

COPY

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

PUBLIC HEARING

January 26, 2009

STENOGRAPHIC REPORT OF PROCEEDINGS had in the above-entitled matter held at 100 West Randolph Street, Concourse Level Auditorium, commencing at 9:13 o'clock a.m., MR. THOMAS P. SULLIVAN, moderating.

COMMITTEE MEMBERS PRESENT:

MR. THOMAS P. SULLIVAN, Moderator

MS. LEIGH B. BIENEN

MS. JENNIFER BISHOP-JENKINS

MR. JAMES R. COLDREN, JR.

MR. BOYD J. INGEMUNSON

MR. JEFFREY M. HOWARD

MR. EDWIN R. PARKINSON

MR. RICHARD D. SCHWIND

MR. RANDOLPH N. STONE

MR. WALTER TAYLOR

Reported by: Anna M. Morales, CSR, RMR

License No.: 084-002854

1 (Whereupon, the following  
2 proceedings commenced at 9:13  
3 o'clock a.m.)

4 MODERATOR SULLIVAN: Good morning. We're going  
5 to begin the most current session of the Capital 09:13:24  
6 Punishment Reform Study Committee public hearings.

7 Our court reporter is Anna Morales from  
8 McCorkle Court Reporters sitting down here, and I  
9 think she would appreciate it, when you speak, I  
10 will ask you to give your name and spell it for her 09:13:56  
11 so she will know who is speaking. And, Anna, as we  
12 go along, when members of the committee speak, I  
13 will ask them also to give their name at least the  
14 first couple of times so you have some idea of  
15 who's talking when they address the witnesses. 09:14:18

16 The statute that creates this committee  
17 which was enacted in 2003 is 20 Illinois Statutes,  
18 Section 3929, and it provides, among other things,  
19 that the committee shall hold hearings on a  
20 periodic basis to receive testimony from the public 09:14:52  
21 regarding the manner in which reforms have impacted  
22 the capital punishment system.

23 So this committee is empowered and  
24 directed to study the impact of the various reforms

1 of the capital punishment system enacted by the  
2 93rd General Assembly, an annual report to the  
3 General Assembly on the effect of these reforms.  
4 Each report shall include -- and then it goes on to  
5 list five specific items. And several of them were 09:15:28  
6 not enacted by the 93rd General Assembly, so it  
7 does create some ambiguity in the drafting process.  
8 So that we are not necessarily limited to the  
9 reforms that were enacted back then, but we know  
10 that our function is not to opine or report on the 09:15:56  
11 question of whether or not there should be a death  
12 penalty, but, rather, to discuss potential for  
13 existing reforms to the system.

14           So in making your remarks today, please  
15 bear that in mind. I will not cut anybody off to 09:16:24  
16 issues that are closely related, but bear in mind  
17 that our function is reform, not retention or  
18 abolition or the lifting or nonlifting of the  
19 moratorium of the death penalty.

20           Now in the list of -- on the sign-in sheet 09:16:48  
21 here, I would like -- is there anyone who has  
22 signed in who has a time problem, that is to say,  
23 who would like to be put first? We're not going to  
24 listen for more than five minutes to the witnesses

1 unless the members of the committee by their  
2 questions or comments take it beyond that. But is  
3 there anyone -- having that in mind, is there  
4 anyone here who has a problem with time and would  
5 like us to know about it? 09:17:28

6 MS. LYON: I have a class.

7 MODERATOR SULLIVAN: What time is class?

8 MS. LYON: I have a class at 11:50.

9 MODERATOR SULLIVAN: You're the first one to  
10 sign in. Yes? 09:17:40

11 MR. CALLAHAN: My name is Tom Callahan. I have  
12 to be back on the north side around 10. I have to  
13 leave here around 10:20.

14 MODERATOR SULLIVAN: So Andrea and Tom would  
15 like to get in the front as I understand. 09:17:54  
16 Everybody else can stay for the whole session.

17 Now I'm going to ask the members of the  
18 committee to identify themselves and their office  
19 or employment.

20 My name is Tom Sullivan. I am a private 09:18:26  
21 lawyer with the firm of Jenner & Block.

22 MR. TAYLOR: My name is Walt Taylor from the  
23 Cook County State's Attorney's office.

24 MR. COLDREN: Chip Coldren from Governors State

1 University.

2 MR. INGEMUNSON: Boyd Ingemunson, private  
3 practicing attorney.

4 MR. SCHWIND: My name is Richard Schwind,  
5 S-c-h-w-i-n-d. I am with the Illinois Attorney 09:18:48  
6 General's Office.

7 MS. BISHOP-JENKINS: Jennifer Bishop-Jenkins,  
8 and I am representing the victim's family members.

9 MR. HOWARD: Jeff Howard, Law Office of the  
10 Cook County Public Defender. 09:19:10

11 MR. PARKINSON: I am Ed Parkinson with the  
12 Appellate Prosecutor's Office in Springfield. And  
13 here comes Leigh Bienen just in time. You want to  
14 introduce yourself.

15 MS. BIENEN: Good morning, everybody. I'm 09:19:28  
16 Leigh Bienen. I am senior lecturer at the  
17 Northwestern University School of Law.

18 MODERATOR SULLIVAN: I have distributed to the  
19 members of the committee three items that I was  
20 given. One is the testimony of Daniel T. Coyne, 09:19:52  
21 President of the Chicago Council of Lawyers, which  
22 is about a page and a third; and attached to it is  
23 an article report by the Council of Lawyers in  
24 March 2000 actually with the assistance of the

1 Chicago Appleseed Fund for Justice entitled Due  
2 Process and the Death Penalty in Illinois. Here's  
3 a copy of that.

4 MS. BIENEN: Thank you.

5 MODERATOR SULLIVAN: I also have distributed to 09:20:24  
6 the members -- if any of the members up here  
7 haven't gotten this, please tell me -- the Death  
8 Penalty Decision Guidelines prepared by the Office  
9 of the Illinois Attorney General and the Illinois  
10 State's Attorneys Association dated February 22, 09:20:36  
11 2006, which we already have, but it's good to have  
12 another copy.

13 And then finally, the third item is a  
14 document that Julie Harmon from the Cook County  
15 Public Defender's office dated January 26, 2009, 09:20:56  
16 entitled Impact of Application Reform Rules on  
17 Practice.

18 So I think with that introduction, we'll  
19 begin with you, Andrea. And we're not going to  
20 impose severe time limits with you. 09:21:24

21 MS. LYON: I think I can be  
22 uncharacteristically brief.

23 MODERATOR SULLIVAN: State your full name.

24 MS. LYON: My name is Andrea Lyon, L-y-o-n, and

1 I am a clinical professor of law at  
2 DePaul University College of Law and also a capital  
3 defense lawyer.

4 This morning, I appreciate the opportunity  
5 to talk to all of you and I wanted to speak to one 09:21:46  
6 specific reform that, in my opinion, had good  
7 intentions that has not actually panned out, and  
8 that is the notice requirement that -- that a  
9 notice be told or given to a defendant as to  
10 whether or not he will be facing the death penalty 09:22:04  
11 within 120 days of the charging, which was a good  
12 idea. We used to have no notice requirement at  
13 all, and everybody sort of would guess, and some  
14 judges would make the prosecution tell you, some  
15 wouldn't. And it was a very good idea to require 09:22:18  
16 some level of notice.

17 But I believe that the intent behind this  
18 particular reform was to give the prosecuting  
19 authorities the opportunity to think about whether  
20 in this case whether they should seek the death 09:22:30  
21 penalty or not.

22 Instead of that happening, it appears to  
23 me that sort of as a savings clause or, you know,  
24 just in case they want to ask for the death

1 penalty, they pretty much notice it in every case  
2 where they potentially could notice it. So it does  
3 not have the narrowing effect that I believe was  
4 the intent of the reform.

5           And this is for a number of reasons. Some   09:22:58  
6 of them may in fact be political, I don't know, but  
7 some of them just have to do with the  
8 practicalities of the situation of being able to  
9 completely investigate the case, you know, and to  
10 present it to the appropriate committee, if there   09:23:12  
11 is a committee. I know in Cook County there is. I  
12 don't know whether there's a committee in every --  
13 you know, in every State's Attorney's jurisdiction  
14 or not.

15           And what's also missing from this is any   09:23:24  
16 opportunity, that is, formal opportunity for the  
17 defense to have a chance to talk to the  
18 prosecutorial authority and make some kind of  
19 presentation as to why the death penalty should not  
20 be sought after it leads some investigation into   09:23:40  
21 mitigation.

22           And so I'm kind of analogizing here to the  
23 system that is currently in place in the federal --  
24 in the federal jurisdiction where there are two



1 things that are different here. One is that -- one  
2 is the potential for the death penalty being there.  
3 You know, counsel is appointed. An investigation  
4 begins on the part of the defense into litigation.  
5 And at some point, usually within a few months, 09:24:10  
6 there's an opportunity to have a meeting with the  
7 actual prosecutors that are handling the particular  
8 case and, generally, the U.S. Attorney or his or  
9 her designate to make a presentation as to why the  
10 death penalty should be sought. 09:24:26

11 The local U.S. Attorney then makes a  
12 recommendation to the Department of Justice. The  
13 Department of Justice either does or does not have  
14 a second hearing or the defense comes and makes a  
15 presentation. If everyone -- usually the way it 09:24:38  
16 works, if they agree with the local U.S. Attorney,  
17 they don't have a hearing, and if there's some  
18 defense, they do, and you have the opportunity  
19 again to make a presentation as to whether or not  
20 to seek the death penalty. 09:24:52

21 This is a smarter use in my opinion of  
22 resources because usually within six or eight  
23 months or so, everybody knows whether or not the  
24 death penalty is being sought, whether the

1 extraordinary expense is involved in preparing the  
2 death penalty case, you know, should be used or  
3 not, whether the kind of discovery that's required  
4 in a death penalty case should be used or not.

5           And in this time of fiscal crisis which           09:25:16  
6 our state is facing and the extraordinary expense  
7 involved in the death penalty case, it would be my  
8 suggestion that this commission think about not  
9 necessarily modeling themselves identically to the  
10 way the federal system works but to suggest to           09:25:34  
11 prosecutorial authorities that there be some  
12 formalized mechanism where such a presentation can  
13 be made, and cases that should be diverted get  
14 diverted out of the death penalty system and either  
15 plead or get tried, to use the parlance of those           09:25:48  
16 who do these cases, as a regular murder as opposed  
17 to a death penalty case.

18           Instead, what ends up happening is, for  
19 example, a case I recently tried, we had four  
20 years, years of litigation as a death penalty case.       09:26:02  
21 You know, enormous numbers of motions, depositions  
22 that were taken, et cetera; and then two months  
23 before trial, the state made the decision to recall  
24 the death penalty.

1 I wasn't sad about it, I'm telling you, of  
2 course, as his lawyer, but I'm just wondering  
3 whether that decision might not have been better  
4 made, you know, six months down the line when all  
5 of the expenditures that were involved would not 09:26:30  
6 have occurred where I wouldn't have submitted 11 or  
7 12 requests for funds, and, you know, we could  
8 have, you know, cut that short.

9 I know that there's a lot of resistance to  
10 having any kind of central authority having any say 09:26:52  
11 here, but, you know, I would think that maybe it  
12 might be something for the Attorney General to  
13 think about having some kind of extra review at  
14 least available so that you could inform State's  
15 Attorneys as to whether or not they're kind of in 09:27:10  
16 line with what else is going on in the state, you  
17 know, whether this kind of litigation is successful  
18 in other cases because the smaller county may or  
19 may not know that. It might make sense to have  
20 some kind of formalized presentation available and 09:27:24  
21 some kind of centralized review.

22 I know that that was one of the reforms  
23 that was suggested that there should be a  
24 centralized review of all death cases so that we

1 don't have, you know, geographic and other sorts of  
2 disparities that we have seen over the years. I  
3 know that reform didn't pass, but perhaps something  
4 less formal and maybe more -- in the end more  
5 helpful could be passed. 09:27:50

6 So that's basically what I wanted to speak  
7 about here this morning and my suggestion for the  
8 reform committee, and I'm happy to answer any  
9 questions that you might have.

10 MODERATOR SULLIVAN: Thank you very much. Let 09:28:04  
11 me ask members of the committee.

12 MS. BISHOP-JENKINS: Do you want me to keep the  
13 sign-in sheet?

14 MODERATOR SULLIVAN: Ed, do you have any  
15 comments or questions for Andrea? 09:28:24

16 MR. PARKINSON: Just keep in mind, I believe  
17 Joe Birkett is going to speak, and the information  
18 he passed out, he, along with Rich Schwind, I think  
19 have been implementing what you have been talking  
20 about for some time. I think he will probably 09:28:38

21 address that more. They do take -- it is  
22 recommended by the prosecutors in the state, the  
23 Attorney General's Office and others throughout the  
24 state that they do just what you said, that is, to

1 take in the section, Defense Counsel Input and  
2 Mitigation; but I won't steal Joe's thunder because  
3 he's going to talk about it.

4 But I believe that's been a concern and  
5 been addressed by the prosecution for a while. 09:29:00  
6 Maybe not in Cook County like --

7 MS. LYON: Not in Cook County. And we need  
8 some consistency here. That's certainly something  
9 we've -- that everybody, I think wherever they come  
10 out on this issue agrees with, there needs to be 09:29:14  
11 some sort of consistency. Thank you for telling  
12 me.

13 MODERATOR SULLIVAN: Andrea, is your experience  
14 here in Cook County?

15 MS. LYON: No. I tried cases in other counties 09:29:24  
16 but not recently. I have had federal cases and  
17 Cook County cases most recently.

18 MODERATOR SULLIVAN: Jeff Howard.

19 MR. HOWARD: As a practicing criminal defense  
20 attorney who's done capital cases, of the reforms 09:29:36  
21 that have been implemented, what do you think is  
22 the one that's had the biggest impact on improving  
23 the system?

24 MS. LYON: Improving the system. I would say

1 the increased access to discovery would be the one  
2 that I would say has had the most beneficial  
3 effect, both I think for the prosecution as well as  
4 for the defense; the ability to take depositions  
5 when it's appropriate; the requirement of personal 09:30:02  
6 signatures that every piece of discovery has been  
7 turned over makes for some deciduous searches on  
8 both sides.

9 And it also I believe has had the effect  
10 of kind of informing folks before trial better 09:30:20  
11 about the strength or weakness of their case. It  
12 has resulted in some dispositions in some cases  
13 where perhaps a trial would have occurred  
14 otherwise. That would be what I would say was the  
15 best of the reforms. 09:30:36

16 You also asked what was the worst did you  
17 ask?

18 MR. HOWARD: No, just the best. You addressed  
19 that.

20 MS. LYON: I wanted to make sure I answered 09:30:48  
21 your question.

22 MODERATOR SULLIVAN: Now I am going to say for  
23 Anna, that was Ed Parkinson, Jeff Howard second.  
24 Now Jennifer Bishop-Jenkins.

1 MS. BISHOP-JENKINS: Professor Lyon, I had two  
2 questions for you. One on the -- is manipulating  
3 the deadline also an option in terms of like if you  
4 just -- what would be the net effect if you  
5 eliminated the notice or extended the notice? 09:31:14  
6 Would that change what you're talking about as  
7 being a concern?

8 MS. LYON: I don't really think it's a time  
9 issue actually. I think it's that a prosecutor is  
10 not sure, you know, early on is going to I believe 09:31:28  
11 notice and ask for the death penalty and figure  
12 they can always withdraw months later. And I am  
13 not sure that that's the most efficient use of  
14 resources.

15 It might make more sense to just simply 09:31:44  
16 build into the system, you know, the time and the  
17 ability, some kind of formalized process. I don't  
18 know what that would necessarily look like, whether  
19 it's a meeting or a memo. You know, you have to  
20 give the defense the opportunity to do some 09:31:58  
21 mitigation investigation, and it's candidly always  
22 a question of how much one wants to reveal and  
23 when; but there are cases where the mitigation is  
24 very substantial and there's no sense in wasting

1 everybody's time and resources on a case where  
2 eventually that would be a rational decision, would  
3 be to take the death off the table.

4 MS. BISHOP-JENKINS: My second question is have  
5 you had a chance to observe what impact this may 09:32:26  
6 be, in the example you used, years of intent and  
7 active pursuit of the death penalty in a case and  
8 then the decision later on down the road to remove  
9 that, have you had any chance to observe what  
10 impact it might have on the victim's families? 09:32:42

11 MS. LYON: In one particular case it was I  
12 think quite emotionally difficult for the victim's  
13 family with whom I had a number of conversations,  
14 and I think that they -- I shouldn't say that. I  
15 believe that they would have been more comfortable 09:33:08  
16 had the decision been made early on and had the  
17 trial occurred sooner, had there been less court  
18 dates to go to and, you know, less times for, you  
19 know, the mother of the victim to be crying and my  
20 client's mother to be crying. I think that might 09:33:22  
21 have been better for them.

22 MR. SCHWIND: My name is Richard Schwind from  
23 the Attorney General's Office.

24 Andrea, nice to see you. You do know that



1 there are guidelines out there that have been  
2 promulgated to all the State's Attorneys. It was  
3 formed and created, a lot of work and effort  
4 between the Attorney General's Office and the  
5 Illinois State's Attorneys Association. And what 09:33:48  
6 you are asking in regard to input from the defense  
7 into the decision as to whether or not to seek the  
8 death penalty is one of the guideline points that  
9 are out there. You understand that?

10 MS. LYON: I do know that. I just don't think 09:34:02  
11 that it's happening -- I'm not sure how to make it  
12 happen without a statute.

13 MR. SCHWIND: Well, I would think that if you  
14 thought you had -- for instance, let's say you're  
15 representing a client who you believe has 09:34:16  
16 sufficient mental deficiencies that the death  
17 penalty shouldn't be sought, would you think it's  
18 incumbent upon the defense attorney to approach the  
19 prosecutor and say, Look it, why don't you consider  
20 this? I think you should consider this before you 09:34:32  
21 make that decision as opposed to -- because the  
22 prosecutor doesn't know what mitigation you may  
23 have or what evidence you would present at the  
24 sentencing phase until the sentencing phase comes

1 around.

2 So why wouldn't the impetus be on the  
3 defense to make that entry and kind of -- you know,  
4 both ways, the prosecutor and the defense together?

5 MS. LYON: But, you know, I certainly haven't 09:35:00

6 asked every lawyer in Illinois, but I certainly  
7 know that I and a lot of people I know do make  
8 these kinds of approaches; but the ability to  
9 actually get heard is difficult because -- and

10 maybe this is a culture issue. But people feel 09:35:16

11 like if they are sort of listening or -- there are  
12 some prosecutors that I've run into over the years,  
13 listening to that soft mitigation stuff that's, you  
14 know, a lint roller or something like that, and

15 then they go through the process with it, they 09:35:36

16 don't seem like they're not tough enough.

17 I just think if there was some formalized

18 thing where, like, six months into the case or

19 eight months into the case there is going to be a

20 meeting where you could present mitigation, I think 09:35:46

21 that that would take the onus off of sort of the

22 people that are in the trenches to kind of reverse

23 the inertia that builds up. And that's one of the

24 things that happens is there's inertia, this is a

1 death case, this is a death case, this is a death  
2 case; and I just think it would make -- it would  
3 just make sense to have some kind of formalized  
4 opportunity.

5 MR. SCHWIND: That leads into my second point 09:36:14  
6 which is the first point you brought up was that  
7 you had cases where the notice to seek the death  
8 penalty has not been timely filed, so to speak?

9 MS. LYON: No, no, no. I had where it gets  
10 filed and then, you know, years of litigation later 09:36:28  
11 it gets withdrawn or -- I mean, no, I have not had  
12 anybody who waits -- I have had people wait to day  
13 119 to file it, but I never had to wait to day 121.

14 MR. SCHWIND: You understand you would have to  
15 go to the prosecutor within that 120 days because 09:36:42  
16 he's under a 120-day time limit to file that  
17 notice, that you would have to go to him with your  
18 evidence of mitigation or reasons not to seek the  
19 death penalty?

20 MS. LYON: That's a problem. That's why I'm 09:36:56  
21 saying that even if the notice is four months, it's  
22 a very difficult short amount of time to do an  
23 adequate mitigation investigation. It takes a  
24 long, long time to do an adequate mitigation

1 investigation. And you'll get a good idea maybe  
2 six or eight months under your belt of mitigation  
3 investigation, but not with three or four when you  
4 are just now learning what the case is about,  
5 right? I mean, you have the police reports to 09:37:20  
6 read. You don't know what the level of evidence is  
7 against him even. In the beginning, there's a huge  
8 amount of, you know, upfront time that gets spent  
9 just understanding the facts of the case.

10 And so what I'm trying to suggest is that 09:37:34  
11 if the notice gets filed 120 days that there be  
12 some time period after that, maybe another 120 days  
13 where there will be a meeting where that can get  
14 reconsidered because the state does have the  
15 opportunity to withdraw it. 09:37:48

16 MR. SCHWIND: The way it stands now it's  
17 something you would consider at any time.

18 MS. LYON: Correct. I'm suggesting some  
19 formalized time frame or method where the  
20 prosecutor, the lead prosecutor on the case and his 09:37:58  
21 or her supervisor can sit down with the defense,  
22 have a meeting in which the defense has the  
23 opportunity to present reasons not to seek the  
24 death penalty. And whether that's six months into

20

1 the case or even a year into the case, that would  
2 -- in this case that I referenced, I want to say it  
3 was three years of litigation. That's what I'm  
4 suggesting.

5 MR. SCHWIND: I understand. I can tell you in 09:38:22  
6 my experience, and I don't try death penalty cases  
7 in Cook County, they don't need the Attorney  
8 General's help, but I travel throughout the state,  
9 and I can tell you, emphatically, in every case  
10 that our office and that I have been involved in, 09:38:34  
11 and I have been in the Attorney General's Office  
12 since 1985 doing this, that every time we've been  
13 involved in a death penalty case, we have  
14 approached the defense lawyer and said, Give us  
15 some reasons. 09:38:46

16 And I can tell you I know it happens in  
17 Du Page County, in the Lemak case if I'm not  
18 mistaken. State's Attorney Birkett asked for the  
19 defense to give him information, and they did not  
20 seek the death penalty in that case. It was a 09:38:58  
21 multi-victim murder case. So it does happen.

22 I'm not here to quarrel with you. I'm  
23 just saying it does happen. But I think you need  
24 to have the defense as well as the prosecution work

1 together in that decision, and I think it is being  
2 done.

3 MS. LYON: I'm sure it's being done on an  
4 ad hoc basis. I'm suggesting it should be  
5 formalized in some kind of way, that this is a 09:39:18  
6 recommendation that this committee could make; and  
7 what that timing will look like, whether it be a  
8 second level review with your office, you know, I  
9 don't know.

10 I do think, though, that having second 09:39:32  
11 level review has meant, at least in the federal  
12 system, less idiosyncratic choices about when to  
13 seek the death penalty. They have 94 different  
14 U.S. Attorneys which is, you know, 94 different  
15 sets of issues that go along with that, which it is 09:39:50  
16 not dissimilar to the number of counties in the  
17 state.

18 MR. SCHWIND: Thank you. I have nothing  
19 further. Thank you, Tom.

20 MODERATOR SULLIVAN: I am going to go down to 09:40:00  
21 Walt, Mr. Walt Taylor.

22 MR. TAYLOR: Walt Taylor from the State's  
23 Attorney's Office. I don't really have any  
24 questions for you, but just a few comments.

1           In Cook County, whenever we do death  
2 review, the defense always has the opportunity to  
3 present to us written reasons, written mitigation  
4 as to why we should not seek the death penalty. In  
5 my experience, there's not one defense attorney       09:40:30  
6 that has ever taken us up on that.

7           MS. LYON: I've never even been told that  
8 that's possible.

9           MR. TAYLOR: It's possible. And I don't know  
10 why we have never been taken up on that, but my       09:40:42  
11 personal opinion is this, and a couple defense  
12 attorneys have smiled and said, We don't want to  
13 give up our mitigation early on.

14           So the opportunity is there. I think a  
15 lot of times, not you, Andrea, but some defense       09:41:02  
16 attorneys don't really give us their mitigation  
17 until the 11th hour before a death penalty hearing.  
18 And I will say that in Cook County, after we do  
19 make the decision to seek a death penalty, many,  
20 many times when the defense comes to us and finally   09:41:16  
21 starts to discuss mitigation and finally starts  
22 discussing the disposition of something less than  
23 the death penalty, the State's Attorneys on the  
24 case always bring it back to death review and we

23

1 always re-evaluate whether we should seek the death  
2 penalty or not.

3           And when that happens and a case is  
4 resolved short of death, there's a lot of people  
5 that continually criticize the prosecutors in this     09:41:52  
6 state for filing notice to seek death and then  
7 years later resolving the case short of death, and  
8 they're criticizing us for filing that notice and  
9 seeking to plead the case out or resolve the case  
10 short of death. So we are in constantly being put     09:42:12  
11 in a catch-22 situation.

12           But, Andrea, what you're saying today I'm  
13 receptive to, and if something needs to be  
14 formalized, it should be formalized, but it is  
15 going on on an ad hoc basis, this continuing     09:42:28  
16 discussion whether we should seek death in this  
17 case or not.

18           MS. LYON: I think it would be great if we  
19 could, you know, come and just talk to you. It  
20 would be great if there was just a meeting where we     09:42:38  
21 could come and talk to you as opposed to  
22 necessarily putting something in writing. That's  
23 just my suggestion. I think it would work better.

24           I really do feel that -- you know, some



1 defense lawyers may make a choice in a strategic  
2 manner not to present mitigation. I'm not going to  
3 tell you that's not going to happen. There's all  
4 kind of strategic choices that get made in every  
5 adversarial situation. But I do believe a lot of 09:43:00  
6 us would welcome the opportunity to present you  
7 with, you know, strong evidence of mental health  
8 problems, for example, mental deficiency I think is  
9 what Rich was asking me about.

10 Why shouldn't we try at least? Why just 09:43:14  
11 not try a different way? And I know we're on the  
12 opposite side and all the rest of that, but I don't  
13 think anyone has an interest in spending our  
14 precious resources on cases that could be resolved  
15 or could be tried as nondeath cases. 09:43:32

16 MODERATOR SULLIVAN: Walt, do you have any  
17 further?

18 MR. TAYLOR: No.

19 MR. COLDREN: No questions.

20 MODERATOR SULLIVAN: Boyd? 09:43:48

21 MR. INGEMUNSON: Just to echo Walt, being a  
22 former prosecutor, now defense attorney, kind of  
23 implicit in the work we do as defense attorneys is  
24 in any type of case we have we're going to set up a

1 meeting with the prosecutor. I've never met a  
2 prosecutor and I've never had a case where a  
3 prosecutor was never willing to sit down and talk  
4 about the case when requested to do so.

5 I think this is already being implemented. 09:44:10

6 I think overformalizing it I think is unnecessary.

7 I think it's just being done already. That's all I

8 have.

9 MODERATOR SULLIVAN: Leigh?

10 MS. BIENEN: Good morning. 09:44:22

11 MS. LYON: How are you doing?

12 MS. BIENEN: Leigh Bienen, B-i-e-n-e-n.

13 I have three questions for you. One is

14 have you noticed any pattern either within your

15 county or throughout the state in terms of which 09:44:36

16 cases are more likely to have a notice of factor

17 served given that we all know that there are many

18 more cases which have a factual basis for having a

19 notice served that are actually served? In other

20 words, gun cases, stranger cases, rural, urban, 09:44:52

21 city, noncity, have you seen any pattern?

22 MS. LYON: I don't feel that I'm really

23 qualified to answer the question because I don't

24 have a broad enough view of the whole State of

26

1 Illinois. I could speculate, but I prefer to talk  
2 about what I actually know something about.

3 MS. BIENEN: Thank you. My next question is,  
4 is it your observation and experience that plea  
5 bargaining, as we usually understand the term, 09:45:18  
6 occurs over whether or not to drop the notice of  
7 factors or serve it at all? And do you think this  
8 is something that should be done?

9 MS. LYON: Well, I guess I could essentially --  
10 I know what you're saying, but I don't know that 09:45:36  
11 I'd necessarily call it plea bargaining because the  
12 case may or may not plead if the death notice is  
13 dropped, although it often does.

14 But I think that, you know, what you're  
15 speaking about earlier about there being some 09:45:46  
16 informal conversations that occur between the  
17 prosecutors and defense attorneys, that this does  
18 happen; but I just think that if there were a  
19 process, you know, where everyone knew that day,  
20 whatever, there was going to be an opportunity to 09:46:02  
21 actually have a meeting, that that would work  
22 better.

23 In terms of plea bargaining, you run into  
24 the issue that there's no plea bargaining to be had

1 when there's notice of a death penalty because,  
2 until you drop that notice, the only thing you can  
3 get is the death penalty, and I have not had many  
4 clients who think that's a bargain exactly.

5 MS. BIENEN: What I mean by plea bargaining, 09:46:28  
6 plea bargaining with regard to either not served or  
7 to drop the notice.

8 MS. LYON: Those are the informal conversations  
9 that have been previously discussed, and I'm just  
10 suggesting some formalization of the process. 09:46:40  
11 That's all.

12 MS. BIENEN: And my final question is, is it  
13 your experience or observation that financial  
14 considerations, e.g., that somebody else other than  
15 the county might be paying for the expenses of the 09:46:52  
16 capital trial is driving the decision to serve the  
17 notice of factors?

18 MS. LYON: I know that it has driven it in  
19 some -- you know, anecdotally, there's been some  
20 cases where the death penalty has been noticed and 09:47:06  
21 then the decision was made based on motions or  
22 something else to make it not a death penalty case,  
23 and then they will re-notice the death penalty  
24 because the county can't afford it and the

1 prosecution would prefer to have the state pay for  
2 it.

3 I know that happened in at least one case  
4 I understand near Champaign, but I am not  
5 remembering the name of the case right now. I 09:47:30  
6 apologize for that. I think there is a financial  
7 motive to have someone else pay the bill. I'm not  
8 saying that the larger counties such as Du Page or  
9 Lake or Cook County where, you know, there are big  
10 prosecutorial expenses no matter what. I am 09:47:44  
11 speaking more when the county is smaller and the  
12 cost of, you know, paying for defense counsel and  
13 experts and all the rest of that, they'd much  
14 prefer to have the state bear the cost of that.

15 MS. BIENEN: Thank you. 09:47:56

16 MODERATOR SULLIVAN: Andrea, a couple  
17 questions. Did you say that in Cook County there's  
18 a pattern of filing a notice in cases that have an  
19 eligibility factor?

20 MS. LYON: It appears to me that way -- 09:48:12

21 MODERATOR SULLIVAN: Early on?

22 MS. LYON: -- and to other lawyers that I have  
23 talked to, it appears that in the beginning, at  
24 least, that the prosecution seems to err on the

1 side of filing the notice as opposed to not filing  
2 one, that that would be my very strong impression.

3 I haven't studied it so I don't want to  
4 tell you that I have done an empirical study to  
5 prove that.

09:48:36

6 MODERATOR SULLIVAN: And that drives the cost  
7 up?

8 MS. LYON: It does drive the cost up. You  
9 know, it takes a lot of time and effort on the part  
10 of the judiciary and everybody. There's the

09:48:44

11 lengthy pre-trial incarceration, lawyers' time,  
12 experts' time, mitigation specialists' time. As  
13 I'm sure, you know, those costs associated with the  
14 death penalty, despite the belief that it's all the  
15 endless appeals, is really the upfront in the trial  
16 of it.

09:49:02

17 MODERATOR SULLIVAN: Andrea, since they have --  
18 the prosecution has 120 days, what in your opinion  
19 would motivate filing earlier, 115 days?

20 MS. LYON: Sometimes they're just very sure  
21 early on. When I meant early, I mean within 120  
22 days they go ahead and file, even if they think at  
23 some point they might have to draw up notice  
24 because it's like a savings, you know, clause or

09:49:20

30

1 something. They want to make sure that they can  
2 ask for it in the event that they decide that they  
3 should.

4           It's just my suggestion that we formalize  
5 something to address that and to give, you know,       09:49:46  
6 defense the opportunity to do a mitigation  
7 investigation. So that's . . .

8           MODERATOR SULLIVAN: Would you recommend  
9 extending the 120 days?

10          MS. LYON: That's an interesting idea. I would       09:49:54  
11 recommend it -- if it were done the way the federal  
12 system does it which is to say that we are thinking  
13 about noticing this case and so you should do your  
14 work-up, you know, counsel, and we'll talk about it  
15 in six months or we'll talk about it in eight       09:50:16  
16 months, that is -- in other words, if it weren't  
17 just like languishing there and not being treated  
18 as a death case and nobody working on the  
19 mitigation, then -- do you see my point?

20                But I think that it just would make more       09:50:28  
21 sense if there were some formalized process that  
22 everybody knew about, that everybody could  
23 understand, whether it was county by county or  
24 statewide. Statewide would make more sense; but

1 even if it was county by county, if you could have  
2 a local rule or a local practice that, you know,  
3 along with the request for discovery that I handed  
4 to you the moment I picked up the case, I also get,  
5 Here's how we do things around here in Cook County 09:50:54  
6 or how we do it in Du Page or wherever it is, that  
7 would be helpful.

8 MODERATOR SULLIVAN: You said that there was a  
9 case that you were in where you thought that they  
10 asked for the death penalty in order to shift the 09:51:06  
11 cost?

12 MS. LYON: It was not my case. I'm talking  
13 about a case that occurred in -- I want to say it  
14 was near Springfield. It wasn't Sangamon County,  
15 and -- 09:51:18

16 MODERATOR SULLIVAN: It was not Sangamon?

17 MS. LYON: It was not Sangamon, but it was near  
18 Champaign. I know that much. I could look up the  
19 case and tell you later, Tom. I just don't  
20 remember the name of the case, where -- 09:51:28

21 MR. PARKINSON: She's talking about the case  
22 that I prosecuted, LaGrone and Amanda Hamm.

23 MS. LYON: Thank you.

24 MODERATOR SULLIVAN: What county was that in?



1 MR. PARKINSON: DeWitt.

2 MR. SCHWIND: DeWitt, D-e-W-i-t-t, County.

3 MODERATOR SULLIVAN: So have you in your  
4 experience felt that the capital punishment was  
5 requested as a bargaining to put pressure on the 09:51:52  
6 defense to plead and work something out?

7 MS. LYON: Well, I mean, of course, it does put  
8 pressure on the defense.

9 MODERATOR SULLIVAN: I'm not asking that. I'm  
10 asking whether -- 09:52:04

11 MS. LYON: Have I felt that it's happened?

12 MODERATOR SULLIVAN: -- deliberate effort on  
13 the part of the prosecutors to do it?

14 MS. LYON: Certain individual prosecutors, yes,  
15 I have thought that. I don't want to paint too 09:52:10  
16 broad of a brush. I don't think that that's every  
17 prosecutor in every case, but I certainly do think  
18 that sometimes that a request for death notice is  
19 there in order to encourage a plea to avoid a death  
20 penalty. I do think it is. 09:52:24

21 MS. BIENEN: Andrea, just another quick  
22 question. With regard to cases where the notice is  
23 served and then withdrawn, first, do you make any  
24 sort of estimate as to how often that happens?

1 And, two, how do you think we as a committee could  
2 get accurate information as to how often that  
3 happens, specific cases which that happens,  
4 et cetera, for the state as a whole?

5 MS. LYON: Okay. That's complicated because 09:52:54  
6 there's no central -- required central reporting,  
7 you know, requirement at all which would make all  
8 of this committee's life a lot easier if it was.  
9 It's very difficult to know, to know that.

10 I think that it does happen fairly often. 09:53:12  
11 I would estimate based on sort of my anecdotal  
12 knowledge from knowing a lot of people that do  
13 these sorts of cases, again, not from any empirical  
14 study, that one case in four if something happens  
15 on the way to trial where the death notice gets 09:53:30  
16 withdrawn or a plea is entered into, that would be  
17 my best estimate. But I want to be clear that I  
18 have not studied it.

19 In terms of your ability to find that out,  
20 at this point, without the statute to back you up, 09:53:44  
21 it would require voluntary participation by, you  
22 know, all 100 or so county prosecutors to give you  
23 that information. I think it would be useful  
24 information from a fiscal point of view to have,

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1 but I don't know how you can -- absent the statute,  
2 I don't know how you can force such information.

3 MS. BIENEN: I do think it would be useful to  
4 require that a notice of factors be filed in such a  
5 central place once it is filed in the case whether 09:54:16  
6 or not it is withdrawn later.

7 MS. LYON: That would be helpful because it  
8 would allow you to follow up. It would allow for  
9 that kind of study that you're talking about doing  
10 which, you know, some of us that are, you know, in 09:54:26  
11 academic institutions would probably be very  
12 interested in doing such an empirical study if it  
13 were possible to get the information without, you  
14 know, sort of literally having to ask each State's  
15 Attorney to talk to you. 09:54:42

16 That would be something, frankly, I would  
17 be interested in studying as an academic in the  
18 matter.

19 MS. BIENEN: Thank you.

20 MS. BISHOP-JENKINS: One more question. 09:54:50

21 MODERATOR SULLIVAN: Go ahead, Jennifer.

22 MS. BISHOP-JENKINS: Andrea, one other  
23 question. In addition to possible financial  
24 reasons that they might be filing an intent to

1 seek, have you ever -- do you have any anecdotal  
2 experience with it perhaps being a bargaining chip  
3 for a plea -- you know, a plea? Do you have any  
4 sense of that being a pattern?

5 MS. LYON: I think it does, and I don't think 09:55:16  
6 it happens in every case. I think it does happen  
7 sometimes, you know. And it certainly has an  
8 effect on what I might advise a client to do  
9 because, you know, not going too far off track  
10 here, your chances of winning anything go down 09:55:32  
11 dramatically with a death qualified jury because,  
12 you know, all studies tell us that the  
13 recommendations fall in the center.

14 So there are a lot of reasons why, you  
15 know, that would -- that it does have that effect. 09:55:46  
16 So I think my friend from Flossmoor has a question.

17 MR. COLDREN: Just for a second, just as a  
18 point --

19 MODERATOR SULLIVAN: State your name.

20 MR. COLDREN: Chip Coldren, C-o-l-d-r-e-n. 09:56:02  
21 First name, Chip.

22 MS. LYON: By the way, Chip, my husband is  
23 getting his master's degree on Saturday from your  
24 school.

1 MR. COLDREN: Very good. Just as a point of  
2 information, there is currently an unfunded mandate  
3 in the state to create a central depository for  
4 information on death cases. It's been placed under  
5 the authority of the Illinois Criminal Justice 09:56:22  
6 Information Authority. But it has not been funded.  
7 MS. LYON: Right. Absent someone actually  
8 getting the data and -- yes.  
9 MR. COLDREN: Yes.  
10 MS. LYON: Anything else? 09:56:36  
11 MODERATOR SULLIVAN: I'm going to go down the  
12 list here and see if any of this has engendered  
13 other comments or questions? Ed?  
14 MR. PARKINSON: I have no other comment.  
15 MODERATOR SULLIVAN: Jeff? 09:56:48  
16 MR. HOWARD: Nothing.  
17 MODERATOR SULLIVAN: Jennifer?  
18 MS. BISHOP-JENKINS: Nothing.  
19 MODERATOR SULLIVAN: Rich?  
20 MR. SCHWIND: Thank you. 09:56:50  
21 MODERATOR SULLIVAN: Walt?  
22 MR. TAYLOR: No. Thanks, Andrea.  
23 MS. LYON: Thank you. Nice to see everybody.  
24 MODERATOR SULLIVAN: Wait a second. Boyd?

1 MR. INGEMUNSON: No.

2 MODERATOR SULLIVAN: Leigh?

3 MS. BIENEN: No. Thank you.

4 MS. LYON: Thanks.

5 MODERATOR SULLIVAN: I'm going to ask 09:57:04

6 Tom Callahan to come up because he said he had a

7 time problem. And Tom, please tell our court

8 reporter, Anna, how to spell your full name and

9 what you represent.

10 MR. CALLAHAN: My name is Tom Callahan, T-o-m, 09:57:22

11 C-a-l-l-a-h-a-n. I'm with DePaul University,

12 DePaul Students Against the Death Penalty and also

13 the Campaign to Win the Death Penalty. And thanks

14 for fitting me in here.

15 MODERATOR SULLIVAN: Are you in law school? 09:57:40

16 MR. CALLAHAN: Undergrad. Undergrad.

17 MODERATOR SULLIVAN: What year are you in?

18 MR. CALLAHAN: Second year.

19 MODERATOR SULLIVAN: Go ahead, please.

20 MR. CALLAHAN: Well, I'm going to be quick. I 09:57:48

21 just feel like this whole idea of reforming the

22 death penalty is silly. I feel like there's no

23 right way to do the wrong thing; and, even if all

24 these reforms were made, whether how positive they

38

1 are, we would still be behind the rest of the  
2 civilized world. I think it's silly in an  
3 international context to be trying to reform such  
4 an inhumane system. That's all.

5 I don't know if you have any questions. 09:58:18

6 MODERATOR SULLIVAN: I'm going to start at the  
7 other end? Wait?

8 MR. TAYLOR: No comments based on that.

9 MODERATOR SULLIVAN: Chip?

10 MR. COLDREN: No thanks. 09:58:28

11 MODERATOR SULLIVAN: Boyd?

12 MR. INGEMUNSON: No.

13 MODERATOR SULLIVAN: Professor Bienen?

14 MS. BIENEN: Just a question. When faced with  
15 a law which you think is unjust, do you and your 09:58:42  
16 colleagues have any suggestions other than  
17 repealing it?

18 MR. CALLAHAN: Well, I think there are  
19 suggestions to make it more just in a better  
20 system, but what I've observed, it hasn't made 09:59:00  
21 momentum towards that point. And since that, I  
22 think it's a waste of time to work so hard to do  
23 that while you make one move to really move towards  
24 a better direction which is abolition.

1 MS. BIENEN: And since you and your colleagues  
2 believe that abolition is the answer, are you  
3 engaged in lobbying the legislature which has the  
4 authority to do that?

5 MR. CALLAHAN: There are people in our 09:59:28  
6 organization that have those issues. I personally  
7 don't.

8 MS. BIENEN: Thank you.

9 MODERATOR SULLIVAN: Ed?

10 MR. PARKINSON: No comment. 09:59:38

11 MODERATOR SULLIVAN: Jim?

12 MR. HOWARD: No questions.

13 MODERATOR SULLIVAN: Jennifer?

14 MS. BISHOP-JENKINS: No, thank you.

15 MODERATOR SULLIVAN: Rich? 09:59:44

16 MR. SCHWIND: Nothing. Thank you.

17 MODERATOR SULLIVAN: We have heard before the  
18 thought, and I think it's obvious anyway to think  
19 about it, that when you reform the system, you make  
20 it less likely that it will be abolished because 09:59:56  
21 it's a more fail-safe system. So I'm sympathetic  
22 to your point, and I think we all understand it and  
23 we appreciate you coming to talk to us.

24 MR. CALLAHAN: Just one more comment to that.

40



1 You say if you reform it, it's more likely not to  
2 be abolished; I think that's -- that still puts us  
3 behind everyone else that has made the right choice  
4 to abolish it. So my opposition to this reform is  
5 that it's not moving towards the right direction, 10:00:24  
6 that it was one of the reasons why this board was  
7 probably created because there were people that  
8 were unjustly being killed; and, nonetheless, if  
9 there are being people being killed at all, that's  
10 wrong. 10:00:38

11 MR. SCHWIND: I have one question. Have you  
12 ever sat through a death penalty case since the  
13 reform has been enacted, sir?

14 MR. CALLAHAN: No.

15 MR. SCHWIND: Thank you. 10:00:46

16 MS. BIENEN: I have one other comment. You and  
17 your colleagues might find it useful to look at  
18 what happened in the states which have abolished  
19 the death penalty, most recently New Jersey. It  
20 was a long political process, but at the end, they 10:00:58  
21 did abolish the death penalty.

22 MR. CALLAHAN: Thank you.

23 MODERATOR SULLIVAN: Thank you very much for  
24 your time. We appreciate you coming here.

1 Joe, would you -- Joe Birkett has  
2 announced he's under some time pressure. Joe,  
3 would you step forward, please? And if you have  
4 others with you, Joe, we would be glad to have them  
5 at the same time. 10:01:22

6 MR. BIRKETT: Good morning. I didn't think I  
7 would have time --

8 MODERATOR SULLIVAN: Could you hold up for a  
9 moment, please? I want to note the presence of  
10 another member of our committee, Randy Stone. 10:01:50

11 Would you raise your hand, Randy? And, Randy, you  
12 got some time problems, but if you -- we would  
13 invite you to come up here for any time you can  
14 spend.

15 MR. STONE: I'm fine. 10:02:04

16 MODERATOR SULLIVAN: Are you fine there? Okay.  
17 If at any point, Randy, you want to comment, would  
18 you raise your hand again? Thanks, Randy. So  
19 we've got Randolph Stone, who's also a member of  
20 the board present. 10:02:16

21 Go ahead, Joe.

22 MR. BIRKETT: Good morning, Mr. Sullivan  
23 Mr. Schwind, members of the committee. It's an  
24 honor to be here. I want to thank the committee

1 for this opportunity.

2 Also with me here today -- I'm

3 Joe Birkett, Du Page County State's Attorney. I'm

4 past president of the Illinois State's Attorneys

5 Association. I'm also past president of the 10:02:32

6 Association of Government Attorneys in Capital

7 Litigation. I'm here at the request of Tom Brown,

8 Livingston County State's Attorney and also

9 president of the Illinois State's Attorneys

10 Association.

11 Also with me here today are Jamie Boyd,

12 State's Attorney of Kankakee County; Eric Weis,

13 State's Attorney of Kendall County; his Chief of

14 Criminal Division, Mike Reidy; and also

15 Bernie Murray, Senior Prosecutor of the Cook County 10:02:56

16 State's Attorney's Office and now as a member of my

17 staff, all of whom have experience in capital

18 litigation. And I'm sure we'll be given questions

19 that maybe -- or if any of them could make a

20 statement. 10:03:08

21 MODERATOR SULLIVAN: I want to ask each of

22 these gentlemen to state their names and spell it

23 so we get it right. Let's start right here.

24 MR. BOYD: Jamie Boyd, B-o-y-d, Kankakee County

1 State's Attorney.

2 MODERATOR SULLIVAN: B-o-y-d.

3 MR. BOYD: B-o-y-d.

4 MODERATOR SULLIVAN: Kankakee County State's

5 Attorney. How long have you held the office, 10:03:28

6 Jamie?

7 MR. BOYD: Since 2006.

8 MODERATOR SULLIVAN: Okay.

9 MR. WEIS: Eric Weis, W-e-i-s, and I'm the

10 Kendall County State's Attorney. 10:03:48

11 MODERATOR SULLIVAN: How did you spell your

12 last name?

13 MR. WEIS: W-e-i-s.

14 MODERATOR SULLIVAN: And how long have you been

15 in office? 10:04:00

16 MR. WEIS: Since 2006 as well.

17 MR. MURRAY: Bernie Murray, M-u-r-r-a-y. I'm

18 with the Du Page County State's Attorney office on

19 Mr. Birkett's staff.

20 MODERATOR SULLIVAN: You're an assistant? 10:04:18

21 MR. MURRAY: Yes, I am.

22 MODERATOR SULLIVAN: How long have you been in

23 the office?

24 MR. MURRAY: I have been a prosecutor for

1 25 years.

2 MODERATOR SULLIVAN: In Du Page?

3 MR. MURRAY: No. Cook County and Du Page  
4 County.

5 MR. REIDY: Mike Reidy, R-e-i-d-y. I'm the 10:04:34  
6 First Assistant State's Attorney for Kendall  
7 County. I have been a prosecutor for 13 years in  
8 Du Page and Kendall.

9 MODERATOR SULLIVAN: Mike, how many years did  
10 you say? 10:04:56

11 MR. REIDY: 13.

12 MODERATOR SULLIVAN: In Du Page and Kendall?

13 MR. REIDY: Yes.

14 MODERATOR SULLIVAN: Go ahead.

15 MR. BIRKETT: With respect to both Mr. Boyd and 10:05:02  
16 Mr. Weis, their experiences are obviously not  
17 limited to just being State's Attorney. Mr. Boyd  
18 has capital litigation experience actually as a  
19 defense attorney; and Mr. Weiss has extensive  
20 experience. He's a career prosecutor with a lot of 10:05:16  
21 murder experience.

22 MODERATOR SULLIVAN: That's the best. You are  
23 on both sides, not just one. Present company  
24 excluded.

45

1 MR. BIRKETT: What I will do is I will follow  
2 up our oral comments with some written document as  
3 well, but I want to address just a couple of the  
4 remarks that were made by Ms. Lyon.

5 And I think, Mr. Sullivan, in one of your 10:05:40  
6 earlier reports, not the 2008 report, but you had  
7 commented on the Death Penalty Decision Guidelines  
8 promulgated by the Illinois State's Attorneys  
9 Association and Attorney General Madigan's office  
10 and referred to them as excellent because they are. 10:05:54  
11 I'm proud of them because I wrote them, and they  
12 were enforced in our county for many years.

13 However, I also wanted to address just a  
14 couple of other things. Under Rule 416 in a case  
15 where the State's Attorney does not file a notice, 10:06:08  
16 if on its face indictment suggests a case may be  
17 capital, the trial court treats it as a capital  
18 case. So there is no waiting. The trial court  
19 treats it as a capital case until there is a notice  
20 filed that it is not a death case. 10:06:24

21 So a potentially capital case on its face  
22 -- and you cannot tell from the face of the  
23 indictment in all cases whether or not it might be  
24 capital, but many times you can. And when the

1 Court can make that determination on the face of  
2 the indictment, the Court treats it as a capital  
3 case.

4 So I want to just put -- debunk that  
5 suggestion that it's always the prosecutor, the 10:06:46  
6 prosecutors are delayed, we delayed the filing, we  
7 delayed withdrawing.

8 Also, this suggestion that prosecutors are  
9 overcharging and seeking death to leverage a plea  
10 is not true. Not in this current area it's not. 10:07:00

11 And I think Ms. Lyons is probably mixing what  
12 happened pre-reform and post-reform. That is not  
13 true.

14 And as you take a look at the NDAA  
15 standards and case law, you will find that such 10:07:16  
16 conduct, while it may be legal, is questionable in  
17 terms of the ethical responsibility of the  
18 prosecutors. That is not happening.

19 I also take, you know, with a grain of  
20 salt what she suggested about downstate prosecutors 10:07:32  
21 seeking death just because of monetary concerns. I  
22 also do not believe that. That is not happening.

23 And I know because I have interaction with State's  
24 Attorneys across the state and have had for several

1 years.

2 This document, the Death Penalty Decision  
3 Guidelines, was circulated to every State's  
4 Attorney in the state. Input was sought from every  
5 State's Attorney -- every State's Attorney's 10:07:56  
6 Office, in particular, Cook County, where  
7 Bernie Murray played a huge role working with me in  
8 getting this done. So every State's Attorney in  
9 the state is following the guidelines.

10 I really do not believe that that is 10:08:08  
11 occurring. If there is evidence of it, bring it  
12 forward. Report it.

13 And I can tell you this, at trial  
14 conferences, judges are asking these questions at  
15 the trial conferences, at the pretrial conferences: 10:08:22  
16 Have you tendered your mitigation? Which is a big  
17 problem in capital cases where defense attorneys  
18 are waiting, as Ms. Lyon alluded to. They don't  
19 want to present the mitigation to the prosecutor  
20 because they think that it might afford the 10:08:34  
21 prosecution too much time to investigate mitigation  
22 and sometimes ferret out what really some has some  
23 merit and what doesn't.

24 That's a problem with some members of the



1 defense bar that only time will cure and judges who  
2 hold them to discovery deadlines. I just tried a  
3 capital case last year where we had actually picked  
4 the Jury. The Jury was in the box. We were in a  
5 second or third day of the trial in the guilt phase 10:09:04  
6 when we finally got discovery regarding some of the  
7 mitigation material. The case had been in pretrial  
8 stage for three years. It's a 2004 murder,  
9 Laurence Lovejoy.

10 Again, you know, I look forward to 10:09:20  
11 answering questions, but the Illinois State's  
12 Attorneys Association recognized that we have the  
13 responsibility to society's judgment expressed by  
14 our law which allows for the death penalty in the  
15 most heinous murder cases. 10:09:34

16 This body should be impartial and consider  
17 the reforms as well as the many other improvements  
18 that have been made in the criminal justice system.  
19 Dozens of them, not just 13, 14, the 30 plus  
20 reforms during the course of the reform movement, 10:09:48  
21 but also the reforms the Illinois Supreme Court has  
22 made. One we were talking about this morning, even  
23 where a defendant does not -- provides notice that  
24 he does not request a jury on the penalty phase,

1 he's entitled to 14 preemptory challenges. That's  
2 a reform that the Illinois Supreme Court enacted  
3 which is working and, you know, you should know  
4 that.

5           There are many, many guarantees and layers   10:10:12  
6 of safety that are in place in Illinois that this  
7 committee has probably not even heard about. I  
8 want to cover some of them today, some in more  
9 greater detail. We also recognize, just like our  
10 predecessors, that there was a crisis of confidence   10:10:26  
11 in the death penalty here in Illinois and other  
12 states as well that in large measure did have to do  
13 with the decisions that were being made.

14           This document, the Guidelines, and the  
15 history of the reform movement reflect -- and the   10:10:38  
16 numbers also reflect how seriously prosecutors are  
17 taking their responsibility. There are only 14  
18 individuals currently on the death row since former  
19 Governor Ryan cleared death row.

20           We recognize that there was this crisis in   10:10:54  
21 confidence, but we also recognize that the law  
22 depends on public confidence and support for its  
23 effectiveness. While it's clear that most ordinary  
24 citizens continue to support capital punishment, it

1 is equally clear and important that resources be  
2 devoted not only to discovering the sources of  
3 error but also finding out whether or not an  
4 innocent person had been executed. Well, that's  
5 been done. That has been done; and, thankfully, 10:11:16  
6 there's no evidence in the modern era that any  
7 innocent person has been executed.

8           During the last ten years, the legal  
9 battle over the death penalty has shifted. You  
10 heard it here today. You hear it all the time. 10:11:28  
11 It's shifted from a battleground of procedure which  
12 resulted often in what people call super (phonetic)  
13 process, and we have more of that here in Illinois  
14 than any other state to the substantive issues that  
15 we think should be in the discussion. 10:11:44

16           The focus should be on both reforms and  
17 the debate over the death penalty. And I concur  
18 with the young man from DePaul University. We  
19 tinkered with it long enough. As the Daily Herald  
20 said, Either we have it or we don't. I agree with 10:11:58  
21 him. I have a different philosophical view of  
22 capital punishment than he does, but we've tinkered  
23 it along enough. Reforms are working.

24           But here's what the focus should be on,

1 Mr. Sullivan. Has the right person been accused?  
2 Does this person and his crime deserve the death  
3 penalty? Did this person receive a fair trial?  
4 That should be the focus.

5 I believe the reforms which have been 10:12:22  
6 enacted and implemented over the past decade plus  
7 have greatly improved capital punishment and the  
8 criminal justice system as a whole in the State of  
9 Illinois because those decisions centered on making  
10 sure that we could answer those questions in the 10:12:36  
11 affirmative, that we can answer those questions yes  
12 in those rare circumstances where a defendant is  
13 actually sentenced to death.

14 And every single one of those people on  
15 death row look at the cases, look at the facts, 10:12:46  
16 look at the record, look at the character of the  
17 accused. Whether or not he believes in capital  
18 punishment morally, as a moral sentence, something  
19 that government should be involved in, if you set  
20 your moral beliefs aside, you will look at those 10:12:58  
21 cases and you'll say, You know what, those  
22 questions, we have to answer those questions in the  
23 affirmative.

24 They're doing a better job here in

1 Illinois. Last September, and I would encourage  
2 you to take a look at the transcripts if they're  
3 available. There were a number of people who  
4 testified before the House Judiciary to the  
5 Criminal Law Committee. Hearings were held here in 10:13:18  
6 Chicago and I believe there was a hearing downstate  
7 as well.

8 Justice Tom Callum, retired from the  
9 2nd District, testified before the committee and  
10 testified that he was a member of the Illinois 10:13:32  
11 Supreme Court Committee on Capital Punishment, and  
12 he testified that the reforms are working, that  
13 Illinois in terms of reform and where we are in  
14 Illinois, we far and away are the best in the  
15 country. 10:13:44

16 And, you know, I have expressed here  
17 today, and I think Justice Callum reflected this,  
18 that rationality, consistency and even candidness  
19 were the goals that all of us working in the reform  
20 sought to achieve. And it doesn't mean our work is 10:13:56  
21 over. It's not.

22 The Illinois State's Attorneys Association  
23 in 1999 put forward the first suggested reforms,  
24 nine reforms, all of which have been enacted with

1 the exception of one. We were united in our belief  
2 that we should reduce a number of aggravated  
3 circumstances in Illinois. In fact, we have a bill  
4 that we've worked on. It's been drafted. I don't  
5 know if it's been presented yet in Springfield, but 10:14:18  
6 we're working with members of the Judiciary  
7 Committee. Obviously, there's been a change now  
8 with Bob Molaro retiring, but we will continue to  
9 work on achieving the end goal.

