No. 16-1125

IN THE

Supreme Court of the United States

ROGERS LACAZE,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Louisiana

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF *AMICUS CURIAE* OF NATIONAL JURY PROJECT IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF NATIONAL JURY PROJECT

This case presents issues of considerable practical and constitutional importance — i.e., clarification of the proper legal framework for challenging a jury verdict based on jurors' material omissions during *voir dire* — and *amicus curiae* National Jury Project ("NJP") is particularly well-suited to provide additional insight into the broad implications of the decision below for civil and criminal cases across the country.

On March 24, 2017, more than 10 days prior to this filing, the NJP notified counsel of record for both parties of its intention to submit a brief in support of the petitioner. Counsel for petitioner consented to the filing of this brief, and that letter of consent has been lodged with the Clerk of this Court. Counsel for respondent declined to grant such consent. Therefore, pursuant to Supreme Court Rule 37.2(b), the NJP respectfully moves this Court for leave to file the accompanying brief of *amicus curiae* in support of the petitioner.

The NJP is a non-profit corporation established in 1975 to study all aspects of the American jury system and maintaining and strengthening that system. The NJP provides consultative and educational services to attorneys and social science professionals in criminal and civil litigation in federal and state courts throughout the United States. From its members' studies in the relevant fields of social science and extensive work and observations in individual cases, the NJP has developed a broad understanding of how the conditions under which jurors are selected affect the behavior of individual jurors' ability to serve as fair and impartial arbiters of fact.

Because the NJP has assisted attorneys in jury selection in thousands of civil and criminal trials, it is well positioned to represent the interests of litigants in selecting unbiased jurors — and for clarifying the legal standards for challenging a jury verdict when jurors make material omissions during *voir dire*. This is especially true given the egregious facts of this capital murder case, involving a triple murder of a New Orleans Police Officer and two siblings in which *three jurors*, despite questioning from the Court and counsel, failed to disclose material facts about themselves and their background — that one juror, who worked as a 911 dispatcher for the NOPD, was personally present in the dispatch room when the NOPD received the 911 call on the night of the murders and then attended the funeral of the slain officer, that another juror was a policeman for 17 years and, while serving on the jury, was an officer with the Louisiana State Police and the Department of Public Safety, and that a third juror suffered through the personal tragedy of losing two siblings to violent crime, one of whom was shot in the head, just as the two other sibling victims were. In state court *habeas* proceedings, the trial court granted a new trial, but was reversed on appeal. And unfortunately, the Louisiana Supreme Court's reversal, relying on a narrow interpretation of *McDonough Power Equipment v. Greenwood*, 464 U.S. 548 (1984), is an example of a wider problem with some Circuits' and States' understanding of that precedent. Indeed, if the petitioner's case had been brought in a jurisdiction on the other side of the split, the order granting him a new trial would not have been overturned on appeal. This lack of uniformity is why this Court should answer the questions presented by the Petitioner.

In sum, the circumstances surrounding jury selection in this case involve issues that have implications for the Petitioner and the jury system as a whole. For these reasons, the NJP has a strong interest in the outcome of this case. The NJP therefore seeks leave to file the attached brief of *amicus curiae* urging the Court to grant the petition.

Respectfully submitted,

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INTEREST OF AMICUS[1]

The National Jury Project ("NJP") is a non-profit corporation established in 1975 to study all aspects of the American jury system and maintaining and strengthening that system. The NJP provides consultative and educational services to attorneys and social science professionals in criminal and civil litigation in federal and state courts throughout the United States. The NJP has assisted attorneys in jury selection in thousands of civil and criminal trials.

