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THE ULTIMATE PENAL SANCTION AND “CLOSURE” FOR SURVIVORS OF HOMICIDE VICTIMS

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I. INTRODUCTION

More than 594,000 Americans have been murdered during the past three decades.1 While this figure is sizable, the number of surviving family members and close friends impacted by the homicides is substantially larger. A national prevalence study found that 9.3% of the adults sampled had close friends or relatives who had been murdered.2 Virginia Mason Medical Center estimates that homicidal deaths produce between 120,000 and 240,000 new homicide survivors each year.3

Survivor reactions to violent crime are often protracted and difficult to treat. Studies of family members of homicide victims found that sixty-six percent could not find meaning after five years.4 Survivors also endured post-homicide distress that did not dramatically lessen over

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3. Virginia Mason Medical Center, The Need, https://www.virginiamason.org/body.cfm?id=572 (last visited Nov. 7, 2007); see also LULA MOSHOURES REDMOND, SURVIVING: WHEN SOMEONE YOU LOVE WAS MURDERED 5 (1989) (calculating that between 210,000 and 300,000 family members are impacted annually by murder based on more than 300 genograms done with homicide survivors); DEBORAH SPUNGEN, HOMICIDE: THE HIDDEN VICTIMS 10 (1997) (calculating that homicide impacts up to 72,000 immediate family members annually based on a ratio of three family members on average per victim).

time, and were significantly more likely than other direct crime victims to have lifetime post-traumatic stress disorder (PTSD). In contrast to victims of minor crimes, victims of violent crime suffer significantly more distress, including loss of confidence (41% versus 11%), loss of self-esteem (37% versus 2%), sleeplessness (27% versus 9%), and headaches and other physical symptoms (41% versus 5%).

Although lay support groups, such as Parents of Murdered Children and Compassionate Friends, and facilitated groups offer survivors of homicide victims a place to belong, practical guidance, and shared experience, mutual support does not significantly reduce PTSD or other aspects of mental distress such as depression, anxiety, and anger. Likewise, the effectiveness of spirituality and religion to accommodate loss is questionable. A study on the use of private counseling and

5. See Amick-McMullan et al., supra note 2, at 545, 552, 554 (reporting that 19.1% of survivors developed PTSD following the murder and 5.2% presented with current PTSD in response to murders that occurred an average of 16.6 years earlier); John R. Freedy et al., The Psychological Adjustment of Recent Crime Victims in the Criminal Justice System, 9 J. INTERPERSONAL VIOLENCE 450, 458 tbl.1 (1994) (finding lifetime PTSD among seventy-one percent of family and friends of homicide victims who had reported the crime to law enforcement); Linda N. Freeman et al., Neglected Victims of Homicide: The Needs of Young Siblings of Murder Victims, 66 AM. J. ORTHOPSYCHIATRY 337, 342 (1996) (stating that bereaved children suffer from PTSD due to a lack of support and identification of problems); Shirley A. Murphy et al., PTSD Among Bereaved Parents Following the Violent Deaths of Their 12- to 28-Year-Old Children: A Longitudinal Prospective Analysis, 12 J. TRAUMATIC STRESS 273, 286 (1999) (reporting that in a study of parents whose children suffered violent deaths "twice as many parents whose children were murdered met PTSD criteria, compared with accident and suicide bereavement"); Martie P. Thompson et al., Comparative Distress Levels of Inner-City Family Members of Homicide Victims, 11 J. TRAUMATIC STRESS 223, 226, 228 (1998) (finding that levels of post-traumatic stress of inner-city family members who had lost a loved one 1.5 to five years ago were significantly higher than the norms for general non-patient adults and equivalent to norms established for recent violent crime victims).


7. HEATHER STRANG, REPAIR OR REVENGE: VICTIMS AND RESTORATIVE JUSTICE 95 tbl.5.6, 96 tbl.5.7 (2002).


9. See George S. Getzel & Rosemary Masters, Serving Families Who Survive Homicide Victims, SOC. CASEWORK: J. CONTEMP. SOC. WORK 138, 142–43 (1984) (describing efforts of the Victim Services Agency of New York to create staff-led support groups for parents whose children were murdered); Eleanor Lyon et al., Group Work with Families of Homicide Victims, 15 SOC. WORK WITH GROUPS 19 (1992) (describing two types of support groups for families of homicide victims: structured, time-limited groups, and on-going self-help groups).


11. See Martie P. Thompson & Paula J. Vardaman, The Role of Religion in Coping with the Loss of a Family Member to Homicide, 36 J. SCI. STUD RELIGION 44, 48 & tbl.2 (1997). The authors report that religious support from clergy and church members was the only
other community resources by parents after their child’s violent death found no statistical significance between the resources and reduced parental distress even five years after the death.\textsuperscript{12}

The pervasive intractability of homicidal grief summons us to examine the need for and efficacy of other options to reduce the suffering in this population. The limitations of current religious and psychological interventions to effect significant change in the level of distress compels the exploration of other, even nontraditional, avenues for survivor well-being. One such possibility is an examination of the impact of the sentence given to the offender. In this regard, the death penalty, though rarely implemented,\textsuperscript{13} is touted as bringing “closure” to family members of homicide victims.\textsuperscript{14} This belief is popularly held, as evidenced by a survey cited by Frank Zimring, which found sixty percent of participants “agreed either strongly or somewhat” that capital punishment brought closure to homicide families.\textsuperscript{15} This coping activity related to decreased distress. \textit{Id.} Pleading, discontent with God, and attempts at good deeds were related to increased distress. \textit{Id.} Spiritually-based coping and avoidance (defined as efforts to refocus attention away from the homicide) were unrelated to distress. \textit{Id.}


13. See James R. Acker & Jeanna Marie Mastrocinque, Causing Death and Sustaining Life: The Law, Capital Punishment, and Criminal Homicide Victims’ Survivors, in WOUNDS THAT DO NOT BIND: VICTIM-BASED PERSPECTIVES ON THE DEATH PENALTY 141, 149 (James R. Acker & David R. Karp eds., 2006) (reporting that in 2001, 16,000 murders were committed in the United States, 163 offenders received the death penalty, and only sixty-six executions were carried out); Hugo Adam Bedau, The Laws, the Crimes, and the Executions, in THE DEATH PENALTY IN AMERICA: CURRENT CONTROVERSIES 26, 31–33 (Hugo Adam Bedau ed., 1997) (presenting statistics on the likelihood of execution); DEATH PENALTY INFO. CTR., FACTS ABOUT THE DEATH PENALTY, http://www.deathpenaltyinfo.org/FactSheet.pdf 1–2 (2007) [hereinafter FACTS ABOUT THE DEATH PENALTY] (stating that there are 3,350 people on death row and not more than seventy-one people have been executed per year since 2001); Mark Ostapiak, Death Penalty Is Racist and Targets the Poor, SOCIALIST ACTION, May 2001, http://www.socialistaction.org/news/200105/death.html (calculating that only one to two percent of murderers receive the death penalty, based on the fact that 16,000 murders were committed in 1999 and approximately 280 persons received the death penalty).


contention has possible merit, as shown by the fact that closure was the most common issue dealt with by over one-third of the survivors in their comments to the press after offenders were executed. The meaning of closure to the survivors, however, has not been determined, and the reliability of the assertion that the death penalty brings closure has not been examined. In non-death penalty states, the ultimate penal sanction for capital murder is life without the possibility of parole (LWOP). Although no claim has been made about LWOP's impact on survivors, the argument could be made that knowing the offender received the maximum sentence the state allows might be a source of solace to the survivors and also advance their well-being and sense of closure.

The death penalty has been widely debated as a state or federal consequence for the crime of murder. Arguments, for example, about its moral effect on crime, its popularity as a punishment for murder,
the lengthiness of the appellate process,\textsuperscript{22} overrepresentation of African-Americans on death row,\textsuperscript{21} and the cruelty of methods used to execute offenders\textsuperscript{24} regularly appear in the extensive literature that now spans over six decades. Although survivors of homicide victims are the ones most directly impacted by the crime, the topics of the death penalty and LWOP have been approached exclusively from a societal, rather than individual, perspective. In a recent article, leading homicide scholars shared their ideas regarding a research agenda for the next decade.\textsuperscript{25} In response to the question, “What don’t we know about homicide that, if we did, would significantly enhance our understanding of lethal violence?” none of the answers included the experience of homicide survivors.\textsuperscript{26} This exclusion replicates the post-homicide experience, which leaves survivors feeling ignored, devalued, and rightfully worried that their loved ones will be forgotten.\textsuperscript{27} The purpose of this paper, therefore, is to assess what is known about the role of the ultimate penal sanction (i.e., death penalty and life without the possibility of parole) relative to homicide survivors and its impact on their well-being.