10 But these goals have been achieved through 10:14:30  
11 the collective word of the bench, the bar, the  
12 Illinois General Assembly and thousands of police  
13 officers across the state who have embraced  
14 videotaping interrogation, expanded use and access  
15 to DNA, new procedures for cataloguing and 10:14:42  
16 preserving evidence, and mandatory disclosure rules  
17 that they resisted initially because -- I know  
18 because I work with them because they were  
19 resistant. It was my proposal. But now they're on  
20 board. Now they're doing it. They have closed 10:14:54  
21 that communication gap.

22 The reforms have gone beyond improving  
23 just capital litigation. They have enhanced the  
24 truth-saving function in the entire criminal

1 justice system. Post-conviction DNA testing which,  
2 again, I helped draft in 1996 together with another  
3 proposal that we had out of Du Page County which  
4 was to expand our DNA database and include all  
5 convicted felons have been a traumatic one-two 10:15:14  
6 punch in the pursuit of the truth in all cases.

7 You've seen rapists discharged, and you have seen  
8 cold cases solved as a result of those tools.

9 We've proven that we could be effective  
10 and listen to the other side, work with the bench, 10:15:28  
11 work with the bar and listen to all views, and that  
12 is reflected in these reforms. The right to raise  
13 a free-standing claim of innocence regarding --

14 without regard to timing constraints has been  
15 codified, People versus Washington. Again, it's 10:15:44  
16 another issue that I worked on with my colleagues  
17 who are seated here. The State's Attorneys  
18 Association embraced that reform. Because we don't  
19 want to have some innocent person sitting in jail,  
20 whether it's one day or 20 years. 10:15:58

21 These reforms were implemented in our  
22 state because we wanted to see the goal of reducing  
23 any chance of convicting an innocent, even if the  
24 price is that the guilty person -- some guilty

1 person may escape conviction or just punishment.

2 And that's a fact. That is going on.

3           The Illinois Supreme Court may set aside  
4 any death sentence now if they find that the  
5 sentence was fundamentally unjust as it applies to 10:16:20  
6 the particular circumstances of the case; but we  
7 know historically that the Court will look at other  
8 case decisions, in particular in certain areas like  
9 domestic homicides.

10           I want to take a little time and talk 10:16:34  
11 about some of the other reforms in greater detail,  
12 but -- and I hope there's questions on them. But I  
13 want to talk about the -- some have called it a  
14 reform -- the moratorium and the detrimental effect  
15 it's having on the justice in Illinois, and it is. 10:16:48

16           First, no one currently on death row is  
17 even close to a realistic execution date, and no  
18 Governor has been or will be requested to issue a  
19 reprieve for years to come. The moratorium is a  
20 political cover and neither our constitution nor 10:17:06  
21 the laws provide for it. In fact, the Illinois  
22 Supreme Court in Manning versus Schneider took a  
23 shot at former Governor Ryan for the way he  
24 exercised his power. The power of clemency,



1    reprieve, pardon is supposed to be exercised in a  
2    case-by-case basis, not in a blatant fashion.

3            The public and prospective jurors in  
4    capital cases have been fooled into believing that  
5    we aren't really serious about capital punishment    10:17:34  
6    in Illinois, that it's really not going to happen,  
7    that no one will ever actually be executed because  
8    of the moratorium. Now I know this because I have  
9    tried capital cases both pre- and post-reform, and  
10   we have had to educate and indoctrinate jurors    10:17:50  
11   that, despite the moratorium, we're serious about  
12   capital punishment in Illinois.

13           Now if I got up -- and I'm sure all of you  
14   know this, but if I got up in a capital case and I  
15   attempted to diminish the Jury's sense of           10:18:02  
16   responsibility by referring to the moratorium with  
17   a wink and a nod, such an argument would result in  
18   reversal error because it's unconstitutional under  
19   Caldwell versus Mississippi to diminish the Jury's  
20   sense of responsibility.                           10:18:16

21           And that's happened. That's happening.  
22   That's happening. I know for a fact that it's  
23   happening because it happened in the Lovejoy case  
24   and it happened in the Eric Hanson case, a

1 quadruple murder case out of Du Page County, two  
2 men who are currently on death row out of Du Page.

3           You tell me how you erase the moratorium  
4 from the Juror's mind by telling him, well, you  
5 know, we'll get a new governor and ultimately it       10:18:38  
6 will be lifted.

7           You want to study something, study that.  
8 You want to study something, again, ask George Ryan  
9 and Rod Blagojevich whether or not they made it  
10 easier for Jurors to vote for death in Illinois       10:18:50  
11 because of this moratorium. Ask yourselves that  
12 question and use your common sense.

13           We're not lobbyists of the death penalty  
14 here, but we're advocates for the proper and fair  
15 enforcement of all laws including the death penalty   10:19:06  
16 in those rare cases where it's appropriate. It's  
17 unfair to both defendants, to the public and to  
18 victims' families to continue this fiction called  
19 the moratorium.

20           In your fourth annual report, you said you   10:19:20  
21 intended to make a complete and careful study of  
22 15 cases. Take a look at the voir dire in those  
23 cases and see what impact the moratorium is having  
24 on the ability to select a fair and impartial Jury.

1           On that topic, you have to be very careful  
2 with statistics. I know you're attempting to  
3 gather statistics. There's a lot you're not going  
4 to learn from the sheet. And one of the things  
5 that we talked about in the Death Penalty Decision     10:19:46  
6 Guidelines is the investigative responsibility and  
7 the authority that the State's Attorneys have. You  
8 just don't accept what the police give you. You  
9 conduct your own investigation into the character  
10 of the defendant's background, his history, and you     10:20:00  
11 gather as much information as possible before you  
12 make a decision.

13           Some more specifics again, in case you  
14 don't ask. You had some comments about the notice  
15 of the intention to seek death. Keep in mind,             10:20:14  
16 regardless of how it's working, it is not  
17 constitutionally required in Illinois, but it is  
18 one of those things that we ask for, the State's  
19 Attorneys Association asks for. We're not  
20 resistant to it. It was actually our proposal that     10:20:28  
21 we require, prior to trial, to provide notice of  
22 the intent to seek death. It was our suggestion.  
23 Rule 411, discovery in capital sentencing.

24           Again, it's working I think effectively

1 except there's a lot of sandbagging, and it still  
2 goes on. And I understand it. You know, most of  
3 the defense bar, including capital litigators, are  
4 my friends, but they got to get over it. If you  
5 provide something to us in mitigation during the 10:20:56  
6 course of a discussion as to whether or not your  
7 client should receive death, you know, that's not  
8 going to be used against -- by the prosecutors  
9 against you in a guilt phase. And if it is, the  
10 Court can enter an appropriate order to prevent it 10:21:10  
11 from doing so.

12 With regard to Andrea Lyon's comments  
13 about the use of the death penalty as a leveraging  
14 tool, I encourage you to read Page 10 of the Death  
15 Penalty Decision Guidelines, the factors that 10:21:22  
16 should not be considered. You don't seek death  
17 because somebody refuses to plead guilty.

18 Disclosure requirements. DNA is something  
19 that has to be looked at, and I know when the rule  
20 was initially written, there was a lot of input 10:21:36  
21 from a lot of different parties. We need to look  
22 at it again. We have seen through our experience  
23 that oftentimes we'll produce thousands upon  
24 thousands of pages of discovery regarding DNA and

1 not a scintilla of it is used by the defense  
2 because they have confidence that the scientists  
3 got it right but the -- it is a burden. But,  
4 again, we're not complaining about it. But I think  
5 it's something that needs to be monitored. 10:22:02

6 Depositions are good. The courts, at  
7 least, in my experience, have been following the  
8 law providing an opportunity for depositions when  
9 good cause is shown. Of course, I objected to one  
10 that we went to the Supreme Court on, the 10:22:18  
11 depositions of the victim in the Marilyn Lemak  
12 case, but it worked out well because then we had a  
13 chance to depose the defendant's family who had  
14 refused to talk to prosecutors, and that was a  
15 great help to us in really sorting out whether or 10:22:32  
16 not she had a legitimate insanity defense. So  
17 they're working for both sides.

18 Reliability for informants and problems.  
19 I'm going to run through some of these very  
20 quickly. Required disclosure of witness 10:22:44  
21 inducements, evidence of presentation are all not  
22 only legally required but also parts of protocols  
23 that have been circulated throughout the state  
24 including an informed protocol that my office

1 drafted and circulated.

2           The Capital Litigation Trust Fund,  
3 obviously, we have a beef with the Governor or  
4 maybe the next Governor and the General Assembly  
5 for cutting our budget and for downstate  
6 prosecutors. That's wrong. No one else was cut  
7 except us. That is just simply wrong.

10:23:08

8           The Capital Litigation Trial Bar I think  
9 overall is working out very well. Requiring  
10 certificates of readiness for defense counsel,  
11 Rule 416, again, something that we suggested. I  
12 initiated that in our discussions with Justice  
13 Callum. I will tell you this: That is a  
14 recommendation that should be expanded to all  
15 nonprobational felonies.

10:23:22

10:23:36

16           MS. BIENEN: Which recommendation?

17           MR. BIRKETT: That a defense attorney certify  
18 prior to trial that he's actually ready for trial.  
19 If we do it post-trial and we do it for  
20 post-conviction in Illinois for all felonies, but  
21 we don't do it pre-trial, that's something for  
22 another day, but prosecutors in this state embrace  
23 that.

10:23:46

24           Certificates, ready certificates and

62

1 requiring prosecutors to inquire of law  
2 enforcement, I think there was some resistance  
3 initially to that, but it has worked out great.  
4 Prior to trial, we send letters out to the  
5 investigators and request production of all notes, 10:24:10  
6 memorandum; and, in a few cases, we have found  
7 last-minute disclosures that rather than affecting  
8 the trial on appeal gives the defense time to deal  
9 with it in a fashion that allows us to go forward  
10 with the trial. So that's been a great reform. 10:24:28

11 MODERATOR SULLIVAN: Could you wrap it up  
12 because we have other people waiting here? We've  
13 between going for 20 minutes. I don't want to --  
14 if you got other important points.

15 MR. BIRKETT: I do, but I can submit them in 10:24:40  
16 writing. You know, again --

17 MODERATOR SULLIVAN: Summarize them orally for  
18 us.

19 MR. BIRKETT: I will. Quickly, there's a very  
20 few of the reforms -- again, as I said, there's 10:24:50  
21 more than 30. There's many reforms. You know,  
22 some of the most important ones are the ones that  
23 get very little attention.

24 Requiring the police to produce and

1 maintain field notes and exculpatory information is  
2 very important. That issue has resulted in a lot  
3 of cases that got reversed for no reason other than  
4 a police report was not furnished, and it was found  
5 out during the course of the post-conviction 10:25:20  
6 investigation. That reform is working.

7           The trial court's nonconcurrence. We  
8 haven't had a case where a court would nonconcur.  
9 Again, I will submit something in writing, but, you  
10 know, I do want to stress to this committee that 10:25:36  
11 the reforms are working, and any testimony you hear  
12 to the contrary is false. They're working.

13           And I know there was a debate about cost.  
14 These costs -- most of the costs associated with  
15 death penalty litigation would be there anyway. If 10:25:56  
16 they're not there, they should be. Because we  
17 should not short-circuit the criminal justice  
18 system just because we're not seeking death.

19           Not all of them, but many of these reforms  
20 should be applicable to all founding cases. I 10:26:12  
21 think my colleagues in the defense bar would agree  
22 with it, but it might frustrate their movement to  
23 end capital punishment in Illinois.

24           Cutting funding for downstate prosecutors



1 was outrageous. In your report, you discussed  
2 cost. But savings due to trainings and the reduced  
3 number of errors, you can't estimate the savings.  
4 It's probably already in the tens of millions of  
5 dollars by requiring a heightened level of scrutiny 10:26:42  
6 in these cases. You're saving the taxpayers  
7 tremendous amount of money by demanding training,  
8 expertise, requiring videotaping, all of these  
9 safeguards. They're saving the taxpayers money.  
10 If you get into that cost game, you're wrong. 10:26:58  
11 You're flat out wrong. Flat out.  
12           And I'll tell you one thing you will never  
13 get, you won't know how many of those defendants,  
14 like Andrea Lyon said, because in my office -- and  
15 in Cook County, they have an opportunity to come 10:27:10  
16 forward. That's nonsense that they don't.  
17 Defendants come to us saying, Look, you made us an  
18 offer, it's not fair. In some cases, we will see  
19 death mitigation and we will say we're going to  
20 come off the death penalty. Sometimes even after 10:27:28  
21 trial. That was the case in the Lemak case.  
22 There's no way to estimate that case. Whether  
23 defendants like Richard Hess or Michael Alfonso or  
24 others in my county have said, you know what, take

1 death penalty off the table and I'll plead one. It  
2 happens. You're are not going to find numbers on  
3 that.

4           Again, the addition of statutory  
5 mitigating factors, two factors that the defense       10:27:52  
6 bar pushed for years and we welcome the history of  
7 extreme, emotional or physical abuse where the  
8 defendant suffers from reduced mental capacity.  
9 Again, you've heard it, but it's important in a  
10 public forum to make sure that you hear it from the   10:28:06  
11 people who are in the rank and file.

12           As the United States Supreme Court said  
13 more than 30 years ago and as most people continue  
14 to believe, the death penalty in some murder cases  
15 is the only expression of justice, hence, society's   10:28:20  
16 moral outrage at particularly offensive conduct.  
17 That was true 30 years ago. It's still true today.

18           The argument should be about the morality  
19 of capital punishment and justice, not cost. The  
20 debate over cost is a charade. It is a charade.       10:28:36

21           While this body contemplates your next  
22 course of action, consider that Illinois has been  
23 touted across the nation as a state that's  
24 conducted an in-depth study to identify the

1 problems and corrected them. President Barack  
2 Obama during his campaign for presidency of the  
3 United States was proud of his role in reforming  
4 capital punishment in Illinois. He touted his role  
5 of the reforms. I know that he worked on them 10:29:08  
6 because we discussed several of the reforms with  
7 him.

8 Past American Bar Association President  
9 Robert Hirshon praised Illinois' approach. Make no  
10 mistake, by everyone's analysis, people on death 10:29:20  
11 row now in Illinois are indisputably guilty. They  
12 benefitted from the system that makes sure their  
13 guilt was established firmly at a trial, at a fair  
14 trial, that their sentences were fundamentally  
15 just. 10:29:34

16 The voices that are not being heard are of  
17 the victims' families; and, with all due respect to  
18 Jennifer, she represents another side, but the  
19 victims, families of murdered victims, their anger,  
20 their pain is not being addressed. 10:29:46

21 MODERATOR SULLIVAN: Mr. Birkett, would you  
22 please conclude?

23 MR. BIRKETT: The death penalty here in  
24 Illinois is working, Mr. Chairman. And before we

1 take any questions, I would please invite my  
2 colleagues.

3 MODERATOR SULLIVAN: Thanks, Joe. Let's start  
4 over with Walt.

5 MR. TAYLOR: Joe, it's always a pleasure to 10:30:08  
6 hear from you. Based on your presentation today, I  
7 don't have any questions for you. So thank you.

8 MR. COLDREN: I don't have any questions.

9 MR. INGEMUNSON: No questions.

10 MS. BIENEN: Good morning. Thank you for your 10:30:24  
11 testimony. I have a couple of quick questions.

12 Do you think that an individual county  
13 prosecutor should file a notice with some central  
14 authority such as perhaps the Illinois Supreme  
15 Court when they file a notice of factors in the 10:30:36  
16 case?

17 MR. BIRKETT: I think that's a fine suggestion.  
18 I would note that those are already available  
19 through the Circuit Court Clerk's office. They're  
20 filed with the Circuit Court Clerks. They're 10:30:48  
21 available. They're public records and they're  
22 available.

23 MS. BIENEN: So you're suggesting the  
24 initiative should come from the Supreme Court --

1 MR. BIRKETT: It could come from the Supreme  
2 Court or any request. You know, I haven't received  
3 such -- I may have, but they are public records.  
4 The notice of the intention to seek death is filed  
5 in every death case where there's notice filed. 10:31:08  
6 It's part of the common law record that's available  
7 to this committee.

8 MS. BIENEN: My next question is related to  
9 that. How can we, as a committee, get a reliable  
10 count of the number of cases in which a notice of 10:31:20  
11 factors has been served in 2003 to 2008 for the  
12 state as a whole and how -- and also a reliable  
13 count on how many cases have actually gone to  
14 capital trials throughout the state from 2003 to  
15 2008? 10:31:38

16 MR. BIRKETT: You'd probably have to do an  
17 inquiry. The First Circuit Court Clerk's office  
18 has those. The State's Attorneys do not keep them  
19 separately. You can get it through the clerk's  
20 office. 10:31:48

21 In terms of the number of capital cases  
22 that went to a capital case, the Administrative Law  
23 Office of Illinois Courts may have that. I know  
24 there is a new -- the death penalty unfunded

1 mandate to collect and gather this information; but  
2 I think I speak on behalf of the association, we  
3 don't have any problem with that.

4 MR. BOYD: Not at all.

5 MS. BIENEN: Is it your experience and opinion 10:32:10  
6 that the Capital Litigation Trust Fund is  
7 appropriately administered?

8 MR. BIRKETT: Well, there have been -- I would  
9 say, there have been some abuses identified in a  
10 couple of cases. I do think that's something that 10:32:20

11 the Illinois Supreme Court needs to take a closer  
12 look at and adopt mandatory guidelines that the  
13 trial courts will be required to follow and how to

14 account for because I do not believe that just  
15 because a case is capital that it should be an open 10:32:36  
16 checkbook. The fees and costs in capital cases

17 should be not kept to a minimum but should be spent  
18 on those necessary expenses that are associated  
19 with not just capital cases but any case.

20 You know, I said this before. I think, 10:32:54  
21 you know, this cost game is a charade. We need to  
22 spend more time on the life cases, on all

23 nonprobational felonies where people are looking at  
24 a long period of time in prison.

1 MS. BIENEN: And just finally, is it your  
2 experience and opinion that certain cases of  
3 capital, defense and prosecution capital is running  
4 effective and well-administered?

5 MR. BIRKETT: From my experience, Professor, I 10:33:20  
6 think it is being run well. I do think there's a  
7 need for more cross-training.

8 MS. BIENEN: More?

9 MR. BIRKETT: More cross-training.

10 MS. BIENEN: Cross-training? 10:33:32

11 MR. BIRKETT: Cross-training where prosecutors  
12 and defense attorneys and judges share in the same  
13 training, where there's an opportunity to discuss  
14 issues, an open forum, so to speak.

15 You know, I have attended defense 10:33:46  
16 functions and, you know, obviously one of the  
17 things I'm required to do in an office of 80  
18 prosecutors is to train them. And oftentimes, we  
19 will invite members of the Public Defender's Office  
20 if it is pertinent to their areas because it's a 10:33:58  
21 savings to the taxpayers.

22 We need to do more of that across our  
23 state, not just judicial conferences, defense bar  
24 conferences, prosecutor conferences, but do some

1 cross-training where, in addition to the formal  
2 training, you have an opportunity to share ideas  
3 and to talk. Maybe we break down some walls.

4 MS. BIENEN: Thank you.

5 MODERATOR SULLIVAN: Ed? 10:34:24

6 MR. PARKINSON: No sir. No comment.

7 MODERATOR SULLIVAN: Jeff?

8 MR. HOWARD: Two questions. If you know the  
9 amount that was cut from outside of Cook County for  
10 prosecution capital cases; and the second question 10:34:34

11 is you indicated that the one reform that the  
12 Illinois State's Attorneys Association had  
13 recommended that hasn't been implemented is the  
14 elimination -- reduction of eligibility factors.

15 Is that identical to what the Governor's Commission 10:34:48  
16 was, their recommendation, or is it different and  
17 how so?

18 MR. BIRKETT: It's different. It's similar. I  
19 think there's substantial agreement that there  
20 are -- I think we've reduced it from 21 to 13, but 10:35:04

21 we haven't -- we got room for more I think.

22 In a lot of capital cases, for example,  
23 errors or other factors, you might -- that same  
24 person is going to be eligible under felony murder



1 or armed robbery or language that we added and  
2 worked on with the General Assembly to add language  
3 for inherently dangerous crime which allowed us to  
4 eliminate several felonies from murder.

5 The other question. I think -- 10:35:36

6 A VOICE: \$1 million.

7 MR. BIRKETT: \$1 million was cut, and that is  
8 substantial for us. You start cutting \$1 million  
9 here and there, it will be a lot of money pretty  
10 soon. 10:35:48

11 MS. BISHOP-JENKINS: Thank you. I wanted to  
12 start off by thanking each and every one of you  
13 that are prosecutors in this room for all that you  
14 do, the incredibly difficult, challenging work you  
15 do for us for public safety and especially for the 10:36:06  
16 family members in these cases every day. We really  
17 appreciate you, and you do good work. I just  
18 wanted to make sure I said that.

19 I wanted to ask in terms of costs incurred  
20 by State's Attorney's Office in the counties, in 10:36:24  
21 capital cases, I know that when they go on longer  
22 there's more procedures, and I know that you all  
23 employ as part of your budgets victim advocates.  
24 Do your costs go up in terms of the offices with

1 capital litigation -- with any capital case with  
2 victim services? And can you use -- how do you  
3 accommodate that?

4 MR. BIRKETT: I can tell you from my  
5 experience, I don't know if any of you want to 10:36:54  
6 answer that, I don't think the costs go up  
7 dramatically. Obviously a capital case is longer.  
8 A capital trial is longer. If you're going to  
9 bring in family members to sit through a trial  
10 especially if they're from out of state, you may 10:37:06  
11 incur some additional cost, but those costs are  
12 going to be there regardless.

13 We don't have any special victims' rights  
14 contained within the policy and the guidelines to  
15 ensure that we follow them and you afford the 10:37:22  
16 victims an opportunity to be heard.

17 MS. BISHOP-JENKINS: And I'm assuming that your  
18 -- because those employees are salaried that they  
19 would be paid in any case, but I'm assuming they  
20 also would eat more time, staff time; is that 10:37:36  
21 correct?

22 MR. BOYD: I would say --

23 MODERATOR SULLIVAN: Identify yourself.

24 MR. BOYD: Jamie Boyd, Kankakee County State's

1 Attorney. I would say that when it comes to the  
2 cost to our office of a trial, particularly with  
3 regards to the relationship with victims, it  
4 matters not to us what the crime is --

5 MS. BISHOP-JENKINS: I assume that's true. 10:38:00

6 MR. BOYD: -- or what the potential sentence  
7 is. We're going to provide the same services. My  
8 victim witness coordinators, my victim witness  
9 team, my relationship with the law enforcement,  
10 they're going to stay. They're going to stay till 10:38:12

11 5 o'clock at night, 8 o'clock at night, midnight at  
12 the courthouse if that's what is necessary.

13 They're going to pick them up at O'Hare or Midway.

14 We're going to make sure we can find rooms for  
15 them. 10:38:24

16 Yes, I have money for that in my budget.

17 Yes, there's always a chance that it will go over;

18 but, believe me, it has nothing to do with whether

19 it's a death penalty case. It's just that's what

20 we need to do in the number of murders and violent 10:38:36

21 crimes that occur in our county whether or not I

22 have enough money each and every day, but we'll

23 find a way to keep doing it.

24 MS. BISHOP-JENKINS: I appreciate that.

1           One other question about victim impact  
2 statements in these cases. Are you aware of any  
3 incidents -- we just heard reports of  
4 Illinoisvictims.org about this where victim impact  
5 statements has been modified by either the           10:39:00  
6 prosecution or the defense or judges in any  
7 procedural things. Are you aware of any modifying  
8 or editing of victims' statements?

9           MR. BIRKETT: The case law on victim impact is  
10 limited to the impact that the crime has had on the   10:39:16  
11 family member and, oftentimes, you'll get a victim  
12 impact statement, a proposed victim impact  
13 statement that requires -- the statute requires the  
14 State's Attorney to review it and approve it, and  
15 you'll get statements and victim impact statements   10:39:30  
16 not just in capital cases, but across the board  
17 where the victim is expressing his or her opinion  
18 or a family member of the deceased victim is giving  
19 his or her opinion about what the sentence should  
20 be or something that might be inappropriate       10:39:46  
21 regarding their opinions of the character of the  
22 defendant rather than a true victim impact.

23           But with regard -- so that heading does  
24 occur and it should occur and it's mandatory that

1 it occur; but, other than that, I think the  
2 expressions that are contained in the victim impact  
3 statements are the victims themselves giving the  
4 Court or the Jury in such a case the true impact  
5 the crime has had on them and their family. 10:40:14

6 MS. BISHOP-JENKINS: Yeah, I would like to  
7 discuss the mandatory another time. It is a  
8 constitutional right, but we can discuss the  
9 details of that later. Thank you.

10 MR. SCHWIND: I just want to say, like Joe, I 10:40:30  
11 have tried cases both for and after the reforms,  
12 and I want to echo that I believe the reforms have  
13 had a substantial impact on justice being served in  
14 these cases, and I want to thank Joe for his  
15 insight as well as his dedication and service. 10:40:46

16 Thank you.

17 MODERATOR SULLIVAN: Joe, your servitude is  
18 impressive. It reminds me of Pope Benedict.

19 MR. BIRKETT: That's the first time I have been  
20 compared to the Pope. 10:41:04

21 MODERATOR SULLIVAN: I have a feeling that if  
22 we went back to the year 2000 and asked the  
23 prosecutors whether everybody in death row is  
24 innocent, they would have been just as certain as

1 you expressed it now. And ipse ipsa doesn't work.  
2 It doesn't matter what Joe Birkett says. It's what  
3 the facts are. And I think it would be more  
4 effective in the future if you said "I believe  
5 that" or "the evidence I think supports that", 10:41:32  
6 rather than "I know that" because you don't know  
7 anymore than I do or anyone in this room. So  
8 please don't overstate your case.

9 MR. BIRKETT: I do know the reform --

10 MODERATOR SULLIVAN: As Jerry Marta always 10:41:46  
11 seems to point out, By overstating your case, you  
12 reduce your case.

13 MR. BIRKETT: Well, thank you, Mr. Sullivan.

14 MODERATOR SULLIVAN: Just a suggestion for the  
15 future -- 10:41:56

16 MR. BIRKETT: I appreciate it.

17 MODERATOR SULLIVAN: -- in a public appearance.

18 MR. BIRKETT: I do -- from experience I know  
19 that the reforms are working and --

20 MODERATOR SULLIVAN: I'm not questioning about 10:42:04  
21 reforms. I'm talking about these flat statements  
22 that everybody is guilty or I know that. You don't  
23 know that.

24 MR. BIRKETT: Did I make such a statement?

1 MODERATOR SULLIVAN: Yes, you did, several  
2 times, repeatedly in fact.

3 MR. BIRKETT: I said the goal was to be able to  
4 answer these questions in the affirmative. I'm not  
5 going to spar with you. I agree with your advice. 10:42:20

6 MODERATOR SULLIVAN: Okay. Anyhow. Joe, thank  
7 you. I want to ask your contrares here,  
8 Jamie Boyd, do you have anything else you would  
9 like to favor us with?

10 MR. BOYD: No. Thank you, Mr. Chairman. 10:42:40

11 MODERATOR SULLIVAN: And Eric Weis, Kendall  
12 County. Eric?

13 MR. WEIS: I have nothing further. Thank you.

14 MODERATOR SULLIVAN: Bernie Murray, Du Page.

15 MR. MURRAY: Nothing more, sir. 10:42:52

16 MODERATOR SULLIVAN: And Mike?

17 MR. REIDY: No. Thank you.

18 MODERATOR SULLIVAN: So I can then check off --  
19 I have got Eric and Jamie down here. I can check  
20 you off. Okay. Thank you very much. Joe, we 10:43:02  
21 appreciate you coming here.

22 Rob Warden?

23 MR. WARDEN: Good morning, ladies and  
24 gentlemen. It's an honor to appear before you. My

1 name is Rob, R-o-b, Warden, W-a-r-d-e-n, as in a  
2 prison. I'm the Executive Director of the Center  
3 on Wrongful Convictions which is part of the Bluhm  
4 Legal Clinic at the Northwestern University School  
5 of Law.

10:43:58

6 Today, six years, one month and fourteen  
7 days after Governor George Ryan famously pronounced  
8 the Illinois death penalty system broken, it still  
9 is. The fairness and accuracy of the system  
10 undoubtedly has been greatly improved by the

10:44:24

11 reforms enacted by the General Assembly and  
12 promulgated by the Illinois Supreme Court, and I  
13 agree in that respect much of what Mr. Birkett just  
14 told you. In fact, I believe that these reforms  
15 probably have made the Illinois death penalty

10:44:42

16 system the fairest and most accurate in the  
17 country.

18 With that said, one of the system's most  
19 glaring flaws has not been adequately addressed.

20 And I refer to the Illinois General Assembly's  
21 failure to enact legislation safeguarding against  
22 the arbitrary, capricious, wanton, freakish, and  
23 racially discriminatory application of the death  
24 penalty.

10:44:58



1           The federal constitution requires that  
2 there be a meaningful distinction between the few  
3 cases in which the death penalty is imposed and the  
4 many cases in which it is not. The most severe  
5 sanction known to the law is supposed to be           10:45:30  
6 reversed for the worst of the worst offenders.

7           Given such constitutional interpretations,  
8 that's the law of the land, it's somewhat  
9 surprising to me, almost incomprehensible, that the  
10 Illinois death penalty law was not struck down long   10:45:46  
11 ago. In fact, it almost was. In the very first  
12 case that came before the Illinois Supreme Court,  
13 Justice Howard Ryan noted in his dissent, it was a  
14 3-4 decision, that giving 102 State's Attorneys  
15 unbridled discretion to seek or not seek the death   10:46:06  
16 penalty in every case was a variable prescription  
17 for arbitrary application of the death penalty.

18           Now I'm aware of the voluntary guidelines,  
19 and I think it's a beautiful document, and I  
20 believe that most prosecutors will follow those       10:46:24  
21 guidelines scrupulously, but they are not required  
22 to. Those need to be ensconced in the law.

23           You know, there's been a lot of evidence  
24 over the years of arbitrary, capricious

1 enforcement. I filed Freedom of Information  
2 Requests of every State's Attorney about 20 years  
3 ago asking them for their guidelines and, of  
4 course, none of them had any. And at the same  
5 time, I identified many cases in which death -- in 10:46:56  
6 which the death penalty was not sought where  
7 egregious, aggravating factors obviously were  
8 present and many cases in which, even within the  
9 same county, there were disparities.

10           Some 15 years after I did that, a major 10:47:18  
11 study ordered by the Judicial on Capital Punishment  
12 found that death sentences were imposed on  
13 8.4 percent of the defendants convicted of  
14 first-degree murder in rural counties; 3.4 percent  
15 in the collar counties; and 1.5 percent in Cook 10:47:38  
16 County.

17           The likelihood of defendants being  
18 sentenced to death, in other words, vary by a  
19 factor of more than five depending on nothing more  
20 than the location where the crime was committed. 10:47:54

21           Two of the recommendations the Capital  
22 Punishment Study Committee made -- the Governor's  
23 Commission on Capital Punishment, excuse me, made  
24 it seems to me are absolutely essential to the

1 uniform application of the death penalty. First,  
2 the General Assembly needs to narrow that broad  
3 class of murder cases into which the present law  
4 allows prosecutors to seek the death penalty.

5           There were 20 -- when we enacted the law,           10:48:28

6 there were seven aggravating factors. That has  
7 been expanded in succeeding years to first 20.

8 There were 20 when the Governor's Commission filed  
9 its report asking -- recommending that those be  
10 drastically cut. The legislature did exactly the           10:48:48  
11 opposite. They increased adding a 21st aggravating  
12 factor to the list.

13           So I think it's imperative that we have a  
14 statewide authority to exercise judgment as to  
15 whether the death penalty is sought or not sought           10:49:10  
16 in every state case statewide.

17           Now, I think -- and along the same line, I  
18 think it's important that the General Assembly  
19 adequately fund this committee so that it could  
20 carry out its mandate to the study of           10:49:28

21 proportionality. Ironically, though, even if you  
22 had that money and you would have studied  
23 proportionality today, and even if you were able to  
24 determine that the 16 men who have been sentenced

1 to death since Governor Ryan cleared out death row  
2 are the absolute worst of the worst, the worst of  
3 the 1800 people who have been convicted of  
4 first-degree murder in this state, it still  
5 wouldn't matter because there's no guarantee going 10:50:00  
6 forward that the system will work as well as  
7 Mr. Birkett has told you it has been working. So  
8 those things need to be done.

9 Now if those things were done, it's also  
10 imperative I think that we address some other 10:50:16  
11 significant flaws that were highlighted by the  
12 18 exonerations in Illinois capital cases between  
13 the period of time that the death penalty was  
14 restored and Governor Ryan cleared out death row on  
15 January 12th of 2003. 10:50:36

16 In that period of time, 298 -- 289, I'm  
17 sorry, men and women, five of the latter, were  
18 sentenced to death in this state. Eighteen of  
19 those have now been exonerated based on significant  
20 claims, substantial claims of actual innocence; an 10:50:56  
21 error rate in excess of 6 percent.

22 Now those 18 cases have greatly  
23 illuminated the flaws in the system that produced  
24 those wrongful convictions. One of the biggest

1 flaws is the use of what I call snitch testimony.  
2 That would include jailhouse informants, alleged  
3 accomplices, alternative suspects, and other  
4 witnesses who have any incentive to shape their  
5 testimony in favor of the prosecution. 10:51:34

6 The second most prevalent factor was false  
7 confessions, if you count false confessions of  
8 co-defendants that led to the convictions of other  
9 defendants. The other factors, of course, include  
10 erroneous eyewitness identification testimony, 10:51:58  
11 false or misleading forensic testimony, ineffective  
12 assistance of counsel, and sometimes police and  
13 prosecutorial misconduct.

14 Now regarding the snitches, the reform  
15 package addressed that problem with a rather tepid 10:52:18  
16 requirement that the trial judges hold pretrial  
17 hearings on any jailhouse informant testimony and,  
18 of course, allow it to be admitted only if it bears  
19 some indicia of credibility.

20 What we really need is something less 10:52:38  
21 stronger. We need to prohibit prosecutors from  
22 using any witness, with the exception of experts,  
23 who have been offered anything of value in exchange  
24 for their testimony. We know under the federal

1 Ryman (phonetic) statute, it is a felony to offer  
2 anything of value to influence a witness's  
3 testimony in any forum and, yet, prosecutors  
4 throughout the land do it every day. Well, it's  
5 bribery and it ought not be permitted. 10:53:08

6 Now if prosecutors want to reward  
7 so-called snitches, that's just fine, but they  
8 ought to then be kept out of the courtroom so they  
9 could use them the way journalists use confidential  
10 sources in pursuing stories. 10:53:28

11 Regarding false confessions, perhaps the  
12 most significant reform in the package enacted by  
13 the General Assembly was requiring police to  
14 electronically record the entire custodial  
15 interrogation and make any confession obtained as a 10:53:48  
16 result of interrogation that was not electronically  
17 recorded presumptively inadmissible. That is an  
18 excellent reform, but additional reforms are  
19 needed.

20 First, confessions of pain following more 10:54:04  
21 than six hours of interrogations -- of  
22 interrogation should just be categorically  
23 inadmissible; and, second, the courts should bar  
24 any confession given by a defendant after he has

1 been told that he failed a polygraph test.  
2 Although there is, in fact, no reliable lie  
3 detection technology, innocent suspects often are  
4 told and often believe that the machines are  
5 infallible. Consequently, after agreeing to take 10:54:42  
6 such a test, suspects often are just devastated and  
7 prone to make statements construed by the  
8 authorities as confessions.

9 Third, interrogators should not be  
10 permitted to line of suspects. Particularly, they 10:55:00  
11 shouldn't be permitted to tell them falsely that  
12 witnesses have implicated them in the crimes of  
13 which they're suspected or their family members  
14 believe that they're guilty. This is a tremendous  
15 factor in a false confession. 10:55:14

16 And fourth, implicit promises of leniency  
17 should be forbidden. Explicit promises are not  
18 permitted -- I mean implicit, shouldn't be  
19 permitted. Explicit are already prohibited, but  
20 they're showing a difference between an explicit 10:55:34  
21 and implicit promise of leniency and, therefore, it  
22 should be banned across the board.

23 Fifth, the courts should be required to  
24 conduct pretrial reliability hearings before

1 allowing confessions into evidence. At present,  
2 the only prerequisite for admission of confessions  
3 in evidence in criminal trials is that they be  
4 voluntary. Reliability is not an issue, and the  
5 standards should be changed making the paramount 10:56:12  
6 issue reliability. And reliability hearings, as  
7 you know, are not a radical concept. They're  
8 already common in other kinds of cases, eyewitness  
9 -- and other kinds of evidence, eyewitness  
10 identification, informant testimony, knowledge 10:56:30  
11 forensic evidence and hearsay.

12 In addition, I think that the polygraph  
13 simply ought to be banned. It's unreliable. It  
14 doesn't work, and it has no business being in a  
15 courtroom. And it's not in any courts, I believe, 10:56:48  
16 in Europe. I know it's not in Europe or Canada.  
17 It's not allowed period. They're not used. And I  
18 believe that that's the standard pretty much  
19 throughout the world.

20 Now regarding forensic testimony, I think 10:57:02  
21 that the General Assembly in creating the Capital  
22 Litigation Trust Fund has made substantial funds  
23 available. I think that that should go a long way  
24 towards solving the problems that we see in the



1 past. It allows the defendants to hire independent  
2 experts. It provides more money for the  
3 prosecution. I think that that is an excellent  
4 reform insofar as it will prevent the abuse -- the  
5 use and abuse of science in the courtroom. 10:57:32

6 Now regarding ineffective assistance of  
7 counsel, obviously, that's been pretty well  
8 addressed by the Supreme Court's rule of going into  
9 effect in 2001 establishing minimum standards of  
10 experience for attorneys representing defendants in 10:57:50  
11 capital cases.

12 And then regarding police and  
13 prosecutorial misconduct. The only steps taken to  
14 reduce police and prosecutorial misconduct are a  
15 legislatively authorized administrative procedure 10:58:04  
16 to fire police officers found to have permitted  
17 perjury, and a reminder from the Illinois Supreme  
18 Court to prosecutors that it's their job to seek  
19 justice, not just win convictions.

20 To my knowledge, no police officer has 10:58:24  
21 ever been fired under that four-year-old  
22 administrative procedure; and I would venture to  
23 say the reminder to prosecutors that they are  
24 supposed to behave will not likely prove to be an

1 effective deterrent to those who would engage in  
2 malfeasance. At the very least, the causes for  
3 firing police officers should be expanded to  
4 offenses in addition to perjury, and prosecutors  
5 ought to be held more accountable by the Attorney 10:58:56  
6 Registration and Disciplinary Commission. I'm not  
7 sure exactly how those objectives could best be  
8 accomplished, but they certainly deserve the  
9 attention of the General Assembly and the Supreme  
10 Court. 10:59:12

11 And with that, all I can say is that it's  
12 laudatory that the reforms are in place. Maybe  
13 they're not sufficient safeguards against either  
14 convicting innocent defendants in capital cases or  
15 the arbitrary, capricious, wanton, freakish, and 10:59:28  
16 racially discriminatory position of the death  
17 penalty. Thank you very much.

18 MODERATOR SULLIVAN: Thank you, Rob. Ed, would  
19 you like to go first?

20 MR. PARKINSON: Just so I understand your 10:59:42  
21 points on two issues, did I hear you say that  
22 snitch testimony should be banned in your opinion  
23 if there's any offer of something?

24 MR. WARDEN: Yes, that's what I said. It's

1 pure and simple. There's no other word for it.

2 It's bribery.

3 MR. PARKINSON: You are not suggesting that  
4 what we call snitch testimony if there is no such  
5 offer should be banned? 11:00:08

6 MR. WARDEN: No.

7 MR. PARKINSON: Because there are situations --

8 MR. WARDEN: If there is an offer, it should be  
9 in writing. It should be required to be in  
10 writing. And often, though, an expectation of 11:00:18

11 favorable treatment will have the same effect as a  
12 promise of favorable treatment. So we need to  
13 take -- we need to be very cautious and it needs to  
14 be -- if another provision were adopted, it would  
15 have to be very carefully crafted. 11:00:40

16 MR. PARKINSON: My other question, you  
17 mentioned polygraph. I was a little confused.  
18 Polygraphs, you said they should be banned or  
19 outlawed, I thought you said. You mean the use of  
20 the polygraph period should be outlawed? Because 11:00:52

21 they're not used in court anyway.

22 MR. WARDEN: Used by police in criminal  
23 investigations. It's a tool that has been used to  
24 -- repeatedly to elicit false confessions; and the

1 fact is that polygraph -- the polygraph technology  
2 is not reliable. No other country uses it. We're  
3 the only country that is using this for these  
4 interrogation purposes and we ought not to. We  
5 should follow the rest of the world. 11:01:22

6 MR. PARKINSON: In my experience -- and I was a  
7 polygraph examiner, I have to confess. Do you know  
8 that it's used -- in my experience and my knowledge  
9 over the years, it's been used to eliminate  
10 suspects. I mean police departments, quite 11:01:34  
11 frankly, have used it to -- somebody might be a  
12 suspect, and if a person is willing to take a  
13 polygraph, that gets them away from the screen of  
14 suspicion.

15 I know that for a -- I better not say that 11:01:46  
16 for a fact because Tom is going to say something.  
17 It's been my experience it's been used that way,  
18 too, as a tool to eliminate --

19 MR. WARDEN: I'm sure it has, but the fact is  
20 that it's -- we're kidding ourselves if we say that 11:02:00  
21 the technology is reliable. It simply is not.

22 You know, a CBS station, a television  
23 station in New York hired three polygraph  
24 examiners. They told them that they had employees

1 who were -- one of whom had clearly stolen  
2 something very important, an expensive piece of  
3 equipment. And they told the polygraph examiner in  
4 each case which employee it was; and, in each case,  
5 the polygraph examiner picked the person who he had 11:02:32  
6 been told was the person. In fact, there had been  
7 no theft at all, and I think that pretty well  
8 exposes the problem with polygraphs.

9 MR. PARKINSON: Thank you. Those are my  
10 questions. 11:02:50

11 MR. HOWARD: I have no questions.

12 MS. BISHOP-JENKINS: I don't have any  
13 questions, but I wanted to thank you,  
14 Professor Warden, for the incredible work that the  
15 Northwestern Center does. You all have changed the 11:03:04  
16 entire paradigm of the justice system in the State  
17 of Illinois and internationally, and I want to  
18 commend you for the extraordinary work you do.

19 MR. WARDEN: Thank you very much. I only wish  
20 we could have done more. 11:03:16

21 MR. SCHWIND: Professor, you started out by  
22 giving some statistics about the arbitrariness and  
23 the application of the death penalty throughout  
24 Illinois. You said it was five times more likely,

1 I believe -- and correct me if I'm wrong -- five  
2 times more likely for someone to face the death  
3 penalty outside Cook County than inside; is that  
4 correct?

5 MR. WARDEN: Yes, in rural counties. It's a 11:03:40  
6 study done by Michael Rattalin (phonetic). It was  
7 part --

8 MR. SCHWIND: In that study, did they look at  
9 what types of murders?

10 MR. WARDEN: Yes, they did. They attempted to 11:03:50  
11 correct it for variations and aggravating factors.  
12 It's a very thorough study, and I recommend it to  
13 you.

14 MR. SCHWIND: How long ago was the study done,  
15 sir? 11:04:04

16 MR. WARDEN: It was done in 2002. Was that  
17 when the Governor's Commission report was issued?

18 MR. SCHWIND: Yes.

19 MR. WARDEN: That's when it was done.

20 MR. SCHWIND: But my point being is that 11:04:12  
21 looking at the types of murders, not just a death  
22 penalty murder in Cook County versus a death  
23 penalty in Knox County, but if you look at the  
24 death penalty murder -- or the death penalty that

1 was sought in a murder in Knox County, would it  
2 have been sought in Cook County if that same crime  
3 had been committed in Cook County?

4 MR. WARDEN: Well, I offer that it probably  
5 would not. You are much more likely to be 11:04:38  
6 sentenced to death if you committed your crime in a  
7 rural county of Illinois than if you committed it  
8 in Cook County. And that was controlling for as  
9 many variables as the scientists could -- social  
10 scientists could identify. 11:04:52

11 MR. SCHWIND: And the only reason I say that is  
12 because it's been my experience that the crimes  
13 that have been -- the death penalty has been sought  
14 for outside of Cook County have been cases of  
15 multi-victims, cases of murders of young children. 11:05:04  
16 And I would think, having been a former Cook County  
17 prosecutor, those would be considered capital cases  
18 and the death penalty sought.

19 MR. WARDEN: Well, in the 298 cases which I  
20 refer -- and those are individuals, by the way, not 11:05:22  
21 cases -- some people were sentenced to death for  
22 more than one case and some people were sentenced  
23 to death in more than one county; but, of those  
24 289, about 45 percent were multiple murder cases

1 and 55 percent were individual murder cases.

2 Now I have that data and I would happy to  
3 provide it to you. And I recall that that figure  
4 was consistent with the study I did in 1985 when we  
5 had only 85 death sentences having been imposed and 11:05:56  
6 I think 45 involve single victims and 40 involved  
7 multiple victims.

8 MR. SCHWIND: I would like to see that because  
9 I try cases outside of Cook County --

10 MR. WARDEN: I would be more than happy to 11:06:08  
11 provide it.

12 MR. SCHWIND: In regard to your opinion  
13 regarding snitch testimony that it should be -- if  
14 they're offered anything in value in terms of their  
15 testimony that that should be banned, why is that 11:06:18  
16 different than paying an expert? Tell me. I'm  
17 asking the opposite. How is that different than  
18 paying an expert?

19 MR. WARDEN: It's not all that different to be  
20 -- to be quite frank. I mean, you're talking 11:06:36  
21 about -- I mean, ideally, in fact, I think in many  
22 European countries, you have experts of the Court.  
23 The Court hires the experts. The expert works for  
24 the Court, not for either side. And I understand



1 what you're saying.

2 MR. SCHWIND: Okay. Go ahead.

3 MR. WARDEN: I agree with you. It's not all  
4 that different.

5 MR. SCHWIND: So in snitch testimony, if it is 11:06:58  
6 brought out that this person is testifying in turn  
7 for a lesser sentence or having their family moved  
8 out of the area, whatever it may be or whatever  
9 indicia it could be, okay, that is brought to the  
10 attention of the trier of fact, whether it be a 11:07:16  
11 judge or jury, correct?

12 MR. WARDEN: Well, probably it is today. It  
13 wasn't always the case.

14 MR. SCHWIND: We're talking about now.

15 MR. WARDEN: Yeah, it probably is. 11:07:24

16 MR. SCHWIND: We're not talking about 20 years  
17 ago.

18 MR. WARDEN: It is brought to the attention of  
19 the trier of fact.

20 MR. SCHWIND: Yes. So that would go, and the 11:07:30  
21 Jury is then instructed as to the credibility  
22 issues, and that they should look at snitch  
23 testimony with a very fine eye; isn't that correct,  
24 sir?

1 MR. WARDEN: That's correct.

2 MR. SCHWIND: And if there happens to be  
3 corroboration, independent corroboration of that  
4 snitch's testimony, that would even go further to  
5 corroborate that testimony; isn't that correct? 11:07:50

6 MR. WARDEN: It would, indeed.

7 MR. SCHWIND: Whether it was a snitch or not.

8 MR. WARDEN: Yes. But history is replete with  
9 cases of erroneous snitch testimony producing  
10 wrongful convictions. The very first documented 11:08:04

11 wrongful conviction in this country occurred in  
12 1819 in Manchester, Vermont. Two brothers were  
13 sentenced to death for the murder of their  
14 brother-in-law based on snitch testimony that then  
15 led to false confessions as they attempted to 11:08:20

16 lessen their culpability in the crime. But the  
17 brother-in-law, fortunately, before anyone was  
18 hanged, showed up alive and well and living in New  
19 Jersey.

20 So that -- we've had a dozen other cases 11:08:36  
21 like that where victims show up alive in this  
22 country after having people convicted. A man named  
23 William Jackson Marion was executed in 1886 in  
24 Beatrice, Nebraska, for such a crime, murdering his

1 best friend, John Cameron, who later showed up  
2 alive and well living in Kansas.

3 So it's happened and it will continue to  
4 happen as long as we let this kind of incentivized  
5 perjury into our courtrooms. 11:09:08

6 MR. SCHWIND: Well, you would agree with me,  
7 though, that people that are going to commit crimes  
8 usually don't commit them with the most upstanding  
9 people, correct?

10 MR. WARDEN: Yes. 11:09:22

11 MR. SCHWIND: As a whole?

12 MR. WARDEN: That's correct.

13 MR. SCHWIND: And that you would try to not  
14 commit a crime if somebody else -- if somebody  
15 knows about it or you have an accomplice. And the 11:09:30  
16 accomplice testimony would be the same, would you  
17 not say, the same as snitch testimony, correct?

18 MR. WARDEN: Very similar.

19 MR. SCHWIND: Yes. And that there are --  
20 reliability is now in place, that one of the 11:09:40  
21 reforms is a reliability hearing regarding  
22 "jailhouse informant snitch testimony".

23 MR. WARDEN: Yes. And that's greatly reduced  
24 the amount of jailhouse snitch testimony that has

1 been proffered in capital cases.

2 MR. SCHWIND: You said -- going to another one  
3 of your points, you said that, in your opinion,  
4 after six hours of interrogation, any statement  
5 made after that should not be admissible. 11:10:04

6 MR. WARDEN: 84 percent of the cases in which  
7 false confessions have been documented in this  
8 country occurred after six hours of interrogation.  
9 There simply ought to be a limit. Six hours,  
10 that's it. In and out. No more. 11:10:16

11 MR. SCHWIND: And that was one of my points.  
12 Why did you pick six hours?

13 MR. WARDEN: Again, it's based on recent data.  
14 84 percent of the documented false confessions in  
15 this country occurred after interrogations in 11:10:28  
16 excess of six hours.

17 MR. SCHWIND: You would admit, though, that  
18 part of the interrogation process is -- the  
19 interrogation is part of the investigative process,  
20 correct? 11:10:44

21 MR. WARDEN: Yes.

22 MR. SCHWIND: And that the police would  
23 continue to interrogate -- or continue to  
24 investigate based on the interrogation?

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1 MR. WARDEN: Yes.

2 MR. SCHWIND: And so if they were checking out,  
3 let's say, an alibi and it took them more than six  
4 hours to check out an alibi and they come back, in  
5 your opinion, anything he said after six hours 11:10:58  
6 should be inadmissible?

7 MR. WARDEN: Yes, I will be happy to work with  
8 inadmissible. Certainly discourage interrogation  
9 in excess of six hours.

10 MR. SCHWIND: I'm sorry?

11 MR. WARDEN: To discourage interrogations in  
12 excess of six hours.

13 MR. SCHWIND: And one of the points you made  
14 was pretrial hearings on reliability of  
15 confessions. 11:11:20

16 MR. WARDEN: Yes.

17 MR. SCHWIND: That's what a motion to suppress  
18 would be for, wouldn't it?

19 MR. WARDEN: No. A motion to suppress -- you  
20 can only suppress a confession by a showing that it 11:11:30  
21 was not voluntary. The Court is only ruling on  
22 whether or not a confession that was made was  
23 voluntary. Reliability isn't considered.

24 So, anyway, we've seen many cases in this

1 country, and I can point out many of them to you in  
2 which confessions have been admitted that didn't  
3 bear any, any semblance of a crime. Say the victim  
4 was strangled or the victim was stabbed.

5           We see a famous case here, the Steven           11:12:00  
6 Linscott case, an Oak Park murder case, an alleged  
7 inculpatory statement containing facts that  
8 supposedly only the killer would know. But he had  
9 the race wrong. He had the murder -- the murder  
10 weapon wrong. He had the mode of entry into the       11:12:18  
11 dwelling wrong. That should have been considered.  
12 That confession probably never should have gotten  
13 into the courtroom.

14       MR. SCHWIND: That would be up to the trier of  
15 fact with the credibility of that statement, right?   11:12:32

16       MR. WARDEN: Yes.

17       MR. SCHWIND: And that's what's done now.

18       MR. WARDEN: No. It's whether --

19       MR. SCHWIND: As a defense --

20       MR. WARDEN: In the Linscott case --           11:12:40

21       MR. SCHWIND: As a defense attorney in that  
22 case that you just talked about, the Oak Park case,  
23 you would bring that out to the Jury and argue to  
24 the Jury how can you even believe this statement.

1 MR. WARDEN: To the Jury, yes. But the issue  
2 is on the pretrial hearing simply whether the  
3 confession was voluntary, not whether it was  
4 reliable. So Steve Linscott's alleged confession  
5 -- I wouldn't call it a confession. It was a 11:13:04  
6 statement that the police and prosecutors contended  
7 contained inculpatory information, but it was  
8 entirely voluntary so it was admissible and it  
9 would be admissible.

10 MR. SCHWIND: Right, but you would argue the 11:13:22  
11 credibility of it --

12 MR. WARDEN: After it's already admitted.

13 MR. SCHWIND: -- and the weight that the Jury  
14 should give to it.

15 MR. WARDEN: Yes. I can show you so many cases 11:13:28  
16 in which confessions and also eyewitness  
17 identification, by the way, has overcome the most  
18 incredible evidence of actual innocence. I mean,  
19 alibis that are so ironclad that they could  
20 hardly -- they couldn't have been constructed 11:13:46  
21 falsely and, yet, because the victim testified, I  
22 will never forget that face or because a  
23 confession, an alleged confession had been entered  
24 into evidence, that evidence was simply overwhelmed

1 and jurors return guilty verdicts.

2 MR. SCHWIND: What happened to the Oak Park  
3 case?

4 MR. WARDEN: The Illinois Appellate Court first  
5 reversed it. It was appealed to the Illinois 11:14:14  
6 Supreme Court which remanded it to the Appellate  
7 Court for further investigation, and the Appellate  
8 Court found that, in fact, the only evidence -- the  
9 confession of course was inadmissible, but that the  
10 forensic evidence had been reported to tie 11:14:30

11 Mr. Linscott to the crime had been fabricated --  
12 that's the words of the Appellate Court -- by the  
13 Cook County State's Attorney, the attorneys trying  
14 the case.

15 MR. SCHWIND: And the last point you brought 11:14:46  
16 up, sir, I think -- and I want to make sure I'm  
17 understanding you, you said the prosecutors should  
18 face the ARDC for their misconduct, correct? And I  
19 agree with that.

20 MR. WARDEN: Yes, yes, yes. I think that the 11:14:56  
21 ARDC should be a lot more vested in pursuing  
22 conduct that was prejudicial to the administration  
23 of justice in a criminal case.

24 MR. SCHWIND: And to be fair, if the defense



1 lawyer is ineffective, intentionally ineffective,  
2 he should face the same scrutiny?

3 MR. WARDEN: Yes, yes. We never had a

4 prosecutor disciplined in this case for doing

5 anything in a case that led to a wrongful 11:15:22

6 conviction, including a famous case, the second --

7 later the second Illinois Supreme Court decision

8 affirming constitutionality of the death penalty,

9 People versus Lewis. It arose in maybe Kankakee

10 County, I'm not sure, and the prosecutor had 11:15:44

11 introduced evidence of a prior record in good faith

12 that turned out to be false; but when that evidence

13 was brought to the prosecutor's attention, he then

14 covered that up and didn't disclose it. And it was

15 only after extensive post-conviction litigation 11:16:10

16 that the facts came to light. And they seemed

17 pretty clear-cut to me, and the Attorney

18 Registration and Disciplinary Commission couldn't

19 provide -- did not provide any sanction in that

20 case. 11:16:26

21 In fact, a person was fired by, if I'm

22 right, Will County for making racist remarks before

23 a jury and was then hired by State's Attorney

24 Richard Daley in Cook County.

1           MODERATOR SULLIVAN: We have an assistant in  
2 Cook County now who three times has been reversed  
3 for making terribly prejudicial arguments. As far  
4 as I know he is still on the payroll and, indeed,  
5 ran for judge recently. Fortunately, he was not           11:16:56  
6 elected. The ARDC in fact came in front of him and  
7 did nothing about it. And as far as I know, he's  
8 still employed by the State's Attorney of Cook  
9 County. And the opinions are just devastating by  
10 the kind of conduct that he's --                               11:17:16

11           MR. WARDEN: Exactly. I'm not -- you know,  
12 don't get me wrong. I know a lot of prosecutors.  
13 I have a lot of good friends who are prosecutors.  
14 I worked briefly in the Cook County State's  
15 Attorney's office. So I'm not just a knee-jerk           11:17:30  
16 opponent of anything prosecutors say. I do not  
17 believe they are all bad guys. There are a few who  
18 fudge the facts intentionally, and those are the  
19 ones that we ought to be weeding out effectively,  
20 more effectively than we've done in the past.               11:17:50

21           MODERATOR SULLIVAN: And the defense lawyers,  
22 too.

23           MR. WARDEN: Yes.

24           MODERATOR SULLIVAN: Let's go over to the left.

1 Walt?

2 MR. TAYLOR: I have no questions, Rob. Thanks  
3 for your presentation.

4 MODERATOR SULLIVAN: Chip?

5 MR. COLDREN: Yes. Thanks, Tom. Last name is 11:18:04  
6 Coldren, C-o-l-d-r-e-n.

7 Just one quick question, Mr. Warden. You  
8 didn't talk about anything regarding line-ups. And  
9 once of the things that this committee is working  
10 on right now is a recommendation regarding blind 11:18:18  
11 administration. So thoughts on that and any  
12 recommendations along those lines?

