

CAPITAL PUNISHMENT REFORM STUDY
COMMITTEE

Minutes of meeting November 23, 2009

The forty-third meeting of the Capital Punishment Reform Study Committee was held at the office of Jenner & Block, 353 North Clark Street, Chicago, Illinois from 1 to 3:45 PM.

Those present

Leigh B. Bienen

Jennifer A. Bishop-Jenkins (via teleconf.)

James R. Coldren, Jr.

Walter Hehner

Jeffrey M. Howard

Boyd J. Ingemunson (via teleconf.)

Edwin R. Parkinson

Richard D. Schwind

Randolph N. Stone

Thomas P. Sullivan

Not present

Kirk W. Dillard

Charles M. Schiedel

Geoffrey R. Stone

Arthur L. Turner

Michael J. Waller (via teleconf.)

Eric C. Weis (via teleconf.)

Also present: David E. Olson, Loyola University; Jeremy Schroeder, Illinois Coalition to Abolish the Death Penalty; Derek Prisco, Frank Straus and Mark Warnsing, Senate Republican staff (via teleconf.).

The minutes of the Committee meeting held on October 26, 2009, were approved.

1. Report of David Olson.

Mr. Olson reported that he contacted the Public Defenders and State's Attorneys who did not respond to the initial survey mailing, requesting that they complete and return the survey forms. Mr. Olson now has a greater response rate, and he has entered the additional data received. Mr. Olson said he is in the process of incorporating the additional data he has received into a new report to be submitted to the Committee. He has several

graduate students doing news media searches in order to obtain details about homicide cases in which sentences of life or death were imposed since the reforms took effect.

Mr. Olson said the most recent Illinois State Police crime statistics identify the offices of the 15 Public Defenders which were involved in homicide investigations since the reforms took effect. He will send the survey form to those which have not already responded.

Mr. Olson distributed a graph, attached as Appendix 1, showing murder offenses, arrests and admissions to the Illinois Department of Corrections from 1990 through 2009.

Mr. Olson has prepared but not yet sent a survey to Illinois trial court judges. On November 5, 2009, Mr. Sullivan wrote a letter to Ms. Cynthia Cobbs, the Director of the Administrative Office of Illinois Courts, asking her consent to Mr. Olson sending the survey, and her support in urging judges to complete and

return the forms. Mr. Sullivan said he has not yet received a response from Ms. Cobbs, and will telephone her to obtain her response.

Reports of subcommittees.

(1) Report of Subcommittee 1 - Police and investigations.

Subcommittee 1 presented to the Committee at its meeting on October 26, 2009 several potential recommendations relating to eyewitness identification procedures that take place in places of detention during homicide investigations. The recommendations are attached as Appendices 1, 2 and 3 to the Agenda for the Committee's October 26 meeting. They were discussed but not voted upon at that meeting. Attached to the Agenda for this meeting as Appendix 1 is a summary of those recommendations, prepared by Mr. Sullivan and distributed to all Committee members on November 5, 2009.

Following is the text of each recommendation and the Committee members' vote on each.

The first recommendation:

Recommendation: In homicide investigations, blind administration should be required of all eyewitness identification procedures. Blind administration may be achieved by use of either of two methods:

(a) Use of a blind administrator. The administrator should not be aware of which person or photograph in the array is the police suspect and which are the fillers. The administrator should assign a number to each person in the array, and use that number when recording the witness' response.

(b) Use of a blind method.

The use of a live lineup is not suitable for this method, because at some point the administrator will know that the witness is viewing the suspect.

When pictures are used, the administrator may know the identity of the suspect, but should not know which person in the array the witness is viewing. The administrator should assign a number to each picture, which must be placed in folders or displayed on a computer screen. The administrator should then shuffle the folders of computer screen pictures. The administrator should not be aware of the number or position of the suspect, and should not look at the pictures as the witness views them.

In using either method, the administrator may permit the witness to view the array more than one time, provided that the entire array should be shown to the witness each time.

During the Committee members' discussion, Mr. Waller raised the question whether the subject matter of this recommendation falls within the purview of the Committee's statutory authorization, found in 20 ICLS § 3929/2. Following discussion, a majority voted in favor of allowing the vote to proceed on the recommendation, as follows:

Ayes - 7: Mss. Bienen and Bishop-Jenkins, and Messrs. Coldren, Howard, G. Stone (by proxy given to Mr. Sullivan), R. Stone, Sullivan. Nays - 6: Messrs. Hehner, Ingemunson, Parkinson, Schwind, Waller and Weis.

