NO. 15-650

In the Supreme Court of the United States

SHONDA WALTER,
Petitioner,
v.

COMMONWEALTH OF PENNSYLVANIA,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

BRIEF *AMICI CURIAE* OF SOCIAL SCIENTISTS IN SUPPORT OF PETITIONER

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U.S. GEN. ACCT. OFF., GAO/GGD-90-57, DEATH PENALTY SENTENCING: RESEARCH INDICATES PATTERN OF RACIAL DISPARITIES (1990) 4, 5

INTEREST OF *AMICI CURIAE*[1]

Amici curiae include university professors, trained in the social sciences, each of whom has conducted empirical studies on the role of race in capital punishment. The interest of the amici is to provide the Court with empirical evidence from social science research, so that the Court may be better able to assess whether petitioner's claim that, in all cases, the imposition of a sentence of death violates the Eighth Amendment's prohibition against cruel and unusual punishments.

The Stephen and Sandra Sheller Center for Social Justice at Temple University Beasley School of Law is a hub for social justice inquiry and advocacy at the Law School and the University. Building on Temple's long-standing and deep commitment to social justice, the Center works in collaboration with Temple Law faculty and students, community groups, the legal community, and other schools and departments within the University to promote justice for underserved populations in Philadelphia and across Pennsylvania. The Center is especially committed to the advancement of racial and ethnic equality in the City of Philadelphia, which has a well-documented and troubling history of disparate treatment of

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[1] Pursuant to Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party authored this brief in whole or in part. No person or entity, other than *amici*, made any monetary contribution to the preparation or submission of this brief. Petitioner and Respondent have consented to the filing of this brief.

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African-American capital defendants. The Sheller Center submits this brief in order to assist the Court in obtaining a picture of the role that race currently plays in the imposition of capital punishment, both locally and nationally.

The Pennsylvania Association of Criminal Defense Lawyers ("PACDL") is a professional association of attorneys admitted to practice before the Supreme Court of Pennsylvania and who are actively engaged in providing criminal defense representation. As *Amicus Curiae*, PACDL presents the perspective of experienced criminal defense attorneys who aim to protect and ensure by rule of law those individual rights guaranteed by the Pennsylvania and United States Constitutions, and work to achieve justice and dignity for defendants. PACDL's membership currently includes 904 private criminal defense practitioners and public defenders throughout the Commonwealth. PACDL members have a direct interest in certiorari being granted in this case because of their concern for ensuring that the race of an accused plays no part in the criminal justice system, including the prosecution's charging decisions; jury selection; and the jury's verdict. That interest and concern is especially heightened when the prosecution seeks to impose capital punishment.

SUMMARY OF ARGUMENT

Social science research provides compelling evidence that race continues to play a significant role in the administration of capital punishment. In particular, and as *amici* detail below, data nationally, including from Pennsylvania, confirm a recurring problem in three areas critical to capital

case litigation: the decision by prosecuting authorities whether to charge the case as capital; the decision by those same authorities as to which prospective jurors will be peremptorily struck; and in the punishment choice made by the selected jurors. In study after study, in jurisdiction after jurisdiction, and after controlling for race-neutral factors, race remains a statistically significant factor, an arbitrary "thumb on the scale."

Race discrimination compromises fairness and imposes arbitrariness. Race of the defendant or the victim constitutes an arbitrary basis for imposing a death sentence because it does not relate to the culpability of the defendant or the nature of the crime. This Court has said that an arbitrary system is cruel and unconstitutional. *Gregg v. Georgia*, 428 U.S. 153, 188 (1976). For these reasons *amici* bring the findings of social science research to the attention of the Court and, given the powerful impact race has played and continues to play in capital punishment, urges the Court to grant a writ of *certiorari* in the instant matter.

ARGUMENT

In *McCleskey v. Kemp*, 481 U.S. 279, 301 (1987), this Court confirmed that the Eighth Amendment is violated where "the death penalty [is] so irrationally imposed that any particular death sentence could be presumed excessive [and] . . . there was no basis for determining in any particular case whether the penalty was proportionate to the crime[.]" *Id.* (citing *Furman v. Georgia*, 408 U.S. 238 (1972)). The Court went on to affirm that where the "capital punishment system operates in an arbitrary and

capricious manner" a constitutional violation has occurred. *Id.* at 306. While the Court concluded in *McCleskey* that the proof of arbitrariness arising from race was inadequate, 40 years of continued study show that to no longer be the case.

