

Making Academic Work Advocacy Work

Technologies of Power in the Public Arena

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Through interviews and courtroom observations in a case study done in collaboration with a community partner in two judicial districts in Minnesota, the authors extend the scholarly conversation about critical, activist research in business and technical communication and make pedagogical suggestions by studying two groups who contribute to the discourse about victim rights: judges who accept plea negotiations and make sentencing decisions and advocates who help victims contribute, through victim impact statements, their reactions as crime victims and their requests for certain punishments and conditions for the crime perpetrators. The authors identify the technologies of power used by each group to assert their disciplinary authority and trace how these assertions play out in the courtroom. They conclude that by capitalizing on the normative structures of impact statements, advocates may actually give victims more power. Such activist research might benefit research participants and enhance research methods.

Of the various groups that claim agency in shaping communication in the public arena, those that write and interpret the law and those that advocate for people affected by those laws must negotiate sometimes differing voices and goals. In this article, we focus on two such groups that contribute to the

discourse about victim rights: judges who accept plea negotiations and make sentencing decisions and advocates who help victims contribute—through victim impact statements (VISs)—their reactions as crime victims and their requests for certain punishments and conditions for crime perpetrators. We identify the technologies of power used by each group to assert disciplinary authority and trace how these assertions play out in the courtroom. We conclude that judges who are granted primary power in the discipline of law exercise a legal choice to support, weigh, or restrict impact statements in the various cases they handle. In addition, judges have in mind an informal, but established, norm that helps determine whether an impact statement is persuasive as they decide whether to accept a plea negotiation or which sentence to impose. Victim advocates, in turn, acknowledge and understand this norm, and they help victims write VISs that will fit within the norm and, therefore, have a greater chance of being persuasive to the court. Further, we suggest that by capitalizing on these normative structures, victim advocates may actually deviate from those norms to give themselves, and subsequently victims, more power.

We also situate our study within the growing body of scholarly work that seeks to contribute to the public sphere and comment on how that goal might affect the research methods used in such studies. We feel that such research and classroom experiences in the public arena are essential in business and technical communication programs, particularly to help graduate students identify and understand the technologies of power used by creators and interpreters of public policy. The case study we present here is an example of such experiences.

In our study of VISs then, we asked the following questions: (a) Given the legislated right that victims have to give impact statements, how do the concerned groups interpret that right in the sentencing hearing? (b) What values, goals, and technologies of power appear in the interpretations of those rights? (c) How do these perhaps conflicting interpretations, values, goals, and technologies of power reflect the disciplinary power of each group and influence the application of the policy that enables victims to give impact statements? (d) What does a study of such statements contribute to our field, particularly in terms of education and research goals in the public arena, and to the participants in such studies?¹

Data Collection, Organization of the Study, and Community Partnership

To answer these questions, we designed a qualitative case study and conducted 45-minute face-to-face interviews with 28 judges in the Fourth and

Second Judicial Districts in Minnesota (Hennepin County–Minneapolis and Ramsey County–St. Paul, respectively) between November 2004 and May 2006. At the same time, we conducted similar interviews with 17 community and system victim and witness advocates in both districts. In our sample, 60% of the judges were male and 40% were female; 89% were Caucasian, 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 assigned to criminal and civil cases, 17% to juvenile cases, 7% to civil cases, 3% to family cases, and 7% served as chief judges. The advocates we interviewed were all female although we did include one male probation officer in Hennepin County who specialized in domestic violence and sexual assault cases; two advocates were African American, and the rest were Caucasian. Their experience ranged from 1 year to over 20 years on the job. Immediately after the interviews, we transcribed them verbatim, and we each coded the transcriptions and then compared and refined our results (see Appendix A for our interview questions). During the same time, we also attended 17 sentencing hearings in a variety of cases in Hennepin and Ramsey Counties to understand the courtroom dynamics when an impact statement is offered, and although in this article we focus on the interviews, we allude to the hearings observed when they offer insight into statements gleaned from the interviews. During our interviews with the advocates, we established an agreement that they would alert us whenever an impact statement was going to be delivered in a sentence hearing. We attended the first four hearings together to develop and refine an observation form (see Appendix B) and to standardize our responses, and then we divided up the observations.

Our research partner for this project was WATCH (originally called Women at the Court House but now legally known by the acronym), a local volunteer-based court monitoring and research organization that follows family and sexual violence cases and provides feedback to the justice system. WATCH provided a way for us to observe and learn about the often unseen and subtle negotiations in the public arena. We suggested the project, and WATCH endorsed it as part of its courtroom research initiative. Our affiliation with WATCH opened many doors for us, particularly among the judges. For example, judges in the Fourth District where WATCH operates were accustomed to a public presence in their courtrooms, and over a third of them were willing to agree to interviews regardless of their relationship with WATCH. One judge, for example, said that she would do “anything for WATCH” (4JD6) whereas another agreed to an interview even though he felt misunderstood when WATCH commented on a case he had handled.² Although WATCH

volunteers primarily monitor domestic violence and sexual assault cases, our observations and interviews also included discourse surrounding other person crimes such as driving while intoxicated (DWI), identity theft, and homicide. WATCH had a definite goal in mind: to create a conversation between judges and between judges and advocates in order to share impressions and reflections about how to handle impact statements and to expose any attitudes that either served or silenced victims.

Because we knew that WATCH would publish our findings in an extensive report that included its own volunteers' observations of more than 70 sentencing hearings, we designed our interview questions and observation form to solicit primarily perceptions and stories that revealed judicial attitudes and advocate perceptions.³ In our judicial interviews, we focused on sentencing decisions that the judge made (as opposed to capital cases in which a jury would make such decisions) and on plea negotiations that the judge would either accept, modify, or reject. We found the open-ended questions at the end of our interviews most revealing: For example, although all the judges remarked that sentencing guidelines were more important than impact statements in making a sentencing decision or accepting a plea negotiation, they all were able to recall an impact statement that did affect a decision. From the judges' and advocates' descriptions of the statements, gathered from our interviews, and our courtroom observations of judges' integration of parts of impact statements when handing down sentences, we were able to speculate about the persuasive features of such statements.

