

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

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February 28, 2006

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Minority Leader
02 Stratton Building
Springfield, IL 62706

Michael J. Madigan
Speaker of the House
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Springfield, IL 62706

Emil Jones, Jr.
Senate President
327 Capitol Building
Springfield, IL 62706

Frank C. Watson
Minority Leader
309A Capitol Building
Springfield, IL 62706

Re: Second annual report of the Capital Punishment Reform
Study Committee

Gentlemen:

The statute which established this Commission provides that the Committee shall report annually to the General Assembly. 20 ILCS 3929/2(b). The first report, submitted on April 27, 2005, covered Committee's activities from inception in early 2005 through the end of April 2005. This is the Committee's second report, covering the balance of the year 2005, from April 28 to December 31, 2005.

Administrative matters.

(1) The Committee has accepted the generous offer of Lori Levin, the Executive Director of the Illinois Criminal Justice Information

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Authority, to make use of facilities in CJIA's Chicago office for Committee and subcommittee meetings, and to post Committee information on the CJIA website.

(2) The members of the Committee have determined that the activities of the Committee are governed by the Illinois Open Meetings Act (5 ILCS 12d1, *et seq*), and have governed themselves accordingly, for example, by posting its agenda and meeting minutes on the CJIA website, and by making its meetings open for public attendance.

(3) Jeffery J. Tomczak resigned from the Committee. Thereafter, Mr. Cross appointed Boyd J. Ingemunson to replace Mr. Tomczak.

(4) The Committee held five meetings during the period May 1 through December 31, 2005, on June 13, August 8, September 26, November 14 and December 12. The minutes of the five meetings are posted on the CJIA website, www.icjia.state.il.us. No hearings have been held to this date in order to receive testimony from the public (see 20 ILCS 3929/2 (c)).

(5) For purposes of conducting its work, the Committee divided into four subcommittees:

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1. *Police and investigations.*

James R. Coldren, Jr., Chair
Thomas P. Needham
Gerald E. Nora
Geoffrey R. Stone

2. *Eligibility for capital punishment, DNA, and proportionality.*

Leigh B. Bienen, Chair
Kirk W. Dillard
Thomas P. Sullivan
Michael J. Waller

3. *Trial court proceedings.*

Jeffrey M. Howard, Chair
Boyd J. Ingemunson
Edwin R. Parkinson
Randolph N. Stone

4. *Post-conviction proceedings, and general topics.*

James B. Durkin
Theodore A. Gottfried, Chair
Richard D. Schwind
Arthur L. Turner

(6) The Committee is in the process of employing a part time Reporter/Special Counsel to assist in our work.

(7) The General Assembly appropriated \$150,000 for Committee expenses for the fiscal year ended June 30, 2006. Thus far, none of that

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appropriation has been spent. The Committee has asked its members who are also members of the General Assembly to introduce legislation that will provide for an appropriation of \$150,000 for Committee expenses for the fiscal year ended June 30, 2007.

Substantive matters.

(1) *Electronic recording of custodial interviews.*

Beginning in July 2005, Illinois law enforcement officers began to record custodial interviews in investigations of homicides. (725 ILCS 5/103-2.1; compare April 2002 Report of the IL Governor's Commission on Capital Punishment, hereafter "Gov. Comm. Report," Recommendations 4 and 82.)

Two Committee members inspected the new digital audio and video recording facilities at the Chicago Police Department/Area One at 51st and Wentworth, Chicago. They reported on the satisfactory appearance of the rooms and equipment. They were told that there are 39 interview rooms equipped for video recording in Chicago, and that the CPD also has portable recording equipment for use when custodial interviews take place outside CPD facilities.

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Sheri Mecklenburg, General Counsel to the Superintendent of the Chicago Police Department, has written an excellent manual regarding recording rules and procedures (attached as Appendix 5 to the Committee's August 8, 2005 minutes). Ms. Mecklenburg stated that the recording procedures are proceeding without major problems.

During the coming year Subcommittee 1 will interview representatives of the Illinois State Police, local police and sheriff's departments, and prosecutors, regarding their experiences with recording custodial interviews under the new statute.

(2) *Pilot programs testing of sequential lineups and photo spreads.*

Pursuant to 725 ILCS 5/107A-10, the Illinois General Assembly funded a one-year pilot program in three police departments to assess the effectiveness of the so-called "double blind sequential" system of conducting lineups and photo spreads, compared with the customary simultaneous system (see Gov. Comm. Report, Rec. 12). The programs ended on October 31, 2005. Ms. Mecklenburg has had the major responsibility for organizing and conducting these programs. She has informed the Committee Chair that the pilot programs proceeded without

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major problems, and that the Illinois State Police report on the results and findings will be issued in March 2006.

