Murder Trials and the Dead: Absence, Presence and Agency

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Abstract

Although murder trials focus very much on the dead, the dead themselves are often downplayed in various respects. Relegated to the category of the deceased, and reduced to objects of scrutiny by forensic pathologists, detectives and the court, the dead are dehumanised. Moreover, the horror of the murders may seem to eclipse all else, including the dead individuals concerned. On one level, then, the dead are deprived of agency. Yet, can they have agency in other ways during and after a murder trial? Can the dead be perceived as active presences, influencing certain ideas, emotions, actions and responses among the living? These issues are explored, drawing on the author's own experience of attending a murder trial. This study adopts an analytic autoethnographic approach, exploring the ways in which a personal experience of this nature can cast light on certain features of contemporary Western and Westernised societies, and also on aspects of our relationships with the dead.

Key words

murder, trial, ritual, narrative, absent, present, agency

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Introduction

This article examines murder trials with particular focus on the agency of dead, raising the central question: do the dead have any agency during and after a murder trial? The term "agency" denotes a capacity to exert significant influence. The article arises from a conference on the agency of the dead, which explored the ways in which the dead affect our emotional, imaginative and psychological lives, and the effect they have on our perceptions, practices, values and actions. The concept of agency is thus defined accordingly.

Much of the research on homicide focuses primarily on homicide survivors[1] and the perpetrators. But there appears to be far less focus on the dead themselves. In this article, I draw on my own experience of attending a murder trial, during which the dead individuals were, paradoxically, both absent and present. Accordingly, my discussion is primarily informed by this individual experience. An approach of this kind has its limitations – particularly because our responses to the violent deaths of people we know well and our perceptions of them as dead individuals are subjective and varied. Nevertheless, in certain circumstances, we must work with what we have to hand.

Moreover, this study analyses this experience from an analytic autoethnographic perspective, discussing the ways in which an individual experience of this kind can illuminate wider socio-cultural dynamics and ways of seeing and being in present-day Western and Westernised societies, as well as aspects of the relationships between the living and the dead. Scholars such as Michael Schwalbe, Leon Anderson, Carolyn Ellis and Tony Adams, and Arthur P. Bochner and Charlotte A. Davies describe the ways in which autoethnography can function as "a doorway and a mirror" (Schwalbe 1996: 58; also Anderson 2006: 383, 373, 390; Ellis – Adams – Bochner 2011: 10; Davies 1999: 180). They explore the ways in which a discussion of a personal experience can enable an individual researcher to enhance their self-knowledge by analysing their own emotions, perceptions, decisions and actions, while also deepening and expanding their insight into the specific community and the broader social context within which their experience took place. Thus, an individual experience can have a wider significance, highlighting aspects of the socio-cultural milieux we inhabit, and the extent to which such contexts can give rise to, shape and are interconnected with particular personal experiences and interpersonal dynamics. Therefore, this

1 The term "homicide survivors" is used to denote family and close friends of the murdered individuals. (This term is widely used in studies of homicide.)

paper begins with an account of an individual experience, before exploring its more general implications.

The people, the place and the context

I was particularly struck by the conference theme, "The Agency of the Dead in the Lives of Individuals: Reasons, Triggers and Contexts," and its resonance in the peculiar and horrible context of a murder trial. The murdered couple in the trial I attended, Judith Masters and her partner Fabien Genin, were very much a presence in my and my husband's lives. They had been our longstanding friends and also distinctive presences in our community. We live in a small South African mountain community called Hogsback. It is an offbeat, tranquil place, where people wander alone during the day and night in the forest and mountains, and where visitors come to relax and unwind. Their sudden, unexpected deaths were therefore a terrible shock.

Judith and Fabien were vibrant, outspoken people, with strong opinions, who cared passionately about living creatures and the environment. They were also internationally renowned primatologists and had worked at the University of Fort Hare, the institution in which I have worked for many years. After their deaths, primatologists from various parts of the world paid tribute to them and the research they had conducted, noting that the international primatological community had lost two of its liveliest, most thought-provoking minds.

