

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Minutes of meeting February 13, 2007

The eighteenth 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 2:50 P.M.

Those present

Leigh B. Bienen
James R. Coldren, Jr. (via teleconference)
Kirk W. Dillard (via teleconference)
James B. Durkin (via teleconference)
Theodore A. Gottfried (via teleconference)
Boyd J. Ingemunson (via teleconference)
Gerald E. Nora (via teleconference)
Richard D. Schwind
Geoffrey R. Stone
Thomas P. Sullivan
Michael J. Waller (via teleconference)

Not present

Jeffrey M. Howard
Edwin R. Parkinson
Randolph N. Stone
Arthur L. Turner

Also present: Peter G. Baroni, Special Counsel; David E. Olson, Committee Research Scientist, Loyola University; Regan M. McCullough and Patrick D. McAnany, Illinois Coalition to Abolish the Death Penalty; Michael M. Ramsey,

Reporter, Copley News Service; and Antwaun L. Sargent, student, Mather Law Academy.

The minutes from the January 23, 2007 meeting were approved unanimously.

1. Public hearings in Springfield and Chicago.

Mr. Sullivan mailed to all Committee members a transcript of the audio recording of the Committee's public hearing held in Springfield, Illinois on November 13, 2006. Mr. Baroni will mail a disc of the hearing to all Committee members. It was agreed that, upon Committee approval of Mr. Sullivan's draft transcription, the transcript should be posted on the Committee website.

The Committee discussed the public hearing scheduled for Monday, February 26, 2007, at 10 A.M. in the concourse level auditorium of the Thompson Center, Chicago. Messrs. Baroni and Schwind have arranged for a court reporter. Mr. Baroni will distribute notice letters and press releases.

2. Governor's appointment to the committee.

Mr. Baroni said a Governor's staff person told him that the Governor's personnel are actively pursuing a replacement for the Governor's open seat on the Committee.

3. *Reports of subcommittees.*

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

Mr. Coldren reported that the subcommittee met at the Chicago Police Department District Headquarters at Belmont and Western on February 7, 2007; the draft minutes are attached as Appendix 1. The members observed a demonstration of the videotaping facilities for homicide suspect interrogations. The tour was led by Deputy Chief of Detectives Michael Clausen. Chief Clausen said he believes the recording requirement has not hindered his department's efforts to investigate homicide cases, that videotapes have worked as a teaching tool, and that they have enhanced many detectives' interrogation techniques.

Mr. Sullivan suggested that the subcommittee also interview the Chicago Police Department's Chief of Detectives on this subject.

Mr. Sullivan said he is having a review made of Illinois case law governing permissible law enforcement interrogation tactics, for potential development of pattern jury instructions.

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

The subcommittee held a meeting on January 16, 2007 at the Northwestern University School of Law; the minutes are attached as Appendix 2.

Ms. Bienen said that the subcommittee held a meeting on February 8, 2007 at the Northwestern University School of Law; the minutes are attached as Appendix 3.

The subcommittee discussed the first degree murder database summary tables created by Ms. Bienen and her assistant.

Mr. Olson said he has tried to locate the data collected by the Governor's Commission on Capital Punishment relating to the proportionality study done by Messrs. Pierce and Radelet. Mr. Olson spoke to personnel at the Department of Corrections and to Rick Guzman, a former employee of the Governor's staff, but they could not recall where the data are stored. Mr. Olson will continue his efforts to locate the data.

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

Mr. Howard reported that the subcommittee held a meeting on January 30, 2007 at the DeWitt County Courthouse, Clinton, Illinois in the chambers of Judge Stephen H. Peters, 6th Judicial Circuit. Judge Peters presided over the *People v. LaGrone* capital case, as well as several other capital cases. He expressed his views on a variety of the capital punishment reforms, including the pretrial jailhouse informant reliability hearings he conducted in the *LaGrone* case.