13 MR. WARDEN: Yes. Well, the Chicago Police  
14 Department or the three departments actually,  
15 Chicago, Joliet and Evanston, did the only field 11:18:32  
16 study that's ever been done.

17 The field study contradicted all of the  
18 academic research that has gone before it. When it  
19 was examined, it was found that this research was  
20 simply fatally flawed and, yet, it has been used 11:18:48  
21 nationally to ward off implementation of this  
22 important reform that's called for by using a  
23 double blind sequential method photographic  
24 identification rather than live line-up in which

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1 people are all displayed at once has been shown to  
2 reduce erroneous eyewitness identification by about  
3 50 percent and reduce accurate eyewitness  
4 identifications by about 20 percent, and in a  
5 five-person line-up, obviously, that's the error 11:19:32  
6 rate you would expect at random.

7           So it's clearly a reform -- it's been  
8 implemented in New Jersey, by the way, I believe in  
9 2001, and it's been well-received and appears to be  
10 working there. 11:19:52

11           MR. COLDREN: Thank you.

12           MODERATOR SULLIVAN: Boyd.

13           MR. INGEMUNSON: Just a quick question about --  
14 you started with some proportionality discussion  
15 over how the death penalty is being administered 11:20:06  
16 when it's actually sentenced.

17           My question to you, typically the case,  
18 and I don't know the figures on that the study, but  
19 isn't that typical of any type of punishment for  
20 any type of crime being proportional? I know 11:20:20  
21 there's a Cook County former prosecutor up here,  
22 now a defense attorney out in the collar county,  
23 rural counties, incarceration is very  
24 disproportionate. The type of crime that you

1 commit in Cook County you're not going to jail.  
2 You're not going to go to jail; but, at the same  
3 time, a crime could be committed anywhere in a  
4 rural county and you're looking at severe  
5 incarceration. 11:20:46

6 I don't see how there's a distinction. It  
7 seems like all across the board any type of crime,  
8 any type of punishment, you might have  
9 disproportionate sentences.

10 MR. WARDEN: You know all those attributes that 11:20:56  
11 I used, arbitrary, capricious, wanton, freakish,  
12 and racially discriminatory were terms applied by  
13 the United States Supreme Court in Furman versus  
14 Georgia.

15 Now in Gregg versus Georgia, four years 11:21:10  
16 later, the Supreme Court basically affirmed that  
17 the death penalty could not be applied on that  
18 basis but found that the new laws had enacted  
19 safeguards to prevent that from happening.

20 And what I'm saying here to you today is 11:21:24  
21 that our capital punishment law did not and does  
22 not meet that standard and, unfortunately, neither  
23 the United States Supreme Court nor the Illinois  
24 Supreme Court has adequately addressed that issue.

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1 But, again, you have 102 State's  
2 Attorneys. They have unbridled discretion, the  
3 Guidelines notwithstanding, to seek or not seek the  
4 death penalty in any case. If they seek it, ask  
5 for a death penalty hearing, it must be held. If 11:22:00  
6 they do not, it cannot be held. And it is just a  
7 variable prescription for arbitrary and capricious  
8 application.

9 So either the Attorney General or some  
10 single authority ought to be overseeing this. And 11:22:14  
11 voluntary guidelines may have worked just fine in  
12 these 16 death sentences that we've had since  
13 January 12, 2003, but there's no guarantee that  
14 they will work going forward unless it's beyond  
15 voluntary. 11:22:34

16 MS. BIENEN: Good morning. I also --  
17 Leigh Bienen, B-i-e-n-e-n. I would also like to  
18 join in Jennifer's comments praising you and the  
19 Center of the work you've done for the state and  
20 the congregant as a whole. 11:22:56

21 I have two quick questions. How can we as  
22 the committee have an accurate count of the number  
23 of cases in which a notice of factors has been  
24 served throughout the state and the number of cases

1 which have actually gone to capital trial  
2 throughout the state for the period 2003-2008?

3 And my second question is, do you have any  
4 comments or opinion on the effectiveness of the  
5 operation of the Capital Litigation Trust Fund? 11:23:26

6 MR. WARDEN: I don't have any firsthand  
7 experience with the Capital Litigation Trust Fund  
8 so I really couldn't comment on that.

9 As to your first question, remind me  
10 again. I'm sorry. 11:23:44

11 MS. BIENEN: The question is how can we get a  
12 reliable count of the number of cases in which the  
13 notice of factors was actually served and the  
14 number of cases which actually went to capital  
15 trial throughout the state for the period 11:23:56  
16 2003-2008?

17 MR. WARDEN: The only practicable way -- I  
18 don't know how you can do it in retrospect now, but  
19 that data needs to be gathered at the time that it  
20 is occurring, and there needs to be some mandated 11:24:10  
21 reporting, and that needs to be adequately funded.  
22 That's the only way that you can assess  
23 proportionality.

24 But I have no idea how you are going to

1 get that data at this late date. And so if we're  
2 going to have a proportionality study which, by the  
3 way, is mandated by the statute that established  
4 this committee, if you're going to do it, you need  
5 to do it going forward and you need to wait until 11:24:38  
6 there's a statistical -- a statistically  
7 significant number of cases in which the death  
8 penalty has been imposed.

9 So this probably can't be done unless you  
10 want to extend the life of this committee by fore 11:24:54  
11 score and seven years.

12 MS. BIENEN: Thank you.

13 MODERATOR SULLIVAN: The committee, the  
14 Governor's Commission recommended that there be a  
15 state-wide review panel for the decisions, and 11:25:14  
16 Joe Birkett is a former president of the State's  
17 Attorneys Association. They vigorously defended --  
18 opposed it on the ground that it violated their  
19 constitutional prerogative which based upon my  
20 legal research is absolutely incorrect. And that 11:25:28  
21 may go a long way towards solving this problem of  
22 proportionality and disparity if some such review  
23 authority statewide, that could apply it statewide,  
24 looked at these things for adoption.



1           Now with regard to polygraphs, you said --  
2 would you repeat to me what is the bottom line of  
3 your view?

4           MR. WARDEN: We're the only nation in which  
5 they're used in criminal investigations by police       11:26:02  
6 or certainly the only major nation, major western  
7 nation. Although they're not admitted in the  
8 courtroom, they are used as an intimidating tool in  
9 police interrogations. A vulnerable victim is told  
10 the machine has established that you're lying and       11:26:20  
11 then the technique is, Well, if you can put some  
12 better face on this, like maybe it was an accident  
13 or self-defense or something like that or he  
14 deserved it, then that might be taken into account  
15 and we can take -- you know, gee, we might be able   11:26:36  
16 to let you go home this afternoon.

17          MODERATOR SULLIVAN: I don't know if you are  
18 familiar with the Mielak (phonetic) case.

19          MR. WARDEN: What?

20          MODERATOR SULLIVAN: The Mielak case.

21          MR. WARDEN: Oh, yes.

22          MODERATOR SULLIVAN: In which the polygraph  
23 operator, polygraph operator had inconclusive  
24 results. But the way -- what they do then is

1 instead of lying about the results, they walk back  
2 in and say, I'm now convinced you're guilty.  
3 There's an implication that's involved in that  
4 statement that the person formed, but they don't  
5 lie to them about it. And the Supreme Court 11:27:12  
6 wrestled with that situation in light of the rule  
7 that the polygraph results are not admissible, and  
8 they disapproved of the practice and said to the  
9 defense, If the prosecution brings out something  
10 that is inadmissible, the defense is entitled to 11:27:30  
11 bring out something that also might be inadmissible  
12 in order to meet that.

13 So there is a case out there on this  
14 that's not -- I think the opinion is poorly  
15 written, that's my own opinion, but the Court has 11:27:44  
16 struggled with this.

17 MR. WARDEN: Given all that I said, I realize  
18 that much of what I would do will not be  
19 implemented unless by some happenstance I were to  
20 become dictator, and I believe that's highly 11:28:02  
21 unlikely. But this is what -- these are things  
22 that this committee needs to take seriously in  
23 assessing how the reforms are working.

24 And I do think the reforms are laudatory,

1 and I congratulate the General Assembly and the  
2 Supreme Court for doing what they have done. It's  
3 just not enough.

4 MODERATOR SULLIVAN: Thank you very. Do you  
5 have written testimony? 11:28:36

6 MR. WARDEN: I do. I only have five copies  
7 unfortunately.

8 MODERATOR SULLIVAN: Let me have four of them.  
9 I'm going to ask the representatives of  
10 the Illinois -- pardon me, the Cook County Public 11:28:44  
11 Defender's Office. I believe there are four,  
12 Crystal Marchigiani, Julie Harmon.

13 MS. HARMON: Good morning.

14 MODERATOR SULLIVAN: Julie, please proceed.  
15 And let's get the names for Anna, our court 11:29:28  
16 reporter, so we have this very clearly as to who's  
17 speaking.

18 MS. HARMON: Julie Harmon, Capital Case  
19 Coordinator with the Public Defender's Office.

20 MODERATOR SULLIVAN: Your position and title? 11:29:40

21 MS. HARMON: I'm the Capital Case coordinator  
22 for the Law Office of the Cook County Public  
23 Defender.

24 MS. MARCHIGIANI: I'm Crystal Marchigiani,

1 M-a-r-c-h-i-g-i-a-n-i. I am Chief of the Homicide  
2 Task Force.

3 MS. HIRSCHBOECK: I'm Stephanie Hirschboeck,  
4 H-i-r-s-c-h-b-o-e-c-k. I'm the supervisor with the  
5 Homicide Task Force. 11:30:00

6 MODERATOR SULLIVAN: Go ahead.

7 MS. HARMON: The Law Office of the Cook County  
8 Public Defender does not believe that the capital  
9 litigation reform rules have had a truly  
10 significant impact on death penalty defense work. 11:30:14

11 While there is no doubt that the reforms have had  
12 some influence on the administration in these  
13 cases, the rules have fallen far short of fixing  
14 the death penalty in Illinois.

15 No discussion of the death penalty can be 11:30:28  
16 had without consideration of the cost to defend  
17 such cases. In this regard, the rule establishing  
18 the Capital Litigation Trust Fund has given the  
19 most practical and obvious benefit to the work of  
20 the Law Office of the Cook County Public Defender. 11:30:44

21 The vast majority of the fund is used to  
22 pay for expert witnesses, most commonly,  
23 mitigators, psychiatrists, psychologists, and  
24 forensic examiners. A much smaller portion is used

1 for investigations, training, and equipment. These  
2 additional funds have allowed us to better prepare  
3 for capital litigation as required by the Supreme  
4 Court and as suggested by the ABA Guidelines.

5           It is far too small a sum, however, given 11:31:12

6 the number of pending cases which consistently  
7 hovers at 140. Despite our constantly resolving  
8 pending capital cases, new ones are always being  
9 initiated. Each year the Capital Litigation Trust

10 Fund allocated by the legislature is depleted long 11:31:30

11 before the state's fiscal year ends, but the work  
12 must continue and the unpaid bills grow. When the  
13 funds are disbursed for next fiscal year, typically  
14 months into that fiscal year, a large portion is  
15 immediately depleted paying these accumulated 11:31:46

16 bills. This year, the added amount equals  
17 60 percent of the total fund.

18           Given the constant escalating costs of  
19 expert witnesses, an endless cycle has been created  
20 for which the annual amount available for current 11:32:00

21 expenses actually diminishes. Quality experts are  
22 becoming discouraged and many have indicated an  
23 unwillingness to work on cases with this office due  
24 to the long stretches, often four to six months,

1 without being paid. The unfortunate consequence of  
2 the large number of charged capital cases is that a  
3 large percentage of the Capital Litigation Trust  
4 Fund is wasted working up those cases that are  
5 technically death penalty eligible but are not 11:32:28  
6 ultimately treated as such at trial and for which  
7 these sums would not have been spent had they been  
8 properly designated as noncapital from the start.  
9 There are too many eligibility factors that allow  
10 for the imposition of death. 11:32:44

11 The rule allowing depositions has also  
12 resulted in a real and practical benefit to the  
13 preparation of death penalty cases. It must,  
14 however, be expanded to include their possible use  
15 of all witnesses that may testify at trial and 11:32:56  
16 deemed necessary by the trial lawyer as it is in  
17 civil cases.

18 I included the written summary that was --  
19 the specific rules that were prepared last year on  
20 February 26, 2007, as none of our positions on the 11:33:10  
21 rules have changed, and it's in the folder which  
22 you have received.

23 Our overall assessment of the rules as a  
24 group is that, with the exception of improving

1 funding and allowing some depositions, they have  
2 not made a significant impact on death penalty  
3 litigation. There are still too many capital cases  
4 pending, and it is still unfairly and inequitably  
5 sought. Jurors are not sufficiently instructed on 11:33:34  
6 the dangers of unreliable eyewitness  
7 identifications. Witness interviews with police  
8 and line-ups are not videotaped. The procedures  
9 for conducting line-ups has changed not at all.  
10 Many more reforms are needed. 11:33:50

11           Statistics show that less people have been  
12 sentenced to death in Illinois annually than have  
13 prior to the reforms being put in place. The  
14 reforms, however, have not resulted in fewer  
15 qualifying factors or fewer numbers of capital 11:34:04  
16 cases, both of which are substantial problems for  
17 capital punishment in Illinois.

18           Capital punishment in Illinois is not  
19 reserved for the worst of the worst when 20 to 25  
20 percent of all murder cases are capital. The fact 11:34:18  
21 of the low percentage of cases in which the state  
22 actually seeks death results in a death sentence is  
23 not a factor of positive reform as much as it is a  
24 factor of the state insisting on going forward with

1 "capital cases" that have no business being charged  
2 as such.

3 As a result in these cases, findings of  
4 not guilty, not eligible, and no death are made  
5 with greater frequency than in anything with real 11:34:44  
6 death cases, if anything, a higher percentage of  
7 death verdicts in capital cases which actually  
8 prove that some progress was being made.

9 We also believe that the large number of  
10 innocent people released from death row is still 11:35:02  
11 fresh in jurors' minds, and it hasn't had an impact  
12 in decisions not to impose death. The more remote  
13 that becomes in a potential juror's consciousness,  
14 however, it will certainly dilute the caution that  
15 we believe impacts deliberations today. 11:35:18

16 Finally, the Law Office of the Cook County  
17 Public Defender is unequivocally against the death  
18 penalty. There are many more problems that all the  
19 reforms in the world will not solve. For instance,  
20 mitigation is often impossible to gather, not 11:35:30  
21 because it does not exist, but because the world in  
22 which some clients are raised is so far outside the  
23 norm. The entire family is up for mental health  
24 issues or generations of abuse but is unwilling to



1 acknowledge or disclose or allow access to any of  
2 it to the defense team. Records in those cases  
3 where there may have been some form of intervention  
4 or treatment are many, many times destroyed,  
5 missing or otherwise unattainable. Clients and 11:36:00  
6 their families refuse to acknowledge or discuss any  
7 details of the family history despite being made  
8 aware of the consequences. Silence is maintained  
9 even in the face of the client's potential  
10 execution. 11:36:14

11 Our ability to discover new evidence of  
12 complex issues on a case-by-case basis is seriously  
13 compromised by the sheer volume of capital cases  
14 with which we must deal. Only abolition of the  
15 death penalty can assure that an innocent person 11:36:26  
16 will not be executed. Thank you.

17 MODERATOR SULLIVAN: Thank you very much,  
18 Julie. I'm going to see -- where did I start last  
19 time?

20 MR. SCHWIND: You started on that end this 11:36:38  
21 time.

22 MODERATOR SULLIVAN: I'm going to start with  
23 Mr. Parkinson, the polygraph examiner.

24 MR. PARKINSON: I have one area. Ed Parkinson,

1 P-a-r-k-i-n-s-o-n. I heard you say that --  
2 basically you're saying that the reforms haven't  
3 gone far enough; but with regard to depositions  
4 which we prosecutors realize and the wording of the  
5 new Supreme Court rule is to allow depositions in 11:37:06  
6 criminal cases where otherwise they never have been  
7 allowed before, but for witnesses who would have  
8 complicated or scientific or some testimony that a  
9 defense attorney could not otherwise get by normal  
10 means. That's the way, if I'm paraphrasing it 11:37:24  
11 correctly, I believe we agree on that.

12 And so it's been reserved for situations  
13 where the Court when requested by defense attorneys  
14 to depose ahead of trial these types of witnesses  
15 so they can better prepare. You said that you 11:37:38  
16 would recommend that they expand it to depositions  
17 for any and all witnesses who may testify in the  
18 trial; is that right?

19 MS. HARMON: If the trial court deemed it  
20 essential for preparation, yes. 11:37:54

21 MR. PARKINSON: Two years ago I prosecuted a  
22 death case down in Southern Illinois, Mount Vernon,  
23 and the defendant shot four people. Three of them  
24 survived. He chased a 16-year-old girl holding a

1 2-year-old baby into the bathroom. He kicked down  
2 the door, shot the girl in the head and she  
3 survived, and shot the baby in her arms; and the  
4 defense counsel asked that they could take her  
5 deposition, the 16-year-old. That would be okay 11:38:18  
6 with you?

7 MS. HARMON: I think they could justify why  
8 they needed access to her before trial, yes.

9 MR. PARKINSON: She gave a police statement.  
10 She gave a statement that was recorded. They had 11:38:30  
11 all her words, but they wanted to put her through a  
12 deposition, and she's 16; and that would be okay  
13 with you?

14 MS. HARMON: Yes.

15 MR. PARKINSON: Thank you. 11:38:42

16 MODERATOR SULLIVAN: Ed, what was the name of  
17 the defendant?

18 MR. PARKINSON: Tucker. Tucker was the last  
19 name. I'm trying to think. He got life. They  
20 didn't impose the death penalty. Tucker. 11:38:54

21 MODERATOR SULLIVAN: Thank you.

22 A VOICE: Aubrey.

23 MR. PARKINSON: Aubrey Tucker. You are not  
24 related, are you?

1 A VOICE: No. I follow the case.

2 MR. PARKINSON: Bad joke. Yes, she is correct.

3 It's Aubrey Tucker. The case is actually logged in

4 at Lawrence County and it was transferred to

5 Mount Vernon on a change of venue. 11:39:14

6 MODERATOR SULLIVAN: Thank you. Go ahead, Jim.

7 MR. HOWARD: I have no questions. Thank you.

8 MS. BISHOP-JENKINS: Jennifer Bishop-Jenkins.

9 I wanted to thank you all first for -- just as we

10 thanked the prosecutors -- for the extraordinary 11:39:30

11 work that you all do. It's very important and

12 amazing work you do every day. And I especially

13 know this because my sister is a Cook County Public

14 Defender. I know how hard she works and under what

15 conditions. 11:39:44

16 I have a question about decisions made by

17 the defense teams about exclusion of victims from

18 the courtroom putting them on witness lists. What

19 are the criteria that you use for determining

20 when -- and I guess this would be somewhat related 11:39:58

21 to Mr. Parkinson's question about -- what would be

22 the criteria by which you would put a victim on a

23 witness list that would keep them out of the

24 courtroom during the trial?

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1 MS. HARMON: They don't appear on the State's  
2 witness list?

3 MS. BISHOP-JENKINS: Right. Let me say, we're  
4 aware of deliberate tactics by some defense teams  
5 to keep witnesses -- to keep victims out of the 11:40:28  
6 courtroom for more persuasive purposes in terms of  
7 the Jury, that they would be placed on a witness  
8 list unnecessarily just to keep them out of the  
9 courtroom. So I'm trying to get at how that  
10 process is decided? 11:40:42

11 MS. HARMON: The only way you would put a  
12 person on a witness list is if they had some  
13 information relative to the crime. Unless they  
14 were somehow a witness with relevant testimony, you  
15 wouldn't put them on a list. I mean, I can't 11:40:58  
16 imagine the circumstances.

17 MS. BISHOP-JENKINS: You never heard of a case  
18 where a witness was -- a victim was put on a  
19 witness list --

20 MS. HARMON: No. Often -- 11:41:08

21 MS. BISHOP-JENKINS: -- for tactical reasons?

22 MS. HARMON: Often a victim will be called by  
23 the prosecution to testify as to life and death and  
24 other issues, and we waive their exclusion from the

1 courtroom many, many times and allow them because  
2 of their nature as victims to stay in the courtroom  
3 despite the motion to exclude witnesses.

4 MS. BISHOP-JENKINS: Okay.

5 MS. HARMON: I would say that's far more common 11:41:28  
6 what we have seen.

7 MS. BISHOP-JENKINS: Interesting. Thank you.

8 MR. SCHWIND: Ms. Harmon, it's nice to see you.  
9 It's been a long time. I used to try cases against  
10 Ms. Harmon in my earlier days in the Cook County 11:41:46  
11 State's Attorney's Office. It's a long time. I  
12 don't mean to dig you, but it was some fun battles.

13 Ms. Harmon, you state -- and I agree with  
14 you that the vast majority of your Capital  
15 Litigation Fund is used to pay for expert 11:42:02

16 witnesses. What I'm asking you is can you give a  
17 for-instance when you go on to say that because a  
18 large portion of your fund is used to work up these  
19 technically death penalty cases that don't turn out  
20 to be death penalty cases you would not have spent 11:42:16

21 that sum of money to work up the case? Can you  
22 give me a for-instance of what you're referring to?

23 Because I don't believe you're saying that  
24 you wouldn't work as hard on the case or call as

1 many witnesses or do the investigation that you  
2 would do on a capital if it weren't a capital case?

3 (Mr. Randolph Stone exits.)

4 MS. HARMON: Well, much of the expert witness  
5 goes to mitigation; and, as a matter of fact, we 11:42:36  
6 cannot work up the level of mitigation on a regular  
7 murder case that we do on a capital case. And we  
8 have a mitigator on every single capital case.  
9 That is not the case in other cases.

10 We have generally a mental health expert 11:42:52  
11 involved because we're not able to determine if the  
12 person has mental health issues. Someone is  
13 usually involved in almost every single death  
14 penalty.

15 MR. SCHWIND: What I'm saying is you would 11:43:06  
16 still do that if -- you wouldn't get a mental  
17 health expert involved if there was no indication  
18 there was any mental health problems.

19 MS. HARMON: I think because in these kind of  
20 cases it's so hidden and there's going to be such a 11:43:16  
21 look into the client's mitigation that we do use  
22 them more readily.

23 And I do think -- according to the ABA  
24 guidelines, it is required that a mental health

1 expert make at least a preliminary evaluation on  
2 every single capital case. That would not be true  
3 of every single felony certainly.

4 MR. SCHWIND: All right. Thank you. I  
5 appreciate that. 11:43:36

6 MR. TAYLOR: Julie, I agree with your  
7 statement, there's too many -- I agree with your  
8 statement that there's too many statutory  
9 aggravating factors. Can you tell us which factors  
10 you think should be repealed? And please don't say 11:43:58  
11 all of them.

12 MS. HARMON: I don't know -- I don't know if I  
13 can actually remember every single one of the 21.  
14 Many, many of the factors are seldom used. They're  
15 for a very narrow or explicit situation. It 11:44:08  
16 usually takes into account the victim. I think it  
17 would be like a paramedic, a fireman, some of  
18 those -- a teacher on the school ground. Some of  
19 those are not commonly used.

20 I would say the greatest number of 11:44:28  
21 eligibility factors that our office believes are  
22 overused is felony murder and child homicides when  
23 there's really not a brutal and heinous because  
24 every death of a child is brutal and heinous by its



1 nature, but we do not believe that every child  
2 killing should be treated as a death case, and we  
3 think that many, many of them are.

4 We also think that every felony murder  
5 case should not be treated as a death case. We 11:44:54  
6 feel that way too many of those are. So those are  
7 the two that I think if they were narrowed or  
8 eliminated would have the most positive impact on  
9 the number of capital cases that are pending that  
10 we don't feel or that usually don't go all the way 11:45:10  
11 to a capital proceeding.

12 MR. TAYLOR: Thank you. Tom, that's all I had.

13 MR. COLDREN: No questions.

14 MODERATOR SULLIVAN: Boyd?

15 MR. INGEMUNSON: Just briefly. We had heard 11:45:22  
16 from Ms. Lyon, our first witness, regarding the  
17 notice of 120 days. We discussed rather lengthy  
18 about the duty of a defense attorney to possibly  
19 try to meet with the prosecutor before that  
20 120 days to provide a mitigation package and have a 11:45:40  
21 meeting regarding that.

22 Do you have a procedure in place at the  
23 Cook County Public Defender's Office to have  
24 meetings prior to the 120-day filing period to try

1 to dissuade someone, a prosecutor from filing a  
2 death notice?

3 MS. HARMON: No. We do not have a formal  
4 program in place as I don't believe the State's  
5 Attorney does with us. I can say that informally 11:46:04  
6 there are often discussions between the two sides  
7 on cases.

8 I have to say, though, that the way that  
9 many of the judges determine the rules is based on  
10 the committee comments that accompany the rule of 11:46:16  
11 the 120-day notice, that if notice is not filed

12 either affirmatively or stating that they're not  
13 going to seek death, it continues to be treated as  
14 a death case in Cook County by the judges  
15 generally. And our office, because the judges do 11:46:34  
16 treat it -- continue to treat it as a death case,  
17 we continue to treat it as a death case if they  
18 don't file that they are not going to seek death.

19 And in many instances, after 120 days is  
20 when the prosecutors -- and this is in the past 11:46:48  
21 several years, not necessarily under this  
22 particular State's Attorney currently that's in  
23 charge, many of them are filed after 120 days. And  
24 the good cause hearing is basically just able to

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1 make a decision, we finally have all the facts and  
2 that is considered good. Some judges have not  
3 allowed it, but that's been rare.

4 MR. INGEMUNSON: Do you feel that if there were  
5 more discussions or some sort of system set up 11:47:18  
6 between you and the State's Attorney's Office that  
7 you could prevent some of these cases from being  
8 filed as a death case?

9 MS. HARMON: I do, and it's hard to know what  
10 the case is for either side that early on. We 11:47:28  
11 certainly have -- I mean, it takes a long time to  
12 get mitigation because people don't want to talk  
13 about horrible things in their family life,  
14 including their client.

15 Three or four -- we don't usually meet 11:47:40  
16 them until, you know, after he's been assigned  
17 to -- he's been formally charged. It's very  
18 difficult within three or four months to know what  
19 your case is all about. It's hard to even know the  
20 facts always because all the discovery is not 11:47:54  
21 complete. The forensic work, you don't know the  
22 strength of the case against the client, which I  
23 think are all factors that should go into the death  
24 penalty.

1           What we have sometimes is cases where, if  
2 you will plead guilty, the state will withdraw  
3 death. But what about a client who doesn't feel  
4 that he's guilty of what he's charged with? He may  
5 admit doing a homicide but not the circumstance       11:48:16  
6 that include the aggravating factors. And there's  
7 many cases where the client maintains his innocence  
8 and, yet, the only way death is taken off the table  
9 is in exchange for a plea.

10           We have many cases that before trial the       11:48:32  
11 State will say, If you take 30 years or 40 years,  
12 we'll take death off the table. Well, if the case  
13 is worth 30 or 40 years, is it a death case? I  
14 think those are the more troubling situations.

15           I think there's some pretty clear-cut       11:48:46  
16 cases where we can go and say -- make our pitch, we  
17 think it's not a death case and then they either  
18 say yes or it isn't. They're not always clear cut.

19           MS. BIENEN: Thank you. Just two quick  
20 questions. Would you be in favor of the extending       11:49:02  
21 that 120 days? Would you be in favor of extending  
22 that 120 days? Tough one, I know.

23           MS. HARMON: I think it probably -- I don't  
24 know. Do you?

1 MODERATOR SULLIVAN: Why don't you stand up?

2 MS. MARCHIGIANI: I have to say that I think  
3 that -- well, I know that there's been at least --

4 MODERATOR SULLIVAN: Can you give your name to  
5 the reporter. 11:49:26

6 MS. MARCHIGIANI: I'm Crystal Marchigiani.

7 There's at least one situation in a death  
8 case where an individual in our office represented  
9 a client where the state was seeking death. That  
10 lawyer tried everything he could to make a 11:49:36

11 presentation to what we call the death committee in  
12 the State's Attorney's Office and was told,  
13 Absolutely not, no way.

14 So this fallacy that you can somehow go to  
15 the State's Attorney and have a conversation such 11:49:50  
16 that they will not file a notice is a fallacy.

17 That just doesn't happen. And in terms of trying  
18 to make a presentation to their committee, as I  
19 said, what we've been told is that's never going to  
20 happen. 11:50:08

21 So I suppose if 180 days would make that  
22 kind of difference, I think we would all say that  
23 filing the notice of intent 180 days, if we had  
24 some ability to go to the State's Attorney and make

1 a presentation, that would be fine; but, as it  
2 stands now, there is nothing like that going on.

3 MS. BIENEN: My other question is do you think  
4 there should be guidelines for the disbursement of  
5 funds from the Capital Litigation Trust Fund? And 11:50:38  
6 do you have any suggestions as to what those  
7 guidelines might look like?

8 MS. HARMON: I don't, but I do not -- but we do  
9 not -- we have an hierarchy within the office to  
10 disburse funds. The individual lawyer has to 11:50:56  
11 submit an application that includes whether a  
12 government rate was requested, what the anticipated  
13 work is going to cover, what the anticipated cost  
14 is going to be. The supervisor of that attorney  
15 signs off on it or the chief of the division. It 11:51:10  
16 is then sent downtown for review at a level higher  
17 than that or another level of review is made and  
18 it's approved and it's finally sent back.

19 So within our office, there is greater  
20 scrutiny already done than probably with just 11:51:26  
21 Capital Litigation Funds in general.

22 MS. BIENEN: Thank you. I'm sorry, we didn't  
23 ask the prosecutors when they were here the same  
24 question as to whether or not there were internal

1 guidelines for their offices.

2 MODERATOR SULLIVAN: Julie, in the Capital  
3 Punishment, The Government Solution, we recommended  
4 a reduction of the factors to five and the minority  
5 recommended six adding -- keeping felony murder. 11:51:54

6 And some of them like the fireman has never been  
7 used, but the firemen's union or whatever it is is  
8 so powerful they can't get it out of there. That's  
9 what I have been told. I don't --

10 MS. HARMON: And I believe our office, although 11:52:10  
11 we're against the death penalty in principle,  
12 definitely the five factors of the committee which  
13 go a long way toward making it be more applicable.

14 MODERATOR SULLIVAN: Most of these other  
15 factors, the only difference is a felony murder and 11:52:22  
16 the child thing that causes the problem. As long  
17 as those are in there, you're going to have this  
18 ability to overcharge with no supervisory -- state  
19 supervisory authority to get some kind of  
20 comparative proportionality. And that I think 11:52:36  
21 is -- you want to get down to the number problems,  
22 that's it.

23 I find it quite interesting, having  
24 listened to Joe Birkett's forceful admonitions

1 about what he knows and what is indeed a fact, you  
2 know, like the earth goes around the sun, and then  
3 to have you come here and tell us, well, at least  
4 in Cook County, it don't work that way.

5 Now here's Paul, who's one of the chief 11:53:10  
6 assistants to Anita Alvarez, and I urge you both to  
7 sit down and discuss these problems and see if it  
8 can be worked out. We got a new day here with a  
9 very fine woman who is dedicated I think to seeking  
10 justice. 11:53:34

11 MS. HARMON: I think so. I think communication  
12 could be improved between our two offices.

13 MODERATOR SULLIVAN: I urge both you and Walt  
14 to sit down and talk about some of these things and  
15 see if you can't have a meeting to work out some of 11:53:48  
16 the groundwork done here on some of these things  
17 because getting some of these reforms to the  
18 legislature is one thing, but the lawyers can work  
19 it out between themselves. It may not have  
20 permanency, but at least it can be of some help. 11:54:00

21 Now you said, and I want to make sure I  
22 understood you, that in many of the cases in which  
23 it's obvious from the indictment or the statement  
24 that the judge hears that it's death eligible, it's



1 treated as death eligible from the arraignment. Is  
2 that about the size of it?

3 MS. HARMON: Yes. And I believe there's a  
4 section of the committee comments that go with the  
5 rule of the notice that say -- and the judge relies 11:54:38  
6 on them -- that says if the state gives no notice,  
7 the parties are to treat it as a capital case.

8 MODERATOR SULLIVAN: All right. And then you  
9 also said, if I understood you correctly, there was  
10 a relationship in some of the cases towards 11:55:00  
11 withdrawing the demand for capital punishment in  
12 exchange for a plea to a lengthy sentence.

13 MS. HARMON: That has occurred I would say  
14 frequently.

15 MODERATOR SULLIVAN: Mr. Birkett denies that 11:55:14  
16 happens ever.

17 MS. HARMON: I'm involved in a case that I  
18 personally represent the client where we were told  
19 if he pled guilty to a term -- a specific term of  
20 years was offered. The client rejected it, and it 11:55:24  
21 is proceeding as a capital case next month to  
22 trial.

23 MODERATOR SULLIVAN: I have personally studied  
24 the results of the 2006 to 2007 cases in which

1 notices were filed, and the statistics are pretty  
2 clear that in about half of the cases it's  
3 withdrawn and the plea is some long-term. So  
4 that's why I caught Mr. Birkett's attention to his  
5 servitude, his ipse ipsa, that diminishes the force 11:55:54  
6 of his presentation.

7 Julie -- and now I want to ask Crystal, do  
8 you have anything else you want to add?

9 MS. MARCHIGIANI: I do not. Thank you.

10 MODERATOR SULLIVAN: Stephanie? 11:56:08

11 MS. HIRSCHBOECK: No, I do not. Thank you.

12 MODERATOR SULLIVAN: Tom?

13 MR. HOWARD: Yes, I have one follow-up question  
14 to something that was brought up. Julie, in a case  
15 in which mandatory natural life without parole is 11:56:16  
16 the only possible sentence other than death, if  
17 death wasn't on the table, then the amount of  
18 mitigation in that case wouldn't be the same as if  
19 death was on -- the work-up in the mitigation  
20 wouldn't necessarily be the same as if a case was 11:56:32  
21 looked at possibly of death.

22 MS. HARMON: You're saying it would be the  
23 same?

24 MR. HOWARD: I'm asking if natural life without

1 parole is the only thing on the table, death is no  
2 longer on the table, then a mitigation work-up  
3 wouldn't be the same as in a death case?

4 MS. HARMON: Certainly. At that point, you  
5 have to concentrate your efforts on the guilt or 11:56:52  
6 innocence and say it's pretty much because it's a  
7 foregone conclusion what the sentence would be if  
8 you lose a trial. I mean, you would do some  
9 mitigation to make a presentation about your client  
10 at sentencing, but it's mandatory. Obviously 11:57:02  
11 there's not going to be a hearing.

12 MODERATOR SULLIVAN: We thank you for the good  
13 work you do.

14 MS. HARMON: Thank you very much.

15 MODERATOR SULLIVAN: We're now going to take 11:57:16  
16 the rest of the people in the order which -- is  
17 Tom Brown still here?

18 MR. PARKINSON: He left. He was here.

19 MODERATOR SULLIVAN: We're going to call the  
20 remaining witnesses in the order in which they 11:57:32  
21 signed in. So the first one is Elliot Slosar.

22 MR. SLOSAR: Thank you, Mr. Sullivan and  
23 Mr. Schwind and the committee. I'm here to talk  
24 today about the cost study that I performed on the

1 death penalty in Illinois. I know it is fairly  
2 limited as some of your previous meetings have been  
3 made aware.

4 To start off, \$148 million in eight years  
5 is certainly a lot of money for our legislature to 11:58:16  
6 allocate to do these cases. And, you know, I'm not  
7 going to let my moral opposition to the death  
8 penalty get into this argument.

9 The fund has been abused on both sides,  
10 defense attorneys' experts as well as prosecutors. 11:58:34

11 After my study came forth, about a yearlong  
12 investigation, I had worked with a reporter quite a  
13 bit in post hearing. He would certainly be willing  
14 to testify before you. Meeting in Springfield is a  
15 little bit closer to St. Louis. And he found that 11:58:54  
16 a county downstate billed \$20,000 for medical bills  
17 to the Trust Fund just so their time wouldn't have  
18 to cover it. That's a problem.

19 State's Attorney Kevin Lyons billed \$1700  
20 for lap tops that he admitted -- Kevin Lyons in 11:59:10  
21 Peoria -- that he admitted seemed questionable;  
22 and, after the death penalty case had concluded, I  
23 can't remember if it was through a plea agreement  
24 or a trial, his office kept those computers. And

1 things of that nature are concerning to taxpayers  
2 whether for or against the death penalty.

3 In the study, the investigation also found  
4 that experts were charging their hourly rate  
5 whether that be \$500 or \$800 to go to Kinko's and 11:59:46  
6 make 19 copies or to pack their suitcase for a  
7 trip; and those expenses are also questionable.

8 One of the problems that I have, you know,  
9 in looking at the cost assessment, I do augment --  
10 you know, I do actually get paid from the Trust 12:00:06  
11 Fund. I do work on a capital case currently is  
12 that it's very arbitrary with what gets approved  
13 from judge to judge and county to county. I have  
14 worked on cases where -- worked on a case on trial  
15 from Cook County. We received life without parole. 12:00:24  
16 And there's cases in suburban counties such as  
17 Du Page where judges would never approve that, thus  
18 Public Defenders don't ask for it.

19 You will see that in my study on the  
20 difference in costs. I think \$10,000 was what 12:00:44  
21 Laurence Lovejoy was afforded in his defense  
22 compared to Juan Luna, which was 1 million;  
23 Cecil Sutherland, 2.1 million.

24 Speaking of Cecil Sutherland, his

1 attorney, John Paul Carroll, almost ruined this  
2 fund five years ago. And I'm sure that many of you  
3 will be surprised. He's on a death penalty case in  
4 Kane County right now, and that he is actually  
5 Drew Peterson's co-counsel with Brodsky for when 12:01:16  
6 Peterson finally does, I'm sure, will be charged.

7 MODERATOR SULLIVAN: Would you repeat that last  
8 sentence or two?

9 MR. SLOSAR: John Paul Carroll is on a case in  
10 Kane County, a death case. I'm sure that when you, 12:01:32  
11 you know, reformed the Trust Fund the first time,  
12 you sort of figured that this guy from Minnesota --

13 MODERATOR SULLIVAN: We're aware of that. What  
14 were you saying about Drew Peterson?

15 MR. SLOSAR: He's the co-counsel for Peterson, 12:01:48  
16 and obviously not a murder case yet, but when he  
17 does get charged, I'm sure that would be a  
18 complicated or at least the initial requirements  
19 for it.

20 And stuff like that, I have a problem with 12:01:58  
21 it as a taxpayer. Even though I'm against the  
22 death penalty, I certainly feel that defense  
23 attorneys have been using it well. Obviously, not  
24 a lot of people have been placed on death row

1 because of the Trust Fund, and the experts and DNA  
2 and investigators, you know.

3 But at the end of the day, there needs to  
4 be an oversight board, I would hope a statewide  
5 oversight board where people, defense attorneys 12:02:28  
6 would submit their budgets to this board or  
7 prosecutors would submit their budgets to this  
8 board. Having it on a judge-by-judge basis is  
9 unfair to defendants, and it's only a matter of  
10 time until a case -- and which results in a death 12:02:44  
11 penalty and maybe the person was guilty, that were  
12 accurately -- get submitted back down because his  
13 defense was not afforded certain costs and which  
14 would have been afforded in another county such as  
15 Cook or places where judges are more liberal with 12:03:02  
16 disbursing the funds. I'm sure prosecutors, the  
17 Attorney General's office does certainly not want  
18 that happening.

19 A couple other things I wanted to talk  
20 about was the variation in facts. This sort of 12:03:18  
21 ties right into is, if you have Public Defenders  
22 getting denied on can I get him on trial, can I get  
23 this expert, I know he costs a lot, at a certain  
24 point to maintain their own -- you know, they have

1 to try regular cases in front of this judge,  
2 felonies, misdemeanors, why would they want to  
3 jeopardize that relationship with a judge knowing  
4 they're going to get denied. And so, at the end of  
5 the day, sometimes they're just going to give up 12:03:48  
6 asking for it; whereas, a defense attorney from  
7 Chicago going into Du Page doesn't really care  
8 about the system that's in place, doesn't really  
9 care about who he pisses off. It's about the  
10 client and to save his life, and I think that that 12:04:02  
11 is a real concern and hopefully a statewide board  
12 would go through with that.

13 I know that there's been a prosecutor in  
14 that St. Louis Post article in their investigative  
15 story that even came out and agreed with having a 12:04:14  
16 statewide oversight board on the CLTF.

17 At the end of the day, this is great  
18 reform. It needs to be managed better, and there's  
19 concerning -- I know that Greater Illinois had  
20 their budget reduced early for this year; but, at 12:04:34  
21 the end of the day, the legislature should not just  
22 solely focus on these attorneys.

23 Why is the State of Illinois Treasurer  
24 getting \$4 million in eight years to just disburse



1 money when Public Defenders for Greater Illinois  
2 get 3.9 million? That's concerning. Somebody who  
3 cuts a check gets more money than Public Defenders,  
4 excluding Cook County, in all of Illinois. I don't  
5 know what they do with that money. 12:05:06

6 By FOIA and looking at the CLTF, I was  
7 very limited on what I could do, and maybe your  
8 panel has more oversight than mine. I don't have  
9 subpoena power. At the time, I was just a college  
10 student. But things like this need to be looked 12:05:20  
11 into, where is this money being spent. And when  
12 you look into it, like the St. Louis Post did, I'm  
13 sure you will find the \$90 trip to Kinko's to copy  
14 10 or 19 pages and the State's Attorney in Peoria  
15 buying lap tops for his office. 12:05:42

16 Hopefully, at the end of the day, we'll  
17 figure out better ways to manage it; and, you know,  
18 at the end of the day, \$148 million allocated,  
19 there's only -- and I will give this to you --  
20 there's only 50 something million spent. And I do 12:05:56  
21 recognize that. But it really goes back to the  
22 fact that Cook County and the other State's  
23 Attorneys are charging way too many cases as  
24 capital cases. That's why the money is being spent

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1 wrongfully. They should be spending it in better  
2 places. That's my comments.

3 MODERATOR SULLIVAN: All right. Start with  
4 Walt?

5 MR. TAYLOR: I have no questions. 12:06:20

6 MODERATOR SULLIVAN: Chip?

7 MR. COLDREN: No questions.

8 MODERATOR SULLIVAN: Boyd?

9 MR. INGEMUNSON: No questions.

10 MODERATOR SULLIVAN: Leigh? 12:06:24

11 MS. BIENEN: If you haven't already done so,  
12 would you please submit to our committee the  
13 newspaper article to which you referred; and if you  
14 have a written version of your study or report,  
15 would you also submit that to us? You have done 12:06:36  
16 it.

17 MR. SLOSAR: I sure will.

18 MS. BIENEN: And the newspaper article?

19 MR. SLOSAR: Yes.

20 MS. BIENEN: Thank you. 12:06:42

21 MODERATOR SULLIVAN: Ed?

22 MR. PARKINSON: No, sir.

23 MODERATOR SULLIVAN: Jeff?

24 MR. HOWARD: One question. You mentioned that

1 the State Treasurer gets a check for \$4 million for  
2 Trust Fund disbursement. Is that based upon  
3 percentage of the overall fund? If I recall, they  
4 get 5 percent of whatever the total fund is,  
5 whatever you get. 12:07:00

6 MR. SLOSAR: You know, I didn't see any  
7 percentage in the legislation. The year they  
8 enacted it, they just gave what they wanted and it  
9 would be granted. So I'm sorry, I can't answer  
10 that. 12:07:12

11 MS. BISHOP-JENKINS: I have a number of  
12 questions. I'm very interested in looking into the  
13 administration of the Trust Fund.

14 First of all, in conversation I have had  
15 with Mr. Birkett about some of these documented 12:07:22  
16 uses in the CLTF, he led me to understand that  
17 there had been some procedural repairs after the  
18 John Paul Carroll case that have, in his  
19 description to me, fixed that problem. Are you  
20 aware -- do you have any comment on whether or not 12:07:42  
21 you think that is true?

22 MR. SLOSAR: Well, there are procedural  
23 repairs, and Mr. Sullivan and I know this committee  
24 worked on that. It dealt with judges looking at

1 budgets and approving them prior to trial, having  
2 conferences in the back, discussing costs as the  
3 trial went along, sort of managing or at least  
4 trying to manage the trial budget.

5 But that leads you to the whole problem if 12:08:08

6 you get a judge who doesn't like your defendant  
7 because he's a serial killer or just, you know,  
8 just done awful things or is just very physically  
9 conservative with money. You're going to go by a  
10 judge by judge basis and, at the end of the day, 12:08:26  
11 it's arbitrary as the death penalty was being  
12 handed down throughout the last few decades here.

13 MS. BISHOP-JENKINS: And so your concern about,  
14 you know, the county by county and judge-by-judge  
15 personalities and cultures of different counties 12:08:42  
16 and different judges, you believe that the way to  
17 fix that would be to have an oversight -- a state  
18 oversight board?

19 MR. SLOSAR: Yes, composed of, you know, former  
20 State's Attorneys, current State's Attorneys, 12:08:54  
21 Public Defenders, former judges. But it should be  
22 through nobody who has a vested interest in the  
23 case. I don't want to see -- I'm not a State's  
24 Attorney yet. After law school, I will be, but I

1 wouldn't want to see a former prosecutor who has  
2 some ties to an earlier case be judging a case that  
3 he has previous interest in. Just like I wouldn't  
4 want to see a defense attorney, now a judge, have a  
5 vested interest in it. It's unfair to a defendant. 12:09:24

6 MS. BISHOP-JENKINS: Are you aware of any  
7 patterns between or correlations between the  
8 expenditures of the CLTF and numbers of convictions  
9 or exonerations? Have you seen any relationship  
10 between who is being convicted and who is being not 12:09:44  
11 convicted that is tried in the capital case based  
12 on CLTF expenditure?

13 MR. SLOSAR: Well, looking at the general  
14 make-up of death row, I'm sure you will all agree  
15 with this, the problem is there is no pattern right 12:10:00  
16 now. You can have \$10,000 spent in your defense  
17 and kill one person and get death or you can have a  
18 million dollars, kill seven people, and get life.  
19 That's a problem.

20 The only pattern that I noticed from my 12:10:18  
21 research is, you know, concerning was that smaller  
22 rural counties were certainly charging cases as  
23 capital cases and getting a lot of money for it.  
24 And even, Mr. Parkinson, you certainly know about

1 this case, the LaGrone and Hamm case. You guys can  
2 order the county -- the county board transcripts  
3 and read how they recertified in that case as a  
4 capital case once the county found out that they  
5 could not afford the defense bills for LaGrone and 12:10:50  
6 Hamm. It's all documented. \$2.3 million. Neither  
7 of them got death. One got acquitted of murder.  
8 And it was all because of money, why they were  
9 charged as a capital case. It's all in the record.

10 MS. BISHOP-JENKINS: You said that it happened 12:11:06  
11 multiple times?

12 MR. SLOSAR: I mean, there's cases where they  
13 certainly -- I mean, you can -- I don't work for  
14 those counties, but from the outside looking in,  
15 they spent a lot of money to get a life sentence. 12:11:16  
16 You can infer whatever you will. But certainly the  
17 LaGrone and Hamm case, that was recertified as a  
18 capital case because of cost because the county  
19 didn't want to pay for it.

20 MS. BISHOP-JENKINS: One last question, as 12:11:32  
21 someone who has studied the CLTF, and I'm not a  
22 statistical expert, but as a taxpayer, there has  
23 been some discussion about whether or not it would  
24 be beneficial to do an actual -- like attempt at

1 least a cost benefit analysis about the use of the  
2 CLTF and weighing the cost of the benefits in terms  
3 of just the taxpayers in general.

4 Do you think it's possible to do that or  
5 do you think anything like that is even possible? 12:12:02

6 MR. SLOSAR: Not for me obviously. People  
7 don't want to give the time of the day to talk to  
8 law students; but, for this committee, I would  
9 certainly hope that you would have the authority to  
10 persuade State's Attorneys, Public Defenders. What 12:12:18  
11 you do have and I wish I had was the amount -- the  
12 hours. You know, I work in a law firm. I'm sure  
13 everybody here worked in a private law firm.

14 Whatever manhours I'm spending is getting charged  
15 somewhere, and if they were keeping track of the 12:12:36  
16 hours that they were doing on capital cases  
17 compared to cases with life without parole or  
18 lesser murder cases as a possibility, you would  
19 certainly be able to track cost benefit analysis.

20 And the \$148 million allocation that I 12:12:52  
21 included doesn't include incarceration or Public  
22 Defenders or the AG's time. There's a lot of work  
23 to be done, and hopefully this committee will take  
24 it seriously when they start to do it.

1 MS. BISHOP-JENKINS: Thank you.

2 MR. SCHWIND: I have nothing.

3 MODERATOR SULLIVAN: You don't represent any  
4 organization?

5 MR. SLOSAR: I don't. I started with the 12:13:16  
6 DePaul Group. I'm working with activists.

7 MODERATOR SULLIVAN: You're a student.

8 MR. SLOSAR: I start law school in the fall. I  
9 work at Loevy & Loevy, and we run the exoneration  
10 project at the University of Chicago. 12:13:34

11 MODERATOR SULLIVAN: You run what?

12 MR. SLOSAR: The exoneration project. Not me.  
13 My job is investigating innocence in cases.

14 MODERATOR SULLIVAN: And that's a law firm  
15 here? 12:13:46

16 MR. SLOSAR: Loevy & Loevy. It's a civil  
17 rights law firm.

18 MODERATOR SULLIVAN: They do police misconduct?

19 MR. SLOSAR: Yes. We did Burge.

20 MODERATOR SULLIVAN: Where are you going to go 12:13:54  
21 to law school?

22 MR. SLOSAR: DePaul.

23 MODERATOR SULLIVAN: You are going to enter  
24 next fall?



1 MR. SLOSAR: Yes.

2 MODERATOR SULLIVAN: You are going to enter --

3 MR. SLOSAR: In law.

4 MODERATOR SULLIVAN: Well, good luck to you.

5 MR. SLOSAR: Thank you.

6 MR. SCHWIND: I just have one question. Did

7 you do this study as a research for some

8 educational endeavor?

9 MR. SLOSAR: I took a year off. Actually this  
10 is my second year between undergrad and law school, 12:14:20

11 and I was working on innocence cases for free,

12 people that wrote to me while I was at DePaul.

13 During that, I said I have a couple hundred

14 dollars, why don't I look at the Trust Fund.

15 It was really just supposed to be for a 12:14:32

16 meeting we had with Tom Cross to talk about how

17 much it costs, and actually turned into what I hope

18 to be a study that you could use.

19 MR. SCHWIND: Thank you.

20 MODERATOR SULLIVAN: Thank you. I'm going to 12:14:56

21 call the two witnesses here, and they represent the

22 Illinois Campaign.

23 MR. SCHWIND: Illinois Coalition Against the

24 Death Penalty.

1           MODERATOR SULLIVAN: ICADP. We've got two  
2 people here from ICADP. Delbert Tibbs and  
3 JoAnna Ryan.  
4           JoAnna, would you introduce yourself  
5 please and spell your name for the court reporter.       12:16:04

6           MS. RYAN: Yes. My name is JoAnna Ryan,  
7 R-y-a-n. And for the record, I'm not related to  
8 George or to Jim or to any of the other prominent  
9 Ryans in the matter.

10           I would like to thank this committee for       12:16:18  
11 the work you are doing and for the chance to  
12 testify. For the past eight years, I have been  
13 part of a volunteer effort by the Illinois  
14 Coalition to Abolish the Death Penalty.

15           MODERATOR SULLIVAN: Can we get the names of       12:16:30  
16 the two gentlemen sitting with you?

17           MR. SCHROEDER: My name is Jeremy Schroeder.  
18 I'm the Executive Director of the Illinois  
19 Coalition to Abolish the Death Penalty.

20           MODERATOR SULLIVAN: S-c-h-r-o-e-d-e-r.       12:16:40

21           MR. SCHROEDER: Spelled like Schroeder.

22           MR. TIBBS: My name is Delbert Tibbs. I am a  
23 member of the Steering Committee of the Illinois  
24 Coalition to Abolish the Death Penalty and an

1 abolitionist at large and a former death row  
2 inmate.

3 MODERATOR SULLIVAN: Former death row inmate?

4 MR. TIBBS: Yes, sir, in Florida.

5 MODERATOR SULLIVAN: And you served your 12:17:00  
6 sentence? You got executed?

7 MR. TIBBS: I got exonerated more or less.

8 MODERATOR SULLIVAN: I want to ask you, Jeremy,  
9 just for the record, would you state what your  
10 position is for the ICADP. 12:17:20

11 MR. SCHROEDER: I'm the Executive Director, but  
12 I'm not planning on testifying, but if the  
13 committee has any questions.

14 MODERATOR SULLIVAN: Go ahead, JoAnna.

15 MS. RYAN: As I said, the past eight years I 12:17:34  
16 have been part of a volunteer effort by the  
17 Illinois Coalition to monitor capital prosecutions  
18 in our state. We began right after the moratorium  
19 was declared by Governor Ryan in January of 2000;  
20 and when we discovered that there in fact had been 12:17:48  
21 ten new death sentences in the year that followed  
22 that, we decided to keep up the monitoring.

23 I believe the committee has copies of our  
24 annual reports from prior years, and they have

1 covered the periods both before and after the  
2 passage of our reform legislation in November 2003.

3 So I'm just going to give a brief overview  
4 of some of our main findings and we'll be  
5 submitting written testimony to flesh those out. 12:18:16

6 Over the past five years, we found the  
7 number of capital cases have declined somewhat  
8 downstate, but they have remained remarkable  
9 steadily elsewhere especially in Cook County which  
10 is where the vast bulk of the prosecutions are. I 12:18:28

11 think Ms. Harmon mentioned that her caseload  
12 consistently hovers about 140 cases, and I think  
13 the total caseload, as far as we can tell, is  
14 between 160, 175 when you add to the public  
15 defender's caseload those court-appointed or 12:18:48  
16 private counsel.

17 80 percent of the cases I can easily rely  
18 on the public defender. 90 percent of these  
19 defendants are African-American or Hispanic. About  
20 20 to 25 percent of them were 21 or under at the 12:19:02  
21 time the crime was committed which does raise some  
22 questions about are we dealing with the worst of  
23 the unreformable.

24 MS. BISHOP-JENKINS: Could you repeat that

1 number, under 21?

2 MS. RYAN: 20 to 25 percent were 21 or under at  
3 the time that the crime was committed.

4 The client who pays their own way, who  
5 chooses their lawyer and pays that lawyer is 12:19:28  
6 virtually unheard of. We do have some, I have  
7 heard, who initially hired their own lawyer and  
8 after a year, two years, three years, the family  
9 runs out of money, the public defender has to  
10 finish up the case. 12:19:46

11 At least 10 percent of the Cook County  
12 defendants we found are dealing with substantial  
13 mental illness. And that's a very conservative  
14 number that we use. Really we're only counting  
15 cases where we see fitness rulings on the record. 12:19:58  
16 In other words, at the hearings the judge is asked  
17 to rule on the defendant's fitness to stand trial  
18 or where we have a known history of schizophrenia  
19 or some other serious mental illness.

20 The actual figure, if you count the 12:20:12  
21 possible cases, the cases where psychiatrists are  
22 being called in whatsoever could be as high as  
23 20 percent. We do know of one defendant -- capital  
24 defendant who is both mentally and physically

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1 disabled after being shot in the head by the police  
2 following his -- or prior to his arrest.

3 MODERATOR SULLIVAN: What case was that?

4 MS. RYAN: It's Mustafa Seetek (phonetic).

5 MODERATOR SULLIVAN: I'm sorry? 12:20:40

6 MS. RYAN: Mustafa Seetek. I have the notice  
7 of intent with me to attach.

8 And the death penalty prosecutions of the  
9 mentally ill have raised concerns nationally  
10 because you're dealing with defendants who may not 12:20:50

11 understand the consequences of their actions or be  
12 able to control their own behavior, but also  
13 because you are looking at people who may not be  
14 able to cooperate with their lawyers in any  
15 meaningful way. 12:21:04

16 And I think at least in the case of mental  
17 illness and mental impairment, we certainly cannot  
18 say that mitigating evidence is a secret, that this  
19 is something that's not available, but that we're  
20 out looking for motions being offered by the 12:21:18  
21 defense that their client is so impaired that he  
22 does not fit to stand trial whatsoever.

23 And in at least three recent trials  
24 downstate, we've seen a difficult and a costly

1 battle of the experts develop over the defendant's  
2 fitness to stand trial. In 2000, we saw two jury  
3 fitness trials preceding the main trial over guilt  
4 or innocence. One was that Aubrey Tucker case in  
5 Lawrence County, and the Gary Pate case in White 12:21:50  
6 County.

