

Testimony of
Ms. Druanne D. White

June 12, 2002

My name is Druanne White. I am the elected Solicitor (State's Attorney) of the Tenth Judicial Circuit in South Carolina. I have been a prosecutor since 1988. I have personally prosecuted approximately 170 homicides.

Bias of the Commission

I have read the Report of the Governor's Commission on Capital Punishment dated April 15, 2002. I would first like to comment on the membership of the Commission. Out of the seventeen Commission Members, only one was an active prosecutor. There were eleven attorneys in private practice. This obviously means that these eleven are criminal defense attorneys, not prosecutors. Despite the fact that the Commission made numerous recommendations about law enforcement techniques, there was no active law enforcement official on the committee. The Commission was supposedly "balanced" because some of the criminal defense attorneys had formerly been prosecutors. In the early 1990s many Democrats switched to the Republican Party. Would anyone claim that a Commission made entirely of Republicans, some of whom were former Democrats, was balanced? Nor is this Commission balanced just because some of the criminal defense attorneys used to be prosecutors.

Page i of the Report's Preamble states "All members of the Commission believe ... that the death penalty has been applied too often in Illinois since it was reestablished in 1977." On Page iii, the Report states "a narrow majority of the Commission would favor that the death penalty be abolished in Illinois". I strongly urge you to recognize that this report is far from being balanced. For instance, it is interesting to note that the report recommends ridiculous limits to eyewitness and jailhouse informant testimony. This same report recommends, however, that a defendant be able to make a statement on his own behalf during the aggravation phase, without being subject to cross-examination.

Balancing Interests

I urge you to balance victims' rights, the community's safety and the safety of our prison guards with the rights of the defendants. On June 10, 2002, Jeff Jacoby wrote an article entitled "When Death Saves Lives". This article noted that the United States had a virtual national moratorium on the death penalty from 1965 to 1980. During this same period, the annual murder rate rose from 9,960 to 23,040. Mr. Jacoby noted that in the 1990s homicide rates fell in most states, but they fell the most in states that use capital punishment. He stated that the Texas murder rate was 15.3 per 100,000 in 1991. In 1999, the Texas murder rate had fallen to 6.1 per 100,000, a drop of 60%. Texas executes more murderers than any other state. Harris County, Texas, had the most aggressive death penalty prosecutions in Texas. Since executions resumed in 1982, Mr. Jacoby noted that murders have decreased by 72% in Harris County. Mr. Jacoby concludes, "We've been down the moratorium road before. We know how that experiment turns out. The results are written in wrenching detail on gravestones across the land."

Current Safety Measures

There is already intense scrutiny by the courts in death penalty cases. In South Carolina, a capital defendant is entitled to two attorneys, both of whom must meet certain qualifications. The State

provides attorney fees of \$25,000 and investigation fees of \$20,000. Both may be increased upon petition of the court. The defense attorneys are excused from all other trial work for ten days before the death penalty trial. Notice of evidence that the State intends to use in aggravation must be provided to the defense before trial. The State must file notice of its intent to seek the death penalty thirty days before trial. The jury must unanimously recommend death penalty. If it does not, the defendant is given a life sentence. Death penalty cases are appealed straight to the South Carolina Supreme Court. The defendant is appointed attorneys for appeals and post conviction relief hearings. To my knowledge, no innocent person has been put to death in South Carolina or in the United States in the post-Furman era. Reliable technology such as DNA ensures even more today than in the past that innocent people are not executed. Although many death penalty cases are reversed, most are reversed for technical reasons.

Commission's Proposals

I agree with forty-eight of the Report's proposals. I have no opinion on twelve. I disagree with twenty-five. For instance,

- 1) Recommendation 4 requires that all custodial interrogations of a suspect be videotaped. This would require an employee to transcribe each tape. Some tapes could last for hours. A prosecutor would then have to review each tape. Additionally, many people are reluctant to talk on tapes. If any inadmissible information is contained in the tapes, the tapes would have to be redacted. If a person is going to give a false confession, what difference does it make if it is on tape? The defendant will say he was coerced before the tape began.
- 2) Recommendation 28 reduces the current eligibility factor list from twenty to five. The recommended list excludes a murder committed during a felony. It further excludes the murder of a child.
- 3) Recommendation 30 establishes a mandatory review committee. This usurps the authority of the local prosecutor and creates another level of bureaucracy.
- 4) Recommendation 46 permits discovery depositions in capital cases. This would cause tremendous expense and delay.
- 5) Recommendation 69 prohibits a conviction based upon the testimony of a single eyewitness. What if the defendant kidnaps the victim and holds the victim for a period of one week? Would that witness not be qualified to identify the defendant? What if the eyewitness knew the defendant? Would that witness not be qualified to identify the defendant? Not all eyewitnesses view the defendant for just a few seconds. Recommendation 69 also prohibits the imposition of the death penalty on the uncorroborated testimony of an in-custody informant. Why would an in-custody informant be any less reliable than a witness who was not in jail? What if the defendant stands up in the jail cafeteria and admits to the crime? Would the State be prohibited from introducing the testimony of all of the inmates that were in the cafeteria?

I will be happy to answer any questions about any of the committee's proposals.