Amici support the Petition for Writ of Certiorari because, as is demonstrated herein, the continuing, pervasive, and substantial impact of race on at least three critical stages in the capital case process—the charging decision, the selection of jurors, and the determination of punishment—profoundly raises concerns and demonstrates that the "capital punishment system operates in an arbitrary and capricious manner[.]" *Id.*

I. Social Scientific Evidence Shows That Race Plays a Significant Role in Capital Charging and Sentencing Decisions

A. Nationwide Evidence

An extensive body of academic literature has developed over the last forty years evaluating the influence of race in the administration of the death penalty. The research focuses on the degree to which the race of the defendant or the victim influences discretionary decisions of prosecutors or jurors. Research has also analyzed the extent to which prosecutors rely on race during jury selection.

In 1990, the United States General Accounting Office undertook a systematic review of the empirical studies of capital charging and sentencing systems conducted in the 1970s and early 1980s. U.S. GEN. ACCT. OFF., GAO/GGD-90-57, DEATH PENALTY SENTENCING: RESEARCH INDICATES PATTERN OF

RACIAL DISPARITIES (1990). The review sought to evaluate the extent to which the existing literature supported claims that black defendants are treated more punitively than similarly situated non-black defendants, and claims that defendants whose victims are white are treated more punitively than similarly situated defendants whose victims are black. The review reported that in "82% of the studies . . . [defendants] who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks." GAO reported this finding "remarkably consistent across data sets, states, data collection methods, and analytic techniques." *Id.* at 5-6.

Catherine Grosso and colleagues identified and reviewed 36 empirical studies between the publication of the GAO Study and 2013 and concluded that the "post-1990 results are consistent with those summarized in the GAO report." An overwhelming majority of the studies concluded that defendants whose victims are white are treated more punitively than similarly situated defendants whose victims are black. Catherine M. Grosso et al., *Race Discrimination and the Death Penalty: An Empirical and Legal Overview*, *in* AMERICA'S EXPERIMENT WITH CAPITAL PUNISHMENT at 525 (Charles S. Lanier, Robert Bohm, & James Acker eds., 2014).

Studies with varying levels of detail and methodological sophistication have been conducted in numerous states.[2] While not universal, the

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[2] In alphabetical order by state: PEG BORTNER & ANDY HALL, ARIZONA FIRST-DEGREE MURDER CASES SUMMARY OF 1995-1999 INDICTMENTS: DATA SET II RESEARCH REPORT TO ARIZONA

CAPITAL CASE COMMISSION (2002); Stephen P. Klein & John E. Rolph, *Relationship of Offender and Victim Race to Death Penalty Sentences in California*, 32 JURIMETRICS J. 33 (1991); Glenn Pierce & Michael Radelet, *The Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides, 1990–1999*, 46 SANTA CLARA L. REV. 1 (2005–2006); Steven F. Shatz & Terry Dalton, *Challenging the Death Penalty with Statistics: Furman, McCleskey, and a Single County Case Study*, 34 CARDOZO L. REV. 1227 (2012) (California); Scott Anderson, *As Flies to Wanton Boys: Death-Eligible Defendants in Georgia and Colorado*, 40 TRIAL TALK 9-16 (1991); Stephanie Hindson et al., *Race, Gender, Religion and Death Sentencing in Colorado, 1980–1999*, 77 U. COLO. L. REV. 549 (2006); John J. Donohue III, *An Empirical Evaluation of the Connecticut Death Penalty System Since 1973: Are There Unlawful Racial, Gender, and Geographic Disparities?*, 11 J. EMPIRIC. L. STUD. 637 (2014); David C. Baldus et al., EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS (1990) (Georgia); Glenn L. Pierce & Michael L. Radelet, *Race, Region and Death Sentencing in Illinois, 1988-1997, Report of the Governor's Commission on Capital Punishment*, tech. app. I, Report A (April 14, 2002); Thomas J. Keil & Gennardo F. Vito, *Race and the Death Penalty in Kentucky Murder Trials: 1976-1991*, 20 AM. J. CRIM. JUST. 17 (1995); Raymond Paternoster & Robert Brame, *Reassessing Race Disparities in Maryland Capital Cases*, 46 CRIMINOLOGY 971 (2008); Glenn Pierce & Michael Radelet, *Death Sentencing in East Baton Rouge Parish, 1990–2008*, 71 LA. L. REV. 647 (2010–2011) (Louisiana); David Keys & Teresa Guess, *The Prevailing Injustices in the Application of the Death Penalty in Missouri (1978–1996)*, 32 SOC. JUST. 151 (2005); Katherine Barnes et al., *Place Matters (Most): An Empirical Study of Prosecutorial Decision-Making in Death-Eligible Cases*, 51 ARIZ. L. REV. 305 (2009) (Missouri); Michael Lenza et al., *The Prevailing Injustices in the Application of the Death Penalty in Missouri (1978–1996)*, 32 SOC. JUST. 151 (2005); David C. Baldus et al., *Arbitrariness and Discrimination in the Administration of the Death Penalty: A Legal and Empirical Analysis of the Nebraska Experience (1973–1999),* 81 NEB. L. REV. 486 (2002); *State v. Marshall*, 613 A.2d 1059 (N.J. 1992); David S. Baime, REPORT TO THE

