

# **Understanding Genre through the Lens of Advocacy: The Rhetorical Work of the Victim Impact Statement**

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## **Abstract**

Through interviews with judges and victim advocates, courtroom observations, and rhetorical analyses of victims' reactions to proposed sentences, the authors examine the features that judges and advocates think make victims' arguments persuasive. The authors conclude that this genre, recently imposed upon the court, functions as a mediating device through which advocates push for collective change, particularly for judicial acceptance of personal and emotional appeals. This study understands genres as responsive to changes within the activity systems in which they work and extends knowledge about genres that function as advocacy tools within internal institutional systems.

On a fall day in 2005 in Minneapolis, an 18-year-old unarmed Somali man was shot five times and died during a robbery attempt. According to the criminal complaint, when asked why he shot the victim, the shooter said, "I don't

know.” A grand jury indicted the perpetrator who pled guilty of first-degree aggravated robbery and one count of second-degree intentional murder. Seven months after the shooting, he was sentenced to 424 months in prison and ordered to pay US\$7,500 in restitution for funeral expenses.

The genesis and result of this case were not unusual. The shooter had a history of violence and was part of a street gang that had committed a series of robberies that fall. No trial took place. Instead a plea negotiation for a lesser offense was accepted and the negotiated sentence fell within the state guidelines for that lesser offense. The police arrested the shooter and filed the criminal complaint; the grand jury indicted him; the probation office did a presentencing investigation; and the prosecutor and defense attorney negotiated the plea agreement, which the district court judge accepted. What is of interest here, however, is that the victim’s mother wrote a victim impact statement (VIS), which was read during the sentencing hearing by a family friend. This 800-word VIS was read just before the agreed-upon sentence was imposed. The statement began with the mother’s reason for being absent at the hearing:

Me not being here has to do with my emotional attachment to this case not because I do not care. It is because, I do not want to know or see the faces of the people that inflicted this pain on me and my family.<sup>1</sup>

As in many such statements, the writer tried to put a face on the victim:

[The victim] was just three and the [sic] half years old when rebels captured my country in 1990. Up to the time, he entered this country, he had no childhood because children were kept indoors or traveling from one place to another for safety as the fourteen year civil [war] went on.

Then she noted the effects of the crime on herself and her family: “I have not been able to work and my grade point average as an honor student has dropped . . . My daughter is still suffering from the days she went without school.” Finally, the victim’s mother reacted to the proposed sentence:

No punishment is enough for your crime . . . I ask that after you shall have served your time, you will be a useful citizen and do not put another mother through what my family and I are going through.

A victim advocate helped the victim prepare the statement before the hearing, and the judge made no comment after the reading of the statement.

Then the sentence, which had been agreed upon by the attorneys and defendant, was imposed upon the defendant.

Through a combination of interviews with judges and victim advocates, courtroom observations, and rhetorical analyses of sample VISs and guidelines for their creation, we examine what features judges and advocates predict will make a VIS persuasive and under what conditions judges might resist or welcome this new genre that has come into their courtrooms. In doing so, we hope to add a further consideration to genre theory: how the use of such a new genre becomes a tool for advocacy, in this case one that victim advocates believe allows them to push for change at the level of the individual sentencing hearing, and subsequently, over time, at the system level to renegotiate the norms that establish authority. We begin our article by describing the context surrounding the emergence of the legislated right to give a VIS. Next, we consider how genre and activity system theories provide a foundation for our study, and then we describe the methods involved in this study. We then analyze sample and model VISs and the heuristics used to guide their writing and then analyze our interviews with judges and victim advocates, with anecdotal reference to our courtroom observations. We understand genres as reflecting the ideology or values of particular discourse communities or as playing a normalizing role as they reflect through discursive acts a community's values or ideologies (Knievel, 2008). We conclude by speculating that the VIS has the perceived power to change the system, even if there is resistance to the genre—a resistance that is seen particularly if the VIS conforms in some way to the ideology or particular values of the system.

## **Background and Context of VISs and Victim Advocacy**

The right to give a VIS and the presence of victim advocates originated within the victim rights movement of the 1960s and 1970s in the United States. This movement generated entities such as rape crisis centers, battered women's shelters, victim compensation programs, stalking statutes, and community notification laws. The idea of VISs is credited to James Rowland, chief probation officer in Fresno County, California, who believed "it was unjust that convicted offenders could use every means possible to cast themselves in a more favorable light before sentencing, while victims and their families were gagged with silence" (Mothers Against Drunk Driving [MADD], 2003, p. 2). In turn, Women's Advocates, Inc., which opened its doors in 1974 in Minnesota, was the first such shelter in the nation and, along with emergency

housing, legal information, community education, and a 24-hour crisis line, still offers victim advocacy and counseling.

These two victim rights phenomena, victim advocates and VISs, were also officially addressed on both the state and federal levels. The federal Violence Against Women Act of 1994 provided over a billion dollars to enhance the investigation and prosecution of sexual assault and domestic violence crimes perpetrated against women. In 1982, the Federal Omnibus Victim and Witness Protection Act required that VISs be considered in federal criminal cases and soon after all states began legislating the right to give a VIS in their courts. Minnesota Statute 611A.038(a), for example, passed in 1988, states that a victim has the right to submit an impact statement, either orally or in writing, at the time of sentencing or disposition. If the victim chooses, the prosecutor must orally present the statement but most often an advocate step in instead. Statements may include the following, “subject to reasonable limitations as to time and length” (determined by the judge): “(1) a summary of the harm or trauma suffered by the victim as a result of the crime; (2) a summary of the economic loss or damage suffered by the victim as a result of the crime; and (3) a victim’s reaction to the proposed sentence or disposition.” The Minnesota Office of Justice Programs, Crime Victims Justice Unit, publicizes that victims have the right to “object orally or in writing to a plea agreement” and “inform the court of the impact of the crime orally or in writing at the sentencing hearing” (Minnesota Office of Justice Programs, 2008, p. 2).

When a crime is investigated by the police, a complaint is filed with the County Attorney’s Office. A victim advocate who works for the County Attorney’s Office will usually contact the victim immediately to offer supportive services, advocacy, or referrals. Advocates are available to provide information about victim’s rights and restitution to victims of various types of crimes including child abuse, domestic violence, and sexual assault. Advocates may also provide details pertaining to the dates or outcomes of a specific case (Hennepin County Attorney’s Office, 2008).

A victim might choose to work instead with a community advocate, who represents a nonprofit organization often connected to domestic violence abuse education, support, and shelter. In either case, the victim will be interviewed by the police and the County Attorney and, if the case is brought to trial, the victim may testify and be cross-examined in open court. Over 90% of all cases, however, are settled by plea negotiation and before the judge accepts such a negotiation, he or she relies on a presentencing report for a full picture of the facts of the crime, the perpetrator’s criminal history and amenability to rehabilitation, and the victim’s experiences and responses. In the Fourth District, for example, investigation probation officers from the Adult

Field Services Division of the Department of Community Correction gather information “from client interviews, family contacts, employers, victims and criminal records and prepare a report for the Court to assist in sentencing decisions” (Department of Community Correction, 2005). In the presentencing report, the victim’s words are reported and interpreted by the probation officer and the judge balances the presentencing investigation and recommendations with the state-mandated sentencing guidelines, which specify according to the degree of the crime and the criminal history of the perpetrators what range of disposition (prison, probation, or both) and duration should be imposed to maintain objectivity and uniformity in sentencing. If a victim chooses, she can offer a VIS before the sentencing hearing and/or speak at the hearing, without cross-examination or interruption, in her own voice and directly to the judge. The VIS becomes part of the court transcript, the official record of the case. If the victim introduces new facts into the case, however, the attorneys are likely to object and start the process over; if the victim speaks directly to the defendant in a VIS, the judge will admonish her to direct her comments to the bench. Although no other formal guidelines exist for how judges must respond to a VIS, judges usually decide whether to delay the imposition of sentencing to consider the victim’s requests, incorporate these requests immediately into sentencing, reject the plea negotiation and require that the attorneys respond to the VIS in a new agreement, or simply listen to the victim and impose an agreed-upon sentence.

