

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Minutes of meeting April 8, 2008

The twenty-ninth 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 2:30 P.M.

Those present

Leigh B. Bienen

Jennifer A. Bishop-Jenkins

James R. Coldren, Jr.

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 (via teleconference)

Randolph N. Stone

Thomas P. Sullivan

Not present

Kirk W. Dillard

Jeffrey M. Howard

Geoffrey Stone

Arthur L. Turner

Michael J. Waller

Also present: David E. Olson; Jordan Boulger, student assistant to David Olson; Laura Weizeorick and Patrick D. McAnany, Illinois Coalition to Abolish the Death Penalty.

The minutes of the Committee meeting held on March 4, 2008 were approved as drafted.

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

Mr. Sullivan reported that Mr. Dillard introduced a bill in the Senate to extend the Committee's tenure to December 31, 2009, and the bill has been referred to the Rules Committee. Mr. McAnany said he will see Mr. Turner in the near future and will ask him about the same bill to be introduced in the House.

2. Committee's funding for FYE 6/30/08 and 6/30/09.

Mr. Sullivan reported that Mr. Dillard introduced a bill in the Senate to provide funding for the Committee of \$250K for each of the fiscal years ending June 1, 2008 and June 1, 2009, and the bill has been referred to the rules Committee. Mr. McAnany will also inquire of Mr. Turner about the House bill to the same effect.

3. *Resignation of Peter G. Baroni.*

It was agreed that Mr. Coldren will draft a letter of appreciation for Mr. Baroni's services to the Committee, to be signed on the Committee's behalf by Messrs. Sullivan and Schwind.

4. *David Olson's preliminary report of the surveys sent to State's Attorneys.*

Dr. Olson gave a report on the responses received thus far from the surveys sent to all Illinois State's Attorneys. The questions and charts containing the responses are attached as Appendix 1. At the next full Committee meeting he will report on the results of the surveys sent to Public Defenders.

50 of 102 State's Attorneys responded to the survey. Of these, 35 reported that they had no capital cases since 2003. Hence, 15 of the respondents had experiences in actual homicide cases in which capital punishment was sought. However, many of the survey questions relate to matters encountered in all homicide cases, before the facts are sufficiently developed to determine if the case is capital-eligible and, as to those that are capital-eligible, before the State's Attorney decides whether capital punishment will be sought.

Some of the highlights of the responses received are:

- Over 90% of State's Attorneys believe training related to capital punishment met office needs.
- Almost 80% believe their staffs have not received specialized training on mental retardation.
- 60% believe there are sufficient numbers of defense lawyers available to effectively handle capital cases; slightly under 20% responded in the negative.
- Over 60% believe there are sufficient resources available to handle death-eligible cases; slightly under 20% believe there are not.
- Over 70% have had no technical problems with their review of recordings of custodial suspect interviews, or the presentation of recordings in court.
- Over 80% believe recorded custodial interrogations have been instrumental in obtaining convictions, and about 40% believe recordings influenced defendants to plea bargain.

- Almost 80% believe the requirement of complete electronic recordings of custodial interviews should not be expanded to include additional felony offenses.
- By a margin of two to one, those who responded expressed a preference that in all lineups and photo spreads, if reasonably available the administrator should be a person who does not know the identity of the suspect.
- Almost all responded satisfaction with the current procedures used by police departments with eyewitness identifications in murder cases.
- Most have not experienced problems with obtaining materials from police departments in homicide cases.
- 60% have experienced delays in receiving results from forensic laboratories in murder cases, but almost none have experienced delays in capital cases.
- All respondents are satisfied with the quality of the forensic labs' work product in capital cases.

- Almost 80% believe 120 days from arraignment is sufficient time to determine whether or not to seek the death penalty.
- By a margin of two to one, respondents believe depositions do not improve the processing of capital cases.
- Over 80% are satisfied with the definitions and court processes used to determine mental retardation, but most believe prosecutors in their offices had not received specialized training on the issue of mental retardation since 2005.
- Over 80% are satisfied with the number of factors that make a homicide case eligible for capital punishment.
- Almost 60% believe the cost to the county does not reduce the likelihood that capital punishment will be sought in capital-eligible cases, while over 40% believe it does. 70% believe cost should not be considered in deciding whether to seek capital punishment, while 30% believe it should.
- Most respondents believe case management conferences in capital cases should not be held in open court, but should be recorded.

- All respondents believe there is a need for pattern jury instructions in capital cases.

5. *Fourth Annual Report.*

Mr. Sullivan reported that on March 26, 2008, he distributed a draft of the Fourth Annual Report to all members and Dr. Olson, and has received responses and suggestions from several members. He said he intends to distribute another draft version of the report within the next few days, for comments and editorial suggestions.

6. *Reports of subcommittees.*

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

Mr. Coldren said that the minutes of the subcommittee meeting on February 22, 2008 have been approved, and are attached as Appendix 2. Mr. Coldren reported that the subcommittee met again on March 21, 2008. The minutes of that meeting have been approved, and are attached as Appendix 3.

Mr. Coldren reported that the subcommittee has undertaken a study of the literature and experiences of police and sheriff departments with the use of sequential lineups (rather than simultaneous lineups and photo

spreads), in which the persons in the lineup or the pictures in the photo spread are shown to the eyewitnesses one by one rather than all at the same time. He said that this practice is designed to be used when the administrator is not aware of the identity of the suspect, and is therefore known as the “double blind sequential” system. The members also agreed to ask Professor Sheri Diamond of Northwestern University if she is willing to assist in the study.

Mr. Coldren also reported that North Carolina has recently enacted legislation requiring the use of blind administrators for all lineups and photo spreads. The subcommittee is currently considering whether, if reasonably available, blind administrators should be required in Illinois.

Mr. Sullivan agreed to send to Mr. Coldren a relating to the use of video or audio tapes to record lineups and photo spreads. He cautioned that if any of the participants’ voices are recorded, their consent must be obtained under the Illinois Eavesdropping Act. 720 ILCS 5/14-2(a)(1).

(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. No additional first degree murder

indictments have been received for the period January 1, 2003 through December 31, 2006. In due course, a letter will be sent to all State's Attorneys requesting that they send the first degree murder indictments for the period January 1, 2006 through December 31, 2007, and requesting the State's Attorneys who have not responded to the initial request to do so.

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

Mr. Parkinson reported that the subcommittee met on April 7, 2008. They discussed jury questionnaires for use in jury selection, and instructions which may be used in the various stages of capital cases. They also discussed whether the burden of proof in the sentencing phase should be changed from beyond a reasonable doubt that capital punishment should be imposed, to no doubt that capital punishment should be imposed.

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

Mr. Schiedel said that the subcommittee has not met since the last full Committee meeting. Ms. Bishop-Jenkins reported that she spoke with John Collins, the Director of the DuPage County Crime Laboratory,

and the Chair of the Illinois Laboratory Advisory Committee.

Ms. Bishop-Jenkins presented a memorandum of her conversation, attached as Appendix 4.

It was agreed that in the coming year, the subcommittee will make further inquiries into the status and operations of Illinois forensic science laboratories, including (1) those that are operated under the Illinois State Police, (2) those that are operated under the auspices of other public bodies, and (3) privately owned and operated labs.

7. Next meeting – Tuesday, May 13, 2008, at noon.

It was agreed that the next full Committee meeting will be held at noon on Tuesday, May 13, 2008, at the office of the Illinois Criminal Justice Information Authority, 300 W. Adams, 7th Floor, Chicago, IL.

Thomas P. Sullivan
Chair
May 16, 2008

Attachments – Appendices 1 - 4.

DRAFT
**Results from the Capital Punishment
Reform Study Committee State's
Attorney Survey**

Prepared for the
Illinois Capital Punishment Reform Study Committee

Prepared by
David E. Olson, Ph.D.

&

Jordan Boulger
Loyola University Chicago

April 8, 2008



Preparing people to lead extraordinary lives

Distribution Method & Response Rate

- Introductory letter distributed by co-chairs Sullivan & Schwind
- Cover letter, survey & self-addressed, postage paid return envelope sent to all 102 county State's Attorney's
- By 3/14/08 responses received from 38 of the 102 county State's Attorney's
- 3/14/08 second cover letter, survey & self-addresses, postage paid return envelope sent to non-responders
- By 4/4/2008 a total of 50 of the 102 county State's Attorney's had responded



Response Rates, by SFY 2003-2007

Volume of Murder Convictions

- **Counties with 0 murder convictions**
 - Surveys returned from 13 of the 27 counties (48.1%)
- **Counties with 1 to 10 murder convictions**
 - Surveys returned from 31 of the 61 counties (50.8%)
- **Counties with 11 or more murder convictions**
 - Surveys returned from 6 of the 14 counties (42.8%)



Staffing & Capital Litigation Trial Bar

- Overall, 14% of the total ASAs employed by respondent agencies were members of the CLTB;
- Varied by volume of homicide convictions:
 - Among the counties with 0 murder convictions, 40% had no ASAs, and 14% of the ASAs were members of the CLTB
 - Among counties with 1 to 10 murder convictions, 29% had no ASAs, and 10% of the ASAs were members of the CLTB
 - Among counties with 11 or more murder convictions, all had ASAs, and 19% of the ASAs were members of the CLTB

