

CONFERENCE

Sentencing

Principles, Perspectives & Possibilities

10–12 February 2006

CANBERRA

Hosted by the

- ◆ National Judicial College of Australia
- ◆ ANU National Institute of Social Sciences & Law
- ◆ ANU College of Law

Contact: sentencing@law.anu.edu.au

VICTIMS OF CRIME, VULNERABLE CITIZENS AND THE CRIMINAL JUSTICE PARADIGM

Ms Tracey Booth

School of Law, University of Western Sydney

Victims of crime, vulnerable citizens and the criminal justice paradigm

Introduction

The victims of crime I am going to focus on today are family victims, the close relatives of a deceased primary victim who has died as the result of an offence.¹ Family victims are prominent in homicide cases and are particularly vulnerable because they generally have no role in the legal proceedings. The paradigm I want to discuss is that that supports the submission of victim impact statements (VIS) from family victims in the sentencing of homicide matters in NSW² and particularly the role of VIS in relation to the formulation of penalty.

In NSW, the law is fairly clear: following the Supreme Court decision in *Previtera* (1997) 94 A Crim R 76,³ VIS from family victims, although admissible after conviction and prior to sentencing, are not taken into account in determining penalty in homicide cases. However, in 2002, sections 3A and 21A(2) were inserted into the *Crimes (Sentencing Procedure) Act 1999* (NSW) (CSPA). Section 3A articulates particular sentencing purposes including recognition of harm done to victims and the community;⁴ section 21A(2) sets out a list of aggravating factors to be taken into account by a sentencing judge, unless it is contrary to a rule of law to do so,⁵ and this includes substantial emotional harm caused by the offence.⁶ These provisions led the NSW Court of Criminal Appeal to sit a bench of five judges in June 2005 to hear an appeal in the case of *Tzanis* [2005] NSWCCA 274 and, in part, to consider the impact of the legislation on the rule in *Previtera* and whether the decision in *Previtera* should still be followed in NSW. Ultimately, the court decided that *Tzanis* was not an appropriate case to decide this issue but comments in this case and other NSW Court of Criminal Appeal decisions have cast doubt on the application of the rule in *Previtera* and the role of VIS from family victims in the sentencing of homicide offenders.

¹ 'Family victim' is defined in s 26 of the *Crimes (Sentencing Procedure) Act 1999* (NSW). In circumstances where a primary victim has died as a direct result of an offence (the deceased), a family victim whether or not he or she has suffered personal harm as a direct result of the offence, is a person who was at the time of the commission of the offence, a member of the deceased's immediate family. A 'member of the deceased's immediate family' is defined as being one of the following:

- The deceased's spouse;
- The deceased's de facto spouse (including a same sex partner) where the parties cohabited for a period of at least two years;
- Parent, guardian or step-parent of the deceased;
- Child of step-child of the deceased or child for whom the deceased was guardian;
- Brother, sister, step-brother or step-sister of the deceased.

² By homicide cases I mean to include offences where death is an element—murder, manslaughter, driving offences causing death and death resulting from an offence against Division 1 of Part 2 of the *Occupational Health and Safety Act 2000* (NSW). Under s27 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) VIS from family victims are admissible in the Supreme Court, District Court, Local Court and the Industrial Relations Commission.

³ Affirmed by the NSW Court of Criminal Appeal in *Bollen* [1998] NSWSC 67 and *Dang* [1999] NSWCCA 42

⁴ s 3A(g)

⁵ s 21A(4)

⁶ s 21A(2)(g)

My paper is divided broadly into 3 parts. In part one, I outline the relevant principles established by the NSW Supreme Court in *Previtera* and note the different approach of other Australian jurisdictions. I consider whether the sentencing purpose to ‘recognise harm to the community’ set out in section 3A does constitute a change of existing sentencing principle in part two. If so, what is the impact of this requirement and the aggravating factor in s21A(2) on the rule in *Previtera*? Is it nonetheless appropriate to take account of VIS from family victims in sentencing? In the final part, I address the problematic nature of establishing substantial emotional harm sustained by family victims as an aggravating factor in sentencing.

