

Capital Punishment Reform Study Committee
Minutes of Subcommittee No. 4 meeting

May 22, 2007

Subcommittee 4 met at Representative Art Turner's legislative office in the State Capitol from 1 to 2:35 P.M. Attending were Theodore A. Gottfried, Gerald E. Nora, James B. Durkin and Arthur Turner. Also attending were Peter G. Baroni, Special Counsel, Katherine Saltmarsh, Ted Gottfried's staff, and Brian Mackey, Chicago Daily Law Bulletin, via teleconference. The subcommittee's guests were Col. Jack Garcia, Lt. Col. Scott Giles and Donna Metzger of the Illinois State Police Forensic Services Division.

The minutes of the April 19, 2007 meeting were approved unanimously.

1. Interview of Illinois State Police Forensic Services Personnel.

The subcommittee met with Col. Jack Garcia, Lt. Col. Scott Giles and Donna Metzger of the Illinois State Police (ISP) Forensic Services Division.

a. Miscellaneous forensic lab issues.

Mr. Gottfried began the discussion by expressing his concern, as a criminal defense attorney, with the current lab system run by law enforcement rather than an independent administrative agency. Mr. Garcia

responded that his lab is not a tool of the prosecution, but a scientific body interested in accurate testing based on objective analysis done in a timely manner. Ms. Metzger also pointed out that the lab requires ethics training for all forensic scientists and that the lab is an independent truth seeker governed by scientific evidence not the prosecution.

She also pointed out that all labs make mistakes; the critical issue is to have quality assurance programs in place to prevent errors to the greatest extent possible and learn from mistakes. The ISP has ongoing quality assurance programs governing scientific work and the in-court testimony of their forensic scientists. All parties involved in the criminal justice system are allowed to critique in court testimony, allowing the lab to insure unbiased, objective testimony is provided by ISP scientists. The guiding principles of the ISP Forensic Services Division are: (1) accuracy; (2) completeness and (3) timeliness.

Ms. Metzger informed the subcommittee that the ISP applies for and gets millions of dollars in federal grants to assist in the sampling and profiling of DNA evidence. She agreed to provide the subcommittee with a list of those grants and amounts.

Ms. Metzger also told the subcommittee that the ISP labs are accredited by the International Standardizing Organization (ISO) in addition

to their accreditation by the American Society of Crime Laboratory Directors (ASCLAD). The ISP obtained this additional accreditation from ISO in order to bolster the credibility of the lab. She said ISO's accreditation procedures are more rigorous, requiring accreditation every two years, instead of every five years as mandated by ASCLAD. Finally, Ms. Metzger said ACSLAD will discontinue accrediting forensic labs within the next two years, so ISO will be the only accreditation body in the country.

Mr. Garcia and Ms. Metzger described the current status of open forensic scientist positions in the forensic services division of ISP. First, ISP has difficulty retaining highly trained forensic scientists because after they go through painstaking ISP training for a year, in order to be a fully qualified ISP forensic scientist, many depart for more money in the private sector. The ISP has created a loan forgiveness program, in an effort to stop the brain drain, that requires a commitment of multiple years of service. Additionally, all new positions at ISP must be approved by the Governor's office. That process can take time depending on the candidate and other external factors.

b. DNA sampling, testing and backlog.

Mr. Garcia explained the two types of DNA sampling or profiling ISP forensic services performs: (1) convicted felon DNA profiling for the Combined DNA Index System (CODIS) database and (2) case evidence

DNA profiling. According to Mr. Garcia, the first type of sampling -- convicted felons for the CODIS database -- has no backlog. It is the easiest sampling and only requires five to six forensic scientists at ISP to keep pace with the work load. The second type of DNA sampling, case work evidence, is more labor intensive and requires 60-70 ISP forensic scientists doing case work DNA sampling and profiling. This second type of DNA sampling has a backlog of approximately 629 active cases as of May 22, 2007. The ISP considers any case that takes more than 30 days from the date of receipt part of the "backlog."

Ms. Metzger said this sampling work is outsourced to accredited labs because it is more voluminous and takes more time. If case work DNA sampling was not outsourced, the backlog would be double or triple the current size. The CODIS sampling work is not outsourced because it is far less complex and requires limited ISP resources and personnel to keep up with the work load. Given the limited costs involved in CODIS sampling, it makes no sense to outsource the work. ISP would prefer to do all DNA sampling within the forensic services division at ISP, but based on the evidence sampling case load, in order to keep up, that sampling must be outsourced. Of the 629 active cases within the ISP backlog, 300 cases are outsourced to approved, accredited private labs.

Additionally, Ms. Metzger said ISP has cut down on outsourcing and no longer out sources on a monthly basis. The outsourcing currently done is precipitated by a contract requiring the outside vendor to travel to Illinois and testify in criminal cases in the DNA testing is contested or at issue. However, from the inception of the ISP's program to outsource DNA sampling, a total of only 10 to 15 criminal cases have required the testimony of an outside private lab vendor at trial. The ISP does not outsource high profile cases, "lives cases" in the system (filed and on a court call) or "rush" cases. Rush cases are cases where the prosecuting authority requests the ISP conduct the sampling/profiling on an expedited basis. Rush cases are completed by the ISP forensic lab within three days. The ISP only out sources cases with no suspects and simple cases or low level felony and misdemeanors cases.

According to Ms. Metzger, Illinois has one of the lowest DNA sampling backlogs in the country. She hopes that in the near future the lab will eliminate its backlog and not have to outsource any DNA sampling work. Finally, both Mr. Garcia and Ms. Metzger agreed to cooperate with the Capital Punishment Reform Study Committee in the future.

2. *Possible misuse of the Capital Litigation Trust Fund.*

The subcommittee discussed the perception among some people across the State that the Fund is misused by smaller counties to pay for the defense costs in first degree murder cases. The subcommittee acknowledged that there is only anecdotal information at this point, but the appearance of a conflict exists. That conflict is that the Fund creates a monetary incentive for a county prosecutor to seek death in a first degree murder case because a capital prosecution will trigger the State funding of the defense in an expensive first degree murder case that would otherwise be paid by the county.

The subcommittee decided to invite Edwin R. Parkinson of the State's Attorney's Appellate Prosecutor's Office to a future subcommittee meeting to discuss the issue and seek his help out in determining how to obtain objective evidence, if it exists, of the practice of misuse of the Fund.

3. *Next meeting – June 18, 2007, 1 P.M.*

It was agreed that the next subcommittee meeting will be held on Monday, June 18, 2007 at 1 P.M. at the Illinois Criminal Justice Information Authority, Chicago, Illinois.

Peter G. Baroni
Special Counsel
June 7, 2007