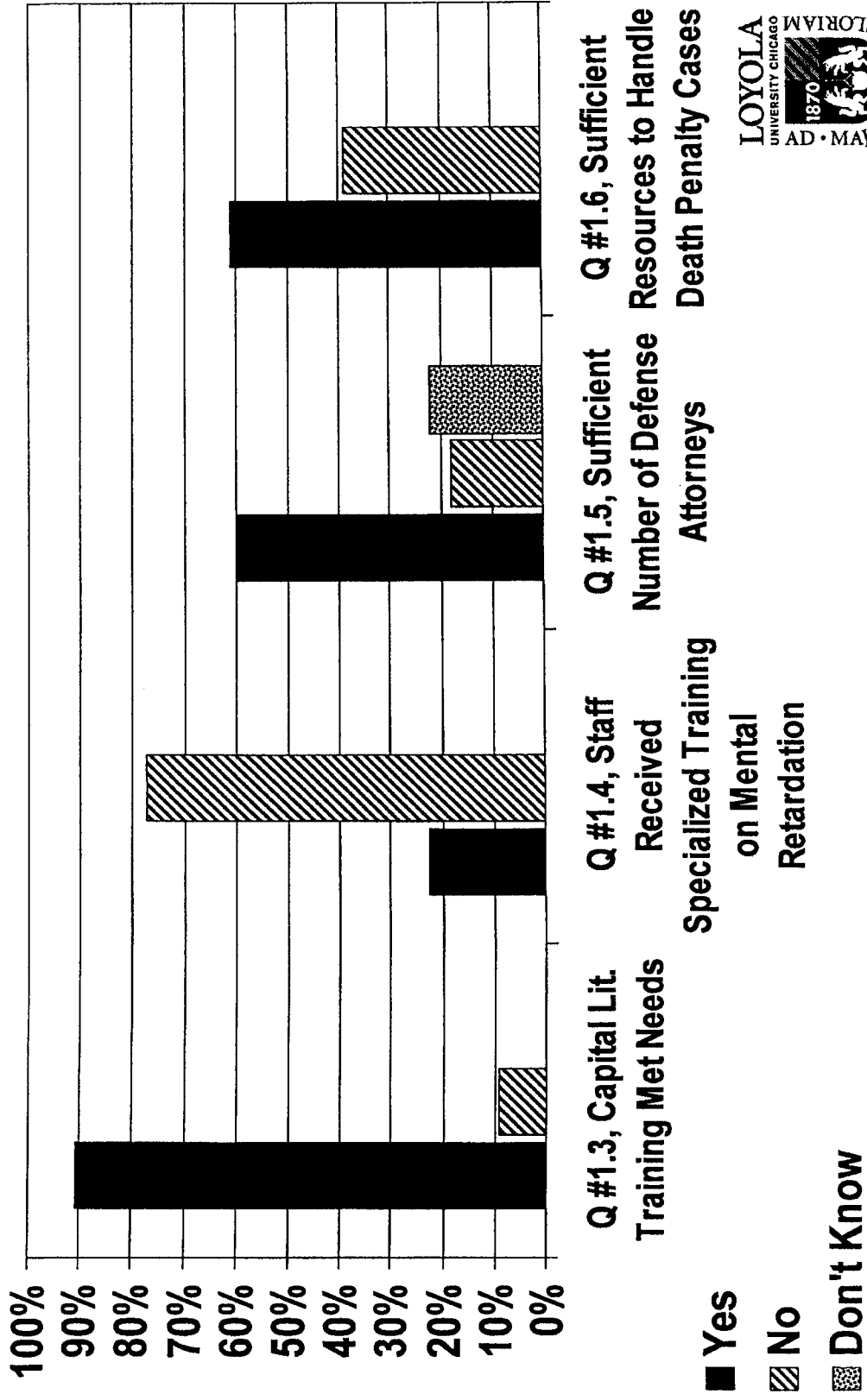


Questions 3 through 6 on Section I of the State's Attorney Survey

- Q1.3) Has the *training related to capital litigation* provided to the staff in your office met the needs of your office? (Check 1)
 - Yes
 - No
 - If no, what additional training for members of the Capital Litigation Trial Bar do you believe is needed?
- Q1.4) Have any prosecutors in your office received any specialized training on the issue of mental retardation since 2005? (Check 1)
 - No
 - Yes
 - If yes, how would you describe the *quality* and *applicability* of the training provided?
- Q1.5) Are the *number* of defense attorneys (either private or within the Public Defender's Office) who are members of the Capital Litigation Trial Bar sufficient to effectively handle death-eligible murder cases in your jurisdiction? (Check 1)
 - No
 - Yes
 - Don't Know
- Q1.6) Are there sufficient resources available to your office to handle *death-eligible* murder cases? (Check1)
 - Yes
 - No
 - If no, what additional resources do you believe are needed for your office?



Questions 3 through 6 on Section I of the State's Attorney Survey



Question 1, Section II & Question 1, Section III

on State's Attorney Survey

- Q2.1) Does your State's Attorney's Office have the State's Attorney or an Assistant State's Attorney *physically present* during custodial interrogations (i.e., from *Miranda* warning forward) of *murder suspects*? (Check 1)

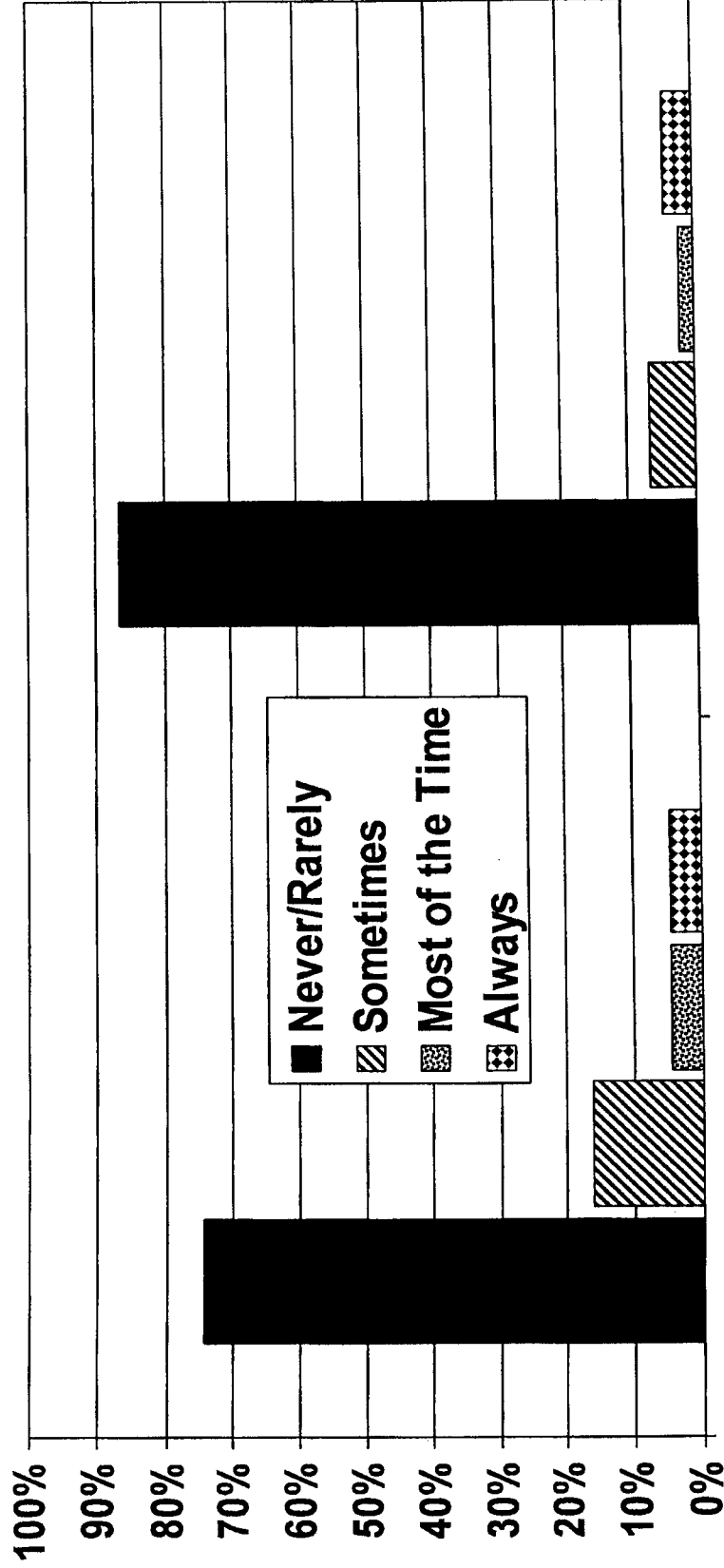
Never/Rarely _____
Sometimes _____
Most of the time _____
Always _____

- Q3.1) Does your State's Attorney's Office have the State's Attorney or an Assistant State's Attorney *physically present* during *eyewitness identification procedures* of *murder suspects*? (Check 1)

Never/Rarely _____
Sometimes _____
Most of the time _____
Always _____



Question 1, Section II & Question 1, Section III on State's Attorney Survey



Q #2.1, ASA Present During Interrogation

Q #3.1, ASA Present During Eyewitness ID



Questions 2 and 3, Section II on State's Attorney Survey

- Q2.2) Since the statutory requirement took effect in July 2005 requiring complete electronic recordings of custodial interviews of murder suspects, were any *technical problems/failures* experienced with your office's receipt/review of recorded interrogations? (Check 1)

Not applicable/have not had any murder cases since the recording requirement

No, no technical problems/failures have not been experienced.

Yes, technical problems/failures have been experienced.

If yes, please provide a brief explanation of the problem(s) experienced.

- Q2.3) Since the recording requirement took effect in July 2005, were any technical problems/limitations experienced with your office's *presentation of this evidence at trial* (i.e., courtrooms not equipped with necessary equipment, audio could not be heard by jury, etc)? (Check 1)

Not applicable/have not had any murder cases since the recording requirement.

No

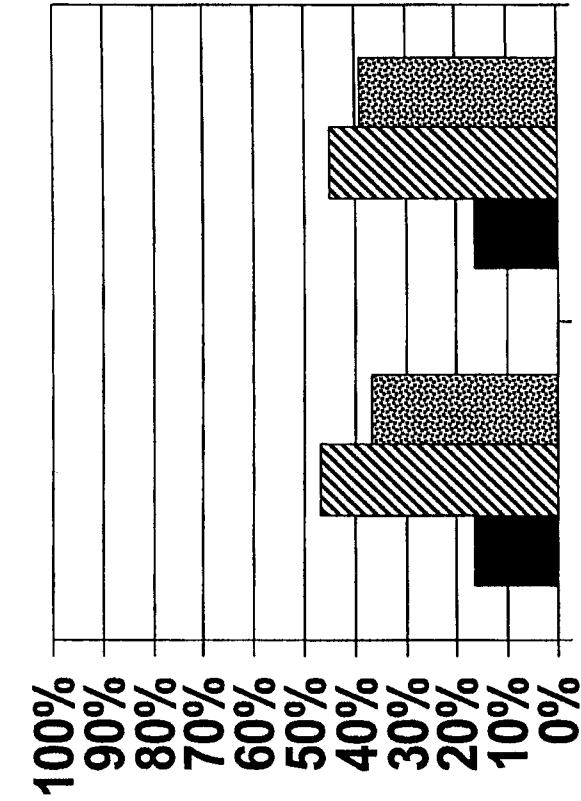
Yes

If yes, please provide a brief explanation of the problem(s) experienced.

