Marquette Law Review

Volume 96
Issue 1 *Fall 2012*

Article 3

2012

Assessing the Impact of the Ultimate Penal Sanction on Homicide Survivors: A Two State Comparison

Marilyn Peterson Armour

Mark S. Umbreit

ASSESSING THE IMPACT OF THE ULTIMATE PENAL SANCTION ON HOMICIDE SURVIVORS: A TWO STATE COMPARISON*

MARILYN PETERSON ARMOUR**

MARK S. UMBREIT***

Numerous studies have examined the psychological sequelae that result from the murder of a loved one. Except for the death penalty, however, sparse attention has been paid to the impact of the murderer's sentence on homicide survivors' well-being. Given the steadfastness of the public's opinion that the death penalty brings satisfaction and closure to survivors, it is surprising that there has been no systematic inquiry directly with survivors about whether obtaining the ultimate punishment affects their healing. This Study used in-person interviews with a randomly selected sample of survivors from four time periods to examine the totality of the ultimate penal sanction (UPS) process and its longitudinal impact on their lives. Moreover, it assessed the differential effect of two types of UPS by comparing survivors' experiences in Texas, a death penalty state, and Minnesota, a life without the possibility of parole (LWOP) state. Comparing states highlights differences primarily during the postconviction stage, specifically with respect to the appeals process and in regard to survivor well-being. In Minnesota, survivors of adjudicated cases show higher levels of physical, psychological, and behavioral health. This Study's findings have implications for trial strategy and policy development.

---

* This Study was made possible through funds provided by the General Convention of the Episcopal Church, U.S.A. and Marquette University Law School in Milwaukee, Wisconsin. The authors express their appreciation to Stephanie L Rivaux, Ph.D., and Richard Pargament, Ph.D. for their assistance with the quantitative analysis. The authors would also like to thank Margaret McAbee, Executive Director of Survivor Resources, St. Paul, Minnesota and Karen Martin, Regional Coordinator-Austin/Central Texas Region, Office of the Attorney General, Crime Victim Services Division, as well as the survivors who participated in this study.

** Ph.D. University of Texas at Austin, marmour@mail.utexas.edu.

*** Ph.D. University of Minnesota, mumbreit@umn.edu.

I. INTRODUCTION

Homicide bereavement is marked by long-lasting and penetrating upheaval in the lives of victim survivors. Current prevalence estimates project 15% of young adults are survivors of homicide, reflecting a 6% increase over previous estimates made in 1991.[1] In most cases, these survivors have unresolved feelings because the murderer, if apprehended, does not receive the punishment he or she deserves—the ultimate penal sanction (UPS), which is death or life without the possibility of parole (LWOP) depending on the jurisdiction.[2] Indeed, the chance that the murderer will even be charged with a capital offense is rare—the death penalty is sought in only 1% of capital eligible cases.[3] Although small in number, capital murder cases consume the attention of the public through mass media, trend-setting legal decisions, and public opinion polls. In contrast, family survivors receive little attention except when family survivors' need for justice is used by proponents in debates about the purposes of the death penalty.

Since the early 1990s, the death penalty has been touted as bringing closure to survivors.[4] Support for this belief has grown. In 2010, a national poll found that 60% of respondents supported the death penalty.[5] The primary reason given for their support was that the death penalty gave victim families satisfaction and closure.[6] This same contention is increasingly advanced as the reason to support LWOP.[7] This belief, though popularly held, has never been systematically

1. Heidi M. Zinzow et al., *Losing a Loved One to Homicide: Prevalence and Mental Health Correlates in a National Sample of Young Adults*, 22 J. TRAUMATIC STRESS 20, 24 (2009).

2. Margaret Vandiver, *The Death Penalty and the Families of Victims: An Overview of Research Issues*, *in* WOUNDS THAT DO NOT BIND: VICTIM-BASED PERSPECTIVES ON THE DEATH PENALTY 235, 237 (James R. Acker & David R. Karp eds., 2006).

3. *Race and the Death Penalty*, AM. CIV. LIBERTIES UNION (Feb. 26, 2003), http://www.aclu.org/print/capital-punishment/race-and-death-penalty.

4. Susan A. Bandes, *Victims, "Closure," and the Sociology of Emotion*, 72 LAW & CONTEMP. PROBS. 1, 2 (2009).

5. *Public Ambivalence Fuels Support for a Halt in U.S. Executions*, ABCNEWS.COM (May 2, 2001), http://abcnews.go.com/images/PollingUnit/851a1DeathPenalty.pdf.

6. *Id.*

7. *See* Dan Cortez, *Sentencing Brings Closure*, DETROIT FREE PRESS, Aug. 4, 2006, http://www.accessmylibrary.com/article-1G1-149063827/sentencing-brings-closure-victim.html; Juliette Rule, *Blankinship Family Now Has "Closure,"* WYOMINGNEWS.COM, (Aug. 25, 2006), http://www.wyomingnews.com/articles/2006/08/25/news/local_news/01local_8-25-06.txt; Yonika Willis, *Last of Three Teens Sentenced in Keim Slaying*, SOUTHBENDTRIBUNE.COM, Apr. 28, 2006, http://articles.southbendtribune.com/2006-04-28/news/26935013_1_keim-hill-cornfield.

examined. Without evidence, the claim of benefit to survivors is only speculation that achieves the status of truth because of social expectations. It also places the justification for the UPS on the backs of victim survivors who already suffer under the weight of immeasurable grief, horrific trauma, unmet expectations, and empty assurances. The striking absence of survivors' voices specific to the UPS stands in marked contrast to the volumes written on the death penalty.

The UPS has been promulgated as a punishment for offenders and a mechanism that helps restore equity and reduce suffering in homicide survivors. Studies show that the aftermath of homicide is extremely painful and long-lasting, the provision and impact of solace is limited, and the institutional response tends to revictimize rather than assist survivors in their healing process. Consequently, any claim about the success of an event or intervention deserves attention because so little seems to help. Until survivors speak for themselves, however, society will continue to project its hoped-for outcome on their experience and the voice of survivors will only be heard in reaction to the presumptions and misrepresentation of their journey.[8]

The purpose of this Study is to answer the question: How does the UPS affect the families of homicide victims (victim survivors)? The two states selected for the Study were Texas (death penalty) and Minnesota (LWOP). By turning directly to survivors as the true experts on their own experience, the Study examines the relevance of closure to their posthomicide experience—asking what constitutes a healing path for survivors where offenders received the UPS and what elements in the criminal justice system foster or hinder the healing process.

II. THE ULTIMATE PENAL SANCTION

All federal and state jurisdictions plus the military have legal sentences for capital or first-degree murder. The primary legal sentences upon conviction are the death penalty and LWOP. Currently, there are thirty-three states with the death penalty and seventeen states and the District of Columbia without the death penalty.[9] All states that

8. *See* Marilyn Peterson Armour & Mark S. Umbreit, *Exploring "Closure" and the Ultimate Penal Sanction for Survivors of Homicide Victims*, 19 FED. SENT'G REP. 105 (2006); *see also* Vandiver, *supra* note 2 (providing an overview of the issues and the need for a systematic program of research on the effects of capital punishment on the families of murder victims).

9. *States With and Without the Death Penalty*, DEATH PENALTY INFO. CTR., http://www.deathpenaltyinfo.org/states-and-without-death-penalty (last visited Oct. 8, 2012) [hereinafter *States With and Without the Death Penalty*].

use the death penalty also use LWOP as an alternate sentence.[10] With the exception of Alaska,[11] states without the death penalty use LWOP as their ultimate sentence.[12] The availability of LWOP both as a primary and secondary option has resulted in a quadrupling of the "lifer population" in prisons from 34,000 in 1984 to 140,000 in 2008.[13] Additions to death row have slowed dramatically from a high of 312 in 1995 to 78 in 2011.[14] Nationwide, there were 3,170 prisoners on death row as of 2012.[15]

A. Texas and the Death Penalty

Texas has a long history of use of the death penalty for capital murder. Beginning with a history of local public hangings, seen as necessary for maintaining order during the post-Civil War period, Texas has swung through a number of cycles in its use of executions.[16] In the early 1900s, the frequency of lynching diminished.[17] In 1923, Texas ordered all executions to be carried out by the state.[18] The rope was replaced by the electric chair, and executions were moved from local

10. *Life Without Parole*, DEATH PENALTY INFO. CTR., http://www.deathpenaltyinfo.org/life-without-parole (last visited Oct. 8, 2012) [hereinafter *Life Without Parole*] (noting that all thirty-three death penalty states offer life without parole).

11. *Id.* Although Alaska does not technically have LWOP, *see id.*, some of the sentences imposed are the practical equivalent, *see, e.g.*, ALASKA STAT. § 12.55.125 (2010) (stating that Alaska has a mandatory sentence of ninety-nine years for first-degree murder if there is an aggravating factor).

12. *See Life Without Parole*, *supra* note 10.

13. Kevin Johnson, *Growing Prison Populations Hinder Budget Cuts*, USATODAY.COM, Oct. 21, 2011, http://usatoday30.usatoday.com/news/nation/story/2011-10-20/prison-life-sentence-budget/50846828/1; s*ee also Californians to Decide in November Whether to Kill the Death Penalty*, CALIFORNIA CAPITOL NETWORK, Apr. 23, 2012, http://www.scpr.org/news/2012/04/23/32141/californians-can-decide-come-november-whether-kill/ (asserting that California has the highest number of prisoners on death row). Voters in California rejected a referendum to repeal the death penalty in November 2012. *See* Aaron Smith, *California to Keep Death Penalty*, CNN MONEY, Nov. 7, 2012, http://money.cnn.com/2012/11/07/news/economy/california-death-penalty/index.html. If it had passed, the initiative would have changed the status of more than 700 prisoners on death row to LWOP. *Id.*

14. DEATH PENALTY INFO. CTR., FACTS ABOUT THE DEATH PENALTY 3 (2012), *available at* http://www.deathpenaltyinfo.org/documents/FactSheet.pdf [hereinafter FACTS ABOUT THE DEATH PENALTY].

15. *Id.* at 2 (stating that there were 3,170 death row inmates as of April 1, 2012).

16. JAMES W. MARQUART ET AL., THE ROPE, THE CHAIR, AND THE NEEDLE: CAPITAL PUNISHMENT IN TEXAS, 1923–1990, at ix, 2–3 (1st ed. 1994).

17. *Id.* at ix.

18. David Carson, *History of the Death Penalty in Texas*, TEXAS EXECUTION INFO. CENTER (2012), http://www.txexecutions.org/history.asp.

communities to the privacy of a state prison located in east Texas.[19] With the Great Depression, state-sanctioned executions increased, especially in the South, but declined again during World War II.[20] This decrease continued through the civil rights movement with anti-death penalty forces bringing about a moratorium on the use of the death penalty out of a nationwide concern with the arbitrary and capricious administration of capital punishment.[21] By 1964, Texas had electrocuted 361 offenders.[22] Between 1964 and 1982, all executions were suspended.[23]

In 1972, the U.S. Supreme Court in *Furman v. Georgia*[24] concluded, in a 5–4 decision, that the practice of capital punishment was unconstitutional.[25] Besides concluding that it was cruel and unusual punishment, three of the justices, in separate concurring opinions, argued that the infrequent application allowed for too much discretion, which therefore "opened the door to discriminatory practices."[26] Texas, consequently, commuted the sentences of fifty-two inmates to life, clearing death row.[27] In response to the Court's decision, the Texas Legislature standardized the way the death penalty was assessed and created rigid guidelines that eventually became associated with a new mode of execution.[28] Lethal injection was used for the first time in 1982 in Texas.[29] By the early 1990s, twenty-two other states adopted this method of execution as well.[30] In the final decade of the century, Texas led the nation in executions. Indeed, from 1997 to 2000, there were ninety-two executions in Texas, more than all executions in the other thirty-three death penalty states combined.[31]

Over the next two decades, evidence emerged from DNA profiling that prompted reform efforts.[32] In 2001, the Texas Legislature passed a

19. MARQUART, *supra* note 16, at ix.
20. *Id.*
21. *Id.*
22. Carson, *supra* note 18, at 1.
23. *Id.*; *see also* MARQUART, *supra* note 16, at ix.
24. Furman v. Georgia, 408 U.S. 238 (1972).
25. *Id.* at 239–40.
26. MARQUART, *supra* note 16, at x.
27. Carson, *supra* note 18, at 1.
28. MARQUART, *supra* note 16, at x.
29. Carson, *supra* note 18, at 1.
30. MARQUART, *supra* note 16, at x.
31. Carson, *supra* note 18, at 2–3.
32. Jay D. Aronson & Simon A. Cole, *Science and the Death Penalty: DNA, Innocence,*

law guaranteeing DNA testing to prisoners who can establish "a reasonable probability" that their innocence will be secured as a result of the testing.[33] From 2000 to the present, "the number of executions, in Texas, decreased from almost 100"[34] to 13.[35] In addition to the influence of DNA testing, the reduction in executions over the past decade was also influenced by the U.S. Supreme Court's finding that executing mentally retarded prisoners is cruel and unusual punishment and therefore unconstitutional.[36] In 2005, the Court added another restriction to the exercise of the death penalty, ruling that offenders who committed their capital offense when they were younger than eighteen could not be executed.[37] Finally, in 2005, the Texas Legislature provided an alternative to death as the UPS.[38] It adopted LWOP, making it possible for jurors to sentence an offender to life without the possibility of parole, instead of sentencing to death.

The number of prisoners on death row in Texas is the lowest it has been since 1986.[39] Currently, a death penalty case costs an average of $2.3 million in Texas.[40] The average time from sentencing to execution in Texas is 10.8 years.[41] Since 1996, victim survivors have been allowed to watch the execution.[42]

Recent debates surrounding the death penalty center on the makeup of lethal injections due to a worldwide shortage of one of the drugs,[43] the

---

and the Debate over Capital Punishment in the United States, 34 LAW & SOC. INQUIRY 603, 605–06 (2009).

33. 2001 Tex. Gen. Laws 2, 2–3; *see* Carson, *supra* note 18, at 3.

34. SHELDON EKLAND-OLSON & DANIELLE DIRKS, HOW ETHICAL SYSTEMS CHANGE: LYNCHING AND CAPITAL PUNISHMENT xi (2012).

35. *DPIC's Year End Report: Death Sentences Plunge to Historic Lows*, DEATH PENALTY INFO. CTR., http://www.deathpenaltyinfo.org/dpic-releases-2011-year-end-report (last visited Oct. 8, 2012) ("Texas led the country with thirteen executions, but that number represents a 46% decrease from 2009, when there were twenty-four executions.").

36. Atkins v. Virginia, 536 U.S. 304, 321 (2002); *see also* Carson, *supra* note 18, at 3.

37. Roper v. Simmons, 543 U.S. 551, 568 (2005); Carson, *supra* note 18, at 3.

38. 2005 Tex. Gen. Laws 2705; Carson, *supra* note 18, at 4.

39. *See* TRACY L. SNELL, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CAPITAL PUNISHMENT, 2009—STATISTICAL TABLES, at 19 tbl.18 (2010) (providing statistics through 2009).

40. FACTS ABOUT THE DEATH PENALTY, *supra* note 14, at 4.

41. See SNELL, *supra* note 39 (noting that 10.8 years is the "average number of years under sentence of death as of 12/31/09," in Texas).

42. *Death Row Facts*, TEXAS DEPARTMENT OF CRIM. JUST., http://www.tdcj.state.tx.us/stat/dr_facts.html (last visited Oct. 8, 2012) ("Effective January 12, 1996, close relatives and friends of the deceased victim were allowed to witness executions.").

43. Carson, *supra* note 18, at 4.

high number of wrongful convictions,[44] and continuation of the long-standing racial pattern of defendant bias.[45]

B. Minnesota and LWOP

Although Minnesota is considered a non-death penalty state, it too has an early history of public lynchings—most often of Native Americans and African Americans.[46] Moreover, in 1849, when Congress created the Minnesota Territory, territorial law held that "all persons convicted of premeditated murder automatically received death sentences."[47] Prior to the 1880s, lynchings and state-sanctioned executions attracted hordes of spectators, fueling a mob mentality that energized the crowds.[48] In particular, the controversial, state-supported hanging of Ann Bilansky, in 1860, laid the groundwork for the anti-death penalty movement, which began in the 1880s.[49] In 1868, Minnesota passed a non-retroactive bill making life sentences the norm—"requiring jurors to affirmatively vote for death sentences."[50]

However, life sentence as the default ended fifteen years later when a bill passed reinstating the death penalty for first-degree murder.[51] The resurgence of public executions again drew large crowds with written invitations sent to the citizenry for viewing from a spectator's platform.[52] In an effort to control these public events, Minnesota passed a statute in 1889 requiring nighttime executions, which quickly generated a nationwide trend toward in-private, after-dark executions.[53] This law,

---

44. S*ee* Brandi Grissom, *Courts Found DA Error in Nearly 25% of Reversed Cases*, TEX. TRIB., July 5, 2012, http://www.texastribune.org/texas-dept-criminal-justice/texas-court-of-criminal-appeals/courts-found-prosecutors-erred-25-exonerations/print.

45. *See* Laura Bassett, *Death Penalty May Be Ruled Unconstitutional in Texas*, HUFFINGTON POST, Dec. 1, 2010, http://www.huffingtonpost.com/2010/12/01/death-penalty-may-be-rule_n_790705.html ("Out of the 464 people that have been executed in Texas, about 70 percent have been minorities, according to the Texas Department of Criminal Justice.").

46. *See States With and Without the Death Penalty*, *supra* note 9; JOHN D. BESSLER, LEGACY OF VIOLENCE: LYNCH MOBS AND EXECUTIONS IN MINNESOTA, at xvii, 1 (2003).

47. BESSLER, *supra* note 46, at 1.

48. *See id.* at 1–23 (describing the culture that accompanied lynchings); *see also* Michael Anderson, *Minnesota's John Day Smith Law and the Death Penalty Debate*, MINN. HISTORY MAG., Summer 2002, at 84–86 (describing public executions).

49. BESSLER, *supra* note 46, at 93–94; *see also* Anderson, *supra* note 48, at 86 (describing the significance of the Ann Bilansky murder).

50. BESSLER, *supra* note 46, at 97.

51. *Id*. at 104–05.

52. *Id*. at 110.

53. *Id*. at xvi–xvii; s*ee also* Anderson, *supra* note 45, at 87–88 (describing the ban on press coverage and the continued publishing about executions without penalty).

known as the Smith law, eliminated the spectacle of public executions by requiring that executions occur before sunrise inside the jail.[54] The law also banned newspaper reporters from attending the executions, which the press ignored based on free speech considerations.[55]

In 1906, detailed accounts by the press of a botched hanging led to a full-blown criminal investigation that resulted in the indictment of three newspapers[56] and the Smith law being upheld.[57] The effort to muzzle the press fueled abolitionist efforts.[58] Minnesota abolished the death penalty in 1911 based on arguments that innocent people were being executed and criminals were going free because juries were reluctant to impose the death penalty.[59] Besides making convictions easier, the option of life imprisonment was made viable, in part, by the Board of Pardon's willingness to curtail the use of its pardoning power—ensuring that the sentence would be carried out.[60] There have been more than a dozen attempts to have the death penalty reinstated, all of which have failed[61] (including an effort in 2004 by then-Governor Tim Pawlenty[62]).

A number of new laws and enhancements to the life imprisonment statutes, however, have been enacted. In 1980, "[s]entencing guidelines were implemented as a modified form of determinate sentencing for all crimes except life sentences for first-degree murder."[63] Between 1980 and 1989, Minnesota set seventeen years as the minimum term for life sentences before parole eligibility.[64] In 1989, the legislature set a thirty-year minimum and added life *without* parole for certain crimes.[65] For sixteen years, the thirty-year minimum constituted life imprisonment. A former prisoner explained how a life sentence with the possibility of parole after thirty years works:

---

54. Anderson, *supra* note 48, at 87.

55. BESSLER, *supra* note 46, at 118–20.

56. *Id*. at 153; *see* Anderson, *supra* note 48, at 89 (discussing the reporting on the botched hanging of William Williams "despite the publishing ban").

57. BESSLER, *supra* note 46, at 158–59.

58. *Id*. at 161; *see* Anderson, *supra* note 48, at 90 (discussing the impact of the Smith law on the rest of the country and the debate about the death penalty in the United States).

59. *See generally* BESSLER, *supra* note 46, at 162–80.

60. *Id.* at 179.

61. *Id*. at 230.

62. *See* Dan Haugen, *Gov. Lays Out Plans for Death Penalty,* MINNESOTA DAILY, Jan. 28, 2004, http://www.mndaily.com/print/23843.

63. *See* MINN. DEP'T OF CORR., CORRECTIONS RETROSPECTIVE 1959–1999, 21–22 (1999), *available at* http://www.doc.state.mn.us/publications/documents/docretro.pdf.

64. *Id*.

65. *Id.*; *see* 1989 Minn. Laws 1581, 1589, 1592.

> Sadly, there is no chance for early release when you're serving a life sentence. After 30 years, they will consider you for release but there's no guarantee you'll get out. Most lifers end up serving 5–10 years longer than the minimum sentence, and some will never be released due to the severity of their crime, or if it's a high profile case.[66]

In 2005, Minnesota passed a bill adding life without release (LWOR) for premeditated first-degree murder.[67] Minnesota Department of Corrections reports that there are 569 "lifers" in Minnesota prisons as of January 1, 2012.[68]

Incapacitation and retribution have become the chief objectives of sentencing in Minnesota over the past two decades.[69] Moreover, the state has increasingly focused on repeat sex offenders as an obstacle to community safety. In 1992, it added life imprisonment for certain repeat sex offenders convicted of first-degree criminal sexual conduct.[70] In 2005, it enhanced the sanction for repeat offenders by including LWOR for first- and second-degree criminal sexual conduct offenses involving heinous acts.[71] The state also used LWOR as a sentence that ensured incapacitation for juveniles convicted of murder in the first-degree.[72] LWOR for juveniles, however, was declared cruel and unusual punishment, and therefore, deemed unconstitutional in a 5–4 vote by the U.S. Supreme Court in June 2012.[73]

III. THERAPEUTIC JURISPRUDENCE AND FAMILY SURVIVORS OF HOMICIDE VICTIMS

Although the literature on sentencing for murder is replete with historic accounts of abolitionist and death penalty developments, there

---

66. *See* Mr. C Response, *How Does Parole Work in Minnesota*, PRISONTALK.COM (Dec. 11, 2008, 2:14PM), http://www.prisontalk.com/forums/archive/index.php/t-381724.html.

67. 2005 Minn. Laws 901, 922.

68. *See* MINN. DEP'T OF CORR., ADULT INMATE PROFILE AS OF 01/01/2012 (2012), *available at* http://www.doc.state.mn.us/aboutdoc/stats/documents/2012JanAdultProfile.pdf.

69. *See* Phil Carruthers, *Sentencing Trends: Analysis and Recommendations*, COUNCIL ON CRIME AND JUSTICE, http://www.crimeandjustice.org/councilinfo.cfm?pID=51(last visited Oct. 27, 2012).

70. 1992 Minn. Laws 1983, 1997, 2000–01.

71. 2005 Minn. Laws 901, 929–31.

72. *See* MINN. STAT. § 260B.101 (2008) (giving juvenile court original jurisdiction over "delinquent" children); MINN. STAT. § 260B.007 (2008) ("The term delinquent child does not include a child alleged to have committed murder in the first degree after becoming 16 years of age . . . .").

73. Miller v. Alabama, 132 S. Ct. 2455, 2460 (2012).

is virtually no mention of homicide survivors. Indeed, it is only in the past thirty years that crime victims' voices have been added—based on survivors' demands to be heard, validated, and treated with dignity and respect.[74] Their recent visibility is due to a convergence of three forces: the crime victims' rights movement, the emergence of therapeutic jurisprudence, and a new emphasis on closure for survivors as justification for the death penalty.

A. Crime Victims' Rights

Support for crime victims' rights emerged in the late 1970s as a cohesive movement birthed out of a deep frustration with the criminal justice system and its marginalization and treatment of victims.[75] After decades of invisibility, crime victims nationwide shared the "widespread sentiment that the legal system did not accord victims the respect or sympathy they deserved, and this lack of support resulted in negative interactions with the criminal justice system."[76] The rights asserted by crime victims focused heavily on their needs for information, involvement in criminal justice proceedings, and demands to be treated with fairness, dignity, and respect throughout the criminal justice process.[77] The movement has made significant strides over the past thirty years in establishing the crime victim's role and enhancing the place of the victim (or victim survivor) in the criminal process. Besides establishing the Office of Victims of Crime under the Department of Justice[78] and procuring federal funding for services to crime victims,[79] all states either amended their constitution to address victims' rights or

74. *See* Bruce J. Winick, *Therapeutic Jurisprudence: Perspectives on Dealing with Victims of Crime*, 33 NOVA L. REV. 536, 544 (2009).

75. Like all other victims, survivors are a part of the victims' rights movement and are intended beneficiaries of the movement. *See* Megan A. Mullett, *Fulfilling the Promise of* Payne*: Creating Participatory Opportunities for Survivors in Capital Cases*, 86 IND. L.J. 1617, 1618 n.10 (2011).

76. *Id.* at 1622.

77. *Id.* at 1622–23.

78. *See The History of Crime Victims' Rights in America*, MD. CRIME VICTIMS' RESOURCE CENTER, http://www.mdcrimevictims.org/laws-and-policies/history-of-crime-victims-rights-in-america/ (last visited Oct. 8, 2012) (noting that the Office of Victims of Crime was created by the U.S. Department of Justice to implement recommendations from President Ronald Reagan's Task Force).

79. *See id.* (noting that in 1984 the Victims of Crime Act (VOCA), Pub. L. 98-473, 98 Stat. 2170 (codified as amended at 42 U.S.C. §§ 10601–10604), was passed and established the Crime Victims Fund to support state victim compensation and services).

passed crime victims' rights legislation.[80] The federal Justice for All Act, passed in 2004, established eight specified rights, including "[t]he right to be reasonably heard at any public proceeding . . . involving release, plea, sentencing or any parole proceeding"[81]—a right which directly affects survivors in capital cases.

B. Therapeutic Jurisprudence

Therapeutic jurisprudence is both a movement and a study of the law's therapeutic impact that emerged during the late 1980s.[82] It calls for a diminution in the law's antitherapeutic effect and an increase in its potential to enhance the well-being of the people it affects.[83] It was initially aimed at civil commitment and the treatment of persons with mental health disorders,[84] but evolved to include drug and other problem solving courts,[85] military law, bankruptcy law, and worker's compensation law.[86]

Only recently has therapeutic jurisprudence expanded beyond its initial focus on the rehabilitation of offenders to include victims.[87] This new area of interest reflects concerns about victim retraumatization and the antitherapeutic potential of the criminal justice system to accentuate crime victims' feelings of powerlessness and compound feelings of

---

80. *See History of Victims' Rights*, NAT'L CRIME VICTIM L. INST., http://law.lclark.edu/centers/national_crime_victim_law_institute/about_ncvli/history_of_victims_rights (last visited Oct. 8, 2012).

81. Justice for All Act of 2004, Pub. L. No. 108-405, § 3771, 118 Stat. 2260, 2261 (codified as amended in scattered sections of 18 U.S.C.).

82. *See* Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 439–41 (1999).

83. *See* David B. Wexler, *Putting Mental Health into Mental Health Law: Therapeutic Jurisprudence*, 16 LAW & HUM. BEHAV. 27, 32 (1992).

84. *See, e.g.*, DAVID B. WEXLER & BRUCE J. WINICK, ESSAYS IN THERAPEUTIC JURISPRUDENCE (1991); DAVID B. WEXLER, THERAPEUTIC JURISPRUDENCE: THE LAW AS A THERAPEUTIC AGENT (1990); David B. Wexler, *New Directions in Therapeutic Jurisprudence: Breaking the Bounds of Conventional Mental Health Law Scholarship*, 10 N.Y.L. SCH. J. HUM. RTS. 759 (1993); David B. Wexler, *Reflections on the Scope of Therapeutic Jurisprudence*, 1 PSYCHOL. PUB. POL'Y & L. 220, 225–26 (1995).

85. *See* Dennis Roderick & Susan T. Krumholz, *Much Ado About Nothing? A Critical Examination of Therapeutic Jurisprudence*, 1 S. NEW ENG. ROUNDTABLE SYMP. L.J. 201, 216 (2006).

86. *See* Amy T. Campbell, *Using Therapeutic Jurisprudence to Frame the Role of Emotion in Health Policymaking*, 5 PHX. L. REV. 675, 678 (2012).

87. *See* Edna Erez et al., *Therapeutic Jurisprudence and Victim Participation in Justice: An Introduction*, *in* THERAPEUTIC JURISPRUDENCE AND VICTIM PARTICIPATION IN JUSTICE: INTERNATIONAL PERSPECTIVES, at x (Edna Erez et al. eds., 2011).

injustice,[88] thereby producing lowered self-esteem,[89] depression and discontent,[90] and self-degradation.[91] Studies support these concerns. Research on survivors from a national representative sample found that the more satisfied survivors were with the criminal justice system's management of their loved ones' murder cases, the less likely they were to be depressed or anxious.[92] Another study found that 71% of survivors had lifetime PTSD,[93] which "might be attributable to . . . aggravation of symptoms produced by interacting with the criminal justice system."[94] Although the criminal justice system can negatively influence victim well-being, a four-state study (n = 1309) also found that crime victim satisfaction can mitigate crime-related PTSD.[95]

Although therapeutic jurisprudence recognizes the necessity to respond to either the positive or negative impact of the law,[96] its more recent focus on victims and their emotional well-being has generated intense controversy about the fundamental purpose of law and due process rights of defendants.[97] Fallout from this controversy has significantly influenced the procedural rights of family survivors to give testimony about the impact of the murder during trials in capital cases

88. *See* Armour & Umbreit, *supra* note 8.

89. *See, e.g.*, Gerda Koper et al., *Procedural Fairness and Self-Esteem*, 23 EUROPEAN J. SOC. PSYCHOL. 313, 314 (1993); Heather J. Smith et al., *The Self-Relevant Implications of the Group-Value Model: Group Membership, Self-Worth, and Treatment Quality*, 34 J. EXPERIMENTAL SOC. PSYCHOL. 470, 489 (1998).

90. *See, e.g.*, Carolyn L. Hafer & James M. Olson, *Beliefs in a Just World, Discontent, and Assertive Actions by Working Women*, 19 PERSONALITY & SOC. PSYCHOL. BULL. 30, 34 (1993); Howard Tennen & Glenn Affleck, *Blaming Others for Threatening Events*, 108 PSYCHOL. BULL. 209, 224 (1990).

91. *See generally* Madeline E. Heilman et al., *Self-Derogating Consequences of Sex-Based Preferential Selection: The Moderating Role of Initial Self-Confidence*, 46 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 202 (1990) (discussing self-derogation generally).

92. Angelynne Amick-McMullan et al., *Family Survivors of Homicide Victims: Theoretical Perspectives and an Exploratory Study*, 2 J. TRAUMATIC STRESS 21, 32 (1989).

93. John R. Freedy et al., *The Psychological Adjustment of Recent Crime Victims in the Criminal Justice System*, 9 J. INTERPERSONAL VIOLENCE 450, 457 (1994) (finding lifetime PTSD among 71% of family and friends of homicide victims who had reported the crime to law enforcement).

94. Dean G. Kilpatrick & Mary P. Koss, *Homicide and Physical Assault*, *in* THE MENTAL HEALTH CONSEQUENCES OF TORTURE 195, 199 (Ellen Gerrity et al. eds., 2001).

95. Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. TRAUMATIC STRESS 159, 160–61, 163 (2003).

96. Winick, *supra* note 74, at 541.

97. *See, e.g.*, Bandes, *supra* note 4.

established under the Justice for All Act.[98] The position held by therapeutic jurisprudence proponents, however, has been to staunchly maintain that the antitherapeutic impact of law on victims generally does not mandate change in a law or legal procedure. Rather, if legal values conflict with therapeutic ones, more research is needed into possible creative approaches for reshaping the law or its application in order to balance competing values.[99]

C. Closure as Justification for the Death Penalty and LWOP

Justifications for the death penalty and LWOP include deterrence, cost effectiveness, incapacitation, and retribution. Deterrence, cost, and the need for incapacitation specific to death penalty cases have been hotly contested for many years. Cost effectiveness and incapacitation, in particular, have less standing today than deterrence and retribution. Taxpayers are increasingly concerned about paying $2–$3 million per case for capital cases.[100] Indeed, many of the arguments to advance LWOP in death penalty states are based on cost effectiveness.[101] Moreover, the data on the danger posed by death row inmates suggests that the majority are not dangerous and serve time without incident—mitigating the need for incapacitation.[102]

Deterrence as justification for the death penalty has spawned

---

98. *See* Antony Pemberton & Sandra Reynaers, *The Controversial Nature of Victim Participation: Therapeutic Benefits in Victim Impact Statements*, *in* THERAPEUTIC JURISPRUDENCE AND VICTIM PARTICIPATION IN JUSTICE: INTERNATIONAL PERSPECTIVES, *supra* note 87, at 233 (describing the tension between the therapeutic rationale for victim impact statements during sentencing and criminal justice principles dismissing therapeutic benefits as alien to the criminal justice system).

99. Winick, *supra* note 74, at 537.

100. *See* Arthur L. Alarcón & Paula M. Mitchell, *Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar Death Penalty Debacle*, 44 LOY. L.A. L. REV. S41, S75 (2011) (noting after a review of individual death penalty cases that the cost of death penalty trials in California between 1983 and 2006 "averaged about $1 million more per trial than the costs of average non-death penalty homicide trials"); *see also Costs of the Death Penalty*, DEATH PENALTY INFO. CENTER, http://www.deathpenaltyinfo.org/costs-death-penalty#financialfacts (last visited Oct. 8, 2012).

101. *See* Alarcón & Mitchell, *supra* note 100, at S221. Alarcón & Mitchell discussed the fiscal impact of using LWOP rather than the death penalty:

> This initiative . . . would save taxpayers millions of dollars per year over time. . . . California's death row population would be immediately and dramatically reduced to a fraction of its current size. This would result in a savings to taxpayers of an additional tens of millions of dollars per year in death row housing costs.

Id.

