

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Agenda for meeting on October 26, 2009

The meeting will be held at 1 PM on Monday, October 26 at the office of Jenner & Block, 330 North Wabash Avenue, 40th Floor, Chicago, IL. The conference call in number is 888-363-4734, access code 4209525, host code 8994.

1. Approval of minutes of September 22, 2009.
2. Fifth Annual Report.
3. Contract with Loyola University, Appendix 1.
4. Report by David Olson re surveys.
5. Subcommittee reports.

Subcommittee 1: Police and investigations.

James R. Coldren, Jr.
Richard D. Schwind

Geoffrey R. Stone
Eric C. Weis

Discussion of recommendations attached as
Appendices 2 and 3.

Discussion of other recommendations of
subcommittee 1 – report by Mr. Coldren.

Subcommittee 2: Eligibility for capital punishment and proportionality.

Leigh B. Bienen
Kirk W. Dillard

Thomas P. Sullivan
Michael J. Waller

Subcommittee 3: Trial court proceedings.

Jeffrey M. Howard
Boyd J. Ingemunson

Edwin R. Parkinson
Randolph N. Stone

Discussion of recommendations attached as
Appendix 4.

*Subcommittee 4: Post-conviction proceedings, DNA and
general topics.*

Jennifer A. Bishop-Jenkins
Walter Hehner

Charles M. Schiedel
Arthur L. Turner

Discussion of status of CLTF funding for prosecutors
and defense lawyers.

6. Other business.



TPS
10/22/09

Attachments - Appendices 1 - 4.



**ILLINOIS
CRIMINAL JUSTICE
INFORMATION AUTHORITY**

300 W. Adams Street • Suite 700 • Chicago, Illinois 60606 • (312) 793-8550

October 20, 2009

Thomas P. Sullivan
Jenner & Block LLP
330 N. Wabash Avenue
Chicago, IL 60611-7603

Dear Mr. Sullivan:

Enclosed is the renewal agreement between Loyola University Chicago and the Capital Punishment Reform Study Committee. Please sign where indicated and return to my attention. I will obtain the signature of our Acting Executive Director and return a copy to you for your records.

The copy was received by our office on October 15. The effective date remains October 1, even though signatures on our part will be obtained after that date. We can cover any costs that Loyola may incur as part of the project as of October 1.

Thank you and please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "THAHN", with a long horizontal line extending to the right.

Tracy Hahn
Senior Research Analyst
Research & Analysis Unit

Enc.

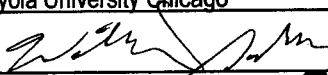
**Appendix 1
(Agenda)**

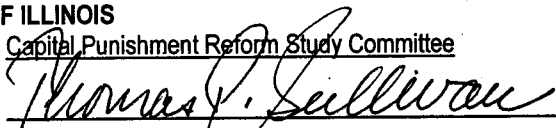
CONTRACT RENEWAL

The undersigned AGENCY and VENDOR (the PARTIES) agree to RENEW the described CONTRACT as follows:

