

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Minutes of meeting June 4, 2007

The twenty first 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 3:15 P.M.

Those present

Leigh B. Bienen

James R. Coldren, Jr.

Theodore A. Gottfried (via teleconference)

Boyd J. Ingemunson (via teleconference)

Jeffrey M. Howard

Gerald E. Nora

Edwin R. Parkinson (via teleconference)

Richard D. Schwind

Randolph N. Stone (via teleconference)

Thomas P. Sullivan

Not present

Kirk W. Dillard

James B. Durkin

Geoffrey R. Stone

Arthur L. Turner

Michael J. Waller

Also present: Peter G. Baroni, Special Counsel; David E. Olson, Research Analyst and Patrick Foley, Mr. Olson's assistant, Loyola University; Christine Debbit and Dan Brunner, Criminal Justice Information Authority; Jane Bohman and Patrick McAnany, Illinois Coalition to Abolish the Death Penalty; Catherine

McMillan, Campaign to End the Death Penalty; and Mark Warnsing, Mr. Dillard's staff attorney (via teleconference).

The minutes of the April 30, 2007 meeting were approved unanimously.

1. Legislation (House Bill 2755) and the Third Annual Report.

Mr. Baroni reported to the Committee that two recommendations in the third annual report (1) the creation of the capital crimes database and (2) the development of guidelines for the mandated recording of homicide interrogations, were included in legislation filed by Mr. Turner, House Amendment #1 to House Bill 2755. The amended bill was heard in the House Judiciary II Committee on May 25, 2007 and voted out unanimously. The bill is currently on the floor of the House, second reading.

One proposal, omitted from the bill based on objections from the Illinois State's Attorney's Association, was the recommendation on page 16 of the Third Annual Report to require blind administrators for eyewitness identification proceedings when "practicable." The Association objection was based on the arguable ambiguity of the word "practicable" in the recommendation and the problems that may arise if the mandate was interpreted over broadly.

Mr. Nora said he objected to the recommendation on page 16 for the same reasons. Although he agrees with the idea that blind administrators are preferable as discussed at the April 2007 full Committee meeting, recommending a statutory

requirement inaccurately reflects the agreement at that meeting. Mr. Nora would like the recommendation removed from the Third Annual Report.

The Committee agreed to take up that issue at the next full Committee meeting. In the interim, the Committee agreed to post a message on the Committee webpage explaining that the recommendation is the subject of continuing discussion, and is being held in abeyance until the Committee resolves the issue.

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

The Committee discussed the status of the Governor's vacant appointment to the Committee. Mr. Baroni said he discussed the issue with Elizabeth Lewinsohn, the Governor's Public Safety Policy Advisor. She said the Governor takes the appointment seriously and wants to make the right appointment after thorough deliberation. She could not provide a timeframe for those deliberations.

3. *Reports of subcommittees.*

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

Mr. Coldren reported that the subcommittee met May 30, 2007 via teleconference; the draft minutes are attached as Appendix 1. The subcommittee discussed the subjects to be addressed at future meetings, including (1) advanced technology for recording and memorializing homicide interrogations,

(2) eyewitness identification issues, (3) a review of the public hearing transcripts for subcommittee issues, and (4) training for police, attorneys and judges.

Mr. Sullivan suggested the subcommittee contact the Chicago Police Training Academy. Other training resources discussed by the Committee include material created by the Attorney General's Office and the Illinois Law Enforcement Training and Standards Board.

The next subcommittee meeting will be held on Friday, June 29, 2007, 10 A.M. at Mr. 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 said that the subcommittee met on June 4, 2007 at the Illinois Criminal Justice Information Authority; the draft minutes are attached as Appendix 2. The focus was on data collection and coordination of the efforts of Ms. Bienen and Mr. Olson. Ms. Bienen and her assistant reported on their efforts to further refine the databases she created to collect information regarding first degree murder indictments.

Mr. Olson provided the Committee with an initial draft survey for police and prosecutors, intended to reflect all subject matters sought by the four subcommittees. The discussion focused on how best to capture as much useful

information as possible. Mr. Olson will continue to refine the surveys, and submit them to the Loyola Institutional Review Board.

Ms. Bienen reported that she and the Committee had been served with a subpoena *duces tecum* requesting the production of all first degree murder indictments collected by the Committee. The subpoena was issued by defense counsel in the People v. Denson, 05CF1324 (16th Judicial Circuit) (Kane County) with a return date of June 18, 2007. Mr. Gottfried agreed to make an inquiry of the attorney in his office who is on the defense team in the case, and follow up with Mr. Baroni. Mr. Baroni said he would keep the Committee advised.