102. *See* MARQUART, *supra* note 16, at 181–82.

numerous studies,[103] many of which contest each other.[104] In 2012, the National Research Council examined studies on the topic since the 1976 Supreme Court decision in *Gregg v. Georgia* that ended a four-year moratorium on executions.[105] It concluded "[the] research to date . . . is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates."[106] The committee recommended that "claims that research demonstrates that capital punishment decreases or increases the homicide rate . . . or has no effect on [it] should not influence policy judgments about capital punishment."[107]

In contrast to the diminishing validity of cost, incapacitation, and deterrence as justifications for the death penalty, retribution has emerged more forcefully because of its current association with survivors and the concept of closure, which has therapeutic appeal to both victims and the public. This association is recent. Although the victim rights movement introduced victim-impact statements (VIS), the claim that the death penalty, and now LWOP, brings closure can be traced to the U.S. Supreme Court's 1991 decision in *Payne v. Tennessee* to uphold the use of these statements in capital cases.[108] Death penalty scholar Franklin Zimring has documented the history of this association, maintaining that the terms "closure" and "death penalty" were never mentioned together until 1989 when they were used together once.[109] In 1993, however, two years after *Payne*, the association was found more

---

103. *See, e.g.*, Hashem Dezhbakhsh & Joanna M. Shepherd, *The Deterrent Effect of Capital Punishment: Evidence from a "Judicial Experiment,"* 44 ECON. INQUIRY 512, 512 (2006); John J. Donohue & Justin Wolfers, *Uses and Abuses of Empirical Evidence in the Death Penalty Debate*, 58 STAN. L. REV. 791, 795–96 (2005); Isaac Ehrlich, *The Deterrent Effect of Capital Punishment: A Question of Life and Death*, 65 AM. ECON. REV. 397, 397 (1975).

104. *See* Marilyn Peterson Armour & Mark S. Umbreit, *The Ultimate Penal Sanction and "Closure" for Survivors of Homicide Victims*, 91 MARQ. L. REV. 381, 393 (2007).

105. COMM. ON LAW AND JUSTICE, NAT'L RESEARCH COUNCIL, DETERRENCE AND THE DEATH PENALTY 2 (Daniel S. Nagin & John V. Pepper eds., 2012), *available at* http://www7.nationalacademies.org/claj/1CLAJ_Publications.html.

106. *Id.*

107. *Id.*

108. Payne v. Tennessee, 501 U.S. 808, 832 (1990) (O'Connor, J., concurring). Justice O'Connor in her concurrence in *Payne* stated, "Murder is the ultimate act of depersonalization. It transforms a living person with hopes, dreams, and fears into a corpse, thereby taking away all that is special and unique about the person. The Constitution does not preclude a State from deciding to give some of that back." *Id.*

109. FRANKLIN E. ZIMRING, THE CONTRADICTIONS OF AMERICAN CAPITAL PUNISHMENT 58 (2003).

than 500 times.[110] This recasting of the rationale for retribution—from revenge and just deserts to serving constructive ends for the victim's healing—has become a core rationale for VIS, preventing undue delays in legal processes, and witnessing executions.[111]

The rhetoric that binds closure to the death penalty is now being used for LWOP. The New Jersey Death Penalty Study Commission stated in their findings "the non-finality of death penalty appeals hurts victims, drains resources and creates a false sense of justice. Replacing the death penalty with life without parole would be certain punishment, not subject to the lengthy delays of capital cases; it would incapacitate the offenders; and it would provide finality for victims' families."[112]

The role of family survivors has grown exponentially over the past three decades. As advocates for themselves, family survivors pushed forward national legislation for crime victims' rights, which provided a platform for state and federal legislation specific to VIS. This legitimating of their needs was accompanied by recognition from the therapeutic jurisprudence community, who theretofore had restricted its territory to the offender. As emerging and powerful stakeholders in the criminal justice system, proponents of both the death penalty and LWOP have recognized family survivors and politically advanced their punishment agendas through claims that the UPS helps bring closure to survivors. Indeed, in recent efforts to replace the death penalty with LWOP, proponents have been joined by family survivors as vocal advocates against capital punishment.[113]

D. Evidence of Closure in VIS and Executions

The use of law as an instrument of healing and rehabilitation calls on criminal justice officials for changes in court procedures to empower survivors, to create mechanisms to assist survivors in the expression of what happened to them, to show dignity and respect, and to add

---

110. *See* Bandes, *supra* note 4, at 1–2 n.3.

111. *See* Jody Lyneé Madeira, "*Why Rebottle the Genie?": Capitalizing on Closure in Death Penalty Proceedings*, 85 IND. L.J. 1477, 1481, 1506 (2010).

112. *See* N.J. DEATH PENALTY COMM'N, DEATH PENALTY STUDY COMMISSION REPORT 61 (2007).

113. *See* E. Brancato, *A Murder Victim Family Member Reflects on Repeal of Death Penalty in Connecticut*, MURDER VICTIMS' FAMILIES FOR RECONCILIATION, http://www.mvfr.org/?p=955 (last visited Oct. 8, 2012) (describing his role as a survivor in the repeal of the death penalty in Connecticut). *See generally* WOUNDS THAT DO NOT BIND: VICTIM-BASED PERSPECTIVES ON THE DEATH PENALTY, *supra* note 2, at 17–140 (compiling personal accounts by survivors).

provisions for survivor choice in the decision-making process to advance survivor self-determination wherever possible. Most of these needs, which have been legislatively codified as rights, are relatively uncontroversial. Tensions between the role of VIS in court and criminal justice principles as well as debates about the power of the defendant's sentence to advance closure, however, have taken center stage.

VIS are oral or written statements, which, as part of the judicial legal process, allow survivors the opportunity to speak during the sentencing of the defendant.[114] They are also referred to as "victim-impact evidence" (VIE) and as "victim allocution" depending on when in the trial process it is heard.[115] They are frequently portrayed as assisting in survivor healing and closure because they give survivors a "voice" and allow them to express their pain and sense of loss in a public setting.[116] The controversy surrounding victim expressions of harm focuses on the emotional appeal of VIS to prejudicially influence jurors' sense of sympathy for the pain caused by the defendant, thereby interfering with the due process rights of the defendant. Specifically, VIS are critiqued based on the fact that their purpose is inconsistent with the principles of criminal justice, which view crime as an act against the state, not the specific victim; that they undermine proportionate treatment of offenders and public interest as the sole and legitimate justification for increased punishment severity; and that they subject defendants to excessive allegations.[117] Although these concerns continue, evidence of influence on jurors and whether or not VIS lead to harsher, disproportionate, and inconsistent sentences has not been shown in the research.[118]

---

114. *See* Paul G. Cassell, *In Defense of Victim Impact Statements*, 6 OHIO ST. J. CRIM. L. 611, 611–12 (2009). Cassell noted that the ostensive purpose of VIS, as established under *Payne,* is to provide information to the sentencing judge or jury about the impact of the crime. *Id.* As an instrument for self-expression, VIS may also help survivors in their healing process, help educate the defendant about the full consequences of the murder, and ensure, under the principle of fairness that the survivor along with the state and the defendant have been heard. *Id.*

115. Minnesota allows for victim impact evidence. *See* MINN. STAT. § 611A.037–.038 (2009). Texas provides a right for survivors to make a statement postsentence. *See* TEX. CODE CRIM. PROC. ANN. art. 42.03 (West 2006).

116. *See* Bandes, *supra* note 4, at 3; *see also* Edna Erez, *Who's Afraid of The Big Bad Victim? Victim Impact Statements as Victim Empowerment and Enhancement of Justice*, 1999 CRIM. L. REV 545, 551; Mullett, *supra* note 75, at 1622–23 (noting that VIS are premised on the victim deserving closure from their presentation in trial or sentencing).

117. *See* Erez, *supra* note 116, at 547.

118. *Id.* at 547–49 (describing the studies and available evidence disputing concerns about VIS).

Whether VIS help survivors heal and achieve closure is another point of contention. The research is inconclusive. Studies vary, showing both increased and decreased satisfaction, as well as neither.[119] Apart from the lack of evidence showing beneficial effects, proponents of VIS claim that they have a communicative function[120]—they fulfill a need for expression and provide recognition of survivors' victim status.

Closure, besides providing justification for the UPS, is also commonly promoted as the basis of the allocation of an opportunity for survivors to witness executions. At least thirteen states have made provisions for survivors to be present when the offender is killed.[121] In Texas, the option to attend came about as a result of pressure from survivors and victim advocates who felt it might help the healing process.[122] Similar to VIS, there is wide disagreement as to whether the UPS, generally, and witnessing the execution, specifically, bring closure. Survivors are resolute that the concept of "closure" bears little or no relevance to their experience.[123] A survey conducted in 1999 by the Victim Services Division of the Texas Department of Criminal Justice found wide variation in survivors' postexecution responses.[124] Interviews

---

119. *See* Pemberton & Reynaers, *supra* note 98, at 235; *see also* Armour & Umbreit, *supra* note 104, at 404–05 (describing how editing of VIS by prosecutors and judges may influence survivors' satisfaction since telling their story may no longer have the same significance).

120. *See, e.g.*, Erez, *supra* note 116, at 550–54; Madeira, *supra* note 111; Julian V. Roberts & Edna Erez, *Communication in Sentencing: Exploring the Expressive Function of Victim Impact Statements*, 10 INT'L REV. VICTIMOLOGY 223 (2004).

121. *See* Peter Hodgkinson, *Capital Punishment: Meeting the Needs of the Families of the Homicide Victim and the Condemned*, *in* CAPITAL PUNISHMENT: STRATEGIES FOR ABOLITION 332, 353 n.63(Peter Hodgkinson & William A. Schabas eds., 2004) ("Oklahoma and Washington guarantee families the right to watch. In addition, California, Florida, Illinois, Louisiana, Montana, North Carolina, Ohio, Pennsylvania, Texas, Utah, and Virginia hold hearings to determine access.").

122. *See* Mark Potok, *Looking Death in the Eye in Texas: Law Lets Families View Executions*, USA TODAY, Feb. 1, 1996, at 3A; *see also Frequently Asked Questions: Victim Survivors Viewing Executions*, TEXAS DEP'T OF CRIM. JUSTICE, http://www.tdcj.state.tx.us/faq/faq_victim_viewing_execution.html (last visited Oct. 8, 2012) (noting that in 1995, victim survivors and victim advocates asked the Texas Department of Criminal Justice for the opportunity to view executions).

123. *See* Marilyn Peterson Armour, *Journey of Family Members of Homicide Victims: A Qualitative Study of Their Posthomicide Experience*, 72 AM. J. ORTHOPSYCHIATRY 372, 380 (2002); Carroll Ann Ellis et al., *The Impact of the Death Penalty on Crime Victims and Those Who Serve Them*, *in* WOUNDS THAT DO NOT BIND: VICTIM-BASED PERSPECTIVES ON THE DEATH PENALTY, *supra* note 2, at 436.

124. Fernando J. Galan & Dan R. Guerra, The Impact of Viewing Executions on Homicide Survivors (1999) (on file with author Marilyn Peterson Armour) (presented before the Crime Victims Institute 1999 Biennial Symposium on Crime Victimization). Studies using

with victims' families and survivors of the Oklahoma City bombing found that twenty-two out of twenty-seven victims claimed that closure never occurs. Although survivors wanted to witness the execution of Timothy McVeigh out of a personal need to see justice done and carried through to completion, most of them did not expect it to assist them.[125]

There is increasing commentary in the literature on survivors and "closure," specifically about the ambiguity of the term and a lack of precision in how it is used. Some scholars advocate for keeping "closure" but moving its definition from a dichotomous outcome associated with resolution of grief and pursuit of vengeance to a process synonymous with restoration of control and accountability as well as coping and healing.[126] Others propose that measuring reductions in anger and anxiety would not only reduce the tension between the therapeutic and justice paradigms but that these constructs, unlike closure or healing, are specified well in the psychological literature.[127]

IV. THERAPEUTIC JURISPRUDENCE, SURVIVORS, AND CONTROL

Aside from the victim rights agenda, concern for the impact of the criminal justice system on victims' emotional well-being and the goal of "closure" are two main reasons behind the push to give victims greater control over the powerlessness that otherwise accompanies the murder of a loved one. Research repeatedly shows that a sense of personal control over situations positively affects well-being.[128] The centrality of powerlessness and need for control is regularly reflected in the literature

---

newspaper accounts of survivor reports report similar results. *See* Samuel R. Gross & Daniel J. Matheson, *What They Say at the End: Capital Victims' Families and the Press*, 88 CORNELL L. REV. 486, 489 (2003) (stating that a review of statements to the press after family members witnessed an execution found that the dominant theme was pain and that the execution finally happened); *see also* Thomas J. Mowen & Ryan D. Schroeder, *Not In My Name: An Investigation of Victims' Family Clemency Movements and Court Appointed Closure*, 12 WESTERN CRIMINOLOGY REV. 65 (2011) (examining newspaper coverage about executions to report responses and sentiments of covictims); Scott Vollum & Dennis R. Longmire, *Covictims of Capital Murder: Statements of Victims' Family Members and Friends Made at the Time of Execution*, 22 VIOLENCE & VICTIMS 601 (2007) (assessing statements from covictims by reviewing articles about executions).

125. *See* Madeira, *supra* note 111, at 1501–02.

126. *Id.* at 1494, 1523.

127. *See* Pemberton & Reynaers, *supra* note 98, at 237.

128. *See generally* JOHN MIROWSKY & CATHERINE E. ROSS, SOCIAL CAUSES OF PSYCHOLOGICAL DISTRESS 167–68 (1989) (synthesizing data from a decade of their own surveys and others with community populations on the impact of social problems on psychological distress and presenting data to suggest that feeling in control of one's life is the most critical aspect of well-being).

on homicide survivors.[129] Professor Armour, for example, found that the question "Who decides?" determines survivors' lived experience—survivors are constantly challenged by others' decisions that impact their lives.[130] Indeed, it appears that the restoration of a sense of control may be an essential element in victim healing.[131] There has been discussion about the necessity for information,[132] the making of meaning,[133] and the access to greater participation[134] as mechanisms to achieve that control. From the perspective of therapeutic jurisprudence, however, little is known about the impact of the UPS on that sense of control and on survivor well-being. Moreover, the linkage between closure and the actual death of the offender or the finality of the offender spending the rest of his or her natural life in prison is only a part of the extensive experience survivors have with the criminal justice system.[135]

Besides anecdotal accounts, several studies have attempted to ferret out survivors' responses to the execution and its ability to provide closure.[136] Gross and Matheson analyzed newspaper accounts of

---

129. *See, e.g.*, Marilyn Armour, *Meaning Making in the Aftermath of Homicide*, 27 DEATH STUD. 519, 519 (2003).

130. Marilyn Ruth Peterson [Armour], The Search for Meaning in the Aftermath of Homicide: A Hermeneutic Phenomenological Study of Families of Homicide Victims 204 (Aug. 1, 2000) (unpublished Ph.D dissertation, University of Minnesota, Minneapolis) (on file with author Marilyn Peterson Armour) ("Death by murder is also different because it is a public matter. Consequently, the respect that is usually accorded mourners in the United States is usurped by the public agenda and the boundary that otherwise protects the privacy of the family is violated. Moreover, death by murder means that others, outside the family, take control of what happens and define the social reality for family members. Family members, therefore, deal with their loved one's death by having to interface with family, friends, and social institutions that have their own reactions to the event.").

131. *See* Dean G. Kilpatrick & Randy K. Otto, *Constitutionally Guaranteed Participation in Criminal Proceedings for Victims: Potential Effects on Psychological Functioning*, 34 WAYNE L. REV. 7 (1987).

132. Paul B. Stretesky et al., *Sense-Making and Secondary Victimization Among Unsolved Homicide Co-Victims*, 38 J. CRIM. JUST. 880, 882–84 (2010).

133. *See* Armour, *supra* note 129, at 534–35; Shirley A. Murphy et al., *Finding Meaning in a Child's Violent Death: A Five-Year Prospective Analysis of Parents' Personal Narratives and Empirical Data*, 27 DEATH STUD. 381, 398 (2003).

134. *See* Deborah P. Kelly & Edna Erez, *Victim Participation in the Criminal Justice System*, *in* VICTIMS OF CRIME 231, 233–35 (Robert C. Davis et al. eds., 2d ed. 1997); Madeira, *supra* note 113, at 1511; Richard P. Wiebe, *The Mental Health Implications of Crime Victims' Rights*, *in* LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE 213, 219–20 (David B. Wexler & Bruce J. Winick eds., 1996).

135. Armour & Umbreit, *supra* note 104, at 422–23.

136. *See generally* Gross & Matheson, *supra* note 124 (examining press stories regarding executions from January 2001 through June 2002); Mowen & Schroeder, *supra* note 124 (examining newspaper coverage about executions to report responses and sentiments of

survivors' statements immediately following executions.[137] Vollum and Longmire examined journalists' reports of survivors' remarks after the reporters attended executions in Texas.[138] Mowen and Schroeder evaluated newspaper coverage of death penalty cases that included statements by, or on behalf of, survivors with regard to their views on the death penalty.[139] Although these studies are secondary accounts and only concentrate on the beginning or the end of the conviction and postconviction process, they uniformly conclude that the likelihood of closure, and by extension an increased sense of control, is highly variable and colored by the appeals process, expectations about the murderer's comments, and feelings of revenge.[140]

Even less is known about whether LWOP gives survivors back a sense of control or reduces their suffering.[141] As with the death penalty, attention has focused principally on societal concerns—including cost-effectiveness and mistakes in death penalty cases.[142] Although the reasoning behind LWOP being touted as a victim service is a little different from the justification of the death penalty, there is still the suggestion that the LWOP sanction—through the concept of closure—has the potential to give a sense of control back to survivors.

---

covictims); Vollum & Longmire, *supra* note 124 (assessing statements from covictims by reviewing articles about executions).

137. Gross & Matheson, *supra* note 124, at 487–89.

138. Vollum & Longmire, *supra* note 124, at 603.

139. Mowen & Schroeder, *supra* note 124, at 70.

140. Gross & Matheson, *supra* note 124, at 491–94; Mowen & Schroeder, *supra* note 124, at 78; Vollum & Longmire, *supra* note 124, at 604 tbl.1, 607.

141. The term "life sentence" has been used in a variety of ways over time and consequently there is much public confusion regarding its meaning. MARC MAUER ET AL., THE MEANING OF "LIFE": LONG PRISON SENTENCES IN CONTEXT 4 (2004), *available at* http://www.prisonterminal.com/documents/The%20Meaning%20of%20Life.pdf. While the intuitive definition of a life sentence is a prison term for the remainder of one's natural life, in fact the term also includes various indeterminate sentences, or sentences whose length can be reduced by commutation, parole, or pardon. *Id.*

142. *See* ROBERT M. BOHM, DEATHQUEST: AN INTRODUCTION TO THE THEORY AND PRACTICE OF CAPITAL PUNISHMENT IN THE UNITED STATES 202 (4th ed. 2012) ("In sum, death sentences could be replaced with LWOP at considerable cost savings to the taxpayer, with negligible impact on the current prison overcrowding crisis. LWOP sentences would also allow for the correction of miscarriages of justice when they [are] discovered . . . ."); *see also* Michael E. Ebert, *Weighing the Costs of Capital Punishment v. Life in Prison Without Parole: An Evaluation of Three States' Studies and Methodologies Comparing Costs of the Death Penalty Versus Life in Prison Without Parole (LWOP)*, 1 NEW VOICES IN PUB. POL'Y 1 (2007) (examining studies noted as non-biased, done in North Carolina (Duke University), Indiana (Indiana Criminal Law Study Commission), and Tennessee (Tennessee House Judiciary Committee)).

V. PERCEIVED CONTROL THEORY

Although information is sparse, carrying out the sentence of death or LWOP, as examples of ultimate justice, reflect hypothetically a symbolic regaining of control by survivors. This sense of control may facilitate healing,[143] but the supposition that any UPS can be remedial remains speculative without direct evidence obtained in a systematic way from homicide survivors. The Study reported in this article uses sense of control theory for its conceptual framework.[144] Perceived sense of control "refers to the extent to which individuals believe that they can control events that affect them."[145] This perceived sense of control is positively associated with physical health, self-esteem, personal adjustment, coping, decreased stress and depression, and psychological well-being.[146] Studies have also found that a strong prior sense of control may be maladaptive for people who later face situations beyond their control and whose sense of control over their world is severely compromised—such as those affected by homicide—leading to a sense of helplessness or personal failure.[147] Frazier assessed perceived control in terms of past, present, and future control over traumatic events.[148] Although past and future control had nonsignificant relations with distress, present control—or control over the healing process—was associated with better adjustment, which was associated with less distress, less PTSD, and greater life satisfaction.[149] According to Frazier's temporal model of perceived control theory, "individuals who believe that they have more control over their [healing] process may

143. *See* MIROWSKY & ROSS, *supra* note 128, at 167–68.

144. *See generally* 1 RESEARCH WITH LOCUS CONTROL CONSTRUCT (Herbert M. Lefcourt ed., 1981); Julian B. Rotter, *Generalized Expectancies for Internal Versus External Control of Reinforcement*, 80 PSYHOL. MONOGRAPHS 1 (1966).

145. Gregory G. Manley et al., *Development of a Personality Biodata Measure to Predict Ethical Decision Making*, 22 J. MANAGERIAL PSYCHOL. 664, 666 (2007).

146. Ellen. A. Skinner, *A Guide to Constructs of Control*, 71 J. PERSONALITY & SOC. PSYCHOL. 549, 549 (1996); Suzanne C. Thompson et al., *Maintaining Perceptions of Control: Finding Perceived Control in Low-Control Circumstances*, 64 J. PERSONALITY & SOC. PSYCHOL. 293, 293 (1993); Suzanne C. Thompson & Shirlynn Spacapan, *Perceptions of Control in Vulnerable Populations*, 47 J. OF SOC. ISSUES 1, 3–6 (1991); Deborah L. Volker, *Control and End-of-Life Care: Does Ethnicity Matter?*, 22 AM. J. HOSPICE & PALLIATIVE MED. 442, 442 (2005); *see also* RICHARD S. LAZARUS & SUSAN FOLKMAN, STRESS, APPRAISAL, AND COPING 170 (1984); Ute Kunzmann et al., *Perceiving Control: A Double-Edged Sword in Old Age*, 57B J. GERONTOLOGY 484, 484, 488 (2002).

147. *See* Volker, *supra* note 146, at 442.

148. Patricia Frazier et al., *Perceived Control and Adjustment to Trauma: A Comparison Across Events*, 23 J. SOC. & CLINICAL PSYCHOL. 303, 303–05 (2004).

149. *Id.* at 316 tbl.1, 320–22.

engage in more adaptive, approach-oriented coping strategies."[150]

Is the perception that the symbolic regaining of control enhances the well-being of homicide survivors actually realized? Does it affect the healing process of survivors? Is there a differential effect on homicide survivors depending on which UPS is imposed? This Study seeks information from homicide survivors about these questions and their experience of the UPS (whether death penalty or LWOP).

VI. THE PROCESS OF THE ULTIMATE PENAL SANCTION

The purpose of this Study is to examine and compare the conviction and postconviction experiences of family survivors in two states, namely Texas and Minnesota. Besides their regional variations geographically and culturally, the legal proceedings in a capital murder (Texas) or first-degree felony–murder (Minnesota) case contrast greatly.

A. Texas

Texas Penal Code section 19.02 defines murder as "intentionally or knowingly caus[ing] the death of an individual."[151] Section 19.03 of the Texas Penal Code defines capital murder as a murder which occurs under certain enumerated circumstances (e.g., murder of a peace officer or fireman; murder while committing the crime of kidnapping, robbery, burglary, aggravated sexual assault, terroristic threat, or arson; murder for remuneration; murder committed while escaping from a penal institution; or murder of a child under ten years of age).[152] People who are under the age of eighteen at the time of commission of the capital crime[153] or who are mentally retarded[154] are precluded from being executed by the Constitution of the United States. A capital trial is a bifurcated trial consisting of a guilt–innocence phase and a punishment phase.[155] For a death sentence to be imposed, the jury must determine that the defendant is a "continuing threat to society" and that the mitigating evidence is not sufficient to warrant a sentence of life imprisonment rather than a death sentence.[156] Until 2005, the only

150. *Id.* at 322.

151. TEX. PENAL CODE ANN. § 19.02(b)(1) (West 2011).

152. *Id.* § 19.03(a) (West 2011 & Supp. 2012).

153. Roper v. Simmons, 543 U.S. 551, 573–75 (2005).

154. Atkins v. Virginia, 536 U.S. 304, 321 (2002).

155. TEX. CODE CRIM. PROC. ANN. art. 37.071 (West 2006).

156. *Texas Execution Primer*, TEX. EXECUTION INFO. CTR., http://www.txexecutions.org/primer.asp (last visited Dec. 29, 2011) [hereinafter *Texas Execution Primer*].

option available to juries was death or life imprisonment with the possibility of parole (the offender had to serve forty years before parole could be considered).[157] However, since 2005, with the passage of S.B. 60, juries are allowed to consider LWOP in death penalty cases.[158]

A defendant sentenced to death usually goes through the mandatory processes of review, direct appeal, and postconviction.[159] Direct appeal is made to the Texas Court of Criminal Appeals.[160] If the conviction is upheld, the defendant may petition the state for a habeas review by the local federal district court and the Fifth Circuit Court of Appeals—focused on either errors not fully known at trial or violations of the defendant's federal constitutional rights.[161] "At any stage in [d]irect [a]ppeal or [p]ost[c]onviction, the case can be remanded to a lower court or reversed and returned to [the] trial court."[162] At the conclusion of each of these processes of review—direct review and postconviction review—the defendant is entitled to ask the U.S. Supreme Court to review the case.[163] On occasion the Supreme Court will review a capital case if there are important legal issues.[164]

The judge presiding over a capital case sets the execution date once

---

157. Bill Habern & David O'Neil, *What About the Parole Process When One Has a Life Sentence on a Capital Murder Charge?*, HABERN, O'NEIL & PAWGAN L.L.P. 1–2 (2001), *available at* http://www.paroletexas.com/articles/life_sentence_parole2.pdf. The 1999 amendment to Article 37.071 Code of Criminal Procedure requires that, upon the defense's request, the jury in a capital case can be instructed as follows: "[I]f the defendant is sentenced to imprisonment in the institutional division of the Texas Department of Criminal Justice for life, the defendant will become eligible for release on parole, but not until the actual time served by the defendant equals 40 years, without consideration of any good conduct time"). *Id.*

158. 2005 Tex. Gen. Laws 2705; TEX. PENAL CODE ANN. § 12.31(b) (West 2011).

159. Council for Restorative Justice, *Victims and Survivors: Finding Your Way Through Court Proceedings in Texas Death Capital Cases*, GEORGIA ST. U. 53–55 (2009) (on file with author) [hereinafter Council for Restorative Justice, *Victims and Survivors*].

160. *Texas Execution Primer*, *supra* note 156, at 3.

161. *Id.* at 3–4.

162. CTR. FOR AM. & INT'L LAW, UNIV. TEX. AUSTIN SCH. SOC. WORK, DEFENSE-INITIATED VICTIM OUTREACH TRAINING MANUAL 53–55 (2008), *available at* http://www.utexas.edu/research/cswr/rji/divo/training.html (requires downloading the Master Manual) [hereinafter DEFENSE-INITIATED VICTIM OUTREACH TRAINING MANUAL]. John Niland is the Director of the Capital Trial Project for the Texas Defender Service. *Staff*, TEXAS DEFENDER SERVICE, http://www.texasdefender.org/staff (last visited Nov. 5, 2012). He wrote a chapter (ch. 13, titled *Steps in a Death Penalty Case: After the Trial*) in *Victims and Survivors: Finding Your Way Through Court Proceedings in Texas Death Capital Cases*. *See* Council for Restorative Justice, *Victims and Survivors*, *supra* note 159, at 55 (providing a chart of the Texas death penalty appeals and postconviction procedure).

163. *Texas Execution Primer*, *supra* note 156, at 3–4.

164. *Id.*

it appears that the offender's appeals have been exhausted.[165] Persons in attendance at the execution can include five relatives or friends of the condemned.[166] In 1996, the Texas Department of Criminal Justice adopted a board rule allowing victim witnesses to attend as well.[167] The average length of time from conviction to execution is 10.8 years.[168] "[T]he national average is that only about one in eleven—nine percent (9%)—of those sentenced to death are executed; most others spend the rest of their lives in prison, die in prison from other causes, have their sentences overturned on appeal or escape the death penalty through executive clemency."[169]

B. Minnesota

In 1989, Minnesota increased sentencing for higher severity crimes, establishing the parameters in use today.[170] Specifically, the punishment for first-degree murder was thirty years to life before parole eligibility (referred to as life without parole)[171] until 2005 when Minnesota established "life without release (LWOR) for premeditated first-degree murder."[172] In 2008, only forty-eight persons, or 0.5% of the prison population, had been sentenced either under life without parole or

---

165. *Id.* at 4 (noting that the prosecution asks the state district judge to set the execution date with the execution dates generally being set one to six months out).

166. TEX. CODE CRIM. PROC. ANN. art. 43.20 (West 2011).

167. *Viewing Executions*, VICTIM SERVS. DIV., TEX. DEP'T CRIMINAL JUSTICE, http://www.tdcj.state.tx.us/divisions/vs/victim_viewing_executions.html (last visited Dec. 29, 2011).

168. SNELL, *supra* note 39, at 19 tbl.18.

169. Ebert, *supra* note 142, at 6. "[T]he best description of our capital punishment system is that of the 6700 people sentenced to die between 1973 and 1999, only 598—*less than one in eleven*—were executed." James S. Liebman, *The Overproduction of Death*, 100 COLUM. L. REV. 2030, 2056 (2000). The U.S. Department of Justice stated that "[o]f the 7,879 people under sentence of death between 1977 and 2010 . . . 6% died by causes other than execution," TRACEY L. SNELL, BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE, CAPITAL PUNISHMENT, 2010–STATISTICAL TABLES 1 (2011). Similarly, the Death Penalty Information Center found that "[s]ince 1976, 272 death row inmates have been granted clemency for humanitarian reasons. *Clemency*, DEATH PENALTY INFO. CENTER, http://www.deathpenaltyinfo.org/clemency (last visited Oct. 27, 2012). "Humanitarian reasons include doubts about the defendant's guilt or conclusions of the governor regarding the death penalty process." *Id.*

170. MINN. DEP'T CORR., MINNESOTA CRIMINAL SENTENCING ENHANCEMENTS: HIGHLIGHTS FROM 1987 TO 2010, at 1 (2010), *available at* http://www.doc.state.mn.us/publications/documents/10-10Sentencingenhancements.pdf.

171. *Id.*

172. *Id.* at 3.

LWOR.[173] Under Rule 29, convictions of first-degree murder and decisions in postconviction proceedings involving convictions of first-degree murder are directly appealable to the Minnesota Supreme Court within ninety days after the final judgment.[174]

VII. SUMMARY OF ULTIMATE PENAL SYSTEM

Although volumes have been written on the death penalty, survivors are the ones most directly affected by the crime and society's response to it. Apart from arguments about the appropriate role for survivors during the trial or voyeuristic glimpses into their reactions to the execution and their need for closure, little if any attention has been given to survivor experiences unique to capital murder (or its equivalent) and to the totality of their existence subsequent to the murder. The striking absence of survivor voices likely contributes to their marginalized status and the propensity of others to presume and assign meaning and motive to their journeys. This Study seeks to expand the focus within the therapeutic jurisprudence community beyond the therapeutic impact of law enforcement and criminal proceedings to include the long-range impact of the offender's punishment on the physical and mental health of survivors.

VIII. METHODOLOGY

A. Design

This multisite, mixed-methods Study used a cross sectional research design over four time periods to examine and compare differences in the conviction and postconviction experiences of family survivors of homicide victims. Because the average length of time from conviction to execution in Texas is 10.8 years,[175] a comparable time period was used to select participants. Participants in both states were selected from these time periods: sentencing to three years postsentence (Time 1), five to eight years postsentence (Time 2), ten to twelve years postsentence (Time 3), and fourteen to sixteen years postsentence (Time 4). Although it would have been preferable to hold the state context of the punishment consistent for comparative purposes,[176] two states were used

173. Ashley Nellis, *Throwing Away the Key: The Expansion of Life Without Parole Sentences in the United States*, 23 FED. SENT'G REP. 27 app. at 31 (2010).

174. MINN. R. CRIM. P. 29.02(1)(a), .03(3)(a).

175. SNELL, *supra* note 39, at 19 tbl.18.

176. There are vast differences between Texas and Minnesota including their

because neither Texas nor Minnesota employed both types of UPS over the 10.8 years covered by the Study.[177]

This Study used a mixed-methods approach, which is a procedure for collecting, analyzing, and "mixing" both qualitative and quantitative data within a single study.[178] This method helps to obtain a more complete understanding of human behavior and experience than using one method alone, and it also provides for a convergence or corroboration of findings.[179] In this regard, the Study asked two questions, each of which required a different type of data. The qualitative research question was, What are the conviction and postconviction experiences of family survivors in capital murder cases? The quantitative research question was, What is the differential effect of the death penalty and LWOP on survivor well-being? These questions provided the framework for the Study. Although qualitative and quantitative data were collected concurrently, data from the two methods were analyzed separately, and the results were compared between the two. The priority in the design was given to the qualitative method.

B. Measures

1. Demographics

The Demographic Questionnaire (DQ) developed for this Study measured homicide survivor demographics. Participants reported their year of birth; gender; race or ethnicity; marital status; education; age of

---

geographical location, political history and party affiliation, size and diversity of population, level of educational attainment, and crime and poverty rates. *See* Jeffrey M. Jones, *State of the States: Political Party Affiliation*, GALLUP (Jan. 28, 2009), http://www.gallup.com/poll/114016/state-states-political-party-affiliation.aspx; U.S. Dep't Commerce, *Law Enforcement, Courts, & Prisons:* Crimes and *Crime Rates*, CENSUS.GOV (2012), http://www.census.gov/compendia/statab/cats/law_enforcement_courts_prisons/crimes_and_crime_rates.html; U.S. Dep't Commerce, *State and County Estimates for 2010*, CENSUS.GOV (June 15, 2012), http://www.census.gov/did/www/saipe/. *Compare, e.g.*, *State & County QuickFacts: Texas*, U.S. CENSUS BUREAU, http://quickfacts.census.gov/qfd/states/48000.html (last updated Sept. 18, 2012) (describing Texas population, diversity, and educational statistics), *with State & County QuickFacts: Minnesota*, U.S. CENSUS BUREAU, http://quickfacts.census.gov/qfd/states/27000.html (last updated Sept. 18, 2012) (describing Minnesota population, diversity, and educational statistics).

177. Texas began using LWOP in 2005. *See* 2005 Tex. Gen. Laws 2706.

178. JOHN W. CRESWELL & VICKI L. PLANO CLARK, UNIV. NEB.-LINCOLN, DESIGNING AND CONDUCTING MIXED METHODS RESEARCH 7 (2007).

179. Veronica A. Thurmond, *The Point of Triangulation*, 33 J. NURSING SCHOLARSHIP 253, 257 (2001).

the victim when killed; relationship to the victim; gender of the victim; date of the victim's death; whether the murderer was known by the victim, the homicide survivor, or both; time since death; time since sentencing; and, for Texas participants, whether the death sentence had been carried out and, if so, time since execution.

