

No. 411A94-5

TWELFTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA )

)

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v. )

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MARCUS REYMOND ROBINSON )

)

From Cumberland County

91 CRS 23143

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BRIEF OF *AMICUS CURIAE*  
MURDER VICTIMS' FAMILIES FOR RECONCILIATION  
OF NORTH CAROLINA  
IN SUPPORT OF RESPONDENT

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The North Carolina Chapter of Murder Victims' Families for Reconciliation (MVFR of NC) files this brief to provide the Court with the perspective of murder victims' families which is often drowned out by the natural retributive emotions evoked in a capital murder case. We strongly believe that all lives matter, regardless of race, and that we deserve a judicial system that treats fairly all persons, including prospective black jurors, regardless of race.

There are substantial reasons to question whether the concern with finality that has permeated the discussion of the North Carolina Racial Justice Act (RJA) is appropriate. We believe that racially-biased justice is not justice at all and is a disservice to victims. The need to secure a fair and just

outcome takes on a marked urgency where life hangs in the balance. Therefore, as discussed further within, we support the findings and conclusions of the court below.

### ARGUMENT

#### **I. TO TREAT FINALITY IN THE CRIMINAL PROCESS AS A PROXY OR A PRECONDITION FOR THE HEALING AND RECOVERY THAT FAMILY MEMBERS OF MURDER VICTIMS NEED ABUSES THE CONCEPT OF FINALITY AND UNDERCUTS THE RIGHTS OF ALL VICTIM FAMILIES TO BE HEARD.**

Identification with the families of murder victims<sup>1</sup> in capital cases is natural because of the immeasurable suffering caused by the defendant. Empathy for these families by actors in the criminal justice system is desirable, but this empathy is easily abused. For one thing, each survivor of murder has her own unique story; thus, when state officials highlight one victim's story, they obscure another. As Professor Susan Bandes has written, "the suffering of crime victims may take many different forms, and it is difficult and dangerous to generalize about what victims experience, what victims want, or what is best for victims."<sup>2</sup>

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<sup>1</sup> Also referred to as "survivors of murder."

<sup>2</sup> Susan Bandes, Empathy, Narrative, and Victim Impact Statements, 63 U. Chi. L. Rev. 361, 405 (1996); see also Susan Bandes, When Victims Seek Closure: Forgiveness, Vengeance and the Role of Government, 27 Fordham Urb. L. J. 1599, 1601 (2000) ("[M]ost of us cannot know how we would react. Therefore, it seems to me we ought to be very slow to judge what any particular individual in that position ought to feel or want.").



Another reason that empathy for survivors of murder is easily abused within the criminal justice context is because their stories can unleash "a complex set of emotions directed toward the defendant, including hatred, fear, racial animus, vindictiveness, undifferentiated vengeance, and the desire to purge collective anger."<sup>3</sup> These emotions can consciously and unconsciously skew the playing field against capital defendants and obscure the objectivity needed for the rule of law.

North Carolina prosecutors and politicians have extensively used the need of murder victims' families for "closure" to support their positions that 1) the RJA should not have been passed in the first instance, 2) its breadth should be curtailed both in legislation and in application and 3) it should be repealed. In doing so, they have improperly conflated the concepts of finality in the criminal process with the "resolution" of emotional issues by survivors of murder. More fundamentally, they have inappropriately held out the experiences, needs and perspectives of one set of survivors of murder to the exclusion of others.<sup>4</sup>

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<sup>3</sup> Id. at 395.

<sup>4</sup> Article 1, Sec. 37 of the NC Constitution gives certain rights, such as the right to be heard, to **all** victims. These rights are explicitly limited by constitutional rights of others.

**A. The State Has Injected the Needs of Families of Murder Victims into the RJA Debate to Further a Partisan Political Agenda**

The N.C. Conference of District Attorneys (NCCDA) has opposed the RJA since its introduction. In November 2011, NCCDA formally asked the Senate to repeal the RJA.<sup>5</sup> Its campaign continued until the RJA was repealed in 2013. Throughout this campaign, NCCDA implored lawmakers to consider the emotional needs of murder victim family members, playing upon the dominant assumption in our society that surviving family members of homicide victims want and need the death penalty and need it quickly in order to feel that justice has been served. In doing so, prosecutors, in the name of the State of North Carolina, emphasized the wants and needs of some families of murder victims over the opposing wants and needs of others.