II. THE DEATH PENALTY AND LIFE WITHOUT THE POSSIBILITY OF PAROLE

The topic of the ultimate penal sanction for capital murder is emotionally charged and a subject of great debate. Questions about how to maintain moral order, equity in punishment, and cruel and inhuman treatment cyclically recur as the crime rate goes up or down, evidence of injustices is uncovered, or new laws are passed. Most of the attention has focused on the institution of the death penalty and

\begin{footnotes}
\footnote{Future, in AMERICA'S EXPERIMENT WITH CAPITAL PUNISHMENT 27 (James R. Acker et al. eds., 2003).}
\footnote{22. See, e.g., Tom Gibbons, Victims Again: Survivors Suffer Through Capital Appeals, 74 A.B.A. J., Sept. 1988, at 64.}
\footnote{26. Id. at 3.}
\end{footnotes}
singly on the offender instead of the victim or family of the deceased.\textsuperscript{28} LWOP is a relative newcomer and, until recently, held viability only as a possible alternative to the death penalty.\textsuperscript{29}

A. The Death Penalty

As of April 2006, the United States had 3,370 prisoners on death row.\textsuperscript{30} The basis for a charge of capital felony in first-degree murder varies by state and is usually reserved for cases that meet the standard for aggravating circumstances, which may include the commission of a separate felony,\textsuperscript{31} the killing of more than one person, the killing of a law enforcement officer, or the commission of the crime while in prison.\textsuperscript{32} Jurors in capital punishment cases must be "death qualified," meaning that death penalty opponents are barred from hearing the case.\textsuperscript{33} Defendants must have a dual trial, the first one to establish guilt or innocence.\textsuperscript{34} If found guilty, a second trial is held to determine whether they get the death penalty or a lesser sentence.\textsuperscript{35} For example, in Texas,

\begin{itemize}
  \item[28.] After Wanda Jean Allen was executed in January 2001, a niece of one of the victims said in reference to the press, "You guys feel sorry about Wanda Jean, but your concern should be with the families . . . . We are the victims." Bobby Ross Jr., \textit{Wanda Jean Allen Executed: Two-Time Killer Dies by Lethal Injection}, DAILY OKLAHOMAN (Oklahoma City, Okla.), Jan. 12, 2001, at 1-A.
\end{itemize}

To be eligible in Virginia for the death penalty, a criminal must commit a murder under one or more special circumstances. These circumstances include robbery or attempted robbery; rape or attempted rape or sodomy, or attempted sodomy, or object sexual penetration; abduction with intent to extort money; the killing of a law enforcement officer; a multiple homicide; murder for hire; murder while incarcerated; murder of more than 1 person in a 3 year period; drug related; pregnant woman; murder victim is less than 14 by an over 21 year old perpetrator.

\textit{Id.}

\begin{itemize}
  \item[35.] \textit{Id.}
\end{itemize}
consideration of the death penalty during the punishment phase of the capital murder trial is based on whether the defendant is a continuing threat to society and whether mitigating evidence related to the person's character, background, and moral culpability warrants a sentence of life imprisonment. A death sentence results in a mandatory automatic appeal to a higher court. The average length of time from sentence to execution is over twelve years because of the extensive appellate process.

Reports on the number of death sentences overturned vary. Tracy Snell and Laura Maruschak report that over the past twenty-five years, thirty-six percent of prisoners were removed from death row at the state or federal level because of police or prosecutorial error, "statutes struck down on appeal, sentences or convictions vacated, commutations, or death by other than execution." In his study of 5,760 death sentences imposed between 1973 and 1995, James S. Liebman found a sixty-eight percent chance that death sentences in those years would be overturned by the courts. The number of cases overturned is significant because "only a miniscule proportion of families of homicide victims are ever able to find out if the execution of the offender actually brings them any long-lasting relief."

Offenders may also be removed from death row if they are exonerated or are granted clemency. Since 1973, 124 people have been released with evidence of their innocence; thirty-nine of these exonerations have occurred since 2000. Excluding former Illinois Governor Ryan’s death sentence commutations of 167 prisoners in 2003, there have been sixty-one grants of clemency in capital cases through early 2005. In 2005, Roper v. Simmons ended the practice of

36. TEX. CODE CRIM. PROC. ANN. art. 37.071 (Vernon 2006).
42. Charles S. Lanier & Beau Breslin, Extinguishing the Victims' Payne or Acquiescing
executing prisoners who were under eighteen.\textsuperscript{44} The Supreme Court’s decision affected seventy-two juveniles in twenty states.\textsuperscript{45}

Survivor’s reactions to these unexpected developments have been intense. “To a family,” said Governor Ryan, who met with victims’ families before commuting the sentences of all prisoners on death row, “they talked about closure. They pleaded with me to allow the state to kill an inmate in its name to provide the families with closure.”\textsuperscript{46} A newspaper article reported that “[h]our after hour, victims and family members of dead victims have been forced to come before a panel and revisit the most horrific event in their lives. These people had to retell their stories and beg, sobbing, for the panel to let the current sentence of death stand.”\textsuperscript{47} Not only is receiving the death penalty rare, but the likelihood of execution and potential to provide closure for homicide survivors is made more remote when appellate reversals, exonerations, commutations, and changes in the law occur.

Thirty-eight states and the federal government have the death penalty.\textsuperscript{48} Five of these states have fewer than three prisoners each on death row.\textsuperscript{49} Kansas, New Hampshire, New York, and New Jersey have not used the death penalty since 1976.\textsuperscript{50} California has the largest population, with 660 prisoners on death row,\textsuperscript{51} but it uses the death penalty sparingly, executing only thirteen prisoners between 1992 and 2006.\textsuperscript{52} New Mexico is considering abolishing the death penalty altogether.\textsuperscript{53}

39. Id. at 568.
43. FACTS ABOUT THE DEATH PENALTY, supra note 13, at 1.
44. Id. at 2.
45. Id. at 1.
46. FACTS ABOUT THE DEATH PENALTY, supra note 13, at 2.
48. DEATH PENALTY INFO. CTR., THE DEATH PENALTY IN 2005: YEAR END REPORT 6
The total number of prisoners executed since 1976 is 1,090.\textsuperscript{54} Although the South accounts for more than eighty percent of these executions,\textsuperscript{55} Texas alone is responsible for thirty-seven percent, or 405, of those prisoners executed since 1976.\textsuperscript{56} The number of executions per year reached a high of ninety-eight prisoners in 1999 and has been dropping since, with fifty-three people executed in 2006.\textsuperscript{57}

Indeed, a review of trends in legislative activity as well as death sentences suggests that an ideological shift in the use of the death penalty may be occurring. Life without the possibility of parole plays an important role in that shift.

\textbf{B. Life Without the Possibility of Parole (LWOP)}

Eleven non-death penalty states and the District of Columbia use LWOP as their ultimate penal sanction.\textsuperscript{58} Those states include Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.\textsuperscript{59} Alaska does not have the death penalty; its ultimate penal sanction is not LWOP, but life \textit{with} parole.\textsuperscript{60} However, Alaska also stipulates mandatory imprisonment of ninety-nine years under certain conditions.\textsuperscript{61}

A life sentence, as originally conceived, was a term of imprisonment without a prescribed duration. This practice dominated from 1910 to

\begin{footnotesize}
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\item[(54)] FACTS ABOUT THE DEATH PENALTY, supra note 13, at 1.
\item[(55)] Id. at 3.
\item[(57)] FACTS ABOUT THE DEATH PENALTY, supra note 13, at 1.
\item[(58)] See Life Without Parole, supra note 18.
\item[(59)] FACTS ABOUT THE DEATH PENALTY, supra note 13, at 1.
\item[(60)] ALASKA STAT. § 33.16.090 (2006).
\item[(61)] ALASKA STAT. § 12.55.125 (2006). A mandatory sentence of ninety-nine years is imposed when
\begin{quote}
the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder[,] . . . has been previously convicted of murder . . . in the first degree[,] . . . subjected the murder victim to substantial physical torture[,] or . . . is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.
\end{quote}
\end{enumerate}
\end{footnotesize}
the 1970s.\textsuperscript{62} The indeterminate nature of the sentence was based on the premise that good behavior and rehabilitation of offenders could be rewarded by release from prison.\textsuperscript{63} Indeterminate sentencing came to an abrupt halt, however, when the U.S. Supreme Court voided the death penalty in 1972 in \textit{Furman v. Georgia}, declaring that capital punishment was being delivered in an arbitrary and capricious manner.\textsuperscript{64} "[A] general attitude of frustration toward a 'revolving door' parole system worsened in the aftermath of \textit{Furman} with an increased fear of the paroling of violent murderers, and prompted legislative response."\textsuperscript{65}

In response to that fear, states, beginning with Alabama,\textsuperscript{66} began enacting the current form of LWOP statutes.\textsuperscript{67} Although the moratorium on the death penalty did not last long,\textsuperscript{68} the life-without-the-possibility-of-parole movement picked up speed. The number of states with LWOP statutes increased from thirty in 1990 to forty-eight, plus the District of Columbia, in 2005.\textsuperscript{69} Currently, thirty-seven out of thirty-eight death penalty states use LWOP as an alternate sentence to the death penalty.\textsuperscript{70}

The option of life without the possibility of parole is viewed by some as a win for death-penalty abolitionists. In Ohio, for example, death sentences were cut by almost one-third after LWOP was enacted in 1996.\textsuperscript{71} North Carolina showed a similar decline. Death sentences dropped sixty-five percent after the advent of LWOP.\textsuperscript{72} Others consider the availability of LWOP an ominous trend as reflected by the fact that the population of those incarcerated for life grew by 170\% from 1992 to

\begin{itemize}
\item \textsuperscript{63} Id.
\item \textsuperscript{64} 408 U.S. 238 (1972).
\item \textsuperscript{65} Julian H. Wright, Jr., Note, \textit{Life-Without-Parole: An Alternative to Death or Not Much of a Life at All?}, 43 VAND. L. REV. 529, 548 (1990).
\item \textsuperscript{66} ALA. CODE § 13A-5-46 (1975).
\item \textsuperscript{67} See A Matter of Life and Death, supra note 29, at 1842 (stating that determinate sentencing was also influenced by the truth-in-sentencing statutes that emerged in response to rising crime rates during the late 1970s and early 1980s and were embodied in the Comprehensive Crime Control Act of 1984).
\item \textsuperscript{68} The death penalty was reauthorized in \textit{Gregg v. Georgia}, 428 U.S. 153 (1976).
\item \textsuperscript{69} See Life Without Parole, supra note 18 (stating that the only death penalty state that does not have LWOP is New Mexico).
\item \textsuperscript{70} Id.
\item \textsuperscript{71} Kris Axtman, \textit{What's Behind Decline in Death Sentences}, CHRISTIAN SCI. MONITOR (Boston), Nov. 22, 2004, at 3.
\item \textsuperscript{72} THE DEATH PENALTY IN 2005: YEAR END REPORT, supra note 53, at 5.
\end{itemize}
Moreover, unlike death sentences, which ensure an automatic appeal and review of the decision, LWOP sentences receive no special consideration, and offenders in most states have no right to post-conviction counsel. Randy Arroyo, whose initial death sentence as a juvenile was undone by the decision of the United States Supreme Court in *Roper v. Simmons*, said that LWOP was the last thing he wanted: "Lifers . . . exist in a world without hope. 'I wish I still had that death sentence.' . . . 'I believe my chances have gone down the drain.'" Indeed, the Supreme Court's decision to bar the execution of juveniles again created a fear of juvenile murderers being released on parole. This possibility is remote based on the fact that, on average, only one commutation by a governor or an appropriate board has occurred in twenty years for each state with the death penalty.

