

Rethinking Victim Impact Statements

By **Eva Herscowitz** | July 7, 2022

The practice has reached almost viral proportions: a string of women, often young, file into a courtroom, take the stand, and recount their abuse by a powerful man.

Perhaps the man is an unknown rapist, like Stanford swimmer Brock Turner, though the men that invite Victim Impact Statements (VIS) are typically high-profile, long-time perpetrators of abuse akin to gymnastics coach Larry Nassar.

In any case, VIS have become a mainstay of trials, fulfilling multiple functions that the broader criminal justice system often overlooks: “informing the sentencing judge or jury of the harm caused by the crime, providing healing and catharsis to victims and co-victims, educating and confronting perpetrators, and educating the public,” writes DePaul University Emeritus Law Professor Susan A. Bandes.

But there are valuable critiques of VIS, too, argues Bandes in an essay entitled “What Are Victim Impact Statements For?” published in the *Brooklyn Law Review*.

In doing so, Bandes challenges established narratives that Victim Impact Statements are a unilaterally therapeutic, educational and informative courtroom practice.

Examine the court rulings and courtroom practices around VIS, and several practical questions arise, argues Bandes.

Is There a Better Way to Hold Harassers Accountable?

“We can acknowledge the emotional power of the statements of Chanel Miller, Simone Biles, Ali Raisman, and other while still asking whether the statements accomplish what their speakers intended, and whether there is a better way to achieve the legitimate goals of VIS without unduly burdening other important trial rights and values,” she writes.

For one, the healing and informative character of VIS are often at odds; in other words, the therapeutic purpose VIS often afford victims is often incongruent with VIS’s role in supplying the sentencer with more information.

The 1991 Supreme Court ruling in *Payne v. Tennessee*

(<https://web.archive.org/web/20220713052621/https://supreme.justia.com/cases/federal/us/501/808/>) upheld the admission of VIS in capital trials, but “this tension has not been adequately addressed,” Bandes writes.

Subsequent court decisions have muddied the legal waters on VIS.

In *Booth v. Maryland*, (<https://web.archive.org/web/20220713052621/https://www.oyez.org/cases/1986/86-5020>) the Supreme Court ruled that the admission of VIS in a capital murder trial violated the Eighth Amendment, arguing that the “emotional impact of the loss on the victim’s family” remained irrelevant to the jury’s sentencing task.

Two years later, the court reversed *Booth*, but failed to clarify precisely *what* the capital jury is to make of victims’ emotional losses. Lengthier sentences are often the assumed byproduct of these highly-personal testimonies, but without court guidance, VIS remain an ambiguously applied legal practice.

Bandes also critiques the carceral approach embedded in VIS.

Inadvertently, these statements can function as a call for harsher punishments, even when victims’ wishes are unaligned with “the goals of the prosecution.”



Photo by Iuseppe Milo via Flickr

Do Victim Impact Statements Really Offer Healing?

“The claim that the statements help victims heal sounds intuitively obvious, good-hearted, and unobjectionable,” she writes. “The danger of such claims is that they may repel careful scrutiny.”

Examining the therapeutic, informational, and educational rationales of VIS, Bandes argues that “fairer” and “more robust” models exist to meet these multifold goals.

VIS are admittedly powerful. A cascade of victims delivering personal speeches serves as visual evidence of a crime’s enduring impact.

But the goals of VIS are better suited to forms of restorative justice, such as victim-offender mediation or victim impact panels, which afford victims a more clearly-defined ability to “confront and even educate the defendant,” Bandes argues.

“There is a certain hubris in transposing restorative goals onto an adversary process without taking the necessary steps to train the legal actors involved, or screen and prepare the parties for what may transpire,” Bandes writes.

“The practices of restorative justice demonstrate that to make direct confrontation and even sustained interchange fruitful for the parties involved requires commitment, training, resources, and some hard tradeoffs between punitive and educative aims.”

Read the full article [here](https://web.archive.org/web/20220713052621/https://papers.ssrn.com/sol3/papers.cfm?abstract%20id=4118829) (https://web.archive.org/web/20220713052621/https://papers.ssrn.com/sol3/papers.cfm?abstract%20id=4118829).

Eva Herscovitz is a contributor to The Crime Report.
