

Using Guidelines to Better Shape Rape Victims' Impact Statements: Toward Increased Rape Victim Ownership and Inclusion within the New Jersey Criminal Justice Process

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ABSTRACT. *Rape victims share their stories and life changing reactions to the sexual violence perpetrated upon them by offenders at sentencing. For many victims, this is one part of the process that they can control. These women, like any victim of a violent act, struggle to be included and to have a voice in a complex system that overshadows them. It is through the victim impact statement that rape victims are given the opportunity to exert control, over a process that uses them, for an end result: the conviction or plea arrangement. This article seeks to highlight this problem within the criminal justice system and to call for more research with this proposed research plan.*

KEYWORDS. *rape victims, impact statements, guidelines, control*

I. INTRODUCTION

Rape victims, in particular, tend to experience frustration with the criminal justice system in New Jersey due, in part to the nature of the crime itself. Rape is a crime of extreme anger, resulting in a lasting loss of control, by the victim. Many victims experience increased fear and uncertainty along with a life altering pain that persists long after the physical bruising heals. This research asks: To what extent do New Jersey criminal procedural rules exist that hinder the rape victim who tries to create a unique and personal victim impact statement. It is posited that rape victim impact statements are adversely influenced by the state's cumbersome rules and strict standards. The state appears to have created stringent guidelines, in order to lessen the degree of retribution, within its criminal justice system. And, as a result, the victim impact statement is less satisfactory and cathartic, for the victim, and the guidelines need to be re-examined and changed.

II. LITERATURE REVIEW

Researchers suggested that we may be defined by our traditional and communal responses to societal harms (Achilles, 2006). Therefore, societies are influenced by the sufferings that it will emphasize and choose not to ignore (Acker, 2006). And our criminal justice system provides for a system of redress as wrongdoers stand trial and the guilty are punished. The state prosecutes and works with the victim to ensure swift justice. Victims may become marginalized in the system as they are forced to give up some ownership of the process so the state can bring about resolution by way of trial and ultimately prosecution (Brink, 2009).

Study One: On Victim Impact Statements

There have been three major studies conducted about the impact of violence on victims and the necessity for victims to make impact statements for the sentencing hearings. First, Ashworth (2009) conducted a qualitative study and the average length of time between the crime and the interview was one year. The study had fifty participants and was weakened by a marked lack of racial and ethnic diversity. One strength to be noted was that it featured many open ended questions that were designed to get the participants talking. They began with questions that were not threatening. Another major strength of this study was its follow up of victims eight years later, when it asked them if they would now write the same victim impact statement, as they had previously written, when the crime first happened (Ashworth, 2009). The results showed that the victims would have written the same victim impact statement eight years later (Ashworth, 2009).

The findings also indicated that some family members were panelists on victim impact panels as well. And many of them had to stop their participation because it made them uneasy or exhausted. The study appeared to be up to date but it was not clear who funded the research. The study was limited in scope to fifty people who wrote victim impact statements or served as victim impact panelists. At times, some of the responses were unclear and it was not always easy to tell whether the subjects were relaying information from their lives or from their participation on victim impact panels.

Study Two: Victim Impact & Effects From Participation

Second, another qualitative study looked at the effects of these other forms of participation on victims since were reliving horrific events that involved acute bouts of suffering coupled with physical injuries. Burns (2006) reports that this type of recount by victims may have negative consequences. The prolific involvement of victims in the criminal justice system can add to the problems that were already mounting. It was found that victims were hard to deal with when they were disappointed with the criminal justice system (Burns, 2006). The close proximity to the process intensified the failings of the system and many victims clearly were not satisfied with the system. The study concluded that victims were helped when the focus was shifted away from the criminal justice system and moved toward individual care giving for victims (Burns, 2006). The victims were searching for healing and felt that they would never achieve some form of closure (Burns, 2006). One major strength of this research was its ability to build upon the prior study as criminologists gained greater insight into how a victim felt in order to help him or her even more. A criticism of the study was that it placed too much emphasis on feelings and emotion without ensuring that logical steps were taken to record the participant's responses and for researchers to remain objective. It often seemed that researchers had lost their objectivity after hearing the horrific stories that were laid bare by the victims who recalled many details, even years later. There were not procedures in place to root out inconsistencies in any stories and each participant was taken as credible and honest without too much due diligence.

Study Three: Not Calling for the Death Penalty

Third, an older study reflected on the family members and their feelings toward the death penalty for a loved ones killer. Cushing and Welch (1999) conducted an extensive study that provided victims with an opportunity to speak about the death penalty along with other issues. Over half of the family members from the study felt that there were not enough victims' rights when compared to defendants' rights but they were not in favor of the death penalty as retribution in its ultimate form (Cushing & Welch, 1999). One weakness of this research was that it seemed to politicize the grief process far too much. And the study was being used to call for the end of the death penalty since it was presented during a human rights conference. The study jumps into the whole notion of restorative justice as a proper and efficient means for handling victimization as communities become more involved to help speed healing.

