

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Amended minutes of meeting March 4, 2008

The twenty-eighth meeting of the Capital Punishment Reform Study Committee was held at the Illinois Criminal Justice Information Authority, 300 W. Adams, Chicago, Illinois from noon to 2:15 P.M.

Those present

Not present

Leigh B. Bienen

Kirk W. Dillard

Jennifer Bishop-Jenkins

Arthur L. Turner

James R. Coldren, Jr.

Jeffrey M. Howard

T. Clinton Hull (via teleconference)

Boyd J. Ingemunson (via teleconference)

Gerald E. Nora (via teleconference)

Edwin R. Parkinson (via teleconference)

Charles M. Schiedel (via teleconference)

Richard D. Schwind

Geoffrey R. Stone (via teleconference)

Randolph N. Stone (via teleconference)

Thomas P. Sullivan

Michael J. Waller (via teleconference)

Also present: David E. Olson; Allan R. Sincox, Illinois Appellate Defender Office, and member, Illinois Laboratory Advisory Committee; and Patrick D. McAnany, Illinois Coalition to Abolish the Death Penalty.

The minutes of the Committee meeting held on December 11, 2007 were approved as drafted.

The members welcomed newly appointed Ms. Bishop-Jenkins, appointed by Governor, assigned to Subcommittee 4.

1. Committee funding for FYE 6/30/08 and 6/30/09.

At the meeting on January 28, 2008 it was agreed that Messrs. Dillard and Turner would introduce bills in the Senate and House, requesting \$250K for the Committee for the F/Y/E 6/30/09, to be included within the CJIA appropriation. Because neither Mr. Dillard nor Mr. Turner was present, it was agreed that Mr. Sullivan will contact them to determine the status of the bills, and include the information in these minutes. Mr. Sullivan learned that Mr. Dillard has introduced a

bill in the Senate for \$250K funding for the Committee for the fiscal years ended 6/30/08 and 6/30/09, and that the bill has been assigned to the Rules Committee, and that no bill has been introduced in the House.

2. *Extension of Committee's tenure to 12/31/09.*

At the meeting on January 28, 2008 it was agreed that Messrs. Dillard and Turner will introduce bills to extend the Committee's tenure through December 31, 2009. Neither Mr. Dillard nor Mr. Turner was present, hence it was agreed that Mr. Sullivan will contact them to determine the status of the shell bills, and include the information in these minutes. Mr. Sullivan learned that Mr. Dillard introduced a bill in the Senate to extend the Committee's tenure through December 31, 2009, that the bill has been assigned to the Rules Committee, and that no bill has been introduced in the House.

3. *David Olson's data re trends in prison sentences in first degree murder cases.*

Mr. Olson circulated charts, attached as Appendix 1, illustrating the trends in the number and characteristics of prison sentences imposed on those convicted of first degree murder in Illinois during fiscal years

1998 to 2007. There was a discussion about the relationship between the Illinois Truth in Sentencing Act (TISA) (730 ILCS 5/3-6-3) and the reduction in the numbers of capital and life sentences. Messrs. Nora, Parkinson, Schwind and Waller stated that, to the best of their knowledge and belief, the challenges to the validity of the TISA, and unresolved questions as to whether the TISA was valid and operable in Illinois, did not affect prosecutors' decisions as to whether or not they sought the death penalty in first degree murder cases.

There was agreement that when the validity of the TISA was confirmed, the number of life sentences decreased, because (1) there was then no provision for parole or good time credit, so that the terms of years to be served were not subject to later reduction, and (2) in many cases when the number of years of the sentences were added to the defendants' ages, the sentences were in reality lifetime sentences.

Mr. Olson pointed out that the disparity between capital sentences imposed in urban and rural communities, found during the 1990s by the experts retained by the Governor's Commission, has diminished in the 2000s. However, Mr. Olson's charts do not include the total number of

cases that were capital eligible during the periods involved, nor the race of the defendants or victims.