When the report is made public, Subcommittee 1 will invite Ms. Mecklenburg and officers involved in the pilot programs to report on this subject. Several Committee members will participate in and/or attend and report on a program which Ms. Mecklenburg has organized on eyewitnesses at Loyola Law School on April 21, 2006, featuring experts from various parts of the United States.

(3) *Preservation of evidence.*

Subcommittee 1 will investigate the use and impact of 725 ILCS 5/116-4, relating to preservation of evidence.

(4) *Prosecution disclosure obligations.*

Subcommittee 1 will investigate compliance with 725 ILCS 5/114-13, relating to the prosecution's disclosure obligations in homicide cases.

(5) *Decertification of police officers.*

Subcommittee 1 will investigate the use and impact of 50 ILCS 705/6.1, relating to decertification of police officers found to have committed perjury in a murder case. (See Gov. Comm. Report, Rec. 19.) This will include discussions with representatives of the Illinois Law

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Enforcement Training Standards Board, the Police Training Board, and perhaps the Illinois Association of Chiefs of Police and the Illinois Labor Relations Board.

(6) *Eligibility for capital punishment and proportionality.*

Subcommittee 2 has considered undertaking a study to determine whether the Illinois capital punishment statutory scheme, and the practices of Illinois prosecutors, comport with court rulings requiring that capital punishment be reserved for the most heinous offenses (compare Gov. Comm. Report, Recs. 27 and 28), and avoid racial and geographic bias (see Gov. Comm. Report, pp. 195-97, and the Technical Appendix). A letter dated December 19, 2005 was sent to all Illinois State's Attorneys, requesting that they provide information about all murder cases indicted in their respective counties since January 1, 2003. The Executive Committee of the Illinois State's Attorneys Association has recommended that all State's Attorneys cooperate in providing responses. Subcommittee members have also made inquiries for relevant data at various agencies, including CJIA, the Illinois Department of Corrections, the Illinois State Police, the Cook County State's Attorney and Public Defender, and the State Appellate Defender.

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This will be the subject of further Subcommittee 2 work and report during the coming year.

(7) *Attorney General and Illinois State's Attorneys Association (ISAA) recommended procedures for selection of cases in which capital punishment will be sought.*

Subcommittee 2 has been advised that representatives of the IL Attorney General and the Executive Committee of the ISAA have approved non-binding protocols for prosecutors' use in deciding whether or not to seek the death penalty in cases in which it is a potential punishment (see Gov. Comm. Report, Rec. 29). The Committee will review and report on the protocols in due course.

(8) *Processing of DNA samples.*

Subcommittee 2 has considered reports of serious backlogs in processing and testing of DNA samples for use in Illinois prosecutions and post-conviction proceedings (compare Gov. Comm. Report, Recs. 21, 23, and 725 ILCS 5/116-5). The Subcommittee intends to investigate and report on this matter during the coming year.

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(9) *Capital Litigation Trust Fund ("CLTF")*.

Subcommittee 3 received a communication from the Cook County Treasurer, who acts as grant recipient of the CLTF (725 ILCS 124/15 et. seq.), explaining that when she receives applications for payment from the CLTF that appear to be in proper form, she authorizes payment. She describes her function as "unequivocally minor and virtually non-discretionary." (Appendix 6 to November 14 minutes.) The Subcommittee members concluded that the Treasurer has correctly interpreted her function, and that she is not empowered to exercise independent judgment as to whether or not to honor and pay applications for payment which appear in proper form.

Ms. Nadine Jackabowski of the IL State Treasurer's office spoke to the subcommittee about a serious abuse of the CLTF by a privately appointed defense lawyer. In an effort to prevent further similar abuses, the General Assembly enacted a new statutory provision, which requires that appointed defense lawyers provide a budget under seal for the *ex parte* examination by both the trial judge and the presiding judge or nominee; and that the judge shall not authorize payment of a bill that is not properly itemized. (725 ILCS 124/10(a)-(b).)

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Subcommittee 3 will investigate a potential problem involving the CLTF, which may arise in murder cases in which the prosecution has not yet filed a certificate that capital punishment will not be sought (due within 120 days after indictment), but the lawyers on both sides are aware that it is highly unlikely that capital punishment will be sought. The subcommittee will also consider whether to recommend adoption of guidelines for reasonable and necessary expenses.

