

CAPITAL PUNISHMENT REFORM STUDY
COMMITTEE

Minutes of meeting September 17, 2008

The thirty-third 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 A. Bishop-Jenkins (via tel.)

Kirk W. Dillard (via teleconference)

Jeffrey M. Howard

T. Clinton Hull (via teleconference)

Gerald E. Nora

Edwin R. Parkinson (via teleconference)

Charles M. Schiedel

Not present

James R. Coldren, Jr.

Boyd J. Ingemunson

Richard D. Schwind

Geoffrey R. Stone

Arthur L. Turner

Randolph N. Stone (via teleconference)

Thomas P. Sullivan

Michael J. Waller (via teleconference)

Also present: David E. Olson; Patrick D. McAnany, Illinois Coalition to Abolish the Death Penalty; Barbara Hayler, Professor Emerita of Criminal Justice, University of Illinois at Springfield; and Mark Warnsing, Senate Republican staff (via teleconference).

The minutes of the Committee meeting held on July 22, 2008, were approved. Messrs. Howard and Nora abstained.

1. David Olson's report.

Mr. Olson reported that the contract with Loyola University has been approved, and he is in process of finalizing the contract with CJIA representatives. Mr. Sullivan stated that he was informed by Mr. Anthony of CJIA that the contract term is October 1, 2008 through June 30, 2009, and the amount

allocated to the contract is \$69,998 for the first period, with a renewal option of \$45,000, for a total of \$111,998.

Mr. Olson said he will be assisted by two knowledgeable colleagues from the Loyola faculty, Messrs. Lombardo and Stemen. Dr. Lombardo has worked in law enforcement for 30 years.

Mr. Olson said he is in process of developing the survey to police and sheriff departments, which he will attempt to submit to the Committee members for comment by mid-October. In addition, he will finalize the survey to judges. Mr. Howard and Mr. Parkinson agreed that they will obtain the names of the judges who have presided in a capital trial since January 1, 2003. The survey will also be directed to all judges who have taken the training necessary to preside in a capital case; Mr. Howard agreed to obtain the names of those judges from AOIC.

Mr. Olson said that in his data collection efforts, he will work with CJIA personnel to examine the criminal history records of the ISP and the IL DOC; work with CJIA to try to develop data regarding capital eligible cases, as described in the recently enacted but unfunded Capital Crimes Database; work with State's Attorneys and public defenders to obtain data about relevant cases as they are processed through the courts, and to learn whether, for example, DNA or eyewitness identifications were involved.

2. Extension of Committee's tenure.

It was reported that the statute creating the Committee has been amended to extend the Committee's tenure to December 31, 2009.

3. Retention of special counsel for the Committee.

After discussion, it was agreed that we will postpone this subject until the next Committee meeting. In the meantime,

Mr. Sullivan will ask CJIA representatives whether, if we desire to obtain a special counsel, we must go through the posting and selection process under the IL statute.

4. *House Judiciary II hearing to be held on September 18, 2008.*

It was agreed that Messrs. Parkinson and Sullivan will act as spokespersons for the Committee at this hearing. It was also agreed that if the Committee's representatives are asked whether or not the moratorium on executions should be repealed before the Committee has finished its work and submitted its final report, they should respond that this subject is outside the Committee's statutorily defined functions, and therefore the Committee takes no position on that subject. Mr. Stone dissented; he stated that in his opinion the Committee should take the position that the moratorium on executions should not be repealed until the Committee has filed its final report.

5. *Additional public hearings.*

It was agreed that in 2009 the Committee will hold two public hearings, probably in Springfield and Chicago, and that we will extend invitations to knowledgeable persons to attend and speak regarding the subjects assigned to the Committee in its enabling statute.

6. *Agenda items 6 and 7.*

It was agreed that Agenda items 6 and 7 will be postponed until the next full Committee meeting, and that in the meantime Mr. Sullivan will re-distribute the memoranda he previously distributed to all members containing references to (1) recommendations of the Governor's Commission on Capital Punishment which have not yet been acted upon by the General Assembly or the Illinois Supreme Court, which have not yet been addressed by the subcommittees, and (2) matters discussed

at the two prior public hearings, which have not yet been addressed by the subcommittees.