Mr. Howard said that Mr. Parkinson was attempting to get dates for the subcommittee to meet with Judge Terry H. Gamber, 2nd Judicial Circuit, in Mt.

Vernon, Illinois. Judge Gamber presided over the *People v. Sutherland* capital case.

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

Mr. Gottfried reported that the subcommittee met earlier in the day on February 13. The minutes of the subcommittee's meeting of January 23, 2007 were approved, attached as Appendix 4.

Mr. Gottfried said the subcommittee has adopted three recommendations to be included in the Committee's Third Annual Report:

First, that State and local forensic laboratories be provided with adequate funding to perform timely testing of DNA samples. Second, that the State seek all available federal funding through the National Institute of Justice including, but not limited to the following: (1) the DNA Capacity Enhancement Program, (2) the Forensic Casework DNA Backlog Reduction Program, (3) the Coverdell Forensic Science Improvement Grant Program and (4) the Convicted Offender DNA Backlog Reduction Program. Third, that the open forensic scientist positions at State Police Forensic Laboratories be filled promptly, and that the General Assembly investigate the status of those vacancies in the appropriations hearing process to facilitate the immediate filling of those positions.

Mr. Gottfried also suggested the legislative members of the Committee send a letter to the Director of the State Police seeking a current accounting of the DNA

testing backlog relating to three areas: first, open case evidence testing; second, convicted felon testing; and third, post-conviction testing of evidence where identification of the defendant was at issue.

Several Committee members expressed concern that outsourcing of DNA testing be limited to convicted felons, and not include open case evidence testing because of chain of custody and integrity of evidence issues.

4. *Other Business.*

Third Annual Report. Mr. Sullivan has distributed to each Committee member a draft of the Committee's Third Annual Report. He suggested that each subcommittee assign one member to meet and re-draft the report, and submit it to all members at least a week before the next Committee meeting. This was unanimously agreed to. The four members are: Mr. Geoffrey Stone, subcommittee 1; Ms. Bienen, subcommittee 2; Mr. Ingemunson, subcommittee 3; and Mr. Schwind, subcommittee 4.

5. *Next meeting – March 26, 2007, 1 P.M.*

It was agreed that the next meeting of the full Committee will be held on Monday, March 26, 2007, 1 P.M., at the Illinois Criminal Justice Information Authority, 120 South Riverside Plaza, Chicago, Illinois.

Thomas P. Sullivan
Chair
March 21, 2007

Attachments: Appendices 1 through 4.

Capital Punishment Reform Study Committee
Minutes of Subcommittee No. 1 meeting

February 7, 2007

Subcommittee 1 held a meeting at the Chicago Police Department, Belmont and Western Avenues, from 11 A.M. to 1:30 P.M. Attending were subcommittee members Richard D. Schwind (Co-Chair), Randolph N. Stone, Jeffrey M. Howard, and James R. “Chip” Coldren. Also in attendance were Steven Hein (research assistant to Chip Coldren). Representing the Chicago Police Department: Michael Chasen, Deputy Chief, Detective Division; Sergeant Tim Gilbert.

The visit began with a brief historical summary from Deputy Chief Chasen. He explained that Superintendent Terry Hillard began planning for an interrogation recording system in 2002, when the likelihood of legislation mandating such taping was on the horizon. When the law mandating recording of homicide interrogations went into effect in July 2005, the Chicago Police Department (CPD) had a ‘state-of-the’ art system ready. Chasen explained that prior to the implementation of this system, there was no such system at CPD; this is a totally new system; it is not a modification of some earlier system. Chasen described the CPD recording system as ‘unique in the world.’ The RMS Corporation developed it according to CPD’s specifications. It cost approximately \$2.9 million to develop, plus an additional \$1.1 million for training (the initially training was delivered to 673 detectives); so he estimates the cost to implement the system at around \$4 million. He explained

that groups representing countries from around the world (South Korea, England, France, Australia, Canada, Germany) and from around the country have come to CPD to view the system, and several of them have plans to implement the system.

