

**Testimony of Dr. William A. Petit, Jr. (March 7, 2011)**  
**Concerning Raised Bill No. 1029**  
***An Act Concerning Victim Impact Statements in Capital Murder Cases***  
**Connecticut General Assembly, Committee on Judiciary**

Good morning Senator Coleman, Representative Fox and members of the Judiciary Committee. My name is William A. Petit, Jr. and I appear as a private citizen to speak on behalf of raised bill No. 1029 (AN ACT CONCERNING VICTIM IMPACT STATEMENTS IN CAPITAL MURDER CASES).

I am joined here by Professor Jeffrey A. Meyer, a former federal criminal prosecutor who now teaches at Quinnipiac and Yale Law Schools. He has prepared a detailed legal memorandum about this bill and that is attached to my written statement, and he is available for any legal questions you might have.

As you all know, last year I sat through the capital murder trial of one of the men who murdered my family in the early morning hours of a summer day in 2007. After the jury found the man guilty on almost all counts, there was a long sentencing hearing. His lawyer called all kinds of so-called "mitigation" witnesses to describe much of the man's life history and in an effort to provoke human sympathy for the defendant before the jury that would decide his fate.

In response, I hoped to tell the jury about the memorable lives and accomplishments of my wife Jennifer, a nurse for 26 years when she was murdered, and my daughters Hayley Elizabeth, 17 years old and headed to Dartmouth (she should be graduating this June) and Michaela Rose, only 11 years old and headed into middle school. I thought Jennifer, Hayley and Michaela—who will never again speak for themselves—should be "humanized" as much as the men who murdered them. And I thought the jury should know about the devastation these men have had on me and our surviving family members --their potential forever lost to me, their family, their friends and society at large.

But I couldn't do so. Why? Because Connecticut statutes do not clearly allow survivors of capital murderers to present victim impact statements to sentencing juries prior to their deliberations. I was repeatedly warned that if I tried to give a victim impact statement to the sentencing jury it could very likely lead to a successful appeal and another prolonged, painful sentencing trial. It is supposed to be an IMPACT statement and when given after all decisions are made clearly has little impact on the process. This is wrong. This is unjust.

I also learned that Connecticut law perversely discriminates against surviving family member victims only in capital murder cases. For non-capital murder cases and indeed for almost all other crimes, Connecticut statutes guarantee the right of crime victims to address the sentencing judge before the judge decides what sentence to impose. Only for the very worst-of-the-worst crimes—capital murder cases—do victims not have this right clearly delineated. And so the capital murder jury is left at sentencing with a one-sided presentation that “humanizes” the murderer while minimizing and even forgetting the lives of those he murdered and the devastation to survivors he left behind.

This is wrong.

This is not just.

I hope you will fix the law to be fair and to be consistent with the Victim’s Rights Amendment of the Connecticut Constitution that guarantees the right of all crime victims “to make a statement to the court at sentencing” and that you will follow our own State constitution that states that victims have “the right to be treated with fairness and respect throughout the criminal justice process” and also “(t)hat the general assembly shall provide by law for the enforcement” of these rights. Connecticut Constitution amend. Art. XXIX (b).

Twenty years ago the U.S. Supreme Court ruled in *Payne v. Tennessee* that victim impact statements of the kind that this bill would allow are constitutional. Twenty years ago, this is not news.

Soon we will return to Courtroom 6A in New Haven to face one more ordeal as a second man goes on trial. If the jury eventually convicts him of a capital crime, I hope you will allow me the opportunity to speak to them about the precious lives he stole and the wreckage he left behind. This is what our constitution plainly allows and what justice truly and fairly demands.

Thank you for this opportunity. I would be pleased to answer any questions you might have.

*William A. Petit, Jr., MD*

**Legislative Proposal of Dr. William A. Petit, Jr.,**  
**to Clarify the Right of Surviving Family Members to Present**  
**Victim Impact Statements in Capital Murder Cases**

Connecticut law is unclear about the right of surviving family members to present a "victim impact" statement for a jury to consider during the sentencing phase of a capital murder trial. Indeed, for the worst-of-the-worst crimes that warrant charges of capital murder, Connecticut law anomalously allows surviving family members fewer rights to address the sentencing authority than are allowed for victims of *non-capital* crimes. And Connecticut law does so despite the U.S. Supreme Court's recognition that victim impact statements are constitutional and that they permissibly "level the playing field" in terms of the information that a capital sentencing jury should consider before deciding what sentence to impose.

