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Ties out of bloodshed: Collective memory, cultural trauma, and the prosecution and execution of Timothy McVeigh

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Abstract

In the aftermath of the Oklahoma City bombing, processes of reconstruction remembering victims, caring for family members and survivors, and punishing the perpetrators-" -began even as debris from the Murrah Federal Building was being cleared. This dissertation explores how collective memory of the bombing among family members and survivors was constructed through their participation in groups formed after the bombing and in the legal proceedings against perpetrators Timothy McVeigh and Terry Nichols. These acts cultivated the formation of various relationships-between family members and survivors as well as between these victimized populations and the perpetrators-that both helped and hindered individual and communal reconstructions of meaning. Based upon data obtained through intensive interviews with victims' family members and survivors, this research studies the impact of membership in advocacy groups on memory work, the tensions that Timothy McVeigh's presence and actions introduced into the lives of family members and survivors, and McVeigh's execution as an event which freed memory work that had stymied in the years since the bombing. The implications of this case study illustrate in what ways concepts such as victimhood and justice are continually being expanded, with the implication that the law as a social institution is called upon to mediate cultural trauma and cultivate collective memory more consciously.

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Barbie Zelizer

**TIES OUT OF BLOODSHED:
COLLECTIVE MEMORY, CULTURAL TRAUMA, AND THE PROSECUTION
AND EXECUTION OF TIMOTHY McVEIGH**

Jody Lyneé Madeira

A DISSERTATION

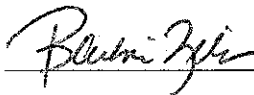
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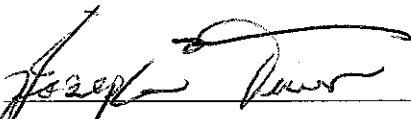
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2007



Supervisor of Dissertation



Graduate Group Chairperson

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2007

ABSTRACT

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Jody Lyneé Madeira

Dr. Barbie Zelizer

In the aftermath of the Oklahoma City bombing, processes of reconstruction—remembering victims, caring for family members and survivors, and punishing the perpetrators—began even as debris from the Murrah Federal Building was being cleared. This dissertation explores how collective memory of the bombing among family members and survivors was constructed through their participation in groups formed after the bombing and in the legal proceedings against perpetrators Timothy McVeigh and Terry Nichols. These acts cultivated the formation of various relationships—between family members and survivors as well as between these victimized populations and the perpetrators—that both helped and hindered individual and communal reconstructions of meaning. Based upon data obtained through intensive interviews with victims' family members and survivors, this research studies the impact of membership in advocacy groups on memory work, the tensions that Timothy McVeigh's presence and actions introduced into the lives of family members and survivors, and McVeigh's execution as an event which freed memory work that had stymied in the years since the bombing. The

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INTRODUCTION

The Oklahoma City bombing took place on April 19, 1995, when thousands of pounds of fuel oil and fertilizer brought down the nine-story Alfred P. Murrah Federal Building. A total of 842 persons were injured or killed as a direct result of this tragedy; 168 of the 842 were killed, 19 of whom were children. The blast left 462 homeless and damaged 312 buildings and businesses.¹ In the weeks and months following the bombing, several reconstructive groups emerged and became extraordinarily active, serving as magnets for community membership and resources.

This dissertation explores how the membership of family members and survivors in Oklahoma City bombing advocacy and support groups and participation in legal proceedings, including witnessing the execution of Timothy McVeigh, impacted upon their mnemonic work about the bombing.

Dramatic and tragic deaths are cultural traumas that require explanation. In their wake, understandings are formed collectively through such mechanisms as interpersonal discussion and media coverage. Reconstructive “interest” groups form in the aftermath of traumatic events to facilitate activities such as collective information-gathering and mourning. In the context of the Oklahoma City bombing, family members and survivors engaged in mnemonic work and formed ties out of bloodshed that both helped and hindered their reconstructions of meaning associated with the bombing. Rapport between members of prominent task-oriented community groups formed in the days and weeks

¹ Karen A. Sitterle & Robin H. Gurwitch, *The Terrorist Bombing in Oklahoma City*, in *WHEN A COMMUNITY WEEPS: CASE STUDIES IN GROUP SURVIVORSHIP* 163-64 (Ellen S. Zimmer & Mary Beth Williams eds., 1999).

after the bombing, was a key source of reconstructive energy and mnemonic work, and these bonds were often felt to be as strong as those of blood kinship.

This dissertation considers how family members and survivors made sense of the bombing through both group membership and participation in legal proceedings.

Engaging in collective memory work, their responses to the bombing were shaped by two primary relationships—the positive, healing, unmediated relationships formed between group members and the negative, destructive, mediated relationships between family members/survivors and Timothy McVeigh. Specifically, this dissertation posed three research questions. First, in the wake of collective cultural trauma, what impact, if any, does advocacy group membership have upon reconstructive memory? Second, when pursuing accountability for criminal perpetrators of collective trauma, how do victims' family members and survivors negotiate institutional constraints to form perceptions of these perpetrators and conclusions about the “meaning” of the traumatic event? Finally, how do victims' family members and survivors react to the execution of a criminal perpetrator, and what factors are “meaningful” in the reactions they have?

It is imperative that these questions be answered because the link between “closure” and capital trials, sentencing, and executions is currently assumed and has not been substantiated through empirical research. Despite a lack of research supporting a connection between executions and closure, a supposed cause-effect relationship between the two predominates in the criminal justice system; prosecutors in capital cases request that juries impose death penalties to give closure to victims' families, and “closure” also figures prominently in claims of death penalty advocates and opponents concerning the moral and political propriety of executions. Yet, the conclusions of state victim witness

advocates who walk victims' families through the process of witnessing an execution—until now, the primary source of information as to how victims' families react to witnessing executions—have been condensed into a national protocol which warns victims' family members *not* to expect closure.

This dissertation endeavors to answer these research questions in four chapters. Chapter 1 reviews the literature to demonstrate the efficacy of using scholarship on collective memory and cultural trauma to analyze processes of sense-making through group membership and legal proceedings. Chapter 2 explores the impact of advocacy group membership, briefly describing the vulnerable mental state in which family members and survivors joined groups in the wake of the bombing and the functions those groups played in trauma recovery. Chapter 3 addresses the involuntary relationship fostered by media coverage of McVeigh, explaining the parallels between this relationship and para-social relationships. Chapter 3 also discusses how victims' families and survivors negotiated the role of the criminal justice system in holding McVeigh accountable for his actions as well as what perceptions these individuals formed of McVeigh and Nichols as perpetrators. Chapter 4 examines family members' and survivors' perceptions of communicative interchange with McVeigh during his execution and analyzes the widely reported sense of "relief" that followed McVeigh's death in terms of a felt need to silence media coverage of McVeigh or McVeigh himself. Finally, this dissertation concludes by exploring how these research findings not only suggest that concepts such as "victimhood" and "justice" are continually being expanded, but suggests that the law as a social institution needs to accommodate these constructive expansions in endeavoring to mediate cultural trauma and cultivate collective memory.

CHAPTER ONE:
**COLLECTIVE MEMORY, CULTURAL TRAUMA, GROUP MEMBERSHIP,
AND THE LAW**

Collective Memory

With memory set smarting like a reopened wound, a man's past is not simply a dead history, an outworn preparation of the present: it is not a repented error shaken loose from the life: it is a still quivering part of himself, bringing shudders and bitter flavours and the tinglings of a merited shame.

George Eliot, *Middlemarch*, bk. 6, ch. 61 (1871)

As George Eliot notes, memory is *living*, and not only living but *social*, capable of triggering emotions such as shame that only have meaning in a collective. Thus, it is both a communicative and collective concept. Communication scholars recognize that “memory is not simply a mental operation that a person uses or that she or he can refine and improve” but is instead a “phenomenon of community.”² Memory as a communal phenomenon must be representational.³ As we shall see, collective memory scholarship focuses upon the *construction* of memory by a collective.

Collective memory as a concept has attracted interdisciplinary attention, and has been approached from “sociology, history, literary criticism, anthropology, psychology, art history, and political science,” and communication perspectives.⁴ This interdisciplinarity, however, has led Olick and Robbins to criticize the contemporary

² Carole Blair, *Collective Memory*, in COMMUNICATION AS . . . : PERSPECTIVES ON THEORY 52 (Gregory J. Shepherd, Jeffrey St. John, & Ted Striphas eds, 2006).

³ See ANDREAS HUYSSSEN, TWILIGHT MEMORIES: MARKING TIME IN A CULTURE OF AMNESIA 3 (1994)

⁴ Jeffrey K. Olick & Joyce Robbins, *Social Memory Studies: From 'Collective Memory' to the Historical Sociology of Mnemonic Practices*, ANNUAL REVIEW OF SOCIOLOGY 24 (1998), at 106. See also Barbie Zelizer, *Reading the Past Against the Grain: The Shape of Memory Studies*, CRITICAL STUDIES IN MEDIA COMMUNICATION 12 (June 1995), at 214-239.

statue of collective memory study as “a nonpradigmatic, transdisciplinary, centerless enterprise.”

A *social* perspective on memory only took root in the late nineteenth and early twentieth century.⁵ Contemporary perspectives on collective memory owe much to the “expansion of memory in the area of philosophy and literature” during this time.⁶ Early research on collective memory may be traced to the work of Bergson, Freud, Benjamin, Durkheim, Marx and Bartlett. In 1896, Henri Bergson published *Matière et mémoire*, in which he identified two kinds of memory: a “superficially, anonymous memory that can be assimilated to habit,” and “deep, personal, ‘pure’ memory that cannot be analyzed in terms of ‘things’ but only of ‘progress.’”⁷ Freud contributed a psychological perspective to memory, postulating that “the individual’s unconscious acts as a repository for all past experiences,” and that emphasis should be placed on processes of forgetting as a site of repression, and not upon remembrance.⁸ Benjamin traced the presence of the past in commodity culture as well as the relationship between commodity culture and forms of historicity.⁹ Foundational scholars Durkheim and Marx reflected upon collective memory only tangentially; Durkheim addressed memory only with respect to commemorative rituals in primitive societies, and Marx’s writings emphasized the “automatic and unconscious quality” of remembering the past.¹⁰ In 1932, Barlett, an experimental psychologist, investigated the social dimensions of memory, proposing not

⁵ Olick & Robbins, *supra* note 4, at 3.

⁶ JACQUES LE GOFF, HISTORY AND MEMORY 93 (1992).

⁷ *Id.* at 93.

⁸ Olick & Robbins, *supra* note 4, at 6.

⁹ See generally S. BUCK-MORSS, THE DIALECTICS OF SEEING: WALTER BENJAMIN AND THE ARCADES PROJECT (1989)

¹⁰ Olick & Robbins, *supra* note 4, at 4.

only that remembering was a constructive process “predominantly determined by social influences.”¹¹ American scholars Cooley and Mead also “theorized about the social context of remembering.”¹²

Though the earliest use of the term “collective memory” was in 1902, contemporary usage of the term is traced to Maurice Halbwachs, and the 1950 publication of his essay on collective memory, *Les mémoires collectives*.¹³ Following in the Durkheimian tradition, Halbwachs was the first sociologist to posit that collective memory is not only a construction of the past, but a “reconstructed picture”¹⁴ that is formulated in the present in response to present problems and perspectives.¹⁵ Halbwachs deplored the psychological emphasis on *individual* memory that grew out of Freudian theory, believing instead that “in society that people normally acquire their memories” as well as where “they recall, recognize, and localize their memories.”¹⁶ Instead, Halbwachs contends, collectives enable memory, such that “no memory as possible outside frameworks used by people living in society to determine and retrieve their recollections.”¹⁷ Since 1980, “collective memory has undergone enormous transformations with the constitution of the social sciences, and it plays an important role in the interdisciplinary relationships being established among them.”¹⁸

Cultural Trauma as a Type of Collective Memory

¹¹ FREDERIC BARTLETT, REMEMBERING: A STUDY IN EXPERIMENTAL AND SOCIAL PSYCHOLOGY 204-5, 244 (Cambridge UP 1995) (1932).

¹² Olick & Robbins, *supra* note 4, at 3.

¹³ *Id.*

¹⁴ MAURICE HALBWACHS, THE COLLECTIVE MEMORY 60 (1982).

¹⁵ *Id.* at 35.

¹⁶ *Id.* at 38.

¹⁷ *Id.* at 43.

¹⁸ LE GOFF, *supra* note 6, at 94.

For the purposes of this dissertation research, research on collective memory helps to address the way in which *collective* behaviors formed in association with the Oklahoma City bombing, such as group joining, group attendance and participation in legal proceedings, depend on memory work. Memory work is the process of working through and narrating experiences. As such, it is always interpretive and constructive, and concerned with reaching closure about past events. Through memory work, individuals gain distance from a life event that is necessary to understand and contextualize them and place them in causal relationships to other life occurrences—in other words, to position themselves in relation to that event. Memory work is collective in the sense that individuals share many life events, and collaborative interpretations of these events may take shape as individuals gather and share memories and interpretations, with the result that individual perceptions are in turn reshaped by these communal exchanges. Groups may therefore perform memory work by constructing areas of common knowledge which create social bonds between members.

In essence, memory offers a form and content for addressing the Oklahoma City bombing in that it both structures and explains the evolving understandings of the bombing and its perpetrators formed by individuals and groups. Compelled by the nature of trauma itself, which acquires its horrific proportions from its ability to destroy not only an individual's sense of normality but the normality of the collectives that constitute that individual's social support network, memory work has been shown to be central to the recovery or "working through" of the collective, which may require processes of sense-making, accountability and restitution, often procured through collective institutional means such as trials and truth commissions. The psychological and psychiatric study of

trauma has been advanced largely by investigating the presence of common symptoms among members of a certain social group, such as soldiers who fought in World War I; in these empirical studies, it is the *commonalities* among members that enabled the formulation of scientific conclusions about the nature of post traumatic stress disorder. Most importantly, traumas affect collectives long after their survivors have passed on; the bombing of Hiroshima and Nagasaki and Holocaust death camps are just two examples of traumas which happened over sixty years ago but which remain problems with which American collective memory must grapple.

The theoretical mirror I hold up to this data, however, is not simply framed by the work of collective memory. The *type* of collective memory is also significant, for it calls into play a theoretical subset of collective memory known as cultural trauma. In analyzing the creation of meaning after the Oklahoma City bombing, I document the creation of a specific culture of interpretation and rehabilitation *against a larger national cultural backdrop* that prompts American citizens to feel “compelled to honor those...who have been murdered for an unjust cause.”¹⁹ Memories of traumatic events, like those of untraumatic events, represent an interpretive culture that did not emerge because it “had” to but because it was constructed by its participants and the cumulative effects of their beliefs and actions over time. As Alexander and Smith state, “those collective forces that are not *compulsory*, the social forces to which we enthusiastically and voluntarily respond.... We do not mourn mass murder unless we have already identified with the victims, and this only happens once in a while, when the symbols are

¹⁹ JEFFREY ALEXANDER, *THE MEANINGS OF SOCIAL LIFE: A CULTURAL SOCIOLOGY* (2003).

aligned in the right way.”²⁰ As an event comes to be made sense of, the narratives that are socially constructed about that event derive their strength and stability from moral frameworks.

Studies of memory have long been concerned with the effects of trauma on collective sense-making and remembrance. In *Mourning and Melancholia*, Freud spoke of our complex social relations to memory in distinguishing mourning, a natural process of recognizing the proper role of memory after loss, from melancholia, a state characterized by “an extraordinary diminution in his [the melancholic’s] self-regard, an impoverishment of his ego on a grand scale.”²¹ Freud conceptualizes mourning as a reconstructive process in which the remembered love object is recognized as lost and distinctive from the self.²² As LaCapra notes, effective mourning must have a “solidaristic social context,” for “social processes of mourning losses and dead loved ones may be the only effective ways of partially overcoming melancholia and depression or at least of preventing them from becoming all-consuming and incapacitating.”²³ Mourning would be analogous to a process of “working through” a memory conflict.²⁴

Alexander states that it occurs “when members of the collectivity feel they have been subjected to a horrendous event that leaves indelible marks on their group consciousness, marking their memories forever in changing their future identity in fundamental and irrevocable ways.” Cultural trauma provides a means by which collectives can begin to address a event perceived as traumatic, to “not only cognitively

²⁰ Jeffrey Alexander & Philip Smith, *The Meanings of (Social) Life: On the Origins of a Cultural Sociology*, in JEFFREY ALEXANDER, *THE MEANINGS OF SOCIAL LIFE: A CULTURAL SOCIOLOGY* 3 (2003).

²¹ Sigmund Freud, *Mourning and Melancholia*, in *THE FREUD READER* 584 (Peter Gay ed., 1989).

²² *Id.* at 587

²³ DOMINICK LACAPRA, *HISTORY AND MEMORY AFTER AUSCHWITZ* 183 (1998).

²⁴ *Id.* at 184.

identify the existence and source of human suffering but “take on board” some significant [moral] responsibility for it.” In this way, collectives formulate and demonstrate “solidary relationships in ways that, in principle, allow them to share the sufferings of others.... societies expand the circle of the we.” Conversely, not recognizing the suffering of others through acknowledging a particular experiences as traumatic bars collectives from achieving a “moral stance.”²⁵

Cultural trauma is explicitly trauma of *culture* and so “may reverberate in the area of affirmed values and norms, patterns and rules, expectations and roles, accepted ideas and beliefs, narrative forms and symbolic meanings, definitions of situations and frames of discourse.”²⁶ Cultural trauma is particularly invasive and damaging to a collective not only because change destroys “cultural tissue” that is particularly sensitive to change because it is a “depository of continuity, heritage, tradition, identity of human communities,” but because cultural “wounds” are “most difficult to heal” because “culture obtains a particular inertia, and once the cultural equilibrium is broken, it is most difficult to restore it.”²⁷

Notably, cultural trauma is, like collective memory, a *collective* process of construction; as Smelser notes, “a collective trauma, affecting a group with definable membership, will, of necessity, also be associated with that group’s collective identity.”²⁸ “Collective” denotes not merely a mass of people, but a group of people who elect to join

²⁵ Jeffrey Alexander, *Cultural Trauma and Collective Identity*, in JEFFREY ALEXANDER, THE MEANINGS OF SOCIAL LIFE: A CULTURAL SOCIOLOGY 85 (2003).

²⁶ Piotr Sztompka, *The Trauma of Social Change: A Case of Postcommunist Societies*, in JEFFREY C. ALEXANDER, RON EYERMAN, BERNHARD GIESEN, NEIL J. SMELSER, & PIOTR SZTOMPKA, CULTURAL TRAUMA AND IDENTITY 161 (2004).

²⁷ *Id.* at 162

²⁸ Neil J. Smelser, *Psychological Trauma and Cultural Trauma*, in JEFFREY C. ALEXANDER, RON EYERMAN, BERNHARD GIESEN, NEIL J. SMELSER, & PIOTR SZTOMPKA, CULTURAL TRAUMA AND IDENTITY 43 (2004).

together on the basis of some core identity. This distinction is critical, for mass coping and collective coping are not the same thing at all.²⁹ Collective trauma occurs when “people . . . perceive the similarity of their situation with that of others, define it as shared. They start to talk about it, exchange observations and experiences, gossip and rumors, formulate diagnoses and myths, identify causes or villains, look for conspiracies, decide to do something about it, envisage coping methods.”³⁰

The establishment of a collective response to trauma may also be a “matter of bitter contestation among groups, sometimes over long periods of time and often without definitive settlement.”³¹ In addition, the “culturally traumatic” label is applied to an event after the fact only if the event disturbs meanings that penetrate to and are bound into the cultural core of collective identity; “events do not, in and of themselves, create collective trauma . . . Trauma is a socially mediated attribution.”³² Sztompka identifies four threshold traits of what he terms “traumatogenic change,” all of which are necessary *but not sufficient* conditions for the application of a traumatic label: that the event be “sudden, comprehensive, fundamental, and unexpected.”³³

The process of designating an event as “traumatic” is a claims-making process in which a certain group enunciates “a claim to some fundamental injury, . . . and a demand for emotional, institutional, and symbolic reparation and reconstitution.”³⁴ In attempting to apply a trauma claim to an event, claims makers must effectively articulate a effective master narrative that is a “spiral of signification” enunciating the nature of the pain (what

²⁹ *Id.* at 48

³⁰ See Sztompka, *supra* note 26.

³¹ Smelser, *supra* note 28, at 28.

³² Alexander, *supra* note 25, at 91.

³³ Sztompka, *supra* note 26, at 159.

³⁴ Alexander, *supra* note 25, at 93.

happened that was allegedly traumatic), the nature of the victim (whom did the allegedly traumatic event affect), the relation of the trauma victim to the wider audience (what shared qualities lie between the audience and the alleged victims of the trauma), and attribution of responsibility (who was the perpetrator).³⁵ It is this process that advocacy groups proceeded through in the months and years after the Oklahoma City bombing.

Members of these groups soon found that trauma claims-making was “powerfully mediated by the nature of the institutional arenas within which it occurs.” In the Oklahoma City context, this includes the institutions of the law and of mass media, each of which shape trauma claims in particular ways, and impose particular institutional consequences. The law as an institution narrows trauma claims to specific stages of the constructive process, such as the attribution of responsibility. As a form of mediation, mass communication may provide heretofore inaccessible outlets for the dramatization of trauma, and may provide a vehicle for one interpretation to gain an edge over other competing interpretations. Yet, processes of constructing trauma “become subject to the restrictions of news reporting, with their demand for concision, ethical neutrality, and perspectival balance,” and may be “exaggerated and distorted” due to the competition between news outlets.³⁶

The successful construction of trauma is rather anticlimactic, consisting as it does of the naturalization of the traumatic designation. Of course, if an event is labeled as traumatic it will affect how that event is “experienced, and thus imagined and represented,” necessitating that “collective identity [] become significantly revised.”

³⁵ KENNETH THOMPSON, MORAL PANICS 20-24 (1998).

³⁶ Alexander, *supra* note 25, at 97-100.

Once this re-remembering or reconstruction has been accomplished, however, there is a “calming down” period during which “the spiral of signification flattens out, affect and emotion become less inflamed, preoccupation with sacrality and liminality gives way to reaggregation.” It is during this period that memorialization of the trauma is fixed into place and the “‘lessons’ of the trauma become objectified in monuments, museums, and collections of historical artifacts.”³⁷ The naturalization of trauma indelibly confirms an event as such, and enables the trauma to be continually accessed and shared, even by those who did not experience it. In addition to confirming an event as traumatic, a successful trauma construction will also have profound implications for those who experienced that event, who will be accorded “victim” status—a status with myriad material and cultural implications.

Collective Memory, Cultural Trauma and the Law: “Doing Justice”

Today there is a perception that, in the words of Elias Canetti, the dead “are nourished by judgment,” and that criminal law is a “means of recompensing the slain through a deliberative act.”³⁸ Agents of legal institutions are summoned forth to answer the call of history, guised in the sheep’s wool of collective memory, to redress traumatic injuries and preserve certain moral truths for the benefit of future citizens. But do we choose to acknowledge the law as an institutional vehicle for collective memory? Or do we instead favor a “strict separation between the legal and the extralegal, between the rule of law and the interests of collective institution”?³⁹

³⁷ *Id.* at 102.

³⁸ LAWRENCE DOUGLAS, *THE MEMORY OF JUDGMENT: MAKING LAW AND HISTORY IN THE TRIALS OF THE HOLOCAUST 2* (2001).

³⁹ *Id.* at 1.

As do other institutions, the law has a collective memory of its own. The law is a site for the communication and construction of cultural authority—authority which “acts as a source of codified knowledge, guiding individuals in appropriate standards of action.”⁴⁰ Authority is communicated through representation, often through ritual acts which consolidate authority, “creating community among people who share like notions about it.”⁴¹ One of the law’s chief institutional aims is policing its boundaries. The judiciary’s erection of “barriers between its members and those of the other groups to whom they render justice” serves the purpose of “resist[ing] external influences and the passions and prejudices of the plaintiffs.”⁴² More than anything else, however, the boundaries between the legal and the extra-legal are maintained through the judicial tradition—deciding cases in accordance with past legal precedents, thereby enunciating an ever-developing mnemonic framework that interprets present cases in light of the past, and thus reinterprets the past as well.

Culturally traumatic events often serve as focal points for ritual commemoration since critical reassessment can provide opportunities for a “decisive moment of collective refounding.”⁴³ In the wake of culturally traumatic events, then, there is a need for what Victor Turner called “social dramas,” ritual processes of social scrutiny and ultimately recovery. Trials, including criminal prosecutions, are social dramas; criminal law, for instance, is especially akin to the formation of collective memory since its deterrence concerns are future-oriented, where collective memory locates greater social solidarity,

⁴⁰ BARBIE ZELIZER, *COVERING THE BODY: THE KENNEDY ASSASSINATION, THE MEDIA, AND THE SHAPING OF COLLECTIVE MEMORY* 2 (1992).

⁴¹ *Id.*

⁴² HALBWACHS, *supra* note 14, at 140.

⁴³ MARK OSIEL, *MASS ATROCITY, COLLECTIVE MEMORY, AND THE LAW* 27 (1999).

but its retributive concerns are past-oriented, where collective memory finds its narrative content.⁴⁴

The notion that criminal trials can contribute to social solidarity originated with Emile Durkheim; as Garland notes, the rituals of criminal justice -- the court-room trial, the passing of sentence, the execution of punishments -- are, in effect, the formalized embodiment of the *conscience collective*.⁴⁵ The act of imposing punishment reflects the process of working through an event which threatens the conscience collective. Legal decisions thus become touchstones for the formation of collective memory, as they “set the tone for the public’s response at the moment that they claim to express it” and “prefigure popular sentiment and give it a degree of definition which it would otherwise lack.”⁴⁶ “Justice” becomes the operative concept for social solidarity, involving a consensus both that certain acts committed are wrong and must be punished. Justice as a concept also has meaning for the many and the few—for society and for victims—and recent decades have witnessed the increasing influence of private justice needs on public justice demands. The needs of victims’ families have come to be a paramount concern as prosecutors make private concerns—a need for closure—into reasons for public support for and application of capital punishment.

Collective memory is furthered by legal processes of the formation and enunciation of stories. In the criminal trial, prosecutors and judges serve as public spokesmen who “tell the stories through which such sentiments are elicited and such

⁴⁴ *Id.* at 18.

⁴⁵ DAVID GARLAND, PUNISHMENT AND MODERN SOCIETY 67, 57 (1990)

⁴⁶ *Id.* at 58.

membership consolidated.”⁴⁷ These stories are “about individual rights: the myriad forms of the human flourishing at the exercise of such rights permits and that their violence wrongly forecloses.”⁴⁸ In these stories, the free will of the perpetrator assumes primary importance, since it is his choices that dictate the outcome of the story and bring about the victim’s death.⁴⁹ After prosecution, imposing punishment “signals the greater or lesser presence of collective memory in a society” since it is by punishing those who commit the most unacceptable acts reinforces our awareness of what those acts are.⁵⁰ The ability to enunciate and fix stories in legal frames, then, becomes an important source of social power.⁵¹

As an institution, however, the law is of limited efficacy as a vehicle of collective memory. The usefulness of legal proceedings is constrained by two concepts: its modesty, or superficial unwillingness to play such a formative mnemonic role; and its practices, which though traditional limit the breadth and depth of inquiry and focus on binary categories such as guilty or not guilty.

Because of its storying potential, citizens may expect legal proceedings to take a formative role in adjudicating history as well.”⁵² However, courts have often protested taking on this task on the grounds of “modesty.”⁵³ In the socially potent trial of Adolf Eichmann, the court explicitly invoked judicial modesty in rejecting such a definitive role, pleading that it was too shortsighted and lacked the requisite authority:

⁴⁷ OSIEL, *supra* note 43, at 28.

⁴⁸ *Id.* at 72.

⁴⁹ *Id.*

⁵⁰ *Id.* at 31.

⁵¹ W. JAMES BOOTH, *COMMUNITIES OF MEMORY: ON WITNESS, IDENTITY, AND JUSTICE* xi (2006).

⁵² OSIEL, *supra* note 43, at 82

⁵³ It is Osiel who introduces this use of “modesty.”

the Court... must not allow itself to be enticed to stray into provinces which are outside its sphere. . . . the Court does not possess the facilities required for investigating general questions of the kind referred to above.... as for questions of principle which are outside the realm of law, no one has made us judges of them and therefore our opinion on them carries no greater weight than that of any person who has devoted study and thought to these questions.⁵⁴

Courts are nonetheless conscious that their opinions “prompt[] particular value commitments on the part of the participants and the audience and thus act as a kind of sentimental education.”⁵⁵

The irony is that courts pay lip service to judicial modesty, but cater to processes of collective memory formation despite themselves; “it cannot quite contain itself from proclaiming the trial’s ‘educational significance’ and ‘educational value.’”⁵⁶ At a minimum, judges are aware that “their judgment will inevitably be viewed as *making* history and that their judgment will itself be subject to historiographical scrutiny.”⁵⁷

The efficacy of the law as a vehicle for collective memory is also hampered by its narrow focus on questions of guilt and innocence—an inquiry whose scope is unlikely to reach the social implications of that criminal behavior. Legal conclusions are inherently professionalized, derived through the application of legal principles to decide disputes on the basis of evidence introduced and evaluated in accordance with legal doctrine, all orchestrated by procedural rules. Thus, “the central concerns of criminal courts... are often decidedly at odds with the public’s interest in a thorough, wide-ranging exploration of what caused such events and whose misconduct contributed to them.”⁵⁸ In addition,

⁵⁴ *Attorney General of Israel v. Eichmann*, 36 I.L.R. 5, 18-19 (Isr. Dist Ct. 1961).

⁵⁵ GARLAND, *supra* note 45, at 67.

⁵⁶ OSIEL, *supra* note 43, at 82.

⁵⁷ *Id.* at 83.

⁵⁸ *Id.* at 180.

legal practices may be tedious and dull to a public hungry for dramatic developments. Even the Nuremberg trials seemed to many reporters as dull and of little dramatic import; novelist Rebecca West, covering the trials for *The New Yorker*, declared them to be “insufferably tedious.”⁵⁹ It is true that trials which are perceived as dull by members of a social collective who lack a direct connection to the acts or individuals subject to judgment may contain other meaning for those intimately connected with these affairs. In addition, many participants saw dullness as a necessary characteristic of proceedings, an inherent result of the detailed presentation of evidence required to obtain a conviction. Thus, dullness is a *professionally* necessary as well as a *morally* required quality of an effective criminal prosecution.

Legal practices may themselves constrain the impact of a trial upon collective memory. Evidentiary and procedural rules mandate that evidence be introduced in specific ways, and limit elicited testimony to forms of questioning acceptable on direct or cross-examination. In addition, the law’s singular focus upon the criminal suspect(s) narrows the scope of inquiry to the deeds and motives of these individuals, which means that the victims’ story is often excluded. Thus, the legal narrative is a necessarily incomplete narrative. Other institutional actors, such as historians or sociologists, may need to step in to supplement the historical record of events whose memory consists largely of a legal record focused on objective proof of the crime and not the subjective experience of the event. In addition, the “attitude of sanctity [in which traumatic testimony is ordinarily regarded] is deeply at odds with the skeptical, scrutinizing posture

⁵⁹ *Id.* at 91.

of any competent cross-examiner, such as defense counsel.”⁶⁰ Witnesses—and their testimony—are on trial.

The law’s efficacy as a vehicle of collective memory is directly imperiled when offender receives a sentence that is perceived as inappropriate—when the punishment does not fit the crime. In the context of the Oklahoma City bombing, Nichols was convicted only of involuntary manslaughter in federal proceedings, although many participants believed that he should have been convicted of first degree murder, necessitating that he be tried again in Oklahoma state court. In situations such as this, adjudicative conclusions seem “morally compromised” for “what is most urgently desired by those seeking a complete accounting... is a thorough condemnation of *all* those sharing significant responsibility... plus a publicly enforced recollection of enduring ‘debt’ to victims and their families thus incurred.”⁶¹

Yet another limiting factor is that the law does not explicitly acknowledge its socially constructed nature, unlike “fickle”⁶² collective memory, which acknowledges that it incorporates past constructions and that it will be reshaped by future constructive processes. Legal reluctance to acknowledge the primacy of social construction stems from its needs for finality and fixation; legal doctrines such as “res judicata, collateral estoppel, stare decisis, double jeopardy, mandatory joinder, statutes of limitations, and restrictive standards of appellate review” are designed to discourage or thwart altogether the subsequent reinterpretation of precedent.⁶³ In the law’s eyes, the past informs the present by binding it, not by providing structuring lines to support constructions. The

⁶⁰ *Id.* at 104.

⁶¹ *Id.* at 164.

⁶² *Id.* at 217.

⁶³ *Id.* at 216.

only situation in which legal practitioners overtly acknowledge constructive processes is the act of legal “interpretation.”⁶⁴ Yet, legal actors construct proceedings every day simply by allowing them to be mediated—not only allowing reporters and cameras into the courtrooms but reserving room for them in the front rows of the courtroom and in establishing media pens inside courthouse lobbies, in addition to actively orchestrating certain legal activities such as the “perp walk” for maximum mediated effect.

As a result of the mismatch between the means to the law’s ends and the formation of collective memory, the law is caught between a need to maintain the legitimacy of its institutional narratives and satisfying diverse justice needs. The law as an institution, then, cannot bear the weight of collective memory alone any more than any other social institution; its “credibility in telling a national story, one that will powerfully shape collective memory, is thus alternately threatened by the narrowness or breadth of the narrative framing.”⁶⁵ Instead, the law contributes to organic processes of collective sense-making. Habermas, for one, suggests that “courts may do for society at large what psychoanalysis does for individuals. They must unearth repressed memory of historic trauma, forcing the “patient” to work through its enduring ramifications, so that he can confront the present on its own terms, not by acting out of unresolved issues.”⁶⁶

As the law sees itself as an institution with the potential to shape collective memory, it becomes changed by that potential, aware of and thus more vulnerable to the same movements that influence collective memory formation. Postmodernism has brought new challenges to the collective sense-making processes, including

⁶⁴ *Id.* at 242.

⁶⁵ *Id.* at 164.

⁶⁶ *Id.* at 173.

problematizing the primacy of legal proceedings as a storying forum; “we have even become suspicious of stories themselves, that is, of their capacity to capture and impart important truths,” and so our “desire to have real events display the coherence, integrity, fullness, and closure of an image of life that is and can only be imaginary” is now recognized to be only that, a desire, and not actual coherence, integrity, fullness, and closure.⁶⁷ Similarly, the law is also subject to new responsibilities to new populations, such as victims’ families. Legal conclusions must now “affirm as well-warranted the victims’ feelings of resentment and indignation, for this affirmation is the only way for society at large to show that it acknowledges and take seriously their condition as victims.”⁶⁸ Legal proceedings can be therapeutic under the right circumstances, contributing to victims’ self-respect when “their suffering is listened to in the trials with respect and sympathy, the true story receives official sanction, the nature of the atrocities are publicly and openly discussed, and their perpetrators’ acts are officially condemned.”⁶⁹

Oddly enough, no prior research on witnessing executions has addressed their therapeutic effects or even approached the issue from the perspective of victims’ families, the population most emotionally invested in the execution. Instead, the only two previous articles to address the subject matter focused on the psychiatric impact of witnessing an execution upon journalists and upon college students’ attitudes towards whether family members should view executions. A 1994 study by Dr. Andrew Freinkel, et al., endeavored to examine the “psychological distress associated with simply being an

⁶⁷ *Id.* at 257.

⁶⁸ *Id.* at 273.

⁶⁹ *Id.*

uninvolved, unthreatened witness to violence.”⁷⁰ Freinkel submitted a questionnaire to journalists who had witnessed the 1992 execution of Robert Alton Harris one month after the sentence was carried out in an effort to assess dissociative symptoms; 15 journalists returned the questionnaire. Freinkel et al found that no journalist reported “severe or long-lasting psychological trauma” but that many had experienced dissociative symptoms and “short-term psychological impact;” however, this study lacked a control group of journalists who did not witness the execution and failed to adequately distinguish the stress that the respondents felt as a result of witnessing the execution from that experienced from unrelated, post-execution assignments. A second study by Marla L. Domino and Marcus T. Boccaccini questioned whether family members of victims should be allowed to watch the executions of their loved ones’ killers.⁷¹ However, Domino and Boccaccini did not provide credible empirical evidence whether victims’ family members should view executions, but instead asked 219 students at the University of Alabama to complete a questionnaire containing a brief description of a policy initiative allowing family members to witness executions followed by eight attitudinal questions about execution-viewing. On the basis of this questionnaire, Domino and Boccaccini reported that 1) most subjects would not want to witness an execution, but were more likely to witness the execution of a family member’s murderer than the execution of stranger’s killer; and 2) most subjects felt that witnessing an execution would “assist the family in coping with the loss of their loved one.

⁷⁰ Andrew Freinkel, Cheryl Koopman, & David Spiegel, M.D., *Dissociative Symptoms in Media Eyewitnesses of an Execution*, AM. J. OF PSYCHIATRY No. 151, at 9 (1994).

⁷¹ Marla L. Domino and Marcus T. Boccaccini, *Doubting Thomas: Should Family Members of Victims Watch Executions?*, L. & PSYCHOL. REV. No. 24, at 51 (2000).

An Orientation to the Oklahoma City Community and Memorial Practices in the Wake of the Oklahoma City Bombing

In this dissertation, the term “collective” denotes membership within communal groups that were organized after the bombing. As an event, the bombing created a community of memory that created an instantaneous sense of bonding among survivors and family members with shared experiences. Irwin Zarecka notes that, although the presence of a “community of memory bonded by traumatic experience” in a broader collective such as a nation-state may “be enough to secure remembrance or redefine collective identity,” more often, there will be a transition from “unspoken bonding to outspoken (and frequently institutionalized) activity that the community of memory acquires public resonance.... but others, especially as the years go by, find it essential to record their experience, to create memorial markers for those who had died, to talk to the young, to join groups or associations.”⁷² Thus, comments Irwin-Zarecka, “they then create communities *tout court*, engaged mainly (but not exclusively) in the work of remembrance.”⁷³

In the Oklahoma City context, collective memory formation originated for many survivors in one or more of the groups formed in the aftermath of the bombing. The groups formed in response to the Oklahoma City bombing were numerous. Formative among them were the Oklahoma City National Memorial Task Force, charged with overseeing the building of the Oklahoma City National Memorial, and a group comprised of family members and survivors seeking to shorten the lengthy habeas appeals process

⁷² IWONA IRWIN-ZARECKA, *FRAMES OF REMEMBRANCE: THE DYNAMICS OF COLLECTIVE MEMORY* 51 (1994).

⁷³ *Id.*

so as to bring a swifter peace to victims' families. In subsequent trials, Timothy McVeigh and Terry Nichols were indicted and charged with 8 counts of first-degree murder for the deaths of federal officials and 3 other charges, including conspiracy. While McVeigh was convicted in June 1997 on all counts and sentenced to death, the jury in Nichols' trial found him guilty of involuntary manslaughter and conspiracy after deliberating for 41 hours, failing to reach a unanimous verdict on whether Nichols planned the bombing "with the intent to kill." After being sentenced to life in prison without possibility of parole, Nichols was tried and convicted in 2004 of 162 counts of first-degree murder in Oklahoma state court, but again escaped the death penalty.

The legal aftermath of the Oklahoma City Bombing culminated in the execution of Timothy McVeigh. On June 12, 2001, 232 witnesses—10 in the death house at the state penitentiary in Terre Haute, Indiana and 222 at a remote viewing location in Oklahoma City—prepared for an event that all hoped would bring some ending to an unspeakable period in their lives. Whereas "live" witnesses viewed a side profile of McVeigh, "remote" witnesses observed the closed circuit feed from a camera positioned on the ceiling directly over McVeigh's face.

The process of making sense of the bombing and pursuing group goals were collective memory processes. Because collectivities have layers of organization, each Oklahoma City group thus had its own memory and played a unique role in constructing the collective memory of the bombing yet simultaneously also belonged to the larger Oklahoma City community. Thus the memory researcher must place herself within the

“perspective of th[ose] group or groups”⁷⁴ because that is how the survivors and family members who joined these groups remember.⁷⁵

The Oklahoma City groups themselves were not mere conglomerates of individual memory practices but, because they themselves provide frameworks for memory, also had memory practices of their own. Thus, the relationship between individual and group memory practices is a two-way street; “. . . the individual remembers by placing himself in the perspective of the group, but one may also affirm that the memory of the group realizes and manifests itself in individual memories.”⁷⁶ Individual memories, then, were localized or positioned with reference to group membership, since to talk about the bombing “mean[t] to connect with a single system of ideas our opinions as well as those of [the group] circle.”⁷⁷ This is not to say that each Oklahoma City group was a “source” of memory, or that the group has the capacity for memory, but rather to acknowledge that the collective frameworks in which memories are constructed “become embedded -- or we might say, ‘actualized’ -- within the permeable boundaries established by a group.”⁷⁸ That is how memory’s social frameworks enabled the Oklahoma City groups to persist over time by lending a sense of continuity to group membership. Individual members could “locate [themselves] within the framework that lends the group coherence, irrespective of whether or not that group is present or currently active.”⁷⁹ In the Oklahoma City context, the social framework of each group’s memories was tied to the goal each group had selected to pursue,

⁷⁴ HALBWACHS, *supra* note 14, at 40.

⁷⁵ *Id.* at 52.

⁷⁶ *Id.* at 40.

⁷⁷ *Id.* at 53.

⁷⁸ *Id.* at 38.

⁷⁹ *Id.*

particularly the most distinct goals of memorializing the bombing and seeking justice for murderous perpetrators.

Because members of the post-bombing groups often referred to those groups as “extended family,” memory practices in the wake of the Oklahoma City bombing most likely parallel the processes by which memory practices form in the family.⁸⁰ Memory as constructed in the family group consists of shared images and interpretations such as “categories, qualities, evaluative criteria.” The elements of this shared perspective serve as a common collective framework around which and within which individual family members’ memories are interwoven. More significantly, these commonalities act as “resources . . . for making sense of the present.” The family’s collective framework thus “supports and reinforces” its boundaries in an armor-like fashion. Thus, memory holds together the family group; the family group does not hold together memory. To boundary a family group in the sense of memory practices is not to cut that group off entirely from society, however, because cultural normative processes “inevitably insinuate themselves within group frameworks.”⁸¹

Thus, like families, Oklahoma City bombing groups—all of whom pursued goals with primary foci as diverse as memorialization and seeking justice—were not independent organizations but rather constituted different entities all clustered around one organic communal unit. Each group was a communal arm that fulfilled an innate need to “heal” by charging itself with the task of making sense of the bombing in a unique way. In other words, each group inhabited a specific communal *space* in collective memory

⁸⁰ *Id.* at 54.

⁸¹ DAVID MIDDLETON & STEVE D. BROWN, *THE SOCIAL PSYCHOLOGY OF EXPERIENCE: STUDIES IN REMEMBERING AND FORGETTING* 39 (2005)

formation. Here, “space” is used to refer to a particular path to making sense of a traumatic event in the sense that different groups inhabited different orientations to collective memory by virtue of their chosen goals. For example, a group seeking to memorialize the bombing must have inhabited a very different memory space from a group seeking justice for perpetrators because each was oriented toward a different institutional space—the former to the institutions of museum and monument, the latter to the institution of the courtroom. Alternatively, these memory spaces could be seen as “containers” for different memory practices.

This colonization of memory space is akin to “implacement,” what Halbwachs termed the relationship between group and group environment. A physical (or I contend, memory) space on which the form of a group’s collective framework is imprinted anchors that group, sometimes to the extent that the space (or perceived memory need) appears to predate the collective framework, or even to be its originator.⁸² Memory space did have an effect on transforming physical space, however; organized into different memory spaces, the Oklahoma City groups contributed to the physical recovery of the blast site, even though that particular physical space did not dictate particular interpretive processes. Finally, the uniqueness of each group’s memory space contributed to group maintenance and stability, for group stability also arises from the “spatial and physical dimension” in which the group exists. After a group makes a certain physical place its own, or “imprints” it, the changed space “reciprocally acts on the collective.”⁸³

⁸² *Id.* at 47

⁸³ *Id.*

Group membership following a mass disaster often congeals around “active grief” behavior through which “family members and survivors formed new communities to offer support to each other.”⁸⁴ While several small groups were formed after the bombing, a few leviathan groups dominated the landscape and served as homes to the bulk of family members and survivors.

Group Membership in the Wake of the Oklahoma City Bombing

Participants belonged to four primary community groups that were founded in the wake of the Oklahoma City bombing: the Oklahoma City Murrah Federal Building Memorial Task Force charged with building a national memorial, a “habeas group” of victims’ families and survivors seeking to curtail legal appeals for offenders sentenced to death, the Oklahoma City Murrah Building Survivors Association which was founded with a community service mission, and Families and Survivors United which sought to secure assistance for family members and survivors.

The Oklahoma City Murrah Federal Building Memorial Task Force

Seventeen participants belonged to the Memorial Task Force, the largest of the community groups which bonded together by proceeding through myriad decisions that were essential to building the Oklahoma City National Memorial. It was also the only group whose genesis came from outside the community of victims’ families and survivors. Thus, the story of the task force is to a large extent the story of the creation of the memorial itself. Thoughts first turned to the question of how to memorialize this tragedy in the summer of 1995. Several weeks after the bombing, Oklahoma City mayor

⁸⁴ EDWARD T. LINENTHAL, *THE UNFINISHED BOMBING: OKLAHOMA CITY IN AMERICAN MEMORY* 98 (2001).

Ronald Norick appointed Robert Johnson, an Oklahoma City attorney, to “organize and direct” the community memorial process, founding the Oklahoma City Murrah Federal Building Memorial Task Force (the “memorial group”). Johnson in turn selected a dozen others to identify “different constituencies” who would have a stake in the memorial process, while being committed to giving family members and survivors a “primary voice” and to ensure that the process would be of more importance than its result. The memorial task force was comprised of 10 operating committees, a 160-member advisory committee, a coordinating committee, and an executive director. On July 17, 1995, between 50 and 75 members of the Victims Families/Survivors Liaison subcommittee held their first meeting, during which family members and survivors expressed anger that “outsiders” had assumed control of the memorial process. At this stage, only a few survivors were involved in the memorialization process. Some survivors felt guilty, others felt as if they didn’t belong, and still others were angered to be treated as if their injuries and their own losses were trivial. Gradually, differences between family members and survivors were negotiated; “survivors consented to privileging the voices of family members, and family members acknowledged that survivors, many of whom had lost close friends and an important part of their world, were...valid members of the ‘trauma club.’” Fault lines also emerged between the family member and survivor groups; prominent sources of anger included anger over the perceived tendencies of some individuals to speak “for” all family members or survivors, suggestions that the memorial privilege the children, and what the memorial should look like.⁸⁵

⁸⁵ *Id.* at 176-181.