In its year end report for 2005, the Death Penalty Information Center noted that "[i]nstead of the death penalty, . . . victim family members increasingly expressed their preference for life-without-parole sentences, which carry much less uncertainty than death sentences." In her effort to repeal the death penalty in New Mexico, Pat Songer said in regard to the death penalty given to her son's murderer, "I believe that we should replace the death penalty in New Mexico with life without the possibility of parole, and use the millions of dollars the state would save to support and expand services for the families of victims." Gary Wright, a victim of one of Ted Kaczynski's devices, expressed relief when the Unabomber was given a life sentence:

> My father has always said, "There are things much worse in this world than death." I believe one of those things is the necessity of a perpetrator to live with and think about his actions. It is so much more difficult to do this than
just close your eyes and go to sleep.  

Roberta Roper expressed that

when life without parole is imposed upon a convicted killer, it means that! There are no automatic appeals, as in death penalty cases. There are no excessive costs, and years of new trials and sentencing for the victim’s family. It is over! And, incarceration for life without parole is far less costly. 

Many of these public statements come from anti-death penalty advocates who also report that a sentence of LWOP gives them relief because the offender’s family is spared suffering and the cycle of taking a life as a way to show value for the life of the victim is stopped.

Aside from personal accounts and opinions, however, little is known about whether the LWOP sentence, like the death sentence, reduces suffering or impacts the well-being of homicide survivors either in states that have the death penalty or in non-death penalty states where LWOP is the ultimate penal sanction possible. As with the death penalty, attention given to LWOP has focused on societal concerns, e.g., cost effectiveness and mistakes in death penalty cases, singularly focusing on the offender instead of the victim or family of the deceased.

III. THE ROLE OF CLOSURE IN JUSTIFYING ULTIMATE PENAL SANCTIONS

Justifications for the death penalty and LWOP include deterrence, cost effectiveness, incapacitation, and retribution. Regardless of their merit, justifications are important because they express the avowed intent of lawmakers or allude to the professed goals of the act.

80. David Kaczynski & Gary Wright, Building a Bridge, in WOUNDS THAT DO NOT BIND: VICTIM-BASED PERSPECTIVES ON THE DEATH PENALTY 85, 100 (James R. Acker & David R. Karp eds., 2006).
82. See Kaczynski & Wright, supra note 80, at 100.
A. Deterrence, Cost, and Dangerousness

Deterrence rests on the premise that using a severe sanction like the death penalty deters murder because it sends the message to would-be criminals that crime does not pay.\textsuperscript{84} In their efforts to prove or disprove the theory, researchers have examined the relationship between execution rates and murder rates in different jurisdictions over time.\textsuperscript{85} Although studies exist that show a deterrent effect,\textsuperscript{86} replication of the research has found serious limitations.\textsuperscript{87} After a re-examination of the existing empirical evidence, recent studies have concluded that the data are inconclusive and the foundation of statistical proof is not strong enough to advance a policy position.\textsuperscript{88} Moreover, researchers are "pessimistic that existing data can resolve this uncertainty."\textsuperscript{89}

In addition to the deterrence argument, justifications have been offered and refuted about the cost effectiveness and incapacitation provided by the death penalty. Although erroneous in their conclusions,\textsuperscript{90} polls historically showed that those who favored the death penalty endorsed "the high cost of imprisonment" as one of their reasons.\textsuperscript{91} Similarly, the object of the death penalty is to provide public


\textsuperscript{86} See Dezhbakhsh & Shepherd, supra note 85, at 517; Ehrlich, supra note 85. See generally Sunstein & Vermeule, supra note 20.

\textsuperscript{87} See Donohue & Wolfers, supra note 85, at 843; Passell & Taylor, supra note 85, at 445.

\textsuperscript{88} Donohue & Wolfers, supra note 85, at 843. A New York Times survey found that between 1980 and 2000, "the homicide rate in states with the death penalty [was] 48% to 101% higher than in states without the death penalty." Raymond Bonner & Ford Fessenden, Absence of Executions: A Special Report: States with No Death Penalty Share Lower Homicide Rates, N.Y. TIMES, Sept. 22, 2000, at A1. Moreover, even though no executions have occurred in Canada, which is a non-death penalty country, since 1962, homicide rates in both the U.S. and Canada have moved in lockstep. Donohue & Wolfers, supra note 85, at 799 & fig.2.

\textsuperscript{89} Donohue & Wolfers, supra note 85, at 794.

\textsuperscript{90} See Christy Hoppe, Executions Cost Texas Millions, DALLAS MORNING NEWS, Mar. 8, 1992, at A1 (stating that in Texas, an average death penalty case costs $2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for forty years).

\textsuperscript{91} Phoebe C. Ellsworth & Samuel R. Gross, Hardening of the Attitudes: Americans'
safety through death of the offender. However, the data on dangerousness for institutionalized death row inmates suggest that the majority are not dangerous and serve time without incident.\textsuperscript{92} Although LWOP offers public protection by incarceration for the rest of the offender’s life, jurors may not understand the meaning of LWOP or may question its trustworthiness.\textsuperscript{93}

\textbf{B. Retribution}

As evidence for the deterrence theory has waned, costs to taxpayers for the death penalty have mounted, and LWOP has offered society a cost effective option to the death penalty to ensure public safety, retribution still remains as the final, most popular and most frequently cited justification for the death penalty.\textsuperscript{94} Retribution is substantiated by the belief that offender punishment should reflect the severity of the crime.\textsuperscript{95}

Because retribution is often associated with vengeance, it may not be, in the eyes of the public, a sufficiently principled societal justification for death.\textsuperscript{96} If, however, the retributionist argument arises from the interests of homicide survivors\textsuperscript{97} and is predicated on the belief that closure is possible once the scales have been balanced with a life for a life, then retribution takes on a different social meaning. Specifically, if retribution provides a service that ameliorates suffering for homicide survivors, retribution potentially becomes a principled justification because it is done on behalf of victim families\textsuperscript{98} and is therefore based on

\textsuperscript{92} See MARQUART, supra note 23, at 181–82.


\textsuperscript{95} Id.

\textsuperscript{96} Smith, supra note 25, at 7.


\textsuperscript{98} See ROBERT NOZICK, \textit{PHILOSOPHICAL EXPLANATIONS} 367 (1981). Nozick argues
morals rather than vengeance.

The presumed connection between retribution as justification for the death penalty and survivors’ interests is buttressed by equity theory. In principal, equity theory maintains that the taking of a life to pay for a life imposes suffering equal to that which the offender imposed on the victim and, therefore, balances the scales.99 Moreover, when the punishment “fits” the crime, it provides survivors with a sense of justice or rightness.100 The sense of justice “re-equilibrate[s] gains and losses of the [offense], re-equilibrate[s] power, and restore[s] the [survivor’s] self esteem.”101 Establishment of a sense of justice is built on the premise that “the greater the offender[’s] punishment, the greater [will] be the emotional recovery of the victim.”102 Moreover, “the greater the [survivor’s] perception of equity and satisfaction with the case disposition, the greater [will be] the [survivor’s] recovery.”103

C. Retribution and Closure

In contrast to deterrence, cost effectiveness, and incapacitation, the retributive argument has been largely immune from empirical evidence. Its effectiveness is dependent on the public’s belief that it provides just deserts to the offender.104 Its effectiveness may also depend upon society’s belief that survivors need closure and its conviction that the


103. Id.

death penalty provides such closure. Moreover, it may be assumed that receiving the ultimate penal sanction gives control back to survivors, allows them to move on,\textsuperscript{105} ends the ordeal, and confirms that bad things happen to people who do bad things, which denies the operation of chance\textsuperscript{106} and redeems the victim as a person of value. Survivors report that these presumptions are shared by some prosecutors who tell them only the death penalty “can assuage their sorrow.”\textsuperscript{107}

“When you have lost a child, you go into a state of insanity, and you think whatever they want you to think,” says Aba Gayle . . . whose 19-year-old daughter was murdered in 1980. “They told me, ‘We are going to catch this man. We’re going to convict him, and when we have an execution, you will be healed.’ The DA told me this, and the sheriff’s department, also the media. And I believed them.”\textsuperscript{108}

Anti-death penalty proponents send survivors a different message. Many contend that, with time, the immediate satisfaction of having the killer executed will change and survivors will wish the offender was still alive. They prescribe concentrating on “learning to live again by transcending grief and triumphing over sorrow” rather than concentrating on the offender and his or her punishment.\textsuperscript{109}

More often than not, families of murder victims do not experience the relief they expected to feel at the execution, says Lula Redmond, a Florida therapist who works with [survivor] families. “Taking a life doesn’t fill that void, but it’s generally not until after the execution [that the families] realize this. Not too many people will honestly [say] publicly that it didn’t do much, though, because they’ve spent most of their lives trying to get

\textsuperscript{105} Travis Loller, When the Death Penalty Doesn’t Mean Closure: A Growing Number of Murder Victims’ Families Say the Death Penalty Won’t Help Them and It May Even Hurt Them (Mar. 2003) (unpublished manuscript, on file with author Marilyn Peterson Armour).


\textsuperscript{108} Id.

