VICTIM IMPACT STATEMENTS: 
THE ROLE OF EXPECTATIONS IN JUROR JUDGMENTS

Emalee J. Weidemann

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Approved by 

Advisory Committee

___________________________  _______________________ 
Dr. Rich Ogle              Dr. Len Lecci

___________________________  _______________________ 
Dr. Bryan Myers            Chair

Accepted by 

Dean, Graduate School
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ABSTRACT

Following the Supreme Court ruling of *Payne v. Tennessee* (1991), victim impact statements (VIS) became a strong topic of debate among legal scholars and forensic psychologists. Previous studies on mock juror sentencing found mixed evidence for the effects of VIS. One possibility for these inconsistencies is that VIS may be most impactful when the level of suffering presented deviates from jurors’ expectations. This perspective implies that sentencing judgments are influenced by perceptions of the suffering of the victim’s family, and VIS serve to either modify or confirm expectations jurors have concerning how much suffering the family is experiencing. This study used a 2 (Expectations: Vulnerable/Resilient) x 3 (VIS: Mild/Control/Severe) factorial between-subjects design to investigate the relationship between expectations, perceived suffering ratings, VIS, and sentencing judgments. However, while it was hypothesized that both sentencing judgments and suffering ratings will only change from post-guilt phase to post-penalty phase when the VIS information is inconsistent with juror expectations (i.e., the Expectations Hypothesis), the present study found little support for this. There was little evidence to support the perspective that perceptions of suffering directly impact sentencing, but attitudes concerning punishment and the death penalty played a pivotal role in sentencing. Implications for the VIS controversy are discussed.
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VICTIM IMPACTS STATEMENTS:
THE ROLE OF EXPECTATIONS IN JUROR JUDGMENTS

INTRODUCTION

Victim impact statements (VIS) are a way for victims to be able to express the amount and type of harm they have experienced as the result of a crime. This practice of victim impact testimony was implemented during the Victim’s Rights Movement as an attempt to shift greater focus to the victim than was previously the practice (Cassell, 2005). VIS commonly include information about financial loss, psychological or emotional turmoil, and physical injury. In a capital trial, the victim’s surviving family members may give this testimony. VIS are given during the sentencing phase, after the defendant has already been found guilty. In capital crime cases, the VIS is addressed towards the jury, who must sentence the defendant.

In 1987, the United States Supreme Court first considered the constitutionality of VIS in Booth v. Maryland. The defendant, John Booth, was convicted of first-degree murder of an elderly couple. During the sentencing phase of the trial, a VIS was presented to the jury that gave detailed account of the effect of the crime on surviving family members, character information of the deceased victims and the family’s personal opinions about the defendant. John Booth was sentenced to death. This sentence was reversed by the Supreme Court when the majority concluded that “the Eighth Amendment prohibits a capital sentencing jury from considering victim impact evidence” (p. 501), as rendering death penalty judgments for reasons based on emotion constitutes cruel and unusual punishment. VIS were also seen as irrelevant to the defendant’s blameworthiness. Specifically, the Booth Court wrote, “First,…personal characteristics of the victim and the emotional impact of the crimes on the family. Second,…family members’ opinions and characterizations of the crimes and the
defendant....[T]his information is irrelevant to a capital sentencing decision” (p. 502-503). The
majority was concerned that testimony which included this information would inflame the
emotions of the jurors and cause irrational sentencing judgments.

Two years later, the issue of VIS once again made its way to the Supreme Court with
South Carolina v. Gathers (1989). Demetrius Gathers was also convicted of first-degree murder,
along with criminal sexual conduct, and sentenced to death. In Gathers’ attempt to rob his
victim, some personal papers were scattered about the crime scene, which were later brought in
as evidence. These papers showed that the victim was a religious man and a registered voter.
The VIS in this case came in the form of the prosecutor’s closing argument, in which several
unconventional statements were made concerning the character of both the victim and the
defendant. For example, the prosecuting attorney stated,

“We know from the proof that Reverend Minister Haynes was a
religious person....Of course, he is with the angels now, but this
defendant Demetrius Gathers could care little about the fact that he
is a religious person....Among the personal effects...[A] voter’s
registration card. Reverend Haynes believed in this community.
He took part” (p.808-810).

Gathers’ sentence was also reversed, on the grounds that “the content of the various papers…
was purely fortuitous and cannot provide any information relevant to the defendant’s moral
culpability” (p. 812). This idea of irrelevance to the defendant’s blameworthiness confirmed the
Booth decision and extended it to further clarify that these sorts of statements are inappropriate,
regardless of who is addressing the jury.

The final decision regarding VIS came in 1991 with the case of Payne v. Tennessee.
Pervis Tyrone Payne was charged with two counts of first-degree murder of Charisse
Christopher and her daughter, Lacie Jo, along with one count of first-degree assault with the
intent to murder her son, Nicholas. Here, the VIS was given by Mary Zvolanek, Charisse’s
mother. She testified that, “[Nicholas] cries for his mom. He doesn't seem to understand why she doesn't come home. And he cries for his sister Lacie. He comes to me many times during the week and asks me, Grandmama, do you miss my Lacie. And I tell him yes. He says, I'm worried about my Lacie” (p. 814-815). The prosecutor further informed the jury that, “Somewhere down the road Nicholas is going to grow up, hopefully. He's going to want to know what happened. And he is going to know what happened to his baby sister and his mother. He is going to want to know what type of justice was done. He is going to want to know what happened. With your verdict, you will provide the answer” (p. 815). Although the Supreme Court of Tennessee stated that the VIS was “technically irrelevant,” they also stated that it “did not create a constitutionally unacceptable risk of an arbitrary imposition of the death penalty and was harmless beyond a reasonable doubt” (p. 816-817). The United States Supreme Court overruled the previous decisions in *Booth* and *Gathers*, leaving the discretion of what is appropriate up to the State. They contended that the Eighth Amendment “erects no *per se* bar” on evidence that informs jurors about harm caused by the defendant (p. 827).

Today, the decisions made by the *Payne* court are broadly interpreted by each state. According to Blume (2003), thirty-three of the thirty-eight states that allow the death penalty also have legislation that specifically allows VIS in capital cases. Despite their widespread use in penalty phases of capital trials, the introduction of VIS has elicited considerable controversy. The rarity of the Supreme Court deciding one issue three different times in four years sparked an enormous debate about whether VIS are inflammatory and prejudicial, or helpful and informative. Many advocates of VIS have cited psychological benefits, such as promoting catharsis, closure, and feelings of empowerment to a person that has recently felt very vulnerable (Kilpatrick & Otto, 1987). Another reason to support VIS is the principle of proportionality,
which suggests that ‘the punishment should fit the crime’ (Erez, 1990). Many scholars feel as though the benefit of giving an overall picture of the crime that includes all perspectives outweighs any potentially negative risks (Henderson, 1985).

Throughout the literature, several have argued that VIS shift the focus away from the defendant; that is, VIS can serve as a distraction, and jurors should be focused on the blameworthiness of the defendant, not on character information about the victim, or other unrelated information (Berger, 1992). Tied closely with this concept is the idea that VIS can be emotionally inflammatory. Jurors may be more persuaded by how they feel about the testimony than by the facts presented in the case (Logan, 1999). Both exemplify the prejudicial nature of VIS, as they potentially interfere with jurors’ capacity to make reasoned judgments concerning the defendant based on information relevant to sentencing. These general issues have formed the basis of psychological research on VIS and jury decision-making.

**Victim Impact Statements and Mock Juror Decision-Making**

Although the Supreme Court began to recognize the controversial nature of VIS in 1987, the first empirical study was not published until 1995, well after the *Payne* decision had been implemented in 1991. The first challenge for researchers was to empirically demonstrate whether VIS affect juror judgments at all. According to Luginbuhl and Burkhead (1995), and confirmed by many subsequent researchers, VIS do have an impact on mock juror sentencing recommendations. That is, individuals are more likely to punish defendants harshly when VIS are included in the sentencing phase of a capital trial. In 1999, Myers and Arbuthnot looked at how strength of evidence interacted with the presence or absence of a VIS on verdict and sentencing judgments, both individually, and again as a group (jury) after deliberation. Confirming Luginbuhl and Burkhead’s (1995) findings, there was a significant main effect of
VIS on sentencing recommendations, such that of those jurors who voted guilty, individuals were more like to impose harsher consequences on the defendant if they had received a VIS (Myers & Arbuthnot, 1999).

Jury simulation studies began to piece together factors that might account for this effect. The first aspect of VIS that was examined empirically is the question of whether any differences in sentencing judgments would occur based upon how the victim’s character is portrayed. The Payne Court certainly made it clear that these sorts of evaluative judgments have no place in the penalty phase of the trial when they wrote, “victim impact evidence is not offered to encourage comparative judgments of this kind – for instance, that the killer of a hardworking, devoted parent deserves the death penalty, but that the murderer of a reprobate does not. It is designed to show instead each victim’s ‘uniqueness as an individual human being’” (p. 823). Therefore, jurors should not consider this character information in their judgments. To test this, Greene, Koehring and Quiat (1998) manipulated victim characteristics to determine whether or not more suffering was perceived by the jury when the victim was an upstanding member of the community as opposed to someone who was less upstanding. As expected, Greene et al. (1998) found that mock jurors rated the crime as significantly more serious and rated the suffering of the surviving relatives as significantly greater when the victim was portrayed in a respectable manner. Greene (1999) replicated these findings across conditions that varied the content of the VIS. Participants received VIS that contained various combinations of victim characteristics, effects on the surviving family members, and the family’s opinions about the crime and their sentencing recommendations. Mock jurors who received all of the aforementioned information viewed the victim as more positive, and again, victims of respectable character elicited greater
perceptions of suffering and harm. In neither study, however, did researchers examine sentencing judgments. Instead, researchers measured a variety of juror sentiments.

In an attempt to further elucidate how victim depiction affects juror judgments, Myers, Godwin, Latter, and Winstanley (2004) examined the effects of language contained in VIS. In the context of a VIS, witnesses are given wide latitude in how they may portray both the victim as well as the defendant. The Supreme Court has supported the use of language meant to portray the victim as more than a “faceless stranger” (*Payne v. Tennessee*, 1991, p. 831), but have failed to address the constitutionality of language aimed at stripping the defendant of their human qualities. Kelman (1973) initially, and later Bandura (1978), and most recently Haney (2004) have warned that dehumanizing language has the potential to erode whatever moral conscience one has concerning killing another.

Myers et al. (2004) examined this issue in the context of VIS. Language which was meant to humanize the victim involved portraying the victim in positive human terms (e.g, “warm,” “caring”). Likewise, language which was meant to dehumanize the defendant spoke to their negative, subhuman characteristics (e.g., “animal,” “slime”). Some participants received one or both types of language in their VIS, whereas a fourth group received neither. When only those participants who were death-qualified were examined, the Dehumanizing group rendered the harsher penalties, with 75.6% voting for the death penalty. Thus, we see that how the trial participants are portrayed may matter to jurors. Jurors are much more willing to rate the suffering of the victim’s relatives as significant when the victim is painted in a positive light. Moreover, when the defendant is portrayed in less-than-human terms, jurors appear more willing to render death penalty judgments.
Another context in which researchers have attempted to look at VIS is by using harm information. This issue of harm information and VIS was addressed by the *Payne* Court when they wrote, “the assessment of harm caused by the defendant as a result of the crime charged has understandably been an important concern of the criminal law, both in determining the elements of the offense and in determining the appropriate punishment” (p.819). Based on research concerning harm information and mock juror judgments, Myers, Lynn, and Arbuthnot (2002) hypothesized that subjects would render more severe punishments when the harm caused by the defendant was more severe. It was further hypothesized that witness demeanor would influence harm judgments (i.e., more harm would be perceived if the witness displayed obvious emotional distress, and less harm would correspond with little emotional display). Although severe harm did lead to significantly more severe sentencing recommendations than did mild harm, emotional demeanor did not significantly affect sentencing, nor did it significantly interact with harm. However, when participants’ emotional responses to the VIS were measured using the Positive and Negative Affect Schedule (Watson, Clark, & Tellegen, 1988), there was a main effect for both witness demeanor and crime severity. Thus, emotional demeanor impacts jurors’ reported emotional responses to the case, but it has little impact on their sentencing judgments. Moreover, jurors reporting greater negative affect were no harsher in their sentencing than were jurors reporting little negative affect.

