was for the impact statement group ($r=-0.29$, $p<.05$). Victim/offender relationship bore

no significant relationship to sentence. Seriousness of the charge, prior record, and nature of the charge were, therefore, included as control variables in the analyses reported below.

To determine if victim impact exerted a significant effect on sentence severity, we conducted a series of hierarchical regression analyses. Hierarchical regression is a technique for determining the effect of one variable on another after holding constant the effects of other variables that may also influence the outcome measure. In this case, we were interested in looking at differences by treatment group in the effects of victim harm on sentencing, after controlling for charges and prior records. On the first step of the analysis, we entered nature of the charge, seriousness of the charge, and offenders' prior records. Then, on the next step, we entered a measure of victim impact which was the sum of the five individual impact measures (physical, psychological, behavioral, short-term financial impact, and long-term financial impact).

The results are displayed in Table 4.2. The table shows that harm to the victim played little role in sentencing decisions after charge and criminal history were taken into account. Adding victim impact to the regression model increased the model's explanatory power by less than one percent. This was true for the victim impact statement group, as well as for cases where no impact statement was drawn and forwarded to officials.

TABLE 4.2

EFFECT OF VICTIM IMPACT ON SENTENCE SEVERITY
BY TREATMENT GROUP

	<u>VIS and Interview Only Cases Combined</u>	<u>Interview Only Cases</u>	<u>VIS Cases</u>
<u>Standardized Regression Coefficients</u>			
Step 1:			
Prior convictions	0.13	0.17	0.15
Seriousness of charge	-0.38*	-0.46*	-0.24*
Nature of charge	-0.07	0.07	-0.29*
Step 2:			
Victim impact	0.03	0.05	0.04
Increase in variance explained by adding victim impact to model.	<1%	1%	<1%

*p<.01

We conducted the same type of analyses using the separate indicators of victim impact, and achieved essentially the same results: Victim impact measures bore no consistent relationship to sentencing decisions, and that was true for cases with and without victim impact statements. One individual measure -- psychological impact -- was significantly related to sentencing after charge and priors were considered ($\beta=0.27$, $p<.05$); but its relationship to sentences was just as strong for cases without, as well as with, impact statements.

In sum, we have no evidence that impact statements result in decisions that better reflect victim harm and scant evidence that sentencing decisions consider information from any source about the crime's effect on the victim.

V. CRIMINAL JUSTICE RESPONSE TO VICTIM IMPACT STATEMENTS

Part of our goal in conducting this study, was to assess the criminal justice system's response to victim impact statements. We were concerned with criminal justice officials' experience with the victim impact statements prepared and distributed by Victim Services Agency--did they receive them, read them and take them into account--as well as with their personal views of the statements: did judges and ADAs find the statements informative or repetitive, helpful or potentially damaging?

We conducted interviews with seven judges--three in-person and four by telephone, and prepared a self-administered survey that was distributed to ADAs in the violent crime bureau and completed by twenty-two ADAs. Both the ADA and judge interviews were designed to measure criminal justice officials' opinions of victim impact information in principle, as well as to document their experiences with the statements prepared by Victim Services Agency's program.

We also looked in DA files to determine whether the impact statement copies given to ADAs had been placed in the files, and if the envelopes containing the statements had been opened. We found that 63% of the files contained impact statements and that only 30% of the files contained open impact statements. Thus, it does not seem that ADAs made much use of impact statements.

ADA Interviews

When discussing victim impact information in the abstract, most ADAs stated that it was useful information. Two in three felt that it is always appropriate to consider the impact of the crime on the victim when sentencing the defendant, while the remainder felt that it is sometimes appropriate. About two in three ADAs also believed that knowing about victim impact is useful to them in all cases, while the rest felt that it is helpful only in selected cases. Several ADAs specified that in cases where the victim was physically injured, a victim impact statement would be particularly appropriate. Others indicated that such statements are helpful in cases involving serious financial loss or emotional impact. The only instance in which an impact statement was cited as being inappropriate (cited by three ADAs) was if the "victim's background [is] worse than the defendant's, or where evidence is lacking. . . then you try to get the best plea possible."

In answer to the question, "is knowing about the impact of the crime on the victim useful to prosecutors in plea negotiations," three in four answered in the affirmative, with fifteen ADAs commenting that knowing the impact of the crime on the victim can be helpful both in adding to the strength of their arguments and in getting a sense of how committed the victim is to pressing charges. A few ADAs disagreed, stating variously that pleas are often based primarily on the defendant's record, or that the

influence an impact statement has depends on the particular judge.