\textsuperscript{109} Lanier & Breslin, supra note 42, at 196.
someone to the death chamber."\(^{110}\)

This debate about whether the ultimate penal sanction really brings closure mirrors the public debate over whether the death penalty effectively deters crime or enhances public safety. Beliefs about the viability of the death penalty as a mechanism to further closure pull on survivors from both sides.

\[\text{T]he world generally tries to yank victims' families around in one of two opposing directions. Most often, we are expected to keep our sense of injury and rage whipped into a constant call for retribution . . . . The other extreme . . . is the pressure to eradicate any strong feelings as quickly as possible.}\(^{111}\)

Although LWOP is also justified as a deterrent, an effective mechanism to prevent further violence, and a suitable form of retribution because it is a living self torture, little has been written about its hypothetical or real relationship to closure for survivors. Until recently, it has been merely juxtaposed against the death penalty. As regards LWOP, it is hypothesized that survivors "may prefer the finality of that sentence and the obscurity into which the defendant will quickly fall to the continued uncertainty and publicity of the death penalty."\(^{112}\) Rather than bringing closure, it is proposed that some survivors may want to keep the offender alive. "A few may even hope that in the future there can be some sort of mediation or reconciliation between them and the offender."\(^{113}\) As LWOP is increasingly advanced as an acceptable type of ultimate penal sanction, more references to its ability to provide closure, however, have surfaced in the literature.\(^{114}\)

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110. Brownlee et al., supra note 107, at 28 (second and third alterations in original).
The notion of closure is rarely advanced by the survivors themselves. Many, if not most, vehemently deny that there is closure or that closure will ever be possible for them; they abhor the word because it implies “getting over it.” Many survivors also insist there can be no justice because nothing will bring their loved ones back. Zimring asserts that the story of closure is mythical and “widely accepted by Americans even in the absence of evidence of what closure means or how it works.” The public’s sentiment is expressed by a columnist who wrote:

There is little enough we can do to ease the pain of grieving survivors, but hanging murderers would help. Many families can find no peace as long as the slayer of their loved one lives. They are filled with rage and despair; they want the killer dead. By seeking the death penalty for willful murderers, society can offer these families a measure of comfort and assure them that their loss is taken seriously.

Anecdotal accounts suggest, however, that survivors’ reactions to the death penalty as retribution and the concept of closure are complex and highly nuanced. One survivor said, “I conclude that death is the easy way out. I will live with the pain of the loss of my daughter for the rest of my life. When the lid of my casket is closed, only then will I have closure.” Another survivor claimed, “If they’re dead, they can’t commit more crimes. I want a finality, I’m tired of hearings and court proceedings. I want him out of my life, and I really see only one way to

do that.\textsuperscript{121} In response to having witnessed the execution of his brother’s murderer, a survivor expressed his disappointment, stating,

“After it was done, we came out, and it was like, ‘Is that it?’ . . . My brother suffered terribly when he died. I really wanted to see them bring [the murderer] into the room and strap him down. They should have let us see a little bit of the terror in [his] face that my brother must have felt.”\textsuperscript{122}

A survivor who was against capital punishment described her surprising response to the jury’s verdict of death:

I discovered that my dismay mingled with a tremendous satisfaction. This upset and confused me. I felt no satisfaction that . . . [the murderer] would be unceremoniously injected with the drugs that would kill him. . . . But I couldn’t help being gratified by what the jury seemed to say: that what was done to [my son] appalled them—appalled them enough to warrant the strongest response legally available.\textsuperscript{123}

The variability in these responses suggests that the need for retribution accorded survivors, society’s portrayal of the death penalty as providing closure, and the belief that closure is a realistic and desirable goal for homicide survivors may be simplistic. Claims that the death penalty brings closure to survivors appear inappropriately homogenous and more reflective of society’s agenda for survivors as an indirect way to increase popular support of the death penalty than what survivors themselves may say they need. The fact that so little justification is advanced in support of LWOP for survivors other than by anti-death penalty proponents indicates that the primacy accorded closure may reveal more about the investment of different interest groups than an accurate portrayal of survivors’ experiences.

Although the death penalty may be statistically rare, its symbolism and political significance is high.\textsuperscript{124} Similarly, the opportunity for closure

\begin{itemize}
\item \textsuperscript{121} David Von Drehle, Among the Lowest of the Dead: The Culture of Death Row 370 (1995).
\item \textsuperscript{122} Brownlee et al., supra note 107, at 27.
\item \textsuperscript{123} Coleman, supra note 111, at 30.
\item \textsuperscript{124} James R. Acker & David R. Karp, Introduction to Wounds That Do Not Bind:
provided by the death penalty may be more symbolic than real. Eugene Kennedy, professor of psychology, claims that the execution itself is symbolic: It is not revenge but rather an invisible, though real, human exchange that replaces survivors' intractable suffering with peace. 125 "They get something of their lives back in that instant in which . . . a moral issue is also resolved." 126 Regardless of its accuracy, the statement and similar statements convey a transcendent and restorative impression that serves to incorporate the symbolic significance of closure for survivors as an appropriate justification for the death penalty.

IV. IMPACT OF THE CRIMINAL JUSTICE SYSTEM ON HOMICIDE SURVIVORS

The potential for closure associated with the ultimate penal sanction necessarily involves the criminal justice system, which holds the power to prosecute and carry out punishment. In this regard, efforts to determine the reality and extent of closure for survivors that results from the linkage of achieving justice with survivor-healing require an examination of the total experience of survivors with the criminal justice system.

The term "closure," when used to justify the death penalty, is most commonly associated with the offender's execution. The actual death of the offender, however, is only one, albeit usually the last, chapter in the survivor's whole experience with the criminal justice system. Prior involvements include the apprehension and indictment of the offender, the relationship with the prosecutor, the bifurcated trial, the preparation and presentation of the Victim Impact Evidence (VIE), the appellate process, and, in some cases, post-execution involvement. In those states where the ultimate sanction is not the death penalty but LWOP, the concept of closure when used in reference to the finality of the offender spending the rest of his natural life in prison is just beginning to appear in the literature. As with the death penalty, the imposition of the LWOP sentence is only a part of the extensive experience with the criminal justice system, which includes, as in death penalty states, pretrial encounters with police and detectives, the charge of capital

VICTIM-BASED PERSPECTIVES ON THE DEATH PENALTY 3, 3 (James R. Acker & David R. Karp eds., 2006).


126. Kennedy, supra note 125.
murder, the bifurcated trial, the giving of VIE, and any involvement after the conviction and sentencing. However, a significant procedural difference for LWOP situations is that the mandatory appeal process, built-in for death penalty cases, is not legally available. Anecdotal accounts provide some information about the entirety of the criminal justice experience specific to survivors whose offenders are charged with and receive the ultimate penal sanction, whether it be the death penalty or LWOP. A number of studies have used samples of victims of violent crime, including homicide survivors, with variable offender outcomes to assess the impact of the criminal justice system on victim well-being. Collectively these data sources provide the context for a closer and empirical examination of survivors’ experiences with the criminal justice system and interactions with the ultimate penal sanction.

Historically, the relationship between the crime victim and the criminal justice system has been ambiguous and continues to be so. Until the 1980s, survivors felt neglected, marginalized, or invisible because their personal needs were eclipsed by the fact that murder was considered a crime committed against the state, making the community the injured party.127 The Federal Victim and Witness Protection Act of 1982,128 the Comprehensive Crime Control Act of 1984,129 the Crime Control Act of 1990,130 and the Crime Victim Assistance Act of 1996131 began to change this perceived imbalance.132 By 2000, victims’ rights amendments had been incorporated into the constitutions of most

127. Armour, supra note 27, at 372.
states, which helped establish victims' special standing in the criminal justice system. The dramatic rise in number of victim assistance programs is a testament to the significance of this legislation.

A. Victim Impact Evidence

The rights of victims have included victim input at different stages in the criminal justice process. This engagement is considered positive to some extent because victims, through self-advocacy, can provide greater safety and protection for themselves and enhance their sense of power to protect others, by deterring the offender from repeating his crime. Provisions for victim impact statements, for example, provide mechanisms for public acknowledgement of victims' suffering and the opportunity for apologies from offenders. The ability to regain personal control over their situation is important because personal control boosts psychological well-being.

Critics of greater participation in the criminal justice system claim,


134. SPUNGEN, supra note 3, at 205. Spungen explains that victims' rights include:

(a) notification of, and the right to attend, court proceedings, including bail hearings and parole hearings; (b) eligibility for compensation and restitution; (c) freedom from intimidation and harassment by the defendant; (d) fair and dignified treatment; (e) victim input at various stages of the criminal justice process; (f) information about the release or escape of defendants; (g) prompt return of victims' property; and (h) notice of all the rights in legislation.

Id.


however, that victims have been co-opted to procure death penalty convictions.\textsuperscript{138} They argue that survivors should not expect the criminal justice system to help them with the emotional effects of a loved one’s murder: “The state should not be concerned whether surviving family members drown in bitterness, experience vindication, or find forgiveness.”\textsuperscript{139} Rather, the criminal justice system is designed to deal with offenders and must distance survivors in order to respect due process of law and equal protection principles.\textsuperscript{140} Efforts to involve survivors in the process may even mislead them into believing that the system can restore the harm of their loss. Given that the role of the criminal justice system is not to provide consolation or vindication, such efforts can confound survivors’ interest in justice with a need for healing, which fosters false hopes for closure.\textsuperscript{141} Lastly, there is no evidence to support the notion that the criminal justice system can help victims’ personal control or their psychological well being.\textsuperscript{142}

The tension among survivors’ needs, efforts to exercise victims’ rights, and the realities of the criminal justice system is heightened and politicized in capital murder cases. For survivors, the giving of Victim Impact Evidence (VIE) during the sentencing phase of an offender’s trial is supposed to allow them to speak freely and receive some public acknowledgment of their suffering. Most often, they talk about attributes of the victim or the impact of the murder on their family.\textsuperscript{143} VIE is valued because telling their story presumably helps survivors make sense out of the tragedy and feel less isolated.