7. *Reports of subcommittees*

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

Mr. Hull stated that subcommittee 1 has not met since the last full Committee meeting. Mr. Coldren reported via email that the subcommittee has been looking into the experience in North Carolina with legislatively mandated blind lineup administration, and that a recommendation on this matter is in draft form.

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

Attached as appendices 1, 2, 3 and 4 are subcommittee 2 approved minutes of July 6, August 6, August 27 and September 17, 2007.

At the meeting with Mr. Devine on August 27, the subject discussed was the Committee's need for documents and

information from the office of the Cook County State's Attorney, which the Committee requested initially requested in a letter from Ms. Bienen in December 2005, and again on July 30, 2008 in a letter signed by Messrs. Schwind and Sullivan. On August 20, 2008, Mr. Nora sent certain information to Messrs. Sullivan and Schwind relating to murder cases charged by the Cook County State's Attorney from January 1, 2003 through July 2008.

At the meeting on August 27, Mr. Devine assured those present that to the extent able his office will fully cooperate with the Committee and respond to the Committee's requests.

During the full Committee meeting today, Mr. Nora presented additional information to Ms. Bienen relating to first degree murder cases indicted in Cook County since January 1, 2003. He said additional information will be forthcoming later today.

As to the indictments themselves, Mr. Nora said that they will have to be obtained from the Clerk of the Criminal Court of Cook County, and that he will cooperate with the Committee in obtaining these documents. Mr. Schwind offered the assistance of one or two persons from his office to assist in the collection process.

Ms. Bienen said she will confer with Ms. Hayler regarding the collection of indictments from counties other than Cook. Ms. Hayler agreed to assist Ms. Bienen in this effort.

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

Mr. Howard stated that the minutes of the subcommittee's meetings on April 7, June 12, and September 10, 2008 have been approved. The April 7 minutes are attached as Appendix 2 to the full Committee minutes of its meeting on June 12, 2008. The June 12 and September 10 minutes are attached as Appendices 5 and 6 containing Attachments 1 through 9.

Mr. Howard said that three members of the subcommittee have discussed pattern jury instructions and verdict forms for use in capital cases Appendix 6, Attachments 1 through 9, with the following results:

- Attachment 1, relating to the holding of the U.S. Supreme Court in *Maryland v. Mills*, was agreed to by all subcommittee members, with the observation that they believe the IPI Committee has considered and rejected this instruction.

- Attachment 2, relating to jurors' evaluation of the testimony of eyewitnesses. The subcommittee vote was one approved, and two believe it is unnecessary.

- Attachment 3, relating to jurors' evaluation of the testimony of in-custody informants, was agreed to by all subcommittee members.

- Attachment 4, relating to jurors' evaluation of statements attributed to the defendant resulting from custodial

interviews that were not recorded. The subcommittee vote was one approved, and two disapproved on the ground that it invades the province of the jury, and emphasizes this instruction over the other instructions.

- Attachment 5, relating to jurors' treatment of mitigating factors. The subcommittee vote was one approved, and two disapproved on the ground that the instruction is confusing and unnecessary.

- Attachments 6 through 9 have been approved by the subcommittee.

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

Mr. Schiedel reported that he attended the meeting of the Illinois Laboratory Advisory Committee (ILAC) on September 8, 2008, and will prepare formal minutes of that meeting insofar as it relates to our work. His memorandum of the meeting is attached as Appendix 7.

Mr. Schiedel said that ILAC was created by an Illinois statute, charged with overseeing and reporting on Illinois forensic labs. (see our Fourth Annual Report, containing a discussion of ILAC at pages 47 to 48.) John Collins, the Chair of ILAC, and the other members, are concerned that ILAC's oversight of Illinois forensic labs is seriously impaired because of lack of resources available to ILAC to perform its assigned functions. Mr. Schiedel recommends that we invite Mr. Collins to attend a full Committee meeting to discuss ILAC's problems.

