No. 14-56373

IN THE

United States Court of Appeals for the Ninth Circuit

ERNEST DEWAYNE JONES,
Petitioner-Appellee,

v.

RON DAVIS, WARDEN
Respondent-Appellant.

On Appeal from the United States District Court
for the Central District of California
No. 09-CV-02158-CJC
The Honorable Cormac J. Carney

BRIEF OF *AMICI CURIAE* MURDER VICTIMS' FAMILIES FOR RECONCILIATION AND CALIFORNIA CRIME VICTIMS FOR ALTERNATIVES TO THE DEATH PENALTY IN SUPPORT OF APPELLEE

PAT MCCOY
MURDER VICTIMS' FAMILIES FOR RECONCILIATION
P.O. Box 27764,
Raleigh, NC 27611-7764
(877) 896-4702

AUNDRÉ HERRON
CALIFORNIA CRIME VICTIMS FOR ALTERNATIVES TO THE DEATH PENALTY
5 Third Street, Suite 725
San Francisco, CA 94103
(415) 262-0082

WILLIAM POLLAK
ANDREW YAPHE
SERGE VORONOV
DAVIS POLK & WARDWELL LLP
1600 El Camino Real
Menlo Park, CA 94025
(650) 752-2000

SHARON KATZ
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017
(212) 450-4000

Counsel for Amici Curiae

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE(S)

CASES

RULES

BOOKS

OTHER AUTHORITIES

STATEMENT OF *AMICI CURIAE* INTEREST

Murder Victims' Families for Reconciliation ("MVFR") and California Crime Victims for Alternatives to the Death Penalty ("CCV") are both victim-founded, victim-led coalitions of family members of murder victims, and their supporters, who oppose the death penalty. MVFR was founded in 1976 and CCV was founded in 2007 in response, in large part, to a society and judicial system that tell family members of murder victims that the imposition of the death penalty is necessary for their healing. There are approximately 730 CCV members (over 500 of whom are family members of victims), while MVFR has 6,328 members nationwide and 941 members in California. Both organizations include people from a broad array of faiths and belief systems, and their members are geographically, racially, and economically diverse. Their members oppose the death penalty for a variety of reasons, including that it (1) complicates grieving and hinders healing, (2) wastes money that could be better spent on law enforcement to help solve the 46 percent of murders that go unsolved every year in California, (3) is applied unfairly and disproportionately, and (4) violates ethical, moral, and religious teachings and norms.

Both organizations seek to give voice to the victims of violence, to enable them to speak to their own needs, to name what is necessary to their own healing, and thus to rebuild their own lives. Both organizations also advocate for programs

and policies designed to reduce the rate of homicide and to promote crime prevention and alternatives to violence.[1]

[1] Amici file this brief with the consent of counsel for both parties pursuant to Rule 29 of the Federal Rules of Appellate Procedure. No counsel for any party authored this brief in whole or in part, and no person or entity made any monetary contribution to the preparation or submission of this brief.

INTRODUCTION

Murder Victims' Families for Reconciliation ("MVFR") and California Crime Victims for Alternatives to the Death Penalty ("CCV") submit this amicus brief to provide the Court with a broader perspective regarding the views on the California death penalty system held by those who are among the most personally affected by it—namely, the family members of individuals who have been murdered. MVFR and CCV passionately believe that the death penalty serves no legitimate penological purpose. The death penalty cannot be justified as retributive justice for co-victims because it is not possible to conclude that all, or even a majority of, co-victims have a compelling need or desire to see such death sentences carried out.[2] In fact, there is no evidence that the death penalty—in the rare cases in which it is actually implemented—brings "closure" or some form of psychological relief to the families of the victims. Instead, the imposition of the death penalty has the opposite effect of prolonging and exacerbating the terrible pain and grief experienced by co-victims.

