

CAPITAL PUNISHMENT REFORM STUDY
COMMITTEE

Minutes of meeting July 7, 2009

The fortieth meeting of the Capital Punishment Reform Study Committee was held at the office of Jenner & Block, 330 North Wabash Avenue, Chicago, Illinois from 1 to 4 PM.

Those present

Leigh B. Bienen

Jennifer A. Bishop-Jenkins (via teleconf.)

James R. Coldren, Jr.

Walter Hehner

Jeffrey M. Howard (via teleconf.)

Boyd J. Ingemunson (via teleconf.)

Edwin R. Parkinson (via teleconf.)

Charles M. Schiedel (via teleconf.)

Richard D. Schwind (via teleconf.)

Not present

Kirk W. Dillard

Randolph N. Stone

Arthur L. Turner

Geoffrey R. Stone (via teleconf.)

Thomas P. Sullivan

Michael J. Waller (via teleconf.)

Also present: Mark Warnsing, Senate Republican staff (via teleconf.); Robert Lombardo, Loyola University; Patrick McAnany and Jeremy Schroeder, Illinois Coalition to Abolish the Death Penalty; and Amanda Delaney, Research Assistant to Ms. Bienen.

The minutes of the Committee meeting held on May 20, 2009, were approved.

1. Funding for FYE June 30, 2010.

Mark Warnsing stated that the budget for the coming fiscal year is still in progress, and that the Committee's request for an appropriation of \$125,000, through the ICJIA budget, is pending.

2. *Fifth Annual Report.*

Mr. Sullivan stated that, owing to intervening matters, he had not yet drafted the Committee's Fifth Annual Report for the year 2008. He recommended that the Committee submit a short 2008 report, and make its more extensive recommendations in the Final Report. This was agreed to by all members present. It was also agreed that, among other subjects, the Fifth Annual Report should discuss funding for the ISP forensic labs as recommended in the Fourth Annual Report, and funding for the Capital Crimes Database.

3. *Mr. Lombardo's report on surveys to police and sheriffs.*

Mr. Lombardo explained Mr. Olson's absence owing to a conflicting engagement. He discussed the survey sent to 413 Illinois police departments, consisting of (1) 215 police departments that reported homicides to the ISP between 2004 and 2007; (2) 88 police departments chosen randomly; (3) all

sheriff departments; and (4) 8 multi-jurisdictional homicide task forces.

Thus far, 193 (47%) departments have responded to the survey. It was agreed that, if Mr. Olson desires, Messrs. Sullivan and Schwind will send another letter to all of the departments that have not responded, urging them to do so.

Messrs. Olson and Lombardo will make a further report on the survey at the Committee's next meeting.

4. *Reports of subcommittees.*

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

The subcommittee has not met since the last meeting.

Mr. Coldren said that he is preparing a new draft of a recommendation regarding the use of either blind administrators or blind procedures in eyewitness identifications; electronic recording of eyewitness identification procedures; and an

amendment to the Eavesdropping Act to permit recording of statements made during eyewitness identification procedures.

Mr. Schwind reported that the officers who attended the Committee meeting on March 9, 2009 have met several times to discuss their views and recommendations about the use of blind administrators or blind procedures, and will make a further report to the Committee.

Mr. Coldren said he will distribute an article on the use of sequential lineup procedures. Mr. Sullivan said that Nancy Steblay was supervising a pilot program in Tucson, AZ, comparing sequential and simultaneous procedures, and that he will contact Ms. Steblay to learn the status of that program.

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

Ms. Bienen reported that the subcommittee has not met since the last Committee meeting. She is continuing to collect

copies of all indictments for murder returned in Illinois since January 12, 2003.

Mr. Howard reported that Cook County Assistant Public Defender Julie Harmon is preparing a listing of the defendants who have been indicted in Cook County since January 1, 2001 in which the State's Attorney has filed a notice of intent to seek the death penalty.

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

Mr. Howard said the subcommittee has not met since the last Committee meeting. The subcommittee is scheduled to meet on July 13.

The members of the Committee present agreed unanimously to recommend that in all capital trials, a jury questionnaire should be used, as presented in Appendix 5 to the minutes of subcommittee 3 of its June 12, 2009 meeting, namely:

Juror questionnaires should be used in all capital cases. However, due to the unique nature of capital cases, specific questions on the questionnaire should be determined by the parties and the trial judge on a case by case basis. Certain topics should be explored, including personal jurors' backgrounds, employment, family, military, education, religion, political, physical/medical, views on capital punishment, criminal justice system/law enforcement, and case specifics.

Mr. Howard said that he will send to Mr. Sullivan the jury instructions that subcommittee 3 has made recommendations, for consideration by the full Committee at its next meeting.

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

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

Mr. Hehner said that he has spoken recently with Celia Doyle at the Illinois State Police forensic laboratory. Ms. Doyle said that there were 829 untested DNA samples in the ISP system, awaiting analysis, and that 359 samples have been outsourced for testing to Cellmark, Inc., a private laboratory.

Mr. Hehner agreed to speak with William Frank, ISP DNA Research Coordinator in Springfield, and report regarding the current DNA backlog at the next Committee meeting.

Mr. Schiedel said that the Illinois statute regarding the right of convicted felons to post-conviction analysis of forensic evidence, including DNA, may have contributed to this backlog.

Mr. Howard said that the Cook County Public Defender has asked the General Assembly to appropriate additional funds with which to defend capital cases. He said the current budget for the FYE June 30, 2010 is \$1.65mm. Mr. Hehner said that in his opinion the State should be precluded from seeking the death penalty in Cook County if the Public Defender has no funds in its budget to defend the cases.

Mr. Howard stated that the General Assembly appropriated \$2mm for the Chief Judge of the Circuit Court of Cook County

to use to pay private lawyers appointed to represent indigent defendants in capital cases.

Mr. Howard said that the expenses involved in capital cases include independent investigators, depositions and transcripts, experts for trials and sentencing hearings. Some experts, and most court reporters at depositions, have been working on capital cases although not paid currently on the basis that the money to pay their bills will be appropriated in due course. Mr. Sullivan said he will call Chief Judge Timothy Evans to discuss these problems.

5. *Other business.*

Ms. Bishop-Jenkins reported that about two months ago, the General Assembly passed Resolution 297, calling for the ICJIA to conduct a formal study of the amount by which capital case costs exceed the costs of the same cases proceeding as non-

capital cases. The Authority has not yet determined whether this study will be conducted in-house.

6. Next meeting – Tuesday, September 22, 2009 at 1 PM.

It was agreed that the next full Committee meeting will be held on Tuesday, September 22, 2009 at 1 PM, at the office of Jenner & Block, 330 N. Wabash Avenue, 40th Floor, Chicago, IL.

Thomas P. Sullivan
Chair
August 25, 2009