

CAPITAL PUNISHMENT REFORM STUDY
COMMITTEE

Minutes of meeting December 4, 2008

The thirty-fifth meeting of the Capital Punishment Reform Study Committee was held at the office of Jenner & Block, 330 North Wabash Avenue, Chicago, Illinois from 9:30 A.M. to noon.

Those present

Leigh B. Bienen

Jennifer Bishop-Jenkins

James R. Coldren, Jr. (via teleconf.)

Walter Hehner

Jeffrey M. Howard (via teleconf.)

T. Clinton Hull (via teleconf.)

Edwin R. Parkinson (via teleconf.)

Charles M. Schiedel

Not present

Kirk W. Dillard

Boyd J. Ingemunson

Geoffrey Stone

Randolph N. Stone

Arthur L. Turner

Richard D. Schwind

Thomas P. Sullivan

Michael J. Waller (via teleconf.)

Also present: David E. Olson; John Collins, Chair, ILAC and Director, DuPage County Laboratory; Allan Sincox, member, ILAC and lawyer; Office of the Illinois Defender; Mark Warnsing, Senate Republican staff (via teleconference); Patrick McAnany and Jeremy Schroeder, Executive Director, of the Illinois Coalition to Abolish the Death Penalty. Later, during the subcommittee 4 discussion, the following persons joined by telephone from ISP Division of Forensic Services: Colonel Scott Giles, Deputy Director; Lt. Colonel Carl Weitzel, Assistant Deputy Director; Commander Donna Metzger, overseer of all ISP forensic labs; and Lt. Anna Segnra, Chief of Staff to Deputy Director.

The minutes of the Committee meeting held on October 22, 2008, were approved with the addition of “in Chicago” regarding the public hearing to be held in January, 2009.

The minutes of the Committee meeting held on September 17, 2008 were amended on page 7, regarding subcommittee 2, to delete “August 27, 2007,” and to add “August 27, 2008.” The second paragraph of Attachment 9 to Appendix 6 was changed to read “The court shall sentence the defendant [natural life without parole - a term of years].”

It was agreed that the Committee will send letter of appreciation to former member Gerald Nora, to be drafted by Mr. Schwind.

1. Report of David Olson re surveys.

Mr. Olson distributed the documents attached as Appendix 1. He stated that out of 950 law enforcement agencies in Illinois, 85 made arrests for murder in 2007. Professor

Lombardo and Mr. Olson met with Mr. Sullivan regarding organization and content of the survey to police, and intend to revise and re-distribute the survey document early in 2009. The survey will be sent to all agencies that made arrests for murder in 2008. Follow-up interviews will be made with the agencies that made the most murder arrests, and a random sample of the remainder.

2. *Illinois forensic laboratories.*

The representatives of the ISP forensic labs, and members of ILAC, agreed that the problems relating to salaries and benefits, outlined at pages 42 and 43 of the Committee's Fourth Annual Report, remain unchanged. Most scientists in senior supervisory positions belong to ASME, but are not in a union. The other scientists belong to the ISPA, Illinois State Employees Union. The labs are having difficulties in filling senior scientific positions. For example, some lab directors are making

less than the line scientists. Overall, the salaries of all ISP scientists are well below national levels, as published in a 2005 NLJ survey. Mr. Collins stated that the Illinois labs are losing scientists to private labs, and public labs located in other states; some leave forensic work altogether. New scientific graduates are dismayed at the low salary levels paid by the ISP.

Nevertheless, the ISP labs have many applications for trainees; 19 were hired as scientists in 2008, and 6 more are to be interviewed in January 2009.

When scientists leave soon after they have been trained, backlogs result. About 20 scientists leave ISP employment each year. Pension issues have become important. See note 19 on page 43, Fourth Annual Report. A statutory change is required to increase the pensions. The employees have retained a lobbyist. Also, there is a pending arbitration based on a union grievance concerning minimum work requirements.

It was noted that it sometimes takes months for the governor to approve the filling of vacant positions, and by the time he does many applicants have accepted other employment.

It was agreed that Mr. Sullivan should discuss these problems with Messrs. Dillard and Turner. Mr. Waller stated that when Senator Cullerton is appointed the majority leader of the Senate, a joint meeting may be arranged with representatives of the Senate and House to discuss these and related issues.