1. DESCRIPTION OF CONTRACT BEING RENEWED: Capital Punishment Reform Study Committee Survey. The primary product of this project is the development and implementation of a survey (or surveys) and analysis that serves the following functions: (1) provides information to criminal justice practitioners and policy makers throughout Illinois and to the citizenry of the State, and (2) makes a contribution to existing criminal justice research. The goal is to publish a written report that serves these functions consistent with the statutory mandate (20 ILCS 3929), whereas the Capital Punishment Reform Study Committee shall study the impact of the various reforms to the capital punishment system enacted by the 93rd General Assembly and annually report to the General Assembly on the effects of these reforms, including
 - (1) The impact of the reforms on the issue of uniformity and proportionality in the application of the death penalty including, but not limited to, the tracking of data related to whether the reforms have eliminated the statistically significant differences in sentencing related to the geographic location of the homicide and the race of the victim found by the Governor's Commission on Capital Punishment in its report issued on April 15, 2002.
 - (2) The implementation of training for police, prosecutors, defense attorneys, and judges recommended by the Governor's Commission on Capital Punishment.
 - (3) The impact of the various reforms on the quality of evidence used during capital prosecutions.
 - (4) The quality of representation provided by defense counsel to defendants in capital prosecutions.
 - (5) The impact of the various reforms on the costs associated with the administration of the Illinois capital punishment system.
2. TERMS AND CONDITIONS: This RENEWAL is on the same terms and conditions as the CONTRACT being renewed except as changed and described herein. All required certifications and disclosures have been made and are current.
3. RENEWAL TERM: This RENEWAL shall begin October 1, 2009 and shall run through June 30, 2010.
4. COST (DESCRIBE CALCULATION AND/OR COST BASIS, IF APPLICABLE): Not to exceed \$45,000.
5. ATTACHMENTS:
Certifications
6. CHANGES FROM CONTRACT BEING RENEWED (INCLUDING COMPENSATION): --

IN WITNESS WHEREOF, the AGENCY and the VENDOR have caused this RENEWAL to be executed on the dates shown below by representatives authorized to bind the respective PARTIES.

VENDOR
 (Vendor) Loyola University Chicago
 Signature 
 Printed Name William K. Sellers, Ph.D.
Research Services Director
 Title _____ Date 10/12/09
 Address 1032 N. Sheridan Road
Granada Center, Suite 400
Chicago IL 60660
 Phone 773-588-2478 Fax 773-508-8942
 E-mail wsellers@luc.edu

STATE OF ILLINOIS
 (Agency) Capital Punishment Reform Study Committee
 Signature 
 Printed Name Thomas P. Sullivan
 Title Committee Chairman Date 10/22/09

 Illinois Criminal Justice Information Authority
 Official Signature _____
 Printed Name Jack Cutrone
 Title Acting Executive Director Date _____
 Address 300 W. Adams, Suite 700
Chicago, IL 60606
 Phone 312/793/8550 Fax 312/793/8422

STATE USE ONLY

NOT PART OF CONTRACTUAL PROVISIONS

PBC# _____

Contract # _____

Project Title _____

Procurement Method (IFB, RFP, Small, etc): _____

Award Code: _____

IPB Publication Date: _____

IPB Ref. # _____

Subcontractor Utilization? Yes No

Subcontractor Disclosure? Yes No

Funding Source _____

Obligation # _____

CMS Program Compliance _____

Fiscal Compliance _____

Legal Compliance _____

Executive Compliance _____

CERTIFICATIONS

LEGAL ABILITY TO CONTRACT: Vendor certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:

1. Vendor, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Contract.
2. Vendor is not in default on an educational loan (5 ILCS 385/3).
3. Vendor (if an individual, sole proprietor, or partner) has informed the director of the Agency in writing if he/she was formerly employed by that agency and has received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges that contracts made without the appropriate filing with the Auditor General are not payable from the "contractual services" or other appropriation line items. Vendor has not received an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, 40 ILCS 5/14-108.3 and 40 ILCS 5/16-133.3, and acknowledges that contracts in violation of Section 15a of the State Finance Act are not payable from the "contractual services" or other appropriation line items (30 ILCS 105/15a).
4. Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer, and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit performing substantially similar work that will be performed under this contract (30 ILCS 500/25-80).
5. Vendor has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has Vendor made an admission of guilt of such conduct that is a matter of record (30 ILCS 500/50-5).
6. If Vendor has been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business (30 ILCS 500/50-10).
7. If Vendor, or any officer, director, partner, or other managerial agent of Vendor, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the State shall declare the Contract void if this certification is false (30 ILCS 500/50-10.5).
8. Vendor and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Vendor and its affiliates acknowledge the State may declare the Contract void if this certification is false (30 ILCS 500/50-11) or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt (30 ILCS 500/50-60).
9. Vendor and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act (30 ILCS 500/50-12) and acknowledges that failure to comply can result in the Contract being declared void.
10. Vendor certifies that it has not committed a willful or knowing violation of the Environmental Protection Act (relating to Civil Penalties under the Environmental Protection Act) within the last five years, and is therefore not barred from being awarded a contract. If the State later determines that this certification was falsely made by the Vendor, the Vendor acknowledges that the State may declare the Contract void (30 ILCS 500/50-14).
11. Vendor has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has Vendor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (30 ILCS 500/50-25).
12. Vendor is not in violation of the "Revolving Door" section of the Illinois Procurement Code (30 ILCS 500/50-30).
13. Vendor will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers or employees of the State (30 ILCS 500/50-40, 50-45, 50-50).
14. In accordance with the Steel Products Procurement Act, steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring agency grants an exception (30 ILCS 565).
15. Vendor will, pursuant to the Drug Free Workplace Act, provide a drug free workplace and Vendor and its employees shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance during the performance of the Contract. This certification applies to contracts of \$5000 or more with individuals; and to entities with 25 or more employees (30 ILCS 580).

16. Neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to contracts that exceed \$10,000 (30 ILCS 582).
17. Vendor has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States (720 ILCS 5/33 E-3, E-4).
18. Vendor complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
19. Vendor does not pay dues to, or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club" (775 ILCS 25/2).
20. Vendor complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been or will be produced in whole or in part by forced labor, or indentured labor under penal sanction (30 ILCS 583).
21. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the Contract have been produced in whole or in part by the labor or any child under the age of 12 (30 ILCS 584).
22. Vendor certifies that it is not in violation of Section 50-14.5 of the Illinois Procurement Code (30 ILCS 500/50-14.5) that states: "Owners of residential buildings who have committed a willful or knowing violation of the Lead Poisoning Prevention Act (410 ILCS 45) are prohibited from doing business with the State until the violation is mitigated".
23. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
24. In accordance with Public Act 095-0307, all information technology, including electronic information, software, systems and equipment, developed or provided under this contract must comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at www.dhs.state.il.us/iitaa.
25. Vendor has disclosed if required, on forms provided by the State, and agrees it is under a continuing obligation to disclose to the State, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or which would prohibit Vendor from having or continuing the Contract. This includes, but is not limited to conflicts under the "Infrastructure Task Force Fee Prohibition" section of the State Finance Act (30 ILCS 105/8.40), Article 50 of the Illinois Procurement Code (30 ILCS 500/50), or those which may conflict in any manner with the Vendor's obligation under this Contract. Vendor shall not employ any person with a conflict to perform under this Contract. If any elected or appointed State officer or employee, or the spouse or minor child of same has any ownership or financial interest in the Vendor or the Contract, Vendor certifies it has disclosed that information to the State if required, on forms provided by the State, and any waiver of the conflict has been issued in accordance with applicable law and rule. A waiver is required if:
- a) the person intending to contract with the State, their spouse or child: (i) holds an elective office in Illinois; (ii) holds a seat in the Illinois General Assembly; (iii) is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority; or holds an appointed position or is employed in any of the offices or agencies of the State government and who receives compensation for such employment in excess of 60% of the salary of the Governor (currently \$106,447.20). (The conflict of interest threshold of 60% of the Governor's salary set forth in Section 50-13 does not apply to elective office holders, legislators, and officers or employees of the Capital Development Board or the Illinois Toll Highway Authority.);
 - b) the contract is with a firm, partnership, association or corporation in which a person referenced in a) above receives more than 7.5% of the total distributable income or an amount in excess of the salary of the Governor (currently \$177,412.00).
 - c) the contract is with a firm, partnership, association or corporation in which a person referenced in b) above, together with their spouse or minor child, receives more than 15% in the aggregate of the total distributable income or an amount in excess of 2 times the salary of the Governor (currently \$354,824.00) from the firm, partnership, association or corporation.
26. Vendor, as defined in Public Act 95-971, certifies that it has read, understands, and is in compliance with the Act and will not make a contribution that will violate the Act. In general, Public Act 95-0971 contains new registration and reporting requirements for certain Vendors, as well as limitations on political contributions by certain Vendors and their affiliates. These requirements shall be effective for the duration of the term of office of the incumbent Governor or for a period of 2 years after the end of the contract term, whichever is longer.

