CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Minutes of meeting September 7, 2006

The fourteenth meeting of the Capital Punishment Reform Study Committee ("Committee") was held at the Illinois Criminal Justice Information Authority, 120 S. Riverside Plaza, Chicago, Illinois from 1 to 3:15 P.M.

Those present	Not present
Leigh B. Bienen	Kirk W. Dillard
James R. Coldren, Jr.	James B. Durkin
Edwin R. Parkinson (via teleconference)	Boyd J. Ingemunson
Theodore A. Gottfried	Gerald E. Nora
Jeffrey M. Howard (via teleconference)	Randolph N. Stone
Richard D. Schwind (via teleconference)	
Geoffrey R. Stone (via teleconference)	
Thomas P. Sullivan	
Arthur L. Turner (via teleconference)	
Michael J. Waller (via teleconference)	

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Peter G. Baroni, Special Counsel

Also present: Dan Rippy, counsel to Kirk W. Dillard (via teleconference); Pat McAnany and Regan McCullough, Illinois Coalition to Abolish the Death Penalty.

The minutes of the meeting of June 19, 2006 were approved unanimously.

1. *Public Hearing on November 13, 2006 in Springfield.*

Mr. Baroni reported that through the Secretary of the Senate's office, he was able to secure Room 212 of the State Capitol on November 13, 2006 at 1 P.M. He will obtain information on travel and accommodations for the Committee members attending the meeting. Mr. Rippy said the State plane likely would be unavailable for use by the Committee on the 13th because the legislative session begins the following day.

The Committee discussed the issue of hearing testimony, and decided that (1) written testimony should be encouraged and (2) tentatively, oral testimony should be limited to five minutes per person. There was also a discussion regarding witness pre-registration, but this matter was not resolved.

The Committee discussed the issue of publicity for the hearing. Mr. Rippy volunteered the Senate Republican press staff as a partner for the Committee in publicizing the hearing. Mr. Baroni was asked to work with Mr. Rippy in coordinating and carrying out hearing publicity in connection with Kirk Dillard's press staff, and work with Mr. Schwind in preparing a list of organizations and associations, including law enforcement, judicial, attorney and advocacy organizations to be invited to attend.

2. *Survey document and retention of an expert.*

Mr. Coldren reported on the draft survey instrument by all Committee members and coordinated by subcommittee chairs. He coordinated the effort and reports based on the submissions from each subcommittee. Two final lists of questions have been drafted. The first is a comprehensive list of approximately 180 questions, consisting of submissions by each subcommittee. The second is a distilled list of about 80 questions, reflecting a pared down version of the comprehensive list. Mr. Baroni was instructed to send both lists to all Committee members.

Mr. Baroni reported that he spoke with Chief Justice Thomas of the Illinois Supreme Court, who expressed a willingness to assist the Committee in disseminating a survey document. Mr. Baroni sent a letter to Justice Thomas, attached as Appendix 1, formally requesting assistance.

Mr. Coldren reported that a subcommittee appointed by Mr. Sullivan has interviewed several potential researchers to assist in transforming the survey questions into an appropriate instrument for conducting a formal survey. The subcommittee, made up of Mr. Coldren, Ms. Bienen, Mr. Nora and Mr. Baroni, interviewed two potential candidates, David Olson from Loyola University, and Patricia Gross, Executive Director of the Metro Chicago Information Center. Mr. Coldren reported that both were excellent. The subcommittee recommended issuing an RFP for the researcher. Mr. Baroni was

instructed to draft an RFP in conjunction with Mr. Coldren and CJIA staff, and disseminate the final RFP to all Committee members for review prior to issuance.

3. *Reports of Subcommittees.*

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

Mr. Coldren reported that the subcommittee met on June 21, 2006. The focus of the subcommittee meeting was the Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures conducted by the Chicago Police Department, dated March 17, 2006. The discussion followed the outline of the Report, and differing perspectives were raised by each subcommittee member. The minutes of the meeting of June 21, 2006 are attached as Appendix 2.

Mr. Sullivan read a letter to the Committee from Sheri Mecklenburg regarding the study and reactions thereto. The letter from Ms. Mecklenburg is attached as Appendix 3.

The next subcommittee meeting is scheduled for October 10, 2006. The focus of that meeting will be obtaining information regarding videotaped interrogations from downstate law enforcement and prosecutors.

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

Ms. Bienen reported that the subcommittee held a meeting on August 14, 2006 dealing with topics as reflected in the minutes attached as Appendix 4.

Mr. Waller reported that the Illinois State's Attorneys Association and the Illinois Attorney General have published the "Death Penalty Decision Guidelines," dated February 22, 2006, attached as Appendix 5.

Ms. Bienen reported that the subcommittee continues to input into its database indictment information received from State's Attorneys offices, and more than 75 of the 102 county prosecutors in the state have responded. The Cook County State's Attorney is still working on a database including all Cook County first degree murder indictment information since January 1, 2003, which Mr. Nora has said should be ready by the end of October.

Mr. Baroni reported that he continues to seek answers about the DNA backlog from the Governor's administration, however, there has been significant turnover in the State's Public Safety office policy personnel. He will continue to try to obtain information. Mr. Sullivan suggested Mr. Baroni contact Ms. Mecklenburg at the Chicago Police Department for more information regarding the DNA backlog.

Ms. Bienen requested that Mr. Baroni send all Committee members a law review article and a New Jersey capital punishment statute which she presented.

(3) *Report of Subcommittee 3 – Trial court proceedings.*

Mr. Howard reported that the subcommittee met on June 19, 2006 and addressed questions to be included in the survey, as reflected in the minutes attached as Appendix 6. Mr. Howard reported that the subcommittee plans to meet with downstate judges who have presided over capital cases since enactment of the reform legislation. Some of those judges include: Judge Scott Shore from Peoria County (10th Judicial Circuit), Judge Harold Frobish from Livingston County (11th Judicial Circuit), and Judge Dale Cini form Coles County (5th Judicial Circuit). Mr. Howard wants to interview them in their home counties, and ask for their thoughts on the capital punishment reforms and further improvements. Mr. Howard said he will coordinate with Mr. Baroni in attempting to meet prior to the next full Committee meeting.

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

Mr. Gottfried reported that the Subcommittee met on June 19, 2006, as reflected in the minutes attached as Appendix 7. The focus of that meeting was compiling survey questions on subject matters assigned to the subcommittee.

Jan Johnson, Director of the Illinois State Police Forensics Lab in Chicago, spoke to the subcommittee. She focused on lab accreditation, and 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 in October at the Office of the State Appellate Defender in Chicago. Mr. Baroni was asked to coordinate with Mr. Schwind to have Michael Atterbery, the Attorney General's appointee to the ILAC Board, testify before the subcommittee.

4. *Other Business*

Governor's Appointment to the Committee.

Mr. Turner said he will contact the Governor's office to request that the Governor's appointment to the Committee be made forthwith.

5. *Next Meeting – October 23, 2006, 1 P.M.*

It was agreed that the next meeting of the Committee will be held on Monday, October 23, 2006 at 1 P.M. at the Illinois Criminal Justice Information Authority, 120 S. Riverside Plaza, Chicago, Illinois.

