

ELK

FILED IN
SUPREME COURT

FEB 22 2019

EASTERN
DISTRICT

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

NO. 102 EM 2018

JERMONT COX,
Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent.

**BRIEF FOR AMICI CURIAE MURDER VICTIMS' FAMILY MEMBERS
LINELL PATTERSON, MEGAN SMITH, SHANNON COLEMAN AND
VICKI SCHIEBER**

Petition for Extraordinary Relief Under King's Bench Jurisdiction

JUSTIN ANDERSON*
MARY SPOONER*
AYELET EVRONY*
CARTER GREENBAUM*
Paul, Weiss, Rifkind, Wharton & Garrison
LLP
New York, NY 10019-6064
(212) 373-3916
Counsel for Amici Curiae
* Not admitted in Pennsylvania

February 21, 2019

RECEIVED

FEB 22 2019

**SUPREME COURT
EASTERN DISTRICT**

TABLE OF CONTENTS

	<u>Page</u>
INTEREST OF <i>AMICI CURIAE</i>	1
STATEMENT OF THE CASE	3
SUMMARY OF ARGUMENT.....	3
STORIES OF <i>AMICI CURIAE</i>	5
A. Linell Patterson and Megan Smith	5
B. Shannon Coleman	7
C. Vicki Schieber.....	9
ARGUMENT	11
I. THE DEATH PENALTY HURTS FAMILY MEMBERS	11
A. Healing and recovery are highly individualized processes, and there is no generalized, one-size-fits-all remedy	11
B. The death penalty is neither necessary nor sufficient for healing	12
C. Studies show executions do not provide resolution, justice, or healing.....	13
D. In many cases, executions have made Family Members feel worse	15
E. The death penalty has divided families.	16
II. THE DEATH PENALTY IS A BLUNT INSTRUMENT THAT IS INEFFECTIVE AND INEFFICIENT AT HELPING FAMILY MEMBERS HEAL.....	17
A. The death penalty is expensive, and resources could be better spent to aid healing and closure for Family Members.	17
B. Any benefits the death penalty can provide are outweighed by lengthy appeals and inherent uncertainty	21

1.	Death sentences are subject to searching judicial review over a lengthy period.....	21
2.	High reversal rates render the death penalty anything but final.....	22
C.	Alternative sanctions more effectively achieve healing and closure.....	24
	CONCLUSION	25

TABLE OF AUTHORITIES

	<u>Page(s)</u>
CASES	
<i>Glossip v. Gross</i> , 135 S. Ct. 2726 (2015) (Breyer, J., dissenting).....	24
OTHER AUTHORITIES	
<i>Anthony Wright</i> , THE NATIONAL REGISTRY OF EXONERATIONS, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4970 (last visited on Feb. 19, 2019)	1
Brief of Amici Curiae Murder Victims’ Families for Reconciliation in Support of Respondent at *8–9, <i>Roper v. Simmons</i> , No. 03-633, 2004 WL 1588549 (July 12, 2004)	16
BUREAU OF JUST. STATISTICS, U.S. DEP’T OF JUST., NCJ 248448, CAPITAL PUNISHMENT: 2013 – STATISTICAL TABLES (December 2014), 20	23
Colman McCarthy, <i>Mother’s Principles were tested and found true after daughter’s murder</i> , NATIONAL CATHOLIC REPORTER (Feb. 18, 2014), https://www.ncronline.org/news/people/mothers-principles-were-tested-and-found-true-after-daughters-murder	9
Conservatives Concerned About the Death Penalty, <i>Wasteful and Inefficient: The alarming cost of the death penalty</i> , https://conservativesconcerned.org/why-were-concerned/cost/ (last visited Feb. 20, 2019).....	18
Corey Burton & Richard Tewksbury, <i>How Families of Murder Victims feel following the Execution of Their Loved One’s Murder: A Content Analysis of Newspaper Reports of Executions from 2006-2011</i> , 1 J. OF QUALITATIVE CRIM. JUST. AND CRIMINOLOGY 1, 61, 65 (2013)	12, 14

TABLE OF AUTHORITIES
(Continued)

	<u>Page(s)</u>
David Gambacorta, Helen Ubinas & Dylan Purcell, <i>More murders, fewer cases solved; no Philly police are fighting about overtime</i> , THE PHILADELPHIA ENQUIRER (December 6, 2018), https://www.philly.com/philly/news/murders-solved-homicides-philadelphia-police-overtime-20181205.html	19
Death Penalty Information Ctr., <i>The Innocence List</i> , https://deathpenaltyinfo.org/innocence-list-those-freeddeath-row (last updated Nov. 5, 2018).....	23
H.B. 355, 2014 Session (Md. 2014).....	20
Joint State Gov't Comm'n, Gen. Assembly of the Commonwealth of Pa., <i>Capital Punishment in Pennsylvania: The Report of the Task Force and Advisory Committee</i> (June 2018).....	18, 19, 20, 23
Judy Eaton & Tony Christensen, <i>Closure and its myths: Victims' families, the death penalty, and the closure argument</i> , 20 INT'L REV. OF VICTIMOLOGY 327, 333 (2014).....	14
Lara Bazelon, <i>The Power of Restorative Justice After Wrongful Conviction</i> , SLATE, (Oct. 17, 2018) https://slate.com/news-and-politics/2018/10/anthony-wright-shannon-coleman-wrongful-convictions-rectify.html	1, 8
Lynne N. Henderson, <i>The Wrongs of Victim's Rights</i> , 37 STAN. L. REV. 937, 976 (1985)	24
Margaret Vandiver, <i>America's Experiment with Capital Punishment</i> , in AMERICA'S EXPERIMENT WITH CAPITAL PUNISHMENT (James R. Acker et al. eds., Carolina Academic Press 1998), 484.....	22
Margaret Vandiver, <i>The Impact of the Death Penalty on the Families of Homicide Victims and of Condemned Prisoners</i> , in AMERICA'S EXPERIMENT WITH CAPITAL PUNISHMENT 623 (2d ed. 2003).....	15
Marilyn Peterson Armour & Mark S. Umbreit, <i>Assessing the Impact of the Ultimate Penal Sanction on Homicide Survivors: A Two State Comparison</i> , 96 MARQUETTE LAW REV. 1 (2012).....	24, 25