Many of the players in this system—the judges, the attorneys, the probation officers, and the police officers—are accorded rights and force of speech by way of their education, their official appointment, and their responsibilities given that appointment. Now, however, a victim and her advocate can step into the last phase of the processing of a case and add a very personal reaction to the process, which the other players are required to stop and hear. Such others’ uneasiness with the VIS is reflected in the Supreme Court debates about the rights to give a VIS in a capital case, where the jury decides between death and life in prison. As first the Court decided, in *Booth v. Maryland* (1987), the Eighth Amendment prohibited consideration of victim impact evidence in sentencing because such evidence created a risk that a jury might impose the death penalty in “an arbitrary and capricious manner.” Then 2 years later, in *South Carolina v. Gathers* (1989), the Court held that VIS information would be admissible if it “relate[d] directly to the circumstances of the crime.” Finally, in *Payne v. Tennessee* (1991), the Court decided that the jury, in debating punishment, could focus on the impact of the defendant’s actions. In *Payne*, a family member related how a 3-year-old boy was affected by the murder of his mother and 2-year-old sister. The Supreme Court agreed with

the Tennessee Supreme Court in *Payne* that although the grandmother's statements were "technically irrelevant," they did not "create a constitutionally unacceptable risk" in deciding upon a sentence (*Payne v. Tennessee*, 1991). Based on the debates generated over the *Payne* decision, some scholars who study the VIS have argued that the VIS has no place in the courtroom because of the disruptions caused to our system of justice; that is, these scholars feel that the delivery of the VIS may destabilize the norms and expectations that govern courtroom activities and legal decision-making. Bandes (1996), for example, argued that VISs reproduced class and race dynamics that disadvantaged defendants and allowed vengeance, rather than empathy, to determine a sentence. Other scholars say that courts are challenged by VISs because victims "rely on the conventions of everyday narratives about trouble," rather than on logical hypotheses for testing against facts (Arrigo & Williams, 2003; Conley & O'Barr, 1990, p. 56). Although these scholars question the influence of VISs on juries in capital cases, such uneasiness with VISs, as we demonstrate later, still exists in noncapital cases where judges impose sentences.

The legislated right to give a VIS then becomes, to use the definition offered by Birkland (1998), a "focusing event," or a nonpolitically neutral event that can "serve as important opportunities for politically disadvantaged groups to champion messages that have been effectively suppressed by dominant groups and advocacy coalitions" (p. 54). Again, the VIS is a genre relatively new to the legal system, but as Devitt (2004) stated, such new genres could "fulfill new functions in changing situations arising from changing cultures, at times to fill widening gaps in existing genre repertoires" (p. 93), and this change could come about through "individual actions" that "must compound to create collective change" (p. 134). But how might the *collective* action of these victims in giving VISs lead to differences in the climate and culture of the courtroom? It is very difficult to measure precisely such differences, but perceived change, among the judges and victim advocates, is possible to capture. And, how have those advocates, who prepare victims and accompany them into the courtroom, had a hand in paving the way for the rhetorical work that this new genre can do?

## **Theoretical Foundation and Assumptions**

To answer these questions, we focus on the VIS functions as a rhetorical genre that may help accomplish particular activities related to victim advocacy or the social/political function of the genre. Such activities may be related to the changing relationships between individuals and groups and the ways in which particular groups or audiences come to understand or accept the functioning of the genre. Because the VIS is a relatively new genre within the legal arena,



we feel that any understanding of genre with which we align ourselves or that we build upon must consider the possibility for change, growth, and even rupture. Berkenkotter and Huckin (1995), for example, noted that genres may simultaneously stabilize and disrupt the communities in which they function. Knievel (2008) too has noted that genres might serve to reflect and sustain the ideologies of the contexts in which they exist, while also allowing room for expansion or growth. Social and political contexts are also subject to change and subsequently genres may reflect and/or sustain those changes. The legislated right to give a VIS, for example, constitutes a policy change imposed upon an activity system given a political climate. In this way, we understand genre as aligned also with activity theory.

Activity theory may be understood as need-based and as taking place within a system in which groups of workers make use of tools or artifacts to work toward a particular goal or outcome (Spinuzzi, 1996). Moreover, these tools or artifacts do not merely help make connections between groups and the objects with which these groups might work (Spinuzzi, 2003). Rather, such artifacts, through their acts of mediation, qualitatively change the types of activities in which subjects engage (Spinuzzi, 2003). We understand the VIS to be a mediating artifact that then accomplishes meaningful advocacy work through the combined activities and interpretations of victim advocates, victims, and the court system. As Spinuzzi's view of activity theory helps describe, artifacts such as the VIS contain "the traces of an ongoing activity, represent problem solving in that activity, and thus tend to stabilize the activity in which they are used" (p. 39). As we will show, VISs trace ongoing activity through the narrative account they create of the crime that has taken place—an account that helps give the victim a voice in the court proceedings; VISs represent problem solving through the inclusion of content that advocates know to be persuasive to judges and that advocates also subjectively understand as helping victims to feel acknowledged and heard; finally, through their successful inclusion of persuasive strategies, we demonstrate that VISs have become more readily accepted by judges in sentencing hearings, thus stabilizing the idea that the VIS is a valuable genre within courtroom proceedings. As Spinuzzi (2003) also noted, genres were sometimes referred to as "tools-in-use," or understood as mediating certain activities. Thus, a genre is far more than an isolated artifact; rather, genres such as the VIS are products of specific cultural and historical contexts and activities and thus serve to reflect, perpetuate, and sustain those activities. In this way, we understand the VIS not only as a mediating artifact but ultimately as a rhetorical genre that functions within the court system.

While VISs must conform to certain policies and guidelines, each statement, we believe, also arises from the different hopes, needs, and contexts of

the victim. With the writing of each VIS then comes the potential for variation and the expectation that the VIS will be perceived or understood differently by different audiences. Knievel (2008) noted that genre change could happen at the level of an individual instantiation of a genre in a specific context. In the case of the VIS, we will suggest that victim advocates often see their job as helping to give a voice to individual victims through the instantiation and function of that genre in that moment. Victim advocates also work to shepherd through a genre imposed upon a system that initially resists the social/political function of that genre. The VIS is, in a sense, a legal product that both delineates and meets the needs of several communities (Devitt, 1991). On one hand, it is a highly personal and individualized document; on the other hand, however, it is through continued production of the VIS that victim advocates are able not only to reinforce the authority of the genre but also to define their own membership within the community as well as encourage interactions across groups.

In the case of the VIS, the relationship between the individual and the group is part of what defines the genre; the victim advocate is able to blunt the edges of this potentially dichotomous relationship by working both with the victim and within the legal system. Based on the perceptions of the advocates we interviewed, the VIS functions as a tool that may allow the victim to feel heard or acknowledged while also allowing the advocate to push for change on a systemic level.