Nowhere is this more true than in California, where of the over 900 individuals sentenced to death since 1978, the State has executed only an arbitrary thirteen individuals, and delays averaging more than twenty-five years plague the

[2] The term "co-victim" is used throughout this brief as shorthand for the families of murder victims.

system.[3] Based on their own experiences, the members of MVFR and CCV believe that the lengthy delays associated with the death penalty, as currently administered in California, create more pain and suffering for co-victims of violent crime. This is because the death penalty and the legal process associated with it force co-victims to repeatedly relive the trauma of the murders of their loved ones and deal with the anxiety, stress, and torment of that experience for as much as a quarter of a century after the murder is committed. As a result, many co-victims, including the ones represented by this amicus brief, strongly reject the death penalty as providing no psychological or emotional solace and as a violation of human rights that implicates the co-victims in yet another killing and dishonors the memory of their murdered family members.

Before turning to the argument section of this brief, MVFR and CCV set out the stories of three co-victims, all of whom are California-based members of MVFR and CCV. The murders described in this brief occurred three, twenty-two, and thirty-four years ago, respectively. These examples highlight some of the different reactions and experiences of co-victims, which are always individual and should never be reduced to clichés. But all of these cases show the harm and suffering inflicted on co-victims by the California death penalty system.

[3] *See Jones v. Chappell*, 31 F. Supp. 3d 1050, 1060 (C.D. Cal. 2014).

CO-VICTIMS' STORIES

A. Bethany Webb[4]

In October 2011, Scott Dekraai shot and killed eight people in a hair salon in Seal Beach, California. This was the deadliest mass shooting in Orange County history.[5] Bethany Webb's sister, Laura, was killed, and Bethany Webb's mother, Hattie Stretz, was seriously injured. Mr. Dekraai confessed to the crime and, in 2014, pleaded guilty to eight counts of murder.

Ms. Webb opposes the death penalty in California in part because of the extraordinary length of time involved in death penalty proceedings.[6] The district attorney has estimated that the death penalty process in this case will take decades. While she waits for the conclusion of the penalty phase of Mr. Dekraai's case (a process that she neither wants nor has asked for), Ms. Webb has "already had to go to court several times and see the man who shattered my family sitting there without remorse." These trips routinely re-traumatize Ms. Webb (and the other co-

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[4] When not otherwise cited here, quotations attributed to Ms. Webb come from an interview with her conducted on December 16, 2014.

[5] *See* Vik Jolly & Eric Hartley, *Seal Beach shootings suspect Scott Dekraai agrees to plead guilty*, ORANGE COUNTY REGISTER, Apr. 29, 2014, http://www.ocregister.com/articles/dekraai-611733-penalty-guilty.html.

[6] In Ms. Webb's own words: "I don't want or need the death penalty." Maura Dolan, *Victims' relatives divided on ending death penalty*, LOS ANGELES TIMES, Oct. 30, 2012, http://articles.latimes.com/2012/oct/30/local/la-me-prop-34-20121031.

victims) who find it "torturous to have to keep going to court." The anguish associated with these trips is especially intense because the death penalty system in California takes so long that "[t]here's no end in sight."[7] "It's all going to be fresh and brought up again when the penalty phase happens. And for no reason. It's all going to end up the same. He's going to die of old age in jail. We know that."

Ms. Webb has other reasons for opposing the death penalty, including (1) the risk of possibly executing an innocent person,[8] (2) the fact that the death penalty "costs an obscene amount of money,"[9] and (3) the special privileges extended to death row inmates. In addition, Ms. Webb believes that the death penalty sends the wrong message, insofar as it indicates that "it is okay to kill somebody because you're mad at them or because they have done something terrible to you."

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[7] Bethany Webb, Op-Ed, *Bethany Webb: Yes on Prop. 34*, ORANGE COUNTY REGISTER, Sept. 25, 2012, http://www.ocregister.com/articles/death-372702-penalty-family.html.

[8] The prospect of executing an innocent individual is profoundly disturbing to Ms. Webb: "After suffering the loss of my beautiful sister, I am not willing to risk putting another family through the pain of losing an innocent family member. My grief cannot erase the fact that, in some cases, it is not clear who is guilty."

[9] As Ms. Webb recently noted when interviewed by the Orange County Registrar: "We have spent $4 billion on the death penalty since 1978, but only executed 13 people." Webb, *supra* note 7.

