

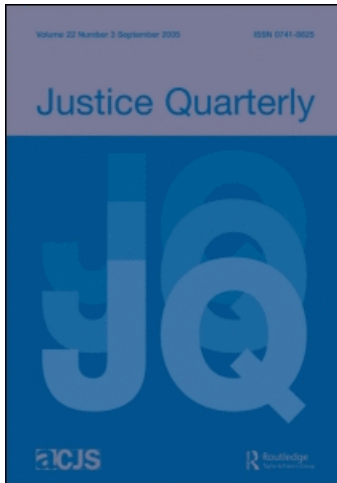
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Justice Quarterly

Publication details, including instructions for authors and subscription information:

<http://www.informaworld.com/smpp/title~content=t713722354>

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To cite this Article Rice, Stephen K., Dirks, Danielle and Exline, Julie J.(2009) 'Of Guilt, Defiance, and Repentance: Evidence from the Texas Death Chamber', *Justice Quarterly*, 26: 2, 295 – 326

To link to this Article: DOI: 10.1080/07418820802178063

URL: <http://dx.doi.org/10.1080/07418820802178063>

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Of Guilt, Defiance, and Repentance: Evidence from the Texas Death Chamber

Stephen K. Rice, Danielle Dirks and Julie J. Exline

Despite the longstanding research tradition looking at administration of the death penalty jurisprudentially, scholarship has only begun to examine such punishment within the paradigm of "emotionally intelligent justice." By

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mapping the intersections of sanctions and emotions, emotionally intelligent justice has been advanced as a way to reduce the cruelty of offenders and of the justice system itself. Utilizing executed inmates' final statements for the period December, 1982 through early June, 2005 and controls for offense and offender characteristics, this study examines the manner in which starkly personal pronouncements manifest in the Texas execution chamber. Descriptive analyses illustrate a broad swath of emotions as offenders approach their deaths, while multivariate models suggest that the presence of homicide survivors (victims' families and friends) at executions facilitates expressions of guilt and repentance, but not defiance, in offenders. Implications for future research are discussed.

Keywords guilt; innocence; defiance; repentance; capital punishment; death penalty; procedural justice; emotionally intelligent justice; homicide survivors; victims' rights; victimology

Introduction

In the 2002 American Society of Criminology Presidential Address, Lawrence W. Sherman called for an "emotionally intelligent" paradigm of justice grounded in the emotions of victims, offenders and society:

For three centuries, criminology has tried to make reason, rather than emotion, the primary method of justice. The results so far are modest, blocked by a paradox in social policy: *we presume that criminals are rational, but justice should be emotional....* The promise of criminology is to reverse these positions: to use reason for emotion, rather than emotion against alleged reason. The reason for criminology can then be to make justice more rational about its effects on the emotional causes and prevention of crime. (Sherman, 2003, p. 2)

Previously developed efforts to map the return of emotions have focused on defiance (Sherman, 1993), disgust (Kahan, 1998), deference (Tyler, 1990), and guilt and shame via restorative justice and reintegrative shaming (Braithwaite, 1989; Karstedt, 2002; Strang, 2002). Complementary efforts have tied emotional arousal and visceral impulses with individual decision-making and criminality (Agnew, 1992; Carmichael & Piquero, 2004; Frazier & Meisenhelder, 1985; Katz, 1988, 1999; Loewenstein, 1996). Interestingly, little research has been conducted on the emotional makeup of condemned inmates' final statements, a void that is notable because of the opportunities that execution narratives provide for the display of identity (Smith, 1996).

Sherman's (2003) thesis calls for greater insight into how offender emotions interface with justice system emotions (p. 26). As such, we present an initial, systematic examination of final statements in a general sense, and more specifically present an empirical test of the potential impact of attendance by homicide survivors (victims' families, friends) at an execution on the emotional makeup of execution chamber narratives. Before presenting results,

we outline two major areas which inform the study: (1) efforts to better understand emotions within the context of criminal justice and penology, particularly that of guilt and repentance, but also defiance, and (2) how offender repentance (and subsequent desires for survivor forgiveness and closure) has come to be associated with victims' rights.

Emotionalization and Criminal Justice

No matter the lens, the contemporary execution may best be viewed as ritual (Haines, 1992). Grounded in the unpredictable nature of the public and aversion to *amende honorable* (Foucault, 1979), public executions were cast aside for modern, private rituals which seemed intended to sooth the conscience of a public which supported the death penalty largely as an abstraction (Haines, 1992).¹ To scholars such as Giddens (1985), the movement of punishment from public to private was explained as neo-Weberian narrative: the movement indoors as "iron cage" with its figurative and material imprisonment of the prisoner (Smith, 1996). To Foucault (1979), it was explained by a "slackening of the hold of the body" (p. 10) or the substitution of discourse related to the body of the criminal to one centered on the soul. Where Giddens saw an expansion of state power vis-à-vis private executions, Foucault saw a newfound focus on *mens rea* and class-conscious mobilization (Smith, 1996).

The substitution of discourse from body to soul conceptualizes the offender in terms of psyche, subjectivity, and consciousness, and thus benefits from a deepened understanding of intrapsychic and interpersonal emotional processes. Toward this end, we first provide an overview of efforts to better understand repentance by offenders, after which we outline its inverse, that of defiance and expressions of perceived injustice.

Repentant Offender

Criminals are sent to penitent-iaries, suggesting that offenders are expected to become penitent for the crimes for which they have been incarcerated (Schimmel, 2002). Returning to Barclay's monition (1862), the mission of correctional institutions has oftentimes centered on personal reformation: that "(a)s often as he [the prisoner] returns to his cell, he should return to our care, our instruction.... And we shall have occasion, perhaps, in our observations upon life, to conclude that the best of mankind will find the fruition of their highest hopes less in the amount of their innocency than in the frequency of their repentance" (p. 138-139). The Christian concept of moral regeneration underpins this desire for reformation,

1. Public support for punishment is punitive and progressive at once, wishing the correctional system to do justice, protect the public, and reform the wayward (Cullen, Fisher, & Applegate, 2000).

that which Beaumont and Tocqueville (1970) noted in their observations of the American penitentiary system (whose function was to “conduct [the prisoner] to reformation by reflection”) (p. 3) (also see Shoemaker, 2001). The capacity for repentance and change is compatible with a morality of respect for the person and the potential for transformation (Govier, 2002). Historically, penal reformers, buttressed by Enlightenment ambitions, supported external constraints such as solitary confinement to facilitate quietude (Shoemaker, 2001). Relatedly, harking to antigallows voices of the early nineteenth century, the private execution promised greater hope for reflection and authentic penitence (Masur, 1989).

Social psychologists frame repentance as including both confession (taking responsibility for an offense) and an act of apology (Exline & Baumeister, 2000). If one were to consider only the offender’s perspective, expressions of guilt and repentance appear to be intrapsychic processes reflecting private attitudes of contrition and psychological change. In some situations—for example, when interpersonal transactions between victims and perpetrators are absent—it may be appropriate to cast repentance as such (Exline & Baumeister, 2000).

The modern execution goes beyond an externally regulated relationship between an offender and their conscience (or God), however. Instead, contemporary protocols draw offenders and homicide survivors together in a ritual that seems equal parts isolative and collective.² It is a context that calls for a different level of analysis, one that allows us to see not only intrapsychic processes but also interpersonal action: how does an offender behave toward the aggrieved, and how does the interface frame descriptions of the acts that brought them to that place? (Rice, 2009; Sarat, 2001a) The inclusion of homicide survivors at executions affords a unique dyad: that of a presentation between offenders who face imminent execution and an audience requiring “face work” (Smith, 1996, p. 252).

Although questions have been raised about the appropriateness of remorse and reconciliation in capital contexts (Radelet & Borg, 2000), “remedial interchange” runs deep in the sociology of apology (Goffman, 1971). As Tavuchis (1991) explains, “the singular achievement of apologetic discourse paradoxically resides in its capacity to ... eradicate the consequences of the offense by evoking the unpredictable faculty of forgiveness” (p. vii) (also see Ohbuchi, Kameda, & Agarie, 1989; Strang, 2002) (although see Gross & Matheson, 2003). Research also suggests that victims are more likely to forgive perpetrators who confess wrongdoing or are fully repentant (Exline, Worthington, Hill, & McCullough, 2003; Weiner, Graham, Peter, & Zmuidinas, 1991). Relatedly, recognition of the emotional content of traumatic events can yield physiological and mental health benefits; benefits of disclosure include an ability to make meaning from an incident or release burdens of inhibition (Pennebaker, Hughes, & O’Heeron, 1987). From the offender’s perspective, confession may serve a cathartic, therapeutic function and act as declaration of newfound acceptance of community norms

2. Either by formal statute or discretionary practice, many death penalty states allow homicide survivors to attend executions (Zimring, 2003).