TABLE OF AUTHORITIES
(Continued)

	<u>Page(s)</u>
Megan Smith, <i>The Death Penalty Won't Bring My Dad Back</i> , THE MORNING CALL (Feb. 21, 2015) http://www.mcall.com/opinion/mc-death-penalty-pennsylvania-smith-yv--20150221-story.html	5
Murder Accountability Project, http://www.murderdata.org/p/blog-page.html	19
Nicole C. Brambila & Liam Migdail-Smith, <i>Executing Just.: A Look at the Cost of Pa.'s Death Penalty</i> , READING EAGLE (June 19, 2016), http://www.readingeagle.com/news/article/executing-justice-a-look-at-the-cost-ofpennsylvanias-death-penalty	18
Nicole C. Brambila, <i>Executing Justice: The discretionary nature of the death penalty in Pennsylvania</i> , READING EAGLE (June 17, 2016), https://www.readingeagle.com/news/article/executing-justice-the-discretionary-nature-of-the-death-penalty-in-pennsylvania	17
Nicole C. Brambila, Ford Turner & Mike Urban, <i>Capital Punishment in Pennsylvania: When death means life</i> , READING EAGLE (December 13, 2014), https://www.readingeagle.com/news/article/capital-punishment-in-pennsylvania-when-death-means-life	18
Rachel King, <i>The Impact of Capital Punishment on Families of Defendants and Murder Victims' Family Members</i> , 89 JUDICATURE 292, 294 (2005-2006)	16
<i>Report, supra</i> note 42	21
Robert Muller, <i>Death Penalty May Not Bring Peace to Victims' Families</i> , PSYCHOLOGY TODAY (October 19, 2016), https://www.psychologytoday.com/us/blog/talking-about-trauma/201610/death-penalty-may-not-bring-peace-victims-families	13
S.B. 3539, 96 Gen. Assemb. (Ill. 2011)	20

TABLE OF AUTHORITIES
(Continued)

	<u>Page(s)</u>
Samuel R. Gross & Daniel J. Matheson, <i>What They Say at the End: Capital Victims’ Families and the Press</i> , 88 CORNELL L. REV. 486, 490 (2003)	12, 14, 22
Scott Vollum & Dennis Longmire, <i>Co-Victims of Capital Murder: Statements of Victims’ Family Members and Friends Made at the Time of Execution</i> , 22 VIOLENCE & VICTIMS 601, 606, 607 (2007)	12, 14
Statement on the Death Penalty by Vicki Schieber, submitted to the U.S. Sen. Judiciary Comm. (Feb. 1, 2006), https://www.judiciary.senate.gov/imo/media/doc/Scheiber%20Testimony%2020106.pdf	10
Susan A. Bandes, <i>Victims ‘Closure’ and the Sociology of Emotion</i> , 72 LAW AND CONTEMP. PROBLEMS 1, 1 (2009).....	11
Susan A. Bandes, <i>When Victims Seek Closure: Forgiveness, Vengeance and the Role of Government</i> , 27 FORDHAM URB. L.J. 1599, 1603 (2000)	11
Vicki Schieber, <i>Letters: Death sentence a ‘hollow promise’</i> , PA. DAILY NEWS, March 9, 2015, at 10.....	11, 22
<i>Vicki Schieber, Maryland Mother of Shannon Schieber, murdered in Pennsylvania in 1998</i> , MURDER VICTIMS’ FAMILIES FOR HUMAN RIGHTS, http://www.mvfhr.org/sites/default/files/pdf/gallery%20-%20Schieber.pdf (last visited Feb. 9, 2019)	10
Victor Streib, <i>Juvenile Justice or Injustice? The Debate Over Reform</i> , 14 ST. JOHN’S J.L. COMM. 371, 376 (2000)	15
Victoria Coward, <i>Murder Victim’s Mother Suggests Big Picture is More Important</i> , CT News Junkie, CONNECTICUT NEWS JUNKIE (May 13, 2011), https://www.ctnewsjunkie.com/archives/entry/oped_murder_victims_mother_suggests_the_big_picture_is_more_important/	20

TABLE OF AUTHORITIES
(Continued)

Page(s)

Vik Kanwar, <i>Capital Punishment as 'Closure': The Limits of a Victim-Centered Jurisprudence</i> , 27 N.Y.U. REV. L. AND SOC. CHANGE 215, 239 (2002).....	11, 13, 15
--	------------

INTEREST OF *AMICI CURIAE*

Amici curiae are four family members of Pennsylvania murder victims who oppose the death penalty.

In 2001, Linell Patterson and Megan Smith's father and stepmother, Terry and Lucy Smith, were tortured and murdered in their home. Four individuals were tried and convicted of their murders. Over Ms. Patterson and Ms. Smith's objections, one defendant was charged with capital murder and sentenced to death. He remains on death row today.

Shannon Coleman's aunt, Louise Talley, was raped and murdered in 1991.¹ Prosecutors charged Anthony Wright, at the time just twenty years old, with capital murder, and a jury convicted him in 1993. The jury voted 7-5 in favor of sentencing Mr. Wright to death, but because Pennsylvania law requires a unanimous verdict to impose a death sentence, Mr. Wright received life without parole.² After serving 25 years, Mr. Wright successfully sought the testing of DNA evidence from the crime scene. That evidence exonerated him, and at a subsequent new trial, Mr. Wright was acquitted.

¹ Lara Bazelon, *The Power of Restorative Justice After Wrongful Conviction*, SLATE, (Oct. 17, 2018)<https://slate.com/news-and-politics/2018/10/anthony-wright-shannon-coleman-wrongful-convictions-rectify.html>.

² *Anthony Wright*, THE NATIONAL REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4970> (last visited on Feb. 19, 2019).