In October 2013, Ms. Webb and the families of several other victims met with the prosecutors assigned to the case and requested that the death penalty be taken off the table. According to Ms. Webb, the prosecutors "told us in our meeting, point blank, that it didn't matter at all if we wanted the death penalty." This meeting left Ms. Webb, and the other co-victims in the meeting, feeling marginalized and ignored. In Ms. Webb's words, "this is not [being done] for us . . . We don't have a voice."

B. Clifford O'Sullivan, Jr.[10]

In September 1993, Mark Scott Thornton abducted 33-year-old Kellie O'Sullivan and killed her. Ms. O'Sullivan was survived by her five-year-old son, Clifford O'Sullivan, Jr. During the sentencing hearing, Mr. O'Sullivan testified in favor of the death penalty for his mother's murderer, becoming the youngest co-victim ever to testify in a death penalty case. He told the sentencing judge that his mother "was the greatest mother," and that what had happened to her "was a very bad thing."[11] He concluded that "what the bad guy did to my mom should happen to [Mr. Thornton]." Following Mr. O'Sullivan's testimony, Mr. Thornton was sentenced to death. Almost twenty years later, Mr. Thornton remains on death row.

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[10] When not otherwise cited here, quotations attributed to Mr. O'Sullivan come from an interview with him conducted on December 18, 2014.

[11] Clifford O'Sullivan, Jr., *Murder Victim's Son Advocates Against Death Penalty*, THE CONTRIBUTOR (Jan. 27, 2014).

Mr. O'Sullivan now deeply regrets his testimony and the role that he played, as a five-year-old child, in the sentencing. Mr. Thornton's death sentence brought Mr. O'Sullivan no relief and he knows that Mr. Thornton's death will do nothing to bring his mother back or help him in his quest for internal peace.

Not only has Mr. O'Sullivan failed to achieve any peace from the death sentence, but he also believes that the system has repeatedly re-victimized him. First, the act of testifying as a young child was a traumatizing one that he remembers vividly to this day. Second, the lengthy appeals process in California following Mr. Thornton's conviction has, in Mr. O'Sullivan's view, exacted "an enormous financial and emotional drain on [Mr. O'Sullivan]." As is typical in California, nearly two decades have passed since Mr. Thornton was sentenced, and yet his appeals are not even close to being exhausted. Mr. O'Sullivan believes that there is little chance the death sentence will ever be carried out, and the years of uncertainty and anxiety have made it exceedingly difficult to move on with his own life.

Finally, Mr. O'Sullivan is concerned that if Mr. Thornton is executed, then he will be complicit in a "state-sanctioned homicide" that runs contrary to his fundamental beliefs. In his own words "as a child, [I] participated in a process that

led to the sentencing of another person to death, and I will raise my hand for indictment should the state-sanctioned homicide ever take place."[12]

C. Aba Gayle[13]

In the fall of 1980, Douglas Mickey murdered Catherine Blount.[14] Mr. Mickey was convicted of Ms. Blount's murder and sentenced to death in 1982. He remains on death row to this day, some thirty-three years after sentence was imposed.

Catherine's mother, Aba Gayle, was devastated by her daughter's death. Following the murder of Catherine, Ms. Gayle says, "[t]here was this awful, hideous darkness, and all I wanted was revenge for the death of my beloved child." However, after eight years of what Ms. Gayle calls "a passionate lust for revenge," she took what she describes as her "first step toward healing." "After many hours of study, prayer, and discussions with others," Ms. Gayle realized "that perhaps I could forgive the man who murdered Catherine" as a way of honoring Catherine's memory. Even though it was extremely difficult, Ms. Gayle ultimately wrote a letter to Douglas Mickey telling him that she forgave him. She found the act of

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[12] *Id.*

[13] When not otherwise cited here, quotations attributed to Ms. Gayle come from an interview with her conducted on December 18, 2014.