A leader in their early opposition efforts was Forsyth County District Attorney Tom Keith. Keith discussed his involvement and views at length in an interview with a journalist in October 2010. He noted that his personal pleas to stop passage of the RJA "fell on deaf ears."<sup>6</sup> Seeing the writing on the wall, Keith acted on his disappointment and "issued a

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<sup>5</sup> Samiha Khann, Prosecutors push lawmakers to revisit Racial Justice Act repeal, *Indy Week* (Nov. 18, 2011), [HTTP://WWW.INDYWEEK.COM/TRIANGULATOR/ARCHIVES/2011/11/18/PROSECUTORS-PUSH-LAWMAKERS-TO-REVISIT-RACIAL-JUSTICE-ACT-REPEAL](http://www.indyweek.com/triangulator/archives/2011/11/18/prosecutors-push-lawmakers-to-revisit-racial-justice-act-repeal).

<sup>6</sup> Keith Barber, Forsyth DA: Racial Justice Act Inherently Flawed, *Yes! Weekly*, (Oct. 23, 2010), <http://www.yesweekly.com/triad/article-7185-forsyth-da-racial-justice-act-inherently-flawed.html>.

press release before the state Senate voted on the bill.”<sup>7</sup> In the press release, despite the fact that the only statutory remedy in the RJA is life without the possibility of parole (LWOP), Keith played on the fears of the survivors of murder victims and others in the community by announcing that the RJA would mean the release of death row inmates into the community:

“About half of the 163 murderers on [North Carolina] death row who received a capital sentence for murder committed before Oct. 1, 1994 will be eligible for release in only 20 years, not life imprisonment without the possibility of parole, if the Racial Justice Act converts all death sentences to life sentences.”<sup>8</sup>

In his interview, Keith admitted that “the law is opaque and unclear about the length of a commuted sentence of a death row inmate, but ‘tell that to a victim’s family.’”<sup>9</sup> He opined that

state lawmakers didn’t think about the repercussions for the families of the victims in capital cases.

. . . .

“They have beat on us and beat on us,” Keith said. “I wish they would have the intestinal fortitude to vote ‘yes’ or ‘no’ on the death penalty, either way. What they’re doing now is just killing us and it’s not fair to the victims.”<sup>10</sup>

Keith continued to raise the issue of closure for families of murder victims after the change in the law in 2012. In an article he wrote in the North Carolina State Bar Journal, Keith

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<sup>7</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

predicted that "the families of the murder victims will have to wait for another generation of lawyers to be born and trained to argue all the legal issues arising out of the 2009 RJA and the 2012 amendment . . . ." <sup>11</sup>

In March 2013, the NCCDA appeared before lawmakers with murder victims' family members who support the death penalty and oppose the RJA. <sup>12</sup> Once again, the prosecutors fear-mongered, asserting that some death row inmates could be eligible for parole if they were to win their RJA appeals. One senator responded:

"Victims' families have suffered for far too long and it's time to stop the legal wrangling and bring them peace and closure, finally, in their cases. . . . We owe it to these families of murder victims across North Carolina to impose the punishment that our laws require." <sup>13</sup>

This same senator later wrote a blog post, widely circulated, on the subject:

Our state has a moral obligation to ensure that death row killers convicted of the most heinous crimes imaginable finally face justice. Victims' families have suffered for far too long and it is

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<sup>11</sup> Thomas J. Keith & Robert E. Campbell, The North Carolina Racial Justice Act from Two Viewpoints, N.C. St. B. J., Fall 2012, at 10, 15.

<sup>12</sup> Jean Parks, Death Penalty Not a Solution - a Letter to North Carolina Legislators, Murder Victims' Families for Reconciliation (April 4, 2013), <http://www.mvfr.org/death-penalty-not-a-solution-a-letter-to-north-carolina-legislators-from-mvfr-member-jean-parks/>.

