

ISSA Proceedings 2002 - Arguments Of Victims: A Case Study Of The Timothy McVeigh Trial



When the sun arose over Oklahoma City on April 19, 1995, occupants and nearby residents of the Alfred P. Murrah Federal Building experienced the horror of a bomb blast that killed 168 and injured 500 members of their community. Following a lengthy trial, the jury convicted Timothy McVeigh of the bombing. After hearing thirty-eight victims testify about the impact of the bombing on their lives and that of their loved ones, the jury sentenced McVeigh to death. The victim's arguments, called victim impact statements (VIS), convinced jurors that McVeigh should receive the death penalty rather than life imprisonment. Federal legal authorities executed McVeigh on June 11, 2001. This essay:

1. explains the origin and history of victims' arguments in the courts in the United States,
2. describes this type of argumentation as a distinct genre of legal discourse by using Mikhail Bakhtin's explanations of content, stylistics, and speech plans, and
3. discusses the implications of the study for research about legal argument.

1. Origin and History of Victims' Arguments

Victim impact statements are a unique genre of legal argumentation. The use of victims' arguments in the McVeigh trial evolved as part of a two-decade struggle for victims' rights in the United States (McDonald, 1976; Carrington & Nicholson, 1984; Roland, 1989). This struggle began in the late 1970s and achieved legislative success with the 1982 *Victim and Witness Protection Act*. Temporary setbacks in victims' rights took place when the U.S. Supreme Court ruled in *Booth v. Maryland* (1987) and *South Carolina v. Gathers* (1989) that victims' impact testimony was unduly prejudicial to jurors because it could not be refuted by the defense and because defendants generally did not know who their victims were when they committed their crimes. In 1991 the victims' rights movement gained new momentum when both of these decisions were overturned in *Payne v.*

Tennessee. Even more voice was given to victims in 1994 through *The Violent Crime Control and Law Enforcement Act* which permitted both the use of the death penalty and VIS in federal trials. *U.S. v. Timothy James McVeigh* (1997) was the one of first federal capital cases to be tried under this statute.

Victims (often with the assistance of attorneys) justify the death penalty for a defendant because of the suffering they have experienced as a result of a crime. Some VIS are presented to the judge in the form of written arguments; others are read to jurors by a court official. Still others are both written and presented orally to the judge and jurors. In general, victims state their names, describe economic losses or physical injuries, identify changes in their physical or psychological well being, and/or explain the general effects of an offense (Schneider, 1992). The arguments from victims provide evidence about “any harm, including financial, social, psychological and physical harm, done to or loss suffered” by a victim at the hands of the accused (*Victim and Witness Protection Act*, 1982, 32).

Additionally, the arguments provide the witnesses with two kinds of witnessing; they give eyewitness testimony to the effects of a crime, and they also allow victims to bear witness to the grief and emotional hardships that cannot be seen (Oliver, 2001, 16). In other words, the arguments have both an outer voice that addresses a jury and an inner voice that gives agency to their subjective experiences and allows them to work through their grief. VIS are personal accounts of the harm suffered by victims that “particularizes” experience and “invites empathic concern” in ways that other legal arguments do not. The witnessing of the victims offers a silenced minority the opportunity to relate their grief in the guise of an argumentative form. In ways similar to literary genres, victim impact arguments are generative bundles of borrowed and reconstituted prosaic (everyday) utterances that speakers socially construct to express their intentions in specific contexts (Bakhtin, 1986). Genres eventually achieve relative stability, but they are never completely replicable or “never perfectly designed,” because the speakers who create them “make do with the resources they have at hand.” Additionally, genres have unpredictable qualities that develop from “unforeseen byproducts” in “unexpected ways” (Morson & Emerson, 1990, 45). The lack of replicability and predictability of genres outlined by Bakhtin (1986) applies to legal discourse since each trial results from similar indictments litigated by different participants in courts operated under diverse rules and procedures.