The first task which memorial task force members undertook had the effect of uniting the group around a common vision of memorialization. The task force gathered opinions as to what visitors should “think, feel or experience,” through meetings of family members and survivors, public meetings in Oklahoma City, meetings with “memorial constituents” who had a unique perspective due to their experiences with the bombing, and a public memorial survey that appeared in Oklahoma City and Tulsa newspapers, post offices, libraries, and on the Internet.⁸⁶ In the spring of 1996, a committee began to write the mission statement. The final mission statement called for a memorial complex with an information center, the inclusion of the Survivor Tree, a memorial located in the footprint of the Murrah Building, the incorporation of the names who died, and the inclusion of survivors’ names “in a manner separate, distinct, and apart from the tribute to and presentation of the names of those who died.”⁸⁷ Themes to be incorporated in the memorial included “remembrance, peace, spirituality and hope, cherished children, comfort, recognition, and learning.”⁸⁸ The preamble of the mission statement utters the heart of the memorialization project: “We come here to remember those who were killed, those who survived and those changed forever. May all who leave here know the impact of violence. May this memorial offer comfort, strength, peace, hope and serenity.”⁸⁹

After the drafting of the mission statement, the task force also closed Fifth Street, which had run between the Journal Record building and the Murrah building, asserting its

⁸⁶ *Id.* at 182.

⁸⁷ Oklahoma City Memorial Foundation, Memorial Mission Statement, *available at* <http://www.oklahomacitynationalmemorial.org/secondary.php?section=10&catid=26> (last accessed April 13, 2007).

⁸⁸ LINENTHAL, *supra* note 84, at 184.

⁸⁹ Memorial Mission Statement, *supra* note 97.

status as “sacred ground.” It also undertook the difficult task of determining who was a survivor, using as examples the Holocaust and the TWA 800 plane crash to elucidate the definition of “survivor” and the claims-making of diverse survivor groups. The survivor definition committee evolved a “primary zone of danger and a secondary zone of distress”; the primary zone was flexible enough to include those who suffered injury severe enough to warrant being held in the hospital regardless of their physical location at 9:02 a.m. Those in the primary zone of danger were to be identified on the building site and inside the Memorial Center, and those in the secondary zone of distress would be represented in the Memorial Center. A process was also established whereby individuals could apply for survivor status; these applications would be reviewed by a committee to see whether they met either survivor criteria.⁹⁰

The processes of closing Fifth Street and defining who was a survivor were both ongoing during the selection of a memorial design; on March 20, 1997, 624 submitted designs were put on public display in Bricktown, hung from a fence in the building because of the importance of the memorial fence surrounding the bomb site.⁹¹ The winning design will be discussed in the following section. The completed memorial opened on April 19, 2000, the fifth anniversary of the bombing. Many task force members continued to be involved on oversight committees or volunteered to lead visitors through the memorial grounds.

The “Habeas Group”

⁹⁰ LINENTHAL, *supra* note 84, at 190, 203-04.

⁹¹ *Id.* at 206.

Six participants belonged to the “habeas group,” so called because its members sought to alter current law to do away with what members considered “an interminable appeals process.”⁹² The group was begun by Glenn Seidl, whose wife Kathy was murdered in the bombing. The members of the habeas group were pro-death penalty victims’ family members and survivors who believed in earning and protecting victims’ rights through political advocacy.

The first political problem that habeas members chose to address was the lengthy time period between a capital offender’s death sentence and execution—a period in which victims’ families prayed that the sentence would not be reversed. The habeas group met in space provided in the offices of the Oklahoma Attorney General; this agency also provided informal assistance in drafting legislation to reduce appeal opportunities for capital offenders. The resulting legislation was supported by the Attorneys General of several other states, including California, Alabama, Pennsylvania, Texas, Colorado, Montana, Nebraska, Louisiana, Arizona, Idaho, and Mississippi. Group members made several trips to Washington to lobby for death penalty reform. During Senate hearings on the legislation, Senator Orrin Hatch stated, “rather than exploiting the devastation of Oklahoma City, I believe that by including this provision in the antiterrorism legislation, we are protecting the families of victims.”⁹³ President Clinton signed the Antiterrorism and Effective Death Penalty Act of 1996 into law on March 24, 1996. Letters from several members of the habeas group were published in the *Congressional Record*. Among them were statements that revealed many of the

⁹² *Id.* at 106.

⁹³ CONG. REC (BILL NO. S. 735), Comprehensive Terrorism Prevention Act s7481 (May 25, 1995).

motivations which led habeas group members to seek death penalty reform. Several letters mention that the victims murdered in the bombing did not have fifteen to twenty years to prepare themselves for death, and that family members did not have the chance to say goodbye. Alice Maroney-Denison authored a letter stating, "My father will not get to live another 15-20 years so why should the convicted?" Carolyn Templin, mother-in-law of bombing victim Scott Williams, wrote, "Our loved ones did not have ten to twenty years to prepare for their deaths." Similarly, Wanda Fincher, sister to Kathy Seidl, noted, "Kathy wasn't allowed to say goodbye to her family or to share any more of her wonderful presence with us. If the murderers are sitting in federal prison for 10-20 years they will be given the right to visit with their families and to say their goodbyes. How does this give justice to us?"⁹⁴

Other letters intimated that a swift execution was needed for the process of healing to begin. Group founder Glenn Seidl wrote "We need change, my family wants justice....When the remains of the Murrah building was imploded May 23rd there was some relief. When the people responsible for this terrible act are found guilty and executed, our families can begin a very important step of the healing process." Clifford Davis, the brother of Kathy Seidl, stated that "Now the only way I can focus my anger, loneliness and the piece of my heart that is now empty, is to try to get the Hatch/Spector bill passed. Mr. Clinton promised swift justice to the persons responsible for this crime. We need to have change." Diane Leonard, whose husband Donald R. Leonard was murdered in the bombing, wrote, "We now need your support, not only for the families of this tragedy, but for all American families who have lost loved ones at the hands of

⁹⁴ *Id.* at s7482.

murderers.... We have been promised justice, but we feel justice will not be accomplished until the verdict of a jury is carried out.” In a similar vein, the letter of Nicole Williams, whose husband Scott was murdered in the blast, stated “we want this to be swift and quick so that we can start the healing process.”⁹⁵

Several group members later involved themselves in other legislative efforts in response to the decisions of Judge Matsch, the judge in Timothy McVeigh’s federal trial, resulting in the passage of legislation mandating that the Denver trial proceedings be broadcast back to Oklahoma City and that victim impact witnesses be permitted to both attend the trial and testify during sentencing proceedings.

The Oklahoma City Murrah Building Survivors Association

Four participants regularly attended meetings of the Survivors Association, seven only attended a few meetings, and thirteen participants signed up to receive the group newsletter but did not attend meetings. The Oklahoma City Murrah Building Survivor’s Association was begun by Dr. Paul Heath, a psychologist with the Veteran’s Administration, who began the organization with \$1,200 of his own money and ran it out of his own small private practice office. Despite its name, the group was open to all, but was targeted towards all survivors, whether or not they had been in the Murrah Building. The Survivor’s Association held its first “help fair” meeting at the First Methodist Church in July of 1995, which provided opportunities for survivors to have their hearing, eyesight, and mental health evaluated by local officials. The founders of this group wished to instill a community service orientation into its activities, but membership in the Oklahoma City Murrah Building Survivors Association diminished in response to these

⁹⁵ *Id.* at s7481-82.

efforts after the first year, a process which will be explained in further detail below.

Membership declined for two principal reasons. First, members felt that Heath had been “monopolizing” meetings, which discouraged several from sharing their own experiences. One participant describes these “monopolization attempts” as follows:

no matter who the facilitator in the room was, he had a way of taking over the meeting and under the guise of welcoming the new person and he would, this is just one example that I remember vividly, we had a husband there for the first time who lost a wife, who'd never been to anything and the way you let someone participate is to let them do it if they want to. He said, “we'll go around the room, we'll introduce ourselves” and so he came to this person and he asked the person a question, but before the person could answer he said, for example, on that day I was and then he went on and talked for the entire – nobody else got to talk from that point on. So I actually got up and left the room and I was coming out and there was a place out here, um, there was only five minutes left of the hour, nobody else got to talk so I came out and there was a station here where there were two Murrah survivors I got to know and they said “what is the matter”? I said, “I am so mad I could chew nails. I've just been in so and so group and the only person who has gotten to talk is Dr. Heath.” They both just started laughing and said, well that's the case everywhere kind of like you had this undercurrent coming from other survivors. He couldn't seem to help himself under the guise of trying to help other people. He would grandstand and talk totally about himself where if somebody got a chance to talk he would use that as a platform to somehow pull it back to his experience.

Many group members who wanted to talk with one another, and not to hear the experiences of one particular individual, ceased to attend in response to Heath's behavior.

The second reason that prompted members to leave was Heath's frequent appearances in the media; participants perceived not only that Heath claimed to speak for all survivors but felt he inappropriately and inaccurately generalized survivors' needs, feelings, and recovery status, irritating survivors by his apparently casual creation of a survivor “collective” when in reality none existed. Despite these turnoffs, however, many others

stayed, and continued to attend and enjoy Survivors Association meetings for several years after the bombing.

Families and Survivors United

Several participants were peripherally involved with the Families and Survivors United, now defunct, was started by Marsha Kight after her adult daughter Frankie Merrill was murdered in the bombing, leaving a five-year-old daughter. Marsha, who was also a member of the memorial group, saw a need to secure financial assistance for family members, many of whom felt like “second-class citizens.” Kight’s organization approached several foundations to fund this assistance, and also commissioned a “commemorative angel figurine,” the sales of which earned enough money to enable 19 people to attend the trials in Denver. The group also sent a “thank you” video to rescue unit across the country. Most importantly, Kight compiled a collection of memorial accounts from family members and the survivors, including those of eight participants, entitled *Forever Changed: Remembering Oklahoma City, April 19, 1995*. Marsha Kight also became a well-known victims rights spokesperson, “calling attention to the struggles of family members and survivors who wished to participate fully in the trial of Timothy McVeigh.”⁹⁶ Kight has testified before the Senate Judiciary Committee several times and went to work full-time for the National Organization For Victim Assistance in 1999.

Informal Advocacy Groups Organized Around Certain Issues

Other advocacy groups also cropped up in the aftermath of the bombing, often comprised of many members of the habeas group. After Judge Matsch moved the trial venues for the prosecutions of McVeigh and Nichols to Denver and dismissed a motion

⁹⁶ LINENTHAL, *supra* note 84, at 102-03.

filed by Oklahoma City attorney Karen Howick to broadcast the trial via closed-circuit television to an Oklahoma City locale, family members and survivors went to Washington, DC once again to lobby Congress to pass legislation allowing the closed-circuit broadcasts. Howick then filed motion on behalf of approximately 100 family members and survivors to get the forum changed, from a room in the Oklahoma City federal courthouse that only held 150 people to the Federal Aviation Administration's 330-seat auditorium.⁹⁷

A group of family members and survivors also sought help from Congress when Judge Matsch decided to bar victim impact witnesses from attending the "guilt" phase of McVeigh's trial, when evidence was presented. This resulted in the passage of the Victim Allocation Clarification Act of 1997, legislation which " 'clarified' rights of victims set forth in the 1990 Victims Rights and Restitution Act (better known as the Victims Bill of Rights) and which was designed to allow victim impact witnesses to both observe a trial and offer impact testimony. The legislation progressed rapidly through the House and Senate and was signed into law by President Clinton on March 20, 1997, who said, "When someone is a victim, he or she should be at the center of the criminal justice process, not on the outside looking in."⁹⁸

Group Commemorative and Advocacy Projects

All groups formed in the aftermath of the Oklahoma City bombing existed to accomplish some goal. Some groups found that the process of reaching that goal actually was a healing pursuit in and of itself. Two groups in particular, the Oklahoma City

⁹⁷ *Id.* at 104.

⁹⁸ *Id.* at 105.

Memorial Task Force and the Habeas Group, produced lasting memorial products—the Oklahoma City National Memorial and the AEDPA—that acquired meaning independently of the group, and yet continued to reflect the visions and creative priorities of the group from which it originated.

The Habeas Group members who lobbied for the passage of the AEDPA embedded their representations of the bombing within the legislative history of the act as printed in the *Congressional Record*.⁹⁹ In focusing their efforts upon legislation which would truncate habeas appeals for convicted capital offenders, Habeas Group members shed their status of victims of terrorism and instead represented themselves as *murder* victims' families. In addition, in keeping with the victims' rights movement's political platform, the letters in the Congressional Record exhibit retributive themes tying a loved one's death to the need to have an offender executed in a timely manner. Members' helplessness to effect justice and powerlessness to restore murder victims to life is contrasted with offenders' ability to appeal their convictions on technical grounds and to possibly achieve their release through their own efforts, and most pervasively their ability to see friends and family for years after their crime.

With the Oklahoma City National Memorial, the experience of visiting the memorial offered a relevant map to understanding its representation of the bombing. The Oklahoma City National Memorial consisted of an outdoor monument and an indoor museum. The outdoor monument was nestled within the footprint of the Murrah Building and incorporated numerous symbols, as described on the memorial's website.¹⁰⁰

⁹⁹ CONG. REC., *supra* note 93, at s7481.

¹⁰⁰ See <http://www.oklahomacitynationalmemorial.org/secondary.php?section=2&catid=30> (last accessed April 25, 2007). Two "Gates of Time" serve as entrances to the outdoor memorial and symbolize time

The Journal Record Building, directly across the street from the Murrah Building, was chosen as the site of the memorial museum, the “physical container to preserve the memory” of the bombing.¹⁰¹ The Oklahoma City National Memorial website provides a thorough description of how the museum was organized:

The Memorial Museum takes visitors on a chronological, self-guided tour . . . through the story of April 19, 1995, and the days, weeks, months and years that followed the bombing of Oklahoma City's Alfred P. Murrah Federal Building . . . The story is told in chapters, and takes visitors through this historical event beginning early morning April 19, 1995, and ending with a message of hope for today.¹⁰²

The museum has been organized into 10 chapters; visitors are lifted to the top story of the museum by elevator, where the exhibits begin.¹⁰³ Visitors “see” the investigation in exhibits that “show” key pieces of evidence and investigative techniques, but they are actually meant to become *immersed* in the experience of the bombing itself. The indoor museum has been manifestly concerned with representing the bombing as an experience of chaos and recovery; it only devotes one short exhibit space to conveying details of

standing still during the moments of the explosion. In between the Gates of Time is a reflecting pool where 5th Street ran between the Murrah Building and the Journal Record Building; this mirrors visitors who are forever changed by their visit. In the footprint of the Murrah building are 168 empty chairs standing in nine rows to symbolize the nine floors of the building. The left foundation wall from the Murrah Building still stands on the left side of the footprint; here one may see the Survivor Wall, listing more than 800 bombing survivors. On a circular promontory situated on the slope lawn rising to the Journal Record Building stands the Survivor Tree, an American Elm that survived the blast. A path towards the entrance to the Journal Record Building leads through the Rescuers' Orchard, a gallery of trees bearing fruit and flowers. Outside the memorial itself is the Children's Area paved with tiles created in 1995 by children around the nation. Finally, a 200-foot section of “the Fence” remains on the Western side of the outdoor memorial where visitors can leave notes, stuffed animals, and wreaths as in the days immediately after the bombing.

¹⁰¹ EDWARD T. LINENTHAL, PRESERVING MEMORY: THE STRUGGLE TO CREATE AMERICA'S HOLOCAUST MUSEUM 1 (1995).

¹⁰² See <http://www.oklahomacitynationalmemorial.org>.

¹⁰³ These “chapters” are described on the website as progressing from a background on terrorism and history of the site to an audio recording of the blast, the confusing and chaotic aftermath of the first moments afterward, survivor experiences in the first hours after the explosion, the early beginnings of the law enforcement investigation into the blast, the world reaction, the processes of rescue and recovery, the process of waiting for death notifications, a gallery of honor for deceased victims, funerals and mourning, criminal prosecutions and sentencing, and remembrance and rebuilding.

criminal proceedings against McVeigh and Nichols, and while McVeigh's death sentence is alluded to, the carrying out of the execution is only described on a 4-by-8-inch bronze plaque that states "McVeigh is executed by lethal injection on June 11, 2001, at the federal penitentiary in Terre Haute, Indiana." Visitors' attention is forcibly focused away from the perpetrators.

Methodology

The design of the present project had two primary goals: to prioritize the quality and reflexive depth of data, and to enroll as participants those individuals that were most emotionally invested in the execution. Qualitative methods have been widely used in the fields of anthropology, communication, and sociology, particularly to conduct exploratory research on emergent topics. One particular qualitative methodology that has received particular attention is grounded theory, which facilitates the development of explanatory theories through the conduct of research, instead of research that tests a pre-conceived hypothesis. Grounded theory also emphasizes the role of data such as participants' voices in constructing theory. The current study utilized open-ended questions as an interviewing tool to assess the impact of the bombing on each participant, membership in post-bombing support groups, reactions to McVeigh's trial and execution, and pre- and post-execution expectations and perceptions.

Participants

The 27 participants included in this study were survivors or victims' family members of the Oklahoma City bombing. A total of 29 participants were interviewed; however, two were not included because they were rescue workers, and not victims and survivors who were present at the moment of the Oklahoma City bombing. More

specific information on individual participants is included in Appendix B. To reach this population, I first contacted the Oklahoma Department of Health, who put me in touch with Dr. Betty Pfefferbaum, a psychiatrist and attorney specializing in child trauma who had conducted years of research with this population and published many studies on the effects of the Oklahoma City bombing on the health of city residents. Dr. Pfefferbaum expressed interest in serving as my clinician on this dissertation project and placed me in contact with Dr. Paul Heath, a survivor of the bombing and the Secretary and Treasurer of a community service organization known as the Murrah Federal Building Survivor's Association to which many victims' families and survivors belonged. Dr. Heath consented to be a part of the project, and agreed to send letters requesting interviews to organization members. To maintain confidentiality, I forward the introductory letters, envelopes, and postage to Dr. Paul Heath, who addressed and mailed the letters. The interview request letters described the project, mentioned Dr. Heath's role in the project to assure recipients that their identities were protected, and informed recipients that they could either telephone Dr. Pfefferbaum's secretary or e-mail me to schedule interviews.

Unfortunately, out of approximately 235 letters mailed, I received approximately 12 requests for interviews. I learned very early on in the interviewing process that I had inadvertently committed a mistake in mentioning Dr. Heath in the interview request letter. Survivors and victims' family members alike expressed strong dislike and distrust of Dr. Heath since he was perceived to have attempted to have relentlessly pursued the media limelight for years. In addition, survivors resented that Dr. Heath had made media statements claiming to speak on behalf of "all survivors". Fortunately, it was possible to remedy this error by switching to an alternate participant recruitment method—asking

participants who had completed interviews if they knew of anyone else who would consent to being interviewed. These participants then placed me in contact with these potential participants, bringing my total interview population to 27 participants.

Participants in the current study were enrolled in the study in three stages. First, members of the Murrah Building Survivor's Association who responded to the interview request letters were included in the study. Second, interviews were conducted with others recommended as potential participants by those who had already completed interviews. Finally, witnesses who viewed the execution live at Terre Haute, Indiana were recruited. The Murrah Building Survivor's Association is a group formed in the aftermath of the Oklahoma City bombing whose members remain in contact with one another; members include both survivors and victims' family members, since in many cases the categories overlap. Contact letters were sent to approximately 10 to 12 persons who witnessed the execution live in Terre Haute and who gave media interviews afterwards.¹⁰⁴ Finally, some interview participants recommended others who they feel could make contributions to this project, and contact letters were also sent to these individuals, informing that who has recommended that they receive contact letters.

The final participant sample was composed of 18 females and 10 males. All but one of the 27 participants were white; the other was African-American. This demographic composition parallels both the overwhelmingly white membership of the post bombing groups, including the Murrah Building Survivor's Association, and that of the larger victim population. All participants were over 18 years of age (participants'

¹⁰⁴These persons include Paul Howell, Shari Sawyer, Kathleen Treanor, Doris Jones, Cathryn Alaniz-Simones, Carla Wade, Richard Williams, Larry Whicher, Gloria Buck, and Peggy Broxterman.

ages ranged from mid-30s to low-70s) and thus were able to legally consent to participation.

Interviewing Methods and Procedures

Two prior studies had used short survey instruments to ascertain the psychiatric effects of witnessing an execution on journalists and to identify college students' attitudes toward execution witnessing. In my dissertation, I wanted to focus not on psychiatric symptoms but on the social and communicative dimensions of capital trials and executions, and so believed that a survey instrument would too narrowly constrain my data. Conducting intensive interviews with open-ended questions allowed me to conversationally guide participants through the task of describe how the bombing, trials, and McVeigh's execution impacted their lives while granting participants complete freedom of response (versus a survey instrument that provided a limited range of responses) and allowing me to retain the flexibility to ask follow-up questions. Of course, that flexibility came with a price; the intensive in-person interviews were more costly than surveys and necessitated transcription and more time-consuming data analysis. However, since I was conducting exploratory research, I placed a high priority on the quality and depth of information versus the quantity of participants. A survey instrument that covered the same subject matter as my intensive interview questionnaire would have been very lengthy and fatiguing to participants.

Because no interview instrument existed, I created my own in consultation with my dissertation committee. Questions concerning the impact of the Oklahoma City bombing, group membership, and attendance at capital trials straightforwardly asked participants to recall the day of the bombing and the weeks following. With respect to

the McVeigh execution and its impact on participants' lives, specific questions were written after I researched the execution and watched online media interviews with victims' families and survivor witnesses. Prior to interviewing participants, questions were refined as a result of input from the dissertation committee and from the two institutional review boards who reviewed my protocol and interview instrument.

The current study design and interview instrument has been approved by two institutional review boards: the Social Sciences IRB at the University of Pennsylvania and a medical IRB at the Oklahoma University Health Sciences Center. The OUHSC IRB permission was necessary in order for Dr. Betty Pfefferbaum, the chair of Behavior Science at Oklahoma University Health Science Center, to serve as my clinician in the event that any participants were unsettled by the intensive interview.

Interviews with all participants took place in the spirit of narrative inquiry, which "aspires to an ideal of participation and involvement" and "dissolves traditional boundaries between researchers and subjects."¹⁰⁵ I was aware that my own experiences with parental loss would influence this project, and found that the death of my father in a car accident at the negligent hands of a tractor-trailer driver as well as the ensuing wrongful death lawsuit gave me insight into coping with sudden loss and the impact of legal proceedings on accountability, finality and healing. Thus, when participants inquired into my reasons for conducting research on this subject matter, I was forthcoming with describing the early life experiences in which this inquiry was rooted. I always stated, however, that my own experiences were very different from and

¹⁰⁵ Arthur P. Bochner, *Perspectives on Inquiry III: The Moral of Stories*, in *HANDBOOK OF INTERPERSONAL COMMUNICATION* 77 (Mark L. Knapp & John A. Daly eds., 3d ed. 2002).

incomparable to the Oklahoma City bombing, and did not describe my experiences further unless participants asked me about them. My willingness to share my own life experiences with participants, together with my genuine enthusiasm for this inquiry, gained me a measure of trust and confidence that I otherwise doubt I would have been able to achieve with participants, many of whom had been interviewed many times by media sources.

Interviews were conducted at any site in Oklahoma City that was comfortable for the participant. While most interviews took place in participants' homes, two interviews took place in a private room at the Oklahoma Health Sciences Center in downtown Oklahoma City and two interviews took place in a hotel room I had reserved at the Sheraton Oklahoma City. All participants were asked for permission to tape the interview and all consented. Prior to each interview, I read a consent form describing the project with each participant, who then signed the consent form as well as a Health Information Privacy Act form. Each participant also received a copy of both forms to retain for their records. This comported with "active" consent procedures. The tape recorder was then turned on, and the interview commenced.

Three interviews with participants who lived in Texas, Minnesota and Georgia were conducted electronically over a land line telephone. In these cases, two packets of the consent packets were mailed to participants beforehand together with a stamped envelope addressed to myself, and the interview was not scheduled until I had received a completed packet in the mail. After an interview appointment was scheduled, I called each participant at home, discussed the consent form at that time, ascertained if they had

any questions, obtained their permission to record the interview, and commenced the interview.

Participants were at low risk of being further traumatized through the intensive interview through a variety of methods. The first protection against emotionally difficult subject matter is partial or total nonparticipation; participants could choose to not answer individual questions, or not to be interviewed at all. Finally, participants were informed in the consent form that they could obtain a confidential referral to a qualified counselor (through Dr. Betty Pfefferbaum) if they should become distressed as a result of the interview.

No participant was financially compensated for participating in the intensive interview. To offer incentive for interview participation, each respondent was informed of the lack of research on this subject matter and the altruistic benefits of participation. All costs for this study were borne by myself and paid for by means of personal funds and a dissertation research grant through the Annenberg School at the University of Pennsylvania.

Finally, to maintain confidentiality, only I knew the participants' identity and I retained all copies of interview recordings and transcripts, on which participants are identified by number. Two support personnel were hired to help with transcription; before I turned over interviews to these individuals to be transcribed, I numerically coded the tapes and stripping identifying information from the recordings. All copies were returned to me at the conclusion of the transcription. The list linking participants' true names with their participant numbers was always maintained in locked and secure files and all data was stored in locked file drawers at each stage of data transfer. Moreover, all

data were accessible only to research staff, and no participant will be identified by name in any published report. Finally, all research staff were trained in ethical issues associated with this research, with specific attention to confidentiality.

Data Analysis

Because this project was exploratory and no a priori theory existed to guide my inquiry, I adopted a grounded theory methodology from its inception. Although I was aware that grounded theory did not readily permit generalization to other situations, this concern was not paramount since this dissertation research was being conducted with the goal of accumulating conclusions that would allow me to generate hypotheses for future research projects. Strauss and Corbin¹⁰⁶ describe data analysis as a process of breaking down, organizing, and reassembling data to develop a different understanding of phenomena. In accord with procedures outlined by Strauss and Corbin regarding data analysis for grounded theory research, the following coding procedures were implemented in the current project: open coding, axial coding, and selective coding. While I utilized Strauss and Corbin's suggestions as guidelines, I also chose to focus on theory generation rather than theory verification, and so followed Glaser¹⁰⁷ in not prioritizing verification of categories and conclusions by other coders. This section describes how data were deconstructed, and subsequently reorganized to provide an understanding of how victims' families and survivors were impacted by membership in post-bombing groups, attendance at capital trials, and McVeigh's execution.

¹⁰⁶ See generally A. STRAUSS & J. M. CORBIN, *BASICS OF QUALITATIVE RESEARCH: GROUNDED THEORY PROCEDURES AND TECHNIQUES* (2d ed., 1988).

¹⁰⁷ See generally B.G. GLASER, *BASICS OF GROUNDED THEORY ANALYSIS* (1992).

Strauss and Corbin state that the “first step in theory building is conceptualizing.”¹⁰⁸ The purpose of open coding is to begin the process of breaking data down into concepts or representations of objects and events. After transcription, I reviewed participant interviews and broke them down according to subject matter of question, for example placing together all participants’ remarks on the impact of membership in support and advocacy groups. I then analyzed responses to each question individually in order to chart trends and patterns and evolved descriptive categories regarding the practices and perceptions of participants. I then began the process of axial coding, which according to Strauss and Corbin is to “begin the process of reassembling data that were fractured during open coding.”¹⁰⁹ In this stage, I began to group category notes into main and subcategories. I ended up with six categories: membership in post-bombing groups, the perceived relationship between McVeigh and victims’ families and survivors, perceptions of the perpetrators’ behaviors during trial, perceptions of attending legal proceedings, and the impact of the execution on participants. Finally, I began the process of selective coding, which is “the process of integrating and refining categories.”¹¹⁰ Here, my primary goal was to develop an overarching theoretical scheme explaining how each of the categories related to each other. This ultimately dictated the organization of dissertation chapters and the relationship of each chapter to the others.

After completing selective coding, I verified the accuracy of my conclusions by “member checking,” or recontacting participants. Maxwell states that member checking, or soliciting feedback from participants, is the “single most important way of ruling out

¹⁰⁸ STRAUSS & CORBIN, *supra* note 106, at 103.

¹⁰⁹ *Id.* at 124.

¹¹⁰ *Id.* at 142.

the possibility of misinterpretation of the meaning of what they say and the perspective they have on what is going on.”¹¹¹ While analyzing data, I also previously contacted other participants to clarify responses that were unclear or garbled on the recording. Each participant I surveyed indicated the need for minimal or no revision.

Summary

This chapter has provided an overview of the scholarship on collective memory and cultural trauma, and has addressed the efficacy of legal proceedings as a vehicle for constructing collective memory and healing cultural trauma. It has also discussed the groups that formed in the wake of the Oklahoma City bombing, described memorial objects such as the AEDPA and the Oklahoma City National Memorial, and explicated the methodological assumptions that guided the project. The following chapter will address the ramifications of group membership upon the formation of social frameworks of collective memory.

¹¹¹ J.A. MAXWELL, *QUALITATIVE RESEARCH DESIGN: AN INTERACTIVE APPROACH* 94 (1996).

CHAPTER TWO:

GROUNDING COLLECTIVE MEMORY: THE IMPACT OF GROUP MEMBERSHIP ON MEMORY WORK

This chapter explores the processes by which groups helped shape collective memory of the Oklahoma City bombing. It first addresses the emotional state of individuals at the inception of group membership, so as to appreciate the reconstructive roles that group membership played in helping individuals build new mnemonic foundations, new intrapersonal priorities, and new interpersonal structures. The chapter then considers group functions which emerged after the bombing, including the provision of companionship, the gravitation toward group narrative, and the organization of members around chosen reconstructive goals. Each of these functions served important mnemonic roles; companionship provided mnemonic support and enabled members to recognize that others were going through similar ordeals, group narrative helped members to build and maintain social frameworks of memory, and group goals gave concrete form to these mnemonic frameworks. Finally, this chapter concludes by exploring in more detail the effects of group membership on “seeking justice”—the facilitation of members’ attendance and/or participation in legal proceedings against Timothy McVeigh, including his 1997 capital trial and 2001 execution. Each of these tasks is regarded as a central node in organizing the group’s collective memory around the bombing.

Common Emotional and Psychological Characteristics of Group Members

It is possible to examine the response of family members and survivors to homicide through the lenses of traumatic grief, alienation, loss of control, and anger, each

of which help construct an “ideal type” of victim.¹¹² While family members and survivors of the bombing were diagnosed with PTSD, examining response solely through these clinical terms implies that there is a “cure,”¹¹³ and certain elements of PTSD such as repressed memory seem to have no useful place.” Instead, this project assumes that memory must be understood as something broader than clinical diagnoses.

Research on traumatic grief began in 1917 with Freud’s portrait of grief pathology in *Mourning and Melancholia*, and continued through the 1900s. This research focused upon the grief stages that an individual would pass through, with and were not focused on mass or collective grieving. Psychiatrist Carl Jung focused on the link between mental illness (or “neurosis) and inability to grieve, and emphasized the need to not deny but progress through grieving processes. In 1944, Lindemann analyzed the phenomenon of acute grief following accidental death, and described a six-characteristic grief “syndrome”; Engel posited in 1961 that grief is abnormal in the sense of a disease, and that “uncomplicated grief” consists of a predictable course of stages, and Bowlby enunciated “acute grief” as an attachment to the deceased that is linked to clinical depression and anxiety, and elaborated a three-phase separation response.¹¹⁴ In addition, Elizabeth Kubler-Ross’s *On Death and Dying* proposed five stages which terminally ill individuals were supposed to proceed in coming to terms with their impending death.

In present scholarship, there is ample documentation of a grief syndrome, although more recent research has shown that grief does not progress through a

¹¹² PAUL ROCK, AFTER HOMICIDE: PRACTICAL AND POLITICAL RESPONSES TO BEREAVEMENT 29 (1998).

¹¹³ *Id.* at 91

¹¹⁴ M. Katherine Shear, Allan Zuckoff, Nadine Melhem, Bonnie J. Gorscak, *The Syndrome of Traumatic Grief and its Treatment*, in PSYCHOLOGICAL EFFECTS OF CATASTROPHIC DISASTERS: GROUP APPROACHES TO TREATMENT 288-333 (Leon A. Schein et al. eds., 2006).

succession of predictable stages, and does not last for any certain time period.¹¹⁵ A growing body of literature even focuses on the psychological response and adjustment to the loss of a family member to murder, indicating that the experience of having a family member murdered embodies both the grieving that goes with profound loss and the anger that is a natural response to trauma and that prompts feelings of vengeance. Thus, family members are said to suffer from “complicated mourning” as well as from feelings of anger, guilt, self-blame, and shattered assumptions.¹¹⁶ It may be three to five years before the most intense grief systems began to wane.¹¹⁷

Trauma and accompanying anxiety complicate the burdens of mourning, as do other symptoms of Post-Traumatic Stress Disorder (PTSD), such as reexperiencing the trauma, diminished responsiveness, exaggerated startle response, disturbed sleep, difficulty in remembering, survivor guilt, and avoidance of activities that may recall the traumatic event.¹¹⁸ Traumatic grief is characterized by feelings of alienation, loss of control, and anger.

Significantly, the grieving processes experienced by Oklahoma City victims and survivors are necessarily different from those identified by prior researchers who focused on individual grief syndromes. Here, the grieving process is not only combined with psychological trauma but is also bound up with other ongoing processes altogether separate from the the grieving individual such as legal proceedings, the timing and

¹¹⁵ *Id.*

¹¹⁶ See THERESE A. RANDO, TREATMENT OF COMPLICATED MOURNING (1993).

¹¹⁷ See L. M. REDMOND, SURVIVING: WHEN SOMEONE YOU LOVE WAS MURDERED: A PROFESSIONAL'S GUIDE TO GROUP GRIEF THERAPY FOR FAMILIES AND FRIENDS OF MURDER VICTIMS (Psychological Consultation and Educational Services, Inc., 1989).

¹¹⁸ See M. BARD, A RETROSPECTIVE STUDY OF HOMICIDE SURVIVOR ADAPTATION, Final report, Grant No. R01 MH31685, National Institutes of Mental Health, Rockville, MD (1982).

outcome of which that individual cannot control. Stages of grieving are often contingent upon the occurrence and outcome of these external proceedings; for example, murder victims' families often feel that they cannot proceed with their lives until the suspected murderer is arrested, tried and sentenced.

Alienation

Survivors of traumatic events often feel increasingly isolated and estranged in the wake of a traumatic event. It is common for victims' family members to feel as if they are alone or alienated; this status can either come from the distanced reactions of others or from a feeling that one is "set apart" by one's authentic expertise in suffering, since "survivors themselves claim that one can never appreciate their significance unless one has been bereft as they have." Sometimes, alienation is voluntary; survivors may claim privileged status from their experiential knowledge of suffering, believing that even experts' understanding is flawed because they had never undergone bereavement from homicide.¹¹⁹

An inability to connect with the banality of everyday life also leads to a sense of profound abnormality. Survivors may feel as if they are strangers in their own lives. This distancing stems at least in part from trauma: "isolation, disbelief, numbness, strength of emotion, and incredulity about mundane activities can bring alienation from the self and from a once familiar society."¹²⁰

Survivors may feel too that they are at the center of a collapsing web of social relations, either because their misfortune is somehow contagious or taboo, or because

¹¹⁹ ROCK, *supra* note 112, at xiii, xix.

¹²⁰ *Id.* at 45

others may avoid associating with survivors, as if they are cursed or carriers of bad luck, with social isolation being the result. Several participants felt as if the bombing suffused their identity; Participant 20, a critically injured survivor, was uncomfortable when friends who were uninvolved in the bombing would introduce him as someone who was in the bombing: "I'm used to it now but I still don't really like it, I mean, you know, it's not what I wanna be remembered for or anything . . ." Participant 27 had a similar experience upon returning to work:

people were curious and naturally wanted to hear . . . how I was doing and which led to what happened. And you sort of became identified with that event too. And you couldn't go anywhere without feeling like the spotlight was kind of on you . . . it was kind of awkward because you would feel like anything you did, that's the first thing people would think was, you know, here comes [Participant 27] and she's from the bombing. And you sort of . . . it sort of became uncomfortable at times because . . . you just would think, "I don't want to be known and remembered for this the rest of my life."

Murder's aftermath is also hardly conducive to the maintenance of old social ties or the formation of new ones since it is a time of "structural disorder" and an intense focus upon the murdered loved one, which may cause the neglect of others who are still living.

Friends and acquaintances may also impose an interpersonal distance at the point where they tire of hearing murder-related stories, when they feel that the survivor is taking too long to heal, or when they feel unequal to the task of responding appropriately to the murder. These forms of withdrawal can produce feelings of shame in survivors. In addition, grief itself may open chasms between family members, who are all grieving in different ways. There is a common understanding among survivors that "they are

exceptionally prone to divorce, and they will quote American estimates that between 70 percent and 90 percent of marriages collapse in the wake of homicide.”¹²¹

Loss of Control

Simply put, murder is disorder.¹²² There can be no readiness, and no anticipatory mourning.¹²³ Murders are arbitrary deaths outside of the natural order that are “unattractive, violent, disorganized, unrehearsed, and arbitrary”—and so there is no leavetaking, contributing to a sense of unfinished and unfulfilled relations with the dead. Loss of control can be triggered by a sense of physical disorder, an inability to control one’s own health or mannerisms, and the survivor’s own body can become a symbol of disorder. Participant 28 recalled being unable to control grieving behavior at work: “my boss had another person come and work with me because I mean I would start crying every time someone would say, “Hi, [Participant 28].” And I would bawl. You know, I’d fall apart.” In addition, 28 was unable to speak her daughter’s name out loud in public without breaking down. Loss of control also stems from fears triggered by violent crime, as they feel they “privy to the real, feral nature of the world.” Survivors were powerless to prevent the first death, to thwart future harms seems impossible, as “violent, intentional death is linked inextricably with images of powerlessness—the powerlessness of the victim to resist, and the powerlessness of the bereaved to intervene at the time of the killing and to control events thereafter.”¹²⁴

In an effort to restore control and prevent future losses, survivors may feel a sense of “keeping vigil” which maintains the traumatic pitch of postdisaster life. A sense of

¹²¹ *Id.* at 32-46.

¹²² *Id.* at 40.

¹²³ *Id.* at xix.

¹²⁴ *Id.* at 39-43, 53.

vigil consists of a determination to maintain control and meaning, to never be caught off guard, to never relax or feel secure. The sense of “keeping vigil” was pervasive following the bombing, as participants reported “hypervigilance,” a symptom of PTSD. Participant 7 described this hypervigilance as stemming from “mostly the, the lack of control that we all felt. Um, and then second to that was the fear of ah, another instance of it happening again, soon we, we all just seemed to be kind of um, just more hyper-vigilant, more um concerned with instances that might normally not have bothered us as much.” Vigils can hinder recovery in numerous ways; protesting injustice can lead victims back into the trauma without resolution, resisting a loss of meaning can lead to depression and despair; attempts to protect others can prevent deeper contacts with others, and survivor guilt can lead victims to feel that they do not deserve therapy or even to be alive.¹²⁵

Perhaps the most significant disorder that murder ushers into survivors’ lives is a collapse of meaning.¹²⁶ Homicide brings with it the destruction of a moral order, and as a result of this moral loss, “survivors may wonder why they have been singled out for loss and what a death might portend about the moral order.”¹²⁷ This is the predicate state for the formation of the questions “why” and “why me/us.” Survivors often referred to putting together “puzzle pieces” of shattered lives; as Participant 22 remarked, “any crime victim feels helpless hopeless someone’s walked in taken control of your life and I, the way I describe it is I felt like um, my life puzzle had been blown apart and uh I

¹²⁵ Melissa S. Wattenberg, William S. Unger, David W. Foy, & Shirley M. Glynn, *Present-Centered Supportive Group Therapy for Trauma Survivors*, in *PSYCHOLOGICAL EFFECTS OF CATASTROPHIC DISASTERS: GROUP APPROACHES TO TREATMENT* 568-69 (Leon A. Schein et al. eds., 2006).

¹²⁶ ROCK, *supra* note 112, at 95.

¹²⁷ *Id.* at 42

needed to get as many pieces of that puzzle back together in order to be able to go forward.”

For these reasons, the reconstruction of moral order becomes tremendously important for survivors. Complex moral schemas devolve into radically simplified and absolutist moral systems. New evaluative moral schemas are often binary, positioning the survivors against the criminal other. This relationship is inequitable since the killer chose to commit the crime yet he lives and the victim is dead; the killer has a future and constitutional rights that the deceased victim does not. Another very common survivor reaction is a desperate need for information, seen as required to begin to lay a reconstructive foundation. Because one cannot move forward without thoroughly understanding insofar as possible the circumstances of the murder, information about the crime and perpetrator is precious, as is information about other crimes, perpetrators, and survivors.¹²⁸

Ultimately, participants slowly came to the realization that perhaps to try to regain control by attempting to exert control only left one feeling spread thin and personally and spiritually diminished. Participant 19 gradually realized that it was important to “let go” sometimes: “You can talk about trials and all that kind of thing. . . .I couldn’t do a thing about it. I had no control over that . . . that’s even part of healing is recognizing those things and trying to do what you can and releasing what you don’t have control over.”

Anger

Anger is the prototypical survivor response; it is not only a “mass of turbulent and contradictory experiences” but a force that sets in place a new web of relations, “a larger

¹²⁸ *Id.* at 101-04, 97

feeling which embraces the survivor, the victim, the killer, and others around the self as an expressive unity.” It is not only an emotion but an activity. Anger is also an organizing and positioning force that encourages the adoption of a simplified evaluative moral schema.¹²⁹

Anger is an important activity for survivors because it provides motivation, allowing survivors to once again assert control.¹³⁰ Thus, “to be an active survivor is in large measure to be angry.” Survivors perform anger, and live in its experience. Anger cannot be other than performative; it “can be authentic and compelling only if it is lived fully and in its immediacy.” Meditation on anger throttles its performativity; “if one pauses to stand back and reflect, merely taking an attitude towards one’s emotions, one no longer lives in the experience but becomes alienated from it.” Because it is performed, anger is self- and world-defining. This constructive capability is tremendously important in survivors’ reconstructive efforts; survivors may “build their very identities around enacting an abiding rage as a form of validation, as a sign of the righteousness and power of their convictions.”¹³¹

Anger can, however, alienate survivors from themselves as they feel a sweeping anger that is often perceived as out of character, leading survivors to question their own sanity and normality, and to perhaps engage in self-blaming. Participant 12, a critically injured survivor, recalled that after the bombing his personality “shifted”: “for the first time in my life I wanted to kill people. I had never wanted to kill anyone, I’ve never been a violent person, and now all of a sudden I had violence, I had anger. I never cussed in

¹²⁹ *Id.* at 101-02.

¹³⁰ *Id.* at 47

¹³¹ *Id.* at 49.

my life, all of a sudden I had, hadn't said very many, but I had said cuss words." In addition, interpersonal reactions to displays of anger may be disturbing to survivors, who feel that others—even other survivors—view them as vicious or consumed by hate.¹³²

In summary, these components of traumatic grieving—alienation, loss of control, and anger—reveal that the group members at the core of this study were subject to varying psychological disturbances. These disturbances, however, made the integration into groups and the invocation of group memory potentially all the more worthwhile.

Functions of Groups Formed in the Wake of the Oklahoma City Bombing

Research has shown that “social contact is a powerful buffer of the effects of stress.”¹³³ Because of the instinctual need for companionship in times of stress, available social support is “one of the most robust predictors of recovery from trauma,” with “those who do not anticipate that friends and loved ones would be available if needed cop[ing] with stress and trauma far less well than those with high perceived social support.”¹³⁴ Adults seeking treatment in the wake of the Oklahoma City bombing who reported receiving support in their workplaces were less likely to display traumatic stress symptoms six months after the event than those who report receiving support from

¹³² *Id.* at 50.

¹³³ K. Chase Stovall-McClough & Marylene Cloitre, *Traumatic Reactions to Terrorism: The Individual and Collective Experience*, in *PSYCHOLOGICAL EFFECTS OF CATASTROPHIC DISASTERS: GROUP APPROACHES TO TREATMENT* 133 (Leon A. Schein et al. eds., 2006). See also J. Cobb, *Social Support as a Moderator of Life Stress*, *PSYCHOSOMATIC MEDICINE* 38 (1976) at 300-314; S. Cohen & G. McKay, *Interpersonal Relationships as Buffers of the Impact of Psychological Stress on Health*, *HANDBOOK OF PSYCHOLOGY AND HEALTH* 253-67 (A. Baum, J.E. Singer, & S.E. Taylor eds., 1984); C. J. Holahan & R. H. Moos, *Social Support and Psychological Distress: A Longitudinal Analysis*, *JOURNAL OF ABNORMAL PSYCHOLOGY* 90 (1981), at 365-370; F. H. Norris & S. A. Murrell, *Social Support, Life Events, and Stress as Modifiers of Adjustment to Bereavement By Older Adults*, *PSYCHOLOGY & AGING* 5 (1990), at 429-436.

¹³⁴ Stovall-McClough & Cloitre, *supra* note 133, at 134. See also Norris & Murrell, *supra* note 133; C.R. Brewin, B. Andrews, & J.D. Valentine, *Meta-analysis of Risk Factors for Posttraumatic Stress Disorder in Trauma-Exposed Adults*, *JOURNAL OF CONSULTING & CLINICAL PSYCHOLOGY* 68 (2000), at 748-766; Z. Solomon, M. Mikulincer, & E. Avitzur, *Coping, Locus of Control, Social Support, and Combat-Related Posttraumatic Stress Disorder: A Prospective Study*, *JOURNAL OF PERSONALITY & SOCIAL PSYCHOLOGY* 55 (1988), at 279-85.

counseling, suggesting that adults with stronger social networks were more likely to “recover.”¹³⁵ Similarly, injured survivors who had registered with the Oklahoma State Health Commissioner noted that “turning to others for support was a nearly universal response.”¹³⁶

Ironically, though social support played a key reconstructive role in the wake of disaster, trauma symptoms can erode existing social support networks, promoting a decline in levels of social support. In the aftermath of a traumatic event, people are most likely to resort to methods of coping that are most familiar to them, and socially connected individuals who handle trauma differently (for example, through discussion or through withdrawal) are likely to feel unsupported, leading to conflict.¹³⁷ Participant 12 related how his supervisor chose an avoidance coping strategy out of fear that the office, which was the supervisor’s coping focus, would be shut down; this choice negatively affected his entire workplace, until he finally engineered a situation in which the supervisor would have to discuss the bombing and its effects.¹³⁸

¹³⁵ P. Tucker, B. Pfefferbaum, S.J. Nixon, & W. Dickson, *Predictors of Posttraumatic Stress Symptoms in Oklahoma City: Exposure, Social Support, Peritraumatic Response*, JOURNAL OF BEHAVIORAL HEALTH SERVICES AND RESEARCH 27, (2000), at 406-416.

