Gender, Emotion and Courtroom Decisions

A Major Qualifying Project

Submitted to the Faculty of

WORCESTER POLYTECHNIC INSTITUTE

in partial fulfillment of the requirements for the

Degree of Bachelor of Science

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Date:
4 of May, 2021

Report Submitted to:

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Abstract

Victim impact statements (VIS) have been controversial due to their emotional nature and how they may influence jury decision-making. Previous research has shown that highly emotional content in VIS increases the chance of a harsher sentence afforded to the defendant in criminal cases (Nadler & Rose, 2003). Research also shows that the gender of the victim and juror play a role in sentencing decisions (Holcomb et al., 2004; Williams et al., 2007; Pozzulo, et al., 2010). This study seeks to expand upon the literature by examining how the emotional content of victim impacts statements as well as the gender of the victim and mock juror influence civil court cases regarding personal injury. A total of 164 participants were included in the analysis and they all read a personal injury case with a plaintiff being either male or female as well as read a VIS which was categorized as either high or low in emotion. They answered questions on how much money in damage amounts they would award to the plaintiff followed by their perceptions of the plaintiff, defendant and the incident. Contrary to past research, we found that emotionality of the VIS, plaintiff gender and gender of the participant had no effect on damage amounts awarded to the plaintiff. This prompts for further investigation for VIS in civil cases to see if other factors such as the type of injury or race of the plaintiff and juror influence damage amounts.

Emotion, Gender and Jury Decisions

Liebeck v. McDonald's Restaurants or The Mcdonald's coffee case made headlines after Stella Liebeck spilled extremely hot coffee on herself and sued Mcdonald's restaurants for her severe burns and other injuries and ended up being awarded close to 3 million dollars for her suffering (Cain, 2017). This case became well-known because the media paid a lot of attention to it, some sources arguing that Liebeck was trying to make money; whereas, other sources focused more on what Liebeck experienced and the impact that the coffee spill had on her life. The empirical questions this case raises are how jurors think about and process the impact an incident has had on a victim, whether the emotional toll plays a role in the impact perceived by others (like jurors), and whether the gender of the victim (or plaintiff) matters. Research has shown that the emotions and gender of the victim can influence juror perceptions and decisions (Nuñez et al., 2016; Holcomb et al., 2004; Williams et al., 2007). There is also competing research about victim impact statements, in which strong emotion can be present and has shown that victim impact statements made during a court case can, at times, influence jurors perceptions (Nadler & Rose, 2003). However, no research to date has investigated whether victim impact statements influence civil case outcomes, like damage awards. Therefore, the aim of the current work is to extend past research and investigate whether the presence of emotion in victim impact statements in a civil case and the gender of the plaintiff influence juror perceptions and decisions.

Victim Impact Statements: Definition and History

Victim impact statements (VIS) are given at a sentencing hearing and are meant to allow the victim to portray the impact that the crime has had on their lives and the people around them. They can be written or recited verbally by the victim or their family and can speak on any suffering that the victim would like to convey before either a judge or jury decides on the

defendant's sentence. These statements can be given in open ended format where a victim states their own message or in the form of question and answer in which victims are asked questions by their attorney (District of Alaska, 2020). For example, in the trial of Larry Nassar, a former USA Gymnastic national team doctor accused of sexual assault, 150 women gave VIS. These statements ranged in emotional content. For instance, many victims broke down in tears and recalled the abuse suffered at the hands of Nassar and how it has impacted their lives since (Lutz, 2018), and others, like Ally Raisman's statement exuded anger and strength as well as calls to U.S. Gymnastics to rethink their policies that allowed a predator like Nassar to abuse women for years. VIS have been viewed by some as a tool for victims to confront their perpetrators in criminal cases, however, there is some research that refutes the idea that they contribute to victim healing (Lens et al., 2015; Pemberton & Reynaers, 2011). There have been debating views on using these statements as pieces of evidence.

The first case to question the true impact of VIS was Booth v Maryland in 1987. Booth was convicted of murder and requested that a jury decide his sentence. In his case, multiple emotionally charged VIS's were given at his sentencing hearing as allowed by the state of Maryland. These VIS were described as unruly and inflammatory and Booth believed they were a key factor in his death sentence. After a series of appeals, this case went to the Supreme Court, and the court ruled that VIS went against the 8th amendment of cruel and unusual punishment and to not be constitutional due to the fact that they divert from facts and evidence (Oyez, 2020). A second case, Payne v Tennessee in 1991, reversed this ruling. Payne was convicted of murder and sentenced to death after the mother of victim gave an emotional VIS about how the family was impacted by her son's death. Payne, citing Booth v Maryland, took matters to the Supreme Court, arguing that the statement should not have been allowed due to the previous ruling.

However, the Supreme Court overruled the prohibition of these statements and referred to VIS as mitigating evidence that should not be limited as well as important information to assess the severity of a crime to determine an appropriate sentence (Oyez, 2020). Due to the controversial nature of VIS, it is important to understand the impact they may have on juror decision making both in the criminal and civil realms.

Victim Impact Statements: Emotional Content

Because of the debate on the presence of VIS in the supreme court, many scholars have studied if VIS does in fact influence sentencing and findings have been mixed. For example, some studies have found that the presence of a VIS drives harsher sentencing decisions both when participants read trial summaries and when presented with a video of a family member giving a statement based off of those given at the controversial trials of Payne v. Tennessee or Booth v. Maryland (Luginbuhl & Burkhead, 1995; Myers & Arbuthnot, 1999). Other research found no effects of VIS on sentencing decisions (Boppre & Miller, 2014). Beyond the presence of the VIS, a study found that the level of emotion matters in that severely emotional statements increase the likelihood of longer sentencing over moderately emotional statements (Nadler & Rose, 2003). Researchers have also looked into the type of emotion and found that angry statements have a higher impact than sad statements and when victims give an angry statement, jurors are more likely to sentence the defendant to the death penalty (Nuñez, et al., 2017). Another study found that the harmful effects of the crime described by the victim had a larger effect on juror sentencing than how visually distraught or sad the victim was (Myers et al., 2002). The complexities of trials make it difficult to tease apart exactly how emotions are perceived and how much they influence jurors.