Regarding DNA sample and forensic biology (FB) testing, each month the labs receive approximately 500 DNA cases and 600 FB cases. As of October 2008, there was a backlog of 983 cases awaiting testing, with an average turnaround time of 78 days (beginning the day the sample is received by the lab). FB turnaround is 68 days. 50 to 60% of the FB cases become DNA cases. The backlogs in both FB and DNA cases have been reduced, the FB backlog by 50%.

The representatives stated that new national DNA standards will become effective on July 1, 2009. The Illinois labs may not enter data into CODIS that is not from an accredited lab, but they are allowed to do a one-time keyboard search. This one-time keyboard search will be prohibited beginning on July 1, 2009. There are two major accrediting bodies, the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), and Forensic Quality Services, Inc. (FQS-I).

Mr. Collins, head of the DuPage County Lab, and Chair of ILAC, stated that the most pressing problems for the ISP forensic labs are organizational stability, and human resources. ILAC's 2007 Annual Report is attached as Appendix 7 to the March 4, 2008 minutes.

Ms. Metzger stated that 98% of the ISP forensic labs' work is done for local law enforcement agencies, and 1 to 2% for the

ISP. She emphasized that the lab supervisors teach and discuss ethics, and they have found no evidence of pressure from state or local agencies to skew the results of testing, or bias in the testing. Mr. Giles stated that the culture of the ISP forensic labs is to obtain objective results. Mr. Collins stated that the ISP labs were the first in the United States to be accredited, and no evidence of bias in the results has been shown or alleged.

3. *Reports of subcommittees.*

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

The subcommittee met by conference telephone on November 14, 2008; the minutes – including a memorandum from Mr. Hull dated November 14, 2008 – are attached as Appendix 2. The discussion centered on the use of blind administrators in lineups and photo spreads involving homicides. Mr. Schwind agreed to discuss this matter with

representatives of the law enforcement community, and invite them to attend a meeting of the full Committee.

(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. She said that data entry continues as to first degree murder indictments from January 1, 2003 to present. Mr. Schwind said he will endeavor to have Attorney General law clerks assist in obtaining the indictments.

It was agreed by the full Committee that the following recommendation, made in the Fourth Annual Report (page 25), should be repeated in the Fifth Annual Report:

Recommendation: The General Assembly and the Governor should take the steps necessary to provide the funding necessary to implement the collection, recording, coding, arrangement, comparison and analysis of the data in a professional manner, as called for in the

statute mandating creation of a “Capital Crimes Database,” 20 ILCS 3930/7.6.

Mr. Hehner stated that the police departments are in need of funds to update and store material. Mr. Sullivan called attention to the Committee’s recommendation in its Fourth Annual Report, p. 18:

Recommendations: The General Assembly should provide funding (1) to carry into effect the provisions of 50 ILCS 705/10.3, relating to training programs and guidelines for the mandated recordings of custodial interviews in homicide investigations, and (2) to law enforcement agencies for expenses related to their electronic recording of custodial interrogations in homicide investigations, for example, expenses relating to purchase of electronic equipment, assuring equipment compatibility, sound proof rooms, reviewing and transcribing recordings, and storage of tapes and discs.

Mr. Hehner also stated that proportionality review should include consideration of the age and gender of the victim.

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

Mr. Howard said the subcommittee has not met since the last full Committee meeting.

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

Mr. Schiedel reported that he attended the September ILAC meeting; his preliminary report is attached as Appendix 3. Details of problems facing the forensic laboratories and ILAC are outlined above.

Attention was called to the alleged misuse of Capital Litigation Trust Fund by attorney John Paul Carroll, in a case in St. Clair County. Mr. Carroll has recently been appointed as defense counsel for an indigent defendant in a new case, pending in Kane County. The members of subcommittee 4 will examine the CLTF, and report to the full Committee on their findings.

4. *Public hearings.*

It was agreed that the next public hearing will be held in Chicago at the Thompson Center, on Monday, January 26, beginning at 9 AM. Messrs. Sullivan and Schwind will send announcements and letters to the media, law schools, and organizations that have expressed an interest in improving the capital punishment system in Illinois.

