

Note: This document illustrates an example of one of the options for how you might take notes as you work through the MPT packet. With this option, you create your document as you outline. Alternatively, you may choose to create a less detailed outline on scratch paper to use as a guide when crafting your final document.

**Preliminary Information from Task Memo**

- **Client:** Sarah Karth
- **Task:** Brief in opposition to Defendant Clegane’s motion to (A) exclude proposed victim-impact statements at sentencing hearing and (B) deny restitution requests
- **Claims:**
  - A. Sarah and her sister, Valerie, are victims of Clegane’s crime within the meaning of the Franklin Crime Victims’ Rights Act (FCVRA), and Sarah should be allowed to read victim-impact statements on behalf of herself and Valerie at the sentencing hearing
  - B. Sarah is entitled to restitution for the losses she and her sister have sustained
- **Posture:** Persuasive

<b>A.</b> Sarah and Valerie Karth are crime victims under the FCVRA and have the right to make a victim-impact statement at the sentencing hearing	
<ul style="list-style-type: none"> <li>• Under FCVRA § 55(a)(4), a crime victim has the right to be reasonably heard at any public proceeding in the district court involving a sentencing</li> <li>• Under FCVRA § 55(a)(6), a crime victim has the right to full and timely restitution</li> <li>• Under FCVRA § 55(b)(1), a “crime victim” is “a person directly and proximately harmed” by a crime</li> </ul>	
<u>Jones</u> (Franklin Court of Appeal 2006)	
Holding	Girlfriend of defendant’s cocaine customer was not a victim under the FCVRA because she could not demonstrate that her injuries were a foreseeable consequence of the drug conspiracy
Rules	<ul style="list-style-type: none"> <li>• Crime victim must demonstrate (1) defendant’s conduct was cause in fact of injuries and (2) purported victim was proximately harmed by the conduct</li> <li>• The closer the relationship between the defendant’s actions and the harm sustained, the more likely a court will find proximate harm</li> </ul>
<u>Berg</u> (Franklin Court of Appeal 2012)	
Holding	Under the FCVRA, passenger killed by drunk driver was a victim of the defendant who was convicted of providing alcohol to a minor resulting in death; her parents were entitled to make victim-impact statements at sentencing on her behalf
Rules	<ul style="list-style-type: none"> <li>• Victim is one who has been directly and proximately harmed</li> <li>• Victim has right to be heard at sentencing</li> </ul>

<b>(1) Valerie Karth, who was injured in the fire, is a victim</b>	
<b>a. Cause in fact</b>	
<u>Jones</u>	
Rule Explanation	<ul style="list-style-type: none"> <li>No causal connection where Jones could not prove that the defendant's sale of cocaine to Jones's boyfriend resulted in him physically abusing her</li> <li>Discussing <u>Hackett</u>: restitution claim against the defendant allowed for property damage caused by coconspirators who started a fire by placing chemicals the defendant supplied on a hot plate because the defendant knew and understood the nature of the drug-manufacturing enterprise and his coconspirator's activities; the defendant was the cause in fact "even though there were 'multiple links in the causal chain'"</li> </ul>
<u>Berg</u>	
Rule Explanation	<ul style="list-style-type: none"> <li>Term "crime victim" should be interpreted broadly (legislative history)</li> <li>Defendant who was convicted of supplying alcohol to minor and allowing her to drive was cause in fact of an accident that killed the victim because she would not have died if he had not provided the alcohol</li> </ul>
File	<ul style="list-style-type: none"> <li>Defendant Clegane was convicted of selling fireworks to a minor, knowing the minor would ignite them and possibly cause harm (task memo, client interview)</li> <li>Valerie was injured in the fire that occurred when sparks from the fireworks set off by the minor caused her garage to burn down (client interview)</li> </ul>
<b>Conclusion on 1(a): Actual causation met as to Valerie</b>	
<b>b. Proximate cause</b>	
<u>Jones</u>	
Rule Explanation	Girlfriend not a victim under the FCVRA because she could not prove that her injuries from domestic abuse were proximately caused by her boyfriend's ingestion of the cocaine; the defendant's acts were not closely related to her harm because the boyfriend made the conscious decision to use the drugs and abuse his girlfriend, and no facts showed that the defendant knew the boyfriend intended to abuse her
<u>Berg</u>	
Rule Explanation	<ul style="list-style-type: none"> <li>Reasonably foreseeable that 19-year-old girlfriend, who had a DUI, might crash the car and injure other passengers if given alcohol</li> <li>Resulting harm to victim was within the zone of risk of the defendant's conduct because there was an intuitive relationship between the harm and the conduct</li> </ul>