2. Well-Being

Well-being was measured by the Inventory of Complicated Grief-Revised (ICG-R).[180] The ICG-R is a thirty-seven-item assessment of complicated grief responses in the month prior to survey administration.[181] This Study used the composite score of the thirty-two ordinal-level response items in the scale, with higher scores indicating greater symptoms.[182] In this sample, scores ranged from 3 to 100. In previous studies, ICG-R reliability has been found to be good.[183] This

180. For a discussion of complicated grief, see generally Holly G. Prigerson & Selby C. Jacobs, *Traumatic Grief as a Distinct Disorder: A Rationale, Consensus Criteria, and a Preliminary Empirical Test*, *in* HANDBOOK OF BEREAVEMENT RESEARCH 613 (Margaret S. Stroebe et al. eds., 2001) [hereinafter Prigerson & Jacobs, *Traumatic Grief*] (discussing "traumatic grief"). Traumatic grief is synonymous with complicated grief. *Id*. at 615. For a discussion of the development of the ICG, see generally Holly G. Prigerson et al., *Inventory of Complicated Grief: A Scale to Measure Maladaptive Symptoms of Loss*, 59 PSYCHIATRY RES. 65 (1995) [hereinafter Prigerson et al., *Inventory*].

181. *See* Prigerson et al., *Inventory*, *supra* note 180 (establishing the ICG, a nineteen-criteria assessment); Prigerson & Jacobs, *Traumatic Grief*, *supra* note 180 (revising and expanding the ICG to the Inventory of Traumatic Grief (ITG) a thirty-six-criteria assessment). The ICG-R is a thirty-seven-criteria assessment which is a modified version of the original ICG nineteen-criteria assessment. *See* Kenneth E. Fowler, The Relationship Between Self Reported Trauma, Complicated Grief, and Depression Among College Students (Apr. 27, 2006) (unpublished Ph.D. dissertation, Florida State University), *available at* http://diginole.lib.fsu.edu/etd/4409/. The ICG-R consists of five items assessing the context of grieving (two dichotomous questions, two fill-in time period questions, and one short-answer question) and thirty-two ordinal-level items constituting a grief symptoms severity scale.

182. The thirty-two items are measured on a Likert-type scale and can be summed for a total composite score. Each Likert-type scale answer was scored 0 to 4. As with a study about familial grief in physician assisted dying, "[t]he items were summed to form a continuous measure of severity of prolonged grief." *See* Linda Ganzini et. al., *Mental Health Outcomes of Family Members of Oregonians Who Request Physician Aid in Dying*, 38 J. PAIN & SYMPTOM MGMT. 807, 809 (2009). Because thirty-two items used Likert-scale type answers, scores on the ICG-R could range from 0 (arrived at by answering 0 for all thirty-two questions) to 128 (arrived at by answering 4 for all thirty-two questions).

183. Robert A. Neimeyer & Laurie A. Burke, *Complicated Grief in the Aftermath of Homicide: Spiritual Crisis and Distress in an African American Sample*, 2 RELIGIONS 145, 153 (2011) ("High internal consistency (Cronbach's $\alpha = 0.95$) has been reported for the ICG-R in samples of both normative and traumatic, premature loss."); Amy E. Latham & Holly G. Prigerson, *Suicidality and Bereavement: Complicated Grief as Psychiatric Disorder Presenting*

Study found that the ICG-R showed good internal consistency with a Cronbach's alpha of 0.952.[184]

3. Survey Instrument

A fifty-seven-item survey instrument was developed for this Study from focus group interviews in Texas and Minnesota with three groups of homicide survivors and three groups of service providers.[185] Individual interviews were also conducted with persons knowledgeable about the execution process. Individual survey items were derived from a template analysis[186] of the data gathered from the focus group and individual interviews.[187] Survey items covered (1) perceptions of justice, (2) attitudes about the UPS, (3) experiences with the criminal justice system, (4) experiences with the offender, (5) psychological states, (6) social and psychological support, (7) religion and spirituality, (8) media, and (9) family relationships. In addition, participants from Texas in Time 2 to Time 4 were asked questions about the appeals process, execution, and postexecution experience depending on their individual circumstances (e.g., if the execution had already occurred).

C. Sample Procurement

This Study used random purposive sampling to recruit a representative sample of homicide survivors whose loved one was killed in Texas or Minnesota and the offender(s) was tried in the same state

---

Greatest Risk for Suicidality, 34 SUICIDE & LIFE-THREATENING BEHAV. 350, 354 (2004) (indicating that the ICG-R has a Chronbach's α of 0.92). Cronbach's alpha is a coefficient of reliability. *See* Lee J. Cronbach, *Coefficient Alpha and the Internal Structure of Tests*, 16 PSYCHOMETRIKA 297, 307 (1951). It is commonly used as a measure of the internal consistency or reliability of a psychometric test score for a sample of examinees. *Id.* at 297–98.

184. Internal consistency normally ranges between 0 and 1. Joseph A. Gliem & Rosem ary R. Gliem, *Calculating, Interpreting, and Reporting Cronbach's Alpha Reliability Coefficient for Likert-Type Scales*, *in* 2003 MIDWEST RESEARCH TO PRACTICE CONFERENCE IN ADULT, CONTINUING, AND COMMUNITY EDUCATION 87 (2003). "The closer Cronbach's alpha coefficient is to 1.0 the greater the internal consistency of the items in the scale." *Id.*

185. *See infra* Appendix C.

186. *See* DOING QUALITATIVE RESEARCH 21 (Benjamin F. Crabtree & William L. Miller eds., 2d ed. 1999). It is appropriate for data collected using semi-structured or structured questions or categories derived from a specific theory. *See id.* at 164–65. Data is coded according to these a priori codes. *See id.* at 164–65. Additionally, codes representing themes are defined as these emerge. *See id.* at 165.

187. *See* Marilyn Armour & Mark Umbreit, *Homicide Survivors: Factors that Influence Their Well-Being*, 2 J. FORENSIC SOC. WORK (forthcoming Dec. 2012) (illustrating a study of the findings from the focus group and individual interviews).

between 1992 and 2007. In order to obtain the survivor sample, offenders convicted of capital murder (Texas), or first-degree murder (Minnesota), were randomly selected from offender lists for each of the four time periods (Time 1 to Time 4). These lists are publically available on the Texas Department of Criminal Justice website[188] and, upon request, from the Minnesota Department of Criminal Justice. In Texas, the names of each offender were given to a victim assistance coordinator at the Texas State Attorney General's Office. The victim assistance coordinator then contacted the homicide survivor on file with the office (whose loved one had been killed by the randomly selected offender). In Minnesota, the names of each offender were given to the Director of Survivor Resources, a Minnesota agency that provides services to family survivors of victims of violent death. The director used her extensive network of contacts with victim assistance coordinators employed at district attorney generals' offices throughout Minnesota to find and contact each homicide survivor whose loved one had been killed by the randomly selected offender. Homicide survivors were given information about the Study by either the victim assistance coordinator (Texas) or the Director of Survivor Resources (Minnesota) and asked if they were interested in participating. Those individuals who were willing to participate were asked whether they would prefer to contact the researcher themselves or have the researcher contact them directly. This procedure was followed until a sample of thirty-nine participants was procured, consisting of approximately five homicide survivors for each time period per state.[189]

D. Data Collection

Semistructured interviews were conducted with homicide survivors between 2008 and 2010 in Minnesota, Texas, Florida, and Tennessee.[190] The principal investigator for the Study conducted all the interviews, which ensured consistency in how the interviews were managed. Each interview was held at a place and time selected by the participant and lasted approximately two hours. Participants signed an informed-

188. *Death Row Information: Offenders on Death Row*, TEXAS DEP'T OF CRIM. JUST. (Aug. 8, 2012), http://www.tdcj.state.tx.us/death_row/dr_offenders_on_dr.html.

189. Despite numerous attempts, the fortieth participant in the Study sample could not be contacted. Consequently, the sample for Texas Time 4 is limited to four rather than five homicide survivors.

190. Twenty-eight interviews were done in 2008, and eleven were done in 2010. Two of the Texas participants were interviewed in their current state of residence—one in Florida and one in Tennessee.

consent statement and completed the DQ and ICG-R prior to beginning the interview. Interviews were digitally recorded and transcribed for analysis.

E. Data Analysis

Data analysis of the qualitative interviews was conducted by the principal investigator. Data analysis of the quantitative measures (DQ and ICG-R) was done concurrently by a statistician.[191] Since the purpose in triangulating methods is to enhance the completeness and confirmation of data in research findings through generating more accurate data,[192] the principal investigator and statistician worked separately to ensure that the findings from their analysis did not influence the final product.

1. Qualitative Data

Data analysis was done using matrix analysis, which is a categorization and organization of qualitative data based on comparisons across cases and across time.[193] Matrices are used to lay out the available data and to facilitate the comparison and the construction of hypotheses. The analysis consisted of six stages. In Stage 1, each interview transcript was randomly selected and read without regard to time and state to gain familiarity with the words, descriptions, meanings, and personal narrative of the participant. A narrative analysis[194] was performed on each case based on temporal aspects of the account including the participant's personal changes. In Stage 2, cases were grouped by time (Time 1 to Time 4) and state (Texas or Minnesota) (n = 8 groups). Interviews within each time-by-state group were reread for identification of event themes specific to the group. Many of the event themes were common for all groups, but some event themes (e.g., appeals) were distinct to either Texas or Minnesota or to particular time

191. The statistician for this Study was Stephanie Rivaux, Ph.D, LMSW who was employed, for the Study, as an independent contractor by the University of Texas, School of Social Work.

192. Thurmond, *supra* note 179, at 257.

193. *See* MATTHEW B. MILES & A. MICHAEL HUBERMAN, QUALITATIVE DATA ANALYSIS: AN EXPANDED SOURCEBOOK 93–94 (2d ed. 1994).

194. *See* CATHERINE KOHLER RIESSMAN, NARRATIVE METHODS FOR THE HUMAN SCIENCES 11 (2008) (noting that a "[n]arrative analysis refers to a family of methods for interpreting texts that have in common a storied form"). Attention to contingent sequences of action distinguish the analysis as well as how individuals use narrative to construct who they are and how they want to be known, i.e., their identities. *Id.* at 5–8.

periods. In Stage 3, rating scales, content-based domain typologies, and experiences or attitudes dichotomized into high–low, present–absent, and satisfied–unsatisfied were assigned to the event themes for comparative purposes. In Stage 4, matrices of event themes by case, time, and state were constructed. Event themes in each case were assigned a scale rating, dichotomized ranking, or typology classification. In Stage 5, quotes from each case were retrieved to substantiate the assigned rating, ranking, or classification. In Stage 6, scale ratings, dichotomized rankings, and typology classifications for event themes were compared as follows: cases nested within the states; cases within time periods nested in states; groups of cases by time period nested in states; and groups of cases by time period between states.

Memoranda were written on the definitions of event themes; the bases for rating scales; rankings of dichotomized variables and typology categories; the findings for each event theme; and the hypothesized relationships as a result of the comparisons made between cases (e.g., comparing participant reactions to executions) and comparisons made within and between groups by state and time (e.g., comparing participant experiences in Texas and Minnesota with the prosecution team at Time 1). The qualitative software data analysis computer program NVivo 9 was used to assist with the analysis.

2. Quantitative Data

Analysis was done of descriptive case variables, respondent and victim demographic variables, and responses to the ICG-R. Case characteristics included state of case, time period of case (Time 1 to Time 4), number of victims in the case, ongoing engagement with the murderer, family violence, prior association between the respondent and the murderer, whether the murderer was known to the victim, and, if the case was a death penalty case, whether the sentence had been carried out. Respondent demographic variables included gender, race/ethnicity, year of birth, marital status, and education level. Victim demographic variables included relationship of the victim to the respondent, gender, and age at time of death.

Once descriptive analyses were examined, ICG-R scores were submitted to a two-way factorial analysis of variance (ANOVA) having two levels of state (Minnesota and Texas) and four time periods (Time 1, Time 2, Time 3, Time 4). Factorial ANOVA is useful when examining how two or more grouping variables (in this case, state and time period) predict a single, normally distributed continuous variable

such as the composite ICG-R score.

To facilitate quantitative analysis of the qualitative data, the researcher coded event themes into categorical and ranked ordinal variables (see Stage 5 above). Correlation and regression analyses of select event themes and ICG-R scores were performed on these data. Despite adherence to a fairly rigorous blind coding process, the coding of the data was inherently subjective and was not independently verified. Therefore, the preliminary quantitative findings should be treated with caution due to undetermined reliability of the coding process.

F. Sample Profile

The sample used in the qualitative and quantitative analyses consisted of thirty-nine individuals who had a loved one murdered and who had subsequently experienced the perpetrators' trial and conviction. Twenty individuals from Minnesota and nineteen from Texas participated in this Study. Each participant was from a separate legal case. Cases were split nearly equally between the four time periods.[195]

The thirty-nine participants included in the analysis represented forty-six victims, with most respondents losing one significant other, four respondents losing two significant others, and one respondent losing three significant others. Of the thirty-nine participants, eighteen reported continuing engagement with the murderer or the murderer's family either through the criminal justice system or through community and familial relationships. These participants were divided equally between states. In 38.5% of cases, the respondent knew the person who committed the murder ($n = 15$), while in 61.5% of cases, the respondent reported that the victim knew the person who committed the murder ($n = 24$). Nearly 33% of cases were family violence cases ($n = 12$). The time since the homicide ranged from 2.58 to 19.75 years, with a mean of 10.00 years ($\sigma = 4.5$). The time since sentencing ranged from just over 1 year to 19.25 years, with a mean of 8.8 years ($\sigma = 4.9$). Of the nineteen Texas cases where the sentence was the death penalty, the sentence had not been carried out in fifteen cases (78.9%)[196] and had been in four cases (21.1%). In cases where the death penalty sentence had been

195. Despite numerous attempts, the fortieth participant in the Study sample could not be contacted. Consequently, the sample for Texas Time 4 is limited to four rather than five homicide survivors.

196. An offender committed suicide in a Time 2 Texas case.

carried out, the time since execution ranged from 1 to 6.5 years with a mean of 3.98 years ($\sigma = 2.4$). Table 1 below shows the counts and valid percentages of case characteristics for the total sample and for each state separately. This table shows that case characteristics are fairly similar between Minnesota and Texas cases with two exceptions: (1) a much higher proportion of Minnesota victims knew the person who killed them, and (2) all of the multiple murders occurred in Texas.

Respondents were primarily female ($n = 31$, 79.5%), and the majority reported mainly White/Caucasian ($n = 31$, 79.5%) or Black/African-American ($n = 4$, 10.3%) racial/ethnic status. Although age data was not gathered, data regarding year of birth was available, and respondents reported years of birth between 1930 and 1979 with a mean of 1953 ($\sigma = 12.6$ years).[197] Nearly half of the respondents were married ($n = 19$, 48.7%), though a significant number were widowed ($n = 8$, 20.5%) or divorced ($n = 6$, 15.4%). The remaining participants were single ($n = 4$, 10.3%), separated ($n = 1$, 2.6%), or in a committed relationship ($n = 1$, 2.6%). Regarding education, most respondents had some college ($n = 14$, 35.9%) or had a high school degree or equivalent ($n = 8$, 20.5%). Table 2 presents full respondent demographic data for the whole sample broken down by state. Review of this table shows that, again, Minnesota and Texas respondents were relatively similar with two minor differing trends: (1) Texas respondents were slightly more diverse racially/ethnically than Minnesota respondents, and (2) Minnesota respondents showed a slight trend towards higher levels of education.

Victims were split near equally by gender, with 56.5% female ($n = 26$) and 43.5% male ($n = 20$). In relation to the respondent, most of the murder victims were parents or stepparents ($n = 19$). Of the remaining victims, seven were siblings, seven were children or step-children, six were spouses or partners, two were grandparents, and five were "other" (which included aunts, mothers-in-law, and daughters-in-law). Table 3 below shows the distributions for relationship and victim gender for the whole sample and by state. Review of this table shows that participants from the two states were relatively comparable. Victim ages varied considerably in this sample, with a range of four months to ninety-three years. Texas victims showed a wider age range than did Minnesota victims. Specifically, in Minnesota, victim ages ranged from eighteen to

197. Participants' ages averaged roughly 54 years, with a range of approximately 29 years to 78 years.

sixty-one years with a mean of 38.4 ($\sigma = 13.6$), while Texas victim ages ranged considerably more, from four months to ninety-three years, with a mean of 33.6 ($\sigma = 24.6$).

IX. QUALITATIVE FINDINGS[198]

Findings were divided into three categories: impact of the UPS on the conviction experience in the criminal justice system; impact of the UPS on the postconviction experience in the criminal justice system; and impact of murder and the UPS on survivors' lives.[199] Each category has associated tables that consist of event themes and researcher-assigned response ratings for each participant. Tables 4, 5, and 6 below show the event themes for each of the three main categories, response options, and percentage distribution for each option. Discussion of the tables focuses on key differences between cases, time periods, and states, as well as commonalities.

A. Category 1: Impact of the UPS on the Conviction Experience

The conviction experience refers to the initial trial in Minnesota and the bifurcated trial in Texas (guilt–innocence phase and punishment phase). It is both a ritualized social drama and communicative forum that evokes deep emotion and contributes to collective sense-making.[200] These legal proceedings, and the preparation for them, are the critical justice juncture for survivors. Their attendance allows them to stand in for the victim and to bear witness to justice. Besides scrutinizing the defendant's persona and conduct, survivors' very presence, though silent, is the fulfillment of their duty to hold the defendant personally accountable for his monstrous act and their incalculable suffering. Though bystanders to the main event, their real or mental relationships with the prosecution and defense teams, as well as giving VIS, gives

198. All quotations in this section come from Study participants and are on file with the author Marilyn Peterson Armour. The participants were interviewed in a series of twenty-eight interviews in 2008 and eleven interviews in 2010. Two of the Texas participants were interviewed in their current state of residence—one in Florida and one in Tennessee. Quotes from Study participants are written verbatim. They include the vernacular of the speaker and may not be grammatically correct or precise in meaning.

199. *See infra* Appendix B. Tables 8a, 8b, 9a, 9b, 10a, 10b, and 10c show the event themes for each category, rating scales, and the individual participant's response to each theme by state and time.

200. *See* Jody Lyneé Madeira, *Blood Relations: Collective Memory, Cultural Trauma, and the Prosecution and Execution of Timothy McVeigh*, 45 STUD. L., POL., & SOC'Y 75, 84–85 (Austin Sarat ed., 2008).

them preferential access to and membership in this publically historic event.

Table 4 below shows the event themes for Category 1. Event themes include relationships with the court, specifically the prosecution team—consisting of the prosecutor(s), investigators, and victim advocate—and the defense team. In addition, event themes focus on procedures such as giving input to the prosecution about the defendant's sentence and making victim-impact statements, as well as on occurrences during the trial such as incidents with the murderer and interactions with the defendant's family.

1. Prosecution Team Contact

Prosecution team contact in preparation for, during, and after the trial was evaluated on a 4-point scale ranging from 1 (none) to 4 (extensive). Most participants perceived that the prosecution team consisted of the prosecutors, victim assistance coordinators, detectives, sometimes the police, and even the judge. The Texas sample for all time periods was consistently satisfied with the amount and quality of the interaction they had with team members and had few, if any, complaints about how they were treated. Participants' comments focused either on their interaction with the prosecutor, "He listened to everything about what I said and told me everything I wanted to know," or the prosecutor's performance,

> [She] was better than anyone you see on TV. Best prosecutor ever. She told us to just be patient and let her build the story, fill in the missing puzzle pieces. She was telling us not to get upset about the public defender. She did a really good job.

Minnesotans varied more with 25% of participants having minimal contact throughout the process. The majority of these participants, however, were peripheral to the main family members impacted by the murder so it is not surprising that contact with the prosecution may have been less frequent, if it occurred at all.

As shown in Figure 1, Time 1 in Texas stands out because, in contrast to Minnesota and other time periods in Texas, all participants had extensive contact with the prosecutorial team. Moreover, the tenor of the contact was different from contact described by the Minnesota participants. With one exception,[201] in Texas participants felt either

201. In one case, a family member was being prosecuted for a familial homicide and the

partnered with or protected by the prosecution who developed close, personal ties with them. Prosecutors visited them in their homes, took them to lunch, made sidebar comments to them during the trial, shared inside information about the criminal justice system, and gave guidance and direction to participants' decisions. A participant described how she became friends with several detectives who set her up with an author who wanted to do a book on her case:

> I was scared about that. Then I talked to them and they said, "You know, she's going to do the book anyway. Don't you want to be cast in a better light than these other people?" So I called her and I said, "Okay, this is the deal. I will talk to you." Well in the course of that she and I have become friends . . . . She has seen [the murderer] and interviewed him and it's strange. I think she gets pleasure from his discomfort too.

Another participant described the quality of the interaction she had with prosecutors during a two-hour phone call:

> They were talking about the fact that they'd like to go for the death penalty. And I said to them [that] I wasn't real comfortable with the death penalty. But, yet I thought if anyone deserved it he did. And I hadn't been to the trial yet and I didn't know what all had happened. I said, "Well wouldn't it be better to shut him in a cage somewhere and leave him there without parole?" [T]hey started telling me all the benefits to people in prison in the general public. They can get a college degree. They get their teeth fixed at no charge. They get all this medical coverage. I mean they get everything. I mean we provide them with the best . . . . I'm sitting here going, "Oh my God!" So, finally in conclusion after we talked about all of that and what could and couldn't happen and how strong we felt their case was, I just in my heart said, " You know what? This guy doesn't need to be walking on this earth anymore." And that's when I told them, "You go for the death penalty. Can you get it?" And they said, "We feel like we can."

Similarly, Time 1 Minnesotans relayed that the prosecution was supportive, informative, and hard working. In speaking about one of the prosecutors, a participant said,

> She was very nice. She explained everything to us, what we don't know about. My sister doesn't understand that much English

---

participant had extensive—but negative—contact with the prosecution team.

> and she understood everything they were saying . . . . [They] contacted me every time something happened or they were going to do something. They'd ask me what we want and we'd always say we wanted the death penalty.

Overall, for Time 1, relationships between homicide survivors and prosecutorial team members in Minnesota seemed more formal and less personal than those experienced by survivors in Texas.

2. Sanction Input

Input from homicide survivors into the decision about the murderer's punishment was rated from none (1) to a lot (3). With one exception, participants in both states indicated that they generally had no input (Texans during Time 1 reported they had a lot (60%) or some (40%) input). In one instance, the father of a son who was killed pushed on the district attorney saying, "Don't disrespect my son. This guy needs to die," which resulted in his finding "a law [that] could be used and followed. And they did it." Input, however, did not necessarily mean that participants got what they wanted. A participant whose son had killed members of the family expressed that "[w]e argued vehemently and effectively or at least passionately and I think argued well that [the death penalty] wasn't necessary in this case and nobody wanted it. And to my knowledge there has never been a case where both sides of the victims' [family] asked the DA not to pursue the death penalty and yet they did."

3. Input Satisfaction

Regardless of whether they had input into the decision making, most of the participants, in both states for all time periods, felt satisfied with the process. In Texas, some participants pointed out that they were content that the decision was not in their hands: "I got the justice that I so desired. I really did. I felt guilty about that too for a while, but then I wasn't the jury. I did not make the decision. The decision just happened to fall where I wanted it to fall." They might have felt relieved when the murderer got the death penalty, but they did not want to live with the responsibility for deciding someone's life or death. Moreover, some Texans felt their input was not relevant because if the murderer met the prerequisites for the death penalty, he'd likely end up on death row anyway: "I just assumed he'd get the death penalty because he'd killed two people."

In Minnesota, participants also seemed to feel that LWOP, or a life sentence with no eligibility for parole for at least thirty years, was the

best a homicide survivor could get. In most instances, participants felt that their preference for the death penalty carried no weight and they best accept what was possible as "good enough." A mother whose daughter was killed by her former husband said,

> At the time if we'd had the death sentence, I probably would have been very happy that he would have gotten it. But like I say, I don't know. That wouldn't have solved anything. I guess just knowing he's in jail for life. He can't get out. He can't enjoy the privilege of saying when he's gonna go to lunch or whatever. I guess that's [it]. I accept it. I don't fight against it.

Many Minnesotans, however, were confused by the sentence and expressed consternation at their discovery that "life" with parole is sometimes merely thirty years. "I was surprised to find out he'd be eligible for parole in twenty-seven years. I thought he'd just get life without the possibility of parole. I didn't think it was quite right." Along with expressing either their personal preference for the death penalty or not understanding the sentencing rules, Minnesotans generally expressed satisfaction that the murderer had gotten the maximum sentence: "I left [the courtroom] with a sense of there really is justice as much as can be given in Minnesota. It felt like as much justice as Minnesota was going to allow had been accomplished."

4. Defense Attorney's Behavior

Participants' reports of defense attorneys' behavior during the trial ranged from negative (1) to positive (3). Most homicide survivors in both states and for all time periods had either negative or neutral reactions. In comparing the defense attorneys for the two offenders who took her son's life, a mother shared the criteria she used for seeing one negatively and the other neutrally:

> The [first] attorney made me very angry. I can remember thinking he had a big round head. I wanted to take it off and roll it down a bowling alley. And at the end [of the trial] he just did all this, "Oh, he's coming to Jesus thing." I found him very upsetting . . . . The other seemed like he was quite a decent [man]. He did his job but he did it respectfully. He didn't try to tear [my son's] character down. And he said after he came up [to me], . . . "He's guilty." He believed [the murderer] was scum and guilty. . . . I guess I feel he was doing his job, but I don't feel the kind of animosity towards him that I do with the other one. Because he didn't play dirty.

Time 3 Texans were a slight exception to the general negative trend. Except for one participant, homicide survivors made positive comments about the defense of the murderer. Comments focused on the competence of the defense attorneys and their sense of fairness: "They were doing their best for a reason—because they wanted to be sure no mistakes were made."

5. Contact with the Defense Attorney

Contact with the defense attorney or others associated with the defense attorney was either negative (1) or positive (3); no contact was rated as neutral (2). As depicted in Figure 2, participants in Minnesota rarely had interaction with defense attorneys. Those that did engage with the defense felt positively about their brief interaction: "Afterwards she talked to us and said, 'I'm really sorry.'" In response, the homicide survivor praised her saying, "You know what. You really did a great job for your client. You didn't win, but you did everything you had to do." Similar encounters happened in Texas but more frequently. Indeed, 32% of the sample had positive contact with the defense. Contact included asking a homicide survivor if a defense team member could send her a condolence card, acknowledging the homicide survivor every day in court, apologizing for representing the defendant because "he had to be represented by the state," or making comments that indicated an empathic identification with the participant. Contact sometimes happened between a participant and a member of the defense attorney's family. In one instance, the defense attorney and his wife came to the cemetery. The wife followed the homicide survivor into the bathroom at the trial to express her sorrow for the loss, and after the trial was over, told the survivor she was in their prayers. In another instance, the defense attorney's parents sat with the participant's parents during the trial.

Participants attached various meanings to these contacts. Sometimes the outreach was taken as an expression of kindness:

> I didn't feel, "Oh, they're all against me." It felt nice. I think she felt sympathy. She was African-American as was the defendant and I'm different.[202] I think she knew that I was in pain. . . . I think it helped me that saying hello to me. Just to feel, "Okay. Wait a minute. She knows who I am. She knows there is a victim involved."

202. Referring to the fact that she is not being a person of color.

In some instances, interactions were interpreted as telling the homicide survivor that the defense was really on the participant's side: "I think it says, 'We're on your side.' I think that is basically what is said, 'I'm on your side but I gotta give this man a defense.'" Participants also construed defense attorneys' comments to be indicators of their humanity. A participant whose baby had been killed shared that the

> [d]efense said it was hard for him to defend [the murderer] because he saw my baby's high chair in the courtroom and it made him think about his baby. . . . It showed he had feelings and emotions too.. . . He's thinking, "What if the same thing happened to one of [my] kids?"

Participants who had positive contact with defense-related individuals tended to make neutral or even positive comments about their performance. One homicide survivor remarked that "[w]hen they came up and apologized, I felt a little better, and felt like saying 'Well, you know they're just doing their job and this is what they have to do.'" Another person commented that "[s]he did a very good job defending him and really did try to give him life instead of the death penalty."

6. VIS/Testimony

The majority of participants in both states gave victim-impact testimony or made statements after sentencing was completed. Some of the participants from Time 4 who did not give statements indicated that the practice of making them was not standardized at the time their offender's case was adjudicated. Others could not remember if they made statements or not. Several participants decided not to make statements because of their feelings, at the time, toward the murderer. One person said, "I didn't want to waste my breath on him." Another person claimed, "It wouldn't have fazed him. I didn't want to give him any more of me."

7. Satisfaction with Giving VIS

Participants' levels of satisfaction with giving VIS ranged from unsatisfied (1) to satisfied (3). If participants reported that they gave their VIS without emotion, they were rated as neutral (2). Most homicide survivors in Minnesota and Texas were satisfied with what they said or how they said it. In relating what happened, most participants would comment on preparing the statement, what they said, how the murderer responded, how they felt giving the VIS, and what they felt having done it. Writing the statement often took time and, for

some, was as important as giving it in court. One participant remarked, "Over the year [before the trial] I must have wrote that thing ten times and tore it up and started over. It's like, 'Oh, I forgot this part' or 'Oh, I forgot that part.'" Many homicide survivors were surprised at the intensity of their emotions when they gave their statement: "I broke down. I couldn't stop it. I found myself shouting and he [the murderer] tried to stare me down. I had my speech all ready and I never got to say a word of it because it left my mind completely." Participants took close note of how the murderer responded. Often the murderer seemed indifferent to them: "He would not look at me which meant he just didn't care what he did, emotionless. Nothing that I said reached him." When the murderer did respond, participants felt they had made an impact: "[It had] a huge impact cause I made him cry. It gave me hope that somehow he learned something from what happened . . . ." Some, however, reminded themselves that having an impact did not necessarily mean much: "I got to give my VIS to him and he was shaking and he was crying and I was like, 'Whatever.'"

8. Trial Disruption by Murderer

Participants in both states reported that the murderers' behaviors in court were upsetting to them.[203] Sometimes the behaviors were nonverbal but held significance in the eyes of the family member:

> He looked at me when he got upset in court one day and they ushered him out. He glared at me and his eyes were so black it was like looking into the pits of hell. I've never seen anybody's eyes look like that, but I didn't waver and then they moved me one row back.

Other times, what the murderer said or did was more explicit. A mother talked about the lasting impact of the murderer's response after receiving the death sentence:

> [T]hey brought him down the aisle . . . of course, I was crying. My mother was crying. Everybody else was crying. Because thank God. [H]e's going to be put behind bars. Well he decides to yell out. "This ain't over yet." [T]hat boy was looking at us

203. In Texas, 39% (n = 7) of participants reported disruption by the murderer. In Minnesota, 46% (n = 7) reported disruption. Percentages are based on total cases that provided information about behaviors of the murderer, the murderer's family during the trial, or both. This information was not volunteered during two of the interviews with participants in Texas and seven cases in Minnesota.

> like the devil himself. "It's not over yet. It's not over yet." He just kept telling us, "this is not over yet." We took it like he wasn't finished with us, like a threat.

The mother later explained that she fears for her son's life because her husband's and the murderer's families are from the same small town and know each other: "I hear those words over and over and over." For some participants, even the murderer's neutral appearance was disturbing:

> He behaved really good in court. He don't say a word . . . . He was just being innocent like nothing happened . . . . That affected us because we know in his mind, he's the one guilty of what he did and still sitting there pretending like nothing happened.

9. Contact with the Murderer's Family

Interactions with the murderer's family at the trial were rated from negative (1) to positive (3). A neutral response (2) meant that the family was referenced but only descriptively and that the participant did not indicate that their presence or absence made any difference to their emotional well-being. For example, "[The murderer] had nobody there. He had some little bimbo that showed up, not his wife. And sat in the back row with leather and chains and she was there a couple of days. But there was never anybody else."

Negative interactions were initiated by both the homicide survivor participants and their family members as well as members of the murderer's family. Negative interactions directed at participants included the murderer's family making comments about needing to "get over it" or "needing to forgive the murderer"; cussing at homicide survivors in the elevator at the courthouse; making threatening comments and stalking homicide survivors outside the courthouse; giving them the finger in the courtroom; etc. Similarly, some family members of the person who had been murdered also had difficulty containing their feelings and reactions. A participant stared so relentlessly at the murderer that the murderer asked his attorney to intervene. In another instance, a participant jumped at the murderer as he passed by him. A father described how a bailiff stopped him from acting on his impulse to kill the murderer:

> I looked around and saw where the bailiffs were. There wasn't one who could stop me before I got there. Just smash his face into that table, pull him up, and rip his Adam's apple out. And I

> looked around and this bailiff looked at me . . . and shook his head. And he said at the break, "I watched you light up. Your body tensed. Your eyes got real wide open . . . I saw your muscles just start. I know what you were thinking and I would have had to shoot ya. I don't think I could have stopped you from getting to him."

Interactions between the participant and murderer's families were not always hostile. A participant described the significance of the connection made between her daughter and the sister of the murderer:

> My daughter had told me, "Mom I went to school with his sister." We were out in the hallway (outside the courtroom) and his sister told me. She said, "Ms. Bullingham,[204] I am so sorry." I said, "Baby it's not your fault. You're not accountable for him . . . it's him." It made a lot of difference. It meant a lot to me that she apologized and that she and my daughter were close at the end, that she and my daughter were hugging each other, together.

Positive contacts between family members of the homicide victim and the murderer's family were usually initiated by the victim's family:

> I walked up to his father [as] we were leaving and I said, "I'm really sorry for you and your family cause I know this has got to be devastating." And he looked at me and I could tell by the way he was looking at me that he wanted to tell me he was sorry. But he was afraid to, because it would be like he was owning up to it. But I wanted him to know that I was sorry for him. I told him, "I know what you're going through." Because he's a parent. I know what I've gone through with my daughter.

These kinds of exchanges were more frequent in Texas and reported by slightly over 20% ($n = 4$) of participants. Information about interactions with the murderer's family during the trial was not given by 40% ($n = 8$) of Minnesotans. Some of the murders, however, were familial homicides, and negative interaction between these family members occurred in other contexts.

10. Satisfaction with the Criminal Justice System

There were 65% of Minnesotans ($n = 13$) who were very satisfied or satisfied with the criminal justice system compared to 42% of Texans

204. Names have been replaced by pseudonyms and any identifying references to places have been redacted.

(n = 8). Moreover, as indicated in Figure 3, 53% of Texans were very dissatisfied, dissatisfied, or somewhat satisfied compared to only 20% of Minnesotans. Higher levels of satisfaction were associated with the outcome of the case or the effort people in the system expended in bringing the murderer to justice. A participant concluded, for example, "Based off what laws we have and the limitations they did everything they could. They did a fabulous job." Another participant echoed the same sentiment: "We were happy with it because we figure we got an outcome. He didn't get away with it. . . . I've got probably more faith in the justice system. I guess because of the way we were treated and the lengths they went, to prove [the case]."