Even though some in the legal community promote this kind of testimony, many

others question its use. For example, Talbert (1988) claims the emotional content of VIS has the potential to inflame the jury and to upset the legal norm of treating similar crimes with similar sentences (210). Clark and Block (1992) also object to the use of VIS because this kind of argumentation can lead to personalized and arbitrary sentences, the victims “are unintended or unknown” by the offender (49), and the sentencing process creates a “mini-trial” in which irrefutable evidence is presented by the government (50). In the McVeigh trial, judges and attorneys agreed that the VIS should contain limited emotional content, describe the victims’ pain and suffering, be presented in an objective manner, and prove the aggravating factors alleged by the government. Aggravating circumstances are justifications for the death penalty. Specifically, prosecutors argued that McVeigh caused the 269 deaths and hundreds of injuries after planning and premeditating the bombing and that he killed federal law enforcement officers through his criminal actions. From the perspective of the law, the goal of the impact statements was to promote moral reasoning among jurors based on weighing the evidence about aggravating factors, such as premeditation, intent, viciousness, and lack of remorse, against mitigating factors, such as a difficult upbringing that may have led the defendant to commit the crime. The family of the defendant did not persuade the jury that legitimate mitigating factors led to McVeigh’s crime.

2. The Genre of Victim Impact Arguments

Victims created the content of their testimony by piecing together conversations and recollections from their everyday experiences. Bakhtin (1986) refers to these fragments of everyday conversation as “the prosaic.” More specifically, Morson and Emerson (1990) conclude, “The everyday is a sphere of constant activity. The source of all social change and individual creativity, the prosaic is truly interesting and the ordinary is what is interesting” (23). This prosaic discourse consists of fragments that the speakers have heard from others. When speakers piece together these fragments in ways that achieve their goals in a particular speech situation, they create new genres. Specifically Bakhtin (1986) concludes that genres result from speakers combining the prosaic informal speech of greetings, conversations, vocalized memories, and expressions of feeling with the formal utterances of reports, speeches, and letters. Similarly, the VIS presented at the McVeigh trial combined the informal utterances from victims’ conversations and experiences with formal utterances they had learned from the media and other public speakers. In this way, the victims in the McVeigh trial

reconstituted ordinary discourse to achieve their extraordinary goal of promoting the death penalty. In the McVeigh trial, the victims appropriated and then reconstituted various kinds of prosaic utterances. One cluster of VIS came from the parents of children who died in the daycare center at the Murrah Federal Building. One mother, Sharon Coyne, spoke about the death of her baby on the day of the bombing. Prosecutor Hartzler asked questions to structure this victim's narrative. Coyne began by establishing the circumstances and background, and then she quickly moved to her recollections of her deceased child. As she presented her statements of grief, Coyne borrowed descriptions and images from previous contexts:

Hartzler: It's true that you had a daughter... And her name was Jaci Rae?... And can you tell the jury a little bit about Jaci?

Coyne: Jaci - Jaci was (sic) blue eyes, big blue eyes, blond hair. Well, she had very, very little hair. Beautiful smile. She just - she didn't have but two teeth. She waited kind of late to cut teeth. She was a serious ham. She loved to be in front of the camera... And she never knew a stranger. I think that the most distinguishing characteristic about Jaci was her unconditional love for me. . . . She loved to cuddle.

(*U.S. v. Timothy James McVeigh*, 1997, June 5; all subsequent victim impact statements come from the trial transcripts and are cited by date).

The prosecutor followed Coyne's descriptive recollection by projecting photographs of Jaci Rae with her family on huge screens for jurors to see. Coyne's testimony appropriated words and phrases from everyday information that a mother tells her friends and family about her child:

Hartzler: How old was Jaci in April of 1995?

Coyne: Jaci was 14 months.

H: Could she talk?

C: She could. She said "Momma" and "Dada." We were working very, very, very hard on "Grandpa and Grandma"...

H: Could she walk?

