

**CAPITAL PUNISHMENT REFORM STUDY
COMMITTEE
PUBLIC HEARING, FEBRUARY 26, 2007
JAMES R. THOMPSON CENTER, CHICAGO, IL**

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Committee Members Present

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

Richard D. Schwind, Vice Chair

Randolph N. Stone

Thomas P. Sullivan, Chair

Peter G. Baroni, Special Counsel

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ILLINOIS CAPITAL PUNISHMENT REFORM
STUDY COMMITTEE

HEARING HELD ON FEBRUARY 26, 2007
10:00 A.M
THOMPSON CENTER
100 WEST RANDOLPH STREET, AUDITORIUM
CHICAGO, ILLINOIS

IllinoisCapitalPunishmentReformMtg022607[2]

1 Present:

2 COMMITTEE MEMBERS

3 Thomas P. Sullivan, Chair
4 Richard D. Schwinn, Vice-Chair
5 James B. Durkin
6 Leigh B. Bienen
7 Theodore A. Gottfried
8 Randolph Stone
9 Boyd J. Ingemunson
10 James R. Coldren
11 Jeffrey M. Howard
12 Edwin Parkinson

13

14 LEINENWEBER & BARONI, LLC
15 BY: MR. PETER G. BARONI
16 321 South Plymouth Court, Suite 1515
17 Chicago, Illinois 60604
18 Appeared as General Special Counsel.

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1 MR. SULLIVAN: Good morning. My name is

2 Tom Sullivan. I am the Chairperson of the

Page 2

3 Capital Punishment Reform Study Committee which
4 was formed by an Act of the Illinois General
5 Assembly several years ago. The statute that
6 created the Committee provides the Committee
7 shall hold the hearings on a periodic basis to
8 receive testimony from the public regarding the
9 manner in which reforms have impacted the
10 capital punishment system, and that's the
11 purpose of this hearing today.

12 We had a previous hearing in
13 Springfield on November 13th which we heard a
14 number of witnesses which brought us some very
15 fine information, and we very much look forward
16 to hearing from the witnesses who are going to
17 testify or give us statements today.

18 To start with I would like to
19 introduce the members of the committee.
20 Starting down on my right is Jim Durkin. You're
21 a Representative, Jim?

22 MR. DURKIN: Yes.

23 MR. SULLIVAN: Kirk, you are --

24 MR. DILLARD: A Senator.

□

1 MR. SULLIVAN: So we generally collect
2 both with needs to Mr. Dillard and one with Jim.
3 Professor Leigh Bienen, Northwestern Law School.
4 Todd Gottfried, who is the Illinois Appellate

IllinoisCapitalPunishmentReformMtg022607[2]
5 Defender. Rick Schwinn is with the Illinois
6 Attorney General's Office, the coach here, and
7 over on the left is Jeff Howard with the Cook
8 County Public Defender.

9 MR. HOWARD: Law Office of the Cook
10 County Public Defender.

11 MR. SULLIVAN: And Dr. James Coldren
12 from Governor's State University is a practicing
13 lawyer. Boyd Ingemunson is a practicing lawyer.
14 Randy Stone from the University of Chicago and
15 Pete Baroni, who is our General Special
16 Counsel.

17 I have before me the slips naming
18 the people who are going to testify, and there
19 are a number of them. I wonder is there anyone
20 here who signed the slip that has a time
21 problem? That is, the order is arbitrary, and
22 if there is anyone here who has a need to leave
23 before the others testify, would you please let
24 me know right now.

□

5

1 Steve, you would like to go right
2 away?

3 UNIDENTIFIED SPEAKER: Yes, sir.

4 MR. SULLIVAN: Anyone else? Yes.

5 MR. TILLAS: Darby Tillas has a time
6 constraint.

7 MR. SULLIVAN: What is the name, please?

8 MR. TILLAS: Darby Tillas.

9 MR. SULLIVAN: Anyone else? Okay. I
10 need the names because I didn't memorize
11 everyone's name.

12 MS. BISHOP: Jane Bishop.

13 MS. JENKINS: Joan Patricia Jenkins.

14 MR. SULLIVAN: Anyone else that has a
15 time problem? All right. In that event we will
16 begin with Mr. Tillas. Mr. Tillas, we've got a
17 microphone here at this podium. If you would
18 like to come and speak, you may have to go
19 around to get to it.

20 I should point out that we have also
21 David Olsen with us who is back in the audience
22 there who is our policy lieutenant. So, Dave,
23 welcome.

24 I also wanted to note that the

□

6

1 function of this committee is to report to the
2 legislature on the impact of the reforms that
3 have been enacted on the capital punishment
4 system. We are not charged with the
5 responsibility of determining whether or not
6 there should be a death penalty. So please keep
7 that in mind when making your remarks.

8 Darby Tillas, would you please
9 proceed, sir.

10 MR. TILLAS: Good morning. My name is
11 Darby Tillas. I spent 9 years, 1 month, and 17
12 days on death row waiting to die for a crime
13 that I did not commit. I was tried, according
14 to my attorneys, five times, including three
15 hung juries. Thanks to my attorneys William
16 Ratcliff, Randolph Stone, Bill Murphy, and most
17 of all Mike Falkner.

18 We must abolish the death penalty.
19 No reforms can change a remedy. There is too
20 much greed. There is too much hatred. There is
21 too much revenge, racism, and prejudice in the
22 system. I read the paper and I hear about
23 lethal injection being unconstitutional and how
24 tortuous it is. By the time we reach the stage

□

7

1 of being put to death, we are already dead. We
2 are tortured for the moment. We are told that
3 the station -- we are told in the courtrooms
4 that the State is seeking the death penalty. We
5 begin to die a little bit every day.

6 Death row is horrendous. You suffer
7 loss. You suffer pain. You suffer hurt. Your
8 family begins to die right along with you. By
9 the time you reach the stage to receive lethal
10 injection, you're already the living dead. Many
11 cases have been overturned, 18 if I remember in
12 Chicago, because of errors.

13 MR. SULLIVAN: Mr. Tillas, one moment.

14 MR. SCHWINN: Sir, try not to lean in.

15 The microphone will pick it up if you lean in.

16 Just one second.

17 MR. TILLAS: The magnitude --

18 MR. SCHWINN: Hold on one second,

19 Mr. Tillas. Okay. Thank you, sir.

20 MR. TILLAS: The magnitude of the death

21 penalty is so great it cannot be tried without

22 errors, and once a man is put to death and later

23 found innocent, he cannot be brought back from

24 the grave.

□

8

1 Everybody is raging about DNA. It's

2 not all DNA. It's prosecutorial misconduct,

3 manufacturing lies, calling them honest

4 representations of facts, the State's Attorney

5 withholding evidence, attorneys with massive

6 case loads, jailhouse snitches and bad

7 forensics. We must abolish the death penalty.

8 There are many people in the State

9 of Illinois and throughout the country,

10 throughout the world that are blood thirsty, and

11 they don't consider the inner workings of the

12 death penalty because politician preach every

13 day lock them all up, kill them all, and you and

14 I know if you execute every man on death row

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15 right now your streets will not be any safer.

16 I think the reforms need to be in
17 our government. The climate of the streets must
18 change. The climate of our community must
19 change. That means the government must put out
20 good programs. Our preachers must get out and
21 get involved in the communities, and politicians
22 like yourself must implement laws and abolish
23 the death penalty that will bring about change.
24 Thank you.

9

1 MR. SULLIVAN: Mr. Tillas, would you
2 come back to the mich for a minute because there
3 are a bunch of lawyers up here. We always
4 permit cross-examination.

5 Is there anyone to my right that
6 would like to ask Mr. Tillas a question or
7 comment? Anyone to my left?

8 MR. STONE: Just briefly, what
9 organizations are you working with now?

10 MR. TILLAS: The Campaign on the Death
11 Penalty. I also have an organization called
12 WHOFM where the defendant's family members --
13 where they teach family members how to support
14 their love ones and help them stay out of jail.
15 I have been able to stay out 20 years as of
16 January 21st but mostly -- well, I work with
17 everyone, the Coalition Against the Death

18 Penalty, Ms. Bowman, and anyone else who brings
19 about abolishment of the death penalty and to
20 make this a better society.

21 MR. STONE: Thank you. Keep up the good
22 work.

23 MR. SULLIVAN: Mr. Tillas, let me ask
24 you a question. What jail or penitentiary did

10

1 you serve your time in?

2 MR. TILLAS: All three maximum,
3 Statesville, Menard, and Pontiac.

4 MR. SULLIVAN: All right. Some day, not
5 now, I would like to talk to you about those
6 facilities.

7 MR. TILLAS: Yes, sir. Cook County is
8 worse than all.

9 MR. SULLIVAN: If you give me a call, I
10 would appreciate it, all right?

11 MR. TILLAS: Yes, sir.

12 MR. SULLIVAN: I would like to talk to
13 you face-to-face.

14 Anybody else? Thank you very much
15 for your testimony.

16 MR. TILLAS: Thank you, sir.

17 MR. SULLIVAN: Jean Bishop.

18 MS. BISHOP: Good morning.

19 MR. SULLIVAN: Good morning.

20 MS. BISHOP: My name is Jean Bishop, and
21 I am with Murder Victims Families for Human
22 Rights. That is an organization of murder
23 victim's family members who have lost loved ones
24 to murders but who oppose the death penalty.

11

1 My younger sister Nancy Bishop and
2 her husband and her unborn child were murdered
3 in Winnetka in 1990, and the person who killed
4 them is serving a sentence of life without
5 parole in Illinois.

6 I appreciate the opportunity to be
7 here to testify in front of you, and I just
8 briefly have two points for your consideration.
9 First is that victims benefit from these death
10 penalty reforms because they prevent the kind of
11 miscarriage of justice that would leave the real
12 killer on the streets unpunished and have an
13 innocent person in jail instead; and, second,
14 that this committee ought to consider the cost
15 of the death penalty and these reforms in
16 relation to the needs of victims' families.

17 I'll start briefly with the reforms.
18 I consider these reforms to be pro victim.
19 Things like mandatory tape confessions, lineup
20 procedure reforms, mandatory preservation of
21 physical evidence, and funding for DNA testing
22 all serve to try to prevent the miscarriages of

23 justice that will only prolong the victim's
24 family because the family is only retraumatized

12

1 if someone is arrested and then years later you
2 find out that's the wrong person and it's
3 someone else. You will hear more about that
4 from my sister Jennifer Jenkins.

5 what I primarily want to talk to you
6 about is cost. I read your enabling statute,
7 and one of the things you're suppose to look at
8 is the impact of various reforms on the cost
9 associated with the administration of the
10 Illinois capital punishment system and money or
11 the lack thereof effects victims. It's
12 something that the Governor's commission report
13 back in 2004 noticed and commented on. It
14 stated that Commission members had various
15 opinions on whether they ought to be looking at
16 cost, but some members of the Commission
17 strongly felt that the cost raised questions
18 about the allocation of resources in the
19 capital -- in the criminal justice system.

20 The report also noted that victims
21 had a variety of services and needs that were
22 not being met, and I am quoting now from the
23 Commission report. Consideration of the needs
24 of surviving family members was not part of the

1 Commission's original mandate. However,
2 Commission members believe that complete
3 consideration of the capital punishment system
4 necessitated consideration of the ways in which
5 the needs of surviving family members are being
6 met and suggestions for improvements.

7 One of the things that the
8 Commission report did was look at several
9 studies of victims which found that there are
10 all sorts of services that they are not
11 receiving, counseling, scholarships, housing
12 things, and that these needs are ongoing. It
13 also noted that there are collateral victims,
14 such as children frequently who witnessed the
15 homicide, family members who had to come upon
16 the scene of their loved ones killing were
17 traumatized by that.

18 The Commission -- I am sorry. The
19 Committee report that you issued last year
20 February 28, 2006 stated that this year one of
21 the things you will be doing is considering
22 reviewing and reporting on, among other things,
23 the recommendations made in the Governor's
24 commission report, which haven't yet been

1 implemented. One of those recommendations,
2 Number 83, urged you to consider the ways to
3 improve the criminal justice system as a whole.

4 well, I want to tell you a story
5 about a victim in the criminal justice system
6 and then suggest one of those ways that you can
7 recommend improving the system, and I'm just
8 going to call her Kathleen. She was referred to
9 me by a criminal defense lawyer in Lake County
10 because she needed help that she wasn't getting.
11 She's a 65 year old woman who lived on the south
12 side of Chicago. Her only child, her daughter,
13 was murdered by an abusive husband. The husband
14 was arrested for murder, and they left behind
15 three little children. So Kathleen, the
16 grandmother, was left with raising them.

17 All the children needed counseling
18 for the trauma that they had been through
19 witnessing their mother's death and having their
20 father being arrested. She needed new housing
21 for the kids. She needed help with one of the
22 children that was developmentally delayed. She
23 needed help driving to and from Porter Lake
24 County because she was diabetic and had vision

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1 problems and it was hard for her to drive once
2 it got dark. She needed all of these things and
3 she was getting none of them.

4 She was a devout Catholic who was
5 opposed to the death penalty and yet they were
6 seeking the death penalty against the killer in
7 Lake County. She came to me and said I need
8 transportation to court. I need a new house. I
9 need counseling for my kids. I need some help
10 with this developmentally delayed child. How
11 come the State has millions of dollars to give
12 me something I don't need or want, which is the
13 death penalty, and they can't help me with any
14 of these things that I really do need? I think
15 that's a great question, and I think it's a
16 question this Committee ought to be asking as it
17 looks at the cost of these reforms in the system
18 as a whole.

19 One of the most important things I
20 want to do today is submit with my written
21 testimony a copy of a report from the New Jersey
22 commission regarding the death penalty and a
23 house bill that passed in the State of New
24 Mexico, both of which abolished the death

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1 penalty and replaced it with life without
2 parole. I hope that that will be looked at by
3 every member of this committee in forming your

4 discussions as you go forward. Thank you.

5 MR. SULLIVAN: Ms. Bishop, did we have
6 materials?

7 MS. BISHOP: Yes.

8 MR. SULLIVAN: Is this multiple copies
9 or one copy?

10 MS. BISHOP: I apologize. I did not
11 make multiple copies for the committee. I just
12 have the one. In there with my written
13 testimony there are excerpts from the Commission
14 report to which I referred in my testimony.
15 There is also the full report of the New Jersey
16 Death Penalty Commission and their
17 recommendations, and there is a copy of House
18 Bill 1930 from New Mexico that again just passed
19 in January and recommends abolition of the death
20 penalty and replacement with life without
21 parole.

22 The most important thing that I
23 would like to mention is that in both cases it
24 was to take the cost savings of abolishing the

□

17

1 death penalty system and applying it not only
2 for crime prevention but also towards services
3 for victims.

4 MR. SULLIVAN: That bill is still
5 pending down in New Mexico?

6 MS. BISHOP: Yes. It passed the house.
7 It will go to the Senate, and in New Jersey it's
8 merely a legislative committee that came to this
9 one that's recommended. The New Jersey
10 legislature has not acted on that yet.

11 MR. SULLIVAN: Okay. I am going to give
12 this back to Mr. Baroni with the request that he
13 reproduce it and distribute a copy to each
14 member of the committee, whether they are here
15 or not today.

16 MS. BISHOP: Thank you very much.

17 MR. SULLIVAN: There may be
18 cross-examination. So let me -- at this time I
19 will go to the left and there is no. -- as I
20 understand it as I look up and down the left and
21 right, it doesn't have a political implication
22 committee. We are a diversified group.

23 To my left, Jeff.

24 MR. HOWARD: Yes. Victims assistance is

□

18

1 provided -- I know that here in Cook County is
2 provided by the States Attorney's Office.
3 Should that be an independent agency in your
4 opinion or in your organization's opinion? And
5 if so, why or why not?

6 MS. BISHOP: We think it should simply
7 because there may be cases, as with my person
8 Kathleen in Lake County, where the prosecutors

9 were seeking one thing and she really wanted
10 something else.

11 MR. SULLIVAN: Jim.

12 MR. COLDREN: Good morning. Thank you
13 very much for your testimony.

14 I would like to ask a question about
15 research, if I might. You have raised an issue
16 of the cost issues, and I know there was some
17 very extensive research done in New Jersey, as I
18 recall about this matter, and we are
19 contemplating engagements in research here. Is
20 there -- the cost effectiveness is a very
21 difficult thing to put your finger on. You
22 track cases in the system. I think you can look
23 at issues about personality, and it may be
24 easier than cost issues. I just wanted to ask

□

19

1 are there any particular compelling findings
2 from the research that you reviewed that brings
3 you to make this recommendation to us?

4 MS. BISHOP: What I understand is that
5 in Illinois, as in other states, the death
6 penalty is far more expensive than a natural
7 life sentence, and I know from the experience of
8 victims here that among the services that they
9 need is just ongoing counseling. There is
10 simply no state fundings for those things. I

11 IllinoisCapitalPunishmentReformMtg022607[2]
12 know that the death penalty -- the Governor's
13 commission on capital punishment did site some
14 studies on cost and though they weren't really
15 called on to study cost. So there are those
16 things that I reviewed. I haven't seen any sort
17 of research about what the cost of providing
18 these services to victims would be, but I think
19 it would be a good thing to look at because
20 again I think when you review the New Jersey
21 report you will see there that the purpose of
22 the recommendation of going to life without
23 parole is in part to free up these sorts of
24 funds and resources, not only to prevent crime
but also to help victims.

□

20

1 MR. SULLIVAN: Boyd, Kirk, do you have a
2 question?

3 MR. DILLARD: No, sir.

4 MR. SULLIVAN: Leigh.

5 MS. BIENEN: Good morning, and thank you
6 very much for your testimony.

7 My question is similar to that of my
8 fellow committee member, which is are you aware
9 of any work done on the cost of capital
10 punishment with the option of the death penalty
11 in Illinois either by your organization or by
12 any other organization work that attempts to
13 look at either the cost of opposing the death

14 penalty in one case or cross cases or by county,
15 et cetera? And also with regards to the cost of
16 victim services, can you tell us, and perhaps
17 it's in your testimony, what sort of budget
18 allocation is made for those at present? Thank
19 you.

20 MS. BISHOP: I don't know the answer to
21 that question. Do you know?

22 UNIDENTIFIED SPEAKER: I know that.

23 MR. SULLIVAN: We will be hearing from
24 your sister.

21

1 MS. BISHOP: Yes, you will be hearing
2 from my sister who is with Illinois Victims
3 Organization, and I hope she will answer that
4 more articulately than I could.

5 MR. SULLIVAN: Ted Gottfried.

6 MR. GOTTFRIED: I have a question about
7 these victims services that are attached to the
8 States Attorney's Office. I know that they
9 assist the State's Attorney in making sure that
10 the witnesses are available for the case and
11 they are case related, but do they also provide
12 other kinds of medical and counseling services
13 for the victims?

14 MS. BISHOP: I'm not aware of anything
15 like that, and I am not aware of anything that

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16 goes on beyond the life of the case. One of the
17 studies that has come out in recent years is
18 that the needs of victims are ongoing, that many
19 times it will go on much longer than one would
20 expect. It's not something that simply closes
21 up after a few years. There could be
22 retraumatizing events, and it's something that
23 requires ongoing help, and I don't believe that
24 the services that the State's Attorneys provides

□

22

1 are for anything other than, for instance,
2 referring people to support groups of family
3 members. I know that my mother, who lost her
4 youngest daughter when my sister was killed, was
5 referred to such a group, a group of family
6 members, but no sort of professional
7 counseling.

8 MR. SCHWINN: Thank you for your
9 testimony. I just want to know do you have
10 ideas about the victim witness services that are
11 in place now? Is there some way it can be
12 expanded in your eyes or in your opinion or
13 added to? Because there are in place services
14 that are available that I will grant you some of
15 the victims' families when you get outside the
16 Cook County and the collar area, you get into
17 central and southern Illinois. There is not a
18 victim witness coordinator in each States

19 Attorney's office. There is probably one for
20 maybe every three or four counties and they go
21 around and they try to do their best. So I
22 guess my question is do you have any
23 recommendations or suggestions on how the
24 services that are in place now for the victims

□

23

1 and their families, how they can be expanded
2 upon or improved?

3 MS. BISHOP: I think the first thing we
4 need to do is actually get a good snapshot
5 around the state of what those needs are. I am
6 going to give you an example. There is a three
7 part series run by a newspaper in Tennessee
8 called the Tennessean. That looks at what
9 happens just to the minor children of people who
10 are effected by murder, people whose parents
11 have been murdered or guardians if they are
12 living with an aunt or grandmother or so on,
13 what happens with those kids.

14 And what they found when they
15 studied it was that many of these kids are
16 orphaned essentially because they have a father
17 who is in jail, for instance, or somebody -- a
18 father who is just absent. So if their mother
19 is killed, they go into foster care. Sometimes
20 they go from foster care into the criminal

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21 justice system themselves. They needed
22 oftentimes food stamps. They needed help with
23 going to school. They needed scholarships for
24 college. There was this whole study done.

24

1 MR. SCHWINN: I understand, that but how
2 would you improve that? what would you do?
3 They would still be seeking those same services.
4 You're just saying put more money into those
5 services?

6 MS. BISHOP: Right. I'm saying identify
7 what the needs are. See what needs are not
8 being met and try to meet them more
9 systematically. I think everyone can agree that
10 they should be improved and it will cost money
11 and if we are trying not to raise taxes, if we
12 are trying to allocate more efficiently, the
13 money that we do have -- I am suggesting that
14 the money that we are pouring down the black
15 hole on the death penalty could more effectively
16 be used to prevent crime and help victims.

17 MR. SCHWINN: Okay. Thank you.

18 MR. SULLIVAN: What year was the
19 killing?

20 MS. BISHOP: Of my sister it was 1990,
21 April, 1990.

22 MR. SULLIVAN: Are you familiar with the
23 Kansas study that was done?

24

MS. BISHOP: I have not read it

25

1 specifically. I am familiar with it, but I have
2 not read it.

3 MR. SULLIVAN: You might want to take a
4 look at that.

5 Also, we have in the audience Mike
6 Ramsey. Do you see that handsome young man over
7 there? He might do the study of the Tennessean
8 for you.

9 MS. BISHOP: I actually had called one
10 of the reporters at the Tribune asking for it
11 when it came out, and even for Cook County alone
12 I think that what we would find would be
13 shocking.

14 MR. SULLIVAN: And there are a number of
15 people at the Tribune that are interested in
16 these issues too. Thank you so much.

17 MS. BISHOP: Thank you.

18 MS. BIENEN: Do you have a name of
19 publication or date of publication for the study
20 that was done in Tennessee?

21 MS. BISHOP: I don't have it with me,
22 but if I could be permitted I will send it to
23 the committee so that everyone can see it.

24 MS. BIENEN: Thank you.

1 MR. SULLIVAN: Send it to Pete Baroni.
2 MS. BISHOP: I will.
3 MR. SULLIVAN: Anyone else?
4 MR. DILLARD: Yes. If the State were to
5 set up some type of system to help families,
6 where should we put that? Should it be in the
7 Attorney Generals Crime and Victims Compensation
8 Department or the Illinois Department of
9 Corrections? Where would you prefer it be
10 located?
11 MS. BISHOP: Can I defer that question
12 to my sister with Illinois Victims?
13 MR. DILLARD: Sure.
14 MS. BISHOP: Thank you.
15 MR. SULLIVAN: Anyone else? Thank you
16 very much.
17 Steve Richards.
18 MR. RICHARDS: Good morning. My name is
19 Steven Richards. I am a lawyer with the Office
20 of the State Appellate Defender. I am also part
21 of the Illinois Public Defender's Association
22 but would also like to say that I am speaking
23 solely for myself and as a lawyer who tries
24 death penalty cases.

1 I would like to speak about five
2 topics. The first is depositions, which is
3 probably a great interest to trial lawyers and
4 not of interest to anyone else. However, in
5 terms of the reforms it's the most significant
6 reform by far. It changes the criminal justice
7 system much more than any other reform, and on
8 the whole I believe it has been successful, but
9 there are some problems, and I think my comments
10 on these matters are probably consistent with
11 what you have heard from State's Attorneys.

12 The problem is that there are
13 different ways of having depositions, and in
14 Indiana there are simply depositions in every
15 criminal case, and the limitations I guess are
16 based upon the stamina of a lawyer in terms of
17 how many depositions they want to do. In
18 Florida they have a system where you categorize
19 different witnesses. You decide, for example,
20 that experts -- you have an absolute right to
21 depose eyewitnesses. You need permission of the
22 Court, and other categories of witnesses are
23 forbidden to be deposed, unless there is some
24 strong pressing reason.

□

1 Now, in Illinois there is a couple

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2 of problems with the consistency of how
3 depositions have been used. The first problem
4 frankly is the problem among defense lawyers
5 because there are some defense lawyers,
6 particularly in the southern and central parts
7 of this state but also increasingly in Cook
8 County, who just use depositions. In fact, in
9 the early period after depositions were
10 instituted in southern and central Illinois
11 there was very, very little litigation in the
12 courts as to depositions. Basically the defense
13 would say they want to depose these people. The
14 prosecution wouldn't oppose the depositions.
15 They would go forward and then they would be
16 part of the case.