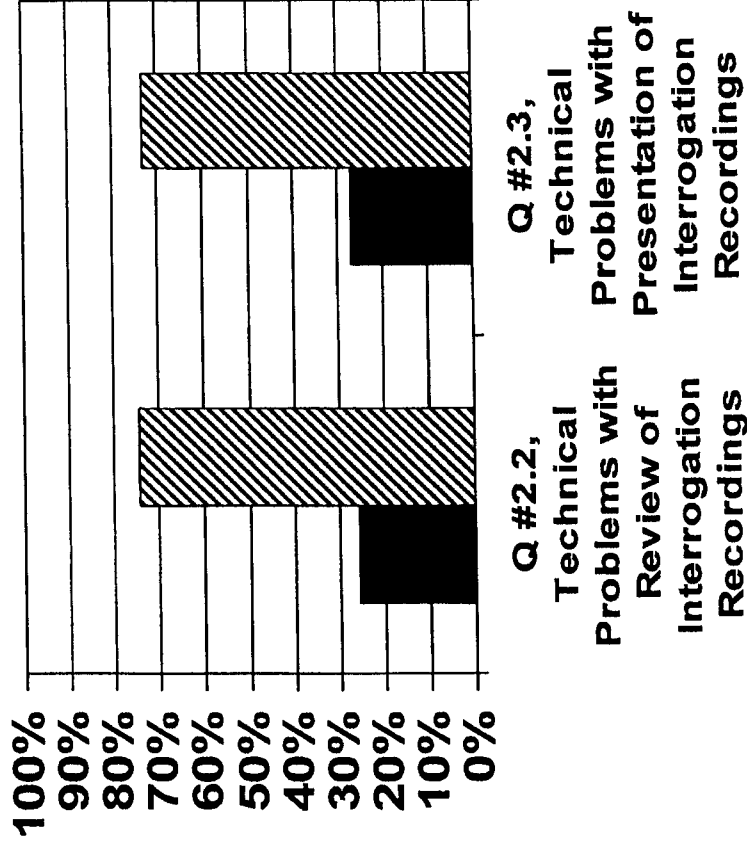


Question 2, Section II, and Question 2, Section III on State's Attorney Survey

All Cases



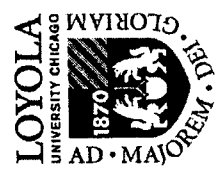
Excluding Not Applicable



Q #2.2, Technical Problems with Review of Interrogation Recordings

Q #2.3, Technical Problems with Presentation of Interrogation Recordings

■ Yes ■ No ■ N/A



Questions 4 and 6, Section II on State's Attorney

Survey

- Q2.4) In your opinion, has the mandatory recording of custodial interrogations in murder cases changed the way *detectives* have conducted interrogations due to the knowledge that jurors will potentially view or hear these taped interrogations? (Check 1)

___ Not applicable/have not had any murder cases since the recording requirement.

___ Don't Know

___ No

___ Yes

If yes, please explain how (either positively or negatively) you believe this has changed their interrogation techniques.

- Q2.6) Has the availability of recorded interrogations/confessions in murder cases influenced decisions made by *your office* regarding whether to seek the death penalty or not? (Check 1)

___ Not applicable/have not had any murder cases since the recording requirement.

___ No, has not influenced the decision regarding whether or not to seek the death penalty.

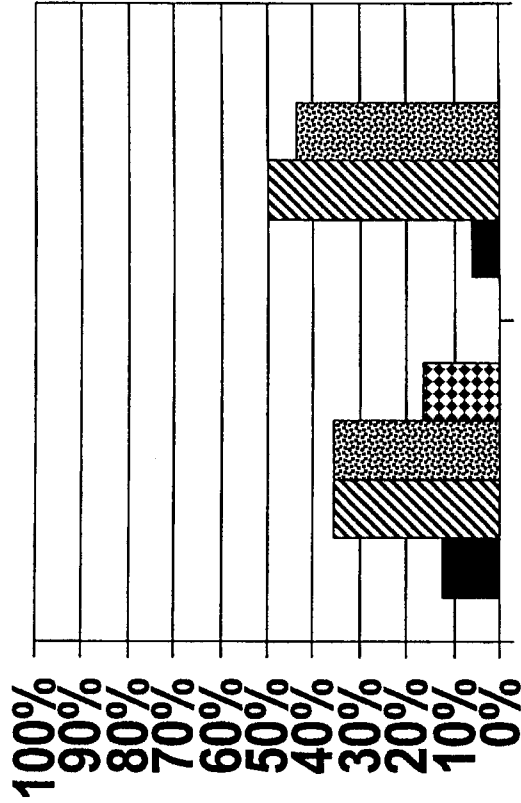
___ Yes, has influenced the decision regarding whether or not to seek the death penalty.

If yes, please explain how the availability of recorded interrogations/confessions influenced this decision. Please provide specific examples.

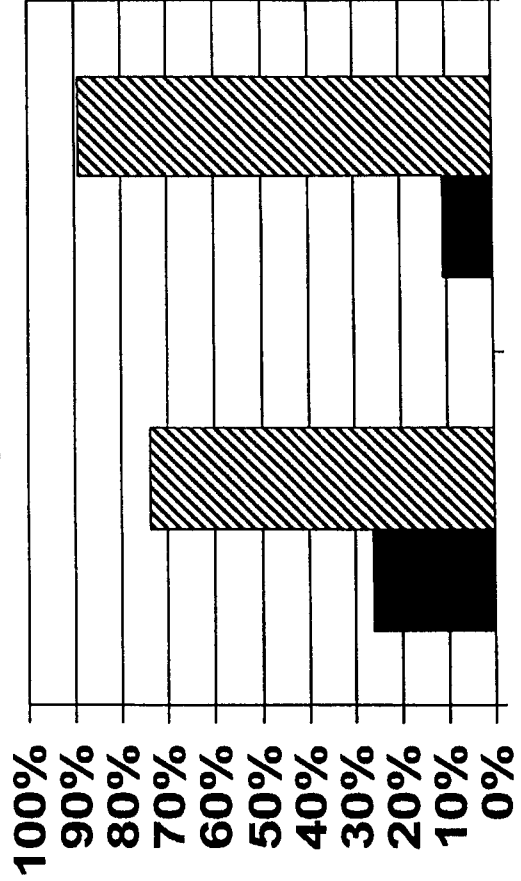


Questions 4 and 6, Section II on State's Attorney Survey

All Cases



Excluding Not Applicable



Q #2.4, Changes in Interrogation Techniques due to Mandatory Recording

Q #2.6, Changes in Decision to Seek Death due to Mandatory Recording

■ Yes ▨ No ▩ N/A ▧ Don't Know



Questions 5, 7, 8, 9 and 10, Section II on State's

Attorney Survey

- Q2.5) Have recorded interrogations been instrumental in obtaining convictions in murder cases? (Check 1)
 Not applicable/have not had any murder cases since the recording requirement.
 No
 Yes

- Q2.7) In your opinion, has the existence of recorded custodial interrogations/confessions in murder cases influenced the willingness of the *defense/defendant* to plea bargain? (Check 1)
 Not applicable/ have not had any murder cases since the recording requirement.
 No, has not influenced defense/defendant willingness to plea bargain.
 Yes, has influenced defense/defendant willingness to plea bargain.

If yes, please explain how or give specific examples.

- Q2.8) In your opinion, has the existence of recorded custodial interrogations/confessions in murder cases influenced the willingness of the defense/defendant to *seek a jury trial*? (Check 1)
 Not applicable/ have not had any murder cases since the recording requirement.
 No, has not influenced defense/defendant to seek a jury trial.
 Yes, has influenced defense/defendant to seek a jury trial.

If yes, explain how and give specific examples.

- Q2.9) In your opinion, have electronic recordings of murder interrogations reduced the number of motions to suppress confessions or admissions owing to failure to give *Miranda* warnings, coercion, or use of improper interview tactics? (Check 1)

- Not applicable/have not had any murder cases since the recording requirement.
- No, has not reduced motions to suppress confessions or admissions.
- Yes, has reduced motions to suppress confessions or admissions.

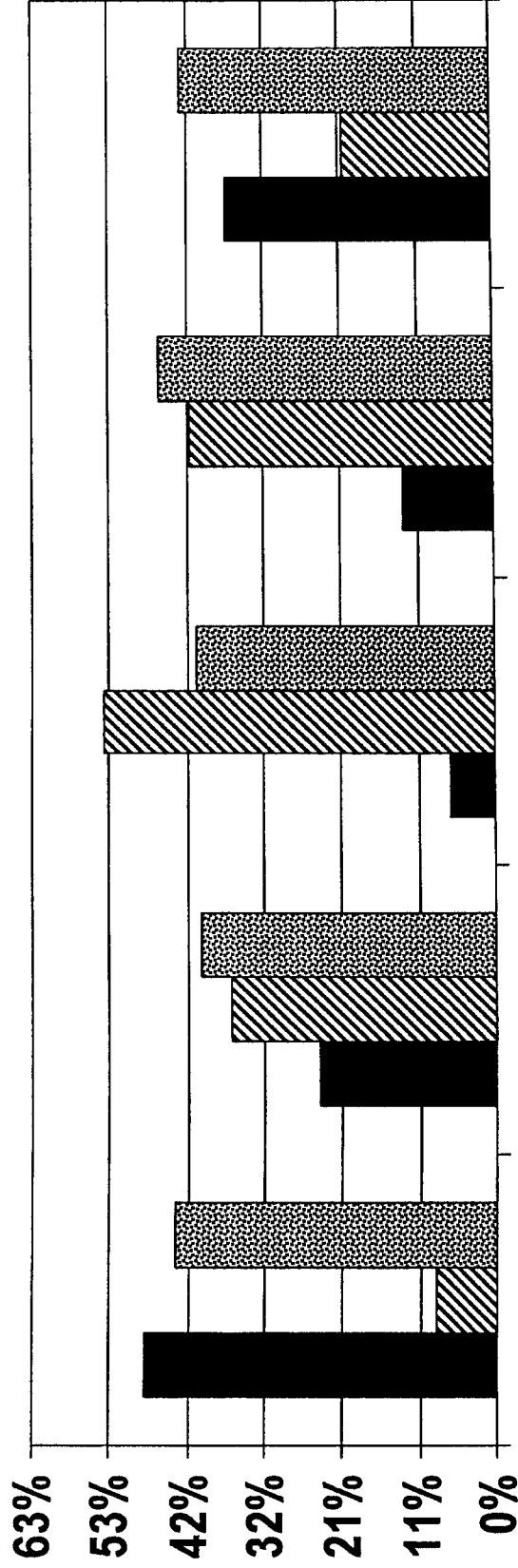
If yes, please give specific examples.

- Q2.10) In your opinion, have electronic recordings made it easier to obtain convictions in murder cases (Check 1)
 Not applicable/have not had any murder cases since the recording requirement
 No, has not made it easier to obtain convictions in murder cases.
 Yes, has made it easier to obtain convictions in murder cases.

If yes, please give examples of how they were used to obtain convictions.