Mr. Waller raised the question whether proxy votes are permitted under the Illinois Open Meetings Act. It was agreed that this issue will be researched, and if it is determined that proxy votes are not permitted, a re-vote will be taken at the next Committee meeting, without proxy votes being counted.

Following further discussion, a motion was made to add to the first sentence of the recommendation the words “if feasible” or “if practicable,” or language stating that the use of blind administration is preferable but not mandatory. A majority voted against the motion, as follows:

No change in language - 7: Ms. Bishop-Jenkins, and Messrs. Coldren, Schwind, Parkinson, R. Stone, Waller and Weis. Add “if feasible” - 2: Messrs. Howard and Sullivan. Either no qualifier or add “if feasible” - 1: Ms. Bienen. Add “preferable” - 1: Mr. R. Stone. Add not mandatory - 1: Mr. Hehner.

Following further discussion the recommendation set forth above was approved as written by a majority, as follows:

Ayes - 7: Mss. Bienen and Bishop-Jenkins, and Messrs. Coldren, Howard, G. Stone (by proxy given to Mr. Sullivan), R. Stone, Sullivan. Nays - 6: Messrs. Hehner, Ingemunson, Parkinson, Schwind, Waller and Weis.

The second recommendation:

Recommendation: When a blind administration is used in a homicide investigation, sequential procedures should be used, that is, the persons or pictures should be displayed to the witness one at a time. Using the assigned numbers, the administrator should record in writing or electronically the witness' response to each

person or picture, before showing the witness the next person or picture.

After discussion, this recommendation was approved as written by a majority, as follows:

Ayes - 7: Mss. Bienen and Bishop-Jenkins, and Messrs. Coldren, Howard, G. Stone (by proxy given to Mr. Sullivan), R. Stone, Sullivan. Nays - 6: Messrs. Hehner, Ingemunson, Parkinson, Schwind, Waller and Weis.

The third recommendation:

Recommendation: If a blind administration is not used in a homicide investigation, a contemporaneous written report should be prepared explaining why a blind administration was not feasible.

After discussion, this recommendation was approved as written by a majority, as follows:

Ayes - 7: Mss. Bienen and Bishop-Jenkins, and Messrs. Mr. Coldren, Howard, G. Stone (by proxy given to Mr. Sullivan), R. Stone, Sullivan. Nays - 6: Messrs. Hehner, Ingemunson, Parkinson, Schwind, Waller and Weis.

The fourth recommendation:

Recommendation: In homicide investigations, all eyewitness identification procedures should be electronically recorded by

both audio and video equipment, subject to the following qualifications:

First, if an eyewitness identification procedure in a homicide investigation is not electronically recorded, a contemporaneous written report should be prepared explaining why making an electronic recording was not feasible.

Second, the Illinois Eavesdropping Act should be amended to permit electronic recording without the knowledge or consent of the participants.

Third, the requirement of electronic recording of eyewitness identification procedures should take effect only after the Illinois Police Training and Standards Board and the Illinois Attorney General's Office have developed a model procedure for the electronic recordings, and have provided relevant training to local police and sheriff departments, and to the Illinois State Police.

After discussion, this recommendation was approved as written by a majority, as follows:

Ayes - 7: Mss. Bienen and Bishop-Jenkins, and Messrs. Coldren, Howard, G. Stone (by proxy given to Mr. Sullivan), R. Stone, Sullivan. Nays - 6: Messrs. Hehner, Ingemunson, Parkinson, Schwind, Waller and Weis.

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

Ms. Bienen stated that she desires that Michael L. Radelet, professor in the Department of Sociology at the University of Colorado, who assisted the Governor's Commission in studying the proportionality of the Illinois capital punishment system, be requested to review the information obtained by Mr. Olson, and provide the Committee his observations about the data. It was agreed that all Committee members will be invited to join in a conference call with Messrs. Olson and Radelet on Wednesday, November 25 at 3 PM, and that Mr. Olson and Ms. Bienen will report on the results at the Committee's next meeting.

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

Mr. Howard reported that the subcommittee met on November 20, and reviewed the recommendations for jury instructions and verdict forms that are attached to the Agenda for the Committee's meeting on October 26, 2009. The members of

the subcommittee were equally divided as to whether these recommendations deal with matters that fall within the Committee's statutory purview.

It was agreed that those recommendations will be discussed at the Committee's next meeting.

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

No report was received from subcommittee 4.

