

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Minutes of meeting June 19, 2006

The thirteenth meeting of the Capital Punishment Reform Study Committee (“Committee”) was held on June 19, 2006 at the Illinois Criminal Justice Information Authority, 120 S. Riverside Plaza, Chicago, Illinois from 1 to 3:30 P.M.

Those present

Leigh B. Bienen

James R. Coldren, Jr. (via teleconference)

James B. Durkin (via teleconference)

Theodore A. Gottfried

Jeffrey M. Howard

Boyd J. Ingemunson (via teleconference)

Richard D. Schwind

Randolph N. Stone

Michael J. Waller

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Peter G. Baroni, Special Counsel

Not present

Kirk W. Dillard

Gerald E. Nora

Edwin R. Parkinson

Geoffrey R. Stone

Thomas P. Sullivan

Arthur L. Turner

Also present: Linda Hui, research assistant to Leigh Bienen; Nicole DeBruin; Kathy Saltmarsh, Office of the State Appellate Defender; and Jane Bowman, Illinois Coalition to Abolish the Death Penalty.

The minutes of the meeting of May 10, 2006 were approved unanimously.

1. *Reports of Subcommittees.*

(1) *Report of Subcommittee 1 – Police Investigations.*

Mr. Coldren reported that the subcommittee met on June 5, 2006.

Crystal Marchigianni, head of the Cook County Public Defender's Office Homicide Task Force, spoke to the subcommittee regarding videotaping of homicide suspects who are in custody; her remarks are reflected in the minutes for that meeting, attached as Appendix 1. Ms. Marchigianni had a generally favorable impression of the videotaping process. She gave her opinions on a variety of specifics and made suggestions for improvements.

The Subcommittee has set meeting for June 21, 2006 to discuss and make recommendations to the full Committee regarding the sequential line-up pilot program report of the Chicago Police Department.

(2) *Report of Subcommittee 2 – Eligibility for capital punishment, DNA and proportionality.*

Ms. Bienen reported that the subcommittee held a meeting on June 13, 2006, dealing with topics reflected in the minutes for that meeting, attached as Appendix 2. Ms. Bienen reported that the Subcommittee continues to collect and

input into its database indictment information being received from State's Attorney's offices. More than 75 of the 102 county prosecutors have responded. Mr. Baroni reported that he has contacted the offices of State's Attorneys who have yet to respond.

Mr. Schwind suggested that Ms. Bienen contact the Illinois State Appellate Prosecutor and the Attorney General's Office for indictment information that those offices may have on capital cases they are prosecuting.

Mr. Baroni reported that he has spoken to a person at the Illinois State Police regarding the DNA testing backlog, who indicated the information would be forthcoming soon.

At Ms. Bienen's request, Mr. Baroni provided the full Committee with a copy of the Report to the New Jersey Supreme Court – Systemic Proportionality Review Project 2004 - 2005.

Ms. Bienen stated that she had asked the members of her Subcommittee to submit suggestions to Mr. Baroni no later than Friday, July 14, 2006 to be included in the final survey instrument to be recommended for use by the Committee.

(3) *Report of Subcommittee 3 – Trial Proceedings.*

Mr. Howard reported that the Subcommittee would meet immediately upon the adjournment of the full Committee meeting today, June 19, 2006.

(4) *Report of Subcommittee 4 – Post-conviction proceedings and general topics.*

Mr. Gottfried reported that the Subcommittee met on May 11, 2006, as reflected in the minutes for that meeting, attached as Appendix 3. He also reported that the Subcommittee met earlier today, June 19, 2006.

Mr. Gottfried stated that the Subcommittee was continuing the process of developing a survey reflecting the subject matters within the purview of Subcommittee 3.

At the last two Subcommittee meetings, the subject matter has been forensic labs and the Illinois Laboratory Advisory Committee (ILAC). At the May meeting, the Subcommittee heard from Allan Sincox, OSAD's Designee to the ILAC. Mr. Sincox presented an outline of some of the issues ILAC has discussed over the last year. First, the issue of forensic lab accreditation was outlined. Second, Mr. Sincox discussed the issue of what type of accreditation is appropriate. Third, he addressed the issue raised by Mr. Durkin and echoed by Mr. Sincox, of compliance with federal Coverdale Grant accountability requirements. Coverdale grants are federal grants given to states (including Illinois) to clean up DNA testing backlogs. Those grants require independent oversight of labs in states that accept grants. While it is not clear that all labs must be accredited, it seems that all labs must be subject to independent oversight by some enforcement body.

At the June 19, 2006 Subcommittee meeting, Jan Johnson, Director of the Illinois State Police Forensics Lab in Chicago, spoke to the Subcommittee. Her testimony focused on lab accreditation and the costs of accreditation. She also discussed the DNA backlog generally, and the priorities the State Police set for testing DNA.

The Subcommittee plans to meet again in July or August.

2. *Other business.*

(1) *Meeting of the Subcommittee chairs.*

The subcommittee chairs met on June 13, 2006 to discuss a concerted effort to gather information from judges and attorneys about reforms in the capital punishment system. The meeting resulted in the following plan of action. Each subcommittee should draft a list of questions for information related to the reforms assigned to the respective subcommittee, to be completed by Friday, July 14, 2006 and submitted via email to Mr. Baroni. Mr. Baroni will organize the questions for a second meeting of the subcommittee chairs on July 20, 2006. A final list of questions will be determined at that meeting. Mr. Baroni will send out a list of prospective social scientists the Committee may use to assist in crafting the questions into an appropriate survey instrument. At the July 20th meeting a recommendation will be made as to how the Committee should proceed.

Mr. Baroni met with Chief Justice Thomas of the Illinois Supreme Court who expressed a willingness to assist the Committee in disseminating a survey document. Mr. Baroni was instructed to draft a letter to Justice Thomas formally requesting assistance.

