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# ANALYZING THE MEDICAL DEFINITION OF DEATH IN CRIMINAL HOMICIDE PROSECUTION

Mariah Wood

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**ANALYZING THE MEDICAL DEFINITION OF DEATH IN  
CRIMINAL HOMICIDE PROSECUTION**

**BY**

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B.A., Political Science, University of New Mexico, 1998  
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DISSERTATION

Submitted in Partial Fulfillment of the  
Requirements for the Degree of

**Doctor of Philosophy in Nursing**

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Albuquerque, NM

July, 2018

## **DEDICATION**

This dissertation is dedicated to the memory of Dr. Helen Leavy. Although her mentorship led to this degree, she was unable to see my graduation. To my husband and family, thank you for your patience and support while I pursued my dream.

## **ACKNOWLEDGMENTS**

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I would also like to thank the leadership and officers of the Albuquerque Police Department. Without your approval and participation, this dissertation would not be possible.

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## **ABSTRACT**

I investigated the use of the medical definition of human death in the criminal justice system and the impact of this definition on the prosecution of criminal homicide. The units of design for this research were two violent crimes cases investigated by the Homicide Unit of the Albuquerque Police Department. Data was collected from officer interviews, case files, Office of the Medical Investigator reports, media and social media.

I identified the themes of pursuit of justice, frustration, and family from the collected data. Key findings include that the medical definition of human death causes confusion and delay in the criminal justice system, the timing of the victim's medical death impacted the sentencing received by the offender, and that the loss of the victim was felt by law enforcement and family before the victim was declared medically dead.

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## **Chapter 1**

### **Introduction**

The medical standards used to define human death have not changed since 1994, despite significant advances in medicine and treatment. The medical definition of human death is used to define criminal homicide, the unlawful killing of one person by another person (Jhaveri, Raloti, Patel, Brahbhatt, & Kaushik, 2014). As a result, some criminal homicide cases are not appropriately prosecuted due to their reliance on a definition of human death that does not reflect the advances of modern medicine and known violent offenders. This violates the retributive theory of punishment: those who commit crimes deserve to suffer a proportional punishment; it is morally good if a legitimate punisher gives those who commit a crime the punishment that they deserve; and it is morally wrong to punish the innocent or to punish disproportionately by not having the punishment fit the crime (Wallen, 2014).

### **Prologue**

Prior to becoming a registered nurse, I served as a police officer for the Albuquerque Police Department (APD) in Albuquerque, New Mexico. I was assigned to patrol and my duties included responding to the scenes of very violent crimes that might result in the death of the victim. I had no medical background and depended upon medical professionals to tell me if they thought the victim would survive. A victim labeled “Category 1” meant that I would need to activate the Homicide Unit to begin their investigation as the patient was not stable and was more likely than not to die from their injuries. Any other category meant that I would conduct a less intensive violent crime investigation. My focus was on whether the victim was going to be labeled as

“dead” so that I would know what steps to take next; the possible long term impact of the injuries was irrelevant to my job. I am now bothered by the almost flippant labeling that determined how I proceeded with my investigation and at my impatience as I stood outside of the trauma bay at the hospital and waited for someone (usually an ambulance medic or nurse) to determine the patient’s prognosis. The immediate status of the victim dictated the type of investigation the crime received. The thought that there were worse outcomes than being declared dead never even crossed my mind.

I met an APD detective for dinner a few years after I left the police department. The detective was struggling to reconcile the well-publicized fact that the homicide rate in Albuquerque had decreased with her knowledge that the number of investigations for violent crimes had risen significantly. She felt that, although the victims were not dying after the violent crimes were committed, there was no actual decrease in the number of attempted criminal homicides in the community. My friend commented that the crimes were still very violent and the impact on the victims just as devastating as the previous years, but the crimes could not be labeled as a homicide because the victims had not died. “You guys are just better at keeping them alive now,” she concluded. We discussed a current case involving a female victim of intimate partner violence who was ventilated and unresponsive while the known offender remained free on the street. The detective advised that they had been waiting months for the victim to be pronounced dead so that the offender could be charged with her murder. Her frustration was palpable. The detective viewed this victim as effectively dead, and having to wait for a medical professional to declare her death was preventing the victim from getting justice.

I shared my own recent experience caring for a severely abused infant in the emergency room and how angry it made me every time the police officer asked if the baby was going to live. I wanted to ask the officer to define what he meant by “live”, as the infant’s brain had been severely damaged after the mother’s boyfriend hit her head against the wall repeatedly. I understood why the officer was asking, but also recognized that living was going to be much more painful than dying for this victim. This conversation, along with my experiences as a police officer and as a nurse, began my inquiry into the complicated specialty of forensic nursing. Forensic nursing is the practice of nursing when “health and legal systems intersect” (ANA & IAFN, 2011, p.3).

### **Significance**

The Uniform Determination of Death Act (UDDA), model legislation that has been adopted by all states, defines the moment of death as when an individual “...has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem...” (President’s Commission, 1981, p.2). The UDDA requires that all determinations of human death be made in accordance with accepted medical standards. However, the medical standards used to define human death have not changed since 1994, despite significant advances in medicine and treatment. Researchers recognize that this definition has not kept up with advances in medicine and that people who would have previously died from illness or injury can now be kept legally alive as a result of improved medical technology (Allen, 1986; Blank, 2001; Gonzales, 2009; Truog, 2015). Blank (2001) wrote that these advances in medicine include machine regulated breathing and heartbeat even when the spontaneous capacity to do either is not present. Truog (2015) wrote that

these advances in medicine are seen in the survival of patients with severe cervical injuries; intensive care units are now able to control the physiological functions that once would have inevitably caused a patient to die from spinal shock.

Currently, the medical definition of human death is used to define homicide, the killing of one person by another person (Jhaveri et al., 2014). Many types of homicide, such as murder or manslaughter, violate criminal laws. Although some victims of violent crime have suffered a complete loss of mental and physical function, they are not declared dead by medical professionals and cannot be classified as a victims of criminal homicide. Law enforcement agencies dedicate significant resources and personnel to investigating violent crimes that are eventually expected to result in criminal homicide convictions, but these open cases are not appropriately prosecuted due to their reliance on a definition for human death that does not reflect the advances of modern medicine. As a result of this fact, known violent offenders are able to avoid punishment for their actions. The loved ones of the victim believe the justice system has failed, and the law enforcement personnel investigating the crime are left feeling ineffective and frustrated.

This unacceptable paradox violates the retributive justice theory of punishment, which is based upon three principles: those who commit crimes deserve to suffer a proportional punishment; it is morally good if a legitimate punisher gives those who commit a crime the punishment that they deserve; and it is morally wrong to punish the innocent or to punish disproportionately by not having the punishment fit the crime (Wallen, 2014). The theory acknowledges an innate value that comes from the punishment itself as long as punishment is reserved for those who deserve to be punished and the punishment is in proportion to the offense committed (Wallen, 2014). If the

current medical definition of death is preventing retributive justice from occurring, then a need exists to reexamine the definition and consider an amended or different definition for use in the criminal justice system.

### **Current Policy**

Death related policy issues continue to generate considerable professional and public debate (Blank, 2001). Policy pertaining to how to define the death of a human is perhaps one of the “most intensely emotional and ethically fraught” of these issues (Blank, 2001, p.192). Until the late 1970s, death was considered to occur at the moment when the respiration and circulation of the human body ceased (Blank, 2001; President’s Commission, 1981). However, this definition became insufficient when advances in medical technology made it possible for a machine to regulate the breathing and heartbeat of a patient (Blank, 2001). Many states responded to this inconsistency by passing laws that attempted to incorporate neurologic criteria into the definition of death. In 1981, the President’s Commission for the Study of Ethical Problems in Medicine determined that a statute was needed to clarify the definition of death (Blank, 2001). The Commission re-defined death as the cessation of brain function instead of the cessation of heart and lung function (Blank, 2001; President’s Commission, 1981). The report also recommended that states adopt the UDDA definition of human death (President’s Commission, 1981). Although this revised definition of death has become the accepted standard of medical practice in most western nations, controversy remains regarding the accuracy of the medical tests used to determine brain death. There are also concerns that the revised definition of death is too restrictive as it does not address medical conditions such as irreversible loss of consciousness (Blank, 2001).

Public policy based upon the brain death standard “suffers from serious moral flaws that demand rectification” (Nair – Collins, 2010, p. 680). Numerous policy questions remain unanswered: Can insurers and other third party payers refuse to pay for the medical care of someone who is “alive but with a dead brain”? How should wills be probated in these cases? How can brain-dead patients be protected from premature termination of medical treatment? How can the rights and dignity of a brain-dead person be protected when their organs are needed to save people who are ‘brain-alive’ (Blank, 2001, p.201)? However, accurately identifying who is at risk for a false declaration of death, what harm might be done to a person who is incorrectly declared sufficiently dead, and the cost to society by continuing to define all “persons with marginal life signs” as alive must be determined before further policy discussion can occur (Charo, 1999, p.283).

The use of the medical definition of death in the criminal justice system results in additional policy concerns. For example, the “year-and-a-day rule”, a rule which required a murder victim to die within a year and a day of the violent act in order for the offender to be prosecuted, has been eliminated in thirty states (Wilbanks, 2008, p.740). However, the elimination of this rule has not resolved all policy challenges. Although the Florida legislature eliminated the year-and-a-day rule in 1998, Florida courts currently struggle with how to handle cases in which the fatal injury occurred prior to the elimination of the rule, but the victim died after the rule change (Wilbanks, 2012). In addition, the gradual extinction of the year-and-a-day rule may result in more “delayed homicide deaths” going to trial (Lin & Gill, 2008, p.354). Delayed homicides are accompanied by policy challenges such as failure of the medical facility to report the death to the appropriate authorities, lack of documentation of the original injury and circumstances, jurisdictional

issues if the injury and death occurred in different locations, and deaths not being linked to an injury that occurred as a result of a previous crime (Lin & Gill, 2008).

The medical definition of death is also used for death penalty policy. The United States Supreme Court recognized that the punishment of death, due to its finality, is different from other criminal punishments such as imprisonment (Acker, 2009). The Court used this “death is different” principle to enact safeguards against the death penalty for juveniles, mentally retarded offenders, rapists, and minors (Acker, 2009, p. 298). In capital murder trials, potential jurors go through a vetting process to become “death qualified” and those whose personal morals prevent them from considering a sentence of death are removed from the process (Acker, 2009, p.299).

There are current policy concerns about the use of “civil death” as a punishment for criminal offenses (“ACLU Challenges”, 2015). The United States has used civil death as a form of criminal punishment in which most of the civil rights of a person convicted of a crime were removed and the person was considered outside of the protection of law (Chin, 2012, p. 1789). The American Civil Liberties Union (ACLU) of Rhode Island recently filed a federal lawsuit challenging the constitutionality of the use of “civil death” as a punishment for criminal offenders (“ACLU Challenges”, 2015). Rhode Island is one of three states that still has a statute providing for the civil death of a prisoner (“ACLU Challenges”, 2015). Per Rhode Island statute:

Every person imprisoned in the adult correctional institutions for life shall, with respect to all rights of property, to the bond of matrimony and to all civil rights and relations of any nature whatsoever, be deemed to be dead in all respects, as if



his or her natural death had taken place at the time of conviction (RI Gen L § 13-6-1).

Another important policy question pertains to the need for a legal definition of death (Charo, 1999; Nair – Collins, 2010). If the decision is made to create a legal definition of death, a decision must also be made as to whether the biological definition of death should be used as a basis for the legal definition (Charo, 1999). Policy makers working on “the rules governing death” must acknowledge and then ignore the biological vagueness and focus on transparent solutions based experience and practical solutions (Charo, 1999, p.289; Truog, 2015).

There is also a need for policy pertaining to the legal definition of personhood as current case law does not provide a consistent definition (Niman, 2012). Niman (2012) wrote that the words “person” or “people” appear twenty-four times in the original United States Constitution and thirty-four times in amendments to the Constitution, yet no definition for either word is given. Nimen concluded that the law should create the best definition of personhood possible based upon current knowledge, with the understanding that the definition may have to be modified at some point in the future (Niman, 2012).

### **Purpose**

The UDDA created a medical definition of death that, although controversial, has been adopted for use in all states. The UDDA also requires that all determinations of death be made in accordance with accepted medical standards (Brugger, 2013). However, the current medical definition of death is not congruent with developments in scientific knowledge or medical technology and ignores the possibility of a status existing between

the bi-polar categories of dead and alive (Brugger, 2013). The current medical definition of death also ignores the characteristics required for personhood; specifically, a person has the ability to be rational, a person is recognized as a person by others, a person is capable of reciprocating with other persons, a person is able to communicate, and a person has some level of consciousness of his surroundings (Locke, 1990).

This medical definition of death is used in criminal homicide law; an individual must be declared medically dead before he can be labeled a victim of homicide (Jhaveri, Raloti, Patel, Brahbhatt, & Kaushik, 2014). While waiting for a person to be declared medically dead, law enforcement officers are prevented from completing the criminal homicide investigation and are unable to charge the offender with criminal homicide. This violates the retributive theory of punishment: those who commit crimes deserve to suffer a proportional punishment; it is morally good if a legitimate punisher gives those who commit a crime the punishment that they deserve; and it is morally wrong to punish the innocent or to punish disproportionately by not having the punishment fit the crime (Wallen, 2014).

In this situation, there is a gap in the knowledge regarding the definition of death. Current literature does not address how the medical definition of human death is operationalized in the criminal justice system or how it affects the prosecution of homicide. There is a significant gap in the literature about sentencing disparity specific to homicide and the impact of homicide “situational characteristics” on sentencing outcomes (Auerhahan, 2007). There is no literature about how using the medical definition of death to prosecute homicide impacts the sentencing of the offender. Therefore, the purpose of this research is to determine how the medical definition of

human death affects the prosecution of criminal homicide and to assess the policy implications of using the medical definition of death in the criminal justice system. Historically, law and public policy has relied upon medicine to define death (Charo, 1999). The use of this definition in the criminal justice system has resulted in significant public policy inconsistencies pertaining to the prosecution of violent crime and the sentences given to those convicted of criminal homicide.

The following research questions and specific aims will guide the design and methods used to explore the key issues:

### **Research Questions**

1. How is the medical definition of human death used in the criminal justice system?
2. How does the medical definition of human death affect the prosecution of criminal homicide?

### **Specific Aims**

1. Assess the impact of the medical definition of death on the investigation and prosecution of criminal homicide using two violent crime cases that were investigated by the Albuquerque Police Department.
2. Discuss the policy implications of using the medical definition of death in the criminal justice system.

There is recognized interdependence between healthcare and the legal system (Gonzales, 2009; President's Commission, 1981; Schultz, 1933; Truog, 2011). However, little is known about how this interdependence impacts the effectiveness of either system. This study is designed to be a starting point for understanding this relationship by

examining how human death is defined and then operationalized in the two different arenas. Medical professionals need to examine the current definition of death and determine if it is possible to develop reasonable criteria to designate when it is highly probable a person will die, thus allowing the law to treat a person as if they were already dead (Charo, 1999; Truog, 2015). Legal professionals need better understanding of the complex relationship between the definition of human death and criminal justice policy to determine if it is necessary to create a legal definition of death to supplement the medical definition currently in use and to guide the writing of more effective homicide laws (Truog, 2015). Understanding this relationship will also help the officers who investigate criminal homicides make sense of the limitations of their efforts and assist the loved ones of victims in better understanding the parameters of the criminal justice system.

## **Chapter 2**

### **Review of Literature**

This chapter presents a review of the literature pertaining to the use of the medical definition of human death in the criminal justice system and the relationship between this definition and the prosecution of criminal homicide. This chapter will also review the literature on the evolution of the definition of human death to the medical definition used today as well as current controversy surrounding the definition. The theoretical frameworks used to situate this work in the context of the research are personhood theory and retributive justice theory.

#### **Defining Death**

The struggle to accurately define and recognize human death has been a long one. In the eighteenth century, tales of bodies suddenly waking up during funerals and caskets found with claw marks on the inside led to the widespread fear of being declared dead prematurely (President's Commission, 1981). During this time, caskets were built with release mechanisms and air valves on the inside and security guards were hired to monitor coffins for signs of life. In 1740, Jean-Jacques Winslow advocated his theory that putrefaction was the only definitive way to identify death and several physicians published articles agreeing with his assessment. The invention of the stethoscope eventually led to the theory that permanent cessation of breathing and heart beat indicated the defining moment of human death (President's Commission, 1981).

