

UNDERSTANDING THE ROLE OF DEFENDANT APOLOGY AS A POTENTIAL
RESPONSE TO VICTIM IMPACT STATEMENTS
JENNIFER A. TALLON

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8/31/09

Jennifer Groscup
Chair of Examining Committee

8/31/09

Maureen O'Connor
Executive Officer

Steven D. Penrod

Maureen O'Connor

Edith Greene

Jennifer Robenolt
Supervision Committee

THE CITY UNIVERSITY OF NEW YORK

Abstract

UNDERSTANDING THE ROLE OF DEFENDANT APOLOGY AS A POTENTIAL
RESPONSE TO VICTIM IMPACT STATEMENTS

by

Jennifer A. Tallon

Adviser: Jennifer L. Groscup

Although it has been established by several empirical studies that the presentation of a victim impact statement (VIS) in capital trials influences jurors in such a manner as they favor sentencing the defendant to death, it is unclear what affective and cognitive processes may play a role in the decision making process. One potential explanation can be derived from the literature concerning negative affect and cognition. Studies have found that anger may lead to peripheral processing whereas sadness leads to a more systematic processing. When faced with emotionally laden evidence such as a VIS one potential response for the defense is to shift the emotional focus of the trial from that of the victim to the defendant. This may be accomplished by allowing the defendant to deliver a statement to the court in which they provide their account of the crime with an accompanying expression of remorse. However, it remains to be seen under what circumstances a defendant's statement may offset (or aggravate) VIS-induced antipathy for the defendant. The purpose of this study was to examine: 1) how variations in the type of affect displayed by the individual presenting a VIS will influence juror decision making 2) how variations in a defendant's statement influence juror decision making, and 3) how variations in the affect displayed by the defendant during the delivery of the statement influence juror decision making.

The results revealed that participants were influenced by their mood and the affective cues conveyed via a VIS. Specifically, those who reported experiencing hostility were more punitive, displayed an anti-defendant bias, and were insensitive to variations in trial evidence. Sadness decreased punitiveness and increased pro-defendant attitudes, but sad participants appeared to overanalyze evidence leading them to render sentences inconsistent with the fact pattern. Additionally, the results of this study revealed the risks a defendant faces when choosing to deliver a statement to the court. Appearing remorseful increased the efficacy of an excuse or full apology (Sympathy x Responsibility), but proved detrimental to the defendant when he only accepted responsibility or expressed sympathy.

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CHAPTER 1: INTRODUCTION

"The emotions aren't always immediately subject to reason, but they are always immediately subject to action" - William James

Capital juries face a unique burden as they as they must decide the fate of a defendant by weighing that defendant's uniqueness as an individual against the nature of his or her crimes. As Haney (2005) asserts, a system of death sentencing is paradoxical: "in order to demonstrate the degree to which we value human life, we take life" (p. 3). The Supreme Court has recognized the uniqueness and finality of death sentences (*Furman v. Georgia*, 1972) and has enacted procedural reforms in order to improve the system. Nevertheless, a tension exists between balancing the rights of the defendant and ensuring that victims are given adequate voice in capital sentencing proceedings. In *Payne v. Tennessee* (1991) the Supreme Court ruled that victim impact statements (VIS) may be introduced by the state in order to highlight the uniqueness of the victim and to convey information concerning the resultant harm experienced by the victim's family and friends. Empirical evidence demonstrates that VIS may lead to affective as opposed to rational decision making, but the cognitive processes involved remain unclear. Further, it remains to be seen what a defendant may do in order to bring balance back to the situation. The defense may present several types of mitigating evidence, some of which is intended to humanize the defendant. Defense attorneys can use various types of mitigating evidence to close the "empathic divide" that exists between the jurors and the defendant – a divide that is likely to be increased by the presence of a VIS (Haney, 2005). The goal of the present research was to examine the underlying cognitive-affective processes involved when jurors are confronted with an emotional VIS and to explore whether a defendant apology can reasonably expect to bridge the empathic divide.

Historical and Legal Context of Victim Impact Statements

Historically, the state has taken the responsibility of representing the voice of victims in the legislative system while actual victims play a background role in criminal justice proceedings. Victim advocacy groups contended that the criminal justice system placed such a strong emphasis upon the preservation of the defendant's rights at the expense of the rights of victims thus sparking cries for legal reforms in order to rectify the imbalance (Kilpatrick, Beatty, & Howley, 1998). In 1990, the *Federal Victim's Rights and Protection Act* clearly laid out a victim's bill of rights which focused heavily upon ensuring that victims were notified about all stages of trial proceedings and that they could not be excluded from the process. Since this time, victim rights have seen greater expansion at the state and Federal level (*Violent Crime Control and Law Enforcement Act, Jacob Wetterling Crimes Against Children Act, Megan's Law, Justice For All Act of 2004*) with victims now having access to a variety of information and programs in order to increase their involvement and ultimately their satisfaction with the process. Nevertheless, we are now faced with yet another imbalance as we must ask ourselves whether the rights of the defendant are compromised by the expansion of the rights of the victim.

One of the more controversial changes stemming from advances in the victim's rights was the Supreme Court's ruling in *Payne v. Tennessee* (1991), which made it constitutional for the state to introduce VIS in the penalty phase of capital trials. Through victim impact evidence, victims as well as their family and friends are now permitted to testify in both capital and non-capital trials about the harm experienced as a result of the crime (Myers & Greene, 2004). The purpose of a VIS in a capital trial is to describe the

impact of the victim's death on survivors, including physical, psychological and financial harm. A VIS might also include survivors' opinions regarding the crime and the defendant, and in some cases it may include recommendations for sentencing (Greene, 1999). A survey of 1,308 crime victims revealed that in terms of importance victims ranked their right to deliver a VIS at sentencing as twelfth out of a list of 13 rights afforded victims, but 93% reported exercising their right to deliver a statement at sentencing (Kilpatrick, Beatty, Howley, 1998). Even though it would appear that victims may not consider this right as important as others (i.e. notification of arrest, being involved in decision to drop the case, being informed of a defendant's release), this is the one right they are most frequently choosing to exercise.

The Supreme Court first addressed the constitutionality of VIS in *Booth v. Maryland* (1987). John Booth had been found guilty of murdering his two elderly neighbors and had been sentenced to death. As per the Maryland sentencing guidelines at the time, victim impact evidence was actually *required* in capital proceedings and so the prosecutor read statements from the victims' children and grandchildren that vividly detailed the character of the victim, their opinions about the crime, and the extent of harm they had experienced as a result of Booth's actions. In a 5 – 4 decision the Supreme Court decided that the introduction of such a statement violated the defendant's Eighth Amendment rights, and the original death sentence was overturned. In his majority opinion, Justice Powell expressed that victim impact evidence focused too much attention on the victim's character and communicated to jurors that defendants found guilty of murdering victims of a high social standing deserved more punishment than victims of a lower social standing. Additionally, the majority held that victims' opinions about the

crime or defendant were an irrelevant form of evidence that did little else than inflame emotions and overshadow rationality. The dissenting opinion focused upon the use of victim impact evidence as a tool to establish balance between mitigating evidence and the uniqueness of the victim. Finally, as articulated by Justice White, the dissenting members of the Court felt that consideration of the harm experienced is an integral component in the determination of punishment.

The Court later expanded its opinion on victim impact evidence in *South Carolina v. Gathers* (1989). The defendant and three other youths murdered and sexually assaulted a preacher in a park before rummaging through the victims belongings which consisted predominantly of religious paraphernalia. Whereas the challenges in the *Booth* case dealt with victim statements, the defendant's death sentence in *Gathers* was challenged on the basis that comments made by the prosecuting attorney pertaining to the religiosity of the victim and his role in the community served to bias the jury in favor of a death sentence. In yet another five to four decision the Court drew on its decision in *Booth* and held that the information presented by the prosecutor was irrelevant in terms of determining responsibility for the crime. As Justice Brennan noted in the majority opinion, *Booth* left open the possibility that victim impact evidence may be introduced if it related "directly to the circumstances of the crime." The majority found that the defendant had been unaware of such qualities of the victim thus they did not play a part in his decision to commit the crime and should not be considered in determining punishment. The dissent once again countered that VIS information should be considered as it details harm and that the prosecutor's statement was appropriate given the facts of *Gathers*.

Although the Supreme Court decisions thus far could hardly be considered reflective of a unanimous opinion regarding the constitutionality of the VIS, the Court took a decidedly different approach in *Payne v. Tennessee* (1991). In *Payne* the defendant had been convicted of the first-degree murder of his girlfriend's neighbor and the neighbor's daughter as well as the assault of the neighbor's son. During the sentencing hearing, the prosecutor presented testimony from the surviving victim's grandmother who testified in great detail about the lasting impact the crime had on her grandson. In a 6 - 3 ruling, the Court overturned its previous decisions in *Booth* and *Gathers* and concluded that victim impact statements are admissible in the penalty phase of capital trials as the Eighth Amendment erects no *per se* bar against such evidence. The majority highlighted two main reasons as to why such evidence was relevant: 1) VIS detail the "uniqueness of an individual human being" (p.7) thus balancing the mitigating evidence defendants have a right to present, and 2) the harm experienced by victims helps inform juror decisions pertaining to blameworthiness and culpability. It should be noted that the Court explicitly stated (in a footnote) that the *Payne* decision did not overturn *Booth's* prohibition against victims' sentencing recommendations; it just overturned the prohibition against testimony relating to victim harm (Logan, 2000). The dissenters drew on the majority opinions of *Booth* and *Gathers* to express their concern over the inclusion of victim impact evidence and once again stressed the danger that VIS shifts the focus from the crime and defendant to the character of the victim.

Since the time of the *Payne* decision, VIS have been used in both federal and military courts as well as in 35 capital states (Logan, 2008). Additionally, the Federal Crime Victims' Rights Act (2004) further expanded the role of victims in the criminal

justice system by providing victims with a right to be reasonably heard in district court proceedings, a right that was challenged but affirmed in *Kenna v. United States District Court for the Central District of California* (2006). Despite the widespread use of such evidence, legal scholars have identified several concerns that have yet to be fully addressed by the legal system. Most notably, critics have focused on the ambiguity inherent in the *Payne* decision as the Supreme Court failed to establish guidelines pertaining to the use of victim impact evidence in capital trials. Thus the VIS process varies greatly across jurisdictions with some exercising strict control over the admissibility of such evidence while others treat VIS more broadly (Logan, 1999; Logan, 2006). There is also confusion pertaining to what parts of *Booth* and *Gathers* the *Payne* decision actually addressed. As Logan (2000) notes, the ever-important footnote in *Payne* upholds the *Booth* Courts decision to limit opinion testimony relating to sentencing. Yet because *Payne* failed to expand upon this idea certain jurisdictions will allow victims to make sentencing recommendations. In the time since the *Payne* decision, federal and state courts have sometimes made efforts to limit their presentation (including regulation of the emotionality displayed by the victim). However, no death sentences have ever been successfully appealed on the grounds of the inadmissibility of victim impact evidence since *Payne* (Logan, 2006).

In addition to the procedural issues associated with the presentation of victim impact evidence, several issues have been expressed concerning how the VIS may result in arbitrary decision making. Proponents contend that a VIS helps balance the penalty phase of capital trials as the defendant is permitted to introduce evidence in order to help establish mitigating factors (Greene, 1999). Such statements also allow for the

prosecution to “humanize” the victim and ensure that he/she does not remain a faceless stranger. However, critics argue that such information is irrelevant to sentencing decisions and such character evidence may serve as a means of conveying extra-legal information regarding the victim’s social status, social value, and importance in the lives of others (Luginbuhl & Burkhead, 1995) and cries for institutionalized revenge (Guastello, 2005). As a result jurors may engage in value-of-life comparisons where the murderers of “respectable” victims receive harsher punishment than murderers who target less desirable victims (Kuhn, 2006). These value-of-life comparisons not only jeopardize the defendant’s right to a fair trial, but they also send the message that some victims are more deserving of justice than others.

Logan (2008) notes that value-of-life comparisons may be lessened in cases involving mass killings as a result of the sheer volume of loss stemming from the crime. However, there is the risk that the presentation of multiple impact statements may only serve to undermine the very purpose of the evidence as victim uniqueness becomes abstract, harm may have a numbing effect, the evidentiary scales are unbalanced, and there is the risk of trivializing the impact of the crime (Logan, 2008). Logan argues that the government’s failure to secure death sentences in three out of the four federally tried mass killings (*McVeigh, Nichols, Al-‘Owhali, and Moussaoui*) provides very limited support for the questionable use of VIS in mass killing trials and highlights that such evidence may serve a larger purpose in terms of providing a historical discourse of our losses as a society. Additionally, the state sanctioned designation of who qualifies as a victim and who is allowed to testify may serve to re-victimize individuals and detracts from the ostensible purpose of the VIS: giving voice to victims. For example, thirty-five

victims testified in *Moussaoui* out of a government compiled database consisting of 8,000 victims affected by the events of 9/11 with testimony ranging from surviving spouses to former New York Mayor Rudolph Giuliani (Logan, 2008).

In addition to arguments concerning the relevancy of victim impact evidence, opponents argue that such emotional information may unduly bias the jury in favor of a death sentence. One of the primary purposes of victim impact evidence as expressed by the *Payne* majority is to communicate the resultant harm stemming from the defendant's crime. Nevertheless, such information is affective in nature and dependent on the victim's ability to articulate the harm they have experienced (Guastello, 2005). In terms of how this influences juror decision making, Nadler and Rose (2003) argue that jurors may use harm as a heuristic cue for determining culpability. Blumenthal (2001) draws on the emotional forecasting literature to demonstrate that people tend to be inaccurate in their predictions of how they will feel in the future thus presenting a risk of victims overestimating (and certainly in some cases underestimating) the harm they have experienced. In examining how this information could combat the potentially biasing nature of a VIS, Blumenthal (2009) presented mock jurors with expert testimony regarding emotional forecasting errors and found that such testimony appeared to negate the impact of the VIS resulting in fewer death sentences. Affect may also influence prosecutorial strategy as attorneys may attempt to capitalize on jurors' similarity to the victim in an effort to foster empathy and sympathy while emphasizing their dissimilarity from the defendant (Levy, 1993). Although some jurisdictions have attempted to limit the emotional content of impact evidence (Logan, 1999), defense attorneys are left with little in the way of tactical strategy to respond to the VIS, as "a defendant who casts

stones on his victim's character cannot possibly ingratiate a jury" (Shanker, 1999, p. 732). Thus the need exists to examine what the defendant can do to counter the inflammatory nature of victim impact evidence.

Prior VIS Research

A limited body of research has examined the influence of VIS on capital sentencing decisions. Various factors such as the victim's social status, the level of harm suffered by the friends and families of the victim, as well as personal qualities of the victim all have all been shown to have an influence on perceptions of blame (Myers & Greene, 2004). The earliest research conducted in this area was focused upon examining how the introduction of a VIS influences perceptions of trial evidence and sentencing decisions. Burkhead, Luginbuhl, and Wrenn (1994) found that mock jurors who favored the death penalty and heard a VIS were more likely to vote for death as compared to those who did not hear a VIS in a mock death penalty case. Luginbuhl and Burkhead (1995) studied the effect of a VIS on sentencing verdicts while manipulating the presence/absence of a VIS and the strength of the evidence supporting the death penalty (i.e., a more aggravating murder as compared to a less aggravating murder). They found that the introduction of a VIS increased votes for death from 20% to 51% but strength of the evidence did not affect sentencing decisions. Myers and Arbuthnot (1999) found that the inclusion of VIS significantly increased the likelihood that individual jurors would recommend the death penalty. These results would appear to confirm the fears expressed by opponents of victim impact evidence as the introduction of a VIS may create an anti-defendant bias and increase punitiveness.

Nevertheless, there is limited evidence that the introduction of a VIS may have no influence on sentences in certain cases. Davis and Smith (1994) conducted a field experiment in the Bronx Supreme Court where they randomly assigned victims of robbery, assault, and burglary to three different intake interviews: victim interviewed and VIS prepared, victim interviewed, and control group. Contrary to previous studies, Davis and Smith did not observe any evidence that the introduction of a VIS caused judges' to render harsher sentences nor did they appear to consider the degree of harm that victims reported as a result of the crime. Although this study focused upon criminal sentencing, it does highlight the complicated nature of victim impact evidence and it allows us to infer that there may be more to the puzzle of how such evidence can influence decision making.

In building upon these earlier findings, scholars have also examined the conditions that may affect the influence of a VIS on juror decision making. Greene, Koehring and Quiat (1998) manipulated the respectability of the victim in a VIS modeled on the *Booth* case. They found that mock jurors who heard a VIS about a highly respectable victim rated him/her as more likable, decent, and valuable. Additionally, they felt more compassion for the victim's survivors and rated the crime as being more serious in nature. Greene (1999) manipulated the content of the VIS to examine how this might affect jurors' perception of the case. Specifically, Greene varied the characteristics of the victim, the impact of the crime on victim's survivors (i.e. physical, psychological and financial), family members' opinions of the defendant, and family members' sentencing recommendations. She found that personal qualities of the victim had a significant impact on perceptions of the victim and the defendant. Mock jurors were influenced by the

social standing and perceived social value of the victim such that they rated the victim more favorably when he was portrayed as having a greater social value. Mock jurors who had access to all forms of the VIS (i.e. physical, psychological and financial) rated the victim more favorably than those who had only some elements of the VIS. Although Greene did not have participants render verdicts or sentencing decisions, this research demonstrates that perceptions of the victim and defendant are affected by VIS, which could reasonably be expected to affect death penalty sentencing decisions. It would appear that impact of the VIS on perceptions of the victim and defendant is strongest when it includes information about multiple types of harm experienced by the family/friends of a victim. Additionally, the higher the social standing of the victim, the more detrimental the outcome is for the defendant.

Finally, there is evidence to suggest that the death qualification process may play a role in the influence of a VIS on sentencing. Although their results were marginally significant, Myers, Godwin, Latter, and Winstanley (2004) observed evidence that death qualified jurors who were exposed to a VIS featuring dehumanizing language concerning the defendant were more likely to return death sentences. Butler (2008) examined how death qualified venirepersons differed from death penalty excludable venirepersons in order to determine how each group would be differentially influenced by the presence or absence of victim impact evidence. When a VIS was present, death qualified participants delivered greater positive ratings regarding the victim's survivors, reported greater psychological harm resultant from the crime, and were more likely to vote for death as compared to excludable participants.

Across all of these studies we have observed the different conditions under which a VIS may be more influential to jurors, but there is still much that we do not know in terms of the underlying psychological processes that may help explain this influence. The results from laboratory experiments have appeared to confirm that the introduction of a VIS may indeed create an anti-defendant climate which can be further exacerbated by variations in the content of a VIS. One potential explanation for the apparent biasing nature of victim impact evidence is that there may be something inherent about a VIS that may lead to decision making that is more affective in nature as opposed to rational and based on facts. This shift in decision making may be prejudicial as the decision is now based more on the emotional nature of the evidence as opposed to the evidence itself, possibly leading to inappropriate decision making.

Emotionality of Victim Impact Evidence

One particular concern that has been raised in the context of VIS is that jurors may not be able to process information rationally as they are overwhelmed by emotion. Myers, Lynn, and Arbuthnot (2002) examined how variations in the level of harm described in a VIS (mild vs. severe) as well as variations in the demeanor of the actor delivering the VIS (low affect vs. high affect) influenced the sentencing judgments of undergraduate mock jurors. In the high affect condition, the actor appeared distraught, cried, and paused during her testimony whereas she appeared unemotional in the low affect condition. Myers and colleagues found that level of harm described by the victim's survivors was more influential in sentencing judgments than witness demeanor as participants were more punitive when harm was severe as compared to when it was mild. Witness demeanor and the interaction (demeanor x harm) did not significantly

influence sentencing, but harm and demeanor significantly influenced negative affect as measured by the Positive and Negative Affect Schedule (PANAS). Negative affect did not mediate the relationship between the manipulated variables and sentencing judgments. The authors cautiously interpreted these findings as limited evidence for the content of VIS being more influential than the affective presentation, but they noted that their operationalization of affect may not have been strong enough to influence decisions nor did it account for specific affective states such as anger and sadness.

More recently, Gordon and Brodsky (2007) examined how variations in the level of emotion and harm described in a VIS influenced mock jurors' perceptions of mitigating evidence. Participants were presented with written trial information which contained a VIS from one of three possible conditions: control (no VIS), low harm and low emotion, or high harm & high emotion. The affective manipulation of the statements was based on switching words associated with affect for more neutral words. Gordon and Brodsky did not observe any evidence of the VIS influencing perceptions of aggravators or mitigators and only 33% of participants reported that the VIS was influential in their decision whereas 97% reported that the details of the crime were the most influential piece of evidence. However, no measures of negative affect were included in order to determine whether participants were emotionally affected by the content of the VIS and the stimulus materials were written (not videotaped) thus making it difficult to integrate these findings with those of Myers et al. (2002).

Although the bulk of this discussion has focused upon the role of VIS in capital trials, evidence exists from the literature pertaining to VIS in criminal trials which helps inform the role affect may play in non-capital decision making. Tsoudis (2000) has

argued in favor of applying Affect Control Theory (ACT; Heise, 1979) to explain how jurors are influenced by the interplay between the demeanors of the victim (the object) and defendant (the actor) relative to the circumstances of the crime (the behavior). Central to ACT is the notion that there is a relationship “between identity, behavior, and emotion in social interactions” (Tsoudis, 2000, p. 475), in which the assessments of all three components run parallel. In the most basic sense: good people do good things and bad people do bad things, but ACT goes one step further to explain how affective responses of the individual to the behavior serve to confirm or disconfirm social identity. As Tsoudis explains, positive affect (or lack of affect) after a negative event serves to disconfirm the perception of a positive identity because it serves to communicate that such behavior is typical. Conversely, negative affect after a negative event disconfirms a negative identity because it communicates the negative behavior is atypical. Tsoudis tested this theory by manipulating the description of facial expressions for the victim and defendant (sad vs. unconcerned) as well as the presence of the defendant’s prior criminal record. Support was found for the ACT model as defendants who were described as displaying sadness were rated in a more positive manner by participants and were punished less harshly than defendants described as unconcerned. Sad victims were also perceived as more positive relative to unconcerned victims and an inverse relationship was observed between perceptions of the victim and perceptions of the defendant indirectly affecting sentencing determinations.

In an expansion of ACT, Rose, Nadler, and Clark (2006) investigated the existence of underlying norms concerning victim emotion. Specifically, the authors wondered if there was a “victim-role” norm which would specify that victims would

behave in the same manner regardless of the crime or whether a rule of proportionality was more appropriate as the affective response of the victim would have to be proportional to the degree of harm experienced from the crime. Crime severity, emotional reaction, and gender of the victim were manipulated across two experiments and empirical support was found for a proportionality norm. Rose and colleagues note that victims who appeared unconcerned when testifying about a severe crime or victims who appeared extremely emotional in response to a less severe crime were perceived as more unusual relative to victims who behaved in manners that best reflected the proportionality of the harm they experienced. Although these perceptions were not found to be related to sentencing judgments, they do raise interesting questions within the context of victim impact evidence. Would a victim who appears unconcerned about describing the harm they have experienced be perceived more negatively than a victim who is visibly upset? Is it possible that an affective display on the part of the defendant could serve to promote the perception that they are inherently a decent person who can redeem his/her mistakes?

Research on victim behavior in criminal trials serves to highlight how the affective reactions of defendants and victims may serve to communicate information pertaining to social identity (Tsoudis, 2000) and the saliency of specific norms (Rose, Nadler, & Clark, 2006). In regards to victim impact evidence, the research on emotionality is limited (Myers, Lynn, & Arbuthnot, 2002; Gordon and Brodsky, 2007) but results thus far indicate that the intensity of the affect displayed by the victim during the statement fails to influence sentencing judgments. However, there is a separate body of evidence that suggests variations in the type of negative affect (anger and sadness)

could elicit differential information processing modes (Feigenson & Park, 2006).

Although witness demeanor may only be one piece of the puzzle, researchers have yet to examine how variations in the types of affect displayed by the victim may influence sentencing.

Theories of Affect and Decision Making

Emotions can directly or indirectly influence peoples' judgments and attributions of blame and responsibility in a variety of situations, but what implications do they have for the jury? Although there is a well established body of literature detailing how emotion influences cognitive processing, for the purpose of this research the focus will be narrowed to two negative mood states – anger and sadness. One of the purposes of the VIS is to detail the harm and loss experienced by the victims. Therefore, sadness and anger are two moods that may be frequently encountered by jurors serving in capital trials. Research has shown that negative moods tend to lead to more deliberate and careful processing of information (Forgas, 2003; Petty, Fabrigar & Wegener, 2003) and less reliance on heuristic cues as opposed to positive moods. Within negative emotions some studies have found that anger and sadness seem to evoke differential types of processing. Anger tends to lead to more heuristic processing, whereas sadness leads to a more systematic, thoughtful type of processing (Feigenson & Park, 2006). Although the intensity and valence of the affect experienced by jurors during trial undoubtedly varies over time, emotionally laden pieces of evidence such as a VIS have the potential to influence both processing and recall of information.

Researchers have used the term *affect* as a global construct meant to encompass both stable emotions and transient mood states (Forgas, 1995). An affective state can be

characterized by its valence (positive versus negative), cognitive appraisals (i.e. certainty, responsibility), and physiological responses (Lerner & Tiedens, 2006). Distinctions can also be drawn between what Bodenhausen (1993) describes as integral affect and incidental affect. Integral affect is best thought of as an emotional response stemming from a specific source. The characteristics of the source can be real, perceived, or imagined (Pham, 2007), but the affect elicited is always in response to the target. For example, Bright and Goodman-Delahunty (2006) found that mock jurors who were exposed to gruesome postmortem photographs experienced greater disgust in response to the evidence as compared to those who were not exposed to the gruesome photographs. In contrast, incidental affective states are unrelated to the target and may include preexisting moods and emotional predispositions (i.e. aggressiveness, anxiety; Pham, 2007). Tiedens and Linton (2001) assert that the vast majority of research on affect and decision making has focused on the induction of incidental affective states in order to examine how positive and negative affect influence cognitive processing. However, jurors may also be influenced by integral emotions that are tied directly to the trial evidence, such as a VIS.

The theory of mood contagion (Hatfield, Cacioppo, & Rapson, 1994) helps illustrate the subtle manners in which mood states may be induced simply through the observation of another individual's behavior. The theory holds that individuals may unconsciously imitate another's emotional behavior leading to the activation of a congruent mood state. According to Hatfield and colleagues, this process can be determined by a number of aspects (speech, posture, facial expressions) that automatically induce a new mood state in the target individual. Hsee, Hatfield, Carlson

and Chemtob (1990) observed that when participants watched a video of a person describing a happy or sad event, participants had a greater tendency to express the emotions of the target. Neumann and Strack (2000) found that even listening to a target person's emotional speech was sufficient to induce a congruent mood in the listener. Additionally, empathy was not necessary to evoke this mood congruence, but the emotional expression seems to activate "codes" in the observer that lead to congruence in mood states. It is possible that a juror observing the presentation of a particularly sorrowful VIS may adopt such an affective state which ultimately has the potential to influence how they process the trial evidence.

Early theories concerning mood-congruent judgments focused upon how affect was organized in memory. Bower (1981) proposed that affective states served as central nodes in an associative network whereby the valence of the emotion served to organize behaviors, concepts, and memory. Bower's theory focused upon two main hypotheses: state-dependent retrieval and mood congruent recall. During encoding, information becomes associated with the specific affective state that the individual was experiencing at that given time. Under the state-retrieval hypothesis, information is more easily recalled from memory when individuals experience the same affective state at the time of recall as they did during the time of encoding. Conversely, mood congruent recall is associated with the tendency of individuals to recall information that is congruent with their affective state during recall. In terms of how this mediational process plays out during judgment, Forgas (1995) explains that if individuals are presently experiencing a happy mood then that should cause them to retrieve more positive information ultimately resulting in a more favorable judgment.

Other theories have taken an “affect as information” (Tiedens & Linton, 2001, p. 973) approach to the study of how incidental affect may influence decision making. If affect is judged as being relevant in the current judgment situation it will act as a heuristic cue in which participants ask themselves “how am I feeling” (Lerner & Keltern, 2000, p.475) in order to render their judgment. Schwarz and Clore (1983) first proposed this theory after observing across two studies that participants who experienced positive affect reported greater life satisfaction than those who experienced negative affect. However, when participants were provided with alternative reasons (expectations about the comfort of a room, weather) for why they experienced a given mood, the influence of negative affect on life satisfaction judgments was eliminated only for those experiencing negative affect. Participants experiencing positive mood continued to render positive judgments. Schwarz and Clore cautiously interpreted this as evidence that negative mood may lead to more effortful processing because it signals that there is something wrong in the environment and people become motivated to find an explanation for the problem in order to restore a positive mood. However, those in a positive mood do not detect any problems so they engage in less effortful processing.

One of the criticisms of these earlier paradigms is that they focused primarily upon how the valence of incidental affect influenced cognitive processing (Lerner & Keltner, 2000). The general patterns found across studies is that positive affect results in more heuristic based processing whereas negative affect increases systematic processing (for reviews see Forgas, 1995; Pham, 2007). However, research by Bodenhausen, Sheppard, and Kramer (1994) demonstrated that angry people were significantly more likely to rely on simple cues when reacting to social stimuli, such as stereotypes and

social status. On the other hand, sad people seemed to take a more analytic approach to the understanding of information. Moons and Mackie (2007) posit that the results of Bodenhausen and colleagues do not conclusively show that angry people process heuristically as they only manipulated the presence of cues and not the quality of the message. In a series of studies, Moons and Mackie found evidence suggesting that angry people have both the motivation and capacity to engage in analytic processing as they were more capable of differentiating between weak and strong argument as compared to those in a neutral mood. In terms of peripheral cues, Moon and Mackie concluded that angry individuals only used relevant cues to assist in their evaluation of the argument. Angry participants differentiated between the quality of the argument made by an irrelevant expert, but not a relevant expert. Despite these somewhat contradictory findings within valence differences have also been observed in the literature on persuasion (Desteno, Petty, Rucker, Wegener, & Braveman, 2004) and likelihood estimates (Desteno, Petty, Wegner, & Rucker, 2000) suggesting that sad and angry individuals engage in differential forms of processing. These findings highlight that not only do differential modes of processing exist *between* valences, but there can also be differential processing *within* valence.

Appraisal theorists have argued that within valence differences highlight that finer distinctions can be made amongst emotions that go beyond global characterizations such as valence. Smith and Ellsworth (1985) were among the earliest researchers to suggest that emotions consisted of multiple appraisal dimensions far beyond the traditional dimensions of pleasantness and arousal. Through a recall task meant to induce 15 different types of emotions, Smith and Ellsworth found that there was in fact a

relationship between an individual's current appraisals of a situation and affect. Specifically, these emotions varied across the following six appraisal dimensions: "pleasantness, anticipated effort, certainty, attentional activity, self-other responsibility/control and situational control" (Smith & Ellsworth, 1985, p. 813). The appraisals associated with anger include greater certainty, the notion that another individual is to blame for the negative event, and the perception that the individual was in control of the event (Ask & Granhag, 2007; Keltner, Ellsworth, & Edwards, 1993; Lerner & Keltner, 2000; Lerner & Tiedens, 2006). In contrast, sadness is characterized by uncertainty and the perception that the cause of the negative event was outside the individual's control (Tiedens & Linton, 2001).

In building upon the earlier ideas of appraisal theory, Lerner and Keltner (2000) proposed Appraisal Tendency Theory in order to explain how individuals may use their appraisal of the current situation to guide decisions in subsequent tasks ultimately resulting in appraisal congruent judgments. In order to test the competing hypotheses posed by valence theory against those associated with appraisal theory, Lerner and Keltner took trait and state measures of fear and anger in undergraduate participants and observed how they performed on the Perceptions of Risk Questionnaire (Tversky, 1983). Contrary to what would be expected by valence theory, angry and fearful participants (two moods associated with negative affect) performed differently on this task such that angry people were more optimistic about future events than fearful participants. These results not only make a more compelling argument in favor of the appraisal theory approach to affect, but they also demonstrate how current appraisals can influence judgments of future events resulting in appraisal congruence. It is possible that such

appraisal congruence may be observed in juror decision making as jurors may have to make multiple decisions during the course of a trial in terms of how to evaluate the evidence. For example if someone is emotionally aroused at the time of hearing a piece of evidence, this same emotion could be re-activated when that piece of evidence is brought up during the deliberation process.

In understanding why sadness and anger differentially influence modes of processing, appraisal theorists hold that certainty appraisals are the principle determinant in depth of processing (Lerner & Tiedens, 2006). Anger is associated with certainty which then guides the processing of information by signaling to the individual that they have acquired enough of information on which to base their judgment. However, sadness fosters greater uncertainty and results in more systematic processing of information as the appraisal signals that there is still information that needs to be considered before rendering a judgment. Thus the certainty appraisal is best thought of as creating differential informational thresholds that ultimately influence how much information that we need to consider before we can make a decision.

The previously discussed work of Bodenhausen et al. (1994) is often cited as early evidence of the role certainty appraisals may play in the processing of information. Tiedens and Linton (2001) expanded upon this early work and attempted to apply appraisal tendency theory (Lerner & Keltner, 2000) in order to examine how certainty appraisals in one situation may influence subsequent judgments. Across four experiments, the authors demonstrated that emotions associated with the certainty appraisal dimension lead to greater peripheral processing as compared to emotions associated with uncertainty. Participants experiencing incidental affect associated with

greater certainty were unable to distinguish between strong and weak arguments and relied more upon expertise cues and stereotypes in making their decisions. In a more recent study of appraisal tendency and the certainty-uncertainty dimension, Small and Lerner (2008) examined how incidental sadness and anger associated with events in one's life may influence subsequent support for welfare policies. The authors found that sadness was associated with greater support for welfare whereas anger decreased support for such policies. The authors replicated this effect in Study 2, but only when participants were not placed under cognitive load. Small and Lerner argue that depth of processing influenced support of welfare policies as the uncertainty associated with sadness caused participants to consider more situational factors in shaping their policy preferences whereas angry participants may have relied upon more dispositional evidence and stereotypes in their policy judgments.

The findings of Small and Lerner (2008) highlight the importance of two other appraisal dimensions that bear relevance for legal decision making: attributions of causality and responsibility. Keltner, Ellsworth, and Edwards (1993) examined how anger and sadness differentially influenced attributional style and found that although there were no differences in terms of positive events; sadness was associated with the tendency to perceive that negative events were caused by situational factors whereas angry participants made more dispositional attributions. Keltner and colleagues replicated this effect using an ambiguous social situation and found that in addition to different more dispositional attributions angry participants were also more likely to perceive the actions of others as unfair compared to sad participants who tended to view the situation as hopeless. In terms of the mediational mechanisms involved, Keltner et al.

found evidence that it is not the salience of responsibility that influenced judgments, but the actual experience of the emotion associated with the cognitive appraisals.

In attempting to gain greater insight into the processes involved in responsibility appraisals, Lerner, Goldberg, and Tetlock (1998) examined how anger influenced processing in fictional tort cases. Relative to neutral mood, anger resulted in greater blame, harsher punishment, and less effortful processing of diagnostic cues (free will vs. coercion) embedded in the trial vignettes. These findings prompted Goldberg, Lerner, and Tetlock (1999) to propose that individuals act as “intuitive prosecutors” when they witness a normative violation and there is perceived injustice (the transgressor goes unpunished). The fact that the transgressor remains unpunished elicits anger from the individual which then influences subsequent attributions of responsibility thus causing the individual to evaluate the facts in a simplistic yet punitive manner. However, if it is perceived that the norm violator has been adequately punished, the intuitive prosecutor mindset remains inactivated, anger will not influence attributions of responsibility, and the facts will be assessed in a normative manner. Goldberg et al. (1999) found support for this theory as anger was associated with greater punitiveness when participants were informed that the transgressor remained unpunished (injustice) as compared to justice feedback. Additionally, anger mediated the relationship between perceived intent and punishment, but only when participants received injustice feedback.

As the previous review has demonstrated, our theoretical understanding of how affect may influence cognition has evolved over time. Earlier valence based models (Bower, 1981; Schwarz & Clore, 1983) provided an important building block for understanding how individuals organized information associated with affect and used

such information as inputs in their judgmental processes. As researchers began to observe findings that could not be accounted for by valence based theories alone (Bodenhausen et al., 1993), theory evolved in order to take into account the cognitive appraisals associated with emotions (Smith & Ellsworth, 1985). Finally, the work by Goldberg et al (1999) presents a unique extension of traditional appraisal theory as it highlights the importance of social context and takes into account how perceptions of injustice may influence affective responses.

Regardless of the precise parameters of the model to which one ascribes, it is clear that emotion compromises rationality in certain situations. Pham (2007) asserts that rationality is characterized by three main elements: logical consistency/reasoning, consistency between goals and behavior, and consistency with social norms/moral reasoning. In terms of legal decisions, legal scholars have painted the picture that affect (in any form) overshadows reason, but the psychological literature clearly demonstrates that not all emotions promote irrationality (Blumenthal, 2005). Although the relationship between affect and legal judgments remains a relatively new field of study, the results are consistent with those derived from traditional theories of affect and cognition, yet they also highlight potentially dangerous situations in which reason may be compromised.

Relationship between Emotion and Legal Judgments

The earliest forays into understanding how affect informed legal judgments (notwithstanding any of the findings previously discussed in the overview of appraisal theory) treated affect as a global construct with an emphasis upon valence and intensity. Fishfader, Howells, Katz, and Teresi (1996) examined how the presentation mode of evidence influenced the emotional states of mock jurors in a wrongful death case. Video

presentations of evidence (testimony, testimony with re-creation of incident) elicited a greater emotional reaction from participants as compared to written transcripts, but it did not influence the amount of information participants retained. Additionally, Fishfader and colleagues found that mood was unrelated to damage awards, but liability judgments decreased as emotional arousal increased. Edwards and Bryan (1997) manipulated the type of information (affective vs. neutral) and instructions pertaining to the evidence's admissibility in a murder trial and found that mock jurors had more difficulty ignoring affectively laden evidence as compared to neutral evidence. Judicial instructions to ignore such evidence served only to make the affective evidence more salient and influential in mock jurors' perceptions of guilt.

Although the research is somewhat scant, scholars have attempted to apply appraisal theory to our understanding of legal decision making. As previously discussed, anger can lead to less systematic processing and less reliance on informational cues (Lerner et al., 1998; Tiedens & Linton, 2001), and greater reliance on heuristics and stereotypes (Tiedens & Linton, 2001) because it is associated with the appraisal dimension of certainty and personal responsibility. Semmler and Brewer (2002) found that participants who were induced to feel sadness were more adept at detecting testimonial inconsistencies as compared to participants experiencing neutral mood suggesting that sad individuals engaged in more effortful processing of the trial information. Even though the induction of anger was not manipulated, mood measures revealed that participants who experienced anger recalled just as many details pertaining to the trial, but were less sensitive to inconsistencies.

In an attempt to generalize the findings of Semmler and Brewer, Ask and Granhag (2007) examined how sadness and anger may guide the investigative judgments of Swedish police officers. As per previous research on emotional appraisals (Keltner, Ellsworth, & Edwards, 1993), investigators who were induced to experience sadness utilized both situational and witness information whereas anger caused investigators to rely only on information related to the witness. Type of affect also guided the decision making strategies of investigators as those in the sad condition were sensitive to variation in the consistency of the witness's statement (incriminating statement vs. exonerating statement) while those in the angry condition were insensitive to such information. Taken together, these results highlight the role affect may play in the processing of information and the serious implications it poses for legal decision making.

In the same vein as the intuitive prosecutor model proposed by Goldberg et al. (1999), scholars have attempted to examine how affect may guide moral judgment. Haidt (2001) proposed the social intuitionist model of moral judgment which holds that moral reasoning is an inherently intuitive and affective process in which reasoning actually occurs *after* a judgment has been rendered. Blumenthal (1995) manipulated positive and negative affect in order to examine how each form of affect influenced moral reasoning. Interestingly, an interaction between affect and gender was observed such that moral reasoning decreased for women during negative mood relative to positive mood, but men experienced a decrease in moral reasoning when they experienced a positive mood. Positive mood was found to increase peripheral processing as participants made more dispositional attributions in their moral judgments, but no effect was observed for negative mood. Blumenthal argued that the null effect for negative mood is actually

somewhat encouraging as it highlights that the affective state most likely to be encountered by jurors during legal proceedings did not appear to decrease rational processing.

In line with the influence of emotional arousal, based on Haidt's (2001) model of moral judgments, Feigenson and Park (2006) proposed that "intuitive affective responses" (p. 145) may be a factor influencing judgments of responsibility. Two paths proposed by Feigenson and Park hold particular relevancy for understanding the impact of highly emotional evidence on juror decision making. One proposed path states that different case facts can arouse differential emotions. Once jurors are in a certain emotional state, these emotions may be used to examine and interpret additional case facts and judgments of responsibility. Additionally, they propose that "emotion aroused by case features are taken as directly informative of judgments of responsibility" (p.146). Along the same lines, Forgas and Bower (2001) have argued that an emotion's cognitive structures become more accessible when one experiences that particular emotion. This may lead to greater utilization of the particular emotion during the process of forming a judgment with regard to responsibility. For example, if a person experiences anger this emotion becomes central in their decision making process. As a result they may tend to make decisions based on peripheral cues, instead of processing the information rationally.

Feigenson and Park (2006) have expanded upon earlier conceptualizations of incidental and integral emotional sources in order to explain how they may influence legal decision making. Incidental emotional sources may be more likely to be disregarded by jurors as such states are legally irrelevant since they do not stem from any of the trial players (such as the defendant or the victim) or evidence. However, integral emotional

sources may be more difficult to separate out and ignore when assessing responsibility levels as they are directly related to the judgment target (e.g. the target's behavior, demeanor). This is relevant in the context of capital trials involving victim impact evidence considering a VIS may arouse various emotions, and the VIS as an integral emotional source may be more difficult to ignore. This may lead jurors to examine the evidence using their emotional arousal as a cognitive framework.