(2) *Public hearings.*

Pursuant the Committee's request, Mr. Gottfried and Mr. Parkinson met with Mr. Baroni to determine the appropriate subject matter and location of Committee public hearings as required by statute. The recommendation of that group is attached as Appendix 4. The recommendations were approved by the Committee. The Committee suggested having one hearing in November in Springfield, and another to be scheduled after the November hearing. The dates discussed were Monday, November 13, 2006 and Monday, November 27, 2006. Both dates are the Monday before the two weeks of General Assembly's veto session. Mr. Baroni was instructed to contact Committee members to determine what date works best for members.

3. *Next Meeting – September 7, 2006, 2 P.M.*

It was agreed that the next meeting of the Committee will be held on Thursday, September 7, 2006 at 2 P.M. at the Illinois Criminal Justice Information Authority, 120 S. Riverside Plaza, Chicago, Illinois.

Thomas P. Sullivan
Chair
July 31, 2006

Attachments: Appendices 1 through 4.

**MINUTES OF THE MEETING OF THE POLICE AND INVESTIGATIONS
SUBCOMMITTEE #1 OF THE CAPITAL PUNISHMENT REFORM STUDY
COMMITTEE**

June 5, 2006

**University of Chicago Law School
Chicago, IL**

Notice of the meeting was sent to all members and posted on the Illinois Criminal Justice Information Authority website.

Present: James R. Coldren, Jr.
Gerald E. Nora
Geoffrey R. Stone
Leigh B. Bienen (non-subcommittee member) (via teleconference)
Peter G. Baroni, Special Counsel

Also present: Guest speaker - Crystal Marchigianni, Head of the Cook County Public Defender's Office Homicide Task Force (guest speaker)

The meeting was called to order at 2:10 P.M.

Testimony of Crystal Marchigianni:

Ms. Marchigianni leads the Cook County Public Defender's Office Homicide Task Force. Mr. Coldren invited her to give testimony to the subcommittee regarding videotaping of interrogations and her experience with that reform. Ms. Marchigianni said, as a threshold matter, that in her estimation approximately 70% of the first degree murders that get assigned to her task force (all first degree murders in the City of Chicago assigned to the Public Defender) could be eligible for the death penalty. Also, approximately one third of the cases assigned to her task force trigger the Capital Litigation Trust Fund. She indicated that since the inception of the videotaping of interrogations mandate in July 2005, her task force has been assigned 142 first degree murder cases (down about 25% from previous years for the same time period). Ms. Marchigianni further indicated that her task force is currently handling approximately 120 definitive capital cases (prosecutors have elected or indicated on the record they are seeking death). Typically, the State's Attorney's office will take between six and nine months from date of arraignment to formally notify the Public Defender's office that they are seeking death in a particular case. Additionally, unless the murder case involves a "serial murderer," Capital Litigation Trust Fund resources will not be used for six months after arraignment. The oldest cases pending are several 2000 murders and several "cold cases."

Ms. Marchigianni suggested that the recording in first degree murder cases is generally of good quality. She said there was a distinct departure in the procedure used by police

and prosecutors before and after the videotaping mandate. Before the mandate, the typical videotaped interrogation was formal and involved police and prosecutors sitting at a table in an interrogation room with the defendant at the head of the table answering questions that seemed to have been answered at an earlier time. Also, the recording was generally short in time. After the mandate, the recording is much longer (up to 24 hours in some cases) and includes the entire time the suspect is in custody - without stopping. Geoff Stone asked Ms. Marchigianni, at this point, what percentage of defendants ask for attorneys, while recorded. She replied that approximately 10% requested an attorney. She also indicated that the recordings have reduced the amount of Fifth Amendment motions to suppress filed by her office claiming that the police denied their client an attorney or continued with the interrogation, when an attorney was requested. Geoff Stone also asked Ms. Marchigianni what her office's general reaction has been to the recording mandate. She indicated her office had mixed feelings about the mandate. In terms of generally having more reliable, objective, truthful evidence, the new recording mandate was helpful, especially in terms of showing a defendant's remorse for conduct, in addition to an admission of guilt. On the other hand, it is a recorded confession and creates strong evidence of guilt that is difficult to defend in court. Overall, she believes it has been helpful in the truth finding process.

Several committee members asked Ms. Marchigianni for her opinion on how to improve the capital punishment system beyond the recent reforms. She responded with several ideas. First, the recorded interrogations do not show what took place before the defendant is in custody at the police station. She is often left with questions and concerns about what happened to the defendant when he was placed in custody and transported to the station. Gerry Nora asked if mounted cameras in squad cars would address her concerns. She was unclear if that was the answer. Another issue raised by Ms. Marchigianni was length of custody before going in front of a judge. She believes the 48 hour custody rule is coercive and leads to statements that are not trustworthy. She also believes that the re-initiation of the interrogation by a suspect after the suspect has invoked his or her Fifth Amendment rights, in the context of a long custodial period is particularly coercive. Finally, Chip Coldren asked Ms. Marchigianni if her office had any problems, in the context of recorded interrogations, with the absence of language interpreters. She indicated that her office has not had such problems since the recording mandate's inception (July 2005), however, it has been a problem in the past with several bad police officer interpreters.

Sequential Line-up Study Issue:

Chip Coldren asked the special counsel to arrange for subcommittee members to have the report and appendix for the Chicago Police Department's sequential lineup study. Coldren would like to discuss the study at a special subcommittee meeting on June 21, 2006.

The next subcommittee meeting is set for June 21, 2006 at 2:30 p.m. at the University of Chicago Law School, 1111 East 60th Street, 6th Floor (Prof. Stone's office, Room 625), Chicago, IL 60637.