The next subcommittee meeting will be held on Monday, July 16, 2007, at 10 A.M. at Northwestern University School of Law, 375 East Chicago Avenue, Chicago, Illinois.

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

Mr. Howard reported that the subcommittee has not met since the last full Committee meeting, but will meet on Monday, June 11, 2007 at 3 P.M. in the Chambers of Judge Katherine Creswell at the DuPage County Courthouse, 505 N. County Farm Road, 4th Floor, Wheaton, Illinois.

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

The subcommittee met May 22, 2007 in Springfield, Illinois; the draft minutes are attached as Appendix 3. The subcommittee met with Colonel Jack S.

Garcia, Lt. Colonel Scott E. Giles and Donna Metzger of the Illinois State Police Forensic Services Division. Mr. Garcia, the director of the Forensic Services Division, outlined a variety of issues, including accreditation of the seven State Police labs, the DNA backlog, and DNA sampling/profiling procedures.

Mr. Gottfried stated that the subcommittee members found Mr. Garcia and his staff to be very forthcoming, and willing to answer every question posed by subcommittee members and counsel.

The next subcommittee meeting will be held on June 18, 2007 at the Illinois Criminal Justice Information Authority, 120 South Riverside Plaza, Chicago, Illinois.

4. *Other Business.*

2008 Fiscal Year Appropriation. Based on the Committee's decision to seek an increased funding level for fiscal 2008 (from \$150,000 to \$250,000), Mr. Baroni worked with Mr. Turner and his staff to formally make that request for inclusion in next year's budget. Mr. Baroni was directed to continue pursuing the increased funding.

5. *Next meeting – July 6, 2007, 11 A.M.*

It was agreed that the next meeting of the full Committee will be held on Friday, July 6, 2007, 11 A.M., at the Illinois Criminal Justice Information Authority, 120 South Riverside Plaza, Chicago, Illinois.

Thomas P. Sullivan
Chair
June 21, 2007

Attachments: Appendices 1 through 3.

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

May 30, 2007

Subcommittee 1 met via teleconference from 2 to 3:10 P.M.

Attending were James R. Coldren, Jr., Richard D. Schwind and Geoffrey R. Stone. Also in attendance was Peter G. Baroni, Special Counsel.

The minutes of the December 4, 2006, December 11, 2006 and February 7, 2007 subcommittee meetings were approved unanimously.

1. Third Annual Report.

The subcommittee discussed Mr. Schwind's concern that the recommendation on page 16 of the Third Annual Report did not reflect Committee consensus or the deliberations of the annual report subcommittee. Mr. Schwind said that he would raise the issue at the next full Committee meeting.

2. Mandatory recording of homicide interrogations.

The subcommittee discussed investigating the viability of utilizing advanced technology for recording and memorializing interrogations. Mr. Coldren agreed to seek out a technology expert to advise the subcommittee.

Mr. Coldren raised the question of whether the mandatory recording of interrogations had resulted in fewer successful motions to suppress. After a discussion, the subcommittee concluded that it would be very difficult to

objectively answer the question posed by Mr. Coldren. The subcommittee will discuss the issue with Mr. Olson.

3. *Eyewitness identification procedures.*

Mr. Coldren suggested the subcommittee put together a bibliography of research studies comparing eyewitness identification procedures, especially those completed since the publication of the Illinois pilot study. Mr. Coldren agreed to work with Mr. Baroni to compile that list before the next subcommittee meeting. Geoffrey Stone suggested that the subcommittee prepare a review of those studies in anticipation of the next annual report.

4. *Training of judges, attorneys and police.*

The subcommittee directed Mr. Baroni to distribute all recommendations from Governor Ryan's Commission on Capital Punishment Report relating to training of judges, attorneys and police. The subcommittee agreed to review those recommendations and determine if they have been implemented. *See* 20 ILCS 3929/2(b)(2) explicitly mandating the Committee study the "implementation of training for police, prosecutors, defense attorneys, and judges as recommended by the Governor's Commission on Capital Punishment."

5. *Review of February 2007 public hearing transcript.*

Mr. Coldren suggested each subcommittee member review the two public hearing transcripts to determine if any subjects discussed should be studied by the

subcommittee. The subcommittee agreed to conduct that review. Mr. Schwind will review the transcript from the public hearing held in Springfield, Mr. Coldren will review the first half of the Chicago hearing transcript, and Mr. Stone will review the second half of the Chicago hearing transcript, in preparation for the next subcommittee meeting.

6. *Next meeting – June 29, 2007*

It was agreed that the next subcommittee meeting will be on June 29, 2007 at 10 A.M. at Geoffrey R. Stone's office at the University of Chicago Law School, 1111 East 60th Street, Chicago, IL 60637. The subcommittee also agreed that Mr. Olson will be invited to attend the meeting.