The NJP has authored three texts, *Jurywork*: *Systematic Techniques* (2d ed. 2016-2017), *Women's Self-Defense Cases*: *Theory and Practice* (1981), and *The Jury System*: *New Methods of Reducing Prejudice* (1975). NJP members have written numerous articles for legal and social science journals and contribute to texts on subjects related to *voir dire* and the jury selection process. NJP members frequently speak at training seminars for criminal and civil trial lawyers throughout the United States, including seminars conducted by the Ninth Circuit Judicial Conference, the Northern District of California Judicial Conference, the Federal Judicial Center, the National Association of Women Judges, the Florida Conference of County Judges, the NAACP Legal Defense Fund, the United States Department of Justice, Civil Rights Division, the American Bar Association, the Practicing Law

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[1] No counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* and its counsel made a monetary contribution to its preparation or submission. Counsel of record for all parties received notice at least 10 days prior to the due date of the *amicus curiae's* intention to file this brief. Petitioner consented to the filing, but, as set forth in the accompanying motion for leave to file this brief, Respondent objected.

Institute, the American Trial Lawyers Association, and the National College of Criminal Defense.

NJP members have been invited to give testimony before Congressional committees and committees of numerous state legislatures. The NJP has conducted hundreds of public opinion surveys concerning criminal justice issues and analyzed the content and impact of pretrial publicity in hundreds of cases. Based on this research and experience, NJP members have submitted declarations and affidavits in numerous cases on issues of bias, pre-trial publicity, venue, jury composition, survey research, jury selection procedure, the use of peremptory challenges and strike procedures, and they have been qualified as expert witnesses in numerous federal and state courts.

Consistent with the express purpose for which it was founded, the NJP has an ongoing interest in studying, maintaining and strengthening all aspects of the American jury system. From its members' studies in the relevant fields of social science and extensive work and observations in individual cases, the NJP has developed a broad understanding of how the conditions under which jurors are selected affect the behavior of individual jurors' ability to serve as fair and impartial arbiters of fact. And because *McDonough Power Equipment v. Greenwood*, 464 U.S. 548 (1984), governs both criminal and civil cases, and the questions presented by Petitioner have implications for conducting practically every jury trial, the National Jury Project has a strong interest in the outcome of this case.

SUMMARY OF THE ARGUMENT

When the Louisiana Supreme Court overturned a ruling that granted the Petitioner a new trial, its decision was but the latest example of a deepening divide between several Circuits and States regarding the proper application of *McDonough Power Equipment v. Greenwood*, 464 U.S. 548 (1984). When jurors lie or make material omissions during *voir dire*, clarification is needed from this Court regarding what must be proven to challenge the verdicts reached by such tainted juries.

This emotionally charged case garnered extensive publicity before eighteen-year-old Rogers Lacaze stood trial and received the death penalty for the murder of a New Orleans Police Officer, Ronald Williams, 25, and two restaurant workers, Cuong Vu, 17, and his 24-year-old sister, Ha Vu. The notoriety can largely be attributed to Mr. Lacaze' co-defendant — Antoinette Frank — who was then a New Orleans Police Officer. Her involvement sensationalized the State's theory, which local media did not ignore. One New Orleans newspaper introduced the case like a seasoned prosecutor: "In an act of lawlessness horrifying even by New Orleans Police Department standards, an officer fired a bullet into the skull of her former patrol partner as she robbed a restaurant early Saturday, police sources said."[2] The cop-on-cop details even caught the national media's attention, with a New York Times article

[2] Michael Perlstein & Calvin Baker, *New Orleans police officer charged with killing cop, 2 others*, Times-Picayune (March 5, 1995) (available at http://www.nola.com/crime/index.ssf/1995/03/new_orleans_police_officer_cha.html).

describing the case as the "Killings That Broke the Spirit Of a Murder-Besieged City."[3]

For local law enforcement, this case was "alien territory."[4] It was the "first case in which one New Orleans police officer [was] charged in the murder of another."[5] And as social science research would predict, the law enforcement community rallied around its slain officer. "'His funeral procession just went on and on, forever and ever,' Lieut. Sam Fradella said of the service for Officer Williams. Hundreds of officers, from police departments all over the country, marched behind the coffin. As the procession passed, cars pulled over to the curb and people got out to pay their respects."[6]

At the funeral, stories were told about Ofc. Williams's life, a local hero who had recently saved a child from drowning. *Id*. Ofc. Williams's mother, his widow, and their two sons, 5 and a new born, were there.[7] Also in attendance was Victoria Mushatt, a 20-year New Orleans Police Department ("NOPD") 911-dispatcher, who knew Williams by name.

