

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Minutes of meeting June 12, 2008

The thirty-first meeting of the Capital Punishment Reform Study Committee was held at the Illinois Criminal Justice Information Authority, 300 W. Adams, Chicago, Illinois from noon to 3 P.M.

Those present

Leigh B. Bienen

Jennifer A. Bishop-Jenkins (via teleconference)

James R. Coldren, Jr.

Jeffrey M. Howard

T. Clinton Hull (via teleconference)

Boyd J. Ingemunson (via teleconference)

Richard D. Schwind

Thomas P. Sullivan

Michael J. Waller (via teleconference)

Not present

Kirk W. Dillard

Gerald E. Nora

Edwin R. Parkinson

Charles M. Schiedel

Geoffrey R. Stone

Randolph N. Stone

Arthur L. Turner

Also present: David E. Olson; Jane Bohman, Illinois Coalition to Abolish the Death Penalty; Rob Sherman, Green Party candidate for

State Representative, 53rd District. Also Lori G. Levin, Executive Director of CIJA (part of meeting).

The minutes of the Committee meeting held on May 13, 2008, were approved.

- 1. Extension of Committee's tenure to December 31, 2009, and Committee's appropriation of \$250,000 for the fiscal year ended June 30, 2009.*

Mr. Sullivan reported that both SB 2657 (extension) and SB 2167 (appropriation) have been approved by both houses of the General Assembly, and sent to the Governor; and that he has spoken about urging the Governor to sign the bills into law with Lt. Governor Patrick Quinn, William J. Quinlan, lawyer to the Governor, and Michael Madigan, Democratic Majority Leader, House of Representatives. The Committee expressed appreciation for the assistance of members Senator Kirk W. Dillard and Representative Arthur L. Turner.

- 2. Retention of Special Counsel.*

The members discussed whether, if the Committee's appropriation is approved, we should once post a notice to fill the position of Special Counsel. A number of members expressed appreciation for the work

performed by Peter G. Baroni, our prior Special Counsel, as well as the benefits the Committee would obtain from having a Special Counsel to deal with law enforcement officials and the General Assembly, and preparation of the Committee's final report. It was agreed that this matter will be placed on the agenda for the Committee's next meeting, after we learn whether the appropriation has been approved.

3. Retention of expert consultant.

Lori Levin reported that the Committee's contract with David Olson/Loyola University of Chicago has expired, therefore if the Committee desires to obtain the services of an expert consultant to continue performing the services Dr. Olson has provided, it is necessary for the Committee to post for the position, and go through the same process that was followed in the retention of Dr. Olson. The members unanimously agreed that we should follow the posting process, and Ms. Levin agreed to have Mr. Hank Anthony of the CJIA staff do so.

4. David Olson's surveys to State's Attorneys and Public Defenders.

Dr. Olson stated that he was in the process of preparing summaries of the results of the survey responses he has received from State's

Attorneys and Public Defenders, which he will provide to the Committee.

5. *Reports of subcommittees.*

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

Mr. Coldren stated that the subcommittee has a series of meetings planned for the balance of 2008 to discuss various subjects related to police and investigations, for example, electronic recordings of lineups and photo spreads, and related issues concerning the Illinois eavesdropping statute; the advisability of having “blind” administrators conduct lineups and photo spreads, and if recommended, how to phrase the language of a proposed statute or rule; and the desirability of recommending use of the sequential system for eyewitness identifications, to replace the current simultaneous system.

(2) *Report of subcommittee 2 - Eligibility for capital punishment and proportionality.*

Ms. Bienen reported that the subcommittee has not met since the last full Committee meeting. She said that she is continuing the collection of data concerning murder indictments returned in Illinois during the years 2003 through 2007. Mr. Sullivan stated that he will

prepare, and he and Mr. Schwind will sign and mail, a letter to all State's Attorneys requesting that they provide copies of all murder indictments returned in their respective counties during those years.

Mr. Nora reported that he has a dataset of the Cook County murder indictments 2003 through 2007, which he will provide to Ms. Bienen.

Ms. Bienen stated she anticipates obtaining the assistance of a research assistant during June and July, and that Ms. Heyler will be called upon to assist as needed.

With respect to the subpoena duces tecum served upon the Committee in State v. Denson, pending in Kane County, Mr. Hull stated he will provide Mr. Sullivan with information about the current status of the case.

(3) Report of subcommittee 3 - Trial court proceedings.

Mr. Howard stated that the subcommittee met on April 7. The minutes of the January 28, 2008 meeting are attached as Appendix 1, and the minutes of the April 7 meeting are attached as Appendix 2.

At the April 7 meeting, members of the subcommittee discussed the terminology of jury instructions, as discussed in the minutes attached

as Appendix 1. It was agreed that the subcommittee will give this matter further consideration and report back to the full Committee.

At the April 7 meeting, members of the subcommittee agreed that the Committee should recommend that a form of jury questionnaire be prepared for use in jury selection in capital cases. Mr. Howard will send suggested topics for the questionnaire to Mr. Sullivan.