C: She could; she'd been walking for about four months. I think if she had her way, she would have been running; but I was very overprotective. And she basically walked the straight and narrow, always on flat surfaces. And usually, if we got to anything difficult, I always picked her up...

Coyne concluded with explanations of the death of her child and the suffering it

caused her, reporting dates, times, and personal physical and psychological effects. The testimony continued:

H: And I know that you were at work that morning, and you heard and felt the explosion... I want you, if you will now Miss Coyne, to tell the jury what impact Jaci's death had on you and your family.

C: There's a lot of different things, different aspects. There's one physical aspect, which, as you know, my hair is falling out, my teeth (are) chipped off. I have a horrible memory loss when things get pretty stressful, but that's really nothing compared to constantly missing her... And I think in the end, by the time they finally told us that they found her body, it had been seven days, and I was just so incredibly thankful that they found her at all; and I felt lucky that I got to hold her wrapped in a beautiful receiving blanket made by my friend, Joyce. And that's the last thing that I held (1997, June 5).

Coyne's testimony imported descriptive imagery, conversational phrases from her child, and factual reports from her past family experiences into the content of her argument. With the help of the attorney's questions, she restructured and reconstituted this content to achieve the purpose of VIS. Not only did she recreate the content, Coyne added a distinctive style using the words of her child so that her argument had multiple authors. She presented oral testimony that reflected her inner suffering. She also gave the dead baby a "voice within" her own voice, a process Bakhtin (1986) calls "echoing" (88). The echoing of the baby's words had a dual persuasive effect. First, it allowed jurors to imagine the personality and the innocence of the baby as a victim. Second, it permitted the mother to use a double voice, showing the physical suffering of her baby and the subjectivity of her own psychological pain.

In addition to the borrowing of prosaic utterances, themes, stylistics, and speech plans illuminate the distinctive properties of this argumentative legal genre. Bakhtin (1986) explains:

Thematic content, style, and compositional structures (speech plans) are inseparably linked to the whole of the utterance and are equally determined by the specific natures of the particular sphere of communication. Each separate utterance is individual, of course, but each sphere in which language is used develops its own relatively stable type of these utterances. These we may call speech genres. (60)

Any new genre, according to Bakhtin (1986), combines simple utterances into

more complex ones. When complex utterances subsume simple ones, a new genre evolves. In this case, speakers recreate a new discourse from borrowed audiences by adopting different themes, adding new stylistics, and implementing speech plans. This kind of argument permits the victims to “work through” their grief by explaining it in subjective terms to others.

Themes. Speakers create themes that respond to the needs of a particular context. In the McVeigh trial, the victims used common themes and made similar claims about their experiences. The predominant themes of the victims’ arguments in the McVeigh trial were the physical devastation caused by the bombing and the pain and suffering of the survivors. Prosecutors chose different types of victims to emphasize the three themes. Seven rescue workers emphasized the devastation theme. Two medical observers identified victims and gave technical data about their injuries. Three survivors described their injuries and recovery, and two videotapes graphically portrayed injuries to children. All other arguments came from relatives of those who died.

Themes differed according to speakers’ experiences. Themes about the personal consequences of their loved one’s death provided common content in the testimony of the relatives of the deceased. For example, Sonia Diane Leonard, wife of a deceased secret service agent, claimed, “I feel my heart looks like that building. It has a huge hole that can never be mended” (1997, June 4). Pam Whicher, wife of deceased Secret Service Agent Alan Whicher, lamented, “It is a little bit like learning to live without your arm. You still do what you do, but everything is changed” (1997, June 5). Each person used prosaic metaphors to bear witness to their personal suffering.

Rescue workers highlighted the devastation in their arguments. This testimony pointed to the extent and the brutality of the crime, an aggravating factor that justifies the death penalty. For example, Allan Prokop, a police officer, described the street scene immediately after the bombing:

There were people running from the building toward us injured, very bloody, crying, and screaming... There were people standing in the windows screaming for help... There were wires sparking inside, a real thick and heavy dust, a cloud. It was strangely quiet, except for the moans and cries from inside of the building (1997, June 5).

