

I. Introduction

In recent years, events across the country have raised the public's awareness of the death penalty and its administration. Since January, 1999, Arizona has executed 10 inmates and 117 prisoners are currently on Arizona's death row. Recognizing the need for a comprehensive study of the death penalty process in Arizona, Attorney General Janet Napolitano formed the Attorney General's Capital Case Commission in the summer of 2000 to study key issues and make recommendations to try to ensure that the death penalty process in Arizona is just, timely, and fair to defendants and victims. This Commission was not charged with and did not consider whether a moratorium or abolition of the death penalty was warranted.

Commission Membership

The Capital Case Commission brought together persons with varied experience and distinct perspectives regarding the capital case pre-trial, trial, sentencing and appeal processes. Commission members include prosecutors, defense attorneys, trial and appellate judges, victims' rights advocates, citizens, and members of the Arizona Legislature. Members did not always agree, but were steadfast in their deliberations to overcome differences in an effort to reach consensus on issues. Commission members include:

The Hon. Janet Napolitano
Arizona Attorney General, Chair

Sen. Chris Cummiskey
Arizona State Senate

Mr. Michael Kimerer
Kimerer & LaVelle

Mr. Paul Ahler
Maricopa County Attorney's
Office

Hon. Stanley G. Feldman
Arizona Supreme Court Justice

Mr. Charles Krull
Maricopa County Deputy Public
Defender - Appeals Division

Mr. Paul Babbitt
Coconino County Board of
Supervisors

Mr. Jaime Gutierrez
Former Arizona State Senator

Mr. Thomas LeClaire
Snell & Wilmer LLP

Dr. Peg Bortner
Center for Urban Inquiry, College
of Public Programs Arizona State
University

Mr. Charles Hastings
Yavapai County Attorney's
Office

Ms. Gail Leland
Director, Homicide Survivors

Mr. Harold Higgins
Pima County Assistant Public
Defender

Rep. John Loreda
Arizona House of Representatives

Mr. James Bush
Fennemore Craig

Sen. Marilyn Jarrett
Arizona State Senate

Hon. James Moeller
Former Arizona Supreme Court
Justice

Mr. Jose Cardenas
Lewis and Roca LLP

Mr. Christopher Johns
Maricopa County Deputy Public
Defender - Appeals Division

Ms. Patricia Orozco
Yuma County Attorney

Hon. David R. Cole
Maricopa County Superior Court
Judge

Hon. Cindy Jorgenson
U.S. District Court Judge for the
State of Arizona

Hon. Michael D. Ryan
Arizona Supreme Court Justice

The Hon. Steven Conn
Mohave County Superior Court
Judge

Senator Tom Smith
Arizona State Senate

Mr. Lee Stein
Fennemore Craig

Mr. Rick A. Unklesbay
Pima County Attorney's Office

Ms. Lois Yankowski
Pima Cty Assistant Legal Defender,
Appeals Section

Mr. John Stookey
Osborn Maledon PA

George Weisz
Executive Assistant to the
Governor

Mr. Steven Twist
Viad Corporation.

The Commission acknowledges the following dedicated staff members from the Arizona Attorney General's Office who participated in Commission discussions and assisted in preparing this Report: Dennis Burke, Kent Cattani, Patrick Cunningham, Timothy Geiger, Michael Haener, Diane Saunders, and Pati Urias.

A Data/Research Subcommittee was the first of four subcommittees formed and was charged with compiling empirical data relating to the death penalty process. A Pre-Trial Issues Subcommittee, a Trial Issues Subcommittee and a Direct Appeal/PCR Subcommittee were each charged with analyzing issues relevant to the various stages of the death penalty process and to make recommendations to the Commission.

The Data/Research Committee, chaired by Dr. Peg Bortner, Director of the College of Public Programs' Center for Urban Inquiry at Arizona State University, prepared two data sets relating to the death penalty process in Arizona. Data Set I (Attachment "B") provides a statistical analysis of all cases in which a defendant was sentenced to death between 1974 and July 1, 2000. Data Set II (Attachment "C") offers a comparative analysis between capital cases charged between January 1, 1995, and December 31, 1999, and non-capital first-degree murder cases charged during that same period. The Attorney General commissioned a third study (Attachment "D") to attempt to estimate the incremental additional costs of prosecuting, defending and appealing a capital murder case compared to those in a non-capital murder case.

In March 2001, the Commission released an Interim Report (Attachment "A") detailing the deliberations of the subcommittees. After 24 months of study, the Commission releases this Final Report. The report includes Commission recommendations to improve the fairness and timeliness of the death penalty system, and the data studies described above. The report also includes Comments submitted by individual members of the Commission.

Many of the Commission recommendations were unanimously endorsed by members of the Commission. Other recommendations reflect a majority view, acknowledging strong differences of opinion on various issues. Some of the recommendations have already been put into place through legislation or through the rule-making process. Other recommendations have been rejected because of state budgetary or other concerns, and a few recommendations were rendered inapplicable when Arizona's death penalty statute was changed to provide for jury sentencing in capital cases. The change to jury sentencing resulted from a 2002 decision by the United States Supreme Court in *Ring v. Arizona*, 122 S. Ct. 2428 (2002), in which the Court held that a defendant in a capital case has a Sixth Amendment right to a jury determination of aggravating circumstances that make the defendant eligible for the death penalty. The Arizona Legislature enacted the new death penalty statute (Attachment "E") in an emergency session in August 2002. The new statute significantly changes the landscape of the capital litigation process in Arizona. Additional study and analysis will be required as the change is implemented across the state.