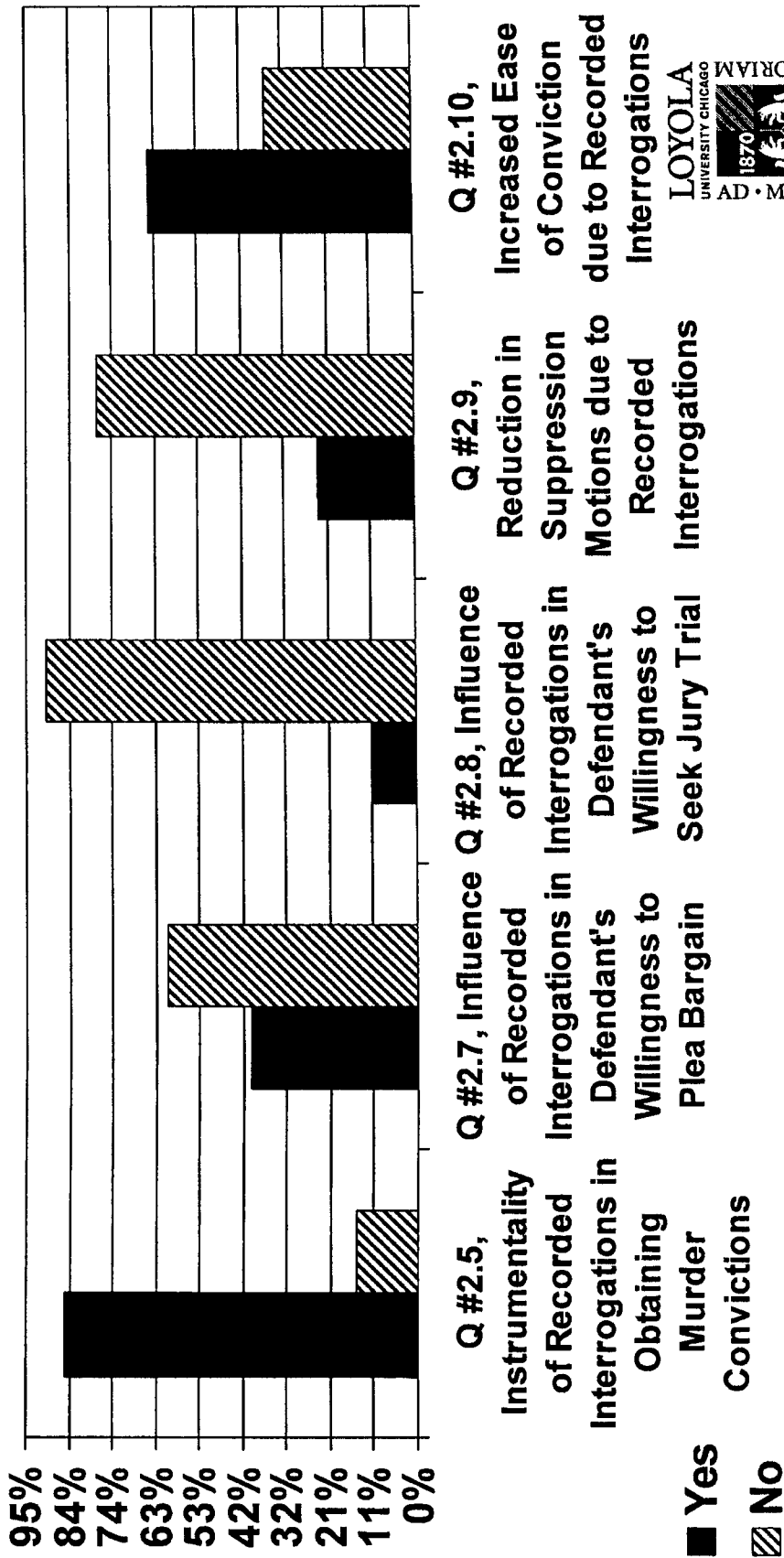
Questions 5, 7, 8, 9 and 10, Section II on State's Attorney Survey



Yes
 No
 N/A



Questions 5, 7, 8, 9 and 10, Section II on State's Attorney Survey- Excluding Not Applicable



Question 11, Section II on State's Attorney Survey

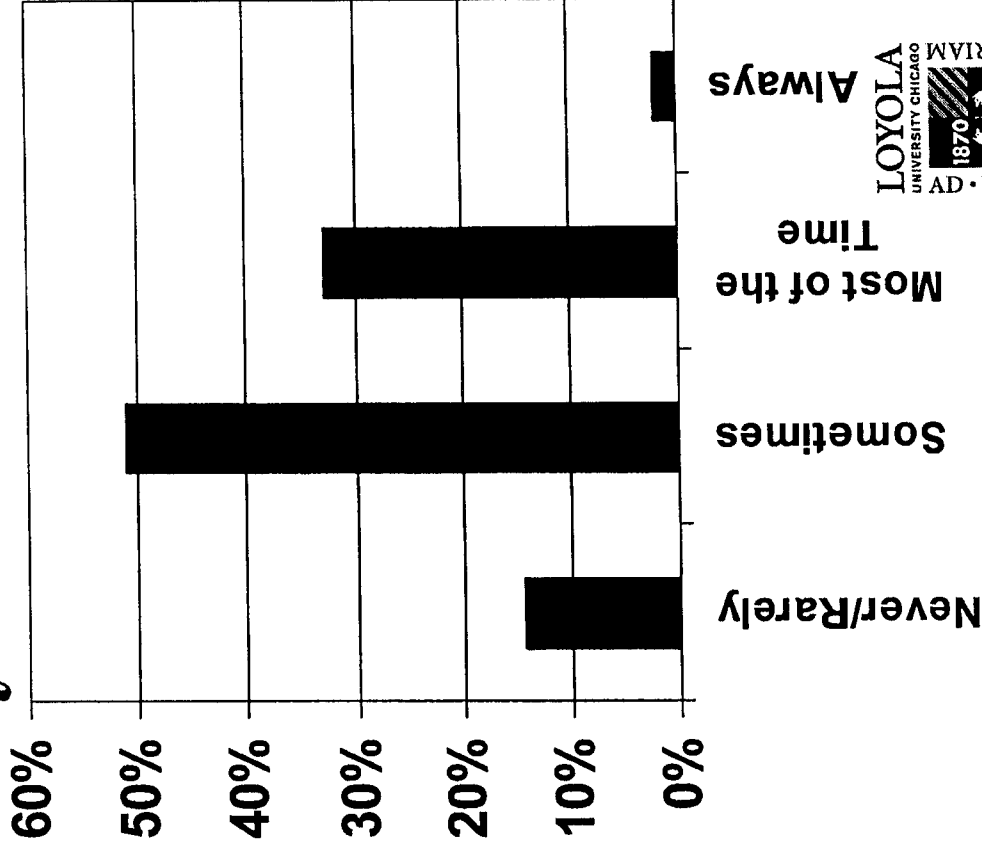
- Q2.11) Since the statutory requirement took effect requiring electronic recordings of custodial interrogations of murder suspects, has your office been provided with recorded interrogations/confessions of any **NON-MURDER** cases? (Check 1)

Never/Rarely _____

Sometimes _____

Most of the time _____

Always _____



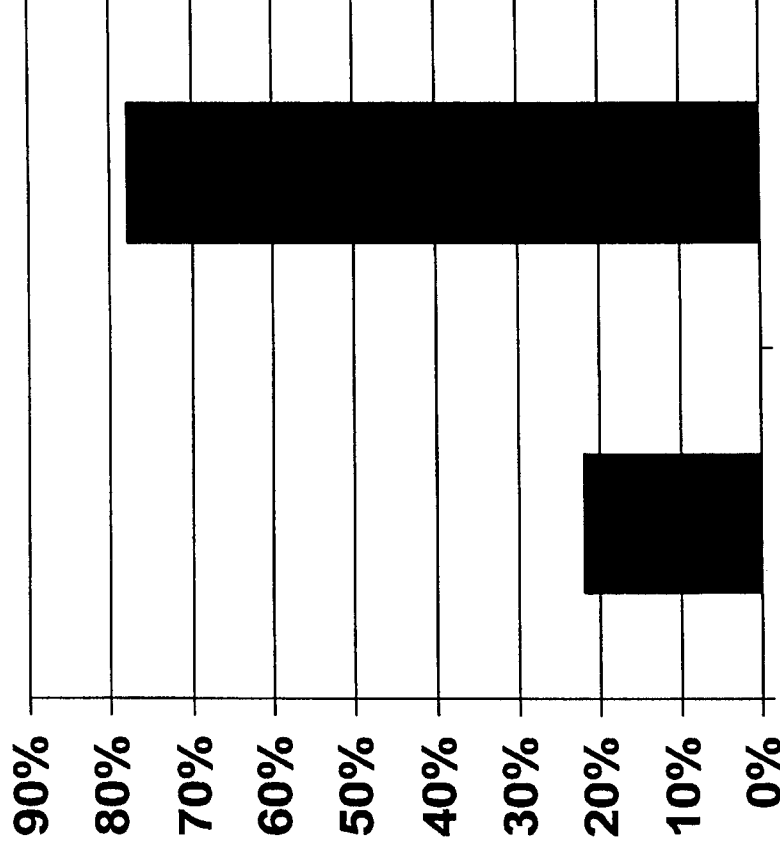
Question 12, Section II on State's Attorney Survey

- Q2.12) Do you believe that the requirement of complete electronic recordings of custodial interrogations should be expanded to include additional felony offenses? (Check 1)

___ No

___ Yes

If yes, what other types of felony offense interrogations do you believe should be recorded and why?



Questions 2 and 3, Section III

on State's Attorney Survey

- Q3.2) Do you prefer the use of administrators of police line-ups who do not know which member of the line-up is the suspect, the so-called "blind" administrator method, if one is reasonably available? (Check 1)

Yes, prefer "blind" administrator methods for police line-ups.

No, do not prefer "blind" administrator methods for police line-ups.

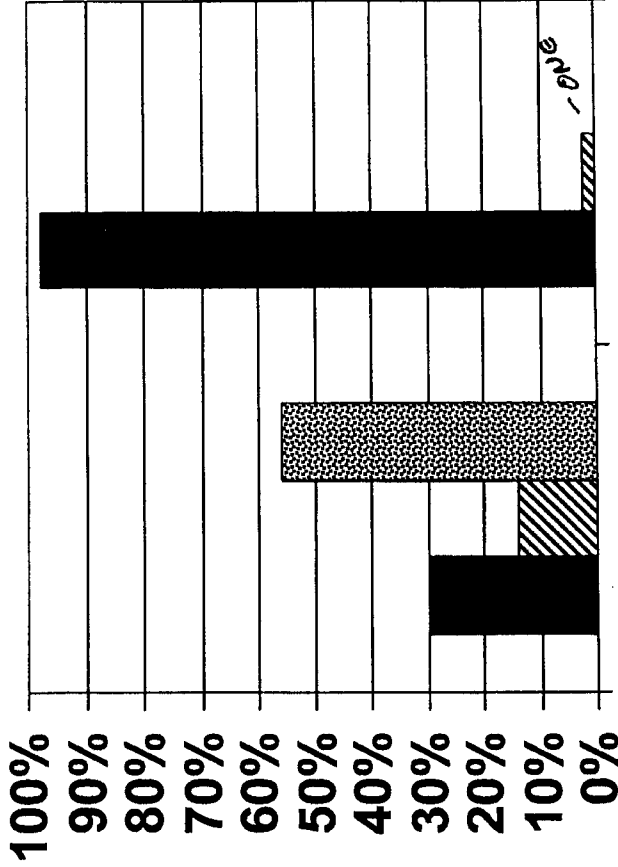
Do not have any opinion.

- Q3.3) Are you satisfied with the current procedures used by police departments for eyewitness identification in murder cases? (Check 1)

Yes

No

If no, how do you believe line-up procedures in murder cases could be improved?