Vicki Schieber's daughter, Shannon, was a brilliant 23-year-old graduate student at the University of Pennsylvania's Wharton School in 1998 when Troy Graves, a serial rapist, broke into her Philadelphia apartment and raped and murdered her. The prosecutor in Shannon's case initially wanted to seek the death penalty, but Ms. Schieber and her husband objected. Today, Mr. Graves is serving life in prison. In the years since her daughter's murder, Ms. Schieber has worked with many other family members of murder victims to help them process their losses and heal.

Though the *amici curiae* are diverse in age, race, and economic background, all four know the pain, confusion, heartache, and trauma left in the wake of a loved one's murder. They oppose the death penalty for multiple reasons. They know firsthand that its imposition only complicates grieving and impedes healing. They believe that it wastes money that could be better spent on actually reducing the rate of unsolved murders and increasing resources for victims' services. They believe that the unfair and arbitrary infliction of the death penalty undermines, rather than effects, justice. And the death penalty violates their ethical, moral, and religious teachings and norms. But it is from their own lived experiences that *amici curiae* understand that the death penalty is not necessary to provide the closure that its proponents promise.

STATEMENT OF THE CASE

Amici curiae adopt and incorporate the Statement of the Case as presented by the Petitioners in their Brief.

SUMMARY OF ARGUMENT

Linell Patterson, Megan Smith, Shannon Coleman, and Vicki Schieber submit this amicus brief to provide the Court with a perspective on the death penalty in Pennsylvania from a group whose interests are frequently invoked to justify its imposition—the family members of murder victims.³ Ms. Patterson, Ms. Smith, Ms. Coleman, and Ms. Schieber know that it is just not true that executions are necessary to provide closure or comfort to Family Members. They object to the death penalty being inflicted in Pennsylvania in their name.

Every Family Member responds to a loved one’s murder differently. The amici are painfully aware that no criminal sentence, including the death penalty, can remedy the suffering and anguish they experience. There is no evidence that the death penalty—in the rare cases in which it is actually implemented—brings Family Members “closure,” or that it provides more substantial relief than the imposition of lesser sentences. Instead, death sentences often have the opposite effect of prolonging and exacerbating Family Members’ trauma and grief. Many Family Members, including amici, see the death penalty

³ The term “Family Members” is used throughout this brief as shorthand for family members of murder victims.

as yet more killing, and as a dishonor to the memories of their murdered loved ones.

Even Family Members who support the death penalty end up being hurt by it. The lengthy legal process constitutionally required to inflict the death penalty in Pennsylvania necessarily forces Family Members to repeatedly relive the trauma of their loved ones' murders and to confront the anxiety, stress, and torment of that experience for nearly twenty years or more. Similarly, the prolonged uncertainty of the outcome—again, required by due process—keeps Family Members in limbo and repeatedly refreshes their traumas. As a result, many Family Members, including the ones represented by this amicus brief, in fact believe that the death penalty causes them more psychological or emotional pain. Nowhere is this more true than in Pennsylvania, where of the 417 defendants sentenced to death since 1978, the Commonwealth has executed only three individuals, and inmates spend an average of nearly eighteen years on death row.

Before turning to the argument section of this brief, *amici curiae* wish to share their own personal experiences of loss, healing, criminal justice, and the death penalty.

STORIES OF *AMICI CURIAE*

A. **Linell Patterson⁴ and Megan Smith⁵**

Linell Patterson and Megan Smith each had the same unequivocal gut reaction when the District Attorney asked whether they wanted their father's murderers to be put to death. They did not. As Ms. Smith recalls: "I just wanted my dad back, and death for someone else was so far removed from the things that mattered."⁶ But the District Attorney pursued the death penalty anyway. Throughout trial, he told the jury that "justice was being done" for the sisters and their family, and sought the death penalty in their name.

Once they made clear that they did not want the death penalty to be sought, their voices no longer mattered. Ms. Patterson and Ms. Smith were only in college at the time. They were reeling from their loss. They still summoned the strength to speak for themselves, and for their father. And they felt silenced and disempowered by the criminal justice system. Eighteen years later, Ms. Smith and Ms. Patterson still feel the sting of having their wishes cast aside.

The state obtained a death sentence for one defendant, Landon May. But that death sentence brought Ms. Patterson and Ms. Smith no closure. Instead, each

⁴ Unless otherwise cited, quotes are from an interview with Ms. Patterson that occurred on January 24, 2019.

⁵ Unless otherwise cited, quotes of Ms. Smith are from an interview on January 28, 2019.

⁶ Megan Smith, *The Death Penalty Won't Bring My Dad Back*, THE MORNING CALL, (Feb. 21, 2015) <http://www.mcall.com/opinion/mc-death-penalty-pennsylvania-smith-yv--20150221-story.html>.

proceeding and news story dredged up old memories and emotions. In contrast, the case of a co-defendant who was sentenced to a term of imprisonment feels finished.

Today, Ms. Patterson and Ms. Smith feel a moral responsibility to prevent Mr. May's death. In her work for death penalty repeal and restorative justice, Ms. Smith has met the family members of death row inmates, and she knows that execution will serve only to victimize more families.

Ms. Patterson and Ms. Smith have sought healing and acceptance in other ways. They strive to keep a positive memory of their father and to "refocus [their lives] away from a killer [they] never knew."⁷ They remember how their father shared his love of "math and science, lights and gears, energy, and solving equations" with "a sense of joy and fun."⁸ Inspired by other Family Members they have met, they try to "live [] full and joyful li[ves] without carrying the heavy load of bitterness and hatred that the death penalty brings."⁹

Though the sisters have made great strides towards peace in the years since their father and stepmother were murdered, they remember how raw and angry they felt at the time of trial, and it disturbs them that Family Members are asked in their most vulnerable and raw emotional stage to weigh in on the life or

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

death of a defendant. Ultimately, the sisters do not believe that the death penalty can bring justice:

I've figured out what justice actually is: It's everyone getting what they need to heal. In a story like mine, it's a victim's surviving family members being supported in the aftermath of a terrible crime. It's guidance on how to navigate the funeral, the trial, the money, the grief. It's the community getting what it needs in the form of safety and crime prevention programs, and the offenders being taken out of the community. It's also the offenders getting what they need—accountability, counseling, safety as well. All of these needs can be met without the death penalty.¹⁰

B. Shannon Coleman¹¹

Shannon Coleman wakes up every day grateful that the man convicted of raping and murdering her aunt, Anthony Wright, was not executed. Mr. Wright was innocent.