17 However, there are some attorneys,
18 both in the northern and the southern parts of
19 the state, particularly attorneys who have had
20 not had experience doing civil cases who don't
21 want to do depositions and won't do depositions
22 and refuse to do depositions.

23 In fact, in two of the cases of
24 people now on death row, Curtis Thomas and

□

29

1 Andrew Urialis (phonetic) -- and I can speak
2 with more familiarity with Andrew Urialis -- the
3 number of depositions done were zero by either
4 side, and that was a case in which there was

5 very complexed psychiatric and psychological
6 testimony on both sides.

7 My suspicion is again at some --
8 there is a resistance among some defense
9 attorneys of doing them because they have never
10 done them, and if you have never done them you
11 kind of have a feeling, well, if I do them I am
12 going to reveal my strategy or something bad is
13 going to happen or at least it's new and
14 different.

15 The second issue, which I think the
16 prosecutors would agree upon, is the issue of
17 what depositions you're going to have and should
18 be litigated -- is litigated. Where there is a
19 contest on the matter, the judge has to then
20 make a finding as to good cause.

21 Now, if you read the rule, it's one
22 of these rules which lawyers like but which are
23 very hard to understand and applaud because it's
24 essentially a factor rule. You look at things

□

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1 like the availability of the witness, the
2 complexity of the testimony, the availability of
3 information from other sources, and then you
4 make some sort of determination.

5 However, the determinations that
6 judges make throughout the state, and

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7 particularly Cook County, vary between judge and
8 judge, not to mention between county and county.
9 If you go to Judge Gahn's courtroom in a serious
10 capital case, you will get a lot of depositions.
11 If you go to Judge Kazmierski's courtroom in an
12 equally serious capital case, you will get very
13 few.

14 I think the solution is to adopt
15 either -- either to have unlimited depositions
16 as in Indiana or have a system of categories of
17 witnesses in which we decide that certain
18 witnesses like experts should merely always be
19 deposed. Certain witnesses like collateral or
20 impeachment or other sorts of witnesses should
21 almost never be deposed, and that is kind of a
22 rule reform which I think will make the system
23 better.

24 I can go on to other reforms or take

□

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1 questions as to this one.

2 MR. SCHWINN: In regards -- you
3 mentioned the Curtis Thomas case along with the
4 Urialis case.

5 MR. RICHARDS: Yes.

6 MR. SCHWINN: As examples where
7 depositions were not utilized. I take exception
8 to that. I don't know about the Urialis case,
9 but there were extensive depositions taken in

10 the Curtis Thomas case because I tried that
11 case, Mr. Richards. I was at all the
12 depositions. That was a capital case based on
13 the insanity defense. So there were extensive
14 depositions in that case. I just want to make
15 the record clear.

16 MR. RICHARDS: I withdraw my comments.
17 I point out in the Urialis case which is also --

18 MR. SCHWINN: That's fine. I don't know
19 the Urialis case. I'm making the record clear.
20 There were extensive depositions in the Curtis
21 Thomas case.

22 MR. RICHARDS: And I think that
23 illustrates the point because they are both
24 cases involving the insanity defense but

□

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1 extensive depositions were done in one and zero
2 on the other. A number --

3 MR. SCHWINN: That has nothing to do
4 with the death penalty itself. That has to do
5 with whatever the strategy decisions on the
6 attorneys part representing the either side was.

7 MR. RICHARDS: well, it may have
8 something to do with strategy decision, but my
9 own experience has been that it's not strategic
10 decisions in total. It's also the question of,
11 number one, some attorneys like to do them and

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12 some attorneys don't, but it does have to do
13 with the death penalty because we only have
14 depositions in death penalty cases, would you
15 agree?

16 MR. SCHWINN: Yes.

17 MR. RICHARDS: Whether the system is
18 being administered fairly evenly throughout the
19 state in terms of depositions or anything else
20 would be one major consideration you would want
21 to look at; isn't that correct?

22 MR. SCHWINN: Yes. Whether the
23 depositions are taken or not, I believe you
24 would have to look at it on a case by case

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1 basis.

2 MR. RICHARDS: Yes.

3 MS. BIENEN: Thank you very much for
4 coming to testify today.

5 when this committee met in
6 Springfield --

7 UNIDENTIFIED SPEAKER: I can't hear you.

8 MS. BIENEN: Thank you again. Can you
9 hear me now?

10 UNIDENTIFIED SPEAKER: I can.

11 MS. BIENEN: Thank you for coming here
12 to testify today, Mr. Richards. I wanted to
13 point out that when the committee met in
14 Springfield Jerry Nora, our committee member

15 from the Cook County States Attorney's Office,
16 made the same point you did about the large
17 variability in the way the standard for taking
18 depositions was applied by different judges and
19 also the large variability of the practice with
20 some capital cases having very few depositions
21 and others having very many.

22 He also pointed to a possible
23 discrepancy in the way, quote, the Certificate
24 of Readiness for a trial was treated in

□

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1 different courts, and I would like to ask you if
2 that has been something that you have observed?
3 And, secondly, I want to ask is once a capital
4 case is designated capital before a judge,
5 whether or not the cost of depositions comes out
6 of the capital litigation trust fund? Thank
7 you.

8 MR. RICHARDS: Okay. I will take the
9 first question first and the second question
10 second. Well, also with the first question I
11 need some clarification as to what the
12 differences were.

13 The Certificate of Readiness as it
14 stands is labeled Certificate of Readiness, but
15 nowhere does it say something like I as a
16 defense attorney say I am ready for trial. It's

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17 sort of odd. It says I have consulted with the
18 client. I have talked about possible defenses.
19 I have done some other things, but it doesn't
20 say in the body what the rules say, I am ready
21 for trial, which I always thought was odd.

22 In the cases of Judge Gahn in the
23 Luna case he has required an additional
24 Certificate of Readiness, which I disagreed

□

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1 with, had things like have you interviewed your
2 witnesses, which was fine, have you filed all
3 motions with the understanding at pretrial.
4 That was also fine and some other things.

5 Generally speaking there has been
6 very little litigation I have seen about the
7 Certificate of Readiness. I have heard some
8 attorneys say things like we are not going to
9 file them and maybe what happens maybe the
10 Attorney General is brought in. To answer your
11 question better, I would have to know what
12 discrepancies are being rigged. what are they?
13 I don't know.

14 MS. BIENEN: I'm just referring to
15 Mr. Norris' testimony on November 13, 2006,
16 which was posted on our website. He doesn't
17 make extensive comments about it, but you can
18 take a look at it there. It starts on page
19 seven. He just says that -- he just makes

20 reference to delays and the committee should
21 look into the cost of delays and things like
22 that.

23 MR. SULLIVAN: Could I interrupt? Jerry
24 pointed out that in some cases the defense

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1 lawyers use these hearings to get a feel from
2 the judge as to whether if there is a plea to
3 impose the death penalty.

4 MR. RICHARD: I'm not sure what hearing
5 you're talking about. I would think you would
6 be talking about the case management conference.
7 Yes, attorneys do use the case management
8 conference to get a feel for the judge about
9 what the law of the land is, whether the judge
10 will impose the death penalty, whether they
11 should pick a jury, or things of that sort. I
12 think that was part of the expectation, and in
13 my view that's a good thing, but again there is
14 variation among the judges. Some do the case
15 management conferences in the back without the
16 defendant present. Some do them in open court.
17 Some don't do them at all but say that every
18 status date is part of the case management
19 conference. So, again, there is a variation on
20 that. I think it's more of an administrative
21 matter. I am not sure that I would suggest that

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22 we need more of a routine, but there are
23 variations.

24 Now, the cost of the depositions, my

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1 understanding is they come out of County budget.
2 They are one of the few capital expenses that
3 don't come out of the capital trust fund, which
4 is why there is some resistance to them.

5 MS. BIENEN: Thank you.

6 MR. SCHWINN: I'm sorry. You are saying
7 that the depositions cost -- cost of depositions
8 don't come out of the capital litigation trust
9 fund?

10 MR. RICHARDS: If you read the rules,
11 the cost goes to the County.

12 MR. SCHWINN: I can tell you that every
13 capital case that I have tried once it's
14 designated a capital case, the capital
15 litigation trust fund kicks in.

16 MR. RICHARDS: I know, but does it pay
17 for the cost of the actual depositions, not the
18 time of the attorneys, the time of the --

19 MR. SCHWINN: The cost of the
20 transcript, sure.

21 MR. RICHARDS: Well, in the Luna case in
22 Cook County we have never seen any bills for the
23 depositions going to the capital trust fund.

24 MR. SCHWINN: Have you submitted the
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1 bills from the judge to be certified to be paid
2 out of the capital litigation trust fund?

3 MR. RICHARDS: I can check on that, but
4 I don't believe so.

5 MR. SCHWINN: It won't get paid unless
6 it's certified by the judge and submitted for
7 payment to the treasurer.

8 MR. SCHWINN: I understand. I have also
9 been told by a number of State's Attorney in
10 Cook County that they are opposed to depositions
11 because they come out of the County fund.
12 That's something maybe you should review with
13 them. I understand Cook County does it their
14 own way and the rest of the state does it the
15 way it should be done.

16 MR. SULLIVAN: We can check on that,
17 Steve.

18 MR. RICHARDS: As I said, I don't pay it
19 out of my budget, so it's not a matter that
20 comes before me. The costs are obviously being
21 paid as these depositions are going forward. I
22 also should say one good thing about depositions
23 that often -- the prosecution will offer
24 alternatives, structured interviews with people

1 present, and I think those are all good things
2 if you're willing to accept them as substitutes.
3 It's also a witness just talking to you, which
4 is a better subsidy than a deposition.

5 MR. COLDREN: You made reference to the
6 Luna case, which is -- that's the Brown's
7 Chicken defense?

8 MR. RICHARDS: Yes.

9 MR. DURKIN: How many depositions have
10 been taken in that case?

11 MR. RICHARDS: Approximately 50, but I
12 also have to clarify -- I also have to clarify
13 that about 20 of those were on a subsidiary
14 issue having to do with whether a reporter's
15 privilege would be breached, and those were very
16 quick, and those were ordered, by the way, at
17 the judge's insistence and over everyone else's
18 resistance, but there have been about 50. Not
19 all have been three hours, and they have
20 included both defense and prosecution witnesses.

21 I also should say that in one of the
22 depositions we discovered that certain records
23 which we thought had been destroyed records of
24 DNA in fact did exist. We wouldn't have known

1 that had we not had the depositions.

2 MR. DURKIN: How many depositions were
3 Public Defender generated motivated depositions
4 and how many were done at the State's Attorneys
5 request?

6 MR. RICHARDS: I would say that the
7 State's Attorney has probably deposed at least
8 ten witnesses so far, all of them experts.

9 MR. COLDREN: Has Judge Gahn denied any
10 depositions that were -- obviously I think, if I
11 am not mistaken, he must have approved the
12 request for a deposition, correct, or did he do
13 it unilaterally with the agreement of the
14 State's Attorney?

15 MR. RICHARDS: We did do it unilaterally
16 with the agreement of the State's Attorney. He
17 approved them. He denied some, including a
18 pathologist, which we didn't agree with, but
19 that was the way it stood.

20 MR. DURKIN: Have you deposed any
21 impeachment witnesses?

22 MR. RICHARDS: No. He denied a request
23 to depose impeachment witnesses and also
24 witnesses who would have corroborated testimony

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1 of other witnesses who are being brought in for
2 prior consistent statements.

3 MR. DURKIN: So approximately 40
4 depositions were done at the request of your
5 Public Defender?

6 MR. RICHARDS: Right, I would say the
7 Public Defender and either us or the Public
8 Defender were requesting the depositions.

9 MR. DURKIN: I don't know who was
10 deposed or what the substance of the
11 testimony was. It was in the late '90's on the
12 prosecutory committee of depositions, but the
13 issue was at what point do we put restraints and
14 stop the fishing expeditions which we often see
15 in civil practice. 40 depositions, I know that
16 is a high profile case and I do -- have been
17 following it and I know folks who are trying the
18 case down at 26th Street and there is a lot of
19 dissatisfaction with the current system. Part
20 of it is with the judge, but also some
21 impression that the case may be strung out
22 unnecessarily by the constant deposing and
23 request for further depositions.

24 So before we try to make some

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1 changes with the rules and place additional
2 restrictions on the judge, don't you think there
3 should be some restraint within the offices to
4 say what exactly do we need? It's more of a
5 comment. You don't have to answer it if you

6 don't want. I can see that -- I'm not
7 suggesting that you are doing this, but that in
8 a system which cases do not get better with age
9 and it has been a tactic at 26th Street when I
10 was a State's Attorney that you push the case
11 out as far as you can because witnesses, their
12 memories will be faint. People will get
13 disinterested in the case and sometimes it will
14 just disappear. So I just hope that we don't
15 get to the point where we are going to have --
16 I'm not sure if the legislature has authority
17 because the Supreme Court has already by rule
18 set up this mechanism to put restraint but also
19 sanction the law for those who are going to take
20 advantage of this process.

21 MR. RICHARDS: Well, your Honor -- I am
22 sorry. Representative Durkin, habit dies hard
23 sometimes.

24 MR. SCHWINN: He is an honorable man.

□

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1 MR. RICHARDS: Yes, and he should be
2 addressed that way.

3 Let me just say that the State's
4 Attorneys have used full advantage of the
5 depositions. I don't know what they say about
6 us, but as for the one -- the State Appellate
7 Defender transfer of Juan Luna, we have not

8 IllinoisCapitalPunishmentReformMtg022607[2]
9 delayed any depositions. We have asked for
10 depositions only after witnesses do not talk to
11 us. We have tried to get material under an
12 objection by other parties, and we have not
13 tried to string out the case by one day,
14 absolutely not, both at the request of the
15 defendant and his family; but there have been
16 obstacles, and part of the obstacles have been
litigation.

17 MR. COLDREN: What year are we on since
18 Mr. Luna was charged? Are we going to get a
19 trial this year?

20 MR. RICHARDS: The trial is set on
21 March 28th. The remaining depositions, three
22 which are all State's Attorneys depositions at
23 their request of mitigation witnesses, will be
24 done this Monday. By the way, we're doing three

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1 depositions in a day, which was my idea,
2 beginning at 10:00 o'clock in our offices; and
3 unless -- as far as we're concerned, we are
4 answering ready on March 28th. If somebody else
5 has another idea, be that the judge, the
6 prosecutor, or co-defendant's counsel, that's
7 something up to them, but we are going to be
8 ready for trial.

9 MR. DURKIN: When was Luna charged?

10 MR. RICHARDS: What?
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MR. DURKIN: When was Luna charged?

MR. RICHARDS: They were both charged in March of 2002. By the way, the State Appellate Defender did not answer the case until the fall of 2003, a year and a half later. We have done motions to suppress, which not all the counsel have done. I will say the Luna case is not an argument against depositions but an argument for them.

Let me just make four other quick comments. Major defect in the system as it stands now in terms of going to the capital part of the system is this. We in Illinois have mandatory life without parole for multiple

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1 murders. We also have mandatory life without
2 parole for murders of police officers, and there
3 are a couple of other minor categories.
4 However, we don't have mandatory life without
5 parole -- and juries are not told the range of
6 sentences -- for all other capital murders, and
7 that raises a disparity because I don't mean to
8 speak facetiously but if I were to advise
9 someone committing murder as to how to avoid the
10 death penalty, I would have to tell them the
11 best thing to do is to make sure you kill two
12 people or a police officer because that way your

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13 jury will be instructed that the choice will be
14 between death and natural life in prison.

15 whereas, for almost all other
16 categories of first degree murder the jury is
17 not instructed what the sentence range is, and I
18 think it's particularly harmful at this point
19 because as Illinois stands now there is no good
20 time credit for murder. 20 years is the
21 absolute minimum. Natural life is a general
22 possibility almost in every capital case, and
23 what we have now is a system whereby people who
24 commit single murders are often more likely to

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1 get the death penalty than people who commit
2 multiple murders or kill police officers. I
3 would say that as a system that's nuts. You
4 would want to have it to be reversed, not the
5 way it is now, and I think that can be addressed
6 by legislation.

7 For example, legislation mandating
8 the jury be instructed as to what the penalties
9 are, particularly when natural life is a serious
10 possibility, as it is every time a defendant is
11 found death eligible. Part of the problem here
12 is and what is so unfair is that 99 percent of
13 the judges in the state if the jury finds a
14 death eligible murder they are going to give
15 natural life, but juries don't know that. Since

16 they don't know that, they are afraid defendants
17 may get out and therefore they are more likely
18 to give the death penalty, and that's not fair
19 and that's not right.

20 MR. DURKIN: I guess one last question.
21 It's on another reform that came out in 2002
22 which is about the jailhouse snitch. To your
23 knowledge has there been a liability hearing
24 conducted on a capital since the law was --

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1 MR. RICHARDS: I know Ted is about to
2 say he knows of one. I know of none.

3 MR. SULLIVAN: Ed handled that. I
4 wanted to introduce to the group Edwin Parkinson
5 from the Appellate Prosecutors office and Gerald
6 Nora from the Assistant States Attorney of Cook
7 County. Ed told me that Lagrone handled three
8 of those, right?

9 MR. PARKINSON: That's correct.

10 MR. RICHARDS: I will say that even in
11 the absence of the hearing depositions have been
12 a great help. In the William Buck case in
13 Rockford there were three jailhouse snitches.
14 They were all deposed. One took the 5th, and
15 two after being deposed were not used by the
16 State, and if you saw the depositions I think
17 you would have a good idea why.

18

MR. SULLIVAN: What case was this?

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MR. RICHARDS: William Buck, which was
the first capital case tried after clemency in
Rockford.

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I personally -- and this has nothing
to do with capital punishment. If I were in
charge, I would extend depositions to noncapital

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1 cases, certainly serious felonies, murders and
2 perhaps Class X or cases where natural life is
3 at issue because the purpose of them is to
4 search for the truth, and they -- in the long
5 run they search the truth.

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MS. BIENEN: You practice in Cook County
and some of the other collar counties; is that
correct?

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MR. RICHARDS: No, we practice
throughout the state. Our jurisdiction is -- we
assist -- first of all, we don't directly
represent clients. We assist attorneys
representing clients either -- basically all
attorneys representing indigent capital clients,
except for the Cook County Public Defender where
we are statutorily excluded. In other words, we
are appointed cases in Cook County, appointed
cases throughout the state and Public Defender's
throughout the state if available if they want
that.

21 MS. BIENEN: How do you find out what
22 capital cases are pending throughout the state?
23 Is there a systematic way in which it's possible
24 to find that out, and would you comment upon how

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1 one would know whether or not there was capital
2 cases?

3 MR. RICHARDS: The answer is, no, there
4 is no systematic way. The chief way we learn is
5 through the Internet or through people calling
6 us, mostly through people calling us. Also, our
7 jurisdiction and the jurisdiction of the capital
8 trust fund begins at the moment a case,
9 potentially capital, enters the system. So in a
10 case where no certificate is filed, no notice is
11 filed, but unless the State says no death
12 penalty, a defendant is entitled to the -- on a
13 presumably eligible case the appointment of two
14 certified counsel and everything else. So we
15 assist often many cases which are never
16 certified, and we try to help prevent them from
17 being certified or notice being given, and
18 that's often successful.

19 MR. SULLIVAN: I just wanted to point
20 out, Steve, that the Governor's commission on
21 capital punishment, which Ted was on, your boss
22 and Mike Bolner did recommend that in all cases,

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23 not just where mandatory life was involved, the
24 jury be instructed as to the alternative to

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1 that; and the legislature did not adopt that
2 recommendation, but it is one of the
3 recommendations that the Commission did make.

4 MR. RICHARDS: Tom, I am aware of that,
5 and thanks for pointing that out to me because I
6 had forgotten to do so. I think it's one of the
7 key reforms that was not enacted.

8 Just on two further -- three further
9 points.

10 MR. SCHWINN: Before we leave that one
11 point -- sorry for interrupting, but the way the
12 I.P.I. is now is that the jury is informed that
13 if they do not impose the death penalty that a
14 sentence of incarceration or imprisonment will
15 be given by the Court.

16 MR. RICHARDS: Yes, that's correct.

17 MR. SCHWINN: They are not just --

18 MR. RICHARDS: They are not left holding
19 the air. I will say in the last capital case I
20 tried after great effort and over the objections
21 of the prosecutors I was able to tell the jury
22 there is no parole in the sense that they think
23 that parole exist and there is no good time
24 credit and that a defendant going -- convicted

1 of first degree murder would be going to maximum
2 security. However, for all they knew he could
3 be going for five years or 10 years or 15 or
4 whatever.

5 In the particular case of the
6 defendant I am talking about he was 37 at the
7 time of arrest. The minimum he could have
8 received once convicted of first degree murder
9 was 20, in which case he would have gotten out
10 at age 57, and since the crime had been found
11 exceptionally brutal and heinous and he was
12 found death eligible, anyone in this room or any
13 lawyer would know 99 percent of the chance was
14 he was getting a 60 year sentence or natural
15 life.

16 So they do know something about
17 where somebody is going, but studies have shown
18 that many jurors think that murderers get out by
19 the end of seven years, and if they think that
20 then obviously they are more inclined to vote
21 the death penalty on false pretenses.

22 MR. SCHWINN: I will disagree with you,
23 and I respect your opinion. The only other
24 thing I wanted to say is we may not -- our

1 opinions may not always match, but I do agree
2 with you wholeheartedly regarding the
3 depositions. I think that's a major step and
4 very helpful in capital litigation for both
5 sides. I just think that the judiciary has to
6 make the step and make it uniformly applied
7 throughout the state rather than -- and I agree
8 with you. You can go to 26th Street from one
9 courtroom to the other and it will be night and
10 day as to how depositions are allowed to be
11 taken.

12 MR. RICHARDS: No further questions, I
13 will defer --

14 MR. COLDREN: I thought you had some
15 other points that you wanted to make?

16 MR. RICHARDS: I do, and I will make
17 them very quickly.

18 One is residual doubt is still
19 something that defense bar I think we need
20 because it's the major reasons that most juries
21 for common sense reasons don't vote for the
22 death penalty. Whether they are told about it
23 or not, I think they should be explicitly told
24 about something which they are going to consider

□

2 It's often raised as an objection
3 that we have no definition of reasonable doubt
4 in Illinois, but most states do have definitions
5 of reasonable doubt and perhaps we should have
6 one as well. I think that's another major
7 reform to be suggested.

8 Lastly, I didn't notice until I
9 litigated my last case that there is some
10 dispute in Illinois as to whether the execution
11 impact, the impact of the death penalty on the
12 survivors and the defendant is admissible at
13 trial, and I think that should be admissible
14 just as the impact of the death of the victim is
15 upon the victim's survivors, and I would
16 recommend those as reforms.

17 MR. SULLIVAN: Is there any questions on
18 the right? Yes, Boyd.

19 MR. INGEMUNSON: Steve, I am a member of
20 the subcommittee that does some work on the
21 trial proceedings in -- performs exam impact of
22 trials. One of the things we have done is go
23 around and meet some of the judges throughout
24 the state that have heard capital cases. Two of

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1 the judges that we met with explicitly stated
2 that the role of the Appellate Defenders Office
3 in the process during the trial proceedings

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4 caused them some concern from the mere fact that
5 these judges didn't necessarily feel that the
6 Appellate Defenders were looking out or doing
7 things at the trial level. They were trying to
8 interject error looking at the case on the
9 appellate level, and I obviously wasn't there
10 for these trials but I just wanted you to
11 comment on it, the comments that we received
12 from two of the judges that we met regarding
13 that.

14 MR. RICHARDS: If you can't name the
15 judges, I can't deal with specifics, but I can
16 deal with the general issue.

17 Let me say this. If one of the
18 judges was Judge Frobish, I think he was sadly
19 mistaken on a number of grounds, but let me tell
20 you this. I have -- if raising issues and
21 having them ruled on, having them included in a
22 post trial motion and having it ruled on
23 negatively is injecting reversible error into
24 the record, then we should have more of it and

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1 not less.

2 One of the scandals of the Illinois
3 system throughout the years has been that trial
4 attorneys have often not raised issues,
5 including good ones and important ones. They
6 have not been reviewed as plain error by the

7 Illinois Supreme Court, and in fact that is one
8 of the things that brings the system into this
9 refute because people think, my God, we are
10 executing people because a lawyer forgot to do
11 something.

12 One of our objectives -- first of
13 all, we are trial lawyers. We are separate
14 within the State Appellate Defender family
15 because we are trial lawyers. I have not raised
16 issues just for strategic reasons. I have
17 raised issues for strategic or other reasons,
18 but we raise issues. We ask for things, and we
19 move the attorneys to ask for things. We never
20 are lead counsel, and we can't tell anyone to do
21 anything; but, again, I am proud of our record
22 of raising issues and preserving a record.
23 That's something that a trial attorney should
24 do. If a trial attorney is not doing that,

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1 frankly they should be disbarred.

2 Yes.

3 MS. BIENEN: Thank you. Would you
4 please comment upon your observation or
5 experience of the practice in the state as a
6 whole with regards to plea bargaining, quote, in
7 the way of the death penalty either before or
8 after the certification of a case that's

IllinoisCapitalPunishmentReformMtg022607[2]
9 capital.