Once we finished our project, WATCH posted our report on its Web site (<http://www.watchmn.org/court.html>), and parts of the report were also covered by several local electronic and print media in the Twin Cities. Finally, we knew that our research had some impact when judges and advocates told WATCH that they had read it and expressed interest and curiosity in, and sometimes dismay at, each other's statements. Our report listed several recommendations for improving judges' and victims' experiences with impact statements in sentencing hearings. For example, we recommended that "victim impact statements should be submitted well in advance of the sentencing hearing to give judges time to read and respond to them" (p. 23) and that

judges should remember to thank the victim for coming forward, and, if they are comfortable, to compliment the victim on her courage in doing so. Given how healing and empowering this might be for the victim, judges should also consider mentioning the impact statement and any specifics from that statement when handing down the sentence. (p. 24)

Although we considered ourselves researchers in conducting this study, WATCH's advocacy goal influenced the version of the report we presented to it and we were excited about making positive changes in the courtroom. That is, understanding WATCH as an advocacy group moved us to think in terms of further promoting those goals and, in doing so, to step outside the academic world with which we were most familiar—one that can often be rather insular. Although working with WATCH was gratifying in itself, one of the most rewarding aspects of our research came from sharing the results of our project with this organization. Our understanding of the VIS, based on and coupled with what we learned from our research, interviews, and observations, was viewed by WATCH as pertinent to its own mission and the issues its volunteers encounter in their work on a daily basis. In short, working with WATCH served as a reminder that merging advocacy work with academic work is indeed possible and that academic work can have a positive influence both within and outside the academy. In fact, thinking of academic work in terms of its capacity to do advocacy work, and wanting to share that perspective with colleagues and students alike, is what fuels much of our energy for research and teaching. Nonetheless, we encountered challenges in working with a community partner such as WATCH. These challenges centered primarily on the need to maintain carefully established relationships within the legal and advocacy communities. In conducting the judicial and advocate interviews, for example, we needed to maintain the respectful relationships that WATCH had developed. We ensured confidentiality and tried to provide some outcomes from our study that might be useful to those parties involved with it. But, overall, the greatest benefit of this study gave us our greatest challenge in conducting it: We were doing academic work that became advocacy work, so we had to balance our interests with those of our research partner in improving the system while describing the nature of that system.

In presenting our study here, we first capture the context of the study, aligning it with other critical activist research in business and technical communication and review the legislated statutes and sentencing guidelines that are interpreted in the courtroom, placing them within the historical context of the victim rights movement from which WATCH's work originates. Next, we describe the theoretical framework for the study, based on Foucault's (1979) theories of disciplinary authority and technologies of power and De Certeau's (1984) understanding of strategies and tactics, both of which guided our interpretation of the courtroom discourse about VISs. Last, we examine the data from our interviews and observations to capture the technologies of power in the judiciary and advocate realms through that courtroom discourse. We conclude by speculating what this study can contribute to our

understanding and pedagogical goals of research on public policy and the public arena.

The Scholarly, Legal, and Public Policy Context of the Study

In writing this article, we are very keen on sharing with colleagues and graduate students the idea that academic work can indeed be understood as advocacy work and that academic work can have an impact not only within but also outside the academy. Recent scholarship in business and technical communication has demonstrated the ways in which researchers may use field-based methods such as interviewing or participant observation to better understand the discourse practices of particular communities or organizations and subsequently to influence more reflective discursive practices within those settings. Faber (1998), for example, interested in better understanding the factors underpinning organizational change, viewed organizations as inherently “discursive products” and identified five rhetorical factors that constitute a “discursive model of change” (p. 219). This model can subsequently be of use to “distressed organizations” undergoing downsizing or implementing hierarchical changes, as well as to organizations wishing to implement organizational changes related to identity construction (p. 233). Implicit in Faber’s study is the idea that business and technical communication researchers can play an integral role in partnering with organizations to help influence internal decision making. Researchers who partner with organizations for particular purposes can offer contextualized understandings of local discursive practices, and they can describe the ways in which certain rhetorical strategies may contribute to those practices in order to influence or shed light on policy changes. In this sense, the business and technical communication researcher becomes engaged in critical advocacy-based research that seeks to influence or inform policy change.

In “Saving the Great Lakes: Public Participation in Environmental Policy,” Waddell (1996) was also concerned with site-based research that aims to set out a model for “enhancing public participation in environmental and science policy disputes” (p. 158). Although Waddell’s study predates Faber’s (1998), and the subject matter differs greatly, Waddell may be understood as implicitly arguing for an activist research program in which the public communicates with policy makers to participate in local decision making. In what some consider a landmark essay in environmental rhetoric, Waddell examined the

influence of “public testimony at the [1991] International Joint Commission’s Sixth Biennial Meeting on Great Lakes Water Quality” (p. 144). Waddell concluded by advocating for a social constructionist model of policy making in which “risk communication is not a process whereby values, beliefs, and emotions are communicated only from the public and technical information is communicated only from the technical experts” (p. 142) but that necessarily entails the sharing of information and involves open communication between all participants.

Also serving to bridge the communication gap between experts and lay audiences, Barton’s (2004) research on the discourse practices of medical oncologists in discussing prognosis with their patients helps identify “prognosis as a problem in the discourse of medicine” (p. 96). That is, her research suggests that medical oncologists tend to avoid or background the difficult discussion of prognosis by “shifting the communicative responsibility for prognosis to patients and their families” (p. 106). Not only did Barton ground her research in observational fieldwork, but equally important, she also presented the results of her work to “medical practitioners in an effort to establish a mutual understanding of professional practices and, perhaps, move toward critically informed changes in those practices.” In doing so, she suggested, “our critical engagement will not only be richer but also be more likely to ring true to the audience of the discipline as a basis for change” (p. 106).

In a somewhat related study, Schuster (2006) interviewed clients of a freestanding birth center operated by a local direct-entry midwife, who provides a space and shares a discourse that helps those clients resist the hegemonic medical messages about the risks involved in birth outside the hospital. Schuster’s interviews reveal the strategies that such clients use in choosing the space in which they give birth and in managing pain without drugs or medical intervention. Both Barton (2004) and Schuster expressed an idea that we too wish to emphasize here, one that we see as an important contribution to activist research in business and technical communication—that sharing the results of field-based research with research partners and participants may help not only to bridge the gap between the researcher and the “audience of the discipline” but also to initiate changes in the practices under discussion. Thus, sharing research results with participants is a valuable component of activist research in business and technical communication.