Contradictions arise when other parts of the case are manipulated or the attitudes of

individual jurors themselves uncover patterns in emotional VIS susceptibility. For example, VIS was not driving people's decisions if details of the case like mental illness were mentioned (Gordon & Brodsky, 2007). Or in a death penalty case, VIS itself didn't affect sentencing but death qualified jurors, or those who are not opposed to the death penalty, were more likely to be influenced by a VIS in that they felt more empathy towards the victim's family members and liked them more. They also found that these death-qualified jury members were more likely to sentence the defendant to death with the presence of a VIS (Butler, 2008). In some cases, VIS did not affect sentencing, but did affect the perceptions of the victim, in that the presence of a VIS made jurors more likely to view the victim more positively (Boppre & Miller, 2014). There also can be discrepancies about what is perceived as emotional, specifically depending on the gender of the juror. Female jurors have been shown to perceive both high and low VIS as emotional and even more emotional if the victim reciting the statement is female (Peace & Forrester, 2012).

Gender and Jury Decision Making

Gender can come into play in many ways in the courtroom. The gender of the perpetrator, victim, and juror may all play a role. While gender has been studied in relation to perpetrator gender, less work has examined the role of the gender of victims. In criminal cases, Holcomb, Williams, and Demuth (2007) observed what they call a "white female effect." More specifically, this research found that when a murder case had a white female victim, then the defendant was more likely to get the death sentence than any other victim (Holcomb et al., 2004; Williams et al., 2007). Researchers explained this finding in a multitude of ways. One explanation being if there was a perceived sexual victimization in the homicide may drive harsher sentencing as well as male juror's tendency to feel like they need to protect the victim

because she is a woman. Conversely, in cases involving a black male victim, defendants were more often awarded the most lenient sentences. This shows there may also be an interaction between the gender and race of the victim. However, in the limited work investigating gender of the victim in civil cases, a different pattern emerged. One study investigated the effect of the victim's gender in a wrongful death civil case and found that when the victim was male, the family was awarded significantly more money than when the victim was female because jurors rationalized that men made more money so the income lost by the male victim was greater than when the victim was female (Goodman, et al., 1991).

There is also research on gender of the jurors playing a role in perceptions of the victim and defendant. One study investigated the effects of a victim's gender and a juror's gender in a sexual abuse case, and found that female jurors emapthized more with victims, gave victims a higher credibility rating no matter the gender of the victim, had more negative views of the defendant, and perceived the defendants as more likely to be guilty than male jurors (Pozzulo, et al., 2010). This supports that in certain cases, a juror's gender and nature of the crime can influence decisions made. However, this case involved a sexual assault case and one question that emerges is whether the type of case influences when a juror's gender may influence their perceptions and decisions (e.g., are females more likely to empathize with victims of sexual assault than men?). Given that both the victim's gender and the gender of the juror may play a role in perceptions and decisions, we will investigate if these factors affect how the emotionality of a case is being perceived as well as the damage amount awarded to the plaintiff.

The Present Study

Overall, research examining how VIS influences trial decisions has resulted in mixed results. Some findings on emotional content in VIS show that perceived level of emotion

(high/low) and type of emotion have been shown to influence jury decisions in criminal trials (Nadler & Rose, 2003; Nuñez, et al., 2017); whereas other research has not found this same effect (Boppre & Miller, 2014; Myers et al., 2002,). The effect of victim gender also has mixed results with some past work finding that defendants who perpetrated a female victim were given a harsher sentence than those who perpetrated a male victims (Holcomb et al., 2004; Williams et al., 2007), and other research finding that when the victim was male, their family was awarded more in damages (Goodman, et al., 1991). Furthermore, the gender of the juror may also influence perceptions decision making (Pozzulo, et al., 2010). Overall, most of the work centers on criminal cases, not civil cases. Therefore, the present study seeks to expand past research and investigate a combination of these factors to see if emotionality in a VIS, plaintiff gender and participant gender influence damage amounts awarded to a plaintiff in a civil trial.

Hypotheses

1) In a civil case, plaintiffs who give a highly emotional VIS will be awarded more money in punitive and compensatory damages than plaintiffs who give a low/flat emotion statement.

2) Female plaintiffs who give highly emotional VIS will be awarded the most money in punitive and compensatory damages compared to women with low/flat VIS and men.

3) Female jurors will be more likely to award more money to the plaintiff if the plaintiff is female, male jurors will be more likely to award the plaintiff money if the plaintiff is male.

Method

Participants

A total of 194 participants were recruited to participate in this study from Amazon's Mechanical Turk (Mturk) and received $3.50 for their participation. After excluding participants, we were left with a total of 164 participants, 41.5% female and 57.9% male. All participants provided informed consent prior to beginning this study and were debriefed immediately after.

Before data analysis, we excluded participants who did not pass our attention check of correctly naming plaintiff gender (i.e., if they answered the question, "What was the gender of the plaintiff?" incorrectly based on the condition they received or not at all, n = 29). This was done because our goal was to look at how gender of the plaintiff may influence damage amounts as well as interact with gender of the participant and this directly related to our hypotheses: H2 and H3. We did not need to exclude any participants based on our second attention check asking what the trial was about.