Ofc. Williams and the Vu siblings were murdered on March 5, 1995, and on July 17, 1995, within this highly emotional backdrop, Mr. Lacaze's trial began.

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[3] Rick Bragg, *Killings That Broke the Spirit Of a Murder-Besieged City*, N.Y. Times (May 13, 1995) (http://www.nytimes.com/1995/05/13/us/killings-that-broke-the-spirit-of-a-murder-besieged-city.html).

[4] *Id*.

[5] *Id*.

[6] *Id*.

[7] *Id*.

The U.S. Constitution guaranteed Mr. Lacaze's right to a fair and impartial trial. But what Mr. Lacaze did not know — and what *voir dire* failed to uncover — was that his jury would be engineered to convict: it included two law enforcement employees, Ms. Mushatt and David Settle, a veteran law enforcement officer, and Lilian Garrett, who also lost two siblings to murder. The jury convicted Mr. Lacaze for all three murders, and on July 21, 1995, less than 20 weeks after the murders occurred, they sentenced him to death.

While the presence of even one biased juror was enough to influence and distort the deliberations and undermine confidence in a verdict, the collective impact of these three jurors was certain to render an unfair result. Jury selection should have uncovered that Juror Mushatt not only attended the slain officer's funeral, but also that she was personally present in the dispatch room when the NOPD received the 911 call on the night of the murders. It should have uncovered that Juror Settle was a policeman for 17 years and was then an officer with the Louisiana State Police and the Department of Public Safety. And it should have uncovered that Juror Garrett suffered through the personal tragedy of losing two siblings to violent crime, one of whom was shot in the head, just as the Vu siblings were. This and other relevant information concerning potential biases should have been disclosed — regardless of whether these jurors personally believed or represented that they could judge the evidence impartially and without bias.

Jury service is a duty and a privilege of citizenship, but just as it is a citizen's duty to serve as a juror, it is a citizen's duty — and a court's responsibility — not to allow them to serve on a case in which the culmination

of one's life experiences results in inherent bias or, at least, for which they cannot reasonably remain impartial.

Indeed, the United States Supreme Court, lower courts, numerous commentators, and social scientists have long recognized that prospective jurors cannot be trusted to self-assess their biases and impartiality. This inherent unreliability heightens the importance of *voir dire*, so that prospective jurors with actual or implied biases can be identified and then excused through cause challenges. But meaningfully exercising these challenges depends on the ability to obtain honest and sufficient information during jury selection. So when jurors sit silent when asked questions, it "g[ives] the trial court no effective opportunity to assess the demeanor of each prospective juror in disclaiming bias" and deprives the trial court of the ability to "evaluate the credibility of the individuals seated on [the] jury." *Mu'Min v. Virginia*, 500 U.S. 415, 452 (1991) (Kennedy, J., dissenting).

A substantial number of jurors are also likely unaware of their own biases or will be unwilling to be open about them. This is particularly true in a group setting, where jurors are asked to answer questions in front of their peers. These potential impediments increase significantly if jurors know the victim or key testifying witnesses or belong to communities (like the law enforcement "family") that entail their own pressures. Given the nature of this case — the killing of a police officer, a co-defendant who was previously partners with the slain officer, and a potential death sentence — the need to ensure full and complete disclosure throughout jury selection was particularly acute.