At Mr. Sullivan's request, Mr. Warnsing agreed to bring to the attention of appropriate members of the General Assembly the Recommendation made on page 48 of our Fourth Annual Report, as follows:

“Representatives of the General Assembly Judiciary Committees and the Chair of the ILAC should discuss and attempt to resolve the concerns expressed by the ILAC Chair.”

8. *Next meeting – Wednesday, October 22, 2008, at 9:30 A.M.*

It was agreed that the next full Committee meeting will be held on Wednesday, October 22, 2008 at 9:30 A.M., at the offices of Jenner & Block, 330 N. Wabash Avenue, 40th Floor, Chicago, IL.

Thomas P. Sullivan
Chair
October 13, 2008

Attachments – Appendices 1 - 7.

Capital Punishment Reform Study Committee
Minutes of Subcommittee No. 2 meeting

July 6, 2007

Subcommittee 2 met at the offices of CIJA from 10 to 11 A.M.

Attending were subcommittee members Leigh B. Bienen, Thomas P. Sullivan and Michael J. Waller (via teleconference). Also present were Peter G. Baroni (via teleconference), David E. Olson, Research Analyst, Theodore A. Gottfried, Patrick D. McAnany and Regan McCullough of the Illinois Coalition to Abolish the Death Penalty, Mark Warnsing, part time Republican Staff legal counsel (via teleconference), Bernard J. Sarley, Capital Case Coordinator, Cook County Public Defender, and Sapna G. Lalimalani, Jennifer L. Cassel and Aaron J. Stucky of Jenner & Block.

The minutes of the June 4, 2007 meeting were approved unanimously.

1. Collection of information re 2003-05 murder indictments.

Mr. Olson and Ms. Bienen reported on their efforts to collect statistical material and indictments for first degree murder cases from January 1, 2003 through December 31, 2005. Ms. Bienen and her

assistant, Ms. Heiler, are focusing on assembling indictments for all homicides for the years 2003 through 2005, with 2006 to be added later. The indictments collected to date have been entered into an excel spreadsheet. We do not have the indictments for the vast majority of Cook County cases, although we have names of defendants for some of those cases. Ms. Bienen said the information received from the State's Attorney of Cook County regarding first degree murder cases during 2003 through 2006 is a spread sheet containing 906 cases, and that it is difficult to understand the data without additional supporting information. She will ask Mr. Nora to supply the data that is in a more useable form. Ms. Heiler is checking the names and indictment numbers for cases against the files of convicted offenders in the Illinois Department of Corrections open data base. Ms. Bienen noted that we need an effective strategy to obtain the indictments from the nonresponsive counties, including Cook County, so that we may verify the accuracy of information on these cases from other sources. These efforts are ongoing.

Mr. Sullivan agreed to call the State's Attorneys of Champaign, McLean, Sangamon and Will counties to request that they supply us with copies of their first degree murder indictments for 2003 through 2005. Mr. Sarley said he will attempt to assist in the collection of the Cook County indictments.

2. *Mr. Olson's survey documents.*

Mr. Olson said he is working on the drafts of the various survey documents, which he has distributed to Committee members in draft form. His target is to have the surveys in final form and sent out by the end of August, with the request that recipients respond by the end of the year. However, the final survey documents must be approved by the Loyola University Institutional Review Board before they may be distributed under Mr. Olson's auspices.

Mr. Olson reported that he has met regarding the survey document to be sent to police administrators with members of Subcommittee 1, and with an Assistant State's Attorney in Lake County. He has also met with members of Subcommittee 2 regarding the collection of data regarding first degree murder indictments from 2003 through 2006.