Judith loved the good things in life: good friends, good wine and food, good books and music (especially opera) and travel. She was highly perceptive, and her ideas and insights were often unique and striking. She had very strong opinions – especially about animals, the environment and the human race – and she would often hold forth about them in her own indefatigable, passionate fashion. Fabien had an encyclopaedic, kaleidoscopic knowledge, with wide-ranging interests and insights encompassing music, literature, current affairs, anthropology and popular culture. With his special awareness of and empathy with wild creatures, he had a particular gift for fieldwork. In an obituary in an international scientific journal, the writer noted that he was constantly challenging ideas, especially his own.

They were murdered in October 2022. Later that year, three men were arrested, and the case began in Cathcart Magistrate's Court in the Eastern Cape province of South Africa. It was eventually transferred to the High Court in Grahamstown, in the Eastern Cape, in September 2024. South Africa operates according to the Roman-Dutch legal system, in which trials in the country have a judge but no jury. The judge in this case, who must

have presided over a great many murder trials, was appalled by the brutality of the murders. They were an example of what has been defined as overkill: the infliction of more injury and harm than is necessary to kill a person (Trojan – Salfati – Schanz 2015: 216–217, 220). There was no clear motive for the murders, so it may have been a robbery that went wrong. Apparently, the accused individuals believed that Judith and Fabien had a large sum of money available in cash. It is also possible that drugs, possibly a substance known locally as tik (crystal methamphetamine), which can induce violent and psychopathic behaviour in users, may have been involved.

The "why" question[2]

Judith and Fabien were consigned to a kind of legal limbo until the murder trial eventually began in the Grahamstown High Court. This prolonged wait while the investigation was concluded, the DNA and forensic reports were completed, and the trial date was established is a widespread phenomenon in South Africa (Pretorius – Halstead-Cleak – Morgan 2020). I attended the trial on behalf of Judith's family and her and Fabien's close friends, and also the Hogsback community. Fabien's mother lives in France, and a member of our group of close friends kept her informed.

The importance of obtaining information about why a murder was committed and what took place has been highlighted in various studies of homicide (see, for example, Bolaśell et al 2021: 2, 7–8, 10; Armour 2002: 374). Given the profound effect of murders on the lives of homicide survivors, such information is crucial. The families, partners and close friends of murdered individuals are plunged into a confusing, nightmare world, an "abyss of chaos and desolation," where the murder of someone close to them seems incomprehensible. In this situation, aspects of their worldviews and belief systems may seem meaningless or inadequate, and they may feel they have lost control over the nature of their lives (Armour 2002: 378, 376, 380). This stems in part from a sense that the murder investigations and the subsequent legal proceedings arising from them are beyond their comprehension and control. Like many other homicide survivors, those closest to Judith and Fabien were made to feel like onlookers cut off from the information they desperately sought, partly as a result of the complex and opaque nature of the investigation, and also because they were marginalised by the criminal justice system, in which murder is perceived primarily as a crime against the state (Armour 2002: 372, 375–376, 378–380).

2 In her study of family members of murder victims, Marilyn Armour describes the extent to which they are haunted by the "why" question (2002: 374).

Distance, separation and isolation

We now return to the central question posed earlier: can the dead have any agency in a murder trial? Or, like some of the living, are they deprived of any kind of agency? On the most obvious level, the dead cannot have agency. All too often, verdicts and sentencing do not operate in the interests of the deceased. Instead, they can be swayed by outside factors, including money, status and power. Moreover, the verdicts and the sentences, emerging from impersonal legal deliberations, may seem detached from the dead individuals concerned.

Another factor is the nature of murder trials themselves. The dead are consigned to the category of the deceased, becoming objects of scrutiny by forensic pathologists, police photographers, detectives and the court. Moreover, the legal terminology used in murder trials may tend to exacerbate this distancing, as do some of the ways in which the murdered individuals are depicted. For instance, in the trial that I attended, the term "unfortunate" was often used, as in "the unfortunate Judith Masters" or "the unfortunate Fabien Genin." This word seemed a hideously inappropriate understatement. Yet it seems that the term "unfortunate" (which has been used in other South African murder trials) functions as a euphemism, softening and obscuring the reality and brutality of homicide.