In Texas, lower levels of satisfaction were associated with general comments about the convictions of innocent people and quality of performance. A woman explained, for example, "[H]ere lately there have been cases especially here in Monteray where people have been exonerated after years of being penalized. How could that have happened? Somebody didn't do their job." Other participants based their assessments on their direct experience: "The judge during the trial is fixing to go on vacation after the trial. He's flipping through a freaking magazine for his vacation. You could see him doing it. So, I'm still at the point where I ain't got no faith in the system at all." Some participants included the police and detectives in making their evaluations. A daughter commented on the fact that apprehending the murderer was due to involvement from the local city's Pakistani community:

> The Pakistani community really came forward and put pressure on the city. They had a rally downtown. They asked us to come. We came, we went. They caught the guy that same week . . . . The politics helped find the criminal and I'm happy it came in one year. But, I'm unhappy that it's still dragging, that he gets so much appeal process.

In Minnesota, lower levels of satisfaction were clustered in Time 4 and were associated with disappointment in the case outcome or interactions with the police. In one instance, for example, the participant wanted the death penalty. This participant was upset because the murderer's wife was alleged to be involved but was never charged. This participant also worried about the murderer's release after his thirty-year sentence. Because the participant feared retribution, she relentlessly pondered what she might do to delay the murderer's parole. In another instance, a father was irate because right

after he was allowed back into his home following his daughter's murder, an argument with the next-door neighbor ensued. The police, based on the neighbor's report, came in droves to his home, handcuffed him, and threw him on the ground: "They supported this moron next door to me and I hated the . . . police. I still do. That's one of the reasons I left from [there]. Couldn't stand the place."

11. Category 1 Summary

Event themes specific to the impact of the UPS on participants during the conviction process in the criminal justice system point to key players in the minds and memories of participants—criminal justice representatives, the defense attorney, the murderer and his family, and the homicide survivor's position and power. Findings indicate little difference between Texas and Minnesota participants, except at particular points in time including: extensive engagement with the prosecutorial team in Texas during Time 1; positive reactions to the defense attorney in Texas during Time 3; more instances of positive contact in Texas between participants with defense team members or their families; and more instances of positive contact in Texas between participants and members of the murderer's family. Although the numbers are small, it appears that there may be some subtle differences between the two states in the quality of the interaction between participants and key players during the conviction process. For example, Texas participants' descriptions of engagement with the prosecutorial team during Time 1 is marked by less rigid boundaries; stronger and more frequent expression by the prosecutorial team of personal feelings and attitudes toward the murderer, what he did, and what he deserves; and more explicit commitment to the homicide survivor and personal involvement even to the point of friendship. By contrast, descriptions by Minnesota participants of their interactions with the prosecutorial team suggest that team members, though sensitive and empathic, are less revealing of their private responses and have limited personal engagement with homicide survivors, thereby making most visible behaviors reflective of their official role.

A similar trend is evident in the quality of the interactions between participants and the defense team. In Texas, nearly 32% of the participants reported that the defense team members or relatives of defense team members felt compelled to express their condolences to homicide survivors for their loss or lend them support during the trial. These exchanges went beyond what was expected; were evaluated as authentic by participants; and clearly helped survivors to feel

acknowledged, valued, and appreciated. Texas participants' receptivity to these interactions may be due to their perceptions of the defense attorney's ambiguous commitment to representing the murderer. That ambiguity may relate to the fact that Texas, in contrast to Minnesota and many other states, depends on a rotation system of court appointed defense attorneys in capital cases—pulling from attorneys who arguably have limited experience in capital murder defenses.[205] Based on that reality, Texas participants tended to reason that the outreach they experienced was actually a way for the defense to convey that their empathy was with the homicide survivor and that representing the murderer was only a job. In contrast, Minnesota participants rarely had interaction or positive engagement with the defense team,[206] who are not on a rotation system. In that vacuum, the feelings participants expressed toward the defense were based on the conversations they had with them in their minds and consisted primarily of negative reactions about how the defense maligned the victim, kept participants out of the trial courtroom, among others.

These state-identified differences in engagement emerge again in some of the interactions between participants and members of the murderer's family. Although 33% of the participants in both states had negative contact with the murderer's family during the trial, the majority of Minnesotans made no reference to these individuals, which suggests they were not present physically at the trial or psychologically in the minds of participants. For Texans, the relationship with the murderer's family may be more evident as shown by the fact that 33% of them made neutral comments and 25% had empathic exchanges initiated by the participants themselves.

Together, these contrasts suggest a state-based differentiation in how participants experience some aspects of the conviction process and

---

205. *See* 2001 Tex. Gen. Laws 1800–01, 1803–07. Minnesota uses a well-established public defender system to represent defendants in capital cases. *See* 1981 Minn. Laws 1982.

206. The contrast between the two states in how defense attorneys or their family members engage with survivors might be explained by how much defense attorneys identify with their role, which is to represent the defendant. In Texas, many, if not most, defense attorneys are in private practice, serve the indigent on a rotation or "wheel" system, and are appointed by a judge. *See* 2001 Tex. Gen. Laws 1800–01, 1803. Under the Texas Fair Defense Act passed in 2001, defense attorneys' representations of the defendant in a capital case, though credible, may be somewhat "involuntary" and more of a service. *Id.* In Minnesota, defense attorneys are part of the public defender system. *See* 1981 Minn. Laws 1982. These attorneys may view their representation of the indigent as a "calling" rather than a job. Although speculative, this difference in professional identification could influence how a defense attorney perceives and interacts with victim-survivors in the courtroom.

in how they and other key players engage during that time. It is possible that in Texas the recognition some participants felt from the prosecution, the support they experienced from the defense team, and the compassion they expressed directly to members of the murderer's family reflect feeling a part of the system as well as empowered by the quality of attention they receive from people in authority. This sense of involvement and association with the system was also evident in the criticisms made by Texas participants about their criminal justice system. Rather than focus on their personal case outcome as the basis for their assessment, Texans critiqued the criminal justice system as if it were accountable to them as state citizens with decidedly vested interests given their status as homicide survivors.

B. Category 2: Impact of the UPS on the Postconviction Experience

After the initial trial and sentencing, survivors enter a no-man's land. They have no role other than to wait for the culmination of the legal proceedings and the enactment of the sentence, whether life imprisonment or execution. For many, the unknowing outcome of the murderer's continued existence is an ongoing reminder of the injustice they have to bear. Without finality, there is no resolution of the trauma. Though rarely acknowledged, this involuntary and subjectively created relationship is taken as real and survivors feel they know the murderer, whether or not they actually do. Survivors have scores of unanswered questions and actively fantasize about the murderer's life and feelings, or lack thereof. In Texas, survivors frequently rehearse the upcoming execution, debate whether or not they will attend, and consider what it will be like and whether the murderer will do or say something that tips the emotional scale.

Table 5 below shows the event themes for Category 2. Besides the emphasis on the appeals and how participants felt about the process, event themes include civil actions initiated during the postconviction period. As well, event themes focus on the relationship with the murderer and consist of participants' attitudes and desires for his suffering and remorse as well as their remaining questions. In Texas, this phase also includes the execution process.

1. Civil Actions

Many participants considered the possibility of civil suits to redress some of the injustices associated with the murder. Less than 5% of Texans, however, implemented such actions. As shown in Figure 4, the Minnesota sample was more active, particularly during Time 2 when

80% of participants brought lawsuits. Although most of the actions filed were for monies from insurance companies and contested estates or from wrongful death suits, the most substantive motivation was to right the wrongs participants had endured due to the loss of their loved ones.

Part of rebalancing the ledger of justice was to correct manifestations of unfairness that accompanied or were the consequence of the murder. A daughter whose father was ambushed and shot by a neighbor sued the murderer for his assets. She explained the injustice and her decision to take legal action saying:

> Why should he be able to take care of his kids now and we don't have our dad to help us? His kids love him now. And my dad didn't have a chance to help us do anything or be there for my son to take on vacation or do things with. So I always felt cheated. So, we sued him.

Sometimes survivors filed wrongful death suits against others who were responsible for the conditions that led to the murder. Survivors explained these suits as tools they could use to ensure inclusion of the significant players in their efforts to achieve a stronger sense of accountability and recompense for the injustice they and their loved ones had suffered. In one case, survivors sued a group home because of their failure to appropriately manage the violent behavior and whereabouts of the adolescent boy who killed their daughter after he broke curfew. In another case, after a domestic homicide, the parents (who were raising the children of their murdered daughter) filed suit against the Internal Revenue Service (IRS) because when the IRS agent was interviewing their daughter's ex-husband (regarding his fraudulent tax statements), the agent left the room briefly and left the case file open on the table. This blunder gave the husband the chance to look at the report and to see that his ex-wife had turned him in to the IRS. Shortly thereafter, he murdered her. Although the out-of-court settlement provided monies to pay for the children's college and dental work, the victim's mother talked about how this action shifted some emotional baggage associated with the injustice of her daughter's murder: "I felt vindicated, kind of, cause I felt it was their fault . . . I proved my point . . . and after that we could get on with our life."

Many, if not most, of the participants who brought legal actions described what happened and what they did about it with a greater sense of righteous anger than they expressed about going through the criminal trial. The intensity of the anger seemed related to their recognition that their loved one's death could have been prevented if

others had not made such grievous errors or had been more conscientious. It was also related to the fact that, on top of losing their loved one, survivors had to endure situations where the murderer, or others who were undeserving, gained while they lost.

2. The Appeals Process and Survivors' Reactions

The movement of a case through the appeals process was assigned a rating of stuck, moving, or completed. Figure 5 shows that, in Minnesota, 90% of twenty-one cases pled or had completed the appeals process. The remaining 10% were moving through the process unimpeded. Minnesotans' reactions to the process by case were rated as satisfied (48%), neutral (10%), or dissatisfied (10%). The rating of neutral was used if the appeals process was acknowledged but no emotional response was given. Information on reactions was not available for 33% of cases because the cases had pled out or participants made no reference to the appeals process itself.

For most participants, the murderer's automatic direct appeal to the Minnesota Supreme Court was concluded within two years after conviction and sentencing. Only one murderer received a second trial that reduced his sentence, which he is now appealing. In this case, the appeals process has lasted eight years. The survivor had a hard time reconciling the loss after having achieved the maximum sentence:

> The first time around . . . I left with a sense of there is justice as much as can be given in Minnesota . . . . The second trial completely tore that to shreds. I don't believe in it anymore. It's kind of like they gave us this and then they just kicked us in the gut and threw us off the curb.

All other cases were moving through or had completed the automatic appeals process without incident. With one exception, survivors whose case convictions and sentences were upheld by the Minnesota Supreme Court indicated satisfaction with the process. Indeed, most of the satisfied survivors expressed only mild apprehension over a possible change in the outcome. A mother whose daughter was killed reported,

> There's an automatic appeal on first-degree murder and . . . I worry about that. They did have a couple of minor things that they said were not handled properly, but not enough to overturn the verdict . . . the minor things they did bring up were things that I wouldn't have even thought of.

The relative insignificance of the appeal outcome is arguably manifest in the responses of half of the survivors during Time 3 and Time 4 who did

not even mention the appeals process.

A very different picture emerged in Texas, where the appeals process involves a number of different state and federal proceedings. During Time 1 and Time 2, 70% of cases were moving through the process unimpeded. However, one case was stuck because of the possibility that the murderer might be found mentally retarded and, therefore, ineligible for the death penalty.[207] The other two cases were rated as completed, based on the fact that one murderer elected to forgo his appeals and had been executed, and the other committed suicide in prison. During Time 3 and Time 4, all cases still in the appeals process ($n = 6$) were stuck because the murderer was appealing based either on the argument that he was mentally retarded or the contention that the murderer was a Mexican national and was tried in the U.S. without his being informed of his consular rights and without having notification to the Mexican consulate of his situation. The appeals for the remaining cases ($n = 3$) were completed and the murderers had been executed.

Differences in state reactions to the appeals process are shown in Figure 6a and Figure 6b. Texans' reactions to the appeals process were rated as follows: 11% were satisfied, 53% were worried, and 37% were nonapprehensive.[208] The two participants who were satisfied with the process had a shortened experience as noted above. Two participants were dissatisfied. In one of those situations, the participant's son had murdered family members, and the son was his only remaining relative. The survivor was hopeful that future appeals might be successful, but he was nevertheless dissatisfied with the sentence and outcome of the appeals already heard.

About a third of Texas participants were nonapprehensive about the appeals process. Those who were nonapprehensive during Time 1 and Time 2 considered the process to be moving smoothly through its various stages. Those who were nonapprehensive during Time 3 and Time 4 were participants in cases where the murderer had been executed, and they were describing the appeals process retrospectively:

> I wasn't worried if they were going to get out or anything like that. I was being informed . . . whenever an appeal came up . . . that they were going for this, but most likely they were going to

207. In *Atkins v. Virginia*, the Supreme Court held that the execution of mentally retarded criminals violated the Eighth Amendment's prohibition on cruel and unusual punishment. 536 U.S. 304, 321 (2002).

208. Percentages do not add up to 100% because of rounding.

> be denied. . . . And they were denied. Every one of them was denied.

Specifically, over half of Texas participants, however, were mildly to exceedingly worried about the future. In cases that were successfully proceeding without delay, participants voiced concerns that the offender might get off due to a finding of mental retardation, only having circumstantial evidence, or the possibility that someone other than the person convicted might actually have been the responsible party. Although these concerns had some validity, participants principally worried that the victory gained in obtaining the death penalty might be lost if certain circumstances invalidated their win.

In cases that were stuck, participants voiced extreme apprehension and fear about the unpredictability and possible outcome of the appeals process. Moreover, because the case was stuck, some participants had endured unbearable circumstances. For example, in a twelve-year-old case, a murderer received a stay of execution, which the family learned about as they were within an hour of arriving at the prison for the execution. The case has been suspended since 2006 because the judge in the most recent appeal has not rendered a judgment so that the case can move forward. The participant and his wife are elderly and desperate for a decision regardless of its direction:

> I don't think I'll live to see it. . . . I feel sure [the judge] is opposed to the death penalty. If I wrote him a letter, I'm afraid he'll say, "Well, I'm gonna show that fellow. I'll hold the case open longer." And he can do it and I can't do a thing about it . . . [a decision] would end it all. And that would be a blessing, just right there. Get it out of that court and get it on the way. If you want to say it goes back to life then so be it. Render that decision.

In another case, the lengthy appeals process plus the delay caused first by waiting for a hearing to determine the offender's mental status and now by the murderer's successful claim that he was not adequately represented by the psychologist and deserves yet another hearing has in some ways imprisoned the family. In this situation, a mother whose mother-in-law and young daughter were murdered had since had three children who knew nothing about their sister's death. The mother kept the three children close to her at all times, fearful that something might happen to them. Moreover, the mother never visited the community her husband was from because her husband knew the offender's family; consequently, she was fearful that the offender's family would seek

retribution once the murderer was executed. She was most concerned that with the new hearing there would be media coverage and her children might find out what happened:

> I have to protect my children. Because I don't want anybody at my doorstep, my school where my kids go . . . the media going to the schools, just to take a picture of my children. If anything happens the first thing we're gonna do is get the kids. We have to have them in one place. I feel like everybody is going to have to go into seclusion.

The mother went on to describe the intensity of her aggravation with the system:

> We haven't had a sense of justice. I feel like my life is on hold because it just hasn't been carried out . . . . When is it gonna be over? . . . [T]here are other murders that happened in 1995 that they have already been put to death. And ours is still lingering? Why aren't things moving on? Why is everything at a standstill? Why are we, cause my children don't even know. And I'm thinking, "How am I going to?"

As shown in Figure 6a, the majority of Texans who were worried about the appeals process were from Times 3 and 4, where cases were stuck in the appeals process. Participants' stories about their appeals varied little except that Time 4 Texans' stories seemed more despairing. Participants from both time periods tended to agonize over how long the process took and having limited to no communication about the legal proceedings. In some instances, they voiced fear and a reluctance to contact officials about the length of time or what was happening in the process. This ambivalence over knowing was accompanied by comments about not being sure what was believable or who to believe:

> Now it's just waiting. I get frustrated at that. In my mind there's a possibility he might be set free if they've lost the evidence. [Prosecutor] Joe Michales says, "Oh no, they won't do the whole trial. They do pieces." I don't trust him because they haven't told me the same story as the D.A.'s office.

Survivors were frustrated watching other cases go through the system that were not as old as theirs. They reassured themselves about the future in a variety of ways, including turning the outcome over to God or reminding others that if the murderer did not get the death penalty and ended up in the general inmate population, other inmates would undoubtedly torture or kill him.

3. Relationship with the Murderer

Although there are few direct encounters between participants and the person who killed their loved one, participants mentally engaged with the murderer to varying degrees. The range of engagement was rated as none, minimal, or more extensive. Conversations with oneself focused on the injustice of what the murderer did, questions about how the murderer could have done it, imaginings about the murderer's life in prison, memories of events during the trial, following what is posted on the murderer's web pages, etc. There were few differences between the states, except for the fact that 30% of Minnesotans had no actual or mental relationship with the murderer compared to 5% of Texans. No mental relationship refers to participant efforts that included conscious decisions not to think about the murderer, the lack of reference to the murderer by name or inability to remember the murderer's name, or commentary that suggested that the murderer was completely irrelevant to the survivor's life: "He's in Oak Park Heights. I rarely think about him. I just don't." Minnesotans with no relationship to the murderer were generally from Times 3 and 4.

In both Minnesota (45%) and Texas (47%), participants had more extensive direct or mental involvement because of some actual association with the murderer. This is due to the fact that the murder was a domestic fatality and there were enduring relationships between family members; new hearings where both the survivor and murderer were present; or ongoing community ties between the families of the murderer and the survivor. In Minnesota, some of these relationships involved actual meetings between the survivor and murderer in prison.

4. Attitude Toward the Murderer

In Texas, 79% of participants held negative attitudes toward the murderer, compared to 57% of participants in Minnesota. Although these attitudes occurred in every time period, they were most evident during Time 2. Although negative attitudes usually referred to participants' feelings of anger, rage, and vengeance, participants' comments also indicated that many survivors were struggling to resolve these emotions or move beyond them. The tenor of negative feelings, however, remained constant even when individuals and groups were compared across the four time periods.

In some instances, participants focused on the intensity of their dislike and hatred of the murderer: "I hate those guys beyond belief. And even now when I see boys that kind of look like them, I want to go

up and punch them. And I can't help that. I just feel so much rage inside. Because of what they did to my brother." Participants also expressed their feelings by noting that the murderer deserved the life he was living now. When describing the prison conditions, a survivor noted,

> [H]e's living like a freaking animal, like he ought to be. He's not being coddled. When I said something [to a guard] about his parents being able to hug him, he says, "His parents will never be able to touch him until we kill him." And that's the way [the guard] put it. And I don't mind telling you that made me feel good. Because I can't touch my son. And the last time I touched my son, he's dead.

Negative attitudes seemed to increase when participants reminded themselves that prison conditions were not as bad as they believed should be for the murderer. A survivor from another country commented,

> He's living a happy life in there. Because we were told that he was going to be in a room, have TV, a toilet, everything in the room . . . . [In our country] he don't have to have food every day. Like one meal a day, don't even have bed to sleep. Two, three times in the night they give you a bucket of water so you are in the cold all the time. Over here they have everything, comfort.

Participants got some satisfaction recounting stories about what happened to the murderer in prison: "When he was stabbed by the other prisoners, I felt good because I thought that they were doing it for us because of what he had done to our baby. I felt good and I'm not going to deny that. That was justice." Besides revenge, however, participants struggled with their negative reactions in an effort to find resolution or peace. A mother described wrestling with conflicting reactions to the murderer:

> The last time I saw him he just looked like a normal person. And I didn't feel like when I saw him at the trial [where] I just saw the devil . . . taking that picture away from my mind, I probably could have said, "Maybe I could forgive him." But then I see another vision. I see the paper. I see [other things]. There's no way. I can't, I cannot forgive. I will not forgive because he took everything, everything that ever meant anything to me.

Not all participants had such volatile reactions. There were 38% of Minnesotans and 21% of Texans that had neutral or even positive attitudes toward the murderer. After learning that the murderer could not sleep because he was having nightmares that her deceased father was sitting at the edge of his bed watching him, a daughter remarked,

> There is something [in that story] that humanized [the murderer] in a way nothing else had. . . . It means my Dad has moved on. My Dad always tried to pull the best out of people. He's trying to pull the best out of [the murderer] at this point. [The murderer] hasn't got a lot of life left. He's an old man. I can see my Dad reaching. . . . [So now] it was more about [the murderer] as a person than as a perpetrator.

5. The Murderer's Suffering and Remorse

Interspersed with survivors' attitudes toward the murderer were comments about their desires that the murderer suffer and that the murderer feel remorse for what he had done. The concept of suffering for the pain the murderer has inflicted on others, or feeling remorse for that pain, is likely related to participants' efforts to find some way to resolve the injustice either through the murderer's suffering as the victim did or through the murderer's recognition, deep sorrow, and torment associated with having to forever bear the responsibility for taking life away from another person.

Approximately half of the participants in both states indicated a desire that the murderer suffer profoundly for what he or she had done. In Texas, 47% of survivors made statements like: "It makes me feel good that he is suffering, I don't want to be the only one suffering." They also felt that suffering was a way to help the murderer realize what he had done: "I just want him to linger on there until it's his time. That way he can have a lot of time to think about it." For some Texans, suffering indicated that the murderer was, in fact, being punished. A survivor compared a murderer's current suffering to his being executed:

> The way they do it now, they just put them to sleep. That ain't cruel to me . . . he's getting a better death than he gave my daughter . . . . I've been told that he don't like being [at the prison] where he's at. He's being punished right where he's at now.

In Minnesota, 50% of survivors made similar comments. A survivor whose little sister was raped and murdered offered additional insight by invoking a racial stereotype as part of her fantasy about the murderer's

suffering and how it could help even the score: "Some big black dude would find him and use him as a little girl toy. That would give me a sense of delight because he could suffer the way she had to suffer."

As depicted in Figure 7, the states showed some difference in the percentage of participants who expressed a need to know if the murderer was remorseful for what he or she had done. In Texas, 32% of survivors indicated that the murderer's remorse was important to their healing, compared to 50% of survivors in Minnesota. Moreover, none of the Texas participants in Time 1 made reference to the murderer's remorse or their need for it.

For survivors, the concept of remorse had a number of dimensions. For example, some survivors felt strongly that even if the murderer was remorseful, they either would not believe it or it would make no difference because the opportunity for it mattering passed long ago: "It would do nothing for me whatsoever . . . . I would doubt it was sincere. Because I heard about his behavior in jail. How he bragged about [what he did]." Other participants felt that they might feel differently toward the murderer if he was truly remorseful because being remorseful would mean that the murderer had learned something or had realized he did wrong, or it might even mean that what he did was not intentional. Some participants were interested in doing a face-to-face dialogue in prison with the murderer. However, they were waiting because an apology or sense of remorse was a prerequisite. A woman whose father was killed by his friend explained: "I'm wanting to meet with him and I'm hoping and I hadn't even said this out loud, that he would have some remorse." Another participant decided to meet with the murderer after he had expressed some remorse in his testimony against a codefendant:

> I guess we want to talk to him to see if what we believe is remorse is really remorse. Is he really feeling this? . . . You know people say you forgive somebody. I know for a fact I never will . . . . He definitely needs to be responsible and acknowledge his part in what happened. I guess I want that. And I think if he does that, if they let him out well . . . there's less chance that he's going to land back in some prison again. That's what I hope.

Besides seeing the murderer differently, some participants expressed that the murderer's remorse could aid their own healing:

> Knowing that he has remorse could be different . . . that the person actually felt remorse would get to a next level. You're

> never going to have complete closure, but it would be a step that would give you back a little of the hate that's there. I've got all this hate and I don't want to hate people. I'm not that way, but I'll never forgive him. I'll probably always dislike but I'd like to get rid of some of that [hate].

6. Opinion About the Ultimate Penal Sanction

Participants' attitudes about the UPS centered on the issue of time, regardless of their state affiliation. Texans were principally concerned with the amount of time it took to get from being sentenced to death to when the murderer would be executed. Minnesotans were principally concerned that the concept of "life without parole" was confusing, and in many cases, meant only thirty years before the murderer would be eligible for parole.

As Figure 8 shows, in Texas, 37% of participants felt positive about the murderer receiving the death penalty. Most of these survivors, for various reasons, were okay with the length of time it took. A survivor, for example, calculated that the murderer's execution and her plan to witness it would likely happen when her children were old enough to leave with a housekeeper: "It's much better than if we went a year ago even or two years ago or . . . when I was pregnant or just having babies and all that. So whenever it's time to go to hell is when he's gonna go to hell." Others felt that the murderer's lengthy suffering prior to being executed was an important part of the death penalty punishment:

> I don't want it to be an immediate death for him. I'd like him to at least be on death row for at least five to ten years and then . . . stay in solitary confinement all the time, no interaction with people whatsoever because he's the type of person that flourishes in prison.

In two instances where the murderer had already been executed and survivors had a positive response, neither mentioned difficulties with the prolonged wait. A participant shared that "we could start working on putting our life back together and trying to figure out what's normal."

An additional 37% were more ambivalent or neutral about the death penalty, in part, because of the time factor: "[The prosecutor] told us they changed all those rules and now it only took eight years to get to the execution and the appeals went real fast and all that. And here fourteen years later it's sitting." A survivor described his feelings after waiting seventeen years for the murderer's death:

> I'm just right on the border. I think it's what he deserves. I

> think it's a bad thing but I don't think it's justice if he doesn't get executed. So it's almost as though I really don't care but I know it's gotta be done. It really has to be done.

Only 11% of survivors were negative about the death penalty. In one instance, the participant who had witnessed the execution was very disappointed by the results:

> I guess I was looking for some kind of pain, not so much pain. I was looking for him to at least turn around and say, "Hey, I'm sorry I killed your [older] brother. I don't know who he was but I'm sorry this happened." I think I would have accepted that, just that. But, he didn't even say that. He didn't even look at us . . . . Not a word, nothing. I didn't see any justice in it. My [youngest] brother was there . . . as well and we were all looking at each other. What? Are you kidding me? That's it?

In Minnesota, 71% of participants felt positive about the sentence the murderer received, often because it was the most he could get. Some of the participants' reactions were based on the fact that survivors were against the death penalty or the murderer actually received a full LWOP sentence. Others preferred a lifetime of suffering over death: "Rather him suffer than take the easy way out with the lethal injection." Although many had concerns about the length of the sentence or confusion about the meaning of life without parole, they seemed to find ways to reduce their concerns. For example, a survivor shared how little apprehension she had about the future because of the unpredictability of the murderer's mental state, the parole board's discretionary power, and the offender's age:

> In Minnesota after thirty years you can get paroled . . . . There was an arrangement made. They wanted to put him in a mental hospital first until he's healthy. *If* he gets well enough, he will go to prison . . . you can have probation in thirty years, *if* the probation board agrees to that. He will be sixty years old then.[209]

Another survivor described her reasoning, which enabled her to accept the reality in Minnesota:

> I kind of questioned it at first because I didn't know what they meant by life, how many years that actually is . . . you don't have another option. There's no other option that would be better because you don't have another option. You've either got A or

209. Emphasis has been added.

> B and that's all you've got, so you make B be okay. So, that's the best I'm gonna get and I'm thinking, "Well, at least he's in there."

No one was neutral in Minnesota about the sanction. However, 29% of participants were negative about the sentencing outcome. For example, one participant explained:

> He'll [the murderer] be forty-nine when he gets out. When you're forty-nine nowadays that's young. . . . This boy has his whole life ahead of him and he just took a life. And every day, there's not a moment. I wake up, it's the first thing I think about and going to bed, it's the last thing I think about. It angers me beyond belief.

For some, the lack of death as an option was irresolvable: "I'd just as soon he was wiped off the face of the earth and that's an honest feeling. Justice, justice was not done in my estimation."

7. Execution Completed

Executions have been carried out in 26% of cases ($n = 4$).[210] In addition to four executions, a murderer died because he committed suicide in prison. In two of the execution cases, the murderers forfeited their appeals and were executed within four and fourteen years, respectively. The other two cases took five and ten years, respectively. Two of the survivors felt that the murderer's death was a positive experience because they were then able to reclaim their lives. A mother whose daughter had been killed maintained,

> It took a long time for us to, for me, to get back on track where I should be. And the execution, it just helped me to know that okay now, he's gone now. He's not going to get out there and hurt somebody else and just start focusing on healing.

A grandmother whose five-year-old granddaughter was raped and murdered felt that the execution had a profound effect on her and the rest of the family:

> I felt like it was over. It was actually over. He could not hurt anyone else . . . . I would have nightmares that he had escaped. I would wake up just petrified . . . . When they said that he was dead, the dreams stopped. My son (the victim's father) quit drinking. He does not have one drink. And he is doing so good.

---

210. *See* Table 5.

> I see 100% turnaround in him. I'm thankful that they did execute him, because my son's at peace now.

The three other survivors had different responses. In the case where the murderer committed suicide, the participant felt somewhat cheated because she had fantasized about possibly meeting with him in prison to find out her husband's last words: "I would have loved to have known what my husband's last words were or his last thoughts. But, I'll never get that." In another case, the participant indicated she had a "neutral" response to the murderer's death:

> It doesn't bring closure because even though the person is executed even still to this day, we don't know why he did it. On the tape [he made] he said some reasons why he did it but [these] could just be bologna. To really just tell you the truth like for me I don't really have closure.

In the third case, the survivor had a negative reaction that increased his distress because the murderer, at the execution, was humorous about it:

> His remarks were, "What is everybody doing here? What's the big deal?" And then he says, "Where is the stunt double when you need one?" . . . He couldn't care less even at the last moment . . . he got out easy. Cause all he did was lay there, relaxed, joked. His last words were that and he just took a deep breath and he stopped. Did he suffer? No, he didn't feel anything. He went to sleep. It's unfair . . . . It was like a slap in the face. I don't know, I guess all those events even with the execution just . . . blocked my feelings more.

8. Execution Witnessing

In those cases where the murderer had already been executed or otherwise died, all but one survivor witnessed the execution.[211] Of the fourteen remaining cases, 64% intended to witness the execution, and 14% did not so intend. Information on the intent to witness was not available for 21% of the participants. As shown in Figure 9, participants differed somewhat by time period. Survivors from Time 1 said little about attending the execution, and only two of them volunteered that they would go.

Survivors from Time 2 actively rehearsed what it would be like to go to the execution. Although one of them did not intend to go, she

211. *See* Table 5.

planned "for [the family] to get together and wait till that time and just be glad that it's over and then we can say our true feelings. That's what I plan." Another participant hoped that the murderer would apologize:

> I still think that maybe when I see him for the execution he'll turn around and say, "I'm sorry I did it." At least he's remorseful or say something that my mom said or say something to us. "I realize now what I did was wrong." Something. I just want him to say something to me.

Excitement was apparent for a participant who had already driven hundreds of miles to the prison to preview where she thought the execution would take place:

> I can't even imagine how bizarre it's gonna be and surreal. And so I'm going to go there and I'm going to . . . have a couple of friends with me . . . . And my old trainer wants to go that used to train me . . . and maybe the detective that did my assault deal.

Survivors from Time 3 planned to attend but did not expect it would make much difference. A participant noted that

> The best thing about it I guess is just to be there to look him in the eye. . . . The actual execution to me is really so insignificant. Viewing is not . . . I know people fought for it, so by no means do I ever want to make it seem like it's not a big issue because for some people it probably is. Viewing the execution is not a big deal for me. I could just sit outside and just know that he's dead.

A father shared that he had already gone to the execution once only to have it called off. It was no longer an active issue for him. A mother originally planned not to go, but after thirteen years, she changed her mind. She explained to her husband, "I need to see it through. I've done all this. I've gone through all this. I need to see it through. And I don't want to but it's something that is gonna finish it."

Survivors from Time 4 also felt that the execution and attending it would not change much for them: "I won't be in there clapping or anything like that. I'll just be there. I'll just close the book on that and I'll come home. There won't be any jubilation like that or anything." Indeed, a mother who once had wanted to witness the execution to hear the murderer say he was sorry now said,

> I just don't want to be a party to that. I don't want to hear his last words anymore because they'd be meaningless to me now. Cause he's had all this time if he wanted to say, "I'm sorry." I don't want to see anybody killed. I've heard them say they

> gurgle. I don't want to hear any of that. I've had enough of them. I'm bleeding every day.

These sentiments were echoed by another participant who claimed, "I've already been too close to death. I don't want to go and watch somebody die. No . . . I don't feel like I'll get anything out of it. It might depress me."

9. Death Penalty Aim

For Texas participants, the purpose of carrying out the death sentence varied, but it included the need to bring an end to the criminal justice process and the murderer's existence in their lives, as well as the need to honor the victim through an outcome that resulted in the same ending for the murderer as the victim had involuntarily undergone. Information was not available for 26% of participants, and in one case, the survivor was adamantly against the use of the death penalty for his son.

Approximately 42% of participants felt that the aim of the death penalty for them was to finish the chapter in their lives that pertained specifically to the murderer and his punishment. Survivors described the relief they felt they would gain and how their lives would be different once the murderer was gone. A mother who has given birth to children since the ex-husband was sentenced noted that she would no longer have to keep their existence a secret for fear of what he might do to them or her even from prison:

> He'll get newspaper articles and he'll scratch out other people's names . . . and put my name or my friend's names or my mother's name. . . . He's written these stories about how he was forced into marriage with me and just these bizarre . . . he's still stalking me in his mind. It never stopped . . . I'll just be glad when we're not breathing the same air. Then I won't worry about putting a picture of my kids on Facebook . . . or worry about keeping it a secret that I have them.

Many participants expressed that they could move forward with their lives:

> It will give total peace of mind. It keeps me bitter. I have a lot of bitter thoughts. Sometimes I can cut them off and other times it just all comes up. That's why when he is no more . . . things are going to get better once we know this guy is no longer in the world.

There were 21% of Texans who felt that the murderer's death would

help satisfy the vow they made to their loved one, both as a pledge of their love and as their representative that their death was avenged. For some, fulfillment of the death sentence would help even the score. A father whose son died in his arms said, "I want that son of a bitch to die like I had to see my son die." For others, it would complete their obligation:

> I need to represent my mother through every step of this all the way to the end, regardless of what that is, if I'm still alive. I'm almost seventy years old. I'm in pretty good health. I anticipate being around when he gets his. And that's because I'm representing my mother. She would do that for me.

10. Remaining Questions

Participants in both states had unanswered questions about their loved one's murder. In Minnesota, 65% had things they wanted to know, and in Texas, 68% had remaining concerns. Those survivors who had no questions either had received answers because of meeting or corresponding with the murderer, or did not feel compelled to have answers.