overwhelming majority of these studies indicate that the odds of receiving the death penalty are enhanced if the victim is white as opposed to black or another race. *See also* Steven F. Shatz & Terry Dalton, *Challenging the Death Penalty with Statistics: Furman, McCleskey, and A Single County Case Study*, 34 CARDOZO L. REV. 1227, 1246-1251 (2013) (reviewing the literature on race and capital punishment). The authors concluded:

SUPREME COURT SYSTEMIC PROPORTIONALITY REVIEW PROJECT 2000-2001 TERM (June 1, 2001) (New Jersey); Leigh Bienan et al., *The Reimposition of Capital Punishment in New Jersey: The Role of Prosecutorial Discretion*, 41 RUTG. L. REV. 27 (1988); Barbara O'Brien et al., *Untangling the Role of Race in Capital Charging and Sentencing in North Carolina, 1990-2009*, N.C. L. REV. (forthcoming 2016); David C. Baldus *et al.*, *Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview, with Recent Findings from Philadelphia*, 83 CORNELL L. REV. 1638 (1998) (Pennsylvania); Raymond Paternoster & Ann Marie Kazyaka, *The Administration of the Death Penalty in South Carolina: Experiences Over the First Few Years*, 39 S.C. L. REV. 245 (1988); Michael Songer & Isaac Unah, *The Effect of Race, Gender, and Location on Prosecutorial Decisions to Seek the Death Penalty in South Carolina,* 58 S.C. L. REV. 161 (2006); John M. Scheb II et al., *Race, Prosecutors, and Juries: The Death Penalty in Tennessee*, 29 JUST. SYS. J. 338 (2008); Deon Brock et al., *Arbitrariness in the Imposition of Death Sentences in Texas: An Analysis of Four Counties by Offense Seriousness, Race of Victim, and Race of Offender*, 28 Am. J. OF CRIM. L. 43 (2000); Scott Phillips, *Continued Racial Disparities in the Capital of Capital Punishment: The Rosenthal Era*, 50 HOUS. L. REV. 131 (2012) (Texas); Scott Phillips, *Racial Disparities in the Capital of Capital Punishment,* 45 HOUS. L. REV. 807 (2008) (Texas); and JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION OF THE VIRGINIA GENERAL ASSEMBLY, REVIEW OF VIRGINIA'S SYSTEM OF CAPITAL PUNISHMENT (2002).

> These empirical studies of racial disparities in death-charging and death-sentencing—done in different jurisdictions, with differing methodologies, covering a variety of time periods—produced results remarkably consistent with the Baldus study findings in Georgia a quarter of a century ago: 1) there is little or no disparity based on race of the defendant alone; 2) there is a statistically significant disparity based on race of the victim(s) alone; and 3) there is an even greater disparity based on the combination of race of the defendant and race of the victim.

Id. at 1250.