3. *Efforts to obtain other data.*

Ms. Bienen reported that she has attempted to obtain information on convictions of first degree murders during the 2003 to 2006 period from the website of IDOC. Mr. Gottfried stated that IDOC has a complete database of those who are sent to IL prisons, but that no information is sent to IDOC regarding cases in which the defendant is acquitted of felony charges. Mr. Olson has attempted to obtain this information through the IL Criminal History Information System. Mr. Sarley said that the Cook County Public Defender records will reveal the race of the victim in the first degree murder cases handled by that office. Mr. Baroni suggested that some of the pertinent information may be obtained from the IL Dept. of Public Health.

4. *Subpoena duces tecum served on Ms. Bienen.*

Ms. Bienen reported that she had received a subpoena duces tecum from a lawyer at the Office of the State Appellate Defender, regarding a first degree murder case pending in Kane County. Mr. Sullivan stated that he has spoken with the lawyer who said we do not have to be

concerned about the return date, because he will attempt to obtain the requested information from another source.

Ms. Bienen said she has spoken to both John Hanlon, the attorney of record in the case, and to Dan Coyne. They are attempting to compile information on cases for the Public Defender in connection with the Kane County case issuing the subpoena. Mr. Sullivan said he will contact Mr. Coyne to attempt to coordinate our mutual efforts.

5. Next meeting – August 6, 2007, 12 noon.

It was agreed that the next meeting of the subcommittee will be held on Monday, August 6, 2007, at noon at the Illinois Criminal Justice Information Authority, 120 S. Riverside Plaza, Chicago, Illinois.

The meeting was adjourned at 11 A.M.

Thomas P. Sullivan
8/6/07

Capital Punishment Reform Study Committee
Minutes of Subcommittee No. 2 meeting

August 6, 2007

Subcommittee 2 met at the offices of the Criminal Justice Information Authority from 12 P.M. to 1 P.M. Attending were subcommittee members Leigh B. Bienen, Thomas P. Sullivan and Michael J. Waller (via teleconference). Also present were Peter G. Baroni, Special Counsel; David E. Olson, Research Analyst and Patrick Foley, Loyola University; Mark Myrent and Jack Cutrone, CJIA; Mark Warnsing, Senate Republican staff legal counsel (via teleconference); and Jennifer Cordis, Michael Margolis and Sapna G. Lalmalani, Jenner & Block.

Approval of the July 6, 2007 meeting minutes was postponed until the next subcommittee meeting to allow members time to review.

1. Committee survey and data collection.

a. Mr. Olson's survey.

Mr. Olson reported on his efforts to finalize the draft surveys for police, prosecutors, defense attorneys and judges. He incorporated most of the editorial comments submitted by Committee members, and hopes to have final surveys for submission to the Loyola University Institutional Review Board (IRB) before the end of August. Based on Mr. Olson's

analysis of the survey subject matter, he recommends the survey be confidential, anonymous and voluntary, in order to comply with IRB requirements, increase response rate and candid responses, and protect against future misuse by third parties.

Another outstanding survey issue concerns the mechanism the Committee uses for distribution. The cooperation of the Administrative Office of the Illinois Courts (AOIC) may be one way to effectively disseminate the survey to attorneys and judges. Mr. Olson will contact the AOIC to discuss their involvement. Private defense attorneys may be identified through the Capital Litigation Trust Fund.

Mr. Olson also submitted a draft survey cover letter for the subcommittee's review, and several draft charts outlining the changes in first degree murder sentencing over the last two decades. The charts show the impact of the "truth in sentencing" law, enacted in 1998, on first degree murder sentencing. At Mr. Sullivan's request, Mr. Baroni will distribute the draft charts to all members of the committee.

b. Ms. Bienen's indictment based data collection effort.

Ms. Bienen said she contacted the defense attorneys handling the *People v. Denson* capital murder case pending in Kane County, Illinois.

She also spoke to Daniel Coyne, a social scientist hired by Mr. Denson's defense counsel to conduct a capital punishment proportionality study. Ms. Bienen reported exchanging information with Mr. Coyne relating to their mutual collection efforts. Ms. Bienen continues to seek first degree murder indictment information from county prosecutors that have not responded. Mr. Sullivan, Mr. Waller and Mr. Schwind will also seek indictment information from those counties yet to comply with the Committee's request for information. The Cook County Public Defender has agreed to share information with the Committee, and the two data bases will be compared and merged to create a more complete record of cases.

