

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Police and Investigations Subcommittee #1

February 22, 2008 Meeting Minutes

The Police and Investigations Subcommittee (#1) of the Capital Punishment Reform Study Committee held a meeting on Friday, February 22, 2008, 10:00 a.m. at the University of Chicago Law School, Dean's Conference Room, First Floor.

The following Subcommittee members participated in the meeting:

James Coldren, Chairperson, Subcommittee # 1, Geoffrey Stone, Clint Hull, and Richard Schwind (via telephone); the full Subcommittee participated.

Coldren was unable to obtain the host code number for the ICJIA conference call service at the start of the meeting, so the meeting proceeded without conference call access.

1. Introduction of new Subcommittee member Clint Hull – Subcommittee members Coldren, Stone, and Schwind welcomed Mr. Hull to the Subcommittee, and Coldren explained that he reviewed the focus of the Subcommittee's work (recording of interrogations and police line-ups) with Mr. Hull just prior to the start of this meeting.
2. Review of the status of Subcommittee # 1 tasks and goals – Coldren provided a brief overview of the status of the Subcommittee's various initiatives:

- a. Currently, the Subcommittee is considering what substantive contribution it will make to the 4th annual report of the full Committee, the main topic of today's meeting,
 - b. There are still some issues requiring follow-up inquiries pertaining to the recording of interrogations in homicide cases, such as: reported equipment failures in several recent cases, establishment of standards or recommendations for recording technology and interview rooms, and possibly recommending that recording of interrogations become the standard practice in all felony cases, and
 - c. More focused, and more in-depth, analysis of issues pertaining to police line-ups and eyewitness testimony, and possibly recommending the use of blind administrators in all line-ups in capital cases.
3. Discussion of Subcommittee contributions and recommendations for the 4th annual report of the full Committee – Coldren initiated this discussion by reviewing a note sent to the Subcommittee from Committee Chair Tom Sullivan; this note suggested the Subcommittee consider six topics, as follows:
- a. Recording custodial interviews
 - i. Subcommittee members discussed the issue of jury instructions and concluded that this had been addressed in the 3rd annual Committee report,
 - ii. Subcommittee members discussed prior testimony suggesting that in some complex homicide investigations, mandated recording of interrogations is difficult to achieve within the 48 hour time period allowed before an arrested suspect must

appear in court, and that perhaps more resources were needed (and perhaps more time allotted in such cases), but no conclusion was reached on this matter,

iii. Coldren noted from earlier testimony that it is possible that the ICJIA has records regarding utilization of recording equipment in homicide interrogations, relating to a grant program that provided such equipment statewide. He said he would check with ICJIA on the availability of these records for review by the Subcommittee,

b. *Eyewitness identifications* - Subcommittee members engaged in a lengthy discussion pertaining to an excerpt from the February 7, 2007 visit to the Chicago Police Department (CPD) interrogation setup at the Belmont District Headquarters. The minutes from that visit contained a quote from a police official indicating that CPD does not videotape live line-ups due to the Illinois eavesdropping law, which prohibits the recording of fillers in line-ups without their consent. Mr. Schwind indicated that asking for permission from fillers would introduce many complications and delays in line-up procedures. Discussion turned to the eavesdropping law and whether there could be an exception to the law in the case of live line-ups in homicide cases. After some discussion it was established that some police agencies take photographs of the live line-ups (thus preserving the record of fillers' participation in line-ups), and since this is the common practice in Illinois, allowing recording or videotaping of line-ups should not be viewed as intrusive or a severe invasion of privacy. Thus the Subcommittee will recommend (in its contribution to the 4th annual report of the full Committee) that the eavesdropping

law be amended to allow for recording of live police line-ups in homicide cases. Subcommittee members made it clear that the recommendation was not for mandatory recording of line-ups, but for making it permissible without filler consent in police line-ups in homicide cases.

- c. Training issues - Subcommittee members discussed this issue at length, touching on testimony suggesting the need for designated training days in Illinois (since many attorneys and judges are tied up in court and may find it difficult to attend several contiguous days of training) and a centralized training facility. The Subcommittee concluded that, currently, sufficient training opportunities and funding exist in the State of Illinois for judges and attorneys involved in murder cases, and that a special recommendation regarding training is not needed. Mr. Schwind agreed to contact Judge Toomin, who oversees judicial training regarding capital cases in Illinois, to see if he had any particular concerns or recommendations in this area.
- d. Cost studies regarding capital punishment – Only one Subcommittee member (Mr. Schwind) had read the capital punishment cost study recently provided to the full Committee. He explained that he had reservations about the study, and that this Subcommittee should not take any position on this matter until the study has been fully reviewed and discussed. All in attendance agreed.
- e. Central storage of evidence in capital cases – regarding the suggestion of one downstate police officer for establishment of a central repository for evidence in capital cases, Subcommittee members felt that this would not be preferred by most police agencies in the state, and that it is probably not feasible. The Subcommittee

discussed the possibility of looking into current storage practices around the state, what guidelines exist, and whether additional guidelines or refinements are needed.

- f. Rural defense fund – The subcommittee discussion regarding this topic moved from the suggested need for a fund for defendants whose cases are decertified in the middle of trial preparation to the possibility of increasing the standards for capital case certification, perhaps even allowing defendants to access capital litigation trust funds after a case has been decertified. The consensus of the Subcommittee was that it would consider the possibility of recommending more stringent standards for death penalty case certification, but that this will require more investigation.

Coldren asked if Subcommittee members had any other comments or suggestions for the Subcommittee's contribution to the 4th annual report, and none were offered. He said he would draft a document for Subcommittee member to review (possibly early next week), so Mr. Sullivan can incorporate it into the draft annual report soon. All agreed.

4. Discussion of a process to review recent research on police line-ups and eyewitness identification – Coldren discussed the list of 15 articles and documents he had found pertaining to recent research and commentary on police line-ups and eyewitness identification (attached). He suggested that the articles fall into three general categories: (1) critique and commentary on the line-up study released by the Chicago Police Department in 2006, which it conducted at the request of the Illinois

State Police, (2) recent studies on police line-ups (mostly comparing simultaneous and sequential line-up procedures), and (3) other studies pertaining to eyewitness identification. Coldren suggested that he divide these studies up amongst the three other Subcommittee members, while he contacts several experts to determine if other recent research exists that the Subcommittee should consider, and if other studies turn up he would review them. Coldren also offered to develop a template for review of the studies. The Subcommittee members agreed with this strategy, that they would track down copies of articles or research reports that were not readily accessible, and that they would inform Coldren if they had difficulty locating any particular study. Coldren agreed to mail out the reading assignments, with a template, and with proposed dates for a Subcommittee meeting next month to begin review and discussion of the studies.

5. The Subcommittee meeting adjourned at approximately 11:30 a.m.