

CAPITAL PUNISHMENT REFORM STUDY
COMMITTEE

Minutes of meeting March 9, 2009

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

Those present

Leigh B. Bienen

James R. Coldren, Jr. (via teleconf.)

Jennifer A. Bishop-Jenkins

Walter Hehner

Jeffrey M. Howard

T. Clinton Hull

Boyd J. Ingemunson (via teleconf.)

Edwin R. Parkinson (via teleconf.)

Not present

Kirk W. Dillard

Geoffrey R. Stone

Randolph N. Stone

Arthur L. Turner

Charles M. Schiedel (via teleconf.)

Richard D. Schwind

Thomas P. Sullivan

Michael J. Waller (via teleconf.)

Also present: David E. Olson and Robert Lombardo, Loyola University; Mark Warnsing, Senate Republican staff (via teleconference); and Daniel Stokes (Northwestern University law student).

The minutes of the Committee meeting held on January 23, 2009, were approved.

1. *Tables of sentences for first degree murder in Illinois trial courts.*

Mr. Olson presented tables of the sentences imposed by IL trial courts in first degree murder cases during the period July 1988 to June 2008, attached as Appendix 1. These statistics show that, between 1988 and 2008, the likelihood that a first

degree murderer will be given the death penalty has been reduced by approximately one-half. Mr. Olson said that it does not necessarily follow that the reforms to the capital punishment system enacted by the General Assembly were the cause of the reduction.

2. *Views of visiting law enforcement personnel regarding blind administrators for lineups and photospreads.*

The following members of IL law enforcement were present to discuss the subject of the advisability of a law requiring that lineups and photospreads that take place in law enforcement detention facilities should be conducted, if feasible, by a “blind” administrator, that is, a person who is not aware of which person in the lineup or photospread is the suspect.

Lt. Michael Cooke, IL State Police, Zone 1
Investigations, Major/Violent Crimes

Deputy Chief Nick Ficarello, Will County Sheriff's
Police, Special Operations Bureau, representing the IL Sheriffs
Association

Chief of Police Fred W. Hayes, Joliet PD

Chief Kevin O'Connell, Investigations Division, IL
Attorney General

Kevin O'Connell, Chief of the Investigations Division
of the Office of the IL Attorney General

Chief of Police Robert Porter, Downers Grove

Chief Hayes said that in small and medium size departments it is often difficult to find a person to conduct the lineup or photospread who is not aware of the identity of the suspect. During the legislatively mandated pilot study, the Joliet PD used blind administrators when required, but it was often a challenge to find a qualified – that is, “blind” – administrator.

Lt. Cooke said that his unit works with and at many local agencies, assisting in the investigations of major crimes. The ISP belongs to all of the Major Crime Task Forces in Illinois, but not all departments belong to a MCTF. He expressed the

concern that departments throughout Illinois often may not be able to comply with a requirement that blind administrators be used to conduct lineups and photospreads.

Chief O'Connell said that at present there is not much training given to local law enforcement agencies regarding the administration of lineups and photospreads. He serves on the state training board, and knows that the 30-day training for detective candidates does not include training for conducting lineups and photospreads. He also said that in Cook County, live lineups are the preferred method of conducting eyewitness identifications. He also pointed out that in many smaller departments there is little room available to conduct live lineups.

Chief Porter provided the Downers Grove PD Lineup/Photospread Advisory Form, attached as Appendix 2. He said that his department usually uses photospreads, and that it is often difficult to find a person who is not aware of the

identity of the suspect. He also emphasized the importance of training for administrators of eyewitness identification procedures.

Deputy Chief Ficarello provided the Sheriff's Office Photo Lineup Protocol, attached at Appendix 3. He said that his department usually uses six photographs, and gives the standard warnings to witnesses before they attempt identifications. He said it is often nearly impossible to locate a person who is unaware of the identity of the suspect. He also said that the Illinois Chiefs of Police, the Illinois Sheriffs Association, the Task Force Commanders, and State's Attorneys, require more time to study and comment on a statutory mandate of using blind administrators.

