

THE IMPACT OF CAPITAL PUNISHMENT ON FAMILIES OF DEFENDANTS AND MURDER VICTIMS' FAMILY MEMBERS

by RACHEL KING

I have spent much of the past decade immersed in the study of how capital punishment impacts those most directly affected by it. In 1996, I began interviewing and photographing family members of murder victims and family members of the condemned. While I was predisposed to oppose capital punishment before I began this project, seeing how the process made the families suffer turned my intellectual opposition into a calling to work to end the practice.

There are many ways in which the death penalty harms families. For the murder victims' family members, the death penalty establishes a hierarchy of victims where some lives are valued more than others. It turns family members against each other. It creates a class of "good" victims and "bad" victims. The families of the condemned are traumatized by the process and feel ostracized and alienated as they watch their government systematically prepare to kill their loved one. They feel as if their entire community has turned against them. And worst of all, the death penalty teaches people, especially children, that killing is an acceptable way to solve problems.

Hierarchy of victims and offenders

Bill Pelke's beloved grandmother Ruth was stabbed to death by four teenaged girls who went to her home under the guise of wanting to take Bible lessons, but with the intention of robbing her to get money to play video games. The girls stabbed Ruth 64 times, so vigorously that her body was literally pinned to the dining room carpet. The girls were all under the age of 18. The state only sought the death penalty for 15-year-old Paula Cooper, believing her to be the ringleader. Paula pleaded guilty to the crime without any promises or deals from the state

and was sentenced to death, making her, at that time, the youngest female on death row in the United States.¹ Paula Cooper was African American and poor.

Initially, Bill supported capital punishment. He and his family wanted all of the girls to be sentenced to death, especially Paula Cooper. They sat in the court room

watching as the judge pronounced the death sentence on Paula. When asked his opinion on the sentence, Bill remarked that it wouldn't bring his grandmother back, but he felt that it was a fair

The families of both murder victims and defendants are adversely affected by the death penalty.

sentence. Bill felt that as long as there was a death penalty then whoever killed his grandmother should get the punishment. If his grandmother's killer did not get the death sentence, the Pelkes believed that meant that Ruth Pelke's life wasn't as valuable as others.²

As long as there is a death penalty, it is natural that families will feel that their loved one's killer should get the most severe punishment. However, not all criminal cases receive the same level of treatment. Most homicides are not even solved. Anne Coleman's 19-year-old, African-American daughter was murdered in her car in Los Angeles. No one was ever charged with the crime. Authorities told Anne that there were dozens of homicides in the city every week and they couldn't possibly solve all of them. Anne felt that her daughter's life was not valuable enough for authorities to put the resources into solving the crime.

1. In *Simmons v. Roper*, the Supreme Court struck down the practice of executing juvenile offenders. Today, none of these offenders would be eligible for the death penalty.

2. Ultimately, Bill changed his mind and opposed Paula's execution. He embarked on an international campaign to save her life. She is now serving a 60-year sentence in an Indiana prison.

In other cases, it is baffling to try to figure out why one offender is sentenced to death and another is not. A particularly disturbing example of this was the case of Manny Babbitt, who was executed by the state of California in 1999. Manny grew up the child of immigrants from the Cape Verde Islands who worked in the cranberry bogs on Cape Cod. He dropped out of high school at 17 and joined the Marines where he was sent into active combat in Viet Nam.

After returning from the war, Manny started acting strangely. He was dishonorably discharged and after repeated instances of bizarre, and at times, violent, behavior, he ended up at the infamous Bridgewater State Hospital diagnosed with schizophrenia.³

After his release, without any treatment plan, the family decided to move Manny to California to live with his brother Bill and his wife, Linda. Despite their best efforts to help Manny, it was soon evident that he needed more help than they could give. Unfortunately, they learned too late just how sick he was.

One night while walking home, Manny broke into the home of elderly Leah Schendel. Manny has no memory of the event, but one theory is that he heard shooting coming from her television set which was turned to a station that was airing a movie about Viet Nam. Manny attacked Ms. Schendel, who died of a heart attack. He then placed a mattress on her body and tied a leather strap around her ankle. He stole a lighter, two watches, and some rolls of nickels. "Tagging" bodies and taking "souvenirs" was common after a killing in Viet Nam.

After finding a lighter with the initials L.S., Bill contacted the police, who promised Bill that if he turned Manny over to the authorities they would ensure that he received treatment for his mental illness. However,

the police immediately sought the death penalty.

It is not clear why a Sacramento prosecutor decided that a mentally ill man who had scared a lady to death should be capitally prosecuted, although the Babbitts suspected that the fact that Manny was poor and black and Leah Schendel was white and middle-class, played a role in that decision.