7 We expect a similar jury fitness trial on  
8 the question of fitness to stand trial very soon in  
9 Ottawa in the case of Keith Mackowiak. Here, we  
10 have a defendant who has not only tried to fire his 12:22:06  
11 lawyers, has alternately tried to plead guilty and  
12 try to protest that he could name the real killer,  
13 but he recently told the judge that he fears one of  
14 his attorneys wants to take him out and shoot him.  
15 And I think you can imagine his lawyers, the 12:22:20  
16 difficulty in maintaining a relationship with a  
17 client under those circumstances.

18 In Du Page County, at least three of the  
19 six pending cases involve serious mental illness  
20 issues. One of those defendants, in addition to 12:22:36  
21 the prior mental illness, has now sustained head  
22 injuries in a suicide attempt while in jail. And  
23 last year, another capital defendant Robert Rejda  
24 after trying to plead guilty and ask for the death

1 penalty did succeed and committed suicide in the  
2 county jail.

3           As far as the impact of the major reforms  
4 such as videotaping of interrogations, screening of  
5 jailhouse snitch testimony, we've tried with our       12:23:04  
6 limited resources to track those because Cook  
7 County capital cases do take so long to come to  
8 trial. Defendants that have been arrested after  
9 July of 2005 when that taping law went in are just  
10 beginning to face trial.                                       12:23:22

11           But I would like to mention three areas of  
12 concern that we have. First, we have seen several  
13 cases where statements that were not reported have  
14 been or may be admitted. It is the judge's call,  
15 as you know, that they decide that despite a lack       12:23:34  
16 of tape that the statement appears to be voluntary  
17 and not coerced, it's their discretion to let it  
18 in.

19           One man's interrogation from his hospital  
20 bed was admitted over defense objections. We have       12:23:48  
21 a case where Chicago detectives arrested a  
22 defendant in the suburbs, another where they  
23 arrested a defendant in Michigan, and questioned  
24 that individual during the course of a long squad



1 car ride back to Chicago. We have other cases of  
2 defendants interrogated in state prisons where it's  
3 not clear at all whether these statements are taped  
4 or what the circumstances surrounding those  
5 statements are like. 12:24:16

6 We have no information yet about  
7 interrogations carried out in the suburbs or  
8 outside of Cook County where I think there are some  
9 very cash-strapped jurisdictions that don't have  
10 the facilities that the Chicago Police Department 12:24:30  
11 has. And a couple of jurisdictions you might call  
12 scandal-plagued as well, or an all-volunteer effort  
13 where maybe they're nonprofessionals. We just  
14 haven't had a chance to go there, and we really  
15 hope that this committee will get the resources to 12:24:44  
16 investigate that.

17 Second, we have seen trials that occurred  
18 during this reform period where written  
19 confessions, possibly coerced statements obtained  
20 before 2005 played a major role in the trial that 12:24:58  
21 takes place in 2007 or 2008. In the most of these  
22 cases, many, if not most of these statements, are  
23 being admitted. In the few cases where judges  
24 suppress them, the prosecution has appealed that

1 ruling right up to the state Supreme Court. And I  
2 think it does raise some questions in my mind about  
3 the political will to put that sort of evidence  
4 behind us when we're talking about a case that  
5 could end in an execution. 12:25:30

6 The third thing is jailhouse snitches do  
7 continue to be used while the testimony of the  
8 co-defendants with an incentive to point the finger  
9 of blame at someone else is even more common than  
10 the testimony of the jailhouse snitch, per se, the 12:25:44  
11 guy in the next cell.

12 The most recent death sentence that was  
13 handed down in Illinois was in Jo Daviess County  
14 against a man named David Damm. This involved a  
15 murder for hire, and the man who did the actual 12:25:58  
16 killing escaped the death penalty by testifying  
17 against the man who was accused of hiring him,  
18 Damm, who did get the death penalty.

19 And I followed this case mainly through  
20 the Freeport Journal Standard, the Waterloo 12:26:12  
21 Courier, and it seems that defense gave away the  
22 trial. The defense team was very open that the  
23 conviction of David Damm could not have been  
24 achieved without this deal made with the actual

1 killer.

2 I'm a workers' comp paralegal by trade.

3 I'm not unfamiliar with expert witnesses and I have  
4 harbored my dark suspicions about doctors who may  
5 tailor their testimony to suit the person's pain. 12:26:40

6 But I think this is a most deeper question, much  
7 deeper question than expert witnesses. I have had  
8 my suspicions, as I said, that an expert can  
9 testify for the love of money, but I have never  
10 seen a doctor give a deposition in order to 12:26:54

11 purchase his freedom or in order to save his life.  
12 And that's exactly what the defendant Bruce Burt  
13 did in his most recent trial. He literally saved  
14 his life with the testimony that he gave against  
15 his co-defendant. 12:27:10

16 When we're talking about irreversible  
17 punishment, when we're talking about ultimate  
18 punishment, I think that kind of evidence has to be  
19 highly -- we have to take a close look at it.

20 If I could also add a couple remarks on 12:27:28  
21 some of the issues raised by other speakers. I'm  
22 very glad that both Mr. Birkett and Ms. Harmon set  
23 us all straight on the 120-day rule. I have a lot  
24 of people in my own coalition who think that the

1 120-day rule is a deadline for the prosecution, and  
2 if 120 days go by and you don't receive that notice  
3 of intent to seek the death penalty, that the  
4 defense lawyer can sort of heave a sigh of relief  
5 and say at least we don't have to do that and 12:27:58  
6 tailor their defense strategy accordingly including  
7 not hiring mitigators, not hiring expert witnesses  
8 of certain sorts.

9 I don't think we have a situation like  
10 that. As a matter of fact, I have seen numerous 12:28:10  
11 cases where the case has -- the public defender  
12 finds himself in a position where they have to  
13 treat it as a death case. The actual notice in at  
14 least one case that we have here may be filed as  
15 late as 18 months after arraignment. And I think, 12:28:26  
16 again, it's a question of what some judges allow  
17 and some judges don't. It seems that some of them  
18 are sticklers for at least asking the state to file  
19 a request for an extension, whereas, in other  
20 courtrooms, that's just automatic. 12:28:44

21 As far as the cost issue, I think it is a  
22 real concern. I think, though, that, first of all,  
23 the Capital Litigation Trust Fund only represents a  
24 small slice of the cost of the death penalty cases.

1 It doesn't represent the salaries of the State's  
2 Attorneys, the Public Defenders or employees, the  
3 special prosecutors, the special appellate  
4 defenders. You know, there have been people on  
5 this committee on both sides who have put in 12:29:14  
6 hundreds of hours of work on some of these cases,  
7 and those figures are not reflected in the cost of  
8 the capital trial.

9           The Cook County Court has its own psych  
10 institute, if you will, Forensic Clinical Services 12:29:26  
11 on who the vast majority of defendants have to rely  
12 for these -- a ruling on their mental fitness, and  
13 that's -- a number of sources have concluded that  
14 that psych institute has its bias towards the  
15 state. And as a matter of fact, its director was 12:29:44  
16 let go in 2004 after a judge found that he had, in  
17 fact, padded the score of -- padded the  
18 intelligence quotient score of the capital  
19 defendant in order to make sure that the man stayed  
20 eligible for the death penalty. 12:30:00

21           I think that some of these cases -- and  
22 particularly the Aubrey Tucker case struck me as  
23 one in which were the death penalty not in play, it  
24 probably would have been a very short case and a

1 not terribly expensive case and less of an ordeal  
2 for the family. Aubrey Tucker went in in a jealous  
3 rage and shot up of a household people. He shot  
4 four people and three lived to tell about it.

5           There was not a tremendous amount of who           12:30:32  
6 done it in that case. And what did absorb a great  
7 deal of time, multiple jury trials and ultimately  
8 over a million dollars was the question of just how  
9 brain damaged, just how mentally disturbed, just  
10 how emotionally scarred is this man. And the           12:30:50  
11 question is was it just enough that we will simply  
12 send him to jail for the rest of his life rather  
13 than executing him?

14           That's also the question in the Gary Pate  
15 case. I'm less familiar with the issues of guilt           12:31:06  
16 or innocence in the Mackowiak case, but I think you  
17 could -- that would be a tremendously useful one to  
18 take a look at while it's going on in LaSalle  
19 County; that some of those resources, if the death  
20 penalty were not out there, these would not be           12:31:22  
21 complex cases, if we were not trying to make that  
22 fine distinction between life imprisonment and  
23 execution.

24           The prior high profile trial in

1 Mr. Tucker's county, in Lawrence County, did  
2 involve very deep complex issues of who done it,  
3 and that's the Julie Rea Harper case. And I think  
4 that if the death penalty was not in play in our  
5 state, we would have more resources to devote all 12:31:50  
6 across the judicial system to make sure that the  
7 playing field was more level and that the  
8 appropriate resources were sunk in finding out the  
9 truth.

10 So, in short, I think if we are 12:32:06  
11 considering whether or not the death penalty should  
12 have a future in this state, we at least need to  
13 know that the types of abuses that led to wrongful  
14 convictions and wrongful death sentences in the  
15 past do not happen again. Unfortunately, based on 12:32:18  
16 what we have found so far, I don't think we can  
17 have any such confidence.

18 Thanks for your time, and I will be very  
19 glad to answer any questions that you have.

20 MODERATOR SULLIVAN: Thank you. I will start 12:32:32  
21 over with Walt on this side here.

22 MR. TAYLOR: I don't have any comments or  
23 questions; but, Mr. Tibbs, I have read many times  
24 your case that went to the U.S. Supreme Court. And

1 I just want to tell you today, it's good to meet  
2 you. Okay.

3 MR. TIBBS: I'm sorry, you're addressing that  
4 to me?

5 MR. TAYLOR: It's good to meet you today. 12:32:56

6 MR. TIBBS: It's good to be here, no pun  
7 intended.

8 MR. TAYLOR: That's all I have.

9 MR. TIBBS: I should also say that there were  
10 folks here who are from the Campaign to End the 12:33:02  
11 Death Penalty who signed a little bit before me

12 because I was late getting here. So even though I  
13 only have a few words to say, if they wish to come  
14 up, like my good friend Ed Norton, he speaks a  
15 little bit more longer than I do, so they should 12:33:16  
16 come now if they are doing it sequentially like  
17 that.

18 MODERATOR SULLIVAN: Well, let's deal with  
19 JoAnna here first and then we'll get to that.

20 MR. COLDREN: No questions. 12:33:28

21 MR. INGEMUNSON: No.

22 MODERATOR SULLIVAN: Leigh?

23 MS. BIENEN: I hope and assume you provided us  
24 with a written copy of your testimony.



1 MS. RYAN: Yes. Thank you. We'll be doing  
2 that in the next day or two.

3 MR. HOWARD: No questions.

4 MS. BISHOP-JENKINS: Thank you, JoAnna, for  
5 your testimony. I especially wanted to commend the 12:33:46  
6 coalition for the valuable contribution it makes to  
7 this public policy debate every year with the  
8 reports that you write that have been substantially  
9 valuable documentation of the process in the state.

10 My question is about this very elusive but 12:34:02  
11 important issue to this committee of  
12 proportionality. And I'm aware of the number of  
13 people who are currently on death row, that about  
14 half of them are serving a death sentence for  
15 killing a single victim and about half of them for 12:34:18  
16 multiple victims. And I'm also aware of several  
17 people who were tried for death but received life  
18 instead that killed multiple victims.

19 So I was just wondering if you had any  
20 observations or comments about the sort of -- and I 12:34:34  
21 realize there's a multiplicity of factors that go  
22 into it besides the number of victims, but is there  
23 -- what have you seen in your studying these cases  
24 that might speak to the proportionality question in

1 terms of who gets death and who doesn't and how  
2 many -- you know, who's getting life, when you have  
3 a Juan Luna who killed seven people getting life,  
4 and other cases where they killed only a single  
5 person and they're getting death. Do you have any 12:35:08  
6 observations about why that's happening?

7 MS. RYAN: I think it remains very random as  
8 you mentioned. There have been individuals who  
9 have killed as many as four people and got life,  
10 and there are individuals who killed one and gotten 12:35:24  
11 death. I'm particularly puzzled at the selection  
12 of cases as capital or noncapital and that's, you  
13 know, without regard to the outcome.

14 Some of the -- the one man who was  
15 sentenced to death in 2007 from Cook County was 12:35:42  
16 convicted of -- he had been burglarizing an  
17 apartment. The owner of the apartment showed up by  
18 surprise. He panicked and he murdered the woman.  
19 And it was a terrible crime, but it was not a  
20 coldly premeditated crime, and it also, when you 12:36:00  
21 looked at the range of the hundreds of other murder  
22 cases that took place in Chicago, I don't think  
23 that anybody would have picked that one out as  
24 being --

1           MODERATOR SULLIVAN: What's the name of that  
2 case?

3           MS. RYAN: That was the Rodney Adkins case.

4                   I do think that the more quality and  
5 quantity and resources that the defense has, the           12:36:22

6 more likely it is that the death penalty will not  
7 be imposed. I think that that's probably, if I had

8 to pick the one reform that I've seen have a real  
9 impact on the ground, it would be the Capital

10 Litigation Trust Fund and its resources                   12:36:38

11 particularly downstate, because where once you had

12 a situation where defendants could have a single,  
13 strapped attorney whose specialty is taxes or real

14 estate defending him and no money to hire a single  
15 investigator let alone a psychiatrist or other           12:36:58

16 expert, you have a certain level in the playing  
17 field, and I think it's contributed to a certain

18 decline south of I-80 in the number of cases that  
19 we do have.

20           MR. SCHWIND: Ms. Ryan, you stated that, and           12:37:18

21 correct me if I'm wrong, about the snitch testimony  
22 in the Damm case.

23           MS. RYAN: Not snitch testimony so much, per  
24 se. This was a testimony of co-defendant.

1 MR. SCHWIND: Yes.

2 MS. RYAN: It was -- as you know, it was a  
3 murder-for-hire situation. A man named Bruce Burt  
4 was able to negotiate a deal with the --

5 MR. SCHWIND: He negotiated with me. 12:37:42

6 MS. RYAN: Yes.

7 MR. SCHWIND: Okay? I wanted to make sure for  
8 the record that it comes out clearly. It seems  
9 that what you were saying is that the actual killer  
10 got natural life and the guy who hired him got 12:37:54  
11 death and you leave it at that. But tell the whole  
12 story, and I will tell you the facts that maybe you  
13 don't know.

14 MS. RYAN: I would say that this was an  
15 extremely tragic and heinous case and that the 12:38:06  
16 crime --

17 MR. SCHWIND: It was the murder of a  
18 13-year-old girl.

19 MS. RYAN: -- was the murder of a 13-year-old  
20 girl. 12:38:14

21 MR. SCHWIND: Who was being sexually abused by  
22 David Damm.

23 MS. RYAN: Precisely.

24 MR. SCHWIND: A 59-year-old white man who was

1 sexually abusing a 13-year-old black girl.

2 MS. RYAN: It was an extreme case.

3 MR. SCHWIND: And he hired Bruce Burt to murder

4 her because she was going to cooperate with the

5 police in the sexual investigation -- the sexual 12:38:32

6 assault investigation of the prosecution. So if it

7 wasn't for Mr. Burt, Mr. Damm would still be

8 walking the streets in Waterloo, Iowa, preying on

9 black -- young black girls like he put on -- one of

10 the black girls that he preyed on in aggravation. 12:38:46

11 So if you want to tell the whole story,

12 tell it completely. That's why Mr. Burt -- I would

13 love to have Mr. Burt on death row; but, without

14 Mr. Burt, we could not have convicted David Damm.

15 And there was physical evidence that corroborated. 12:39:00

16 There was David Damm's DNA, his semen, that

17 corroborated the motive in that case. There was

18 evidence, physical evidence of phone calls going

19 back and forth. There were witnesses that saw the

20 victim get into the van with David Damm when he 12:39:16

21 transferred her to Bruce Burt to take her and get

22 rid of her, made her disappear. Okay?

23 There was a written agreement that was put

24 into place at the very beginning that we gave to

1 the defense, that they knew about it. They deposed  
2 Mr. Burt for over four and a half hours. There was  
3 Jury -- the Jury was informed about all of this.  
4 So there was no undercover.

5 So I just want to make the record clear, 12:39:42  
6 ma'am, that that's why Bruce Burt is sitting doing  
7 actual life and David Damm is on death row. It's  
8 because without Bruce Burt -- and it happens quite  
9 a bit that if you're going to commit a murder like  
10 this, you keep things quiet and not expand upon it. 12:39:56

11 But without Bruce Burt, David Damm would still be  
12 walking the streets in Waterloo, Iowa, preying on  
13 black girls.

14 MS. RYAN: I don't disagree with that and I  
15 don't disagree this was a horrifying case. I do -- 12:40:10

16 MR. SCHWIND: Then what's your point of  
17 bringing it up is what I would like to know?

18 MS. RYAN: I think that it was fairly clear  
19 from the record that our knowledge about what --  
20 our knowledge about what David Damm is, about his 12:40:24  
21 intentions, about the terms of the dastardly deal  
22 that he struck with Bruce Burt came from the  
23 testimony of Bruce Burt. And that I'm not saying  
24 that such testimony should never be used, but I'm

1 saying that when we base a decision to execute on  
2 the testimony of a man who is an admitted murderer  
3 who carried out the deed and whose testimony is  
4 literally saving his own life, we might want to  
5 look at that because we have every opportunity to 12:40:56  
6 place Mr. Damm behind bars for the rest of his  
7 life.

8           One of the things that did disturb me  
9 about the case, one of the many things because you  
10 couldn't even get near that case without being 12:41:08  
11 deeply disturbed about the whole nature of it, was  
12 the interview with the Jury that took place that  
13 some of the Waterloo press did. They indicated  
14 that this had been a tough decision for them, that  
15 it had caused them no lack of sleepless nights, and 12:41:22  
16 that the key factor for many of them was their  
17 conviction that if they did not vote to -- if they  
18 didn't vote to excuse David Damm that he would be  
19 out in a few years to menace another young girl.

20           Now this is a man who's 61 years old. The 12:41:42  
21 statutory minimum that he could possibly get for  
22 first-degree murder is 20 years, and I think you  
23 all know he would not get it because that's what  
24 you give in cases of great leniency. And this was

1 a tremendous -- it was a terribly aggravated case.

2           And, yet, as you also know, it's only in a  
3 very limited number of death penalty cases, such as  
4 a case involving the murder of a policeman or the  
5 murder of two people that the Jury is allowed to       12:42:08  
6 know anything about the options in the judge's  
7 hands, the sentencing alternatives should they  
8 decide against execution.

9           And in face of all the facts, many of  
10 these jurors were sincerely convinced that if they       12:42:24  
11 did not vote to execute David Damm that the law  
12 would allow him to get out and perhaps murder  
13 another young girl within the next ten years.

14       MR. SCHWIND: I can tell you that that never  
15 went into evidence before the Jury so I don't know       12:42:42  
16 where that came from. That was never argued. It  
17 never went into evidence. The Jury -- the Jury  
18 actually heard an argument very similar to what you  
19 just said by the defense, and the Jury dismissed it  
20 and said that death was the appropriate sentence.       12:42:56

21       MS. RYAN: I will forward the article. As I  
22 said --

23       MR. SCHWIND: Please do.

24       MS. RYAN: I'm not an attorney.



1 MR. SCHWIND: I was there.

2 MS. RYAN: I realize.

3 MR. SCHWIND: I know. I lived and breathed  
4 that case for two and a half years, ma'am, so I  
5 know what went on in that case. 12:43:10

6 MS. RYAN: I have a tremendous respect for  
7 everyone that had to deal with those facts and make  
8 those life-and-death decisions, sir.

9 As I say, I'm all volunteer,  
10 nonprofessional. And one of my dreams, finally, 12:43:22  
11 has been to turn over some of this data that we  
12 have collected to folks who have both the expertise  
13 and the standing and the resources to thoroughly  
14 check it out.

15 Very understandably, a lot of lawyers do 12:43:38  
16 not want to confide an entire case to little ol' me  
17 when they'd have great more confidence in confiding  
18 to your committee and to say nothing of the  
19 resources that hopefully you will get to be able to  
20 carry out this kind of investigation. So thank 12:43:52  
21 you.

22 MS. BIENEN: I just have one thing. I wanted  
23 to thank you for the work that you and your  
24 organization do and, as is evident to everybody,

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1 these cases present very troubling questions to  
2 everybody in society.

3 I also just wanted to ask you, as I have  
4 asked other people, how can we as a committee get  
5 reliable information on the number of cases in 12:44:18  
6 which a notice of factors have been served and  
7 which has gone to capital trial throughout the  
8 state? And I appreciate the fact that you as an  
9 organization have tried to track these numbers.

10 MS. RYAN: It's extremely tough. I think that 12:44:32  
11 if a centralized database of notice of intent were  
12 formed, it would be a great step forward.

13 We have tried Freedom of Information Act  
14 Requests. A great number of county State's  
15 Attorneys do comply. Unfortunately, the larger 12:44:48  
16 jurisdictions don't. And Mr. Birkett has provided  
17 us with lists of all the first-degree murder  
18 indictments in his county and told us, you know,  
19 that we were free to go to the courthouse and pull  
20 those files and see which ones there is a notice of 12:45:04  
21 intent.

22 I based a lot of my research on that  
23 blinking green 1980s database down at the Cook  
24 County courthouse which stores our criminal

1 information. It's a DOS-based computer terminal  
2 which is older than a lot of the attorneys that use  
3 it. It's not a very complete source. From time to  
4 time, when I can get time during business hours,  
5 which is rare, I go down to the Cook County 12:45:32  
6 courthouse and prevail on the clerks to pull the  
7 court files. That's given me access to a number of  
8 really interesting pleadings in current cases.

9 And that's one thing I could recommend,  
10 that if you had people to send to do that work and 12:45:48  
11 perhaps attorneys to follow up on some of it to  
12 track these cases, that would be -- that would be  
13 very helpful.

14 Otherwise, I got to admit my debt to local  
15 newspaper reporters. They have been a big part of 12:46:06  
16 the picture as I'm sure you know in the state.

17 MS. BIENEN: Thank you.

18 MODERATOR SULLIVAN: JoAnna, just for your  
19 information, I've recently written an amicus curiae  
20 brief in the Illinois Supreme Court on Bannister, 12:46:26  
21 Joseph Bannister case. The Court, Justice Freeman,  
22 wrote an opinion saying that the rule that requires  
23 that the Jury be told of the alternate sentence is  
24 limited to cases in which life without parole is to

1 be imposed. And Bannister, because he only killed  
2 one person instead of two, was not within the rule  
3 even though he would have to live to be about 150  
4 in order to get out with mandatory minimums.

5 And I have urged the Court to rethink that 12:47:08  
6 ruling and to extend it to any case in which the  
7 mandatory minimums extend beyond the life  
8 expectancy of the defendant. And that is not many  
9 -- the Supreme Court granted leave to file the  
10 brief but has not acted on the petition. I'm the 12:47:32  
11 one that filed an amicus on behalf of the  
12 Governor's Commission on Capital Punishment. So  
13 that the lawyers who are in these cases should be  
14 preserving that issue for appeal.

15 MS. RYAN: That would be a tremendous step 12:47:52  
16 forward. Thank you.

17 MODERATOR SULLIVAN: I join the others in  
18 complimenting your organization because I know  
19 Pat McAnany and others there and they have been  
20 extremely helpful to our committee with 12:48:06  
21 information.

22 Delbert, do you want to -- do you want to  
23 address us, Delbert?

24 MR. TIBBS: I wanted to say a few words.



1 car accident against the State of Florida not to be  
2 tried again. And that's a single individual,  
3 namely, myself, fighting the might of the sovereign  
4 State of Florida not to be summarily put to death  
5 by the state. 12:49:54

6 As you probably know, some of you, in  
7 excess of 100 people have been released from prison  
8 since we came up with the wonderful scientific tool  
9 of DNA which simply points out that our system, if  
10 we thought it were so, as many people seem to think 12:50:12  
11 that we've created an infallible system of finding  
12 the guilty and letting the innocent go. I submit,  
13 and it's very clear, we have not found such a  
14 system and that, as long as we are human, we  
15 probably never will because from everything that we 12:50:34  
16 do has that potential to have flaws in it.

17 And because human life is the most  
18 precious thing that I know, I don't think that we  
19 should allow a system that is capable of taking  
20 that life away to continue to exist such as the 12:50:48  
21 system with capital punishment as it is in Illinois  
22 and I believe in 37 other states now.

23 So if you are able to recommend things to  
24 our legislative body, I'm urging that you recommend  
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1 to the state that capital punishment itself be  
2 abolished as it has been abolished in all the other  
3 so-called -- I won't say so-called, but in fact the  
4 civilized nations of the world, the advanced  
5 nations of the word. 12:51:22

6 I think capital punishment is a relic of  
7 an age that's gone by and there are too many things  
8 that have gone by already and we don't want anymore  
9 to go by. Just as slavery was a terrible ill, and  
10 reforming it created segregation and discrimination 12:51:42  
11 and so forth because that's what they called  
12 themselves doing, but it didn't deal with the ideal  
13 which is the constitution that most of us believe  
14 in that all human beings have a right to the same  
15 things that any other human being has a right to 12:51:58  
16 like the pursuit of happiness and so forth.

17 And so I think that that's what we need to  
18 be doing in Illinois and the rest of these states  
19 that still have capital punishment on the books.  
20 We really don't need to kill people. In every 12:52:14  
21 study that's been done, it's been indicated that it  
22 does not deter a crime to any significant degree.  
23 All we have to do is look at our sister state of  
24 Michigan. It does not make us safer, and it's very

1 likely, I'm convinced, that it brutalizes the  
2 social order and the people who promote it and it  
3 will God-fearing, God-loving people as many of us  
4 claim to be as we invoke God in all our sacred  
5 functions, when we make the President, when we 12:52:46  
6 swear in in court and so forth. I don't believe  
7 that the God of the Bible, that Jesus Christ  
8 claimed to be his father approves of it or  
9 sanctions it, and it doesn't serve us and we can  
10 find something better. We can figure out 12:53:02  
11 something. I certainly don't have all the answers.  
12 I certainly think that people who grossly  
13 violate the orders of society have to be dealt  
14 with, but I don't think we have to kill them  
15 because I think we accrue too much baggage when we 12:53:18  
16 do that and often we make mistakes.  
17 That's all I have to say. I thank you for  
18 being here and for allowing me to address you.  
19 MODERATOR SULLIVAN: Thank you very much,  
20 Delbert. Wait a second. I want to see if there's 12:53:32  
21 someone that want to ask questions.  
22 MR. HOWARD: I don't have any questions. Thank  
23 you.  
24 MODERATOR SULLIVAN: Jennifer, go ahead.



1 MS. BISHOP-JENKINS: Thank you, Delbert, for  
2 your being here with us today. And I note with  
3 interest your reference to the Christian faith  
4 which is the ultimate example of an innocent death  
5 row inmate. 12:54:02

6 I would ask if you knew what the current  
7 number is nationally of exonerated death row  
8 inmates. It's well over 100, is it not?

9 MR. TIBBS: Probably 130 or something. Is that  
10 correct? 12:54:16

11 A VOICE: 132.

12 MS. BISHOP-JENKINS: Thank you.

13 MR. SCHWIND: I have nothing. Thank you.

14 MODERATOR SULLIVAN: Wait?

15 MR. TAYLOR: Nothing. 12:54:28

16 MR. COLDREN: No questions.

17 MR. INGEMUNSON: No questions.

18 MS. BIENEN: Thank you.

19 MODERATOR SULLIVAN: Delbert, you call  
20 attention to the Christian beliefs. Is that what 12:54:34  
21 you talked about?

22 MR. TIBBS: I believe I said that, yes.

23 MODERATOR SULLIVAN: It occurs to me that the  
24 single most prominent example of a wrongful

1 execution is the man who's in the front of all the  
2 Catholic churches on the cross.

3 MR. TIBBS: Absolutely.

4 MODERATOR SULLIVAN: I often wondered about  
5 that. 12:55:06

6 MR. TIBBS: I might point out that also Jews,  
7 Hindus, Buddhists, and righteous atheists don't  
8 feel that it's the thing to do either.

9 MODERATOR SULLIVAN: I don't know obviously. I  
10 don't even know all the Catholics -- 12:55:18

11 MR. TIBBS: I met most of those. Thank you.

12 MODERATOR SULLIVAN: Thank you for your  
13 comments. Now was there anyone else from the  
14 coalition that wanted to discuss something?

15 MR. FAY: Good morning. Thank you for your 12:55:28  
16 invitation. I did not sign to speak this morning,  
17 but I am Garnet Fay. I have --

18 MODERATOR SULLIVAN: What's your name?

19 MR. FAY: Garnet, G-a-r-n-e-t, Fay, F-a-y, and  
20 I have the privilege this year to serve as 12:55:42

21 President of the Illinois Coalition to Abolish the  
22 Death Penalty.

23 I think most of what I would have said has  
24 already been said. I wanted to register my

1 affirmation for the sentiments that have been  
2 previously expressed.

3 I am a lawyer in private practice  
4 primarily on the civil side, and I come to this  
5 work as a representative of the Religious Society 12:56:12  
6 of Friends, Quakers, and this is my perspective  
7 which impels my joining in the work of abolition.

8 So my sentiment is not well hidden, and I affirm  
9 all of the positive things that your commission is  
10 undertaking. It's an arduous task, and I trust 12:56:32  
11 that you will have good results as you have made  
12 some very good inroads already. Thank you.

13 MODERATOR SULLIVAN: Could I ask you, the  
14 Friends, they have another name, don't they?

15 MR. FAY: The Religious Society of Friends, 12:56:46  
16 Quakers.

17 MODERATOR SULLIVAN: Quakers.

18 MR. FAY: Yes. And I also share my  
19 participation with the Illinois Conference of  
20 Churches which has resolved to seek the abolition 12:56:58  
21 of the death penalty. That is an interfaith,  
22 interdenominational body of the Christian churches  
23 in the State of Illinois, and the Chicago Council  
24 of Religious Leaders which has also called for the

1 abolition of the death penalty. And that is an  
2 interfaith body in Chicago.

3 MODERATOR SULLIVAN: Let's start with Walter.

4 MR. TAYLOR: No questions.

5 MR. COLDREN: No questions. 12:57:34

6 MR. INGEMUNSON: No questions.

7 MS. BIENEN: No, thank you.

8 MR. HOWARD: No questions.

9 MS. BISHOP-JENKINS: No, but thank you kindly.

10 MR. SCHWIND: Nothing. Thank you, sir. 12:57:42

11 MODERATOR SULLIVAN: Thank you very much.

12 We're going to next call -- I'm going to  
13 keep going. We got Darby Tillis and then we have  
14 Marlene Martin and Dora Larson. Well, there's two  
15 people from the same organization, Marlene Martin 12:58:16

16 and Robin Kaufman. Let's start with Darby. We got  
17 two people from the Campaign to End the Death  
18 Penalty including Julien Ball and Marlene Martin.  
19 And go ahead, come on up Darby. We'll listen to  
20 you. Please proceed, Darby. 12:58:48

21 MR. TILLIS: Good morning. My name is  
22 Darby Tillis. I'm Illinois' agglomerate number one  
23 along with my co-defendant. Spent nine years --

24 MR. SCHWIND: You don't have to lean up to the

1 microphone. If you'd stay back, you got a deep  
2 enough resonant voice. Thank you. I didn't mean  
3 to interrupt you, but it will feed back if you try  
4 to get up close. It will pick it up.

5 MR. TILLIS: I spent 9 years, 1 month, 17 days 12:59:40  
6 on death row for a crime that I did not commit.

7 Many of you know the problems each year  
8 today speaking about what if the situation was on  
9 the other foot. In the last 31 years, I have  
10 suffered the effects of the death penalty, nine of 13:00:16

11 those years, as I just said, given the death  
12 penalty. 22 years, as of last Wednesday,  
13 January 21, '09, I have been living with  
14 post-traumatic stress syndrome. As I said, many of  
15 you know the problems when the shoe is on the other 13:00:52  
16 foot.

17 Since being released, my daughter was shot  
18 in the head twice at 91st and Laflin along with her  
19 boyfriend who was shot in the mouth. Two years  
20 later, my daughter's mother was shot and killed at 13:01:06

21 78th and Exchange. Shot in the head twice. Four  
22 years ago, my 18-year-old nephew who just enrolled  
23 in college was shot in the face four times and  
24 executed in Philadelphia. And just few days short

1 of eight months ago, my niece by marriage was shot  
2 in the head and in the heart in Arkansas. I have  
3 many reasons for believing that the death penalty  
4 serves no purpose and should be abolished.

5 In the 22 years of being released, looking 13:02:06  
6 back over five trials, including three hung juries,  
7 I found that some men that are custodians of the  
8 judicial system like my judge, the late  
9 Thomas Maloney, had blood lust in their hearts and  
10 were motivated by greed, power, and monetary gain, 13:02:36  
11 and they'll do whatever it takes to win the trial  
12 of law.

13 I say to this great panel of legal minds  
14 that whatever precautionary measures and reforms  
15 that you enact, it will not be enough to secure 13:02:56  
16 innocent men from being killed. I believe and I  
17 know without a doubt that it's time to abolish the  
18 death penalty. No man should have to live from day  
19 to day of the horrors of death row.

20 Today, I offer myself as an example. It 13:03:32  
21 was in 1976, 1977 that fail-safe changes was put  
22 into effect. Ten years later, my co-defendants and  
23 I proved to the State of Illinois that there was  
24 still flaws in the system.

1           There is one thing that -- or one law that  
2 should be put into effect concerning the death  
3 penalty is that judges, State's Attorneys, and  
4 policemen were knowing and willing to send an  
5 innocent man to jail. They should go to jail, too.   13:04:20  
6 It's time to abolish the death penalty.

7           Sometimes I speak very blatant about the  
8 death penalty is harsh, and I have been labeled  
9 angry. Twenty-two years, I have done nothing but  
10 speak. I'm inviting you all to my 22-year           13:04:54  
11 extravaganza called Forgive the State in the month  
12 of March. I will publicly state to the State of  
13 Illinois I forgive them for whatever they did to  
14 me.

15           Someone said something about the man on           13:05:24  
16 the cross. In the 23rd chapter of St. Luke, he  
17 said, Forgive them Father, they know not what  
18 they're doing. Now surely if He could say that  
19 after being tortured in faith and death and because  
20 of Him I was walking away from the gallows or           13:05:42  
21 walking away from death, I should have been able to  
22 say forgive them. And I did.

23           And I had to put on a face of faith for  
24 the people in the State of Illinois because

1 85 percent of the people in the State of Illinois  
2 wanted me dead and 68 percent of the lawyers that  
3 tried us wanted us dead according to a survey.

4 There is a scripture in the book of  
5 Jeremiah that says, I walk with you, put the words 13:06:16  
6 in your mouth, and don't be afraid. And for  
7 22 years I've said that. Hello, world. Hello  
8 Illinois. Thank you.

9 MODERATOR SULLIVAN: Thank you very much,  
10 Mr. Tillis. Jim? 13:06:32

11 MR. HOWARD: No questions.

12 MODERATOR SULLIVAN: Jennifer?

13 MS. BISHOP-JENKINS: Darby, thank you so much  
14 for your continuing willingness to revisit such  
15 painful episodes in your life in order to be of 13:06:44  
16 service to everyone and to raise consciousness.

17 I'm wondering if you have any figures  
18 about the financial remunerations that have been  
19 made to the almost 20 Illinois exonerated inmates  
20 that have had to be paid out in terms of taxpayer 13:07:06  
21 money to compensate the wrongfully convicted. Are  
22 you aware of a total sum or maybe specific examples  
23 of monies that had to be paid out to compensate the  
24 wrongfully convicted?



1 MR. TILLIS: No, I don't have the exact amount  
2 and truly --

3 MS. BISHOP-JENKINS: It's in the millions, yes.

4 MODERATOR SULLIVAN: Rich, do you have  
5 anything? 13:07:40

6 MR. SCHWIND: I have nothing.

7 MR. TAYLOR: Thank you for your presentation.  
8 I don't have any questions.

9 MR. COLDREN: No questions.

10 MR. INGEMUNSON: No. 13:07:48

11 MS. BIENEN: Thank you.

12 MODERATOR SULLIVAN: Thank you very much. We  
13 very much appreciate your coming. We're going to  
14 -- let's see, I got ahead of myself a little bit.

15 We have the Campaign to End the Death Penalty 13:08:00  
16 people. So is this Julien?

17 MR. BALL: Yes.

18 MODERATOR SULLIVAN: And Robin. Robin and --  
19 let's take them one by one.

20 MR. BALL: My name is Julien Ball, and I'm an 13:08:24

21 organizer with the Campaign to End the Death  
22 Penalty here in Chicago. We're a grass roots  
23 organization. We have a chapter here in Chicago  
24 and others around the country. I will try not --

1 MODERATOR SULLIVAN: What is your title?  
2 MR. BALL: I'm an organizer here in Chicago.  
3 MODERATOR SULLIVAN: Organizer in Chicago.  
4 MR. BALL: And I will try not to repeat too  
5 much of what other people have said about the 13:08:46  
6 reforms.  
7 MODERATOR SULLIVAN: Let's get the names of the  
8 -- it's B-a-l-l?  
9 MR. BALL: That's right.  
10 MS. KAUFMAN: K-a-u-f-m-a-n. 13:08:54  
11 MODERATOR SULLIVAN: And that is --  
12 MS. KAUFMAN: R-o-b-i-n.  
13 MODERATOR SULLIVAN: Robin Kaufman. And,  
14 Robin, you're with the Campaign?  
15 MS. KAUFMAN: I'm speaking more as an 13:09:12  
16 individual.  
17 MODERATOR SULLIVAN: And this lady?  
18 MS. MARTIN: Marlene Martin.  
19 MODERATOR SULLIVAN: Marlene. Ms. Martin, are  
20 you representing the CEDP? 13:09:22  
21 MS. MARTIN: Yes.  
22 MODERATOR SULLIVAN: Go ahead, Julien.  
23 MR. BALL: First, I guess I just want to say we  
24 work with students, community members, prisoners,

1 family members, and exonerees to highlight the  
2 death penalty both here in Chicago and nationally.  
3 There's a guy who spoke here earlier, a student at  
4 DePaul. I actually have -- I have worked with the  
5 Illinois Coalition to Abolish the Death Penalty and 13:09:52  
6 have been on a number of lobby days with them; and  
7 then, just as importantly, I think I have sat in  
8 courtrooms with prisoners, family members whose  
9 sons were facing the death penalty and seeing that  
10 even under the new and improved death penalty with 13:10:12  
11 the reforms what many of those family members go  
12 through and just feeling overwhelmed.

13           And even with a Capital Litigation Trust  
14 Fund, which I do actually think is an important  
15 reform, I think Julie Harmon testified really well 13:10:26  
16 to what it has been able to do for the Public  
17 Defender's Office, but also the limitations of it.

18           And so I think -- but even with that, you  
19 know, sitting with prisoners, family members, they  
20 still feel overwhelmed. They still feel that 13:10:46  
21 they're not sure where to turn in the legal system.

22           There's one woman, Shirley McFarland, her  
23 husband was being charged in a capital case. He  
24 had been the bread winner for the family, and she's

1 no longer involved because her life has just gotten  
2 so crazy, and she's -- she had her home foreclosed  
3 on; and these are just some of the things that  
4 people deal with in the legal system.

5           So I want to thank the study committee for     13:11:20  
6 the opportunity to present here today. You know, I  
7 think this committee has a really important job  
8 which is to study how effective and fair the new  
9 and improved death penalty is.

10           People have spoken to some of the             13:11:44  
11 important reforms that have been put in, the  
12 videotaped interrogations, the Capital Litigation  
13 Trust Fund, the pretrial hearings around the  
14 jailhouse informant, but I think it's also

15 important to step back and look at how this reform     13:12:00  
16 process came about in the first place, that it took  
17 the dramatic action of one governor to clear out  
18 death row, to clear out -- to commute the sentences  
19 of all 167 death row prisoners for almost any

20 reform to take place, and that it took that             13:12:20  
21 dramatic action even for this committee to exist I  
22 think says something about the death penalty in  
23 Illinois and the political will to change it.

24           Joe Birkett talked about how more than

1 30 reforms have been passed to the death penalty.  
2 Well, it's worth remembering that Governor Ryan's  
3 Commission, which Mr. Sullivan also chaired, passed  
4 -- or recommended 85 reforms to the death penalty.  
5 So we're not even close to where that Commission 13:12:54  
6 wanted us to be. And even that Commission  
7 concluded that no system, given human nature and  
8 frailties, could ever be devised that would work  
9 perfectly and absolutely guarantee that no innocent  
10 person is ever again put to death. 13:13:08

11 So I know we're supposed to be talking  
12 about the reforms of the death penalty here. So I  
13 mean I guess just to say, police interrogation, I  
14 think people have spoken to many of the reforms.  
15 One issue is that this doesn't apply to witnesses. 13:13:24  
16 Darby Tillis, who just spoke to you, he will tell  
17 you he came into the station of his own free will  
18 because he heard the police were looking for him  
19 and they wanted him to testify against someone, to  
20 solve the case, and when he said he didn't know 13:13:42  
21 anything about the case, they charged him instead,  
22 and he spent nine years on death row waiting to die  
23 as a result.

24 So there's still a lot of power the police

1 have to where things can go wrong in capital cases.

2           People talked about the fact -- the way  
3 police line-ups are conducted, that people -- that  
4 the administrator of police line-ups knows who it  
5 is that they want the witness to identify and how 13:14:18  
6 that can lead to errors. But I think most  
7 seriously and the death penalty's fatal flaw which  
8 can't be fixed, can't be reformed out of existence  
9 is who gets the death penalty in our society.

10           Governor Ryan's Commission recognized that 13:14:38  
11 the race of the victim and where in the state the  
12 victim happens to live in plays a huge role in  
13 whether prosecutors seek death and whether somebody  
14 gets the death sentence. In Chicago, as many of  
15 you may know, as many as 13 men, all 13:14:54

16 African-American, ended up on death row based on  
17 confessions that were tortured out of them by  
18 Chicago Police. Four of those men, Madison Hobbey,  
19 Aaron Patterson, Leroy Orange, and Stanley Howard  
20 last year were paid \$19.8 million for what they had 13:15:10  
21 to endure.

22           And so while videotaping interrogations  
23 might be able to cut down on some of that behavior,  
24 it's not going to fit who gets charged in these

1 cases, racial bias on who gets charged, who gets  
2 convicted, and who gets sentenced to death.

3           As others have pointed out,  
4 Governor Ryan's Commission, you know, made a few  
5 recommendations to cut down on that arbitrariness,       13:15:38  
6 but the Supreme Court set up a review for all  
7 first-degree murder cases to see which one is  
8 getting death certification, and also to set up the  
9 mechanism for prosecutors to coordinate, to make --  
10 to cut down on the arbitrariness in seeking the       13:16:00  
11 death penalty.

12           And because that hasn't been done, we  
13 don't know the full extent of racial bias that's  
14 still in the death penalty. But we do know that,  
15 as JoAnna pointed out, 90 percent of death cases in       13:16:16  
16 Cook County involve African-American or Latino  
17 defendants in a county that's only 46 percent  
18 African-American or Latino.

19           And we also know that even with the  
20 Capital Litigation Trust Fund, those charged with       13:16:30  
21 death cases are overwhelmingly poor and that more  
22 than half the men currently on death row have  
23 histories of mental illness. So the death penalty  
24 is continuing to target the most vulnerable people

1 in the society.

2           You know, I think it's worth pointing out  
3 that this isn't the first reform process that has  
4 existed to the death penalty. The Supreme Court  
5 case, Furman versus Georgia, the U.S. Supreme Court 13:17:02  
6 struck down the death penalty nationally saying  
7 that the death penalty was practiced in an  
8 arbitrary and racist manner and violated the  
9 8th Amendment prohibition on cruel and unusual  
10 punishment. So, you know, this led the state to 13:17:20  
11 change their execution procedures and restart  
12 executions in 1977.

13           But here we are again, we're saying death  
14 penalty is still arbitrary and still racist, you  
15 know, because there continues to reflect the 13:17:40  
16 problems in society as a whole. We live in a  
17 society where employment in terms of quality of  
18 health care, in terms of housing, African-Americans  
19 live under worse conditions than whites. And I  
20 think it's unrealistic to expect that that's going 13:18:00  
21 to change just in the area of the justice system,  
22 that this is a system-wide problem.

23           So I guess I will just end by saying that  
24 this committee has an important job to do; that



1 similar committees in New Jersey and Maryland have  
2 looked at the death penalty and have recommended  
3 that the death penalty be abolished.

4 Now I have heard that the mandate of this  
5 committee is just to evaluate individual reforms, 13:18:26  
6 but the way I think about that, it's kind of like  
7 being in a forest that's been burnt out. There's  
8 been a giant forest fire and then you're going and  
9 you're looking at each tree and you're saying, you  
10 know what, that tree isn't very healthy. There's a 13:18:44  
11 problem with that tree.

12 Sooner or later, you're going to have to  
13 look at the whole forest and look at it and say,  
14 you know, this forest can't be salvaged. And so,  
15 you know, I think looking at the individual 13:18:58  
16 reforms, we're missing the forest for the trees.

17 So I'm urging this committee to follow  
18 commissions that have come before you in New Jersey  
19 and Maryland and recommend that the death penalty  
20 be abolished. Thank you. 13:19:12

21 MODERATOR SULLIVAN: Thank you very much.  
22 Walt?

23 MR. TAYLOR: Thank you, sir. No questions.

24 MR. COLDREN: No.

1 MR. INGEMUNSON: No.

2 MS. BIENEN: Have you also submitted written  
3 testimony to us?

4 MS. BALL: I can give that to you right now.

5 MS. BIENEN: Thank you. 13:19:32

6 MR. HOWARD: No questions.

7 MS. BISHOP-JENKINS: Thank you, Julien. I  
8 wanted to begin by commending and note especially  
9 the consistent excellent work that the campaign has  
10 done on raising consciousness about issues of race 13:19:44  
11 and poverty. I think you have been unique in your  
12 ability to do that.

13 And I wanted to ask you, again, because of  
14 our very elusive task with regard to  
15 proportionality and study, do you all have 13:19:56  
16 suggestions for us as to how we can -- and I know  
17 that you cited some cases especially from before  
18 the reforms in the Governor's Commission findings,  
19 but focusing on cases under our mandate from 2003  
20 on, if you have any suggestions as to how to get at 13:20:16  
21 racial proportionality issues since 2003?

22 MR. BALL: Well, I mean, I think that the  
23 commission that Governor Ryan appointed had  
24 recommended the database which was supposed to

1 track all first-degree murder cases and, you know,  
2 the State of Illinois has far greater resources  
3 than we could ever hope to have, but I think the  
4 fact that hasn't been set up shows that there's a  
5 lack of political will in this state to get at 13:20:50  
6 issues of racism and arbitrariness, and I think  
7 that that's a problem that needs to be looked at.

8 MR. SCHWIND: I have nothing.

9 MODERATOR SULLIVAN: I just want to mention,  
10 Julien, that the Governor's Commission recommended 13:21:06  
11 that witness statements be -- witness statements be  
12 recorded. Now the Governor's Commission only dealt  
13 with homicide cases because that's the only one  
14 we're dealing with, but there's no rational  
15 distinction between recording a defendant's 13:21:28  
16 interrogation in the station house whether he's  
17 charged with rape or homicide, in my opinion.

18 Now also we talked about capricious  
19 selection. We recommended four different methods  
20 to stop the capriciousness of the selection. 13:21:54  
21 Indeed, in another part of the Commission's report,  
22 we said -- we wondered when we looked at the  
23 exonerated people, not only why they were selected  
24 for capital punishment but, in many cases, why they

1 were prosecuted at all on the evidence.

2           So we recommended severe reduction in the  
3 death penalty eligibility factors; a statewide  
4 review commission to review the decision of every  
5 State's Attorney's selection of the case of capital     13:22:30  
6 punishment; the option of the trial judge in a jury  
7 case to overturn the Jury's verdict; and full  
8 comparative proportionality review from the Supreme  
9 Court; and the statutory mandate to collect the  
10 data. Now the last is the only thing that's been     13:22:54  
11 done without -- that's been passed but no funding.

12           So that's where we stand on the Governor's  
13 Commission recommendation to try to get rid of  
14 capriciousness and discrimination both racially and  
15 geographically in the selection. Just in case you     13:23:14  
16 haven't read our report very clearly.

17           MR. BALL: Thanks.

18           MODERATOR SULLIVAN: Thanks. Now we have --  
19 were you going to testify, or Marlene?

20           MS. MARTIN: I think we both want to say a few     13:23:40  
21 words.

22           MODERATOR SULLIVAN: Okay. Go ahead. It's  
23 getting late, but that's okay, we don't want to cut  
24 you off, but we will --

1 MS. MARTIN: But you will.

2 MODERATOR SULLIVAN: But also try to focus on  
3 reforms rather than whether or not we should retain  
4 the death penalty.

5 MS. MARTIN: Well, my name is Marlene Martin. 13:24:04

6 I'm with the Campaign to End the Death Penalty.

7 I'm sorry to say that I'm not going to be

8 restricted to talking about reforms, but I do

9 appreciate what you have said earlier that even

10 though -- you know, that people are also coming to 13:24:20

11 this hearing that are connected to this issue even

12 though they might not fall within the limitations

13 of just speaking to reforms.

14 Obviously, I'm in the group called the

15 Campaign to End the Death Penalty, and I have an 13:24:38

16 interest in seeing the death penalty in this

17 country abolished. And I do understand -- you

18 know, it's incredibly frustrating to come as a

19 death penalty abolitionist to this kind of a forum

20 and to speak in front of this committee because the 13:24:54

21 committee is set with a task and mandated to try to

22 figure out ways to make the death penalty work

23 better, and I'm concerned with some of the things

24 that I have heard here today, you know, especially

1 in regards to -- you know, the efforts of this  
2 committee could be to help reform the death penalty  
3 in such a way that means the moratorium would be  
4 lifted and that we could get on -- we can use  
5 Illinois as a model of the death penalty, really 13:25:24  
6 getting it right, and then lift the moratorium and  
7 start into the business of executing people again.  
8 And I really feel that we need to be cautious  
9 against going in that direction.

10 I completely disagree with what 13:25:40  
11 Joe Birkett said that the moratorium has been  
12 detrimental in Illinois. I couldn't disagree more.  
13 And I really hope that in the years that we've had  
14 the moratorium, that killing by the state has  
15 dropped out of favor with this population. And I 13:25:54  
16 hope that we're not a model that ends up lifting  
17 the moratorium, but, instead, moves from the  
18 moratorium on towards abolition.

19 And I know that that message is not within  
20 the confines of this group, and I understand that 13:26:10  
21 this means we have to take it into the streets and  
22 into college campuses and high schools and so on in  
23 order to build the kind of support and the reasons  
24 why we need to fight for abolition. But in saying

1 that, I just -- I don't want to repeat what other  
2 people have said, but why does the parameters of  
3 this commission or this committee, once it's  
4 finished and you're done, is there anything that  
5 bars individuals from saying what you believe and 13:26:40  
6 to be able to come out in favor of repeal  
7 legislation in Illinois? And if you're able to do  
8 that, I would recommend that you do.

9 I think it spoke volumes when Julien  
10 mentioned New Jersey and Maryland which is poised 13:26:54  
11 to win abolition in that state, that it would mean  
12 a lot for people like yourselves that have been in  
13 the position of studying the death penalty to come  
14 out and say that we should get rid of it here in  
15 Illinois. 13:27:10

16 And just to say, you know, we've talked  
17 about it -- and I will try to end on this -- but  
18 we've talked about how in 1976 when it was brought  
19 back, we were also promised then that no longer  
20 would we have innocent people being executed, that 13:27:22  
21 it would be fair and just the way it was  
22 administrated. And we've had 30 plus years to show  
23 us that it is biased against those that are poor.  
24 It's biased against those that are racial

1 minorities in this society. 80 percent of those  
2 that on death row are charged with killing whites.  
3 Even the whites and blacks are victims of homicide  
4 in the same amount.

5           And just to say that, you know reforms,           13:27:50  
6 for example, you know, well, why isn't it enough?  
7 Why can't we have a fail-safe system like, for  
8 example, making sure that every single person is --  
9 their confession is videotaped? Well, it makes me  
10 think of Darrell Cannon. He was a police torture           13:28:08  
11 victim, and he was driven -- he was taken from the  
12 police station and driven out to a remote area in  
13 Illinois, and his pants were pulled down. He was  
14 electrically shocked to his genitals, a shotgun put  
15 in his mouth. He was threatened. He was called           13:28:26  
16 many racial derogatory statements. His family was  
17 threatened to the point where he did make a false  
18 confession. That was never videotaped. And I'm  
19 sure that if they did bring this in and then set up  
20 the video camera, he very well could agree to           13:28:40  
21 something that he wouldn't do.

22           And then just lastly to say that, you  
23 know, I think of the case also of Troy Davis, which  
24 I'm sure that you've heard of this case in Georgia,



1 and this also reminds me of even though you all  
2 might put recommendations out there and come up  
3 with best reforms and they're initiated, what  
4 happens when there's a sensational case like  
5 there's a police officer killed in the streets, 13:29:08  
6 like with the case of Troy Davis in Georgia? A  
7 white police officer was killed and there was a  
8 rush to try to solve this case. And sometimes that  
9 happens with the most sensational cases; and, yet,  
10 those are the ones that are going to be death 13:29:22  
11 eligible, right, the killing of a police officer.

12 And what they did was they had pressured  
13 -- the police pressured witnesses to testify that  
14 it was Troy. Now he's already faced three  
15 execution dates. He faced them down, but he's 13:29:38  
16 still not off death row and very well still could  
17 be executed. The courts will not hear the witness  
18 testimony, that seven of the nine witnesses that  
19 testified that it was Troy, have come out in  
20 affidavits and said that they didn't do it -- that 13:29:58  
21 Troy was not the shooter and that they were  
22 pressured by police to say that it was him.

23 This is not being admitted into -- he's  
24 not been able to present this to a court of law.

1 And I worry about that, that if the reforms are  
2 enacted, that later on down the line, there could  
3 be another sensational case, and then the  
4 legislation drives through expanding eligibility  
5 for the death penalty. 13:30:28

6 And that's another reason why we need to  
7 be for outright abolition. That should be the  
8 goal, and that I would encourage all of you that  
9 think that and believe that to speak to that when  
10 this -- when you finish up as a group. 13:30:42

11 MODERATOR SULLIVAN: Hold on a minute. Thank  
12 you very much, Marlene.

13 MS. MARTIN: And can I just say one quick  
14 thing? When you say about the parameters, it makes  
15 me think of slavery, and I'm glad that Delbert 13:30:56  
16 raised that because when you think about slavery,  
17 you never think about let's get together and talk  
18 about -- and we can talk about whether or not we  
19 need to get rid of slavery. The only thing that we  
20 are tasked to do is figure out how to best carry 13:31:12  
21 that system out, that wrong system. Let's better  
22 feed our slaves. Let's better house them. Let's  
23 not make the whipping as harsh as it is.

24 We find ourselves, as abolitionists,

1 caught in that paradigm like, yes, of course, I  
2 want it better for slaves, but guess what, I really  
3 don't want there to be slavery at all. So that's  
4 kind of the position that a lot of us activists  
5 unfortunately find ourselves in when we talk to you 13:31:38  
6 guys.

7 MODERATOR SULLIVAN: Wait.

8 MR. TAYLOR: Thanks for your presentation. I  
9 don't have any questions.

10 MR. COLDREN: No questions. 13:31:48

11 MR. INGEMUNSON: No questions.

12 MS. BIENEN: I don't have any questions. Thank  
13 you again for your work, and also I wanted to  
14 commend you on some work I'm sure you know that was  
15 done in Connecticut where apparently they also came 13:31:58  
16 very close to abolition.

17 MR. HOWARD: Thank you. No questions.

18 MS. BISHOP-JENKINS: I do have one question,  
19 Marlene. Thank you for your testimony. You know  
20 given that the members of this committee are 13:32:12  
21 actually functioning under a legislative mandate, I  
22 just wanted to ask, since you express frustration  
23 with the limits of our mandate, have you personally  
24 or do you know of any activists that have actually

1 gone in any either or personal organized way to the  
2 legislature and asked them to change their mandate?  
3 Have you actually done that?