Along these same lines, Nadler and Rose (2003) examined the emotional response of the witness and its effect on juror judgments. Here, they varied the emotional reactions of the victim (Severe vs. Mild) to a crime. In the Severe condition, participants learned that the “victim is now feeling afraid, vulnerable, depressed, is having problems sleeping, and cannot stop thinking about the crime” (p. 433). In the Mild condition, participants learned that the “victim was angry
when the crime first happened, but now has returned to her normal activities and no longer thinks too much about the crime” (p. 433-434). A third group received no information about how the victim was coping. The severe reaction group rendered significantly harsher punishments than the mild reaction group, however, they failed to replicate this effect for a second case involving a different crime. Similarly, the severe reaction group indicated having significantly greater sympathy for the victim than those in the mild reaction group. Again, this effect was not significant in the second crime scenario. Although they contend that victims’ emotional responses to harm will affect mock jurors’ punishments, their inconsistencies suggest a less concrete interpretation.

Although the harm presented in a VIS is important to sentencing judgments, the context in which it arises may also matter to jurors. That is, when the harm and suffering surrounding the crime is all-too-apparent in particularly heinous crimes, VIS may add little to what jurors already feel about the crime. In Payne, Justice O’Connor opined that jurors may become so outraged in the guilt phase for particularly gruesome crimes that a VIS may offer little additional motivation to punish the defendant harshly. In short, jurors may have reached their limit on moral outrage toward the defendant in some cases and not others. Recently, Kehn, Roop, Kemp, Lewis, and Myers (2006) tested this saturation hypothesis by examining the effects of crime heinousness (high vs. low) and VIS (present/absent) on mock juror sentencing judgments. Although there were main effects for both VIS and crime heinousness, the two factors failed to significantly interact. This finding argues against the saturation hypothesis.

Although there is little convincing evidence that the influence of VIS on juror sentencing judgments varies as a function of crime heinousness, the degree to which VIS impact jurors may still vary as a function of the context in which it emerges. One such contextual factor is the
source of the VIS. As some have noted (e.g., Logan, 1999; Myers & Greene, 2004), the Payne Court offered little guidance concerning who may testify in a VIS. In the trial of Timothy McVeigh, some 38 different individuals, including rescue workers, testified at length before the jury. In 2004, McGowan and Myers looked at the witness to see if who gave the VIS influenced sentencing judgments. Of the four conditions (Control/No VIS, Wife, Coworker, and Firefighter), the harshest sentences were given when the witness was the victim’s coworker. Yet subjects rated the wife’s suffering as most severe, suggesting that sentencing judgments are not a direct reflection of estimates of witness suffering. Clearly, one would expect greater suffering from the wife than one would expect from the coworker. In this vein, expectations of suffering may play an important role in how one responds to VIS.

*Expectations and Victim Impact Statements*

Thus, we see that harm information influences judgments, as do perceptions of victim suffering, but the findings are inconsistent. One explanation for these inconsistent findings may be that the harm information contained in a VIS may fail, under some circumstances, to deviate substantially from expectations, and consequently, have little impact on jurors. Therefore, how one responds to the tragedy of losing a loved one may be important to jurors. One hypothesis as to why VIS impacted juror judgments in some situations, and not in others, is that the chief value of VIS are to inform the jurors of something that they did not already know. Individuals typically have preconceived notions of how a victim of a crime should feel in response to their situation. According to recent findings, these expectations (or predictions) of how individuals should feel – a term referred to as affective forecasting – can differ substantially from the actual experience (Wilson & Gilbert, 2003). People already have expectations about how much harm has been inflicted on a family who has just lost a loved one without even hearing a VIS. Perhaps
it is only when VIS depart from expectations that they are likely to be useful in aiding juror judgments.

Rose, Nadler and Clark (2006) empirically examined these issues by trying to establish “emotion norms,” in response to various crimes, and then analyzing what happened when a victim’s emotional response deviated from that norm. Two separate studies were conducted, and within each study, the seriousness of the crime and the intensity of the emotional response were varied, and judgments of “‘How unusual’ the victim’s reaction seemed” were measured on a 7 point scale. When the crime situation did not involve physical threat to the victim, only the severe reaction to the mild crime was judged by participants as unusual. Alternatively, when the crime situation did involve some aspect of physical threat, it was the mild reaction to a severe crime that was judged by participants as unusual. These findings suggest that expectations may affect how people view the emotional responses of a victim, and thus how they weigh the harm information. It is noteworthy that none of these ratings of unusualness correlated with punishment ratings. This study suggests jurors may judge the appropriateness of a victim’s response to their experienced harm. When a victim’s response deviates from expectations it is judged as unusual. However, as noted, jurors may also have expectations about how much suffering or harm will likely accompany a crime. Here, VIS information that substantially departs from these expectations may have greater impact on judgments than VIS information that is largely consistent with expectations.

*Empathy and VIS*

Researchers have not yet explored the concept of empathy in the context of VIS, even though legal commentators have extensively debated this issue. The purpose of a VIS, as outlined by the courts, is to convey important information about the amount of harm and
suffering the surviving relatives are experiencing as a result of this loss. Presumably, more empathic individuals would be more able to perceive and incorporate information about another individual’s suffering into their judgments. Bandes (1996) pinpoints empathy as the mechanism by which jurors become emotional, and therefore irrational. It is not clear, however, which component of empathy she is referring to. In 1980, Davis developed the Interpersonal Reactivity Index (IRI), which measures an individual’s trait-level empathy, or ability to look through the eyes of another person. Three of the four subscales produced by the IRI, Perspective-Taking, Empathic Concern, and Personal Distress, have been shown to be the three most important aspects of empathy (Davis, 1983). More specifically, the Empathic Concern subscale encompasses the emotional component of empathy (i.e., actually feeling the emotions that one perceives another individual is feeling), whereas Perspective-Taking encompasses the cognitive component of empathy (i.e., being able to incorporate information from another person’s perspective). Because legal interpretations of prejudicial judgments are consistent with emotional judgments, individuals who display emotional reactions to the suffering of others and translate these responses to their legal judgments (e.g., sentencing) are evidencing prejudicial decision-making. One would therefore be most concerned with how jurors score on the Empathic Concern subscale, and whether these scores correlate with sentencing judgments. However, if this same pattern was revealed with the Perspective-Taking subscale, it can be assumed that people are using their empathy to inform their judgments in a rational way.

Even though empathy, through how people perceive suffering information, should be a helpful insight into how VIS impact judgments, that impact of VIS is measured chiefly by sentencing judgments. It is therefore necessary to also examine the role of individual beliefs about punishment and how they may impact sentencing. That is, individuals who place little
importance on the victim in evaluating the appropriate punishment a defendant should receive may place little value on VIS. Consequently, jurors bring not only expectations about the suffering of victims to trial, but they also bring attitudes concerning punishment. As we will see, these attitudes can have important implications for how VIS information is incorporated into sentencing judgments.

**Attitudes Regarding Punishment**

Traditionally, punishment has been conceptualized by breaking it down into three distinct components: retribution, deterrence, and rehabilitation (e.g., Fagothy, 1976; Honderich, 1969). These components serve as different reasons or justifications for the act of punishment. Retribution focuses largely on the defendant, and can be conceptualized with an ‘eye for an eye’ principle (Chung & Bagozzi, 1997). More specifically, retribution has been said to embody components of both revenge and restitution (Packer, 1968). More recent conceptualizations of punishment still include retribution as a widely understood justification. Deterrence, on the other hand, focuses largely on society and what is deemed best for non-offenders. The hope of this rationale rests on the idea that criminals will so strongly fear the negative consequences of their actions that it may deter them from committing the crime at all. Rehabilitation focuses on change, and how punishment can benefit both the defendant and the larger community to which they belong. According to de Keijser, van der Leeden, and Jackson (2002), deterrence and rehabilitation both fit into the more expansive category of utilitarianism. With its roots in philosophy, utilitarian ideas about punishment involve the prospective good that can come in a number of ways from lowering the incidence of crime. Collapsing deterrence and rehabilitation into this broader framework opens the door for a relatively new way of conceptualizing punishment – restorative justice.
Restorative justice focuses on the victim and the harm that they have been made to suffer. The goal of restorative justice is to compensate for this harm in some meaningful way (Walgrave, 1994). This view is generally seen as an alternative to the aforementioned theories of punishment, and is clearly the most applicable with regards to VIS. Perhaps VIS are more useful to those persons who subscribe to a more restorative approach to punishment than to those whose attitudes are more traditionally oriented.

De Keijser, van der Leeden, and Jackson (2002) developed a scale to assess these differences in punishment attitudes. Using factor analytic methods, the scale provides six main categories of punishment that fall into two central standpoints: deterrence, incapacitation, desert, and moral balance all represent a “harsh treatment” point of view, whereas rehabilitation and restorative justice can be better described by “social constructiveness” (p. 333). Conceivably, these particular attitudes toward punishment serve to influence how VIS information is processed and utilized in their decisions. If this were the case, VIS would be influencing different jurors in different ways based solely on their individual attitudes regarding punishment in general.

Present Study

As was noted earlier, VIS may be the most impactful when the information contained in the testimony departs substantially from one’s expectations. More specifically, the harm information portrayed in a VIS involves the suffering of the victim’s relatives. As the Supreme Court has previously noted, jurors typically presume that the murder of an individual has left some mark on their surviving family. Therefore, the issue becomes whether or not jurors learn from the VIS that the family is suffering much more or much less than they had initially suspected. In order to test this Expectations Hypothesis, the expected suffering of a family will be manipulated in order to create expectations of severe suffering in one condition (i.e.,
Vulnerable), and expectations of mild suffering in another condition (i.e., Resilient).
Additionally, the information participants will learn about the actual suffering of the victim’s relatives will also be varied, in a VIS, such that in one condition the family actually experiences severe suffering, and in a second condition the family actually experiences mild suffering, given the circumstances. In a third condition, participants learn no new information about the family (i.e., Control/No VIS). If deviation from expected suffering is what impacts sentencing judgments, then participants who make judgments based on inconsistent information (i.e., Vulnerable expectations, Mild VIS) should sentence differently than participants who make judgments based on congruent information (i.e., Vulnerable expectations, Severe VIS).

To further demonstrate that it is changes in perceived suffering that plays a role in how jurors sentence, suffering difference scores (Post-Penalty – Post-Guilt) should be greater when the information in the VIS deviates from expectations. In turn, suffering difference scores should significantly correlate with sentencing judgments. Moreover, individual differences in one’s capacity to empathize with victims, as well as beliefs about punishment, are also examined in order to explore a potential relation to sentencing judgments. Individuals scoring high on trait measures of empathy should presumably be more sensitive to the suffering information presented in a VIS. Consequently, these individuals should demonstrate a greater impact of suffering information on sentencing judgments. Additionally, those individuals that believe that the goals of punishment are to compensate the victim for the harm that’s been done to them should presumably be paying more attention to the type of information contained in a VIS. Therefore, the information that they learn in the VIS should be more impactful in their sentencing.
METHOD

Design and Participants

The present study is a 2 (Expectations: Vulnerable/Resilient) x 3 (VIS: Mild/Control/Severe) factorial between-subjects design. Undergraduate psychology students attending the University of North Carolina Wilmington voluntarily participated in this study in exchange for class credit. The participants were comprised of 352 students who were randomly assigned to one of the six aforementioned conditions. According to Cohen (1977), this number of subjects has ensured that this study has adequate power (0.80) based on the prediction of a moderate interaction effect size (partial $\eta^2 = 0.10$).

Procedure

This experiment took place in a classroom setting with groups ranging from 2 to 20 participants. First, participants signed an informed consent form, which was filed separately from their subsequent data. They were asked to act as though they were serving on a real jury (see appendix A). Participants then completed a standard demographic questionnaire. After that, participants read the guilt phase of a trial transcript, and subsequently completed a post-guilt phase questionnaire. Finally, participants read the penalty phase of a trial transcript, and subsequently completed a post-penalty phase questionnaire, along with the Interpersonal Reactivity Index (IRI), the Attitudes About Punishment Scale (AAPS), the Death-Qualification Questionnaire (DQQ), and the Line Drawing Task (LDT). Participants were thanked for their participation and dismissed as a group after everyone had completed the task.