<sup>13</sup> See, e.g., Michael Biesecker, Bills Seeks to Streamline NC Execution Process, Pilotonline.com (Mar. 13, 2013), <http://hamptonroads.com/2013/03/bill-seeks-streamline-nc-execution-process>.

past time to stop the legal wrangling and bring them the peace and closure they deserve. . . .

We owe it to the families of murder victims across our state to impose the punishment the law requires. Nothing more, nothing less – without prejudice or passion. With the ending of RJA, justice will be served for the families of the long silent victims, the juries of North Carolina who did their solemn duty and the district attorneys who prosecuted these cases.<sup>14</sup>

Similarly, in the State House of Representatives, one reporter noted that debate on the RJA was

noteworthy for both its emotion and its ideology. Those who voted to rescind it recited the names of people whose killers were on death row and said the law had clogged the courts and denied justice to victims.<sup>15</sup>

The sincerity of the statements of concern for survivors of murder made by prosecutors and politicians in opposition to the RJA is suspect. When punishment becomes the focus of discussions about “closure,” there is a risk that an ostensible concern for victims' rights may become a cloak for advancing policy arguments that favor prosecution goals.<sup>16</sup> This phenomenon has

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<sup>14</sup> Sen. Thom Goolsby, Death of Racial (In)justice Act, Carolina Columns, (June 6, 2013), <http://carolinacolumns.com/thom-goolsby/sen-thom-goolsby-death-of-racial-injustice-act>.

<sup>15</sup> Kim Severson, North Carolina Repeals Law Allowing Racial Bias Claim in Death Penalty Challenges, *New York Times*, June 5, 2013, [http://www.nytimes.com/2013/06/06/us/racial-justice-act-repealed-in-north-carolina.html?\\_r=0](http://www.nytimes.com/2013/06/06/us/racial-justice-act-repealed-in-north-carolina.html?_r=0).

<sup>16</sup> Vik Kanwar, Capital Punishment as 'Closure': The Limits of a Victim-Centered Jurisprudence, 27 N.Y.U. Rev. L. and Soc. Change 215, 229 (2001-2002).

been documented by several commentators.<sup>17</sup> As Michael Radelet, a sociologist who has written several books on the death penalty, put it, "The families get used and co-opted ... I don't even know what the term 'closure' means. Someone kills your child, there is no closure."<sup>18</sup>

**B. Litigation of Questions of Racial Bias in Capital Cases Does Not Prolong "Closure" for Family Members of Murder Victims**

In opposing passage and application of the RJA, prosecutors and politicians have too often conflated the concepts of finality in the criminal process and the "resolution" of emotional issues by the survivors of murder. What survivors of murder most clearly need is healing and recovery from trauma. The process of healing that survivors go through is not analogous to, and does not depend upon, the concept of finality, which is a jurisprudential consideration for the court system.

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<sup>17</sup> See, e.g., Susan Bandes, Victim Standing, 1999 Utah L. Rev. 331, 333-334 (1999) ("the sorts of victim initiatives that have been successful have been those, and only those, that advance the prosecution's own agenda"); Robert Mosteller, Victims' Rights and the Constitution: Moving From Guaranteeing Participatory Rights to Benefitting the Prosecution, 29 St. Mary's L. J. 1053, 1057-60 (1998) (giving examples of victims' rights that would have been enforceable against government but were eliminated from various versions of proposed Victims' Rights Amendments); Lynne N. Henderson, Revisiting Victims' Rights, 1999 Utah L. Rev. 383, 384, ("crime control conservatives use victims and victims' rights to achieve ends other than helping victims recover"); Markus Dirk Dubber, Regulating the Tender Heart When the Axe is Ready to Strike, 41 Buff. L. Rev. 85, 127 (1993) ("Payne did not respond to the arguably legitimate concerns of crime victims as much as it reflected the exploitation of these concerns in a widespread crusade against the rights of criminal defendants in general, and against those convicted of capital crimes in particular.")

<sup>18</sup> Louis Romano, With Death, Hope That Life Goes On; On the Eve of an Execution, Victims Yearn for Peace at Last, Wash. Post, Aug. 8, 1996, at A1.