Vendor certifies, in accordance with Public Act 95-971, as applicable:

Vendor is not required to register as a business entity with the State Board of Elections.

or

Vendor has registered as a business entity with the State Board of Elections and acknowledges a continuing duty to update the registration as required by the Act. **A copy of the official certificate of registration as issued by the State Board of Elections is attached.**

Vendor acknowledges that the State may declare this Contract void without any additional compensation due to the Vendor if this foregoing certification is false or if the Vendor (or any of its Affiliated Persons or Entities) engages in conduct that violates Public Act 95-0971.

TAXPAYER IDENTIFICATION NUMBER

I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).
 - If you are an individual, enter your name and SSN as it appears on your Social Security Card.
 - If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.
 - If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the d/b/a on the business name line and enter the owner's SSN or EIN.
 - If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).
 - For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.

Name: Loyola University of Chicago

Business Name: _____

Taxpayer Identification Number:

Social Security Number _____
or
Employer Identification Number 36-1408475

Legal Status (check one):

- | | |
|---|---|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Governmental |
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> Nonresident alien |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Estate or trust |
| <input type="checkbox"/> Legal Services Corporation | <input type="checkbox"/> Pharmacy (Non-Corp.) |
| <input checked="" type="checkbox"/> Tax-exempt | <input type="checkbox"/> Pharmacy/Funeral Home/Cemetery (Corp.) |
| <input type="checkbox"/> Corporation providing or billing medical and/or health care services | <input type="checkbox"/> Limited Liability Company (select applicable tax classification) |
| <input type="checkbox"/> Corporation NOT providing or billing medical and/or health care services | <input type="checkbox"/> D = disregarded entity |
| | <input type="checkbox"/> C = corporation |
| | <input type="checkbox"/> P = partnership |

Signature: [Handwritten Signature]

Date: 10/12/09



**ILLINOIS
CRIMINAL JUSTICE
INFORMATION AUTHORITY**

120 South Riverside Plaza • Suite 1016 • Chicago, Illinois 60606 • (312) 793-8550

LOYOLA UNIVERSITY
CHICAGO

2009 OCT -9 P 1:47

OFFICE OF UNIV.
RESEARCH SERVICES

10-9

September 10, 2009

Samuel Attoh, Ph.D.
Dean, Graduate School
& Associate Provost for Research Centers
Office of Research Services
Loyola University Chicago
6526 N. Sheridan Road
Chicago, IL 60626

Caroline Kappers

RE: Capital Punishment Reform Study Committee

Dear Dr. Attoh: *Caroline*

Enclosed is the renewal contract for services for the research project, Capital Punishment Reform Study Committee Survey. This project is under the direction of Dr. David Olson.

The term of the agreement is October 1, 2009 through June 30, 2010. The award amount is \$45,000.

We look forward to working with Loyola on this important project. Please obtain signatures on behalf of Loyola University where indicated and return to me. I will obtain the Committee Chairman's signature and our Executive Director's signature and return a copy for your records.

Thank you and please contact me if you have any questions.

Sincerely,

Tracy L. Hahn
Senior Research Analyst
Research and Analysis Unit

Enc - contract renewal

Original recommended language:

Legislation should be enacted requiring that whenever practicable the administrator of an eyewitness lineup or photo spread should not be aware of which member of the array is the police suspect.

