

CAPITAL PUNISHMENT REFORM STUDY
COMMITTEE

Minutes of meeting October 22, 2008

The thirty-fourth 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

James R. Coldren, Jr.

Jeffrey M. Howard

T. Clinton Hull (via teleconference)

Edwin R. Parkinson (via telec.)

Richard D. Schwind

Geoffrey Stone (via teleconference)

Randolph N. Stone (via teleconference)

Thomas P. Sullivan

Not present

Jennifer Bishop-Jenkins

Kirk W. Dillard

Boyd J. Ingemunson

Gerald E. Nora

Charles M. Schiedel

Arthur L. Turner

Michael J. Waller

Also present: David E. Olson; Donald Stemen, David Olson's associate; Mark Warnsing, Senate Republican staff (via teleconference); and Dan Yuhaf, Deputy State Appellate Defender, from Charles Schiedel's office (via teleconference).

The minutes of the Committee meeting held on September 17, 2008, were approved as amended.

1. Report on hearing before the House Judiciary Committee II.

Messrs. Parkinson and Sullivan reported on the hearing on September 18, 2008 before the Illinois House Judiciary Committee II, at which they spoke on behalf of this Committee. They recounted the background, membership and working of this Committee. In response to a question from the chair of the House Judiciary Committee, they responded that at the meeting of the full Committee held on September 17, 2008, the Committee members agreed, with one dissent, that because this Committee's mandate relates solely to studying reforms to the

capital punishment system in Illinois, this Committee takes no position as to whether the moratorium should be left in place or lifted, or whether the death penalty should be retained or abolished.

2. *Retention of David Olson as Committee consultant.*

Mr. Sullivan reported that the contract between the Committee and Loyola University and Mr. Olson has been approved and is awaiting signature.

3. *Report of David Olson.*

Mr. Olson said he will soon distribute to all Committee members his draft survey directed to law enforcement agencies. He anticipates having the survey ready for mailing by mid-November. There are approximately 950 police and sheriffs departments in Illinois. In addition, there are police employed by Forest Preserve Districts, area Task Forces (Mr. Coldren said there are about 10 in Illinois), and Metropolitan Enforcement Groups (MEG units deal chiefly with drug cases). In rural areas,

sheriffs tend to handle homicide investigations, rather than the small police departments.

Mr. Olson said he will ask Messrs. Sullivan and Schwind to send an advance letter to the departments who will receive the survey, urging their cooperation in completing and returning the survey.

Mr. Olson said he had in mind sending the survey to all departments that had two or more homicides since January 1, 2003, and a random sample of the remainder.

Mr. Olson noted that the ISP has not yet released data for murders in Illinois for 2007.

It was stated that Christine Davit at CJIA is examining the matriculation through the system of persons arrested for homicide in Illinois.

4. *Special Committee counsel.*

After discussion, it was agreed that the matter of whether the Committee should retain counsel will be tabled for the present.

5. *Topics addressed at the Committee's two public hearings, and by the Governor's Commission on Capital Punishment.*

Mr. Sullivan said he will redistribute his memoranda summarizing these topics, and the subcommittees to which they relate. Those memoranda are attached as Appendices 1 and 2, as follows:

1 - Analysis of the April 2002 Report of the Governor's Commission on Capital Punishment. This memorandum was previously distributed to all Committee members on February 13, 2006 and again on May 21, 2008.

2 - Analysis of matters raised in public hearings on November 13, 2006 and February 26, 2007. This memorandum

was previously distributed to all Committee members on July 17, 2007 and May 21, 2008.

6. *Future Committee public hearings.*

It was agreed that the Committee will attempt to schedule a public hearing in Chicago on January 19-21, or 26-28, 2009.

Mr. Schwind will pursue arrangements for place and dates.

It was also agreed that the Committee will attempt to schedule a public hearing during the week of February 23 in Springfield. Mr. Warnsing will pursue arrangements for place and dates.

7. *Reports of subcommittees*

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

Mr. Coldren said the subcommittee has not met since the last full Committee meeting. The subcommittee anticipates meeting in the near future to study and make recommendations to the full committee regarding eyewitness identifications.

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

Ms. Bienen stated that the subcommittee has not met since the meeting with State's Attorney Devine on August 27, 2008, and that little progress has been made with respect to collecting copies of Cook County homicide indictments.

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

Mr. Howard said the subcommittee has not met since the last full Committee meeting.