Part 1: The rule in *previtera*

Prior to the passing of the Victims Rights Act 1996 (NSW), VIS from family victims were generally not admissible and considered irrelevant to the sentencing of offenders in homicide cases in NSW.⁷ In 1997, section 23C was inserted into the Criminal Procedure Act 1986 (NSW). This provision gave family victims the right to submit a written VIS to the court detailing the impact of the primary victim’s death upon members of the deceased’s family. The court was required to both receive and acknowledge a VIS from a family victim although the court did not have to consider that VIS in connection with the determination of penalty unless it considered it appropriate to do so.

This provision was considered by Hunt CJ at CL in *Previtera* when sentencing the offender for murder. At the sentencing stage of the matter, the Crown tendered a VIS authored by the deceased’s son which gave details of the reactions of the son and his sister to the murder of their mother in terms Hunt CJ described as “moderate and compassionate” (at 85). As required by the legislation, Hunt CJ acknowledged receipt of the VIS and extended his sympathy to the family victims “for their tragic and senseless loss” (at 84). However, his Honour found that it could never be appropriate to take a VIS from a family victim into account in sentencing if it dealt only with the effect of the death upon the victim’s family. He was of the view that while consequences sustained by a victim who is directly injured by the offence are always relevant to the sentencing task, harm sustained by family victims, can never be relevant. This was because the impact of the deceased’s death was not harm relevant to the objective circumstances of the offence, the consequence and manner of death, and nor could it aggravate the offence. In the course of his judgment he said:

It is regarded by all thinking persons as offensive to fundamental concepts of equality and justice for criminal courts to value one life as greater than another. It would therefore be wholly inappropriate to impose a harsher sentence upon an offender because the value of the life lost is perceived to be greater in the one case than it is in the other.

The decision in *Previtera* was subsequently affirmed by the NSW Court of Criminal Appeal⁸ and is currently followed by sentencing courts in NSW.⁹ In 1999, the VIS

⁷ *R v de Souza* unreported judgment of Dunford J, NSW Supreme Court 10/11/95.

⁸ *Bollen* [1998] NSWSC 67 and *Dang* [1999] NSWCCA 42.

provisions analysed in *Previtera*, were reformatted and incorporated into the *CSPA*.¹⁰ Despite Hunt CJ's criticism of the "poor" drafting of section 23C, the terminology considered by him whereby a sentencing judge could take account of a VIS if it was appropriate to do so, remains substantially the same and is now located in section 28(4)(b) of the *CSPA*.¹¹

The approach to VIS from family victims in homicide matters in NSW differs from that taken in most other Australian jurisdictions. Chief Justice Spigelman observed in *Tzanis* [at 15] that these differences "do not seem to be explicable by differences in the respective statutory regimes."

However, NSW is the only Australian jurisdiction with the legislative proviso that the sentencing judge need only take account of the VIS from family victims if he or she considers it *appropriate* to do so. Although the language employed by the different Australian statutory regimes is not uniform and the procedural requirements vary, there are no such similar provisos and generally sentencing courts are required to take account of harm sustained by victims (including family victims) in the course of sentencing homicide matters and VIS may be submitted to assist the court in the formulation of penalty.¹²

Thus, whilst in most Australian jurisdictions it is considered good law that a sentencing judge "should not be required to impose a harsher penalty upon an offender who causes the death of a person who is widely loved than upon one who causes the death of an unloved victim",¹³ the impact of the death of the deceased on the family is nonetheless a relevant factor in sentencing.

A key difference between NSW and the other Australian jurisdictions, is the fact that in NSW the harm sustained by family victims, the emotional harm that is caused by the impact of the deceased's death, is not relevant to the formulation of penalty in a homicide case; the relevant harm is confined to the death of the deceased and the circumstances of that death. This is because of the danger that the sentence will reflect not the culpability of the offender in killing but the value and worthiness of the life extinguished. In *R v de Souza* Dunford J said that "the life of one homicide victim

⁹ For instance see such recent decisions as *R v White* [2005] NSWSC 667, *R v Hillsley* [2005] NSWSC 652, *R v Goodwin* [2004] NSWSC 757, *R v Hamoui (No. 4)* [2005] NSWSC 279, *R v Vuni* [2005] NSWSC 184, *R v Ward* [2005] NSWSC 266, *R v MAH* [2005] NSWSC 871.

¹⁰ Section 28 (3) provides: "If a primary victim has died as a direct result of the offence a court must receive a victim impact statement given by a family victim and acknowledge its receipt, and may make any comment on it that the court considers appropriate."

¹¹ Section 28 (4)(b) provides that a court: "must not consider a victim impact statement given by a family in connection with the determination of the punishment for the offence unless it considers that it is appropriate to do so."