Grabill (2000), in his work with the Atlanta Planning Council and their local processes around HIV–AIDS policy making, explicitly positioned the technical writing researcher as activist. Grabill understood “policy making as

a function of institutionalized rhetorical processes” and took “an activist research stance in order to help generate the knowledge necessary to intervene in those processes” (p. 31). Grabill argued that activist research should afford “power and position to others in order to achieve a goal,” that “participants must benefit from the processes of research just as the researcher benefits,” and that “outsiders [should] be invited to participate in local problem solving.” Last, Grabill maintained that activist research must involve “mutual knowledge construction . . . that participants have a fundamental opportunity to participate in analysis, reflection, and meaning making” (p. 34). In our own work with WATCH, we also strongly believed that the organization should benefit from our research process, and we assisted it in refining the project and completing a plan to disseminate its results.

To understand further the goals of WATCH and this study, we must recognize the context of the victim rights movement and of legal and public policy debate concerning VISs. The legislated right to give impact statements originated within the victim rights movement of the 1960s and 1970s in the United States. This movement generated efforts such as rape crisis centers, victim and witness advocacy programs, hotlines and shelters for battered women, victim compensation programs, mandatory arrest policies in domestic violence cases, restitution programs, stalking statutes, community notification laws, the online national sex offender registry, and amber alerts. Other governmental and grassroots efforts and organizations within the movement include the National Organization for Victim Assistance (founded in 1975); the National Coalition Against Sexual Assault (1978); the Crime Victims’ Legal Advocacy Institute (1979), renamed the Victims’ Assistance Legal Organization (VALOR) in 1981; Mothers Against Drunk Driving (1980); state-sponsored Crime Victims’ Bill of Rights (the first was passed by Wisconsin in 1980); Crime Victims’ Rights Week, created by President Reagan in 1981, and the Task Force on Victims of Crime that followed in 1982; the U.S. Department of Justice Office for Victims of Crime (1983); the National Center for Victims of Crime (1985), which works with over 10,000 grassroots organizations and criminal justice agencies; the National Aging Resource Center on Elder Abuse (1988); and the Violence Against Women Act, which authorized, in 1994, more than one billion dollars for funding programs to combat violence against women and then, in 2000, extensive funding for rape prevention and education programs. WATCH, founded in 1992, responded to a perceived need of victims to have a public presence in the courtroom. In part, however, all these efforts were meant to ensure that victims had a voice in criminal proceedings against their abusers.

The right to give an impact statement is legislated in a Minnesota statute (Right to Submit Statement at Sentencing, 2006). Impact statements have a number of purposes: to increase victim satisfaction and closure, to educate the court on the burden crime places on the victim, to allow the victim to react to the proposed sentence, to better determine restitution orders, and to balance the information the court receives on the defendant's background (Sobieski, 2004, para. 6). Community advocates in the Twin Cities, such as the Tubman Family Alliance Center and Casa de Esperanza, provide shelter, as well as help in negotiating the legal process, particularly for orders of protection for domestic violence victims. Other community groups such as the Minnesota Coalition for Battered Women and Battered Women's Legal Advocacy Group focus on education and system change. System advocates, such as those affiliated with the County Attorney Offices in the Fourth and Second Judicial Districts in Minnesota, help victims of a variety of person crimes—anything from identity theft to homicide—negotiate the legal system and provide templates and models of VISs. Both community and system advocates accompany victims to sentencing hearings and will read, edit, and even, if the victim prefers, deliver the impact statement orally during the hearing.

Recent U.S. Supreme Court decisions have affirmed the right to give an impact statement (see *Payne v. Tennessee*, 1991). Despite this decision, whether impact statements are prejudicial and inflammatory in all cases, and therefore a violation of a defendant's eighth amendment rights, is still debated by scholars (see e.g., Arrigo & Williams, 2003; Bandes, 1996; Burr, 2002-2003; Schneider, 1992). Other scholars have asked whether victims do feel better after giving an impact statement, and their findings vary from victims getting little satisfaction (see e.g., Bandes, 2000; Hillenbrand & Smith, 1989; Karmen, 1992) to victims experiencing great satisfaction if the judge acknowledges and even responds to the statement by citing the victim's own words in rendering the sentence (see e.g., Erez, 1991; Erez, 1999; Villmoare & Neto, 1987).

Similar studies ask whether impact statements have an effect on sentencing decisions. Greene (1999), for example, found that information about the personal qualities of the deceased created "a more favorable impression" of the victim than that created by opinion evidence alone or no victim impact information (p. 344; see also Greene & Koehring, 1998; Nadler & Rose, 2003). Ludwig (2001), on the other hand, found that impact statements did not have a significant effect on decisions to depart from the presumed sentence, to sentence according to aggravated or mitigated guidelines, or to issue restitution orders (p. ii; see also Erez & Laster, 1999; Erez & Tontodonato,

1990; Henley, Davis, & Smith, 1994; Jackson, 1994; Myers & Arbuthnot, 1999). Moreover, Sanders, Hoyle, Morgan, and Cape (2001) explained that impact statements have little effect because most cases are “typical cases,” that is, “the impact of the crime on the victim is as one would expect given the nature and seriousness of the crime,” and any significant harm will be revealed before the sentencing hearing, in the form of witness statements, for example (p. 454). The scholarly debate continues over the challenge VISs might pose to constitutional rights, the satisfaction that victims feel when giving a VIS, and the effect such VISs might have on sentencing decisions and plea negotiations.

Finally, Minnesota is one of many states that have adopted sentencing guidelines for felony convictions.⁴ Particularly important to our study is the potential tension between the presumed sentencing guidelines and the legislated right to give an impact statement in cases in which the victim wants to influence the sentence. According to the Minnesota Sentencing Guidelines Commission (2006), the purpose of the sentencing guidelines is to “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.” The sentencing guidelines take into account two dimensions, offense severity and criminal history, and departures from the presumptive sentences “should be made only when substantial and compelling circumstances exist” (p. 2). Recently judges’ options were further limited by the U.S. Supreme Court in *Blakely v. Washington* (2004). In states with sentencing guidelines, a jury must now determine beyond a reasonable doubt whether aggravating factors, other than prior convictions, exist as facts before a judge may use these factors to impose a harsher sentence than indicated in the sentencing guidelines, or the defendant must waive his “Blakely rights” in a plea negotiation that includes a harsher sentence. Therefore, although victims have the right to give an impact statement, they enter into a legal system that is still negotiating how to respond to these often-emotional statements that may disrupt a system supposedly based on rationality and neutrality.

