EVIDENCE—The Prosecution Is Not Required to Produce the Four Year Old Victim of a Sexual Assault at Trial or to Have the Trial Court Find the Victim Was Unavailable for Testimony Before the Out-of-Court Statements of the Child Are Admitted Under the Spontaneous Declaration and Medical Examination Exceptions to the Hearsay Rule—*White v. Illinois*, 112 S. Ct. 736 (1992).

## I. INTRODUCTION

The Sixth Amendment to the United States Constitution guarantees an individual accused of a crime a fair trial.[1] Specifically, the Confrontation Clause of the Sixth Amendment provides, in pertinent part, "[T]he accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ." [2] Recently, the Supreme Court examined the Confrontation Clause and its effect on out-of-court declarations admitted into evidence at trial under the hearsay exceptions.[3]

On April 16, 1988, at approximately four o'clock in the morning, four year old S.G. woke her babysitter, Tony DeVore, with a scream.[4] DeVore went to the room where S.G. was sleeping and saw the petitioner, Randall D. White, leave the room and exit the house.[5] DeVore identified the intruder as White, who DeVore knew as a friend of S.G.'s mother.[6] When DeVore asked the child what happened, S.G. stated White had placed his hand on her mouth, choked her, threatened her with whipping, and had "touch[ed] her in the wrong places."[7] DeVore asked S.G. to point to where White had touched her and she indicated the vaginal area.[8] S.G.'s mother, Tammy Grigsby, returned home approximately thirty minutes after the incident.[9] Grigsby also questioned her daughter, and S.G. repeated her claims.[10] S.G. told her mother White had also "put his mouth on her front part."[11] Grigsby then called the police.[12] Police Officer Terry Lewis questioned S.G., and later testified at trial that S.G. told him the same story she had earlier related to DeVore and Grigsby.[13]

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1. The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

U.S. CONST. amend VI.

2. *Id.*
3. White v. Illinois, 112 S. Ct. 736 (1992).
4. *Id.* at 739.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*

Following questioning by Officer Lewis, S.G. was taken to the hospital where she was examined by Cheryl Reents, an emergency room nurse, and by Dr. Michael Meinzen.[14] Both reported in their testimony that S.G. repeated identical claims of the incident.[15]

White was subsequently convicted of aggravated criminal sexual assault, residential burglary, and unlawful restraint.[16] S.G. did not testify at White's trial.[17] The prosecution attempted to call her as a witness twice. She experienced emotional difficulty when brought to the courtroom, however, and left both times without testifying.[18] Defense counsel did not attempt to call S.G. as a witness.[19]

White objected on hearsay grounds to the testimony of DeVore, Grigsby, Lewis, Reents, and Meinzen regarding S.G.'s statements to them about the assault.[20] The trial court overruled these objections and admitted the testimony into evidence based on the Illinois hearsay exceptions for spontaneous declarations[21] and declarations made in the course of receiving medical treatment.[22] The Illinois Appellate Court affirmed the conviction.[23]

The Illinois Supreme Court denied discretionary review and the United States Supreme Court granted certiorari.[24] Chief Justice Rehnquist wrote the opinion of the Court and limited review to the constitutional question of whether allowing the challenged testimony into evidence violated the petitioner's rights under the Sixth Amendment Confrontation Clause.[25] The Supreme Court *held*, affirmed.[26] The prosecution is not required to produce the four year old victim of a sexual assault at trial or to have the trial court find the victim was unavailable for testimony before the out-of-court statements of the child are admitted under the spontaneous declaration and medical examination exceptions to the hearsay rule. *White v. Illinois*, 112 S. Ct. 736 (1992).