Today, the definition of cardiorespiratory death is readily accepted as a medical sign of human death. Although debate continues as to whether or not neurological death should be considered death at all, the death of the brain is now considered the moment of

death in most developed nations, including the United States (Pearson et al., 2001; Rady & Verheijde, 2009; Youngner & Arnold, 2001). As defined for use in cases of human organ donation, cardiorespiratory death is 2 – 5 minutes of absent arterial pulses in organ donors without a heartbeat and neurological death is the irreversible loss of consciousness accompanied by spontaneous respiration (Rady & Verheijde, 2009). There remains debate in the medical community as to whether brain death should be defined as permanent non-function of the entire brain, the cortex, or the brainstem in a human being (Arbour, 2013; Pearson et al., 2001; President’s Council, 2009; Shaw, 2015; Truog, 2015; Veatch & Ross, 2016).

In 1981, The President’s Commission for the Study of Ethical Problems in Medicine sought to redefine human death because imprecise legal and medical definitions had blurred the lines between the concepts of dying and death. The Commission concluded that the definition of death had important social policy considerations related to biomedical, legal, philosophical, social, and religious interests (President’s Commission, 1981). The report recommended that states adopt the Uniform Determination of Death Act (UDDA), which defines the moment of human death as when “An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead” (President’s Commission, 1981, p.2). The UDDA also required that all determinations of death be made in accordance with accepted medical standards. The report concluded that death was a “unitary phenomenon” that should be defined using general physiological standards rather than medical criteria or tests that

may evolve over time but the term “unitary phenomenon” was not explained (President’s Commission, 1981, p.1).

In 1994, an Ad Hoc Committee of the Harvard Medical School reevaluated how human brain death should be defined and determined that unreceptivity, unresponsiveness, no movement of breathing, and no reflexes were required for permanent brain death (Brugger, 2013). Using these criteria, a permanently brain-dead patient will show no awareness of internal need or external stimuli, will have no spontaneous breathing or spontaneous movement in response to stimuli, will have no tendon reflexes, and will have fixed and dilated pupils (Brugger, 2013).

In December of 2008, the President’s Council on Bioethics (PCBE) published a report in response to the question of what standard should be used to declare an individual dead. The goal of the report was to “apprise the American public of the contemporary state of the debate and to guide the public’s reflections on matters that touch some of society’s deepest human questions” (PCBE, 2008, p.1). Per the report, the mechanical ventilator was a key advance in medical technology that resulted in confusion about when death actually occurred in the hospital setting as the ventilator “may stave off death, often for months or even years” (PCBE, 2008, p.1). The authors of the report recognized and considered two opposing philosophical positions on whether or not a human with total brain failure is dead: one which rejected neurological standards as an ethically valid way for determining human death and the other supporting the use of neurological standards. The authors note that both positions reject the idea that human death should be treated as only a matter of social agreement or legal construct and agreed that the standard used to determine death must be based upon both biological and

philosophical grounds. Both positions also agreed that, under the current available technology, a human being who is not definitively known to be dead should be considered alive. The authors did not address the possibility that advances in medical technology or scientific exploration may eventually result in a category of person that is neither dead nor alive.

The PCBE rejected a third philosophical position based upon the premise that humans actually experience two deaths: the death of the person (distinguished by the capacity for thought, reason, and feeling) and the death of the body or organism. The latter describes an individual incapacitated by a severe brain injury who is then regarded as “dead as person” (PCBE, 2008, p.50). The PCBE wrote that this philosophy required, in certain cases, for there to be two deaths instead of one as the body “that has ceased to be a person” could be treated as deceased for some purposes, including organ retrieval, while the heart was still beating. The authors acknowledged that the two-death theory was problematic as it expanded the concept of human death beyond the current meaning (PCBE, 2008, p.51). The report also contained a theoretical justification for a set of neurological criteria to be used for determining human death, noting that this standard for death is a “well-entrenched standard, having been enshrined in law and applied in medical practice for more than two decades” and that the position would have serious implications for organ procurement (PCBE, 2008, p.69). The PCBE authors concluded that death is a “single phenomenon marking the end of life of a biological organism” and that human death is finite, requiring something more than the loss of personhood (PCBE, 2008, p.52). The prevailing opinion of the members of the PCBE was that the current neurological standard for declaring death is both biologically and philosophically sound.



Brugger (2014) argued that the criteria for medical death adopted by the PCBE ignores the brain-dead patients who show a high degree of non-brain mediated activity (such as wound healing and puberty) and that this type of activity should cause doubt as to whether or not the human is actually dead.

The PCBE authors focused on determining the criteria for death but did not address whether the *absence* of criteria for death should be used to define life. Researchers recognize that this omission has significant ramifications when trying to determine whether or not a human should be considered alive. Biologist Carol Cleland & astrobiologist Christopher Chyba (2002) wrote that although there is currently no broadly accepted definition of life, it has become increasingly important to define what exactly it means to be alive. Astrobiologist Steven Benner wrote that the concept of life is very different from the concept of being alive; he used the example of a human cell in a finger as something that is alive and part of a living system but does not have life (Benner, 2010).

### **Personhood Theory**

Personhood theory recognizes that there is a difference in the rights, protections, and privileges under the law for those granted the status of a person instead of the status of a human being. The determination of personhood versus human being is widely debated. Modern personhood theories begin with the psychological writings of John Locke, who defined a person as an intelligent being who has reason and reflection and is conscious of his own perceptions (Locke, 1990). Locke believed that the identity of a person was directly tied to the ability of that person to reflect upon past thoughts and actions. Included in the definition of a person was the requirement of responsibility for

actions that could be remembered by the consciousness (Locke, 1990). The classification of something as a person is typically accompanied by certain rights and responsibilities that are not assigned to a non-person (Perry, 2001).

Philosopher Daniel Dennet summarized six themes common to theories on personhood: a person is rational, considered a person by others, capable of reciprocating, capable of communication, and is conscious in some special way (Locke, 1990). These same themes can be used to define the characteristics of personhood: a person has the ability to be rational, a person is recognized as a person by others, a person is capable of reciprocating with other persons, a person is able to communicate, and a person has some level of consciousness of his surroundings (Locke, 1990). The absence of all of these characteristics is the absence of personhood. What makes a person more than a human is no longer present; although the human may be alive, the person is not.

The characteristics of personhood continue to be subject to debate. Balducci (2008) wrote that the discipline of bioethics is meant to protect the person involved in medical research or medical care but the principles of bioethics do not specify who or what is a person. He wrote that personhood is used to argue both sides of debates involving the beginning and ending of life, including abortion rights, euthanasia, and physician-assisted suicide. According to Epstein (2013), the principles of bioethics do not resolve the difficulties of personhood: people have multiple identities, each identity exists on a spectrum, and the values and preferences of a person change depending upon their outside influences. Kadlac (2010) further clarifies the importance of differentiating between the concept of a human and the concept of a person, although the two words are often used interchangeably in a conversation. Kadlac reminds readers that the

characteristics attributed to belonging to a person can often be found in animals as well, such as self-motivated activity and the capacity to communicate.

There has also been a significant amount written about the role of personhood and reproductive rights. The process of conception and birth, similar to the process of dying, has no identifiable point in time that is the transition from nonlife to life (Chapo, 1999). The “Personhood Movement” was developed as an attempt to obtain legal protection for the pre-born at the earliest stage of biological development (Will, 2013, p.574). In the landmark case of *Roe v. Wade* (1973), Supreme Court Justice Blackmun wrote that if fetal personhood had been established then the fetus’ right to life would have been guaranteed by the Fourteenth Amendment. Although the Court determined that no Constitutional rights apply to the fetus before birth, it allowed that the state had an interest in protecting fetal life and that the viability of the fetus was an important point (Christofferson – Deb, 2012). This use of a specific moment in time “exemplifies the absolutism that seems central to U.S. legal and biomedical notions” of what is life and what is death (Christofferson – Deb, 2012, p. 579). It is important to note that Blackmun did not address whether the loss of personhood meant that previously held rights were no longer guaranteed. Also, the UDDA’s definition of human death conflicts with personhood theory as the fetus does not have a fully functioning brain and is not considered viable until 24 weeks of gestation (Christofferson – Deb, 2012).

The importance of preservation of personhood during patient care is also discussed in research literature. After concluding that failure to acknowledge personhood can result in patient dissatisfaction, Chochinov et al. (2015) developed a Patient Dignity Question (PDQ) to help healthcare providers recognize the personhood of patients. In his

study, 126 patients were read a brief statement advising that some patients worry their healthcare providers do not really know who they are as a person. The patients were then asked what they wanted their provider to know about them as a person. Chochinov et al. concluded that the PDQ accurately portrayed what patients wanted their medical provider to know about their personhood and that providers felt the information elicited from the PDQ was necessary to provide the best possible care for the patient. Long (2009) reviewed literature on patient care approaches meant to support personhood in individuals with dementia. She determined that individuals with dementia can lose personhood if caregivers do not actively work to maintain it as part of their daily care. Long concluded that caregivers of patients with dementia should obtain a detailed physical, psychological, social, and spiritual history of the patient and use this information to honor the person and what brings them joy.

In a reflective essay, bioethics researcher and blogger William Peace (2012) wrote about the importance of recognizing the personhood of people with physical disabilities. Peace was hospitalized for severe complications from previous injuries when his doctor advised him that he could be kept “very comfortable” if Peace chose to stop taking medications or receiving life-saving antibiotic therapy (Peace, 2012, p.14). Peace describes this offer as the ultimate insult by a professional who was in charge of his medical care. “That night made me realize that I was not a human but a tragic figure. Out of the kindness of the physician’s heart, I was being given a chance to end my life,” wrote Peace (2012, p.15).

Current discussion about when death occurs focuses on either the loss of the organism as a whole (irreversible cessation of functioning) or the irreversible loss of

consciousness or personhood (DeGrazia, 2011; Shewmon, 2010). Under personhood theory, the actual death of the physical human body is irrelevant. It is the loss of personhood that is actually the death or end of the person; the survival of the physical body only indicates that the human being (but not the person) is alive.

### **Criticisms of Personhood Theory**

There are significant criticisms against using personhood as the criteria for determining the status of human life. Philosopher Timothy Chappell (2011) wrote that the criteria used to determine personhood such as self-consciousness, emotionality, and sentience confuses criteria for personhood with criteria for an *ideal* state of personhood. Chappell pointed out that we have already identified a creature as a person before we begin applying the criteria for personhood to the creature and that these criteria are actually aspects of personhood based upon our assumptions of what it means to be human. Another criticism of personhood theory is that it allows for the possibility that non-human beings may have parity with human beings. Kadlac (2010) and Kittay (2008) wrote that the characteristics required for personhood are not unique to human life and that the loss of those same characteristics should not be synonymous with the loss of human life. Kittay also wrote that personhood may eventually serve as the commonality between human beings and yet undiscovered life forms.

There are moral dangers inherent to determining that one human being is more or less alive than another human being. Personhood theory has been used to exclude certain groups from the category of humans, such as women, the mentally ill, and racial minorities (Kittay, 2008). Fyson and Cromby (2013) wrote that the Universal Declaration of Human Rights use of the personhood attributes of reason and consciousness actually

excludes people with severe intellectual disabilities. In addition, the concept of personhood requires some form of reciprocity and co-presence. This may result in persons with profound multiple disabilities being seen as somehow having less personhood during their interactions with others (Blain-Moraes, Chesser, Kingsnorth, McKeever & Biddiss, 2013). However, these criticisms of personhood theory may actually support the use of personhood as an indicator of the value of the human life, if not the actual status of a human being alive or dead (Chappell, 2011). Right or wrong, a perceived lack of personhood has been historically recognized as a legitimate way to designate some humans as less than others and therefore not worthy of being called a person (Chappell, 2011).

### **Death, Law, and Public Policy**

Historically, law and public policy has relied upon medicine to define death and determine other “biological facts” (Charo, 1999, p.277). As biological facts are sometimes nebulous, law and public policy have already had to work together to create “legal fictions” to resolve complicated issues (Charo, 1999, p.280). The use of legal fiction allows a goal to be achieved without the heavy burden of rewriting federal and state codes (Charo, 1999). An example of a legal fiction in which the law has ignored or misconstrued biological facts in order to serve a public purpose is adoption; the law pretends that the birth parents never existed by awarding a new birth certificate to the adopted child and legally treating the adoptee the same as biological offspring (Charo, 1999).

Another example of legal fiction pertains to people who have been missing for several years. In order to manage the significant legal issues such as insurance claims and

re-marriage that may result from this situation, courts in the United States typically presume a person dead after 7 years of absence (Carriere, 1990; Charo, 1999). This presumption of death allows the law to proceed as if there is no doubt someone is dead when, in reality, the law is inferring from a long absence that a person is only more likely than not to be deceased (Carriere, 1990; Charro, 1999). However, this has resulted in problems for people who are still alive but have been declared legally dead by the government (Charro, 1999; Citroni, 2014). It is estimated that approximately 40 people every day are mistakenly or incorrectly determined to be deceased by the United States government and listed as such in the Social Security Death Index, a federal database which identifies people the government considers dead (Erb, 2013). For example, an Ohio man who disappeared and was declared legally dead in 1994 was unable to get his death filing overturned by the courts because Ohio law prevents changes to death rulings after three years have passed (Debucuooy – Dodley, 2013). The man admitted he had purposefully disappeared but claimed to have no knowledge that the Ohio courts had declared him dead or that his ex-wife had been collecting Social Security for their children; he left the court a living but legally dead man (Debucuooy – Dodley, 2013).

Another form of legal fiction is the use of “civil death” as a form of criminal punishment (Chin, 2012, p. 1789). The punishment of civil death takes away most of the civil rights of a person convicted of a crime and the person is considered outside of the protection of law (Chin, 2012, p. 1789). Although 18 states have used civil death as a punishment at some point in time, only three states still have civil death laws (Chin, 2012). The American Civil Liberties Union (ACLU) of Rhode Island has recently filed a federal lawsuit challenging the constitutionality of the use of “civil death” as a

punishment for criminal offenders (“ACLU Challenges”, 2015). Rhode Island is one of three states that still has a statute providing for the civil death of a prisoner (“ACLU Challenges”, 2015). The decline of civil death may be related to the reality that people convicted of a felony no longer automatically receive the death penalty; when all felony convictions were speedily punished by death, the statute of civil death allowed for an immediate settlement of the convicted person’s affairs (Chin, 2012).

There are inherent risks to having courts use “abstract legal principles to define human life” as it gives courts the option to decide that a human being is not fully human or fully alive (Painter, 2014, p.673). For example, the U.S. Supreme Court determined that slaves were merely “three-fifths” a person in the 1856 case of *Dred Scott v. Sandford* despite there being no biological or medical basis for this assumption about human beings (Painter, 2014, p.673). There is also concern that one court may articulate a legal principle defining life based on the interpretation evidence provided in particular case and then other courts follow that legal precedent without examining the evidence (Painter, 2014).

A different type of presumption of death is used when recording the official times of death of two people who die so close in time that it is impossible to tell who died first (Charo, 1999). In order to avoid inheritance and transfer of property complications arising from this situation, many states have enacted a simultaneous death statute which allows the law to treat the people as if they died in the same instant (Charo, 1999). Charo concluded that, in the world of public policy, public perception trumps scientific reality and that biological facts do not determine the law because the public is willing to ignore facts in order to achieve a goal (Charo, 1999).



The courts have also weighed in on the definition of death and the rights of individuals while dying. In 1977, Collester wrote “That medical technology has outdistanced law and traditional ethics is to state the obvious” (p. 304). Collester was referring to the famous 1975 Karen Quinlin court case in which a 21-year-old female was hospitalized in a persistent vegetative state after she stopped breathing while attending a party with friends. Karen’s father petitioned the Superior Court of New Jersey to be appointed the guardian of both the person and the property of his daughter and requested the authority to authorize her disconnection from life support machines. After extensive debate over whether Karen was alive or dead, the court ruled that she was medically and legally alive as she had sufficient responses to light and pain to determine she had not experienced brain death and that disconnecting the respirator would likely result in Karen’s death, which would be considered a homicide. Mr. Quinlan’s request to be the guardian over his daughter’s person was initially denied by the courts. The Quinlan family then appealed this denial to the state Supreme Court, which ruled that the Quinlans had the right to take their daughter off of life support (Nessman, 1996).

The United States Supreme Court addressed the right to die issue in the 1990 case of Nancy Cruzman, a New Jersey female who spent eight years in a persistent vegetative state (Nessman, 1996). The court ruled that adults were able to refuse medical treatment if there was convincing evidence that the patient would have wanted to die but did not address whether a person in a persistent vegetative state should be considered dead. Following this case, there is still not a clear legal-medical definition of death (Nessman, 1996; Truog, 2015).