I also found that, despite the fact that the two murdered people had been longstanding friends, a type of mental distancing and detachment was taking place. Murder trials are ghastly affairs, during which all the details of the killings and the injuries inflicted on the murdered individuals are disclosed. In this trial, some details, particularly the evidence provided by the forensic pathologist and the police photographer, together with the information contained in the post-mortem reports, were especially horrible. (Only the legal counsel, the detectives and the accused were shown the police photographs of the crime scene and the murdered individuals.) I found myself mentally separating what I was hearing from the two people I had known so well. It was almost as if who they were and what had been done to them belonged to two entirely separate categories.

A further kind of separation took place on other levels. At times, the horror of the murders seemed to eclipse all else, including the dead individuals concerned. At the outset, the shock, disbelief, anguish and trauma that many people experienced when they learned of the murders tended to engulf them. Some people still cannot bear to talk about Judith and Fabien. This distancing, and the sense of separation that accompanies it also intensifies feelings of helplessness and isolation. As someone whose brother was murdered once said, "[We were] left in our own little corners,

not knowing what to do" (Pretorius, Halstead-Cleak and Morgan 2010). This sense of isolation stems from and is intensified by the way in which mourning, which formerly took place at a social and communal level, has become increasingly individualised in contemporary Western and Westernised societies. Philippe Ariès explores this in *The Hour of Our Death* (1981), his study of changing attitudes to death and dying in Western culture, as does Meghan O'Rourke (2010). Freud's "Mourning and Melancholia," with its focus on the inner, psychological lives of individuals, is emblematic of this shift (also O'Rourke).[3]

So, while this legal and personal detachment and disconnection was taking place, where were the dead themselves, and in what ways, if any, could they make their presences felt at a murder trial? We are connected to the dead in different senses and we are made aware of their presences in various ways. Yet, an awareness of this kind is impeded by several factors, including the lack of rituals for the dead and the dying. Clifford Geertz describes how rituals and the symbolic systems surrounding them provide reassurance, bestowing a sense of order and meaning in the midst of confusion, and incorporating that which might seem unfamiliar into a familiar framework (1973: 99). Similarly, Joanna Wojtkowiak, Jonn Lind and Geert E. Smid depict rituals as "enactments of meaning making" (2021: 2). These aspects of ritual are particularly important in the context of murder, when much may seem confusing and incomprehensible. Commentators such as Robert Hertz, Maurice Bloch and Jonathan Parry, and Richard Huntington and Peter Metcalf describe the ways in which rituals offer a means of responding to and engaging with that which goes beyond words and human comprehension, on account of their symbolic nature (see Hertz 1960: 1; Bloch – Parry 1982: 1–7; Huntington – Metcalf 1979: 62–64).

Furthermore, Jean and John Comaroff observe that ritual can serve as a means of asserting a degree of symbolic control over a milieu that appears to be rapidly and dramatically changing (1993: xiv). The deaths of those we know well may bring about drastic changes of this kind, for they may alter the nature of our lives and some of our worldviews. In their studies of how various societies deal with death and mourning, Hertz and Huntington and Metcalf describe the ways in which death rituals are interwoven with life, forming a fundamental part of human existence.

However, in general, contemporary Western societies tend to lack – or have few or insufficient – rituals for death and mourning. Many writers have pointed out, including Atul Gawande in *Being Mortal* (2014), his study of

3 References to Freud derive from *The Standard Edition of the Complete Psychological Works of Sigmund Freud* (1957).

aging and death, that contemporary Western or Westernised societies tend to be ill-equipped to respond to or come to terms with death and dying (see, for example, 1–10, 259–263). There is all too often an avoidance of the fact of death. We have tended to distance ourselves from rituals that might provide meaningful ways of responding to death, and incorporating it into our worldviews (see, for example, O'Rourke 2010). As a result, it impedes or complicates our ability to integrate the dead into the world of the living, albeit symbolically, through ritualistic activities and recollections and various ways of paying tribute to them, and also by means of an ongoing acknowledgement of them as significant presences in our lives. This sense of separation from the dead came to the fore during the course of the trial. As the courtroom proceedings unfolded, Judith and Fabien seemed consigned to a place of darkness and horror. I had a sense that the two people I had once been so close to were receding ever further away from me.