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14. *Id.*
15. *Id.*
16. *Id.* (citing ILL. REV. STAT. ch. 38, para. 12-14, 19-3, 10-3, (1989)).
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.* at 739-40.
21. People v. White, 555 N.E.2d 1241, 1243 (Ill. 1990), *aff'd* 112 S. Ct. 736 (1992). The spontaneous declaration exception applies to "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." *Id.* at 1246.
22. *Id.* at 1244. The medical examination exception applies to "statements made by the victim to medical personnel for purposes of medical diagnosis or treatment including descriptions of the cause of symptom, pain or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment . . . ." ILL. REV. STAT. ch. 38, para. 115-13 (1989).
23. People v. White, 555 N.E.2d at 1243.
24. White v. Illinois, 112 S. Ct. 736, 740 (1992).
25. *Id.*
26. *Id.*

## II. THE MAJORITY OPINION

### A. *The Unavailability Rule*

The petitioner's principle argument was that his convictions were based on the out-of-court statements of a complaining witness who did not testify at trial.[27] He contended, based on the Court's prior decision in *Ohio v. Roberts*,[28] he was denied his Sixth Amendment right to confront his accuser because the unavailability requirement was not met.[29] The unavailability requirement was derived from the Court's statement in *Roberts*: "[W]hen a hearsay declarant is not present for cross-examination at trial, the Confrontation Clause normally requires a showing that he is unavailable."[30] In *Roberts*, the Court considered a Confrontation Clause challenge to the introduction at trial of a transcript containing testimony from a witness who did not appear at trial but who gave her testimony at a preliminary hearing.[31] The accused was charged with forgery of a check and possession of stolen credit cards belonging to the witness's parents.[32] The trial court admitted the transcript from the hearing into evidence relying on section 2945.49 of the Ohio Revised Code Annotated, which permits the use of preliminary hearing testimony of a witness who "cannot for any reason be produced at the trial."[33] Roberts was convicted on both counts.[34]

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27. Brief for Petitioner at 12, White v. Illinois, 112 S. Ct. 736 (1992) (No. 90-6113).

28. Ohio v. Roberts, 448 U.S. 56 (1980).

29. Brief for Petitioner at 12, White v. Illinois, 112 S. Ct. 736 (1992) (No. 90-6113).

30. Ohio v. Roberts, 448 U.S. at 67.

31. *Id.* at 59. The witness gave her testimony at respondent Roberts's preliminary hearing on charges of forgery of a check in the name of Bernard Isaacs and possession of stolen credit cards belonging to Isaacs and his wife. *Id.* The witness was the Isaacses' daughter, Anita. *Id.* Anita testified that she knew the respondent and had allowed him to use her apartment for several days while she was away. *Id.* Roberts's counsel attempted to elicit from Anita that she had given him the checks and credit cards without telling him she did not have permission to use them. *Id.* Anita denied these allegations. *Id.* After Roberts was indicted, Anita was subpoenaed on five different occasions to testify; however, according to her parents, Anita had left town soon after the preliminary hearing and they did not know where she could be reached. *Id.* at 59-61. The Court held the defense counsel's questioning of Anita at the preliminary hearing "clearly partook of cross-examination as a matter of form," and thus, it complied with the purposes behind the confrontation requirement. *Id.* at 71-72.

32. *Id.* at 59.

33. *Id.* at 60 (citing OHIO REV. CODE ANN. § 2945.49 (Anderson 1975)). The statute provides:

> Testimony taken at an examination or a preliminary hearing at which the defendant is present, or at a former trial of the cause, or taken by deposition at the instance of the defendant or, the state, may be used whenever the witness giving such testimony dies, or cannot for any reason be produced at trial.

Ohio v. Roberts, 448 U.S. 56, 59 n.2 (1980) (citing OHIO REV. CODE ANN. § 2945.49 (Anderson 1975)).

34. *Id.* at 60. The Ohio Court of Appeals subsequently reversed, holding the prosecution had not made a "good faith effort" to determine Anita's whereabouts. *Id.* The Supreme Court of Ohio affirmed on other grounds, holding the transcript inadmissible, but the court of appeals had erred in its finding that Anita was not unavailable. *Id.* at 60-61.