(Schimmel, 2002). It is also important to note, however, that expressions of repentance may backfire and lead to regret, particularly when such expressions feel forced and do not reflect true remorse (Exline, DeShea, & Holeman, 2007).

It is also important to note that repentance and forgiveness do not necessarily equate with reconciliation. Whereas forgiveness refers to one's decision to release emotions such as bitterness and hatred, reconciliation implies a willingness to come together, attempting to restore a relationship in an atmosphere of trust (Exline & Baumeister, 2000; Worthington, 2005). The question of whether forgiveness is appropriate in justice settings has been a controversial one in recent years (Exline et al., 2003), perhaps owing to confusion between the concepts of forgiveness and reconciliation. For many victims in death row contexts, the main benefit of hearing an expression of apology and repentance may be the facilitation of internal resolution (forgiveness) rather than a restored relationship with the offender (reconciliation) (although see King's (2003) examination of survivors who have sought reconciliation).

Outstanding Questions

While little research exists on the exact roles of apology and repentance in capital contexts (relatedly, see Everett and Nienstedt (1999) regarding defendant emotions in federal sentencing reductions; also Presser (2003) on remorse and neutralization among violent offenders), the constructs have received considerable attention in social psychology (Exline et al., 2007). Despite this, questions remain regarding situational predictors that cue apology versus non-apology (Exline et al., 2007). While complements of apology such as forgiveness and unforgiveness situations (Zechmeister & Romero, 2002) and reparation and revenge in restorative justice (Strang, 2002) have received degrees of explication, comprehensive, systematic studies are lacking in the area of apology. This is surprising given the active, performative role of apology and remorse in moral philosophy (Austin, 1975).

Toward this end, it is important to understand injustice amid interpersonal offenses. Equity theory, for example, suggests that imbalances are created as parties receive differential outcomes relative to one another (Walster, Berscheid, & Walster, 1973). Consequently, balance may be restored through the reparation of debts between offenders and victims (Blau, 1964). More recently, Worthington (2003) proposed that when individuals harm one another there is an injustice gap, or a gap between one's current state and the state that would exist if things were fair. Of particular relevance to matters of crime and restoration, such gaps are thought to be filled via psychological or behavioral means (Braithwaite, 1989; Strang, 2002).

Theoretically, equity theory and social exchange theory (Blau, 1964; Walster et al., 1973) suggest that justice may be restored through justification strategies (to restore psychological equity) or compensation strategies (to restore actual equity). Apology would appear to reside somewhere between these two options.

That is, apology neither completely removes damage, nor does it offer material repayment. It may, however, help to repay a debt in psychological terms by tapping into the emotional and social dynamics of offenses (Exline et al., 2007). By expressing remorse and admitting wrongdoing, those who apologize respond to the needs of impacted audiences (Smith, 1996). Once audiences feel that their needs have been restored, they may become less punitive and more forgiving (Fagenson & Cooper, 1987).

Perceived Injustice and Defiance

As criminologists and legal scholars have long recognized, however, capital contexts also draw on emotions that are far removed from that of apology, remorse, or repentance. Instead, sanction effects sometimes attune to perceived procedural injustice, stigmatization, or a denial of shame, particularly among those who are poorly bonded to society (Braithwaite, 1989; Sherman, 1993; Tyler, 1990). Issues related to distributive injustice, such as erroneous and/or racially biased conviction, have also received attention (Baldus, Woodworth, & Pulaski, 1990; Radelet, Bedau, & Putnam, 1992). Consistent with these very different emotional spheres, a barrier to repentance is the perception that one's punishment is inaccurate, excessive, or unfair (Exline & Baumeister, 2000). Relatedly, a failure to gain deference to the decisions of legal authorities may stem from an assessment that authorities are not using fair procedures and that their motives are not trustworthy (Rice & Piquero, 2005; Tyler & Huo, 2002).

Defiance, a "proud, shameless reaction" to the administration of sanctions (Sherman, 1993, p. 459), is particularly important to understand within a death chamber context because defiance that focuses on the state's use of power ties to the legitimacy of legal authority itself. As Markel (2005) explains, "if the death penalty is distributed arbitrarily ... the agents who impose it act without legitimacy, for they transgress the bounded use of power that itself permits their use of coercion over others" (p. 458). As such, the articulation of procedural injustice speaks of a debasement of person and reminds us of the state's sovereignty over life (Garland, 2005; Sarat, 2001a).

Analogous to research which assesses the linguistics of confession and bereavement (e.g., Pennebaker et al., 1987; Pennebaker, Mayne, & Francis, 1997), scholars have argued that hard-edged, material aspects of penal practice such as its technologies, economies, and politics should be coupled with discourse analysis to better understand the meaning attached to penal power (Garland, 2006). Whereas public accounts of executions in years past were extraordinary for their banality ("their homely, small-town ordinariness") (Garland, 2005, p. 794), the availability of final statement transcripts in the modern era sometimes provides a more vivid display: that of pain, and death, and allows for the construction of both as facts of legal life (Radelet, 2006; Rice, 2009; Sarat, 2001a). Empirical questions remain, however: how frequently do death row inmates voice defiant attitudes in their final statements? Are they

more likely to use defiant strategies or repentant ones? Does the presence of victims' loved ones at an execution make a difference in the use of strategies? The present study addresses these questions.

Victims' Rights

Although offenders and communities play important roles, modern jurisprudence frames victims as the "symbolic heart of modern legality" (Sarat, 2001b, p. 35). With the implicit belief that victimization's costs transcend the financial or physical and also disrupt social relations and sense of self, efforts centered on victim restoration call for an expansion of victim involvement in many phases of criminal justice (Elias, 1986; Van Ness & Strong, 1997). Victims have come to be integrated into bail hearings, negotiated guilty pleas, probation and parole revocations, offender release from mental health institutions, and access to the ultimate sanction (Stein, 1999). Overall, victim advocacy programs promote interests such as rights, information, better treatment, just outcomes, and greater involvement (Elias, 1986).

Taking root in *Booth v. Maryland* (1987) and subsequently *Payne v. Tennessee* (1991), victims began to figure prominently in capital trials and imprisonment (Sarat, 2001b). By permitting impact testimony from persons close to the victim, the *Payne* decision framed the victim as an "idealized subject" of justice (Simon, 2002). As Stein (1999) explains, "the logic of permitting survivors of homicide victims to witness an execution flows directly from the core principles of human rights. It is a logic that no known victim advocates, even those who strongly oppose the death penalty, have challenged.... As homicide survivors began asserting that they wanted to witness executions ... the community of victim advocates appreciated the gravity of that event in the victims' lives" (pp. 3-4).

In order to assist victim advocates in providing appropriate support services, in 1998 the National Organization for Victim Assistance and the Pennsylvania Board of Probation and Parole facilitated the first national symposium on homicide survivors as witnesses to an execution (Achilles, 1999). Key items in the protocol included the status of victim involvement in death penalty decisions, the logistical and emotional preparation of victims prior to executions, and post-execution debriefing and follow-up. Common themes in pre-execution preparation include attending to grief, choosing whether to participate, choosing whether to be accompanied by a support person, and "predicting, preparing," and possibly "lowering one's expectations":

It is important to stress to survivors that witnessing an execution is very unlikely to be a cure-all. In many cases, the survivors experience a let-down. Some may feel that the offender's death (in case of lethal injection) was too humane, too easy, or anti-climactic.

... (y)ou should encourage family members to focus on their own healing as opposed to the expecting (sic) total relief on the "magical" day when the defendant is put

to death. In some instances, people will feel tremendous relief and find closure—but not always. This is a long, painful journey, and sometimes, when the execution is completed, the pain is not reduced—and for many, the journey does not end with the sentence being carried out (Achilles, 1999, p. 14).

The protocol recommends that follow-up contact focus on witness perspectives, sensory memories, and lingering distress (Achilles, 1999, pp. 14-15).