Manny's defense lawyer showed up drunk for court most days. He struck all the blacks from the jury pool and when Bill asked him why he said that black people were not smart enough to follow the case. Despite these setbacks, the Babbitts held out hope that Manny's life would be spared and that he would get the treatment he so desperately needed.

While Manny's trial was going on, there were two other homicide trials in the same court house. One man had kidnapped two women, raped them both, and killed one outright and left the other for dead, throwing them into a hole and burying them with rocks. The surviving woman dug herself out of hole and got a ride back to town, naked.

The other man had also kidnapped a woman and then shot her in the hip. She bled to death in the back of a car. Reporters covering the cases told Bill that everyone was predicting that Manny would be sentenced to life and the other two would be sentenced to death. The reporters were wrong. The jury sentenced Manny to death and the other two men, who were both white, received life sentences.

Later, a prominent lawyer took over Manny's case launching a high profile clemency campaign that attracted the support of hundreds of vets, several of whom testified that Manny had saved their lives during battle. Manny received help from another quarter, too. David Kaczynski, brother of "uni-bomber" Ted Kaczynski, came forward on behalf of the Babbitts. Like Manny, David had also turned in his mentally-ill brother to authorities. Ted had intentionally killed five people and injured several others. On the urging of the Kaczynski family (who had retained attorneys to represent them),



Bill Babbitt holding a photograph of his brother, Manny, taken shortly before his execution.

3. Manny almost certainly suffered from post-traumatic stress disorder. He was not diagnosed with it, probably because it was not well understood at that time.

prosecutors agreed to a life sentence for Ted. David believed that the fact that he was white and middle class resulted in his family receiving vastly different treatment than the Babbitts. However, neither Manny's valor during battle nor his mental illness persuaded Governor Gray Davis to commute Manny's sentence. Bill witnessed his brother's execution.

It has been nearly impossible for Manny's family to understand why Manny was executed when others, who had committed more serious crimes, were spared. If the death penalty is supposed to be reserved for the worst of the worst offenders, how can a person who frightened someone to death fall within that category. The Babbitt family, and people familiar with Manny's case, do not believe that justice was done in his case.

Unfortunately, Manny's story is not unique.

Turning family members against each other

One of the saddest aspects of the death penalty is how it tears at the fabric of families, turning them against each other at a time when they need each other most. Family members may have differing feelings about the death penalty and they are often pitted against each other as the case progresses towards execution.

A particularly poignant example is the case of Maria Hines whose beloved baby brother, Virginia State Trooper Jerry Hines, was murdered in the line of duty. The Commonwealth sought and obtained a death sentence for Dennis Eaton. Trooper Hines' widow was pleased with the sentence. Maria felt uncomfortable with the death penalty, but kept her feelings to herself out of respect for her sister-in-law. However, after watching the execution scene in the movie, "Dead Man Walking," Maria ran from the theater in horror and knew that she could no longer remain silent about her opposition to Eaton's execution.

Maria began corresponding with Eaton. Eventually she visited him in prison and developed a relationship with him. He asked her to be his spir-

itual advisor and she agreed. She wrote a letter to the governor urging him to commute Dennis's sentence to life in prison.

Once the media learned about Maria's stance, newspapers started covering the story, focusing on the division within the family, seemingly unconcerned with how their reporting affected the family members. Maria read one article in which her sister-in-law and nephew accused Maria of opposing Dennis's execution so she could go on the *Oprah* show and make a lot of money. In fact, Maria had decided to donate any honoraria she received to a victim's organization. Family members were quoted as saying that the "entire family" had turned against Maria for opposing the execution. Ultimately, Dennis was executed, which was devastating for Maria. More than a decade later, she remains ostracized from the family.

I also met plenty of families where there was disagreement within the family, but the family members managed to remain close. There is probably no experience more stressful than losing a loved one to murder. Prosecuting the case as a death case places an additional strain on a family that has already been enormously taxed. In cases where the death penalty is not sought, or where a jury returns a life verdict, the case is, for all practical purposes, finished and the family can put the case behind them. I am not suggesting that the end of a legal case brings "closure" to families, but I am suggesting that the ongoing, high profile, nature of death penalty cases continues to open up wounds making it extremely difficult to heal.

"Good" and "bad" victims

The paradigm in our society is that murder victim's family members will support the death penalty. Those who do not are sometimes surprisingly ill-treated by people both inside and outside the criminal justice system. The most extreme example is the case of SueZanne Bosler, whose father, a Mennonite minister, was murdered by an intruder who also

stabbed SueZanne multiple times and left her for dead. SueZanne miraculously survived and after extensive surgeries and rehabilitation she is able to lead a normal life; however she was permanently impaired by the attack.