Design

This study is designed as a 2x2, meaning that there are two independent variables (IVs), the emotionality of the VIS and the gender of the victim. The VIS was either high or low in emotional content. The gender of the victim was either described as male or female. The main dependent variables (DVs) in this study were the amount awarded in punitive and compensatory damages and perceptions of the defendant and victim

Materials

Civil Case

Our goal was to create a case summary in which the outcome would be as close to an even split based on verdict, or as close to the same number of participants rendering the defendant being guilty and not guilty. This goal was established so that participants would not be

biased towards awarding a low or high amount of damages based on the case summary. To test if our case was close to a split verdict we conducted a pretest (N = 19) comparing this case to another case we had created based on the famous Mcdonald's coffee case involving personal injury due to the plaintiff spilling hot coffee on themselves. This case about falling merchandise had more of a split verdict (9 answering "not guilty" and 7 answering "guilty) compared to the rendition of the coffee case (4 answering "not guilty" and 13 answering "guilty) when asking participants to render a verdict. In addition, when we asked participants to indicate which case they believed would render a more split verdict, 76.5% chose this case over the McDonald's case.

All participants were shown the same civil case, in which the plaintiff was either male or female. This summary described an injury that occurred when the plaintiff was reaching for a coffee maker on a high shelf and a box of dinnerware fell on them, causing a concussion. It began with a case summary of the events leading up to the injury and the treatment that occurred after. The summary also included store policy and how the actions of those at the store that day were according to their policy. They were then shown two arguments which consisted of a paragraph each, beginning with the plaintiff's argument that described evidence as to why the store should be held responsible for their injuries. This included mention of expert testimony from a doctor and evidence of past complaints. Then they read the defendant's argument which described the store's right to their own policy and why their policy was in place. It affirmed that the store was not breaking any laws by stacking this item on a high shelf.

Victim Impact Statements

All participants were shown a VIS, which was either high in emotional content or low in emotional content. The VIS was written in question/answer format, with the victim answering questions on the stand. It consisted of four questions. It asked the victim to tell the court what happened that caused the injury, in which both answers for the high and low emotion condition were the same. The lawyer then asks the victim to explain to the court the extent of their injury, in which the high emotion condition embellishes the same facts of their injuries with words like unbearable, and waking up everyday with their head throbbing. Whereas, the low emotion condition simply listed their injuries in one sentence with no descriptive words. The lawyer asks the victim about their medical treatment and again the high emotion statement added phrases like "extreme headaches" versus the low emotion statement which simply lists the medical treatment, matter of factly, with no added emotion. Finally the lawyer asks the victim to describe the impact the injury has had on them, in which the high emotion statement describes feeling very depressed, feeling like their independence has been robbed and feeling like their body will never be the same. The low emotion mentions one sentence about feeling sad due to lack of independence.

To confirm that these statements reflected higher compared to lower emotions, we conducted a pre-test to compare these statements. A paired sample T-test was conducted to compare the emotional content in the high emotion statement versus that of the low/flat emotion statement. There was a significant difference in the emotionality of the high emotion statement (M= 3.86, SD= 2.04) and the low/flat emotion statement (M= 2.71, SD= 1.60), $t(6)$= 2.83, p= 0.03. In other words, the high emotion statement was perceived as being significantly more emotional than the low/flat emotion statement.

Punitive and Compensatory Damages Measure

For this measure we want to see how much money the participant would award the defendant. Before asking each question we define the goal of each type of damages. For example, we define punitive damages as, "Punitive damages are meant to deter the defendant from committing the wrongdoing again, which prevents others from the same incident as the plaintiff." This is followed by the question, "How much money in punitive damages would you fine Halls Department Store?" Next we define compensatory damages as, "Compensatory damages are awarded to the plaintiff to right their wrongdoing by the defendent." This is followed by the question, "How much money in compensatory damages would you award the plaintiff?" The answer format was in the form of a text box where participants specified their answer in dollars for punitive damages, min = 0 and max = 5,000,000 and compensatory damages, min = 0 and max = 2,000,000. This information was used to see which VIS condition, high or low emotion, rendered participants to be more likely to award more damages and what type.

We also wanted to gauge the confidence of the participant's decision by asking "How confident are you in your decision?" from 1 being "not at all confident" to 7 being "extremely confident." After data collection, we examined the data distribution for punitive and compensatory damage amounts and used log transformation to normalize the skew. Originally, punitive damages had a skew of 5.61, SD = 546051.14 and compensatory damages had a skew of 4.25, SD = 261187.07.

Blameworthiness and Responsibility

As in past research, we also wanted to assess the jurors' perceptions of each party (Skorinko, et al., 2014). This was operationalized by asking questions like "How blameworthy is the defendant/plaintiff for the incident?", "How responsible is the defendant/plaintiff for the

plaintiff's injury?" and "To what extent is it the defendant/plaintiff's fault?" We also asked a question exclusively for the defendant, "How likely is the defendant to be litigated for something like this in the future?" Answer options for all of these questions ranged from a 1-7 scale, 1 being "not at all" and 7 being "very much." To score this we took the average scores for these 3 questions pertaining to the plaintiff and a higher score would indicate higher perceived responsibility of the plaintiff. We did this same process for responsibility of the defendant, taking the average of the four questions with a higher score indicating higher perceived responsibility of the defendant.

Empathy Towards the Victim

This scale by Batson and colleagues (1997) was used to measure empathy towards the victim. In past studies it has been used to measure empathy towards stigmatized people like a person with AIDS, a homeless man and a convicted murderer. Results found that when these groups were more responsible for their situation, the empathy towards them went down and it was not generalizable to the entire stigmatized group population. When asked to feel empathetic towards these groups, the empathy measured via this scale went up and they also found that this empathy generalized out to the entire stigmatized group and not just the individual (Batson, et al., 1997). In this scale participants are presented with 6 words and asked to what extent this describes their feelings towards the plaintiff. The 6 words are sympathetic, compassionate, soft-hearted, warm, tender, and moved. This was measured on a 1-7 scale, 1 being not at all and 7 being extremely. These responses are averaged and higher numbers on this scale indicated higher empathy.