2. *Next meeting – September 17, 2007, 11 A.M.*

It was agreed that the next meeting of the subcommittee will be held on Monday, September 17, 2007, 11 AM at the Illinois Criminal Justice Information Authority, 120 S. Riverside Plaza, Chicago, Illinois.

The meeting was adjourned at 1 P.M.

Thomas P. Sullivan
9/11/07

Capital Punishment Reform Study Committee
Minutes of Subcommittee No. 2 meeting
with Richard A. Devine

August 27, 2008

Subcommittee 2 met on August 27, 2008 at the Office of Richard A. Devine, Cook County States Attorney. Present: Thomas P. Sullivan, Committee Chair, Richard D. Schwind, Committee Vice Chair, Leigh B. Bienen, subcommittee chair, and Gerald E. Nora, Committee Member.

The purpose of the meeting was to discuss how the Committee could obtain copies of the indictments for all first degree murders in Cook Country for the period 2003-2008, pursuant to our statutory mandate to assess the impact of the 2003 reforms to the operation of the capital punishment statute and rules instituted by the Illinois legislature and the Supreme Court of Illinois. It is our intention and purpose to obtain copies of the indictments from all 102 counties in Illinois for the period

in order to report back to the legislature as to the application of the capital punishment statute and the capital punishment system in Illinois. A number of counties have complied with the Committee's request to send copies of the indictments for first degree murder during the period. It is necessary to have the same information from Cook County.

A frank discussion of the bureaucratic and institutional challenges raised by obtaining copies of several thousand indictments ensued. Those present suggested that this objective could be best achieved by asking the Cook County States Attorney's office to assist the Committee by contacting some of the staff at the County Clerk's office with whom it has a reliable and regular working relationship. Mr. Sullivan reported that previously when doing research on this subject he had not obtained information from the County Clerk's office in a manner which would have made it practicable to obtain

information on a large number of cases.

In the meantime the Committee is compiling from several sources a list of all first degree murders in Cook County, and this list will be used to identify the cases in Cook County for which we need the original legal records of indictment and judgment.

Those present at the meeting will report back to the Committee as to progress on this matter. Messrs. Devine and Nora agreed they will assist us in our efforts to obtain cooperation from the Cook County Criminal Court Clerk's office, and that Mr. Schwind said he might be able to have a person from his office help us.

Leigh B. Bienen
9/10/08

Capital Punishment Reform Study Committee
Minutes of Subcommittee No. 2 meeting

September 17, 2007

Subcommittee 2 met at the offices of the Criminal Justice Information Authority from 11 A.M. to noon. Attending were subcommittee members Leigh B. Bienen, Thomas P. Sullivan and Michael J. Waller (via teleconference). Also present were James R. Coldren, Peter G. Baroni, Special Counsel; David E. Olson, Research Analyst; Catherine McMillan, Campaign To End the Death Penalty; and Mark Warnsing, Senate Republican staff legal counsel (via teleconference).

1. Committee survey and data collection.

Ms. Bienen reported that she and her assistant had received from Daniel Coyne of Chicago-Kent Law School the list of cases for the database he has been developing to support a challenge to the application of the Illinois capital punishment statute based upon principles of proportionality. We now have both the print version of cases from Cook County, going back to 1996, and the electronic version. In addition we have the cases that Mr. Coyne and his colleagues

identified from the other 101 counties. These will all be cross-checked and compared with what we already have in our indictment based database.

Ms. Bienen's research assistant who was working on this project has taken another job and moved, so she is working to train another person to take over the task. When the two databases are conformed, we will assess how many indictments we need to ask for from Cook County and from the other counties. At some point we will request the indictments for post-2005 all counties. Ms. Bienen will report the results of this work as they become available.