Mr. Howard reported that he has made efforts to identify the Illinois Circuit Court judges who have (1) presided over a capital case since January 21, 2003 that began as a capital case, regardless of the later outcome, and (2) taken the required training to become qualified to serve as trial judges in capital cases.

Mr. Howard reported that as to the list of qualified judges, he received a response from the director of the Administrative

Office of the Illinois Courts declining to disclose the names of qualified judges. Mr. Howard's letter requesting the information is attached as Appendix 3, and the Director's response is attached as Appendix 4. It was agreed that Mr. Sullivan will contact Chief Justice Thomas Fitzgerald to attempt to resolve this matter.

The minutes of the meeting regarding the jury instructions and verdict forms submitted by subcommittee 3, as reported in the draft minutes of the full Committee meeting of September 17, 2008, were corrected.

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

No member of subcommittee 4 attended the meeting.

Mr. Parkinson called attention to the appointment of a lawyer to a capital case, who will be paid from the capital Litigation Trust Fund, despite his having been subject to severe criticism for his billings in the Cecil Sutherland capital case.

His conduct in that case led to legislative reforms to tighten judicial control over the billings of defense lawyers to the CLTF. Attached as Appendix 5 is a news story on this topic from the St. Louis Post-Dispatch, Oct. 20, 2008. It was agreed that this subject should be added to the agenda of subcommittee 4.

After the meeting, the chair received several communications regarding matters within the responsibility of subcommittee 4:

- Ms. Bishop-Jenkins forwarded a recommendation from subcommittee 4, as follows:

“After talking to the ILAC leaders our subcommittee would like to make a recommendation to the CPRSC as a whole for our full approval and hopeful action:

“We would like the CPRSC to officially ask the State Legislature to bring more resources and attention into their concerns over compliance, obtaining information, and the other concerns that arise from the lab system in the state being BOTH public and private. They are having trouble getting anyone in Springfield to pay attention to their requests for some sort of (I

won't say 'enforcement' power) ability to maintain a consistent standard, or obtain consistent information from all the labs, and get them to talk to each other even consistently. The State Legislature needs to step in and make some infrastructure support possible for ILAC to be able to do its job.

“Unless some steps are taken in this direction, there will be little ability to improve the legally vital laboratory procedural issues that challenge our state.”

- Mr. Warnsing reported that, as discussed in the full Committee meeting on September 17, 2008, he spoke with a staff attorney of the Senate Democrat judiciary Committee, who agreed to suggest to the Judiciary Committee chair to schedule a meeting between representatives of the Judiciary Committee and the Illinois Laboratory Advisory Committee (ILAC).

- It was recommended that the Committee invite a member of ILAC to attend its next meeting to discuss issues relevant to its work.

- It was reported that there are now 15 men on death row in Illinois.

8. *Other business.*

Mr. Sullivan called attention to the requirement that all those members who have not done so are required to file with the Secretary of State a signed Disclosure of Appointee Interest in State Contracts, a copy of which is attached as Appendix 6.

9. *Next meeting – Thursday, December 4, 2008, at 9:30 A.M.*

It was agreed that the next full Committee meeting will be held on Thursday, December 4, 2008 at 9:30 A.M., at the office of Jenner & Block, 330 N. Wabash Avenue, 40th Floor, Chicago, IL.

Thomas P. Sullivan
Chair
October 30, 2008

Attachments – Appendices 1 - 6.

- AOIC - Administrative Office of IL Courts
- CLTF - Capital Litigation Trust Fund
- CCLA - Capital Crimes Litigation Act
- CJIA - Criminal Justice Information Authority
- ISAA - IL State's Attorneys Association
- ISC - Illinois Supreme Court
- ISCR - Illinois Supreme Court Rule
- PCHA - Post Conviction Hearing Act

GOVERNOR'S COMMISSION RECOMMENDATIONS

<u>No.</u>	<u>Subject</u>	<u>Status</u>	<u>Subc.</u>
1	Police pursue inquiries after suspect identified		1
2	Police record keeping and sharing w/prosecutor	725 ILCS 5/114-131	1
3	Appoint PD for indigents at station	Bill defeated -	1
4	Videotape custodial interviews in murder investigations	Enacted - 725 ILCS 5/1 032.1	1
5	Repeat non-recorded statements to suspect on tape, with suspect's comments		1

