

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Minutes of meeting September 26, 2005

The sixth meeting of the Committee was held at 120 S. Riverside Plaza, Chicago, from 2 to 4 P.M.

Those present

Leigh B. Bienen
James B. Coldren, Jr.
James B. Durkin (conference phone)
Theodore A. Gottfried
Jeffrey M. Howard
Boyd J. Ingemunson (conference phone)
Thomas P. Needham
Gerald E. Nora (conference phone)
Edwin R. Parkinson
Richard D. Schwind
Randolph N. Stone
Thomas P. Sullivan
Michael J. Waller

Not present

Kirk W. Dillard
Geoffrey R. Stone
Arthur L. Turner

Also present: Paul Froelich, State Representative, 56th District; Patrick D. McAnany, IL Coalition to Abolish the Death Penalty; and Derek Persico, office of Illinois House Republican Leader Tom Cross.

The minutes of the meeting of August 8, 2005 were approved as amended.

Report of Subcommittee 1 - Police and Investigations.

The subcommittee Chair, Mr. Coldren, reported that the subcommittee has not held a meeting since the last full Committee meeting. The next subcommittee meeting is scheduled for October 3.

Mr. Coldren reported on the subcommittee's inquiries into decertification of police officers pursuant to the new statute 50 ILCS 705/6.1 (h) - (r), which will be the subject of further inquiry by the subcommittee. (See Governor's Commission Recommendation 19.)

Mr. Sullivan gave a brief report on the status of electronic recording of custodial interrogations in homicide investigations which began statewide in mid-July. (See Governor's Commission Recommendation 4.) The system appears to be operating well, with no known complaints or glitches.

Mr. Sullivan also gave a brief report on the status of the pilot programs of double blind sequential lineups and photo spreads in the Evanston PD, the Joliet PD, and District 11, Areas 3, 4 and 5 of the Chicago PD. (See Governor's Commission Recommendation 12.) The programs are scheduled to end on October 31, 2005, and the report of the Illinois State Police is expected to be filed early in 2006. A conference on eyewitness identifications has been tentatively scheduled for April 21, 2006, at Loyola Law School, which will include discussion and analysis of the results of the pilot programs.

Report of Subcommittee 2 - Eligibility for Capital Punishment, DNA, and Proportionality.

The subcommittee Chair, Ms. Bienen, reported that the subcommittee met today from 1 to 2 PM, and that Stephen L. Richards of the State Appellate Defender office attended a portion of the meeting. The minutes of the meeting are attached hereto as Appendix 1. The committee discussed methods of collecting data necessary to determine whether or not the Illinois statutes on capital punishment comply with the rulings of the United States Supreme Court regarding narrowing eligibility for and imposition of capital punishment. (See Governor's Commission Recommendations 12 and 28.) Ms. Bienen distributed three items submitted by Mr. Richards, an undated memorandum by Mr. Richards entitled "Empirical study of the Illinois death penalty," attached as Appendix 2, an undated "Memorandum" by Mr. Richards, titled Cook County Circuit Court, *People v. Luna*, 02 CR 15430, attached as Appendix 3, and a transcript dated December 30, 2003 in the *Luna* case, Appendix 4.

Ms. Bienen called attention to a proposed data collection instrument she prepared entitled "Death Penalty Committee Proportionality Review Study," dated September 2005, attached as Appendix 5, and the memoranda prepared by Jude J. Geiger, a Yale University law student employed by Jenner & Block this summer, entitled "United States Supreme Court Standard for Death Penalty Eligibility,"

August 8, 2005, Appendix 6, “Illinois Death Penalty Eligibility Factors,” August 11, 2005, Appendix 7, and “Illinois Aggravating Factors: Sample Survey,” August 11, 2005, Appendix 8.

Mr. Waller reported that the Illinois State’s Attorneys Association and the Illinois Attorney General have agreed upon protocols for State’s Attorneys’ selection of cases for capital punishment, which he anticipates will be adopted and promulgation authorized at the December 2005 meeting of the State’s Attorneys Association. (See Governor’s Commission Recommendation 29.)

Mr. Sullivan noted that the subcommittee will also take up the matter of the adequacy of the laboratory testing of DNA samples in capital cases. (See Governor’s Commission Recommendations 21, 23 and 26.)

Report of Subcommittee 3 - Trial Court Proceedings.

The subcommittee Chair, Mr. Howard, reported that the subcommittee has not held a meeting since the last full Committee meeting on August 8.

Mr. Howard noted that subcommittee members have requested the Cook County Treasurer, Maria Pappas, to meet with the subcommittee concerning the Capital Litigation Trust Fund, but she has declined to do so. Ms. Pappas said she would explain her reasons for declining to meet in a letter to the Committee Chair. Mr. Sullivan stated that he had not yet received a letter from Ms. Pappas.

Report of Subcommittee 4 - Post-Conviction Proceedings, and General

Topics.

The subcommittee Chair, Mr. Gottfried, reported that the subcommittee has not held a meeting since the last full Committee meeting on August 8. The subcommittee has scheduled a meeting for October 14, 2005 at 9:30 AM.

Mr. Sullivan distributed an article by Barry Scheck entitled “The Need for Independent Forensic Audits Now,” published in The Champion, Sept./Oct. 2004, Appendix 9. (See Governor’s Commission Recommendation 20.)

Retention of a Committee Reporter/Special Counsel.

Mr. Schwind reported that he had conferred with Robert Boehmer of CJIA, and concluded that the best course for the Committee is to follow the procedures in the IL Procurement Act for the retention of a part time Special Counsel to the Committee. Mr. Schwind read a draft job description. Messrs. Schwind, Nora and Sullivan were appointed a special subcommittee to agree upon the final job description, which will be posted for 30 days. The matter of compensation will be deferred until later, for approval by the full Committee.

Other Business.

First Item. Mr. Schwind requested each Committee member to send him a short bio, to be posted on the Committee’s CJIA website. Bios may be sent to rschwind@atg.state.il.us.

Second Item. Mr. Sullivan reported that he has received a resignation from Jeffrey Tomczak, dated September 22, 2005, effective June 28, 2005. Because Representative Cross wrote Mr. Sullivan on June 30, 2005 advising that he had appointed Mr. Ingemunson to replace Mr. Tomczak, the earlier effective date of Mr. Tomczak's resignation renders moot Agenda Item 4: Discussion of authority of office holders to replace Committee members they have appointed, per 20 ILCS 3929/2(a). All members concurred.

Next meeting - November 14, 2005, 2 P.M.

It was agreed that the next meeting of the full Committee will be held on November 14, 2005 at 2 P. M., at the CJIA offices, 120 S. Riverside Plaza, Chicago.

Thomas P. Sullivan
Chair
October 11, 2005

Attachments - Appendixes 1 through 9.