Self-Others Overlap

We asked participants to complete the Inclusion of Other in the Self scale created by Aron & Aron (1992) which is a measure that shows a variety of overlapping circles, with one circle titled either "defendant" or "plaintiff" the other titled "self." Participants answered this scale once for the plaintiff and once for the defendant. These visuals of overlapping circles are numbered from 1 to 7, with 1 showing two circles that do not touch and 7 showing two circles that are completely overlapping (see Figure 1 for an example). This same visual was shown again in the next question with one circle titled "plaintiff" and the other titled "self."

Figure 1

Inclusion of Self and Other Scale
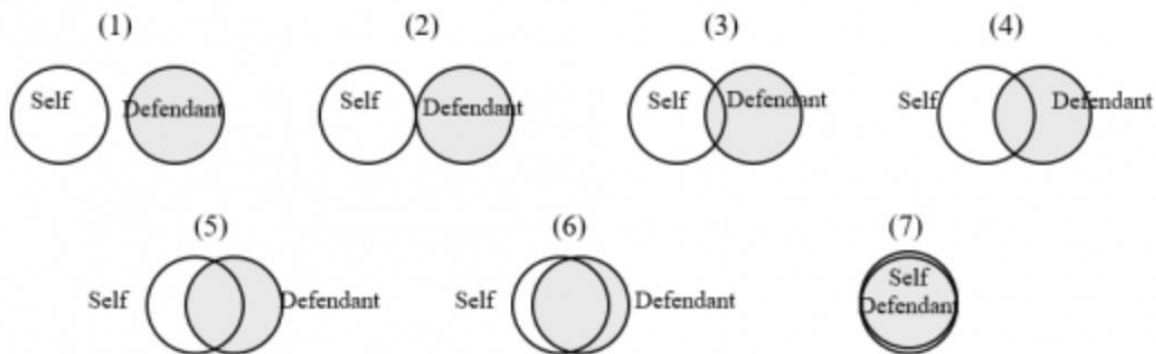
The participant is asked to answer the number from 1 to 7 that indicates the circles with the overlap that describes the relationship between them and the defendant or plaintiff. Participants also indicated: "To what extent are you and the plaintiff/defendant similar?" and "To what extent would you use "we" to describe your relationship with the plaintiff/defendant?" Both of these are on a 1-7 scale with 1 being "not at all" and 7 being "very much." All three of these questions were averaged together to create two composite variables: "similarity to the plaintiff" and "similarity to the defendant."

Perceived Shock

Past research shows that mock jurors in a criminal case who felt horror after reading the proceedings were more likely to pay attention to details supporting the victim and less likely to pay attention to details supporting the defendant (Forsterlee, et al., 2004). While our case differs from Forsterlee and colleagues (2004) because it is civil rather than criminal, we decided to assess shock, a potentially more appropriate sentiment for our case. We asked participants, "How shocked were you by the details of this case?" on a 7-point likert scale to assess these feelings with 1 being "not at all shocked" and 7 being "extremely shocked."

Severity of Injury

For this measure, we wanted to assess the perceived severity of the injuries sustained by the plaintiff. We asked, "How severe did the incident seem to be?" with 1 being "not at all severe" and 7 being "extremely severe." We also wanted to differentiate between physical and psychological injuries, and asked: "How would you describe the severity of the physical injury/injuries sustained by Jane/John Doe?" and "How would you describe the severity of the psychological injury/injuries sustained by Jane/John Doe?" with 1 being not at all severe and 7 being extremely severe. Initial analyses showed no differences between physical and psychological injuries. Therefore, we averaged the responses to all three questions and named this variable "severity."

Need for Cognition Scale

Created by Cacioppo, Petty and Kao (1984), the Need for Cognition (NFC) Scale is an 18 question scale that assesses an individual's engagement with tasks that require cognitive effort. The scale includes questions such as "I really enjoy a task that involves coming up with new solutions to problems" (Cacioppo, Petty & Feng Kao, 1984). The answers are based on a 1-5

scale from 1 being "extremely uncharacteristic of me" to 5 being "extremely characteristic of me." NFC score was calculated by taking the mean of the 18 items and higher scores reflect higher NFC.

It was utilized by Wevodau and colleagues (2004) to determine the relationship between NFC scores and the impact of a VIS on mock jurors. They found that higher NFC scores were associated with higher perpetrator blame. However, NFC was not a strong predictor of the mock jurors' sentencing decisions, and higher NFC scores did not lead to harsher sentencing (Wevodau et al., 2004).

Need for Affect Scale

The Need for Affect Scale is a 26 question scale, designed by Maio & Esses (2001). It assesses an individual's willingness to engage with emotion, along with how important they consider emotional understanding. The scale includes questions such as "It is important for me to be in touch with my feelings (Maio & Esses, 2001)." It includes two subscales, approach (13 items) and avoidance (13 items, reverse coded) and questions are answered on a 1-7 scale, 1 being "extreme disagreement" and 7 being "extreme agreement." NFA score was calculated by taking the mean of the 26 items and higher NFA scores reflect higher NFA.

Wevodau and colleagues (2004) used this scale alongside the NFC scale to assess the correlation between NFA scores and the influence of an emotional VIS on mock jurors. In their study, participants were presented a sexual assault case followed by either no VIS, one that focused on emotional and psychological harm to the victim, or one that focused on physical harm done to the victim. When no VIS was presented, mock jurors who scored lower on the NFA scale often gave harsher sentences than those who scored higher in NFA. However, in the

presence of a VIS, those who scored higher for NFA gave harsher sentences to the defendant (Wevodau et al., 2004).

Manipulation Checks

We asked a series of questions that were manipulation checks to make sure that the independent variables were perceived as intended by the participants or to see how participants used their information to reach their decision on damage amounts. The first was an open response asking what the trial was about followed by a multiple choice question asking the gender of the plaintiff in their case with options of male, female, other or not sure. This was to ensure that we knew which participants paid attention to the gender of the victim. Race was not specified in the case at all but we were curious to understand what race jurors perceived the plaintiff to be. Therefore, we asked, "What race was the plaintiff?" as a multiple choice question.

