

Stephen F. Austin State University

SFA ScholarWorks

Electronic Theses and Dissertations

4-2023

The Effects of Variations of Victim Impact Statements on Juror Bias

Emily Sutton

Stephen F Austin State University, sutton.e714@gmail.com

Follow this and additional works at: <https://scholarworks.sfasu.edu/etds>



Part of the [Law Commons](#), and the [Other Psychology Commons](#)

[Tell us](#) how this article helped you.

Repository Citation

Sutton, Emily, "The Effects of Variations of Victim Impact Statements on Juror Bias" (2023). *Electronic Theses and Dissertations*. 496.

<https://scholarworks.sfasu.edu/etds/496>

This Thesis is brought to you for free and open access by SFA ScholarWorks. It has been accepted for inclusion in Electronic Theses and Dissertations by an authorized administrator of SFA ScholarWorks. For more information, please contact cdsscholarworks@sfasu.edu.

The Effects of Variations of Victim Impact Statements on Juror Bias

Creative Commons License



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](https://creativecommons.org/licenses/by-nc-nd/4.0/).

The Effects of Variations of Victim Impact Statements on Juror Bias

By

Emily S. Sutton, Bachelor of Arts

Presented to the Faculty of the Graduate School of

Stephen F. Austin State University

In Partial Fulfillment

of the Requirements

For the Degree of

Master of Arts in Psychology

STEPHEN F. AUSTIN STATE UNIVERSITY

May 2023

The Effects of Variations of Victim Impact Statements on Juror Bias

By

Emily S. Sutton, Bachelor of Arts

APPROVED:

Steven Estrada, Ph.D., Thesis Director

Scott Hutchens, Ph.D. Committee Member

Scott Drury, Ph.D., Committee Member

George Day, Ph.D., Committee Member

Sheryll Jerez, Ph.D.
Interim Dean of Research and Graduate Studies

Abstract

Victim impact statements (VIS) are federally protected statements describing the physical, emotional, and financial impact of a crime on a victim. States can decide the content and timing of the VIS, resulting in much variation. Previous research has found an effect of these variations on mock juror bias in capital trials. The current study examined if variations such as changing the strength of emotion, crime type, and including sentencing recommendation within a VIS affects the judgements of mock jurors. The results showed the sexual assault VIS produced higher guilt ratings and longer sentences. Furthermore, the inclusion of a high sentencing recommendation produced longer sentences. Additionally, guilt ratings were increased by the interaction of emotionality and anchor within the VIS. The results of this study suggest that variations in the implementation and presentation of VIS across states may be impacting the fairness of criminal trials and the rights of defendants.

Acknowledgements

I am extremely lucky to have had multiple academic mentors whose support has made this possible. I would like to thank Dr. Steven Estrada, whose guidance and mentorship has challenged me to develop into a better student, researcher, and professional. He was vital in the completion of this project and in my successful admittance into my future PhD program. I would also like to thank my committee members, Dr. Scott Drury, Dr. Scott Hutchens, and Dr. George Day, who were essential in the creation of this thesis which I am very proud of.

I am grateful for my family and friends as well as the undergraduates who I have been working closely with to complete this project. The help of Kat, Shelby, Ryan, and Alex is greatly appreciated. I am also grateful for the unwavering support of my graduate cohort. Alex, Hannah, and Monique have helped me to be successful in this program and I could never thank them enough.

Table of Contents

Abstract.....	i
Acknowledgments.....	ii
List of Figures.....	vi
Introduction.....	1
Victim Impact Statements.....	1
Crime Type.....	5
Emotionality.....	8
Sentencing Recommendation.....	10
The Current Study.....	14
Method.....	16
Design.....	16
Participants.....	16
Materials.....	17
Emotionality Manipulation.....	19
Crime Type Manipulation.....	20
Anchor Manipulation.....	20
Guilt Measure.....	20
Sentencing.....	21
Demographics.....	21

Procedure.....	21
Results.....	23
Guilt Ratings.....	23
Sentencing.....	26
Emotionality.....	26
Anchor.....	26
Crime Type.....	27
Exploratory Analysis.....	28
Discussion.....	30
Guilt Measures.....	30
Crime Type.....	30
Emotionality and Anchor.....	31
Sentencing.....	32
Emotionality.....	32
Anchor.....	33
Crime Type.....	34
Future Directions.....	34
Conclusion.....	36
References.....	38
Appendices.....	42
Appendix A - Full Stimulus Example.....	42
Appendix B – Instructions.....	43

Appendix C – Preambles.....	44
Appendix D – Victim Impact Statements.....	45
Appendix E – Word Pairs.....	52
Vita.....	53

List of Figures

<i>Figure 1.</i> Mean guilt ratings and standard deviations based of crime type described in the VIS	24
<i>Figure 2.</i> Discriminant function analysis plot showing the interaction between emotionality and anchor was separated by function 1, guilt ratings, rather than function 2, guilt decision	25
<i>Figure 3.</i> Mean sentencing length and standard deviations based off anchor provided in the VIS	27
<i>Figure 4.</i> Mean sentencing length and standard deviations based of crime type described in the VIS	28

Introduction

Victim Impact Statements

Victim impact statements (VISs) are written or oral statements presented by victims or a victim's family during a criminal trial. These statements describe how the crime has impacted the life of the victim. Previous Supreme Court decisions originally ruled that VISs were not allowed in criminal proceedings. Victim impact statements were inadmissible due to fear of these statements biasing decisions due to extralegal factors, such as emotionality, as opposed to evidence and facts (*Booth v. Maryland*, 1987). However, in 1991, the Supreme Court ruled in *Payne v. Tennessee* (1991) that victims had the right to give a VIS, and that these statements fulfilled the victims' right to be heard in trials. More recently, *Bosse v. Oklahoma* (2016) further clarified what is allowable in VISs, and reaffirmed these statements help to uphold a victim's right to participate in criminal trials. Because of these rulings, VISs are now protected by federal law.

The U.S. Department of Justice has recently updated how VISs can be used in the federal court system, defining what types of VISs are allowable, when victim impact statements are allowed, and what can be included in a VIS. For example, VISs can be written or oral statements outlining the emotional, physical, and financial impact of the crime on the victim and others. Further, statements can take the form of a letter to the

judge, a formal statement, a personal narrative, or a standardized form can be given. If a written statement is submitted to the U.S. attorney's office, the judge receives the statement prior to sentencing. If the statement is given orally, a victim witness coordinator helps to prepare the statement before presentation to the court. In both cases, the statement is given before sentencing and must be taken into consideration by the judge. Additionally, some jurisdictions allow the option to give both a written and oral statement (U.S. Department of Justice, 2020). Although the U.S. Department of Justice provides guidelines for the federal courts, states still have the power to decide how and when to use VISs and this introduces considerable variability in how, when, and what comprises a VIS. Given that little research has been done examining the influence of VISs on judgements of guilt and sentencing, whether VISs are somehow biasing judgment is unknown. Further, whether the different ways the VIS process is implemented shows differential effects on judgments is also unknown.

While states can determine how VISs are constructed and when they are used, because these statements are protected by federal law, VISs must be allowed in some form. Victims' rights are considered important in the U.S. criminal justice system and in justice systems around the world (U.S. Department of Justice, 2020). As stated in *Payne v. Tennessee* (1991), VISs are meant to protect victims' rights and provide insight into the impact of the crime. For example, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power ensures that victims have the right to be respected, receive legal advice, support, protection, and compensation, and have their interests

protected in criminal proceedings (Pemberton & Reynaers, 2011). Additionally, *Bosse v. Oklahoma* (2016) reaffirmed that VISs are important in upholding a victim's right to participate in criminal trials and therefore should remain protected under federal law. Given the importance of victims' rights and the personal information victims can provide, allowing VISs within trials provides assurance that states are respecting the rights of victims and are also providing jurors with important information about the impact of the crime (Myers et al., 2018).

In addition to the legal benefits, VISs may provide closure by allowing victims or victims' families to present how the crime has impacted them personally (Roberts & Erez, 2004). For most states, VISs have relatively few universal restrictions on what the victim can emphasize. As long as the VIS highlights financial, emotional, and physical damages that were a direct result of the crime, the statement's author has varying degrees of autonomy depending upon the state where the statement is allowed. For example, these statements can include preferred financial compensation or positive characteristics of the victim themselves (Pemberton & Reynaers, 2011). Allowing victims to decide the contents of the VIS results in much variation in the content of a VIS. However, these statements are ultimately meant to protect and respect victims' rights while providing vital information regarding the direct impact of the crime to the courts during trial. Yet because no standard exists, research into how these different elements of a VIS influence juror judgment and decision is warranted.

Impact statements are protected by federal law however, there is no universal

guideline on how they should be used or how to incorporate VISs into judgments of guilt or sentencing. Further, as decided in *Payne v. Tennessee* (1991), the guidelines for the construction and delivery of VISs are set by each state individually, which contributes to increased variability in how VISs are administered. For example, VISs are typically given after the evidence has been heard and often after the verdict has been decided, meaning these statements frequently influence the sentence rather than the verdict (Szmania & Gracylany, 2006). However, in Ohio, as long as evidence is considered relevant to both the circumstances and impact of the crime then a VIS can be presented before the verdict, influencing judgments of guilt as well as sentencing (Blume, 2003). In other states the presentation and content of a VIS is much more restricted. For example, in Texas, a standard VIS form is completed and submitted to the court. The form is not read aloud to the court unless requested by the victim and approved by the court. This shows the limitations the Texas criminal justice system places on these statements in comparison to other states (Texas Department of Criminal Justice, Victim Services Division, 2021). As another example of how variations in guidelines can be problematic, states such as Minnesota, Alabama, Oklahoma, and Kansas previously allowed sentencing recommendations within VISs (Blume, 2003; Minnesota Office of Justice Programs, 2008). However, *Bosse v. Oklahoma* (2016) clarified that sentencing recommendations within VISs are not admissible in court. These recommendations were potentially allowing sentencing decisions that were in violation of a defendant's 8th Amendment right to a sentence proportional to the crime committed, due to biasing jurors' judgment

towards the recommendation. Despite the inadmissibility of a sentencing recommendation in any VIS, different states still have different guidelines for the creation and content of VISs, and these variations are potentially problematic for conducting fair and unbiased criminal trials.