Ms. Coleman did not oppose the death penalty at the time of the trial. Indeed, for 22 years, Ms. Coleman believed that Mr. Wright was guilty. But in 2015, she discovered that DNA evidence from her aunt's body matched another man, and that there were allegations of misconduct against the detectives who investigated the case, including that they planted evidence in Mr. Wright's bedroom. The state retried Mr. Wright for murder, but Ms. Coleman was convinced of his innocence. Hoping she could persuade prosecutors to drop the

¹⁰ *Id.*

¹¹ Unless otherwise cited, quotes are from an Interview with Ms. Coleman that occurred on January 29, 2019.

case, she started a Change.org petition, writing: “there has been no justice in this case. Instead, there has been another crime committed—and it is against Anthony Wright... There is no earthly reason why this man is still incarcerated.”¹² Though her petition was unsuccessful in preventing a retrial, the jury deliberated for only five minutes before acquitting Mr. Wright and setting him free in 2016. Since his acquittal, Mr. Wright and Ms. Coleman have become close friends. Ms. Coleman recalls that the first thing Mr. Wright said to her after his release was, “I’m sorry for your loss.” She remains awed by his ability to let go of anger, even after years in prison for a crime he did not commit.

Had Mr. Wright been sentenced to death in 1993, he might well have died before he had the chance for exoneration. And, had he been sentenced to death, the sentence would have been imposed in Ms. Coleman’s name and those of other members of her family.

Ms. Coleman was uncertain about how she felt about the death penalty in 1993. But she is certain today: “There is just too much error, bias, and racism—it’s just not fair.” She does not believe that one human being should be tasked with deciding whether another human being has the right to live or to die. And, Ms. Coleman does not think that the death penalty can bring closure to Family Members because she does not think that closure after a murder is possible:

¹² Bazelon, *supra* note 1.

“It’s just a word that people throw around. If you can’t bring them back, then there’s no closure.”

C. Vicki Schieber¹³

Guided in part by her Catholic faith, Vicki Schieber opposed the death penalty for the killer of her daughter Shannon.¹⁴ Although Ms. Schieber and her husband ultimately succeeded in persuading prosecutors not to pursue the death penalty, it was only after a painful exchange with prosecutors who suggested that failing to advocate for the death penalty called into question their love for their daughter.

In honor of Shannon’s life, Ms. Schieber has dedicated her life to abolishing the death penalty, and to helping other Family Members heal. In her work with Family Members, Ms. Schieber has witnessed how the strain of waiting for an execution can prevent healing and closure. She has watched Family Members who may have originally supported the death penalty learn that execution brings them no peace or satisfaction. Drawing on her own experience, and from that of the Family Members she has worked with, Ms. Schieber rejects the argument that the death penalty can bring Family Members peace or healing: “I

¹³ Unless otherwise cited, quotes are from an interview of Ms. Schieber that occurred on January 23, 2019.

¹⁴ See Colman McCarthy, *Mother’s Principles were tested and found true after daughter’s murder*, NATIONAL CATHOLIC REPORTER (Feb. 18, 2014), <https://www.ncronline.org/news/people/mothers-principles-were-tested-and-found-true-after-daughters-murder>.

can tell you with all seriousness that there is no such thing as closure when a violent crime rips away the life of someone dear to you Killing Shannon's murderer would not stop the unfolding of the world around us with its constant reminders of unfulfilled hopes and dreams."¹⁵

Ms. Schieber opposes the death penalty in Pennsylvania in part because it does not serve Family Members' needs. Ms. Schieber believes that money spent on the death penalty should go instead to victim's services, including investigative services and counseling.

Ms. Schieber also believes that the death penalty puts society's focus on the killer, thereby deemphasizing the importance of the victim. Ms. Schieber wants people to remember her daughter Shannon as a brilliant young woman with a boundless smile, a graceful presence, and a generous spirit. In her own words:

"We want the world to remember Shannon and to know what kind of person she was. In fact, we believe that one tragedy of the death penalty is that it turns society's perspective away from the victim and creates an outpouring of support for those who have perpetuated a crime. For us, the death penalty is not the way to honor our daughter's life."¹⁶

¹⁵ Statement on the Death Penalty by Vicki Schieber, submitted to the U.S. Sen. Judiciary Comm. (Feb. 1, 2006),

<https://www.judiciary.senate.gov/imo/media/doc/Scheiber%20Testimony%20020106.pdf>.

¹⁶ *Vicki Schieber, Maryland Mother of Shannon Schieber, murdered in Pennsylvania in 1998*, MURDER VICTIMS' FAMILIES FOR HUMAN RIGHTS,

<http://www.mvfhr.org/sites/default/files/pdf/gallery%20-%20Schieber.pdf> (last visited Feb. 9, 2019).

ARGUMENT

I. THE DEATH PENALTY HURTS FAMILY MEMBERS.

A. Healing and recovery are highly individualized processes, and there is no generalized, one-size-fits-all remedy.

To argue that the death penalty can provide “closure” to Family Members is to ignore the reality that grief is a deeply personal process experienced differently by different people. “Closure” has “no accepted psychological meaning.”¹⁷ Instead, its meaning is unique to each Family Member, based on that Family Member’s individual needs.¹⁸ Some Family Members, like Ms. Schieber, do not believe in closure at all, because “you never ‘get over’ the death of your [loved one].”¹⁹

While some Family Members believe that the execution of their loved one’s killers will bring them closure, many do not. And in fact others find that both the process and the outcome of execution only causes them more pain. Many Family Members find support through therapy, or by connecting with other Family Members who have lost loved ones to violence. Others, like Ms. Schieber find solace through their religious faith. Some Family Members find that they can only

¹⁷ Susan A. Bandes, *Victims ‘Closure’ and the Sociology of Emotion*, 72 LAW AND CONTEMP. PROBLEMS 1, 1 (2009).

