

AFFIDAVIT OF CATHERINE M. GROSSO

Affiant, being duly sworn, deposes and states as follows:

1. I am Catherine M. Grosso and I reside in East Lansing, Michigan.
2. I graduated from the University of Iowa College of Law with high distinction in 2002.
3. I am currently an Assistant Professor of Law at the Michigan State University College of Law where I teach courses in criminal procedure and corrections law.
4. Prior to joining the faculty at the Michigan State University College of Law, I was a Visiting Assistant Professor of Law at the University of Illinois College of Law where I taught courses in criminal procedure, constitutional law, evidence and capital punishment law.
5. In my professional career, I have been heavily involved in conducting research and empirical studies on race and the death penalty. My publications on race and the death penalty include: *Empirical Studies of Race and Geographic Discrimination in the Administration of the Death Penalty: A Primer on Key Methodological Issues*, David Baldus, George Woodworth, Neil Alan Weiner, David Zuckerman, and Catherine M. Grosso, which was recently published in "In the Future of America's Death Penalty: An Agenda for the Next Generation of Capital Punishment Research" (Charles S. Lanier, William Bowers, and James Acker eds.) (Durham, N.C.: Carolina Acad. Press 2009); *Race and Proportionality since McCleskey v. Kemp (1987): Different Actors with Mixed Strategies of Denial and Avoidance*, David C. Baldus, George Woodworth, and Catherine M. Grosso, 39 Colum. Hum. Rts. L. Rev. 143 (2007); and *Arbitrariness and Discrimination in the Administration of the Death Penalty: A Legal and Empirical Analysis of the Nebraska Experience (1973-1999)*, David C. Baldus, George Woodworth, Catherine M. Grosso, and Aaron M. Christ, 81 Neb. L. Rev. 486 (2002).
6. It is my understanding that the above-captioned capital case is at the pretrial stage.
7. I am familiar with the provisions of the North Carolina Racial Justice Act ("RJA"), which are set forth in N.C. Gen. Stat. § 15A-2010 *et seq.* I am also familiar with N.C. Gen. Stat. § 15A-2000, the statutory provision governing the death penalty in North Carolina.
8. I have reviewed the statewide study conducted in 2001 by Dr. Isaac Unah of the Department of Political Science at UNC - Chapel Hill and Professor Jack Boger of the UNC School of Law, entitled "Race and the Death Penalty in North Carolina, an Empirical Analysis: 1993-97," which showed that the odds of a defendant receiving the death penalty were three and one-half times more likely when the race of the victim was white.
9. On August 11, 2009, Dr. Barbara O'Brien, an Assistant Professor of Law at Michigan State University College of Law and I began conducting a statewide study in North Carolina to

determine whether race has played a significant role in seeking or imposing the death penalty in counties, prosecutorial districts, judicial divisions and the State. Professor Richard A. Rosen of the UNC School of Law and Professor David C. Baldus of the University of Iowa College of Law are also primary investigators for this study.

10. In designing the current statewide study, Professor O'Brien and I sought to address, *inter alia*, potential limitations to the methodology utilized in the Unah-Boger study.

11. The study that Professor O'Brien and I are currently conducting in North Carolina will examine race and the death penalty in cases prosecuted from 1990 to the present. The study will review the cases of every defendant who has been sentenced to death since 1990, every defendant who received a sentence of life imprisonment following a capital trial since 1990, and a random sample of other cases since 1990 in which defendants were prosecuted for potentially capital offenses, but whose cases were resolved prior to the commencement of a capital trial or with a non-capital trial. The study will be conducted in such a way that data sufficient for statistical analysis will be generated from every prosecutorial district and judicial division in the State.

12. Conducting a statewide empirical study is a labor intensive and time consuming process. Data collectors and data coders must follow strict protocols to ensure that the data is collected and recorded in a uniform manner. Professor O'Brien and I have already trained a large contingent of attorneys in how to collect and code data obtained from counties throughout the State. Conducting a statewide study is also very expensive. Professor O'Brien and I expect our study in North Carolina to cost approximately \$500,000.

13. Based on my past experience in conducting similar empirical studies, I do not think that it is feasible for each pretrial defendant who might have a claim under the RJA to conduct his or her own statewide statistical study. My opinion is based on the following four reasons: (1) The attorneys representing the defendants do not have the knowledge or expertise necessary to design a valid study; (2) The attorneys representing the defendants do not have access to sufficient funds to hire and train individuals to collect data in each county or to retain experts to analyze the data; (3) The attorneys representing the defendants do not have the statistical training or experience that is required to conduct sophisticated statistical analysis, such as multiple regression analysis, on the data; and (4) Based on my conversations with Thomas K. Maher, Executive Director of Indigent Defense Services (IDS), and Robert M. Hurley, Capital Defender for North Carolina, IDS does not have sufficient funds available to pay for individual defendants to retain their own experts to conduct such studies.

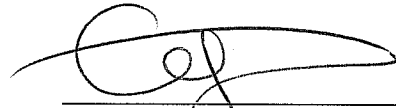
14. Due to the projected costs of conducting multiple empirical studies in different areas of the State, IDS has recommended "launching a coordinated statewide statistical study by an independent research entity to produce a baseline of data that may be disaggregated for purposes of analyzing racial discrimination claims by county, district and division." Legislative Incarceration Fiscal Note, North Carolina Racial Justice Act, p. 5 (June 18, 2009). The study that Professor O'Brien and I are conducting meets these criteria.

15. Professor O'Brien and I expect our study to be completed on or about August 10, 2010. If preliminary results are available prior to August 10, 2010, we will try to make these results available.

16. In my professional opinion, it would be extremely difficult, if not impossible, for the defendant in this case to conduct a valid statewide study in less than one year.

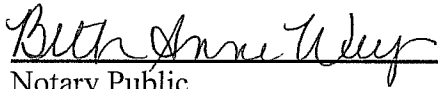
17. In the interest of justice and judicial economy, I urge the court to continue the defendant's trial to enable him to utilize our statewide study in investigating and, if warranted by the results of the study, filing a claim of racial discrimination under the RJA.

Further, Affiant sayeth not.



Catherine M. Grosso  
Assistant Professor of Law

Sworn to and subscribed before me  
this the 7 day of October, 2009.

  
Notary Public

My commission expires: 11.29.2015