The second public hearing will be held in Springfield, at a time and place to be determined, perhaps during the week of February 23. Mr. Warnsing agreed to assist the Committee in obtaining a location for the hearing, probably on a Monday or Friday.

5. *Other business.*

(1) An email dated December 3, 2008, received by Mr. Sullivan from L. Rachel McKinzie, Ethics Officer, IDOC

(attached as Appendix 4), regarding Mandatory Annual Ethics Training, was distributed to all members.

(2) Mr. Sullivan asked each subcommittee chair to send him suggested text for the Committee's Fifth Annual Report.

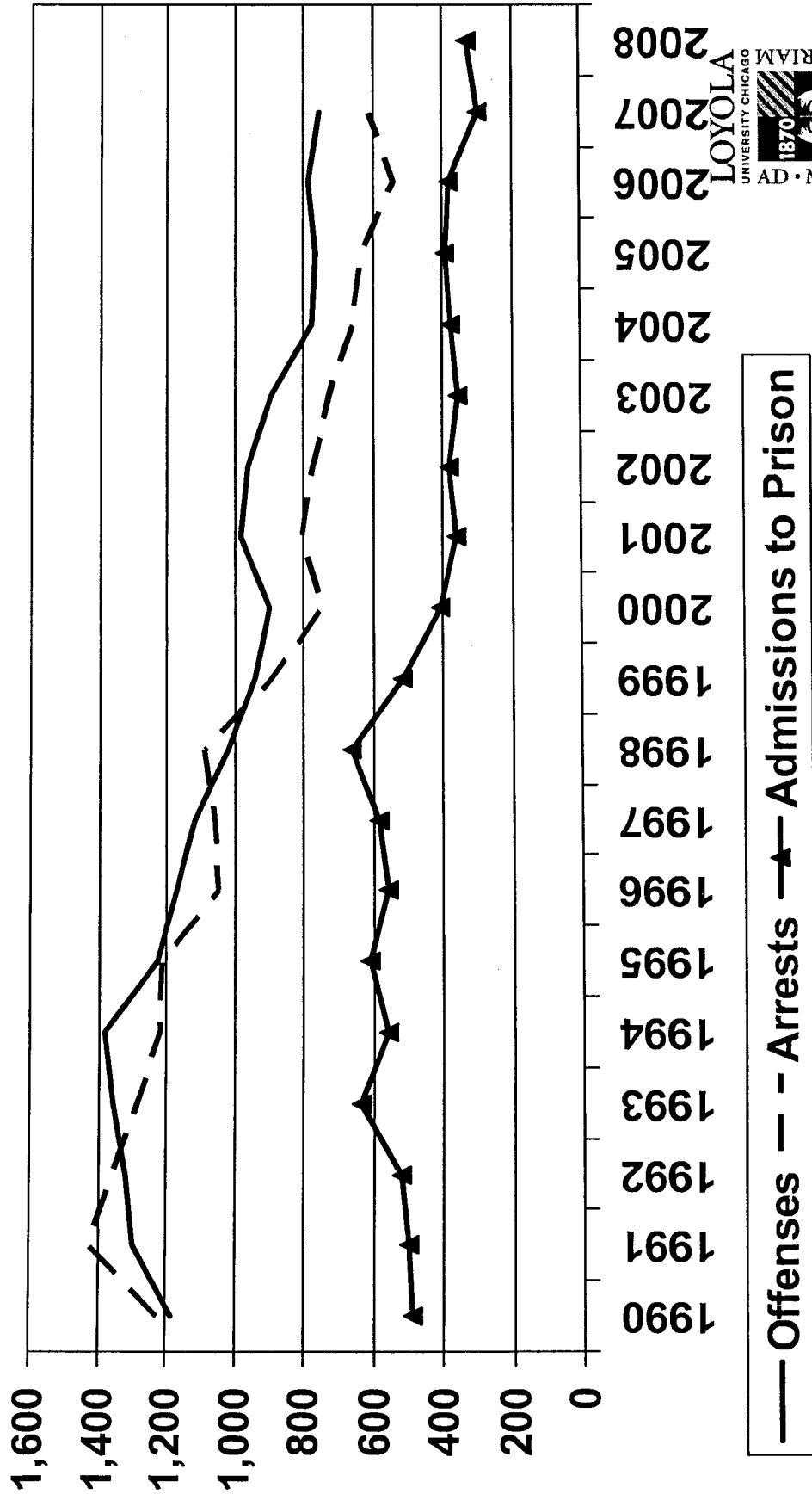
6. *Next meeting – Friday, January 23, 2009, at 9:30 A.M.*

It was agreed that the next full Committee meeting will be held on Friday, January 23, 2009 at 9:30 A.M., at the office of Jenner & Block, 330 N. Wabash Avenue, 40th Floor, Chicago, IL.