¹⁸ Susan A. Bandes, *When Victims Seek Closure: Forgiveness, Vengeance and the Role of Government*, 27 FORDHAM URB. L.J. 1599, 1603 (2000); Vik Kanwar, *Capital Punishment as ‘Closure’: The Limits of a Victim-Centered Jurisprudence*, 27 N.Y.U. REV. L. AND SOC. CHANGE 215, 239 (2002).

¹⁹ Vicki Schieber, *Letters: Death sentence a ‘hollow promise’*, PA. DAILY NEWS, March 9, 2015, at 10.

find peace by letting go of their anger, or even by forgiving their loved one's killer. Ms. Schieber, Ms. Patterson, and Ms. Smith all chose to communicate with their loved ones' killers, and all three found the experience to be a "big step" towards healing.

Far from providing closure, execution impedes, or even forecloses, some of these paths to healing. The execution of Shannon Schieber's killer would have violated a fundamental tenet of Ms. Schieber's Catholic faith and caused her additional pain. A death sentence and swift execution would have rendered impossible the communication that Ms. Patterson, Ms. Smith, and Ms. Schieber all found so cathartic. There is simply no "generalized remedy" – least of all the death penalty – that can provide "closure" to Family Members, because each Family Member has unique needs, and those needs may change over time.

B. The death penalty is neither necessary nor sufficient for healing

Even in death penalty cases, a Family Member's grief does not stop when the criminal case ends or the killer is executed.²⁰ As one Family Member

²⁰ Samuel R. Gross & Daniel J. Matheson, *What They Say at the End: Capital Victims' Families and the Press*, 88 CORNELL L. REV. 486, 490 (2003); Corey Burton & Richard Tewksbury, *How Families of Murder Victims feel following the Execution of Their Loved One's Murder: A Content Analysis of Newspaper Reports of Executions from 2006-2011*, 1 J. OF QUALITATIVE CRIM. JUST. AND CRIMINOLOGY 1, 61, 65 (2013); Scott Vollum & Dennis Longmire, *Co-Victims of Capital Murder: Statements of Victims' Family Members and Friends Made at the Time of Execution*, 22 VIOLENCE & VICTIMS 601, 606, 607 (2007).

expressed: “healing is a process, not an event.”²¹ Dorothy Johnson-Speight, a Family Member and Licensed Professional Counselor who works with other Family Members in Philadelphia through her organization, Mothers in Charge, says that “grief work”—which she defines as “going through the pain” to process the reality of a loved one’s murder— is “the key” to healing.²² At most, the murderer’s fate in the criminal justice system forms only a piece of this process. But, in all cases, the “[c]ourts cannot bring about the ultimate moment of cessation in an infinitely more complicated process of grieving.”²³ In Ms. Johnson-Speight’s experience, many Family Members become invested in the criminal justice process, believing that it will bring them closure, only to find once it is over that the real work of healing has yet to begin.

C. Studies show executions do not provide resolution, justice, or healing

When executions do occur, even Family Members who supported the execution often find that it did not bring them the expected feelings of resolution, justice, or healing. Over the past two decades, a number of studies evaluated public statements by Family Members who attended the execution of their loved

²¹ Robert Muller, *Death Penalty May Not Bring Peace to Victims’ Families*, PSYCHOLOGY TODAY (October 19, 2016), <https://www.psychologytoday.com/us/blog/talking-about-trauma/201610/death-penalty-may-not-bring-peace-victims-families>.

²² Statements attributed to Dorothy Johnson-Speight come from an interview of Ms. Johnson-Speight on February 5, 2019.

²³ Kanwar, *supra* note 18, at 241–42.

ones' murderers. Though family members who support the death penalty are far more likely to attend executions than those who do not, even these families rarely say that the execution gave them closure.²⁴ In one study, only 12% of Family Members said that the execution brought them a feeling of closure.²⁵ In another study, only 20% said executions brought them healing or closure.²⁶ In a third study, only 31% did.²⁷ The best available evidence also indicates that Family Members – even those that support the death penalty – are more likely to express dissatisfaction with an execution than satisfaction.²⁸ As one father told the press following the execution of his child's killer: "We can say it's the end, but it's never going to be closure... The execution doesn't really make me feel any better."²⁹

Instead of feeling closure, family members were far more likely to express frustration with the criminal justice process or continued anger towards the offender.³⁰ Even some Family Members who said they felt closure in the immediate aftermath of the execution found that the feeling dissipated with time. One such Family Member said: "I'm trying to make myself realize that even when

²⁴ See Gross & Matheson, *supra* note 20, at 502.

²⁵ See Judy Eaton & Tony Christensen, *Closure and its myths: Victims' families, the death penalty, and the closure argument*, 20 INT'L REV. OF VICTIMOLOGY 327, 333 (2014).

²⁶ See Vollum & Longmire, *supra* note 20, at 604.

²⁷ See Burton & Tewksbury, *supra* note 20, at 60.

²⁸ See Vollum & Longmire, *supra* note 20, at 607.

²⁹ See Burton & Tewksbury, *supra* note 20, at 65.

³⁰ See Eaton & Christensen, *supra* note 25, at 334-35.

I'm back home . . . and [the execution] is all over, [my children] are still gone and we still have to live with this.³¹

D. In many cases, executions have made Family Members feel worse

For Family Members who have spent years channeling their pain at their loved one's killer, "losing the object of their anger may leave them feeling empty and unfocused."³² And if Family Members waited years for an execution that they believed would "bring them substantial emotional relief and it does not, they often feel worse after the execution."³³ Victor Streib, a law professor and attorney specializing in the death penalty, has written of his own experiences working with families of murder victims who have been told that the criminal justice system would "fix" their pain:

"What they wanted was their little girl back. The system could not deliver that. Even worse, it pretended that what they needed was to have us wreak horrible punishments on a few more wretched [individuals], and they would feel better."³⁴

For Family Members who oppose the death penalty, the execution of their loved one's killer can impose a heavy emotional and moral burden. They often believe that the initial crime has resulted in another killing, one for which

³¹ Kanwar, *supra* note 18, at 244 (citing Lee Hancock, *Victims' Relatives Watch Execution in First for Texas*, DALLAS MORNING NEWS, Feb. 10, 1996, at 1A).

