

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Minutes of meeting July 6, 2007

The twenty second meeting of the Capital Punishment Reform Study Committee was held at the Illinois Criminal Justice Information Authority, 120 S. Riverside Plaza, Chicago, Illinois from 11 A.M. to 12:45 P.M.

Those present

Leigh B. Bienen

James R. Coldren, Jr.

Theodore A. Gottfried

Boyd J. Ingemunson (via teleconference)

Jeffrey M. Howard

Edwin R. Parkinson (via teleconference)

Richard D. Schwind

Geoffrey Stone (via teleconference)

Thomas P. Sullivan

Arthur L. Turner (via teleconference)

Michael J. Waller (via teleconference)

Not present

Kirk W. Dillard

James B. Durkin

Gerald E. Nora

Randolph N. Stone

Also present: Peter G. Baroni, Special Counsel; Mark Warnsing, Senate Republican staff; Bernard J. Sarley, Capital Case Coordinator, Cook County Public Defender; Regan McCullough and Patrick D. McAnany, Illinois Coalition to

Abolish the Death Penalty; Catherine McMillan, Campaign to End the Death Penalty; Darby Tillis; and Jennifer L. Cassel, Sapna G. Lalimalani and Aaron J. Stucky of Jenner & Block.

The minutes of the June 4, 2007 meeting were approved unanimously.

1. Committee appropriation.

Messrs. Turner and Baroni reported: For the current fiscal year beginning 7/7/07, the General Assembly adopted an interim budget that expires 7/31/07, which includes \$150K per year for CPRSC, within CJIA's appropriation. Our request for \$250K has been introduced, and is on hold with the remainder of the State budget. Action is expected before end of July; they anticipate no objections to our request. Mr. Baroni to report as events unfold.

2. Legislation based on recommendation in CPRSC Third Annual Report.

House Amendment 1 to SB 1023 contains the recommendation contained at pages 12 and 21 of the Committee's Third Annual Report, regarding (1) guidelines for recording of custodial interviews in homicide investigations, and (2) collection of data to be maintained by CJIA relating to Illinois capital eligible indictments. Messrs. Turner and Baroni reported that the bill is set for hearing next week before House Judiciary Committee II. Mr. Durkin is a member of the Committee. No opposition is anticipated. Mr. Baroni and K. Saltmarsh from Mr. Gottfried's office will attend. The members agreed that, as to the provisions in the proposed bill

regarding collection of data, 20 ILCS 3930/7.6 (a), it is their understanding and intent that the words “capital eligible cases” refer to any and all cases in which an Illinois State’s Attorney has the power and discretion to file a certificate under Illinois Supreme Court Rule 416(c), whether or not a certificate is filed, and that those words are not intended to be limited to cases in which a State’s Attorney files a certificate under Illinois Supreme Court Rule 416(c) of intent to seek capital punishment.

3. *Reconsideration of the recommendation relating to use of blind administrators in lineups and photo spreads, page 16 of the Third Annual Report.*

At Mr. Sullivan’s request, it was agreed to postpone discussion of this matter until the next full Committee meeting. In the meantime, we have posted the following on our CJIA website: “The recommendation on page 16 of the Capital Punishment Reform Study Committee’s Third Annual Report is under further consideration by the committee and is currently being held in abeyance.”

4. *Reports of subcommittees.*

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

Mr. Coldren reported that the subcommittee met on June 29. The minutes of the subcommittee meeting of May 30, 2007 (attached as Appendix 1 to the minutes of the full Committee’s meeting of June 4, 2007) were approved.

Mr. Olson attended the meeting, and reviewed with members his survey drafts, with particular reference to those directed to law enforcement agencies. A discussion was held regarding including matters relating to victims' families in the survey documents, for example, notification of deaths, financial assistance, preparation for and transportation to court, notification of status of cases, and the like. Mr. Waller said his office, as most other larger Illinois State's Attorneys offices, employs personnel to serve as victim-witness coordinators.

Mr. Schwind said some funding for this purpose comes from the budget of the Illinois Attorney General, and that this is a large and important section of the Cook County State's Attorneys office, coordinating among victims, witnesses and prosecutors. Mr. Schwind said that Jennifer Kuhn is the Supervisor of the Victim-Witness Program for the Attorney General. It was agreed that the Chairs of subcommittees 1 and 4 will discuss which should take responsibility for victim-witness matters, including meeting with Ms. Kuhn, and drafting proposed legislation re funding for State's Attorneys for assistance in this area.

Regarding the costs involved in setting up and conducting recorded custodial interviews, including transcripts and storage, Mr. Sullivan suggested Mr. Coldren contact Howard Anderson at Jenner & Block to obtain the cost information he has collected, and to obtain his suggestions for other sources.

Several members said that in various counties, criminal trials are being recorded electronically, and transcripts are being prepared from the recordings, for example, DuPage, Jo Daviess and McHenry. This may be a potential method of preparing transcripts of custodial interviews. Mr. Coldren will check on the status of this matter with the Administrative Office of Illinois Courts.

Regarding training of law enforcement officers for recording custodial interviews in homicide investigations, Mr. Coldren distributed written training materials on that subject provided by Ellen Mandeltort, Deputy Attorney General. Mr. Coldren reported that members of subcommittees 1 and 4 are in the process of arranging a joint meeting with Ms. Mandeltort to learn the status of training and experiences of Illinois law enforcement officers.

The next subcommittee meeting will be held on Thursday, August 2, 2007, 10 A.M. at Mr. Geoffrey Stone's office at the University of Chicago Law School, Chicago, Illinois.