The United States Supreme Court, in the course of analyzing Roberts's Confrontation Clause challenge to the admission of the testimony, "used language that might suggest that the Confrontation Clause generally requires that a declarant either be produced at trial or be found unavailable before his out-of-court statement may be admitted into evidence."[35] In response to White's argument based on *Roberts*, however, the Court hastened to note the limitations placed on that decision by the Court's subsequent decision in *United States v. Inadi*.[36] *Inadi* involved the out-of-court, recorded statements of participants in a conspiracy to manufacture and distribute methamphetamine.[37] The Illinois Appellate Court also pointed out the important omission of the subsequent *Inadi* holding from White's argument, stating, "In making this argument, defendant's counsel on appeal inexplicably fails to cite or discuss *United States v. Inadi* . . . , in which the United States Supreme Court repudiated the interpretation of *Roberts* upon which defendant relies."[38] The Court in *Inadi* circumvented any argument that the language of *Roberts* promoted "'a wholesale revision of the law of evidence' under the guise of the Confrontation Clause."[39] To the contrary, the Court restrictively limited the holding of *Roberts* to "the question it answered, the authority it cited, and its own facts."[40] Thus, the *Inadi* Court emphatically refused to extend to all out-of-court statements the unavailability requirement set forth in *Roberts*.[41]

The Court gave two reasons for its refusal to extend the unavailability requirement. First, unlike statements made in prior judicial proceedings, some hearsay exception statements provide evidence of the circumstances and context in which they were made that cannot be replicated or given the same significance when repeated in court.[42] For example, in *Inadi* the Court stated:

> Conspirators are likely to speak differently when talking to each other in furtherance of their illegal aims than when testifying on the witness stand. Even when the declarant takes the stand, his in-court testimony seldom will produce a significant portion of the evidentiary value of his statements during the course of the conspiracy.[43]

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35. White v. Illinois, 112 S. Ct. 736, 741 (1992).

36. United States v. Inadi, 475 U.S. 387 (1986).

37. The prosecution lawfully intercepted and recorded telephone conversations between participants regarding planned meetings and the whereabouts of some missing drugs. *Id.* at 390-91. Inadi sought to exclude this evidence, but the trial court admitted it because the statements were made by conspirators during the course of and in the furtherance of the conspiracy, satisfying FED. R. EVID. 801(d)(2)(E), the hearsay exception for statements of this description. United States v. Inadi, 475 U.S. at 390-91. Inadi also challenged the admission on the basis of the Confrontation Clause, arguing the statements were inadmissible absent a showing the declarants were unavailable. *Id.* at 390.

38. People v. White, 555 N.E.2d 1241, 1251 (Ill. 1990), *aff'd* 112 S. Ct. 736 (1992).

39. White v. Illinois, 112 S. Ct. at 741 (quoting United States v. Inadi, 475 U.S. at 392).

40. *Id.* (quoting United States v. Inadi, 475 U.S. at 394).

41. United States v. Inadi, 475 U.S. 387, 395 (1986).

42. *Id.* at 395-96.

43. *Id.* at 395.

Chief Justice Rehnquist, using similar reasoning in response to White's challenge, noted S.G.'s out-of-court statements "had substantial probative value, value that could not be duplicated simply by the declarant later testifying in court."[44] Therefore, the statements fell within the hearsay exceptions.[45]

Second, the Court in *Inadi* concluded that the imposition of a broad unavailability requirement would be of little benefit.[46] It stated that such a requirement could "not be defended as a constitutional 'better evidence rule'" because it would not serve to exclude the evidence unless the prosecution mistakenly failed to produce an available witness.[47] Therefore, the Court concluded the expanded requirement would not substantially improve the accuracy of factfinding and would impose great burdens on the process.[48]