Taken together this research on emotion and decision making indicates that negative emotions, particularly anger and sadness, can have a substantial impact on information processing. These emotional states can induce differing levels of processing, leading to vastly different outcomes. For instance as Tiedens and Linton (2001) point out, anger lead to greater certainty and less careful processing of information whereas sadness produces the opposite effect. Additionally, when a particular emotional state is activated, subsequent information is evaluated in light of this arousal (Feigenson & Park, 2006). Depending on the emotional state of the actor, attributions of responsibility may be varied.

Various emotional states induced by VIS's may lead to differing interpretations of the VIS. For example, jurors who are experiencing anger toward the defendant may be more hostile to the defendant in their decision making than those who are experiencing sadness. Angry victims may induce an angry mood in jurors and the desire to award harsher sentences. In contrast, the delivery of a sorrowful VIS may evoke sorrowful emotions in jurors and promote greater uncertainty in judgments. This evoking of differing emotions may have an influence on cognitive processing states. Anger may potentially lead to peripheral processing, leading jurors to make rash judgments; whereas

sadness may lead to more central, effortful processing. This effortful processing may cause them to render decisions that accurately reflect the case evidence and may cause them to rely less upon extralegal cues such as the social standing of the victim and defendant.

As is evidenced by the preceding sections, the criminal justice system policy has shifted toward favoring victims of crimes with greater emphasis being placed upon humanizing the victim and highlighting their uniqueness through highly emotional information. One potential response for the defense is to shift the emotional focus of the trial from that of the victim to the defendant. This may be accomplished by allowing the defendant to deliver a statement to the court in which they provide their account of the crime with an accompanying expression of remorse. Although such evidence would be presented in order to establish mitigation, such a statement may be heavily laden with emotion and may serve to humanize the defendant. However, it remains to be seen under what circumstances a defendant's statement may offset (or even aggravate) VIS-induced antipathy for the defendant.

Apology and Law

Remorse may not typically be listed as a statutory mitigator in the context of capital trials, but it may serve to establish mitigation by highlighting a defendant's moral character and rehabilitation potential (Eisenberg, Garvey, & Wells, 1998). Although a defendant making a statement of apology will not be subjected to the negative scrutiny of cross-examination by the prosecution during the sentencing phase of the trial, defendants and attorneys may be reluctant to deliver a remorse statement out of fear that the jury will

perceive them as being insincere (Sundby, 1998). Thus a defendant may have to do more than say “I’m sorry” in order to establish remorsefulness in the minds of the jury.

The concepts of remorse and apology go hand in hand. Although defendant remorse is not always defined as a statutory mitigator, it is possible that such expressions may serve to communicate pleas for mercy on the part of the defendant or be utilized by jurors as a gauge for the defendant’s potential redemption (Costanzo & Costanzo, 1992). Additionally, apologies serve as a way of repairing social bonds that have been damaged by a harmful act. Abel (1998) argues that apologies are a way for the wrongdoer to express moral inferiority in a venue that is controlled by the victim. According to Scher and Darley (1997) remorse or regret is the central concept conveyed in an apology as it qualifies the acceptance of responsibility with an expression of affect on the part of the offender. Remorse can be expressed through both explicit statements of apology and nonverbal behaviors (crying, sulking, etc.). However, prior research indicates that expressions of remorse may in fact prove detrimental to the defendant in certain situations (Niedermeir, Horowitz, & Kerr, 1999; Niedermeir, Horowitz, & Kerr, 2001, Bornstein, Rung, & Miller, 2002; Robbennolt, 2003).

An important distinction must be drawn between apologies and “accounts.” In a critical review of the apology literature, Petrucci (2002) states that the following are core elements of an apology: an expression of remorse/regret, acceptance of responsibility on the part of the transgressor, an offer of compensation, a promise to avoid harmful behavior, the hope of improved relationships, and the expression of emotion on the part of the offender. However, Goffman (1971) posits that accounts are simply a retelling of the harmful act without the acceptance of responsibility. Gonzales, Haugen, and

Manning (1994) assert that different types of accounts may include excuses, justifications, and refusals whereas an apology is a form of concession due to the acceptance of responsibility on the part of the wrongdoer. Excuses are a form of accounts that hold particular relevance for defendants at trial. For example, defendants in the penalty phase of a capital trial may try to justify their behavior based on situational (i.e. "I was intoxicated at the time of the crime") or dispositional factors ("I am a weak person who followed the group") in order to somehow mediate the impact of the crime without the acceptance of responsibility.

Although the acceptance of responsibility on the part of the offender is central to differentiating an apology from an account, there is evidence that the acceptance of responsibility may increase punishment. Petrucci (2002) argues that an apology could increase negative affect and ultimately result in a negative outcome for the offender, but the literature illustrates the opposite trend -- the acceptance of responsibility via an apology actually reduces anger and thus reduces punishment (Weiner, Graham, Orli, & Zmuidinas, 1991). Petrucci posits that this trend provides support for the importance of affect in decision making as it illustrates how affect may be more influential than cognitions surrounding the crime and the victim in determining trial outcome. Thus positive affect induced by an apology may help to combat the negative affect created by an emotional VIS.

It is understandable that defendants may be reluctant to deliver a remorse statement to the jury for fear of being perceived as insincere, but if the statement and a defendant's behavior are calibrated then the statement may actually help counteract the VIS. As Petrucci asserts, simply offering an apology helps to lessen anger and decrease

punitiveness. If an apology is accompanied with a behavioral display of remorse (i.e. crying, becoming choked up) then it may make remorse even more salient to the jury. It is also possible that a behavioral display may make an excuse just as effective as an apology as jurors may use the defendant's behavior as a proxy for determining remorse. Even though a defendant may not overtly state that they accept responsibility, jurors may infer this from their behavior. However, it is also possible that there is a danger of being perceived as insincere if a defendant fails to display appropriate affect. Thus even if a defendant apologizes, the acceptance of responsibility may be lost on the jury if there is no display of affect in order to make the statement salient.

Apologies, Remorse, and the Jury

The role of defendant remorse on sentencing judgments has been most frequently examined within the context of juror decision making in civil trials (Niedermeir, Horowitz, & Kerr, 1999; Niedermeir, Horowitz, & Kerr, 2001, Bornstein, Rung, & Miller, 2002; Robbennolt, 2003). The results taken as a whole illustrate the complex nature of remorse and how the impact of such statements may be moderated by variables related to the content of the statement, the characteristics of the defendant, and the perceptions of the law.

In the most relevant test of apologies versus accounts, Robbennolt (2003) asked participants to imagine they were plaintiffs in a civil suit who were asked to evaluate a potential settlement. Scenarios were manipulated according to whether the offender offered a partial apology (expressions of sympathy), full apology (sympathy and acceptance of responsibility) or no apology. When the injury was severe, partial apologies resulted in greater attributions of responsibility towards the defendant and

fostered a sense of inequity between the proposed settlement and the injuries experienced. Full apologies resulted in less anger, greater sympathy for the offender, and more forgiveness than partial or no apologies. Thus a simple expression of sympathy without the acceptance of responsibility on the part of the offender may prove detrimental to the defendant under certain circumstances.

Niedermeier, Horowitz, and Kerr (1999) examined the roles of remorse and the social status of the defendant in juror nullification involving a willful neglect trial. A significant status by remorse interaction revealed that defendants of a higher status who expressed remorse were perceived as guiltier than higher status defendants who did not express remorse. However, lower status defendants that did not express remorse were judged as guiltier than those that were remorseful. Niedermeier, Horowitz, and Kerr (2001) once again examined the role of remorse and juror nullification in a willful neglect trial and found that expressions of remorse are actually detrimental to the defendant under certain circumstances. When the defendant expressed remorse for his decision mock jurors rated the defendant as being guiltier when the law was perceived as fair, but unremorseful defendants yielded equal ratings of guilt in both the fair and unfair perceptions of the law. The authors also found a significant gender by remorse interaction where expressions of remorse on the part of a female defendant did little to undermine her perceived level of competence, but expressions of remorse for a male defendant caused jurors to perceive him as less competent than when there was no expression of remorse.

Based upon the work of Niedermeier and colleagues, the relationship between expressions of remorse and perceptions of guilt is complex and consideration must be

given to when remorse can be used as a legal strategy. Bornstein, Rung, and Miller (2002) examined whether the timing of the expression can influence the efficacy of remorse in a medical malpractice case. Mock jurors awarded the most compensation when remorse was expressed at the time of the incident and later stated at trial. When remorse was expressed at trial, compensation did not differ from the defendant who did not express remorse. There was also limited evidence that a defendant who made an explicit unremorseful statement was punished by having to pay more compensation. Bornstein et al. (2002) explain these results as partial evidence that jurors may be somewhat influenced by their emotions and that expressions of remorse at the time of the incident are actually perceived as admissions of wrongdoing.

The research examining the role of defendant remorse in criminal sentencing has also highlighted the complex relationship between apology and juror decisionmaking. Crosby, Britner, Jodl, and Portwood (1995) found that remorse was not a significant predictor of verdict in a juvenile death penalty trial, but manipulation checks revealed that participants rated the defendant as unremorseful across all remorse conditions--thus undermining the validity of this finding. Kleinke, Wallis, and Stadler (1992) found that the direct manipulation of remorse did not affect criminal sentencing for a rapist, but the participants' *perception* of remorse was significantly related to sentencing recommendations with more lenient sentences delivered for the rapists perceived as remorseful. In contrast, Robinson, Smith-Lovin, and Tsoudis (1994) found evidence of an emotional component in expressions of remorse during criminal confessions. If the defendant displayed greater emotional reaction, participants delivered more lenient sentences. The intensity of the affect displayed by a defendant may also play a role in

jurors' decision as a defendant who displayed low levels of affect was deemed less credible and guiltier as compared to a defendant displaying high levels of affect (Heath, Grannemann, and Peacock, 2004). In examining how evidentiary strength may be moderated by defendant behavior, Heath and colleagues found that the effect of the defendant's behavior was strongest only when the jurors were presented with weak evidence and that perceptions of the defendant's sincerity mediated the relationship between affective displays and ratings of guilt.

Most recently, Jehle, Miller, and Kemmelmeier (2008) manipulated both the remorsefulness of the defendant as well as the type of account (excuse, justification, denial, and no explanation) he delivered to the court when testifying in a murder trial. This study represents an important step in the study of remorse and the jury as Jehle and colleagues examined how remorseful behavior displayed moderates the effects of accounts meant to diminish the responsibility of the defendant. Thus this work represents an important counterpoint to the previous studies of apology that suggests remorsefulness is effective in increasing the efficacy of an apology. Jehle and colleagues found a significant interaction between remorse and no explanation and a marginally significant interaction between remorse and excuse such that a display of remorse on the part of the defendant actually proved detrimental to the defendant as compared to appearing unremorseful in either account condition. Although this study is focused on judgments in a criminal case, it highlights how a display of remorse may backfire when the defendant is seeking to decrease his culpability.

Survey data and post-trial interviews of actual capital jurors also highlight the importance defendant remorse may play in decision making. Sundby (1998) found that

defendant remorse was one of the most discussed topics in penalty phase deliberations and that lack of remorse was often cited as a reason for death sentences. Antonio (2006) found evidence that when a defendant consistently appeared emotionally involved and remorseful throughout trial, capital jurors expressed greater uncertainty in their sentencing decisions or favored a sentence of life imprisonment as compared to emotionally uninvolved defendants. Defendants who were willing to take the stand were perceived as more remorseful than defendants who remained silent (Eisenberg, Garvey, & Wells, 1998), but jurors may pick up on the behavior of the defendant throughout trial and use that as a proxy for gauging remorsefulness (Sundby, 1998). Eisenberg, et al. (1998) found a positive correlation between defendant demeanor and remorsefulness such that the more uncomfortable/troubled a defendant appeared the more likely jurors were to believe the defendant was remorseful. Although Eisenberg, et al. (1998) found that remorsefulness was a predictor of verdict, it did not matter as much as the perceived viciousness of the crime and was only effective when viciousness was low. Based on prior research (Greene, Koehring & Quiat, 1998) it does not seem unreasonable to expect that the inclusion of a VIS may increase the perceived viciousness of the crime-thus raising the possibility that a statement by the defendant may not be enough to counteract the impact of the VIS. The possibility exists that the sincerity of the defendant's statement as communicated through behavior at the time of the statement may help establish remorsefulness.

Although it is intuitively appealing to assume that expressions of remorse will lead to compassion on the part of the jury, this may not always be the case. The introduction of a remorse statement may be considered too risky if other aspects of the

defendant's behavior are not calibrated with the statement. Furthermore, if the VIS produces irrational or illegal decisions as proposed by both scholars and the courts (Myers & Greene, 2004; *Booth v. Maryland*, 1987) does the introduction of emotionally saturated evidence on the part of the defense merely "fight fire with fire" or might it be possible to claim that it puts decision making back on a rational/legal footing?

CHAPTER 2: Purpose of the Research

Although it has been established by several empirical studies that the presentation of a VIS influences the jury in such a manner as they favor sentencing the defendant to death (Burkhead, Luginbulh, & Wrenn, 1994; Luginbuhl & Burkheald, 1995; Greene, Koehring & Quiat, 1998; Myers & Arbuthnot, 1999; Myers, Godwin, Latter, & Winstanley, 2004), it is unclear what affective and cognitive processes underlie jurors' decisions when faced with such evidence. One potential explanation can be derived from the literature concerning negative affect and cognition. Undoubtedly, jurors serving on capital cases may experience negative affect by virtue of the type of evidence they must consider. However, the VIS may have an additive effect whereby jurors may experience greater anger or sadness depending on the emotion displayed by the individual presenting the VIS. Through emotional contagion (Hatfield, Cacioppo, & Rapson, 1994) jurors may find themselves experiencing the very same emotion as the individual delivering the VIS, and this may influence their processing of evidence relevant to sentencing. Emotional contagion may be reactivated in the deliberation room when jurors discuss the weight they should afford the VIS in their sentencing decision. Jurors may remain in an emotional state as a result of their initial exposure to the VIS and as Feigenson and Park (2006) propose that the emotion a juror experiences (in this case anger or sadness) may influence the interpretation of additional case facts and the formation of a judgment with regard to responsibility.

The purpose of this study was to examine: 1) how variations in the type of affect displayed by the individual presenting a VIS will influence juror decision making 2) how variations in a defendant's statement influence juror decision making, and 3) how

variations in the affect displayed by the defendant during the delivery of the statement influence juror decision making. In other words, we wanted to understand how a defendant may combat the potentially biasing emotional content of the VIS through variations in the types of statements presented to the jury. In the present study, we sought to examine how variations in the defendant's statement (excuse vs. sympathy vs. acceptance of responsibility) would be evaluated by mock jurors as a potential response to the prosecution's presentation of a VIS. The purpose was to identify the conditions under which such statements may prove to be the most effective in countering juror reliance upon extralegal cues associated with the defendant and victim. However, we were also sensitive to the possibility that the presentation of emotionally laden evidence in response to a VIS may create a playing field where jurors engage in irrational decisionmaking. Defendant remorse/apology has most often been studied within the context of civil jury decision making, but evidence from actual capital trials (Eisenberg, Garvey, & Wells, 1998; Sundby, 1998) allows us to postulate that defendant behavior may be used by jurors as a proxy for determining remorsefulness. Thus it is possible that a remorse statement may only be effective when the defendant's behavior is calibrated with the apology. It was hypothesized that the defendant's statement will be most effective when the defendant displays sad affect during the statement, and the statement consists of an explicit apology. However, it was expected that when the defendant's statement consists of an excuse or it is presented with flat affect then the statement will be less effective.

The secondary purpose of this research was to examine how sadness and anger as conveyed through the VIS may influence how jurors process trial evidence. Prior

research has shown that the induction of sadness actually causes individuals to engage in more systematic processing of information whereas anger prompts peripheral processing. Although this is a danger in many legal situations, the stakes are even higher within the context of capital sentencing due to the finality of death. Additionally, prior research has shown that juror comprehension of jury instructions in capital cases is notoriously poor (Wiener, Rogers, Winter, Hurt, Hackney, Kadela, Seib, Rauch, Warren, & Morasco, 2004). It is possible that affect conveyed via a VIS may influence jurors' sensitivity to variation in trial evidence. This has the potential to influence how jurors perceive mitigating and aggravating evidence.

Two aggravating factors that jurors may be asked to consider in capital trials include the defendant's risk of future violence and the significance of the defendant's prior criminal record. The issue of risk assessment was famously heard before the Supreme Court in the case of *Barefoot vs. Estelle* (1983) in which the court affirmed the defendant's original death sentence even though an *amicus curiae* brief filed by the American Psychiatric Association reported the limits associated with mental health professionals' predictions of dangerousness. Prior research on jurors' use of risk assessment information has shown that mock jurors are more persuaded by the use of clinical assessments of dangerousness as compared to actuarial assessments presumably because such information is easier to understand (Krauss & Sales, 2001; Krauss & Lee, 2003). The significance of the defendant's prior criminal record may also be discussed within the context of an individual's risk assessment as it has been demonstrated to be one of the strongest predictors of future violence (Melton, Petrila, Poythress, & Slobogin, 1997). Empirical evidence derived from non-capital trials has also highlights how

powerful prior record information may be to jurors (Greene & Dodge, 1995; Steblay, Besirevic, Fulero, & Jiminez-Lorente, 1999; Tsoudis, 2000).

Hypotheses

Specific attention was given to the importance of emotional mediators versus the non-emotional mediators of the various effects to examine differences in influence on decision making. One of the major purposes was to examine whether and to what extent the various VIS response methods (i.e. methods employed by the defense to counter a VIS) shifted decision making to and from affective responding to sentencing evidence as compared to rational processing. Specifically, we were interested in examining the following hypotheses:

1) A defendant who decides to remain silent will be judged more harshly than a defendant who addresses the court.

2) Consistent with the findings of Robbennolt (2003), we expected that the defendant's statement will result in more positive evaluations/outcomes when it takes the form of a full apology (Sympathy x Responsibility) versus a partial apology (Sympathy) or an Excuse.

3) In examining the role of defendant remorse, we were in fact testing two competing hypotheses. First, the results from previous civil (Niedermeier et al., 1999; 2001) and criminal studies (Jehle et al., 2008) examining remorsefulness would suggest that a display of remorse should prove detrimental regardless of the content of the defendant's statement. However, data derived from capital trials (Sundby, 1998; Eisenberg, Garvey, & Wells, 1998) would suggest that appearing *unremorseful* would prove most detrimental to a capital defendant during sentencing. However, given that

capital trials present a different task for jurors, we expected that a display of remorse will actually result in more positive outcomes for the defendant (particularly when coupled with a full apology) as compared to when the defendant appears unremorseful.

4) The VIS would be most damaging to a defendant when it was presented with angry affect as compared to flat or sad affect as it will result in fewer attributions to the situation and more attributions to the defendant.

5) The content of the defendant's statement would moderate the aforementioned VIS effects in such a manner that responsibility will prove most effective as it is the key component of an apology as compared to an excuse. When sympathy is coupled with responsibility, it should also prove more effective than the expression of sympathy alone (partial apology)

6) Mock jurors who are experiencing sadness as measured by the PANAS-X would be sensitive to variations in the evidence (Prior Criminal Record, Dangerousness) whereas those experiencing hostility would be insensitive to variations in the trial evidence.

7) Finally, we expected that affect would mediate the relationship between our manipulations, perceptions of the evidence, and sentencing outcomes.

CHAPTER 3: Methods

Design

This experiment was a 3 (VIS: Sad, Angry, Flat) x 2 (Prior Criminal Record: Absent vs. Present) x 2 (Dangerousness: Low Risk vs. High Risk) x 3 (Defendant Behavior: No Statement, Flat Statement, Sad Statement) x 2 (Excuse: Absent vs. Present) x 2 (Sympathy: Absent vs. Present) x 2 (Responsibility: Absent vs. Present) between groups incomplete factorial design in which irrelevant cells were deleted. Since the defendant behavior factor contained a level in which there was no statement, this level could not be crossed with excuse, sympathy, or responsibility. Additionally, the excuse condition could not be crossed with responsibility since an excuse is the complete denial of responsibility. This makes it impractical to examine the two-way interaction between these factors (Excuse x Responsibility) as well as the three-way interaction of all statement factors (Excuse x Sympathy x Responsibility). Once these irrelevant cells had been deleted this design yielded 132 cells.

Participants

Participants were 395 death qualified community members (38.6% male, 61.4% female) who ranged in age from 18 to 78 years old ($M = 37.32$, $Md = 34.00$). The sample consisted of 57.0% Caucasian, 22.4% African American, 10.6% Hispanic, 4.6% Asian, and 5.4% mixed-other. Participants were recruited via an advertisement placed online at Craig's List where they were instructed to fill out an eligibility form in order for us to determine whether they would be qualified to serve on a capital jury (Appendix A). Participants were considered eligible if they could consider all three sentencing options (death, life without the possibility of parole, life with the possibility of parole), they were

not so in favor of the death penalty that they would automatically sentence the defendant to death, and they were not so opposed to the death penalty that they would automatically sentence the defendant to life imprisonment. These questions were consistent with the *voir dire* items outlined by *Witherspoon vs. IL* (1968) and *Lockhart vs. McCree* (1986). Participants were once again screened for eligibility when contacted by trained research assistants in order to ensure that they fully comprehended the death qualification questions. Participants were also asked to provide information meant to assess their general jury eligibility including whether they were a U.S. citizen, at least 18 years of age, were registered to vote or had a valid ID, and they had never been convicted of a felony.

Materials

Pre-Trial Questionnaire (Appendix B): Participants completed several scales in order to measure their attitudes towards the legal system and variables related to emotional processing. The scales included the Death Penalty Attitudes Questionnaire (DPAQ; O'Neill, Patry, & Penrod, 2004), The Revised Legal Attitudes Questionnaire-23 (RLAQ-23; Kravitz, Cutler, & Brock, 1993), and the Interpersonal Reactivity Index (IRI; Davis, 1983). All of the scales were presented in random order to control for order effects.

In order to control for pre-existing attitudes about the death penalty and legal system, we administered the DPAQ and RLAQ-23. The DPAQ is a 15-item scale measuring five factors associated with attitudes towards the death penalty: General Support ($\alpha = .87$), Retribution and Revenge ($\alpha = .75$), Death Penalty is a Deterrent ($\alpha = .85$), Death Penalty is Cheaper ($\alpha = .89$), and Life without Parole Allows Parole ($\alpha = .69$).

The General Support, Deterrent, and LWOP subscales have been shown to have the strongest direct effects on sentencing decisions (O'Neill, Patry, & Penrod, 2004). The RLAQ-23 is a measure of legal authoritarianism which has been shown to influence judgments of responsibility and verdict. It is a single factor scale with good reliability ($\alpha = .71$).

Finally, The IRI was administered to measure individual differences in empathy. As Davis (1983) notes, empathy is best thought of as a multidimensional construct. The IRI is a 29-item measure comprised of four dimensions: Perspective Taking (Males $\alpha = .75$, Females $\alpha = .78$), Fantasy (Males $\alpha = .78$, Females $\alpha = .75$), Empathic Concern (Males $\alpha = .72$, Females $\alpha = .70$), and Personal Distress (Males $\alpha = .78$, Females $\alpha = .78$). Both the Perspective Taking and Fantasy subscales are related to the ability of individuals to place themselves in another individual's situation or to imagine the feelings of individuals in works of fiction. The Empathic Concern measures one's willingness to express concern for others and the Personal Distress is the extent to which individuals experience anxiety related to interpersonal interactions.

Trial Summary (Appendix C): We created a composite case based on the fact patterns of two Texas death penalty trials: *U.S. v. Bernard & Vialva* and *McCullum v. Dretke*. The decision to modify the fact patterns of these cases served two purposes. First, *U.S. v. Bernard & Vialva* focused upon a gang of young men who carjacked and murdered a married couple who worked in the community as youth ministers. This allows us to examine what happens when a defendant is faced with the worst possible scenarios of a VIS (a victim of high social standing). Second, the history of the defendant in *McCullum v. Dretke* allows us to examine the efficacy of highlighting the

positive characteristics of the defendant. Demarco McCullum was the quarterback of his high school football team and was a popular, charismatic student who was convicted of murdering a gay couple outside a nightclub in Texas

The trial summary was one page in length and detailed the events leading up to the crime and the evidence that was presented at the defendant's trial. In the summary, Brian McCullum was accused of the carjacking and murder of Stacie and Todd Bagley, a married couple who picked up him and his friend (Tony Sparks) after they claimed they were experiencing car troubles. Once the youths were in the car, McCullum pulled out a gun and forced the couple into the trunk of the car after obtaining their bank cards. McCullum and Sparks then drove around for several hours to various ATM locations withdrawing money from the Bagley's accounts. McCullum then decided to shoot the couple because he feared they would go to the police. The evidence that was described as being presented at trial included the registration records which showed the gun was registered to McCullum, fingerprint and ballistic evidence showing McCullum had fired the gun, the testimony of Tony Sparks, and surveillance videos from the convenience store where they abducted the couple. Participants were asked to render a verdict upon completion of the trial summary.

Sentencing Phase of Mock Trial (Appendix D): Professional actors were recruited via advertisements placed in local trade papers. In auditioning individuals for the role of the victim's mother and the defendant, we had all of the actors read the VIS or defendant statement multiple times while displaying different affective states: sad, angry, and flat for the VIS or sad and flat for the defendant's statement. The audition videos were then pilot tested in order to ensure that participants were sensitive to the emotions each actor

displayed. The actor and actress with the highest ratings were then awarded the roles in the mock trial. Additionally, the professional actors who were cast as the attorneys in the mock trial happened to be actual attorneys.

The mock trial lasted approximately 75 minutes and featured the direct testimony of several witnesses. The judge delivered pre-jury instructions describing the process and the task set out before the mock jurors. These preliminary instructions were modified from the penalty phase of *United States vs. McVeigh*. Next, participants heard the prosecuting attorneys opening statement in which he detailed the following aggravating factors: the crime was committed after substantial planning and premeditation to cause the death of more than one person, the murder occurred during a carjacking making it a capital offense, the crime resulted in multiple deaths, Brian McCullum posed a risk of future violence, and Brian McCullum had a significant prior criminal record (this last factor was omitted in any condition where the defendant's prior criminal record was absent). The prosecutor also mentioned that they would be presenting non-statutory aggravating factors including the fact that the crimes were carried out in a cruel and heinous manner and victim impact evidence. The opening statement delivered by the defense attorney focused on humanizing his client in an effort to establish mitigation.

The prosecution called two witnesses to the stand in order to help prove the aggravating factors. The first witness called was the Detective in charge of the case who testified about the case evidence and the heinous nature of the crime. The detective once again described the events leading up to the crime including the surveillance videos, fingerprint and ballistics evidence indicating that McCullum had been responsible for the murder. He also described statements McCullum's co-conspirator made to the police

including that Bagley's had begged for their release and swore they wouldn't go to the police, but McCullum mocked their pleas for mercy. The detective also described the following events in order to establish heinousness: the couple was forced into the trunk of their car, they were driven around for several hours while McCullum and Sparks used their stolen credit cards, McCullum verbally ridiculed the victims when they begged for mercy, McCullum decided to shoot the Bagleys so they wouldn't go to the police even though Sparks protested, McCullum shot both victims in the head, the gunshot wound killed the husband instantaneously while the wife is knocked unconscious, McCullum then set the car ablaze in order to dispose of the evidence which ultimately caused the unconscious victim to die from smoke inhalation.

The prosecuting attorney also presented expert testimony in order to establish that the defendant posed a risk of future violence and to communicate how that risk was informed by his prior criminal record. Dr. Jack Barker began his testimony by describing his credentials, the purpose of a risk assessment, and the methods he utilized in order to evaluate the defendant. In order to control for the effects found in previous research demonstrating that clinical assessments are more persuasive than actuarial assessments (Krauss & Sales, 2001), we presented a hybrid form of expert testimony in which Barker described administering both the Psychopathy Checklist-Revised (PCL-R) and the HCR-20 in addition to his clinical interview. Barker described what each scale measured, the defendant's test results, and aspects of the defendant's history gathered via the clinical interview. This testimony contained the following manipulations:

1) *Prior Criminal Record: absent vs. present.* In the description of the various records that Dr. Barker described reviewing the prosecuting attorney explicitly asked if

the defendant had a prior criminal record. In the no prior record condition Barker testified that he did not have a record and this was the first time he came into contact with police. In the prior record condition, McCullum was described as having a prior record for assault stemming from a bar fight which resulted in him being sentenced to anger management.

2) *Dangerousness: low/moderate risk vs. high risk.* After describing the defendant's borderline scores on the PCL-R and moderate risk described by the HCR-20 as well as the results from his clinical interview, Dr. Barker was asked to describe the likelihood the defendant would engage in future acts of violence if not executed. In the low risk condition, Barker testified that there was a low to moderate likelihood of future violence based on the defendant's score on the PCL-R and HCR-20, but his lack of mental illness lowered that risk. In the high-risk condition, Barker testified that there was a high likelihood of future violence, based on the defendant's score on the PCL-R and HCR-20, but risk management issues such as his poor response to stress and the presence of de-stabilizers in prison increased that risk.

Next, the defense presented expert testimony from McCullum's prison counselor, Dr. William Gunn, in order to help establish the defendant's rehabilitation potential. Gunn began by describing his credentials (which were similar to the expert witness for the prosecution) and that he first encountered the defendant when he made the decision to seek out counseling. Gunn described the nature of the counseling program the defendant had entered and concluded that the defendant had a great deal of rehabilitation potential based upon the progress made in the counseling program. The defense also presented testimony from McCullum's mother, Laura McCullum, who described what the

defendant had been like as a child and how he had been a good student until he went away to college and met his co-conspirator Tony Sparks. McCullum's mother also testified about their family and how Brian tried to take care of her and his two younger brothers in addition to how Brian had changed since his arrest.

After the defense rested their case, the prosecution asked to present victim impact evidence detailing the full extent the impact of the crime had on Stacie Bagley's mother, Eve Lynch. Across all three conditions, the statement was presented uninterrupted and the content was held constant. During the filming of the trial, the actress was asked to read the statement multiple times in each affective state. Each video was then pilot tested and the one eliciting the highest ratings for the target emotion was selected for the final video. The VIS affective measures were as follows:

3) *Type of VIS: sad vs. angry vs. flat:* In the sad condition, the actress read the VIS in a very sorrowful tone of voice and display behavior consistent with sorrow (crying, choking up during the statement, getting teary eyed when she looked in the direction of the courtroom where the defendant would be seated). In the angry condition, the actress read the VIS in a very angry tone and display behaviors consistent with anger (appearing very tense, loud tone of voice, glaring when she looked in the direction of the courtroom where the defendant would be seated). Finally, in the flat affect condition the actress read the VIS without any overt display of emotion (reading her statement in a monotone voice, no affective facial expression, glancing in the direction of the courtroom where the defendant would be seated).

Once the victim's mother finished her statement, the judge thanked her for her time and asked the defense if Brian McCullum would still wish to address the court. In

the *no statement* condition, the judge thanked the victim's mother for her statement and the attorneys proceeded directly to their closing arguments. Since the statement is the only time in the trial where participants would have seen an image of the defendant, we inserted several cutaway shots of the defendant sitting at the table with his attorney throughout the trial in order to ensure that participants in the *no statement* condition would still be exposed to an image of the defendant. The number of cutaway shots was held consistent across all conditions. As with the VIS, the actor was asked to read the statement multiple times during filming and we selected the clips that elicited the highest ratings for the target emotions. The affective manipulations for the defendant's behavior were as follows:

4) *Defendant Behavior: no statement vs. flat behavior vs. sad behavior.* In the *no statement* condition, the defendant never addressed the court. In the *flat affect* condition, the defendant read his statement without any overt display of affect (reading his statement in a monotone voice, not overt facial expression, not looking in the direction of the courtroom where the victim's family would be seated). In the *sad* condition, the defendant displayed clear behavioral indicators associated with sadness (slow/low tone of voice, crying, choking up during the statement, glancing empathically in the direction of the courtroom where the victim's family would be seated).

In addition to manipulating the behavior of the defendant, the content of his statement was manipulated in order to examine how variations in the components of apology would influence sentencing decisions. The statement always started in the same manner: the defendant stated that he was not asking for mercy or forgiveness but, he felt that he owed the families an explanation for his behavior. The defendant then provided

his account of the crime where he stated that he never intended to kill anyone that night, but that they simply wanted to rob a person in order to get money in the fastest way possible. After the paragraph describing his account of the crime, we manipulated the presence of absence of an excuse for the crime, the defendant's expression of sympathy for the suffering of the victims' families, and the defendant's willingness to accept responsibility for the crime.

5) *Excuse: absent vs. present.* When an excuse was present, the defendant explained that he committed the murder because he panicked and was worried that the victims would go to the police if they were left alive. He described how Sparks was arguing with him to let them go, how the victims were crying and begging for their release, and how everything just got so out of control that he snapped and pulled the trigger. In the *absent* condition, this paragraph was omitted. Due to the design of the study, this manipulation could never be crossed with our responsibility manipulation since an excuse is meant to negate responsibility thus rendering the interaction irrelevant.

6) *Sympathy: absent vs. present.* The next aspect of the defendant's statement that was manipulated was whether the defendant tried to empathize with the victims' family. When sympathy was present, the defendant told the victims' family how badly he felt for all of the pain they had experienced. The defendant described how he felt that he truly knew who the victims were as people after having listened to all of the testimony and that he fully understood the extent of their loss. He explained that he knew his sympathy wasn't much to offer, but that it was all he had left to give. In the *absent* condition, this paragraph was omitted. The sympathy condition could be crossed with both the *excuse* and *responsibility* conditions.

7) *Responsibility: absent vs. present.* The final aspect of the defendant's statement that was manipulated was whether he accepted responsibility for the crime. When responsibility was present, the defendant stated that he now realizes that the responsibility for the crime rests solely with him and that no excuse could ever lessen the impact of the crime. He concludes by stating that he hopes that by accepting responsibility for the crime he can deliver some sort of closure to the victims' families. In the *absent* condition, this paragraph was omitted.

Upon completion of the defendant's statement, the judge then informed the jury that they would now proceed with the closing arguments. After both attorneys presented their closing statements, the judge then delivered the jury instructions. The jury instructions were pattern instructions adapted from the federal sentencing guidelines and included a summary of the aggravators and mitigators presented in the trial as well as information pertaining to how jurors should weigh the evidence.

Measures (Appendix E): In order to determine whether mood contagion between the witnesses in the video and mock jurors had occurred, participants completed the Positive and Negative Affective Schedule – Expanded Form (PANAS-X; Watson & Clark, 1994). The PANAS-X is a 60-item scale measuring the following affective states: “Fear, Sadness, Guilt, Hostility, Shyness, Fatigue, Surprise, Joviality, Self-Assurance, Attentiveness, and Serenity” (p. 1). Participants were instructed that the scale was comprised of words reflecting different feelings and emotions and they were to rate the extent to which they felt this way (1 = very slightly or not at all; 5 = extremely) *in the past few moments*. One of the strengths of the PANAS-X is that the instructions account for measuring affect over time with the *moment* instruction having been shown to elicit

strong internal consistency for both the positive ($\alpha = .88$) and negative ($\alpha = .85$) affective scales.

After participants completed the PANAS-X, they were instructed to proceed to the sentencing forms. Each form began with a copy of the jury instructions presented during the trial to assist participants in evaluating the evidence and rendering their sentence. Next, we modified the special forms used during federal death penalty sentencing in order to measure how participants evaluated the intent of the defendant, aggravating and mitigating factors, and their sentence. The primary dependent measure was individual juror sentences (life imprisonment without parole, death). Participants were asked whether each factor had been met beyond a reasonable doubt (or by a preponderance of evidence for mitigators) and the extent to which they weighed each factor in their decision (1 = Not weighed at all; 9 = Heavily weighed). Participants were also asked to report what the most important piece of evidence had been in their sentencing decision.

The sentencing form also contained items measured on 9-point Likert-type scales assessing confidence in their decision (1 = not at all confident; 9 = very confident) and the defendant's responsibility for the crime (1 = not at all responsible; 9 = very responsible). This questionnaire also included questions that assessed perceptions of all the witnesses' credibility, perceptions of the evidence, and manipulation checks.

Procedure

Upon entering the lab, participants were randomly assigned to individual laptop computers that contained one of a 132 possible DVDs depicting our mock sentencing trial. After obtaining informed consent (Appendix F), researchers informed jurors that

they would be watching a DVD of the sentencing phase from a mock death penalty trial and that they would be asked to decide whether the defendant should be sentenced to life imprisonment without parole or to death. Participants first completed the pre-trial questionnaire. All of the scales were randomized in order to control for order effects.

Next, participants were given the trial summary and were told that this summarized the events surrounding the crime and the evidence that was presented during the guilt phase of the defendant's trial. After they finished reading the trial summary, participants were asked to deliver a verdict (guilty, not guilty). In order to ensure that there were no participants with lingering concerns regarding the defendant's guilt, we omitted data from any participant who voted not guilty.

Once participants completed the trial summary, research assistants provided each participant with a set of headphones and started the DVDs. The researchers informed participants that they would now watch the sentencing phase of the defendant's trial and that they were to pay very close attention to the video. Participants were also told that they would be unable to take notes during the video. Upon completion of the DVD, participants completed the PANAS-X and Sentencing Forms. Finally, participants were debriefed (Appendix G) and paid \$40 for their participation which lasted approximately two and a half hours.

CHAPTER 4: Results

Data Analytic Strategy

Analyses were conducted in several stages:

- 1) The first stage involved the creation of composite variables from the observed variables in order to effectively measure participants' perceptions of the evidence and witnesses and increase construct validity. The first step in this process involved conducting confirmatory factor analyses followed by a reliability analysis to confirm the internal consistency of the identified composites.
- 2) The next stage involved examining the descriptive statistics (Table 1). Univariate analysis was also conducted on our manipulation checks in order to determine participants' sensitivity to the manipulated variables.
- 3) Bivariate correlations were next examined for all variables. Due to the use of an incomplete factorial design a number of the manipulated variables were negatively correlated with one another creating colinearity issues. In order to correct for this problem, all interaction terms were residualized using linear regression. The correlations for all variables are included in Table 2.
- 4) A series of path analyses were conducted using the statistical package SPSS. This involved three steps due to differences in the level of measurement of the final outcome (Sentence) and mediators. First, a hierarchal logistic regression was conducted for each model in order to examine the direct and total effects on sentence. Next, the logistic coefficients were standardized in order to allow for the calculation of indirect effects. Finally, hierarchal linear regressions were

conducted for each of the continuous mediators in order to determine direct effects.

Control Variables. In each of the models that were conducted several scales were included in order to control for the contribution of pre-existing attitudes and traits. Every model included the following measures on the first step: DPAQ, RLAQ-23, IRI – Perspective Taking, IRI – Empathic Concern, PANAS – Sadness, and PANAS – Hostility. Due to the size of these models and the nature of the hypotheses, we have provided the direct, indirect, and total effects for these scales on Sentence in Tables 3 through 6 but in-depth discussion of our results will be limited only to the contribution of the PANAS to decision making. The rationale for including the PANAS on this step when it was originally predicted to be a mediator will be expanded upon in subsequent sections.

Stage 1. Composite Variables

In developing the items, we included multiple measures of each witness in order to create composite variables which also allowed us to preserve degrees of freedom and to control for multicollinearity. A total of five composite variables were created: Prosecution Witnesses, Defense Witnesses, Defendant Rehabilitation Potential, Defendant Character, and Defendant Sincerity. All composite variables were created by averaging Likert-type responses. Items were reverse coded in order to ensure all of the components of the composite variables were coded in the appropriate direction. Higher scores indicate more positive evaluations of each composite.

Participants were asked to report the degree to which they felt each trial player was persuasive, trustworthy, and likable. Participants were also asked to rate the strength

of the defense and prosecutions' case in addition to the competency of the attorneys. In regards to the victims and the victim's mother (the agent of the VIS), items were developed in order to assess dimensions such as empathy, heinousness, suffering, and harm. Participants were also asked to express the extent to which they empathized with the defendant's mother who was featured prominently as a character witness for the defense. The composite variable created for Prosecution Witnesses (Cronbach's $\alpha = .90$) consisted of perceptions of the prosecuting attorney, detective, and expert for the prosecution. The composite variable created for Defense Witnesses (Cronbach's $\alpha = .90$) consisted of perceptions of the defense attorney, expert for the defense, and the defendant's mother.

Three composite variables were created in order to examine the types of attributions made about the defendant. Defendant Rehabilitation Potential (Cronbach's $\alpha = .80$) consisted of items related to the defendant's likelihood of future dangerousness, the extent to which he could be rehabilitated, perceptions that he should be allowed to redeem his mistakes, and whether the defendant was a fundamentally "bad" person. The composite measuring Defendant Character (Cronbach's $\alpha = .79$) was comprised of several items measuring aspects related to the defendant's personality including how likable, trustworthy, influential, the extent to which he was valued by his family and community, and the level of control he had over the situation. Finally, Defendant Sincerity (Cronbach's $\alpha = .89$) was developed in order to examine how remorseful, sympathetic, and responsible the defendant felt. Although these three composites are significantly correlated with one another (see Table 2), it was important to separate them

in order to determine whether the manipulated variables differentially influenced different aspects related to the defendant.

Stage 2. Descriptive Statistics and Univariate Analyses

In examining the frequency of sentences that participants delivered, it appears as if the trial elicited a majority of Life Without Parole sentences (254 or 64.6%), but there were a number of Death sentences (139 or 35.4%). The means and standard deviations for all control variables and mediators are presented in Table 1. On average it would appear as if participants rated the Prosecution witnesses more positively ($M = 7.20$, $SD = .97$) than the defense witnesses ($M = 5.90$, $SD = 1.42$) ($t(395) = 17.95$, $p < .001$). Perceptions of the defendant all centered around the middle of the 9-point Likert type scale, with the exception of perceptions of the defendant's character ($M = 4.41$, $SD = 1.41$). Finally, it appears as if there is a ceiling effect in terms of perceptions of how responsible the defendant was for the crime ($M = 8.52$, $SD = .97$) and how strongly the defendant should be punished ($M = 8.20$, $SD = 1.03$).