Reverend Bosler had told his family that if he were ever murdered he did not want the killer to get the death penalty. Despite this, prosecutors sought and obtained a death sentence for John Bernard Campbell, using SueZanne as their star witness. Petite and attractive, her heart-rending story made a tremendous impression on the jury. However, once the verdict was returned, SueZanne began a 10-year odyssey to get Campbell off death row.

On appeal, Campbell's death sentence was reversed due to prosecutorial error, and the case was sent back for another sentencing hearing. The defense and SueZanne asked the prosecutor to agree to life without parole, thus foregoing the need for another sentencing hearing. The prosecutor refused, and SueZanne had to go back to court to tell her story again, thus reliving the trauma of the event. A different jury sentenced Campbell to death a second time, but again, Campbell's death sentence was reversed due to prosecutorial error.

At this point, Sue-Zanne hired a lawyer to advise her about her rights as a victim under Florida law. SueZanne wanted the jury to know that she did not support the death penalty; however, Florida law and the prosecutor forbid her from telling this to the jury. Her attorney advised SueZanne that when the prosecutor asked her what she did for work, as he would do at the start of her testimony, she could truthfully tell the jury that she had two professions—she was a hairdresser and she traveled around the country working to end the death penalty. When SueZanne followed her lawyer's advice, the prosecutor vociferously objected and the judge ordered the jury from the courtroom. The judge then admonished SueZanne that if she mentioned the

death penalty again he would throw her in jail for contempt of court. The third jury sentenced Campbell to life without parole.

It seems unlikely that SueZanne would have had the same experience if she had told the jury that she supported the death penalty and wanted to see Campbell fry. As long as SueZanne did what the prosecutor wanted her to do to achieve a death sentence, she was in his good graces. Once she refused to cooperate, she

did not support the death penalty. She believes that forgiveness is necessary for healing and that it is difficult, if not impossible, to forgive someone if you are holding out for their execution. Over the years, Marietta has told her journey of forgiveness to countless audiences and many people have said to her, "You must not have loved your daughter otherwise you would have supported the death penalty for her killer." Marietta replies that she does not

the case. People who initially supported the death penalty sometimes decide by the end of the case that they no longer support it. (I have not seen any cases where the reverse is true.) It would be awkward, to say the least, for a prosecutor who sought the death penalty on behalf of a victim to wind up being in opposition to that victim by the end of the case.

Betrayed by society

No one expects that someone in their family will be sentenced to death. No mother raises her child to end up on death row. Psychologist Kathy Norgard was completely unprepared when her son, John Eastlack, killed an elderly couple after escaping from jail where he was serving a sentence for credit card fraud. John had no history of violence, but did have a history of shoplifting, lying, and getting in trouble as a teenager.

Shortly after his arrest, Kathy watched John, against the advice of his attorney, confess to the murder on the evening news. In the following weeks, he repeatedly granted interviews in which he recounted the grisly details of the crime. She grieved for the family members of the murdered couple and was horrified that her child could have committed such a ghastly crime. Still, while she believed her son deserved to be punished, she was terrified at the idea that he might be executed. John's defense attorney seemed resigned to the fact that John would be sentenced to death and did little to represent him. Not surprisingly, John was convicted and sentenced to death.

Kathy describes the experience of having a loved one on death row as a form of chronic grief. The fact that her government was preparing to kill her child constantly weighed on her mind. In grocery stores, at church, or community meetings, Kathy wondered if the people she was interacting with supported her child's execution.

Kathy was fortunate to learn about an attorney who was an expert in handling mitigation cases. She took on John's case and she and Kathy

Family members often disagree about how a case should be handled, which puts the prosecutor in an awkward position.

was threatened with jail. Although less dramatic than SueZanne's story, many other victims have shared similar stories of how the prosecutor turned against them if they opposed the death penalty.

Sometimes it is not the prosecutor, but others who judge victims who oppose the death penalty. Marietta Jaegar Lane's seven-year-old daughter Susie was kidnapped, tortured, and murdered. For over a year, Marietta did not know if her daughter was dead or alive. During that time, she struggled with intense rage and worried for her sanity. A devout Catholic, Marietta decided that her rage was destroying her and that in order to survive she would have to forgive the man who had harmed her daughter.

Once the killer was arrested, Marietta told the prosecutor she did not want him to seek the death penalty and he respected her wishes. Because he was no longer facing the death penalty, the killer confessed to the crime and several others from that jurisdiction. Although he was a suspect in several other murders, he would not confess to crimes from jurisdictions where the prosecutor was holding out for the death penalty.