Although the notion of “change” could then be defined either by the outcome of the sentencing hearing or through possible feelings of catharsis on the part of the victim, it also can be measured by the acceptance of the resisted genre within the system of genres or the courtroom setting in which the genres interact. In this way, genre change can happen at the level of an individual genre instantiation in an individual context, while functioning within a larger collective or community. As a genre, the VIS not only represents individual action but also creates a bridge between public policy (by public policy, in this case, we mean the imposition of the VIS upon the legal system in response to the victim rights movement) and internal institutional activity systems such as those of the sentencing hearing that happens within the courtroom. Knievel (2008) noted that to refocus an internal genre as one of public policy could serve as a catalyst for dialogue between the public and the internal activity system, thereby influencing the intentions and relationships of these groups. Relative to our study, these sorts of dialogues are most related to judges’ and advocates’ perceptions of the role of the VIS.

In this article then, we identify genre change more in terms of judges’ relative acceptance of the VIS within the sentencing hearing rather than influencing



the sentence per se. As both judges and advocates describe, the genre must contain a delicate balance of features or qualities such that its reading is considered acceptable to the court. We describe the dissonance judges' experience with the VIS and the ways in which they are perhaps more inclined to at least accept its presence in hearings if it contains the specific features that they value—features that we are able to describe based on our interviews and observations. We explore what advice advocates give to victims in writing a VIS and the outcomes that advocates perceive the VIS can accomplish. Finally, by understanding the VIS as an important genre within an activity system, we find the VIS, through the applied knowledge and understanding of the victim advocates, has come to be viewed as a credible and oftentimes persuasive rhetorical genre within courtroom proceedings.

## **Method**

### *Interviews, Rhetorical Analysis, and Observations*

To establish a foundation for these analytical tasks, we engaged in a 3-year qualitative and interpretive study of VISs, which involved interviews with judges and advocates; analysis of models, heuristics, and sample VISs; and courtroom observations.<sup>2</sup> We limited our study to two judicial districts in Minnesota: the fourth district (Hennepin County/Minneapolis) and the second district (Ramsey County/St. Paul). Our community partner in this study was WATCH, a local volunteer-based court monitoring and research organization that follows family and sexual violence cases and provides feedback to the justice system. The study presented here is part of a larger project in cooperation with WATCH, which also involved a study of the emotional expressions accepted by judges in VISs and their courtrooms in general (Schuster & Propen, in press) and a study of the challenges of making scholarly work advocacy work (Propen & Schuster, 2008). The genre analysis of VIS models, heuristics, and samples and appropriate reference to interviews and observations are unique to the part of the project described here. In the descriptions of data collection and analysis that follow, we refer to our steps in open and inductive coding.

### *Part I. Coding and Analyzing VIS Models, Heuristics, and Samples*

A supervisor of the victim advocates in one Minnesota judicial district agreed to have her team collect sample VISs for us over a 3-month period. The team collected 10 VISs, with confidential information redacted, which they thought

were representative of those they encountered in working with victims. In the meantime, we collected from eight printed or electronic sources various model VISs and heuristics designed to help generate persuasive VISs. These sources ranged from the handouts provided in both judicial districts to advice given by such organizations as MADD; we selected these sources because they were developed or recommended by the victim advocates we interviewed or mentioned in the literature on VISs. We each then developed inductively codes, or categories and subcategories of topics, from the samples, models, and heuristics. We then developed a merged list and recoded across the entire data set to create a comprehensive list of features of the VIS. The sample in Figure 1, for example, illustrates the typical features of a VIS as well as our coding categories.

We followed the same procedure of merged coding with the sample VISs and then merged and recoded all three data sets: the samples, models, and heuristics. Often the sample VISs departed from the models or heuristics, and so they greatly expanded our categories and subcategories and represented how an individual might personalize a VIS. The models and heuristics, for example, illustrated or recommended the epistolary form to organize VISs, but several of our samples used diary or journal entry organization to trace the victims' activities since the crime to the present. But again, in this qualitative and interpretive study, we created this list of features not to quantify our results, to analyze all categories that emerged, or even identify commonalities among sources but to provide the most comprehensive foundation for understanding the broader context of the judicial reactions to VISs, the work of advocates in helping victims prepare and present VISs, and the perceived possibilities that the VIS would bring change to the legal system.

## *Part II. Coding and Analyzing Judicial Interviews*

Although we were interested in what advocacy groups felt were features that made a VIS persuasive, we also wanted to capture the perceptions of judges who have no formal guidance on how to respond to VISs but are required by statute to hear them before imposing a sentence. And we wanted some sense of what the judges felt made a VIS memorable or persuasive. Although it was impossible in this qualitative and interpretive study to measure with precision how often and in what way any one judge responded to any particular VIS, the reactions and anecdotes that judges shared with us created a more complete picture of how the VIS functions as a genre within the context of the legal system, and we attempted to capture these perceptions in our data collection and analysis.

January 1, 2006  
Victim Impact Statement  
*State of Washington vs. John A. Doe*  
Grant County Cause No: 06-1-00123-4  
[*epistolary format; organized by causal analysis*]

Honorable Judge [*addresses the judge; recognizes judicial authority*],

The actions of Mr. Doe have greatly affected my life. Since he committed this crime, I have been unable to sleep at night [*lifestyles changes*]. I am constantly afraid that someone will break into my home and injure me again [*physical injuries; psychological effects; ongoing safety concerns*]. I am no longer able to trust people like I did before [*psychological effects; ability to relate to others*]. My children are also afraid [*impact on family members*]. They do not want to go out in the yard to play because they fear that Mr. Doe or someone will try to hurt them. The [sic] used to play with other children in the neighborhood, but now will not even go to the bus stop without me [*loss of innocence*].

Mr. Doe's crime has also had a deep financial impact on our family. As we do not have insurance, we have been unable to replace the items broken when he broke into our home [*financial effects*]. Although Crime Victims Compensation has been covering our medical bills, the healing process is taking a long time [*interactions with court, police, and legal system*]. I had to miss six weeks of work, using all of my sick and vacation leave [*job-related effects*]. Prior to this incident, I had rarely missed a day at work [*lifestyle changes*].

People should not be able to commit crimes like this and get away with it [*writer's motivation in writing VIS*]. The emotional and financial impact will be felt for years to come [*imaginative descriptions and speculations*]. I believe Mr. Doe needs to spend at least 5 years in prison for this crime [*recommendation of a specific sentence; speculation about perpetrator's possible rehabilitation*]. I know this is not the first time he has committed a felony, and it's time that he be held accountable for his actions [*argued on the basis of fairness; feelings about people who commit crimes*].

Very truly yours,  
Jane A. Smith

**Figure 1.** Sample VIS with coding categories identified

Source: City of Baltimore, "4 Steps to Fighting Crime" (Baltimore, 2009).

Note: The coding categories are identified in square brackets and bold italic type.

To understand the VIS within this context, we conducted 45-minute face-to-face interviews with 22 judges in the Fourth District and 6 judges in the Second District. The judges' prior relationships with WATCH made them

receptive to our requests for interviews. Although we initially invited all 61 judges in the Fourth District and all 29 judges in the Second District to participate in an interview, we believe that the higher level of participation in the Fourth District is directly attributable to the positive presence of WATCH in that district. We interviewed every judge who agreed to participate and feel that we captured a useful sampling of judicial experience and assignments. Of the 28 judges we interviewed, 60% were male and 40% female; 89% were White, 7% were African American, and 4% were Hispanic; 43% had 5 to 10 years' experience on the bench, 25% had 11 to 20 years' experience, and 32% had more than 20 years' experience; and 66% were presently assigned to criminal and civil cases, 17% to juvenile cases, 7% to civil cases only, and 7% had or were serving as chief judges (judges rotate their assignments as frequently as every 3 years).