"Closure" is neither a legal notion nor even an adequate psychological notion.<sup>19</sup> For many survivors, "the concept of 'closure' bears little or no relevance to their experience."<sup>20</sup> Many survivors succeed, at best, in reconciling themselves to the fact of the murder.<sup>21</sup> At most, what happens to the killer within the criminal justice process is only part of a survivor's process of trying to accept the violent loss of a family member.

To suggest that "closure" is required for healing from violent crime implies that victims cannot begin the healing process until the case is behind them. Lynne N. Henderson, herself a crime victim, has challenged this notion persuasively:

Another myth that operates throughout the victim's rights literature is that criminal cases are endlessly delayed, usually but not always by wily defense counsel, and the victim 'cannot heal' or 'put the matter behind her' until there is a final judgment of guilt. This assertion is questionable, because healing takes place whether or not an offender is ever located, much less

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<sup>19</sup> Susan A. Bandes, *Victims, "Closure," and the Sociology of Emotion*, 72 *Law & Contemp. Probs.* 1 (Spring 2009) ("Closure is a term with no accepted psychological meaning. It is, in fact, an unacknowledged umbrella term for a host of loosely related and often empirically dubious concepts.").

<sup>20</sup> Marilyn Peterson Armour and Mark S. Umbreit, *Assessing the Impact of the Ultimate Penal Sanction on Homicide Survivors: A Two State Comparison*, 96 *Marq. L. Rev.* 1, 19 (2012).

<sup>21</sup> For more on the definition of reconciliation within this context, see *Murder Victims' Families for Reconciliation, What is Reconciliation?*, <http://www.mvfr.org/about/what-is-reconciliation/>. As the MVFR website states, "Among our Members, the most widely shared view of 'reconciliation' is a desire to reconcile within themselves that a horrible, senseless tragedy has hit their family and come to terms with how they will live in the aftermath. For these family members, reconciliation means something like 'accepting that you cannot undo the murder but you can decide how you want to live afterwards.'"

convicted. Nor does the healing process necessarily end with the successful resolution of a case.<sup>22</sup>

In an earlier article, she explained why emotional "resolution" does not ultimately depend on the outcome of the criminal case:

It is simplistic to assert that the rituals of condemnation will erase so profound an experience for an individual. Continuances and delays may cause a victim to relive the event, but a victim is likely to relive portions of the event whether or not there is a delay. Issues raised by victimization do not resolve themselves quickly: A reintegration and understanding of such questions as mortality, meaning, and responsibility take time.<sup>23</sup>

Recent research of Professors Marilyn Armour and Mark Umbreit confirms what many have concluded: what survivors of murder need most is the return of a sense of control.

As repeatedly shown in the literature and again in the Study, survivor well-being is associated with a perceived sense of control, not the lofty or political ideal of closure that is ill-defined and has multiple meanings or is insulting to or in disrepute among survivors themselves.<sup>24</sup>

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<sup>22</sup> Lynne N. Henderson, Revisiting Victim's Rights, 1999 Utah L. Rev. 383, 418 (1999). Certainly, for the vast majority of survivors of murder victims, healing must take place without the imposition of the death penalty, since so few killers are sentenced to death. In North Carolina, of the 3,990 homicide cases that occurred from 1993 through 1997, only 99 first-degree murders resulted in death sentences (2.5%), compared with 303 murders that resulted in life sentences. Isaac Unah & Jack Boger, Race and the Death Penalty in North Carolina, An Empirical Analysis: 1993-1997, The Common Sense Foundation, North Carolina Council of Churches (2001), <http://www.deathpenaltyinfo.org/race-and-death-penalty-north-carolina>.

<sup>23</sup> Lynne Henderson, The Wrongs of Victim's Rights, 37 Stanford L. Rev. 937, 976-77 (1985).

<sup>24</sup> Armour & Umbriet, *supra* note 21, at 95.



Their study compared the well-being of survivors of murder victims in a death penalty state, and a state in which the ultimate punishment is LWOP and discovered that survivors in the latter had a greater sense of well-being. The authors' conclusion was that survivors of murder had a greater sense of control with the determinate sentence of LWOP.<sup>25</sup> This result bolsters the position of MVFR of NC that it is impossible to conclude how all, or even a majority of, survivors of murder victims will respond to the imposition of LWOP in RJA cases.