Thomas P. Sullivan
Chair
October 4, 2006

Attachments: Appendices 1 through 7.

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Thomas P. Sullivan
Chair

Richard D. Schwind
Vice Chair

Leigh B. Bienen
James R. Coldren, Jr.
Kirk W. Dillard
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Randolph N. Stone
Arthur L. Turner
Michael J. Waller

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R G. Baroni
al Counsel

July 21, 2006

The Honorable Robert R. Thomas
Chief Justice
Illinois Supreme Court
1776 S. Naperville Road
Building A, Suite 207
Wheaton, IL 60187

Dear Justice Thomas:

Thank you for taking the time to meet with me last month regarding the Capital Punishment Reform Study Committee and my work as the Committee's Special Counsel. Pursuant to that conversation, I would like to formally ask, on behalf of the Committee, for the Supreme Court's assistance in gathering information from judges and attorneys.

As you may recall, in 2003-2004 the Illinois General Assembly passed and the Governor signed legislation that continued the reform of the capital punishment system started by the Illinois Supreme Court. The legislature also established the Committee (Public Act 93-0605, Sections 1 and 2, enclosed). The Committee is generally charged with studying reforms to the capital punishment system in Illinois. The Committee members believe that one of the most effective ways of conducting the study is by gathering information and opinions from attorneys and judges across the State who are experienced in capital litigation. To that end, we are currently developing a survey form. You and I discussed a number of ways the Court could be helpful with our information gathering process.

We ask that the Court allow us to disseminate our survey form at capital litigation training seminars for judges and attorneys. One approach is to incorporate the survey into the required curriculum for judicial training seminars covering capital punishment, mandated by the Special Supreme Court Committee on Capital Cases, and into Capital Litigation Trial Bar training courses mandated by Supreme Court Rule. Another way is

APPENDIX 1

THOMAS P. SULLIVAN
CHAIR

RICHARD D. SCHWIND
VICE CHAIR

LEIGH B. BIENEN
JAMES R. COLDREN, JR.
KIRK W. DILLARD
JAMES B. DURKIN
THEODORE A. GOTTFRIED
JEFFREY M. HOWARD
BOYD J. INGEMUNSON
GERALD E. NORA
EDWIN R. PARKINSON
GEOFFREY R. STONE
RANDOLPH N. STONE
ARTHUR L. TURNER
MICHAEL J. WALLER

PETER G. BARONI
'IAL COUNSEL

through the Conference of Chief Circuit Judges. The cooperation of the Conference would provide access to every judge in the State, not just those attending a training seminar. There may be other means at the Court's disposal for gathering information on capital punishment reforms in this State. We are open to any thoughts you or the other members of the Court may have on the issue.

Enclosed is a general breakdown of reforms to the capital punishment system enacted by the legislative, executive and judicial branches of Illinois government over the past few years.

I will follow up this letter with a telephone call soon. If you have questions, please contact me. Thank you again for your time and consideration.

Sincerely,

Peter G. Baroni
Special Counsel
Capital Punishment Reform Study Committee

Enclosures

cc: Thomas P. Sullivan, Chair
Richard D. Schwind, Co-Chair

Public Act 93-0605

Section 1. Short title. This Act may be cited as the Capital Punishment Reform Study Committee Act.

Section 2. Capital Punishment Reform Study Committee.

(a) There is created the Capital Punishment Reform Study Committee, hereinafter referred to as the Committee, consisting of 15 members appointed as follows:

(1) Three members appointed by the President of the Senate;

(2) Two members appointed by the Minority Leader of the Senate;

(3) Three members appointed by the Speaker of the House of Representatives;

(4) Two members appointed by the Minority Leader of the House of Representatives;

(5) One member appointed by the Attorney General;

(6) One member appointed by the Governor;

(7) One member appointed by the Cook County State's Attorney;

(8) One member appointed by the Office of the Cook County Public Defender;

(9) One member appointed by the Office of the State Appellate Defender; and

(10) One member appointed by the office of the State's Attorneys Appellate Prosecutor.

(b) The Committee shall study the impact of the various reforms to the capital punishment system enacted by the 93rd General Assembly and annually report to the General Assembly on the effects of these reforms. Each report shall include:

(1) The impact of the reforms on the issue of uniformity and proportionality in the application of the death penalty including, but not limited to, the tracking of data related to whether the reforms have eliminated the statistically significant differences in sentencing related to the geographic location of the homicide and the race of the victim found by the Governor's Commission on Capital Punishment in its report issued on April 15, 2002.

(2) The implementation of training for police, prosecutors, defense attorneys, and judges as recommended by the Governor's Commission on Capital Punishment.

(3) The impact of the various reforms on the quality of evidence used during capital prosecutions.

(4) The quality of representation provided by defense counsel to defendants in capital prosecutions.

(5) The impact of the various reforms on the costs associated with the administration of the Illinois capital punishment system.

(c) The Committee shall hold hearings on a periodic basis to receive testimony from the public regarding the manner in which reforms have impacted the capital punishment system.

(d) The Committee shall submit its final report to the General Assembly no later than 5 years after the effective date of this Act.

Capital Punishment Reform Study Committee
Jurisdiction

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1. Custodial interview pilot project. 20 ILCS 3930/7.2 and 720 ILCS 5/14-3 (P.A. 93-605, Secs. 5 and 10).

2. Mandatory taped interrogations in homicide cases. 725 ILCS 5/103-2.1 (P.A. 93-206, Sec. 25, and P.A. 93-517, Sec. 25).

3. Mandatory lineup admonishments, records and disclosure. 725 ILCS 5/107A-5 (P.A. 93-605, Sec. 15).

4. Pilot program studying additional lineup procedure reforms. 725 ILCS 5/107A-10 (P.A. 93-605, Sec. 15).

5. Mandatory record-keeping and disclosure obligations for police departments. 725 ILCS 114-13 (P.A. 93-605, Sec. 15).

6. Mandatory preservation of physical evidence in criminal cases. 725 ILCS 5/116-4 (P.A. 91-459, Sec. 10 and 91-871, Sec. 10).

7. Murder statute: redefinition of felony murder aggravating factor. 720 ILCS 5/9-1(b)(6)(c) (P.A. 93-605, Sec. 10).

8. Murder statute: advisory prosecution standards for screening capital punishment. 720 ILCS 9-1(k) (P.A. 93-605, Sec. 10).

9. Funding for DNA testing from Capital Litigation Trust Fund. 725 ILCS 124/15(e)(2) (P.A. 93-605, Sec. 20).

10. Notice requirements on seeking the death penalty. Sup. Ct. R. 416(c).

11. Minimum, uniform evidentiary standards for DNA evidence. Sup. Ct. R. 417.

12. Murder statute: redefinition of witness murder aggravating factor. 720 ILCS 5/9-1(b)(8) (P.A. 93-605, Sec. 10).

13. Murder statute: new mitigating factor for mental/physical abuse and diminished mental capacity. 720 ILCS 5/9-1(c)(6) & (7) (P.A. 93-605, Sec. 10).

14. Murder statute: new standard for imposing death – is death appropriate (changes from mitigation sufficient to preclude death). 720 ILCS 9-1(g) (P.A. 93-605, Sec. 10). Illinois Pattern Jury Instructions Committee drafting instruction reflecting this change.

