

## **Sheriff Rodenberg's Concurrence with Portions of the Minority Report**

I would like to say that I was glad to be a part of the Death Penalty Task Force, and although I was the only member of the policing community I nevertheless felt I was a part of the process and was enlightened by the spirited discussions that took place among those from other disciplines. In this vein I was impressed by the interest, knowledge, and professionalism of the other Task Force members, and it was a pleasure meeting and serving with them.

In reflecting upon the content of the majority and minority reports I concur with the Minority Report that anti-death penalty thinking dominated the process, and the Majority recommendations reflect that. There was nothing of significance in the final majority report of any substance that enhanced "fairness" from the state's-prosecution's point of view. To the contrary, virtually everything in the majority report if ultimately implemented would make the death penalty more unlikely, if not virtually impossible, in Ohio. Yet, I fully and completely agree that appropriate procedures and safeguards should be implemented to reduce arbitrariness, ensure no innocent individuals are executed, and that the death penalty is implicated in only those cases where guilt is certain. To that extent I believe that some of the majority recommendations have merit and should be implemented.

Rather than stake out an individual detailed position on all of the 56 recommendations, which I believe are fully covered in the majority and minority reports, I would like to focus on those three recommendations that directly impact law enforcement investigative and case preparation issues.

### **RECOMMENDATION #1: Presumptive Involuntariness of Unrecorded In-Custody Statements**

The majority of the Task Force recommended that "any in-custody interrogation covered under Miranda v. Arizona MUST be electronically recorded, and if not the statements would be PRESUMED INVOLUNTARY." (emphasis added)

Certainly there is no question whatsoever that recorded statements are preferable and arguably more accurate and reliable than verbal, unrecorded statements. Furthermore, I truly believe that law enforcement agencies today appreciate and acknowledge this, and thus make every effort to record defendant statements in all serious cases. Yet, given real world practical considerations this is not always possible.

I believe that a cautionary jury instruction, and defense counsel cross-examination of the officer(s) who take unrecorded statements from death penalty eligible defendants, and closing arguments would adequately address this situation. However, a blanket rule that renders all unrecorded statements presumptively involuntary goes too far, and I concur with the minority that such a standard prejudicially suggests improper or illegal law enforcement action. I, therefore, object to Recommendation #1 as adopted by the majority.

### **RECOMMENDATION #4: Crime Lab Certification**

I do not agree with the majority position that ALL crime labs be certified. Many non-certified labs have performed their forensic duties very well, and the concept of "certification" can be misleading. Further, such a requirement could eliminate many existing labs and overload the remaining. This, in turn, would create even further delay in the proceedings. As with the matter of unrecorded defendant statements I feel that any perceived problems in this area can be adequately addressed and exposed via defense counsel cross-examination and closing arguments.

## **RECOMMENDATION #17: Evidentiary/Interrogation Prerequisites for the Death Penalty**

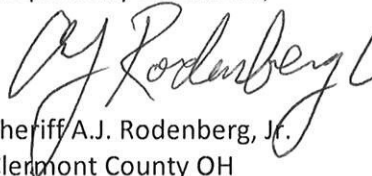
Of all 56 recommendations I find this one to be the most objectionable. As adopted by the majority this recommendation, if implemented, would narrowly restrict the death penalty to cases when the defendant is linked to the crime biologically or via DNA, where a VIDEOTAPED voluntary confession of the defendant exists, a video recording exists (e.g. surveillance camera) that conclusively links the defendant to the crime, or "other like factors" determined by the General Assembly.

Completely discounted in the foregoing recommendation is credible eyewitness testimony and fingerprint evidence. Furthermore this Recommendation appears to conflict with Recommendation #1 which allows for both audio and video recording of defendant statements. As with a stringent requirement for recording defendant statements via any medium, a recommendation to limit death penalty cases to only video-recorded statements of defendants is even more objectionable as well as impractical for law enforcement operations. I therefore, concur with the Minority Report and oppose Recommendation #17 as proposed by the Majority.

Without presenting any additional commentary, I also support the MINORITY REPORT with respect to the following Task Force recommendations:

- Recommendation #5: Proportionality Review
- Recommendations #8 & 9: Serious Mental Illness as a Disqualifier for the Death Penalty
- Recommendations #11 & 12: ABA & Supplementary Guidelines
- Recommendation #20: Withdrawal of Jury Waiver following appeal
- Recommendation #28: Post-Conviction Depositions & Subpoenas
- Recommendation #32: Mandate for Seeking Recusal of Judge
- Recommendation #33: Removal of Designated Specs from the Death Penalty Statute
- Recommendation #34: Death Penalty Charging Committee
- Recommendation #35: Racial Justice Act
- Recommendation #38: Exculpatory Evidence at Grand Jury
- Recommendation #39: Mandatory Pre-Trial Conferences
- Recommendation #43: Clemency Review Procedures
- Recommendations #51 & 52: Appointment of Defense Counsel and Experts

Respectfully Submitted,



Sheriff A.J. Rodenberg, Jr.  
Clermont County OH

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