

# Chicago Council of Lawyers

Chicago's Public Interest Bar Association

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## STATEMENT OF THE CHICAGO COUNCIL OF LAWYERS TO THE GOVERNOR'S COMMISSION ON CAPITAL PUNISHMENT BY COUNCIL PRESIDENT PAUL W. MOLLIKA

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August 2, 2000

Illinois finds itself at an historic crossroads with respect to the death penalty.

Gov. George Ryan, in a May 10, 2000 press interview, explained in support of our state's present moratorium on executions that "I think that our system was in such bad shape we had to do what we did, and that's why I called the moratorium . . . We couldn't take any more chances. There are a lot of very obvious things that were wrong with our system and things that were fixable."

Chief Justice Moses Harrison dissented in 1998 against the Illinois death penalty system in *People v. Bull*. He warned that "[t]he number of death cases is rising, the pace of executions is quickening, and our court, which is responsible for reviewing all cases in which the death penalty is imposed, has demonstrated an unfortunate willingness to disregard the law in order to affirm a sentence of death."

As a sign of the legal fissures running beneath our state's death penalty system, our Supreme Court recently issued an opinion in *People v. Bobbie O. Williams*, July 6, 2000. In this case, six of our seven justices wrote separate, conflicting opinions — in which the majority of the justices would have affirmed the death sentence, but failed to agree on a single sentencing factor supporting execution. Accordingly, the sentence had to be vacated. In three other recent cases — *People v. Wilson* (May 18, 2000), *People v. Jones* (Apr. 20, 2000), and *People v. Holman* (Apr. 20, 2000) — sentences of death were affirmed by the Supreme Court by a bare four-to-three majority, which hardly inspires certitude within and without our criminal justice system.

With the state's chief executive and chief jurist in apparent agreement, our state must now confront the crisis of confidence enveloping the state's death penalty system.

The Council in 1997 first called for a state moratorium on executions. Thereafter, the Council (by the efforts of Board member Ed McManus, Chicago Appleseed's Harvey J. Badesch fellow Kristina Smith, and others) scoured the public record of reported death

Chicago Council of Lawyers Statement  
page 2

penalty decisions and spoke with experts in the field for traces of where so many prosecutions went wrong in this state.

The report issued by the Council in March of 2000 recommended reforms concerning the handling of prosecutions, defense counsel, police, judges and juries. Yet while the Council stands by these reforms today, we caution the Commission that all of these proposals stacked together cannot warranty perfection in the criminal justice system, stem deliberate misconduct or cure human prejudice or caprice. The Council deliberately carves out for possible future consideration such sensitive issues orbiting the death penalty as prosecutorial discretion, racial and income imbalances on death row, structural defects in our capital sentencing laws and jury bias.

I reiterate the Council's bottom-line conclusion, that "capital prosecutions [in Illinois] were prone to the common sorts of errors, shoddiness and outright misconduct found in even the most ordinary criminal cases." If we cannot get even basic due process right in these cases, which lies on the surface for all to see, then the structural and invisible faults that many observers believe exist beneath the criminal justice system should shake our conscience even more profoundly.

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## 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 — in addition to all other materials currently required to be produced — 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)