15. Murder statute: judicial decision to non-concur with a jury verdict of death. 720 ILCS 9-1(g) (P.A. 93-605, Sec. 10).

16. Murder statute: trial court decertification of capital case. 720 ILCS 9-1(h-5)(P.A. 93-605, Sec. 10).

17. Mandatory taped interrogations in homicide cases use at trial. 725 ILCS 5/103-2.1 (P.A. 93-206, Sec. 25, and P.A. 93-517, Sec. 25).

18. Trial court proceedings to determine mental retardation. 725 ILCS 5/114-15 (P.A. 93-605, Sec. 15).

19. Informant testimony (snitch) pre-trial hearing on reliability. 725 ILCS 5/115-21 (P.A. 93-605).

20. Use of the Capital Litigation Trust Fund at trial. 730 ILCS 5/5-4-3.

21. Specific description and disclosure of Brady material by the prosecution. Sup. Ct. R. 412(c).

22. Notice requirements on seeking the death penalty and notice practice followed by prosecutors. Sup. Ct. R. 416(c).

23. Assignment of qualified prosecution and defense counsel from capital litigation bar. Sup. Ct. R. 416(d).

24. Discovery depositions in capital cases. Sup. Ct. R. 416(e).

25. Case management conferences to regulate, ensure competence of counsel and implementation of disclosure requirements in capital cases. Sup. Ct. R. 416(f).

26. Respective certifications of readiness by prosecution and defense counsel before trial in capital cases. Sup. Ct. R. 416(g) and (h).

27. Police decertification proceedings for perjury. 50 ILCS 705/6.1 (P.A. 93-605, Sec. 6).

28. Murder statute: Supreme Court reduction of death sentence as fundamentally unjust. 720 ILCS 9-1(i) (P.A. 93-605, Sec. 10).

29. Defense motions for fingerprint and forensic testing. 725 ILCS 5/116-3 11 (P.A. 93-605, Sec. 15).

30. Defense motions for DNA database searches. 725 ILCS 5/116-5 (P.A. 93-605, Sec. 15).

31. Post conviction proceedings, evidence of actual innocence. 725 ILCS 5/22-1 (P.A. 93-605, Sec. 15).

32. Repeal of Capital Litigation Trust Fund sunset provision, making it a permanent reform. 730 ILCS 5/5-4-3(f) (P.A. 93-605, Sec. 25).

33. Capital litigation bar. Sup. Ct. R. 714(a) through (f) and (h).

34. Continuing legal education for capital litigation bar attorneys. Sup. Ct. R. 714(g).

35. Judicial capital litigation training seminars. Sup. Ct. R. 43.

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

June 21, 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: Subcommittee members: Chip Coldren, Gerry Nora and Geof Stone; legal counsel: Peter Baroni; non-subcommittee members: Leigh Bienen (via teleconference)

The meeting was called to order at 2:10 p.m.

Chip Coldren opened the meeting by reviewing the goal of this special meeting of the Subcommittee – to discuss each Subcommittee members' comments on the "Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double-Blind Identification Procedures." Pursuant to Illinois law (725 ILCS 5/107A-10), the Illinois State Police commissioned the Chicago Police Department to conduct a pilot study on "the effectiveness of the sequential method for photograph and live lineup procedures" involving three Illinois jurisdictions. Chip suggested that each subcommittee member present their comments on the report, then the subcommittee would discuss whether to prepare a review of the report for the full Committee, or whether any further review or related activities were warranted.

Chip offered his review of the report as follows. He noted three key sections in the report, one that responds to the question "Should we do it?" [meaning, should law enforcement adopt double-blind sequential line-ups as the preferred method in capital cases?], another that responds to the question, "Can we do it?" [meaning, is it practical and feasible for law enforcement to adopt this line-up method?], and the set of recommendations at the end of the report.

Should we [law enforcement] do it? – The study does not address this question with sufficient scientific rigor to ascertain whether the line-up method (e.g., sequential or simultaneous) or the line up administrator (e.g., blind vs. non-blind) caused the observed differences in identification rates (suspect identification, filler identification, and no identification). Additional studies with more controls are need, so that the causes of any observed differences in outcomes can be isolated. The study(ies) should be designed so

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that the method of administration (blind) is held constant and the line-up method is varied (sequential v. simultaneous), with random assignment of cases to either line-up method, pre- and post-testing within groups, and the study should be administered by a research scientist with extensive experience in the administration of randomized studies. In addition, Chip suggested that researchers measure the rate of 'true' identification, meaning that in addition to identifying whether witnesses identify the suspects selected by law enforcement, they should measure how often the suspects are in fact convicted of the crimes. Researchers should continue comparing sub-categories of cases according to whether the witness knows or does not know the suspect, suspect race vs. witness race, photo spread vs. live line-up, and the different settings in which the line-ups take place.

Can we [law enforcement] do it? – Chip expressed a concern about the apparent need to balance efficiency with accuracy in this matter, especially since the accuracy of line-up identifications seems to have figured heavily into the number of murder convictions that have been overturned. Gerry Nora suggested caution regarding this matter. He noted that he is aware that faulty identifications generally have figured into capital convictions that have been overturned, he is not certain that it is line-up identifications that are at issue, and, he explained, he cannot find evidence in Illinois that suggests faulty line-up identifications are the main reason that any murder convictions have been overturned. Chip noted further that the report on the pilot program provides little information on the oversight of the implementation of the study, beyond the training provided to study participants in the three jurisdictions. In addition, the pilot study report did not address the effectiveness of the training provided. The evaluation surveys discussed in the report were administered to police only, not to witnesses or any other participants; in fact, they allowed the police participants to assess how the witnesses experienced the double-blind sequential line-up procedures, rather than surveying the witnesses themselves. Finally, Chip noted that the report described a strong negative opinion from law enforcement regarding the double-blind sequential procedure, and commented that it is not uncommon for law enforcement practitioners to have strong initial negative reactions to reforms or changes in police procedures, and then to observe this negative reaction dissipate (or change significantly) as time passes and experience is gained. This is true of recent policing innovations such as community policing, racial profiling reporting systems, and video taping of various police procedures. Thus, Chip suggested that the research did not thoroughly study the practical issues relating to sequential, double-blind line-up procedures, gave substantial weight to law enforcement and not other reactions to the procedures, and gave substantial weight to early negative reactions by law enforcement that are likely to change over time.

Pilot study recommendations – Chip stated that he agreed with the recommendations made in the pilot study report, though he felt that they should have been more specific and detailed, especially regarding the anticipated outcomes and benefits from each recommendation. He agreed that line-up instructions should be further studied. If further work is done on specific instructions, types of instructions, or methods of delivering instructions, these methods should be compared and analyzed, and, again, linked to specific outcomes desired or anticipated based on the instructions tested. He agreed that

technological applications in line-up administration should be explored seriously; technological applications can be helpful in selecting fillers for line-ups (using imaging techniques), in standardizing line-up procedures (e.g., use of laptops and standard instructions for conducting line-ups), and in recording line-ups. Chip also suggested that remote video technology might be helpful in solving problems with double-blind administration. Chip noted his general agreement with the other recommendations in the report.