The other most poignant themes of physical harm and suffering came from victims who survived the bombing and continued to live with negative physical

and psychological effects. For example, Clifford Gayle, an employee of Housing and Urban Development, described his injuries in this way: "The left side of my face was crushed. It had a hole in... the skull - in the membrane between the skull and the brain. I had glass and concrete in my neck here, just barely missed an artery and a vein. My eye was hanging out, cut in five pieces" (1997, June 5). Other victims talked about fractures, collapsed lungs, long hospitalization, and reconstructive surgery. The VIS allowed them to speak the unspeakable.

Victims particularized their pain and suffering and, in doing so, recreated the bomb scene, put a face on the victims, and allowed jurors to hear, feel, and see the human impact of the bombing. Even a year after the trial ended, juror Vera Chubb recalled, "I needed to hear those people. I needed to touch them. I needed to hug them." Fighting back tears, she told reporters, "I knew it was going to be a hard day, but I didn't think this hard" (Romono, 1998, June 13, A1). Unlike most trial testimony, the victims' arguments provided facts, symbolize the affect, and thereby created strong emotional bonds between victims and jurors. According to Bakhtin (1996), the completion of a message occurs when the audience acts on the themes. The McVeigh victims finalized their theme twice, once at the sentencing hearing when the jurors stated that McVeigh should receive the death penalty and again a year after the trial when jurors met and greeted the victims. The victims' arguments created logical and affective connections with jurors that allowed their themes to justify the death penalty.

Stylistics. In addition to the themes, a second component of victims' arguments is what Bakhtin (1981) calls "stylistics," the language and tone of a discourse. Speakers choose words from earlier contexts and from other people in their immediate or past history. The style of any speaker is an accumulation of the "thinking and the language of other people (living and dead) whose ideas and words are part of the store of ideas in the language-user's head" (259). In the McVeigh trial, the victims chose words from everyday conversations, words of grief likely expressed or heard by them during the mourning process, phrases they heard from medical personnel, and language that they borrowed from stories in the media. The exact origins of the language cannot always be determined, but the process of appropriating words from others characterizes how genres are generally formed (Bakhtin, 1981, 242-59). Since the trial occurred two years after the bombing, victims had read and heard many different utterances about the tragedy and therefore could, and probably did, borrow from that content. The

victims used a tone that conveyed both their personal experience and public emotions about the bombing. The tone creates “an imprint of individuality” (Morson & Emerson, 1990, 134) because it expresses the emotional and evaluative attitudes of speakers, accentuates the speaker’s personal experience, and achieves a ‘stylistic aura’ ” (139). Many of the victims accentuated their content by echoing the emotions they experienced privately and by restating the feelings conveyed by those who observed the experience from the outside. This echoing of personal and public sentiments and the direct expressions of the victims’ own experience constitute “the verbal vestments” of the discourse (Bakhtin, 1986, 88). In this trial, victims borrowed some of their style, both language and tone, from interpersonal conversations, feature stories in the media, and their knowledge of the appropriate speech content of eulogies and tributes.

Many of the victims imported the language and conveyed a tone characteristic of interpersonal conversations that name personal characteristics of others, refer to social routines, and make disclosures that give information about personal relationships (Ratcliffe & Hudson, 1988, 1-2). Sonia Leonard adopted this style when she referred to a work routine, identified personal characteristics, and disclosed information about her relationship with her husband:

I remember the Saturday before the bombing, he and I were working in the backyard and took a break for lunch, and I was stupidly complaining about what I thought had been a hard week—the week before. And what he said to me was, “Everything is attitude, attitude, attitude. And if you approach anything with the right attitude, it will be easier. And I’ve clung to those words the last two years, and they’ve helped a lot” (1997, June 4).

Leonard not only borrowed the interpersonal language from her previous experience, but she also adopted the “verbal vestments” of her husband’s objective and rational tone.