Chip's revised language (with one revision, from Geof Stone):

Legislation should be enacted that requires blind administration of lineups and that permits several different administration options, such as: live lineups, photo-spread lineups using the 'folder' method, or computer-generated lineups. The double blind method should be the ~~preferred~~ required method, so that the administrator of the lineup is not aware of which individual in a lineup array is the police suspect. When an independent administrator is not available, a photo array must be used (the folder method, or a computer-generated method), and the lineup procedure must insure that the lineup administrator does not know the point in the sequence of photos that the suspect's photo appears, and does not know which photo a witness is viewing at any time during the procedure.

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

POLICE AND INVESTIGATIONS SUBCOMMITTEE (#1)

Minutes: Subcommittee Meeting, October 13, 2009, via conference call

Subcommittee Members Present: James Coldren (Chair), Geoffrey Stone, Eric Weiss

Absent: Rick Schwind

Mr. Coldren called the meeting to order at 10:15 a.m., with a quorum present. He briefly discussed the meeting agenda, the draft Subcommittee recommendations regarding police lineups in homicide cases (Attachment A), and invited Mr. Weiss, as the newest Subcommittee member, to ask for any background information or clarification regarding the meeting materials before the discussion began. Mr. Weiss explained that he had reviewed the materials and didn't have any specific questions at the moment.

Mr. Coldren explained that both he and Mr. Stone had registered their agreement with the Subcommittee recommendations in prior discussions and meetings, then suggested that the Subcommittee take up the seven recommendations one-by-one, and record each member's comments and vote to accept or reject the recommendations. All present agreed.

Mr. Coldren introduced the first recommendation for a blind administrator, or a blind procedure, for all line-ups in police facilities for homicide cases. Mr. Weiss asked for a clarification that "show ups" were not included in this recommendation, and both Mr. Coldren and Mr. Stone agreed.

Following that initial discussion, Mr. Weiss explained that he agreed with recommendations 1 through 4, and recommendation 6 on the document provided (Attachment A), and that he had concerns and questions about recommendation number 5, dealing with audio or video recording of police line-ups in homicide cases; he explained that his main concern was with logistics and feasibility, not with the merit of the suggestion, which he agreed with in principle. He felt that small jurisdictions (e.g., municipalities with populations of 4,000 or less, with independent police departments) would often encounter logistical difficulties with a requirement to video tape or audio tape police line-ups in police facilities in all homicide cases.

The Subcommittee members present discussed this issue for several minutes, and the discussion centered on different scenarios and different situations, and whether it would be reasonable to expect a small police department to record the line-up in different circumstances.

Mr. Stone asked whether the current provision in recommendation number 5 (see Attachment A), to record line-ups, when feasible, and to prepare a report for the court when such a recording was not feasible, did not satisfy the concerns over practicality. This would not remove the possibility of a court

Minutes: Subcommittee Meeting, October 13, 2009

Page 1

battle or argument over whether police did everything they possibly could to record the lineup, thus complicating rather than aiding a court proceeding.

The members present decided to add language to recommendation number 5 stating that the recommendation would go into effect only after the Illinois Police Training and Standards Board and the Illinois Attorney General's Office developed model procedures for recording line-ups in police facilities in homicide cases. All members present agreed to this modification (see Attachment B).

All members present also agree that the final paragraph in the subcommittee's recommendation, that the Illinois legislature modify the eavesdropping law to accommodate this set of recommendations, should remain as written.

See Attachment A for a copy of the Subcommittee recommendations discussed at this meeting, and see Attachment B for a copy of the modified recommendation that the Subcommittee will forward to the full Study Committee, upon review and comment by all Subcommittee members.

The meeting adjourned at approximately 10:40 a.m.