Most survivors' questions had to do with various versions of "Why?" Some participants' questions were more rhetorical statements of disbelief than actual questions. For example, an aunt whose niece was killed by her (the niece's) husband proclaimed, "Why did he do what he did? Because she had everything [for him] in her house. She bought him a Caravan to go to work. Bought him a navigator so he could read the road and why did he have to do that?" Much of the time, participants' questions had to do with wanting to understand the murderer's mind or motive:

> I don't understand how somebody's state of mind can be such that they feel they have the right to take somebody else's life. That will never make sense to me. I don't get it. If [the murderer] had been crazy I might understand it better. But he's a rational human being with no mental illness on which to blame this. I don't get it.

Sometimes survivors' efforts to understand the mentality of the murderer transferred to others, like the defense attorney. A mother exclaimed, "I don't see how people can back up somebody like that. People actually have feelings for people like [the murderer] that are on death row. Why? Why?" In some instances, survivors' "why" questions focused on the particulars, almost as if getting exact

information would help explain the circumstances. A father posed the questions he would like to have asked the murderer:

> What made you do this? What was the trigger? Did [my daughter] do something? What was the thing that just made you go nuts? Or did you predetermine that you just wanted to kill her? We had two dogs. Where were the dogs, the pit bull and the cocker spaniel? Where were they?

In addition to having questions about the victim's last words or if the murderer had any remorse, participants' "why" questions also encompassed God and how God could have allowed the murder to happen: "I thought to myself gosh, why didn't you [God] intervene? Why didn't you come to help her?" Sometimes survivors provided their own answers: "I think to be perfectly honest and this may sound really stupid that the devil sent his advocates to take [my nephew] away and God took his soul because I think that's what the devil really wanted."

11. Category 2 Summary

The analysis of event themes specific to the impact of the UPS on participants during the postconviction process suggests important differences between the two states in dealing with the criminal justice system, some distinctions in response to the murderer, and some similarities in the questions that remain unanswered. Many of the findings have implications for participants and their sense of control over their lives.

The percentage of Minnesotans who filed civil suits after the murderer's conviction is noteworthy because, in comparison, only one Texas survivor planned to do so. Moreover, the majority of legal action occurred for participants in Time 2. The suits filed in Minnesota represented efforts by participants to redress injustices that emerged after the criminal proceedings were completed, including the personal appeals. It is assumed that this trend in participant-initiated civil litigation may reflect participants' efforts to gain additional control over the outcome of their loved one's death. The fact that civil litigation did not occur at the same level in Texas suggests that the experience of the criminal justice process may be different. Although speculative, it is possible that the criminal justice process in these cases, and others, continues to override civil considerations due to the ongoing appeals. Moreover, because the odds of winning a suit increase once the finding of guilt and the associated sentence are upheld, Minnesotans may feel more confident than Texans whose cases are still in process. Texans,

however, may feel less need to pursue other avenues for justice. Rather than feeling dropped because the process is finished, Texans may feel less isolation, experience a closer connection to the state, or perhaps have a stronger sense of control due to achieving a death sentence for the murderer.

The difference in the appeals process is particularly striking in terms of time, potential for delay, reversal of the verdict, and participants' responses. Whereas Minnesotans were finished with the process within two years after the conviction, Texans were waiting, in some cases, for over fifteen years. Moreover, Minnesotans indicated that there was almost no delay in the appeals process or reason for uncertainty about the outcome. In contrast, 37% of all Texas cases and 100% of cases still in appeals during Time 3 and Time 4 were stuck. Indeed, 10% of Minnesotans were dissatisfied with the appeals process in comparison to over 50% of Texans who were clearly worried that the gain they had attained in the death sentence might be undone by a new trial, resentencing, or a determination by the U.S. Supreme Court. Participants' apprehension about losing the control they thought they had over the murderer's sentence was significant and likely kept survivors caught and suspended with little sense of who was in charge, what laws and procedures prevailed, what impact new legal proceedings might have on their lives, and how long their waiting to know might last.

Although not necessarily tied to the appeals process, this difference between the states was replicated in certain trends. Texans had more active mental relationships with the murderer (only 5% of Texans have no relationship vs. 30% of Minnesotans). A larger percentage of Texans had negative responses to the murderer (79% vs. 57%). Texans placed lesser importance on remorse (32% vs. 50%). Texans had less positive opinions about the UPS (37% vs. 71%). It is possible, however, that the brevity of the appeals process in Minnesota might have lessened the ongoing centrality of the murderer in survivors' lives as well as the volatility of possible changes in the outcome of the original trial sentence. In reverse, the extensiveness of the appeals may have stymied participants' ability to remove the murderer from their thoughts, and impacted the potential for further anger against the murderer caused by feeling victimized by additional and, in some participants' minds, "unnecessary" legal processes. The reality may also have affected their hope for remorse, and perhaps swayed, for some, a less than desirable acceptance of the UPS as the state's maximum possible sentence.

A clear difference between the states was that Texans had the likelihood of execution and the option of witnessing the execution as

possible mechanisms for experiencing some sense of control. For survivors where the murderer's execution had already occurred, their experience vacillated from feeling they had regained control over their lives to feeling that the murderer's death made little difference to feeling that the execution created additional distress due to how the murderer behaved in the execution chamber. Time between murderers' deaths and the research interviews were six months, two years, three years, five years, and six years. It is possible that, with more time, these reactions would shift in direction.

The same variation was evident in participants' responses to witnessing the executions. Although 64% of survivors planned to attend the execution, survivors from Time 3 and Time 4 were uncertain about the impact of witnessing or the actuality of the murderer's death on their ability to get on with their lives. It is possible, therefore, that the opportunity to witness the murderer's death might not increase survivors' sense of control. That assumption, however, must be weighed against the fact that just having the option to make the decision for themselves, that is the option to witness the execution, provides an increased sense of control that would be reduced if that option were not available.

There were similarities between participants from both states in their desire for the murderer to suffer or to hear his or her remorse and answer questions that remain. At least half the participants from each state hoped that the murderer's life in prison was arduous and created suffering tantamount to what their loved one had experienced. This yearning suggested that if the murderer suffered at least his punishment would be impactful and, as such, provide participants with some measure of power over the murderer. Likewise, the hope for remorse may also be predicated on the belief that accepting responsibility for the murder would reduce participants' sense of continued victimization by the murderer and lessen their powerlessness because their plight would become more visible to the murderer.

The why questions asked by survivors showed no differences over time or between states. Regardless of the meaning behind the questions, the lack of answers continued to leave participants unknowing, which reinforces not having control. Participants who had answers or no longer needed to know conveyed finality about what they knew, as if there was no more to be done.

C. Category 3: Aftermath of Murder and the UPS on Survivors' Lives

The murder of a loved one wreaks havoc in survivors' lives. The

core injustice created by the unexpected, willful, and involuntary death of a loved one gets compounded by a host of additional wrongs that continue to emanate unpredictably from all sides. Survivors repeatedly re-experience their initial helplessness as they watch the fallout from the murder and, over the years, it takes away still more of their existence. Ironically, some of the life-altering change creates new growth adding heretofore-unrealized opportunities. In general, however, there are far-reaching consequences that vastly alter who survivors know themselves to be as well as how they function in the aftermath of their loss.

Table 6 shows the event themes for Category 3 that focused on the consequences of both the murder of a loved one and the UPS on participants and their families. Event themes consisted of injustices survivors endured besides the murder; negative fallout beyond the murder itself; positive consequences in survivors' lives; current physical reactions associated with the murder; psychological change.

1. Injustices Associated with the Criminal Justice System

In addition to the murder of their loved one, some participants felt they suffered additional injustice because of the criminal justice system. In Texas, 42% reported one or more instances where they did not feel well-served, for example, by police who missed the chance to apprehend the murderer before he killed the survivor's loved one, or by crime victim's assistance, which only paid a pittance for the rape counseling needed by the participant's daughters.

In Minnesota, 50% of survivors also experienced injustices associated with the criminal justice system. In one instance, a survivor who previously had celebrated getting a first-degree murder conviction with thirty years before parole sentence watched a jury settle on second-degree murder after the murderer was awarded a new trial: "We got a jury that didn't want to be there [in court] cause Christmas was coming. We found out after [the trial was over] they just wanted to go home so they kind of settled on second-degree." The lasting sting of injustice was also evident in a mother's comments about how her daughter was portrayed during the trial by the defense:

> I don't understand why we have to vilify the person that's dead. He was trying to make her out to be . . . . How do I put it, that she was promiscuous and things like that. We couldn't say that after they got married and she was pregnant, he was dating another woman. We couldn't say anything bad about him, but they could sure try to knock her down.

2. Injustices Not Associated with the Criminal Justice System

The sense of unfairness felt by participants also included injustices that were unrelated to the criminal justice system. In Texas, 21% of survivors described incidents that upset them greatly. A father relayed that his son, who was a housing inspector, was killed when he went to serve a ticket on a house that already had five different citations. The father discovered that no one had followed up on the citations because the city manager was afraid of the current owner: "It didn't matter that my son was dead at all. My son dies for nothing. They can't even finish a $50.00 ticket . . . ." In another instance, a woman felt blamed by her family for the murder of her brother because she had asked him to look in on her children while she was at work:

> I feel like they blamed me a lot because he died, because he was killed, because I worked and I asked him to come watch the kids because I was always having to ask somebody to babysit. If I had been able to handle my business he wouldn't have died.

In Minnesota, 50% of participants shared similar injustices. A brother whose sister had been killed by her husband was incensed that his seventy-year-old mother got nothing from the estate because the murderer's family claimed it all. Similarly, the grandparents of a young woman whose mother was murdered spent her social security allotment on themselves:

> [My grandparents] claimed I was living with them. The $50,000 was meant to supplement. You don't have any parents left. You're an orphan essentially. And that money is to help try to fill the void of what they could have done for you. And it's all gone and I couldn't tell you where it is and they'll never fess up to it.

The accumulation of additional injustices—whether associated with the criminal justice system or not—compounded the central injustice, which was the murder of a loved one, and tended to intensify the sense of powerlessness and anger that accompanied the murder.

3. Negative Consequences

Participants in both Texas and Minnesota reported numerous instances of negative fallout on themselves and family members from the murder or experiences associated with the murder. In Texas, 26% made no reference to negative results, but the remaining participants indicated destructive impact of the events on themselves (42%), family

members (26%), or both (5%). In Minnesota, 35% made no reference to negative results, but the remaining participants indicated destructive impact of the events on themselves (10%), family members (40%), or both (15%).

Fallout from the murder included both psychological disasters, such as suicides and drug addictions, and changes in life circumstances, such as fighting for custody of children, rifts between family members, school problems, lack of financial resources, etc. These consequences had reshaped participants' lives, setting many of them on downward, crisis-ridden trajectories that did not exist prior to the murder. A mother talked about what happened to her daughters, both of whom were violently raped while their uncle was forced to watch before the murderer killed him:

> It became a big black white issue, a big racial thing. The girls could not listen to a black person talk. When they heard that voice, that way of speaking, it just flooded them with emotion. . . . The school by then was probably 50/50. And the black kids were really going at them because they thought it was a racial issue. "Y'all knew that guy. Y'all invited him in and then y'all made [him rape you]." My oldest decided she didn't want to stay in Drummond anymore and went to Nebraska to live with my cousin. The following year my youngest daughter went up there and my cousin home schooled her but then she came back home and she'd been in and out of every different school. We finally sent her to a neighboring town because I knew the principal. I went over there and she was in a room by herself. [Teachers] came in and she did her studies by herself. She had shaved her head. The boy who was with them that night was killed at work six months later. He was electrocuted.

In addition to drug problems and depression, there were five suicides by participants' family members related to the murder of a loved one. Some of the suicides set off more fallout for families, creating a chain reaction of events. In one instance, a woman's brother committed suicide after his parents were murdered at the convenience store they ran. Because he did not bring his father dinner where his father worked, his mother had to:

> He always felt I should have gone. I think he felt he would have protected papa too. . . . My other sister [has] written emails where she feels she wants to commit suicide. . . . My younger sister I'm very worried about. I'm scared she's going to follow the same path as my brother.

In another case, a woman explained that after killing her mother-in-law, her father-in-law blamed his dead wife's son: "Aaron is William's second victim. He started using drugs. We filed a wrongful death suit because he was beneficiary to everything. So he had money to buy all those drugs." He eventually died of an overdose. Then the survivor found out her sixteen-year-old had leukemia:

> He looks at me. [His younger brother] starts crying and he looks at me and goes, "Am I gonna die?" I couldn't say no. I didn't know. . . . Both of the boys are at an alternative school . . . they weren't getting in trouble at school. But, they just weren't going. They didn't care.

4. Positive Consequences

Although survivors were well aware of the negative fallout on them and others they loved, they also experienced positive spinoff because of what they went through and the ways that the murder impacted their lives. Figure 10 shows the differences between states. In Texas, 35% of participants made no reference to positive results, but the remaining survivors indicated positive activities/positive life changes (30%), personal growth/meaning system development (10%), or both (20%). In Minnesota, 20% made no reference to positive results, but the remaining participants indicated positive activities/positive life changes (30%), personal growth/meaning system development (5%), or both (45%). Minnesotans who claimed positive spinoff impacting both their activities/life changes and personal growth/meaning system development came from Time 2, Time 3, and Time 4. Indeed, 60% of participants ($n = 3$) in each of those time periods claimed positive consequences in both areas. Moreover, more Texans than Minnesotans claimed no positive impact. They also made fewer references to personal growth/meaning system development.

Constructive activities and life changes included caregiving and closer connections with children, decisions to leave abusive relationships, returning to school, becoming more religious, and changing jobs. Some of the changes were subtle, but the activities held important meaning to the survivor. A mother who bemoaned the fact that her daughter's death meant there would be no grandchildren discovered an unexpected source of nourishment: "I served in the children's ministry for nine years, loving and hugging those babies and giving them my full attention. I credit a lot of my healing to that, just being able to love those babies." Others did a complete life overhaul. A survivor whose son murdered family members made the decision to

turn everything over to God: "Once I made the decision to give up and let God take this if that's what he wanted to do, it was wonderful. It was liberating. I saw insights I hadn't seen before." Realizing God's purpose, this survivor wrote a book about the murders, his experience, and forgiveness, and became a nationally recognized speaker:

> I was allowed to live for a purpose and the purpose is to tell my story. . . . I gave away the white flag. "Okay God, I give up. I'm going to stop hiding from all this." It's been exciting. It's a powerful positive thing in my life to talk in front of an audience to tell them about what happened that night and tell them how God works.

Still others found avenues for life changes that were unusual but fitting for them. A young woman who lost her baby, mother, and niece began visiting funeral homes after school:

> When I go there it's my safe place. . . . I can go there and gather my thoughts . . . like a clear head it changes my whole attitude. The guy there tells me, "You're going to be a help to a lot of people by what [you've] been through." I have a little notebook that I carry around and if I have questions I write them down. And when I go I ask him (the funeral director) the questions and whatever he tells me I just write them down there. . . . I understand some of [how of why] the stuff with my mom was harder to do [to prepare for the funeral] because of the trauma her body had taken.

The young woman eventually decided to become a mortician and has since graduated with a degree in mortuary science.

Positive spinoffs also include personal growth and meaning-making that helped participants to integrate the loss of their loved one, related events, and the way the victim's death happened. A survivor described her perspective about new challenges, safety, and control:

> I'd never been anywhere. I didn't even have a passport. And I just started traveling. I remember my son standing in front of me with that smile saying, "Mom quit talking about it and just do it or it's never going to happen." I feel like my son's part of me and I'm part of him. So the part of me that's him is going to Africa. I know too though no matter where you are, no matter where you go, who you're with you are never safe. . . . There just isn't. . . . And yet, I think all of us has this part that likes to feel you have a little bit of control over your life. I know there isn't that. Never was. Never is.

A teacher explained what she has learned from the murder of her father and how she uses these lessons in her teaching:

> I can choose my attitude. . . . I have more control and more, I think about it more. Over how I handle things and frankly, I teach my students that if you think you have control over your life forget it. You don't. You have control over how you respond to the things that happen in your life . . . and therefore, you ultimately control the outcome by your choices. I had a choice when dad died. I could become bitter and angry and live my life that way. I could become productive and use it, use what I learned, use the experience to become more empathic, to become more knowledgeable, to become more of who I could be.

These personal changes often had a celebratory or freeing quality to them: "All of a sudden you have this new outlook on life because you realize how tenuous it really is and so then you say, 'Okay, I'm going to live life to the fullest.'"

5. Current Physical Reactions

Survivors' responses to the murder and its aftermath were frequently expressed in physical problems as depicted in Figure 11. Although it was common for participants to report difficulties with issues such as concentration, memory lapses, sleep, nightmares, eating, and endurance, some of them found that the toll from the murder, related stressors, and accumulated stress were long-lasting. In Texas, 42% of participants indicated no current physical manifestations. The remainder experienced current sleep problems (16%); disease or illness associated with the extreme stress (26%); or both sleep and illness or disease (5%). Information was not available in two cases (11%). In Minnesota, 60% of participants indicated no current physical manifestations. The remainder experienced current sleep problems (25%); disease or illness associated with the extreme stress (10%); or both sleep and illness or disease (5%). The contrast between the states is most notable in the percentage of participants who had no current physical reactions and in the higher percentage of participants with self-diagnosed murder-related disease or illness in Texas.

Ongoing sleep disturbance included a range of conditions, including inability to fall asleep, terminal insomnia so survivors could not get back to sleep, nightmares, and light sleeping because of startle reactions. Survivors reported hearing noises in the house, recurrent pictures of finding their loved one dead, and rumination over their difficulties:

> If I wake in the middle of the night, which is very, very often, I can't fall back to sleep. And the problem is that I start thinking. It doesn't even matter what. But I start thinking about something and almost play scenarios out in my head. [They] haven't happened yet, but somehow I know.

Participants had a variety of physical conditions that they self-diagnosed as related to the murder. Many of the conditions are commonly associated with stress, such as high blood pressure. A survivor related the gradual onset of her physical problems:

> I gained weight in the ten years. I became a diabetic. I have thyroid problems. I have high blood pressure and I'm losing my hair. And it was like my health went down, just down, down, down. And like right now I'm still trying to control my diabetes and it's all down deep in there.

Besides chronic conditions such as neck problems, migraines, high cholesterol, and problems regulating menstrual bleeding, some survivors had life-threatening reactions:

> I didn't know I was experiencing heart attacks. Right after the trial, I experienced something with my body like it was on fire. And my breath, felt like they had filled up with milk and somebody just lit me on fire. [The doctor told me,] "You're walking dead. You have 8% [iron in your blood] when you should have 180%." I was just dying. I was bleeding to death. I'm taking iron pills. They want to give me a transfusion but I'm scared of the blood. They say it's one in a million, might get bad blood. I told them, "I'm not fixing to be that percent, nope."

6. Psychological Changes

The murder of their loved one and subsequent challenges produced permanent psychological change in participants. Some had ongoing trauma reactions that consisted of sleep problems, fear and anxiety, crying jags, and responses triggered by reminders of the trauma. Survivors also indicated that they were self- or professionally diagnosed as depressed and emotionally shut down. The majority reported significant issues with trusting others. Participants also described posttraumatic growth as a result of the murder.

There were striking differences between the states on the percentages of survivors who suffered from ongoing trauma reactions. Specifically, 42% of Texans described persistent struggles, compared to 20% of Minnesotans. Some of the struggles were periodic:

> I still have nightmares occasionally. Sometime the nightmare is I'm actually there and see him get shot. Sometimes the nightmare is I'm in his place and being shot and then my kids are left orphaned. Sometimes I wake up and don't remember what the nightmare was and I just wake up in tears. Maybe once a month or every couple of months I may have one [a dream].

Other struggles interrupted survivors' daily functioning:

> I don't know if I'm scared of people or I don't trust myself to be alone, but I am really scared as long as it's dark. I never had that before. And I always have the TV on, not to hear any sound anywhere else. Because if anything knocked hard, I am scared. So I always have the TV on or the music playing. If I go upstairs, I have to have the light on. If I am alone in the house, I have a mattress in front of the chair. As long as it gets dark I just be in one place until somebody gets home.

A similar contrast between the states also applied to the percentage of participants, shown in Figure 12, who reported themselves as depressed or emotionally dulled. In Texas, 63% of survivors fit this profile, compared to 25% of Minnesotans. Many participants described classic symptoms of depression: "I'm just going through life, through the motions. Okay, I'm forced to go to the baseball game. Okay, I need to go to open house. So, life is moving me as it goes because of my three children. Without that, I think I would be stagnant." Others noted permanent shifts in their ability to respond to emotional highs and lows. They described themselves as not being present, being unemotional, empty, hardened, existing with a cloud over everything, and as realizing that a part of them was gone that they would not get back: "Sometimes I can be happy. But, I am not able to reach the extent of happy that I could before that day. It's not there anymore. It's like if it was way up on a scale you can't go up to the top of the scale anymore."

The contrast between the states reversed itself in the percentage of participants who had difficulty trusting others. In Texas, 37% of survivors indicated that they had trust issues, whereas 55% of Minnesotans volunteered that their ability to trust was severely hampered as a result of their loved one's murder. All Minnesotans from Time 1 and 80% from Time 4 had problems with trust. Moreover, in describing their difficulties, Minnesotans gave lengthier and more detailed descriptions. A wife shared,

> [T]ell you the truth, I don't trust anybody anymore. Even my own husband. . . . The only person I can trust is my son. I can

> tell him anything, not my husband. . . . You could see a person but you don't know what is in their mind. Sometime they look very innocent to you, but they could do you harm. That's why I don't trust anybody. . . . I protect myself and keep [a] far distance from those I don't trust.

Another survivor declared,

> I don't trust people. I'm very leery or wondering what it is they're after or what they're up to. It's like I know going down the street that you can look at people—and it's more men—and they can look normal, but they're not. How am I supposed to know this man is okay and this man isn't. I think it shatters a lot of your belief in the goodness of humanity. That some human could do this for nothing.

There was a pronounced difference between the states, shown in Figure 13, in the percentage of survivors who made reference to their psychological growth because of what they had endured. Only 5% of Texans indicated positive psychological changes in comparison to 55% of survivors in Minnesota. Most of the Minnesota participants came from Time 3 and Time 4. In noting their changes, survivors made reference to their strength, accomplishments, realizations, and outspokenness. For example, a woman exclaimed, "It has made me stronger. It has made me. Going through this, I know I can get through anything." A woman whose mother was killed when she was an adolescent described who she had become, compared to who she likely would have been: "I think I'm a better person in general than I would have been. I think had things been the same, I was so rebellious and so not wanting to have the way things were, that I probably would have been pregnant in high school." A survivor described what she saw as she surveyed what had happened to her over the years:

> All of a sudden I had to make the decisions and I didn't have anyone I could talk it over with. And it was scary because I had some big decisions to make and know what to do, didn't trust myself to do the right thing. . . . I probably gained a lot more self-confidence than I had. I've changed a lot from what I was twelve years ago. So that's probably a good thing that's come out of it. And growing into myself. It gave me that other purpose to go and finish and get this degree. That made me a different person too that I could get through these classes and get good grades and still manage the farm and the kids. All of it. I guess I felt like a super woman for a while. So that maybe was a good thing.

7. Behavioral Changes

Participants noted ways that the murder of their loved one, and related events, impacted their lives and the actions they took to manage their feelings. Stress-reducing behaviors included making sure doors were locked or staying away from situations that could trigger panic reactions. Refocusing behaviors consisted of moving away from the home where the murder happened or throwing oneself into work. Some participants found themselves doing things to preserve memories or keep themselves close to physical reminders of their loved one. Survivors also described behaviors that developed or reinforced a sense of agency in terms of controlling outcomes related to the murder.

As shown in Figure 14, Texas and Minnesota differed on the percentage of participants using different types of stress-reducing behaviors. In Texas, survivors principally used avoidant/distancing behaviors (37%), whereas in Minnesota survivors preferred self-protective behaviors (40%). Moreover, Texans were more likely than Minnesotans to use both avoidant/distancing and self-protective behaviors (26% vs. 15%). Self-protective actions included having guns readily available, checking on family members to be sure they were all right, or taking extra safety precautions. A grandmother who had to fight her son-in-law's parents for custody of her granddaughters after he had killed their mother decided not to put an announcement in the paper that one of the granddaughters was getting married: "I didn't trust that if the grandparents saw it that they might have come and tried to push their way into the wedding and made it uncomfortable. I never was real guarded but that has definitely changed. That's the major change I see in myself." Avoidant/distancing actions were done usually in reference to triggers that could create strong emotional responses. A survivor whose daughter was killed by her husband decided to stay away from family members who tended to fight. A man who was harassed by the police in conjunction with his daughter's murder declared, "I can't think of a reason I would ever call a cop." A survivor shared her internal struggle with going out among people:

> Sometimes I be like I get dressed. I fix myself up. I try to talk to myself about going. . . . I'll probably dress five times before I go out the door. I'll be like, "Oh, what am I doing?" I look at the clock. "Let me get out of here," so I know I got to go. "Oh no, this don't look good." I use excuses. "Oh, this don't look good." I just sit down. . . . I used to go out a lot. Now I can't find two friends.

Although 75% of Minnesotans used refocusing behaviors, as shown in Figure 15, to deal with their reactions to the murder, only 37% of Texans did. Refocusing behaviors included busyness to divert survivors from thinking about the murder as well as lifestyle changes to mitigate some of their suffering. The preponderance of participants from Minnesota used either lifestyle changes (30%) or both types of refocusing behaviors (35%). In terms of busyness, a woman who had lost her son explained, "I'd go out and I would dig the yard up. And I'd just work myself to the point where you'd be exhausted. I had to just ride myself to the point that I had to go, go, go." When asked how he was different since his sister was murdered, a survivor answered, "Guess with me being busy and active, takes your mind away from things." Lifestyle changes allowed survivors to reduce stressors that otherwise kept the murder fresh or made it difficult to manage their emotions. A participant who was a school bus driver described crying whenever she was by herself: "So I figured that wasn't a good thing for me to be doing with other people on the bus. . . . So I went into the school. I worked as a janitor and that was better for me because I didn't have time to think." A man recounted making the decision to sell his home in order to get further away from disturbing memories:

> I tried to stay in the house because I didn't want to be chased out. But it was hard to sit back in that room where she was murdered. Eventually I just surrendered and left, sold the house and moved. It was hard to leave but it was the right thing to do. . . . You weren't constantly looking down there and imagining where she was laying. . . . Didn't have to deal with that jerk next door [either].

In Texas, 32% of participants engaged in behaviors to preserve memories or physical reminders of their loved ones, compared to 5% of Minnesotans. A father shared what he did to keep his son close: "He's been gone three and a half years and my cell phone has still got his answering message because I had it transferred so that I could play it anytime I wanted it. I could hear his voice." A mother remembered the time she has spent in her daughter's room: "I locked myself in that bedroom right there a lot. That was Missy's room. And I slept in that room a lot. I guess because I felt closer to Missy."

Sense of agency refers to the subjective awareness that one is initiating, executing, and controlling one's own volitional actions in the world. Sense-of-agency behaviors included controlling thoughts about the murder and being assertive about making murder-related decisions

that affected participants' well-being. As shown in Figure 16, Texas and Minnesota varied in the percentage of participants who engaged in sense-of-agency behaviors (47% vs. 85%), as well as the proportion of participants who engaged in being self-assertive (32% vs. 20%), controlling of thought (10% vs. 25%), or both (5% vs. 40%). A survivor talked about the decision she and her husband consciously made not to follow the media coverage of their son's death because of the debate about whether or not, as a police officer, he had followed protocol and perhaps caused his own death:

> We didn't want to believe it. We didn't watch TV because they would flash his picture when we didn't know it. We didn't read the papers so we really didn't know what happened to him. My brother, he's a policeman in Connecticut . . . [h]e wanted to tell me and I said, "I just don't want to know. I just want you to leave me alone. I don't want to hear it." . . . For me it was the right thing cause I don't think I could have handled knowing.

A woman explained what she did to take charge of her own healing:

> At some point along the line, I started taking control, making choices. Some of those choices were very, very hard because of expectations placed from elsewhere. . . . I hate these grief groups were we sit around and we rehash it all over again . . . but Mom is feeling the healing or help from this and thinking that's the cure for everyone. And finally I just said, "I hate these." Taking control in those ways was healthy for me. Now did it mean that those issues that typically get worked through in those situations had gone away? No. It just meant that I had to deal with them in my own time, in my own way, in my own pace.

Sense-of-agency behaviors often required extra energy because survivors had to push against their emotional proclivities or go against the grain of what was considered normal. The drive that pushed them to act often had a strong sense of intention or purpose behind it.

8. Category 3 Summary

In contrast to Categories 1 and 2, the focus in Category 3 moves beyond specific topics associated with the criminal justice process and relationship with the murderer to consider the cumulative impact of the UPS on survivors physically, emotionally, and behaviorally; the negative and positive consequences on themselves and others over time; and the decisions they made about how to live with what had happened to their lives. The findings cover a wide time spectrum ranging from two to

nineteen years after the death of participants' loved ones. Aside from the similarity in the percentage of participants reporting injustices associated with the criminal justice system, findings from the other event themes consistently show considerable variation between Texas and Minnesota.

A higher percentage of Minnesotans than Texans, for example, noted additional injustices not associated with the criminal justice system (50% vs. 21%). Although speculative, this contrast may reflect the fact that Minnesotans, particularly from Time 2, were more likely to concentrate on injustices outside of the criminal justice because the criminal justice process was finished.

Compared to Texans, fewer Minnesotans referenced negative fallout from the murder (65% vs. 74%). Moreover, Texans, when compared to Minnesotans, indicated that they, rather than other family members, were principally affected (42% vs. 10%), whereas for Minnesotans, the ripple effect on others was more prominent than it was for Texans (40% vs. 26%), as was the impact on both themselves and other family members (15% vs. 5%).

Minnesotans also reported more positive results than Texans (80% vs. 65%). In Texas, the preponderance of positive spinoff tended to concentrate on the more recent murders (Time 1 and Time 2), whereas in Minnesota, the positive spinoff was more evident in the later time periods (Time 1, Time 2, and Time 3). There was also a substantial difference between the states in terms of the greater frequency of Minnesotan's references to their personal growth/meaning system development in combination with positive activities/lifestyle changes (45% vs. 20%). The higher percentage of references from Minnesota participants may reflect integration of the murder, possibly as a result of the fact that the criminal justice process was finished earlier than in Texas.

More Minnesotans indicated no lasting physical reactions compared to Texans (60% vs. 42%). Moreover, more Texans than Minnesotans reported disease or illness (26% vs. 10%). The nature and frequency of their physical issues indicate that Texans may have experienced more ongoing stress.

Texans had more ongoing trauma reactions (42% vs. 20%) and depression/emotional dulling (63% vs. 25%) than Minnesotans. Psychological changes also included posttraumatic growth, which was less for Texans (5%) than for Minnesotans (55%) who were concentrated in Time 3 and Time 4. A seemingly paradoxical development was evident in the higher percentage of Minnesotans who

reported trust issues compared to Texans (55% vs. 37%). It is possible that this finding reflects a regional difference in that there may have been a core shift in trusting others, but that change may not have been perceived as a loss or negative result. It is also important to note that variation in this percentage comes primarily from Time 1 participants in Texas and Minnesota. The percentage of those with trust issues is the same in both states otherwise.

In regard to the impact of the murder on changes in participants' behavior, both Minnesotans and Texans used stress-reducing behaviors. Minnesotans, however, had higher percentages of self-protective behaviors (40% vs. 11%) and Texans had more avoidant/distancing behaviors (37% vs. 15%). A higher percentage of Minnesotans than Texans used both types of behaviors (26% vs. 15%). Participants also described "refocusing efforts" to move away from the impact of the murder. Refocusing efforts included busyness and lifestyle changes. More Minnesotans than Texans used refocusing behaviors (75% vs. 25%). More Minnesotans than Texans also used lifestyle changes solely (30% vs. 21%) or both busyness and lifestyle changes (35% vs. 5%). Minnesotans and Texans were similar in their use of busyness only (10% vs. 11%). Many more Texans than Minnesotans employed behaviors to preserve their closeness to the immediate presence of their loved one (32% vs. 5%). This finding may reflect a difference in the progress of the bereavement process and may be explained by the extent to which the criminal justice process had been completed. Finally, more Minnesotans than Texans reported instances of using self-agency—using self-assertion and thought control to impact the direction of their lives (85% vs. 47%).

Although the contrast between Texas and Minnesota for each separate finding associated with negative and positive consequences, physical reactions, and psychological and behavioral changes may not individually be particularly important, the accumulation and clustering of the differences between the states for almost all the event themes is suggestive of something beyond randomness. Moreover, the state differences are supported by the consistency in the direction of the findings.

X. QUANTITATIVE RESULTS

Multivariate analysis was conducted for both the ICG-R scores by state and time and for select event themes as predictors of ICG-R scores. A two-way factorial ANOVA was used to assess the interaction and main effects in predicting the grief scores. Event themes were

quantitatively coded and analyzed using correlation and regression techniques.

A. ICG-R Scores by State and Time

The two-way factorial ANOVA yielded a statistically significant interaction effect for state by time period ($F(3, 31) = 4.268$, $p = .012$; partial $\varepsilon^2 = .292$), as well as a statistically significant effect for time ($F(3, 31) = 3.859$, $p = .019$; partial $\varepsilon^2 = .272$). The main effect of state was not statistically significant ($F(1, 31) = 0.701$, $p = .409$; partial $\varepsilon^2 = .022$). As seen in Figure 17 and Table 7 below, ICG-R scores remained relatively stable across time for Texas participants, but Minnesota participants showed higher initial scores and a marked decrease in grief symptom severity from Time 1 to Time 3. Tukey post-hoc analyses showed that the statistically significant findings for time period were due to differences between Time 1 and Time 3 only.

B. Select Event Themes and ICG-R Scores

Four Category 1 event themes were examined to see if they predicted grief scores as measured by the ICG-R. These themes included prosecutor contact, defense attorney contact, defense attorney behavior, and contact with the murderer's family. The Spearman's rank order correlation coefficient (i.e., Spearman's rho) was used for these analyses. The Spearman's rho tests showed a statistically significant, moderate, negative relationship between ICG-R scores and contact with the murderer's family ($r = -0.445$, $p = 0.014$). Specifically, increased contact with the murderer's family predicted lower ICG-R scores, and therefore, a lower level of unresolved grief. The other three event themes did not predict ICG-R scores at a statistically significant level.

To further examine the relationship of these themes with grief scores, multivariate regression models were run with state and time period as covariates, using dummy-coded variables for the themes. In these models, prosecutor contact did not significantly predict ICG-R scores ($F(3, 34) = 2.635$, $p = 0.065$). Defense attorney contact did significantly predict ICG-R scores ($F(3, 28) = 5.646$, $p = 0.004$), specifically, more positive contact with the defense attorney predicted lower grief scores. Similarly, more positive defense attorney behavior also predicted lower grief scores at a statistically significant level ($F(3, 28) = 4.296$, $p = 0.013$). More positive contact with the murderer's family likewise predicted lower grief scores ($F(3, 26) = 4.544$, $p = 0.011$).

