

MINUTES OF THE MEETING OF THE TRIAL PROCEEDINGS
SUBCOMMITTEE #3 OF THE CAPITAL PUNISHMENT REFORM STUDY
COMMITTEE

May 10, 2006

Criminal Justice Information Authority
Chicago, IL

Notice of the meeting was sent to all members and posted on the Illinois Criminal Justice Information Authority website.

Present: Ed Parkinson, Peter Baroni (in person); Rick Schwind and Tom Sullivan (in-person for the latter part of the meeting); Jeff Howard and Boyd Ingemunson (via teleconference).

The meeting was called to order at 1:05 p.m.

Discussion Topic #1: Jurisdiction of the subcommittee

Jeff Howard led a discussion regarding the jurisdiction of Subcommittee #3. The subcommittee seemed to be in consensus as to the following topics being within its oversight:

1. Murder statute: redefinition of witness murder aggravating factor. 720 ILCS 5/9-1(b)(8) (P.A. 93-605, Sec. 10).
2. Murder statute: new mitigating factor for mental/physical abuse and diminished mental capacity. 720 ILCS 5/9-1(c)(6) & (7) (P.A. 93-605).
3. Murder statute: new standard for imposing death – is death appropriate (changes from mitigation sufficient to preclude death). 720 ILCS 9-1(g) (P.A. 93-605, Sec. 10). Illinois Pattern Jury Instructions Committee drafting instruction reflecting this change.
4. Murder statute: judicial decision to non-concur with a jury verdict of death. 720 ILCS 9-1(g) (P.A. 93-605, Sec. 10).
5. Murder statute: trial court decertification of capital case. 720 ILCS 9-1(h-5)(P.A. 93-605, Sec. 10).
6. Mandatory taped interrogations in homicide cases use at trial. 725 ILCS 5/103-2.1 (P.A. 93-206, Sec. 25, and P.A. 93-517, Sec. 25).
7. Trial court proceedings to determine mental retardation. 725 ILCS 5/114-15 (P.A. 93-605, Sec. 15).
8. Informant testimony (snitch) pre-trial hearing on reliability. 725 ILCS 5/115-21 (P.A. 93-605).
9. Use of the Capital Litigation Trust Fund at trial. 730 ILCS 5/5-4-3.

10. Specific description and disclosure of Brady material by the prosecution. Sup. Ct. R. 412(c).
11. Notice requirements on seeking the death penalty and notice practice followed by prosecutors. Sup. Ct. R. 416(c).
12. Assignment of qualified prosecution and defense counsel from capital litigation bar. Sup. Ct. R. 416(d).
13. Discovery depositions in capital cases. Sup. Ct. R. 416(e).
14. Case management conferences to ensure competence of counsel and disclosure requirements in capital cases. Sup. Ct. R. 416(f).
15. Respective certifications of readiness by prosecution and defense counsel before trial in capital cases. Sup. Ct. R. 416(g) and (h).

There seemed general agreement among subcommittee members as to the foregoing list. Discussion turned to one suggested idea being within the subcommittees' jurisdiction: residual doubt/no doubt. It was suggested that the idea of "no doubt" be included based on some proposed legislation in the general assembly last year. Concern was raised regarding the inclusion of proposals being under the subcommittee purview, without being enacted. The concern focused on the vast array of "proposals" to reform the death penalty that may exist and the difficulty in reviewing reforms that do not statutorily exist. There was also the suggestion that it may be outside the CPRSC's charge. However, subcommittee members all acknowledged that "residual doubt" is part of arguments in every death penalty case (on some level or another). Based on that fact, the subcommittee seemed willing to look at the issue of residual doubt, to the extent possible, because its presence in capital cases may have changed given the statutory changes, within the purview of the subcommittee, particularly the "death is appropriate" amendment.

Ed Parkinson discussed with the subcommittee his recent personal experience with the statutory changes in a capital murder prosecution he finished a few weeks ago. In that case, *People v. LaGrone*, the judge held a 4 day pre-trial reliability hearing on several jailhouse snitches the State wished to testify at trial. It was an interesting experience with an outcome, according to Parkinson, that was unexpected.

Discussion Topic #2: Guest speakers

Howard led a discussion regarding potential speakers the subcommittee could invite to future meetings to address issues of concern to the members. There seemed general consensus that appropriate speakers would be judges, prosecutors and defense attorneys that have participated in capital trials. Additionally, the subcommittee agreed that it would be useful to seek out a representative from the Illinois Pattern Jury Instructions Committee and the Administrative Office of the Illinois Courts to discuss issues that are of interest to the subcommittee. The task of seeking out such representatives would have to be done in a way to give deference to the court and its constitutional independence. Mention was made of difficulty one CPRSC member had in making contact with the Supreme Court and that maybe a different tack should be taken by the subcommittee. The subcommittee asked legal counsel Baroni to seek out Judge Toomin in an effort to effectuate such communication. The subcommittee also discussed the need to review capital trial jury instruction proposals that have been at issue over the

last two years regarding proposed instructions on the “death is appropriate” language added by Public Act 93-605. The consensus seemed to be that such a review would prepare the members for an IPI representative to speak to the subcommittee.

Discussion Topic #3: Use of a social scientist

Mr. Howard led a discussion that focused on the work of the subcommittee. The subcommittee seemed to come to a consensus that the use of a neutral social scientist (not invested in either side of the capital punishment debate) to assist the subcommittee and Mr. Baroni in formatting questions for a survey would be helpful. Howard thought that such a survey could be disseminated to members of the Capital Litigation Trial Bar and judges who have been approved to hear capital cases. The subcommittee seemed to agree that a neutral social scientist could be useful in working with the special counsel to create a survey instrument and establish a database for compilation of information (in concert with the other subcommittees) but that the substance of the survey and database would be dictated by the subcommittee.

The Subcommittee adjourned at 2:00 p.m.