Four in five ADAs indicated that they would be in favor of having a regular procedure implemented for the collection of victim impact statements. Several ADAs qualified their positive responses, however, with comments such as, "only if I knew [the impact statements] were required to be placed on the record at the time of the plea." Examples of comments made by the minority of ADAs who would oppose a regular procedure for collecting impact statements include:

- o I think the DA interviews with the civilians during the regular course of trial preparation are sufficient. Why generate more Rosario material?

- o The ADA assigned to the case should always ascertain from the victim the crime's impact. I would not be in favor of an independent agency speaking to our witnesses and duplicating information the ADA should gather.

- o Its too much of a burden on victims--its enough just getting them to the grand jury.

While ADAs generally approved of the concept of impact statements, feedback about the program established by Victim Services was less enthusiastic. A majority (54%) of ADAs felt that the impact statements rarely or never contained better or more detailed information than they would otherwise have had. Fifty-eight percent of ADAs indicated that the procedure was problematic and inconvenient. A few ADAs noted that there were occasional inconsistencies between the information given to the VSA

interviewer and the information elicited by the ADA, and one thought that including information about the psychological impact of the crime threatened to make the victim appear unstable. Yet, most of the reservations cited concerned the procedure for collecting the statement: for instance, the physical distance of the project office from the grand jury or the inconvenience for the ADA and for the victim of having to sit through "yet another" interview. In addition, ADAs disliked the fact that the writing of impact statements increased the quantity of case information required to be turned over to the defense.

ADAs were also skeptical about the extent to which judges consider the impact of the crime on the victim when sentencing the defendant: the majority thought that judges only sometimes considered victim impact when sentencing and the rest (32%) thought that judges seldom or never considered victim impact. One respondent said that he hears a judge mention victim impact "once in a blue moon."

Judge Interviews

We interviewed seven judges--three in-person and four by telephone. The interviews were open-ended and averaged 20-30 minutes in length. Key issues included the usefulness of victim impact information, whether such information duplicates that provided by probation officers or prosecutors, the types of information that are most useful in particular types of cases, when impact information should be obtained from the victim, the effects of such statements on court processing time, and any defense challenges to the statements.

Judges were first asked how many cases they had sentenced in which VSA provided a victim impact statement. Most judges had sentenced 4-6 cases with such statements. When asked how often they generally receive information about the impact of the crime on the victim from prosecutors, the judges consistently agreed that prosecutors rarely relate such information. Some judges suggested that prosecutors at the sentencing stage have very little, or no, contact with the victim in the case and thus have no idea how the victim was affected.

Victims themselves seldom write the judge to describe the impact of the crime, nor do they present oral statements. Three judges said they had never received any information directly from the victim; one judge speculated that in had only happened five

time in the 20 years he has been on the bench while another judge estimated it had happened a half dozen times in his 21 years on the bench. In those rare cases, the judges said it was sometimes useful and sometimes not useful. Particularly unhelpful were victims who were "out for blood" and somewhat "hysterical". But statements made by some victims were viewed as useful. For example, one judge relayed a case in which the victim was robbed at gunpoint by a young assailant about the same age. The judge said the victim wrote him "not because he was upset by the robbery itself but because he was upset by the robber's actions after the robbery." When the victim only had \$7.00 in his pocket, the robber retorted that he ought to kill the victim since it was so little money. This angered the victim far more than the robbery and the judge empathized with the victim's response and felt this was an important piece of information to have in determining the defendant's sentence.

All of the judges thought it was helpful to learn about the effects on the victim via the VSA impact statements. Some judges felt an entire separate program to collect such information was unnecessary because such information could be collected by existing programs (either by probation or by the prosecutor). Others thought some agency should be created with this as their prime responsibility. All agreed that the victim's harm should be communicated to the court as evidenced by these statements:

- o The system should "do something for the victim"--we are very concerned with the defendant's rights, but we should be

equally concerned for the victims and not "throw them out like an old shoe".

o "As judges, we sometimes lose sight of the humanitarian aspects of defendants and victims. Both should be treated like human beings and not just cases. It is important that the victim's point of view be listened to and that the victim be told that the system is interested in what they have to say."

o Judges "absolutely" need to know the effects on the victim--both the short-term effects and the long term effects--"it is only fair".