¹³⁶ C.S. North, S.J. Nixon, S. Shariat, S. Mallonee, J.C. McMillen, E.L. Spitznagel, E.L., & E.M. Smith, *Psychiatric disorders among survivors of the Oklahoma City Bombing*, JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 282 (1999), at 759.

¹³⁷ Stovall-McClough & Cloitre, *supra* note 133, at 136.

¹³⁸ Participant 12 recalled,

The first three months or so, six months, um we weren’t allowed to talk about it at work, with my coworkers, my boss was in denial....she couldn’t accept that it happened....she was calling everybody in Washington the day after . . . she was on the phone as soon as she got [through] to Washington saying everything was just fine, there were no problems.... Well my coworkers never got any counseling or, or any help or anything, and um so I arranged for the police department to do a deprogramming session for all of us, and I tricked my boss into being there and she had to, first she really, you know, was angry and then she listened to the people and went through it with them and then um afterward she said it was the best thing, that

The groups that formed in the wake of the Oklahoma City bombing served many important functions for their members, chief of which were companionship, providing sites for narrative and normative construction, and organizing members and orienting them towards positive goals. Significantly, all of these functions were reconstructive, which is not surprising since the notion of reconstruction is implicit in “survivor” status. Survivors were “. . . forced to define chaotic events in uncommon and uncomfortable ways; and they have sought to restore order to disorder, driven by a great demiurge to found new organizations, and moved by a dialectic that yields distinct and unstable institutional forms.”¹³⁹

Strangely enough, membership in a group was often not a deliberate matter, but rather the result of family members and survivors hearing of meetings from friends and deciding to attend, or of group members reaching out to friends outside groups. As Rock remarks, “joining was often more a matter of contingency than of deliberate choice, of the bereaved having chance meetings at opportune times with others in lay referral networks.”¹⁴⁰ Another influential factor was the level of comfort individuals had with the group; as Participant 19 stated, “it was maybe a year or a year and a half before I felt that I wanted to get involved in some kind of group and then it’s like so which group do I want to get involved with and I kind of visited a couple and it was kinda, you know, I went to one here and thought ooh, they’re really mad, ooh, bad vibes here.”

Groups as Sources of Companionship

you know, she really needed it...and she was trying to find a positive way but it was still hard for her to talk about it, real hard, because it threatened her world.

¹³⁹ ROCK, *supra* note 112, at xiii.

¹⁴⁰ *Id.* at 29.

It is hardly novel to suggest that groups formed in the wake of a traumatic event provide companionship for members. Group bonding can be a powerful antidote to feelings of isolation or alienation: “As members listen to one another describe what happened to them and how they have reacted, the commonality of experiences becomes a powerful counter to the feeling of social and emotional isolation so widespread among those who have experienced traumatic events.”¹⁴¹

Companionship in group settings certainly helped to reduce participants’ feelings of isolation or alienation and abnormality. Participant 9 described how she and her coworkers together overcame a sense of being the “only one” to feel a certain way: “sometimes we would think that we were the only ones that were feeling certain ways and you just kinda mention it to somebody or you hear somebody mentioning it and you think, “Oh, I’m not the only one.” that’s how we, we were more of a family” At times the companionship function of the group was more of an attraction than the group goal; as Participant 21, a member of the memorial group, recalled, “in the beginning it wasn’t really for the memorial; it was so I could be around other people.” Even when the group goal was significant, participants still weighed companionship as being equal to the accomplishment of the goal; as Participant 22 remarked of the habeas group, “the other part was it was that peer support. We were together a lot. And shared a lot.”

Attending group meetings was the first time in which many participants took stock of their social network in the sense of realizing who else had survived the bombing,

¹⁴¹ Daniel S. Weiss, *Psychodynamic Group Treatment*, in *PSYCHOLOGICAL EFFECTS OF CATASTROPHIC DISASTERS: GROUP APPROACHES TO TREATMENT* 788 (Leon A. Schein et al. eds., 2006).

or how everyone else was faring physically and emotionally. The chance to obtain any information which would allow one to sketch out the contours of this radically altered world was welcome and alleviated some bases of worry. Participant 26 recalled this powerful “reunion,” where she learned that people she had feared dead were actually alive: “that’s where you saw who was alive. You know, some of the people that I thought were dead were alive.” Groups continued to be where survivors and family members kept tabs on each other; meetings where members “saw people.”

Participant 5 stated that Murrah Building Survivor Association meetings was where he saw “a lot of people,” and felt that this group was “more helpful because I got to visit with everybody, talk to them, see how they were doing.” Keeping apprised of others’ progress allowed members to regain a sense of control that helped them in their own memory work.

In addition to reconnecting with old friends and acquaintances, participants stated that group membership allowed them to connect with others who soon became dear. For family members, meeting new survivors who had known or worked with their murdered loved one was tremendously meaningful, allowing them to access others’ memories of their loved ones. Participant 28 recalled meeting Participant 21, and was thrilled to learn that she had known her murdered daughter and that the two could confirm for one another what type of person the daughter was: “[Participant 21] was the first person that was a survivor that I met, that knew [28’s daughter], you know, because all this time I was like, ‘[28’s daughter] had the best laugh. She was so fun.’ But [Participant 21], . . . she was the proof that she was like, ‘Oh yeah, [28’s daughter] was, you know, [28’s daughter] was fun. She was just a character. She just really was a character.’” From that

moment on, 28 began to seek out survivors who knew her daughter to gain more knowledge about her daughter's life: "survivors became crucial, so important to meet and find people that knew [28's daughter]: "And every time I went, you know, they'd say, 'Oh yeah, she always went down to the snack bar. Every day she went down and got Coke.' Really? 'Yes, yes.'"

28's reaction to meeting others who had known her daughter illustrates how group meetings allowed victims' families to mnemotically reconnect to their past and that of their loved ones, to recover something of what was lost. This is akin to Landsberg's concept of "prosthetic memory," processes of apprehending memories of unexperienced events through gathering such recollections at museums. Here, victims' families were able to have returned to them memories of the victims' everyday, routine lives that were mundane and overlooked, never perceived as "lost" until the victims' deaths. Now, memories of the victims were embedded in their relationships with coworkers, and had to be accessed through opening up relationships to those surviving coworkers. Coworkers also felt reconnected to deceased victims through forming relationships with their families. Thus, interpersonal relationships literally became social frameworks of memory, and victims' families undertook active searches to open such connections as part of their memory work. In addition, old groups (such as departments of coworkers in the Murrah Building) that were irrevocably altered on the morning of April 19th still had surviving social frameworks of memory. Though the devastating events of that morning altered group dynamics so forcefully that groups' existences were effectively terminated, it became important to preserve and re-form, not abandon, those former social frameworks—defining as outsiders new hires who joined the department to perform the

tasks of deceased victims. It was as if new groups that formed after the bombing absorbed the ghosts of many different groups that existed before the bombing, and membership became a way to access those ghosts for those who wished to be haunted.

After the bombing, survivors and family members just wanted to talk to other survivors or family members. Participant 26 stated that she could not stop talking about the bombing once she began to attend meetings of the Murrah Building Survivor's Association: "what we would do is sometimes we would go around the room and each person would tell their story. And that was healing for me. And I found that the more I talked about it, the more I wanted to talk about it. And I just couldn't shut up." Talking was a way of validating memory, and sharing memories allowed members to build new social frameworks of memory and therefore new structures of meaning.

Even informal group gatherings proved to be healing. Participant 29, whose sibling was a federal employee murdered in the Murrah Building, stated that in Thanksgiving of 1995 the family members of murdered law enforcement personnel were all brought to Miami for five days based on the idea of a U.S. Customs employee. 29 accompanied her parents, and recalled that the trip was a "turning point" for her father:

day by day all of a sudden this power kind of lifts from him and you can kind of see life coming back into him and we were I guess at the stadium and for the celebrity thing and they had like Julio Iglesias came in and got a picture of him kissing my mom and there's a picture of my dad standing in between the Miami Heat cheerleaders and there is a smile on his face... and it's sort of like that was a turning point for him. And even when we got home, there was a new life to him.

This illustrated that the "collective" in collective memory was multi-layered; groups provided myriad new opportunities for forming other, unrelated subgroups, producing a

web of interconnections that connected each Oklahoma City group to the others, and to the city community and national resources.

For some participants, the bonds of companionship offered so much that it seemed as if fellow group members became extended family. Sources of companionship could arise from physical ties to the bombing site or because members fulfilled family-like support roles. For Participant 11, group membership in the memorial group was family-like, since its proximity to the bombing location made it feel like home: “its kind of like going home [to the place where it happened] or something. It’s hard to describe it, but it’s really helped.” This is a testament to the crucial link between memory reconstruction and physical space. In fact, ties to physical space were implicit in the categorization of certain groups, such as surviving coworkers, defined by their relationship to the blast site. Participants 10 and 26 both stated that members of the memorial group functioned as family members; 26 remarked, “we felt like that was your family from the Murrah Building.”

This was especially important for members who did not have a base of support in their own families. Participant 29 felt that she had “lost” her family in the bombing since they did not talk about it: “I mean that just compounded this horrible hurt that you’re going through. I started to see my family fall apart we’re dealing with- first the death of someone you love and then second a terrorist attack and then your family starts to disintegrate.” For Participant 29, the habeas appeal became another outlet “that was their appeal for me to be able to talk to other people outside of our family”; this fellowship was ultimately more important to 29 than death penalty reform: “more than the political,

it was more the contact with making a new family since I had lost mine and kind of a way to get my head off what was going on with my own family.”

Unfortunately, several participants, both family members and survivors, described their families as being unable to understand the true impact of the bombing upon their lives. Often, family members expected survivors to be the same people they had been on the morning of April 19, 1995. This gave rise to tremendous emotional alienation as survivors faced loved ones’ expectations that nothing had changed. As Participant 21 described,

My family was not understanding what I was going through. . . . they didn’t realize that I am not the same person. . . . my husband was the type who wanted to, just pretend like this didn’t happen and we’ll be fine. And I couldn’t, I had to face what happened . . . And only place I could get that was to go and be around other survivors and families . . .

Several survivors and victims’ family members described how the bombing did not seem to exist for their families, rendering it impossible to talk to them about the event and its aftermath. This may suggest that family members of survivors and victims who avoided discourse about the bombing avoided forming social frameworks of memory concerning the event *or* activating existing social frameworks by referring to the event because accessing such frameworks was perceived as too painful an act *either* for these family members or for survivors themselves. Numerous participants were offended when family members did not call on the anniversary of the bombing. Participant 28, for instance, found this offensive:

Then on April 19th, did I get a call from any of them? None. I didn’t get a call from any of my family. I mean, of course [names], my son and daughter-in-law, but my sisters . . . I mean I get people at church that are, you know, people I hardly even know, that are, “I was thinking about you this weekend. How are you doing?” But I don’t

even get a phone call or anything from my family. And then that's been the way for eleven years. And not one of them has asked me about the execution. They haven't asked me about the trials, my testimony. You know, it's like they don't want to know it, they don't want to hear it. They just -- like it didn't happen. But it did....you know I would think that I could talk with my family.

28 stated that her family likely did not know that talking about the bombing was healing.

Maybe they don't want me to get upset. Maybe they think I'll be talking to them just like to you. But they just think you know they don't want to upset me. But they don't know that that's what's healing. And -- and you want -- you know, when you're healing you should -- your family should be helpful when you're healing. But I don't -- I don't know, it's weird. It's a weird feeling to know that and --and it's hurtful. It's hurtful to me to have them not, you know, ask, after everything I mean.

As a result, several participants did not talk to their families about the bombing.

Participant 7, for instance, refrained from sharing her experiences with the family out of a perceived need to protect them: "why would you ever inflict that pain on someone you love that dearly and the majority of the things I was thinking would have petrified 'em."

Participant 9 also shared more stories with coworkers than with family because they "understood" in a way that family members could not: "they understood but they didn't go through so my co-workers that were there went through it so we had like a bond.

Whereas my family, I had to explain it to them. It was better at work."

These remarks about the ways in which members of groups exterior to the family—coworkers or groups that formed in response to the Oklahoma City bombing—underscored the notion that the boundaries of "family" comprised those who shared the same social frameworks of memory, a concept more elastic than strictures of blood or legal kinship. In addition, speaking of groups as "families" also implicated the family members of survivors and victims who chose not to participate in groups, a choice which

forced many participants to seek social support from group membership. In the case of victims' family members, for instance, some victims' family members formed new social frameworks around the bombing site while other members of the same family did not; the mother of a bombing victim felt comfortable and needed to visit the bombing site whereas the victim's aunt wanted to avoid such a visit at all cost. Clearly, members of a family need not share a willingness to form social frameworks of memory around a particular issue or event. However, as participants' remarks demonstrated, when family members did not share social frameworks, other sources of social support outside the family became crucial.

The timing at which the companionship function of post-bombing groups was most beneficial varied. Some participants found it invaluable to talk to people from the inception of group membership. Others found it more helpful years after becoming involved. Thus, the point at which survivors and family members transitioned varied; some worked through individual and collective memory simultaneously from early on, and some worked on individual memory first and then later focused on collective memory processes. Participant 6, a survivor, stated that her own healing process needed to be complete before associations with others could be truly meaningful: "Eventually I hooked up with some survivors that probably by the third year I was getting tremendous help from. Yet, in the first two years I was just dealing with guilt.... as I got to know some of the survivors, [Participant 21] for example, was one of the survivors that I really got a lot of help from because we could say anything to each other, but we didn't really realize that until about a year or two."

The importance of being able to speak to other group members some time after the bombing when others had “moved on” from the tragedy may have been especially valuable. Oklahoma City groups retained the bombing as the nucleus of their social frameworks of memory long past the time when it was publicly eclipsed by other events. Participant 6 stated that she and others felt as if they had to conceal their own feelings because of the time had passed, and that outside of groups “You had to be real careful because after six months a lot of people felt like people shouldn’t be talking – that you should’ve gotten over it so a lot of us had to hide our feelings.” Some felt that groups beyond those in Oklahoma City were helpful; these groups had formed social frameworks of memory oriented toward similar concerns associated with loss and recovery, and were broadly oriented towards the reconstruction of meaning after the death of a loved one, even though specific goals pursued by the group may have differed from those chosen by Oklahoma City groups. Participant 8 was a member of an online group: ““I think people outside of Oklahoma were more sympathetic. You know the community here after the first couple years I think you know unless they lost someone it was like okay enough we’re tired of it....Um-hmm, cause it was in the media every day for probably at least the first two years.” For 8, it also helped to compare the manner in which her best friend died to other, more prolonged ways of dying. Similarly, Participant 17 also felt that joining homicide survivor groups outside of Oklahoma City was helpful, because it showed that other victims’ family members besides 17 did not support the death penalty: “that organization helps me out a lot because I, my belief was that I was opposed to the death penalty and it was a good feeling to find out that there's really thousands of people out there that are murder victim's family members that believe just like I do.”

The sharing of stories and extension of insider status to others continued years after the bombing. As time passed the social frameworks of collective memory grew flexible enough to allow in those who became affiliated with the bombing at a much later date. As late as five years after the bombing, for instance, park rangers became part of the memorial group “family” when the memorial opened and was staffed partly through National Park Service personnel. Participant 6, who went through the training program with the park rangers, stated that the rangers were accepted after getting to know the volunteer survivors and family members not only through hours of service but also by sharing stories:

So we went through training with those rangers and we became like a family because, once again, at that point which was at four years for a new group of people we were asked to tell our story. . . . And as the rangers sat there and listened to us and saw the tears, saw the tears also softened my four years of healing, they became close to us. We volunteered weekly with them. . . . We had private parties where the rangers and the volunteers got together. So they watched us really grow and heal. By the fifth anniversary where we had that big celebration they were like brothers and sisters to us, so they became family.

In summary, group meetings fulfilled a profound need for companionship among both family members and survivors, particularly among those lacking support from friends and family.

Groups as Sites of Memory

In addition to being sources of companionship and camaraderie, groups that formed in the wake of the Oklahoma City bombing were also “storying” sites where narratives of the bombing and of the identities of its perpetrators were continually constructed and revised. Narrative processes are key for reconstruction. In his essay

“Remembering, Repeating and Working Through,” Freud discusses the “acting out” phenomenon, where a patient is compelled to attempt to reenact an old experience by unconsciously and repetitiously placing themselves into a particular aggressive situation that could harm either themselves or others. Freud contends that this compulsion can be cured “transference,” which establishes an “intermediate realm between illness and real life through which the transition from the one to the other is made” that consists “to a very large extent of narrative activity: the analysands tell of their past, of their present life outside the analysis, of their life within the analysis....”¹⁴² According to Connerton, “later writers... have pointed to its central importance” in uncovering and eradicating efforts to terminate efforts to maintain narrative discontinuity.¹⁴³ This close link between narrative acts of storytelling and reconstruction and recovery is also present in theories of psychodynamic group therapy for trauma survivors, since it is narrative behavior, the giving up of a traumatic tale to an empathic ear, and not other comfort-giving behaviors, that are most healing for group members.¹⁴⁴ Inevitably, then, sharing stories works to fulfill both companionship and sensemaking functions. As Connerton states,

thus we may say, more generally, that we all come to know each other by asking for accounts, by giving accounts, by believing or disbelieving stories about each other's pasts and identities. In successfully identifying and understanding what someone else is doing we set a particular event or episode or way of behaving in the context of a number of narrative histories.... the narrative of one life is part of an interconnecting set of narratives; it is embedded in the story of those groups from which individuals derive their identity.¹⁴⁵

¹⁴² PAUL CONNERTON, *HOW SOCIETIES REMEMBER* 26 (1989).

¹⁴³ *Id.* at 26

¹⁴⁴ Weiss, *supra* note 141, at 797.

¹⁴⁵ CONNERTON, *supra* note 142, at 21.

Storytelling is a “core element” of group interventions for traumatic grief since it is a “key developmental milestone in the achievement of selfhood,” and thus is logically an integral reconstructive behavior.¹⁴⁶ Significantly, narrating grief is culturally a collective experience; “conventions which are used to impose a discursive form upon grief and bring it in to the public realm” include “the great collective ceremonies of the funeral and memorial service with their special language and rites, and . . . the lesser vernacular rituals of poems, shrines, pilgrimages, photographs, flowers, and candles.”¹⁴⁷

In the wake of the Oklahoma City bombing, grief provided the impetus to talk—about the bombing, about murdered loved ones—and through talk came catharsis. As Participant 29, a family member, recalled, “the interviews like what I’m doing now is very cathartic. For me this is the therapy that I need. I can tell people about [29’s murdered sibling]. I can talk about what happened to me.” There was an imperative for survivors and family members not only to see, interact, and form relationships with one another, but to share their stories with one another. As Participant 21 stated, “in the beginning I was going to, I was very involved in the memorial. And so I would go to the weekly meetings and I shared my stories with -- various places even at churches and things and – survivors, we would get together and we would share stories.” Participants stated that one of the primary benefits of group membership was the chance to share experiences with one another. More specifically, group meetings became a forum for people to talk about the bombing; as Participant 5 said, “That’s where everybody talked about where they were... Well they first started forming the group that’s when everybody

¹⁴⁶ Weiss, *supra* note 141, at 794. See also D.N. STERN, *THE INTERPERSONAL WORLD OF THE INFANT: A VIEW FROM PSYCHOANALYSIS AND DEVELOPMENTAL PSYCHOLOGY* (1985).

¹⁴⁷ ROCK, *supra* note 112, at 55.

would go and start talking about where they were and their problems.” Though it was a drive to find others who could understand the physical and emotional complications of the bombing that prompted individuals to share stories and experiences with one another, additional foundations of understanding were created after a group had “jelled”—when group members shared social frameworks of memory. At this point, the act of sharing meaning (and memory) was not necessarily oral. Participant 22 stated, “And, uh, when you’re in a group like that you know you don’t have to explain if you just start crying they understand. They, if you do something stupid which we all did, you know, your brain doesn’t work. You just, it’s hard to function, but they got it and you knew they did.”

The urge to meet with one another was so strong that individuals did not wish to continue to attend groups not oriented around dialogic behavior. Participant 23, one of the founders of the Murrah Building Survivors Organization and the group’s first President, stated that group meetings provided an atmosphere in which people could talk. This ultimately imperiled the mission that 23 envisioned for the organization:

when ah I tried to guide to the organization to become a service organization . . . I found that to be almost impossible because people need to verbalize and unload and talk about their bombing experiences was the most important thing they wanted to talk about the people who needed to talk, maybe they couldn't talk at home. They'd come to the meeting and that's all they wanted to talk about, and ah that began to be a divider rather than a ah, than something to bring the group together. And since I couldn't, didn't, wasn't able to and neither was the three presidents that followed me, or the organization....the presidents that followed me to try to organize these meetings could not, they were not any more effective than I was to get people to ah catch the idea of the organization.

Thus, group members likely prioritized an active focus on the creation of social frameworks of memory and on the maintenance of these frameworks.

As one of the people who attended briefly and then ceased to attend, Participant 12 was angry that Paul Heath, the founder of the Murrah Building Survivor's Association, did not "allow" survivors to talk to one another on the grounds that it would have hampered recovery: "but then stopping us and we could've helped each other, we, we, we couldn't, we could've really relied on each other." Participant 21 echoed this sentiment:

In the very beginning there was a group of us that met because we wanted to come together, come together. I mean we all worked in this Federal Building We saw each other in the snack bars and credit union or the elevators. And when we went to this meeting; it started out very good and um Dr. Heath wanted to set up a big place where we could just all meet And he started giving ideals of what he wanted to do. And there were a couple of us that said, we don't want to do all that. We just want to come to one big room and see each other and hug . . . We just want to see each other. Well he still set this all up and created all this chaos and it wasn't what we needed at that time. It was too early. We just want to see each other.

As a process of forming social frameworks of memory, sharing stories created a set of normative expectations or assumptions as to who the group was and what it stood for. Research has shown that simplified evaluative moral schemas developed by groups of homicide survivors very soon after losing a loved one to murder become incorporated into homicide survivor groups and perpetuated within group culture: "the new dualisms of the bereaved were continually to be reinforced and celebrated in the narrative structures of activist groups."¹⁴⁸ As Rock comments with respect to pervasive themes such as the alienation, loss of control, and anger processes identified earlier, "the sheer

¹⁴⁸ *Id.* at 103.

strength and pervasiveness of those themes make it apparent that there is a firm interpretive logic shared by activist survivors” that “stems from a traumatic confrontation with violent death, but also flows from the interpretations that come to be shaped and ratified by survivors in their subsequent talk with one another.”¹⁴⁹

The need to find others with similar experiences is so important that it is one of the chief purposes of group therapy for traumatic grief.¹⁵⁰ As Davies et al notes, “the social milieu in group-based trauma treatment provides a unique opportunity for members to learn from one another, which often results in awareness that they are not alone in their struggles -- a phenomenon known as *universality*.”¹⁵¹ It is not surprising in view of recent trauma research that one of participants’ primary requirements for sharing stories with others in the time period immediately following the bombing was similarity of loss. This illustrates that reaching out to others with a shared orientation to a traumatic event may have been the first foray into processes of collective memory formation and that these first steps must be taken before one could fully engage with the totality of possible orientations to that traumatic event. One’s orientation to others with different experiences of loss, then, occurred in stages, first empathizing with the experiences of “others” whose experiences of loss were most similar before turning to those with more disparate experiences.

Participants wanted to share experiences with those who had endured a comparable experience; as Participant 11 stated, “[I talked about bombing experiences]

¹⁴⁹ *Id.* at 30.

¹⁵⁰ Shear et al., *supra* note 114, at 326.

¹⁵¹ D. Rob Davies, Gary M. Burlingame, & Christopher M. Layne, *Integrating Small-Group Process Principles into Trauma-Focused Group Psychotherapy: What Should a Group Trauma Therapist Know?*, in *PSYCHOLOGICAL EFFECTS OF CATASTROPHIC DISASTERS: GROUP APPROACHES TO TREATMENT* 393 (Leon A. Schein et al. eds., 2006).

mainly with my boss because we have both shared the same experience and everything and, and I think -- well right, first I don't think that some of the other people really understood, you know, what had happened or what was going on." Unfortunately, it was not always possible for participants to share stories with other individuals with whom they had experienced the bombing; Participant 18, for instance, was disappointed that 18 could not exchange experiences with a woman with whom 18 had survived the bombing because she suffered from mental trauma. In addition, sharing experiences with others with different types of bombing experiences was difficult. Participant 12, a critically injured survivor from the Journal Record Building, related the positives and negatives of sharing stories with non-critically injured survivors:

Some were in the Federal building, some were in the Southwestern Bell building, some were in the apartments, um, they all had unique experiences and . . . I always went last, I always hated to say anything because they would all either start crying or cringe when they'd hear about my week or what was going on with me . . .

Sharing stories with others with different experiences of loss very soon after the bombing may actually have been harmful. Participant 24 described a retreat held soon after the bombing that was oriented around storytelling but took an "unhealthy" approach:

Well, that just didn't work . . . it was too soon, there were too many emotions and quite honestly, too many jealousies, animosities and other kinds of things because of people who were not injured, or not there that day or who responded from the other building across the street, there were very different views about everything that happened .

Injured survivors found it necessary to be careful when sharing stories in the presence of noninjured survivors. Participant 24 noted that this was particularly problematic for uninjured survivors.

The benefits of exchanging stories is often discussed in abstract terms as “healing”; Participant 28 even explicitly described talking through trauma as the only form of counseling she had. Participant 27 stated that it was the act of talking that held the potential to heal: “I think that’s where a lot of the healing came in too... Yes, the talking and the...all the commons threads that you know, you would find.” Collective memory reconstruction was not only beneficial in terms of mental health, but held the potential for a more physical experience of release as well. Participant 21 stated that her fellow group members were a “support base” and that group participation was “cathartic.”

One reason why exchanging stories was perceived as therapeutic may be that it helped participants to become more aware of the impact of one’s physical condition upon mental and emotional states. Even the physical act of speaking itself could result in emotional healing. Telling one’s story makes one more *aware* of trauma; Participant 6 recalled one moment where she unexpectedly broke down:

In the first families and survivors meetings that I went to and they had everybody around tables and they asked you to talk about something. I thought I was there to listen and facilitate, right, but as they came around the table to me well I started talking, I started crying just like I did today and realized I had a whole lot inside that was going to need to be taken care of.

Storytelling, then, renders apparent internal conflicts with a traumatic event:

... there is a typically a key point in the story where each individual's composure changes, the ability to proceed is disrupted, and, typically, crying occurs. Remarkably, these moments do not typically occur at the moment in the story where the most “objectively” horrific or distressing aspect of the event is told. Rather, such moments typically reflect the difficulty the individual is having in coming to terms with

the way the events unfolded. At these moments, the conflict is most clearly presented.¹⁵²

In recalling one such moment of conflict, Participant 28 discusses how talking about her daughter before other members of the memorial group was important to her recovery. At the memorial meeting, 28, who was quiet and shy, had to stand up and speak, and could not at first say her daughter's name, but after talking more and more about her daughter, her emotional state improved:

And they would just say, 'What are you feeling?' You know, or 'What would you want someone to know that you're feeling?' And so . . . each time we met, a different person would stand up and talk, be the representative of that table. . . . it was my turn. I had to get up and I got my name and I couldn't say [28's daughter's] name. I just, you know, the tears just began to just pour. And I finally got out [28's daughter's] name and . . . and so I don't even remember what we talked about at that time. I was just trying to get through that first time. And so the next time I had to do it, I was able to say [28's daughter's name] and then I began to cry again. But each time I went you know, I would get a little bit better . . .

Other participants commented that they found telling stories helped in adapting to the traumatic effects of the bombing; as Participant 27 noted, "you would talk and talk and talk that first year and tell it over and over and over and over again. And so I think naturally, it becomes . . . you sort of become desensitized to it, to what you went through in a way."

For group members, it was at times difficult to remember that both they and their groups were also part of a larger world in which not everyone was affected by the bombing. As time wore on, members were forced to confront these changes; for

¹⁵² Weiss, *supra* note 141, at 794. See also C. Milbrath, M. Bond, S. Cooper, H.J. Znoj, M.J. Horowitz, and J.C. Perry, *Sequential Consequences of Therapists' Interventions*, JOURNAL OF PSYCHOTHERAPY PRACTICE & RESEARCH 8 (1999), at 40-54; C.H. Stinson, C. Milbrath, & M.J. Horowitz, *Dysfluency and Topic Orientation in Bereaved Individuals: Bridging Individual and Group Studies*, JOURNAL OF CONSULTING & CLINICAL PSYCHOLOGY, 63 (1995), at 37-45.

instance, survivors found that new coworkers replaced those murdered in the bombing, until those who had “been there” on April 19, 1995 were in the minority. By this time, survivors had jelled into groups of their own accord, and did not often admit others into the circle. Group identity was preserved despite the presence of these uninvolved others; Participant 2 recalled participating in a coworker “bombing group” in her office:

[we] had a “bombing group” of employees...It was very cliquish for awhile. The new people didn't understand. We didn't expect them to understand. And uh, the survivors were the majority for awhile but it didn't last very long. It was only a year or two because they replaced all the people that were killed. . . . But we still, you know, had things together. We always had a memorial service every anniversary in the office. . .

In summary, then, groups that formed in the wake of the Oklahoma City bombing were “storying” sites where narratives of the bombing and of the identities of its perpetrators were continually constructed. These narrative processes were responsible for the building and maintenance of social frameworks of memory that helped reconcile people to the bombing and its aftermath.

Groups as Goal Setters

In the Oklahoma City context, groups often worked together to build some memorial product constructed in accordance with the group's memorial orientation—its social frameworks of memory. Of necessity, these efforts embedded or fixed these social frameworks within the memorial product's design and through the adoption of certain constructive priorities and visions. For example, the memorial group vowed to choose a memorial design that was inclusive of all loss experiences and not to privilege one site or orientation to memory, such as the perspective of victims' family members or the murder of the children in the America's Kids daycare center in the Murrah Building. Thus, this

priority, originating in the task force's social frameworks of memory, was embodied in the mission statement which provided the foundation for the memorialization process, and which called for an informed and intentional inclusivity.

In addition to facilitating the sharing of grieving stories and encouraging others to unify despite differences in experience and opinion, accomplishing a goal such as the passage of habeas legislation or the building of the memorial provided an outlet for anger-motivated activity. Family members of victims killed in other instances of terrorism have used anger as a unifying force.¹⁵³ When united, survivors and family members were a potent advocacy force, as have been families of homicide victims: "they are unusually driven and unusually harrowed, and policy-makers, practitioners, and politicians have found it impracticable to deny them an audience."¹⁵⁴ Some survivors and family members directed their intense emotional passions into advocacy to such an extent that they became career advocates, and are still carrying advocacy work eleven years after the bombing. Participant 17, for example, still serves on the board of directors for the memorial, as well as volunteering at the Oklahoma City Memorial Marathon each year and other fundraisers. In addition, 17 travels nationally and internationally to speak out against the death penalty and serves both on the board of Crime Victims for a Just Society in Mason, Michigan, a group primarily funded by Michigan State University, and on the board of the National Association to Abolish the Death Penalty (NDACP).

Frequently, active involvement in group teamwork—the act of communally accomplishing goals—was also described as reconstructive and therapeutic. In addition

¹⁵³ ROCK, *supra* note 112, at 47.

¹⁵⁴ *Id.* at xiii.

to being vocationally interested in the memorial as a project, Participant 1 also found the building process “healing”: “. . . my office being right across the street from it and watching it go up, it was like, you know, a little pet project of mine kinda, you know, I was, uh, that, that was probably as much healing as anything watching the memorial be built . . .” Similarly, Participant 23 was thankful for opportunities for group participation since they enabled 23 to channel PTSD symptoms such as hypervigilance into positive activities. The therapeutic benefits of communal activity were the byproduct of staying active and not giving in to despair; for Participant 22 also stated that participation in the memorial task force and habeas group was “healing” because it satisfied the need to “do something.” This need to “do something” could evolve to the point where participants literally wore themselves out. Participant 29, another intensely involved family member, stated that the price of intense action—exhaustion—was also its primary benefit:

I think for me, um, it was [healing]. It was that partly it was having to do something, um, and the other part was having to keep myself busy night and day so that I was just so exhausted that I just could kinda go home and fall into bed. You didn’t really just sit and think about it. I think that was part of my motivation too.

Those who were active retained a focus, illustrating that goal-setting contributed purpose and direction; Participant 21 noted that “in those initial stages [it was the memorial group that] that gave me kind of a purpose and the support.” Significantly, the function of groups as goal setters also overlapped with the function of groups as sites of narrative reconstruction; sometimes this involvement in group tasks explicitly involved storytelling. For 26, volunteering at the memorial provided an outlet to talk about the effect of the bombing on the Oklahoma City community:

I'd get down there [to the memorial] and I would have breath of energy or you know, a sudden increase in energy. I felt like if I go in there, I felt like a new person. And I talked to people. That's where I went to talk to, talk more about it. I didn't tell my experience. I told the story of the Murrah Building and the people that worked in there. The life that was once there on the inside.

Group goals were seen by group members as accomplishments that were worthy in their own right. Participant 6 described the memorial both as a truth-telling mechanism and as a site that was symbolic of the culture of Oklahoma City:

The memorial was so important to me. I wanted to be sure that the truth was told and by that time we were already hearing people that would come up and claim what all had happened that day and they would give facts that I knew weren't true and that drives library people nuts. You know be accurate whatever the truth is, but I also wanted people coming from other places who had been so wonderful to us. I wanted them to experience a warm welcome and to feel the warmth of the good part of Oklahoma City even while they were visiting the memorial so that was important to me. I felt like I needed to pay back.

Participant 21 described the memorial as a monument to a creative use of destructive forces and to the healing process itself:

Well we, we tell people that you know when you see the memorial I mean, I am proud of it because its like, look what we do with our pain and our anger we could have done so much destruction. And we learned to listen to each other, to compromise and I said -- it's not just the physical memorial but it was a healing process. It really did so much for so many of us.

In addition, group members were able to see how collective memory formation overlapped with individual memory construction by ascertaining that particular group goals both aligned with members' unique areas of focus after the bombing and fulfilled members' personal needs for certain kinds of activity. Sometimes members' immediate needs were directly fulfilled by the group; Participant 12, a critically injured survivor, was in danger of being fired from his job because of the extensive leave time required by

a succession of multiple surgeries and periods of recovery, and the habeas group helped him to keep his job:

I liked the group in the attorney general's office, and there were a couple of times when I needed their help, and they did help me and that was like um I don't think it was in the first year, probably in the second or third year. And they actually did do some things that helped....[this group] was the only one I had any respect for.

Occasionally group members took on additional advocacy responsibilities within the context of achieving a group goal. Participant 24, an injured survivor who had also been the Assistant Building Manager for the Murrah Building at the time of the bombing and who knew the building and its occupants intimately, assumed the mantle of survivor advocate to ensure that survivors were accorded an appropriate place in the memorialization process, and to continually put out the message that survivors had been injured and traumatized in addition to family members:

Well, I always felt like that I spoke for those who were in the building and survived and those who were, maybe not at work that day, who worked there and as it turned out even those who were in the other buildings outside of the Murrah building um keeping in mind that there were people killed in other buildings besides the Murrah building and that there were many, many injuries in a delineated area around the Murrah building itself. So, I felt like that it was my purpose because of my connection with the building, my connection with the people, most of the survivors for that matter. I didn't really know all those -- the other people in those other buildings but I felt like because of that connection and because of my position with GSA at the time to represent the building and the people and the ACC that kind of thing that I sort of naturally became that survivor representative if not -- you know, because I advocated for the survivors.

The products of collective memory construction were a physical panacea for group members; accomplishing group goals also helped group members once more attain

a sense of control and overcome helplessness. Participant 19 felt empowered by the habeas group's successful lobbying for the passage of habeas reform:

that was a real interesting thing too because, again, part of it was we've had tremendous loss of control, what do you do in terms of having, being able to regain control and again, so part of that was the um seeing some of the laws change all the way from not only the death penalty reform...

Significantly, different groups fulfilled different functions. Participant 28, a member of both the memorial task force and the habeas group, stated the memorial group allowed her to remember her daughter and her unborn grandchild:

In the...in the Memorial Group, I was remembering [28's daughter]. And I was remembering, making sure her baby was not forgotten. And I got really wrapped up in that too, because you had this fear that they would be forgotten. I mean I'm sure you've experienced that. And being so close to the event, you don't know that this whole world is looking. You know, that it's not just you. It's the whole...everyone was seeing it and how big it was. I didn't...you know, you don't...I didn't. I never felt that enormity. I just knew that my daughter was dead and I didn't want her forgotten. And you know you got to cemeteries and they're, "Oh, I haven't been here since she died. I don't even have any flowers. I didn't want that to happen with [28's daughter]. And so that was my function with the Memorial.

By contrast, the habeas group was not about remembering 28's daughter but achieving justice:

With the Habeas, with the trial group, that was the whole...the whole justice, you know, making sure that who did this, was punished and the right judgment, the right justice, whatever you know. And I wasn't...I even you know, and I even said and I meant it. You know, I don't want just anyone executed or found guilty. I don't want just anyone. I want the person who did it. I want the person who killed my daughter to have to pay for what he did. You know, if they can prove it wasn't him, then it wasn't him. So we'll find who it is and we'll get them. It wasn't I just wanted someone. That wasn't it. I wanted the right person. And I felt like we had the right person. And you know, I was able to see enough evidence and I wrote down all everyday I guess."

Group members themselves remained intensely proud of the accomplishment of group goals. Participant 1 stated that the passage of the AEDPA in 1996 was “a miracle in most of our eyes,” and also recalled that being part of the memorial process was “quite an honor.” Participant 24, who became seen as a survivor ‘advocate’ in the memorial group and in other contexts because he insisted on the appropriate inclusion of survivors within post-bombing recovery efforts, also felt “honored” to take an active part in the memorialization process: “being a part of it actually helped because I was helped, I was very honored to be able to represent kind of as the survivor advocate, for, on the, on the memorial panels and everything for those survivors that, you know that I knew for so many years.” Participant 22, who was present on the stage with one other when President Clinton signed the AEPDA into law, stated of that day, “What an amazing day that was. It was incredible to see those initials going on that piece of paper and know....”

Participant 24 described the memorial as a miraculous accomplishment as well: “You know whether it’s gonna be a stone in the ground or um you know, and obviously I don’t know that any of us really thought it would end up being what it is today. That, that’s the miracle about the whole process.” Participant 24 stated that group members knew very early on that the memorial was going to be a very unique and special achievement:

But we knew very early on that there was, there was -- because of, of what we call the Oklahoma standard and that’s the response that people all over the nation and the world literally gave to Oklahoma City that there was something there that we had never dealt with before, that we felt like would be necessary and that would be a memorial to those who were killed, those who survived and the rest would be you know, those who were changed.

As beneficial as the accomplishment of a collective goal was, there came a time when some members felt that involvement was no longer necessary. For some, moving forward created the incentive to cease to become profoundly involved. As 27 stated,

after about the fifth anniversary, when they opened the Memorial, and the Memorial got off and running, I sort of didn't feel like it was as therapeutic anymore. I just wasn't...and by then I mean we were trying to have a baby and we doing some other things and going to school and all that stuff. So it didn't become, you know, as necessary for me to be involved in any group at that point.

This point came at around the same time for Participant 25, who ceased to become involved because the attendance at the memorial had declined, and volunteering could no longer keep 25 very busy:

About a year and a half ago they...my problem is I've got to keep my mind and my body occupied. And during that period of time it was, the amount of people coming to the Memorial at that time was not that heavy. And so it got me into trouble. So that's when I quit that deal.

Finally, other participants terminated their involvement when their idealistic conceptions of what the memorial stood for conflicted with its other political and profit-making potentials. For Participant 28, a family member who quit a former job to become the gift shop manager at the Memorial, it was best to return to her former job after seeing how the memorial ran as a business in addition to a site of memory, and particularly when she felt in the middle of contests between the Memorial Foundation and the Institute for the Prevention of Terrorism:

And it was so good until...until I started seeing the...the business endeavor. And I know what has to be there and I don't know if this should be in there....But there were things that were said and done that as a family member I did not need to be doing. I didn't need to hear it. I didn't need to be there you know....I had quit my job and I went to work there. And I probably would have stayed but just the...it was

just too much. I couldn't handle being in the middle, is exactly what I felt like. I felt like I was being pulled between all these groups and everyone wanting to know, "What do you know? What do you know?"

Here, Participant 28 commented a process that Huyssen terms the "new and public politicization of the museum," through which the museum "has been sucked into the maelstrom of modernization: museum shows are managed and advertised as major spectacles with calculable benefits for sponsors, organizers and city budgets, and the claim to fame of any major metropolis will depend considerably on the attractiveness of its museal sites."¹⁵⁵ Thus, for 28, these political and commercial concerns interfered with 28's ideal of the memorial as a reconstructive project and therefore threatened to violate the goal of the memorial as constructed with the task force's social frameworks of collective memory, prompting her to terminate her involvement to retain a unsullied impression of the memorial as a purely memorial entity. For 28, the museum was a memorial, not a spectacular exhibit space or an entity to capture tourist interest within Oklahoma City.

Electing Not to Join Groups and Coping With Group Tensions

Not all participants became involved in groups. The choice not to become involved with a group was precipitated by discomfort or dislike toward the social framework under construction in a particular group. For some, it was not desirable to be around others who were not at a compatible healing point in recovery or reconstruction; exposure to the memory practices of such people carried "risk." For Participant 3, for instance, there was no benefit but only danger in being around people who were not at the

¹⁵⁵ HUYSEN, *supra* note 3, at 20-21.

same stage in healing: “But I couldn’t risk being around people who were still hurting so much, and so I stayed away from the large group.”

Discomfort with a particular group’s social framework was felt by most participants, who tried to attend various group meetings until they found a framework that accommodated their needs or ceased their joining behaviors upon feeling that they did not belong. Merely making a physical effort to attend a group meeting was an assertion of identity, of a right to be present and of a sense of belonging, even if members were making an initial foray into the group to ascertain its dynamics and orientation. Both family members and survivors felt alienated if their relationship to deceased victims or to the bombing event was atypical; Participant 6 remarked, “I felt like I didn’t belong anywhere because I hadn’t lost a family member and I could not call myself a survivor because I wasn’t in the Murrah Building.” Similarly, Participant 14, whose ex-spouse was murdered in the bombing, “just didn’t feel comfortable” at early memorial meetings because her story earned an “oh” reaction, and felt sure that this alienation was due to the fact that it was her former spouse that was killed.

There was also little incentive to join if one’s need for constructing a social framework were being met elsewhere. Participant 27 also stated that because she had tremendous support from family and from church, she felt no need to attend a group at first because she felt that her survivor status and other members’ anger were both alienating:

I had family, a lot of family and friends and my husband very supportive and I could talk to them any time. So I didn’t feel the need to go and publicly... And the people were so angry still. . . . And it just felt...it didn’t feel like a good time for me And you were

with people who had lost people. So you sort of felt awkward about, you know, they were still angry.

Thus, participants were not likely to join groups if they had strong social support networks elsewhere, particularly if they felt awkward or out of place through confrontations with others in group meetings.

Finally, as effective as groups were in cultivating a sense of companionship, certain group dynamics of the memorial task force—interpersonal frictions generated by bringing together individuals with varying political opinions and radically different experiences of loss from the bombing—also were very difficult to work through in the first months following the bombing. Although overcoming these interpersonal challenges was one of the processes that most tightly knit group members together at a later point, at first they isolated members in different categories, temporarily preventing them from finding a common cause. It was as if one's orientation to the bombing positioned one in a unique memory-making perspective to the bombing, which had repercussions for the reconstruction of both individual and collective memory. The very lack of social frameworks of memory meant that social insecurity and its symptomatic jockeying for memorial power and prestige was natural. Some time had to pass before survivors or victims' family members could negotiate through the challenges of their own orientations to the point where it was possible to empathically understand and validate other perspectives. It was commonly assumed that one's perspective to the bombing carried an implicit valuation in terms of one's stake in making memory. Those who had endured what was perceived to be the greatest loss—the death of a family member—were thought to deserve a louder voice in constructing the collective memory of the bombing

than survivors who actually had a much closer physical proximity to the blast. In this way, various loss groups attempted to make memorial claims-making into an exclusive privilege.

Profound sources of interpersonal tension existed between survivors of the bombing and family members whose relatives had been murdered in the explosion, between injured survivors and apparently uninjured survivors who experienced survivors' guilt and other forms of mental trauma, and between those who supported the death penalty and those who opposed it.¹⁵⁶

Survivors' geographic proximity to ground zero at the time of the bombing was also a source of tensions; as Participant 24 stated, "some people would look at you like, well who are you and why are you here. You know you were two blocks away and where—I was right there . . ."

For survivors, memorial group meetings assumed a hostile air as family members who resented the presence of the living sought to limit or altogether terminate their participation. Participant 1 recollected that these tensions rose to the fore when the survivors and family members met together during memorial group meetings: "there was a, *strong* feelings among family members who had lost someone, in the bombing, uh . . .

¹⁵⁶ Participant 23 observed that

it became very apparent to me early on that people who are the families of victim members who died as a result of the bombing did not feel that survivors ah especially early on, had any right to think about, talk about or in anyway be involved in decision making processes, where we were collectively gathered together. . . . And I, very early, I learned that if you were an injured survivor, they had a perspective and the more injured they were, ah the more intense the feelings ah that, that sort of tried to separate ah people's involvement ah in a collective way in meetings. If you were not an injured survivor, they wondered why you were even willing to open your mouth . . .

had a lot of bad feeling toward people who survived the bombing, And um the family members were very abusive in a lot of cases toward survivors . . . Verbally [abusive], . . . Very angry, quite often said you don't belong in the same room with us." Participant 7 recalled being told that "you don't have a right to be here, you didn't die, you don't have a right to be here, you don't have a right to say anything." Other participants, such as Participant 15, experienced outright rejection from family members immediately after the family members learned she was a survivor:

this one mother who was carrying, this mother, I don't know what her name is but I know whose mother she was and she walked up and, "Oh, who was your family? Who did you lose?" I go, "I didn't lose anyone. I'm a survivor." She just immediately turns around and just walks off.

Family members felt as if survivors did not understand the pain of death or loss, privileging the death of a loved one over the physical and or emotional trauma of survivorship. This is indicative of the "trauma membrane" phenomenon, which is "characterized by the passive or active exclusion of people who are perceived not to have experienced the same, or similar, dramatic events."¹⁵⁷ Thus, hierarchies of bereavement evolve.¹⁵⁸ One family member, Participant 8, stated that the sight of other survivors, especially survivors who worked with her best friend who was murdered in the bombing, was incredibly painful because it was not apparent others had lived: "There was one girl that worked with Frankie that survived and I just could not stand to see her . . . It's terrible. I wouldn't want her dead, but then I'd look at her and go well why her, you know is she different? Is she special?"

¹⁵⁷ Davies, *supra* note 151, at 401; see J.D. Lindy & J.P. Wilson, *Respecting the Trauma Membrane: Above all, Do No Harm*, in *TREATING PSYCHOLOGICAL TRAUMA AND PTSD* (J.P. Wilson & M.J. Friedman eds., 2001).