Variation among VISs across different states is not uncommon. An analysis of 192 VISs within capital trials found that the content of these statements had a large amount of variation among these states (Myers et al., 2018). For example, within all states that allow the death penalty, control of the content and timing of VISs has a wide degree of dissimilarity among states. Some states allow the VIS to contain only content that is factual, while other states allow these statements to contain subjective content such as descriptions of a victim's character (Myers et al., 2018). Variation in VISs across states in content and presentation is problematic in that these different variations could be affecting the impartialness of the criminal justice system and biasing jurors against or for defendants. Universal guidelines may be necessary to allow both the right of a victim to participate in criminal trials, and the constitutional right of defendants to a fair trial by an impartial jury.

Crime type

Research on VISs have focused on the use of VISs within capital trials, or trials where the defendant is eligible for the death penalty. Research has found that variations in the content of the statement, such descriptions of the victims' characteristics or descriptions of the impact the crime had on the victim, affects the opinion jurors form

about the victim. The more information jurors receive about the victim and the impact of the crime, the more favorably they view the survivors of the crime. This suggests that VISs may potentially bias jurors' opinions in favor of the victim (Greene, 1999). Other research on the effects of VISs on death-penalty-eligible sentences found that altering the content of these statements, either to be more or less emotional or to include evaluations of the victims' character, does affect how often capital sentences are given (Myers & Greene, 2004; Nuñez et al., 2017). One study focused on the use of VISs within the context of a non-capital sentencing trial. However, the crime committed in this study was also murder, and the researchers analyzed the communicative benefits of these statements, rather than the effects of these statements on jurors' decisions on guilt (Szmania & Gracylany, 2006). While the aforementioned studies provide a limited understanding on how VISs influence the outcomes of capital trials, VISs can be used in any criminal trial where the victim is human (Roberts & Erez, 2004). As VISs are used when prosecuting other types of crimes, research should explore the effects these statements have on outcomes of non-capital trials.

Although VISs have been constitutional since *Payne v. Tennessee* (1991), the research so far has focused on the effects of VISs in capital trials rather than in other criminal trials where these statements can be used. A review of 36 studies on the use of VISs concluded that the studies done so far focus on capital trials and are not enough to draw conclusions about the systematic impact of VISs on all criminal proceedings in which the statements are used. The review also concluded that because the studies done

focused on the imposition of the death penalty, any results found cannot be applied to other types of criminal cases (Kunst et al., 2021). Because VISs can be used in any crime where the victim is human, the effects of the statements on sentencing and guilt ratings for other crime types needs to be explored (Kunst et al., 2021; Roberts & Erez, 2004).

Though no work has been done examining whether VISs influence decisions in non-capital trials, the evidence in capital trials suggests that other criminal trials may be susceptible to bias with VISs (Greene, 1999; Myers & Greene, 2004; Nuñez et al., 2017). Additionally, the presence of VISs can result in increased sentences for both male and female defendants in murder trials. The increase in sentencing is suggested to be due to increased ratings of deviancy and anger towards the defendant as a result of the VIS (Forsterlee et al., 2004). Because an effect of these statements on capital sentencing has been found, there is good reason to suggest the use of VISs in non-capital trials may also affect the outcomes of these trials. Defendants of different crime types are viewed differently by jurors, suggesting that information that systematically affects the perceptions of the defendants should be understood. For example, when comparing sentences given for different types of crimes in the U.S., individuals convicted of sexual assault are sentenced to more years on average than individuals convicted of physical assault (U.S. Sentencing Commission). Also, defendants of sexual assault are seen as more culpable by jurors, especially if the victim is consistently emotional in their retelling of the assault throughout the reporting process and trial (Wiener et al., 2006). While a retelling of an assault is not the same as a VIS, these statements (which typically

contain the retelling of the crime and its effects) for sexual assault cases may have more of an impact on sentencing than other types of cases. Because VISs may result in an increase in anger towards the defendant, and because different crimes are judged differently by jurors, exploration as to the effect of VISs on non-capital trials is warranted.

Emotionality

Since the guidelines and regulations of VISs vary by state, the emotional content of these statements also varies (Myers et al. 2018). For example, in states such as Texas, where a victim submits a form to the court, the VIS is unlikely to be highly emotional. This form provides questions to be answered as a guide rather than allowing the victim full autonomy in the content of the VIS (Texas Department of Criminal Justice, Victim Services Division, 2021). In other states, VISs are not restricted to a form and allow the victim full autonomy in the construction of the impact statement, including whatever emotional, physical, or psychological damage the victim feels is necessary to present to the court (California Department of Corrections and Rehabilitation, 2022). While the ruling in *Payne v. Tennessee* (1991) provided federal protection for the inclusion of VISs in criminal proceedings, the content, construction, and delivery of VISs are largely left to states. Therefore, considerable variability exists among states in how emotion is presented in the VIS.

In addition to the variability in emotional content of VISs, the effect the emotional content of VISs actually has on the outcomes of trials is unclear (Kunst et al., 2021;

Shuster & Propen, 2010). For example, a review of judges' opinions on VISs found that judges considered the information presented in VISs as either irrelevant or too emotional (Cassel, 2009; Shuster & Propen, 2010). Impact statements that are “too angry” or “full of too much grief” are dissuading judges, as the statements are viewed as too prejudicial and disrespectful of the fairness of the trial (Shuster & Propen, 2010). While these are the opinions of legal experts, variations of VISs are potentially unconstitutional if more emotional VISs are affecting the impartialness of jurors and, consequently, the fairness of criminal trials. The opinions of legal experts are warranted as studies have found that emotionally charged testimony makes it difficult for jurors to remain unbiased when making decisions (Matsuo & Itoh, 2016; Myers et al., 2002). While VISs are different from testimonies, they are oftentimes emotionally charged and could also be increasing juror bias. Therefore, systematic examination of the impact on decisions of guilt and sentencing of different emotional content in VISs is warranted.

Supporting the idea that VISs can affect emotional processing, research has shown that the presence of VISs in capital trials increases negative emotions in participants and increases sentencing length and guilty verdicts (Boppre et al., 2014). Further, research has shown that in a capital trial, mock jurors who viewed a video-taped VIS had more feelings of anger, hostility, and vengeance, and were more likely to impose the death penalty than mock jurors who viewed no VIS (Paternoster & Deise, 2011). In addition, Myers and Greene (2004) found that mock jurors were more likely to impose a death sentence when the language depicting the defendant was dehumanizing. These

studies, along with others, focused more specifically on the effect of anger on the outcomes of capital trials (Myers & Greene, 2004; Nuñez et al., 2017; Paternoster & Deise, 2011). However, since anger is not the only emotion that can be portrayed in a VIS, more emotional language may affect the outcomes of trials, regardless of the type of emotion being portrayed.

Previous studies support the *Bosse v. Oklahoma* (2016) ruling that VISs should not include language which attacks the characteristics of the defendant, as this language can be biasing to jurors. However, this ruling also upheld that, as stated in *Payne v Tennessee* (1991), VISs can outline the emotional impact of the crime. Therefore, VIS may still contain highly emotional statements that may impact juror bias, which is possibly producing biased judgments and unfair trials.

Sentencing Recommendation

While the *Payne v. Tennessee* (1991) decision made VISs protected by federal law, the decision provided two overarching limitations. First, VISs should not cause an increase in sentencing length so great that the sentence itself violates the 8th Amendment, which provides protection from cruel and unusual punishments. The second limitation is the VIS should not impact the outcome of the trial by biasing the jurors and causing them to make judgements based off extra-legal factors. Biasing the jurors for or against the defendant violates the 6th Amendment which provides individuals the right to a trial by an impartial jury (Blume, 2003). Additionally, *Bosse v. Oklahoma* (2016) stated that the inclusion of a sentencing recommendation in a VIS is unconstitutional. However, even

without the inclusion of a sentencing recommendation, previous studies have found that the use of VISs themselves affects the outcomes of trials (Greene, 1999; Myers & Arbuthnot, 1999; Myers & Greene, 2004; Nunez et al., 2017). For example, one study found jurors who received impact statements and determined the defendant was guilty recommended significantly longer sentences and more death penalty verdicts compared to jurors who did not receive an impact statement (Myers & Arbuthnot, 1999). With previous studies finding that the presence alone of a VIS affects sentencing judgements, research into how the variations of VISs may be differently affecting these judgements is necessary.

Although *Bosse v. Oklahoma* (2016) ruled that sentencing recommendations within VISs are unconstitutional, some states, specifically Oklahoma, Minnesota, Kansas, and Alabama, had previously allowed recommendations within VISs (Blume, 2003; Minnesota Office of Justice Programs, 2008). In addition, there is importance in providing research support in drawing a strong conclusion with respect to inclusion of sentencing recommendations in VISs. One explanation as to how including sentencing recommendation within the VIS could affect actual sentencing is by producing an anchoring effect on jurors. Anchoring occurs when judgments and decisions are influenced by information that provides a starting point, or “anchor,” from which the deliberations of the judgment or decision begins, even when the anchor is unrelated to the decision being made (Tversky & Kahneman, 1974). For example, in a study on judges’ decisions, one group of judges read a scenario where the prosecutor demanded 34

months. Another group of judges read the same scenario, except the prosecutor demanded two months. The study found that the judges who were exposed to the demand of 34 months decided on a significantly higher sentence than the judges exposed to the demand of two months (Englich & Mussweiler, 2001). Additionally, a meta-analysis on anchoring within legal contexts found that the presence of numeric anchors within legal contexts does exist, although the effect of the anchor is dependent on the legal relevance of the anchor. For example, the meta-analysis found that if an irrelevant numerical value was provided before a sentence was determined, there was less of an effect on the sentence although a significant effect was still present. Conversely, if relevant numerical value was provided before sentencing, such as a recommended sentence length for that crime, judges would “anchor” their sentence to that number (Bystranowski et al, 2021). Because anchoring has been shown to take place in legal context and otherwise, VISs which include a sentence recommendation within their statement may produce an anchoring effect. This effect of anchoring provides further support as to why sentencing recommendations are no longer allowed in VISs (*Bosse v. Oklahoma*, 2016).

Decisions influenced by extra-legal factors is problematic, as during criminal trials, jurors are specifically instructed on how to make their decision about a case. Before the trial, jurors are told the issues of the case, relevant laws, and the standard of proof that should be used to make their decision (American Bar Association [ABA], Division for public education, 2019). Jurors are also instructed as to what is and is not evidence, and ultimately told to make their decision based on the law and evidence

provided during trial. In federal criminal trials, jurors are specifically instructed not to make decisions based on their own biases, attitudes, sympathies, or other emotions (Ninth Circuit Jury Instructions Committee, 2022). The lack of a universal standard for VISs allows for much variation in content, resulting in jury decisions potentially being made on variations of extra-legal factors rather than on facts and evidence (Cassel, 2009; Myers et al., 2018). If these decisions are being made on extra-legal elements, the decisions themselves are violating a defendant's 6th Amendment right to a fair trial.