Additional controversy surrounds who gets to make the final decision about whether or not a person is dead. For example, Cotard's syndrome is a disease often characterized by the belief that part of the body has died and no longer exists. One patient diagnosed with this disorder was convinced that his brain had died during a previous suicide attempt and that his body simply had not caught up. A subsequent brain scan showed profound disturbances in the regions of the brain responsible for core consciousness and a sense of self; the patient was convinced that he was brain-dead but was not permitted end his life and was eventually institutionalized as having a mental illness (Charland - Verville et al., 2013). Although it seems that the controversy of when death occurs could be resolved if those who had died could talk, Cotard's syndrome illustrates that dispute remains even when the person himself believes he knows when he became deceased.

A recent example of the controversy surrounding who gets to decide when a person is dead involves a fourteen-year-old female who was declared brain dead following a medical procedure that resulted in massive post-operative bleeding (Truog, 2015). The female had been pronounced medically dead by her doctor and had a death certificate issued, but her parents refused to allow doctors to remove her from the ventilator. Although she was legally considered a deceased person, the patient was transferred to a home-care facility where her body continues to grow and develop today with the support of a ventilator and tube feedings.

Researchers Stuart J. Youngner and Robert M. Arnold (2001, p.532) wrote that death is "ultimately a social construct" and that the interpretation of the biological facts surrounding death are influenced by other disciplines such as philosophy, religion,

psychology, economics, and politics. Per Youngner & Arnold (2001), the concept of brain death has been accepted by the public only because it is useful and not because it is theoretically perfect. They wrote that brain death, recognized in law and clinical practice but resisted by some conservative religious groups, is an example of the inconsistencies in laws about death. An example of this inconsistency is found in a New Jersey state law that allows individuals to claim a religious exemption from being declared dead based upon neurological criterion (Youngner & Arnold, 2001). The concept of brain death was introduced before the debate over abortion and physician-assisted suicide caught national attention; both issues have since resulted in debate about protecting life regardless of quantity and quality (Youngner & Arnold, 2001). Youngner & Arnold stipulated that the controversies surrounding the definition of death have had little impact on law or public policy because the press, public, and elected officials are not likely to thoroughly examine the issue but will instead rely upon experts, who will also “side-step” the issue (Youngner & Arnold, 2001, p. 534). They concluded that these issues will remain misunderstood and unresolved, and that society will continue to accept policies that “incrementally gerrymander” the line between life and death but will become outraged whenever a conceptual inconsistency surfaces (Youngner & Arnold, 2001, p.534).

Researcher Robert. H. Blank examined policy issues surrounding the definition of death as a result of social and technological change. He concluded that although the definition of death does not matter to the dead person, it matters very much to those who are left behind and that it should be no surprise that the definition of death has significant emotional and ethical connotations (Blank, 2001). Blank wrote that if consciousness is necessary for the human experience, no harm can be done to humans who lacks

consciousness by declaring them dead. However, the definition of death that is ultimately chosen must be a matter of public policy and not a medical or technical definition as the definition will greatly impact the living (Blank, 2001). Blank concluded that death is a biological issue that has “widespread and complicated” political ramifications (Blank, 2011, p. 51).

Medical ethics professor Dr. Robert Truog has written extensively about the precarious relationship between the medical profession, death, and the law. When addressing the role of the medical doctor in capital punishment, Truog & Brennan (1993) wrote that participation in any execution is a violation of medical ethics and should be grounds for removing the medical license of a physician. Truog later acknowledged that much of the literature against physician participation in capital punishment is based on the belief that capital punishment is inherently wrong (Truog, 2015). Truog also wrote that many patients who are declared dead for the purposes of organ donation do not actually meet the requirements of death as defined by the Uniform Determination of Death Act (Truog, 2015). He proposed that organ donation should be allowed from “living donors”, or those who are imminently dying or irreversibly unconscious in order to increase the number of organs available for transplant (Truog, 2015, p. 1907). Truog wrote that, for the purposes of organ donation, the legal definition of death should be understood not as biologically correct but rather a form of socially acceptable “legal fiction” (Truog, 2015, p. 1886). He pointed to similar types of legal fiction that are acceptable in society today. For example, the legal definition of blindness, while significantly different than the medical definition of blindness, is an acceptable

classification that is accompanied by both protected rights and legal restrictions (Truog, 2015).

## **Homicide**

Criminal justice literature does not attempt to definitively define death, but instead addresses the intent and actions that resulted in the death of a person. The current administrative process for determining a person as dead relies upon the opinion of a medical professional (Griffith, 2016). The Uniform Determination of Death Act (UDDA) requires that all determinations of death be made in accordance with accepted medical standards and concludes that death is a “unitary phenomenon” that should be defined using general physiological standards rather than medical criteria or tests that may evolve over time (President’s Commission, 1981, p.1). Prior to the creation and adoption of the UDDA, *Black’s Law Dictionary* mirrored the physician’s definition of death as the cessation of circulation and lung function (President’s Commission, 1981).

Homicide is legally defined as the act of one person killing another person (Jhaveri, Raloti, Patel, Brahbhatt, & Kaushik, 2014). The motive behind the homicide is irrelevant; to shorten a life, even if the person is dying or wishes to die, is to commit homicide (Collester, 1977). Homicide can be lawful (self-defense) or criminal (killing a store clerk during a robbery).

Criminal homicide is the unlawful killing of a person. Although each state has its own unique laws for defining types of homicides, the broad categories of murder and manslaughter provided in The Code of Laws of the United States are typically used. The United States Code defines murder as “The unlawful killing of a human being with malice aforethought... or perpetrated as part of a pattern or practice of assault or torture against a

child or children; or perpetrated from a premeditated design unlawfully and maliciously to affect the death of any human being other than him who is killed, is murder in the first degree” (Murder, U. S. C.). The definition of manslaughter differs from murder in that manslaughter is the unlawful killing of a human being without malice (Manslaughter, U. S. C.).

In order for an accused person to be convicted of criminal homicide, the prosecution must prove that a particular injury caused the victim’s death (Wilbanks, 2008). Historically, the “year-and-a-day rule” was used to prevent a defendant from being convicted of murder if the victim did not die within a year and a day of the act; it was presumed that an injury inflicted more than a year and a day prior to death could not have been the cause of death (Wilbanks, 2008, p.740). This rule stems from thirteenth century English common law where it served to limit the amount of time a person had to file an “appeal of death”, a formal complaint requesting action after a murder (Row, 2004; Wilbanks, 2008, p. 741). By the eighteenth century, the rule was used to prevent prosecution for deaths that occurred outside of the specified time limit because medical technology available at that time could not establish “beyond a reasonable doubt” that an injury resulted in death when a significant period of time separated the two events (Row, 2004; Wilbanks, 2008, p.741).

Although American state courts applied the year-and-a-day rule as early as 1824, the U.S. Supreme Court did not mention the rule until the 1891 case of *Ball v. United States* (Row, 2004; Wilbanks, 2008). In this case, the Court reversed the murder convictions of three men because the indictment did not advise the time and location of the murder so it could not be determined if the death occurred within a year and a day

after the crime was committed (Wilbanks, 2008). In 1894, the Court re-enforced the legitimacy of the year-and-a-day rule in the case of *Louisville, Evansville & Saint Louis Railroad Co. v. Clarke* by writing that the rule is to be used for prosecutions of murder except when the jurisdiction prohibited the use by statute (Wilbanks, 2008). Most American state courts also recognized the legitimacy of the year-and-a day rule in criminal homicide; in South Carolina, the rule was used to prevent the prosecution of an attempted murder as it was presumed the injury caused by the defendant did not result in the victim's death (Row, 2004).

In 1934, New York became the first state to abolish the year-and-a-day rule; more than 30 states have since followed suite (Row, 2004). Alabama and Maryland are the only states in which the state Supreme Court addressed the rule and chosen to keep it in the original form (Gardner & Anderson, 2015; Rowe, 2004). The Maryland legislature, however, has since abolished the year-and-a-day rule (Rowe, 2004).

The gradual extinction of the year-and-a-day rule may result in more “delayed homicide deaths” going to trial (Lin & Gill, 2008, p.354). The investigation of delayed homicides may be challenging due to issues such as failure of the medical facility to report the death to the appropriate authorities, lack of documentation of the original injury and circumstances, jurisdictional issues if the injury and death occurred in different locations, and deaths not being linked to an injury that occurred as a result of a previous crime (Lin & Gill, 2008). In addition, the medical examiner must issue a certification of death that shows a pathophysiologic link between the injury and the death that occurred at a later date. This may result in some delayed homicides being missed (Lin & Gill, 2008). Lin & Gill (2008) reviewed the medical examiner certificates for all homicides

that occurred in New York City between January 1, 2005, and December 31, 2006. Of the 1,211 homicides, 42 cases had a lethal injury that occurred more than one year before death. The homicide victims in the 42 cases survived between 1.3 to 43.2 years, with a mean of 15.7 years, after the injury that ultimately caused their death (Lin & Gill, 2008). The researchers did not determine if the homicide offenders were ever charged or convicted for the delayed homicide.

Rosen (1990) wrote about the inconsistencies seen in the definition of death as defined in the legal felony rule of murder compared to how it is defined in the assignment of capital punishment for crimes. New Mexico attorney Robert Gonzalez examined three cases involving victims of violent crime in a persistent vegetative state (PVS), a condition in which the brain stem still functions but the higher brain is damaged to such an extent that it cannot be repaired (Gonzales, 2009). These victims had autonomic functions such as breathing and heart rate but had “no consciousness or cognition and no chance of regaining either” (Gonzales, 2011, p. 530). In each of the cases, the offender was not able to be charged with murder (and likely receive a greater prison sentence) because the victim did not immediately die from their actions. Gonzalez concluded that there needs to be a shift in either how medical science defines death or the way that the law defines murder (Gonzalez, 2009). He suggested creating a new set of laws to address the taking of a life in addition to the current laws which address the causing of a death. “The criminal law must recognize that a criminal who puts a victim in a PVS (Persistent Vegetative State) has ended the victim’s life and must face the same legal repercussions as a criminal who commits homicide,” wrote Gonzalez (2009, p. 532).



## **Justice**

**Retributive justice theory.** In the United States, the primary means of managing the injustice resulting from a criminal act is punishment (Wenzel et al., 2007). Retributive justice theory stipulates that those who commit the crime of homicide deserve an equitable punishment for their actions and that the punishment be given by the criminal justice system, the legitimate authority for criminal punishment in the United States. According to Wallen (2014), punishment is appropriate when there has been an intentional violation of the rights of another person. An action must have four elements in order to count as a punishment: it must impose a cost, hardship, or remove a benefit from the person being punished; the punishment must be done with intention in that it cannot be a consequence or a side effect of an event; the action must be imposed as a response to what is believed to be a harmful act or offense; and the action must be imposed, in part, as a way of sending a message or censure or condemnation (Wallen, 2014).

Retributive justice is a theory of punishment based upon three principles: those who commit crimes deserve to suffer a proportional punishment, it is morally good if a legitimate punisher gives those who commit a crime the punishment that they deserve, and it is morally wrong to punish the innocent or to punish disproportionately by not having the punishment fit the crime (Wallen, 2014). Retributivism requires that those who do wrong receive punishment and that those who have done no wrong not be punished. Retributivism acknowledges an innate value that comes from the punishment itself as long as punishment is reserved for those who deserve to be punished and the punishment is in proportion to the offense committed (Wallen, 2014; Wenzel, Okimoto, Feather, & Platow, 2007). The concept of retribution should not be confused with

revenge or vengeance; retribution is not personal and does not involve pleasure from the infliction of punishment (Wallen, 2014).

Retribution is a negative social sanction that is imposed as a punishment when an individual violates the norms and rules of society (Heller, 1987). Retributivists seek justice for the wrong that has been committed; in order for justice, there must be a proportional relationship between the crime committed and the punishment received. Retributive justice theorists recognize the loss experienced by the victims of crime and want the offenders to suffer for causing that loss. The key components of retributive justice are proportionality and suffering. Lack of suffering or inequity between the crime and the punishment violates retributive justice theory.

Criticisms of retributive justice theory include that it is nearly impossible to inflict punishment on individuals who commit crimes without also sometimes inflicting punishment on individuals who are innocent of the crime that they are accused of committing (Wallen, 2014). Retributive justice theory does not clearly or consistently identify what punishments should be given for what offenses and does not identify who should be the responsible party for the punishment (Wallen, 2014). Retributive justice theory also assumes that people who commit offenses operate under free will and have control of their thoughts and actions (Wallen, 2014). Scientific inquiry has not definitively determined to what extent this is actually true and debate continues as to the actual extent of freedom of people to make choices. Finally, opponents of retributive justice theory point out that the theory dismisses the moral complications that arise from expecting a positive benefit to be the result of the infliction of a negative punishment (Rosebury, 2011).

**Restorative justice theory.** Restorative justice theory focuses on repairing the harm caused by a criminal act instead of making the offender suffer as punishment for his actions. Under restorative justice, criminal acts are viewed as conflicts that need to be resolved with the participation of offenders, victims, and the community. Punishment, although often part of this conflict resolution process, it is not the goal (Wenzel et al., 2007). Restorative justice theorists believe that because crime hurts, justice should heal and that healing must include the healing of relationships (Braithwaite, 2007).

Restorative justice is implemented in the forms of family conferences, victim – offender reconciliation programs, sentencing circles and reparative boards (Dzur, 2003, p.279).

The restorative justice movement began in 1974 with victim-offender mediations held in Ontario and Indiana (Dzur, 2003). In the 1990s, recognition of the increasing costs and social failures of the criminal justice system led to widespread political support for the restorative justice movement. All models of restorative justice require voluntary participation of the victim and offender as they seek a “mutually satisfactory resolution” (Dzur, 2003, p.279; Tully 2008). Proponents of restorative justice believe that the current criminal justice system alienates the victims of crime by forcing them to be represented by prosecuting attorneys and alienates the criminal offenders by having them thoroughly represented by professionals and relieved from the responsibility of explaining their actions or asking for forgiveness (Dzur, 2003).

Criticisms of restorative justice theory include that there is minimal evidence to show that restorative justice practices work, although this may be because research has been hampered by the problem of self-selection when offenders and victims are given the choice between a restorative justice program or a more traditional court process (Wenzel

et al., 2007). Another major criticism of restorative justice theory is that there is no evidence that current implementations have significantly reduced recidivism among offenders (Braithwaite, 2007; Wenzel et al., 2007). Critics of this theory also believe that a criminal act is both “a *harm* to the victim and a *wrong* that transgresses criminal law” and that the relationship between the state and the offender is ignored as part of the restorative justice process (Cammiss, 2014, p.664). A final criticism pertains to a limit in the type of crimes that restorative justice is able to safely address. Restorative justice is not an option for crimes in which the victim needs ongoing protection from the offender, such as domestic violence (Hanan, 2016).

Both retributive and restorative justice theorists agree that, ideally, all violent crimes should receive a comprehensive investigation by law enforcement that culminates in a speedy arrest and some form of resolution. In reality, some violent crimes are investigated but not resolved due to outdated criminal codes that do not reflect the advances of modern medicine. The result is that known offenders of very violent crimes remain free while the victim, the victim’s family, and law enforcement officers are denied justice. The current criminal justice system in the United States does not have the appropriate mechanisms in place to prosecute for the crime of *functional homicide*. The term functional homicide describes the phenomenon that occurs when the action of one individual causes severe injury to a second individual, in which the injured person remains alive but suffers a complete loss of independent function.

In the case of functional homicide, it is not sufficient to charge a person with the lesser crime of attempted murder. The functional homicide victim has lost the characteristics of personhood; although the human body survived the murder attempt, the

person did not. Charging the offender with attempted murder ignores the reality of what was done to the victim. In addition, there are vastly different federal sentencing guidelines for the crimes of murder and attempted murder. A first-degree murder sentence with no prior convictions is 27 years to life imprisonment, if the death penalty is not imposed (Gonzalez, 2009). The federal sentencing guidelines for attempted murder, regardless of level of harm to the victim, is no more than 20 years in prison (Assault, U.S.C.).

### **Conclusion**

The literature pertaining to the definition of human death is extensive, varied, and contradictory. The struggle to accurately define this concept has resulted in the establishment of cardiorespiratory and neurological criteria that must be met before a human is declared dead by a medical professional, but debate remains as to whether or not the use of neurological criteria (and the associated assumption that a human is dead because of absent neurological function) is accurate or ethical. Debate also remains as to whether the loss of personhood and the death of a human are the same thing. Judicial rulings as to how a human is determined to be dead, and who is legally allowed to make that determination, are inconsistent. In addition, the concept of death is understood differently depending upon the discipline trying to explain the concept and the motivations behind the explanations. Attempts to medically define death have focused on the creation of a precise definition with the intent to provide an identifiable and measurable point in time in which a human death occurs so that a person can be declared either dead or not dead. The current medical definition of death is not congruent with developments in scientific knowledge or medical technology and ignores the possibility

of a status existing between the dichotomous categories of dead and alive. The definition of death is a public policy issue because every member of the public will, at some point, die (Brock, 1999). In addition, most people will be affected by the consequences of having another person declared dead as there are a variety of social and legal consequences that accompany the death of a person (Brock, 1999).

