

The author(s) shown below used Federal funds provided by the U.S. Department of Justice and prepared the following final report:

Document Title: Homicide, Bereavement, and the Criminal Justice System, Executive Summary

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Document No.: 189567

Date Received: August 6, 2001

Award Number: 2000-IJ-CX-0011

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Homicide, Bereavement, and the Criminal Justice System¹

2,500 Word Executive Summary

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May 15, 2001

FINAL REPORT *Archived*
Approved By: *[Signature]*
Date: 7/23/01

¹ This project was supported by Grant No. 2000-IJ-CX-0011 awarded by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

INTRODUCTION

By 1988, more than 16 million Americans had lost a friend or family member to homicide ("bereaved") (Amick-McMullan, Kilpatrick, and Resnick 1991). More than fifty percent of bereaved from a nationally representative sample felt unhappy with the criminal justice system's management of their loved one's murder case, and satisfaction with the criminal justice system explained 66% of the variation in bereaveds' anxiety and depression (Amick-McMullan et al. 1991). The criminal justice system presents bereaved families with frustrating delays, and it offers false hope for closure (Amick-McMullan, Kilpatrick, Veronen, and Smith 1989; Schlosser 1997). Current evidence suggests that the criminal justice system is pivotal in bereavement from murder (Amick-McMullan et al. 1991). It is not clear, however, what this pivotal position entails.

RESEARCH DESIGN AND METHODOLOGY

This study utilizes qualitative and quantitative data to assess the effect of the criminal justice system on the bereavement of people who have lost a loved one to murder ("bereaved"). The data come from three sources: in-depth interviews with 32 bereaved whose loved ones were murdered between 1994 and 1998 in Center County (pseudonym) Texas, in-depth interviews with 19 Center County criminal justice professionals, and participant observations of murder cases in the Center County criminal justice system.

Lofland and Lofland's (1995) principles for coding qualitative data guided the analysis of the in-depth interview and participant-observation data. I also use a series of bivariate regression models to estimate the effect of sociodemographic characteristics on the criminal justice index score, sociodemographic characteristics on depression, criminal justice index score on depression, and case status on depression.

MAJOR FINDINGS

Bereaveds' Views of and Experiences with the Criminal Justice System

Death Notification

Bereaved express emotional upset, or all-consuming feelings of a lived-body, following the news of their loved one's death (Denzin 1984), and they use two strategies to cope with the news: disbelief and spontaneous action. Both strategies capture the ability of thoughts to suppress feelings in self-interaction (Mead 1934; Mills and Kleinman 1988). These strategies also indicate that emotion work occurs not just when individuals have high levels of self-reflexivity (or thought) but also when individuals have low levels of self-reflexivity (Mills and Kleinman 1988). Emotion work conducted in times of little thought represent an extreme type of emotion work (Hochschild 1983).

Law Enforcement

Overall, bereaved experience the most frustration with the law enforcement aspect of the criminal justice system. This is true for probably two reasons. First, all 32 bereaved had contact with the police department following their loved one's death; only 19 bereaved had contact with the district attorney's office and only 11 bereaved experienced a trial. There are more bereaved who can express concern for the law enforcement part of the system, and they did so. Second, the police department is more "public" and thus more protective of its work than other organizations in the system (Skolnick 1975; Sudnow 1967). Police department's efforts to control information impede bereaveds' access to that information. This impediment frustrates bereaved.

Bereaved describe three main law enforcement policies as presenting obstacles to their grief, including taking possession of their deceased loved one's corpse, controlling information about the death and the investigation, and prioritizing some cases over others. The police's ability to confiscate the corpse can be linked to Sundow's (1967) finding that hospitals try to prevent "body exposure" following the death of a patient. The corpse confiscation also reveals the public in appearance but private in practice nature of police department work. Women, particularly mothers, were more likely than men or other relatives to express an interest in seeing their deceased loved one's body, and this indicates that grief practices differ by gender and role-identity (Thoits 1986; Thoits 1991).

Bereaved express concern about law enforcement professionals' implementation of departmental policies, including information control, emotion, and investigation. Bereaved wanted murder detectives to consider their information about the cause of death, but detectives often dismiss that information. Bereaved also want information about the way their loved one died, but too much information about the death can create distress and traumatic imaginings (Amick-McMullan et al. 1989; Burgess 1975; Parkes 1993).