The Current Study

Since the Supreme Court ruled that VISs are protected by federal law, whether or not VISs are a biasing extralegal factor has been under debate (Cassel, 2009; Myers et al., 2018; Shuster & Proppen, 2010). The degree to which factors vary in VISs, such as emotionality, sentencing, and the nature of the crime have all been included in the debate. However, research examining the effects of emotionality on judgements of guilt and sentencing has thus far been inconclusive (Boppre et al., 2014; Myers & Greene, 2004; Nuñez et al., 2017; Paternoster & Deise, 2011). In addition, guidelines provided by both the states and federal government show that emotionality is not the only way that the content of VISs differs among states (California Department of Corrections and Rehabilitation, 2022; Minnesota Department of Justice Programs, 2008; U.S. Department of Justice, 2020). Other content variations such as changing the type of crime the statement is given for are also possibly biasing outcomes in criminal trials. As a result of these content variations, a defendant's constitutional right to a fair trial by an impartial jury may be being violated. Additionally, if VISs are leading to longer, unfair sentences, the use of these statements violates an individual's 8th Amendment right. To provide clarity as to the influence of VISs, the current research will examine if manipulating the emotional content, crime type, and including a sentencing recommendation within a VIS can affect the impartialness of jurors.

The current study will present VISs to participants that vary in emotionality, in the presence of a suggested sentence as an anchor, and in crime type. Since previous research has found that greater emotionality affects judgement, we expect to find VISs with higher emotionality will produce higher judgment of guilt and suggested sentencing. However, previous studies that did not find a significant difference in the number of guilty verdicts produced with the inclusion of a VIS used a dichotomous measure of guilt (guilty or not guilty). Because of this, this study will also include a continuous measure of guilt ratings. This will allow for greater sensitivity in finding an effect of emotionality on guilt ratings. Further, since most studies have looked at VISs in capital trials, the inclusion of less-severe criminal cases is warranted, since VISs are allowable in these criminal cases. Based on previous research, we expect to find the use of VISs in sexual assault cases will produce higher sentences than in physical assault cases. Finally, we expect that allowing VISs to suggest sentences will provide an anchor for mock jurors, thereby increasing suggested sentencing when the anchor is greater.

Method

Design

The experimental design for this study is a 3 (sentencing recommendation anchor-none vs. low vs. high) X 2 (emotionality-less vs. more) X 2 (crime type-sexual assault vs. physical assault) between-groups factorial design. This design creates 12 conditions, meaning 12 vignettes are needed to satisfy each condition. Participants will each receive one vignette.

Participants

The original sample for this study ($N = 411$) was recruited from the undergraduate research pool at Stephen F. Austin State University and online social media platforms. Of that sample, 143 participants were excluded for not completing any part of the study. These participants logged in to the study but did not continue to the data collection section, therefore, they did not provide any useable data. Additionally, four participants did not consent to the study. One participant was not over 18 years old. Four participants did not give a guilt decision. Two participants had completion times that were five and seven standard deviations above the average. Within-without analysis showed no effect of excluding them, so these participants were not included in the data analysis. The exclusion of these responses left a total of 257 participants in the sample. Of these 257 participants, 90 were recruited from SONA systems and 167 were recruited from social media. A majority of the participants were White ($N = 175$; 68.1%) and female ($N =$

183; 71.2%). Of the participants, 32 (12.5%) had a master's degree or higher, 64 (24.9%) had a bachelor's degree, 140 (54.5%) had a high school degree, one (.4%) only completed middle school, and 20 (7.9%) preferred not to answer. The age of participants ranged from 18 to 86 years old ($M = 27.26$, $SD = 13.77$) with a majority of participants being in the 18-to-23-year range (60.3%). Participants recruited from the research pool at Stephen F. Austin State University received one research credit after completing the study. Participants recruited from social media did not receive compensation.

Materials

The design of the study calls for 12 vignettes to satisfy all conditions. As this was a completely between-participants design, each participant read one vignette. Each vignette consisted of instructions, a preamble, and a victim impact statement (See Appendix A for an example of a full vignette). The instructions asked participants to use the VIS when providing a judgement, as the statement provides important insight on the impact the crime has had on the victim (Appendix B). The instructions were modeled after instructions given in court when the VIS is used, as well as instructions given to the victim when creating the VIS (Blume, 2003; California Department of Corrections and Rehabilitation, 2022; Texas Department of Criminal Justice, Victim Services Division, 2021; U.S. Department of Justice, 2020).

The preamble for the vignettes was the same across conditions, other than the crime type described (sexual assault or physical assault). The preamble provided a description of the crime without giving enough evidence to prove the defendant's guilt

(Appendix C). This was done by only providing limited evidence that would not be sufficient to determine guilt in a criminal trial such as an eyewitness description and unclear camera footage. The preamble was modeled from descriptions of cases provided by Oyez in order to be easily understood by all participants (<https://www.oyez.org>). Oyez is a law project originating from Cornell's legal information institute, Justia, and the Chicago-Kent College of Law. The project provides case overviews that are meant for easy consumption and understanding by using language such as "defendant" rather than "perpetrator" and giving specific evidence such as the content of the alibi. The language and descriptions given by this website were used within the preamble when describing the elements of the case.

The VISs were created with the goal of making the statement versatile enough to use in all conditions and externally valid enough to be able to apply actual court proceedings (Appendix D). The VIS was created by taking six VIS used in sexual assault cases and six impact statements in physical assault cases and identifying common themes and phrases. Common themes and phrases were identified by counting phrases that occurred in multiple VISs in both sexual assault and physical assault cases. For example, the phrase "The attack has resulted in a lifetime of pain," was counted six times; two times in physical assault statements and four times in sexual assault statements. The Texas Department of Justice's "dos and don'ts of VISs" and the U.S. Department of Justice's guidelines for creating VISs were also examined. These guidelines tell creators of VISs what areas to focus on and what not to include in their statements. For example,

the Texas dos and don'ts suggest focusing on financial strains of therapy and not using profanity or obscene language in the VIS. The guidelines, themes, and phrases were then used to construct the standard VIS to be used across conditions.

Emotionality Manipulation

Within each condition, words within the statement were altered to make the statement more or less emotional. The words used to manipulate the emotionality of the VISs were decided upon based on valence and arousal ratings in the Affective Norms of English Words (ANEW) scale (Bradley & Lang, 1999). The ANEW provides ratings for the Valence, Arousal, and Dominance of words. The valence ratings range from one to nine, with higher ratings being more positive and lower ratings being more negative. The arousal ratings range from one to nine, with lower ratings being less arousing and higher ratings being more arousing. The dominance ratings range from one to nine, with higher ratings meaning higher dominance (Bradley & Lang, 1999).

There are 18-word pairs within the VISs that were changed for each condition (Appendix E). The words pairs were created by using synonyms of the emotional words included in the VISs and using the synonyms with the highest and lowest possible arousal ratings using the ANEW. The valence ratings of all word pairs within the VISs were on the lower end of the scale ($M = 2.43$, $SD = .63$). This means all word pairs are rated as having a negative valence. Each word within the word pair was rated as having higher or lower arousal ratings. The words with higher arousal ratings were included in the more emotional condition ($M = 6.33$, $SD = .84$) and the words with lower arousal ratings were

included in the less emotional condition ($M = 5.26$, $SD = .75$).

Crime Type Manipulation

Within each VIS, the crime type described was also manipulated. The crime committed was either described as sexual assault or physical assault depending on the condition. The crime type was stated five times within the VIS. Crime type was also manipulated in the preamble so that the description of the crime matches the VIS. The crime type was stated one time within the preamble.

Anchor Manipulation

The VIS included three levels of sentencing recommendations within the statement. The three levels were no recommendation, a recommendation of 10 years, or a recommendation of 1000 years. If the VIS included an anchor, a sentence was added to the VIS to either recommend a low number of years in prison (10 years) or a high number of years in prison (1000 years).

Guilt Measure

After reading the vignette participants were asked to decide the guilt of the defendant. The participants were first asked, “Based on what you read, is the defendant guilty or not guilty?” Participants then selected either guilty or not guilty. Participants were asked to also give a guilt rating using a sliding scale. The scale ranged from 0-100, with higher numbers indicating participants rate the defendant as having a higher likelihood of guilt. The question read, “Based on what you read, how likely is it that the defendant is guilty?” These questions provided both a dichotomous and a continuous

measure for guilt.

Sentencing

After providing a guilt rating, participants were then asked to provide a sentencing recommendation. Participants were asked, “Based on what you read, what sentence would you recommend for this crime?” Participants were presented with a sliding scale ranging from 0 to 100 years and recommended a sentence within that range.

Demographics

At the end of the study demographic information was collected. Participants were asked their age, sex, ethnicity, race, parent’s education level, and their own education level.

Procedure

Participants were recruited via social media and also through SONA Systems, an online recruitment program for undergraduates at Stephen F. Austin State University. Participants were directed to Qualtrics, an online program for developing and delivering surveys, where they consented to participate in the study. Participants were randomly assigned to one of 12 vignettes. Participants first received the same set of instructions on how to complete the study. Participants then read through the preamble that matched the assigned vignette. Participants then read one of 12 VISs (Appendix D). Following the statements vignettes, participants were asked if the defendant is guilty or not guilty and how likely it is that the defendant is guilty using the sliding scale. Finally, participants gave a recommended sentence length using the sliding scale. Participants read a

debriefing message which explained the purpose of this study and outlined participant resources and supports that are available to them. Finally, if participants were recruited through SONA Systems, they were granted credit for participating.