Texas Efforts

Within the context of this burgeoning national effort, during late 1995 victim survivors and advocacy groups appeared before a panel of Texas Board of Criminal Justice members to request the opportunity to attend executions, presuming that such attendance would assist in the healing process. Effective January 12, 1996, the Texas Board of Criminal Justice adopted a rule permitting attendance (Texas Department of Criminal Justice, 2004a). Prior to this date, only relatives or friends of the condemned inmate, members of the media, and criminal justice officials were permitted to attend (Marquart, Ekland-Olson, & Sorensen, 1994). As of January 12, 1996, viewing was limited to immediate family members and individuals with a close relationship to the deceased victim. In mid-1998, the rules were relaxed to allow victim witnesses to include close friends of surviving relatives (Texas Department of Criminal Justice, 2004a).

The Victim Services Division (VSD) of the Texas Department of Criminal Justice coordinates execution viewings and provides a mechanism for impacted parties to participate in the process within an environment of “integrity, fairness, compassion, and dignity” (Texas Department of Criminal Justice, 2004b). By the end of 2005, the VSD facilitated homicide survivor attendance at almost 200 executions (M. Odom, personal communication, February 20, 2007; M. Odom, personal communication, February 23, 2007; Texas Department of Criminal Justice, 2004a). In addition to the Division’s duties related to executions, VSD personnel also manage notifications, the processing of victim impact statements, the coordination of meetings between parole board members and victims, and the administration of prison tours.

The Texas VSD takes steps to educate witnesses about the execution process and what they will likely experience. On the day of the execution, witnesses are shown a video detailing the execution process and are briefed on possible scenarios to include the presence of protesters, an offensive final statement by the offender, and emotional outbursts from the inmate witness viewing room (Texas Department of Criminal Justice, 2004a). Victim witnesses and inmate witnesses have visual access to the death chamber but are separated by a wall. Efforts are also made to minimize contact between the two groups in the hours preceding the execution (Texas Department of Criminal Justice, 2004a). The execution viewing takes approximately seven to ten minutes and is characterized as outlined in Appendix A. Post-execution support is provided by representatives from VSD, the prison liaison, chaplaincy, and psychologists. A packet of

death row information is presented to include information about the inmate's offense, the last meal request, the official witness list, the last statement (if made) and general death row information. Follow-up calls are placed several weeks after the execution to attend to issues of coping and psychological strain (Texas Department of Criminal Justice, 2004a, 2004c).

Variability in victims' emotional responses are likely inasmuch as those who are more oriented toward justice concerns (e.g., rules, fairness) than relational concerns (e.g., empathy, mercy) are likely to resist expressing forgiveness if they are not satisfied that justice has been served (Hill, Exline, & Cohen, 2005). Relatedly, the subjective evaluation of a psychological strain can differ markedly between individuals; factors to include one's individual traits and personal and social resources impact the perceived magnitude of a severe strain (Agnew, 1992). Nonetheless, one robust finding from the forgiveness literature is that repentant acts—those that imply both acceptance of responsibility and genuine remorse—do make it easier for victims to forgive (Exline et al., 2003).

Current Focus

We present an initial, systematic examination of final statements of condemned inmates in a general sense, and more specifically present an empirical test of the potential impact of attendance by homicide survivors (victims' families, friends) at an execution on the emotional makeup of execution chamber narratives. Following Smith's (1996) call for the examination of such statements—particularly with regard to understanding the implications of inmate freedom of action (p. 261)—we also heed Sampson's (1993) call for "dynamic contextualism" in criminological research by coupling quantitative methodologies with event structures and causal narratives. Dialogues centering on the relative merits of restorative justice in death row contexts will benefit from the effort (e.g., Umbreit & Vos, 2000), as will work which argues that exemplars of pity and terror in death chamber narratives threaten the legitimacy of capital punishment itself (Rice, 2009; Ricoeur, 1967; Smith, 1996).

Research Design

The state of Texas was chosen as the source for final statements for several reasons. Most notably, Texas is where more than a third of executions in the United States have occurred since 1976, and the state was at the fore in permitting homicide survivors to attend executions (Bedau, 1997). Further, and of relevance to an effort which wishes to gauge a full range of emotions as offenders contemplate their deaths, approximately half of all capital cases in Texas are overturned on appeal, a number of innocent inmates have been freed from death row, and approximately a quarter of the condemned have been represented by attorneys who have been disciplined for misconduct (Berlow, 2003).

Based on its categorization of final statements according to a set of thematic codes, the present research adopts content analysis as its analysis strategy (Gottschalk, 1997).³ Thematic codes were created to capture constructs that have been linked to emotions, crime, and the law (e.g., Braithwaite, 1989; Everett & Nienstedt, 1999; Scheff & Retzinger, 1991; Sherman, 1993; Tyler, 1990). Namely, expressions of guilt, repentance, expressions of innocence, expressions regarding the unjust nature of capital punishment, and expressions regarding a lack of procedural fairness in the inmate's legal proceedings. Through this process, some statements were found to include few emotional expressions, while others included several (e.g., innocence, capital punishment as illegitimate, and legal proceeding as unfair). In addition to the thematic codes, a number of inmate demographic and legal characteristics were collected. All data were coded at the project's inception.

Once thematic codes were defined, the codes were applied to textual accounts of final statements for the period December 7, 1982 through June 7, 2005, an interval whose start-date marks the advent of lethal injection in Texas.⁴ The study's first two authors applied the thematic codes to the set of final statement narratives independently; agreement between the two coders was good, yielding kappas (κ) ranging from .91 to .98.⁵ Coding discrepancies were resolved through collaborative review and the correction of impacted items. An execution-by-variable matrix was created and statistical analyses were designed as follows.

Effective January 12, 1996, the Texas Board of Criminal Justice adopted a rule permitting homicide survivors to view executions (Texas Department of Criminal Justice, 2004a). Prior to this date, only relatives or friends of the condemned inmate, members of the media, and criminal justice officials were permitted to attend (Marquart et al., 1994). All narrative elements of the final statements were analyzed with regard to this date, and statistical effects were estimated by whether an emotional element manifested before, or after, January 12, 1996.⁶

3. Content analysis has been applied to identity and the "code of the street" (Kubrin, 2005), the social construction of corporate violence (Wright, Cullen & Blankenship, 1995), racial and ethnic typification of crime (Chiricos & Eschholz, 2002), and several other topics.

4. Although Texas adopted lethal injection as means of execution in 1977, the first execution by lethal injection took place on December 7, 1982. Changing the means of execution was based on the belief that lethal injection was more humane than the traumatic and visually offensive electrocution (Marquart et al., 1994).

5. Guilt .94; repentance .95; innocence .91; capital punishment unjust .98; legal proceeding unfair .96.

6. As of December 1, 1996, viewing was limited to immediate family members and individuals with a close relationship to the deceased victim. In mid-1998, the rules were modified to allow close friends of surviving relatives to attend (Texas Department of Criminal Justice, 2004a). For the purpose of our analyses, we treat December 1, 1996 as the sole victims' rights measure as there is little reason to believe that the mid-1998 rule modification (i.e., the attendance of friends of the family) would substantively impact the emotional makeup of final statements (and if so, would likely be a function of degree, not kind).

Baseline comparisons were obtained through descriptive statistics and measures of association, while logit techniques were utilized to regress restorative emotions (i.e., expressions of guilt; repentance) on the pre/post survivor attendance date (January 12, 1996) amid sociolegal characteristics. Conversely, logit techniques were also utilized to regress defiant emotions (i.e., expressions of innocence; expressions of the unjust nature of capital punishment; expressions of the unjust nature of the inmate's legal proceeding(s)) on the survivor attendance date amid controls.⁷ The homicide survivor attendance measure is a proxy because we lack execution-by-execution measures of when victim witnesses were in attendance post-January 12, 1996. In the aggregate, however, homicide survivors have attended approximately 80 percent of executions in Texas after January 12, 1996, to include a high of 91 percent in 2004.⁸

Data Collection

Three hundred forty-five executions took place in Texas for the period December 7, 1982 through June 7, 2005. Most of the final statements and corresponding inmate legal and demographic information were obtained from the Texas Department of Criminal Justice, although some data were collected from other sources described below. Legal and demographic information includes age (at time of offense, at received, at execution), education, race/ethnicity, sex, county of conviction, whether inmate had a prior Texas prison record, race/ethnicity of victim(s), whether inmate had codefendant(s), whether inmate dropped his/her appeal, whether inmate had evidence of mental retardation, and years on death row. Capital crimes in Texas are criminal homicide with one of nine aggravating circumstances (TX Penal Code 19.03) (Death Penalty Information Center, 2007).