What kinds of information do judges want? All of the judges were interested in the physical, financial, and psychological effects of the crime. Most judges--but not all--also wanted the victim's opinion about the sentence (although they were quick to point out that the victim's wishes were not paramount--equity across cases in sentences and other concerns should override victims' desires). When asked to prioritize the most and least useful types of information, the majority said the victim's opinion about the sentence was the least useful, while the psychological, physical, and financial impacts were most useful. However, the judges noted that information about the financial loss was seldom used to determine restitution since very few defendants could pay restitution, and thus it was almost never awarded.

When would judges want to receive victim impact information? This question generated the greatest dissent among the judges. About half the judges wanted the information "as soon as possible" so that it could help in their decision about whether to accept or

suggest a change in the plea negotiation. These judges reasoned that obtaining the information after the plea was not very useful since their only option would be to nullify the plea--a step rarely taken. Once a plea is entered it was seen largely as a "done deal," thus victim harm information could have little or no impact. Other judges, however, felt very strongly that judges should not have access to victim impact information prior to sentencing as it was prejudicial and unfair to the defendant prior to conviction. One judge took a middle position and noted that if the defense attorney had the information at the same time as the judge and prosecutor prior to conviction (to challenge the information if necessary) then the judge could consider the information. Otherwise, the judge should not receive the information prior to sentencing. None of the judges had any defense attorneys challenge the victim impact statements provided by VSA.

In what types of cases did judges feel victim impact statements were most helpful? Some judges said the information was helpful in any case involving a victim; others said they were most interested in such information in personal injury cases as opposed to property cases; in "more serious cases", such as rape cases, assaults, and armed robberies; and in cases involving a "face-to-face" confrontation. Victim impact information was viewed as least useful in auto theft cases, property crimes, and vehicle manslaughter cases (the latter because the victim was not the intended target but was the accidental target).

Do victim impact statements slow down the adjudication process? All but one judge replied no. The one judge who said it did slow down the process responded "so what?"--it is "worth" it, because it is not fair to the victim to rush through the cases as human suffering should not be measured in terms of time or slowing down the system. He further added that victims expect the criminal justice system to protect them and they will become dissatisfied with a system that doesn't seek out their opinions and ask them about the crime's impact.

Synthesis

A comparison of the responses of the two groups of criminal justice officials reveals some interesting similarities and differences. ADAs and judges gave conflicting accounts of who prepares victim impact information and how often it is made available to judges for sentencing. ADAs claimed that VSA's victim impact statements were superfluous because they collect that information themselves (most felt that the victim impact statements rarely or never contained information of which they would otherwise have been unaware). In addition, the fact that most impact statements given to ADAs were not placed in the case files and/or were not opened, enforces that idea that ADAs saw little value in impact statements. In sharp contrast, the judges report that they almost never receive victim impact information--either from the presentence report or from the prosecutor. Thus, the judges confirmed that the victim impact statements did not merely duplicate information already available to the court.

While ADAs expressed the opinion that judges were generally uninterested in victim impact information, judges claimed the opposite. While judges agreed that other information was equally important to sentencing decisions, they claim to both desire and need victim impact statement information.

Although ADAs and judges paint different pictures of the

system as it exists, it is clear that information about victim harm is currently not conveyed to judges with any regularity. Yet, both groups agree on the principle of considering impact statements. While reservations were expressed on both sides--specifically about the possibility that victim impact statements might interfere with ensuring equity for the defendant and about the necessity of turning more information over to the defense--all these concerns were seen as workable.

VI. CONCLUSIONS

We began this study to address some of the controversial issues surrounding the use of victim impact statements. Do impact statements result in harsher sentences? In sentences that better reflect the harm done to victims? Does considering victim impact add to court delays? Finally, does preparing victim impact statements make victims more satisfied with the justice process? Or, conversely, could preparing impact statements lead to greater dissatisfaction by raising victims' expectations unreasonably?

Our results should lend support to advocates of victim impact statements: we found no support for those who argue against victim impact statements on the grounds that their use puts defendants in jeopardy and may result in harsher sentences. In this respect, our data stand in contrast to those reported by Erez and Tontodonato (1989) who found that victim impact statements were associated with an increased likelihood of incarceration. The discrepancy between the two studies may reflect differences between courts in receptivity to victim impact statements. Or they may result from the fact that Erez and Tontodonato used a weaker, correlational research design: There is no guarantee in their study that cases that had victim impact statements taken were equivalent in other respects to cases without impact statements. Indeed, such an equivalence could be expected only if the act of taking an impact statement was randomly distributed among cases in their sample,

which seems highly unlikely.