¹² Section 95(1) *Sentencing Act 1995* (Victoria), section 7 *Criminal Law (Sentencing) Act 1988* (SA), section 24 *Sentencing Act 1995* (WA), section 106B (4) *Sentencing Act 1995* (NT), section 14(1) *Criminal Offence Victims Act 1995* (QLD), s 9 *Penalties and Sentences Act 1992* (QLD), s 81A(2)(b) *Sentencing Act 1997* (Tasmania), section 49(1) *Crimes (Sentencing) Act 2005* (ACT).

¹³ *R v Miller* [1995] 2 VR 348.

cannot ... be of more intrinsic value than another because he or she comes from a close family or has loving relatives.”

These principles were discussed by Perry J of the South Australian Supreme Court who explained that “it is not a matter of valuing one life more than another. Rather it is a question of having regard to the totality of the ‘injury, loss or damage’ which may include [that] suffered by” family victims.”¹⁴ In that case the court said that the ‘injury, loss or damage’ flowing from the death of one person may be more severe in one case than another and having regard to victim impact evidence from family victims could have the capacity to affect the sentence. Clearly the court was of the view that the harm sustained by family victims stemming from the death of the deceased was part of the circumstances of the death and thereby relevant to sentencing.

The bulk of the cases that I have looked at for the purposes of this paper have been confined to those matters heard in the Victorian and South Australian Supreme Court or at appellate level in those jurisdictions. However in those cases, although VIS from family victims are acknowledged, often in some detail with a significant degree of sensitivity particularly in the Victorian courts, there is usually no indication of the weight that has been attributed to those VIS beyond a statement that the harm suffered by the family victims is a ‘factor’ that has been taken into account.

Part 2: The Impact of Sections 3A and 21A(2)(g) of the *Crimes (Sentencing Procedure) Act 1999 (NSW)*

Section 3A, inserted into the *Crime (Sentencing Procedure) Act 1999 (NSW) (CSPA)* in 2002, sets out the following purposes for which a court may impose a sentence on an offender:

- (a) To ensure that the offender is adequately punished for the offence;
- (b) To prevent crime by deterring the offender and other persons from committing similar offences;
- (c) To protect the community from the offender;
- (d) To promote the rehabilitation of the offender;
- (e) To make the offender accountable for his or her actions;
- (f) To denounce the conduct of the offender;
- (g) To recognise the harm done to the victim of crime and to the community.

In the context of this paper, we are interested in the purpose set out in s3A (g)—recognising harm done to the community. Together with s3A, a new s21A was also inserted into the *CSPA* setting out specific aggravating and mitigating factors that a sentencing court is required to take into account in determining an appropriate sentence for an offence although these factors are not intended to be exhaustive.¹⁵ The relevant aggravating factor set out in s 21A(2)(g) is substantial “injury, emotional harm, loss or

¹⁴ *R v Birmingham (No. 2)* [1997] 96 A Crim R 545 at 548.

¹⁵ Section 21A(1) provides that “the matters referred to in this subsection are in addition to any other matters that are required or permitted to be taken into account by the Court under any Act or rule of law.”

damage caused by the offence.” Sub-section (4) limits the use to be made of the listed factors by providing that the sentencing court “is not to have regard to any such aggravating or mitigating factor in sentencing if it would be contrary to any Act or rule of law to do so”. According to Howie J in *Wickham* [2004] NSWCCA 193 at [23], the effect of this provision “is to ensure that a factor is not taken into account in a way that is inconsistent with general sentencing principles and policy. It was the intention of Parliament to replicate the common law.” Thus, the operation of s 21A(2)(g) will be limited by the rule in *Previtera* if it continues to apply and substantial emotional harm sustained by a family victim will not be an aggravating factor in sentencing.¹⁶

When hearing an application for a guideline judgment for the offence of assault police in 2002, Spigelman CJ observed that it was arguable that some of the purposes set out in section 3A of the *CSPA* constituted a change of pre-existing sentencing principle and in particular noted that “recognising harm to the community” may introduce a new element into the sentencing task.¹⁷ The chief justice expanded on this theme in *R v Berg* [2004] NSWCCA 300 at [43] where he said: “the reasons given in *Previtera* may need to be reconsidered in an appropriate case ... it seems to me strongly arguable that the recognition of this purpose of sentencing [ie harm to the community] would encompass the kinds of matters which are incorporated in a victim impact statement. It may in some cases be appropriate to consider the contents of such statements in the sentencing exercise. This was not a purpose of sentence recognised by Hunt CJCL in *Previtera*.”