Currently, CPD has a total of 37 rooms equipped for recording interrogations (6 rooms in the Belmont and Western location) – in the five detective areas, plus at the Homan Square Cold Case unit, and in the Polygraph unit.

CPD provides continuous training for new detectives. The training lasts approximately 2 days, is provided by Chasen and other CPD officials. It covers the technology plus policies and revised procedures in both the detective and patrol divisions.

Other local police departments do not ‘borrow’ the CPD system, though occasionally CPD will have someone in custody who is wanted by another jurisdiction; in those instances the interrogation rooms may be used to question individuals involved in non-CPD cases. The Illinois State Police may use an interrogation room occasionally for an aggravated DUI interrogation. The Cook County Sheriff’s police do not use the CPD interrogation recording rooms. Chasen looked up statistics as recent as the morning of this visit, and said that approximately 3% of the recorded videos are related to vehicular cases so some lesser percentage of those would be state police cases.

Quoting from his statistics, Chasen explained that since July 18, 2005, CPD has recorded 1,841 videos, accounting for a total of 17,411 hours (that's approximately 9.5 hours per taping). One terabyte of storage will hold 13,000 to 14,000 hours of taping files. They began the system with one terabyte of storage with a one terabyte backup, and have now gone to three terabytes of storage with three terabyte backups. [recalling our earlier conversation with Chasen last year, I believe one terabyte of storage costs about \$500,000; if this is true, they have gone from \$1 million to \$6 million in storage costs in less than 2 years]. Chasen estimated over \$10,000,000 in storage costs.

Chasen noted that, since the videos are evidence in homicide cases, the records must be retained forever.

Procedurally, all viable homicide suspects are taken to the appropriate detective areas, turned over to homicide detectives, and then taken directly to a taping room. The detective will unlock the metal box (about 1.5 foot square) right outside the door to the interrogation room, and a red light will turn on immediately, signifying that the room is in use and recording is in progress. Once turned on, the taping will run continuously, with a few exceptions – if a lawyer arrives to speak to the suspect, the sound and video link to the screen in the box outside the room is turned off with the “lawyer key” (but the taping continues with just a time counter running), the detective hands the key to the lawyer entering the room, when the

lawyer is done and exits the room he or she returns the key to the detective, who keys the audio and video link back on); also, if for any reason the detective stops the taping, then a video file (with a “V” number) is created; if the detective restarts the taping, a new video file with a new “V” number is created; all “V” numbers are linked to CPD RD (Record Division) numbers. Detectives rarely stop a taping session. When the video room is in use and the recording system is running, the only way anyone outside the room can hear what is being said inside the room is by using earphones that can be plugged into a jack in the box outside the interrogation room. Thus, people not connected to the investigation who are walking in the hallways can see what is happening in the room, but they cannot hear the conversation unless they plug earphones into the jack (see description of the video room below).

If for any reason, the lights are turned off in the interrogation room, or if the lighting fails, an ultraviolet recording procedure kicks in; even though the room is pitch black inside, the camera can record what is happening inside the room with reasonable image quality (the ultraviolet recording image in the video room is of higher quality than the image in the box outside the interrogation room). This capacity was demonstrated to us.

Chasen explained that CPD does not record lineups on video; they do take photos of lineups. He explained that it is illegal to record the conversations of fillers in lineups, so they don't do it.

Following the tour and demonstration of the interrogation rooms, Chasen and Gilbert took us to the video room; this is a room near the interrogation rooms with six monitors (each one linked separately to an interrogation room, with a dedicated line, for security purposes), and with several data storage devices. Essentially it is a room that allows others to view what is happening in the interrogation rooms (provided they have a legitimate reason to do so), and to make copies of any portion of a recorded interrogation if they want to. Chasen explained that every recording is sent to storage in a split signal. This means that one signal (feed) goes to the local storage unit, which can hold up to about 14 days' worth of interrogations; this unit works like a "TIVO," meaning the person operating it can view earlier parts of a recording while the interrogation is on-going; they can also view several different interrogations at once (if there are multiple suspects, for example). The second signal goes to a storage unit directly downtown at CPD headquarters; this is not viewable at the location, though it can be accessed at the downtown location by others. Once a recording is stopped (e.g., the recording device is turned off), the entire recording is sent downtown, with a "V" # attached to it.

