

Capital Punishment Reform Study Committee
Corrected Minutes of joint meeting of Subcommittees 1 (Police and
Investigations) and 4 (Post-conviction proceedings)

September 17, 2007
Illinois Criminal Justice Information Authority Office
2-4 pm

Subcommittees 1 and 4 met to hear from experts on training matters on September 17, 2004, from 2-4 pm at the offices of the Illinois Criminal Justice Information Authority. Attending were James R. “Chip” Coldren, Jr., Theodore Gottfried, Tom Sullivan, Richard D. Schwind, Jeff Howard, Leigh Bienen, and Jerry Nora. Invited presenters included Bernard Murray (Cook County State’s Attorney’s Office), Dan Nelson (Illinois Law Enforcement Training and Standards Board), Paul Taylor (Administrative Office of the Illinois Courts), Crystal Marchigiani (Cook County Public Defender’s Office), and Ellen Mandeltort (Illinois Attorney General’s Office).

Chip Coldren welcomed the invited presenters and reviewed the purpose of this joint subcommittee meeting – to learn about training developed and implemented in reaction to legislative reforms regarding the death penalty in Illinois, some of which explicitly required new training, the scope of the training and topics covered, number of training sessions held and number of individuals trained, geographic areas of the state covered by training, obstacles encountered in

the course of conducting training, and future directions and recommendations regarding training on death penalty matters in Illinois.

Mr. Murray of the Cook County State's Attorney's Office (CCSAO) began the testimony, explaining that the CCSAO developed the first accredited CLE on death penalty matters in Illinois, a 2-day training session; this session was reviewed and approved by Judge Toomin of the Capital Litigation Trial Bar Capital Case Committee. The CCSAO training program is lecture and trial advocacy based. It was offered twice, once in August 2005 in Oakbrook, IL (approximately 225 trainees) and again in June 2007 (approx. 180 trainees). The CCSAO offered a 12-hour training session in Springfield (date unknown), which was well attended. In addition, the State Appellate Prosecutor's Office offers a 4-day trial education class pertaining to death penalty cases, as well as trial education class for 3rd chairs. Mr. Murray explained the formal evaluations of these training sessions have not been conducted (though the CCSAO plans to do so in the future), noting again that the training undergoes judicial review and review by Paul Taylor of the Administrative Office of the Illinois Courts. Regarding training difficulties, Mr. Murray explained that it is difficult to get prosecutors out of the courtroom for two days in a row, and that it is also difficult to find reasonably priced, well equipped large lecture halls for training purposes. Mr. Murray explained the CCSAO intends to continue refining their training courses in the future so they

remain relevant. Regarding improvements needed, Mr. Murray suggested that a dedicated training facility with up-to-date courtroom technology would be helpful. He also suggested that the state might agree on a 2-day court holiday each year, to allow for in-service training across the state when attorneys do not have to be in courtrooms. Finally, he said, ethics training is a priority. The CCSAO has developed a 4-hour, 110 page ethics seminar that he can share with the Committee, and most training sessions include a 1-hour component on ethical issues. The inclusion of ethics materials in training sessions has increased in recent years, he explained. In response to a request for data regarding training sessions, and copies of training materials, Mr. Murray offered that Mr. Randy Roberts in his office can help compile and provide this information for the Committee.

Mr. Gottfried asked about the extent to which scientific material is included in the CCSAO training sessions. Mr. Murray replied that, yes, scientific material regarding DNA evidence and other technical matters are included in the training materials, and that there is a particular focus on psychiatry.

Mr. Schwind asked if there is a DNA specialist on the CCSAO staff who contributes to training sessions and materials. Mr. Murray replied that Ms. Kara Seffenson, a DNA specialist on staff at the CCSAO, has contributed DNA materials and that she participates as an instructor in many of the CCSAO training sessions.

Mr. Sullivan asked if Mr. Murray has noticed any reactions by prosecutors to recorded interrogations in homicide cases. Mr. Murray noted that in some cases (he mentioned Chicago Police Department recordings specifically) background noise (e.g., noise from ceiling ducts and vents) can pose a problem; in some cases detectives or suspects mumble and the recording is not clear. He also noted that editing the CPD interrogation files requires different software (Sanction 2) which requires a different license that costs about \$500.