10 MR. RICHARDS: All I can say is it's
11 like the plea bargain of anything else. I think
12 it goes on. It's a good thing. There have been
13 some notable successes I think which both sides
14 can take credit for. For example, the case in
15 Peoria recently that was plea bargained. Plea
16 bargaining is a good thing and it happens.

17 The problem with making the system
18 uniform and fair of course is if we had
19 identical defendants -- identical defense
20 counsels, identical prosecutors, and identical
21 judges, everything would work smoothly. In
22 fact, we have defendants who are crazy. We have
23 defense attorneys who are occasionally not as
24 competent as they could be. We have prosecutors

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1 who are overzealous, and we have judges who are
2 unreasonable. So given the fact that human
3 nature is as it is, some cases we plea bargain
4 because everybody works together and some cases
5 won't because particularly defendants will not
6 see what they should see.

7 MR. GOTTFRIED: I have a point of
8 personal privilege. The legislatures will
9 understand that.

10 I just wanted to make a couple of
11 points for the record, and that is our office is

12 not the primary attorney in any death penalty
13 case. The only way we get involved is if the
14 attorneys write a letter to me seeking
15 assistance, and those primary attorneys still
16 decide what issues are raised in the trial
17 course, and I would suggest to the judges that
18 the best way to avoid error is to follow the law
19 when making a ruling. That's all. Thank you.

20 MR. RICHARDS: I would also say if you
21 haven't talked to Judge McGraw in Winnebago, I
22 would strongly suggest that you do so because he
23 had great experience and said on the record that
24 he thought the representation both from the

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1 Public Defender in winnebago and State Appellate
2 Defenders was the best that he had ever seen.
3 Now, of course he was dealing with a claim of
4 ineffective assistance raised by William Buck.
5 However, his -- I think the allegation is false,
6 and I will defy anyone to put it in writing to
7 tell me what they are talking about and I will
8 address it.

9 MR. HOWARD: I have a question. Under
10 our enabling legislation we are charged with
11 looking at all of the representations provided
12 by defense counsel to defendants charged with
13 capital cases, and since you're doing cases all

IllinoisCapitalPunishmentReformMtg022607[2]
14 over the state since 2003 do you think the
15 changes, such as the capital litigation and any
16 other changes have enhanced or improved the
17 quality of representation provided by defense
18 counsels throughout the state?

19 MR. RICHARDS: I think the answer is
20 there is a resounding yes with the caveat I had
21 before. Not everyone, for example, wants to do
22 depositions. Some people don't want to use
23 depositions because they have never done them
24 before. On the whole from what I know of the

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1 system which existed prior to 2000 I think is
2 the operative date for most of the changes
3 involving counsel, things are vastly better, and
4 people like the death penalty could urge and
5 argue well that the representation is much
6 better than it use to be on both sides, both
7 prosecutors and defense counsel. Whether you
8 want to keep up such a system or whether it
9 provides benefits is not what I would address,
10 and I guess it's beyond the scope of your
11 mandate; but in terms of a system, it's better
12 in the representation and the representation is
13 better.

14 MR. SULLIVAN: Steve, I want to ask you
15 when you say that the -- some of the defense
16 lawyers don't like the depositions of the

17 capital litigation trial bar which is required
18 for this course, don't they teach about
19 depositions and the benefits of depositions, the
20 potential benefits of depositions?

21 MR. RICHARDS: We do, but again not
22 everybody believes. Many defense lawyers just
23 tell me I don't want to do it because it's going
24 to give away my strategy or something or it's

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1 too time consuming or the trial case is going to
2 trial quick. So, yes, we do teach about it, but
3 I think there is a split. Some people like them
4 and some people do them all the time and some
5 people don't like them and never do them.

6 MR. SULLIVAN: Another issue that has
7 been raised in front of our committee is Rule
8 416C, certifications for capital cases. Do you
9 know what I am talking about?

10 MR. RICHARDS: Well, you --

11 MR. SULLIVAN: They are going to seek
12 the death penalty.

13 MR. RICHARDS: Right.

14 MR. SULLIVAN: Do you know of any
15 instances of which a judge has permitted that to
16 be filed beyond 120 days when there was no order
17 entered extending the claims?

18 MR. RICHARDS: There have been a couple

IllinoisCapitalPunishmentReformMtg022607[2]
19 of cases that the Cook County Public Defender
20 has had, which I am not aware of -- I am not
21 aware of what the results were, but I do know
22 there were extensions beyond the date, and I
23 think they asked for petitions for a supervisory
24 order. I don't know what happened with them.

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1 MR. SULLIVAN: The other thing is there
2 has been suggestions made, no evidence, that
3 some of the State's Attorneys -- I think this
4 applies to down state. It could apply to Cook
5 County are overcertifying in order to get --
6 take advantage of the capital litigation trust
7 fund and move the money away from the local
8 community or to get leverage in plea bargaining.

9 MR. RICHARDS: well, it seems to me that
10 the State's Attorneys will always want to seek
11 the death penalty, number one. Number two,
12 there is nothing theoretically wrong with that.
13 The advantage of the system -- yeah, the State's
14 Attorneys have said one of the advantages of the
15 death penalty is it makes natural life stiff
16 because then there is an incentive to plea.
17 Personally I don't think there is anything wrong
18 with that if you really believe that the case is
19 capital.

20 what I do think though is that part
21 of the point of the reforms is if you are going

22 to seek the death penalty either to get more
23 money or as a plea bargaining tool, you should
24 also have the weight of well equipped defense

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1 counsel, depositions, many sort of things which
2 weigh on the other side of the scale. So when
3 you as a prosecutor is making this calculus you
4 will be thinking, well, gee maybe I really don't
5 want to do it. I don't want all these capital
6 things in.

7 I know that it's -- the sequence of
8 events in the Lagrone case may have raised that
9 inference. I have no personal knowledge that
10 that is true. There is a member on the
11 committee who could comment to that from
12 personal knowledge. So you should ask him, not
13 me. But in any event, that's human nature.
14 Obviously if money is out there and you can get
15 money by having a case be capital, people will
16 be inclined to put that in the calculus. Again,
17 there is not necessarily anything wrong with
18 that in my view.

19 MS. BIENEN: Mr. Richards, are you aware
20 of any county in which it's the practice for the
21 certificate making a case declared a capital
22 case to be filed centrally in the county so it
23 would be impossible to go to that county because

24 IllinoisCapitalPunishmentReformMtg022607[2]
there are so many cases pending?

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1 MR. RICHARDS: The answer is no, and
2 another outstanding defect in the system in
3 Illinois, as you well know, is that we have no
4 central registry anywhere of capital cases, and
5 that's something that can be done with a stroke
6 of a pen by just having some office where you
7 send them to, you know. You wouldn't have to
8 pay anybody separately. You could just say by
9 law as soon as you follow a certificate of
10 intent, send it to the treasurer. Then we have
11 them all.

12 MR. SULLIVAN: Indeed I would think that
13 perhaps the capital litigation trust fund that
14 has to pay out based on a particular case they
15 might have that information.

16 MR. RICHARDS: Well, they do have it
17 when people submit bills. They will know the
18 names of the cases when the bills are submitted.
19 They don't handle all cases. The Cook County
20 Public Defender handles probably twice the
21 number that they do. Again, just a simple by a
22 stroke of a pen every time you file a notice
23 send it to some place. That would be remedied.

24 MR. SULLIVAN: Anyone else for

1 Mr. Richards? Thank you, Steve, very much for
2 your comments.

3 Jennifer Bishop Jenkins.

4 MS. JENKINS: I have copies of some
5 written testimony. Good morning. My name is
6 Jennifer Bishop Jenkins, and thank you once
7 again for inviting our organization of Illinois
8 victims to testify before your Committee as we
9 did in Springfield in November. I am also the
10 sister to Jean Bishop of the murder victims
11 case. You heard about the case.

12 I am also personally opposed to the
13 death penalty, but in my testimony at this point
14 I am here representing an organization that
15 formed last year as a result of demonstrated
16 need for victims rights advocacy and watch dog
17 of legislative matters that effect victims that
18 arose in the state and particularly with regards
19 to the HGRA study committee and the threat to
20 possibly retroactive sentence reduction and
21 possible changes in laws with regards to parole
22 determining sentences and so on.

23 So we have created a statewide
24 organization. We have a website. We are

1 affiliated with a national organization called
2 the National Coalition of Victims in Action. We
3 have hundreds of members statewide. We have
4 thousands of people that are signed up to our
5 petition, and we are meeting regularly with
6 states attorneys and with elected officials,
7 state legislatures, the governor's office, and
8 so on trying to gather more information and
9 empower the victim's voices in the judicial
10 process.

11 I would like to start off by
12 answering some of the questions that were raised
13 during my sister's testimony and specifically to
14 get to answer the question about what we were
15 recommending would be done with fun and know
16 that there are some very specific things I think
17 a lot of people don't realize about victim
18 services and the lack thereof in the state.

19 First of all, all victim services,
20 as you pointed, out they are not in every
21 county. Cook County has a good department, but
22 as everyone knows from watching the news these
23 days it's under significant threat financially
24 and has already been cut and looks like it may

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1 continue to be cut.

2 specifically there are four areas
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3 where victims do not receive services that are a
4 significant need for them to receive services,
5 and one of them is from the point of the crime.
6 Because victim services statewide at the county
7 level are tied through the States Attorney's
8 offices, and that means that it is completely
9 tied to their processes legally and if the
10 victim -- if, for example, at the point of the
11 crime on the victim needs services, in fact
12 right now victims don't receive any victim
13 advocacy services until the actual legal
14 proceedings begin litigation with the State's
15 Attorneys. So right now from the point of crime
16 on usually the trauma is most immediate at the
17 point of the crime, and they do not receive the
18 services.

19 Second, they are not receiving
20 services if the offender is never caught. It's
21 tied to the existence of a prosecution case
22 against an offender.

23 Third, they are not receiving any
24 support ongoing after the trial is over. There

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1 are in Cook County some. There is only actually
2 one. There use to be four. It's been cut down
3 to one because the major support groups that are
4 available to people ongoing after trial, but

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5 that's a very minimal problem. It's not
6 statewide. It would benefit immensely from
7 funding given to counties to allow monthly
8 support groups for victims to be ongoing even
9 after the point of the trial.

10 Finally, there is no services for
11 peripheral victims. Peripheral victims I
12 would -- let me give you an illustration. I
13 work very closely with the Englewood families of
14 which the two assault weapons case where the
15 little girls were shot in their home last year
16 in Englewood, and one of those victims, Seretha
17 white, was killed in a birthday party where
18 there was 30 girls 11 years old at a birthday
19 party, and the assault weapons fire came in
20 through the window and sprayed the room with
21 bullets and hit Seretha in the back of the head
22 and killed her, and all the bodies were thrown
23 down on the floor inside of the living room at
24 this birthday party. Not a single person that

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1 attended that birthday party received any victim
2 services to this day a year later.

3 The only person that's receiving
4 victim services is the mother of the little girl
5 that was murdered and only with regards to the
6 prosecution of the case. So all of those
7 children are deeply traumatized and would

8 benefit immensely from counseling.
9 We did recommend in the testimony
10 that I gave in November that an independent
11 Ombudsman be created at the state level for
12 victims because of the fact that victims
13 currently right now are in fact of necessity.
14 Their services are tied somewhat to the
15 prosecutors' offices, and that's necessary to a
16 certain extent because they are the ones with
17 the information about the proceedings but the
18 independent Ombudsman at the state level has
19 been tried in other states. It was tried in
20 Minnesota. It worked very, very well. It was a
21 very admired program. Unfortunately, it was cut
22 because of budget concerns in Minnesota, but an
23 independent Ombudsman will advocate at the state
24 level to ensure that the victim are not steered

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1 or used for the prosecutions agenda, if there is
2 one that is in conflict with the victim's needs.
3 Finally, I will reiterate my point
4 which I made in November, which it's incredibly
5 important for reforms that you are here to work
6 on. Victims need the system to get the right
7 guide. It's immensely traumatizing for victims
8 if the wrong person is arrested. Some victims
9 in fact are never able to make the journey once

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10 an error has been found to understand that it's
11 a new person that really was the true offender
12 all along because victims perform such an
13 intense emotional bond at the time of the
14 trauma, and I submitted some talking points to
15 you in writing about the nature of traumatic
16 memories and particularly why it is that victims
17 bond to this prosecutorial process in such
18 intense ways.

19 Finally, there is a new situation
20 that has arisen since the point of my last
21 testimony before you, and as we are trying to
22 represent the widespread views of many victims
23 in our organization, some who strongly favor the
24 death penalty and some who strongly oppose it, I

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1 simply wanted to say we have been very concerned
2 about the relationship that the prisoner review
3 in this state has with victims. There is
4 inadequate understanding and inadequate
5 representation of victims concerns in the
6 Prisoner Review Board, and I would be happy to
7 provide more detail to this committee. One of
8 our organizational issues of the last several
9 months have been of great concern about that.

10 Finally, just to say that the
11 services that the -- the sentences that are the
12 best for victims are determinate sentences that

13 are lengthy and prompt in their sense of
14 finality, and because of that in strong murder
15 cases I have found from personal experience that
16 a life without parole sentence is a very good
17 sentence for victims, and I am available to take
18 your questions.

19 MR. SULLIVAN: Kirk.

20 MR. DILLARD: Thank you. Two things.
21 First is a question if we were to create
22 Ombudsman or programs for victims assistance, do
23 you have a preference where it might be housed
24 in Illinois government?

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1 MS. JENKINS: Yes. There is -- this has
2 come out after a result of some study that we
3 have done, but we are only at the beginning of
4 being able to articulate it in detail. I have
5 made some handwritten notes on the pieces that I
6 just gave Mr. Baroni so you can see it, but we
7 will write this up in more detail for you.

8 we have seen several different
9 models tried around the country. I think
10 obviously we have to balance what's possible
11 financially with what is ideal, but remember
12 that victims are the reason we are all here.
13 Victims are the reason there is a crime, and
14 those are the people who primarily we believe

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15 should get a significant amount of effort.

16 County offices are ideal through
17 which to continue. We should make sure that
18 there is absolutely in every single county
19 victim services that are offered from the point
20 of crime that are not necessarily tied just to
21 the prosecution of the case, that are also
22 available for peripheral victims as well, and
23 that can be ongoing for emotional support after
24 the trial.

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1 But if you also would create at the
2 state level at least one person or one office
3 that is an independent Ombudsman for victims
4 that can be a person that can oversee the
5 victims services that are tied to the county
6 level through the States Attorney's Offices to
7 make sure that victims interests are represented
8 no matter what the particular disposition of
9 their case.

10 MR. DILLARD: The other comment or
11 question is about the Prisoner Review Board and
12 your issues with PRB. If you would, the various
13 members of the Prisoner Review Board are up soon
14 before the Senate Executive Appointments
15 Committee.

16 MR. JENKINS: We have asked the Governor
17 for a victim representation on that committee.

18 MR. DILLARD: I happen to be a member of
19 the Executive Appointment Committee. I know
20 some of the peer members are up before me for
21 reappointment. So if you have suggestions or
22 comments, why don't you get them to me, and
23 there is no better time other than the budgetary
24 process to get someone's attention when their

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1 employment or confirmation depends upon it. So
2 you know at least through me right now you will
3 probably have a captive argument audience with
4 some of the Prisoner Review Board members.
5 There is one or two that are up for --

6 MS. JENKINS: I believe there are five
7 appointments that the Governor has to make very
8 soon.

9 MR. DILLARD: I think one of them was
10 done within the last couple of weeks. Now is a
11 good time to get their attention.

12 MS. JENKINS: I would be happy to meet
13 with you.

14 MR. DILLARD: Tell me what you want me
15 to ask. Thanks.

16 MR. SULLIVAN: Go ahead, Leigh.

17 MS. BIENEN: Thank you very much for
18 your testimony. Since the police are always the
19 first ones to the crime, do the police offer any

IllinoisCapitalPunishmentReformMtg022607[2]
20 victim services? Do you think that would be a
21 effective place to put victims services if they
22 are not there now and what are the experience
23 with victims groups in other states with regards
24 to the police administering victim service?

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1 MS. JENKINS: Actually, my husband is
2 also a murder victim's family member. He is an
3 author of a national book for crime victims and
4 is an expert and travels the country and trains
5 people how to do exactly what you're talking
6 about from the point of crime.

7 MS. BIENEN: Can you provide us with
8 that book?

9 MS. JENKINS: Absolutely. I would be
10 happy to provide one to everyone in the
11 committee.

12 He has been working with the
13 training of people who do what they call death
14 notifications. Death notifications are done in
15 such a wide variety of ways. Sometimes it's
16 done by coroner. Sometimes it's done by a
17 dispatcher. Sometimes it's done by a trained
18 police officer. Sometimes it's done by an
19 untrained police officer. Sometimes -- it
20 happens in such a wide variety of ways.

21 In Illinois some very well funded
22 police departments have a full-time social

23 worker. For example, my hometown Winnetka,
24 which is a very prosperous community, has a

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1 full-time social worker which was assigned to
2 our family at the point of the murder in our
3 case, but that social worker was only for the
4 first few days and until the prosecutor services
5 took over, and in fact most communities in
6 Illinois don't have that.

7 MR. INGEMUNSON: In terms of the
8 services that you are talking about, I would
9 imagine it ranges from helping the people
10 through the process in court and also all the
11 way up to counseling. You talked about social
12 things and stuff along those lines. In your
13 experience can you talk about -- some of the
14 victims obviously probably don't necessarily want
15 to go to counseling. I deal with clients a lot
16 of times that need counseling but it's a
17 voluntary thing. How often in your experience
18 do you come across victims that don't
19 necessarily want to seek the help that you --
20 you mentioned the 30 children. Obviously all
21 those children have parents, and the parents are
22 looking out for the best interest of the
23 children and they will take the steps necessary
24 to try to obtain that counseling. Can you

1 comment on that?

2 MS. JENKINS: In my experience -- and I
3 have fairly significant experience working with
4 victims statewide for the last decade. I will
5 say I am going to ballpark a 95 percent figure
6 want counseling of victim services. It's an
7 overwhelming number of them want it and miss it
8 horribly in its absence. Most victim services
9 even now like Cook County which has a staff of
10 60 people, it's primarily only to navigate them
11 through the legal system, call them up and tell
12 them, look, you have got a hearing, you have got
13 a trial, you have got to be there. I will help
14 you get there, I will sit with you during the
15 trial. There is no counseling even though it's
16 use to be only one homicide support group at
17 least for homicide victims, and there are some
18 other pilot programs, obviously domestic
19 programs and parents of murdered children
20 chapters and things like that, but those things
21 are far and between. Individual counseling is
22 nonexistent.

23 MR. SULLIVAN: Randy.

24 MR. STONE: That was my question in the

1 example you mentioned of the 30 children,
2 peripheral victims. Wouldn't they be entitled
3 to get services from the State mental health
4 department or the County mental health
5 department to get some kind of counseling if
6 they needed it?

7 MS. JENKINS: At this point that's the
8 only thing that would be available to them,
9 which would be something that is available to
10 someone of a low income, but there is no
11 organized outreach. There is nobody that has
12 even informed them that those services might be
13 available even if they did X, Y, and Z and
14 tracked down those services and if they fill out
15 the appropriate paperwork to qualify for some
16 low cost program. It's incredibly unvictim
17 friendly, and right now the impotence is
18 completely on the victims to initiate anything
19 that happens to them, and what's worse is that
20 even with regards to this issue of parole in the
21 Prisoner Review Board, the impotence is entirely
22 placed on victims to initiate the seeking of
23 information about their cases, and it's quite a
24 disturbing trend, especially with the most

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1 recent release of John Outlaw where the family
2 after every year for ten years being told that
3 there was a parole hearing come up. He is a C
4 number prisoner, that in fact this year when he
5 was released they didn't even inform the family
6 that there was a hearing, much less that he was
7 going to be released, and the family is deeply
8 traumatized and is of course in agony at this
9 point. So it's almost always on the victim to
10 initiate that.

11 MR. SULLIVAN: James.

12 MR. COLDREN: Good morning. I am
13 interested in your comment in response to the
14 question about if there were an independent
15 source for victims services available that your
16 preference or your recommendation would be to
17 locate them in county government. So --

18 MS. JENKINS: Actually, I think the
19 independent person should function at the state
20 level, the independent Ombudsman office. I do
21 believe that victim services at the County level
22 do need to be tied to the prosecutors model
23 that's currently in place because that's the
24 place that has the information about the

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1 process, at least in some way. In any way they
2 can be made more independently better for
3 victims, but they have to work with the State's

4 Attorneys because that's where the information
5 is.

6 MR. COLDREN: Thank you.

7 MR. BARONI: The Ombudsman scenario that
8 you said was effecting, do you know how long it
9 was there?

10 MS. JENKINS: I will find that out.
11 That was in place for a couple of years, and it
12 died for lack of funding when they went to
13 budget cuts a couple of years ago. It's been
14 several years since it's been in place. It
15 hasn't been in place for four or five years.

16 MR. BARONI: Are you aware of any model
17 legislation that creates this type of person on
18 a state law level to administer services?

19 MS. JENKINS: I believe there is model
20 legislation, and I will get you a copy of that.
21 There is a publication called Dignity Denied in
22 which they proposed that.

23 MR. SULLIVAN: Ms. Jenkins, have you --
24 on some of these points you have made have you

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1 been down to testify in front of the General
2 Assembly?

3 MS. JENKINS: Not on this specific issue
4 at this point. I have testified on the death
5 penalty. I have testified on victim issues, but

IllinoisCapitalPunishmentReformMtg022607[2]
6 not related to this particular point.

7 MR. SULLIVAN: I just wanted -- or maybe
8 Kirk could answer this perhaps, whether there is
9 particular legislation that you or your
10 organization would sponsor that may address --

11 MS. JENKINS: We are working on that,
12 Mr. Sullivan.

13 MR. SULLIVAN: And here we have got
14 several --

15 MS. JENKINS: We're actually just now
16 beginning to discover the need for this and
17 going to articulate that and would love to meet
18 with any of you. All that would --

19 MR. SULLIVAN: We happen to have three
20 members of the legislature on this committee.

21 MS. JENKINS: That's great.

22 MR. SULLIVAN: All right. Anyone else?
23 Thank you very much.

24 Our next will be Allen from the Cook

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1 County State's Attorney. I can't read the last
2 name.

3 MR. SPELLBERG: Allen Spellberg,
4 S-p-e-l-l-b-e-r-g. Unfortunately I was not
5 gifted with the ability of clean penmanship.

6 Good morning. My name is Allen
7 Spellberg. I am a deputy supervisor of the
8 Criminal Appeals Division in the Cook County

9 States Attorneys Office, and I am actually here
10 as a substitute on behalf of Bernie Murray, the
11 chief of our criminal prosecution bureau who
12 unfortunately is sick with the flu.

13 Mr. Murray wanted me to reiterate a
14 point that Mr. Nora had presented back in
15 November with us, which is regarding an issue of
16 depositions. It has been our experience in Cook
17 County that there is a wide variety of the use
18 of depositions, as Mr. Richards said earlier,
19 that some judges will order them almost as a
20 matter of course while other judges will
21 restrict their use.

22 So one of the things that we believe
23 that is truly necessary to improve the system
24 even further is to have further guidance as to

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1 what good cause means, as to when those
2 depositions are available, when they can occur,
3 how long they should take. Because as everyone
4 knows, justice delayed is justice denied, and
5 these depositions as they go on and on in some
6 cases can take the matters well into three,
7 four, five years before it can lead to trial.
8 Everyone in the system has an interest in taking
9 these trials and bringing them to a quick
10 resolution. So that is our primary point that

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11 we truly wish to have better guidance as to what
12 good cause is as to when depositions are
13 available.

14 MR. SCHWINN: Do you think that it would
15 be advisable to do what -- Mr. Richards said in
16 Florida they classify the type of witnesses,
17 such as expert witnesses you have an absolute
18 right to take a deposition, eyewitnesses, you
19 know, and as you go down the line of witnesses
20 that there should be a classification as to
21 whether it's discretionary or mandatory, the
22 right to take depositions.

23 MR. SPELLBERG: Well, I am not familiar
24 with the Florida plan personally. I don't

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1 believe that there should be any sort of
2 mandatory system associated with it at all.
3 Instead, I think it's appropriate to leave it to
4 judicial discretion to let the determination as
5 to what that witness may or may be not
6 testifying to, let the judge decide again we
7 need guidance for that usual discretion. Most
8 judges I would imagine will allow expert witness
9 depositions, unless there is a good reason not
10 to, but that doesn't mean that we should
11 legislate that it should always occur. For that
12 reason I don't think it's necessary to have a
13 series of categories.

14 MR. SULLIVAN: Go ahead.

15 MR. INGEMUNSON: To maintain that
16 discretionary nature of the rule, what is it
17 that -- do you have an idea of how you would
18 further expand on that definition to tighten it
19 up a little bit and yet maintain that
20 discretionary nature of it?