Chasen showed us a portable video unit that detectives use when they have to conduct interrogations away from CPD; this unit allows the uploading of video files into the CPD video storage system.

Generally, only Assistant State's Attorneys assigned to a case, detectives assigned to a case, or a detective supervisor can gain access to the video room (obviously, other ranking police officials can). Assistant State's Attorneys receive training on the video system too.

Chasen and Gilbert explained that detectives are trained to integrate the reasons for suspect absences from the interrogation room (e.g., phone call, using the toilet, lineup) into their interrogations. If a suspect leaves the room to make a phone call, for example, the detective will ask, upon the suspect's return to the interrogation room, "How did the phone call go?" or "Did you get in touch with your mom?", or something along those lines.

Committee representatives asked Chasen and Gilbert several questions about whether detectives were changing their interrogation techniques. Sometimes yes and sometimes no, they responded. It depends on several factors (experience, individual preferences, nature of the case or suspect, etc.). The training covers the legal issues regarding legal interrogation tactics. It also depends on the State's Attorney trying the case, on jury reaction, and so on. Yes, they agreed that some interrogation tactics are changing; however, it is too early to tell whether recording

of interrogations is making a significant impact on trials and case outcomes. They explained that the cases involving recordings under this new system are just getting into the trial courts, so it will still be a while before any such assessments can be made. Detectives still use 'traditional' interrogation tactics.

Chasen explained several approaches to training and system planning that he felt were valuable. In developing the system, they asked detective supervisors in the different areas to identify their 'best' detectives. This group helped develop a list of all the features, and checks and balances, that the new system should have. They also utilized a series of 'what if' scenarios (with Assistant State's Attorneys playing the role of suspects) to identify problems, legal exposures, and training topics.

Richard Schwind asked if it seems that suspects are more likely to confess under this new system. In response, Chasen and Gilbert said that gang members will more readily request a lawyer (and clam up).

The system also has the capability to store and play back video recordings of homicide crime scenes, which can be helpful in the investigation process.

As the visit concluded, the Committee members present voiced their positive impressions of the interrogation recording system, the impressive record of over 1,800 recorded interrogations without the loss of a single one due to technical

malfunctions, and the forethought and planning that went into the design of the system.

James R. "Chip" Coldren
Chair

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

January 16, 2007

Subcommittee 2 met at Northwestern University Law School from 2 to 3:15 P.M. Attending were subcommittee members Leigh B. Bienen, Thomas P. Sullivan (via teleconference) and Michael J. Waller (via teleconference). Also attending were Jeffrey M. Howard (via teleconference) and James R. Coldren, Jr. (via teleconference). Also present were David E. Olson, CPRSC Research Scientist, Patrick Foley, Mr. Olson's research assistant, Molly E. Heiler, Ms. Bienen's research assistant and Dan Rippy, legal counsel to Kirk W. Dillard (via teleconference).

The minutes of the December 11, 2006 meeting were approved unanimously.

1. Research database.

Ms. Bienen and her assistant Ms. Heiler outlined the contents of the database they set up for first degree murder indictments from across the State, with several draft tables summarizing information. One table contains a summary of responses to the subcommittee's request for first degree murder indictments, 2003 through 2005. 75 of 102 State's Attorneys responded to Ms. Bienen's request. Mr. Olson noted that of the 27 non-responsive counties, four have large population centers and more than a

handful of first degree murders, namely, Champaign, McLean, Sangamon and Will.

Dr. Olson also noted that, according to State Police Reports, from 2003 to 2005 Champaign had 14 first degree murder cases, McLean 11, Sangamon 20 and Will 56. Another table is a list of all county State's Attorney responses to the request for first degree murder indictments.