Simply put, information withheld during *voir dire* deprived Mr. Lacaze of a fair trial. Three jurors failed to disclose highly relevant information — facts only

discovered during the post-conviction relief stage — that would have resulted in valid cause challenges:

Juror Victoria Mushatt. She was repeatedly asked during *voir dire* to disclose her extraordinary, personal connections to this case. But she failed to do so until the post-conviction relief hearing. Ms. Mushatt worked as a dispatcher for the New Orleans Police Department for 20 years. Ms. Mushatt was present when the 911-call came in that Ofc. Williams had been shot and killed. She assisted the 911-operators that night, including looking through NOPD manuals to determine if there was a police officer named Antoinette. She knew the testifying 911 dispatcher and five other testifying police officers, and she "felt like she knew" Ofc. Williams from dispatching 911 calls for him. Ms. Mushatt also attended Ofc. Williams' funeral, along with her co-workers at the New Orleans Police Department, and remembered that, "[a]fter the murder happened it was very emotional for everyone in the department . . . We were all like family in the department. It was a tough time."

Juror David Settle. He sat in the audience as the first panel of jurors were questioned about their connections to law enforcement. He watched as one juror disclosed that her nephew was a police officer and another disclosed that his brother-in-law was a customs officer. When Mr. Settle was called up in the second panel, he and the others were instructed by the court to volunteer any relevant responses to the questions previously posed and whether he had any relations to law enforcement. As the Louisiana Supreme Court found, these "inquiries were sufficient to have prompted a reasonable person in Mr. Settle's position to disclose his employment experience." Pet.App. 12a. But Mr. Settle remained silent, even though he had

worked in law enforcement his entire adult life and was a law enforcement officer for the Louisiana State Police while sitting on the jury.

Juror Lilian Garrett. She had personal experience with the effects of losing family members to violent crime. Two of Ms. Garrett's brothers were violently murdered: one was beaten to death, and the other was shot in the head. She failed to disclose this information during jury selection despite being questioned about it three times.

Mr. Lacaze "was entitled to be tried by 12, not 9 or even 10, impartial and unprejudiced jurors." *Parker v. Gladden*, 385 U.S. 363, 366 (1966) (per curiam). But only one conclusion can be drawn from this *voir dire*: it failed to ensure a fair and impartial trial. The district court correctly found that Mr. Lacaze's constitutional rights were violated. Its ruling conformed to clear precedent that a defendant is entitled to a new trial where (1) a juror fails to answer a material question honestly during *voir dire*, and (2) a correct response would have provided a valid basis for a cause challenge. *McDonough Power Equipment v. Greenwood*, 464 U.S. 548, 556 (1984). But the violations of Mr. Lacaze's constitutional right to a fair and impartial trial went beyond Mr. Settle, as the Sixth and Fourteenth Amendments require more from jury selection than what Mr. Lacaze received. Jurors Settle, Mushatt, and Garrett failed to disclose highly relevant facts during *voir dire*.

Whether a function of purposeful concealment, or accidental omission, each of these three jurors deprived Mr. Lacaze of a fair and unbiased jury. Worse yet, it resulted in a jury engineered to convict.

As the trial court held, Mr. Lacaze deserves a new trial that will — this time — be fair and impartial. Unfortunately for Mr. Lacaze and other litigants who happen to find themselves in jurisdictions that, like the Louisiana Supreme Court, rely on a narrow interpretation of *McDonough*, the trial court's decision was reversed. But if Mr. Lacaze's case had been brought in a jurisdiction on the other side of the split, the order granting him a new trial would not have been overturned on appeal. Because this case is an example of a wider problem regarding the proper interpretation of *McDonough*, this Court should grant certiorari and answer the questions presented by the Petitioner.

ARGUMENT

I. A POTENTIAL JUROR'S SELF-ASSESSMENT OF IMPARTIALITY IS INHERENTLY UNRELIABLE IN HIGH PUBLICITY CASES — AND CERTAINLY WHEN A POTENTIAL JUROR HAS PERSONAL KNOWLEDGE ABOUT THE CASE.