Mr. Sullivan asked if Mr. Murray was aware of any cases or confessions that had been lost due to problems with recording of interrogations. Mr. Murray responded that 3 or 4 confessions had been lost due to technical problems with recording of interrogations (the evidence was suppressed in court); there have been imperfect Miranda warnings (no clear answer by the suspect), and he noted that some of these issues are a matter of police training. Mr. Sullivan also asked if there have been many refusals by suspects to record interrogations, and Mr. Murray said there have been a few such refusals. Mr. Murray also noted that in one case, after a suspect was Mirandized and the detective had left the interrogation room, the suspect called someone from her cell phone and implicated herself in the murder, which was recorded on tape. In another instance, a suspect injured himself while in the interrogation room to make it appear as if he had been beaten up.

In response to a question about training costs, Mr. Murray noted that much of the training is subsidized by the Capital Litigation Trust Fund (CLTF), which covers facility costs, equipment costs, and audio visual costs). He noted that the CCSAO incurs costs for equipment needed for presentation of taped interrogations in court, and he also noted that CPD uses a ‘cutting edge’ version of .mpeg files for storing recorded interrogations, thus requiring that the CCSAO purchase comparable equipment that can read the CPD file format.

Ms. Ellen Mandeltort of the Illinois Attorney General’s Office (AGO) offered testimony. She explained how the AGO and the Illinois Law Enforcement Training and Standards Board (ILETSB) convened a working group of law enforcement and prosecutors from across the state to brainstorm about the training that would be required to implement the new law mandating recording of interrogations in homicide cases. They conducted a survey of police and prosecutors to aid in this task (a copy of the survey was provided, and the Committee requested a summary of the survey results). Ms. Mandeltort noted that the response to the survey was very high in comparison to other such surveys conducted, indicating broad interest and concern regarding the new law. She explained that the working group’s orientation to the training moved from a “how to interrogate” orientation to a “how to implement the law” orientation, based on the feedback received. Some adaptation to the new technology would be required,

since, with the camera in place, the detectives would no longer be “alone in the room;” many individuals (prosecutors, defense counsel, judges, and juries) would see how the detective conducted the interrogation. Ms. Mandeltort referred the Committee to the training materials she provided earlier (attached), and noted that the working group decided to use “local talent” (Illinois State Police trainers with experience in homicide interrogations) as trainers, rather than rely on out-of-state trainers who operated under different legal mandates. She explained that a ‘train the trainers’ session was held on October 1 (2004) in Des Plaines, followed by another train the trainer session on October 6. On October 20th, a video satellite training session was held with about 650 trainees from across the state, using Dan Roach and Keith Frederick from ISP as trainers. Ms. Mandeltort noted that ISP (based on a grant from ICJIA) distributed \$850,000 in recording equipment across the state (she thought there had been a follow-up \$450,000 grant program, but was not sure). The equipment was distributed by county (sheriff’s departments). She believes the training was successful, but it was not formally evaluated. A major aim of the training, she explained, was to provide an informative resource for prosecutors and police, not to be prescriptive, and to encourage police and prosecutors to work closely together on local implementation issues.

Many things have to be considered in implementation, she explained, such as: recording rooms (soundproofing, visible clocks to corroborate video time

stamps, dry erase boards in the rooms), audio recording (since the mandate is for electronic, not video, recording), consent issues, whether recording will be used for non-homicide cases, will the camera be covert?, camera location and angle, microphone location, continuous taping (if not continuous, then detectives must summarize on tape what happened during gaps in recording), evidence storage, paying for transcripts, and what to do with inadmissible portions that are recorded.

Ms. Mandeltort corroborated the statement by Mr. Murray that there have been several instances in which video cameras have recorded incriminating evidence after officers have left interrogation rooms. She also offered that, as others have found, some police officers initially had reservations about recorded interrogations, but they typically came to realize the benefits of recording, and now the law enforcement community views recording interrogations as a good policy.

Mr. Nora asked if Ms. Mandeltort thought that standards for recording equipment should be developed. Ms. Mandeltort responded that, while they might be helpful, they must take into account the wide discrepancy across the state in resources available for recording interrogations.