The Subcommittee adjourned at 3:45 p.m.

TO: Members of Subcommittee No. 2 of the Capital Punishment Reform Study
Committee (CPRSC)

FROM: Peter Baroni,
Special Counsel to the CPRSC

DATE June 24, 2006

RE: Minutes of Subcommittee No. 2 conference call meeting -- June 13, 2006

On June 13, 2006 at 2:30 p.m. a meeting of Subcommittee #2 was held via conference call. Attending were Leigh Bienen, Tom Sullivan, Mike Waller and Peter Baroni (special counsel to the Committee). Kirk Dillard did not participate; Dan Rippey, legal counsel to Senator Dillard participated on his behalf.

Item No. 1: Survey Issues/Questions. Leigh Bienen summarized the meeting of the subcommittee chairs regarding the concerted effort that needs to be put forward by all four CPRSC subcommittees in creating a uniform, concise survey instrument for those actors involved in the capital punishment litigation process – prosecutors, defense attorneys, judges and police. Bienen urged all members of the subcommittee to conceive questions for submission to Peter Baroni by July 15, 2006, including:

1. Murder statute: redefinition of felony murder aggravating factors. 720 ILCS 5/9-1(b)(6)(c) (P.A. 93-605, Sec. 10).
2. Murder statute: advisory prosecution standards for screening capital punishment. 720 ILCS 9-1(k) (P.A. 93-605, Sec. 10).
3. Funding for DNA testing from Capital Litigation Trust Fund. 725 ILCS 124/15(e)(2) (P.A. 93-605, Sec. 20).
4. Notice requirements on seeking the death penalty. Sup. Ct. R. 416(c).
5. Minimum, uniform evidentiary standards for DNA evidence. Sup. Ct. R. 417.

The subcommittee went on to discuss the types of questions each member would like to have answered by survey respondents. Additionally, Baroni reported on a meeting he had with Supreme Court Chief Justice Thomas regarding the Court assisting the CPRSC in gathering information. Baroni indicated that Justice Thomas seemed open to the idea, but that he wanted a formal request from the Committee. The group agreed that Baroni should draft such a request on behalf of the Committee conversation.

Item No. 2: DNA Backlog. Peter Baroni reported that the Illinois State Police was supposed to provide information on the DNA backlog after the legislative session had adjourned. Baroni was told by an ISP representative that backlog information would be provided by the end of May

2006. As of the June meeting of Subcommittee 2 no information had been provided. Baroni indicated that he would follow up with the State Police and the Governor's Office.

Item No. 3: First Degree Murder Indictment Data Collection. Leigh Bienen reported on the response to the letter sent asking for the indictments from all county prosecutors for first degree murders during the 2003 and 2004 period. More than 75 of 102 counties have responded and information from the indictments is being put in a data base. Baroni suggested that he had difficulty getting any information from the Will County State's Attorney. Dan Rippy made several suggestions regarding people in that office who may be helpful. Baroni also spoke to Jerry Nora of the Cook County State's Attorney's Office regarding the receipt of first degree murder information and indictments, and Nora said the information would be coming soon. Baroni also spoke to Jeff Howard from the Cook County Public Defender's Office, who said he had received first degree murder indictment information from about 80% of the assistant public defenders in Cook County, and when he was closer to 100% he would forward the information to Baroni or Bienen.

Item No. 4: Capital Punishment Protocols. The committee briefly discussed the status of the protocols adopted by the State's Attorney's Association and the Attorney General's Office regarding the prosecution of capital cases in Illinois. Mike Waller reported that the status was largely unchanged. Discussions continue between the Attorney General's Office and the DuPage County State's Attorney's Office concerning the final protocol proposal. The Committee would like to get a copy of the protocols for public distribution when available.

The meeting was adjourned.

Peter G. Baroni
Special Counsel to the CPRSC
Leinenweber & Baroni
Attorneys at Law

MINUTES OF THE MEETING OF THE POST-CONVICTION PROCEEDINGS
SUBCOMMITTEE #4 OF THE CAPITAL PUNISHMENT REFORM STUDY
COMMITTEE

May 11, 2006

Criminal Justice Information Authority
Chicago, IL

Notice of the meeting was sent to all members and posted on the Illinois Criminal Justice Information Authority website.

Present: James B. Durkin (via teleconference)
Theodore A. Gottfried
Richard D. Schwind
Peter G. Baroni, Special Counsel

Also present: Kathryn Saltmarsh (via teleconference)
Guest of the subcommittee: Allan Sincox (Office of the State Appellate Defender (OSAD)) (member of the Illinois Laboratory Advisory Committee)

The meeting was called to order at 10:05 a.m. The minutes of the previous meeting (3/29/06) were approved.

Discussion Topic #1: Illinois Laboratory Advisory Committee (ILAC)

Ted Gottfried introduced Allan Sincox, OSAD's Designee to the ILAC. Sincox gave the subcommittee an outline of who participates in the ILAC (see attached ILAC member list) and submitted ILAC's 2006 Report (see attached 2006 ILAC Report). Sincox then outlined some of the issues the ILAC has discussed over the last year. First, the issue of forensic lab accreditation was outlined. There seems to be reluctance on the part of State and regional labs to accept an accreditation mandate based primarily on cost. No ILAC member objects to accreditation mandates. Sincox said that if the State would bear the cost of accreditation (according to ISP lab director that cost would be 10-15% of each lab's total budget), there would be general acceptance of the mandate.

Sincox said another issue of contention at ILAC is what type of accreditation is appropriate. There seems to be no clearly appropriate national standard for the appropriate accreditation. Rick Schwind suggested that the point of accreditation is uniformity in testing standards and adherence to consistent protocols for testing with monitoring for lab compliance.