Some of the Category 3 event themes were also examined in light of

ICG-R scores. Participant symptoms were examined—specifically, whether the participant had physical reactions, trauma reactions, depression or dulling symptoms, or posttraumatic growth. Changes in behavior were also examined as possible predictors of ICG-R scores, such as whether the respondent reported stress-reducing behaviors, lifestyle changes, busyness, preserving behaviors, or self-assertion. Before presenting the findings from these analyses, it is important to note a caveat—that multiple comparisons like those done here may inflate Type I errors (i.e., that with an alpha of .05, one of every twenty tests will be significant by chance alone). One way to address this is to use a Bonferroni-corrected alpha level. If, however, a Bonferroni-corrected alpha level is used to interpret findings, none of the comparisons would be statistically significant. Given that this is a preliminary study, the following discussion presents findings using an alpha of .05 and asks that the reader keep the issue of possible inferential error in mind. Findings were that physical reactions predicted statistically significant higher grief scores ($t(35) = -2.886$, $p = 0.007$), and posttraumatic growth predicted statistically significant lower grief scores ($t(36) = 2.481$, $p = 0.018$). Trauma reactions and depression/dulling did not predict grief scores at a statistically significant level ($t(36) = -1.989$, $p = 0.054$ for trauma and $t(36) = -1.091$, $p = .283$ for depression/dulling). When examining behavioral responses, only self-assertion was found to predict grief scores at a statistically significant level ($t(37) = 2.148$, $p = 0.38$), specifically, that self-assertion predicted lower grief scores.

XI. DISCUSSION OF FINDINGS

The intent of this research is to examine homicide survivor experience in the context of the harshest of punishments allowed by law. Conventional wisdom presumes the harshest punishment available will provide survivors with the utmost in justice, vindication, and satisfaction.[212] What we know about homicide survivor experience, however, is that "violent, intentional death is linked inextricably with images of powerlessness—the powerlessness of the victim to resist, and the powerlessness of the bereaved to intervene at the time of the killing and to control events thereafter."[213] The Study demonstrates that

212. *See, e.g.*, Bandes, *supra* note 4, at 1–4.

213. PAUL ROCK, AFTER HOMICIDE: PRACTICAL AND POLITICAL RESPONSES TO BEREAVEMENT 53 (1998).

although the UPS does provide a sense of justice and satisfaction in the punishment of the murderer, the punishment, by itself, is limited in its healing potential for survivors. Furthermore, the Study indicates that other factors are necessary to aid survivors in their ability to integrate the trauma of the murder, find the psychological space to grieve, and locate the supports that facilitate rebuilding their lives. The Study provides evidence that survivors' well-being is enhanced if they have a greater sense of control over their lives and this sense of control contributes to a higher level of satisfaction with the justice system and its processes. The Study identifies core factors that offer survivors a stronger sense of control.

A. Outreach and VIS

Study results suggest that outreach to survivors, respectful interactions, and positive relationships with key stakeholders (e.g., the prosecution team, defense attorneys, and members of the murderer's family) during the pretrial and conviction stage may be associated with lower ICG-R scores. The personal and intense nature of these memorable associations, however brief, makes these associations participative opportunities for survivors. Although speculative, these associations are likely to build survivors' self-esteem and serve as testament to their special identity as crime victims and deep mourners. These associations were particularly evident in Texas for Time 1 survivors. In contrast to Time 1 survivors in Minnesota, Texans expressed no issues with trust, which, according to Study participants, was majorly damaged by the murder and associated events. This dynamic suggests that survivors may have felt relatively confident about their criminal justice experience and a part of, rather than victimized by, courtroom events. Although these survivors were the youngest in the Study in terms of time since conviction, it is possible that these positive associations with pivotal figures could inoculate them somewhat from the upcoming stress and lengthiness of the appeal processes.

Therapeutic jurisprudence asserts that the giving of victim-impact statements empower survivors with an opportunity to participate.[214] Nowhere, however, is the debate about crime victim rights greater than in the literature about due process, procedural justice, VIS, and closure.[215] The Study found that survivors were satisfied with the VIS

214. *See* Erez, *supra* note 116, at 551.

215. *See, e.g.*, Bandes, *supra* note 4, at 3; Cassell, *supra* note 114, at 612; Erez, *supra* note

experience but varied substantially in their reactions. Some felt exuberant, for example, that the murderer cried. Others felt out of control emotionally or upset that the murderer did not look at them or show expression while they were making their statement. Although Minnesotans gave VIS at sentencing, and Texans made allocution after sentencing, the placement of VIS in the trial proceedings seemed to make no difference. Moreover, survivors said little that could link VIS to victim healing other than it serving an expressive function. Based on these findings, its therapeutic impact in capital murder cases will likely remain questionable. It may be more important, therefore, to consider instead the injustice and negative consequences to survivors if the right, which is now institutionalized, were taken from them.[216]

B. Social Expectations, Ambiguous Loss, and Closure

Social expectation theory proposes that institutional structures are influenced by assumptions or social norms about what people feel and ought to feel.[217] Social expectations play a role in how we see and maneuver our social worlds.[218] Socially received expectations also motivate our behavior. The social construction of closure, what it is supposed to accomplish for survivors, and how institutional structures provide for it, is a prime example of how social expectations condition our beliefs and actions. What happens when social expectations are unrealized? How does this disjuncture impact survivors' sense of control and well-being? Survivors in Texas were particularly susceptible to this distortion because of the length of the appeals process. Survivors whose cases were stuck during Time 3 and Time 4 (ten to sixteen years postsentencing) faced a heretofore-permanent state of suspension, not knowing if and when the case would move forward or move forward in

116.

216. Victims already experience some injustice because they have limited control over their VIS. *See* Tracey Booth, '*Cooling Out' Victims of Crime: Managing Victim Participation in the Sentencing Process in a Superior Sentencing Court*, 45 AUSTR. & N.Z. J. CRIMINOLOGY 214, 217 (2012) (noting that not only can the VIS be edited by the court before the sentencing hearing but also that once in court, the defendant can object to the content of VIS and, if it does not comply with the law, it may be edited and parts deleted altogether in open court); *see also* Charles F. Baird & Elizabeth E. McGinn, *Re-Victimizing the Victim: How Prosecutorial and Judicial Discretion Are Being Exercised to Silence Victims Who Oppose Capital Punishment*, 15 STAN. L. & POL'Y REV. 447, 466 (2004) (commenting on the fact that VIS that oppose the death penalty are barred from being given).

217. *See, e.g.*, Bandes, *supra* note 4, at 10.

218. Koichi Hasegawa et al., *The Effects of 'Social Expectation' on the Development of Civil Society in Japan*, 3 J. CIV. SOC'Y 179, 180–81 (2007).

their lifetimes. The impact of having achieved the ultimate sentence while living under threat of losing it, coupled with a sustained and undeviating lack of resolution, clearly undermines any control that survivors might have initially attained through the guilty verdict.

The concept of ambiguous loss provides a framework for understanding the meaning of this indeterminate reality in survivors' lives. It refers to an "unclear loss that defies closure."[219] The concept was first formulated by Pauline Boss after interviewing wives whose husbands were missing in action (MIA) in Vietnam and Southeast Asia and later applied to family members whose loved one had Alzheimer's.[220] The inability to resolve ambiguous loss is due to the outside situation but is considered the most devastating of all losses because the ambiguity prevents people from adjusting.[221] In the Study, the survivors with stuck cases appeared to be suffering from ambiguous loss, which was marked, as noted by Boss, by their fluctuating between hope and hopelessness, a deadening of emotion, and stagnation in personal movement waiting for some resolution and relief.[222]

Texas survivors also seemed to be at odds with the social expectation that the execution would bring closure. Besides a mixture of responses in cases where executions had been completed, survivors' anticipation about the positive impact of any upcoming execution was gradually reduced the longer they had to wait for its finality. Regardless of the circumstances, however, most survivors focused on the execution as the pivotal event and gave strong consideration to the issue of attending and the fantasy of what might happen in the death chamber.

The social expectation of closure newly associated with LWOP seemed absent in Minnesota. The endpoint was the sentencing. The appeals process was sparsely referenced except for one case where the sentence had been reduced on appeal. Although Minnesotans were finished with the criminal justice process sooner and theoretically got control back over their lives earlier, survivors did not appear to notice or value the difference. Instead, many Minnesota survivors wished for the death penalty believing that the murderer's death would be more

---

219. *See About Pauline Boss: Personal Statement*, AMBIGUOUSLOSS.COM, http://www.ambiguousloss.com/personal_statement.php (last visited Oct. 8, 2012); *see also* PAULINE BOSS, AMBIGUOUS LOSS: LEARNING TO LIVE WITH UNRESOLVED GRIEF 26–44 (1999).

220. *Id.* at 12–15.

221. *Id.* at 6.

222. *Id.* at 11.

satisfying than LWOP. This reality may demonstrate that, without a collectively held and valued social expectation about what LWOP is supposed to give to survivors, there remains a void that is predictably trumped by the belief, for some, that the death penalty remains the ultimate and preferred outcome.

C. The Involuntary Relationship

Besides the element of time, the postconviction phase was marked by survivors' mental relationship with the murderer, holding him unrelentingly accountable for what he did. Regardless of the sentence, most survivors felt negatively, wanting the murderer to suffer as they did. Survivors' concentration on the murderer was present and intense as well in the conviction stage during the trial. Besides having rage and contempt for the murderer, survivors observed defense attorneys closely for how they handled the case, watched the courtroom behaviors and reactions to testimony of defendant's and persons' associated with the murderer, and others in the courtroom, and frequently directed their VIS to the murderer, hoping that he would never forget what they had said.

There is an emerging literature on this mental relationship due to the recognition that a situationally induced relationship is forced on the survivor as a consequence of the murder.[223] The inextricable tie between the survivor and murderer is based on the fact that the murderer was the last person to be with the survivor's loved one.[224] This involuntary relationship is filled with anger and hostility and kept alive either until the offender is executed or no longer pervades the survivor's life through appeals outcomes or efforts to resurface.[225] Madeira contends that the potency of the relationship is maintained because social expectations disallow it, which, in effect, pushes it into the background

223. *See* MARK UMBREIT & MARILYN PETERSON ARMOUR, RESTORATIVE JUSTICE DIALOGUE: AN ESSENTIAL GUIDE FOR RESEARCH AND PRACTICE 315 (2010); Mickell Branham & Richard Burr, *Understanding Defense-Initiated Victim Outreach and Why it is Essential in Defending a Capital Client*, 36 HOFSTRA L. REV. 1019, 1023, 1026 (2008); Richard Burr, *Expanding the Horizons of Capital Defense: Why Defense Teams Should Be Concerned About Victims and Survivors*, CHAMPION, Dec. 2006, at 44–47 (discussing the relationship formed between offenders and survivors).

224. Burr, *supra* note 223.

225. Several survivors commented on offender websites that they visited. They were incensed by material on the website—including pictures of children killed, and requests for friendship.

where it functions at a subliminal level and is given little attention.[226] It is also furthered through the survivor's subjective creation of who the murderer is—subjective because there is no contact, so little ongoing information available to the survivor, and no give-and-take.[227] Madeira suggests that the relationship is most harmful when the offender "appears defiant, remorseless and unemotional" and when the survivor's subjective creation is taken as real.[228] Besides keeping the trauma alive, the lack of social recognition about the relationship's formation and effects contributes to the survivor's suffering.[229]

D. Rumination and Vengeance

The inextricable and ongoing negative connection with the murderer in the Study seemed tied to some survivors' ruminations and their powerlessness over circumstances beyond their control. For many, their inability to control this ruminating generated ledgers of unresolved injustices accompanied by anger and frustration. Clearly, the delay in stuck appeals processes fostered rumination, but so did non-stranger homicides in both states that involved ongoing contact with people who knew the murderer. The seeming delight in fantasizing the murderer's suffering, or a wish fulfillment for the murderer's remorse, also fed out-of-control thinking that led nowhere.

Survivors seeking vengeance for the grievous wrong of murder lies at the conceptual base of justice.[230] Vengeance is commonly accepted as a morally worthy attempt to undo evil.[231] Although the social expectation is that avenging a wrongdoer will relieve anger and that higher punishment will lead to a better mood, experimental studies show the opposite.[232] A study on punishment found that the dorsal striatum, the brain region that is closely related to pleasure,[233] was activated when

---

226. Jody Lyneé Madeira, *When It's so Hard to Relate: Can the Legal System Mitigate the Trauma of Victim-Offender Relationships?*, 46 HOUS. L. REV. 401, 437 (2009).

227. *Id.* at 443.

228. *Id.* at 405–06.

229. *Id.* at 406.

230. Bas van Stokkom, *Victims' Needs, Well-Being and 'Closure': Is Revenge Therapeutic?*, *in* THERAPEUTIC JURISPRUDENCE AND VICTIM PARTICIPATION IN JUSTICE: INTERNATIONAL PERSPECTIVES, *supra* note 87, at 207, 212–13.

231. *Id.*

232. *See* Kevin M. Carlsmith et al., *The Paradoxical Consequences of Revenge*, 95 J. PERSONALITY & SOC. PSYCHOL. 1316, 1316 (2008).

233. *See* Dominique J.-F. de Quervain et al., *The Neural Basis of Altruistic Punishment*, 305 SCIENCE 1254, 1254 (2004).

participants decided to punish a violator of a social norm, but a subsequent study showed that the predicted and experienced emotion were substantially different.[234] Specifically, after the punishment was administered, these participants were substantially less happy than those who did not punish.[235] This is because these participants who punished continued to ruminate about the violator.[236]

To some extent, the Study findings mirror these conclusions. Approximately half of the survivors in both states wanted the murderer to suffer. However, the Minnesota survivors had more neutral attitudes toward the murderer, or no mental relationship with him, particularly for survivors from Time 3 and Time 4. It is possible that the interminable waiting and stuck status of cases in Texas make it more difficult for survivors to control their ruminations.

E. Civil Actions and Accumulated Injustices

The role of civil lawsuits in the postconviction phase has been curiously absent in the literature on homicide bereavement. In addition to the criminal justice system, civil actions provide an important mechanism for survivors to seek justice, in part because the initiative emanates from them as plaintiffs rather than the state and is centered specifically on the wrongs done according to the survivors' perspective. Nearly all the civil lawsuits were brought by Minnesotans and occurred before Time 2 (5 to 7 years after the sentencing or punishment trial). These survivors often spent as much time describing the civil suit that they themselves brought as they did the criminal trial. Their accounts were frequently accompanied by a sense of vindication and righteousness even when the civil suit outcomes were disappointing. Only one survivor in Texas had considered a civil action. In homicide cases, civil action may rest on obtaining the criminal justice conviction and having it upheld on appeal. The lengthiness of the appeal process in death penalty cases, therefore, may act as a disincentive against civil suits. Moreover, while a criminal case is pending or on appeal or in habeas corpus proceedings, the case is not over and the defendant cannot speak without having what he says used against him.

Regardless of whether survivors brought civil suits, they experienced additional injustices, which fed their tendencies to ruminate and

234. *See* Carlsmith et al., *supra* note 232, at 1323.
235. *Id.* at 1322–23.
236. *Id.* at 1319.

reinforced their sense of victimization. Indeed, survivors often had a stronger visceral sense of injustice done than any sense of what justice meant other than relief that the murderer had been caught, convicted and sentenced. Though speculative, this expansion of injustices created by outside circumstances may have undermined their ability to re-establish a sense of control.

F. Satisfaction with the Criminal Justice System

Crime victims' satisfaction with the criminal justice system has been found to be related to their perception of a sense of fairness,[237] which is affected by feeling interest from key stakeholders (e.g., police and public prosecutors); a chance to express the victims' wishes and have those wishes considered, recognized, and respected.[238] These same elements are also associated with posttrauma adjustment.[239] Research also shows that anger rumination and motivation to seek revenge are associated with "greater levels of negative affect and lower levels of life satisfaction."[240] Although the Study did not examine relationships between event themes (e.g., VIS and criminal justice satisfaction), there were higher levels of satisfaction with the criminal justice system for Minnesota participants compared to Texans. Survivor comments suggest that this difference reflects less confidence in the system. The difference may also be a product of uncompleted cases and the uncertainty and lack of control many Texas survivors experience. This reality may make it difficult for Texas survivors to experience a perceived sense of control, which is essential to emotional well-being.[241]

---

237. *See generally* JO-ANNE WEMMERS, VICTIMS IN THE CRIMINAL JUSTICE SYSTEM 4 (1996) (laying out the need to research the treatment of victims by the criminal justice system and how it affects their attitudes toward criminal justice authorities and the law). For a discussion of the findings, see *id.* at 198–214.

238. *Id.* at 4.

239. *See* Jo-Anne Wemmers, *Victims in the Criminal Justice System and Therapeutic Jurisprudence: A Canadian Perspective*, *in* THERAPEUTIC JURISPRUDENCE AND VICTIM PARTICIPATION IN JUSTICE: INTERNATIONAL PERPECTIVE, *supra* note 87, at 80.

240. van Stokkom, *supra* note 230, at 220–21.

241. *See* BRUCE J. WINICK, THERAPEUTIC JURISPRUDENCE APPLIED: ESSAYS ON MENTAL HEALTH LAW 68, 70–71 (1997); Bruce J. Winick, *On Autonomy: Legal and Psychological Perspectives,* 37 VILL. L. REV. 1705, 1755 (1992); *see also* Armour & Umbreit, *supra* note 187 (describing that homicide survivor well-being is assessed, in part, through a survivor's ability to move forward, as opposed to remaining stuck in the aftermath of their loss).

G. Physical and Mental Health of Survivors

A perceived sense of control has been found in numerous studies to be positively associated with physical health, self-esteem, personal adjustment, coping, decreased stress and depression and psychological well-being. The Study found less physical and emotional distress and more health-oriented behaviors (e.g., posttraumatic growth, healthier stress-reducing activities,[242] refocusing behaviors, and sense of agency behaviors) in Minnesota participants. Based on the perceived control theory, there may be a positive relationship between these indices of well-being and perceived control suggesting that these survivors more likely believe that they have some control over the events that affect them. There is some support for this supposition in the quantitative findings. Besides the fact that Minnesotans during Time 2, Time 3, and Time 4 had lower ICG-R scores, lower ICG-R scores predicted less illness/disease and more posttraumatic growth and self-assertive behaviors.

The trauma and victimization caused by murder challenges the fundamental components of the assumptive world, including assumptions about benevolence, predictability, and controllability.[243] Part of survivors' struggle is to rebuild a meaning system as a base for moving their lives forward.[244] Although this construction is exceedingly difficult,[245] studies on the relationship between complicated bereavement and meaning-making find that sense-making is *the* explanatory mechanism for the association between violent loss and complications in grieving, suggesting that the ability to create meaning may impact complicated bereavement.[246] In the Study, more Minnesotans than Texans referenced meaning-making as part of the positive consequences

242. *See* Todd B. Kashdan & Jennifer Q. Kane, *Post-Traumatic Distress and the Presence of Post-Traumatic Growth and Meaning in Life: Experiential Avoidance as a Moderator*, 50 PERSONALITY & INDIVIDUAL DIFFERENCES 84, 87 (2011) (finding that less reliance on experiential avoidance predicts greater PTG and meaning in life). In this Study, Texas survivors used more avoidant/distancing behaviors more than Minnesota survivors.

243. RONNIE JANOFF-BULMAN, SHATTERED ASSUMPTIONS: TOWARDS A NEW PSYCHOLOGY OF TRAUMA 4–25 (1992).

244. Armour, *supra* note 129 (describing how meaning making grounded in action gives homicide survivors avenues for re-establishing a sense of coherence, self-continuity and a new sense of social identity).

245. *See* Murphy et al., *supra* note 133, at 397 (finding that 43% of parents whose child suffered a violent death from accident, suicide, or homicide were not able to find meaning after five years).

246. Joseph M. Currier et al., *Sense-Making, Grief, and the Experience of Violent Loss: Toward a Mediational Model*, 30 DEATH STUD. 403, 403 (2006).

from the tragedy. This state difference surfaced again for posttraumatic growth (PTG) both in the percentage of Minnesotans who make reference to their strength, accomplishments, realizations and outspokenness and in the quantitative findings that showed ICG-R scores predicting posttraumatic growth and self-assertive behavior. The fact that perceptions of present control over the "recovery" process relate to lower levels of psychological distress[247] is likely reflected in these relationships.

Increasingly, the evidence shows that posttraumatic growth (PTG)—growing psychologically from traumatic events—happens alongside and is positively correlated with PTSD.[248] However, over time the relationship attenuates and becomes more negative.[249] This shift is explained by the fact that PTG has a short-term illusory side related to short-term compensatory coping mechanisms (e.g. busyness) and a long-term constructive, self-transcending side related to action[250] for a more genuine and lasting growth (e.g. sense-of-agency behaviors).[251] This trend is reflected in the Study findings for Minnesotans, the majority of whom indicated PTG during the later time periods (Time 3 and Time 4) as well as behaviors aimed at thought control and self-assertion.

H. Summary of Findings

The need to assess the impact of event themes on survivors' sense of control and well-being is supported by current research on traumatic events and the temporal model of control, which shows that control over the present is associated with better adjustment.[252] The findings from

247. *See* Ryan M. Walsh & Steven E. Bruce, *The Relationships Between Perceived Levels of Control, Psychological Distress, and Legal System Variables in a Sample of Sexual Assault Survivors*, 17 VIOLENCE AGAINST WOMEN 603, 603 (2011).

248. Dinu-Stefan Teodorescu et al., *Posttraumatic Growth, Depressive Symptoms, Posttraumatic Stress Symptoms, Post-Migration Stressors and Quality of Life in Multi-Traumatized Psychiatric Outpatients with a Refugee Background in Norway*, 10 HEALTH & QUALITY OF LIFE OUTCOMES 84, 85 (2012).

249. *Id.*; Richard G. Tedeschi & Lawrence G. Calhoun, *The Posttraumatic Growth Inventory: Measuring the Positive Legacy of Trauma*, 9 J. TRAUMATIC STRESS 455 (1996); Vicki S. Helgeson et al., *A Meta-Analytic Review of Benefit Finding and Growth*, 74 J. CONSULTING & CLINICAL PSYCHOL. 797, 797–98 (2006); Floortje Mols et al., *Well-Being, Posttraumatic Growth and Benefit Finding in Long-Term Breast Cancer Survivors*, 24 PSYCHOL. & HEALTH 583, 584 (2009).

250. *See* Armour, *supra* note 129, at 525.

251. Tanja Zoellner & Andreas Maercker, *Posttraumatic Growth in Clinical Psychology—A Critical Review and Introduction of a Two Component Model*, 26 CLINICAL PSYCHOL. REV. 626, 640 (2006).

252. Frazier, *supra* note 148, at 304–05.

this Study reflect the relative sense of control survivors felt they had over a spectrum of events that collectively comprised their conviction and postconviction experience and the relationship between that control and indicators of their well-being. For example, issues during the conviction process such as giving input to the prosecution about the murderer's sanction, feeling blocked from responding to the defense attorney's portrayal of the victim, being recognized by the defense, whether the murderer was present or attentive to the survivor's VIS, feeling helpless to stop the murderer's derisive nonverbal behaviors, or feeling powerless over efforts by the murderer's family to even the score influence survivors' sense of control. Likewise the bringing of civil actions, lack of information or unpredictability about what is happening with the appeals, delays in the appeal process caused by external forces such as crime labs losing evidence or Supreme Court decisions, negative experiences associated with the execution, and unanswered questions that restrict comprehensibility of the murder impact on the survivors' sense of control. The consequences, as shown in this Study, of having more or less control over their own healing process impacts survivors' well-being. Indeed, the issue with control is complex in that survivors reported more situations that denied or removed control than instances that were empowering.

XII. LIMITATIONS

This investigation of survivors and the UPS is a pilot study with a small sample from two states. The inquiry is limited by the fact that qualitative findings cannot be generalized beyond survivors who participated in this research or the socio-historic time when they were interviewed. Moreover, because the two states selected for comparison differ significantly, it is possible that the state differences noted in the findings reflect regional variations rather than differences in the UPS. Although the Minnesota cases were randomly selected from state's listings of first-degree felony murders, there was variation in the sentence received ranging from LWOR to twenty-seven years before consideration of parole. Consequently, the assignment of the LWOP designation to Minnesota is questionable since the maximum sentence of LWOR for first-degree felony murder was not legislated until 2005. Except for the analysis of the quantitative data, only the principal investigator was involved in doing the Study. Although this reality heightened consistency in the interviewing process and control over the analysis, there was no corroboration of the event themes or ratings assigned to the event themes except through triangulation of the

quantitative results.

XIII. IMPLICATIONS

The findings from the Study have implications for therapeutic jurisprudence and its response to survivors. As a movement and field of study that is concerned with the therapeutic and anti-therapeutic effects of the law and legal system on crime victims, it has the power to guide thinking about many of the issues raised in the Study. Most central is the misguided justification for either the death penalty or LWOP that the UPS brings closure. As repeatedly shown in the literature and again in the Study, survivor well-being is associated with a perceived sense of control, not the lofty or political ideal of closure that is ill-defined and has multiple meanings or is insulting to or in disrepute among survivors themselves. Rather than throwing closure out, we suggest that closure be reconfigured to convey a regained sense of control and that it be considered a sense-making process, synonymous with meaning-making, rather than a destination.[253] Within this framework, the criminal justice system can then provide footholds in a variety of areas to encourage agency and the development of strengths rather than an external focus on the finality of the punishment.

Part of regaining control rests on the survivors' ability to create a personal narrative as a sense-making instrument that pulls together what happened and can assist in interpreting events and comprehending oneself.[254] Narrative resolution, however, is often blocked by ongoing and disruptive circumstances and limited information about the murderer, the murder, and what actually happened. Several of the survivors had the opportunity to meet with the murderer for a restorative dialogue.[255] Survivors, in these cases, had moved far ahead of

253. Armour has made this argument before. *See* Armour, *supra* note 129, at 534–35. This suggestion has also been made by Jody Lyneé Madeira. Madeira, *supra* note 111, at 1503, 1506.

254. Madeira, *supra* note 111, at 1509–11.

255. Both Minnesota and Texas offer restorative justice programs to homicide survivors for a mediated dialogue with the murderer—even in cases involving the death penalty. For a description and evaluation of the program in Texas, see MARK S. UMBREIT ET AL., FACING VIOLENCE: THE PATH OF RESTORATIVE JUSTICE AND DIALOGUE 11–12 (2003). The humanistic approach used in the Minnesota program is described as well. *Id.* at 16–17. For a brief description of the Minnesota program, see *Victim Offender Dialogue*, MINNESOTA DEP'T OF CORRECTIONS, https://www.minnesotachoice.com/web/guest/victim-offender-dialogue (last visited Oct. 27, 2012); *see also* Madeira, *supra* note 111, at 1516 (noting that eleven out of twenty-seven survivors in her study wanted to meet with McVeigh and another five were willing but unsure of the meeting's productivity).

others in their resolution of feelings toward the murderer and in having a fuller, more credible picture that they, rather than the criminal justice system, had obtained. This Study found that the involuntary relationship with the murderer was omnipresent and especially so for survivors waiting for the murderer's execution. The ability of survivors to dialogue directly might help complete their narrative so they could move forward earlier.

Similarly, there are prescribed barriers between survivors and the defense team and between survivors and members of the defendant's family. The findings suggest that the possibility for respectful interaction is empowering and puts the survivor in charge. Defense-initiated victim outreach (DIVO) is a recent addition to death penalty litigation that offers survivors the opportunity, through an independent victim specialist, for a relationship with the defense team to get needs met as determined by the survivor.[256] Mechanisms like DIVO act on the reality of the involuntary relationship through the defense team as proxy for the defendant. Mechanisms like DIVO, or other programs that carefully and sensitively bring together members of the victims and defendant's families, can be empowering, help provide information, and perhaps reduce some of the rumination that otherwise impedes movement.

A major implication is the need for survivors to have access to the Study findings. Homicide survivors are thrust into the criminal justice system and the public light with little or no knowledge about the process and what to expect. Survivors who are part of UPS proceedings have the additional burden of navigating complex layers of legal proceedings that hold huge implications for their futures. Knowledge of the information in the Study, which was gleaned from survivors like themselves, would aid them in their decision making and leave them less dependent on other well-meaning legal representatives whose political agendas might serve to filter out important information that could be healing for the survivor.

From a therapeutic jurisprudence perspective, the Study findings also have implications for prosecutors and defense attorneys. While maintaining their objectivity, prosecutors need to be mindful that providing information as well as solid and consistent support helps inoculate survivors against some of the stressors in the courtroom. The establishment of a partnered relationship achieved through consultation

256. See Branham & Burr, *supra* note 223, at 1023–25.

with survivors and making room for their input elevates their diminished status as crime victims in their own eyes thereby providing the building blocks for a stronger sense of participation and control. The findings confirm the need for defense attorneys not to avoid survivors but to engage with them in a respectful, compassionate manner. Defense attorneys do not need to show empathy by conveying an ambivalent commitment to the defendant as purported to have happened to some of the survivors in this study. Rather, the defense outreach must be sincere and responsive to survivor needs. Defense attorneys might also work with their clients, where appropriate, to better understand the enormity of the survivor's loss and what they did to their lives. Many survivors hunger for genuine remorse as part of what they need to complete, even resolve, the narrative of the murder so they can move forward.

XIV. CONCLUSION

Although a causal relationship between court-generated closure and survivor well-being has been hypothesized, it has never been tested. Media reports of survivor comments at the time of execution, or made immediately following it, and studies based on those comments, have been the best evidence to date but represent partial or indirectly derived approximations of the impact of the UPS on survivors.[257] This Study used in-person interviews with a randomly selected sample of survivors from four time periods about the entire UPS process and its longitudinal impact on their lives. Moreover, it assessed the impact of different types of UPS on survivors by comparing their experiences in two different states, namely Texas and Minnesota. Findings include designation of UPS-related event themes at time of conviction and postconviction, as well as event themes associated with the consequences of the homicide on survivor's lives. State comparisons show differences primarily during postconviction (specific to the appeals process) and in survivor well-being, with Minnesotans having higher levels of physical, psychological, and behavioral health. Quantitative results support these state differences between Time 1 and Time 3 as well as predictive relationships between grief scores and event themes of well-being. The

257. *See generally* Gross & Matheson, *supra* note 124 (examining press stories regarding executions from January 2001 through June 2002); Mowen & Schroeder, *supra* note 124 (examining newspaper coverage about executions to report responses and sentiments of covictims); Vollum & Longmire, *supra* note 124 (assessing statements from covictims by reviewing articles about executions).

issue of survivor's perceived control over present-day circumstances is a critical factor reflected in the event themes as well as the researcher-assigned ratings, of survivors' reactions. Although the UPS is promulgated as the ultimate justice, this Study found that the critical dynamic was the control survivors felt they had over the process of getting to the end. In Minnesota, survivors had greater control, likely because the appeals process was successful, predictable, and completed within two years after conviction; whereas, the finality of the appeals process in Texas was drawn out, elusive, delayed, and unpredictable. It generated layers of injustice, powerlessness, and in some instances, despair. Although the grief and depth of sorrow remained high for Minnesotans, no longer having to deal with the murderer, his outcome, or the criminal justice system allowed survivors' control and energy to be put into the present to be used for personal healing.

