

REMARKS OF DONNA G. ZUCKER,
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PHILADELPHIA DISTRICT ATTORNEY'S OFFICE
RE: SENATE BILL NO. 81

Good afternoon, Mr. Chairman and Members of the Committee. I wish to thank you for the opportunity to speak in support of Senate Bill No. 81, which amends the Post Conviction Relief Act and provides for a system of unitary direct and collateral review in cases in which the death penalty has been imposed.

Today, I would like to briefly address the system of collateral review for death penalty cases established by the Capital Unitary Review Act, since this Act is entirely new and represents a significant change in the way death penalty cases will be reviewed in Pennsylvania. At the conclusion of my ~~prepared~~ remarks I will be happy to answer any specific questions you might have about unitary review or about the changes to the Post Conviction Relief Act reflected in Senate Bill No. 81.

The Capital Unitary Review Act replaces **post**-appeal collateral review with **pre**-appeal collateral review. Thus, issues such as claims of ineffective counsel, which in our present system are classically reviewed in post-conviction actions, often litigated years after the crime, will be explored immediately after trial and will be ultimately resolved at the same time as claims of trial error raised on direct appeal.

There have been suggestions that the Unitary Review procedure will amount to a "rush to judgment." Nothing could be further from the truth. What the procedure ensures is that those with **legitimate** claims may obtain speedy review and quick relief.

The vast majority of capital cases are reviewed in collateral proceedings. Thus, while some critics of the Unitary Review procedure complain that supplying a second lawyer immediately upon conviction will increase the cost of capital litigation, the fact is that the costs of collateral review in capital cases are inevitable. *We either have them today or tomorrow* The present system merely delays incurring these costs and indeed increases them, since the longer collateral litigation is delayed, the more difficult it becomes: Files are lost, notes of testimony are unretrievable, witnesses are missing and cannot be located, memories have faded. Thus, the resources required to investigate a claim only increase as time passes.

The costs of delay are not merely monetary. Our criminal justice system is built upon the premise that justice delayed is justice denied. Our constitution and statutes require a speedy trial to ensure the swift and just resolution of criminal charges, for, obviously, the search for truth is most effectively pursued when evidence is fresh. The present system of collateral review totally subverts the philosophy underlying the speedy trial rules. It encourages delay for as long as possible, thus ensuring that the litigation of claims will be far removed in time from the crime and from the trial and that evidence and witnesses will be more difficult, if not impossible, to obtain. Delay furthers no interest but that of a justly convicted defendant who has no legitimate claim but merely wishes to avoid the imposition of his sentence.

The new statute requiring the Governor to sign death warrants within a time certain after affirmance does not obviate this problem. The signing of a warrant does not force or provide a time for the filing of a post-conviction petition but only fosters emergency stay litigation. It does not encourage the swift investigation of claims but to the contrary allows a defendant to wait until **after** his warrant is signed to make any effort to explore possible collateral issues in his case.

The Unitary Review Act systemizes the collateral review process. It ensures an orderly process. It ensures the investigation of issues **before** a warrant is signed. It ensures every defendant the **means** to investigate, for it provides every defendant with a second lawyer to explore and raise collateral claims. All claims--whether collateral claims of ineffective counsel or claims of trial error--will ultimately be resolved in a single proceeding in the state Supreme Court. The defendant who has been truly wronged by the conduct of his lawyer can only welcome such immediate review.

The Unitary Review Act will also foster public confidence in the criminal justice system. We have all heard complaints about what is perceived to be an endlessly drawn-out appellate process, particularly in capital cases. The Capital Unitary Review Act precludes unnecessary delay by ensuring the rapid consideration and resolution of collateral issues. That this is a goal in everyone's interest cannot seriously be disputed.