According to criminal law, an individual is required to be declared medically dead before he can be labeled a victim of homicide. Current literature does not address how the medical definition of human death is operationalized in the criminal justice system or how it affects the prosecution of homicide. There is also no literature suggesting an alternative definition of death for use in criminal prosecutions. The findings from this research will identify how the medical definition of death impacted the prosecution of homicide in two cases where the victim did not immediately die after being victimized. By recognizing that not all mortally wounded victims die immediately, this research begins the process of examining whether the current medical definition of death should continue to be used in the criminal justice system.

## **Chapter 3**

### **Methods**

The previous chapter reviewed the evolution of the medical definition of death and inadequacy of that definition in light of the complex issues facing society today. The use of the current medical definition of death in criminal homicide law results in cases being left in limbo as the criminal justice system waits for the victim to be pronounced dead. Chapter 3 contains a description of the methodology used to conduct qualitative case studies of two homicide investigations in which the victims were not immediately declared dead. This chapter includes the following components: research design, research setting, case selection, data sources, permission and informed consent procedures, and data collection and analysis. The following research questions are addressed: how is the medical definition of death used in the criminal justice system and how does that definition impact the investigation and prosecution of homicide? The specific aims of this research are to assess the impact of the medical definition of death on the investigation and prosecution of criminal homicide using two violent crime cases that were investigated by the Albuquerque Police Department and to discuss the policy implications of using the medical definition of death in the criminal justice system.

#### **Research Design**

This research used a pragmatic interpretive framework. The reasoning for this framework was that the ontological basis of pragmatism centers on reality being what is useful, practical, and what works (Creswell, 2013). According to Denzin (1994), an interpretive framework is an art that can be learned but not a formula for research. Interpretive qualitative research includes descriptive and explanative designs and uses

theory to identify areas of potential importance in what is being studied (Rona, 2016). The underlying epistemological understanding of this approach is that reality has both empirical and affective dimensions and is realized through objective and subjective evidence. The axiological belief of pragmatism focuses on the outcome of the research, which is to gain useful knowledge while recognizing that this knowledge reflects, to some degree, the values of the researcher and the participant (Creswell, 2013).

Pragmatism seeks to determine the “practical consequences and useful applications” of what can be learned about an issue or problem (Patton, 2015, p.99). Tenants of pragmatism include focusing the inquiry on obtaining useful answers to practical questions, adapting the research design to the real-life constraints of time, access, and resource limitations and acknowledging the impact of those limitations on research findings, and looking for actionable findings when analyzing data (Patton, 2015). Either quantitative or qualitative research can be completed using a pragmatic interpretive framework. A pragmatic framework will draw from diverse data sources and focus on the practical applications of the methodology to directly address the research question (Creswell, 2013).

I used a naturalistic inquiry research design. Guba (1981) differentiates between the rationalistic (formerly referred to as scientific) and naturalistic inquiry paradigms. I selected the appropriate paradigm after determining whose assumptions were best met by what is being investigated. Key differences between the paradigms include the nature of reality, the nature of the inquirer/object relationship, the nature of truth statements, and characteristic differences in the approach taken by their practitioners (Guba, 1981, p.77). Patton (2015, p.89) wrote that paradigms are both a strength and weakness for the



researcher because although it makes decisions about what actions to take “relatively easy”, the weakness is that the reason for the decision is hidden in the paradigms. Lincoln (2010, p.7) reminds researchers that paradigms do matter because they reveal the standpoint of the researcher, the researcher’s relationship to others, what the researcher counts as knowledge, and how the researcher will handle the “conflicting and contradictory” values encountered during the research.

I chose a qualitative case study design for this research. Qualitative research is appropriate to explore or identify variables that are not easily measured, to study a group or population that is poorly understood or unknown, or to “hear silenced voices” (Creswell, 2013, p. 48). Creswell (2013) identifies eight characteristics of qualitative research: the data are often collected in the field (natural setting), the researcher is the “key instrument” in the data collection process, the research involves complex reasoning through inductive and deductive logic, the research focuses on participants’ meaning about the problem or issue, the research uses emergent design, the researcher uses reflexivity and the researcher seeks to develop a “holistic account” of the issue being studied (p.45). Elo et al. (2014) also identifies inductive and deductive paths for qualitative data analysis. Reflexivity is operationally defined as a systematic and self-critical reflective process that leads to understanding and owning one’s perspective (Patton, 2015). Qualitative research primarily uses non-numeric data, typically in the form of words, and is useful when a detailed and complex understanding of an issue is needed (Creswell, 2013; Jackson II, Drummond, & Camara, 2007). The data obtained in qualitative research are most useful for research where the theories are absent or just beginning to be formed and the questions being asked are exploratory (Baker, 2010).

Case study research (CSR) examines an issue through one or more cases within a specific setting or context; data collection may involve multiple sources and results in case description and case based themes (Creswell, Hanson, & Clark, 2007; Woodside, 2010). Case studies may be used to focus on the issue in a case in order to provide insight into the issue (Creswell, Hanson, Clark, 2007; Flyvberg, 2011). Qualitative researcher Robert Yin (2014) writes that case studies are used to contribute to knowledge about individual, group, organizational, social, and political phenomena. Also, the selection of a qualitative case study provides the best method for this research because the main research questions are “how” and “why” questions, the researcher has no control over the events, and the focus of the study is on a contemporary phenomenon that is occurring in a real-world context (Yin, 2014). The focus of the research is not the story of the individual in the case study but rather the issue within the case in order to better understand the issue. Qualitative researcher Robert Stake (1995) identifies three categories of case study research: intrinsic, instrumental, and collective. In intrinsic case study design, the case itself is the primary focus of the exploration. In instrumental case study design, the study is typically designed around an existing theory and formal sampling may happen before the selection of the cases in order to ensure the the case will result in useful findings. A collective case study design was appropriate for this research as more than one case was used to achieve better representation of what occurred in the criminal justice system when the victim of a homicide did not immediately die (Stake, 1995).

The use of case studies is familiar to social scientists and has been used extensively in psychology, medicine, law, and political science (Creswell, 2013). CSR is appropriate for nursing research; it can be used to describe a clinical experience, explore

hypotheses, evaluate nursing practice, or assess the effectiveness of an intervention (Baker, 2010; Brophy, 2008). Brophy (2008) wrote that this methodology is particularly useful in the nursing profession as there is a focus on individual cases in many areas of nursing practice, although it is important to note that there are many nurses who also focus on group and community care.

Criticisms of CSR include a perceived lack of qualitative rigor (Woodside, 2010). An additional criticism is the inability of a case study to provide representativeness to populations because each case is so unique that it represents a “one-off” situation (Woodside, 2010, p. 9). Qualitative researchers acknowledge that the information obtained through CSR is not always immediately generalizable to populations but that it can be generalized to theory (Brophy, 2008; Woodside, 2010). The purpose of qualitative inquiry is not to generalize, but to better understand something (Patton, 2015; Stake, 1995). While it may not be possible to generalize from a small sample of cases, it is possible to learn from them (Patton, 2015).

Flyvbjerg (2011) summarized five common “misunderstandings” about case study research: general, theoretical knowledge is more valuable than concrete case knowledge, case studies do not contribute to scientific development due to a lack of generalizability, case studies are most useful for generating hypotheses but other research methods are more suitable for hypothesis testing and theory building, case studies tend to confirm the pre-conceived notions of the researcher, and that it is difficult to summarize and develop general propositions and theories based on case studies (p.302). Flyvbjerg addressed the first misunderstanding by pointing out that some types of theoretical knowledge are not available for human affairs research and that concrete case study knowledge is more

valuable than an impossible search for predictive theories that do not exist. He argued that a researcher can generalize based upon a single case and that the usefulness of case studies is not limited to the creation and testing of hypotheses (Flyvbjerg, 2011, p.305). Flyvbjerg asserted that case study research is more likely to discount the pre-conceived notions of the researcher than it is to verify those notions, and that those who suggest otherwise misunderstand the rigors of the qualitative research process. Finally, Flyvbjerg agreed that summarizing some case studies can be difficult but points out that not all cases should be summarized and that, in some circumstances, “the case story is itself the result” (Flyvbjerg, 2011, p.312).

Krefting (1991) and Cypress (2017) suggested that qualitative research should not be evaluated with the same criteria used to evaluate quantitative research because the nature and purpose of qualitative research is different than that of quantitative. She summarized a model of qualitative rigor proposed by Lincoln & Guba (1985) that addressed four components of trustworthiness: truth-value (credibility), applicability (transferability), consistency (dependability), and neutrality (confirmability). Credibility, like the quantitative term of validity, requires the researcher to present an accurate description and interpretation of the research. I established credibility by making regular entries in a reflective journal, member checking, and peer debriefing. As part of my reflective journal, I noted officer emotion, tone of voice, and body language throughout the interview. During data analysis, I used these reflective journal notes to contextualize the transcripts. Transferability (similar to external validity) refers to the ability to apply research methods and findings to multiple groups. I established transferability by providing extensive descriptions of the population, demographics and geographic

boundaries of the participants in the study (Thomas & Magilvy, 2011). Dependability, similar to the quantitative term reliability, refers to the ability of a researcher to follow the methods and decisions made by the original researcher of the study. I established dependability by providing an “audit trail” describing the specific purpose of the study, how and why participants were selected for the study, the data collection process, an explanation for how data were manipulated for analysis, a discussion of the interpretation and presentation of research findings, and communication as to how data was determined to be credible (Thomas & Magilvy, 2011). In addition, an experienced qualitative researcher regularly monitored my coding and analysis.

Although the evaluation standards proposed by Lincoln & Guba (1985) are considered the “gold standard” for determining quality in qualitative research, the concept of validity needs additional definition to allow it to be readily translated from quantitative to qualitative research (Whittemore, Chase, & Mandle, 2011, p. 527). For this study, I used the following techniques to diminish identified threats to validity: “design considerations” through the use of triangulation of sources, “data generating” through the use of articulating data collection decisions, “analytic” by articulating data analysis decisions, and “presentation” by providing an audit trail, thick descriptions, and acknowledging the researcher perspective (Whittemore, Chase, & Mandle, 2011, p.533). Thick description is operationally defined as providing detailed descriptions, including context and examples of raw data, in order to allow the researcher to make informed decisions about the transferability of findings (Houghton, Casey, Shaw, & Murphy, 2013; Lincoln & Guba, 1985; Stake, 1995).

I avoided “narrative fraud” such as overstating weak evidence, ignoring local effects, or picking data that support a specific position through the following measures: triangulation of data sources, use of caution when making generalizations, robust use of description so that readers can interpret the information along with the researchers, and by sharing a provisional analysis with stakeholders (homicide detectives) to allow for feedback and alternative explanations (Cousin, 2005, p.426). In addition, direct quotations were used to provide insight into the thoughts of the study participants. I also searched for alternative explanations for emergent findings and considered the contradictions before drawing conclusions (Patton, 1999).

### **Informed Consent and Human Subject Protection**

I followed the guidelines of the University of New Mexico’s Human Research Protections Office and Institutional Review Board for consent procedures and protection of human subjects. The University of New Mexico’s Office of the Institutional Review Board reviewed and approved this study. Additionally, Albuquerque Police Chief Gorden Eden provided a letter of cooperation approving the data collection inside of APD. I sent requests for interviews to individual work emails and work addresses, which are available to the public. When a potential participant responded that they were interested in participating, I scheduled an appointment to undergo informed consent. I was the only person to obtain consent from potential participants and am trained and certified in the ethical treatment of human participants in research studies as taught by IRB courses. In order to ensure privacy, the interviews were held either in a private office with a secured door at the Albuquerque Police Department, a private room / office with a secured door at a location chosen by the participant, or via the telephone. I provided participants with a

consent form and a form describing the study procedures and potential risks in detail to the potential participant. The form also detailed the steps taken to protect the privacy and confidentiality of those who volunteered to participate in the study (National Research Council, 2003). I invited participants to ask questions prior to providing consent. If a potential participant was unsure about participation, I gave them a copy of the consent form with my contact information and invited them to call if they decided to participate. Once informed consent was obtained and the appropriate form signed, I scheduled an appointment for an interview with the participant. At each study encounter, I reminded participants that they had the ability to withdraw consent at any time during the study. I filed the consent forms in a locked cabinet in a locked building, away from any material with personal or sensitive study data.

### **Research Setting**

I conducted this study in Albuquerque, New Mexico. According to the Federal Bureau of Investigation Uniform Crime Reports (UCR), violent crime in both the state of New Mexico and the city of Albuquerque increased at a rate greater than the national average during 2015 (Kaplan & Perez, 2016). Violent crime is defined by UCR as murder, manslaughter, rape, robbery, and aggravated assault (Kaplan & Perez, 2016). In New Mexico, there were 656.1 violent crimes per 100,000 residents in 2015, which was an increase of 9.8 percent over the previous year (Kaplan & Perez, 2016). This increase was significantly larger than the average increase of 3.1 percent that was experienced nationwide (Kaplan & Perez, 2016).

The Albuquerque Police Department (APD) is the largest municipal police department in New Mexico. As of November 25<sup>th</sup>, 2015, APD had 841 sworn officers

and 609 civilian employees (Alexandar Weiss Consulting, 2015). The department serves a population of over 556,000 people (United States Census Bureau, 2013). APD has five major bureaus: Professional Accountability Bureau, Field Services Bureau, Administrative Support Bureau, Investigative Bureau, and Special Services Bureau (Alexandar Weiss Consulting, 2015). Under the Investigative Bureau, the department has four specialized units responsible for investigating violent crime: Armed Robbery Unit, Sex Crimes Unit, Crimes Against Children Unit, and Homicide Unit (Violent, n.d.). Although the department divides the city into six separate area commands, a single APD Homicide Unit investigates crimes in all of the area commands.

Officers join the APD Homicide Unit through a competitive process that includes an application, written exam, and oral interview. Although a transfer to the unit comes with the title of detective and a gold badge (to replace the silver badge worn by non-detective officers in the department), there is no increase in hourly pay for those accepted to the unit. As of November 2015, the APD Homicide Unit consisted of 7 detectives and one sergeant (Alexandar Weiss Consulting, 2015.) Detectives in the homicide unit tend to be male, divorced at least once, are between the ages of 25 – 35, have some college, and have at least five years of police patrol experience prior to becoming a homicide detective. Sergeant Elizabeth (Liz) Thomson was supervisor of the unit at the time of data collection.

From 2005 through 2014, Albuquerque averaged 41.3 murders per year (City-data.com, 2016). The APD Homicide Unit investigated only 28 homicides in 2014, down from an all-time high of 70 homicides in 1996 (Boetel, 2015). APD officials did not know the exact cause of this decrease in homicides, but attributed it to several things



including improved medical care, good police work, social programs, or the bodies being found outside of city limits (Boetel, 2015). In a January 12<sup>th</sup>, 2015, interview with the *Albuquerque Journal*, Sergeant Liz Thomson stated that she believed the credit for the decrease in homicides belongs to the medical first responders and emergency department employees. “People are the victims of violent crime at a high rate, but less people are dying as a result of their injuries,” advised Thomson. She advised that her unit responded to a “significant number” of violent crimes in 2014, although the exact number was not available (Boetel, 2015). Albuquerque Mayor Richard Barry said that good police work and the success of education, homelessness, and addiction programs in the city contributed to the decrease in homicides in 2014 (Boetel, 2015). Although the exact figures are not known, the data from this study suggest an incidence of approximately 20 people annually who are victims of violent crimes and would have cases impacted by a legal fiction statute.

Between the years 2005 and 2014, Albuquerque’s average number of violent offenses per 100,000 population was 851.8 (Department of Justice, n.d.). The violent crime rate increased more than 9 percent in Albuquerque between 2014 and 2015, although it decreased by 0.1 percent in other cities of similar size (Perez, 2016a). In 2015, the APD Homicide Unit investigated 46 murders (Perez, 2016b). This number does not include suspicious deaths and non-murder homicides such as fatal shootings by police officers or deaths from self-defense. Mayor Barry said in a statement that the 2015 increase in murder rates was not acceptable and that he believes repeat violent offenders contributed to the increase (Perez, 2016b). The city recently hired outside consultant Peter Winograd to help determine the cause of the violent crime increase (Perez, 2016a).