We first transcribed the interviews, with the interview questions framing the judges' responses. Although these interview questions could have been used as starter codes, instead each of us performed open coding on the transcriptions with topics emerging unrestricted. Again, we developed a merged list and then recoded across the entire data set. At this time we did not limit the topics to the features of the VIS as genre; WATCH wanted, as did we, the analysis of the interviews to lead to a variety of reports and articles (see, for example, Schuster & Proppen, 2006) and to allow for the unexpected topic to emerge (see Appendix A for our interview questions). We then added our list of categories and subcategories from the judicial interviews to those we identified in our coding of the VIS models, heuristics, and samples. Finally, we moved specific comments from the judges into a rubric created from these categories and subcategories. At times such a comment might be as short as a single word or as long as an entire response to an interview question.

### *Part III. Coding and Analyzing Advocate Interviews*

To capture the perceptions of victim advocates, we contacted the supervisors of victim advocates in both districts and all community-based advocacy groups in the Twin Cities to invite their advocates to participate in 45-minute face-to-face interviews (see Appendix B for our interview questions). Sixteen advocates agreed to be interviewed; 9 were employed by the County Attorney's Office in either the Second or the Fourth District, and 7 worked with community-based groups, particularly those working with victims of domestic violence. The advocates we interviewed were all female; 2 were African American, the rest were White, and their experience ranged from 1 to more than 20 years on the job. We followed the same coding process we did with

the judge interviews. In particular, we added any additional categories and subcategories to the emerging list of VIS persuasive features, but we allowed topics to emerge that captured a sense of how the advocates had a hand in paving the way for the rhetorical work that the VIS might do. We then carried into our rubric of categories and subcategories quotes directly from these interviews to serve as illustrations and examples. We realize again that we are dealing with perceptions offered by our participants and have no useful means to quantify their comments, but we have followed the best coding and analysis techniques for grounded theory analysis following Glaser and Strauss (1967/2007). The categories and subcategories gleaned from our models, heuristics, and sample VISs and from our interviews appear in Table 1. Again, our purpose was not to quantify these data but to interpret the VIS in the largest possible context, and we cannot analyze in this article all the categories and subcategories that emerged. Finally, to preserve the confidentiality promised to our interviewees, we do not make finer distinctions than noting a primary source as “interviews.”

#### *Part IV. Observing Sentencing Hearings*

During the same period when we were interviewing judges and advocates, we attended 17 sentencing hearings in a variety of cases in both districts to understand the courtroom dynamics when a VIS is offered. The advocates we interviewed agreed to alert us to when they and a victim would appear in court for this purpose. We attended the first four hearings together to develop and refine an observation form and then one or the other of us attended the other 13 hearings (see Appendix C for our observation form). We observed hearings in which the perpetrators were charged with crimes ranging from identity theft to first-degree murder. Because our sample size is small, we did not code our observations but instead sparingly allude to them anecdotally when they offer insight into our analysis of the VIS samples, models, and heuristics and of our interviews.

Finally, in all aspects of this study and for a number of reasons, we did not interview victims. Although privacy issues greatly restrict scholars' access to victims and it is difficult to get a representative sample of victim volunteers, who most likely would have had a positive experience in the court system, there are studies that attempt to capture the attitudes and experiences of victims in presenting VISs. Their findings vary from victims getting little satisfaction (Bandes, 2000; Hillenbrand & Smith, 1989) to victims experiencing much satisfaction (Erez, 1999; Villmoare & Neto, 1987). There are also studies that assess the effect of VISs on mock or real juries. Greene, for example, found

**Table I.** Coding sources, categories, and subcategories

Coding Sources	Categories	Subcategories
Interviews	VIS as genre	Acceptance
		Rejection
		Legislative intent
		Historical context
	Sentencing guidelines	Role of universal standards
	Roles of victim advocates	Guide for the victim
		Ensuring positive outcome
		Protect future of VISs
		Teaching the “norms” of the VIS
	Effect on legal system	Alternative ways of sentencing
		Balancing of reason and emotion
		Personalizes suffering
		Affects perpetrator
		Becomes customary
Changes judicial persona		
Response to the sentence	Downward departures	
Effects of the crime	Adding new information	
Self-reflective comments by victim	Victim’s own role in crime, including self-blaming	
Models and Heuristics	Addressing the judge	Recognizing judicial authority
		Asking for empathy (walking in victim’s shoes)
		Acknowledging judicial experience and expertise
	Response to the sentence	Rejection of suggested sentence or plea
		Recommendation of specific sentence
	Effects of the crime	Lifestyle changes
		Psychological effects, including loss of hopes and dreams, loss of trust, and loss of innocence
		Ability to relate to others
		Physical injuries, including medical treatments

(continued)



**Table I. (continued)**

		Financial effects
		Job-related effects
		On-going safety concerns
		Impact on family members, including children
		General description of victim, including awards, accomplishments, activities
	Interaction with others in legal system	Court, police, prosecutors, etc.
	Organizational features	Epistolary
Sample VISs	Response to the sentence	Rejection of suggested sentence or plea
		Argued on the basis of revenge
		Argued on the basis of fairness
	Self-reflective comments by victim	Victim's motivation in writing VIS
	Comments on perpetrator	Victim's relationship with perpetrator
		Refutation of perpetrator's story
		Knowledge of perpetrator's motive
		Speculation about rehabilitation
		Recall of perpetrator's threats and actions
	Stylistic features	Imaginative descriptions and speculations
		Anaphora (repetition of beginning clauses)
	Organizational features	Chronological order
		Narrative with real or imagined dialogue
		Causal analysis
		Diary or journal entry

Note: This table represents the primary sources of data for the categories and subcategories that emerged in our coding although many categories were noted in more than one source.

that information about the personal qualities of the deceased created “a more favorable impression” of the victim than did no impact information (1999, p. 344; see also Nadler & Rose, 2003). Ludwig, on the other hand, found that VISs did not have a significant effect on decisions to depart from the presumed sentence (2001; see also, Erez & Tontodanto, 1990; Myers & Arbuthnot, 1999). There are no studies, however, that we know of, that capture both the attitudes of the decision-makers, the judges, in encountering VISs, and the efforts of the advocates, in helping victims create VISs. However, we do recognize that our study is limited to the perceptions of advocates and judges, who assume that victims have certain goals, needs, and outcomes and that victims’ goals might differ from these perceptions even though both advocates and judges do have contact with victims. Future research might tie these two pieces of the picture together, but for the moment, we recognize the need to understand how advocates and judges perceive the advocacy work of the VIS as part of an activity system. And, we believe that our analysis of the data described above demonstrates those perceptions.

