

TO: Capital Punishment Reform Study Committee Members

FROM: Leigh B. Bienen, Chairman of the Subcommittee

DATE: September 28, 2005

RE: MINUTES – Subcommittee Meeting held September 26, 2005

On September 26, 2005 at 1:00 pm the Subcommittee on Eligibility for Capital Punishment, Proportionality Review, and DNA (Subcommittee No. 2) met at the **Illinois Criminal Justice Information Authority**, 120 South Riverside Plaza, Suite 1016.

The meeting was called to order at 1:00 pm at the ICIJA offices. All notices required under the Illinois Public Meetings Act had been posted. Members of the Subcommittee present were Leigh Bienen, Tom Sullivan, and Mike Waller on the speaker phone. Senator Dillard was not present. Guest speaker present Stephen Richards, Deputy Defender Death Penalty Trial Assistance Division, Office of the State Appellate Defender. On the speaker phone were committee members Gerald Nora and Boyd Ingemunson. Also present was committee member Richard Schwind. Also present for some or all of this meeting were Paul Froehlich, State Representative from the 56th District, Schaumburg, Patrick McAnany from the Illinois Coalition Against the Death Penalty and Derek Persico from the Illinois House of Representatives, Tom Cross's office. Towards the end of the meeting members of the full committee joined the subcommittee meeting.

Members of the subcommittee and the whole committee had received copies of the proposed data collection instrument for the Death Penalty Proportionality Review Study, distributed by the subcommittee chair and dated September 2005. That document will be publicly available with other documents submitted. The subcommittee had been sent a Memorandum of Law prepared by Jude J. Geiger, summer associate at Jenner and Block, for Tom Sullivan. This memo contained background research on the Illinois Statutory Aggravating factors, addressing each one in detail, and other relevant decisional and statutory law, both before the United States Supreme Court and before the Illinois Supreme Court. This Memorandum of Law has been made available to the full committee and is available with other documents made available to the public. The Memorandum was focused on the issue of whether or not the statutory aggravating factors sufficiently narrowed the class of death eligible cases in order to pass constitutional muster and what factual information would be needed to establish that fact.

Discussion ensued over what was the suitable universe of cases on which basic data should be collected and how much detail was needed on cases which were not death eligible or not prosecuted as capital cases. The question of the purpose of the collection of data was aired. Generally the purpose is to establish a reliable factual record for what homicides in Illinois are eligible for capital prosecution and what homicides are actually

declared to be capital cases. Concern was expressed over the fact that even though data is being collected from January 1, 2003, forward from Governor Ryan's commutation of all then existing death sentences, many of the cases are still pending. Gerald Nora pointed out that he had reviewed cases in his office which had gone to the Grand Jury, and only a proportion of all murders were designated as capital cases. Richard Schwind noted that the capital case he is involved with, *People v. Sullivan*, is now pending before the Illinois Supreme Court and the oral argument in that case can be heard over the internet at www.illinoischannel.org.

Tom Sullivan noted that information on the facts of a case were necessary to make an accurate determination as to whether there was a factual basis for one of the 21 statutory aggravating factors. Further discussion ensued as to what facts were needed and whether or not the result in the case was needed, and how these facts could be obtained. Richard Schwind and Mike Waller noted that the States Attorneys Association had considered the protocols for eligibility for capital punishment, and that it was expected that those protocols would be finalized and made public in December.

Stephen L. Richards, State Appellate Defender, Death Penalty Trial Assistance Division, and the invited guest of the Subcommittee came and distributed Memorandum and other background materials relevant to the Subcommittee's proposed data collection effort for the analysis of proportionality in the application of the death penalty. The Memorandum was faxed to Gerald Nora, and all of the background materials will be made publicly available. Mr. Richards suggested that the Subcommittee ask the legislature for subpoena power so that it could demand information, such as that in police reports and other documents not available to the public, from the police and prosecutors. Gerald Nora, Mike Waller, and Leigh Bienen expressed the view that in their opinion such a move, and whether or not subpoena power was needed, was premature. The consideration of whether the Subcommittee has sufficient authority to obtain the needed information for a reliable analysis of the application of the death penalty may be addressed at a later time.

The Subcommittee thanked Mr. Richards for the material and for the expression of his views, which will be taken into consideration.

Tom Sullivan summarized the discussion. The Subcommittee set its next meeting for 2 pm on October 5th at Tom Sullivan's office at Jenner and Block, IBM Building, 333 North Wabash, 40th Floor.

The meeting of the Subcommittee was adjourned, and the full committee meeting began.