Theoretical Framework

In this study, we relied on Foucault’s (1990) theories of power and knowledge systems and his definitions of technologies of power, as well as

on De Certeau's (1984) notion of strategies and tactics, to understand the disciplinary authority and interactions of judges and advocates who respond when victims choose to give impact statements. To Foucault, law is only "the terminal point" that those in power might take; instead, he proposed that to understand the nuances of power relations, we must identify "the multiplicity of force relations immanent in their sphere in which they operate and which constitute their own organization" (p. 92). In other words, we might do well to consider the dynamics that function to perpetuate and sustain what counts as a normal, and thereby acceptable and persuasive, VIS. That is, the normative structures governing what counts as an acceptable impact statement do not come from nowhere. They are a product of, for one, judges' attempts to reconcile their own disciplinary authority and adherence to state guidelines with victims' requests for particular sentences or punishments for defendants' crimes. Victim advocates function as intermediaries who not only work within the system but also help victims articulate the effects of a crime in an attempt to influence the sentence, feel empowered and heard, and, ultimately, heal. These complex relationships are not always stable and are thus subject to "ceaseless struggles and confrontations," forms of resistance that are never external to power but instead part of the "interplay of nonegalitarian and mobile relations" (pp. 92, 95). To say that these relationships are "nonegalitarian," however, is not necessarily to say that they are adversarial—they may or may not be. What they are, though, is negotiable. And we are interested in the many points of negotiation in those relationships.

De Certeau (1984) also addressed the ways in which particular groups negotiate, through the conscious or unconscious implementation of strategies and tactics, a balance of power. For example, judges' adherence to state guidelines, or even the existence of such guidelines in the first place, may be understood as consistent with De Certeau's notion of the "strategy." Judges' negotiations of these guidelines with the needs and requests of victims then work as a

calculation of power relationships that becomes possible as soon as a subject with will and power [such as the courts] can be isolated . . . [and] delimited as its own and . . . serve as the base from which relations with an exteriority composed of targets or threats . . . can be managed. (p. 36)

An "exteriority" is not necessarily a "target" or a "threat" per se; rather, an exteriority is an organization that works both with and against the more powerful subject, in this case, the court system. An exterior group, such as

the victim advocates, for example, might then execute what De Certeau referred to as “tactics,” or

calculated action[s] determined by the absence of a proper locus. No delimitation of an exteriority, then, provides it with the condition necessary for autonomy. The space of the tactic is the space of the other. Thus it must play on and with a terrain imposed on it and organized by the law of a foreign power. (p. 37)

In other words, victim advocates must work within the terrain of the court system, recognizing the sentencing guidelines and VIS norms established by judges. Furthermore, victim advocates occupy the space of the other by using those norms to inform their own advocacy work and thus empower the victim.

Foucault (1990) also understood normalization as a necessary component for maintaining, resisting, and negotiating disciplinary power. He explored the tension between, on one hand, “the rule of optimal specification”—or the legal impulse to rely on “an exhaustive, explicit code” of “defining crimes and fixing penalties,” such as Minnesota’s sentencing guidelines—and, on the other hand, individualization that responds to such things as the “status of the offender” (pp. 98, 99). Rather than applying such impulses to punish to theories of the law or moral choices, or the institutions based on these theories or choices, Foucault (1979) recommended analyzing the “modalities according to which the power to punish is exercised,” that is, the “technologies of power” (p. 131). Foucault proposed that such punishment depends on normalization. So in this study, we must reach below the surface of the sentencing guidelines and legislation to understand the relationship between the judges who must weigh the VISs and the advocates who help prepare them. In rhetorical terms, what is determined to be normal is persuasive; what is considered to be abnormal is not. More specifically, in hearing VISs, judges establish, wittingly or unwittingly, a norm for what counts as the acceptable, thereby persuasive, impact statement. Advocates recognize the acceptance of these norms and work within them, sometimes subtly subverting the disciplinary mechanisms of the court system in order to help victims compose what they know will be the most well-received impact statement possible, thus helping to empower the victim. “Discipline,” then, according to Foucault (1979),

may be identified neither with an institution nor with an apparatus; it is a type of power, a modality for its exercise, comprising a whole set of instruments, techniques, procedures, levels of application, targets; it is a “physics” or an “anatomy” of power, a technology. (p. 215)

Those technologies of power, those negotiations and dynamics, those strategies and tactics, are what we identify in our observations and interviews and believe that students and scholars of business and technical communication must understand in public settings. These interviews and observations were vital in helping us discern the nuances of the dynamics between the various groups involved in writing and interpreting VISs, and we feel strongly that methods in business and technical communication should include interviewing and observing individuals and constituencies as they interpret these texts.

Technologies of Power in the Judiciary and Advocate Realms

The judicial discourse we captured, through interviews and observations, often contains assertions of the judges' authority backed by the principles of the law. Judicial choices in sentencing may also be articulated as limited by sentencing guidelines—a “rhetoric of inevitability,” as Bandes (1996) called it (p. 378; see also, Lutz, 1988). This authority and rhetoric of inevitability in fact work together to deflect arguments against a sentencing decision and establish norms for what counts as a persuasive VIS. In addition, the plea negotiation and the presentencing investigation, as authoritative knowledge systems in a case, along with the sentencing guidelines then have the potential to cast any impact statement as unnecessary in terms of sentencing decisions. Although victim advocates are aware that judges generally place less emphasis on the impact statement than on other factors, the judges have a norm in mind for what counts as the acceptable VIS. Although the majority of victim advocates note that “very rarely does an impact statement affect the sentence because its typically been decided already” (AHS5), they also acknowledge the huge benefit of the statement for the victim. Advocates will let victims know that, in general, the purpose of the impact statement is not necessarily to influence the sentence; rather, “The power really is just in the victim being able to stand up and say, ‘You did this to me, it was wrong, this is how it affected me, and this is what I think should happen to you for doing that to me’” (AHS12). At the same time, as we describe later, advocates also understand the features that make a VIS persuasive in the eyes of the court, and they will do everything in their power to help victims craft such a persuasive statement. If the VIS is deemed persuasive by the judge, then it has a chance to function as doubly

powerful, both as a means for catharsis for the victim and also as a tool for influencing the sentence.