¹⁵⁸ ROCK, *supra* note 112, at 51.

This animosity retraumatized survivors, exacerbating survivor guilt and causing additional emotional trauma at a time when survivors were most vulnerable. Participant 15 recalled, "A few of them hurt my feelings and at that time I was really raw and I'd cry a lot ..." According to Participant 6, this animosity, together with the pain of recovery, helped to make some survivors who were critically injured feel guilty, and wish that they had not survived: "Some of those people had over 24-29 operations and there were times when some of those people felt early on with all the pain they were going through it might have been better if they had died and to hear a family member say you aren't going through anything, you are a survivor. Well they were going through so much, just exacerbated that hurt and anger and pain."

Survivor guilt came about for many participants when they were brought into physical contact with victims' family members, even if the family members were not openly hostile. As Participant 21 recollected,

I had so many people even in the hospital you know -- you are special you must be special, you know God has a special purpose for you. And I was so overcome with -- I was scared to death. If I am so special what is it I'm supposed to do Um I had heard about survivors' guilt, didn't understand it, probably about two weeks after the bombing they were going to take families and survivors down to this sight. And we were all supposed to meet....And they had buses and they took you down there. . . . as we got to the site survivors guilt hit me because I am like, here I am with all these families who lost somebody and I am alive. And it hit me and it hit me hard. It's a horrible, horrible feeling you feel guilty for living. I felt guilty when family members would come around it took me probably two or three years to really start getting over that.

Perhaps this was because reconstructing one's own life and integrating the bombing into new routines was a demanding enough task without being physically reminded of and confronted with what family members had to cope with. Survivor guilt, then, was

testament to the fact that survivors' individual memory reconstruction processes were more collective than family members' because they included an awareness of perceived disparities between their own traumatized position and that of family members. Meeting with family members exacerbated survivor guilt; as 21 noted,

I can remember the one [memorial task force] meeting in particular. I am sitting next to a man who almost bled to death in the building and we were there, and we were talking -- they were talking about putting survivors names on, on something. And the woman got up and said, this is not for survivors this is for -- you know, she lost her daughter and she was very vocal. And it hit me and this other man hard. And after the meeting I looked at him and I said, you know, if there was human -- she doesn't realize that if it was humanly possible I'd trade places with her daughter . . .

Such exhibitions of hostility forced survivors to modify their behavior. As Participant 17 stated, “. . . you have to be very careful not to -- around certain people. You have to be very careful that you couldn't voice how you were hurting because they lost a loved one, you know. It was hard, it was very hard.”

Another common source of tension between survivors was support for or opposition to the death penalty. Few members of the memorial group also belonged to the habeas group; the two groups had become intensely committed to very different goals to which their members devoted intense labor. Participant 28, who was both a member of the memorial group and the habeas group, stated that some members of the memorial group tried to discourage her from joining the habeas group: “I always felt like people were like, ‘You know, what are you doing?’ You know, and but I felt I was right. I felt right about this. And it wasn't right that...that people can sit you know, and get all of these appeals and appeal and appeal.” 28 stated that there was only one other individual who belonged to both groups, and that while she shared information concerning

memorial task force proceedings with habeas group members, there was little need to share proceedings of the habeas group with memorial group members. Tensions resulting from differences in death penalty opinion also led some participants to cease to become involved in groups that they had found helpful in the past as opinions changed in the years following the prosecutions of McVeigh and Nichols. Participant 19, for instance, began to disaffiliate from the habeas group after the habeas group tried to accomplish additional changes to death penalty law and capital procedure:

one of the things that happened for me with that particular group because that group would be very, very pro-death penalty, okay, and after I guess it would have been after both of the Federal trials then it almost kind of got into well, by-golly, we ought to see if we could make it 10 out of 12 jury votes for a death penalty and going farther. Yeah and it got to a point where this group of people that had been very important and in whom I'd gained a lot were going in a direction that I thought was a little too far and had problems, and I had problems with that.

Gradually, these hostilities diminished and empathic understandings of others' orientations became more common and others' experiences of loss began to be appreciated and validated. At this point, members stated, it became apparent that this animosity was itself a symptom of trauma. Participant 1 attributed this negativity directly to PTSD. Unfortunately some survivors had already ceased to attend; Participant 7 stated, "I took it deep to my core and it I, I distanced myself. Okay fine I won't be around them, I don't want to inflict this on them so I, I wouldn't. I dropped out early on....I thought okay, I'm not gonna put myself through this. I'm not gonna harm them by being in their presence. So I pulled myself and I didn't get involved until years later." Other members, however, persisted in attending groups despite this acrimonious behavior, mindful of the need to fulfill a higher calling; as Participant 21 noted, "And I

was not going to go back to the meeting and then I was like, no, I came here for a purpose and I am going to continue.”

In summary, significant obstacles had to be overcome in order to understand and validate others’ members experiences of loss. Some potential members felt so alienated in the early stages of group formation that they elected to forego membership activities altogether. But those who stayed within groups long enough to surmount experiential differences and take part in the construction of common social frameworks of memory found that the experience of “growing together” as a group was healing and reconstructive.

The Memorial Effects of Group Goal-Setting

The selection and pursuit of a particular group goal influenced group members towards or away from attendance and/or participation in legal proceedings against Timothy McVeigh, including his 1997 capital trial and 2001 execution.

Membership in post bombing groups undoubtedly provided companionship, narrative structure, and positive goal outlets for anger and other emotions, thus rendering groups a site of collective memory formation whose members together negotiated the meaning of cultural trauma. Just as members shaped groups, groups shaped members’ understandings of the bombing and of the experience of loss. Groups—and group goals—played an especially significant part in constructing the degree to which members felt that attending various stages of legal proceedings, including McVeigh’s execution, was personally meaningful, particularly in comparison with other possible activities such as work, becoming involved in a non-legal group goal, or spending time with family. In essence, then, members’ “justice needs” were partially constructed through the formation

of group identity and the selection of group goals. This section contrasts the membership of two groups, the memorial task force and the habeas group.

The memorial group indisputably had a very different focus than the habeas group. The memorial task force was focused on remembering those who had been murdered in the bombing, recognizing the survivors, commemorating the rescue workers, and telling the story of the memorialization process. The Oklahoma City Memorial does not focus heavily on the prosecutions of McVeigh and Nichols; the only museum display that tells of these legal proceedings is a two-panel installation entitled "Justice" that includes chronological timelines of the prosecutions along with sketches from the trials and blowups of three newspaper articles: a *Rocky Mountain News* article from June 2, 1997 announcing a guilty verdict in the McVeigh case, a *Daily Oklahoman* article from December 24, 1997 describing a guilty verdict in Nichols' federal trial, and another *Daily Oklahoman* article dated May 27, 2004 announcing a conviction in Nichols' state trial. There is no mention of McVeigh's execution with the exception of a nondescript 4-by-8-inch bronze plaque that was installed within an hour of McVeigh's death stating only "McVeigh is executed by lethal injection on June 11, 2001, at the federal penitentiary in Terre Haute, Indiana."¹⁵⁹ The plaque, which hangs next to the *Rocky Mountain News* article detailing McVeigh's conviction, replaced a plaque which stated that McVeigh's execution had been postponed from May 16 to June 11. Participant 24, who helped to hang the plaque, stated to the media on the occasion of the plaque's hanging that "[t]his is a part of the evolution of the museum," and described the execution as "a very significant

¹⁵⁹ *New Plaque at Bombing Memorial After McVeigh's Death*, available online at http://www.courttv.com/news/mcveigh_special/0612_plaque_ap.html.

change in the timeline.” Thus, the memorial task force endeavored to remember and represent murdered victims as well as living survivors and rescue workers, and focused on making these memorial constructions as full and robust as possible—a goal centered around creating and ensuring a *presence*, not an absence. In so doing, it strove to give voice to the dead and the living, a voice that emphasized tragedy and turmoil but also rebirth and rebuilding through remembrance.

The habeas group, in contrast, may have pursued death penalty reform in the names of murdered loved ones, but that group’s focus was very much on what surviving family members of murder victims had to endure through waiting as long as seventeen years for an offender’s execution to be carried out. Thus, much of the habeas group focus was on the *justice* of eradicating opportunities for offenders such as McVeigh to pursue additional appeals which prolonged execution—a focus on the offender and on the need to expeditiously carry out death sentences, albeit one pursued in the names of murder victims and their families. The essential focus of this group was the timely conclusion of legal proceedings against an offender. For this reason, the habeas group was pursuing the enactment of *absence*, ensuring the attainment of accountability and the removal of an offender from the lives of victims’ families.

In keeping with these goals, core members of the memorial group were likely to find the building of the memorial *or* the guilty verdict in the McVeigh trial more meaningful than the execution. By the time of the execution in June of 2001, more memorial task force members spoke of being too involved in family or work or other activities that they see as positive to attend the execution. Habeas group members, on the other hand, were more likely to see the trial and execution as meaningful—particularly of

the execution being the culmination of legal proceedings. They spoke of not only a need to *see* as many legal proceedings as possible, but also a need to be involved in proceedings for reasons of completion and of a personal struggle to ensure widespread access to proceedings (i.e., ensuring that victim impact witnesses could attend evidence presentation in the case in chief, ensuring that the trial was broadcast back to Oklahoma City after the change of venue, ensuring that the execution would be broadcast back to Oklahoma City from Terra Haute). Thus, if group goals were healing, then choosing a goal for many members defined not only a major focus of healing, but also the point at which most of the healing process could be accomplished (the building of the memorial, McVeigh's trial, or McVeigh's execution) *and* the institution that would "enable" healing (the memorial, the criminal justice system, or both). Goal selection also reflected informed judgments about what was the most appropriate way to memorialize the bombing, those murdered, and the bombing's impact on survivors, rescue workers, and family members.

One might point out that what mattered was not group processes and goal attainment but members' prior personal and political beliefs on issues such as the death penalty. Of course, the choice of a goal was dictated by many factors, including members' opinions on the death penalty—but personal and political opinions in and of themselves did not accomplish group work. Thus, although opinion formation predated selection of groups and goals, they were not solely responsible for commitment and sacrifice to achieve group goals. Because of a likely interdependency of death penalty opinion and group membership, however, an effort will be made to identify members' stances on the death penalty when discussing certain participants' reactions.

The difference between the memorial group and the habeas group can most conservatively be characterized as a rhetorical difference—how they spoke of the meaningfulness of legal proceedings versus other possible time investments. Differences between the groups were not found in disparities in group members' support for the death penalty, although all of the habeas group participants did in fact support the death penalty; in terms of an appropriate sentence for McVeigh, some memorial task force members reported support for life imprisonment without possibility of parole for McVeigh and others reported support for the death penalty. Nor did execution witnessing provide an adequate means to distinguish between the two groups, although three out of the six (or 50 percent) of the habeas group members interviewed attended as compared to 6 out of 18 members (or roughly 33 percent) of the memorial task force (including participants who belonged both to the habeas group and to the memorial task force). Six of the eight execution witnesses were members of the memorial task force; four of the eight execution witness participants were members only of the memorial task force, and another two witnesses were members of both the habeas group and the memorial task force.

It is not surprising that memorial task force members who opposed the death penalty stated that they did not need an execution for “justice” to have been attained. As Participant 6, a death penalty opponent, related, “my sense of justice, I think, would have wanted him in jail, but I was sure he was going to get that. I had no need to see him killed. In terms of justice I knew he was going to get justice.”

What is surprising, however, is that whereas all habeas group members spoke of a need to attend and be involved in legal proceedings for various reasons, some memorial

task force members who supported the death penalty either all the time, who had “no opinion,” or who were willing to support it on a case-by-case basis did not mention that the trial and execution as particularly meaningful proceedings. Participant 21, who reported holding “no opinion” on the death penalty, attended the closed circuit broadcast of the execution only to support friends (but unexpectedly had a healing experience at the execution herself), stated that the execution held no real personal meaning in and of itself, but was instead focused on whether McVeigh would be found guilty and thus held accountable: “Yes, yes he was found guilty. He is held accountable, what happens to him, the death penalty or not, was not important to me.” 21 did not feel a duty or responsibility to attend the trial because of an effort to return to work:

I think I went there, you know I went back to work and I was more focused on I have to, I have to work....And I don't have the luxury of taking off and following it. I didn't feel like I, I mean had so many friends that were going and keeping me posted, I didn't feel like I had to be in there.

Participant 24, an injured survivor and a supporter of the death penalty, also reported no desire to attend the trial or the execution, and stated of the execution, “I don't know if it healed me, I don't know if it might work. I don't know. I just didn't deal with it at that time. I was actually too busy to think about it to be quite honest.” In June of 2001, 24 was involved with many other concerns not related to legal proceedings: “. . . I was so focused on business and the memorial and family and life that I think it was just another, I keep saying another chapter in that book. I think it was just like ‘okay this part is over and I don't have to deal with that anymore.’” 24 did not feel a personal need to see the execution in order to know that McVeigh was held accountable:

It was not something that was important to me. I knew it was going to happen. I knew he was going to be executed and I knew when he is going to be over. I knew when we were given minute by minute update. . . . But I did not have to personally be there to see it happen for to be over that part of it to be over for me.

Participant 27 also did not feel a duty to attend the trial because of a desire to get back to work in defiance of McVeigh's ability to change her life:

I sort of...I felt a bigger responsibility to getting back to work and doing my job and continue to do my job well. And sort of used work kind of therapeutically that way in terms of...that's where my survivor instinct came in that he had changed my life but he wasn't going to change that part of it because I love what I do work-wise. So I didn't want to take time away from work to go...you know be away from work to watch the trial.

27 just happened to be on vacation in Colorado at the time that the verdict was expected to be handed down in McVeigh's trial, and decided to take one day of vacation to attend on that day. 27 recalled that the guilty verdict marked a personal "end" to proceedings:

just a sense of relief when they found him guilty. Just a sense that he wasn't going to be able to do it to anybody else or get off, you know, that he...just for me...just I remember sobbing when they read the guilty verdict, just because it was just such a sense of - okay, it's done. For me it was done....I don't want to say closure, but I got a huge, I mean I moved very fast-forward.

For other members of the memorial group, the memorial itself played a very significant role in recovery. Participant 26, an injured survivor who was an opponent of the death penalty after the bombing, recalled a personal ability to forgive McVeigh around the time the memorial was opened in 2000. 26 believed that there was a connection between the two:

I've often told the story the way I felt when the Memorial opened that day, on April 19th 2000. And when I walked down the steps I could feel the...something being lifted from me. And I felt lighter and I felt relief. And when I thought about it later, I could describe it as I had

been wearing an overcoat for 5 years and had all these feelings of depression, anger, sadness, guilt, despair. All these things I'd been carrying for 5 years. And now I had a place to hang that overcoat and leave those feelings there. I didn't need to carry them with me anymore....It was as if a burden had been lifted. It was very liberating.

Participant 26 described this moment as being more poignant than the experience of learning of the guilty verdict in McVeigh's trial.

The memorial group was a very large and inclusive organization, both in intent and in actuality. Unlike the habeas group, it was not formed as an advocacy group that would strive to achieve political ends such as the passage of a certain piece of legislation, and so it would be surprising if every group member had chosen not to attend the trial out of a desire to prioritize other activities. Thus, of course, some members of the memorial group did find it meaningful to attend McVeigh's trial and execution. Three participants attended both the trial and execution; two of these individuals were only members of the memorial task force, and the third belonged to both the memorial task force and the habeas group. Participant 7 stated that attending the trial and execution was an important step in being "involved in the process" and an important step in healing:

And I think it was important to my healing process as well. I don't think I realized that at the time, but I do now in hindsight think that that really helped me ah in ways that I might not have known. And ah, may still not understand. But it, it did help me to see justice be done.

Similarly, Participant 15 attended the execution to see justice done—to see McVeigh suffer and to see accountability; she described it as "something I had to do":

The execution was something I needed to do for myself because I deserved; I believed he needed to be punished because he knew those babies were in that daycare. He knew. He knew that there was 200 and some people working in that building, 300 however many there were, I

can't remember and he did it just because he hated the government.
And I can't comprehend hate.

In contrast to some members of the memorial task force, all participants who were members of the habeas group felt that attending the trial, execution or both were important steps in being "involved" in the process or "made a difference." This is not surprising; the habeas group, which was much smaller than the memorial group with an approximate maximum membership of 30 people, was explicitly formed to be an advocacy group and chose advocacy as a very different form of memorialization than building a national memorial. While the memorial goals of the memorial task force did not overlap with legal proceedings against McVeigh and Nichols themselves but only dealt with them in order to represent their significance to the Oklahoma City community and to the nation and the world, members of the habeas group explicitly sought to change legal proceedings in several different ways, drastically shortening the habeas appeals available to defendants sentenced to death through the Effective Death Penalty Act of 1996, and fighting to have the federal trials of McVeigh and Nichols broadcast back to Oklahoma City, to allow victim impact witnesses to attend the presentation of evidence in the case in chief, and to allow the execution to be broadcast back to Oklahoma City as well. Thus, the focus of the habeas group was largely *on* legal proceedings from the group's inception.

Participant 1, a survivor, stated that he retired to attend the trial in Oklahoma City at the FAA Center and only missed one or two days of the trial proceedings. 1 attended out of "a desire to see that, that justice was served and witness it so that if it didn't come out the way I knew it should've I could understand why, it didn't." Though

knowing that the execution would be carried out was very important to McVeigh, Participant 1 did not want to see him die: “I don’t wanna see anybody die no more I wanna see people die the day of the bombing.”

Participant 22, a family member, attended the closed circuit broadcast of the execution because she had a need to actually see what it would be like. Seeing the execution was especially important to her because a member of her immediate family had committed suicide prior to the bombing, and she had chosen not to view the body and then always regretted that decision and wondered what it would have been like. 22 stated, “I had watched that man and I needed to complete the process. I needed to see it through. And, um, that’s why I did it.” 22 also attended the execution because she had fought for it to be broadcast via closed circuit, and recalled explaining to Attorney General John Ashcroft that the impact of not seeing her immediate family member:

We had to fight for close circuit. We had to meet with General Ashcroft and talk him into doing close circuit for execution and one of the arguments I gave him then was, I gave him the example of my [immediate family member who committed suicide]. And the torment I went through as a result of not having seen her and I did not want to have nightmares for years to come after the execution about what I thought it must have been like. Again, I wanted to deal with reality.

22 described witnessing the execution as a form of “self-preservation” and didn’t want to “guess” what the execution would be like:

It’s, it’s the same type of need, um, to me it was self preservation. Because I already knew from that one experience how horrible it was to guess. I didn’t want to guess about what my [murdered spouse] looked like and I didn’t want to guess about what Mc-, what the execution was like. I wanted to deal with reality.

Participant 28 also witnessed the execution to “see things through” and because she had also fought to have the execution broadcast via closed-circuit: “You know, I had

talked the talk. Did I...was I big enough to walk the walk? And I was..." On the morning of the execution, 28's son-in-law told her that he was not going to go, and she told him that she was going to follow it through: "I have to do this. That's the least I can do is follow it through. I fought a long, long battle to not face, to not see it to the end."

Finally, Participant 29 also reported a need to "see things through" and to finish what for her had "started" the morning of April 19, 1995: "And I have this real complacent hang up about anything that I start. You know it could take me four years to read a book but damn it I'm going to finish it. You know, I was downtown, I saw it happen." 29 felt very lucky to have been able to attend the trials and the execution, and get a profound sense of completion as a result:

You know so like being able to attend those trials, being able to testify at both trials, being able to you know physically witness the execution, I'm telling you this was luck. I just lucked into the right place at the right time. I was able to do so muchBut again this was this whole cyclical thing, I mean everything that went around. I just happened to fall into. Trials, testifying, attending all three trials. You know being able to get a seat because some people especially the first trial didn't even get a lottery seat so and again the timing, you know I didn't go on some dry boring testimony week. I went when like closing statements. The big time. So I mean I just- that was just all so important for me and if I had missed any piece of it, I would have felt incomplete for this whole thing that we've been through.

Participant 29 stated that witnessing the execution in person "the most important thing," and her profound gratitude at being able to attend the execution was evident:

That was- I think that was the most important thing to me. I could have- I mean I could have viewed it as the FAA center if I had to and I mean, what are you going to do if that's what happened, that's what happened. But it was just . . . just complete relief when I found out I was one of the 10 selected. Because I mean I can't...I cannot even... there aren't enough words to describe how important it was for me to do that. Oh wow. It's just- I still can't believe it...."Oh God, I don't even know if I can put that into words [what it meant to be present at

the execution]. . . . Physically being there. Yeah. Yeah. I mean and I can't- I can't put it into words. . . . I don't know how to say it. But yeah, physically being there was so. . . . for me, I don't know why but yeah, yeah.

These statements made by habeas group members attesting to the importance of attending McVeigh's trial and execution directly contrast with the statements of memorial task force members who elected not to attend the trial and/or the execution, choosing instead to prioritize of other concerns such as work and family. The responses of Participants 22 and 28 also suggested that advocacy work played an important role in attendance, in that participants were more likely to attend or become involved proceedings that they had endeavored to bring about, again confirming that goal selection played a significant role in memory construction.

Summary

This chapter has explored the processes by which groups contributed to the collective memory of the Oklahoma City bombing. It did so by reconstructing the members' emotional states and detailing how post-bombing groups ameliorated their emotional vulnerability by providing companionship, providing sites for narrative and normative reconstruction and organizing members toward chosen reconstructive goals. It has also detailed the ways in which membership in one of these two groups—one focused on memorialization, the other on the criminal justice process—channeled members away from or further into participation in legal proceedings, including witnessing McVeigh's execution. The progressively healing and constructive relationships formed between group members, created and strengthened by group social frameworks of memory, helped members to make sense of the bombing and to ascertain their own relationships to it. Not

all relationships helped to stimulate intrapersonal and social exploration and reconstruction, however; as they became familiar with Timothy McVeigh as a perpetrator, victims' family members and survivors also felt increasingly pulled into an involuntary and destructive relationship with McVeigh that would end only after his execution.

CHAPTER THREE:

McVEIGH, FAMILY MEMBERS, & SURVIVORS: RELATIONSHIPS, THE LAW, AND MEMORY

This chapter explores how family members and survivors negotiated their relationships with McVeigh and the criminal justice system. It analyzes these relationships chronologically from McVeigh's arrest through his trial and ultimately execution. It first outlines the victim-offender relationship that was perceived to exist between family members/survivors and McVeigh, exploring its para-social origins. The implications of this relationship, in which McVeigh was seen as a defiant offender, posed a potential barrier to the construction of social mnemonic frameworks. This chapter then links the para-social relationship to the behavior of family members and survivors through the federal trials of McVeigh and Nichols, elucidating how family members and survivors perceived the criminal justice system by analyzing their opinions on the death penalty, the trial and execution. Though McVeigh was held accountable for the bombing, the trial did not facilitate memory work for family members and survivors. Finally, this chapter examines the state of family members' and survivors' impressions of McVeigh immediately prior to his execution, including their ability to forgive, their willingness to meet with him in person, and their expectations concerning his conduct at the execution. Their impressions reflect the degree to which McVeigh's defiance unsettled them, revealing how participants' attitudes towards the perpetrators and the criminal justice system affected processes of mnemonic reconstruction.

The Victim-Offender Relationship

Just as the relationships between group members were healing in terms of collective memory, participants perceived that they shared an involuntary relationship with Timothy McVeigh that cast a negative aura upon reconstructive social frameworks of memory. This hindered the recovery process by “manipulating” the victims through the media until his execution in June of 2001. Participants could not help but incorporate this involuntary relationship as part of their collective memory formation, and they did so in ways that delayed or at the very least unsettled the healing process. But whereas the formation of beneficial relationships between group members was unmediated and not subject to constraints by outside institutions, the victim-offender relationship was entirely mediated by institutions. It was first facilitated by the news media, and then bounded by the criminal justice system which controlled “exposure” to McVeigh and created forums such as the trial and execution where family members and survivors could assess McVeigh’s behaviors. Interestingly enough, the criminal justice system even placed limitations on the media coverage of McVeigh while he was imprisoned; Ed Bradley’s “60 Minutes” interview with McVeigh was filmed in his cell on death row.

These constraints were in tension with the historical treatment of victims in criminal prosecutions, with key tenets of the victims’ rights movement, and with recent state reforms designed to expand victim participation in criminal trials and executions. Victim participation in death penalty jurisprudence and practice has grown increasingly complicated from medieval times to the present day. Before the criminal justice system evolved as a state institution, victims were at the heart responsible for initiating criminal charges and even prosecuting offenders. The state, however, gradually took over the tasks of criminal prosecution and sentencing, minimizing victim participation until they

were altogether excluded from the process, and only granted the participatory rights enjoyed by other citizens. Execution itself was also radically different; mid-nineteenth century executions in America were typically public hangings in the courthouse square by the local sheriff, and executions in eighteenth and seventeenth century London were very dramatic public spectacles where prisoners were paraded before mobs eager for entertainment.

In contrast, contemporary capital cases involve extended pretrial periods and trials, result frequently in life sentences rather than death sentences, occasion reversals and retrials, see a decade or more transpire between sentence and execution, and as a result of numerous initiatives focusing on victims' rights and interests. Significantly, capital trials now commonly involve victims' families with much greater regularity and centrality than in earlier eras due to the advent of victim impact testimony and very recent accommodations made to assist victims' families in witnessing executions. The Victims' Rights movement of the 1980's won an increased role for victims in securing the defendants' punishment for most crimes, and victims' family members battled through a succession of Supreme Court cases (*Booth v. Maryland*, 482 U.S. 496 (1987); *South Carolina v. Gathers*, 490 U.S. 805 (1989)) before winning the right to present "victim impact evidence" at the penalty stage of a capital trial in 1991 in *Payne v. Tennessee*, 501 U.S. 808 (1991). Furthermore, states have increasingly accommodated victims' family members throughout the capital trial and execution. By 1998, 22 states had instituted a position of Victim Advocate responsible for maintaining contact with victim family members throughout condemned prisoners' successive appeals, preparing them for the execution, and actually attending the execution with victims' family members.

Additionally, in the 1990s two themes converged to make victim-related issues of even more immediate importance: the suggestion that imposing and carrying out a death sentence brought needed "closure" to victims' families, and the notion that justice requires carrying out executions in the name of murder victims and their survivors. Currently, advocates and opponents of capital punishment both claim that the death penalty has a profound effect on the families of murder victims; the former assert that it provides them with "closure," the latter assert that it further victimizes them. Criminal justice officials themselves use "closure" as support for capital punishment.

These constraints placed around Timothy McVeigh's prosecution and execution vastly limited opportunities for even para-social forms of engagement; participants had to fight to witness in three contexts. First, after the trial judge granted McVeigh's attorney's request for a change of venue from Oklahoma to Colorado and refused to broadcast the trial back to Oklahoma City by closed-circuit feed, family members/survivors petitioned Congress to ensure that this broadcast occurred. Second, after the trial judge refused to allow a slew of family members/survivors to attend the trial because they were slated to give victim impact testimony during sentencing, these individuals again asked Congress to pass legislation (known as the "Victims Rights Clarification Act of 1997") allowing them to both attend the penalty phase of the trial and testify at sentencing. Third, angered by the fact that only 10 victims (assigned by lottery) were permitted to witness McVeigh's execution in Terre Haute, family members and survivors had to petition Ashcroft to broadcast McVeigh's execution back to Oklahoma City via closed-circuit feed so that additional witnesses could be accommodated.

It is not surprising that such institutional mediation would alter reconstructive memory processes. Legal institutions, including the police, judiciary, and penal systems, specialize in capturing, prosecuting, and punishing an offender impersonally, concentrating on the offender and not on his victims. Institutional outrage at crime stems not from the human loss crime engenders but from the legal violation itself. Victims, in contrast, cannot remain impersonal but are submerged in an emotive role; their orientation to the crime is relational, their outrage stemming from an intimacy lost through criminal behavior. Victims cannot relate to institutional technology. Thus, while institutions are indirectly affected by a violation of a disembodied law, victims are directly affected by an embodied crime made manifest through a lost beloved body.

The lynchpin in the relationship between victims' families/survivors and McVeigh was that he be held accountable for his role in the bombing, whether or not forcing accountability upon him later led him to accept responsibility for his heinous deed. The successful formation of new individual and social mnemonic frameworks demanded that McVeigh be tried and sentenced for his crimes—tasks that in a nation-state are solely within the province of the state or federal criminal justice systems. Thus, the criminal justice system also was at the helm of the accountability process that was key to the reconstruction of collective memory. Its institutional routines left indelible fingerprints upon the accountability inquiry, defining the scope of inquiry into the bombing and investigating McVeigh's criminal intent. The result was that the accountability inquiry was narrowed to a question of guilt and innocence, which of necessity excluded queries that were not legally relevant though still meaningful to victims' families and survivors. In addition, victims' families and survivors were

bystanders to adjudication of guilt or innocence, aside from the handful who testified in the guilt phase of the trial; the primary actors in this drama were the trial judge, and members of the prosecution and defense teams. Allowing victim impact testimony during the penalty phase of the trial, sentencing proceedings, did somewhat mitigate the silencing of victims' families and survivors, but the statements of such witnesses were very closely circumscribed. As discussed in the literature review, criminal trials are key to the production of collective memory but are problematic vehicles of collective memory by themselves; their specialized inquiries break down under the weight of memory's demands if asked to bear that full weight alone, and so must be supplemented by other endeavors. Nonetheless, the criminal justice system not only controlled visual access to McVeigh through the media and legal proceedings, but also affected the formation of collective memory through manners as diverse as how expeditiously the trial was held, how it was held (e.g., whether it was broadcast to other venues), whether family members and survivors were allowed to attend, what verdict was handed down, and whether sentence was carried out.

Existing methods of researching the psychological and emotional states of homicide survivors are incomplete in and of themselves to address the experiences of victims' families and survivors. Neither going through the grieving "stages," nor attending or testifying in legal proceedings or even witnessing the reading of the guilty verdict or the execution, nor media representations of victims can account for the phenomenon of how victims process the aftermath of murder, attend legal proceedings, or witness and interpret an execution. Significantly, each of these approaches positions the victim as a passive self, a body that travels through grief stages, a body that attends the

trial and perhaps witnesses the execution, a body that can be represented by others. This creates the impression that victims are both defined by and confined by these models and their codes of behavior. An alternate approach is to examine the phenomenon of homicide survivorship as an involuntary relationship between the victims' family and the offender, that exists even when neither party knew the other prior to the murderous act, and that is like any other in communicative dimensions, structured through speech and silence.

This relationship is rarely tacitly acknowledged (but never explicitly defined) in criminological scholarship. It is a concept whose logic is the combined logic of several facts—publicity about the offender and the murder, the victims' families' need to know “why” and “how” the crime occurred and the necessity of understanding the offender to answer those questions at least in part. How could victims' families help but feel they know an offender through the plethora of intimate details that emerges through contemporary media coverage? Sharp notes that coverage of Jeffrey Dahmer's murders extended to thorough details of his personal life: “the type of beer he drank; his cigarette preference, the types of potato chips he ate, and the brand of baking soda he used in his refrigerator.”¹⁶⁰ This relationship may also extend to offenders' families; offenders and their families (and even offenders' communities) may be roped together into a category of otherness, set apart by disgust and hatred, with offenders' family members experiencing intensely negative publicity.¹⁶¹

¹⁶⁰ SUSAN F. SHARP, *HIDDEN VICTIMS: THE EFFECTS OF THE DEATH PENALTY ON FAMILIES OF THE ACCUSED 1* (2005)

¹⁶¹ *Id.* at 36.

What is the communicative nature of this relationship? In the context of the Oklahoma City bombing, it was a relationship in which victims' impressions of McVeigh as a man and, in some cases, as a monster contextualized his mannerisms and his statements. It was a relationship characterized by perceptions of communicative iniquity, inequity and inequality, in which victims/survivors perceived they had little communicative control over McVeigh. McVeigh was seen to have great communicative agency and an ability to communicate with victims/survivors despite their antipathy towards such efforts, while victims had to settle for channeling their own communications through media or through victim impact testimony. It was a relationship pregnant with communicative necessity and perceived obligation, in which victims very much wanted to hear "why" and how McVeigh carried out the bombing and yearned in many cases to speak with him in person. It was a relationship whose only possibility of termination lay in the death of McVeigh or of victims themselves.

In addition, this involuntary relationship between McVeigh and family members and survivors profoundly influenced the formation of collective memory and the resolution of cultural trauma because it was perceived as a challenge to the reconstruction of identity through the group and individual processes discussed earlier. As will be discussed shortly, because of the understandings of McVeigh that participants evolved, many described McVeigh's continued existence as a barrier on the road to "recovery" and resolution. In occupying one camp in the involuntary relationship between victim's family/survivor and offender, and therefore bound to victims' family members and survivors, McVeigh became a part *of* the collective, instead of being cast outside it. The inclusion of McVeigh in the collective was traumatizing to family members and survivors

because it directly affected the narrative resolution of the trauma and delayed family members' and survivors' control over the resolution process; at any time a message could issue from McVeigh that could potentially aggravate wounds just starting to heal. Thus, the collective memory of homicide—including the collective memory of the Oklahoma City bombing—was shaped not only by the events of the murder but also for the duration of the involuntary relationship between the offender and family members/survivors.

Significantly, refocusing research on the victim-offender relationship also recognizes that victims and survivors define as well as become defined by the experiences of survivorship. It implies an exchange, a give and take of activity and passivity, and recognizes that processes of sensemaking are mutually constructive and cyclical, and not self-constructive and linear. Victims change and alter conceptions of grieving in the course of healing; they are active participants in the trial with the potential to change its practices and potentials; and they challenge representations of victims in addition to conforming to existing representations.

Finally, refocusing research on the victim-offender relationship also effectively organizes how participants made sense of the chaos of post-bombing social relations. It explains why the vast majority of participants regardless of political views on the death penalty felt relief in the wake of the execution which terminated the involuntary relationship that had begun six years before.

In the wake of homicide, family members and survivors become involuntarily and intimately linked to the offender through the offense, so that they must “live with” the offender to a greater or lesser extent until death—either the offender's or their own. As Janice Smith, a nonwitness family member whose brother was murdered in the bombing,

stated in a media interview after McVeigh's execution on June 11, 2001, "It's over. We don't have to continue with him any more."¹⁶² The obligations of this linkage are contradictory; on the one hand, the offender has murdered at least one family member, yet on the other the offender is often the only possible source of information about the offense and the victim's last moments. This linkage is also most often mediated; through news coverage, other forms of media, and trial proceedings, victims become very familiar with the offender's personal history, including his family. Victims and offenders may hear each others' statements through press conferences, media interviews, trial testimony, books or websites, or other forms of public communication. Less often, victims and offenders may communicate more directly, through letters or by meeting face to face through mediation programs. Such communicative interchanges deepen and contextualize the victim-offender relationship. There may even be a sense that family members and survivors are an offender's "audience" and an interactive positioning based on this perception. Constance Richardson, a nonparticipant family member whose 20-year old daughter was murdered in the bombing, chose to visit the memorial on the morning of June 11, 2001 instead of witnessing the execution by closed-circuit, stating "I didn't want to be part of his audience."¹⁶³

Intensive interviews with family members and survivors revealed a perceived intentionality, a conviction that statements made by McVeigh were targeted to these individuals to further wound them. As Participant 21 stated, "it [seemed] like every time he turned around, he was doing something to jab at us and it was just very painful

¹⁶² Nick Bryant, *Pain Remains For McVeigh Victims*, BBC (June 11, 2001) available at <http://news.bbc.co.uk/1/hi/world/americas/1383171.stm>.

¹⁶³ *Id.*

because he could sit there behind those bars and get us three squares a day and everything and not have all these worries . . .”

Many participants attributed malicious intent to McVeigh’s communications; for instance, Participant 24 stated, “I have always felt like that if, if McVeigh and Nichols for example had access to the family members, survivors, through the media, through books, through whatever purposes they had that it would always just be keep digging at us, sticking that knife and twisting.” Participant 25, however, contrasted McVeigh’s intent with that of Nichols:

McVeigh, even though he knew that he was getting the death sentence, he was defiant all the way up to the point where it actually happened, okay? He would speak out to the media. . . . And everything that he did was doing nothing but hurting the family members here in Oklahoma. . . . Nichols, Nichols is a little different because since he’s been tried and convicted, you don’t hear about him. . . . I can live with him being in prison for the rest of his life, for the simple reason that he is not defiant and he’s not going out and getting on the news and so forth and trying to hurt the family members.

Termination of media coverage allowed Participant 15 to cease to think of McVeigh: “I’ve quit completely, stopped thinking about him the day they executed him.” This intimation of malicious intent through media contact was especially strong when McVeigh made a statement that family members found especially painful. One of the most wounding messages that family members and survivors recalled hearing from McVeigh was his terming the murders of the children in the America’s Kids daycare center in the Murrah Building “collateral damage.”

Significantly, family members and survivors embodied their relationship to McVeigh in how they worded their responses to interview questions, creating the impression of a dialogue between themselves and McVeigh. Participant 21 referred to

McVeigh jabbing “at us,” while 5 stated that McVeigh has hurt “me,” 25 noted that McVeigh “would tell the families” and 24 spoke in terms of McVeigh and Nichols having “access to the family members, survivors through the media, through books.” In addition, participants seemed at times to assert that they “knew” McVeigh; several participants, for instance, claimed to “know” that McVeigh would not have sincerely meant any apology that he may have given at his execution.

Though family members and survivors perceived themselves to be the targets of McVeigh’s statements, such communication did not fit within the most narrow formulation of the interpersonal communication interaction, which involves face to face meetings between two participants consisting of a simultaneous “two way” exchange of meaning.¹⁶⁴ All message exchanges outside of the trial context were mediated. Within the trial context, those witnesses who testified in McVeigh’s trial were involved in interpersonal exchanges with the attorneys who were eliciting direct testimony from or cross examining them, and not with McVeigh himself. It is entirely possible that there was an actual interpersonal interchange between McVeigh and trial witnesses, for participants recalled looking at McVeigh during their testimony and recollected their impressions of his reactions. However, even this interaction was not what is meant by a purist definition of interpersonal communication.¹⁶⁵ So how best to explain the intimacy

¹⁶⁴ PETER HARTLEY, INTERPERSONAL COMMUNICATION 20-24 (2d ed., 1999).

¹⁶⁵ Attempts to define exactly what interactions constitute interpersonal communication are fraught with peril. Mark Knapp, John Daly, Kelly Fudge Albada, & Gerald R. Miller, *Background and Current Trends in the Study of Interpersonal Communication*, in HANDBOOK OF INTERPERSONAL COMMUNICATION 9 (3rd Edition, Ed. Mark L. Knapp & John A. Daly eds., 3d ed., 2002). Communication scholars disagree on the “number of communicators involved, the physical proximity of the communicators, the nature of the interaction units used to explain an encounter, and the degree of formality and structure attending the interactants’ relationship.” *Id.* Perhaps all it is possible to agree on is that interpersonal communication involves “at least two communicators; intentionally orienting toward each other; as both subject and object; whose actions embody each other’s perspectives both toward self and toward other.” A. P. Bochner,

of the communicative relationship between McVeigh and his victims, to account for participants' perceptions that McVeigh was speaking *to them*?

In 1956, Horton and Wohl published an article in *Psychiatry* seeking to explain television viewers' perceived relationship to television personalities.¹⁶⁶ Terming this illusory relation a "para-social interaction," Horton and Wohl defined it as "the illusion of face-to-face relationship with the performer" in which "the conditions of response to the performer are analogous to those in a primary group." This relationship is built upon a cumulative "exchange" of affective messages between the personality, termed the "persona," and the audience, whereby the audience is "subtly insinuated into the program's action and internal social relationships and, by dint of this kind of staging, is ambiguously transformed into a group which observes and participates in the show by turns." Para-social relationships are characterized by a "lack of effective reciprocity" since "the interaction, characteristically, is one-sided, nondialectical, controlled by the performer, and not susceptible of mutual development"; thus, "the audience is free to choose among the relationships offered, but it cannot create new ones." Despite the lack of communicative give and take, the persona who is the focus of the para-social relationship becomes integrated into the audience member's social circle as a familiar presence." Significantly, this presence is above all a reliable presence. Nonetheless,

Interpersonal Communication, in INTERNATIONAL ENCYCLOPEDIA OF COMMUNICATIONS 336 (E. Barnouw, G. Gerbner, W. Schramm, T. L. Worth & L. Gross eds., 1989). Cappella emphasizes the ability to influence another as the focus of interpersonal communication analysis. J.N. Cappella, *Interpersonal Communication: Definitions and Fundamental Questions*, in HANDBOOK OF COMMUNICATION SCIENCE 228 (C.R. Berger & S.H. Chaffee eds., 1987). Despite this lack of consensus, however, certain definitional practices are more common than others. For instance, it is most common to limit the number of participants in an interpersonal encounter to two, and another assumption involves limiting such interactions to face to face exchanges involving close physical proximity. Knapp et al., *supra*, at 9.

¹⁶⁶ Donald Horton & R. Richard Wohl, *Mass Communication and Para-Social Interaction: Observation on Intimacy at a Distance*, *Psychiatry* 19(3) (August 1956) (republished in INTER/MEDIA: INTERPERSONAL COMMUNICATION IN A MEDIA WORLD (Gary Gumpert & Robert Cathcart eds., 2d ed., 1979) (188-211).

however artless this relationship may appear, it is also a strategic and constant one.

Producers formulate the persona's character specifically to enhance audience members' loyalty to the persona.¹⁶⁷ Subsequent research into para-social relationships further suggests that this illusory intimacy, the subjective creation of audience members, is actually taken as "real."¹⁶⁸ Para-social relationships continue to pervade media usage today.¹⁶⁹

Researchers have always construed the persona that is the target of the para-social relation as being in the position of a para-social "friend," someone who is likeable and trustworthy. Thus, this type of investiture can be termed a "positive" para-social relationship, or a investiture of positive affect in a persona. But logically, if one can have relationships with para-social "friends," then one may also have relationships with para-social "enemies," opening the door to the formation of "negative" para-social relationships. Negative para-social relations have the same characteristics as their positive counterparts, though these characteristics form an identification that is the inverse of that encouraged by the positive relation. A para-social relation with an "enemy" also frames spectators' perceptions of the performer, enabling persistent dislike

¹⁶⁷ *Id.* at 188-191, 195.

¹⁶⁸ Analyzing the para-social relationships that viewers of television news form with newscasters, Levy notes, "[e]ven though this affective tie is completely the subjective invention of the audience, para-socially interactive viewers believe it is genuine and they interpret the behavior of the news personae as reciprocating this 'real' bond." Mark Levy, *Watching TV News as Para-Social Interaction*, in *INTER/MEDIA: INTERPERSONAL COMMUNICATION IN A MEDIA WORLD* 185 (Gary Gumpert & Robert Cathcart eds., 2d ed., 1979)

¹⁶⁹ In the wake of "Crocodile Hunter" Steve Irwin's death on August 31, 2006 from a stingray barb embedded in his chest, this popular figure was publicly mourned, becoming the leading celebrity story despite others such as the debut of Katie Couric on the "CBS Evening News," Rosie O'Donnell's arrival on "The View," and the release of the first photographs of Suri Cruise. One CNN story on the intense coverage of Irwin's death and public mourning featured a media expert who directly attributed the phenomenon to the strong para-social relationships Irwin fostered in audiences: "Every now and then a TV star has the ability to transcend the electronic barrier of what a television is and really feel like they're one of the family..." David Williams, *Irwin's Death Strikes a Chord*, available at <http://www.cnn.com/2006/SHOWBIZ/TV/09/06/irwin.outpouring/index.html>.

and animosity. Whereas the positive para-social persona is an “ingroup” member, a desirable associate, the para-social enemy is an outsider, a deviant Other. Victims are as encouraged to be loyal to their hatred of criminal personas as audience members are encouraged to admire their media personas. Realizing how negative para-social relations are cultivated also necessitates broadening the concepts of “media” and “media producer,” extending them from application in the narrower context of mass media to application in the broader context of social institutions who may take on strategic mediating roles—including criminal justice officials who orchestrate the arrest and trial of criminal offenders from the “perp walk” to incarceration or execution.

From participants’ attributions of malicious communicative intent to McVeigh and the degree to which their responses attributed a dialogic character to their interactions with McVeigh, it is clear that there was ample evidence of a negative para-social relation between family members and survivors and McVeigh. McVeigh was their para-social enemy, the one who, however mediated his communications may be, both had the potential to communicate *and* actually communicated with the intent of inflicting further harm on an especially vulnerable and wounded population. However, while the para-social relationship as a concept implies that the victim-offender relationship was illusory, it truly was so only in the sense that participants spoke in terms of an unfortunate intimacy with McVeigh. McVeigh actually initiated the relationship, after all, by traumatizing them, injuring them, and murdering their loved ones.

The intimacy of this negative para-social relation was particularly ironic in light of the impersonal nature of the Oklahoma City bombing itself. According to numerous media interviews and statements made to the authors of his biography *An American*

Terrorist, McVeigh saw himself as standing in opposition to the United States government, at the narrowest opposing the government agencies involved in Waco and Ruby Ridge, and explained that he chose to bomb the Murrah Federal Building because he thought that it would make a spectacular media target, not out of personal animosity toward anyone who worked in the building or anything housed in the building. Yet, the bombing immediately became intensely personal, as images brought to life stories such as the iconic image of the dead Baylee Almon, the one-year-old baby girl cradled in the arms of Oklahoma City firefighter Chris Fields. The impersonality of the bombing was an incomprehensible affront to family members and survivors, who could not see it as such.

How did the para-social relationship between McVeigh and victims' families and survivors come about? Because para-social identification is enhanced or discouraged by the construction of mediated images of a persona, the visual technology of mediated images plays a key role in the formation of such relationships. Meyrowitz contends that an affective relationship can be encouraged by the composition of a television shot, such that "the way in which a person is framed may suggest an interpersonal distance between that person and the viewer."¹⁷⁰ Thus the interpersonal distance between the audience and the actor's image can bolster the sense that an interpersonal relationship exists. The para-social identification of viewers with viewed personae is enhanced by technological reproduction of key interpersonal proxemic distances. The visual relationship alters with a "framing variable" that mediates the distance between the viewer and the center of that

¹⁷⁰ Joshua Meyrowitz, *Television and Interpersonal Behavior: Codes of Perception and Response*, in *INTER/MEDIA: INTERPERSONAL COMMUNICATION IN A MEDIA WORLD* 225 (Gary Gumpert & Robert Cathcart eds., 2d ed., 1979).

image through use of a close-up, medium shot, or long shot. Actions in long shots “tend to be viewed in terms of abstract ‘events’” and “close-ups focus attention on personal characteristics and response,” with intensity of response being related to shot distance. In addition, some shots portray an “objective distance” of a detached observer, while others utilize a “subjective distance” that allows audience viewers to assume the perspective of a character. Also relevant is Goffman’s concept of “front,” “that part of the individual’s performance which regularly functions in a general and fixed fashion to define the situation for those who observe the performance.”¹⁷¹ “Personal front” includes manner and appearance, and “front region roles” are roles that reflect onstage behavior in which someone plays out an idealized conception of a social role.”¹⁷² Significantly, “the enemy is generally seen in front region roles only.”¹⁷³

Media coverage of McVeigh was limited to two “moments”: shots of McVeigh being escorted to and from the courthouse in Oklahoma City by law enforcement, and an Emmy-award winning “Sixty Minutes” interview that aired March 13, 2000 which Ed Bradley conducted with McVeigh while he was on federal death row. The “perp walk” shots most certainly portrayed McVeigh in the “front region” role of criminal and social enemy. Thus, it is not surprising that McVeigh’s profile from these “perp walk” shots later became the centerpiece of news graphics headlining execution stories. Ed Bradley’s “60 Minutes” interview, on the other hand, allowed McVeigh to explain himself in his own words, yet the interview alternated between camera shots of McVeigh captured over Bradley’s shoulder, positioning the viewer in the interrogator’s

¹⁷¹ *Id.* at 221-27, 229-30, 236.