To check the manipulation of the emotional content in the VIS, we asked how emotional they perceived the VIS on a likert scale with 1 being "not at all emotional" and 7 being "extremely emotional." This was to ensure that they were perceiving the high and low emotion condition as it was intended. This was followed by the question asking to what extent the impact statement impacted their decision on punitive and compensatory damage amounts on a likert scale with 1 being "not at all" and 7 being "very much." This was to see how they report that the statement impacted their decision, if not at all than there may have been other facts of the case that regardless of the level of emotional content in the statement, influenced their decision on damages.

Finally, to see if participants were perspective taking with the defendant and/or the plaintiff we asked two questions about each. The first was "How easily could you put yourself in the defendant's/plaintiff's shoes?" and the second was "How motivated were you to put yourself

in the defendant's/plaintiff's shoes?" and these were on a 1-7 scale with 1 being "not at all easy/motivated" and 7 being "extremely easy/motivated." These two questions will be analyzed seperately.

Demographics

Finally, we asked several demographic questions including gender, ethnicity, age (only those who are over 18 will be included in analysis), political affiliation, US citizenship status, if they are a college student and what year, and finally if they have ever been a juror before. Gender of the participant is particularly important, as past research has shown that gender is related to how emotional a VIS is perceived (Peace & Forrester, 2012).

Procedure

Prior to their participation, all participants viewed an informed consent form that told them about the activities they would engage in for this study. Participants selected whether they "Agreed" or "Disagreed" to participate. After agreeing to participate, they then imagined that they were assuming the role of a juror for a civil case involving personal injury. Participants read a case summary, including arguments from the plaintiff and defendant, followed by a VIS given by the victim. The VIS was either given by a male or female victim and expressed either high or low emotion. Participants determined how much money would be awarded to the plaintiff in punitive and compensatory damages. Participants then answered questions about themselves and their perceptions of the plaintiff and defendant. They answered questions about the severity of the incident overall, physically and psychologically, the level of responsibility that the plaintiff and defendant had on the incident. They also answered the Need for Affect scale to measure their tendencies to engage with emotion and the Need for Cognition scale to measure their tendency to engage in cognitive processes (Maio & Esses, 2011; Wevodau, et al., 2014). To measure

empathy and felt similarity towards the defendant and plaintiff, participants completed the

Batson's Empathy Scale (Batson, et al., 1997) and the Inclusion of Other in the Self scale (Aron

& Aron, 1992) to measure their similarity to the plaintiff and the defendant. They also answered

a question about how shocked they were by the case. Finally, participants answered

manipulations checks on the subject of the case and the gender of the plaintiff followed by

questions about their demographic information and viewed the debriefing form.

<div align="center">**Results**</div>

Data were analyzed using three-way analysis of variance (ANOVA) with plaintiff gender,

emotionality of VIS, and participant gender as the between-participants factors. Main analyses

focused on the effects for punitive damages and compensatory damages as the dependent

variables. Exploratory analyses for punitive and compensatory damages examined the effects of

severity of the incident and perceived similarity of the participant to the plaintiff in addition to

emotionality and gender of the plaintiff and juror to the plaintiff on damage amounts. Other

exploratory analyses were done looking at responsibility of the plaintiff, responsibility of the

defendant and empathy for the plaintiff, perceived race of the plaintiff and perceived emotion

(high/low) of the plaintiff's testimony.

Main Analyses

Punitive and Compensatory Damages

Punitive Damages. Contrary to the H1 that plaintiffs with highly emotional statements

would be awarded more money in punitive damages compared to plaintiffs with low/flat

emotional statements, there was no main effect for the emotionality of the statement on punitive

damages, $F(1,161) = .27$, $p = .60$, $\eta^2{}_p = .00$, two-tailed test. There were also no main effects for

gender of the plaintiff or gender of the participant, p's > .96. There were no two-way interactions

between the emotionality of the condition and the gender of the plaintiff, p = .78; between

emotionality and gender of the plaintiff, p = .27, or between gender of the plaintiff and gender of

the participant, p = .28. Finally, there was also no three way interaction between emotionality of

the statement, gender of the plaintiff, and gender of the participant , p = .44. These findings do

not support the hypotheses H2 and H3, that predicted that female plaintiffs who gave highly

emotional statements would be awarded the most in damages and that jurors would award more

money to a plaintiff if they identified as the same gender of the plaintiff.[1]

Compensatory Damages. Contrary to the H1 that plaintiffs with highly emotional

statements would be awarded more money in compensatory damages compared to plaintiffs with

low/flat emotional statements, there was no main effect for the emotionality of the statement on

compensatory damages, $F(1,161) = 1.42$, p =.24, $\eta^2_p = .01$, two-tailed test. There were also no

main effects for gender of the plaintiff or gender of the participant, p's > .47. There were no two-

way interactions between emotionality of the statement and gender of the plaintiff, p = .39;

emotionality and gender of the participant, p = .56; or gender of the plaintiff and gender of the

participant, p = .52. Finally, there was no three way interaction between emotionality of the

statement, gender of the plaintiff, and gender of the participant , p = .10. These findings also do

not support the hypotheses H2 and H3, that predicted that females with highly emotional

statements would be awarded the most in compensatory damages and that jurors would award

more money to a plaintiff if they identified as the same gender of the plaintiff.[2]

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[1] This analysis for effects on punitive damages was run with the variables for Need for Affect (NFA) as a fourth independent variable and NFA did not influence the results. An analysis was also run with Need for Cognition (NFC) as a fourth independent variable and NFC did not influence the results.

[2] This analysis for effects on compensatory damages was run with the variables for both Need for Affect (NFA) as a fourth independent variable and NFA did not influence the results. An analysis was also run with Need for Cognition (NFC) as a fourth independent variable and NFC did not influence the results.