## **Sample Case Selection**

The units of design for this research were two violent crimes cases assigned to the Homicide Unit of the Albuquerque Police Department. I selected the cases from violent crime investigations conducted by the APD homicide unit between 2000 and 2014. I included cases involving one or more violent crimes where the victim had been declared dead 72 hours or more after the crime was committed, a known suspect was identified by the investigating officer, and the police file contained a finalized report from the Office of the Medical Investigator determining the manner of death to be criminal homicide. I excluded cases involving sensitive populations (offenders under the age of 18, prisoners, and victims or offenders with a documented mental illness) were excluded from consideration.

I chose to eliminate cases in which the victim was pronounced medically dead up to 72 hours after the crime was committed. As this is a poorly understood and little investigated phenomenon, there is currently no literature addressing a required time period for a criminal act to be defined as a delayed criminal homicide. I made the decision to exclude cases in which time of death was within 72 hours of the initial criminal act causing the terminal injury based on my clinical experience working within a medical setting, and my professional experience as a police officer. Drawing from these two professions, I determined that criminal homicides in which the death occurred within 72 hours would likely have a higher occurrence in which medical activities such as surgical interventions would obfuscate the cause and medical pronouncement of death of the victim. This 72-hour window allowed for better clarity regarding the implications of the delayed pronouncement of medical death, which was the purpose of this study. I

limited the number of selected cases to two as there was a risk that selecting additional cases would place an undue stress on the interview participants and the participating police department.

I used purposive case selection to select the cases for this research. Purposive sampling is operationally defined as selecting information rich cases that will best answer the question being studied (Patton, 2015). Researchers Seawright & Gerring (2008) note that random sampling is not a viable option for a very small sample as the results may be unbiased but not at all representative. For this research, I used diverse case method sampling (similar to maximum variation or heterogeneity sampling) to enhance the representativeness of the chosen sample. The primary objective of this selection method is to achieve maximum variation by selecting at least two cases that represent the diverse values of specific variables (Seawright & Gerring, 2008). The diverse characteristics sought in the selected cases were as follows: age of victim, race of victim, age of offender, race of offender, relationship between offender and victim (offender known to victim / offender not known to victim), weapon used in crime (firearm / other weapon), location in city (area command) where crime was committed, and the length of time that the primary investigating detective served on the homicide unit. In order to identify the diverse values, I constructed a matrix of the varying characteristics among the eligible cases, identified a selection of cases that were least similar from one another based on their varying characteristics, and then chose two cases that contained the most rich detail and information in order to best answer the research questions being studied. The strength of this sampling strategy is that any common patterns that emerge from the diverse cases are of particular interest and value in identifying the shared aspects of the cases (Patton,

2015). The two selected cases best represented the totality of the cases that met the exclusion criteria because of the diverse characteristics of the criminal acts and victim injuries, the variety of victim and offender demographics, and the differing investigating officers. The two selected cases also had contrasting lengths of time between when the victim was injured and when he was pronounced medically dead (less than one month in one case and more than 18 months in the other.)

### **Data Collection**

According to Yin (2014), data collection in case study research should use multiple sources of evidence, use a case study database, and maintain a chain of evidence. Case study evidence may stem from six different sources: documents, archival records, interviews, direct observation, participant-observation, and physical artifacts (Yin, 2014). Sources of evidence for this research were archival records, documents and interviews. Strengths of using archival records and documentation as sources of evidence include that they are stable, unobtrusive, specific, and broad (Yin, 2014). However, both can be difficult to retrieve and have the potential for bias if the author was biased or it is collected incorrectly (Yin, 2014). Appendix A summarizes the forms of data used in this research.

Once I had identified the cases to be used, I collected data from the case files of the APD Homicide Unit. The case file contained the police reports written by the initial officers on scene, the notes and reports of the investigating officers, witness statements, medical records for the victim, details about collected evidence, background information on the victim, the offender, and potential witnesses, diagrams of the crime scene, and crime scene photographs. I then collected additional data pertaining to the selected cases

from the following sources: media and social media, booking records, court records, and other legal documents. I also obtained data from the autopsy reports from the Office of the Medical Examiner; a finalized copy of the report was included as part of the police investigation file. I used caution when attributing information obtained from social media data sources (Facebook and Twitter) as it is possible for a person to pretend they are someone they are not and noted when data could not be confirmed by a non-social media source (Henderson, 2011).

**Interviews.** I used a purposive sampling strategy combined with snowball sampling. After the data from archival records and documents were collected, I requested interviews from all officers who responded to or investigated the crime. In qualitative research, interviewing is used to generate data from individuals or groups using structured, semi-structured, or unstructured approaches to questioning (Jackson II, Drummond, & Camara, 2007). A significant amount of qualitative research stems from interviews as it allows researchers to access subjective experiences and attitudes and allows past events to be studied by interviewing people who participated in the event (Peräkylä & Ruusuvoori, 2011). This research used semi-structured interviews following the general guidelines of establishing rapport and asking open-ended questions (De Chesnay, 2015). I asked additional interview questions as they emerged from my conversation with the interviewee (DiCicco-Bloom & Crabtree, 2006). An interview guide appears as Appendix B to this document.

The interview is one of the most important sources of case study evidence (Yin, 2014). Strengths of using interviews as a source of evidence is that they can focus directly on case study topics and can be insightful and provide explanations along with

personal views. Possible weaknesses of interviews are that there may be bias due to poorly articulated questions, there may be response bias or inaccuracies due to poor recall, and the interviewee may provide answers that the interviewer wants to hear (Yin, 2014). Case study interviews should resemble guided conversations rather than direct questioning (Yin, 2014). For this research, two 1- hour interviews were scheduled with each participant. A second interview allowed time for clarification and follow up questions; it also helps insure that the views of the participants were accurately captured and confirmed with the participants through member checking of preliminary analysis from the first interview (Thomas & Magilvy, 2011). The interviews were semi-structured and the few open-ended questions that were asked stemmed from the information contained in the case file (see Appendix B for interview guide). I modified questions during the interview process to adapt to the information obtained in the interviewee's responses. If the interviewee verbalized he or she was unable to answer case specific questions, I modified the interview questions to be non-case specific. The participant completed a brief demographic questionnaire prior to the start of the interview (see Appendix C for demographic questions). The demographic questionnaires were stored in a locked file cabinet within a locked building and were destroyed after the conclusion of the final data analysis.

In order to minimize the risk of harm due to a breach of confidentiality, I administered the demographic questionnaire and interviews in a private setting of the officer's choice and coded all interview data numerically to prevent identification of the participant. I assured participants were assured that all records would be kept confidential in research files located in a locked office in a locked building and entered into a

password – protected computer behind a secure and maintained firewall. Breach of confidentiality was highly unlikely because all personally identifying information was kept separate from the data collected and was linked only by a master subject identification list maintained by me. I took handwritten notes during each interview. I transcribed the notes on a password – protected computer immediately after the interview and then destroyed the handwritten notes. I audiotaped the interviews when permitted by the participant. The recorded tapes and transcriptions were destroyed after the conclusion of the final data analysis (DiCicco – Bloom & Crabtree, 2006). No data was collected on video recordings or via photographs. No data was transmitted or stored via the internet.

### **Data Analysis**

Data collection and data analysis occur simultaneously in case study research (Stake, 1995). I used applied thematic analysis and matrix analysis (Averill, 2002; Creswell, 2013; Lissle, Carlson, & McKenna, 2004). During analysis, I used an inductive approach meant to identify patterns in the data using thematic codes. I began analysis with a detailed description of the cases, individuals, and contextual setting (Creswell, Hanson, Clark, 2007; Creswell, 2013). Interviews were transcribed by a Collaborative Institutional Training Initiative (CITI) qualified transcriptionist and I compared the transcripts against the audio recordings randomly to check for accuracy. I also added in my reflexive notes when appropriate to supplement each interview, providing contextual data such as participant emotional cues not evident in the transcribed documents. Once all interviews were accurately prepared, I initiated the analysis process by reading and re-reading the interviews in an iterative process until I was fully immersed in the data. In these readings, I observed the data for emerging patterns, categories, and themes.

One challenge of coding qualitative data is that coding can lead to “decontextualisation”, making the true meaning of the data difficult to ascertain (Baker, 2010, p. i31). I addressed this challenge by using Tesch’s eight steps in the coding process (Tesch, 1990).

1. I read all transcriptions carefully in order to “get a sense of the whole” and took notes as ideas were formed.
2. I chose one document (i.e., one interview), made a note of each topic and wrote each identified topic in the margin of the document.
3. After this has been done for three sets of data, I made a list of all topics. I compared the topics and drew lines between similar topics.
  - a. On a separate piece of paper, I clustered together similar topics and formed the topics into columns. I chose a name for each cluster of topics that best described the overall topic.
  - b. I then created a new list that contained the following columns: major topics (topics highly emphasized by participants), minor topics (topics less emphasized by participants), and unique topics. The level of emphasis was determined by the frequency the topic was mentioned and the emotional impact of the topic on the participants. Emotional impact was determined by the number of verbal and non-verbal emotional cues provided by the participant during the discussion about the topic. Unique topics were topics that occurred rarely and had low emphasis but were important to my research.



4. I took the list and went back to the data. I abbreviated the topics as codes and wrote the codes next to the appropriate segments in the text. I then checked to see if new categories or codes emerged that did not appear in the topics already identified. I kept researcher notes of the ideas that came to mind as I completed this preliminary organization of data.
5. Next, I worked to refine my data organization system by reviewing each document for the most descriptive wording for each topic and creating categories from the related topics. I looked for ways to reduce the total number of categories by grouping together topics that were related.
6. I determined the final abbreviation for each category and alphabetized the codes. I verified that I had not accidentally given two different meanings to a code.
7. I assembled the data belonging to each category in one place and performed a preliminary analysis by looking at the data one category at a time (Tesch, 1990). For each data set, I identified and summarized the content for each category. I looked specifically for shared content, unique content, confusion and contradictions in content, and missing content pertaining to my research question.
8. I recoded the existing data as necessary.

When data contained more than one theme, I coded the data as a unique occurrence for each theme. I developed a matrix to organize and provided a visual representation of the data so that patterns could be seen and communicated clearly (Liddle, Carlson, & McKenna, 2004). Matrix analysis is a “valuable way of displaying,

interpreting, evaluating, and disseminating study findings” (Averill, 2002, p. 856).

Matrices allow for the systematic notation and evaluation of interview responses and also allow for an outcome oriented matrix display of information (Averill, 2002). For this research, a matrix was also used to organize and display findings and to view patterns across rows (Liddle, Carlson, & McKenna, 2004).

### **Summary**

A qualitative design was appropriate for this research as it examined an issue that needed to be explored and the issue had variables that were not easily measured (Creswell, 2013; Patton, 2015). Case study research was the best method for this inquiry because the research questions addressed how something was occurring, the researcher had no control over the events, and the focus of the study was on a contemporary phenomenon that is occurring in a real-world context (Yin, 2014). The use of case study research also allowed for information to be obtained from multiple sources (Creswell, Hanson, Clark, 2007; Flyvberg, 2011). I used narrative format to provide detailed descriptions of each case. I used tables to illustrate nontextual forms of information.

## **Chapter 4**

### **Findings and Interpretive Themes**

The previous chapter detailed the methodology used to conduct qualitative case studies of two homicide investigations in which the victims were not immediately declared dead. This chapter includes the following components: data collection, major themes and subthemes, and data matrices. The purpose of this study is to identify how the medical definition of human death is used in the criminal justice system and to determine how this definition affects the prosecution of criminal homicide. In this analysis, I identified patterns in the data using thematic codes, then clustered those codes into major themes and sub-themes. This chapter will report the results of my analysis in both narrative and matrix form. I identified the following major themes: pursuit of justice, frustration, and family. Appendix D displays the themes and sub-themes from all data examined. I used gender specific pronouns and job titles (officer and detective) interchangeably throughout this chapter in order to protect the anonymity of the officers interviewed.

### **Case Selection**

The units of design for this research were two violent crimes cases investigated by the Homicide Unit of the Albuquerque Police Department. To select the two cases used in this study, I identified 685 cases that the Homicide Unit investigated between the years of 2000 and 2014. I then eliminated the cases that did not meet my inclusion criteria and cases that involved sensitive populations (offenders under the age of 18, offender or victim was a prisoner, and victims or offenders with a documented mental illness). The 26 remaining cases involved violent crimes in which the victim had been declared dead

72 hours or more after the crime was committed, had a known suspect that was identified by the investigating officer, and had a finalized report from the Office of the Medical Investigator determining the manner of death to be criminal homicide as part of the case file. I reviewed the 26 cases for diverse characteristics as follows: age of victim, race of victim, age of offender, race of offender, relationship between offender and victim (offender known to victim / offender not known to victim), weapon used in crime (firearm / other weapon), location in city (area command) where crime was committed, and the length of time that the primary investigating detective served on the homicide unit. I then selected two diverse, information-rich cases that would most likely best answer the questions being studied and had lead detectives still employed by the Albuquerque Police Department. Appendix E displays the diverse characteristics of the selected cases.

After the cases were selected, I collected additional data pertaining to the cases from the following sources: interviews with law enforcement officers who worked on the selected cases, media and social media, booking records, court records, and other legal documents. I also obtained data from the investigation and autopsy reports from the Office of the Medical Examiner (OMI), which were part of the case file. Appendix A displays the sources of data and provides an overview of the content found in each type of data.

### **Case 1 Summary**

In the fall of 2014, a young adult male was shot multiple times while he sat in his truck at a park on the west side of Albuquerque. The victim had been lured to the park by text messages from the offender and two other males, pretending to be a girl wanting to

meet the victim. When the victim arrived at the park, the three males attempted to rob the victim at gunpoint. The victim was shot multiple times while trying to escape in his vehicle. A 911 emergency call advising of “shots fired in the area” triggered the dispatch of police officers to the crime scene. The initial officers who arrived reported that they found a “male subject with an apparent gunshot wound to the head” inside of a truck. The officers applied pressure to the wounds and a tourniquet to one of the victim’s arms in order to stop the massive blood loss.

Forty-four days after the shooting, the offender was arrested and charged with aggravated battery with a deadly weapon or great bodily harm and attempted murder. The offender and the two other males who were with him at the park were also charged with attempt to commit a felony robbery. The offender was released from jail on bond after his arrest. More than two years later, he plead guilty to aggravated battery with great bodily harm and was sentenced to five and a half years in prison. Just one month after the sentencing, the victim was pronounced dead.

### **Case 2 Summary**

In the summer of 2014, a male called the police when he found his grandfather minimally conscious and barely breathing on the bedroom floor of his house. Three days prior, the elderly victim had been severely beaten and left incapacitated until he was found by his grandson. Thirteen days after he was beaten, the victim was pronounced dead at a local hospital. OMI listed the manner of death as homicide caused by blunt trauma. The day after the victim was pronounced dead, two suspects were arrested for first degree murder, kidnapping, robbery and other lesser charges. Three other suspects were arrested for non-violent crimes associated with the robbery. All plead guilty to

lesser crimes and the longest sentence given to any of the offenders was seven years in prison.

## **Demographic and Descriptive Data**

### **Demographic Characteristics**

There were 2 victims, ages 18 and 65, and three offenders. All individuals directly involved in the crimes, victims and offenders, were male. Appendix F provides victim and offender demographic data, obtained from the criminal case file. I interviewed 5 officers, ranging in age from late twenties to late fifties, both male and female, and ranging in other characteristics including race/ethnicity, education (all had post-high school education), and years of law enforcement experience. Officer demographic and experience details will not be provided in order to protect the confidentiality of the participants. Four of the five officers interviewed agreed to have their interviews recorded. During the interview that was not recorded, I took detailed hand-written notes and transcribed the notes immediately after the interview.

### **Study Results**

Three major themes emerged from the data: pursuit of justice, frustration, and family.

#### **Theme: Pursuit of Justice**

The theme of pursuit of justice was identified 434 times in the data. This theme was found throughout the case files, the officer interviews, and in the family communications with media and social media. I identified the following subthemes: antecedents to criminal homicide (234 occurrences), retributive justice (178 occurrences), divine justice (17 occurrences), and value of human life (5 occurrences).

**Subtheme 1: Antecedents to criminal homicide.** The subtheme of antecedents to criminal homicide refers to the actions and circumstances that occurred up to the moment that OMI determined the death of the victim to be the result of homicide. These antecedents include the elements of the crime, the length of time between the crime and pronouncement of death, the suffering of the victim prior to being declared medically dead, and the determination (by OMI) that the death was the result of a criminal act. Both case files contained extensive details about the condition of the victim at the crime scene, at the hospital, and prior to being pronounced dead. In addition, the reports issued by the Office of the Medical Investigator provided explicit and detailed information about the physical injuries of the victim, the medical interventions made in an effort to keep the victim alive, and the actions taken by family members prior to the death of the victim.

