

INTRODUCTION

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Victims and the Death Penalty

Criminal homicide exacts incalculable harm. Individual lives are cruelly extinguished. Surviving family members—the co-victims of this devastating crime—are left without warning to cope with their loved one's violent death. Shock waves of horror, grief, and anger sweep through communities, accompanied by a profound sense of collective vulnerability. Murder, the most aggravated form of criminal homicide, evokes the law's severest punishment.

Thirty-six states and the federal government presently authorize capital punishment for murder.¹ In the remaining states the maximum punishment is life imprisonment without parole. Even in death penalty jurisdictions, capital punishment is reserved for a narrowly defined category of criminal homicide: aggravated murder (Acker and Lanier 1993a, 1993b; Bonczar and Snell 2004:2–3). The number of death sentences annually imposed and carried out in this country pales in comparison to the intentional criminal homicides committed each year (see Table 1).

Although the death penalty is statistically rare in response to criminal homicide, its symbolism and political significance makes it a central rhetorical plank in discussions about victims' rights. And because thousands upon

1. At this writing, twelve states and the District of Columbia provide by statute that life imprisonment (or life imprisonment without parole) is the maximum punishment for murder (Death Penalty Information Center 2005). Judicial decisions in two other states, Kansas (*State v. Marsh* 2004) and New York (*People v. LaValle* 2004), have invalidated death penalty legislation, leaving life imprisonment as the maximum authorized punishment. The U.S. Supreme Court has agreed to review the state court decision striking Kansas's death penalty law and is likely to issue a ruling in 2006 (*Kansas v. Marsh* 2005).

Table 1. Murders and Non-Negligent Manslaughters, Death Sentences Imposed, and Executions in the United States: 1990–2003

Year	Murders and Non-Negligent		Death Sentences	
	Manslaughters		Imposed	Executions
1990	23,440		251	23
1991	24,700		267	14
1992	23,760		286	31
1993	24,530		289	38
1994	23,330		314	31
1995	21,610		318	56
1996	19,650		320	45
1997	18,210		276	74
1998	16,970		302	68
1999	15,520		276	98
2000	15,590		232	85
2001	15,980		164	66
2002	14,054		168	71
2003	14,408		144	65

(Sources: Bonczar and Snell 2003:1, 2004:1, 14; Federal Bureau of Investigation 2002: Table 2.10, 2003: Table 2.10; Maguire and Pastore 2004:534)

thousands of family members each year are directly affected by decisions about whether capital punishment will be sought, imposed, and carried out in individual cases, the death penalty's personal toll on murder co-victims is substantial. Among the many justifications offered in support of capital punishment is its presumed value in providing redress to society in the name of murder victims and offering some measure of solace to victims' survivors. Yet we know surprisingly little about many important related issues, including the extent to which co-victims are involved in and how they are affected by prosecutors' decisions about whether to pursue a capital sentence; the significance of presenting victim impact evidence in capital trials; the stresses imposed on survivors by the criminal justice system in murder cases, from police investigations through the lengthy process of trials, appeals, and clemency decisions; how co-victims prepare for and what they experience following an execution; how co-victims' needs, feelings, and attitudes change over time; and a host of others. The purpose of this volume is to explore victim-based perspectives on capital punishment.

Terms like "justice" and "closure" are frequently advanced to cement the connection between capital punishment, murder victims, and victims' survivors (Gross and Matheson 2003; Zimring 2003:58–63). Anecdotal accounts about co-victims' feelings, needs, and priorities in the wake of murder are

plentiful yet contradictory. These discordant expressions underscore the vast chasm between what many people assume—and perhaps want to believe—and what we actually know about how the death penalty and the death penalty process affect murder victims' surviving family members.