Pilot Study

A pilot study was conducted using psychology undergraduates from summer school courses at UNCW. Fifty-six students participated, and 38 were included in the analysis. The 18
participants that were excluded from the final analysis were excluded because their answers to several questions clearly indicated a lack of understanding of the instructions for the task at hand. Participants were asked to rate 15 pieces of information about a family on a 7-point scale, anchored with 1 (Extremely Resilient) and 7 (Extremely Vulnerable), with 4 labeled as ‘No Impact.’ They were also asked to rate the same 15 items on a 7-point scale anchored with 1 (Less Likeable) and 7 (More Likeable), with 4 labeled as ‘No Impact’ (*see appendix B*). The order of these tasks was counterbalanced. Correlations were conducted between the vulnerability and the likeability ratings for each question, assessing which piece of information would be viewed as creating a vulnerable or a resilient expectation about the family without creating an accidental likeability manipulation as well. Items were selected that scored high on either vulnerability or resilience, and also showed low correlations with likeability.

Two items for both vulnerable expectations and resilient expectations were chosen based on mean values and low correlations with likeability. The vulnerable statements convey that the family is in debt (*M* = 6.21, *SD* = .87, *r* = .018) and that the mother is unable to work due to a disability (*M* = 5.82, *SD* = 1.23, *r* = .093). The resilient statements convey that the family has close extended family in town (*M* = 2.71, *SD* = 1.09, *r* = -.188) and that the father had a good life insurance policy (*M* = 2.82, *SD* = 1.29, *r* = -.234). This information was included in the Trial Transcript – Guilt Phase during the prosecutor’s closing statement.

**Materials**

**Demographic Questionnaire**  This questionnaire included questions about the participant’s age, gender, citizenship, educational background, ethnicity, and jury eligibility (*see appendix C*).
Trial Transcript – Guilt Phase  A two page transcript of the guilt phase of a capital trial comprised of approximately 660 words was used. The document included a synopsis of the crime, in which a father is murdered. A series of summaries of testimonies given by both the defense and the prosecution were presented, and the evidence against the defendant was strong so that evidence of guilt was strong. In the Vulnerable condition, the closing statements included information about the family that made them appear to be especially vulnerable to the circumstances of this loss; specifically, that the mother has a disability that rendered her unable to work, and that the family was in extraordinary debt at the time of the murder (see appendix D). This information was presented in order to create the expectation that the victim’s family was particularly devastated by the loss of the victim. In contrast, in the Resilient condition, the closing statements included information about the family that made them appear to be especially resilient to the circumstances of this loss; specifically, that there were over a dozen extended family members living in the same town, and that the father had an excellent life insurance policy (see appendix E). This information was presented in order to create the expectation that the victim’s family was able to recover quite well after the loss of the victim. In both conditions, the crime information was held constant; participants were told that guilt had already been established, and that their role was to sentence the defendant.

Post Guilt Phase Questionnaire  Participants answered a series of questions using a 7 point Likert scale, with options ranging from either strong disagreement (scored 1) to strong agreement (scored 7), or much less (scored 1) to much more (scored 7), depending on the question (see appendix F). The questions assessed verdict agreement, used for screening, and family suffering, used as a manipulation check. Other questions relevant to the trial were asked
to mask the manipulation and reduce demand characteristics (e.g., Compared to other criminal acts you have experienced or heard about, how brutal is this crime?).

**Trial Transcript – Penalty Phase**  Participants read a 1-2 page transcript of the penalty phase of this trial, which was identical for all conditions expect for the degree of harm and suffering that the victim’s family had experienced (i.e., VIS). In the Control condition, this gave an overview of both the mitigating and aggravating circumstances, with no additional information about the family (*see appendix G*). In the Mild condition, participants learned that the family was sad about the loss, but had unexpectedly benefited considerably from the help of others (e.g., children rallied together with others to start a support group for those who have lost parents due to murder, a relative moved in with the family is helping out financially), and therefore were experiencing relatively mild harm at that point (*see appendix H*). In the Severe condition, participants learned that the family was utterly devastated by the loss, so much so that they had experienced extremely severe and unforeseen suffering (e.g., daughter attempted to commit suicide, family became homeless) (*see appendix I*). This outcome information was presented in a VIS by Mrs. Wilson, the surviving wife/mother.

**Post Penalty Phase Questionnaire**  Participants made sentencing judgments in two ways. First, they made a dichotomous choice between Life in Prison and the Death Penalty. Second, they made a more psychometrically sensitive sentencing rating on a 7 point scale. Providing both methods of rendering sentencing judgments is typical in VIS studies. Additional ratings assessed *family suffering, family likeability, personal empathy* felt for the family, and *how influential* each component of the trial was in forming their judgments about the family and the defendant (*see appendix J*). The suffering rating scores after the guilt phase were subtracted from these same scores after the penalty phase, which provided a *suffering difference score* to
measure whether or not participants’ assessments of family suffering changed as a result of the VIS.

**Interpersonal Reactivity Index** This measure, developed by Davis (1980), evaluates four distinct subscales of interpersonal reactivity: Fantasy, Empathic Concern, Perspective-Taking, and Personal Distress (*see appendix K*). Each subscale contains statements, and subjects were asked to rate how well each statement describes them on a scale ranging from A (Does not describe me well) to E (Describes me very well). The Fantasy subscale had seven questions concerning one’s ability to imagine oneself in a make-believe situation; for example, “When I watch a good movie, I can very easily put myself in the place of a leading character.” Similarly, the Perspective-Taking subscale contained seven questions concerning one’s ability to cognitively put oneself in someone else’s shoes; for example, “I sometimes try to understand my friends better by imagining how things look from their perspective.” Empathic Concern, which gave insight into the emotional component of taking another person’s perspective, also had seven questions; for example, “I often have tender, concerned feelings for people less fortunate than me.” Finally, the Personal Distress subscale investigated one’s susceptibility to fall apart under emotional duress; for example, “When I see someone who badly needs help in an emergency, I go to pieces.”

**Attitudes About Punishment Scale** This measure, a slightly modified version of the one developed by de Keijser, van der Leeden, and Jackson (2002), examined six components of punishment attitudes using a self-report questionnaire. The scale had six categories and 30 total items, where participants rated the items on a 5-point Likert scale, anchored with ‘strongly disagree’ and ‘strongly agree’ (*see appendix L*). The category of ‘Deterrence’ can be conceptualized as prevention through harsh treatment; for example, item 3 reads, “When certain
crimes become more common, the severity of punishment for that crime should also increase.” ‘Desert,’ which is theoretically and statistically closely tied to deterrence, represents the ideology that criminals deserve the experience of suffering and harsh treatment; for example, item 14 reads, “Punishment without an element of suffering is no punishment.” Changing the focus from harsh treatment attitudes to ones that promote social constructiveness gives us the remaining four categories. ‘Incapacitation’ is the idea that the only way for society to be safe is to completely remove criminals from it; for example, item 7 reads, “Unless persons who commit serious crimes are imprisoned without the possibility of parole, they will continue to pose a threat to society.” Similarly, ‘Moral Balance’ is represented by the need to keep society in a state of moral equilibrium; for example, item 18 reads, “Justice is served at the moment that a criminal offender is punished.” Similarly, ‘Restorative Justice’ embodies the idea that victims should be repaid for their suffering; for example, item 29 reads, “The best form of punishment is one that does the best job of restoring the victim to the way they were prior to the crime.” Finally, attitudes of ‘Rehabilitation’ suppose that punishment should also benefit the offender in some way; for example, item 23 reads, “Officials in the criminal justice system have the moral duty to help criminals to get back on the right track” (p.328).

*Death Qualification Questionnaire* The DQQ determined whether or not participants would be eligible to serve on a capital jury based upon their beliefs and opinions regarding the death penalty (see appendix M). According to *Witherspoon v. Illinois* (1968), a juror who is unwilling to impose the death penalty in any case, regardless of the evidence, is not eligible to serve on a capital jury. These items, created by Fitzgerald and Ellsworth (1984), assess the extent to which the participant is unwilling to impose the death penalty, along with the extent to which they would be able to provide a fair and impartial guilt decision (*Wainwright v. Witt*,
1985), knowing that the defendant then faces the possibility of receiving the death penalty. Currently, most jurisdictions use the *Witt* criteria to death-qualify their juries. However, it is typical to use both *Witt* and *Witherspoon* criteria for empirical purposes to allow for comparisons across past studies.

*Line Drawing Task* The LDT allows participants to show how they conceptualize harsh punishments by comparing Life in Prison and the Death Penalty on a self-drawn scale (*see appendix N*). Participants were asked to draw two Xs on a line that extended across the whole page, anchored with ‘Mildest Punishment’ on one end and ‘Harshest Punishment’ on the other end; participants were asked to label the two Xs LP for Life in Prison, and DP for Death Penalty. Measurements were taken (mm) between these two points on the scale to determine relative harshness of the two punishments for each subject.
RESULTS

Descriptive Statistics and Participant Screening

Participants were first screened for death-qualification using Witt criteria and verdict agreement. Participants were excluded from the analyses if they reported their verdict agreement to be 4 or less on a 7 point Likert scale. All subsequent analyses were conducted with this restricted sample. This screening resulted in a 328 person sample, with 53 subjects in the Vulnerable/Severe condition, 55 subjects in the Resilient/Severe condition, 54 subjects in the Vulnerable/Control condition, 57 subjects in the Resilient/Control condition, 52 subjects in the Vulnerable/Mild condition, and 57 subjects in the Resilient/Mild condition. Participants ranged in age from 17 to 52 (\(M = 19.47, SD = 3.08\)). The sample was comprised of predominantly Caucasian (287) and predominantly female (220) subjects. There were 14 African-Americans, 12 subjects that reported “Other” as their ethnicity, 9 Hispanic/Latinos, and 6 Asian-Americans. There were no significant differences between the subjects in any of the six conditions on any of these demographic measures.

Manipulation Check

An independent samples t-test was conducted on post-guilt ratings of family suffering to determine whether or not expectations of family suffering were sufficiently manipulated between the Vulnerable (\(M = 5.48, SD = 1.04\)) and Resilient (\(M = 5.30, SD = 1.06\)) conditions. The difference between ratings of expectations of family suffering failed to reach conventional levels of statistical significance, \(t(326) = 1.88, p > .05\). A one-way ANOVA was conducted on post-penalty ratings of family suffering to determine whether or not harm information was sufficiently manipulated between the Severe, Control and Mild conditions. There was a significant difference on the post-penalty measure of family suffering, \(F(2, 325) = 19.95, p < .001\).
Participants in the Severe ($M = 6.00, SD = .99$) condition reported that the family experienced significantly greater harm than did participants in either the Control ($M = 5.23, SD = 1.07$) or the Mild ($M = 5.27, SD = 1.00$) conditions. The latter two conditions failed to significantly differ.

**Sentencing Judgments and Changes in Suffering**

A 2 (Expectations) x 3 (VIS) between-subjects factorial ANOVA was conducted on 7 point sentencing judgment ratings. There was no main effect for Expectations, $F(1, 322) = 3.03$, $p > .05$, partial $\eta^2 = .009$. The main effect for VIS approached significance, $F(2, 322) = 2.94, p < .06$, partial $\eta^2 = .018$. There was not a significant interaction between Expectations and VIS, $F(2, 322) = .39, p > .05$, partial $\eta^2 = .002$ (see figure 1).

In order to determine whether the expectations about suffering were significantly altered by VIS information, difference scores were calculated between the post-guilt phase ratings of victim suffering and the post-penalty phase ratings of victim suffering (Penalty – Guilt). A 2 (Expectations) x 3 (VIS) between-subjects factorial ANOVA was conducted on suffering difference scores. There was no main effect for Expectations, $F(1, 322) = .63, p > .05$, partial $\eta^2 = .002$. There was a main effect for VIS, $F(2, 322) = 20.28, p < .001$, partial $\eta^2 = .112$. Participants in the Severe ($M = .57, SD = 1.09$) condition increased ratings of family suffering from post-guilt to post-penalty, which was significantly different from participants in both the Control ($M = -.12, SD = .70$) and Mild ($M = -.06, SD = .83$) conditions (see figure 2). Contrary to predictions, there was not a significant interaction between Expectations and VIS, $F(2,322) = 1.05, p > .05$, partial $\eta^2 = .006$.