4 MS. MARTIN: In terms of bills being forwarded?

5 MS. BISHOP-JENKINS: To expand it, you wanted 13:32:36  
6 our mandate to be different other than to examine  
7 the reforms; but to discuss the larger social  
8 problem, have you actually or anyone that you know  
9 done anything to ask the legislature to do that, to  
10 actually change our mandate? 13:32:50

11 MS. MARTIN: You know, the best thing to do is  
12 to put forward a bill to repeal the death penalty.

13 MS. BISHOP-JENKINS: Have you done that?

14 MS. MARTIN: Well, there's been efforts in the  
15 past. I mean, we've been involved, our group has, 13:33:02  
16 and, you know, there are other efforts underway  
17 with the Illinois Coalition and so forth to put  
18 forward legislation. And we want to do that. We  
19 want to go to lobby day. We want to be part of  
20 that. 13:33:14

21 And just to say also that just in the  
22 wider scheme of things, like I just wonder of all  
23 the energy, all the minds and the incredible energy  
24 that we've used towards these efforts because we

1 believe in justice and fairness, and we want to see  
2 a better kind of society. And I guess I just think  
3 at the end of the day when somebody said, what does  
4 the death penalty really do? Is it a solution to  
5 any of these crimes that we find ourselves living 13:33:38  
6 in? And I go back to that study that was done in  
7 1995 where they asked police superintendents, what  
8 was the best weapon that they could use as a  
9 crime-fighting preventive measure, and the highest  
10 marks were not the death penalty, were not things 13:33:56  
11 about harsh incarceration. They were things like  
12 youth poverty programs, you know, better  
13 employment, better things that don't then breath  
14 that kind of climate. We end up saying the only  
15 thing we can do as a society is have the death 13:34:10  
16 penalty, and that's going to be the thing.

17           It's a very narrow way of looking at  
18 problems of crime. And I think all the energy that  
19 could be put towards anti-poverty programs, youth  
20 creation things. Mental health. Mental health 13:34:24  
21 issues that don't go -- that we see so many of  
22 those that are on Illinois death row suffer from.

23           MS. BISHOP-JENKINS: You personally have not  
24 asked the legislature to change our mandate? You

1 have not?

2 MS. MARTIN: Me, myself? No.

3 MS. BISHOP-JENKINS: Thank you.

4 MR. SCHWIND: I have no questions. Thank you  
5 for very much. I appreciate -- while we don't have 13:34:46  
6 the same opinion, I appreciate and respect your  
7 right to say it and thank you for coming in.

8 MS. MARTIN: Thank you.

9 MODERATOR SULLIVAN: We all believe in the  
10 First Amendment. 13:34:56

11 MS. MARTIN: Could I give you the newsletter  
12 and also just to say that Darrell Cannon's  
13 testimony is in here when he talked about what they  
14 did to him when they drove him around in Illinois.  
15 So I will give you all a copy of that. Thank you 13:35:06  
16 so much.

17 MODERATOR SULLIVAN: Robin Kaufman. I should  
18 say the final speaker we have --

19 MS. KAUFMAN: Robin Kaufman. I mentioned that  
20 although I'm a member of the Campaign to End the 13:35:24  
21 Death Penalty, I'm speaking as an individual.

22 I kind of came to it kind of by the back  
23 door, by a side door. The last ten years of my  
24 life has been a journey, a journey from the white,

1 middle-class, suburban background, which is my  
2 background, into a more urban environment. I have  
3 three sons of color, and despite all that I had  
4 done in the Civil Rights Movement and all the  
5 friends I had, there was nothing to educate me 13:36:08  
6 about racism in our society more significant than  
7 trying to raise these children. Everything -- when  
8 they were young, I didn't see it. As soon as they  
9 became young men, I started to see the racial  
10 profiling, the impact of dire economic and social 13:36:30  
11 conditions on their friends, and it's something  
12 that, if you haven't gone through it, you don't  
13 understand. But, you know, Julien alluded to it.  
14 We should read about the sociology books.  
15 So I found myself spending time in 13:37:00  
16 courtrooms, watching police --  
17 MR. SCHWIND: Step back from the mic. Thank  
18 you.  
19 MS. KAUFMAN: -- watching police perjure  
20 themselves on a regular basis in order to justify 13:37:12  
21 their arrests. I started to read. I started to  
22 look for groups that were working to make the  
23 criminal justice system more fair, and I stumbled  
24 upon the campaign.

1 I know you want me to talk about the  
2 reforms. While I agree that we need to get rid of  
3 the death penalty, I think the work that you're  
4 doing exposing some of what goes on and trying to  
5 deal with the problems, problems of snitches and 13:37:56  
6 false confessions, he got a whole list of them, I  
7 hope in your recommendation you will apply them to  
8 everybody, not just death penalty cases. Because  
9 the death penalty cases have been a canary in the  
10 minds and have shown us the problems. But those 13:38:32  
11 problems affect millions more than the death  
12 penalty cases. So that's one thing I would say.

13 Another thing is just the mere existence  
14 of the death penalty is a threat over the head of  
15 young men, and generally they're young men. It's 13:39:02  
16 enough to make them think about pleading guilty to  
17 something that he hasn't done. There was a recent  
18 case in Norfolk, Virginia, where FBI agents had  
19 been out trying to get these people -- these people  
20 out of jail, a bunch of young servicemen; and when 13:39:22  
21 asked why did they confess to something they hadn't  
22 done, the answer was I was afraid of the death  
23 penalty. So they confessed to things they hadn't  
24 done. Now, you know, clearly they're still in



1 jail.

2 My only own son was picked up one day at  
3 work, handcuffed, taken away from his job because  
4 he looked like somebody that was wanted for murder.

5 He said, Mom, when they showed me the picture of 13:40:00

6 the guy they thought I was, who incidentally had  
7 the same first name as him, he said my life flashed  
8 in front of me. I thought I was a goner. He knew

9 from my work how tough it was for people to go to  
10 jail for things they hadn't done. When I saw the 13:40:20

11 picture of the -- of the men, it was all over TV  
12 and everything, I was horrified. Luckily, the  
13 person they were looking for had some tattoos that  
14 were very distinctive, and so my son was very, very  
15 quickly released. 13:40:42

16 Jennifer, you've done a lot dealing with  
17 the -- and good work -- of families of victims. I  
18 would like people to think about the families of  
19 the accused, whether they're guilty or not guilty.

20 They have mothers, fathers, children, sisters, 13:41:06

21 brothers, and friends. How would you feel if your  
22 son was on death row whether he was guilty or not?  
23 What would that do to your family? What would that  
24 do to you? What would that do to him?

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1 I admire Delbert and Darby for coming  
2 forth. I'm astounded by how saintly they appear on  
3 the surface because I don't know what I would be  
4 like if I spent time worrying that I was about to  
5 be killed for something I hadn't done. 13:41:52

6 I worry about the impact of our enormous  
7 incarceration rates on the black community because,  
8 in certain neighborhoods, this high percent of --  
9 there's more crime because of the economic, social,  
10 emotional, everything, you know, the whole ball of 13:42:14  
11 wax. And so it's going to blow up in our face some  
12 day. We can't afford to keep incarcerating people.

13 I raise this because we are dealing with a  
14 political issue. And, Jennifer, you asked, well,  
15 have you gone to the legislature? They're looking 13:42:36  
16 for their careers, and law and order is good for  
17 your career. You're a bunch of professionals who I  
18 hope don't have to, except maybe the prosecutors,  
19 but depend on your livelihood for getting  
20 convictions. So you're in a good position to take 13:43:04  
21 the lead and to say we want these reforms, but  
22 reform isn't enough. The system is broken.

23 And for every innocent person who gets  
24 convicted, there's a guilty one out there who

1 doesn't get convicted. If we continue to make it  
2 easy for prosecutors to scare them or detectives to  
3 scare confessions out of people who are afraid of  
4 going to jail, that's one more innocent person in  
5 jail and, for you law and order folks, that's one 13:43:44  
6 more guilty person who's walking. So we need to  
7 draw the debate. We need to get rid of the death  
8 penalty, and thank you for all the hard work.

9 MODERATOR SULLIVAN: Thank you. Wait a second.  
10 Jeffrey? 13:44:06

11 MR. HOWARD: Thank you. No questions.

12 MS. BISHOP-JENKINS: No questions. Thank you.

13 MR. SCHWIND: I have no questions.

14 MR. TAYLOR: No questions.

15 MR. COLDREN: No questions. 13:44:20

16 MR. INGEMUNSON: No questions.

17 MS. BIENEN: Thank you for your testimony.

18 MODERATOR SULLIVAN: One thing I would like to  
19 point out to you, I don't think anybody's read the  
20 Governor's Commission report, but Recommendation 83 13:44:30  
21 which I have often written was the single most  
22 important recommendation of that committee. It has  
23 nothing to do with the death penalty, and that is  
24 that, to the extent applicable, the recommendations

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1 made in this report should be applied to all felony  
2 cases.

3 MS. KAUFMAN: Good. Thank you.

4 MODERATOR SULLIVAN: Next, we have Dora Larson.

5 Is Dora Larson here? You are from the Illinois 13:45:04  
6 Victims Organization. And, Dora, would you give  
7 the court reporter the spelling of your name,  
8 please?

9 MS. LARSON: Dora, D-o-r-a, Larson,  
10 L-a-r-s-o-n. 13:45:30

11 MODERATOR SULLIVAN: What is your -- your group  
12 is -- state what your group is.

13 MS. LARSON: I'm speaking today for the  
14 Illinois Victims.org and a victim advocate for over  
15 20 years and a surviving victim. 13:45:44

16 I testified early on in Springfield with  
17 the first commission to give testimony and also  
18 accompanied a number of homicide victim families to  
19 their testimony. I even got a chapter in  
20 Scott Turow's Ultimate Punishment, and he only had 13:46:06  
21 one thing that I dispute is that victims who wanted  
22 the death penalty think we're going to get our  
23 children back. Believe me, that is not the case.

24 My work began in -- well, almost 25 years

1 now as a victim advocate when my little 10-year-old  
2 daughter, Vicki -- and our family lived in a town  
3 of 500 up by the Quad Cities. She was kidnapped.  
4 She was taken, you know, to a spot that her killer  
5 had three days before. He strangled her, raped 13:46:46  
6 her, and threw her in this grave. We would find  
7 out that our first opinion of Mr. Darnell, who was  
8 a very intelligent, polite, quote scripture was  
9 really a monster that had started torturing and  
10 killing little animals when he was a preschooler 13:47:08  
11 and he went on then to murder our Vicki. Our lives  
12 have never been the same; and, in the name of  
13 homicide, it's going to take at least three  
14 generations before a homicide case really does not  
15 affect the families. 13:47:26

16 For over the 20 years, I have done and sat  
17 with murder cases, dozens of them, even including  
18 helping with the State's Attorneys, the Attorney  
19 General's office; and when Governor Ryan, you know,  
20 said no more death row, there were at least 12 13:47:48  
21 cases that I sat with the family on.

22 But whether -- I will say I am for the  
23 death penalty. I always have been. But when I got  
24 started in this work, most, not all, but most of

1 the victims of homicide, when you talk to them, do  
2 want the death penalty. The greatest fear that we  
3 have -- now Scott Darnell is the youngest member to  
4 be given natural life for murder and 30 for the  
5 rape. He's now doing the trendy thing. He just 13:48:20  
6 petitioned the Governor for early release, but as I  
7 said before, Scott was wrong. We don't think our  
8 children are going to be returned. We just want to  
9 make sure it never happens again, that there be no  
10 more victims. 13:48:42

11 But whether you're for or against the  
12 death penalty, that's not the question today. I do  
13 want to applaud all the changes that's happened  
14 since this first started and the laws that are on  
15 the books. They have helped out a lot of cases. 13:48:56  
16 And, believe me, never do we want an innocent  
17 person put to death. That is not anything that any  
18 of us wish.

19 Few of the things that I really, really  
20 like about the changes of course is the jailhouse 13:49:18  
21 snitch testimony, the videotaping of any of the  
22 questioning done, and that they have a special  
23 defense team that is trained and funded for capital  
24 cases, and all of the money that's allocated to the

1 prosecution and the defense out of the Capital  
2 Litigation Trust Fund.

3           With this money has anyone thought of --  
4 given any thought to surviving victims and their  
5 special needs out of this fund? The expenses of           13:49:54  
6 traveling to and from court. When you change  
7 venues, have you ever given any thought -- and I  
8 know some of the State's Attorneys pick this up and  
9 a lot don't and they're not able to. If we had  
10 some money from the CLTF, that would pay for the           13:50:12  
11 change of venue cases.

12           Childcare. What if the family has younger  
13 children? Providing a safe room in or near the  
14 courthouse so that the victim family doesn't have  
15 to face the defendant's family. And I've sat in a           13:50:34  
16 courtroom while the victims have to watch the other  
17 prisoners shackled and brought by.

18           For the Prisoner Review Board, when I  
19 worked for the Department of Corrections, this was  
20 something that we worked on is making sure that the           13:50:50  
21 family had money to come and give testimony,  
22 whether it be in Chicago or Springfield or in one  
23 of the prisons.

24           And another thing is that the victims,

1 it's vital that we ensure all victims if they  
2 choose to be registered as a victim and to make  
3 sure that they're informed of every step of the  
4 process. Victims should never be denied their  
5 chance to be heard because of their finances. 13:51:28

6 I would propose a committee be appointed  
7 for the victims in these cases and that we have  
8 that committee that would approve all decisions and  
9 money allocated. And I know that I and I know  
10 people like Jennifer would be happy to give any 13:51:48  
11 assistance and help with that; but, again, for the  
12 victim.

13 Restorative justice. It was -- in the  
14 years that I have worked, I thought it was another  
15 saying that was going to leave the victims behind, 13:52:04  
16 but it is not. But it was introduced to me by one  
17 of my mentors, Odie Washington. Restorative  
18 justice concerns a community, the offender, and the  
19 victim. So in a capital case, we have the  
20 community, and that's the core personnel during the 13:52:20  
21 trial; the offender is the murder or the accused  
22 murder; and the victim is forgotten. We're missing  
23 part of that core case. And we have done nothing  
24 wrong and, yet, we're thrust into something that is



1 undescrivable, and we have no choice in this other  
2 than our loved ones taken from us by murderers.

3           Victims should not be left out of that  
4 part of the process, and our rights and needs  
5 should be met. For these reasons, I'm asking that       13:53:00  
6 victims receive funding from the CLTF, and I want  
7 to thank you very much for your time.

8           MODERATOR SULLIVAN: All right. Thank you very  
9 much. Let me just see. Walt?

10          MR. TAYLOR: Ma'am, I want to thank you for       13:53:18  
11 your testimony, your fortitude for coming forward  
12 and sharing your pain that your family went  
13 through. I want to tell you that very little has  
14 been said today about the victims. And you're  
15 right. When you go to court, no one cares about       13:53:38  
16 the victim. It's all about the offender. It's all  
17 about his rights. Nobody talks about the victims.

18               I will tell you right now, ma'am, I come  
19 to work every day because of people like you. I  
20 don't come to work to convict the wrong people and       13:54:00  
21 put the wrong people on death row. I come because  
22 of people like you; and, as long as I'm sitting on  
23 this commission, you will have a voice.

24               We've already discussed having some

1 appropriations for victims' families on capital  
2 cases. I believe that's one of the  
3 recommendations, and I will try to recommend that.  
4 But I just hope and pray to God that everybody in  
5 this room today, the horrific crimes that your 13:54:38  
6 family went through, never happens to them.

7 MS. LARSON: Please, yes.

8 MR. TAYLOR: If they do, then they will be  
9 truly crying out for the prosecution to help their  
10 family like your family has been helped. 13:54:54

11 So I want to tell you, thank you for  
12 coming in. I admire your guts for sitting there  
13 and listening to this all day and patiently waiting  
14 and sharing with us your concerns. Okay? Thank  
15 you very much. 13:55:06

16 MS. LARSON: Thank you. I appreciate all the  
17 work the prosecutors and defense attorneys do.

18 MR. COLDREN: Thank you, ma'am. I have no  
19 questions.

20 MR. INGEMUNSON: No. 13:55:18

21 MS. BIENEN: Thank you very much. I appreciate  
22 it.

23 MR. HOWARD: Thank you for showing up today.

24 MS. BISHOP-JENKINS: Thank you very much. I

1 want to make a special underlining of what Walt  
2 just said about how incredibly difficult it is for  
3 victims' families to have to endure this entire  
4 process where so much focus is put on the offender.  
5 And when I think about the bond that we share as 13:55:48  
6 family members, all the resources that are focused  
7 in this system on the process, the due process and  
8 all the technicalities of it, when you look at the  
9 percentages of the resources devoted to the legal  
10 process as opposed to what you have so eloquently 13:56:08  
11 reminded us here today is the issue which is that  
12 there has been a murder, probably a multiple  
13 murder, and that there is -- no matter how serious  
14 issues of justice are with offenders, and they are  
15 serious, those people that are also alive, we can 13:56:30  
16 all focus on what's important to us. But,  
17 ultimately, there's nothing that can be done to  
18 address the atomic button of destruction done when  
19 somebody is murdered. And the other problems pale  
20 in comparison to that. 13:56:48

21 And so I appreciate very much your  
22 reminder to us that when we -- I believe that  
23 budgets, state budgets are moral documents, and  
24 that what we, as citizens of Illinois, spend our

1 money on says a great deal about who we are and  
2 what we believe in and what we value. And the lack  
3 of resources for victims compared to the amount  
4 given to protect the offenders in this process is  
5 deeply troubling to me and has been for some time. 13:57:20

6 And I wanted to know, first, and then  
7 again to thank you for your decades of service to  
8 victims in the wake of your own victimization,  
9 could you make any additional observations about  
10 the adequacy of resources that you have seen in, 13:57:34  
11 you know, in county budgets and in the state budget  
12 because you have worked in Springfield. You have  
13 worked as an advocate. You've actually worked with  
14 prosecutors in many cases. You have been alongside  
15 many cases other than your own. 13:57:48

16 Just any overall specifics about the  
17 adequacy of resources?

18 MS. LARSON: Well, of course, there's not  
19 enough, and I know that the victim advocates within  
20 the counties, they receive out of the budget, the 13:58:06  
21 State's Attorney's budget, you know, a paycheck for  
22 a better word, but I don't believe it's enough.  
23 And if State's Attorneys had more money, they could  
24 hire just a specialized person that would do

1 nothing but capital cases and be trained in it.  
2 Because I am involved, and it's no disrespect to  
3 any victim advocate, but some of them really have  
4 no idea really what the victim has gone through.

5 MS. BISHOP-JENKINS: Are you aware of any 13:58:42  
6 training for the advocates?

7 MS. LARSON: It's great to read it in a book.  
8 Again, I'm not putting anyone down, but it's  
9 something to read it out of a book and try to apply  
10 it than if you are properly trained. So if you can 13:58:54  
11 help in that, the victim advocate, and help the  
12 victim and also help the prosecution and ultimately  
13 the whole procedure.

14 (Mr. Coldren exits.)

15 MS. BISHOP-JENKINS: So there's training in the 13:59:08  
16 CLTF budget, training for all sorts of other  
17 professionals, but none that you're aware of for  
18 the victim advocate?

19 MS. LARSON: Right.

20 MS. BISHOP-JENKINS: Are you aware of how many 13:59:16  
21 counties even have victim advocates?

22 MS. LARSON: I'm not real positive, but I would  
23 say most, but oftentimes they're just part time.

24 MS. BISHOP-JENKINS: I'm aware of at least

1 20 percent that don't even have one and many  
2 counties that share just one.

3 MS. LARSON: Right. You know, with the  
4 Attorney General's budget being cut, you know, it  
5 went down, and that was such a shame, you know, 13:59:38  
6 because people had to cut back because of the cuts  
7 done to Madigan's budget.

8 The victims -- you know, a lot has changed  
9 since I started over almost 25 years ago, hitting  
10 the road and changing the laws and, you know, doing 14:00:02  
11 talks and that and trying to get the public on the  
12 needed issues; but the victim advocate also must  
13 understand that that victim has rights, too. It's  
14 constitutional, even though we'd like to strengthen  
15 that, but oftentimes the victim advocate doesn't 14:00:26  
16 even tell the victim about their rights or what  
17 they can do; and, if nothing else, the victim  
18 advocate can -- you know, I've had cases where the  
19 victim was just totally ticked off at the State's  
20 Attorney. Well, if I just sit there and explain 14:00:44  
21 what happened, that's all it takes, and they aren't  
22 called. As a victim advocate, that isn't hard at  
23 all because they trust you, too.

24 So I really do believe it's a lot of

1 intensive training just to make it easier for the  
2 victims and truly give a fair trial for all  
3 involved.

4 MS. BISHOP-JENKINS: Thank you.

5 MR. SCHWIND: Ma'am, please take this in the 14:01:16  
6 way that it's given to you. I have met too many  
7 people in my career like yourself, victims, but I  
8 am thankful for your sincere and heartfelt  
9 comments. Thank you very much for coming here  
10 today and sharing them with us. 14:01:30

11 MS. LARSON: Thank you.

12 MODERATOR SULLIVAN: Have you read the part of  
13 the Governor's Commission report dealing with the  
14 victim rights?

15 MS. LARSON: No, I have not. 14:01:40

16 MODERATOR SULLIVAN: There's a special section  
17 -- because we weren't directed to deal with  
18 victims, but because of people like Jennifer here  
19 and others who came before us to talk about  
20 victims' rights, and we did interview the families 14:01:54  
21 of many of the people that were the ones that had  
22 been slain, we did make a special report.

23 So it's not directly relevant to the work  
24 of this committee, but I have a feeling that when

1 we file our final report next year, our fifth  
2 report, we will include the section on victims'  
3 rights and the kinds of things you were talking  
4 about.

5 MS. LARSON: Thank you. I apologize. Health 14:02:24  
6 issues have kind of kept me out of the mainstream  
7 here for a number of really years and I'm back. I  
8 had a wonderful doctor. And I was telling  
9 Jennifer, I think a lot of people was hoping that I  
10 had died in the meantime, but, no, I'm back and I 14:02:44  
11 will continue to fight.

12 MODERATOR SULLIVAN: We're glad to have you  
13 back. Thank you.

14 The last two witnesses just signed in. We  
15 got two people from the Oak Park Friends Meeting. 14:03:08  
16 Patricia McMillen and Judith Harris. We got two  
17 speakers or one?

18 MS. McMILLEN: We have two.

19 MODERATOR SULLIVAN: I just want to say that at  
20 2:15 I have to get up and go and leave. I'll leave 14:03:40  
21 it to Mr. Schwind. Thank you. Please proceed.  
22 What's your name, ma'am?

23 MS. ERICKSON: I'm Judith Erickson,  
24 E-r-i-c-k-s-o-n.



1 MODERATOR SULLIVAN: Your organization?

2 MS. ERICKSON: I'm a member of Oak Park Friends  
3 Meeting, but I'm really here as an individual  
4 citizen.

5 MODERATOR SULLIVAN: Would you spell your name 14:04:04  
6 for the court reporter, please?

7 MS. ERICKSON: J-u-d-i-t-h, E-r-i-c-k-s-o-n. I  
8 have a few copies of my testimony here.

9 MODERATOR SULLIVAN: Good.

10 MS. ERICKSON: I have been a citizen of Oak 14:04:20  
11 Park, Illinois, since 1990 and have been

12 increasingly interested in criminal justice issues  
13 since becoming a member of the Religious Society of  
14 Friends, Quakers, in the 1990s.

15 As a result of this interest, I went 14:04:36  
16 through a 40-hour training program at Sarah's Inn,

17 a domestic violence program, as part of their  
18 faith-based outreach program to educate more  
19 community members about domestic violence and the

20 services Sarah's Inn provides. Within the past 14:04:52  
21 couple of years, I have had the sad opportunity to

22 learn more about these issues because a couple I  
23 have known for over ten years were involved in the  
24 terrible incident of domestic violence.

233

1           Because I am opposed to capital punishment  
2 and was interested in seeing how it is applied, I,  
3 along with Patricia McMillen, who is also providing  
4 her own testimony, attended several sentencing  
5 hearings of Rodney Adkins. These hearings resulted 14:05:26  
6 in the death penalty for Mr. Adkins. I heard about  
7 the horrific murder of the unfortunate victim who  
8 came home from jogging to find Mr. Adkins  
9 burglarizing her apartment. I heard that although  
10 he had been in trouble many times for various 14:05:44  
11 crimes, he had never been convicted of a violent  
12 crime.

13           There were witnesses who reported that he  
14 had tried to turn away from the life of crime, but  
15 I can see how difficult that can be. There are 14:05:56  
16 huge hurdles for getting a job and leading a lawful  
17 life after out of getting of prison which I learned  
18 a bit of from my friend who spent a year in jail  
19 and in prison. This friend, who is white, did not  
20 have any great deal of conviction when he pled 14:06:14  
21 guilty to aggravated battery. His act was  
22 premeditated and heinous. He nearly killed his  
23 former partner.

24           I attended the sentencing. The judge was

1 visibly shocked and disturbed when she learned the  
2 details of the crime, but there was a plea bargain  
3 arrangement, and she reluctantly went along with  
4 it. His sentence was for three years, but he  
5 actually got out on probation after six months. 14:06:42

6 Mr. Adkins is African-American. His  
7 victim was white. I would like to think that race  
8 did not have anything to do with the sentence he  
9 received. However, that same week, a sentence was  
10 given in a murder-for-hire scheme. The offender 14:07:02  
11 was white and he was given a life sentence. The  
12 man I mentioned earlier planned his attack. A  
13 murder for hire is by definition premeditated. The  
14 murder Mr. Adkins committed seemed unpremeditated.

15 It seems to me that premeditation should 14:07:22  
16 have a lot of weight in sentencing. It disturbs me  
17 that the African-American was given the heaviest  
18 sentence although his crime was not premeditated.  
19 I remember how I felt when the judge in the Adkins  
20 case declared his sentence. I was surprised that 14:07:40  
21 he announced it so quickly and to everyone without  
22 speaking. It seemed to me that the judge must have  
23 already made up his mind about it because he did  
24 not take time to consider all that was said.

1           Only a few moments passed between the end  
2 of the lawyers' arguments and the deliverance of  
3 the sentence. I thought it was unfortunate that  
4 the judge didn't take more time to think about all  
5 that had been said. I also remember that the judge 14:08:10  
6 did little to explain why he gave the death penalty  
7 rather than life in prison.

8           As a citizen, I wanted to hear him explain  
9 why he chose the death penalty, what guidelines he  
10 used, what precedence he could point to, but that 14:08:26  
11 did not happen. So it had the appearance of being  
12 arbitrary, especially when compared with the other  
13 murder-for-hire sentence.

14           There seems to be no accountability as to  
15 when the death penalty is applied and when it is 14:08:42  
16 not. If there are no clear guidelines, how can we  
17 expect judges to make such decisions? Do we really  
18 want to let them decide and not expect an  
19 explanation? How would you feel if the offender or  
20 victim were someone you cared about? And I know 14:09:02  
21 that has happened tragically to at least one of  
22 you. Would you be okay with whatever decision the  
23 judge came up with?

24           His decision seemed arbitrary to a random

1 citizen like me. I don't know how the Capital  
2 Punishment Reform Study Committee can support the  
3 current system.

4 MODERATOR SULLIVAN: Which case were you  
5 talking about? Adkins, was it? 14:09:28

6 MS. ERICKSON: Adkins. Yes.

7 MODERATOR SULLIVAN: The Adkins case? What  
8 judge gave that sentence?

9 MS. McMILLEN: Thomas Tucker. You talked about  
10 that earlier. That was the only death sentence in 14:09:38  
11 Cook County in 2007.

12 MODERATOR SULLIVAN: Thank you very much.

13 MR. SCHWIND: That was out in Maybrook.

14 MS. McMILLEN: Maywood.

15 MR. SCHWIND: Maybrook Courthouse. 14:09:50

16 MODERATOR SULLIVAN: Walt?

17 MR. TAYLOR: I have no questions, ma'am.

18 MR. INGEMUNSON: No questions.

19 MS. BIENEN: Thank you.

20 MR. HOWARD: Thank you. No questions. 14:10:02

21 MS. BISHOP-JENKINS: Thank you. I just wanted  
22 to, you know, commend conscientious citizens who  
23 have no other connection to this issue caring so  
24 much to give time to go and observe these trials

1 and to make such an impression about the important  
2 issues at stake for the public.

3 MS. ERICKSON: It did make a big impression on  
4 me. And thank you for giving me the opportunity to  
5 express. 14:10:26

6 MR. SCHWIND: I have nothing. Thank you,  
7 ma'am. I appreciate it.

8 MODERATOR SULLIVAN: Thank you very much.

9 The last witness is Patricia McMillen.  
10 Spell your name, please, Patricia for the court 14:10:48  
11 reporter.

12 MS. McMILLEN: P-a-t-r-i-c-i-a,  
13 M-c-M-i-l-l-e-n.

14 MODERATOR SULLIVAN: Are you here on behalf of  
15 an organization? 14:11:02

16 MS. McMILLEN: I wrote myself in as being with  
17 the Oak Park Friends Meeting. I'm actually more on  
18 my own behalf, but also I wanted to express the  
19 interest of a movement in which I'm a founding  
20 member, the Abolition in Illinois Movement, in 14:11:22  
21 these hearings. Our president, Steve Richards, was  
22 not able to be here today.

23 MODERATOR SULLIVAN: What's the name of the  
24 organization?

1 MS. McMILLEN: It's called Abolition in  
2 Illinois Movement, and I have my business card and  
3 the Web site information with me.

4 MODERATOR SULLIVAN: Abolition in Illinois  
5 Movement. And Steve is? 14:11:42

6 MS. McMILLEN: He's the president.

7 MODERATOR SULLIVAN: Patricia, I do not mean to  
8 be impolite, but if I don't catch the 2:35, I may  
9 be in court myself on the wrong side.

10 MS. McMILLEN: I understand. I'm happy to just 14:12:06  
11 file my written testimony.

12 MODERATOR SULLIVAN: No, no, please proceed and  
13 give your whole testimony. Mr. Rich Schwind, my  
14 dear friend, will take over. Do you think you're  
15 up to this? 14:12:22

16 MR. SCHWIND: I will do my best.

17 MS. McMILLEN: I will give it to you and you  
18 can read it on the train.

19 MODERATOR SULLIVAN: And I will distribute  
20 these to all the members of the committee because 14:12:34  
21 not everyone could be here.

22 MS. McMILLEN: Thank you for the opportunity to  
23 testify today regarding the reforms. I'm a writer,  
24 activist and Illinois taxpayer. I was admitted to

1 the Illinois bar in 1983, but I am now on inactive  
2 status. For the 20 years I did practice law in  
3 Illinois. I was the third generation of my family  
4 to do so: My father, the late Thomas R. McMillen,  
5 left a civil practice in Chicago to sit on the 14:12:58  
6 Circuit Court of Cook County and later moved to the  
7 United States District Court for the Northern  
8 District of Illinois.

9           There he heard, among other cases, the  
10 1981 criminal trial which resulted in lengthy 14:13:08  
11 sentences for several members of the Puerto Rican  
12 Armed Forces for National Liberation, or FALN.

13           MODERATOR SULLIVAN: I tried cases in front of  
14 your father. He acquitted one of my clients. I  
15 remember that. 14:13:24

16           MS. McMILLEN: I hope you won't hold it against  
17 me.

18           MS. BIENEN: No, it's a plus.

19           MS. McMILLEN: My grandfather practiced law in  
20 Decatur, Illinois, and left that practice to sit on 14:13:32  
21 the U.S. -- to serve one and a half terms in the  
22 U.S. House of Representatives.

23           As for me, my relevant practice has  
24 included a summer clerkship during law school with



1 the U.S. Attorney's Office for the Southern  
2 District of New York Criminal Division, and, later,  
3 representation of incarcerated parents as a  
4 volunteer attorney with Chicago Legal Advocacy for  
5 Incarcerated Mothers. 14:13:54

6 Prior to law school, in the mid 1970s, I  
7 was also empanelled as a juror for a Cook County  
8 death penalty case, though, due to a Speedy Trial  
9 Act violation, the charges were dropped and the  
10 Jury dismissed without our hearing any evidence. 14:14:08

11 I cite these credentials not to boast but  
12 because I want you to know that I am dedicated,  
13 both as a matter of choice and as a family  
14 tradition, to the rule of law in Illinois. It is,  
15 moreover, my studied opinion that neither the 2002 14:14:20  
16 reforms to the Illinois death penalty nor the  
17 Illinois death penalty as so reformed serve the  
18 best interests of our citizens in preventing and  
19 redressing criminal violations in our state and  
20 that, in fact, the inequities of the Illinois death 14:14:34  
21 penalty as well as its expense are impediments to  
22 effective administration of Illinois criminal law.

23 (Moderator Sullivan exits.)

24 MS. McMILLEN: In 2007, I attended more than

1 half the days of the Maywood, Illinois, trial of  
2 Rodney Adkins, an African-American male who was  
3 eventually sentenced to death for the felony murder  
4 of Catherine McAvinchey, a white female. I  
5 attended this trial as a court-watcher, initially 14:14:58  
6 at the request of a member of the West Suburban  
7 Committee Against the Death Penalty, but later on  
8 my own initiative. For the sentencing phase of the  
9 trial, I also brought Judith Erickson who just  
10 testified. 14:15:12

11 My experience in Maywood demonstrated to  
12 me that the reforms now in place in Illinois,  
13 laudable as they are, did not prevent a miscarriage  
14 of justice in that case and will not do so in  
15 future cases; that, rather, the Illinois death 14:15:30  
16 penalty is an obsolete and broken-beyond-repair  
17 sentence which offers wildly inconsistent and,  
18 therefore, no redress on behalf of the people of  
19 the State of Illinois for any crime whatsoever.

20 My experience watching the Adkins trial 14:15:40  
21 indicated, first, that despite technical  
22 improvements, the Illinois death penalty still  
23 takes place in a racially charged context which  
24 contributes to a perception, if not reality, of

1 unfairness. As previously stated, the Adkins case  
2 involved one white female victim who is a retail  
3 store manager, who had the misfortune of surprising  
4 Adkins, a large, dark-skinned black man, during the  
5 course of his burglary of her Oak Park apartment. 14:16:06

6 Adkins' videotaped confession provided  
7 convincing evidence both of guilt and of excellent  
8 professional police and attorney interrogation  
9 work; still, the lasting impression was of an  
10 unintelligent, terminally unlucky and, at least, 14:16:22  
11 somewhat contrite offender caught in the stacked  
12 deck of Northern Illinois racism.

13 Although, due to claimed space  
14 limitations, I was not permitted inside the  
15 courtroom during voir dire, I was able to observe 14:16:34  
16 the juror panels which entered the courtroom for  
17 interviewing. They were overwhelmingly white. The  
18 resulting jury included, at most, one black juror;  
19 most of the rest appeared white or light-skinned  
20 Hispanic. All of the rest, I should have said. 14:16:46

21 The racial imbalance in the rest of the  
22 courtroom was equally hard to ignore: White judge,  
23 white prosecutors, and numerous white survivor  
24 family and friends, and a white advocate paid by

1 the State's Attorney, versus a black defendant, one  
2 black and two white defense counsel, and the  
3 defendant's African-American family members who sat  
4 in the visitors' gallery as well. This disparity  
5 in and of itself seemed to throw into question the 14:17:16  
6 uniformity of application which the 2002 Governor's  
7 Commission report referred to.

8 My second observation is that the Adkins  
9 outcome appeared grossly disproportionate.  
10 Although Adkins had a long rap sheet as a career 14:17:30  
11 house burglar, this was his first known violent  
12 crime. Although, moreover, the homicide was both  
13 brutal and bloody, there was neither evidence nor  
14 claim of torture; hence, none of the five  
15 eligibility factors recommended by the 2002 14:17:44  
16 Governor's Commission was present.

17 The testimony also indicated that, in  
18 previous incarcerations, Adkins had maintained a  
19 clean prison record and had even earned a  
20 bachelor's license and become a barber and role 14:17:56  
21 model for younger prisoners while behind bars. The  
22 fact that the state is willing to throw away the  
23 life of this individual without so much as a second  
24 thought shocks me deeply.

1           Finally, although I cannot testify as to  
2 the quality of representation of the defendant, it  
3 did appear that Adkins, a heroin and alcohol addict  
4 with limited education, was either unable or  
5 unwilling to cooperate with his defense counsel,       14:18:22  
6 whose advice he appeared to ignore throughout the  
7 trial especially in giving a pre-sentencing  
8 statement which expressed anger and resentment and  
9 no remorse.

10           A recent study, available on line on the       14:18:34  
11 Web site of the Abolition in Illinois Movement,  
12 www.aimillinois.org, has shown that a shocking  
13 amount of money is being allocated and spent to  
14 bring and defend capital cases like the Adkins  
15 trial which, while momentarily spectacular and       14:18:52  
16 perhaps of some immediate satisfaction and/or  
17 career advantage to some prosecutors and judges,  
18 seemed to be doing little to stem the incidence of  
19 violent crimes in this state, let alone comfort the  
20 surviving family members of violent crime victims.   14:19:10

21           It seems, rather, that the money thus  
22 expended would be better used to improve prison  
23 conditions, offer better rehabilitation and  
24 anti-recidivism programs and opportunities both to

1 life- and to shorter-term prisoners, and improve  
2 programs to protect and support law-abiding  
3 citizens of our state, including courtroom  
4 personnel like my late father, victims and  
5 survivors of violent crime and their families. 14:19:32

6 I have attached to my written testimony a  
7 copy of an article I wrote for Oak Park's Wednesday  
8 Journal weekly newspaper which was published a few  
9 days after the Adkins sentenced was handed down.  
10 As my article elaborates entitled Rodney Adkins 14:19:48  
11 Sentencing, An American Tragedy, I would have  
12 preferred that Rodney Adkins receive a life  
13 sentence without possibility of a parole. I remain  
14 hopeful that the Illinois Supreme Court will so  
15 rule on his appeal. 14:20:02

16 Thank you for your attention and for your  
17 service to the State of Illinois.

18 MR. SCHWIND: Thank you, Patricia. Walter, do  
19 you have any questions?

20 MR. TAYLOR: No questions, ma'am. Thank you. 14:20:12

21 MR. INGEMUNSON: No questions.

22 MS. BIENEN: Thank you, again, and thank you  
23 for being a court observer, a very important  
24 function.

1 MR. HOWARD: Thank you. No questions.

2 MS. BISHOP-JENKINS: Thank you, Patty. I just  
3 want -- I did want to ask one question about -- and  
4 thank you for especially reminding us of the fact  
5 that even after the reforms, even though guilt or 14:20:30  
6 innocence might not be the issue, there are many  
7 other issues in terms of proportionality that are  
8 still at stake with these cases.

9 Are you aware of any other outstanding  
10 cases besides the Adkins one of the current death 14:20:44  
11 row inmates that have been convicted since  
12 Governor Ryan cleared off death row, are you aware  
13 of any others that raised extraordinary issues like  
14 I think the Adkins case as this clearly does? Is  
15 that the one that you think is the most egregious 14:21:00  
16 of the cases in terms of whether that death  
17 sentence was appropriate in that case?

18 MS. McMILLEN: The reason that I went into such  
19 detail is that that was my first experience of  
20 sitting through most of a death row trial. 14:21:14

21 I am aware of the more recent conviction  
22 which was discussed earlier with Ms. Ryan, the Damm  
23 case, which was defended by Steve Richards who is  
24 the president of the Abolition in Illinois Movement

1 along with others; and my understanding was that  
2 there was no jury instruction on lesser sentences  
3 which seemed pretty egregious.

4           You know, the overall system seems to  
5 still have major issues in, for example, the           14:21:58  
6 statistics that are available for the tendency of  
7 death qualified jurors to convict are pretty  
8 convincing. It indicates that if you are willing  
9 to be death qualified, and I was in my early 20s --  
10 and I will tell you when that Speedy Trial Act           14:22:22  
11 violation came in, I was convinced the guy was  
12 guilty. There was just no question in my mind. It  
13 didn't take any evidence at all. As soon as I  
14 heard that the key witness had gone missing at the  
15 last minute, you know, I knew it.           14:22:38

16           And I think that -- but I do think there  
17 is statistical evidence that death qualified jurors  
18 tend to commit. So I'm sure they're out there.  
19 It's just, Jennifer, that I don't agree with all  
20 the cases that are out there.           14:22:56

21           MS. BISHOP-JENKINS: I thank you for calling  
22 attention to the fact that in this instance it's  
23 not the only issue. Thank you.

24           MR. SCHWIND: Patricia, I just want to clear



1 something up on the Damm case. As you know, if you  
2 were here, I was the prosecutor on that case. The  
3 reason there was no Jury instruction given to the  
4 Jury is because we followed the law. And the only  
5 time the Jury is instructed at the sentencing phase 14:23:16  
6 of a death penalty case is if natural life is the  
7 only other sentence. It's either death or natural  
8 life. This was not the case in Mr. Damm's  
9 situation. Okay?

10 MS. McMILLEN: Given that the charge of the 14:23:32  
11 committee is to reform the law, maybe -- you know  
12 what I'm trying to say is that maybe that  
13 particular aspect of Illinois law could be looked  
14 at.

15 MR. SCHWIND: Well, the defense decided to 14:23:42  
16 argue that any prison sentence, and they did argue  
17 to the Jury, that any prison sentence based on  
18 Mr. Damm's age at the time, 59, would be a life  
19 sentence, that he would die in prison. So the Jury  
20 was informed by the defense, not by the state, but 14:23:58  
21 by the defense.

22 MS. McMILLEN: So you think it was inadequate  
23 representation in order to have an appeal?

24 MR. SCHWIND: I'm sorry?

1 MS. McMILLEN: You think you ought to have an  
2 appeal for inadequate representation?

3 MR. SCHWIND: I'm just telling you what the  
4 Jury -- I thought Mr. Richards did a good job as  
5 well as his two other attorneys that were with him, 14:24:14  
6 the two other qualified lawyers, Mr. Lyons and  
7 Mr. Sincox.

8 MS. McMILLEN: Well, I don't think it was just  
9 a factor. I mean, we are in agreement that the  
10 factor that kept the Jury from possibly considering 14:24:26  
11 a sentence of life without parole was not -- was a  
12 detail of Illinois law which could be looked at and  
13 you could -- this committee could suggest a reform.

14 MR. SCHWIND: Well, I'm just telling you that  
15 the law was followed and I think it was followed 14:24:48  
16 correctly.

17 MS. McMILLEN: You know, I guess the only thing  
18 I would add, since I'm at the microphone, is that  
19 to go back to Mr. Sullivan's citation of Number 83  
20 of the reforms, of the suggested reforms, I think 14:25:02  
21 we're looking at the broader issue of Illinois  
22 prosecution. We're not just looking at death  
23 eligible cases. We're not just looking at capital  
24 cases. We're looking at the treatment of victims

250

1 and the treatment of prisoners in all cases  
2 involving violent crime. And I think we have to  
3 look at the sentencing scheme as a whole in doing  
4 that. So I thank you again for your services.

5 MR. SCHWIND: Thank you very much, Patricia. 14:25:32

6 Is there anybody else that would like to give  
7 testimony to the committee before we adjourn?

8 Hearing no response, I would entertain a  
9 motion to adjourn the committee.

10 MS. BISHOP-JENKINS: So moved. 14:25:44

11 MS. BIENEN: Second.

12 MR. SCHWIND: All in favor?

13 (Ayes in unison.)

14 MR. SCHWIND: None opposed.

15 I would like, for the record reflect, to 14:25:48

16 thank our court reporter, Anna, for hanging in  
17 there.

18 (Whereupon, the meeting  
19 adjourned at 2:26 o'clock p.m.)

20

21

22

23

24

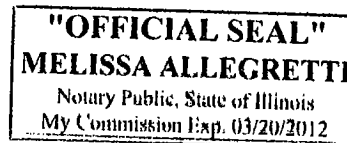
1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF C O O K )  
4

5 ANNA M. MORALES, being first duly sworn,  
6 On oath says that she is a court reporter doing  
7 business in the City of Chicago; and that she  
8 reported in shorthand the proceedings of said  
9 meeting, and that the foregoing is a true and  
10 correct transcript of her shorthand notes so taken  
11 as aforesaid, and contains the proceedings given at  
12 said meeting.



13  
14 Anna M. Morales  
15 Certified Shorthand Reporter  
16

17 SUBSCRIBED AND SWORN TO  
18 before me this 11 day  
19 of February 2009.



20  
21  
22 Melissa Allegretti  
23 Notary Public  
24

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12:33:16	12:45:04	12:59:40	196:15	206:20	217:5
168:15	178:20	189:5	13:12:20	13:26:40	13:40:20
12:33:28	12:45:32	120	196:20	207:5	217:10
168:20	179:5	7:11 19:15	13:12:54	13:26:54	13:40:42
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12:35:24	12:47:52	163:23 164:1	198:10	208:15	218:20
170:10	180:15	121	13:14:54	13:28:40	13:43:44
12:35:42	12:48:06	19:13	198:15	208:20	219:5
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12:36:38	12:48:58	173:1	199:10	209:15	219:20
171:10	181:15	13:00:16	13:16:16	13:29:58	13:45:04
12:36:58	12:49:18	189:10	199:15	209:20	220:5
171:15	181:20	13:00:52	13:16:30	13:30:28	13:45:30
12:37:18	12:49:54	189:15	199:20	210:5	220:10
171:20	182:5	13:01:06	13:17:02	13:30:42	13:45:44
12:37:42	12:50:12	189:20	200:5	210:10	220:15
172:5	182:10	13:02:06	13:17:20	13:30:56	13:46:06
12:37:54	12:50:34	190:5	200:10	210:15	220:20
172:10	182:15	13:02:36	13:17:40	13:31:12	13:46:46

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13:52:04	14:05:26	14:17:30	18-year-old	202:21	5
224:15	234:5	244:10	189:22	2003-2008	75:11 147:4
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224:20	234:10	244:15	133:21,23	2004	108:3 145:20
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13:54:54	14:07:40	14:19:32	1974	237:11	60
226:10	235:20	246:5	181:23	241:24	117:17
13:55:06	14:08:10	14:19:48	1976	2008	61
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13:56:48	14:09:38	14:21:00	1983	21st	75:11
227:20	237:10	247:15	181:24 240:1	83:11	8th
13:57:20	14:09:50	14:21:14	1985	22	200:9
228:5	237:15	247:20	21:12 96:4	6:10 189:12	8.4
13:57:34	14:10:02	14:21:58	1990	190:5 192:7	82:13
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228:20	238:10	248:15	213:7	25	219:20 250:19
13:58:42	14:11:02	14:22:56	1996	45:1 119:19	84
229:5	238:15	248:20	55:2	156:20 157:2	100:6,14
13:58:54	14:11:22	14:23:16	1999	220:24 230:9	85
229:10	238:20	249:5	53:23		96:5 192:1
13:59:08	14:11:42	14:23:32			197:4
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13:59:16	14:12:06	14:23:42	2nd	3-4	9
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185:9	239:20	250:5	141:23	145:2	
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## **EXHIBITS**

## **Testimony of Professor Daniel T. Coyne, President of the Chicago Council of Lawyers**

January 26, 2009



I am Professor Daniel T. Coyne. I am both President of the Chicago Council of Lawyers and the Associate Clinical Professor of Law at Chicago Kent College of Law. It is the position of the Council that the death penalty system as administered in Illinois is hopelessly flawed. We come to this conclusion after exhaustive research into why this system has failed to provide the essential safeguards designed to prevent wrongful imposition of the death penalty.

During the past dozen years, the Chicago Council of Lawyers has examined Illinois' capital punishment system, issued proposals to reform that system and monitored developments in capital punishment in Illinois and the United States. After it became known that several innocent men had been sentenced to Illinois' death row, the Council in 1997 called on all three branches of Illinois government to impose a moratorium on executions and to appoint commissions to recommend reforms.

In 2000, the Council and the Chicago Appleseed Fund for Justice issued a 56-page report entitled *Due Process and the Death Penalty in Illinois* that analyzed death penalty cases, discussed why the system was failing to provide due process of law, and made dozens of recommendations aimed at improving both trial and post-conviction procedures in capital cases. In the same year, then-Gov. George H. Ryan imposed a moratorium on executions and established a Commission on Capital Punishment, which ultimately made 85 recommendations.

After looking at both our research and the work of others, it is the view of both the Council and Chicago Appleseed that full implementation of essential safeguards designed to prevent wrongful imposition of the irrevocable sentence of death is more than an aspiration. It is a necessity.

Unfortunately, the Illinois General Assembly has turned a blind eye toward this necessity. There have been implemented a few reforms, but most recommendations have gone unheeded. In 2003, Ryan commuted the death sentences of all 167 inmates on Illinois' death row, noting that the legislature had failed to act on his commission's recommendations.

In December of 2007, in an effort to stimulate reform, the Board of Governors of the Chicago Council of Lawyers voted to support the abolition of the death penalty in Illinois if the Illinois General Assembly did not take aggressive action to immediately implement all of the recommendations found in the governor's and the Council's reports.

In the last 12 months, there has been no discernible effort made by the General Assembly to implement any additional reform regarding the death penalty. The vast majority of recommended reforms have not been implemented and death penalty prosecutions continue to place an economic burden on the State budget.

We are spending millions of tax dollars pursuing criminal prosecutions through a system that does not work. We both squander needed dollars and put human life at risk. While the Council and Chicago Appleseed have recommended changes to the death penalty system in the past and have given the Illinois legislature time to act, we now conclude that this persistent and deliberate indifference to a crisis in the administration of justice in Illinois is intolerable. Accordingly, the Council urges the immediate elimination of the death penalty in Illinois.

**DUE PROCESS  
AND THE DEATH PENALTY  
IN ILLINOIS**

A Report by

**THE CHICAGO COUNCIL OF LAWYERS**

with the assistance of

**THE CHICAGO APPLESEED FUND FOR JUSTICE**

March, 2000

## I. INTRODUCTION

Two and one-half years ago, in the wake of disclosures that nine innocent men had been wrongly convicted and sentenced to death in Illinois, the Chicago Council of Lawyers and its sister organization, the Chicago Appleseed Fund For Justice initiated a major campaign seeking a moratorium on imposition of the death penalty until the system could be fixed.

In the intervening time, four more persons have been released from Death Row. This means that Illinois actually has exonerated more persons than it has executed since capital punishment was reinstated in 1977. During that time, 13 persons have been exonerated<sup>1</sup> and 12 have been executed.

The Council and Chicago Appleseed in 1997 urged Governor Jim Edgar, the Illinois General Assembly and the Illinois Supreme Court to call a halt to executions. When George Ryan became Governor in 1999, the Council and Chicago Appleseed renewed their request. Last month, Governor Ryan agreed to declare a moratorium and to establish a commission to study the system.

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<sup>1</sup> Perry Cobb, Darby Tillis, Joseph Burrows, Rolando Cruz, Alejandro Hernandez, Verneal Jimerson, Dennis Williams, Gary Gauger, Carl Lawson, Anthony Porter, Steven Smith, Ronald Jones and Steven Manning.

In the meantime, with the assistance of Chicago Appleseed, the Council over the past eight months has been conducting its own study<sup>2</sup>, the results of which are contained in this report. The report will be submitted to the Governor's Commission, as well as to study committees appointed by the Illinois Supreme Court and the Illinois House of Representatives.

The fact that 13 persons in 13 years have been freed from Death Row because of wrongful convictions suggests that the state's capital punishment system is seriously flawed. While no criminal justice system is perfect, it is intolerable that a system involving the taking of life by the State is so unreliable. Moreover, serious questions about the guilt of a number of those remaining on Death Row have been raised by their attorneys.

Early in 1997, the American Bar Association issued a report sharply critical of the administration of the death penalty system nationwide and called for a moratorium on executions until each state and the federal government could study and reform it. The Council soon thereafter became the first local or state bar association in the country to call for a moratorium. The Council and Chicago Appleseed drafted legislation for a moratorium which was introduced in the Illinois General Assembly<sup>3</sup>; led a coalition of

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<sup>2</sup> The study was conducted under the supervision of the Council's Committee on the Death Penalty (Ed McManus, chair). Assisting in the study were Kate Merrill of Skadden, Arps, Slate, Meagher and Flom, Council intern Elissa Germaine, and Chicago Appleseed's Harvey J. Badesch Fellow, Kristina Smith. The report was written by Ms. Smith and Mr. McManus.

<sup>3</sup> House Bill 2291, 90<sup>th</sup> General Assembly, by Rep. Schakowsky et al.

organizations and individuals in filing an *amicus curiae* brief with the Illinois Supreme Court calling for a moratorium<sup>4</sup>; and petitioned Governor Edgar to stop executions.

Other organizations pressed the issue with government officials as well.

Northwestern University School of Law sponsored a widely publicized Conference on Wrongful Convictions and the Death Penalty in November, 1998. The Illinois Death Penalty Moratorium Project persuaded the House of Representatives to pass a resolution in April, 1999, urging the Governor to declare a moratorium and establishing a study commission. The *Chicago Tribune* ran a series of articles in November, 1999, that were very critical of the system.

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<sup>4</sup> Brief submitted in *People v. Kliner*, July, 1997.

One member of the Illinois Supreme Court, Justice Moses Harrison, announced his opposition to the system in November, 1998, calling it Aprofoundly unjust.<sup>5</sup>

A committee of 17 judges was appointed in April, 1999, by the Supreme Court to study the system, and the committee issued a report on November 23, 1999, recommending several amendments to the Court's rules aimed at improving the system.<sup>6</sup> The Council views that report as an excellent document. While we do not necessarily endorse all of the committee's recommendations and we go further than the committee in proposing various reforms, we believe their report represents a very important step toward improving the system, and we urge the Illinois Supreme Court and the Illinois General Assembly to give it serious consideration.

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<sup>5</sup> *People v. Bull*, 185 Ill.2d 175 at 228, 705 N.E.2d 824 at 848 (Ill. 1998) (Harrison, J., concurring in part and dissenting in part).

<sup>6</sup> *Findings and Recommendations of the Special Supreme Court Committee on Capital Cases* (1999).



The Council, with the assistance of Chicago Appleseed, began its own study of the Illinois death penalty system in June, 1999. The primary focus of the study was a review of published case law of all inmates under death sentence.<sup>7</sup> To our knowledge, this is the first time an Illinois bar association has conducted such a review. The purpose of the case reviews was to identify patterns in the arrest and prosecution of the inmates, in an effort to draw conclusions as to how the system could be reformed. The study also consisted of a review of case law of the 13 persons exonerated; a review of literature on capital punishment issues; and personal interviews with numerous attorneys. Based on the study findings, the Council is making several recommendations.

What we discovered in preparing this report was that capital prosecutions were prone to the common sorts of errors, shoddiness and outright misconduct found in even the most ordinary criminal cases. These flaws may be found in all corners of the justice system: state's attorneys, defense counsel, the police, juries and judiciary. Sometimes, as we shall see, these flaws result in reversible error; sometimes, they are deemed harmless or are waived. But irrespective of the ultimate outcome of the conviction, a close reading of this case law defies the common expectation that extra care is taken in capital cases,

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<sup>7</sup> As of June 30, 1999, there were 159 inmates on Death Row (64 at Menard, 92 at Pontiac, 3 at Tamms and 3 females at Dwight), according to the Illinois Department of Corrections. Published case law was not available for 17 inmates.

betrays recurrent violations of the Adeath is different<sup>@</sup> standard of due process laid down by the U.S. Supreme Court,<sup>8</sup> and shakes confidence in the convictions.

Although the Council makes recommendations for improvements in the capital punishment system, the limited purpose of these suggestions must be made clear. *The Council in no way endorses the continued application of the death penalty in Illinois.* Members of the Council differ on whether Illinois ought to abolish the death penalty or retain it, and that dialogue will continue with the publication of this report. The Council also refrained in this Report from commenting on other major issues of fairness in the system, raised by the American Bar Association, which do not specifically concern the due process afforded capital defendants. The project was confined to a study and recommendations concerning why Illinois has sentenced at least 13 innocent persons to death. No set of recommendations, though, can warranty perfection in the criminal justice system or stem deliberate misconduct.

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<sup>8</sup>Gardner v. Florida, 430 U.S. 349, 357-58 (1977) (citations omitted): A[D]eath is a different kind of punishment from any other which may be imposed in this country. From the point of view of the defendant, it is different in both its severity and its finality. From the point of view of society, the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action. It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.<sup>@</sup>

It should also be noted that while our recommendations for reform are aimed at the capital punishment system, in some cases they may well apply to the criminal justice system as a whole. For example, effective assistance of counsel is vital for all criminal defendants; in urging special concern for capital defendants because their lives are at stake, we are not disregarding the importance of this issue to non-capital defendants.

The report is divided into five areas of study, relating to the major players in the system: the prosecution, the defense, the police, the jury and the courts.

## II. THE PROSECUTION

### A. Prosecutorial Misconduct

There are many fine prosecuting attorneys in Illinois dedicated to a vigorous effort to put criminals behind bars while respecting their constitutional rights. But there are also prosecutors who engage in misconduct in their determination to win a conviction and, in capital cases, a death sentence. A recent, notorious case was *People v. Murray Blue*,<sup>9</sup> where the prosecutors introduced a bloody and brain-splattered police uniform at trial (ostensibly to corroborate the location of the victim's wounds), used narrative objections to prejudice the jury and exhorted the jurors in closing to let the dead officer's family "hear" from the jury. Despite the Supreme Court's statement that the record evidence was sufficient to convict the defendant, such overt misconduct violated the defendant's right to a fair trial and rendered the conviction invalid.<sup>10</sup>

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<sup>9</sup>2000 WL 70206 (Jan. 27, 2000).

<sup>10</sup>See also *People v. Woolley*, 178 Ill. 2d 175, 687 N.E.2d 979 (1997) (death sentence vacated where prosecutor invited testimony by police officer that defendant's prior crimes "could have been" charged as felonies, and then argued to jury in closing that it should treat the prior crimes as if they were felonies).