Geof observed that the key chart in the report was Table 3.a, "Effects of Simultaneous v. Sequential Presentation on Identification Rates." Geof noted that the title was misleading because the table implied that the data represented a comparison of simultaneous presentations when, in fact, there were four rather than two variables. That is, the study compared not simultaneous v. sequential presentations, but simultaneous non-blind presentations v. sequential double-blind presentations. Geof pointed out that this is important because it is inconceivable that non-blind presentations could be better than double-blind presentations. Indeed, double-blind presentations *cannot* create any bias in the identification, whereas non-blind presentations obviously can create a bias. Put differently, in terms of accuracy of identification, double-blind presentations are always better than non-blind presentations. The only questions about whether to use double-blind presentations is whether they are practical and affordable. They are unquestionably preferable in terms of accuracy.

Geof noted the proper way to determine how much more accurate double-blind presentations are than non-blind presentations is to compare apples to apples. That is, to compare non-blind sequential presentations to double-blind sequential presentations, or non-blind simultaneous presentations to double-blind simulataneous presentations. Such comparisons would be a good test of accuracy because the difference between the double-blind and non-blind presentations would reflect the degree of bias in non-blind presentations. This, Geof observed, is what the study should have examined.

Geof reasoned further that the table is misleading insofar as it appears to suggest that simultaneous presentations are better than sequential presentations. This is true in two respects. First, Geof pointed out that the table shows that the suspect was identified in 60% of the simultaneous presentations but in only 45% of the sequential presentations. Because of the assumption that identified suspects were guilty, the implication was that simultaneous presentations result in identification of the guilty person 33% more often than sequential presentations. Geof argued that his is entirely false. The sequential presentations were done using the double-blind method and the simultaneous presentations were done using the non-blind method. Because the double-blind method cannot be less accurate than the non-blind method, the large differential between simultaneous and sequential presentations in the study has to be due to one of two factors: Either simultaneous presentations are *much* more accurate than sequential presentations, or the bias inherent in simultaneous presentations leads witnesses to identify the suspect 33% more often that he would *without* the bias (or, of course, it could be some combination of the two). Geof argued that the most important possible implication of the study is not the simultaneous presentation is more accurate than

sequential presentation, but that investigator bias has a *dramatic* impact on the eyewitness identifications in the non-blind situation.

Second, Geof noted that the table showed that eyewitnesses misidentified fillers more than three times more often in sequential than in simultaneous presentations (9.2% v. 2.8%). The superficial implication is, again, that sequential presentations are risky. But, again, this misunderstands the significance of the data. Unless simultaneous presentations are much more reliable than sequential presentations, what the table actually shows is that investigators in non-blind presentations (all the simultaneous presentations) were steering eyewitnesses away from the fillers and to the suspects, thus explaining the high number of identifications of suspects and the lower number of identifications of fillers.

Geof acknowledged that there is no way to know for certain what is happening in these data. The correct interpretation depends on information not provided: The relative accuracy of double-blind v. non-blind presentations or the relative accuracy of simultaneous v. sequential presentations. Geof suggested a simple way to get at this question. Because the double-blind sequential presentations in the study could not be affected by investigator bias, the only possible distorting effect in those presentations would be from the order in which the individuals were presented. That is, witnesses may tend to identify the first or the second or the last individual. Assuming the suspect is randomly placed in the sequential presentation, the eyewitness identification should be randomly distributed among the number of positions in the presentation. If that is so, then there is no distortion and the double-blind sequential format would clearly be as good as it gets. If there is a distortion (that is, if the eyewitnesses do tend to select the person in, say, the second position in the sequence), then that data is a measure of the overall inaccuracy of double-blind sequential presentations. Geof suggested that the study examine that question, which is quite simple to do.

Gerry Nora began his discussion by noting that he has read everything he could find about this study and he voiced support for all the study recommendations. On a pragmatic note, he suggested that the subcommittee be cautious about "setting the grounds for its own impeachment," particularly regarding the recommendation that research scientists get involved. Gerry noted that Geoff Stone makes a good point, and that you would almost always prefer a double-blind sequential line-up procedure, but this will be difficult outside of Cook County. Gerry discussed the premise of mis-identifications (of suspects) caused by non-neutral line-up administrators, and suggested that in many instances the suspect him/her self is just as likely (if not more likely) to be giving visual cues to the witness reviewing the lineup. Gerry also noted that there is a significant difference between photo spreads (which are not based on a determination of probably cause) and live line-ups (which must be based on probable cause, in Illinois). Gerry explained that as a matter of experience or gut feeling, he prefers live line-ups. Finally, Gerry restated his support for the notion that the field will benefit from additional study of these matters, and for the pilot study recommendations.

Leigh Bienen offered several comments. She is leery of the Committee endorsing such a study when its reliability has been questioned. Any recommendations of this

subcommittee or the larger Committee should be very specific. She views the technological solutions as interesting and possibly helpful.

Geof Stone noted that he has grave questions about the effects of non-double blind procedures of any kind. Returning our attention to Table 3.a on page 38 of the pilot study report, he explained that this table suggests that 95% of identifications are 'accurate' under the simultaneous non-blind method (approximately 60 suspect identifications divided by approximately 63 total identifications) and that 83% of identifications are 'accurate' under the sequential non-blind method (approximately 45 suspect identifications divided by approximately 54 total identifications). This is a large difference in the percentage of suspect identifications, but we don't know what's causing them due to the inability to disentangle the effects of blind vs. non-blind administration in the pilot study.

Geof suggested that an analysis of the outcomes of the sequential, double-blind method may help us understand this issue. If, for example, a pattern is found in the identification of suspects under the sequential, double-blind method, then we would suspect that accuracy of this method. In other words, if the sequential double-blind method produces a random pattern of outcomes regarding the sequential order of suspects identified (assuming that suspects are placed in random order in the sequence), then we would have more confidence in the method. On the other hand, if an analysis of the outcome data for the sequential double-blind method shows that witnesses pick the first or second individual in the sequence more often than any other, then there would be evidence of bias in the method.

Chip agreed to contact Sheri Mecklenberg at the Chicago Police Department to see if the data can be made available for further analysis along these lines.

Regarding next steps regarding the review of the pilot study report, the Subcommittee decided that the details and complications surrounding this issue are significant and that the Subcommittee needs to spend additional time reviewing and discussing them before reporting to the full Committee. The Subcommittee agreed to conduct further review of the report and discuss it again at the next meeting.

The next Subcommittee meeting is set for August 7, 2006 at 2:00 p.m. at the University of Chicago Law School, 1111 East 60th Street, Chicago, IL 60637.

The Subcommittee adjourned at 3:30 p.m.

SHERI H. MECKLENBURG
ILLINOIS PILOT PROGRAM DIRECTOR
c/o Chicago Police Department
3510 S. Michigan Avenue
Chicago, IL 60653
(312) 745-6115

Mr. Thomas Sullivan
Chair, Capital Punishment Reform Study Committee
c/o Jenner & Block
One IBM Plaza
330 N. Wabash
Chicago, IL 60611
By fax (312) 840-7328

Richard D. Schwind
Vice-Chair, Capital Punishment Reform Study Committee
c/o Office of the Attorney General
James R. Thompson Center
100 W. Randolph Street, 12th Floor, Room 265
Chicago, IL 60601
By fax (312) 814-5366

Dear Mr. Sullivan and Mr. Schwind:

By now, I hope that you and your members have had an opportunity to review and discuss the *Report to the Legislature of the State of Illinois: The Illinois Pilot Program On Sequential, Double-Blind Identification Procedures*.