But doesn't the execution of a murderer bring "closure" to the survivors? Margaret Vandiver has called attention to the dearth of available research on this issue:

The effects of executions on homicide victims' families simply are not known. It may be that some families experience a real and lasting sense of peace and closure from the execution of their relative's killer. Statements made by victims' survivors at the time of execution often indicate that they feel a great sense of relief. No systematic interviews have been done with these families to learn whether the execution does result in long-term improvement in their emotional condition. 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

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<sup>25</sup> Id. at 98.

not, they may even feel worse after the execution.<sup>26</sup>

Armour and Umbreit reviewed more recent studies, including interviews of survivors of the Oklahoma City bombing, and found that the studies

uniformly conclude that the likelihood of closure, and by extension an increased sense of control, is highly variable and colored by the appeals process, expectations about the murderer's comments, and feelings of revenge.<sup>27</sup>

They concluded that whether a defendant receives the ultimate punishment - be it death or LWOP - provides some sense of justice and satisfaction to survivors, but "the punishment, by itself, is limited in its healing potential for survivors."<sup>28</sup>

MVFR of NC's opposition to the death penalty is rooted in our members' direct experience of loss and our strongly held belief that executions are not what will help us heal. As Jean Parks, a member of MVFR of NC, wrote so eloquently in an open letter to North Carolina legislators on the RJA:

I am saddened by the legislation (SB306) recently filed in the NC Senate to resume executions, especially since the bill sponsor . . . claims to be working to achieve justice for victims.

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<sup>26</sup> 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, 484-485 (Acker, Bohm and Lanier, 1998).

<sup>27</sup> Armour & Umbreit, *supra* note 21, at 22.

<sup>28</sup> Id. at 85.

[T]roubling is the idea that the death of another human being could somehow provide justice, closure or peace for the grieving family members of a murder victim. The desire for revenge and retribution is a normal response to losing a loved one to murder. The State has taken on the responsibility of imposing that retribution. But why do we consider it more civilized for the State to take a life for a life than for a surviving family member to do so? Violence perpetuates violence.

As the sister of a murder victim, I have tried to imagine being the sibling or parent of a person about to be executed. How horrible that must be, knowing the date and time your loved one will be killed by the government and not being able to do anything about it. The man who killed my sister was not sentenced to death, but I can tell you his execution would not have brought me any sense of peace or closure.<sup>29</sup>

## **II. A FOCUS ON "CLOSURE" FOR MURDER VICTIMS' FAMILIES IN THE FACE OF RACIAL BIAS IN CAPITAL SENTENCING UNDERMINES MORE FUNDAMENTAL NEEDS OF SURVIVORS, WHICH INCLUDE AN UNBIASED CRIMINAL JUSTICE SYSTEM**

This case provides a unique window into the racial divide that characterizes the death penalty in North Carolina. Mr. Robinson, who is black, was sentenced to death for the killing of Erik Tornblom, who was white. A decade later, Mr. Robinson's brother, Curtis, was murdered by two black men. Curtis, a Navy veteran, was black. His killers were sentenced to terms of years. Curtis' mother, Shirley Burns, points out the racial inequities in the system from her experience as a survivor of murder:

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<sup>29</sup> Jean Parks, *supra* note 12.

The people who willfully, intentionally, premeditated, took my son's life Curtis, I didn't ask for the death penalty. But I found out that the state could have incarcerated them for life. They did not. They didn't go after these guys who willfully planned plotted and carried out my son's death.<sup>30</sup>

**A. The Focus on "Closure" Obscures the True Needs of Survivors of Murder**

Healing and recovery from a violent loss of a family member is a complex and highly individualized process. The process requires an intimate focus on the particular needs of an individual survivor, a focus that it is neither appropriate nor practical to expect the legal system to provide. As Vik Kanwar has written, "individual requirements for 'closure' are so personal that it would be difficult to conceive of any generalized remedy that could be properly tailored to this purpose."<sup>31</sup> Indeed, generalizations about the need for "closure" are unsupported by any empirical research:

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<sup>30</sup> Jessica Jones, A Mother Who Has Lost Two Sons, North Carolina Public Radio (Jan. 30, 2012, 4:00 AM), <http://wunc.org/post/mother-who-has-lost-two-sons>. More than half of all homicide victims in North Carolina are black. Frank R. Baumgartner & Richard J. Richardson, Racial Discrepancies in Homicide Victimization and Executions in North Carolina, 1976-2008, 1 (Mar. 20, 2010), <http://www.unc.edu/~fbaum/Innocence/NC/Racial-discrepancies-NC-homicides-executions.pdf>. ("From 1976 through 2008, 19,591 North Carolinians have been the victims of homicides, almost 600 per year on average. Of these, about three-quarters are male, and 54 percent are African-American.") In both the 2000 and 2010 census, the percentage of black North Carolinians who identified as black was approximately 21.5%. Census Viewer, Population of North Carolina: Census 2010 and 2000 Interactive Map, Demographics, Statistics, Quick Facts, (last visited July 30, 2013), <http://censusviewer.com/state/NC>.

<sup>31</sup> Vik Kanwar, *supra* note 18 at 239.

"Assertions about what victims need are often presented as if they are empirically based. If this is indeed an empirical question about what conditions are most likely to help, we ought to be looking for empirical answers, and there are surprisingly few out there."<sup>32</sup>

What little empirical evidence does exist "supports the intuitively obvious view that different victims have different needs, and that an individual victim's needs may change over time."<sup>33</sup>

The misplaced focus by State actors on closure obscures the greater needs of murder survivors. Thousands of murder victim family members in North Carolina go without their most pressing and relevant needs being taken seriously. Survivors of murder need to feel safe and want more resources to help law enforcement solve unsolved murders and bring more offenders to justice. They need a sense of control and want to be kept informed about investigations and judicial proceedings and want expanded financial compensation to help families with burial costs and work-time lost due to the murder. And when it comes to emotional needs, they need access to mental health services. As Bonnita Spikes, whose husband was murdered and who works with other homicide survivors in Baltimore, put it:

Over and over, I have found families in dire need of support and traumatic grief counseling

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<sup>32</sup> Bandes, When Victims Seek Closure, *supra* note 2 at 1602.

<sup>33</sup> Id. at 1602-1603.

services... Most don't have any insurance. Nor are they resourceful in knowing who to go and beg for help. I have come to know people, young and old, who have little or no access to professional help coping with their overwhelming loss. For most of these families, the notion of a death sentence for their loved one's murderer isn't even a remote thought. They are struggling to hold their households together, to help their families grieve and survive the trauma one day at a time.<sup>34</sup>

Susan Herman, former Director of the National Center for Victims of Crime (NCVC), speaks of the need to create a "parallel justice," one that helps victims separate healing from the criminal justice process.<sup>35</sup> As explained on the NCVC website:

Most victims never have a chance to participate in the criminal justice process because their offenders are never arrested or prosecuted. However, even if crime victims had every opportunity to participate and be heard in the criminal justice system, it is inevitable that many would remain profoundly disappointed because the clear focus of the criminal justice system is on the offender and not the victim.<sup>36</sup>

Similarly, Prof. Bandes has emphasized that we must "be careful to distinguish the question of what victims need from

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<sup>34</sup> Bonnita Spikes, Quotes of Family Members of Homicide Victims, Equal Justice USA, <http://ejusa.org/learn/quotes/victims> (last visited July 23, 2013).

<sup>35</sup> Susan Herman, Seeking Parallel Justice: A New Agenda for the Victims Movement, National Center for Victims of Crime (Dec. 15, 2000), <http://victimsofcrime.org/docs/Parallel%20Justice/Seeking%20PJ%20dec%202000.pdf?Status=Master&sfvrsn=0&%253bsfvrsn=0>.