\textsuperscript{138} ZIMRING, supra note 15, at 55–59.
\textsuperscript{139} KAY, supra note 116, at 147.
\textsuperscript{140} Acker & Mastrocinque, supra note 13, at 151.
\textsuperscript{141} Susan Bandes, When Victims Seek Closure: Forgiveness, Vengeance and the Role of Government, 27 FORDHAM URB. L.J. 1599, 1605–06 (2000). Ms. Bandes suggests that preventing the criminal justice system from doing further harm may be a more realistic goal than expecting it to provide crime victims with positive assistance: “[W]hat individual victims and survivors need to attain closure must come from psychological, religious and social support systems. Such systems have greater ability to individuate among victims and to accommodate to the shifting and complex needs of particular victims.” Id.
\textsuperscript{143} Theodore Eisenberg et al., Victim Characteristics and Victim Impact Evidence in South Carolina Capital Cases, in WOUNDS THAT DO NOT BIND: VICTIM-BASED PERSPECTIVES ON THE DEATH PENALTY 297, 302 tbl.1 (James R. Acker & David R. Karp eds., 2006) (reporting that twelve percent of survivors talk about what kind of punishment they wanted the defendant to receive).
This right to speak, however, was curtailed by *Booth v. Maryland* in 1987 when the Justices ruled that the survivors’ VIE testimony “arbitrarily interjected sentencing considerations [about the character of the victim] that were irrelevant to the offender’s moral blameworthiness.” The *Booth* ruling was overturned in 1991 by *Payne v. Tennessee*. Although this development made capital punishment law more responsive to the needs of survivors, VIE tends to be seen adversely as “impassioned and embittered adjuncts to the prosecution team” rather than as “innocent and profoundly hurt.” Consequently, the giving of VIE is closely monitored for its possible influence on jurors’ decisions, a concern that is not empirically grounded when using actual rather than mock juror samples. Some survivors feel robbed by this practice:

It’s still not clear to me, actually, just what purpose a victim’s family’s appearance in court is supposed to serve. Perhaps it is just that: an appearance. . . . [M]y mother, Cameron, and I were able to give the jury only the sketchiest portrait of our family, a few details about Russell as a person, and the basic fact of our affection for him. And we were, each of us, given the chance to declare the obvious: that we missed him.

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144. 482 U.S. 496 (1987).
148. See Eisenberg et al., *supra* note 143, at 298–99 (reporting that a survey of over 200 jurors who sat on capital cases in South Carolina between 1985 and 2001 found no significant relation between increased victim admirability and juror capital sentencing votes nor between the introduction of VIE and sentencing outcomes); Edith Greene, *The Many Guises of Victim Impact Evidence and Effects on Jurors’ Judgments*, 5 PSYCHOL. CRIME & L. 331 (1999) (using a mock jury); Edith Greene et al., *Victim Impact Evidence in Capital Cases: Does the Victim’s Character Matter?*, 28 J. APPLIED SOC. PSYCHOL. 145 (1998) (showing that VIE influenced the mock jury); David R. Karp & Jarrett B. Warshaw, *Their Day in Court: The Role of Murder Victims’ Families in Capital Juror Decision Making*, in WOUNDS THAT DO NOT BIND: VICTIM-BASED PERSPECTIVES ON THE DEATH PENALTY 275, 289 & n.7 (James R. Acker & David R. Karp eds., 2006) (reporting that studies have found that VIE does have an indirect effect on jurors through the information given to them by prosecutors about the victim or the survivors’ experience; however, the results are only marginally statistically significant, p = .065); James Luginbuhl & Michael Burkhead, *Victim Impact Evidence in a Capital Trial: Encouraging Votes for Death*, 20 AM. J. CRIM. JUST. 1 (1995).
Prosecutors have broad discretion over how VIE is conveyed, e.g., photos, diary entries, who testifies, and the number of witnesses.\textsuperscript{150} Judges may carefully screen the VIE, removing portions that could prejudice the jury.\textsuperscript{151} There is some evidence to suggest that prosecutors exclude VIE from survivors who do not support the death penalty.\textsuperscript{152}

Existing empirical research suggests that victim input has only a modest impact on measures of dispositional outcomes and victim satisfaction with the sentence or the criminal justice system.\textsuperscript{153} A five-state survey found that half of the crime victims were not satisfied with their opportunity to provide input in the sentencing decision.\textsuperscript{154} If survivors' statements are heavily edited by prosecutors and judges, then studies that find that victim participation has little or no significance on victim satisfaction or well-being might erroneously conclude that victim participation could be extraneous to survivors' well-being.\textsuperscript{155} Rather, such studies may reflect, in part, the fact that once the content of victims' statements gets altered, telling their story no longer has the same significance.

\textbf{B. Relationship with Prosecutors}

The relationship between survivors and the prosecution is another example of potential strain between survivors' needs and the realities of the criminal justice system.

In capital and non-capital murder cases, survivors take their cue from prosecutors who hold sway over the management of cases including the investigation, the nature of the indictments, and punishment of the offender. Ideally, survivors should have input into their sentencing decisions as indicated in the recent Crime Victims' Act, which gives survivors the right to be heard at proceedings involving

\begin{itemize}
  \item \textsuperscript{150} See, e.g., Wayne A. Logan, \textit{Victims, Survivors, and the Decisions to Seek and Impose Death, in WOUNDS THAT DO NOT BIND: VICTIM-BASED PERSPECTIVES ON THE DEATH PENALTY} 161, 164 (James R. Acker & David R. Karp eds., 2006).
  \item \textsuperscript{151} Id. at 163–64.
  \item \textsuperscript{152} See KING, supra note 113, at 158.
  \item \textsuperscript{153} Peggy M. Tobolowsky, \textit{Victim Participation in the Criminal Justice Process: Fifteen Years After the President's Task Force on Victims of Crime, 25 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT} 21, 89 n.254 (1999).
  \item \textsuperscript{154} See SUSAN W. HILLENBRAND & BARBARA E. SMITH, AM. BAR ASS'N, CRIMINAL JUSTICE SECTION, VICTIMS RIGHTS LEGISLATION: AN ASSESSMENT OF ITS IMPACT ON CRIMINAL JUSTICE PRACTITIONERS AND VICTIMS 16–17 (1989).
  \item \textsuperscript{155} See Edna Erez & Pamela Tontodonato, \textit{Victim Participation in Sentencing and Satisfaction with Justice, 9 JUST. Q.} 393, 402-03 (1992) (stating that victim satisfaction has been found to be most influenced by the fairness and severity of the sentence).
\end{itemize}
offender sentencing. In capital murder cases, a committee of experienced prosecutors is assembled to evaluate the situation and advise the district attorney about whether or not to seek the ultimate penal sanction. Input from survivors is expected to receive consideration as part of the evaluation process.

Although survivors may rely on the prosecution for information, direction and validation, the prosecutors themselves may pay little attention to what survivors want because they are largely guided by the open-ended mandate that they “seek justice.” They may not discuss the reality of a capital case with the family or may be so focused on proving the offender’s guilt that they are “unaware of or choose to ignore” their impact on the survivors. When survivors’ views about justice conflict with what prosecutors want, the prosecutors may resist the survivors’ wishes in their charging decisions. One family’s request that the prosecutor plead the case, not go to trial, and have the offender serve a life sentence without the possibility of parole was considered at odds with what the prosecution wanted.

Approximately ten percent of survivors oppose capital punishment. They report that they often face prosecutorial hostility and may feel shut out of the process. Prosecutors may be selective about which cases to pursue. The expression or absence of their feelings for the case can also enhance the survivors’ experience either positively or negatively. Survivors “like to see prosecutors exerting emotional energy in the pursuit of justice for their loved one.”

Prosecutors themselves feel conflicted about what they can actually do for survivors. Their candidness, involvement, and empathy may help

156. LEGISLATIVE NOTICE, supra note 133.
158. Id.
161. Id. at 384–85.
162. Melville, supra note 14, at 15.
163. Id.
164. Goodrum & Stafford, supra note 142, at 95.
165. Id. at 100.
survivors feel like they are part of the “team,” which can help restore their personal control.\textsuperscript{166} Their sympathy toward survivors may leave survivors feeling “indebted for their understanding and kindness.”\textsuperscript{167} Yet, “you see them hurting and you can’t fix it . . . . [T]hey think that something wonderful is going to happen at the end of the case.”\textsuperscript{168}

I try to explain to them . . . that regardless of how we dispose of this case, . . . you’re not going to be fixed. You’re still going to have to deal with this. It’s not going to go way. And most people don’t believe me before it happens, but . . . talk to any of the families of cases that I’ve worked on, they’ll tell you.\textsuperscript{169}

C. Appellate Process

The most obvious split between survivors’ needs and defendants’ rights, as handled by the criminal justice system, is the appellate process. Automatic appeals commence as soon as a person is given the death penalty.\textsuperscript{170} According to Jonathan Gradess, Executive Director of the New York State Defenders Association, “all convicted murderers [after sentencing] have the right to initiate judicial review at 11 different levels.”\textsuperscript{171} The appeal process, which used to last two years in 1960\textsuperscript{172} and averaged approximately five years in 1990,\textsuperscript{173} now can last as long as two or even three decades.\textsuperscript{174} Currently, the average length of time from sentence to execution is almost twelve years.\textsuperscript{175} Although LWOP sentences can also be appealed, it is not automatic, and LWOP cases involve advanced post-conviction review and habeas processes less frequently than death penalty cases.\textsuperscript{176}

\begin{thebibliography}{99}
\item 166. Id. at 93.
\item 167. Id. at 103.
\item 168. Id. at 119.
\item 169. Id. at 126.
\item 170. Loge, supra note 115, at 413; Loller, supra note 105.
\item 171. Gibbons, supra note 22, at 66 (describing New York state appeals process).
\item 173. MARQUART, supra note 23, at 137.
\item 174. LIEBMAN ET AL., supra note 39, at 81 fig.14.
\item 175. SNELL, supra note 37, at 1.
\end{thebibliography}
Survivors, after having won death penalty convictions, go through years of bitterly contested appeals that are protracted and fraught with uncertainties. Indeed, condemned offenders have a high probability of reversal on appeal: one study found that sixty-seven percent of appealed death sentences were reversed. Survivors claim it is the length of the appeal process, not the death penalty, that is to blame for the terrible effect upon them. One survivor used a loud, jarring cowbell to illustrate the repeated shocks dealt by the appeals process: "'My mother's killer has been on death row in Ohio for more than ten years. We keep getting e-mail updates about possible appeals.' Clank! Life goes back to normal for awhile, and then—Clank!—another e-mail announces another appeal." This emotional roller coaster is difficult to endure. It churns up disturbing memories that make it more difficult to put the murder behind or focus on the victim's life rather than his or her death. It can bring out the media, who replay footage of the crime scene or make speculations about the ultimate outcome of the case. A survivor said of the appellate process, "'Every time [my wife's parents] hear about another appeal, another delay, it throws them into a grave depression . . . I think it happens to all of us. We're all thrown back to square one.'" This endless repetition and the glacial pace of capital appeals tend to increase stress and delay healing of survivors who are trying to put the horror of the crime behind them. "'I just go through the motions of living. If I ever allowed myself to let go, I'd start screaming and never stop.'" It may be that the sense of closure that one would otherwise expect from the conviction and receiving the death penalty is diminished or eliminated when the certainty of the standing of a decision remains uncertain, and, even if confirmed, there is a wait of many years to have the death penalty carried out. Because of this torturously long course, it is also possible that the sense of closure seemingly applied to the murderer's death may be more related to