Scores on the control variables showed a significant amount of variation. For the sake of preserving degrees of freedom, the subscales of the DPAQ were summed to create one score that ranged from 15 to 124 with scores appearing to fall close to the middle of the scale ($M = 69.19$, $SD = 19.08$). This strategy was also used in scoring the RLAQ-23 producing scores that ranged from -57 to 45 ($M = -4.46$, $SD = 16.46$). The Perspective Taking and Empathic Concern subscales from the IRI were utilized in order to control for differences in traits related to affective influence. Finally, in examining the descriptive statistics for the PANAS-X it would appear as if participants were more likely

to have reported experiencing hostility during the course of the trial ($M = 12.14$, $SD = 4.78$) as compared to sadness ($M = 8.64$, $SD = 3.28$) ($t(395) = 19.07$, $p < .001$).

Manipulation Check: Perceptions of Affect

In order to determine whether participants were sensitive to variations in the affective information conveyed in the defendant's statement and VIS, several items were developed in order to measure the intensity and nature of the affect conveyed in the VIS and defendant statement. There was a significant mean difference in the ratings of how emotional the victims' mother appeared during the presentation of the VIS $F(2,391) = 18.684$, $MSe = 2.701$, $p < .001$. Bonferroni post hoc analysis revealed that participants rated the Flat VIS ($M = 6.92$, $SD = 1.90$) as significantly less emotional than both the Angry VIS ($M = 7.72$, $SD = 1.54$) and the Sad VIS ($M = 8.15$, $SD = 1.46$). Emotionality ratings did not significantly differ between the Angry VIS and Sad VIS ($p = .09$). There was also a significant difference in ratings of how angry the mother appeared during the VIS $F(2,392) = 68.448$, $MSe = 4.686$, $p < .001$. Participant made the appropriate distinctions as the Angry VIS ($M = 7.25$, $SD = 1.96$) was rated as significantly more angry as compared to both the Flat VIS ($M = 4.31$, $SD = 2.04$) and the Sad VIS ($M = 4.88$, $SD = 2.47$). Finally, there were significant mean differences for ratings of how sad the mother appeared during the VIS $F(2,392) = 10.269$, $MSe = 2.309$, $p < .001$. Although the average ratings for sadness were high across all conditions, the Sad VIS ($M = 8.46$, $SD = 1.28$) was rated as significantly more sad than the Flat VIS ($M = 7.70$, $SD = 1.70$) and the Angry VIS ($M = 7.75$, $SD = 1.53$).

The manipulation checks for the affect conveyed by the defendant were also in the appropriate direction. There was a significant mean difference between the flat

defendant statement and the sad defendant statement in terms of how emotional the defendant appeared $t(354.33) = -16.057, p < .001$. The flat statement ($M = 3.78, SD = 1.87$) was rated as less emotional than the sad statement ($M = 6.82, SD = 1.72$). There was also a significant mean difference in terms of how sad the defendant appeared during his statement $t(357) = -10.503, p < .001$. The flat statement ($M = 4.16, SD = 2.07$) conveyed less sadness than the sad statement ($M = 6.43, SD = 2.03$).

Manipulation Check: Sensitivity to Variations in Evidence

As previously discussed, the trial featured an expert for the prosecution who testified about the risk associated with the defendant committing future acts of violence if he were not executed (low/moderate vs. high). During the course of his testimony the expert discussed the nature of the records that he reviewed in order to formulate his opinion. It was during this testimony that he mentioned whether the defendant had no prior criminal record or a prior conviction for assault.

Participants were sensitive to variations in the expert's opinion regarding the defendant's future likelihood of violence $t(392) = -6.845, p < .001$. When the expert testified that the defendant posed a low/moderate risk ($M = 5.16, SD = 2.13$) the expert's opinion of the risk of violence was rated as lower than when he testified that there was a high risk ($M = 6.57, SD = 1.95$). There was also a significant difference when participants were asked to report the likelihood of the defendant committing future acts of violence if he were not executed $t(393) = -2.389, p = .017$. Although these ratings were low, participants felt the defendant posed a lower risk of violence when the expert testified that he posed a low/moderate risk ($M = 4.42, SD = 2.24$) as compared to a high risk ($M = 4.96, SD = 2.31$). Participants were also asked to report how likely it was that

the defendant is dangerous, but there was no significant difference as a function of the expert's opinion $t(393) = -1.500, p = .135$. Taken together these results appear to indicate that while participants were able to distinguish between the expert's opinions regarding the defendant's risk of violence, they may not have been fully convinced by the expert's opinion in relation to the other pieces of evidence.

In examining participants' sensitivity to variations in the defendant's prior criminal record, the defendant was rated as significantly more danger when a prior criminal record was present ($M = 5.99, SD = 2.01$) versus when he had no prior criminal record ($M = 5.19, SD = 2.12$), $t(393) = -3.860, p < .001$. Given that the presence or absence of a prior criminal record is a far more objective form of evidence as compared to the expert's opinion regarding risk of future violence, participants were asked to report on a dichotomous measure (yes, no) whether the defendant had a PCR. Cross tabulation revealed that 45 (11.4%) out of 395 participants failed this manipulation check. Instead of omitting these individuals a dummy variable was created for inclusion in our multivariate models in order to control for those who failed the manipulation check.

Stage 3. Bivariate Correlations

Table 2 contains the bivariate correlations for all variables included in the models¹. The correlations indicate that there are a number of significant effects amongst the manipulated variables that make theoretical sense. In examining the correlations between the manipulated variables, sentence, and mediators it would appear as if the strongest correlation exists between sentence and the defendant rehabilitation composite

¹ The 13 conditions in which the defendant did not make a statement were omitted in these correlations ($n = 35$). It was felt that since these conditions lacked a key piece of evidence the weight of the evidence would be different from all other conditions. See Path Model 1 for a more thorough explanation of how this group is different from the other conditions.

($r = -.62$) suggesting that as rehabilitation potential decreases the chance of a death sentence increase.

There are several other correlations that should be noted as they directly informed the analytic strategy for the path models. As previously mentioned, this study used an incomplete factorial design because certain components of a defendant's statement can never co-exist from a theoretical perspective. Thus there is a strong negative correlation between Responsibility and Excuse ($r = -.67$) which is then related to all of their interaction terms (i.e. $r = -.79$ for Excuse x Sympathy and Sympathy x Responsibility). In order to control for multicollinearity and to break a large model up into more theoretically relevant models, (see Figure 1 for the layout of the full model) four separate path analyses were conducted: No Defendant Statement vs. Statement, Partial Apology (Excuse x Sympathy), Full Apology (Sympathy x Responsibility), and Processing of Evidence.

Evidence for Mood Contagion?

It was hypothesized that participants' affective states as measured by the Sadness and Hostility subscales of the PANAS-X would mediate the effects of our manipulated variables. The rationale behind this hypothesis was rooted in the theory of mood contagion. If mood contagion was playing a role in shifting participants' affective states then we would expect to see that the introduction of a Sad VIS should result in higher ratings on the Sadness subscale and an Angry VIS should produce higher ratings on the Hostility subscale.

In earlier models it was demonstrated that Hostility and Sadness did directly influence Sentence as well as perceptions of the evidence, but the main effect for VIS did

not directly influence scores on the PANAS-X nor did many of the other predictors included in the models. In examining the correlations there is a significant correlation between Sadness and the interaction terms VIS Sad x Defendant Sad x Excuse ($r = -.12$), but the other significant correlations are with measures of pre-existing attitudes (DPAQ $r = .12$; IRI - Perspective Taking subscale $r = -.12$). Scores on the Hostility subscale were also correlated with scores on the DPAQ ($r = .22$) and the IRI – Perspective Taking ($r = -.17$). Failure to find support for the affect as mediator hypotheses influenced the decision to retain the PANAS-X subscales in the model, but to include them as control variables in order to examine how affect experienced during the trial may influence decision making.

Stage 4. Path Analysis

Each of the four path analyses were conducted over several stages. First, a hierarchical logistic regression was conducted in order to determine the direct and total effects on sentence (0 = life without parole, 1 = death). The order in which the variables were originally entered for both the logistic and linear models is as follows:

Step 1: Main Effects, Control Variables (including PANAS-X subscales)

Step 2: Two and Three-way interactions

Step 3: Prosecution Witnesses, Defense Witnesses

Step 4: Defendant Rehabilitation, Defendant Character, Defendant Sincerity

Step 5: How responsible is the defendant? How strongly do you feel the defendant should be punished?

Next, the logistic coefficients were standardized in order to calculate the indirect effects on sentence as defined by the formula $B = b(SD_x/SD_y)$ where b is the logistic

coefficients and SDx is the standard deviation of each predictor. Due to the dichotomous nature of the outcome variables, the calculation of SDy involved several steps as outlined by Menard (2001). The predicted probabilities were saved for each of the logistic regression models conducted in SPSS which were then transformed into logits using the formula $\ln[\text{predicted probability}/(1-\text{predicted probability})]$. Next, the predicted probabilities were correlated with sentence in order to allow for the calculation of R^2 . Finally, SDy was calculated as the standard deviation of the logit variable divided by the R^2 . Indirect effects were then calculated by subtracting the standardized B for direct effects from the standardized B for total effect.

Model 1 – No Defendant Statement vs. Taking the Stand

Direct and Total Effects on Sentence.

A hierarchical model using logistic regression was created in order to test the hypothesis that a defendant's decision to remain silent when faced with a VIS would negatively influence perceptions of the defendant and increase the likelihood of a death sentence. Defendant Statement was coded as "0" if the defendant took the stand during the penalty phase of the trial and made *any* form of a statement ($n = 360$) and "1" if he remained silent (the hanging control group; $n = 35$). Two dummy variables were created from the multilevel VIS variable treating the Flat VIS condition as the reference category. Interaction terms were created by taking the product of the main effects. All of the interactions terms were residualized by regressing the raw interaction term onto the main effects and lower-interactions in the case of higher order interactions. This was done in order to ensure the terms would represent the independent effects of the interaction terms. The direct, indirect, and total effects are included in Table 3 and all significant paths are

included in Figure 2. For each step in the model we have reported the block and model chi square, Nagelkerke R^2 and percent correctly reclassified.

It was hypothesized that our results concerning affect should be consistent with Appraisal Theory such that anger would increase punitiveness and sadness would decrease these effects. Step 1 of the model is significant, $-2LL = 44.291$, $X^2 (9) = 66.374$, $p < .001$. The main effects and control variables account for 21.4% of the variance in sentence and 69.7% of sentences were correctly classified. The main effects for VIS Angry, VIS Sad, and Defendant Statement were non significant. Consistent with the hypotheses concerning affect, there were significant direct effects for Hostility and Sadness. For every one unit increase in hostility, the defendant was 1.084 times more likely to deliver a death sentence whereas for every one unit increase in sadness, the likelihood of a death sentence decreased by 9.5%.

It was also hypothesized that if a defendant remains silent when faced with a VIS, then that should result in harsher penalties as compared to a defendant that addresses the court. When the interaction terms are entered on step 2, there was improvement in model fit, $X^2 (2) = 12.375$, $p = .002$. The overall model was significant, $-2LL = 431.916$, $X^2 (11) = 78.748$, $p < .001$, accounted for 25% of the variance in sentence and 70.7% of sentence decisions were correctly reclassified with the inclusion of the interaction terms. The overall model was significant, $-2LL = 431.916$, $X^2 (11) = 78.748$, $p < .001$. Consistent with hypotheses, there was a significant direct effect for Angry VIS x Defendant Statement. The odds ratio for not making a statement is 1.497 times higher than the odds ratio for statement when the VIS is angry, meaning that a death sentence is more likely when there is an angry VIS and there is no response from the defendant.

There was also a significant direct effect for Sad VIS x Defendant Statement demonstrating a slightly stronger VIS effect than the Angry VIS. The odds ratio for not making a statement is 1.585 times higher than the odds ratio for statement when the VIS is sad, meaning that a death sentence is more likely when there is a sad VIS and there is no response from the defendant.

Next, we began to include our mediators on the remaining steps of the model. Perceptions of the Prosecution and Defense Witnesses significantly improved the model when they were included on step 3, $X^2(2) = 79.830, p < .001$. The model was significant, $-2LL = 352.086, X^2(13) = 158.579, p < .001$, accounted for 45.7% of the variance in sentence and 80.7% of sentences were correctly re-classified with the inclusion of the first block of mediators. Both mediators produced significant direct effects on sentence. As perceptions of the Prosecution Witnesses increase, the likelihood of a death sentence becomes 3.404 times more likely. As perceptions of the Defense Witnesses increase, there is a 58.8% decrease in the likelihood of a death sentence.

Defendant Rehabilitation, Character, and Sincerity significantly improved the model when they were included on step 4, $X^2(3) = 69.296, p < .001$. The model was significant, $-2LL = 282.790, X^2(16) = 227.875, p < .001$, accounted for 60.5% of the variance in sentence and 86.0% of sentences were correctly classified with the inclusion of the defendant mediators. Of the three mediators, Defendant Rehabilitation was the only one to have a significant direct effect on sentence. As perceptions of rehabilitation potential increase, there is a 56.3% decrease in the likelihood of a death sentence.

Finally, the inclusion of our items measuring how responsible the defendant was for the crime and how strongly the defendant should be punished on step 5 did not

significantly improve model fit, $X^2(2) = 3.199, p = .202$. There was a marginally significant direct effect for punishment suggesting that as punishment increased, the likelihood of a death sentence was 1.393 times more likely. The variables in the full model were significant, $-2LL = 279.591, X^2(18) = 231.074, p < .001$. The final model accounted for 61.1% of the variance in sentence and 86.5% of sentences were correctly classified.

Indirect Effects on Sentence

In examining the indirect and total effects, the positive direct effect of Hostility is mediated by a moderate negative indirect effect through perceptions of the Prosecution Witnesses and perceptions of the defendant's rehabilitation potential leading to a weak positive total effect. In terms of Prosecution Witnesses, increases in hostility cause the prosecution witnesses to appear stronger. With increases in perceptions of the prosecution witnesses, the defendant's potential for rehabilitation decreases which then increase the likelihood of a death sentence. There was also a direct effect of Hostility on prosecution witnesses that lead directly to sentence suggesting that as hostility increases, the prosecution looks stronger and then the prosecution appears stronger, the likelihood of a death sentence increases. Hostility also directly influence defendant rehabilitation suggesting that as hostility increases, perceptions of the defendant's rehabilitation potential decrease and decreases in rehabilitation potential increase the likelihood of a death sentence.

The negative direct effect of sadness is mediated by a moderate positive indirect effect through perceptions of Defense Witnesses and perceptions of the defendant's rehabilitation potential leading to a moderate negative total effect. As sadness increases,

perceptions of the defense witnesses also increase with increases in defense witnesses leading to more positive evaluations of the defendant's rehabilitation potential in turn decreasing the likelihood of a death sentence. There was also a direct effect of Sadness on Defense Witnesses leading to sentence. Thus as sadness increases, the defense looks stronger which then decreases the likelihood of a death sentence. Sadness also directly influenced rehabilitation potential such that as sadness increased, the defendant appeared to have greater potential which then decreased the likelihood of a death sentence.

Although there was no significant direct effect for Sad VIS on sentence, it does indirectly influence sentence via perceptions of the prosecution witnesses such that the presence of a sad VIS makes the prosecution appear stronger than a flat VIS. As the prosecution appears stronger, the likelihood of a death sentence increases. Increases in the prosecution witnesses also cause decreases in defendant rehabilitation resulting in an increased likelihood of a death sentence.

The direct effect for VIS Angry x Defendant Statement on sentence did not produce an indirect effect and yielded a positive moderate total effect. However, the direct effect for VIS Sad x Defendant Statement was mediated by a weaker negative indirect effect through defendant rehabilitation leading to a positive moderate total effect. The indirect effect suggests that when the defendant is faced with a sad VIS and he chooses not to make a statement, he appears to have less rehabilitation potential as compared to when he makes a statement and as rehabilitation potential decreases, the likelihood of a death sentence increase.

Other Direct Effects on Mediators

In addition to the previously discussed mediated effects, there were several effects that did not influence Sentence, but still contain interesting information. The model predicting attributions of responsibility was significant, $F(16, 378) = 3.610$, $MSe = .855$, $p < .001$. The variables in the model accounted for 13.3% of the variance in ratings of responsibility. Hostility ($\beta = .143$, $p = .032$) and Sadness ($\beta = -.132$, $p = .044$) had a direct effect on responsibility in manners that were consistent with Appraisal Theory of Affect. Prosecution Witnesses were also significantly related to responsibility in the appropriate direction ($\beta = .285$, $p < .000$). There were also two marginally significant effects for Defendant Character ($\beta = -.146$, $p = .066$) and Defendant Sincerity ($\beta = .135$, $p = .061$). At first glance, the direction of the effect for Defendant Sincerity is somewhat perplexing as when one considers the anecdotal evidence from surveys of capital jurors, but when one stops to consider that if a defendant appears to genuinely appear remorseful for the crime then jurors are making the appropriate conclusion that the defendant did play some role in the offense thus increasing perceptions of responsibility.

The model predicting punishment was also significant, $F(16, 378) = 6.453$, $MSe = .860$, $p < .001$. The variables in the model accounted for 21.5% of the variance in punishment. Once again, Hostility ($\beta = .187$, $p = .005$) and Sadness ($\beta = -.130$, $p = .044$) had a significant direct effect in a direction that was consistent with past research. Prosecution Witnesses were also significantly related to punishment in the appropriate direction ($\beta = .346$, $p < .001$) as were Defense Witnesses ($\beta = -.146$, $p = .005$). In examining the effects of the defendant composites, Defendant Rehabilitation ($\beta = -.154$, $p = .022$) and Defendant Character ($\beta = -.225$, $p = .003$) significantly predicted punishment such that if the defendant looked better, then the desire for punishment was lessened.

Once again there was a marginally significant effect for Defendant Sincerity ($\beta = .127, p = .064$) in a direction that was somewhat inconsistent with the hypotheses, but consistent with the previous finding for responsibility.

In examining evaluations of the defendant, the model for Defendant Rehabilitation was significant $F(13, 381) = 17.404, MSe = 1.795, p < .001$ and explained 37.3% of the variation in rehabilitation potential. Hostility ($\beta = -.218, p = .001$) and Sadness ($\beta = .131, p = .037$) continued to influence the mediators in the hypothesized direction. The interaction term Sad VIS x Defendant Statement was also a significant predictor ($\beta = -.143, p = .009$) indicating that when the defendant is faced with a Sad VIS and he does not make a statement he is perceived as having less rehabilitation potential than when he makes any type of statement when confronted with a Sad VIS. Prosecution Witnesses ($\beta = -.419, p < .001$) and Defense Witnesses ($\beta = .464, p < .001$) also influenced perceptions of the defendant's rehabilitation potential in the appropriate direction.

The model for Defendant Character was significant $F(13, 381) = 21.504, MSe = 1.184, p < .001$ and explained 42.3% of the variation in rehabilitation potential. Hostility ($\beta = -.132, p = .041$) and Sadness ($\beta = .208, p = .001$) continued to influence the mediators in a consistent manner. There was a significant main effect for Defendant Statement ($\beta = -.177, p < .001$) consistent with the hypothesis that a defendant will be evaluated more negatively when he remains silent as compared to making any statement. The main effect was qualified by the interaction term Sad VIS x Defendant Statement which was once again significant and consistent with the previous finding pertaining to defendant rehabilitation ($\beta = -.127, p = .022$). Prosecution Witnesses ($\beta = -.366, p <$

.001) and Defense Witnesses ($\beta = .580, p < .001$) also influenced perceptions of the defendant's character in the appropriate direction.

The model for Defendant Sincerity was significant $F(13, 381) = 13.606, MSe = 3.089, p < .001$ and explained 31.7% of the variation in perceptions of sincerity. Hostility was a significant predictor ($\beta = -.132, p = .041$) and continued to influence the mediators in a consistent manner. There was also a significant main effect for Angry VIS ($\beta = -.133, p = .018$) consistent with hypotheses that the presence of an Angry VIS (compared to a Flat VIS) results in more negative evaluations of the defendant. Once again there was a significant main effect for Defendant Statement ($\beta = -.168, p = .001$) qualified by the interaction term Sad VIS x Defendant Statement ($\beta = -.125, p = .025$). Prosecution Witnesses ($\beta = -.259, p < .001$) and Defense Witnesses ($\beta = .482, p < .001$) also influenced perceptions of the defendant's rehabilitation potential in the appropriate direction.

Although the model for Prosecution Witnesses was significant $F(11, 383) = 8.205, MSe = .788, p < .001$ and explained 19.1% of the variation in perceptions of the prosecution's case, there were fewer significant effects. There was a main effect for Sad VIS ($\beta = .118, p = .028$) suggesting that the presence of a Sad VIS as compared to a Flat VIS improved perceptions of the prosecution's case. There was also a marginally significant effect for Hostility ($\beta = .114, p = .065$) consistent with the overall pattern that individuals who experience more hostility during the course of the trial tend to favor the prosecution's case. The model for Defense Witnesses was marginally significant $F(11, 383) = 1.751, MSe = 1.971, p = .061$ and explained only 4.1% of the variation in rehabilitation potential, there were fewer significant effects. Sadness was a significant

predictor consistent with the overall pattern that individuals who report experiencing more sadness during the trial tend to favor the defense's case ($\beta = .139, p = .035$).

Summary

Overall, this model confirmed the hypothesis that a defendant's decision to not take the stand during the sentencing phase of a death penalty trial can prove detrimental when a defendant is faced with a VIS. Contrary to expectations, this effect emerged for not only the hypothesized interaction with an Angry VIS, but also with a Sad VIS. In testing the competing hypotheses regarding defendant remorsefulness, it would appear that our findings are consistent with those of Jehle et al. (2008). Perceptions of defendant sincerity directly influenced attributions of responsibility and punishment in such a way as to suggest that if the defendant's statement is perceived as sincere, it is actually detrimental to his case. This contradicts previous findings from surveys of actual capital jurors (Eisenberg, Garvey, & Wells, 1998; Sundby, 1998). In terms of perceptions of the defendant, participants are primarily relying upon his rehabilitation potential in their ultimate decision suggesting that they are considering the legally relevant information. Thus it would appear that not making a statement may be detrimental to the defendant as it allows for a VIS effect to emerge, but the question remains as to whether any statement will help combat a VIS or if the message and behavior of the defendant may have to be carefully calibrated.

As previously mentioned, the failure to find support for the hypothesis that affect will serve as a mediator may help shed some light on VIS effects we observe in this model. It was originally expected that a Sad VIS should induce feelings of sadness in an individual and an Angry VIS should induce hostility via mood contagion. Given that we

did not find support for the mood induction hypothesis, this suggests that individuals may be *reacting* to the additive effects of the evidence rather than one particular piece of affectively laden evidence. What precisely is causing them to react is unclear and may be rooted in pre-existing beliefs and traits, but affect is influencing participants in a manner that is consistent with what would be expected from appraisal theory of affect. As hypothesized, sadness appears to be decreasing punitiveness whereas hostility is increasing punitiveness as evidence by the direct effects on sentence. As expected, affective states are influencing perceptions of the evidence such that those experiencing hostility are making more negative attributions towards the defendant whereas those who are experiencing sadness are evaluating the defendant in a more positive manner. Generally speaking, it appears as if hostility creates a pro-prosecution environment whereas sadness creates a pro-defense environment. This is also consistent with appraisal theory as responsibility is one of the appraisals that distinguishes hostility from sadness and was demonstrated in the model by the direct effects of sadness and hostility on responsibility. From a legal perspective, this appraisal dimension is tied directly to reasonable doubt so it is not a far departure to propose that sadness may increase reasonable doubt and hostility decreases it. Certainty is the other appraisal dimension that distinguishes hostility from sadness so a lack of certainty may also causing people to perceive more reasonable doubt when they are sad versus hostile.

Model 2 – Partial Apology

Direct and Total Effects on Sentence.

The next model examined the efficacy of statements meant to decrease the responsibility of the defendant, specifically excuses and partial apologies. Overall, we

expected to observe that such statements should prove detrimental to the defendant even when they were coupled with an expression of sympathy as such a statements convey the message of: “I feel for your loss, but it’s not really my fault.” This model also allowed us to directly test the effects of defendant behavior in order to test the competing hypotheses presented by Jehle et al. (2008) and Eisenberg and colleagues (1998). If the defendant appeared remorseful during the statement, then it may increase perceptions of sincerity and result in more positive outcomes or it can backfire and make him appear more culpable. Finally, this model allowed us to examine how excuse, sympathy, and defendant behavior moderate the effects of a VIS. Excuse (1 = excuse present, 0 = no excuse), Sympathy (1 = sympathy present, 0 = no sympathy), and Defendant Behavior (1 = sad, 0 = flat) were represented by dichotomous variables. The direct, indirect, and total effects are included in Table 4 and significant paths are included in Figure 3.

At step 1 of the analysis the model is significant, $-2LL = 390.428$, $X^2(12) = 71.071$, $p < .001$. The main effects and control variables account for 24.8% of the variance in sentence and 71.3% of sentences were correctly classified. As hypothesized, there was a significant total effect for VIS Angry, but it was in the opposite direction suggesting that the presence of an angry VIS makes the chances of a death sentence 63% less likely than a flat VIS. The main effects for VIS Sad and Defendant Behavior were non significant. As in the previous model, there were significant direct effects for Hostility and Sadness.

In examining how remorse moderates the efficacy of a defendant statement, we there is evidence to suggest that it can help and hurt a defendant. **Given the nature of death penalty sentencing, we expected that remorse should increase the efficacy of a**

defendant statement. However, it was hypothesized that excuses should prove detrimental to the defendant. When the interaction terms are entered on step 2, there was improvement in model fit, $X^2(16) = 29.364, p = .022$. The model was significant, $-2LL = 361.064, X^2(28) = 100.435, p = < .001$, accounted for 33.7% of the variance in sentence and 74.9% of sentences were correctly re-classified with the inclusion of the interaction terms. Support was found for the hypothesis that defendant remorse may increase the efficacy of a defendant statement as there was a significant direct effect for Defendant Behavior x Excuse. The odds ratio of an excuse delivered with sadness is 37.7% less than the odds ratio predicting sentence for an excuse delivered without affect, indicating that life sentences are more likely when the defendant provides an excuse with sadness than without affect. Although our finding concerning how remorse moderates the efficacy of a defendant statement is consistent with our hypothesis, we did not expect an excuse to decrease the chances of death sentence.

This model also allowed us to test how components of the defendant statement moderate the effects of a VIS. **It was hypothesized that excuses and partial apologies should prove ineffective in combating the effects of a VIS.** Consistent with our hypothesis, there was a significant direct effect for Sad VIS x Excuse. The odds ratio for presenting an excuse is 1.512 times higher than the odds ratio for not presenting an excuse when the VIS is sad, meaning that a death sentence is more likely when there is a sad VIS and the defendant presents an excuse. Although we have found support for our hypothesis, it was expected that this effect would emerge for an Angry VIS, not a Sad VIS.

The patterns of effects for the remaining blocks were nearly identical to the previously discussed model with the only difference appearing to be an increase in the strength of the effects. Perceptions of the Prosecution and Defense Witnesses significantly improved the model when they were included on step 3, $X^2(2) = 72.141, p < .001$. The model was significant, $-2LL = 288.923, X^2(30) = 172.577, p < .001$, accounted for 52.8% of the variance in sentence and 81.6% of sentences were correctly re-classified. The inclusion of defendant rehabilitation, character, and sincerity on step 4 once again improved the model, $X^2(3) = 66.942, p < .001$. The model was significant $-2LL = 221.980, X^2(33) = 239.519, p < .001$, accounted for 67.3% of the variance in sentence and 89.4% of sentences were correctly re-classified with the inclusion of the first block of mediators. Defendant Rehabilitation was once again the only significant predictor of sentence. Finally, the inclusion of attributions of responsibility and punishment on step 5 did not significantly improve the model, $X^2(2) = 2.975, p = .226$ and the marginally significant effect for punishment did not emerge as it had in the previous model. The full model was significant, $-2LL = 219.005, X^2(35) = 242.494, p < .001$, accounted for 67.9% of the variance in sentence and 88.6% of sentences were correctly re-classified.

Indirect Effects on Sentence.

Hostility and Sadness once again directly influenced sentence and the indirect effects were identical to those described in Model 1. The same indirect effect was observed for Sad VIS as previously discussed. Hostility once again significantly influenced perceptions of prosecution witnesses and defendant rehabilitation. However, Sadness was rendered a marginally significant predictor of defense witnesses, but remained a significant predictor of defendant rehabilitation.

The direct effect for Defendant Behavior x Excuse on sentence was mediated by a weaker negative indirect effect through perceptions of Defense Witnesses and the defendant's rehabilitation potential leading to a negative moderate total effect. However, these direct effects on the mediators were only marginally significant accounting for the weak indirect effect. Regardless, when the defendant appears sad during his excuse as compared to appearing flat, it makes the defense witnesses appear stronger in turn causing perceptions of rehabilitation to increase ultimately decreasing the likelihood of a death sentence. Similar patterns emerged for the direct effects on defendant rehabilitation and defense witnesses leading to sentence.

The direct effect for VIS Sad x Excuse was mediated by a weaker positive indirect effect through perceptions of the Defense Witnesses leading to a weaker positive total effect. Thus it would appear that when the defendant is faced with a Sad VIS and he presents an excuse, perceptions of the defense witnesses' decrease which can then directly increase the chances of a death sentence or it can decrease perceptions of rehabilitation potential ultimately increasing the chances of death.

Although there was no direct effect for VIS Angry x Excuse, it indirectly influenced sentence via defense witnesses. When the defendant responds to an angry VIS with an excuse, it causes the defense witnesses to appear weaker which once again leads directly to sentence or it can indirectly influence sentence via defendant rehabilitation. A similar indirect effect emerges for VIS Sad x Sympathy suggesting that responding to a Sad VIS with an expression of sympathy also negatively impacts perceptions of the defense witnesses in turn directly leading to sentence or indirectly influencing sentence via defendant rehabilitation.

Other Direct Effects on Mediators

As with the previous model, there are several interesting effects that do not mediate the relationship between our predictors and outcome. The model predicting attributions of responsibility was significant, $F(33, 359) = 2.360$, $MSe = .852$, $p < .001$. The variables in the model accounted for 19.3% of the variance in ratings of responsibility. Hostility was now a non-significant predictor of responsibility ($\beta = .110$, $p = .119$) and Sadness was now rendered marginally significant ($\beta = -.126$, $p = .067$). There was a significant main effect for Defendant Behavior ($\beta = .167$, $p = .001$) suggesting that the defendant appeared more responsible when he appeared remorseful versus when he appeared flat, lending support for the effects observed by Jehle et al. (2008). Prosecution Witnesses was once again significant in the previous direction ($\beta = .290$, $p < .000$) and there was now a significant effect for Defendant Character ($\beta = -.168$, $p = .045$), but the previously observed trend for Defendant Sincerity was non-significant ($\beta = .123$, $p = .120$).

The model predicting punishment was also significant, $F(33, 359) = 3.573$, $MSe = .880$, $p < .001$. The variables in the model accounted for 26.6% of the variance in punishment. Once again, Hostility ($\beta = .187$, $p = .008$) and Sadness ($\beta = -.137$, $p = .045$) had a significant direct effect on punishment. There was also a significant main effect for Defendant Behavior ($\beta = .102$, $p = .047$). This effect is consistent with the direct effect observed for this variable on ratings of responsibility; a defendant who appears remorseful is perceived as deserving more punishment than a defendant who appears flat. Interestingly, the main effect proves misleading for the interaction of Defendant Behavior x Excuse ($\beta = -.120$, $p = .021$) suggesting that there is a steeper slope for the regression

line when the defendant appears sad while making an excuse compared to appearing flat while making an excuse. Thus punishment decreases more sharply when the defendant appears sad during an excuse versus when he appears flat. As in the previous model, Prosecution Witnesses ($\beta = .348, p < .001$), Defense Witnesses ($\beta = -.152, p = .007$), Defendant Rehabilitation ($\beta = -.151, p = .033$) and Defendant Character ($\beta = -.219, p = .006$) were all significant predictors and Defendant Sincerity ($\beta = .128, p = .090$) proved marginally significant.

The model for Defendant Rehabilitation was significant $F(30, 359) = 6.663, MSe = 1.834, p < .001$ and explained 37.8% of the variation in rehabilitation potential. Hostility ($\beta = -.173, p = .011$) and Sadness ($\beta = .129, p = .050$) were once again significant predictors of rehabilitation potential. Interestingly, Defendant Behavior was not a significant predictor suggesting that the appearance of remorsefulness may not factor into determinations of rehabilitation. However, the interaction between Defendant Behavior x Excuse was marginally significant ($\beta = .090, p = .074$) suggesting that the defendant may appear to have greater rehabilitation potential when his excuse is accompanied with a show of remorse as compared to appearing flat during an excuse. There was also a marginally significant effect for VIS Angry x Excuse ($\beta = -.108, p = .063$) suggesting that when an Angry VIS is present and the defendant makes an excuse, he appears to have less potential as compared to not making an excuse when faced with an Angry VIS. This effect was consistent with the hypothesis that an excuse will prove ineffective in combating an Angry VIS. Prosecution Witnesses ($\beta = -.415, p < .001$) and Defense Witnesses ($\beta = .438, p < .001$) were once again significant predictors of rehabilitation potential.

The model for Defendant Character was significant $F(30, 359) = 8.671$, $MSe = 1.160$, $p < .001$ and explained 44.2% of the variation in perceptions of the defendant's character. Hostility ($\beta = -.193$, $p = .006$) and Sadness ($\beta = .234$, $p = .001$) continued to influence perceptions of the defendant's character. As with rehabilitation, there was no significant main effect for Defendant Behavior ($\beta = .064$, $p = .206$). The interaction term for Angry VIS x Excuse was now significant ($\beta = -.162$, $p = .007$) and influenced perceptions of character in the same manner as it influenced defendant rehabilitation. Interestingly, Sad VIS x Excuse was marginally significant ($\beta = -.109$, $p = .066$) and produced the same pattern of effects observed for the Angry VIS. Prosecution Witnesses ($\beta = -.395$, $p < .001$) and Defense Witnesses ($\beta = .599$, $p < .001$) were once again significant predictors of perceptions of the defendant's character.

The model for Defendant Sincerity was significant $F(30, 359) = 6.310$, $MSe = 2.837$, $p < .001$ and explained 36.5% of the variation in perceptions of sincerity. Hostility was once again a significant predictor ($\beta = -.161$, $p = .018$) and Sadness ($\beta = .175$, $p = .008$) emerged as significant in a manner consistent with the overall effects of the variable on perceptions of the defendant. The main effect for Angry VIS ($\beta = -.130$, $p = .025$) once again emerged as a significant predictor of Defendant Sincerity. There was also a significant main effect for Defendant Behavior ($\beta = .204$, $p < .001$) suggesting that a defendant who appeared remorseful was perceived as more sincere than a defendant who appeared flat. A marginally significant effect emerged for Excuse x Sympathy ($\beta = .086$, $p = .082$) suggesting that a defendant appears more sincere when his excuse is accompanied with an expression of sympathy as compared to an excuse without sympathy. As with perceptions of the defendant's character there was once again an

effect for VIS Angry x Excuse ($\beta = -.161, p = .006$) producing the same pattern of effects. Prosecution Witnesses ($\beta = -.269, p < .001$) and Defense Witnesses ($\beta = .468, p < .001$) were once again significant predictors of perceptions of the defendant's sincerity.

The model for Prosecution Witnesses was significant $F(28, 359) = 3.141, MSe = .819, p < .001$ and explained 21.0% of the variation in perceptions of the prosecution's case. Once again, there were significant main effects for Sad VIS ($\beta = .122, p = .031$) and Hostility ($\beta = .131, p = .049$). There was also a marginally significant three-way interaction between Sad VIS x Defendant Behavior x Sympathy ($\beta = .104, p = .073$) suggesting that when the defendant appears remorseful (relative to flat affect) the prosecution looks stronger when the defendant responds to a Sad VIS with an expression of sympathy as compared to when there is a Sad VIS and no expression of sympathy. The model for Defense Witnesses was now significant $F(28, 331) = 1.595, MSe = 1.886, p = .031$ and explained 11.1% of the variation in defendant witnesses. Sadness was now a moderately significant predictor ($\beta = .133, p = .058$). There was also a marginally significant effect for Defendant Behavior x Excuse ($\beta = .095, p = .074$) indicating that when the defendant makes an excuse and appears remorseful, the defense looks better than when he makes an excuse and appears flat. However, there was a significant effect for Angry VIS x Excuse ($\beta = -.158, p = .010$) indicating that when there is an angry VIS and the defendant delivers an excuse, the defense looks worse than when there is an angry VIS and he chooses not to make an excuse. Similar patterns emerged for Sad VIS as Sad VIS x Excuse ($\beta = -.188, p = .055$) and Sad VIS x Sympathy ($\beta = -.166, p = .007$) impacted perceptions of the defense witnesses in a similar manner.

Summary

The findings from this model highlight the fine line a defendant must walk when planning to address the court. As expected, an excuse is somewhat ineffective in combating the effects of both an Angry and Sad VIS. However, if a defendant tempers his excuse with a show of remorse, he is perceived in a more positive manner and actually decreases the likelihood of a death sentence relative to appearing flat during his statement. Interestingly, it appears as if the expression of sympathy does not necessarily improve the efficacy of an excuse and may make the prosecution's case appear stronger under certain situations. Thus a partial apology does not prove effective in helping the defendant's case, but an excuse with an accompanying show of remorse is the most useful. This somewhat contradicts the effects of remorse as proposed by Jehle et al., but we do find evidence supporting their findings as well given the direct effect for defendant behavior on punishment and responsibility.

Model 3 – Full Apology

Direct and Total Effects on Sentence.

The next model tested the hypothesis that the acceptance of responsibility may serve to improve perceptions for the defendant and outcomes. As the acceptance of responsibility is one of the core components of an apology, this should improve perceptions of the defendant especially when it is accompanied with an expression of sympathy and remorse as it approximates a full apology: "I feel for your loss, and it's my fault." As with the previously discussed Partial Apology model, we can also examine behavioral congruence with a defendant's message and how these components moderate the effects of a VIS. Responsibility, Sympathy, and Defendant Behavior were represented by dichotomous variables coded as "0" if the component was absent and "1"

if it was present. The direct, indirect, and total effects are included in Table 5 and the significant paths are in Figure 4.

The acceptance of responsibility should prove beneficial to the defendant as it is the key component of an apology. At step 1 of the analysis the model is significant, $-2LL = 386.225$, $X^2(12) = 75.274$, $p < .001$. The main effects and control variables account for 26.1% of the variance in sentence and 71.9% of sentences were correctly classified. There were once again significant direct effects for Hostility and Sadness as well as the significant total effect for VIS Angry. Although there was a main effect for Responsibility as we hypothesized, it was contrary to our hypothesis suggesting that if the defendant accepts responsibility for the crime he is 1.701 times more likely to be sentenced to death compared to when he does not accept responsibility.

A full apology (Sympathy x Responsibility) should decrease the chances of a death sentence and the display of remorse should increase the efficacy of an apology. When the interaction terms are entered on step 2, there was improvement in model fit, $X^2(16) = 34.200$, $p = .005$. The model was significant, $-2LL = 352.025$, $X^2(28) = 109.474$, $p < .001$, accounted for 36.3% of the variance in sentence and 76.0% of sentences were correctly re-classified with the inclusion of the interaction terms. Contrary to our hypothesis, there was a significant direct effect for Sympathy x Responsibility qualifying the main effect for Responsibility. The odds ratio of responsibility delivered with sympathy is 1.345 times higher than the odds ratio predicting sentence for responsibility delivered without sympathy, indicating that death sentences are more likely when the defendant expresses sympathy and responsibility. Similar patterns also emerged for the marginally significant effect of Defendant Behavior x Sympathy and Defendant Behavior

x Responsibility suggesting that when affect is present for either a partial apology or a traditional apology the odds of death are greater. However, the three-way interaction reflecting a full defendant apology (Defendant Behavior x Sympathy x Responsibility) was significant and consistent with our hypotheses. A 2 x 2 x 2 ANOVA allowed for examination of simple effects for the target group (Responsibility). When the defendant is emotional, the odds ratio for qualifying the acceptance of responsibility with the expression of sympathy is 24.1% less than the odds ratio for then the defendant appears unemotional and qualifies his acceptance of responsibility with an expression of sympathy. Thus life sentences are more likely when the defendant presents a full apology with affect as compared to appearing flat.

Full apologies should successfully combat the effects of a VIS. Finally, there was a significant effect for Sad VIS x Responsibility. The odds ratio for accepting responsibility is 37.7% less than the odds ratio for not accepting responsibility when the VIS is Sad, meaning that life sentences are more likely when the defendant accepts responsibility when faced with a sad VIS than not accepting responsibility.

The patterns of effects for the remaining blocks were similar to the previously discussed models and once again the strength of the effects appeared to increase. Perceptions of the Prosecution and Defense Witnesses significantly improved the model when they were included on step 3, $X^2(2) = 76.775, p < .001$. The model was significant, $-2LL = 275.250, X^2(30) = 186.249, p < .001$ accounted for 55.9% of the variance in sentence and 82.5% of sentences were correctly re-classified with the inclusion of perceptions of the Prosecution Witnesses and Defense Witnesses. The inclusion of defendant rehabilitation, character, and sincerity on step 4 once again improved the

model, $X^2(3) = 65.860, p < .001$. The model was significant, $-2LL = 209.390, X^2(33) = 252.109, p < .001$, accounted for 69.7% of the variance in sentence and 88.6% of sentences were correctly re-classified with the inclusion of the first block of mediators. Defendant Rehabilitation was once again the only significant predictor of sentence. The inclusion of attributions of responsibility and punishment on step 5 once again did not significantly improve the model, $X^2(2) = 4.194, p = .123$ and the marginally significant effect for punishment emerged once more. The full model was significant, $-2LL = 205.197, X^2(35) = 256.303, p < .001$. The final model accounted for 70.5% of the variance in sentence and 88.9% of sentences were correctly re-classified.