Prosecutorial misconduct is seldom so easy to uncover and to remedy. It may include introducing deliberately misleading testimony<sup>11</sup> or withholding evidence from the defense. A prosecutor's well-intentioned desire to clean up the streets -- fueled by high-profile cases, the public's demand for a tough stand against crime and the lack of consequences for his or her actions -- can eventually become overreaching.<sup>12</sup> One form of misconduct is the failure to disclose exculpatory or mitigating evidence, known as *Brady* material,<sup>13</sup> to the defense.<sup>14</sup>

Appellate courts do not always reverse convictions even where the misconduct of the prosecutor is demonstrated on the record. The Supreme Court may, and often does, hold that the misconduct was harmless error.<sup>15</sup> In instances where convictions are reversed on this basis, it is rare for prosecutors to receive any sort of punishment for their conduct, despite the fact that it may violate the Illinois Rules of Professional Conduct.<sup>15</sup>

The most publicized case of alleged prosecutorial misconduct in recent Illinois history involved Rolando Cruz and Alejandro Hernandez, who were ultimately exonerated in the murder of Jeanine Nicarico after spending 10 years on Death Row. The circuit court that acquitted Cruz found that police lied about a statement supposedly made to them by Cruz, and prosecutors allegedly endorsed and perpetuated the lie.

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<sup>11</sup>People v. Olinger, 176 Ill. 2d 326, 680 N.E.2d 321 (1997) (on post-conviction petition, court orders hearing on claim that state used knowingly perjured testimony).

<sup>12</sup> Morton, *Seeking the Elusive Remedy for Prosecutorial Misconduct: Suppression, Dismissal, or Discipline?*, 7 Geo. J. Legal Ethics 1083 at 1085 (1994).

<sup>13</sup>Brady v. Maryland, 373 U.S. 83, 10 L.Ed.2d 215, 83 S.Ct. 1194 (1963).

<sup>14</sup>People v. Coleman, 183 Ill. 2d 366, 701 N.E.2d 1063 (1998) (on post-conviction petition, court orders hearing into possible *Brady* violation).

<sup>15</sup>Rule 3.8(b) states: "A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if the defendant is not represented by a lawyer, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to

Prosecutors were also found to have failed to disclose evidence suggesting Hernandez's innocence and to have concealed the fact that another man had confessed to the murder.<sup>16</sup>

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negate the guilt of the accused or mitigate the degree of the offense.®

<sup>16</sup> People v. Hernandez, 1997 U.S. Dist. LEXIS 14526. Following the defendants' release, three prosecutors and four police officers were indicted for conspiring to obstruct justice and perjury. However, a jury found all seven not guilty.

In the case of exonerated inmate Verneal Jimerson, the Illinois Supreme Court ruled that prosecutors knowingly allowed their chief witness against Jimerson and co-defendant Dennis Williams to lie, falsely denying the existence of an agreement with the state not to pursue charges against her.<sup>17</sup>

A witness against exonerated inmate Joseph Burrows testified at a post-conviction hearing that he was pressed by prosecutors to provide false evidence.<sup>18</sup>

At least thirty-two inmates currently on Death Row contend that prosecutorial misconduct was a major factor leading to their convictions.

Current inmate John Pecoraro contended that information was not disclosed to him that a clergyman had told police that another man confessed to the crime, and that the other man failed a lie detector test. Pecoraro's lawyers also said they were not told that the state's key witness, Martha Jackson, had been arrested in a separate case for allegedly hiring Pecoraro to kill her husband; that those charges were dropped; and that Jackson failed a lie detector test.<sup>19</sup>

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<sup>17</sup> People v. Jimerson, 166 Ill.2d 211, 652 N.E.2d 278 (Ill. 1995).

<sup>18</sup> People v. Burrows, 172 Ill.2d 169, 665 N.E.2d 1319 (Ill. 1996).

<sup>19</sup> People v. Pecoraro, 175 Ill.2d 294, 677 N.E.2d 875 at 881 (Ill. 1997).

Hector Sanchez contended that the prosecutor's cross-examination of him was improper and prejudicial. The Illinois Supreme Court said the cross-examination admittedly gives us pause but found the error harmless.<sup>20</sup> In a dissent, Justice Goldenhersh stated that this was the most flagrant example of improper, prejudicial cross-examination to come before the Court in the many cases involving death penalties. In a second dissent, Justice Simon said he would indelibly stamp the tactics employed here as unconstitutional. He attributed the majority's decision to a fundamental misunderstanding of the nature of sentencing hearings and how the harmless error standard is to be applied to them.

Edward Spreitzer contended that it was misconduct for the prosecutor to cross-examine him on a matter that had been excluded in a motion *in limine*. The Illinois Supreme Court found that the cross-examination did constitute misconduct but that the issue had been waived by the defense's failure to object to it at trial.<sup>21</sup>

James Tenner contended that the prosecutor made inflammatory comments to the jury, including expressing the prosecutor's personal belief that Tenner deserved the death penalty, telling the jury to act on behalf of the victims, and suggesting that the defense was concealing a witness. A federal district court, ruling on a habeas petition, ruled that these claims were barred by procedural default.<sup>22</sup>

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<sup>20</sup> *People v. Sanchez*, 115 Ill.2d 238 at 279, 503 N.E.2d 277 at 293 (Ill. 1987). The prosecutor repeatedly pressed the defendant, over objections of counsel, to describe a picture of the brutally beaten murder victim.

<sup>21</sup> *People v. Spreitzer*, 123 Ill.2d 1, 525 N.E.2d 30 (Ill. 1988). This is also an example of ineffective assistance of counsel. See section on The Defense.

<sup>22</sup> *Tenner v. Gilmore*, 1998 WL 721115 (N.D. Ill. 1998).



John Whitehead contended that the prosecutor impermissibly highlighted his failure to testify, made an issue of the defense attorney-s sincerity, misled the jury and referred to Whitehead as a Apervert.® The Illinois Supreme Court held that the claims were waived because of defense counsel-s failure to object in a timely manner.<sup>23</sup>

### **Recommendation**

Prosecutors in Illinois capital cases have told outright lies to jurors, exaggerated the criminal backgrounds of defendants, used inflammatory arguments and misstated the law. Ultimately, it is up to defense counsel to challenge these actions, and it is up to judges to put a stop to them. But one key step that could correct serious abuses would be to toughen the requirements for pre-trial discovery.

The Special Supreme Court Committee on Capital Cases has addressed this issue, and the Council conditionally endorses two of the committee-s recommendations:

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<sup>23</sup> People v. Whitehead, 116 Ill.2d 425, 508 N.E.2d 687 (Ill. 1987). Also see People v. Thomas, 951 F.Supp. 1338 (Ill. 1996) (prosecutor made racial remarks to jury; claim of misconduct barred by procedural default); People v. Ward, 154 Ill.2d 272, 609 N.E.2d 252 (Ill. 1992) (misconduct claimed but court found issue was waived for review).

(1) To require certification 14 days before trial that the prosecution has conferred with individuals involved in the investigation and trial preparation of a capital case to determine the existence of *Brady* material. The proposal establishes an affirmative duty on the part of the prosecution to ask individuals working on the case about *Brady* material in their possession or control. This duty will ensure that all available *Brady* material reaches the prosecution, and that the prosecution is aware of all the *Brady* material it must disclose to the defense.<sup>24</sup>

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<sup>24</sup> *Findings and Recommendations of the Special Supreme Court Committee on Capital Cases* (1999) at 35-36.

(2) To require the prosecution to specifically identify by description or otherwise any *Brady* material disclosed. The Committee said this requirement would help to focus the prosecution on its responsibility to determine the existence of *Brady* material and to disclose it and would ensure that the defense does not lose sight of essential evidence in what may be voluminous discovery materials.<sup>25</sup>

While the Council applauds the Committee's concern about discovery, it feels that the Committee's recommendations do not go far enough. The Council therefore recommends:

- (1) That certification be required within 60 days of arraignment, or within 90 days if good cause is shown.
- (2) That the certification be signed not only by the prosecutors on the case but also by the elected or appointed State's Attorney or Attorney General.
- (3) That the certification requirement apply not only to *Brady* material but also to *Giglio*<sup>26</sup> material (material damaging to the defense's case) and all material subject to disclosure under Illinois Supreme Court Rule 412.
- (4) That if the court finds, either at trial or at post-conviction, that the prosecution has violated discovery rules, the court would be obligated to refer the matter to the Attorney Registration and Disciplinary Commission (ARDC).

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<sup>25</sup> Id. at 36-37. This proposal is drafted in terms that would make the new requirements applicable to any felony case.

- (5) That the certification requirement be made applicable not only to prosecutors but to agents of a police department and any other investigative agency involved in a case.

The Council also recommends that Illinois Supreme Court Rule 412 be expanded to require the prosecution in murder cases C in addition to all disclosure currently required by the rule C to disclose or make available to the defense the following materials:

- (1) All documents, physical evidence and tangible things obtained in connection with the investigation which led to the filing of the charges.
- (2) Criminal histories for all persons listed in any discovery that is disclosed.
- (3) Any promises, inducements, or benefits offered to any person listed.
- (4) Identification of all instances in which any person listed has previously testified for the prosecution in a criminal case, other than persons employed by a law enforcement or governmental agency.
- (5) Any information that is material to the preparation of the defense or which may tend to exculpate the accused or impeach the credibility of any person listed.
- (6) The identities of all individuals other than the accused who have been at any point a subject of the investigation that led to the pending charges, and a fair description of the basis on which those individuals were subjects.

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<sup>26</sup> Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763 (1971).

The Council also recommends that such disclosures be made mandatory and automatic, rather than upon written motion of the defense as in the present rule, unless the prosecution obtains a protective order for good cause.<sup>27</sup>

#### **B. Lack of Notice**

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<sup>27</sup> An additional recommendation, that prosecutors be required to meet certain standards of experience and training, is contained in the Defense section because it applies to defense counsel as well.

Illinois is the only state in the country in which prosecutors are not required to give some advance notice that they will seek the death penalty,<sup>28</sup> yet the Illinois Supreme Court has upheld the constitutionality of the statute.<sup>29</sup> The defense often files a motion requesting that the prosecution disclose its intent regarding the death penalty, and although such motions are typically granted, the prosecution is under no obligation to respond.<sup>30</sup>

Although it is rare in experience for the state to actually wait until the beginning of trial to declare its intention to seek death, the very option is an affront to due process. Lack of notice deprives defendants of full opportunity to make intelligent decisions about their defense. Defendants may also be deprived of public resources earmarked for capital cases until notice is given that it is a capital case.

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<sup>28</sup> Reinberg, *The Constitutionality of the Illinois Death Penalty Statute: The Right to Pretrial Notice of the State's Intention to Seek the Death Penalty*, 85 Nw. U.L. Rev. 272 at 274 (1990). See also *People ex. Rel. Carey v. Cousins*, 77 Ill.2d 531 (Ryan, J., dissenting): There is no requirement that the defendant, at any stage of the proceeding prior to or during the hearing to determine his guilt or innocence, be notified that the death penalty will be requested.

<sup>29</sup> *People v. Caballero*, 102 Ill.2d 23, 464 N.E.2d 223 (Ill. 1984); *People v. Silagy*, 101 Ill.2d 147 at 161-162, 461 N.E.2d 415 (Ill. 1984); *People v. Gaines*, 88 Ill.2d 342, 430 N.E.2d 1046 (Ill. 1981). See also *Silagy v. Peters*, 905 F.2d 986 at 994 (7<sup>th</sup> Cir. 1990) (pretrial knowledge regarding the certainty of a request for the death penalty is not essential for purposes of the Sixth Amendment).

<sup>30</sup> Bienen, *The Quality of Justice in Capital Cases: Illinois as a Case Study*, 61 *AUT Law & Contemp. Probs.* 193 at 206 (1998).

### Recommendation

The Illinois State's Attorneys Association has recommended that the state be required to provide notice of its intent to seek the death penalty within 120 days of arraignment,<sup>31</sup> and the Special Supreme Court Committee on Capital Cases has accepted that recommendation.<sup>32</sup> However, the Council believes that is not sufficient notice, given the gravity of the sentence. Defendants, in order to take any and all steps necessary to protect their rights, are entitled to be informed as early in the process as feasible that they potentially might lose their life. The Council therefore recommends that the state be required to provide notice of its intent to seek the death penalty within 30 days of arraignment, or within 90 days if there is good cause.

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<sup>31</sup> Illinois State's Attorneys Association, April 27, 1999.

<sup>32</sup> *Findings and Recommendations of the Special Supreme Court Committee on Capital Cases* (1999) at 46-47, recommending that the state be required to provide notice of its intent to seek or decline to seek the death penalty within 120 days after a defendant is arraigned.

### III. THE DEFENSE

#### A. Competence of Counsel

Capital cases are the most demanding criminal prosecutions in the United States. Every task ordinarily performed in the representation of a criminal defendant becomes more difficult and time-consuming when the defendant is facing execution. Despite the level of difficulty, attorneys who have defended those accused of capital cases have been problematic, as the cases reveal.<sup>33</sup> On one day in 1999, the Illinois Supreme Court ruled on challenges to two death sentences based on ineffective assistance of counsel, both on post-conviction petitions. In the first, appellate counsel failed on direct appeal to preserve a challenge to sufficiency of evidence to support the sentencing jury's finding.<sup>34</sup> In that case, the sentence was voided and the state was declared barred from seeking reimposition of the sentence based on double jeopardy. In the second, appointed counsel failed to make routine amendments to a *pro se* prisoner petition that might have overcome a procedural bar of waiver.<sup>35</sup>

The trials of former Death Row inmates Dennis Williams and Verneal Jimerson demonstrate the low quality of some capital defense counsel. Williams and Jimerson were

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<sup>33</sup> Voigts, *Narrowing the Eye of the Needle: Procedural Default, Habeas Reform, and Claims of Ineffective Assistance of Counsel*, 99 Colum. L. Rev. 1103 at 1119 (1999).

<sup>34</sup> *People v. West*, 187 Ill. 2d 418, 719 N.E.2d 664 (1999).

<sup>35</sup> *People v. Turner*, 187 Ill. 2d 406, 719 N.E.2d 725 (1999).



part of what came to be known as the Ford Heights Four, a group of men convicted of rape and murder who were exonerated when DNA test results showed their innocence. Subsequent to the testing, another man confessed that he and three others actually committed the crimes. DNA tests of these men confirmed that they were the killers.

At his first trial, Williams was represented by a court-appointed attorney who was defending himself against disbarment proceedings at the same time.<sup>36</sup> Williams' attorney, Archie Weston, eventually was found guilty of neglecting client matters, committing acts prejudicial to the administration of justice and acts which intentionally caused damage and prejudice to his client, and commingling and converting client funds. He was disbarred in 1982.<sup>37</sup> Williams spent 18 years in prison before being exonerated.

Verneal Jimerson was similarly represented at trial by a court-appointed attorney who had been before the Attorney Registration and Disciplinary Commission. His attorney, Earl Taylor, was just coming off a one-year suspension for a pattern of consistent neglect when he was assigned to represent Jimerson.<sup>38</sup>

In the case of exonerated inmate Carl Lawson, Asst. State's Atty. Walter Bradon appeared in court at Lawson's arraignment, then later resigned from the State's Attorney's Office and wound up as Lawson's defense attorney. The Illinois Supreme

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<sup>36</sup> People v. Williams, 93 Ill.2d 309, 444 N.E.2d 136 (Ill. 1982), *cert. denied*, 466 U.S. 909 (1984).

<sup>37</sup> In re Weston, 92 Ill.2d 431, 442 N.E.2d 236 (Ill. 1982).

<sup>38</sup> In re Taylor, 66 Ill.2d 567, 442 N.E.2d 845 (Ill. 1977).

Court found that Bradon's representation of both the State and the defendant in the same matter constituted a *per se* conflict of interest.<sup>39</sup>

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<sup>39</sup> People v. Lawson, 163 Ill.2d 187, 644 N.E.2d 1172 (Ill. 1994).

At least twenty-six of the inmates currently on Death Row have made claims of ineffective assistance of counsel. For example, Tuhran Lear was sentenced to death for the murder of a gas station manager.<sup>40</sup> His appointed trial counsel was fresh out of law school, had never tried a homicide case before and never received any formal training on defending capital cases. He did not consult with other attorneys nor hire investigators. He did not conduct jury *voir dire* on racial bias despite the fact that the crime was interracial. He failed to inform the jury that the State's key witness gave contradictory testimony, and he failed to present a defense theory. Although the the Illinois Supreme Court denied Lear's defense on procedural default grounds, the dissent in Lear's post-conviction appeal concluded that, Athere was an unreasonable risk that the defendant was unfairly sentenced to death.<sup>41</sup>

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<sup>40</sup> People v. Lear, 143 Ill.2d 138, 572 N.E.2d 876 (Ill. 1991).

<sup>41</sup> People v. Lear, 175 Ill.2d 262, 677 N.E.2d 895 at 904 (Ill. 1997) (Freeman, J., dissenting).

One area of ineffective assistance is in the investigation and presentation of mitigating evidence.<sup>42</sup> Due to a lack of resources or experience, some defense attorneys have provided scant support during the penalty phase, thereby lessening the States burden of establishing the propriety of a death sentence. For example, counsel appointed to defend Johnny Neal Jr. was alleged to have made no investigation except for interviewing Neal and his wife.<sup>43</sup> The attorney had no training or supervision and did not present any evidence in mitigation. But Neals claim of ineffectiveness was rejected on appeal.

Other examples:

John Pecoraro-s attorney had previously conducted only four jury trials, had no staff or co-counsel, lacked training in capital cases and was paid a total of \$200.<sup>44</sup> The Illinois Supreme Court, however, determined that Pecoraro was not denied his right to effective assistance of counsel.

Prior to and during Leroy Orange-s trial, defense counsel had four ARDC complaints filed against him.<sup>45</sup> One of them subsequently resulted in a six-month suspension from the practice of law. Additionally, Orange-s attorney and the father of one of Orange-s victims were high school classmates. At trial, counsel failed to present

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<sup>42</sup>People v. Towns, 182 Ill. 2d 491, 696 N.E.2d 1128 (1998) (on post-conviction petition, court orders hearing on claim of ineffective assistance of counsel at sentencing phase); People v. Ruiz, 177 Ill. 2d 368, 686 N.E.2d 574 (1997) (same); People v. Howery, 178 Ill. 2d 1, 687 N.E.2d 836 (1997) (on direct appeal, finding ineffective assistance of counsel at sentencing phase where counsel conducted perfunctory investigation and failed to present mitigating evidence).

<sup>43</sup> Neal v. Peters III, 1996 WL 11085 (N.D.Ill. 1996).

<sup>44</sup> People v. Pecoraro, 144 Ill.2d 1, 578 N.E.2d 942 (Ill. 1991).

<sup>45</sup> People v. Orange, 168 Ill.2d 138, 659 N.E.2d 935 (Ill. 1995).

any evidence in mitigation and failed to investigate Orange's claims of police coercion. Orange's claims of ineffectiveness were rejected on appeal.

Gregory Madej's court-appointed attorney allegedly failed to investigate or present mitigation evidence.<sup>46</sup> The Illinois Supreme Court agreed that the lawyer failed to provide an adequate defense, stating that the defense was tantamount to the presentation of no evidence at all.<sup>46</sup> However, the court upheld Madej's death sentence, stating that the outcome would not have been different if his attorney had investigated and prepared more adequately.<sup>46</sup>

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<sup>46</sup> People v. Madej, 177 Ill.2d 116, 685 N.E.2d 908 (Ill. 1997).

Although defense counsel in Andrew Maxwell's trial allegedly advised him to waive a jury based on her inadequate understanding of the admissibility of prior criminal acts, the Illinois Supreme Court ruled that she was not ineffective.<sup>47</sup> Further, she was not held ineffective even though she failed to present evidence in mitigation and gave Maxwell incorrect advice that he would not receive the death penalty from the judge. The dissent in the post-conviction case strongly disagreed with the majority's opinion, stating, "The result of the majority's decision is to permit execution of this defendant despite serious constitutional flaws in [his] prosecution."<sup>48</sup>

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<sup>47</sup> People v. Maxwell, 148 Ill.2d 116, 592 N.E.2d 960 (Ill. 1992).

<sup>48</sup> People v. Maxwell, 173 Ill.2d 102, 670 N.E.2d 679 at 696 (Ill. 1996) (McMorrow, J., dissenting).

As these cases<sup>49</sup> demonstrate, even serious errors committed by defense counsel will not render the attorney's performance constitutionally deficient. This is due in part to the almost unattainable standard for finding counsel ineffective handed down by the U.S. Supreme Court in *Strickland v. Washington*<sup>50</sup> and followed by courts in Illinois.<sup>51</sup> In *Strickland*, the Court established a two-prong test for ineffectiveness: (1) counsel's performance must be so seriously deficient as to fall below an objective standard of reasonableness under prevailing professional norms and (2) the deficient performance must so prejudice the defense as to deny the defendant a fair trial.

### Recommendation

Clearly, a higher standard must be adopted for defense counsel in capital cases. The Special Supreme Court Committee on Capital Cases has recommended creation of a capital litigation trial bar with specific experience and training qualifications for admission.<sup>52</sup> This proposal would apply to both prosecuting and defense attorneys and it

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<sup>49</sup> See also *People v. Shatner*, 174 Ill.2d 133, 673 N.E.2d 258 (Ill. 1996) (trial counsel failed to make an opening statement, present evidence or make an argument against the death penalty); *People v. Szabo*, 113 Ill.2d 83, 497 N.E.2d 995 (Ill. 1986) (trial counsel eventually disbarred, with 78 complaints against him made to ARDC); *U.S. ex rel. Emerson v. Grimley*, 883 F.Supp. 225 (N.D. Ill. 1995) (trial counsel failed to make opening statement, interview witnesses, consult defendant prior to trial, develop a coherent defense theory or prepare or present mitigation evidence); *People v. Palmer*, 643 N.E.2d 797 (Ill. 1994) (Harrison, J., dissenting) (dissent stated that attorney completely abandoned his role as an advocate by urging defendant to accept a blind plea of guilty without attempting to obtain a concession on sentencing); *Pitsonbarger v. Gramley*, 103 F.3d 1293 (1996) (Seventh Circuit characterized the quality of defendant's representation at post-conviction hearings as Adeplorable® but declined to grant petition).

<sup>50</sup> 466 U.S. 668, 104 S.Ct. 2052 (1984).

<sup>51</sup> Some jurisdictions have rejected *Strickland* under state law and imposed higher standards on counsel. See *People v. Claudio*, 83 N.Y.2d 76, 607 N.Y.S.2d 912, 629 N.E.2d 384 (1993); *State v. Smith*, 68 Haw. 304, 712 P.2d 496 (1986).

<sup>52</sup> *Findings and Recommendations of the Special Supreme Court Committee on Capital Cases* (1999) at 3.

would apply to both appointed and retained counsel. To qualify as lead counsel an attorney would be required to:

- (1) Be a member in good standing of the Illinois Bar or admitted *pro hac vice*.
- (2) Be an experienced and active trial practitioner with at least five years of criminal litigation experience.
- (3) Have substantial familiarity with the ethics, practice, procedure and rules of the trial and reviewing courts of the State of Illinois.
- (4) Have prior experience as lead or co-counsel in no fewer than eight felony trials which were tried to completion, at least two of which were murder prosecutions, and either:
  - (a) have completed within two years prior to appointment at least 12 hours of training in the preparation and trial of capital cases in a course approved by the Illinois Supreme Court, or
  - (b) have substantial familiarity with and extensive experience in the use of expert witnesses, and forensic and medical evidence including, but not limited to, mental health, pathology, and DNA profiling evidence.

Qualifications for co-counsel would be to demonstrate three years of criminal litigation experience and participation as lead or co-counsel in five felony jury trials tried to completion.



The Council applauds the committee's proposal and conditionally endorses it. However, the Council believes the standard should be higher and recommends that lead counsel:

- (1) Be required to have five years of full-time criminal litigation experience or demonstrated equivalent experience.
- (2) Be required to have experience in no fewer than 12 felony trials, at least four of which were murder prosecutions.<sup>53</sup>
- (3) Be required to have completed at least 20 hours of training.

Additionally, the Council recommends that every capital case have at least two attorneys representing the defendant.

#### **B. Funding of the Defense**

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<sup>53</sup> The Council recognizes that in some parts of Downstate Illinois, there is a shortage of attorneys and it may not be possible to find attorneys who meet the qualifications. However, this is not a reason to deprive the defendant of adequate representation. In such cases, attorneys should be brought in from other parts of the state.

The shortage of funding often prevents counsel from presenting an adequate defense. Exonerated defendant Anthony Porter presents one example of this problem. Porter's appellate attorneys claimed his trial counsel did not generate exculpatory evidence because he was not paid in full for legal services.<sup>54</sup> It was ultimately discovered that another man actually committed the murders for which Porter was convicted. That man ultimately confessed when his identity was discovered by a team of journalism students at Northwestern University and a private investigator, and Porter was freed.

A poignant example is presented by another exonerated defendant, Carl Lawson, who was denied funding to hire a shoeprint expert.<sup>55</sup> In his counsel's motions to obtain the funding, he explained that he had no familiarity with the details of such evidence and required assistance in order to prepare a defense and cross-examine the state's expert. The trial court repeatedly denied his motions despite the fact that the shoeprint evidence was the only evidence linking Lawson to the crime. Moreover, in closing arguments the prosecutor stated that the shoeprint evidence was "the single, strongest piece of evidence in this case, and it's a piece of evidence that you can't get around." Thus, the jury convicted Lawson based on the uncontroverted evidence of the state's expert.

The shoeprint had been found in blood near the victim's body, and the prosecutor claimed only the murderer could have left the print because it was left while the blood

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<sup>54</sup> People v. Porter, 164 Ill.2d 400, 647 N.E.2d 972 (Ill. 1995).

<sup>55</sup> People v. Lawson, 163 Ill.2d 187, 644 N.E.2d 1172 (Ill. 1994).

was still wet. Lawson was allowed to hire experts at a retrial ordered by the Illinois Supreme Court, and he was acquitted after it was revealed that the blood was still wet when the victim's body was found and that the shoeprint could easily have been left by any number of people from the neighborhood (including Lawson) who gathered around the body before police arrived.

Another exonerated defendant, Verneal Jimerson, claimed his trial counsel failed to present mitigation evidence.<sup>56</sup>

Requested funding was denied to the defense of at least 10 current Death Row inmates. One of them is William Keene. Keene is left-handed, and at the trial a pathologist testified for the state that the killer was likely left-handed.<sup>57</sup> Keene's counsel could not rebut the state's expert because the defense was denied funding for its own pathologist. The court refused on the grounds that the issue did not go to the heart of the defense.

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<sup>56</sup> People v. Jimerson, 166 Ill.2d 211, 652 N.E.2d 268 (Ill. 1995). Also see People v. Williams, 147 Ill.2d 173, 588 N.E.2d 983 (Ill. 1991); People v. Burrows, 148 Ill.2d 196, 592 N.E.2d 997 (Ill. 1992).

<sup>57</sup> People v. Keene, 169 Ill.2d 1, 660 N.E.2d 901 (Ill. 1995).

Johnny Neal Jr., in a post-conviction petition, filed a motion for appointment of an expert to conduct a forensic psychological analysis. The post-conviction petition was dismissed without ruling on the request for an expert.<sup>58</sup> He raised the issue in a second post-conviction petition, but the court held that since he did not request a ruling in the first proceeding, he was deemed to have acquiesced in the court's dismissal without ruling on his request. Therefore, the court held, Neal could not now claim error.<sup>59</sup>

An important step toward correcting the problem of inadequate defense funding occurred during the past year in Illinois with passage of the Capital Crimes Litigation Act.<sup>60</sup> The act establishes a Capital Litigation Trust Fund. Public defenders and state attorneys can apply for assistance from the fund. Defense expenditures may include payment for an investigator; for expert, forensic or other witnesses; and for mitigation specialists. However, the new legislation does not unambiguously apply to retained counsel, although in practice requests by retained counsel for funds may be honored. Often, a defendant chooses to retain private counsel, only to discover later that the fee he or she is able to pay is not nearly sufficient to enable the attorney to hire an investigator, pay for forensic testing or retain experts to testify at trial. There is also the open issue of whether the defendant must return such funds if the state determines not to seek death.

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<sup>58</sup> People v. Neal, 568 N.E.2d 908 (Ill. 1990).

<sup>59</sup> People v. Neal, 689 N.E.2d 1040 (Ill. 1997).

<sup>60</sup> P.A. 91-589 (S.B. 574), enacted August 14, 1999, effective Jan. 1, 2000.

Several states recognize the importance of assuring that counsel has adequate funding to stage a competent defense.<sup>61</sup> The United States Supreme Court in 1985 held that a murder defendant was constitutionally entitled to hire a psychiatrist to testify to his mental state and the State was obligated to pay for it if he was indigent.<sup>62</sup>

### Recommendation

If a trial is to be a fair search for the truth, both sides must have equivalent resources with which to investigate and present their case. It is essential that defense counsel be able to mount a meaningful defense. Since the recent funding reforms do not apply to retained counsel, the Council recommends that the Illinois Supreme Court adopt a rule directing circuit courts to grant reasonable requests for funding in capital cases in which the defendant is represented by retained counsel. Such requests should be made to the Presiding Judge of the Criminal Division of the Circuit Court. Denial of such requests should be the basis of expedited, interlocutory appeal.

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<sup>61</sup> See *Anderson v. Justice Court of San Benito County*, 99 Cal. Rptr. 274 (1<sup>st</sup> Dist. App. 1979); *Johnson v. Snyder*, 417 So.2d 783 (Fla. Ct. App. 1982), citing Florida Code of Criminal Procedure 2.111(b)(4); *Mason v. Arizona*, 504 F.2d 1345 (9<sup>th</sup> Cir. 1974), *cert. denied*, 420 U.S. 936 (1975).

<sup>62</sup> *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087 (1985).

## IV. THE POLICE

### A. False Confessions

Confessions are very powerful evidence in criminal prosecutions. Someone who confesses, one recent study concluded, is presumed guilty by the system and may suffer rougher treatment by every criminal justice official and at each stage of the trial.<sup>63</sup> Jurors may find it difficult to believe defendants claiming innocence who once allegedly confessed to the crime.<sup>64</sup> We must be concerned, then, when coerced and even false confessions occur in capital cases.

False confessions may occur in different circumstances:

First, a person may seek out police and confess to crimes he or she did not commit due to psychological or mental impairments, to achieve notoriety, to seek relief from generalized guilt, or because he or she cannot distinguish between reality and imagination.<sup>65</sup> In these situations the suspect should receive, although only upon consent of the defendant and his or her counsel, a psychological evaluation.

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<sup>63</sup> Ofshe & Leo, *Symposium on Coercion: An Interdisciplinary Examination of Coercion, Exploitation, and the Law: II. Coerced Confessions: The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 Denv. U.L. Rev. 979 at 983 (1997).

<sup>64</sup> Prettyman, *Commentary: False Confessions and Fundamental Fairness: The Need for Electronic Recording of Custodial Interrogations*, 6 B.U. Pub. Int. L.J. 719 at 726 (1997).

<sup>65</sup> Prettyman; *Supra* at 741.

Second, the pressures and demands of interrogators may produce so much anxiety in certain people that they will do anything to cause it to end, including confessing to a crime they did not commit.

Third, the suspect may confess by coming to believe the suggestions of the police, even though the suspect has no memory of committing the crime and even though he is actually innocent.

### Physical Coercion

It was only through DNA evidence that Ronald Jones was exonerated of a murder for which he had been sentenced to death. Before Jones' trial, DNA testing was not sophisticated enough to yield accurate results. Once it became available, Jones' appellate counsel came up against considerable resistance by prosecutors and the court to his request for testing. Jones, whose conviction was based on his confession, claimed that he only confessed because the police beat him.<sup>66</sup> Even after the DNA test proved he was innocent, he spent another 22 months in jail while the state's attorney reinvestigated the case and debated whether to retry him.

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<sup>66</sup> People v. Jones, 156 Ill.2d 225, 620 N.E.2d 325 at 332 (Ill. 1993).

Courts and other public bodies have made findings in cases of alleged police coercion. In 1993, an investigation into police practices at the Chicago Police Department's Area Two and Area Three Violent Crimes headquarters found that over the course of 15 years, Lt. Jon Burge and his detectives had been allegedly using physical torture and threats to coerce confessions. Their alleged methods included suffocation with plastic typewriter covers, cattle prods, bats, sticks, radiators, cigarette burns, Russian roulette and beatings. The Police Department's Office of Professional Standards issued a report, written by Investigator Michael Goldston, finding that physical abuse, including planned torture,<sup>67</sup> occurred under Burge's command on a systematic basis over a period of many years.<sup>67</sup>

At least twenty-seven current Illinois Death Row inmates allege that they were coerced into confessing by the police; 10 of them<sup>68</sup> allege they were coerced at the hands of Burge and his detectives.

One of the most publicized is Aaron Patterson, who claims he was physically abused and threatened for 25 hours and repeatedly denied a lawyer.<sup>69</sup> A confession<sup>69</sup> was written by an Assistant State's Attorney and used to convict him, but he never signed it.

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<sup>67</sup> Brief *Amicus Curiae*, filed by the Ad Hoc Committee for a Full Inquiry Into Police Torture and the Death Penalty, in *People v. Patterson*, December, 1998.

<sup>68</sup> Madison Hobley, Stanley Howard, Leonard Kidd, Derrick King, Ronald Kitchen, Jerry Mahaffey, Reginald Mahaffey, Andrew Maxwell, Leroy Orange and Aaron Patterson.

<sup>69</sup> *People v. Patterson*, 145 Ill.2d 414, 610 N.E.2d 16 (Ill. 1993).



Instead, he used a paper clip while he was alone in the interrogation room and etched a message on a steel bench stating that his confession was a lie and that he was tortured. Photographs were taken of the etchings, but the trial judge refused to admit them into evidence.<sup>70</sup>

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<sup>70</sup> The message, dated A4/30,® said, AAaron lied. . . . Police threaten me with violence. . . . Slapped and suffocated me with plastic. . . . Signed false statement to murders.®

Death Row inmate Leonard Kidd claims that his alleged confession, which was never recorded, was the result of threats made by a police sergeant who held a gun to Kidd's stomach.<sup>71</sup> Kidd claims he requested that a lawyer be present during his interrogation but his requests were denied. The public defenders assigned to his case stated that they attempted to visit Kidd but were given misleading statements as to his whereabouts.

Derrick King also claims his confession was coerced through physical abuse by police.<sup>72</sup> Although several witnesses testified that Kidd appeared to have been beaten, the judge found that his statement was voluntary.

Stanley Howard not only alleged that his confession was coerced by beatings and suffocation, he had medical reports to back it up, but he was nevertheless convicted. Later, an investigator for the Chicago Police Department Office of Professional Standards found that the abuse had occurred and that officers had lied about it.<sup>73</sup>

Madison Hobley also alleged he was beaten and suffocated before confessing. The police officer who obtained the confession testified that he had no notes because they got wet and torn and he tossed them away.<sup>74</sup>

### Mental Coercion

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<sup>71</sup> People v. Kidd, 178 Ill.2d 92, 687 N.E.2d 945 (Ill. 1997).

<sup>72</sup> People v. King, 155 Ill.2d 232, 48 N.E.2d 514 (Ill. 1986).

<sup>73</sup> People v. Howard, 147 Ill.2d 103, 588 N.E.2d 1044 (Ill. 1991).

<sup>74</sup> People v. Hobley, 182 Ill.2d 404, 696 N.E.2d 313 (Ill. 1998).

Psychological coercion and verbal threats, in contrast to physical abuse, do not leave any marks to show the court.<sup>75</sup> This form of questioning produces a subject who may admit to almost anything suggested by his or her interrogators.

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<sup>75</sup> Prettyman, *Supra* at 744.

In a review of defendants who falsely confessed, one study reported several techniques used in different jurisdictions.<sup>76</sup> First, suspects were isolated in interrogation rooms without a lawyer, family member or friend. Second, interrogations were relentless and lengthy. Third, the police often strategically lied to the suspect about the overall strength of the case against him. Finally, suspects were often told that they had a psychological problem that would be alleviated only through confession and that it is not uncommon for perpetrators to bury memories of their crimes.

Also, information known by the police is sometimes unwittingly communicated to the suspect. During high-pressured interrogation, the suspect may adopt this information into the false confession, leading the police to believe in the validity of the confession. When the confession is presented to the jury with details known only to the actual killer,<sup>77</sup> the prosecutor improves the chances of a conviction.

Inmate Patrick Page alleges that he was coerced into confessing through lies and false promises by the police and the state's attorney and that he was refused contact with an attorney or with family members.<sup>77</sup>

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<sup>76</sup> *Id.* at 730.

<sup>77</sup> *People v. Page*, 614 N.E.2d 1160 (Ill. 1993).

Gary Gauger of McHenry County was convicted of killing his parents, based on a confession he made, but he has now been exonerated and another man has admitted he killed them. Gauger's conviction was reversed on the grounds that the police did not even have probable cause to arrest him in the first place. Gauger filed a lawsuit in October, 1999, contending he was coerced into the confession by police and that evidence in his case was withheld by the state's attorney. He alleged that police denied him sleep for 21 hours until he was in a weakened psychological state and told him they had physical evidence connecting him to the crime even though they did not. He says he was brainwashed into thinking he could have committed the murders, in part by engaging in a game of hypotheticals with police.<sup>78</sup>

#### **B. Other Misconduct**

Not only have police coerced confessions, but in some instances they have manufactured evidence. In Rolando Cruz's final trial, a police detective admitted that he had lied about the facts surrounding a statement the defendant allegedly made about a vision,<sup>79</sup> leading to the exoneration of Cruz and co-defendant Alejandro Hernandez.

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<sup>78</sup> *Freed Death Row Inmate Sues Prosecutors, Police*, Chicago Tribune, October 2, 1999.

One way to assure the validity of confessions is to record interrogations and confessions electronically. Several law enforcement agencies in Illinois recently have begun to employ videotaping. Bills requiring electronic recording were considered last year by the General Assembly but were not approved. The Special Supreme Court Committee on Capital Cases stated that routine electronic recording of all custodial interrogations and confessions would be a major improvement in criminal procedure.<sup>79</sup> The committee said it believed adoption of a recording requirement would be best dealt with by the voluntary action of individual executive agencies or by legislative enactment, but it should be encouraged by the courts.

Electronic recording of interrogations currently is required by court decision in Alaska and Minnesota and by statute in Texas. The Alaska Supreme Court held that electronic recording is mandated by the due process clause of the state constitution.<sup>80</sup> In Minnesota, the Supreme Court established a recording requirement on the basis of its supervisory power to insure the fair administration of justice.<sup>81</sup>

### Recommendation

Juries, in order to reach a just verdict, must be in a position to evaluate the truthfulness, reliability and circumstances of confessions. One way to assure this is quick presentment of the defendant. State law already provides (under 725 ILCS 5/109-1) that

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<sup>79</sup> *Findings and Recommendations of the Special Supreme Court Committee on Capital Cases* (1999) at 60-61.

<sup>80</sup> *Stephen v. State*, 711 P.2d 1156 (Alaska 1985).

a person arrested with or without a warrant shall be taken without unnecessary delay before the nearest and most accessible judge,<sup>81</sup> and sanctions should be available against law enforcement agents who do not heed this requirement in murder cases.

Another way of deterring undue coercion is by videotaping not only the confession but the entire interrogation process leading up to it. In the long run, videotaping will greatly reduce litigation and will result in a far greater sense of security about the convictions obtained.

The Council therefore recommends that the General Assembly enact legislation requiring non-stop videotaping at police stations of the interrogations and confessions of all persons taken into custody in connection with homicides. The legislation should provide that custodial statements by the defendant would be inadmissible if the prosecution was unable to show good cause why interrogations or confessions were not videotaped.

One other proposal that would indirectly affect the police is contained in the Prosecution section of this report: the requirement that police departments as well as prosecutors certify that all *Brady*, *Giglio*, and Ill. S. Ct. Rule 412 materials have been disclosed to the defense prior to trial.

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<sup>81</sup> State v. Scales, 518 N.W.2d 587 (Minn. 1994).

## V. THE JURY

### A. Eyewitness Testimony

In a 1999 case, the Illinois Supreme Court reversed and ordered acquittal of a defendant sentenced to death who was tried on the testimony of a single eyewitness.<sup>82</sup> The Court held unanimously that the single witness C who was contradicted by others, who made a contradictory written admission to defense counsel five months earlier, and who was believed to have a motive to finger the defendant (to cover for her sister's boyfriend) C could not establish proof beyond a reasonable doubt for the state.

Eyewitness testimony is deemed by many professionals to be inherently unreliable.<sup>83</sup> Erroneous identifications are the result of the universal fallibility of sense perception and memory, and the susceptibility of the mind to suggestive influences. Environmental factors, such as the observer's stress, biases, race, age, sex and susceptibility to suggestion by the questioner, also affect the ability of the eyewitness to relate accurately what was observed.

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<sup>82</sup>People v. Smith, 185 Ill. 2d 532, 708 N.E.2d 365 (1999).

<sup>83</sup> Westlin, *The Case for Expert Witness Assistance to the Jury in Eyewitness Identification Cases*, 71 Or. L. Rev. 93 (1992).



The unreliability of eyewitness testimony is confounded by the tendency of jurors to give great weight to in-court eyewitness testimony, especially where the witness appears confident in the identification. Jurors universally share the misconception that outward expressions of confidence reflect the accuracy of the identification. This expression of confidence, however, is seldom related to the factual accuracy of the identification. Witnesses tend to want to avoid negative perceptions by the jurors, judges, spectators and the media. As a result, they may exude more confidence in their identification than they actually feel. Jurors then incorrectly interpret this confidence as a demonstration that the identification is accurate.

Such testimony is also easily faked or manipulated, such as found in the cases of exonerated inmates Steven Smith and Anthony Porter. Smith was convicted of the murder of a prison warden primarily on the basis of eyewitness testimony of Deborah Caraway, who provided the only direct evidence linking him to the crime.<sup>84</sup> At the time of trial, Caraway's sister was dating the leader of a street gang who was suspected of the murder, giving Caraway a strong incentive to direct the investigation elsewhere. Despite her bias, Smith was convicted and spent 13 years on Death Row before the Illinois Supreme Court vacated his conviction, finding there was insufficient evidence.

Porter was convicted on the basis of the eyewitness testimony of Henry Williams and William Taylor.<sup>85</sup> Both men identified Porter in a mug book as the person who shot

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<sup>84</sup> People v. Smith, 141 Ill.2d 40, 565 N.E.2d 900 at 905 (Ill. 1990).

<sup>85</sup> People v. Porter, 111 Ill.2d 386, 489 N.E.2d 1329 (Ill. 1986).

the victims, and Taylor identified Porter in a lineup.<sup>86</sup> After Porter spent 16 years on Death Row, both men admitted they never saw him commit the murders. They said they lied due to police coercion. Another man then confessed to the crimes.

### **B. Accomplice Testimony**

Testimony by accomplices must be viewed with great caution. Suspected accomplices have a strong incentive to implicate others so they can lessen their own responsibility or obtain a favorable deal from the prosecution.

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<sup>86</sup> People v. Porter, 112 F.3d 1308 (7<sup>th</sup> Cir. 1997).

The primary evidence to connect Verneal Jimerson and Dennis Williams to the murders that resulted in their death sentences was that of an alleged accomplice, Paula Gray. Gray, a 17-year-old girl with mental retardation--an IQ of 64--testified that Jimerson, Williams and two other men killed a young man and woman.<sup>87</sup> Gray, who was in prison awaiting trial for her part in the murders, was allowed to testify falsely at their trial that she had not been promised anything in return for her testimony. In reality, Gray had been promised by the state that the murder charges against her would be dropped if she testified against them. Evidence of this deal, however, was never given to the defense or presented to the jury. Gray eventually gave a statement to private investigators and a team of Northwestern University journalism students admitting she lied under police pressure.

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<sup>87</sup> People v. Jimerson, 166 Ill.2d 211, 652 N.E.2d 278 (Ill. 1995).

Joseph Burrows was convicted of murder substantially based on the testimony of two alleged accomplices with absolutely no physical evidence linking him to the murder.<sup>88</sup> The accomplices, who had adjacent cells during Burrows' trial, both gave trial testimony inculping Burrows that was inconsistent with the testimony given when they were arrested. After Burrows was convicted, they recanted. One of them, Gayle Potter, admitted that she was solely responsible for the murder and that Burrows was not even present at the crime scene. Her inculpatory statement was supported by a substantial amount of corroborating evidence. She explained that she was now telling the truth as part of her drug rehabilitation program. The other alleged accomplice, Ralph Frye, stated that he lied under pressure from Potter and the prosecutor. Another witness came forward and verified that Potter had committed the murder, and after five years on Death Row, Burrows was exonerated.

As with alleged eyewitness testimony, accomplice testimony can also too easily be faked or manipulated. Two other exonerated inmates, Perry Cobb and Darby Tillis, were convicted based on the testimony of an accomplice, Phyllis Santini. Without her testimony, the state would have been left with a flimsy case built only on circumstantial evidence.<sup>89</sup> The trial court denied admission of evidence that Santini's testimony was based on her expectation of reward and refused to grant the defendant's request of an accomplice instruction. Santini eventually recanted her testimony, stating that she was lying to protect her boyfriend. Cobb and Tillis endured five trials over an eight-year period before finally being exonerated.

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<sup>88</sup> People v. Burrows, 172 Ill.2d 169, 665 N.E.2d 1319 (Ill. 1996).

At least twenty inmates currently on Death Row were convicted in part by accomplice testimony, including:

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<sup>89</sup> People v. Cobb, 97 Ill.2d 465, 455 N.E.2d 31 at 36 (Ill. 1983).

Hector Sanchez. His co-defendant, Warren Peters Jr., testified at Sanchez's trial, prior to his own sentencing. Peters later admitted that he lied at Sanchez's trial in order to get a more lenient sentence.<sup>90</sup>

John Szabo. Robert Leatherman, an accomplice, was the state's key witness against Szabo. Leatherman was 16 years old at the time the crimes were committed and testified pursuant to an agreement with the State that he would be tried as a juvenile and released when he reached 21.<sup>91</sup>

William Franklin. Buddy Williams testified against Franklin as the state's sole eyewitness and was portrayed to the jury as an innocent bystander, with no fear of prosecution.<sup>92</sup> In reality, according to the dissent in Franklin's appeal, Williams was an accomplice charged with armed robbery and testified with the expectation of favorable treatment.<sup>93</sup> Williams' true motive for testifying was never disclosed to the jury.

### C. Jailhouse Informants

The testimony of a so-called jailhouse snitch,<sup>®</sup> who claims to have had an inculpatory conversation with the defendant while they both were incarcerated, is possibly

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<sup>90</sup> People v. Sanchez, 115 Ill.2d 238, 503 N.E.2d 277 (Ill. 1986).

<sup>91</sup> People v. Szabo, 113 Ill.2d 83, 497 N.E.2d 995 (Ill. 1986).

<sup>92</sup> People v. Franklin, 167 Ill.2d 1, 656 N.E.2d 750 (Ill. 1995).

the most unreliable type of testimony in a criminal case. Such informants have every reason to lie in order to garner favor and receive leniency in their own cases.

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<sup>93</sup> Id. at 763 (McMorrow, J. dissenting).

Exonerated inmate Dennis Williams was convicted partly on the basis of testimony by a cellmate, David Jackson, who said Williams admitted killing the victims. Jackson later admitted he fabricated the conversation because he held a grudge against Williams.<sup>94</sup>

A fellow inmate of Rolando Cruz, Stephen Ford, testified that Cruz told him he had Akind of killed@ a girl. Ford was impeached, however, with testimony from Cruz=s first trial, in which he said he was unsure about the defendant-s statement to him. Ford also conceded that he had received two five-year concurrent sentences for two burglary charges and numerous other burglary charges were Apossibly@ dropped less than two weeks after he reported his conversation with Cruz to authorities.<sup>95</sup>

Steven Manning, the most recent inmate exonerated, was convicted on the word of a jailhouse informant, Tommy Dye, who had a long history of telling lies.<sup>96</sup>

Seventeen current inmates were convicted partly on the basis of testimony by jailhouse informants, including:

Remon Williams. Tony Whitehead testified against Williams. The following day, Whitehead was released from jail.<sup>97</sup>

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<sup>94</sup> People v. Williams, 93 Ill.2d 309, 444 N.E.2d 136 (Ill. 1982).

<sup>95</sup> People v. Cruz, 162 Ill.2d 314, 643 N.E.2d 636 (Ill. 1994).

<sup>96</sup> People v. Manning, 182 Ill.2d 193, 695 N.E.2d 423 (Ill. 1998).



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<sup>97</sup> *People v. Williams*, 182 Ill.2d 171, 695 N.E.2d 380 (Ill. 1998).

Robert Wayne Owens. The key state witness at his trial was David Toliver, a cellmate. In exchange for his testimony stating that Owens confessed the crime to him, burglary charges against Toliver were reduced. Owens argued on appeal that the trial court prevented him from cross-examining Toliver, which would have exposed his bias, but the reviewing court stated that it was within the trial court's discretion to limit cross-examination.<sup>98</sup>

Arlie Davis. William Joe Tennison, a cellmate, testified that Davis made several incriminating statements to him. But jailers testified that Davis never talked to fellow inmates. Davis himself testified that he caught Tennison rifling through Davis' court papers, and Tennison later told prosecutors that Davis had confessed to him. Davis' attorney had requested that he be placed in a cell by himself, but he was turned down.<sup>99</sup>

Ronald Kitchen was convicted of a murder based partly on the testimony of Willie Williams, a friend of his. Williams, who was in prison at the time, claimed he placed a collect call to Kitchen and Kitchen confessed to him. But telephone company records showed no call from the prison to Kitchen.<sup>100</sup>

### **Recommendation**

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<sup>98</sup> People v. Owens, 102 Ill.2d 88, 464 N.E.2d 261 (Ill. 1984).

<sup>99</sup> People v. Davis, 185 Ill.2d 317, 706 N.E.2d 473 (Ill. 1998).

<sup>100</sup> People v. Kitchen, 636 N.E.2d 1 (Ill. 1994).

The Special Supreme Court Committee on Capital Cases has recommended the use of discovery depositions in capital cases when other forms of discovery do not permit full preparation for trial.<sup>101</sup> The proposal would permit depositions of persons disclosed as potential witnesses upon leave of court for good cause shown.<sup>®</sup> The Council endorses this recommendation, but would go further. In view of the serious problems outlined above with regard to sole eyewitness testimony, accomplice testimony and jailhouse informant testimony, the Council recommends that the state's proffer of these three types of testimony be considered *per se* evidence of good cause. Such depositions should be limited, though, to the defense who (unlike the state) customarily lacks access to the witnesses. Also, care must be taken to prevent such discovery depositions from being admitted in the place of live witness testimony at trial, which would impair the jury's ability to observe and assess demeanor and the defendant's right to confrontation.

The Illinois Pattern Jury Instructions contains a section on Testimony of an Accomplice<sup>102</sup> which provides:

When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case.

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<sup>101</sup> *Findings and Recommendations of the Special Supreme Court Committee on Capital Cases* (1999) at 37-38.

<sup>102</sup> Illinois Pattern Jury Instructions, Criminal No. 3.17 (3d ed. 1992).

In view of the problems with regard to jailhouse informant testimony, the Council recommends that a similar jury instruction be given for such testimony.

The Council also recommends that a special jury instruction be instituted with regard to eyewitness testimony. It would caution jurors to examine such testimony carefully because its reliability is sometimes questionable--what people think they saw and what actually happened may be two different things. It is especially unwise in a capital case to rely heavily on a single eyewitness.

#### D. Residual Doubt

Many jurors in criminal trials are confident enough in their verdict to convict a defendant but nevertheless open to an argument that their level of confidence falls short of the complete moral certainty needed to take a person's life. Yet Illinois law does not allow defendants to argue residual doubt.<sup>103</sup>

United States Supreme Court Justice O'Connor wrote of the residual doubt standard that it is a lingering uncertainty about facts, a state of mind that exists somewhere between beyond a reasonable doubt and absolute certainty.<sup>103</sup> Proponents of using a residual doubt standard in capital cases argue that the heightened standard provides an additional safeguard that is necessary because the beyond a reasonable doubt standard is not infallible and death is irrevocable.<sup>104</sup> Some argue that, after the

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<sup>103</sup> Franklin v. Lynaugh, 487 U.S. 164 at 188, 108 S.Ct. 2320 (1988) (plurality opinion). The Supreme Court in this case rejected the argument that capital defendants have a constitutional right to argue residual doubt as a mitigating factor.

<sup>104</sup> Treadway, *Residual Doubt in Capital Sentencing: No Doubt It Is an Appropriate Mitigating Factor*, 43 Case W. Res. 215 at 217 (1992).

penalty phase, if the jury still thinks that there is a slight possibility that the defendant is innocent, residual doubt should be considered in the sentencing phase as a mitigating factor. In this instance, the residual doubt standard should be explained through standard jury instructions prior to deliberation.

Other supporters of utilizing residual doubt advocate a more limited use of the standard. Professor Craig M. Bradley of Indiana University School of Law states: *Alf any jury retains[s] any lingering doubt about the defendant-s guilt, the death sentence should not be imposed.*<sup>105</sup> However, Bradley would limit it to situations where the defendant claims total non-participation or non-awareness of the crime.

Use of a residual doubt standard is potentially meaningful when the prosecution-s case is largely circumstantial and the doubt involves the defendant-s level of participation in the crime. Thus, where jurors are unsure as to the defendant-s level of participation, a residual doubt argument may result in a sentence other than death.

The Illinois Supreme Court has routinely upheld the trial court-s denial of the defense-s request to argue residual doubt to the jury.<sup>106</sup>

### Recommendation

The Council believes that the State of Illinois must not be allowed to execute a person if a member of the jury has doubt about the person-s guilt. We therefore call upon

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<sup>105</sup> Bradley, *A Genuinely Modest Proposal Concerning the Death Penalty*, 72 Ind. L.J. 25 (1996).

<sup>106</sup> *People v. Terrell*, 185 Ill.2d 467, 708 N.E.2d 309 (Ill. 1999); *People v. Brown*, 172 Ill.2d 1, 665 N.E.2d 1290 (Ill. 1996); *People v. Hooper*, 172 Ill.2d 64, 665 N.E.2d 1190 (Ill. 1996).

the General Assembly to enact a statute requiring that capital juries be instructed, at the eligibility phase of the sentencing process, that if any member of the jury has any residual doubts about the defendant's guilt, the jury must return a non-death verdict.

#### **E. Lack of Remorse**

A study of jury deliberation revealed that jurors frequently rely on the defendant's lack of remorse as a significant factor in their decision to impose the death penalty.<sup>107</sup> In fact, many of the jurors polled in the study named remorse as the most compelling reason for their sentencing decision. Moreover, the jurors stated they most likely would have voted for a life sentence had the defendant expressed remorse.

Surprisingly, the jurors based their decision of whether the defendant felt remorse not on his or her expression of sorrow, but instead on how the defense presented its case. For example, jurors express nearly universal disfavor of defendants who testify on their own behalf that they were actually innocent. In this situation, jurors feel that the defendant refuses to accept responsibility. In contrast, a defendant's verbal acknowledgment of responsibility for the murder increased the likelihood of receiving a life sentence. However, acknowledgment must occur sooner rather than later. If the defendant first accepts responsibility during the penalty phase, this tends to be viewed by

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<sup>107</sup> Sundby, *Symposium: The Capital Jury and Absolution: The Intersection of Trial Strategy, Remorse and the Death Penalty*, 83 Cornell L. Rev. 1557 (1998).

the jury as a disingenuous attempt to avoid a death sentence after he has already been convicted.

Where a defendant fails to take responsibility either at all or until the penalty phase, jurors tend to look cynically at other mitigating evidence presented by the defense and regard it as another attempt to deny responsibility. If the defendant fails to express responsibility and the prosecutor argues lack of remorse, the jury seems more likely to sentence the defendant to death.

Lack of remorse was used against eight current Death Row inmates.

In the trial of Aldwin McNeal, the prosecutor argued in closing that he is not sorry and you can't assure yourselves that he won't do this again, even in prison.<sup>108</sup> The prosecutor at the sentencing hearing of William Peoples argued that the defendant Ademonstrated a complete lack of remorse in word and deed.<sup>109</sup> At the sentencing hearing of Leslie Palmer, the judge stated that he had not seen any remorse exhibited by the defendant in the Anine plus months of numerous court proceedings.<sup>110</sup>

A defendant who is actually innocent is put in a perilous situation. If he chooses to contest his guilt, the jurors are likely to regard this as failure to accept responsibility.<sup>111</sup> On the other hand, if he chooses to accept responsibility in order to avoid death, he will be convicted for a crime he did not commit.

### Recommendation

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<sup>108</sup> People v. McNeal, 175 Ill.2d 335, 677 N.E.2d 841 (Ill. 1997).

<sup>109</sup> People v. Peoples, 155 Ill.2d 422, 616 N.E.2d 294 (Ill. 1993).

<sup>110</sup> People v. Palmer, 643 N.E.2d 797 (Ill. 1994).

The Council recommends that the prosecution be barred from arguing that a refusal to admit guilt supports a sentence of death.

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<sup>111</sup> Sundby, *Supra*.