21 MR. SPELLBERG: Well, I think what needs
22 to be said is again we need to reiterate the
23 good cause, and good cause needs to be
24 demonstrated through the means of efforts to

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1 reach the witnesses, speak to the witnesses
2 individually. The importance of what the
3 proposed testimony would be is the necessity of
4 having a formal sit down deposition subjecting
5 to cross-examination beforehand, again just a
6 heightened awareness of the factors that would
7 fit in. So, again, it would be the importance
8 of the witness, the needs of the witness, the
9 effect it has on the witnesses because these
10 depositions are difficult for many of these
11 witnesses. So a listing of the factors I would
12 suppose would go into an identification of what
13 good cause is.

14 Anybody else?

15 MR. SULLIVAN: Allen, let me ask you

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16 something. There is mandatory judicial training
17 in the capital cases. Have you thought about
18 having this subject or maybe it is on the
19 training schedule for attorneys who try capital
20 cases?

21 MR. JENKINS: I'm not particular with
22 the training schedules for judges for capital
23 cases. I would imagine that they are at least
24 informed and trained as to what the rules

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1 provide. Beyond that though I don't believe
2 that they are specifically told what the factors
3 should exercise are in determining good cause.
4 Right now it's an open ended question for the
5 judges.

6 MR. SULLIVAN: Maybe someone could help
7 me. who is it that handles the judge's judicial
8 training?

9 MR. GOTTFRIED: I think Judge Tooman is
10 involved with that.

11 MR. SCHWINN: Judge Tooman is on the --

12 MR. SULLIVAN: Supreme Court capital
13 cases.

14 MR. SCHWINN: Yes.

15 MR. SULLIVAN: So you might bring this
16 up to Judge Michael Tooman.

17 The other thing that occurs to me is
18 that there is a potential for Supreme Court

19 Illinois rule that would adapt some standards,
20 and they have a rules committee. So those are
21 some areas that you might want to -- we might
22 want to address too.

23 MR. SPELLBERG: Certainly those options
24 are available to us as an independent entity.

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1 Again, the goal of this Commission is to
2 determine the effective reforms that have been
3 enacted. This is just a point that we thought
4 was important to reiterate that the depositions
5 need to be at least refocused slightly in terms
6 of how we obtain depositions and how they are
7 available. From our perspective there needs to
8 be a clarity as to the availability of
9 depositions as to when and who.

10 MR. SULLIVAN: It seems to be coming
11 from both sides for different reasons, but
12 everybody agrees that we have got to do
13 something.

14 MR. SPELLBERG: That's why we thought it
15 was important to come forward today and present
16 this to you.

17 MR. SULLIVAN: Thank you very much.
18 Bernard Sarley.

19 MR. SARLEY: Good morning, everyone.
20 My name is Bernard Sarley. I am an Assistant

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21 Cook County Public Defender. By way of
22 background I have been with the Public
23 Defender's Office for about 26 years. My
24 current position is capital case coordinator,

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1 although I have only been in that position for
2 about six months. Previous to that and sort of
3 continuing on I have been in the homicide task
4 force, and that's been since 1986. I have tried
5 over 100 juries, most of them murders, a number
6 of those capital cases. I haven't spent as much
7 time in my new position yet because I am still
8 finishing up the cases that I have carried with
9 me. In fact, I have two capital sentencing
10 hearings set for later in the month of March.
11 Actually one starts later this week. So that's
12 just for purposes of background.

13 I appreciate the opportunity to
14 speak to you all and have you hear my comments
15 on these issues. I don't have any written
16 comments, but I would like to provide written
17 comments shortly. They are just not really in
18 the form that I am ready to present, but I would
19 like to do that.

20 MR. SULLIVAN: You may do that.

21 MR. SARLEY: Thank you.

22 I basically have five topics that I
23 wanted to cover, and that is videotaped

24 interrogation, the addition of statutory

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1 mitigating factors, the new death penalty
2 standard, and sort of that with respect to jury
3 instructions, depositions as we heard about
4 earlier this morning, and I also would like to
5 address the large number of death penalty cases
6 that are currently pending in Cook County and
7 sort of the issue of eligibility for the death
8 penalty.

9 with regards to videotape
10 interrogation, I think that's definitely a
11 positive reform that has taken place. I believe
12 it's good for law enforcement. I believe it's
13 good for the defense. It probably cuts down on
14 frivolous and unnecessary litigation and it
15 probably should result in cases -- some cases
16 being resolved short of trial that wouldn't have
17 been in the past. I also believe that it should
18 result in further -- excuse me -- in fewer false
19 confessions and fewer wrongful convictions. I
20 think that's a positive reform, and I appreciate
21 the fact that that's in effect right now.

22 with regards to the addition --
23 recent addition of statutory mitigating factors
24 that is a mental or physical abuse of a child

1 and the diminished mental capacity, I also
2 believe those are positive reforms, and I
3 appreciate the fact that those have now been
4 statutorily put into the categories of
5 mitigating factors that are there to be
6 considered by the Court or by the jury in a
7 sentencing. These particular mitigating factors
8 have long been relied on in death penalty cases
9 prior to their codification, and our opinion is
10 that the fact that they are identified by the
11 Court and can be considered specifically by the
12 jury as mitigation is a good thing.

13 The next point I would like to speak
14 about is the -- is the new death penalty
15 standard and sort of in light of jury
16 instructions, and I would like to talk about
17 both of those at the same time. I think in
18 that -- in this regard it's both a positive and
19 a negative.

20 The old standard, sufficient
21 mitigating factors just to -- it is awkwardly
22 worded or was an awkwardly worded standard and
23 sometimes could be difficult to understand and
24 difficult for juries to apply it and almost sort

1 of a double negative approach to it. The new
2 standard is certainly more plain language or
3 uses more plain language.

4 I however have some concern with the
5 word weighing in the definition and in its use.
6 I believe that it's possible that the use of the
7 word weighing could result in a jury -- when
8 considering aggravating and mitigating factors,
9 it could simply go down the list, make a list
10 and make their decision based on which list is
11 the longest because it quote, unquote, weighs it
12 more, and I would be troubled if that were to
13 cause a jury to disregard or to not give enough
14 weight to some mitigating factors or aggravating
15 factors, whichever the case may be, that might
16 be stronger or have more weight.

17 And I would suggest or I would guess
18 it would be my opinion that the word considering
19 instead of the word weighing might be a better
20 word because considering would allow a jury or a
21 court in a bench sentencing to decide on their
22 own what appropriate weight should be given to
23 all of the various mitigating and aggravating
24 factors without necessarily having to resort to

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1 which list is longest to make their decision.

2 MR. SULLIVAN: Do you have the sentence,
3 the full sentence that you are referring to
4 there?

5 MR. SARLEY: As I said, I will present
6 something in writing. If the jury determines
7 unanimously after weighing the factors in
8 aggravation and mitigation that death is the
9 appropriate sentence, the Court shall sentence
10 the defendant to death. That's the statement.
11 I would submit that perhaps the word considering
12 would be a better word than weighing.

13 MR. SULLIVAN: All right.

14 MR. SARLEY: In either case I believe
15 that as quickly as possible we need I.P.I. jury
16 instructions to govern these types of cases to
17 the jury so that there is a standard, same set
18 of instructions to be used for the death penalty
19 sentencing as it was in the past. Right now we
20 have cases that have been tried recently where
21 this issue came up. Basically the Court with
22 the help of the attorneys and with the input
23 from the attorneys has basically come up with
24 their best application of what the instructions

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1 should be.

2 I believe that the instructions
3 should include -- should my suggestion about the
4 word considering not carry, that at the very

5 least one of the instructions should include an
6 appropriate definition of the word weighing so
7 that it wouldn't be improperly considered or
8 imposed by the -- considered by the jurors. As
9 part of the I.P.I. instructions I think an
10 appropriate definition of weighing would be my
11 suggestion, and I think that would be an
12 effective use of the jury instructions.

13 MR. SULLIVAN: I have been frustrated by
14 the I.P.I. because they say unless there is a
15 statute or a court case that has the principal
16 in it that they will not make it into an I.P.I.
17 instruction, which I think is not correct, is
18 not historically correct, and is stupid, but
19 that happens to be what I have been told by the
20 I.P.I. committee. So you may run into that same
21 problem, unless there is some court case that
22 says that. I'm just warning you in advance what
23 you may find.

24 MR. SARLEY: well, I know that there

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1 have been cases now which have resulted in death
2 verdicts where a new standard was used and some
3 language was used. So I guess it's just a
4 matter of time then for the Supreme Court to
5 decide if that was the correct -- if the
6 instructions used were correct or not and maybe

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7 that's coming sooner -- hopefully sooner than
8 later but I understand. What do we do in the
9 meantime?

10 MR. NORA: Mr. Sarley, on your problem
11 with the word weigh, by this point in the
12 proceeding the jury would have had the I.P.I.
13 instruction on the preliminary issues.

14 MR. SARLEY: Correct.

15 MR. NORA: Including those on how they
16 should consider the credibility of the witness.
17 Those instructions tell the jury it's for you to
18 determine the weight to give the witnesses,
19 their opportunity to observe, et cetera. Would
20 your problem be addressed with the I.P.I.
21 instruction considerably to tell the jury it's
22 for them to decide what weight to give in
23 various mitigating factors?

24 MR. SARLEY: It could, and I guess I

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1 would have to see the instructions itself to
2 decide whether I believe that that would solve
3 the problem. I mean, obviously a less favorable
4 alternative, sure, I would want the word
5 weighing to be defined, and I would like the
6 jury instructed properly on it.

7 MR. NORA: Usually not arguing to his
8 defense I would think it would be important to
9 impress upon the jury the necessity to carefully

10 consider. I think that's what the word weigh
11 might impress.

12 MR. SARLEY: Okay. I appreciate that.
13 Thank you.

14 MR. SULLIVAN: If you have any success
15 with the I.P.I. committee, let me know, Bernie.

16 MR. SARLEY: I will do my best. You
17 will be the first to know.

18 MR. NORA: Don't tell them how stupid
19 they are being.

20 MR. SULLIVAN: I've already told them
21 that.

22 MS. BIENEN: Thank you very much for
23 your testimony. I have two questions.

24 The first is if you as a defense

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1 attorney requested that the instruction be given
2 that in the weighing process and mitigating
3 evidence, no matter how slight, could outweigh
4 any and all aggravated circumstances and it was
5 not a question of the number of aggravating
6 circumstances versus the number of mitigating
7 circumstances, would that instruction be read
8 and accepted?

9 MR. SARLEY: Are you asking if I
10 submitted that would it be accepted?

11 MS. BIENEN: Yes.

12 MR. SARLEY: I don't know. I guess it
13 would be up to the Court to decide. If the
14 Court had already overruled my attempt to use
15 the word considering then as a less favored
16 alternative, I would certainly ask that that
17 weighing be defined in the way you suggest it,
18 and I would hope that the Court would agree and
19 instruct the jury that way.

20 MS. BIENEN: My understanding is that
21 that kind of instruction is given in other
22 states. I think it's given in New Jersey. My
23 question relates to what is your experience with
24 regards to how and when and what manner the

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1 defendant's mental retardation is determined?

2 MR. SARLEY: How it's determined?

3 MS. BIENEN: Yes, and presented to the
4 Court.

5 MR. SARLEY: Well, initially expert
6 witnesses are either hired or appointed to test
7 the defendant and evaluate him, him or her in
8 making a determination. Then at some point
9 depending on the results it would be presented
10 to the Court at a hearing, and if the issue in
11 that case was whether the defendant's mental
12 retardation was of the extent that made him
13 ineligible for the death penalty, then a hearing
14 would take place and the Court would make that

15 decision and of course after the -- and the
16 defense either hires or the State's Attorney
17 could of course hire their own expert or get
18 another expert to look at it, and at the hearing
19 that would all come out.

20 MS. BIENEN: Is it your experience that
21 determining issues of mental retardation is one
22 where there is often conflicting evidence or
23 adversarial hearings?

24 MR. SARLEY: I would say certainly that

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1 there is conflicting evidence in a number of
2 cases, and I would also say that in some cases
3 it's not conflicting and all the expert
4 witnesses basically come down on the same side
5 but that's -- I would believe equally it happens
6 each way.

7 MS. BIENEN: If this committee was to
8 determine how many capital cases were pending in
9 Cook County at the present time and how many had
10 come to trial since the imposition of the
11 reforms, what would be the most efficient and
12 best way for us to do that?

13 MR. SARLEY: Probably talk to me. It's
14 interesting that you brought that up because one
15 of the things I was going to say at some point
16 is I believe that at this time that there are

IllinoisCapitalPunishmentReformMtg022607[2]
17 approximately 150 capital cases pending in Cook
18 County that are represented by the Public
19 Defender's Office and --

20 MR. SCHWINN: Is that where the Cook
21 County States Attorneys Office has filed their
22 intention to seek the death penalty?

23 MR. SARLEY: Correct, filed and not
24 either withdrawn it or had something else

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1 happen. The only way I get to that number is by
2 talking to all of the capital case attorneys.
3 You know, it's kind of a painstaking thing, as
4 Jeff knows. There are over 40 with the Public
5 Defender's Office in Cook County, but that's the
6 only way to do it. I guess one of the things I
7 am going to try to do once I get clear of all
8 these cases that I am finishing up is try to
9 work on a better way of keeping a tab on that
10 number.

11 MS. BIENEN: At present there is no
12 central place where the notice of factors --

13 MR. SARLEY: No, not really. It's
14 probably call me and I will do the best I can to
15 get you that information.

16 MR. SCHWINN: Mr. Sarley, I just wanted
17 to ask you in the point regarding mental
18 retardation, in light of the new guidelines that
19 have -- the advisory guidelines that have been
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20 set up for the prosecutors that have been put
21 together by the State's Attorneys Association,
22 as well as the Illinois Attorney General's
23 Office, one of the guidelines or suggestions
24 would be to get the input of the defendant

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1 through his attorney of any mitigation that you
2 think we should be aware of for the decision to
3 seek the death penalty is decided. Would you
4 believe that this mental retardation factor
5 should be put up front to the prosecutor before
6 the decision to seek the death penalty is made
7 considering -- I know in light of the fact that
8 it may take a substantial period of time to
9 determine testing and having the expert write a
10 report and getting into the State's Attorneys or
11 the prosecutor. Would you be in favor of
12 something of that nature?

13 MR. SARLEY: I believe that if the
14 defense has developed information regarding
15 mental retardation that is credible and -- I
16 don't see any reason why it shouldn't be
17 presented to the prosecution.

18 MR. SCHWINN: That should be brought up
19 front rather than waiting to the eligibility
20 phase?

21 MR. SARLEY: If it's reasonable to

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22 believe that that could have an effect on --

23 MR. SCHWINN: On the decision.

24 MR. SARLEY: On the decision by the

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1 prosecution. I know some defense attorneys are
2 probably skeptical about that. I don't know if
3 that's necessarily warranted or not. Maybe it
4 depends on the prosecutor you're working with
5 but, I mean, the information is going to come
6 out anyway.

7 MR. SCHWINN: Exactly. That's my point,
8 and it would save the cost of going through a
9 capital litigation of death qualifying the jury,
10 all of that, you know, and it would not preclude
11 you if the State's Attorney said, well, you
12 know, we will consider that but we don't believe
13 that it's something that should stop us from
14 seeking the death penalty. It will not preclude
15 you from bringing that in as mitigation.

16 MR. SARLEY: I understand that, and I
17 really don't have any problem with that.

18 MR. SCHWINN: Okay. Thank you.

19 MR. SULLIVAN: Anyone else have --

20 MR. SARLEY: I have a couple more if you
21 don't mind. I won't take as long as Steve
22 Richards.

23 MR. GOTTFRIED: Just a quick question
24 about mental retardation. I'm thinking back to

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1 when I represented defendants in the trial court
2 as a Public Defender. Mental retardation as far
3 as the death penalty, I would almost assume that
4 it's a defense lawyer's duty to examine this in
5 every single case because how would I know if he
6 is retarded or not? Is that the practice?

7 MR. SARLEY: It is not a specific
8 practice, but it is -- certainly we would wish
9 to air on the side of making sure we examine
10 everybody that in any way could possibly fit
11 into this category. So I would agree with that.

12 The next thing I wanted to talk
13 about was depositions. I will agree with the
14 previous speakers that I think it has been an
15 outstanding reform. It's very helpful.

16 MR. SULLIVAN: Which?

17 MR. SARLEY: Depositions. It's an
18 outstanding reform, and I think it was long
19 overdue, and I am very happy that is now made a
20 part of capital cases. I do think however that
21 it can have more of an impact than it does
22 currently.

23 Based on -- again, these are
24 statistics that I sort of compiled quickly, and

1 they are not as complete as I would want them to
2 be, but I believe that in the Public Defender's
3 office since the advent of the new rules that in
4 about 40 percent of the cases depositions have
5 been requested, and in approximately 45 percent
6 of those cases the Court has allowed at least
7 one deposition. So if those statistics are
8 correct, then it's less than 20 percent of the
9 capital cases that depositions are occurring
10 then, and again maybe they are not exact
11 statistics at this point but I think it's a
12 pretty good benchmark.

13 Now, the question is -- actually, I
14 would like to step back to something that was
15 said earlier. It seems to me that it appears
16 based on the Dagorski, the Luna, the Brown's
17 Chicken case and the number of depositions that
18 have been allowed in that case and the
19 discussion that I have heard that depositions
20 are occurring a lot or all the time, and I
21 understand that for several reasons the
22 complexity of that case, the gravity of that
23 case, as well as perhaps the judge who is
24 overseeing that case that a lot of depositions

1 have occurred in that case; but generally
2 speaking I don't think they occur as much in
3 Cook County as people think, and the question is
4 why.

5 As I have suggested with my
6 statistics, maybe a little less than 20 percent
7 of the time depositions occur. I would suggest
8 two reasons, and I think one of them is that the
9 State's Attorney usually opposes depositions in
10 Cook County. I don't know if that's the case in
11 other counties or other places, but in my
12 personal practice almost all the time when I
13 filed a motion for a deposition the State has
14 objected and filed a response in objection to
15 it. In speaking to other attorneys who practice
16 in Cook County, they have a lot of the same
17 concerns that the State's Attorney regularly --
18 pretty regularly, not in all cases, but in a lot
19 of cases objects to the Defense motions for
20 depositions. So I would suggest that that's one
21 of the reasons that we don't have depositions in
22 more cases.

23 Secondly, I would agree with my
24 colleague from the States Attorney's Office that

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1 good cause needs to be defined a little better
2 so that a Court can have more of a guideline as

IllinoisCapitalPunishmentReformMtg022607[2]
3 to when a deposition would be appropriate and
4 when not, and I am mindful of the question that
5 was asked previously about should there be
6 specific questions whether it's mandatory, and I
7 am not so sure about that, but I think that
8 guidelines for good cause and a better
9 deposition of good cause -- I am sorry, a
10 better definition of good cause would certainly
11 help courts and make it more uniform because I
12 certainly heard -- again, the same thing that
13 other people have said. Some judges will never
14 give you depositions. Other judges will, and
15 the way they apply the standards really are not
16 uniform at all. It needs to be more uniform.
17 You need to expect and get the same response or
18 similar response no matter where you are, and I
19 think a way of doing that would be to get a
20 better definition of good cause.

21 MR. SULLIVAN: Jerry, did you want to --

22 MR. NORA: On depositions when you say
23 that the Cook County State's Attorney routinely
24 objects to depositions, are you saying that in

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1 most cases the State's Attorney is objecting to
2 all depositions or in most cases the
3 deposition -- the State's Attorney is objecting
4 to some of the requests for depositions?

5 MR. SARLEY: My personal experience has
Page 96

6 been in the cases where I have requested capital
7 cases that I have requested depositions the
8 State has objected to everyone that I asked for.
9 I have spoken to other attorneys and they have
10 similar complaints. I know that's not the case
11 all the time but my -- my impression from my
12 practice in speaking to a number of capital
13 attorneys is that the State's Attorneys are more
14 opposed to depositions generally I guess would
15 be the way of putting it.

16 MR. NORA: And if what you are saying is
17 what's the general case, are you finding that
18 that type of objection is persuasive with the
19 Court or are the Courts actually requiring some
20 strong cause and then making a --

21 MR. SARLEY: Again, this is just -- it
22 varies. It depends again where the case is.
23 It's been successful. In the cases that I have
24 requested depositions in, it's been successful.

□

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1 Other people in other forums and the like have
2 gotten depositions. So some of the Courts have
3 allowed depositions. It just varies. You can't
4 really give an answer that covers everything.
5 It's more of a case by case and form by form
6 question, I think.

7 MR. SULLIVAN: Number 5.

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MR. SARLEY: Number 5, thank you. My

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opinion.

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MR. SULLIVAN: Then we're going to take

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a break.

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MR. SARLEY: I'm almost done.

13

My opinion is there are too many

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death penalty cases right now in Cook County and

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too many eligibility factors, and I think

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that -- I would urge that someone would look at

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that. In Illinois, as across the United States,

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I believe that the death penalty should be

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reserved for what is termed as the worse of the

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worse. However, in Cook County currently -- and

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I had already told you that there are about 150

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death penalty cases pending that are represented

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by the Public Defender. That is approximately

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25 percent of the cases where people are charged

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with first degree murder. So it's about a

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fourth of the first degree murder cases in Cook

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County currently are death penalty cases, and I

4

think that's too high of a figure.

5

I believe this -- one of the things

6

it's doing is it's beginning to create a problem

7

in the Public Defender's Office with regards to

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cost. Last year for the first time we spent

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more money on capital cases than we had in the

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capital litigation trust fund for the year, and

11 we went over by about \$100,000.

12 Now, the first problem of course is
13 that we are not able to pay all the bills for
14 the capital cases during that fiscal year. The
15 second problem that created is that when we
16 finally got our money for the current fiscal
17 year, the first \$100,000 of that money had to go
18 to pay last years bills. So as we move on, that
19 problem is going to regenerate and get worse and
20 worse.

21 As of about a week ago when I spoke
22 to the person who monitors the account, we have
23 less than 25 percent of the fund left for this
24 year and this year is -- this fiscal year goes

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1 to the end of June, and this person has told me
2 he doesn't think that it will last, which puts
3 us in the same position that we were in the
4 previous year, not being able to pay all of our
5 bills for the capital cases for that fiscal year
6 and then carrying the balance over to next year.
7 It's sort of a problem that is just going to
8 regenerate itself. As long as we are charged
9 with defending so many capital cases, there
10 seems to be no end in sight to this problem, and
11 maybe I will take this opportunity to sort of
12 mention this too.

13 The way the capital litigation trust
14 funds works -- and Jeff knows more about this
15 than I do since I'm just getting into it, but
16 once June 30th hits the fund is closed or -- you
17 don't have access to it anymore. We pay all of
18 our bills, and then we don't get the money again
19 until next year sometime. That creates maybe
20 four up to five months where we don't have
21 access to the money to pay the bills, and this
22 creates problems with some of our expert
23 witnesses because I have taken more than one
24 call from an expert witness who said where is my

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1 money, I am not getting paid and, you know what,
2 I am not working for Cook County anymore because
3 I am not doing anything. I am not subsidizing,
4 you know, my work with your pace. So I don't
5 know if there is anything that the committee can
6 do. I don't know what the solution to that
7 particular problem is, but it is a problem that
8 there are four months and maybe five months of
9 the year where we are not able to pay the bills.
10 In addition to that problem, now there seems to
11 be more and more repeat with the every
12 increasing number of capital cases.

13 I guess my final question is how can
14 the problem of this large amount of capital
15 cases in Cook County be addressed. Well,

16 perhaps more screening or better screening by
17 the prosecution. Maybe all of these cases don't
18 need to be capital cases. If capital cases are
19 designed to be for the worse of the worse, then
20 I don't think 150 people charged with murder in
21 Cook County are the worse of the worse. Perhaps
22 few eligibility factors would help. I'm sure
23 that would help much, maybe a combination of
24 both, getting back to the original eligibility

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1 factors that we started way back when.

2 One other thing, and I will end with
3 this. It's process -- it sort of goes along
4 with the process of decertification. There is a
5 new -- there is a statute -- newly enacted
6 statute that talks about decertification in
7 capital cases. It can occur in a limited amount
8 of cases after trial. Basically the types of
9 cases are where there is a snitch or a jailhouse
10 informant without any other corroboration or a
11 single live witness or single co-defendant
12 without further -- without any further
13 corroboration.

14 If a conviction is based on that,
15 then the judge can decertify a case after a
16 conviction as noncapital because of the
17 unreliability problems in that case. Now,

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18 that's all well and good, but I have got to tell
19 you there is not a lot of those cases around in
20 Cook County. A very small percentage of the
21 cases fit into those categories. What I would
22 suggest is that there is some way we can get the
23 decertification process to occur pretrial.

24 In situations where we believe that

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1 a person is charged with first degree murder,
2 the state has elected it as a capital case. If
3 we believe that there is an eligibility problem,
4 we believe that the person is not -- should not
5 be eligible or is not eligible for the death
6 penalty. What defense attorneys customarily do
7 or we have done in Cook County is file a motion
8 to preclude the state from seeking death because
9 for whatever reason.

10 For instance, as an example it's a
11 murder of a child under 12 but it has to be
12 brutal and heinous. It has to be accompanied by
13 brutal and heinous behavior. If we don't
14 believe it applies, we file a motion and we ask
15 the judge to hear that issue pretrial. What's
16 happening now when you file these motions the
17 state objects and the judge says, you know what,
18 it's premature and I can't hear it now. That's
19 a sentencing issue. If your client is
20 convicted, we will address that in eligibility.

