

CAPITAL PUNISHMENT REFORM STUDY
COMMITTEE

Minutes of meeting January 23, 2009

The thirty-sixth meeting of the Capital Punishment Reform Study Committee was held at the office of Jenner & Block, 330 North Wabash Avenue, Chicago, Illinois from 9:30 A.M. to noon.

Those present

Leigh B. Bienen

Jennifer A. Bishop-Jenkins

James R. Coldren, Jr. (via teleconf.)

Walter Hehner

Jeffrey M. Howard

Edwin R. Parkinson (via teleconf.)

Randolph N. Stone

Charles M. Schiedel (via teleconf.)

Not present

Kirk W. Dillard

Boyd J. Ingemunson

T. Clinton Hull

Geoffrey Stone

Arthur L. Turner

Richard D. Schwind

Thomas P. Sullivan

Michael J. Waller (via teleconf.)

Also present: David E. Olson and Robert Lombardo, Loyola University; Mark Warnsing, Senate Republican staff (via teleconference); and Patrick McAnany, Illinois Coalition to Abolish the Death Penalty.

The minutes of the Committee meeting held on December 4, 2008, were approved.

- 1. Report of David Olson and Roberto Lombardo re surveys to law enforcement officials.*

The current version of the draft survey will be distributed to all members within one week. The draft will also be distributed to the Loyola Institutional Review Board. Mr. Olson requested that all members send him suggested changes and edits within the following 10 days.

Mr. Olson pointed out that some departments do not carry out some or all of their own investigations of homicides committed within their geographical jurisdictions, instead the crimes are investigated by area task forces or major assistance teams. As an example, Mr. Waller called attention to the Lake County Major Crimes Task Force, which is brought into some but not all of the homicides committed in the jurisdictions of the various Sheriffs and PDs in Lake County. Attention was also called to the Northwest Suburban Task Force, and to the IL State Police Department, which provides support to various local agencies in investigations of homicides and other major crimes. Mr. Olson will attempt to identify these organizations, and send the survey to them.

2. *Public hearing in Chicago, January 26, 9 A.M., Thompson Center auditorium.*

Mr. Schwind has made arrangements for a court reporter and microphones. Messrs. Sullivan and Schwind have sent notices of the hearing to state and local law enforcement agencies, law schools, local prosecutors and public defenders and their associations, and the news media.

3. *Public hearing in Springfield, March 2, 10 A.M., State Capitol Building, Room 212.*

Mr. Schwind has made arrangements for a court reporter and microphones. Messrs. Sullivan and Schwind have sent notices of the hearing to relevant persons and organizations, and the news media. Committee members may submit requests for reimbursement of their travel expenses, to be reviewed and approved if appropriate, by the chair and co-chair.

4. *Fifth Annual Report covering the Committee's activities during 2008.*

As heretofore, Mr. Sullivan will prepare the initial draft of this report. Mr. Sullivan requested each member, particularly the chairs of the four subcommittees, to send him suggestions for items to be included in this report.

5. *Reports of subcommittees.*

(1) *Report of subcommittee 1 - Police and investigations.*

Mr. Coldren said the subcommittee has not met since the last Committee meeting, but is scheduled to meet within the next several weeks.

Mr. Schwind said that several law enforcement officials have been invited to attend the next full Committee meeting, to discuss potential problems for smaller departments that may arise from a requirement that blind administrators be used in eyewitness identifications.

(2) Report of subcommittee 2 - Eligibility for capital punishment and proportionality.

Ms. Bienen said the subcommittee has not met since the last Committee meeting. She said the data entry process continues with respect to murder indictments returned in Illinois since January 1, 2003.

It was reported that there are now 15 persons on death row in Illinois. Curtis Thompson committed suicide.

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

Mr. Howard reported that the subcommittee met on January 9, 2009. The minutes of that meeting are attached as Appendix 1.

The subcommittee members discussed budgetary concerns, owing to the Governor's line item vetoes. The Capital Litigation Trust Fund statute was amended to exclude payment of expenses to prosecutors from counties other than Cook.

Subcommittee 3 recommends that the full Committee make a recommendation that this funding be reinstated.

It was also reported that CLTF funding for the Appellate Prosecutor was eliminated, while funding for the Attorney General was not affected.