Mr. Coldren said that the preferred improvement is the use of a blind system, rather than blind administrators. To illustrate his point, Mr. Coldren suggested that Illinois law enforcement

adopt the method in use in North Carolina, called the folder method. Five photographs of persons resembling the suspect are placed, with the suspect's photograph, in separate folders, and are arranged in random order. The photos are shown to the witness one at a time, with the administrator unaware of which photo is being shown. The witnesses' responses are recorded verbatim. Training is needed in advance of the use of this method.

Mr. Coldren presented the document attached as Appendix 4, containing the language previously proposed for the Committee's recommendation to the General Assembly, and different language drafted by Mr. Coldren with a revision of Mr. G. Stone.

Mr. Waller said that in Lake County law enforcement departments, almost all identification procedures are conducted with photo rather than live lineups. Mr. Hull said the same

procedure is usually used in Kane County. Mr. Hehner said that in Cook County, the State's Attorney prefers that, when an identification is made through a photospread, the witness then be required to select the perpetrator in a live lineup.

Mr. Howard pointed out that the Joliet PD participated in the pilot eyewitness identification program. This is the fourth largest PD in Illinois, with 300 officers and 45 detectives.

During the pilot program, the Joliet PD conducted 257 lineups in high crime areas, including 65 double-blind sequential lineups, and in only one instance was a blind administrator not available.

Mr. Olson pointed out that a survey has been sent to police and sheriff departments throughout Illinois, which includes a request for their positions regarding a requirement that blind administrators be used where practicable in all photospreads and lineups.

Mr. Sullivan pointed out to the visitors that for the past several years the Committee has been considering a proposal requiring blind administrators where practicable, and is on the verge of adopting a recommendation to the Illinois General Assembly on this subject. He urged the visitors to speak with their organizations, and to promptly respond with their official positions on the subject, so that Committee members will be able to take into consideration the concerns and positions of Illinois law enforcement organizations.

3. *Public hearings held in Chicago (January 26, 2009) and Springfield (March 2, 2009).*

A discussion was held regarding the subjects discussed by witnesses at these meetings. It was unanimously agreed that the transcripts of all Committee public hearings should be posted on the CJIA website.

4. *Reports of subcommittees.*

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

Mr. Coldren reported that the subcommittee has not met since the last full Committee meeting. He said that the subcommittee will follow through on the discussion held today, recounted above, and formulate a proposal to the General Assembly regarding the requirement of using blind administrators where practicable, or the use of blind procedures, when photospreads and lineups are conducted by law enforcement personnel. He said that he will distribute to members the recommendations on this topic adopted by the Constitution and Innocence Projects.

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

Ms. Bienen reported that the subcommittee has not met since the last full Committee meeting. The subcommittee is still

in process of collecting all first degree murder indictments in each county during 2003 through the present, and collating the information received.

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

Mr. Howard reported that the subcommittee has not met since the last full Committee meeting. The members intend to continue to interview the trial court judges who have tried capital cases. Mr. Howard requested that the agenda for the next full Committee meeting, include discussion of jury instructions and verdict forms for use in capital trials, and discussion of whether, in certain counties, first degree murder cases have been designated for capital punishment in order that the prosecution and defense qualify to be paid through the Capital Litigation Trust Fund (CLTF).

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

Mr. Schiedel reported that the subcommittee has not met since the last full Committee meeting. Ms. Bishop-Jenkins said that she and Mr. Hehner have met to discuss potential recommendations for improvements to the law governing the CLTF. She also said she may present a proposal to the Committee regarding use of unspent CLTF funds be used for victim services.

5. Next meeting – Monday, April 6, 2009, at 1 PM.

It was agreed that the next full Committee meeting will be held on Monday, April 6, 2009 at 1 PM, at the office of Jenner & Block, 330 N. Wabash Avenue, 40th Floor, Chicago, IL.

Thomas P. Sullivan
Chair
May 18, 2009

Attachments - Appendices 1 - 4.

DRAFT
Tables Summarizing the Sentencing of First Degree Murderers in Illinois

Prepared for
The Illinois Capital Punishment Reform Study Committee

Prepared by
David E. Olson, Ph.D.
Donald Stemen, Ph.D.