<u>No.</u>	<u>Subject</u>	<u>Status</u>	<u>Subc.</u>
6	Police audio record non-station interviews, etc.		1
7	Amend Eavesdropping Act re Rec. 4	Enacted - 720 ILCS 5/14-3(k)	1
8	Police record interviews of significant witnesses		1
9	Police ascertain suspect's mental capacity, etc.		1
10	Blind lineup/photo spread administrators		1
11 a	Tell eyewitness suspect may not be present in lineup/photo spread	Enacted - 725 ILCS 5/107A-5(b)	1
11 b	Tell eyewitness not to assume administrator knows which is the suspect	Enacted - 725 ILCS 5/107A-5(b)	1
12	If administrator blind, use sequential procedures for lineups/photo spreads	One year pilot programs - 725 ILCS 5/107A-10	1
13	Suspects not stand out in lineups/ photo spreads		1
14	Before feedback by law enforcement, clear written record of eyewitness' statements as to confidence person is/is not perpetrator		1
15	When practicable, videotape lineup/photo spread procedures and witness' confidence statements	Enacted, photograph or record - 5/107A-5(a)	1
16	Police training in 8 areas		1
17	Police training include obligations re arrested/detained foreign nationals		1
18	IL A.G. remind agencies re notice required by Vienna Convention re arrested/detained foreign nationals; regular review to ensure compliance		1

<u>No.</u>	<u>Subject</u>	<u>Status</u>	<u>Subc.</u>
19	Amend IL statute re police perjury as basis for certification revocation	Enacted -	4
20	Create independent civilian state forensic lab	Not enacted	4
21	Adequate funding for DNA testing, personnel, facilities; outsource to private companies if necessary		2
22	Support ISCR 417 re minimum standards for DNA evidence	No action required	2
23	Adequate federal and state funding for DNA database		2
24	Capital defendant may seek court order for DNA database search re others who may be guilty	Enacted - 725 ILCS 5/1116-5	2
25	Forensic/DNA testing for potential new evidence re capital defendant's innocence	Enacted - 725 ILCS 5/116-3	4
26	CLTF broadly construed to provide funding for capital forensic testing		4
27-8	CP eligibility factors reduced to 5	Not enacted - cf 720 ILCS 5/9-1 (b)	2
29	AG and ISAA adopt non-binding guidelines for selection of capital cases	Adopted December 2005	2
30	Mandatory submission of capital case decisions to statewide review panel. Alternative: Governor establish voluntary review process, and commute capital sentence if case not submitted for review, unless compelling reasons for non-submission	Not enacted	2
31	Support ISCR 416 (c) re time for state to announce intent to seek CP, and	No action required	3

<u>No.</u>	<u>Subject</u>	<u>Status</u>	<u>Subc.</u>
	eligibility factors		
32	ISC consider encouraging AOIC to educate trial judges about CCLA and defense funding sources		3
33	Support ISCR 43 and Comments. ISC take further action to ensure highest quality training and support for judges in capital trials, and to require judges to be trained before presiding over a capital case		3
34	ISC consider ways to insure trial judges trained re new rules on capital litigation, especially discovery process		3
35	Capital trial judges trained in 8 areas		3
36	ISC and AOIC provide funding for materials to train capital trial judges and support staff research		3
37	ISC distribute resource materials to those trying capital cases		3
38	ISC or circuit chief judges certify judges qualified to try capital cases		3
39	ISC appoint standing committee of experienced judges to provide aid to capital trial judges		3
40	Support ISCR 416 (d) re qualifications for capital trial lawyers	No action required	3
41	Support ISCR 701 (b) re lead capital counsel admitted to Capital Litigation Bar under Rule 714	No action required	3
42	Support ISCR 714 re requirements for capital trial lawyers	No action required	3
43	State Appellate Defender facilitate distribution of information to certified		3