Exploratory Analyses for Punitive and Compensatory Damages

Similarity to the Plaintiff as an Independent Variable

Similarity towards the plaintiff was measured using the Inclusion of Other in the Self

scale (Aron & Aron 1992) along with the 2 other questions related to similarity (not part of the

Aron & Aron original scale) that we averaged together to form one similarity measure. To

conduct the analysis, we first conducted a median split on the similarity composite variable to

look at those who perceived little similarity between themselves and the plaintiff and those who

perceived a lot of similarity between themselves and the plaintiff.

Similarity to the Plaintiff on Punitive Damages. There were no main effects for

emotionality of the statement, gender of plaintiff or gender of the participant on punitive

damages, p's > .30. However, there was a main effect of similarity to the plaintiff on punitive

damages, $F(1, 144) = 8.60$, $p = .00$, $\eta^2_p = .06$, two-tailed test. More specifically, those high in

perceived similarity with the plaintiff ($M = 4.47$; $SD = 1.25$) awarded more in punitive damages

compared to those low in similarity ($M = 3.71$; $SD = 2.11$). There were no significant interaction

two-way, three-way, or four-way interactions between any of the independent variables, p's >

.13.

Similarity to the Plaintiff on Compensatory Damages. There were no main effects for

emotionality of the statement, gender of plaintiff, gender of the participant or similarity to the

plaintiff on compensatory damages, p's > .19. There were also no significant interactions

between any of these variables, p's > .12.

Severity as an Independent Variable

To determine the perceived severity of the incident, we created a composite variable that

included the severity rating overall, for physical injuries, and for psychological injuries. To run

the ANOVA with the composite variable of severity as an independent variable we conducted a median split to look at those who perceived little severity in the incident compared to those who perceived the incident as being very severe.

Severity on Punitive Damages. There were no main effects for emotion of condition, gender of plaintiff or gender of the participant on punitive damages, p's > .37 . There was a main effect of severity on punitive damages, $F(1, 145) = 19.18$, $p = .00$, $\eta^2_p = .13$, two-tailed test. More specifically, those who perceived the incident as being very severe $(M = 4.73; SD = 1.16)$ awarded more in punitive damages compared to those who perceived little severity $(M = 3.47; SD = 2.03)$. There were no significant two way or three way interactions between any of these variables, p's > .16. There was a significant four-way interaction between the emotionality of the statement, gender of the plaintiff, gender of the participant and severity, $p = .04$.

To look further into this four-way interaction, we conducted simple effects analysis and in particular we were most interested in how differences in perceived similarity influenced damage awards. When female participants read about a case with a female plaintiff that involved low emotion VIS, the perceived severity marginally influenced punitive damages, such that incidents perceived as more severe $(M = 4.85, SD = .79)$ were awarded more in damages than incidents perceived as less severe $(M = 3.46, SD = 2.22)$, $F (1, 129) = 3.06$, $p = .08$, $\eta^2_p = .02$.

When female participants read about a case with a male plaintiff and the case involved high emotion VIS, the perceived severity influenced punitive damages, such that incidents perceived as more severe $(M = 4.93, SD = .70)$ were awarded more in damages than incidents perceived as less severe $(M = 2.28, SD = 2.08)$, $F (1, 129) = 8.54$, $p = .004$, $\eta^2_p = .06$. Similarly, when male participants read about a case with a female plaintiff that involved high emotion VIS, the perceived severity also influenced punitive damages, such that incidents perceived as more

severe (M = 5.17, SD =.72) were awarded more in damages than incidents perceived as less

severe (M = 2.96, SD = 2.08), F (1, 129) = 10.04, p = .002, η^2_p = .07. When male participants

read about a case with a male plaintiff that involved low emotion VIS, the perceived severity

marginally influenced punitive damages, such that incidents perceived as more severe (M = 4.70,

SD =1.19) were awarded more in damages than incidents perceived as less severe (M = 3.21, SD

= 2.50), F (1, 129) = 3.70, p = .056, η^2_p = .03. Thus, in some instances, when the incidents were

perceived as more severe the defendant was more likely to be awarded higher punitive damages.

The simple effects analysis also showed in one instance participant gender mattered.

When a male plaintiff expressed a high emotion VIS and the incident was perceived as less

severe, the participants gender marginally influenced punitive damages, such that male

participants (M = 4.09, SD = 1.81) awarded more in punitive damages than female participants

(M = 2.28, SD = 2.08), F (1, 129) = 3.72, p = .056, η^2_p = .03.

And, the simple effects analysis showed in one instance the emotion in the VIS mattered.

Female participants who saw a male plaintiff and believed the incident was low in severity

awarded more in punitive damages when they read a low/flat emotion VIS (M = 4.08, SD = 1.42)

then a high emotion VIS (M = 2.28, SD = 2.08), F (1, 129) = 4.12, p =.04, η^2_p = .03. No other

comparisons were significant.

Severity on Compensatory Damages. There were no main effects for emotion of

condition, gender of plaintiff or gender of the participant on punitive damages, p's > .37 . There

was a main effect of severity on compensatory damages, $F(1, 145)$ = 17.68, p =.00, η^2_p = .12,

two-tailed test. More specifically, those who perceived the incident as being very severe(M =

4.66; SD = 1.01) awarded more in compensatory damages compared to those who perceived little

severity ($M = 3.52$; $SD = 1.64$). There were no significant interactions between any of these variables, p's $> .28$.

Exploratory Analyses for other Dependant Variables

Perceptions of Responsibility

In addition to damage awards, we wondered whether the emotionality of the statement, gender of the plaintiff, and gender of the participant influenced the perceptions of how responsible the plaintiff and defendant were for the incident. Data were analyzed using three-way analysis of variance (ANOVA) with the responsibility of the plaintiff or responsibility of the defendant as the dependent variable and emotionality of VIS, and gender of the plaintiff and gender of the participant as the between-participants factors.