³² 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 623 (2d ed. 2003).

³³ *Id.*

³⁴ Victor Streib, *Juvenile Justice or Injustice? The Debate Over Reform*, 14 ST. JOHN'S J.L. COMM. 371, 376 (2000).

they feel partially responsible. As one Family Member told the Oklahoma Pardon Board when asking for the commutation of a death sentence imposed on the person who murdered her sister:

“I cannot bear that my sister’s existence be tied to any more violence. ... [I]t disturbs me deeply that with the prospect of executing her murderer, more violence will be heaped upon already great violence. You must understand that this act cannot bring closure but rather will make my dear sister’s death even more painful to me.”³⁵

It is particularly painful for these Family Members to watch death penalty advocates co-opt their loss in support of a policy that they profoundly oppose. As Ms. Patterson says: “It makes me so angry to hear that the death penalty is for me. Landon May’s death is not for me.”

E. The death penalty has divided families.

When Family Members do not agree about the proper fate of their loved one’s murderer, the death penalty can cause painful schisms. Family Members who share their grief over their loved one’s death still become “pitted against each other as the case progresses towards execution.”³⁶ While Ms. Patterson and Ms. Smith resolutely opposed a death sentence for their father and step-mother’s killers, other relatives disagreed, leading to family conflict at an

³⁵ Brief of Amici Curiae Murder Victims' Families for Reconciliation in Support of Respondent at *8–9, *Roper v. Simmons*, No. 03-633, 2004 WL 1588549 (July 12, 2004) (citing “*This Act Cannot Bring Closure*,” *The Voice* (Murder Victims' Families for Reconciliation), Spring/Summer 2003, at 9).

³⁶ Rachel King, *The Impact of Capital Punishment on Families of Defendants and Murder Victims' Family Members*, 89 JUDICATURE 292, 294 (2005-2006).

already deeply painful time. Theirs is not an isolated example. In 1998, Maria Hines's brother, Virginia State Trooper Jerry Hines, was murdered by Dennis Eaton, and Eaton was sentenced to death.³⁷ While her brother's widow and the rest of the family supported the death sentence, Maria alone opposed it.³⁸ The conflict escalated and Maria "remains ostracized from the family" for her opposition to the death penalty.³⁹ The death penalty can turn families of victims "against each other at a time when they need each other most."⁴⁰

II. THE DEATH PENALTY IS A BLUNT INSTRUMENT THAT IS INEFFECTIVE AND INEFFICIENT AT HELPING FAMILY MEMBERS HEAL

A. The death penalty is expensive, and resources could be better spent to aid healing and closure for Family Members.

The death penalty is expensive. The Commonwealth devotes a disproportionate amount of resources to a tiny minority of cases at the expense of the vast majority of homicides and victims. Less than 2% of homicides in Pennsylvania result in a death sentence,⁴¹ and only three death sentences out of 417

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See Nicole C. Brambila, *Executing Justice: The discretionary nature of the death penalty in Pennsylvania*, *READING EAGLE* (June 17, 2016),

<https://www.readingeagle.com/news/article/executing-justice-the-discretionary-nature-of-the-death-penalty-in-pennsylvania>.

death sentences since 1978 have ended in execution.⁴² Yet the death penalty has cost the Commonwealth an estimated \$816 million over that time, with each death sentence adding “about \$2 million to a murder case.”⁴³ Due to their severity and the finality of the punishment, death penalty cases also necessarily receive significantly more time and attention from prosecutors, judges, clerks and law enforcement.⁴⁴ And, not only are death penalty cases more expensive to try and appeal, death row inmates are more expensive to house. The solitary confinement conditions on death row cost an additional \$10,000 per inmate, per year.⁴⁵ As Berks County District Attorney John T. Adams told the *Reading Eagle*: “Definitely, the death penalty extremely strains our resources.”⁴⁶

These resources are not unlimited. Resources spent on death penalty cases are resources diverted from the other 98% of homicides and their victims, and from services that could do much more to help Family Members heal.⁴⁷

⁴² Joint State Gov’t Comm’n, Gen. Assembly of the Commonwealth of Pa., *Capital Punishment in Pennsylvania: The Report of the Task Force and Advisory Committee* (June 2018) [hereinafter *Report*], 1.

⁴³ Nicole C. Brambila & Liam Migdail-Smith, *Executing Just.: A Look at the Cost of Pa.’s Death Penalty*, *READING EAGLE* (June 19, 2016), <http://www.readingeagle.com/news/article/executing-justice-a-look-at-the-cost-of-pennsylvanias-death-penalty>.

⁴⁴ Conservatives Concerned About the Death Penalty, *Wasteful and Inefficient: The alarming cost of the death penalty*, <https://conservativesconcerned.org/why-were-concerned/cost/> (last visited Feb. 20, 2019).

⁴⁵ Nicole C. Brambila, Ford Turner & Mike Urban, *Capital Punishment in Pennsylvania: When death means life*, *READING EAGLE* (December 13, 2014), <https://www.readingeagle.com/news/article/capital-punishment-in-pennsylvania-when-death-means-life>.

⁴⁶ *Id.*

⁴⁷ *Id.*

Money saved by abolishing the death penalty could be spent on vital grief and trauma counseling for Family Members, professional leave to attend court proceedings, or other financial support.⁴⁸ While many Family Members need counseling long after their criminal cases end, few communities in Pennsylvania provide it.⁴⁹ These resources could also be used to increase funding for investigative police in an effort to reduce the Commonwealth's unsolved murder rate—35% statewide between 2007 and 2017.⁵⁰ In Philadelphia, where 58% of homicides went unsolved in 2017, insufficient technology—detectives lack voicemail and email accounts—and cuts in overtime pay are contributing factors to a plummeting homicide clearance rate.⁵¹ Put another way, these finite resources could be used to improve access to the services, answers, and catharsis that the criminal justice process *can* provide.