<u>No.</u>	<u>Subject</u>	<u>Status</u>	<u>Subc.</u>
	capital defense lawyers		
44	Support efforts to train and adequately fund capital lawyers		3
45	Capital Trial Bar members trained in 8 areas		3
46	Support ISCR 416 (e) re discovery depositions in capital cases	No action required	3
47	Support ISCR 416 (f) re capital case management conferences. ISC require final case conference		3
48	Support ISCR 416 (g) re certification of case management conference	No action required	3
49	ISC adopt rule defining exculpatory evidence		3
50	Require record disclosed to defense lawyer before trial of promises/benefits to state's witnesses	Enacted - 5/115-22; cf. 5/114-13	3
51	Prosecutor inform defense lawyer of snitch witness' identity/ background		3
52	Pretrial hearing re reliability of snitch testimony; state interlocutory appeal	Adopted - 5/115-21	3
53	Courts scrutinize tactics that might induce involuntary/untrustworthy confession		3, 4
54	No recommendation whether plea negotiations should be restricted re death penalty	No action required	3
55	Expert testimony re eyewitness testimony resolved by trial judge	No action required	3
56	Jury instructions re eyewitnesses enumerate factors for jury consideration; improve IPI 3.15, add last sentence	Not adopted	3

<u>No.</u>	<u>Subject</u>	<u>Status</u>	<u>Subc.</u>
57	IPI Committee consider cautionary instruction re reliability of snitch testimony	Not adopted	3
58	Add to IPI instructions 3.06 and 3.07 a warning re unrecorded statements attributed to defendant	Not adopted	3
59	Illinois courts continue rejection of polygraph evidence in guilt phase	No action required	3
60	Support ISCR 411 re discovery rules applicable in sentencing phase	No action required	3
61	Add to mitigating factors defendant's history of extreme emotional or physical abuse, and reduced mental capacity	Adopted - 5/9-1(c)(6), (7)	3
62	Defendant's right of allocution during sentencing phase, w/o cross exam	Not adopted	3
63	Jury instruction re alternate sentences if CP not imposed	Not adopted	3
64	Illinois courts continue rejection of polygraph evidence in sentencing phase	No action required	3
65	Amend 720 ILCS 5/9-1(g) re jury's determination whether to impose CP		3
66	If eligibility factors reduced to 5, and jury returns CP, trial judge state whether concurs, and if not sentence defendant to life		3
67	If eligibility factors reduced to 5, and fact finder determines no CP, mandatory sentence of life		3
68	CP not imposed if defendant mentally retarded	Atkins v. Virginia, 536 U. S. 304, 321 (2002)	3
69	CP not imposed on uncorroborated testimony of (1) jailhouse snitch re	Adopted 5/9-1(h-5)	3

<u>No.</u>	<u>Subject</u>	<u>Status</u>	<u>Subc.</u>
	defendant's admission or confession, or (2) single eyewitness/accomplice		
70	ISC consider on direct appeal whether (1) CP imposed due to arbitrary factor, (2) independent weighing of aggravation/mitigation indicates CP proper, and (3) CP excessive or disproportionate to penalty in similar cases.	Not adopted; cf. 720 ILCS 5/9-1 (i)	4
71	Amend ISCR Rule 3.8 - after conviction prosecutor disclose evidence tending to negate guilt or mitigate sentence	Not adopted	4
72	Amend PCHA to require petition filed with 6 months after ISC affirmance and mandate issued		4
73	Amend PCHA amended to require evidentiary hearing on petition within 1 year	Not adopted	4
74	Amend PCHA to provide non-frivolous petition based on newly discovered evidence may be filed in CP cases at any time	Not adopted	4
75	Illinois law provide that in CP cases, after all appeals exhausted, clemency petition must be filed within 30 days after ISC sets execution date	Not adopted	4
76	Executive and legislative leaders significantly improve available resources for reforms in CP cases		4
77	IL General Assembly reauthorize CCLA containing CLTF and other provisions	Adopted	4
78	Support CLTF re adequate compensation for CP trial lawyers		4

<u>No.</u>	<u>Subject</u>	<u>Status</u>	<u>Subc.</u>
	and regular reconsideration of rates		
79	CLTF construed broadly to insure public defenders secure additional counsel and reimbursement of expenses		4
80	State Appellate Defender's Office work continue, and funds appropriated		4
81	Support Task force on PP recommendations - reduce student loan burdens, improve salaries and pensions		4
82	Provide adequate funding to IL police agencies for recording equipment, personnel and facilities needed to record in homicide cases, etc	Adopted	4
83	Consider ways to broaden recommendations to improve criminal justice system as a whole		
84	Data collected by trial courts re all first degree murder cases; forms collected by AOIC, and data kept in CJIA database	Not adopted	4
85	Remind judges of obligation to report violations of Rules of Professional Conduct by prosecutors and defense lawyers		4

TPS
2/13/06

MATTERS RAISED IN PUBLIC HEARINGS

Following are matters raised by witnesses in the two public hearings held thus far by the CPRSC, allocated among the four subcommittees.