The question then is: does the requirement for the court to recognise the harm to the community thereby introduce a new element into the sentencing task?

Parliament's Intention

There is no compelling evidence that Parliament intended by the provisions in sections 3A and 21A to change the common law and existing sentencing principle. In *R v MA* [2004] NSWCCA 92 at [23] Dunford J (with whom Studdert and James JJ agreed) said that s3A was in substance a codification and elaboration of the purposes of criminal punishment described in *Veen v R (No. 2)* (1988) 164 CLR 465. Mason CJ, Brennan, Dawson and Toohey JJ said in *Veen v R (No. 2)*:

The purposes of criminal punishment are various: protection of society, deterrence of the offender and of others who might be tempted to offend, retribution and reform. The purposes overlap and none of them can be considered in isolation from the others when determining what is an appropriate sentence in a particular case. They are guideposts to the appropriate sentence but sometimes they point in different directions. (at 476)

Indeed, in his speech introducing the Sentencing Bill, the Attorney-General too quoted this well-known passage from *Veen No. 2* when explaining that “the sentencing of offenders is an extremely complex and sophisticated judicial exercise” and “the imposition of a just sentence in the individual case requires the exercise of a complex

¹⁶ *Wickham* [2004] NSWCCA 193 at [25].

¹⁷ *Re Attorney-General's Application under s 37 of the Crimes (Sentencing Procedure) Act 1999 (NSW) (No 2 of 2002)* [2002] NSWCCA 515 at [57].

judicial discretion.”¹⁸ Parliament’s intention to reflect the common law principles was also made plain by the Attorney-General’s comments that “s21Asets out clearly identified and *well-recognised* aggravating and mitigating factors” and that those factors apply “to the sentencing exercise as they presently apply at common law.”¹⁹ A similar conclusion was reached by Howie J in *Tadrosse* [2005] NSWCCA 145 at [18] when he said that: “If a court finds itself considering an aggravating feature that would not have been taken into account before s21A was enacted, then it is very likely that the court has misconstrued the section.”

Also significant is the fact that in a political climate that gives much prominence to victims of crime, when sections 3A and 21A were inserted into the Act in 2002, the provisions regarding the submission of VIS by family victims remained substantially unaltered. Nor did the Attorney-General discuss the impact of sections 3A and/or 21A on VIS from family victims in his reading speech. Although Parliament had ample notice of the principle in *Previtera*, and the approach of the NSW sentencing courts to VIS from family victims, it did not take the opportunity to amend the provisions.

In the context of victims of crime, I would have expected Parliament to state so explicitly if it intended to change the existing law. Because Parliament did not do so, it is likely that it did not intend to change the common law and that s 3A was intended to simply articulate existing common law purposes of sentencing with a view to, in the words of the A-G , “promoting transparency in sentencing ...and...promoting public understanding of the sentencing process.”

Harm to the community caused by an offence has long been relevant to the sentencing task. The sentencing court in the Canadian case of *R v Readhead* [2001] BCPC 208, said that as a result of the commission of a criminal offence “every member of the community has suffered harm and loss...It is that generalised sense of the consequences of a criminal act that must be taken into account by the sentencing judge” [at 13]. Deterrence, retribution and rehabilitation are variously considered by sentencing courts in the interests of protecting the community. Herron CJ said in *Cuthbert* (1967) 86 WN NSW 272 (at 274): “The ultimate object of the criminal law is the protection of society from crime; all purposes of punishment may be subsumed under this single head.” The sentence imposed is addressed to both the offender and the community; in aiming to inspire community confidence in the criminal justice system and maintain community support it has been important to impose sentences that reflect the harm caused to the community by the offence and community values.²⁰

Conduct is criminalised because of its negative impact upon or harm done to our community. The penalties established for each offence reflect the seriousness with which the Legislature views the particular conduct because of its adverse impact on our community or individuals within it. Thus, the perceived ‘harm’ to the community

¹⁸ Second Reading Speech for *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing)* Bill, NSW Legislative Assembly *Parliamentary Debates (Hansard)* at 5813.

¹⁹ n 18 at 5813.