Of the 345 executions, we were unable to determine whether a final statement was made at four of the executions. Of the remaining 341 executions, 269 inmates chose to make final statements (79 percent) while 72 (21 percent) did not. A small number of final statement texts were not available from Texas Department of Criminal Justice ($N = 26$) (D. Germany, personal communication, August 6, 2003). Using LexisNexis, we collected Associated Press (AP) or United Press International (UPI) news wire transcripts for these remaining 26

7. Time-series analysis has not been applied to the study's pre-December 1, 1996, post-December 1, 1996 framework due to the relative lack of data points (executions) available for consecutive measurements at equally spaced time intervals (Ostrom, 1978).

8. In 1996, one of three executions had victim witnesses. 1997: 23 of 37 executions. 1998: 17 of 20. 1999: 29 of 35. 2000: 34 of 40. 2001: 14 of 17. 2002: 25 of 33. 2003: 19 of 24. 2004: 21 of 23. 2005: 15 of 19 (M. Odom, personal communication, February 20, 2007; M. Odom, personal communication, February 23, 2007; Texas Department of Criminal Justice, 2004a).

statements.⁹ In effect, then, 269 inmates' final statements comprise our sample.

Table 1 provides a profile of the inmates who chose to make final statements. The average age at execution is approximately 39 and the average number of years on death row is roughly 10, meaning a great many inmates were in their late twenties or early thirties at the time of conviction. The racial makeup of the group is 52 percent White, 33 percent African American, and 14 percent Hispanic.

Approximately 50 percent of the offenders were high school graduates or GED recipients.¹⁰ Inmate sex is not included in Table 1; this group of offenders is over-

Table 1 Profile of inmates who made final statements (*N* = 269)

Characteristic	Minimum	Maximum	Mean	S.D.	%
Race					
White					52
African American					33
Hispanic					14
Other					1
Age received	18	57	28.40	8.10	
Age executed	24	66	38.92	8.27	
Years on death row	1	25	10.50	4.29	
Education level (GED=12)	3	16	10.63	2.14	
High school graduate (=1) (GED=1)	0	1	.46	.50	
Prior Texas prison record (=1)	0	1	.42	.50	
Harris County conviction (=1)	0	1	.23	.42	
Dropped appeal (=1)	0	1	.07	.26	
Juvenile at time of offense (=1)	0	1	.04	.19	
Had codefendant(s)	0	1	.46	.50	
Evidence of mental retardation	0	1	.015	.12	
Victim race					
White					77
Hispanic					11
African American					9
Mix of races among victims					2
Other					1
Victim sex					
Male					53
Female					40
Mix of sexes among victims					7

9. A dummy variable was created to measure whether a statement had been retrieved from the Texas Department of Criminal Justice (1) or AP/UPI (0). The dummy variable was found to be non-significantly associated with each dependent variable.

10. Approximately 10 percent of the Texas Department of Criminal Justice offender information sheets (*n* = 29) failed to note the highest grade completed. A missing value dummy variable (0/1) was found to be non-significantly associated with the dependent variables. Here, we treat this data as missing completely at random; in other words, the probability that an observation (*X_i*) is missing is likely to be unrelated to the value of *X_i* or to the value of other variables (Allison, 2001).

whelmingly male (99.3 percent), and given the skew we did not use a measure of sex in the analyses.¹¹ Forty-two percent had prior Texas prison records.¹² Seven percent of the group dropped their appeals prior to execution, 4 percent were juveniles at the time of their offense, and 1.5 percent had evidence of mental retardation.¹³ Twenty-three percent of the inmates were sentenced in Harris County.¹⁴ Fifty-three percent of the victims were male, 40 percent female, and in 7 percent of the cases victims included both sexes. Victim race was majority White (77 percent) and split roughly equally between African Americans (9 percent) and Hispanics (11 percent). In the case of multiple victims, victim race was less heterogeneous than with sex as only 2 percent of the cases were interracial.¹⁵

Interestingly, there is no statistically significant difference between those who did, and did not, make final statements for each personal and case characteristic: race of inmate, age received, age executed, years on death row, education level, prior Texas prison record, Harris County conviction, dropped appeal, juvenile at time of offense, had codefendant, evidence of mental retardation, victim race, and victim sex. Because of our lack of information about each inmate in the weeks and months prior to the execution (e.g., with regard to mental health and/or the manner in which the inmate considers the impending execution and their culpability, innocence, etc), it is difficult to interpret statement versus no statement. Social psychology suggests that "avoidance" may represent a transgression-relevant response. In other words, when individuals are angry with others they may avoid contact and withdraw (e.g., see the avoidance subscale of the TRIM-18-R) (McCullough & Hoyt, 2002). Once again, we caution readers to use care in attributing psychological responses to stony silence; without additional information, one may make inappropriate assumptions.

Independent Variables

The study's primary predictor is based on the date at which homicide survivors (victims' family, friends) were permitted to attend executions in Texas: January

11. Karla Faye Tucker made a final statement at her 1998 execution: "Yes sir, I would like to say to all of you-the Thornton family and Jerry Dean's family that I am so sorry. I hope God will give you peace with this. Baby, I love you. Ron, give Peggy a hug for me. Everybody has been so good to me. I love all of you very much. I am going to be face to face with Jesus now. Warden Baggett, thank all of you so much. You have been so good to me. I love all of you very much. I will see you all when you get there. I will wait for you" (Texas Department of Criminal Justice, 2004d). The only other female, Betty Lou Beets, chose not to make a final statement at her execution in 2000.

12. In order to minimize missing data due to a lack of interstate records availability, for this measure we only include inmates' Texas prison record.

13. Variables for dropped appeal, juvenile at time of offense, and evidence of mental retardation were not included in multivariate analyses in light of their low *N*s.

14. Harris County is included as some have questioned whether the large number of death sentences in Harris County indicates biases in that jurisdiction. As of 2001, if Harris County were a state it would have ranked third behind Texas and Virginia in total executions since 1977 (Tolson, 2001).

15. Victim race/sex and dropped appeals data obtained from Fins (2006). Evidence of mental retardation obtained from the Death Penalty Information Center (2007).

12, 1996. Emotives in the final statements were analyzed with regard to this victims' rights proxy, and statistical effects were estimated by whether a given emotion manifested before, or after, January 12, 1996. As such, the measure is dichotomous (0/1). Control variables include years on death row and level of education (continuous) and a series of dichotomous measures: prior Texas prison record, Harris County conviction, whether the inmate had codefendant(s) at trial, whether the inmate was African American, and whether there was a White victim.¹⁶

Dependent Variables

Thematic codes were designed to capture a range of emotions that were likely to manifest in the execution chamber, some of which are tied to concerns for victims' rights and restoration (i.e., admissions of guilt, repentance) (e.g., Exline & Baumeister, 2000; Kurki, 2000) and others to more defiant emotions (i.e., expressions of innocence, injustice) (Baldus et al., 1990; Sherman, 1993; Tyler, 1990). Table 2 provides indicators.

Table 2 Descriptive statistics for outcome variables (0/1) (December 7, 1982 to June 7, 2005)

Variables	Indicator(s)	<i>M</i>	<i>SD</i>
Victim Restoration Vars.			
Expression of guilt	Inmate admits guilt in death of victim(s). Statement admits responsibility (as opposed to external attribution of guilt).	.36	.48
Repentance	Coupled with statement of guilt, inmate expresses a desire for forgiveness and/or expresses sorrow. Final statement is clearly directed toward the homicide survivor(s).	.32	.46
Defiance Vars.			
Statement of innocence	Inmate claims innocence for crime for which s/he was convicted.	.19	.39
Capital punishment illegit	Inmate expresses sentiment regarding injustice of capital punishment.	.10	.30
Legal proceeding unfair	Inmate claims lack of procedural fairness in his/her legal proceedings.	.10	.30

Inmate made final statement ($N = 269$). Inmate did not make final statement ($N = 72$). Descriptive statistics are for those executions where the inmate chose to make a final statement. The final statements were more likely to contain the victim restoration-related emotions than the defiant emotions ($\chi^2 = 4.10$; $p < .05$).

16. The latter two measures are included in light of research which suggests disparities in prosecutorial discretion and the imposition of death sentences based on race of defendant/race of victim (e.g., Baldus et al., 1990).