November 13, 2006, Springfield

<u>Witness</u>	<u>Pages</u>	<u>Subject</u>	<u>Subc.</u>
Nora	5-6, 9-10, 13-15	Electronic recordings: funding for equipment in small departments, soundproof rooms, transcripts, storage, etc.	1
Nora	6-7	Good cause for depositions.	3
Nora	7	Delays due to discovery and readiness certificates.	3
Nora	7-8, 11-12	Abuse of case management conferences.	3
Nora	8-9, 12-13	Increasing funding for training and compensation of Assistant State's Attorneys.	4
McAnany	15-16	Data collection re capital cases.	2
McAnany	17	Narrow definition of first degree murder.	2
McAnany	17-18	Excessive eligibility factors.	2
McAnany	18	Proof required for capital punishment.	
McAnany	18-19, 31	Cost study of capital cases.	2
McCullough	19-20	Statistics re capital punishment certifications compared to capital punishment verdicts, and statistics re capital punishment verdicts overall.	2
McCullough	20-21, 23	Misuse of capital punishment certifications.	2
McCullough	22	Improper removal of juror in capital punishment case.	3

<u>Witness</u>	<u>Pages</u>	<u>Subject</u>	<u>Subc.</u>
McCullough	23-25	Data collection re capital punishment cases, Attorney General's Capital Litigation Docket Sheet.	2
McCullough	27-28	Cost study of capital cases.	2
Jenkins	33-36	Victims' problems with capital punishment.	4
Jenkins	34	Objectiveness of investigations, decrease influence of politics.	1
Jenkins	36-37	LWOP alternative to capital punishment.	4
Jenkins	37-38	Delays in capital punishment trial process.	3
Jenkins	37, 43-44	Depositions used to delay process.	3
Jenkins	39	Independent agency of victim advocates.	4
Jenkins	39-40	Study of psychology of victim during lineup procedures.	—
Sullivan/Nora/ Jenkins	41-43	Role of victims in determining sentence.	4
Rice	51-53	Concerns of felony murder as eligibility factor.	2
Golden	58-59, 68	Misuse of capital punishment to limit defense resources.	2
Golden	57-59	More thorough investigations.	1
Golden	59	Equality of resources on prosecution and defense sides.	4
Golden	59-60, 63- 64	Extend reforms to all capital-eligible and non-capital cases.	4
Golden	60-61	Federal funds for defense witnesses in serious cases.	3
Golden	62, 67	Study impact of pursuing capital punishment on resources for defendants.	4

<u>Witness</u>	<u>Pages</u>	<u>Subject</u>	<u>Subc.</u>
Golden	65	Equal resources for non-capital and capital defendants.	4
Virgil	70-71	Eliminate death penalty for mentally ill/reform mental health system.	2
Haida	77-78	Input from victims and defense attorneys re pursuing capital punishment.	2
Haida	78-79, 84	Funding for training defense counsel in non-capital cases.	—
Haida	79	Pre-trial hearings on jailhouse informants.	3
Haida	82-83	Good cause for depositions.	3
Haida	83-84	Lack of defense-certified attorneys in Capital Litigation Trial Bar.	3
Haida	84-85	Funding for non-capital cases.	4

– END –

February 26, 2007, Chicago

<u>Witness</u>	<u>Pages</u>	<u>Subject</u>	<u>Subc.</u>
Bishop	10-11	Cost study of administering death penalty.	4
Bishop	10-11	Cost study of impact of reforms.	4
Bishop	12, 14-15	Victims' services (counseling, scholarships, housing/take).	4
Bishop	18	Apply costs savings of reforms to victims' services.	4
Bishop	16-17	Victims' assistance agency independent of States Attorney's office.	4
Bishop	20	Victims' services provided beyond life of case.	4
Bishop	21	Study of victims' needs in IL.	4
Richards	27	Increase use of depositions.	3
Richards	31	Definition of good cause for depositions.	3
Richards	30	Allow unlimited depositions or limit to specific categories of witnesses.	3
Richards	35	Cook County depositions paid for by county instead of state.	3
Richards	39	Depositions used to delay cases.	3
Richards	42	Legislation mandating juries be informed of all penalties/range of sentences.	3
Richards	44	Extend depositions to non-capital cases.	3