Bereaved also want murder detectives to keep them informed about the status of the investigation. The detective's interest in protecting the integrity of the murder investigation, however, supersedes bereaved's interest in learning about the detective's work. Bereaved's inability to access information about the case diminishes their personal control, and decreased personal control is associated with decreased psychological well-being (Mirowsky and Ross 1989).

Bereaved expect detectives to express sympathy for their loss (Clark 1987). Clark (1987) would describe detectives as "underinvestors" in sympathy exchange. Detectives underinvest

because they recognize the limited effect that their emotional efforts will have on bereaveds' well-being, and it is not in the interest of their work to do so. The detective's "status shield" intimidates bereaved when they are being questioned as suspects, and it discourages bereaved from approaching detectives with their questions about the case (Hochschild 1983; Stenross and Kleinman 1989). Bereaved also criticize or praise murder detectives for the way they investigated the case. Their view of this part of police work suggests that a good investigation brings some relief for their grief.

District Attorney's Office

Bereaveds' two main frustrations with the district attorney's office concern timing and turnover. The delay in time from indictment to trial appears to postpone bereaved from both moving forward in their bereavement and getting answers to their questions. In turnover, the organization's "legal-rational" decision to move a prosecutor from one case to another gives bereaved the impression that their case, and thus their loved one, are not valued within the organization (Weber 1968).

Information control is not as big of an issue for bereaved in their encounters with the district attorney's office because of organizational culture, bereaved socialization, and stage access. First, the law requires that prosecutors disclose evidence in the case to the defendant and his or her attorney. Prosecutors are more open to sharing their information with bereaved. This makes bereaved feel a part of the process, and it boosts their personal control. Second, bereaved also gain an understanding of how the system works by the time the case reaches the district attorney's office, and they may have adapted to the system's interest in information control. Third, bereaved can see prosecutors' "stage" or their work (Hochschild 1983); they cannot see

detectives' work, because of the police's interest in maintaining the integrity of the investigation. The increased access to the prosecutors' stage may alleviate concerns that the system is working on their behalf and reduce their sense of alienation.

Bereaved talk about three aspects of prosecutors' implementation of organization policy and procedure: information, action, and emotion. Bereaved express appreciation for the information prosecutors shared with them, even when that information concerned weaknesses in the case. They also appreciate prosecutors' efforts in the case. However, some bereaved experienced resistance when they tried to offer prosecutors advice about how to handle the case. Konradi (1996) finds that prosecutors reject rape victims' suggestions for prosecution strategy. My observations indicate that bereaved with higher levels of education are more like than bereaved with lower levels of education to offer advice about case strategy.

The prosecutor's "shared emotionality" (or shared understanding for their loss) indicates to bereaved that the prosecutor "gets it" (Denzin 1985). When prosecutors express that shared emotionality in the trial, bereaved feel that not only the prosecutor but also the jury and judge understand the effect the loss has had on them.

The Trial

The trial is a ritual that reaffirms the criminal justice system's beliefs, and it upholds the distinction between the sacred (legal) and the profane (illegal). Durkheim's (1965) explanation for the emergence of religious life provides a constructive framework for understanding the meaning of the trial for bereaved. When the defendant or defense attorney's behavior at trial does not uphold the sacred nature of the ritual, bereaved become upset. When a jury's decision does not reflect bereaved's understanding of the murder or the weight of their loss, bereaved feel

that the ritual and the system are illegitimate. The perception that there is no justice for you or your loved one is unsettling for bereaved.

Criminal Justice Professionals' Perceptions, Perspective, and Management of Bereaved

Criminal justice professionals' most common perception of bereaved is that they are emotional, but what aspect of emotions they talk about is influenced by their organization in the criminal justice system and their role within that organization. The "emotional" label gives bereaved a stigma in the eyes of some professionals, and this stigma gives professionals an excuse to exclude them from the process (Goffman 1963). Although murder detectives dislike emotional encounters, they use these encounters to categorize bereaved a "normal" and "abnormal." An emotional bereaved is a normal bereaved; an unemotional bereaved is a suspect in the murder. Skolnick (1975), Sudnow (1965), and Bridges and Steen (1998) find that criminal justice professionals use classification schemes to streamline their work. Murder detectives use a classification scheme for bereaved to assist them in the identification or elimination of the bereaved as a suspect.