Absence and presence

Then, a turning point of sorts took place. The three accused were eventually convicted of murdering Judith Masters and Fabien Genin. Before the sentences were passed, the court allowed a space to consider mitigating or aggravating factors that might provide grounds for reducing or increasing the sentences. The judge rejected the mitigating arguments of the three men as facile and said that their expressions of remorse rang hollow. The prosecutor invited me to take the witness stand and outline some aggravating factors. I was asked to explain why Judith and Fabien were internationally renowned researchers and to highlight their many achievements in teaching and postgraduate supervision. I also described the contribution they had made as scientists to the Hogsback community.

Therefore, in a sense, I had to mentally step outside the murder trial for a while, by reading obituaries in international scientific journals that paid tribute to them and their achievements, and by reflecting on some of their significant contributions to teaching and postgraduate supervision at the University of Fort Hare, and the role they had played in our community. Thus, I was forced to move beyond thinking of them as two people who had died in a terrible way and to return to them as they had been in life, as the living people I had known.

By recalling them and recounting their achievements as teachers and researchers and their contributions as scientists to our community, it seemed as if a process of recovery was taking place, and (even if only briefly and symbolically) they had been restored to the people that they once were. And

I felt connected to Judith and Fabien once again, and that I had moved beyond the separation and disconnection that had taken place during the trial.

It was as if they had a kind of agency and that they had been waiting to step back into the picture and be recovered and re-acknowledged. In life, they had been people who were impossible to ignore, and even in a murder trial, it was impossible to ignore the people they had been. Their research and teaching had been central to their existence, and when I was called upon to describe their careers as researchers and teachers, it felt almost as if they were steering the process. It was as though I was not doing something for them; I was doing what they would have wanted.

When the sentences were handed down, all three men were sentenced to life imprisonment (each received two life sentences for the murders of Judith and Fabien, to run concurrently). In that moment, I suddenly had a very vivid mental picture of Judith and Fabien as they had been when we visited them in their home, before it became a place of horror, and I had a strong sense that they were aware of the verdict. Perhaps this can be interpreted as a subjective reaction to an intense emotional and psychological experience, or it could be understood as some kind of indication of the agency of the dead.

After the trial, it seemed that some type of ritual was needed to move Judith and Fabien beyond Criminal Court B in the Grahamstown High Court. I felt that our memories of them should not conclude with the trial and that this was important for us and for them, and that it was something that they themselves would have wanted. I discussed the idea with another person in our group of close friends, and she agreed that some kind of post-trial ritual was necessary in order to "free their spirits." I envisaged a ceremony to plant two indigenous forest trees near the local forest. However, there were differing opinions in our group of close friends. One particularly close friend said that she felt that the tree-planting ceremony would seem like a final farewell; she and another member of the group suggested that a memorial bench be installed for Judith and Fabien instead. But some friends were traumatised and many of us were psychologically and emotionally exhausted. Various people had done so much in the wake of the murders (including packing up Judith and Fabien's home, re-homing their animals and organising their memorial event) while carrying great burdens of grief. And none of us could take on any more after the trial. Therefore, we were not in a position to move forward with the idea. Still, I felt that something essential, something that both the dead and the living needed, remained unfulfilled.

Conclusion: analysis

What general conclusions can be drawn from this very specific deeply personal experience? As noted at the outset, our responses to the dead are individualised and subjective. Yet, analytic autoethnographic approaches move from the specific to the general, allowing the broader relevance of an individual experience to be explored (Anderson 2006: 373–375).