Responsibility of the Defendant. There was no main effect for the emotionality of the statement on responsibility of the defendant, $F(1,163) = .06$, $p = .80$, $\eta^2_p = .00$, two-tailed test. There were also no main effects for gender of the plaintiff, $p = .80$ or gender of the participant, $p = .23$. There were no two-way interactions between gender of the plaintiff and the emotionality of the condition, $p = .41$; no interaction between emotionality and gender of the participant, $p = .67$; and no interaction between gender of the plaintiff and gender of the participant, $p = .47$. Finally there was no three way interaction between gender of the plaintiff, gender of the participant and emotionality of the statement, $p = .32$.

Responsibility of the Plaintiff. There was no main effect for the emotionality of the statement on responsibility of the plaintiff, $F(1,163) = .00$, $p = .96$, $\eta^2_p = .00$, two-tailed test. There were also no main effects for gender of the plaintiff or gender of the participant, p's $> .85$. There were no interactions between emotionality of the statement and gender of the plaintiff, $p = .83$; no interaction between emotionality and gender of the participant, $p = .71$; and no interaction

between gender of the plaintiff and gender of the participant, $p =$ .25. Finally there was no three way interaction between emotionality of the statement, gender of the plaintiff and gender of the participant, $p =$ .57.

Empathy for the Plaintiff

We measured empathy for the plaintiff using Batson's Empathy Scale (Batson et al., 1997) to see if emotionality of the statement, gender of the plaintiff and gender of the participant influenced perceived empathy for the plaintiff. Data were analyzed using three-way analysis of variance (ANOVA) with the empathy for the plaintiff as the dependent variable and emotionality of statement and gender of the plaintiff as the between-participants factors and the gender of the participant as a third independent variable.

Empathy for the Plaintiff. There was no main effect for the emotionality of the statement on empathy for the plaintiff, $F(1,163) =$ .25, $p =$ .62, $\eta^2_p =$ .00, two-tailed test. There were also no main effects for gender of the plaintiff or gender of the participant, p's > .97. There were no interactions between emotionality of the statement and gender of the plaintiff, $p =$ .82; no interaction between emotionality and gender of the plaintiff, $p =$ .90; and no interaction between gender of the plaintiff and gender of the participant, $p =$ .46. Finally there was no three way interaction between emotionality of the statement, gender of the plaintiff and gender of the participant, $p =$ .29.

Perceived Race of the Plaintiff

Overall, 125 out of 164 participants (76.2%) perceived the plaintiff as White. We also investigated whether participants' own race influenced their perceptions of the race of the plaintiff. The descriptive statistics indicate that regardless of one's own race, the plaintiff was perceived as White. Out of 16 participants who identify as African American/Black, 12

perceived the plaintiff as being white. Out of 17 participants who identify as being Asian, 14

perceived the plaintiff as being white. Out of 117 participants who identify as being Caucasian,

89 perceived the plaintiff as being white. Out of 10 participants who identify as being Hispanic,

7 perceived the plaintiff as being white. Out of 2 participants who identify as being biracial, 1

perceived the plaintiff as being white.

Manipulation Checks

Emotionality of the VIS

Data were analyzed using three-way analysis of variance (ANOVA) with the perceived

emotion by the participant as the dependent variable and the emotion condition (high/low

emotion), gender of the plaintiff and gender of the participant as the between-participants

factors.There was no main effect for how emotional a plaintiff was perceived based on the

emotion condition (high/low emotion), gender of the plaintiff or gender of the participant, *p's*

>.18. There were no two-way interactions between emotionality of the statement and gender of

the plaintiff, $p = .93$; no interaction between emotionality and gender of the plaintiff, $p = .81$; and

no interaction between gender of the plaintiff and gender of the participant, $p = .96$. Finally there

was no three way interaction between emotionality of the statement, gender of the plaintiff and

gender of the participant, $p = .11$.Thus, although we did pretest these statements and while the

means trend in the direction that indicates more emotion was detected in the High VIS compared

to the Flat VIS, this does show that there was no statistically significant difference in emotion

being perceived by condition.

<div align="center">

General Discussion

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To summarize the results, there was no support for H1, as plaintiffs with highly

emotional statements did not receive more in damage awards. There was also no support for H2.

Female plaintiffs with highly emotional statements did not receive the most amount in damage awards. There was also no support for H3, as participants did not award a plaintiff more in damage amounts when they were the same gender as the plaintiff.

These findings may indicate a fundamental difference in jury perceptions and decision making between criminal and civil cases. Research on criminal cases has shown that when mock juries are presented with a high emotion VIS, jurors are likely to sentence the defendant much more harshly than a low emotion VIS (Nadler & Rose, 2003). Also, gender of the juror and victim has been shown to affect perceptions of the case in that female jurors were more likely to view the defendant as more responsible and the victim as more reliable, credible and believable compared to male jurors (Pozzulo, et al., 2010) and when a criminal case involves a female victim, the defendant is likely to get a longer sentence (Holcomb et al., 2004, pp 7; Williams et al., 2007). However, because this research was done on criminal cases, these findings could be heavily impacted by the fact that there is one specific person to blame (the defendant) as opposed to an entire company which may not make it as easy to place blame on the entire entity. It also could be the nature of the crime, as in a criminal case the defendant did something to the victim, whereas in this case the plaintiff was reaching on a shelf and merchandise fell on her and the defendant was blamed for their shelving policy at the store. These fundamental differences may offer some explanation as to why we did not find the same patterns present in criminal cases, in this civil case.

One potential limitation of the study that may explain why we did not see an effect on damage amounts based on the emotionality of the VIS is that participants were not perceiving the highly emotional VIS and low/flat emotional VIS as we had intended. Future research should look into further differentiating the two emotional statements and pre-test using a larger sample.