Q #3.2, Prefer "Blind Administrator" Method
 Q #3.3, Satisfied with Current Eyewitness ID Techniques

Yes
 No
 No Opinion

Question 1 & 3, Section IV, Questions 5 & 11, Section V on State's Attorney Survey

- Q4.1) Have you experienced any problems with police departments in your jurisdiction complying with the requirement that they provide all investigative files, materials, field notes, etc. to your office in every homicide case? (Check 1)
 Not applicable/have not had any murder cases since the requirement.
 No, there have not been any problems with police departments complying.
 Yes, there have been problems with police departments complying.

If yes, please describe the problems experienced (i.e., handwritten reports difficult to work with, incompatible/lacking equipment to review recorded custodial interrogations, timeliness, missing pages/documents, etc).

- Q4.3) In the past 4 years, have you experienced delays in obtaining forensic lab results for murder cases that have delayed discovery or court proceedings?
 Not applicable/have not had any murder cases in the past 4 years.
 No
 Yes

- Q5.10) Has your office experienced delays in receiving results from forensic laboratories in *death penalty* cases? (Check 1)
 No
 Yes

If yes, please explain or give examples.

- Q5.11) Are you satisfied with the quality of the work product of forensic laboratories in *death penalty* cases? (Check 1)
 Yes
 No

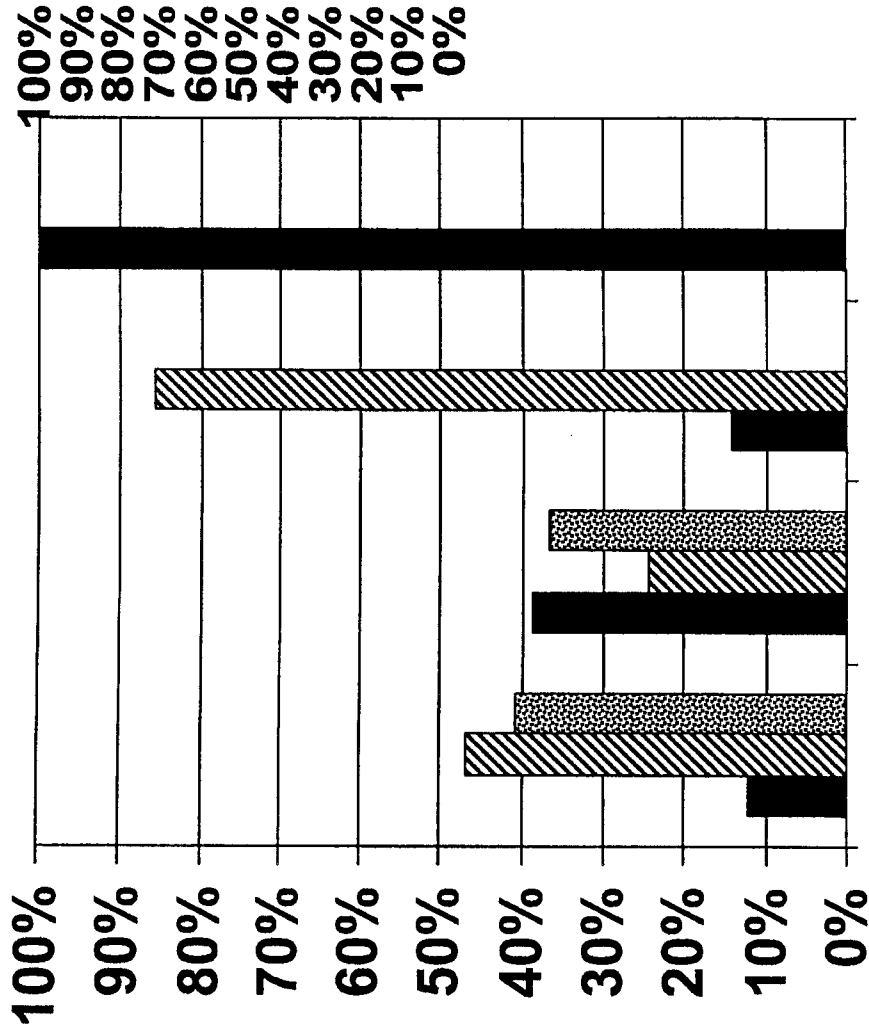
If no, please explain and give examples



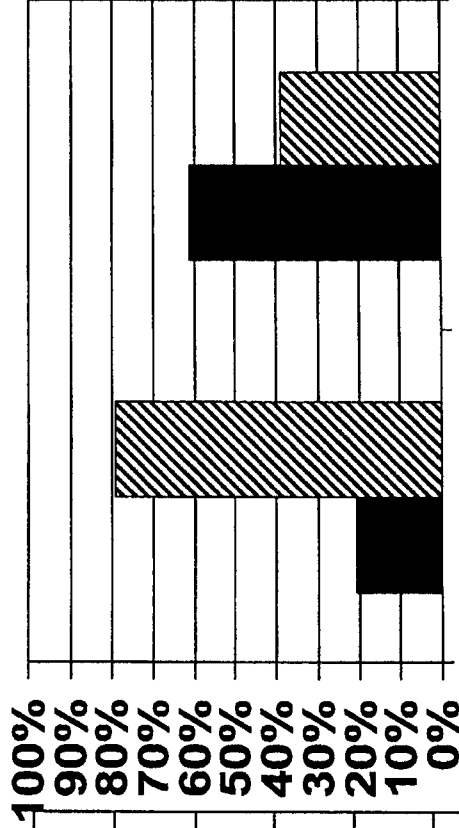
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Question 1 & 3, Section IV, Questions 5 & 11, Section V on State's Attorney Survey

All Cases



Excluding Not Applicable



Q #4.1,
Experienced
Problems with
Police Depts.
Providing Files,
Materials,
Notes, Etc.

Q #4.3,
Experienced
Delays in
Obtaining
Forensic
Results in
Murder Cases



■ Yes ■ No ■ N/A

Question 2, 3, & 6, Section V on State's Attorney Survey

• Q5.2) In general, do you believe that 120 days from arraignment is sufficient time to determine if the death penalty will be sought (i.e., a certificate to seek the death penalty is filed)? (Check 1)

No

Yes

• Q5.3) Have you had any specific cases/experiences where the 120 days was not sufficient time? (Check 1)

Not applicable/have not had any death-eligible cases since the 120 day requirement was implemented

No

Yes

If yes, please explain the circumstances where 120 days was not sufficient.

• Q5.6) Do you believe that allowing depositions in capital cases improves the processing of these cases? (Check 1)

Not applicable/ have not had any capital cases since 2003.

No, depositions do not improve the processing of capital cases.

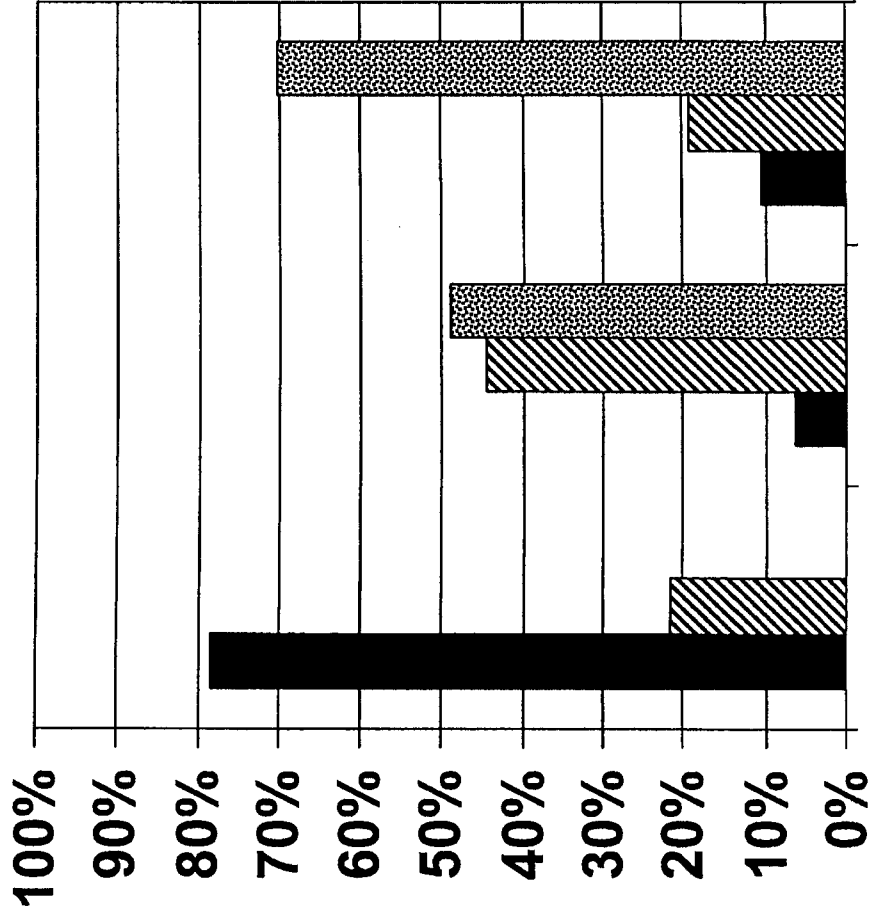
Yes, depositions do improve the processing of capital cases.

If yes or no, please explain why or why not.



Question 2, 3, & 6, Section V on State's Attorney Survey

All Cases



Excluding Not Applicable



Q #5.3, Cases where 120 Days was Insufficient
 Q #5.6, Allowing Depositions Improves Processing of Capital Cases



Questions 4 & 5, Section V, and Question 4,

Section I on State's Attorney Survey

- Q5.4) Do you believe that the new mitigating factor for mental and physical abuse or for diminished mental capacity has changed your office's decision to file a certificate to seek capital punishment? (Check 1)

___ Not applicable/ have not had any death-eligible cases since 2003.

___ No

___ Yes

- Q5.5) Are you satisfied with the factors utilized in the Illinois statute, and the process used in the court, to determine mental retardation? (Check 1)

___ Yes

___ No

If no, what aspect are you not satisfied with?