Outcome variables were coded dichotomously (0/1), with "1" indicating the presence of the emotional expression within a final statement. Of the two victims' rights-related variables, it is important to note that repentance is a combinatorial variable. That is, in order to remain consistent with scholarship which describes repentance as including both confession and apology (e.g., Exline & Baumeister, 2000), the repentance variable requires that an inmate have scored affirmatively (1) on guilt and the expression of sorrow toward/desire for forgiveness from the homicide survivor(s).¹⁷

Hypotheses

The study hypotheses are as follows: (1) that the inclusion of homicide survivors at executions is associated with expressions of guilt and repentance in inmates' final statements; (2) conversely, that homicide survivors at executions is not associated with emotions that are generally thought to be unrelated to the inmate ↔ homicide survivor interface (i.e., expressions of innocence, defiance); (3) that any effect of the inclusion of homicide survivors at executions is not rendered insignificant upon the introduction of sociolegal control variables.

Results

As indicated in Table 2, the 269 final statements were more likely to contain victims' rights-related sentiments (guilt: 36 percent; repentance: 32 percent) than expressions of innocence (19 percent), expressions of capital punishment as unjust (10 percent), or expressions of unfair legal proceedings (10 percent) ($\chi^2 = 4.10$ ($p < .05$)). Interestingly, this trend is at odds with reintegrative shaming research which suggests that serious offenders develop a variety of barriers against feeling responsibility for their actions (e.g., Braithwaite & Mugford, 1994). Appendix B offers exemplars for the outcome variables. It is important to note that some final statements included more than one emotive within themselves (e.g., capital punishment illegitimate + legal proceeding unfair). For the purpose of clarity, Appendix B highlights final statements that reflect a minimal number per statement.

Figure 1 depicts how the victims' rights proxy relates to the total number of executions in Texas during the period December 7, 1982 to June 7, 2005 ($N = 345$) and to the final statements that were expressed at a subset of those executions ($N = 269$). Between December 7, 1982 and January 12, 1996, 104 executions were carried out, representing 30 percent of the total. The period January 12, 1996 to

17. A conservative standard was employed. If, through the context of the narrative, we were unable to definitively link an apparent statement of sorrow/desire for forgiveness with a homicide survivor (as opposed to generalized society, for example), we referred to Lexis-Nexis AP or UPI news wires to map victim survivor names against the content of the narrative. If a clear link between offender and homicide survivor could not be made, a statement was coded 0.

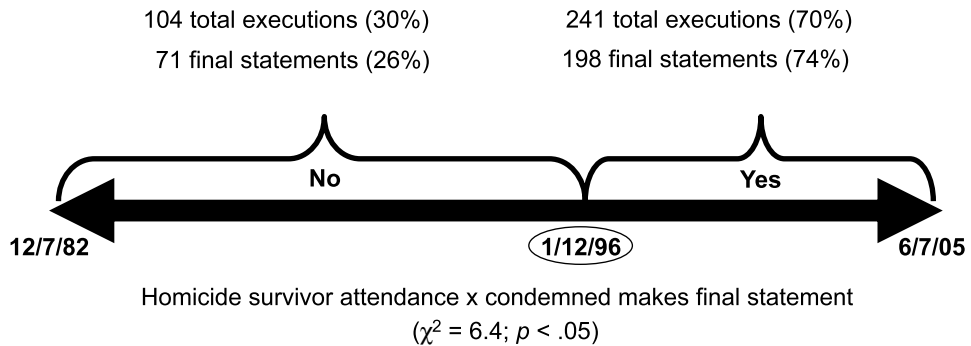


Figure 1 Relationship of victims' rights proxy to Texas execution calendar for period December 7, 1982 to June 7, 2005. For clarification: during the period December 7, 1982 to January 12, 1996, 104 executions were carried out by the state of Texas, representing 30% of the executions carried out in Texas post-*Furman*. Seventy-one final statements were made at the 104 executions, representing 26% of the final statements made post-*Furman*. In sum, 68% of the executions pre-January 12, 1996 included a final statement, while 82% of the executions post-January 12, 1996 included a final statement.

June 7, 2005 featured 241 total executions, or 70 percent, a far greater number of executions relative to the time interval (approximately thirteen years versus nine years, respectively).

Of the total number of final statements during these years, 71 (or 26 percent) were expressed prior to the inclusion of homicide survivors, while 198 (74 percent) were expressed after survivors were granted access. As a group, inmates were more likely to make a final statement after homicide survivors were provided the opportunity to attend ($\chi^2 = 6.4, p < .05$). Specifically, 68 percent of the executions pre-January 12, 1996 included a final statement, while 82 percent of the executions post-January 12, 1996 included a final statement.

Figures 2 and 3 present additional baseline data for whether death chamber emotives were more or less likely to be made pre-or post-January 12, 1996. Figure 2 provides preliminary support for the primary study hypothesis. There exists a moderately strong relationship between the homicide survivor attendance proxy and admission of guilt ($\chi^2 = 19.6; p < .001; \text{phi} = .27$) and a strong relationship between the homicide survivor attendance proxy and repentance ($\chi^2 = 30.1; p < .001; \text{phi} = .33$). The contrast is particularly striking for repentance: for the period in Texas when homicide survivors were not eligible to attend executions (December 7, 1982 to January 12, 1996), only four inmates' final statements admitted guilt and expressed sorrow/desired forgiveness from the homicide survivor(s) (i.e., were repentant), representing less than 6 percent of the final statements during the period. Once homicide survivors came into play (January 12, 1996, onward), 81 final statements were repentant in nature, representing 41 percent of the final statements during the period.

Figure 3 provides preliminary support for the study's secondary hypothesis: that the inclusion of homicide survivors at executions should not be associated

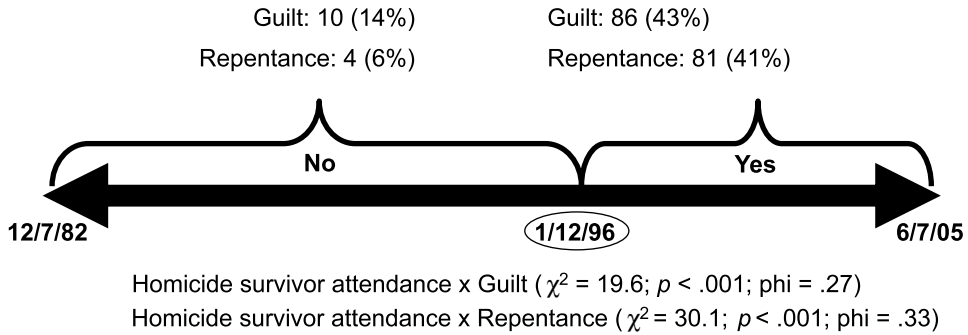


Figure 2 Homicide survivor attendance proxy x guilt and repentance. For clarification: during the period in which homicide survivors were not permitted to attend executions (pre-January 12, 1996), 10 final statements included expressions of guilt (representing 14% of the final statements during that period). During the period in which homicide survivors were permitted to attend executions (post-January 12, 1996), 86 final statements included expressions of guilt (representing 43% of the final statements during that period). The trend is even more striking for repentance: whereas only 6% of final statements expressed pre-January 12, 1996 were repentant in nature, 41% of the final statements expressed post-January 12, 1996 were. *N* = 269 total final statements.

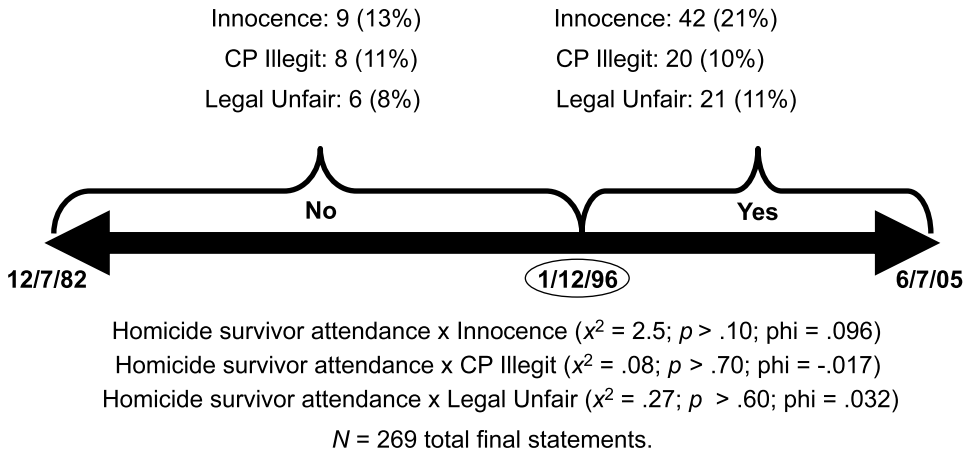


Figure 3 Homicide survivor attendance proxy x defiance measures

with emotions that are generally thought to be unrelated to the inmate ↔ homicide survivor exchange. Non-statistically significant associations were found for each of the defiant emotions: expressions of innocence ($\chi^2 = 2.5, p > .10$), expressions of the unjust nature of capital punishment ($\chi^2 = .08, p > .70$), and expressions of the unjust nature of the inmate’s legal proceedings ($\chi^2 = .27, p > .60$). Preliminarily, it would appear that the two subsets of emotions (repentant, defiant) present themselves differently in this context.