**Exploratory Analyses Concerning the Expectations Hypothesis**

The Expectations Hypothesis predicts that consistent expectations/VIS pairs will not significantly differ from controls, whereas inconsistent expectations/VIS pairs will significantly
Figure 1. Mean sentencing judgments on a 7 point scale in the Vulnerable and Resilient Expectations conditions, and the Severe, Control and Mild Victim Impact Statement conditions. The main effect for VIS approached significance, $F(2, 322) = 2.94, p < .06.$
Figure 2. Mean suffering difference scores in the Severe, Control and Mild Victim Impact Statement conditions. There are significant differences between the Severe and the other two conditions, \( F(2, 322) = 20.28, p < .001 \).
differ from both consistent and control groups. This model suggests that VIS impact sentencing judgments when the level of suffering expressed by the victim deviates from expected suffering. For the purpose of exploring whether the Expectations Hypothesis holds some merit, and the insignificant results were due primarily to an ineffective manipulation of expectations, further exploratory analyses were conducted. To determine whether there would have been sufficient support for the Expectations Hypothesis had participants’ expectations been sufficiently manipulated, two One-Way ANOVAs were conducted using sentencing judgments as the dependent variable and VIS as the independent variable. The first ANOVA looked at only those subjects in the Vulnerable condition whose post-guilt suffering ratings were 5 or higher (for these participants, the manipulation of expected suffering worked as anticipated). There was a significant difference between the three conditions, \( F(2, 122) = 4.27, p < .05 \). However, linear contrast analysis revealed that, contrary to the Expectations Hypothesis, participants who read a Mild \( (M = 3.45, SD = 1.84) \) VIS did not render significantly different judgments than participants who read a Severe VIS \( (M = 4.30, SD = 1.98) \) or a Control/No VIS \( (M = 3.21, SD = 1.57) \). An estimated Cohen’s \( d \) was calculated to be \( d = .17 \), a small effect size. The second ANOVA looked at only those subjects in the Resilient condition whose post-guilt suffering ratings were 4 or lower (again examining those for whom the manipulation was effective). There was not a significant difference between the three conditions, \( F(2, 46) = 1.01, p > .05 \). An estimated Cohen’s \( d \) was calculated to determine the effect size of the Expectations Hypothesis, comparing participants in the Severe \( (M = 4.13, SD = 1.60) \) condition with those in a combination of the Mild \( (M = 3.20, SD = 2.08) \) and Control \( (M = 3.47, SD = 1.87) \) conditions. This estimated effect size was found to be \( d = .42 \), a moderate effect size.
Empathy

The IRI produced four subscales: Perspective-Taking, Fantasy, Empathic Concern and Personal Distress. Pearson Product Moment correlations were conducted between all subscales of the IRI (i.e., measure of trait empathy), 7 point ratings of personal empathy (i.e., state empathy), and interval sentencing judgments. There was a significant positive correlation between personal empathy and sentencing judgments, $r = .12, p < .05$. There were no significant correlations between any of the four IRI subscales and sentencing judgments. However, there were significant positive correlations between personal empathy ratings and the Empathic Concern subscale ($r = .29, p < .001$), the Perspective-Taking subscale ($r = .15, p < .01$), and the Fantasy subscale ($r = .18, p < .001$).

In order to examine whether one’s capacity to feel empathy for others may interact with VIS on both sentencing judgments and changes in perceived victim suffering, two separate multiple regression analyses were conducted. A hierarchical regression was first conducted using Empathic Concern scores and VIS (yes/no), entered first simultaneously, and the interaction term (IRI x VIS) as the second entry, using 7 point ratings of sentencing as the criterion. In order to control for inflated type I error rates, significance was tested at $\alpha = .01$. The Empathic Concern subscale did not significantly predict sentencing judgments, $\beta = -.04, t (325) = -.68, p > .01$; VIS did not significantly predict sentencing judgments, $\beta = .01, t (325) = .23, p > .01$; the interaction between Empathic Concern and VIS did not significantly predict sentencing judgments, $\beta = .19, t (324) = .46, p > .01$.

A second hierarchical regression was conducted using Empathic Concern scores and VIS (yes/no), simultaneously, as the first entry, and the interaction term (IRI x VIS) as the second entry, on suffering difference scores. In order to control for inflated type I error rates,
significance was tested at $\alpha = .01$. Although the Empathic Concern subscale did not significantly predict changes in suffering ratings, $\beta = .01, t(325) = .17, p > .01$, VIS did significantly predict changes in suffering ratings, $\beta = .19, t(325) = 3.49, p < .001$. The interaction between Empathic Concern and VIS did not significantly predict changes in suffering ratings, $\beta = -.27, t(324) = - .67, p > .01$.

A third hierarchical regression was conducted using Empathic Concern scores and VIS (yes/no), simultaneously, as the first entry, and the interaction term (IRI x VIS) as the second entry, on post-penalty suffering ratings. In order to control for inflated type I error rates, significance was tested at $\alpha = .01$. Although the Empathic Concern subscale did not significantly predict post-penalty suffering ratings, $\beta = .10, t(325) = 1.75, p > .01$, VIS did significantly predict post-penalty suffering ratings, $\beta = .19, t(325) = 3.49, p < .01$. The interaction between Empathic Concern and VIS did not significantly predict post-penalty suffering ratings, $\beta = -.37, t(324) = -.93, p > .01$.

**Attitudes about Punishment**

**The Attitudes About Punishment Scale**

The AAPS produced six subscales: Deterrence, Incapacitation, Desert, Moral Balance, Rehabilitation and Restorative Justice. Pearson Product Moment correlations were conducted between all subscales of the AAPS and interval measures of sentencing judgments. There were significant positive correlations between sentencing judgments and Deterrence ($r = .36, p < .001$), Incapacitation ($r = .42, p < .001$), and Desert ($r = .39, p < .001$), and a significant negative correlation between sentencing judgments and Rehabilitation ($r = -.22, p < .001$).

In order to determine whether the influence of VIS on sentencing interacts with beliefs about punishment, a series of hierarchical multiple regressions were conducted using VIS
(yes/no) and each of the relevant subscales of the AAPS as predictors (entered first, simultaneously), along with VIS x AAPS interaction term (entered second), and using interval measures of sentencing judgments as the criterion. In order to control for inflated type I error rates, significance was tested for each analysis at $\alpha = .01$. Deterrence significantly predicts sentencing judgments, $\beta = .36, t (324) = 7.00, p < .001$. Incapacitation significantly predicts sentencing judgments, $\beta = .42, t (323) = 8.23, p < .001$. Desert significantly predicts sentencing judgments, $\beta = .39, t (325) = 7.56, p < .001$. Rehabilitation significantly predicts sentencing judgments, $\beta = -.22, t (325) = -4.15, p < .001$. In each of these cases, neither the VIS nor the VIS x AAPS interaction term significantly predicted sentencing judgments.

A follow-up multiple regression was conducted to determine which of these four subscales was the best predictor of sentencing judgments when looked at together. Desert was the best predictor of sentencing judgments, $\beta = .23, t (320) = 4.01, p < .001$, followed by Incapacitation, $\beta = .19, t (320) = 2.82, p < .01$, Deterrence, $\beta = .16, t (320) = 2.69, p < .01$, and finally, Rehabilitation, $\beta = -.14, t (320) = -2.72, p < .01$.

**Attitudes Towards the Death Penalty**

As part of the Death-Qualification Questionnaire, subjects were asked to categorize their views about the death penalty by choosing between the options: *Strongly in Favor, Somewhat in Favor, Somewhat Opposed*, or *Strongly Opposed*. A Chi-Square test of independence was conducted to determine the relationship between dichotomous judgments of sentencing (life in prison/death penalty) and attitudes toward the death penalty. This analysis revealed a significant relationship between attitudes toward the death penalty and sentencing, $\chi^2 (3, N = 323) = 105.61, p < .001, V = .57$ (see figure 3).
Figure 3. Frequency (% within each Attitudes category) of dichotomous sentencing judgments as it relates to Attitudes towards the death penalty. There is a significant relationship, $\chi^2 (N = 323) = 105.61, p < .001, V = .57$. 
Given the strength of the relationship between attitudes and sentencing, the preliminary analyses were re-conducted using attitudes towards the death penalty as a covariate. A 2 (Expectations) x 3 (VIS) between-subjects factorial ANCOVA was conducted on 7 point sentencing judgment ratings. Although there was still no main effect for Expectations, $F(1, 316) = 2.82, p > .05$, partial $\eta^2 = .01$, and no significant interaction between Expectations and VIS, $F(2, 316) = 1.36, p > .05$, partial $\eta^2 = .01$, there was, however, a main effect for VIS, $F(2, 316) = 3.43, p < .05$, partial $\eta^2 = .02$. Participants in the Severe condition ($M = 4.12, SD = 2.01$) rendered significantly harsher judgments than participants in the Mild condition ($M = 3.51, SD = 1.95$). Participants in the Control condition ($M = 3.73, SD = 1.95$), were not significantly different from either the Severe or the Mild conditions.

Line Drawing Task

The LDT was included to determine the extent to which some participants might believe that life in prison is a harsher sentence than the death penalty. Measurements, taken in millimeters, were made from the marked places on the line to the end of the line on the right side, and difference scores were calculated (Life in Prison mark – Death Penalty mark). Participants with positive scores indicated that the Death Penalty was the more severe punishment, whereas participants with negative scores indicated that Life in Prison was the more severe punishment. Ninety-one participants (28.17%) indicated that Life in Prison was a more severe punishment than the death penalty. Given the large proportion of individuals who conceptualize life in prison as the more severe punishment, the preliminary analyses were re-conducted after screening out those participants. A 2 (Expectations) x 3 (VIS) between-subjects factorial ANOVA was conducted on 7 point sentencing judgment ratings. This analysis revealed that there was no main effect for Expectations, $F(1, 226) = 1.67, p > .05$, partial $\eta^2 = .007$, no
main effect for VIS, $F (2, 226) = 2.55, p > .05$, partial $\eta^2 = .022$, and no significant interaction between Expectations and VIS, $F (2, 226) = .26, p > .05$, partial $\eta^2 = .002$. 
DISCUSSION

As a body of literature, research concerning VIS is still relatively undeveloped. Past research concerning VIS is inconsistent regarding how VIS work, and why they seem to matter to jurors. Perhaps this is due to the fact that VIS research has remained largely atheoretical. Researchers have focused on when a VIS is impactful, but there is no clear theory about how. Although the relation between VIS, suffering, and sentencing has been previously explored (e.g., McGowan & Myers, 2004), this research has not yet focused on how expected suffering may play an important role in this link. For example, it has been established that VIS do impact judgments, such that individuals who are given VIS information are more likely to punish the defendant harshly than individuals in a control group (e.g., Luginbuhl & Burkhead, 1995; Myers & Arbuthnot, 1999). It has further been shown that VIS do impact perceptions of victim suffering, such that individuals who read about a respectable victim rated family suffering as greater than individuals who read about a less upstanding citizen (Greene, Koehring & Quiat, 1998). Moreover, the harm information contained in a VIS may matter to jurors, such that more severe harm leads to more severe sentencing (Myers, Lynn & Arbuthnot, 2002). All of this research has provided important contributions to understanding VIS. However, how VIS may ultimately influence sentencing judgments has not been clearly shown. As VIS research moves into its second stage, it is becoming increasingly important to pinpoint a theory that illuminates the link between VIS and sentencing.

One possibility explored here is that changes in perceived suffering arising from a VIS may be the factor that connects the harm information contained in a VIS and sentencing judgments. That is, VIS inform jurors of victim suffering, but this information can only matter to jurors if it significantly deviates from their prior expectations of suffering. Prior research
revealed that participants gave harsher judgments when the VIS comes from a source where suffering is expected to be low, versus a source where suffering is expected to be high (McGowan & Myers, 2004). This suggests that jurors may bring expectations about suffering and harm to the table based on the information from the guilt phase of the trial. In some instances, VIS might not offer any more than a confirmation of what the juror already expects. In other instances, VIS might drastically deviate from expectations. It is these instances in which a VIS should be the most impactful for jurors.

The Expectations Hypothesis

The goal of the present study was to investigate the role of expectations in how jurors make sentencing judgments when presented with a VIS. It was designed such that participants would learn information about the family/victim from the guilt phase of the trial, and that this information would create expectations of victim suffering. In one condition, this information attempted to create Vulnerable expectations, where the family is expected to suffer much more than the average family that loses a loved one due to murder. In another condition, this information attempted to create Resilient expectations, where the family is expected to suffer much less (i.e., cope much better) than the average family that loses a loved one due to murder. It was hypothesized that VIS would be most impactful when jurors were presented with information that was inconsistent with their suffering expectations, compared to when jurors were presented with information that was congruent with their suffering expectations. Unfortunately, the present study found little support in favor of the Expectations Hypothesis. As will be explored next, there are a number of possible explanations for the null findings.