Other victims reported observations as if they were feature stories borrowed from the news media. A feature is a human interest story in which journalists establish a setting, character, action, and a moral as they report their observations about an event (Garrison, 1990, 349-55). In contrast to a news story, a feature conveys the subjective interpretations of the reporter and engages the sentiment of the reader. This type of style characterized part of Officer Don Browning’s story about an incident at the bombsite:

A man and his little girl approached us and, of course, they were talking to us and

they came up; and the father was thanking us for being there. The little girl was wearing a guardian angel pin on her blouse. She was probably five or six years old; and at that moment, I couldn't really understand what she was saying... And eventually her father helped me understand that she was saying the angel was a pin that she was wearing for her friends and that she was due to arrive at the daycare center at the Murrah Building at approximately 11:00 (on the day of the bombing). And we all gave her a little hug and told her how glad we were that she was okay. And she asked me if she could pet my dog. And she grabbed "Gunny" around his neck and hugged him close... and told him, "Mr. Police Dog, will you find my friends?"

Browning instantiated the qualities of a feature story; that is, he subjectively interpreted this experience to establish human interest for the courtroom audience, echoed the words of the little girl, and highlighted the child's uplifting character and hopeful dialogue as it had taken place in the tragic setting of the bombing rescue.

Other victims borrowed a eulogistic form that names the deceased persons' achievements, stresses their positive traits, uses stories to illustrate how they lived life, and conveys an attitude of respect toward the deceased (Ehninger, Gronbeck, McKerrow & Monroe, 1982, 363). An illustration of the eulogistic content appeared in the argument of Glenn Cetyl when he incorporated a letter written by his ten-year-old son Clint about his deceased mother:

I miss my mom. We used to go for walks. She would read to me. We would go to Wal-Mart. Sometimes at school maybe a kid will bring something up - and he was talking about show and tell - something new that he got and someone would ask him or her where they got it. And they usually say, 'My mom got it,' and that makes me sad. After the bomb, everyone went to my aunt's house, and my grandma took me to the zoo - my cousin and I to the zoo. While we were at the zoo, I bought my mom a ring. I bought it for whenever they found her. Sometimes at school around the holidays, I will still make my mom Mothers' Day and Valentine's cards like the other kids (do) (1997, June 6).

The statement names the positive experiences Clint had with his mother, echoes what his classmates said about their mothers, indicates how the victim lived her life, and expresses personal sorrow and lamentation. The effect of this touching tribute evidenced the facts of the child's grief as well as the voice of his psychological suffering.

The tone of victims' arguments at the McVeigh trial varied with speakers' choices of phrases and content. For example, when victims spoke about the productive lives of those killed, their tone was cheerful and positive. When they recollected events that typified their family members' traits, they used tones of humor, happiness, as well as sadness and longing. When victims stated the impact that the bombing had on them, they expressed a somber and sometimes angry tone. Some survivors and relatives of victims expressed hopefulness and the intent to get on with their own lives, and others related their experiences with personal depression and emphasized that their lives were forever changed by the effects of the bombing.

The stylistics of the McVeigh's victims provided an emotional imprint on jurors about the loss, pain, and suffering of the victims. The style often switched from objective reports of the victim's background and experiences to subjective accounts of their relationships with victims. The style also changed from factual and causal sequences that detailed events and actions to reflective and subjective accounts of those facts that pointed to personal suffering. Even though the attorneys encouraged victims to provide only factual reports, the language and tone of the speakers created sympathy and often evoked tears from jurors. Because the content necessarily focused on the victims, the style never was dispassionate. The stylistic component of the VIS achieved the goal outlined by the majority opinion in *Payne v. Tennessee* (1991); that is, the testimony of victims should encourage empathy and allow the victims to have a voice in the legal system. In this case the victims seemed not so much to gain empathy as to "perform" their testimony in a way that they brought a voice to unspeakable experiences. Oliver (2001) calls this process "witnessing," a process of "testifying to both something you have seen with your own eyes and something that you cannot see" (86). The witnessing created a style for the victims' arguments that clearly energized and emotionalized the content with verbal vestments that contained the signature of personal victimage.