Consistent with the analytic plan, logistic regression models (Table 3) were utilized to regress expressions of guilt and repentance on the homicide

Table 3 Odds ratios of expressions of guilt and repentance on victims' rights proxy

Independent Variable	Guilt			Repentance		
	<i>B</i>	<i>SE (B)</i>	Exp (<i>B</i>)	<i>B</i>	<i>SE (B)</i>	Exp (<i>B</i>)
Victims' Rights Measure						
Homicide Survivor Attendance	2.206	.568**	9.084	2.865	.757**	17.549
Controls						
Years on Death Row	-.053	.034	.949	-.044	.035	.957
Education (GED=12)	.027	.073	1.027	.016	.076	1.016
Prior TX Prison Record	-.635	.301*	.530	-.698	.310*	.498
Harris County Conviction	.033	.388	1.034	.104	.402	1.110
White Victim	-.080	.367	.923	-.280	.375	.755
Had Codefendant(s)	-.072	.297	.930	-.047	.305	.954
Black Inmate	-.451	.340	.637	-.412	.350	.662
Constant	-1.679	1.031	.187	-2.286	1.165*	.102
-2 log L	272.468			259.444		
Chi-Square / df	32.381 / 8			36.814 / 8		
Nagelkerke R ²	.178			.203		

Note: Odds ratios greater than 1.0 are associated with increases in guilt / repentance, while odds ratios less than 1.0 are associated with decreases.

* $p < .05$; ** $p < .001$.

$N = 232$ (Cases with missing information were excluded from the analyses).

survivor attendance proxy amid the sociolegal characteristics. As can be seen, prior to their moments of death condemned Texas inmates are more likely to admit guilt ($b = 2.15$; $p < .001$) and to repent ($b = 2.82$; $p < .001$) when homicide survivors are in attendance at an execution. With regard to repentance, specifically, it is interesting to note that inmates are 17 times more likely to repent in the post-January 12, 1996 world (see odds ratio).¹⁸

Of the seven control variables, the only statistically significant variable ($p < .05$) in the two models is for prior Texas prison record. As an odds ratio below 1.0 indicates that as a predictor increases, the odds of the outcome occurring decreases, those who have a prior Texas prison record tend to express guilt and repentance less often than those who do not have a prior record. Several noteworthy sociolegal variables (e.g., education; White victim; African American inmate) fail to exhibit significant effects on guilt or repentance.

Consistent with the study's secondary hypothesis and the baseline measures presented earlier, the models in Table 4 indicate that the inclusion of homicide

18. A reviewer made the reasonable argument that because not knowing the value of the independent variable (survivor attendance/no attendance) in 20 percent of the cases post-December 1, 1996 is problematic, it would be helpful to know whether the apparent sharp change in repentance was, in fact, a change or simply part of a gradual occurrence over the entire span of years. Consistent with expectation, repentance graphs as 1982-1986: 13 percent of final statements; 1987-1991: 7 percent of final statements; 1992 to pre-December 1, 1996: 4 percent of final statements; December 1, 1996 to 2000: 37 percent of final statements; 2001 to June 7, 2005: 45 percent of final statements.

Table 4 Odds ratios of innocence, capital punishment illegitimate and trial unfair on victims' rights proxy

Independent Variable	Innocence			Capital Punishment Illegit			Trial Unfair		
	B	SE(B)	Exp(B)	B	SE(B)	Exp(B)	B	SE(B)	Exp(B)
Victims' Rights Measure									
Homicide Survivor Attendance	.513	.495	1.670	.001	.574	1.001	.562	.610	1.755
Controls									
Years on Death Row	.046	.039	1.047	-.094	.062	.911	-.037	.053	.964
Education (GED=12)	.062	.086	1.064	.124	.118	1.132	-.010	.105	.990
Prior TX Prison Record	.121	.341	1.128	-.280	.481	.756	-.351	.465	.704
Harris County Conviction	-.009	.426	.991	.386	.525	1.471	.760	.503	2.138
White Victim	.097	.422	1.102	.652	.615	1.920	.875	.662	2.400
Had Codefendant(s)	.096	.341	1.101	.254	.469	1.289	.342	.446	1.407
Black Inmate	.379	.368	1.461	.905	.495*	2.472	-.019	.498	.981
Constant	-3.330	1.181**	.036	-3.654	1.648**	.026	-3.076	1.499**	.046
-2 Log L	223.414			136.729			148.247		
Chi-Square / df	4.838 / 8			8.766 / 8			6.076 / 8		
Nagelkerke R-Square	.033			.080			.053		

Note: Odds ratios greater than 1.0 are associated with increases in innocence, cp illegitimate, and trial unfair, while odds ratios less than 1.0 are associated with decreases.

* = $p < .10$; ** = $p < .05$

N = 232 (Cases with missing information were excluded from the analyses).

survivors at executions is not significantly associated with more defiant expressions of innocence ($b = .513$; $p > .30$), the unjust nature of capital punishment ($b = .001$; $p > .90$), or the unjust nature of the inmate's legal proceedings ($b = .562$; $p > .30$).

Of the seven control variables, the only statistically significant variable ($p < .10$) in the models is for African American inmates in the capital punishment model, indicating that African Americans are more likely to claim that capital punishment is unjust. Similar to the guilt and repentance models, the remainder of the control variables fails to exhibit significant effects on the three defiance-related emotives.

Discussion

Just as there is a rich lexicon available to explain *mens rea* (e.g., intention, knowledge, recklessness, and negligence) (Katz, 1987), so too are the emotions that manifest as inmates contemplate their deaths. In this paper we present an initial, systematic examination of final statements of condemned inmates, and in doing so present an empirical test of potential victims' rights effects on the emotional makeup of such narratives. Of the executions that took place in Texas during the period December 7, 1982 through June 7, 2005 for which we have complete data ($N = 341$), 269 inmates chose to make final statements when given the opportunity to do so, representing 80 percent of the executions during the period. Victims' rights effects were modeled by comparing the emotional content of death narratives before and after the date in which homicide survivors were provided the opportunity to attend executions in Texas (January 12, 1996). During this period (January 12, 1996 to June 7, 2005), approximately 80 percent of the executions included at least one homicide survivor in attendance. Several key findings emerged from our effort.

For the complete 22-year post-*Furman* period, condemned inmates were more repentant than defiant in final statements, as 36 percent of inmates expressed guilt and 32 percent were repentant just prior to execution. Defiant emotions, on the other hand, were less commonplace in that 19 percent of inmates proclaimed innocence, 10 percent remarked on the illegitimacy of capital punishment, and 10 percent described injustice in their legal proceedings.

Split-sample and multivariate analyses provided further definition, indicating that a disproportionate percentage of the guilt and repentance "load" comes by way of attendance by homicide survivors. More specifically, the inclusion of survivors at executions was strongly associated with guilt and repentance in inmates, and these emotions were found to remain significant after control variables were introduced. For example, inmates were 17 times more likely to repent in the years following the inclusion of homicide survivors at executions than in the years prior. Consistent with expectation, analyses also indicated that the inclusion of homicide survivors at executions was not associated with defiant emotions that are thought to be generally unrelated to the offender ↔

homicide survivor exchange (i.e., claims of innocence, perceived death penalty illegitimacy, or perceived injustice in one's legal proceeding).

Taken as a whole, it would appear that there is something emotionally palpable underway when witness lists are made up of not only criminal justice officials, media representatives, and inmate witnesses but also homicide survivors. When one also includes emotions that tie to proud, shameless defiance (Sherman, 1993), these findings stand in contrast with those who suggest that most inmates go to their deaths in quiet, resigned states (e.g., Johnson, 1990). Relatedly, research has suggested that offenders are likely to see an offense as stemming from causes that were impulsive, uncontrollable, justifiable, or due to mitigating circumstances, and are likely to downplay the impact of their transgressions (Baumeister, Stillwell, & Wotman, 1990). At least preliminarily, the present findings evoke different assumptions for a not insignificant number of inmates.