The Subcommittee will continue to review and report these and other matters related to the CLTF (see Gov. Comm. Report, Recs. 76-79).

(10) *Capital Litigation Trial Bar ("CLTB")*.

Subcommittee 3 is investigating the resources available to both the prosecution and defense of capital cases throughout Illinois through the CLTB. Prosecutors who are members of the CLTB are made available in counties that lack adequate resources by the Illinois Attorney General and the State's Attorney's Appellate Prosecutor's office (SAAP). The SAAP conducts training programs for prosecutors who wish to obtain capital trial certification. On the defense side, the State Appellate Defender makes available to the defense non-lawyer "Forensic Social Historians," to assist in preparation of mitigation evidence for the penalty phase of capital cases.

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Subcommittee 3 is considering a study of the impact and effect of these resources in individual capital cases.

(11) *Training of Illinois judges and lawyers for capital trials.*

During the coming year, Subcommittee 3 will review the training being given to Illinois trial court judges regarding trials of capital cases. The Subcommittee is considering sending a questionnaire to all sitting Illinois trial judges, State's Attorneys and criminal defense lawyers concerning various aspects of capital punishment trial proceedings.

(12) *Pattern instructions relating to jury's consideration of (1) eyewitness testimony, (2) unrecorded statements attributed to the defendant, and (3) testimony of in-custody informants.*

The Committee chair has sent a memorandum to the members of the Illinois Supreme Court Committee on Pattern Instructions in Criminal Cases (IPI-Criminal Committee) urging adoption of pattern jury instructions on the three subjects mentioned above (see Gov. Comm. Report, Recs. 56-58). The IPI-Criminal Committee has thus far failed to act on this matter.

Subcommittee 3 will pursue this in the coming year.

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(13) *The Illinois state forensic laboratory.*

Subcommittee 4 has discussed the concept of having an independent forensic laboratory, separate from state or local police, which employs persons who are not connected to any law enforcement function (see Gov. Comm. Report, Rec. 20). Subcommittee 4 will consider this matter during the coming year. Members of the Subcommittee will also consult with the General Assembly's newly formed Lab Oversight Committee.

(14) *Post-trial procedures in capital cases.*

Subcommittee 4 is considering sending a questionnaire to Illinois lawyers who are customarily involved in capital appellate and other post-conviction proceedings, to inquire about the effect of the reforms adopted.

(15) *Federal habeas corpus legislation regarding state criminal prosecutions.*

Subcommittee 4 has taken note of several bills introduced into the federal Congress which impact the ability of persons who receive sentences of capital punishment in state courts to seek relief in federal courts through petitions for writs of habeas corpus. The Subcommittee will study this subject during the coming year.

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(16) *Other recommendations of the Governor's Commission on
Capital Punishment.*

The members of the Committee have concluded that their function under the enabling statute (20 ILCS 3929/2) is to evaluate the impact of the reforms to the Illinois capital punishment system enacted by the 93rd General Assembly against the backdrop of the reforms that have been implemented by the judiciary and other government agencies, as well as other reforms proposed by the Governor's Commission which may be necessary or advisable to adopt in order to make fully effective the reforms already adopted. Accordingly, in the coming year the Committee will consider, review and report on the reforms mentioned above, other reforms put in place by the Illinois General Assembly, the Illinois judiciary and Illinois law enforcement agencies, and the recommendations made in the April 2002 Report of the Governor's Commission which have not yet been implemented.

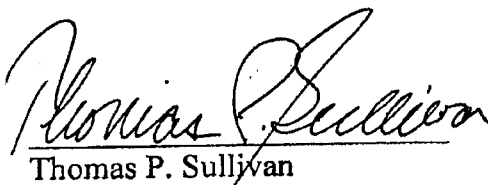
Conclusion.

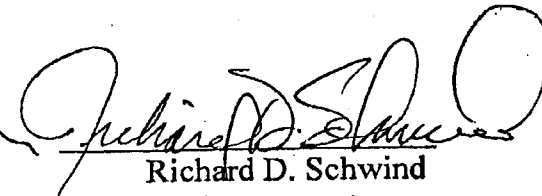
As you will observe from the foregoing report, during 2005 the Committee was devoted largely to organization and beginning to investigate the matters within its statutory mandate. We anticipate that in forthcoming

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annual reports the Committee will have substantive recommendations for the
Illinois General Assembly and other agencies involved in the capital
punishment process in Illinois.

Please contact us if further information is desired.


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