In our interviews, then, we encountered judges who asserted their authority in sentencing decisions, often to explain the reason for the sentence or its terms and to show that the VIS did not play a primary role in their decision making. One judge, for example, said, “And I want that clear to the victims as well as the defendant. But your input is welcome, but the decision remains with the court” (2JD4). This decision-making status as conveyed to the victim is also made clear to the defendant—and many judges, as they deliver the terms of the sentence, will choose to echo back to the defendant the contents of an impact statement in order to “give that voice from a position of authority” (4JD7). For example, one judge told the defendant the following:

If you don’t do the things I am telling you to do, whether it’s a treatment program or no contact or whatever . . . I am going to put you in jail, you are not going to have work release, and you are going to sit there and do every day that I can make you do. (4JD17)

The foundation of this status rests, many judges assert, within the principles of the law, which they summarize in a way that may seem dismissive of the victim’s individual perspective: “An individual does not get to dispense individual justice. It’s got to fit within the scheme of what is acceptable in the community” (4JD18). Here, to borrow from De Certeau’s model (1984), we may see how the court system functions as willful and powerful, as an institution that can “serve as the base from which” those cast in the role of other “can be managed” (p. 36). The state, not the individual, is the victim; the crime is against society, and retribution rather than retaliation is the goal of justice. And so the victims and their advocates enter a courtroom in which the judges might assume a position of authority, based on their understanding of the function of the law, and the impact statement is clearly secondary: “I listen to all this and I am polite to people because the statute obligates me to, but, so far as I know, it doesn’t influence me” (4JD21).

Again, in addition to this assertion of authority, judges describe sentencing guidelines as placing reasonable limits on that authority, as providing an objective and equitable framework for their decision making. As one judge said, “You can really have the empathy; you can feel the pain. But again, our justice system with the sentencing guidelines really does take out your visceral reactions to things” (2JD1). Another judge said the following:

I am a great believer in them [guidelines]. They are supposed to limit disparity; they are supposed to promote proportionality, and I think they do. God only knows where we would all go without them. So they give me a starting point. (4JD6)

These judges seem to view the guidelines as a sort of overarching strategy for decision making—one that delimits the territory in which action is possible (De Certeau, 1984, p. 36).

Many of the judges we interviewed and observed also attributed their ultimate sentencing decision for the crime to the plea agreement or the prosecutor's decision to offer a settlement, another way in which the rhetoric of inevitability is used to justify a sentence decision or plea. "The prosecutor knows the case so much better than the judge ever does," said one judge (2JD1). Therefore, judges state that they seldom "go back on the deal" (2JD5). The presentencing recommendation, which the judge reads before accepting the plea negotiation, contains information about the effect of the crime on the victim and the victim's response to the plea, but that information is recorded and perhaps interpreted by the probation officer. So, as one judge said, "when you get to the impact statements, even the ones that are particularly moving and heartfelt and emotional, they aren't really telling a judge anything he didn't know or already assume" (4JD14). Judicial discourse about impact statements, then, reinforces the power and knowledge system of the law.

Once having established this authority and suggested this inevitability, however, some judges do view disciplinary action as a negotiation involving a constellation of variables, some of which may include the impact statement and some of which may include additional details about the case, the victim, or the defendant. Aggravating and mitigating circumstances do allow a judge to depart from sentencing guidelines. The defendant's past history, age and mental health, patterns of abuse, and possible rehabilitation, as well as the nature of the offense and the brutality of the crime, are all possible circumstances that affect the disposition (jail or probation) and duration of the sentence, and many defendants do waive their Blakely rights in plea negotiations in order to avoid possibly receiving even more severe penalties after a trial. When probed, then, most judges did recall at least one case in which the VIS caused them to reconsider a sentencing decision or plea, agreeing that there are certainly instances in which the impact statement can influence the sentence. Moreover, judges almost always acknowledged the potential emotional benefit of an impact statement to victims: "It gives them an opportunity to say, 'You know, here's something bad that happened to me,' and it somehow has a cleansing effect on them" (2JD2). Although the victim

must address the judge, not the defendant, when delivering a statement, the impact statement does give the victim a chance to tell the person, albeit indirectly, “You hurt me, and I feel bad. And I want you to understand that I am hurting” (2JD6).

Advocates, too, while acknowledging the limited influence of the impact statement, often returned to the idea of the impact statement as a liberating tool for empowerment and validation. Many advocates felt that it really depends on the judge—that some judges “really try to take into consideration what the victim is saying” (ARC9). Interestingly, one advocate even described a case in which the impact letter deviated from the norm in that it was about 10 pages long, which is not traditional. The judge “took a recess from the hearing to go back and read all 10 pages,” and then she “came back out on the record and she kicked the plea deal because based on everything the victim was telling her in the impact statement, she didn’t feel that she could support the plea negotiation” (AHS8). That example of an impact statement that deviated from its generic norm in a way that influenced the judge’s decision shows that impact statements can occasionally influence the sentence. But as this advocate put it, “That is the .01%” (AHS8). Notably, this advocate felt that the impact statement, being 10 pages long, did not fit the “traditional” model of the genre. Perhaps advocates’ understanding of the normative structures that govern what counts as an influential impact statement actually allowed such a nontraditional VIS to function persuasively. In other words, in understanding the norm, advocates may be able to subtly subvert the norm in order to help make the victim’s voice heard. Although we can only speculate on the precise features that made this particular 10-page impact statement persuasive to the judge, we can safely presume that victim advocates’ awareness of and ability to work within and against the strategies of the court system aided in making that “.01%” an actuality.

Features of a Persuasive Impact Statement

In our interviews, judges generally identified features that might make impact statements persuasive regardless of how objective and limited these judges were in making their sentencing decisions. An impact statement can cause a judge to rethink a plea:

I have had cases where I was planning to honor a plea agreement, and then after victim impact, I rejected it. That is not typical; it’s unusual, but it has happened. And I actually changed my practice after that, and I told people whether I accept a plea agreement depends on the entire process, including the victim impact statement. (4JD22)

More commonly, however, an impact statement might affect the conditions of probation, causing the judge to order anger-management treatment, drug and alcohol supervision, domestic violence counseling, or such. Moreover, although the advocates generally agreed that the impact statement is unlikely to have a real “impact on the judge in terms of sentencing,” they clearly agreed that the work of the impact statement transcends the actual sentencing. By giving an impact statement, one advocate said, “You will be giving a gift to society because you are educating every single person in that courtroom—the court reporter, the clerk, the total strangers, the judge, the defense attorney, the prosecutors.” That is, after hearing the impact statement, they are no longer going to view the victim as “a case, they are going to see a human being. They are going to go, ‘Wow, I cannot imagine what that would be like if it happened to me’” (ARC17). Therefore, in our interviews and observations, we attempted to capture those traits of a persuasive impact statement.