For example, victims were the focal point of media accounts when serial killer Michael Ross was executed in Connecticut in May 2005—marking the first death sentence carried out in that state in forty-five years. Ross insisted on waiving appeals that remained available to him, explaining that he “wanted to spare the families of his victims . . . further torment” (Tuohy 2005:A1). Newspaper stories featured the biographies of the eight young women Ross was known to have murdered, along with moving remembrances offered by families and friends (Tuohy and Griffin 2005). Following Ross's execution, Governor M. Jodi Rell declared, “I hope that there is at least some measure of relief and closure for [the slain victims'] families” (ibid.). Meanwhile, the chief state's attorney admonished, “And so I say today, it's time to forget about Michael Ross, but we should never forget about his victims and we should always remember and embrace their families” (Associated Press 2005a). One victim's father thanked jurors and the state “for finally giving us the justice that our children are due” (ibid.). Another co-victim remarked, “I thought I would feel closure, but I felt anger just watching him lay [sic] there and just sleep after what he did to these women” (Yardley 2005:B1).²

Co-victims are united by the grievous event of a loved one's murder, but they are not a monolithic group. Their thoughts and reactions regarding capital punishment vary markedly. Some report achieving “closure,” or at least a measure of relief, in the knowledge that their loved one's killer has been executed (see Miller 2004; Ratcliffe 2005; Weber 2005). Others emphatically reject that closure is possible following the murder of a spouse or relative and even “bristle at the word” (Korosec 2005:A1). The widow of one murder victim exclaimed, “Closure is something that society's come up with to make them feel better . . . It'll never be over” (Petersen 2004:A1). Following the execution of her daughter's murderer, another co-victim commented, “There will be no closure while I live” (Associated Press 2005b). A mother whose daughter was slain explained, “There's a hole there that doesn't close . . . I don't think I'm going to get closure . . . maybe peace” (Associated Press 2003).

2. The same co-victim also volunteered, “but I'm sure I will feel some closure soon” (Tuohy 2005:A1).

Although a majority of Americans report being in favor of the death penalty (Bohm 2003), for most citizens the issue remains mercifully theoretical. But murder co-victims have involuntarily been thrust into a position where the question has become intensely personal. Many passionately support capital punishment for the murder of their loved ones. One co-victim, when allowed to confront her daughter's murderer in court, told him, "I want them to put you to death as soon as possible ... You deserve to burn in hell for all eternity" (Finz 2005:A1). For some, executions bring "[t]he satisfaction ... [of] knowing justice is done" (Shurley 2004:15). Others express relief about their own and others' safety. "I'll be sleeping a little better at night," said [the daughter of a murder victim following the offender's execution]. "I know there will be no chance of me ever running into him ever, ever" (Miller 2004:B1; see also Hallifax 2003).

Still other murder victims' survivors repudiate capital punishment altogether (King 2003; Pelke 2003). They do so for various reasons—some to honor the values and memories of their slain loved one (Hallifax 2003), others in part to avoid lengthy and disruptive legal proceedings (Schieber and Schieber 2004), and still others because of personal opposition to the death penalty. Following their son's murder, one couple explained, "We don't condone killing by anybody or the state, for any reason" (Green 2003:B1). In another case, a murder victim's widow stated, "My kids learned that another killing, even if it is by the state, doesn't help and that it does not bring my husband, Carlos, their nano, back" (Terrell 2005:A5).

Questions about the significance of capital punishment to murder victims' survivors, and the impact of the death penalty and related legal procedures on co-victims and their recovery process, far outstrip the answers. Individuals and their reactions clearly differ. There is much that we do not understand. Criminal justice system responses and legal and administrative policies are too important to be established on oversimplified and potentially erroneous assumptions about what co-victims experience and need in the wake of murder.

Pathways to this Collection

The co-victims who share their stories in the collection are brave souls who demonstrate that the death penalty is not merely a "hot topic" for school debate teams, but touches many lives deeply and irreversibly. As editors of this volume, we consider ourselves to be social scientists and remain committed to a careful consideration of all available evidence and perspectives. But we are also two persons who are concerned about the death penalty and its vari-

ous consequences, especially on victims' families. Therefore, it makes sense for us to share how we each become interested in editing this book.

David Karp's Path

My history of this project traces back to four events. The first was the murder of my wife's friend Wendy Cheek in 1985. Twenty years later, the offender, Robert Fairbank, remains on death row in California. Some part of me is always aware of the grief experienced by Wendy's sister and parents.