## VI. THE COURTS

### A. The Courts Role in Examining Evidence

Under the current standard for reviewing sufficiency of the evidence in a criminal case in Illinois, the reviewing court is instructed to examine each piece of evidence in the light most favorable to the prosecution. The reviewing court--either the trial judge in a post-trial motion or an appellate court--must determine whether, assuming the jury believed the state's evidence, that evidence was sufficient for a rational person to find the defendant guilty.

This standard applies to all criminal cases, but it is argued that a capital case should have a more rigorous standard in order to reduce the risk of executing an innocent person. Several states have addressed this issue:

Ohio reviewing courts undertake a three-part review in capital cases.<sup>112</sup> First, as with other criminal appeals, the court considers the errors of law asserted by the defense. Second, the court independently weighs the evidence to determine whether the aggravating circumstances outweigh the mitigating factors. Finally, the court determines whether the death sentence is in excess of or disproportionate to the penalty imposed in similar cases.

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<sup>112</sup> People v. Watson, 61 Ohio St.3d 1, 572 N.E.2d 97 (Ohio 1991).

In Missouri, the reviewing court conducts a proportionality review of the whole record, independent of the findings and conclusions of the judge and jury.<sup>113</sup> The court goes beyond a mere inquiry into whether the evidence is sufficient to support a conviction; it also compares the weight of the evidence in other cases in which the death penalty was given.

In Oklahoma, the trial judge in capital cases files a report with the Court of Criminal Appeals.<sup>114</sup> One of the questions the judge must answer is: Although the evidence suffices to sustain the verdict, does it foreclose all doubt respecting the defendant's guilt?

In Florida, the appellate court must make an independent examination of the facts and compare them to other cases in which death was imposed. The court may then let the death sentence stand, reduce it to life, or remand to the trial court for resentencing or reweighing of mitigating factors.

Some states have what is known as the Jury Override. Montana, Florida and Alabama do not allow the jury to make the final determination of sentencing. In

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<sup>113</sup> People v. Chaney, 967 S.W.2d 47 (Mo. 1998).

<sup>114</sup> People v. Dodd, 1999 WL 521976 (July 22, 1999). The court granted rehearing in this case in October, 1999, and withdrew the opinion pending rehearing. (1999 WL 907406).

Montana, the sentencing is conducted entirely by the court.<sup>115</sup> In Alabama, the jury returns an Advisory verdict.<sup>116</sup> The court then determines the sentence.

In Florida, the jury makes a recommendation for sentencing. The recommendation does not have to be unanimous. The trial court then decides the sentence. Upon review, the court uses the size of the jury vote as a factor in its proportionality review (discussed above). For example, if the jury vote is 7-5 or 8-4, the reviewing court is more likely to reduce the sentence to life than if the jury vote was 12-0 in favor of death.

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<sup>115</sup> Mont. Code Anno. Sect. 46-18-301.

<sup>116</sup> Code of Ala. Sect. 13A-5-47.

A recent instance in which the Illinois Supreme Court reviewed sufficiency of evidence was in the case of Steven Smith. The Court reversed Smith's conviction and death sentence after finding that the evidence against him, primarily the testimony of a single eyewitness, Debrah Caraway, was insufficient.<sup>117</sup> Justice Heiple wrote:

. . . [a]lthough the testimony of a single witness is sufficient to convict *if positive and credible* (citation omitted), given the serious inconsistencies in, and the repeated impeachment of, Debrah Caraway's testimony, we find that no reasonable trier of fact could have found her testimony credible. Moreover, the circumstantial evidence tending to link defendant to the murder merely narrowed the class of individuals who may have killed the victim, without pointing specifically to the defendant. . . . What is involved here is the standard of proof which is applicable to all crimes. That is to say, conviction beyond a reasonable doubt. Whether the crime charged be trespass, shoplifting, armed robbery, or murder, the test is the same. The burden of meeting this standard falls solely on the prosecution. If it fails to meet this burden, a defendant is entitled to a finding of not guilty. No defendant is required to prove his innocence.

### Recommendation

In view of the extreme importance of establishing guilt with certainty in capital cases, the Council recommends that trial judges more vigilantly exercise their authority to grant a judgement notwithstanding the verdict (JNOV) in cases where they have any doubt about the defendant's guilt. Moreover, the Illinois Supreme Court should conduct a *de novo* review in all death cases.

### **B. Post-conviction Proceedings**

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<sup>117</sup> People v. Smith, 185 Ill.2d 532, 708 N.E.2d 365 (Ill. 1999).

A person under sentence of death should never be precluded from raising a constitutional issue in a post-conviction petition, no matter how much time has passed. One need only look at the case of Dennis Williams, who spent 18 years on Death Row before the system determined he was not guilty. Yet Illinois statutes place strict time limitations on all defendants. The law<sup>118</sup> states that no proceedings shall be commenced more than six months after the denial of a petition for leave to appeal or more than 45 days after the defendant files a brief in the appeal or 3 years from the date of conviction, whichever is sooner.

#### Recommendation

The Council recommends that the General Assembly amend the statute to eliminate the time limitation for post-conviction petitions in capital cases.

#### **C. Judicial Training**

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<sup>118</sup> 725 ILCS 5/122-1(c)

Just as defense counsel are often inexperienced in handling capital cases, some judges lack experience in this complex area of the law. Several recent cases from the Supreme Court reveal the sort of simple errors that can be made by judges in trying and sentencing capital defendants.<sup>119</sup> It is essential that a judge trying a case involving the death penalty have a thorough knowledge of capital litigation.

### Recommendation

The Council endorses the recommendation of the Special Supreme Court Committee on Capital Cases<sup>120</sup> to establish a regular schedule of seminars on topics relevant to capital cases, and to require judges to attend a seminar at least once every six years.

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<sup>119</sup>People v. Shaw, 186 Ill. 2d 301, 713 N.E.2d 301 (1998) (erroneous jury instructions); People v. Davis, 185 Ill. 2d 317, 713 N.E.2d 1161 (1998) (exclusion of proffered mitigation evidence in sentencing phase); People v. Steidl, 177 Ill. 2d 239, 685 N.E.2d 1335 (1997) (judge admitted relying on his personal knowledge of defense counsel's performance in other cases to weigh ineffective assistance of counsel claim); People v. Alvine, 173 Ill. 2d 273, 671 N.E.2d 713 (1996) (erroneous jury instructions).

<sup>120</sup> *Findings and Recommendations of the Special Supreme Court Committee on Capital Cases* (1999) at 59.

## VII. CONCLUSION

Violent crime is a very serious problem for society, and Illinois is fortunate in having skilled police officers, prosecutors and judges whose duty is to protect the people of the state from its criminals. There is no doubt that many individuals incarcerated in Illinois prisons belong there for the horrendous crimes they have committed. But a criminal justice system that goes beyond its scope and imprisons the innocent is unacceptable in a civilized society. And a system that condemns innocent persons to death, in the name of the people of the State, is intolerable.

So far, since 1977, 13 persons who were sentenced to death have been found innocent. Twelve others have been executed, although serious questions were raised about the guilt of some of them. And this study has raised many more questions concerning current inmates of Death Row.

The United States Constitution guarantees reliability in the imposition of capital punishment. The United States Supreme Court has recognized that because of the severity and the irrevocability of the death penalty, a higher standard of reliability is required.<sup>121</sup> It is therefore incumbent on the State of Illinois to take whatever steps are necessary to achieve that higher standard. We submit that the adoption of the recommendations contained in this report will go a long way toward guaranteeing, Aas

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<sup>121</sup> Woodson v. North Carolina, 428 U.S. 280 at 305 (1976). See also Gardner v. Florida, 430 U.S. 349 at 357-58 (1977) and Beck v. Alabama, 447 U.S. 625 at 637-38 (1980).

much as humanly possible<sup>122</sup> (in the words of Justice O'Connor<sup>122</sup>), that innocent persons will not be executed by the State of Illinois.

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<sup>122</sup>Eddings v. Oklahoma, 455 U.S. 104 at 118 (1982) (O'Connor, J., concurring).



**APPENDIX A**  
**SUMMARY OF RECOMMENDATIONS**

**The Prosecution**

1. To require certification 60 days after arraignment (or 90 days with good cause) that the prosecution has conferred with individuals involved in the investigation and trial preparation of a capital case to determine the existence of *Brady, Giglio* or Ill. S. Ct. Rule 412 material. The certification must be signed by the prosecutors on the case and by the State's Attorney. The certification requirement also would apply to police departments and other investigative agencies. (Pages 10-11)
2. To require the prosecution to specifically identify any material disclosed. (Pages 10-11)
3. To provide that if the prosecution fails to abide by discovery rules, the court shall refer the matter to the Attorney Registration and Disciplinary Commission. (Pages 10-11)
4. To expand Illinois Supreme Court rules to require the prosecution to disclose in murder prosecutions C in addition to all other materials currently required to be produced C all documents, physical evidence and tangible things obtained in connection with the investigation; criminal histories for all persons listed in discovery; any promises, inducements or benefits offered to persons listed; identification of all instances in which persons listed have previously testified for the prosecution in a criminal case; any information that is material to the preparation of the defense or which may tend to exculpate the accused or impeach the credibility of a person listed; and the identities of all individuals who have been a subject of the investigation. (Page 12)
5. To require the state to notify the defense within 30 days of arraignment (or 90 days with good cause) of its intent to seek the death penalty. (Pages 13-14)

**The Defense**

6. To create a capital litigation trial bar with experience and training qualifications for admission. Prosecutors and defense attorneys would be required to have five years of full-time criminal litigation experience or substantial equivalent; have experience in no fewer than 12 felony trials, at least four of which were murder prosecutions; and have completed at least 20 hours of training. Every capital case would be required to have at least two defense attorneys. (Pages 20-21)
7. To require the circuit court to grant reasonable requests for funding in capital cases in which the defendant is represented by retained counsel. (Page 25)

### The Police

8. To require quick presentation of murder defendants to a judge, and to provide for sanctions against law enforcement agents who do not heed this requirement. (Page 32)
9. To require videotaping of custodial interrogations and confessions in homicide cases. If the prosecution is unable to show good cause why interrogations and confessions were not videotaped, statements by the defendant would be inadmissible. (Pages 32-33)

### The Jury

10. To permit the use of discovery depositions in capital cases upon leave of court for good cause shown. Testimony by a sole eyewitness, by an accomplice or by a jailhouse informant would be considered *per se* evidence of good cause. Such discovery depositions would be at defendant's option and would not be permitted to stand in the place of live witness testimony at trial (Pages 40-41)
11. To require a special jury instruction on testimony by eyewitnesses and jailhouse informants, instructing the jury to consider the testimony with caution. (Pages 41-42)
12. To require that if any member of a jury has a lingering doubt about the defendant's guilt, the jury must return a non-death verdict. (Pages 43-44)
13. To bar the prosecution from arguing that a refusal to admit guilt supports a sentence of death. (Page 45)

### The Courts

14. To reinforce that the trial judge has a duty to reduce the sentence from death if the judge has doubts about the defendant's guilt. (Pages 48-49)
15. To require the Illinois Supreme Court to conduct a *de novo* review in all death cases. (Page 49)
16. To eliminate the time limitation for post-conviction petitions in capital cases. (Page 49)
17. To require judges to undergo periodic training in capital litigation. (Page 50)

## MAJOR ISSUES: CURRENT AND EXONERATED\* INMATES

The Council's research discovered claims by the following inmates in selected categories:  
*(Note: The claims of these particular defendants may or may not have merit; the Council does not necessarily support each claim.)*

**Alleged Prosecutorial Misconduct**--Murray Blue, Dedrick Coleman, Roland Cruz\*, Alejandro Hernandez\*, Verneal Jimerson\*, Dennis Williams\*, Steven Manning\*, Joseph Burrows\*, Henry Brisbon, Robert Cloutier, Roger Collins, Mario Flores, William Franklin, Delbert Heard, Madison Hobley, Andrew Johnson, Leonard Kidd, Ronald Kitchen, Jerry Mahaffey, Reginald Mahaffey, Perry Olinger, Patrick Page, John Pecoraro, Jimmy Ray Pitsonbarger, Hector Sanchez, Larry Scott, Edward Spreitzer, Cecil Sutherland, James Tenner, Walter Thomas, Willie Thompkins, Sherrell Towns, Robert Turner, Jerry Ward, John Whitehead, Elton Williams, Frank Williams, Martin Woolley.

**Competence of Counsel**--Gary Gauger\*, Carl Lawson\*, Dennis Williams\*, Verneal Jimerson\*, Juan Caballero, Dedrick Coleman, Dennis Emerson, James Foster, Mario Flores, William Franklin, Anthony Hall, Bernon Howery, Andre Jones, Tuhran Lear, Gregory Madej, Andrew Maxwell, Johnny Neal Jr., Leroy Orange, Leslie Palmer, John Pecoraro, Jimmy Ray Pitsonbarger, Jeffrey Rissley, Luis Ruiz, Darrin Shatner, Darryl Sims, Edward Spreitzer, John Szabo, Terrence Towns, Robert Turner, Paul West.

**Denial of Funds to the Defense**--Carl Lawson\*, Anthony Porter\*, Verneal Jimerson\*, Dennis Williams\*, Joseph Burrows\*, Ronald Burt, Roger Collins, William Clair Keene, Tuhran Lear, Johnny Neal Jr., Robin Wayne Owens, William Peeples, Frank Redd, Willie Thompkins, Patrick Wright.

**Alleged Coerced Confessions**--Ronald Jones\*, Gary Gauger\*, Johnnie Lee Evans, James Foster, Oasby Gilliam, Demetrium Henderson, Madison Hobley, Stanley Howard, Renaldo Hudson, Mark Johnson, Leonard Kidd, Derrick King, Ronald Kitchen, Jerry Mahaffey, Reginald Mahaffey, Andrew Maxwell, Joseph Miller, Edward Moore, Johnny Neal Jr., Leroy Orange, Robin Wayne Owens, Patrick Page, Aaron Patterson, John Pecoraro, Daniel Ramsey, Bobby Sims, Robert St. Pierre, Paul West, Elton Williams.

**Testimony by Accomplices**--Joseph Burrows\*, Verneal Jimerson\*, Perry Cobb\*, Darby Tillis\*, Dennis Williams\*, Anthony Brown, Ronald Burt, Roger Collins, Mario Flores, William Franklin, David Harris, Lawrence Jackson, William Clair Keene, Ronald Kliner, Charles McLaurin, Aldwin McNeal, Robin Wayne Owens, Hector Sanchez, Robert St. Pierre, John Szabo, Christopher Thomas, Robert Towner, Sherrell Towns, Robert Turner, Remon Williams.

**Testimony by Jailhouse Informants--**Joseph Burrows\*, Gary Gauger\*, Steve Manning\*, Dennis Williams\*, Rolando Cruz\*, Juan Caballero, Arlie Davis, Victor Ganus, Ronald Kitchen, Roosevelt Lucas, Geno Macri, Edward Moore, Robin Wayne Owens, John Pecoraro, Darrin Shatner, Robert Todd, Sherrell Towns, Robert Turner, Elton Williams, Remon Williams, Glenn Wilson, Martin Woolley.

**Lack of Remorse Argued--**Robert Cloutier, Paul Erickson, Jerry Mahaffey, Aldwin McNeal, Johnny Neal Jr., Leslie Palmer, William Peeples, Sherrell Towns.

ELLIOTT  
SLOSAR

# Costs of Capital Punishment in Illinois

Research Compiled by Elliot Slosar\*

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\* Elliot Slosar graduated from DePaul University in 2007 with a Bachelor's Degree in Political Science and a minor in Sociology. He is also on the Board of Directors for Students Against the Death Penalty and is a Co-Founder of the Abolition in Illinois Movement.

## Executive Summary

8 years  
53 million spent  
Problems  
1. discuss deception of allocation  
Members Capital cases → States attorney charging for the money  
2. Arbitration in having judges approve an oversight council → shared  
be at States attorneys. Defense Attorneys.  
Disparity in defense

- Since the inception of the Capital Litigation Trust Fund in 2000, the State of Illinois has disbursed \$148,944,735. The 2008 budget for the Capital Litigation Trust Fund is \$16,332,553 -- \$6,691,200 of which is earmarked for capital cases in Cook County alone.
- With an allocation of \$65,249,900 since the inception of the trust fund, Cook County has sent six men to death row. The County has actually spent \$32,677,089.34, which is an average cost of \$5,446,181 per death sentence obtained. Cook County has already spent \$1,719,823.19 trying capital cases in 2008.
- The 49 counties (excluding Cook) that have used the Capital Litigation Trust Fund have so far spent \$20,076,940.63. 13 counties (excluding Cook) in Illinois have accounted for over 73% of this expenditure. Greater Illinois has sentenced seven people to death row with this money, which is an average cost of \$2,868,134 per death sentence obtained
- The costs of the initial trial defense for those on death row varied from \$10,627.50 (Laurence Lovejoy) to \$2,041,895.65 (Cecil Sutherland).
- Last May, Juan Luna was convicted in a Cook County courtroom of killing seven people. His appointed Counsel spent \$941,331.60 in preparation for his trial defense.
- Since the inception of the Capital Litigation Trust Fund, the common misconception has been that an overwhelming amount of monies that the fund disbursed went directly towards counties in Illinois in order to prosecute and defend capital cases. Yet, that distribution accounts for only 66.78% of the actual money allocated from the trust fund. In only eight years, in addition to the State's Attorneys, Public Defenders, and appointed Counsel, another \$49,476,835.00 was used to administer capital punishment in the State of Illinois.
- One private attorney, John Paul Carroll, came from out of state to take a case. He billed for \$871,154.10, this was a retrial. His private investigator, Michael Fleming, also tapped the trust fund for \$619,914.50. The defendant, Cecil Sutherland, still ended up on death row. After this case, additional safeguards regarding the CLTF were instituted.
- In 2003, the State's Attorney of DeWitt County charged Amanda Hamm and Maurice Lagrone with murdering her three children. Prosecutors changed their minds three different times about trying Hamm and Lagrone in a capital case. After spending \$2,230,246.65, Hamm was not convicted of murder and Lagrone was found ineligible for the death penalty.
- The allocation of \$148,944,735, in just eight years, has landed just 13 individuals on death row. That is a cost of \$11,457,287.31 per death sentence obtained. Even more alarming, this does not include the majority of prosecution costs, appeals costs, incarceration, or any portion of execution expenses in Illinois.

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## **Introduction**

The cost of capital punishment in Illinois has not been documented since the inception of the Capital Litigation Trust Fund. The fund originated in response to the frequency of errors made in capital cases in Illinois. In order to qualify for resources available from the fund, the State's Attorney, Public Defender, or appointed Counsel must be participating in a capital case. There are currently 21 factors that allow for the accused to be eligible for the death penalty in Illinois. The availability of state funding, combined with the large number of eligibility factors and the lack of a statewide oversight board, encourages State's Attorneys in Illinois to ask, with relative ease, for the ultimate punishment.

## **Methodology**

The data used to create the graphs and analysis for this report were provided by the State of Illinois Treasurer's Office, Chief Judge of the Cook County Courts, and then corroborated by legislation in the Illinois State Legislature. The total amount spent in Cook County and greater Illinois is as of January 10, 2008.

## **Limitations on the Study**

While the data in this report has been extensively researched and thoroughly documented, it cannot account for all costs associated with the death penalty in Illinois. Although the funds allocated can be documented through both legislation and the State of Illinois Treasurer's Office, the Cook County State's Attorney and Public Defender do not keep track of their exact costs as closely as others within Illinois. For appointed Counsel in Cook County, and for all three entities within greater Illinois, the amount of money spent at trial, through the Capital Litigation Trust Fund, is documented based upon the case number. That is not the case for the State's Attorney and Public Defender in Cook County. The only figures available are the allocations for that year and the total amount spent. For this reason, the study is limited in giving an exact cost in the placement of inmates on death row from Cook County.

Moreover, although expenses incurred in the process of trying capital cases can be reimbursed for Public Defenders and States Attorneys, the actual salaries of these attorneys are not reimbursed from the trust fund and therefore cannot be accurately gauged. Trial preparation for capital cases can last anywhere from two to six years. Judges, Public Defenders, and States Attorneys collectively spend thousands of hours preparing a capital case. In addition, they also typically have investigators, law clerks, and secretaries from their offices that provide services during the preparation for these complex death penalty cases. The amount of money that the State of Illinois spends at the trial level does not include these significant figures that are difficult to assess. This study only addresses the Capital Litigation Trust Fund. It does not address any of the other costs associated with the death penalty system.



## State of Illinois Capital Litigation Trust Fund

The Capital Litigation Trust Fund (CLTF) was signed into law on January 1, 2000<sup>2</sup>. The fund was created to provide competent counsel and resources for the State and the Defendant during capital trials. The fund also intended to level out the playing field between the defense and prosecution in capital cases. Prior to the CLTF, prosecutors had an extreme advantage in funding. Prosecutors receive funds from federal grants and county budgets to investigate and prosecute capital cases. Ironically, they have also claimed use of the Capital Litigation Trust Fund as well.

The legislation was prompted due to the recurring problem of innocent men and women being sentenced to the penalty of death in Illinois. To date, eighteen people have been released from Illinois' death row<sup>3</sup>. Twelve men have been executed since the inception of the modern capital punishment system in Illinois<sup>4</sup>. In Illinois, more individuals are thus leaving death row after exoneration, not execution.

Litigating capital cases is an expensive proposition, as the research shows throughout this report. The costs associated with capital trials are extensive. Most capital trials require intensive investigation, numerous attorneys, mitigation specialists, forensic testing, mock trials, testimony provided by expert witnesses, and many other expenditures as well. For this reason, the Capital Litigation Trust Fund has been made available for appointed Counsel, Public Defenders, and State's Attorneys.

Each year the Illinois legislature approves a budget for the statewide Capital Litigation Trust Fund. This money is then transferred from the state's General Revenue Fund to the Capital Litigation Trust Fund. Within this appropriation, Cook County is allocated funds that are disbursed to the Cook County Treasurer's Office. While Cook County has its own individual budget due to its significant size, the rest of greater Illinois is dependent upon the rest of the funds available to prosecute and defend capital cases. These funds are distributed by the State of Illinois Treasurer's Office.

The 2008 budget for the Capital Litigation Trust Fund is \$16,332,553<sup>5</sup> -- \$6,691,200 of which is earmarked for capital cases in Cook County alone<sup>5</sup>. Since the inception of the Capital Litigation Trust Fund in 2000, the State of Illinois has disbursed \$148,944,735<sup>6</sup>.

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<sup>2</sup> Barack H. Obama, John Cullerton, Carl E. Hawkinson, and George Shadid, State of Illinois, State Senate & House of Representatives, SB0574: Capital Crimes Litigation Act, 1 Jan. 2000, 15 Jan. 2008 <<http://www.ilga.gov/legislation/legisnet91/status/910SB0574.html>>.

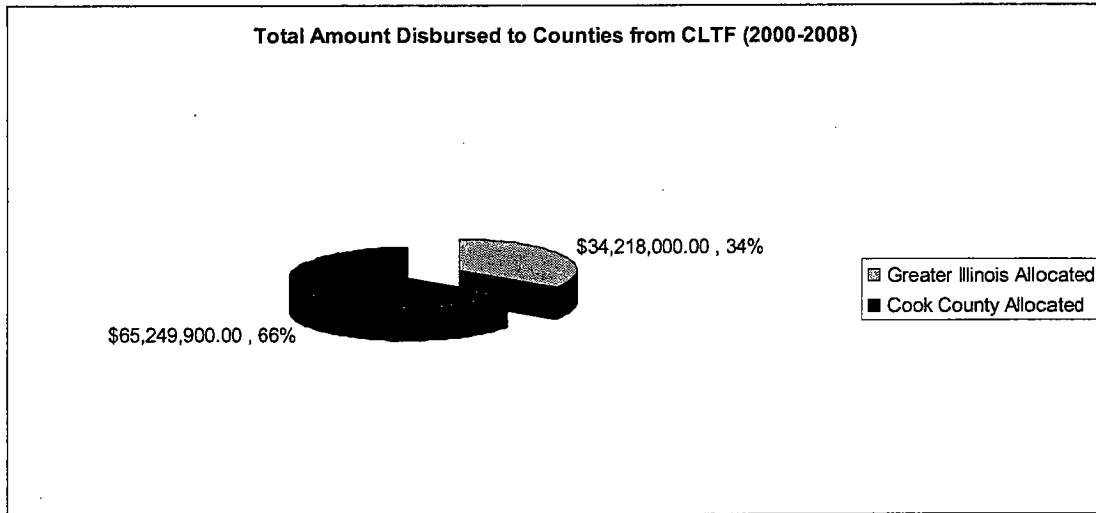
<sup>3</sup> "Inmate Search," Illinois Department of Corrections, 2 Jan. 2008, State of Illinois, 2 Jan. 2008 <<http://www.idoc.state.il.us/subsections/search/default.asp>>.

<sup>4</sup> "Number of Executions by State and Region Since 1976," Death Penalty Information Center, 28 Sept. 2007, 18 Jan. 2008 <<http://www.deathpenaltyinfo.org/article.php?scid=8&did=186>>.

<sup>5</sup> Jeffrey M. Shoenberg, State of Illinois Senate, SB1754, 22 Feb. 2007, 21 Jan. 2008 <<http://www.ilga.gov/legislation/95/SB/PDF/09500SB1754lv.pdf>>.

Jeffrey M. Shoenberg, State of Illinois Senate, SB1835, 8 Mar. 2007, 21 Jan. 2008 <<http://www.ilga.gov/legislation/95/SB/PDF/09500SB1835lv.pdf>>.

<sup>6</sup> Includes 97 allotments from the Illinois State Legislature to the Capital Litigation Trust Fund. The amount of funds were pulled from passed legislation and then corroborated by the State of Illinois Treasurer's Office.



### Cook County Costs

Cook County spends more money trying capital cases than most states. According to the Illinois Coalition to Abolish the Death Penalty's 2007 annual report, nearly 90% of Illinois death penalty cases occur in Cook County<sup>7</sup>. The total amount of funds allocated to Cook County since the inception of the trust fund is \$65,249,900<sup>8</sup>.

<sup>7</sup> Capital Punishment in Illinois: Rejecting a Failed Policy, Illinois Coalition to Abolish the Death Penalty, Chicago: ICADP, 2007 1-39.

<sup>8</sup> Jeffrey M. Shoenberg, State of Illinois Senate, SB1754, 22 Feb. 2007, 21 Jan. 2008  
<<http://www.ilga.gov/legislation/95/SB/PDF/09500SB1754lv.pdf>>.

Dave Sullivan, State of Illinois General Assembly, SB3348, 19 Feb. 2004, 20 Jan. 2008  
<<http://www.ilga.gov/legislation/93/SB/PDF/09300SB3348lv.pdf>>.

Steven J. Rauschenberger, and Donne E. Trotter, State of Illinois General Assembly, SB0630, 07 Jan. 1999, 19 Jan. 2008  
<<http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html>>.

Steven J. Rauschenberger, State of Illinois General Assembly, SB1779, 3 Feb. 2000, 19 Jan. 2008  
<<http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html>>.

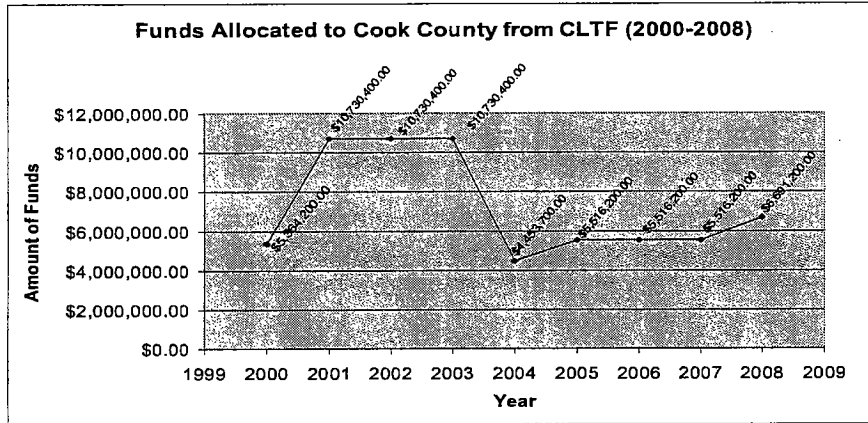
Steven J. Rauschenberger, State of Illinois General Assembly, SB2359, 22 Feb. 2002, 18 Jan. 2008  
<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

Tom Cross, State of Illinois General Assembly, HB5587, 17 Feb. 2006, 21 Jan. 2008  
<<http://www.ilga.gov/legislation/94/HB/PDF/09400HB5587lv.pdf>>.

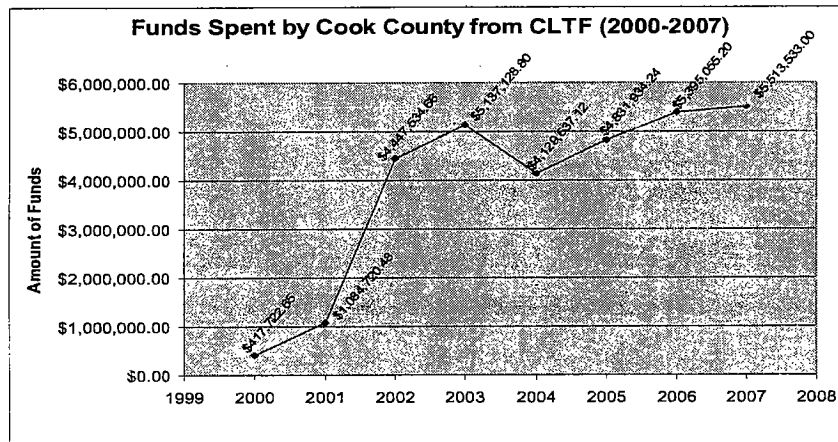
Michael J. Madigan, Gary Hannig, and Charles G. Morrow III, State of Illinois General Assembly, HB3502, 5 Mar. 2001, 19 Jan. 2008  
<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

Michael J. Madigan, Gary Hannig, and Monique D. Davis, State of Illinois General Assembly, HB 3513, 28 Feb. 2003,  
<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

Michael J. Madigan, Gary Hannig, and Monique D. Davis, State of Illinois General Assembly, HB3539, 23 Feb. 2005, 21 Jan. 2008  
<<http://www.ilga.gov/legislation/94/HB/PDF/09400HB3539lv.pdf>>.



Out of the funds allocated, Cook County has spent \$32,677,089.34<sup>9</sup>.



For the year 2008, Cook County was disbursed \$6,681,200 in order to defend and prosecute capital cases at the trial level<sup>10</sup>. This distribution to the Cook County Treasurer is further divided into disbursements for the Public Defender, State's Attorney, and court-appointed Counsel. Cook County has already spent \$1,719,823.19 trying capital cases in 2008<sup>11</sup>.

### Breakdown of Funds Disbursed in Cook County

A far greater proportion of funds for capital cases are disbursed to the Cook County State's Attorney's Office than to other counties. The State's Attorney's Office has been allocated nearly 36 million dollars to prosecute capital cases since 2000<sup>12</sup>.

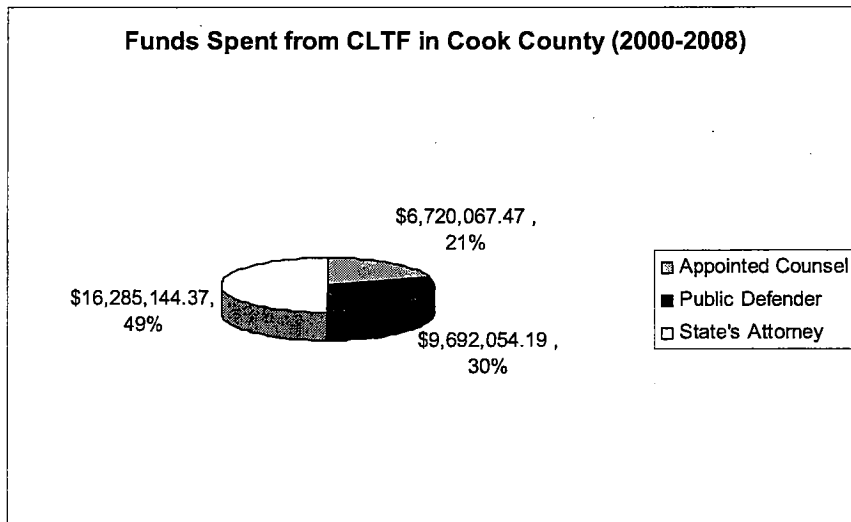
<sup>9</sup> Nadine Jakubowski, State of Illinois Treasurer's Office, "Cook County CLTF," email to the author, 11 Jan. 2008.

<sup>10</sup> Jeffrey M. Shoenberg, State of Illinois Senate, SB1754, 22 Feb. 2007, 21 Jan. 2008 <<http://www.ilga.gov/legislation/95/SB/PDF/09500SB1754lv.pdf>>.

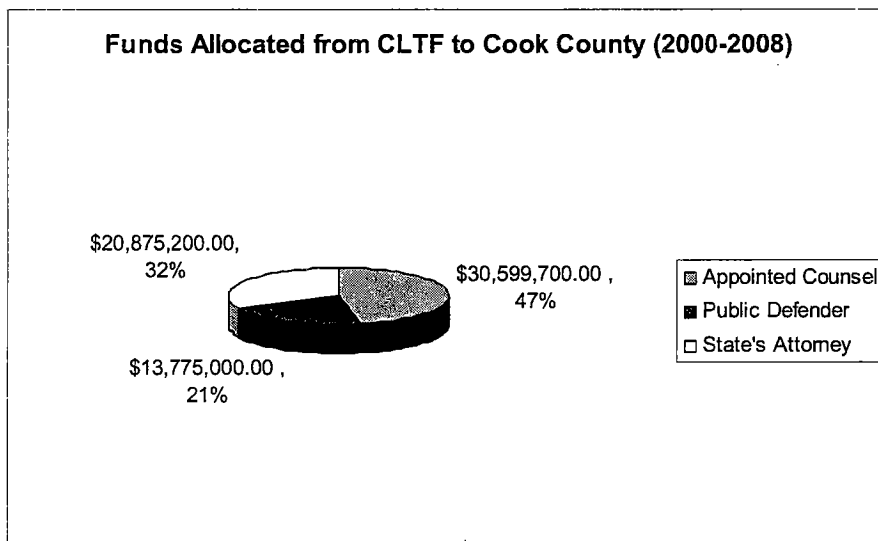
<sup>11</sup> Riley, Rosemary F. "Capital Litigation Fund." Email to the author. 11 Jan. 2008.

<sup>12</sup> Steven J. Rauschenberger, and Donne E. Trotter, State of Illinois General Assembly, SB0630, 07 Jan. 1999, 19 Jan. 2008 <<http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html>>.

With an allocation of \$65,249,900, Cook County sent six men to death row. The County has actually spent \$32,677,089.34, which is an average cost of \$5,446,181.56 per death sentence obtained<sup>13</sup>.



Cook County is the only county in Illinois where the prosecutors are allocated nearly as much money as the Public Defenders and appointed Counsels combined.



Steven J. Rauschenberger, State of Illinois General Assembly, [SB1779](http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html), 3 Feb. 2000, 19 Jan. 2008  
<<http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html>>.

Steven J. Rauschenberger, State of Illinois General Assembly, [SB2359](http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3), 22 Feb. 2002, 18 Jan. 2008  
<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

<sup>13</sup> Nadine Jakubowski, State of Illinois Treasurer's Office, "Cook County CLTF," email to the author, 11 Jan. 2008.

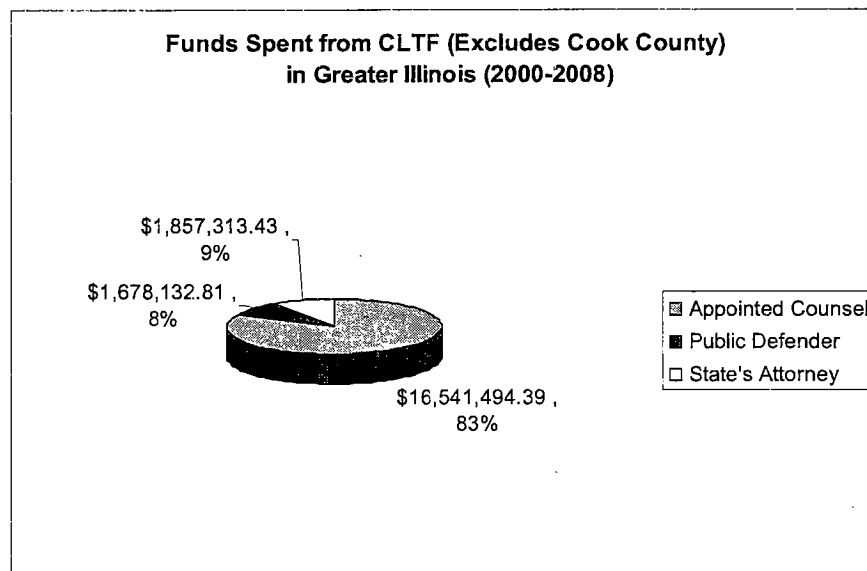
## Greater Illinois Costs

Most counties in Illinois receive funding from Federal grant programs that are designed to enhance law enforcement in a multitude of ways – from crime prevention to prosecution. For instance, in 2006, Cook County State’s Attorney Dick Devine announced that his office received nearly a million dollar federal grant that will be used to reopen, investigate, and prosecute unsolved murder cases in Cook County<sup>14</sup>. In the press release sent out by Devine, he noted that this money would go towards, among other cases, the prosecution of Juan Luna and Jim Degorski, who at that time, were defendants charged in committing the Brown’s Chicken Massacre<sup>14</sup>. Luna has since been convicted.

It is impossible to gauge how much money the prosecution gets to prosecute capital cases. However, when looking at the large amount of funds provided by the Federal Government and private agencies, in addition to the budgets allocated from County Boards, it is undeniable that the State receives more funds to prosecute capital cases than defense attorneys incur defending them.

Since the inception of the Capital Litigation Trust Fund, 50 counties in Illinois have used the fund in some form or fashion to prosecute and defend capital cases<sup>15</sup>. As noted earlier, Cook County has its own separate budget, leaving the other 49 counties eligible to use the greater Illinois funds.

With an allocation of \$34,218,000, greater Illinois sent seven men to death row<sup>16</sup>. The 49 counties that have used the Capital Litigation Trust Fund have so far spent \$20,076,940.63<sup>15</sup>.

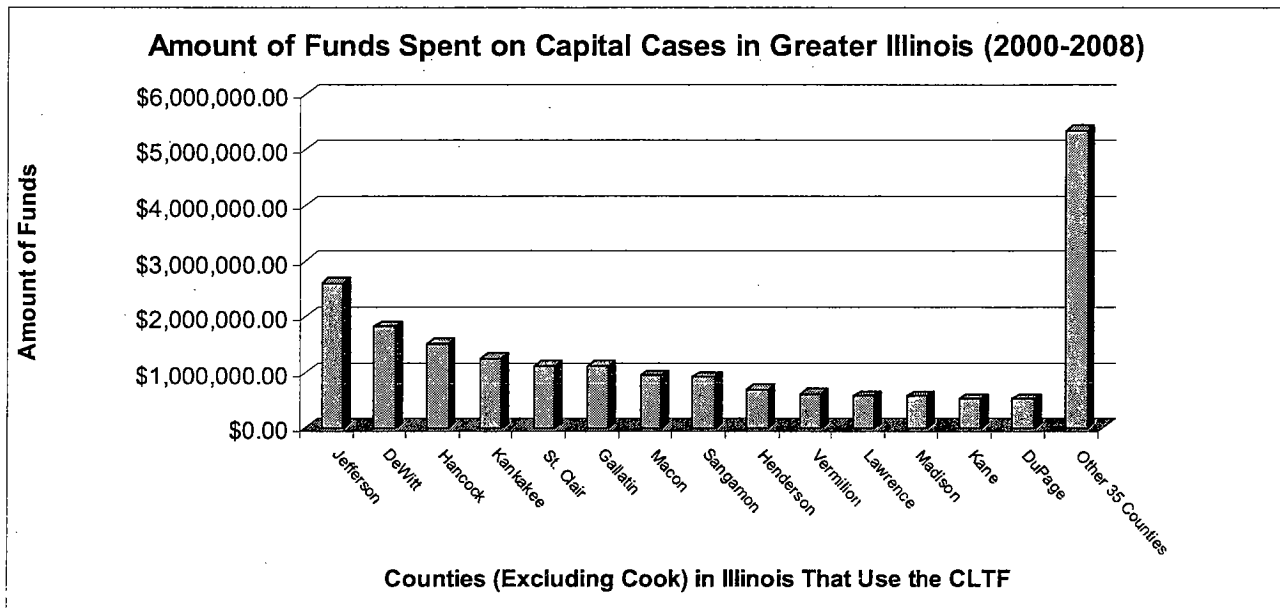


<sup>14</sup> "State's Attorney Devine and U.S. Rep Mark Kirk Announce \$1 Million Grant to Help Solve Murder Cases." Cook County State’s Attorneys Office, May 31,2006, January 7,2008, <<http://www.statesattorney.org/pressmurdergrant01.htm>>.

<sup>15</sup> Nadine Jakubowski, State of Illinois Treasurer’s Office, "Re: Trust Fund," e-mail to Stephen L. Richards, 9 Jan. 2008.

<sup>16</sup> Capital Punishment in Illinois: Rejecting a Failed Policy. Illinois Coalition to Abolish the Death Penalty. Chicago: ICADP, 2007. 1-39.

Even more disturbing, 13 counties in Illinois accounted for over 73% of this expenditure. The other 35 counties in greater Illinois that have used the Capital Litigation Trust Fund account for just 27% of the total amount spent by greater Illinois.



A number of factors correlate with the outcome of the statistics regarding the spending in the 13 highest (excluding Cook) counties in Illinois. A high murder rate could, in fact, lead the State's Attorney to prosecute more capital cases, thus allowing for a larger total of expenditures from the litigation trust fund. Yet, looking beyond just the numbers reveals other concerns.

State's Attorneys have considerable discretion when deciding to pursue the death penalty in a murder case. Some State's Attorneys are sometimes inclined to prosecute first-degree murder cases as capital cases due to personal ideologies or political pressures regarding capital punishment. Many also realize the fiscal security, indeed, significant income, that the Capital Litigation Trust Fund provides.

Other factors raise questions about the purpose behind death penalty prosecutions. John Barsanti, the current State's Attorney of Kane County, was quoted in a 2006 *Daily Herald* article claiming that he uses the death penalty as a leverage tool<sup>17</sup>. Within this article, Barsanti exclaimed, "In a negotiating situation, you can say, You roll the dice on this one and lose, you get death."<sup>17</sup> Other State's Attorneys have been known to use similar tactics as well.

In the 49 greater Illinois counties that have used the Capital Litigation Trust Fund to litigate death penalty cases, 83% of the expenditures went towards costs associated with appointed Counsels<sup>18</sup>. To date, \$16,541,494 has been spent paying appointed Counsel in greater Illinois

<sup>17</sup> Adam Kovac, "Barsanti's Strategy of Using the Death Penalty to Leverage Plea Bargains Has Met with Mixed Results," *Daily Herald* 18 July 2006, 15 Jan. 2008 <<http://www.dailyherald.com/story/print/?id=77161>>.

<sup>18</sup> Nadine Jakubowski, State of Illinois Treasurer's Office, "Re: Trust Fund," e-mail to Stephen L. Richards, 9 Jan. 2008.

see Barsanti said to look at 10% of the state attorneys guidelines  
 10

since the inception of the trust fund<sup>18</sup>.

The costs associated with litigating death penalty cases in Cook County are drastically different from that in the rest of Illinois, primarily due to greater use of appointed Counsel outside Cook County. Thus, counties other than Cook have thus far used 41% less CLTF funding to prosecute death penalty cases than they have used to defend them<sup>18</sup>.

Spending \$20,076,940.63 on death penalty trials from the Capital Litigation Trust Fund has netted minimal results<sup>18</sup>. Greater Illinois has sentenced seven people to death row with this money, which is an average cost of \$2,868,134 per death sentence obtained<sup>19</sup>.

### Specific Costs Concerning the Condemned

In 2003, former Illinois Governor George H. Ryan commuted the death sentences of all 167 inmates on death row, most to life without parole<sup>20</sup>. And yet, after only five years, there are already 13 new residents on the Illinois condemned unit. Death row is being refilled<sup>21</sup>.

The costs of the initial trial defense for those now on death row varied from \$10,627.50 (Laurence Lovejoy) to \$2,041,895.65 (Cecil Sutherland)<sup>22</sup>. The costs of prosecuting these individuals ranged from \$8,833.90 (Laurence Lovejoy) to \$414,826.83 (Cecil Sutherland)<sup>22</sup>.

Achieving a few death sentences in Illinois has been an extremely expensive proposition. As noted in the following table, some death sentences cost the State of Illinois millions of dollars – just for the initial trial itself. An even greater concern is the disparity between funds spent to defend the accused in rural counties when compared to urban counties, such as Cook or DuPage Counties, where Public Defenders represented the majority of defendants at trial who are now on death row.

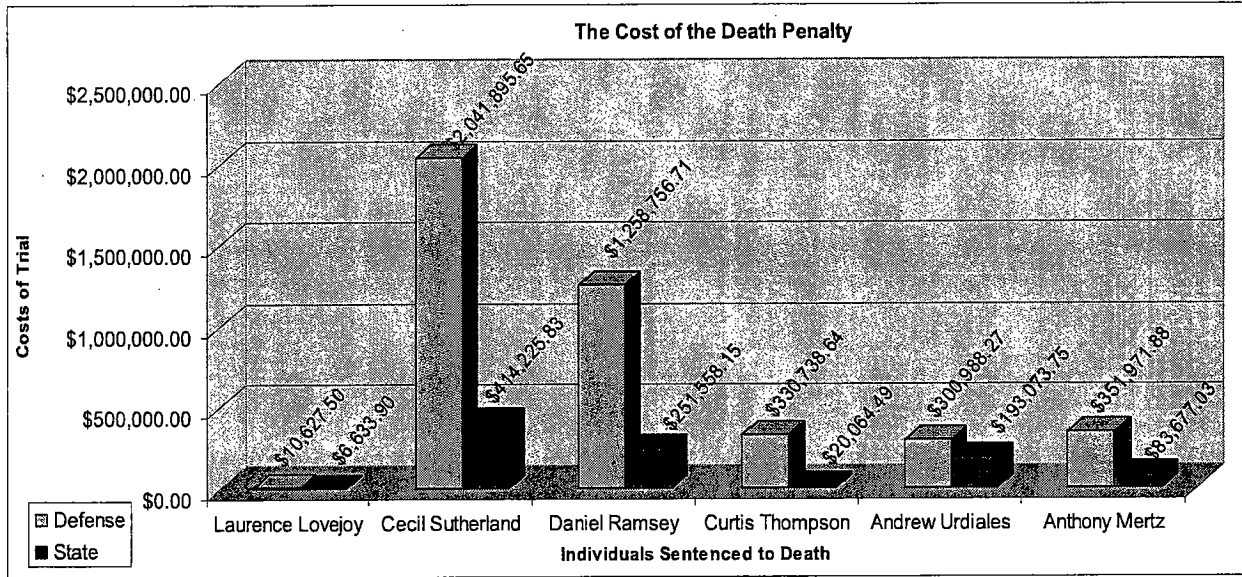
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<sup>19</sup> "Inmate Search," Illinois Department of Corrections, 2 Jan. 2008, State of Illinois, 2 Jan. 2008 <<http://www.idoc.state.il.us/subsections/search/default.asp>>.

<sup>20</sup> "Illinois Death Row Inmates Granted Commutation by Governor George Ryan," Death Penalty Information Center, 27 Sept. 2007, 17 Jan. 2008 <<http://www.deathpenaltyinfo.org/article.php?scid=13&did=485>>.

<sup>21</sup> Capital Punishment in Illinois: Rejecting a Failed Policy. Illinois Coalition to Abolish the Death Penalty. Chicago: ICADP, 2007. 1-39.

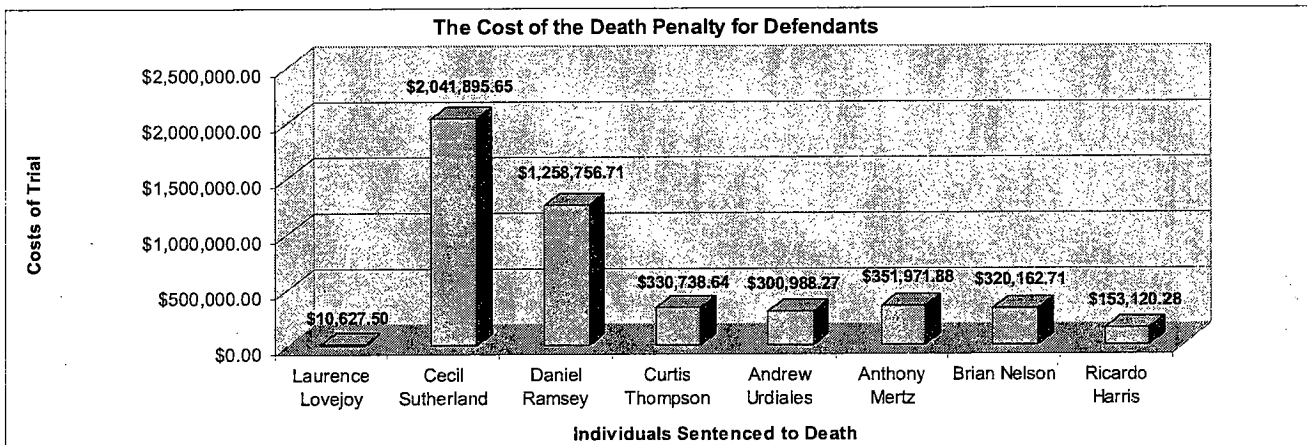
<sup>22</sup> Nadine Jakubowski, State of Illinois Treasurer's Office, "Re: Trust Fund," e-mail to Stephen L. Richards, 9 Jan. 2008.



The quality of representation cannot be wholly attributed to the amount spent at trial. Still, expenditures made from the Capital Litigation Trust Fund are a good indicator of the quality of defense, since their use to fund expert witnesses, mitigation specialists, and outside investigations often means the defendant has been better represented.

For instance, the cost of defending Laurence Lovejoy, who received a death sentence for killing one person, was nearly a million dollars less than the cost of defending Juan Luna, who also faced the death penalty for killing seven people, but was instead sentenced to life without parole in the end<sup>23</sup>. Both were jury trials.

However, the amount of money spent defending any given death penalty case varies widely, leaving room for much criticism for the random and subjective nature both of death penalty prosecutions and quality of defense. In Laurence Lovejoy's case, only \$10,627.50 was spent in his defense<sup>22</sup>. And yet, the defense for Cecil Sutherland, also now on death row, was \$2,041,895.65<sup>22</sup>.



<sup>23</sup> This does not include the amount of funds incurred by the Office of the State Appellate Defender, Death Penalty Trial Assistance, during the course of Lovejoy's and Luna's case. The DPTA office had a lead attorney, mitigator, investigator, and paralegal working on both cases.



## The Cost of High-Profile Capital Cases Not Resulting in a Death Sentence

Many people in society would concede that some crimes are so heinous that the accused deserve to be tried for the ultimate punishment available. Yet it is these cases - the high-profile murders of three young children, the unprovoked mass murder of seven individuals, or a serial murderer convicted of killing eight people - which highlight the arbitrary nature of capital punishment in Illinois.

In the aforementioned cases, none of the convicted were sentenced to the death penalty. Nevertheless, the cost of their cases was exorbitant. A few examples will suffice:

--Last May, Juan Luna was convicted in a Cook County courtroom of killing seven people<sup>24</sup>. His appointed Counsel spent \$941,331.60 in preparation for his trial defense<sup>25</sup>. (That excludes any costs attributed to the attorneys and mitigators which were provided by the Office of the State Appellate Defender, Death Penalty Trial Assistance.) He was ordered to serve seven consecutive sentences of life without parole.

--In May of 2006, Larry Bright pled guilty to the murder of eight people; he was forced to serve eight life-without-parole sentences<sup>26</sup>. Bright publicly offered to plead guilty before he was even appointed a public defender by the courts<sup>27</sup>. Yet his capital case accrued \$231,898.05 in costs before the State's Attorney was willing to grant him the ability to plead guilty in exchange for eight sentences of life without parole<sup>25</sup>.

--In 2003, the State's Attorney of DeWitt County charged Amanda Hamm and Maurice Lagrone with murdering her three children<sup>28</sup>. Prosecutors changed their minds three different times about trying Hamm and Lagrone in a capital case. The Sheriff of Dewitt County even sent out a press release stating: "Although this case certainly qualifies for the death penalty, recent trends in Illinois and the particular facts of this case would seem to indicate that imposition and execution of that sentence would be a remote possibility"<sup>29</sup>.

Yet, less than ninety days later, an attorney for Lagrone stated that the Capital Litigation Trust Fund would not be able to fund the charges against Lagrone or Hamm if the death

<sup>24</sup> Carlos Sadovi, "Families Confront 'Killer' Luna in Court," Chicago Tribune 16 May 2007, 23 Jan. 2008  
<[http://www.chicagotribune.com/news/local/chi-browns\\_new\\_may16,1,5532861.story](http://www.chicagotribune.com/news/local/chi-browns_new_may16,1,5532861.story)>.

<sup>25</sup> Rosemary F. Riley, "Capital Litigation Fund," email to the author, 11 Jan. 2008.

<sup>26</sup> Associated Press, "Accused Serial Killer Pleads Guilty to Eight Deaths in Exchange for Life in Prison," USA Today 30 May 2006, 22 Jan. 2008  
<[http://www.usatoday.com/news/nation/2006-05-30-illinois-serial-killer\\_x.htm](http://www.usatoday.com/news/nation/2006-05-30-illinois-serial-killer_x.htm)>.

<sup>27</sup> Charles Montaldo, "Larry Bright Charged with 2nd Murder," About.Com: Crime and Punishment, 14 Feb. 2005, 20 Jan. 2008  
<<http://crime.about.com/b/2005/02/14/larry-bright-charged-with-2nd-murder.htm>>.

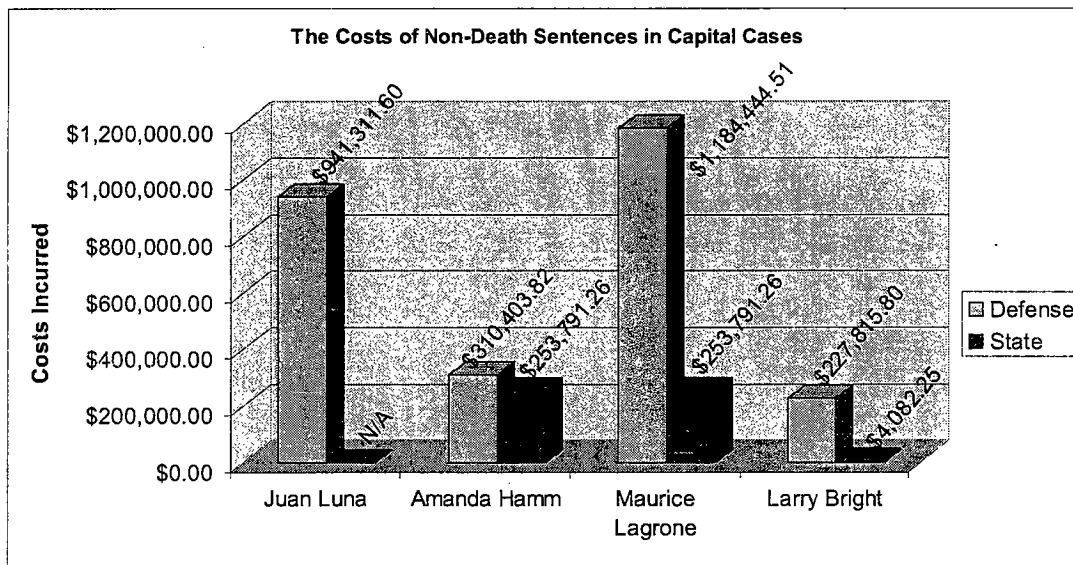
<sup>28</sup> Edith Brady-Lunny, "Amanda Hamm Sentenced to 10 Years in Prison," Bloomington-Normal Pantagraph 15 Feb. 2007, 23 Jan. 2008  
<<http://www.pantagraph.com/articles/2007/02/01/news/doc45c2178096b4a224078092.txt>>.