Indirect Effects on Sentence.

Hostility and Sadness once again directly influenced sentence and the indirect effects were similar to those previously in addition to the previously discussed indirect effect for Sad VIS. There was also the same indirect effect for Sad VIS x Sympathy as described in Model 2. Interestingly, Responsibility, Sympathy x Responsibility, Defendant Sad x Sympathy, and Defendant Sad x Sympathy x Responsibility did not produce significant indirect effects despite their direct effects on sentence.

There was a marginally significant direct effect for Sad VIS x Responsibility on perceptions of the defense witnesses. Once again, defense witnesses lead directly to sentence and they also influenced perceptions of defendant rehabilitation which then lead to sentence. Thus it would appear that when the defendant chose to respond to a Sad VIS with the acceptance of responsibility it made the defense's case appear stronger which decreased the chances of a death sentence or increased perceptions of defendant rehabilitation leading to a decrease in life sentences.

In addition to a significant direct effect on sentence, Defendant Sad x Responsibility indirectly influenced sentence via defendant rehabilitation. When the defendant accepted responsibility with a show of emotion as compared to responsibility without emotion, perceptions of rehabilitation potential decreased thus increasing the likelihood of a death sentence.

Other Direct Effects on Mediators

The model predicting attributions of responsibility was significant, $F(33, 359) = 2.636$, $MSe = .833$, $p < .001$. The variables in the model accounted for 21.1% of the variance in ratings of responsibility. Hostility ($\beta = .119$, $p = .094$) and Sadness ($\beta = -.128$, $p = .062$) were both marginally significant. Defendant Behavior ($\beta = .167$, $p = .001$) was once again significant as it had been in the partial apology model. There was a marginally significant effect for Responsibility ($\beta = .100$, $p = .058$), which is not unusual as greater attributions of responsibility were made when the defendant accepted responsibility for the crime.

A number of interaction terms proved marginally significant predictors of responsibility. The effect for Defendant Behavior x Sympathy x Responsibility ($\beta = -.094$, $p = .071$) influenced attributions of responsibility in a manner that was consistent with its direct effect on sentence; if the defendant displayed flat affect (relative to sad affect), he appeared to be more responsible for the crime when his expression of responsibility was accompanied with an expression of sympathy as compared to when he accepted responsibility without an expression of sympathy. There was a marginally significant effect for Angry VIS x Defendant Behavior x Sympathy ($\beta = -.102$, $p = .090$). If the defendant displayed flat affect (relative to sad affect), he appeared to be more

responsible for the crime when he expresses sympathy to combat an Angry VIS as compared to when he does not express sympathy when faced with an Angry VIS. A similar pattern emerged for Sad VIS x Defendant Behavior x Responsibility ($\beta = -.115, p = .058$), which was qualified by the Sad VIS x Responsibility effect ($\beta = .118, p = .052$) indicating that a defendant appears more responsible when he chooses to respond to a Sad VIS with an expression of responsibility versus not expressing responsibility when faced with a Sad VIS. Once again, Prosecution Witnesses ($\beta = .281, p < .000$) and Defendant Character ($\beta = -.181, p = .030$), were significant predictors of responsibility.

The model predicting punishment was significant, $F(33, 359) = 3.569, MSe = .880, p < .001$. The variables in the model accounted for 26.5% of the variance in punishment. Hostility ($\beta = .190, p = .007$), Sadness ($\beta = -.138, p = .044$), and Defendant Behavior ($\beta = .102, p = .047$) were once again significant. The interaction between Defendant Behavior x Sympathy ($\beta = .091, p = .078$) was marginally significant and suggested that punishment was greater when a defendant appeared sad while expressing sympathy compared to expressing sympathy while appearing flat. Defendant Behavior x Sympathy x Responsibility was also significant ($\beta = -.142, p = .006$) and influenced punishment in a manner that was consistent with its effects on sentence and responsibility. Prosecution Witnesses ($\beta = .339, p < .001$), Defense Witnesses ($\beta = -.143, p = .011$), Defendant Rehabilitation ($\beta = -.160, p = .025$) and Defendant Character ($\beta = -.225, p = .005$) were all significant predictors and Defendant Sincerity ($\beta = .142, p = .058$) proved marginally significant once again.

The model for Defendant Rehabilitation was significant $F(30, 359) = 7.060, MSe = 1.794, p < .001$ and explained 39.2% of the variation in rehabilitation potential.

Hostility ($\beta = -.176, p = .010$) and Sadness ($\beta = .132, p = .045$) were once again significant predictors of rehabilitation potential. Defendant Behavior x Responsibility was also significant ($\beta = -.123, p = .015$) suggesting that the defendant may appear to have less rehabilitation potential if his acceptance of responsibility is accompanied with a show of remorse as compared to appearing flat while accepting responsibility. There was also a marginally significant effect for VIS Angry x Sympathy ($\beta = .101, p = .087$) suggesting that when an Angry VIS is present and the defendant expresses sympathy, he appears to have greater potential as compared to not expressing sympathy when faced with an Angry VIS. Prosecution Witnesses ($\beta = -.423, p < .001$) and Defense Witnesses ($\beta = .447, p < .001$) were once again significant predictors of rehabilitation potential.

The model for Defendant Character was significant $F(30, 359) = 8.774, MSe = 1.154, p < .001$ and explained 44.4% of the variation in perceptions of the defendant's character. Hostility ($\beta = -.189, p = .007$) and Sadness ($\beta = .230, p = .001$) continued to influence perceptions of the defendant's character. Sad VIS x Responsibility proved to be marginally significant ($\beta = .102, p = .089$) the pattern of which suggests that the defendant looks better when he combats a Sad VIS by accepting responsibility relative to not accepting responsibility when faced with a Sad VIS. Prosecution Witnesses ($\beta = -.405, p < .001$) and Defense Witnesses ($\beta = .608, p < .001$) were once again significant predictors of perceptions of the defendant's character.

The model for Defendant Sincerity was significant $F(30, 359) = 6.118, MSe = 2.869, p < .001$ and explained 35.8% of the variation in perceptions of sincerity. Hostility ($\beta = -.156, p = .022$), Sadness ($\beta = .170, p = .011$), Angry VIS ($\beta = -.129, p = .026$), and Defendant Behavior ($\beta = .203, p < .001$) were all once again significant. A

marginally significant effect emerged for Defendant Behavior x Sympathy x Responsibility ($\beta = .088, p = .082$), but now the pattern of effects was opposite of the previous patterns; the defendant appeared more sincere when he appeared sad (relative to flat) and his acceptance of responsibility was accompanied with the expression of sympathy versus accepting responsibility and not expressing sympathy. Prosecution Witnesses ($\beta = -.281, p < .001$) and Defense Witnesses ($\beta = .475, p < .001$) were once again significant predictors of perceptions of the defendant's sincerity.

The model for Prosecution Witnesses was significant $F(28, 359) = 3.292, MSe = .819, p < .001$ and explained 21.8% of the variation in perceptions of the prosecution's case. Once again, there were significant main effects for Sad VIS ($\beta = .122, p = .031$) and Hostility ($\beta = .133, p = .046$) and a marginally significant effect for Sad VIS x Defendant Behavior x Sympathy ($\beta = .100, p = .084$). The model for Defense Witnesses was non-significant $F(28, 359) = 1.335, MSe = 1.924, p = .123$ and explained 10.1% of the variation in defendant witnesses. Sadness was moderately significant ($\beta = .131, p = .061$) and the interaction for Sad VIS x Sympathy ($\beta = -.128, p = .040$) emerged as significant once again. There were marginally significant effects for Angry VIS x Responsibility ($\beta = .107, p = .083$) and Sad VIS x Responsibility ($\beta = .110, p = .075$) both suggesting that the defense looks stronger when they combat either VIS by having the defendant accept responsibility for the crime as compared to when he's faced with a VIS and does not accept responsibility.

Summary

The results of this model show the many ways that remorsefulness may prove detrimental to the defendant and how the core components of a full apology can help and

hurt the defendant. Contrary to expectations, apology does not serve the same purpose in the legal arena as it does in social interactions. The acceptance of responsibility and responsibility with an expression of sympathy resulted in an increased likelihood of death sentences. We also found contrary evidence for our hypothesis that the expression of remorse should increase the efficacy of a defendant statement. When remorse was coupled with the expression of sympathy or the acceptance of responsibility the outcomes for the defendant were negative. Yet we did observe evidence that was consistent with our expectations that the presence of a full apology (Defendant Behavior x Sympathy x Responsibility) decreased the likelihood of a death sentence. These results appear to support the findings of Jehle et al. (2008) that a show of remorse actually leads to more negative outcomes, except in the case of full apologies. In terms of how each component of the message combats the effects of a VIS, we do observe effects consistent with our hypothesis that the acceptance of responsibility can counter the VIS. For example, even though the acceptance of responsibility leads to an increase in the likelihood of a death sentence, the Sad VIS x Responsibility effect on sentence suggests the likelihood of a death sentence is lessened when the defendant chooses to respond to a Sad VIS by accepting responsibility versus not accepting responsibility when faced with a Sad VIS.

Model 4 – Processing of Evidence

Direct and Total Effects on Sentence.

The final model allowed us to examine two different phenomena: 1) how the affective cues delivered via a VIS may moderate perceptions of other forms of evidence and 2) how participants' affective states may moderate the effects of evidence. As previously discussed, there was no evidence to support the mood contagion hypothesis

which posed affect as a mediator. However, this does not mean that such states may not moderate the effects of the trial evidence. Further, if the VIS is not playing a role in mood contagion as originally hypothesized, it is possible that participants may be using the affect inherent in these statements as cues for inferring other forms of information (i.e. sincerity of the victim's mother, level of harm). Thus this model tested the moderated effects of affective states and affective cues in shifting perceptions of the evidence. Consistent with Appraisal Theory of Affect, it was hypothesized that sadness should elicit more central processing of the evidence whereas hostility should result in peripheral processing. Thus we would expect to see that participants would make the correct attributions consistent with the evidentiary weight in a given cell (i.e. the defendant should look worse when a PCR is present or Dangerousness is high). Under this hypothesis, we would expect to see significant paths stemming from the interactions between PANAS Sadness and the evidence whereas the paths should be null for the interactions between PANAS Hostility since they are processing peripherally and are thus relying on other pieces of information.

Given the failure to find support for the mood contagion hypothesis and the findings from previous models, it would appear as if the Sad VIS may be more detrimental to the defendant under certain situations as compared to an Angry VIS, a finding that contradicts our original expectations. In terms of how a VIS may influence perceptions of evidence, it is possible that the presentation of a Sad VIS may create a stronger case against the defendant when it is coupled with other forms of evidence as compared to an Angry VIS. In some ways, this effect may represent the intersection of appraisal theory and affect control theory; sadness is associated with situational

attributions whereas anger is associated with attributions to the individual. When coupled with affect control theory, it is possible that individuals are reacting to the affect in the VIS by trying to explain the emotional display of the victim's mother in a manner consistent with appraisal theory. Thus if the mother appears sad, it may be inferred that there are other things in the environment that are causing the sadness that may ostensibly be linked to the crime, but appear to amplify it whereas anger is primarily just the reaction from the mother independent of other aspects in the environment. The direct, indirect, and total effects are included in Table 6 and the direct effects are presented in Figure 5.

At step 1 of the analysis the model is significant, $-2LL = 392.236, X^2(11) = 69.263, p < .001$. The main effects and control variables account for 24.3% of the variance in sentence and 71.0% of sentences were correctly classified. There were once again significant direct effects for Hostility and Sadness and a significant total effect for Angry VIS. Although the direct effects for Prior Criminal Record were non-significant, it produced a significant total effects, but in the opposite direction of what we would necessarily expect. The total effect for Prior Criminal Record suggests that after we account for the other variables in the model, the chances of a death sentence are 55.5% less likely when the defendant has a prior criminal record as compared to when there is no prior criminal record. However, this strange effect is in the opposite direction of the correlation coefficient for PCR and Sentence ($r = .04$). By individually adding the predictors into the model, it was discovered that the interaction terms of Hostility x PCR and Sadness x Dangerousness suppressed the PCR effect.

Participants will use the affective cues conveyed by a VIS to judge other pieces of evidence. When the interaction terms are entered on step 2, there was no improvement in model fit, $X^2(13) = 16.487, p = .224$. The model was significant, $-2LL = 375.750, X^2(24) = 85.750, p < .001$, accounted for 29.4% of the variance in sentence and 75.3% of sentences were correctly re-classified with the inclusion of the interaction terms. Consistent with expectations concerning the Sad VIS, there was a significant direct effect for VIS Sad x Prior Criminal Record, but it was in the opposite direction. The odds ratio for prior criminal record delivered with a sad VIS is 32.3% less than the odds ratio predicting sentence for a sad VIS delivered without a prior criminal record, indicating that life sentences are more likely when there is a prior criminal record and sad VIS than a Sad VIS presented with no prior criminal record. Sad VIS x Prior Criminal Record x Dangerousness was marginally significant and in the hypothesized direction. A 2 x 2 x 2 ANOVA allowed for examination of simple effects for the target group (Sad VIS). The odds ratio for Sad VIS x Dangerousness is 1.327 times greater for the defendant when a PCR is present as compared to the odds ratio for Sad VIS x Dangerousness when a PCR is absent, thus the likelihood of a death sentence is greater when a PCR and Sad VIS are present, and Dangerousness is high.

Sadness should elicit central processing whereas hostility should result in peripheral processing. Also consistent with our hypotheses, there was a significant total effect for Sadness x Dangerousness x PCR, but the direction of the effect is in the opposite of what we would expect if participants are processing centrally. When a PCR is present, for every one unit increase in Sadness the odds ratio is 40.7% lower for when he's a high risk of future dangerousness versus the odds ratio for when he poses a low

risk. When we take into consideration that sadness decreases punitiveness and appears to cause individuals to favor the defense, this effects may be indicative of participants filtering the evidence through such a lens. Thus the more sadness one experiences may cause them to experience greater reasonable doubt concerning some of the prosecution's evidence. For example, they may be thinking of other ways to explain the existence of a prior criminal record or they may doubt the credibility of the expert delivering the risk assessment.

The patterns of effects for the remaining blocks were similar to the previously discussed models and once again the strength of the effects appeared to increase. Perceptions of the Prosecution and Defense Witnesses significantly improved the model when they were included on step 3, $X^2(2) = 70.391, p < .001$. The model was significant, $-2LL = 305.359, X^2(26) = 156.141, p < .001$, accounted for 48.7% of the variance in sentence and 81.1% of sentences were correctly re-classified with the inclusion of perceptions of the Prosecution Witnesses and Defense Witnesses. The inclusion of defendant rehabilitation, character, and sincerity on step 4 once again improved the model, $X^2(3) = 80.396, p < .001$. The model was significant, $-2LL = 224.963, X^2(29) = 236.537, p < .001$, accounted for 66.7% of the variance in sentence and 88.0% of sentences were correctly classified. Defendant Rehabilitation was once again the only significant predictor of sentence. The inclusion of attributions of responsibility and punishment on step 5 did not significantly improve the model, $X^2(2) = 3.356, p = .187$ and the marginally significant effect for punishment emerged once more. The full model was significant, $-2LL = 221.607, X^2(31) = 239.892, p < .001$. The final model accounted for 67.4% of the variance in sentence and 88.6% of sentences were correctly classified.

Indirect Effects on Sentence.

Hostility and Sadness once again directly influenced sentence and the indirect effects were similar to those previously in addition to the previously discussed indirect effect for Sad VIS. Although neither piece of evidence yielded a significant direct effect on sentence, Prior Criminal Record and Dangerousness indirectly influenced via defendant rehabilitation. When a Prior Criminal record was present, it decreased perceptions of rehabilitation potential which in turn increased the likelihood of a death sentence. Dangerousness operated in a similar manner such that as the defendant's risk of violence increased, his rehabilitation potential decreased thus increasing the likelihood of a death sentence. There was also a marginally significant effect for Prior Criminal record suggesting that the presence of a Prior Criminal record made the other defense witnesses appear weaker. Defense witnesses had paths leading directly to sentence or a path leading to defendant rehabilitation suggesting that as perceptions of the defense witnesses decreased, perceptions of rehabilitation decreased ultimately increasing the likelihood of a death sentence.

The direct effect of Sad VIS x Prior Criminal Record on sentence also produced an indirect effect which was mediated via Prosecution Witnesses. When there was a Sad VIS present and the prosecution presented evidence of a Prior Criminal Record, it made the other prosecution witnesses appeared weaker thus decreasing the likelihood of a death sentence. This effect on Prosecution Witnesses also served to increase perceptions of defendant rehabilitation which served to decrease the likelihood of a death sentence. At first glance, these two indirect effects are somewhat perplexing as our results suggests that the Sad VIS appears to be the more inflammatory form of victim impact evidence.

One would expect that when this is coupled with a Prior Criminal Record that it should make the defendant look worse, yet we observe the opposite effects. It is possible that the presence of a Prior Criminal Record may be such a strong piece of evidence that the inclusion of affectively laden evidence such as a VIS creates a tipping point where participants feel like the prosecution is just presenting anything they can to ensure a death sentence thus making them appear unfocused.

Other Direct Effects on Mediators

The model predicting attributions of responsibility was significant, $F(29, 359) = 2.340$, $MSe = .865$, $p < .001$. The variables in the model accounted for 17.1% of the variance in ratings of responsibility. Hostility was marginally significant ($\beta = .121$, $p = .091$) whereas Sadness ($\beta = -.140$, $p = .044$) was significant. The interaction between Angry VIS x PCR was significant ($\beta = -.135$, $p = .027$) suggesting a steeper decrease in punishment when there is a PCR and Angry VIS as compared to when there is no PCR and an Angry VIS. Prosecution Witnesses were once again significant ($\beta = .277$, $p < .001$) as were Defendant Character ($\beta = .121$, $p = .091$) and Defendant Sincerity ($\beta = .121$, $p = .091$).

The model predicting punishment was significant, $F(29, 359) = 3.665$, $MSe = .895$, $p < .001$. The variables in the model accounted for 24.4% of the variance in punishment. Hostility ($\beta = .196$, $p = .005$) and Sadness ($\beta = -.150$, $p = .029$) were once again significant. The interaction for Angry VIS x PCR ($\beta = -.109$, $p = .065$) was marginally significant and represented a similar pattern as it did for responsibility. However, Sad VIS x PCR ($\beta = -.186$, $p = .002$) was significant and reflected the same pattern of data as an Angry VIS. There was also a marginally significant effect for

Sadness x PCR ($\beta = .128, p = .068$) lending support to the hypothesis that sadness is leading to the appropriate attributions about punishment when a PCR is present versus absent. Prosecution Witnesses ($\beta = .325, p < .001$), Defense Witnesses ($\beta = -.128, p = .023$), Defendant Rehabilitation ($\beta = -.189, p = .009$) and Defendant Character ($\beta = -.193, p = .016$) and Defendant Sincerity ($\beta = .157, p = .033$) were all significant once again.

The model for Defendant Rehabilitation was significant $F(26, 359) = 8.120, MSe = 1.783, p < .001$ and explained 38.8% of the variation in rehabilitation potential.

Hostility ($\beta = -.164, p = .014$) was once again significant and Sadness ($\beta = .117, p = .071$) was marginally significant. There were also significant main effects for Prior Criminal Record ($\beta = -.110, p = .026$) and Dangerousness ($\beta = -.125, p = .012$) indicating that the defendant has greater rehabilitation potential when he has no PCR and poses a low risk of dangerousness as compared to when there is a PCR and he poses a high risk. Prosecution Witnesses ($\beta = -.413, p < .001$) and Defense Witnesses ($\beta = .451, p < .001$) were once again significant predictors of rehabilitation potential.

The model for Defendant Character was significant $F(26, 359) = 9.433, MSe = 1.182, p < .001$ and explained 42.4% of the variation in perceptions of the defendant's character. Hostility ($\beta = -.184, p = .008$) and Sadness ($\beta = .224, p = .001$) continued to influence perceptions of the defendant's character. Sad VIS x PCR was also a significant predictor ($\beta = .102, p = .089$), but the pattern of results is contrary to expectations; when there is a Sad VIS and PCR the defendant is perceived in a more positive manner as compared to when there was a Sad VIS and no PCR. Prosecution Witnesses ($\beta = -.388, p < .001$) and Defense Witnesses ($\beta = .583, p < .001$) were once again significant predictors of perceptions of the defendant's character.

The model for Defendant Sincerity was significant $F(26, 359) = 6.474$, $MSe = 2.933$, $p < .001$ and explained 33.6% of the variation in perceptions of sincerity. Hostility ($\beta = -.137$, $p = .046$), Sadness ($\beta = .147$, $p = .029$), and Angry VIS ($\beta = -.130$, $p = .027$) were all once again significant. There was also a significant main effect for Prior Criminal Record ($\beta = -.131$, $p = .010$) suggesting that the defendant appeared more sincere when there was no PCR compared to the presence of a PCR. Prosecution Witnesses ($\beta = -.261$, $p < .001$) and Defense Witnesses ($\beta = .471$, $p < .001$) were once again significant predictors of perceptions of the defendant's sincerity.

The model for Prosecution Witnesses was significant $F(24, 359) = 3.822$, $MSe = .804$, $p < .001$ and explained 21.5% of the variation in perceptions of the prosecution's case. Once again, there were significant main effects for Sad VIS ($\beta = .122$, $p = .032$) and Hostility ($\beta = .135$, $p = .043$). There was also a significant effect for Sad VIS x PCR ($\beta = -.153$, $p = .007$) suggesting that the prosecution looked weaker when there was a Sad VIS coupled with a PCR versus a Sad VIS without a PCR. The model for Defense Witnesses was non-significant $F(24, 359) = 1.246$, $MSe = 1.942$, $p = .199$ and explained 8.2% of the variation in defendant witnesses. Sadness was moderately significant ($\beta = .132$, $p = .059$) and a marginally significant main effect emerged for Prior Criminal Record ($\beta = -.091$, $p = .086$) suggesting that the defense looks worse when there is a PCR as compared to when there is no PCR.

Summary

The results from this model are somewhat mixed. As expected, we did observe null effects for the interactions between hostility and the evidence, and significant effects for the interactions of sadness and the evidence. This does suggest that those who are

sad are more carefully processing the evidence. However, when we examine the pattern of these effects it does not necessarily suggest *accurate* processing. At first, the significant total effect for Sadness x PCR x Dangerousness presents the opposite of what we would expect to see if people are carefully weighing the evidence; we would expect to see that when a PCR is present, for every increase in sadness we would expect to see the odds of death increase for when he's a high danger as compared to when there is no PCR and he's a low danger. Yet when we consider that the results from all four models appear to suggest that sadness results in less punitiveness overall, it's possible that sad individuals are *overanalyzing* the evidence since they are finding more reasonable doubt.

Although affect does influence perceptions of the evidence, we do find some evidence that the affective cues associated with the VIS also moderate the evidence in a somewhat perplexing manner. Although the hypothesized pattern exists for Sad VIS x Dangerousness and Sad VIS x PCR x Dangerousness, the Sad VIS x PCR interaction suggests that the likelihood of a death sentence decreases when there is a Sad VIS and PCR as compared to a Sad VIS and no PCR. As previously mentioned, the Sad VIS appears to be more detrimental to the defendant under certain situations. It is possible that when it is coupled with a strong piece of evidence such as a PCR that participants feel one piece of evidence doesn't contribute much beyond the other thus creating a sense that the prosecution is "fishing" for evidence to sink the defendant, a finding which also fits nicely with the effects observed for responsibility, punishment, and prosecution witnesses. It also explains the Sad VIS x PCR effect on character where the defendant actually looks better when there is a Sad VIS and PCR versus a Sad VIS and no PCR. As with the defendant's decision to address the court, these findings appear to suggest that

the prosecution must be careful in considering the situations in which it would be prudent for them to present a VIS coupled with other forms of evidence as there is the possibility it can actually hurt their case.

CHAPTER 5: Discussion

Through the years, legislators have increased the involvement of victims in the criminal justice system in order to ensure that voice be given to those who have been directly or indirectly impacted by crime. One of the most controversial pieces of legislation has focused on the admissibility of victim impact statement in capital trials after the Supreme Court ruling in *Payne vs. Tennessee* (1991). Critics have argued that the presentation of a VIS tilts the scales in favor of the prosecution and places unwarranted attention upon extralegal information, but proponents argue that such rights are essential in order to ensure that jurors are informed about the full extent of harm resultant from the crime (Myers & Greene, 2004). Scholars have attempted to examine the conditions under which a VIS may lead to inaccurate decision making in capital trials with convergent results indicating that the mere presence of this evidence can increase the likelihood of a death sentence and that the cues conveyed via a VIS may lead to inaccurate decisions (Burkhead, Luginbulh, & Wrenn, 1994; Luginbuhl & Burkheald, 1995; Greene, Koehring & Quiat, 1998; Myers & Arbuthnot, 1999; Myers, Godwin, Latter, & Winstanley, 2004).

Even though our knowledge concerning the effects of VIS has grown exponentially, there is still much that we do not understand in terms of the underlying mechanisms involved in the cognitive processing of such evidence. As originally expressed in the Supreme Court opinion in *Booth vs. Maryland* (1987), there is the danger that VIS may do little aside from compromise the rationality of the jury by causing them to focus on emotionally laden evidence. The prior research on emotionality of VIS has primarily treated affect as a global construct with evidence to suggest that the

affectivity of a VIS is not necessarily as influential as its content or other forms of trial evidence (Myers et al., 2002; Gordon & Brodsky, 2007). These studies represent an important first step in understanding the complex role emotions may play in the courtroom, but the picture is not yet complete. Based on the social cognitive literature relating to affect (Bodenhausen et al., 1994), it may not be the intensity of the affect or the valence that is most influential to individuals but the cognitive appraisals associated with each affective state. Appraisal Theory of Affect (Smith & Ellsworth, 1985; Lerner & Keltner, 2000) contends that emotions can be distinguished on the basis of several appraisal dimensions that influence how individuals process information. Recent research on appraisal theory has focused on identifying differences in processing within affective valence with specific attention paid to anger and sadness. As a whole, this research suggests that anger is associated with greater certainty which results in more peripheral processing whereas sadness is associated with uncertainty leading to more central processing (Tiedens & Linton, 2001; Lerner & Tiedens, 2006). Anger has also been shown to cause individuals to make greater attribution errors and increase perceptions of responsibility whereas sadness appears to function in the opposite manner (Small & Lerner, 2008). In applying these findings to the context of capital trials featuring a VIS, it is certainly possible that jurors who experience sadness and anger during the course of the trial may process the evidence in a manner consistent with the findings of Appraisal Theory. Further, affect may mediate the relationship between evidence and sentencing outcomes as mood contagion may occur by which jurors are passively induced into affective states stemming from the affect conveyed by the individual presenting a VIS.

Finally, with all of the attention focused upon understanding how the presentation of VIS influences mock jurors, it is unclear what a defendant can do to balance the scales of justice when confronted with a VIS. One potential solution a defendant may consider is to shift the affective focus of the trial by directly addressing the jury during the sentencing phase of capital trials. However, the past research on apology and defendant remorsefulness is quite mixed suggesting that this may actually hurt the defendant in certain situations. (Niedermeir, Horowitz, & Kerr, 1999; Niedermeir, Horowitz, & Kerr, 2001, Bornstein, Rung, & Miller, 2002; Robbennolt, 2003, Jehle et al., 2008). Even though there is a risk in addressing the jury, data derived from post-trial surveys and interviews with actual capital jurors suggests that remaining silent during trial or appearing unremorseful may be just as detrimental (Eisenberg, Garvey, & Wells, 1998; Sundby, 1998). In order to fully understand the effects of defendant statements on mock jurors, one must first consider how the content of the statement conveys information concerning the culpability of the defendant. Accounts, specifically excuses, are meant to provide the audience with information regarding an event, but they ultimately serve to deny/decrease the responsibility an individual accepts for their transgression (Goffman, 1971). Partial apologies also represent a different form of accounts as such statements serve to convey sympathy for the victim's pain, but without the acceptance of responsibility (Robbennolt, 2003). Both forms of accounts differ from apologies which are characterized by the acceptance of responsibility for the transgression and an emotional display meant to convey remorse (Petrucci, 2002). Although this is dangerous from a legal perspective as responsibility directly inform legal culpability, past research on apologies has illustrated that an apology can actually *decrease* punishment and

negative affect (Weiner et al., 1991). Thus it is possible that an apology may moderate the potentially negative effects of a VIS, but it is a complex situation where a defendant must tread carefully.

The purpose of the present research was to approach the study of the affectivity of VIS from an Appraisal Theory perspective in order to examine how anger and sadness conveyed via the behavior of the individual presenting the VIS may influence mock jurors. It was originally hypothesized that affect (as measured by the PANAS-X) would mediate the relationship between evidence and sentencing decisions providing us with evidence of mood contagion. It was also expected that a VIS conveyed with anger would be most damaging to the defendant due to anger being associated with greater negative attributions to the individual and an increased desire for punishment as compared to a VIS conveyed with sadness or flat affect. Relative to other pieces of trial evidence (prior criminal record and dangerousness), anger should lead to more peripheral processing of this information whereas sadness should result in central processing.

The secondary purpose of this study was to examine how jurors will be influenced by a defendant's statement and whether it might prove successful in combating the potentially negative effects of a VIS. It was hypothesized that a defendant who remains silent during the sentencing phase of capital trials would be judged more harshly than a defendant who addresses the court. In terms of the content of the statement, it was expected that a full apology would result in more positive outcomes for the defendant as compared to an excuse or partial apology. We were also essentially testing two competing hypotheses related to the remorseful behavior of the defendant since remorse has been shown to be both detrimental and helpful under certain situations. It was

expected that the capital sentencing context would present a different decision making task to jurors causing a display of remorse to be perceived in a more positive manner than appearing flat during the statement. It was also expected that the content of the defendant's statement would prove useful in moderating the effects of a VIS with responsibility and sympathy x responsibility proving the most effective relative to excuses.

The results of this study provide preliminary results that highlight the tightrope that defense attorneys and prosecutors must walk when considering the presentation of affectively laden evidence. Careful consideration may have to be given to how this evidence fits into the larger picture and whether it would be beneficial to play to the emotions of the jury. In many ways, the defendant has the largest burden to face as the results of this study show that his decision to remain silent proves detrimental, but there is also a danger when he takes the stand. Thus it may appear as if defendants and defense attorneys may wish to consider not only how the behavior of the defendant could be carefully calibrated with the message in some instances, but they may also wish to estimate how that message may be altered by the presentation of other forms of evidence.

Summary: Affect & Victim Impact Statements

Although it was originally hypothesized that affect would mediate the relationship between trial evidence and sentencing outcomes, we did not find any support for this hypothesis. Thus it would appear that mood contagion is not playing a role in influencing the emotions of mock jurors. This finding is consistent with the results of Myers and colleagues (2002) and extends their finding beyond negative affect to account for differentiation within negative affect, sadness and anger. This finding also provides us

with greater insight into the complexity of affect in the jury box. As mood contagion is described as a fairly passive and unconscious response to emotional stimuli, this process would appear to be somewhat contradictory to the task of serving as a juror. Jurors are instructed to critically examine the evidence and to maintain impartiality. Thus simply allowing oneself to be overwhelmed by the affect of one trial player may be seen as a means of compromising impartiality. Since they are actively engaging the evidence, it is possible that their anger and sadness is a *reaction* to the additive effects of the evidence which is influenced by pre-existing attitudes and traits. This is not to say that affect does not play a role in capital decision making, but the underlying mechanisms involved in *how* these emotions are shifted within jurors remains somewhat elusive.

Even though we failed to support the affect-as-mediator hypothesis, we did find support for our hypothesis that sadness and anger would differentially influence the processing of evidence in a manner that is consistent with Appraisal Theory. It was hypothesized that an angry VIS would be more damaging than a sad or flat VIS, but this requires some re-interpretation due to our failure to find evidence of mood contagion as the VIS was originally thought to be the agent by which this process would occur. Nevertheless, anger and sadness are acting in the manner we originally hypothesized even though we do not find evidence of mood contagion. Affect is directly influencing sentencing outcomes as hostility results in an increased likelihood of a death sentence whereas increased sadness decreases the likelihood of a death sentence. Sadness and anger also directly affected punishment and responsibility in similar manners. Emotions are also influencing perceptions of the evidence in a manner consistent with our hypotheses as anger is resulting in more negative evaluations of the defendant as

compared to sadness. Overall, it appears as if hostility creates a tendency to favor the prosecution's evidence whereas sadness creates greater favor of the defense, a finding that we explain as possibly being tied into the appraisal dimension of certainty influencing determinations of reasonable doubt.

It was also hypothesized that we would observe differences in terms of how anger and sadness influenced the processing of evidence. This is also rooted in the appraisal dimension of certainty as anger should create greater certainty and promote peripheral processing whereas the uncertainty associated with sadness should lead to central processing. Consistent with our hypothesis, we did find support that mock jurors who experienced greater sadness were more sensitive to variations in other forms of trial evidence as compared to those who were experiencing hostility. At first glance, this could be interpreted that those experiencing sadness are more carefully attending to the evidence thus suggesting central processing as compared to the null results for hostility. However, when we interpret the pattern of the results it does not necessarily reflect *accurate* decision making one would expect from central processing as we observe sad individual are making the inappropriate inferences when a prior criminal record is present. It is possible that since sadness decreases punitiveness, increases pro-defendant perceptions, and decreases attributions of responsibility, this finding might reflect evidence that sadness may cause people to overanalyze the evidence and find greater reasonable doubt.

In addition to affective states influencing perceptions of the evidence and processing, it would also appear as if participants may be using the affect conveyed via the VIS as a cue in assessing the trial evidence. The interaction between sad VIS and

prior criminal record suggests that the likelihood of a death sentence decreases when a sad VIS is presented in addition to a prior criminal record. A similar contradictory pattern also emerged for Sad VIS x Prior Criminal Record on perceptions of the defendant's character, responsibility, punishment, and prosecution witnesses. Since the sad VIS appears to be a fairly strong piece of evidence, it is possible that when it is coupled with an equally (if not stronger) piece of evidence such as a prior criminal record that a backlash effect may occur such that participants feel one piece of evidence doesn't contribute much beyond the other thus creating the appearance that the prosecution may be grasping at straws.

The influence of the VIS is not only moderated by the defendant's statement, but other pieces of evidence also play a role in impacting the effects of a VIS. We originally manipulated the presentation of the defendant's prior criminal record and future risk of violence in order to gauge how affect influences the processing of trial evidence, but our results highlight the complexity of decision making in death penalty trials. The results support our hypothesis that individuals experiencing sadness would be more sensitive to variations in the trial evidence as compared to those experiencing hostility building upon previous research involving the application of Appraisal Theory to legal judgments (Semmler & Brewer, 2002; Ask & Granhag, 2007). However, the pattern of results is the opposite of what one would expect of accurate decision making yet it fits into the overall pattern that those who experience sadness are less punitive and more pro-defendant as compared to those who experience hostility (Small & Lerner, 2008). In interpreting these results we must once again keep in mind that our failure to find support for the mood contagion hypothesis suggests that affect may be influenced by the additive effects of the

evidence as well as pre-existing attitudes and traits. Nevertheless, it would also appear that participants may be using the affect conveyed via the VIS as a cue in assessing the trial evidence. Interestingly, these results highlight instances in which the presentation of a VIS may create a backlash effect for the prosecution suggesting that it may be excessive to present an effectively powerful piece of information if the deck is already stacked against the defendant.

Summary: Remorse, Accounts, and Apology

It was first hypothesized that a defendant who remained silent during the penalty phase of the trial would be judged more harshly than one who took the stand. We did find support for this hypothesis as the defendant was perceived more negatively and incurred harsher penalties when he remained silent as compared to taking the stand and making any form of a statement. Perhaps the full efficacy of a defendant statement cannot be properly gauged without examining how it can moderate the effects of a VIS. Mock jurors were more susceptible to a VIS effect when the defendant did not take the stand as compared to when he addressed the court. This effect emerged for both the Sad and Angry VIS which was contradictory to expectations, but does lend partial support to the findings of Myers et al. (2002) who found that other forms of evidence were more influential than the intensity of affect conveyed via the presentation of a VIS. It would appear that a defendant's decision to not address the court might be judged as a more important piece of information as compared to the affective display of a VIS. However, a larger effect emerged for the interaction term involving a Sad VIS as compared to the interaction term for an Angry VIS and there were differential main effects for both forms of the VIS in terms of how they influenced perceptions of the defendant and evidence.

Thus the affective cues conveyed via a VIS do influence jurors, but not in a manner that appears consistent with mood contagion or appraisal theory of affect.

When we examine not only how the behavior of the defendant, but the content of the statement influences sentencing decisions and moderates the effects of a VIS a more complex picture emerges. It was hypothesized that an excuse would be the least effective way to counter a VIS and our results support this hypothesis. We also hypothesized that when the defendant appeared remorseful the defendant would be evaluated in a more positive manner, but our results suggests the opposite as the remorseful defendant appeared more responsible and deserving of greater punishment. However, somewhat contradictory to expectations, when an excuse was tempered with remorseful behavior (Defendant Behavior x Excuse) it decreased the likelihood of a death sentence as compared to an unremorseful excuse. This is an interesting finding considering an excuse denies responsibility, but remorse is tied to the concept of responsibility.

It was expected that the components of a full apology (specifically the acceptance of responsibility) should prove most effective in combating a VIS and we do observe evidence to support this evidence. When the defendant is faced with a Sad VIS and accepts responsibility the likelihood of a death sentence decreases. However, contrary to our hypothesis, there was a direct effect for responsibility on sentences such that the acceptance of responsibility *increased* the likelihood of a death sentence. When we examined how defendant behavior moderated the effects of partial apologies (Defendant Behavior x Sympathy) and apologies (Defendant Behavior x Responsibility) the likelihood of a death sentence was greater when the defendant appeared remorseful during each statement as compared to appearing unremorseful. However, the three-way

interaction representing a full apology (Defendant Behavior x Sympathy x Responsibility) was consistent with our hypotheses and indicates that when the defendant appears remorseful and qualifies the acceptance of responsibility with the expression of sympathy the likelihood of a death sentence decreases. Thus this three-way interaction also suggests one other instance where appearing remorseful may prove beneficial to the defendant.

The components of the defendant's statement also moderated the manner in which the VIS influenced perceptions of the defendant and evidence. Consistent with the direct effect on sentence, combating an Angry or Sad VIS with an excuse served to make the defense's case look worse as compared to not making an excuse when faced with either form of a VIS. This pattern of effects also emerged for the interaction of Sad VIS and Sympathy. Similar patterns emerged for the interaction between Sad VIS and Excuse as well as the interaction between Angry VIS and Excuse in terms of how they influenced perceptions of the defendant lending support to our hypothesis that an excuse will prove ineffective in combating a VIS. Interestingly, opposite effects emerge for the interactions between VIS and Responsibility even though the acceptance of responsibility increases the likelihood of a death sentence. Thus even though the components of a full apology may prove detrimental in terms of the ultimate decision mock jurors must make, they are tempering the effects of both forms of the VIS resulting in more positive evaluations of the defendant and defense evidence.

The findings of this study have allowed us to partially confirm some of the findings from surveys of actual capital jurors. Consistent with the findings of Eisenberg et al. (1998) and Garvey (1998), when the defendant chose to remain silent during the

sentencing phase of the trial it lead to more negative attributions as compared to when he took the stand. Yet we also found support for the competing hypothesis derived from laboratory studies that perceptions of remorse can actually prove detrimental to the defendant under certain situations (Jehle et al., 2008; Niedermeier et al., 1999).

Perceptions of the defendant's sincerity directly influenced ratings of responsibility and punishment in such a manner as to suggest that as perceptions of remorsefulness increase, so do the penalties. Defendant Behavior (Flat vs. Sad) also directly influenced ratings of responsibility and punishment in the same manner, but this main effect is misleading under certain situations when we take the content of the defendant's statement into account. However, responsibility and punishment did not lead directly to sentencing outcomes.

Contrary to the findings of Jehle et al. (2008), the results of this study suggest that a display of remorse may prove helpful to a defendant under certain conditions. These results contradict those of Jehle and colleagues as it was observed that when an excuse was coupled with an accompanying display of remorsefulness, the statement lead to more positive attributions and outcomes for the defendant as compared to an excuse delivered with a flat demeanor. Although this contradicts our hypothesis regarding the efficacy of excuses, we did find evidence consistent with the results observed by Robbennolt (2003) that partial apologies (the expression of sympathy) can actually prove detrimental to the defendant when coupled with a display of remorse. However, contradictory to Robbennolt's findings, the presentation of a full apology (sympathy, responsibility) actually proves very detrimental to the defendant under certain conditions, but the effect appears lessened if it is tempered with a display of remorse.

Implications for the Legal System

The results of this study help to expand our understanding of the role defendant remorse may play in capital trials. Although the majority of the research on defendant remorse has been conducted in a civil or criminal context (Bornstein, Rung, & Miller, 2002; Jehle et al., 2008; Niedermeir, Horowitz, & Kerr, 1999; Niedermeir, Horowitz, & Kerr, 2001; Robbennolt, 2003), the results of this study replicate some of these effects within a new context. As previously discussed, we do observe evidence that defendant remorse may be detrimental under specific instances. However, when we take into account not only the content of the statement but how the statement moderates the effects of other evidence a more complete picture emerges highlighting the complexity surrounding the role defendant remorse may play in capital trials. This study also provided the opportunity to contrast the findings from these laboratory studies with data derived from actual capital trials (Eisenberg et al., 1998; Garvey, 1998; Sundby, 1998). Even though we do find support for both hypotheses in different contexts, our results illustrate that the effects of defendant remorse may not be as clear cut as survey data would have one believe. Further, the results from this study highlight how remorse may be mediated by perceptions of the defendant and trial evidence thus allowing for a more thorough understand of how remorse relates to other forms of evidence.