<u>Witness</u>	<u>Pages</u>	<u>Subject</u>	<u>Subc.</u>
Richards	48	Residual doubt standard for death penalty.	3
Richards	49	Definition of reasonable doubt.	3
Richards	49	Admit evidence of impact of death penalty on defendant and survivors.	3
Richards	58	Central registry of capital cases.	2
Bishop - Jenkins	60, 66	Victims' services in every county.	4
Bishop- Jenkins	61	Victims' services provided regardless of litigation.	4
Bishop- Jenkins	62	Services for peripheral victims.	4
Bishop- Jenkins	63, 66	Ombudsman at state level to oversee victims' services.	4
Bishop- Jenkins	64	Increase victim representation on Prisoner Review Board.	4
Bishop- Jenkins	70	Victims' counseling.	4
Bishop- Jenkins	71	Organized outreach to inform victims of available services.	4
Spellberg	75, 77	Good cause for depositions determined based on specified factors.	3
Sarley	83	Definition of death penalty standard - change "weighing" to "considering."	3
Sarley	84	IPI jury instructions for death penalty cases, including definition of "weighing."	3

<u>Witness</u>	<u>Pages</u>	<u>Subject</u>	<u>Subc.</u>
Sarley	90	Central registry of capital cases.	2
Sarley	95-96	Definition of good cause for depositions.	3
Sarley	98	Excessive eligibility factors.	2
Sarley	101	Strengthen screening of cases by prosecution.	2
Sarley	102, 106-7	Decertification process in pretrial phase for questions for law.	2
Schwinn	91-92	Determination of mental illness before pursuing death penalty.	2
Goldman	116-17	Excessive eligibility factors.	2
Goldman	116-17	Implement aggravating factors.	2
Goldman	118	Study role of race, gender & geographic location in death penalty system.	2
Goldman	118	Study whether system is functioning properly based on States' Attorney voluntary guidelines.	2
Goldman	118-19	Transparency of charging decision committees.	2
Goldman	120	Obtain all information, i.e. mental illness, prior to pursuing death penalty.	2
Goldman	120-21	Cost study of death penalty versus other options to promote public safety.	2

<u>Witness</u>	<u>Pages</u>	<u>Subject</u>	<u>Subc.</u>
Goldman	122, 129-39	Central registry of capital cases.	2
Goldman	123	Study acquittals in capital cases to determine what other reforms are needed.	4
Goldman	124-25	Arbitrary aggravating factors, i.e. felony murder.	2
Goldman	135-36, 141	Increase resources and training to implement reforms.	1
Goldman	143-44	Study persuasiveness of mitigating factors on judge/jury.	2
Martin	159	Use of death penalty as coercive device to secure confessions.	1
Martin	157	Mandatory electronic recording.	1
Martin	155, 160, 163	Racial bias in system/race as factor in pursuing death penalty.	2
Summers	170	Use of capital litigation fund as factor in pursuing death penalty.	2
Summers	169-70	Increase state funding for non-capital cases.	4
Summers	170	Race as factor in pursuing death penalty.	2
Weiss	175	Prohibit stance on death penalty as factor in paneling jurors.	3
Johnson	182-83	Counseling services for victims and families of defendants.	4

<u>Witness</u>	<u>Pages</u>	<u>Subject</u>	<u>Subc.</u>
McMillan	188	Apply commission recommendations to all cases.	4
McMillan	189	Eyewitness identification reliability and accuracy.	1
McMillan	190	Guidelines for witness identification procedures.	1
McMillan	193	Legislation requiring DNA to comply with set standards.	3
Sullivan	194	Study of improved eyewitness procedures.	1
Wendt	199	Eliminate crimes of passion and robberies from death penalty eligible cases.	2
Wendt	200	Improving technical aspects of executions.	4

- END -

TPS
7/17/07



Law Office of the
COOK COUNTY PUBLIC DEFENDER

69 W. WASHINGTON • 16TH FLOOR • CHICAGO, IL 60602 • (312) 603-0600

Edwin A. Burnette • Public Defender

September 23, 2008

Joan Mason
Senior Training Manager
AOIC
3101 Old Jacksonville Rd.
Springfield, IL 62704

Dear Ms. Mason:

On behalf of the Capital Punishment Reform Study Committee (CPRSC), I have been asked to determine the names of all Illinois judges who have received the necessary approved training which allows the judge to preside over a capital case. If you would provide me with the names of such judges, that would be most helpful. The CPRSC intends to survey these judges to determine the impact the death penalty reforms have had. Determining such impact is one of the mandates the legislature has given the CPRSC.