<sup>29</sup> Stephanie Potter, "Death Penalty Won't Be Sought in Child Deaths," Decatur Herald & Review 27 Jan. 2004, 23 Jan. 2008  
<[http://nl.newsbank.com/nl-search/we/Archives?p\\_action=doc&p\\_docid=1005AE2461E1FF56&p\\_docnum=2&s\\_dlid=DL0108012412190309304&s\\_ecproduct=SUB-FREE&s\\_ecprodtype=INSTANT&s\\_subterm=Subscription%20until%3A%2012%2F14%2F2015%2011%3A59%20PM&s\\_subexpires=12%2F14%2F2015%2011%3A59%20PM&s\\_username=decaturfree&s\\_accountid=AC0107082015365903015&s\\_upgradeable=no](http://nl.newsbank.com/nl-search/we/Archives?p_action=doc&p_docid=1005AE2461E1FF56&p_docnum=2&s_dlid=DL0108012412190309304&s_ecproduct=SUB-FREE&s_ecprodtype=INSTANT&s_subterm=Subscription%20until%3A%2012%2F14%2F2015%2011%3A59%20PM&s_subexpires=12%2F14%2F2015%2011%3A59%20PM&s_username=decaturfree&s_accountid=AC0107082015365903015&s_upgradeable=no)>.

penalty was off the table<sup>30</sup>. The County Board soon took on the task of evaluating the effect that these two capital cases had on their public defenders' budget<sup>30</sup>. A short time later, Board member Charles Moore was quoted in the *Decatur Herald* as saying, "We're representing the taxpayers. We can't give a blank check and say whatever"<sup>31</sup>. Only weeks later, the State's Attorney filed his certification for seeking the death penalty against both Hamm and Lagrone<sup>32</sup>.

So in all actuality, the death penalty was not sought against Lagrone or Hamm because they were the "worst of the worst." Rather, it was a way to alleviate any trial cost for the money-strapped DeWitt County. After spending \$2,230,246.65, Hamm was not convicted of murder and Lagrone was found ineligible for the death penalty<sup>28</sup>.

Some may point to these results and claim that the reforms on capital punishment must work due to the difficulty in landing these four people on death row. However, it cost the State of Illinois \$3,175,660.50<sup>33</sup> to prosecute and defend these cases, and that excludes the costs incurred during the fourteen-year investigation and subsequent prosecution of Juan Luna<sup>34</sup>.



<sup>30</sup> Edith Brady-Lunny, "Clinton Drowning Strains Defender Budget," *Herald & Review* 9 Oct. 2006, 23 Jan. 2008 <<http://www.nacdl.org/public.nsf/defenseupdates/illinois026?opendocument>>.

<sup>31</sup> Mike Frazier, "DeWitt Co. Fears High Legal Bills in Murder Trial," *Decatur Herald & Review* 20 Mar. 2004, 23 Jan. 2008 <[http://nl.newsbank.com/nl-search/we/Archives?p\\_action=doc&p\\_docid=1017256757D90EC1&p\\_docnum=2&s\\_dlid=DL0108012406392301358&s\\_ecproduct=SUB-FREE&s\\_ecprodtype=INSTANT&s\\_subterm=Subscription%20until%3A%2012%2F14%2F2015%2011%3A59%20PM&s\\_subexpires=12%2F14%2F2015%2011%3A59%20PM&s\\_username=decaturfree&s\\_accountid=AC0107082015365903015&s\\_upgradeable=no](http://nl.newsbank.com/nl-search/we/Archives?p_action=doc&p_docid=1017256757D90EC1&p_docnum=2&s_dlid=DL0108012406392301358&s_ecproduct=SUB-FREE&s_ecprodtype=INSTANT&s_subterm=Subscription%20until%3A%2012%2F14%2F2015%2011%3A59%20PM&s_subexpires=12%2F14%2F2015%2011%3A59%20PM&s_username=decaturfree&s_accountid=AC0107082015365903015&s_upgradeable=no)>.

<sup>32</sup> Staff Report, "Board Agrees to Pay Legal Bills for LaGrone Jr." *Decatur Herald & Review* 24 Apr. 2004, 23 Jan. 2008 <[http://nl.newsbank.com/nl-search/we/Archives?p\\_action=doc&p\\_docid=1023191499692DBD&p\\_docnum=15&s\\_dlid=DL0108012412240009440&s\\_ecproduct=SUB-FREE&s\\_ecprodtype=INSTANT&s\\_subterm=Subscription%20until%3A%2012%2F14%2F2015%2011%3A59%20PM&s\\_subexpires=12%2F14%2F2015%2011%3A59%20PM&s\\_username=decaturfree&s\\_accountid=AC0107082015365903015&s\\_upgradeable=no](http://nl.newsbank.com/nl-search/we/Archives?p_action=doc&p_docid=1023191499692DBD&p_docnum=15&s_dlid=DL0108012412240009440&s_ecproduct=SUB-FREE&s_ecprodtype=INSTANT&s_subterm=Subscription%20until%3A%2012%2F14%2F2015%2011%3A59%20PM&s_subexpires=12%2F14%2F2015%2011%3A59%20PM&s_username=decaturfree&s_accountid=AC0107082015365903015&s_upgradeable=no)>.

<sup>33</sup> Nadine Jakubowski, State of Illinois Treasurer's Office "Re: Trust Fund," e-mail to Stephen L. Richards, 9 Jan. 2008.

<sup>34</sup> Carlos Sadovi, "Families Confront 'Killer' Luna in Court," *Chicago Tribune* 16 May 2007, 23 Jan. 2008 <[http://www.chicagotribune.com/news/local/chi-browns\\_new\\_may16\\_07\\_5532861.story](http://www.chicagotribune.com/news/local/chi-browns_new_may16_07_5532861.story)>.

## Other Costs Associated with Capital Trials

Since the inception of the Capital Litigation Trust Fund, the common misconception has been that an overwhelming amount of monies that the fund disbursed went directly towards counties in Illinois in order to prosecute and defend capital cases. Yet, that distribution accounts for only 66.78% of the actual money allocated from the trust fund. In only eight years, in addition to the State's Attorneys, Public Defenders, and appointed Counsel, another \$49,476,835.00 was used to administer the capital punishment system in the State of Illinois - a figure stunning to many<sup>35</sup>.

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<sup>35</sup> Dave Sullivan, State of Illinois General Assembly, SB3348, 19 Feb. 2004, 20 Jan. 2008  
<<http://www.ilga.gov/legislation/93/SB/PDF/09300SB3348lv.pdf>>.

Ryder, State of Illinois General Assembly, HB3902, 25 Jan. 2000, 19 Jan. 2008  
<<http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html>>.

Tom Cross, State of Illinois General Assembly, HB5587, 17 Feb. 2006, 21 Jan. 2008  
<<http://www.ilga.gov/legislation/94/HB/PDF/09400HB5587lv.pdf>>.

Steven J. Rauschenberger, and Donne E. Trotter, State of Illinois General Assembly, SB0630, 07 Jan. 1999, 19 Jan. 2008  
<<http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html>>.

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<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

Gary Hannig, State of Illinois General Assembly, HB4441, 9 Jan. 2006, 21 Jan. 2008  
<<http://www.ilga.gov/legislation/94/HB/PDF/09400HB4441lv.pdf>>.

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<<http://www.ilga.gov/legislation/94/SB/PDF/09400SB1730lv.pdf>>.

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<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

Jeffrey M. Shoenberg, State of Illinois Senate, SB1835, 8 Mar. 2007, 21 Jan. 2008  
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<<http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html>>.

Steven J. Rauschenberger, State of Illinois General Assembly, SB1779, 3 Feb. 2000, 19 Jan. 2008  
<<http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html>>.

Steven J. Rauschenberger, State of Illinois General Assembly, SB2359, 22 Feb. 2002, 18 Jan. 2008  
<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

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<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

Michael J. Madigan, Gary Hannig, and Charles G. Morrow III, State of Illinois General Assembly, HB3502, 5 Mar. 2001, 19 Jan. 2008  
<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

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<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

Michael J. Madigan, Gary Hannig, and Monique D. Davis, State of Illinois General Assembly, HB3539, 23 Feb. 2005, 21 Jan. 2008  
<<http://www.ilga.gov/legislation/94/HB/PDF/09400HB3539lv.pdf>>.

Michael J. Madigan, Gary Hannig, and Monique D. Davis, State of Illinois General Assembly, HB3780, 13 Mar. 2007,  
<<http://www.ilga.gov/legislation/95/HB/PDF/09500HB3780lv.pdf>>.

Michael J. Madigan, Gary Hannig, and Monique D. Davis, State of Illinois General Assembly, HB3796, 10 Apr. 2003, 15 Jan. 2008  
<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

## Office of the State Appellate Defender: Death Penalty Trial Assistance Unit

The Office of the State Appellate Defender, Death Penalty Trial Assistance Unit is staffed with attorneys, mitigation specialists, and investigators who provide trial assistance in death penalty cases where the defendant is indigent<sup>36</sup>. DPTA has provided extensive services in some of the most difficult capital cases in recent years – serving as co-counsel in the trial of Juan Luna, as well as helping to defend Brian Dugan. The Division has offices in Chicago, Springfield, and Belleville. It has assisted in 197 cases since opening in 2000<sup>36</sup>.

Since the inception of the Capital Litigation Trust Fund, the Death Penalty Trial Assistance Unit has been allocated \$22,746,486.00 in order to help it assist Public Defenders and appointed Counsel throughout the state<sup>37</sup>. The 2008 budget alone for this Unit is \$3,190,453.00, nearly as much as all of greater Illinois combined<sup>38</sup>. All of this DPTA funding comes directly from the Capital Litigation Trust Fund.

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<<http://www.ilga.gov/legislation/93/HB/PDF/09300HB7271lv.pdf>>.

<sup>36</sup> "General Information," Office of the State Appellate Defender, 22 Jan. 2007, State of Illinois, 23 Jan. 2008  
<<http://www.state.il.us/DEFENDER/>>.

<sup>37</sup> Vince Demuzio, State of Illinois General Assembly, SB3012, 6 Feb. 2004, 20 Jan. 2008  
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Michael J. Madigan, Gary Hannig, and Lovana Jones, State of Illinois General Assembly, HB4065, 28 Feb. 2005, 20 Jan. 2008  
<<http://www.ilga.gov/legislation/94/HB/PDF/09400HB4065lv.pdf>>.

Michael J. Madigan, Gary Hannig, and Lovana Jones, State of Illinois General Assembly, HB5763, 21 Feb. 2006, 21 Jan. 2008  
<<http://www.ilga.gov/legislation/94/HB/PDF/09400HB5763lv.pdf>>.

Steven J. Rauschenberger, and Donne E. Trotter, State of Illinois General Assembly, SB0630, 07 Jan. 1999, 19 Jan. 2008  
<<http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html>>.

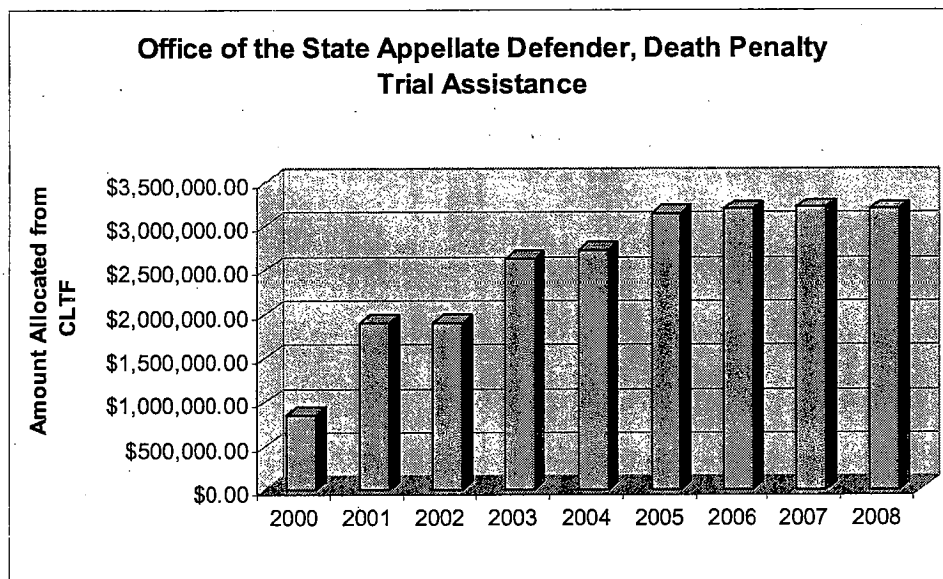
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Steven J. Rauschenberger, and Kirk Dillard, State of Illinois General Assembly, SB1774, 3 Feb. 2000, 19 Jan. 2008  
<<http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html>>.

<sup>38</sup> Jeffrey M. Shoenberg, State of Illinois Senate, SB1754, 22 Feb. 2007, 21 Jan. 2008  
<<http://www.ilga.gov/legislation/95/SB/PDF/09500SB1754lv.pdf>>.

Jeffrey M. Shoenberg, State of Illinois Senate, SB1835, 8 Mar. 2007, 21 Jan. 2008  
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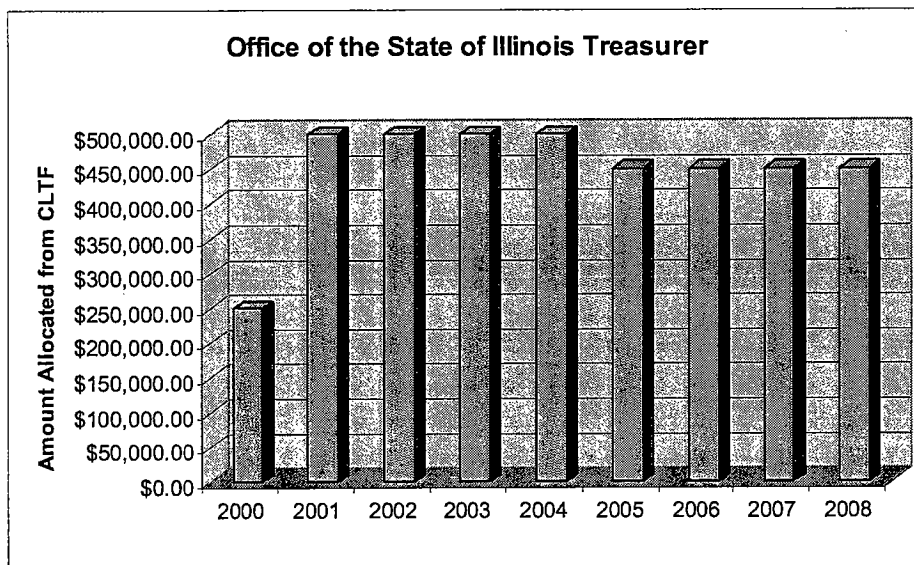


### State of Illinois Treasurer

The Office of the Illinois State Treasurer, currently run by Alexi Giannoulis, is the administrator of the entire Capital Litigation Trust Fund<sup>39</sup>. The Treasurer "provides money for the appropriations to be made, grants to be awarded, and compensation and expenses to be paid under this act"<sup>39</sup>. The State Treasurer is given the duty of not only disbursing money to the State's Attorneys, Public Defenders, and appointed Counsel in all of greater Illinois, but is also given the duty of disbursing funds to those entities in Cook County, the Attorney General, the State Appellate Prosecutor, and the State Appellate Defender<sup>39</sup>.

As compensation for administering this extensive fund from 2000 to 2008, the State Treasurer has received a total of \$4,053,600, an average of \$450,400 per fiscal year<sup>35</sup>. To put this in context, the State of Illinois Treasurer has been allocated more funds to administer the Capital Litigation Trust Fund, than has been allocated to Public Defenders for the entire greater Illinois combined. The Public Defenders for greater Illinois have been allocated a total of \$3,984,000 since the inception of the trust fund in 2000<sup>35</sup>.

<sup>39</sup> "Capital Litigation Trust Fund," Illinois State Treasurer, 22 Jan. 2008, State of Illinois, 22 Jan. 2008 <<http://www.treasurer.il.gov/programs/capital-litigation-trust-fund/capital-litigation-trust-fund.aspx>>.



## State of Illinois Attorney General

The State of Illinois Attorney General also receives extensive funding from the Capital Litigation Trust Fund. The funding is to go towards “expenses incurred by the Attorney General when the Attorney General is ordered by the presiding judge of the Criminal Division of the Circuit Court of Cook County to prosecute or supervise the prosecution of Cook County cases”<sup>40</sup>. The Attorney General also has the authority to prosecute capital cases in Greater Illinois as well. Since 2000, the Attorney General has received \$6,800,000 to help prosecute capital cases in Cook County - an amount almost equal to the allocation from the Capital Litigation Trust Fund to State’s Attorneys in all of greater Illinois<sup>41</sup>.

<sup>40</sup> Barack H. Obama, John Cullerton, Carl E. Hawkinson, and George Shadid, State of Illinois General Assembly, SB0574: Capital Crimes Litigation Act, 1 Jan. 2000, 15 Jan. 2008 <<http://www.ilga.gov/legislation/legisnet91/status/910SB0574.html>>.

<sup>41</sup> Michael J. Madigan, Gary Hannig, and Monique D. Davis, State of Illinois General Assembly, HB3780, 13 Mar. 2007, <<http://www.ilga.gov/legislation/95/HB/PDF/09500HB3780lv.pdf>>.

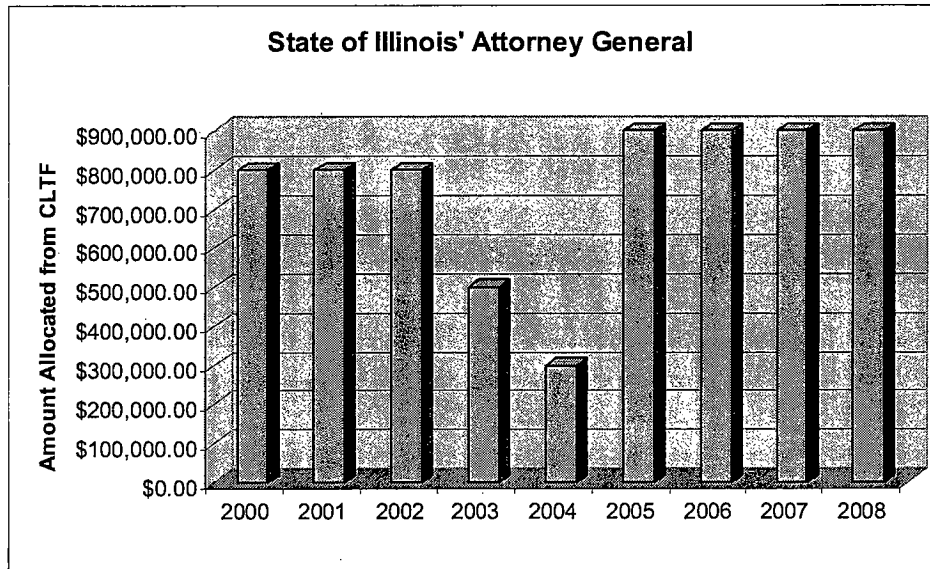
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Michael J. Madigan, Gary Hannig, and Monique D. Davis, State of Illinois General Assembly, HB5769, 28 Feb. 2006, 21 Jan. 2008 <<http://www.ilga.gov/legislation/94/HB/PDF/09400HB4441lv.pdf>>.

Michael J. Madigan, Gary Hannig, and Monique D. Davis, State of Illinois General Assembly, HB7271, 26 Feb. 2004, 20 Jan. 2008 <<http://www.ilga.gov/legislation/93/HB/PDF/09300HB7271lv.pdf>>.

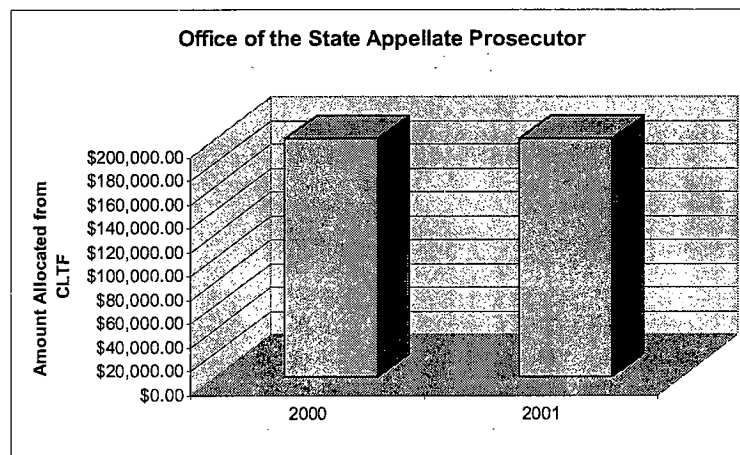
Steven J. Rauschenberger, State of Illinois General Assembly, SB1345, 22 Feb. 2001, 19 Jan. 2008 <<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

Ryder, State of Illinois General Assembly, HB3902, 25 Jan. 2000, 19 Jan. 2008 <<http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html>>.



### State of Illinois Appellate Prosecutor

The State of Illinois Appellate Prosecutor is another entity that has received funding from the widely distributive Capital Litigation Trust Fund. Since the origination of the fund, \$4,300,000 has been allocated to the Appellate Prosecutor<sup>42</sup>. Under the legislation that appropriated this funding, this money is to be used for "support under the State's Attorneys Appellate Prosecutor's Act for the several county State's Attorneys outside of Cook County"<sup>43</sup>.

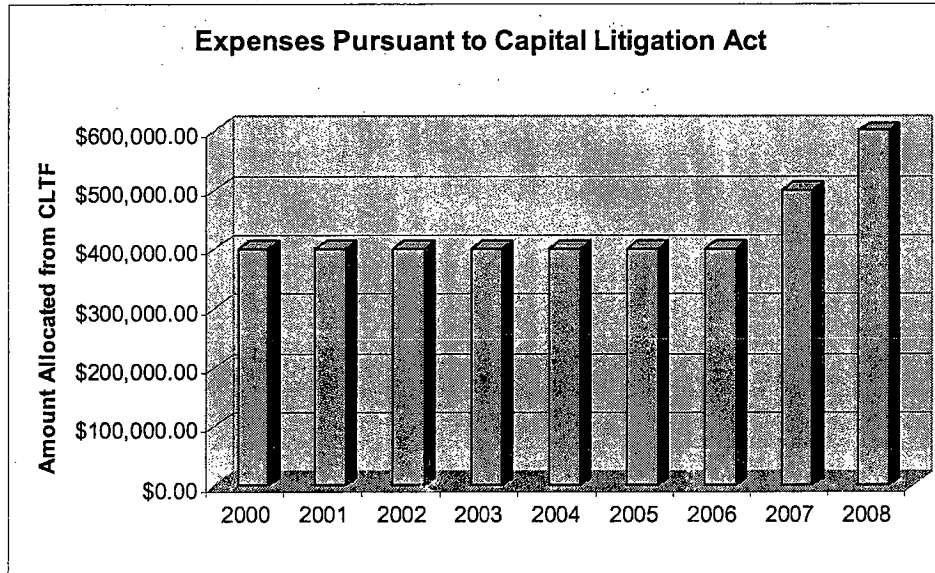


The State of Illinois Appellate Prosecutor also receives funding from the Capital Litigation Trust Fund for expenses pursuant to the Capital Litigation Crimes Act.<sup>43</sup> Since the inception of the trust

<sup>42</sup> Steven J. Rauschenberger, and Donne E. Trotter, State of Illinois General Assembly, SB0630, 07 Jan. 1999, 19 Jan. 2008 <<http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html>>.

<sup>43</sup> Barack H. Obama, John Cullerton, Carl E. Hawkinson, and George Shadid, State of Illinois General Assembly, SB0574: Capital Crimes Litigation Act, 1 Jan. 2000, 15 Jan. 2008 <<http://www.ilga.gov/legislation/legisnet91/status/910SB0574.html>>.

fund, the State of Illinois has allocated \$3,900,000 to cover such expenses<sup>44</sup>. Through the use of these funds, the Appellate Prosecutor is able to participate in prosecuting numerous capital cases, at the trial level, in the State of Illinois. The Appellate Prosecutor has received funding from the Capital Litigation Trust Fund since its inception in 2000<sup>42</sup>.



### Some Costs Associated with Death Penalty Appeals

#### Office of the State Appellate Defender: Post Conviction Unit

The Office of the State Appellate Defender Post Conviction Unit represents death row inmates in their extensive post-conviction proceedings.<sup>45</sup> The Post Conviction Unit currently has offices

<sup>44</sup> Gary Hannig, State of Illinois General Assembly, [HB4441](#), 9 Jan. 2006, 21 Jan. 2008  
<<http://www.ilga.gov/legislation/94/HB/PDF/09400HB4441lv.pdf>>.

Michael J. Madigan, Gary Hannig, and Charles G. Morrow III, State of Illinois General Assembly, [HB3502](#), 5 Mar. 2001, 19 Jan. 2008  
<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

Frank J. Mautino, State of Illinois General Assembly, [HB4979](#), 5 Feb. 2002, 14 Jan. 2008  
<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=3513&GAID=3&GA=93&DocTypeID=HB&LegID=6137&SessionID=3>>.

Jeffrey M. Shoenberg, State of Illinois Senate, [SB1754](#), 22 Feb. 2007, 21 Jan. 2008  
<<http://www.ilga.gov/legislation/95/SB/PDF/09500SB1754lv.pdf>>.

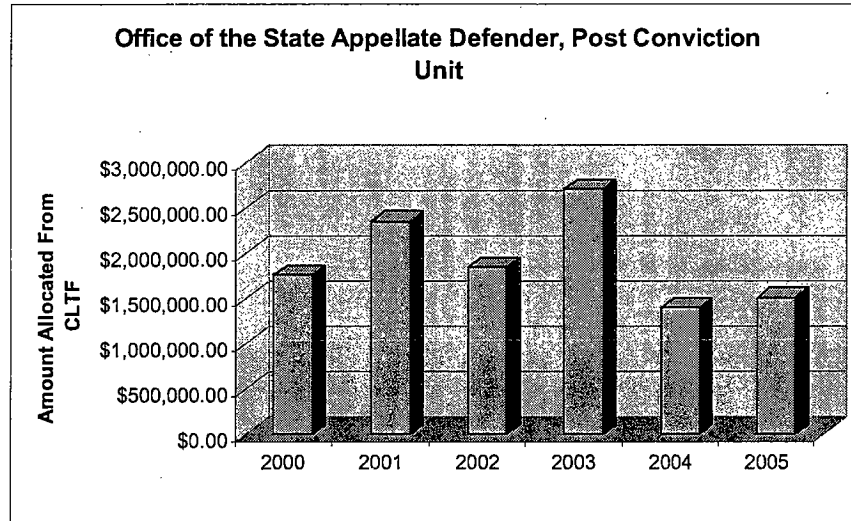
Steven J. Rauschenberger, State of Illinois General Assembly, [SB1779](#), 3 Feb. 2000, 19 Jan. 2008  
<<http://www.ilga.gov/legislation/legisnet92/status/920SB1345.html>>.

Donne E. Trotter, State of Illinois General Assembly, [SB1730](#), 25 Feb. 2005, 20 Jan. 2008  
<<http://www.ilga.gov/legislation/94/SB/PDF/09400SB1730lv.pdf>>.

Charles D. Morrow III, State of Illinois General Assembly, [HB2289](#), 19 Feb. 2003, 20 Jan. 2008  
<<http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=3&GA=93&DocTypeId=HB&DocNum=2289&GAID=3&LegID=3558&pecSess=&Session=>>>.

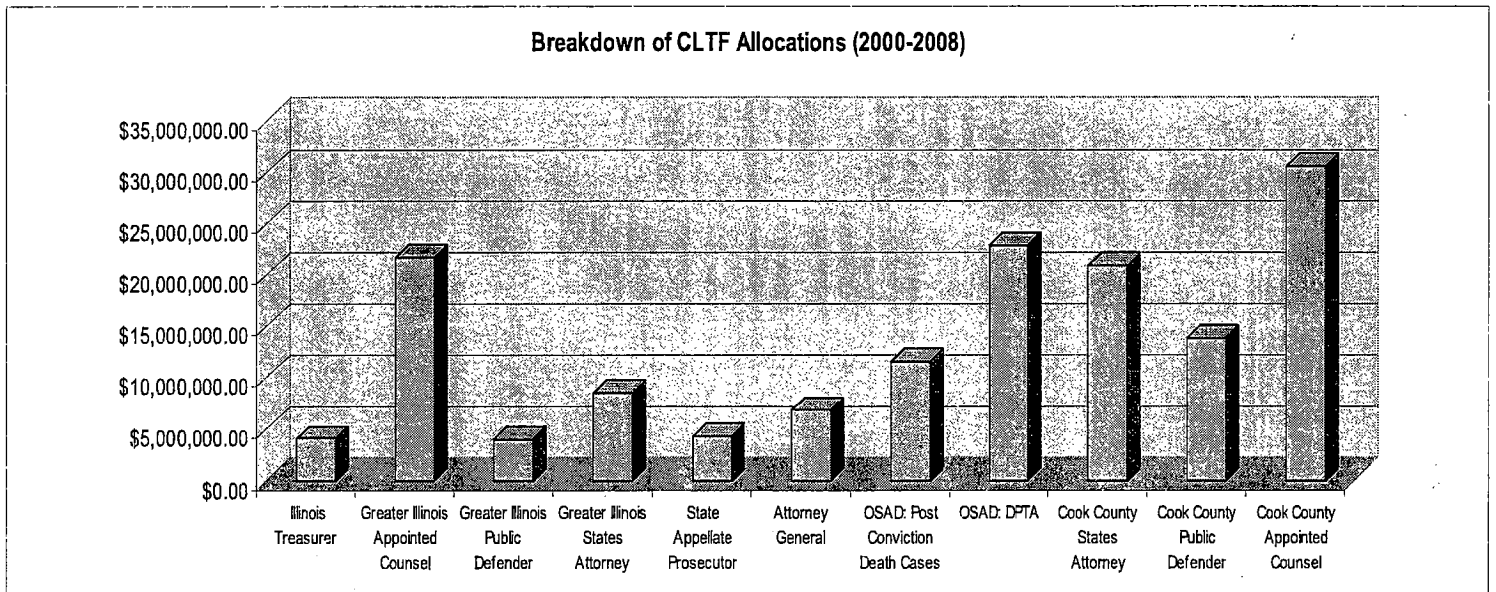


in Springfield and Chicago<sup>45</sup>. Since the creation of the Capital Litigation Trust Fund, the Post-Conviction Unit has been allocated \$11,576,749 in order to litigate death sentences at the Post-Conviction level<sup>37</sup>. On average, this Unit received \$1,929,458.17 per year<sup>37</sup>. The Unit stopped receiving funding from the Capital Litigation Trust Fund in 2006<sup>37</sup>.



**Conclusion**

To date, the Capital Litigation Trust Fund has disbursed \$148,944,735 to further the death penalty in Illinois<sup>6</sup>.



The original intention of the fund -- to provide quality counsel in cases that possibly warrant the ultimate punishment -- was undeniably admirable. In positively affecting the level of

<sup>45</sup> "General Information," Office of the State Appellate Defender, 22 Jan. 2007, State of Illinois, 23 Jan. 2008 <<http://www.state.il.us/DEFENDER/>>.

training and preparation within Illinois' criminal justice system—from prosecutors and judges to defense counsel, both private and public, and others—the fund has, as well, likely raised the quality of both prosecutions and defense for non-capital crimes as well. However, such effects are unintended, and could be far more focused under better legislation in the future. But the reality is that it has kept afloat a very controversial system.

In recent decades, Illinois has become infamous for sending innocent men and women to prison, including death row. Any step towards rectifying the probability of condemning the innocent is called for. However, although the Capital Litigation Trust Fund has certainly aided Illinois' ability to provide justice, it is also clear that the CLTF serves as a band-aid on a fatal wound.

At times, the fund has been the subject of possible abuse. For instance, one private attorney, John Paul Carroll, attracted by the Capital Litigation Trust Fund to come to Illinois from Connecticut, billed for \$871,154.10, in a retrial<sup>46</sup>. His private investigator, Michael Fleming, also tapped the trust fund for \$619,914.50<sup>46</sup>. The defendant, Cecil Sutherland, still ended up on death row.

In response to concerns raised by the Sutherland case, among others, the legislature created extraordinary oversight mechanisms<sup>47</sup>. The legislation required that judges review and approve the defense counsel's estimated budget prior to the case<sup>47</sup>. Interestingly, it has excluded the costs of a capital case from being obtained under a Freedom of Information Act request until the sentence is handed down<sup>47</sup>. It is unclear yet how effective the oversight will be.

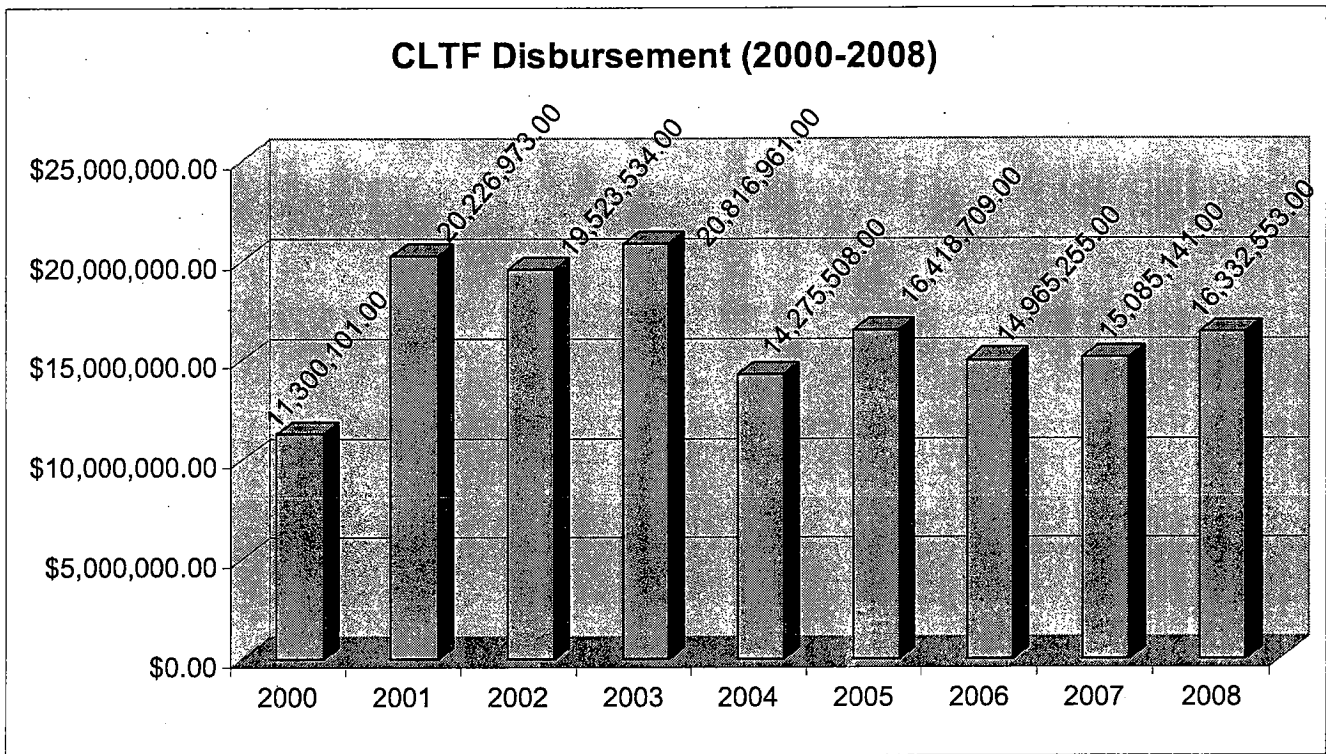
The representation of defendants in capital cases is the most important responsibility in the legal system. The defense team literally has a life in their hands. Because of this, the wages set for private attorneys from the Capital Litigation Trust Fund are among the highest in the nation compared to other states. Attorneys are typically awarded \$125-150 per hour; mitigators charge between \$70-100 per hour; and investigators range from \$50-100 per hour. However, it is not just private attorneys, mitigators, or investigators who receive financial stability from the death penalty system.

The Capital Litigation Trust Fund has also unintentionally created an unavoidable financial and political inducement for State's Attorneys who are inclined to seek the death penalty, owing in part to the fiscal assistance it provides to their individual counties.

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<sup>46</sup> Nadine Jakubowski, "Re: Trust Fund," e-mail to Stephen L. Richards, 9 Jan. 2008.

<sup>47</sup> John J. Cullerton, John O. Jones, and Gary Forby, State of Illinois General Assembly, SB2082, 25 Feb. 2005, 24 Jan. 2008  
<<http://www.ilga.gov/legislation/billstatus.asp?DocNum=2082&GAID=8&GA=94&DocTypeID=SB&LegID=20523&SessionID=50#actions>>.



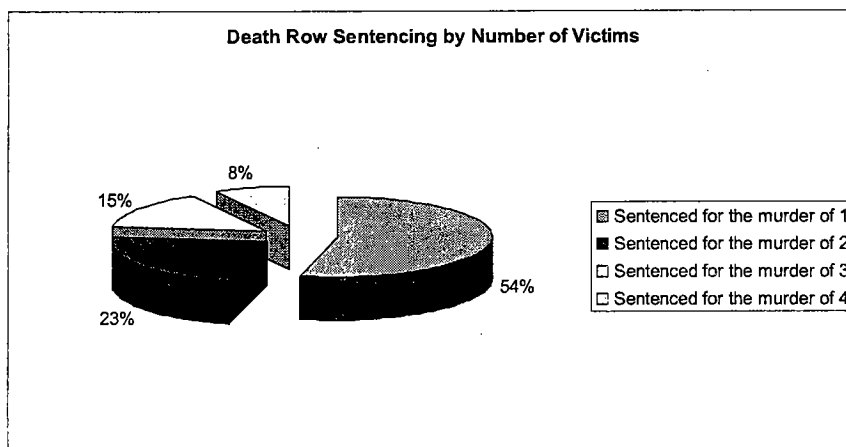
The allocation of nearly 150 million dollars, in just eight years, has landed just 13 individuals on death row<sup>6</sup>. That is a cost of \$11,457,287.31 per death sentence obtained. Even more alarming, this does not include federal grant money given to counties for prosecution of capital cases, county board money allocated to the State's Attorney and Public Defender offices within those counties, the majority of appeals costs, incarceration, or any portion of execution expenses in Illinois.

At this rate, capital punishment in Illinois could feasibly cost a quarter billion dollars, with the inclusion of incarceration and appeals, in only the first decade of the 21<sup>st</sup> century. It is easy to conclude that the death penalty system has been a financial disaster for the State of Illinois.

## Appendix

### The Arbitrary Nature of Capital Punishment in Illinois

A vast majority of pending capital cases are resolved in a non-death sentence. According to the Illinois Coalition to Abolish the Death Penalty's 2007 annual report, only 1% of pending capital cases ended in a death sentence<sup>48</sup>. Statistics do not bear out the assertion that the death penalty is only reserved for the worst of the worst. For instance, 54% of the inmates on Illinois' death row were sentencing for murdering one victim<sup>49</sup>.



Seven out of thirteen people on Illinois' death row were sentenced to death for the murder of one

<sup>48</sup> Capital Punishment in Illinois: Rejecting a Failed Policy. Illinois Coalition to Abolish the Death Penalty. Chicago: ICADP, 2007. 1-39.

<sup>49</sup> Bill Dwyer, "Adkins Gets Death Penalty," Wednesday Journal 8 July 2007, 25 Jan. 2008 <<http://wednesdayjournalonline.com/Main.asp?SectionID=1&ArticleID=8606>>.

Brian P. Nanos, "Death Penalty Sought in Logan Square Murder," Medill News Service 5 May 2005, 21 Jan. 2008 <[http://mesh.medill.northwestern.edu/mnschicago/archives/2005/05/murdkid\\_death\\_p.html](http://mesh.medill.northwestern.edu/mnschicago/archives/2005/05/murdkid_death_p.html)>.

"Cook County Imposes 2nd Death Penalty of 2005," NBC 12 May 2005, 22 Jan. 2008 <<http://www.nbc5.com/news/4482418/detail.html>>.

Dan Rozek, "Jury: Lovejoy Deserves to Die," Chicago Sun-Times 15 Feb. 2007, 21 Jan. 2008 <<http://www.suntimes.com/news/metro/259759,021507lovejoy.article>>.

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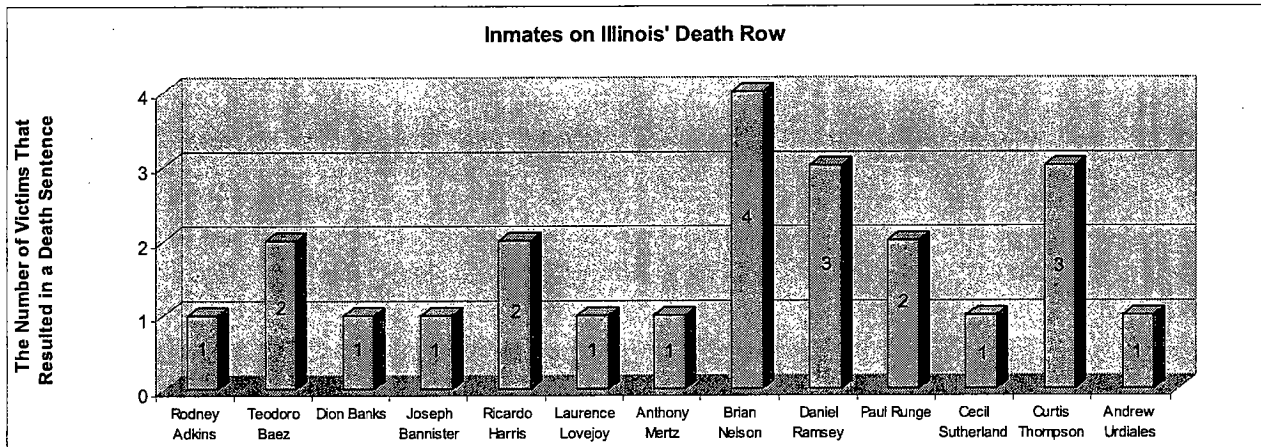
Rodney Hart, "Ramsey Trial Aftermath: Victims' Families Speak," Quincy Herald Whig 22 May 2007, 22 Jan. 2008 <<http://www.whig.com/288927349197344.php>>.

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Yuxing Zheng, "Carjacker Guilty of Murder; Jury Weighs Death Penalty," Medill News Service 18 May 2006, 21 Jan. 2008 <[http://mesh.medill.northwestern.edu/mnschicago/archives/2006/05/crjctrl\\_a\\_jury.html](http://mesh.medill.northwestern.edu/mnschicago/archives/2006/05/crjctrl_a_jury.html)>.

victim<sup>50</sup>. The reforms that have passed or been recommended throughout the past eight years have tried to prevent the exact arbitrariness that plagues Illinois' criminal justice system to this day.

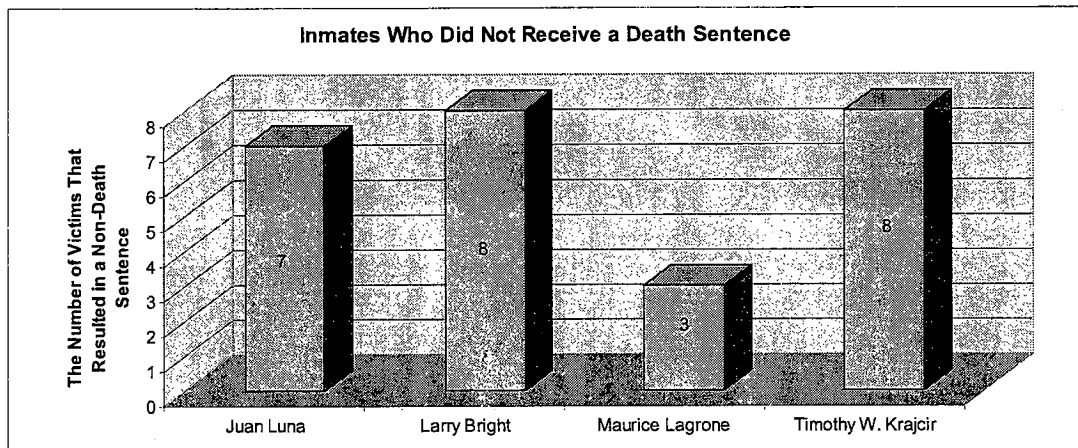


Even more alarming, the current composition of death row inmates is incomparable to those who presently serve sentences of life without parole.

--Juan Luna was convicted of the mass murder of seven individuals. Luna was sentenced to life without the possibility of parole.

--Larry Bright was convicted of killing at least eight individuals, although authorities suspect there may be more. He was sentenced to life without the possibility of parole. Lastly,

--Maurice Lagrone was convicted of murdering three young children. He too, was sentenced to life without the possibility of parole.



The inconsistencies from case to case lead to a disparity in sentencing that is startling.

<sup>50</sup> Some of these individuals may be charged or convicted of murder in other cases, but were sentenced to death based upon the victims in that particular case.

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Patricia R. McMillen  
Founding Member

Testimony to be filed with the Illinois Capital Punishment

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Date: January 26, 2009

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To Committee Chair Thomas P. Sullivan and the Members of the Committee:

Thank you for this opportunity to testify regarding reforms to Illinois criminal laws.

I am a writer, activist, and Illinois taxpayer, admitted to the Illinois bar in 1983 but now on inactive status. For the twenty years I did practice law in Illinois, I was the third generation of my family to do so: my father, the late Thomas R. McMillen, left a civil practice in Chicago to sit on the Circuit Court of Cook County, and later moved to the U. S. District Court for the Northern District of Illinois. There he heard, among other cases, the 1981 criminal trial which resulted in lengthy sentences for several members of the Puerto Rican Armed Forces for National Liberation, or FALN. My grandfather, Rolla Coral McMillen, practiced law in Decatur, Illinois beginning early in the last century, leaving that practice during WW II to serve one and one-half terms in the U. S. House of Representatives.

As for me, my relevant practice has included a summer clerkship during law school with the U. S. Attorney's Office for the Southern District of New York Criminal Division and, later, representation of incarcerated parents as a volunteer attorney with Chicago Legal Advocacy for Incarcerated Mothers (CLAIM). Prior to law school, in the mid-1970's, I was, also, empanelled as a juror for an Cook County death penalty case, though—due to a Speedy Trial Act violation—the charges were dropped, and the jury dismissed, without presentation of any evidence.

I cite these credentials not to boast, but because I want you to know that I am dedicated, both as a matter of choice and as a family tradition, to the rule of law in Illinois. It is, moreover, my studied opinion that neither the 2002 reforms to the Illinois death penalty, nor the Illinois death penalty as so reformed, serve the best interests of our citizens in preventing and redressing criminal violations in our state; and that, in fact, the inequities of the Illinois death penalty as well as its expense are impediments to effective administration of Illinois criminal law.

In 2007, I attended more than half the days of the Maywood, Illinois trial of Rodney Adkins, an African-American male who was eventually sentenced to death for the felony murder of Catherine McAvinchey, a white female. I attended this trial as a court-watcher, initially at the request of a member of the West Suburban Committee Against the Death Penalty, but later on my own initiative. For the sentencing phase of the trial, I also brought with me a friend from Oak Park, Judith Erickson, who is also filing testimony today.

My experience in Maywood demonstrated to me that the reforms now in place in Illinois, laudable as they are, did not prevent a miscarriage of justice in that case and will not do

so in future cases; that rather, the Illinois death penalty is an obsolete and broken-beyond-repair sentence which offers wildly inconsistent, and therefore no, redress on behalf of the People of the State of Illinois for any crime whatsoever.

My experience watching the Adkins trial indicated, first, that despite technical improvements, the Illinois death penalty still takes place in a racially charged context which contributes to a perception, if not a reality, of unfairness. As previously stated, the Adkins case involved one (white female) victim, a retail store manager, who had the misfortune of surprising Adkins—a large, dark-skinned Black man—during the course of his burglary of her Oak Park apartment. Adkins' videotaped confession provided convincing evidence both of guilt and of excellent, professional police and attorney interrogation work; still, the lasting impression was of an unintelligent, terminally unlucky, and at least somewhat contrite, offender caught in the stacked deck of Northern Illinois racism.

Although, due to claimed space limitations, I was not permitted inside the courtroom during voir dire, I was able to observe the juror panels which entered the courtroom for interviewing; they were overwhelmingly white. The resulting jury included, at most, one Black juror; most of the rest appeared white or light-skinned Hispanic. The racial imbalance in the rest of the courtroom was equally hard to ignore: white judge, white prosecutors, and numerous white survivor family and friends, vs. Black defendant, one black (and two white) defense counsel, and the defendant's African-American family members. This disparity, in and of itself, seemed to throw into question the "uniformity" of application which the 2002 Governor's Commission report referred to.

My second observation is that the Adkins outcome appeared grossly disproportionate. Although Adkins had a long rap sheet as a career house burglar, this was his first known violent crime. Although, moreover, the homicide was both brutal and bloody, there was neither evidence nor claim of torture; hence, none of the five eligibility factors recommended by the 2002 Governor's Commission was present. The testimony also indicated that, in previous incarcerations, Adkins had maintained a clean prison record, and had even earned a barber's license and become a barber and role model for younger prisoners while behind bars. The fact that the State is willing to throw away the life of this individual without so much as a second thought shocks me deeply.

Finally, although I cannot testify as to the quality of representation of the defendant, it did appear that Adkins—a heroin and alcohol addict with limited education—was either unable or unwilling to cooperate with his defense counsel, whose advice he appeared to ignore throughout the trial, especially in giving a pre-sentencing statement which expressed anger and resentment (and no remorse).

A recent study, available online on the website of the Abolition in Illinois Movement ([www.aimillinois.org](http://www.aimillinois.org)), has shown that a shocking amount of money is being allocated and spent to bring and defend capital cases like the Adkins trial which—while momentarily spectacular, and perhaps of some immediate satisfaction and/or career advantage to some prosecutors and judges—seem to be doing little to stem the incidence

of violent crime in this State, let alone comfort the surviving family members of violent crime victims. It seems, rather, that the money thus expended would be better used to improve prison conditions, offer better rehabilitation and anti-recidivism programs and opportunities both to life and to shorter-term prisoners, and improve programs to protect and support law-abiding citizens of our State, including courtroom personnel like my late father, victims and survivors of violent crime, and their families.

I will, finally, attach to my written testimony a copy of an article I wrote for Oak Park's Wednesday Journal weekly newspaper which was published a few days after the Adkins sentence was handed down. As my article elaborates, I would have preferred that Rodney Adkins receive a life sentence without possibility of parole; I remain hopeful that the Illinois Supreme Court will so rule on his appeal.

Thank you for your attention and for your service to the State of Illinois.

Attachment

W E D N E S D A Y

# JOURNAL

of Oak Park and River Forest

August 15, 2007

.8, No. 5

ONE DOLLAR

GROWING  
COMMUNITY

Wednesday Journal, Inc.

## Rodney Adkins sentencing: An American tragedy

*The myth is that somehow this gigantic hole is going to be closed. [But] there's never an end even if you do have a death penalty for the offender. How you move forward is not to have to be focused on the offender for the next two decades.*

—Jennifer Bishop-Jenkins, co-founder, Illinois Victims.org, and sister of 1990 Winnetka murder victim Nancy Langert

Last Tuesday night, I searched my notes looking for some indication of what time Rodney Adkins' sentencing hearing would begin the next morning. Finding nothing, I went online, using the Google web search engine (which, for those of you wondering, doesn't contain records of the Maywood court schedule—but I was desperate).

My search yielded no useful information regarding the hearing time but did lead me to an Internet weblog—a “blog”—containing two entries from people claiming special relationships to the Adkins trial. One writer, who signed onto the blog under the name “brokenhearted,” claimed a close lifetime friendship with Cathy McAvinchey, the Oak Park resident murdered by Adkins in 2003. Writing on May 17 of this year—nearly four years after the crime occurred, and two months after Adkins' March 2007 conviction for home invasion, residential burglary and murder—“brokenhearted” bemoaned Ms. McAvinchey's untimely and gruesome death, and credited her late friend, godmother to the blogger's two children, with having made the blogger “a better person because of her serene nature.”

“Better person” or not, “brokenhearted” went on to

express her opinion of Adkins' behavior, and life prospects, in not-so-serene language: “Rodney Adkins is an animal that doesn't deserve to live out his life when he so brutally and intentionally took [McAvinchey's]. If there is a perfect example of a situation that warrants capital punishment, this is it.”

Typical blog overstatement? Perhaps. But what followed—from a blogger named “Lady”—added eerie perspective: “I HOPE THAT MRS CATHERINE CAN REST IN PEACE, HOWEVER RODNEY WAS MY COUSIN AND HE UNDERSTAND [sic] THAT WHAT HE DID WAS TOTALLY WRONG HE'S NOT AN ANIMAL HE'S A PERSON AND HE IS A GOOD PERSON THAT MADE THE WRONG DISCISION [sic].”

Stripping aside the technical detail of applicable law, with its complicated balancing of factors for and against each available sentencing option (and not to minimize their importance—I am, after all, a lawyer), those two blog entries, to me, lay out the crux of a court's decision in sentencing capital crimes in Illinois. How, exactly, does a diverse community, through its judicial process, decide between one life story and another—between the struggles and potential of one family and those of another—in the name of justice for all, and not just the lucky (let alone privileged) few?

Let's remember that under current law, the alternatives available to Judge Thomas Tucker, in sentencing Adkins last Wednesday, were at least two: the death penalty, on the one hand, and life imprisonment without pa-

PATRICIA  
MCMILLEN

One View

See DEATH PENALTY on page 32

# DEATH PENALTY

## Abolish capital punishment

from page 23

role, on the other. For those of us who may believe even the second alternative is a punishment too good for a repeat house burglar, drug addict, and confessed murderer, I call, first, on French essayist Albert Camus, who answered those of his day who disdained the penalty of hard labor with the observation that "privation of freedom seems a slight punishment only insofar as contemporary society has taught us to despise freedom."

Nor, realistically, can it be said that life imprisonment without parole is much improvement over the hard labor of Camus' day. Now, as then, prison at its best means separation from the familiar—home, family, friends, work, school—and its replacement with a life that is regimented, colorless, and largely devoid of the satisfaction that comes from productivity, and which is spent among strangers, whether guards or other inmates, whose (sometimes uncomfortably close) proximity is simply no substitute for friendship or intimate family life. Compared to execution, of course, prison does offer the hope of rehabilitation, as well as a chance to experience, perhaps even express, remorse for one's criminal acts. Still, "freedom" it's not.

Then there's the death penalty. Though currently suspended under an Illinois moratorium

of indeterminate length, the penalty remains on Illinois' books, and continues to be sought by Illinois prosecutors on, it seems, an almost daily basis. Judge Tucker's decision on Wednesday to impose that penalty will send Adkins, for the time being, to prison, where he'll join a dozen or so others awaiting either pardon (with or without commutation to a life sentence), a successful appeal on one or another issue raised by their respective arrests and/or trials, or the lifting of Illinois' moratorium. If he's average (and, again, assuming a relatively near-term lifting of the Illinois moratorium, not at all a certainty), according to figures on the Death Penalty Information Center website, he'll spend 10 or more years in this holding pattern before his actual execution date.

As Adkins' counsel, the talented Assistant Public Defender Preston Jones, Jr., pointed out in closing arguments on Wednesday, the healthy, 44-year-old Adkins may, indeed, spend the next 15 or even 20 years in state custody while exhausting his rights of appeal. At every such appeal, the McAvinchey family and friends will be, in some sense, re-victimized, forced to experience re-opening of the wounds which—as "brokenhearted"'s blog entry so poignantly reveals—have not yet even begun to heal.

Meanwhile, the rest of us taxpayers will continue to pay the mounting costs of court-

room, judges, and appellate counsel on both sides (Adkins is indigent), spending resources which might be equally well spent solving or even preventing other crimes, or, perhaps, enhancing the bare-bones forms of direct assistance (including guidance through pre-trial and trial procedures) now provided by the State to victims of violent crime.

Am I suggesting some sort of "forgive and forget" scenario? Certainly not. In fact, after witnessing most of the Adkins trial—with

**But if we  
humans are  
nothing else,  
we are—all of  
us—"animals"  
who think, love  
and grieve.**

its gruesome evidence and unforgettable taped confession—I could not myself imagine any sentence for Mr. Adkins short of life imprisonment without parole. I understand, and share, the need of all human beings to feel safe in our homes, as well as the deep frustration of today's Americans—urban, suburban and rural; coastal and midland—who sense that violent domestic crime is on a long-term uptrend, often (as in Adkins' case) drug- and/or alcohol-addiction-fueled,

with preventive strategies lagging behind the inexorable curve, and the imposition of "police state" levels of control always a temptation.

Perhaps, too, it is only human that we sometimes call one another "animals" (or worse), or that we wish, momentarily at least, that our irreparable losses could be, at least, avenged with the ultimate penalty.

But if we humans are nothing else, we are—all of us—"animals" who think, love and grieve. We are compassionate animals, who will not survive unless we learn to imagine, and consider, the feelings of others. We must learn, in other words, to imagine how cousins (or parents, children, or friends, for that matter) of even the most depraved drug addict are also victims of such a person's unconscionable acts; to imagine how courtroom and prison personnel required to kill prisoners on behalf of those—us—on the "outside" are, themselves, systematically stripped of their own humanity (yet still expected to contribute to the rehabilitation of prisoners, even in cases where that seems impossible).

In short, to imagine, if we can, a better way.

For my part, I keep trying to imagine an Illinois in which murderers confess, not out of fear of the death penalty, but because (as Adkins intimated at the end of his taped confession, played in court last March) the opportunity to "come clean," which lifts a burden from the wrongdoer and is the first step in rehabilitation; an Illinois in which bereaved families may routinely have the "closure" which comes from knowing what happened to their loved ones, but not pay the price of being exploited in the courtroom for the sake of obtaining a hollow "victory" for a State prosecutorial team.

To me, that scenario will only come about when the Illinois death penalty has been