Another issue discussed at the April 7 meeting was whether the Committee should recommend that, before a “small” county may obtain access to the Capital Litigation Trust Fund in any case in which the local State’s Attorney has served notice of intention to seek capital punishment, the county must explain the reasons for seeking capital punishment. The subcommittee has not determined the size cut-off for determining which counties are to be considered “small.” The reason underlying this concept is the concerns expressed by several downstate judges that prosecutors in small counties were filing capital punishment notices in order to have access to CLTF funds, and thus shift the cost from the local county; and that, as the cases approached the trial stage, the State’s Attorneys were withdrawing the notices. The subcommittee

is also considering recommending appointment of a committee made up of prosecutors and/or judges, to review the States Attorneys' selection of cases for capital punishment. If the committee disapproved the decision to serve a notice for capital punishment, the "small" county would be prohibited from obtaining funds for the case through the CLTF.

Several questions were raised about the feasibility of this proposal: first, whether this would vitiate the prerogative of each State's Attorney to decide in which first degree murder cases eligible for capital punishment he/she will serve notice to seek capital punishment; and second, whether an amendment to the CLTF statute would be required to put this plan into effect.

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

Ms. Bishop-Jenkins reported that the members of subcommittee 4 were in direct contact with members of the IL Laboratory Advisory Committee, and planned to attend the ILAC meeting in September.

Regarding the letter Mr. Schiedel sent to Mr. Sullivan on June 11, 2008, asking for written materials Judge Kinsella plans

to present at the meeting of the Association of Government Attorneys in Capital Litigation on August 28, 2008,

Mr. Schwind said he will obtain the materials and send them to Mr. Schiedel.

6. *Other Business.*

(1) Mr. Sherman explained the five reasons why he favors continuation of the moratorium on capital punishment executions.

(2) The Committee's minutes of March 4, 2008 were amended as follows:

*Page 9: Ms. Bienen stated that the subcommittee has received first degree murder indictments from many but not all State's Attorneys for the period January 1, 2003 to December 31, 2006. Messrs. Parkinson, Schwind and Waller agreed to assist in contacting the delinquent State's Attorneys who have not yet responded; Ms. Bienen will identify the counties for them.

*Page 13: Ms. Bienen stated that some years ago a study was done in New Jersey that analyzed the cost of the reimposition of capital prosecutions in New Jersey.

7. *Next meeting – Tuesday, July 22, 2008, at noon.*

It was agreed that the next full Committee meeting will be held at noon on Tuesday, July 22, 2008, at the office of the Illinois Criminal Justice Information Authority, 300 W. Adams, 7th Floor, Chicago, IL.

Thomas P. Sullivan
Chair
July 21, 2008

Attachments – Appendices 1 - 2.

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE
MINUTES OF SUBCOMMITTEE NO. 3 MEETING

January 28, 2008

Subcommittee 3 met at the office of the Illinois Criminal Justice Authority in Chicago, Illinois, on January 28, 2008. Attending were subcommittee members Jeffrey M. Howard, Edwin R. Parkinson (via teleconference), Randolph Stone (via teleconference), and Boyd J. Ingemunson (via teleconference).

Jeff Howard and Ed Parkinson discussed the status of obtaining the common law records in capital cases tried since 2003. Jeff Howard stated that he will distribute copies of jury instructions and jury questionnaires from death penalty common law records (CLRs) he has obtained.

The subcommittee members agreed to review the draft of the subcommittee's portion for the Fourth Annual Report prepared by a student from the University of Chicago School of Law. The subcommittee members also agreed to make any recommendations to be considered for submission in the Annual Report after reviewing the draft.

No date was set for subcommittee 3's next meeting.

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE
MINUTES OF SUBCOMMITTEE NO. 3 MEETING

April 7, 2008

Subcommittee 3 met at 69 W. Washington, Chicago, Illinois, on April 7, 2008. Attending were subcommittee members Jeffrey M. Howard, Edwin R. Parkinson (via teleconference), Randolph Stone (via teleconference).

The minutes of the October 31, 2007, and January 28, 2008 meetings, were approved.

The subcommittee discussed the jury instructions found in the capital common law records the subcommittee had obtained. Upon review of the sentencing jury instructions, the subcommittee noted concerns over using the phrase “after weighing the factors in aggravation and mitigation” versus the phrase “after considering the factors in aggravation and mitigation” in determining whether to impose the death penalty.

The subcommittee decided to bring this concern to the full committee. Even if the full committee is not willing to recommend “considering” as opposed to “weighing,” then the subcommittee thought an instruction defining the word “weighing” should be recommended. Otherwise, the subcommittee thought the jury instructions used in capital cases mirroring the phrasing found in the capital sentencing statute were adequate.

The subcommittee decided to review the jury questionnaires to see what, if any, recommendations it believes are necessary.

The subcommittee also decided to recommend to the full committee that before a small county may access the Capital Litigation Trust Fund (CLTF), the State’s Attorney of that county must present his/her reasons for seeking death before an established committee of review. Such a review committee will need to be established.

If the review committee approves the State’s Attorney’s request, then the CLTF may be accessed. If the review committee disagrees with the State’s Attorney’s request, then the State’s Attorney may still seek death but not access the CLTF for prosecuting the case.