- Q1.4) Have any prosecutors in your office received any specialized training on the issue of mental retardation since 2005? (Check 1)

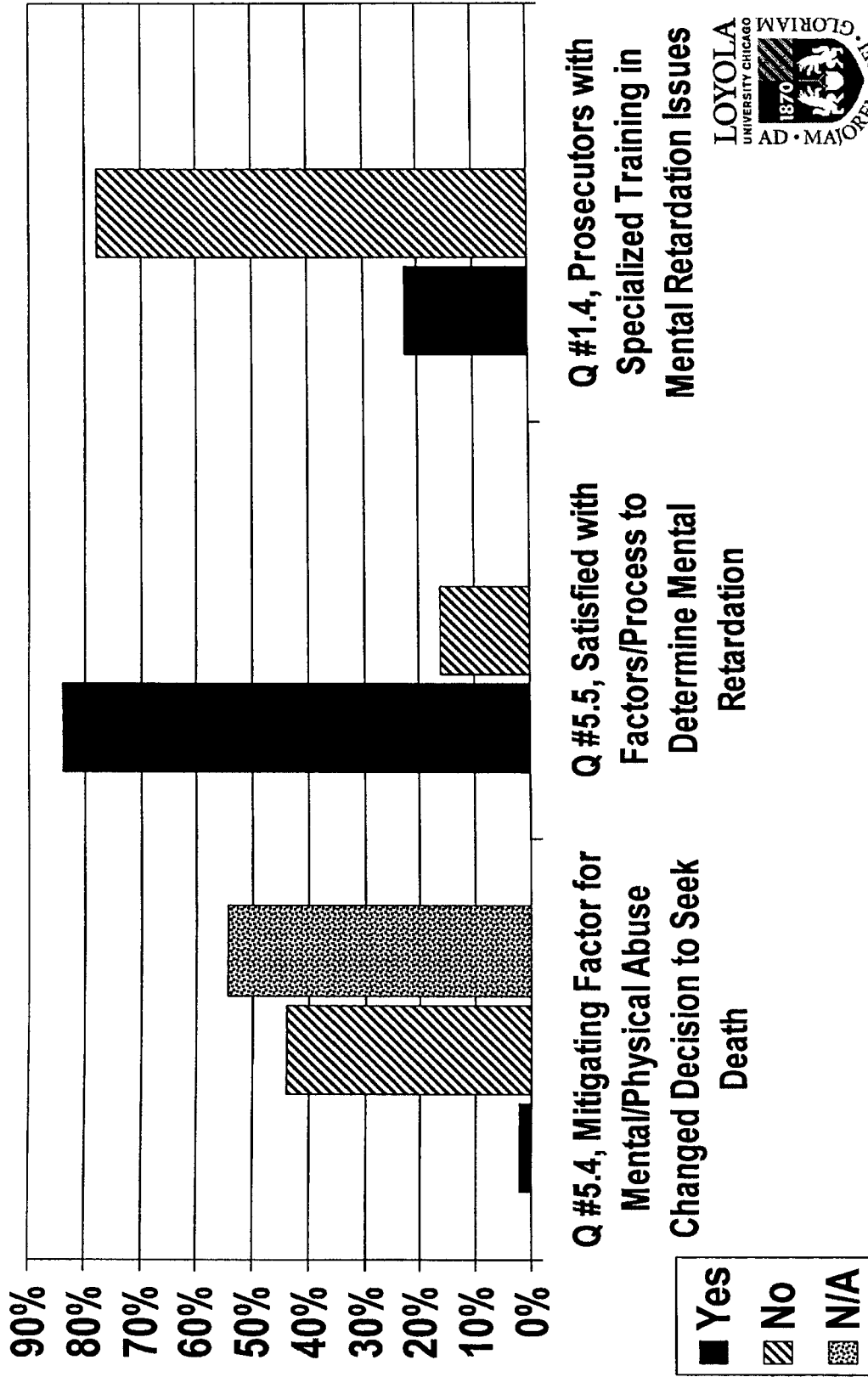
___ No

___ Yes

If yes, how would you describe the *quality* and *applicability* of the training provided?



Questions 4 & 5, Section V, and Question 4, Section I on State's Attorney Survey



Question 7, Section V on State's Attorney Survey

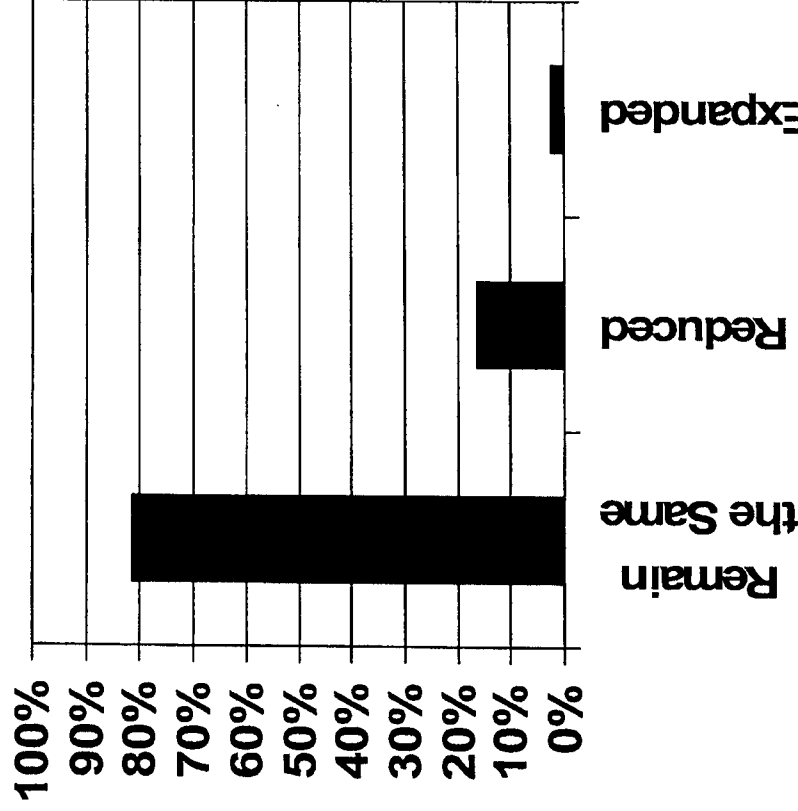
- Q5.7) Do you believe that the number of factors that make a homicide case eligible for the death penalty should remain the same, be reduced or be expanded? (Check 1)

_____ Remain the same

_____ Reduced

_____ Expanded

If reduced or expanded, what specific changes do you believe should be made?



Questions 8 & 9, Section V on State's Attorney

Survey

- Q5.8) Do you believe that the *cost* to your County of pursuing the death penalty reduces the likelihood that it will be sought? (Check 1)

_____ No, the cost to the county does not reduce the likelihood that the death-penalty will be sought.

_____ Yes, the cost to the county does reduce the likelihood that the death-penalty will be sought.

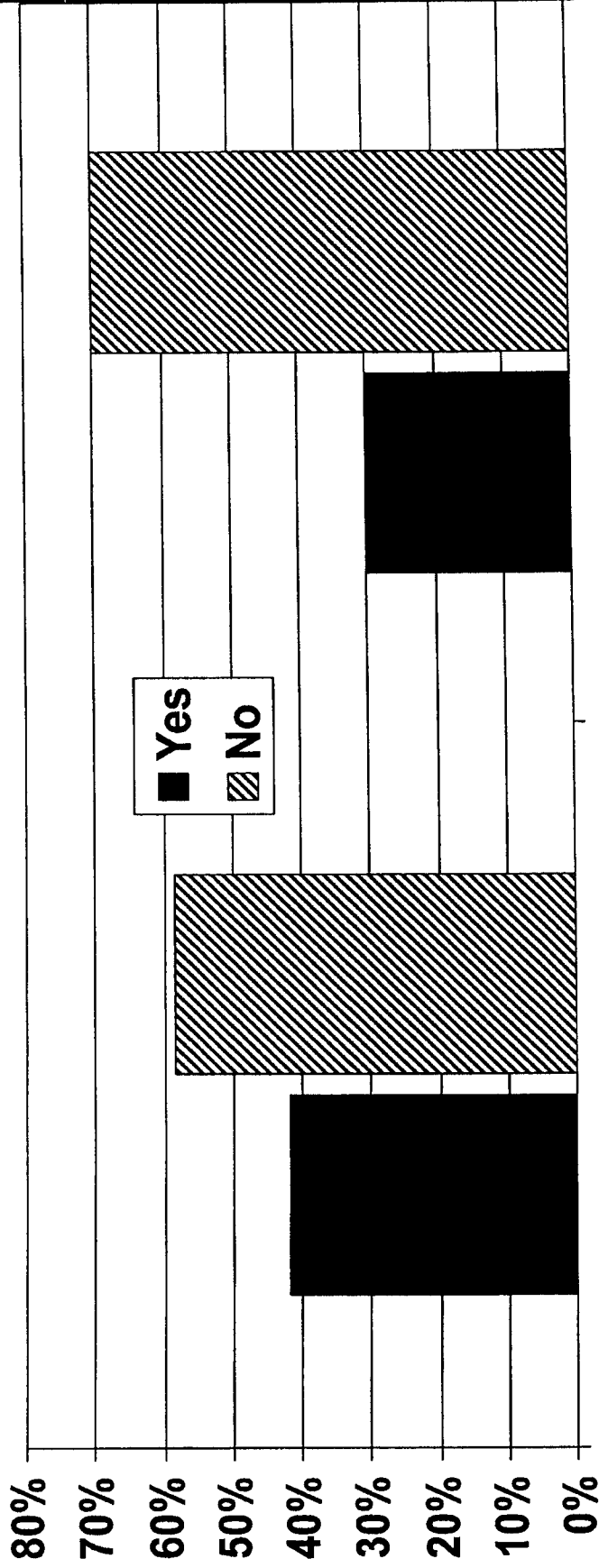
- Q5.9) *Should* the cost of pursuing the death penalty be considered when determining whether it should be sought? (Check 1)

_____ No, the cost should not be considered.

_____ Yes, the cost should be considered.



Questions 8 & 9, Section V on State's Attorney Survey



Q #5.8, Does Cost of Pursuing Death Reduce Likelihood of Death Being Sought Q #5.9, Should Cost of Pursuing Death be Considered in Determining if Death is Sought



Question 1, Section VI on State's Attorney Survey

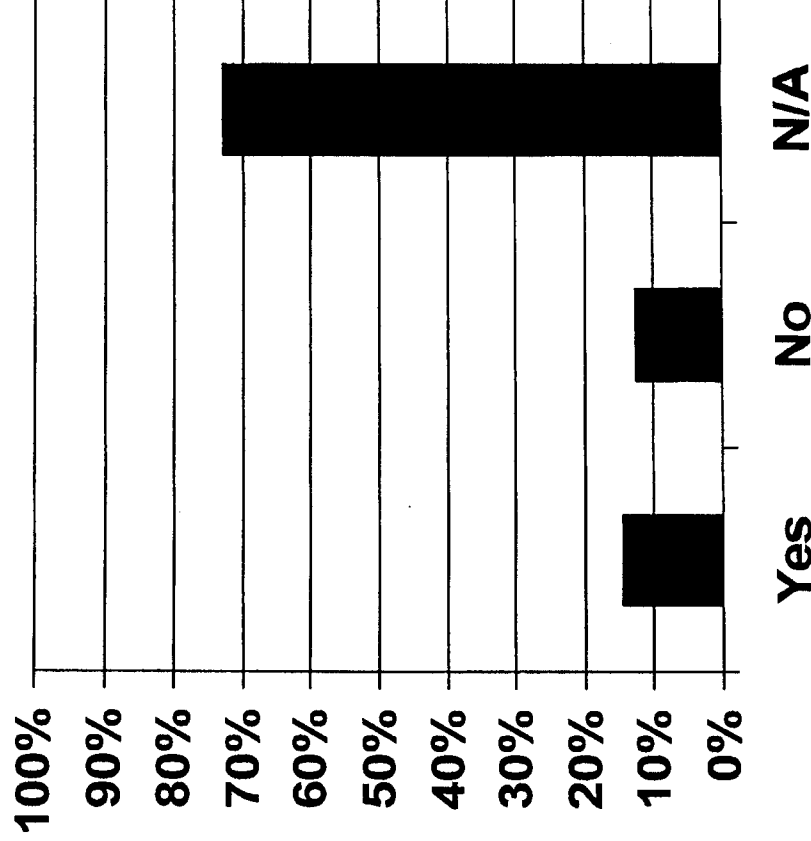
- Q6.1) Are juror questionnaires--questions proposed by the defense and prosecution, reviewed by the court to reach a consensus, and given to prospective jurors prior to *voir dire*—used in *capital cases* in your county? (Check 1)

Not applicable/have not had any capital cases involving a jury in the past 4 years

___ No

___ Yes

If yes, how are they created and do you find them useful?