Interestingly, for judges, VISs are deemed persuasive if they argue for leniency or mercy, provide new information on a case, support the principles of the law, display insight into the crime or relationship with the defendant, or offer a vivid account of the crime that distinguishes it from the typical or average crime of its sort. One judge, for example, described the sort of novel point of view that a victim might offer in an impact statement: “I learn of the victim’s injury and impact in . . . several dimensions that have never been flashed before my brain before, and I will reject negotiations on those cases” (4JD6). Likewise, victim advocates understand that a persuasive impact statement should provide insights into the relationship and the crime that would otherwise be unavailable to the court:

We don’t want them to get a whole lot into the incident . . . that’s already been established. But maybe where they were, the hopes, the dreams they had for this relationship [in a domestic assault case], how it started out and maybe how did it get this way, how it has affected them, maybe what they have been reduced to because of this. (AHC14)

The most persuasive impact statements seem to be those in which the victim describes relationship dynamics, in domestic assault cases, and personal accounts, in other crimes, that the judge would otherwise be unable to see or understand.

Consistent with this idea were the words of one judge, who noted how other victims were able to make their “particular case different” by describing details that would otherwise have remained unknown; for example, “I have

had to do therapy,' or 'I broke my engagement,' or 'my husband couldn't deal with me being raped, and we are divorced'" (4JD10). Another judge described why he imposed a more lenient sentence on a father who, while on drugs, threw his child against the wall to stop the child from crying. In this case, the mother asked for treatment rather than jail time: "She really loved him, and I think that she was pregnant with another child, that she would suffer, and the new child would suffer without having a father, that he was exceedingly remorseful over what happened" (4JD16). One judge, however, described how appreciative judges are when victims agree with the sentence through their insight into the ways the court must protect public safety:

I just think we probably are all a little more comfortable if we hear the victim say, "This was awful, terrible, and yet I know that society would be better off . . . if this guy gets treatment as opposed to getting prison." (4JD10)

In such cases, the VIS confirms the court's decision rather than influences it.

As we discovered in our interviews, then, victims who are successful in influencing a sentencing decision or affecting a plea negotiation have to be skillful rhetors and work within the norms for VISs that are informally established by the courts: They must argue that the crime had affected them more than the "typical" crime would have, that they have special insight into the defendant, or that they understand that a plea may be accepted that involves probation instead of prison time but that probation conditions might be a better way to correct or monitor the defendant's behavior. In their expectations for the VIS, then, judges shape what counts as an acceptable and thereby persuasive VIS. But also, by understanding and working within these norms, victim advocates perpetuate and sustain the norm while they use that understanding to help victims write the most persuasive VIS possible.

Nonetheless, delivering an impact statement is a difficult task because, on one hand, as many advocates agreed, "the ones that are probably the most compelling and the most powerful are the ones where people are really willing to open up and really talk about their pain" (AHS12). On the other hand, though, most advocates agreed that "the more sensible you come across, the more seriously you are taken" (AHS1). The standard for the well-received impact statement is therefore high. Advocates and victims alike have the difficult job of achieving what may seem like an impossible balance. That is, judges seem to want personal information and insights about the relationship conveyed in the impact statement, but this information must be presented in a balanced tone that is not overly emotional.

Advocates then recognize that for a judge to view an impact statement as credible, it must achieve a delicate balance between emotion and more objective insights into the crime. Because that is often easier said than done, advocates will work closely with victims, providing templates and models of VISs, to construct a statement that the victim feels comfortable with and that the advocate feels will be well received by the court. Here, advocates function as the other and “play on and with a terrain imposed upon [them]” by the authority of the court system (De Certeau, 1984, p. 36). They exercise tactics that work within and against the normative structures established by the courts. One advocate saw the need for a persuasive VIS as also rooted in the need to protect the genre and its ability to help future victims:

There are things they can say in their impact statements but there are certainly things they cannot say in their impact statements too. The court is pretty clear on that, and we try to educate them so that they are not doing something that they are not going to be allowed to do or that could endanger possible future victim impact statements. (AHS6)

The impact statement, then, not only functions as an advocacy tool but also as a technology of power in its own right—one that works with and against the system to assert and retain its disciplinary authority through its proper adherence to and subtle subversion of the normative structure of the VIS.

Another advocate acknowledged the need to keep the tone of the statement balanced—again, working within the system while also integrating the victim’s voice in a manner acceptable to the judge:

I let them know, “I want you to be as open and honest as you are willing to be.” . . . “You are welcome to talk about him but the comments have to be directed to the court,” and then [there are] guidelines about being respectful too. (AHS12)

Advocates noted that victims’ requests for sentencing should “be reasonable” and that when reading the impact statement, it’s “okay to cry, and it’s okay to be emotional, but you don’t want to yell. You don’t want to talk in half sentences” (AHS1). Advocates also noted that impact statements tend to work best when they are written or prepared ahead of time. Impact statements, then, must be carefully crafted, respectful, and articulate. The need to work within these expectations is important not only to ensure that the victim is heard but also to retain the disciplinary authority of the VIS as a viable knowledge system, as a technology of power that helps negotiate the balance between the victim’s need to be heard and the judge’s need to retain

authority and work within the normative structures of the court—structures that the judges themselves perpetuate and sustain.

Judicial Demeanor in the Courtroom

During the sentencing hearing itself, judges struggle with how to respond to VISs. Advocates, having witnessed a wide range of judicial demeanor in the courtroom, understand and corroborate this point. Within the hearings we observed and in the recollections of hearings conveyed in interviews, we found that negotiations were again at play in the courtroom when VISs were presented.