Another issue raised by Jim Durkin and echoed by Sincox is concern regarding compliance with federal Coverdale Grant accountability requirements. They are federal grants

given to states (including Illinois) to clean up DNA testing backlogs. Those grants require independent oversight of labs in states that accept grants. It is not clear that those accountability requirements mean all labs must be accredited. However, it seemed clear that all labs must be subject to independent oversight by some enforcement body. Durkin believes oversight is sorely lacking in Illinois and may jeopardize federal funding. All subcommittee members agree to discuss the issue further and obtaining more testimony regarding the best approach for both accreditation and independent oversight of forensic labs in Illinois.

Discussion Topic #2: Subcommittee jurisdiction and use of a social scientist

Mr. Gottfried led a discussion that focused on the work of the subcommittee. Gottfried said his staff will work with the Special Counsel Baroni to create a draft survey document for the next subcommittee meeting in June. The survey would be disseminated to post conviction and appellate practitioners as well as judges who have presided over capital cases.

The topic of social scientist was raised in connection with data collection. The subcommittee came to a consensus that the idea may be viable; however, the survey questions should be drafted and discussed before a decision on the involvement of a social scientist is made by the subcommittee. Mr. Gottfried suggested that the simplicity of questions Subcommittee #4 wishes to ask, combined with the relatively small universe of people to survey, may result in a lack of need for the involvement of a social scientist.

The other idea discussed was the need for consistency in data collection by all four CPRSC subcommittees based on the potential for crossover issues arising. Several subcommittee members said consistency may be a reason for the involvement of a social scientist.

In terms of the subcommittee's jurisdiction over capital litigation training and continuing education for attorneys and judges, Mr. Gottfried suggested reviewing the training programs currently in place; after review, the subcommittee could determine the impact of such programs and what improvements may be needed. Mr. Schwind agreed with Gottfried, and outlined areas where capital litigation training needs improvement.

Mr. Baroni listed areas of concern to the subcommittee and suggested the subcommittee members review the list and make additions or deletions as they deem appropriate.

The subcommittee agreed on a tentative agenda for the June meeting: (1) discussion of the draft survey questions; and (2) hear another speaker from ILAC and possibly the State lab.

The next subcommittee meeting was set for June 19, 2006 at 1:00 p.m. at the Criminal Justice Information Authority in Chicago.

The Subcommittee adjourned at 11:20 a.m.

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ILLINOIS LABORATORY ADVISORY COMMITTEE

2006 Report

EXECUTIVE SUMMARY

Illinois Public Act 093-0784 ("the Act") created the Illinois Laboratory Advisory Committee (herein referred to as "the Committee"). The Act mandates that the responsibilities of the Committee, among others, are to examine ways to make more efficient use of State laboratories, including facilities, personnel and equipment; to examine ways to reduce laboratory backlogs; to make recommendations regarding staffing and funding needs to ensure resources that allow for accurate, timely and complete analysis of all samples submitted for testing; and to make recommendations regarding accreditation and quality assurance as it applies to laboratory testing that will be in compliance with recognized International Organization for Standardization and applicable professional standards.

In this first report, the Committee has resolved to accomplish three simple but critical objectives:

1. To make a clear and compelling statement regarding the importance of scientific testing services provided by the State of Illinois.
2. To identify what the Committee considers to be a systemic and pervasive problem that is contributing to conditions that potentially threaten the well-being of the public.
3. To present a recommendation to address the problem at hand and ensure that the State's capacity to provide adequate, timely, and accurate scientific services is preserved.

Importance of Scientific Testing

Scientific testing services provided by the State of Illinois have a direct impact on the safety, health, and general well-being of Illinois citizens. These scientific testing services include, for example, forensic science testing, environmental testing, materials testing, bio-terrorism testing and public health testing. It is necessary that the State of Illinois maintain an appropriate capacity to bring proactive and reactive scientific solutions to bear on the problems faced by the public on a daily basis.

Problem Statement

The committee believes some of the agencies responsible for providing the aforementioned scientific services may experience difficulties in their ability to deliver these services in a manner that consistently earns and retains the confidence of the public and its institutions. The tolerance of any potential decline, however innocent or incidental it may be, stands in opposition to the public's intolerance for substandard scientific practices that place them at risk.

Committee Recommendation

The Committee requests that the executive and legislative branches work vigorously and diligently to remedy the concern described in the above problem statement. In doing so, the committee recommends that a full and complete review of scientific testing services be completed by the end of the 2006 calendar year to determine the following:

1. Do Illinois State laboratories have the necessary management, scientific and support staff to take on the challenges they will face in the future?
2. Does the funding allocated to each Illinois State laboratory reflect the degree to which the public relies on the services provided by the laboratory?

3. Is the funding allocated to each Illinois State laboratory sufficient for all laboratories to accomplish their missions in a high-quality and timely manner?
4. Does each State laboratory utilize its available resources in an efficient and effective manner?
5. Does each State laboratory conform to appropriate scientific and accreditation standards, as applicable to its particular mission?
6. Are the expectations of the public, executive branch, legislative branch, and judicial branch realistic given the current capacity of Illinois State laboratories to carry out scientific testing?
7. What problems currently faced by Illinois State laboratories represent a clear and present danger to the public's health and safety?

The Committee recognizes that it does not have the resources to gather and analyze the information necessary to independently carry out this recommendation. The members of the Committee, however, are eager to assist the State in any way possible. This is a worthy endeavor that has long-term implications for the health and safety of the public.

CURRENT CONDITIONS AND PROBLEMS

This section of the report will identify specific conditions that the committee has determined to be symptomatic of the root problem described in the executive summary. While there are other symptoms worthy of consideration and attention, the conditions described below have been singled out by the committee as having immediate urgency.