Questions 2-5, Section VI on State's Attorney

Survey

- Q6.2) Are case management conferences held in *every* murder case that are *potential* death-penalty cases (i.e., a certificate of intent to seek death has not yet been formally filed) in your jurisdiction? (Check 1)
____ Not applicable/ have not had any death-eligible cases since 2003.
____ No
____ Yes

If yes, please explain the process used by the court to make this determination/decision to hold case management conferences in potential death-penalty cases.

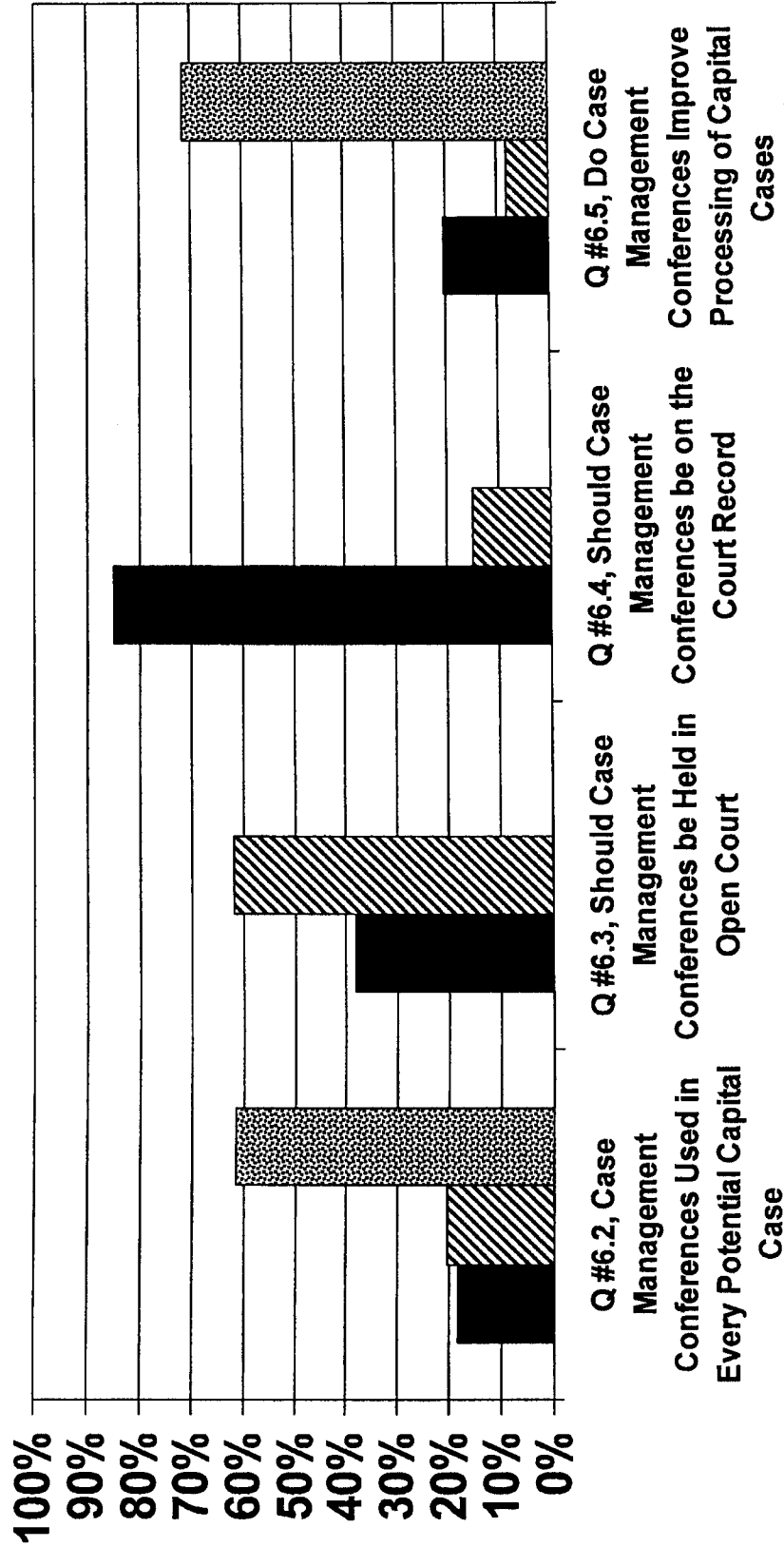
- Q6.3) Do you believe case management conferences for death-penalty cases should be held in *open court*? (Check 1)
____ No, they should not be held in open court.
____ Yes, they should be held in open court.
- Q6.4) Do you believe these case management conferences for death-penalty cases should be on the *court record*? (Check 1)
____ No, they should not be on the court record.
____ Yes, they should be on the court record.

- Q6.5) Do you believe these *case management conferences* for death-penalty cases have improved the processing of death-penalty cases? (Check 1)
____ Not applicable/ have not had any death-penalty cases since 2003.
____ No, have not improved the processing of death-penalty cases.
____ Yes, have improved the processing of death-penalty cases.

If yes or no, please explain why or why not.



Questions 2-5, Section VI on State's Attorney Survey



Yes
 No
 N/A



Question 6, Section VI on State's Attorney Survey

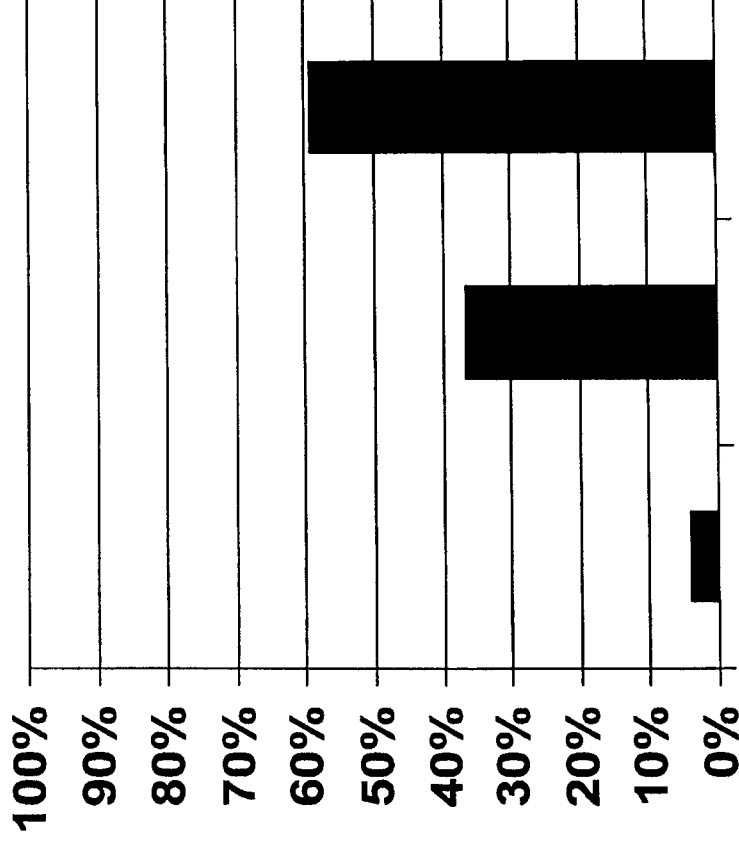
- Q6.6) Has your office had experience with the statutory requirement of a pretrial hearing concerning the reliability of testimony of informants (i.e., "jailhouse" informants) in a capital case? (Check 1)

_____ Not applicable/ have not had any murder cases since 2003.

_____ No

_____ Yes

If yes, what are your perceptions of this hearing?



Yes No N/A

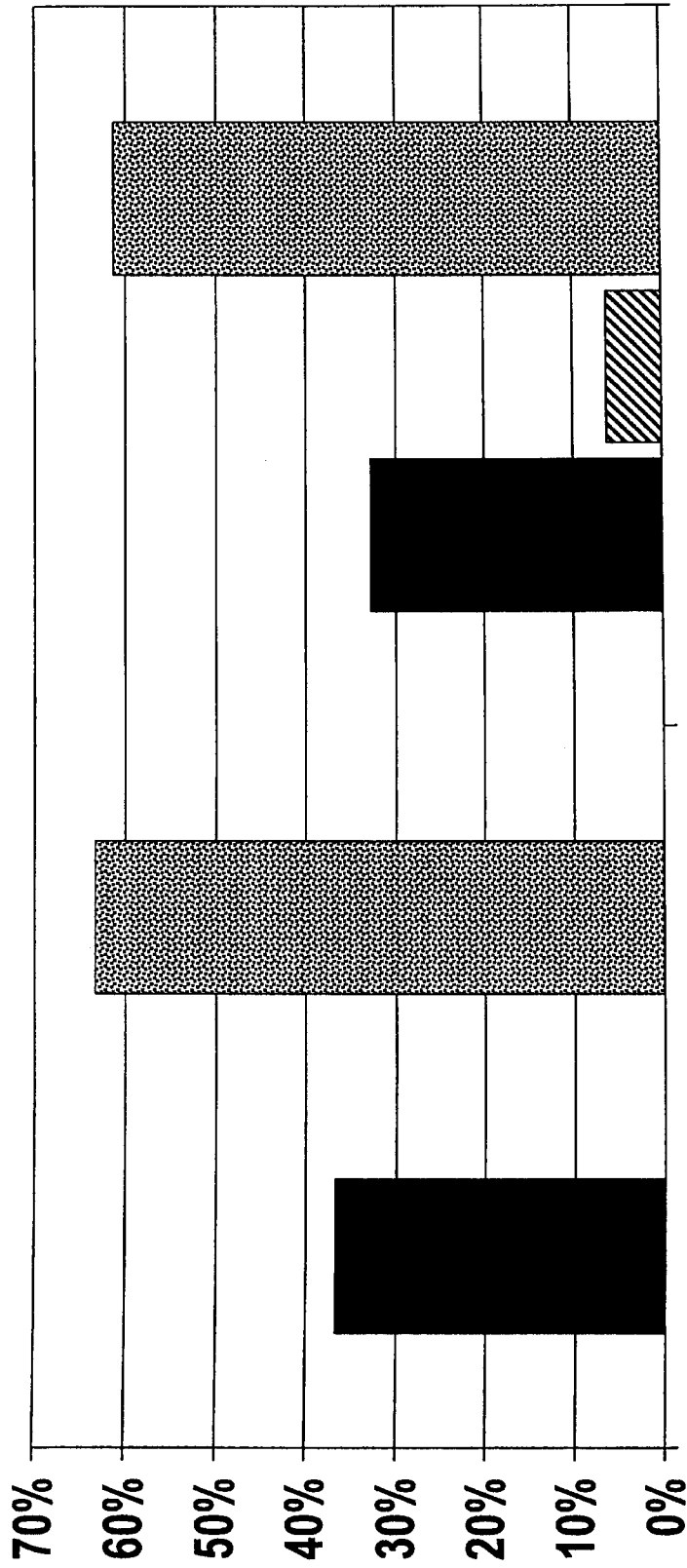


Questions 7 & 8, Section VI on State's Attorney Survey

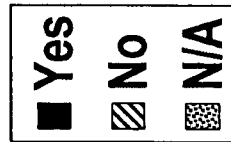
- Q6.7) Do you believe that the trial judges in capital cases tried in your county since 2003 have sufficient experience and competence to handle these cases? (Check 1)
____ Not applicable/ have not had any capital cases since 2003.
____ Yes
____ No
- Q6.8) Do you believe that the defense bar in capital cases tried in your county since 2003 have sufficient experience and competence to handle these cases? (Check 1)
____ Not applicable/ have not had any capital cases since 2003.
____ Yes
____ No