Peter G. Baroni
Special Counsel
June 21, 2007

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

June 4, 2007

Subcommittee 2 met at the Illinois Criminal Justice Information Authority, 120 South Riverside Plaza, Chicago, Illinois. from 11 A.M. to 12:50 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 Analyst, Patrick Foley, Mr. Olson's assistant, Molly E. Heiler, Ms. Bienen's research assistant, and Mark Warnsing, legal counsel to Kirk W. Dillard (via teleconference).

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

1. Subpoena duces tecum served on Ms. Bienen.

Ms. Bienen reported that she was served with a subpoena *duces tecum* requesting the production of documents -- all first degree murder indictments collected by the Committee. The subpoena was issued by defense counsel, David E. Camic, of Aurora, in connection with *People v. Denson*, 05CF1324 (16th Judicial Circuit, Kane County), a capital murder case. The subpoena has a return date of June 18, 2007. Mr. Waller

suggested that the full Committee discuss the issue at its meeting today. The subcommittee directed Mr. Baroni to research the issue of the Committee's obligation under the subpoena. Ms. Bienen suggested the Committee adopt a policy on replying to subpoena requests.

2. *Research database.*

Ms. Bienen and her assistant Ms. Heiler gave an update on the contents of the database they set up for first degree murder indictments from across the state. The updates were based on cross checking information with Illinois Department of Corrections data. The database has 1,329 entries. Entries include 28 counties reporting no first degree murder indictments during the reporting period, and 1,301 entries referencing first degree murder indictments. The 1,301 entries relate to actual first degree murder indictments the Committee received, and lists or descriptions of first degree murder indictments provided by prosecutors and public defenders from across the state. A total of 29 counties failed to respond to the Committee's request for first degree murder indictments. The cross referencing work continues by Ms. Bienen and Ms. Heiler.

3. *Mr. Olson's survey instrument.*

Mr. Olson distributed a first draft of a survey for prosecutors and law enforcement. He described the document as encompassing all the questions

raised by each subcommittee. Once Mr. Olson gets preliminary approval of the surveys distributed, he will draft the surveys for judges and defense attorneys. Mr. Olson will present the surveys to the Loyola University Institutional Review Board after they are approved by the Committee. Mr. Olson reported that he met with the chief of felony prosecutions for the Lake County State's Attorney's Office, Patricia Fix, and asked her to provide feedback on the questionnaire. She provided Mr. Olson with helpful comments.

Mr. Sullivan and Ms. Bienen made a number of suggestions regarding the survey instruments. The subcommittee agreed to review the surveys and provide feedback to Mr. Olson before the next meeting.

4. Next meeting – July 6, 2007, 10 A.M.

It was agreed that the next meeting of the subcommittee will be held on Friday, July 6, 2007, 10 A.M. at the Illinois Criminal Justice Information Authority, 120 S. Riverside Plaza, Chicago, Illinois.

Peter G. Baroni
Special Counsel
June 21, 2007

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

May 22, 2007

Subcommittee 4 met at Representative Arthur Turner's office in the State Capitol from 1 to 2:35 P.M.

Attending were Theodore A. Gottfried, Gerald E. Nora, James B. Durkin and Arthur Turner. Also attending were Peter G. Baroni, Special Counsel, Katherine Saltmarsh of Mr. Gottfried's staff, and Brian Mackey, Chicago Daily Law Bulletin (via teleconference). The subcommittee's guests were Col. Jack Garcia, Lt. Col. Scott Giles, and Donna Metzger, all from the Illinois State Police Forensic Services Division.

The minutes of the April 19, 2007 meeting were approved unanimously.

1. Interview of Illinois State Police Forensic Services Division

Personnel.

The subcommittee met with Col. Jack Garcia, Lt. Col. Scott Giles and Donna Metzger of the Illinois State Police (ISP) Forensic Services Division.

a. Miscellaneous forensic lab issues.

Mr. Gottfried began the discussion by expressing his concern, as a criminal defense attorney, with the forensic laboratories being operated by law enforcement rather than an independent administrative agency. Mr. Garcia responded that his

lab is not a tool of the prosecution, but a scientific body interested in accurate testing based on objective analysis done in a timely manner. Ms. Metzger also pointed out that the lab requires ethics training for all forensic scientists, and that the lab is an independent truth seeker governed by scientific evidence, not the prosecution.