21 The problem there is by the time you get to
22 eligibility, you have spent all this time and
23 effort in a capital case for a case in which you
24 don't believe it should be a capital case. So

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1 why can't the judge hear that motion pretrial
2 sort of like in -- sort of like a preliminary
3 hearing type of thing.

4 And I will give you an example of a
5 case I tried. I won't give you the name of it,
6 but a couple of years ago with that particular
7 eligibility factor a woman was charged with
8 killing her child, two year old child. The
9 state was seeking death based on brutal and
10 heinous indicative of wanton cruelty. It was
11 pretty clear to me that that didn't comply. So
12 I filed a motion and the Court predictably said
13 you know what, Counsel, it's premature and I
14 can't hear it now. That's an eligibility issue.
15 so fine. So we treat it as a capital case and
16 we go all the way through trial. We have an
17 eligibility hearing and the judge rules clearly
18 this it is not eligible. well, why couldn't
19 that -- why can't there be some screening
20 process before trial so that if the State is not
21 going to decertify cases as capital or not seek
22 capital punishment on some cases that at least

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23 the Court can have some input on reducing the
24 number of capital cases.

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1 what this would do is would get the
2 cases that shouldn't be capital cases not
3 considered capital cases and would save the
4 crisis that we have with all these capital cases
5 and the funds that we just don't have to defend
6 all of them.

7 so that's really all I have to say.
8 I will be happy to take any other questions. If
9 not, thank you very much for hearing me.

10 MS. SULLIVAN: Jerry, you want to start?

11 MR. NORA: You suggested a preliminary
12 hearing type of proceeding?

13 MR. SARLEY: Exactly. I think so, yes.

14 MR. NORA: So you're not suggesting that
15 an entire mini trial be held with full
16 cross-examination?

17 MR. SARLEY: well, right. I think
18 something similar -- I mean, there is
19 cross-examination allowed in preliminary
20 hearings.

21 MR. NORA: Preliminary hearings for some
22 years have provided the judge the ability to
23 find probable cause at any point in the
24 proceeding, and on cross-examination at any

0

1 point would that be a satisfactory proceeding or
2 are we talking about really having a mini trial
3 before trial?

4 MR. SARLEY: Well, I think, sir, there
5 needs to be something.

6 MR. NORA: I'm granting you that premise
7 for the sake of argument. What I'm asking you
8 is what kind of remedy are you proposing? Is it
9 a preliminary hearing type proceeding or is it
10 basically a full blown evidentiary hearing?

11 MR. SARLEY: Well, I understand that.
12 As a defense attorney I will say I will take the
13 full blown hearing, but I will also settle for
14 the preliminary hearing if I can get that.

15 MR. SCHWINN: Along the same point, are
16 you talking about questions of fact or questions
17 of law regarding the eligibility factors? In
18 your instance that you gave as an example you
19 believe that the factors didn't show that the
20 murder was brutal and heinous. That's a
21 question of fact, not a question of law.

22 MR. SARLEY: I would agree.

23 MR. SCHWINN: I would agree to disagree
24 with you I guess in regards to having a hearing

1 beforehand to giving you -- the old term is at
2 least two bites of the apple regarding
3 eligibility. If you can't get the judge to go
4 along with you on that, you still have the
5 opportunity to have eligibility go along with
6 that, correct?

7 MR. SARLEY: Sounds like that's correct.

8 MR. SCHWINN: If it's a question of
9 law -- and I was involved in a capital case
10 where the defense filed ahead of time a motion,
11 for lack of a better term, to de-death the case
12 because he didn't believe we could -- he didn't
13 believe that -- we agree that we couldn't show
14 that there was -- this defendant actually
15 inflicted any injury on the defendant -- on the
16 victim, but the eligibility factor was the cold,
17 calculated, premeditated factor. We said that
18 you didn't have to. It wasn't like the felony
19 murder rule where if you were basing it on
20 felony murder that you had to show that the
21 defendant inflicted some injury to the victim.
22 So that was a question of law, not a question of
23 fact. So I think you may have an idea that we
24 should look at if it deals with eligibility

□

1 factors on the question of law, not on the
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2 question of fact.

3 MR. SARLEY: Well, again, if I could get
4 somebody to agree to just look at it on
5 questions of law, I think that that would help
6 because my goal is -- that if I have 150 capital
7 cases and if everybody agrees with me and maybe
8 they don't that that's not -- that that's too
9 many, then how do we get that number down? And
10 if it's not as many -- if cases won't be
11 excluded by the prosecution through that
12 process, then maybe we can do it this way.

13 MR. SCHWINN: Again, would this be
14 something that you would bring up to the
15 prosecution before they decided whether or not
16 to seek the death penalty?

17 MR. SARLEY: We could.

18 MR. STONE: You said that about 150 of
19 the 600 first degree murder cases in Cook County
20 are considered death penalty cases?

21 MR. SARLEY: Correct.

22 MR. STONE: You think if we are only
23 suppose to consider the worse of the worse death
24 eligible, that percentage is too high? What do

□

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1 you think would be an appropriate percentage?

2 MR. SARLEY: You know, I hadn't really
3 thought about that question, and I don't want to

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4 just throw out a number. I don't know. That's
5 a good question. Can I get back to you on that?
6 I'm not sure.

7 MR. NORA: I think that's a very
8 interesting case because when you are talking
9 about the worse of the worse, we are really
10 allowing the murderers to kind of decide within
11 their community what the standards are going to
12 be on punishment. If they reform themselves
13 maybe the threshold is lower for the worse of
14 the worse. If we had John Wayne Gacey a year,
15 maybe John Wayne Gacey wouldn't be the worse of
16 the worse anymore. That's an interesting point.
17 I think before we slide off into those things --
18 some people say all murderers are the worse of
19 the worse.

20 MR. SARLEY: I think we have to start
21 from a premise that that is not the case because
22 every murder would be a death penalty case and
23 it's not.

24 MR. STONE: That's my point. I think

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1 that we understand that if we have a pool of
2 cases that involve first degree murder only a
3 certainly percentage should be eligible for
4 death. I think almost everybody agrees with
5 that. The question is where do you draw the
6 line. If 25 percent is too high, what would be

7 appropriate? Clearly some people might say,
8 well, 50 percent. Whereas, others would agree 5
9 percent. I was just wondering if you had given
10 it some thought in terms of where that line
11 should be drawn. I didn't mean to put you on
12 the spot.

13 MR. SARLEY: If I threw out a number, I
14 would just be throwing out a number for you
15 right now.

16 MR. SULLIVAN: I can say this. As far
17 as what happened last year, it seems like we're
18 right that when you have the cases that were
19 concluded last year, less than five percent
20 resulted in the death penalty. It's got to
21 raise some serious questions about what's going
22 on with the Cook County States Attorney's Office
23 in certifying these cases.

24 MS. BIENEN: Mr. Sarley, thank you very

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1 much for your testimony. My understanding of
2 the nature that you require on the certification
3 on the notice -- the current practice in New
4 Jersey is a hearing on the fact and law. For
5 example, the New Jersey Supreme Court has
6 interpreted the meaning of heinous approach as a
7 cruel factor in very specific cases, and so an
8 attorney will say this doesn't meet the standard

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9 and et cetera, et cetera. So I call that to
10 your attention. You may wish to look at some
11 case law.

12 I also have a more specific
13 question, and that is what is your observation
14 and experience with regards to the practice in
15 Cook County of both plea bargaining away the
16 death penalty and the certification of the
17 notice of factors either before or after the
18 certification of notice of factors and either
19 with or without the knowledge of the judge?

20 MR. SARLEY: Well, I think it happens
21 all the time in Cook County. I mean any time a
22 case results in a plea of guilty, which is a
23 recommended sentence that is agreed to or
24 recommended by the prosecution and the defendant

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1 pleas and that's the sentence and the judges
2 usually apprises it at some point along the
3 line, that happens. I mean, that happens a lot
4 in Cook County. So it does happen very
5 frequently.

6 MS. BIENEN: What about after
7 certification?

8 MR. SARLEY: It usually happens after
9 certification before certification probably
10 happens somewhere fairly early in the process,
11 and then at some point closer to trial for

12 whatever reason the parties reach an agreement
13 and that's how a case is disposed of. So it
14 happens very frequently and mostly after
15 certification.

16 MR. NORA: Mr. Sarley, you're not
17 opposed to us continuing to negotiate with you
18 after certifying a case?

19 MR. SARLEY: Not at all.

20 MR. NORA: In fact, would I be correct
21 in saying that the judge cannot be apprised or
22 brought into it until there is substantial
23 agreement with the parties?

24 MR. SARLEY: That's what the rule

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1 states, correct.

2 MR. NORA: Also, usually defense
3 attorneys will be unable to give its client
4 meaningful advice on whether to plea until well
5 passed the certification stage on a case.

6 MR. SARLEY: That's probably the case.

7 MR. NORA: Do you think justice is
8 served by the prosecutor maintaining an openness
9 between plea negotiations after certification.

10 MR. SARLEY: Sure, absolutely.

11 MR. NORA: Would justice be disserved if
12 we stopped after certification?

13 MR. SARLEY: In many cases it would, of

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14 course.

15 MR. NORA: Plea negotiations always
16 talking about something other than death.

17 MR. SARLEY: Correct, obviously.

18 MR. NORA: That's the obvious point.
19 It's just going to go down or better. So in
20 some respects that lowered number of death
21 penalties after certification may reflect the
22 number of factors, including an openness of the
23 prosecutors, information from the defense
24 attorney, are good defense attorney working, and

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1 other factors that may be promoting justice.

2 MR. SARLEY: Those would all be factors
3 that could lower the numbers.

4 MR. NORA: If we refuse to prosecute,
5 the number of death penalty would only -- if we
6 refuse to negotiate and just continue can the
7 certification -- we would probably have the same
8 number of death penalties already. The number
9 would probably go up.

10 MR. SARLEY: Unless there was a
11 screening process beforehand that didn't even
12 include the defense attorney.

13 MR. NORA: So the criticism of the
14 negotiations is really working -- will only be
15 encouraging more death penalties if we
16 discourage these plea negotiations.

17 MR. SARLEY: I don't necessarily know
18 that that's really the same question.

19 MR. NORA: I will withdraw it then.

20 MS. BIENEN: Just one other question.

21 Is it now possible in Cook County to
22 plead guilty to a death sentence?

23 MR. SARLEY: To plead guilty to a death
24 sentence?

□

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1 MS. BIENEN: Correct, that's the
2 question.

3 MR. SARLEY: It's always up to the
4 judge to decide what the sentence is. I suppose
5 somebody could plead guilty and say I want the
6 death penalty, but doesn't necessarily mean that
7 the judge --

8 MR. NORA: I think the record shows
9 there is a blind plea without the plea
10 negotiation. I don't know anywhere the
11 representative of a defendant and a prosecutor
12 has agreed to a plea negotiation.

13 MR. SARLEY: I'm not aware of one of
14 those.

15 MR. SCHWINN: No.

16 MR. SULLIVAN: Thank you, Mr. Sarley.
17 We are -- we still have a number of people
18 testifying, and we are going to take a 15 minute

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19 recess, but I would like to invite the people
20 that are still waiting to speak if you have a
21 particular commitment that would cause you want
22 to get in earlier rather than later, would you
23 please come up and talk to me about it right
24 now, but we will take 15 minutes. It's now 25

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1 to 1:00. We will start again at 10 to 1:00.
2 (Whereupon, a recess was
3 taken.)

4 MR. SULLIVAN: Next witness will be Jane
5 Goldman.

6 MS. GOLDMAN: Good afternoon. My name
7 is Jane Goldman. I am an attorney, and I am
8 also the executive director of the Illinois
9 Coalition to Abolish the Death Penalty. I want
10 to thank all of you for giving me the
11 opportunity for appearing here before you today.
12 I appreciate the many ways in which committee
13 members have worked to improve the criminal
14 justice system. We tracked the Illinois death
15 penalty case in development since the moratorium
16 was placed on executions in January of 2000. We
17 do this through the efforts of staff, volunteers
18 and interns, and we seek information from a
19 number of sources.

20 Today I am providing all members of
21 the committee a copy of our 2007 annual report.

22 This report covers the Illinois system for 2006.
23 The coalition has also provided committee
24 members with copies of our prior reports, and I

□

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1 would be happy again to provide additional
2 copies to the committee if that would be a
3 benefit.

4 The picture emerging from our
5 analysis reveals certain transfer
6 considerations. One of the big picture items
7 that is coming forward is that the death penalty
8 is receding from use overall, notwithstanding
9 that little conversation that just occurred from
10 the criminal justice system. Mainly this is in
11 the imposition of the death penalty as opposed
12 to seeking it, although that is going on as well
13 outside of Cook County.

14 The imposition of the death penalty
15 has bought 82 percent from the death penalty's
16 hay day in the 1990's compared to the four years
17 since the commutations. In the four years since
18 the commutations we have had on average of 2.5
19 death sentences a year throughout the state
20 compared to the 16, 17, 18 a year in the mid
21 1990's.

22 Only six death sentences have
23 resulted from greater Illinois cases. That's

1 of 2003, and also since that time death penalty
2 cases have been disposed of in Cook County. Of
3 these only six have resulted in a death
4 sentence, one of which is currently under
5 review.

6 At this point, as Mr. Sarley, said
7 in our research it indicates that the Cook
8 County capital case load is around 150 cases.
9 This represents about 90 percent of all current
10 cases in Illinois. There are about 16 cases in
11 9 counties outside of Cook County. DuPage has
12 the majority of -- the bulk of those. Some
13 counties only have one.

14 There was just a discussion about
15 evaluating whether this 150 case level is too
16 high. I would make a few points. One is that
17 it's not a philosophical debate. There are
18 aggravating factors that are suppose to clearly
19 delineate who is and who is not eligible for the
20 death penalty. There should not be so much give
21 in the system that there is such a question of
22 who is and who is not eligible. That's why I
23 think the fact that the legislation failed to
24 implement the aggravating factors is such an

1 urgent issue for this committee to consider.

2 In addition, there is some other
3 factors that could be more carefully evaluated
4 that could reduce this number. Many mentally
5 ill defendants are charged with the death
6 penalty. There are many young people in Cook
7 County -- 20 percent of those charged are 21 and
8 older, and that raises the question of really
9 they are the worse of the worse or if they have
10 not been given an opportunity to reform or learn
11 from their all be it terrible crime.

12 There is also a number of mothers
13 who killed their children that are currently
14 under capital cases where the county is seeking
15 the death penalty. I think that needs to be
16 further reviewed to see whether adequate weight
17 is being giving to the mitigating factor of
18 postpartum depression.

19 In addition, there are national
20 studies that are again reinforcing the notion
21 that the victim's gender and race are playing an
22 unacceptable role in the death penalty. I am
23 not anyway saying that happens in Cook County or
24 anywhere else in Illinois. That was found in

1 the Governor's admission report. I think it's
2 very important that this Committee determine
3 whether or not unacceptable factors such as
4 race, gender, or geographic location of the
5 crime continue to play an unacceptable role in
6 the Illinois system, and this again is
7 especially true because the aggravating factors
8 weren't reduced.

9 There also was in statewide
10 committee put in place to determine whether the
11 death penalty should be sought. That was also
12 recommended and the Supreme Court have a
13 personality review. So I think it's very
14 important for this Committee to wrestle with
15 this issue of whether the system truly is
16 capturing the worse of the worse.

17 I would also say that I really
18 appreciate the voluntary guidelines that the
19 State's Attorneys Association put in place. I
20 think this Committee needs to use those as a
21 guideline to determine whether the system is
22 functioning properly.

23 One of the issues there is the
24 transparency see of these charging decision

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1 committees, how do they work, whose on them, are
2 all the committees asking the same questions,

3 how do you determine whether the same factors --
4 whether the factors were weighed in similar or
5 different ways. I think transparency and
6 completeness of the record on how these
7 committees work or don't work is going to be
8 very important for the legislature when they go
9 to determine what are the next steps for our
10 state in relation to capital punishment.

11 I would also say that there are
12 troubling cases, such as the Maxi case where --
13 it was a terrible time. I think there is an
14 interaction. If the crime is particularly
15 heinous, sometimes cooler heads do not prevail.
16 In this case the man was exhibiting bizarre
17 behavior. This is the Maxi case in Dewhit
18 County. From media reports and other inquiries
19 he was exhibiting bizarre behavior in the jail.
20 I could be wrong, and I know some of you may be
21 working on this case and you can correct me and
22 I would be happy to be corrected, but the
23 defense sought it and the judge granted a
24 fitness hearing. Before that fitness hearing

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1 even came back, he was charged with a capital
2 crime and the death penalty will be sought.
3 Now, it did come back that he was fit, but it
4 seems to me in this new atmosphere of caution we

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5 should be looking for all the information we can
6 get before we seek the death penalty.

7 I know, for example, in Lake County
8 the State's Attorney has been his practice for
9 many years, and he has set aside some extremely
10 heinous cases when evidence prior to the
11 charging decision showed him that mental illness
12 played such a role in the crime that it was not
13 appropriate for capital punishment. So I think
14 that is one of the great issues that has to be
15 wrestled with.

16 I am going to -- a lot of this that
17 I was going to say was always covered, but I do
18 want to cover the cost issue as well. There was
19 a question of whether studies have been done.
20 We with our limited capacity we have tried over
21 the years to make cost analysis. It's in our
22 previous reports, and again I would be happy to
23 compile that, especially for the committee to
24 look at that.

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1 Again, it varies a lot by the case
2 but I would say -- I also included in our packet
3 that I gave you a compendium of how much each
4 county has charged to the Capital Litigation
5 Trust Fund and how much each case has charged to
6 the Capital Litigation Trust Fund since 2000.
7 Now, this does not include Cook County either

8 side. I think that's under a different set of
9 circumstances, and I will leave it to the
10 parties to provide it to the committee.

11 But I think those cases may help you
12 decide what extra costs are associated with only
13 seeking the death penalty as oppose to handling
14 the cases. A lot of the cases that go to trial
15 would otherwise be subject to a mandatory life
16 without parole sentence. The question really is
17 what we are spending to pursue the death penalty
18 over other options that protect public safety to
19 the extent that they have a permanent or a very
20 long prison sentence. I think that -- I
21 understand it's not up to the committee to
22 determine that, whether it's a good option or
23 not. I know many of are you in this field and
24 pursuing these cases. So maybe it's even unfair

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1 for you to determine should there be a death
2 penalty or not, but I think the legislature is
3 asking you to provide the most complete picture,
4 and because you are involved you have the
5 capacity to do that.

6 We have the cost broken down by
7 each -- I guess it would be definitely not a
8 budget person, but I guess it would be like who
9 the vendors are or who it was paid too. So then

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10 you can also analyze how much went into mental
11 health experts, how much went to more
12 traditional trial costs.

13 Just to kind of go in a little bit
14 more about where we get our information because
15 I know that we have a number of questions about
16 that. We go -- as much as we can with our
17 limited resources, we go to the county
18 courthouses. We search dockets. We make
19 Freedom of Information Act requests. Some are
20 answered in full, some in part, some accurately,
21 some not. Some the State's Attorney has flat
22 out refused to provide us the information even
23 though I have called and them know I am doing
24 some research. I think there needs to be some

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1 mechanism where we can all know exactly how the
2 capital punishment system is functioning.

3 I will just say one final thing,
4 which is that the thing that most troubled me is
5 as last night I was trying to prepare for this
6 is that in reading through the prior reports, it
7 seemed like some of the issues were surfacing
8 each year in the system, co-defendant testimony
9 or snitch testimony or cases where people are
10 actually acquitted in a capital case, coerced
11 confessions being alleged; and, yet, the case
12 going to trial on a capital basis. I think

13 everyone is working in good faith. One, as the
14 system continues to use it properly; but, two,
15 evaluate whether going forward we should have a
16 capital punishment system. I think it's these
17 issues that continue to surface despite the best
18 efforts of everyone involved that need that
19 analysis. The cases where the people are found
20 not guilty would be a perfect place to start to
21 try to figure out are there things that are
22 still not working on each layer of the system;
23 but, again, I commend you for your participation
24 in this committee. I will really appreciate

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1 everything that you are doing and the coalition
2 would like to help in any way that it can to
3 share our information and further the work of
4 the community. I would be happy to answer any
5 questions.

6 MS. BIENEN: Thank you for your
7 testimony.

8 With regards to your comments about
9 transparency of the process of standards for the
10 case that's eligible and we are assisted by the
11 recent State's Attorneys guidelines, have your
12 office or have you observed or made any
13 investigation of findings with regards to county
14 by county disparities in the application of

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specific criteria for the death penalty? For
16 example, the felony factor and if there is
17 information about that which is not in your
18 report or which is the subject of your
19 observation? Will you comment on that?

20 MS. GOLDMAN: We have as much
21 aggravating factor information as we can get.
22 We will get notices, and I will be happy to
23 compile that and send that to you.

24 I will say in broad terms in the

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1 south side of Cook County the aggravating
2 factors are probably narrowing to where the
3 greatest factor might be multiple murder, which
4 would make -- which would be eligible under any
5 scheme, the original, the current, or the
6 proposed by the Governor's commission.

7 In Cook County we have a list of
8 aggravated factors, and I think felony murder --
9 and I'm not trying -- to try to answer your
10 question in good faith, I think felony murder
11 remains a prominent aggravating factor in Cook
12 County. That may in some sense be related to
13 what kind of crime occurs in Cook County, but
14 also that is one of the aggravating factors that
15 would have been eliminated. I believe the
16 Governor's commission identified it as a source
17 of summons arbitrary in the system. I think

18 those factors that most likely have the most
19 give in them, if that can be quantified, have to
20 be studied and evaluated the most to see if
21 that's where some arbitrariness may be coming
22 in.

23 MR. GOTTFRIED: It mentions something
24 about a case where the State seeks death where

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1 the defender is found not guilty. Are you aware
2 of such a case?

3 MS. GOLDMAN: We have documented over a
4 dozen where either the person was found not
5 guilty, including three or four last year, or
6 where the charges were dropped prior to trial,
7 which certainly is not as troubling of an
8 outcome; but, yes, we have documented cases
9 where we were told they were capital cases, they
10 went to trial, and they were actually acquitted.
11 I would be happy to provide all of that
12 information to you. It's actually in the
13 reports but I would compile --

14 MR. GOTTFRIED: My State's Attorneys act
15 like there is no such case.

16 MS. GOLDMAN: In Galaton County last
17 year she was found not guilty. She was found
18 guilty of a lesser charge. She was not found
19 guilty of murder and she was charged capitally

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20 to trial. It happens, and that was an
21 unfortunate case where she and her stepson were
22 originally charged, and that case is actually
23 raised a possible case where they sought the
24 Capital Litigation Trust Fund and almost a

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1 million dollars was spent on the two cases. He
2 agreed to a plea arrangement to testify against
3 her, but the jury said in the paper afterwards
4 they couldn't figure out who actually did the
5 killing, so they felt they had to acquit her. I
6 am not casting any dispersions on the case.
7 That did happen last year. There also were
8 several cases in Cook County where the witnesses
9 were quite suspect. One was a jail murder and I
10 was -- Jerry can diffuse me if it wasn't a
11 capital case, but he was acquitted. There have
12 been cases over the years where people are
13 acquitted, and I would be happy to provide that
14 information.

15 MR. GOTTFRIED: It makes you understand
16 the strength of the case. The jury makes the
17 decision. The people can say we disagree with
18 the jury, but it does make you understand the
19 state is not seeking the death penalty in cases
20 where there is abundant evidence where there is
21 question of guilt can go either way.

22 MS. GOLDMAN: I think one of the things
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23 too is that there may be circumstances where the
24 case starts to peel off during the process but

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1 the parties are committed to their positions. I
2 think that's something that has to be studied
3 whether -- not being a criminal lawyer but some
4 of this discussion of when evidence can be
5 presented, question of law, question of fact,
6 that has -- I think it's a very crucial issue,
7 especially if the case isn't at the end what it
8 was in the beginning, and I know that's what
9 plea bargainings are for, but it doesn't always
10 seem to work to expedite some of these more
11 questionable cases.

12 I do think it is troubling. I think
13 it will be very important going forward once --
14 now that these voluntary guidelines have been
15 adopted. Of course, they are voluntary, but
16 they say that the prosecution should have
17 absolutely no doubt of the defendant's guilt
18 when the charging decision is made. So if that
19 is the case and we continue to have acquittals
20 then I think we do have a problem since we have
21 had acquittals. I think we would -- that would
22 even raise the question to a higher level.

23 MR. GOTTFRIED: Could I ask -- it seems
24 strange that I would be asking this, but for

1 some time you kept track of all the people on
2 death row. Do you still do that?

3 MS. GOLDMAN: Yes, we do.

4 MR. GOTTFRIED: In terms of my office we
5 know the cases that we have been appointed to on
6 appeal and we know the cases where we have been
7 asked to give assistance at trial, but in order
8 to find out all the death penalty prosecution, I
9 mean, we are looking at newspapers, we are
10 hearing rumors. Do you have a better system of
11 trying to figure out where there is a death
12 penalty prosecution going on?