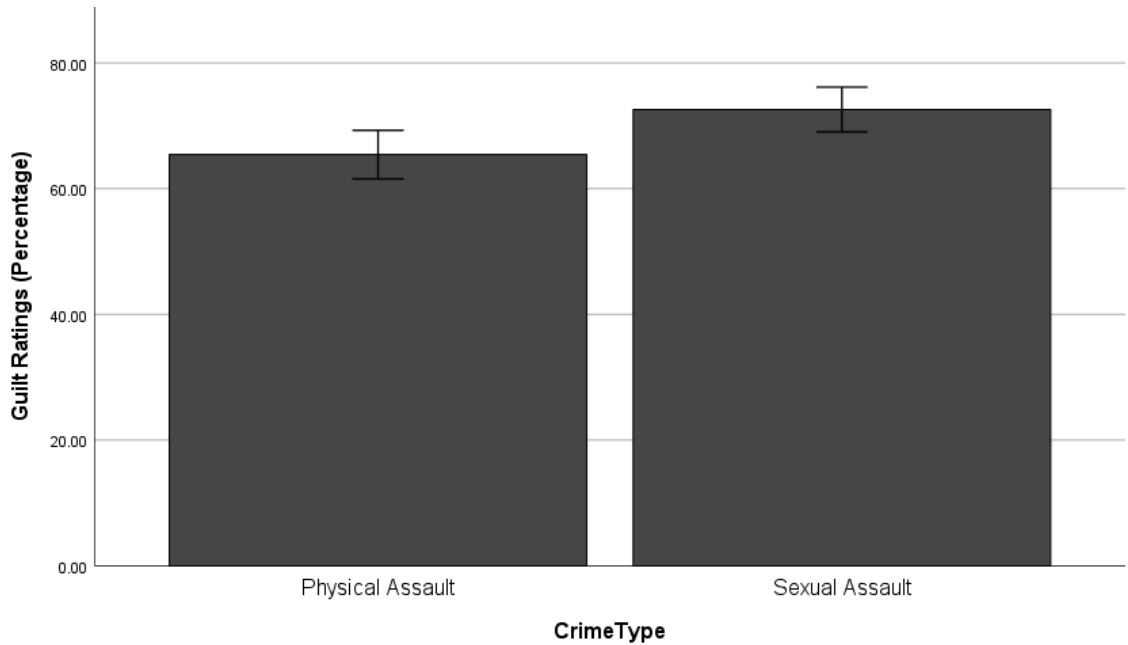
Results

Guilt Ratings

First, a MANOVA was run examining the effects of emotionality, anchor, and crime type on the dichotomous and continuous measures of guilt. Box's test of equality of covariance was not significant ($p > .05$). Cook's distance indicated no case with excessive influence. There was a significant effect of crime type on guilt measures, $F(2, 244) = 4.633, p < .05$, Pillai's Trace = .037, partial $\eta^2 = .037$. Participants who read the VIS for sexual assault gave higher guilt ratings ($M = 72.58, SD = 20.43$) than participants who read the VIS for physical assault ($M = 65.41, SD = 22.05$).

Figure 1

Mean Guilt Ratings Based on Crime Type



Note. Mean guilt ratings as a percentage and standard deviations based on crime type.

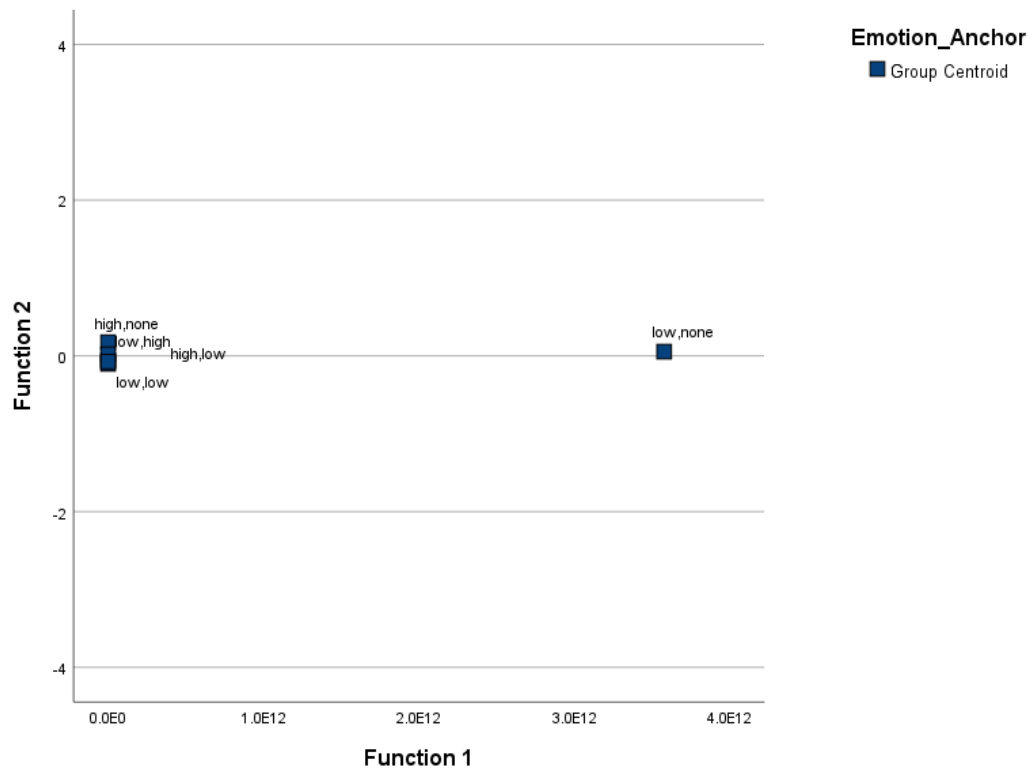
Error bars (95% CI) indicated +/- range of one standard deviation.

There was also a significant interaction between emotionality and anchor on guilt measures, $F(4, 490) = 2.795, p < .05$, Pillai's Trace = .045, partial $\eta^2 = .022$. This was followed with discriminant function analysis, which revealed two discriminant functions. The first explained 84.7% of the variance, canonical $R^2 = .05$ whereas the second explained only 15.3% of the variance, canonical $R^2 = .01$. The correlations between outcomes and the discriminant functions revealed that percentage of guilt likelihood loaded highly on function 1 ($r = .53$) and function 2 ($r = .89$), whereas guilt decision loaded more highly on function 2 ($r = .95$). The discriminant function plot showed that

the first function, which discriminated groups based on guilt percentage rather than guilt decision, differentiated the groups. Participants which viewed the VIS lower on emotionality and with no anchor gave lower guilt ratings ($M = 65.62$, $SD = 21.00$) than participants which viewed any other VIS ($M = 69.55$, $SD = 21.58$).

Figure 2

Discriminant Function Analysis



Note. Guilt likeliness loaded on function 1 ($r = .53$) which explained 84.7% of the variance and function 2 ($r = .89$). Guilt decision loaded mainly on function 2 ($r = .95$) which explained 15.3% of the variance. Function 1, which discriminated groups based on guilt percentage rather than guilt decision, differentiated the groups.

Sentencing

Emotionality

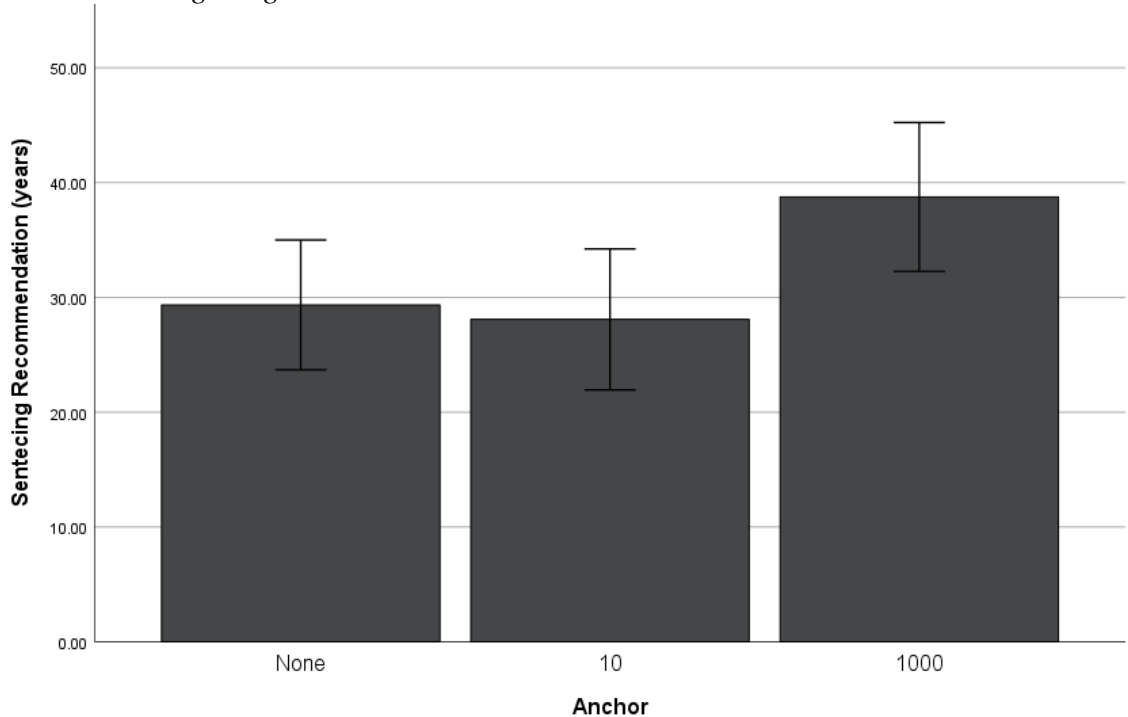
Second, a factorial ANOVA was conducted to examine the differences between levels of emotionality, sentencing anchor, and crime type on suggested sentencing length. The results of this study did not support the hypothesis that emotionality would have a main effect on sentencing length. There was no significant difference found in sentencing length $F(1, 255) = .005, p > .05$, when participants read either the more ($M = 32.37, SD = 29.11$) or less emotional VIS ($M = 32.24, SD = 28.76$).

Anchor

The results of the factorial ANOVA supported the hypothesis that there would be a main effect of anchor on sentencing length. Levene's test indicated a violation of homogeneity of variances, $p < .05$, therefore Welch's F was used. There was a significant main effect of the anchor on the sentencing length, $F(2, 168.28) = 3.349, p < .05$. Post hoc comparisons using the Tukey LSD test showed that participants given the highest anchor of 1000 years provided longer sentencing lengths ($M = 38.75$ years, $SD = 31.11$ years) than participants given the anchor of 10 years ($M = 28.08, SD = 28.47$) and participants given no anchor ($M = 29.35, SD = 25.57$).

Figure 3

Mean Sentencing Length Based on Anchor



Note. Mean sentencing length in years and standard deviations based on anchor provided in the VIS. Error bars (95% CI) indicated +/- range of one standard deviation.