The manipulation check revealed that the expectation manipulation failed to adequately alter expected suffering. Perhaps the expectations information was not salient enough to create
the appropriate differences between conditions, or perhaps the measure used to rate expectations was insufficient. Concerning the latter explanation, the scale that was used asked participants to rate victim suffering by comparing it to “other families who have lost a loved one due to murder” (see appendix F). The scale was anchored with 1 (much less) and 7 (much more). Scales of this kind have proved problematic in other instances as well. Recall in the pilot study for the present investigation, 32% of the subjects were unable to understand the task where a similar scale was used. At the time, the problem was judged to be a lack of clarity about the anchors “Vulnerable” and “Resilient.” In retrospect, perhaps scales where the true anchor is the midpoint causes difficulty for participants. Additionally, concerning the former explanation, there are inherent difficulties in creating a believable and salient resilient vignette, without changing the facts of the crime or victim likeability. It is hard to imagine a realistic scenario in which a family that just lost a loved one due to murder actually benefited from this loss. Having a scenario that is realistic is especially important in preserving external validity and increasing the applicability of these findings.

Beyond this manipulation check, the non-significant 2 x 3 ANOVA demonstrated an additional lack of confirming evidence for the Expectations Hypothesis. A follow-up pair of exploratory analyses was conducted to determine whether the results were due primarily to the failed manipulation or primarily due to a lack of support for the overall hypothesis. When only those participants in the Vulnerable condition who perceived the victims as vulnerable (i.e., expected them to suffer greatly) were examined, there was a significant difference in sentencing judgments between the three levels of VIS, but not in the hypothesized direction. That is, the Expectations Hypothesis predicts that the Mild condition should be significantly different than both the Control and Severe conditions, which should not significantly differ from each other.
However, it was instead found that the Severe condition was significantly different from the Control, but the Mild condition was not significantly different from either other condition. Moreover, the effect was small ($d = .17$), and of the 159 participants in the Vulnerable condition, 125 (78.62%) were subject to this analysis because the expectations manipulation was only successful for these participants. Conversely, when only Resilient participants for whom the manipulation was effective (i.e., low suffering expected) were examined, there was not a significant difference between groups. In this instance, however, the effect size ($d = .42$) suggests that the failure to reach statistical significance was primarily due to a lack of statistical power. In this case, only 49 (28.99%) of the 169 original participants remained. So, it appears that manipulating participants to expect high suffering is much easier than to create the expectation that low suffering will result.

On the other hand, the finding also suggests that while it may be more difficult to establish an expectation for low suffering, VIS are more impactful when expectations for resiliency are met with evidence of severe suffering. That is, the discrepancy between the effect sizes of the two conditions suggests the possibility of a unidirectional effect for expectations and VIS information, such that people are capable of allowing new information to modify their judgments up (i.e., render harsher sentences) but not down (i.e., render more lenient sentences). The findings achieved by Myers, Lynn and Arbuthnot (2002) are consistent with this unidirectional explanation. When comparing a control group ($M = 5.97$, $SD = 1.40$), which can be conceptualized as a proxy for participants’ expectations, to both mild ($M = 5.90$, $SD = 1.46$) and severe ($M = 6.57$, $SD = 1.26$) harm groups, participants in the mild harm condition were only able to modify their expectations down by an average of .07 units, whereas participants in the severe harm condition were able to modify their expectations up by an average of .60 units.
Additionally, Rose, Nadler and Clark (2006) examined participants’ impressions concerning unusual reactions to crimes. When the crime situation involved physical threat, it was only the mild reaction to the severe crime that was considered unusual. Reactions that exceeded participant expectations in a more severe direction, regardless of crime, were considered appropriate. Both of these studies, along with the present findings, argue in favor of a unidirectional response to harm information.

Future research efforts should focus on investigating this Unidirectional Expectations Hypothesis, which predicts that individuals have a much easier time modifying their expectations in a more severe direction than in a less severe one. Perhaps the expectations that jurors bring to the table serve as a threshold, from which they can only adjust suffering judgments upward rather than downward. Future research should focus on developing this model, while controlling for factors that often co-vary with manipulating expectations (e.g., victim likeability, crime heinousness). Learning more about how expectations change as a function of other variables will help researchers to build a more accurate and thorough model of how expectations, in turn, affect juror judgments.

Along these lines, the present study demonstrated little evidence that expectations were adequately manipulated. Thus, it was impossible to adequately test models that could better explore why expectations matter. In that respect, future research might address two opposing models which could help explain why expectations matter. One model suggests that expectations enhance the salience of experiences which contradict those expectations, thus promoting a stronger reaction (i.e., over-reaction) to that information. This interpretation is best exemplified by the Affective Expectation Model (AEM; Wilson & Klaaren, 1992). For example, this model would predict that when an individual expects a movie to be sad and it is actually
funny, he or she perceives it as funnier than if they initially expected a funny movie or had no expectations at all. In the context of VIS, severe suffering should be more impactful if it follows expectations of resiliency than if it follows expectations of vulnerability. By contrast, a second model predicts that expectations may serve as a default that is adjusted according to whether additional information learned during the VIS indicates some adjustment is necessary. This model is consistent with Tversky & Kahneman’s (1974) anchoring and adjustment heuristic, and would suggest very different findings than the AEM. With anchoring and adjustment, the largest sentencing differences between the Vulnerable and Resilient conditions would be for the control group (where no adjustment has taken place), and any information learned from a VIS would serve to lessen this difference. The AEM, on the other hand, would suggest that the largest sentencing differences between the Vulnerable and Resilient conditions would be in each of the experimental groups (where outcome information contrasted with expectations). While the present hypotheses were more in line with an AEM perspective, the inability to properly achieve differences in expectations precluded the possibility of testing either of these models.

The null findings in the present investigation have been largely attributed to the inability to effectively manipulate expectations. While this interpretation has some merit, it must also be acknowledged that the null findings in the present study may indicate that the model, which suggests that a VIS impacts judgments because it contains information about suffering that deviates from expectations, is not correct. It is therefore important that we examine in greater detail the potential role that perceptions of suffering play in the relation between VIS and sentencing.
Is Suffering the Mechanism by Which VIS Influence Sentencing?

Legal scholars and Supreme Court Justices have a long history of connecting VIS with perceptions of victim suffering. It has been assumed throughout the psycholegal literature that communicating suffering information is the rationale behind a VIS, based upon the justifications outlined by the Payne Court. That is, a family member’s testimony about the harm that they have experienced should influence juror perceptions of victim suffering, which should influence sentencing judgments. Although the Supreme Court never explicitly communicates this presumptive model of VIS influence, their reasoning behind allowing VIS as admissible testimony suggests that, according to the Payne Court, this is how VIS should work. According to the majority opinion in Payne v. Tennessee (1991), “Victim impact evidence is simply another form or method of informing the sentencing authority about the specific harm caused by the crime in question…Courts have always taken into consideration the harm done by the defendant in imposing sentence” (825). The Payne Court makes it clear by overturning the decisions of Booth and Gathers that communicating harm information (i.e., suffering) is the purpose of a VIS, and that this information should impact the jury. They further clarify their stance by noting that, “A State may legitimately conclude that evidence about the victim and about the impact of the murder on the victim’s family is relevant to the jury’s decision as to whether or not the death penalty should be imposed. There is no reason to treat such evidence differently than any other relevant evidence is treated” (827). Thus, the rationale behind the introduction of VIS into capital sentencing proceedings is clear—VIS allow for the communication of information concerning the suffering of the victim’s family, and that information serves to justifiably inform sentencing decisions.
Although the majority for the Payne Court was unequivocal in their outline of the relevance of communicating victim suffering to the jury, the empirical research paints an inconsistent picture of the role of suffering in juror judgments. In fact, most studies fail to examine this connection at all, and when they do, the correlations between suffering and sentencing are weak and/or insignificant (e.g., McGowan & Myers, 2004). Certainly bivariate correlations are typically weakened in instances where variability is truncated in one or both of the variables (Gravetter & Wallnau, 2007). Asking participants to rate the suffering of the victim’s relatives has typically elicited ceiling effects, as jurors typically rate suffering as very high. In this respect, the low correlations between suffering and sentencing reflect methodological shortcomings. Nevertheless, although subsequent measures of suffering designed to remove the ceiling effect were somewhat successful, low correlations between suffering and sentencing remain. McGowan and Myers (2004) reported this, and these findings were replicated in the present study. Nevertheless, these low correlations between suffering and sentencing call into question previous studies that have rested on the assumption that these juror sentiments (e.g., perceived suffering) are theoretically linked to sentencing judgments, obviating the need to directly examine the impact of VIS on sentencing. For example, Greene et al. (1998) failed to examine sentencing judgments and showed only that VIS impact perceived suffering. By doing so, the authors implied that a VIS impacts sentencing because it impacted perceptions of suffering. The present findings (as well as those by McGowan & Myers, 2004) suggest the need to examine the effects of VIS on sentencing directly, as the presumed link between suffering and sentencing is questionable.

If it is not perceptions of suffering that drives sentencing judgments, then what is it? One possibility is that VIS may indeed communicate suffering, but this information may also co-vary
with other factors that may be more directly tied to sentencing judgments. For example, as suffering varies, typically the brutality or heinousness of the crime also varies, and it may be these factors that most directly impact sentencing. In fact, the most robust effect sizes in VIS literature occur when variables such as these are manipulated. Kehn et al. (2006) reported that heinousness accounted for 13% of the variance in sentencing—far greater than suffering ratings which have tended to produce rather low correlations (e.g., $r^2 = .025$ for the present study).

Perhaps researchers should focus on empirically testing this suffering model to explain how VIS should affect sentencing as proposed by the courts. Instead of blindly trying to uncover a mechanism of action for VIS, the research should be testing whether or not a VIS does what it is supposed to do – if it doesn’t, then that insight has much larger policy implications than identifying one small piece of the puzzle at a time. Additionally, as will be examined next, future researchers should make every effort to control for the extremely robust effect of death penalty beliefs on sentencing judgments. These attitudes are analogous to statistical noise that has not been controlled for in past studies, and such a large effect can overshadow the potential effects of suffering information. Next, the findings concerning attitudes towards punishment will be discussed as a potential shift of focus for future research.

**Attitudes Toward Punishment and the Death Penalty, and VIS**

In the present study, attitudes towards punishment, in general, and more specifically attitudes toward the death penalty, did the best job of predicting sentencing judgments. In fact, the impact of an individual’s personal beliefs on the death penalty appears to overshadow the impact of many other factors (i.e., suffering information contained in a VIS). It appears that jurors do bring something to the table – they bring their attitudes, morals, and beliefs about the legal system. In the present study, the relationship between 7 point sentencing judgments and
death penalty attitudes revealed a partial $\eta^2$ of .47, and the relationship between dichotomous sentencing judgments and death penalty attitudes revealed a Kramer’s V of .57, which are unquestionably strong effects. Once these attitudes were used as a covariate, the effect of the VIS on sentencing judgments became significant. Unlike Luginbuhl and Burkhead (1995), who used death penalty attitudes as a moderating variable, the present study suggests that these attitudes can be more accurately conceptualized as an independent predictor variable. To test this, a 3 (VIS) x 4 (Death Penalty Attitudes) ANOVA was conducted using 7 point sentencing judgments as the dependent variable. No significant interaction emerged, $F(6, 311) = .37, p > .05$ (see figure 4). If death penalty attitudes were a moderating variable, as Luginbuhl and Burkhead (1995) suggest, there would be an interaction with VIS, such that the effects of VIS were different depending on which category of death penalty attitudes a participant reported.

It is also worth noting that even after death-qualification (using Witt criteria), 53 participants (16.13%) remained in the sample who reported being “strongly opposed” to the death penalty. Only one of them rendered the death penalty as their sentencing judgment, regardless of condition. This indicates that screening out for Witt excludables, although externally valid, still leaves in a number of participants with strong views opposing the death penalty. Past research purports that death-qualified juries are significantly more likely to sentence the defendant to death, and that this bias should be of significant concern to psycholegal scholars (Butler, 2007). However, the present study did not replicate these findings. Death-qualification status was not significantly related to dichotomous sentencing, $\chi^2(1, N = 341) = .67, p > .05$.