&

Jordan Boulger

Loyola University Chicago
Department of Criminal Justice
802 North Michigan Avenue
Chicago, Illinois 60611
312-915-7563

General Overview

In an effort to examine the patterns of death penalty imposition across Illinois, researchers from Loyola University obtained detailed, offender-level data from the Illinois Department of Corrections (IDOC) that included information pertaining to the 9,218 offenders convicted of first degree murder and admitted to prison in Illinois from July 1988 through June 2008, or state fiscal year (SFY) 1989 (which covers the period from July 1, 1988 to June 30, 1989) to SFY 2008. During this 20-year period, a total of 149 individuals were convicted and sentenced to death.

The tables on the following pages summarize the total number of offenders convicted of first degree murder in Illinois and the number and proportion of these offenders who received a death sentence across different regions of Illinois and across different time periods. The time periods used in the analyses were the "Pre-Moratorium" (July 1988 to December 1999), the "Moratorium & Governor's Capital Punishment Commission" period (January 2000 to June 2005) and the "Post-Reform passage" period (July 2005 to June 2008).

Over the time periods examined, the proportion of first-degree murderers sentenced to death statewide fell from 1.9 percent in the pre-moratorium period to 0.9 percent in the post-reform passage period (Table 1). In purely statistical terms, this decrease from 1.9 percent to 0.9 percent translates to roughly a 50 percent reduction in the likelihood of the death penalty being imposed over these time periods. Across all separate geographic regions of Illinois examined (Tables 2 through 6), the proportion of first degree murderers sentenced to death fell between the pre-moratorium and post-reform passage periods.

Table 1
Statewide Sentences Imposed on Convicted Murderers in Illinois

	Non-Death Sentence	Death Sentence	Total
Pre-Moratorium (July 1988 through December 1999)	6,106 (98.1%)	118 (1.9%)	6,224 (100.0%)
Moratorium (January 2000 through Passage of Reforms (June 2005))	1,961 (98.9%)	22 (1.1%)	1,983 (100.0%)
Post-Reform Passage (July 2005 through June 2008)	1,002 (99.1%)	9 (0.9%)	1,011 (100.0%)
Total	9,069 (98.4%)	149 (1.6%)	9,218 (100.0%)

Source: Analyses of IDOC data by Olson, Stemen & Boulger.

Table 2
Sentences Imposed on Convicted Murderers in *Cook County, Illinois*

	Non-Death Sentence	Death Sentence	Total
Pre-Moratorium (July 1988 through December 1999)	4,655 (98.8%)	58 (1.2%)	4,713 (100.0%)
Moratorium (January 2000 through Passage of Reforms (June 2005))	1,405 (99.3%)	10 (0.7%)	1,415 (100.0%)
Post-Reform Passage (July 2005 through June 2008)	714 (99.4%)	4 (0.6%)	718 (100.0%)
Total	6,774 (98.9%)	72 (1.1%)	6,846 (100.0%)

Source: Analyses of IDOC data by Olson, Stemen & Boulger.

Table 3
Sentences Imposed on Convicted Murderers in *Illinois Outside of Cook County*

	Non-Death Sentence	Death Sentence	Total
Pre-Moratorium (July 1988 through December 1999)	1,451 (96.0%)	60 (4.0%)	1,511 (100.0%)
Moratorium (January 2000 through Passage of Reforms (June 2005))	556 (97.9%)	12 (2.1%)	568 (100.0%)
Post-Reform Passage (July 2005 through June 2008)	288 (98.3%)	5 (1.7%)	293 (100.0%)
Total	2,295 (96.3%)	77 (3.2%)	2,372 (100.0%)

Source: Analyses of IDOC data by Olson, Stemen & Boulger.

Table 4
Sentences Imposed on Convicted Murderers in *Illinois' "Collar Counties"* (Lake, McHenry, Kane, DuPage and Will Counties Combined)

	Non-Death Sentence	Death Sentence	Total
Pre-Moratorium (July 1988 through December 1999)	405 (95.3%)	20 (4.7%)	425 (100%)
Moratorium (January 2000 through Passage of Reforms (June 2005))	133 (98.5%)	2 (1.5%)	135 (100%)
Post-Reform Passage (July 2005 through June 2008)	75 (96.2%)	3 (3.8%)	78 (100%)
Total	613 (96.1%)	25 (3.9%)	638 (100%)

Source: Analyses of IDOC data by Olson, Stemen & Boulger.