Mr. Sullivan had agreed with Messrs. Schwind and Parkinson to call the county prosecutors who had replied to our request for the indictments for the years 2003-2005. We are still waiting for indictments from several counties. Mr. Sullivan agreed to ask Messrs. Parkinson, Schwind and Waller to contact the States Attorneys in those counties.

Mr. Sullivan reported on the database he has been analyzing, defined as all cases in which a notice of factors was served and the case

reached final disposition in the trial court in the calendar year 2006.

Mr. Sullivan is having his assistants enter data with regard to the dispositions of these cases, whether that result be acquittal, a judgment of guilty for a non-homicide offense, a judgment of guilty of non-capital homicide, or the imposition of the death penalty.

Mr. Olson reported on the current status of preparation of the data collection instruments for presentation to the Loyola University Institutional Review Board (IRB). These are the surveys to be sent to various criminal justice agencies, the police, the States Attorneys, the Administrative Office of the Illinois Courts, the administrators of the Capital Litigation Trust Fund, and others, as mandated by our charge to study the effects of the reform of the capital punishment statutes in 2003. The principal concern of the IRB will be the protection of human subjects and assurance of anonymity. The instruments have been submitted this week to the IRB, and a decision is expected soon, perhaps as early as next week, which will be communicated to the Committee.

Mr. Olson said that he was continuing to check the data in the Department of Corrections public database, information on what

sentences were received by offenders identified as persons originally indicted for murder.

With regard to 825 attorneys certified by the Capital Litigation Trial Bar (CLTB), a discussion was held with regard to whether a random survey of these attorneys would be useful, directed to their experience with capital cases since the enactment of the reforms, e.g., the efficacy of training, and the suitability of the requirements and process for being certified. It is not clear from the listing of CLTB attorneys who has actually conducted a capital trial, either as an Assistant State's Attorney or as a defense attorney. A cross-check of the disbursement of funds may provide additional information as to who has actually prosecuted capital cases.

Regarding the information on homicide cases collected from police reports by the Illinois Criminal Justice Authority, this data collection effort, except for the reporting of aggregate numbers, will be reviewed by the Loyola University IRB.

2. *Next meeting – November 8, 2007, 11 A.M.*

It was agreed that the next meeting of the subcommittee will be held at 11 AM on Thursday, November 8, 2007, at the Illinois Criminal Justice Information Authority, 120 S. Riverside Plaza, Chicago, Illinois.

The meeting was adjourned at noon.

Leigh B. Bienen
Thomas P. Sullivan
10/9/07

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE
MINUTES OF SUBCOMMITTEE NO. 3 MEETING

June 12, 2008

Subcommittee 3 met at the Illinois Criminal Justice Authority, 300 W. Adams, Chicago, Illinois, on June 12, 2008. Attending were subcommittee members Jeffrey M. Howard, Edwin R. Parkinson (via teleconference), and Boyd Ingemunson (via teleconference).

The members approved the minutes from its last meeting held on 4/7/08.

The sub-committee discussed juror questionnaires. The sub-committee members decided to recommend that questionnaires be used in capital cases. However, due to the unique nature of capital cases, the sub-committee believes specific questions on a questionnaire need to be determined by the parties and judge on a case by case basis. The sub-committee believes certain topics need to be explored with whatever questions are included in the questionnaire. These topics include: personal info, employment, family, military, education, religion, political, physical/medical, views on capital punishment, criminal justice system/law enforcement, and case specifics.

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE
MINUTES OF SUBCOMMITTEE NO. 3 MEETING

September 10, 2008

Subcommittee 3 met at the Law Office of the Cook County Public Defender, 16th Floor, 69 W. Washington, Chicago, Illinois, on September 10, 2008. Attending were subcommittee members Jeffrey M. Howard, Edwin R. Parkinson (via teleconference), and Boyd Ingemunson (via teleconference).

The members approved the minutes from its last meeting held on 6-12-08.