In a high-publicity case, prospective jurors may bring information and opinions gleaned from sources outside the courtroom — the media, family members, neighbors, relatives, coworkers and friends — including awareness of inadmissible evidence or sensationalized characterizations of the charged offense and the accused's role in it. Crime news tends to dominate local news coverage, and most of what is reported is obtained from police sources and presents the prosecution's side of the case. John S. Carroll, Norbert L. Kerr, James J. Alfini, Frances M. Weaver, Robert J. MacCoun, & Valerie Feldman, "Free Press and Fair Trial: The Role of Behavioral Research," 10 Law and Hum. Behav. 187, 190 (1986). Persons who follow such news and recall details of what is reported are more likely than

others to feel prosecution-oriented.[8] They are, however, "no less likely to feel they could hear the evidence with an open mind." *Id*.; *see also* Edmond Costantini & Joel King, "The Partial Juror: Correlates and Causes of Prejudgment," 15 Law & Soc'y Rev. 9, 12 (1980).

Courtrooms are already intimidating settings for prospective jurors — settings in which they are acutely aware that they themselves are being judged and evaluated according to their ability to be fair and impartial. These criteria are heavily value-laden, and set the standard for what makes a citizen a good juror. This awareness and jurors' evaluation-apprehension influence how they answer questions.[9] Many factors thus can affect how jurors answer questions: awareness of the consequences of their responses; both potential inclusion and exclusion from a jury; and opinions the judge, attorneys, and others present in courtroom

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[8] See J.K. Hvistendahl, *The Effect of Placement on Biasing Information*, 56 Journalism Quarterly 863 (1979), citing a study by Columbia University Professor Alice Padawer-Singer in which taped testimony from an actual murder trial was submitted to panels of juries drawn from regular jury pools. Prior to the mock trials, one-half of the juries were presented with simulated news articles reporting that the accused had a prior criminal record and had made a confession he had later retracted. Eighty percent of the jurors exposed to the "news" accounts voted to convict while only 39% of the control group jurors would have found the defendant guilty. *See also* Sue, Smith and Gilbert, "Biasing Effects of Pretrial Publicity on Judicial Decisions," 2 J Crim Justice 163 (1974); Sue, Smith and Pedroza, "Authoritarianism, Pretrial Publicity and Awareness of Bias in Simulated Jurors," 37 *Psychological Reports* 1299 (1975).

[9] Milton J. Rosenberg, *When Dissonance Fails: On Eliminating Evaluation Apprehension from Attitude Measurement*," 1 Journal of Personality and Social Psychology 28 (1965).

might form of them.[10] It is extremely difficult for some prospective jurors to make disclosures which run counter to the value placed on fairness, impartiality, and open-mindedness in jury selection.[11]

If outside knowledge and resulting biases go undetected, the accused's right to a fair trial is lost. Merely eliciting prospective jurors' affirmative responses to questions asking whether they can set aside prejudicial opinions is an unreasonable reliance on jurors' self-assessments of fairness. It is particularly unreasonable when the juror's opinion has not been articulated. Other commentators have also noted "jurors' tendency to exaggerate their self-reported ability to be impartial."[12]

Here, unlike any other juror, Ms. Mushatt's familiarity with the case was firsthand. She needed no media coverage to form a pre-trial opinion. But her contact with the case — including the victim and his family — was never revealed in *voir dire*. Nor were the sources of her information. Her decades of experience

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[10] Barry E. Collins and Michael F. Hoyt, *Personal Responsibility-for-Consequences: An Integration of the "Forced Compliance" Literature*, 8 Journal of Experimental Social Psychology 558 (1972); Leon Festinger, *A Theory of Social Comparison Processes*, 7 Human Relations 117 (1954); Schachter, The Psychology of Affiliation (1959); Robert M. Arkin & Alan J. Appelman, *Social Anxiety, Self-Presentation and the Self-Serving Bias in Causal Attribution*, 38 Journal of Personality and Social Psychology 23 (1980).