[14] *See* Aba Gayle, *Aba Gayle's Story*, THE CATHERINE BLOUNT FOUNDATION, http://www.catherineblountfdn.org/abagayle.html (last visited Mar. 4, 2015).

mailing the letter to be healing: "All the anger, all the rage, all the lust for revenge—simply vanished in that moment." After sending the letter, Ms. Gayle came to a realization: "I did not need to have anyone executed for me to be healed. I could now get on with my life!" To Ms. Gayle's surprise, Mr. Mickey responded to her letter. "He expressed remorse and sorrow for the crime" and wrote "I would gladly give my life this instant if it would in any way change that terrible night." Mr. Mickey included a visiting form with his letter and, months later, Ms. Gayle visited the prison and met Mr. Mickey. Visiting death row surprised Ms. Gayle: "I did not see a single monster in that room. It was filled with ordinary looking men."

In light of these experiences, Ms. Gayle now opposes the death penalty for Mr. Mickey. In fact, Ms. Gayle and her family believe that the death penalty is "immoral" and "a violation of human rights" because it is nothing more than "state-sanctioned murder." After decades of delays, she also questions the wisdom of executing someone for "something they did thirty years ago." Ms. Gayle says that, if that day should ever come, it would re-traumatize her family; she would "feel awful, really awful. They'd be executing [a] friend. That is just another murder that should not happen."

Accordingly, Ms. Gayle and her entire family pleaded with the district attorney not to appeal a (subsequently overturned) decision revoking the death penalty in Mr. Mickey's case. Her plea was ignored, and the death penalty was

reinstated. This experience was difficult for Ms. Gayle and made her feel as if her views were irrelevant. "Over and over," she laments, "I've been told that what we feel and what we think is not important."

ARGUMENT

A. The Death Penalty Cannot Be Justified as a Means of Obtaining Closure for the Families of Victims

As Judge Carney noted in his opinion, one of the two primary rationales often advanced for the death penalty is that it provides retribution for the victims of these terrible crimes, which is supposedly necessary for co-victims to heal.[15] This concept—that murder victims' families cannot fully heal until the judicial system has ended the life of the murderer—is frequently referred to as "closure."[16]

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[15] *See Jones*, 31 F. Supp. 3d at 1064–65; *see also People v. Sattiewhite*, 328 P.3d 1, 34 (Cal. 2014) (discussing a prosecutor's argument in favor of imposing the death penalty on a defendant on the ground that "[w]e must have closure so that we feel secure knowing that justice is served"); *Bowling v. Ky. Dep't of Corr.*, 301 S.W. 3d 478, 496 (Ky. 2009) (Scott, J., concurring in part and dissenting in part) (arguing that certain death sentences should be carried out because "[t]he families of the victims cry out for closure").

[16] "Closure" is an "unacknowledged umbrella term for a host of loosely related and often empirically dubious concepts." Susan A. Bandes, *Victims, "Closure," and the Sociology of Emotion*, LAW & CONTEMP. PROBS., Spring 2009, at 1, 1 (2009) (explaining that "closure" is "a term with no accepted psychological meaning"). These include the idea of finality, or the chance for survivors to "put the murder behind them"; an end to the proceedings; the removal of the defendant as a "threat"; and the ability to "complete (or begin) the process of 'healing.'" Samuel R. Gross & Daniel J. Matheson, *What They Say at the End: Capital Victims' Families and the Press*, 88 CORNELL L. REV. 486, 489–91 (2003).

But, as the stories above illustrate, many co-victims do not believe that the execution of the people who murdered their loved ones will bring them "closure." In fact, there simply is no reliable empirical evidence to suggest that co-victims benefit from the execution of a convicted defendant.

> Some families may find that the execution does not provide them much if any comfort. In fact, losing the object of their anger may leave them feeling empty and unfocused. If they have believed for years that the execution of their relative's killer would bring them substantial emotional relief and it does not, they may even feel worse after the execution.[17]

Indeed, studies suggest that while co-victims may well "want a psychological 'resolution' of the matter," such a resolution usually "does not ultimately depend on the outcome of the criminal case."[18] As one scholar explains, it is "simplistic to