This is true across decades of study. The Baldus study of the administration of capital punishment in Georgia from 1973-1980 (litigated in *McCleskey v. Kemp*, 481 U.S. 279 (1987)) found that, after adjusting for the presence or absence of legitimate case characteristics, including the level of violence and the defendant's prior record, defendants whose victims were white faced odds of receiving a death sentence that were on average 4.3 times higher than similarly situated defendants whose victims were black. DAVID C. BALDUS ET AL., EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS 319-320 (1990).

Professor Eberhardt and colleagues used the data from the Baldus study to show that among defendants convicted of murdering a white victim, defendants whose appearance was more stereotypically black (e.g. darker skinned, with a

broader nose and thicker lips) were sentenced more harshly and, in particular, were more likely to be sentenced to death than if their features were less stereotypically black. This finding held even after the researchers controlled for the many non-racial factors that might account for the results. Jennifer L. Eberhardt et al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes*, 17 PSYCHOLOG. SCI. 383 (2006).

Subsequent charging and sentencing studies find lower odds but consistent and statistically significant disparities. A recent study of capital charging and sentencing decisions in North Carolina between 1990 and 2009 used a very similar methodology to that in the Baldus study discussed above and reported similar findings. The primary model analyzing death sentencing among all death-eligible cases showed that—even after controlling for multiple measures of culpability—cases with at least one white victim face odds of receiving a death sentence that were 2.17 times the odds faced by all other cases. The evidence further suggested that this effect arises primarily in charging decisions, where prosecutors systematically disregard cases in which black defendants kill black victims. The odds of a black defendant/black victim case advancing to a capital trial are 2.6 times lower than the odds faced by all other cases. The study found that white victim cases and black defendant/black victim cases pulled strongly in the opposite direction. In both instances, race—a factor unrelated to culpability and repugnant to the criminal justice system—plays a significant role. Barbara O'Brien et al., *Untangling the Role of Race*

in Capital Charging and Sentencing in North Carolina, 1990-2009, N.C. L. REV. (forthcoming 2016).

Recent research has contributed to our understanding of possible ways that race infects capital decision-making. One field of research suggests that the human mind may unwittingly inject bias into the seemingly neutral concepts and processes of death penalty administration. This area of research is less well developed, but new research suggests that jury-eligible citizens harbor implicit racial stereotypes about blacks and whites generally, as well as implicit associations between race and the value of life. This research also found that death-qualified jurors harbored stronger racial biases than excluded jurors. Justin D. Levinson et al., *Devaluing Death: An Empirical Study of Implicit Racial Bias on Jury-Eligible Citizens in Six Death Penalty States*, 89 N.Y.U. L. REV. 513 (2014).

B. Pennsylvania Evidence

Social science researchers have also turned their attention to Pennsylvania. One study on the role of race in capital charging and sentencing found that that African Americans in Philadelphia receive the death penalty at a substantially higher rate than defendants of other races prosecuted for similar murders. This well-controlled study of 600 death-eligible cases and 384 penalty trial cases in Philadelphia County during the period 1983-1993 documented significant black-defendant effects after controlling for the culpability of the defendant and the nature of the crimes. David C. Baldus, et al., *Racial Discrimination and the Death Penalty in the*

Post-Furman Era: An Empirical and Legal Overview, with Recent Findings from Philadelphia, 83 CORNELL L. REV. 1638 (1998).

Baldus and colleagues later updated this research to include cases through 2000 for litigation in 2003. Professor Baldus testified at a post-trial evidentiary hearing in Philadelphia that he had reviewed 338 capital cases in which Philadelphia juries weighed aggravating factors against mitigating factors, and that a statistical analysis indicated that "there is substantial, consistent and statistically significant discrimination against African–American defendants." *Commonwealth v. Arrington*, 86 A.3d 831, 854-55 (Pa. 2014) *cert. denied sub nom. Arrington v. Pennsylvania*, 135 S.Ct. 479, 190 L.Ed.2d 363 (2014).

II. Social Scientific Evidence Shows That Race Plays a Significant Role in the Exercise of Peremptory Challenges in Capital Jury Selection

Nearly thirty years ago, this Court made clear that racial discrimination in jury selection violates the guarantee of Equal Protection because "[s]election procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice." *Batson v. Kentucky*, 476 U.S. 79, 87 (U.S. 1986). In the Eighth Amendment setting, purposeful exclusion is found in the recurring and systemic exclusion of African-American venire persons who are otherwise death-qualified and fit to serve as capital case jurors. As a starting point, this "undermine[s] public confidence." In addition, however, the pattern of

exclusion compounds the race-effect in jury weighing and penalty determination, increasing the arbitrary and capricious nature of the death penalty punishment system.