Other states have successfully abolished the death penalty and redirected resources in these ways, with positive impact. In 2011, Illinois passed a bill that abolished the death penalty and redirected money to a new Death Penalty

⁴⁸ *Id.*

⁴⁹ *Report, supra* note 42, at 113-119.

⁵⁰ Murder Accountability Project, <http://www.murderdata.org/p/blog-page.html> (last visited Feb. 20, 2019) (stating that the Pennsylvania statewide solvency rate between 2008 and 2017 was 65.21%).

⁵¹ David Gambacorta, Helen Ubinas & Dylan Purcell, *More murders, fewer cases solved; no Philly police are fighting about overtime*, THE PHILADELPHIA ENQUIRER (December 6, 2018), <https://www.philly.com/philly/news/murders-solved-homicides-philadelphia-police-overtime-20181205.html>.

Abolition Fund that provided services for Family Members and training for law enforcement personnel.⁵² In 2014, a year after Maryland abolished the death penalty, it passed a bill establishing a grant program to address the specific needs of Family Members.⁵³

Maintaining Pennsylvania's resource disparity might make sense if the death penalty was truly and consistently reserved for the "worst of the worst" crimes. But the reality is that, in Pennsylvania, the death penalty is not reserved for the most serious offenses or offenders, but often correlates with the race of the victim and the location of the crime.⁵⁴ A system purporting to seek justice for Family Members that expends grossly disproportionate resources on fewer than 2% of victims results in unnecessary pain and suffering for the 98% of Family Members who are deemed less deserving of the Commonwealth's resources and attention. As the mother of a murder victim in Connecticut wrote: "If we are serious about helping surviving victims—all [surviving victims]—we need to face the ugly truth that the death penalty sets some crimes and some victims apart as more important than others."⁵⁵

⁵² S.B. 3539, 96 Gen. Assemb. (Ill. 2011).

⁵³ H.B. 355, 2014 Session (Md. 2014).

⁵⁴ *Report, supra* note 42, at 62-65.

⁵⁵ Victoria Coward, *Murder Victim's Mother Suggests Big Picture is More Important*, CT News Junkie, CONNECTICUT NEWS JUNKIE (May 13, 2011), https://www.ctnewsjunkie.com/archives/entry/op-ed_murder_victims_mother_suggests_the_big_picture_is_more_important/.

B. Any benefits the death penalty can provide are outweighed by lengthy appeals and inherent uncertainty

1. Death sentences are subject to searching judicial review over a lengthy period.

Instead of bringing resolution, a death sentence for their loved one's murderer ensnares Family Members in trauma for years, even decades. The 150 inmates on Pennsylvania's death row as of June 2018 have each been there an average of 17.49 years.⁵⁶ The longest-serving death row inmate in Pennsylvania received his sentence more than thirty-five years ago, in 1983.⁵⁷

During that time, Family Members must endure numerous hearings and proceedings which serve as repeated reminders of their trauma. Death sentences in Pennsylvania receive automatic review by the Pennsylvania Supreme Court.⁵⁸ Most death row inmates also file petitions under the Post-Conviction Relief Act and federal habeas law, each of which also includes appeals to the Pennsylvania Supreme Court and petitions for *certiorari* to the United States Supreme Court.⁵⁹ A typical death sentence can involve 17 post-conviction filings, hearings, and decisions before appeals are exhausted.⁶⁰ During this time, at least two premature death warrants will issue, only to be stayed, which "itself can be a

⁵⁶ *Report, supra* note 42, at 190.

⁵⁷ *Id.*, at 190.

⁵⁸ *Id.*, at 156.

⁵⁹ *Id.*, at 157.

⁶⁰ *Id.*

roller coaster of emotions for [Family Members].”⁶¹ From 1985 through April 2018, Pennsylvania has issued 466 death warrants but carried out three executions.⁶²

Although these appeals provide a vital safeguard against the very real possibility that the Commonwealth will execute an innocent person or carry out an execution without due process, they entangle Family Members in a criminal justice process that keeps the initial trauma of the murder evergreen, and delays healing. “[R]epetitive confrontations with the criminal justice system” have been found to disrupt the recovery of family members of victims.⁶³ In this way the “death penalty traps victims’ families in a decades-long cycle of uncertainty... and waiting.”⁶⁴ As one Family Member told the press at the execution of her son’s murderer: “We have relived our worst nightmare over and over, instead of being able to remember happier things Twenty-four years is too long.”⁶⁵

2. High reversal rates render the death penalty anything but final.

The high reversal rate of the death penalty in Pennsylvania ensures that, in almost all cases, it is a hollow promise of a resolution that will never come.

⁶¹ *Id.*

⁶² *Id.*, at 156.

⁶³ Margaret Vandiver, *America’s Experiment with Capital Punishment*, in AMERICA’S EXPERIMENT WITH CAPITAL PUNISHMENT (James R. Acker et al. eds., Carolina Academic Press 1998), 484.

⁶⁴ Schieber, *supra* note 19.

⁶⁵ Gross & Matheson, *supra* note 20, at 492.

Between 1973 and 2013, Pennsylvania sentenced 417 defendants to death.⁶⁶ It executed three, all of whom waived their appeals.⁶⁷ As of 2013, another 188 death row inmates, or about 45% of the 417 sentenced to death since 1973, saw their sentences overturned in favor of life or less than life.⁶⁸ Another 30 death row inmates died of natural causes while awaiting execution.⁶⁹

Even more troubling and painful for Family Members is the possibility that someone convicted of murder and sentenced to death might, in fact, be innocent. Since 1978, new information and evidence has led to the exoneration of six death row inmates in Pennsylvania.⁷⁰ That is twice the number of executions in the Commonwealth. Nationally, between 1973 and 2018, new evidence has exonerated 164 death row prisoners.⁷¹ In one study, researchers examined historical data regarding exonerations from 1973 through 2004 and estimated that that 4.1% of those on death row during that time were innocent.⁷² The reversal rate

⁶⁶ BUREAU OF JUST. STATISTICS, U.S. DEP'T OF JUST., NCJ 248448, CAPITAL PUNISHMENT: 2013 – STATISTICAL TABLES (December 2014), 20.