## **Adjudicating within a System of Genres: Judicial Reactions to the VIS**

In their interviews with us, judges articulated that the victim’s reactions to the proposed sentence constitutes one of the greatest difficulties they have, the point at which we suggest the system most resists this new genre imposed upon it. State sentencing guidelines provide standards for the disposition and duration of sentences in felony cases and, according to the Minnesota Sentencing Guidelines Commission (2009), these guidelines “establish rational and consistent sentencing standards which reduce sentencing disparity and ensure that sanctions following conviction of a felony are proportional to the severity of the offense of conviction and the extent of the offender’s criminal history” (p. 2; the Minnesota sentencing guidelines grid can be found at <http://www.msgc.state.mn.us/>). In our interviews, most judges praised the goal and objectivity of sentencing guidelines in determining duration and disposition and requiring judges to have good reason to depart (upward or downward) from them. As one judge said, “They [the guidelines] are supposed to limit disparity, they are supposed to promote proportionality, and I think they do. God only knows what we would all do without them.”<sup>3</sup> In the sentencing hearings we observed, the judges often referred to the sentencing guidelines in their explanations as to why they might not respond to the victim’s or the defendant’s requests for departure. One judge, for example, carefully explained to the victim that identity theft was a level three offense and because the defendant had no prior record, the judge would not depart

from the sentencing guidelines (February 1, 2006). In another hearing for sexual assault/acquaintance rape, the judge explained that the sentencing guidelines were based on “just deserts,” and in this case, there were no exceptions for a downward departure (April 13, 2006). Therefore, one judge sums up best the potential for judicial resentment of the legislature for having “pulled kind of a sleight of hand” by imposing VISs on the legal system, saying to a victim, “‘You are entitled to come in and do this,’ but then with a wink and a nod, it’s totally meaningless” (4JD9).

The sentencing guidelines also influence the recommendations in the presentencing report and plea negotiations, more established genres. It is possible to see, then, that aspects such as sentencing are indeed imbricated in the functioning of a system of genres. This established system of genres appears to influence judges’ reactions to the VIS: “If I have agreed to a plea agreement, I am going to stick with it, almost in spite of the impact statement” (4JD2). In a sentencing hearing for sexual assault we observed, for example, the judge explained that he was influenced by the presentencing report, which predicted that the defendant would be less likely to reoffend if he received treatment rather than prison time (February 21, 2006). In another hearing for sexual assault, the judge again mentioned that the presentencing evaluation, which included a report from the state psychiatrist, rated the severity of the crime great and the defendant as attributing his problems to “meeting women in a bad way” and therefore showing no remorse; the judge then explained how he arrived at the exact number of months for incarceration (April 6, 2006).

Occasionally the VIS does change a sentencing decision: “And so it certainly is possible that something either the attorney or the victim says can sway me. I mean something has to sway me if I enter the courtroom, and I haven’t really quite decided,” one judge noted (4JD20). And advocates attest to seeing such reversals: “But I have seen the plea negotiation change. And I have seen judges take a deeper look.”<sup>4</sup> But to take a “deeper look,” judges say that new information has to be presented in a VIS, a phenomenon unusual and unwelcome at this point in the information-gathering and decision-making process, a phenomenon that should be avoided if the other genres have done their work. As one judge said, “I hardly want to be in the position of saying, ‘Oh, I never heard this before. Stop the presses; we are not going to do this’” (4JD19).

Judges and advocates perceive that the VIS can be most influential in terms of the specific conditions of the sentence. Here the genre, in offering the most personal look at how the crime affects the victim, may be an accepted addition. It does not disrupt the system of genres created to maintain an efficient, consistent, and seemingly objective response to crime, but it allows

judges to respond specifically to the requests made by the victims. Advocates understand that the victim's voice in the legal system is only one of many, and that voice introduces "one tiny picture, one snap shot in time . . . There is one crime, and it has one consequence," and the potential influence of a VIS in any one case is "relatively small," probation with no treatment versus probation with treatment, for example (AHS8). But, as one judge confirmed, "If the sentencing guidelines call for a probationary sentence, then whatever probationary conditions are imposed could be impacted by what the victim states, especially in regards to no-contact orders. . . anger management, chemical dependency issues" (4JD11). Thus we observed one judge note that because the VIS described the struggles of the children to adjust to their mother's death, she would add the stipulation that the defendant pay for counseling as part of his sentence (April 10, 2006).

Finally, although the court may welcome specific conditions of probation suggested within a VIS, our interviews revealed that despite the potential disruption of introducing raw emotion in the courtroom, a disruption that disturbs the expected dichotomy of reason versus emotion, retribution versus revenge, the judges were divided in their reactions to emotional expressions within VISs. One judge confirmed just that: "A lot of times they [VISs] are very vengeful statements. I guess I can understand why somebody would write a statement like that, but when it's merely to spew some venom because they are upset, it's not very helpful" (2JD3). But, it is with the expression of these emotions that we suspect a systemic benefit or even change might come. In our interviews, several judges recognized that, through these emotional expressions, the VIS puts a face on victims. As one judge said, VISs are "constructive in the sense of bringing some reality into the room" (4JD6). Another judge recollected the victims' palpable fear of the perpetrator in a specific murder case: "They explained how he came in with a gun, and how he duct-taped them and then put them into a room and terrorized them. I mean you can feel that" (2JD1). Finally, one judge described the more permanent influence of VISs in general on his world view:

[A] theme that runs throughout letters, is that when people say that they have not only lost the trust in that particular person but that they are fearful in general as a result, fearful of men, and fearful of being outside alone, that has an affect when people say those kinds of things. In other words, when it really has, when they say that this has made a profound impact on the way that I look at the world now. (2JD6)

Although the judges we interviewed all explained the benefits of sentencing guidelines and noted the lack of universal standards on how to respond to

VISs, several acknowledged that VISs could influence specific conditions of a sentence and that emotional expressions could affect their views of crime in the broadest sense. What advice then do victim advocates give those writing VISs, given these somewhat mixed judicial perceptions?

## **Negotiating within a System of Genres: The Advocate's Role**

Overall, the VIS samples provided for this study demonstrated some consistency in the main features of VISs as encouraged by advocates. Moreover, advice from advocates seems to address the expectations of the court by encouraging a VIS that reflects the ideology of the discourse communities in which the VIS operates and the judicial perceptions we shared above.

The common brochure distributed by advocates in the second and fourth judicial districts in Minnesota, for example, advises victims to address “jail, prison, work release privileges, [and] community service,” and to state “support for, or opposition to, treatment or community service programs” (Minnesota Office of Justice Programs, 2004, p. 3). Even the template given in both districts to children younger than school age asks for such reactions, ranging from sending the offender to jail to “go[ing] to a doctor to get help” (Minnesota Second and Fourth Judicial Districts, n.d., n.p.). MADD also encourages the victim to request very specific terms for probation, including “no alcohol or drug use,” “participate in Victim Awareness Classes in prison,” and “pay full or partial restitution” (MADD, 2003, p. 12). Moreover, MADD offers some specific ways to describe the effects of the crime in a way that a judge might be hard pressed to disregard. Instead of saying, “*Every morning when I wake up, I think about my daughter,*” the suggested phrasing is “*Every morning when I wake up, I remember that (name of daughter) will not be in her chair at the breakfast table and that I no longer will need to buy Fruit Loops, her favorite cereal*” (MADD, 2003, p. 5, emphasis in original). One victim then, in describing the psychological and physical outcomes of the abuse she endured, wrote elaborately that: “He smothered me so many times that my lips were swollen and bloody. It hurt to smile or open my mouth wide for a week because [my] jaw hurt so badly.”<sup>5</sup> A mother conveyed a loss of hope and trust and described changes in her daughter’s behavior as a result of ongoing but yet undetected sexual abuse:

Her behavior began to change after this. She wanted to drink caffeinated pop and energy drinks. I guess she was trying to stay awake and alert at all times. She became aggressive towards the kids at school. And she wouldn’t allow anyone to touch her or see her changing her clothes. (L7)

Thus one advocate we interviewed advised victims, “[Y]ou have an opportunity to say . . . ‘these are the reasons why I don’t feel that this [sentence] is appropriate because this is the kind of impact that this incident had on me and my life’” (ARC9).