Thomas P. Sullivan
Chair
January 22, 2009

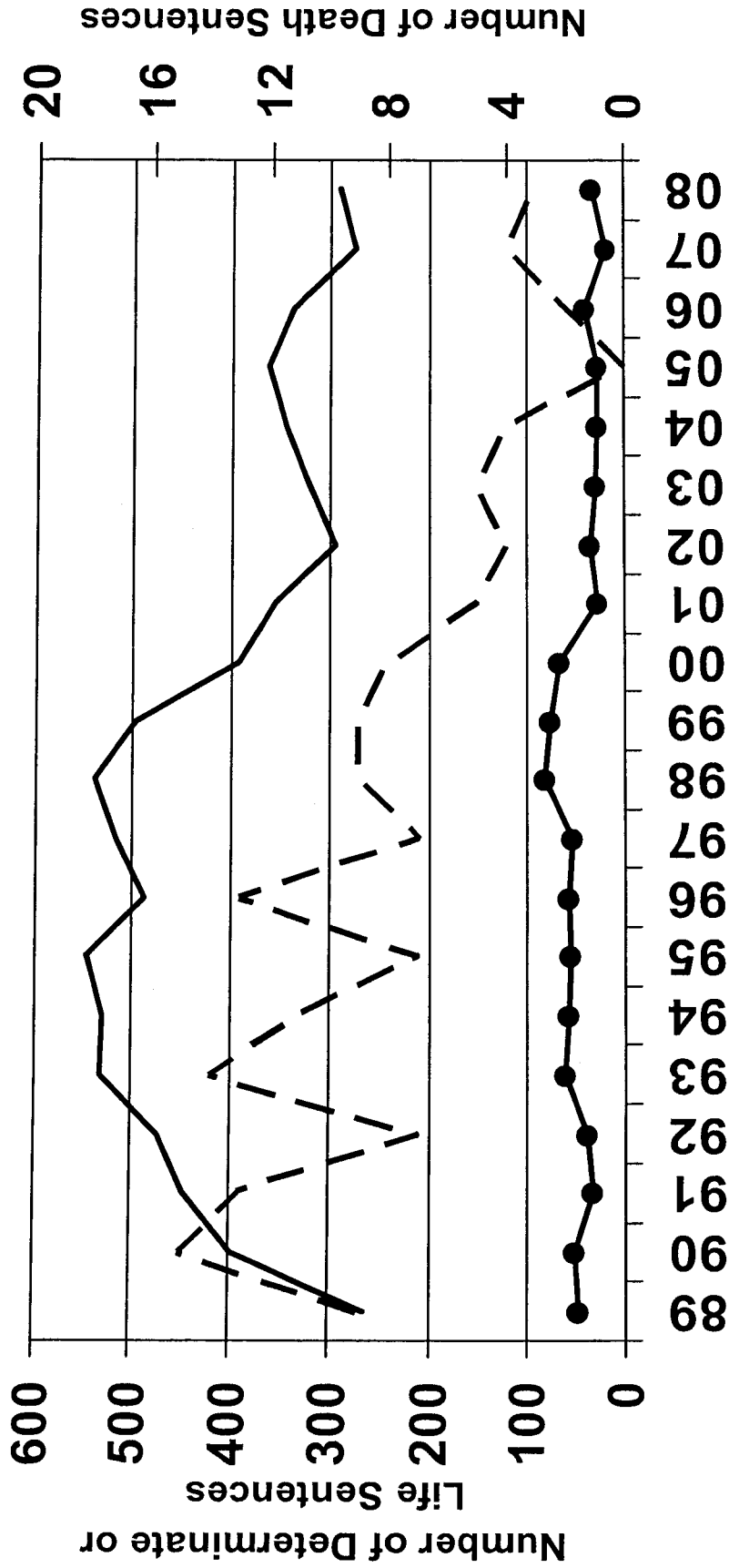
Attachments – Appendices 1 - 4.