First, this experience highlights that the dead remain ongoing presences in our lives, even when they are no longer physically present. Drawing on the work of Dennis Klass, Phyllis R. Silverman and Stephen Nickman (1996), Avril Maddrell speaks of the "continuing bonds" that exist between the living and the dead (2013: 501, 506–508). She observes that many people feel "a strong sense of the presence of the absent deceased in their lives." Thus, paradoxically, the dead are both absent and present. Indeed, an awareness of their absence may be intertwined with a powerful sense of their presence (Ibid.: 501–503, 505, 517). In my case, the murder trial, despite its focus on their deaths and thus their absence, eventually made Judith and Fabien powerfully present in an emotional and psychological sense.

Second, the experience suggests that there are certain things (be they actions, rituals or specific processes taking place on emotional, psychological or imaginative levels, including re-imaginings, reconnections and acts of recovery) that can be enacted for the dead. In a sense, the dead have needs and – as I discovered during the trial – also demands. In this, memory plays an essential role. If we keep the dead alive in our memories by a continual process of remembering them as they once were, focusing particularly on what made them unique and important presences in our lives, they remain with us. Memories of this kind offer an alternative – albeit a limited one – to the avoidance and denial of death, and consequently, the dead. If we allow the dead to slip away into forgetfulness, part of our world slips away too.

However, as Freud notes, memory is paradoxical. In seeking to find healing from trauma, we turn to our memories, yet memory preserves the very trauma we seek to heal (also Conway 2006). At the same time, memory is selective and subjective and shaped by emphasis and omission. In a sense, then, our memories are narratives, and by means of memory, we can recreate our narratives. Although offering an alternative narrative about Judith and Fabien towards the end of the trial did not override the horror of their deaths, it ensured that their story did not end there. Instead, the story of their lives took precedence over the story of their deaths at a certain point during the trial. Several commentators emphasise the significance of reworking "the narrative of homicide" by constructing counter-narratives of the

murdered individuals rather than being entrapped in recurrent, nightmarish images of their violent deaths. Such narratives do not erase the hideousness of what happened, but they offer alternatives to "the traumatized imaged of the deceased" (Rynearson – McCreery 1993).

Rynearson and McCreery note that if a homicide survivor "becomes the narrator, rather than witness," then "the retelling belongs to the teller, instead of autonomously intruding" (1993). This has a particularly valuable role to play in the context of narratives of violence and horror that characterise murder trials, embedded as they are in legal complexities.

A narrative re-creation of this kind can have ritual-like qualities. For instance, it may take place as part of a pre-arranged procedure enacted to fulfil a particular function, facilitating a progression towards wholeness and healing.[4] This is indicative of the importance of rituals – of whatever form – at key times in our lives. This is particularly the case in the context of a murder and its aftermath. Indeed, ritualistic activities of various kinds could have fulfilled important functions after the murders and during and after the trial.

Huntington and Metcalf emphasise the importance of death rituals in diverse cultures, describing how they provide meaningful ways of acknowledging, responding to and coming to terms with death. They also discuss the ways in which certain death rituals may enable a community and the individuals within it to affirm the beliefs and values that shape and guide their actions and perceptions, bestowing a sense of meaning and purpose on them. Moreover, Bloch and Parry describe how ritual offers a way of responding to the seemingly random, haphazard nature of death, and also to its unpredictability (1982: 12–13, 15). As murder magnifies these aspects of death, ritual could fulfil a significant function in such a context. During intense, destabilising circumstances such as death, rituals can function as a secure, structured space in which to express emotions and engage with complex, sometimes threatening aspects of human experience (Wojtkowiak – Lind – Smid 2021: 2, 9).