Mark Warnsing agreed to report to the chair regarding any changes or proposed changes to these budget cuts. This matter will be discussed at the March 9 Committee meeting.

The subcommittee members voted 2 to 1 (one member not present) against recommendation of a jury instruction relating to cross racial identifications. This matter will be taken up by the full Committee at the forthcoming meeting on March 9, as well as other recommendations made by subcommittee 3 relating to jury instructions and verdict forms.

Mr. Schwind pointed out that on September 23, 2008, the Special Committee of the IL Supreme Court on Capital Cases

added the following sentence to the Committee Comments to Rule 416 (d), entitled “Representation by Counsel,” relating to appointment of lawyers for indigent defendants in capital punishment cases:

“However, trial courts shall not appoint attorneys of the Office of the State Appellate Defender to serve as trial counsel in capital cases, nor shall attorneys of that agency serve in that capacity unless and until such time as they may be statutorily authorized to appear as trial counsel.”

This matter was discussed in the Committee’s Fourth Annual Report, pages 40-41. The issue is whether there is a serious potential for a conflict of interest when lawyers from the Appellate Defender’s Office represent an indigent defendant at the trial. Lawyers from that office may represent the indigent defendant on appeal in the event of a conviction, and may be required to contend that trial counsel was ineffective.

Mr. Parkinson said that he has raised this issue in several capital cases that he has tried, and that Judge Frobish from Livingston County raised the issue in the Urialis case.

It was agreed that this matter will be considered by the full Committee on March 9.

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

Mr. Schiedel said that the subcommittee has met by telephone, directed to the lack of Capital Litigation Trust Fund (CLTF) funding for the Appellate Defender's Office. This matter will be considered by the Committee on March 9.

The subcommittee also has discussed abuses of funding from the CLTF, especially by certain defense lawyers, and the disparities among the way in which different judges handle applications for payments from the CLTF. Mr. Hehner said that a committee of the Union League Club is studying alleged

misuses of CLTF funds. Mr. Warnsing said that this matter is also being discussed among members of General Assembly.

It was agreed that the chair will invite Nadine Jakubowski, Capital Litigation Manager/Chicago Budget Analyst, to a forthcoming full Committee meeting.

6. Next meeting – Monday, March 9, 2009, at 1 PM.

It was agreed that the next full Committee meeting will be held on Monday, March 9, 2009 at 1 PM, at the office of Jenner & Block, 330 N. Wabash Avenue, 40th Floor, Chicago, IL.

Thomas P. Sullivan
Chair
February 27, 2009

Attachment - Appendix 1

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE
MINUTES OF SUBCOMMITTEE NO. 3 MEETING

January 9, 2009

Subcommittee 3 met at the Law Office of the Cook County Public Defender, Chicago, Illinois, on January 9, 2009. Attending were subcommittee members Jeffrey M. Howard, Edwin R. Parkinson (via teleconference), and Boyd J. Ingemunson (via teleconference).

Ed Parkinson brought to the subcommittee's attention that funding in the Capital Litigation Trust Fund (CLTF) for prosecution of capital uses outside of Cook County had been eliminated. The subcommittee voted to recommend restoring the funding in the CLTF for prosecution of capital cases outside of Cook County.

The subcommittee discussed any recommendations the subcommittee believes it should make for inclusion in the upcoming annual report. All the recommendations the subcommittee believes should be included in the annual report have been made throughout the year and now need to be discussed and voted upon by the entire Capital Punishment Reform Study Committee.

A jury instruction concerning cross-racial identification was discussed. This instruction is attached as Attachment 11. The subcommittee voted two to one that the cross racial instruction is not necessary. However, the subcommittee decided that this instruction should be submitted before the full CPRSC for its consideration.

ATTACHMENT - 11

In this case, the defendant, _____ (*insert name*), is of a different race than _____ (*insert name of identifying witness*), the witness who has identified [him] [her]. You may consider, if you think it is appropriate to do so, whether the fact that the defendant is of a different race than the witness has affected the accuracy of the witness' original perception or the accuracy of a later identification. You should consider that in ordinary human experience, some people may have greater difficulty in accurately identifying members of a different race than they do in identifying members of their own race.

You may also consider whether there are other factors present in this case which overcome any such difficulty of identification. [For example, you may conclude that the witness had sufficient contacts with members of the defendant's race that [he] [she] would not have greater difficulty in making a reliable identification.]