

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Minutes of meeting April 30, 2007

The twentieth meeting of the Capital Punishment Reform Study Committee was held at the Illinois Criminal Justice Information Authority, 120 S. Riverside Plaza, Chicago, Illinois from 1 to 2:15 P.M.

Those present

Leigh B. Bienen
James R. Coldren, Jr. (via teleconference)
James B. Durkin (via teleconference)
Jeffrey M. Howard
Edwin R. Parkinson (via teleconference)
Richard D. Schwind (via teleconference)
Geoffrey R. Stone (via teleconference)
Thomas P. Sullivan
Michael J. Waller (via teleconference)

Not present

Kirk W. Dillard
Theodore A. Gottfried
Boyd J. Ingemunson
Gerald E. Nora
Randolph N. Stone
Arthur L. Turner

Also present: Peter G. Baroni, Special Counsel; David E. Olson, Committee Research Scientist, Loyola University; and Brett M. Hellinga, Mr. Dillard's staff attorney (via teleconference).

The minutes of the March 26, 2007 meeting were approved unanimously.

1. *Third annual report.*

Mr. Baroni was directed to work with the legislative members of the Committee and their respective staffs on drafting legislative proposals, based on the recommendations in the third annual report. Mr. Baroni will provide committee members with drafts of those legislative proposals as they become available for comment and revision if necessary.

Mr. Sullivan reported that he emailed Judge Bertina E. Lampkin, Chair of the Illinois Pattern Jury Instructions Committee, a copy of the Third Annual Report, directing her attention to the recommendation suggesting a new pattern jury instruction relating to police interrogation methods of felony suspects.

2. *Governor's appointment to the committee.*

The Committee discussed the status of the Governor's vacant appointment to the Committee. Mr. Baroni said there was no change in status. Mr. Sullivan agreed to contact all legislative members of the Committee to request their assistance in persuading the Governor make his Committee appointment.

3. *Schwind-Nora subcommittee assignment change*

Owing to scheduling changes in the Cook County State's Attorney's Office, Mr. Nora requested that he and Mr. Schwind change subcommittee assignments. Mr. Schwind agreed, and the Committee approved the change.

4. *Reports of subcommittees.*

(1) *Report of Subcommittee 1 – Police and investigations.*

Mr. Coldren reported that the subcommittee had not met since the last full Committee meeting, but would hold an organizational meeting soon.

(2) *Report of Subcommittee 2 – Eligibility for capital punishment and proportionality.*

Ms. Bienen said that the subcommittee met on April 16, 2007 at Northwestern University School of Law; the draft minutes are attached as Appendix 1. The members of the subcommittee recommended that responsibility for addressing DNA issues be transferred to subcommittee 4. The Committee members agreed unanimously.

The meeting on April 16 focused on data collection and coordination of the efforts of Ms. Bienen, Mr. Sullivan and Mr. Olson. Ms. Bienen and her assistant, Ms. Heiler, reported on their efforts to further refine the databases she created to house information collected on first degree murder indictments. Mr. Sullivan, on his own, has compiled data relating to all first degree murder cases where notice to seek death was filed and the case was disposed of in Illinois trial courts in 2006. He agreed to share the information with Ms. Bienen and Mr. Olson.

Mr. Olson outlined his development of a survey instrument reflective of the entire universe of reforms the committee is charged with studying. Mr. Olson

plans to finish a first draft of the survey and disseminate it to the entire committee for review and comment within the next month.

The next subcommittee meeting will be held on Monday, June 4, 2007, 11 A.M. at the Illinois Criminal Justice Information Authority, 120 South Riverside Plaza, Chicago, Illinois.

(3) Report of Subcommittee 3 – Trial court proceedings.

Mr. Howard reported that the subcommittee met on March 28, 2007 in Mt. Vernon, Illinois with Judge Terry H. Gamber, 2nd Judicial Circuit; the draft minutes are attached as Appendix 2. Judge Gamber presided over the *People v. Sutherland* capital case. The subcommittee discussed a number of issues with Judge Gamber including the use of depositions in capital cases, the training of judges presiding over capital cases, the Capital Litigation Trust Fund and Trial Bar, case management conferences, and other issues Judge Gamber viewed as important.

The subcommittee intends to meet next with a suburban Chicago judge who has presided over a capital case since the reforms took place. Mr. Baroni is attempting to arrange that meeting.

(4) Report of Subcommittee 4 – Post-conviction proceedings, DNA and general topics.

The subcommittee met April 19, 2007 in Springfield, Illinois; the draft minutes are attached as Appendix 3. The subcommittee discussed subject matter to

be addressed at upcoming meetings. The subcommittee directed Mr. Baroni to arrange for Colonel Jack S. Garcia, Director of the Illinois State Police Forensic Services Unit, to appear at the next subcommittee meeting.

It was agreed that the next subcommittee meeting will be held on May 22, 2007 at 1 P.M. in Mr. Turner's Springfield office.