However, if it is true in some cases that death-qualified juries are more death-prone, that should not be surprising or alarming to researchers or legal scholars. The purpose of death-
Figure 4. Mean sentencing judgments on a 7 point scale comparing attitudes towards the death penalty and the Severe, Control and Mild Victim Impact Statement conditions. There is a significant main effect for attitudes, $F(3, 311) = 92.84, p < .001$, partial $\eta^2 = .47$, and a significant main effect for VIS, $F(2, 311) = 3.46, p < .05$, partial $\eta^2 = .02$. A significant VIS by attitude interaction failed to emerge.
qualification is to establish a jury that is willing to consider the death penalty. This is another instance where researchers should look back to the courts for direction, and start testing whether or not a procedure works the way it should (i.e., does death-qualification help avoid a hung jury), instead of focusing on issues that are inconsequential to policymakers (i.e., whether or not death-qualification leads to more death penalty judgments in place of what would otherwise be a hung jury).

In addition to feelings about the death penalty, people feel certain ways about punishment in general. These attitudes contributed to their sentencing judgments as well, explaining 25% of the variability in sentencing. There is currently no working theory of how general punishment attitudes affect sentencing judgments in the context of VIS—this issue has not been explored until now. Nevertheless, the present findings are certainly consistent with how one would predict attitudes about punishment should work. The subscales of Deterrence, Incapacitation and Desert, which all support the idea that society is only safe when criminals are off the street and that criminals should be punished harshly for their crimes to prevent future offending, are all positively correlated with sentencing, whereas Rehabilitation, which supports the idea of giving offenders a chance to learn from their mistakes, is negatively correlated with sentencing. However, it was also predicted that the Restorative Justice subscale, which focuses on compensating the victim for the harm they have experienced, would be the most relevant here—unfortunately, that prediction was unsupported. Most importantly, none of these subscales significantly interacted with VIS on sentencing judgments. In other words, the impact of VIS on sentencing failed to vary as a function of the attitudes one has surrounding punishment.

Another related concept that past research fails to address is how jurors weigh the severity of the death penalty versus life in prison. Past studies have always operated under the
assumption that the death penalty is regarded as the more severe of the two punishments by all people, but 28% of the present study’s sample felt differently. Although screening out participants who failed to judge the death penalty as harsher than life in prison did not impact any of the main hypotheses in which sentencing was the dependent variable, the fact that such a sizable percentage of respondents (28%) indicated that they believed life in prison to be a harsher punishment than the death penalty is a significant finding. This percentage is consistent with previous studies that have addressed this issue. For example, Smith & Pezzella (2008) reported two studies in which 21% (study 1) and 24% (study 2) of participants rated life in prison as the harsher punishment. Certainly, future research concerning death penalty judgments should address this issue as it has the potential to greatly impact findings. In fact, death-qualification has become a central aspect of jury decision-making research where death penalty judgments are an option (Butler, 2007). Given that the percentages of participants who perceive life in prison as harsher than the death penalty appear to greatly exceed the percentage of individuals who fail to meet death-qualification standards (10-15%), perceptions of sentencing harshness could ultimately have an even greater impact on this area of jury decision-making than death-qualification alone.

If researchers start to control for the variability in punishment and, more importantly, death penalty attitudes, and if, in fact, suffering does play an important role in this decision-making process, than empathy characteristics might help move researchers closer to pinpointing why suffering might matter to certain types of people. Although presumptive connections have not held up thus far, intuitively, suffering judgments and empathy must be connected. Next, the role of empathy will be discussed as it empirically and theoretically relates to VIS, suffering ratings, and sentencing judgments.
Empathy and VIS

The biggest criticism of allowing victim impact testimony to be admissible in court is the potential for such emotionally charged evidence to yield “a constitutionally unacceptable risk that the jury may impose the death penalty in an arbitrary and capricious manner” (Booth v. Maryland, 1987, 502-3). A dissenting opinion during Payne by Justice Stevens explains victim impact evidence as “evidence that serves no purpose other than to appeal to the sympathies or emotions of the jurors” (856-7). This line of reasoning is typical among legal scholars as well, who have even gone so far as to identify empathy, a reaction to learning about victim suffering, as the method by which jurors sentencing judgments become irrational (Bandes, 1996). The present study did not attempt to assess the emotions of participants, but an attempt was made to assess each participant’s tendency toward empathic experiences as measured by the IRI. The present study found no support of the notion that individuals who score high on measures of trait-level empathy (either the emotional component as evidenced by the Empathic Concern subscale of the IRI, or the cognitive component as evidenced by the Perspective-Taking subscale of the IRI) sentence differently than those who do not, and ratings of personal empathy felt for the family accounted for less than 1.5% of the variability in sentencing. However, when asked to rate how influential the guilt and penalty phases of the trial were in helping them to form opinions about the family and the defendant, participants who scored high on trait-level empathy were more likely to give higher ratings for the influence of both the guilt ($r = .14, p < .05$) and the penalty ($r = .19, p < .01$) phases in their opinions of the family. However, this harm information still isn’t translating to sentencing judgments. These findings suggest that if suffering information is influential, the influence it might have is not causing jurors to render indiscriminate death penalty sentences based on emotion instead of reason.
Legal scholars have failed to consider that if an individual’s threshold for empathy is high, those individuals will be more likely to see through the eyes of both the victim and the defendant. Therefore, trait-level empathy should not (and does not appear to) cause irrational judgments. Further, these measures represent participants’ reporting of how influential the information was, and there are important differences between reported influences and actual influences throughout the decision-making literature (Grove & Meehl, 1996). Finally, as was noted earlier, empathy toward victims may play but a small role in sentencing, whereas other factors (e.g., attitudes toward the death penalty and punishment) clearly play a more substantial role in sentencing. Participants may indeed experience greater empathy without it translating to a sizable impact on sentencing decisions.

Limitations

Jury simulation research has consistently been criticized for a variety of reasons, most of which relate to the ecological validity of the research (Weiten & Diamond, 1979). Relevant to this study, it is important to note that using a college-aged sample is generally not representative of the typical demographic makeup of an actual jury. However, Sears (1986) found no differences between a sample of college sophomores and a more representative community sample. Another criticism is that reading a short summary of a trial does not present the information in a way that can be equated to an actual case, and that researchers should be using more sophisticated means of presentation. Again, however, research shows that jurors behave the same way regardless of trial stimuli (Bornstein, 1999). Therefore, in both sample as well as stimuli, the present approach has been well-supported in the jury decision-making literature. One important caveat to address is that the comparatively young age of the present sample may have limited the generalizability of the present findings. Age may be a particularly important
variable in VIS research given that the purpose of the research is to examine how jurors relate to
grief and loss. Obviously, older samples have had greater opportunity to grieve. However, it is
noteworthy that the findings here are similar in many respects to previous studies on VIS that
used more heterogeneous populations in terms of age, ethnicity, and education (e.g., McGowan
& Myers, 2004; Myers et al., 2004).

One criticism that is not so easily dismissed is that jury simulation studies lack
appropriate consequences (Myers, Weidemann & Pearce, 2006). That is, reporting that you will
give someone the death penalty might be very different than actually sending a live human being
down death row. However, it is important to note that strengthening the ecological validity of a
study of juror behavior (e.g., by conducting post-trial interviews of actual jurors) often
correspondingly weakens the internal validity of the research. This trade-off is sensitive, and
future researchers are encouraged to find and implement ways of establishing cause and effect
relations surrounding VIS that retain strong external validity. At the very least, it is
recommended that participants are encouraged to “think and respond as though this was a real
case, and you were serving on an actual jury” (see appendix A for complete participant
instructions used in this study).

In addition to limitations of jury simulation research in general, there are a few
limitations specific to the present study that should be reiterated here. First, the information
contained in the Resilient condition was not salient enough to create a sufficient manipulation of
expected suffering. In the future, more piloting should be conducted to determine what sorts of
information might alter these expectations without altering any other important variables (i.e.,
likeability, brutality). Second, the scale used to measure suffering ratings continued to produce
ceiling effects. Perhaps a more overtly ordinal measure would be more appropriate, with
multiple choice options instead of a continuous rating scale. That way, each number would represent a clear dimension of suffering, and interpretation would not be left up to the participant. Finally, and perhaps most importantly, the present study did not include a control condition for the Expectations variable. This condition was not included for largely pragmatic reasons, as the number of cells was already substantial, as was the number of participants, and this inclusion would have required a total sample size in excess of 550 participants. Moreover, it was not clear whether one could reasonably produce no expectations of suffering, even if information surrounding the victim and the relatives was removed from the guilt phase. Future research might benefit from introducing a No-Expectations/Control condition. This would further clarify the manipulation check as well as more adequately explore the possible models (e.g., AEM versus anchoring and adjustment heuristic) surrounding the role of expectations in sentencing.

CONCLUSIONS

As the first phase of VIS research is coming to a close, researchers must decide whether or not to continue trying to identify how a VIS impacts juror judgments. Until now, research designs have been based upon suggestions from legal scholars, who are concerned about the impact of such emotional testimony when a person’s life is hanging in the balance. Unfortunately, this has left researchers with a body of literature that is disconnected, both from the Supreme Court rulings and from itself, by not using consistent materials, dependent measures, or death-qualification criteria. Perhaps it is time to move forward by gaining a fresh perspective on these issues. First, a strong theory must be built as to how VIS should work, according to the presumptive model of the courts. Myers, Lynn and Arbuthnot (2002) tested a
model surrounding what VIS should not do, which is prejudice the jury by inflaming their emotions in a way that it impacts sentencing. But this is only a small step in the right direction. Future research should continue to focus specifically on expectations, because that is a measure of how much harm is foreseeable and justifiably punishable (e.g., see Alicke, 2000, for a review of this issue). Additionally, researchers must be prepared to examine all relevant dependent variables in their studies, including expectations, suffering, sentencing, punishment attitudes, empathy and death-qualification. Only then will comparisons across studies be able to adequately inform the literature.
REFERENCES


APPENDIX A – DATA COLLECTION INSTRUCTIONS

1. Always arrive at least 10 minutes before the session begins. If you’re not 10 minutes early, you’re already late.

2. You should print out or write down the names of the people signed up for each time slot. Have the participants sign in as they arrive to the study. If everybody hasn’t arrived at the start time, say “We’re still waiting for some people to arrive; it will just be a few more minutes.” After five minutes, close the door and begin the session. If someone arrives after the study has begun, tell them to sign up for a different slot, or just use your best judgment.

Say: “Before we begin, please make sure your cell phones have been turned off. This study is scheduled to take approximately 55 minutes, and you will be dismissed as a group at the end of that time. Are there any questions before we begin?”

Informed Consent: Say, “I’m about to pass out a consent form. Please read it carefully, turn it over, and sign and date it if you agree to participate. If anyone would like a copy for your personal records, feel free to take one on your way out at the end of the study. I will be coming around to collect them when everyone is finished. Does anyone need a pen or a pencil?”

Packet: Say, “I am about to hand out a packet. Please read everything carefully and answer the corresponding questions honestly and to the best of your ability. In this study, you are being asked to think and respond as though this was a real case, and you were serving on an actual jury. Please keep that in mind while you are answering these questions. It is important that you take your time. I will pick them up when everyone has finished.”

When everybody is done, take them up and say, “The study you just participated in concerns how jurors think about death penalty cases, and what types of information matters to them. Thank you for participating... your assistance with this project will help us learn more about how our legal system works. You are now dismissed. Have a great night.”

If anyone has a question about the study, tell them to feel free to contact Emalee Weidemann at 962-4028 or ejw0906@uncw.edu, or Bryan Myers at 962-3636 or myersb@uncw.edu for more information.
APPENDIX B – PILOT QUESTIONNAIRE

Gender ~ ____ Male  ____ Female

Age ~ ____

Imagine you learn about a trial that involves a man (husband & father) being brutally murdered. Below are a number of characteristics that you might learn about his surviving family in the context of the trial. Please rate each of these characteristics according to how vulnerable (i.e., potential for harm, potential for a greater degree of suffering) or how resilient (i.e., protected from harm, potential for a lesser degree of suffering) it makes the family appear as they prepare to deal with the aftermath of this crime.

For example, if you learned something about the family that made them appear to be extremely vulnerable to experience harm, you would choose a higher number (e.g., 7). If you learned something about the family that made them appear to be resilient to the possibility of experiencing harm, you would choose a lower number (e.g., 1). If you learned something about the family that would have no impact on their experience of harm or suffering, you would choose a neutral number (e.g., 4).