There was no variation in the data as to the content of the antecedents; officers, family, media, and the OMI agreed on the facts of what occurred prior to the injured person being pronounced a victim of criminal homicide. There was, however, significant variation in the interpretation and importance given to these antecedents. Per their training, officers were very factual and non-emotional when discussing the antecedents of a case. When asked about their involvement in a selected case, all officers quickly provided an overview of their involvement in the case, details about the victim and the offender(s), details about the injuries of the victim, and their official role in the investigation. All officers concluded their responses to this question by stating how the offender(s) was identified and arrested. The officer's words and affect during this portion of the semi-structured interviews was almost identical to the precise, professional, and unemotional content found in their reports. This was in stark contrast to how officers

spoke about the events that occurred after an offender was charged with criminal homicide. When not speaking about antecedent to the crime, officers provided less precision regarding the factual information. They spoke with high emotion when discussing their perceptions of the suffering experienced by the victims while waiting to be declared dead, and by the families while waiting for the criminal justice system to punish the offenders.

The investigator from OMI also wrote extensively about the antecedents to criminal homicide in both case reports. In the autopsy noted for Case 2, an OMI investigator wrote the following: “(Victim’s Name) was found down in his home, minimally conscious and barely breathing, with blood on his face. *It is unclear when he was last known to be alive...*” [emphasis is mine- MW]. This last ambiguous sentence is surprising in that it was written by a medical doctor and differs from the precise technical writing about the known time of death (the patient was declared dead in a hospital) found in the other OMI documents. It also contradicts the well documented fact that the patient had not been declared medically dead prior to being transferred to the hospital; the medical investigator acknowledges this in his subsequent note about the victim being transferred to an area hospital where he was intubated and placed on a mechanical ventilator: “He remained comatose but still responded somewhat to painful stimuli on June 2, but eventually lost that ability and remained unresponsive. On June 5, the family opted to withdraw active care and pursue comfort measures. (Victim’s Name) was extubated and died soon after.” This statement is in conflict with the previously highlighted quote, in which it is noted that “it is unclear when he was last known to be alive.”



Media and social media comments made by family members of the victims, however, rarely mentioned any antecedents to criminal homicide except to use social media to communicate the basic facts of the crime immediately after the crime occurred. Instead, comments addressed the suffering of the victim and the family after the crime but prior to the victim being declared dead and the perceived injustice of the sentences given to the offenders. The antecedents that were presented matched those provided by officers and in OMI reports, but the presentation was highly emotional and the antecedents were offered as a rationale for subsequent cries for justice. A family member of the Case 2 victim posted a graphic picture of the bruised and intubated victim in the hospital, prior to being declared medically dead. The associated comments expressed “hope justice will come soon for him” and “prayers for justice” to be served.

The criminal justice system relies upon the medical definition of human death during the critical time period between when a violent crime has been committed and when an offender is charged with that crime. It is during this time period that development of the criminal act of homicide occurs: a violent crime becomes more than a horrible act of violence; it becomes the taking of a human life. The antecedents to the criminal homicide showed that not all deaths are equal; what occurred after the crime was committed but before the victim was pronounced dead are conditions which determined the quality of the death and subsequently determined what was needed to obtain justice for that death. The family and friends of the victims clearly considered the characteristics of these antecedents when deciding how to define justice in these cases. Media and social media communications detailed the pain and suffering of the victim, the medical actions taken to keep the victim physically alive, the loss of personhood by the victim, the

actions and decisions of family pertaining to the medical care of the victim, and the impact of the victim's delayed death on the family.

In both cases, the medical definition of human death was used to determine the actual criminal act that was committed and the charges that were to be filed. A victim being declared medically dead also determined which investigators were responsible for the criminal investigation as the police department had one group of investigators who were responsible for violent crimes that did not result in death and a different group who were responsible for cases in which the violent crime did result in death. In both of the selected cases, the homicide unit was called to the crime scene because the victims were identified as likely to die by officers or medical professionals on scene.

In both cases, the medical definition of human death was used to trigger specific actions in the criminal justice system. For example, the investigation and subsequent actions of the Office of the Medical Investigator (OMI) only began after the victim was declared dead by a medical professional. These actions included a death investigation (including peer review) and the determination of the cause and manner of death. Officers did not question the role or timing of OMI; in the same breath they spoke about their patient being declared medically dead before OMI began their investigation.

The medical definition of human death was also used to determine which criminal act the offenders will be charged with and the timing of those charges. During their interviews, two homicide detectives brought up a recent case in which a victim had been pronounced dead by medical professionals but the Office of the District Attorney refused to allow the offender to be charged with criminal homicide because medical equipment continued to pump the victim's heart and inflate his lungs until his organs could be

harvested for transplant. The officer stated that the District Attorney would not allow the offender to be charged with murder because medical equipment was keeping the victim's heart beating until it was time to harvest organs for donation; the District Attorney was not sure if the victim should be considered legally dead:

And they were actually waiting to find a recipient for his heart. So...this person was arrested and taken to jail and he bonded out within a day, and we're sitting there waiting with the knowledge that he (victim) has been pronounced dead but we couldn't charge murder. There is this gap...So what ended up happening was once his heart was harvested and he no longer had any life, a warrant was written and he was taken to jail on murder. But there was that gap in time where he could have (hurt someone else).

Another officer sarcastically commented that he now asked if the victim was "dead enough" before he charged the offender. "He (district attorney) said 'I've never had a case like this and yes, this is something that the law doesn't address'...So, we just had to wait until the heart was harvested to charge (the offender)," said a detective.

A senior detective spoke about the antecedents of criminal homicide and commented that all officers occasionally have cases that "linger, and don't go anywhere, because the person didn't die." He said that these cases were particularly frustrating because everyone knows the person was gravely injured and their life was completely altered by the injury:

It's terrible to say this, but it would have been better if they had died. It would have been better for them, their family, and then for the case because the person

would have suffered some actual consequences...the law doesn't really match what is going on.

The concept of how conditions of death impacted the pursuit of justice was also found in the media and social media statements made by the family and friends of victims when addressing if justice was found in the offender's criminal sentence. In a televised interview with a local news station about the inadequacy of the sentence given to the offender, the mother of the victim in Case 1 spoke not of his actual moment of death but rather about his circumstances after the night he was injured. "He was trapped in his body," she said. "(He) never spoke another word from that night on." A family member of a victim also addressed the conditions of death when posting about her father, "It's ok to let a sweet old man lay in a pool of his own blood and do nothing about it!" and "Daddy's last weeks on Earth are weighing heavily on my heart today!" On social media, family and others commented on the suffering experienced by the Case 2 victim prior to death more often than any other topic.

The timing in which the medical pronouncement of death is made was mentioned frequently and with a high level of emotion by officers during their interviews. They spoke about their frustration of not being called out to investigate a crime because the victim had not yet been declared medically dead even though it was "obvious" that the victim's injuries were so severe that they were eventually going to die. One officer described getting called to a homicide scene hours after the victim was taken to the hospital because the officers sent to the call were waiting for the victim to be declared dead before calling out homicide detectives:

We were seeing delays of 4 hours, 6 hours to call out investigators because (patrol officers) were being told by hospitals, ‘They’re category 1. They’re going to die.’ So they’re waiting, waiting, waiting to call out homicide because the person isn’t dead. So we are saying ‘Whoa, whoa, who, you cannot do that. You either call out homicide or you call out an impact detective to get the ball rolling because those first few hours are critical in solving them.

In both of the examined cases, the first officers who arrived on scene made the decision to call the homicide detectives to the scene (indicating there was awareness of the potential lethality of the crime), although neither original report reflects this awareness. Prediction of death was an important condition in these cases because it resulted in the start of the criminal homicide investigation. The primary homicide detectives wrote that they had been advised the victim was not expected to survive the injuries in the initial case notes. In Case 1, this notification initially came from the officers on scene. In Case 2, the detective wrote that they were told by the hospital that the victim had several broken ribs, a punctured lung, a brain bleed, severe dehydration, and kidney failure; the nurse advised him that the victim was only going to receive comfort care. “(Nurse) stated that Richard was going to die, it was just a matter of when,” wrote the detective. Another homicide detective spoke about the consequences of being unable to predict when a victim was going to be declared dead in the face of 2015 Bernalillo County procedure changes requiring aggravated battery cases to be put on an accelerated timeline in order to relieve overcrowding in the jails:

It’s a lot of pressure... We don’t know if or when he is going to die. He is very, very, very severely injured. They (District Attorney’s Office) are trying to meet

these deadlines, so they come up with a plea to meet this deadline. And then what happens? He dies.

Similarly, the time between when the victim was pronounced dead and when the victim was identified as a victim of homicide was also a condition of death that two officers spoke about at length. In these cases, the death of the person (and the subsequent OMI investigation) was actually the start of the police homicide investigation because the police had not been aware of the death. One officer spoke about a case he had recently been assigned in which no officers had been involved until OMI had determined the manner of death to be strangulation. He commented:

So that does affect our case, because if it had been a full call out (at the time of death), we could have preserved some evidence. I'm having to go back and interview individuals who last saw him, get into his cell phone... some of those items can't be recovered.

One homicide detective explained why she believed current criminal law did not consider conditions of death and needed to be modified:

To me, if you are so severely injured that you, as a person, don't exist any longer, you are unable to speak, you are unable to walk or move, you are unable to think as you thought before, you are unable to conduct any of your life activities that you did before. To me, I think the law should view that person as dead. Maybe there would be another word for it. Criminally speaking you, as a crime, have taken that person's life away.

However, multiple homicide detectives identified that the patient's declaration of medical death had some type of impact on the prioritization given to their cases. One officer explained how prioritization works at all levels of the criminal justice system:

Think of it this way. An impact (non-homicide) detective, they have to prioritize their cases. So they have auto burglaries, burglaries...so the highest priority that they have is an aggravated battery with a serious injury. That goes to the top of their list. It goes to the bottom of ours. We have to prioritize; our most serious cases are the people who have died...And then the District Attorney's office has said 'We're going to prioritize the most serious cases to prosecute.' Well, what the law says is the most serious cases for the District Attorney's office are murder...If it's an aggravated battery with great bodily harm, it's a lesser of a priority.

**Subtheme 2: Retributive justice.** The subtheme of retributive justice, the belief that a person who commits a criminal act deserves to suffer a proportional punishment, was found in officer interviews, newspaper articles, and social media postings. Family and friends of victims made multiple highly emotional posts to social media about the need for the offenders to be punished and their disappointment in the punishment given by the criminal justice system. Multiple posts written after the cases were sentenced indicated a desire for physical suffering for the offender. "Hopefully his stay in prison is a rough one", wrote a family member of the victim in Case 1.

Officers spoke with high emotion about their desire to have the offender suffer in exchange for their crime when the criminal justice system "failed". In the interviews, officers defined the amount of justice provided to the violent crime victims and their

families as the amount of pain and suffering experienced by the offender. The officers clearly preferred to have this justice served in the form of a formal punishment by the criminal justice system, instead of having other officers or family members seeking justice through violence. All officers expressed feelings of betrayal when the judicial system did not live up to their expectations. One officer tearfully spoke about being disappointment in the criminal justice system:

It really, really, really, really bothers me that as part of the criminal justice system there is absolutely nothing we can do to get justice for these victims and their families....sometimes I wonder if it would have been less devastating if the person had actually died. ... I think that if justice is quicker, I think that the healing, grieving process can sort of happen quicker and maybe more completely.

**Subtheme 3: Divine justice.** The subtheme of divine justice was found only on social media and only after the social media contributors expressed disappointment in a judicial decision, such as when an offender was able to post bond and be released from jail or when a plea agreement was made prior to trial. Multiple people commented that, although justice was not served here on earth, it was sure to be delivered later in the afterlife. “When posting about the upcoming trial for the Case 2 suspect, the daughter of the victim optimistically wrote “Here is to a year of justice!” After the plea deals and sentencing had concluded, the same person posted “There is NO justice for Dad in this lying, crude, immoral world!” Another person commented “Justice will only be seen in the afterlife, I suppose. Justice will be His.” A person responded “You are right thou [sic]!!!! Gods got this!!!” Similarly, a family member in Case 1 posted “No one gets passed [sic] god.”



**Subtheme 4: Value of a human life.** Family members in both cases equated the amount of punishment given to the offender as a reflection of the perceived value of the victim's life. Relatives of the victims posted on social media that a drug dealer faces a higher bond than a murderer, writing "Sad that drugs are worth more than a human life" and "A drug dealer gose [sic] away for life but a person killer gets 5 years?????" The mother of one victim spoke with news media about the lack of punishment in her son's case. "They're trying to tell me five and a half (years in prison), that's what my son's life is worth?" she asked. "We just can't, we can't accept it."

**Theme: Frustration**

The theme of frustration was identified 297 times in the officer interviews, the news media, and social media. Under this theme, I identified the subthemes of duty (181 occurrences) and blame (83 occurrences).

**Subtheme 1: Duty.** Throughout their interviews, officers expressed that they felt both the magnitude of their professional role and the weight of their moral obligation to the victim and family. Officers also assumed a level of responsibility when the outcome of the case was not what they felt it should be. All indicated that they had worked hard to get into their position in the homicide unit; one officer spoke of joining the unit after a family member was murdered and others because they felt that being a homicide detective was the chance to try and "right the ultimate wrong." Although I noted a distinct sense of pride when the officers spoke about their work on their cases, there was also a heavy sense of pressure when they spoke about their job. All officers mentioned the strain they felt as they tried to work multiple homicide cases simultaneously; there was obvious frustration at the workload assigned to them as they worried they might not

meet the expectations of the victim's family. "We are already working so, so hard and we have other cases. It's a shame. When you know you have other cases that you can solve and there's not enough time to work them, that's pretty sad," said one officer when discussing her job. Another officer spoke about his struggle to make sure that each of his cases gets the time and attention it deserves: "Sometimes we work 30, close to 40 hours of overtime each week. We do have to sleep or else we wouldn't be able to function. But it's important and we want to do the best job that we can."

Officers also spoke of their struggles to manage heavy caseloads and identified the label of homicide as being key to the priority given a criminal case in an already overburdened criminal justice system. One officer described the process of prioritization for violent crime cases as follows:

We have to prioritize our most serious cases are the people who have died...And then the district attorney's office has said, 'We're going to prioritize the most serious cases to prosecute.' Well, what the law says is the most serious cases for the district attorney's office are murder. So you've got to look at where does it rise in their pile of priority? If it's an aggravated battery with great bodily harm, it's less of a priority...you better be prepared that the system isn't going to take it seriously if they don't die.

Officers expressed frustrations when they spoke of their workload and commented that they were being assigned to work an increased number of cases with less resources such as field officer assistance and administrative support. One detective sardonically pointed out that the homicide unit had fewer officers than the horse mounted unit; another commented that the "dead do not vote" so the homicide unit gets "short-

changed”. Although there were clear frustrations with their positions, there was a convergence in the officer interviews in their clear sense of duty, to the families, to the victims, and to their units.

Although the subtheme of duty was identified primarily in the officer interviews, there were instances where it was also identified in news media and social media. In these instances, people who knew the victims spoke or wrote about the responsibility they felt make sure the “truth was known” about the death of the victim and that justice was obtained for their loved ones. Both family and friends expressed frustration with the judicial system after the homicide. The daughter of a victim posted the following message on Facebook: “Next round of pre-trial interviews this week! No one can piece this together! Too many defendants, too many stories! I don’t think the truth will ever come out!”

**Subtheme 2: Blame.** The subtheme of blame was identified in the officer interviews, media and social media interactions by family members of the victims, and social media postings of the community. On 23 occasions, this blame was accompanied by an anti-New Mexico sentiment. All parties frequently blamed “New Mexico” for the crimes that occurred and the outcome of these cases. Officers spoke at length of loopholes in New Mexico laws that allowed for lenient sentencing of violent crime offenders. They pointed to current sentencing guidelines for attempted murder, which requires a shorter prison sentence than is given for aggravated battery with a deadly weapon, as proof that the state was at fault for the lenient sentencing of criminals in these cases. The District Attorney’s office echoed this sentiment when telling news media that

the offender in Case 1 was allowed to plead to the lesser charge of aggravated battery because it would “translate to more time behind bars”.

Facebook postings echoed an anti-New Mexico sentiment, blaming Albuquerque police officers for corruption that led to weak criminal charges and “New Mexico judges” for allowing lenient sentences for the offenders in both cases. The youngest daughter of the victim in Case 2 posted a tearful video on Facebook stating that her father’s killers “got away with murder” and blames lenient state laws for the situation. Family and friends of the Case 1 victim also posted comments blaming the culture in New Mexico for the perceived lack of punishment received by the offenders; one sibling of a victim posted on social media “NEW MEXICO’S DA, Judges and justice systems are the worst!!! They are only out to help the crimalnal [sic] activity in New Mexico thrive and our story is proof of it!!!”