[11] Linda L. Marshal & Althea Smith, *The Effects of Demand Characteristics, Evaluation Anxiety, and Expectancy on Juror Honesty During Voir Dire*, 120 The Journal of Psychology: Interdisciplinary and Applied 205 (1986).

[12] 1978 Report of the American Bar Association Committee on Fair Trial and Free Press.

as a 911 dispatcher on the night of the killing, her attendance at the funeral, her feeling a familial tie to the victim, and her other points of contact with the case were never known to the defense. By not disclosing that she could have essentially been a testifying witness, Ms. Mushatt stripped the court and counsel of the opportunity to explore and test her self-assessment of biases and impartiality. *See Mu'Min*, 500 U.S. at 452 (Kennedy, J., dissenting) (When jurors sit silent when asked questions, it "g[ives] the trial court no effective opportunity to assess the demeanor of each prospective juror in disclaiming bias" and deprives the trial court of the ability to "evaluate the credibility of the individuals seated on [the] jury"). And had Ms. Mushatt been forthright, no self-assurances of impartiality could have saved her from a cause challenge.

The same goes for Mr. Settle. When he was called up in the second panel, the court instructed him and the other potential jurors to volunteer any relevant responses to the questions previously posed and whether he had any relations to law enforcement. Mr. Settle remained silent. Mr. Lacaze had a right to explore and test any self-assurance that — despite his work experiences — Mr. Settle could be impartial. But Mr. Lacaze was stripped of that right.

Allowing pre-trial publicity to enter the jury box simply through a juror's self-assessment of bias significantly threatens a trial's fairness and impartiality. But allowing personal knowledge of the facts, witnesses, and victim — especially when not disclosed during *voir dire* — practically ensures an unfair trial.

II. A POTENTIAL JUROR WITH TIES TO LAW ENFORCEMENT CANNOT REASONABLY REMAIN IMPARTIAL IN CASES IN WHICH LAW ENFORCEMENT WAS A VICTIM — AND THESE TIES SHOULD HAVE BEEN DISCLOSED.

The culture and relationships within the law enforcement community have long been observed and discussed by social scientists and criminologists. Police work is unquestionably stressful and dangerous and there is great loyalty among law enforcement, some of whom even adopt a "we versus they" attitude toward citizenry.[13] Law enforcement is often described as "family" and when an officer is killed in the line of duty, officers from departments throughout the state

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[13] Eugene A. Paoline, *Taking Stock: Toward a richer understanding of police culture*, 31 Journal of Criminal Justice 199, 203 (2003) ("Due to this separation between the police and the public, officers tend to identify and socialize with other officers. In this context, officers develop a 'we versus they' attitude toward citizenry (Kappeler et al., 1998; Sholnick, 1994; Sparrow, et al., 1990; Westley, 1970). This contributes to a strengthening of the bond between police officers and facilitates the second defining outcome of police culture — strong group loyalty. The cultural mandate of loyalty is a function of both the occupational and organizational environments. Officers depend on one another for both physical and emotional protection because of danger, uncertainty, and anxiety found in the occupational environment (Manning, 1995; Westley, 1970).").

See also Steven M, Susan Marchionna & Brian Fitch, Introduction to Policing 103 (3d. 2016) ("The authority provided to police officers also separates them from other citizens. Thus police officers, who are socially isolated from the public, and rely on each other for support and protection from a dangerous and hostile work setting, are said to develop a 'we versus them' attitude toward the public and a strong sense of loyalty toward other officers. (Terrill, 2003)").

and region demonstrate that loyalty with funeral processions attended by hundreds of officers and staff.