The second event was a hike in the Adirondack Mountains of New York with a friend and local judge. We spent much of it discussing the constitutionality of capital punishment and my interest in restorative justice. I told him that I knew of cases where family members of homicide victims had met with offenders in order to get questions answered and convey the depth of their pain—as a step in their healing journey. While we enjoyed climbing up the steep banks beside a waterfall, we pondered if the death penalty is invoked in the name of victims, and whether executions preclude at least some victims from an important opportunity for recovery.

I took these questions with me to a professional meeting in 2002 in Myrtle Beach, North Carolina. I was there to conduct a workshop on a New York City probation program that included both restorative justice and treatment components. But I dined with experts in victims' services and asked them about the concerns of victims' families in capital cases. What I learned was that the research was slim, but the needs were great. That the victims' community had been ignored by death penalty scholars. That the lengthy criminal justice process in capital cases was grueling for victims' families. That many detested the word "closure" and believed it misrepresented the path of recovery. That the victims' community was internally conflicted about the death penalty.

Finally, I had lunch with Jim Acker and Charlie Lanier, both death penalty scholars at the University at Albany School of Criminal Justice, and David Kaczynski, brother of Ted Kaczynski (widely known as the Unabomber). Because of the Justice Department's handling of the Kaczynski case, David ultimately became the director of New Yorkers Against the Death Penalty. At lunch, I learned that David had been reaching out to victims' families and was hoping to sponsor a forum where family members could share their views about the death penalty. And I learned about an organization of victims' families who were opposed to the death penalty—Murder Victims Families for Reconciliation. Jim and I committed to creating a forum to discuss these issues, and enlisted the support of Anne Seymour, a victims' advocate and co-director of the Washington, D.C., organization Justice Solutions.

Jim Acker's Path

My engagement with the death penalty began on exclusively intellectual ground when *Furman v. Georgia* (1972)—the landmark Supreme Court decision that temporarily halted capital punishment in this country—was assigned reading in one of my law-school classes. To this day, I remain enthralled by the rich lessons of history, government, ethics, sociology, and jurisprudence that spill from this epochal ruling. Just a heartbeat after entering the legal profession, or so it now seems, I was appointed to represent a man accused of capital murder in North Carolina at a time when the gas chamber was a staple of the criminal justice process. The responsibility of defending a person whose life was in jeopardy by virtue of this charge abruptly changed my perspective on capital punishment. I had moved from books to the front lines.

Practicing law reinforces, if it does not inculcate, an insular view of the world—one dominated by the advocate's duty to advance a client's cause. As a defense attorney, I focused narrowly on the interests of those accused and convicted of crimes and on closely connected procedural safeguards. In a sense, it was my job to deny responsibility for criminal victimization on my clients' behalf, and to minimize culpability when guilt could not be negated. "Victims' rights" sounded decidedly out of place in this worldview, more closely resembling a threat than an aspiration.

When I left law practice for academia, my interest in capital punishment continued, but the issues gradually assumed a subtler and more variegated hue. I have explored many questions relating to the death penalty and encountered numerous others while speaking about the topic. I have consistently disclaimed the ability to respond meaningfully to one interrogatory—a question that often (but not inevitably) is delivered more in the form of a challenge: "How would you feel if a member of your family was murdered?" I hope to the very core of my being that I am never in a position to answer that inquiry. I also know that others have tragically been forced to go there. And although I cannot appreciate the depths of what they experience and feel, I know intuitively that whatever punishment might befall an offender, society's response to criminal homicide cannot in good conscience ignore their plight.

Similar thoughts were on others' minds. As David has described, they were voiced one day over a lunch that we shared with Charlie Lanier and David Kaczynski. Sensing the complexity of the issues, we agreed that bringing people together to talk about them should be our starting point. We knew that academic perspectives would be important, but considered the insights of

homicide co-victims to be indispensable. David Karp continued the conversation with Anne Seymour, whose energies fortified us tenfold. When Beau Breslin joined our planning group, we were on our way to developing what we hoped would be a groundbreaking and productive conference.