**Theme: Family**

When examining how the medical definition of human death impacts the prosecution of criminal homicide, it is necessary to examine the role of the family in this process. The theme of family emerged through subthemes of burden, communication, and grief.

**Subtheme 1: Burden.** The subtheme of burden was characterized by the expectations placed on family members throughout the homicide investigation, prosecution, and sentencing. In both cases, law enforcement and medical providers assigned family members significant roles and responsibilities that directly impacted the outcome of the case. Family members were interviewed at length by investigating officers and actively assisted officers throughout the criminal investigation. In Case 1, the

victim's uncle gave detectives information and belongings of the victim that led to the identification of a suspect. In Case 2, the victim's grandson found the victim and called the police to the crime scene. The daughter of the victim also notified the police of the missing wallet and credit cards; this ultimately led to the identification of the suspects.

Officers acknowledged the heavy burden placed on family members to make medical decisions that impacted when a victim would be pronounced dead. Officers spoke of cases in which the family refused to remove life support; a lesser criminal plea was made because there was no way to know how long it would take for the victim to die. In Case 1, the officer said the doctors told the family that the victim was unlikely to have "much" brain function, if he survived, and that it may be better for them to "pull the plug":

Officer: And they refused to pull the plug. I understand their thinking about it. I can't imagine if I had to go through that situation, I wouldn't want to pull the plug on my daughter either. That's why he had stayed alive this long.

Mariah: How would the outcome would have been different if the family had made a different decision?

Officer: That guy (offender) would be doing quite a bit more time.

A different officer commented that he did not think the family understood or recognized the consequences on a criminal case, when the decision was made to leave a victim on life support. He said that in his case, he did not know if they ever will make that connection. "If he passed away, they wanted it to happen more natural than pulling the plug," he said. Officers recognized the burden faced by the family members of victims that are not yet declared dead:

When you see the toll it takes on the family – you have a family member who was criminally injured, but they are not dead, and this goes on for years of taking care of this person. It’s devastating. Sometimes I wonder if it would have been less devastating if the person had actually died. And then justice could have been, at least, quicker and more severe....I don’t look at it as closure. I don’t think those families actually close that off. I think that if justice is quicker, I think that the healing, grieving process can sort of happen quicker and maybe more completely.

**Subtheme 2: Communication.** The data showed that the family members in these cases were responsible for case communication: family provided critical information to the investigating detectives that assisted in the solving of both cases, detectives appointed a family member to serve as a point of contact to provide information to the rest of the family, family members provided medical updates about the victim to the detectives, and family members communicated about their loss and the criminal case in the media and social media. The officers interviewed had varying amounts of interactions with the family, although all mentioned that the primary detectives always tried to appoint one “contact” family member and then rely on that family member to distribute information to the rest of the family. “Every family is different” said one officer. “I really am sympathetic to those families because my (family member) was murdered too...some families, they keep in contact with me and we communicate on a regular basis. They’ll send me a note, send me a card, whatever, a phone call. And then the other ones, not so much.”

Interestingly, the role of the family seemed to far outweigh the role of medical providers in keeping officers advised on the medical status of the victim. Officers were

not concerned that there was no formal system in place for a medical provider to notify them of the death pronouncement of the victim and said they were comfortable relaying on the family for medical updates. One officer did recognize the role that the Office of the Medical Investigator (OMI) played in determining the path of a homicide investigation. In this interview, the officer spoke at length about a current case in which a homicide offender negotiated his plea to domestic violence because OMI had initially ruled the victim's death not to be caused by homicide:

The family was able to get doctors to go back and look at the evidence again, to look at everything. And at that point, the doctor determined she was going to change it to a homicide. By then it was already too late because the district attorney had already offered a deal to the defendant for kidnapping and domestic violence.

Family members also communicated with the public through media and social media. For example, the mother of the victim in Case 1 spoke to the news media after the sentencing of the offender and said that she felt the Office of the District Attorney lied to her, although the article did not specify what she felt was a lie.

**Subtheme 3: Grief.** Although I did not speak with family members directly about grief, the subtheme was present in officer interviews, in published newspaper articles, and on social media. One officer said she attempted to help family members with their grief by informally connecting them with other family members going through similar experiences but that it is not always successful. Officers also pointed out that there were different kinds of grief experienced by family members. In their opinion, the grief following the physical death of a loved one was “better” than the grief that came from

watching a family member who was waiting to be pronounced dead. One officer described what she considers a fate worse than the medical death of a loved one:

If you have to be the parent of a child who was active and good and healthy; wrong place, wrong time and then they get shot or stabbed or whatever and then they're in a hospital bed in a coma for the rest of their life. (You) are just watching them intubated. That's not only affecting the victim whose life was taken. Yeah, they're physically there but you have loved ones that have to see that every day.

In Case 2, family members of the victim openly discussed their grief on social media and made numerous posts of poems about grief and loss. One child of a victim posted, "Some days are worse than others. I cry and I want my daddy. I know he is in a better place now. But miss him terribly." (Zarate, 2015).

### **Conclusion**

When investigating the complex roles the medical definition of human death plays in the criminal justice system and how this definition impacted the prosecution of homicide, I identified the following themes: antecedents to criminal homicide, frustration, and family. I also identified subthemes under each theme that contributed to the overall understanding of the theme and explained the relationships between the themes and subthemes. In the next chapter, I will examine the relationship between these themes and personhood and retributive justice theories.



## Chapter 5

### Discussion

In Chapter 4, I identified three major themes that emerged from the data: pursuit of justice, frustration, and family. In this chapter, I present key findings and recommendations of the study. I conclude this chapter by presenting the limitations and health policy implications of the study as well as suggestions for future research.

#### Key Findings

The Uniform Determination of Death Act (UDDA) requires that all determinations of human death be made in accordance with accepted medical standards. Researchers recognize that this definition has not kept up with advances in medicine and that people who would have previously died from illness or injury can now be kept legally alive as a result of improved medical technology (Allen, 1986; Blank, 2001; Gonzales, 2009; Truog, 2015). Currently, the medical definition of human death is used to define criminal homicide, the killing of one person by another person (Jhaveri, Raloti, Patel, Brahbhatt, & Kaushik, 2014). This study was designed to determine how the medical definition of human death is used in the criminal justice system and how this definition affects the prosecution of criminal homicide. The specific aims of the study were to assess the impact of the medical definition of death on the prosecution of criminal homicide and discuss the policy implications of using the medical definition of death in the criminal justice system.

**Finding 1: Precision in definition matters.** I found that the medical definition of human death causes confusion, delays, and frustration when used in the criminal justice system.

Previous research details the problems associated with prosecuting criminal homicide cases in which the victim is not immediately pronounced dead after injury (Gonzales, 2009; Lin & Gill, 2008; Rosen, 1990; Row, 2004; Wilbanks, 2008). However, neither law nor literature addresses a unique situation identified by two officers during their interviews involving a violent crime victim that had been pronounced medically dead. In this case, the prosecuting attorney refused to allow the offender to be charged with criminal homicide because the victim still exhibited traditional signs of life, but only because medical equipment continued to pump the victim's heart and inflate his lungs until organs could be harvested for transplant. The prosecuting attorney was aware that the victim had been declared medically dead but opined that the victim still exhibited too many traditional signs of life to be labeled a victim of criminal homicide. The refusal of the prosecuting attorney to accept that the victim was dead enough to meet the criteria for criminal homicide resulted in the offender being charged with aggravated battery with a deadly weapon, instead of murder. The offender was quickly released from jail after paying a small bond. A few days later, the victim's organs were harvested and a warrant for murder was issued for the offender.

Under the theme of frustration, I identified the sub-themes of duty and blame. The officers' frustration was palpable when they spoke about waiting for the victim, already pronounced medically dead by a doctor, to *look* dead enough for the prosecuting attorney to agree to the murder charge. Officers felt they had the duty to ensure the offender was arrested and charged with the crime committed; they blamed the prosecuting attorney for refusing to accept the medical pronouncement of death. Pragmatically, a violent offender being charged with a lesser crime that allows for quick release from jail is concerning.

Once released, the offender may commit additional crimes or attempt to flee and officers face additional risks when having to re-arrest the offender at a later point in time. In this case, the release of the offender sent a clear message to officers, homicide survivors, and the community: a known violent criminal was allowed to remain free because medical professionals and the prosecuting attorney could not agree on how to identify the victim as dead.

The medical definition of human death was used to determine if and when a person is designated a victim of criminal homicide. Precision in terminology was critical for this designation, as the designation determined the criminal charges brought against the offender. The literature agrees that the medical definition of human death determines the status assigned to the victim (Gonzales, 2009; Lin & Gill, 2008; Jhaveri, Raloti, Patel, Brahbhatt, & Kaushik, 2014). In this study, the determination of medical death did not change which police unit conducted the criminal homicide investigation or the processes used during the initial investigation. APD policies required homicide detectives to be on the investigation team for all violent crimes involving great bodily harm or death. However, the determination of medical death did directly impact the initial criminal charges brought against the offender. If the victim had not been declared medically dead (and was therefore not a victim of criminal homicide), the offender was charged with a lesser crime such as aggravated battery or attempted murder.

Lack of precision in the medical definition of human death also impacted the prioritization of violent crime cases in the criminal justice system. I identified prioritization of workload as a component of the theme pursuit of justice: when managing their workload, the majority of detectives advised that they did prioritize criminal

homicide cases over the cases in which the victim had not yet been pronounced medically dead. Officers also stated that the cases in which the victim had been pronounced medically dead were a higher priority for prosecution by the District Attorney. I found no previous research pertaining to prioritization of cases by the District Attorney's office in New Mexico or in other states. Literature supports the concept of prioritization of workload by law enforcement officers and identifies the officer's perception of the victim's "worthiness" and police unit culture as factors that impacts this prioritization (Belur et al., 2015; Hawk & Dabney, 2014, p. 1129; Roberts, 2007; Xu, 2008). Existing literature does not identify the medical status of the victim (medically dead or not medically dead) as a factor in case prioritization by officers or prosecutors. This finding is a new contribution to this body of existing literature.

**Finding 2: Temporality is critical.** Violent crime offenders could be sentenced to less time in prison because the victim had not been declared medically dead *at the time* of sentencing.

In one case, the prosecuting attorney decided to allow the offender to plea to aggravated battery with a deadly weapon; the victim had been on mechanical life support for over a year and there was no way of knowing when he would be declared medically dead. The victim was then declared medically dead a few weeks after the plea deal was made but before the offender had been sentenced. The prosecuting attorney asked the court to allow the plea to be revoked and the charge amended to murder but the court ruled that the plea would stand despite the change in the victim's status.

Under the theme of pursuit of justice, I identified the sub-themes of retributive justice and value of human life. Retributive justice becomes unattainable when the

amount of punishment an offender receives is impacted by when the victim is declared medically dead, and not based solely on the actions of the offender. This results in frustration for the officers who feel that punishment of the offender is necessary in their pursuit of justice. For the family members who equate the amount of punishment given to the offender as a reflection of the value of their loved one's life, this finding is devastating.

The literature agrees that advances in medicine may result in violent crime offenders receiving reduced punishment because either the victim is not declared medically dead at the time of the court proceedings or the victim is declared medically dead long after the violent crime had been committed (Gonzalez, 2009; Lin & Gill, 2008; Rosen, 1990). There was no dispute as to whether the violent actions of the offender had caused the death of the victim; medicine had simply been able to keep the victim medically alive slightly longer than the prosecuting attorney was willing to allow the case to stay unresolved. There is societal consensus that the act of criminal homicide justifies depriving the offender of a substantial portion, if not all, of their own life through criminal sentencing (Gonzalez, 2009).

**Finding 3: Profound emotional processing precedes medical death.** I found that both homicide survivors and law enforcement officers felt the true loss of the victim occurred before the victim was pronounced medically dead.

For family, this emotional processing was clearly evident in the theme of grief. When speaking to the news media after the sentencing of her son's killer, a mother expressed that she had actually lost her over a year ago although he was only recently pronounced dead. The daughter of a victim posted on Facebook a picture of her father in

his hospital bed, unconscious and intubated. Under the picture, she wrote that the doctors had told her that her father would most likely never wake up and that she was struggling to cope with her great loss.

For officers, this emotional processing is found in the themes of frustration and pursuit of justice. During their interviews, officers repeatedly spoke about cases they continued to work because they considered the victim to be a victim of homicide although they did not know if or when the victim would be pronounced medically dead. Both homicide survivors and police officers recognized that the actual devastation associated with the violent crime came from losing the person that the victim used to be and that the pain from this loss was experienced long before the victim was declared medically dead.

Literature on personhood theory and grief accompanying loss of personhood supports this finding. Under personhood theory, the actual moment of medical death for a human being should be irrelevant as it is actually the loss of personhood that marks the end of the person (Chapo, 1999; DeGrazia, 2011; Epstein, 2013; Locke, 1990; Perry, 2001; Traub, 2015). In a study on physician interactions with cognitively impaired elders, Adams, McIlvain, Geske, & Porter (2005) identified that physicians grieved the loss of their patient as the personhood of the patient was lost; this grief was came long before the medical death of the patient. However, literature does not directly address personhood as understood by law enforcement or homicide survivors; this is a new contribution to the existing body of literature.

**Finding 4: Retributive justice is desired.** I found that both law enforcement and homicide survivors sought retributive (not restorative) justice.

I identified retributive justice as a sub-theme of pursuit of justice. Retributive justice is a theory of punishment based upon three principles: those who commit crimes deserve to suffer a proportional punishment, it is morally good if a legitimate punisher gives those who commit a crime the punishment that they deserve, and it is morally wrong to punish the innocent or to punish disproportionately by not having the punishment fit the crime (Wallen, 2014). Retributive justice differs from restorative justice in that restorative justice looks for all stakeholders in the crime to work together to agree on how to deal with the consequences and future implications of the crime (Allais, 2008). Family members' social media posts clearly did not indicate a desire for restorative justice; there was no mention of the criminal offender being punished because it would ultimately result in repairing the harm done to the victim's family or the eventual betterment of society. Family wanted punishment to occur because the offender had done wrong. For the retributivist, this type of harsh punishment is a "morally required response" to wrongdoing (Allais, 2008, p.129). When retributive justice did not occur, family expressed outrage that the punishment did not fit the crime and posted on social media about the failures of the criminal justice system. This reaction is congruent with retributive justice theory: retributive justice is required to address the moral component of a crime, condemn the wrongdoing, and send a public message that a person was wronged (Allais, 2008; Bilz, 2016; Clark, 2009).

The desire for retributive justice is supported in the literature. Barrile (2015) examined 52 close family members of homicide victims whose case ended in the execution of the offender. Although all of the survivors either said that they forgave the offender and/or expressed empathy for the offender or his family, only one of the

survivors wanted to stop the execution or show mercy to the offender. For the survivors, the punishment of the death penalty was public acknowledgement of the value of the victim's life. The retribution, the offender's life, was proof of this value (Barrile, 2015).

Failure to obtain retributive justice strongly contributed to the theme of frustration that emerged from the data. In addition to their own frustration, officers (frequently with great emotion) commented on the frustration experienced by the family of the victim throughout the investigation and prosecution process. This frustration was also identified in family statements to news media and on social websites. Literature supports the finding of frustration among homicide survivors. Goodrum (2007) identified conflict over the victim's body and conflict over the flow of case information as causes of frustration for homicide survivors. Skolnick (2011) noted that police officers were often frustrated with the criminal justice system and that officers were burdened from the tension generated when trying to balance effectiveness and legality. Terstra & Kort (2016) wrote that officers were driven to find solutions to social problems and experienced frustration when they were unable to solve problems through formal means.

In these cases, the perceived lack of retributive justice resulted in intense frustration for both police and homicide survivors. Officers worked diligently to arrest the violent offenders and resolve the cases with the most equitable punishment they were able to legally deliver. However, the delivery of this punishment was derailed when the victims, whom they perceive as deceased for all intents and purposes, were not immediately pronounced medically dead. This resulted in extreme frustration for the officers because there was no way to obtain retributive justice. Family members, also frustrated at the lack of retributive justice, lashed out publicly at the criminal justice



system because they had no concrete way to place blame on the true cause of their angst: the ever-increasing ability of the human body to medically survive violent trauma and the current policies defining human death.

It is important to note that neither officer nor homicide survivors gave any indication that some form of restorative justice would be welcomed in these cases. This is congruent with the literature on violent crime and retributive and restorative justice theories (Dzur, 2003; Wenzel et al., 2007). Although there is significant variation in how restorative justice programs are currently implemented in the United States, few programs currently accept repeat adult offenders or violent offenders (Dzur, 2003). Literature also advises against the use of retributive justice for crimes in which the victim needs to be protected from contact with the offender, such as in the case of domestic violence (Hanan, 2016).