IEPA Laboratory Funding Decline

The Committee has discussed the fact that the laboratories of the Illinois Environmental Protection Agency (IEPA) face discontinuance of operations at the end of June 2007 due to budgetary shortfalls linked to a decreased participation in IEPA's Community Water Supply Testing Program

Over time, funding for some of IEPA's essential activities inadvertently became dependent on drinking-water testing revenues. As that revenue was allowed to shift from IEPA to private testing labs, the state now faces the unintended consequence that its environmental testing labs may be forced to close.

The State of Illinois has a long history of providing chemical analyses for its citizens. The Illinois Department of Public Health (IDPH) laboratory system was established in 1904 and began testing drinking water early in its history. The testing of public drinking water was continued with the establishment of the IEPA in 1970 and chemical analysis was expanded to include streams, lakes, landfills, dumps and other areas of environmental concern.

The IEPA's laboratories test for critical chemical compounds that are not tested in any other State laboratory. Closing the IEPA laboratories will mean that the State's laboratory system would not be able to provide chemical analyses for routine environmental monitoring programs, industrial spills, accidents, train derailments or terrorist events.

Events such as the Formosa Plant explosion in Illiopolis illustrate the importance of the analytical resources available at the IEPA laboratories. Without the IEPA laboratories, the State would not have the testing capabilities needed to determine the nature and extent of chemical contamination following such events. Other critical chemical analyses unique to the IEPA laboratories include mercury analysis for fish advisory reports, toxic metals analysis, pesticide analysis and herbicide analysis. These capabilities would be lost as well.

A document that fully explains this critical situation is in Appendix A.

Inability to Fill Supervisory Positions in the State Laboratories

Many of the Illinois State laboratories have encountered problems in filling management positions since the restructuring of previously existing classification series to the existing Public Service Administrator and Senior Public Service Administrator classifications in the early 1990s.

Three currently insurmountable problems exist because of the PSA/SPSA classifications:

1. Inability to fill first-line supervisory positions.
2. Inability to fill higher-level supervisory positions through promotion.
3. Cap on salary for promotional increases.

Each of these problems interferes with maintaining effective supervision and management for administering a scientific testing laboratory. It impacts both the internal operations of each department and the user agencies to which the services are provided.

An appropriate and competitive series of position titles for compensating laboratory managers is not currently in place. In the absence of such a compensation structure, it becomes nearly impossible for laboratories to accomplish the following:

Fill first line supervisory positions.

Fill higher-level supervisory/managerial positions.

Compete with other science administrator positions nationally.

Ensure the highest quality of work and increase bench-level productivity.

Increase morale and decrease attrition of supervisors to bench-level positions or to other employers.

Individual State agencies have difficulties in fully and completely judging the quality and productivity of their laboratories. Therefore, agencies rely upon laboratory administrators/managers to develop and maintain an efficient, high-quality laboratory. The Committee believes that hiring and maintaining key personnel who are highly trained, educated, and experienced is fundamental to ensure quality analyses.

Appendix B contains a proposal for a new Science Administrator Series that was presented to the Committee for consideration. It is being included in this report as a viable option to address the above-described problems.

Laboratory Accreditation

The Act mandates that it is the responsibility of the Committee to make recommendations regarding accreditation and quality-assurance as it applies to laboratory testing. The Committee believes this is a top priority. To the extent that the public expects Illinois State laboratories to achieve a desired level of quality, the Committee believes laboratory accreditation is necessary to establish a quality-assurance framework that will allow Illinois State laboratories to demonstrate compliance with appropriate scientific standards. In doing so, the public institutions that depend on the reliability of laboratory testing results issued by the State will be afforded a higher degree of confidence.

The Committee has discussed formulation of a recommendation that calls for all laboratories engaged in the testing of samples for the purpose of reporting results, opinions, interpretations, or conclusions to a client, to obtain accreditation based upon standards set forth by the International Organization for Standardization ("ISO") and/or other applicable professional organizations.

Future recommendations pertaining to accreditation, however, will be contingent upon the appropriation of additional incremental funding approximately equal to 15% of the laboratory's annual budget or, when this formula is deemed to be inadequate, an amount recommended by the Committee.

Appendix C contains additional information about laboratory accreditation.

CONCLUSION

This report highlights the importance of scientific testing in protecting the public and identifies the need for policy makers to adequately fund Illinois State Laboratories. The ability of the laboratories to perform testing is crucial to the ability of the State to detect infectious disease, monitor for public safety and health, detect bioterrorism, and participate in crime detection and prevention. The committee concludes that priority be given to Illinois State laboratories to enable them to provide accurate, timely, and professional scientific testing services. The committee is resolved to assist, to the best of its ability, all branches of government in this process. To do so is to take important steps toward protecting the lives of the citizens of Illinois.

APPENDIX A – IEPA LABORATORY SERVICES

The Champaign and Springfield laboratories of the Illinois Environmental Protection Agency face discontinuance of operations at the end of June 2007 due to an anticipated lower participation in the Community Water Supply Testing Program.

Background

The State of Illinois has a long history of providing drinking water analyses for the citizens of Illinois to ensure that their drinking water is safe. The Illinois Department of Public Health (IDPH) laboratory system was established in 1904 and began testing drinking water early in its history.

In 1970, many of the drinking water testing responsibilities for community water supplies were passed on to the newly formed Illinois Environmental Protection Agency (IEPA) along with expanded chemical analysis for streams, landfills, dumps and other areas of environmental concern.

From the IEPA's beginning, the Division of Laboratories, which is now comprised of laboratories in Springfield and Champaign, performed nearly 100% of the chemical and microbiological analysis for drinking water from the community water supplies in the State. The IEPA's drinking water analyses were paid for through General Revenue Funding (GRF) for many years at no cost to the community water supplies as required by the Illinois Environmental Protection Act.