Chief Justice Rehnquist clarified the scope of *Roberts* in light of the *Inadi* Court's holding limiting the unavailability requirement, stating, "*Roberts* stands for the proposition that unavailability analysis is a necessary part of the Confrontation Clause inquiry *only* when the challenged out-of-court statements were made in the course of a prior judicial proceeding."[49] Therefore, the Court rejected White's argument based on the unavailability rule, concluding that the observations in *Inadi* "apply with full force to the case at hand."[50]

### B. *Guarantees of Reliability*

The Court, in order to further validate its refusal to expand the unavailability requirement and distinguish the hearsay exceptions at issue from those in *Roberts*, stressed the idea of the reliability and trustworthiness of "firmly rooted" exceptions.[51] Drawing on prior case law, the Court formulated a workable approach to the problems arising when the Confrontation Clause and hearsay exceptions conflict.[52] This two-pronged approach to the dilemma was set forth in

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44. White v. Illinois, 112 S. Ct. at 743.

45. *Id.*

46. United States v. Inadi, 475 U.S. 387, 396-97 (1986).

47. *Id.* (citing Peter Western, *Confrontation and Compulsory Process: A Unified Theory of Evidence for Criminal Cases*, 91 HARV. L. REV. 567, 586-601 (1978)); *see* David S. Davenport, *The Confrontation Clause and the Co-Conspirator Exception in Criminal Prosecutions: A Functional Analysis*, 85 HARV. L. REV. 1378, 1403 (1972).

48. White v. Illinois, 112 S. Ct. at 742.

49. *Id.* at 741 (emphasis added).

50. *Id.* at 742.

51. *Id.* at 742 n.8 (citing Idaho v. Wright, 110 S. Ct. 3139, 3141-42 (1990); Bourjaily v. United States, 483 U.S. 171, 182-84 (1987)).

52. *See, e.g.*, Idaho v. Wright, 497 U.S. 805, 814-17 (1990) (stating in dicta that when a statement bears "adequate indicia of reliability" the statement could be admitted); Ohio v. Roberts, 448 U.S. 56, 70-72 (1980) (allowing into evidence statements made at a preliminary hearing of a witness who did not appear at trial); Bourjaily v. United States, 483 U.S. 171, 182 (1987) (holding the Confrontation Clause does not require a court's independent inquiry into a statement's reliability to satisfy FED. R. EVID. 801(d)(2)(E)); Dutton v. Evans, 400 U.S. 74, 87-88 (1970) (allowing the out-of-court statements of a conspirator to be admitted against fellow conspirators); California v. Green, 399 U.S. 149, 150-51 (1970) (allowing into evidence a witness' prior statement from a preliminary hearing when witness became evasive at trial).

*Ohio v. Roberts*.[53] Essentially, it states the Confrontation Clause limits admissible hearsay statements in two ways. First, the establishment of the unavailability requirement indicates a constitutional preference for face-to-face accusation in the effort to ensure the reliability of testimony.[54] "In the usual case . . . , the prosecution must either produce, or demonstrate the unavailability of, the declarant whose statement it wishes to use . . . ." [55]

In the event the witness is shown to be unavailable, the second prong of the approach is activated.[56] This second prong allows certain hearsay statements to be admitted upon a showing of unavailability only if the statement bears adequate "indicia of reliability."[57] "Reliability can be inferred without more in a case when the evidence falls within a firmly rooted hearsay exception. In other cases, [there must be a] particularized guarantee[] of trustworthiness."[58] The Court in *Roberts* noted specifically, however, that this approach was not meant to "map out a theory of the Confrontation Clause that would determine the validity of all hearsay 'exceptions.'"[59]

The Court concluded the hearsay exceptions for spontaneous declarations[60] and statements made for medical purposes,[61] although failing the first prong regarding face-to-face confrontation, satisfied the second prong of the *Roberts* approach.[62] The Court determined that the context in which statements of this kind are made provide the requisite guarantees of their reliability and trustworthiness.[63] In support of this assertion, the Court noted the spontaneous declaration exception "is at least two centuries old,"[64] and both exceptions are recognized in the Federal Rules of Evidence,[65] and among the individual states.[66] The Court found the combination of these factors qualified the hearsay exceptions as "firmly rooted" for purposes of Confrontation Clause inquiry.[67]