Attachment A

Capital Punishment Reform Study Committee – Police and Investigations Subcommittee
Recommendations Regarding Police Lineups in Homicide Cases

The Illinois Legislature should enact legislation that requires the following regarding administration of suspect lineups in homicide cases:

1. Use of a blind method in all lineup administrations, so that the administrator of the lineup is not aware which individual viewed by a witness in a lineup array is the police suspect,
2. Blind administration (blind administrators or, in the absence of blind administrators, blind procedures) of lineup methods in homicide cases, and that permits several different administration options, such as: live lineups, photo-spread lineups using the 'folder' method, or computer-generated lineups; if a blind administrator or a blind procedure is not feasible, then there must be a contemporaneously prepared written report explaining why blind administration was not used,
3. When an independent (blind) administrator is not available, a photo array must be used (the folder method, or a computer-generated method), and the lineup procedure must insure that the lineup administrator does not know the point in the sequence of photos that the suspect's photo appears, and does not know which photo a witness is viewing at any time during the procedure,
4. Sequential presentation of suspects, photographs or images, if a blind administration method is used,
5. Video and audio taping of all eyewitness identification procedures that occur within a police facility; if video or audio taping is not feasible, then there must be a contemporaneously prepared written report explaining why the video or audio taping was not feasible, and
6. Training for all Illinois law enforcement agencies that covers, at a minimum:
 - a. Research evidence regarding lineup administration,
 - b. The three primary blind administration methods (live, folder, computer photo array),
 - c. Details of lineup administration and recordkeeping, and
 - d. Recording of lineups.

The Illinois legislature should also amend the existing eavesdropping law to allow for recording of lineups in homicide cases without notifying the suspect or fillers in the lineups.

Attachment B

Capital Punishment Reform Study Committee – Police and Investigations Subcommittee
Modified Recommendations Regarding Police Lineups in Homicide Cases

The Illinois Legislature should enact legislation that requires the following regarding administration of suspect lineups in homicide cases:

1. Use of a blind method in all lineup administrations, so that the administrator of the lineup is not aware which individual viewed by a witness in a lineup array is the police suspect,
2. Blind administration (blind administrators or, in the absence of blind administrators, blind procedures) of lineup methods in homicide cases, ~~that permit several different administration options, such as: live lineups, photo-spread lineups using the 'folder' method, or computer-generated lineups; if a blind administrator or a blind procedure is not feasible, then there must be a contemporaneously prepared written report explaining why blind administration was not used,~~

Deleted: and
Deleted: s
3. When an independent (blind) administrator is not available, a photo array must be used (the folder method, or a computer-generated method), and the lineup procedure must insure that the lineup administrator does not know the point in the sequence of photos that the suspect's photo appears, and does not know which photo a witness is viewing at any time during the procedure,
4. Sequential presentation of suspects, photographs or images, if a blind administration method is used,
5. Video and audio taping of all eyewitness identification procedures that occur within a police facility; if video or audio taping is not feasible, then there must be a contemporaneously prepared written report explaining why the video or audio taping was not feasible (this recommendation shall take effect only after the Illinois Police Training and Standards Board and the Illinois Attorney General's Office develop a model procedure for video and audio recording of line-ups in police facilities in homicide cases), and
6. Training for all Illinois law enforcement agencies that covers, at a minimum:
 - a. Research evidence regarding lineup administration,
 - b. The three primary blind administration methods (live, folder, computer photo array),
 - c. Details of lineup administration and recordkeeping, and
 - d. Recording of lineups.

The Illinois legislature should also amend the existing eavesdropping law to allow for recording of lineups in homicide cases without notifying the suspect or fillers in the lineups.

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE
MINUTES OF SUBCOMMITTEE NO. 3 MEETING

January 9, 2009

Subcommittee 3 met at the Law Office of the Cook County Public Defender, Chicago, Illinois, on January 9, 2009. Attending were subcommittee members Jeffrey M. Howard, Edwin R. Parkinson (via teleconference), and Boyd J. Ingemunson (via teleconference).