In the VIS samples provided for this study, moreover, we found that victims often justified these individual requests by appeals for fairness and justice, statements about public and personal safety, and appraisals of rehabilitation potential, all presumed values of the legal system in which the VIS, as genre, functions. Altogether, advocates seem to advise the victim on how to enter into business as usual in a sentencing hearing by attending to what “the judge might be interested in hearing about” (ARC9). In this sense then, the VIS also reflects through discourse the ideology of the community. In a murder case, for example, the victim’s parents requested that in all fairness the defendant, who had agreed to a 33.5-year sentence, with the possibility of early release for “good behavior,” should “endure, in prison, that same amount of years that our daughter lived,” a period that would not include that early release (L1). A victim of domestic abuse appealed to public safety in requesting that “the Defendant receive the stiffest sentence he can receive . . . maybe he can finally see that he can not continue with creating abuse and havoc in people’s lives” and requested that the judge order alcohol and anger management treatment for the defendant (L3). Similarly, the parents of a murder victim requested a “restraining order” so that the defendant “never contact our family by any means or through any other party” and that he not be allowed within 100 miles of their home (L1). And a mother of a victim of child sexual abuse requested that the defendant “receive daily therapy for his illness” (L7). These victims couched their requests in the ideological framework of the legal system and recommended specific conditions to match those ideologies. These writers, we assume with the help of the advocate, seem to recognize the genre system that governs most sentencing decisions and then fit their individual requests within the values that created and govern this system of genres. The presentation of the VIS in court may then be viewed as a quite literal enactment of the system’s ideology, but at the level of individual experience.

But alongside the challenge of responding to the recommendations of a presentencing investigation, the conclusions of a plea agreement, and the restrictions of state sentencing guidelines, as the judges also perceived, the VIS invites into the courtroom the emotions that challenge such objectivity, efficiency, and consistency of the system of established genres. The genre of the VIS, then, might function as a sort of tool-in-use that works toward the realization of a particular outcome, but this outcome is met not only by the victim’s specific requests being addressed but also by the victim’s expressing



those requests within a genre that again potentially disrupts the dichotomy of reason versus emotion, retribution rather than revenge, within the system. We find that this benefit of bringing reality into the courtroom also demands the skill of the victim advocate in helping create an effective VIS. The advocates we interviewed noted that a VIS will garner more attention if victims “are really willing to be open about the emotional piece . . . to talk about the difficult, emotional, painful ways that this has impacted them, kind of on a day-to-day basis that people can relate to” (AHS12). Victims vividly describe the emotional outcomes of the crime on themselves and their families, which include fear, pain, and anger—and the call for vengeance: “I want one thing—and only one thing—from all of this: to be free of fear and pain that I believe he will continue to cause,” wrote one victim (L10); “I want to live in peace for as long as I can. We deserve that. He deserves a lifetime of hell,” wrote another (L4). A VIS written by a child abused by her father offers a similar expression: “I wish you would sit in the electric chair, be shaved bald and be in prison for life” (L5). The advocates we interviewed seem so well-versed in the genre and the system in which it functions, that they found when a VIS conveys emotionally difficult information, the information can be couched in a way that is helpful rather than disturbing to the judge. As one advocate said

When somebody talks about that they continually look over their shoulder, that they have been prescribed sleeping medication because they cannot sleep . . . that emotional impact can reach out to the judges, I think, in a way that hearing the financial impact or hearing “I am really mad at him or want him to go to jail” doesn’t have. (AHS8)

The VIS then can act as an advocacy tool that helps inform the judge of the many variables influencing the victim’s experience. These variables are communicated through the normative structures of the VIS—structures that not only reflect the ideology of the system but also leave room for the articulation of individual, lived experience. Moreover, if successfully linked to the ideology of the system, the VIS might provide room for emotional expression within that system, to bring a face to victims in a system, as one judge called it.

## **Changing a System of Genres: The Rhetorical Work of the VIS**

Victims who elect to prepare a VIS must navigate that established system of genres with the help of an advocate. But regardless of the rhetorical abilities

of the writers and editing abilities of the advocates, advocates perceive that without also negotiating the boundaries of their own jobs, the VIS is unlikely to realize its potential to change the system. This need for advocacy is often documented by victims themselves within their VISs. For example, a victim of identity theft complained that “the case kept getting continued, not very important, just felony forgery,” because “the county attorney’s plate was full” (L2). Likewise, a victim of domestic abuse obtained an order for protection (OFP) against her abuser and realized its limitations when her children called 911 after the abuser violated the order: The police arrested the abuser “coming out of my house minutes later. It only took him 3 days to locate our new home, stalk me, threaten me, and break in” (L4). The advocates then use their expertise to ease the victim’s way through the system; one advocate, for example, educated a victim about the limitations of the system:

[the victim’s] perception is she called the police, and they didn’t do what she wanted, and I am able to say, “Well, no wonder you feel that way, that makes perfect sense. I am really sorry that the police were too busy that they never had time to explain to you . . . why they do this.” (ARC17)

But also, by educating the victim about her rights, the advocate is also protecting the victim’s rights: “to make sure that victim knows what their rights are, and none of these rights gets violated” (AHS6). Finally, this function of the advocate is often symbolized by her physical stance in the sentencing hearing. At times, the advocate presents the VIS for the victim, as in one sexual assault case we observed, because the adolescent victim and her mother found it “too difficult” to be there (February 23, 2006). Also, when the victim is present, the advocate might “stand right there with them, often in between the defendant and them. . . . because, just that stare, if he or she looks at the victim, that can just crumble, [be] devastating” (AHS5). In another sexual assault hearing we observed, the advocate stood beside the victim’s mother as she read her VIS and had one arm out behind the mother’s back, not touching her until she started to cry and then physically giving her support (March 31, 2006).

Advocates also do subtle rhetorical work to increase the chances of the victim’s voice being heard. Knowing that a case can be derailed if a victim recants, for example, particularly common in domestic violence cases, advocates are experts in supporting a victim with second thoughts. As one advocate said, “I try to first find out why they are recanting, what the underlying issue is. Is it money? Is it fear? Has someone threatened them?” (AHS6). If the victim

wants to recant, advocates will provide extra resources; at the same time, the advocate reassures the victim, “I am on their side, I am with them, so whatever they want to say, I want them to know that they can say it, freely, openly” (AHS5). The advocate’s rapport with victims, ironically, can sometimes cause a judge or prosecutor to rely too much on the advocate’s knowledge. As one advocate described, during a discussion about whether to lift a no-contact order, “I have had a judge ask me, he said, ‘Would you come to the bench?’ So I came up to the bench, and he said, ‘Well, what do you think I should do?’” (AHC4). But advocates clearly establish the boundaries of their role so as not to devalue the VIS: “We are not there to particularly represent the victim’s wishes. We just relay them” (AHC14). The advocates then walk a fine line between relaying the victim’s wishes, guiding them to resources if they appear ready to back out of the process, but not overstepping into a decisive role. In this way, advocates may be seen as performing genre knowledge through this acknowledgment of the sorts of communicative boundaries that become most visible to members of the discourse community who frequently work with the VIS.