¹⁷² ERVING GOFFMAN, *THE PRESENTATION OF SELF IN EVERYDAY LIFE* 22 (1959).

¹⁷³ Meyrowitz, *supra* note 170, at 236.

chair, and close-ups of McVeigh's facial expression. The following pictures illustrate these orientations:



Figure 1: Photos from McVeigh's "perp walk" in Oklahoma, in which McVeigh is walking in public for the first time after being identified as the bombing suspect.

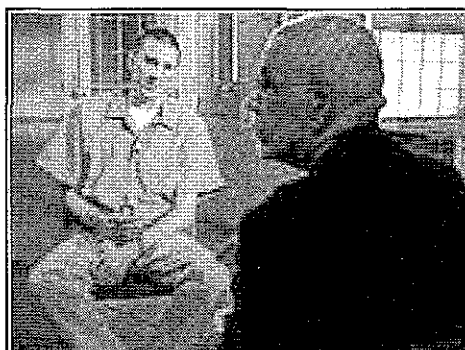
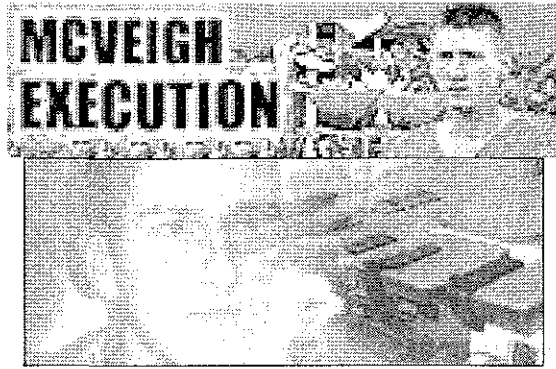
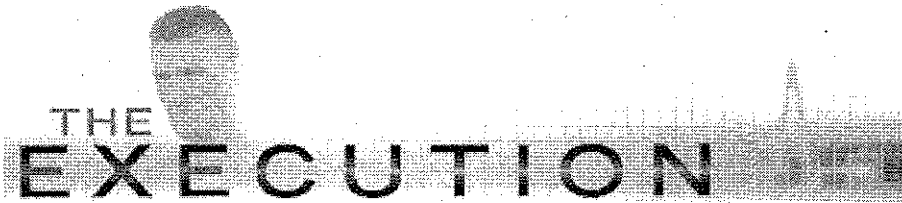


Figure 2: Still shot from Ed Bradley's "60 Minutes" interview with McVeigh, aired March 13, 2000
In addition, the image from McVeigh's Oklahoma "perp walk" was the dominant photograph of him used in media coverage of the Oklahoma City bombing, and was often incorporated into news graphics, as in the following examples of online news graphics and images from execution coverage and images from print media.

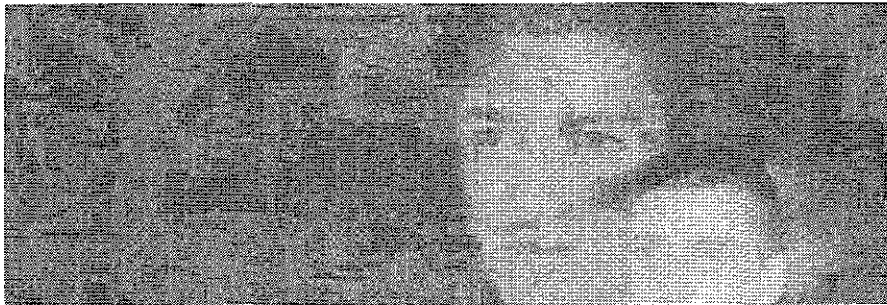
BBC



USA TODAY



COURT TV



NEWSHOUR WITH JIM LEHRER



Figure 3: News graphics for the McVeigh execution from BBC, USA Today, Court TV, and the NewsHour with Jim Lehrer

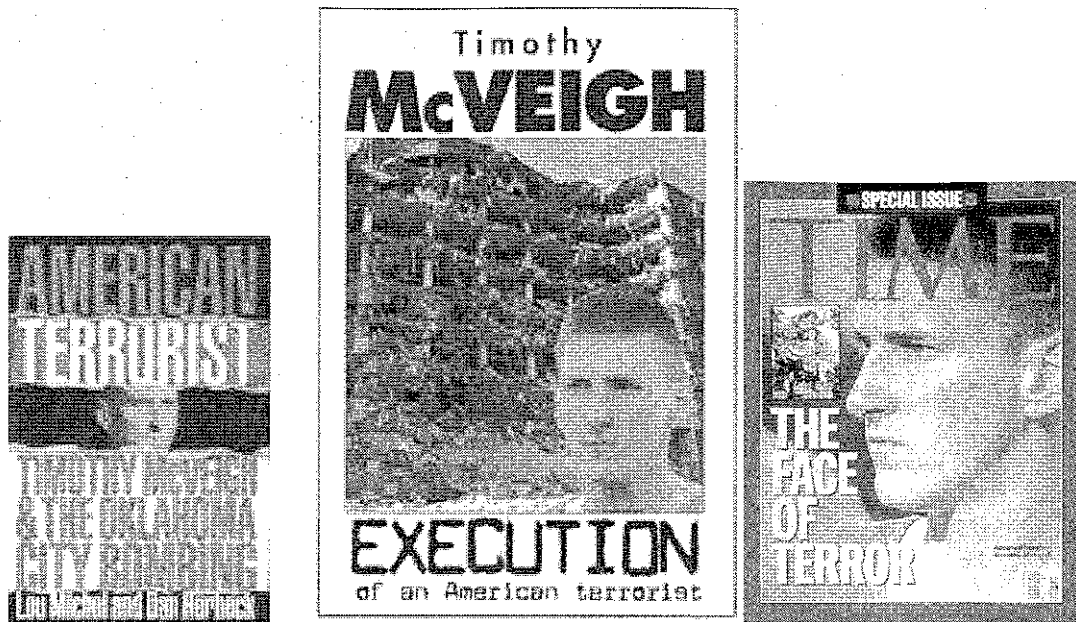


Figure 4: Images of McVeigh in print Media, from left to right: the cover of *American Terrorist* written by Michel and Herbeck with McVeigh's cooperation, the graphic used by the *Terra Haute Tribune-Star*, and the May 1, 1995 cover of *Time*

Further attention was drawn to McVeigh's gaze by textual descriptions of these very same images. Early media stories described McVeigh's expression as that of "hard eyes unlit by the faintest flicker of emotion," the look of a man whose "name didn't mean much then but the image did," the stare of "a poker-faced killer in a crewcut."¹⁷⁴ This first impression resurfaced continually, including on the morning of his execution: "[i]n his last moments, his face was as blank as it was that April day six years ago when America first saw him escorted out of an Oklahoma jail."¹⁷⁵ Interestingly, early media constructions of McVeigh were cyclically incorporated into subsequent constructions, snowballing upon one another to produce a coherent image of McVeigh as para-social

¹⁷⁴ Sam Handlin, *Profile of a Mass Murderer: Who is Timothy McVeigh?*, available at http://www.courttv.com/news/mcveigh_special/profile_ctv.html

¹⁷⁵ *McVeigh Shows No Remorse at Execution*, available at http://www.courttv.com/news/mcveigh_special/0612_noremorse_ap.html.

enemy. Thus, McVeigh's gaze became crucial in the construction of McVeigh as a para-social enemy.

The heavy media focus on the "perp walk" images could easily have influenced the early impression formation of family members and survivors, constructing expectancies regarding the import of his communicative behaviors. Impression formation upon initial acquaintance is rapid, or even instant, as the subconscious makes its "highly stereotypic" impressions.¹⁷⁶ Because what can be gleaned from introductory verbal exchanges is restricted by convention, nonverbal cues such as "stable physical appearance and kinesic and vocalic cues" are especially significant in "shaping interpersonal expectations and in generating a frame for the parties' interpretation of subsequent behavior. Moreover, interactants require only very brief glimpses of behavior to form "fairly accurate and strong" judgments of actors. The rapidity of impression formation is necessary because humans are "driven by an underlying need for uncertainty reduction" and by a need for sensemaking. Significantly, humans' initial impressions of unfamiliar individuals are highly consistent, but is more accurate as to judgments of sex, age, occupation, and social status than as to attitudes, values and personality traits. Initial impressions are "highly persistent, even in the face of subsequent contradictory cues," and humans seem to seek out communicative information that confirms first impressions.¹⁷⁷

Thus, the moment when family members and survivors were "introduced" to McVeigh via media broadcast of the "perp walk" was very likely when they formed

¹⁷⁶ Judee K. Burgoon & Gregory D. Hoobler, *Nonverbal Signals*, in HANDBOOK OF INTERPERSONAL COMMUNICATION 262 (Mark L. Knapp & John A. Daly eds., 3d ed., 2002).

¹⁷⁷ *Id.* at 262-64.

initial impressions of McVeigh as a person and as a perpetrator. Significantly, this footage or still shots from it were rebroadcast frequently and repeatedly in ensuing years on local and national news, thus reinforcing the visual cues from which the initial impression was formed. Several execution witnesses, unprompted by the interviewer, remarked on the similarities between McVeigh's gaze during the execution and his gaze on previous occasions captured and aired on television. For instance, Participant 22, a closed-circuit witness, stated, "[h]e didn't just look. He had that same look in his eyes when they arrested him. Do you remember him coming out of the court house and that stern look on his face? That's the look he had. . . . Like defiant." Participant 15, another remote witness, stated in response to the inquiry of whether McVeigh's gaze during the execution seemed cold, "Yes, very cold. He was the whole time. Any time you ever saw him on TV." These comments revealed not only that witnesses were aware of how McVeigh was constructed in and by the news media as a person and an offender, but that they found these constructions meaningful.

Pursuing Accountability Through the Criminal Justice System

Significantly, participants' remarks provide evidence of the strong belief of the Oklahoma City victims and survivors community (especially habeas group members) that institutions such as the criminal justice system must privilege their needs, most obviously by allowing attendance and participation in criminal trials. This belief pervades victims' and survivors' views on trial attendance and participation, and thus is a crucial part of understanding how participants came to draw a link between attendance/participation and recovery. Participants believed that they had rights to these roles; Participant 22 referred to both "our right to testify" and "our right to attend." Similarly, Participant 28 recalled

that victims and survivors gathered to persuade Ashcroft to arrange a closed circuit broadcast of McVeigh's execution asserted that "we had the right to attend . . ."

McVeigh's execution: "if we want to witness then we should have been able to . . . we should be able to witness it. That's our right." These uncompromising claims caused quite a bit of friction between victims/survivors and the criminal justice institution, embodied in U.S. District Judge Matsch who presided over McVeigh's federal trial.

Such claims are also solid tenets of the victims' rights movement, in which victims claim the right to be kept informed of each development and the right to participate in criminal proceedings. Unfortunately, these demands have the effect of channeling victims' and survivors' expectations and hopes into the criminal trial, an institutional product that is not victim-centered in either its focus (which is upon the defendant's actions) or in its inquiry (which centers upon guilt or innocence).

In the Oklahoma City context, these claims became most concrete in two separate incidents when victims and survivors went to Congress to override a decision by U.S. District Judge Matsch which would limit or prohibit attendance at McVeigh's trial. In 1996, after McVeigh applied for and received a change of trial venue from Oklahoma City to Denver, Colorado, victims and survivors hired Oklahoma City attorney Karen Howick to fight for McVeigh's trial to be broadcast back to Oklahoma City via closed circuit. In April 24, 1996, after an intense lobbying effort by victims, Congress passed legislation allowing for closed-circuit broadcasts of trials that are moved out of state or relocated 350 miles from the original trial location.

Moreover, in March of 1997, when U.S. District Judge Matsch initially barred victims and survivors slated to give victim impact testimony at sentencing from attending

the guilt phase of McVeigh's trial, just weeks before the scheduled trial start date. A group of victims and survivors, many of whom were members of the habeas group, initially appealed Judge Matsch's ruling to the U.S. Court of Appeals for the Tenth Circuit, which upheld the ruling. Another appeal was instituted; however, Participant 22, who was heavily involved in efforts to change Judge Matsch's ruling, recalled that there was a sense that that route was going to be unsuccessful, and since 22 was working in the Oklahoma City Attorney General's office at that time she asked for proposed legislation to be written. After an intensive lobbying effort, legislation allowing victims to be present at trials was brought before Congress and passed with historic speed. As Participant 22 recalls:

as it turned out the AG [Attorney General] and I went back [to Washington] and uh watched it pass the floor or the I think it was the House was first one day and the floor of the Senate the next day. And then it was signed into law that evening by Clinton. So it was in two days time it passed both Houses and signed into law.

This legislation, known as the Victims' Rights Clarification Act of 1997, 18 U.S.C. § 3510, states amongst other provisions that "a United States district court shall not order any victim of any offense excluded from the trial of a defendant accused of that offense because such victim may, during the sentencing hearing, testify as to the effect of the offense on the victim and the victim's family . . ."

Survivors and victims' families also believed that they were entitled to accountability, achieved through the trials of the bombing suspects. As soon as Timothy McVeigh and Terry Nichols were identified as the perpetrators, victims' families and survivors of all political persuasions looked forward to the day when they would be held accountable. Even before trial, however, victims' families and survivors felt that

McVeigh was defiant. Perhaps this para-social impression affected expectations of McVeigh's behavior at trial; what is certain, however, is that victims' families and survivors who attended the trial either by closed-circuit broadcast were truly positioned opposite to McVeigh, their aggressor and antagonizer, in the forum of *United States v. Timothy McVeigh*. It was in this forum that victims' families and survivors sought accountability—not only in holding McVeigh responsible, but also in identifying his motivations and the origins of his criminal intent so as to answer the (potentially unanswerable) queries of “why” and “why us.”

Thus, the accountability inquiry took on an interpersonal dimension that penetrated beyond the question of guilt or innocence. It was profoundly important to victims' families and survivors that they sought to understand both McVeigh and Nichols as persons and as offenders, to gauge the depths of these men who had wrought such destruction. The offenders' bodies were literally bodies of evidence that family members and survivors could scrutinize for insights essential to their reconstructive processes. The following diagram illustrates the mnemonic relationship between victims' families/survivors, offenders, and the bombing.

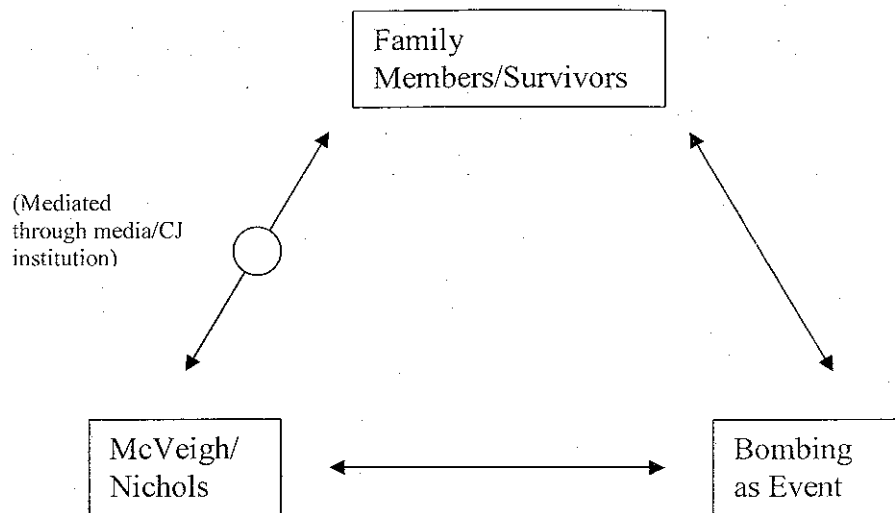


Figure 5: The mnemonic relationship between victims' families/survivors, offenders, & the bombing

Seeing the offenders' behavior provided insight not only into the mediated victim-offender relationship, solidifying family members' and survivors' perceptions of McVeigh and Nichols, but also into the relationship between McVeigh and Nichols and the bombing, which allowed trial attendees to speculate how the offenders felt about the bombing—whether they regretted or took pride in it. Family members and survivors had to form such perceptions to negotiate the involuntary victim-offender relationship; for example, it was necessary to apprehend how one felt towards McVeigh and how one believed McVeigh felt about the bombing in order to integrate the offender into the reconstructive process.

Family members and survivors who attended the trial in Denver constantly scrutinized the defendants' behaviors; as Participant 25 noted, these behaviors “were some of the things that we was [sic] trying to watch and see how both of them would react under circumstances.” This suggests that defendants' bodies were objects on which

memory work can be performed. Participant 17 described the intensity of this behavioral scrutiny:

during lunch breaks and all that they are talking that all of this angry thing and how this person you know or what McVeigh did at the table, where you're sitting there, you know some facial exp, that he had expression of some kind or how he sat on the chair . .

The nature of the Denver courtroom as a public space seemed to enhance such surveillance. Participant 19, a victim impact witness in McVeigh's trial, described the Denver courtroom as a more "intimate" space; she enjoyed attending the trial in Denver because of the increased opportunity to see "body language" and other communicative cues: "you could see demeanor of the body language, you could hear the vocal quality and the way that the witness was talking and so forth."

The heightened physical proximity between attendee family members and survivors and McVeigh enabled a revelation for some. Participant 28 was struck by McVeigh's humanity upon seeing him in person for the first time during the Oklahoma City change of venue proceedings: "but it hit me too, he's just a man. He's a man. You know, in my mind he was a monster. But he really was a man." But the continued presence of McVeigh could also be unnerving; as Participant 28 stated of the FAA trial broadcast, "the camera was set on Judge Matsch and we could see the attorneys and Sometimes you could see him when he leaned back that was pretty unnerving, you know, upsetting . . ." Thus, McVeigh's body could serve as a mnemonic magnet, directly immersed onlookers once more in the horror of the bombing.

Impressions of McVeigh's behavior at trial not only confirmed earlier perceptions of his defiant demeanor formed from media images of his perp walk, but also

explicitly contrasted with impressions of Nichols' behavior as a solemn, remorseful offender. The beginning of McVeigh's trial meant that another institution besides the news media now offered visual access to McVeigh as a defendant. Not surprisingly, McVeigh's demeanor in the courtroom bolstered his behavior "as seen on TV." The most frequent characterizations of McVeigh at his trial reflected an "inappropriate" emotion or reaction to the trial event; McVeigh was described variously as inappropriately jocular, sarcastic, arrogant, unemotional and unremorseful. Presumably, the ideal defendant should be solemn, respectful, remorseful, and intimidated by the machinations of justice moving against him. These very same qualities appeared in the most frequent characterizations of Nichols, wherein Nichols was emotional, shamed, quiet, and nervous. The entire range of characterizations of the two defendants are summarized in table form below.

Characterizations of McVeigh's Behavior	Characterizations of Nichols' Behavior
Inappropriately happy/joking Sneering/Sarcastic Evil Maliciously interested in the hurt he had effected Proud/arrogant Aggressive Unremorseful Unemotional Impassive/unreadable Cold Callous Cowardly	More emotional the opposite of McVeigh ashamed nervous refined quiet afraid

Table 1: Participants' characterizations of McVeigh and Nichols at trial

One of the most pervasive trial witness characterizations of McVeigh was as an unemotional defendant whose reactions were nonexistent or impossible to interpret. Participant 2, for instance, stated that McVeigh “was always just sitting there expressionless, never showed any remorse. Never showed any emotion. He was just like a statue there.” For Participant 29, this impassivity was inhuman: “I mean McVeigh was just automaton almost. Just so- didn’t move. Nothing. Just stony. Like I said, no like- wasn’t even a human being.” Often, this impassivity was connected to a coldness of demeanor; Participant 10 remarked, “McVeigh was a raw hard person to understand and to get any kind of vibe from; he was just cold and callous.” Participant 28 associated this passivity with callousness: “you know, he never showed anything. Never...you know, it was all like nothing, it was nothing. It was -- so what, people die.” Participant 27 linked this passivity with a capacity for deceit: “. . . even if he’d said something whether you could have trusted that what he was saying was honest or... I mean just because he was so stoic throughout the trial and he always had the same look on his face.” Two participants connected this coldness to “evil.” Finally, Participant 22 felt that this cold demeanor helped her recognize that McVeigh was a coward: “we locked eyes and that was the most cold feeling I’ve ever had in my life and I remember thinking what a coward.”

Another of the most pervasive characterizations of McVeigh was as a proud or arrogant perpetrator who enjoyed attending the trial; for instance, Participant 8 stated “He is a cold son-of-a-bitch and he sat there arrogant and looking like he was enjoying the show.” Several other family members and survivors were angered by McVeigh’s apparently casual behavior that they perceived as relaxation or enjoyment of the

proceedings. Participant 28 first perceived McVeigh as jocular at the Oklahoma City change of venue proceeding: “when they drove in, . . . he was just waving at people and talking to them. . . . I thought, he was really smiling.” According to Participant 8, McVeigh appeared to enjoyed himself during the trial because he “[p]ropped his feet up on the chair in front of him.” Participant 16, a trial attendee in Denver, recalled that “McVeigh would walk into the courtroom laughing, and joking, and sneering, and looking at the victims . . . like he was just having a good old time until the jury and the judge would come in and then he would settle down and, you know, be more serene.” Participant 22 noted that McVeigh was relaxed and disengaged when he was uninterested in the testimony: “the rest of the time he was, he didn’t care. He was like leaning back in his chair . . .” Such behavioral displays greatly angered participants; Participant 28, for instance, stated, “. . . he just made me sick, because he would sit up there and talk to his lawyers and smile at the media and you know, I just. . . it was just crazy.”

The moments of inappropriate jocular and informality contrasted with other moments in which McVeigh was obviously paying a great deal of attention to the proceedings. Participant 22 perceived that McVeigh was only interested in evidence of the truck bomb and the harm it had caused:

The things he paid attention to were anyone who was testifying about that had bomb knowledge, uh, how they’re built and what works, what doesn’t work. . . . and any rescue workers . . . because he wanted to know the damage he’d done. And victims. He wanted to know how much he had hurt everybody.

Participant 25 also described McVeigh as “very aggressive” and very involved at times: “He watched a lot of the . . . people testifying. He got involved in a lot of it. When they

brought out parts and they was talking about the telephones and the chemicals, he looked like he was really interested in it more than Nichols was.”

Victim impact witnesses differed in the degree to which they looked over at McVeigh during his testimony; several did not look or limited the times that they looked for fear of losing focus while on the witness stand. Participant 21, for instance, lost her composure while testifying:

I couldn't, I, I looked at him, I mean I was so nervous and so scared and I really don't understand why it was affecting, well it was affecting me emotionally. . . . I just wanted to cry and when I looked over him, it shook me out so bad that I was like I can't look at him or I can't stay focused on what I am here for. . . . So I did not look back over at him.

Participant 24, who testified in the prosecution's case in chief, had been coached not to look over at McVeigh by prosecutors and tried not to, but could not resist; he minimized such glances to remain accurate and in control.

Trial witnesses characterized Nichols' conduct as the opposite of McVeigh's behavior; for Participant 25, these differences individualized the defendants. Participants reported that Nichols was more emotional than McVeigh; according to Participant 24, this emotion was elicited by the trial: “I felt like things that were said or done not necessarily by me during my testimony but by maybe others, victim impact, that kind of thing, that there were times when he was very emotional.” Participants also credited Nichols with displaying situationally appropriate emotions; for example, Participant 8 stated that Nichols appeared to be “uncomfortable, scared, guilty . . . He looked very frightened.” Participant 28 described Nichols as “a little more nervous,” and Participant 24 stated that Nichols may have felt shame: “I felt like that Nichols was maybe more

ashamed of what he couldn't have stopped from doing.” For Participant 29, these displays of emotion were signs of humanity: “And I hate to give him credit for this but you kind of see a person in Nichols.” Nichols was also quieter, according to Participant 25, and Participant 28 stated that he was more somber: “he wasn't the jokester whatever. . . . he did lean over and talk to his attorneys and but he didn't do the waving at people and the laughing and you know, he did not do that. He was much more serious.”

Participants' impressions of McVeigh as a defiant, remorseless defendant who took pride in the sophistication of his crimes set the tone for the years between the handing down of the guilty verdict and the final sentencing proceeding during which McVeigh was sentenced to die by lethal injection and McVeigh's execution. It was this period of time in which McVeigh was perceived to attempt to manipulate victims' families through media contact, prompting Ashcroft to plead with journalists not to interview McVeigh shortly before the execution, and sparking creative responses such as the political cartoon below:



Figure 6: Political Cartoon Reflecting Ashcroft's Efforts to Muffle McVeigh Before Execution. Source: Steve Sack, Minnesota, THE MINNEAPOLIS STAR-TRIBUNE, available at <http://cagle.msnbc.com/news/mcveigh/ex7.asp>

McVeigh's behavior at trial was a nail in his coffin; it is what cemented family members' and survivors' initial impressions of him as a defiant, remorseless, arrogant offender; trial attendees now felt they "knew" what sort of men McVeigh and Nichols were. Moreover, his behavior profoundly affected the reception of his later remarks to the media, cultivating the widespread perceptions that such remarks were made to manipulate and further wound families and survivors. This would ultimately produce a sense that McVeigh had to be executed in order to silence him and thereby end the victim-offender relationship—a justification that was never given in efforts to impose the death penalty upon Nichols.

Participants' Perceptions of the Criminal Justice System Prior to the Execution

All victims' family members and survivors could agree on the need for accountability; all wanted McVeigh to be placed on trial for his role in the bombing. Thus, short of pursuing vigilante justice, all had to accept the role of the criminal justice system. However, beyond the threshold issue of accountability, there was great diversity in how individual victims' families and survivors negotiated the involvement of the criminal justice system in attaining the goal of accountability, particularly in terms of opinions on appropriate sentence and whether it was necessary to attend the trial and execution. In addition, victims' families and survivors learned that they not only had to await the outcome of McVeigh's trial but also had to negotiate their troubled relationships to McVeigh as a perpetrator, grappling with whether to forgive, perhaps a desire to meet McVeigh before his execution, and expectations as to what his execution would achieve in their own lives.

Two sets of interview questions provided insight into how participants accommodated the criminal justice system and legal proceedings into their individual and collective memorial frameworks: participants' opinions on the death penalty, whether participants felt a duty or responsibility to attend McVeigh's trial, and whether participants felt a duty or responsibility to witness McVeigh's execution.

Participants' Opinion on the Propriety of the Death Penalty

Whether a victims' family member or survivor was for, against, or ambivalent towards the death penalty necessarily corresponded to the desired penal outcome in McVeigh's trial—what sentence participants felt that McVeigh merited. The awarding of the desired verdict and sentence, in turn, was directly related to participants' satisfaction with the involvement of the criminal justice system—and therefore to reconstructive mnemonic processes. Notably, however, even if the “right” verdict was given, and the “right” sentence was handed down, the manner in which the sentence was imposed also had implications for the formation of individual and social frameworks of memory; for instance, it was a key tenet of the Habeas Group that postponing execution for as long as 17 years caused “suffering”—memory wounds—for victims' families.

In the context of the Oklahoma City bombing, the tie between memory and judicial outcome was aptly demonstrated by the community's reception of the verdicts and sentences in the federal trials of McVeigh and Nichols. When a federal jury convicted McVeigh on eight counts of first degree murder and determined that he should die by lethal injection, many survivors and victims' families literally embraced the jury; members of the Habeas Group brought the McVeigh jury to Oklahoma City to meet others and see the bombing site as well as other area attractions, and later traveled to

Colorado as jurors' guests. But when another federal jury convicted Nichols only of eight counts of involuntary manslaughter (and not guilty of eight counts of first or second degree murder), survivors and victims' families responded with anger and confusion. The result of this abhorrent verdict was a second state trial for Nichols in McAllister, Oklahoma, which cost the state millions of dollars for Nichols' representation alone, in which the jury handed down the "right" verdict, convicting Nichols of 160 counts of murder and of one count of causing the death of an unborn child. However, this trial failed to award what many felt was the "right" *sentence* of death, leaving Nichols imprisoned for life without possibility of parole. In the end, then, the interests of memory were served by those of justice, in that accountability in the form of a murder verdict was achieved.

Participants' support for the death penalty declined slightly after the bombing.

	<u>Pre-bombing</u>	<u>Post-Bombing</u>
No opinion	3	1
For	16	15
Against	7	8
Case-by-Case	1	3

Table 2: Changes in participants' support for the death penalty before and after the bombing

In summary, eight participants reported no change in opinion or change in strength of opinion, eight reported that their current opinion had grown stronger, one participant changed from against the death penalty to for the death penalty, three changed from for to against, three struggled with their opinion following the bombing but

ultimately retained it, and two formed an opinion for the first time. Thus, participants were most likely to form an opinion on the death penalty after the bombing.

Participants listed a variety of reasons for supporting the death penalty. For Participant 1, it was a safety issue: “If we don’t execute these people if we can incarcerate them, can’t guarantee they stay there, uh, as a society, uh, we cannot allow ‘em to be released in a society and brutalize, and continue to kill and murder, that’s just insane.” Participants 5, 10, 14, 15, 16, and 24 stated that certain perpetrators “deserved” the death penalty or that the death penalty was the proper “response” to murder. As Participant 5 remarked, “I believe this way – you commit a crime you deserve what you get. . . . if you killed somebody, you know, they can’t do nothin’ about it. I mean, why, they died – why don’t the person that killed them, why don’t they die?” Participants 16, 22 and 24 also stated that the death penalty law was “on the books” and so should be applied. 16 recalled telling the Oklahoma Governor and Lieutenant Governor “well, if it’s not appropriate in this case where he killed 168 people, when would it ever be appropriate?” 22 stated that “the laws of our land state that if you do this then this is the penalty and I strongly believe that should be enforced.” Finally, Participant 5 was unwilling to pay to keep murderers alive. Thus, support for the death penalty seemed to stem from the fact that it was reserved as the ultimate response to a heinous crime that certain offenders merited.

Participants also opposed the death penalty for a number of reasons; responses focused on the concept of absence—an absence of those lost, an absence of civilized standards, an absence of closure, and an absence of accountability. It also focused on the concept of surfeit—an abundance of suffering, and an abundance of money being spent

to execute offenders. Participant 2 commented on the perpetual absence of those lost: “I don’t think that killing a person is going to bring back anybody else. It’s not it just doesn’t solve any problems . . .” Participants 3 and 27 lamented an absence of civilized standards by intimating that the death penalty was uncivilized or barbaric, and that execution wounded yet another family; Participant 27 stated that “he done such a terrible thing and yet we were going through as a civilized society and inflicting that same stuff on others that . . . were affected.” Participants 2 and 27 felt empathy for McVeigh’s family who had already suffered. Participant 17 lamented an absence of closure from execution, and remarked, “. . . even people that are not anti death penalty that have gone through for example Tim McVeigh’s execution They are still angry, still not dealt with it, even though they delivered the body to them.” Participants 11 and 19 lamented an absence of accountability for executed offenders. Participant 11 felt that death was “really too easy” and that “it would have been better if he’d served life in prison and thought about his crimes . . .” Finally, opponents also noted the expense of the death penalty; Participant 23 stated, “they cost more in this country in legal expenses and other expenses to execute a United States citizen of course than it costs to keep them in prison for life.” Opposition to the death penalty, therefore, stemmed from participants’ expectations that the execution would fail to achieve certain outcomes for victims and would cause additional harm to the offenders’ family, the process of accountability, government coffers, and the national image.

Incorporated in many participants’ responses regardless of their stance on the death penalty were indictments of the current criminal justice system. Participant 10 commented on the inconsistency of the system:

It angers me that people who kill one person can get the Death Penalty but people who kill 5 or 6 get off with the life sentence for the same state you know and it -- I think, I think it should be straight if you know, if you kill somebody that mean it's an eye for an eye.

Participant 12 lambasted the current system for being too slow, and stated that new policies should be created in certain "heinous" cases to effect death immediately after conviction: "I think that there are extreme situations and I don't know how they can legally be defined . . . there are special circumstances I believe where especially if guilt is proven . . . those people should be executed, on the spot, no waiting, no delay . . ."

Participant 16 regretted that too many murderers escape the noose:

here in Oklahoma back when it was a territory . . . we had a hanging judge Parker, is what they called him. And uh, I had always heard this saying that the crime decreased in the Oklahoma territory when hanging Judge Parker here, not because of the severity of the punishment, but because of the surety of it. . . . But our system seems like it's gotten to where there's so many loopholes and there's so many ways they can get around being punished, they think they can get away with anything.

Finally, Participant 19 advocated restorative justice, feeling that accountability was lost in the adversarial games-playing and politics of criminal litigation, and other concerns that should not be present are introduced because "everyone pleads not guilty even if they have a video camera that actually shows them in great detail doing the crime," "the defense is over here trying to play games of all sorts to try to get the person off or whatever" and lawyers for the defense and the state "may be trying to build a career." These negative perceptions of the criminal justice system revealed that although victims' family members and survivors did rely on it to achieve accountability, they maintained a critical distance from its proceedings and worried that its shortcomings would imperil its mission.

Death penalty opponents indicted the current criminal justice system for making the death penalty available as a sentencing option. To be a death penalty opponent is to critique the criminal justice system, to fault it for being uncivilized, imposing further suffering. In addition, Participant 17 noted that “closure” has become an improper justification for the death penalty:

I can see now the horrible lies that are told to . . . victim’s family members by prosecutors that are otherwise good people, they are educated people, they are all liars and about how that they need to get the death penalty for this guy so that they can have some type of closure and like if we bring you his dead body, you are going to feel much better about the loss of your son or daughter whoever it is . . .

Thus, whether participants were for or against the death penalty played a key role in structuring their expectations of legal proceedings as well as the outcomes that they desired, and so played a crucial role in guiding individual frameworks of memory.

The Perception of a Duty or Responsibility to View or Participate in the Trial and Witness the Execution

Whether participants felt a duty or responsibility to attend the trial and execution addresses the issue of whether and how they felt it necessary to incorporate legal proceedings into their reconstructive processes. The criminal justice system not only mediated the involuntary relationship between victims’ families and McVeigh, it also mediated other types of memory work through which these individuals labored to form supportive ways of comprehending and recovering from the bombing. Significantly, its mission to achieve accountability made the criminal justice system a mediating entity for every victims’ family member and survivor whether or not they attended the trial, but it was especially so for attendees. In addition, however, legal proceedings potentially both

created a new mnemonic duty—a duty to themselves or to murdered victims to attend legal proceedings or witness McVeigh’s execution—and provided a venue in which that duty could be satisfied. This section addresses what types of duties victims’ family members and survivors identified in relation to legal proceedings and how these duties were satisfied.

Testifying in open court was the only way one could actually satisfy a duty to participate in legal proceedings. The witness called to the stand at trial was literally a memory vehicle, “the mirror of what has been, and so is key to making present the truth about the past.” The witness thus was responsible for being the “porter for things past,” for exercising a two-dimensional fidelity—fidelity towards the accurate recollection of events and loyalty to deceased victims through serving as their representative. Like others who bear witness, the witness on the stand “has a certain obstinacy, a stubbornness and a willingness to resist” that enables him to exercise response-ability so that “he answers the crime with the enduringness of the will to remember, to testify, and to see that justice does not forget.” Because the witness “testifies to matters already placed within a legal horizon saturated with moral judgments, with notions of responsibility, agency, and fault,” the lawyer eliciting testimony from a witness places the witness’s testimony within a legal context, in effect translating lay memory into legal memory. Testifying, although a felt obligation, was constructed as “elective,” but “the fact of its voluntariness, far from diminishing its moral weight, rather strengthens the mandate to

remain faithful to the victims of mass crime by not completing the perpetrators' work of effacement."¹⁷⁸

Significantly, two participants who were called as witnesses at McVeigh's trial but who did not feel a duty or responsibility to attend the trial felt a tremendous duty to testify. Participant 24, a witness for the prosecution, stated, "I felt like it was my responsibility because I was asked by the US Attorney to . . . be the Government's witness for GSA for the building . . ." 24 stated that this duty made the act of testifying more difficult: "probably the most difficult thing I ever did because I felt a tremendous responsibility to my friends, my coworkers, my community, to make sure that my testimony was a part of helping to prosecute those people." Participant 20, a critically injured survivor who was slated to give victim impact testimony but whose testimony was cancelled at the last minute, also spoke of a duty to help sentence McVeigh to death:

The way I looked at it was . . . my story and my case and injuries . . . could make a big impact and if it could help to get him the death sentence then I was . . . I'd do my part, you know. . . . they were gonna pay my way up there for the trial and pay the lodging and all that, but if I thought me being there would help him get the death sentence, I'd a paid my own way . . .

Thus, Participants 24 and 20 were willing to go through a tremendous ordeal for a higher cause in order to satisfy a complex system of responsibilities to individuals localized and dispersed, dead and alive, known and unknown, as well as to answer the deeds of McVeigh and Nichols. The efforts of participants who testified also diluted the impersonal nature of trial proceedings, making it possible for witnesses—particularly those giving victim impact testimony—to raise their own voice and hear the voices of

¹⁷⁸ BOOTH, *supra* note 51, at 130-132.

others in a chorus of protest against loss in a forum in which they were otherwise bystanders.

One did not have to take the stand in order to be a trial witness, however. Physical presence, though a silent presence, was a profound reminder that others stood in for the deceased victims, out of love and duty for those individuals or from a desire to gather information to understand what happened to those so cherished. To attend a trial was to experience justice. Interestingly enough, fewer participants characterized attending the trial as a duty or responsibility than an important step in being involved in the process. By a small margin, most participants reported that they did not feel a duty or responsibility to attend McVeigh's trial. Of 27 participants, 14 did not feel a duty or responsibility to view the trial, 12 reported feeling a duty or responsibility, and one felt a duty or responsibility to be a witness at the trial, but not to attend the trial itself. However, 15 participants felt that attending the trial was an important step in being involved in the process, while 12 felt that it was not. This indicated that terming attendance a "duty or responsibility" meant that it was something more than significant or meaningful; the dimensions of this term are analyzed in this section.

Family members and survivors who felt a duty or responsibility to attend the trial cited the need to represent murdered victims—a type of bearing witness. The reason most frequently cited by participants who felt a duty or responsibility to attend McVeigh's trial was to represent the individuals murdered in the bombing; 9 of the 12 participants listed this as a response. Participant 7, a survivor stated, "I thought it was critical for me to be there as a representative of the friends that I lost ah and for their families that couldn't . . ." Participant 22 attended to represent her murdered spouse: "so

many of us want to and I'm included in that group, you want to represent your loved one. They can't be there. You want to be there for them." Sometimes this felt need to represent the victim stemmed from a perception that the victim would have wanted that person to attend, a need to keep others from forgetting the victim, or a need to be a spokesperson for the victim, as evidenced by 28's remarks:

I did, I felt I did for...for my daughter. I felt she can't be there. And believe me, she would have been there. If it had been the other way round, if it had been me, she'd be there, I know she would be there. She would have been very vocal. . . . And that's the least I could do as her parent, to do that, to be there and be her voice . . .

Thus, attending legal proceedings to represent a deceased victim served the function of somehow keeping alive that person's presence, and bringing it into attempts to achieve accountability.

Another reason frequently cited by family members and survivors was the need for information, which is key mnemonic need, since one must know what occurred before one can hope to understand it. Five participants (four of whom also felt a duty or responsibility to attend the trial to represent those killed) felt a responsibility to attend for information-gathering purposes. Participant 10 attended from a longing to gain "insight" into the why the bombing occurred: "I went, for some insight to see if I could, I don't know, figure out why he could do something like that, you know, why people would not report it I never got any, you know, any insight to it but I felt better." This craving for information could be a consuming need:

I needed to find out everything that went on, how it went on, how they was able to prosecute or catch him and all these things. The more I knew about what was going on and in that case the better off I was as far as myself and my family was concerned.

Participant 26 also wanted to be saturated with information: “I felt a responsibility. And I wanted to, I wanted to be there. I wanted to hear all of it that I could.” For Participant 23, being there in person was an important part of gathering this information for increased accuracy, “so that when I spoke about it, when I thought about it, it was based on facts and rule of law and ah not just driven by rumor and emotion.” Interestingly enough, some participants needed to glean as much information as possible, but did not consider this a “duty.” These participants will be discussed in the following subsection.

The “duty” to attend in representation of those murdered was closely related to a duty to pass on information to others. Three participants who felt a duty or responsibility to attend the trial to represent those killed also felt a responsibility to attend to share information with others unable to attend, demonstrating not only the importance of information for mnemonic reconstruction but also that these frameworks—and methods of building them—were above all *social*. Participant 7 stated that it was also important to go to share information with coworkers who “didn’t want to go . . . didn’t want to get that involved, didn’t want to be ah, reinjured, um, whatever their reason was, that I, I’ll go for them.” This in effect created a liaison role where one person from a family would be designated to attend; for instance, Participant 25 stated, “My family expected me to be the one who would come back and tell them what was going on, if they had any kind of questions or so forth.”

Two participants who felt a duty or responsibility to attend the trial to represent those killed also felt a responsibility to represent living family members or coworkers. Other sources of a duty or responsibility given were to be supportive, to represent one or

more organizations, and to see in person that McVeigh was guilty, each of which were cited by one participant. Not everyone who attended for the above reasons acknowledged that they felt a “duty”, however. Significantly, participants often implicitly define a duty as something owed to those who could not attend, versus a personal need or a desire to support others who were there. Participant 19 did not term it a duty to attend “just for myself,” and another participant who attended the victim impact testimony portion of McVeigh’s sentencing hearing to support friends who were testifying did not term this a duty or responsibility. Participant 22 distinguished a “duty” to attend the trial to represent 22’s murdered spouse from a personal need to attend for information.

The relationship of legal proceedings to memory reconstruction does not necessarily have to be described as a “duty”; it can also be a visceral “hunger” to attend proceedings in person, to be “part of” proceedings. The most consistently given reason cited by participants who did not feel a duty or responsibility to attend was information-gathering; three participants attended for this purpose. Participant 22 described this need as a desperate hunger: “a huge part of going was information. I just was starved for information. I needed, I was desperate for information.” Two participants remarked that information helped them to put the “puzzle pieces” back together.

Interestingly enough, five participants’ statements evidenced a desire to bear witness to justice live, although these participants did not describe attendance as a duty or responsibility to others. Participant 1 not only went to see “justice” accomplished, but also wanted to be a representational presence so that the jury would see those who were very concerned about the outcome of the trial. Participant 16 tied attendance to participation: “I don’t think I felt a duty or responsibility as much as just wanting to

know that I was there and a part of it and was able to look him in the face, you know, and call him a creep. Which I did . . .”

In addition, the body of the defendant as a device upon which to perform memory work proved to be an incentive for attendance. Two participants wanted to see McVeigh and observe him in person or witness his reactions to the trial proceedings. Participant 16, who remembered that McVeigh came in with others to the Journal Record Building before the bombing, stated,

I always wondered when he was looking at us in the courtroom too. If he ever recognized any of us, like, when he came to my office. Do you know that you came to my office, that I'm a real person, you know, and you hurt me? And a, I don't know, what it, that was one reason I wanted to be there, to look him in the face and to just know if he . . .

Participant 12's interest was not limited only to McVeigh's reactions, but also to trial strategy, how the prosecution presented evidence and how the defense responded.

In summary, these remarks revealed that “duty” was regarded by participants largely as a relational debt that was owed to others deceased or alive who were *unable to attend*. It did not extend to the fulfillment of a personal need for information or first-hand observation.

Not everyone who attended the trial found it a positive experience. Four participants attended the trial for at least one day and then ceased to attend because it was harmful or meaningless. Many participants noted that attendance was emotionally difficult or harmful; for two participants, this was related to a sense that they as uninjured survivors did not have priority to attend the trial. Participant 6, a noninjured survivor who was in neither the Murrah Building nor the Journal Record Building, recalled feeling “guilt.” Participant 11 went because “I felt that the people that had been in the Memorial

building, the people that had lost loved ones that they should have the top priority for going if they want to go,” and Participant 9 did not attend because “It wasn’t going to do anything for me but upset me.” The evaluation of attendance as a harmful experience could have been prompted by proceedings themselves; after attending an early pre-trial hearing in which a victim’s mother took the stand and broke down, Participant 11, an uninjured survivor who was in the Journal Record Building, found proceedings too emotionally devastating to attend again.

Attendance was not a priority for some participants who could perform memory work more effectively without being present at legal proceedings since the attendees’ demeanor or the tedium of evidence presentation detracted from the trial’s overall mnemonic significance. Participant 17 did not attend the trial both because other attendees were angry or obsessive and because the trial was “boring” and 17 could follow the trial in other ways. Participants 21 and 27, both injured survivors, were focused on work and also stated that they kept up with proceedings through other means.

Three participants did not attend at all (beyond one participant who attended one day only in order to testify). All three either stated that they stayed away from the trial to maintain mental health or because they had moved on and chose not to get wrapped up in proceedings. Participant 3 recognized attendance was not a healing activity, stating “I felt for my own mental health that I had a duty to stay away from it”; similarly, Participant 24 remarked, “That’s not something that I needed personally . . . to be able to move on in my process.”

In summary, willingness to attend the trial was connected to the expected role that attendance would play in memory work; trials were expected to play an essential role in

recovery for participants who felt a duty to others deceased or living or for those who felt a visceral hunger for information or personal needs for completion or justice.

Participants did not attend the trial or ceased to attend when it became apparent that the attendance experience would not assist reconstructive memory work, or worse, would hinder such recovery efforts.

Attendance at Trial as an Important Step in Being Involved

Whether or not participants felt that attendance at trial was an “important step in being involved” spoke to a felt need to attend legal proceedings for the construction of individual and collective memory. Significantly, 15 participants felt that attending the trial was an important step, and their responses spoke of a need to bear witness to justice, not to attend in the names of murdered victims. It is readily apparent that that number exceeded the number of participants who reported feeling a duty or responsibility to view the trial. As the following table shows, however, participants who reported feeling a duty or responsibility to attend were more likely to feel that attendance was an important step in being involved; all but one participant who reported feeling a duty or responsibility felt that attending the trial was a significant step in being involved.