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

Ms. Bienen reported that the subcommittee met today at 10 AM, together with David Olson. The minutes of the subcommittee meetings of April 16, (attached as Appendix 1 to the minutes of the full Committee's meeting of April 30, 2007) and June 4 (attached as Appendix 2 to the minutes of the full Committee's meeting of June 4, 2007) were approved.

Mr. Olson reported that he is continuing to work on the survey. He met with an Assistant State's Attorney in Lake County, with members of subcommittee 1 regarding the survey to be sent to police administrators, and with members of subcommittee 2 on June 20 and today. His goal is to have the survey cleared by Loyola University's Institutional Review Board – which must await completion of the final survey documents – and circulated to addressees by the end of August, and to have responses collected by the end of the year. Discussion ensued regarding various sources of relevant information, including the Illinois Department of Corrections, the Cook County Public Defender's office, including Mr. Sarley who was present at the meeting and volunteered to assist, and the Department of Public Health which keeps a record of all homicides as part of its medical examiner's reports.

Ms. Bienen stated that the subcommittee has not received the indictments for the years 2003 through 2005 from the Cook County State's Attorney, and from a number of other State's Attorneys. She said that Mr. Nora sent her lists of cases, but no indictments, but that the lists cannot be understood or relied upon in their present form. Ms. Bienen suggested the Committee again ask Mr. Nora to provide copies of the 2003-2005 Cook County first degree murder indictments.

Mr. Sullivan has agreed to make calls to the State's Attorneys of McLean, Sangamon and Will counties to attempt to obtain copies of their first degree

murder indictments for 2003 through 2005. Mr. Waller said that if Ms. Bienen will supply a list, he will speak with the delinquent prosecutors at the forthcoming meeting of the Illinois State's Attorneys Association; Ms. Bienen agreed to supply the list and it was given to Mr. Sullivan at the meeting.

The next subcommittee meeting will be held at noon on August 6 at the CJIA office.

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

Mr. Howard said members of the subcommittee met on June 11 at the courthouse in DuPage County, with Judge K. Craswell. The minutes of the subcommittee meeting of March 28 (attached as Appendix 2 to the minutes of the full Committee's meeting of April 30, 2007) were approved.

Judge Kathryn Creswell has presided over four capital trials, two since the reforms went into effect. She approves the requirement that custodial interviews be electronically recorded in homicide investigations. She also said she has found the lawyers who have tried the four cases have been well qualified, and that she believes the Capital Trial Bar has resulted in improvements on what were already very competent lawyers on both sides. She also has found that the use of jury questionnaires, filled out in advance of the jury selection process and made available to the lawyers on both sides, has promoted efficiency in the jury selection process.

Mr. Schwind said that in his experience it is common for trial judges in capital cases to make use of advance jury questionnaires.

Subcommittee 3 is scheduled to meet on July 23 with several Cook County Criminal Court trial judges, at the Criminal Court Building, 26th and California, to discuss the judicial survey and related matters.

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

Mr. Gottfried reported that Subcommittee 4 has not met since the last full committee meeting, and is scheduled to meet on July 18. The minutes of the meetings of April 19 (attached as Appendix 3 to the minutes of the full Committee's meeting of April 30, 2007) and May 22 (attached as Appendix 3 to the minutes of the full Committee's meeting of June 4, 2007) have been approved.

5. *Other Business.*

(1) *Alleged prosecutorial misuse of the Capital Litigation Trust Fund.*

A member of the Committee pointed out that at the public hearing in Chicago, Ms. Carrie Summers stated that she believed a State's Attorney had certified a case for capital punishment in order to make use of the Capital Litigation Trust Fund, and thus avoid having the costs borne by the local county. Then; later, the case was decertified. In other words, the case had been declared capital for budgetary reasons. Mr. Parkinson said the witness may have been

referring to a case he handled in DeWitt County, in which Maurice LaGrone and Amanda Hamm were indicted for murder of Ms. Hamm's children. The trials were severed, and Mr. LaGrone was tried first. A jury found him guilty, but not eligible for death, and he received a life sentence. Mr. Parkinson and the local prosecutor decided to withdraw the capital certification for Ms. Hamm, because under the facts she was slightly less culpable than LaGrone in the murders. This was purely a tactical decision. The original decision to seek death for both had nothing to do with obtaining access to the CLTF.

Mr. Parkinson said he has been trying capital cases throughout downstate Illinois for many years, assisting local prosecutors who do not have adequate experience in this area. While he does not have direct proof, he suspects that some State's Attorneys may have given in to the temptation to tap into the CLTF in order to avoid having the local county pay the costs, and then "de-deathed" the cases in exchange for guilty pleas. Mr. Parkinson said that these are merely his suspicions, based upon many years working in this area throughout Illinois.

In answer to Ms. Bienen's question, Mr. Schwind said that when a case is de-deathed, the local county is not required to reimburse the CLTF, but rather pays the costs forward from the time the capital certificate is withdrawn.

- (2) *Assignment of responsibility for pursuing matters discussed by witnesses who appeared at the Committee's two public hearings.*

Mr. Sullivan said that Ms. Sapna Lalimalani, an associate at Jenner & Block, has completed a review of the subject matters discussed by the witnesses who appeared before the Committee at its public hearings, held in Springfield on November 13, 2006 and in Chicago on February 26, 2007. She has prepared a list showing which subcommittee is responsible for considering each matter, although some may be outside the scope of the Committee's statutory authority.

Mr. Sullivan will distribute the list to all members for their consideration.

6. *Next meeting – August 6, 2007, 1 P.M.*

It was agreed that the next meeting of the full Committee will be held on Monday, August 6, 2007, 1 P.M., at the Illinois Criminal Justice Information Authority, 120 South Riverside Plaza, Chicago, Illinois.

Thomas P. Sullivan
Chair
July 31, 2007