

III. Attorney General's Capital Case Commission

The Arizona Attorney General's Capital Case Commission was charged with reviewing the capital punishment process in Arizona in its entirety to ensure that it works in a fair, timely and orderly manner. To that end, the Commission examined the system beginning with the pre-trial process, and continuing through the trial process and the completion of the appellate process.

The Capital Case Commission was designed to encourage full debate and to enable the subcommittees of the Commission to work through the intricacies of death penalty litigation in Arizona. Commission meetings were held between September 2000 and July 2002. All Commission and subcommittee meetings were open to the public, and members of the public were allowed to speak and present written materials for consideration.

The Subcommittees

Data/Research Subcommittee:

Commission Members:

Peg Bortner, Chair, Center for Urban Inquiry, Arizona State University
Janet Napolitano, Arizona Attorney General
Michael D. Ryan, Arizona Supreme Court Justice
John A. Stookey, Osborn Maledon
Rick A. Unklesbay, Pima County Attorney's Office

Other Participants:

Paul Ahler, Maricopa County Attorney's Office
Dennis Burke, Attorney General's Office
Kent Cattani, Attorney General's Office
Patrick Cunningham, Attorney General's Office
Noel Dessaint, Arizona Supreme Court Clerk
Daryl Fischer, Arizona Department of Corrections
Timothy Geiger, Attorney General's Office
Donna Hallam, Arizona Supreme Court Staff Attorney
Paul McMurdie, Maricopa County Attorney's Office
Diane Saunders, Attorney General's Office

At the inception of the Capital Case Commission, the Data/Research Subcommittee was established to work in consultation with the Center for Urban Inquiry, College of Public Programs at Arizona State University to compile empirical data about the death penalty process in Arizona. The Subcommittee provided available information to the Capital Case Commission, responded to Commission requests for relevant information, maintained a record of research projects suggested by Commission deliberations, assessed the feasibility of further research, and assisted in the preparation of Commission recommendations.

Dr. Peg Bortner, Director of the Center for Urban Inquiry at Arizona State University, chaired the Data/Research Subcommittee for the Commission and designed research methods for the study of

Arizona's capital cases in Data Sets I and II. The work on Data Sets I and II was performed through services provided without charge by Dr. Bortner, Dr. Andy Hall, and their colleagues at the Center for Urban Inquiry. The Attorney General and the Commission are deeply grateful for these services.

The Data/Research Subcommittee began meeting in the summer of 2000, and devised three areas of empirical research to be completed:

- Data Set I examines the characteristics of the 230 Arizona death penalty cases from 1974 through July 1, 2000 and focuses on:

- the number and type of aggravating and mitigating factors found to exist by sentencing judges;
- the number and type of conviction and sentence related remands, reversals or modifications in the appellate process of the cases;
- case outcomes;
- time intervals for key junctures in the sentencing and appellate process; and
- defendant and victim profiles, including relationships between victims and defendants, and group characteristics such as age, race/ethnicity, gender, and county of residence.

The Center for Urban Inquiry produced a Report to the Commission on Data Set I entitled "Summary of Death Sentence Process: Data Set I Research Report to Arizona Capital Case Commission, March 2001," (Attachment "B"). The Data/Research Subcommittee also made recommendations which, if implemented, would better capture this same data in the future in superior court clerks' offices, prosecuting attorneys' offices and within the Office of the Attorney General. The Attorney General's Office intends to keep Data Set I updated.

- Data Set II is the study of all first-degree murder cases charged during a five-year period, January 1, 1995 through December 31, 1999 in all 15 counties and focuses on:

- indictments and sentencing;
- time intervals;
- co-defendants' characteristics; and
- defendants' characteristics.

In a randomly-selected 62 percent of those cases, research was sought on:

- prior criminal record;
- type of defense counsel;
- mental/behavioral health issues; and
- victim characteristics.

Data Set II follows the paths taken in first-degree murder cases. It displays all indictments over that five-year period, cases where death was noticed, the number of cases that went to trial, the cases that resulted in convictions, and of those, the cases where the death sentence was imposed.

The Center for Urban Inquiry produced a Report to the Commission on Data Set II entitled "Summary of First-degree Murder Cases, 1995-1999: Data Set II Research Report to Arizona Capital Case Commission" (Attachment "C"). The Data/Research Subcommittee also made recommendations which, if implemented, would better ensure that this same data

is captured in the future in superior court clerks' offices, prosecuting attorneys' offices, and within the Office of the Attorney General. The Center for Urban Inquiry intends to keep Data Set II current.