Counselors, detectives, and prosecutors describe different aspects of emotions as the most difficult part of their work with bereaved – seeing them through the pain, making the death notification, and explaining that a trial will not make them feel better (respectively). Professionals use three management strategies in their work with bereaved, including avoidance, organizational shield, and information control. Professionals, particularly detectives, use the avoidance strategy because they are not comfortable seeing the pain of bereaveds' loss, and they recognize that there is not much that brings them comfort. Detectives along with prosecutors use counselors as organizational shields to create a buffer between them and the bereaved.

Counselors are more likely to do emotional labor or “dirty work” than detectives or prosecutors (Abbott 1988; Hochschild 1983).

Professionals control information to check the stability of bereaved, create stability in bereaved in the short and long term, and protect the integrity of the investigation. Information control is a form of social control (Clark and Gibbs 1975; Ekland-Olson 1984). It allows professionals to influence the behavior of bereaved. There is evidence to indicate that bereaved use emotions to influence the behavior of criminal justice professionals. They “bond” with a detective to encourage the detective to release information about the case or they storm out of prosecutor meetings to push for a trial instead of a plea bargain (Clark 1987).

The Criminal Justice-Bereaved Association

The nature of the association between the criminal justice system and bereaveds’ psychological well-being is complex. Bivariate regression modeling indicates that women have a greater number of contacts with the criminal justice system than men. Gender and level of education are associated with depression, such that women have higher levels of depression than men and the higher the level of education, the lower the level of depression. The number of contacts with the criminal justice system is positively associated with level of depression, and this association is significant.

The status of the case in the criminal justice system also appears to affect depression such that bereaved whose loved ones’ murder cases were unsolved had the lowest levels of depression and bereaved whose loved ones’ murder cases were solved-resolved had the highest levels of depression.

POLICY RECOMMENDATIONS

Four main policy recommendations follow from this research. First, a judge interviewed for this study said that the criminal justice system was never designed to heal the harm of a victim's loss, and people that think it should are misled. It may be the criminal justice system plays a part in misleading people. While victim service counselors offer a helpful resource to bereaved, the term "counselor" may not be appropriate for the victim service professionals assisting bereaved for two reasons. The first reason involves time; victim service counselors actual have a limited amount of time to spend with bereaved.

The second reason is that the term counselor may mislead bereaved into thinking that the criminal justice system can play a role in their healing. The idea that the system employs licensed professional counselors suggests that the system has an interest in bringing resolution to the bereaved's feelings about their victimization, and the evidence presented here indicates that the system offers some relief to the bereavement process, but not much. For these reasons, the term liaison better indicates both the role that these professionals play in the system and the work that they do with bereaved. Although the change from counselor to liaison is subtle, I think it sends an important message to both professionals and victims that neither the criminal justice system nor its professionals can assist bereaved in recovery.

Second, the evidence presented here suggests that criminal justice professionals could do a better job of explaining to bereaved the reasons for their actions in the case as well as the reasons for their exclusion of bereaved from particular aspects of the criminal justice process. These explanations should come early in bereaveds' experiences with the system, and they could be presented at a meeting with the detective(s), liaison, and family members in the first week or two following the death. These explanations would indicate to bereaved that professionals

understand and acknowledge their interest in obtaining information (for example), and this acknowledgement could improve professional-bereaved relations. These explanations could also help bereaved to see the long-term benefits of not getting the information they desire in the short term.

Third, previous research indicates that recipients of social support find that people with situational similarities provide the most helpful assistance (Gottlieb 1985; Thoits 1986b). Thus, bereaved would find other bereaved that have had contact with the criminal justice system to be the most helpful. Criminal justice liaisons in law enforcement (the first part of the system with which bereaved have contact) could provide bereaved with a list of situationally similar bereaved that have volunteered to be contacts for newly bereaved people. The system could also seek out bereaved to serve as volunteer victim service liaisons.

Fourth, bereaved indicate that they appreciate professionals' expressions of sympathy for their loss, and their comments suggest that the professionals that do this have smoother (or less adversarial) interactions with bereaved. While some professionals may feel that they cannot offer sympathy without compromising their work on the murder case, others may not. Detectives appear to use a status shield to maintain their position of authority over bereaved and to discourage bereaved from making contact with them. The expression of sympathy dismisses the status shield. I think it is simply important for professionals to be aware of the power of sympathy in their interactions with bereaved. The expression of sympathy can make for less adversarial interactions; the denial of sympathy can make for more adversarial interactions. In this way, emotions – the emotions of the bereaved and of the professionals – are powerful tools for influencing the behavior of others in interactions.

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