5. *Other Business.*

2008 Fiscal Year Appropriation. The Committee discussed the level of appropriation the Committee should have for fiscal year 2008. Based on the level of activity in the coming fiscal year, the administration of several statewide surveys, the employment of Mr. Olson, and larger anticipated workload, the Committee unanimously recommended the funding level for fiscal 2008 be increased to \$250,000. Mr. Baroni was directed to work with legislative members of the Committee to address this funding request in the coming year's budget.

6. *Next meeting – June 4, 2007, 1 P.M.*

It was agreed that the next meeting of the full Committee will be held on Monday, June 4, 2007, 1 P.M., at the Illinois Criminal Justice Information Authority, 120 South Riverside Plaza, Chicago, Illinois.

Thomas P. Sullivan
Chair
May 24, 2007

Attachments: Appendices 1 through 3.

Capital Punishment Reform Study Committee
Minutes of Subcommittee No. 2 meeting

April 16, 2007

Subcommittee 2 met at Northwestern University Law School from 11 A.M. to 12:45 P.M. Attending were subcommittee members Leigh B. Bienen, Thomas P. Sullivan and Michael J. Waller (via teleconference). Also present were Peter G. Baroni, Special Counsel, David E. Olson, Research Scientist, Molly E. Heiler, Ms. Bienen's research assistant, and Brett M. Hellinga, legal counsel to Kirk W. Dillard (via teleconference).

1. Research database.

Ms. Bienen and Ms. Heiler reported on the contents of the database they set up for first degree murder indictments from across the State, with updates based on cross checking information with Illinois Department of Corrections data. Mr. Olson noted that although some Corrections data is flawed, the corroboration of collected first degree indictment information is an important function served by the Corrections cross check.

2. Mr. Sullivan's data collection.

Mr. Sullivan reported to the subcommittee on his personal effort to analyze first degree murder cases based on information provided to him by the Illinois Coalition to Abolish the Death Penalty. Mr. Sullivan compiled data on all first degree murder cases disposed of in Illinois trial courts in

2006 in which the prosecution filed a certification seeking death pursuant to Supreme Court Rule 416(c). Mr. Sullivan agreed that when his data and findings are more refined, he will share them with the subcommittee and Mr. Olson.

Mr. Waller suggested the subcommittee recommend that the Illinois Supreme Court adopt a rule requiring the Administrative Office of the Illinois Courts (AOIC) to collect the kind of data Mr. Sullivan analyzed. He said that AOIC is the agency best suited to collect the data relating to compliance with Supreme Court Rule mandates.

3. *Mr. Olson's data collection.*

Mr. Olson reported to the subcommittee that he has drafted several versions of a survey instrument to be sent to law enforcement, prosecutors, defense attorneys and judges. He plans to have a working draft of each survey to disseminate to the subcommittee and the full Committee within the next month. Mr. Baroni was directed to review the survey drafts, and compare each with the lists of information each subcommittee seeks to further the study efforts of the respective subcommittees. Mr. Olson said he would meet with a Lake County Assistant State's Attorney who has handled capital cases to review the prosecution survey as part of the drafting process.

Mr. Waller suggested Mr. Olson contact Mr. Nora to facilitate obtaining information from the Cook County State's Attorney's Office.

3. *DNA issues to subcommittee 4.*

Mr. Sullivan suggested subcommittee 2 transfer responsibility for addressing DNA issues to subcommittee 4. The subcommittee agreed to recommend that transfer to the full Committee.

4. *Next meeting – June 4, 2007, 11 A.M.*

It was agreed that the next meeting of the subcommittee will be held on Monday, June 4, 2007, 11 A.M., at the Illinois Criminal Justice Information Authority, 120 South Riverside Plaza, Chicago, Illinois.

Peter G. Baroni
Special Counsel
May 24, 2007

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE
Minutes of Subcommittee No. 3 meeting

March 28, 2007

Subcommittee 3 of the Capital Punishment Reform Study Committee held a meeting in the chambers of Judge Terry H. Gamber at the Jefferson County Courthouse, Mount Vernon, Illinois from 8 A.M. to 9 A.M. Attending were subcommittee members Jeffrey M. Howard, Edwin R. Parkinson and Boyd J. Ingemunson (via teleconference). Also in attendance were Peter G. Baroni, Special Counsel (via teleconference) and Judge Terry H. Gamber of the 2nd Judicial Circuit.

The minutes of the January 30, 2007 subcommittee meeting were approved unanimously as amended.

1. Interview of Judge Terry H. Gamber.

(1) Depositions in Capital Cases.

Mr. Howard began a discussion regarding the use of depositions in capital cases. Judge Gamber said that the defense and prosecution asked to take depositions in the capital case over which he presided. Judge Gamber expressed concerns regarding the judicial application of the standard of “just cause shown” set forth in Supreme Court Rule 416 (e) in deciding whether to grant or deny a request to take a deposition. However, in the case he presided over, the two sides agreed to a list of witnesses that should be

deposed. Judge Gamber also said that it is better to hold capital case depositions in the courthouse where the case is heard or close by so that the judge may be consulted for rulings in connection with problems that arise during the deposition.