Ms. Mandeltort noted that there is a learning curve for police officers that conduct recorded interrogations. She also explained that, for the equipment provided by ICJIA, each use of the equipment was supposed to be documented, so ICJIA might have some interesting information regarding use of recording

equipment in the field. She ended her testimony by noting that in November 2004 there were 40 newly elected State's Attorneys in Illinois; they received a special training session, which included about 102 participants.

Mr. Nelson noted that the training materials referred to by Ms. Mandeltort were converted to DVD format and sent to approximately 1,200 police officers across the state; he also noted that approximately 1,000 police officers had received training in recording of interrogations, covering about 1,200 police departments in Illinois. He explained that, since the initial training was offered, several police training organizations in Illinois have inserted training modules regarding recording of interrogations, including the Cook County Sheriff, the Suburban Police Academy in DuPage County, the Police Training Institute in Champaign, the Southwest Academy in Bellville, and the CPD Training Academy. The Illinois mobile training units have provided interrogation training to approximately 1,844 police officers. Mr. Nelson explained that while delivery of this training is mandatory, attendance is not; thus, some departments do not participate in the training, sometimes due to human resource and budgetary constraints. Regarding the possibility of developing standards for recording equipment, Mr. Nelson suggested that recommendations be developed, not uniform standards.

Paul Taylor began his testimony by referring to Supreme Court Rule 43, which governs training required for judges presiding over capital cases; he explained that the training developed under Rule 43 is developed by the Administrative Office of the Illinois Courts (AOIC) Judicial Education Unit and Judicial Education Committee (chaired by Judge Toomin). Members of the Capital Litigation Trial Bar (CLTB) are required to receive training in capital cases once every two years. In order to apply to be qualified to hear capital cases, applicants to CLTB must attend one 12-hour course in the year prior to applying (Rule 714-b). After their initial training, these individuals must receive training in capital cases every two years thereafter. Currently there are about 750 trained members of CLTB, and keeping track of them is a logistical nightmare. The AOIC Capital Case Committee reviews and approves all course outlines and the CVs of trainers. All courses must be 12 hours in length, and they must contain 2 hours of science-related material. Training in approved courses is offered across the state of Illinois, and training providers must be certified each year; the major training providers include the Appellate Prosecutors Office, the Office of the State Appellate Defender, the Cook County Public Defenders Office, and the Cook County States Attorneys Office. Proof of attendance at AOIC training sessions is provided when members send copies of their training certificates to AOIC. AOIC sends notices out to CLTB members 3 times per year, reminding them of the need

to attend training sessions. If a CLTB member misses a required training session, he or she is placed on inactive status, and one chance is provided to be reinstated. In response to a question from Mr. Schwind about whether there is a backlog of individuals requesting to become CLTB certified, Mr. Taylor explained that it depends on the review committee – some review committees respond quickly and others (especially those staffed with full-time attorneys and prosecutors) take a bit of time to review applicants; some do fall through the cracks. Currently, he said, there are about 180 active applications pending.

Ms. Marchigiani and Jeff Howard presented training information for the Cook County Public Defender's Office (CCPDO). Ms. Marchigiani explained that, since the enactment of capital punishment reforms (for the past 4 years) the focus of training provided by the CCPDO is to “support lawyers trying to save client's lives.” CCPDO put on a death penalty workshop in September 2003 (lecture and trial advocacy style), dealing primarily with mitigation evidence. In November 2003, they put on a training for new lead counsels (lecture and panel style), dealing with new rules governing capital cases and how to conduct a sentencing hearing. There was a September 2004 training session on capital case rules, followed by a seminar on Voir Dire. In February 2005 the CCPDO put on a lecture-style training on death cases for new public defenders. In the summer of 2006 the put on a training on mitigation issues for leaders and 2nd chairs, including

ethics training (7 hours geared toward professionalism). Another training session was offered for non grade 4 public defenders. Almost all of this training was provided by in-house trainers, with the involvement of psychiatrist, crime lab experts, and other experts. These training sessions have been evaluated and they receive uniformly high ratings. Outside of Cook County, training similar to that offered by CCPDO is provided by the Appellate Defender's Office. IICLE and DePaul University provide some training sessions in Cook County and downstate.

James R. Coldren Jr.
Theodore A. Gottfried