2. Next meetings.

In light of the impending end of the Committee's statutory tenure on December 31, 2009, and in order to dispose of all pending matters, it was agreed that, the Committee should hold two meeting during December:

Monday, December 7, 2009 at 10 AM.

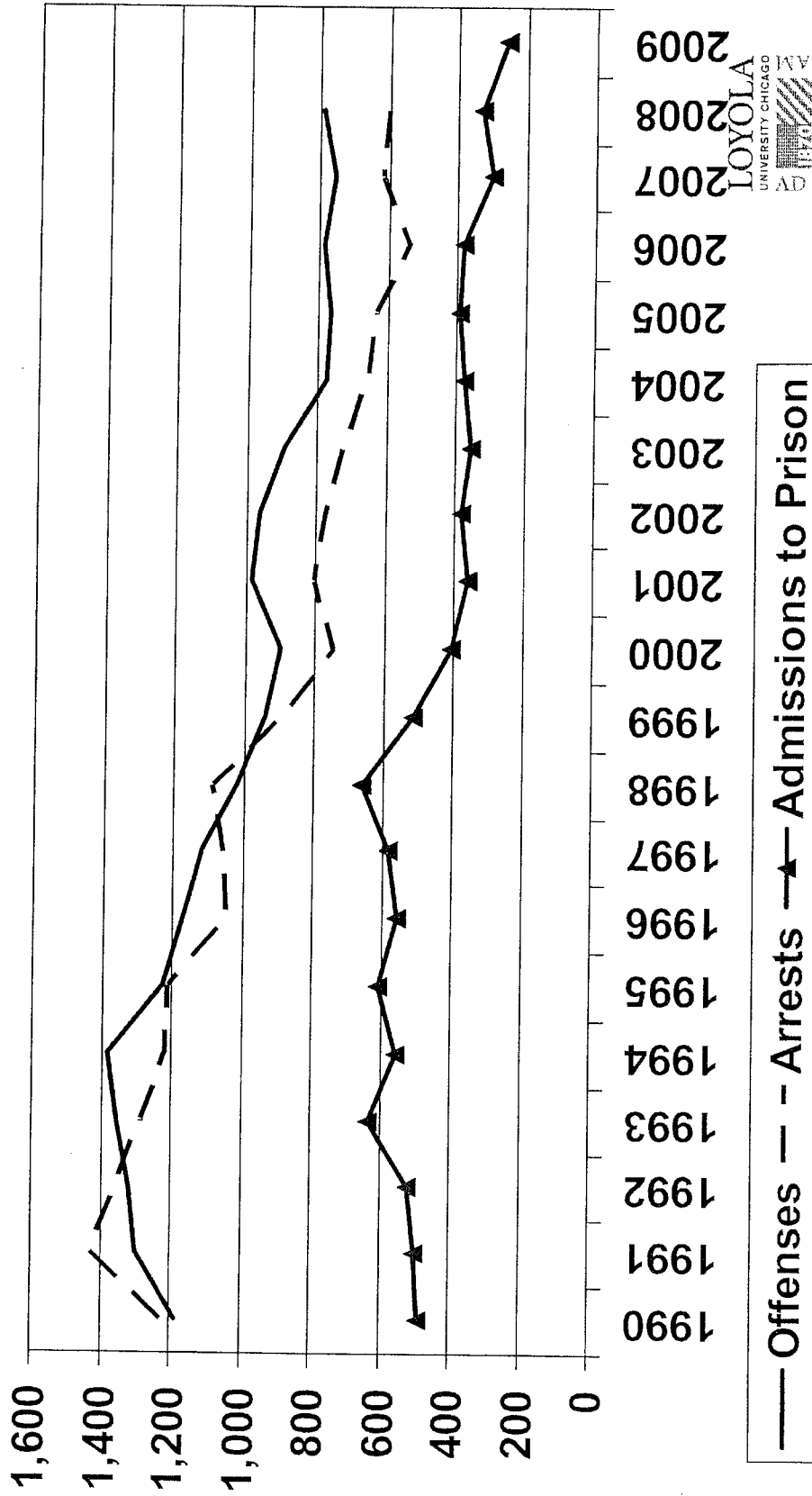
Thursday, December 17, 2009 at 1 PM.

Both meetings will be held at the offices of Jenner & Block,
353 N. Clark, 45th floor, conference call-in number 1-888-363-
4734, access code 4209525, host pass code 3365.

Thomas P. Sullivan
Chair
November 30, 2009

Attachment - Appendix 1.

Murder Offenses, Arrests & Admissions to Prison in Illinois



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