The drinking water program requirements expanded considerably due to the USEPA's 1986 Amendments to the Safe Drinking Water Act. These new requirements meant that the Illinois EPA laboratories had to greatly expand testing capabilities and find a way to pay for the new analyses.

To pay for this testing, The Illinois Environmental Protection Act was amended by Public Act 86-670 (Act) - and again amended by Public Act 92-0147 - to establish the Community Water Supply Laboratory Fund (Fund) in January of 1990. The Community Water Supply Testing Council (Council) was also established by the Act to review and approve the fees charged to the community water supplies by the IEPA for the drinking water testing program (Program). The drinking water supplies that opted into the Program contributed to the Fund. The Act also allowed community water supplies to choose not to participate in the Program. The community water supplies that opted out of the Program were responsible for finding other laboratories to perform the required analysis.

Initially the drinking water analysis costs were shared between the IEPA and the community water supplies with 50% of the costs coming from GRF and 50% of the costs coming from the Fund. At this point the participation rate among the supplies was at 93%.

During a State budget crisis in 1992, the 50% GRF contribution was withdrawn and the drinking water testing was completely funded from the fees collected from the community water supplies. At about the same time commercial laboratories began ramping up their operations and expanding their drinking water chemical and microbiological analysis capabilities and the decision whether to "opt in" or "opt out" of the Fund became a three-year commitment for the supplies – if the supplies "opted in" they had to stay in the Program for three years and were guaranteed no cost increases for the duration of the three-year cycle.

Over the last few three-year cycles of the Program, the commercial laboratories have continued to make inroads into the drinking water testing program and fewer and fewer community water supplies have opted into the Program. In June 2004, the IEPA laboratories had a major layoff because of another downturn in participation in the Program. Each community water supply will have their next opportunity to make the decision on where to send their samples late in 2006. With current participation at 58%, the IEPA's Springfield and Champaign laboratories may not survive another drop in participation.

The Importance of Maintaining an IEPA Laboratory Presence

The Program was structured to ensure that the smaller supplies could afford the costs of having their drinking water tested. The fees for the chemical and microbiological testing were structured so that smaller community water supplies

paid at a much lower rate than the larger community water supplies. As a result, most of the smaller community water supplies participate in the Program. Closing the IEPA laboratories could mean that the smaller supplies may not be able to afford laboratory analysis and be in non-compliance with drinking water regulations.

The IEPA's Springfield and Champaign laboratories test for critical compounds that are not done in any other State laboratories. Closing the IEPA laboratories will mean that the State's laboratory system will not be able to respond fully in many chemical spill events, accidents or terrorist events. IDPH, which had the only other once offered laboratory system to once offer similar analyses, has closed their environmental laboratory division. Commercial laboratories would not be obligated to make the State's emergency samples the first priority.

Closing the IEPA laboratories will mean that commercial laboratories would do all routine chemical analysis for the State's environmental programs. The State laboratory system would lose many critical testing capabilities including mercury analysis, toxic metals analysis, pesticide analysis, herbicide analysis and volatile analysis including gasoline components.

Closing the IEPA's Springfield and Champaign laboratories would mean that the State would lose the ability to analyze for commonly found pollutants in drinking water. The State would be dependent on the commercial laboratory sector to analyze drinking water and would have less control over prioritizing emergency water sampling.

The IEPA laboratories' funding needs for the Program help determine what the commercial laboratories will charge the community water supplies for drinking water analysis. Without the IEPA's input, the community water supplies costs for analysis at the commercial laboratories may rise.

The IEPA's laboratories have no profit motive and have no motivation to take short cuts on data quality or data integrity issues. Recent media reports have shown that data fraud and data integrity problems are more common in commercial laboratories.

The IEPA's laboratories are the only State laboratories currently capable of analyzing fish for organic and inorganic pollutants including mercury. The fish analysis is done in a cooperative effort between the IEPA, the Illinois Department of Public Health and the Illinois Department of Natural Resources. The fish data is used in an annual fish advisory report issued by the IDPH. Very few commercial laboratories offer fish analysis.

The IEPA's laboratories are National Environmental Laboratory Program (NELAP) accredited and were among the first group in the country to receive this accreditation, the highest accreditation available to environmental laboratories. Not all commercial laboratories have NELAP accreditation and therefore may not be able to produce high quality, legally enforceable data.

The IEPA laboratories analyze fluoride in drinking water for IDPH. If the IEPA laboratories could no longer provide this data, either the IDPH would have to develop this analysis or the community water supplies would have to find laboratories and pay to have the analysis done.

The IEPA laboratories serve as a 10-year repository for samples and data that may be used in criminal or civil court cases. Closing the IEPA laboratories would jeopardize any pending cases. No court case has ever been lost due to inconsistent or inaccurate results from the IEPA laboratories. Commercial laboratories could have conflicts of interest in court cases depending on the clients it served or go out of business jeopardizing the court cases.

Nearly every IEPA decision, from drinking water compliance to landfill permits, can be traced back to a laboratory analysis. Safe drinking water and an environment free of toxic pollutants is on the front lines of the public health of everyone in the State and should be analyzed in the public sector to ensure good quality data. The IEPA needs to maintain a laboratory to ensure that the needed testing can be done to support the ongoing needs of the various IEPA programs and ensure the health of the citizens of the State.

APPENDIX B- SCIENCE ADMINISTRATOR SERIES

The Act mandates that it is the responsibility of the Committee to make recommendations regarding staffing and funding needs to ensure resources to obtain accurate, timely and complete analysis of all samples submitted for testing; to make recommendations regarding training procedures to ensure training is conducted consistent with recognized scientific procedures; and to examine ways to reduce laboratory backlogs and to make more efficient use of the State laboratories, including facilities, personnel and equipment.