The father was the sole breadwinner for the family:

1 2 3 4 5 6 7
(Extremely Resilient) (No Impact) (Extremely Vulnerable)

The mother lost a parent due to cancer 2 years ago:

1 2 3 4 5 6 7
(Extremely Resilient) (No Impact) (Extremely Vulnerable)

Recently, the family won $100,000 in their state lottery:

1 2 3 4 5 6 7
(Extremely Resilient) (No Impact) (Extremely Vulnerable)
One of the children has a severe learning disability and requires special care:

1 2 3 4 5 6 7
(Extremely Resilient) (No Impact) (Extremely Vulnerable)

The mother and father had been having marital problems and were considering divorce:

1 2 3 4 5 6 7
(Extremely Resilient) (No Impact) (Extremely Vulnerable)

The mother was the sole breadwinner for the family:

1 2 3 4 5 6 7
(Extremely Resilient) (No Impact) (Extremely Vulnerable)

The eldest daughter was planning a wedding for the next month:

1 2 3 4 5 6 7
(Extremely Resilient) (No Impact) (Extremely Vulnerable)

The mother has a disability that renders her unable to work:

1 2 3 4 5 6 7
(Extremely Resilient) (No Impact) (Extremely Vulnerable)

The family identifies as a minority group:

1 2 3 4 5 6 7
(Extremely Resilient) (No Impact) (Extremely Vulnerable)

Father had an excellent life insurance policy:

1 2 3 4 5 6 7
(Extremely Resilient) (No Impact) (Extremely Vulnerable)
There is no history of mental illness on either side of the family:

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One of the children has a substance abuse problem:

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The family identifies strongly with the Christian faith:

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There are over a dozen extended family members living in the same town:

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The family is in extraordinary debt at the time of the murder:

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Is there anything that was not included here that you think would be a sign of the unusual vulnerability of this family?
Now, please rate each of these characteristics according to how likeable it makes the family appear, in your opinion.

For example, if you learned something about the family that made them appear more likeable to you, you would choose a higher number (e.g., 7). If you learned something about the family that made them appear to be less likeable to you, you would choose a lower number (e.g., 1). If you learned something about the family that would have no impact on their likeability, you would choose a neutral number (e.g., 4).

The father was the sole breadwinner for the family:

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The mother lost a parent due to cancer 2 years ago:

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Recently, the family won $100,000 in their state lottery:

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One of the children has a severe learning disability and requires special care:

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The mother and father had been having marital problems and were considering divorce:

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The mother was the sole breadwinner for the family:

1 2 3 4 5 6 7
(Less (No Impact) (More
Likeable)

The eldest daughter was planning a wedding for the next month:

1 2 3 4 5 6 7
(Less (No Impact) (More
Likeable)

The mother has a disability that renders her unable to work:

1 2 3 4 5 6 7
(Less (No Impact) (More
Likeable)

The family identifies as a minority group:

1 2 3 4 5 6 7
(Less (No Impact) (More
Likeable)

Father had an excellent life insurance policy:

1 2 3 4 5 6 7
(Less (No Impact) (More
Likeable)

There is no history of mental illness on either side of the family:

1 2 3 4 5 6 7
(Less (No Impact) (More
Likeable)
One of the children has a substance abuse problem:

1  2  3  4  5  6  7
(Less Likeable) (No Impact) (More Likeable)

The family identifies strongly with the Christian faith:

1  2  3  4  5  6  7
(Less Likeable) (No Impact) (More Likeable)

There are over a dozen extended family members living in the same town:

1  2  3  4  5  6  7
(Less Likeable) (No Impact) (More Likeable)

The family is in extraordinary debt at the time of the murder:

1  2  3  4  5  6  7
(Less Likeable) (No Impact) (More Likeable)

Is there anything that was not included here that you think would cause extreme likeability in regards to this family?
Demographic Information

Please answer the following information. This information is important so that we may compare our sample to individuals selected for juries throughout North Carolina. All information collected will be kept anonymous and confidential.

1. Age ______

2. Gender (circle one): Male Female

3. Are you a U.S. Citizen? (circle one) Yes No

4. Education Completed (check one):
   _____ Less than high school
   _____ High school or GED
   _____ Associates degree / some community college
   _____ University degree
   _____ Graduate education

5. Race (check the one that best describes you):
   _____ African American    _____ Asian American    _____ Caucasian
   _____ Hispanic/Latino     _____ Native American   _____ Other

6. Do you have a valid NC Driver's license? (circle one) Yes No
On April 7th, 2006, Mr. Christopher Smith was arrested and charged with murder and first-degree criminal sexual conduct on the basis of an incident in which, after he and three other youths had encountered another man in a wooded section of a park at night and had beaten the man on the head with a bottle, the defendant perforated the man's rectum with an umbrella and stabbed him repeatedly with a knife. The youths, looking for something to steal, had also rummaged through the victim's belongings and scattered them on the ground.

The defendant was found by the police running in a wooded neighborhood near the park with blood on his clothes. He was wearing jeans and a red hooded sweatshirt. He was taken into custody, where he refused to speak without the presence of his lawyer.

An individual jogging in the park came across the dead body and called the police. The police report identified the victim as Mr. Robert Wilson, a 44 year old businessman, husband to 42 year old Mrs. Donna Wilson and father of 17 year old Annie and 15 year old Katie Wilson. The coroner's report indicated that Mr. Wilson died at approximately 11:45pm. The official cause of death was due to a heart attack as a result of excessive blood loss resulting from the knife wounds.

On July 1st, 2007, Mr. Christopher Smith was tried in the Court of General Sessions for Rutherford County, North Carolina. Smith pled not guilty to both of the crimes with which he was charged. The prosecution introduced the arresting officer as a witness. The prosecution also introduced the defendant's fingerprints on both the umbrella as well as the knife. In addition, Ronald Sanders testified to witnessing the event. He was walking his dog in the park at the time. He saw someone wearing a red hooded sweatshirt hit the victim with a bottle. Sanders immediately fled the area and when he returned home, he called the police.

The final testimony was from one of the other youths that accompanied Smith. He testified that Smith was the one who first attacked the victim, then later stabbed him and assaulted him with an umbrella.

The defense offered testimony only by the defendant, Christopher Smith. The defense claimed that Smith did intend to rob the victim, but that in the confusion of the theft the victim was stabbed by accident. The defendant claimed that someone else must have come by after the defendant fled the scene and brutalized the victim with an umbrella.
During closing statements, the prosecution asked the jury to think of the poor family that was left behind – Donna Wilson, a single mother, and Katie & Annie Wilson, two teenage girls that are forced to think about what the defendant had done to their father for the rest of their lives. The prosecution spoke of the degree to which the defendant was a loving man who cared deeply for his family and how he looked after his family, and always placed their welfare first. They learned that because his wife suffers from a disability that renders her unable to work, Robert Wilson was the sole provider for the family. He owned a small private business and although he was always careful to make sure his family was well provided for, he had suffered some financial setbacks just prior to his death, and so the family was in extraordinary debt at the time of his death. The prosecuting attorney finished his closing statements by reminding the jury that Robert Wilson was devoted to his family. Although he frequently had to travel for his work, he made sure he was always present for important events in his children’s lives.

After deliberation, the jury rendered a unanimous verdict of Guilt, and convicted the defendant, Christopher Smith, on all counts for which he was charged. They believed that he was Guilty beyond a reasonable doubt.
On April 7th, 2006, Mr. Christopher Smith was arrested and charged with murder and first-degree criminal sexual conduct on the basis of an incident in which, after he and three other youths had encountered another man in a wooded section of a park at night and had beaten the man on the head with a bottle, the defendant perforated the man's rectum with an umbrella and stabbed him repeatedly with a knife. The youths, looking for something to steal, had also rummaged through the victim's belongings and scattered them on the ground.

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After deliberation, the jury rendered a unanimous verdict of Guilt, and convicted the defendant, Christopher Smith, on all counts for which he was charged. They believed that he was Guilty beyond a reasonable doubt.
APPENDIX F – POST-GUILT PHASE QUESTIONNAIRE

1. Compared to other criminal acts you have experienced or heard about, how brutal is this crime?

   1          2          3          4          5          6          7
   Much                             Much
   Less                                                                        More

2. Do you agree with the verdict of the jury?

   1          2          3          4          5          6          7
   Strongly  Strongly
   Disagree                                                                    Agree

3. Please indicate your feelings towards the defendant by rating your agreement with the statement: “I believe the defendant should be punished as harshly as possible.”

   1          2          3          4          5          6          7
   Strongly  Strongly
   Disagree                                                                    Agree

4. Compared to other families that have lost a loved one due to murder, how much do you believe this family is suffering right now?

   1          2          3          4          5          6          7
   Much                             Much
   Less                                                                        More
The Judge: “Your duty as jurors is to decide the appropriate punishment for Mr. Smith. The possible options for a conviction of 1st degree murder in North Carolina are:

(1) the death penalty or (2) life in prison.

To decide the appropriate penalty for Mr. Smith, you must weigh the aggravating and mitigating circumstances surrounding the crime. Aggravating circumstances (those that argue for the death penalty) add to the severity or seriousness of the offense. Mitigating circumstances (those that argue for a life in prison sentence) are any facts or information that does not excuse the crime but, in all fairness and a sense of mercy, can be considered to reduce the degree of blame upon Mr. Smith. If the aggravating circumstances outweigh the mitigating circumstances, you must return a sentence of death. You are free to consider whatever information you deem relevant to make this judgment.”

Aggravating Circumstances
Prosecutor: “Ladies and gentlemen of the jury, you alone can decide the fate of Mr. Smith. The unexpected murder of Mr. Wilson has left the Wilson family devastated. Mrs. Wilson’s life and the lives of Annie and Katie Wilson have been forever altered. The defendant cared nothing for the innocent lives he has destroyed. The truth is he doesn’t care. This defendant is surely deserving of the harshest punishment.”

Mitigating Circumstances
Defense Attorney: “Ladies and gentlemen of the jury, you have a very important decision to make. A man’s life hangs in the balance. I agree that this was a terrible and senseless act. But killing Mr. Smith will not bring back the life of the victim. Prior to this act, Mr. Smith had no previous history of violent altercations. This was a lone unexplainable act. He is as devastated by his acts as we all are. He must now live the rest of his life knowing the harm he has caused. I ask that you show mercy toward Mr. Smith. Yes, he should be punished and he knows this. But, he does not deserve to die. Life matters; life is sacred. Ladies and gentlemen, I ask that you show some compassion when you sentence Mr. Smith.”
The Judge: “Your duty as jurors is to decide the appropriate punishment for Mr. Smith. The possible options for a conviction of 1st degree murder in North Carolina are:
(1) the death penalty or (2) life in prison.
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**Testimony of Mrs. Wilson:** “I asked to speak before the jury because I wanted the jurors to know who my husband Robert was and what he meant to all of us. I remember waking up that night to a phone call from the police asking me to come down to the morgue. Robert had passed away just minutes before I got there. I never even got to say good-bye to my husband or tell him how much I loved him. He was the love of my life. We had always shared a special relationship, and we became even closer once we had our children, Annie and Katie.

Now, my girls are left without a father, without a strong role model, and most importantly without a solid family. I am grateful for the love and support we have received from family members and our community. My girls go to a school that has been very understanding about what we have undergone, and they are providing therapy for both my girls, free of charge. They have been a tremendous support to me, and have rallied together with other people their age in the community to start a support group for children who have lost a
parent due to murder. My family has been incredibly supportive as well. My sister Mary has moved in to help us out, and she is helping me maintain the house, along with helping us out financially when needed. This tragedy has really taught me the value of family and friends and how generous people can be.

When members of the jury sit down and decide the fate of the defendant, I want you to realize what a good man he took from us the night he murdered my husband. Robert was a wonderful husband and father. He had his whole life ahead of him, but that was taken away when Christopher Smith decided his life no longer mattered. I’m certain you will hear the defense talk about the sanctity of life and the need for mercy. What mercy did he show Robert? I want you to please think about this when you decide this case. Thank you.”

Mitigating Circumstances
Defense Attorney: “Ladies and gentlemen of the jury, you have a very important decision to make. A man’s life hangs in the balance. I agree that this was a terrible and senseless act. But killing Mr. Smith will not bring back the life of the victim. Prior to this act, Mr. Smith had no previous history of violent altercations. This was a lone unexplainable act. He is as devastated by his acts as we all are. He must now live the rest of his life knowing the harm he has caused. I ask that you show mercy toward Mr. Smith. Yes, he should be punished and he knows this. But, he does not deserve to die. Life matters; life is sacred. Ladies and gentlemen, I ask that you show some compassion when you sentence Mr. Smith.”