The subcommittee discussed jury instructions. The subcommittee members decided to recommend adoption of Attachment 1 to the full committee with the information that it is believed the IPI committee has considered this instruction and rejected it. The subcommittee members decided to submit to the full committee for its consideration Attachment 2, which adds a sentence to existing IPI 3.15. Two of the subcommittee members do not believe the sentence contained in Attachment 2 is necessary. The subcommittee members are recommending to the full committee the adoption of Attachment 3. The subcommittee decided to submit to the full committee Attachment 4 for its consideration. Two of the subcommittee members believe the instruction contained on Attachment 4 invades the province of the jury and over emphasizes this one instruction over the other instructions. The subcommittee decided to submit to the full committee for its consideration Attachment 5. Two of the subcommittee members believe the instruction is confusing and unnecessary.

The subcommittee decided to discuss one other proposed instruction at its next meeting as members had not received a copy of it as of 9/10/08. Finally, Ed Parkinson will attempt to identify the present members of the IPI committee.

ATTACHMENT - 1

“If any one of you believes that a mitigating factor is supported by the evidence, you may consider it in arriving at your decision even though all or some of the other jurors do not believe the mitigating factor is supported by the evidence.”

This instruction is consistent both with our new statute and with the *Maryland v. Mills* principle. If the Committee is not willing to accept these as the standard instructions, the Committee Comments should at least reflect the Committee’s determination that a trial judge would not violate the law by giving an instruction on nonunanimity as to the existence and importance of mitigating factors.

ATTACHMENT - 2

IPI 3.15 should also be amended to add a final sentence which states as follows:

“Eyewitness testimony should be carefully examined in light of other evidence in the case.”

ATTACHMENT - 3

The State has introduced the testimony of an in-custody informant as to a statement allegedly made by the defendant. Such testimony is to be examined and weighed by you with care. Whether the in-custody informant's testimony has been affected by interest or prejudice against the defendant is for you to determine. In making this determination, you should consider: (1) whether the in-custody informant has received anything, or expects to receive anything, in exchange for his/her testimony; (2) any other case in which the in-custody informant testified or offered statements against an individual but was not called, and whether the statements were admitted in the case, and whether the in-custody informant received any deal, promise, inducement, or benefit in exchange for that testimony or statement; (3) whether the in-custody informant has ever changed his/her testimony; (4) the criminal history of the in-custody informant; and (5) any other evidence relevant to the in-custody informant's credibility.

ATTACHMENT - 4

“You have before you evidence that the defendant made a statement relating to the offenses charged in the indictment. It is for you to determine [whether the defendant made the statement and, if so,] what weight should be given to the statement. In determining the weight to be given to a statement, you should consider all of the circumstances under which it was made. You should pay particular attention to whether or not the statement is recorded, and if it is, what method was used to record it. An electronic recording that contains the defendant’s actual voice or a statement written by the defendant may be more reliable than a non-recorded summary.”

ATTACHMENT - 5

“If any one of you finds that a mitigating factor listed in these instructions is supported by the evidence, you must treat that mitigating factor as a reason why the defendant should not be sentenced to death. You may not treat that listed mitigating factor as a reason why the defendant should be sentenced to death.”

ATTACHMENT - 6

Under the law, the defendant shall be sentenced to death if you unanimously find after considering the factors in aggravation and mitigation that death is the appropriate sentence.

If after considering the factors in aggravation and mitigation one or more jurors determines that death is not the appropriate sentence, the court shall impose a sentence [(other than death) (of natural life imprisonment, and no person serving a sentence of natural life imprisonment can be paroled or released, except through an order by the Governor for executive clemency)].

ATTACHMENT - 7

In deciding whether the defendant should be sentenced to death, you should consider all the aggravating factors supported by the evidence and all the mitigating factors supported by the evidence.

Aggravating factors are reasons why the defendant should be sentenced to death. Mitigating factors are reasons why the defendant should not be sentenced to death. Aggravating factors include:

First:

(Insert any statutory aggravating factor or factors found by the jury at the first stage of the death penalty hearing)

Second: Any other reason supported by the evidence why the defendant should be sentenced to death.