In terms of implications for the legal system, our results do appear to support the implications proposed by Niedermeier et al. (2001) and Jehle et al. (2008) in that defendants may need to carefully consider how much remorse they display in certain situations. However, our results diverge from these previous findings as remorse actually *increased* the efficacy of the content of the defendant's statement, specifically excuse and

full apology. One of the reasons for this divergence is that during the sentencing phase of a capital trial, guilt has already been found and now jurors are asked to engage in a new decision making task where remorsefulness is something they may have to consider in weighing mitigators and aggravators. Jehle and colleagues note that remorse may prove advantageous during sentencing and the results from the present study illustrate specific instances in which defendants may have to calibrate the content of the statement with their behavior.

Another possible reason for this divergence is that the excuse condition used in the study conducted by Jehle and colleagues was very different from the form of excuse used in the present study. In the Jehle study, the defendant testified that he was the gun accidentally discharged when he was attempting to wrestle the gun away from the victim. In our excuse condition, the defendant testified that he planned to engage in the robbery, but that events spiraled out of control until he became overwhelmed and panicked that the victims could identify him if they went to the police. Thus our excuse conditions represents an internal shift within the defendant whereas the excuse used by Jehle and colleagues involved the defendant explaining the victim played some sort of role in the murder. Although both are excuses, they deny responsibility in different ways.

Additionally, our results highlight the complexity surrounding the acceptance of responsibility. Even though the acceptance of responsibility is the hallmark of an apology, it has a very different meaning when placed within a legal context as it is tied to culpability. Thus the results of this study illustrate that effects observed in the literature relating to apology within an interpersonal context (Petrucci, 2002; Weiner et al., 1991) may not replicate similar patterns in a legal context.

Overall, the results of the present study highlight the care a defendant should consider taking when addressing the court and how their statement may be judged in relation to other forms of evidence. Even though the acceptance of responsibility appeared detrimental to the defendant, it appeared successful in combating the effects of a VIS whereas an excuse aggravated the VIS effects. Thus defendants may have to consider taking a risk and addressing the court during the sentencing phase of the trial, but they may wish to consider tempering their statement in a manner that would be an appropriate response to other forms of evidence.

This study has also contributed to our understanding of the affective nature of VIS. The prior research conducted by Myers and colleagues (2002) as well as Gordon and Brodsky (2007) would appear to suggest that the affective content of the VIS may not be as influential as other pieces of evidence. Consistent with the findings of Myers et al. (2002), we did not find support that affect mediates the effects of the VIS. One may be inclined to argue that mood contagion failed because participants were insensitive to our affective manipulations; but the manipulation checks reveal that participants correctly identified the affect conveyed by each VIS. Further, we do observe that the Sad and Angry VIS differentially influenced perceptions of other pieces of evidence suggesting that participants may be using affect as a cue for evaluating the evidence.

The findings from this study in regards to how jurors are influenced by their affective states as well as the affective cues conveyed via the trial evidence also helps expand our understanding of emotions in the courtroom. Perhaps what is most interesting is that mock jurors appear to be influenced by incidental affect (random emotions) and integral affect (emotions tied to evidence). This would appear to somewhat contradict the

argument made by Feigenson and Park (2006) who proposed that incidental affect should be largely ignored by jurors as it does not contain any legally relevant information whereas integral affect is more influential as affect is treated as information. Although we do not conclusively know what influenced the affective states of participants in our study, it is possible that the shift in mood is the cumulative response to the trial evidence and jurors are asking themselves “how does all of this make me feel?” when making their ultimate decision in addition to using the affective cues conveyed via the evidence.

As previously discussed, contrary to expectations, it appears as if the Sad VIS may be stronger than the Angry VIS in certain regards. Consistent with expectations, the Angry VIS negatively influenced perceptions of the defendant, but the Sad VIS directly influenced perceptions of the prosecution witnesses in such a manner as the prosecution appeared stronger when there was a Sad VIS compared to a Flat VIS. There also appeared to be more interaction effects between the Sad VIS and components of the defendant statement suggesting that even though the Sad VIS may make the prosecution appear stronger, it is not impossible to shift the affective focus via the use of apology.

Perhaps the most interesting finding concerns the previously discussed backlash effect observed in regards to the interaction effects between the Sad VIS, PCR, and Dangerousness suggesting that there is a tipping point where the presentation of a VIS may actually *hurt* the prosecution’s case. This finding is somewhat related the Logan’s (2008) argument that the presentation of multiple VIS may create a numbing effect where jurors just do not know how to use the information so they disregard it. Thus it would be prudent for prosecuting attorneys to consider if the presentation of a VIS would help or hurt their case given the other forms of evidence they intend to present to the jury.

If the affect of the VIS is not resulting in mood contagion but the affective cues are still shifting perceptions of the evidence then what are the underlying processes at work? Even though sadness and hostility may not be induced via the VIS, they both influence decision making in a manner that is consistent with Appraisal Theory of Affect. However, this result is more than likely the additive effect of all forms of evidence presented at the trial and cannot wholly account for our observed VIS effects.

As previously mentioned, the VIS effects may represent the intersection of Appraisal Theory and Affect Control Theory. In an application of ACT, Tsoudis (2000) found evidence that victims who appeared sad were judged more positively than those who appeared unaffected by the crime. Rose and colleagues (2006) also found similar results and expanded upon ACT by finding evidence of a proportionality norm suggesting that the emotion displayed by the victim must be proportional to the severity of the crime. Although our manipulation checks illustrate that the Angry and Sad VIS did not differ in terms of their emotional intensity, it is possible that the appraisals associated with anger and sadness may somehow change the interpretation of this proportionality norm. Thus participants are reacting to the affect conveyed by the VIS in order to place the information into proper context. Our results fit nicely with those of Tsoudis in terms of explaining why the Sad VIS may be more influential than an Angry VIS. However, if we stop to consider that Appraisal Theory contends that sadness is associated with greater situational attributions then it is possible that participants may be inferring that the effects of the crime have permeated all aspects of the individual's life whereas anger (associated with greater attributions to the individual) is just the reaction of the individual and is not diagnostic of the severity of the crime. This would also be consistent with Feigenson and

Park's (2006) argument concerning the difficulty jurors may have in separating integral emotional responses from the trial evidence as the two concepts are intertwined.

The findings of this study also render some interesting questions in terms of balancing the potential problems associated with a VIS and justice. Our results illustrate that the affective cues conveyed through the presentation of a VIS can create an anti-defendant bias, but they can also harm the prosecution's case under certain situations. Perhaps one potential solution to ensuring that justice is carried out is to provide an alternate means for victims to inform the court as to the harm they have endured. For example, the field study conducted by Davis and Smith (1994) did not provide any evidence of the prejudicial nature of VIS in criminal trials. Although their study focused on judges' decisions in criminal trials, the interesting thing to note is that the VIS delivered in these cases was a written record that was prepared with a court appointed liaison. Although the mode of presentation for VIS in capital trials is a matter of judicial discretion, it is possible that the emotional cues associated with a VIS could be lessened if they were presented as a written document to the jury. Victims may also feel a greater sense of justice if such statements were prepared with the assistance of advocates who were trained to help them focus on the information that is pertinent to the purpose of a VIS. This would still provide victims with a chance to be heard during court proceedings, but it may also help preserve the rights of the defendant.

The influence of incidental and integral affect on mock juror decision making presents a unique issue for the courts as it appears to compromise the impartiality of jurors. However, it is still unclear what precisely can be done in order to shift the decision making task onto rational ground. One consideration may be to rely upon

judicial admonishments in order to remind jurors that they are to rule according to the evidence and not their emotions. Blumenthal (2009) has also explored the role of expert testimony concerning affective forecasting as a potential safeguard against VIS.

According to Blumenthal, the literature concerning affective forecasting illustrates that people tend to be poor judges of predicting the intensity and duration of their affective responses to events. Blumenthal applied this potential safeguard in two studies and found that the effects of a VIS were diminished when the defense presented an expert providing educational testimony about the errors associated with affective forecasting and that the efficacy of this safeguard was linked to perceptions of the expert's credibility. Further exploration of the efficacy of such safeguards and how they may help balance the rights of the defendant and those of the victim represent the next steps in VIS research and may help clarify potential remedies to affect in the courtroom.

Although a defendant statement may serve to correct the emotionally biasing aspects of the victim impact statement under certain situations, they may also help heal the damage done to social relationships and norms. The current focus of the criminal justice system is upon punishment, not repairing the social bonds damaged by the crime. This individual badness model adopted by the system treats apology and remorse as measures of the offender's character and need for punishment (Bibas and Bierschbach, 2004). Bibas and Bierschbach argue in favor of a broad relational model rooted in restorative justice in which apology is treated as an important ritual that may be used to restore the dyadic relationship between offender and victim as well as their relationships with society. Not only would victims be given the opportunity to give voice but they may also be able to gain a sense of closure from knowing that the offender has accepted

responsibility for the crime. Therefore, apologies and expressions of remorse may not only help moderate the impact of victim impact statements but they may help with the social re-integration of the offender if they are used in such a manner as to supplement punishment.

According to the relational model proposed by Bibas and Bierschbach (2004), even an insincere apology is effective as apologies are essentially concepts rooted in educating the individual as to the social norm they have violated and may ultimately lead to full acceptance of responsibility. Bibas and Bierschbach argue that this is most apparent when a mother makes a child apologize for an indiscretion; even if they do not accept responsibility for the action, they may ultimately understand the importance of the norm they violated. Although an insincere apology may ultimately serve the purpose of educating the offender, there is evidence that the trier of fact may negatively view partial apologies and accounts tempered with remorse (Robbennolt, 2003; Jehle et al., 2008). However, our results concerning affectively laden excuses might provide some support for the model proposed by Bibas and Bierschbach as they show even accounts meant to decrease responsibility for the crime can prove beneficial to the defendant when they are accompanied with a display of remorse. Although it would appear that a remorseful excuse can make the defendant indirectly look worse, it has an overall effect that leads to an increase in the chances of a life sentence. This is in contradiction to remorseful apologies which indirectly make the defendant look better, but tend to lead to a death sentence. We originally hypothesized that apologies should prove beneficial to the defendant since prior research has shown they decrease negative affect and the need for punishment and that excuses should prove little use since they deny responsibility. One

possibility is that mock jurors are interpreting the excuse as evidence that the defendant is beginning to understand the impact of the crime similar to the child in the example provided by Bibas and Bierschbach whereas a defendant who accepts responsibility has known all along that what he did was wrong.

Although the present study examined the effects of emotionally laden VIS within the context of a death penalty trial, some of the findings may generalize to other settings. Given that our results concerning the role of affect in decision making are largely consistent with the general findings from the Appraisal Theory literature, it would not be unexpected to observe similar effects for anger and sadness in other legal settings. However, it is possible that some of the findings concerning the use of the affective cues presented via the VIS may not generalize beyond the context of capital sentencing. Butler (2008) found that non-death qualified jurors were less influenced by VIS overall as compared to death qualified jurors. Thus it may be possible that non-death qualified jurors may not be as influenced by integral affective sources as the participants from our death qualified sample. Furthermore, our findings concerning the role of remorse, apologies, and accounts are somewhat consistent with previous findings from studies of civil juror decision making, there are several divergent results which may possibly be explained by differences in the ultimate decisions mock jurors were asked to make.

Our overall findings concerning affect may also generalize to situations outside of legal settings. We found evidence that participants' decisions are not only influenced by integral affect stemming from information linked to the task at hand, but incidental affect which should be largely ignored (Feigenson & Park, 2006). Thus it would appear that it is not solely a case of the emotions of the processor that affect decision making as the

decision maker is influenced by the emotional content of information stemming from aspects of the environment. However, it would appear as if this emotional content does not necessarily have to induce mood contagion in order to influence processing as we observed that it can independently affect processing. The effects we found for incidental affect could not be explained by mood contagion, but they are in the hypothesized direction and consistent with Appraisal Theory as we observed sadness decreased punitiveness whereas anger increased it. Perhaps these are independent and co-occurring effects, but as previously discussed, it is unclear what influenced participants emotional states. Future research should consider exploring how the affective states of participants change over the course of a given task in order to clarify the role of incidental affect, the mechanisms involved, and how it may differ from perceptions of emotional cues conveyed via task specific information.

Limitations & Future Directions

One limitation to this research deals with the difficulty associated with trying to study capital sentencing in a laboratory setting. As Supreme Court Justice Thurgood Marshall opined in *Ford v. Wainwright* (1986), “Death is different.” Although we have gone to great lengths in order to ensure that our materials were as realistic as possible, we recognize the challenge in trying to accurately capture the affective responses of actual capital jurors because deciding between life and death in a simulation is very different from making that difficult decision in the deliberation room. This may also explain why our findings regarding defendant remorse more closely parallel the findings from previous laboratory studies as compared to data derived from post-trial interviews with capital jurors. Although this is certainly a valid concern, the magnitudes of the effects

associated with the affective responses of participants are consistent with theory and speak to the realism of our materials.

A related limitation is that the present study did not include mock jury deliberations. This would be particularly useful in terms of determining what might be causing the emotional responses of jurors and how deliberations may correct some of these biases. Deliberations would also help shed light upon why remorsefulness is proving useful to the defendant in certain situations, but detrimental in others. Finally, it would help us understand precisely *how* mock jurors are using the VIS in their decisions relative to other pieces of evidence.

Another limitation was that the defendant in this study may be considered somewhat atypical of capital defendants. Although jurors were sensitive to the dangerousness and PCR manipulations, the ratings were closer to the midpoint of the scale suggesting that the defendant may not have necessarily been perceived as dangerous. One may argue that this cast doubt upon our findings regarding the processing of evidence or the effectiveness of the defendant's statement, but the effects make sense from a theoretical perspective and are consistent with the overall pattern of results. Future studies should consider attempting to replicate these effects by using defendants from different backgrounds in order to fully understand the effects of remorse and accounts on mock jurors.

This study represents an important step in understanding the role defendant remorse plays in capital trials. These results build upon the work of Jehle et al. (2008) by varying both the defendant's behavior and account of the crime. Although the only account condition that overlapped between the Jehle study and the present study was the

inclusion of an excuse condition (in which we observed different effects) it would be interesting to observe how other accounts (i.e. justifications and denials) may be perceived in capital sentencing. An additional future line of research would be to consider how mock jurors perceive a combination of excuses and apologies. Although we did not cross these two conditions as they could not theoretically co-exist, from a practical perspective it is not unusual to imagine a situation where a defendant tries to excuse his behavior, but now realizes what he did was wrong and accepts responsibility. Furthermore, previous research has detailed that the timing of remorse proves important in capital sentencing (Sundby, 1998) and that defendants may have to prove consistent in order for remorse to be effective. A test of behavioral consistency by varying the timing of remorse (i.e. pre-trial, during the guilt phase, during sentencing) would help shed even more light on the complexity of defendant remorse and the importance of behavioral consistency/calibration with the message the defendant wishes to convey to the court.

Although this study does elucidate the role affect may play in decision making, there is still much to learn about how these emotions ebb and flow during the trial. One potential direction would be to apply a repeated measures design in order to track how hostility and sadness change over the course of the trial in order to identify what pieces of evidence are proving to exert the strongest influence over participants' emotions. The present study can only provide information about the total contribution of affect to the decision making task, but it is an important starting point in understanding the dangers associated with affect in the courtroom.

An important area to consider for policy implications as well as future directions is in identifying potential safeguards that may decrease reliance upon affective

processing. Our results do appear to partially confirm the fears expressed by the *Booth* and *Gathers* Court that the emotionality of the VIS may prove detrimental to the defendant in some instances, but we cannot conclusively say that the affective results we observed can be attributed only to the VIS. Furthermore, closer investigation of the backlash effect we observed regarding the presentation of a VIS when you already have strong evidence against the defendant requires greater exploration. Is it possible that by limiting the affect of the VIS (either by limiting the emotional range the victim is allowed to display or the mode of presentation) might we find a balance between providing the victim with voice and ensuring that the defendant's right to a fair trial is not compromised?

The present study has helped expand our knowledge of the role of victim impact statements in capital sentencing, how their affective content may influence mock jurors, and the potential responses a defendant may consider utilizing when faced with such evidence. Our results suggest that even though the VIS does not play a role in mood induction, mock jurors may be using the affective cues of a VIS to render their decisions. Our findings also help expand our understanding of affect in the courtroom as we found overwhelming support that hostility and sadness experienced during the course of the trial can differentially impact the decisions of mock jurors. Finally, our findings highlight the conundrum faced by the defendants in capital sentencing trials involving VIS: remain silent and run the risk of appearing unremorseful or take a risk and address the court. Contrary to expectations, remorse can backfire for the defendant depending upon the content of the statement, but remaining silent also proves detrimental. Taken together, these results help provide more information on the dangers associated with a VIS and the

potential ways we can consider balancing the scales of justice in order to ensure that victims are given voice, but not at the expense of denying defendants legal protection.

Table 1. *Descriptive Statistics*

Variables	Means	SD	Minimum	Maximum
Death Penalty Attitudes	69.19	19.08	15.00	124.00
Revised Legal Attitudes Questionnaire-23	-4.46	16.46	-57.00	45.00
Interpersonal Reactivity Index – Perspective Taking	50.12	9.56	20.00	70.00
Interpersonal Reactivity Index – Empathic Concern	52.01	9.99	11.00	70.00
PANAS - Hostility	12.14	4.77	6.00	26.00
PANAS - Sadness	8.63	3.28	5.00	24.00
Prosecution Witnesses	7.20	.97	2.71	9.00
Defense Witnesses	5.90	1.42	1.92	9.00
Defendant – Rehabilitation Potential	5.18	1.66	1.00	9.00
Defendant – Character	4.41	1.41	1.29	8.14
Defendant – Sincerity	5.92	2.09	1.00	9.00
How responsible is the defendant?	8.52	.97	1.00	9.00
How strongly do you feel the defendant should be punished?	8.20	1.03	4.00	9.00

Table 2. *Bivariate Correlations*

<i>Variables</i>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1. Defendant Sad	1														
2. Excuse	0	1													
3. Sympathy	0	-.17*	1												
4. Responsibility	0	-.67*	-.17*	1											
5. E x S	0	0	0	.24*	1										
6. S x R	0	.24*	0	0	-.79*	1									
7. DS x E	0	0	0	0	0	0	1								
8. DS x S	0	0	0	0	0	0	-.17*	1							
9. DS x R	0	0	0	0	0	0	-.67*	-.17*	1						
10. DS x E x S	0	0	0	0	0	0	0	0	.24*	1					
11. DS x S x R	0	0	0	0	0	0	.24*	0	0	-.79*	1				
12. VIS Angry	0	0	0	0	0	0	0	0	0	0	0	1			
13. VISA x E	0	0	0	0	0	0	0	0	0	0	0	0	1		
14. VISA x S	0	0	0	0	0	0	0	0	0	0	0	0	-.17*	1	
15. VISA x R	0	0	0	0	0	0	0	0	0	0	0	0	-.67*	-.17*	1
16. VISA x E x S	0	0	0	0	0	0	0	0	0	0	0	0	0	0	.24*
17. VISA x S x R	0	0	0	0	0	0	0	0	0	0	0	0	.24*	0	0
18. VISA x DS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
19. VISA x DS x E	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
20. VISA x DS x S	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
21. VISA x DS x R	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
22. VIS Sad	0	0	0	0	0	0	0	0	0	0	0	-.50*	0	0	0
23. VISS x E	0	0	0	0	0	0	0	0	0	0	0	0	-.50*	.08	.33*
24. VISS x S	0	0	0	0	0	0	0	0	0	0	0	0	.08	-.50*	.08
25. VISS x R	0	0	0	0	0	0	0	0	0	0	0	0	.33*	.08	-.50*
26. VISS x E x S	0	0	0	0	0	0	0	0	0	0	0	0	0	0	-.12*
27. VISS x S x R	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
28. VISS x DS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
29. VISS x DS x E	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
30. VISS x DS x S	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

<i>Variables</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>	<i>11</i>	<i>12</i>	<i>13</i>	<i>14</i>	<i>15</i>
31. VISS x DS x R	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
32. PCR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
33. Dangerousness	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
34. PCR x Danger	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
35. VISA x Danger	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
36. VISA x PCR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
37. VISA x Danger x PCR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
38. VISS x Danger	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
39. VISS x PCR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
40. VISS x Danger x PCR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
41. DPAQ	-0.02	-0.09	-0.05	.09	.03	-0.02	-0.02	-0.04	-0.01	.06	-0.09	.08	0.01	-0.02	.06
42. RLAQ-23	.03	.01	.05	.03	.05	0	.01	-0.02	.04	-0.02	.05	-0.01	.06	-0.02	-0.05
43. IRI – PT	.01	-0.03	.09	-0.04	-0.02	-0.01	.05	-0.03	-0.06	-0.03	.02	.09	0	.09	0
44. IRI – EC	0	.04	.05	-0.08	-0.01	-0.02	.05	-0.01	-0.04	-0.07	.07	.06	-0.01	-0.12*	-0.04
45. PANAS - Hostility	0	-0.02	-0.01	-0.04	-0.03	-0.03	-0.02	.02	0	-0.05	.03	-0.03	.02	-0.06	-0.02

<i>Variables</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>	<i>10</i>	<i>11</i>	<i>12</i>	<i>13</i>	<i>14</i>	<i>15</i>
46. PH x PCR	-0.02	-0.07	.01	0	-0.08	.01	-0.06	.10	-0.01	.02	-0.05	.03	-0.09	.03	.06
47. PH x Danger	.03	.08	-0.05	-0.04	-0.01	.02	-0.07	-0.02	.06	-0.04	.02	.05	-0.05	-0.03	.03
48. PH x PCR x Danger	-0.02	.02	.02	-0.06	.04	-0.07	-0.90	.03	.09	.11*	-0.10	.01	-0.08	-0.01	.05
49. PANAS - Sadness	-0.05	-0.05	-0.01	.01	-0.07	.03	-0.08	-0.02	.04	-0.02	-0.02	-0.01	-0.02	-0.08	.04
50. PS x PCR	.03	-0.04	.02	.01	-0.05	.02	.02	0	-0.06	.03	-0.06	-0.02	-0.04	-0.02	.04
51. PS x Danger	.04	.05	-0.08	-0.04	-0.01	0	-0.08	.02	.06	.05	-0.06	.03	-0.06	-0.05	-0.01
52. PS x PCR x Danger	.03	.06	.01	-0.07	.04	-0.05	-0.10	-0.04	.09	.07	-0.09	.04	.02	0	-0.04
53. Prosecution Witnesses	.50	0	.11*	-0.01	.02	0	.02	0	-0.02	.03	-0.03	0	-0.02	-0.01	.02
54. Defense Witnesses	0	0	.05	0	.03	-0.02	.08	.07	-0.04	-0.01	.06	.01	-0.10	.02	.05
55. Defendant – Rehab	0	-0.01	.05	-0.04	-0.02	-0.02	.08	.01	-0.11*	-0.04	.01	-0.03	-0.09	.12*	-0.03
56. Defendant – Character	.06	.05	.01	.01	-0.03	.09	.05	.04	-0.04	-0.04	.06	-0.07	-0.12*	.08	0
57. Defendant – Sincerity	.20*	.05	-0.01	.03	.07	-0.01	.05	.06	-0.06	-0.09	.10	-0.13*	-0.12*	.06	.02
58. Responsibility	.18*	-0.06	-0.04	.10	-0.01	.04	-0.06	.06	-0.03	.01	-0.07	.06	.02	-0.01	.01
59. Punishment	.11*	-0.03	.04	.01	.02	-0.02	-0.11*	.09	0	.05	-0.12*	.04	-0.04	-0.03	.05
60. Sentence	-0.05	-0.02	-0.03	.12*	-0.03	.10	-0.16*	.05	.10	.07	-0.10	-0.05	0	-0.03	.02

Variables	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
16. VISA x E x S	1														
17. VISA x S x R	-.79*	1													
18. VISA x DS	0	0	1												
19. VISA x DS x E	0	0	0	1											
20. VISA x DS x S	0	0	0	.08	1										
21. VISA x DS x R	0	0	0	-.67*	-.16*	1									
22. VIS Sad	0	0	0	0	0	0	1								
23. VISS x E	0	-.12*	0	0	0	0	0	1							
24. VISS x S	0	0	0	0	0	0	0	-.17*	1						
25. VISS x R	0	0	0	0	0	0	0	-.67	-.17	1					
26. VISS x E x S	-.12*	0	0	0	0	0	0	0	0	.24	1				
27. VISS x S x R	-.50*	-.39*	0	0	0	0	0	.24	0	0	-.78*	1			
28. VISS x DS	0	0	-.50*	0	0	0	0	0	0	0	0	0	1		
29. VISS x DS x E	0	0	0	-.50*	.08	.33*	0	0	0	0	0	0	0	1	
30. VISS x DS x S	0	0	0	.08	-.50*	.08	0	0	0	0	0	0	0	-.17*	1

Variables	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
31. VISS x DS x R	0	0	0	.33*	.08	-.50*	0	0	0	0	0	0	0	-.67*	-.17*
32. PCR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
33. Dangerousness	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
34. PCR x Danger	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
35. VISA x Danger	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
36. VISA x PCR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
37. VISA x Danger x PCR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
38. VISS x Danger	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
39. VISS x PCR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
40. VISS x Danger x PCR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
41. DPAQ	.07	-.04	-.02	-.07	.08	0	0	-.04	.01	-.02	-.01	-.05	.05	.05	-.03
42. RLAQ-23	.06	-.06	.01	-.03	.13*	-.04	-.07	-.06	.02	.01	-.05	.02	0	.02	-.13*
43. IRI - PT	.04	-.01	-.01	.08	-.09	0	-.07	.02	-.08	-.05	-.04	0	-.06	-.01	.02
44. IRI - EC	-.04	-.04	.04	.03	-.06	.02	.01	.08	.06	-.04	-.07	.12	-.03	.08	-.02
45. PANAS - Hostility	-.01	-.01	.02	.02	.04	-.04	-.01	.03	.01	.02	.05	0	.05	-.04	.03

<i>Variables</i>	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
46. PH x PCR	-.01	-.01	-.04	.02	-.01	0	-.02	0	0	-.03	-.07	.04	.04	-.07	.05
47. PH x Danger	.07	-.09	.03	.09	-.05	-.11*	-.02	0	-.06	0	-.04	.02	-.05	-.09	-.01
48. PH x PCR x Danger	.04	-.06	-.02	-.02	.08	0	-.05	.08	.05	-.08	-.03	.04	-.01	-.01	-.08
49. PANAS - Sadness	.01	-.02	.05	-.12*	.01	.06	.04	.07	-.02	-.07	-.04	.03	.02	.06	-.02
50. PS x PCR	.03	-.04	.05	.08	-.01	-.01	.07	-.02	-.01	-.03	-.08	.03	.02	-.09	.03
51. PS x Danger	-.01	-.07	.04	.06	.02	-.05	-.05	-.03	.03	.02	-.01	.01	-.09	-.04	-.01
52. PS x PCR x Danger	0	-.01	.01	-.05	.05	.05	-.05	0	-.02	0	-.03	.02	.04	-.02	-.01
53. Prosecution Witnesses	.05	-.05	.03	.03	.01	-.09	.09	.02	-.04	.01	-.08	.08	.02	.03	.05
54. Defense Witnesses	-.07	.03	0	-.03	-.07	-.04	.03	0	-.13*	.06	.04	-.03	.03	.06	.05
55. Defendant – Rehab	-.05	-.02	-.04	-.04	-.07	.03	.04	0	-.08	.07	.03	0	.04	.04	.01
56. Defendant – Character	-.06	-.03	.02	-.02	-.05	.03	.06	-.01	-.04	.07	-.01	.05	.03	-.02	0
57. Defendant – Sincerity	-.03	-.04	-.02	-.01	-.03	-.03	.08	.02	-.09	.05	-.02	.05	.02	-.01	.03
58. Responsibility	.01	.01	-.05	.05	-.10*	-.03	-.03	-.06	0	.08	0	.01	.07	.03	.08
59. Punishment	-.01	.02	.06	-.08	.09	.02	-.03	.04	0	-.03	-.06	.07	.01	.05	-.04
60. Sentence	.08	-.06	0	-.01	.06	.03	-.01	.09	.02	-.13*	-.07	.04	-.04	.05	0

<i>Variables</i>	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45
31. VISS x DS x R	1														
32. PCR	0	1													
33. Dangerousness	0	0	1												
34. PCR x Danger	0	0	0	1											
35. VISA x Danger	0	0	0	0	1										
36. VISA x PCR	0	0	0	0	0	1									
37. VISA x Danger x PCR	0	0	0	0	0	0	1								
38. VISS x Danger	0	0	0	0	-.50*	0	0	1							
39. VISS x PCR	0	0	0	0	0	-.50*	-.35*	0	1						
40. VISS x Danger x PCR	0	0	0	0	0	-.35*	-.50*	0	0	1					
41. DPAQ	-.05	.07	-.03	-.03	-.02	-.06	.04	-.05	.10	-.03	1				
42. RLAQ-23	-.02	.03	.06	.01	-.11*	0	.02	-.04	.07	-.01	.41*	1			
43. IRI – PT	-.05	.09	.08	-.04	.02	-.06	-.02	.09	.07	-.01	-.14*	-.09	1		
44. IRI – EC	-.08	.05	-.04	-.06	.08	-.06	-.01	-.08	.08	.03	-.12*	-.11*	.39*	1	
45. PANAS - Hostility	-.01	.04	-.05	-.07	.05	.02	.02	-.02	-.02	-.06	.22*	.04	-.17*	.06	1

<i>Variables</i>	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45
46. PH x PCR	.03	0	-.06	-.05	.01	-.04	.05	-.05	.03	-.01	.09	.10	-.04	-.08	0
47. PH x Danger	.08	-.07	0	.04	-.04	.02	.02	.03	-.05	-.01	.04	-.03	-.03	.05	0
48. PH x PCR x Danger	.01	0	0	0	.03	.05	-.04	-.02	-.02	.03	-.14*	-.01	.03	.07	0
49. PANAS - Sadness	-.05	0	-.08	-.06	.03	-.02	.05	-.06	.07	-.07	.12*	0	-.12*	.07	.66*
50. PS x PCR	.06	0	-.05	-.07	.04	-.01	.03	-.06	.03	-.05	.12*	-.02	-.05	-.07	.01
51. PS x Danger	.03	-.06	0	-.01	0	.05	-.01	.03	-.06	.06	.04	-.13*	-.03	.07	.08
52. PS x PCR x Danger	-.02	0	0	0	0	.03	0	.06	-.04	.02	-.16*	-.02	.06	.08	-.03
53. Prosecution Witnesses	0	0	.02	-.02	-.02	-.03	0	-.02	-.07	.03	.15*	.16*	.15*	.31*	.16*
54. Defense Witnesses	-.02	-.10	.03	.03	.05	0	.01	-.02	.06	0	-.18*	.10	.11*	.07	-.04
55. Defendant – Rehab	-.05	-.14*	-.09	.03	0	.03	-.02	.07	.03	-.02	-.32*	-.15*	.12*	-.05	-.18*
56. Defendant – Character	0	-.09	.03	.07	.01	-.04	.04	.05	.13*	0	-.25	-.10	.06	-.02	-.11*
57. Defendant – Sincerity	.01	-.14	-.01	.08	.07	-.08	0	0	.01	.03	-.23*	-.05	.14	.03	-.11*
58. Responsibility	-.01	.06	0.07	.02	-.08	-.10*	-.04	.10	0	.01	.06	.10*	.10	.10	.03
59. Punishment	-.04	.01	-.08	0	-.02	-.03	.02	0	-.12*	.02	.16*	.09	-.02	.15*	.15*
60. Sentence	-.06	.04	.04	-.04	-.03	.04	-.03	.03	-.11*	.10*	.37*	.16*	-.08	.04	.18*

<i>Variables</i>	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60
46. PH x PCR	1														
47. PH x Danger	-.10	1													
48. PH x PCR x Danger	0	0	1												
49. PANAS - Sadness	.01	-.08	-.03	1											
50. PS x PCR	.66*	-.09	-.07	0	1										
51. PS x Danger	-.09	.66*	0	0	-.09	1									
52. PS x PCR x Danger	.09	.01	.65	0	0	0	1								
53. Prosecution Witnesses	.03	.03	-.05	.10	.06	-.01	.02	1							
54. Defense Witnesses	-.03	-.06	-.04	.06	0	-.10	-.01	.35*	1						
55. Defendant – Rehab	-.02	-.02	0	-.04	-.07	-.06	-.03	-.27*	.35*	1					
56. Defendant – Character	-.04	-.01	-.07	.06	-.03	-.06	-.04	-.16*	.49*	.64*	1				
57. Defendant – Sincerity	-.07	.06	-.05	.02	-.05	.02	-.04	-.06	.42*	.59*	.70*	1			
58. Responsibility	.07	.07	.02	-.06	.06	.04	.04	.30*	.07	-.13*	-.14*	-.01	1		
59. Punishment	.02	0	.05	.02	.08	.02	.08	.33*	-.05	-.32*	-.30*	-.15*	.30*	1	
60. Sentence	.04	-.02	-.01	.02	.03	.04	-.06	.22*	-.35*	-.62*	-.50*	-.48*	.10*	.30*	1

Table 3. *No Statement: Direct, Indirect, and, Total Standardized Effects on Sentence*

	Direct Effects			Indirect Effects	Total Effects		
	Std B	S.E.	Odds Ratio	Std B	Std B	S.E.	Odds Ratio
Defendant Statement	.022	.402	1.436	-.038	-.016	.591	.777
VIS Angry	-.020	.288	.823	-.044	-.064	.391	.534
VIS Sad	.011	.283	1.110	-.030	-.019	.374	.827
PANAS Hostility	.084	.032	1.084**	-.077	.007	.045	1.007
PANAS Sadness	-.071	.047	.905*	.048	-.022	.067	.970
DPAQ Total	.178	.008	1.044***	-.041	.137	.010	1.034* *
RLAQ-23 Total	.025	.008	.722	-.029	-.004	.011	.999
IRI – Perspective Taking	-.023	.013	.635	.002	-.021	.020	.990
IRI – Empathic Concern	.050	.013	1.023†	-.024	.026	.019	1.012
VIS Angry x Defendant Statement	.088	.152	1.497**	-.017	.070	.196	1.384
VIS Sad x Defendant Statement	.100	1.54	1.585**	-.036	.064	.192	1.345
Prosecution Witnesses	.259	.203	3.404***	-.138	.121	.244	1.772*
Defense Witnesses	-.274	.125	.412***	.123	-.150	.157	.614**
Defendant - Rehabilitation	-.299	.141	.437***	.007	-.293	.146	.445** *
Defendant - Character	-.018	.174	.944	.010	-.008	.178	.975
Defendant - Sincerity	-.040	.104	.917	-.001	-.041	.106	.914
How responsible is the Defendant?	-.014	.186	.935	0	-.014	.186	.935
Punishment	.074	.189	1.393†	0	.074	.189	1.393†

* $p < .05$, ** $p < .01$, *** $p < .001$, † $p < .09$

Table 4. *Partial Apology: Direct, Indirect, and, Total Standardized Effects on Sentence*

	Direct Effects			Indirect Effects	Total Effects		
	Std B	S.E.	Odds Ratio		Std B	S.E.	Odds Ratio
Defendant Sad	-.021	.248	.804	-.031	-.052	.393	.583
Excuse	-.005	.257	.952	-.029	-.034	.392	.697
Sympathy	-.026	.256	.761	-.003	-.029	.378	.735
VIS Angry	-.041	.309	.634	-.049	-.090	.469	.370*
VIS Sad	-.018	.302	.820	-.006	-.024	.435	.768
PANAS Hostility	.085	.036	1.099**	-.004	.081	.055	1.094
PANAS Sadness	-.076	.052	.887*	-.004	-.080	.080	.880
DPAQ Total	.171	.008	1.048** *	-.033	.138	.012	1.039* *
RLAQ-23 Total	.009	.008	1.003	.003	.013	.013	1.004
IRI – Perspective Taking	-.020	.015	.989	.047	.027	.024	1.016
IRI – Empathic Concern	.052	.014	1.027†	-.021	.031	.022	1.017
Excuse x Sympathy	-.019	.135	.908	-.031	-.050	.192	.773
Defendant Sad x Excuse	-.091	.139	.623***	-.014	-.105	.191	.580**
Defendant Sad x Sympathy	.021	.135	1.113	.014	.034	.183	1.194
Defendant Sad x Excuse x Sympathy	.031	.137	1.175	-.023	.008	.194	1.044
VIS Angry x Defendant Sad	-.012	.156	.941	-.017	-.029	.215	.860
VIS Angry x Excuse	.034	.161	1.205	-.040	-.006	.228	.971
VIS Angry x Defendant Sad x Excuse	.010	.164	1.053	-.007	.003	.225	1.014
VIS Angry x Sympathy	.002	.158	1.008	.028	.029	.221	1.165
VIS Angry x Defendant Sad x Sympathy	.029	.158	1.167	-.027	.003	.217	1.015
VIS Angry x Excuse x Sympathy	.020	.159	1.110	-.033	-.013	.221	.936
VIS Sad x Defendant Sad	-.034	.153	.836	.001	-.033	.207	.842
VIS Sad x Excuse	.080	.158	1.512**	.015	.095	.215	1.634*
VIS Sad x Defendant Sad x Excuse	.034	.160	1.197	.029	.064	.222	1.394
VIS Sad x Sympathy	.008	.158	1.044	-.015	-.007	.213	.964
VIS Sad x Defendant Sad x Sympathy	.019	.158	1.103	.011	.030	.211	1.171
VIS Sad x Excuse x Sympathy	-.034	.157	.836	-.024	-.058	.215	.737

	<i>Direct Effects</i>			<i>Indirect Effects</i>	<i>Total Effects</i>		
Prosecution Witnesses	.244	.231	3.633***	-.147	.096	.287	1.663†
Defense Witnesses	-.272	.150	.367***	.116	-.156	.187	.563**
Defendant - Rehabilitation	-.305	.179	.382***	.005	-.300	.184	.389** *
Defendant - Character	-.035	.223	.876	.006	-.029	.227	.896
Defendant - Sincerity	-.040	.133	.902	-.003	-.043	.136	.896
How responsible is the Defendant?	-.031	.231	.850	0	-.031	.231	.850
Punishment	.075	.228	1.448	0	.075	.228	1.448

* $p < .05$, ** $p < .01$, *** $p < .001$, † $p < .09$

Table 5. *Full Apology: Direct, Indirect, and, Total Standardized Effects on Sentence*

	Direct Effects			Indirect Effects	Total Effects		
	Std B	S.E.	Odds Ratio	Std B	Std B	S.E.	Odds Ratio
Defendant Sad	-.019	.249	.807	-.035	-.055	.408	.548
Responsibility	.047	.258	1.701*	.050	.097	.402	2.968**
Sympathy	-.015	.259	.843	.012	-.003	.392	.963
VIS Angry	-.040	.311	.625	-.051	-.091	.502	.346*
VIS Sad	-.018	.304	.810	-.007	-.025	.447	.746
PANAS Hostility	.087	.037	1.107**	.022	.109	.058	1.136*
PANAS Sadness	-.075	.052	.881*	-.019	-.094	.082	.853†
DPAQ Total	.157	.008	1.048***	-.034	.123	.012	1.036**
RLAQ-23 Total	.012	.008	1.004	0	.012	.013	1.004
IRI – Perspective Taking	-.020	.015	.988	.036	.015	.024	1.009
IRI – Empathic Concern	.051	.014	1.029*	-.018	.033	.023	1.018
Sympathy x Responsibility	.053	.137	1.345*	.051	.105	.200	1.784**
Defendant Sad x Responsibility	.067	.138	1.447**	-.007	.060	.192	1.393†
Defendant Sad x Sympathy	.045	.139	1.283†	.013	.058	.191	1.382†
Defendant Sad x Sympathy x Responsibility	-.050	.139	.759*	-.001	-.051	.201	.755
VIS Angry x Defendant Sad	-.020	.160	.898	-.008	-.028	.224	.858
VIS Angry x Responsibility	-.025	.159	.869	-.003	-.028	.233	.856
VIS Angry x Defendant Sad x Responsibility	.028	.161	1.168	.002	.030	.225	1.183
VIS Angry x Sympathy	-.005	.167	.971	.036	.031	.239	1.187
VIS Angry x Defendant Sad x Sympathy	.030	.163	1.181	-.020	.010	.228	1.056
VIS Angry x Sympathy x Responsibility	-.019	.159	.902	-.008	-.027	.221	.861
VIS Sad x Defendant Sad	-.035	.154	.824	.004	-.031	.211	.843
VIS Sad x Responsibility	-.085	.157	.623**	-.026	-.112	.227	.539**
VIS Sad x Defendant Sad x Responsibility	-.011	.157	.940	-.034	-.045	.224	.779
VIS Sad x Sympathy	-.020	.158	.898	-.016	-.035	.221	.822
VIS Sad x Defendant Sad x Sympathy	.008	.158	1.048	.003	.011	.216	1.065
VIS Sad x Sympathy x Responsibility	.024	.155	1.141	.018	.042	.221	1.263

	Direct Effects			Indirect Effects	Total Effects		
	Std B	S.E.	Odds Ratio	Std B	Std B	S.E.	Odds Ratio
Prosecution Witnesses	.241	.235	3.889***	-.133	.108	.301	1.840*
Defense Witnesses	-.267	.154	.350***	.104	-.163	.198	.526***
Defendant - Rehabilitation	-.286	.192	.383***	.011	-.275	.197	.397***
Defendant - Character	-.064	.232	.775	-.004	-.068	.239	.762
Defendant - Sincerity	-.018	.136	.953	0	-.018	.140	.952
How responsible is the Defendant?	-.044	.235	.781	0	-.044	.235	.781
Punishment	.082	.245	1.547†	0	.082	.245	1.547†

* $p < .05$, ** $p < .01$, *** $p < .001$, † $p < .09$

Table 6. *Processing of Evidence: Direct, Indirect, and, Total Standardized Effects on Sentence*