Indeed, Ms. Mushatt — herself a 911 dispatcher in New Orleans — felt compelled to attend the funeral for Ofc. Williams. She was a dispatcher on the night of the incident and participated in the response. As a 911 operator in New Orleans, Ms. Mushatt qualifies as a member of the law enforcement "family." She expressed this sentiment herself in her declaration in post conviction — even referring to her law enforcement connections as familial (emphasis added):

> "After the murder happened it was very emotional for everyone in the department. My husband has been a police officer for 20 years. ***We were all like family in the department***. It was a tough time. We lost an officer, and he was killed by an officer."

At the funeral, Ms. Mushatt heard stories about Ofc. Williams' life, saw his mother, his wife, and two young children grieving, and participated in the ceremony with the rest of the law enforcement "family" in attendance, including presumably some of the other officers that would later be called to testify at Mr. Lacaze's trial.

But the trial's unfairness was compounded when Ms. Mushatt was not the only juror with law enforcement connections. A *current* law enforcement officer was also impaneled to listen to the testimony of 22 fellow police officers and two police dispatchers.[14] Like Ms.

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[14] These witnesses were as follows: James Gallager, Geraldine Prudhomme, Irvin Briant, Reginald Crier, Darryl Watson, Michael Morgani, Sandra Duncan, Debbie Rogers, Earnest Smith, David Slecco, Wayne Farve, Reginald Jacques, Yvonne Farve, Warren Fitzgerald, John Treadway, Earnest Bringier, Marco Demma,

Mushatt, Mr. Settle failed to identify himself as a law enforcement officer during *voir dire*, despite the broad and much repeated inquiry of the panel. Mr. Settle, it turns out, was in law enforcement for seventeen years.

Though the defense counsel asked, "Are any of you related to anyone in law enforcement?," neither Ms. Mushatt nor Mr. Settle identified themselves. This becomes even more troubling when considering that they heard other jurors describe even tenuous law enforcement contacts including relatives, in-laws, tenants, friends, and other contacts with members of the NOPD, the United States Customs Office, a forensic pathologist, and other law enforcement agencies. The repeated inquiry about law enforcement contact and specific witnesses alerted all jurors to the court and counsel's interest in this highly relevant topic.

Indeed, as an experienced officer paid for his investigative skills, Mr. Settle certainly would have understood the importance of honestly disclosing this information, which only raises the serious specter that the failure to disclose was volitional and intentional so that he would not be disqualified from serving as a juror in this highly emotional case involving another law enforcement officer. While social science research about the brotherhood and familial connections between law enforcement may help explain why this information was withheld, it does not provide an excuse. Mr. Lacaze had a right to know — regardless of whether Mr. Settle and Ms. Mushatt *personally* thought they could be impartial when asked the question during *voir dire* and regardless of whether they now believe that they judged the facts impartially.

Edward Rantz, Patrick Young, Tuoc Tran, Stanley Morlier, John Landry, Sandra Jackson, and Dee Barnes.

III. A POTENTIAL JUROR WITH TWO SIBLINGS WHO WERE MURDERED CANNOT REASONABLY REMAIN IMPARTIAL IN A CAPITAL CASE INVOLVING THE MURDER OF TWO SIBLINGS.

Jurors frequently fail to disclose pertinent experiences and biases necessitating new trials. Courts have required new trials where jurors failed to disclose relevant information, including their own or family members' experiences with crime.[15] Often these failures to disclose consist of sensitive or embarrassing, yet highly relevant, information.[16] Social science also confirms that, even when a juror is not herself a victim of

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[15] *See, e.g.*, *State v. Akins*, 867 S.W.2d 350, 353 (Tenn. Crim. App. 1993) (juror failed to disclose experience with drug and alcohol rehabilitation, including work as DUI probation counselor, in DUI and vehicular homicide case); *Ex Parte Dunaway*, 198 So.3d 567, 589 (Ala. 2014) ((juror failed to disclose her cousin was victim of similar crime); *Villalobos v. State*, 143 So. 3d 1042, 1047 (Fla. App. 2014) (juror failed to disclose personal and work relationship with state witness); *United States v. Scott*, 854 F.2d 697, 699-700 (5th Cir. 1988) (juror failed to disclose his brother was sheriff in law enforcement agency that investigated case).