Most important, however, to any study of the VIS as a new and potentially disruptive genre within the legal system is the advocates’ acknowledgment that their collective action with all victims can lead to a “system change” (ARC17). Particularly, the community advocates who also work with battered women’s shelters say,

[A] large percentage of our clients have been victims of crimes, didn’t know it was a crime, were too afraid to report, so we could be working with them for many years before it even gets into the criminal justice system, educating them about the process. (ARC17)

And advocates often share with victims another important educational mission

I will say, “but it’s important for the judge to hear from you because, you know, they deal with these kinds of cases every day, you know, and even if a plea negotiation has been agreed upon on this one, it could change how things are happening with another one.” (AHS1)

That one VIS, as an individual response from one victim, can then contribute to collective understanding, is a message often conveyed by advocates. A victim we observed, for example, seemed to sense this educational mission of the VIS when she urged other victims of sexual assault, “Don’t be

afraid when something like this happens,” but instead “be strong” (April 25, 2006). And as Knievel (2008) has noted, such individual variations of a genre can eventually lead to genre change (p. 350). While templates and guidelines exist for how to write a VIS, just as much of its ethos within the system comes from the specific instantiation and function of that genre in that moment.

Advocates also remember the “early years of impact statements,” in which “there were all kinds of problems,” and judges seldom welcomed VISs (ARS16). Now the advice that advocates give victims, including the “parameters” or “things that they can say in their impact statements” and “things they cannot say,” are meant not only to produce an effective individual VIS but also to avoid “endanger[ing] possible future victim impacts statements” (AHS6), endangering that potential for collective or systemic change the advocates see reflected in the genre. Advocates recognize that “every victim impact statement is very different from the next” (AHS6) and that becoming a victim of a crime is “not optional . . . [so] the rest of the process within reason should be optional” (ARS16). Subsequently, advocates recognize that victims must write the VIS on their own terms and make the individual stylistic or rhetorical choices with which they are comfortable. Nonetheless, advocates make victims aware of the normalizing parameters of the genre, which include keeping their requests (AHS1) and their summaries of events “within reason” (ARS16) and talking about things “the judge can relate to” (ARS16). And as we mentioned before, advocates also sense that judges are more responsive when the victim requests certain conditions be attached to the sentence, for example, that “the defendant get help versus . . . endless incarceration” (ARS16). In terms of expressing emotions, one advocate advises, “Cry if you need to, but just don’t be a raving lunatic” (AHS1).

The advocates feel the pressure from judges to normalize the VIS as a genre that follows these dictates:

[O]verall I have to say our judges are pretty good . . . But they have made it pretty darn clear that they want the rest of us to, you know, kind of rein it in at the front end. Give them [the victims] real clear instructions about what the parameters are of impact statements. (ARS16)

In this sense, the genre may very well be viewed as a site “of contention between stability and change,” as Berkenkotter and Huckin (1995) put it (p. 6). That is, advocates not only work to help victims express the nuances of their different experiences but also work to make the VIS as a genre acceptable in the courtroom by guiding victims to meet the parameters of the VIS. Nonetheless, advocates do perceive that the judges are “very moved

by when a victim does express how this [crime] has affected their lives” (AHS5); they are “open” to “the emotional piece” (AHS12); and “most judges want to do the right thing, and if they can hear in an impact statement that they are going to make a difference by what they do, I think that that matters to them” (AHS8).

But do the judges confirm this increasing openness to the genre? Of course, judges still define their position as one of objectivity and neutrality: “I think it’s my role to be neutral,” said one judge, “to listen, and to take into account what’s been said and then to render a decision that is fair and impartial and just under the circumstances” (2JD3). Judges certainly share, however, stories of cases in which direct contact with the victim inspired them to consider alternative conditions of a sentence. One judge, for example, had the perpetrator write a letter to MADD every month for the entire 3 years of his sentence, so that the mother of the victim “knew that at least once a month he [the perpetrator] had to sit down and think about her child” (4JD16). Moreover, judges have a “tradition to strip away emotions,” but “the victim statements put it back” (4JD6) by “personaliz[ing] the victim’s suffering” (2JD2). And so, judges too recognized the changes in the courtroom from the past, when VISs were perceived as problematic, to now, when VIS are so “common-place,” that “all of us, the lawyers as well as the judges, have gotten much more comfortable with having the victims come in and speak, and I think that we handle it better than we used to” (4JD17). One judge went to the point of saying, “I think that more attention should be paid to victim impact statements. I think that they should be routine, and I think that it is generally irresponsible for a prosecutor not to have one” (4JD22). Finally, another judge sums up the collective change that the genre appears to have made:

If there’s an impact statement that I receive about how it’s negatively affected [the victim] then I try to echo that back [in imposing the sentence]. I don’t do a lot of lecturing anymore. When you first get on the bench, you think you’re going to change everyone, and you don’t, but I at least try to give that [victim input] a voice from that position of authority. (4JD7)

Judges then share the perception with the advocates that VISs have influenced their courtrooms. The VIS is here to stay, judges assume; the victim’s voice now has found a way into a system in which other genres often speak the louder. The VIS carries this potential for systemic change because the advocate introduces the victim to the parameters of the genre and educates the victim to the values of the system.

## Conclusion

This research study is limited in its focus to the perceptions of judges and advocates who encounter and advise victims as they react to proposed sentences or describe the effects of crimes on their lives. The study is also limited in that our interviews and observations took place in two judicial districts in the same state, and our samples were gathered from one of these districts. However, there is uniformity among states in terms of granting victims the right to give a VIS and offering victims advice in writing and presenting those VISs, similar dependence on mechanisms such as sentencing guidelines and presentencing reports in negotiating sentences, and similar structures and procedures in imposing sentences. We feel, therefore, that we can identify the problems that judges generally might experience when encountering a victim who wants to come to a sentencing hearing to give a VIS, what a judge might perceive makes a persuasive argument in a VIS, and finally what an advocate might advise as an acceptable argument offered in a VIS, given the norms of the legal system and the sentencing hearing. Future research might raise the same questions for judges and advocates across the United States or even internationally and more closely link the victim's perceptions of their experiences to the judges' and advocates' speculations about those experiences.

The judges we interviewed not only expressed discomfort with the open displays of emotion that VISs were likely to bring into the courtroom but also acknowledged that they also brought a more personal view of victims, a view that is beneficial to the legal system in general. The judges also noted their reliance on such mechanisms as sentencing guidelines to ensure objectivity and uniformity in sentences and their enforcement of social retribution rather than personal revenge. The judges, however, did appreciate victims' suggestions about conditions attached to sentences, such as anger management classes or restitution for counseling or funeral expenses. Advocates often provide models and heuristics to help victims conform to the norms of the court but still create a detailed picture of how their lives have been affected by the crime. In the samples we studied, such victims might appeal to fairness and justice, stress public and personal safety, and offer appraisals of rehabilitation potential, all values of the legal system, what "the judge might be interested in hearing." Finally, advocates use their expertise to guide a victim through the legal system and to lead potentially to a system change that is more welcoming of and places more value in victims' opinions. Judges acknowledge the advocates' work in disrupting, often in a productive way, the established genre system of the court.