179. Vandiver, supra note 112, at 621.
180. Gibbons, supra note 22, at 64.
judicial, rather than emotional, closure.

D. Execution

Although the concept of "closure" is most often associated with the execution of the offender, no systematic interviews have been done with survivors about execution's long-term effects on their well-being.\(^{182}\) After witnessing the execution, some say they felt better and others say they were disappointed or felt even worse. One victim's widow expressed satisfaction after witnessing the execution by lethal injection: "I got to see the evil in his eye. Then I got to hear him choke. And that was a wonderful feeling."\(^{183}\) Another survivor said, "We just found a deep relief in knowing that they could never commit this horrific crime against another family. And for that we felt some peace."\(^{184}\) A victim's sister, on the other hand, declared her disappointment: "The penalty has been carried out, but this is by no means justice. . . . [The murderer] went to sleep. [My sister] suffered a violent death. His family had over 12 years to say goodbye to him. We were robbed of that luxury."\(^{185}\)

At least thirteen states have made provisions for survivors to be present when the offender is killed.\(^{186}\) In Texas, the option to attend came as a result of pressure from survivors and victim advocates who felt it might help the healing process.\(^{187}\) Texas offers a victim-witness execution process: staff prepare survivors by visiting them prior to the execution, providing a personal point of contact when they arrive at the death house, and accompanying them before, during, and after the execution; after the execution, survivors meet with the post-trauma support team for a debriefing session and are escorted if they indicate a wish to meet the press; then, each witness is contacted several weeks

\(^{182}\) Vandiver, supra note 112, at 623.

\(^{183}\) Loller, supra note 105.


\(^{185}\) Clifton White Executed for Murder of Woman, NEWS & OBSERVER (Raleigh, N.C.), Aug. 25, 2001, at 3A.

\(^{186}\) Hodgkinson, supra note 17, at 353 n.63 (reporting that Oklahoma and Washington guarantee families the right to watch, whereas California, Florida, Illinois, Louisiana, Montana, North Carolina, Ohio, Pennsylvania, Texas, Utah, and Virginia hold hearings to determine access).

later about any physical or emotional problems they have experienced subsequent to the execution. 188

In Texas, the number of survivors who witness the execution has increased annually. 189 Texas considers the witnessing of an execution to be traumatizing and disavows that the execution brings closure. 190 "We realize there is no such thing as closure. The execution process is long, painful and often times frustrating. It is our goal to offer [survivors] our heartfelt compassion, our resources to assist[] them, and a professional, loving arm to help them along the path of healing." 191

A review of statements to the press reported to be made by family members after witnessing an execution found that the dominant theme was pain. 192 Undoubtedly, survivors revisit the tragedy of their loved one's death, a memory surrounded by loss and the futility of not being able to change what happened. In more than one-third of the cases, survivors mentioned closure—the hope that now they can put the murder behind them or the fear that they cannot. 193 In approximately twenty-five percent of the cases survivors said that justice was done. 194 An equal number focused on revenge by expressing satisfaction or disappointment with the punishment or offender’s suffering. 195 Offenders apologized or asked for forgiveness in one-third of the cases, 196 but survivors mentioned offenders’ final words in only about two-thirds of those cases. 197 Around one-tenth of survivors supported clemency for the offender, and approximately the same percentage of survivors expressed concern for the offender or the offender’s family. 198

189. See Hodgkinson, supra note 17, at 354 (reporting that in 2001, eighty-two percent of survivors attended the execution of their loved one’s killer).
190. Viewing Executions, supra note 187.
191. Id.
193. Id.
194. Id. at 494.
195. Id. at 489.
196. Id. at 501
197. Id. at 489.
198. Id. at 497.
Overall, “the most common reaction . . . [was] relief that [the execution] finally happened.”

Witnessing executions is further complicated when some family members want the death penalty and others do not. Likewise, executions are particularly challenging when the loved one and offender are from the same family. In one case, two children issued a press statement after their father was executed for the murder of his wife: “The state of Georgia made orphans of [the two children] . . . despite their pleas . . . that their families not be traumatized. Another body is in the coffin.” Survivors also suffer when the state proceeds with an execution against their wishes: “I get sick when death-penalty advocates self-righteously prescribe execution to treat the wounds we live with after homicide . . . . Those who hold out an event—execution—as the solution to pain have no understanding of healing. Healing is a process, not an event.”

E. Research on Witnessing Executions

In 1999, the Victim Services Division of the Texas Department of Criminal Justice conducted a survey to assess what the impact of viewing executions had been on survivors. The questionnaire asked for reports of physical or emotional discomfort prior to and following witnessing an execution. Of the sample of forty-one witnesses, forty-four percent reported that they experienced continued physical and emotional discomfort (e.g., cautious of personal safety and stomach pains) as a result of the murder prior to actually viewing the execution. After the execution, only 19.5% reported physical or emotional discomfort. Survey participants were also asked about various post-

199. Id. at 514.
201. Dan Levey, Feelings from the Heart, in WOUNDS THAT DO NOT BIND: VICTIM-BASED PERSPECTIVES ON THE DEATH PENALTY 33, 44 (James R. Acker & David R. Karp eds., 2006).
203. Id. at 3.
204. Id. Types of physical discomfort ranged from headaches to listlessness. Emotional discomfort was more pronounced, ranging from an inability to concentrate to numbness of feelings at work or an inability to express feelings. Others reported feelings of sadness, resentment and loneliness. Id. at 5.
traumatic symptoms and indicated that, for some, unresolved feelings about the victimization or the execution may have remained.\textsuperscript{205} In addition to answering specific questions about trauma and physical and emotional reactions, survivors volunteered information that again showed wide variation in their post-execution responses. For example, one survivor said, "Since the execution, I have not had any nightmares or bad dreams of harm being done to my other family members. It has been a wonderful relief."\textsuperscript{206} In contrast, another survivor said, "[A]t different times, I can see him on the [gurney] waiting to die. Makes me feel bad even though I knew he was guilty."\textsuperscript{207} Another survivor described her long-term reaction:

I feel that the execution ended my life as I had known it for 7 years. I had nothing more to focus on. I had to really realize that my daughter was gone. There was \textit{nothing more I could do for her}. It had taken almost two years for me to get back to normal: closure has come!\textsuperscript{208}

Survivors were pleased with the preparation but indicated it would be helpful to clarify reasons for wanting to witness in order to have more realistic expectations. Eighty-eight percent of the sample found the debriefings helpful.\textsuperscript{209} Although survivors felt it was helpful to openly express feelings that were kept inside for a long time, the researchers suggested that follow up might be indicated because so little is known about the transfer effects from viewing the execution. "As one respondent put it, 'watching someone die is a saddening sinking feeling.' It doesn't always produce the effect one thinks it will."\textsuperscript{210} However, none of the survey participants regretted having viewed the execution.\textsuperscript{211}

\textsuperscript{205} \textit{Id.} at 4 (stating that following the execution, 44\% reported "'having strong feelings [in response to] see[ing] or hear[ing] about a prison or another execution,'" 32\% reported obsessive thinking about the execution, 32\% reported flashbacks or images, 17\% indicated "'feelings of wanting to be separated from others,'" 15\% said they had angry outbursts, and 12\% stated they were irritable with others).  
\textsuperscript{206} \textit{Id.} at 4.  
\textsuperscript{207} \textit{Id.} at 5.  
\textsuperscript{208} \textit{Id.} at 4 (emphasis added).  
\textsuperscript{209} \textit{Id.} at 3.  
\textsuperscript{210} \textit{Id.} at 6.  
\textsuperscript{211} \textit{Id.} at 3.
F. Secondary Victimization—Interactions and Survivor Expectations

Whether the focus is on VIE, the relationship with the prosecutor, the appellate process, or the execution, the criminal justice system plays a significant role in contributing to the well being of survivors because of its potential to revictimize them.

1. Secondary Victimization—Interactions with the Criminal Justice System

Studies show that the most consistent responses to questions about crime victims' experiences generally are frustration with and alienation from the criminal justice system. The potential to aggravate or compound trauma is particularly high in capital murder cases. Survivors are not familiar with the capital murder trial, their role, or what to expect. They may be restricted by the prosecutor from getting information about the case, which the survivors may view as a necessary resource to manage their stress. They have to endure proceedings over years, which forces them to relive the crime. Lack of consideration by the prosecution or exclusions from involvement in decision-making processes can accentuate feelings of powerlessness. Acts of disrespect may compound the feelings of injustice from the crime or create new ones because survivors may feel subjected to something they do not deserve. These experiences might intensify the perception that the world is not fair or just. Such perceptions have been found to produce lowered self-esteem, depression and discontent, and self-degradation.