A. Nationwide Evidence

Researchers have consistently found racial disparities in strike decisions.[3] An early study by Billy Turner and colleagues examined strikes by both the prosecution and defense in 121 criminal trials in one Louisiana parish from 1976-1981. The authors compared the percentage of struck jurors who were black (44%) to the percent of the population in the Louisiana parish that was black at the time of the study (18%), and inferred from this 26-point disparity that jury selection was not race neutral. Billy M. Turner et al., *Race and Peremptory Challenges During Voir Dire: Do Prosecution and Defense Agree?*, 14 J. CRIM. JUST. 61 (1986).

The pattern has continued over time and to the present. In thirteen non-capital felony trials in North Carolina, prosecutors used 60% of their strikes against black jurors, who constituted only 32% of the venire. In comparison, defense attorneys used 87% of their strikes against white jurors, who made up 68% of the venire. Mary R. Rose, *The Peremptory Challenge Accused of Race or Gender Discrimination? Some Data from One County*, 23 LAW & HUM. BEHAV. 695 (1999).

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[3] *See* Catherine M. Grosso & Barbara O'Brien, *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials*, 97 IOWA L. REV. 1531 (2012) (collecting studies discussed herein).

John Clark and colleagues more recently analyzed jury selection in 28 civil and criminal trials in two adjacent counties in a southeastern state. Across the eleven criminal trials they examined, race was a statistically significant predictor of both prosecution and defense strikes. John Clark et al., *Five Factor Model Personality Traits, Jury Selection, and Case Outcomes in Criminal and Civil Cases*, 34 CRIM. JUST. & BEHAV. 641 (2007).

Similar results were reported in at least four other county-level studies: RICHARD BOURKE & JOE HINGSTON, BLACK STRIKES: A STUDY OF THE RACIALLY DISPARATE USE OF PEREMPTORY CHALLENGES BY THE JEFFERSON PARISH DISTRICT ATTORNEY'S OFFICE 5 (2003) (Louisiana) (noting that in both six- and twelve-person juries, prosecutors struck "black prospective jurors at more than three times the rate" they struck their white counterparts); URSULA NOYE, BLACK STRIKES: A STUDY OF THE RACIALLY DISPARATE USE OF PEREMPTORY CHALLENGES BY THE CADDO PARISH DISTRICT ATTORNEY'S OFFICE (2015) (Louisiana) (finding that prosecutors chose to strike black prospective jurors at three times the rate of non-blacks, a finding which is statistically significant); David C. Baldus et al., *The Use of Peremptory Challenges in Capital Murder Trials: A Legal and Empirical Analysis*, 3 U. PA. J. CONST. L. 3, 10 (2001) (discussed below); Steve McGonigle et al., *A Process of Juror Elimination: Dallas Prosecutors Say They Don't Discriminate, but Analysis Shows They Are More Likely to Reject Black Jurors*, DALL. MORNING NEWS, Aug. 21, 2005, at 2005 WLNR 24658335 (finding that prosecutors "excluded eligible blacks from juries at more than

twice the rate they rejected eligible whites" even after the researchers controlled for non-racial characteristics of the jurors).[4]

Grosso and O'Brien examined the influence of race on the exercise of peremptory challenges in capital trials of all defendants on death row in North Carolina as of July 1, 2010. They found substantial disparities about which potential jurors prosecutors struck. Over the twenty-year period under review, prosecutors struck eligible black venire members at about 2.5 times the rate they struck eligible venire members who were not black. These disparities remained consistent over time and across the state, and did not diminish when researchers controlled for race-neutral factors. Catherine M. Grosso & Barbara O'Brien, *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials*, 97 IOWA L. REV. 1531 (2012).