²⁰ *R v Geddes* (1936) 36 SR NSW 554.

determines the range of penalties that are available to the sentencing court and the penalty imposed recognises the harm to the community.

The Question of Appropriateness

Whether or not section 3A does introduce a new sentencing purpose and the reference to ‘community’ in s 3A(g) encompasses the deceased victim’s family, any overturning of *Previtera* nonetheless has to take account of the VIS provisions in the *CSPA*. As noted above, the VIS provisions relating to family victims have not been changed since considered by the Supreme Court in *Previtera* and the ambiguity of those provisions is readily apparent. Whilst VIS from family victims are admissible to the sentencing court in written form²¹ and may also be read aloud to the court by the victim or victim’s representative,²² the sentencing court need not take that VIS into account in sentencing unless it considers it appropriate to do so.²³

How should the court approach this issue of ‘appropriateness?’ The principle that sentencing courts should not put a greater value on one human life as opposed to another is compelling and well recognised in many other Australian jurisdictions.²⁴ Nevertheless, aside from the South Australian Supreme Court, sentencing courts in other Australian jurisdictions have not really grappled with the dangers inherent in taking account of the emotional harm sustained by family victims and particularly the risk that the sentence will reflect not the culpability of the offender in killing but the value and worthiness of the life extinguished.

However, it may be that the blanket approach of *Previtera* is no longer acceptable, particularly if s 3A is thought to introduce a new element to the sentencing task. Perhaps a way forward might be to take account of victim impact evidence in circumstances where there is a compelling link between the harm sustained by family victims and the culpability of the offender. For instance where the trauma felt by the family victims is so closely connected to the context of the killing that it could be linked to intent/recklessness or negligence, such as in the case of killing a young child whose parents are obviously going to be devastated. Sebba argues that there is merit on retributive principles that murder of a national or communal figure inflicts a greater and foreseeable loss on society than that of an anonymous citizen and therefore deserves greater punishment.²⁵ All crimes are not the same and there are infinite shades of morality, of less and more worse. Further, Sebba points out that there is a close analogy to the types of victim attributes which have gained express recognition in the criminal law whereby offence definitions or sentencing enhancements refer to the status of the victim.²⁶ For example we already have provisions which single out the protection of

²¹ section 28(3).

²² section 30A.

²³ Section 28(4)(b).

²⁴ *R v Miller* [1995] 2 VR 348, *R v Birmingham (No. 2)* [1997] 96 A Crim R 545, *Inkson* (1996) 6 Tas R 1, *Smith* [1997] Tas SC BC 9702637.

²⁵ Sebba, L, “Sentencing and the Victim: The Aftermath of *Payne*” (1994) 3 *International Review of Victimology* 141–165 at 153.

²⁶ Sebba note 25 at 155.

particular victims as in the public interest (police officers, correctional officers, health workers, teachers etc).²⁷ Where the identity of the victim including age, vulnerability, performing public service in course occupation etc is relevant to the culpability of the crime, then it could be ‘appropriate’ to take the VIS into account in the formulation of penalty and a case law could develop.

Part 3: Harm sustained by family victims as an aggravating factor

Section 21A(2)(g) of the *CSPA* provides that a court can take account of substantial emotional harm caused by the offence. In *Berg* the Court of Criminal Appeal appeared to assume that evidence in support of this aggravating factor can be provided by victim impact statement. Assuming it is appropriate to take account of victim impact evidence from family victims in sentencing, I would argue that sentencing courts should be wary about taking account of such victim impact evidence to establish the aggravating factor of substantial emotional harm for a number of reasons.

First, is a VIS an appropriate mechanism through which to prove substantial harm to aggravate the penalty under s21A(2)(g)? It is well established that facts relied as aggravating a particular offence must be established beyond reasonable doubt. As Wood CJ cautioned in *R v Berg*, particular difficulties arise in NSW because VIS from family victims are unsworn and, although there appears to be nothing in Part 3 Division 2 of the *CSPA* to prevent it, the practice seems to be that victim-authors are not cross examined about content. Nor does section 30A that allows victims to read their VIS aloud to the court, appear to envisage cross examination.²⁸ Even it were permitted, such cross-examination may be tactically unwise for an offender who hopes to be regarded as remorseful. Moreover, such a stressful experience of cross examination could have a “chilling effect” on the victim-author²⁹ particularly in cases where the offender is unrepresented. To continue with an emerging theme at this conference, cross examination of family victims on their VIS is just the sort of legal event to end up on the front page of *The Daily Trash*, headlines crying out for justice and the journalist careful to name all legal participants accurately. However, a failure to cross-examine could be seen as acceptance of what might in the circumstances be an excessive or exaggerated response with no recourse on appeal.