The Court underscored the value of such statements, in relation to guarantees of reliability, to the trier-of-fact.[68] "A statement that has been offered in a moment of excitement—without the opportunity to reflect on the consequences . . . may justifiably carry more weight with the trier-of-fact than a similar

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53. Ohio v. Roberts, 448 U.S. 56, 65 (1980).
54. *Id.* at 66.
55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.* at 64-65 (citing California v. Green, 399 U.S. 149, 162 (1970)).
60. *See supra* note 21.
61. *See supra* note 22.
62. White v. Illinois, 112 S. Ct. at 742.
63. *Id.*
64. *Id.* at 742 n.8 (citing 6 JOHN H. WIGMORE, EVIDENCE § 1747, at 195 (James H. Chadbourn rev. ed. 1976)).
65. FED. R. EVID. 803(2) (spontaneous declarations); FED. R. EVID. 803(4) (medical examination statements).
66. White v. Illinois, 112 S. Ct. at 742 n.8.
67. *Id.*
68. *Id.* at 742.

statement offered in the relative calm of the courtroom."[69] Similarly, the Court explained that statements made in the course of a medical examination, where false statements could cause misdiagnosis, carry a substantial degree of reliability.[70] Based on this reasoning, Chief Justice Rehnquist put the petitioner's Confrontation Clause challenge to rest when he stated, "[W]here proffered hearsay has sufficient guarantees of reliability to come within a firmly rooted exception to the hearsay rule, the Confrontation Clause has been satisfied."[71]

## III. THE CONCURRENCE

Justice Thomas, joined by Justice Scalia, concurred in the judgment. Justice Thomas wrote separately, however, to question the evolution of the Court's Confrontation Clause jurisprudence.[72] He argued, "The truth may be that this Court's cases unnecessarily have complicated and confused the relationship between the constitutional right of confrontation and the hearsay rules of evidence."[73] He asserted the critical phrase in the Confrontation Clause is "witnesses against him" and stated that before an understanding of the relationship between the Confrontation Clause and hearsay rules can be reached, the meaning of this phrase must be ascertained.[74]

Justice Thomas criticized the Court's assumptions in prior cases "that all hearsay declarants are 'witnesses against' a defendant within the meaning of the Clause."[75] This assumption, he argued, "is neither warranted nor supported by the history or text of the Confrontation Clause."[76] He maintained that the difficulty involved in interpreting the phrase is a result of the lack of evidence indicating what the drafters intended it to mean.[77]

The United States, as amicus curiae in support of the respondent, argued in support of a strict, narrow reading of the phrase "witnesses against him," stating:

> The common-law right to confrontation, which was incorporated in the Bill of Rights, arose in response to the once-common English practice of using depositions, affidavits, and other similar statements in lieu of live testimony in criminal trials. There is no indication in the historical materials that the common-law confrontation right was meant as a general limitation on the development of the hearsay rule and its exceptions.[78]

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69. *Id.* at 742-43.
70. *Id.* at 743.
71. *Id.*
72. *Id.* at 744 (Thomas, J., concurring).
73. *Id.* (Thomas, J., concurring).
74. *Id.* (Thomas, J., concurring).
75. *Id.* (Thomas, J., concurring) (citing Ohio v. Roberts, 448 U.S. 56 (1980); Lee v. Illinois, 476 U.S. 530 (1986); Idaho v. Wright, 497 U.S. 805 (1990)).
76. *Id.* (Thomas, J., concurring).
77. *Id.* (Thomas, J., concurring).
78. Brief for the United States as Amicus Curiae at 6, White v. Illinois, 112 S. Ct. 736 (1992) (No. 90-6113).