File	<ul style="list-style-type: none"> <li>• Minor’s statement to Defendant Clegane that he intended to give everyone a big surprise was evidence that the minor intended to light the fireworks near others (client interview)</li> <li>• Fireworks are dangerous and can cause harm; they caused the fire in which Valerie was injured (client interview)</li> </ul>
<b>Conclusion on 1(b):</b> Proximate causation met as to Valerie	
<b>Conclusion on 1:</b> Valerie is a victim	
<b>(2)</b> Sarah Karth, Valerie’s sister, is a victim	
<u>Humphrey</u> (Franklin Court of Appeal 2008)	
Holding	Mother was an appropriate representative for her sons, whose father had been killed by a driver convicted of involuntary manslaughter
Rules	<ul style="list-style-type: none"> <li>• Physical harm not necessary to qualify as crime victim under the FCVRA; “harm” under § 56(b)(2) includes physical, financial, and psychological damage</li> <li>• Only requirement is that person is “directly and proximately harmed”</li> <li>• FCVRA § 55(b)(2): if a crime victim is “under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim . . . , family members, or any other persons appointed as suitable by the court may assume the crime victim’s rights under [the FCVRA]”</li> </ul>
Rule Explanation	<ul style="list-style-type: none"> <li>• The defendant, who caused an accident while driving and texting, was required to pay restitution for loss of child support to two minors who were not physically harmed but whose father was killed</li> <li>• Loss of child support was within the “zone of risk” of texting while driving</li> <li>• Ex-wife of the deceased was a suitable representative for their two minor children</li> </ul>
File	<ul style="list-style-type: none"> <li>• Sarah was not present at fireworks explosion</li> <li>• Sarah saw Valerie suffer from her injuries and be in a coma for months and worried she would not recover</li> <li>• Valerie was in a coma for months; she is still hospitalized and is unable to participate in the proceeding (client interview)</li> <li>• Sarah is Valerie’s sister (client interview)</li> <li>• Sarah is 35 years old (client interview)</li> <li>• Valerie’s father is deceased; her mother is too traumatized and frail (client interview)</li> </ul>
<b>Conclusion on 2:</b> Sarah is a victim and can represent Valerie	

<b>Conclusion on A:</b> Both Valerie and Sarah are “victims”; Sarah can represent her sister, Valerie	
<b>B.</b> Sarah and Valerie are entitled to restitution	
<ul style="list-style-type: none"> <li>• Under FCVRA § 55(a)(6), victims have the right to full and timely restitution</li> <li>• Under FCVRA § 56(d), a court must consider three factors: (1) public policy that favors requiring criminals to compensate for damage and injury to their victims, (2) the financial burden placed on the victim and those who provide services to the victim as a result of the defendant’s criminal conduct, and (3) the defendant’s financial resources</li> </ul>	
<u>Jones</u>	
Rule Explanation	Discussing Hackett: defendant required to pay restitution to an insurance company for property damage caused by a fire set by his coconspirator because the defendant supplied the necessary chemicals and knew and understood that the illegal drug manufacturing enterprise could harm others
File	<ul style="list-style-type: none"> <li>• Sale of professional-grade fireworks to a minor presents risk of harm to others</li> <li>• Minors are unlikely to have insurance or assets</li> <li>• Valerie’s damages: \$22,000 in medical expenses; \$40,000 in future medical expenses; \$120,000 in lost wages; and \$17,000 in property damage (client interview)</li> <li>• Sarah’s damages: \$1,500 in therapy (client interview)</li> <li>• There is documentary and testimonial evidence of the damages</li> </ul>
<u>Humphrey</u>	
Rules	<ul style="list-style-type: none"> <li>• FCVRA § 56(c): a defendant is presumed to have the ability to pay restitution unless the defendant establishes the inability to pay by a preponderance of the evidence</li> <li>• This is a rebuttable presumption; the defendant has the burden to demonstrate the inability to pay</li> </ul>
File	<ul style="list-style-type: none"> <li>• Defendant Clegane owns four fireworks retail businesses in the state of Franklin</li> <li>• Clegane’s motion does not state that he is unable to pay restitution</li> </ul>

**Conclusion on B:** The court should order Defendant Clegane to pay restitution to Valerie and Sarah

**Overall Conclusion:**

(A) Sarah should be permitted to read the victim impact statements for both herself and Valerie, and (B) Defendant Clegane should pay restitution to both Sarah and Valerie