Based on her experience, Marietta

want to memorialize the life of her beautiful, loving daughter by killing a sick human being.

There is a lot of controversy within the criminal justice system over whether, or how much, victims' desires should be taken into account when deciding how to prosecute death cases. If a victim opposes the death penalty, should the prosecutor decide not to seek it or, conversely, if the victim supports the death penalty, should the prosecutor decide to seek it?

My position is that prosecutors, if they believe it is appropriate to do so, can seek the victim's input before deciding how to handle the case. However, the prosecutor must make the ultimate decision whether to seek the death penalty based on what he or she believes is best for the community. Not only are family members unqualified to make the decision, but they are often crazy with grief and are not in a rationale frame of mind to make such an important decision.

As already mentioned, family members often disagree about how the case should be handled, which puts the prosecutor in the awkward position of having to decide which position to follow. Also, family members often change their mind during



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researched John's birth records (he had been adopted) and learned that John's birth mother had used alcohol during her pregnancy. Kathy had never known that John had been diagnosed as fetal alcohol affected. This diagnosis helped explain John's inability to control his behavior, as was demonstrated with the juvenile delinquency and the media fiasco. John's death sentence was reversed on the grounds that he had not had an adequate sentencing hearing. At resentencing, the defense presented the judge with the new information about John's background and the judge sentenced John to life in prison without parole. The fact that Kathy is well-educated, resourceful, and white may have enabled her to help her son in a way that other families cannot.⁴

If it is stressful for a parent to lose a child to execution, it may be even worse for a child to lose a parent. A particularly tragic case is that of Abdullah Hameen who was executed by Delaware in 2001. Abdullah killed a man during a drug deal. He entered prison a young man with little respect for himself or society, but while in prison underwent a genuine transformation. At that time, Delaware housed its death row prisoners in general population which gave Abdullah the opportunity to take courses and participate in activities. He started an interfaith peace group that included prisoners and members of the community; he met with juvenile delinquents warning them against getting

involved in crime; he practiced his religion; he married Shakeerah, a woman he met through prison work; and most importantly, he established a loving relationship with his young son, "Little Hameen," who visited and called him regularly.

As the date of Abdullah's execution drew near, many were optimistic that the Delaware Board of Pardons would recommend commuting his sentence from death

to life. The standard the Board used for determining commutation was whether the prisoner had made extraordinary efforts at rehabilitation. Everyone, even prison officials, agreed that Abdullah had done so. In fact, people thought that if Abdullah did not meet the standard, no prisoner could.

Many people, including Little Hameen, testified at Abdullah's hearing and it seemed as though the Board was leaning towards clemency. However, last minute testimony from a family member of the victim asking for Abdullah's execution discouraged the Board from recommending clemency.

Little Hameen was devastated by the decision. He became extremely distraught and depressed. He didn't understand why his father had to die when it was so obvious that he was not the same man who had committed the crime a decade earlier. After the execution, Little Hameen started getting in trouble with the law. Shakeerah tried to help him, but within a year he was charged with a capital crime and was facing a death sentence himself.

I'm not arguing that all children whose parents are executed are going to become killers. My point is that society failed Little Hameen. He was a victim, just as much as the young man who Abdullah killed, yet society did not acknowledge him as such. We offered him no support or understanding, no counseling or

services, not even any condolences. We killed his father and left him to figure out how to live with his rage and pain. Obviously, he didn't do a very good job of figuring it out. If we are going to continue executing people, we must take a hard look at how the executions are affecting the families of the condemned, especially the children.

No evidence for healing

One of the primary justifications for capital punishment is that the victims need it to heal. Executions are held out as a talisman that will provide the victim with closure. This belief serves, in large part, as the rationale for state-sanctioned killing. However, this belief is completely unsubstantiated. There is no data or research that suggests that executions help people heal. There is significant anecdotal evidence that the opposite may be true. Until research establishes that executions have some healing property, let's not pretend that we are killing people on behalf of the victims. Some victims support the death penalty; many do not.

The decision for the government to kill a human being is profound and should be taken seriously. It is unlike any other form of punishment and has a lasting impact on everyone who is touched by it. (I'll leave for another day the discussion of how the death penalty harms lawyers, prison officials, judges, jurors, etc.) We can't kill without consequences and the price we are paying to continue this policy is very dear. ❧

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4. Katherine Norgard has written a book about this case, *Hard to Place: A Crime of Alcohol* (Recovery Resources Press, 2006).