2. *Future data collection.*

Mr. Olson asked the subcommittee to describe the purpose for its data collection efforts. Ms. Bienen said that the intent of the data collection effort was to report on the impact of the capital punishment reforms based on data on the number of first degree murders, the number of death eligible murders, and the number of cases in which the State's Attorney filed a notice that capital punishment would be sought.

Mr. Olson suggested an additional source of information is the Illinois State Police. The State Police have information on every person arrested for first degree murder in the state, and the Department of Corrections has comprehensive information on everyone incarcerated in a state prison based on first degree murder charges. Mr. Waller asked Mr. Olson if the State Police could provide more comprehensive information relating to first degree murder defendants. Mr. Olson said the committee could collect

information from State Police files on the number of people arrested, the date of arrest, the date of charges, and dispositional information. Based on that information the committee could develop a more refined survey for dissemination to State's Attorneys, law enforcement agencies and other interested parties in the criminal justice system. Ms. Bienen said she would like to pursue the information gathering ideas Mr. Olson discussed. Ms. Bienen and Mr. Olson said the Criminal Justice Information Authority would be another resource for obtaining information.

Mr. Waller said the subcommittee should focus solely on death-eligible cases, and that only a small percentage of first degree murder cases may be death eligible. Mr. Sullivan said that if only a small percentage of first degree murder cases are death eligible, that fact itself is significant. Mr. Waller said he believes two primary questions should be asked: (1) was the defendant eligible for the death penalty, and (2) did the prosecutor seek the death penalty? Mr. Howard agreed.

Mr. Howard raised an issue which is under the jurisdiction of both subcommittees 2 and 3, initially raised by Judge Harold J. Frobish in October of 2006, regarding pressures that he believes exist in smaller counties on prosecutors to declare cases death eligible. Judge Frobish expressed the view that in small rural counties, there is often strong public

and financial pressure on prosecutors to seek death in first degree murder prosecutions. Mr. Howard believes that this issue should be examined through data collection. Mr. Sullivan said that the Governor's Commission on Capital Punishment found that rural county prosecutors were more likely to seek death than urban county prosecutors.

Mr. Olson said one way to conduct sampling is through collecting information from Circuit Court clerks, and that all information gathered should be kept in a central database. He recommended that all CPRSC subcommittees coordinate their data collection efforts.

Ms. Bienen said it is important to have an accurate factual record on the number of first degree murders, death-eligible murders, and capital prosecutions, for all counties in the state, large and small.

3. *Next meeting – February 8, 2007, 4 P.M.*

It was agreed that the next subcommittee meeting will be held on February 8, 2007 at 4 P.M. at the Northwestern University Law School.

Peter G. Baroni
Special Counsel

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

February 8, 2007

Subcommittee 2 held a meeting at the Northwestern University Law School from 4 to 4:45 P.M. Attending were subcommittee members Leigh B. Bienen, Thomas P. Sullivan (via teleconference) and Michael J. Waller (via teleconference). Present were Peter G. Baroni, Special Counsel (via teleconference); David E. Olson, CPRSC Research Scientist, Loyola University (via teleconference); and Molly E. Heiler, Ms. Bienen's research assistant.

The minutes of the January 16, 2007 meeting were approved unanimously.

1. Third Annual Report.

The subcommittee agreed to request that the first degree murder database summary tables Ms. Bienen and Ms. Heiler created into the Committee's Third Annual Report. No other recommendations were made by the subcommittee for inclusion in the annual report.

2. Future data collection and other information gathering.

Mr. Olson said he had sought out the data collected by the Governor's Commission on Capital Punishment relating to the proportionality study done by the Commission. Mr. Olson spoke to the Department of

Corrections and a former employee of the Governor's staff involved in the study, Mr. Rick Guzman. They could not recall where the data was stored. Mr. Olson will continue his efforts to obtain this information.