This appendix includes a proposed Science Administrator Series that would be a more adequate and accurate position structure and ensures that the best candidates are selected to serve as managers, supervisors and administrators. This would attract the highest caliber of leaders to pursue the mission of all state scientific laboratories.

Current Conditions and Problems

The current PSA/SPSA series has not met the needs of the Illinois State laboratories. During the time this series has been in-place, the State has encountered increasing difficulty in filling science supervisor/manager positions. The more common problems have been:

1. Inability to fill first line supervisory positions.
Science supervisors/managers are drawn from the highest bench level scientist series. Unfortunately, employees at this level have seen a much better salary progression if they remain as scientists until such time as they have reached the highest salary level as a senior scientist. For example, within the Illinois State Police, several scientists who did accept a first-line supervisory position early in their careers soon found that their subordinates and former peers were, in a matter of a few years, making a much higher salary. Subsequently, due to this pay disparity, state agencies have been unable to fill several supervisory positions. A few individuals asked to return to the bench, while other qualified individuals who learned of the potential salary disparity, decided not to interview for management positions. Still others were lost to private industry once they had an experience level that made them desirable candidates.
2. Inability to fill higher-level supervisory positions.
Many of the higher-level positions are difficult to fill using the current PSA/SPSA titles. The reasons are similar to what has been described above in 1. Additionally, the SPSA title is used for multiple levels. For example, within one state agency, it is not uncommon to have five levels of managerial oversight all within the SPSA title. The result is all higher supervisory levels have the potential for making the same salary. Often, accepting a higher level supervisory position also requires the individual to make a geographical move. Thus, there is very little incentive for an SPSA to move to a position of higher responsibility and to advance within the organization.
3. Cap on salary promotional increases.
The salary disparity issue is compounded by state rules of a 15 percent maximum increase upon promotion. Some departments have an even smaller promotional increase cap, i.e. 8%. The ability to place individuals at a salary that is commensurate with the level of responsibility, regardless of the percent increase, would attract additional qualified individuals to supervisory/managerial levels.

Proposed Solution

The recommended solution is for CMS to establish a Science Administrator Series. The establishment of the series would accomplish the following:

1. Filling of first line supervisory positions by the most qualified individuals.
The recommended series has the initial salary level of the first line supervisor equal to the highest step of the most senior bench scientist. Thus, qualified less tenured scientists who are extremely capable analytically and have supervisory potential are compensated adequately for the increased responsibilities they assume. They would not be concerned about their subordinates with equivalent time in service exceeding their salary level. As a result, critical vacancies will be filled.

2. Filling of higher-level supervisory/managerial levels.

The recommended series has several managerial levels corresponding to increasing levels of responsibility. The salary structure has been designed so that each level has greater potential earning capability. This structure eliminates the current problem of several levels having the same maximum salary. Because of the potential for greater salary compensation with the new series, vertical movement to higher levels will be attractive to more qualified candidates.

3. Competitive salary levels with other science administrator positions nationally.

The new scale places state scientific managerial levels in a scale consistent with other comparable laboratories. This fact will facilitate the ability of the state laboratories to recruit nationally the most qualified managers for their departments. The ability to recruit nationally has been and will continue to be very critical since early retirement incentives have drained state agencies of experienced scientific administrators.

4. Higher quality work, increased bench level productivity and thus increased cost savings.

Another advantage to the proposed series is that it is actually cost effective and will save the state money over time. Having the best scientific managers/leaders in place will result in a higher quality work product, increased bench level productivity, innovation into new, more efficient and effective techniques, and thus increased cost savings.

5. Increased morale and decreased attrition of supervisors to bench level positions or to other employers.

Supervisory salaries commensurate with responsibilities, and thus higher than subordinate salaries, will result in increased morale and decreased attrition. Consequently, the supervisors will remain in their positions longer, gain more expertise in their specific managerial duties, and create stability within the laboratory setting. All of these factors will lead to increased productivity and efficiency, again saving money.

**SCIENCE ADMINISTRATOR
Proposed Salary Structure**

FY07

SA I	(Step 8 of FS III - starting point)	
	*\$ 6,416 mo.	- \$ 8,020 mo. (25% range)
	\$76,992 yr.	- \$ 96,240 yr.
SA II	*\$ 6,865 mo.	- \$ 8,581 mo. (25% range)
	\$82,380 yr.	- \$ 102,972 yr.
SA III	*\$ 7,346 mo.	- \$ 9,183 mo. (25% range)
	\$88,152 yr.	- \$ 110,196 yr.
SA IV	*\$ 7,860 mo.	- \$ 9,825 mo. (25% range)
	\$94,320 yr.	- \$ 117,900 yr.
SA V	*\$ 8,410 mo.	- \$ 10,513 mo. (25% range)
	\$100,920 yr.	- \$ 126,156 yr.
SA VI	*\$ 8,999 mo.-	\$ 11,249 mo. (25% range)
	\$107,988 yr.	- \$134,988 yr.
SA VII	*\$ 9,629 mo.-	\$ 12,036 mo. (25% range)
	\$115,548 yr.	- \$144,432 yr.