13 MS. GOLDMAN: We think we do and then we
14 find out there is more that we don't know. What
15 we do is we file Freedom of Information Act
16 requests. I often call the public information
17 officer of a county to try to clear up cases
18 that are not clear. We ask prosecutors who
19 either won't do it under FOYA and this is our
20 situation with Cook County to provide as much
21 evidence as they will. Plus we went to the
22 P.D.'s because we felt that was another very
23 good source of information.

24 The troubling thing is that you

1 can -- everybody says we will just look in the
2 case file, but it can be on the docket and not
3 in the case file. It cannot be on the docket
4 and in the case file. It cannot be on the
5 docket, not in the case file, the notice, and
6 yet everybody agrees it's a capital trial.

7 With Cook County only being further
8 squeezed for resources you worry that even the
9 file in there now -- trust me. I managed over
10 500 cases when I represented the UAW against
11 Caterpillar. My files were not pretty, but if
12 we are going to know what's going on in a
13 systemic way, then these files have to be
14 complete.

15 It seems like the clearest, simplest
16 thing would be simply each time a State's
17 Attorney files a notice it goes to the chief
18 prosecutor and then they forward it either to
19 the State's Attorney Association, this
20 committee, or whoever we can agree on it is a
21 good. Then again if they withdraw. I did it
22 here as well. There were cases where no notices
23 were filed that were pursued as a capital case
24 and that's the most troubling of all because --

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1 MR. SCHWINN: Have you considered the
2 constitutionality of your idea?

3 MS. GOLDMAN: You mean the separation of
4 powers issue?

5 MR. SCHWINN: Yes.

6 MS. GOLDMAN: Well, the Courts can order
7 them to do it. Courts in many states are
8 requiring them at the trial level to fill out a
9 form that --

10 MR. SCHWINN: They do know with the
11 intention to seek. They have to list the
12 factors which they are relying upon to seek the
13 death penalty, and that's filed with the clerk
14 of the court.

15 MS. GOLDMAN: I think there is a
16 separation of powers issue, but I would put it
17 this way, Mr. Schwinn. If the State wants to
18 continue to pursue the death penalty, it would
19 strike me that everyone involved, prosecutors
20 and defense attorneys would gladly volunteer
21 because notice is public record. Just volunteer
22 the notice to be sent to a depository for a
23 study by the Committee. I don't think that
24 that's -- many State's Attorneys have happily

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1 sent me their notices. Not happily. I am
2 assuming a fact not in evidence. They have
3 voluntarily sent it in.

4 MR. SCHWINN: The notice is a public
5 record. You don't have to get it from the
6 State's Attorney. You just go to the clerks
7 office.

8 MR. GOLDMAN: Assuming they are in the
9 file and assuming you can figure out all the
10 murder cases and everybody who is a first degree
11 murder case and, you know -- I think that
12 voluntary compliance with recordkeeping and data
13 gathering is the best thing for all of us as we
14 try to solve this problem or the question. I
15 won't even characterize it as a problem, the
16 question of whether we should continue to have a
17 death penalty.

18 MR. SCHWINN: Jerry.

19 MR. NORA: I don't know if that one case
20 you described is or was a death penalty.

21 MS. GOLDMAN: I will provide that list
22 to you, Jerry, because I think a lot of them are
23 in your jurisdiction, not all of them.

24 MR. NORA: Well, I look forward to

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1 reading your report, and I am just taking this
2 opportunity to congratulate you on being one of
3 the most articulate and civil effective
4 advocates for your position that I have
5 encountered.

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MS. GOLDMAN: Thank you.

MR. NORA: I think you raised a very good question, is it fair for people who are identified with these issues to move on these issues. We frequently stand where we sit but I think -- I hope -- you're certainly a person that makes us better in all respects by the questions you raise. You have a definite opinion on the death penalty, but you are still able to live with the individual issues. Our recordkeeping is much better, but it's not perfect, but it's better because of the request that you are making for information.

MS. GOLDMAN: Thank you.

MR. SULLIVAN: Go ahead, Jeff.

MR. HOWARD: You mentioned the age of 21, and I am curious about two things. Do you know how many other states in this country have the eligibility age at 21 rather than 18 like

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Illinois does?

MS. GOLDMAN: I don't think anybody does.

MR. HOWARD: Do you have any idea in the state of Illinois how many death eligible individuals are between the ages of 18 and 21?

MS. GOLDMAN: I have only formerly studied that for Cook County largely because you

9 provided me the ages. I would say outside of
10 Cook County there have been several cases that
11 stand out to me because they are very similar.
12 One was just tried to conclusion, the Brian
13 Nelson case, and then there is one pending, the
14 Jason Smith case. These are young men in their
15 teens who either on a rampage -- I don't want to
16 get into the characterization of what they did,
17 but they to these domestic killings of a large
18 number of people. Like one killed her baby and
19 the mom, and the other one killed the whole
20 family. So those guys were -- I would say it
21 would be hard for me characterize it off the top
22 of my head.

23 Again, this is where it all gets
24 pretty hard because it's this whole inner play

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1 between what they did versus who they are. I
2 certainly have a hard time as I read every day
3 these cases. First of all, it's so depressing;
4 but, secondly, how do you judge who is the worse
5 of the worse and who can't be rehabilitated and
6 can't, you know, be safe in prison for other
7 prisoners. I mean, these are very top
8 determination. I would say if we could
9 eliminate as many cases as possible prior to the
10 charging decision, it would help everyone have

11 IllinoisCapitalPunishmentReformMtg022607[2]
the resources as the trials go forward to not
12 feel swamped by the whole system and carefully
13 answer those questions during the process of the
14 trial.

15 MR. SCHWINN: I have what you handed
16 out, your 2007 annual report, and I am looking
17 at it because this Committee is not here to
18 discuss whether the death penalty should be
19 abolished or not. That's not what we are here
20 for. I am looking under your Illinois death
21 penalty reform section, which is what we are
22 here for, and you make -- your organization
23 makes a statement -- and I am reading from the
24 status of enacted reforms under B. It says

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1 regarding the mandate of the taping of all first
2 degree murder investigations, and I quote, you
3 say not surprising funding is an issue but also
4 police culture seems to hinder, if not bar, the
5 use of taping broadly in murdered cases.

6 Have you found instances where the
7 police have not used the taping or have --
8 what -- I don't understand what you are saying
9 there, and let me finish. The next sentence
10 says, of course, death penalty cases are the
11 critical target here but many murder cases are
12 potentially death qualified. Have you found
13 evidence that the videotaping has not been done

14 and there has been some type of -- some way
15 getting around the taping?

16 MS. GOLDMAN: My understanding was that
17 there was a discussion at the last committee
18 hearing about the different paces at which the
19 videotaping had been implemented and some
20 difficulties in certain counties in getting it
21 implemented. That's not casting aspersions on
22 anybody's efforts, but that was my understanding
23 and I was -- this section was written by
24 Mr. McInanny who was present at that hearing.

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1 MR. SCHWINN: In your statement here you
2 seem to put it on the police culture that
3 hindered the problems with the taping.

4 MS. GOLDMAN: Mr. Schwinn, we also
5 talked about the cost, and there was apparently
6 some discussion about barriers to
7 implementation. It was not meant to be a
8 criticism of the police, but that was something
9 that was discussed and certainly has to be
10 looked at. As things change and reforms are
11 made, do the entities charged with carrying out
12 reforms have the resources to carry out reform
13 and are there any barriers either -- people do
14 resist change. I resist change. Everybody does
15 on some level. It's important for this

IllinoisCapitalPunishmentReformMtg022607[2]
16 committee to make sure that the reforms are
17 accepted and understood, and that's a huge part
18 of the Governor's commission reform
19 recommendations is that the training be
20 throughout the system about the reforms, and I
21 think that's a very important focus of this
22 committee, are the parties that are carrying out
23 the system given the resources, the training,
24 and the knowledge to fully implement these

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1 reforms. So please do not take that as any
2 kind of attack on anybody. It's really a
3 measure of trying to make sure that the reforms
4 are looked at to make sure that have -- beyond
5 that, I just don't think there is any
6 truthfulness --

7 MR. SCHWINN: I'm just reading what your
8 organization put in here.

9 MS. GOLDMAN: I'm explaining --

10 MR. SCHWINN: The police culture
11 hindered, if not barred the use of taping
12 broadly in murder cases. Well, I'm just trying
13 to -- I'm asking you if you found evidence that
14 the police are somehow trying to get around the
15 videotaping requirements that are mandated by
16 statute?

17 MS. GOLDMAN: There has been evidence
18 that the application has varied by county and

19 that -- my understanding was that there was a
20 discussion of why that had occurred, and again
21 we are not trying to cast any aspersions. I
22 don't think that this issue has to be looked at
23 in a negative way. It should be looked at as
24 are all the entities given the opportunity, the

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1 resources, and the training to make the
2 necessary changes.

3 MR. SCHWINN: The last question I have
4 is again under the Illinois death penalty reform
5 it's the very last sentence that you have in
6 this. You state taken as a whole the Committee,
7 referring to this Committee, so far has moved
8 slow toward assessing the evidence of reform
9 impact on the system but what -- I am sorry, but
10 what its initial inquiries have uncovered is a
11 slow implementation of many reforms mandated by
12 the 2003 reform statutes.

13 What reforms have not been -- have
14 been slow to be mandated -- slow to be
15 implemented by the mandate?

16 MS. GOLDMAN: I think there has been
17 some discussion that videotaping is not
18 universal in its application, and that would be
19 one reform. The lineup study is --

20 MR. SCHWINN: The lineup study was not a

IllinoisCapitalPunishmentReformMtg022607[2]
reform of the Death Penalty Reform Act.

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MS. GOLDMAN: Well, it was a pilot

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program.

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MR. SCHWINN: It was a pilot program.

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1 It had nothing to do with the death penalty
2 reform. That lineup study goes to any kind of
3 lineup that's done. It's not just death penalty
4 cases, lineups. So that had nothing to do with
5 it.

6 MS. GOLDMAN: Well, I will point to the
7 videotaping, and I would point to the fact that
8 the crucial issue is we need to know more. We
9 need to make sure these reforms are being
10 implemented. If you want to pin me into a
11 corner to make me make some admission, I will.

12 Our role is to contribute to the
13 debate by providing information and resources
14 and data that would be helpful for the debate.
15 We're not here to cast aspersions. I don't
16 think it's helpful to have this narrow
17 discussion about a few lines in our report.

18 MR. SCHWINN: Ma'am, I'm not trying to
19 pin you in a corner, but when you put out
20 something like this and it was done last year
21 too and I brought it to the attention of your
22 people of factual mistakes, you publish these
23 things and you give it to the public, and the

24 public reads it. You paint with a broad brush

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1 is what I'm saying.

2 MS. GOLDMAN: Would you say,
3 Mr. Schwinn --

4 MR. SCHWINN: You paint with a broad
5 brush, and this is a perfect example when you
6 say that police culture hindered, if not barred
7 the use of taping broadly in murder cases.

8 MS. GOLDMAN: You know, Mr. Schwinn, I
9 will make two observations. One is I am not
10 sure anybody at this committee believes that
11 these reforms have been fully and expeditiously
12 implemented. Secondly, I came up here to make a
13 contribution, and I think that every report gets
14 better, every report can get better, but I am
15 here as a citizen to make a contribution. I
16 accept and thank you for your comments, and we
17 will continue to make this report the best we
18 can, and we would appreciate the cooperation of
19 all the entities involved to get the best
20 information that we can.

21 MR. SCHWINN: Thank you for your
22 comments.

23 MS. GOLDMAN: Thank you. Is that all?

24 MR. NORA: On that videotaping issue we

1 should look into it to see where equipment is
2 still needed, but I think your research is going
3 to look at it's very exhaustive and detailed
4 work and it shows.

5 MS. GOLDMAN: We will, and that's been
6 my understanding that where it is implemented
7 people are satisfied on all sides.

8 MR. STONE: Just to comment briefly, I
9 mean, on the videotaping question as I read your
10 report basically the report says that funding
11 was an issue in terms of implementing the
12 process across the state and, secondly, that
13 police culture may have contributed to hindering
14 the process. I don't think that's any sort of
15 revelation that a lot of police departments
16 around the state were not exactly excited about
17 doing mandatory videotaping of interrogations.
18 I mean, that's pretty much common knowledge as
19 far as I'm concerned.

20 MR. SULLIVAN: Can I comment for a
21 minute, please?

22 I have had a particular study of
23 this issue throughout the nation I have read.
24 The statute that was passed by the legislature,

1 first of all, doesn't require videotaping. It's
2 electronic recording. It's not on a video, but
3 it does have an evidentiary consequence because
4 if in a potential capital case -- and that's
5 what we are only talking about capital cases,
6 but that happens to be every murder basically.
7 The police can't take a chance when they have a
8 suspect in custody so that the inclination I
9 assume and I believe is it's a murder case, you
10 better videotape it or you might get the
11 confession because it's presumed inadmissible if
12 it's not taped. The presumption can be
13 overcome.

14 It's my understanding, and I cannot
15 claim to be sure of this, but it's my
16 understanding that the police in Illinois since
17 July of '05 have complied with this requirement.
18 If not because they want to, but because they
19 are afraid not to. In other words, if you don't
20 comply with it, then the judge doesn't find good
21 cause and you lose the statement. So I think
22 that funding is an issue and a compatibility of
23 equipment also is an issue. I do believe that
24 the practice has been followed in murder cases

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1 and certainly the prosecutors will follow it and

IllinoisCapitalPunishmentReformMtg022607[2]
2 the chief of police will follow it simply

3 because they lose the confession if they
4 don't.

5 The other thing is -- some of these
6 reforms -- in fact I think most of them had --
7 they went into effect right now. So it was
8 legislation. The Supreme Court of Illinois, as
9 far as I know, has done absolutely nothing since
10 the report came out to implement any of the
11 recommendations that were made. So it's not
12 slow. It's just zero. Anyhow, I think we have
13 battered you enough on that subject.

14 MS. GOLDMAN: I don't want to really
15 stay up here any longer, but in all honesty I
16 want to say I think the focus should be on the
17 facts and not any editorial -- the facts in here
18 are what we are trying to present to further the
19 debate in this area. I hope everyone is open to
20 a honest and fair discussion because that's
21 really all we are seeking to do.

22 MR. SCHWINN: The fact is that the
23 reforms that have been implemented by the 2003
24 statute reforms, those are in place and are

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1 being used, and in most cases were being used
2 before the effective date of that statute. So I
3 think the statement that you make in your report
4 is inaccurate, and that's what I'm pointing out

5 to you.

6 MS. BIENEN: Thank you very much for
7 your testimony. I would like too ask you for
8 your observations and experience with regards to
9 another area, and that is the area of when
10 statutory mitigating factors such as age of the
11 defendant or the mental condition of the
12 defendant can have an aggravating impact. For
13 example, if you have a young defendant between
14 the ages of 18 and 22, the jury may perceive
15 that as somebody who may be dangerous for a long
16 time; and with regards to the mental mitigating
17 factor that if you have a defendant who is
18 not -- does not meet the standard of retardation
19 or is fit to stand trial and yet has
20 characteristics which are troubling to the jury
21 or the jury finds dangerous, do you have any
22 observations or comments on how those factors
23 have been played out in cases in Illinois?

24 MS. GOLDMAN: I can think of cases where

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1 youth was taken into account and cases where it
2 wasn't. I can think of cases where different
3 factors seemed to influence the judge or the
4 jury, and in other cases it did not sway them.
5 So I think that would be worth looking at to see
6 whether there are any issues that seem to be

7 IllinoisCapitalPunishmentReformMtg022607[2]
8 particularly persuasive to a judge or a jury in
9 terms of any of the mitigators, but I'm not even
10 sure there is enough of a body of cases to
11 really make any kind of a statistical analysis
12 at this point.

13 Thank you all for your
14 consideration.

15 MR. SULLIVAN: Thank you.

16 Next we have Janet Kittliues. I
17 want to get the spelling of your last name
18 because I can't read your writing it's
19 K-i-t-t-l-i-u-e-s.

20 MR. SULLIVAN: Okay. Janet, and you're
21 with the League of Women's Voters in Illinois?

22 MS. KITTLIUES: Yes. I am the death
23 penalty issue specialist with the Illinois
24 League.

In 2000 the League of Women Voters

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1 of Evanston began a process which ultimately
2 resulted in the League of Women Voters of
3 Illinois and the League of Women Voters of the
4 United States adopting positions advocating the
5 abolition of the death penalty. I want to share
6 our experience with you in the hope that it will
7 assist you as you determine what recommendations
8 you will bring to the General Assembly, even
9 though I know that your mandate is much less

10 broad than that.

11 The League of Women's Voters does not
12 adopt positions lightly. The membership before
13 it adopts a position on an issue thoroughly
14 studies the subject taking into account a
15 variety of perspectives. When this issue was
16 approached by the league, the question was not
17 can we safely execute the system, that is can we
18 justly in a manner that is zero free to take the
19 life of someone who is deemed worthy of this
20 penalty, rather the question for us was are what
21 the virtues of the death penalty and what are
22 the problems with the death penalty, does it
23 serve society.

24 Looking at the pros and cons of the

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1 death penalty was an enlightening process
2 because we discovered that there was very little
3 to commend the death penalty. This was
4 something --

5 MR. SULLIVAN: Very little what?

6 MS. KITTLIUES: There was very little to
7 commend the death penalty.

8 MR. SULLIVAN: Okay. Thanks.

9 MS. KITTLIUES: This was a surprise to
10 many people since the death penalty does enjoy
11 wide support. It is and someone has noted

IllinoisCapitalPunishmentReformMtg022607[2]
12 support that a mile long but an inch deep. That
13 is the public's support for the death penalty is
14 based more on emotional grounds than on rational
15 ones.

16 We looked in vain for credible
17 reasons to support capital punishment. For
18 example, the death penalty for one individual
19 who is locked up awaiting execution, studies
20 have fairly and consistently concluded that the
21 death penalty does not act as a. Deterrent the
22 idea that without a death penalty murder rates
23 would soar is contradicted by statistics showing
24 that the murder rates are as low or lower in

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1 states do not have the death penalty.

2 The argument then the most serious
3 crimes require forfeiture of life is
4 contradicted by the fact that only two percent
5 of all murders at a maximum results in the death
6 penalty. Further, people committing the most
7 heinous crimes may escape the death penalty
8 because it's used as a bargaining chip. That
9 safeguards in our justice system to ensure that
10 only guilty people wind up on death row is
11 contradicted by the fact that 120 wrongfully
12 convicted persons have been released from death
13 row since 1973, many despite the system and not
14 because the system worked.

15 This naturally leads us to wonder
16 how many defendants having been denied DNA
17 testing were in fact innocent. How many
18 innocent persons went to their death because
19 their case did not attract a well funded appeals
20 lawyer with the resources to thoroughly
21 investigate leads that the police had
22 dismissed.

23 When the Illinois league brought
24 this issue to the national convention in 2004,

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1 this position was not adopted because league
2 members had not been convinced that it had been
3 thoroughly studied. Indeed, several leagues
4 were in the midst of their own studies and they
5 wanted to complete them before committing
6 themselves to an abolition position.

7 In 2006 when the Illinois league
8 once again brought there issue to the national
9 convention the situation was quite different. A
10 total of 13 state leagues had adopted their own
11 abolition positions. Leagues that had not
12 participated in state studies were able to
13 access -- they were able to do local studies in
14 preparation for the convention using our
15 materials and the materials of other state
16 leagues that were posted on our website. The

IllinoisCapitalPunishmentReformMtg022607[2]
17 Internet facilitated a great deal of discussion
18 and communication of information as we prepared
19 for the convention. So by the time we
20 considered the adoption of this position the
21 death penalty had been thoroughly scrutinized.

22 while some states gave evidence that
23 they had recognized the flaws of the death
24 penalty were making attempts to address them, we

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1 discovered as we compared our information and
2 our studies with one another that there were
3 certain flaws that were consistent in all states
4 that effected the administration of the death
5 penalty, and these flaws are fatal. There is no
6 amount of reform that can satisfactorily correct
7 them. The death penalty simply serves no useful
8 purpose in the United States, especially given
9 the alternative of life without parole.

10 Our decision in the 2006 convention
11 was an easy one. The position is the League of
12 Women Voters of the United States supports the
13 abolition of the death penalty was adopted
14 overwhelmingly. The challenge that's given to
15 your committee to study the impact of the
16 various reforms of the capital punishment system
17 is much too narrowly focused. Consider the
18 testimony and the evidence that you collect.
19 Observe how absolutely worthless and destructive

20 this penalty is to the administration of
21 justice.

22 Capital punishment discredits our
23 criminal justice system and it mocks our
24 judicial tradition of justice for all. When you

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1 do report to the legislature your findings on
2 the conduct of capital punishment in this state,
3 I hope that you will be bold enough to suggest
4 to the General Assembly to stop tinkering with
5 machinery of death. I urge you to recommend to
6 the General Assembly that they should abolish
7 the death penalty. Thank you.

8 MR. SULLIVAN: Thank you, Janet. Now
9 you have got wait for cross-examination. I'm
10 going to turn to the right, turn to the left.

11 Have you read Kamousse's Reflections
12 on the Dilatine?

13 MS. KITTLIUES: No.

14 MR. SULLIVAN: I recommend you do. I
15 think you're going to like it. Thank you very
16 much.

17 Just so everybody knows that the
18 people that came up and said that they needed to
19 get out of here right away, the way we did it
20 was alphabetical, and that's how we are doing
21 it. I'm sorry about that.

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MS. JACKSON: How are you. I am Marva Jackson, the mother of -- I am Marva Jackson,

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1 the mother of Jamie Jackson. Jamie was 17 years
2 old. He is now 33 years old. He is an innocent
3 person. He was wrongfully convicted by the
4 system. There was a whole lot of stuff going
5 on. I had this attorney who said he couldn't
6 have a jury trial, he had to have a bench trial,
7 and we were saying, well, this is taking his
8 Constitutional rights away from him. Oh, no, he
9 has to have a bench trial and if he doesn't have
10 a bench trial under this leader here I just
11 can't represent him.

12 The attorney carried my son through
13 three judges. He didn't want him here, he
14 didn't want him there, he didn't want him here.
15 When he got him to where he wanted him to, he
16 said now you have to have a bench trial. You
17 can't have a jury trial. I said, well, this is
18 his taking his Constitutional rights away. He
19 said he can't have one. Anyway, he did this.
20 The judge told my son you're going to go to the
21 death penalty. My son was 17. He said but I'm
22 going to give you a short cut. I am going to
23 give you life. My son was convicted on a bag of
24 potato chips.

1 My daughter had sent him to get her
2 some gas. He pulled out a bag of potato chips.
3 He was going to pay for the potato chips and the
4 gas at the same time. He laid the potato
5 chips -- the bag of potato chips on the counter,
6 and he was calling anybody in here, anyone in
7 here, anyone in here. He didn't see anyone. He
8 said, ma, on the other side -- I walked around
9 on the other side of the counter. There was a
10 man laying down in a pool of blood. He said, I
11 never seen nothing like this in my life. He ran
12 out. As he ran out, he kicked the pager. He
13 thought it was his. He said I thought it was
14 mine and he picked it up. When he got back to
15 my daughter's house, he discovered it wasn't
16 his. This little friend of his he said, well,
17 give it to me. I will take it. He said but
18 it's not mine. Anyway, that same -- that next
19 morning they found out that this person had been
20 killed and this is -- they put this pager number
21 and the person that picked up -- you know, got
22 the pager he said my son gave it to him. This
23 is how my son --

24 MR. SULLIVAN: What year was this?

1 MS. JACKSON: What year was it?
2 MR. SULLIVAN: Yes.
3 MS. JACKSON: 1991.
4 MR. SULLIVAN: '91?
5 MS. JACKSON: Yes.
6 MR. SULLIVAN: He was convicted in '91,
7 your boy.
8 MS. JACKSON: (Nonverbal response.)
9 MR. SULLIVAN: Has he been in jail ever
10 since then?
11 MS. JACKSON: They gave -- the judge
12 gave my son two natural life sentences plus 25
13 years. How many lives do you get?
14 MR. SULLIVAN: But he is still in jail?
15 MS. JACKSON: Yes, sir.
16 MR. SULLIVAN: Is the case in court?
17 MS. JACKSON: No.
18 MR. SULLIVAN: It's not?
19 MS. JACKSON: No. He got two natural
20 life sentences plus 25 years.
21 MR. SULLIVAN: Does he have a lawyer
22 now?
23 MS. JACKSON: No.
24 MR. SULLIVAN: Pardon me?

1 MS. JACKSON: No. We got a second
2 lawyer. This attorney found out that the
3 deceased person was with -- served time in an
4 Indiana state prison and that he was a prison
5 snitcher is what they call him.