This Report represents a ground-breaking field study, the first in the country to collect data in the field on more than 700 photo and live lineups from three jurisdictions, to compare the current method to the recommended method and to employ two independent nationally-renowned analysts to review the data. There have been some questions raised about methodology, which are being addressed through an Addendum to be filed shortly. There also are different interpretations of the data, which is to be expected. Regardless of the criticisms and interpretations, everyone agrees that Illinois law enforcement did a tremendous job in collecting this data. Since, the Department of Justice called for field studies in 1999, Illinois is the first state to undertake such a study. Illinois has led the way for additional field studies, has reinvigorated the eyewitness community and has set a standard for collection of data rather than relying upon debates over abstract theories.

The Report makes no conclusions, but instead offers ten Recommendations for future study, all of which have been lauded around the country. Your committee is an influential voice on reforms. It would send an important message if your committee would consider commending

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Illinois law enforcement on the study (without regard to the data or the results) and endorsing or adopting the ten Recommendations offered in the study. Such a position would go a long way toward encouraging future studies, as well as fostering a willingness to be open to other changes to the system. Your committee has an opportunity to squelch the polarization that often results from debates over changes to the system and, instead, to promote the idea of working together for the greater good.

I look forward to receiving your support for Illinois law enforcement on this issue.

Sincerely,

Sheri H. Mecklenburg
Director, Illinois Pilot Program

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

FROM: Peter Baroni,
Special Counsel to the CPRSC

DATE: August 15, 2006

RE: Minutes of Subcommittee No. 2 conference call meeting -- August 14, 2006

On August 14, 2006 at 10:00am a meeting of Subcommittee #2 was held via conference call. Attending were Leigh Bienen, Mike Waller and Peter Baroni (special counsel to the Committee). Kirk Dillard and Tom Sullivan did not participate.

Item No. 1: Survey Issues/Questions. Leigh Bienen and Peter Baroni summarized the meeting of the subcommittee chairs regarding the survey questions submitted by all four subcommittees and the status of the retention of a social scientist to assist the Committee in conducting a survey. The interview of potential experts was intended to be complete by the next full Committee meeting, September 7, 2006.

Item No. 2: DNA Backlog. Peter Baroni reported that the Governor's Office has a new public safety attorney and that new person would need to be contacted to determine the status of the DNA backlog. The prior gubernatorial designee, Robin Olson, left her position before giving Baroni a formal response on the issue. Leigh Bienen asked Baroni if he would seek out a representative from the Governor's office or the State Police Crime Lab to address the Subcommittee on the DNA testing issues of (1) funding; (2) case volume (felons and cases); (3) procedures for testing (in-house and by contract labs); and (4) generally how the testing process is proceeding at this point.

Item No. 3: First Degree Murder Indictment Data Collection. Leigh Bienen reported that the Cook County Public Defender's Office had sent her several boxes of first degree murder indictments for cases their office is handling or has handled. Peter Baroni reported that Jerry Nora of the Cook County State's Attorney's Office is almost finished putting together a database of all first degree murder indictments filed by his office since 2003. However, he has detected several glitches in the system and anticipated resolving those issues by the end of September.

Item No. 4: Capital Punishment Protocols. Mike Waller reported that the protocols had, at long last, been jointly adopted by the Attorney General's Office and the Appellate Prosecutor's Office. Waller indicated that he would forward a copy to Peter Baroni for distribution to the entire Committee.

APPENDIX 4

The meeting was adjourned.

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

DEATH PENALTY DECISION GUIDELINES

Prepared By:

Office of the Illinois Attorney General
Lisa Madigan, Attorney General

Illinois State's Attorneys Association

February 22, 2006

APPENDIX 5

INTRODUCTION

The Illinois State's Attorney's Association and the Illinois Attorney General, acting pursuant to the Illinois' First Degree Murder Statute, have consulted and hereby recommend these "voluntary guidelines for procedures governing whether or not to seek the death penalty," 720 ILCS 5/9-1(k). These guidelines reflect the policies and practices already in place in many counties across the state. The drafters also incorporated relevant recommendations of the various task forces and committees that reviewed Illinois' capital punishment system. These guidelines do not have the force of law, but they are intended to assist State's Attorneys in exercising their discretion in conformance with the highest standards of justice.

The Illinois State's Attorneys and the Attorney General recognize that seeking the death penalty is the most difficult decision within the criminal justice system and appreciate the awesome responsibility vested in them by the citizens of Illinois. The "exercise of informed discretion by the State's Attorney after a review of all available information, including information that might be mitigating, is an important safeguard against injustice in the administration of capital punishment." (Supreme Court Committee on Capital Cases, Supplemental Findings and Recommendations, page 71).

We recognize that the primary expression of public and social policy of this state emanates from the legislature and that as the elected prosecutors we have a responsibility to respect society's judgment which allows for the imposition of the death penalty for the most heinous murders. 720 ILCS 5/9-1(b). The primary factors in making a decision to seek a death sentence are the need to not only have absolutely no doubt regarding the defendant's guilt but also his/her eligibility for the imposition of death pursuant to the first degree murder statute. The basis of both the charging decision and the decision to seek death must be fundamentally fair and

consistent with the law. The decision to seek death should not be automatic simply because the defendant appears to be clearly guilty and clearly eligible. In making this decision, State's Attorneys should be focused on the strength of the case and the background and character of the defendant. *See, e.g.,* **Gregg v. Georgia**, 428 U.S. 153, 49 L.Ed.2d 859, 903 (1976).

When deciding whether or not to seek the death penalty, the State's Attorney should have the benefit of as much information as possible about the offense and the offender and a reasonable time to make the decision. Prosecutors recognize that because the decision is so visible to the public and vital to the administration of justice that it will reflect on the legal system as a whole. Through these guidelines prosecutors seek to ensure that in cases where the death penalty is sought, trials are fair and justice is done. In exercising discretion, the State's Attorney is responsible for protecting the rights of society and the rights of the defendant.

These proposed guidelines are not intended to be a substitute for adopting appropriate policies and procedures at a local level. These guidelines are illustrative of certain basic factors which should be considered in the exercise of discretion.

CHARGING

The probability of a conviction is the central factor in any charging decision. This is especially true in first degree murder cases in which the defendant may be exposed to the death penalty. While the concept of "residual doubt" has been held not to be a "mitigating circumstance", **Franklin v. Lynaugh**, 487 U.S. 164, 101 L.Ed.2d 155 (1988); and **People v. Edgeston**, 157 Ill.2d 201, 623 NE 2d 329 (1993); the strength of the case and the likelihood of a conviction must be clear based upon the available evidence. Charging decisions, which may be modified as the State's Attorney gains additional information about the offense and offender, should appropriately reflect both the nature of the offense and the culpability and eligibility of

the offender. The State's Attorney should file charges which adequately encompass the offenses believed to have been committed by the defendant. The State's Attorney should be confident in the quality of the evidence and its ability to meet, and even surpass, the burden of proof of beyond a reasonable doubt. The observations of the United State's Supreme Court in 1976 are instructive regarding the exercise of discretion in capital cases. "Thus defendants will escape the death penalty through prosecutorial charging decisions only because the offense is not sufficiently serious; or because the proof is insufficiently strong." **Gregg v. Georgia**, 428 U.S. 153, 49 L.Ed.2d 859, 903 (1976).