213. Goodrum & Stafford, supra note 142, at 68.


Findings from studies of the impact of the criminal justice system on crime victims support these concerns. An early study of 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.\textsuperscript{218} Another study found that seventy-one percent of survivors had lifetime PTSD,\textsuperscript{219} which “might be attributable to . . . aggravation of symptoms produced by interacting with the criminal justice system.”\textsuperscript{220}

Goodrum and Stafford examined the number of types of contacts survivors had with criminal justice professionals, e.g., a defense attorney or police department detective, and the number of types of processes experienced by survivors, e.g., a probation hearing or trial.\textsuperscript{221} In their study, types of contact and types of processes were combined to give an involvement score for each survivor (n = 32) with the criminal justice system.\textsuperscript{222} They found a significant positive correlation between involvement and level of depression.\textsuperscript{223} Indeed, fifty-eight percent of the sample were clinically depressed based on the cut-off score of the instrument used to measure clinical depression.\textsuperscript{224} The authors speculate that some survivors “invest more energy in and attention to the criminal justice system’s management of their loved one’s case than others [do]. This investment may build up [survivors’] expectations for (and hope of) the system’s resolution to the case.”\textsuperscript{225}

Goodrum and Stafford also examined the relationship between case status and depression.\textsuperscript{226} Murder cases associated with each survivor were divided into unsolved (i.e., there is no known suspect), solved-unresolved (i.e., a suspect has been identified or indicted, but the case has not yet been resolved in the criminal justice system), solved-resolved (i.e., a suspect has been indicted, charged, and either tried or plea-bargained and the case has been resolved), and murder-suicide.\textsuperscript{227}

\begin{itemize}
\item \textsuperscript{218} Angelynne Amick-McMullan et al., \textit{Family Survivors of Homicide Victims: Theoretical Perspectives and an Exploratory Study}, 2 J. TRAUMATIC STRESS 21, 32 (1989).
\item \textsuperscript{219} J. Freedy et al., \textit{supra} note 5, at 458.
\item \textsuperscript{220} Dean G. Kilpatrick & Mary P. Koss, \textit{Homicide and Physical Assault}, in THE MENTAL HEALTH CONSEQUENCES OF TORTURE 195, 199 (Ellen Gerrity et al. eds., 2001).
\item \textsuperscript{221} Goodrum & Stafford, \textit{supra} note 142, at 137–139.
\item \textsuperscript{222} \textit{Id.}
\item \textsuperscript{223} \textit{Id.}
\item \textsuperscript{224} \textit{Id.} at 140.
\item \textsuperscript{225} \textit{Id.} at 147.
\item \textsuperscript{226} \textit{Id.} at 149–55.
\item \textsuperscript{227} \textit{Id.}
\end{itemize}
Survivors whose cases were “unsolved” had the lowest mean depression scores.228 Survivors whose cases were “solved-resolved” had the highest mean depression scores.229 The authors speculate that survivors “may feel depressed when the resolution (or ending) does not make them feel better.”230

Criminal proceedings can induce other negative psychological changes in crime victims. These include self-esteem, faith in the future, trust in the legal system, and faith in a just world.231 A five-year study of crime victims’ appraisals (n = 137) of the criminal justice experience found that crime victims’ secondary victimization as measured by these attitudinal variables was attributed to outcome satisfaction (e.g., finding of guilty) and perceived procedural justice,232 rather than to punishment severity (e.g., life without parole, death penalty), interactional justice, (i.e., victim blaming, insensitive remarks, minimization of the harm), or the psychological stress (i.e., giving testimony, presence of spectators) from the criminal proceedings.233

Procedural justice is a critical variable in survivors’ appraisals of criminal proceedings. Fairness of the legal process may be understood to include perceptions of being heard, listened to, and taken seriously by the police and the court.234 Northwestern University researcher Tom R. Tyler found that perceived fairness of the adjudication process operates independent of the actual outcome, over which survivors have little decisional control.235 Although the criminal justice process can

228. Id. at 150.
229. Id.
230. Id. at 148.
231. Hammer, supra note 99; see also Orth, supra note 101, at 315–16.
232. Orth, supra note 101, at 321. Procedural justice consisted of several criteria:
   the consistent application of rules (consistency), bias suppression in
   decision making (bias suppression), accurate consideration of all relevant
   information (accuracy), the review of the decision in case of objections
   and new information (correctability), representativeness of the views of
   all parties concerned (representativeness), and compatibility of the
   decision with generally accepted ethical values (ethicality).

   Id. at 315; see also Gerald S. Leventhal, What Should Be Done with Equity Theory: New
   Approaches to the Study of Fairness in Social Relationships, in SOCIAL EXCHANGE:
   ADVANCES IN THEORY AND RESEARCH 27, 34–37 (Kenneth J. Gergen et al. eds., 1980).

235. Tom R. Tyler, Conditions Leading to Value-Expressive Effects in Judgments of
   Procedural Justice: A Test of Four Models, 52 J. PERSONALITY & SOC. PSYCHOL. 333, 333–34
negatively influence psychological variables like faith in a just world or faith in the future, a four-state study (c = 1309) also found that crime victim satisfaction with the criminal justice process can mitigate crime-related PTSD.\textsuperscript{236} Crime victims who were satisfied reported less intrusion and hyperarousal several years later.\textsuperscript{237}

2. Secondary Victimization—Survivor Expectations

The distance between anticipated and actual experience plays a significant role in whether or not survivors feel revictimized by or are satisfied with the criminal justice system.\textsuperscript{238} Because murder shatters the assumptions about a just and safe world, survivors may look to “the system to restore some of their sense of security by ensuring that the murderer will never hurt . . . anyone . . . again.”\textsuperscript{239} They also want to be able to express the immeasurable depth of their loss. They may view the trial as a ritual practice and a revered and trusted symbol that creates and maintains justice and restores order to social life.\textsuperscript{240} They may expect the execution to reduce their gnawing sense of unfairness because the murderer will finally receive the punishment he or she deserves. Rarely does the system do any of these things for survivors.

Survivors commonly feel disillusioned and even betrayed when the criminal justice system does not fulfill its implied or imagined promise to help heal the harm of their loss, bring psychological resolution so their lives can go on, or restore equity after waiting so long for the justice they deserved.\textsuperscript{241} Even the adage that the murderer’s death will bring closure is questionable and may be an empty assurance. For example, aside from the interminable wait, the most common complaint expressed by survivors about the execution process in Texas was that this mode of death was too easy for the murderer.\textsuperscript{242}

The evidence points to a high probability that there are a number of unmet expectations and related secondary victimization for survivors at different points in the criminal justice process. Accordingly, any

\begin{footnotesize}
\begin{enumerate}
\item Herman, \textit{supra} note 136, at 163 (citing Christina A. Byrne et al., \textit{Victimization and Psychological Adjustment: Moderating Effects of Victim Satisfaction with the Criminal Justice System}, paper presented at the Association for the Advancement of Behavior Therapy Annual Convention (Nov. 1996)).
\item \textit{Id.} at 162–63.
\item Goodrum & Stafford, \textit{supra} note 142, at 125.
\item Vandiver, \textit{supra} note 17, at 240.
\item See Goodrum & Stafford, \textit{supra} note 142, at 104.
\item Herman, \textit{supra} note 136, at 162–63.
\item Hodgkinson, \textit{supra} note 17, at 354.
\end{enumerate}
\end{footnotesize}
conclusion that the ultimate penal sanction (i.e., execution or LWOP) provides closure may be too simplistic and more a hoped-for result than truly representing the variety and complexity of survivors' responses throughout the ordeal, from the trial, including the finding of guilt and the sentencing, to the time of execution and thereafter. Moreover, survivors' responses may vary over time. The assertion that execution brings closure, therefore, tends to wipe out and override survivors' other reactions to the criminal justice system and, more importantly, is unreflective of the findings from studies that detail the negative interaction between survivors and the criminal justice system. This reality is further compounded by the fact that there is little, if any, research that focuses directly on the unique experience of those survivors where the offenders are charged with capital murder.

V. THE ROLE OF CLOSURE ON THE PATH TO HEALING

Survivors tend to be resolute that the concepts of closure, healing, and recovery bear little or no relevance to their experience. Many find these terms insulting because they suggest that it is possible, and even desirable, to “get over” the pain of having lost their loved one or move past an event that has altered the course of their lives forever. Unfortunately, the concept of closure is a vague notion and is usually applied in an abstract or metaphorical way. Its significance to survivors, therefore, depends on the meaning of closure to each individual survivor.

This expression has been used in relation to the fact that the murderer is no longer a threat, so survivors can feel safe again. Sometimes closure has been applied to a survivor's feelings of satisfaction because the murderer finally got his just deserts. It can also refer to the future, i.e., now that the murder is behind them, they can move on and begin to move toward closure. Closure can also

243. Armour, supra note 27, at 380; see Ellis et al., supra note 188, at 436.
244. SPUNGEN, supra note 3, at 239.
246. See Ellis et al., supra note 188, at 436 (noting that a person may “close” on a house purchase but not on the life of a loved one).
247. See, e.g., Gross & Matheson, supra note 16, at 490.
248. See id. at 489.
249. White, supra note 83, at 65.
connote the ending of suffering due to unrelenting pain or anger.\textsuperscript{250} It may be used with respect to the internal peace that is felt from having forgiven the murderer.\textsuperscript{251} Achieving closure can be the response to learning all the unknown details about what really happened, understanding what caused the murder, learning the victim’s last words, or discovering whether or not the victim suffered.\textsuperscript{252} Sometimes the concept of closure “having occurred” is conceded to but only with a reminder that closure is not what really matters. Survivors may say, for example, that although there can be partial closure, the suffering remains.\textsuperscript{253}

There are also types of closure. Judicial closure may refer to the end of survivors’ involvement with the criminal justice system.\textsuperscript{254} Emotional closure may mean letting go of long-standing anger toward the murderer.\textsuperscript{255} Psychological closure may signify the completion of a final act to honor the victim.\textsuperscript{256}