Speech Plans. Speakers promote their themes and convey their style through what Bakhtin (1986) calls "speech plans" or compositional features. He explains that speakers create genres according to

1. the topic about which they are speaking,
2. the "addressees" to whom they are speaking, and
3. the expectations of how they will be understood (p. xvii).

Attorneys affected the composition of the victims' arguments in the McVeigh trial through three different kinds of questions that allowed victims to identify themselves, describe how deaths or injuries occurred, and state how the bombing incident adversely affected their lives.

The trial audience for the VIS was complex. Even though the jury seemed to be the primary audience, the goal of the victims' arguments was take into account human moral standards. Bakhtin describes audiences as "addressees." He notes that addressees are a composite of several different interpretive perspectives. One type of addressee was the speaker that uses his or her discourse to express and inner voice and to reflect personally on the content and themes presented in the speech. The victims' themes and evidence recalled the facts of the crime and reflected on the impact the crime has had on their lives. The second type of addressee is the audience that decides or acts upon the discourse. In this case, the post-trial remarks of jurors to the press indicated they believed and acted as the victims wanted. A third type, the "superaddressee," consists of an ideal audience possessing the knowledge and the insight to understand the meanings the speaker sought to convey (Morson & Emerson, 1990, 135). In this case, victims viewed the superaddressee as a moral authority that shared their belief in the guilt of McVeigh, desired his punishment, and accepted death as a moral solution for the crime.

VIS are a unique genre of trial argumentation that involves testimony about what victims "have seen with their own eyes," the horror created by the crime, and "bearing witness to something that cannot be seen," the subjective experience of their suffering (Oliver, 2001, 18). Effective victims' arguments, in ways similar to other speech genres, create self reflection, induce action from designated decision makers, and seek morally grounded actions. The victims in this trial created speech plans in several stages. First, they formulated their statements by conversations with self, answering questions about what should be said, how it should be phrased, and what moral conclusions should be drawn. Next, victims made additional adjustments creating themes and choosing a style to accommodate the expectations of attorneys and the judge and to dialogue with the jurors about the meaning of their suffering. The legal rules permitted victims to create arguments within specific parameters of weighing aggravating and mitigating circumstances and of engaging in moral reasoning. Finally, the victims designed their statements for a superaddressee, an omniscient judge, who

understood their sorrow and suffering perfectly and agreed about how justice should be done. In this way, the victim's conception of the addressees likely affected their ability to perform this legal genre of victim impact arguments.

Survivor Susan Urbach's arguments conveyed different themes and styles and showed that she was speaking to all of the audiences described above. At the time of the bombing, Urbach worked as the regional director of the Oklahoma Small Business Development Center, located in the Journal Record Building across the street from the Murrah Federal Building. Prosecutor Beth Wilkinson conducted the examination, asking Urbach to recollect the day of the bombing.

Wilkinson: Tell us what happened to you at 9:02 on April 19.

Urbach: Well, at 9:02 I was standing in the doorway of my office. The appointment was running late, and we were kind of making bets on whether or not he'd actually show... And the woman who was... going to be doing the seminar was standing next to me... And another of my staff members was in the office...

W: Did you feel the explosion?...

U: And the building just shook so badly that you couldn't even stand. And at that point in time, I started feeling things fall on me. I had a very, very large blow to the head that hurt, and rubble - things were falling on me. The concrete wall fell on me, and the window exploded into my back and then the ceiling came crashing down all over me...

W: Were you able to dig yourself out of the rubble eventually?

U: Yes. I got some very unusual strength to be able to dig myself up out of the rubble, and we didn't stop to look at anything. I mean we just immediately headed for the door...

W: And on what side of your face were you wounded?