In order to make an appropriate charging decision, it is crucial that the State's Attorney takes steps to ensure that investigative personnel have provided all material and information relevant to the accused and the offenses under consideration. See Supreme Court Rule 412(f) and 725 ILCS 114-13. The failure to obtain and evaluate all relevant evidence can have a detrimental effect on not only the charging decision, but the ultimate disposition of a case. Investigative power and responsibilities of State's Attorneys are inherent and incidental to our prosecutorial powers. **People v. Thompson**, 88 Ill.App.3d 375 (1980). We have a continuing duty in all cases, but especially in capital cases, to evaluate and investigate the facts of a case. All reports, items of evidence and other relevant material should be evaluated in order to determine whether additional evidence is necessary in order to reasonably assure that a conviction may be obtained. The strengths and weaknesses of a case should be evaluated in light of anticipated defenses.

THE NATURE OF THE OFFENSE

The State's Attorney must determine whether the murder is the type of crime that calls for the ultimate punishment. Factors such as pre-meditation; torture; dismemberment and other depraved conduct should be considered. However, State's Attorneys must resist the temptation or public pressure to seek a death sentence based solely on the brutality of the crime without reference to other relevant factors.

ELIGIBILITY (STATUTORY FACTORS IN AGGRAVATION)

The existence of aggravating factors which make the defendant eligible for the death penalty pursuant to 720 ILCS 5/9-1(b) must be carefully evaluated in light of the burden of proof beyond a reasonable doubt. In cases where the death penalty is sought, the factors relied upon must be included in the notice provided to the defense pursuant to Supreme Court Rule 416 (c). Statutory aggravating factors should be evaluated in light of both the proofs and an examination of the decisions of the United States and Illinois Supreme Courts. The following examples demonstrate the importance of careful evaluation of potential aggravation:

a. 720 ILCS 5/9-1(b)(11) of the Illinois statute makes a defendant eligible for death if "the murder was committed in a cold, calculated and pre-meditated manner pursuant to a preconceived plan, scheme or design to take a human life. . ." State Courts interpreting this factor have determined that time is a critical element in assessing whether this factor is satisfied. A substantial period of reflection or deliberation is required. The prosecutor must prove more than that the murder was technically pre-meditated. By applying this type of analysis the Courts properly narrow the class of death eligible defendants and provide a "meaningful basis for distinguishing the few cases in which (the death penalty) is imposed from the many cases in which it is not." **Gregg v. Georgia**, 49 L.Ed.2d at 883.

b. To be eligible based upon murder of a peace officer (or for that matter any special class of victims) the evidence must show that the defendant knew or should have known that the victim was a peace officer. 720 ILCS 5/9-1(b)(1).

c. Eligibility under the multiple murder provision may depend upon the proofs and findings supporting the prior conviction. For example, evidence of a prior conviction based on accountability, without more, is not sufficient for eligibility under 720 ILCS 5/9-1(b)(3). It must be certain that the prior conviction is for murder. The date of the murders is generally of no significance. The case in which the defendant is being sentenced may be considered for multiple-murder eligibility. He is "convicted" under 9-1(b)(3) once the court enters judgment on the verdict. A defendant is also eligible under 9-1(b)(3) if he has killed more than one victim in the case for which he is being sentenced.

d. Under the felony murder provision (section 9-1(b)(6)) a number of factors must be considered. Generally, timing of the acts which cause death does not affect eligibility as long as it can be shown that the murder was in the "course of" the other felony. In an accountability case, it must be proven that the defendant's mental state and participation satisfy the Court's interpretation of the statute. See **Tison v. Arizona,** 481 U.S. 137 (1987).

e. Murder of a victim under age 12 (9-1(b)(7)) must be accompanied by "exceptionally brutal or heinous behavior indicative of wanton cruelty." Murder by suffocation almost immediately after injuries that could have been inflicted by a single blow does not satisfy this requirement. **People v. Lucas**, 132 Ill.2d 399, 548 N.E. 2d 1003 (1989). Deliberate starvation and exposure satisfies this requirement. **People v. Banks**, 161 Ill.2d 119, 641 N.E. 2d 331 (1994).

f. Generally, the murder of a witness provision (9-1(b)(8)) does not include investigation or prosecution for offenses which occurred in the course of commission of the murder, including the murder itself. In **People v. Brownell**, 79 Ill.2d 508, 404 N.E. 2d 181 (1980) the Court said:

"Otherwise, were we to adopt the trial court's finding, this aggravating factor could apply in every prosecution for murder where another offense contemporaneously occurs because the victim could have been a witness against the defendant. Or, even more broadly, this aggravating factor could apply to every prosecution for murder since every victim, obviously, is prevented from testifying against the defendant. We do not think the General Assembly intended the death penalty to be applied in every murder case, and, if it did, the General Assembly

> could certainly find a more direct way to express its intent than through this aggravating factor." In other cases, the courts have held that this factor is satisfied where the evidence clearly shows that the defendant contemplated killing the victim for the specific purpose of preventing his/her testimony, even when the murder is in the course of various felonies. See **People v. Hernando William**, 97 Ill.2d 252, 454 N.E. 2d 220 (1983), **Williams v. Chrans**, 945 F 2d 926 (7th Circuit 1991).

While evidence supporting a single statutory aggravating factor is sufficient to support a decision to seek death, the number of aggravating factors should be considered. Similarly, the State's Attorney should consider each potential mitigating factor and while more than one mitigating factor may exist, it is the weight of such evidence compared to the nature and circumstances of the murder that should guide the decision to seek or not to seek the death penalty.

CAPITAL LITIGATION COMMITTEE

It has long been recognized that the State's Attorney is entrusted with exclusive discretion to decide which charges shall be brought, or whether to prosecute at all. This discretion extends to the decision of whether or not to seek the death penalty in a first degree murder case. "Each capital case is unique and must be evaluated on its own facts, focusing on whether the circumstances of the crime and the character of the defendant are such that the deterrent and retributive functions of the ultimate sanction will be served by imposing the death penalty." **People v. Johnson**, 128 Ill.2d 253 (1989). While the death penalty decision rests exclusively with the State's Attorney, it is advisable that the State's Attorney seek input from experienced prosecutors in making necessary decisions regarding potential capital cases. State's Attorneys in counties with an adequate number of sufficiently experienced Assistant State's Attorneys should form a committee, which includes the Assistants assigned to the case, to consult and assist the State's Attorney in making death penalty decisions. State's Attorneys in

counties without an adequate number of sufficiently experienced prosecutors, if they choose to do so and so request, may consult with a committee of experienced State's Attorneys appointed by the President of the State's Attorneys Association in making death penalty decisions. A fact sheet is helpful to committee members. Appended to these guidelines is a sample Capital Litigation Fact Sheet. Notes of the committee that pertain to the State's theories, opinions or conclusions, should not be discoverable, as they qualify as work product pursuant to Supreme Court Rule 412(j)(i).