	Direct Effects			Indirect Effects	Total Effects		
	Std B	S.E.	Odds Ratio	Std B	Std B	S.E.	Odds Ratio
VIS Angry	-.041	.308	.642	-.045	-.086	.448	.393*
VIS Sad	-.018	.302	.818	-.025	-.044	.440	.623
Prior Criminal Record	.002	.250	1.017	-.081	-.079	.376	.445*
Dangerousness	-.008	.250	.925	-.047	-.054	.367	.574
PANAS Hostility	.084	.036	1.097**	-.065	.019	.054	1.021
PANAS Sadness	-.074	.051	.891*	.054	-.021	.075	.969
DPAQ Total	.173	.008	1.048***	-.029	.144	.012	1.040**
RLAQ-23 Total	.010	.008	1.003	.010	.019	.013	1.006
IRI – Perspective Taking	-.022	.015	.988	.055	.033	.024	1.018
IRI – Empathic Concern	.051	.014	1.026†	.004	.055	.023	1.028
PCR x Dangerousness	-.005	.130	.977	.023	.018	.185	1.098
VIS Angry x PCR	-.007	.210	.963	.035	.028	.208	1.154
VIS Angry x Dangerousness	-.007	.149	.963	.031	.024	.207	1.130
VIS Angry x PCR x Dangerousness	.003	.149	1.013	-.015	-.013	.206	.937
VIS Sad x PCR	-.076	.152	.678**	.003	-.073	.213	.687†
VIS Sad x Dangerousness	.028	.151	1.154	.057	.085	.214	1.549*
VIS Sad x PCR x Dangerousness	.055	.150	1.327†	.021	.076	.212	1.480†
Hostility x PCR	.015	.177	1.080	.040	.055	.253	1.323
Hostility x Dangerousness	-.043	.179	.804	.003	-.039	.252	.817
Hostility x Dangerousness x PCR	.029	.176	1.161	.048	.076	.252	1.483
Sadness x PCR	-.010	.184	.949	-.054	-.065	.253	.718
Sadness x Dangerousness	.024	.180	1.130	-.017	.007	.247	1.034
Sadness x Dangerousness x PCR	-.026	.179	.873	-.075	-.101	.249	.593*

	Direct Effects			Indirect Effects	Total Effects		
	Std B	S.E.	Odds Ratio	Std B	Std B	S.E.	Odds Ratio
Prosecution Witnesses	.237	.226	3.459***	-.165	.073	.281	1.461
Defense Witnesses	-.264	.142	.383***	.116	-.148	.171	.584**
Defendant - Rehabilitation	-.367	.193	.319***	.008	-.359	.199	.327***
Defendant - Character	.044	.209	1.176	.008	.051	.213	1.209
Defendant - Sincerity	-.083	.130	.810	-.004	-.088	.132	.802†
How responsible is the Defendant?	-.018	.253	.910	0	-.018	.253	.910
Punishment	.087	.243	1.528†	0	.087	.243	1.528†

* $p < .05$, ** $p < .01$, *** $p < .001$, † $p < .09$

Figure 1. Full Model

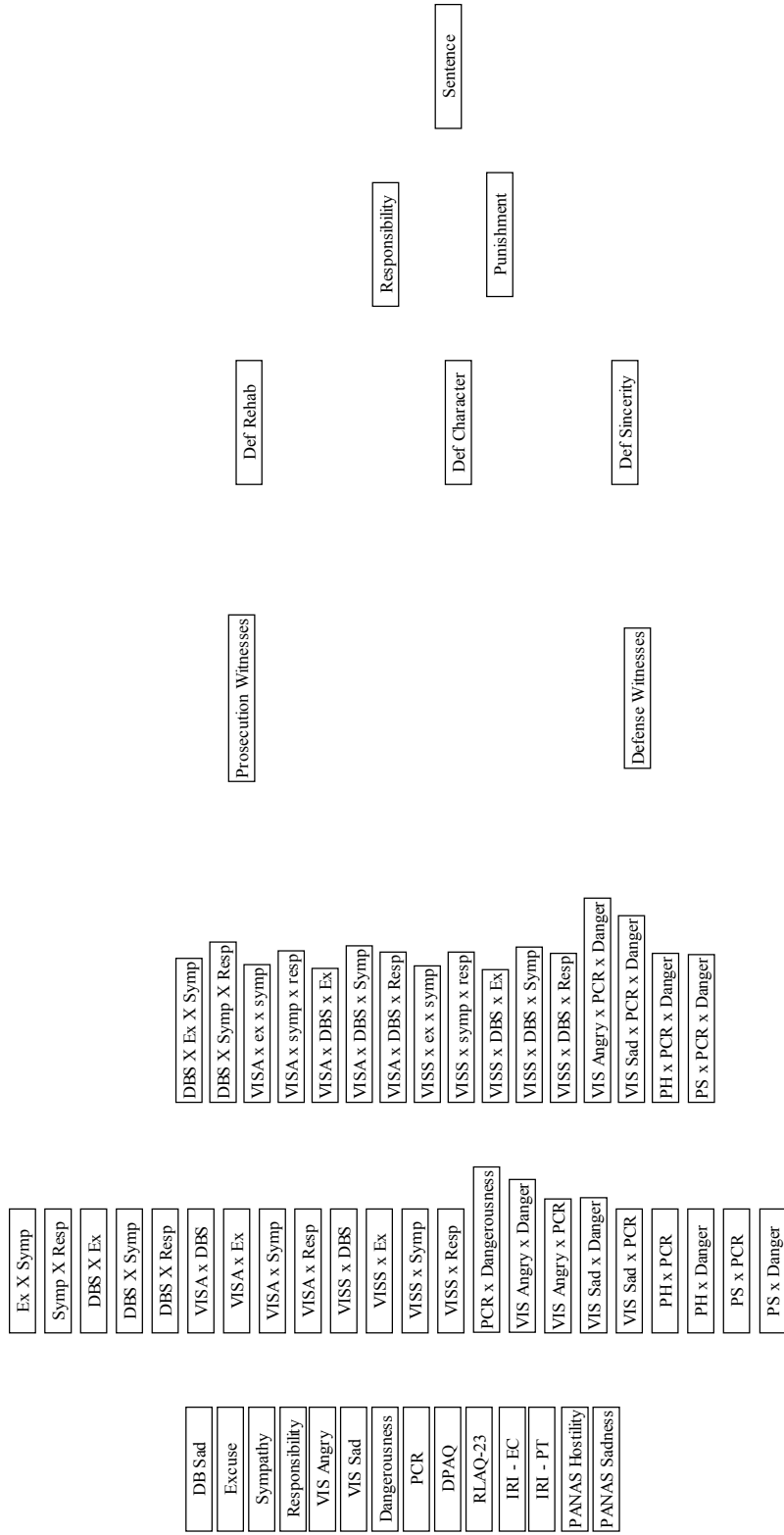
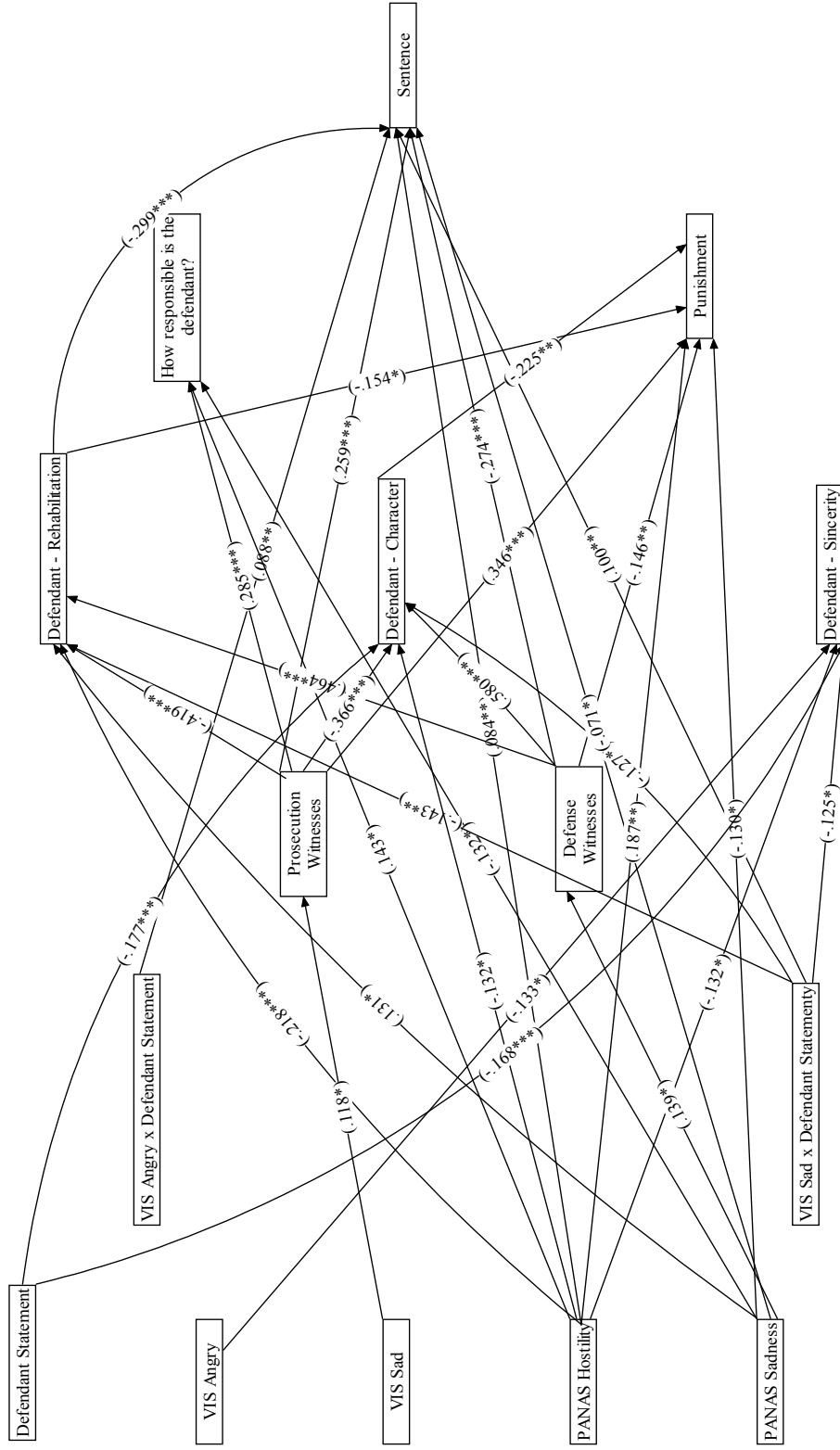


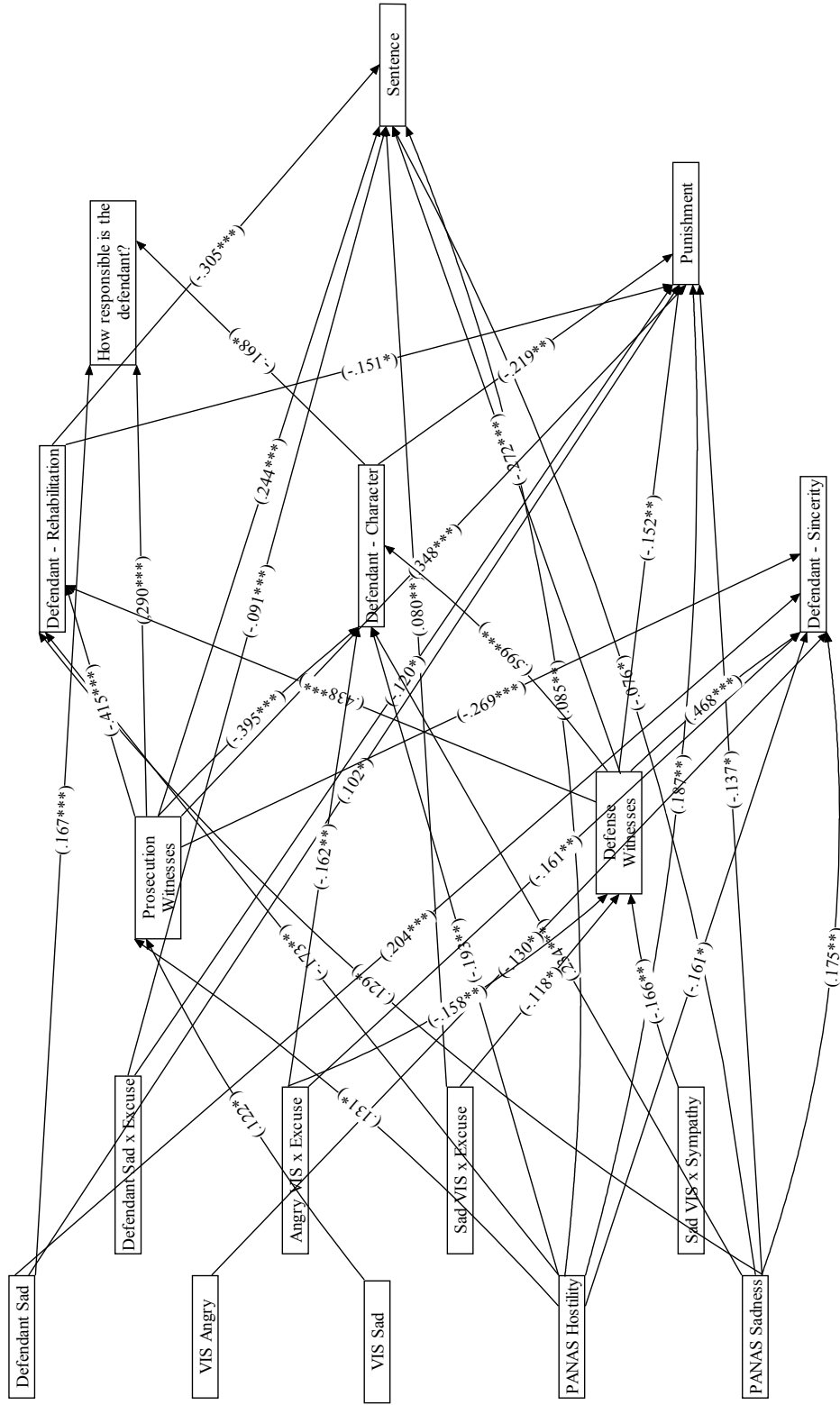
Figure 2. Defendant Statement vs. No Statement



* $p < .05$, ** $p < .01$, *** $p < .001$

Note: This figure contains information pertaining to observed variables with significant paths. For a full list of predictors please see Table 3.

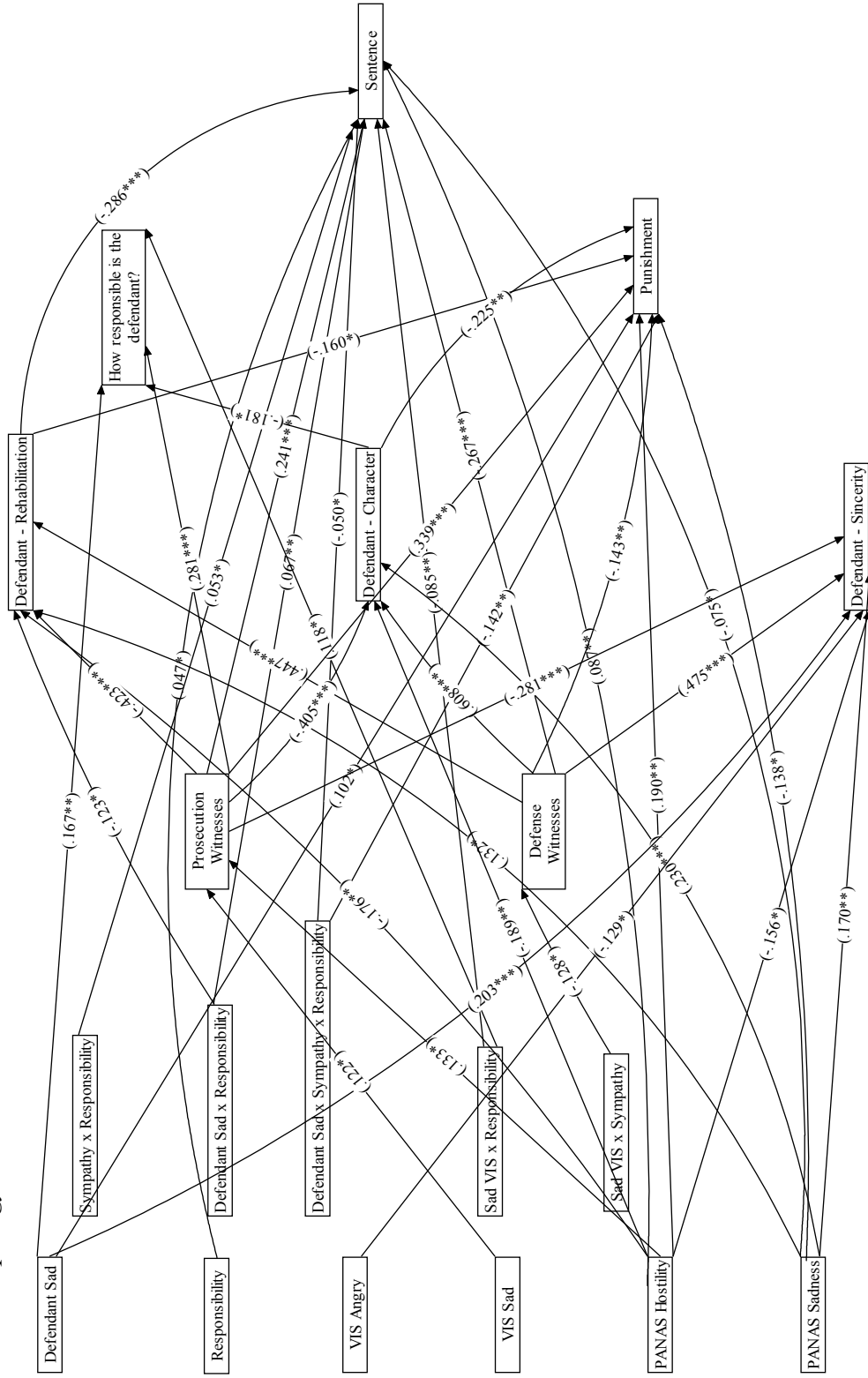
Figure 3. *Partial Apology*



* $p < .05$, ** $p < .01$, *** $p < .001$

Note: This figure contains information pertaining to observed variables with significant paths. For a full list of predictors please see Table 4.

Figure 4. Full Apology



* $p < .05$, ** $p < .01$, *** $p < .001$

Note: This figure contains information pertaining to observed variables with significant paths. For a full list of predictors please see Table 5.

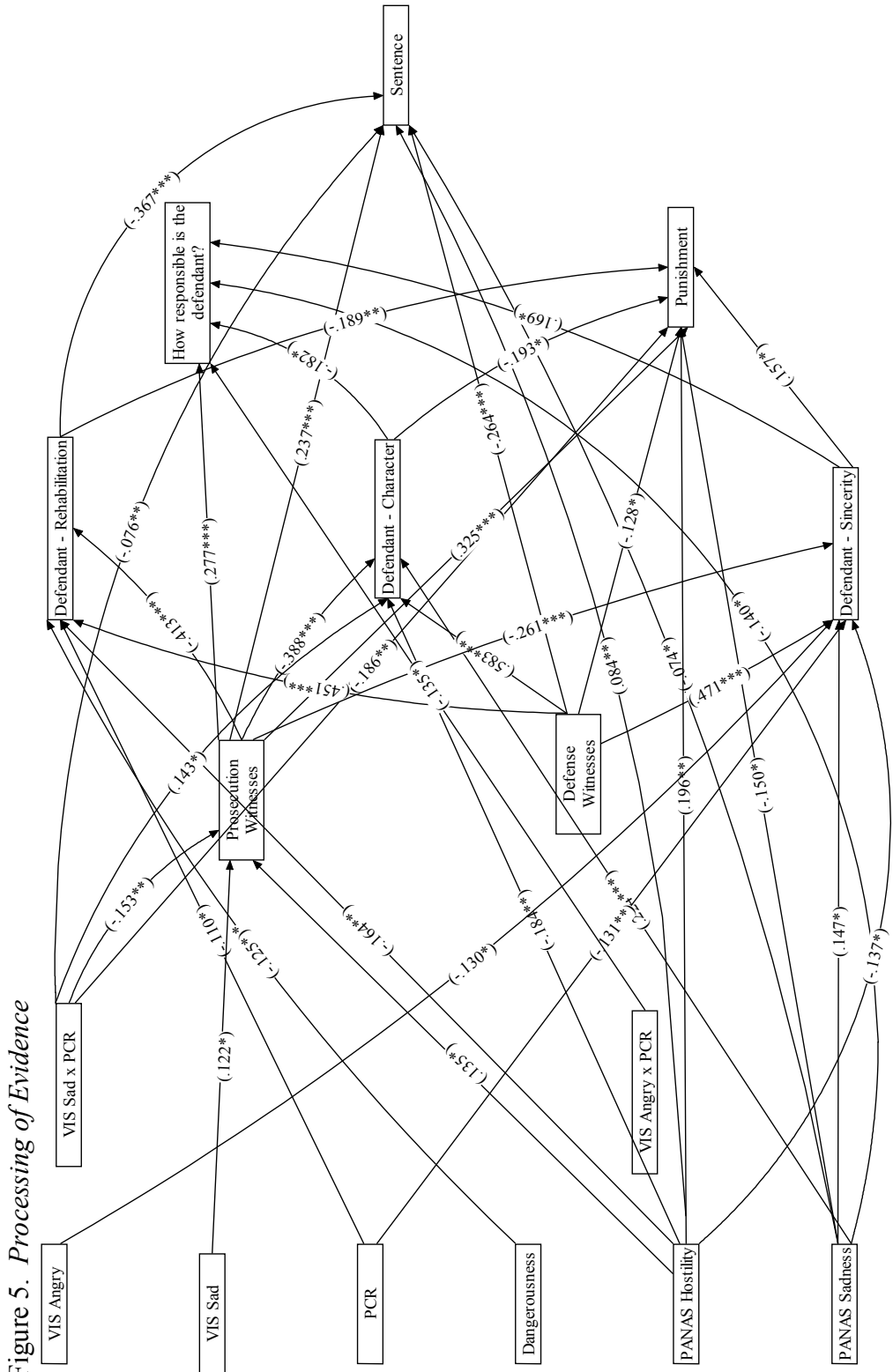


Figure 5. Processing of Evidence

* $p < .05$, ** $p < .01$, *** $p < .001$
 Note: This figure contains information pertaining to observed variables with significant paths. For a full list of predictors please see Table 6.

Appendix A. Juror Eligibility Form

In order to determine whether you are eligible to participate in our study, we're going to need you to answer several questions. If you meet the eligibility requirements, a research assistant will contact you in order to schedule a time to attend the experiment.

Please answer the following questions as if you were a juror called to serve in a death penalty trial.

1. In your sentencing decision, can you consider all three of these legal punishments-- death, imprisonment for life without parole or imprisonment for life--and impose the one warranted by the law and evidence?

Yes No

2. If you find beyond a reasonable doubt that the defendant was guilty of murder in the first degree, are your reservations about the death penalty so strong that regardless of the law, the facts, and circumstances of the case, you would not consider the imposition of the penalty of death?

Yes No

3. If you find beyond a reasonable doubt that the defendant is guilty of murder in the first degree, will you automatically impose the penalty of death?

Yes No

4. Are you 18 years of age or older?

Yes No

5. Have you ever been convicted of a felony?

Yes No

6. Are you a U.S. citizen?

Yes No

7. Do you have a valid driver's license/id or are you registered to vote?

Yes No

8. Please enter your first and last name

9. Please enter your telephone number

10. Please enter your telephone number

8. The death penalty is the just way to compensate the victim's family for some murders.

Strongly Disagree										Strongly Agree
1	2	3	4	5	6	7	8	9		

9. The death penalty does not deter other murderers.

Strongly Disagree										Strongly Agree
1	2	3	4	5	6	7	8	9		

10. The death penalty makes criminals think twice before committing murder.

Strongly Disagree										Strongly Agree
1	2	3	4	5	6	7	8	9		

11. Executing a person for premeditated murder discourages others from committing that crime in the future.

Strongly Disagree										Strongly Agree
1	2	3	4	5	6	7	8	9		

12. It is more cost efficient to sentence a murderer to death rather than to life imprisonment.

Strongly Disagree										Strongly Agree
1	2	3	4	5	6	7	8	9		

13. Executing a murderer is less expensive than keeping him in jail for the rest of his life.

Strongly Disagree										Strongly Agree
1	2	3	4	5	6	7	8	9		

14. Even when a murderer gets a sentence of life without parole, he usually gets out on parole.

Strongly Disagree										Strongly Agree
1	2	3	4	5	6	7	8	9		

15. There is no such thing as a sentence that truly means "life without parole."

Strongly Disagree										Strongly Agree
1	2	3	4	5	6	7	8	9		

Revised Legal Attitudes Questionnaire - 23

Instructions: For each of the statements below, please indicate to what extent you agree or disagree. If you strongly disagree with the statement please write “-3” to the left of the question. If you strongly agree with the statement please write “3” to the left of the question. Of course, you may neither agree nor disagree with the following statements. If so, please use the numbers in the middle of the scale that describes the best fit.

Please keep the following scale in mind as you rate each of the statements below:

- 3 = strongly disagree**
 - 2 = moderately disagree**
 - 1 = slightly disagree**
 - 0 = neutral**
 - 1 = slightly agree**
 - 2 = moderately agree**
 - 3 = strongly agree**
-

1. _____ Unfair treatment of underprivileged groups and classes is the chief cause of crime.
2. _____ Too many obviously guilty persons escape punishment because of legal technicalities.
3. _____ Evidence illegally obtained should be admissible in court if such evidence is the only way of obtaining a conviction.
4. _____ Search warrants should clearly specify the person or things to be seized.
5. _____ No one should be convicted of a crime on the basis of circumstantial evidence, no matter how strong such evidence is.
6. _____ There is no need in a criminal case for the accused to prove his innocence beyond a reasonable doubt.
7. _____ Any person who resists arrest commits a crime.
8. _____ When determining a person’s guilt of innocence, the existence of a prior arrest record should not be considered.
9. _____ Wiretapping by anyone and for any reason should be completely illegal.
10. _____ Defendants in a criminal case should be required to take the witness stand.
11. _____ All too often, minority group members do not get fair trials.

Please keep the following scale in mind as you rate each of the statements below:

-3 = strongly disagree

-2 = moderately disagree

-1 = slightly disagree

0 = neutral

1 = slightly agree

2 = moderately agree

3 = strongly agree

12. _____ Because of the oppression and persecution minority group members suffer, they deserve leniency and special treatment in the courts.
13. _____ Citizens need to be protected against excess police power as well as against criminals.
14. _____ It is better for society that several guilty men be freed than one innocent one wrongfully imprisoned.
15. _____ Accused persons should be required to take lie-detector tests.
16. _____ When there is a “hung” jury in a criminal case, the defendant should always be freed and the indictment dismissed.
17. _____ A society with true freedom and equality for *all* would have very little crime.
18. _____ It is moral and ethical for a lawyer to represent a defendant in a criminal case even when he believes his client is guilty.
19. _____ Police should be allowed to arrest and question suspicious looking persons to determine whether they have been up to something illegal.
20. _____ The law coddles criminals to the detriment of society.
21. _____ The freedom of society is endangered as much by overzealous law enforcement as by the acts of individual criminals.
22. _____ In the long run, liberty is more important than order.
23. _____ Upstanding citizens have nothing to fear from the police.

Interpersonal Reactivity Index

Rate the following statements as best you can according to how well they describe you:

- | Does not
describe me well | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | Describes me
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 C. Trial Summary

Trial Summary

Brian McCullum and Tony Sparks had been friends since they were in college. One night, McCullum and Sparks had decided to plan a robbery. The two men decided on the following plan: they would ask someone for a ride, get in the car and pull a gun on the victim, steal the victim's money and personal effects, obtain the pin number for the victim's ATM card, force the victim into the trunk of the car and drive somewhere to abandon the car with the victim locked in the trunk. Sparks drove McCullum to a local supermarket to find a victim. Having had no luck there, they continued their search by driving around parking lots at other local stores until they found Todd Bagley using a pay phone while his wife Stacie waited for him in their car.

McCullum approached Todd and asked him for a ride to his uncle's house. Todd agreed. McCullum got in the backseat of the Bagleys' car while Sparks followed in a separate vehicle. McCullum gave Todd directions, and then pulled out the gun, pointed it at Todd and told him that "the plans have changed." On McCullum's orders, Todd stopped the car, and the Bagleys got out. Sparks parked the vehicle he was driving and got into the Bagley's car with McCullum.

Diana Prince, the friend whom the Bagley's were visiting, filed a missing persons' report with the Harris County Sheriffs Department when Todd and Stacie never returned to her home. Based on the payphone records, police were able to pinpoint the convenience store where Todd and Stacie were last seen. The surveillance video showed Brian McCullum getting into their vehicle and driving in the direction of a secluded park. The police organized a manhunt of the park where they found the Bagley's car with the bodies of Todd and Stacie locked in the trunk. Both victims had been shot in the head. The police also found a bag containing two guns, one of which was identified as the murder weapon. Forensic evidence later confirmed that the murder weapon contained a partial fingerprint belonging to Brian McCullum and that the gun was registered in his name.

The police also noticed that large sums of money had been withdrawn from the Bagley's bank account in addition to unusual activity on their credit cards. Surveillance videos from several different ATMs showed McCullum and Sparks using the Bagley's ATM cards to withdraw cash. The surveillance videos corroborated Tony Sparks' testimony that Brian McCullum would use the ATMs while Sparks waited in the car. The police arrested Brian McCullum and Tony Sparks based upon the videos and the gun registration records.

McCullum told police during his interrogation that they had decided to rob someone in the Killeen – a rather affluent neighborhood- because he believed people there "always carry a lot of cash," and were easy to rob. McCullum told homicide detectives that they decided to rob someone for money to buy new clothes, but that they had not intended to ever murder someone. McCullum stated that he had panicked because the Bagley's saw his face and he believed they would go to the police.

Tony Sparks plead guilty to various offenses in exchange for his truthful testimony. Based largely upon this testimony, McCullum was charged with carjacking resulting in death and conspiracy to commit murder. Additionally, McCullum was charged with two counts of first degree murder since ballistics and fingerprint evidence indicated he was responsible for firing the gun that killed the Bagleys. McCullum's defense focused primarily upon attacking Sparks' testimony as McCullum claimed it had been Sparks' idea to kill the Bagleys.

Imagine you are a juror in this case, what would be your verdict? (Please circle one)

Guilty

Not Guilty

Appendix D. Trial Transcript

Trial Summary

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Imagine you are a juror in this case, what would be your verdict? (Please circle one)

Guilty

Not Guilty

U.S. Government vs. Brian McCullum
Case # 841981

BAILIFF

All rise. Court is now in session. The honorable Judge Richard Matsch is now presiding.

JUDGE

Please be seated. Now, before we begin, I want to give you a general overview of where we are now and what to expect. Now that the jury has found Brian McCullum guilty of crimes which carry a possible sentence of death, we begin the second phase of the trial, the part where you will be asked to decide whether Brian McCullum should be sentenced to death or to life imprisonment without any possibility of release.

Even though the jury has found Mr. McCullum guilty of charges which carry a possible death sentence, the law requires that you approach this sentencing proceeding with open minds and be able to give meaningful consideration to all of the possible sentences, which again are death and life in prison without the possibility of ever being released.

Before deciding on the appropriate punishment, you must consider additional information about the crimes and about the uniqueness of the defendant as an individual human being. The information you may consider includes the evidence presented at the trial. Thus you may consider the testimony, the exhibits, and the stipulations offered by both sides during the guilt phase; and there will be no need for the parties to reoffer that evidence that's already before you.

The parties will also call witnesses and other exhibits at this second hearing in an effort to prove aggravating and mitigating circumstances. The Government first will present information about aggravating circumstances which tend to support imposition of the death penalty. The defense then will present information about mitigating circumstances, which tend to support imposition of a sentence other than death.

I will instruct you in more detail at the close of this hearing regarding the questions you must answer based on all of the information, which you will then have before you. Your initial responsibility will be to decide whether the Government has proved beyond a reasonable doubt that the defendant acted with the requisite intent to cause death and whether the Government has proved at least one aggravating factor from the list of aggravating factors it has alleged. If you make these findings, you must then consider whether the Government has proved beyond a reasonable doubt additional aggravating factors called "nonstatutory aggravating factors" that it has alleged.

Next, each juror individually must consider whether the defendant has proved any mitigating factors by a preponderance of the evidence. Mitigating factors may include information about personal traits, character, or background of Brian McCullum.

You must ultimately determine whether the proven aggravating factor or factors sufficiently outweigh any proven mitigating factor or factors to justify a sentence of death. The weighing of aggravating and mitigating factors is not a mechanical process. You should not simply count the number of aggravating factors and mitigating factors and decide which number is greater, but instead you should consider the weight and value of each factor.

Your role in this proceeding is to be the conscience of the community in making a moral judgment about the worth of a specific life balanced against the societal value of a deserved punishment for those particular crimes. Your decision must be a reasoned one, free from the influence of passion, prejudice, or any other arbitrary factors.

Now, once again, just as was true throughout the trial, you must keep open minds and wait until you've heard it all before making any individual decisions and before discussing the question of punishment with any other jurors. The fundamental rule is that the jury must fairly and impartially consider what they have heard, both at trial and during this phase and follow the law in making the decision.

We will now proceed with this hearing and call on counsel for the Government for the opening statement.

MR. RYAN (Prosecutor)

Your Honor . . .

JUDGE

Mr. Ryan.

MR. RYAN (Prosecutor)

May it please the Court . . .

JUDGE

Go ahead.

MR. RYAN (Prosecutor)

My name is Patrick Ryan. I'm the United States Attorney in Texas, where these crimes occurred. On behalf of the United States and my fellow prosecutors, it is my duty to talk to you, to prepare you to receive information about this crime. You have already heard some information, but we will present more. This information will be difficult for us to present and it is information that will be painful for you to hear. But it is our duty to ensure that you are fully informed with respect to all of the facts, the loss of life, the devastation, and the injuries to those affected by these crimes; and it is your duty to be fully informed before you make a sentencing decision.

By the verdict that you have found, you have made a determination that this defendant, Brian McCullum, committed all of the crimes charged, crimes of killing two innocent people during the commission of a carjacking. Now not every crime, not every murder, justifies the imposition of the death penalty. There are special circumstances and cases in which it is permitted, and his Honor told you some this morning about some of the factors that you will need to consider in your decision. The factors that we intend to prove through the presentation of our evidence are the following:

The first aggravating factor that you will need to consider is that the defendant committed the offenses after substantial planning and premeditation to cause the death of one or more persons. Despite the fact that a co-conspirator was present at the scene of the crime, it was Brian McCullum that pulled the trigger on that night. We will also present evidence detailing the days that lead up to the crime and it will become clear that it was Brian McCullum's idea to purchase the gun that was used to murder Stacie and

Todd Bagley. McCullum did not act in the heat of the moment as the defense attorney will have you believe. He did not kill the Bagleys' because he got carried away and could see no escape from his situation. No, he carefully planned, and executed a crime so heinous that once you hear all the details you will have no choice but to return a verdict of death.

The second aggravating factor: that the defendant participated in the carjacking of the victims thus resulting in their deaths. A murder committed during the commission of a carjacking is a capital offense. A capital offense as defined by the law is a criminal offense punishable by death. This is a crime so serious that the lawmakers deemed it appropriate to punish one who commits such a crime by death. You must take this into account when determining Brian McCullum's fate.

The third aggravating factor that you must consider is that the offenses committed by the defendant resulted in multiple deaths. Brian McCullum did not only take the life of one innocent person, but that of two. He killed two innocent people with planned precision.

You will hear the testimony of Detective James Thompson, the individual in charge of the Bagley case. At the conclusion of the evidence, we will ask you to find that these three statutory aggravating factors have been met beyond a reasonable doubt.

The final two statutory factors that you must consider are whether Brian McCullum will continue to pose a risk of violence if he is not executed. You will hear testimony from Dr. Jack Barker. Dr. Barker will testify about the future risk of violence Brian McCullum poses even if he were to remain incarcerated for the remainder of his life. I am convinced that after you hear Dr. Barker's testimony, you will fully understand just the extent of violence that Mr. McCullum is capable of inflicting on other inmates or prison staff.

Dr. Barker will also testify concerning the nature of Brian McCullum's prior criminal record, the final statutory factor you will need to consider. Dr. Barker's testimony will reveal that this is not the first violent act Mr. McCullum had committed. You must take this information into account when deciding whether Mr. McCullum poses a continued risk of danger if left incarcerated.

We will also be presenting non-statutory aggravators in order to prove our case. The first non-statutory aggravator you must take into consideration is whether the crimes were carried out in a cold and heinous manner. The Bagleys were locked in a dark trunk for several hours and made to beg for their lives. When their pleas for mercy were ignored, Brian McCullum shot both victims at point blank range in the face. Detective Thompson's testimony will establish the heinousness and cruelty of Brian McCullum's actions.

Finally, victim-impact evidence will be presented. This is evidence concerning the effect of the defendant's offenses on the victims and the victims' families as evidenced by the oral testimony and victim-impact statements that identify the victim of the offenses and the extent and scope of injury and loss suffered by the victims' families. You will hear testimony from Eve Lynch, Stacie Bagley's mother. She will tell you about the impact Todd and Stacie's deaths had on her. You will come to know these two individuals who died without warning. You will get a glimpse of the devastation, of the broken dreams, and the lost lives.

Ladies and gentlemen, at the end of this case, after you've heard all of the evidence, we will ask you to return a verdict of death, the only verdict that justly fits this crime. Thank you.

JUDGE:

Would the counsel for the defense like to present their opening argument?

MR. BURR (Defense):

If it pleases the Court, we would like to present our opening argument.

JUDGE:

Proceed

MR. BURR (Defense):

Thank you, your honor. Ladies and gentlemen of the jury, the truth of the suffering which you will hear today will undoubtedly spark extraordinarily powerful emotions and they represent truths which you will have to consider. You could not avoid considering it. Still, we ask you to think for a moment whether it is the only truth that you need to consider. And we urge you to come to the conclusion and to listen to our reasons as to why it is not the only truth that must be considered.

Judge Matsch has said to you several times that you are acting as the conscience of the community in making this decision. You are. We have no King Solomon in our time. Indeed we have never had a King Solomon in this country. For more than 200 years, we have relied on each other, on other peers to make the hardest, most difficult decisions to accord justice.

That is the challenge that is now before you. And we submit that it is not based upon a single reality. The wisdom that you have to draw on is not conventional wisdom. The wisdom of Solomon is anything but conventional. The wisdom that you must summon calls for you first to step back, to step back from those raw feelings, the feelings that make you cringe, that make you angry, that make you feel a whole range of emotions that most people in this courtroom will experience with you during this trial.

The first challenge and the first step towards the wisdom of Solomon is to step back, not to step back from the facts, we would never ask you to do that, but to step aside, leave the emotion as best you can there, and let the facts simply reside with you in a calm way. And as you do that, we then ask that you be open to and listen to all of the evidence we will present as you come to a decision of justice for the community.

A question that has undoubtedly been haunting you during this trial is the question how did this come to be? What could have happened to bring about so much suffering? The Government will try to argue that my client, Brian McCullum, committed these acts in a cold blooded manner for his own personal gain. And by finding my client guilty, you have accepted at least a part of that, those facts and a part of that theory. We must accept your verdict in this part of the trial. This is not the time or place to retry guilt or innocence or to quibble about those facts, and that is not what we intend to do.

But there is another side to this reality that we will ask that you consider now as you find your way and find justice. This evidence will be coming from several very important witnesses whom you will hear from during the course of this trial. These are

people who have come from the cross section and cross span of Mr. McCullum's life. They are counselors and they are his family. All of this evidence will illustrate that Brian McCullum was a smart young man just starting out in life, but he threw it all away one evening in a series of tragic decisions. However, we will ask you to consider all of this evidence and to ask yourself whether Mr. McCullum is beyond redemption.

Brian took a wrong turn in life – one any one of us sitting here could have taken. He started hanging out with the wrong crowd who influenced him in a way not conducive to his development.

And as you sift through these facts and begin to piece together the person that Brian McCullum is, you will begin to see through the stereotypes that might have been created for you by the lack of information before, and you will be able to see him for who he is: A person not very much unlike your brother, who could be your brother, who could be your son, who could be your grandson.

After considering this evidence, we will ask that you to assume again your role as conscience of the community and taking into account both sides of this tragic story, that you provide a response that you think is the right response. There is violence, there is much death, there is tremendous suffering. But there is also a person at the center whom you will not be able to dismiss easily as a monster or a demon, who could be your son, who could be your brother, who could be your grandson, who had a number of admirable human qualities, a number of vulnerable human qualities, and a number of frailties, just like any of us, but who is just like any of us. And he is at the middle of this, and there is violence at both ends. And we believe that once you have sifted through these facts that you will come to the conclusion that the right response is a life sentence.

JUDGE:

Thank you, Mr. Ryan and Mr. Burr. The Government may call its first witness.

MR. RYAN (Prosecutor):

We call Detective James Thompson.

JUDGE:

All right.

BAILIFF:

Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

DET. THOMPSON:

I do.

MR. RYAN (Prosecutor):

Please state your name and profession for the record.

DET. THOMPSON:

Detective James Thompson. I was the head investigator in the Bagley murders

MR. RYAN (Prosecutor):

Can you tell us about how Brian McCullum first encountered the Bagleys?

DET. THOMPSON:

Brian McCullum and Tony Sparks had found the Bagley's in a convenience store parking lot. Todd Bagley had been using a payphone while Stacie Bagley waited for him in their car. McCullum approached Todd Bagley and explained that he was having car problems. McCullum then asked him if they would be willing to give him a ride to his uncle's house and Mr. Bagley agreed. McCullum entered the backseat of the car while Sparks followed in another vehicle.