Please turn to the next page and answer some questions.
The Judge: “Your duty as jurors is to decide the appropriate punishment for Mr. Smith. The possible options for a conviction of 1st degree murder in North Carolina are:
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Now, my girls are left without a father, without a strong role model, and most importantly without a solid family. Everything changed for us when Robert died. The business he ran went bankrupt. Because of some accounting errors, life insurance premiums were never paid and so our policy was cancelled. I am the sole provider now, and we’ve lost our home this past year because we could no longer make the mortgage payments. For the past nine months we have been forced to live in homeless shelters. We lived in our car
for a month prior to that, but our car was also repossessed. Because of my handicap, I've been unable to work and the stress of this has only added to my health problems. Robert provided a good income for us and now that is gone. Shelters are a terrible place for families to live. They are dirty, dangerous places. Every night I go to sleep wondering what might happen to us. The situation seems hopeless. We have mounting medical expenses for the treatment of my daughter Annie, who has attempted suicide twice in the short time since the death of her father, the most recent of which landed her in intensive care. I don't know what I would do if I lost another person that I loved. Katie's not much better, and they've both dropped out of school. They take care of me during the day when we have to stay out of the shelter. I've lost Robert and now I'm losing my girls too. No one can help us; we are all alone in this.

When members of the jury sit down and decide the fate of the defendant, I want you to realize what a good man he took from us the night he murdered my husband. Robert was a wonderful husband and father. He had his whole life ahead of him, but that was taken away when Christopher Smith decided his life no longer mattered. I'm certain you will hear the defense talk about the sanctity of life and the need for mercy. What mercy did he show Robert? I want you to please think about this when you decide this case. Thank you.”

Mitigating Circumstances

Defense Attorney: “Ladies and gentlemen of the jury, you have a very important decision to make. A man’s life hangs in the balance. I agree that this was a terrible and senseless act. But killing Mr. Smith will not bring back the life of the victim. Prior to this act, Mr. Smith had no previous history of violence. This was a lone unexplainable act. He is as devastated by his acts as we all are. He must now live the rest of his life knowing the harm he has caused. I ask that you show mercy toward Mr. Smith. Yes, he should be punished and he knows this. But, he does not deserve to die. Life matters; life is sacred. Ladies and gentlemen, I ask that you show some compassion when you sentence Mr. Smith.”

Please turn to the next page and answer some questions.
APPENDIX J – POST-PENALTY PHASE QUESTIONNAIRE

Sentencing

1. Which punishment would you vote to impose the defendant? (check one)
   ______ Life in prison with no possibility of parole
   ______ Death penalty

2. How confident are you in your punishment decision?

   1          2          3          4          5          6          7
   Not at all Confident Extremely Confident

3. How strongly do you believe that the defendant deserves the death penalty?

   1          2          3          4          5          6          7
   Not at all Very Strongly

4. Compared to other families that have lost a loved one due to murder, how much do you believe this family is suffering right now?

   1          2          3          4          5          6          7
   Much Less More

5. Compared to an average family, how likeable is this family to you?

   1          2          3          4          5          6          7
   Not at all Extremely Likeable Likeable

6. How much personal empathy do you feel for this family (i.e., how much personal identification and understanding do you have for this family’s situation and feelings)?

   1          2          3          4          5          6          7
   No Empathy A lot of Empathy
7. How influential was the guilt phase of the trial in helping you to form opinions about the family?

1           2           3           4           5           6           7
Not at all Influential

8. How influential was the penalty phase of the trial in helping you to form opinions about the family?

1           2           3           4           5           6           7
Not at all Influential

9. How influential was the guilt phase of the trial in helping you to form opinions about the defendant?

1           2           3           4           5           6           7
Not at all Influential

10. How influential was the penalty phase of the trial in helping you to form opinions about the defendant?

1           2           3           4           5           6           7
Not at all Influential

11. How much is the father to blame for the suffering of this family?

1           2           3           4           5           6           7
Not at all to Blame

Entirely to Blame
APPENDIX K – INTERPERSONAL REACTIVITY INDEX (IRI)

The following statements inquire about your thoughts and feelings in a variety of situations. For each item, indicate how well it describes you by choosing the appropriate letter on the scale at the top of the page: A, B, C, D, or E. When you have decided on your answer, fill in the letter on the answer sheet next to the item number. READ EACH ITEM CAREFULLY BEFORE RESPONDING. Answer as honestly as you can. Thank you.

ANSWER SCALE:

A              B              C              D              E
DOES NOT DESCRIBES ME
DESCRIBE ME    DESCRIBES ME
WELL          VERY WELL

______ 1. I daydream and fantasize, with some regularity, about things that might happen to me.

______ 2. I often have tender, concerned feelings for people less fortunate than me.

______ 3. I sometimes find it difficult to see things from the "other guy's" point of view.

______ 4. Sometimes I don't feel very sorry for other people when they are having problems.

______ 5. I really get involved with the feelings of the characters in a novel.

______ 6. In emergency situations, I feel apprehensive and ill-at-ease.

______ 7. I am usually objective when I watch a movie or play, and I don't often get completely caught up in it.

______ 8. I try to look at everybody's side of a disagreement before I make a decision.
9. When I see someone being taken advantage of, I feel kind of protective towards them.

10. I sometimes feel helpless when I am in the middle of a very emotional situation.

11. I sometimes try to understand my friends better by imagining how things look from their perspective.

12. Becoming extremely involved in a good book or movie is somewhat rare for me.

13. When I see someone get hurt, I tend to remain calm.

14. Other people's misfortunes do not usually disturb me a great deal.

15. If I'm sure I'm right about something, I don't waste much time listening to other people's arguments.

16. After seeing a play or movie, I have felt as though I were one of the characters.

17. Being in a tense emotional situation scares me.

18. When I see someone being treated unfairly, I sometimes don't feel very much pity for them.

19. I am usually pretty effective in dealing with emergencies.

20. I am often quite touched by things that I see happen.

21. I believe that there are two sides to every question and try to look at them both.
22. I would describe myself as a pretty soft-hearted person.

23. When I watch a good movie, I can very easily put myself in the place of a leading character.

24. I tend to lose control during emergencies.

25. When I'm upset at someone, I usually try to "put myself in his shoes" for a while.

26. When I am reading an interesting story or novel, I imagine how I would feel if the events in the story were happening to me.

27. When I see someone who badly needs help in an emergency, I go to pieces.

28. Before criticizing somebody, I try to imagine how I would feel if I were in their place.
APPENDIX L – ATTITUDES ABOUT PUNISHMENT SCALE (AAPS)

1. In order to discourage a larger number of people from committing crimes, heavier sentences should be imposed.

   1  2  3  4  5  
   strongly disagree  strongly agree

2. If heavier sentences were to be given out, more people would be discouraged to commit crimes than at present.

   1  2  3  4  5  
   strongly disagree  strongly agree

3. When certain crimes become more common, the severity of punishment for that crime should also increase.

   1  2  3  4  5  
   strongly disagree  strongly agree

4. Heavy sentences increase the public’s belief in the criminal justice system.

   1  2  3  4  5  
   strongly disagree  strongly agree

5. Most people who actively support rehabilitation measures for criminals give little importance to the seriousness of the crimes committed.

   1  2  3  4  5  
   strongly disagree  strongly agree

6. To ensure the safety of citizens, people who commit serious crimes should be put in prison for as long as possible.

   1  2  3  4  5  
   strongly disagree  strongly agree
7. Unless persons who commit serious crimes are imprisoned without the possibility of parole, they will continue to pose a threat to society.

1  2  3  4  5  
strongly disagree  strongly agree

8. For a great number of criminal offenders, it is safer for society to have them locked up rather than walking around freely.

1  2  3  4  5  
strongly disagree  strongly agree

9. In punishing serious crimes of violence, the safety of citizens is of greater importance than the needs of the criminal offender.

1  2  3  4  5  
strongly disagree  strongly agree

10. It is better to put regular criminal offenders in prison for longer periods of time because this will prevent many crimes from taking place.

1  2  3  4  5  
strongly disagree  strongly agree

11. Punishment is deserved suffering.

1  2  3  4  5  
strongly disagree  strongly agree

12. Even for alternative forms of punishment, suffering should play an important role.

1  2  3  4  5  
strongly disagree  strongly agree

13. Making the criminal offender suffer should be an important part of all punishment.

1  2  3  4  5  
strongly disagree  strongly agree
14. Punishment without an element of suffering is no punishment.

1  2  3  4  5
strongly disagree  strongly agree

15. When criminal offenders are punished, they are getting what they deserve.

1  2  3  4  5
strongly disagree  strongly agree

16. Punishment restores the legal order in society disrupted by an act of crime.

1  2  3  4  5
strongly disagree  strongly agree

17. Punishment restores the ‘moral balance’ in society disrupted by a crime.

1  2  3  4  5
strongly disagree  strongly agree

18. Justice is served at the moment that a criminal offender is punished.

1  2  3  4  5
strongly disagree  strongly agree

19. Giving out punishment to criminals is a moral duty.

1  2  3  4  5
strongly disagree  strongly agree

20. By undergoing punishment, a criminal pays off his debt to society.

1  2  3  4  5
strongly disagree  strongly agree
21. The main focus of the criminal justice should be on correction through the appropriate use of punishment and treatment.

1  2  3  4  5
strongly disagree      strongly agree

22. It is not the function of the criminal justice system to reform criminals.

1  2  3  4  5
strongly disagree      strongly agree

23. Officials in the criminal justice system have the moral duty to help criminals to get back on the right track.

1  2  3  4  5
strongly disagree      strongly agree

24. In establishing the type and severity of punishment, the possibilities for rehabilitation should play a key role in the decision.

1  2  3  4  5
strongly disagree      strongly agree

25. It is unethical to allow the goal of rehabilitation to determine sentencing.

1  2  3  4  5
strongly disagree      strongly agree

26. The criminal justice system should help the criminal offender and victim reach a solution on which they can both agree.

1  2  3  4  5
strongly disagree      strongly agree

27. Criminal prosecution is unnecessary in situations where the criminal offender and victim have, reached a solution to the conflict on which they can both agree.

1  2  3  4  5
strongly disagree      strongly agree
28. A criminal process can only be determined a success when both criminal offender and victim are satisfied with the VIS.

   1  2  3  4  5  
   strongly disagree  strongly agree

29. The best form of punishment is one that does the best job of restoring the victim to the way they were prior to the crime.

   1  2  3  4  5  
   strongly disagree  strongly agree

30. Resolving conflict is an overlooked goal within our criminal justice system.

   1  2  3  4  5  
   strongly disagree  strongly agree
I’d like to ask you some questions about the death penalty. Are you strongly in favor, somewhat in favor, somewhat opposed or strongly opposed to the death penalty?

_____ Strongly in Favor
_____ Somewhat in Favor
_____ Somewhat Opposed
_____ Strongly Opposed

Now assume that you’ve been called as a possible juror in a first degree murder trial. The prosecutor is asking for the death sentence. Since this is a case where the death penalty may be imposed, the judge will ask you certain questions about your attitudes toward the death penalty before deciding whether you should be chosen to serve on the jury.

There are two parts to any trial where the death penalty may be imposed. In the first part, the jury decided whether the person on trial is guilty or not guilty. If the person is found guilty, there is a second part – a separate trial – in which the jury decides whether he or she should get the death penalty, or life in prison.

The judge will ask you the following question:

“Is your attitude toward the death penalty such that as a juror you would never be willing to impose it in any case, no matter what the evidence was, or would you consider voting to impose it in at least some cases?”

How would you answer? Would you say:

_____ I would be unwilling to vote to impose it in any case.
_____ I would consider voting to impose it in some cases.
Now suppose that you were a juror in the first part of the trial, just to decide whether the accused person is guilty or not guilty of the crime. The judge instructs you that in reaching your verdict you are only allowed to consider the evidence presented in court, and must follow the law as he will state it to you. If the accused is found guilty, there will be a separate trial to decide whether or not he or she should get the death penalty.

Which of the following expresses what you would do if you were a juror for the first part of the trial? (Read each answer choice)

_____ I would follow the judge’s instructions and decide the question of guilt or innocence in a fair and impartial manner based on the evidence and the law.

_____ I would not be fair and impartial in deciding the question of guilt or innocence, knowing that if the person was convicted he or she might get the death penalty.
We are also interested in learning how harsh you believe the death penalty is, relative to life in prison. On the line below, please indicate where each of these punishments fall by drawing two Xs, and labeling one of them DP (Death Penalty) and the other one LP (Life in Prison). Please draw these Xs so that they are representative of how harsh you feel these two punishments are in relation to each other.