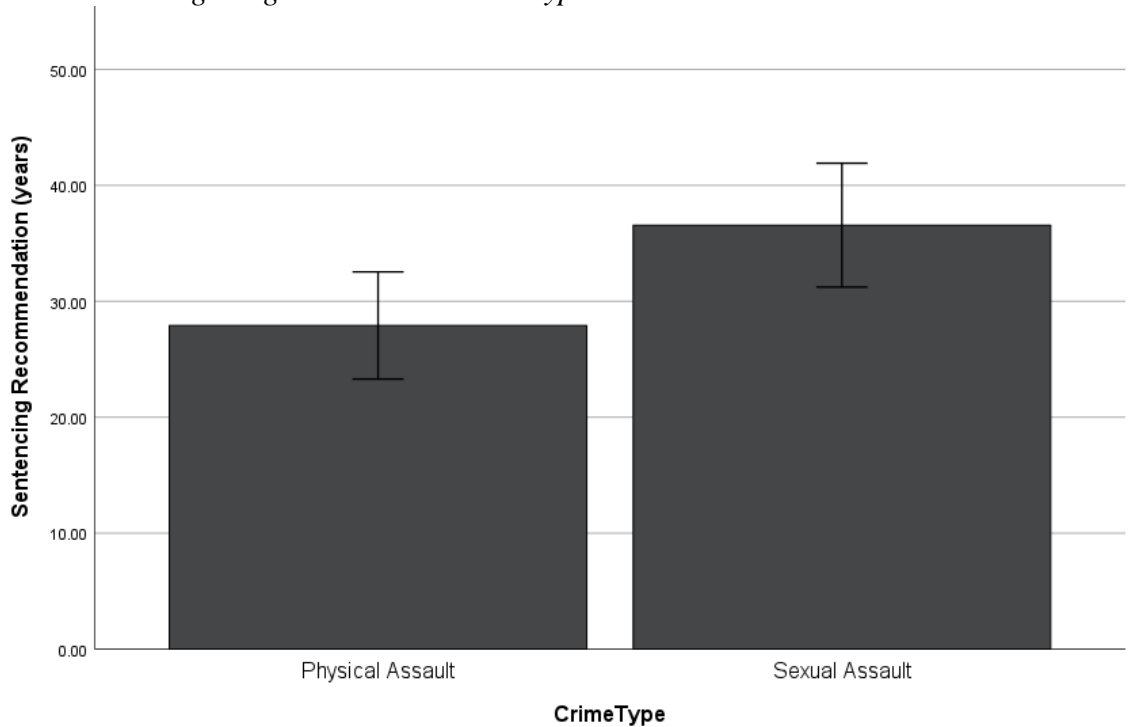
Crime Type

Additionally, the results of the factorial ANOVA supported the hypothesis that there would be a main effect of crime type on sentencing length. Levene's test indicated a violation of homogeneity of variances, $p < .05$. therefore, Welch's F was used. There was a significant main effect of crime type on sentencing length, $F(1, 250.11) = 5.881, p < .05$. Participants who read the VIS for sexual assault gave significantly longer sentences ($M = 36.57, SD = 30.64$) than those who read the VIS for physical assault ($M = 27.91, SD$

= 26.41).

Figure 4

Mean Sentencing Length Based on Crime Type



Note. Mean sentencing length in years and standard deviations based on crime type. Error bars (95% CI) indicated +/- range of one standard deviation.

Exploratory Analysis

Previous research has found that female mock jurors are more likely to render a guilty verdict in sexual assault cases than male jurors (Golding et al., 2007; Schutte & Hosch, 1997). Additionally, female jurors are more confident that male defendants are guilty than female defendants for sexual abuse crimes (Quas et al., 2002). Because we measured both guilt decision and guilt likeliness, exploratory analysis was performed to

see if the effects of gender could be seen in our study.

An independent samples *t*-test was run to examine the difference between males and females on guilt likeliness. A significant relationship between gender on guilt likeliness was found, $t(101.44) = -3.21, p < .001$, with females giving higher guilt ratings ($M = 72.32, SD = 24.64$) than males ($M = 61.74, SD = 24.63$). A second independent samples *t*-test was run to examine the difference between gender and sentencing length. A significant difference between gender on sentencing length was found, $t(151.87) = -3.57, p < .001$, with females giving longer sentencing recommendations ($M = 35.82, SD = 29.88$) than males ($M = 22.96, SD = 23.77$). Additionally, a chi-square test was run to assess the relationship between gender and guilty verdict. The relationship between these variables was significant $X^2(2, N = 257) = 17.91, p < .001$, with females more likely to render a guilty verdict than males. These findings support previous research which have found gender differences in guilt decisions, guilt confidence, and sentencing lengths (Golding et al., 2007; Schutte & Hosch, 1997; Quas et al., 2002).

Discussion

Overall, results of this study found that mock jurors increase their suggested sentence when reading a VIS with a high sentence recommendation. This suggests that, previously, when sentencing recommendations were included within VISs in some states, jurors may have been anchoring to the sentencing recommendation included in a VIS rather than suggesting a sentence based on facts and evidence. Therefore, our results provide empirical for *Bosse v. Oklahoma* (2016) which states that sentencing recommendations within VISs are unconstitutional. In addition, results show that when participants read a VIS for a sexual assault case, they gave higher guilt ratings and longer sentences than they would have after reading a physical assault VIS. This implies that different guidelines may be needed for the implementation of VISs in different types of criminal trials. Furthermore, the current study found an interaction between emotionality and sentencing recommendation on guilt measures. Participants who read a VIS with lower emotionality and no anchor gave lower guilt ratings than participants who read a VIS with higher emotionality and an anchor present. These results suggests that the presence of extra-legal evidence in a VIS affects the decisions of jurors.

Guilt Measures

Crime Type

The results of the current study found that participants who read sexual assault VISs gave significantly higher combined guilt measures than participants who read the

physical assault VIS. These results support previous studies that have shown mock jurors see defendants of sexual assault as more culpable than defendants of other types of crimes, and that jurors may already hold a bias against defendants of sexual assault (Weiner et al., 2006). Although crime type did affect guilt measures, one limitation of our study was that we did not include a condition with no VIS. Since VISs are federally protected and are present in all types of criminal trials, the current study looked into variations. In order to see if VISs increase juror bias in criminal cases, future studies may want to include a condition with no VIS in order to consider if the VIS itself causes an increase in bias, or if jurors already hold a bias against defendants of sexual assault. However, the goal of the current study was to focus on the effect of variations and how the lack of universal guidelines may be impacting trial outcomes, therefore each condition included a variation of a VIS.

Emotionality and Anchor

Although no main effect of emotionality was found in the current study, the interaction between the emotionality and the anchor suggests that emotionality is still an influential factor when jurors are judging guiltiness. Our analysis showed that in the absence of extra-legal factors in the VIS, specifically in the low emotionality and no sentencing anchor condition, participants provided lower guilt ratings than all other groups. This differentiation may be explained by the hot-cold empathy gap, which is a cognitive bias that explains that people's decision-making is "state-dependent" or more dependent on their emotional state than they realize (Loewenstein, 2005). When VISs are

used, jurors who read a VIS with low emotionality and no anchor may be in a “cold state” and may be able to discount the statement as not being actual evidence. However, when emotionality is increased or an anchor is present, jurors may be in a “hot-state” and more influenced by the content of the VIS rather than facts and evidence. Regardless of how jurors are processing the content of the VIS, these findings suggest that the inclusion of extra-legal elements in a VIS is potentially problematic. Jurors are specifically instructed to use only facts and evidence presented during the trial when making their decisions. Making decisions due to extra-legal factors rather than evidence violates jury instructions and a defendant's 6th Amendment right to a fair trial, therefore guidelines may be necessary to limit the emotionality and the inclusion of an anchor in a VIS.

Sentencing

Emotionality

While there was an interaction between anchoring and emotionality on guilt ratings, a main effect of emotionality was not found. This may have been due to the small difference in arousal between the more and less emotional stimuli. The more emotional VIS was only a single point greater in arousal than the less emotional VIS. The small difference between the more and less emotional statements may explain why there was no significant effect of emotionality on sentencing length or guilt likelihood. In future, a survey question may be included asking participants the strength of emotion they felt after reading the VIS. This would reveal if the emotionality manipulation was successful or if there was no difference in emotionality between VISs.

Additionally, previous studies have found that angry VISs influence juror bias whereas sad VISs do not (Nuñez et al., 2017). An additional survey item asking participants which emotion they felt could be included in future. This would allow us to know what type of emotion was being felt, and how that specific emotion may affect juror's decisions. The type of emotion jurors experience may also relate to the hot-cold empathy gap (Loewenstein, 2005). For example, sadness may be a cold emotion and could allow jurors to make more rational decisions, whereas anger may induce a hot state causing jurors to make different decisions. If, in the current study, participants were feeling sadness, the hot-cold empathy gap could explain why that specific emotion did not affect participants' decisions. Overall, future studies can include survey items about the type and strength of emotion caused by the VIS in order to better understand the influence of emotionality on juror decisions.

Anchor

While no main effect of emotionality was found, the current study did find a main effect of anchoring on sentencing length. Participants who read VISs containing the highest anchor of 1000 years gave significantly longer sentences than participants who read either the VIS containing the anchor of 10 years or the VIS containing no anchor. The anchoring effect has shown to influence decisions made in many situations, including decisions in the legal system made by legal professionals (Bystranowski et al., 2021; Englich & Mussweiler, 2001; Tversky & Kahneman, 1974). The sentencing recommendation provided in a VIS is extra-legal evidence, and therefore should not

affect the judgments in criminal trials. However, as supported by these results, when a sentencing recommendation was allowed in a VIS jurors were potentially making judgements based on that anchor rather than facts and evidence. These results provide an explanation as to how including a sentencing recommendation effects jurors' decisions. These results also support *Bosse v. Oklahoma* (2016), which has ruled that sentencing recommendations within VISs are unconstitutional as they are in violation of a defendant's 8th Amendment right.

Crime Type

The present study also found that participants who read the VIS for sexual assault gave significantly longer sentences than participants who read the physical assault VIS. Individuals convicted of sexual assault are given longer sentences on average than those who are convicted of physical assault (Wiener et al., 2006; Kaeble, 2018; U.S. Sentencing Commission). Because the results of our study reflect the outcomes of criminal trials, our results are potentially more applicable to these types of trials.