Table 5
Sentences Imposed on Convicted Murderers in *Illinois' Urban Counties, Excluding the Cook and "Collar" County Region*

	Non-Death Sentence	Death Sentence	Total
Pre-Moratorium (July 1988 through December 1999)	725 (97.1%)	22 (2.9%)	747 (100%)
Moratorium (January 2000 through Passage of Reforms (June 2005))	276 (97.9%)	6 (2.1%)	282 (100%)
Post-Reform Passage (July 2005 through June 2008)	150 (100%)	0 (0%)	150 (100%)
Total	1,151 (97.6%)	28 (2.4%)	1,179 (100%)

Source: Analyses of IDOC data by Olson, Stemen & Boulger.

Table 6
Sentences Imposed on Convicted Murderers in *Illinois' Rural Counties*

	Non-Death Sentence	Death Sentence	Total
Pre-Moratorium (July 1988 through December 1999)	319 (94.7%)	18 (5.3%)	337 (100%)
Moratorium (January 2000 through Passage of Reforms (June 2005))	154 (97.5%)	4 (2.5%)	158 (100%)
Post-Reform Passage (July 2005 through June 2008)	58 (96.7%)	2 (3.3%)	60 (100%)
Total	531 (95.7%)	24 (4.3%)	555 (100%)

Source: Analyses of IDOC data by Olson, Stemen & Boulger.

**Downers Grove Police Department
LINEUP/PHOTOSPREAD ADVISORY FORM**



I, _____, agree to view a lineup/photospread at
_____ on _____
(Location) (Date)

I understand that the suspect may or may not be in the lineup/photospread.

I understand that I am not required to make an identification.

I do not assume that the person administering the lineup/photospread knows which person is the suspect.

Signature of person viewing lineup/photospread

Date Time

Detective/Officer Star #

Case #

Revised 03/07



Will County Sheriff's Office

INTEROFFICE COMMUNICATION

TO: Deputy Chief Nick Ficarello

FROM: Lt. William Carlisle

DATE: March 6, 2009

SUBJECT: Photo Lineup Protocol

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The Will County Sheriff's Detective Division currently uses the following protocol when developing a photographic lineup.

When the focus of the investigation identifies a person of interest, the detective will obtain all identifiers of this person. The detective will then cross-reference this person's identifiers with any individuals in CIMIS, to try and obtain a quality photo line up.

The detective then selects 5 photographs of individuals who most closely match the subject. The detective then uploads these five photographs, along with a photograph of the subject who is the focus of the investigation, into the database known as Critical Reach. The photographs are then arranged in Critical Reach with two rows containing three subjects each.

The detective can now use this form to identify a subject who is the focus of the investigation. The detective then must first read to the witness or victim the photo spread advisory form prior to them viewing the line up. The form must be filled out in its entirety, and initialed and signed by all parties involved.

- The detective then shows the photo lineup to the victim or witness, if there is a positive ID of the subject, the detective then has the victim or witness sign, date, and put the time on the photo identifying the perpetrator. All hardcopy documents are then entered into evidence.

It should be noted that the detective completes follow-up reports, for all the aforementioned steps taken in the production and completion of the photo line up form.

Original recommended language:

Legislation should be enacted requiring that whenever practicable the administrator of an eyewitness lineup or photo spread should not be aware of which member of the array is the police suspect.

Chip's revised language (with one revision, from Geof Stone):

Legislation should be enacted that requires blind administration of lineups and that permits several different administration options, such as: live lineups, photo-spread lineups using the 'folder' method, or computer-generated lineups. The double blind method should be the ~~preferred~~ required method, so that the administrator of the lineup is not aware of which individual in a lineup array is the police suspect. When an independent administrator is not available, a photo array must be used (the folder method, or a computer-generated method), and the lineup procedure must insure that the lineup administrator does not know the point in the sequence of photos that the suspect's photo appears, and does not know which photo a witness is viewing at any time during the procedure.