For these reasons, Connecticut law should be amended to clarify the right of a surviving family member (or other appropriate legal representative) to present a victim impact statement during the sentencing phase of a capital murder case. The new law should make clear that a surviving family member has the right to personally present a victim impact statement and to do so *before* the sentencing jury decides what sentence to impose. The new law should also clarify what form a victim impact statement may take and what subjects it may address. The law should allow a victim impact statement to include information that is presented in the form of narrative, photos or video and that describes the murdered victim's general life history, his or her accomplishments, and his or her family and social ties, as well as the physical, emotional, psychological and economic impact of the victim's murder on surviving family members and the victim's community.

Part A below describes the legal and factual background that gives rise to this legislative proposal. Part B describes how Connecticut law should be clarified to give surviving family members a meaningful right to present a victim impact statement at any capital murder sentencing of a defendant who has murdered their family member(s).<sup>1</sup>

**A. Background**

To clarify the basis for this legislative proposal, it is necessary to describe what Connecticut law currently provides in terms of the right to present a victim impact statement and what constitutional limits exist on how victim impact statements are presented in the course of capital sentencing proceedings. Subpart 1 below describes Connecticut law, and Subpart 2 below describes the limitations placed upon the content and manner of presentation of victim impacts statements by the U.S. Constitution.

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<sup>1</sup> This memorandum has been prepared on behalf of Dr. William A. Petit, Jr., by Jeffrey A. Meyer, Professor of Law at Quinnipiac University School of Law and Clinical Visiting Professor of Law at Yale Law School.

## I. Connecticut Law

The Connecticut Constitution includes a Victim's Rights Amendment that creates multiple rights for victims of crime, including the right of all crime victims "to make a statement to the court at sentencing." Conn. Const. amend. art. XXIX. The Amendment further provides that "[t]he general assembly shall provide by law for the enforcement of this [amendment]." *Id.*<sup>2</sup>

Recently the Connecticut Supreme Court has ruled that "in accordance with the victims' rights amendment of our state constitution, the [trial] court must provide an opportunity for the victim to meaningfully participate in the defendant's sentencing." *State v. Thomas*, 296 Conn. 375, 390 (2010). The Court in *Thomas* cited legislative history of the Victim's Rights Amendment that "demonstrates the legislature's clear intent to provide crime victims with the opportunity to participate meaningfully in the sentencing and plea bargaining process," thus guaranteeing victims "'a true role in the process'" and giving victims "'a part in the process that determines the fate of those that have struck at them as criminals.'" *Id.* at 390 n.11 (quoting statements of Rep. Michael Lawlor and Sen. Kevin Sullivan). Although *Thomas* was not a capital murder case, the Court did not suggest that its reasoning would be different for capital murder cases.

For ordinary criminal cases, Connecticut law provides in relevant part that "[p]rior to the imposition of sentence upon any defendant ... the court shall permit any victim of the crime to appear before the court for the purpose of making a statement for the record." Conn. Gen. Stat. § 54-91c(b). Consistent with the Connecticut Supreme Court's decision in *Thomas*, this statute requires that a sentencing judge hear and consider any statement from a crime victim before deciding what sentence to impose. *See Thomas*, 296 Conn. at 389 n.10 (citing cognate provision of Connecticut Practice Book § 43-10).

Oddly, however, the statutory rights of victims in capital murder cases are less clear than for victims of non-capital crimes. Connecticut's capital sentencing statute provides that "[a] victim impact statement prepared with the assistance of a victim advocate to be placed in court files in accordance with subdivision (2) of subsection (a) of section 54-220 may be read in court prior to imposition of sentence upon a defendant found guilty of a crime punishable by

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<sup>2</sup> The Victims Rights Amendment provides in full: "b. In all criminal prosecutions, a victim, as the general assembly may define by law, shall have the following rights: (1) the right to be treated with fairness and respect throughout the criminal justice process; (2) the right to timely disposition of the case following arrest of the accused, provided no right of the accused is abridged; (3) the right to be reasonably protected from the accused throughout the criminal justice process; (4) the right to notification of court proceedings; (5) the right to attend the trial and all other court proceedings the accused has the right to attend, unless such person is to testify and the court determines that such person's testimony would be materially affected if such person hears other testimony; (6) the right to communicate with the prosecution; (7) the right to object to or support any plea agreement entered into by the accused and the prosecution and to make a statement to the court prior to the acceptance by the court of the plea of guilty or nolo contendere by the accused; (8) the right to make a statement to the court at sentencing; (9) the right to restitution which shall be enforceable in the same manner as any other cause of action or as otherwise provided by law; and (10) the right to information about the arrest, conviction, sentence, imprisonment and release of the accused. The general assembly shall provide by law for the enforcement of this subsection. Nothing in this subsection or in any law enacted pursuant to this subsection shall be construed as creating a basis for vacating a conviction or ground for appellate relief in any criminal case." (emphasis added).