Second, if taking account of victim impact evidence might lead to more severe sentences, what is the impact on equality and parity of sentencing when VIS are not submitted? Victim impact evidence is not mandatory in NSW (or indeed any of the Australian jurisdictions) although anecdotal evidence suggests that it is unusual that VIS are not submitted in homicide cases. Studies of similar legislation in other jurisdictions have revealed that whether or not a victim will submit a VIS depends on particular characteristics of the victim including class, gender, cultural background, level of literacy, costs of reports and the assistance that is made available for this purpose.³⁰

²⁷ Section 21A(2)(a).

²⁸ *R v Wilson* [2005] NSWCCA 219.

²⁹ *R v Shaban* [2004] ABQB 558 at [20].

³⁰ Richards, C (1992) “Victim’s Rights Wronged” 17 *Alternative Law Journal* 131 at 133.

Third, the variable quality of VIS is also problematic for it is inevitable that family victims will express themselves with varying levels of eloquence and expertise.³¹ This problem has taken on a new twist these days with the opportunity provided for victims to read their VIS aloud to the court. Oral presentation requires a certain amount of self-confidence and also opportunity. Problems of access are faced by those family victims in regional areas who do not have the wherewithal to come to Sydney for the purpose of reading their VIS aloud to the court.

In these circumstances, if it is found that VIS from family victims are relevant to the sentencing exercise, it may be that little weight can be given to those statements. In *R v Slack* [2004] NSWCCA 128 Sperling J suggested that substantial weight could not be given to an account of harm in an unsworn statement which was untested by cross-examination and “in the nature of things, far from being an objective and impartial account of the effect of the offence on the victim.”³²

Finally, identification of emotional harm that is indeed ‘substantial’ will be problematic. The NSW Court of Criminal Appeal has considered nature of substantial emotional harm in cases involving armed robbery and found that substantial harm in this context will be harm that is significantly more serious than that which any ordinary person would have suffered when subjected to this offence.³³ What is the level of emotional harm that an ordinary family victim will suffer? When will that emotional harm be substantial? Inevitably, such a determination will require comparisons between the experiences of family victims and the deceased victim: an unhappy task at best and one complicated by the different opportunities and/or abilities of family victims to express themselves.

Conclusion

The role of VIS from family victims remains a vexed and controversial issue in NSW. Although the Court of Criminal Appeal has raised the issue on more than one occasion, it has demonstrated a marked reluctance to actually grapple with and overturn the decision in *Previtera*.³⁴ No doubt this reticence reflects both the cautious approach of the court to overturning its own previous decisions and the controversial nature of the issues involved.

Although I would urge caution if the *Previtera* principle was to be overturned or qualified, I do not want to be understood as suggesting that VIS from family victims are irrelevant in homicide matters and should be inadmissible. Indeed, I think that VIS are a very important aspect of sentencing process and should be retained.³⁵ A significant majority of family victims elect to tender a VIS in homicide matters and increasing

³¹ See the results of my empirical research in this area in Booth, T, “Voices After the Killing: Hearing the Stories of Family Victims in NSW” (2001) 10(1) *Griffith Law Review* 25–41.

³³ *R v Youkhana* NSWCCA [2005] 412, *Solomon* [2005] NSWCCA 158.

³⁴ See the court’s most recent decision in this area in *R v FD*; *R v JD*; *R v FD* [2006] NSWCCA 231.

³⁵ For an expanded argument on this point see Booth, T, “Homicide, Family Victims and Sentencing: Continuing the Debate about Victim Impact Statements” (2004) 15(3) *Current Issues in Criminal Justice* 253–257.

numbers are utilizing the opportunity to read their VIS aloud to the court. Such a level of participation, despite the fact that most would be made aware that their VIS will not influence the ultimate penalty, indicates that family victims want this chance to be heard, to recount their experiences and be involved in the sentencing process. Through acknowledgement of VIS, the sentencing courts are able to communicate a message that encompasses the wider interests of family victims and expresses the changing values and expectations of the community. As Mr. Justice Vincent said in his paper to this conference yesterday, sentencing is as much about process as it is about outcome.