McCullum gave the Bagleys directions while Sparks continued to follow the car for several minutes. When they reached a relatively deserted area near the park, McCullum pulled out a gun and ordered Todd and Stacie to pull over and give him the car keys and their wallets.

MR. RYAN (Prosecutor):

What happened after they pulled over?

DET. THOMPSON

Sparks parked his car nearby and then walked over to the Bagley's car. McCullum instructed the Bagleys to get out of the car and to kneel on the ground while Sparks bound their hands with duct tape. They were next instructed to get in the trunk of the car. McCullum and Sparks then proceeded to drive around with them in the trunk for two hours while they traveled from various banks and stores using the Bagley's ATM and credit cards. According to Sparks, the Bagleys could be heard begging to be released but McCullum would just crudely curse and mock them. They then drove back to the park where Sparks had hidden his car.

McCullum went through the car in order to look for more valuables. While he was doing that, Sparks was watching the Bagleys who begged him to let them go. They mentioned that they were from out of town and that they were leaving the next day. They promised that they could have anything they wanted and that they wouldn't go to the police.

MR. RYAN (Prosecutor):

Is this when the argument ensued between Sparks and McCullum?

DET. THOMPSON

Yes, Sparks felt that they should just let them go, but McCullum was convinced that they would go to the police. He was also scared that they could identify them because the young men hadn't been wearing anything to cover their face. McCullum told Sparks that they had to shoot the Bagleys and hide the bodies. While this was going on, the Bagleys continued to beg to be released

MR. RYAN (Prosecutor):

What happened next?

DET. THOMPSON

McCullum and Sparks continued arguing until McCullum walked up to the trunk and shot the Bagleys in the head. McCullum and Sparks then drove the car deeper into the woods where they decided that they would burn the car in order to get rid of the bodies. McCullum grabbed a gas can from Sparks' car and began to pour fuel all over the vehicle before he set it on fire. They then wiped down the guns, placed them in a bag, and hid them elsewhere in the woods. After they did one last look around the crime scene, they went home.

MR. RYAN (Prosecutor):

Could you briefly tell us how Sparks and McCullum were initially identified as suspects?

DET. THOMPSON:

Well, the person that the Bagleys were visiting filed a missing persons' report. We were able to establish the last location that the Bagley's had been seen at thanks to the payphone records. When we arrived at the convenience store, surveillance videos not only showed McCullum getting into the car but we also got a general sense of the direction in which they were traveling which lead directly to the Belton Lake Recreation Area. We organized a search of the woods where we found both the car containing the bodies as well as the guns, one of which had a partial fingerprint. We also gathered the surveillance video from the ATMs where the Bagleys' cards had been used that night and we were able to identify McCullum and Sparks.

MR. RYAN (Prosecutor):

According to the autopsy report, what was the cause of death?

DET. THOMPSON:

Todd Bagley died instantly from a gunshot wound to the head. Stacie Bagley had been shot in the right side of her face. However, the autopsy revealed that she died from smoke inhalation. This suggests that the gunshot merely knocked her unconscious.

MR. RYAN (Prosecutor):

Who was shot first?

DET. THOMPSON:

Todd Bagley.

MR. RYAN (Prosecutor):

So Stacie Bagley watched her husband get shot in the head before being shot herself?

DET. THOMPSON:

Well, they were both shot while confined in the trunk of the car so it is possible.

MR. RYAN (Prosecutor):

Now, you stated that you found the guns. Can you tell us about the ballistics evidence?

DET. THOMPSON:

Ballistics confirmed that only one gun had been used to fire the two bullets that had wounded Mr. and Mrs. Bagley. We also searched the registration records and found that the gun was registered to Brian McCullum

MR. RYAN (Prosecutor):

Now, I want to take some time to discuss events leading up to the crime. Do you have any information as to when this gun had been purchased?

DET. THOMPSON:

The registration records were dated about a week before the time of the crime.

MR. RYAN (Prosecutor):

So Brian McCullum took the time to purchase a gun a short time before the murders?

DET. THOMPSON:

Yes.

MR. RYAN (Prosecutor):

Now you mentioned that you found a partial print on one of the guns. Who did it belong to?

DET. THOMPSON:

We found Brian McCullum's fingerprint on the murder weapon.

MR. RYAN (Prosecutor):

Detective Thompson, how long have you worked for law enforcement?

DET. THOMPSON:

I've worked as a police officer for nearly ten years and I've spent the past five years working as a homicide detective.

MR. RYAN (Prosecutor):

In your experience as a homicide detective, have you ever seen a crime scene like the one in this case?

DET. THOMPSON:

No, I have not.

MR. RYAN (Prosecutor):

Thank you, Detective Thompson. No further questions, your honor.

JUDGE

Mr. Burr, do you wish to cross-examine this witness?

MR. BURR (Defense):

No, your honor

JUDGE:

Very well, the Government may call its next witness.

MR. RYAN (Prosecutor):

We call Dr. Jack Barker.

BAILIFF:

Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

JACK BARKER:

I do.

MR. RYAN (Prosecutor):

Please state your name and profession for the record.

JACK BARKER:

My name is Jack Barker. I'm a licensed clinical psychologist who works at Oswald State Hospital.

MR. RYAN (Prosecutor):

Could you please state for the court how long you have been a psychologist as well as where you have received your professional training.

JACK BARKER:

I have been a board-certified psychologist for 10 years and I have been on staff at Oswald State Hospital for the past five years. I received my BA in psychology from the University of Texas at Austin and pursued my MA and Ph.D. at Texas A & M. My specialized area of work is in forensic assessments. I am also certified by the Darkstone Research Group in the administration of the Psychopathy Checklist-Revised also known as the PCL-R. I have also received specialized trainings in administering other forensic instruments such as the HCR-20.

MR. RYAN (Prosecutor):

Could you please tell us a little bit about your involvement in this case?

JACK BARKER:

I was hired by the prosecution in order to conduct a risk assessment on Mr. Brian McCullum.

MR. RYAN (Prosecutor):
What is a risk assessment?

JACK BARKER:
It's an assessment geared at determining the risk an individual poses of committing future acts of violence against themselves or others.

MR. RYAN (Prosecutor):
How do you determine the level of risk an individual poses?

JACK BARKER:
Well, the assessment involves multiple steps. I first start by reviewing all available records including anything pertaining to an individual's mental health and criminal records. In addition to various records, I also attempt to obtain supporting information via interviews with friends, employers, and family members. I will then schedule several hours of psychological testing. Once I get those test results, I then conduct a face-to-face interview with the individual in order to ask specific questions. Finally, I take all of that information and I formulate a report that I then submit to the court before I am called to testify.

MR. RYAN (Prosecutor):
Could you please start by describing the records that you reviewed to prepare for your interview with Mr. McCullum?

JACK BARKER:
I reviewed his school records and he appeared to have been a very bright student. However, his grades started to slip when he entered college and he ultimately lost his scholarship.

MR. RYAN (Prosecutor):
Did he have a history of hospitalizations for mental illness?

JACK BARKER:
No, Mr. McCullum does not have a history of mental illness.

MR. RYAN (Prosecutor):
Did he have a prior criminal record?

No PCR Manipulation

JACK BARKER:
No, Mr. McCullum does not have a prior criminal record. This is the first time he has come into contact with the police.

PCR Manipulation

JACK BARKER:

Yes, Mr. McCullum had a prior criminal record for assault. It appears as if Mr. McCullum and two other men had been involved in a bar fight and they were arrested when a bystander called the police. He was sentenced to anger management and made to pay a fine.

MR. RYAN (Prosecutor):

Do you have any indication as to why a good student suddenly flunks out of college?

JACK BARKER:

Well, based on my interviews with several members of Mr. McCullum's family it would appear as if he began to associate with a rather tough crowd once he moved away to college. Several of his known associates had criminal records for dealing drugs amongst other crimes including assault and robbery. It would appear as if he became involved with criminals once he left home.

MR. RYAN (Prosecutor):

In addition to the records that you reviewed, what sort of tests did you administer to Mr. McCullum

JACK BARKER:

I administered the PCL-R in addition to the HCR-20. The PCL-R measures psychopathy. People who are psychopathic prey on others using charm, deceit, violence or other methods that allow them to get with they want. Some of the symptoms of psychopathy include: lack of a conscience or sense of guilt, lack of empathy, egocentricity, pathological lying, repeated violations of social norms, disregard for the law, shallow emotions, and a history of victimizing others. The presence of psychopathy is a well-verified factor in risk of future violence. The HCR-20 is frequently given in addition to the PCL-R and it contains 20 items which assess the presence of known risk factors for future violence, including a history of violent acts, current clinical issues, and risk management issues. The items of both tests are based on empirical research and they have good to excellent reliability.

MR. RYAN (Prosecutor):

What did the test results suggest?

JACK BARKER:

Mr. McCullum scored a 22 on the Psychopathy Checklist. A score of 30 or above typically indicates the individual should be categorized as a psychopath, so he is just below the cutoff. Although his score is below the cutoff for psychopathy, it is elevated indicating the presence of some psychopathic traits. The HCR-20 does not provide specific scoring guidelines for assessing risk, but assists clinicians in determining if an individual is a low, moderate, or high risk of committing future acts of violence. It is my opinion that Mr. McCullum poses a moderate risk.

MR. RYAN (Prosecutor):

Can you tell us about the clinical interview that you conducted?

JACK BARKER:

I spent several hours interviewing Mr. McCullum over two months ago. I used his the information I gathered from his records and test results in order to formulate my interview strategy. Mr. McCullum does present certain risk factors that increase his chances of future violence.

MR. RYAN (Prosecutor):

What are these factors?

JACK BARKER:

Well, I would say his age is certainly a factor. Although he is 25 years-old, this is still an age where individuals are at a risk of committing future acts of violence. He also has a history of employment problems and relationship instability. He has also experienced family disruption on account of his parent's divorce. It does not appear that Mr. McCullum is currently experiencing any form of mental illness. However, he does present some impulsivity and negative attitudes that also place him at a risk of increased violence. Finally, there are also risk factors present that might prove to make risk management difficult for him in prison. Given that Mr. McCullum claims he committed the crime because he panicked, this suggests that he does not handle stress very well and placement in a stressful environment such as prison might increase his risk of violence. Prisons also include a variety of de-stabilizers such as isolation, drugs, and gang violence so I believe these could also present problems for Mr. McCullum's risk management.

MR. RYAN (Prosecutor):

Dr. Barker, based on all of the data what is your professional opinion about the likelihood of Mr. McCullum committing violent acts behind bars?

Low Risk Manipulation

JACK BARKER:

Given the types of risk factors present, it is my opinion that there is a low to moderate likelihood of Mr. McCullum committing future acts of violence if he is not executed. While, his borderline scores on the PCL-R and moderate risk on the HCR-20 suggest that there is a chance he could engage in future violent acts, Mr. McCullum's lack of mental illness lower the risk of violence.

High Risk Manipulation

JACK BARKER:

Given the types of risk factors present, it is my opinion that there is a high likelihood of Mr. McCullum committing future acts of violence if he is not executed. His borderline scores on the PCL-R and moderate risk on the HCR-20 suggests that there is a chance he could engage in future violent acts, but the presence of risk management issues such as his poor response to stressors and the presence of de-stabilizers in prison increase the risk of violence.

MR. RYAN (Prosecutor):

Thank you, Dr. Barker. No further questions, your honor.

JUDGE

Mr. Burr, do you wish to cross-examine this witness?

MR. BURR (Defense):

I have no questions, your honor.

JUDGE

Very well, the government may call it's next witness.

MR. RYAN (Prosecutor):

The government rests, your honor.

JUDGE

Then the defense may call its first witness.

MR. BURR (Defense):

We wish to call William Gunn.

BAILIFF:

Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

WILLIAM GUNN:

I do.

MR. BURR (Defense):

Please state your name and occupation for the record.

WILLIAM GUNN:

William Gunn. I'm a licensed clinical psychologist who works for the Federal Bureau of Prisons. I currently work at the Federal Detention Center in Houston, Texas.

MR. BURR (Defense):

Could you please state for the court how long you have been a psychologist as well as where you have received your professional training?

WILLIAM GUNN:

I have been a licensed psychologist for 10 years. I received my BA in psychology from the University of Texas at El Paso and pursued my PhD in clinical psychology at Sam Houston University. I did my fieldwork at the Carswell Federal Medical Center in Fort Worth, Texas. After I graduated I gained a position at the Beaumont Federal Detention Facility where I worked for five years before transferring to the Federal Detention Center in Houston where I have worked for the past five years.

MR. BURR (Defense):

Mr. Gunn, when did you first encounter Mr. McCullum?

WILLIAM GUNN:

Mr. McCullum had requested to talk to a mental health counselor when he was first brought to the facility a year ago before the trial started. It should be noted that Mr. McCullum sought out my help voluntarily and that he was not referred by the prison officials. Most inmates find their way into the mental health system as a result of emergency intervention on the part of the staff or because it's part of the terms of their sentence.

MR. BURR (Defense):

What was Brian McCullum's reason for wanting to enter counseling?

WILLIAM GUNN:

He said that he was depressed and having a hard time getting used to living in the detention center. He just wanted to have a chance to talk to someone and get himself together. He was very withdrawn and quiet when I first met him.

MR. BURR (Defense):

Can you tell us a little more about the type of counseling you engaged in with Brian McCullum?

WILLIAM GUNN:

We have one-on-one therapy sessions twice a week which are opportunities for him to discuss how he's adjusting to life in the detention facility and actions he can take to try and better his life while he's incarcerated. The inmates have various assignments that they have to work on outside of the counseling sessions if they want to stay in the program. These assignments are an attempt to get them to develop insight into why they committed their crimes and to identify triggers of such behavior so that they can stop the behavior before it escalates out of control.

MR. BURR (Defense):

Can you tell us a little more about these behavioral triggers?

WILLIAM GUNN:

It's a technique geared at getting the offender to look at the situation globally in order to assess the things that influence their offending. For example, an individual who beats his wife might only do so when he's drunk. One of the goals would be to get to the point where that individual recognizes what triggers his urge to drink so that he can stop the situation from escalating to violence.

MR. BURR (Defense):

Mr. Gunn, have you ever worked in a maximum security federal penitentiary?

WILLIAM GUNN:

Yes, I have. As I previously mentioned, I worked at the Beaumont facility which is a large complex encompassing minimum, medium, and maximum security penitentiaries. During my tenure there I worked with prisoners who were from all three security levels.

MR. BURR (Defense):

Could you tell us a little bit about what life in a maximum security federal penitentiary is like for a prisoner?

WILLIAM GUNN:

Well, much depends on the individual, but prisoners are typically confined to their cells for 23 hours a day. Sometimes a prisoner may be allowed out of their cell for one hour of recreation time within the unit or some other designated area. Each prisoner has their own cell where they eat all of their meals alone and are under constant supervision. If they need to travel to another part of the prison they are shackled and escorted by the guards.

MR. BURR (Defense):

Do you think Brian McCullum would fare well in a maximum security penitentiary?

WILLIAM GUNN:

Yes, I think he would. I think he shows potential for rehabilitation. He's only been confined in the detention facility for a year and he's already taking steps to try and better himself. Bear in mind, the detention facility is just meant to hold inmates pre-trial and during the processing period post-trial. Brian McCullum started to take these steps before he even got to trial. I also believe that he has enough of insight into his behavior to understand why he committed those crimes and how to control his behavior in the future.

MR. BURR (Defense):

Thank you, Mr. Gunn. I have no further questions.

JUDGE

Mr. Ryan, do you wish to cross-examine this witness?

MR. RYAN (Prosecutor):

No, your honor

JUDGE:

Very well, the defense may call its next witness.

MR. BURR (Defense):

The defense calls Laura McCullum to the stand.

BAILIFF:

Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

LAURA McCULLUM:

I do.

MR. BURR (Defense):

Please state your name for the record as well as your relationship to the defendant.

LAURA McCULLUM:

Laura McCullum. I am Brian McCullum's mother.

MR. BURR (Defense):

Thank you, and Ms. McCullum, can you tell us a little bit about what Brian was like growing up?

LAURA McCULLUM:

He was a wonderful child. He was well behaved, never got into any trouble at school. He was extremely curious, and always trying to learn new things and get involved in new activities. As a teenager he never gave me much trouble. He was always willing to help out around the house. He was a little quiet and sullen at times, but so are all teenagers.

MR. BURR (Defense):

What kind of activities was he involved in during his high school and college years?

LAURA McCULLUM:

Brian was a really good high school student with good grades and he was the pitcher on his high school baseball team. He was able to go to college on a baseball scholarship, but he ultimately lost that scholarship because he couldn't maintain his GPA. When he went away to school he began hanging out with a pretty wild crowd of students and he became more focused on partying than going to class.

MR. BURR (Defense):

Could you tell us about Brian's friends?

LAURA McCULLUM:

He was very good friends with Tony Sparks. I personally didn't care much for him. He was very rude and I heard that he had been in trouble in school several times before. I warned Brian to be careful – I didn't want him to get into trouble. I thought that they would lose touch with each other once Brian moved back home, but it turned out that Tony had also been kicked out of college and moved back home. He only lived a few towns away from us.

They would see each other several times a week. I really began to worry about Brian because he would come home at all hours of the night and there were times where

it looked like he had been in a fight. I tried to get him to see that he needed to stop behaving like this, but he would just tell me that I worry too much.

MR. BURR (Defense):

Can you tell us a little about Brian and his behavior since the incident?

LAURA McCULLUM:

My son doesn't seem like the person he once was. Anytime I visit him he just seems so unemotional.

MR. BURR (Defense):

What has he been doing since in prison?

LAURA McCULLUM:

Well, he has been doing a lot of reading. He has entered into the counseling program at the prison, which I think will be very helpful to him.

MR. BURR (Defense):

Do you have any other children?

LAURA McCULLUM:

Yes I have two other sons, both younger than Brian.

MR. BURR (Defense):

And what was Brian's relationship with his younger brothers like?

LAURA McCULLUM:

Brian was like a father to them. My ex-husband wasn't around and they looked up to Brian.

MR. BURR (Defense):

Has Brian seen his brothers since he has been in jail?

LAURA McCULLUM:

No, I just think it will be too traumatic for them to see him like this right now.

MR. BURR (Defense):

Thank you Ms. McCullum. No further questions.

JUDGE

Thank you, Ms. McCullum. You may step down. The defense may call its next witness.

MR. BURR (Defense):

The defense rests, your honor.

JUDGE

Thank you. Now, Mr. Ryan, do you still wish to present the Victim Impact Statement from Stacie Bagley's mother, Eve Lynch?

MR. RYAN (Prosecutor):

Yes, your honor.

JUDGE

Very well. You may present the statement.

Victim Impact Statement

EVE LYNCH (Stacie Bagley's Mother)

Preparing to address the court today has been extremely painful. I have had to bring up all the thoughts and emotions I had worked so hard to repress these past couple of months. I've tried so hard to be strong because I know that's what Stacie and Todd would have wanted, but I do not have their strength. When I finally sat down to write this statement, it all came out in tears.

Stacie was such a sweet and cuddly child I would hold her and look at her and daydream about the life she would have. We had so much to give her and I know she would have a happy life. I was so proud of my Stacie. She was the first member of our family to have gone to a college and she worked so hard in order to make her dreams of a better life a reality. We never had the money to pay for Stacie's education, but she did not let that dissuade her. She worked two fulltime jobs in order to pay her tuition in addition to helping us pay our bills.

The day she and Todd got married was one of the proudest days of my life. She had met Todd while they were in college and he was just the sweetest boy I had ever met. I saw them having a beautiful and joy-filled life together. I knew they would have beautiful children whom they would love with everything they had. Stacie and Todd had loved children and wanted nothing more than to start their own family, but until the time was right they took joy in their work as youth ministers and school teachers. Their decision to become youth ministers and pass on their happiness to others made my heart swell with pride. It's almost unbearable to think of the future they had destroyed in a random and senseless act of violence and I sit here and shake with sadness and anger.

It is so hard for me to think of the way she died and how frightened she must have been – and yet she was courageous, even in her last moments. I know who killed Stacie but I still don't know why. What makes me so upset was that none of this should have happened. My Stacie and Todd were wonderful people who offered to give Brian McCullum a ride – and look where their generosity left them.

I feel pained that I could do nothing to help my baby girl. I am unable to stop thinking about that day. How she must have felt in that moment when she knew she was about to die. I have nightmares, and am unable to sleep most nights. What upsets me terribly is I have become emotionally unavailable to the rest of my family, and I have difficulties maintaining any relationships. Our family life is in shreds from the big void that has been created by Stacie's murder. I am constantly visiting doctors for the depression I developed after Stacie's death. I experience physical pain daily, although I know there is nothing wrong with me. I am afraid to go to a store of fear of being

attacked. I am unable to work and have gone out on disability. My family is now in great debt because of the funeral costs, my reduced income, and doctor's bills. But all this pales in comparison to what Stacie suffered.

And what upsets me the most is that that man, sitting right there could have stopped this tragic act from happening. All he had to do was say no. Just let them go. I ask you to do the right thing. Put this man where he belongs, and help protect those who cannot protect themselves.

JUDGE

Thank you. Before we move on, I understand that you would like to read a statement that Brian McCullum has written. Is this still the case, Mr. Burr?

MR. BURR (Defense):

Yes, your honor.

JUDGE

Very well, you may present the statement.

BRIAN MCCULLUM (defendant)

I just wanted to have the opportunity to address the court as well as the family and friends of Mr. & Mrs. Bagley. I'm not up here to ask for your mercy or forgiveness, as I probably don't deserve it. I can't blame you for hating me after what has happened and what you have been put through. I just thought that at the very least I owed you an explanation

I never intended to kill someone that night. The two of us had decided on a plan where we could get money in the fastest and easiest way possible. When I first saw Mr. Bagley standing at that payphone I didn't regard him as another human being with family and friends who cared about him. He was just a random person whom I was going to take from in order to get what I wanted. It wasn't until I had the gun in my hand that so many different things went through my head.

Excuse Condition

At that very moment I started to panic when I finally realized what a serious mistake I had even made by agreeing to participate in this robbery and what could happen to me. I thought about how disappointed my family would be and how my life would be ruined if they went to the police. Sparks and I were screaming at each other and arguing over what we should do while the Bagley's were crying and pleading with us. Everything just got so out of control so quickly that I just snapped. I just wanted everything to stop and I was so scared that I would get caught that I pulled the trigger.

Sympathy Condition

I've had a lot of time to think about that night and I just wanted to let you know how badly I feel for the pain that you have experienced. After sitting here and listening to all of this testimony, I feel as if I've truly gotten to know the people that Mr. and Mrs. Bagley were and I realize now more than ever what you have lost. I see how upset you are and I hope that one day you will know peace. I know that it's not much in light of

everything that has happened, but I know how painful it must now be to not have your daughter in your life anymore. I know that my sympathy may not mean much in light of what has happened, but it's all that I have left to offer you

Responsibility Condition

I now realize that the responsibility for the crime rests only upon my shoulders. I am the only one who is at fault and there is nobody else who could be blamed for the actions of that night. I made the decision to pull the trigger and in doing so I killed two innocent people. There is no excuse that I can offer you that would somehow lessen the impact of what I have done. It's taken me a long time to get to this point, but I hope that by accepting responsibility for my crimes I can provide you with some closure.

I'm sure that you must all be thinking "why did this happen?" I know that it's a question that I've been asking myself for months trying to understand why I did what I did and how I can prevent it from ever happening again. The fact of the matter is that I was a selfish, weak person. In fact, I probably still am, but I'm trying to fix that. As Mr. Gunn told you earlier, I've been trying very hard to work on changing who I am and I'm trying to become a better person. I feel as if having the opportunity to deliver this statement is an important first step in that process.

JUDGE

Thank you. Ladies and gentlemen of the jury, you are about to hear the closing arguments. You will first hear from the government, then the defense, and then I will instruct you on the law. So we'll proceed. Mr. Ryan.

MR. RYAN (Prosecutor):

May it please the Court, ladies and gentlemen of the jury, it's time. It's time for justice. A little over one year ago, Brian McCullum decided that he had no time for justice. He believed that it was his right to murder an innocent young couple for his own personal gain. He gave his victims no warning. He scoffed at their pleas for mercy, and he mocked the lessons that he learned from his mother. Brian McCullum revealed his total disregard for the rights of his fellow citizens, including the most basic, their right to life.

But today, despite his total disregard for life, liberty, and justice, we give the defendant what every person in this country deserves: Justice. Brian McCullum has been presumed innocent. He's had a public trial, and he has had citizens from his community consider all of the evidence before declaring him guilty beyond a reasonable doubt to every crime charged. Unlike his victims, Brian McCullum receives justice.

But as you know, justice is not finished. There is one decision that you all must make as the conscience of the community. Justice requires that you consider all of the information presented about this crime and about Mr. McCullum. And then as Judge Matsch told you during his preliminary remarks, you must make a moral judgment about the worth of a specific life balanced against the societal value of a deserved punishment.

In his opening statement, Mr. Burr reminded you that the sentencing decision of life or death could only be based on the facts, and we agree. This trial is not a place for revenge, anger, or fear. It is for justice; it is time for justice, and justice demands that you deal with the facts.

Brian McCullum killed two innocent people who were only just starting their lives together. They were targeted because they were in the wrong place at the wrong time. They welcomed their attacker into their car because they saw a person in need and they were capable of helping him. Tragically, their generosity sealed their fates as Todd and Stacie Bagley had no idea just who it was they were inviting into their car. And how did that evening end? Todd and Stacie spent their last moment locked in the trunk of a car before Brian McCullum shot both of them in the head.

Those are the facts, and Brian McCullum is responsible for those facts.

It is all of these facts and many more that you must consider when deciding whether Brian McCullum should live or die. We are asking you to do a difficult job. We know that. But we are asking you to do what is right and what is just.

Take a moment before we review the evidence and the information you received during the penalty case and look at Brian McCullum. Look into the eyes of a murderer and tell him you will have courage. Tell him you will speak with one unified voice as the moral conscience of the community and tell him that he deserves the ultimate punishment.

There are many reasons why the defendant should be punished with the ultimate sanction that our community has reserved for only the most heinous of crimes. Those reasons set out as aggravating factors may be weighed against the mitigation that the defense has presented. But it is only you who can determine the weight of each factor and the value of Brian McCullum's life. But for the next several minutes, I would like to review the information that you've received during the penalty hearing that proves beyond any doubt that the defendant's crimes were so despicable and the consequences of his murders so horrific that the only just sentence is a sentence of death.

The first aggravating factor that you'll need to consider is whether Mr. McCullum engaged in substantial planning and premeditation. During his opening statement for this phase, I reviewed some of the evidence that you heard during the trial, and I don't want to repeat that for you, but I do want to remind you of one thing. When Brian McCullum obtained that gun and brought it out that evening he planned and laid in wait for innocent victims to stumble across his path. He did not fall into the situation unwittingly; he planned it all out before he acted. He knew what he was going to do – don't let the defense convince you otherwise.

And what mitigation evidence have you heard in contrast to the Government's evidence? The defense has suggested that Brian McCullum was an impressionable man who hung out with the wrong crowd.

He was selfish and scared of what would happen to him if the Bagley's went to the police. He panicked and pulled the trigger and tried to take the easy way out instead of standing up to his friend and acting like a man.

The next factors that you will have to consider during your deliberations is whether Brian McCullum killed victims during the commission of a federal crime and whether that crime resulted in multiple deaths; that is, murder during the commission of a carjacking. Again, there's no question that this aggravating factor has been proved. He committed a carjacking – a capital offense punishable by death. There is no doubt or debate about this fact. He killed two, not one two people – again no debate. Given these aggravating factors Ladies, and Gentleman, you must find for death.

Finally, you must consider whether Brian McCullum continues to pose a risk of violence. Even if he is sentenced to life in prison, the risk of violence is still present. The testimony you have heard from Dr. Barker clearly illustrates Mr. McCullum's full potential for violence. You have also been asked to consider several other aggravating factors in your decision. I want to again stress how important it is for you to consider Mr. McCullum's prior history. Consider the events surrounding the crime and how the victims suffered. Finally, consider how the loss of this young couple impacted their community.

As the moral conscience of the community, you must speak on behalf of all Americans who rightly refuse to accept any justification for this horrible crime. It is time for justice. It is time to impose the ultimate sanction on the man responsible for this terror. Serve justice, speak as the moral conscience of the community, and sentence Brian McCullum to death.

JUDGE

Mr. Burr?

MR. BURR (Defense):

We do not dispute one of the things that Mr. Ryan said; indeed, we do not dispute many of the things that he said. The immensity of the loss and suffering associated with this crime is large. Yes, the victims were innocent. Yes, the attack was planned. Yes, the crime occurred during a federal offense and it resulted in the death of multiple victims. These facts are not disputable. I will not stand here to try to justify or excuse what has happened. But that is not the mission that faces you in this part of the case. The mission is different. You will hear it stated from Judge Matsch, but it's terribly important that you understand it; and I will talk about it a bit before I talk about the facts any more.

You have already heard several times from Judge Matsch that in deciding the appropriate sentence for Mr. McCullum, you must serve as the conscience of the community. It is terribly important that you listen to what is said about this role and come to understand it in your own terms, because it is at the heart of what you're called upon to do. Serving as the conscience of the community requires first that you be willing to follow the law. Judge Matsch will instruct you on the law. What he will tell you is so important that I'd like to take just a few moments to talk about it as well.

The most important requirement of the law, again which you have heard already from Judge Matsch and you will hear again, is that you be willing to consider both aggravating and mitigating circumstances before you decide what the appropriate sentence is. To be able to consider both aggravating and mitigating circumstances, you have to understand what mitigating circumstances are. Let me address that briefly.

Judge Matsch explained in his instructions at the beginning of the penalty phase that mitigation circumstance -- circumstances are those factors which weigh in favor of a life sentence. They are those aspects of the background, character, and life of Mr. McCullum and of the circumstances surrounding this offense that might cause you to question whether to impose a death sentence. They are the things that tug at you, they give you pause; that cause you to think in your quiet moments that perhaps life is the appropriate sentence.

Mitigating circumstances are not matters which excuse the crimes for which Mr. McCullum has been convicted, nor do they lessen in any way the responsibility he bears for whatever he did. Either sentence, death or life without the possibility of release, is very severe. Choosing life over death does not mean that you in any sense excuse these crimes. It means only that you have found some reason to exercise a small measure of compassion. It is crucial that you appreciate this distinction.

The final requirement of the law is that you engage in a process of weighing aggravating and mitigating circumstances. Judge Matsch will instruct that the weighing process is not a mechanical process, a counting and comparing in a quantitative way the number of aggravating and mitigating circumstances. It requires that you consider aggravating and mitigating circumstances in light of each other and follow the dictates of your conscience as to what sentence should be imposed. Because your conscience is your guidepost Judge Matsch will instruct that you are never, never required to impose a death sentence.

I'd now like to turn to the facts that have to be weighed. You know that the person that you found responsible for these crimes is quite human by now, just like you and many of the people you know and love. You know that Brian is not an evil man, not a man who was somehow defective in the way he thought or felt or dwelt among us in his lifetime, but instead a man who embodies much of the best that we call "human" and a young man who loved his family.

The testimony of those who know Brian is still fresh with you, so I won't go over it in much detail; but I do want to recall with you briefly some of the qualities that define this man, Brian McCullum. So many people from such different walks of life saw so many of the same qualities in Brian that you know these qualities are real and enduring. Who is he? He is an intelligent young man who is polite and friendly to those who knew him at school. He is an ambitious individual who was an honors student and the pitcher of his baseball team. He is a loving son and older brother who worried about being the man of the house in the absence of his father. Even as a prisoner, he is a man willing to look within so that he may understand and grow from this experience.

These are the realities that you must bring into the weighing process in considering the enormity of this crime. How do they relate to one another? The aggravating circumstances that Mr. Ryan went over with you are what they are. They are not diminished, nor are their gravity lessened by the mitigating circumstances. We do not contend that they are. There is no excuse and there is no justification.

These areas of mitigation do not excuse and do not diminish or call for anything less than a severe, severe punishment, nothing less than life without the possibility of release. A death sentence of sorts, but a death sentence that implicates something about your conscience. Thank you.

JUDGE

Now that you have heard all of the evidence in this case and the arguments of each side, it is my duty to give you instructions as to the law applicable to the very serious question of whether or not Brian McCullum should be sentenced to life imprisonment without any possibility of release, to death, or to some lesser sentence to be determined by the court. Regardless of any opinion you may have as to what the law may

be -- or should be -- it would be a violation of your oaths as jurors to base your verdict upon any other view of the law than that given to you in these instructions.

I instruct you that unanimity is required for you to sentence Brian McCullum to death. That is, the death penalty may not be imposed under our law unless all twelve jurors agree. If after due deliberation any of you -- even a single juror -- is not persuaded that the death penalty should be imposed in this case, then the jury may not sentence the defendant to death.

Aggravating factors are those that would tend to support imposition of the death penalty. Mitigating factors are those that suggest that life in prison without any possibility of release, or some lesser sentence is appropriate or sufficient to do justice in this case. Your task is not simply to decide whether aggravating and mitigating factors exist in this case. Rather, you are called upon to evaluate any such factors and to make a unique, individualized choice between judgment about the death penalty, life in prison without any possibility of release, or some lesser prison sentence as a punishment for Brian McCullum.

Before you consider aggravating or mitigating factors, you must make a determination concerning the personal intent of the defendant, Brian McCullum, in regard to the homicide which he has been convicted of committing. If the jury unanimously agrees beyond a reasonable doubt that Brian McCullum intentionally killed the victim, you must then take up the issue of deciding what Mr. McCullum's sentence. If you do not find the defendant had intent to kill the victims, the deliberations will end and the defendant will receive a sentence of life in prison. The four types of intent for you to consider are the following:

- A) The defendant intentionally killed the victim
OR
- B) The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim;
OR
- C) The defendant intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act other than one of the participants in the offense, and the victim died as a direct result of the act;
OR
- D) The defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act.

After having decided whether the defendant had the proper intent, you must first consider whether the government has proved beyond a reasonable doubt, and to your unanimous satisfaction, at least one aggravating. You may only continue with your deliberations if you have found at least one listed aggravating circumstance proved to the jury's unanimous satisfaction and beyond a reasonable doubt with respect to the intentional murder of this victim(s). If you do not find the aggravating factor or factors to have been proven, your deliberations are concluded and the defendant will be sentenced to life in prison. The statutory aggravating factors are:

- Brian McCullum committed the offense after substantial planning and premeditation.
- Brian McCullum participated in the carjacking of the victims thus resulting in their deaths.
- The offenses committed by Brian McCullum resulted in multiple deaths.
- Brian McCullum will continue to pose a risk of future violence if he is sentenced to life in prison.
- Brian McCullum had a significant prior criminal record

Next, if you find the statutory aggravating factor proven beyond a reasonable doubt, you must next consider whether any other non-statutory aggravating factors have been proven to your unanimous satisfaction beyond a reasonable doubt. I instruct you that the law permits you to consider and discuss only those aggravating factors specifically claimed by the Government and listed below. The jury is not free to consider any other facts in aggravation which the Government may have argued in closing or you conceive on your own. Regardless of the findings you have made as to the non-statutory aggravating factors, you will proceed to the next section. The non-statutory factors are as follows:

- The crimes were carried out in a cruel and heinous manner
- Victim impact evidence detailing the resultant harm experienced by the victims' loved ones as a result of the crime

You must then consider whether any of you find mitigating factors to have been established by the greater weight or preponderance of the evidence. A mitigating factor is not offered to justify or excuse the defendant's conduct. Rather, a mitigating factor is simply an extenuating fact about the defendant's life or character, or about the circumstances surrounding the intentional, aggravated killing that would suggest, in fairness and mercy, that a sentence of death is not the most appropriate punishment, or that a sentence of life in prison without any possibility of release is the more appropriate punishment. Unlike aggravating factors, which you must unanimously find proved beyond a reasonable doubt in order for you to consider them in your deliberations, the law does not require unanimity with regard to mitigating factors.

Any juror persuaded of the existence of a mitigating factor by a preponderance of the evidence must consider it in this case. It is the defendant's burden to establish any mitigating factors, but only by a preponderance of the evidence. This is a lesser standard of proof under the law than proof beyond a reasonable doubt. A factor is established by a preponderance of the evidence if its existence is shown to be more likely so than not so. In other words, a preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, produces in your minds the belief that what is sought to be established is, more likely than not, true.

The mitigating factors presented by the defense are as follows:

- Brian McCullum has invariably responded well to structured environments, and would likely make an excellent adaptation to prison if he were sentenced to life imprisonment.
- That other factors in Brian McCullum's childhood, back ground or character mitigate against imposition of the death sentence.
- Brian McCullum has shown remorse for his actions
- The execution impact evidence presented by the defendants' loved ones illustrating

Once you have decided upon the aggravating and mitigating factors present in this case, the law requires you to evaluate these factors to decide whether you are unanimously persuaded beyond a reasonable doubt that the aggravating factors proved so outweigh any mitigating factors that justice cannot be served absent a sentence of death. When I speak of justice, ladies and gentlemen, I speak of the highest ideal of the law, and the standard by which civilized societies are measured. Justice contemplates the careful application of human reason and experience to a set of circumstances. It contemplates an even-handed weighing of those circumstances in an effort to reach a "fair" or "correct" result. Thus, passion, prejudice, and any arbitrary considerations have no role to play in your efforts to reach a just result in this case.

In carefully weighing the various factors at issue in this case, you are called upon to make a unique, individualized judgment about the appropriateness of executing Brian McCullum. This is not a mechanical process. Neither is it determined by raw numbers. You do not simply count factors. You consider them qualitatively. Any one aggravating factor proved, if sufficiently serious, may outweigh several mitigating factors. Thus, even if you were only to find the statutory aggravating factors proved, and not the non-statutory factors, you would still have to fit them carefully against the mitigating factors. On the other hand, you must recognize that a single mitigating factor may outweigh several aggravating factors. In short, ladies and gentlemen, what is called for in weighing the various factors is not arithmetic, but your careful, considered, and mature judgment. At this stage in the process, you are not called upon simply to find relevant factors. You are called upon to decide whether the defendant shall live or die.

Only if you are unanimously persuaded beyond a reasonable doubt that the aggravating factors so outweigh the mitigating factors that justice cannot be done by any sentence less than death can you return a decision in favor of capital punishment. Each juror must decide whether the law requires that Brian McCullum be put to death or not. If even one juror finds a mitigating factor present which, in that juror's mind, is not outweighed beyond a reasonable doubt by the aggravating factors proved, then the jury may not sentence Brian McCullum to death.

The careful judgment the law expects you to exercise in this regard is further reflected in the fact that, even if you are persuaded that aggravating factors outweigh mitigating factors, you must still be unanimously convinced that the aggravating factors are sufficiently serious to mandate a sentence of death rather than life imprisonment without the possibility of release. If even one juror concludes that justice can be served by a sentence of less than death, the jury cannot return a decision in favor of capital punishment.

I also remind you, ladies and gentlemen, that, whatever findings you make with respect to the aggravating and mitigating factors, you are never required to impose a death sentence. For example, there may be something about this case or about Brian McCullum that one or more of you are not able to identify as a specific mitigating factor, but that nevertheless leads you to doubt that the defendant should be sentenced to death. In such a case, the jury should render a decision against the death penalty. Any one of you is free to decide that a death sentence should not be imposed in this case for any reason you see fit, so long as, based on the evidence and your sense of justice, you conclude that the proven aggravating factors do not “sufficiently” outweigh mitigation such that the death penalty should be imposed.

Appendix E. Dependent Measures

This scale consists of a number of words and phrases that describe different feelings and emotions. Read each item and then mark the appropriate answer in the space next to that word. Indicate to what extent you have felt this way during the past few moments. Use the following scale to record your answers:

1	2	3	4	5
Very Slightly or Not at All	A Little	Moderately	Quite a Bit	Extremely
_____ cheerful	_____ sad	_____ active	_____ angry at self	
_____ disgusted	_____ calm	_____ guilty	_____ enthusiastic	
_____ attentive	_____ afraid	_____ joyful	_____ downhearted	
_____ bashful	_____ tired	_____ nervous	_____ sheepish	
_____ sluggish	_____ amazed	_____ lonely	_____ distressed	
_____ daring	_____ shaky	_____ sleepy	_____ blameworthy	
_____ surprised	_____ happy	_____ excited	_____ determined	
_____ strong	_____ timid	_____ hostile	_____ frightened	
_____ scornful	_____ alone	_____ proud	_____ astonished	
_____ relaxed	_____ alert	_____ jittery	_____ interested	
_____ irritable	_____ upset	_____ lively	_____ loathing	
_____ delighted	_____ angry	_____ ashamed	_____ confident	
_____ inspired	_____ bold	_____ at ease	_____ energetic	
_____ fearless	_____ blue	_____ scared	_____ concentrating	
_____ disgusted with self	_____ shy	_____ drowsy	_____ dissatisfied with self	

Jury Instructions

In order to help you in your decision, we have provided a copy of the instructions that the judge delivered during the trial. Feel free to refer to these when answering your questions. Please note that these are standard instructions given in all death penalty cases so some of the mitigators and aggravators may not apply to your specific case, but the decision making process is the same.

Now that you have heard all of the evidence in this case and the arguments of each side, it is my duty to give you instructions as to the law applicable to the very serious question of whether or not Brian McCullum should be sentenced to life imprisonment without any possibility of release, to death, or to some lesser sentence to be determined by the court. Regardless of any opinion you may have as to what the law may be -- or should be -- it would be a violation of your oaths as jurors to base your verdict upon any other view of the law than that given to you in these instructions.

I instruct you that unanimity is required for you to sentence Brian McCullum to death. That is, the death penalty may not be imposed under our law unless all twelve jurors agree. If after due deliberation any of you -- even a single juror -- is not persuaded that the death penalty should be imposed in this case, then the jury may not sentence the defendant to death.

Aggravating factors are those that would tend to support imposition of the death penalty. Mitigating factors are those that suggest that life in prison without any possibility of release, or some lesser sentence is appropriate or sufficient to do justice in this case. Your task is not simply to decide whether aggravating and mitigating factors exist in this case. Rather, you are called upon to evaluate any such factors and to make a unique, individualized choice between judgment about the death penalty, life in prison without any possibility of release, or some lesser prison sentence as a punishment for Brian McCullum.

