

**CAPITAL PUNISHMENT REFORM STUDY COMMITTEE**  
**DNA and proportionality subcommittee No. 2**

**Minutes of meeting January 16, 2007**

The DNA and proportionality subcommittee of the Capital Punishment Reform Study Committee (CPRSC) meeting was held at the Northwestern University School of Law, 375 East Chicago Avenue, Second Floor, Faculty Commons, Chicago, Illinois 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 full committee members Jeffrey M. Howard (via teleconference) and James R. Coldren, Jr. (via teleconference). Present were David E. Olson (Loyola University) (CPRSC research scientist), Patrick Foley (Mr. Olson's research assistant), Molly 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. The first table contains a summary of responses to the subcommittee's request for first

degree murder indictments. Seventy five county state's attorneys responded to Ms. Bienen's request for first degree murder indictments from 2003 through 2005. Of those respondents, 44 sent copies of indictments and 28 sent no indictments because their respective county had no first degree murders charged during that time period. Of the 27 non-responsive counties, four have large population centers and more than a handful of first degree murders. Those four counties are: Champaign, McLean, Sangamon and Will. According to State Police Reports, Dr. Olson noted, from 2003 to 2005 Champaign had 14 first degree murder cases, McLean had 11, Sangamon had 20 and Will had 56. The third table was 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 with certainty based on objectively collected data on the number of first degree murders, the number of death eligible murders, and the number of capital cases, since the reforms were enacted.

Mr. Olson suggested an additional source of information for these data could be the Illinois State Police. The State Police have information on

every person arrested for first degree murder in the state. Additionally, 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 on the number of people arrested, the date of their arrest, the date of the charges, and other arrest and dispositional information from State Police files. 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 would like to pursue the information gathering ideas that Mr. Olson discussed. Ms. Bienen and Mr. Olson both thought the Criminal Justice Information Authority would be another resource for obtaining information.

Mr. Waller views data collection as important only after a decision is made on what the committee seeks to accomplish. Mr. Waller also said the subcommittee should focus solely on death-eligible cases. Mr. Waller suggested that there may be only a small percentage of first degree murder cases that are death eligible. Mr. Sullivan said that if it is true, that only a small percentage of first degree murder cases are death eligible, such a

finding would be significant. Mr. Waller thinks 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 agrees that those are the two of the most important questions to ask.

Mr. Olson asked if the subcommittee wanted to collect information regarding all first degree murder cases. Mr. Waller said that Mr. Olson should first determine if the information is available, and then come up with a proposal for data collection that the subcommittee could consider.

Mr. Howard raised an issue which is under the jurisdiction of both subcommittees #2 and #3. This is an issue initially raised by Judge Harold J. Frobish in October of 2006, regarding pressures that he believes exist, in smaller counties, on prosecutors to seek the death penalty, and declare cases death eligible. Judge Frobish expressed the view that in smaller, rural counties, there is 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 far more likely to seek death than urban county prosecutors.

Ms. Bienen suggested one approach to data collection could be sampling from larger counties. Mr. Olson suggested one way to conduct sampling is through collecting information from circuit court clerks. Mr. Olson suggested that all information gathered pursuant to the subcommittee's charge should be transmitted and kept in a central database. Further, Mr. Olson recommended that all CPRSC subcommittees coordinate data collection efforts. Mr. Olson views information gathering as successful if the major counties are responsive to requests. Ms. Bienen emphasized that 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.

Mr. Olson said any data collection efforts must be cleared through Loyola University's Institutional Review Board.

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

It was agreed that the next subcommittee meeting was scheduled for February 8, 2007 at 4 P.M. at the Northwestern University School of Law, 375 East Chicago Avenue, Second Floor, Faculty Commons, Chicago, Illinois.

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