She also pointed out that all labs make mistakes, so that quality assurance programs must be in place to prevent errors, and learn from mistakes. The ISP has ongoing quality assurance programs governing scientific work and the court testimony of their forensic scientists. All parties involved in the criminal justice system are allowed to critique the court testimony, allowing the lab to insure that unbiased, objective testimony is provided by ISP scientists. The guiding principles of the ISP Forensic Services Division are accuracy; completeness and timeliness.

Ms. Metzger informed the subcommittee that the ISP applies for and gets millions of dollars in federal grants to assist in the sampling and profiling of DNA evidence. She agreed to provide the subcommittee with a list of the grants and amount of each.

Ms. Metzger said the ISP labs are accredited by the International Standardizing Organization (ISO) in addition to their accreditation by the American Society of Crime Laboratory Directors (ASCLAD). The ISP obtained this additional accreditation from ISO in order to bolster the credibility of the lab.

She said ISO's accreditation procedures are more rigorous, requiring accreditation every two years, instead of every five years mandated by ASCLAD. Ms. Metzger said ACSLAD will discontinue accrediting forensic labs within the next two years, so ISO will be the only accreditation body in the country.

Mr. Garcia and Ms. Metzger described the current status of open positions in the Forensic Services Division of ISP. ISP has difficulty retaining highly trained forensic scientists, because after they go through painstaking ISP training for a year in order to be a fully qualified ISP forensic scientist, many depart in order to make more money in the private sector. In an effort to stop this "brain drain," the ISP has created a loan forgiveness program that requires a commitment of multiple years of service.

A related problem is that all new positions at ISP must be approved by the Governor's office, a process that may take an extended period of time depending on the candidate and other factors.

b. DNA sampling, testing and backlog.

Mr. Garcia explained the two types of DNA sampling or profiling ISP forensic services performs: (1) convicted felon DNA profiling for the Combined DNA Index System (CODIS) database and (2) case evidence DNA profiling.

(1) CODIS profiling.

According to Mr. Garcia, the first type of sampling -- convicted felons for the CODIS database -- has no backlog. It is the easiest sampling, and requires only five to six forensic scientists at ISP to keep pace with the work load. CODIS sampling work is not outsourced because it is far less complex than case evidence profiling, and requires limited ISP resources and personnel to keep up with the work load.

(2) Case evidence profiling.

The second type of DNA sampling, case work evidence, is more labor intensive, and requires 60 to 70 ISP forensic scientists. There is a backlog of approximately 630 active cases as of May 22, 2007. The ISP considers any case that takes more than 30 days from the date of receipt part of the backlog.

Ms. Metzger said that some of this sampling work is outsourced to accredited labs, because it is more voluminous and takes more time. ISP would prefer to do all DNA sampling within the forensic services division at ISP, but in order to keep up with the evidence sampling case load, some must be outsourced. Of the active cases within the ISP backlog, 300 have been outsourced to approved, accredited private labs. If this work was not outsourced, the backlog would be double or triple the current size. The ISP outsources cases only when there are no current suspects, and simple cases, or low level felony and misdemeanors cases.

Ms. Metzger said that Illinois has one of the lowest DNA sampling backlogs in the country. Ms. Metzger said that the ISP has cut down on outsourcing, and no longer outsources on a monthly basis. She hopes that in the near future the lab will eliminate its backlog and not have to outsource any DNA sampling work.

Current outsource contracts require the outside vendor to travel to Illinois to testify in criminal cases if the DNA testing is contested or at issue. From the inception of the ISP's outsource program, a total of only 10 to 15 criminal cases have required the testimony of an outside private lab vendor at trial. The ISP does not outsource high profile cases, or "live cases" in the system (filed and on a court call), or "rush" cases, that is, cases where the prosecuting authority requests the ISP conduct the sampling/profiling on an expedited basis, which are completed by the ISP lab within three days.

Both Mr. Garcia and Ms. Metzger agreed to cooperate with the Capital Punishment Reform Study Committee in the future.

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

The subcommittee discussed the perception among some that the Fund is misused by smaller counties to pay for the defense costs in first degree murder cases. Members of the subcommittee acknowledged that there is only anecdotal information at this point, but the appearance of a conflict exists, namely, the Fund creates a monetary incentive for a county prosecutor to seek the death penalty in

first degree murder cases because that will trigger State funding of indigents' defense, which is often very costly, that would otherwise be paid by the county.

The subcommittee agreed 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 seek his help out in determining how to obtain objective evidence, if it exists, of the practice of any misuse of the Fund.

3. *Next meeting – June 18, 2007, 1 P.M.*

It was agreed that the next subcommittee meeting will be held on Monday, June 18, 2007 at 1 P.M. at the Illinois Criminal Justice Information Authority, Chicago, Illinois.

Peter G. Baroni
Special Counsel
June 21, 2007