Thank you in advance for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey M. Howard".

Jeffrey M. Howard
Acting Chief of Operations

cc: Tom Sullivan, Chair of CPRSC



Supreme Court of Illinois
ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS

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October 9, 2008

Mr. Jeffrey M. Howard
Cook County Public Defender
69 W. Washington Street, 16th Floor
Chicago, Illinois 60602

Dear Mr. Howard:

Your September 23, 2008 correspondence addressed to a member of my staff was forwarded to my attention and I have given some consideration to your request. As a general policy matter, the Administrative Office will not disclose the identity of any judge who attends a judicial training event. We do so in the interest of avoiding any inappropriate intrusion on the judiciary from litigants or the general public.

Although I can appreciate your interest in measuring the impact of judicial training on death penalty reforms, I am not inclined to deviate from the policy. A survey of judges regarding capital punishment reforms, no matter how well intentioned or structured, could give rise to and support certain inferences about judicial decision making in capital cases. That said, I would be happy to have dialogue with you concerning aspects of the reforms which were anticipated to be addressed by judges participating in the survey and to, perhaps, assist you in identifying an alternative means by which to measure.

If you would find the dialogue helpful, please feel free to call me.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia Y. Cobbs".

Cynthia Y. Cobbs
Director

CYC:lae



Lawyer's new case spurs new outrage

By Nicholas J.C. Pistor

ST. LOUIS POST-DISPATCH

Monday, Oct. 20 2008

Defense lawyer John Paul Carroll's big spending on a single capital murder case sparked reform of the way Illinois pays for its death penalty system. Yet three years later, the state has put Carroll back in the death penalty business.

An Illinois judge appointed Carroll this summer to defend a death penalty case — just one day after Carroll admitted making a serious legal error in another murder case.

"I'm appalled by it," said Rep. Kurt Granberg, D-Carlyle, when told about Carroll's appointment. "People like this should not be allowed to come in here and cheat the taxpayers."

Carroll's appointment to the latest case means he can once again tap into the Illinois Capital Litigation Fund. The Illinois Legislature attempted to reform the fund in 2005 after Carroll's defense of Cecil Sutherland cost the state \$2 million, including \$900,000 in legal fees.

At the time, one legislator called for the attorney general to investigate Carroll's billing. Furious lawmakers established new rules for the death penalty fund. Now judges in each case must preapprove hourly rates and defense attorneys' estimated budgets for the entire case.

But a Post-Dispatch investigation published Sept. 28 found the fund is still being abused by lawyers, private investigators and expert witnesses, who charge steep fees to drive, make copies and send e-mails. One private investigator was allowed to bill 49 hours for one day, while a ballistics expert was allowed to charge \$300-an-hour just to drive to Belleville from Indiana.

The state requires lawyers who handle death-penalty cases to be specially approved by the Supreme Court as a "safeguard of the fairness and accuracy of capital trials" to ensure "competence, professionalism and integrity of the attorneys who try those cases," according to the court's website.

In the 1990s, Carroll's law license was suspended for 18 months. A disciplinary commission found that Carroll filed false income tax returns over three years, gave improper accounting to a client, and charged an excessive fee.

Despite that suspension and Carroll's history with the death-penalty fund, the Illinois Supreme Court again certified Carroll last year to handle death penalty cases. The court has refused to give the Post-Dispatch a copy of Carroll's application for certification, saying it is an "internal working document."

In June, Kane County Circuit Judge Timothy Sheldon appointed Carroll to defend Darren Denson, who is accused of shooting and stabbing a man to death.

According to court records, the appointment came one day after Carroll filed a motion for a new trial in another murder case — with a surprising admission. Carroll said he hadn't told his client, Edgar Castro, that the state had offered an attractive plea deal before Castro stood trial. The state, according to Carroll's motion, had offered to allow Castro to plead guilty to a lesser charge of armed violence in exchange for dropping the murder charge.

"The defense counsel did not convey this overture to the defendant, which he would have accepted, but merely rejected the offer out-of-hand," Carroll wrote.

Castro was convicted of first-degree murder. A judge is deciding whether to grant a new trial.