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[17] Margaret Vandiver, *The Impact of the Death Penalty on the Families of Homicide Victims and of Condemned Prisoners*, *in* AMERICA'S EXPERIMENT WITH CAPITAL PUNISHMENT, 477, 484–85 (1st ed. 1998); *see also* FRANKLIN E. ZIMRING, THE CONTRADICTIONS OF AMERICAN CAPITAL PUNISHMENT 58–60 (2003) (discussing the history of the use of the term "closure" in connection with the death penalty, and explaining that the "empirical support for [the theory that execution brings closure to victims' families] is quite thin"); Lawrence C. Marshall, *The Innocence Revolution and the Death Penalty*, 1 OHIO ST. J. CRIM. L. 573, 582 (2004) ("There is simply no evidence that executions deliver on their promise of promoting the psychological welfare of murder victims' families.").

[18] Lynne N. Henderson, *The Wrongs of Victim's Rights*, 37 STAN. L. REV. 937, 976 (1985); *see also* Jody L. Madeira, *"Why Rebottle the Genie": Capitalizing on Closure in Death Penalty Proceedings*, 85 IND. L.J. 1477, 1489–90 (2010) (explaining that the legal system "necessarily entails certain forms of closure stemming from its need to seek accountability[] and pronounce a verdict," but that these "forms of closure" are completely different from the kinds of closure that "victims actually seek or require"); Susan Bandes, *When Victims Seek Closure:*
(….continued)

assert that the rituals of condemnation will erase so profound an experience for the individual."[19] Thus, it is unsurprising that many family members of murder victims report that they did not feel any closure after the execution had been carried out.[20] Simply put, there is no evidence that the achievement of *judicial* closure—i.e., the carrying out of the death penalty—also brings *emotional* or *psychological* closure.[21]

The invocation of "closure" as a unitary concept masks the reality that the families of victims have varied and diverse responses to the horror of having a

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(continued….)

Forgiveness, Vengeance, and the Role of Government, 27 FORDHAM URB. L.J. 1599, 1606 (2000) (explaining that the "kinds of closure" provided by the legal system "may not track the sorts of therapeutic or spiritual closure victims seek").

[19] Henderson, *supra* note 18, at 976.

[20] *See, e.g.*, Thomas J. Mowen & Ryan D. Schroeder, *Not in My Name: An Investigation of Victims' Family Clemency Movements and Court Appointed Closure*, 12 W. CRIMINOLOGY REV. 65, 78 (2011) (concluding that "most families do not receive closure through the imposition of the death penalty"); Lynne Henderson, *Co-Opting Compassion: The Federal Victim's Rights Amendment*, 10 ST. THOMAS L. REV. 579, 601–02 (1998) ("Anecdotally, victims who expected the punishment or even execution of the offender would bring them relief, satisfaction, gratification, or an end to the effects of the trauma often find that the effects remain and the 'victory' is a Pyrrhic one.").

[21] *See* Henderson, *supra* note 20, at 601–02; Marshall, *supra* note 17, at 582; *see also* ROBERT M. BOHM, DEATHQUEST: AN INTRODUCTION TO THE THEORY AND PRACTICE OF CAPITAL PUNISHMENT IN THE UNITED STATES 308 (4th ed. 2012) (observing that a number of family members of murder victims, "including some who support capital punishment . . . bristle at the contention that executions bring closure," and instead feel that "executions produce an outcome, but never closure").

family member murdered. The "empirical evidence . . . supports the intuitively obvious view that different [co-]victims have different needs, and that an individual [co-]victim's needs may change over time."[22] Even the "[f]amilies of homicide victims differ widely on how they think offenders should be punished, and sometimes members of the same family, or families victimized by the same defendant, may disagree on the proper punishment."[23] Thus, it is impossible and inappropriate to justify the death penalty as supposedly bringing closure to the co-victims of these terrible crimes.

B. The Length of the Appeals Process Exacts a Toll on Victims' Families

In California, extensive delays—exceeding twenty-five years on average and sometimes over thirty-five years—are systematic and inherent in the death penalty process.[24] These delays exact a serious toll on the families of murder victims and

[22] Bandes, *supra* note 18, at 1602–03; *see also* Marian J. Borg, *Vicarious Homicide Victimization and Support for Capital Punishment: A Test of Black's Theory of Law*, 36 CRIMINOLOGY 537, 538 (1998) (summarizing studies showing that some family members of murder victims feel "strong opposition to state executions," while others who "initially demanded a capital sentence to avenge their grief" later found "that the killer's execution did not bring the emotional closure they had hoped for").