Questions 7 & 8, Section VI on State's Attorney Survey



Q #6.7, Trial Judges in Capital Cases have Sufficient Experience and Competence to Handle these Cases Q #6.8, Defense Bar in Capital Cases have Sufficient Experience and Competence to Handle these Cases



Question 9, Section VI, on State's Attorney Survey

- Q6.9) Do you feel that there is a need for pattern jury instructions in death-eligible cases?

_____ Yes

_____ No

100% Indicated "Yes"



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.

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Police and Investigations Subcommittee

March 21, 2008 Meeting Minutes

The Police and Investigations Subcommittee of the Capital Punishment Reform Study Committee held a meeting on Friday, March 21, 2008 at 10 AM at the University of Chicago Law School, Dean's Conference Room, First Floor.

The following subcommittee members participated in the meeting: James Coldren, Chair, Geoffrey Stone and Richard Schwind (via telephone).

1. Review of lineup and eyewitness studies.

(a) *Double blind Sequential Systems.* Mr. Coldren summarized a recent communication he received from Geof Stone concerning his review of several lineup studies. The general conclusion of the studies is that sequential lineups are more reliable than simultaneous lineups, especially when conducted in a double blind manner. However, while this procedure produces fewer false identifications, the procedure also results in fewer overall identifications being made and fewer identifications of the police suspects. There are different methods of administration of sequential lineups and photo spreads and the rate of identifications sometimes hinges on the way in

which the sequential procedure is conducted. There does not seem to be conclusive evidence regarding the best way to conduct sequential lineups.

Mr. Stone also explained the flawed nature of the ISP (so-called “Mecklenburg”) study. Mr. Schwind noted that one of the more recent studies assigned to him, the report published by The Justice Project, “Eyewitness Identification - A Policy Review” (2007), merits the subcommittee’s attention. Mr. Coldren will send a copy of that study to all subcommittee members. Mr. Schwind said he has heard that several new sequential vs. simultaneous lineup studies may be underway, but he does not know where they are being conducted. Mr. Coldren said he will check with Nancy Steblay and James Doyle.

Mr. Stone suggested that the subcommittee engage the services of an expert experimental social scientist to render judgment on the methodological rigor of the studies the subcommittee is reviewing.

(b) *“Blind” administrators.* Mr. Stone stated that the evidence is overwhelming in support of competent blind administrators, that is, that lineups and photo spreads should be conducted by persons who are not aware of the identity of the suspect.

Mr. Schwind commented on his review of several studies, although he has not completed a full review of the studies assigned to

him. He noted that most of the studies assigned to him were written by Professor Gary Wells, usually with several co-authors, and that the evidence was strong in favor of double blind administration. One of the studies he reviewed suggests that accuracy or error in eyewitness identification often hinges on pre-lineup instructions. He suggested that poor instructions might affect a double blind administration as well as a non-blind administration.

Following further discussion on this matter, the members concluded that, all other things being equal, double blind administration will produce fewer identification errors than non-blind administration.

Mr. Coldren stated that he had attempted to reach Professors Malpass, Gary Wells, Nancy Steblay, and John Doyle (all authors of recent lineup studies). He has received responses from Ms. Steblay and Mr. Doyle, who indicated a willingness to discuss lineup issues with the subcommittee. Mr. Doyle told Mr. Coldren that he was aware of a new study scheduled for release in about a week, and that he will send a copy to Mr. Coldren. When he receives the study, Mr. Coldren will review it and report back to the subcommittee.

The subcommittee decided to contact Professor Sheri Diamond at Northwestern University, and ask that she review the studies and render an opinion on their methodologies and findings. Mr. Coldren will contact Prof. Diamond and request her assistance.

Mr. Coldren stated that a recommendation in favor of legislation requiring use of blind administrators of lineups and photo spreads was removed from the Committee Third Annual Report at the request of several Committee members. This was done based upon the language calling for use of blind administrators “wherever practicable.” (Third Annual Report, pages 13-14.) Mr. Coldren observed that the Committee Chair has specifically asked this subcommittee to develop a recommendation regarding use of blind administrators. Mr. Coldren also stressed that the objection to the language in the Third Annual Report related to the use of the word “practicable,” and there are few if any doubts among Committee members to the superiority of blind administration of lineups.

Mr. Coldren said that North Carolina has mandated sequential lineups, and several other states -- Georgia, Maryland, Vermont, West Virginia -- are considering similar legislation, and in several cases are undertaking studies and investigations.

Mr. Stone suggested that since North Carolina appears to have taken the strongest stance on this issue, the subcommittee should begin with an inquiry into that state’s experience with sequential double blind procedures. Further discussion on this matter resulted in a recommendation that the subcommittee contact the Illinois Chief’s Association, the Illinois Sheriff’s Association, and several downstate

rural police agencies, to inquire about the feasibility of double blind sequential lineups if they were to be mandated. Mr. Schwind agreed to inquire with the Illinois Sheriff's Association, and Mr. Coldren will inquire with the Illinois Chief's Association.

In summary:

1. The subcommittee will continue reviewing lineup studies, and consult with Mr. Hull. Mr. Schwind has several other studies to review;
2. Mr. Coldren will review any new studies that come to the subcommittee's attention and report his findings to the subcommittee;
3. Mr. Coldren will inquire into North Carolina's experience with sequential double blind administration;
4. Mr. Coldren will send the 2007 report of The Justice Project to subcommittee members;
5. Messrs. Coldren and Schwind will work to identify individuals in Illinois law enforcement associations who can inform the subcommittee about the feasibility of sequential lineup administration, especially in rural jurisdictions and small towns;
6. Mr. Coldren will contact Prof. Diamond at Northwestern University to inquire about her availability to assist with the review of lineup studies; and

7. Mr. Coldren will inquire with Professors Steblay and Doyle about recent lineup-photo spread studies.

2. Approval of minutes of the February 22, 2008 meeting.

The subcommittee members present approved the minutes from the most recent subcommittee meeting.

3. Discussion of subcommittee contribution to the 4th annual report of the full Committee.

The members present suggested that the section pertaining to “permanent certification” of death penalty cases be removed from the draft of the 4th annual report. Mr. Coldren agreed to send the amended report to Rick Schwind, so he may make a final review before sending it to Tom Sullivan.

The subcommittee meeting adjourned at approximately 11 AM.

James Coldren
March 24, 2008

MEMO

To: The Illinois Capital Punishment Reform Study Commit'

From: Subcommittee 4

Date: April 8, 2008

Re: Response from the Illinois Labs regarding recommendations for improvement

On April 7, 2008, the Chairman of the Illinois Laboratory Advisory Committee (ILAC), John Collins talked with us for the purpose of determining the role that his committee has played in preparing Illinois' forensic science laboratories to comply with recommendations prescribed by the Capital Litigation Reform Committee. ILAC is an advisory committee that was created in the Illinois General Assembly through Public Act 093-0784 and is responsible for annually reporting recommendations to the Governor, General Assembly, and Illinois Supreme Court regarding the scientific testing laboratories operated by the State.

Chairman Collins, who is also the Director of the DuPage County Crime Laboratory in Wheaton, Illinois, advised that because the *ILAC* committee has no specific oversight authority, it makes recommendations deemed to be necessary for the effective and efficient operation and management of Illinois Laboratories. Furthermore, the creation of the committee included no mandate to force or otherwise require the Illinois State Police Division of Forensic Services (DOFS) to comply with recommendations specific to capital litigation reform. According to Collins, however, the Illinois State Police earned additional accreditation recognition in 2007 against ISO 17025, an international standard for testing laboratories that is controlled and monitored by an international federation located in Geneva, Switzerland. Any other changes implemented by ISP/DOFS for the purpose of adopting capital litigation reform recommendations are not overseen by the ILAC committee.

A problem was noted by Chairman Collins with regards to the work of the ILAC committee. Despite the regular convening of its members and the reporting of recommendations intended to address what Collins regarded as "very serious issues having direct relevance to the safety of Illinois citizens," the committee has been entirely unsuccessful in soliciting feedback and guidance from its founding legislators and the recipients of its annual reports. As a result, the full range of technical and managerial expertise that would otherwise be available to the branches of Illinois government through the ILAC committee is a resource that has yet to be utilized to its fullest extent.

Collins advised that the ILAC committee's 2008 annual report will recommend specific changes, including the amendment of Public Act 093-0784, to help the committee effectively report is recommendations and gather feedback that can serve as guidance for future deliberations.

Because of the critical importance of forensic science laboratories to the fair and effective adjudication of criminal cases in Illinois, it would be highly beneficial if the House and Senate judiciary committees heard testimony from the ILAC chair or his/her designee on a regular basis so as to maintain a familiarity with the ILAC committee's recommendations and deliberations. Currently, no reliable mechanism exists to ensure that ILAC recommendations are being given due consideration. It is recommended that such communication be statutorily required, not only to receive the recommendations of the ILAC committee, but to afford the Governor, General Assembly, and Supreme Court an opportunity to advise the ILAC committee on matters requiring its expertise. While Collins argued that it is not necessary or practical for the ILAC committee to have authoritative oversight of forensic science laboratories in Illinois, it is necessary that it be properly informed and that its recommendations are heard in a formal setting.

The ILAC committee is expected to draft and approve its next report in April 2008.

For more information:

John M. Collins
Illinois Laboratory Advisory Committee
Chairman
(630) 407-2101