death.” C.G.S. § 53a-46d.<sup>3</sup> This statute is ambiguous in at least three ways. First, in stating that the victim’s statement “may” be read, it bespeaks a possibility that a judge may have discretion *not* to allow the victim’s statement to be presented (in contrast to the mandatory language of “shall” that appears in the victim-statement statute for other criminal cases, *see* Conn. Gen. Stat. § 54-91c(b)). Second, with its phrasing in the passive voice, the statute does not identify who may read the victim impact statement—whether a surviving family member has the right to read his or her own statement or whether the judge may decide that the prosecutor or another court official should read the statement. Lastly, the statute does not make clear when the statement should be read—whether it should be read to the capital sentencing jury before the jury decides what sentence to impose or whether it may be deferred until after the sentencing jury has reached its decision and presented only as an after-the-fact formality to be read in court before the trial judge formally imposes sentence upon the defendant in accordance with the jury’s prior decision.

In light of these ambiguities and based on concerns of the State’s Attorney that these ambiguities would furnish the grounds for appeal, Dr. Petit decided not to seek the right to read his victim impact statement to the sentencing jury in the recent case of *State v. Hayes*. *See* *Alaine Griffin, Petit Won’t Ask to Speak in Penalty Phase of Hayes Trial*, HARTFORD COURANT, Oct. 8, 2010 (noting Dr. Petit’s statement that the “lack of clarity” in the law makes for “a crippling disincentive to surviving family members of victims in capital murder cases to make a statement” because it “could be used (wrongly) as a basis for appeal and possibly even a new sentencing trial”); *see also id.* (“I think it is fair to say that most prosecutors believe that it would be risky to allow such statements as it might lead to a successful appeal issue for defendants.”) (quoting Rep. Michael Lawlor).<sup>4</sup>

## 2. Federal Constitutional Law

Allowing survivors the right to tell a capital sentencing jury about the loss that they have suffered as a result of the murder of their family members is fully consistent with the United States Constitution. In *Payne v. Tennessee*, 501 U.S. 808 (1991), the Supreme Court observed that “[a] State may legitimately conclude that evidence about the victim and about the impact of the murder on the victim’s family is relevant to the jury’s decision as to whether or not the death penalty should be imposed.” *Id.* at 827. Accordingly, the Court ruled that “if the State chooses to permit the admission of victim impact evidence and prosecutorial argument on that subject, the Eighth Amendment erects no *per se* bar.” *Id.* at 827.<sup>5</sup>

Indeed, it has long been the rule that a capital murder defendant is entitled to introduce virtually any mitigating evidence on his behalf, including past good deeds and circumstances of

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<sup>3</sup> In turn, C.G.S. § 54a-220(a)(2) states that “[v]ictim advocates shall have the following responsibilities and duties: ... (2) to assist victims in the preparation of victim impact statements to be placed in court files.”

<sup>4</sup> Ultimately, Dr. Petit and other family members presented victim impact statements in court but did so only after the jury reached and announced its decision on what sentence to impose and during the course of a separate hearing weeks after the jury’s verdict and just moments before Judge Blue formally imposed the jury’s sentence.

<sup>5</sup> The Eighth Amendment to the U.S. Constitution prohibits the infliction of “cruel and unusual punishments,” and it is the principal provision of the federal constitution that regulates the procedures for capital sentencing proceedings. *See, e.g., Graham v. Florida*, 130 S.Ct. 2011, 2021-23 (2010); *Kansas v. Marsh*, 548 U.S. 163, 174-75 (2006).

his upbringing.<sup>6</sup> In the case of *State v. Hayes*, for example, the defendant adduced days of “mitigation” testimony from psychiatric experts, based in large part on hearsay statements of the defendant. The Court in *Payne* reasoned that just as a capital defendant is permitted to seek to “humanize” himself by presenting any mitigating evidence about his background and character to the trial jury, the prosecution should also be permitted to “humanize” the lives of a defendant’s victims in order that the jury appreciate the magnitude of the loss that the defendant has inflicted. *Id.* at 825-26; *Jones v. United States*, 527 U.S. 373, 395 (1999) (plurality opinion) (“[t]he Eighth Amendment ... permits capital sentencing juries to consider evidence relating to the victim's personal characteristics and the emotional impact of the murder on the victim's family in deciding whether an eligible defendant should receive a death sentence”); *State v. Reynolds*, 264 Conn. 1, 173-74 (2003) (citing and discussing *Payne* at length); *People v. Kelly*, 42 Cal.4<sup>th</sup> 763, 793 (Cal. 2007) (upholding admission of victim impact testimony that “properly focused on Sara's life and the pain her death caused her family and friends,” and noting that “[t]his testimony was rather typical of the victim impact evidence we routinely permit”).