[16] *See*, *e.g.*, *Banther v. State*, 823 A.2d 467, 481-84 (Del. 2003) (in a murder case, finding structural error where juror failed to disclose she had been molested by her grandfather); *Dyer v. Calderon*, 151 F.3d 970, 781-82 (9th Cir. 1998) (en banc) (in case involving shooting, implied bias imputed to juror who failed to disclose her brother had been shot and killed); *Tinsley v. Borg*, 895 F.2d 520, 524-526 (9th Cir. 1990) (in a rape case, juror failed to disclose exposure to family and child abuse); *Knight v. State,* 675 So.2d 487, 495-96 (Ala. Ct. Crim. App. 1995) (juror failed to disclose acquaintance with defense witness and defendant's brother); *State v. Briggs*, 776 P.2d 1347, 1349 (Wash. App. 1989) (juror failed to disclose he suffered speech impediment similar to defendant); *U.S. v. Eubanks*, 591 F.2d 315, 517 (9th Cir. 1979) (in heroin distribution case, juror could not be impartial because of experience with his sons using heroin); and *U.S. ex re. De Vita v.*

crime, she is significantly more likely to convict when she knows someone who has experienced a similar crime.[17]

In this case, the jury was asked, "Has anybody been the victim of a violent crime or knows someone close to them that has been the victim of a violent crime?" Two of Juror Garrett's brothers were violently murdered: one was beaten to death, and the other was shot in the head. Ms. Garrett did not disclose that two siblings were murdered in *voir dire* on a case involving the murder of two siblings. Even if this failure to disclose was unintentional, this information is highly relevant, and defense counsel was deprived of the ability to pursue a challenge for cause or to exercise an intelligent peremptory challenge. *See U.S. v. Colombo*, 869 F.2d 149, 150 (2d Cir. 1989) ("In the instant case, . . . appellant was prevented from intelligently exercising his peremptory and causal challenges because of the juror's intentional nondisclosure.").

CONCLUSION

The need for full and complete disclosure throughout jury selection was paramount. It involved highly emotional events, the killing of a police officer, a co-defendant who was the former police partner of the victim, and a triple homicide at a well-known Vietnamese restaurant, along with issues of race, identity,

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McCorkle, 248 F.2d 1, 8 (3d Cir. 1957) (en banc) (in robbery case, juror had implied bias from herself being victim of a robbery).

[17] Scott E. Culhane, Harmon M. Hosch, and William G. Weaver, "Crime Victims Serving as Jurors: Is There Bias Present?" Law and Human Behavior, Vol. 28, No. 6, December 2004 (in mock trials, finding that jurors who knew victims of rape, stolen property, or burglary were significantly more likely to convict defendants accused of those crimes).

relative culpability, and the death penalty. The information which was not disclosed by Jurors Mushatt and Settle — their law enforcement experience, contact, relationships, and first-person familiarity with the case and one of the victims — was a matter of utmost importance, relevance, and the unmistakable basis of challenges for cause. Likewise, Ms. Garrett should have disclosed that two of her brothers had been murdered. Had the information been disclosed, even the most inexperienced defense counsel would have challenged these prospective jurors.

Finally, only this Court can clarify and provide uniformity for the proper legal standard under *McDonough*, which currently governs all such challenges to jury verdicts in every criminal and civil case in the United States. And because the Louisiana Supreme Court's reversal, relying on a narrow interpretation of *McDonough*, is an example of a wider problem with some Circuits' and States' understanding of that precedent, *amicus* National Jury Project urges the Court to grant certiorari.

Respectfully submitted,

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