		Attending Trial Important Step		Total
		No	Yes	
Duty or Responsibility to View Trial	No	10	4	14
	Yes	1	11	12
Duty or Responsibility to be Witness, not Attend		1	0	1
Total		12	15	27

Table 3: Crosstabulation: Duty or responsibility to view trial*attending trial as important step

The memory work that attendance facilitated revolved around the needs to achieve “completion” and “justice.” Three of the 15 participants felt that attendance offered needed completion. Participant 22 remarked, “I don’t think . . . had that legislation not been passed and I not, I had not been able to view and learn what had occurred I think I’d be a basket case. I don’t think I could’ve stood it.”

Four participants mentioned the concept of “justice” in explaining why attending the trial was an important step in being involved. Participant 1 described “a desire to see that, that justice was served and witness it so that if it didn’t come out the way I knew it should’ve I could understand why, it didn’t.” Participant 7 stated that it was healing to see justice be done. Justice was the only proper response to the victims’ murders; Participant 8 noted, “we didn’t have our loved ones I mean at least we could see that we got justice.” Some survivors felt that the trial was the rare forum in which they received justice; Participant 15 remarked, “It was like, there is justice and there was a lot of times when we didn’t feel like we had any, there was not any justice for the survivors.”

Other reasons for feeling that attending the trial was an important step in being involved included maintaining an active presence at the trial (one participant), seeing progress or advancement (one participant), and the inability to get the “whole picture” from news media (one participant). Attendance at trial, then, continued to be perceived as a progressive behavior that would assist in memory reconstruction.

Whether Participants Felt a Duty or Responsibility to Witness the Execution

Like participants’ desire to attend the trial, participants’ desire to witness the execution was linked to the role that they expected this experience to play in reconstructive memory work, invoking the perceived link between execution and closure.

Some participants did not hesitate to decouple the witnessing experience from closure because it would not restore murdered loved ones to life or because the focus of their memory was no longer on vengeance against McVeigh. Others chose to witness because they perceived a need to be present for the last legal proceeding for purposes of completion or because they needed to bear witness to justice. Interestingly, the concept of “duty” did not break down along the lines of “debt to others” versus “debt to self” as it did in participants’ descriptions of whether or not they felt a duty to witness the trial. The reason for this is a matter of speculation; perhaps the personal need to see McVeigh die was stronger than the need to attend the trial had been, or perhaps the idea of witnessing another’s death was a culturally taboo hurdle that required the weightier imperative of a “duty” to one’s self.

Eighteen participants did not feel a duty or responsibility to view the execution, and only nine said that they did. Fifteen participants who did not have a duty or responsibility to witness did not witness the execution. Their most commonly cited reason for the absence of a duty or responsibility to witness the execution was that they felt that witnessing the execution was unnecessary since it would not provide closure or assist in healing, or that participants had moved on past that point. In short, most people did not feel that witnessing the execution would assist them in bearing witness. This reflects the perception that the execution would not help construct or supplement social frameworks of memory, that there was some barrier to obtaining a narrative endpoint from the execution. Participant 9 cited as evidence her belief that many who had felt the execution would bring closure were still “upset” afterwards, and concludes that “it didn’t do anything for them.” Participant 14 stated that witnessing was useless because it could

not alter the past: "I didn't feel like I needed to see it. I mean, I, I didn't feel like that was going to make my pain or my hurt ... or that of my girls any less. It wasn't going to change what had happened." Participant 24 supported a death sentence for McVeigh, but had "moved on" so that witnessing the execution was not important: "It was not something that was important to me. I knew it was going happen. . . . But I did not have to personally be there to see it happen for that part of it to be over for me."

Other participants who did not feel a duty and did not witness felt it would somehow be distasteful. Although Participant 1 felt McVeigh should die, he did not want to see him die: "I don't wanna see anybody die no more I wanna see people die the day of the bombing." It was hard for 1 to understand how anyone could watch an execution, despite the brutality of the bombing:

I, I can't understand why anybody wants to watch somebody die, even if the vicious crime he committed I want to know it happened, I don't want to see it on TV and I don't want to watch it. I just want to know it happened I, I can't understand how anybody could uh . . . regardless of how painful it was and everything, the event, to, to really want to view that but I, I obviously some people do and that's, I guess that's okay, with them if it's okay with them it's okay with me. I don't want to see it.

Participant 6 couldn't stomach the thought of attending based on her belief that the witnessing would be gruesome: "It wasn't so much that I didn't feel a duty so much as I knew I couldn't stomach it. I have read about executions."

Additional reasons for not feeling a duty or responsibility to witness included being with family instead (one participant), being against the execution (one participant), and feeling that others had a greater need or desire to witness (one participant).

Participants who did not report feeling a duty or responsibility to witness, but nonetheless attended the execution, cited a reason which overlapped with those of participants who felt a duty: a need to see justice done. Participant 15 remarked, "I guess I wanted to see him suffer but he didn't suffer. . . . The execution was something I needed to do for myself because I deserved; I believed he needed to be punished because he knew those babies were in that daycare." Participant 22 witnessed for reasons of completion, to see the process through, to know exactly what happened, and because she had fought to have the execution broadcast via closed circuit TV:

I was not joyful about it even though I'd fought so hard for that to happen . . . It was a difficult thing for me to do because its not, watching someone die is not something I just thought I really wanted to do but I felt I'd fought so hard for that I had been through the trials. . . . I had watched that man and I needed to complete the process. I needed to see it through.

Finally, Participant 21 witnessed to support other family members and survivors who attended.

Ideally, for reconstructive mnemetic processes to be successful, traumatic crimes merit punishments of an appropriate severity. Certainly participants had different conceptions of what this sentence according to their death penalty beliefs; but for the majority who supported McVeigh's death sentence, his execution was the "answer" to the bombing, and witnessing the execution was seen as a way to answer McVeigh, an affirmative act that was not only bearing witness to justice but using one's presence at the event as a voice of protest. The idea of seeing justice done encompasses needs for two forms of resolution in mnemetic reconstruction: accountability, and the spectacle of that accountability.

Of the eight participants who felt a duty or responsibility to view the execution, the two most frequent reasons for wanting to witness were a personal need to be present (to be involved or to see justice done) in response to what McVeigh had done (three participants) and a need to see it through to completion, often related to having fought to have the execution televised (three participants). Predictably, these two reasons were similar and often conflated. Participant 12, though unable to attend due to injuries incurred in the bombing, characterized the execution as a “response”: “the execution was a response to what he did to us and so I would like to have witnessed it . . .” Participant 29, a family member and live witness, felt a profound need to physically be present at McVeigh’s execution:

I think that was the most important thing to me. . . . I could have viewed it at the FAA center if I had to . . . But it was just . . . just complete relief when I found out I was one of the 10 selected. . . . there aren’t enough words to describe how important it was for me to do that. Oh wow. It’s just- I still can’t believe it. . . . Oh God, I don’t even know if I can put that into words. . . . Physically being there.

Participants also saw completion as being important; Participants 7 and 29, in addition to wishing to physically be present to see the proceeding, also felt very strongly the need to complete the process. This suggested that the conclusion of legal proceedings against an offender was important in structuring memories about the event; one had a complete mnemonic narrative when the offender was been convicted and held accountable through serving his sentence, particularly when the act of serving the sentence was accomplished virtually instantaneously through death.

Two participants stated that witnessing was a step towards becoming more involved; Participant 25 described the decision to witness as a decision to “pick up the

stick,” and he also started doing media interviews at the same time. Other reasons for attending were that the execution was the most meaningful proceeding (one participant) and a duty to attend (the live) execution as a representative of a survivor’s organization (one participant).

Thus, in summary, like his federal trial, McVeigh’s execution provided opportunities for further memory work, with participants’ willingness to witness the execution stemming from their expectations of what the experience of witnessing would accomplish.

Participants’ Perceptions of McVeigh Prior to the Execution

Two sets of interview questions provided insight into how participants’ perceptions of McVeigh as an offender and as a human being affected the manner in which he was included within their individual and collective memory frameworks: whether participants had forgiven McVeigh, whether they would have been willing to meet with him prior to his execution, and what behaviors participants wished to see from McVeigh immediately before he was executed.

Whether Participants Had Forgiven McVeigh

Forgiveness was important in a mnemonic sense because a forgiven perpetrator signifies a very notable development in individual frameworks of memory. A forgiven offender is no longer the negative focus of memory work, a magnet to which an individual’s negative emotions are instantaneously and involuntarily attracted. Thus, while it is possible to “move on” in the absence of forgiveness, forgiveness itself indicates that an individual is no longer drawing each breath in the shadow of a traumatic event.

Participants were equally divided in their ability to forgive McVeigh. Of 27 participants, 12 had not forgiven McVeigh, 11 had forgiven him, one did not know, one stated that McVeigh was dead so forgiveness is a moot point, and one had forgiven McVeigh for what he did to that participant personally but not for what he did to others. Participants who had not yet forgiven McVeigh cited two main categories of reasoning: that McVeigh's act was unforgivable, and that forgiveness was enabled by an external stimulus that was lacking. Two participants felt that McVeigh's extreme culpability eradicated the possibility of forgiveness; as Participant 1 stated, "How can you forgive him." Participant 24 could not forgive McVeigh because he had affirmatively chose to harm innocents: "I've never forgiven them for what they've done to change our lives forever and to, to take those away from us that we -- that were important to us. Because they had a choice. It's not like a natural disaster . . ." Three participants stated that the childrens' deaths perhaps barred forgiveness; Participant 27 believed that she did not have the ability to forgive McVeigh for what he did to *others*, particularly in terms of the murdered children:

I've forgiven him for what you know, my injuries and what I was put through in a way. But I'm not sure I can ever give the...or I can ever forgive him for the people...specially since I've got a child of my own, but the people who lost children that day. I mean that I can't reconcile really.

Five other participants' replies intimated that they were under no obligation to forgive McVeigh because an external "trigger" needed for the act of forgiveness was missing; Participants 20 and 29, for instance, both remarked that forgiveness is religious and unnecessary since they did not espouse that creed. Finally, participants 22, 28, and 29 all

mentioned that they were not obligated to forgive McVeigh because he never asked to be forgiven.

Those participants who had forgiven McVeigh did so for two reasons: for their own benefit or because they empathized with McVeigh in some respect. Five participants forgave McVeigh for their own well-being; as Participant 17 stated, “it was all about me. . . . I was the one that got, got relief from all this pain. Totally. And it wasn't about McVeigh. He received nothing for me actually being able to feel, feel the forgiveness.” Participant 19 described how forgiveness was healing: “I have so much energy and you have to choose how you use your energy and to hate is a real energy drainer that often times doesn't do anything except drain you. . . .” Participant 21 spoke of forgiveness as a way to regain control:

One of the services that church is talking about forgiveness and that was being able to pick up with your life [or] go on and let somebody control your life because you are so angry. I had gone through that part of forgiveness I am going on with my life.

Other participants forgave McVeigh when they were able to empathize or pity him in some respect. Participant 2 forgave McVeigh because McVeigh was convinced that what he did was right: “He thought he was doing was a good thing and, I, I, just can't hate him for it.” Participant 6 pitied McVeigh and his father after reading about McVeigh's childhood: “I began to feel towards McVeigh that here was a child where something had gone horribly, horribly wrong and then as I felt towards his father that here was a father of a son that he was about to lose and how would I feel about that.” Finally, Participant 23 felt that understanding McVeigh's motivations and reading the Turner Diaries was important in being able to forgive him.

Interestingly, participants had differing conceptions of the relationship between forgiveness and hatred. Three participants who had forgiven McVeigh stated that an absence of hatred entailed forgiveness in the sense that not to hate is to forgive, and three other participants who had not forgiven McVeigh stated that it was possible to not hate and yet not forgive. Both groups conceived of “hatred” as a negative force that one must release. Those who espoused the “no hatred entails forgiveness” approach all repudiated anger. Participant 6 spoke of hatred as a destructive emotion that freezes one in the aftermath of the bombing:

I have seen what the hatred has done to some of the people associated with the bombing who, by the tenth anniversary, as I said to one of my friends, ‘what are they going to do now that Nichols is in jail and McVeigh’s dead and they’re still out there backed up clear back to the first year with their anger and they haven’t worked through that?’

Similarly, 19 also spoke of hatred as a “killer disease.” 26 had to “let go” of the hatred and anger since “if I carried that hatred around, I would stay mad. And it was hard carrying that with me.” Other participants, however, speak of letting go of hatred without forgiving. 22 moved on without forgiving:

and a lot of times people say that affects your life . . . If you can’t forgive them it eats away at you. . . . But I don’t feel that’s the case. I haven’t forgiven McVeigh. I haven’t forgiven Nichols. But I don’t think about them much anymore. I really don’t. I don’t focus on them. I don’t have enormous hatred. . . . I don’t have that now but I cannot forgive their actions. . . . So I think you can be ok without forgiving.

For some, reconstructing mnemonic structures and negotiating relationships with perpetrators such as McVeigh took place in conjunction with preexisting belief systems such as Christianity which set forth reconstructive principles that guide the recovery process. Thus, Christian survivors must come to terms according to their religious

beliefs. But while some participants received direction from the Christian imperative to forgive, others were deeply troubled by their inability to forgive McVeigh. Eight participants identified forgiveness as a Christian or religious ideal. Of these, two specifically connected their Christian beliefs and their ability to forgive McVeigh; as Participant 7 stated, “that’s part of, of the walk, um is forgiveness. . . . it’s required by God and that um, if there’s a chance that . . . me not forgiving someone would keep me from going to heaven then I’m going to forgive someone ‘cause I’m going to heaven.” Two participants, both closed-circuit witnesses, found the execution to be a religious experience; 7 was surprised to be moved to pray with a coworker for McVeigh during his execution “that he would, with his last breath receive Jesus as his Lord and Savior so he could go to heaven.” And 21 had a religious experience of forgiveness during this same moment:

when I was there viewing him and watching him, it was like, all of sudden he came to me, I don’t know what’s on the other side and when I get to the other side all of this may mean absolutely nothing. I started to thinking of him as Timothy McVeigh, the soul and not Timothy McVeigh, the man and I started praying for him that this is his last chance, this is his last breath and I prayed for him and it just like overtook me.

However, several other Christian participants acknowledged a tension between being Christian and an inability or unwillingness to forgive. Participant 3 thought it strange that one would pray for McVeigh and want to execute him: “. . . I did not get that. Well if you’ve forgiven him, ok I forgive him now let’s go out and hang him, you know, why? Wait!” For him, McVeigh’s humanity was the barrier to execution:

I don’t care if that is one of the callings of Christianity or any religion to forgive someone. I’m not going to. . . .But having said that, whether I like it or not, McVeigh, like Hitler, is a child of God. . . . and even

though I would never in my life find room for forgiveness I still knew in my mind that whether I liked it or not he was a creation of God, the creator or whatever he, term we want to use, and I had no right in ending that life.

Participant 28 found that the need to forgive evolved over time; after having not forgiven McVeigh for years because he never asked and because it was God's place to forgive him, she recently felt like she should forgive him according to Christian creed: "But of course now my...my...at church, I'm having this guilt inside. . . . And I know should, religiously I should forgive him."

The idea of a McVeigh that was reconciled with Jesus and thus granted admittance to heaven was troubling to many participants. Participant 9 had never conceived of McVeigh going to heaven until her father, a pastor, delivered a sermon that stated that McVeigh would go to heaven if he confessed his faith in Jesus Christ: "That really hit me hard. Cause I thought he was going to hell the whole time." Participant 21 was disconcerted the Sunday before the execution while attending a Sunday School discussion on McVeigh's ability to ascend to heaven if he asked for forgiveness because she felt that McVeigh didn't deserve it. After the execution, however, she "was able to let it go, turned it over to my God and it's between McVeigh and God now." Participant 28 was similarly disturbed by the idea of McVeigh in Heaven: "If he did, asked for forgiveness, then he's the same place [my child] is. And I can't...ugh." These acknowledgements of discomfort point to the tension that Christianity as a belief system introduces in memory work. Participants' discomfort with McVeigh in Heaven, where they believed deceased victims were taken and where they hoped to be after their own deaths, stemmed from the role that Heaven plays in participants' reconstructive memory

frameworks. Heaven seemed to be a mnemetic soother; the idea of deceased loved ones at “home” with their Lord was a cherished one in participant interviews, and the insertion of evil into this divine realm in the form of McVeigh seemed traitorous to the victims’ memory.

Some Christian participants diminished the discomfort that came from picturing McVeigh in heaven with the victims by placing the burden to forgive McVeigh upon God. For Participant 22, this struggle was easier because “even though I’m a Christian and that’s been something that I’ve battled with, um, there is a verse in the Bible that says that unless the person asks for forgiveness we’re not expected to forgive.” Participant 28, however, did not forgive McVeigh for years because he never asked and because it was God’s place to forgive him, but has recently felt like an urge to forgive him; yet, her discomfort with picturing McVeigh in heaven may have prompted her to favor the perspective that God must forgive, for that is the conclusion to which she ultimately returned after describing her discomfort: “If he did, asked for forgiveness, then he’s the same place [my child] is. And I can’t...ugh. But again it’s for God to forgive and not me.”

In summary, participants’ individual decisions with respect to forgiveness—encompassing the struggle to forgive, the accomplishment of forgiveness, and the conscious refusal to forgive—all signaled that negotiating an involuntary relationship to McVeigh was a necessary process in reconstructive memory work. In addition, like participants’ attitudes towards the death penalty, the impact of Christianity upon the act of forgiveness illustrated the influence of preexisting belief systems upon memory work.

Willingness to Meet with McVeigh

Of 27 participants, 11 stated that they would be willing to meet with McVeigh, 11 stated that they would not, and five stated that they did not know whether they would be willing to meet with him or not.

Three of the 11 participants who were willing to meet with McVeigh had actually tried but been unable to meet with him in person before the execution. The 11 participants who were willing to meet with McVeigh listed a variety of reasons for this willingness, including “why” McVeigh had committed the bombing, the desire to see McVeigh in person and/or interact with him outside of legal proceedings, the desire to learn something from being in McVeigh’s presence, and whether or not McVeigh had been in the bombing.

The most frequently cited response as to why participants would have wanted to meet with McVeigh was “why.” Six participants wanted to know “why,” described as an unanswerable query that encompassed not only a deep inquiry into “why did McVeigh commit the act,” but also the question of “why us.” 22 described the question of “why” as an incessant question that drove victims “crazy”: “I think it’s not just us, I think it’s any crime victim, that just drives you crazy the first several . . . months I guess it was. . . . all day, that question, why, why, why, why, why, why. It drives you nuts. . . . You need an answer.” Participants described “why” as including McVeigh’s motivation and his decision to blow up strangers, to harm innocents. Participant 7 described the question of “why” in terms of the impersonality of the bombing:

Why? Help me understand your thought process in this. I, I understand vengeance. . . . Help me understand why you thought this would serve your need for vengeance. What did I ever do to you that makes me die, pay for those people dying in Waco? Help me

understand that. . . . these are strangers to him, just as we were strangers to him. What was it about this that made him think we, should be the ones to suffer for them, those strangers dying, what made the connection there?

Participant 15 described the question of “why” as being directed to why McVeigh chose to blow up the building when people were inside: “Why. I mean other than the fact that you hate the government, why the babies If you wanted to blow it up why didn’t you blow it up when there wasn’t anybody there? You’re still making a statement; you’re still costing the government lots of money.” 22 described “why” as knowing not only McVeigh’s motivations but also what led up to his need to commit the bombing: “I wanted him to help me to understand where in the world he was coming from. Why in the world he thought this action would cause the reaction that he thought it would.” These statements reveal that there was a profound sense that one who seeks to reconstruct memory following a traumatic event first needs to understand how and why that traumatic event occurred.

These remarks also illustrated that one of the hardest mnemonic tasks which victims’ families and survivors faced was reconciling the very *personal* impact of the bombing’s aftermath with McVeigh’s impersonal, terroristic decision to murder unknown innocents. Participants sought a rational reason why the Murrah Federal Building was bombed, but did not feel one was proffered in legal proceedings; McVeigh’s hatred of the government was perceived as too superficial an explanation. For 22, the trial did not answer every question, and the reasons given at trial for McVeigh’s motivation to commit the bombing were not satisfactory:

I knew going in that you don’t get every question answered but that’s [the trial is] the place that you can get more questions [answered] than

anywhere else. Um, so I didn't expect everything to be answered. We got, we were given a reason. You know, Waco. But for, for those of us who think fairly normally that's not enough of a reason to do what he did. So you know you still have questions. You wanna understand what motivated him.

But information revealed at trial about McVeigh's childhood may have allowed attendees to provide psychological reasons for McVeigh's decision to bomb the Murrah building:

What happened in his childhood. What . . . was it, you know, when his mother left and did, that seemed to have an enormous affect on him. His mother leaving him and his mother being the run-around person that she was and evidently the strong personality in her, his father was a weak personality and I think, um, he kept going back to his mom really trying to get from his mom something whether it be approval or love or whatever and he never could get it. . . . But, I, you know, needing to understand why for me went, you know I just kept trying to go further back and further back and figure out why.

However, part of the process of learning to come to terms with this query most likely included learning that there was no perfect answer. This is the conclusion to which Participant 7 came: "And it never will be [answered]. I don't think he could, I honestly don't think he would be capable of giving an answer that, a human being with a heart would ever be able to understand." This demonstrated that the trial and execution were inherently ineffective for participants in this way, verifying once again that it was unrealistic to expect legal proceedings to fulfill every demand of memory reconstruction.

The second most prevalent reason for wanting to meet with McVeigh was to hear an expression of remorse; Participant 7 stated, "I'd like him to have truly, honest expressed to me his remorse. His, um, his understanding that he misunderstood. If that makes sense." McVeigh's apology at execution would have punctuated the narrative of the bombing with a gesture of reconciliation. But while memory may be idealistic, it is not blind to the likelihood that certain forms of reconciliation will come to pass;

participants acknowledged McVeigh's "soldier" mentality would make apology unlikely. As Participant 26 noted, "Well, I would have asked him if he was sorry, although I don't think he was. I think he viewed himself as a warrior." What was ironic was that participants grasped that the impact of McVeigh's soldier mentality with respect to the unlikelihood of his apology, but could not acclimate themselves to the idea that the bombing was an impersonal act of terrorism or ideological warfare, in endeavoring to answer the question "why" or "why us."

Another reason for meeting with McVeigh was to inform him of how the bombing had personally affected participants' lives, in hopes of eliciting remorse. Confronting McVeigh with specific, personal tales of death, survival, and recovery, would satisfy two mnemonic needs: the need to bridge the gap between the impersonal act of terrorism and its terrifyingly personal effects, and the need to personalize the trial proceeding through attendance and through telling one's own story of loss through victim impact testimony. Two participants wanted to confront McVeigh with their personal stories; Participant 17 wanted to tell McVeigh of the impact of the loss of his murdered child in the hopes of eliciting some remorse to "break him a little bit . . ." Participant 19, on the other hand, wanted to tell McVeigh that he "failed": ". . . I think he wanted the revolution to rise up and all of that and you know you failed buddy, you failed."

Another reason for meeting with McVeigh mentioned by three participants was to interact with him outside of the trial forum. This indicates that the constraints placed upon the victim-offender relationship and the accountability process by the criminal justice system also unfortunately constrained reconstructive memory work. Thus, participants wanted to escape these institutional constraints upon access to the offender

and/or as to the types of queries that were asked, and were unwilling to entirely defer to the criminal justice system as arbiter of guilt and innocence. Participant 8 stated that attending in person would confirm whether or not McVeigh was guilty: "I had to see for myself, I mean all the media was telling you was that he was guilty but I had to look at him and know and I knew if I looked at him I'd know if he was guilty or not no matter what the jury came back with . . ." Participant 25 wanted to ask different questions than were asked in the trial: "I wanted to find out why, with the questions that I had, not some lawyer or the judge or whatever asking him. I wanted to ask my own questions."

Resisting the mediated access to McVeigh, Participant 28 wanted to break through the communicative barrier of the trial and "not have to, you know, go through a lawyer or go through a whatever, you know, just to say you know, why did you do that?"

Beyond asking McVeigh "why" he committed the bombing, other participants simply desired real, interpersonal interaction with McVeigh outside the terms of the criminal justice system; they feel that being in McVeigh's presence or in interpersonal encounter with him may have allowed them to "reach" McVeigh. Participants regarded McVeigh himself as a form of bombing evidence that could yield personal insight.

Participant 6, for instance, wondered what she may have "picked up on" from being in McVeigh's presence:

I'm an intuitive person. I'm not psychic, but I can pick up in a rough way people's energy and um, it would have been interesting to just be in his presence and ask him some questions and let him answer and see what I might or might not pick up on.

Similarly, Participant 25 wanted to gauge McVeigh's deceit:

I wanted to look him in the eyes because . . . I know how to deal with people and I can tell [a] lot of times when people are lying to me. And

so I wanted to see if he would lie or whether he would tell me the truth about why and so forth. . . . I think maybe right before his death, maybe if I could have got in there, maybe I could have found out something.

But in speculating about what it would have been like to meet with McVeigh, participants returned again and again to the obstacles that McVeigh's stoic demeanor introduced to the mnemonic efficacy of this hypothetical encounter. Three participants perceived that McVeigh would not have been forthcoming in a face-to-face meeting. Participant 6 qualified her remarks about what she would ask McVeigh with the statement, "I mean if he would open up - he probably wouldn't have. I think he was a very guarded person by the time he did and very much crazed against the government." Participant 21 wanted to know whether McVeigh and others had entered the Murrah building pretending to seek employment prior to the bombing, but added, "of course I know he wouldn't have told me." Participant 22 also expressed doubt that McVeigh would have been cooperative in helping her to understand why he committed the act: "I would have, not that he would have done it but uh, I wanted him to help me to understand where in the world he was coming from."

In addition to speaking with McVeigh of his intentions and remorse, a few participants who believed they had seen McVeigh in the Murrah Federal Building or Journal Record building before the bombing felt that it was necessary to confirm these recollections. This was an important part of formulating a personal chronology of the bombing, and confirming McVeigh's presence would have reassured participants that they had not imagined these encounters. Two participants who recalled seeing McVeigh and defendants in the building wanted to know whether McVeigh remembered coming to

their offices, and whether these visit changed anything. Participant 23 recalled meeting with McVeigh the Thursday before the bombing:

was there anything said on Thursday before the bombing when he was in my office ah that changed his mind one way or the other. My head knows nothing was going to change his mind, because the bomb materials were already bought by Terry Nichols. They were already stored. He was on his way up to build the bomb. Nothing that I said caused him to bomb the building. . . . I'm the one who talked to him, I'd kinda like to know how he experienced that. Because I really tried to find a job for him. And he smiled and he was just as happy as he could be about . . .

Other reasons for wanting to meet with McVeigh were to tell him that he was forgiven (one participant), to ask him if he would change anything if he could go back in time (one participant), and to find out who else was involved (one participant).

In summary, participants who would have wanted to meet with McVeigh wanted to escape institutional strictures such as the guilt/innocence inquiry to access McVeigh not just as a defendant but as a person, to confront him with the personal cost of his crimes, and to ask him questions geared to issues beyond guilt, issues such as whether he had accepted responsibility, whether he felt remorse, and whether he had in fact entered the Murrah Federal Building and surrounding locations prior to April 19, 1995.

For those four participants who were unsure about their willingness to meet McVeigh, McVeigh's demeanor contributed to participants' uncertainty as to whether such a meeting would be productive. Two participants mentioned wanting to know "why"; as Participant 9 stated, "I mean, I just want to know why. I mean if he wanted to make a statement he could have blew the building up without anybody there." Participants who were undecided also stated that it would be good to hear McVeigh take responsibility (one participant), to ask McVeigh if he remembered coming to an office in

the Murrah building (one participant) and to see whether McVeigh would apologize (one participant). But these participants also believed that McVeigh would not have been forthcoming; Participant 9 noted, “Just thinking, you know, cause he probably wouldn’t say anything . . . ,” and Participant 14 remarked, “I, I don’t feel like it would have made any difference. . . . he wasn’t saying anything anyway to anybody. . . .”

The majority of participants were unwilling to meet with McVeigh for reasons which illustrated that McVeigh’s demeanor was a mnemonic barrier to information recovery and thus to reconstruction. Of those 12 participants, five felt that McVeigh would not be forthcoming, as Participant 7 noted, “I don’t think it would have done any good. You know, I don’t know what I would have derived from it. Because just from what I saw, just from what I saw of him on television and I’m not sure I would have ever gotten any real answers from him.” Attending a meeting with McVeigh may have even fueled anger; Participant 29 stated, “I think he would have been as defiant and arrogant as he’d been the whole time. That would really have pissed me off.” Three participants believed that McVeigh would not have expressed remorse or regret, rendering the meeting useless. Participants felt that McVeigh was “proud of what he did. He believed what he did was right,” and regarded himself as “ahead of his day, a martyr.”

Nonetheless, participants who were unwilling to meet with McVeigh readily admitted that they would have liked to ask him the same questions as those participants who were willing to meet with McVeigh. The question of “why” was still the most compelling area of inquiry. Participant 3 wanted to know “how could you, what were you think[ing],” and Participant 18 was most concerned about how McVeigh, a decorated veteran, could have committed such an act: Other reasons given for an unwillingness to

meet with McVeigh include anger (one participant), and no longer being at a stage where such a meeting would have been important (one participant)

In summary, participants' remarks on their willingness to meet with McVeigh prior to his execution revealed the profound effect that a defendant's demeanor had upon memory work. The offender's defiance encouraged victims' families and survivors to maintain animosity, an antagonistic attitude towards him that went deeper than the natural adversarial positioning following from the crime. In addition, a defiant defender was not perceived to be particularly forthcoming, encouraging family members and survivors to choose alternative memory processes that would exclude a face-to-face meeting with the offender. Thus prevented the offender from becoming a tool of reconstructive memory work.¹⁷⁹

What Participants Wanted McVeigh to Do or Say Before the Execution

Not all participants wanted McVeigh to say or do something before his execution; seven did not want to hear from him. But for the majority of participants, the execution offered one last opportunity for a meaningful resolution to the accountability inquiry. If McVeigh had sincerely apologized, he would have accepted why he needed to be held accountable for his actions—a more satisfying outcome than having accountability forced upon him. Participants seemed to regard a reconciliatory gesture as more likely than an apology in face-to-face interactions with McVeigh, perhaps because it would be one of McVeigh's last acts before dying. Without resolution, participants would be deriving accountability entirely from a death sentence forcibly imposed by the criminal justice

¹⁷⁹ This explains why, in existing victim-offender mediation programs implemented in several states, both victims' family members *and* the offender have to voluntarily consent to such a meeting. Otherwise, finding themselves opposite a defiant or outright hostile offender could detrimentally affect family members' memory work.

system upon McVeigh's body. Therefore, it is not surprising that the behaviors that participants most yearned to see were those that could demonstrate McVeigh's acceptance of responsibility.

The statements that participants desired to hear from McVeigh tracked the questions that they would have asked him in a face-to-face encounter. Seven participants wanted McVeigh to tell them "why," five wanted him to tell the "truth" or the "real story," six wanted him to show remorse, two wanted him to accept Christ or make peace with God, two wanted him to admit guilt or take responsibility, one wanted him to make a statement to family members, and one wanted him to quote from the poem "Invictus." 17 participants did not feel that an apology was important, and 10 participants felt that it was important. 18 participants did not feel that it was important whether McVeigh confessed to a priest or sought last rites, eight felt it was important, and one was unsure as to its importance.

As reported in the discussion of why participants wanted to meet with McVeigh, knowing "why" McVeigh committed the act, as well as "why us," were central concerns. Participant 1 wanted to hear from McVeigh "what in his demented mind was he thinking when he did this . . ." Participant 9 defined "why" in terms of McVeigh's terming victims' deaths "collateral damage": "I've always just wanted to know why. And why were we collateral damage, . . . and why did he do it to the kids?" Participant 14's remark echoed this desire: "you know, what made him do what he did. Um, the fact that, that he took the lives of 19 children. . . . I couldn't even comprehend the mind of a person who could do that. . . . I just, I just could not understand that at all." Participant 15 wanted to hear

McVeigh give additional reasons for committing the bombing other than Ruby Ridge or Waco.

Predictably, six participants also wanted to hear remorse from McVeigh. Participants 17 and 19 thought it would be good for McVeigh to make a “remorseful statement” for the sake of the victims. Commensurate with longing for expressions of remorse, participants also wished for McVeigh to be morally reconciled to his crimes and his punishment. Two participants expressed the hope that McVeigh would find God; Participant 7 “wanted him to accept Jesus as his Lord and Savior,” and Participant 10 “had hope that he’d made his peace with God.” And two participants wanted McVeigh to affirmatively “admit guilt,” again acceding to having their understandings of the bombing mediated through the criminal justice system.

Participants’ remarks also confirmed that the production of “truth” of whether McVeigh and Nichols acted alone was not confined to McVeigh’s trial, and that ideally it would be revealed by McVeigh himself instead of by attorneys. Five participants wanted to know the “truth” or the “real story,” including whether any others were involved. Participant 25 stated, “I think there are things there that’s not being told.” Participant 6 craved the “whole truth,” and Participant 11 stated that “I would have liked to have known the real story behind all this and why he did it and if there were others involved.”

In summary, it is not surprising that the gestures and statements that participants most hoped that McVeigh would make prior to his execution tracked the questions they would have asked him in a face-to-face meeting; the execution was the last forum in which these queries could be answered, and because they had not been effectively answered up until that point, they were still open points of inquiry. Nor is it surprising

that family members and survivors were slightly more hopeful that McVeigh would make efforts at explanation or reconciliation in his last moments; the penal tradition of providing an offender to be executed a chance to impart “last words” is centuries-old, and gallows speeches used to be prime opportunities for offenders to express regret for sinful moral failings and speak of a hunger for divine forgiveness. One’s last actions before dying are presumed to be one’s most honest, forthcoming, and forthright gestures; hence the legal evidentiary tenet known as the “dying declaration,” which redeems from the pits of hearsay the last words of a dying man giving the identity of his killer. Nonetheless, participants did not have much confidence that their desires for reconciliation would be fulfilled and so were perhaps prepared for a witnessing experience that was less cathartic in many respects than they otherwise would have anticipated.

Summary

In conclusion, the institutional strictures placed on the victim-offender relationship and the process of holding McVeigh accountable were necessary. They rendered legitimate legal proceedings that were key to producing mnemetically-crucial accountability. They were also too narrow, because the guilt/innocence inquiry was merely the threshold inquiry for participants who wanted to know “Why?” Legal proceedings were perceived to either avoid the questions that were most important for memory reconstruction or to provide responses inadequate to support mnemonic structures.

Thus, although the criminal justice system successfully held McVeigh accountable through a conviction and death sentence, it did not effectively mediate the crucial memory work needed for family members and survivors to come to terms with the

bombing. These individuals were thereby left on their own to cope with McVeigh's defiant response to the horrors he had unleashed, to reconcile themselves to the unbridgeable gap between an impersonal act of terrorism and the terrifyingly personal scale of loss with which they had to cope in its aftermath, and to continue with memory work despite crucial questions remaining unanswered. The following chapter discusses how these many unanswered questions affected the experience of witnessing the execution, as execution witnesses brought to the execution issues heretofore left unresolved. In this regard, they continued to negotiate their involuntary relationship to McVeigh by scrutinizing his behavior in his final moments.

CHAPTER FOUR:

MEMORY SET FREE: THE EXECUTION AS THE END OF THE VICTIM-OFFENDER RELATIONSHIP & MEMORY SET FREE

Prior to McVeigh's execution on June 12, 2001, victims' family members and survivors perceived that they were trapped in an involuntary relationship wherein McVeigh was a unwanted part of their lives, an intruder into the processes of memory reconstruction who could manipulate or unsettle recovery at will with callous media commentary. McVeigh's behavior at trial upset many because McVeigh did not comport himself as a remorseful defendant, but as a defiant offender who took pride in the devastation he had wrought. The few participants who testified at trial or otherwise met McVeigh eye to eye also spoke of being disconcerted by the fact that they were confronting McVeigh face-to-face; brought into such proximity, Participant 28 felt as if she were "looking at the devil eye to eye" and the experience took her breath away, Participant 22 went cold, and Participants 21 and 24 were distracted while testifying by McVeigh's confrontational presence.

Those who witnessed the execution confronted McVeigh again in his final moments, face-to-face in the case of those who witnessed by closed-circuit. However, this confrontation was on different terms. McVeigh was no longer a man presumed innocent but a condemned offender strapped to a gurney to die. And the ones witnessing that death had survived a tremendous tragedy and were adamant that they were not only going to survive, but that they were going to *live*. As a result of the execution, family members and survivors were able to finally exorcise McVeigh as a presence in their lives

and detangle him from their day-to-day mnemetic reconstructive formations. For years, the involuntary links that family members and survivors perceived chained them to McVeigh had dampened, interrupted and delayed the formation of individual and collective frameworks of memory, imperiling reconstructive processes. In addition, his execution terminated the mediation of the criminal justice institution in reconstructive processes. With McVeigh removed as a reconstructive roadblock, and with legal proceedings against him finally at an end, mnemetic healing could resume.

This chapter begins by discussing executions as communicative events that play formative roles in victims' and survivors' reconstructive mnemetic processes. It then proceeds to analyze the roles of gazing behavior and silence in the McVeigh execution. With respect to gaze, not only did witnesses perceive that McVeigh's gaze held communicative import, but his gazing behaviors confirmed witnesses' prior impressions of McVeigh as a defiant and remorseless offender. This chapter then discusses three dimensions of silence: witnesses' silence, McVeigh's silence, and execution as a means of silencing McVeigh. Finally, this chapter discusses witnesses' reactions to McVeigh's peaceful death and their desires for a more palpable display of suffering. This chapter concludes by observing that, although many characteristics of an "ideal" execution, such as the offender's apology, were not present, McVeigh's execution was ultimately successful because it effected a period of silence in which victims' families and survivors could finally proceed with mnemetic reconstruction.

The Execution as a Mnemetic and Communicative Event

Again, victims and survivors believed that they were entitled to view the execution, because it was the culmination of legal proceedings and for reasons of finality;

those who met with Ashcroft to persuade him to arrange for a closed-circuit broadcast of the execution stated that it was not only their desire but their “right” to witness the execution, evidencing participants’ linkage of attendance at legal proceedings and recovery. Like the experience of attending the trial, McVeigh’s execution was an event that witnesses experienced in common. All nonwitnesses were aware that the execution was going to be held on the morning of June 12, 2001 and remembered watching the clock during the early morning hours, as they knew others were—thus consciously taking part in the execution as a collective experience. Though family members’ and survivors’ exposure to McVeigh was even more constrained by the execution routines employed by the criminal justice institution than those employed during the trial, the execution venue was structured differently in one key aspect. Whereas the judge, trial witnesses, and the jurors (and to a lesser extent counsel and McVeigh himself) were on the “stage” of the courtroom and thus positioned as the focal point of attendees’ visual field, McVeigh himself was the visual focus for both live and closed circuit witnesses to the execution. McVeigh’s body, then, and in particular his face, was the object of witnessing—its behaviors and its sufferings. For closed circuit witnesses, the face was the primary object of attention, as the closed circuit camera was positioned on the ceiling directly over McVeigh’s gurney, creating a closed circuit feed consisting of a close-up of McVeigh from collarbone to crown. Unlike the trial, which did not facilitate close scrutiny of McVeigh’s behaviors, the criminal justice institution orchestrated the execution as an event to be witnessed.

McVeigh’s last actions made a profound impression on execution witnesses.

Witnessing is an interactive experience, for “witnessing is always, at a fundamental level,

a relationship of mediation.”¹⁸⁰ In considering the execution as an interactive experience, it is essential to explore the relational dimensions of McVeigh’s execution and their boundaries, including McVeigh’s interactive behaviors, the positioning of witnesses, and their roles and motivations.

That executions can be vehicles of collective memory is not a novel proposition. Both Foucault and Spierenburg discuss at length the symbolic spectacle of early modern public executions and the collective lessons that the populace took away from them. Commenting upon the symbolism of the publicly tortured body, Foucault stated that public torture

is an element of the liturgy of punishment and meets two demands. It must mark the victim: it is intended . . . to brand the victim with infamy; even if its function is to ‘purge’ the crime, torture does not reconcile; it traces around or, rather, on the very body of the condemned man signs that must not be effaced; in any case, men will remember . . . torture and pain duly observed. And, from the point of view of the law that imposes it, public torture and execution must be spectacular, it must be seen by all almost as its triumph. The very excess of the violence employed is one of the elements of its glory: the fact that the guilty man should moan and cry out under the blows is not a shameful side-effect, it is the very ceremonial of justice being expressed in all its force.¹⁸¹

Attendance at executions offered the chance to glimpse divine Truth, with the length of suffering itself being laden with symbolic value by which “the body has produced and reproduced the truth of the crime”: “each word, each cry, the duration of the agony, the resisting body, the life that clung desperately to it, all this constituted a sign.”¹⁸² In addition, the public execution reflected an affronted sovereign’s right of retribution and

¹⁸⁰ Carrie A. Rentschler, *Witnessing: US Citizenship and the Vicarious Experience of Suffering*, MEDIA, CULTURAL AND SOCIETY 26(2) (2004), at 297.

¹⁸¹ MICHEL FOUCAULT, DISCIPLINE & PUNISH: THE BIRTH OF THE PRISON 34 (1979) (trans. Alan Sheridan 1977).

¹⁸² *Id.* at 47, 46.

therefore is one example of the “great rituals in which power is eclipsed and restored,” a ceremony affirming “that every crime constituted as it were a rebellion against the law and the criminal was an enemy of the prince,” effecting “justice as the physical, material and awesome force of the sovereign deployed there.”¹⁸³

Spierenburg further notes that Western European “executions were dramatized in order to serve as a sort of morality play” with a religious message, often assisted by lengthy and impassioned “gallows speeches” in which condemned prisoners lamented their sins so that “punishment was shown and the possibility of a penitent and edifying death is present.”¹⁸⁴ In addition, the public execution both “warned potential transgressors of the law that criminal justice would be practiced and it warned everyone to remember who practiced it.” In the ideal early modern execution, the criminal was both a believer in Christ and a penitent figure who was convinced that his punishment was righteous and determined to endure it for the salvation of his soul, and so was to meet his Maker having confessed his crime. To die unreconciled to authorities, fellow men, and God was to meet death as a beast, a mere animal.¹⁸⁵ Spectators were accordingly impressed by a “beautiful death,” which coincidentally also reinforced Christian and legal doctrine. The gallows place itself held an imposing position in the culture of Western European countries; it was a place of infamy and taboo, and executioners were held in awe and publicly reviled. Thus, the public execution in the

¹⁸³ *Id.* at 48-50.

¹⁸⁴ PIETER SPIERENBURG, *THE SPECTACLE OF SUFFERING* 43, 54 (1984).

¹⁸⁵ *Id.* at 55, 60-61.

collective memory of early modern Western Europe was the demonstration of the “truth-power relation” which still remains at the heart of punishment today.¹⁸⁶

Victims’ family members perform a much different function than do media and official witnesses to an execution. Official witnesses to an execution represent the state and are present to ensure that an execution is in fact carried out; journalists who witness the execution traditionally perform a watchdog function to ensure that the state is acting as it should (i.e., not executing in a barbaric fashion) and to report the orderly completion of the execution to the public. Victim witnesses, however, are there for an altogether different set of reasons. They do not represent the state or the public-at-large, but instead embody the most localized and private of interests—that of the murdered victims, and of those who have borne witness to the aftermath of murder. Allowing victims’ families to witness executions is a fairly recent development, with many states first allowing victims’ families to witness in the early to mid-1990s. A handful of states still do not allow victims’ families to witness. Interviews with victim witness advocates in charge of prepping family members to witness executions and accompanying them to the witnessing room reveal that states, such as Oklahoma, often passed legislation allowing family members to witness after state legislators, themselves survivors of homicide, wanted to attend the execution of the offenders responsible. Other states allow victims to witness not through the passage of legislation but by the prerogative of the prison warden.¹⁸⁷ In whatever institutional form it assumes, however, the advent of victim witnessing illustrates an acknowledgement by the criminal justice institution that there

¹⁸⁶ FOUCAULT, *supra* note 181, at 55.

¹⁸⁷ This information comes from recorded interviews with capital victim witness advocates in Oklahoma, Missouri, North Carolina, South Carolina, Virginia, Ohio, Georgia, Alabama, and Florida.

are other interests at stake in execution besides those of the state. It augurs a change in the conception of justice that at first sounds rather pedestrian; crimes are not only committed against the state, but against the victims as well. But this marks a radical reconceptualization of “justice” that terminates the exclusion of victims from participation in legal proceedings, one that accords victims a stake in legal proceedings not only by providing opportunities to witness executions but also to provide victim impact testimony at sentencing. “Justice” is no longer meted out by the state as sovereign through a punishment formally imposed upon a condemned citizen, it is the end point of accountability to which victims are entitled in acknowledgement of their suffering. Official executions now intersect with rituals of popular justice—what tenets of popular legal culture, informed by the victims’ rights movement and on “war-on-crime” conservatism, advocate is due victims’ family members.

McVeigh’s execution specifically played a crucial role in the formation of collective memory of the Oklahoma City bombing. Legally, it was the moment when accountability was imposed, the execution of sentence, the conclusion of legal proceedings. It also marked the event through which media coverage of the Oklahoma City bombing and its legal aftermath would grind to a halt, and the moment when McVeigh himself would be silenced. Socially, it was an opportunity for both live and closed circuit witnesses to socialize with one another once again, to gather to discuss the bombing and individual recovery as well as new goings-on—all framed by an awareness of what event witnesses had gathered to see.

Significantly, the reasons why McVeigh’s execution was broadcast back to Oklahoma City via closed circuit are mnemonic in nature. Significantly, it was not at all

certain until a few months before McVeigh's execution that more than 10 live victim witnesses would be able to attend. The struggle to televise McVeigh's execution was framed in terms of a need to witness "justice," with victims' families and survivors advocating that everyone who was affected by the bombing had a right to choose for themselves whether or not to witness. As McVeigh's execution date approached, numerous Oklahoma City bombing survivors and victims' families, including many participants in this study, sought to persuade Attorney General John Ashcroft to arrange for a closed circuit broadcast of the McVeigh execution from Terre Haute to Oklahoma City. On April 10, 2001, Ashcroft visited Oklahoma City and met with 100 survivors and victims' families who were united in their belief that seeing the execution was important to them. At that meeting, according to Participant 28, family members and survivors conveyed "why it was so important to see it through and that we have the right to attend that." According to Participant 28, the change in Ashcroft's attitude toward televising the execution was obvious:

... I don't really know [why Ashcroft came to Oklahoma City to meet with victims' families and survivors] unless it was because he just thought ... like so many people, uh, it appears ghoulish. You know, he didn't have any concept of why we needed to do that. But once he met with this group of people it was, it was pretty amazing. It was obvious that he kind of had his knees knocked out from under him. He was overwhelmed by what he heard in that room, um, he had a whole new perspective of what the needs were. Why there were needs. ... he was really upset, he was...and he could see it. You could tell it.