This study of the VIS then, we believe, does contribute to the scholarly conversation about genres that advocate within internal institutional activity systems and become the occasion for a focusing event that might open up



opportunity for new voices. In the case of VISs, however, the genre, as imposed upon the system, requires an expert, an advocate, who not only functions inside the system but also encourages the voices of those perceived as too often left outside the system. This study also opens up additional complexity for continued scholarly discussion of genres as dynamic and responsive to other genres within a system or to changes within the communities in which they do their rhetorical work. We suggest then that genre theory needs to accommodate the ways in which genres are not only dynamic and responsive to other genres, the ways in which they can change or even disrupt a system, but also the advocacy it might require to sustain those possibilities for change or disruption into a system that has a firm hierarchy of voices at work. Indeed, within a system that values objectivity and neutrality, a system in which genres such as the presentencing report and sentencing guidelines operate so firmly according to those values, the more and more common presence of the VIS, carefully crafted with the help of the advocate, has brought into the courtroom the victim's voice.

## **Appendix A**

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### *Interview Questions for Judges*

1. How long have you been a judge in Hennepin/Ramsey County?
2. How often do you see a VIS submitted to you before a sentencing hearing?  
How often does the victim give allocution of that statement at the hearing?
3. What factors do you commonly weigh before deciding on a sentence?
4. How important is the existence of a VIS in the context of all the other factors that influence your decision? Which is the most important factor in deciding on a sentence?
5. Do you give more weight to a victim who gives allocution of that VIS at the hearing itself? Or does it matter?
6. In considering a VIS, do you consider separately the victim's statement of the emotional impact of the crime and the victim's opinion of the kind and degree of sentence that the defendant should receive? If you do consider separately the victim's statement of the emotional impact of the crime and the victim's opinion of the kind and degree of sentence that the defendant should receive, which carries more weight with you? The emotional appeal or the reaction to a possible sentence?
7. Are there universal standards or professional guidelines that help you determine how much weight to give the VIS? Over time, have you developed your own standards or guidelines that help you determine how much weight to give the VIS? And would you share those with me?

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*(continued)*

## **Appendix A (continued)**

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8. Could you recall for me a VIS that made a particular impression on you? And why?
  9. Is there anything else that you would like to share with me about the courtroom, the sentencing decisions that you must make, and/or VISs?
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## **Appendix B**

### *Interview Questions for Advocates*

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1. Could you describe how you have worked with victims in the past to develop VISs? What tools and guidelines do you provide them?
  2. Generally how have you observed that victim input is gathered by your office or organization, by the prosecutor's office, or by probation?
  3. What do you think motivates victims to submit a VIS? What might make them reluctant? Who do you think that a victim who writes an impact statement perceives the audience to be?
  4. Do you think that it is more important for the victim to express the emotional impact of the crime or to express an opinion as to the kind and degree of the sentence? Or both? Generally which of these two purposes are victims more successful in accomplishing?
  5. How often do victims elect not only to write an impact statement but also to attend and speak at the sentencing hearing? Do you think that it's important for a victim to attend the sentencing hearing—and do you urge them to do so?
  6. In your experience, if a victim elects not to attend a hearing and to give allocution, why does the victim choose not to do so?
  7. How much weight do you think judges give to VISs? In terms of the other factors that the judge must weigh in determining a sentence, which factor do you think is most important?
  8. In your opinion, what features must a persuasive VIS have? Could you share with me the description of any VIS that you think had a particular impact on the judge—in terms of expressing the emotional impact of the crime or in influencing the kind and degree of sentence or both?
  9. Is there anything else you would like to share with me in terms of your experience in working with victims in general? Or in submitting VISs? Or in giving allocution at a sentencing hearing?
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## Appendix C

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Your Name: Date:

Case Number: Judge:

Offense: Advocate:

Defendant: Relationship to Victim:

Sentence:

- I. How was the VIS presented in court (circle all that apply)?
  - a. Read by the victim or family member in the hearing
  - b. Read by the county attorney/prosecutor in hearing
  - c. Read by advocate in hearing
  - d. Submitted in writing before the hearing
  - e. Other \_\_\_\_\_
- II. Was it your impression that the VIS was offered to (circle all that apply)
  - a. argue for a particular sentence or treatment plan
  - b. bring closure to the emotional effect of the crime on the victim
  - c. give the victim a sense that justice is being done
  - d. other \_\_\_\_\_
- III. Summarize the content of the VIS, if it was read or described during the hearing. Be sure to include any specific requests made by the victim.
- IV. How would you describe the demeanor of the judge in listening to and responding to the VIS (see Ptacek, 1999, for our source for this question)?
  - a. Supportive (e.g., welcoming, agreeing)
  - b. Courteous (e.g., attentive, interested)
  - c. Businesslike (e.g., routine, impersonal)
  - d. Strict (e.g., bureaucratic, firm, stress power of the judge)
  - e. Condescending (e.g., patronizing, demeaning, sexist)
  - f. Harsh (e.g., nasty, abrasive, scolding, contemptuous)
  - g. Other:
- V. What *verbal* statements did the judge make toward the victim or the person reading the impact statement that might contribute to your descriptions of judicial demeanor? For example, did the judge engage in dialogue with the victim, thank the victim, respond to any specifics of the impact statement, mention specifics of the impact statement to the defendant? Please describe:

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(continued)

## Appendix C (continued)

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VI. What *nonverbal* gestures did the judge make toward the victim or the person reading the impact statement that might contribute to your descriptions of judicial demeanor? For example, facial expressions (maintains eye contact, smiles, frowns), posture (faces victim, sits at attention), mannerisms (nods head, looks down at papers), tone of voice (harsh, soft). Please describe:

VII. Did the judge acknowledge that the VIS affected his or her decision in the sentence for the defendant?

No \_\_\_\_\_

Yes \_\_\_\_\_

Please summarize what the judge said, particularly about how the sentence might have been affected by the VIS:

VIII. Describe anything that the defendant or the defense attorney said on the defendant's behalf (particularly in response to the impact statement):

IX. Describe any reaction to the impact statement from the gallery or anything the judge did to maintain control of the courtroom during the sentencing:

X. Record below any other impression that you think might be important:

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The authors declared that they had no conflicts of interests with respect to their authorship or the publication of this article.

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### Notes

1. To maintain confidentiality throughout of the persons involved we have not identified them by name. In this article, we refer to any observed hearing only by the date; we attended this hearing on 4/16/06. In this case, we also obtained the VIS from the advocate involved in the case and the facts of the case from two local newspaper stories and a subsequent decision, involving the shooter's accomplice, by the State of Minnesota Court of Appeals.
2. The Institutional Review Board (IRB) at the University of Minnesota exempted this study (Study Number 0708E14905) under federal guidelines 45 CFR Part 46.101 (b) category #4. In addition, victim advocates and judges are public figures,

sentencing hearings are open to the public, and victim impact statements a matter of court records and available to the public. We did create the consent form for our interviews using the models provided by the IRB.

3. We identify our interview sources according to the following key: We use the district, either the second judicial district (2JD) or the fourth judicial district (4JD), and a random number that we assign each judge. This quote comes from source 4JD6.
4. We identify the advocates by the following key: A for advocate; R (Ramsey) or H (Hennepin) for the county in which the advocate works; C (community) or S (system) for the organization in which the advocate works; and a random number for each advocate. This quote comes from advocate AHC14.
5. We have removed all identifying features, including dates and names, and have numbered VISs. This quote comes from VIS (or letter) number eight or L8. If possible, we have not noted errors in punctuation and grammar to let the VISs stand without the distraction of [sic].

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