In sum, the United States' assertion was "the historical concerns addressed by the Confrontation Clause do not justify extending that requirement to all out-of-court statements."[79]

The majority opinion rejected this contention as too narrow and an interpretation that would "virtually eliminate [the Confrontation Clause's] role in restricting the admission of hearsay testimony."[80] The interpretation given by the United States, the Court stated, was not viable in light of prior case law.[81]

This narrow interpretation received support, however, from Justice Thomas and Justice Scalia.[82] Justice Thomas criticized the majority for rejecting the suggestion of the United States unnecessarily.[83] Justice Scalia, relying on the plain language of the Confrontation Clause, supported the narrow reading of the phrase in an earlier decision: "'witnesses against him' . . . obviously refers to those who give testimony against the defendant at trial."[84]

The thrust of the constitutional requirements under this narrow interpretation of the Confrontation Clause supported by Justices Thomas and Scalia was a requirement that testimony be taken "infrajudicially, . . . subject to cross-examination—not secret or ex parte away from the accused."[85] Thus, this view supports the idea that the Constitution does not limit what kind of statements may be admitted in this manner, it only prescribes the procedure to be followed.[86] Justice Thomas conceded, however, the conflict between this narrow interpretation of the Confrontation Clause and the Court's precedent would cause difficulty and could render "an improper construction of the Confrontation Clause."[87]

Furthermore, the concurrence, in its examination of the language of the Confrontation Clause, focused on the assertion that the Court, in its recent decisions, implemented standards and limitations that had no basis in the text of the Sixth Amendment.[88] Justice Thomas argued the decisions since *Ohio v. Roberts* have implied the Confrontation Clause bars only unreliable hearsay.[89] This distinction regarding reliability of testimony, he stated, was not made in the text of the Clause.[90] Justice Thomas asserted this issue was more properly undertaken

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79. *Id.*

80. White v. Illinois, 112 S. Ct. at 741.

81. *Id.*

82. *Id.* at 744-46 (Thomas, J., concurring).

83. *Id.* at 744 (Thomas, J., concurring).

84. *Id.* at 745 (Scalia, J., concurring) (quoting Maryland v. Craig, 110 S. Ct. 3157, 3173 (1990) (Scalia, J., dissenting)).

85. *Id.* at 744 (Thomas, J., concurring) (quoting 5 JOHN H. WIGMORE, EVIDENCE §1397, at 159 (James H. Chadbourn rev. 1974)).

86. *Id.* (Thomas, J., concurring). This view was suggested by Justice Harlan in Dutton v. Evans, 400 U.S. 74, 93 (1970) (Harlan, J., concurring).

87. White v. Illinois, 112 S. Ct. at 745 (Thomas, J., concurring).

88. *Id.* at 746 (Thomas, J., concurring).

89. *Id.* (Thomas, J., concurring). "[T]he Court has interpreted the Clause to mean that hearsay may be admitted only under a 'firmly rooted' exception, or if it otherwise bears 'particularized guarantees of trustworthiness.'" *Id.* (quoting Ohio v. Roberts, 448 U.S. 56, 66 (1980)).

90. *Id.* (Thomas, J., concurring).

by the Due Process Clause.[91] "There is no reason to strain the text of the Confrontation Clause to provide criminal defendants with a protection that due process already provides . . . ."[92]

Finally, the concurrence indicated the problems associated with the Court's focus on "firmly rooted" exceptions in recent decisions.[93] Justice Thomas noted the Court's lack of an explanation, in terms of the Confrontation Clause, of a State's decision to allow an exception to the hearsay rule that is not widely recognized.[94] In order to satisfy the Confrontation Clause, he stated, "[T]he State would have to establish in each individual case that hearsay admitted pursuant to the newly created exception bears 'particularized guarantees of trustworthiness,' and would have to continue doing so until the exception became 'firmly rooted' in the common law."[95] This result, he concluded, was not consistent with the Confrontation Clause itself because there is no support for the notion the clause was designed to constitutionalize exceptions to the hearsay rule through their evolution in common law.[96]