Murder Offenses, Arrests & Admissions to Prison in Illinois



Preparing people to lead extraordinary lives

Sentences Imposed on Those Convicted of 1st Degree Murder



Life ——— Determinate - - - Death

**Local Law Enforcement Agencies Reporting Murder Arrests in 2007 (88 agencies), Sorted
from Highest to Lowest Number in 2007**

AGENCY	COUNTY	Arrests for Murder 2006	Arrests for Murder 2007
CHICAGO	Cook	313	354
AURORA	Kane	6	27
ROCKFORD	Winnebago	13	20
DECATUR	Macon	6	13
PEORIA	Peoria	4	13
JOLIET	Will	12	11
MAYWOOD	Cook	7	10
CHICAGO HEIGHTS	Cook	4	8
ALTON	Madison	1	6
CALUMET CITY	Cook	0	5
HARVEY	Cook	2	5
LANSING	Cook	0	5
KANKAKEE	Kankakee	2	5
ADDISON	Du Page	1	4
WAUKEGAN	Lake	4	4
SPRINGFIELD	Sangamon	0	4
FREEPORT	Stephenson	1	4
WILL S.O.	Will	6	4
BOONE S.O.	Boone	0	3
COOK S.O.	Cook	15	3
MELROSE PARK	Cook	0	3
KANE S.O.	Kane	1	3
PEORIA S.O.	Peoria	1	3
ST. CLAIR S.O.	St. Clair	2	3
WINNEBAGO S.O.	Winnebago	1	3
CHAMPAIGN S.O.	Champaign	0	2
MATTOON	Coles	5	2
BERWYN	Cook	0	2
CALUMET PARK	Cook	0	2
DOLTON	Cook	5	2
EVANSTON	Cook	0	2
MATTESON	Cook	1	2
RIVERDALE	Cook	4	2
DE KALB	De Kalb	1	2
VILLA PARK	Du Page	1	2
LAKE S.O.	Lake	0	2
COLLINSVILLE	Madison	0	2
MADISON S.O.	Madison	1	2
BLOOMINGTON	McLean	0	2
ROCK ISLAND	Rock Island	4	2
ROCK ISLAND S.O.	Rock Island	4	2
BELLEVILLE	St. Clair	0	2
FAIRVIEW HEIGHTS	St. Clair	0	2

FAIRFIELD	Wayne	0	2
WAYNE S.O.	Wayne	0	2
AURORA	Will	0	2
CREST HILL	Will	0	2
PLAINFIELD	Will	0	2
QUINCY	Adams	1	1
BEARDSTOWN	Cass	0	1
RANTOUL	Champaign	0	1
URBANA	Champaign	0	1
CICERO	Cook	3	1
HANOVER PARK	Cook	0	1
HOMEWOOD	Cook	1	1
MT. PROSPECT	Cook	0	1
OAK FOREST	Cook	1	1
PARK FOREST	Cook	1	1
SUMMIT	Cook	0	1
DE KALB S.O.	De Kalb	0	1
AURORA	Du Page	1	1
LOMBARD	Du Page	0	1
WOODRIDGE	Du Page	0	1
CANTON	Fulton	2	1
MT. VERNON	Jefferson	1	1
CARPENTERSVILLE	Kane	0	1
EAST DUNDEE	Kane	0	1
GILBERTS	Kane	0	1
KANKAKEE S.O.	Kankakee	0	1
NORTH CHICAGO	Lake	0	1
ZION	Lake	0	1
MACOUPIN S.O.	Macoupin	0	1
GRANITE CITY	Madison	2	1
MARION S.O.	Marion	0	1
MCDONOUGH S.O.	McDonough	0	1
JACKSONVILLE	Morgan	1	1
COAL VALLEY	Rock Island	0	1
EAST MOLINE	Rock Island	0	1
SANGAMON S.O.	Sangamon	0	1
CENTREVILLE	St. Clair	3	1
MILLSTADT	St. Clair	0	1
PEKIN	Tazewell	1	1
HOOPESTON	Vermilion	0	1
WARREN S.O.	Warren	0	1
CRETE	Will	0	1
LOCKPORT	Will	0	1
MARION	Williamson	0	1
ROSCOE	Winnebago	1	1

Subc. 1

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Police and Investigations Subcommittee #1

November 14, 2008 Meeting Minutes

The Police and Investigations Subcommittee (#1) of the Capital Punishment Reform Study Committee held a meeting on Friday, November 14, 2008 at 2:00 p.m. This meeting was conducted via phone conference. The following Subcommittee members participated in the meeting¹:

James Coldren, Chairperson, Subcommittee # 1
Geoffrey Stone, and
Richard Schwind.