Future Modeling

Future research projects will likely be modeled on the notion of restorative justice as a way to provide meaningful mediation between victim and perpetrator. The research appears to be moving in this direction toward the examination of victim offender mediation programs and their impact on victims and perpetrators. These encounters tend to be highly regulated interactions and victims and offenders speak and answer questions in order to help the healing process and further understanding somehow. One main purpose of victim offender mediation is also to help make offenders more accountable for their actions. Researchers will be interested to observe and to measure the emotional impact on victims and offenders that stems from these highly charged meetings. It will prove to be interesting to see whether these forms of mediation would impact the victim impact statement.

III. METHODS

This article calls for more research in this area. The proposed methodology for this research would likely employ a qualitative approach as the researcher could interview the ten victims on two occasions for fifteen minutes in a particular county within New Jersey. The purpose of the interviews will be to determine how the guidelines for writing the statements enhance or hinder the victim's full participation in this cathartic process. This research plan would prove to be the best method to develop a story about the victims' experiences from the first interview. While, the second interview gives the victims or rather those study participants, the chance to clarify details about their own stories and provide some feedback to the interviewer/researcher that will lead to an improvement in the guidelines. The interviews should provide some emerging and expected themes which include: how the interviewees/victims struggled to create their own personal victim impact statements because of the strict guidelines. It is hoped that this methodology using in-depth interviews will produce a sense of control over and participation in the legal process. This proposed study and the purpose for the interviews would be to ascertain how the guidelines shape and hamper their victim impact statements. Historically, past fruitful studies were already conducted based on how social workers would portray victims to the world. Those studies, in general, focused on which information was included or left out and how that reflected or failed to reflect the victim's true feelings. Past researchers have suggested that future studies were needed in this key area. It may prove useful to design a research plan in order to examine this process using victims' own emotions and feelings as elicited from interviews. And based on those studies, it will be important, in any future study to ask what kind of interest do officials have in developing guidelines for writing victim impact statements that truly reflects victims' experiences in order to empower victims?

IV. PROPOSED ANALYSIS

The data sources should be gathered from interviews, transcripts, and observations. Interviews can be conducted with victims, as well as criminal justice officials, social workers, and defense attorneys. It is understood that we cannot limit the research to victims alone, since it may be hard to find victims who are willing to participate fully. Transcripts from sentencing hearings can be explored to review victim impact statements made in the county. Observations can be conducted in order to witness the delivery of an actual victim impact statement in court. The list of potential interviewees will be identified and contacted via mail. The letter will inform the party of the nature and purpose of this project. It will include a stamped postcard for the potential interviewee to return if he or she is not interested in being contacted at all. The researcher's phone number will be provided as well as other contact information to make it easy for the potential interviewee to respond. It may prove necessary to contact sixty people in order to reach the target number of interviewees.

The interviews can be coded using NVIVO 7 qualitative data analysis software. And it will allow me to organize the data sources and figure out the themes that will be used. Responses can be coded with themes such as victim role. This software allows the researcher to create a codebook of terms unique to the research. It can be easier to identify the interviewee using the code assigned that stands for either victim or defense attorney, depending on who is being interviewed. The codebook will be created to include those other sources making the software more valuable to this process.

Using three data sources should provide me with a thorough understanding of the victim impact statement and its function within the New Jersey criminal justice system.

V. LIMITATIONS

As researchers, we are limited by ethical considerations when conducting human research. This topic is emotionally charged for the victim and our research may be limited, since some prospective participants (victims) may not want to talk with us. If we cannot obtain Institutional Review Board (IRB) approval, we may have to limit the prospective participant list to peripheral observers of the criminal justice system, such as: prosecutors, judges, social workers, and possibly other family members or friends connected to the victims. The IRB will likely consider whether it is ethical to probe the victim, as participant, for information that will lead that person to re-live the events of the crime. Many prospective participants will refuse to talk about their terrible experiences, in general. These victims will likely not participate in the study at all. Alternatively, they may not follow through on all the steps required to be an active and meaningful participant. It is unethical for the researcher to coax or cajole a reluctant participant, under the circumstances. The ability to find diverse participants will be smaller since many rape victims feel shame and may be reluctant to speak. To overcome this problem, it may prove necessary to branch out and interview peripheral people connected to the legal process. These peripheral people would include: Judges, Prosecutors, Defense Attorneys, Social Workers, and members from the law enforcement community.

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