- Data Set III was conducted by Dr. Linda Williams of The Williams Institute under contract with the Office of the Attorney General. It is a smaller exploratory study of 30 cases and is an attempt to estimate the incremental costs of first-degree murder cases where the death penalty was sought and not sought. The study attempted to capture the following activities in each of the 30 cases:

- the number of pretrial/trial motions filed and Arizona Superior Court minute entries recorded;
- the number and cost of trial-related psychiatric/medical evaluations and exams;
- the number and cost of trial-related special investigators;
- the length and cost of jury trial;
- the length and cost of aggravation/mitigation hearings;
- the length of time from indictment to sentencing;
- the cost of trial preparation/trial hours expended by defense and county attorneys; and
- some specific state and county costs associated with appeals.

Research concluded that only a portion of the data sought was available. Due to the small sample size, concerns were raised as to the "skewness" of the statistics. The habeas stage prosecution costs are not included. And, with the exception of costs associated with housing defendants from indictment to sentencing, the report does not reflect the costs of incarceration. Defendants who were charged with capital murder but ultimately sentenced to life imprisonment or a term of years are not captured in this study. With these disclaimers, the study, entitled "Case Study on State and County Costs Associated with Capital Adjudication in Arizona: Data Set III Research Report to Arizona Capital Case Commission" is included as Attachment "D."

The Data/Research Subcommittee recommends that mechanisms for more accurately capturing cost data be implemented and further study be conducted on a larger sample of cases.

Pre-Trial Issues Subcommittee:

Thomas L. LeClaire, Chair, Snell & Wilmer LLP
Paul W. Ahler, Maricopa County Attorney's Office
James M. Bush, Fennemore Craig
Jose Cardenas, Lewis and Roca LLP
Harold L. Higgins, Jr., Pima County Assistant Public Defender
Cindy K. Jorgenson, U.S. District Court for the State of Arizona
John A. Loredó, Arizona House of Representatives
Patricia A. Orozco, Yuma County Attorney
Lee Stein, Fennemore Craig
George Weisz, Executive Assistant to the Governor

Issues Before the Pre-Trial Issues Subcommittee:

1. How prosecutors identify cases in which to seek the death penalty
2. The statutory scheme of aggravating circumstances that define which defendants are death eligible
3. The minimum age for imposing the death penalty
4. The issue of mental retardation as it applies to eligibility for the death penalty
5. Residual doubt as a mitigating factor
6. Time lines for filing a notice of intent to seek the death penalty

Trial Issues Subcommittee:

David R. Cole, Chair, Maricopa County Superior Court Judge
Steven F. Conn, Mohave County Superior Court Judge
Jaime Gutierrez, Former Arizona State Senator
Charles R. Hastings, Former Yavapai County Attorney
Marilyn Jarrett, Arizona Senator
Christopher Johns, Maricopa County Deputy Public Defender
Michael D. Kimerer, Kimerer & LaVelle
Gail Leland, Director, Homicide Survivors
John A. Stookey, Osborn Maledon PA
Rick A. Unklesbay, Pima County Attorney's Office

Issues Before the Trial Issues Subcommittee:

1. Trial defense attorney competence
2. Time lines for disclosure of intent to seek the death penalty
3. Conduct of an aggravation/mitigation hearing and death penalty sentencing
4. The use of mitigation experts in preparation of the defense case
5. The need for adequate trial defense attorneys for indigent defendants in Arizona
6. The issue of delay in investigating and trying a capital case in the trial courts

Direct Appeal/PCR Subcommittee:

Michael D. Ryan, Chair, Arizona Supreme Court Justice
Paul J. Babbitt, Jr., Coconino County Board of Supervisors
Peg Bortner, Center for Urban Inquiry, Arizona State University
Chris Cumiskey, Arizona State Senate
Stanley G. Feldman, Arizona Supreme Court Justice
Charles Krull, Maricopa County Deputy Public Defender
James Moeller, Former Arizona Supreme Court Justice
Tom Smith, Arizona State Senate
Steven J. Twist, Viad Corporation
Lois Yankowski, Pima County Assistant Legal Defender

Issues Before the Direct Appeal/PCR Subcommittee:

1. Qualifications for an appellate defense attorney
2. The need to provide an adequate number of attorneys to handle PCR proceedings in Arizona capital cases
3. The long time intervals in processing capital appeals in Arizona
4. The need for a trial and appellate public defender office in Arizona
5. Ariz. R. Crim. P. 32 governing PCR proceedings
6. Whether Arizona needs to change its procedures to be able to “opt in” under the Federal Anti-Terrorism and Effective Death Penalty Act of 1996

The Interim Report

On July 30, 2001, the Capital Case Commission produced an Interim Report (Attachment “A”) that provided a summary of the issues and detailed the deliberations and recommendations returned by the subcommittees and the Commission. The Interim Report offers more detail on subcommittee deliberations than is contained in this Final Report.