To be sure, while these results provide insight into sanctions and their concomitant psychosocial processes, attention should be drawn to whether these results *matter* through the lens of victims' rights and emotionally intelligent justice. That is, it is important to recognize that as measured here, guilt and repentance are "unidirectional" in that they center on inmate emotions without an assessment of the critical issue of survivor closure. As has been done with capital juries (e.g., Bowers, 1995; Dirks, 2008; Fleury-Steiner, 2002), we recommend that future research employ interviews with survivors to understand subtle connections between inmate death narratives and survivor transformation (Gross & Matheson, 2003).¹⁹ To accomplish this task, it will be necessary to secure an execution-by-execution accounting of whether homicide survivors were in attendance. Whether the nature of an inmate's crime and their background affects closure is also an open question, as survivors tend to become more punitive when they are told disturbing stories about offenders (Beckett, 1997).

There are several other important questions and limitations. First, it is important to note that of the 341 inmates under study, 269 inmates chose to make a final statement, while 72 did not. Theory suggests that there is a range of behavioral and cognitive coping mechanisms available to those who face egregious strain (Agnew, 1992). Silence at moments such as this may denote any number of attitudinal states. Therefore, it is not possible to ascertain whether the 72 inmates were of like, or divergent, minds on matters of repentance and defiance.²⁰ If one were to presume a degree of attitudinal homogeneity among the 72, it could certainly bolster, or diminish, the effects outlined here.

19. One intriguing anecdote: After having been informed of Carl Kelly's final statement in 1993 ("I'm an African warrior, born to bleed, born to die"), a victim's mother responded by noting the lack of repentance: "Oh yeah, right. What about the rest of us? When I heard he said that, any feelings I might have had for him just kinda snapped and I said, 'Okay, justice has been served'" (Blaustein, 1997, p. 389).

20. Another interesting anecdote: As an inmate was being escorted to the Florida death chamber, he kicked a senior corrections official between the legs. Minutes later, the same inmate chose not to make a final statement when given the opportunity to do so (Michael L. Radelet, personal communication, November 20, 2003). Defiance can, alas, take many forms.

Second, spiritual and personal counsel to death row inmates have been known to provide assistance in crafting final statements (e.g., in "borderline retarded" inmate Richard J. Wilkerson's final statement (August 31, 1993), written through his sister Michelle Winn) (Texas Department of Criminal Justice, 2004d). Without knowledge of an inmate's contribution to their statement, emotions-based categorization may be called into question. For our purpose, it is assumed that each statement encapsulates the inmate's emotional orientation. Third, our review of statements suggests that they may occasionally be at odds with ones made by inmates days or weeks prior to execution.²¹ In light of the opportunities that execution narratives provide for the display of identity (Smith, 1996), we feel that final statements provide valuable insight in their own right.

Fourth, content analysis relies on the consistent application of coding themes to free-flowing text (Bernard, 2000). We have made every effort to apply our themes consistently and conservatively; there were, however, a limited number of instances where a final statement could have been interpreted as defiant on its face but was not categorizable as such.²² Fifth, Texas Department of Criminal Justice offender information sheets categorize Hispanics as a mutually exclusive racial category. Future research may wish to gauge whether inmate emotions differ across self-defined lines of race and ethnicity (e.g., Black-Hispanic perceptions) (Rice, Reitzel, & Piquero, 2005). Further, as Texas has a specific demographic profile and unique position in death penalty administration (Zimring, 2003, p. 89), generalizing the findings to other states is an open question.

Sixth, it is important to know whether the emotional makeup of final statements is affected by breakdowns in routine procedures, such as an inmate not playing their assigned role (Haines, 1992; Sarat, 2001a). Moreover, theoretical work related to master emotions or religiosity (e.g., Applegate, Cullen, Fisher, & Vander Ven, 2000; Scheff & Retzinger, 1991; Schimmel, 2002) may help us to understand emotional expressions at executions. How, for example, might voice (agency) tie to sorrow, procedural injustice to anger, or compounded procedural and social-structural injustice to savage defiance? Questions such as these would most certainly add to the dearth of research assessing the emotional life of

21. For example, Theodore Bundy was executed in Florida in 1989 for the murder of 12-year-old Kimberly Leach of Lake City, FL. Despite years of claims of innocence, in the days leading up to execution Bundy confessed to the slayings of 20 women and was reported to have expressed remorse and to have felt "God's presence" (Flores, 1989). Bundy's brief final statement, "Give my love to my family and friends" (Flores, 1989) thereby provided only partial insight into emotives that ranged from defiant to possibly repentant in months prior.

22. As in Brian Roberson's final statement in 2000: "(Portion omitted). So this is my statement. To all of the racist White folks in America that hate Black folks and to all of the Black folks in America that hate themselves: the infamous words of my famous legendary brother, Matt Turner, 'Y'all kiss my Black ass.' Let's do it" (Texas Department of Criminal Justice, 2004d). Despite its defiant tenor, based on our coding themes this statement is neither a statement of innocence nor a statement claiming capital punishment illegitimacy nor a statement recounting the unfairness of Roberson's legal proceeding. As such, all articulated final statements, no matter their content, were tallied for the *N* of 269 (even in the case of uncodable brief expressions of love toward family, or, for example, the case of David Hittle, whose final statement of "Santajaib Singh Ji" referenced an Indian religious teacher who advocated love and nonviolence (<http://www.clarkprosecutor.org>)).

serious incarcerated offenders and their families (although see Hagan & Dinovitzer, 1999; Liebling, 1995; Radelet, Vandiver, & Berardo, 1983; Sharp, 2005 on the additive effects of incarceration on psychosocial health and social and human capital).²³

Should the system continue to allow homicide survivors to attend executions? Much of this will be determined by balancing calls for victims' rights in the ultimate sanction (Acker & Karp, 2006) against those who question whether death row is an appropriate venue for restoration given capital punishment's embrace of retribution (Radelet & Borg, 2000). Should future research find that repentant emotions tie strongly to victim closure, then the study's findings will likely provide support for a victims' rights-inspired line of thinking. Whether institutions should try to elicit "authentic emotions" from the accused in the first place remains an outstanding question, however (Karstedt, 2002).²⁴

In sum, attention should be paid to the balance between the rights of survivors, the rights of inmates, and underlying power differentials between the two (Braithwaite & Mugford, 1994; Carlen, 1983; Sarat, 2001b). At day's end, we may find that we are ill prepared to find meaning in final statements—that the penal system's desire for minimization of physical pain (Sarat, 2001a) has led to a theatrical representation of pain: punishment which plumbs the depths of the offender's heart. It remains to be seen whether we are witnessing honest desires for restorative healing or de facto moral solidarity between victim and state in shared disdain for the criminal (Simon, 2002).

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23. It is important to note that we use the term "defiant" for statements of innocence (and so forth) in the spirit of the inmate not subscribing to the death chamber's prescribed solemnity (Haines, 1992; Sarat, 2001a). As one reviewer remarked, Texas' long history with this form of punishment (e.g., Bedau, 1997; Zimring, 2003) paints a picture of a subset of inmates simply protesting their innocence because they were, in fact, innocent and failing to express repentance because they had nothing to repent. If one frames the execution processually (e.g., Johnson, 1990), claims of innocence might well be cast as "defiant," whereas social psychologically (e.g., Haney, 2005), they become simple reflections of the inmate's immediate reality.

24. Karstedt's (2002, pp. 301-305) "core problems" with the role of emotions in criminal justice may relate to this assessment of final statements: whether, given the "invisibility" of emotions, institutions should elicit emotions from individuals, whether emotions constitute an inmate's moral principles, and whether emotions' prominent position in contemporary criminal justice are 'natural' or 'primordial' (i.e., based on natural responses or overarching institutional frameworks). Further, as a reviewer remarked, emotions defined as desires for forgiveness, statements of repentance, etc., from the restorative justice/reintegrative shaming literature (e.g., Braithwaite, 1989) have been criticized as being "marred by the questionable validity of the major constructs." While the present effort is not a test of restorative justice or reintegrative shaming, we do feel that discussions of how emotions present themselves in such contexts (e.g., Morris, 2002; Strang, 2002) will benefit, as will research which attempts to assess the construct validity of restorative emotions (e.g., Harder & Zalma, 1990).

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Appendix A Description of Execution, for Homicide Survivors

Prior to viewing the execution, the victim witnesses are subjected to a "pat search" by prison guards. This is to ensure that witnesses are carrying no items of contraband, such as cell phones, pagers or recording devices.