In another respect our data are also supportive of those who argue for the use of victim impact statements. We did not find, based on interviews with court officials, that the mechanism we developed for considering victim impact delayed dispositions.

But our data also give advocates of victim impact statements cause for concern. Victim impact statements did not produce sentencing decisions that better reflected the effects of crime on victims. Nor did we find much evidence that -- with or without impact statements -- sentencing decisions were influenced by our measures of the effects of crime upon victims, once charge and defendants' prior records were taken into account. In this respect, our results are consistent with Walsch (1986) and Erez and Tontodonato (1989) who found no evidence that victim desires are considered in sentencing decisions. But it is also true that the impact of crime on victims is incorporated in charging decisions: More serious charges tend to entail greater harm to victims. And our analysis found charge severity to be highly predictive of sentences.

Interviews with officials helped to explain why impact statements had no discernible effect on sentencing. Although judges professed to be interested in the impact of crime on victims, ADAs thought, at best, that judges considered such information only

occasionally. And, although the majority of ADAs interviewed said that victim impact ought to be considered on a regular basis, judges reported that ADAs rarely related to them such information. Moreover, ADAs clearly believed information contained in victim impact statements was not terribly useful to them, as evidenced by their frequent failure to incorporate the statements in their case files and their failure to open the statements that were in case files.

The truth probably is that officials have established ways of making decisions that do not call for explicit information about the impact of crime on victims. They make sentencing decisions according to established norms based on the nature of the charge and the defendant's character (Rosett & Cressey, 1976): In this process, officials may feel that the charge itself often conveys sufficient information about victim harm for purposes of sentencing. Getting officials to consider specific measures of victim impact means changing well-established habits, and that is not something a brief experiment is likely to do.

Our results do not lend credibility to those who would argue that victim impact statements are a good way to promote victim satisfaction with the justice system. We did not find any indications that impact statements caused greater feelings of involvement, greater satisfaction with the justice process, or greater satisfaction with dispositions. In this respect, our

results are consistent with our earlier quasi-experiment in Brooklyn (Davis, 1985) which also found no effects of impact statements on victim satisfaction. It is also consistent with a correlational study by Erez (1989), who found that, at best, impact statements may account for about one percent of the variation in victim satisfaction with sentences. On a positive note, however, neither did we find that preparing impact statements caused greater dissatisfaction by raising victims' expectations to unreasonable levels.

The results of the earlier two studies could be dismissed as implementation failure. That is, the impact statement treatments may have not been distinct enough from the rest of the court process or the purpose of impact statements may not have been explained well because the programs were conducted by prosecutors, not victim advocates. But that was not the case with our Bronx experiment. Perhaps the bottom line is that, regardless of what they are told, victims just don't believe (and apparently rightly so) that impact statements will actually make a difference in sentencing.

In the interviews we conducted, we noted how much importance victims placed on their grand jury testimony--for most of them, this seemed to be the really significant event in the court process. In other work (Davis, Russell and Kunreuther, 1980), we noted the great significance that judges seem to have for victims.

It may be, then, that victim allocution at sentencing might be a better vehicle for increasing victims' sense of participation than victim impact statement procedures seem to be.

In our view, it only makes sense to implement allocution programs, or any type of victim impact program, if there is some reason to expect that officials will actually consider what victims say when they are determining offenders' sentences. Our research, as well as other studies, suggests that officials are resistant to change, especially when such change may affect routine processing. Overburdened courts help to encourage a system of plea-bargaining inconsistent with lengthy consideration of victim harm. Unless victim participation becomes a primary goal for officials, it is unlikely that victims will become active participants. Concern about defendants' rights, due process, and the need to adjudicate large numbers of cases without sufficient resources for any part of the system, is likely to undermine efforts to increase the victim's role in the system.