Most judges confirm that they offer victims at least nonverbal assurances that they are listening to them, and some go beyond those assurances to incorporate the VIS in the imposition of the sentence. As one judge said, “I look them in the eye. I don’t write notes. I try to show that I am interested, and I want to accommodate them, and I am listening to what they say” (4JD16). Moreover, during a February 2005 criminal sexual assault hearing, we observed the judge tell the victim that she was a brave, good person and that she did the right thing.⁵ Consistent with this point, most advocates cited making eye contact, displaying active listening, and providing validating comments as among the best things a judge can do to make the victim feel heard. As one advocate put it:

I love the eye contact, and the victim might not even be aware of it because she is shaking, holding her paper, trying to read. . . . Certainly when they [judges] say things like, “I just want to thank you for your courage. I know that was hard for you,” I just think that’s huge in helping her heal from it all. (AHS3)

What can be most validating, though, as another advocate explained, is when the judge will say things to the defendant that the victim would like to be able to say herself:

Judges have a lot to say at sentencing hearings to the defendant, and depending on how moved they have been by what this person did, sometimes they say what the victim would like to say themselves but can’t. Things like, “. . . I can’t believe how much damage you have caused here.” (ARS16)

An advocate said, for example, that a victim once told her that the judge’s words, in acknowledging her statement, were “balm for her soul” (ARS16). This impression was confirmed in more than one sentencing hearing. In one

hearing, for example, the victim's brother, for whom English was a second language, struggled to express his loss. The judge confirmed that his statement was heard by saying that she was "aware of how wonderful his sister was and how much she had cared for her friends and family" (May 10, 2005). Another judge, who addressed a 9-year-old victim of sexual assault whose teacher described in an impact statement that the young victim had lost her confidence, was well aware that he could use his status to try to restore that confidence: "So I used my power and my pulpit to say, 'You are a courageous young woman, and you are a strong young woman, and I want you to know this is not your fault'" (4JD22). He ordered the defendant to pay restitution for the victim's counseling for the rest of her life. But these comments are still considered crossing the line for many judges.

So, judges may choose to remain silent because they feel ill-equipped to know what to say to victims: "I have trouble with that. I often times don't know what to say" (4JD1). This response is a survival tactic for some; for instance, one judge said, "I think I am able to put things behind me in order to just keep living. I seem to be able to finish something and be done with it and not have it haunt me too long" (4JD2). This detachment, of course, does not go unnoticed by others in the courtroom. One victim advocate, for example, stated that during particularly emotional impact statements, judges "either get pulled in or they are pushed away" (AHC14); they succumb to the expressions of pain and grief, or they work twice as hard to resist them (AHC14). Advocates' awareness and understanding of the dynamics of judicial demeanor and the attitudes and beliefs that influence it serve as an additional variable that informs their understanding of the role of impact statements. As another advocate put it, "There are a lot of judges who, you know, survive this work by building this wall, and they don't really want to be moved. They see it as having a bias" (ARC17). Although advocates frequently concede that judges play a difficult role in the process, they are not necessarily expressing opposition to judges' demeanor when they make comments such as that one. Rather, they are acknowledging the various perspectives and often-difficult positions of judges. Advocates then use their prior knowledge of judicial demeanor in the courtroom as yet another means to strengthen their own work and, ultimately, help empower the victim.

Many judges, however, are hesitant to respond verbally to an impact statement not because they have built a wall, *per se*, but because they fear that such a response may diminish their authority or control of their courtrooms. One judge, for example, said he doesn't respond verbally to the victim's statement "because I have to stay objective, and the way I show my objectivity is by not taking sides" (2JD2). Another judge stated that she refrains

from commenting because she cannot control the victim's reactions to her comments:

I just listen. Usually I don't say too much because you just really never know what to say because whatever you say could be taken wrong, and I don't want anyone to think that I am judging what they say or demeaning them. (4JD14)

One judge explained that he has to distinguish carefully between his own emotional response and his legal discourse, as he described one comment he made in a homicide case:

"One of the things that happens in our lives is that our parents die . . . that's the natural order of things. But there is no consolation of a parent losing a child. Your last thought before you die . . . will be of this child and what happened to it. . . ." So I have all sorts of consolatory speeches in my repertoire, but none of it has anything to do with the criminal law. (4JD21)

Finally, this distinction between legal and emotional discourse led a judge to suppress his response to victims:

I think that the informal training we get with the victim impact statements is that judges don't really comment on the victim impact statement, and that can be very difficult because . . . it just seems like common decency to express your sorrow and condolence. (4JD2)

In other cases, however, judges were simply not able to maintain this resolve. In one hearing, for example, four family members gave impact statements in which they described their loss when a young relative had been killed in a driving while intoxicated case. She had always wanted to get married and had overcome physical and mental challenges in order to be able to do so, but then on her first wedding anniversary, she was killed by a driver impaired by drugs. The court clerk, the prosecutor, the defendant, and the judge all cried during the hearing (April 15, 2006).

Judges, then, struggle to find a response to impact statements that fits their own sense of appropriate legal discourse, control, authority, and human decency. And as advocates noted, victims for whom catharsis rests on the judge's ability to express emotion may be most disappointed during sentencing hearings conducted by judges who feel that emotion and reason are separate entities, who feel compelled to suppress their own emotional responses, or who have become numb to impact statements in general. One advocate told how this lack of emotional response complicates her ability to assist the victim:

I tried to prepare the client . . . they are crying and emotional, and the people with them are crying and emotional, and then to see this judge just kind of like sitting there, I think that this is really hard for them to deal with. (AHC10)

Finally, in some cases we observed that the judge maintained a formal and objective persona during the hearing but communicated informally and even emotionally after the hearing. During a hearing in a third-degree criminal sexual conduct case, for example, the victim conveyed in her impact statement a sense of her trauma and survival in saying to other potential victims, “Don’t be afraid when something like this happens,” but be strong and courageous (April 25, 2006). She described how her life had gotten better, and she thanked the police officer that had helped her at the time of the incident. After the hearing, the judge walked out into the gallery to speak to the victim, whom he recognized from her own appearances in drug court, and praised her for how far she had come. Another judge followed the mother of a victim into the hallway after a hearing. In her impact statement, the mother had described the severity of the attacks on her daughter. The defendant had attacked the daughter five times before, and, according to the complaint, in this latest attack, he had broken out the victim’s teeth and battered her beyond recognition. The mother described how she feared for her daughter’s life because the daughter was drug and alcohol addicted and unable to leave the relationship (March 31, 2006). The judge, who had maintained the order for protection but, despite having imposed a sentence that was more severe than the guidelines suggested, could impose only 180 days in the workhouse, offered to help the victim’s mother protect her daughter in “any way” she could, and she praised her for preparing the impact statement. “It took a lot of courage,” the judge said, as she asked whether she could share the statement with others for “educational” purposes. Again, these last two judges maintained the formality of the hearing but physically moved away from the bench and engaged in personal conversations to acknowledge the courage and the fears of the victims. Moments such as this demonstrate how the VIS can function as a persuasive tool that can help negotiate the power relationships in the courtroom. Although these power dynamics may appear strictly hierarchical at times, they really are not. The VIS functions as a technology of power that negotiates disciplinary norms. When composed with an underlying knowledge of the normative structures governing the persuasive impact statement, the VIS becomes a disciplinary tool whose role is to highlight the parameters within which the norms can be defined and then perhaps subtly subverted.