Experienced capital litigators from the Office of the Illinois Attorney General and the State's Attorneys Appellate Prosecutors Office are resources available to assist State's Attorneys in all counties. All prosecutors appearing as lead or co-counsel in a capital case must be members of the Capital Litigation Trial Bar as provided in Supreme Court Rule 714.

VICTIM'S FAMILY

Under 725 ILCS 120/4, family members of murder victims, like all victims of crime, have specific rights which include:

1. The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.
2. The right to be notified of all court proceedings.
3. The right to communicate with prosecutors.
4. The right to make a statement to the court at sentencing.
5. The right to information about the conviction, sentence, imprisonment and release of the accused.
6. The right to a timely disposition of the case.
7. The right to be reasonably protected from the accused during the criminal justice process.
8. The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at trial.
9. The right to have present at all court proceedings, subject to the rules of evidence, an advocate or other support person of the victim's choice.
10. The right to restitution.

The State's Attorney or his/her representative should consider the views expressed by the victim's family in making the decision to seek or not seek the death penalty. The family should be advised that the decision regarding what penalty to seek is the State's Attorney's and although the family's views are important, their views are only one factor in making the decision. See **People v. Mack**, 105 Ill.2d 103, 473 N.E.2d 880, 85 Ill.Dec.281 (1985).

DEFENSE COUNSEL INPUT AND MITIGATION

Prior to announcing a decision to seek death, the State's Attorney should provide defense counsel with an opportunity to present matters in writing and/or in person, which might affect the decision to seek or not seek death. This communication should not be used to negotiate a disposition, but give defense counsel a fair opportunity to present valid reasons why the death penalty should not be sought in his/her client's case. It is important that the offer to the defense be an open offer and that the State's Attorney be willing to review information presented by the defense at any reasonable time.

In addition to information provided by the defense, the State's Attorney should carefully assess all potential mitigating factors; both statutory and non-statutory, and evaluate them in light of the nature of the offense.

The investigation of the defendant's background should include a review of any and all information concerning the defendant. The defendant's prior criminal record, including police reports and jail records, should be evaluated and witnesses interviewed. All other available information relevant to the defendant's life history and character should be considered.

FACTORS THAT SHOULD NOT BE CONSIDERED

The basis of a State's Attorney's decision to charge and to seek the death penalty must be grounded upon the strength of the case, the background and character of the accused and other relevant factors..

a. The race, ethnicity, religion, sex, social or economic standing of the defendant or the victim should play **no** role in the prosecutor's decision.

b. The wealth of the defendant or the quality of his/her representation should not be factors in the decision.

c. The prosecutor should not seek a death sentence solely because the defendant refuses to plead guilty. The U.S. Supreme Court has held that the conscious exercise of some selectivity in enforcement is not in itself a Federal constitutional violation absent a showing that the selection (offer) is based on an unjustifiable standard such as race, religion or other arbitrary classification. See **Oyler v. Boles**, 368 U.S. 448, 72 Ed.2d 446 (1962). A plea of guilty entered by the defendant to avoid a possible death sentence is not compelled within the meaning of the Fifth Amendment. **North Carolina v. Alford**, 400 U.S. 25, 27 L.Ed.2d 162, 167 (1970). The record must clearly establish that "the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." **Alford**, 27 L.Ed. 2d at 168. It is critical to protecting the integrity of judgments that Supreme Court rules governing guilty pleas are followed. If a plea offer is communicated and rejected, it is important to make a record. In many cases, the defendant who receives the death sentence will later claim ineffective assistance of counsel. The objective of making a complete record is to avoid providing the defendant with grounds in support of post-conviction proceedings. For a particularly compelling example of why a clear record is essential read **People v. Montgomery**, 192 Ill.2d 642, 736 NE 2d 1025, 249 Ill.Dec. 587 (2000).

State's Attorneys must always be mindful of the impact the prosecutor's decisions will have on the administration of justice and respect for the rule of law in this State.

TIMING OF THE DECISION AND NOTICE

The purpose of providing notice to the defense is to allow for meaningful preparation and representation of the defendant by counsel in good standing with the Capital Litigation Trial Bar pursuant to Supreme Court Rule 714. Illinois Supreme Court Rule 416(c) requires:

> "The State's Attorney or Attorney General shall provide notice of the State's intention to seek or reject imposition

> of the death penalty by filing Notice of Intent to Seek or Decline Death Penalty as soon as practicable. In no event shall the filing of said notice be later than 120 days after arraignment, unless for good cause shown, the Court directs otherwise. The Notice of Intent to seek imposition of the death penalty shall also include all of the statutory aggravating factors enumerated in section 9-1(b) of the Criminal Code of 1961 (720 ILCS 5/9-1(b) which the State intends to introduce during the death penalty sentencing hearing."

In cases where the State's Attorney has decided early on to seek the death penalty, it is prudent to inform defense counsel informally of the decision and complete all follow up investigation before formally filing timely notice pursuant to Rule 416. There is always the possibility that new information may develop which causes the State's Attorney to change the decision that "death is the appropriate sentence." The State's Attorney should not lead defense counsel to believe that the death penalty will not be sought unless that actually reflects a formal decision. State's Attorneys should be aware of the possibility of de-certification of a capital case by the trial court following conviction. Under 720 ILCS 5/9-1(h-5), the trial court, on its own motion or on written motion of the defendant, may decertify the case as a death penalty case if the court finds that the only evidence supporting the defendant's conviction is the uncorroborated testimony of an informant witness concerning the confession or admission of the defendant or that the sole evidence against the defendant is a single eyewitness or single accomplice without any other corroborating evidence.

CONCLUSION

The fair and impartial administration of Capital Punishment in this State depends largely on the decisions of the State's Attorneys and the Illinois Attorney General. In those few cases in which the death penalty is successfully sought and actually imposed the citizens of Illinois must, at all times, be assured that the process was fair and that the conclusion was just.

Sample Capital Litigation Fact Sheet

CAPITAL LITIGATION COMMITTEE
MEMORANDUM

PEOPLE V. JOHN DOE, No.

Defendant:
Name
D.O.B.
Race (for statistical purposes only)
Custodial Status/Bond Amount
Previous Address

Victim:
Name
D.O.B.
D.O.D.
Race (for statistical purposes only)
Previous Address

Charges:

Indictment Date:

Summary of Facts: **(Including known motive)**

Eligibility Factors:

Social History:

Criminal History:

Co-Defendant(s):
Name
D.O.B.
Case Number

Victim Contacts:

Victim Input: **Attitude toward death penalty, etc.**

Defendant's Attorney:
Name
Address
Phone
Capital Litigation Certification?

Mitigation: **Statutory and Non-Statutory**
Aggravation: **Non-Statutory other than criminal history**

MINUTES OF THE MEETING OF THE TRIAL PROCEEDINGS SUBCOMMITTEE #3 OF THE CAPITAL PUNISHMENT REFORM STUDY COMMITTEE (CPRSC)

June 19, 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: Jeff Howard, Randy Stone and Peter Baroni (in person); Boyd Ingemunson and Ed Parkinson (via teleconference).