U: Everything was on the left side. There is like a half swastika kind of wound that started underneath the eye and goes down to my laugh line, several large lacerations that went from like my ear to my chin. My ear was totally cut in half all the way through the cartilage... (1997, June 5).

The testimony began with prosaic descriptions of office work presented in a conversational tone, but proceeded next to a feature-story-like description of the physical effort of digging herself out of rubble and then to the graphic imagery of personal suffering - lacerations and swastika-like cuts. Her remarks mixed the formal terminology she had heard from medical practitioners with personal and informal language characteristic of interpersonal conversations. She addressed

her attorney by identifying her profession and the location of her job to the bombsite. Her testimony about what she saw and what she could not see adopted the point of view, language, and tone of a victim.

For example, the last segment of Urbach's testimony conveyed the moral meaning she had attached to her experience. She reflected through a kind of inner speech about the personal meaning of her experience and established ideals for her external addressees about how other victims should perceive their scars and healing:

W: And how do you feel about your scar today on your face?

U: Well, it's my badge of honor.

W: What do you mean "badge of honor"?

U: Well, to me you see, a scar – and any scar, tells a story. And the story it tells is... a story of a wounding and healing that goes along with that wounding. And the more deeply you're wounded, the more healing that must come your way, that you must experience for that wound to close up and for you to get your scar. I mean, you don't get your scar unless you've been wounded and you have been healed. And I've got my scar.

W: So you're proud of your scar.

U: Yes (1997, June 5).

Urbach's speech plan showed how she used self reflection and an inner voice to understand her pain, persuaded jurors about the horror of the bombing, and addressed an ideal audience who righteously could judge her suffering. Unlike some of the other victims, Urbach provided an explicit moral interpretation and an idealized understanding of her experience. The style of victims' statements, in ways similar to other argumentative discourse, depends on the knowledge and verbal sophistication of the speaker. Victims with high levels of knowledge and education, credentials Urbach had, likely expressed their victimage with more complex and reflective content than victims without such training. Nonetheless, all of the victims' arguments borrowed some utterances, themes, and stylistics from others in order to formulate their own discourses.

3. Implications

Victim impact statements are a distinct genre of courtroom argument. The victims' arguments in the McVeigh case evolved first from the social movement for victim's rights, became part of specific legal statutes and opinions, and finally entered into the immediate legal and personal situations of the trial participants.

The type of legal argument provides a double sense of testifying about what the victims observed and what others could not observe. To constitute this genre of legal argument, victims appropriated utterances from other contexts to achieve a specific goal. They developed their arguments by formulating their themes and style after a reflective dialogue with self; then they adjusted their testimony to the rules and expectations of their legal audience of the judge, attorneys, and jurors; and finally, they reflectively and subjectively interpreted their experiences in the terms of morality and justice accepted by the ideal audience of the superaddressee. At the same time, these complicated speech plans made vivid and factual contrasts between how the victims lived before the bombing and their present lives. This kind of argument contains facts and causal explanations dressed in the verbal vestments of suffering and hope in order to facilitate the moral reasoning of the jurors about the death penalty and to provide a voice for the victims. Even though legal standards try to preclude passion and feeling, the testimony of the victims necessarily is subjective and evokes affective responses because the victims carefully borrow themes and stylistics and create speech plans that allow them to witness through both an outer voice of objective fact reporting and an inner voice of subjective reflection. This study highlights the difficulty of moral reasoning in death penalty cases. Victims' rights advocates view the use of impact statements in the McVeigh trial as proof of the success of the movement. In contrast, some legal scholars (Bandes, 1996) continue to see victims' statements as a controversial type of formal legal argument because the emotional features have the potential to trump the factual and logical argumentation. This essay takes the position that victims' arguments are persuasive because they allow arguers to give witness to the seen and the unseen, combine logical and emotional proof, and express multiple personal and social voices through the borrowing and reconstituting of themes and stylistics and the adoption of innovative speech plans that appeal to jurors' assumptions about justice and morality.

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