Two days later, on April 12, 2001, Ashcroft acceded to the request to televise McVeigh's execution via closed circuit broadcast. Paramount among the reasons for granting this request was Ashcroft's desire to ensure "closure" for victims' families. Announcing the closed-circuit broadcast of the execution, Ashcroft stated

I also met with about 100 survivors and victim family members on Tuesday to hear their stories and try to understand their loss. The magnitude of this case is certainly stunning. My time with these brave survivors changed me. What was taken from them can never be replaced nor fully restored. Their lives were shattered, and I hope that we can help to meet their need to close this chapter in their lives.¹⁸⁸

Thus, the decision to undertake a closed-circuit broadcast to accommodate additional witnesses was framed in terms of resolution and closure. Accordingly, Ashcroft reasoned that since the “Oklahoma City survivors may be the largest group of crime victims in our history,” the Department of Justice “must make special provisions” “in accordance with our responsibilities to carry out justice.”¹⁸⁹ President Bush’s remarks after the execution was carried out also impose this frame: “Today, every living person who was hurt by the evil done in Oklahoma City can rest in the knowledge that there has been a reckoning.”¹⁹⁰

The response of the legal community to the decision to televise McVeigh’s execution via closed-circuit transmission was anything but predictable. In an April 12, 2001 broadcast of *NewsHour with Jim Lehrer*, New York Law School professor Robert Blecker stated, “I think we have a right to see and in a sense a responsibility to see what is being done in our name” and opined that McVeigh “should not control the process” and that “his last statement should not be televised.” Bonnie Bucqueroux, Executive Director of “Crime Victims for a Just Society,” did not “see a real role for the victims here,” and advocated that “this is the business of the government and it is the government that should be held accountable for this.” Bucqueroux remained concerned that “victims

¹⁸⁸ DOJ Press Release, *Attorney General Ashcroft’s Statement Regarding the Execution of Timothy McVeigh*, available at <http://www.usdoj.gov/opa/pr/2001/April/169ag.htm> (hereinafter Ashcroft’s Statement).

¹⁸⁹ *Id.*

¹⁹⁰ *Remarks by President Bush on McVeigh Execution*, White House Press Release, available at <http://www.whitehouse.gov/news/releases/2001/06/20010611.html> (last visited April 13, 2007).

are being used in the process. . . . I think they are being sold, some of them, a bill of goods that is going to lead to a kind of closure that they are not going to achieve because this really isn't retribution, this is vengeance."¹⁹¹

McVeigh's execution, then, was not only an event experienced in common that assisted family members and survivors in the reconstruction of social frameworks of memory; it was also a communicative event. It may seem odd at first to speak of an execution as a communicative event, which herein will be defined as a specific episode in which someone is engaged in meaning-making by drawing on enculturated systems of communicative practices, the underlying sociocultural systems or toolboxes from which we strategically choose spoken, written, or gestural behaviors. Human communication is not a transmission of transparent meaning but a negotiated exchange of meaning. Communication does not take place in a vacuum but in a social context filled with entities that may either facilitate or hinder human interaction. Differing cultural backgrounds or ideological assumptions may result in deviating perceptions as easily as does a noisy environment or technological malfunction. A communicative framework of action and reaction is the ideal means by which to address punishment in general, capital punishment in particular, and the execution as a specific imposition of capital punishment. Criminal law's efficacy itself presumes the existence of communication, expressions that some actions are illegal and that those who commit crimes will be punished. That citizens understand what actions are illegal is proof that those concepts have been successfully communicated to them. As a state-instituted ritual, punishment is a social act, and capital punishment is its most extreme form.

¹⁹¹ NewsHour with Jim Lehrer, *Witness to an Execution* (April 12, 2001).

Thus, an execution is both communicative action and an event with social consequences. An execution is the enactment of the pronounced death sentence. The state is the primary actor in the execution ritual that outlines, regulates, and supervises the execution though the execution is carried out in the name of the people. The state actor communicates both with and through the condemned to reach the immediate witnesses and more remote audiences exposed to the execution through media. The state's expression to the condemned is a unique punitive message. Usually punishment is meant to express censure, and a "don't do it again" warning. Here, the object of the punishment will not live to learn his lesson, so one can infer that the state's ultimate communicative target is not the condemned but the witnesses to the execution.

The condemned plays a remarkably passive role in the execution process. The execution is designed to subordinate the will of the individual to the will of the state, reenacting the contract between the governed and the governing. Punitive acts, then, are the means by which the state seeks to "prevent the despotic spirit . . . from plunging the laws of society into its original chaos."¹⁹² Executions are the ultimate confirmation of this repositing popular power over the body of the infractor. The state has codified its gatekeeping role in carrying out the execution, most notably for our purposes in 28 C.F.R. § 26.4(f), which prohibits photographic, audio, and visual recording devices at federal executions.¹⁹³

Giddens has noted that "[e]xecution finally puts the body beyond the possibility of social control."¹⁹⁴ However, it would seem instead that the state's control over the

¹⁹² CESAR BECCARIA, ON CRIMES AND PUNISHMENTS 12 (Henry Paolucci, trans., 1963) (1764).

¹⁹³ 28 C.F.R. § 26.4 (2007)

¹⁹⁴ ANTHONY GIDDENS, MODERNITY AND SELF IDENTITY 162 (1991).

social *person* must cease upon death, but its control over the *body* can continue in perpetuity. The body is the site and target of the most rigid forms of social control. The state imprisons the condemned until the date of his death, and impresses additional restrictions upon his final moments. Since the days of public hangings, prisoners have often been hooded or masked “to spare spectators the sight of the condemned person’s distorted or disfigured features,” and after the electric chair replaced the noose, leather face masks concealed the condemned’s features.¹⁹⁵ When lethal injection is used, the prisoner’s body is often sanitized by a sheet cover, and the prisoner lays supine upon a gurney so that witnesses see only one side of his features. In McVeigh’s execution, the closed-circuit camera was suspended directly over his head, so that witnesses had an unobstructed view of his features.

The state also restrains the condemned’s final expressions and actions. Formerly, “at large spectacles and at small private executions as well, the prisoner was made a part of the ritual by being offered an opportunity to deliver his final words.” Now, however, this privilege has been “gradually withdrawn” because “there is a fear that he will say something nasty that will disrupt the proceedings,” and in some cases, the prisoner is only permitted to write his last words.¹⁹⁶

Finally, the physical space in which the execution is carried out further emphasizes that the state is the primary actor and others but incidentally connected to the act. According to Foucault, the execution, once a “pure event” and “collective spectacle,” moved out of view with the invention of the prison organization. Giddens further states

¹⁹⁵ JOHN BESSLER, *DEATH IN THE DARK: MIDNIGHT EXECUTIONS IN AMERICA* 151 (1997).

¹⁹⁶ ROBERT JAY LIFTON & GREG MITCHEL, *WHO OWNS DEATH? CAPITAL PUNISHMENT, THE AMERICAN CONSCIENCE, & THE END OF THE DEATH PENALTY* 182 (2002).

that executions were often “noisy and prolonged”.¹⁹⁷ Death was dissected into silent and rehearsed routine processes, “a sequence of technical modifications” to make it “instantaneous” and “unobtrusive.”¹⁹⁸ The existence of the witness room distances witnesses from the invocation and metaphysical and physical consequences of the execution; witnesses become bystanders because of the distance imposed by concrete and glass. The layout of the witness rooms further regulates witnesses’ impressions and responses and structures the execution as a distant communicative event, allowing the state to “minimize the fascination of looking by effecting death as mechanically and as precisely as possible.”¹⁹⁹

Like other communicative events, McVeigh’s execution was structured through gazing behavior and through silence. Each of McVeigh’s behaviors was perceived to have repercussions for individual and for collective formation of social frameworks of memory. Thus, this chapter will first discuss witnesses’ perceptions of McVeigh’s gazing behaviors during the execution, discussing gazing behavior as a normative phenomenon and questioning whether McVeigh’s gaze was marked by witnesses because it defied such interactional rules. It will then explore the role of silence in McVeigh’s execution, addressing it in three contexts: the silence of witnesses, witnesses’ perceptions of McVeigh’s silence, and the execution as an act of silencing McVeigh.

Deconstructing McVeigh’s Gaze

Witnesses literally attend and attend to an execution on the basis of general communicative expectancies, behavioral signals that interpersonal interaction will likely

¹⁹⁷ GIDDENS, *supra* note 194, at 162.

¹⁹⁸ *Id.*

¹⁹⁹ AUSTIN SARAT, *WHEN THE STATE KILLS: CAPITAL PUNISHMENT AND THE AMERICAN CONDITION* 189 (2001).

commence. Such dynamics are activated when the condemned invites or opens an interaction by either looking into the witness rooms or by addressing witnesses through “last words.” Often, the condemned does make some communicative endeavors, but rarely makes the gestures that witnesses say they most desire. In exploring the interactive dimensions of the McVeigh execution, the importance of his visual awareness of witnesses is established through his gaze. Participants 25 and 29, both live witnesses, recall that when the curtain was opened, McVeigh physically lifted his head and slowly stared into three of the four witness rooms in which sat his own witnesses, bombing victims, and media witnesses.²⁰⁰ There is some question whether McVeigh stared into the room reserved for government witnesses. Persons in all of these rooms but the offender witness room were concealed by a one-way glass. McVeigh then lay back down and stared up at the ceiling, into the closed circuit camera. This active visual engagement with witnesses was noted by several attendees, and remote witnesses believed that McVeigh was staring directly at them.

Execution witnesses are often intensely interested in watching the offender’s face throughout the procedure, to the point that corrective measures may have to be taken when logistics such as the location of the gurney vis-a-vis the victim witnessing room and the girth of the defendant make this impossible.²⁰¹ Closed circuit witnesses felt that the

²⁰⁰ Participant 25 stated,

... once they opened up the curtains, and he looked at his lawyers, gave them kind of a nod. Then he turned his head to the media, looked at them for a few seconds, nodded to them and turned to us and looked at us and it was only a couple of two or three seconds. I guess he realized then that he could not see us. And so once that happened and he turned back around and stared right straight at the ceiling.

²⁰¹ In an interview with one state victim advocate who witnesses executions with victims’ families and who wished to remain anonymous, the victim viewing room was positioned at the foot of the gurney, which was

placement of the camera directly over the gurney in Terre Haute was ideal because it allowed them to clearly see McVeigh's facial expressions. The desire to see McVeigh face-to-face fueled some witnesses' desire to view the execution. When asked about the desire to see the execution in person, Participant 25 remarked in a media interview five days before the execution:

I have not been able to see this guy face to face. I have watch[ed] him on TV, I've watched him on closed-circuit. And I'm the type of guy that I need to see what is going on. I'm hoping that if I can see his face maybe I can get some kind of idea exactly who he is and what he thinks . . .²⁰²

Closed circuit witnesses reported being "shocked" or "jarred" by the sudden sight of McVeigh's face on the screen. The spouse of Participant 5 stated that "I think I thought they would just show a picture of him laying on the table from a sideways view or something. So it kind of surprised me a little bit when they did click on that it was just his face there." Participant 21 experienced shock: "I visualized you [were] going to see like him across the room on the bed and he [would be] strapped down and everything, when the curtains opened his face was right there big huge, I mean the camera was like right on his face. . . . Yeah, like shoulders up, that shocked me." Participant 22 also found McVeigh's enlarged face a "little startling."

But this shock did not prevent most witnesses from unhesitatingly endorsing this placement, since they wanted to see his face for a variety of reasons. Participant 5's spouse stated, "I'm glad I saw him that close up and everything cause that way I knew

parallel to the floor. During the execution of an obese offender, victims complained that they were not able to see past the offender's girth to his face. Afterwards, the head of the gurney was positioned at a sloping angle to allow witnesses to see the offender's face at all times.

²⁰² Transcript, CNN Breaking News, *Judge Denies Stay of Execution for McVeigh, Appeal Expected* (June 6, 2001), available at <http://transcripts.cnn.com/TRANSCRIPTS/0106/06/bn.03.html>.

from his eyes and his expression what he was feeling.” Participant 21 credited a spiritual experience of forgiveness that she underwent during the execution to being able to see McVeigh’s face: “I think the face thing is what, really brought it to reality with me. . . . it was a face-to-face thing and I think that’s probably what drew me in to what I needed to go through.” The two closed circuit witnesses who wanted to see a more inclusive picture stated that they wanted to see more of what was going on in the execution chamber; Participant 15 wanted to see all of McVeigh’s body despite being somewhat wary of doing so, and Participant 7 would have liked to see additional preparations for the execution as well as a more expansive view that included all of McVeigh’s body along with the corrections staff and other people in the witness rooms, so that it would be as if she were there in person. She felt that it was odd that closed-circuit witnesses could not see more:

I mean honestly this was a protected room, where we were, protected room where they were, we knew each other. Um, so what’s wrong with us seeing who’s there? The warden, the other family members and survivors that were present, him, his family, who was there with him, I, I would just like to have for it have been like we were there in that room, rather than just watching from the chest up. . . . We didn’t even get to see the injection go in, we didn’t get to see the needle in his arm.

Interviews with witnesses also show that McVeigh’s gazing behaviors gave rise to an intense perception among closed circuit witnesses that McVeigh was aware that his death was being witnessed, that he wanted to create a certain image, and that his gazing behavior produced an interactional expectancy for witnesses. Closed circuit witnesses believed that McVeigh was staring at them through the camera and that he was conscious of their presence. Larry Whicher, a closed circuit witness, stated in a media interview

immediately after the execution that McVeigh “actually lifted his head and looked directly into the camera and it was as if he was looking directly at us” and described his stare in the following manner:

It was a totally expressionless, blank stare -- and his eyes were unblinking, they appeared to me to be coal black and he didn't need to make a statement. I truly believe that his eyes were telling me he had a look of defiance and that if he could he'd do it all again.²⁰³

Participant 5's spouse sensed that McVeigh was aware that he was being watched: “He knew that people were looking at him, watching him . . .” When McVeigh's face appeared on the screen, it seemed to Participant 7 that he was looking at the witnesses in the viewing rooms:

you almost, you could see him almost like visibly like he's looking at each person in there. Specifically making specific attention of the fact that he's looking at each person in there. . . . It's almost like he's looking at each family member or whoever's there. . . . His eyes could move, I don't recall him picking up his head. . .

Participant 22 believed that McVeigh was “very aware” that there was a camera suspended above him. Not only did witnesses feel that McVeigh was aware of live and closed circuit witnesses, but there was a definite perception that he was actually and purposefully *looking at* all witnesses, even those viewing by closed circuit. Three closed circuit witnesses described McVeigh's gaze as unmediated, despite the closed circuit feed. Participant 21 stated that “he raised his head up and I mean he kind of did like this and it was almost like he was just staring at each person. . . . and it was something he did on purpose It's almost like it was a face-to-face contact with him.” Participant 22 stated, “there's his face *looking at you*” (emphasis added). Finally, Participant 28

²⁰³ *Id.*

perceived that McVeigh was not only aware of witnesses' presence and that his gaze seemed to penetrate through the mediated images to reach witnesses:

And as he stared at the camera, knowing that we were watching, . . . he would just stare at that camera. And it was just...like it was just he was just staring right through you. I mean absolutely everyone said the same thing. It looked like he was looking right at you, like he was looking right at me.

Witnesses in the death chamber in Terre Haute had a different experience of McVeigh than witnesses who viewed via closed-circuit television. Live witnesses, then, only had seconds of perceived eye contact with McVeigh. Participant 25 stated that McVeigh "glared into the room, you know, trying to figure out who was who, who was in there and where we were standing at." Participant 29 recalled that McVeigh raised his head in an effort to look at victim witnesses, although it was unexpected: "I never expected him to look at us. And then... it was like drum roll. His head turns to his right. He rolls over and he looks at all of us. Or at our window. Four, maybe five second and then turns his head back."

In the closed-circuit image, McVeigh was lying on his back and so his gaze defaulted to the ceiling, making it unclear whether he was looking at the camera, the ceiling, the remote witnesses, both, or neither. The remote witnesses, however, did impose meaning upon that gaze, and perhaps even felt its full impact even though they were the most removed. As closed circuit witness Larry Whicher stated in a media interview immediately following the execution: "I think that stare in the camera is

something that will stay with meIt won't haunt me, but I think it will be a memory that will stay with me and make me think there are others like that in the world."²⁰⁴

Normative Dimensions of Gazing

The implications of McVeigh's communicative gaze for the formation of individual and collective memory is closely tied to the social interpretations of gazing behavior. For sighted people, gaze is an important social behavior.²⁰⁵ Above all else, a gaze conveys visual attention.²⁰⁶ In a classic 1967 study of eye gaze, Kendon proposed that eye contact had three functions, the first two of which are directly relevant here: to express emotion, monitor others' actions, and regulate conversational flow.²⁰⁷ Similarly, Argyle found that eye contact signaled the level of intimacy which existed between two interactants; the greater the eye contact, the closer the relationship between them.²⁰⁸ Mutual gaze is also physiologically arousing; Mazur et al found that mutual gaze between experimental participants caused more arousal (measured by "strong, significant, and consistent drops" in thumb blood volume, or TBV, which measures the quantity of blood moving from the "periphery of the body to the heart, lungs, and large muscles") than control conditions of nonmutual gaze.²⁰⁹

²⁰⁴ Terry Horne, *Viewers Struck by Look in McVeigh's Eyes*, THE INDIANAPOLIS STAR (June 12, 2001), available at http://www2.indystar.com/library/factfiles/crime/national/1995/oklahoma_city_bombing/stories/2001_0612b.html.

²⁰⁵ MICHAEL ARGYLE & MARK COOK, *GAZE AND MUTUAL GAZE* ix (New York: Cambridge UP, 1976).

²⁰⁶ *Id.* at 84.

²⁰⁷ A. Kendon, *Some Functions of Gaze Direction in Social Interaction*, ACTA PSYCHOLOGICA 26 (1967), at 1-47.

²⁰⁸ See MICHAEL ARGYLE, *BODILY COMMUNICATION* (2d ed., 1988).

²⁰⁹ A. Mazur, Eugene Rosa, Mark Faupel, Joshua Heller, Russell Leen, & Blake Thurman, *Physiological Aspects of Communication via Mutual Gaze*, THE AMERICAN JOURNAL OF SOCIOLOGY, 86(1) (July 1980), at 62, 71.

McVeigh's gazing behavior led witnesses to perceive that he was both conscious of and paid careful attention to their presence. Gauging from closed circuit witnesses' comments, McVeigh's staring behavior was likely more marked for them than for live witnesses since it was prolonged, and therefore interpreted as unexpected behavior or a breach of social norms.²¹⁰ According to Kendon, 11 out of 20 subjects in an experimental interview situation spontaneously commented on variations in an interviewer's gaze pattern when it deviated from normal, whereas none mentioned the gaze when the interviewer's gaze patterns remained normal.²¹¹

Establishing that McVeigh's gaze was socially significant begs the question of what it signified and how it positioned McVeigh *vis a vis* the witnesses. The most obvious element that a gaze conveys is visual attention: "people who notice when others are looking at them, or who are aware of how much someone is looking, will probably draw some inference from this behavior."²¹² McVeigh's attempt to gaze into each witness room informed witnesses of his conscious and careful attention to and awareness of their presence. In actuality, witnesses who were in the death chamber in Terre Haute had a more immediate or intimate encounter with McVeigh than closed circuit witnesses because of their close physical proximity to his body. However, it was closed circuit witnesses who felt a more intimate connection with McVeigh through his gaze. McVeigh was reclining on his back so that his gaze was directed upwards to the ceiling as a matter of course, and so it is unclear whether his upturned gaze into the camera (and through its

²¹⁰ According to Kendon, 11 out of 20 subjects in an experimental interview situation spontaneously commented on variations in an interviewer's gaze pattern when it deviated from normal, whereas none mentioned the gaze when the interviewer's gaze patterns remained normal. ARGYLE & COOK, *supra* note 205, at 83.

²¹¹ *Id.*

²¹² *Id.* at 84.

lens to the witnesses in Oklahoma City) was targeted at the ceiling, the remote witnesses, both, or neither. Thus, for whatever reason, it was the closed circuit witnesses who felt the full impact of McVeigh's gaze.

Because visual attention can act as a summons, an attentive gaze may be the indication that a communicative interaction is starting or is likely to start. A gaze unites persons who were previously inattentive both towards each other and to the interactive potential that arrived with an awareness of the gaze. This interpersonal unity is there even if the motivation that engendered the gaze divides its participants, as in the case of an openly hostile stare. When a gaze thus serves as a trigger for attention, communicative expectancies are a logical corollary: "if someone is looked at by a stranger or someone he is not interacting with, he expects something to happen or an interaction to start."²¹³ In effect, then, the gaze constitutes a summons to pay attention *because* the gazer is paying attention, implying that attention is a reciprocal behavior.

The attentive gaze also objectifies its target: "when A becomes aware that B is looking at him, he is aware that B is attending to him and therefore that he, A, is the object of B's attention." The effect of this objectification differs depending on the environment in which the gaze is delivered: "if B can see better than A, e.g. by . . . being behind a one way screen, then A becomes very uncomfortable." Feeling as if one is observed is "a function of role." According to Merleau-Ponty, people can be "stripped of existence" or "transformed into an object" by "being looked at by someone who dares not strike up any relationship."²¹⁴ Thus, a gaze that is an invitation to attention (and therefore

²¹³ *Id.* at 85.

²¹⁴ *Id.*

to awareness of attention) but is not an invitation to further communicative interaction is a truly objectifying gaze, a behavior which has significant social consequences and positioning effects for its target.

A gaze may also signify an attempt to establish dominance. Evidence suggests that status is determined very soon within an interaction, from the first 15 seconds to 1 minute, instead of emerging over a longer term.²¹⁵ Staring behavior is commonly interpreted as assertive in a wide range of cultures. In addition, empirical research has shown that staring behavior can be perceived as threatening or dominating.²¹⁶ Stares are likely to be perceived as showing anger, aggression or assertiveness when accompanied by lowered eyebrows.²¹⁷ The experimental findings of Mazur et al suggest that mutual gazes accompanied by lowered brows were more physiologically arousing than mutual gazes accompanied by raised brows; declines in subjects' TBV were "significantly deeper" in the lowered brow situations.²¹⁸ Mazur et al found that participants' level of comfort with staring behavior was a "strong predictor" of dominance in subsequent

²¹⁵ Fisek and Ofshe found that half of groups comprised of students undifferentiated in status characteristics such as sex, race, and age formed a stable status order within the first minute of interaction. M. Fisek & R. Ofshe, *The Process of Status Evolution*, SOCIOMETRY, 33 (1970) at 327-46. In addition, Rosa and Mazur were able to predict students' rankings in similar groups moderately well by observing eye contact behavior during the first 15 seconds of interaction. E. Rosa & A. Mazur, *Incipient Status in Small Groups*, SOCIAL FORCES 58 (1979), at 18-37.

²¹⁶ See H. Moore & A. Gilliland, *The Measurement of Aggressiveness*, JOURNAL OF EXPERIMENTAL SOCIAL PSYCHOLOGY 7 (1921), at 623-26; S. Thayer, *The Effect of Interpersonal Looking Duration in Dominance Judgments*, JOURNAL OF SOCIAL PSYCHOLOGY 79 (1969), at 285-86; R. Exline, S. Ellyson, & B. Long, *Visual Behavior as an Aspect of Power Role Relationships*, in NONVERBAL COMMUNICATION OF AGGRESSION (P. Pliner, L. Krames and T. Alloway eds., 1975), at 21-52; P. Ellsworth, *Direct Gaze as a Social Stimulus: The Example of Aggression*, in NONVERBAL COMMUNICATION OF AGGRESSION (P. Pliner, L. Krames and T. Alloway eds., 1975), at 53-75; P. Ellsworth & E. J. Langer, *Staring and Approach: An Interpretation of the Stare as a Nonspecific Activator*, JOURNAL OF PERSONALITY & SOCIAL PSYCHOLOGY 33 (1976), at 117-22; E. LIEBOW, TALLEY'S CORNER, (1967); D. Fromme & D. Beam, *Dominance and Sex Differences in Non-verbal Responses to Differential Eye Contact*, JOURNAL OF RESEARCH IN PERSONALITY 8 (1974), at 76-87.

²¹⁷ Mazur et al., *supra* note 209, at 63.

²¹⁸ *Id.* at 64.

interactions, with participants who reported being more comfortable with the stare taking a dominant role in subsequent conversation and decision making tasks.²¹⁹ In communicative purposes related to assertions of dominance, gazes can also communicate threat or challenge.²²⁰

The positioning effect of a gaze can result from an active “staring down” which puts the subject “in her place,” or may result from deviant behavior that violates norms of interaction and thus provides discomfort in the subject. For instance, “staring on the part of strangers constitutes a bizarre piece of rule-breaking, whose meaning is unclear, from which the person stared at might well want to escape.”²²¹ The interpretation of a gaze, like the meaning of other nonverbal signals, is heavily dependent on its social context and on how actors define the situation.²²² An execution setting is not the same type of interaction as a friendly chat between friends; the condemned’s past behavior has opposed him to those who witness his execution either because they were somehow harmed by him (survivors or family members of victims) or because they are there to commemorate the consequences of his transgression (media and government witnesses). This explains why McVeigh’s gaze was interpreted as confrontational or defiant, particularly when interpreted in light of his silence at the warden’s request for “last words.” Such a confrontational gaze connotes animosity and dominance and implies

²¹⁹ *Id.* at 70.

²²⁰ B.J. Smith, F. Sanford, & M. Goldman, *Norm Violations, Sex, and the ‘Blank Stare*, *JOURNAL OF SOCIAL PSYCHOLOGY* 103 (1977), at 49-55.

²²¹ ARGYLE & COOK, *supra* note 205, at 93.

²²² See Mazur et al., *supra* note 209.

emotion and power roles: “looks can express aggression and hostility, and can also evoke it.”²²³

Witness responses suggest that McVeigh’s gaze could have been perceived as one of two particularly aggressive gazing behaviors, a “stare down” or a “hate stare.” A stare down is a “dominance encounter” in which one party decides to hold another’s gaze so that it becomes a staring contest in which each interactant attempt to outstare the other that ends only when one party looks away.²²⁴ Participant 8 wanted to stare down McVeigh when 8 attended his trial in Denver: “I just stared at him, I said I’m gonna stare at you until you look me in the eye and he did. And I said I’m not going to, you’re going to look away before I do.” An especially antagonistic gaze that Goffman termed the “hate stare” is a deliberate breach of the nonstaring accord between strangers that Goffman terms “civil inattention.”²²⁵ The hate stare is “insulting partly because it implies the person stared at doesn’t really count as a person at all.” This perspective prioritizes the “deliberate breaking of the social norm.”²²⁶ Both consequences of the hate stare parallel likely consequences of McVeigh’s gaze: objectifying the targets of the gaze, and its deviance from social norms. Such a gaze implies that the gazer is dominant and has the right to stare at and impose upon the target of his gaze. In studies of dominance, increased looking by a person makes him or her appear more dominant to others.

Rules define gazing behavior in public spaces. This is significant because McVeigh was surrounded by unseen others, mostly strangers, all of whom were staring at him. According to Goffman, gaze is rule-governed; “people are expected to gaze in

²²³ ARGYLE & COOK, *supra* note 205, at 74.

²²⁴ Mazur et al., *supra* note 209, at 52.

²²⁵ ARGYLE & COOK, *supra* note 205, at 74.

²²⁶ *Id.* at 74, 75.

certain ways, and it is disturbing to others if they gaze in a different manner.”²²⁷ Rules may be defined by the group to which one belongs, and rules for gazing at group members differ from those regulating gazes at nonmembers. A group of people in a public place “defines itself as a group of means of spatial proximity and by the members orienting towards each other;” it is expected that members will gaze at other members and will not attend (again the emphasis on attention) to those outside. The gaze of an outsider may be regarded as an “invasion.” Certain events merit different rules than those that govern other gatherings. Greeting another, moving from unknown to known, requires “bodily contacts and mutual gaze.” Such a “mutual gaze” “has the special meaning that two people are attending to each other,” and “is usually necessary for social interaction to begin or to be sustained.”²²⁸

McVeigh’s execution was certainly public in the sense that many people were present as witnesses, either in person or via closed circuit television...Live witnesses in Terra Haute were organized into four groups—government witnesses, victim witnesses, media witnesses, and McVeigh’s witnesses—arrayed in witnessing rooms surrounding the gurney. Similarly, closed circuit witnesses in Oklahoma City were assembled in each other’s presences. The execution was only private in the sense of not being “open to the public”; witnesses had to be family members or survivors or in a supportive capacity for those individuals. However, the execution was by no means an “ordinary” public space, where normal rules and conventions of interaction and gaze apply. It was a liminal space, involving many changes of status—living to dead, sentence pronounced versus

²²⁷ *Id.* at 112 (citing ERVING GOFFMAN, BEHAVIOR IN PUBLIC PLACES (Glencoe: The Free Press 1963).

²²⁸ *Id.* at 112, 114.

sentence carried out—that invoke the ritual context and its ensuing formulaics. Instead, these rules have much in common with the theatrical “audience,” where participation is defined by the expectation that one will await the spectacle, and that when the curtain goes up (or slides open) the audience member will then fix his gaze upon the revealed sight.

The rules for witnessing an execution, then, are simple in form: gaze is expected and encouraged. The rules for the condemned, however, are much more temporal and tenuous. The protocol of the lethal injection ritual lacks the physical prohibitions on gaze inherent in other forms of execution—the hood for hanging, the blindfold for death by firing squad, the face mask for electrocution—which incidentally were foisted upon the condemned not to restrict his gaze but to protect witnesses from being horrified by his unsightly visage during and after the execution. The only restriction that a prisoner condemned to die by lethal injection faces is the gurney which restrains him prone on his back, and forces his face towards the ceiling. The head of a prisoner, however, is not restrained, and so he ostensibly has the freedom to turn his head and gaze into the witness rooms surrounding the death chamber, summoning witnesses to attention and invoking the potential of communicative interaction.

Witnesses’ Perception of a Communicative Gaze

When participants recalled how McVeigh’s gazing behavior made them feel, they spoke of unease and incompleteness as well as pollution, defilement, and anger. This notion of a “communicative gaze” is similar to the diseased gaze of the murderer in ancient Greek culture. The Athenians placed great importance upon the spectacle as a means of transferring emotion, and therefore exchange; eyes themselves were associated

“not only with knowledge and the arousal of emotions but also with justice and properly ordered reciprocity.”²²⁹ Thus, “the justice of punishment, the right response to wrongdoing, inhabits or takes place in the realm of human intersubjectivity marked out by the gaze,” and the “wrongdoer and the punisher . . . exchanged ‘glances’ when they exchanged justice.” These cultural tenets found expression in Greek tragedy, where the effects of wrongdoing included a “disease” that was not so much biological as social, an anger that threatened to overwhelm victims and communities. Tragic victims who suffered from the disease of anger signaled their distemper through their gaze.

Wrongdoers were diseased in another sense; they were agents of contagion that could spread the disease of anger throughout the community, polluting its inhabitants through the gaze. Thus, “to be seen by a murderer was also to see the murderer with one’s own eyes,” and following this exchange become “inspired to anger.” By these means, wrongdoers “introduce[d] negative forms of intersubjective exchange—glares and glances of anger—to the community.” Anger, in turn, was linked to memory through its longevity, and thus became “a powerful motor for the production and maintenance of systems of knowledge.”²³⁰ Some participants’ remarks directly invoked this sense of contagious anger; Participant 28 had a disturbing sensation of evil upon meeting

McVeigh’s eyes:

And but he started looking around the room. And I remember he met...met me eye to eye. And I...I mean I just...I’m sure I just went white and I had to turn around. I just...I was like...it’s like someone had just taken my breath away. In shock I you know, I said it was like looking at the devil eye to eye. It was just a horrible, horrible feeling.

²²⁹ DANIELLE ALLEN, *THE WORLD OF PROMETHEUS: THE POLITICS OF PUNISHING IN DEMOCRATIC ATHENS* 80 (2000).

²³⁰ *Id.* at 77-81.

What is immediately obvious is that McVeigh's gaze did have communicative dimensions for most witnesses, so much so that one journalist was prompted to refer to McVeigh's gaze as "a look they will long remember, the long hard stare into the camera," that was comprised of a "blankness" and an "unblinking gaze."²³¹ Closed circuit witnesses certainly perceived that McVeigh was attempting to send a message. Witnesses described McVeigh's expression as either confrontational ("staring" into the camera), or "stern" or "defiant" ("I've seen it a lot in my grandchildren. You know that kind of defiance of ah, you can whip me if you want to but it's not hurting.") or as overtly malicious, terming it a "go to hell" or "eat shit and die" expression, one that "just spit on us all some more," and an "evil" expression.²³² For Participant 22, McVeigh's expression was so defiant that a relaxation in his facial posture was the preeminent physical sign of his death. Witnesses also stated that McVeigh's face registered pride or arrogance, describing it as "triumphant," a "fuck you all, I won" look, one that said "I did the right thing and I'm not sorry" or "I'm willing to die for my idea." Ironically, witnesses further described McVeigh's expression as registering absence, explaining that it was blank ("nothing"), unremorseful ("no remorse"), uncaring ("didn't give a flip," "didn't care") and free of suffering ("you're not hurting me", "no sign of discomfort," "showed no pain").

Interpreting McVeigh's gaze as communicative had interpersonal consequences from survivors, from angering them to disappointing them to hurting them further or, in one case, enabling forgiveness. Participant 25 stated in a media interview following the

²³¹ Horne, *supra* note 204.

²³² The impression of "evil" was also echoed by closed-circuit witness Gloria Buck, who stated in a media interview that "It was almost like the devil was inside him, looking at us." *Id.*

execution that "What I was hoping for, and I'm sure most of us were, we could see some kind of, maybe, 'I'm sorry,'" he said. "You know, something like that. We didn't get anything from his face."²³³ Similarly Participant 15 stated, "he died like he didn't care and I cried because of that, because he did not care." Participant 5 remarked in a media interview following the execution that "He got the final word I thought I would feel something more satisfying."²³⁴ This perception was echoed by Jay Sawyer, a nonparticipant closed-circuit witness whose mother was murdered in the bombing, who stated in a media interview, "[w]ithout saying anything he got the final word, absolutely. His teeth were clenched, just like when he was first arrested. His teeth were clenched, his lips were pursed and just a blank stare. It was the same today."²³⁵

But according to Participant 21, confronting McVeigh face to face is what enabled 21 to have an intensely spiritual experience in which 21 forgave McVeigh:

I am still not looking at him and he kind of raised up and I think was glaring into the camera, and all of sudden it's like, you know because I have this faith. . . . when I was there viewing him and watching him, it was like, all of sudden he came to me, I don't know what's on the other side and when I get to the other side all of this may mean absolutely nothing. I started to thinking of him as Timothy McVeigh, the soul and not Timothy McVeigh, the man and I started praying for him that this is his last chance, this is his last breath and I prayed for him and it just like overtook me. . . . Um, I was able to let it go, I guess to me that was the true forgiveness, not to oh yeah Timothy you could be my best buddy type forgiveness. So it's forgiveness in different stages To me this was a true forgiveness letting it go.

As the following table reveals, individual witnesses often describe McVeigh's execution in many different ways.

5	"I saw a man laying there on a bed or a table, ah, the camera was
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²³³ *McVeigh Shows No Remorse at Execution*, *supra* note 175.

²³⁴ Bryant, *supra* note 162.

²³⁵ *Id.*

	<p>pointed right at his face, he had a go to hell look er expression on his face. . . . He had a triumphant look on his face. . . . (I) Like a smirk? (S) I wouldn't even call that a smirk. He didn't go that far to smirk. He didn't show that much expression but just like an anxiety mood. He knew that people were looking at him, watching him and um, he just showed no remorse, nothing he showed no pain.”</p> <p>“I thought he was telling everybody I won. Fuck you all, I won. Excuse my language, I don't usually talk like that, but that's what I felt he was doing.”</p>
7	<p>“I think he was um, when he was looking at each one I think he was trying I, I felt he was kind of like saying you, you're not hurting me I've seen it a lot in my grandchildren. You know that kind of defiance of ah, you can whip me if you want to but it's not hurting.”</p>
15	<p>“He just, he just laid there like...just spit on us all some more. . . . [asked to describe facial expression] None, none. It's just like he didn't give a flip at the end. . . . But he didn't care still. I think that's what, even to the end he didn't care. . . . he, his, his expression on his face was just like eat shit and die people, I don't care.”</p>
21	<p>“looked so evil,” “glaring into the camera,” “confrontational,” “defiant”</p>
22	<p>“very very defiant until the last instant.”</p> <p>“He did just glare into the camera. He didn't just look. He had that same look in his eyes when they arrested him. Do you remember him coming out of the court house and that stern look on his face? That's the look he had. . . . Like defiant. I did it. I did the right thing and I'm not sorry. He was just, defiant is the word I would use. He didn't back down one iota.”</p>
25	<p>“And he...what he did is he once they opened up the curtains, and he looked at his lawyers, gave them kind of a nod. Then he turned his head to the media, looked at them for a few seconds, nodded to them and turned to us and looked at us and it was only a couple of two or three seconds. I guess he realized then that he could not see us. And so once that happened and he turned back around and stared right straight at the ceiling.”</p> <p>“different kind of thank type smile, kind of stuff”—for his witnesses “kind of like, okay guys, it's going to happen type situation”—for the media “glared into the room, you know, trying to figure out who was who, who was in there and where we were standing at”—victim witnesses</p>
28	<p>“Yeah, because he didn't say anything, because he...he'd just been so defiant the whole time, and that I'm willing to die for my idea, my cause. I mean he felt like he was a martyr and so yeah, so yeah, I guess I do, because he was doing the same thing that I was doing. He talked the talk. He's going to go all the way through.”</p>

29	<p>“I think I saw McVeigh, he looked over at his witnesses which I think were his attorneys. He of course didn’t have any family there. Looked over at them and you know they’re hands were up to the window. Maybe he could see our pictures. We could see their hands. Anyway. And then he turned and he looked at the press. I mean and he’s laying down and he’s strapped down and he can barely lift his head because he is pretty strapped down but maybe lift his head up an inch. I never expected him to look at us. And then... it was like, drum roll. His head turns to his right. He rolls over and he looks at all of us. Or at our window. Four, maybe five second and then turns his head back.”</p> <p>“More, I’d say leaning towards more like a glare like you know boy- I can’t give him credit for anything. You know, the guy... has never had much of a look in his eye. Even when I listen to like that 60 Minutes interview, I saw that not too long ago. I don’t know- there’s just- I don’t... and I have wondered since then why did he even look at us? Was he trying to give us something? I don’t know.”</p>
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Table 4: Witnesses' interview descriptions of McVeigh's expression during execution

Particularly interesting is the description of Participant 5’s spouse, who stated both that McVeigh’s gaze simultaneously showed “nothing” and was a “go to hell” and a “triumphant” expression. This suggests that, for her, “nothing” meant something else other than completely devoid of expression, as in “nothing appropriate” or “nothing that I wished to see.”

Live witnesses who viewed the execution in Terre Haute did not sense either that McVeigh was attempting to communicate with witnesses or what he was attempting to communicate. Participant 25 stated that McVeigh “glared” into the victim witness room, “trying to figure out who was who, who was in there and where we were standing at,” but he did not interpret anything significant in McVeigh’s expression other than confusion; in a media interview immediately following the execution, he stated, “we didn't get anything from his face.”²³⁶ Similarly, other than characterizing that look as being akin to

²³⁶ Transcript, CNN Live Event, *Family Members Witness [sic] to McVeigh Execution Recount Their Experience*, (June 11, 2001), available at <http://transcripts.cnn.com/TRANSCRIPTS/0106/11/se.08.html>.

a “glare,” Participant 29 did not know whether McVeigh was “trying to give us [live witnesses] something.” Live witnesses may have wished for more communicative interaction; survivor Anthony Scott, another live execution witness, said in a media interview immediately following the execution that “I wish that there might have been eye to eye contact, but he couldn't see us.”²³⁷ Participant 25's disappointment was also evident, “I was hoping to look at this man, but it didn't work, guys. So we went with what we felt like going in.”²³⁸ This communicative ambiguity may have made it difficult for live witnesses to categorize McVeigh's emotional state at the moment of his execution. As Participant 25 remarked in a media interview, “I mean he's not a monster, guys. I mean not when you're looking at him in the face. I mean he's just a regular human being. But, you know, there's no facial expressions on him whatsoever so there was no way of knowing just exactly what he is and how he is.”

Still other closed circuit witnesses revealed in media interviews or statements that McVeigh exhibited signs of fear. Survivor Calvin Moser said, “To me, he had the look of, ‘I'm not in control of this. As much as I've criticized the government, the government has me.’”²³⁹ Oneta Johnson, a family member, noted that “He looked up and stared at us, but I saw his jaw quiver.”²⁴⁰

Witnesses, whether live or closed circuit, wanted to respond communicatively in turn to McVeigh's gaze. Participant 7 stated that she wanted McVeigh to be able to see her, “Just so that he could see that I'm not a monster. That we are not monsters, we're

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ Home, *supra* note 204.

²⁴⁰ *Id.*

just people too. You know and all we did was go to work that day. That's it." Similarly,

Participant 28 stated:

I would like for him to look at my face and know the pain that I knew he's caused. And to see, you know, to see my daughter and to know that you know, you killed my daughter and her baby. You killed them. You know, yeah, I wish he could have seen my face, because I saw his, I wish he could have seen mine.

Though live witnesses may not have felt as if they had an opportunity to communicate their thoughts to McVeigh, this did not prevent them from wishing that they had been able to. Participant 25 wanted to communicate defiance back to McVeigh: "I wanted to see him when he was in the chair, like that, and I wanted him to see me. Because I wanted him to know that no matter what he did or didn't do, we were going to survive this thing and we would be better afterwards." Similarly, live witness and survivor Anthony Scott stated, "I wanted him to see me, to somehow let him know that you didn't break the spirit that you thought you were going to break".

One closed circuit witness stated that it was not meaningful that McVeigh could not actually see other witnesses. Participant 22 explained that "I think maybe for someone who has a lot of vengeance would want that maybe but I didn't care anything about that."

Two of the live witnesses brought in small photographs of their murdered loved ones and held the photographs up against the glass during the execution. Participant 29 brought a photograph of her murdered sibling. While entering the witnessing room in Terra Haute, she was in the front row and placed it up to the glass; she described how another witness did the same thing with a photograph of a murdered child:

I was again lucky enough, I got in the front row and [another live witness] and I had both had a picture. . . She had her [child]'s picture and we put them right up to the window. Not that he could see it. It was more symbolic and we had to do it very discreetly because we had guards behind us. But yeah, stuck a picture up there so [sibling's name] could watch it happen.

When asked whether it was “almost like not only were you witnessing but it was also like your brother was also witnessing,” Participant 29 replied “Yeah, that’s why I did it. Symbolically I felt that way . . .”

The Mnemonic Effects of McVeigh’s Gaze

In summary, McVeigh’s gazing behavior had several mnemonic consequences. First, although witnesses expected the execution to be a moment of resolution, McVeigh’s gazing behavior obstructed that expectation. With the exception of one witness who was able to forgive McVeigh after viewing the execution closed-circuit, witnesses did not gain the “satisfaction” from McVeigh’s gaze that they might have felt had he not appeared to be defiant or nonplussed by the execution. Instead, witnesses felt once again as if they were being challenged by McVeigh, although the nature of the execution allowed some witnesses to trump that sensation by realizing that they would walk out of the encounter alive but McVeigh would not. In particular, although the mnemonic effect was magnified by the closed-circuit technology which broadcast a frontal picture of McVeigh’s face, such intimacy merely allowed witnesses to confirm their earlier impressions of McVeigh, although they now felt as if they were confronting that defiance head-on. Thus, if witnesses found the execution to be “fulfilling” or “satisfying,” it had to be for some other reason than his gazing behavior, such as its status as the final legal proceeding or the fact that it was the moment in which McVeigh would

be put to death and thus held accountable for his actions. Ultimately, witnesses who were unsettled by McVeigh's gazing behavior returned to these same overarching concerns to explain why they felt relief after McVeigh was executed.

Dimensions of Silence in the McVeigh Execution

Silence has a multitude of meanings. It may be "a sign of someone's power or control over others, or it may be a sign of a person's weakness and submission," it may be "a state in which one gains knowledge, or it may be a state of idle ignorance or unlearning."²⁴¹ "Affection, reverence, attention, hesitation, and other states and emotions are ordinarily and naturally communicated through silence."²⁴² Jaworski states that silence is a "highly ambiguous" form of communication as "it does not manifest any particular assumptions in a strong way" and so "is more open for the audience to speculate about which assumption(s) the communicator had in mind to make manifest or more manifest in his or her use of silence."²⁴³ Therefore, we must reject a simplistic view of silence as merely a counter to speech, an absence defined as such because it is bereft of verbal presence. Under such an impoverished perspective, "humans are metaphorically conceptualized as machines, and the constant 'humming' of the machine is regarded as a sign of its proper functioning," but when the humming ceases and silence reigns, "the (human) machine is perceived as if it no longer work[s] well."²⁴⁴ Under this perspective, wording equates to working. However, silence does "retain the illocutionary force of speech . . . it is fully capable of actualizing the common speech acts of apologizing,

²⁴¹ ADAM JAWORSKI, *THE POWER OF SILENCE: SOCIAL AND PRAGMATIC PERSPECTIVES* 69 (1993).

²⁴² *Id.* at 38.

²⁴³ *Id.* at 85.

²⁴⁴ *Id.* at 46 (quoting R. Scollon, *The Machine Stops: Silence in the Metaphor of Malfunction*, in *PERSPECTIVES ON SILENCE* (D. Tannen & M. Saville-Troike eds., 1985), at 21-30).

refusing, complaining, questioning, etc.,” and “it is through this potential that silence can have positive or negative social consequences: cohesive or divisive . . . informative and revelational.”²⁴⁵ Jaworski posits instead a conceptualization of silence that does not treat it as a “negative phenomenon with respect to speech” but locates both silence and speech “on a communicative continuum of forms . . . from most to least verbal.”²⁴⁶

Of particular interest here are the communicative dimensions of silence. It is a clear prerequisite that, for silence to be communicative, it must be invested with meaning. Jaworski posits that one person only interprets another’s silence when there is an interactional expectation, when “the communication process is expected or perceived to be taking place,” when one person intends to communicate something to another.²⁴⁷ He then exemplifies “noncommunicative” silence by a hypothetical situation where two strangers pass on the street without intending to interact with one another; the lack of intent to communicate means that the silence is not socially meaningful. This seems a strange notion, for as researchers, we would contest that this silence does have communicative meaning regardless of the intentions of these two strangers. In Jaworski’s eyes, then, meaningfulness is constructed from the perspective of the interactional participant and not an external observer. This conception of communicative silence thus presupposes communicative engagement or the expectation for such engagement. It is noteworthy that to place silence and speech on the same communicative spectrum is not to equate the communicative dimensions of one with those of the other. Each has a different communicative threshold; “the mere occurrence

²⁴⁵ Włodzimierz Sobkowiak, *Silence and Markedness Theory*, in *SILENCE: INTERDISCIPLINARY PERSPECTIVES* 46 (Adam Jaworski ed., 1997).