The perspective and description from officers about their frustration in these cases builds upon previous law enforcement research. Skolnick (2011) noted that police officers were often frustrated with the criminal justice system and that officers were burdened from the tension generated when trying to balance effectiveness and legality. Terstra & Kort (2016) wrote that officers were driven to find solutions to social problems and experienced frustration when they were unable to solve problems through formal means. The findings of this study provides additional insight into the frustration of homicide survivors and homicide detectives.

## **Summary**

When examining the medical definition of human death, there is incongruence between the policies guiding medical practice and the policies of the criminal justice

system. The increased use of technology has resulted in a conceptual shift pertaining to what it means to be alive, dead, or nearing death (Machado, 2005, p.791). The current medical definition of human death has not kept up with this conceptual shift, resulting in frustration for law enforcement and confusion and frustration for homicide survivors. This research supports previous work that has identified inconsistency in criminal homicide laws, fueled by advances in medicine that result in the delayed pronouncement of death for some violent crime victims.

### **Policy Implications**

The effects of this policy on the officers investigating violent crimes is significant. Officers clearly identify that the actual charge used to prosecute and sentence the offender is of great importance. Officers recognize that it makes no sense to wait until a person no longer has breath or pulse to be considered a victim of criminal homicide; the violence of the crime committed had already taken away the very essence of what made them alive. The current policy forces officers to charge violent offenders with a lesser crime.

The consequences of the lesser charge can be significant: violent crime offenders do not receive a punishment that fits the horrific crime that was committed, the prosecution of the criminal case takes a back seat to cases where the victim was medically dead, and the offender receives a lesser punishment for actions which took a life despite the victim not being yet declared dead. This results in great frustration for the officers, as they are motivated to pursue justice. This also results in pain and frustration for the loved ones of the homicide victims. Two officers spoke, one with anger and the other with tears, about having to tell parents that a violent crime offender had been

charged with aggravated battery instead of attempted murder simply because their child had not yet been declared medically dead. The officers told the family that, in New Mexico, a conviction for aggravated battery would result in a longer prison sentence than would a conviction for attempted murder but the mother of the victim was still devastated by the decision. She wanted the criminal charge to indicate the true depth of her loss. It did not matter to her that her child still had respirations and a heartbeat. In her mind, her child had been murdered.

An important policy issue arises when family members of the violent crime victim make medical decisions that prolong the victim's traditional signs of life. These medical decisions may be made because the family is not ready for the victim to be declared medically dead or because the organs of the victim are waiting to be harvested for transplant. These end-of-life medical care decisions made by family members have the potential to delay the arrest of the violent crime suspect, result in a suspect being charged with a lesser crime than criminal homicide, and impact the actual punishment received by the offender for the crime. Currently, there are no requirements for law enforcement or medical providers to educate the victim's family about these possible consequences or ensure that family understands the ramifications of the medical decisions they are making.

**Policy solutions.** One possible solution for these policy issues would be the development of a legal (instead of medical) definition of death. Charo (1999, p.277) advocates for the use of a "legal fiction" to resolve this complicated issue. Legal fictions are currently used in cases of adoption or legal blindness; the law pretends that the birth parents never existed by awarding a new birth certificate to the adopted child and legally

treating the adoptee the same as biological offspring (Charo, 1999). In addition, legal fictions allow for policy resolution without the angst of rewriting a large amount of federal and state codes. Under a legal fiction, a person who has lost their personhood could be considered legally dead even if they have not yet met the criteria for pronouncement of medical death. The findings of this research support instituting a legal fiction policy regarding death in situations of criminal homicide, specifically the findings regarding temporality and precision in the definition of death.

Prior to the adoption of this legal fiction, it will be important to address the potential negative implications and unintended consequences that may result. The law would have to define a specific set of criteria to be met before a victim could be pronounced legally dead. The adoption of this legal fiction would also have operational consequences for hospitals as it would be necessary to develop protocols and identify resources for the care of the legally dead. Additional financial considerations, such as who pays for the medical care of the legally dead and the decision of whether a legally dead person should receive life insurance benefits, must be addressed prior to this change in law.

An alternate solution to creating a legal fiction would be to create an entirely new set of criminal laws to address the taking of a life in addition to the current laws which are focused on the cause of death (Gonzales 2009). The distinction is important; current criminal law reflects the archaic perspective that the medical death of a violent crime victim is the worst possible outcome of a violent crime. Advances in medical technology have made this assumption no longer correct. Currently, the medical death of a violent crime victim is simply a bookend to the loss of life that had already occurred.

Both of these potential solutions will require a change to law, which in turn will drive policy change. These policy changes will ultimately change nursing practice. The role of the nurse must be considered when evaluating possible policy solutions. Nurses have the implicit responsibility to advocate for these patients, as these patients are no longer able to speak for themselves. Nurses must be educated as to the current laws and policies impacting these violent crime patients and their families; this education should begin in nursing school as an accompaniment to portions of the curriculum on the process of dying and patient death. In this study, the family of the victims felt the loss of their loved one before the patient was ever pronounced medically dead. As healthcare professionals, we must be prepared to support them through this unique grief process.

### **Limitations**

One criticism of case study research (CSR) is a perceived lack of qualitative rigor (Woodside, 2009). I established qualitative rigor through trustworthiness by making regular entries in a reflective journal, member checking, and peer debriefing. I established transferability by providing extensive descriptions of the population, demographics and geographic boundaries of the participants in the study (Thomas & Magilvy, 2011). I established dependability by providing an “audit trail” describing the specific purpose of the study, how and why participants were selected for the study, the data collection process, an explanation for how data were manipulated for analysis, a discussion of the interpretation and presentation of research findings, and communication as to how data was determined to be credible (Thomas & Magilvy, 2011). I also provided rich description through the use of direct quotations from study participants. In addition, an experienced qualitative researcher regularly monitored my coding and data analysis

progress. Although I am confident that I am presenting an accurate description and interpretation of this research, future studies could allow for a second researcher with no law enforcement experience to conduct a portion of the interviews for comparison.

An additional criticism of CSR is that a case study is unable to provide representativeness to populations because each case is so unique that it represents a “one-off” situation (Woodside, 2010, p. 9). Although I chose two specific cases as the basis for my research, my research also captures the more general concepts raised by my inquiry. In the interviews, participants spoke in general terms about situations and questions when they could not answer a question directly about the selected case. In addition, all officers identified additional criminal cases as support for their responses to the questions asked about the selected cases. The contribution of this additional general information and data drawn from other experiences contributed to the scope of data available, giving these results wider representability.

Additionally, there were two aspects of the research design which could be considered limitations in this study. First, I limited my recruitment methods for officers to their work email address and work phone number. While this limitation was necessary to obtain buy-in and approval from the Albuquerque Police Department for this project, it did prevent me from contacting officers who worked on the selected cases but had since retired from the department. This restriction did not impact the results of the case studies as the retired officers had done supportive work only, such as completing vehicle tow paperwork or accompanying a detective to serve a search warrant. Although it would have been interesting to have additional perspectives on these cases, based on the degree

of repetition in the data across cases I am confident that I have saturation of the data despite recruitment limitations.

The second shortcoming was my decision to not collect data directly from the family and friends of the homicide victims in these cases but instead to use data publicly available through the media, social media, and case files. Prior to beginning this research, I had incorrectly assumed that the families of the victims had little impact on homicide investigations and prosecutions. There is a significant research opportunity to further examine this research topic from the perspective of the family of the victims.

Additionally, the nature of this study did not allow me to determine the prevalence of criminal homicide cases in which the victim is not declared medically dead immediately after being injured or in which the medical definition of human death prevented an offender from being convicted of criminal homicide. This delimitation was purposeful. I chose to obtain data through qualitative case study research as my research questions were exploratory and a detailed understanding of this complex issue was needed.

Finally, I would be remiss in not recognizing the potential issue of researcher bias as it pertains to this study. I had previously worked as an officer with the Albuquerque Police Department and knew one of the interviewed officers both professionally and socially. Although I did not advise any of the interviewees that I had been a police officer, all mentioned it when agreeing to an interview. I believe that my experience as a police officer encouraged officers to share information more openly. This belief is supported by the positive comments about my work experience made by the interviewed officers during our initial contact and also by the feedback from two officers at the

conclusion of the interview. Although this may have limited full disclosure during interviews, based on the comments made by the participants, it was also an advantage. Having a law enforcement background allowed me insight into this unique culture. I understood the work experiences of the officers and the complexity of their emotions as they performed their duties. My background also contributed to the freedom in which officers shared documents and information with me; officers allowed me full access to case files and gave me their personal contact information after agreeing to the interview. Officers also trusted that my understanding of their work experiences would allow me to fairly interpret the information and emotion they shared. This was evident in the familiarity with which the participants spoke with me during interviews.

### **Future Research**

This study was an initial attempt to understand the use and impact of the medical definition of human death in the criminal justice system. It is important to continue to expand this knowledge through research with other law enforcement agencies (of varying sizes) in other states, as these agencies work under different state statutes and different investigation protocols. It is also important to compare United States policies and criminal sentencing practices to those found in similar countries. I propose that the next step in this research be to quantify the true scope (incidence and prevalence) of this problem in New Mexico and other states. Also, future research examining the relationship between criminal sentencing and the length of time it took for a victim to be declared legally dead could provide a quantitative assessment of the impact of the medical definition of human death on criminal punishment.



In the cases examined in this study, the family of the victim had a significant role during the investigation and prosecution of criminal homicide. The extent and burden of this role on the family is not understood. We also do not know if the family fully understands that the medical decisions they make during this time period can directly impact the legal punishment given to the offender. We also do not know if this knowledge would change their medical decisions. Additional research involving the victim's family would provide clarity as to their level of understanding about the impact of medical decisions on crime prosecution and sentencing. This research would also help medical professionals and members of the criminal justice system better understand their needs during the lengthy process of criminal investigation and prosecution.

Additional research should also be done to examine the role of the nurse when caring for victims of violent crime and their families. It is important that we not only address the clinical aspects of this role, but also the opportunities available for nurse involvement in both research and policy. Forensic nursing, recognized as a specialty in 1995 by the American Nurses Association, takes place at the connection point between the legal system and the healthcare system (Simmons, 2014). Forensic nursing education is beneficial for all nurses who care for violent crime victims, criminal perpetrators, and their loved ones but there is currently limited available curriculum content to teach nurses about this important and growing field (Simmons, 2014).

Nurses are uniquely positioned to take a leadership role in driving change for this important issue. Nurse educators should prepare nursing students to work with bereaved families who are managing violent deaths instead of limiting nursing school courses to case studies on deaths from illness and age. Nurse competency exams should include

questions about the policies regulating medical death, thus requiring students to both identify the concepts of personhood while learning the skills necessary to care for patients and families who are impacted by these policies. Bedside nurses should guide families as they interact with police and medical professionals to ensure families have the knowledge necessary to make the best possible decisions during the worst days of their lives. Advance practice nurses should obtain the knowledge necessary to advocate for this unique population, providing true patient-centered care while other medical professionals remain all too focused on preserving the traditional signs of life. Hospital nurse administrators should help develop and implement policy pertaining to the treatment and resources provided to violent crime patients and families waiting for their loved one to be declared medically dead. All nurses have an ethical obligation to identify the risks faced by their patients and families. For the cases examined in this study, the greatest risk to the victims was not being pronounced medically dead even though what made them alive had already been lost.

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**Appendix A:  
Data Sources**

	Homicide Case Files	Other Documents	OMI Report	Interviews	Other
Case 1	31 pages, included offender and witness statements, phone records, bank account information, evidence log	Patrol officer reports Search warrants Vehicle tow sheet	Listed cause of death as "delayed complications of traumatic brain injury"; listed manner of death as "homicide"	Three interviews	News Media
Case 2	214 pages, included offender and witness statements, phone records, bank account information, evidence log, warrants, and previous criminal history information for offenders, witnesses, and victims, store video, credit card logs	Patrol officer reports 911 dispatch logs	Listed cause of death as "blunt trauma"; listed manner of death as "homicide"	Three interviews	News Media Social Media

*Note.* One person was interviewed for both cases.

**Appendix B:**  
**Interview Guide**

1. Please tell me about your involvement in this case.
  
2. How did you find out the victim had died in this case?
  
3. How does your job change if the victim is not declared dead the same day they are injured?
  
4. Advances in medicine now allow some violent crime victims to be kept medically alive for years after the crime was committed, although they eventually are pronounced dead as a result of the crime. How do you feel those type of cases should be handled?
  
5. (State the UDDA medical definition of death.) If you could change the way that the medical definition of death is used in the prosecution of criminal homicide, how would you change it?
  
6. What do you think would be the impact on the criminal justice system if laws were changed so that a person could be considered a victim of criminal homicide even if they had not been pronounced dead by a medical professional?
  
7. How do you feel about the outcome of this case?

**Appendix C:**  
**Demographic Questions**

Please complete the following information about yourself by filling in the blank or checking the square that best describes your answer.

Age: \_\_\_\_\_

Sex:  Male  Female

Race/Ethnicity:  Asian / Pacific Islander  
 Black or African American  
 Hispanic or Latino  
 Native American or American Indian  
 White  
 Other \_\_\_\_\_

Marital Status:  Married  
 Single, never married  
 Divorced  
 Separated  
 Living with Partner  
 Widowed

Years of service at current employer:  
 less than 3  
 3 -6 years  
 7 – 10 years  
 11 – 15 years  
 16 – 20 years  
 More than 20 years

Have you ever been in the military?  Yes  No

Did you attend church, synagogue, mosque, or some other religious worship service in the last month?  
 Yes, did attend  No, did not attend

What is the highest degree or level of school you have completed?  
 High School degree or GED  
 Some college credit, no degree  
 Associate Degree  
 Bachelor’s Degree  
 Master’s Degree and / or Doctorate degree

**Thank you for participating in this study.**



**Appendix D:**  
**Themes and Subthemes**

<i>Data Source</i>	<i>Theme: Pursuit of Justice</i>	<i>Theme: Frustration</i>	<i>Theme: Family</i>
Case files, OMI reports and other documents	<p>Served as documentation of investigation and prosecution of crime; detailed events leading up to homicide, criminal history of victim and offender(s), and elements of crime</p> <p>Provided details about the victim's suffering prior to being declared medically dead</p> <p>Reports lacked clarity surrounding death of victim (example: identified victim as dead in home and again in hospital days later)</p> <p>Reports contained conclusion that medical death of victim was caused by violence; this conclusion necessary for criminal homicide charge</p>	<p>Notes from investigating officers provided hour by hour narrative of the lengthy investigations, including failed attempts to gather evidence or arrest offenders</p>	<p>Documented interactions with offender(s) and victims family as well as family contributions to investigation.</p> <p>Family of victim provided the victim's medical history for the OMI report</p>
Officer Interviews	<p>Officers were highly emotional when relaying suffering of victim and family prior to medical death of victim</p> <p>Officers carried burden of ensuring justice for family of victim; believed that the value of the victim's life was reflected in punishment given to offender</p> <p>Officers spoke only of retributive justice</p>	<p>Officers felt burden of ensuring retributive justice and experienced great frustration when unable to do so</p> <p>Officers sympathized with frustration of family over perceived failings of criminal justice system</p>	<p>Officers recognized the role/burden of family during investigations</p> <p>Officers did not educate family about impact of victim's medical status on criminal case</p> <p>Officers had varying amounts of interactions with family; some remained in contact for years</p>
Media and Social Media	<p>Survivors of homicide used media / social media to voice the suffering of the victim prior to medical death; multiple cries for the punishment of the offender to be in proportion to pre-</p>	<p>Intense frustration expressed when survivors perceived offender was not receiving due punishment</p>	<p>Family used media / social media to publically grieve loss and exchange updates and information</p>

medical death suffering of  
victim  
Survivors sought only retributive  
justice

Frustration publically  
directed at police,  
judges, culture of  
New Mexico

**Appendix E:**  
**Diverse Characteristics of Cases**

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	Motive	Weapon	Relationship	Location
Case 1	Robbery	Firearm	Stranger	Public Park
Case 2	Domestic dispute, robbery	Hands, feet unknown blunt object	Offender 1: roommate Offender 2: roommate's friend	Home

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**Appendix F:**  
**Victim and Offender Demographic Data**

	Age	Gender	Race	Injuries
Victim (Case 1)	18	M	W	Multiple gunshot wounds
Victim (Case 2)	65	M	W	Blunt force trauma
Offender (Case 1)	18	M	W	NA
Offender 1 (Case 2)	20	M	B	Facial Bruising
Offender 2 (Case 2)	25	M	B	NA