6 MR. SULLIVAN: Your organization is the
7 CEDP?

8 MS. JACKSON: Uh-huh.

9 MR. SULLIVAN: What does that stand for?

10 MS. JACKSON: Campaign to end the death
11 penalty.

12 MR. SULLIVAN: Our function is not -- I
13 mean, we have a statutory obligation to report
14 to the legislature once a year for five years on
15 the impact on the various reforms which took
16 place long after your son was convicted, and if
17 he was wrongfully convicted that's a shame and I
18 hope that it gets corrected very soon, but
19 you're really speaking to the wrong group. As
20 much as we sympathize and empathize with you as
21 the mother of a boy that's been put in jail for
22 all that time --

23 MS. JACKSON: Well, when my son was in
24 court he had four witnesses that were subpoenaed

□

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1 to come to court and testify who did this.
2 These are the subpoenas here. The State

IllinoisCapitalPunishmentReformMtg022607[2]
3 prosecutor called these people up and told them
4 do not come into court.

5 MR. SULLIVAN: Ms. Jackson, if you have
6 got a lawyer that can handle this or the Public
7 Defender, fine, but you're really in the wrong
8 forum.

9 MS. JACKSON: Well, I apologize for
10 that.

11 MR. SULLIVAN: I don't mean to be
12 abrupt.

13 MS. JACKSON: No, I understand what you
14 are saying.

15 MR. SULLIVAN: In any way or insincere
16 with you.

17 MS. JACKSON: I understand what you are
18 saying. Being the victim of identity theft I'm
19 just here for what my son. That's all.

20 MR. SULLIVAN: We sympathize with you
21 very much.

22 MS. JACKSON: Thank you.

23 MR. SULLIVAN: As we would with anymore
24 whose boy in jail.

□

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1 MS. JACKSON: Thank you.

2 MR. SULLIVAN: You're welcome.

3 Marlene Martin.

4 MS. MARTIN: Hello, everybody. My name
5 is Marlene Martin. I am the national director
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6 of the campaign to the end the death penalty.
7 We are a national grass roots activist
8 organization.

9 If I could just take one quick
10 second to say something about Marva. I really
11 commend Marva for coming here, and even though
12 Jamie didn't get the death penalty, I think part
13 of what she was trying to say is he was 17 years
14 old. He could have been eligible for the death
15 penalty, and also that the long sentence that he
16 did get in a sense is like the death penalty.
17 We call it the in-house death penalty and that
18 too often our criminal justice system does
19 penalize those people of color too often and
20 those people that are innocent and those people
21 that can't afford good legal representation.

22 I just want to thank you guys for
23 giving me a few short minutes to say a few words
24 and also just to say that for ten years I have

□

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1 been doing work with family members and other
2 activists to try to humanize the issue of the
3 death penalty, and over those years grappling
4 with the question about can the death penalty be
5 reformed and how do we look at reforming the
6 death penalty, what do we have to say about it,
7 and I just want to say that I don't think that

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8 reforms really are enough, and I want to give a
9 few examples.

10 For example, having videotaped or
11 electronic whatever confessions or maybe even
12 videotaping every interrogation, I am not
13 against that. I'm just saying that I don't
14 believe that that's enough. My experience, for
15 example, working taking the example of police
16 torture victims and my experience over the years
17 in working with victims of police torture, many
18 of whom still languish in jail sent there,
19 largely due to statements that were coerced from
20 them and a group of them, as you all know, came
21 to be known as the death row ten were actually
22 sent to death row largely as a result of coerced
23 confessions. They were suffocated to the point
24 of blacking out. They were tortured by the use

□

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1 of electrical shock on their genitals and so on,
2 and many of these men still languish in prison
3 today.

4 Now, you say, well, that was in the
5 1970's and '80's, we know longer have that. We
6 have reformed that away, and I think that you
7 can say the way that these men were tortured
8 using suffocation was very careful. The police
9 and detectives were careful not to leave a mark
10 so as then when they will later say, well, throw

11 it out whatever, whose words were they going to
12 believe, a poor black person or the police that
13 said that they actually did confess? So what I
14 want to raise is that, you know, are there other
15 clever ways to get around the videotaped
16 confession, and I think that there are
17 unfortunately.

18 If you look at the case of Kevin
19 Fox, Kevin Fox is a father in Illinois who
20 confessed on videotape of the murder of his
21 three year old daughter, and he was in jail for
22 eight months and he could have faced the death
23 penalty. DNA later proved that he was innocent
24 and he was freed but he did confess. He wasn't

□

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1 a juvenile. He wasn't mentally retarded. He
2 wasn't mentally ill, and why did he confess?
3 why would somebody confess to such a horrible
4 crime, the crime of killing your own child? And
5 they -- you know, when you look back as to why,
6 he was grilled for 14 hours. He was lied to,
7 which is perfectly legal, police and so on
8 saying that they have evidence against him and
9 that if he didn't confess it would be worse for
10 him. He could be assaulted in prison sexually
11 and so on and that if he confessed he could get
12 a lighter sentence. Now, what if there was no

IllinoisCapitalPunishmentReformMtg022607[2]
13 DNA in this case? Would Kevin still be in
14 prison today and how many other Kevins are out
15 there in prison or on death row?

16 I'm also reminded of the central
17 jogger case. There were five black men from
18 Harlem, ages 14 to 16, who were picked up and
19 accused of gang raping and beating a woman so
20 badly that she lost 80 percent of her blood.
21 She was left for dead. Many of these young men,
22 youth confessed with their parents present, and
23 they confessed on videotape and they spent many
24 years in prison before they were -- DNA also

□

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1 cleared them; but, again, what if there was no
2 DNA?

3 Donald Trump at the time paid for a
4 full page ad to say that these youth were evil
5 and that he wished there was the death penalty
6 because they should be executed.

7 So what's the conclusion? Who would
8 confess to such brutal crimes? These young
9 youth actually confessed in great detail on the
10 videotape and was very convincing that they knew
11 and they said different ways of how this woman
12 was brutally tortured and killed and again, you
13 know, it's perfectly legal. The police will
14 lie, say that they have evidence that they don't
15 and so on and so forth.

16 Now, there is one other respect and
17 I think other people have touched on this, and I
18 think it's important to underline it that
19 reforms won't touch this issue of unfairness.
20 That's how the death penalty is used.
21 Prosecutors use the death penalty as a threat to
22 get people to confess to crimes, some who are
23 completely innocent.
24 Take the case of Chris Ochoa in

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1 Texas. He was threatened. He was told there is
2 evidence against him and basically who is going
3 to believe you, you an immigrant, a poor
4 immigrant against my testimony. He basically
5 thought of that and was like you know what, I
6 don't stand a chance and I could get the death
7 penalty so I better go ahead and confess and get
8 a life sentence, which is what he got. It took
9 him 12 years until he was able to prove his
10 innocence, and now Chris is a practicing
11 attorney. He travels around and speaks against
12 the death penalty. 12 years of his life was
13 stolen.

14 The death penalty is suppose to be
15 used not in that way, right? Not as a coercive
16 device for prosecutors to solve cases. We are
17 told it's suppose to be used for the worse of

IllinoisCapitalPunishmentReformMtg022607[2]
18 the worse, but time and time again we have seen
19 that's used again the poorest of the poor and
20 those with dark skin.

21 Our criminal justice system is
22 flawed, and to say that everyone is equal before
23 the law is just not true. Everyone knows that
24 money buys better justice. It's just plain and

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1 simple. In our country, in our state it still
2 suffers from a scurrying of racism. This cannot
3 be reformed out of the system. Of the pending
4 capital cases, 150 of them, 75 percent of them
5 are African Americans, and if you add in
6 Latinos, that makes 90 percent of the pending
7 capital cases are people of color.

8 One defense lawyer once told me that
9 the most important factor in whether or not you
10 know -- whether or not he will take on a case, a
11 death penalty case, the first question he asks
12 is what was the race of the victim, not what the
13 was the heinous of the crime because that will
14 determine whether or not the death penalty will
15 be sought, and that, you know -- that shouldn't
16 be tolerated.

17 As Committee members you may think
18 that the death penalty itself is beyond your
19 scope, but you shouldn't be hemmed in by that.
20 Look at what the New Jersey commission. They

21 came out with a recommendation. They were
22 mandated the same as you all are. They came out
23 with a recommendation after they studied it, and
24 they came out with a recommendation that we

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1 should abolish the death penalty. In that state
2 now we can see that is actually helping to fuel
3 and move in the direction of abolition.

4 So I think this is really important
5 that you're having these hearings. We are
6 determining history here. This is really
7 important stuff. My daughter is seven years old
8 and I tried to explain to her, you know, why I
9 was coming down here today and how it's
10 important to stand up and to speak out for
11 justice and to speak out if you see unfairness
12 happening.

13 Because when we look back in
14 history, we look back at history and we are
15 ashamed and we are appalled that we live in a
16 country that tolerated slavery and it was
17 legitimized in this country, and we look back at
18 those people who stood up and fought against it,
19 that spoke against it, and they eventually did
20 away it as heroes as a people who did the right
21 thing.

22 we don't look to the people who

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23 tolerated it, the people who said, well, our
24 constitution allows it and we just need to

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1 figure out how to make it work a little bit
2 fairer. So I think we have an obligation to ask
3 the bigger questions, not just to have polite
4 discourse about how to best carry on doing the
5 wrong thing when the right thing is to do away
6 with it altogether.

7 MR. SULLIVAN: Thank you very much.

8 I have a comment. Your analogy to
9 slavery seems to be a little overdrawn, but the
10 point you make about the obligation of citizens
11 to speak out against what they consider to be
12 unjust is absolutely correct, and I think the
13 problem is most of us don't have the courage to
14 do it. So I applaud you for your testimony.
15 Thank you very much.

16 MS. MARTIN: Thank you. Could I just
17 ask you why you don't see the analogy between
18 slavery because that was something that was --
19 you know, involved poor Blacks. So why doesn't
20 the analogy --

21 MR. SULLIVAN: Because the death penalty
22 is not applied against everybody. We have Black
23 people here. We have many people that's not
24 under the death penalty, so it's more of a

1 selective thing. If it's unjust, it's a --

2 MS. MARTIN: But it's disproportionately
3 applied to those people of color, and statistics
4 bear that out, the race of the victim.

5 MR. SULLIVAN: Our commission -- the
6 Governor's commission did find that. We found
7 that there was disproportionate in the death
8 penalty as to the race of the victim and where
9 the crime occurred that is in urban communities
10 it was less likely than -- to get the death
11 penalties than in the rural community and more
12 likely that you would get the death penalty in a
13 small community or with a white victim. I was
14 surprised of that myself that it did not show up
15 as to the race of the defendant, that it did
16 not. That was the study that was done by
17 Professor Pierce and Professor Ratford in our
18 commission and you will --

19 MS. MARTIN: I mean, everything that I
20 have ever seen and studied and read is that race
21 plays a huge determining factor in who ends up
22 on death row.

23 MR. SULLIVAN: As Jerry Nora said -- it
24 showed up in the race of the victim.

1 MS. MARTIN: Right.

2 MR. SULLIVAN: That's why your lawyer
3 say is the victim white because if the victim is
4 white, you're more likely to get the death
5 penalty in Illinois without looking at any other
6 thing.

7 MS. MARTIN: Uh-huh.

8 MR. SULLIVAN: Thank you very much.

9 MS. MARTIN: I know other people
10 employed you to read a book. I would ask you to
11 guys to check out Back From The Dead. It's a
12 great book by Chever I am also going to leave
13 you copies of our newsletter you can pass out.
14 You have got other information that you're
15 reading, but I am hoping that you take a glance
16 at that and not think of it as beyond the scope
17 of what you're doing.

18 MR. SULLIVAN: Who is the author of the
19 book?

20 MS. MARTIN: Her name is Chever,
21 C-h-e-v-e-r, and it's a book that she did. She
22 studied all the people that were released from
23 death row after '72. That's the other thing is
24 that if we want to really talk about how to

□

1 prevent crime, you know, it's not by seeking out
Page 164

2 harsher and longer sentences. It's not about
3 the death penalty. It's about the police what
4 the superintendents when they were polled said.
5 We need better jobs. We need crime prevention.
6 We need better drug treatment centers for
7 people. That's what we really need. We don't
8 need the death penalty and we don't need harsher
9 sentences. That's really what we need. I think
10 this is an excellent book that speaks to that.
11 When you look at why are so many people leaving
12 prison and then going right back in prison,
13 recidivism is so high, well, they don't have any
14 opportunities. They don't have opportunities,
15 they don't have jobs, and they don't have any
16 skills. What her book talks so perfectly about
17 is that even people who have committed very
18 heinous crimes and have admitted to that, if
19 they did get some kind of education and there
20 was some opportunity, they don't go back into
21 prison, and I think those are the things that we
22 need to start as a society looking at. I know
23 that's a little bit beyond maybe the scope of
24 what you guys are doing, but you got to look at

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1 it in the contest of what it is that you're
2 discussing.

3 Okay. Thanks everybody. If we did

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4 want to submit anything, who is the best person
5 to give it to?

6 MR. SCHWINN: Peter Baroni.

7 MR. SULLIVAN: Carrie Summers.

8 MS. SUMMERS: Good afternoon. My name
9 is Carrie Summers, and I would like to first
10 thank everyone for taking the time to listen to
11 me today. I am here representing myself as a
12 friend of Amanda Hemm who was just prosecuted,
13 and actually her final sentence was child
14 endangerment, but most of the time over the last
15 few years since the tragedy occurred from the
16 time that the tragedy occurred through
17 sentencing the trial has been a death penalty
18 trial. So I am here to discuss that.

19 I am going to go through a little
20 chronology. Starting on September 2nd the
21 accident occurred in Lake Clinton in Clinton,
22 Illinois. That's my hometown, so I know a lot
23 about the town. The town is not terribly
24 prosperous. Unfortunately they -- the place

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1 where the accident occurred at Lake Clinton,
2 it's actually a cooling tank for the nuclear
3 reactor. So some of the industry that's been
4 invited into the community over the last few
5 years has been medical waste dumps, hog
6 processing plants, things of that nature. It's

7 been very difficult economically in that rural
8 area for quite some time.

9 So my mother and I went down state
10 for the funeral. We attended the funeral. It
11 was a thing I hope never to see anything like
12 again as long as I live. It was horrifying. I
13 came back. I fully expected say Amanda to be
14 charged and prosecuted with something, two
15 adults and the -- three children don't just die
16 in the presence of two adults and there not be
17 some kind of a problem. I expected Amanda to be
18 charged with something, but what I didn't expect
19 was for Amanda and Maurice to be charged with
20 between the two of them 18 counts of murder and
21 for the prosecution to be seeking the death
22 penalties for them both.

23 So I was surprised and angered into
24 the idea of making a film. So I began working

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1 on a film. I followed the case for the last
2 couple of years. What happened next was also a
3 little bit surprising as things moved through
4 the first few months of this case.

5 They were indicted in December of
6 2003. Right about that time Illinois Republican
7 State Senators Bradey and Mitchell both
8 introduced proceed death penalty legislation. I

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9 felt like that on some level they were of course
10 using this case and they were pretty upfront
11 about that. They were talking about the heinous
12 nature of this crime, which was appropriate,
13 what they thought was a situation or what they
14 thought was the situation.

15 Shortly after that Amanda's mother,
16 Ann Powers, on December 13th publicly declared
17 that she did not want her daughter executed.
18 Now, Ann Powers plays a very interesting role in
19 this situation because she is of course the
20 grandmother of the victims of three deceased
21 children and the mother of the accused and in
22 the meantime in the month of December she also
23 lost her mother. So she was overwhelmed by
24 grief at that time and she asked that her

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1 daughter not be executed.

2 The following Monday, end of January
3 of 2004, the prosecution decided not to pursue
4 the death penalty. I exhaled. I thought I
5 don't have a film but that's okay. I was very
6 pleased that we weren't going to be seeking the
7 death penalty in this case, and I was hoping for
8 appropriate justice.

9 Well, over the next couple of months
10 several other things happened. On March 18th
11 the County board of DeWhit County discussed the

12 trial fees and their intent to scrutinize the
13 bills of this trial. They also shortly
14 thereafter were quoted in the local media as
15 saying things like we can't afford to pay for
16 this stupid trial. They were referencing the
17 trial as being stupid in nature, and they also
18 were I believe giving the judge some difficulty
19 not wanting to pay the bills.

20 So on April 5th the county -- the
21 Dewhitt County Judge Steven Peters ordered that
22 the county began to pay the bills. Shortly
23 after that April 15th, again Representative
24 Mitchell introduced the legislation aimed at

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1 relieving the county of the financial burden of
2 the trial, meaning that he wanted for the State
3 of Illinois to adopt new legislation. I hope am
4 getting this right. I am not an attorney or a
5 legislature. Adopting legislation that allowed
6 for cases, not just capital cases, but other
7 cases, life in prison cases to be -- for the
8 state to give assistance to counties in trouble.

9 But apparently that didn't happen
10 because the following day on April 17th the
11 prosecution entered their desire to pursue the
12 death penalty again. Amanda unfortunately found
13 out while watching television. Her attorney

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14 didn't get in touch with her, and Amanda's
15 mother found out through the local news. So we
16 went through the process of Maurice with the
17 death penalty and then Amanda.

18 So I have questions that have come
19 out of this process wondering how the capital
20 litigation fund is used in pursuing death
21 penalty, if that indeed becomes a factor in
22 whether prosecutors and judges -- prosecutors, I
23 guess, determine whether to pursue the death
24 penalty or not and wondering whether perhaps is

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1 some of the reasons why we are seeing an
2 increase not in the execution of the death
3 penalty -- the sentencing but the actual drive
4 for that.

5 On a separate note I was deeply
6 disturbed by the trial in terms of race, and
7 race is not something that in a situation like
8 this you can really pinpoint and say that was
9 racism or that was racism, but it was pretty
10 obvious that there were underlying elements of
11 racism through this entire trial. Of course
12 Amanda Hem and her three children were white.
13 In fact, she had three different fathers for
14 each of her children. So you had three angry
15 white men and Maurice Lagrone was an African
16 American. So I just had been troubled. I only

17 raise questions. I apologize. I have no
18 answers. Thank you for listening to me.

19 MR. PARKINSON: Just a comment. I know
20 Ms. Summers I was one of the prosecutors in both
21 Lagrone and Hemm's case. She followed this as a
22 friend of Amanda. She was very open and tried
23 to get answers throughout. She had no ax to
24 grind except in terms of how the funds was used,

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1 and the fact was the County going to be broke a
2 factor in her mind -- a question in her mind is
3 that why they received the death penalty.
4 That's kind of where she's coming from.

5 MS. SUMMERS: Please, I don't mean to
6 imply intent. I mean, subconsciously you were
7 placed in a horrible challenge. The prosecution
8 was faced with a very difficult challenge with
9 this case in this particular environment. I
10 apologize.

11 MR. PARKINSON: You don't have to
12 apologize. It's a question that other people
13 have asked. So that's a fair question.

14 MR. SULLIVAN: I didn't pick up at the
15 beginning of your statement what your interest
16 in the Lagrone case was or is?

17 MS. SUMMERS: I am Amanda Hemm's friend.

18 MR. SULLIVAN: You're her friend?

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MS. SUMMERS: I am her friend.

20

MR. SULLIVAN: I see. Any other

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questions? We have heard from different sources

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that particularly down state some State's

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Attorneys will seek the death penalty in order

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to avoid having the local county pay for the

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cost and then decertify the case before it goes

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to trial to move the cost away into the capital

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litigation fund. No one has ever proven that to

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us, but we have heard that allegation. So

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you're not the first one to raise the question

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because it's been raised in front of our group

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several times by other people.

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MS. SUMMERS: I think it's one of the

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trouble byproducts of reform and having, as Ed

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and I discussed very briefly, having the death

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penalty not in -- it's not happening now but it

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is happening, you can't execute, but you can try

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the case, it's really placed the state and I

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think all of the legal system in a very

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compromising position, and I think out of these

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reforms where we have tried to address some of

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the problems with the system other problems are

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being created.

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MR. SULLIVAN: Right. A lot of

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unintended consequences.

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MS. SUMMERS: Exactly. Thank you.

22 Guidi weiss.

23 MR. SCHWINN: Last name is w-e-i-s-s?

24 MS. WEISS: Yes.

□

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1 MR. SULLIVAN: Would you spell your
2 first name?

3 MS. WEISS: It's G-i-u-d-i.

4 Good afternoon. Thanks for letting
5 me speak. I will be very brief. Everybody
6 before me has been very articulate. My name is
7 Judy Weiss. I am here as the Illinois liaison
8 for the Great Panthers. I am also with the
9 Board of the Justice Coalition of Greater
10 Chicago. Am I getting into this mich?

11 MR. SCHWINN: Yes.

12 MS. WEISS: Okay, thanks. I can't hear.
13 My ears are stopped up.

14 Both of the organizations that I
15 just mentioned have long been opposed to the
16 death penalty. The Great Panthers for decades
17 and the Justice Coalition since its inception,
18 oh, six or seven years ago, I believe. I know
19 that we are not here to talk about abolition.
20 we are here to talk about reform, but I think
21 that those -- the fact that I belong to these
22 organizations brings up a point in reform that
23 no one has yet brought. That is, when I have

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24 been called to jury duty in the past, I have

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1 always been asked what organizations I belong
2 to, and I have always been dismissed. I think
3 the chances of my being impaneled on a capital
4 case are pretty much zero.

5 I am a long standing opponent. I
6 belong to organizations that have long standing
7 opposition. If it was just me, it would be
8 fine. If this was just, you know, a few
9 thousand Great Panthers around the U.S. it would
10 be fine. If it was just tens of thousands of
11 people who belong to the ACLU or Amnesty
12 International it would be a little trickier, but
13 those numbers are growing.

14 It use to be a very -- it use to be
15 a small minority in opposing to capital
16 punishment. I have seen those numbers grow
17 through the years, and now I have seen poles
18 that say when life without parole is offered as
19 an alternative, it's 49 percent, very close to
20 half and those numbers continue to grow.

21 Now, I wonder what's going to happen
22 when there is nobody left to be on these juries.
23 I hope that that means that there will be no
24 capital punishment, but I do hope in fact that

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1 the death penalty is abolished long before then.
2 It's a question that reform really can't
3 address, the fact that people like me, people
4 who are knowledgeable about these issues who
5 know the justice system, who know where things
6 can go wrong, who know we are all human, who
7 knows that justice is not always served, those
8 of us know these things are excluded from these
9 juries, and I think that's a dangerous
10 proposition. It's getting more dangerous each
11 day. Thank you.

12 MS. BIENEN: Thank you for your
13 testimony.

14 If you could propose a reform that
15 would address the problem you have mentioned,
16 how do you think it might be done, through the
17 court rule or what do you think?

18 MS. WEISS: Well, the fact is I don't
19 believe in reform. I believe in abolition.
20 It's hard for me to address something that -- I
21 am a grown up. I compromise now and then. I
22 think that a person's stand on the death penalty
23 should not be a question in paneling them for a
24 jury. I think that people who are concerned

1 about the issue and who are involved in the
2 issue should have as much to say as anyone
3 else.

4 MR. SCHWINN: Ma'am, you understand that
5 just because you oppose the death penalty
6 doesn't mean you would not necessarily be chosen
7 unless that option is unwaiverable and you would
8 never sign a death verdict, and I assume because
9 of what you said here you would never sign a
10 death verdict?

11 MS. WEISS: That's right.

12 MR. SCHWINN: You would not be on a
13 jury. Just as somebody said I would vote for
14 death penalty every single time if the man is
15 convicted or if a woman is convicted of murder,
16 they deserve the death penalty, they wouldn't
17 sit on the jury.

18 MS. WEISS: And I understand the logic
19 behind that. I'm just saying that what that is
20 doing is in effect excluding a growing number of
21 people from the jury pool.

22 MR. SCHWINN: Because they are biased
23 just as you can say I would convict every black
24 man or I would convict every Hispanic man or I

□

1 would convict every male or white male, you
2 wouldn't get on the jury either.

3 MS. WEISS: I'm not saying --

4 MR. SCHWINN: What you do is you weed
5 out the bias.

6 MS. WEISS: Yes, and I am saying that in
7 weeding out the bias of those who I say I would
8 convict every Black man or Hispanic man, you're
9 weeding out people who are prejudiced. You're
10 weeding out people who are against the death
11 penalty. You're weeding out people who are
12 knowledgeable and compassionate.

13 MR. NORA: It reminds me of where you
14 stand is where you sit. I think you would agree
15 that what you're really looking forward to is
16 people going to vote at the poles?

17 MS. WEISS: Yes.

18 MR. SULLIVAN: Mary L. Johnson.

19 MS. JOHNSON: Good afternoon. My name
20 is Mary L. Johnson. I am with the Chicago Black
21 United Community Families of Wrongful Convicted.
22 I am also on the visiting team of the head
23 chapter. I am with the outside group, which is
24 a group who mentors to family members who have

□

1 incarcerated relatives.

2 I would like to start off by saying
3 how much I appreciated the commission the last
4 time they met with Attorney Thomas Sullivan, and

IllinoisCapitalPunishmentReformMtg022607[2]
5 I was so pleased with the report and the
6 recommendations for 85 percent I think of the
7 recommendations for reform, and I have lived to
8 see that that hasn't been instrumented. I don't
9 think anyone read it. Maybe we can make that
10 mandatory that they read that report because it
11 was really interesting, and the time that was
12 spent, it was by people who were in dialogue who
13 weren't all in agreement, but they took the time
14 to not just talk with one another, they listened
15 and they came up with these suggestions, and
16 these suggestions would have helped people who
17 like Ms. Jackson and myself.