Another possible explanation is that different types of emotion were being perceived. Past research found that angry impact statements in criminal cases were more likely to lead to the defendant receiving the death penalty than sad impact statements (Nuñez, et al., 2017). Therefore, future research should investigate whether these types of emotions are more important than the amount of emotionality in the VIS. Further, future research could explore whether participants perceive the highly emotional VIS as more angry or sad whether this influences damage amounts.

Another explanation could be that emotion may not be the only factor that drives decision making. Experimental research has shown that when a VIS includes greater or more severe harm as a result of the defendant, it drives harsher sentencing (Nadler & Rose, 2003). This may explain why we did not see any effects of emotionality, gender of the plaintiff and gender of the participant on damage amounts but did see main effects for severity on punitive and compensatory damages. Including extra details in plaintiff testimony that increase jurors perceptions of severity may have a greater influence for decision making over perceived emotion. For example, a set of studies on civil trials found that jurors perceived suffering of a plaintiff to be more severe when it pertained to psychological injuries versus physical injuries. This study also found greater psychological suffering was perceived in sexual assault and kidnapping cases versus falling incidents or car accident (Vallano & McQuiston, 2018). These findings may imply that the type of perceived severity (i.e. psychological versus physical), may elicit higher damage amounts as well as the type of civil case (i.e. medical malpractice versus falling incident). Further research could examine what type of details increase perceptions of severity such as more physical versus psychological injuries, effects on family or holding a job, type of injury, etc. If psychological injuries are truely what causes greater perceptions of

severity, it would be important to test how this may affect damage amounts awarded to the plaintiff.

Although we did not see an effect on damage amounts based on gender of the plaintiff, there may be other characteristics that interact with or are significant other than gender such as race or age. Past research has shown that defendants in trials with white female victims are more likely to receive harsher sentencing and defendants in trials with black male victims receive the least harsh sentencing (Williams et al., 2007). We saw that most participants in each racial group of jurors perceived the plaintiff as white, this could be in part due to referring to them as "John Doe" or "Jane Doe" in the case summary and statement. For this reason we did not have adequate data to look at this research question in depth. In this study we looked at gender but a future direction could look into how the racial profile and/or gender together effect damage amounts. It would be important to investigate if there is a relationship between the racial identity of the plaintiff and damage amounts as well as if racial similarity between the race of the plaintiff and that of the participant has a stronger effect on damage amounts.

Conclusion

Overall while this study did not show that emotion in VIS, gender of the plaintiff, or gender of the participant influence damage amounts in a personal injury case, it opens a door for further study into emotional plaintiff testimony in civil cases. Due to the controversial nature of VIS and the past research on emotional VIS influencing jury decisions in criminal cases, this understudied courtroom process is an important avenue for future research in civil cases because the presence of VIS in criminal cases is comparable to emotional plaintiff testimony in civil cases. This research can make judges, lawyers, jury members, plaintiffs and defendants in civil cases aware of what factors influence jury decision making and trial outcomes. It may shed light

on why plaintiffs in certain trials, such as the controversial, McDonald's coffee case, receive such large damage amounts. It also has implications for the justice system as a whole in considering the effects that emotional content has when presented at trial. My research lends itself to further avenues that may influence jury decision making in addition to emotionality of a plaintiff testimony, such as perceived severity in both the injury and the details of the testimony, plaintiff characteristics such as gender, race and age, and how juror similarity to those characteristics may bolster damage amounts.

Table 1

Descriptive and Inferential Statistics for Punitive Damages

Group	N	M	SD	M (log)	SD (log)	F	p	η_p^2
Emotionality						.27	.60	.00
Low	81	$174,904.00	328,875.71	4.06	1.73			
High	80	$250,356.25	703,328.12	3.98	1.91			
Plaintiff Gender						.01	.93	.00
Female	83	$229,234.57	637,882.77	4.05	1.84			
Male	80	$195,347.50	440,986.54	4.00	1.80			
Juror Gender						.00	.96	.00
Emotionality * Plaintiff Gender						.08	.78	.00
Low/Male				4.04	1.79			
Low/Female				4.10	1.69			
High/Male				3.96	1.82			
High/Female				3.99	2.02			
Emotionality * Juror Gender						1.25	.27	.00
Low/Male				3.92	1.89			
Low/Female				4.26	1.51			
High/Male				4.09	1.83			
High/Female				3.80	2.05			
Plaintiff Gender * Juror Gender						1.20	.28	.00
Male/Male				3.85	1.97			
Male/Female				4.20	1.54			

Female/Female	3.89	2.02
Female/Male	4.15	1.74

	F	p	η
Emotionality * Plaintiff Gender * Juror Gender	.59	.44	.00

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p ≤.05 and ** = *p* ≤ .01

Table 2

Descriptive and Inferential Statistics for Compensatory Damages

Group	N	M	SD	M (log)	SD (log)	F	p	η_p^2
Emotionality						1.42	.24	.00
Low	81	$83,248.15	156,048.20	3.88	1.62			
High	80	$143,437.50	335,225.02	4.19	1.31			
Plaintiff Gender						.03	.88	.00
Female	81	$131,670.99	264,295.21	4.08	1.55			
Male	80	$94,409	259,686.87	4.00	1.41			
Juror Gender						.52	.47	.00
Emotionality * Plaintiff Gender						.74	.39	.00
Low/Male				3.78	1.60			
Low/Female				3.98	1.66			
High/Male				4.21	1.19			
High/Female				4.17	1.45			
Emotionality * Juror Gender						.35	.56	.00
Low/Male				3.74	1.75			
Low/Female				4.06	1.45			

High/Male		4.17	1.29		
High/Female		4.22	1.37		
Plaintiff Gender * Juror Gender				.42	.52	.00
Male/Male		3.87	1.49		
Male/Female		4.17	1.30		
Female/Female		4.10	1.53		
Female/Male		4.06	1.58		
Emotionality * Plaintiff Gender * Juror Gender				2.73	.10	.02

$p \leq .05$ and ** = $p \leq .01$

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