Mr. Olson has also asked the Department of Corrections for information relating to all inmates incarcerated at a state prison facility for first degree murder from 1993 through 2006. Mr. Sullivan said we should obtain information on all first degree murder cases in which State's Attorneys have filed capital certifications since 2003.

Ms. Bienen asked Mr. Baroni to prepare a memorandum outlining all capital cases decided by the Illinois Supreme Court from January 2003 through the present, and that Mr. Baroni update the memo as new cases are decided by the Court.

3. *Next meeting – to be determined.*

It was agreed that the subcommittee would agree on a mutually agreeable time to meet after the Committee's public hearing on February 26, 2007.

Peter G. Baroni
Special Counsel
February 20, 2007

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

January 23, 2007

The meeting was held at the Illinois Criminal Justice Information Authority, 120 S. Riverside Plaza, Chicago, Illinois from 12 to 12:45 P.M. Attending were subcommittee members Theodore A. Gottfried and Richard D. Schwind. Also in attendance were Special Counsel, Peter G. Baroni, and Michael L. Atterberry of the Illinois Attorney General's Office (via teleconference).

The minutes of the December 13, 2006 were approved unanimously.

1. The Illinois Laboratory Advisory Committee.

Mr. Gottfried led a discussion focused on subcommittee guest Mr. Atterberry and his position as the Attorney General's representative on the Illinois Laboratory Advisory Committee (ILAC).

(1) Laboratory Accreditation.

Mr. Atterberry said ILAC had discussed several legislative proposals seeking statewide laboratory accreditation. He said board members had differing perspectives on what accreditation would require and which labs would be required to have accreditation. ILAC membership encompasses both criminal forensic laboratories and civilian laboratories that have nothing to do with the criminal justice system. One proposal, made in

House Bill 5241 (Rep. Durkin) in the 93rd General Assembly, provided that ILAC become the accreditation or oversight body for all Illinois laboratories. Mr. Schwind said that oversight is a good idea, but ILAC does not have the investigative power, resources, and the capacity to be an independent oversight body. Mr. Gottfried said the reason for House Bill 5241 is to ensure compliance with federal Coverdale grant requirements.

(2) Coverdale Grants

Coverdale grants are federal funding for DNA testing at public forensic laboratories across the United States. Mr. Atterberry said no Coverdale grant money has been obtained by Illinois laboratories. Mr. Schwind said the need for an oversight body is important notwithstanding receipt of Coverdale grants, because if DNA testing is not done correctly the entire criminal justice system suffers. Members of the subcommittee asked Mr. Baroni to investigate other states that have received Coverdale grant money, in order to determine what those states did to comply with the oversight requirements.

(3) DNA Backlog

Mr. Gottfried asked if DNA testing backlogs came up at ILAC meetings. Mr. Atterberry said he had no information on DNA backlogs, and ILAC has not dealt with that issue. Mr. Schwind said that the Illinois State

Police labs takes a triage approach to DNA testing. In other words, the State Police prioritize DNA testing with serious open cases first, post-conviction testing later, and somewhere in between convicted felon testing.

Mr. Gottfried asked if there was any tension among committee members because members of ILAC represent differing adversarial parties in the criminal justice process. Mr. Atterberry said that there were differences of opinion but collegial relationships.

2. *Training of attorneys and judges.*

Mr. Gottfried provided the Office of the State Appellate Defender capital punishment training seminar agendas; see Appendix 1. Mr. Schwind agreed to provide the subcommittee with the Attorney General's capital punishment training seminar agendas, and training material produced in conjunction with capital punishment seminars held by prosecuting authorities across the State.

3. *Next meeting – February 13, 2007, 12 P.M.*

It was agreed that the next subcommittee meeting will be held on Tuesday, February 13, 2007 at 12 P.M. at the Illinois Criminal Justice Information Authority, 120 S. Riverside Plaza, Chicago, Illinois.

Peter G. Baroni
Special Counsel
Leinenweber & Baroni
Attorneys at Law