Future Directions

In order to better replicate the emotionality of VISs, future studies could look to present these statements in different formats and structures. Previous studies have manipulated the emotions of a VIS by having the statement read in person and having the reader display different emotions (Nuñez et al., 2017). Future studies could have the VIS read in different emotions and use the ANEW scale used in this study to manipulate the actual content to be more or less emotional. Manipulating both the content and display of

emotion may better replicate the intensity of emotions experienced by jurors in actual criminal trials. Emotionality could also be altered by using different formats for the creation of the VIS. For example, a VIS created using the form required by Texas would likely be very low in emotionality, while a VIS from a different state which allows more autonomous control would likely be much higher in emotionality (California Department of Corrections and Rehabilitation, 2022; Texas Department of Criminal Justice, Victim Services Division, 2021). Using different state's guidelines to create different VISs could potentially show the problems with each specific standard, rather than with emotionality as a whole.

In addition, future studies could also include other stages of the trial process such as the presentation of evidence and deliberation. In a majority of states, VISs are presented at the end of the trial, often after a guilty verdict has been passed (Blume, 2003). The current study did find that altering the content (specifically including an anchor) of the VIS affected sentencing length. Future studies could ask mock jurors to deliberate or confirm guilt beforehand and present stronger evidence to see how the VIS interacts with evidence presented during other stages of the trial. This may also increase the effect of the emotionality of the VIS by more accurately replicating a trial atmosphere. Because the effect of variations was seen in the current study, by more accurately replicating criminal trial procedures, the results would have more external validity and potentially provide more detailed insight into what VIS guidelines are needed to protect the fairness of criminal trials.

Conclusion

The results of the current study show that the variations of VISs resulting from the lack of universal guidelines is potentially problematic for the fairness of the criminal justice system. Although VISs are federally protected, the different guidelines among different states are allowing the use of VISs that may be differentially affecting juror bias. The current study found that the use of VISs in sexual assault cases increases both sentencing length and guilt judgements given by jurors. Previous research suggests defendants of sexual abuse crimes are seen as more deviant and culpable by jurors, so VISs may potentially increase those feelings when used in sexual abuse cases (Wiener et al., 2016). Though our study could not directly address the problem of different crimes and the influence of VISs, our results offer intriguing avenues for future studies. Additionally, including a high sentencing recommendation was found to increase the recommendation given by mock jurors. This suggests that when a sentencing recommendation is included, jurors may anchor their decisions on this extra-legal suggestion rather than evidence provided. The inclusion of a sentencing recommendation is unconstitutional according to *Bosse v. Oklahoma* (2016), and these results provide possible explanation and empirical support as to how recommendations within VISs violate an individual's 8th Amendment right. Overall, VISs are federally protected and integral in upholding victims' rights to participate in trials. However, the results of this study show that the variations produced by the lack of guidelines for the creation and implementation of VISs are potentially problematic for the fairness of the legal system

and the rights of the defendant. Therefore, efforts should be made to establish universal guidelines not only across capital trials but across all types of criminal trials.

References

- American Bar Association. (2019). *How courts work*. ABA.
https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/juryinstruct/
- Blume, J. H. (2003). Ten years of Payne: Victim impact evidence in capital cases. *Cornell Law Review*, 88(2), 257-281.
- Booth v. Maryland, 482 U.S. 496 (1987).
- Boppre, B., & Miller, M. K. (2014). How victim and execution impact statements affect mock jurors' perceptions, emotions, and verdicts. *Victims & Offenders*, 9(4), 413–435. <https://doi.org/10.1080/15564886.2013.845124>
- Bosse v. Oklahoma, 580 U.S. 1 (2016).
- Bradley, M. M., & Lang, P. J. (1999). *Affective norms for English words (ANEW): Instruction manual and affective ratings* (Technical Report C-1). The Center for Research in Psychophysiology, University of Florida.
- Bystranowski, P., Janik, B., Próchnicki, M., & Skórska, P. (2021). Anchoring effect in legal decision-making: A meta-analysis. *Law and Human Behavior*, 45(1), 1–23. <https://doi.org/10.1037/lhb0000438>
- California Department of Corrections and Rehabilitation. (2022). *A guide for writing victim impact statements*. <https://www.cdcr.ca.gov/victim-services/a-guide-for-writing-victim-impact-statements/>
- Cassell, P. G. (2009). In defense of victim impact statements. *Ohio State Journal of Criminal Law*, 6(2), 611-648.
- Englich, B., & Mussweiler, T. (2001). Sentencing under uncertainty: Anchoring effects in the courtroom. *Journal of Applied Social Psychology*, 31(7), 1535-1551.
- Forsterlee, L., Fox, G. B., Forsterlee, R., & Ho, R. (2004). The effects of a victim impact statement and gender on juror information processing in a criminal trial: Does the punishment fit the crime? *Australian Psychologist*, 39(1), 57-67. <https://doi.org/10.1080/00050060410001660353>

- Georges, L. C., Wiener, R. L., & Keller, S. R. (2013). The angry juror: Sentencing decisions in first-degree murder. *Applied Cognitive Psychology*, 27(2), 156-166. <https://doi.org/10.1002/acp.2880>
- Golding, J. M., Bradshaw, G. S., Dunlap, E. E., & Hodell, E. C. (2007). The impact of mock jury gender composition on deliberations and conviction rates in a child sexual assault trial. *Child Maltreatment*, 12(2), 182-190. <https://doi.org/10.1177/1077559506298995>
- Greene, E. (1999). The many guises of victim impact evidence and effects on jurors' judgments. *Psychology, Crime & Law*, 5(4), 331-348.
- Kunst, M., de Groot, G., Meester, J., & van Doorn, J. (2021). The impact of victim impact statements on legal decisions in criminal proceedings: A systematic review of the literature across jurisdictions and decision types. *Aggression and Violent Behavior*, 56.
- Loewenstein, G. (2005). Hot-cold empathy gaps and medical decision making. *Health Psychology*, 24(4S), S49. <https://doi.org/10.1037/0278-6133.24.4.S49>
- Matsuo, K., & Itoh, Y. (2016). Effects of emotional testimony and gruesome photographs on mock jurors' decisions and negative emotions. *Psychiatry, Psychology and Law*, 23(1), 85-101.
- Minnesota Office of Justice Programs. (2008). *Victim Impact Statements*. <https://dps.mn.gov/divisions/ojp/forms-documents/Documents/Victim%20Impact%20Statement%20-%20English.pdf>
- Myers, B. & Arbuthnot, J. (1999). The effects of victim impact evidence on the verdicts and sentencing judgments of mock jurors. *Journal of Offender Rehabilitation*, 29(3-4), 95-112. https://doi.org/10.1300/J076v29n03_05
- Myers, B. & Greene, E. (2004). The prejudicial nature of victim impact statements: implications for capital sentencing policy. *Psychology, Public Policy, and Law*, 10 (4), 492-515. <https://doi.org/10.1037/1076-8971.10.4.492>
- Myers, B., Lynn, S. J., & Arbuthnot, J. (2002). Victim impact evidence and juror judgments: The effects of harm information and witness demeanor. *Journal of Applied Social Psychology*, 32, 2393-2412. <https://doi.org/10.1111/j.15591816.2002.tb011896.x>

- Myers, B., Nuñez, N., Wilkowski, B., Kehn, A., & Dunn, K. (2018). The heterogeneity of victim impact statements: A content analysis of capital trial sentencing penalty phase transcripts. *Psychology, Public Policy, and Law*, 24(4), 474–488. <https://doi.org/10.1037/law0000185>
- Ninth Circuit Jury Instructions Committee. (2022). *Manual of model civil jury instructions for the district courts of the Ninth Circuit*. <https://www.ce9.uscourts.gov/jury-instructions/model-civil>
- Nuñez, N., Myers, B., Wilkowski, B. M., & Schweitzer, K. (2017). The impact of angry versus sad victim impact statements on mock jurors' sentencing decisions in a capital trial. *Criminal Justice and Behavior*, 44(6), 862–886. <https://doi.org/10.1177/0093854816689809>
- Nuñez, N., Schweitzer, K., Chai, C. A., & Myers, B. (2015). Negative emotions felt during trial: The effect of fear, anger, and sadness on juror decision making. *Applied Cognitive Psychology*, 29(2), 200–209. <https://doi.org/10.1002/acp.3094>
- Paternoster, R., & Deise, J. (2011). A heavy thumb on the scale: The effect of victim impact evidence on capital decision making. *Criminology: An Interdisciplinary Journal*, 49(1), 129–161. <https://doi.org/10.1111/j.1745-9125.2010.00220.x>
- Payne v. Tennessee, 401 U.S. 808 (1991).
- Pemberton, A., & Reynaers, S. (2011). The controversial nature of victim participation: Therapeutic benefits in victim impact statements. In E. Erez, M. Kilchlinh, & J. J. M. Wemmers (Eds.), *Therapeutic jurisprudence and victim participation in justice: International perspectives* (pp. 229–248). Carolina Academic Publishing. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1745923
- Quas, J. A., Bottoms, B. L., Haegerich, T. M., & Nysse-Carris, K. L. (2002). Effects of victim, defendant, and juror gender on decisions in child sexual assault cases. *Journal of Applied Social Psychology*, 32(10), 1993–2021. <https://doi.org/10.1111/j.1559-1816.2002.tb02061.x>
- Roberts, J. V., & Erez, E. (2004). Communication in sentencing: Exploring the expressive function of victim impact statements. *International Review of Victimology*, 10(3), 223–244. <https://doi.org/10.1177/026975800401000302>
- Schuster, M. L., & Proppen, A. (2010). Degrees of emotion: Judicial responses to victim impact statements. *Law, Culture and the Humanities*, 6(1), 75–104. <https://doi.org/10.1177/1743872109349104>

- Schutte, J. W., & Hosch, H. M. (1997). Gender differences in sexual assault verdicts: A meta-analysis. *Journal of Social Behavior and Personality*, 12(3), 761.
- Szmania, S. J., & Gracyalny, M. L. (2006). Addressing the court, the offender, and the community: A communication analysis of victim impact statements in a non-capital sentencing hearing. *International Review of Victimology*, 13(3), 231-249. <https://doi.org/10.1177/026975800601300301>.
- Texas Department of Criminal Justice. Victim Services Division. (2021). *It's your voice; Information regarding the victim impact statement*. https://www.tdcj.texas.gov/publications/victim_impact_statement.html
- Tversky, A., & Kahneman, D. (1974). Judgment under uncertainty: Heuristics and biases. *Science*, 185(4157), 1124–1131. <http://www.jstor.org/stable/1738360>
- U.S. Department of Justice. Victim Notification Program. (2020). *Victim Impact Statements*. <https://www.justice.gov/criminal-vns/victim-impact-statements#:~:text=Victim%20impact%20statements%20describe%20the,either%20written%20or%20oral%20statements>.
- U.S. Sentencing Commission. (2021) *Sourcebook of federal sentencing statistics*. <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2021/Table15.pdf>
- Wiener, R. L., Arnot, L., Winter, R., & Redmond, B. (2006). Generic prejudice in the law: Sexual assault and homicide. *Basic and Applied Social Psychology*, 28(2), 145–155. https://doi.org/10.1207/s15324834basp2802_4

Appendix A

Full Stimulus Example

Instructions

You are going to read a description of a crime obtained from a police report. After reading the description, you will read a victim impact statement which is a description of the impact of the crime. This statement was created and presented by the victim to the court. Use the victim impact statement when giving a judgement, as the statement provides a better understanding of the impact of the crime.