1. Discussion of Subcommittee recommendation regarding blind administration of line ups – Rick Schwind began this discussion by explaining that he showed the meeting materials provided to the Subcommittee members (draft recommendation regarding line ups, North Carolina line up reform legislation, and Wisconsin Attorney General model policy regarding line ups) to the chief of investigations in the Illinois Attorney General's office (Kevin O'Connell, former police chief in Des Plaines, IL). Schwind reported that Mr. O'Connell's reaction suggests that local law enforcement representatives in Illinois (from the Illinois Chiefs' and Sheriffs' Associations) deserve a chance to react and comment on the issue of mandatory blind administration of lineups before this recommendation becomes formalized in the Committee report or in the law. Coldren and Stone agreed. Coldren suggested that the recommendation be moved up to the full Committee so that a broader discussion can be held, and so that all Committee members can hear the comments and reactions from law enforcement representatives. There was general agreement with this point.

¹ Subcommittee member Clint Hull could not attend this meeting. He sent his comments on the line up recommendations and related materials, and they are appended to these minutes.

Geof Stone pointed out that the issue of blind administration is essentially a matter of common sense and that the recommendation at issue here is consistent with decades of research. He noted that all the research evidence to date points to the benefits of blind administration of lineups, for everyone and for the entire justice system, and that there is no evidence against blind administration. The Subcommittee members agreed that the recommendation should address line ups in homicide investigations only, not all criminal cases. Stone noted that this should reduce the logistical burden on law enforcement, though Schwind was not so certain. The Subcommittee members also agreed that all Committee members should receive the materials provided to the subcommittee on this matter; Chip agreed to see that all Committee members received them before the December 4 meeting. Rick Schwind said he would consult with the Illinois Chiefs' Association, the Sheriffs' Association, and the Training and Standards Board to determine when their schedules will permit attendance at a full Committee meeting to discuss this matter, and that he will suggest that the next full Committee meeting (following the December 4 meeting) be held at a time that is convenient for individuals representing these organizations; this will provide an opportunity for full discussion of the line up recommendation. The recommendation follows below (with a slight modification to reflect the subcommittee's discussion at this meeting):

Legislation should be enacted that requires blind administration of lineups in all homicide investigations, 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 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.

2. Future Subcommittee meetings and topics – The subcommittee members present agreed to wait until after the full Committee meeting on December 4th, 2008 to set the next date and time for a subcommittee meeting. Chip reminded the other

subcommittee members that the Subcommittee had discussed paying Prof. Shari Diamond of Northwestern University to review several recent line up studies and submit a report, written in lay person's language, that summarizes the questions, research methods, and findings of contemporary research on police line ups. The subcommittee members present agreed with this, and that this suggestion should be made at the full Committee meeting on December 4th. Chip said he would recommend a stipend of \$1,000 for Professor Diamond, and if the full Committee agrees, will make the arrangements with her.

3. The Subcommittee meeting adjourned at approximately 2:30 p.m.

Comments provided by Subcommittee member Clint Hull:

From: **Error! Hyperlink reference not valid.** Sent: Fri 11/14/2008 6:56 AM
To: **Error! Hyperlink reference not valid.**
Cc:
Subject: RE: materials for Friday's subcommittee meeting

Chip,

I just wanted to remind you that I will not be able to attend the meeting today due to a previously scheduled meeting. I am sorry.

I have reviewed the materials that you distributed. I know the other issue that was discussed was recommending that legislation be enacted/recommended that the line-up procedure be audio taped/video taped. Is that still on the table?