The Skidmore Conference

A conference held in September 2003 on the campus of Skidmore College addressed "The Impact of the Death Penalty on Victims' Families" and served as a bridge between the questions explored there and this volume. The conference, co-sponsored by Skidmore College, the University at Albany School of Criminal Justice, and Justice Solutions, Inc. (a nonprofit organization devoted to crime victims and co-founded by conference participant and contributor to this volume, Anne Seymour), was unprecedented—at least to our knowledge—in its mission and composition. It brought together over the span of three days a national representation of approximately forty co-victims, victim advocates, and academics from multiple disciplines to share their insights, perspectives, and knowledge about murder co-victimization and the death penalty. The dialogue began with a candid and free-flowing session among co-victims; it concluded with a plenary session that summarized what had been learned during the conference and aimed to capitalize on the groundwork that had been laid. Many of the contributors to this volume attended the conference.

Widely diverse views were expressed at the conference about matters that were both acutely practical (such as the logistics of cleaning blood from a murder scene and how best to keep open communication channels with a prosecutor's office) and loftily conceptual (embracing healing, justice, pathos, and spiritualism). Some consensus emerged as well. Participants were largely joined regarding the significance of the questions being addressed and in recognizing that much remained to be accomplished. Those sentiments gave rise to this volume.

A Précis

In keeping with the tradition of the Skidmore conference, we regard this book as a beginning. Its chapters offer no final answers about what co-victims experience, feel, and most urgently need when a loved one is murdered, nor about how capital punishment and the criminal justice process generally figure into that mix. Indeed, the chapters strongly suggest that the pursuit of

final answers would be both futile and counterproductive; that to a considerable extent each co-victim of criminal homicide is destined to find his or her own way on a journey with no clear road map or destination. Yet we are confident that the book's contributors advance questions and offer perspectives that brightly illuminate matters of importance to individual co-victims, criminal justice and related service providers, academic researchers, and legal and social policymakers. We hope that this collection will stimulate discussion and research about murder co-victimization and capital punishment and help promote just and meaningful individual and societal responses.

The book is divided into four parts, although the subjects addressed in the different sections are not so easily compartmentalized. Part I presents "Personal Accounts: The Experiences of Co-Victims of Murder and Other Crimes." The chapters in this section are gripping and tragic. All were authored by individuals touched directly by criminal violence—people whose children (Linda White, Stanley and Phyllis Rosenbluth, Roberta Roper, and Marsha Kimble), father (Shane Wagner), or brothers (Charisse Coleman, Dan Levey) were murdered, or, in Gary Wright's case, who nearly died in a life-shattering explosion orchestrated by the brother of his co-author, David Kaczynski. These chapters take readers into worlds where none should have to go. The authors eloquently and poignantly share with us their victimization experiences, their interactions with the criminal justice system, and their thoughts about reclaiming broken lives, deciphering the meaning of justice, and supporting or opposing capital punishment. They demonstrate that stereotypes and generalizations regarding them and their attitudes about the death penalty are unjustifiable and frequently injurious.

Collectively, they attest to the truism that murder co-victims are a remarkably diverse lot. Some favor the death penalty, but many do not. Their stories reflect a case that resulted in a death sentence, but the offender still lives on death row; cases where the offenders have been executed; another where the offender, previously sitting on death row, was given clemency by a state governor. In one account, the defendants were not eligible for the death penalty because they were too young; in another the defendant received a lesser sentence through a plea agreement. One author tells us that the jury chose life sentences in lieu of capital punishment; and in another case a capital prosecution was terminated in lieu of a negotiated guilty plea and sentence of life imprisonment without parole, motivated largely by the offender's mental illness. Some contributors experienced the intense media frenzy associated with celebrated cases, such as the Unabomber and Oklahoma City bomber Timothy McVeigh. One author chose to meet with the offender as part of her recovery process; another sought such a meeting, but was denied permission. One became close friends with the offender's brother.