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APPENDIX A

VICTIM IMPACT INTERVIEW

Docket #: _____

ADA: _____

PHYSICAL INJURIES

1. How extensively were you injured?

- _____ () None at all
- _____ () Minor--no medical att.
- _____ () ER/ doctor's treatment
- _____ () Hospitalized overnight

2. Are your injuries affecting your job/daily routine?

3. Will you have to put out money for your medical expenses?

- Yes ()
- No ()

4. For what treatment? _____

5. Are you receiving ongoing treatments? Describe.

PROPERTY LOSSES/DAMAGE

1. Was there any loss of property (including cash) or any damage?
Yes (stolen) () Yes (damaged) () No ()

(a) What was it? _____

(b) Was it recovered? _____

(c) Will any of the loss be replaced through insurance or other means? Yes () No () _____

2. Has the loss affected your daily routine/ lifestyle?

3. Did the property have any special significance to you?

LOSS OF TIME FROM WORK/SCHOOL

1. Has the crime caused you to miss work/school/other responsibilities?

of days: _____

2. Have you lost any pay from time missed from work?

About how much? _____

EMOTIONAL EFFECTS

1. Have you been feeling upset since the crime? Yes () No ()

IF YES: Would you say you are somewhat upset or very upset? _____

Elaboration: _____

2. Has the crime caused you to change your routines, habits or relationships with others?

Other Effects

1. Is there any other way that the crime affected you that I haven't asked you about?

CASE INFORMATION

Victim Name _____ Indictment # _____

Address: _____

_____ Phone#(s): _____

Defendant's Name(s) _____

Charges: _____

Initial _____ Final _____

Defendant's Prior Convictions:

Felonies _____ # Misdemeanors _____

Victim/Offender Relationship

_____ Immediate family _____ Acquaintance/Neighbor

_____ Romantic intimates _____ Seen in neighborhood

_____ Extended family

Case Outcome

Disposition: _____

Sentence: _____

Special Conditions: _____

Condition of VIS seal: _____ Broken _____ Unbroken

RATING

P.I.: _____

Psy.: _____

Fin. (Imm.): _____

Beh.: _____

Fin. (Subs.): _____

APPENDIX B

VICTIM IMPACT STATEMENT

_____ was stabbed; he sustained a collapsed lung, a serious injury requiring a week of hospitalization. At the time of the interview, _____ reported that he still experiences pain and burning and said he might have to return to the hospital to have his stitches re-done as they may not be healing properly. Insurance will cover _____ medical costs.

The assault has significantly altered _____ daily life; he attended school for two or three days but was told that he is not yet ready and must receive at-home tutoring. Further, _____ can no longer do the same type of after-school work as he did before the assault; he now does what he termed, "light clean-up work."

VICTIM IMPACT STATEMENT

_____ was robbed of her pocketbook. Although the pocketbook and its contents were recovered, she had to miss two days of work as a result of the crime. _____ lost two days of pay.

Since the robbery, _____ reports being very nervous and very upset. She said, "I feel inside very nervous. I don't sleep at night. I'm up since 3am this morning, and normally I sleep eight hours through." She also said that she is frightened to go out by herself and frightened for her 14 year old son to go out. Now, _____ only goes out if she has to, and then not by herself.

* * *

When recontacted approximately one month later, _____ reported that she continues to be very nervous because of the crime. "My whole nerve system is different now," she said. In addition, _____ reiterated that she absolutely will not go out alone at night anymore.

APPENDIX C

VICTIM IMPACT STATEMENT

Rating System

- Five Areas to be Assessed: A. Physical Injury
B. Immediate Financial Repercussions
C. Subsequent Financial Repercussions
D. Psychological Effects
E. Behavioral Changes

A. Physical Injury:

- NONE: (no injury).....1
SOME: (minor: Emergency Room, bruises, scratches).....2
SUBSTANTIAL: (hospitalization/ongoing treatment).....3

B. Immediate Financial Repercussions:

- NONE: (nothing taken/all recovered).....1
SOME: (value unknown/value < \$500.00).....2
SUBSTANTIAL: (value \$500.00 +)3

C. Subsequent Financial Repercussions:

- NONE:1
SOME: (missed 1-4 days school/work to go to court or as a direct result of the crime; medical bills minor/unknown).....2
SUBSTANTIAL: (missed 5+ days school/work; major medical bills)..3

D. Psychological Effects:

- NONE: (none reported).....1
SOME: (minor nervousness/fear, anger, discomfort, distress).....2
SUBSTANTIAL: (major fear, anger, discomfort, distress).....3

E. Behavioral Effects:

- NONE: (none reported).....1
SOME: (some restriction/change of activity).....2
SUBSTANTIAL (major restriction/change of activity).....3