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[4] The *Dallas Morning News* published the results of this research in a set of feature stories between Sunday, August 21 and Tuesday, August 23. *See About the Series*, DALL. MORNING NEWS, Aug. 21, 2005, at 19A, 2005 WLNR 24658085 (describing the series); *How the Analysis Was Done*, DALL. MORNING NEWS, Aug. 21, 2005, at 9A, 2005 WLNR 2457224 (reporting study design and methodology). The Dallas Morning News published a similar study on jury selection in Dallas County in 1986. *See* Steve McGonigle & Ed Timms, *Race Bias Pervades Jury Selection*, DALL. MORNING NEWS, Mar. 9, 1986, at 1986 WLNR 1683009. This study analyzed the impact of peremptory strikes on jury composition in 10 randomly selected felony jury trials in 1983 and 1984 and found blacks largely excluded from jury service. *Id.*

The finding of race as a factor in jury strikes is robust. In several of these studies disparities persisted even where researchers included race-neutral factors about jurors that might bear on a party's decision to strike.[5]

An additional body of research has examined the role of race in jury selection in an experimental setting. This type of research is limited by the artificial nature of the decision making. Its strength, however, is that it allows researchers greater control over the variables in question in order to identify causal factors. These studies also offer substantial confirming evidence that race plays a significant role in jury selection, especially when evaluated in conjunction with the research from actual trials reviewed above.

An excellent example of this work was conducted by Michael Norton and Samuel Sommers. The researchers presented three groups of study participants—college students, law students, and trial attorneys—with the facts of a criminal case involving a black defendant. The researchers told participants to assume the role of the prosecutor, and

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[5] This is to rule out the possible explanation that racial disparities in strike rates arise because race is associated with other race-neutral factors that drive strike decisions. If members of one race are disproportionately less supportive of the death penalty, for example, prosecutors' disproportionately high strike rates against that group may be driven by group members' views rather than their race. Controlling for various race-neutral factors that may bear on the decision to strike allows the researcher to rule out at least some alternative explanations of racial disparities.

that they had only one peremptory strike left to use in deciding which of two prospective jurors to strike. The prospective jurors each had qualities that pretesting suggested would be troubling to prosecutors: one was a journalist who had investigated police misconduct and the other had indicated skepticism about statistics relevant to forensic evidence that the state would offer. Participants were randomly assigned to one of two conditions: one in which the first prospective juror was black and the second white, and another in which the race of the prospective jurors was reversed.

Participants challenged the black juror more often than the white juror, regardless of whether the juror was presented as the journalist or the statistics skeptic. Yet, when asked to explain why they struck the juror they did, the study participants almost never mentioned race; participants tended to offer the first juror's experience writing about police misconduct when striking him, and cited the second juror's skepticism about statistics when striking him. Samuel R. Sommers & Michael I. Norton, *Race-Based Judgments, Race-Neutral Justifications: Experimental Examination of Peremptory Use and the Batson Challenge Procedure*, 31 LAW & HUM. BEHAV. 261 (2007).

B. Pennsylvania Evidence

David Baldus and colleagues analyzed 317 capital murder cases tried by jury in Philadelphia between 1981 and 1997. The research evaluated each side's decision to strike or accept a qualified venire member. The research found that prosecutors struck

on average 51% of the black jurors they had the opportunity to strike, compared to only 26% of comparable non-black jurors, and that defense strikes exhibited a nearly identical pattern in reverse, even after researchers controlled for various non-racial characteristics of the jurors, such as age, occupation, education, and responses to certain questions asked in voir dire David C. Baldus et. al., *The Use of Peremptory Challenges in Capital Murder Trials: A Legal and Empirical Analysis*, 3 U. PA. J. CONST. L. 3, 121-23 (2001).

CONCLUSION

After several dozen studies and more than four decades of research, there is compelling proof that race influences decision makers responsible for administering the capital punishment system. Race influences charging and prosecuting decisions, jury selection, and sentencing. This influence compromises fairness, creates arbitrariness, and undermines confidence in the criminal justice system.

The consistency and power of these findings raise the fundamental question of whether the death penalty is imposed arbitrarily, *i.e.*, without the "reasonable consistency" required by the Constitution's commands. *Eddings v. Oklahoma*, 455 U.S. 104, 112 (1982). That question, last examined more than four decades ago, warrants re-examination now.

For these reasons *amici* bring the findings of social science research to the attention of this Court and, given the powerful impact race has played and continues to play in capital punishment, urge this

Court to grant a writ of *certiorari* in the instant matter.

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