*Payne* does not open the door to surviving family members to say anything they wish in a victim impact statement. The Supreme Court’s decision in *Payne* partially overruled *Booth v. Maryland*, 482 U.S. 496 (1987), which had previously held “that evidence and argument relating to the victim and the impact of the victim's death on the victim's family [was] inadmissible at a capital sentencing hearing.” *Payne*, 501 U.S. at 830 n.2. But the Court in *Payne* left intact *Booth*’s additional holding that “the admission of a victim's family members' characterizations and opinions about the crime, the defendant, and the appropriate sentence violates the Eighth Amendment.” *Id.* Moreover, notwithstanding its conclusion that the Eighth Amendment erects no *per se* bar to use of victim impact evidence, the Court in *Payne* also noted that “in the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief.” *Id.* at 825.

In short, victim impact statements in capital murder cases are constitutional under both the state and federal constitutions. They are fully consistent with the Victim’s Rights Amendment of the Connecticut Constitution and its guarantee for all crime victims the right to make a statement to the court at sentencing and in general to a meaningful role at sentencing. Victim impact statements do not violate the Eighth Amendment of the U.S. Constitution provided that they are limited to descriptions of the victim’s personal background and characteristics as well as the impact on surviving family members of the victim’s murder (rather than the survivors’ opinions about the crime, about the defendant, and about what sentence the defendant should receive).

To be sure, the manner of presenting victim impact evidence should not be “so unduly prejudicial that it renders the trial fundamentally unfair.” *Payne*, 501 U.S. at 825. But subject to judicial oversight and review to ensure that victim impact statements are not presented in a way that is unduly prejudicial in format or content, courts in other states have generally permitted survivors to supplement their impact statements with video and photos relevant to describing the

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<sup>6</sup> See, e.g., *Porter v. McCollum*, 130 S.Ct. 447 (2009) (*per curiam*) (noting that “the Constitution requires that ‘the sentencer in capital cases must be permitted to consider any relevant mitigating factor’”) (citing *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982)).

personal characteristics, history, and accomplishments of a capital murderer's victims. See *People v. Kelly*, 42 Cal.4<sup>th</sup> at 796-98 (collecting cases). For example, the California Supreme Court has upheld admission of a 20-minute videotape that "consist[ed] of a montage of still photographs and video clips of [deceased victim] Sara Weir's life, from her infancy until shortly before she was killed at the age of 19, narrated calmly and unemotionally by her mother." *Id.* at 796. The California court stressed that such video evidence "must factually and realistically portray the victim's life and character and not present a staged and contrived presentation" and "even when presented factually, must not be unduly emotional." *Id.* at 798.

### **B. Legislative Proposal**

In light of the background described above, the Connecticut General Assembly should clarify Connecticut law to make clear the right of a surviving family member (or other legal representative of a murdered victim) to present a victim impact statement to the sentencing jury in all capital murder cases. First, the new law should make clear the right of a surviving family member to appear personally before a capital sentencing jury to present a victim impact statement and to do so before the jury renders its decision on what sentence to impose. Second, the new law should also make clear that a victim impact statement may include information presented in the form of narrative, photos or video that may describe the murdered victim's general life history, family and social ties, and accomplishments, as well as the physical, emotional, psychological and economic impact on surviving family members and the victim's community from the defendant's murder of the victim. To protect against any possibility of unfair prejudice from the presentation and scope of any particular victim impact statement, the new law should make clear the duty of the trial judge to review the content of a victim impact statement before its presentation to the sentencing jury and to limit the content and manner of presentation of a victim impact statement in a manner consistent with the new law and with what the state and federal constitutions permit.

### **C. Conclusion**

For the reasons set forth above, it is respectfully submitted that Connecticut law should be amended to clarify the right of surviving family members (or their legal representatives) to present a victim impact statement during the sentencing phase of capital murder proceedings.

Submitted by Prof. Jeffrey A. Meyer  
on behalf of Dr. William A. Petit, Jr.  
DECEMBER 24, 2010