At the appropriate time, the witnesses are escorted to the viewing room by an Internal Affairs officer. A Victim Services representative accompanies the witnesses in viewing, and occasionally the Institutional Victim Liaison will view as well.

The actual viewing process takes approximately 7-10 minutes. The witnesses are ushered into the viewing room along with representatives from the media. The media may have five witnesses, which are divided between the inmate and victim witness rooms. The inmate witnesses are in the room next door. While we cannot see those witnesses, on occasion we can hear emotional outbursts.

Upon entering the viewing room, witnesses observe the inmate already strapped to the Gurney. Thick glass and steel bars separate the inmate chamber from the viewing room. A microphone is suspended above the inmate's head and there are speakers in both viewing rooms. The unit Warden stands at the head of the Gurney and the unit Chaplain stands at the foot. Both remain there until the inmate is pronounced dead (emphasis added). The witnesses remain standing throughout the process so I always encourage them to lean against one of the walls should they get tired or feel weak. Witnesses are also reminded that while the media representatives in the viewing room cannot speak to them, they may record any conversation or behavior the witnesses may have while viewing.

Prior to the execution, the warden will ask the inmate if they want to make a last statement. At this time the inmate may say anything they desire. Some express remorse for their crime; others will use this time to criticize the Texas criminal justice system, or proclaim their innocence. A few will choose not to make a statement. The witnesses are discouraged from attempting to talk to communicate in any manner with the inmate (emphasis added).

After the last statement is made, witnesses will notice within 15-20 seconds that the inmate's chest is expanding. One of the drugs used in the execution process collapses the diaphragm and the air has to escape. As the air escapes, it may make a snorting or gurgling sound, or sometimes the inmate will cough and make a hissing sound. If for some reason the inmate continues talking after the drugs have started flowing, they may die with their mouth and eyes open. This is the worst-case scenario and does not happen frequently.

After the air escapes there is nothing else to see or hear. This maybe the most difficult part for the witnesses, as all we do is stand for approximately three to five more minutes while the drugs are being processed in the inmate's body. A physician later enters the room, inspects the inmate for vital signs, and pronounces the time of death (Texas Department of Criminal Justice, 2004a).

Appendix B Final Statement Exemplars

Variables	Final Statement
Victims' rights variables Expression of guilt	<p>Jeffery Dillingham, executed in 2000 for the murder-for-hire of Caren Koslow of Fort Worth (<i>partial transcript</i>): "I would just like to apologize to the victim's family for what I did. I take full responsibility for that poor woman's death, for the pain and suffering inflicted on Mr. Koslow. ... I love you Heavenly Father, I love you Jesus. Thank you both for loving me. Amen." (TDCJ)</p> <p>Robert Morrow, executed in 2004 for the beating and stabbing death of Lisa Morrow in Liberty: "Yes I do. Mike and Ms. Allison, I would like to tell you that I am responsible and I am sorry for what I did and the pain I caused you all. I love you Earline and all of my friends that stood by me. I feel blessed to have had you all. Stay strong and take care of them kids. Set me free Warden. Father, accept me." (TDCJ)</p>
Repentance	<p>Samuel Gallamore, executed in 2003 for the beating and stabbing deaths of Clayton Kenney, Juliana Kenney, and Adrienne Arnot near Kerrville: "There are many things I would like to say, but none more important that how I feel toward Mr. & Mrs. Kenney, and Ms. Arnot. I would like to apologize and say I'm sorry but words seem so hollow and cheap. Their death should not have happened, but it did. I'm so sorry that all of this took place. Now I have devastated my family as well, but my heart has grown in the last few minutes because I was forgiven by the family of Mr. & Mrs. Kenney, and Ms. Arnot. Thank You. You have given me more hope then I have had in a long time. If I could change things I would, not for my sake but for all those who have loved me over the years, and for those who have forgiven me. Thank you for all that you have given me." (TDCJ)</p> <p>Larry Hayes, executed in 2003 for the shooting deaths of his wife, Mary Hayes, and convenience store clerk Rosalyn Robinson: "I would like for Rosalyn's family and loved ones and my wife, Mary's, family to know that I am genuinely sorry for what I did. I would like you to reach down in your hearts and forgive me. There is no excuse for what I did. Rosalyn's mother asked me at the trial, "Why?" and I do not have a good reason for it. Please forgive me. As for my friends and family here - thanks for sticking with me and know that I love you and will take part of you with me. I would like to thank one of the arresting officers that I would have killed if I could have. He gave me CPR, saved my life, and gave me a chance to get my life right. I know I will see Mary and Rosalyn tonight. I love you all." (TDCJ)</p>

Appendix B (Continued).

Variables	Final Statement
Defiance variables Statement of innocence	<p>James Wilkins, executed in 2001 for the shooting deaths of Richard Wood and Larry McMillan in Tyler (<i>partial transcript</i>): "Sandy (<i>survivor in shooting</i>), all of you, I am sorry. Please hear me. Please in the name of God forgive me. Please understand. Please find that peace. I am really sorry. Please for your sake forgive me. All of you please." (TDCJ)</p> <p>Robert Coulson, executed in 2002 for the suffocation deaths of five of his family members: "I'm innocent. I had nothing to do with my family's murders. I want to thank everyone who has supported me. I hope they continue to fight. You know who you are. That's all. Thank you, Warden." (TDCJ)</p> <p>Tommy Jackson, executed in 2000 for the abduction and shooting death of Rosalind Robison, a University of Texas student (<i>partial transcript</i>). "I will say this on my own behalf but then again I know it is not going to make any difference but what you fixing to witness is not a nice thing. It's not nice. It's not nice. The media. I would just like to address to the media with everybody's permission. I would like to say before I go that it has been said that I have shown no remorse, but if you look at my record and my background, ask anybody that know me that in order for me to show any kind of remorse for killing that ever been done, this one time I can't show no remorse for something that I did not do and if I did I would be faking. I would totally be faking and believe me there is nothing fake about me. Nothing fake. I've done wrong, sure, I've paid the time. This is one time that I know I cannot show no remorse for something that I did not do. I am at peace, please believe me. Wherefore, I figure that what I am dying for now is what I have done in my past. This is what I am dying for. Not for killing Rosalyn. I don't know what ya'll call her but I call her Ros, I call her Ros. That's it." (TDCJ)</p>
Capital punishment illegitimate	<p>Raymond Kinnamon, executed in 1994 for the shooting death of Ronald Longmire at a Houston bar (<i>partial transcript</i>): "I'm not ready to go, but I have no choice; I sent several letters to my family; they'll be very moving when you get them. I want to say goodbye again to my boys. I know I'm missing somebody, but if there's anything I have left to say, it would be that I wish I had a Shakespearean vocabulary, but since I was raised in TDC, I missed out on some of my vocabulary. If my words can persuade you to discontinue this practice of executing people, please do so. If the citizens don't do away with the death penalty, Texas won't be a safe place to be. I have no revenge because hate won't solve anything." (TDCJ)</p>

Appendix B (Continued).

Variables	Final Statement
Legal proceeding unfair	<p>Henry Porter, executed in 1985 for the shooting death of Forth Worth police officer Henry Mailloux (<i>partial transcript</i>): "From there you call me a cold-blooded murderer. I didn't tie anyone to a stretcher. I didn't pump any poison into anybody's veins from behind a locked door. You call this justice. I call this and your society a bunch of cold-blooded murderers. I don't say this with any bitterness or anger. I just say this with truthfulness." (TDCJ)</p> <p>Gerald Tigner, Jr., executed in 2002 for the shooting deaths of James Williams and Michael Watkins in Waco. "Yes. My last statement. I was wrongfully convicted of this crime against Michael Watkins and James Williams on 10th Street on August 31, 1993. I got convicted on a false confession because I never admitted to it, but my lawyer did not put this out to the jury. I did not kill those drug dealers. I send love to my family and friends; my east side family and friends. I am being real with the real. That's all that counts in my heart. I will see you later. That's it." (TDCJ)</p> <p>Bernard Amos, executed in 1995 for the shooting death of James Joe in Dallas: "I just say in this case the state of Texas made a big mistake. It doesn't do any good to have a lawyer. Fifty percent of the cases go before the Court of Criminal Appeals. They only hear the white ones. May the grace of God have mercy on them." (TDCJ).</p>

Note: some final statements include several emotional expressions within the same statement (e.g., innocence + capital punishment illegitimate + legal proceeding unfair). For clarity, here we have selected statements that reflect a minimal number of outcome variables per statement.