4. *Statistics provided by Mr. Schwind relating to capital sentences imposed since January 2003.*

Mr. Schwind called attention to statistics concerning the 14 men who have received capital sentences since the Governor Ryan granted clemency to all death row inmates in January 2003 through December 31, 2007:

Defendants: 8 white, 6 African-American.

Victims: 9 white, 3 A-A, 1 Hispanic, 1 Asian.

Number of persons killed: 2 or more in 8 cases, 1 in 6 cases.

Area of murders: 9 urban, 5 rural. Collar counties of DuPage, Kane and Will are considered urban.

5. *The General Assembly's direction that the Committee report on geographic and racial differences in capital sentencing.*

Mr. Sullivan raised the question as to how the Committee should proceed in order to fulfill its mandate provided in the Capital Punishment Reform Committee Study Act, 20 ILCS 3939/2(b)(1):

“(b) The 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. Each report shall include:

(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."

The regional and racial disparities are discussed in the Governor's Commission Report at pages 167-68; the study by the experts retained by the Governor's Commission are contained in the Technical Appendix to the Report, and at 81 Oregon Law Review 39 (2002).

The members of the Committee agreed that in order for the Committee to respond to the statutory directive, it is necessary that the Committee collect statewide data as to all indictments for first degree murder in cases that were/are capital eligible. Provision for a portion of this data collection has been made by the statute enacted by the General Assembly and approved by the Governor in 2007 (20 ILCS 3930/7.6), creating a Capital Crimes Database. However, no funds have been

provided to collect, analyze and store the data. Accordingly, unless and until funding is provided for the collection, reporting, analyzing processes and storage, the Committee is impaired in responding to its statutory mandate.

6. *David Olson's surveys to State's Attorneys and Public Defenders.*

Mr. Olson reported that letters from Messrs. Sullivan and Schwind (Appendices 2 and 3), followed by the survey documents (Appendices 4 and 5), have been sent to all Illinois State's Attorneys and Public Defenders, as well as the offices of the Attorney General and the State Appellate Prosecutor and Defender. He has received about 30 responses from State's Attorneys. He will provide a further report at our next meeting.

7. *Fourth Annual Report.*

Mr. Sullivan reported that he has received drafts from each of the four subcommittees with suggestions for the Committee's Fourth Annual Report to the General Assembly. Mr. Sullivan will circulate a

draft of the report to all members prior to the next full committee meeting.

8. *Reports of subcommittees.*

(1) *Report of subcommittee 1– Police and investigations.*

Mr. Coldren reported that the subcommittee met recently to discuss projects for the coming year. As noted in the Committee’s minutes of January 28, 2008, Mr. Coldren has distributed a list of suggested readings regarding eyewitness identification procedures (attached to the Committee’s minutes of January 28, 2008 as Appendix 2), and the subcommittee plans to speak with various experts on that subject.

Mr. Schwind stated that he has spoken with Judge Michael Toomin about training for judges who try capital cases, and that the subcommittee members plan to speak with Judge Toomin again on this topic.

Mr. Sullivan asked that the subcommittee (1) make a recommendation concerning the use of blind administrators to lineup and photo spread procedures, and (2) speak with Michael Chasen, Deputy Chief of the CPD Detective Division, or his successor, and his

superior Deputy Chief of Investigative Services, Steven Peterson, relating to eyewitness identification procedures used by the CPD, and new or proposed regulations on the subject.

(2) Report of subcommittee 2 - Eligibility for capital punishment and proportionality.

Ms. Bienen reported that the subcommittee has not met since the last full Committee meeting, but has been in communication with Mr. Olson concerning the surveys he has sent to State's Attorneys and Public Defenders.

Ms. Bienen stated that the subcommittee has received first degree murder indictments from many but not all State's Attorneys for the period January 1, 2003 to December 31, 2006. Messrs. Parkinson, Schwind and Waller agreed to assist in contacting the delinquent State's Attorneys who have not yet responded; Ms. Bienen will identify the counties for them.

After the State's Attorneys have responded to Mr. Olson's surveys, the Committee will send a request to all State's Attorneys for their 2007 first degree murder indictments.