Part II offers "Legal Perspectives" relating to murder, victimization, and the death penalty. The four chapters in this section examine the legal identity and rights of victims of crime. They focus on decisions made by actors within the legal system—prosecutors, courts, and governors—that relate directly to the capital punishment of murderers. James Acker and Jeanna Mastrocinque describe the legal evolution of crime victims' status and question whether the death penalty, which represents a social policy response to murder, is well suited to redress the needs of individual co-victims. Wayne Logan probes the legal relevance of murder co-victims' opinions to capital charging and sentencing decisions and analyzes the Supreme Court's changing justifications in rulings addressing the admissibility of victim impact evidence in capital trials. The chapters by Charles Lanier and Beau Breslin, and Austin Sarat, dwell particularly on Governor George Ryan's decision immediately before leaving office to commute to life imprisonment the sentences of all prisoners on Illinois's death row. The authors closely examine the justifications for Governor Ryan's actions and the ramifications of the blanket commutations for the murder victims' surviving family members.

Legal perspectives give way to "Research Perspectives" in Part III of the book. Margaret Vandiver leads off by highlighting the urgent need for researchers to marshal systematic evidence bearing on several compelling unanswered questions concerning the impact of the death penalty and the capital punishment process on murder victims' family members. The remaining chapters explore two broad questions. Some authors (David Karp and Jarrett Warshaw, and Theodore Eisenberg, Stephen Garvey and Martin Wells) focus on the responsiveness of jurors charged with making sentencing decisions in capital trials to testimony about the characteristics of murder victims and the hardships endured by surviving family members. Other authors (Mark Reed and Brenda Blackwell, and Judith Kay) shed light on murder co-victims' post-crime needs and how official procedures and outcomes can exacerbate or be responsive to the survivors' plight. The chapter by Mark Umbreit and colleagues reports on the experiences of surviving family members who participated in unique face-to-face, carefully mediated meetings with their loved ones' murderers shortly before the offenders were executed.

Part IV of the book explores "Policy Implications: Capital Punishment, Criminal Justice Practices, and Victim Services." Peter Loge scrutinizes the rhetoric used in discussions involving capital punishment and victims' rights and offers strategies for bridging gulfs between interest groups and stakeholders—which, he argues, would redound to the benefit of murder co-victims. Michael Radelet and Dawn Stanley describe a unique college class offered at the University of Colorado, which saw undergraduate students and families unite to identify unsolved homicides and create support and informational networks for the co-victims of unsolved murders. Tammy Krause

urges criminal defense teams to place increased reliance on victim outreach specialists to work directly with murder victims' families and prosecutors to identify, and—to the extent consistent with their roles as legal advocates—mediate mutually agreeable case resolutions. Carroll Ann Ellis, Karin Ho, and Anne Seymour combine their decades of experience as victim advocates to recommend key policies and action steps that should be implemented to serve the best interests of co-victims of criminal homicide.

We do not presume that definitive answers emerge in the following pages to the daunting litany of questions encompassing murder victims and capital punishment. At the same time, we believe that the experiences recounted, the questions posed, the arguments made, and the research results reported in the ensuing chapters significantly enhance our insights concerning victim-based perspectives on the death penalty. It is our hope that readers will gain a deeper understanding of the issues confronting murder victims' family members, including the specific relevance and consequences of capital punishment to individual survivors and as a legal and social policy tool. Ultimately, we anticipate the day when the needs of murder victims' survivors can be more perfectly harmonized with the procedures and imperatives of social justice.

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Wounds That Do Not Bind

Victim-Based Perspectives on the Death Penalty

This volume presents perspectives of murder victims' family members, academics, and crime victims' advocates regarding an intensely debated issue about which surprisingly little information exists: the significance of capital punishment to murder victims' survivors. The book includes more than twenty chapters that examine a variety of issues concerning these survivors, or co-victims, and the death penalty. These chapters present the personal accounts of victims' family members' experiences with the criminal justice system and examine relevant legal and research issues, including the use of victim impact evidence in capital trials, how the capital punishment process affects co-victims, what is known about the immediate and long-term needs of murder victims' survivors, and how those needs can be addressed.

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ISBN 1-59460-080-5



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