Carroll couldn't be reached for comment.

"This is a very serious situation," said Steven Beckett, professor and director of trial advocacy at University of Illinois' law school. "An attorney has a duty to convey any and all offers from the state to their client. It's

fundamental to our judicial system."

Sheldon said he appointed Carroll after two other lawyers dropped out of the case, and only because Carroll had a prior relationship with the defendant. Sheldon also was the judge in the Castro case.

"My heart just skipped a beat," Sheldon said on Tuesday when informed by the Post-Dispatch of Carroll's history with the death penalty fund. "I had heard about a lawyer who billed \$2 million for a case, but I had no idea whatsoever it was our local John Paul Carroll."

In that case in 2004, Carroll defended convicted child killer Cecil Sutherland. Sutherland agreed to let a St. Clair County court sentence him to death. The theory was, in part, to put Sutherland's case on a fast track to automatic review by the Illinois Supreme Court, which had already sided with him on an earlier appeal.

The appeal was denied, and Sutherland is now on death row. Carroll billed more than \$2 million for Sutherland's defense, prompting outrage from legislators. Among the bills, Carroll charged \$135.68 an hour for the time it took to pack his van at his former home in Minnesota and drive to Illinois. (He now has a law office in DuPage County, Ill.)

Illinois Treasurer Alexi Giannoulias has promised additional reforms that would create a panel to review vouchers submitted to the fund and set specific limits on amounts lawyers and others can charge for items such as meals and travel.

Kati Phillips, a Giannoulias spokeswoman, said of the recent Post-Dispatch findings: "(John Paul Carroll) is the poster boy for capital litigation abuse. Despite the changes to the law that he prompted ... there is still potential for abuse. Frankly, it would be embarrassing to the state and the legal system if an attorney emptied the fund twice due to lack of oversight."

Meanwhile, Granberg, the state representative, says he is going to talk to Attorney General Lisa Madigan's office, again, about investigating billings of the fund. St. Clair County Circuit Judge Milton Wharton has also called for an

investigation into the billings of the Jason Smith death penalty case tried earlier this year in Belleville.

Granberg said he wants to set up a system that would bar Carroll and others with "questionable billing" in their background from tapping the fund in the future.

"I'm not giving up on this," he said.

Kevin McDermott of the Post-Dispatch contributed to this report

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Disclosure of Appointee Interest in State Contracts to be filed with the Secretary of State Secretary of State Index Department, Ethics Section



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217-524-0309
217-524-0930 (fax)
www.cyberdriveillinois.com

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Mailing Address: _____		
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Name and type of organization for which this disclosure is being filed: _____		
<input type="checkbox"/> Board <input type="checkbox"/> Commission <input type="checkbox"/> Authority <input type="checkbox"/> Task Force	<table border="1" style="margin: auto;"> <tr> <td style="padding: 5px;">Date of Appointment: _____ (This date must be completed.)</td> </tr> </table>	Date of Appointment: _____ (This date must be completed.)
Date of Appointment: _____ (This date must be completed.)		

GENERAL DIRECTIONS

Pursuant to 5 ILCS 420/3A.30, upon appointment to a board, commission, authority or task force authorized or created by State law, a person must file with the Secretary of State a disclosure of all contracts the person, or his or her spouse or immediate family members living with the person, have with the State and all contracts between the State and any entity in which the person, or his or her spouse or immediate family members living with the person, have a majority financial interest.

List all contracts with the State of Illinois in effect on or after the date of appointment:

(If additional space is needed, please attach a supplemental listing.)

Name of individual or entity contracting with the State of Illinois:

Name of State agency or department contract is with:

VERIFICATION

"I declare that this disclosure statement (including any supplemental listing) has been examined by me and to the best of my knowledge and belief is a true, correct and complete statement of any contracts that I am required to identify pursuant to the Illinois Governmental Ethics Act. I understand that the penalty for willfully filing a false or incomplete statement shall be a business offense punishable by a fine of \$1,001.

It is further understood that an unlawful conflict of interest may arise if, as an appointee, I, my spouse, or immediate family member living in my residence has or acquires a contract or has or acquires a direct pecuniary interest in a contract with the State that relates to the board, commission, authority or task force of which I am an appointee during and for one year following the conclusion of my term of office."

Signature of Appointee Making Statement

Date

(Source: Added at 29 Ill. Reg. 8908, effective June 10, 2005.)