18 See, when I first started out
19 speaking I was speaking for my son who had been
20 given a death sentence, but he is just living
21 out his life in the penitentiary, and I found
22 that no one was listening because they saw me
23 coming from, oh, that's her son, no wondering
24 she's complaining, and I got pitiful because I'm

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1 one of those people who worked at the post
2 office in the '60's. I was a big time Black and
3 I felt sorry for Dr. King. I thought why don't
4 they move to Chicago if they want to be treated
5 fair. This is how I was. I had no kind of
6 hatred in me. I was raised to love everybody,
7 and I assumed all attorneys were like Perry

8 Mason. That was the only one I know, so that's
9 what I judged it by. Attorneys would not rest
10 if they know an innocent person is going to
11 jail. That's what I thought, but from my
12 experience I learned that that's not the case.

13 Some of them are just as naive as I
14 am. They really believe what they read. They
15 go by what they see on television. See, that's
16 what I was doing, and I was raised to love the
17 family of Dick and Jane. I even wanted a spot
18 in Puff. I just wanted to be just like these
19 people but what happened with -- my son didn't
20 get the death penalty. He was about to get it
21 because the attorneys had told him that if he
22 didn't sign this confession that they had drawn
23 up for him to protect me, his mother -- they
24 said we got witnesses who will say that your

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1 mother was in on this crime that we are accusing
2 you of and we are going to go and drag her off
3 her job handcuffed if you don't sign it, and my
4 attorney told me he said he is fixing to sign
5 it, tell them to leave my mother alone. I can
6 take the beating but don't bother my mother.

7 MR. SULLIVAN: What year was this?

8 MS. JOHNSON: That was in '86, and I
9 told the attorney -- I said, you tell him if he

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10 signs that confession he has already ended my
11 life. Let me fight if I have to fight for my
12 from my jail cell. So my son didn't sign it,
13 but he is still in jail. They didn't give him
14 the death penalty. I got the official -- when
15 he mentioned about facts of law, I got the
16 official statement that the police wrote up
17 about me, and if you see it you know good and
18 well if they had that on me I would have been in
19 jail too.

20 But what I am saying is I start
21 feeling helpless and pitiful and I start going
22 into deep medication. I said what I can do
23 because the people that I had been raised to
24 love, which was mostly whites, santa clause and

□

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1 Jesus, all recognized that was good, I started
2 disliking them. I got bitter. I wanted to hurt
3 them like I had been hurt because I trusted
4 them, but that just made me numb. I couldn't
5 function, and when I would come out to people
6 they could feel that hate. I was so angry
7 because how could you do this to me. I believed
8 in you, but what I did is I got an answer.

9 One day I was out protesting and
10 they said why don't you join the Coalition
11 Against the Death Penalty. I said the death
12 penalty? People on death row? Then I thought

13 my son would have been there if he would have
14 signed that paper. So I went to death row as a
15 visitor, didn't know what I was going in to see.
16 Like people see me and they say, oh, well, I
17 don't have the experience you have. I said what
18 you mean? I have never been to jail. It's just
19 about love. I love my son and I was raised to
20 love the people who I thought were responsible
21 for him being in jail, but I went on death row
22 and young people started talking to me. They
23 told me things I know were true, that I could
24 believe because before that I would have said,

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1 oh, they wouldn't do that to him, he is making
2 that up but, see, I had walked that road. I
3 didn't even do nothing but they said she was
4 going to get my daughter and my wife and I told
5 them to leave them alone and I just signed it.
6 They told me all kinds of things. I said this
7 is why I'm here. They were so glad because most
8 of the people that I went to visit on death row
9 with at that time they were Caucasians. I was
10 the token Black.

11 MR. SULLIVAN: Ms. Johnson, if I can
12 interrupt you for a minute. As I've told some
13 of the prior speakers --

14 MS. JOHNSON: well, I'm talking about

IllinoisCapitalPunishmentReformMtg022607[2]
15 death row. I then gave you my part.

16 MR. SULLIVAN: I know, but our statute
17 right here says the committee shall study the
18 impact of the various reforms for the capital
19 punishment enacted by the mandatory General
20 Assembly and report annually about certain
21 things, some of which don't deal with the
22 reforms enacted by the 93rd General Assembly,
23 but it doesn't have to do with whether we should
24 have a death penalty or not. I think there are

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1 different views up here as to whether or not
2 there should be a death penalty.

3 MS. JOHNSON: Yeah, I understand that.
4 I didn't want to talk about the death penalty I
5 wanted to talk about the effect on the victims.
6 I heard them say --

7 MR. SULLIVAN: I understand that.

8 MS. JOHNSON: I heard them say about the
9 victims and they were talking about the victims
10 of -- like the family that was murdered, their
11 family, the victims.

12 Well, what I am saying is a lot of
13 times that these children, young adults under 21
14 if they would study them they would find out a
15 lot of them had been witnesses to brutal stuff
16 where they hadn't been given the proper
17 counseling. So this long range it effects

18 people that you never see. You never realize
19 the harm that's being done because, see, nobody
20 looks at say the victims in my family or the
21 victims of the guys on death row. There is a
22 whole group of victims out there that nobody has
23 been considered. So when you go to the
24 legislatures I would like for that to be

□

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1 presented to them to let them know knock on any
2 door, any door and you're subject to find
3 another victim. It might not be the victim of a
4 murder person, the person that was murdered, but
5 the person who has been incarcerated. Many
6 times it's wrongfully. Even if they convicted
7 them and they did it, it effects that whole
8 family.

9 MR. SULLIVAN: The families of the
10 convicted defendants suffer. I represent people
11 who were held for five years in Guantanamo Bay.
12 They set in the jail cell. I spoke to the
13 families. That's not our function. As much as
14 we sympathize with you as we did with
15 Ms. Jackson, you're simply beyond the scope of
16 our power to do anything as a committee. I
17 mean, as individuals --

18 MS. JOHNSON: This is about reforming
19 death row.

20 MR. SULLIVAN: This isn't the place --
21 MS. JOHNSON: Reforming death row --
22 MR. SULLIVAN: Reforming the capital
23 punishment system. In other words, a lot of
24 people would say that what we are doing is

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1 trying to make a bad situation better, and in
2 fact one of the witnesses down in Springfield
3 said that to us that our reform has contributed
4 to make it where is. That may be so but -- what
5 you are saying to us much, as we sympathize with
6 you is, not within our purview.

7 MS. JOHNSON: See, what I did -- I
8 didn't explain myself properly if you thought I
9 wanted sympathy. Because I want empathy not
10 sympathy.

11 MR. SULLIVAN: No, I'm not saying that
12 at all. I'm just saying what you are saying to
13 us we can't do anything about as a committee.

14 MS. JOHNSON: So visiting death row for
15 ten years, my experience with them doesn't
16 qualify me at all to give any suggestions?
17 Because what I was saying is I thought the
18 commission when they met in full I thought that
19 would also open the eyes up of people to look at
20 the system. So what I would like to end with --
21 I don't know how many of y'all read Dr. King's
22 book Letters From Birmingham, but I think he

23 explains that we need much more than that dream.
24 we need to stop dreaming and consider where do

□

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1 we go from here. Because as long as justice is
2 unfair, people are going to be miserable and
3 they have got some people who are -- people of
4 color who don't look colored so they are mixed
5 all in between. So you're subject to run into
6 that. Whatever you can do, I throw myself on
7 the mercy of the commission, please help us.
8 Because we are ignorant to the law. We don't
9 know the law and the facts but we do have common
10 sense. Thank you.

11 MR. SULLIVAN: Thank you very much for
12 coming. We really appreciate it.

13 MR. SULLIVAN: Catherine McMillan.

14 MS. MCMILLAN: My name is Catherine
15 McMillan. I apologize that I would like to be
16 more composed.

17 MR. SULLIVAN: Ms. McMillan, may I make
18 a suggestion to you?

19 MS. MCMILLAN: Yes.

20 MR. SULLIVAN: Just relax and wait
21 before you speak for about 30 seconds.

22 MR. SCHWINN: Take a deep breath.

23 MR. SULLIVAN: Take a nice deep breath.
24 You don't need to be afraid of us.

1 MS. MCMILLAN: This is the first time I
2 am publicly speaking about what happened to my
3 family. My brother Edward McMillan on
4 July 22, 2004 was arrested for a 22 year old
5 murder that had happened in Ventura County.
6 Unfortunately, my brother only spent three
7 months in jail. He was arrested in Kalamazoo,
8 Michigan. Fortunately it happened at a time
9 when there is DNA, and the DNA results came back
10 negative and the charges were dropped against
11 him.

12 The DNA was entered into the
13 national database, and the person who killed
14 Merlin Oliver 22 years ago was identified,
15 found, and arrested. He admitted that he killed
16 the victim in self-defense because he was 18
17 years old and picked up by a 35 year old man who
18 would pick up hitch hikers and take them back
19 home and then in the middle of the night assault
20 them. I realized when my brother was in jail
21 that on one of his hitch hikes to California
22 many years ago that he too was picked up by this
23 man, and that's why his fingerprints were found.

24 During the time that he was prison I

1 had to prepare that my brother could be
2 sentenced to life in prison. When my brother
3 asked if he could get the death penalty, I
4 couldn't tell him no or because in California
5 they can bring the death penalty up until the
6 time of trial.

7 One of the problems of his case was
8 that there was false eyewitness identification.
9 The police in Ventura County tracked down a 22
10 year old witness, and in a photo lineup having
11 visited her once she told them a story saying
12 that there was a man at the house that day that
13 was actually not in the police record. The
14 police then returned to her with a photo, lineup
15 and my brother was in that photo lineup because
16 his fingerprints were found in the house. She
17 immediately identified him as the person
18 present. When my brother was in Cook County --
19 not in Cook County, Kalamazoo County jail he was
20 threatened with murder by another inmate. I
21 feared that he would lose his sanity. He didn't
22 see the light of day for three months and worse
23 he told me he was treated like an animal and
24 treated with contempt.

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1 My father fought for two years in
2 the military, and he survived. On my mother's
3 side my grandmother was a daughter of the
4 American revolution my. Brother Michael
5 McMillan served in the U.S. Navy several years
6 ago. After serving his country, this was the
7 justice that was served to my family.

8 This is what opened my eyes to the
9 reality of the criminal justice system. As a
10 result I have become active, first of all, in
11 the campaign to end the death penalty because
12 that's the tip of the iceberg, but we all know
13 that one of the recommendations made, mostly the
14 recommendation made by the Commission
15 established by Governor Ryan, is that the
16 uniform should apply to all murder cases and not
17 just capital cases.

18 I attended the eyewitness
19 identification conference that was held in Iowa.
20 My background is health care. I am a registered
21 nurse, and when I attended I was not fully
22 prepared to find what I found. My nursing
23 prepared me to have analytical skills regarding
24 scientific methodology, to analyze problems, and

□

1 to think of control groups and none control
2 groups and to be able to read and analyze
3 studies. What I found at the Commission -- at
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4 this conference was a great deal of confusion.
5 when I left that day I did not have any sense
6 that the prosecutors who attended or the police
7 officers who attended knew what to do with the
8 results of those studies and knew what action
9 needed to be taken.

10 when I look at the recommendations
11 made by the Commission, one of the
12 recommendations focuses on improving the
13 reliability of eyewitness identifications by
14 implementing changes by increasing the accuracy
15 and reliability of what eyewitness evidence is,
16 and yet what happened with the study is my
17 brother who was accused of a murder in Ventura
18 County California also has a Commission and I
19 attended one of the hearings as well. That
20 study was actually referred to by the DA
21 involved in my brother's case and was used as a
22 dissenting letter and recommendations that were
23 made in regards to two sequential -- the use of
24 the sequential lineup and the jury instructions,

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1 that was overcome and legislation was passed,
2 but the changes have not been implemented
3 because Arnold Schwarzenegger vetoed that
4 legislation.

5 This is an example where we, myself

6 IllinoisCapitalPunishmentReformMtg022607[2]
and the American people, are not being served by
7 our criminal justice system, and it seems that
8 the political process of those in power have
9 more say than even those Attorney Generals,
10 criminal defense attorneys, Commissions making
11 the recommendations.

12 In regards to Illinois, I question
13 why we haven't made these reforms. I recall
14 that someone at the end of the conference -- and
15 I won't say names because I don't want to
16 necessarily put words in anyone's mouth -- said
17 that that study does not stop us from moving
18 forward in terms of implementing double blind
19 lineups. I look at the state of New Jersey and
20 the Attorney General there John J. Farm
21 promulgated guidelines for identification
22 procedures based on the U.S. Department of
23 Justice that dated back years ago. Another
24 prosecutor George Kennedy, the D.A. of Santa

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1 Claire County also implemented across all law
2 enforcement agencies the recommended changes.

3 I look at the State of Illinois and
4 I am looking for where is the leadership here to
5 make those changes? I wonder why the
6 prosecutor -- why a prosecutor is allowed to say
7 to our governor lift the moratorium when all of
8 the recommendations have not been made.

9 As a member of the campaign to end
10 the death penalty, I work with -- I have met so
11 many family members who have family members in
12 jail, and I can quote Thomas Sullivan, one of
13 his articles, that there are actually vast
14 numbers of innocent people that we can assume
15 are in prison, and I would like to since I am --
16 I would like to refer to the actual article. It
17 was a publication in the journal of the American
18 Society, September, October 2002. Thomas
19 Sullivan says we must face the likelihood that
20 there are a vast number of persons now in our
21 presence who are innocent of the crimes for
22 which they were convicted of. He also says
23 there is every reason to act.
24 I would like to thank Thomas

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1 Sullivan for his leadership, but I'm looking at
2 where is the leadership among district attorneys
3 here in Illinois. I am particularly troubled by
4 the comment, Mr. Nora, you made earlier that
5 people would say that all murderers are the
6 worse of the worse. There was a Supreme Court
7 ruling that said --

8 MR. NORA: Ma'am, I know you don't want
9 to put words in my mouth. So let me clarify if
10 I wasn't clear before that people disagreed on

IllinoisCapitalPunishmentReformMtg022607[2]
11 what percentages the worse would be of the

12 worse. I expressed no opinion of my own.

13 MS. MCMILLAN: I immediately wrote down
14 some people say all murderers are the worse of
15 the worse.

16 MR. NORA: There are people who would
17 subscribe to that. I have not said that.

18 MS. MCMILLAN: But you're on this panel
19 that is working for reform.

20 MR. NORA: And that that's why I must
21 educate myself on the viewpoints on who I might
22 disagree with. I note that all that is an
23 accurate statement what some people say. I'm
24 not saying that I agree with it.

□

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1 MS. MCMILLAN: But then I think you
2 should qualify what you say and that in fact
3 that sentiment was ruled unconstitutional.
4 You're a D.A., are you not, obligated to uphold
5 the law of the land?

6 MR. SULLIVAN: I don't think we need to
7 get into a dispute with individual members of
8 the committee. We all make statements. I don't
9 think Jerry Nora said that he believes this. He
10 was repeating what some others had said. So I
11 don't think it's fair. I know you don't mean to
12 be -- so why don't you go and make your
13 presentation. Finish it up.

14 MS. MCMILLAN: Okay. I would like to
15 say that I think our District Attorneys go
16 unchallenged and that I referenced the statement
17 by a District Attorney who just -- who just had
18 a capital case where the jury sentenced the
19 defendant to death. He called for lifting the
20 moratorium. So I question, you know, whether or
21 not there is a good faith that is there that we
22 need from our prosecutors for a fair criminal
23 justice system. Very few people can stand up to
24 a D.A. and hold them accountable for what they

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1 say and do.

2 The other point I would like to make
3 is that in my brother's case there was DNA
4 evidence, and when I asked our defense attorney
5 why wouldn't the prosecutor have run the DNA or
6 ask for the DNA first and then if there was a
7 match pursue criminal charges, again those
8 questions of the D.A. always justify their
9 actions.

10 In my brother's case he received an
11 apology from the District Attorney and also the
12 District Attorney filed an actual finding of
13 innocence in his case in 2006. So I would like
14 to note from the D.A. -- we need a law so that
15 all DNA will comply with the required standards,

16 IllinoisCapitalPunishmentReformMtg022607[2]
and have like George Kennedy and Mr. Farmer from
17 New Jersey.

18 MR. SULLIVAN: Thank you very much.

19 On the right, on the left. I wanted
20 to say couple of things. On the California bill
21 that Governor Schwarznegger vetoed it's my
22 recollection that that bill did not call for the
23 implementation of a double line sequential
24 lineup but rather called for a study of improved

□

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1 eyewitness procedures. I have the bill back at
2 my office, and I do not believe that it called
3 for double blind sequential lineups. I think
4 all of us on this committee regards of what our
5 views are on this issues, including the death
6 penalty, sympathize with you and your family in
7 regards to what happened with your brother.
8 None of us want to have an innocent person
9 picked up and put in jail for three months or
10 three days. Any system of justice is going to
11 have -- human beings are going to run it and
12 human beings are going to make mistakes. Our
13 effort is to try to reduce the number of
14 mistakes like you're talking about. It's
15 obvious that would be a good reform. We thank
16 you very much for coming and sharing with us.

17 MS. MCMILLAN: I would just like to
18 respond that you want to reduce the number of

19 errors, and yet even in terms of this eyewitness
20 procedure the changes across the country have
21 not been -- the death penalty and application of
22 death penalty continues. So I want to have the
23 powers to make the changes.

24 MR. SULLIVAN: Thank you very much.

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1 our last person to speak to us today
2 is Mr. Wendt.

3 MR. WENDT: Yes, my name is William
4 Wendt, and I suppose there is an advantage in
5 going last. I get to comment on what previous
6 speakers have said, and in regards to this
7 exchange over jury disqualification I would like
8 to suggest a reading of a Supreme Court case
9 from 1986, Law Court versus McRay which held
10 that jurors can be excluded if they refuse to
11 support a death verdict, but I would take very,
12 very brief exception to one paragraph of that
13 decision in which in short as I view it anyway
14 says that jurors are agents of the government
15 and I suppose that would be -- I am speaking
16 semi extemporaneously.

17 I would like to comment not within
18 the very narrow of the impact on reforms --
19 impact of reforms on death row inmates. I would
20 think the outstanding witness on that would be

21 IllinoisCapitalPunishmentReformMtg022607[2]
one Mary L. Johnson here, and why she wasn't
22 questioned further about specific cases, I mean,
23 she's right there and she should come back. She
24 has been doing this for quite a few years going

□

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1 to death row and visiting people and getting
2 acquainted with very specific situations, but if
3 you're going to hold this hearing in a scope, I
4 think there are three or four people in the
5 state that would be qualified to comment.

6 I would like to comment on some
7 aspects of Illinois legal culture over the past
8 20 or so years that I think any kind of reform,
9 you know, is rather problematic. Since 1999 I
10 went to Springfield to hear argument before the
11 Illinois Supreme Court in a death penalty case
12 in which the prosecutor made the argument it's
13 not torture if it doesn't leave physical
14 marks.

15 MR. SCHWINN: I'm sorry. Can you repeat
16 that?

17 MR. WENDT: What I heard earlier is that
18 the argument to the Illinois Supreme Court is
19 it's not torture if it doesn't leave physical
20 marks, and some months later I filed a complaint
21 with the Attorney Disciplinary Commission over
22 that as being a totally improper argument, and
23 it just got blown off. I do not have the

24 correspondence on me. If you want me to deliver

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1 it somewhere, I can make another copy and do
2 that, but that sort of mentality suggests to me
3 that, you know, you can pass all the laws you
4 want; but if this mentality prevails, well, it's
5 not going to mean a whole lot.

6 Now, I happen to also read -- about
7 20 years ago there was a very comprehensive
8 article in the Illinois Law Review. Illinois
9 Death Penalty, 1986 Illinois Law Review 177, and
10 in summary this argument says that the Illinois
11 Supreme Court, at least at this date, never
12 really definitively ruled that the death penalty
13 is constitutional, and there is majority of
14 Illinois justices on the Illinois Supreme Court
15 at that time that had in one way or another said
16 that it was unconstitutional, but I will leave
17 you a copy of my note what I wrote some years
18 ago.

19 My encounter with Illinois justice
20 came with these same very issues, which is
21 simply not following the written law. I mean,
22 there is any number of cases which hold that the
23 jury nullification is a legislative act and a
24 violation of civil duty. Now, don't let me get

1 started with judges because it's going to be a
2 while, but I think discussion on any reform
3 rather I don't know -- I know I have to get to
4 this question beyond this technical framework.

5 I just had an occasion yesterday on
6 a totally different regard to make a copy of
7 Oliver Wendell Holmes descent in the Lockman
8 case, and what is germane to this discussion is
9 general -- he says general propositions do not
10 decide concrete cases. The decision will depend
11 on the judgment or intuition more settled than
12 articulate major premises. I guess you can say
13 that about the Scott case and a whole bunch of
14 things. There is a certain bunch of
15 preconceived notions that go into what we call
16 judicial opinions which are not suppose to be
17 ruled law. It's not suppose to be ruled by
18 these. Don't get me started on that.

19 As far as specific reforms of the
20 death penalty are concerned, let me make this
21 suggestion. There have been some allegation
22 over recent years about lethal injection being a
23 cruel and unusual punishment, about people
24 lingering ten minutes afterwards and just a

1 recent case in Florida where somebody lingered
2 for 35 minutes for a quick form of execution.
3 Let me suggest -- again, I am not making this as
4 an argument in favor of the death penalty. I'm
5 just saying that I can sort of accept it sort of
6 on the outward limits.

7 There is a case where a very limited
8 death penalty such as applied to prisoners who
9 murder a prison guard or something like that
10 when they have been appropriate along those
11 lines. I do not think the death penalty should
12 be applied to routine crimes of passion or
13 robberies or things like that for reasons that
14 are well discussed elsewhere.

15 Anyway, what you see on these T.V.
16 commercials and on the 10:00 o'clock news every
17 night you see the car crashes, why don't we use
18 these car crashes -- it's going to take a larger
19 execution. The chamber is going to have to be
20 100 feet long. We shouldn't have any worry
21 about the condemned lingering for any length of
22 time, but as with any technical proposition
23 things examined go wrong, and I suppose we will
24 need some provision just this case. The first

□

1 blow doesn't unlike -- it's a possibility that

IllinoisCapitalPunishmentReformMtg022607[2]
2 it doesn't do the job. We will have to do it
3 over and have somebody shoot them.

4 As far as technical innovation of
5 the death penalty is concerned, see if you can
6 find the case on Thomas Kemler who was the first
7 one to be executed in the state of New York some
8 time in the late 19th Century, and this was
9 Thomas Edison's idea. There was a big war in
10 the electrical industry war and drug current and
11 he wanted to enter a case. That alternate case
12 was dangerous. He set up experiments in New
13 York to execute people by electrocution, except
14 it took several times and several hours before
15 this one guy finally got executed, and I guess
16 we have heard this recent hanging in Iraq where
17 the head separated from the body. They are
18 suppose to fall far enough to separate the neck.
19 If this sort of the thing ever comes to pass, I
20 am not going to complain. This is just an
21 outside application of the death penalty that I
22 can more or less live with that. I don't know
23 if it will do a whole lot to the current crime,
24 but I think it would do wonders for traffic

□

218

1 safety. So let nobody say I am opposed to the
2 death penalty because I am squeamish.

3 MR. SULLIVAN: Before you leave
4 Mr. Wendt, I need to ask the panel members
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5 whether they have any questions for you.

6 Jerry, do you have some questions of
7 Mr. Wendt?

8 MR. NORA: No, I don't. Thank you,
9 sir.

10 MR. SULLIVAN: Thank you so much, sir.

11 It's now 3:00 o'clock. We have been
12 going a long time here. We've heard from 15
13 different witnesses, and I think we've heard a
14 lot of very fine viewpoints expressed, and I
15 would like to thank all of the people that came
16 to talk to us, and we are doing the best we can
17 to carry out our legislative mandate, and we
18 have a five year time. So we may have other
19 public hearings as we go through our work, but
20 we were directed to hold public hearings, and
21 this is the second one. There may be others.

22 We would like to thank all of you
23 for coming, and I think I will listen to a
24 motion to adjourn.

□

219

1 MR. SCHWINN: I would make a motion to
2 adjourn the Committee.

3 MS. BIENEN: Second.

4 MR. SULLIVAN: All in favor.

5 (whereupon, there was a
6 chorus of I's.)

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MR. SULLIVAN: We're adjourned.

(whereupon, the
above-entitled cause was
concluded.)

□

1 STATE OF ILLINOIS)
2 COUNTY OF COOK } SS.

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I, SHERRY L. JONES, a
Certified Shorthand Reporter for the State of
Illinois, do hereby certify that the foregoing
was reported by stenographic and mechanical
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10 means, which matter was held on the date, and at
11 the time and place set out on the title page
12 hereof and that the foregoing constitutes a true
13 and accurate transcript of same.

14 I further certify that I am not
15 related to any of the parties, nor am I an
16 employee of or related to any of the attorneys
17 representing the parties, and I have no
18 financial interest in the outcome of this
19 matter.

20

21

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C.S.R. No. 084-004024

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