Ed Parkinson brought to the subcommittee's attention that funding in the Capital Litigation Trust Fund (CLTF) for prosecution of capital uses outside of Cook County had been eliminated. The subcommittee voted to recommend restoring the funding in the CLTF for prosecution of capital cases outside of Cook County.

The subcommittee discussed any recommendations the subcommittee believes it should make for inclusion in the upcoming annual report. All the recommendations the subcommittee believes should be included in the annual report have been made throughout the year and now need to be discussed and voted upon by the entire Capital Punishment Reform Study Committee.

A jury instruction concerning cross-racial identification was discussed. This instruction is attached as Attachment 11. The subcommittee voted two to one that the cross racial instruction is not necessary. However, the subcommittee decided that this instruction should be submitted before the full CPRSC for its consideration.

ATTACHMENT - 11

In this case, the defendant, _____ (*insert name*), is of a different race than _____ (*insert name of identifying witness*), the witness who has identified [him] [her]. You may consider, if you think it is appropriate to do so, whether the fact that the defendant is of a different race than the witness has affected the accuracy of the witness' original perception or the accuracy of a later identification. You should consider that in ordinary human experience, some people may have greater difficulty in accurately identifying members of a different race than they do in identifying members of their own race.

You may also consider whether there are other factors present in this case which overcome any such difficulty of identification. [For example, you may conclude that the witness had sufficient contacts with members of the defendant's race that [he] [she] would not have greater difficulty in making a reliable identification.]

TPS

— Original Message —

From: Jeffrey Howard <jhoward@cookcountygov.com>

To: Sullivan, Thomas P

Sent: Wed Jul 15 11:38:33 2009

Subject: Fwd: Jury Instructions (Attachments 1-11)

Here are the jury instruction attachments my sub-comm submitted. Attachment 9 was amended so that death is not the sentence. However, that amendment is not reflected in the attachment. We discussed amending attachment 9 at a full comm mtg, so your minutes should reflect that amendment. The only change b/t attachment 9 and the IPI is the substitution of "considering" for "weighing." Jeff

ATTACHMENT - 1

“If any one of you believes that a mitigating factor is supported by the evidence, you may consider it in arriving at your decision even though all or some of the other jurors do not believe the mitigating factor is supported by the evidence.”

This instruction is consistent both with our new statute and with the *Maryland v. Mills* principle. If the Committee is not willing to accept these as the standard instructions, the Committee Comments should at least reflect the Committee’s determination that a trial judge would not violate the law by giving an instruction on nonunanimity as to the existence and importance of mitigating factors.

ATTACHMENT - 2

IPI 3.15 should also be amended to add a final sentence which states as follows:

“Eyewitness testimony should be carefully examined in light of other evidence in the case.”

ATTACHMENT - 3

The State has introduced the testimony of an in-custody informant as to a statement allegedly made by the defendant. Such testimony is to be examined and weighed by you with care. Whether the in-custody informant's testimony has been affected by interest or prejudice against the defendant is for you to determine. In making this determination, you should consider: (1) whether the in-custody informant has received anything, or expects to receive anything, in exchange for his/her testimony; (2) any other case in which the in-custody informant testified or offered statements against an individual but was not called, and whether the statements were admitted in the case, and whether the in-custody informant received any deal, promise, inducement, or benefit in exchange for that testimony or statement; (3) whether the in-custody informant has ever changed his/her testimony; (4) the criminal history of the in-custody informant; and (5) any other evidence relevant to the in-custody informant's credibility.

ATTACHMENT - 4

“You have before you evidence that the defendant made a statement relating to the offenses charged in the indictment. It is for you to determine [whether the defendant made the statement and, if so,] what weight should be given to the statement. In determining the weight to be given to a statement, you should consider all of the circumstances under which it was made. You should pay particular attention to whether or not the statement is recorded, and if it is, what method was used to record it. An electronic recording that contains the defendant’s actual voice or a statement written by the defendant may be more reliable than a non-recorded summary.”