Stimulus #3: Physical Assault, higher emotionality, low sentencing recommendation:

On October 24, 2021, around 12:00 a.m., the victim was physically assaulted in a side-street by her apartment. A security camera about 100 feet away caught footage of a figure who looked similar to the defendant fleeing the scene at approximately 12:10 a.m. An eyewitness at the scene gave a description that matches the defendant. The defendant has provided a weak alibi and claimed to be home alone during the time of the crime.

The following is a victim impact statement given by the victim.

On the day of the **brutal** physical assault, my life was **destroyed**. The night I was physically assaulted has left me with a lifetime of therapy, hard work, and **pain**. I've had to, and will continue to have to, **crush** my savings to get as close to my old normal as possible. I can't convey, in full detail, how **broken** this has left me.

The physical assault was a decision. A choice was made to **agonize** me not only in that moment, but for the rest of my life. Every day I'm **overwhelmed** with emotions. I'm **stressed** that it will happen again. I am **embarrassed** that it happened at all. I am **angry** that you have gotten away with it for this long. But most of all, I am **miserable**. I am **miserable** because this hasn't only **injured** me but also how my friends and family see me. It looms over me to know that this can never be undone – I will never not be the victim of a **violent** physical assault. I will forever live as a statistic because of this crime. I am not okay and I never will be.

I **despise** you and what you have done to my life. The sentence you receive is **outrageous** in comparison to what you deserve. I hope you get 10 years, but even then, it won't be enough. You physically assaulted me. You have **mutilated** my identity in a way that I can never undo. Because of you, I will always be **terrified** to walk alone at night.

Appendix B

Instructions

You are going to read a description of a crime obtained from a police report. After reading the description, you will read a victim impact statement which is a description of the impact of the crime. This statement was created and presented by the victim to the court. Use the victim impact statement when giving a judgement, as the statement provides a better understanding of the impact of the crime.

Appendix C

Preambles

Physical Assault Condition

On October 24, 2021, around 12:00 a.m., the victim was physically assaulted in a side-street by her apartment. A security camera about 100 feet away caught footage of a figure who looked similar to the defendant fleeing the scene at approximately 12:10 a.m. An eyewitness at the scene gave a description that matches the defendant. The defendant has provided a weak alibi and claimed to be home alone during the time of the crime.

Sexual Assault Condition

On October 24, 2021, around 12:00 a.m., the victim was sexually assaulted in a side-street by her apartment. A security camera about 100 feet away caught footage of a figure who looked similar to the defendant fleeing the scene at approximately 12:10 a.m. An eyewitness at the scene gave a description that matches the defendant. The defendant has provided a weak alibi and claimed to be home alone during the time of the crime.

Appendix D

Victim Impact Statements

Stimulus #1: Physical assault, higher emotionality, no sentencing recommendation:

On the day of the **brutal** physical assault, my life was **destroyed**. The night I was physically assaulted has left me with a lifetime of therapy, hard work, and **pain**. I've had to, and will continue to have to, **crush** my savings to get as close to my old normal as possible. I can't convey, in full detail, how **broken** this has left me.

The physical assault was a decision. A choice was made to **agonize** me not only in that moment, but for the rest of my life. Every day I'm **overwhelmed** with emotions. I'm **stressed** that it will happen again. I am **embarrassed** that it happened at all. I am **angry** that you have gotten away with it for this long. But most of all, I am **miserable**. I am **miserable** because this hasn't only **injured** me but also how my friends and family see me. It looms over me to know that this can never be undone – I will never not be the victim of a **violent** physical assault. I will forever live as a statistic because of this crime. I am not okay and I never will be.

I **despise** you and what you have done to my life. The sentence you receive is **outrageous** in comparison to what you deserve. You physically assaulted me. You have **mutilated** my identity in a way that I can never undo. Because of you, I will always be **terrified** to walk alone at night.

Stimulus #2: Physical assault, higher emotionality, low sentencing recommendation:

On the day of the **brutal** physical assault, my life was **destroyed**. The night I was physically assaulted has left me with a lifetime of therapy, hard work, and **pain**. I've had to, and will continue to have to, **crush** my savings to get as close to my old normal as possible. I can't convey, in full detail, how **broken** this has left me.

The physical assault was a decision. A choice was made to **agonize** me not only in that moment, but for the rest of my life. Every day I'm **overwhelmed** with emotions. I'm **stressed** that it will happen again. I am **embarrassed** that it happened at all. I am **angry** that you have gotten away with it for this long. But most of all, I am **miserable**. I am **miserable** because this hasn't only **injured** me but also how my friends and family see me. It looms over me to know that this can never be undone – I will never not be the

victim of a **violent** physical assault. I will forever live as a statistic because of this crime. I am not okay and I never will be.

I **despise** you and what you have done to my life. The sentence you receive is **outrageous** in comparison to what you deserve. I hope you get 10 years, but even then, it won't be enough. You physically assaulted me. You have **mutilated** my identity in a way that I can never undo. Because of you, I will always be **terrified** to walk alone at night.

Stimulus #3: Physical assault, higher emotionality, high sentencing recommendation:

On the day of the **brutal** physical assault, my life was **destroyed**. The night I was physically assaulted has left me with a lifetime of therapy, hard work, and **pain**. I've had to, and will continue to have to, **crush** my savings to get as close to my old normal as possible. I can't convey, in full detail, how **broken** this has left me.

The physical assault was a decision. A choice was made to **agonize** me not only in that moment, but for the rest of my life. Every day I'm **overwhelmed** with emotions. I'm **stressed** that it will happen again. I am **embarrassed** that it happened at all. I am **angry** that you have gotten away with it for this long. But most of all, I am **miserable**. I am **miserable** because this hasn't only **injured** me but also how my friends and family see me. It looms over me to know that this can never be undone – I will never not be the victim of a **violent** physical assault. I will forever live as a statistic because of this crime. I am not okay and I never will be.

I **despise** you and what you have done to my life. The sentence you receive is **outrageous** in comparison to what you deserve. I hope you get 1000 years, but even then, it won't be enough. You physically assaulted me. You have **mutilated** my identity in a way that I can never undo. Because of you, I will always be **terrified** to walk alone at night.

Stimulus #4: Physical assault, lower emotionality, no sentencing recommendation:

On the day of the **cruel** physical assault, my life was **damaged**. The night I was physically assaulted has left me with a lifetime of therapy, hard work, and **discomfort**. I've had to, and will continue to have to, **waste** my savings to get as close to my old normal as possible. I can't convey, in full detail, how **defeated** this has left me.

The physical assault was a decision. A choice was made to **hurt** me not only in that moment, but for the rest of my life. Every day I'm **crushed** with emotions. I'm **troubled** that it will happen again. I am **frustrated** that it happened at all. I am **upset** that you have gotten away with it for this long. But most of all, I am **gloomy**. I am **gloomy** because this hasn't only **damaged** me but also how my friends and family see me. It looms over me to know that this can never be undone – I will never not be the victim of a **cruel** physical assault. I will forever live as a statistic because of this crime. I am not okay and I never will be.

I **resent** you and what you have done to my life. The sentence you receive is **insulting** in comparison to what you deserve. You physically assaulted me. You have **broken** my identity in a way that I can never undo. Because of you, I will always be **afraid** to walk alone at night.

Stimulus #5: Physical assault, lower emotionality, low sentencing recommendation:

On the day of the **cruel** physical assault, my life was **damaged**. The night I was physically assaulted has left me with a lifetime of therapy, hard work, and **discomfort**. I've had to, and will continue to have to, **waste** my savings to get as close to my old normal as possible. I can't convey, in full detail, how **defeated** this has left me.

The physical assault was a decision. A choice was made to **hurt** me not only in that moment, but for the rest of my life. Every day I'm **crushed** with emotions. I'm **troubled** that it will happen again. I am **frustrated** that it happened at all. I am **upset** that you have gotten away with it for this long. But most of all, I am **gloomy**. I am **gloomy** because this hasn't only **damaged** me but also how my friends and family see me. It looms over me to know that this can never be undone – I will never not be the victim of a **cruel** physical assault. I will forever live as a statistic because of this crime. I am not okay and I never will be.

I **resent** you and what you have done to my life. The sentence you receive is **insulting** in comparison to what you deserve. I hope you get 10 years, but even then, it won't be enough. You physically assaulted me. You have **broken** my identity in a way that I can never undo. Because of you, I will always be **afraid** to walk alone at night.

Stimulus #6: Physical assault, lower emotionality, high sentencing recommendation:

On the day of the **cruel** physical assault, my life was **damaged**. The night I was physically assaulted has left me with a lifetime of therapy, hard work, and **discomfort**.

I've had to, and will continue to have to, **waste** my savings to get as close to my old normal as possible. I can't convey, in full detail, how **defeated** this has left me.

The physical assault was a decision. A choice was made to **hurt** me not only in that moment, but for the rest of my life. Every day I'm **crushed** with emotions. I'm **troubled** that it will happen again. I am **frustrated** that it happened at all. I am **upset** that you have gotten away with it for this long. But most of all, I am **gloomy**. I am **gloomy** because this hasn't only **damaged** me but also how my friends and family see me. It looms over me to know that this can never be undone – I will never not be the victim of a **cruel** physical assault. I will forever live as a statistic because of this crime. I am not okay and I never will be.

I **resent** you and what you have done to my life. The sentence you receive is **insulting** in comparison to what you deserve. I hope you get 1000 years, but even then, it won't be enough. You physically assaulted me. You have **broken** my identity in a way that I can never undo. Because of you, I will always be **afraid** to walk alone at night.