[23] Margaret Vandiver, *The Impact of the Death Penalty on the Families of Homicide Victims and of Condemned Prisoners, in* AMERICA'S EXPERIMENT WITH CAPITAL PUNISHMENT 637 (2d ed. 2003).

[24] *See Jones*, 31 F. Supp. 3d at 1054, 1060, 1065–66.

actually *reduce* the possibility of "closure" by (1) compelling co-victims to relive and revisit the horrors of the murder of a family member and (2) creating anxiety and uncertainty regarding the resolution of the legal process.

First, even in other states with delays averaging ten to fifteen years, the "glacial pace of capital appeals exacts a high price from the families of victims trying to put the horror of the crime behind them."[25] Roberta Roper, who founded a victims' rights group after her daughter was murdered, explained that the process "never seems to be over for the family," who are "told to show up for court" and testify, only to be "disregarded until [the prosecutors] need us again."[26] This process, which frequently lasts over twenty-five years in California, engenders a feeling of "secondary victimization" among many co-victims, insofar as they "have to endure proceedings over years, which forces them to relive the crime."[27]

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[25] Tom Gibbons, *Victims Again: Survivors Suffer Through Capital Appeals*, A.B.A. J., Sept. 1988, at 64, 67.

[26] *Id.* at 66, 68 (quoting Roberta Roper).

[27] Marilyn Peterson Armour & Mark S. Umbreit, *The Ultimate Penal Sanction and "Closure" for Survivors of Homicide Victims*, 91 MARQ. L. REV. 381, 413 (2007); *see also* JUDITH WEBB KAY, MURDERING MYTHS: THE STORY BEHIND THE DEATH PENALTY 82 (2005) (observing that families of murder victims are "made to wait many years for a promise of closure through an execution that may never happen," during which time they are "encouraged to remain fixated on their anger and to define themselves in terms of their loss").

Other studies of statements made by the families of murder victims have reached the same conclusion: the "single most prevalent theme" expressed by co-victims "was dissatisfaction or frustration with the delay or length of time" in the appeals process.[28] Indeed, the problem is reflected in the statement of Ms. Webb, who says that she finds it "torturous to go to court" over and over again, as well as the statement of Mr. O'Sullivan, who believes that the lengthy appeals process has "exacted an enormous financial and emotional drain on him."

Second, the lack of a final resolution to the legal proceedings creates a great deal of uncertainty and anxiety for co-victims, which makes achieving closure more difficult. A recent study compared the experiences of victims' families in states with and without the death penalty and concluded that the well-being of co-victims "is associated with a perceived sense of control" over the legal process.[29] In a state in which convicted murderers are sentenced to life without release rather than death, "survivors had greater control, likely because the appeals process was

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[28] Scott Vollum & Dennis R. Longmire, *Covictims of Capital Murder: Statements of Victims' Family Members and Friends Made at the Time of Execution*, 22 VIOLENCE AND VICTIMS 601, 615 (2007).

[29] Marilyn Peterson Armour & Mark S. Umbreit, *Assessing the Impact of the Ultimate Penal Sanction on Homicide Survivors: A Two State Comparison*, 96 MARQ. L. REV. 1, 95 (2012); *see also* ROBERT M. BOHM, ULTIMATE SANCTION 57 (2010) (quoting a co-victims' advocate explaining that victims' families feel "harassed by the court," insofar as proceedings "drag them right back to the night their loved one was murdered").

successful, predictable, and completed within two years after conviction."[30] By contrast, in a state that employed the death penalty, the "appeals process . . . was drawn out, elusive, delayed, and unpredictable," which "generated layers of injustice, powerlessness, and in some instances, despair."[31]

In 2006, the State of New Jersey established a Death Penalty Study Commission to study how the death penalty was administered in New Jersey.[32] After interviewing numerous witnesses, including the family members of murder victims, the Commission concluded that the "non-finality of death penalty appeals hurts victims, drains resources and creates a false sense of justice." Accordingly, the Commission recommended replacing the death penalty with life without parole, insofar as the latter is a "certain punishment, not subject to the lengthy delays of capital cases" that would "provide finality for victims' families."[33] Likewise, when former Illinois Governor George Ryan decided to commute all of the death sentences of prisoners in his state, he explained his decision in part by observing

[30] Armour & Umbreit, *supra* note 29, at 98.