<sup>36</sup> National Center for Victims of Crime, Welcome to the National Center for Victims of Crime, <http://victimsofcrime.org/library/publications/other-topics/parallel-justice/parallel-justice-framework> (last visited July 24, 2013)

the question of what the legal system ought to provide.”<sup>37</sup> She explains:

Some of what individual victims or survivors need to attain closure must come from psychological, religious and social support systems. Such systems have greater ability to individuate among victims and to accommodate the shifting and complex needs of particular victims. They are not obligated to reach a fixed and categorical judgment or any legal judgment at all. Moreover, they are not obligated to weigh a host of other factors against the victim's needs, including the rights of the defendant and the good of society as a whole.<sup>38</sup>

To lead survivors of murder to believe that a particular court result will positively benefit them is a risky enterprise. For example, victims who hope that execution will help them heal are often disappointed when the offender's death does not bring the emotional peace or closure that they anticipated.<sup>39</sup> Victor Streib has written of his experience working with families of murder victims who have been told that the criminal justice system would “fix” their pain:

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<sup>37</sup> Bandes, When Victims Seek Closure, *supra* note 2 at 1605.

<sup>38</sup> Id. at 1605-06.

<sup>39</sup> Lynne Henderson, Co-Opting Compassion: The Federal Victim's Rights Amendment, 10 St. Thomas L. Rev. 579, 595-96 (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.”); 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.”).

I talk with those families years after and I say, 'Is it better? This person went to prison or this person was executed. Does this fix it?' No, it is not better. 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 teenagers, and they would feel better."<sup>40</sup>

**B. Murder Victims' Families Deserve A Judicial System They Can Trust To Deliver Justice Without Regard For The Race Of The Victim, The Jurors, Or The Accused.**

As noted above, there is a prevailing assumption in our society that surviving family members of homicide victims want and need the death penalty and need it quickly in order to feel that justice has been served. In reality, victims' views and needs, including as to punishment, are quite diverse. Thus, it is impossible to conclude how all, or even a majority of, survivors of murder victims will be affected by the overturning of death sentences because of racial bias in the justice system.

Survivors of murder victims have diverse beliefs about the moral and legal legitimacy of the death penalty. As Margaret Vandiver has pointed out,

families 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.<sup>41</sup>

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<sup>40</sup> Victor Streib, Juvenile Justice or Injustice? The Debate Over Reform, 14 St. John's J.L. Comm. 371, 376 (2000).

<sup>41</sup> Vandiver, *supra* note 26, at 497.



The victims' families represented by this brief believe our grief will not be lessened by the taking of a life for a life, nor does such punishment honor our lost loved ones. We believe that justice for victims – whose human rights have been so completely violated – does not come from violating the human rights of others.

In enacting the RJA, the General Assembly upheld a value that is of vital importance to family members of murder victims: the legitimacy of the criminal justice system. When facing the devastating loss of a murdered loved one, the response of the criminal justice system plays a hugely significant role in shaping the experience of surviving family members. Whether the criminal justice system honors the memory of the murder victim and whether family members feel respected, listened to, and vindicated by the system all affect a survivor's ability to make the journey toward healing and reach some kind of peace with loss. As a result, it is critical that family members have confidence in the fairness and impartiality of the criminal justice system.

A criminal justice system that is seen to treat black and white citizens differently can have no legitimacy in a democratic society. Where, as proven by substantial evidence in this case, race is a significant factor in the prosecution's decisions about which citizens would serve on the jury, no one,

least of all family members of murder victims, can trust the fairness of the jury's punishment decision.<sup>42</sup> Indeed, discrimination in jury selection "invites cynicism respecting the jury's neutrality and its obligation to adhere to the law."<sup>43</sup> As this Court has observed, "the judicial system of a democratic society must operate evenhandedly . . . [and] be perceived to operate evenhandedly."<sup>44</sup>

MVFR of NC believes that the problem of race discrimination in our capital punishment system is a serious cancer and an embarrassing stain on North Carolina. Court rulings in the past two years have proven beyond reasonable doubt that North Carolina needs the Racial Justice Act to expose, correct and prevent race discrimination in death sentencing cases. While at times painful and inconvenient, the treatment is working and needs to be allowed to continue to work.

Several of our members have spoken out publicly on this issue. Tom Fewel, whose daughter was murdered in 1985, believes the RJA should be given a chance to weed out racially tainted sentences:

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<sup>42</sup> Batson v. Kentucky, 476 U.S. 79, 87 (1986) ("[S]election procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice."). See also, Miller-El v. Dretke, 545 U.S. 231, 237-38 (2005) (internal citations omitted) (Race discrimination in jury selection "casts doubt over the obligation of the parties, the jury and indeed the court to adhere to the law throughout the trial.")