APPENDIX A: FIGURES

Figure 1. Percentage Distribution of Prosecution Contact at Time 1 by State

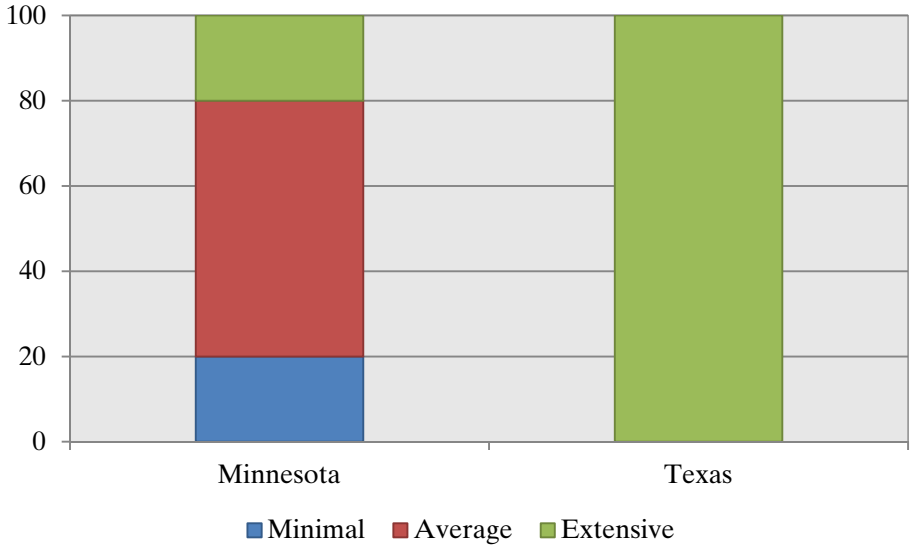


Figure 2. Percentage Distribution of Defense Attorney Contact by State

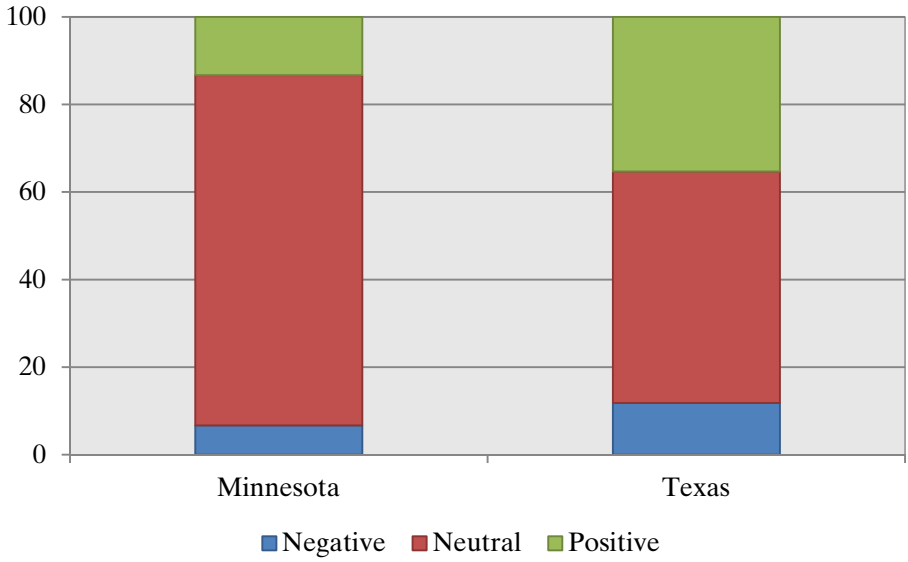


Figure 3. Percentage Distribution of Criminal Justice Satisfaction by State

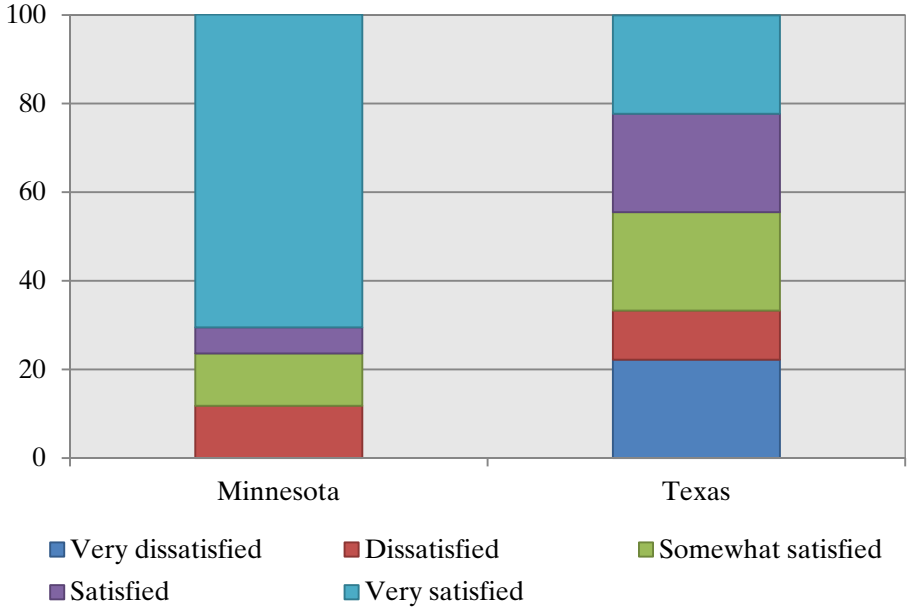


Figure 4. Percentage Distribution of Civil Actions by Time and State

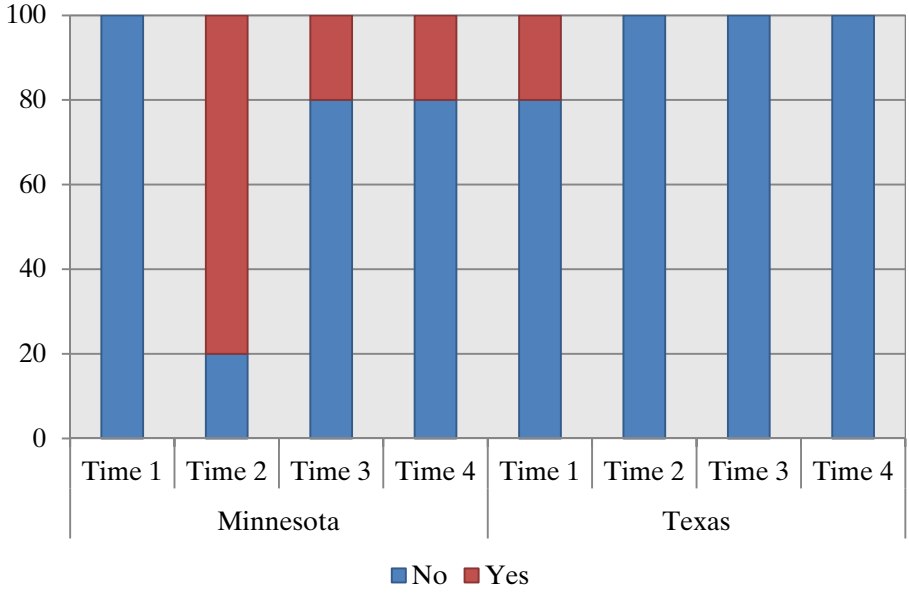


Figure 5. Percentage Distribution of Case Status by State

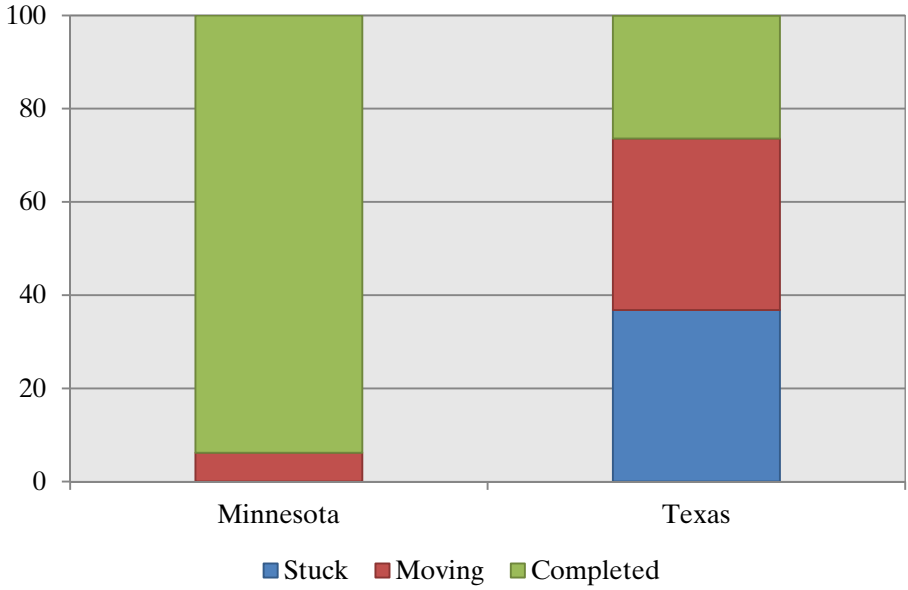


Figure 6a. Percentage Distribution of Reaction to Appeal Process by State—Texas

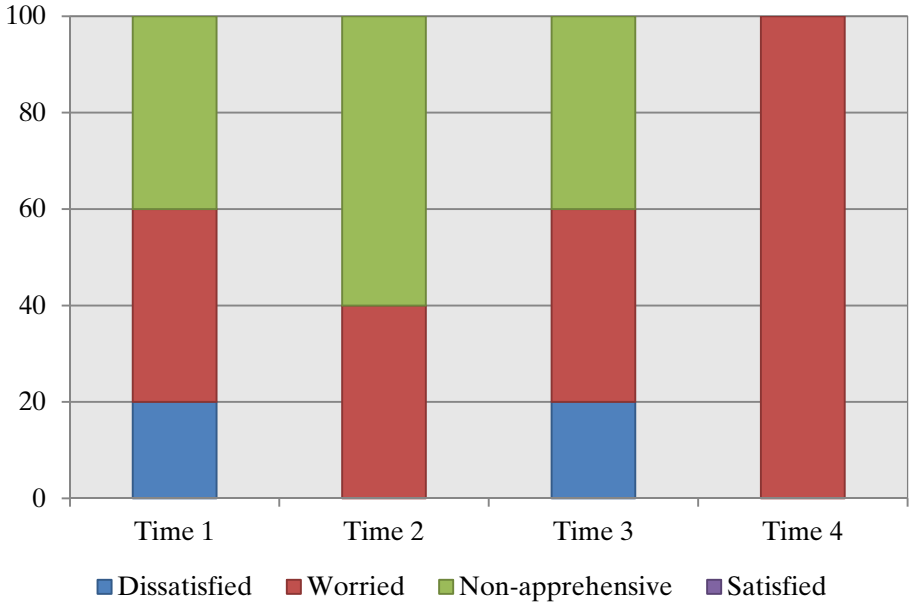


Figure 6b. Percentage Distribution of Reaction to Appeal Process by State—Minnesota

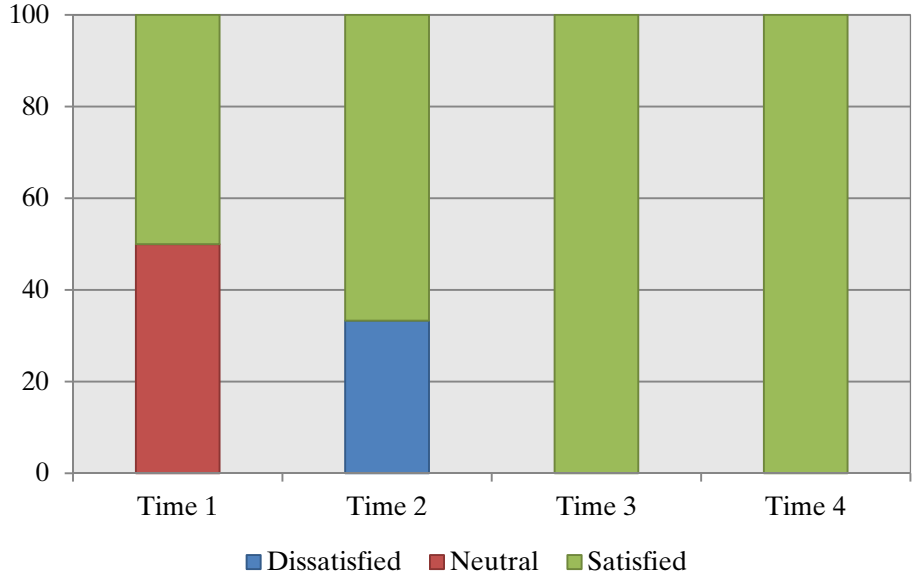


Figure 7. Percentage Distribution of Desire for Murderer Remorse by State

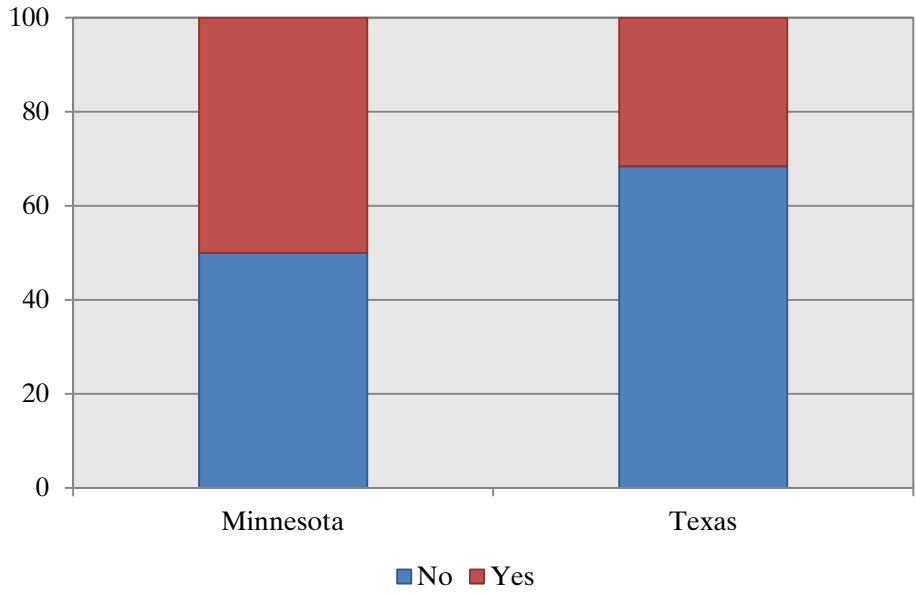


Figure 8. Percentage Distribution of Opinion of UPS by State

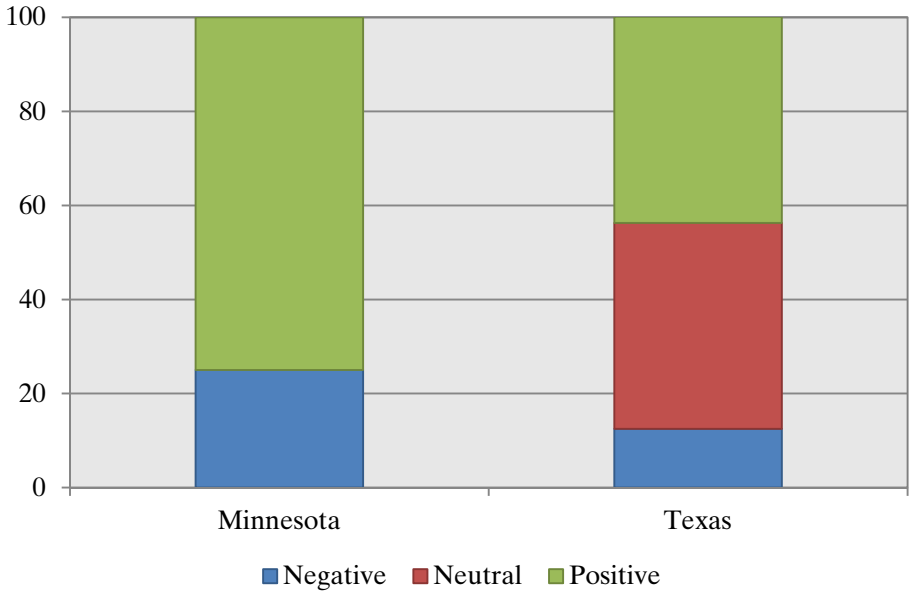


Figure 9. Percentage Distribution of Execution Witnessing/Plan to Witness by Time

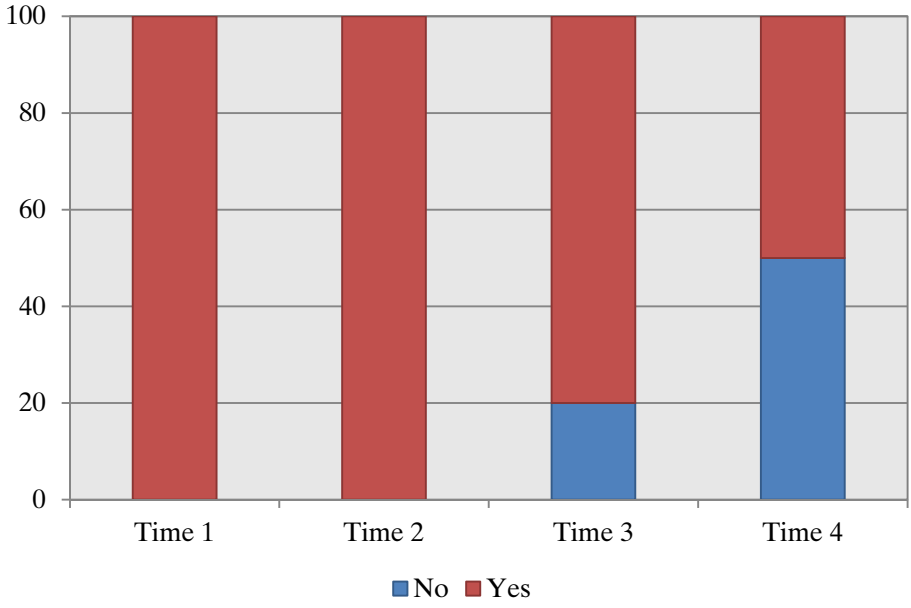


Figure 10. Percentage Distribution of Positive Spinoff by State

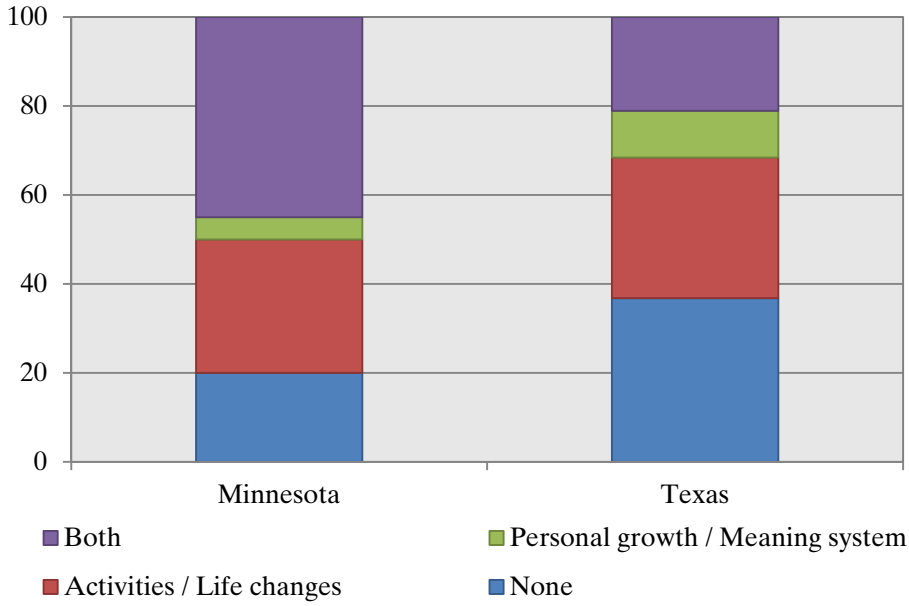


Figure 11. Percentage Distribution of Physical Reactions by State

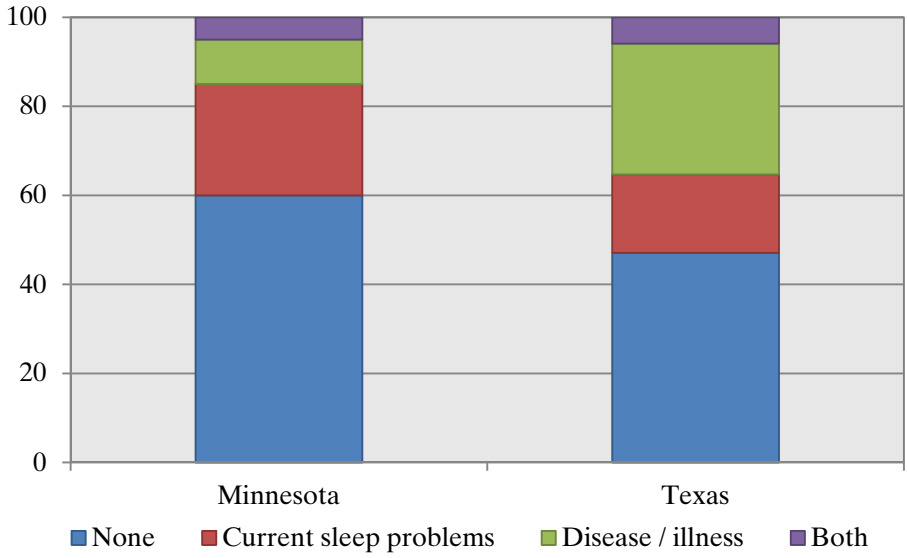


Figure 12. Percentage Distribution of Depression/Emotional Dulling by State

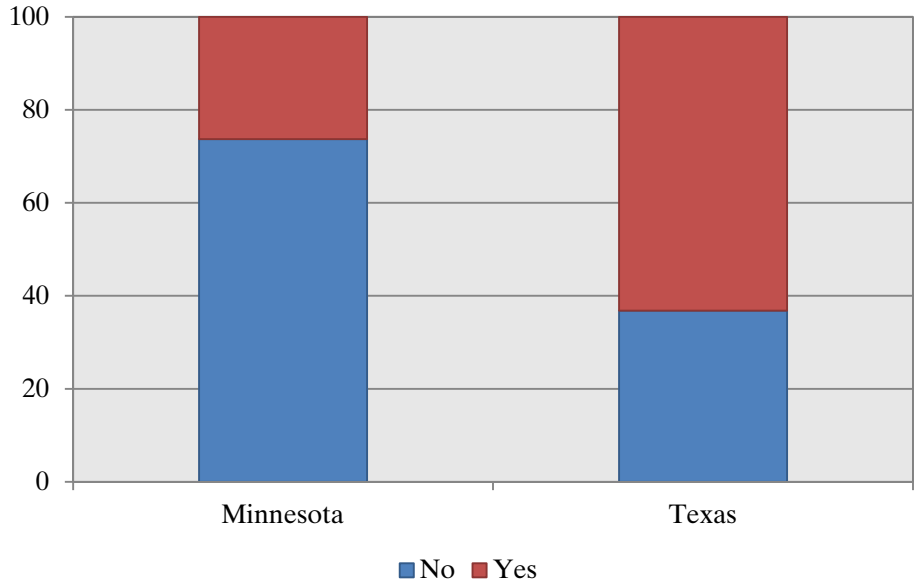


Figure 13. Percentage Distribution of Posttraumatic Growth by State

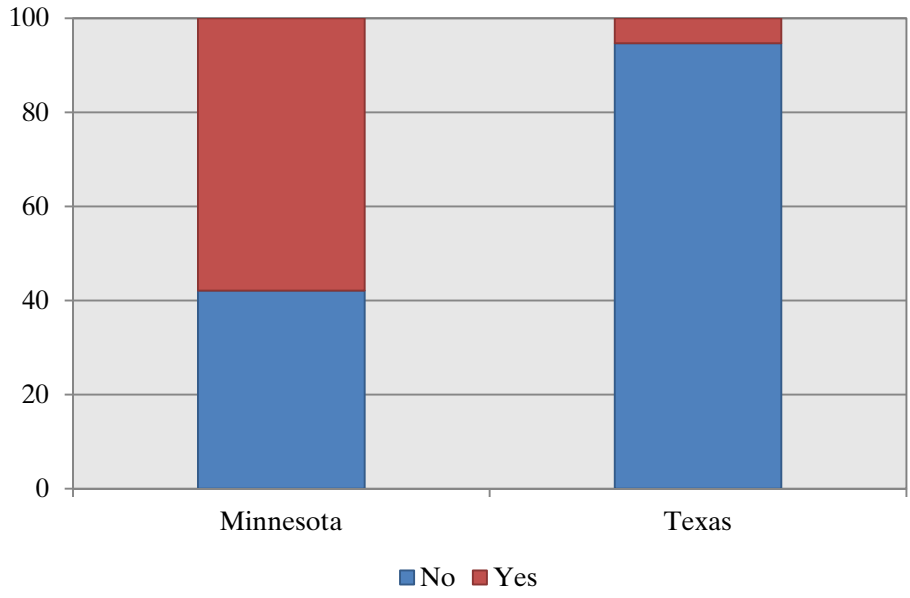


Figure 14. Percentage Distribution of Stress-Reducing Behaviors by State

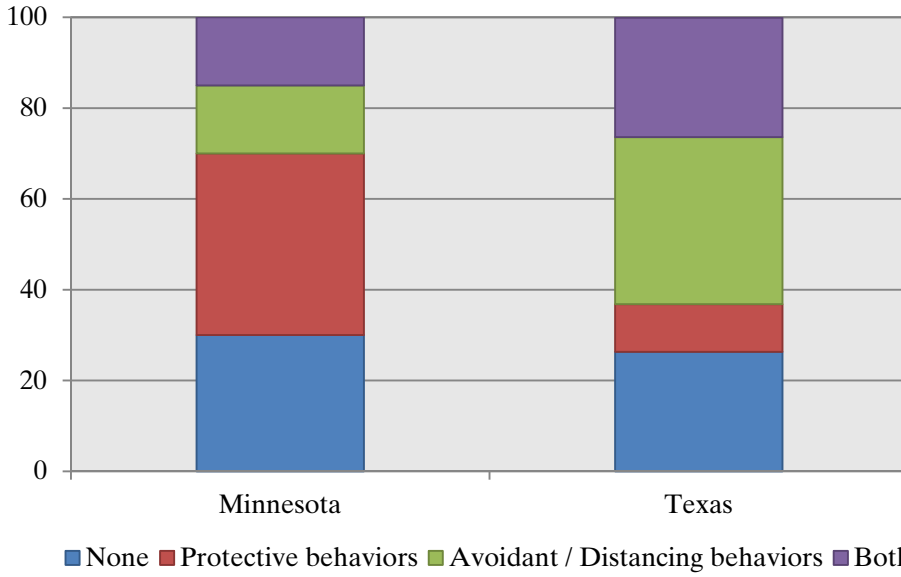


Figure 15. Percentage Distribution of Refocusing Behaviors by State

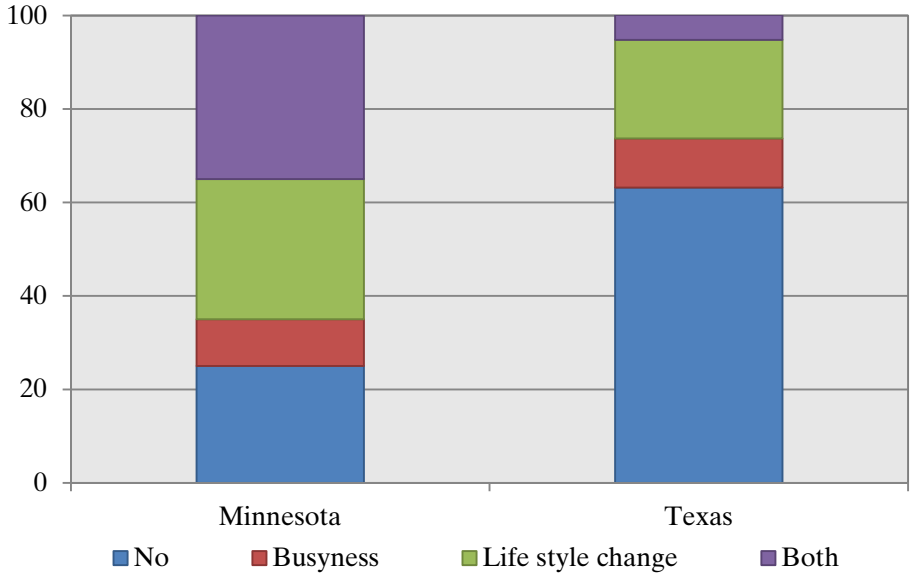


Figure 16. Percentage Distribution of Sense-of-Agency Behaviors by State

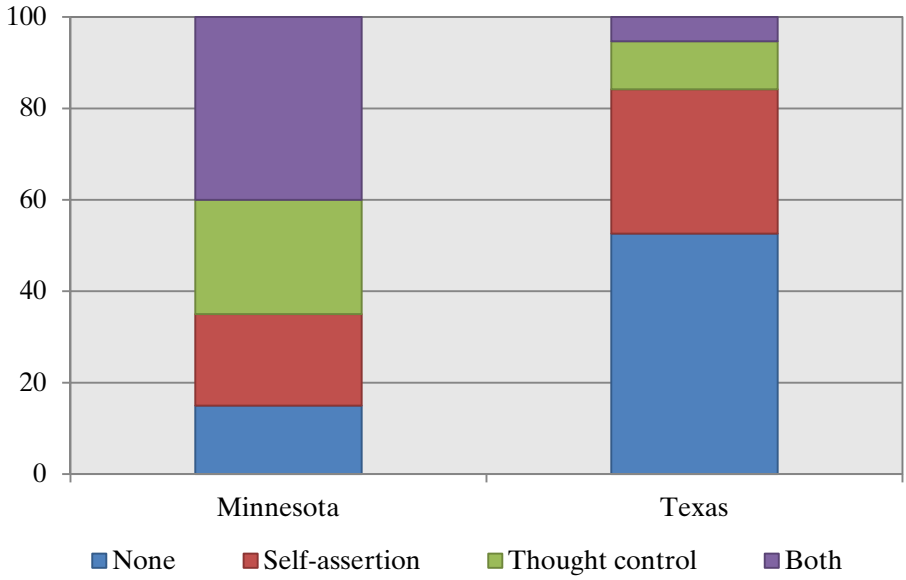
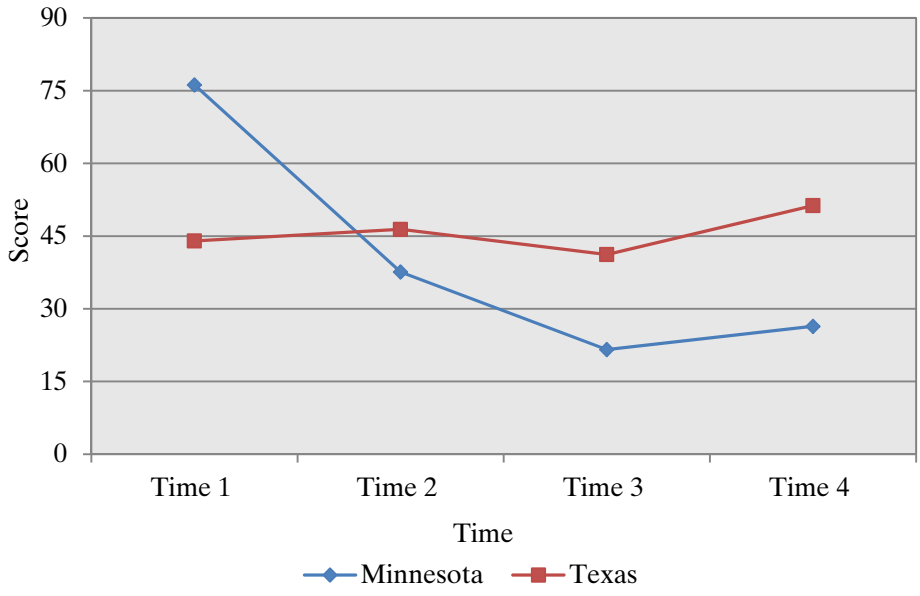


Figure 17. Mean ICG-R Scores by Time and State



APPENDIX B: TABLES

Table 1: Case Characteristics of UPS Sample

		All Cases		Minnesota		Texas	
		n	Valid Percentage	n	Valid Percentage	n	Valid Percentage
State	Minnesota	20	51.3	20	100.0	N/A	N/A
	Texas	19	48.7		N/A	19	100.0
Timeframes	Time 1 (1992–1994)	10	25.6	5	25.0	5	26.3
	Time 2 (1996–1998)	10	25.6	5	25.0	5	26.3
	Time 3 (2000–2002)	10	25.6	5	25.0	5	26.3
	Time 4 (2004–2006)	9	23.1	5	25.0	4	21.1
Continuing engagement	Yes	18	46.2	9	45.0	9	47.4
	No	21	53.8	11	55.0	10	52.6
Family violence case	Yes	12	30.8	7	35.0	5	26.3
	No	27	69.2	13	65.0	14	73.7
Participant knew murderer	Yes	15	38.5	9	45.0	6	31.6
	No	24	61.5	11	55.0	13	68.4
Victim knew murderer	Yes	24	61.5	15	75.0	9	47.4
	No	15	38.5	5	25.0	10	52.6
If death penalty case, has sentence been carried out?	Yes	4	10.3	N/A	N/A	4	21.1
	No	15	38.5	N/A	N/A	15	78.9
	Not applicable	20	51.3	20	100.0	N/A	N/A

Table 2: Respondent Characteristics of USP Sample

		All Cases		Minnesota		Texas	
		n	Valid Percentage	n	Valid Percentage	n	Valid Percentage
Gender	Female	31	79.5	17	85.0	14	73.7
	Male	8	20.5	3	15.0	5	26.3
Race/ Ethnicity	Black / African-American	4	10.3	2	10.0	2	10.5
	Hispanic / Mexican American / Chicano	2	5.1	0	0.0	2	10.5
	White / Caucasian	31	79.5	17	85.0	14	73.7
	Asian / Pacific Islander	1	2.6	0	0.0	1	5.3
	Other	1	2.6	1	5.0	0	0.0
Marital Status	Single	4	10.3	1	5.0	3	15.8
	Married	19	48.7	8	40.0	11	57.9
	Separated	1	2.6	1	5.0	0	0.0
	Divorced	6	15.4	4	20.0	2	10.5
	Widowed	8	20.5	6	30.0	2	10.5
	Committed relationship	1	2.6	0	0.0	1	5.3
Education	Grades 7–9	1	2.6	1	5.0	0	0.0
	Grades 10–12	6	15.4	4	20.0	2	10.5
	High school graduate / GED	8	20.5	2	10.0	6	31.6
	Some college or an associate's degree	14	35.9	7	35.0	7	36.8
	Bachelor's degree	4	10.3	2	10.0	2	10.5
	Some graduate school	1	2.6	0	0.0	1	5.3
	Graduate degree / other professional program	5	12.8	4	20.0	1	5.3

Table 3: Victim Characteristics of UPS Sample

		All Cases		Minnesota		Texas	
		n	Valid Percentage	n	Valid Percentage	n	Valid Percentage
Relationship to Study Participant	Parent / Step-parent	19	41.3	6	30.0	13	50.0
	Spouse / Partner	6	13.0	4	20.0	2	7.7
	Child / Step-child	7	15.2	3	15.0	4	15.4
	Sibling	7	15.2	3	15.0	4	15.4
	Grandparent	2	4.3	0	0.0	2	7.7
	Other	5	10.9	4	20.0	1	3.9
Gender	Female	26	56.5	10	50.0	16	61.5
	Male	20	43.5	10	50.0	10	38.5

Table 4. Percentage Distributions of Category 1 Event Themes by State and Time Period

		MINNESOTA				TEXAS			
		Time 1	Time 2	Time 3	Time 4	Time 1	Time 2	Time 3	Time 4
Theme	Response Categories								
Prosecution Team Contact	None	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	Minimal	20.0	20.0	60.0	0.0	0.0	0.0	0.0	0.0
	Average	60.0	80.0	40.0	50.0	0.0	100.0	100.0	75.0
	Extensive	20.0	0.0	0.0	50.0	100.0	0.0	0.0	25.0
Sanction Input	None	80.0	60.0	80.0	100.0	0.0	75.0	75.0	100.0
	Some	20.0	20.0	20.0	0.0	40.0	25.0	25.0	0.0
	A lot	0.0	20.0	0.0	0.0	60.0	0.0	0.0	0.0
Input Satisfaction	Not satisfied	20.0	0.0	0.0	0.0	20.0	0.0	20.0	0.0
	Satisfied	80.0	100.0	100.0	100.0	80.0	100.0	80.0	100.0
Defense Attorney Behavior	Negative	80.0	66.7	75.0	33.3	50.0	25.0	20.0	100.0
	Neutral	20.0	33.3	0.0	66.7	50.0	75.0	20.0	0.0
	Positive	0.0	0.0	25.0	0.0	0.0	0.0	60.0	0.0
Defense Attorney Contact	Negative	20.0	0.0	0.0	0.0	0.0	25.0	20.0	0.0
	Neutral	80.0	100.0	75.0	66.7	50.0	50.0	20.0	100.0
	Positive	0.0	0.0	25.0	33.3	50.0	25.0	60.0	0.0
Victim-Impact Statements (VIS)	No	0.0	0.0	25.0	50.0	20.0	0.0	20.0	50.0
	Yes	100.0	100.0	75.0	50.0	80.0	100.0	80.0	50.0
VIS Satisfaction	Not satisfied	0.0	20.0	0.0	0.0	20.0	0.0	0.0	0.0
	Neutral	20.0	0.0	33.3	0.0	20.0	20.0	25.0	75.0
	Satisfied	80.0	80.0	66.7	100.0	60.0	80.0	75.0	25.0
Trial Disruption by Murderer	Yes	80.0	50.0	0.0	0.0	25.0	40.0	50.0	50.0
	No	20.0	50.0	100.0	100.0	75.0	60.0	50.0	50.0
Family Contact	Negative	100.0	50.0	0.0	66.7	50.0	40.0	60.0	0.0
	Neutral	0.0	50.0	50.0	33.3	0.0	40.0	40.0	75.0
	Positive	0.0	0.0	50.0	0.0	50.0	20.0	0.0	25.0
Criminal Justice Satisfaction	Very dissatisfied	0.0	0.0	0.0	0.0	40.0	20.0	0.0	33.3
	Dissatisfied	0.0	0.0	0.0	40.0	0.0	0.0	40.0	0.0
	Somewhat satisfied	20.0	0.0	0.0	20.0	20.0	20.0	40.0	0.0
	Satisfied	20.0	0.0	0.0	0.0	20.0	60.0	0.0	0.0
	Very satisfied	60.0	100.0	100.0	40.0	20.0	0.0	20.0	66.7