First, as it relates to the line-up procedures, I always hesitate to "require" something. I think it is important to remember that the state consists of 102 counties with different resources, procedures, etc. Each police department has different set ups, different staffing levels, varying degrees of resources. For instance, just recently, DeKalb County needed to do a live line-up but couldn't do it at the DeKalb County Jail because 1) the jail doesn't have a place to do a live line-up and 2) they didn't have sufficient inmates to put in as fillers. If the rest of the committee believes the recommendation should be that the double blind method is required/mandatory, then I believe it is also important to put a catch all as they did in the mandatory taping statute in homicide cases that allow for the admissibility of the identification procedure even if the statute is not complied with as long as the court makes an independent assessment of the reliability of the procedure (of course taking into account the fact that the statute was not complied with.) This will give the police officers/prosecutors an opportunity to argue in court why they could not comply with the statute and to argue why, in absence of compliance, it should still be admitted.

Second, as it relates to the taping of the procedure, I would be in favor of such a recommendation again with the same catch all language. I think the biggest issue here is the different jurisdictions ability to tape this procedure. It sounds very easy but it is often much more difficult than it sounds because of the different set-ups etc.

Sube. 4

Re: Fwd: ILAC Meeting on Tuesday at 11 in Springfield

Charles.Schiedel@OSAD.state.il.us [Charles.Schiedel@OSAD.state.il.us]

Sent: Wednesday, September 10, 2008 11:21 AM

To: jenniferbjenkins@aol.com

Cc: gnora@cookcountygov.com; JerryNora@aol.com; RepArtTurner9@aol.com; Sullivan, Thomas P

Tom, Jennifer & Co.,

I attended ILAC Meeting Tues.

I'll try to have a full report by the 17th but the short of it is that they are a group of highly skilled, experienced people who believe there are some problems in the forensic testing systems of our state. They are frustrated by the apparent lack of interest, feedback or support from the legislature, the governor's office or even the AG(who has a representative on the Committee). They hope that we can help them have some impact on reform of the system and look forward to working with us.

see you next week CMS

Appendix 3

From: Sullivan, Thomas P [mailto:TSullivan@jenner.com]

Sent: Thursday, December 04, 2008 8:48 AM

To: Bienen, Leigh B.; Bishop-Jenkins, Jennifer A.; Coldren, James; David E. Olson, Ph.D; Dillard, Kirk W. Senator; Drew, Bobbie (Rep. Art Turner's office); Hehner, Walt; Howard, Jeffrey M.; Hull, Clint; Ingemunson, Boyd J.; Parkinson, Edwin R.; Schiedel, Charles M.; Schwind, Richard D.; Stone, Geoffrey R.; Stone, Randolph N.; Turner, Arthur L. (Representative); Waller, Michael J.

Subject: FW: Ethics Training

All - Here is an email I received yesterday from Ms. McKinzie, the IDOC Ethics Officer, with attached materials. She said we all are to sign and return the Acknowledgement of Participation form to her. Tom.

Thomas P. Sullivan
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From: McKinzie, Rachel [mailto:RACHEL.McKINZIE@doc.illinois.gov]

Sent: Wednesday, December 03, 2008 1:53 PM

To: Sullivan, Thomas P

Subject: FW: Ethics Training

Here's the ethics training material for the committee members. The certificate gets signed by the committee member after reading the material. The members can mail their certificates to me at:

Rachel McKinzie

Ethics Officer

Illinois Department of Corrections

100 W. Randolph Suite 4-200

Chicago Illinois 60601

If there are any questions, I can be reached at 312-814-2214

Thank You.

From: McKinzie, Rachel
Sent: Wednesday, October 22, 2008 9:02 AM
To: Sullivan, Thomas P
Subject: Ethics Training

Mr. Sullivan,

Attached is a copy of the Ethics Training we discussed on the telephone. All members of the Capital Punishment Reform Study Committee must complete ethics training for 2008. They are to read the material and sign the certificate attesting to having completed reading the training material. The certificate is then sent to me. I would greatly appreciate if you could distribute the training material to your members at you meeting.

<<2007 Appointee Training Notice.pdf>> <<Ethics Training for Board Appointees 091107.pdf>>

Thank you

L. Rachel McKinzie

Ethics Officer

Assistant Deputy Chief Legal Counsel

Illinois Department of Corrections

100 W. Randolph, Suite 4-200

Chicago, Illinois 60601

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