[31] *Id.*

[32] N.J. DEATH PENALTY COMM'N, DEATH PENALTY STUDY COMMISSION REPORT 3 (2007).

[33] *Id.* at 61.

that it was a form of "cruel and unusual punishment" for "family members to go through this . . . legal limbo for [twenty] years."[34]

Nowhere is this more true than in California, where it takes an average of twenty-five years simply to complete the post-conviction appeals process.[35] The lengthy delay in California is extraordinary and it puts family members into a seemingly permanent state of limbo, which makes it exceedingly difficult to achieve any sense of closure or to heal and move on with their lives. Moreover, as illustrated in the stories of Bethany Webb, Clifford O'Sullivan, and Aba Gayle, the death penalty system in California repeatedly re-victimizes co-victims by forcing them to endure a lengthy process over which they have no control.

C. The Imposition of the Death Penalty Often Exacerbates the Difficulty of Healing for Co-Victims

Members of MVFR and CCV believe that the death penalty dishonors the lives and memories of their loved ones. Indeed, they have done everything in their power, including supporting California's Proposition 34, to repeal the death penalty in California. It is thus especially painful to them when their anguish is used to add emotional weight in support of a policy that they so profoundly oppose. Mr. O'Sullivan, for example, has explained that to this day he feels

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[34] *See* AUSTIN SARAT, MERCY ON TRIAL: WHAT IT MEANS TO STOP AN EXECUTION 130 (2005) (quoting George Ryan).

[35] *See Jones*, 31 F. Supp. 3d at 1054, 1062.

wracked with guilt over his role, as a five year old child, in advocating for Mr. Thornton's execution. If Mr. Thornton is executed, Mr. O'Sullivan has said he will be devastated at having been complicit in a "state-sanctioned homicide." Similarly, Ms. Gayle views the death penalty as "immoral" and has indicated that if Mr. Mickey is ever executed it will "re-traumatize her family." Accordingly, she has "beg[ged] the government not to murder in my name, and more important, not to tarnish the memory of my daughter with another senseless killing." Ms. Webb had a similar experience and has described how she felt isolated and marginalized when the district attorney ignored her request not to seek the death penalty.[36]

As the stories described above illustrate, when co-victims' wishes are ignored and their names are used in support of a policy they reject as an invalid means of addressing their grief and loss, they often feel marginalized, irrelevant, and disrespected. It is clear that the psychological impact of these experiences can severely hinder the healing and recovery process.[37]

[36] Other co-victims find that watching the suffering experienced by the family of the murderer serves only to remind them of their own loss. As Ms. Gayle noted, their grief "is just as strong as mine about my daughter. They're just as much victims as I was." Thus, for some families, the imposition of the death penalty can actually heighten their pain and suffering when carrying out the sentence results in yet another loss of life.

[37] Armour & Umbreit, *supra* note 29, at 95–98.

CONCLUSION

For the reasons stated herein, the judgment of the District Court should be affirmed.

Respectfully submitted,

By */s/ William D. Pollak*

WILLIAM D. POLLAK
ANDREW YAPHE
SERGE VORONOV
DAVIS POLK & WARDWELL LLP
1600 El Camino Real
Menlo Park, CA 94025
(650) 752-2000

SHARON KATZ
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017
(212) 450-4000

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C) of the Federal Rules Of Appellate Procedure, I certify that the foregoing brief is proportionally spaced, used 14-point Times New Roman type, and contains 4,754 words.

Dated: March 6, 2015

/s/ William D. Pollak
William D. Pollak

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

Dated: March 6, 2015

/s/ William D. Pollak
William D. Pollak