²⁴⁶ JAWORSKI, *supra* note 241, at 46.

²⁴⁷ *Id.* at 34.

of words is capable of creating a communicative situation, while the mere occurrence of silence does not.”²⁴⁸

Because meaningful silence is “indistinguishable in its acoustic form” from noncommunicative silence, there must needs be some method to determine one from the other. The concept of meaningfulness hinges upon communicative engagement or interaction, such a tool must be a relational tool, and “the identification and interpretation of these two types of silence will have to rely on the functional and psychological aspects of the perception of interaction.” Jaworski utilizes Relevance Theory to explain the communicative dimensions of silence. Relevance Theory understands communication to be the intentional conveyance of assumptions between participants in a communicative encounter, and defines two “levels of intentionality,” informative intention and communicative intention. “Informative intention” is present when a communicator attempts to make manifest a set of assumptions to another interactant.²⁴⁹ “Communicative intention” is present when the interactant and the communicator both recognize that the communicator has this informative intention.²⁵⁰ Analyzing McVeigh’s execution calls forth both the informative intention and the communicative intention, I would argue, because within its interactional bounds “silence is used ostensibly to manifest explicitly (or make more manifest) as set of assumptions.”²⁵¹

When silence is meaningful, then, it may assume social functions. According to Jensen (1973), there are five functions of silence: a linkage function, where “silence may bond two (or more) people or it may separate them”; an affecting function, where

²⁴⁸ *Id.* at 77.

²⁴⁹ *Id.* at 91.

²⁵⁰ *Id.* at 85.

²⁵¹ *Id.* at 87.

“silence may heal (over time) or wound”; a revelation function, where “silence may make something known to a person . . . or it may hide information from others”; a judgmental function, where “silence may signal assent and favor or it may signal dissent and disfavor”; and an activating function, where “silence may signal deep thoughtfulness . . . or it may signal mental inactivity.”²⁵²

Within the interactional context of the McVeigh execution, there are three primary contexts of silence: that of the witnesses, that of McVeigh himself, and that of the execution as imposing silence upon McVeigh.

Witnesses' Silence

The morning of McVeigh's execution marked the merger of the healing, voluntary group relationships and the destructive, involuntary victim-offender relationship between family members/survivors and McVeigh. As family members and survivors congregated to await the closed circuit broadcast or assembled to be transported to the death house, the strong interpersonal bonds forged between group members over the six years from bombing to execution were tapped as a source of support to carry friends through whatever the day would bring—including a confrontation with McVeigh.

At the FAA Center in Oklahoma City, the remote site to which McVeigh's execution was broadcast via closed circuit television, intermittent talking took place before the execution began. Several witnesses spoke of the execution as something of a reunion or social gathering. Participant 7 recalled that juice and fruit were provided in the kitchen in the back part of the viewing room, and that witnesses were greeting one

²⁵² *Id.* at 67.

another: "it was almost like just a little social gathering before a meeting." Similarly,

Participant 21 stated,

because it had been a long while since a lot of us had been together and we all were there for one purpose. . . . we were able to talk and laugh and share things that have gone on with our families because I mean we're like a whole community . . . it's almost like a, a family reunion. I have an extended family because now all the people that I knew, who have died, I know their families now.

Participant 28 noted that witnesses were not speaking only of the execution, but primarily of other things, including recollections of the bombing itself and the recovery process.

The social dimensions of collectively witnessing the execution were especially apparent for live witnesses, some of whom traveled to Terra Haute together, and all of whom dined together the evening before the execution and the morning of the execution.

Participant 29 already knew many of the other live witnesses: "you only have 10 people, that I knew about half of us was really weird. So we had a nice sense of camaraderie right off the bat." 29 and other witnesses shared a similar attitude toward many aspects of the proceedings, including viewing in a humorous light the many counselors and other professionals present at a dinner with the warden the evening before the execution:

They were... I'm exaggerating, maybe 20. But I mean preachers, psychologists, psychiatrists, therapists . . . it's sort of like they're just waiting for all of us to crack up or something. . . . we were all like- we were in a pretty good mood given you know what- maybe we hadn't thought about what we're getting ready to do, the gravity of it . . . I think the people I was close to there kind of felt the same way. Like God, get- just get out. Anyway, we made a joke of it.

According to 29, the "good mood" of witnesses persisted through the execution itself: "I think there was one person and this was not even until we were in the room that one person seemed you know to be very solemn about it. . . . we were just kind of, I don't

want to say joking and certainly not laughing, but it was not a somber experience in that room.”

Closed circuit witnesses described the atmosphere in the witnessing room in Oklahoma City as being very different than the atmosphere in Terre Haute. Despite the interactions between witnesses, an air of nervous anticipation was palpable. Participant 5's spouse said that closed circuit witnesses were “milling around” “really restless” and “on edge” before the execution began because “their anticipation was kinda getting to them.” Participant 21 remarked that different witnesses awaited the execution in differing frames of mind: “There were some that were just, somber like me just, you know, there were some that were like, I remember one, one woman go, ‘This is a great day for an execution.’ I mean, you know, you had every feeling in there.” Participant 22 stated that “Everybody was nervous. I think. I mean it appeared to me that everybody I talked to was pretty nervous. One girl just passed out. She just, she just was too overwhelmed. She stayed though. She got better.” Participant 28 described there being “all kind of nervous talk, kind of chitchatting.”

During the remote broadcast of the execution itself, witnesses were silent; Participants 7 and 15 recalled that they were “very quiet,” and 7 did not remember any audible crying. Participant 5's spouse was allowed to describe to her husband what was going on during the closed circuit execution even though “everybody else was cautioned to be quiet, be orderly . . . they didn't want any outbursts or no, ah, they didn't want any kind of clapping or yelling or loud crying or anything like that,” and so she described the proceedings in a “real low” voice. Participant 21 noted that things were “Very quiet, I was amazed, when he actually died. It was silent. . . . I really expected some people to, to

have an outburst, you know, clap or something. It was very silent.” In Terra Haute, however, according to Participant 25, there was some talking in the execution chamber as some of the female witnesses who had brought photographs made comments: “Probably the women made comments about this is my husband or this is my brother or what. . . . With photographs.” Participant 29 also stated that one of the witnesses was speaking during the execution: “I mean [witness] was ‘hey you son of a bitch over here, look at this picture.’ You know yelling at him.”

After the closed-circuit viewing of the execution, Participant 7 recollected that there was an attitude of “okay it’s done, let’s move on.” This is precisely how live witnesses described the execution; as Participant 25 said, “when it was over with, you know, they said, ‘It’s over, it’s done.’” In Oklahoma City, there was an air of quiet afterwards according to Participant 28: “everyone kind of just got up, made their way out, went and got in the cars.”

If we accept Jaworski’s proposition that silence and speech are two ends of a communicative spectrum, it is easy to understand that, like speech, silence can be “situation specific,” depending on “the practical conventions of the event itself.”²⁵³ Such events may actually be interactions structured through silence.²⁵⁴ It thus appears that the closed circuit viewing of McVeigh’s execution was structured for witnesses through silence, while the live viewing was either structured to a much lesser degree through silence or, more likely, was not structured at all through silence.

²⁵³ *Id.* at 22.

²⁵⁴ Jaworski posits that meditation and walking are two such activities. *Id.* at 19.

It at first seemed surprising that live witnesses reported less silence in the witnessing room at Terra Haute than closed circuit witnesses reported in the remote witnessing room in Oklahoma City. After all, one might think that prison strictures would impose silence upon the act of witnessing in Terra Haute. This would suggest that the farther one gets from the event, the looser the controls become over speech and silence during the act of witnessing. Clearly, participants' remarks supported the opposite of this observation. An explanation may be found, however, by switching the focus from how far removed witnesses are from the witnessed event to whether the target of witness' communicative actions was within communicative range. Thus, it is more likely that the converse is true: that closed circuit witnesses in Oklahoma City had little reason to break silence because McVeigh, the target of any communicative efforts they would have made, was literally remote, appearing through a mediated image. It was the live witnesses standing in a room removed from McVeigh by only one wall who stood in communicative proximity to McVeigh.²⁵⁵

In summary, witnesses' degree of silence during the execution, as contrasted with their social interaction beforehand, reveals that live witnesses were much more likely to attempt to communicate with McVeigh during the execution than remote witnesses.

Thus, while remote witnesses experienced greater degrees of gazing behavior than live

²⁵⁵ This change in focus was provoked by a conversation I had with a colleague concerning the college graduation of his daughter. Graduation day temperatures soared to 90 degrees, and there was limited shade for attendees, prompting college officials to open a remote witnessing location featuring a big screen in the campus chapel. Attendees in the chapel, including my colleague, could see everything of note—individual graduates receiving degrees, the enthusiastic cheering of live spectators. However, when remote witnesses' loved ones received their degrees, the remote witnesses did not cheer or clap; a "sheepish few" clapped, but did so half-heartedly and stopped their clapping very soon. There seemed to be little purpose in either communicating in the absence of the communicative participant, particularly in view of the code of silent witnessing that was imposed. So with the differences in communicative activity in the closed circuit location in Oklahoma City and the witness room in Terra Haute. I am indebted to William J. Bowers for providing this insight.

witnesses, live witnesses' physical and therefore communicative proximity to McVeigh was far greater than that of remote witnesses. This prompted some live witnesses to take advantage of the proximity in order to verbally challenge or lambast McVeigh, suggesting that live witnessing may prompt the active release of more aggression than remote witnessing. In a mnemonic sense, then, witnessing an execution live may be more satisfying for witnesses, who are more likely to assume an "active" role in the execution and thus may be less likely to feel that they have been denied an opportunity to confront the condemned offender.

Witness Perceptions of McVeigh's Silence

Witnesses elect to view executions for many reasons, prominent among them the longing for some sign of repentance or suffering from the condemned—an apology, an acknowledgment of the pain and suffering endured by those reclaiming their lives after a capital crime. Thus, witnesses subject the condemned's behavior to intense scrutiny, searching for a communicational opening, some sign of interactional engagement. McVeigh did not make any statement, remorseful or otherwise, at the warden's request for last words. However, copies of his final written statement, a copy of the poem "Invictus" by William Ernest Henley, were distributed to media representatives.

After the execution, McVeigh's appellate attorney Robert Nigh, who had visited McVeigh prior to the execution, addressed the media to explain why his client had not made a final statement: "To the victims of Oklahoma City, I say that I am sorry, that I could not successfully help Tim to express words of reconciliation that he did not

perceive to be dishonest."²⁵⁶ Thus, Nigh connected McVeigh's silence to an unbending insistence that his actions were justified.

Whereas some execution witnesses wanted McVeigh to say something instead of remaining silent, other witnesses were fearful that McVeigh would use the opportunity to hurt survivors and family members further; Participant 5 just wanted McVeigh to say something instead of remaining silent. Witnesses' hopes for a remorseful statement were dimmed by their perceptions that it wasn't in his nature to apologize. Thus, witnesses wanted an apology, yet either did not expect one or would not have believed McVeigh if he had apologized. Participant 5 was not surprised when McVeigh did not make a remorseful statement, and stated that "I think it'd have been important if he'd apologized, but I don't, I don't think he'd meant it if he did apologize. . . . And he didn't mean it even if he you know, no, no apology was really in that man as far as I could tell." Similarly, Participant 22 remarked, "you just can't help but have this hope even though you know its ridiculous and that's not going to happen you still have that hope you'll say something that is remotely remorseful. And, uh, you know, it didn't happen. He was very very defiant until the last instant." Participant 7 was the only execution witness who was angered by McVeigh's silence, particularly given the fact that he was "behind [his] movement," but she also was not surprised that McVeigh chose to remain silent in view of his military training, acknowledging that McVeigh's behaviors were constructed by past life experiences. Two live witnesses, Participants 25 and 29, did not care whether or not McVeigh apologized; both of them noted that they did not expect an apology. Two execution witnesses were relieved that McVeigh was silent, in view of other, more

²⁵⁶ *McVeigh Shows No Remorse at Execution*, *supra* note 175.

harmful statements he could have made. Finally, one witness was relieved that McVeigh did not make “death sounds” as that witness’s father had done when he struggled for breath.

In communicative interactions, the refusal to speak can be troubling and potentially toxic; “one’s failure to say something that is expected in a given moment by the other party can be interpreted as a sign of hostility or dumbness.”²⁵⁷ In hostile situations colored by anger and violence, where silence is usually thought to be the antithesis of noisy rage, silence can be a weapon, and “silent treatment of the opponent may be even more powerful than uttering the harshest of words and drives many people crazy.”²⁵⁸ Hence the power of the adage “turn the other cheek.” How much more painful can silence as a weapon be when there is no future opportunity for the one who wields it to reestablish communication and contact? When delivered in response to an offer or invitation, “silence is the extreme manifestation of indirectness” and, consequently, a strong form of disengagement, if not disregard.²⁵⁹ It is also a “highly face-threatening act.”²⁶⁰ Here, silence embodies rejection—of the offer, and potentially of the offeror as well.

When this request to speak/refusal to speak pattern plays out in the context of an execution, the condemned only has a very limited attempt to respond, and to refuse this invitation to give “last words” is to remain silent forever, barring a last minute reprieve. The scripted regimentation of an execution protocol provides an opportunity for the

²⁵⁷ JAWORSKI, *supra* note 241, at 25.

²⁵⁸ *Id.* at 49.

²⁵⁹ *Id.* at 52 (quoting Deborah Tannen, *Silence: Anything But*, in PERSPECTIVES ON SILENCE 97 (D. Tannen & M. Saville-Troike eds., 1985).

²⁶⁰ *Id.* (quoting P. BROWN & S. LEVINSON, POLITENESS: SOME UNIVERSALS IN LANGUAGE USAGE (Cambridge, UK: Cambridge UP 1987) (1978).

warden to invite the “condemned” to utter any last words. Under the “Countdown” section of the execution protocol manual followed by those in the death chamber at Terre Haute in 2001, for example,

3. The Warden will ask the condemned individual if he/she has any last words or wishes to make a statement. The condemned individual will have been advised in advance by the Warden that this statement should be reasonably brief. This statement will be transcribed by a BOP staff member and provided to the media.
4. At the conclusion of the remarks, or when the Warden determines it is time to proceed, the Warden will read documentation deemed necessary to the execution process. The Warden will then advise the Designated United States Marshal that, “We are ready.”²⁶¹

This request/refusal pattern played itself out in the McVeigh execution. Thus, one of the obvious manifestations of a condemned body’s taboo status is that the condemned becomes silenced through the order-bearing protocol of the execution, speaking only when he is bidden, just as other taboo bodies do when subject to the strictures of other ceremonies, in giving vows, taking oaths, and delivering eulogies.²⁶²

In the point-counterpoint pattern of offer and refusal, McVeigh’s silence was in effect interpreted as his response. Witnesses were not interested in McVeigh’s actual intent in remaining silent because they found his silence to be so meaningful. As the remarks of witnesses to the execution made clear, some form of communication was desired but in many cases not expected. Yet, witnesses still interpreted McVeigh’s silence as pregnant with defiant meaning.

In summary, McVeigh’s silence, like his gazing behavior, confirmed witnesses’ prior impressions that he was a defiant and remorseless offender. It thus did not disturb

²⁶¹ 2001 BUREAU OF PRISONS EXECUTION PROTOCOL, *available at* <http://www.thesmokinggun.com/archive/bopprotocol24.html>

²⁶² JAWORSKI, *supra* note 241, at 198.

mnemonic frameworks relating to McVeigh as a defendant or to his relationship to the Oklahoma City bombing. If anything, McVeigh's silence was a boon in light of the fact that he could have taken that final opportunity to further irritate witnesses in some way. Such a gesture would undoubtedly have unsettled witnesses far more than his expected silence actually did.

McVeigh's Death as Imposing Silence

A third dimension of silence in Timothy McVeigh's execution was the fact that McVeigh himself was now permanently silenced, a communicative absence occasioned by death. A living Timothy McVeigh was simultaneously a reminder of his potential to "jab" at victims, a reminder of the bombing, and a reminder of injustice. In addition, participants spoke of a fear that McVeigh could still influence others and a weariness of continuously hearing the defendants' names in the press; as Participant 1, a nonwitness, stated of Nichols: "to think he's still influencing people every day in the media, I am *tired* of seeing his name appear in the Oklahoma newspaper and it still appears in there every few months." Execution was perceived by many participants as the only way to effectively silence an offender; as Participant 24 stated, "You know, after someone is executed you are completely finished with every battle you have to fight in that arena. No more McVeigh battles to fight. Don't have to worry about what's gonna come out in the newspaper that he said to some reporter somewhere."

Several nonwitnesses and witnesses experienced relief that there was silence following the execution. However, participants characterized this silence very differently depending on whether they were for or against the death penalty. All participants who opposed the death penalty spoke of this relief from recurrent media activity, whereas

those for the death penalty remarked on the end to his life that provided relief. This suggested that participants who supported the death penalty felt that their relationship with McVeigh as a para-social enemy was somehow more threatening.

Both nonwitnesses and witnesses who supported the death penalty expressed relief from McVeigh's death. Participant 1 stated, "when those people are executed and you know they're *gone*, there, there is a change for the people that were victims of that crime. It's gotta be better. It was for me." Most participants who were for the death penalty specifically connected this relief to either McVeigh's ability to no longer speak with the intent to harm others or his ability to incidentally harm others in speaking. In these statements, survivors and family members were affected by communications from the offender(s) and thus accorded a quasi-participant status in these interchanges.

Participants also acknowledged that McVeigh was the *subject* and not the *origin* of media coverage was also problematic and hurtful; as Participant 24 remarked,

And part of that [the inability to entirely leave behind the emotional entanglement with offenders], without blaming the media, part of that was a media because I constantly -- I think I tell you the story about the reporter who asked me about closure and why we kept opening up our wounds and my answer to that was I never closed and I never will. As every time you write a story, every time you, you know, question what happened or who was involved and those kind of things, those lesions were always there, period.

Similarly, Participant 16 was thankful that "I don't hear his name constantly for the rest of my life."

Several nonwitnesses who supported the death penalty also experienced relief that McVeigh was silenced. Describing her relief after the execution, Participant 8 stated that "It's still death but yeah there was that relief. We don't have to hear his crap anymore.

He can't he can't hurt us. He's gone. He got what he deserved. . . . You know he can't write no [sic] books any more, he can't grant no [sic] interviews" Participant 8 stated that it would have been harder if McVeigh had remained alive: "I think that would have been harder because he would've, you would've heard things. Every now and then I'm sure he would've wrote something or talked to a reporter or you know it would have been in your face for life." For that reason, she could only forgive McVeigh "[w]hen his mouth was shut." Participant 12 felt a physical relief from McVeigh's silence: "when, when McVeigh was killed I felt a huge sense of relief. . . . I think physically it was a major uh benefit to me, and uh I think spiritually um he's not making headlines, no one is reading his letters in the newspaper, like the bomber the clinic, abortion clinic bomber." Speaking about a recent statement that Nichols had released from prison, Participant 12 compared Nichols to the infamous murderer Charles Manson, stating "he [Nichols] should be dead, he shouldn't be capable of speaking, and I knew that this was something that could happen because Manson is alive. And he's still impacting people and . . . and that shouldn't happen, and that can't happen for McVeigh, he's gone." Participant 12 stated that even life imprisonment should mean an inability to communicate with others: "to me, life imprisonment would be cruel and unusual punishment, because they should not see another living human being, they should not be able to communicate with another human being." 12 connected an offender's ability to communicate with the ability to impact victims and survivors: "I don't care what they do, it's what they say, if they can impact, affect have any type of bearing on any other human being, it's wrong. And if they're dead, they can't do that."

Execution witnesses who supported the death penalty also focused on McVeigh as a communicative agent in expressing relief in the aftermath of his execution. Participant 15, a survivor and closed circuit witness, spoke in terms of silencing McVeigh: "I don't have to listen to his mouth ever again, ever. . . . That's what I wanted. You know I wanted someone to silence him because all he did was hurt people still and he got his kicks out of it even in prison he still had freedom of speech." For Participant 25, McVeigh's willingness to use the media to continue to inflict harm on family members and survivors was one reason why he felt McVeigh needed to be executed, in contrast to Nichols, whose quiet prison presence meant that he could "live with" his continued existence:

McVeigh, even though he knew that he was getting the death sentence, he was defiant all the way up to the point where it actually happened, okay? He would speak out to the media. He would tell the families to grow up, it's collateral damage that we killed your kids, you know. And everything that he did was doing nothing but hurting the family members here in Oklahoma. So the only way for us to have any kind of peace was to execute this man. Now on Nichols, Nichols is a little different because since he's been tried and convicted, you don't hear about him. And so even though he was ninety percent involved . . . I can live with him being in prison for the rest of his life, for the simple reason that he is not defiant and he's not going out and getting on the news and so forth and trying to hurt the family members.

Similarly, Participant 28, a family member and closed circuit witness, found the execution meaningful in terms of the silence of McVeigh:

Seeing it through and to know that he really was silenced. That he really is dead. I saw him die. It can't be any of this - we saw President Kennedy on a yacht or we saw . . . you know, Elvis Presley working at Burger King or whatever, you know. I mean you hear all this crap. And I mean I know I saw him die and I know he is silenced. And that is what I wanted. I wanted him to be silenced and I saw him being silenced.

For Participant 29, a live witness, the execution ended McVeigh's presence:

Peace. I mean I felt a real peace. Within my self. And again because I'm not carrying him in my head. He's gone. He's out of my head now. And that's more room for [29's sibling]. To think I have to share room with that son of a bitch with such a nice guy like my [sibling]. That sucks.

Participant 21, one of the few who expressed no opinion on the death penalty, also explained the sense of relief after the execution in terms of terminating McVeigh's potential as a communicative agent: "Um the jabbing is what I am very happy has stopped . . . Because that was a very, very painful when he came out and said the children were collateral damage and it was like, that was so hard on the families."

Participants who were against the death penalty, on the other hand, described their sense of relief as emanating from the termination of media coverage from McVeigh, and not the death of McVeigh in itself. Participant 3, a survivor and nonwitness, stated that "I just wanted the media to quit talking about it [the execution] . . . I just wanted some return to, as much return to normalcy as I could have." But 3 stated that, while cessation of media coverage was an improvement, coverage would have "died down" if McVeigh had been given life imprisonment, as it had with respect to Nichols. Participant 11 also confessed to being kept "on edge" by media coverage: "I just felt like, it was kept stirring up, stirred up, stirred up, stirred up . . . all the time and it just, there was still Terry Nichols to deal with, that all the media and everything, it just -- that kept me toned up . . . constantly bringing everything up again." Participant 19, a survivor and nonwitness, specifically attributed a sense of relief following the execution to media coverage instead of McVeigh's presence:

it's not so much that he is or isn't alive, it's that his -- here we go again, access to media. See he had access to media and you know maybe that's another thing, maybe that's another type of punishment that needs to be given is non-access to media because if he wouldn't have been writing people and calling people and giving interviews and making pronouncements and so on, you know, it'd be a lot easier to live with him, being in prison for the rest of his life.

Participant 19 described a feeling of being set free by the cessation of media coverage:

“all the media packed up like you know what we are free, they will not ever come back in this manner again ever, you know, you will not ever get any more pronouncements from McVeigh on anything.”

Thus, participants conceived of the “relief” and “satisfaction” that they obtained from McVeigh's execution differently; their opinion on the death penalty dictated whether it was the media or McVeigh himself who hindered mnemonic reconstruction. Most importantly, however, it is abundantly clear that what was effective about the execution was that it resulted in *silence* and thereby enabled a state of peace to descend and the stabilization of mnemonic structures to proceed.

Witnesses' Reactions to McVeigh's Death

The more painful and prolonged the experience of death, the more terrible that death becomes. “Good” deaths need no response save mourning, because they are deaths that occur within the natural order. “Bad” deaths, on the other hand, require a response. Formulated through a fatal calculus, means of extracting accountability are the usual proper “response” to a bad death. A death from a tragic car accident and a death from first degree murder will both merit responses designed to seek accountability—a wrongful death lawsuit in the former, and a criminal prosecution in the latter. Deaths from genocide merit investigation by “truth” commissions. Such deaths, then, are

abnormal occurrences that must be taken apart, studied, and understood in order to create a “record” of the fatal circumstances and to prevent similar episodes from occurring in the future. For those in favor of the death penalty, the response to a “bad” death is another “bad” death.

In the context of the Oklahoma City bombing, the murders of the eight federal agents for which McVeigh was prosecuted occurred simultaneously with the murders of 160 other adults and children and the wounding of hundreds of survivors. These deaths were “bad” deaths that cried out that McVeigh be held accountable. And McVeigh was sentenced to death in response. Yet, McVeigh’s own death, however unnaturally induced it may have been, visually resembled a “good” death—a peaceful, rapid, and painless instance of passing away while asleep. A number of participants who witnessed the execution felt that it was not right that McVeigh’s death was not more painful; various reactions included statements that McVeigh should have been electrocuted, hanged, or mutilated. McVeigh’s death as an image, then, while interpreted as the proper “response” to the Oklahoma City bombing, was seen as “improperly” peaceful. The responsive properties define what was meaningful in a positive or negative sense about that image; just as a photographic image is burdened by its historical context, McVeigh’s death was bounded by the nature of his victims’ deaths and his behavior from arrest to execution, as well as the physical space and technologies in and by which McVeigh was executed.

Those witnesses who watched McVeigh’s execution viewed his death as a “response” to the 168 murders and countless instances of suffering McVeigh had dealt out to innocents through the Oklahoma City bombing. Thus, his manner of death, as witnessed, was contrasted with the victims’ terrible deaths and survivors’ years of painful

physical and mental suffering and recuperation, with the result that McVeigh's death was felt to be too peaceful and too brief.

There was much sentiment among witnesses that lethal injection was too "easy" of a death for McVeigh. As Participant 28 stated,

I think he should be hanged, you know, and in the public. Public should see him, be hanged. . . . because you know, injection was too easy. You know, even the electric chair execution to me, was too, too easy. You know. But of course that's been outlawed and that didn't happen of course. That was just my point of view. And you know, I know I said that. It was I wanted something severe

Witnesses were angered that that McVeigh passed peacefully as if he were going to sleep, without any evidence of pain upon his countenance. As the spouse of Participant 5 stated, "He pissed me off cause he didn't show anything. I wanted him to do a little sufferin'. It upset me because he didn't ." Participant 7 also wanted McVeigh's death to be more violent: "I don't think it was a gruesome enough. I, I think it should have been more painful. I think it should have been the electric chair at the minimum. . . . He just went to sleep. That's the easy way out." Participant 15 wished McVeigh's death would have been more akin to the deaths of his victims: "to be honest with you I wanted them to blow him up. I wanted him to be hurt. I think he was actually afraid cause it was the unknown but I wanted him to be mutilated like my friends were."

Witnesses were also disconcerted by the fact that it took McVeigh only moments to die, and juxtaposed it to the years of suffering caused by the bombing. Participant 15 stated, "Yeah, I was [angry] cause I thought you know this hasn't taken any time to kill him and you know it took hours to get some people out, some people didn't come out alive. You know I have friends that are still getting glass out of their body." She

compared the brevity of the execution to the length and complexity of preparations to attend, and to a visit to the restroom she made shortly before the execution began:

it took, it took me longer to get out of the bathroom then it took him, it was just like, this is it? My [support person] goes, "We got up at 3 o'clock in the morning to come down here for this?" Cause I just thought it'd take a long time. . . . And like I said it was just like this is it? It took me longer to get out of the restroom then it took him, for him to die.

She approved of McVeigh's death sentence, and was glad to have made the decision to attend the execution, but was disappointed that the execution was so banal: "to me it was a let down because it didn't last long enough. I wanted him to suffer. I wanted him to hurt you know people that were hurt had to walk, to endure the pain" Live witnesses also exhibited anger at the speed of his death; survivor Sue Ashford stated in an interview immediately following the execution that "He didn't suffer at all The man just went to sleep or, as I said, the monster did. I think they should have done the same thing to him as he did in Oklahoma."²⁶³

Thus, participants' remarks revealed that ideally an offender's death should be as close to the death(s) of his victim(s) as possible in terms of suffering and duration. Mnemonic justice demands that the suffering of victim(s) be recompensed through the physical suffering of the offender; death in and of itself is not enough, and so a painful death is necessary.

Summary

In a mnemonic sense, executions are frequently held out to be points of resolution or "closure" for victims' families, proceedings that enable them to feel relief after years

²⁶³ "McVeigh Shows No Remorse at Execution, *supra* note 175.

of waiting in sentencing limbo. It is not surprising, then, that Gross and Matheson's concept of a "hallmark execution" turns upon the reconciliation of the condemned to his crime and of the victim's family to the condemned; in this "ideal" execution, the condemned looks directly at the victims' family members and apologizes honestly, the victims' family accepts the apology and forgives the offender, and the killer achieves peace and is reconciled to God before being put to death.²⁶⁴ Notably, the visible suffering of the condemned is not mentioned as part of this ideal; presumably, if the victim's family is reconciled to the condemned, there is no need to see such displays of suffering.

McVeigh's execution exhibited none of these qualities; instead, his gazing behavior unsettled witnesses and together with his silence confirmed witnesses' prior impressions of McVeigh as a defiant and remorseless offender. Yet, participants characterized this execution as satisfying in that it enabled victim witnesses to reconnect once more with one another and it had the desired effect of silencing both McVeigh and the news media. McVeigh's execution, then, succeeded as an "ideal" execution because it was open to as many victim witnesses as wanted to view it. This suggests that whether or not any execution is "ideal" actually depends on the circumstances of the crime as well as on the offender's behavior prior to execution.

Ultimately, however, participants' remarks revealed that the most mnemotically successful execution was the one that was expeditiously carried out, for only then could the dust settle, silence reign, and the frameworks of memory solidify. While defiant

²⁶⁴ Samuel R. Gross & Daniel J. Matheson, *What They Say at the End: Capital Victims' Families and the Press*, 88 CORNELL L. REV. 486 (2003).

gestures may unsettle victim witnesses and a refusal to deliver apologetic last words might sadden them, neither communicative behavior was particularly surprising at the execution stage. Similarly, that fact that an offender's death was peaceful in complete contrast to the murder he committed did not surprise victims already angered by a perceived lack of balance between services accorded to the offender and the marginalization of the victim that pervaded the entire criminal justice system. Thus, surety of the offender's death—and the end of the victim-offender relationship—was the most crucial factor for victim witnesses.

CONCLUSION

This dissertation has analyzed how the membership of family members and survivors in Oklahoma City bombing advocacy and support groups and participation in legal proceedings—including execution—impacted upon their mnemonic work about the bombing.

The research has illustrated how unmediated relationships among group members contributed to the collective memory of the Oklahoma City bombing. These relationships helped address members' vulnerable emotional states, ameliorating their vulnerabilities by providing companionship, providing sites for narrative and normative reconstruction and organizing members toward chosen reconstructive goals. In addition, membership in groups helped channel members away from or further into participation in legal proceedings, including witnessing McVeigh's execution.

Moreover, this research has revealed the existence of an involuntary relationship between family members/survivors and McVeigh that was initiated by media images of him. It was also strengthened by McVeigh's conduct during his capital trial and execution. Unlike voluntary relationships formed between group members, this victim-offender relationship was mediated by the institutional strictures placed on the victim-offender relationship. They were both simultaneously necessary—because they rendered legitimate the legal proceedings that were key to producing accountability—and too narrow, because the guilt/innocence question was merely the threshold inquiry for participants who wanted to know more. Legal proceedings were perceived by family members and survivors as either avoiding the questions most important for memory reconstruction or providing inadequate responses to support mnemonic structures. Thus,

although the criminal justice system successfully held McVeigh accountable through a conviction and death sentence, it did not effectively foster the crucial memory work needed for family members and survivors to come to terms with the bombing. This meant that individuals had to cope on their own with McVeigh's defiance and continue unassisted with their memory work.

At the same time, however, this research has documented how the execution allowed many to complete the memory work that was disrupted by McVeigh's continued existence and left unresolved by legal proceedings until that point. Although McVeigh's staring behavior and silence unsettled witnesses and confirmed witnesses' prior impressions of him as defiant and remorseless, his execution was still satisfying to participants. It enabled victim witnesses to reconnect once more with one another, and it silenced both McVeigh and the news media. McVeigh's execution, then, succeeded as an "ideal" execution because it was open to as many victim witnesses as wanted to view it, suggesting that the degree of satisfaction victim witnesses derived from the execution depended not only on the circumstances of the crime but also on the offender's behavior prior to execution.

This inquiry is but a first step toward researching the perceptions which murder victims' family members form towards legal proceedings, including execution, and the psychological and mnemonic effects that participation in legal proceedings has upon reconstruction and recovery. More research is needed to determine more precisely the effects of perpetrator media images upon families' perceptions of those perpetrators, as well as on the permutations and limitations of the victim-offender relationship. In that McVeigh was an atypical perpetrator and the Oklahoma City bombing an atypical murder

case in terms of mass victimage and intensity of media coverage, additional research is needed to address what occurs in less-publicized murders with fewer victims.

This research into the collective formation of memory and resolution of the cultural trauma of the Oklahoma City bombing through social group membership and participation in legal proceedings offers a glimpse into the mechanisms by which “justice” is expanded. It also offers a view on the extension of the status as “justice” stakeholders to victims’ families and survivors. The expansion has two legal dimensions. First the status of “victim” no longer is granted only to the dead body of the murder victim whose wounds and markings serve as objective “evidence” at the murder trial, but now encompasses as well the murder victims’ family members and all the subjectivity of their suffering. The living make more demands than the dead but speak with the weight of the grave in their rhetoric. Prosecutory proceedings for McVeigh and Nichols were rife with instances where victims asserted their right to move out of the legal periphery—the right to be allowed to attend the presentation of evidence despite being slated to give victim impact testimony, the right to attend the trial after venue was moved from Oklahoma City to Denver, the right to witness the execution despite a witness room with a capacity of ten witnesses. Second, the concept of penal “justice” itself has been enlarged from what is privately owed the perpetrator in recognition of his individual free will and capacity for responsibility to include that which is publicly owed the victims’ family in recognition of its loss and suffering. As part of this expansion from privatized punishment to public reckonings, demands for justice have increasingly called for *witnessed* justice, as exemplified in the McVeigh execution. These developments

problematize concepts such as accountability and vengeance, rendering them more complex than merely prosecuting and obtaining a conviction, as the law presently allows.

The implications of this case study for the relationship between victims, the law, and collective memory are sundry. As the social construction of victims and justice expands, the state will likely face increased demands to expand the responsibilities of its criminal justice system to incorporate such constructions into its judicial operations. Victims want the law to develop an increased capacity to not only institutionally recognize their trauma claims but to accommodate these claims by including them in legal proceedings through victim impact testimony and expanded execution witnessing opportunities. In essence then, as this research documents, many victims are no longer content for the state to arrest and prosecute, but call upon it to recognize suffering and compensate for their losses as well, to expand its focus so that “[i]t is no longer about individuals and their responsibilities, about crime and punishment,” but increasingly about “public responsibility and public solidarity, about risks of life and collective support.”²⁶⁵ In many cases, then, victims are still seeking for law to become a more collective institution that “not only defines the imperfection of the social order but takes responsibility also for its repair; it not only assesses the harm inflicted to victims but also carries the burden of its healing.”²⁶⁶ It remains to be seen to what extent law will accommodate these demands.

²⁶⁵ BERNHARD GIESEN, TRIUMPH AND TRAUMA 66 (2004).

²⁶⁶ *Id.*

APPENDIX A: DISSERTATION INTERVIEW QUESTIONS

1. May I record this interview?

Reasons:

It frees me to listen to you instead of taking notes

Your gift to me is your story, and my gift to you and to others is the best possible research, so I can best listen to your story if it's recorded

If you wish, I can return the recording to you or destroy it at the conclusion of the research project

The Bombing

"I'd first like to ask you some questions about the bombing."

1. Is there anywhere you would like to start? OR Please tell me about your loss.
2. How did you seek to come to grips with what happened in the Oklahoma City bombing?
3. Sometimes when a tragedy occurs we can cope better by finding a certain way of looking at that tragedy. Were there particular aspects of the experience that help you to cope with what happened? Was there anything about the experience that was particularly memorable? Poignant? Painful? Surprising?
4. Did others share their experiences surrounding the bombing with you? How often? In which kinds of situations?
5. Did you share your experiences surrounding the bombing with others? With whom? How often? In which kinds of situations?
6. Was there any similarity in your experiences? Please describe. Was there anything particularly different about your experiences? Please describe.
7. Were any individuals important to you in dealing with the bombing and your loss? How were they important?
8. Were any groups important to you in dealing with the bombing and your loss? How were they important?

How did this group come about?

What did the group do together?

At what point was the group most and least helpful?

Are you still involved with the group? If not, when did you stop becoming involved?

9. Have different groups been important to you over the experience with the bombing? For example, was one group very important immediately after the bombing, but not so crucial later on as a second group?

How did this second group come about?

What did the group do together?

At what point was each group most and least helpful?

McVeigh's Trial and Execution

"Now I'd like to ask you some questions about McVeigh's trial and execution."

10. Did the fact that the bombing was a crime make you feel better in any way? What about the fact that it was a crime for which McVeigh could die?

11. Did you attend the trial? In Oklahoma or in Colorado or both? How much of the trial did you attend? What phases of the trial did you attend?

12. Were you involved in the sentencing phase of the trial, such as by giving victim impact testimony? If so, did you?

13. Did you follow the trial in the mass media (print, broadcast, internet, word of mouth, etc.)?

14. What exposure, if any, did you have to death before the bombing? Before the execution?

15. Apart from the bombing, have you or one of your friends ever known someone who was murdered? When did this occur? Was it a case where the defendant could be sentenced to death? Did you/your friend view the execution?

16. Prior to the execution, did you watch or read anything about the death penalty or execution? If so, do you feel that these experiences prepared you in any way for the execution?

17. Did you have an opinion on capital punishment before the bombing? If so, did this view change after the bombing? After the execution?

18. Would you say that you have ever forgiven McVeigh? If so, when do you feel this occurred?

19. Did you feel a duty or responsibility to view McVeigh's trial? Please describe.

20. Did you feel a duty or responsibility to view McVeigh's execution? Please describe.
21. Do you think attending the trial/execution was an important step in being involved in the process (do you think that seeing it occur made a difference?)
22. Did you witness McVeigh's execution?

Follow Ups:

Did you submit your name to be included for the lottery drawing to view the execution in person?

Did you want to see it and were not chosen?

Did you just not want to see it?

If not, why not? Overwhelming/expense/already had other plans/family members discouraged?)

23. If given the chance, would you have been willing to meet with McVeigh before he was executed? Why or why not?

Follow Ups:

Would you have preferred to meet him alone or with others? Which others'?

What would you have said or done in such a meeting?

What would you have wanted McVeigh to say or do?

IF INTERVIEWEE WITNESSED THE EXECUTION (IF NOT GO TO QUESTION XX):

24. Did you witness the execution in Terre Haute or Oklahoma City?
25. Did you imagine beforehand what the execution would be like? If so, what did you expect that it would be like?
26. Did you feel the execution would be meaningful to you? If so, how?
27. Did you feel prepared to view the execution? If so, please explain.
28. Did you bring a support person with you to the execution? If so, who? Did that person witness the execution with you?
29. Were you allowed to bring anything with you to the execution, such as a photograph, etc.?

YES: What did you bring?

NO: If you would have been allowed, what would you have brought?

30. Did you wear a particular outfit to the execution?
31. Did you want McVeigh to do or say anything before he was executed? If so, what?
32. Was it important to you whether or not McVeigh apologized? Please explain.
33. Was it important to you whether or not McVeigh confessed and obtained last rites from a priest? Please explain.
34. Tell me about what happened at the execution.

Follow Ups:

What was it like to first see McVeigh?

When McVeigh first became visible, did you feel that he was trying to send any messages or communicate to witnesses in any way?

How did you feel about McVeigh's silence? Surprised? Saddened? Angered?

What about when the lethal injection began?

What about when McVeigh was pronounced dead?

What were you thinking of during the execution?

Is there anything that stands out as being particularly memorable?

How would you characterize the experience? Predicable? Unreal?

Could you tell when McVeigh died?

What did you think of the poem "Invictus"?

35. Did McVeigh look at witnesses? If so, how did this contact make you feel? Do you wish he would have been able to see you?
36. Did McVeigh's way of looking remind you of the looks you have received in other situations? Please describe these situations,
37. Were you debriefed after the execution?

YES: Who debriefed you? Was this debriefing helpful to you?

NO: Do you wish you would have been debriefed? By who?

38. Did you feel physically, socially, or emotionally removed from the execution procedure in any way? If so, did it make the execution easier to watch?
39. -How do you feel about the way McVeigh died?
40. Did McVeigh's death set in place a "before and after" moment for you? Please explain.
41. What word do you use for how you felt after McVeigh was executed?

42. How do you feel about the word 'closure'? What does that word mean to you?
43. Do you feel as if you were a victim or a survivor, or would you suggest another term besides victim or a survivor? (In what ways?)
44. Did you take a support person to the execution? If so, who? Did you prefer to view the execution with other survivors and family members, or would you have preferred to view it alone?
45. Did you take anything away from this experience? How do you think the execution was meaningful to you (i.e., lending finality to your experience with the bombing, affecting your ability to deal with your loss)?
46. Do you think that your reaction would have been different if McVeigh had been given a life sentence instead? What about if he had killed himself in the attack.
47. After it was over, did you discuss the execution with anyone? If so, who?

Follow Ups:

Was it easier to talk to your support person or to other nonwitnesses about the experience?

48. Did talking about the execution with others change the experience for you at all? If so, how?
49. Do you feel that the execution sent a statement?
50. Do you feel that the execution accomplished anything for you? All survivors or families of victims? America?
51. Thinking back, do you wish that officials had done anything differently with respect to the execution? Would you change anything about the execution procedure if you could?
52. Hypothetical: Another domestic terrorist blew up a federal building in Dallas, TX. A close friend was the survivor of this tragedy/lost a loved one, and was invited to witness the execution of the person responsible. What would you advise your friend to do?

IF DIDN'T WITNESS:

53. Did you follow news of the execution in the mass media/other forums?

54. Were you thinking of the execution while it was occurring?
55. Did you mark the execution in any way?
56. Did you want McVeigh to do or say anything before he was executed? Please explain.
57. Was it important to you whether or not McVeigh apologized?
58. Was it important to you whether or not McVeigh confessed and obtained last rites from a priest?
59. Was anything different for you after McVeigh was executed? Did knowing that McVeigh was dead change things for you? If so, how? Would you have felt differently if McVeigh had been given a life sentence?
60. What word do you use for how you felt after McVeigh was executed?
61. How do you feel about the word 'closure'? What does that word mean to you?
62. Do you feel as if you were a victim or a survivor, or would you use suggest you are something other than a victim or a survivor? (In what ways?)
63. What was your reaction to the outcome of the recent Nichols trial? Do you feel it is important that he was held accountable for the deaths of those killed in the bombing? Do you feel that he should have gotten the death penalty?

FINAL QUESTIONS:

63. If you had a spouse or significant other at the time of the bombing whose life was not directly threatened, did that person have the same attitude towards/perception of the execution as you had?
64. What questions would you have asked McVeigh, Nichols, or anyone else concerned?
65. How would things have been different if the person responsible for the bombing was a member of al Qaeda?
66. How are the acts of terrorism on 9/11 different from the Oklahoma City bombing?
67. Are there any other questions or statements that you think I need to consider as part of this research?

FOLLOW-UP: Ask the question interviewee would have asked.

APPENDIX B: PARTICIPANT CHARACTERISTICS

Participant No.	Sex	Status	Int. Date	Viewed Execution	Attended Trial	Testified at a Legal Proc.	Opinion on DP B/F Bombing	Opinion on DP After Bombing	Misc. Info
1	M	S	6/24/2005	N	Y-all	N	For	For	
2	F	S	6/24/2005	N	Y-2/3 days	Y	Against	Against	
3	M	S	6/24/2005	N	N, didn't need, too raw	N	Against	Against	
4		RESCUE							Not Included in Analysis
5	M	S	7/2/2005	Y	Y	N	For	For	
6	F	S	7/3/2005	N	Y, one day, still struggling with guilt, too difficult emotionally	N	Against	Against	
7	F	S	7/5/2005	Y	Y	Y	For	For	
8	F	V's Friend	7/5/2005	N	Y	N	For	For	
9	F	S	7/5/2005	N	Y-1 day, decided didn't want to hear it	N	No opinion	For	
10	F	V's Daughter	7/6/2005	N	Y, about 12 times	Y	For	For	
11	F	S	7/9/2005	N	Y---went once to pre-trial/early trial, too upsetting	N	Against	Against	
12	M	S	7/9/2005	N, but would have liked to	Y	Y	Against	For	Critically injured
13		RESCUE							Not Included in Analysis
14	F	V's ex-wife, mother of V's children	7/16/2005	N	N, but got badges, was going to go with daughter, felt uncomfortable going by self	N	For	For	
15	F	S	7/16/2005	Y	Y--40 hours	N	For	For	
16	F	S	7/17/2005	N	Y	N	For	For	
17	M	F's Dad	7/17/2005	N	Y	Y	Against	For, then Against	
18	M	S	7/24/2005	N	N	N	For	For	Does not live in

									Oklahoma
19	F	S	9/29/2005	N	Y	Y	For	Come to be more against	
20	M	S	9/29/2005	N	N	N	For	For	
21	F	S	9/30/2005	Y	Y	Y	No opinion, on fence	No opinion, on fence	
22	F	V's Wife	9/30/2005	Y	Y	Y	For	For	
23	M	S	10/2/2005	N	Y	Y	Against	Against	
24	M	S	11/2/2005	N	Y only as witness, too draining to attend other parts	Y	For	For	
25	M	V's Dad	4/29/2006	Y-Live	Y-1 week Denver, 40-45% at FAA	N	N	Case-by-case	
26	F	S	4/29/2006	N	Y-FAA, 2 weeks	N	For	Case-by-case, now more against	
27	F	S	4/29/2006	N	Y, FAA (not very much, enough to keep up), 1 day Denver (there on vacation) (3 days total)	N	For	Against	
28	F	V's Mom	4/30/2006	Y-Live	Y, 1 week Denver, 2-3 days/week FAA	Y	For	For	
29	F	V's Sister	5/22/2006	Y-Live	Y—1 week for each of 3 trials	Y	Case-by-case	Case-by-case	