Justice Thomas suggested the Court should further examine how the critical phrase, "witnesses against," in the Sixth Amendment Confrontation Clause applies to the myriad of exceptions to the hearsay rule of evidence.[97] He generally advised the Court against confusing constitutional principles and rules of evidence.[98] Although he failed to suggest any particularly workable approach to the reasonable allowance of hearsay evidence, Justice Thomas's principal argument essentially underscored the idea that the Court currently lacks support on which to base its recent decisions.[99] "[I]t is difficult," he argued, "to see how or why the [Confrontation] Clause should apply to hearsay evidence as a general proposition."[100]

## IV. CONCLUSION

*White v. Illinois* will have significant effects in the future, particularly in cases involving sexual abuse of children. The ability to use out-of-court statements under hearsay exceptions for spontaneous declarations and statements made in the course of medical examinations will allow prosecutors alternatives to an inaccessible witness—the abused child.[101] Moreover, prosecutors' ability to

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91. *Id.* at 747 (Thomas, J., concurring).
92. *Id.* (Thomas, J., concurring).
93. *Id.* at 748 (Thomas, J., concurring).
94. *Id.* (Thomas, J., concurring).
95. *Id.* (Thomas, J., concurring).
96. *Id.* (Thomas, J., concurring).
97. *Id.* (Thomas, J., concurring).
98. *Id.* at 744 (Thomas, J., concurring).
99. *Id.* at 745 (Thomas, J., concurring).
100. *Id.* (Thomas, J., concurring).
101. Brief of Amicus Curiae, The Victim Assistance Centre, Inc. at 20-21, White v. Illinois, 112 S. Ct. 736 (1992) (No. 90-6113).

use such statements will likely increase the number of convictions in child sexual abuse cases.[102]

*White v. Illinois* and similar cases involving the out-of-court statements of children who are victims of sexual abuse place two extremely important societal interests at odds. On one hand, our judicial system embraces the objective of the preservation of individual rights and liberties established by the Constitution of the United States. On the other hand, however, there is a strong societal interest in effective law enforcement and the protection of our children. Organizations dedicated to the prevention and treatment of child abuse will be encouraged by this decision because reports of abuse by children who are unable to testify at trial may still be admitted into evidence if they meet the requirements for the hearsay exceptions.[103] Further, child-protection advocates believe these out-of-court statements may be more reliable and accurate than what a child would be able to remember at trial.[104]

Opponents of the *White v. Illinois* decision assert it will result in the conviction of innocent people.[105] They caution that the adoption of an exception for children to the unavailability requirement will create confusion in the minds of jurors and therefore disparate treatment for defendants.[106]

A very positive result of this decision is the effect it will have on the prevention of child abuse. It provides enormous support for the interests of the victims, and may help to reduce the instances of abuse.

Although the policy of child protection supports the decision of the Court in *White v. Illinois* to further extend exceptions to the hearsay rule, some would argue the exceptions have swallowed the rule. The rights of the accused seem to be in jeopardy after *White v. Illinois*. This will be an important area in which courts should observe closely and proceed carefully, in order to maintain the balance of these two important societal interests.

*Elizabeth A. Delagardelle*

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102. Brief of Amicus Curiae, National Association of Criminal Defense Lawyers at 4, White v. Illinois, 112 S. Ct. 736 (1992) (90-6113).

103. Brief of Amicus Curiae, The Victim Assistance Centre, Inc. at 20-21, White v. Illinois, 112 S. Ct. 736 (1992) (90-6113).

104. Brief of Amicus Curiae, The New York Society for the Prevention of Cruelty to Children at 3, White v. Illinois, 112 S. Ct. 736 (1992) (90-6113).

105. Brief of Amicus Curiae, The National Association of Criminal Defense Lawyers at 4, White v. Illinois, 112 S. Ct. 736 (1992) (90-6113).

106. *Id.*