(2) *Capital Litigation Judicial Training.*

Judge Gamber has attended three capital trainings for judges who preside over capital cases. He found all of them helpful and worthwhile. Topics covered were those judges may encounter while presiding over capital cases, including DNA, eyewitness testimony, evidentiary problems, jury selection, and mental retardation. Judge Gamber believes issues relating to mental retardation and jury selection could be covered more thoroughly in those training seminars.

(3) *Capital Litigation Trial Bar.*

Judge Gamber said that a very real problem exists in southern Illinois regarding defense counsel becoming members of the Capital Litigation Trial Bar. He stated that some very experienced defense attorneys have opted not to join the CLTB for a variety of reasons.

(4) *Capital Litigation Trust Fund.*

Judge Gamber believes the existence of the Capital Litigation Trust Fund has not impacted the prosecution seeking the death penalty in Jefferson

County. He said the Jefferson County State's Attorney has not sought death in many cases that were capital eligible. However, Judge Gamber believes that the availability of the CLTF in capital cases as an alternative to using county funding to pay for the defense in non-capital first degree murder cases may be a consideration for some counties and State's Attorneys.

Judge Gamber believes the submission of a budget and the requirement that another judge approve expenditures from the CLTF improves the administration of the CLTF in individual cases. Based on his experience with the prosecutor in Jefferson County, he believes it is unnecessary for a judge to control or oversee the State's Attorney's access to the CLTF.

Judge Gamber expressed concerns over the *ex parte* procedure for defense counsel to request experts through CLTF funding. The law does not give directions regarding how judges should handle a request of that nature. Judge Gamber believes notice should be given to the State, and that *ex parte* funding requests should be done in the presence of a court reporter.

(5) *Case management conferences.*

Judge Gamber found case management conferences to be helpful in the efficient administration of the case. Judge Gamber held the conferences

about once every month. During the conferences, he was able to deal with all discovery issues as they arose.

(6) *Miscellaneous Issues.*

In the capital case Judge Gamber presided over, jail house snitch testimony and mental retardation were not involved. He conducted individual *voir dire* for jury selection. Judge Gamber said Illinois Pattern Jury Instructions addressing the aggravation and mitigation portion of the case would have assisted him in instructing the jury. He said the reforms relating to the availability and testing of DNA proved to be a valuable asset.

2. *Next meeting – to be determined*

It was agreed that the next subcommittee meeting should be with judges who have presided over capital cases in either DuPage or Will County. Mr. Baroni will attempt to arrange those meetings.

Peter G. Baroni
Special Counsel
May 24, 2007

Capital Punishment Reform Study Committee
Minutes of Subcommittee No. 4 meeting

April 19, 2007

Subcommittee 4 met at Arthur Turner's legislative office in the State Capitol from 1 to 1:55 P.M. Attending were Theodore A. Gottfried, Gerald E. Nora, James B. Durkin and Arthur L. Turner. Also attending were Peter G. Baroni, Special Counsel and Brian Mackey, Chicago Daily Law Bulletin.

The minutes of the January 23, 2007 meeting were approved unanimously. The minutes of the February 13, 2007 were amended and approved unanimously.

1. DNA Issues.

The subcommittee discussed the issue of federal funding for DNA testing and collection. Mr. Baroni was instructed to research the status of federal funding and what types of federal funding are available.

The subcommittee also agreed to invite Colonel Jack S. Garcia, Director of Illinois State Police Forensic Services, to the next subcommittee meeting.

The Subcommittee discussed the status of Mr. Durkin's DNA testing bill (HB488), and the implications it would have for the Illinois State Police Lab.

2. *Potential misuse of the Capital Litigation Trust Fund.*

The subcommittee discussed the perception among some persons that the CLTF is being misused by smaller counties to pay for the defense costs in first degree murder cases. The subcommittee acknowledged that there is only anecdotal information at this point, but the appearance of misuse exists. The CLTF creates a monetary incentive for prosecutors in smaller counties to file capital certificates under Supreme Court Rule 416(c), which triggers the CLTF funding defense costs that would otherwise be paid by the county.

The subcommittee decided to invite Edwin R. Parkinson of the State's Attorney's Appellate Prosecutor's Office to a future subcommittee meeting to discuss the issue, and to seek his advice as to how to obtain objective evidence, if it exists, of the misuse of the CLTF.

3. *Next meeting – May 22, 2007, 1 P.M.*

It was agreed that the next subcommittee meeting will be held on Tuesday, May 22, 2007 at 1 P.M. at Representative Arthur Turner's office in the State Capitol, Springfield, Illinois.

Peter G. Baroni
Special Counsel
May 24, 2007