Where there is evidence of an aggravating factor, the fact that such aggravating factor is not a factor specifically listed in these instructions does not preclude your consideration of the evidence.

Mitigating factors include:

First: [(Any or all of the following) (The following)] is supported by the evidence:

The defendant has no significant history of prior criminal activity.

The murder was committed while the defendant was under the influence of an extreme mental or emotional disturbance, although not such as to constitute a defense to prosecution.

The murdered person was a participant in the defendant's homicidal conduct or consented to the homicidal act.

The defendant acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm.

The defendant was not personally present during the commission of the act or acts causing death.

The defendant's background includes a history of extreme emotional or physical abuse.

The defendant suffers from a reduced mental capacity.

ATTACHMENT - 7 (continue)

Second: Any other reason supported by the evidence why the defendant should not be sentenced to death.

Where there is evidence of a mitigating factor, the fact that such mitigating factor is not a factor specifically listed in these instructions does not preclude your consideration of the evidence.

If you unanimously determine from your consideration of all the evidence after considering the factors in aggravation and mitigation that death is the appropriate sentence, then you should sign the verdict requiring the court to sentence the defendant to death.

If after considering the factors in aggravation and mitigation one or more jurors determine that death is not the appropriate sentence, then you should sign the verdict requiring the court to impose a sentence [(other than death) (of natural life imprisonment)].

ATTACHMENT - 8

After considering the factors in aggravation and mitigation, we the jury unanimously determine that death is the appropriate sentence.

The court shall sentence the defendant _____ to death.

Foreperson

Sep 8th Meeting of Illinois Laboratory Advisory Committee Springfield

The meeting was chaired by John Collins of the DuPage County Sheriffs Office .John is in his second ,and he hopes, final year as ILAC chairman.Other members included Donna Metzger of the Illinois State Police and officials from the departments of public health ,the Illinois Emergency Management Agency ,medical schools and the Cook County States Attorneys Office.

Minutes

1. Mr. Collins began by noting that ILAC had been created by the General Assembly to oversee state forensic facilities.He went on to lament that their ability to provide that oversight had been severely “watered down” by a lack of resources and support. He described the committee as struggling for a means to have an impact.It is his impression that ILACs “ founding fathers “ in the legislature have lost interest.

2. Letters have been sent to the governor,the Illinois Supreme Court and Sen. Cullerton among others .No feedback had come from any source except Tom Sullivan and Jennifer Bishop of our committee.

3.The general concern of the chair and members was that serious problems do exist in the infrastructure of labs in our state .There are outmoded facilities and old equipment .The members believe that a crisis will result if these matters are not addressed.

4.A discussion of strategy centered on the need for an advocate in the legislature .The Attorney General has apparently been of no help nor has the Legislative Reference Bureau.It was noted that the Tribune had done at least one editorial on the importance of ILAC.

5. Members expressed views regarding the dangers of taking a political position to achieve some impact. The point was made that public criticism of specific labs or forensic work in general might be seized on by one side or another in a legal proceeding. There was a brief discussion of the issue of accreditation with the recognition that non-accredited labs are still seen as a source of important evidence by litigators.

6. I expressed the CPRSC’s sympathy with ILACs perceived lack of interest and support on the part of the governor and general assembly. The members were grateful for our support and Mr. Collins hopes to meet with Jennifer and attend our next meeting. I was asked some questions about the number of DNA exonerations in capital cases.

7. I inquired about the salary disparities that had been brought to our attention earlier this year. Ms. Metzger reported that while CMS had made no progress on the salary structures in general, the representation by AFSCME of some state police personnel had produced improvements for Senior Public Service Administrators who had been paid less than the workers they supervise. Some personnel had also benefitted from representation by the Teamsters.

8.John Collins stated their goal for next year is to complete a “white paper” on lab infrastructure to present to the Capital Development Board .He is concerned with their resources to gather data and do adequate surveys .He hopes they can benefit from working with us in some areas.