ATTACHMENT - 5

“If any one of you finds that a mitigating factor listed in these instructions is supported by the evidence, you must treat that mitigating factor as a reason why the defendant should not be sentenced to death. You may not treat that listed mitigating factor as a reason why the defendant should be sentenced to death.”

ATTACHMENT - 6

Under the law, the defendant shall be sentenced to death if you unanimously find after considering the factors in aggravation and mitigation that death is the appropriate sentence.

If after considering the factors in aggravation and mitigation one or more jurors determines that death is not the appropriate sentence, the court shall impose a sentence [(other than death) (of natural life imprisonment, and no person serving a sentence of natural life imprisonment can be paroled or released, except through an order by the Governor for executive clemency)].

ATTACHMENT - 7

In deciding whether the defendant should be sentenced to death, you should consider all the aggravating factors supported by the evidence and all the mitigating factors supported by the evidence.

Aggravating factors are reasons why the defendant should be sentenced to death. Mitigating factors are reasons why the defendant should not be sentenced to death. Aggravating factors include:

First:

(Insert any statutory aggravating factor or factors found by the jury at the first stage of the death penalty hearing)

Second: Any other reason supported by the evidence why the defendant should be sentenced to death.

Where there is evidence of an aggravating factor; the fact that such aggravating factor is not a factor specifically listed in these instructions does not preclude your consideration of the evidence.

Mitigating factors include:

First: [(Any or all of the following) (The following)] is supported by the evidence:

The defendant has no significant history of prior criminal activity.

The murder was committed while the defendant was under the influence of an extreme mental or emotional disturbance, although not such as to constitute a defense to prosecution.

The murdered person was a participant in the defendant's homicidal conduct or consented to the homicidal act.

The defendant acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm.

The defendant was not personally present during the commission of the act or acts causing death.

The defendant's background includes a history of extreme emotional or physical abuse.

The defendant suffers from a reduced mental capacity.

ATTACHMENT - 7 (continue)

Second: Any other reason supported by the evidence why the defendant should not be sentenced to death.

Where there is evidence of a mitigating factor, the fact that such mitigating factor is not a factor specifically listed in these instructions does not preclude your consideration of the evidence.

If you unanimously determine from your consideration of all the evidence after considering the factors in aggravation and mitigation that death is the appropriate sentence, then you should sign the verdict requiring the court to sentence the defendant to death.

If after considering the factors in aggravation and mitigation one or more jurors determine that death is not the appropriate sentence, then you should sign the verdict requiring the court to impose a sentence [(other than death) (of natural life imprisonment)].

ATTACHMENT - 10

“Psychological studies have shown that indicating to a witness that a suspect is present in an identification procedure or failing to warn the witness that the perpetrator may or may not be in the procedure increases the likelihood that the witness will select one of the individuals in the procedure, even when the perpetrator is not present. Thus, such behavior on the part of the procedure administrator tends to increase the probability of a misidentification.

This information is not intended to direct you to give more or less weight to the eyewitness identification evidence offered by the state. It is your duty to determine whether that evidence is to be believed. You may, however, take into account the results of the psychological studies, as just explained to you, in making that determination.”

ATTACHMENT - 11

In this case, the defendant, _____ (*insert name*), is of a different race than _____ (*insert name of identifying witness*), the witness who has identified [him] [her]. You may consider, if you think it is appropriate to do so, whether the fact that the defendant is of a different race than the witness has affected the accuracy of the witness' original perception or the accuracy of a later identification. You should consider that in ordinary human experience, some people may have greater difficulty in accurately identifying members of a different race than they do in identifying members of their own race.

You may also consider whether there are other factors present in this case which overcome any such difficulty of identification. [For example, you may conclude that the witness had sufficient contacts with members of the defendant's race that [he] [she] would not have greater difficulty in making a reliable identification.]