Because rituals have been used to enable individuals to cope with and move beyond a state of entrapment in anguish, suffering and shock, they can eventually fulfil a transformative function (Wojtkowiak – Lind – Smid 2021: 2; Rynearson – McCreery 1993: 258–261). Indeed, rituals have been depicted as "metaphors for transformation" (Johnson et al 1995). Ritualistic activities and enactments can offer an individual a space within which grief, horror and trauma can be revisited, allowing for a re-imagining of

4 Rynearson and McCreery depict this, for instance, in their discussion of specific types of therapy for homicide survivors (1993).

their experience, and a certain transformation can take place on emotional, psychological and imaginative levels. New perspectives can be brought to bear not only on the trauma and horror but on those affected by it, including the deceased and those enacting the rituals. Moreover, Wojtkowiak, Lind and Smid maintain that rituals can constitute a significant aspect of the grieving process (Wojtkowiak – Lind – Smid 2021: 2, 89; also Rynearson – McCreery 1993: 258–261). As a result of these above-outlined factors, ritual has been shown to play a key role in the treatment of ongoing, deep-seated grief, trauma and post-traumatic stress disorder (see, for example, Johnson et al 1995; Wojtkowiak – Lind – Smid 2021).

Further to this, various commentators, including Hertz and Bloch and Parry, describe how rituals fulfil a communal function, helping counteract the terrible isolation of grief. Johnson, Feldman and Lubin (1995) and others also discuss how rituals enable grieving individuals to feel connected not just to others close to the deceased but also to their communities (also Wojtkowiak – Lind – Smid 2021: 8–9).

Other aspects of death rituals are relevant to Judith and Fabien's deaths and to the Hogsback community. In their studies of death rituals in various communities, Hertz, Bloch and Parry and Huntington and Metcalf show that death is marked by rituals at various stages and these form part of a process that provides a structured space for grieving, and enables the souls of the deceased to move on (see, for example, Bloch and Parry 1982: 1–44, 108–122).

Hertz's study on death rituals, for example, is divided into stages, commencing with the provisional burial of the body and the mourning process and culminating with the final burial, when the soul is believed to reach the place it is destined for. This calls to mind Judith and Fabien's friend's desire to "free their spirits" after the trial by means of some kind of ritual procedure. During the "intermediary" liminal period, both the dead and the living undergo a process of change (Hertz 1969: 2–14; also Venbrux 2007: 5–7). Thus rituals of this nature involve such a transition for both the deceased and for the living.

Various death rituals provide a means of affirming the life of a community and the lives of the bereaved individuals within it (see, for example, Hertz 1969: 46; Bloch and Parry 1982: 2–6, 20–22, 29; Wojtkowiak – Lind – Smid 2021: 8–9; Huntington and Metcalf 1979: 43–122). For example, in *Death and the Regeneration of Life* (1982), Bloch and Parry describe how death and life can be interconnected in death and mourning rituals. Thus, such rituals offer a way to move forward at individual and community levels. In the case of Judith and Fabien's murders, ritualistic activities might have facilitated this. Specifically, they could have helped address the lack of closure

after the trial. As some of those closest to Judith and Fabien believed, the notion of closure felt incongruous and inappropriate, given the horror of the murders and the ongoing grief and trauma that they left in their wake. This was particularly pertinent during the trial, despite the verdict. This lack of closure has been highlighted in various homicide studies (see, for example, Armour 2002: 378). Under such circumstances, recourse to ritual or ritual-like activities of some kind – while not a means of bringing about closure – could have provided a way of moving forward.

Yet, as was the case during and after the trial, our rituals are not there when we most need them. For instance, Meghan O'Rourke describes how, after her mother's death, she lacked rituals to turn to and "felt abandoned, adrift" (2010). Indeed, in times of tragedy, suffering and disaster, we need significant ways of responding and moving forward. But all too often, these rituals are lacking and we are unable to construct meaningful rituals of our own.

In conclusion, we return to the question posed at the outset: do the dead have any kind of agency during and after a murder trial? The answer is not straightforward. They do not, but also they do. A murder trial involves a process of distancing and detachment at legal and individual levels, and during a trial the dead are deprived of their individuality and humanity, reduced to objects to be examined and deliberated upon. However, the dead continue to exert a profound influence over our emotional, psychological and imaginative lives, and, in that sense, they do have agency. It is possible to become deeply aware of this during the course of a murder trial and its aftermath. Finally, it is worth noting that under certain – sometimes extreme – circumstances, the dead do not need to be summoned. They are there of their own accord.

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