⁶⁷ *Report, supra* note 42, at 1-2.

⁶⁸ *Id.* at 173-74.

⁶⁹ BUREAU OF JUST. STATISTICS, *supra* note 66, at 20.

⁷⁰ Death Penalty Information Ctr., *The Innocence List*, <https://deathpenaltyinfo.org/innocence-list-those-freeddeath-row> (last updated Nov. 5, 2018) (This number includes those who were “acquitted of all charges related to the crime that placed them on death row, or . . . [h]ad all charges related to the crime that placed them on death row dismissed by the prosecution or the courts, or” were pardoned “based on evidence of innocence.”).

⁷¹ *Report, supra* note 42, at 16 (citing Death Penalty Information Ctr., *The Innocence List*, <https://deathpenaltyinfo.org/innocence-list-those-freed-deathrow> (last updated Nov. 5, 2018)).

⁷² *Report, supra* note 42, at 172 (citing Samuel R. Gross *et al.*, *Rate of False Conviction of Crim. Defendants Who Are Sentenced to Death*, PNAS 7230, 7231, 7234 (May 20, 2014), <http://www.pnas.org/content/pnas/111/20/7230.full.pdf>).

is so substantial that in 2015, Justice Breyer asserted “there is significantly more research based evidence today indicating that courts sentence to death individuals who may well be actually innocent. . . .” *Glossip v. Gross*, 135 S. Ct. 2726, 2759 (2015) (Breyer, J., dissenting).

C. Alternative sanctions more effectively achieve healing and closure.

To the extent the judicial process can aid in healing and closure, there is no evidence that the death penalty fulfills that purpose better than alternative sanctions. While Family Members may crave a psychological resolution of the criminal case, “this kind of resolution does not [] depend” on the specific penalty that the murderer ultimately receives.⁷³ In fact, a 2012 study comparing the psychological well-being of Family Members of homicide victims in Texas and Minnesota whose killers received the harshest penalty in either state—the death penalty in Texas and life without parole in Minnesota—concluded that Family Members in Minnesota reported better psychological health and more satisfaction with the criminal justice system.⁷⁴ Comparing the death penalty with life without parole, researchers find that the latter provides “survivors [with] greater control, likely because the appeals process was successful, predictable, and completed

⁷³ Lynne N. Henderson, *The Wrongs of Victim’s Rights*, 37 STAN. L. REV. 937, 976 (1985).

⁷⁴ See Marilyn Peterson Armour & Mark S. Umbreit, *Assessing the Impact of the Ultimate Penal Sanction on Homicide Survivors: A Two State Comparison*, 96 MARQUETTE LAW REV. 1 (2012).

within two years after conviction; whereas the finality of the appeals process in [death penalty cases] was drawn out, elusive, delayed, and unpredictable.”⁷⁵


Thus, Family Members in states without the death penalty do not suffer for lack of “closure” that only the death penalty can provide. On the contrary, the quicker resolution of alternative sanctions frees Family Members to concentrate on other matters aside from the murderer’s punishment and to focus on healing instead.

CONCLUSION

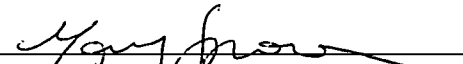
If this Court is to consider the effect that the death penalty may have on Family Members, then it must consider the impact on all Family Members. Though “closure” is frequently invoked as a reason for imposing the death penalty, there is no evidence that executions can provide healing for all, or even most, Family Members. Instead, the death penalty impedes healing by delaying resolution and prolonging anxiety, stress, and trauma. For Family Members who oppose the death penalty, death sentences impose an additional moral and emotional burden that compounds the profound grief they already feel over their loved one’s violent death. The death penalty is also expensive, and it requires a disproportionate allocation of resources on a tiny minority of homicides. Those resources would be better spent on actually reducing the rate of unsolved murders


⁷⁵ *Id.* at 52.

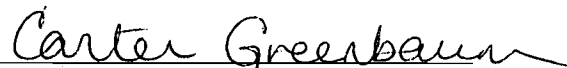
and funding victims' services. Accordingly, *amici curiae* respectfully request this Court to rule for the Petitioner in this case.


Justin Anderson

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP
2001 K Street, NW
Washington, DC 20006-1047
(202) 223-7321


Mary Spooner


Ayelet Evrony


Carter Greenbaum

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

Attorneys for *Amici Curiae*

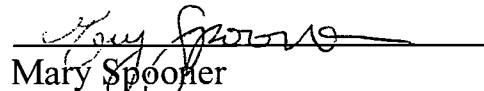
February 21, 2019

5

CERTIFICATE OF COMPLIANCE

I, Mary Spooner, Esq., certify that, based on the word count system used to prepare the foregoing Brief, that the foregoing Brief contains 5994 words, exclusive of the cover page, the Table of Contents, the Table of Citations, the signature block, and the certifications.

Dated: Feb. 21, 2019


Mary Spooner
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

NO. 102 EM 2018

JERMONT COX,
Petitioner,
v.
COMMONWEALTH OF PENNSYLVANIA,
Respondent

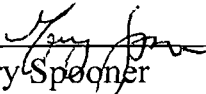
CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and correct copy of the foregoing Brief of Amici Curiae was served upon all counsel of record, via FedEx, on this 21st day of February, at the following addresses:

Josh Shapiro, Attorney General
James Barker, Senior Deputy Attorney General
William Stoycos, Senior Deputy Attorney General
Office of the Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Larry Krasner, District Attorney
Paul George, Assistant Supervisor, Law Division
Philadelphia District Attorney's Office
Three South Penn Square
Philadelphia, PA 19107-3499

Helen A. Marino
Stuart Brian Lev
Federal Community Defender Office
for the Eastern District of Pennsylvania
Suite 545 West - The Curtis Center
Philadelphia, PA 19106

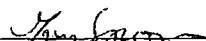


Mary Spooner
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Mary C. Spooner

Signature: 

Name: Mary C. Spooner

Attorney No. (if applicable): 5262605 (NY)