* Indicates 7% increase from title to title (monthly range)

**SCIENCE ADMINISTRATOR
Comparisons of Current Salaries**

7/1/05 Salary Forensic Scientist III Step 8 (FY06)	\$5,987*
1/1/06 Salary Forensic Scientist III Step 8 (FY06)	\$6,167*
7/1/06 Salary Forensic Scientist III Step 8 (FY07)	\$6,352*
1/1/07 Salary Forensic Scientist III Step 8 (FY07)	\$6,416*
7/1/07 Salary Forensic Scientist III Step 8 (FY08)	\$6,673*
1/1/08 Salary Forensic Scientist III Step 8 (FY08)	\$6,873*

* Does not include \$25 or \$50 longevity increases

Current range for PSA \$2,996 - 6,558

Current range for SPSA \$4,330 - 9,705

APPENDIX C - ACCREDITATION

The International Organization for Standardization (ISO) is a federation of standardization bodies from over 110 countries. ISO's activities include the organizing of international committees and the writing of standards to include standards for testing laboratories (ISO 17025). Accreditation is defined as "formal recognition that a testing laboratory is competent to carry out specific tests or types of tests" (ISO Guide 2).

Accredited laboratories are recognized by an independent third party to have met all applicable quality

standards. By meeting these standards, accredited laboratories demonstrate their capacity to deliver reliable results and provide to their clients greater confidence in these results. Accreditation is both a time consuming and expensive process; however, its benefits, in terms of continued quality improvement, will be evident through increased public trust that Illinois State laboratories provide accurate, reliable analyses. In the future, the Committee will make recommendations regarding the following:

- 1) type(s) of accreditation suitable for each laboratory;
- 2) resources necessary to achieve/maintain accreditation;
- 3) a timetable for achieving accreditation.

Although many State laboratories are accredited, there is no overlying framework as to the expectations of the State regarding accreditation.

ILLINOIS LABORATORY ADVISORY COMMITTEE
(Public Act 093-0784)

May 10, 2006

The Honorable Jim Durkin
Representative, 82nd District
6404 West Joliet Road, Suite 203
Countryside, IL 60525

Dear Representative Durkin:

The purpose of this letter is to introduce the Illinois Laboratory Advisory Committee (ILAC). The Committee was created under Public Act 093-0784. It consists of fifteen members appointed by the Directors of Illinois State agencies operating scientific laboratories; prosecution and defense attorneys for Cook County, the State of Illinois Appellate Court and State's Attorney; DuPage County Sheriff's Crime Laboratory; and the University of Illinois.

The responsibilities of the Committee are many and include proposals and recommendations concerning evidence; accreditation and quality assurance; training, staffing and funding; private laboratories; evidence and discovery; efficient use of State laboratories; reduction of laboratory backlogs; and the proposed construction of State laboratories.

If, for any reason, you or your staff wishes to contact the Illinois Laboratory Advisory Committee, please contact me at the DuPage County Sheriff's Office. My information is listed below.

Respectfully Submitted,



John M. Collins
Committee Chair

Sheriff's Office Crime Laboratory
501 N. County Farm Road
Wheaton, Illinois 60187
(630) 407-2101
Fax: (630) 407-2106
Email: jcollins@dupageco.org

ILLINOIS LABORATORY ADVISORY COMMITTEE
(Public Act 093-0784)

May 10, 2006

Honorable Lisa Madigan
Attorney General
Attn: Opinions Bureau
500 South Second Street
Springfield, IL 62706

Dear Attorney General Madigan:

The purpose of this correspondence is to request an opinion regarding the Lobbyist Registration Act (Act 170 of Chapter 25 of the Illinois Compiled Statutes) and its application to the business of the Illinois Laboratory Advisory Committee, which was established under Public Act 093-0784.

The Illinois Laboratory Advisory Committee is charged with the responsibility of formulating recommendations for the executive, legislative, and judicial branches of Illinois government as they pertain to laboratory scientific services provided by the State.

Sections 4(e) and 4(f) of the Lobbyist Registration Act, provided below for your convenience, appear to exempt our committee members from registering as lobbyists:

- (e) Employees of the General Assembly legislators, legislative and legislative commissions.
- (f) Persons who possess technical skills and knowledge relevant to certain areas of executive, legislative or administrative actions, whose skills and knowledge would be helpful to officials when considering such actions, whose activities are limited to making occasional appearances for or communicating on behalf of a registrant and who do not make expenditures that are reportable pursuant to Section 6 even though receiving expense reimbursement for such occasional appearances.

Therefore, we are proceeding accordingly and have initiated communications with members of the General Assembly in regards to the recommendations issued by our committee and the technical expertise of its members.

Again, we are requesting a formal interpretation of sections 4(e) and 4(f) of the Lobbyist Registration Act including any other language in the act that you judge to be relevant to our committee's business.

Thank you for your assistance in this matter



John M. Collins
Committee Chair

Attn: Crime Laboratory
501 N. County Farm Road
Wheaton, Illinois 60187
(630) 407-2101
Fax: (630) 407-2106
Email: jcollins@dupageco.org

MEMORANDUM

To: Capital Punishment Reform Study Committee (CPRSC) Members
From: Ted Gottfried and Ed Parkinson
Date: June 8, 2006
Re: CPRSC Subcommittee Reform Assignments

We met with the CPRSC Special Counsel to discuss the issue of holding hearings in the near future pursuant to our legislative mandate. The following encompass our recommendations to the full Committee.

1. The Committee should hold two hearings this year, during the summer/fall.
2. The hearings should be held in Springfield and Chicago.
3. Notice for the hearings should be posted on our website.
4. The hearings should be open to the public.
5. Witnesses should be required to pre-register if they wish to testify; persons or organizations not registered will not be allowed to testify.
6. Testimony should be limited to the reforms enacted and should exclude opinions on the death penalty.
7. A reasonable time limit should be imposed on the testimony of both individual witnesses and organizations.
8. The Committee should seek out prosecutors, defense attorneys, judges and law enforcement that have had experience with the capital reforms to testify regarding their respective views on those reforms.
9. The parameters of witness testimony should be broad – provide the Committee with your positions on specific reforms (i.e. what works, what doesn't work, what improvements can be made).