Conclusion

Judges understand and respect that victims have the legislated right to give an impact statement, and they certainly honor that right; however, they also struggle to maintain not only their authority in the courtroom but also their role within a larger institution that, to borrow from De Certeau's (1984) language, serves as a base from which external threats may be managed. The unpredictability of the emotional displays elicited by impact statements is sometimes perceived as a threat to that authority and to that institution. Judges then use the rhetoric of inevitability, citing sentencing guidelines as being more restrictive than they actually might be in individual cases, to give them the option to offset that threat. Victims, on the other hand, see the impact statement as an opportunity to make themselves heard, request particular sentences or punishments, and gain closure on the crime. Victim advocates must negotiate the relationships between judges and victims, not only by understanding judges' preferences and comfort levels with VISs but also by being honest with victims about the limitations of the VIS and the potential emotional value for the victim. In negotiating these relationships, they ease the tension between these two groups by helping victims to adjust their expectations as well as to compose the most appropriate statement, given the normative structures governing it and the room for subtle subversion that such normative structures allow for and invite.

Inherent in each group's interpretation of the right to give an impact statement are the values and goals both of a system that seeks to highlight the parameters within which the norms may be defined in relation to the person or group cast as the other and of that other itself. Again, by referring to a system that seeks to enforce parameters, we do not mean to say that the relationship between judges and victims is necessarily adversarial or even strictly hierarchical. Indeed, victim advocates have a lot of knowledge to impart to members of the court system, and judges do understand that advocates have much to offer in the way of experience and resources. The middle ground, therefore, lies in the negotiation afforded by the work of the VIS itself and by those moments of mutual understanding that occur when judges are moved by an impact statement or when judges listen attentively, validate, and even express sympathy to the victim. The disciplinary power of each group then fluctuates given a constellation of variables. Thus, these relationships are far from being strictly hierarchical although they may appear so. Although advocates must play on the terrain imposed on them, they are able to control this terrain as well, and by using the technologies of power afforded by the VIS to work within and against

the system, they use their discursive understanding to help empower the victim.

Such studies as this one provide insight into important questions about business and technical communication in the public arena. Concerned groups must negotiate public policy, including interpretations of legislated rights and limitations, to articulate and achieve their goals. Understanding how those groups frame problems, define rhetorical exigencies, and get issues on the table demands in-depth and often sustained investigation—investigation that goes much beyond identifying various voices and articulated goals. The interaction between these concerned groups, as we discovered, may take place in a middle ground of negotiation, which is not immediately obvious to the investigator. And as we experienced, one way for scholars of business and technical communication and rhetoric to conduct such cases is to partner with a community group involved in such negotiations. That community partner, in turn, can help more widely disseminate the results and recommendations of such studies so that research participants can increase their understanding of each other and open up the dialogue. In our case, we also hope that our study will reveal to advocates and victims successfully persuasive strategies and tactics that enhance a VIS.

Finally, we have some suggestions for how graduate education, in particular, in business and technical communication, might address the themes and discoveries we found in our study:

1. We are long accustomed to audience analysis techniques that enforce hierarchical descriptions, particularly within industry—someone is the boss, someone a colleague, someone an employee. In our study, we found that victims and their advocates were able to enter into negotiations with judges who initially seemed to have much uniform authority and status. The legislated right to give a VIS began that negotiation, but working within the norm also provided a way not only to negotiate but also to resist the blanket imposition of judicial authority or sentencing guidelines. Our graduate courses then need to address those more nuanced relationships within the public arena.
2. Not only do graduate courses need to address those more nuanced relationships within the public arena, but they should also subsequently encourage firsthand experiences within those arenas whenever possible. By encouraging partnerships with organizations that deal with various forms of public policy, whether it be in the legal or nonprofit arena, for example, students get to witness policy in action versus or in addition to policy analyzed in the text.
3. We recommend that graduate students have the opportunity to experience the application of theory as interpretive tools. Students often feel they must extend theory to succeed in their courses or dissertations, but the case study approach,

such as ours, for example, demands that theory provide tools first to interpret and then to contribute to theory. By starting with such unique case studies, we can begin to understand the rhetorical nature of the public arena and the negotiations within the creation and application of public policy.

4. Business and technical communication provides tools for understanding the persuasive elements of genres as they are applied in decision making and in creating new documents, such as the legislated right to give a VIS and the statement itself in negotiation with sentencing guidelines. These tools provide an understanding of the relationship of text and its presentation, in this case, in the courtroom. Moreover, expertise in business and technical communication should include the ability to interview and observe individuals and constituencies as they interpret these texts.
5. Finally, sharing the results of our study with WATCH was one of the most rewarding aspects of our project. Sharing research results with participants and inviting their participation or feedback is also an important component of activist research, as Barton (2004), Faber (1998), Grabill (2000), Schuster (2006), and Waddell (1996) all explicitly or implicitly described. With this, we feel that graduate courses in the research methods of business and technical communication would benefit by addressing the complexities of sharing research results with research participants or the public.

Appendix A

Sample Interview Questions for Judges and for Advocates

Judges:

1. How long have you been a judge in Hennepin/Ramsey County?
2. How often do you see a victim impact statement (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?

(continued)

Appendix A (continued)

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?
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 felony/gross misdemeanor domestic violence courtroom, the sentencing decisions that you must make, and/or VISs?

Advocates:

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?
-

Appendix B

Observation Form

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?
 - 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:
- 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:

(continued)

Appendix B (continued)

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:

Notes

1. Results of this study were presented at the Law and Society Association Conference in Baltimore, MD, in July 2006 and at the College Composition and Communication Conference in New York City in March 2007.

2. We identify the speaker of a quote according to the following key: If the speaker is a judge, we identify the district, either the second judicial district (2JD) or the fourth judicial district (4JD), and the random number we assigned that judge (in this case, number 6). If the speaker is an advocate (A), we identify the county, either Hennepin (H) or Ramsey (R); the type, either system (S) or community (C); and the random number we assigned that advocate.

3. WATCH volunteers used our observation form to record their impressions of impact statements given during sentencing hearings. But because we were not able to control for the volunteers' varying degrees of experience (e.g., observers' experience ranged from that of new student interns to that of the executive director of WATCH), we have grounded our findings on our interviews and our own observations.

4. The Minnesota sentencing guidelines grid can be found at <http://www.msgc.state.mn.us/>.

5. Statements and observations from the hearings are noted by the date alone.

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