<sup>43</sup> Powers v. Ohio, 499 U.S. 400, 412 (1991).

<sup>44</sup> State v. Cofield, 320 N.C. 297, 302 (1987).

Not only has racial bias impacted death sentences in our state historically, but we have evidence that bias has impacted who is on death row right now. . . . We can't say we're for justice and then ignore that fact.<sup>45</sup>

John Jennings, whose son was taken by gun violence, agrees:

We don't want anyone punished in an unjust or unfair way. We want the right person held accountable in the right way. That's the only way we can trust that justice prevails for us and our family members.<sup>46</sup>

Pat McCoy, whose sister was brutally raped and murdered, wrote in an op-ed in opposition to repeal of the RJA:

Nothing honors my sister's life more than the pursuit of truth and justice. If she were here among us she, too, would be urging our legislature to reinstate its commitment to equal justice before the law. Anything less dishonors and diminishes us all, regardless of our personal sentiments about capital punishment.<sup>47</sup>

Therese Bartholomew, whose brother was murdered and who holds a master's degree in criminal justice, met with Governor Perdue in December of 2011 to urge her to veto SB9. She told the Governor that "I believe the Racial Justice Act improves our system of justice. I want the legislature to leave it alone and let it work."<sup>48</sup>

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<sup>45</sup> Press Release, Murder Victims' Families for Reconciliation, Dec. 12, 2011, <http://www.ncmatorium.org/News.aspx?li=6547>.

<sup>46</sup> Id.

<sup>47</sup> Pat McCoy, Op-Ed., Uphold the Racial Justice Act, News and Observer, June 18, 2012, available at <http://www.newsobserver.com/2012/06/18/2145922/uphold-the-racial-justice-act.html#storylink=cpy>.

<sup>48</sup> Press Release, *supra* note 45.

Finally, from the unique perspective of a murder victim family member whose loved one's killer has not been identified, Yolanda Littlejohn said in 2012 that

After imprisoning the wrong man for 17 years, my sister Jacquetta's murder has not been solved. . . . I cannot understand why our legislature is undoing the Racial Justice Act - a law that tries to right wrongs - when we know our justice system is so imperfect.<sup>49</sup>

### **CONCLUSION**

Members of MVFR of NC know from experience the anger, hurt, and desperation that family members feel after a murder. We also know the desire of family members to feel that a murder has been acknowledged by society, that the victim mattered, and that the act will not go unpunished.

MVFR of NC appreciates the sincere concern of others within the system about the impact the application of a law has on the survivors of the murder victim. Those within the system, however, cannot consider the individual needs of the survivors at the expense of the rights of the defendant and of the rights of all for a just, impartial criminal justice process.

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<sup>49</sup> Press Release, Murder Victims' Families for Reconciliation, June 14, 2012, available at <http://standdown.typepad.com/weblog/2012/06/nc-murder-victims-families-criticize-house-bill.html>. The man convicted of her sister's murder, Greg Taylor, was wrongfully convicted of her death. He was fully exonerated by NC Innocence Inquiry Commission, based on egregious misconduct by the state's crime lab.

This brief demonstrates that the needs of survivors of murder are complex and diverse and that there is no basis for assumptions about survivors' need for "closure." It also demonstrates that litigation under the RJA does not prolong the suffering of all families of murder victims and that many families support the passage and application of the RJA. Finally, it demonstrates that sometimes LWOP is not only the just result in a murder case, as in the face of racial bias at trial, but also the result that may bring finality that most closely correlates to healing from a murder.

Amicus respectfully requests this Court to rule for Respondent in this case.

Respectfully submitted, this 9<sup>th</sup> day of August, 2013.

For Murder Victims' Families for  
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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **BRIEF OF AMICUS CURIAE OF MURDER VICTIMS' FAMILIES FOR RECONCILIATION OF NORTH CAROLINA IN SUPPORT OF RESPONDENT** via email upon the following:

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This the 9<sup>th</sup> day of August, 2013.

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