The meeting was called to order at 3:30 p.m.

The minutes of the meeting on May 10, 2006 were approved as submitted.

Discussion Topic #1: Survey Instrument

Jeff Howard led a discussion regarding information gathering on subject matter within the purview of the Subcommittee. Mr. Howard outlined the meeting of the subcommittee co-chairs and the recommendation at that meeting that a survey instrument should be created in concert with all subcommittees of the CPRSC. He then discussed the specific suggestions for Subcommittee #3. There was consensus among the members of the subcommittee as to the following: (1) each member of the subcommittee would be assigned a subject within the jurisdiction of the subcommittee; (2) each member would develop a list of questions he would like answers to based on the assigned subject matter; (3) each member would determine the appropriate audience for the questions developed; and (4) each member of the subcommittee would determine how frequently he would like the questions asked via survey. The subject matter jurisdiction of the Subcommittee was assigned to members as follows (based on the jurisdiction set forth in the minutes for the May 10, 2006 Subcommittee #3 meeting):

Jeff Howard:

7. Trial court proceedings to determine mental retardation. 725 ILCS 5/114-15;

12. Assignment of qualified prosecution and defense counsel from capital litigation bar. Sup. Ct. R. 416(d);

14. Case management conferences to ensure competence of counsel and disclosure requirements in capital cases. Sup. Ct. R. 416(f); and

15. Respective certifications of readiness by prosecution and defense counsel before trial in capital cases. Sup. Ct. R. 416(g) and (h).

APPENDIX 6

Boyd Ingemunson:

2. Murder statute: new mitigating factor for mental/physical abuse and diminished mental capacity. 720 ILCS 5/9-1(c)(6) & (7);

4. Murder statute: judicial decision to non-concur with a jury verdict of death. 720 ILCS 9-1(g);

5. Murder statute: trial court decertification of capital case. 720 ILCS 9-1(h-5)(P.A. 93-605, Sec. 10);

9. Use of the Capital Litigation Trust Fund at trial. 730 ILCS 5/5-4-3

Ed Parkinson:

3. Murder statute: new standard for imposing death – is death appropriate (changes from mitigation sufficient to preclude death). 720 ILCS 9-1(g) -- Illinois Pattern Jury Instructions Committee drafting instruction reflecting this change;

6. Mandatory taped interrogations in homicide cases use at trial. 725 ILCS 5/103-2.1;

8. Informant testimony (snitch) pre-trial hearing on reliability. 725 ILCS 5/115-21; and

11. Notice requirements on seeking the death penalty and notice practice followed by prosecutors. Sup. Ct. R. 416(c).

Randy Stone:

1. Murder statute: redefinition of witness murder aggravating factor. 720 ILCS 5/9-1(b)(8);

10. Specific description and disclosure of Brady material by the prosecution. Sup. Ct. R. 412(c);

13. Discovery depositions in capital cases. Sup. Ct. R. 416(e); and

16. Jury Voir Dire and Instructions

It was further agreed that Jury Instructions and Voir Dire would be within the scope of Subcommittee #3 and that Prof. Stone would conceive of questions for that subject area. Mr. Howard also explained the process that the co-chairs would take in finding a social scientist to assist the CPRSC in creating a survey. The Subcommittee chose July 7, 2006 as the date questions should be submitted to Mr. Baroni for compilation. Mr. Baroni was also asked to email a list of Chip Coldren's questions, created for Subcommittee #1. to all Subcommittee #3 members to review in compiling their list of questions.

Discussion Topic #2: Common Law Records in Capital Cases

The Subcommittee next discussed obtaining the common law records for all capital cases. Mr. Howard outlined the import of obtaining common law records for determining the jury instructions given in a particular case, as well as how jury selection was conducted. Mr. Baroni was asked to order the entire common law record for all capital cases that have gone to verdict.

The next Subcommittee meeting was set for July 10, 2006 at 1:00 p.m. at the Criminal Justice Information Authority in Chicago.

The Subcommittee adjourned at 4:15 p.m.

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

June 19, 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: Ted Gottfried, Rick Schwind, Kathy Saltmarsh (Gottfried's staff), Leigh Bienen and Peter Baroni. Guest of the Subcommittee: Dr. Jan L. Johnson, Director of the Illinois State Police Forensic Center in Chicago.

The meeting was called to order at 12:00 p.m. The minutes of the previous meeting on 5/11/06 were approved.

Discussion Topic #1: Illinois State Police Forensic Center and its Director

Rick Schwind introduced Dr. Jan L. Johnson, Director of the Illinois State Police Forensic Center in Chicago. Dr. Johnson discussed a variety of topics with the Subcommittee relating to the Chicago Lab she directs. The first issue dealt with accreditation of the Chicago lab, State Police labs and other labs, generally. An association of forensic labs from across the country has established an accreditation body called ASCLAD. ASCLAD has created another affiliated accreditation body called ISO-ASCLAD. The accreditation process is on going for both bodies, with periodic audits, inspections testing and surveillance assessments. The costs of accreditation vary based on the size of the lab. The fees paid by the Chicago lab are $25,000 per year for ASCLAD accreditation and an additional $80,000 every five years for the ACSLAD Legacy Program (an advance form of ASCLAD accreditation).

The testing done by ASCLAD is available upon subpoena in criminal cases.

The next topic Ms. Johnson discussed with the subcommittee related to training conducted by her lab. The Lab conducts trainings for forensic scientists on testifying in court, including mock trials. Additionally, the lab has in-court monitors and requests all parties to a criminal case involving the testimony of a forensic scientist to fill out rating cards on the performance of the particular scientist. The Lab also conducts follow-up interviews with the same parties.

Ms. Johnson next addressed the issue of DNA testing by the State Police. She indicated that, as far as testing DNA, priorities evolve. There are two types of testing: (1) CODIS testing of convicted felons and (2) casework testing of DNA evidence from crime scenes. The import of testing felons is to get the offender profile into the CODIS database as soon as possible (with a priority on those about to be released from prison) in order to get access to a "hit" or "match" with an open case in the CODIS database, if one exists. The priority in casework testing is cases that are active and proceeding through the judicial system, before testing evidence from a "cold case." Ms. Johnson indicated that the decision as far as how to allocate limited resources can be difficult.

The subcommittee suggested, after Ms. Johnson finished her discussion, that the full committee may benefit from her testimony in the future.

Discussion Topic #2: Subcommittee questions for survey based on its jurisdiction

Mr. Gottfried led a brief discussion regarding potential survey questions the Subcommittee may wish to include in a survey instrument to be disseminated to judges and practitioners. The survey would be done in concert with the other CPRSC subcommittees. He reported that Kathy Saltmarsh from the OSAD office was working on a revised list of questions based on the Subcommittee's jurisdiction. Mr. Gottfried also suggested that the members of the Subcommittee should draft their own questions to be incorporated into the document. Finally, he said that Ms. Saltmarsh would work with Mr. Baroni to finalize the list of questions and email to the members of the Subcommittee for review and revision.

The next subcommittee meeting was not set because two Subcommittee members were missing. Mr. Baroni was instructed to contact Subcommittee members and set a mutually agreeable time and place for the next meeting.

The Subcommittee adjourned at 1:05 p.m.