CAPITAL PUNISHMENT REFORM STUDY COMMITTEE
MINUTES OF SUBCOMMITTEE NO. 3 MEETING

September 10, 2008

Subcommittee 3 met at the Law Office of the Cook County Public Defender, 16th Floor, 69 W. Washington, Chicago, Illinois, on September 10, 2008. Attending were subcommittee members Jeffrey M. Howard, Edwin R. Parkinson (via teleconference), and Boyd Ingemunson (via teleconference).

The members approved the minutes from its last meeting held on 6-12-08.

The subcommittee discussed jury instructions. The subcommittee members decided to recommend adoption of Attachment 1 to the full committee with the information that it is believed the IPI committee has considered this instruction and rejected it. The subcommittee members decided to submit to the full committee for its consideration Attachment 2, which adds a sentence to existing IPI 3.15. Two of the subcommittee members do not believe the sentence contained in Attachment 2 is necessary. The subcommittee members are recommending to the full committee the adoption of Attachment 3. The subcommittee decided to submit to the full committee Attachment 4 for its consideration. Two of the subcommittee members believe the instruction contained on Attachment 4 invades the province of the jury and over emphasizes this one instruction over the other instructions. The subcommittee decided to submit to the full committee for its consideration Attachment 5. Two of the subcommittee members believe the instruction is confusing and unnecessary.

The subcommittee decided to discuss one other proposed instruction at its next meeting as members had not received a copy of it as of 9/10/08. Finally, Ed Parkinson will attempt to identify the present members of the IPI committee.

ATTACHMENT - 1

"If any one of you believes that a mitigating factor is supported by the evidence, you may consider it in arriving at your decision even though all or some of the other jurors do not believe the mitigating factor is supported by the evidence."

This instruction is consistent both with our new statute and with the *Maryland v. Mills* principle. If the Committee is not willing to accept these as the standard instructions, the Committee Comments should at least reflect the Committee's determination that a trial judge would not violate the law by giving an instruction on nonunanimity as to the existence and importance of mitigating factors.

ATTACHMENT - 2

IPI 3.15 should also be amended to add a final sentence which states as follows:

"Eyewitness testimony should be carefully examined in light of other evidence in the case."

ATTACHMENT - 3

The State has introduced the testimony of an in-custody informant as to a statement allegedly made by the defendant. Such testimony is to be examined and weighed by you with care. Whether the in-custody informant's testimony has been affected by interest or prejudice against the defendant is for you to determine. In making this determination, you should consider: (1) whether the in-custody informant has received anything, or expects to receive anything, in exchange for his/her testimony; (2) any other case in which the in-custody informant testified or offered statements against an individual but was not called, and whether the statements were admitted in the case, and whether the in-custody informant received any deal, promise, inducement, or benefit in exchange for that testimony or statement; (3) whether the in-custody informant has ever changed his/her testimony; (4) the criminal history of the in-custody informant; and (5) any other evidence relevant to the in-custody informant's credibility.

ATTACHMENT - 4

"You have before you evidence that the defendant made a statement relating to the offenses charged in the indictment. It is for you to determine [whether the defendant made the statement and, if so,] what weight should be given to the statement. In determining the weight to be given to a statement, you should consider all of the circumstances under which it was made. You should pay particular attention to whether or not the statement is recorded, and if it is, what method was used to record it. An electronic recording that contains the defendant's actual voice or a statement written by the defendant may be more reliable than a non-recorded summary."

ATTACHMENT - 5

"If any one of you finds that a mitigating factor listed in these instructions is supported by the evidence, you must treat that mitigating factor as a reason why the defendant should not be sentenced to death. You may not treat that listed mitigating factor as a reason why the defendant should be sentenced to death."

ATTACHMENT - 6

Under the law, the defendant shall be sentenced to death if you unanimously find after considering the factors in aggravation and mitigation that death is the appropriate sentence.

If after considering the factors in aggravation and mitigation one or more jurors determines that death is not the appropriate sentence, the court shall impose a sentence [(other than death) (of natural life imprisonment, and no person serving a sentence of natural life imprisonment can be paroled or released, except through an order by the Governor for executive clemency)].

ATTACHMENT - 7

In deciding whether the defendant should be sentenced to death, you should consider all the aggravating factors supported by the evidence and all the mitigating factors supported by the evidence.

Aggravating factors are reasons why the defendant should be sentenced to death. Mitigating factors are reasons why the defendant should not be sentenced to death. Aggravating factors include:

First:

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(Insert any statutory aggravating factor or factors found by the jury at the first stage of the death penalty hearing)

Second: Any other reason supported by the evidence why the defendant should be sentenced to death.

Where there is evidence of an aggravating factor, the fact that such aggravating factor is not a factor specifically listed in these instructions does not preclude your consideration of the evidence.

Mitigating factors include:

First: [(Any or all of the following) (The following)] is supported by the evidence:

The defendant has no significant history of prior criminal activity.

The murder was committed while the defendant was under the influence of an extreme mental or emotional disturbance, although not such as to constitute a defense to prosecution.

The murdered person was a participant in the defendant's homicidal conduct or consented to the homicidal act.

The defendant acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm.

The defendant was not personally present during the commission of the act or acts causing death.

The defendant's background includes a history of extreme emotional or physical abuse.

The defendant suffers from a reduced mental capacity.

Second: Any other reason supported by the evidence why the defendant should not be sentenced to death.

Where there is evidence of a mitigating factor, the fact that such mitigating factor is not a factor specifically listed in these instructions does not preclude your consideration of the evidence.

If you unanimously determine from your consideration of all the evidence after considering the factors in aggravation and mitigation that death is the appropriate sentence, then you should sign the verdict requiring the court to sentence the defendant to death.

If after considering the factors in aggravation and mitigation one or more jurors determine that death is not the appropriate sentence, then you should sign the verdict requiring the court to impose a sentence [(other than death) (of natural life imprisonment)].

ATTACHMENT - 8

After considering the factors in aggravation and mitigation, we the jury unanimously determine that death is the appropriate sentence.

The court shall sentence the defendant _____ to death.

Foreperson

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ATTACHMENT - 9

After considering the factors in aggravation and mitigation, one or more of the jurors determines that death is not the appropriate sentence.

The court shall sentence the defendant _____ to death.

Foreperson

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