Before you consider aggravating or mitigating factors, you must make a determination concerning the personal intent of the defendant, Brian McCullum, in regard to the homicide which he has been convicted of committing. If the jury unanimously agrees beyond a reasonable doubt that Brian McCullum intentionally killed the victim, you must then take up the issue of deciding what Mr. McCullum's sentence. If you do not find the defendant had intent to kill the victims, the deliberations will end and the defendant will receive a sentence of life in prison. The four types of intent for you to consider are the following:

- A) The defendant intentionally killed the victim
OR
- B) The defendant intentionally inflicted serious bodily injury that resulted in the death of the victim;
OR
- C) The defendant intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act other than one of the participants in the offense, and the victim died as a direct result of the act;
OR
- D) The defendant intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act.

After having decided whether the defendant had the proper intent, you must first consider whether the government has proved beyond a reasonable doubt, and to your unanimous

satisfaction, at least one aggravating. You may only continue with your deliberations if you have found at least one listed aggravating circumstance proved to the jury's unanimous satisfaction and beyond a reasonable doubt with respect to the intentional murder of this victim(s). If you do not find the aggravating factor or factors to have been proven, your deliberations are concluded and the defendant will be sentenced to life in prison. The statutory aggravating factors are:

- Brian McCullum committed the offense after substantial planning and premeditation.
- Brian McCullum participated in the carjacking of the victims thus resulting in their deaths.
- The offenses committed by Brian McCullum resulted in multiple deaths.
- Brian McCullum will continue to pose a risk of future violence if he is sentenced to life in prison.
- Brian McCullum had a significant prior criminal record

Next, if you find the statutory aggravating factor proven beyond a reasonable doubt, you must next consider whether any other non-statutory aggravating factors have been proven to your unanimous satisfaction beyond a reasonable doubt. I instruct you that the law permits you to consider and discuss only those aggravating factors specifically claimed by the Government and listed below. The jury is not free to consider any other facts in aggravation which the Government may have argued in closing or you conceive on your own. Regardless of the findings you have made as to the non-statutory aggravating factors, you will proceed to the next section. The non-statutory factors are as follows:

- The crimes were carried out in a cruel and heinous manner
- Victim impact evidence detailing the resultant harm experienced by the victims' loved ones as a result of the crime

You must then consider whether any of you find mitigating factors to have been established by the greater weight or preponderance of the evidence. A mitigating factor is not offered to justify or excuse the defendant's conduct. Rather, a mitigating factor is simply an extenuating fact about the defendant's life or character, or about the circumstances surrounding the intentional, aggravated killing that would suggest, in fairness and mercy, that a sentence of death is not the most appropriate punishment, or that a sentence of life in prison without any possibility of release is the more appropriate punishment. Unlike aggravating factors, which you must unanimously find proved beyond a reasonable doubt in order for you to consider them in your deliberations, the law does not require unanimity with regard to mitigating factors.

Any juror persuaded of the existence of a mitigating factor by a preponderance of the evidence must consider it in this case. It is the defendant's burden to establish any mitigating factors, but only by a preponderance of the evidence. This is a lesser standard of proof under the law than proof beyond a reasonable doubt. A factor is established by a preponderance of the evidence if its existence is shown to be more likely so than not so. In other words, a preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, produces in your minds the belief that what is sought to be established is, more likely than not, true.

The mitigating factors presented by the defense are as follows:

- Brian McCullum has invariably responded well to structured environments, and would likely make an excellent adaptation to prison if he were sentenced to life imprisonment.
- That other factors in Brian McCullum's childhood, back ground or character mitigate against imposition of the death sentence.

- Brian McCullum has shown remorse for his actions

Once you have decided upon the aggravating and mitigating factors present in this case, the law requires you to evaluate these factors to decide whether you are unanimously persuaded beyond a reasonable doubt that the aggravating factors proved so outweigh any mitigating factors that justice cannot be served absent a sentence of death. When I speak of justice, ladies and gentlemen, I speak of the highest ideal of the law, and the standard by which civilized societies are measured. Justice contemplates the careful application of human reason and experience to a set of circumstances. It contemplates an even-handed weighing of those circumstances in an effort to reach a "fair" or "correct" result. Thus, passion, prejudice, and any arbitrary considerations have no role to play in your efforts to reach a just result in this case.

In carefully weighing the various factors at issue in this case, you are called upon to make a unique, individualized judgment about the appropriateness of executing Brian McCullum. This is not a mechanical process. Neither is it determined by raw numbers. You do not simply count factors. You consider them qualitatively. Any one aggravating factor proved, if sufficiently serious, may outweigh several mitigating factors. Thus, even if you were only to find the statutory aggravating factors proved, and not the non-statutory factors, you would still have to fit them carefully against the mitigating factors. On the other hand, you must recognize that a single mitigating factor may outweigh several aggravating factors. In short, ladies and gentlemen, what is called for in weighing the various factors is not arithmetic, but your careful, considered, and mature judgment. At this stage in the process, you are not called upon simply to find relevant factors. You are called upon to decide whether the defendant shall live or die.

Only if you are unanimously persuaded beyond a reasonable doubt that the aggravating factors so outweigh the mitigating factors that justice cannot be done by any sentence less than death can you return a decision in favor of capital punishment. Each juror must decide whether the law requires that Brian McCullum be put to death or not. If even one juror finds a mitigating factor present which, in that juror's mind, is not outweighed beyond a reasonable doubt by the aggravating factors proved, then the jury may not sentence Brian McCullum to death.

The careful judgment the law expects you to exercise in this regard is further reflected in the fact that, even if you are persuaded that aggravating factors outweigh mitigating factors, you must still be unanimously convinced that the aggravating factors are sufficiently serious to mandate a sentence of death rather than life imprisonment without the possibility of release. If even one juror concludes that justice can be served by a sentence of less than death, the jury cannot return a decision in favor of capital punishment.

I also remind you, ladies and gentlemen, that, whatever findings you make with respect to the aggravating and mitigating factors, you are never required to impose a death sentence. For example, there may be something about this case or about Brian McCullum that one or more of you are not able to identify as a specific mitigating factor, but that nevertheless leads you to doubt that the defendant should be sentenced to death. In such a case, the jury should render a decision against the death penalty. Any one of you is free to decide that a death sentence should not be imposed in this case for any reason you see fit, so long as, based on the evidence and your sense of justice, you conclude that the proven aggravating factors do not "sufficiently" outweigh mitigation such that the death penalty should be imposed.

How heavily did you weigh this aggravating factor in your sentencing decision?

Not weighed at all									Heavily weighed
1	2	3	4	5	6	7	8	9	

Did you find beyond a reasonable doubt that the defendant participated in the carjacking of the victims thus resulting in their deaths? (Please circle one)

Yes No

How heavily did you weigh this aggravating factor in your sentencing decision?

Not weighed at all									Heavily weighed
1	2	3	4	5	6	7	8	9	

Did you find beyond a reasonable doubt that Brian McCullum will continue to pose a risk of future violence if he is sentenced to life in prison? (Please circle one)

Yes No N/A

How heavily did you weigh this aggravating factor in your sentencing decision?

Not weighed at all									Heavily weighed
1	2	3	4	5	6	7	8	9	

Did you find beyond a reasonable doubt that the offenses committed by the defendant resulted in multiple deaths? (Please circle one)

Yes No N/A

How heavily did you weigh this aggravating factor in your sentencing decision?

Not weighed at all									Heavily weighed
1	2	3	4	5	6	7	8	9	

Did you find beyond a reasonable doubt that the crimes were carried out in a cruel and heinous manner? (Please circle one)

Yes No N/A

How heavily did you weigh this aggravating factor in your sentencing decision?

Not weighed at all

Heavily weighed

1 2 3 4 5 6 7 8 9

Did you find beyond a reasonable doubt that additional harm had been experienced by the families of the victims as a result of the defendant's crimes? (Please circle one)

Yes No N/A

How heavily did you weigh this aggravating factor in your sentencing decision?

Not weighed at all

Heavily weighed

1 2 3 4 5 6 7 8 9

Did you find beyond a reasonable doubt that Brian McCullum had a significant prior criminal record? (Please circle one)

Yes No N/A

Not weighed at all

Heavily weighed

1 2 3 4 5 6 7 8 9

Mitigating Factors

Did you find by a preponderance of evidence that Brian McCullum has invariably responded well to structured environments, and would likely make an excellent adaptation to prison if he were sentenced to life imprisonment? (Please circle one)

Yes No N/A

Not weighed at all

Heavily weighed

1 2 3 4 5 6 7 8 9

Did you find by a preponderance of evidence that other factors in Brian McCullum's childhood, back ground or character mitigate against imposition of the death sentence? (Please circle one)

Yes No N/A

How heavily did you weigh this mitigating factor in your sentencing decision?

Not weighed at all

Heavily weighed

1 2 3 4 5 6 7 8 9

Did you find by a preponderance of evidence that Brian McCullum has shown remorse for his actions? (Please circle one)

Yes		No		N/A					
Not weighed at all								Heavily weighed	
1	2	3	4	5	6	7	8	9	

What was the most important piece of evidence in your sentencing decision?

How responsible do you think the defendant was for the crime?

Not at all
responsible

1 2 3 4 5 6 7 8

Very
responsible

9

How confident are you in your verdict choice?

Not at all
confident

1 2 3 4 5 6 7 8

Very
confident

9

These questions refer to Mr. Ryan, the prosecuting attorney representing the Government

How competent was the prosecuting attorney?

Not at all
competent

1 2 3 4 5 6 7 8

Very
competent

9

How influential was the prosecuting attorney?

Not at all
persuasive

1 2 3 4 5 6 7 8

Very
persuasive

9

How likable was the prosecuting attorney?

Not at all
likable

1 2 3 4 5 6 7 8

Very
likable

9

How trustworthy was the prosecuting attorney?

Not at all
trustworthy

1 2 3 4 5 6 7 8

Very
trustworthy

9

How strong do you feel the prosecution's case was?

Not at all
strong

1 2 3 4 5 6 7 8

Very
strong

9

These questions refer to Mr. Burr, the defense attorney representing Brian McCullum

How competent was the defense attorney?

Not at all
competent

1 2 3 4 5 6 7 8

Very
competent

9

How influential was the defense attorney?

Not at all
persuasive

1 2 3 4 5 6 7 8 9

Very
persuasive

How likable was the defense attorney?

Not at all
likable

1 2 3 4 5 6 7 8 9

Very
likable

How trustworthy was the defense attorney?

Not at all
trustworthy

1 2 3 4 5 6 7 8 9

Very
trustworthy

How strong do you feel the defense's case was?

Not at all
strong

1 2 3 4 5 6 7 8 9

Very
strong

These questions refer to Detective James Thompson, the detective in charge of the investigation

How influential was Detective James Thompson?

Not at all
influential

1 2 3 4 5 6 7 8 9

Very
influential

How likable was Detective James Thompson?

Not at all
likable

1 2 3 4 5 6 7 8 9

Very
likable

How trustworthy was Detective James Thompson?

Not at all
trustworthy

1 2 3 4 5 6 7 8 9

Very
trustworthy

These questions refer to Dr. Jack Barker, the expert witness for the prosecution

How influential was Dr. Jack Barker?

Not at all
influential

1 2 3 4 5 6 7 8 9

Very
influential

How likable was Dr. Jack Barker?

Not at all likable									Very likable
1	2	3	4	5	6	7	8	9	

How trustworthy was Dr. Jack Barker?

Not at all trustworthy									Very trustworthy
1	2	3	4	5	6	7	8	9	

What was Dr. Jack Barker’s ultimate opinion on Brian McCullum’s risk for future violence? (Please circle one)

Low Risk of Future Dangerousness High Risk of Future Dangerousness

In Dr. Jack Barker’s testimony, what did he tell the court about the likelihood of Brian McCullum committing future acts of violence?

Low likelihood									High likelihood
1	2	3	4	5	6	7	8	9	

How likely do you think it is that the defendant will commit future crimes in prison if he is not executed?

Not at all likely									Very likely
1	2	3	4	5	6	7	8	9	

Did the defendant have a prior criminal record? (Please circle one)

Yes No

How likely is it that the defendant is dangerous?

Not at all likely									Very likely
1	2	3	4	5	6	7	8	9	

These questions refer to Eve Lynch, the mother of one of the victims

How influential was Eve Lynch?

Not at all strong									Very strong
1	2	3	4	5	6	7	8	9	

How likable was Eve Lynch?

Not at all likable									Very likable
1	2	3	4	5	6	7	8	9	

How trustworthy was Eve Lynch?

Not at all trustworthy								Very trustworthy
1	2	3	4	5	6	7	8	9

Eve Lynch seemed unemotional? (Please circle one)

Yes No

How emotional did Eve Lynch seem during her statement?

Not at all emotional								Very emotional
1	2	3	4	5	6	7	8	9

Eve Lynch seemed angry? (Please circle one)

Yes No

How angry did Eve Lynch seem during her statement?

Not at all angry								Very angry
1	2	3	4	5	6	7	8	9

Eve Lynch seemed sad? (Please circle one)

Yes No

How sad did Eve Lynch seem during her statement?

Not at all sad								Very sad
1	2	3	4	5	6	7	8	9

How much harm did Eve Lynch experience as a result of the crime?

No harm at all								Great deal of harm
1	2	3	4	5	6	7	8	9

How much empathy did you feel for Eve Lynch?

No empathy at all								A great deal of empathy
1	2	3	4	5	6	7	8	9

These questions refer to Todd and Stacie Bagley, the victims

How likeable were the victims?

Not at all likable								Very likable
1	2	3	4	5	6	7	8	9

How similar are you to the victims?

Not at all
similar

1 2 3 4 5 6 7 8 9

Very
similar

How much empathy did you feel for the victims?

No empathy
at all

1 2 3 4 5 6 7 8 9

A great deal
of empathy

How likely is it that the victims made a valuable contribution to society?

Not at all
likely

1 2 3 4 5 6 7 8 9

Very
likely

How much are the victims valued by their family and friends?

Not at all
valued

1 2 3 4 5 6 7 8 9

Valued
greatly

How much did the victims suffer?

Did not suffer
at all

1 2 3 4 5 6 7 8 9

Suffered
greatly

How heinous was the crime?

Not at all
heinous

1 2 3 4 5 6 7 8 9

Very
heinous

These questions refer to Dr. William Gunn, expert witness for the defense

How influential was Dr. William Gunn?

Not at all
influential

1 2 3 4 5 6 7 8 9

Very
influential

How likable was Dr. William Gunn?

Not at all
likable

1 2 3 4 5 6 7 8 9

Very
likable

How trustworthy was Dr. William Gunn?

Not at all trustworthy									Very trustworthy
1	2	3	4	5	6	7	8	9	

These questions refer to Laura McCullum, the mother of the defendant

How influential was Laura McCullum?

Not at all influential									Very Influential
1	2	3	4	5	6	7	8	9	

How likable was Laura McCullum?

Not at all likable									Very likable
1	2	3	4	5	6	7	8	9	

How trustworthy was Laura McCullum?

Not at all trustworthy									Very trustworthy
1	2	3	4	5	6	7	8	9	

How much empathy did you feel for Laura McCullum?

No empathy at all									A great deal of empathy
1	2	3	4	5	6	7	8	9	

These questions refer to Brian McCullum, the defendant

Brian McCullum seemed unemotional? (Please circle one)

Yes No

How emotional did the defendant seem during his statement?

Not at all emotional									Very emotional
1	2	3	4	5	6	7	8	9	

Brian McCullum (the defendant) seemed sad? (Please circle one)

Yes No

How sad did the defendant seem during his statement?

Not at all sad									Very sad
1	2	3	4	5	6	7	8	9	

Brian McCullum made an excuse for his behavior? (Please circle one)

Yes No

How likely is it that the defendant was lying during his statement?

Not at all
likely

Very
likely

1 2 3 4 5 6 7 8 9

Brian McCullum expressed sympathy for the victims' family? (Please circle one)

Yes No

How sincere was the defendant during his statement?

Not at all
sincere

Very
sincere

1 2 3 4 5 6 7 8 9

How persuasive was the defendant during his statement?

Not at all
persuasive

Very
persuasive

1 2 3 4 5 6 7 8 9

Brian McCullum apologized? (Please circle one)

Yes No

How apologetic did the defendant seem during his statement?

Not at all
apologetic

Very
apologetic

1 2 3 4 5 6 7 8 9

Brian McCullum accepted responsibility? (Please circle one)

Yes No

How influential was Brian McCullum?

Not at all
influential

Very
influential

1 2 3 4 5 6 7 8 9

How likable was Brian McCullum?

Not at all
likable

Very
likable

1 2 3 4 5 6 7 8 9

How trustworthy was Brian McCullum?

Not at all trustworthy									Very trustworthy
1	2	3	4	5	6	7	8	9	

How likely is it that the defendant is fundamentally a bad person?

Not at all likely									Very likely
1	2	3	4	5	6	7	8	9	

How likely is it that the defendant would not have killed the victims if the situation had been different?

Not at all likely									Very likely
1	2	3	4	5	6	7	8	9	

How much control did the defendant have over the situation?

No control at all									Total control
1	2	3	4	5	6	7	8	9	

How strongly do you feel that Brian McCullum should be punished?

Should not be punished									Should be punished harshly
1	2	3	4	5	6	7	8	9	

How much of a potential do you feel that the defendant has for rehabilitation in prison?

No potential for rehabilitation									Total potential for rehabilitation
1	2	3	4	5	6	7	8	9	

The defendant should be allowed to redeem his mistakes.

Strongly disagree									Strongly agree
1	2	3	4	5	6	7	8	9	

How similar are you to the defendant?

Not at all similar									Very similar
1	2	3	4	5	6	7	8	9	

How likely is it that the defendant would have made a valuable contribution to society?

Not at all likely									Very likely
1	2	3	4	5	6	7	8	9	

How much is the defendant valued by his family and friends?

Not at all valued									Valued greatly
1	2	3	4	5	6	7	8	9	

How much sympathy do you think the defendant feels for the victims' family?

No sympathy at all									A great deal of sympathy
1	2	3	4	5	6	7	8	9	

How remorseful do you think the defendant is for the crime?

Not at all remorseful									Very remorseful
1	2	3	4	5	6	7	8	9	

How much responsibility do you think the defendant has accepted for the crime?

No responsibility accepted									Much responsibility accepted
1	2	3	4	5	6	7	8	9	

How carefully did you read the evidence?

Not carefully at all									Very Carefully
1	2	3	4	5	6	7	8	9	

How difficult was it for you to render a fair verdict?

Not difficult at all									Very Difficult
1	2	3	4	5	6	7	8	9	

Please answer some questions about yourself:

What is your age? _____

What your gender? _____

What is the ethnicity that you most closely identify yourself with? _____

What is your religion? _____

What U.S. state are you a resident of? _____

Do you have a valid driver's license in that state? _____

Are you a registered voter in that state? _____

Are you a US citizen? _____

Have you ever been convicted of a felony? _____

Appendix F. Informed Consent

Jury Decision Making in a Death Penalty Case 2

You are invited to participate in a research study entitled “Jury Decision Making in a Death Penalty Case 2.” The purpose of this research is to examine how jurors make decisions in death penalty trials. We plan to enroll approximately 396 participants into this study. If you decide to participate, you will be asked to read a short trial summary, watch a DVD of the sentencing phase of the trial, and answer questions about the case. Participation should take about two and a half hours of your time and you will be paid \$40 in cash upon completion of the study. If you have any questions please do not hesitate to ask.

This research is being conducted by Tarika Daftary and Jennifer Tallon, forensic psychology doctoral students under the supervision of Dr. Jennifer Groscup and Dr. Steven Penrod, professors in the Department of Psychology at John Jay College of Criminal Justice, City University of New York. The purpose of this research study is to identify how people make decisions in death penalty trials. In order to participate in this research you must be 18 years of age or older.

The subject matter in this experiment would be similar to what you would hear on the evening news or see on a crime drama television show. However, such a sensitive topic could create some minimal discomfort for you. If you find that the information makes you uncomfortable or feel that it will make you uncomfortable, you are free to decide not to participate or to withdraw at any time. Furthermore, you may skip any questions that you do not wish to answer.

The benefits to your participation in this research include that you may find the learning experience enjoyable, and the process may help you to better understand the legal system and the way in which jury decisions are made. It is possible that you may experience no direct benefit from your participation. However, the information gained from this study will help us better understand the perceptions that individuals have concerning the death penalty. This is particularly important as very little research has been conducted in this area.

Any information obtained during this study which could identify you will be kept strictly confidential. The information obtained in this study may be published in scientific journals or presented at scientific meetings, but your identity will be kept strictly confidential. Results will be kept in a secure location which is only accessible to the investigators, and your identity will be kept separate from your responses to the questions you will be asked. You will not be asked to put your name on any of the responses you give during the research.

You are free to decide not to participate in this study or to withdraw at any time without adversely affecting your relationship with the investigators or with John Jay College. Your decision not to participate will not result in any loss of benefits to which you are otherwise entitled. Your decision to discontinue participation at any time during the study will not result in any loss of benefits to which you are otherwise entitled. Your academic standing will be in no way affected by your decision to participate or to not participate.

You may ask questions concerning the research before agreeing to participate or during the experiment. If you have any questions regarding this research, you may contact Professor Groscup at (212) 237-8774 or in room 2124 in the Department of Psychology at John Jay College. If you have any questions about your rights as a research subject that has not been answered by the investigator you may contact the John Jay College Institutional Review Board at (212) 237-8961 or you may email them at jj-irb@jjay.cuny.edu.

You are voluntarily making a decision whether or not to participate in this research study. Your signature certifies that you have decided to participate having read and understood the information presented. You will be given a copy of this consent form to keep.

Signature of Research Participant Printed Name Date

Signature of Researcher Printed Name Date

Tarika Daftary, Jennifer Tallon, Principal Investigators
Jennifer L. Groscup, PhD, J.D & Steven Penrod PhD, J.D , Faculty Advisors
Office: 2124N, Department of Psychology
John Jay College of Criminal Justice
445 W. 59th St.
New York, NY 10019-1199
(212) 237-8774, tdaftary@gc.cuny.edu, jtallon@gc.cuny.edu, jgroscup@jjay.cuny.edu, spenrod@jjay.cuny.edu

Appendix G. Debriefing

Debriefing

Jury Decision Making in a Death Penalty Case 2

Thank you for your participation in this study. This debriefing is given as an opportunity for you to learn more about this research project, how your participation plays a part in this research, and why this research may be important to society. Please do not discuss this study with anyone else who might also participate in the future. Knowledge about the study may influence their responses and, essentially, invalidate the information obtained from them. (For this same reason, it is important that you tell the experimenter if you knew details about this study before participating.)

This study was designed in order to help us understand how mock jurors make decisions in capital trials. All participants answered the same questions and watched the same DVD. However, several aspects of the video varied according to the behaviors of the actors, the content of the defendant's statement, the heinousness of the crime, and the defendant's risk of future dangerousness. For example, everyone was exposed to a victim impact statement but in one condition the mother acted very angry, in a separate condition she appeared very sad, and in the final condition she did not display any emotion. We also manipulated the type of emotion displayed by the defendant if he delivered a statement to the court (no statement vs. sad vs. no emotion). The content of the defendant's statement was also manipulated such that an excuse, the expression of sympathy for the victims, or the acceptance of responsibility were present or absent in some conditions. Finally, we manipulated pieces of evidence including the heinousness of the crime (low vs. high) and the defendant's prior criminal record (absent vs. prior record for assault).

Prior research has shown that the presence of a victim impact statement (VIS) results in more biased decision-making. However, nobody has examined the emotion content of these statements and how they may influence mock jurors. It is important to understand how certain pieces of emotional evidence may influence juror decision-making in death penalty trials as sadness and anger influence decision-making in different manners. Prior research has shown that when people are angry, they are more certain in their decisions, but may rely on pre-existing beliefs and ideas that aren't relevant to the trial. When individuals are sad, they are less certain about their decision and attempt to process the information more carefully. There is also little empirical evidence about the role of defendant remorse statements in death penalty trials, but it is hypothesized that such evidence may moderate the victim impact statement resulting in less biased decisions.

It is hypothesized that the VIS will result in more death sentences and negative attributions of the defendant when it is delivered with anger as compared to sad or flat affect. An explicit expression of sympathy accompanied with the acceptance of responsibility will result in more life sentences and more positive attributions of the defendant as compared to an excuse. The defendant's statement will be more effective when there is the expression of sympathy, acceptance of responsibility and emotion than when the defendant displays flat affect or delivers an excuse. Finally, we expect that participants who are experiencing sadness will be sensitive to variations in the trial evidence, but angry participants will be insensitive to such variations.

It is likely that the results of this research will be presented at academic conferences and/or published as an article in a journal. Again, your individual responses will be kept confidential during this process. If you are interested in the results of this study or if you have any additional questions or comments, please contact Jennifer Tallon (jtallon@gc.cuny.edu), Tarika Daftary (tdaftary@gc.cuny.edu), or Jennifer Groscup (jgroscup@jjay.cuny.edu) by email or phone at (212) 237-8774 or in room 2124N, Department of Psychology, John Jay College of Criminal Justice, The City University of New York, 445 W 59th St., New York, NY, 10019-1199. In the event of any problems resulting from participation in the study, psychological treatment is available at the John Jay College Counseling Information Office at (212) 237-8111.

Thank you again for your participation.

References

- Abel, R. (1998). *Speaking Respect, Respecting Speech*. Chicago, IL: University of Chicago Press.
- Antonio, M.E. (2006). Arbitrariness and the death penalty: How the defendant's appearance during trial influences capital jurors' punishment decision. *Behavioral Sciences and the Law*, 24, 215-234.
- Ask, K. & Granhag, P.A. (2007). Hot cognition in investigative judgments: The differential influence of anger and sadness. *Law and Human Behavior*, 31, 537-551.
- Barefoot v. Estelle*. 463 U.S. 880 (1983).
- Bibas, S., & Bierschbach, R.A. (2004). Integrating remorse and apology into criminal procedure. *Yale Law Journal*, 114, 85-148.
- Blumenthal, J.A. (2001). The admissibility of victim impact statements at capital sentencing: Traditional and nontraditional perspectives. *Drake Law Review*, 50, 67-91.
- Blumenthal, J.A. (2005). Does mood influence moral judgment? An empirical test with legal and policy implications. *Law and Psychology Review*, 29, 1-28.
- Blumenthal, J.A. (2009). Affective forecasting and capital sentencing: Reducing the effect of victim impact statements. *American Criminal Law Review*, 46, 107-125.
- Bodenhausen, G. V. (1993). Emotions, arousal, and stereotype-based discrimination: A heuristic model of affect and stereotyping. In D. M. Mackie & D.L. Hamilton (Eds.), *Affect, cognition, and stereotyping* (pp. 13-37). San Diego, CA: Academic Press.

- Bodenhausen, G. V., Sheppard, L. A., & Kramer, G. P. (1994). Negative affect and social judgment—the differential impact of anger and sadness. *European Journal of Social Psychology, 24*, 45–62.
- Booth v. Maryland*, 482 U.S. 496 (1987).
- Bornstein, B.H., Rung, L.M., & Miller, M.K. (2002). The effects of defendant remorse on a mock juror decision in a malpractice case. *Behavioral Science and the Law, 20*, 393-409.
- Bower, G.H. (1981). Mood and memory. *American Psychologist, 36*, 129-148.
- Bright, D.A., & Goodman-Delahunty, J. (2006). Gruesome evidence and emotion: Anger, blame, and jury decision making. *Law and Human Behavior, 30*, 183-202.
- Burkhead, M., Luginbuhl, J., & Wrenn, S. (1994, March). *Victim impact evidence in capital trials: What are its effects?* Poster presented at the meetings of the American-Psychology-Law Association, Sante Fe, NM.
- Butler, B. (2008). The role of death qualification in venirepersons' susceptibility to victim impact statements. *Psychology, Crime, & Law, 14*, 133-141.
- Costanzo, M., & Costanzo, S. (1992). Jury decision making in the capital penalty phase: Legal assumptions, empirical findings, and a research agenda. *Law and Human Behavior, 16*, 185-201.
- Crosby, C. A., Britner, P. A., Jodl, K. M., & Portwood, S. G. (1995). The juvenile death penalty and the Eighth Amendment: An empirical investigation of societal consensus and proportionality. *Law and Human Behavior, 19*, 245-261.
- Federal Crime Victims' Rights Act*, 18 U.S.C. § 3771 (2004).

- Davis, M. H. (1983). Measuring individual differences in empathy: Evidence for a multidimensional approach. *Journal of Personality and Social Psychology*, 44, 113-126.
- Davis, R.C., & Smith, B.E. (1994). The effects of victim impact statements on sentencing decisions: A test in an urban setting. *Justice Quarterly*, 11, 453-469.
- DeSteno, D., Petty, R. E., Rucker, D. D., Wegener, D. T., & Braverman, J. (2004). Discrete emotions and persuasion: The role of emotion-induced expectancies. *Journal of Personality and Social Psychology*, 86, 43-56.
- DeSteno, D., Petty, R. E., Wegener, D. T., & Rucker, D. D. (2000). Beyond valence in the perception of likelihood: The role of emotion specificity. *Journal of Personality and Social Psychology*, 78, 397-416.
- Edwards, K., & Bryan, T.S. (1997). Judgmental biases produced by instructions to disregard: The (paradoxical) case of emotional information. *Personality and Social Psychology Bulletin*, 23, 849-864.
- Eisenberg, T., Garvey, S.P., & Wells, M.T. (1998) "But Was He Sorry? The Role of Remorse in Capital Sentencing." *Cornell Law Review*, 83, 1599-1637.
- Feigenson, N., & Park, J. (2006). Emotions and attributions of legal responsibility and blame: A research review. *Law and Human Behavior*, 30, 143-161.
- Fishfader, V.L., Howells, G.N., Katz, R.C., & Teresi, P.S. (1996). Evidential and extralegal factors in juror decisions: Presentation mode, retention, and level of emotionality. *Law and Human Behavior*, 20, 565-572.
- Ford v. Wainwright*, 477 U.S. 399 (1986).

- Forgas, J.P. (1995). Mood and judgment: The Affect Infusion Model (AIM).
Psychological Bulletin, 11, 39-66.
- Forgas, J.P. (2003). Affective Intelligence. The role of affect in social thinking and behavior. In Ciarrochi, J., Forgas, J. P., & Mayer, J. D. (Eds). *Emotional intelligence in everyday life: A scientific inquiry*. (pp. 46-63). New York, NY: Psychology Press
- Forgas, J. P., & Bower, G. H. (2001). Mood effects on person-perception judgments. In: Parrott, W. G. (Ed) *Emotions in social psychology: Essential readings*. (pp. 204-215). New York, NY: Psychology Press.
- Furman v. Georgia*, 408 U.S. 238 (1972)
- Goffman, E. (1971). *Relations in public: Microstudies of the public order*. New York: Basic.
- Goldberg, J.H., Lerner, J.S., & Tetlock, P.E. (1999). Rage and reason: The psychology of the intuitive prosecutor. *European Journal of Social Psychology, 29*, 781-795.
- Gonzales, M. H., Haugen, J. A., & Manning, D. J. (1994). Victims as ‘narrative critics’: factors influencing rejoinders and evaluative responses to offenders’ accounts. *Personality and Social Psychology Bulletin, 20*, 691–704.
- Gordon, T.M., & Brodsky, S.L. (2007). The influence of victim impact statements on sentencing in capital cases. *Journal of Forensic Psychology Practice, 7*, 45-52.
- Greene, E. (1999). The many guises of victim impact evidence and effects on jurors’ judgments. *Psychology, Crime and Law, 5*, 331-348.
- Greene, E., & Dodge, M. (1995). The influence of prior record evidence on juror decision making. *Law and Human Behavior, 19*, 67-78.

- Greene, E., Koehring, H., & Quiat, M. (1998). Victim impact evidence in capital cases: Does the victim's character matter? *Journal of Applied Social Psychology, 28*, 145-156.
- Guastello, C. (2005). Victim impact statements: Institutionalized revenge. *Arizona State Law Journal, 37*, 1321-1340.
- Haidt, J. (2001). The emotional dog and its rational tail: A social intuitionist approach to moral judgment. *Psychological Review, 108*, 814-834.
- Haney, C. (2004). *Death by Design: Capital Punishment as a Social Psychological System*. New York, NY: Oxford University Press.
- Hatfield, E., Cacioppo, J. T., & Rapson, R. L. (1994). *Emotional Contagion*. New York: Cambridge University Press.
- Heath, W., Grannemann, B., & Peacock, M. (2004). How the defendant's emotion level affects mock jurors' decisions when presentation mode and evidence strength are varied. *Journal of Applied Social Psychology, 34*, 624-664.
- Heise, D.R. (1979). *Understanding events: Affect and the construction of social action*. New York; Cambridge University Press.
- Hsee, C. K., Hatfield, E., Carlson, J. & Chemtob, C. (1990). The effect of power on susceptibility to emotional contagion. *Cognition and Emotion, 4*, 327-340.
- Jehle, A., Miller, M.K., Kimmelmeier, M. (2008). The influence of accounts and remorse on mock jurors' judgements of offenders. *Law & Human Behavior*, Online First. Retrieved July 15, 2009, from <http://www.springerlink.com/content/t5604166u01g721w/?p=dfe0484f5c7143cca66fd3aeafcf64f9&pi=28>

- Keltner, D., Ellsworth, P. C., & Edwards, K. (1993). Beyond simple pessimism: Effects of anger and sadness on social perception. *Journal of Personality and Social Psychology, 64*, 740-752.
- Kenna v. District Court*, 435 F.3d 1011 (9th Cir. 2006).
- Kilpatrick, D.G., Beatty, D., & Howley, S.S. (1998, December). The rights of crime victims – Does legal protection make a difference? *National Institute of Justice: Research in Brief*, 1-11.
- Kleinke, C. L., Wallis, R., & Stadler, K. (1992). Evaluation of a rapist as a function of expressed intent and remorse. *The Journal of Social Psychology, 132*, 525-537.
- Kuhn, P. (2006). Victim impact statements in capital sentencing and *Humphries v. Ozmint* – Do “worthless” defendants pay a higher price? *New England Journal on Criminal and Civil Confinement, 32*, 251-278.
- Krauss, D.A., & Lee (2003). Deliberating on dangerousness and death: Jurors' ability to differentiate between expert actuarial and clinical predictions of dangerousness. *International Journal of Law and Psychiatry, 26*, 113-137.
- Krauss, D.A., & Sales, B.D. (2001). The effects of clinical and scientific expert testimony on juror decision making in capital sentencing. *Psychology, Public Policy, and Law, 7*, 267-310.
- Lerner, J.S., Goldberg, J.H., & Tetlock, P.E. (1998). Sober second thought: The effects of accountability, anger, and authoritarianism on attributions of responsibility. *Personality and Social Psychology Bulletin, 24*, 563-574.
- Lerner, J.S., & Keltner, D. (2000). Beyond valence: Toward a model of emotion-specific influences on judgment and choice. *Cognition & Emotion, 14*, 473-493.

- Lerner, J.S., & Tiedens, L.Z. (2006). Portrait of the angry decision maker: How appraisal tendencies shape anger's influence on cognition. *Journal of Behavioral Decision Making, 19*, 115-137.
- Levy, J.H. (1993). Limiting victim impact evidence and argument after *Payne v. Tennessee*. *Stanford Law Review, 45*, 1027-1060.
- Lockhart v. McCree*, 476 U.S. 162 (1986).
- Logan, W. (1999). Through the past darkly: A survey of the uses and abuses of victim impact evidence in capital trials. *Arizona Law Review, 41*, 143-192.
- Logan, W. (2000). Opining on death: Witness sentence recommendations in capital trials. *Boston College Law Review, 41*, 517-547.
- Logan, W. (2006). Victim impact evidence in Federal capital trials. *Federal Sentencing Reporter, 19*, 5-12
- Logan, W. (2008). Confronting evil" Victims' rights in an age of terror. *Georgetown Law Journal, 96*, 721-776.
- Luginbuhl, J., & Burkhead, M. (1994). Sources of bias and arbitrariness in the capital trial. *Journal of Social Issues, 50*, 103-124.
- Luginbuhl, J., & Burkhead, M. (1995). Victim impact evidence in a capital trial: Encouraging votes for death. *American Journal of Criminal Justice, 20*, 1-16.
- Melton, G., Petrila, J., Poythress, N., & Slobogin, C. (1997). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers*. New York: Guilford Press.

- Moons, W.G., & Mackie, D.M. (2007). Thinking straight while seeing red: The influence of anger on information processing. *Personality and Social Psychology Bulletin*, 33, 706-720.
- Myers, B., & Arbuthnot, J. (1999). The effects of victim impact evidence on the verdicts and sentencing judgments of mock jurors. *Journal of Offender Rehabilitation*, 29, 95-112.
- Myers, B., Godwin, D., Latter, R., & Winstanley, S. (2004). Victim impact statements and mock juror sentencing: The impact of dehumanizing language on a death qualified sample. *American Journal of Forensic Psychology*, 22, 39–55.
- Myers, B., & Greene, E. (2004). The prejudicial nature of victim impact statements: Implications for capital sentencing policy. *Psychology, Public Policy, and Law*, 4, 492-515.
- Myers, B., Lynn, S.J., & Arbuthnot, J. (2002). Victim impact testimony and juror judgments: The effects of harm information and witness demeanor. *Journal of Applied Social Psychology*, 32, 2393-2412.
- Nadler, J., & Rose, M.R. (2003). Victim impact testimony and the psychology of punishment. *Cornell Law Review*, 88, 419-456.
- Niedermeier, R., Horowitz, I.A., & Kerr, N.L. (1999). Informing Jurors of their Nullification Power: A Route to a Just Verdict or Judicial Chaos? *Law and Human Behavior*. 23, 331 - 352.
- Niedermeier, K.E., Horowitz, I.A., & Kerr, N.L. (2001). Exceptions to the rule: The effects of remorse, status, and gender on decision making. *Journal of Applied Social Psychology*, 31, 604-623.

- Neumann, R., & Strack, F. (2000). "Mood contagion": The automatic transfer of mood between persons. *Journal of Personality and Social Psychology*, 79, 211-223.
- O'Neil, K. M., Patry, M. W., & Penrod, S. D. (2004). Exploring the effects of attitudes toward the death penalty on capital sentencing verdicts. *Psychology, Public Policy, & Law*, 10, 443-470.
- Payne v. Tennessee*, 111 S. Ct. 2597 (1991).
- Petrucci, C.J. (2002). Research evidence: What we know about apology. *Behavioral Science and the Law*, 20, 337-362.
- Petty, R. E., Fabrigar L. R., & Wegener, D. T. (1997). Attitudes and attitude change. *Annual Review of Psychology*, 48, 609-647.
- Pham, M.T. (2007). Emotion and rationality: A critical review and interpretation of empirical evidence. *Review of General Psychology*, 11, 155-178.
- Robbennolt, J.K. (2003). Apologies and Legal Settlement: An Empirical Examination. *Michigan Law Review*, 102, 460-516.
- Robinson, D., Smith-Lovin, L., & Tsoudis, O. (1994). From a heinous crime to an unfortunate accident: The effects of remorse in responses to mock criminal confessions. *Social Forces*, 73, 175-190.
- Rose, M.R., Nadler, J., & Clark, J. (2006). Appropriately upset? Emotion norms and perceptions of crime victims. *Law and Human Behavior*, 30, 203-219.
- Scher, S. J., & Darley, J. M. (1997). How effective are the things people say to apologize? Effects of the realization of the apology speech act. *Journal of Psycholinguistic Research*, 26, 127-140.

- Schwarz, N., & Clore, G.L. (1983). Mood, misattribution, and judgments of well-being: Informative and directive functions of affective states. *Journal of Personality and Social Psychology, 45*, 513-523.
- Semmler, C., & Brewer, N. (2002). Effects of mood and emotion on juror processing and judgments. *Behavioral Sciences and the Law, 20*, 423-436.
- Shanker, N. (1999). Getting a grip on *Payne* and restricting the influence of victim impact statements in capital sentencing: The Timothy McVeigh case and various state approaches compared. *Hastings Constitutional Law Quarterly, 26*, 711-740.
- Small, D.A., & Lerner, J.S. (2008). Emotional policy: Personal sadness and anger shape judgments about a welfare case. *Political Psychology, 29*, 149-168.
- Smith, C.A., & Ellsworth, P.C. (1985). Patterns of cognitive appraisal in emotion. *Journal of Personality and Social Psychology, 48*, 813-838.
- South Carolina v. Gathers*, 490 U.S. 805 (1989).
- Spielberger, C. D., & Sydeman, S. J. (1994). State-Trait Anxiety Inventory and State Trait Anger Expression Inventory. In M. E. Maruish (Ed.), *The use of psychological tests for treatment planning and outcome assessment* (pp.292-321). Hillsdale, NJ: LEA.
- Stebly, N. M., Besirevic, J., Fulero, S. M., & Jimenez-Lorente, B. (1999). The effects of pretrial publicity on juror verdicts: A meta-analytic review. *Law and Human Behavior, 23*, 219-235.
- Sundby, S.E. (1998). The capital jury and absolution: the intersection of trial strategy, remorse, and the death penalty.” *Cornell Law Review, 83*, 1557-1598.

- Tiedens, L.Z., & Linton, S. (2001). Judgment under emotional certainty and uncertainty: The effects of specific emotions on information processing. *Journal of Personality and Social Psychology*, 81, 973-988.
- Tsoudis, O. (2000). Relation of affect control theory to the sentencing of criminals. *The Journal of Social Psychology*, 140, 473-485.
- United States v. Bernard & Vialva*, 299 F.3d 467 (2002).
- United States v. McVeigh*, 153 F.3d 1166, 1211 (1998).
- Weiner, B., Graham, S., Orli, P., & Zmuidinas, M. (1991). Public confession and forgiveness. *Journal of Personality*, 59, 281-312.
- Witherspoon v. Illinois*, 391 U.S. 510 (1968).