Table 5. Percentage Distributions of Category 2 Event Themes by State and Time Period

		Minnesota				Texas			
		Time 1	Time 2	Time 3	Time 4	Time 1	Time 2	Time 3	Time 4
Theme	Response Categories								
Civil Action	No	100.0	20.0	80.0	80.0	80.0	100.0	100.0	100.0
	Yes	0.0	80.0	20.0	20.0	20.0	0.0	0.0	0.0
Appeal Process	Stuck	0.0	0.0	0.0	0.0	20.0	0.0	60.0	75.0
	Moving	25.0	0.0	0.0	0.0	80.0	60.0	0.0	0.0
	Completed	75.0	100.0	100.0	100.0	0.0	40.0	40.0	25.0
Reaction to Appeal Process—Minnesota	Dissatisfied	0.0	33.3	0.0	0.0	N/A	N/A	N/A	N/A
	Neutral	50.0	0.0	0.0	0.0	N/A	N/A	N/A	N/A
	Satisfied	50.0	66.7	100.0	100.0	N/A	N/A	N/A	N/A
Reaction to Appeal Process—Texas	Dissatisfied	N/A	N/A	N/A	N/A	20.0	0.0	20.0	0.0
	Worried	N/A	N/A	N/A	N/A	40.0	40.0	40.0	100.0
	Non-apprehensive	N/A	N/A	N/A	N/A	40.0	60.0	40.0	0.0
	Satisfied	N/A	N/A	N/A	N/A	0.0	0.0	0.0	0.0
Mental Relationship with Murderer	None	0.0	20.0	40.0	60.0	0.0	0.0	0.0	25.0
	Some	60.0	40.0	40.0	0.0	60.0	60.0	40.0	75.0
	Much	40.0	40.0	20.0	40.0	40.0	40.0	60.0	0.0
Attitude Toward Murderer	Negative	40.0	80.0	25.0	60.0	80.0	100.0	80.0	50.0
	Neutral	60.0	0.0	75.0	20.0	0.0	0.0	20.0	50.0
	Positive	0.0	20.0	0.0	20.0	20.0	0.0	0.0	0.0
Desire for Murderer to Suffer	No	40.0	40.0	50.0	60.0	40.0	80.0	60.0	25.0
	Yes	60.0	60.0	50.0	40.0	60.0	20.0	40.0	75.0
Desire for Murderer Remorse	No	40.0	60.0	20.0	80.0	100.0	40.0	60.0	75.0
	Yes	60.0	40.0	80.0	20.0	0.0	60.0	40.0	25.0
Opinion Toward UPS	Negative	40.0	40.0	0.0	20.0	33.3	0.0	20.0	0.0
	Neutral	0.0	0.0	0.0	0.0	33.3	25.0	40.0	75.0
	Positive	60.0	60.0	100.0	80.0	33.3	75.0	40.0	25.0
Execution Done	No	N/A	N/A	N/A	N/A	100.0	80.0	60.0	75.0
	Yes	N/A	N/A	N/A	N/A	0.0	20.0	40.0	25.0
Execution Witnessed / Plan to Witness	No	N/A	N/A	N/A	N/A	0.0	0.0	20.0	50.0
	Yes	N/A	N/A	N/A	N/A	100.0	100.0	80.0	50.0
Death Penalty Aim	An ending	N/A	N/A	N/A	N/A	0.0	100.0	75.0	33.3
	Equity/honoring victim	N/A	N/A	N/A	N/A	66.7	0.0	25.0	33.3
	Other	N/A	N/A	N/A	N/A	33.3	0.0	0.0	33.3
Remaining Questions	No	20.0	0.0	60.0	50.0	40.0	40.0	40.0	0.0
	Yes	80.0	100.0	40.0	50.0	60.0	60.0	60.0	100.0

Table 6. Percentage Distributions of Category 3 Event Themes by State and Time Period

		Minnesota				Texas			
		Time 1	Time 2	Time 3	Time 4	Time 1	Time 2	Time 3	Time 4
Theme	Response Categories								
Criminal Justice Injustices / Resentments	None	40	20	100	40	60	80	40	50
	1	60	60	0	60	20	0	40	25
	2 to 3	0	20	0	0	20	20	20	25
	4 or more	0	0	0	0	0	0	0	0
Non-Criminal Justice Injustices / Resentments	None	80	20	60	60	80	100	80	50
	1	20	40	40	40	20	0	0	0
	2 to 3	0	40	0	0	0	0	20	50
	4 or more	0	0	0	0	0	0	0	0
Negative Fallout	None	40	40	40	20	60	0	20	25
	On self	20	0	0	20	20	60	40	50
	On other	40	60	60	0	20	40	20	25
	On both self and other	0	0	0	60	0	0	20	0
Positive Spinoff	None	40	20	20	0	20	20	60	50
	Activities / Life changes	60	20	0	40	20	40	20	50
	Personal growth / Meaning system	0	0	20	0	20	20	0	0
	Both of the above	0	60	60	60	40	20	20	0
Current Physical Reactions	None	40	80	60	60	60	0	60	50
	Current sleep problems	40	20	0	40	20	0	20	25
	Disease / Illness	0	0	40	0	0	100	20	25
	Both of the above	20	0	0	0	20	0	0	0
Trauma Reactions	No	40	100	80	100	40	40	60	100
	Yes	60	0	20	0	60	60	40	0
Emotional Dulling / Depressive Symptoms	No	60	50	80	100	60	20	20	50
	Yes	40	50	20	0	40	80	80	50
Lack of Trust	No	0	75	80	20	80	60	40	75
	Yes	100	25	20	80	20	40	60	25
Post Traumatic Growth	No	100	50	20	0	80	100	100	100
	Yes	0	50	80	100	20	0	0	0

Stress-Reducing Activities	None	0	40	60	20	20	40	20	25
	Protective behaviors	60	20	0	80	0	0	20	25
	Avoidant / Distancing behaviors	0	40	20	0	40	40	40	25
	Both of the above	40	0	20	0	40	20	20	25
Refocusing Behaviors	No	40	40	20	0	60	40	80	75
	Business	0	40	0	0	0	20	0	25
	Life style change	60	0	40	20	20	40	20	0
	Both of the above	0	20	40	80	20	0	0	0
Preserving Behaviors	No	100	80	100	100	60	40	80	100
	Yes	0	20	0	0	40	60	20	0
Sense of Agency Behaviors	None	20	20	20	0	80	60	40	25
	Self-assertion	20	0	20	40	0	20	60	50
	Thought control	40	60	0	0	0	20	0	25
	Both of the above	20	20	60	60	20	0	0	0

Table 7: ICG-R Score Means and Standard Deviations by Time and State

		Time 1	Time 2	Time 3	Time 4
Minnesota	Mean	76.2	37.6	21.6	26.4
	SD	24.4	22.5	8.6	13.2
Texas	Mean	44.0	46.4	41.2	51.3
	SD	23.8	18.7	15.9	24.3

Table 8a: Category 1 Texas Cases: Impact of UPS on Conviction Experience

	Pros Contact[a]	Sanction Input[b]	Input Satis[c]	Def Att Beh[d]	Def Att Contact[e]	VIS[f]	VIS Satis[g]	Murd Disrp[h]	Fam Contact[i]	CJ Satis[j]
Time 1										
Case 1	4	3	2	1	3	2	3	1	3	5
Case 2	4	2	2	2	3	2	1	2	1	3
Case 3	4	3	2	2	2	2	2	2	1	1
Case 4	4	3	1	N/A	N/A	2	3	N/A	N/A	1
Case 5	4	2	2	1	2	1	3	2	3	4
Time 2										
Case 1	3	N/A	2	N/A	N/A	2	3	2	3	4
Case 2	3	1	2	2	2	2	2	1	1	4
Case 3	3	1	2	2	2	2	3	2	2	1
Case 4	3	2	2	1	1	2	3	1	1	3
Case 5	3	1	2	2	3	2	3	2	2	4
Time 3										
Case 1	3	N/A	2	3	3	2	2	1	1	2
Case 2	3	1	1	2	3	1	N/A	2	2	3
Case 3	3	1	2	3	3	2	3	N/A	2	2
Case 4	3	2	2	3	2	2	3	2	1	3
Case 5	3	1	2	1	1	2	3	1	1	5
Time 4										
Case 1	3	1	2	1	2	1	3	2	3	5
Case 2	3	1	2	1	2	2	2	1	2	1
Case 3	4	1	2	1	2	1	2	1	2	N/A
Case 4	3	1	2	1	2	2	2	2	2	5

[a] Prosecution Team Contact: (1) None (2) Minimal (3) Average (4) Extensive

[b] Sanction Input: (1) None (2) Some (3) A lot

[c] Input Satisfaction: (1) Not Satisfied (2) Satisfied

[d] Defense Attorney Behavior: (1) Negative (2) Neutral (3) Positive

[e] Defense Attorney Contact: (1) Negative (2) Neutral (3) Positive

[f] Victim-Impact Statement/Testimony: (1) No (2) Yes

[g] Victim-Impact Statement/Testimony Satisfaction: (1) Not satisfied (2) Neutral (3) Satisfied

[h] Trial Disruption by Murderer: (1) Yes (2) No

[i] Family Contact: (1) Negative (2) Neutral (3) Positive

[j] Criminal Justice Satisfaction: (1) Very Dissatisfied (2) Dissatisfied (3) Somewhat (4) Satisfied (5) Very Satisfied

Table 8b: Category 1 Minnesota Cases: Impact of UPS on Conviction Experience

	Pros Contact[a]	Sanction Input[b]	Input Satis[c]	Def Att Beh[d]	Def Att Contact[e]	VIS[f]	VIS Satis[g]	Murd Disrp[h]	Fam Contact[i]	CJ Satis[j]
Time 1										
Case 1	3	2	2	2	2	2	2	2	1	5
Case 2	2	1	2	1	2	2	3	1	N/A	4
Case 3	4	1	2	1	2	2	3	1	1	5
Case 4	3	1	2	1	1	2	3	1	1	5
Case 5	3	1	1	1	2	2	3	1	N/A	3
Time 2										
Case 1	2	1	2	2	2	2	3	2	2	N/A
Case 2	3	2	2	(a) 1 (b) 2	(a) 2 (b) 2	2	3	2	2	5
Case 3	3	1	2	N/A	N/A	2	1	N/A	N/A	5
Case 4	3	1	2	N/A	N/A	2	3	1	1	N/A
Case 5	3	3	2	1	2	2	3	1	1	5
Time 3										
Case 1	3	1	2	3	3	N/A	N/A	N/A	3	5
Case 2	3	2	2	1	2	2	3	N/A	N/A	5
Case 3	2	1	2	N/A	N/A	2	2	2	N/A	N/A
Case 4	2	1	2	1	2	1	N/A	2	2	5
Case 5	2	1	2	1	2	2	3	2	N/A	5
Time 4										
Case 1	4	1	2	N/A	N/A	2	3	N/A	1	2
Case 2	3	1	2	1	2	1	N/A	N/A	N/A	5
Case 3	4	1	2	2	2	1	N/A	N/A	1	2
Case 4	3	1	2	2	3	2	3	2	2	5
Case 5	N/A		2	N/A	N/A	N/A	N/A	N/A	N/A	3

[a] Prosecution Team Contact: (1) None (2) Minimal (3) Average (4) Extensive

[b] Sanction Input: (1) None (2) Some (3) A lot

[c] Input Satisfaction: (1) Not Satisfied (2) Satisfied

[d] Defense Attorney Behavior: (1) Negative (2) Neutral (3) Positive

[e] Defense Attorney Contact: (1) Negative (2) Neutral (3) Positive

[f] Victim-Impact Statement/Testimony: (1) No (2) Yes

[g] Victim-Impact Statement/Testimony: (1) Not satisfied (2) Neutral (3) Satisfied

[h] Trial Disruption by Murderer: (1) Yes (2) No

[i] Family Contact: (1) Negative (2) Neutral (3) Positive

[j] Criminal Justice Satisfaction: (1) Very Dissatisfied (2) Dissatisfied (3) Somewhat (4) Satisfied (5) Very Satisfied

[k] Death Penalty Attitude: (1) Non Death Penalty (2) Ambivalent (3) Pro Death Penalty

Table 9a: Category 2 Texas Cases—Impact of UPS on Postconviction Experience

	Civil Act[a]	Appeal Proc[b]	Appeal React[c]	Murd Rela[d]	Murd Att[e]	Murd Suff[f]	Murd Rem[g]	UPS Opin[h]	Exec Donei	Exec Wit[j]	DP Aim[k]	Ques[l]
Time 1												
Case 1	1	1	2	3	1	1	1	2	1	2	2	1
Case 2	1	2	2	2	1	2	1	N/A	1	N/A	N/A	2
Case 3	2	2	3	2	1	2	1	3	1	2	2	1
Case 4	1	2	1	3	3	1	1	1	1	N/A	3	2
Case 5	1	2	3	2	1	2	1	N/A	1	N/A	N/A	2
Time 2												
Case 1	1	3	3	2	1	1	1	3	2	2	1	2
Case 2	1	3	3	2	1	1	2	N/A	1*	N/A	N/A	2
Case 3	1	2	3	3	1	2	2	3	1	2	1	2
Case 4	1	2	2	3	1	1	1	3	1	2	1	1
Case 5	1	2	2	2	1	1	2	2	1	2	1	1
Time 3												
Case 1	1	1	1	3	1	2	1	3	1	2	1	2
Case 2	1	3	3	2	1	2	2	1	2	2	2	1
Case 3	1	1	2	3	2	1	2	2	1	2	1	1
Case 4	1	3	3	2	1	1	1	2	2	1	N/A	2
Case 5	1	1	2	3	1	1	1	3	1	2	1	2
Time 4												
Case 1	1	1	2	1	2	1	1	2	1	2	3	2
Case 2	1	1	2	2	2	2	2	2	1	1	1	2
Case 3	1	3	2	2	1	2	1	3	2	2	2	2
Case 4	1	1	2	2	1	2	1	2	1	1	N/A	2

* Murdered committed suicide

[a] Civil Legal Action: (1) No (2) Yes

[b] Appeal Process: (1) Stuck (2) Moving (3) Completed

[c] Reaction to Appeal Process: (1) Dissatisfied (2) Worried (3) Non Apprehensive (4) Satisfied

[d] Mental Relationship with Murderer: (1) None (2) Some (3) Much

[e] Attitude Toward Murderer: (1) Negative (2) Neutral (3) Positive

[f] Desire for Murderer to Suffer: (1) No (2) Yes

[g] Desire for Murderer Remorse: (1) No (2) Yes

[h] Opinion Toward UPS: (1) Negative (2) Neutral (3) Positive

[I] Execution Done: (1) No (2) Yes

[j] Execution Witnessed/Plan to Witness: (1) No (2) Yes

[k] Death Penalty Aim: (1) An Ending (2) Equity/Honoring of Victim (3) Other

[l] Remaining Questions: (1) No (2) Yes

Table 9b: Category 2 Minnesota Cases—Impact of UPS on Postconviction Experience

	Civil Act[a]	Appeal Proc[b]	Appeal React[c]	Murd Rela[d]	Murd Att[e]	Murd Suff[f]	Murd Rem[g]	UPS Opin[h]	Ques[i]
Time 1									
Case 1	1	3	3	2	1	2	1	3	2
Case 2	1	N/A	N/A	3	2	2	2	3	2
Case 3	1	3	2	2	2	2	1	3	2
Case 4	1	2	2	3	1	1	2	1	2
Case 5	1	3	3	2	2	1	2	1	1
Time 2									
Case 1	2	3	3	1	1	1	1	3	2
Case 2	1	(a) 2 (b) 3	(a) 1 (b) 3	(a) 3(b) 3	(a) 1 (b) 3	2	2	(a) 1 (b) 3	2
Case 3	2	3	1	3	1	2	2	3	2
Case 4	2	3	N/A	2	1	2	1	1	2
Case 5	2	3	3	2	1	1	1	1	2
Time 3									
Case 1	1	N/A	N/A	2	2	N/A	2	3	1
Case 2	1	3	3	2	2	1	2	3	2
Case 3	1	3	N/A	1	2	1	2	3	2
Case 4	2	3	3	3	1	2	2	3	1
Case 5	1	N/A	3	1		2	1	3	1
Time 4									
Case 1	1	3	N/A	3	3	1	2	3	1
Case 2	2	3	3	1	2	2	1	3	1
Case 3	1	3	N/A	3	1	1	1	1	N/A
Case 4	1	3	3	1	1	1	1	3	2
Case 5	1	3	N/A	1	1	2	1	3	2

[a] Civil Legal Action: (1) No (2) Yes

[b] Appeal Process: (1) Stuck (2) Moving (3) Completed

[c] Reaction to Appeal Process: (1) Dissatisfied (2) Neutral (3) Satisfied

[d] Mental Relationship with Murderer: (1) None (2) Some (3) Much

[e] Attitude Toward Murderer: (1) Negative (2) Neutral (3) Positive

[f] Desire for Murderer to Suffer: (1) No (2) Yes

[g] Desire for Murderer Remorse: (1) No (2) Yes

[h] Opinion Toward UPS: (1) Negative (2) Neutral (3) Positive

[i] Remaining Questions: (1) No (2) Yes

Table 10a: Category 3—Impact of Murder and UPS on Survivors' Lives

	TEXAS					MINNESOTA				
	CJ Injus[a]	NCJ Injus[b]	Neg Cons[c]	Post Cons[d]	Phy React[e]	CJ Injus[a]	NCJ Injus[b]	Neg Cons[c]	Post Cons[d]	Phy React[e]
Time 1										
Case 1	1	1	1	4	1	1	1	1	2	2
Case 2	2	1	1	2	1	2	1	3	2	1
Case 3	1	2	2	1	2	1	1	1	1	1
Case 4	3	1	1	4	1	2	2	2	1	2
Case 5	1	1	3	3	4	2	1	3	2	4
Time 2										
Case 1	1	1	2	2	N/A	2	1	1	1	1
Case 2	1	1	2	3	3	2	2	3	4	1
Case 3	3	1	2	2	N/A	3	3	3	4	1
Case 4	1	1	3	1	3	1	2	1	2	1
Case 5	1	1	3	4	3	2	3	3	4	2
Time 3										
Case 1	3	3	3	2	2	1	1	3	3	3
Case 2	2	1	2	1	1	1	2	1	4	1
Case 3	2	1	2	1	1	1	1	3	1	1
Case 4	1	1	1	4	1	1	2	3	4	3
Case 5	1	1	4	1	3	1	1	1	4	1
Time 4										
Case 1	1	1	2	1	3	2	2	4	4	2
Case 2	3	3	2	2	1	2	1	4	4	1
Case 3	1	1	3	2	1	2	2	4	4	1
Case 4	2	3	1	1	2	1	1	1	2	1
Case 5	N/A	N/A	N/A	N/A	N/A	1	1	2	2	2

[a] Criminal Justice Injustices/Resentments: (1) None (2) 1 (3) 2–3 (4) More than 4

[b] Non-Criminal Justice Injustices/Resentments: (1) None (2) 1 (3) 2–3 (4) More than 4

[c] Negative Fallout: (1) None (2) On Self (3) On Other (4) On Both Self and Other

[d] Positive Spinoff : (1) None (2) Activities/Life Changes (3) Personal Growth/Meaning System (4) Both Activities/Life Changes and Personal Growth/Meaning Systems

[e] Current Physical Reactions: (1) None (2) Current Sleep Problems (3) Disease/Illness (4) Both Sleep and Disease/Illness

Table 10b: Category 3—Psychological Changes in Survivors' Lives

	TEXAS				MINNESOTA			
	Trauma Reaction[a]	Emo Dulling/ Depression[b]	Trust Issues[c]	PT Growth[d]	Trauma Reaction[a]	Emo Dulling/ Depression[b]	Trust Issues[c]	PT Growth[d]
Time 1								
Case 1	2	1	1	2	2	1	2	1
Case 2	1	1	2	1	1	2	2	1
Case 3	1	2	1	1	2	1	2	1
Case 4	2	2	1	1	2	2	2	1
Case 5	2	1	1	1	1	1	2	1
Time 2								
Case 1	2	1	1	1	1	1	1	1
Case 2	1	2	2	1	1	2	2	2
Case 3	1	2	1	1	1	1	1	2
Case 4	2	2	1	1	N/A	N/A	N/A	N/A
Case 5	2	2	2	1	1	2	1	1
Time 3								
Case 1	2	2	2	1	1	1	1	2
Case 2	1	2	2	1	1	1	1	2
Case 3	1	1	1	1	1	1	1	1
Case 4	1	2	1	1	2	2	2	2
Case 5	2	2	2	1	1	1	1	2
Time 4								
Case 1	1	2	1	1	1	1	2	2
Case 2	1	2	2	1	1	1	2	2
Case 3	1	1	1	1	1	1	2	2
Case 4	1	1	1	1	1	1	2	2
Case 5	N/A	N/A	N/A	N/A	1	1	1	2

[a] Trauma Reactions: (1) No (2) Yes

[b] Emotional Dulling/Depressive Symptoms: (1) No (2) Yes

[c] Lack of Trust: (1) No (2) Yes

[d] PT Growth: (1) No (2) Yes

Table 10c: Category 3—Behavioral Changes in Survivors' Lives

	TEXAS				MINNESOTA			
	Stress Reduce[a]	Refocus Behav[b]	Preserve Behav[c]	Sense of Agency[d]	Stress Reduce[a]	Refocus Behav[b]	Preserve Behav[c]	Sense of Agency[d]
Time 1								
Case 1	4	1	1	1	4	1	1	1
Case 2	1	4	2	1	2	3	1	4
Case 3	3	1	2	1	2	1	1	3
Case 4	3	3	1	4	2	3	1	2
Case 5	4	1	1	1	4	3	1	3
Time 2								
Case 1	1	3	2	1	1	2	1	1
Case 2	1	3	2	2	2	2	2	3
Case 3	4	1	1	1	3	1	1	4
Case 4	3	1	1	1	1	1	1	3
Case 5	3	2	2	3	3	4	1	3
Time 3								
Case 1	2	1	1	2	3	3	1	4
Case 2	3	1	2	1	1	4	1	2
Case 3	1	1	1	2	1	1	1	1
Case 4	3	3	1	2	4	4	1	4
Case 5	4	1	1	1	1	3	1	4
Time 4								
Case 1	3	1	1	1	1	4	1	4
Case 2	4	1	1	2	2	4	1	2
Case 3	2	2	1	2	2	3	1	2
Case 4	1	1	1	3	2	4	1	4
Case 5	N/A	N/A	N/A	N/A	2	4	1	4

[a] Stress Reducing Activities: (1) No (2) Protective Behaviors (3) Avoidant/Distancing Behaviors (4) Protective and Avoidant/Distancing Behaviors

[b] Refocusing Behaviors: (1) None (2) Busyness (3) Life Style Change (4) Both Busyness and Life Style Change

[c] Preserving Behaviors: (1) No (2) Yes

[d] Sense of Agency Behaviors: (1) No (2) Self Assertion (3) Thought Control (4) Self Assertion and Thought Control

APPENDIX C: UPS INTERVIEW GUIDE

Preface: A lot of terrible things have happened to you related to your loved one's death. These things are all very important and we want to honor them. However, what we really want to know about and what hasn't been studied are answers to the question: What has been helpful in getting you through this process?

This interview is completely voluntary and confidential. If I ask you any question you do not want to answer, say "pass" and we'll go on to the next question. Please also feel free to ask for clarification. This interview could take anywhere from two to three hours, depending on how much you have to say. Also before we begin the interview I am going to ask you to fill out three forms. One is a form that gives me information on things like your age, your gender, and your marital status. The second one is about your reactions to your loved one's death in the past month. The third one is about your sense of social support.

The interview itself is divided into nine parts. The first four parts ask you about your sense of justice, your experience with the criminal justice system, your definition of movement, and your experience with the murderer. The fifth part asks you about personal changes to you since the death of your loved one. The sixth and seventh parts ask you about social and psychological support as well as the role of religion and spirituality in your healing process. The eighth part asks you about the role of the media. The ninth part asks you about changes in your family relationships

OPENER

Let's take 10–15 minutes for you to familiarize me with your story.

JUSTICE

1. Where is your case now in the criminal justice process?
2. What criminal justice officials and what parts of the criminal justice process have you had contact with?
3. Please check the events that you have experienced.
   (a) Offender was apprehended (caught)
   (b) Offender was convicted, etc.
   (c) Offender was given the ultimate penal sanction (Death Penalty or LWOP)
   (d) The ultimate penal sanction has been carried out

(e) The sentence has been upheld during the appeal process
(f) The appeal process is complete
(g) The execution date has been set
(h) The execution was witnessed by me
(i) The execution is completed
(j) The offender is suffering in prison
(k) The offender will never get out/put away for life.

4. Describe your relationship with the prosecutor?

5. What does justice mean to you?

6. What does injustice mean to you?

7. What events, if any, made you feel that justice was furthered?

8. Although the murderer was charged and sentenced at the highest level, what more would increase your sense that justice was furthered?

9. What events increased your sense of injustice?

10. How satisfied are you with the outcome of the criminal proceedings?

(a) Very Dissatisfied	–3
(b) Dissatisfied	–2
(c) Somewhat Dissatisfied	–1
(d) Neutral	0
(e) Somewhat Satisfied	+1
(f) Satisfied	+2
(g) Very Satisfied	+3

Attitudes About Death Penalty and LWOP

11. What was your attitude about the _____ prior to the murder of your loved one? What impact has the death of your loved one had on your attitude?

(a) Death Penalty
(b) LWOP

12. How much faith did you have in the criminal justice system prior to the murder of your loved one? How much faith in the criminal justice system do you have now?

13. People argue that _____ brings closure. What has been your experience?

    (a) Death Penalty
    (b) LWOP

14. What does your religion say about responding to someone who has taken the life of another person? Is your religion morally at odds with the ultimate penal sanction? If yes, how have you dealt with that conflict?

Sentencing to One Year Out: Death Notification, Investigation and Trial

A15. Some people tell us that the way they are notified about their loved one's murder makes it harder or easier to cope with their loss. What things about the notification process made it harder to cope with your loss? What things helped you to cope with your loss?

A16. Some people tell us that their experience with the coroner's office makes it harder or easier to cope with their loss. What things did the coroner's office do that made it harder to cope with your loss? What things did the coroner's office do to help you cope with your loss?

A17. Some people tell us that there are things about the criminal justice system's management of their loved one's homicide case that makes it harder or easier to cope with their loss. What things did the _____ do that made it harder to cope with your loss? How did you get through that time? What things did the _____ do that helped you to cope with your loss?

    (a) Police Department
    (b) DA's Office
    (c) Judge / Trial
    (d) Anything else

A18. Comment on the following events and how they made it harder or easier to cope with your loss.

    (a) Finding out that the D.A. would go for the ultimate penal sanction
    (b) Attendance (lack of attendance) at the pretrial hearings and the trial
    (c) Viewing of the crime scene and autopsy photos

(d) Participation in the decision-making about the sentencing and penalty phases of the trial
(e) Information given about the case and/or court proceedings, including incorrect or incomplete information
(f) Behavior by the defense
(g) Preparation and delivery of the victim-impact statement
(h) Information about the offender's life

A19. What was your reaction when the offender received _____? What did it mean to you? How did others, including the offender, react? How did their reactions impact you?

(a) the conviction
(b) the punishment

Five to Seven Years Out: Appeal Process

B15. Describe your life since the offender received _____. What postsentence events have occurred that have made it harder to cope with your loss? What helped you during that time?

(a) Death Penalty
(b) LWOP

B16. Some people tell us that there are things that happen during the appellate process that make it harder or easier to cope with their loss. How did _____ affect you?

(a) Waiting for the appeal process to be over
(b) Hearing about an offender's successful appeal in a death penalty case
(c) The extent or lack of information given to you about an appeal when it is filed in your case
(d) Learning the decision after an appeal has been heard
(e) Other

B17. What changes, if any, have (did) you noticed in yourself since the offender received _____ (sleep patterns, eating patterns, energy level, physical health, feelings of anxiety, feelings of anger, etc.)? What changes did you notice in other family members?

(a) Death Penalty
(b) LWOP

B18. How did you react after all the appeals were finished? Rate the degree to which the end of the appeal process impeded or assisted your journey?

(a) Significantly Impeded	–3
(b) Impeded	–2
(c) Somewhat Impeded	–1
(d) Neutral	0
(e) Somewhat Assisted	+1
(f) Assisted	+2
(g) Significantly Assisted	+3

Nine to Eleven Years Out: Execution

C15. [After the appeal process was over] Describe your experience leading up to the execution. What is (was) the meaning of the execution for you? What hopes do (did) you have for how the execution will (would) make a difference in your life?

C16. Do (did) you plan to view the execution? Why is (was) it important to view (not view) the execution? What do (did) you expect the execution will be (would be) like? What will be (was) the best thing about viewing/not viewing the execution? What will be (was) the hardest thing about viewing/not viewing the execution?

C17. What changes, if any, have (did) you noticed in yourself leading up to the execution (sleep patterns, eating patterns, energy level, physical health, feelings of anxiety, feelings of anger, etc.)? What changes did you notice in other family members?

C18. How do (did) others within and outside the family react to the offender being executed? What is (was) your response to their reactions?

C19. Who else will attend (attended) the execution besides you? What is (was) the nature of the relationship(s) between you?

C20. What are (were) your thoughts about the offender's family? What are (were) your reactions to the presence of the offender's family at the execution? Did the offender's family apologize? What was that like for you?

C21. What did the offender say, if anything, at the execution? What was your reaction to the offender's statements?

Thirteen to Fifteen Years Out: Post Execution

D15. What changes, if any, did you notice in yourself in the first several months after the execution (sleep patterns, eating patterns, energy level, physical health, feelings of anxiety, feelings of anger, etc.)? What changes did you notice in other family members?

D16. Did the execution give you what you wanted? Did it resolve or complete anything about the grief you feel for the loss of your loved one? If yes, what did it resolve or complete for you?

D17. How did the execution impact your sense of justice served?

D18. Did the execution change any of your views about the murder of your loved one? Do you have any regrets about the execution? What is the meaning you give to the offender's death? Rate the degree to which the completed execution impeded or assisted your journey?

(a) Significantly Impeded	–3
(b) Impeded	–2
(c) Somewhat Impeded	–1
(d) Neutral	0
(e) Somewhat Assisted	+1
(f) Assisted	+2
(g) Significantly Assisted	+3

MOVEMENT

Preface: Because this is a study about your healing process, I'd like to ask you a few more general questions. Certain things have happened to you that give you a sense of progress. Other things have happened that make you feel that you are just standing in place. Some things seem to push you back.

22. Lots of survivors don't like the words healing and closure. How do you see the process you've gone through?

23. What does movement mean to you? How do you know you moved?

24. Tell me about a recent experience of movement?

25. What would you hope would happen for you as a result of movement?

26. What would you wish for other survivors in terms of a positive outcome for them?

Murderer

27. Describe your relationship with the murderer prior to the murder? How, if at all, have your feelings about the murder or the offender changed over time? How do you feel about the murder or the offender now?

28. How did the murderer behave during the trial? How did that behavior affect you then? How does that behavior affect you today?

29. How did you react when you learned about the murderer's life?

30. Has there been any acknowledgment of your pain from the murderer or any member the murderer's family? What difference does it make/would it make that the murderer or member of the murderer's family feels sorry for what he did?

31. What difference does it/would it make that the offender is suffering?

Psychological States

32. Some people find that the loss of a loved one changes the way they see the world and how it functions. What, if anything, has changed about how you see the world? What difficulties, if any, has that change created for you?

33. What concerns, if any, have others expressed about your ongoing reaction to the murder and the loss of your loved one?

34. Some people try to hold onto things or keep things the way they were before their loved one was murdered? What has remained the same and what has changed?

35. Some people feel guilty about the past or guilty if they feel happy. What, if anything, causes you to feel guilty?

36. What positive changes, if any, have you made in your life as a result of the murder?

37. What experiences, if any, have helped you feel safe and secure in the world again?

38. What questions, if any, remain unanswered about the homicide?

39. What important questions about the homicide, if any, have been answered for you?

40. Have you been able to make some sense out of the murder? If not, do you expect to make sense out of the murder? Rate the degree to which the ability to make some sense out of the murder impeded or assisted your journey?

(a) Significantly Impeded	–3
(b) Impeded	–2
(c) Somewhat Impeded	–1
(d) Neutral	0
(e) Somewhat Assisted	+1
(f) Assisted	+2
(g) Significantly Assisted	+3

41. What experiences, if any, created uncertainty about the offender's outcome? What did you do to cope with the uncertainty?

42. What experiences, if any, have given you back a sense of control?

Social & Psychological Support

43. People have different experiences with people following this type of loss. I'm interested in what happened to you. To start, who are the main people that you have turned to for help with your loss?

44. Briefly describe the quality of your relationship with _____.

45. What did this person do to help you cope with your loss?

46. In what ways has your support system changed, if at all, since the loss of your loved one?

47. Some people find that other people treat them differently after this type of loss. What was your experience?

48. What did people do that made it harder for you to cope with your loss?

49. Some people keep to themselves because they feel that other people do not understand their loss. What was your experience?

50. Some people join a bereavement support group or get psychological/pastoral counseling after a loved one dies. What was your experience?

Religion/Spirituality

51. Some people experience changes in their relationship with God or in their religious beliefs or practices. What changes have you experienced over time?

52. What religious/spiritual practices, if any, have you used to help you cope with the loss of your loved one?

53. What does your religion say about forgiveness? Do you experience a conflict between your personal or religious beliefs about forgiveness and your current feelings toward the murderer?

54. What do you believe about forgiving the murderer? What would it take to forgive him? How did you come to forgive him?

Media

55. Describe the significant positive or negative experiences with the media.

Family Relationships

56. How did your _____ react to the death of your loved one?

    (a) Spouse/partner
    (b) Child(ren)
    (c) Sibling(s)
    (d) Parent(s)
    (e) Other

57. What changes, if any, have occurred in your relationship with your _____ since your loss?

    (a) Spouse/partner
    (b) Child(ren)
    (c) Sibling(s)
    (d) Parent(s)
    (e) Other