(3) Report of subcommittee 3 - Trial court proceedings.

Mr. Howard reported that the subcommittee has not met since the last full Committee meeting. One of the topics the subcommittee will examine this year is proposed pattern jury instructions (1) relating to the eligibility and sentencing phases, and (2) for the guilt/innocence phase, relating to testimony of eyewitness identifications, jailhouse informants, and statements made by defendants that were not recorded electronically.

(4) Report of subcommittee 4 - Post-conviction proceedings, DNA and general topics.

Mr. Schiedel introduced Allan Sincox, who is employed by the Illinois Appellate Defender, and is the Appellate Defender's appointee to the Illinois Laboratory Advisory Committee (ILAC). Copies of the ILAC reports for 2006 and 2007 are attached as Appendices 6 and 7. A copy of the Illinois State Police "FY2007 DNA Testing Accountability Report" is attached as Appendix 8.

Mr. Sincox pointed out that the ILAC had made three substantive recommendations in its 2007 Annual Report, none of which has been acted upon by either the Governor or the Illinois General Assembly:

- The first is a need for reforms to “unacceptable salary discrepancies which have developed among the leadership of Illinois’ scientific laboratories.”
- The second is that the Illinois legislature require laboratories engaging in post-conviction DNA analysis to be accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) or equivalent accrediting body.
- The third relates to “an online Illinois Services Database that allows law enforcement, public health, and homeland security personnel to respond more appropriately to potential threats by researching the capabilities and service provided by Illinois laboratories.”

Mr. Sincox stated that the Illinois Auditor General is the designated oversight agency for all Illinois state forensic laboratories.

The members agree that we need more information about the Illinois forensics labs, both governmental and privately owned.

Ms. Bishop-Jenkins agreed that she will contact ILAC Chair John Collins of the DuPage County Crime Lab, and/or April Deatley, ILAC Secretary, and advise the other members of Subcommittee 4 if and when meetings or telephone conferences have been arranged.

9. *Other business.*

(1) *Report of Ms. Bishop-Jenkins.*

Ms. Bishop-Jenkins submitted a memorandum dated March 4, 2008, entitled “A summary of victim issue concerns, especially related to capital murder cases,” attached as Appendix 9. After discussion, the members agreed that the issues raised in Ms. Bishop-Jenkins’ memorandum were important, and require action by various public and private agencies, but appear to be outside the statutory authority and responsibility of this Committee.

(2) *Elliot Slosar’s research on “Costs of Capital Punishment in Illinois.”*

Ms. Bishop-Jenkins distributed a document entitled “Costs of Capital Punishment in Illinois,” research compiled by Elliot Slosar, attached as Appendix 10.

Messrs. Sullivan and Schwind pointed out that Mr. Slosar's research deals only with the gross costs attributed to capital cases, which is of limited value, because it fails to analyze the extra or additional costs that are incurred when a first degree murder case is prosecuted as a capital case, over and above the costs that would have been incurred had the case been prosecuted as a non-capital case. Mr. Olson observed that these are known as "marginal costs."

Ms. Bienen stated that some years ago a study was done in New Jersey that analyzed the cost of the reimposition of capital prosecutions in New Jersey.

(3) *Article regarding the deterrent effect of capital punishment.*

Mr. Schwind distributed an article from the New York Times dated November 18, 2007, written by Adam Liptak, entitled "Does Death Penalty Save Lives? A New Debate." The article relates to studies conducted during the past decades by economists, based upon which the author contends that there is a direct causal relationship between the number of executions and homicide rates. Mr. Liptak's article points out

that the validity of the economists' studies and conclusions are a subject of ongoing debate.

10. Next meeting – Tuesday, April 8, 2008, at noon.

It was agreed that the next full Committee meeting will be held on Tuesday, April 8, 2008 at noon, at the office of the Illinois Criminal Justice Authority, located at 300 W. Adams, Chicago, IL.

Thomas P. Sullivan
Chair
April 29, 2008

Attachments – Appendices 1- 10.