Stimulus #7: Sexual assault, higher emotionality, no sentencing recommendation:

On the day of the **brutal** sexual assault, my life was **destroyed**. The night I was sexually assaulted has left me with a lifetime of therapy, hard work, and **pain**. I've had to, and will continue to have to, **crush** my savings to get as close to my old normal as possible. I can't convey, in full detail, how **broken** this has left me.

The sexual assault was a decision. A choice was made to **agonize** me not only in that moment, but for the rest of my life. Every day I'm **overwhelmed** with emotions. I'm **stressed** that it will happen again. I am **embarrassed** that it happened at all. I am **angry** that you have gotten away with it for this long. But most of all, I am **miserable**. I am **miserable** because this hasn't only **injured** me but also how my friends and family see me. It looms over me to know that this can never be undone – I will never not be the victim of a **violent** sexual assault. I will forever live as a statistic because of this crime. I am not okay and I never will be.

I **despise** you and what you have done to my life. The sentence you receive is **outrageous** in comparison to what you deserve. You sexually assaulted me. You have **mutilated** my identity in a way that I can never undo. Because of you, I will always be **terrified** to walk alone at night.

Stimulus #8: Sexual assault, higher emotionality, low sentencing recommendation:

On the day of the **brutal** sexual assault, my life was **destroyed**. The night I was sexually assaulted has left me with a lifetime of therapy, hard work, and **pain**. I've had to, and will continue to have to, **crush** my savings to get as close to my old normal as possible. I can't convey, in full detail, how **broken** this has left me.

The sexual assault was a decision. A choice was made to **agonize** me not only in that moment, but for the rest of my life. Every day I'm **overwhelmed** with emotions. I'm **stressed** that it will happen again. I am **embarrassed** that it happened at all. I am **angry** that you have gotten away with it for this long. But most of all, I am **miserable**. I am **miserable** because this hasn't only **injured** me but also how my friends and family see me. It looms over me to know that this can never be undone – I will never not be the victim of a **violent** sexual assault. I will forever live as a statistic because of this crime. I am not okay and I never will be.

I **despise** you and what you have done to my life. The sentence you receive is **outrageous** in comparison to what you deserve. I hope you get 10 years, but even then, it won't be enough. You sexually assaulted me. You have **mutilated** my identity in a way that I can never undo. Because of you, I will always be **terrified** to walk alone at night.

Stimulus #9: Sexual assault, higher emotionality, high sentencing recommendation:

On the day of the **brutal** sexual assault, my life was **destroyed**. The night I was sexually assaulted has left me with a lifetime of therapy, hard work, and **pain**. I've had to, and will continue to have to, **crush** my savings to get as close to my old normal as possible. I can't convey, in full detail, how **broken** this has left me.

The sexual assault was a decision. A choice was made to **agonize** me not only in that moment, but for the rest of my life. Every day I'm **overwhelmed** with emotions. I'm **stressed** that it will happen again. I am **embarrassed** that it happened at all. I am **angry** that you have gotten away with it for this long. But most of all, I am **miserable**. I am **miserable** because this hasn't only **injured** me but also how my friends and family see me. It looms over me to know that this can never be undone – I will never not be the victim of a **violent** sexual assault. I will forever live as a statistic because of this crime. I am not okay and I never will be.

I **despise** you and what you have done to my life. The sentence you receive is **outrageous** in comparison to what you deserve. I hope you get 1000 years, but even then, it won't be enough. You sexually assaulted me. You have **mutilated** my identity in a way that I can never undo. Because of you, I will always be **terrified** to walk alone at night.

Stimulus #10: Sexual assault, lower emotionality, no sentencing recommendation:

On the day of the **cruel** sexual assault, my life was **damaged**. The night I was sexually assaulted has left me with a lifetime of therapy, hard work, and **discomfort**. I've had to, and will continue to have to, **waste** my savings to get as close to my old normal as possible. I can't convey, in full detail, how **defeated** this has left me.

The sexual assault was a decision. A choice was made to **hurt** me not only in that moment, but for the rest of my life. Every day I'm **crushed** with emotions. I'm **troubled** that it will happen again. I am **frustrated** that it happened at all. I am **upset** that you have gotten away with it for this long. But most of all, I am **gloomy**. I am **gloomy** because this hasn't only **damaged** me but also how my friends and family see me. It looms over me to know that this can never be undone – I will never not be the victim of a **cruel** sexual assault. I will forever live as a statistic because of this crime. I am not okay and I never will be.

I **resent** you and what you have done to my life. The sentence you receive is **insulting** in comparison to what you deserve. You sexually assaulted me. You have **broken** my identity in a way that I can never undo. Because of you, I will always be **afraid** to walk alone at night.

Stimulus #11: Sexual assault, lower emotionality, low sentencing recommendation:

On the day of the **cruel** sexual assault, my life was **damaged**. The night I was sexually assaulted has left me with a lifetime of therapy, hard work, and **discomfort**. I've had to, and will continue to have to, **waste** my savings to get as close to my old normal as possible. I can't convey, in full detail, how **defeated** this has left me.

The sexual assault was a decision. A choice was made to **hurt** me not only in that moment, but for the rest of my life. Every day I'm **crushed** with emotions. I'm **troubled** that it will happen again. I am **frustrated** that it happened at all. I am **upset** that you have gotten away with it for this long. But most of all, I am **gloomy**. I am **gloomy** because this hasn't only **damaged** me but also how my friends and family see me. It looms over me to know that this can never be undone – I will never not be the victim of a **cruel** sexual assault. I will forever live as a statistic because of this crime. I am not okay and I never will be.

I **resent** you and what you have done to my life. The sentence you receive is **insulting** in comparison to what you deserve. I hope you get 10 years, but even then, it won't be enough. You sexually assaulted me. You have **broken** my identity in a way that I can never undo. Because of you, I will always be **afraid** to walk alone at night.

Stimulus #12: Sexual assault, lower emotionality, high sentencing recommendation:

On the day of the **cruel** sexual assault, my life was **damaged**. The night I was sexually assaulted has left me with a lifetime of therapy, hard work, and **discomfort**. I've had to, and will continue to have to, **waste** my savings to get as close to my old normal as possible. I can't convey, in full detail, how **defeated** this has left me.

The sexual assault was a decision. A choice was made to **hurt** me not only in that moment, but for the rest of my life. Every day I'm **crushed** with emotions. I'm **troubled** that it will happen again. I am **frustrated** that it happened at all. I am **upset** that you have gotten away with it for this long. But most of all, I am **gloomy**. I am **gloomy** because this hasn't only **damaged** me but also how my friends and family see me. It looms over me to know that this can never be undone – I will never not be the victim of a **cruel** sexual assault. I will forever live as a statistic because of this crime. I am not okay and I never will be.

I **resent** you and what you have done to my life. The sentence you receive is **insulting** in comparison to what you deserve. I hope you get 1000 years, but even then, it won't be enough. You sexually assaulted me. You have **broken** my identity in a way that I can never undo. Because of you, I will always be **afraid** to walk alone at night.

Appendix E

Word pairs

Low	Valence Mean Rating (SD)	Arousal Mean Rating (SD)	High	Valence Mean Rating (SD)	Arousal Mean Rating (SD)
Cruel	V=1.97(1.67)	A=5.68(2.65)	Brutal	V=2.80(1.90)	A=6.60(2.36)
Damaged	V=3.05(1.65)	A=5.57(2.26)	Destroyed	V=2.64(2.03)	A=6.84(2.38)
Discomfort	V=2.19(1.23)	A=4.17(2.44)	Pain	V=2.13(1.81)	A=6.5(2.49)
Waste	V=2.93(1.76)	A=4.14(2.3)	Crush	V=2.21(1.74)	A=5.52(2.87)
Defeated	V=2.34(1.66)	A=5.09(3.00)	Broken	V=3.05(1.92)	A=5.43(2.42)
Hurt	V=1.9(1.26)	A=5.85(2.49)	Agonize	V=2.43(2.17)	A=6.06(2.67)
Crushed	V=2.21(1.74)	A=5.52(2.87)	Overwhelmed	V=4.19(2.61)	A=7.00(2.37)
Troubled	V=2.17(1.12)	A=5.94(2.36)	Stressed	V=2.09(1.42)	A=7.45(2.38)
Frustrated	V=2.48(1.64)	A=5.61(2.67)	Embarrassed	V=3.03(1.85)	A=5.87(2.55)
Upset	V=2.00(1.18)	A=5.86(2.4)	Angry	V=2.85(1.70)	A=7.17(2.07)
Gloomy	V=1.88(1.23)	A=4=3.83(2.33)	Miserable	V=1.93(1.60)	A=5.17(2.69)
Gloomy	V=1.61(.95)	A=4.13(2.38)	Miserable	V=1.83(1.42)	A=4.72(2.95)
Damaged	V=3.05(1.65)	A=5.43(2.26)	Injured	V=1.85(1.76)	A=5.81(2.06)
Cruel	V=1.97(1.67)	A=5.68(2.65)	Violent	V=1.48(1.78)	A=7.26(2.47)
Resent	V=3.76(1.90)	A=4.47(2.12)	Despise	V=2.00(1.38)	A=6.52(2.43)
Insulting	V=3.00(1.33)	A=5.37(2.46)	Outrageous	V=3.52(2.12)	A=6.83(2.26)
Broken	V=3.05(1.92)	A=5.43(2.42)	Mutilated	V=1.82(1.45)	A=6.41(2.94)
Afraid	V=2.42(1.28)	A=6.67(2.54)	Terrified	V=1.8(1.14)	A=7.3(2.27)
AVERAGE	2.43(.59)	5.26(.75)	AVERAGE	2.44(.74)	6.33(.84)

VITA

After completing her work at Pacifica High School in Garden Grove, California in 2017, Emily Sutton went on to study at Southwestern College in Winfield Kansas. She received a Bachelor of Arts Degree in Psychology from Southwestern College in 2020, graduating *summa cum laude*. In August 2021, she went on to study at the Graduate School of Stephen F. Austin State University, and received the degree of Master of Arts in Psychology in 2023. During her two years of graduate school, Emily was employed as a graduate assistant for the Department of Psychology.

Permanent Address: 5341 Santa Gertrudes Ave
Garden Grove, CA 92845

Publication Manual of the American Psychological Association (Seventh Edition)

This thesis was typed by Emily Sabra Sutton.