Sometimes the opposite of closure, which is “no closure,” is used as a retort to the suggestion that there will be no more pain or that the execution of the murderer will settle the score.\textsuperscript{257} “No closure” can sometimes refer to the fact that what was taken can never be restored.\textsuperscript{258} It may also be used to connote disappointment that the murderer died too easily\textsuperscript{259} or to protest the fictional solution that another death caused by executing the murderer could ever bring solace.\textsuperscript{260} It can also signify the amount of vengefulness a survivor feels.\textsuperscript{261}

Closure is commonly presented as an end state and evaluated as a dichotomous variable due, in part, to its use as part of a political agenda in support of the ultimate penal sanction or the reactivity of survivors to

\textsuperscript{250} Gross & Matheson, \textit{supra} note 16, at 492.
\textsuperscript{251} See \textit{King, supra} note 113, at 55.
\textsuperscript{253} Goodrum & Stafford, \textit{supra} note 142, at 155.
\textsuperscript{254} Krause, \textit{supra} note 160, at 381.
\textsuperscript{255} Goodrum & Stafford, \textit{supra} note 142, at 155.
\textsuperscript{256} See Zimring, \textit{supra} note 15, at 59.
\textsuperscript{257} See \textit{King, supra} note 113, at 7.
\textsuperscript{258} \textit{Id.} at 73.
\textsuperscript{259} Gross & Matheson, \textit{supra} note 16, at 489.
\textsuperscript{260} See \textit{King supra} note 113, at 73.
\textsuperscript{261} See \textit{Spared Twice, Texas Killer Executed}, \textit{DESERT MORNING NEWS} (Salt Lake City, Utah) Sept. 28, 2000, at A2.
the term. Closure may more realistically be conceived of as a continuum rather than an end point relative to the impact of particular events or the assigned meanings given to those events. The "degree of closure" may be a more apt phrase and may provide a more accurate measure of the survivor's movement.

The debate over the advisability of closure as a synonym for "getting over it," the possibility of attaining it, and the variety of conditions it refers to serves as a reminder that each survivor's path is unique. The relevance of closure to the post-homicide experience generally or the ultimate penal sanction specifically depends, therefore, on what it means, if anything, to each person as well as her self assessment of relative movement.

VI. THE PATH TO HEALING

Whether misguided or accurate, the notion that the death penalty or LWOP offers or brings closure to survivors is central to the larger question about first, what constitutes a healing path for survivors where offenders received the ultimate penal sanction and, second, whether those elements foster or hinder the healing process. Although healing, like recovery (as used in reference to substance abuse or chronic and persistent mental illness), is viewed as a life-long journey or process unique to each person, studies of survivors generally suggest that some experiences may advance movement. For example, survivors who have met with the offender for a mediated dialogue report major life changes, including personal growth and healing, strengthened spirituality, better outlook, and better feelings toward the offender. In three of the twenty cases that comprised the sample for this study, the offender had received the death penalty. Survivors from the study uniformly reported benefit from meeting with the offender, holding the offender accountable, and expressing to the offender the impact from the crime. A mother of a homicide victim said, "There just aren't any words that would adequately express what I feel. I feel human for the first time in


265. Id. at 347.

266. Id. at 117, 317, 354; Umbreit et al., supra note 252, at 367.
twelve years."  

Some survivors find, as reported earlier, that viewing the execution is helpful. In addition, how much information police provide about the case, how frequently survivors are contacted and kept abreast of the progress of the case, and how sensitive police are of their feelings directly affect survivors beliefs about esteem, social support, control, and safety. "[T]he management of information is . . . a form of coping, and this finding indicates that [survivors] use information as a resource to manage stress." Regardless of the answers to survivors' questions, it helps bring understanding to their loss so survivors can go on. When survivors obtain procedural justice and outcome satisfaction, it helps restore their beliefs that the world is a just and ordered place where people have control and influence. An understanding of that world heightens personal control and perceived well-being. A survivor's subjective perceptions that the offender's punishment is fair and adequate also influences the survivor's distress level.

Outside the contributions made by the criminal justice system, social support (in the form of instrumental aid, emotional caring, or concern) and information play a vital role in the ongoing healing process of survivors because of their ability to buffer the effects of stigma and isolation that otherwise attend death by murder. The ability to make sense out of the violent loss has also been found to reduce the potential for the development of complicated grief. Homicide survivors, however, have difficulty making sense of a senseless event or finding benefit in the tragedy. Meaning-making that is expressed through action has been found to be a major avenue for the re-establishment of a sense of coherence, self-continuity, and social identity in the aftermath

267. Umbreit et al., supra note 252, at 367.
268. GALAN & GUERRA, supra note 202, at 4.
270. Goodrum & Stafford, supra note 142, at 68.
271. Id. at 69.
273. See LERNER, supra note 100, at 9; MIROWSKY & ROSS, supra note 137, at 253.
274. Tontodonato & Erez, supra note 212, at 49.
278. Murphy et al., supra note 4.
of homicide. 279

A survivor’s ability to let go of the attachment to the pain the murderer caused is also considered pivotal to the re-establishment of a sense of personal control. 280 Such movement is made possible through changes in cognition. For example, insights about the murder can result in drawing new conclusions. 281 A sister whose brother was killed realized,

I can’t (loud voice) *hate* this person anymore, I can’t (loud voice) want to kill this person anymore because what am I going to get from it? (loud voice) *Nothing*. No satisfaction. I’m still not going to get [the victim] back. And look how many people’s lives I’m going to (loud voice) *hurt* if I hurt him. 282

Revising and synthesizing the traumatic memory of the killing with the nurturing memory of the deceased is also a reworking of cognitions that helps release the survivor from the persistent tragedy of the story because the survivor can define the loved one by his or her life rather than by just how the person died. 283

The meaning and significance of closure as part of survivors’ healing process has yet to be fully investigated. The variety of reactions to closure, some of which are contradictory, make it difficult to draw definitive conclusions about the meaning of closure, degree of closure or the events that impact closure. The current literature debates the existence and viability of closure 284 or critiques its use as a tool of death penalty proponents. 285 What is missing is a direct examination of the survivors’ experiences of ultimate penal sanctions and the meaning, process, and function of closure.

285. See id. at 61–63.
VII. THE NEED FOR SURVIVORS' VOICES

Although murder is a social issue that affects the survival and safety of civilized society, survivors are the ones most directly affected by the crime and how society responds to it. Studies of the post-homicide experience have grown considerably in the past two decades. The striking absence of survivors' voices specific to the ultimate penal sanction, however, stands in marked contrast to the volumes written on the subject of the death penalty. This void likely contributes both to survivors' marginalization as co-victims of homicide and to the propensity of others to presume and assign meaning and motive to their journey. In addition, the scarcity of knowledge about their true experience also limits the development of effective interventions that might further the healing process for survivors.

Studies are needed, therefore, on a variety of issues specific to survivors and the death penalty and LWOP as ultimate penal sanctions. It is important, for example, to question any differences between the death penalty and LWOP in meeting survivors' needs. What, for instance, is the impact of type of sentence on survivors' perceived equity and personal control at the time of trial and subsequent to trial? What is the impact of each type of sentence on a sense of judicial and psychological closure? What, if anything, happens to survivors' preferences for offender punishment over time? If they change, what factors influence the mutability of their opinions? How do survivors' preferences for the offenders' sentences impact their well-being? How do survivors manage differences in sentence preferences between family members? How do survivors manage the sentence when the offender and victim are from the same family? What role does the state's position on the ultimate sanction play on survivors' preferences? Does the death penalty intrinsically offer something unique, or is it sought after simply because it is the ultimate penal sanction available in death-penalty jurisdictions? How do religious affiliation, socioeconomic level, educational level, gender, length of residence in the state, race, or ethnic identification and other demographic variables influence survivors' preferences for offender punishment?

Although the literature shows that involvement with the criminal justice system impacts survivor well-being, there are survivor experiences unique to capital murder that have not been examined.

What is the involvement of survivors in prosecutors' decisions about sentencing? What is the meaning to survivors of giving VIE? What factors contribute to the perceived injustices associated with events, including criminal justice involvement, subsequent to the homicide? What is the relationship between those perceived injustices and the felt sense of equity that the ultimate penal sanction theoretically provides? What are the manifestations of well-being and non-well-being during the appeal process? What mechanisms do survivors use to cope with the appeal process in death penalty cases? How do appellate decisions that require a retrial or new findings that show the offender is actually innocent affect survivors? How does the length of the appeal process affect family relationships? Is there a difference in survivors' well-being among those who support, oppose, or are ambivalent about the offenders' execution? How do survivors prepare themselves for the execution? Is there a difference in survivors' well-being between those who witness and those who do not witness the execution? What is the relationship between the meaning given to the offender's execution and closure? What is the impact of offenders' last words on the emotional well-being of survivors? What is the durability of positive changes in well-being after the offender is executed or receives a sentence of life-without-the-possibility-of-parole? How does survivors' previous involvement with the criminal justice system prior to the homicide influence their involvement specific to the death of their loved ones?

Kay indicates that one of the tasks in recovery is for survivors to reclaim their own humanity after years of rage, terror, and humiliation.\textsuperscript{287} Studies are needed on the impact of the ultimate penal sanction on personal values at different points over time. Survivors' expectations play a critical role in how they react to stress.\textsuperscript{288} Studies that delineate the source of unrealistic expectations, the level of disappointment when expectations are not met, the meaning made out of frustrated expectations, and the impact of failed expectations on survivor well-being might provide the impetus for survivor education about what to expect\textsuperscript{289} as well as information for curriculum building and for professionals who interact with survivors.

The ultimate penal sanction 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

\begin{itemize}
\item \textsuperscript{287} Kay, supra note 116, at 155.
\item \textsuperscript{288} See generally Richard S. Lazarus, Stress and Emotion (1999).
\item \textsuperscript{289} See Ellis et al., supra note 188, at 440–41.
\end{itemize}
homicide is extremely painful and long-lasting, the provision and impact of solace is limited, and the institutional response tends to re-victimize 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 experiences, and the voice of survivors will only be heard in reaction to the presumptions and misrepresentations of their journey.