

I. Introduction

During the past two 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 more than 100 prisoners are now 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 to make recommendations to ensure that the death penalty process in Arizona is fair to defendants and victims. The Capital Case Commission was formed in the summer of 2000 and, after one year of study and research, releases this Interim Report. After additional research, the Commission will reconvene.

Commission Membership

The Capital Case Commission brings together persons with varied experience and distinct perspectives regarding the capital case pre-trial, trial, sentencing and appeal processes. Commission members include Arizona Supreme Court Justice, the Honorable Stanley G. Feldman; former Arizona Supreme Court Justice, the Honorable James Moeller; Arizona Court of Appeals member, the Honorable Michael Ryan; and three members of the Arizona Superior Court, the Honorable Dave Cole, the Honorable Steven Conn and the Honorable Cindy Jorgenson. Four members of the Arizona Legislature serve on the Commission, the Assistant Floor Leader in the Senate, Senator Chris Cummiskey; Majority Whip in the House of Representatives, Representative Marilyn Jarrett; Mr. John Loreda of the House of Representatives and Mr. Tom Smith of the Senate. Five current or former prosecutors serve on the Commission including Attorney General Janet Napolitano; the elected county attorney from Yuma County, the Honorable Patricia Orozco; former Yavapai County Attorney, the Honorable Charles Hastings; Mr. Paul Ahler of the Maricopa County Attorney's Office; and Mr. Rick Unklesbay of the Pima County Attorney's Office. Seven members of the Arizona Defense Bar join the Commission including private and public defense attorneys and trial and appellate specialists: Mr. Harold Higgins of the Pima County Assistant Public Defender's Office; Mr. Chris Johns of the Maricopa County Public Defender's Office; Mr. Michael Kimerer of Kimer & LaVelle; Mr. Charles Krull of the Maricopa County Public Defender's Office; Mr. Lee Stein of Fennemore Craig; Mr. John Stookey of Osborn Maledon; and Ms. Lois Yankowski of the Pima County Legal Defender's Office. The Governor's Executive Assistant for Law Enforcement and Criminal Justice, Special Agent George Weisz, is a member of the Commission, along with members representing crime victims in Arizona, Mr. Steven Twist and Ms. Gail Leland. The Commission has citizen membership from Mr. Jaime Gutierrez, a former State Senator from Tucson; Dr. Peg Bortner from Arizona State University; Mr. Jose Cardenas of Lewis and Roca; and Mr. Tom LeClaire of Snell & Wilmer. Finally, the Honorable Paul Babbitt, a member of the Coconino County Board of Supervisors, represents the county perspective and Mr. James Bush, Chair of the Governor's Mental Health Task Force and attorney, provides perspective on mental health issues. Short biographies of each member appear in Appendix E.

The Objective

The objective of the Commission is to review 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 current system beginning with the pre-trial process, and continuing through the trial process and the completion of the appellate process.

The Structure and Research

The structure of the Commission is designed to encourage full debate and to enable the subcommittees of the Commission to work through the intricacies of death penalty litigation in Arizona. The Commission met seven times beginning in September, 2000 through May, 2001. The Commission will meet again when additional research has been completed. The Commission's meetings are open to the public and the Commission has received written input from the public. The Commission subcommittee meetings were open and members of the public were allowed to speak and/or present written materials. Beginning in September, 2000, the subcommittees met more than 30 times collectively.

The Subcommittees

Data/Research Subcommittee:

Peg Bortner, Chair

Michael D. Ryan

Rick A. Unklesbay

Janet Napolitano

John A. Stookey

The Data/Research Subcommittee, chaired by Dr. Peg Bortner of the Center for Urban Inquiry in the College of Public Programs at Arizona State University, began meeting in the summer of 2000, and devised three areas of empirical research to be completed:

- Data Set I profiles all Arizona capital cases for individuals sentenced from 1974 through July 1, 2000. This study profiles all defendants and victims in those cases, summarizes the processing of capital cases in Arizona, sets forth time intervals between major decision points and studies all of the cases requiring corrective appellate action. The Center for Urban Inquiry presented an Interim 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" (hereinafter referred to as Data Set I Research Report). That report is attached to this Interim Report for easy reference.
- The Center for Urban Inquiry is now working on Data Set II, which is the study of all first degree murder cases charged during a five-year period, January 1, 1995 through December 31, 1999 for Maricopa, Pima, Coconino and Mojave counties. This data will be used for a comparative analysis to Data Set I and will focus on the differences between a capital murder case and a non-capital murder case in the four counties.

- Work on Data Set III has begun using a representative sample from cases in Data Set II to determine the incremental additional costs of prosecuting, defending and appealing a capital murder case as compared to a non-capital murder case.

Pre-Trial Issues Subcommittee:

Thomas L. LeClaire, Chair	Jose Cardenas
Paul W. Ahler	Harold L. Higgins, Jr.
James M. Bush	Cindy K. Jorgenson
John A. Loreda	Lee Stein
Patricia A. Orozco	George Weisz

Issues:

- how prosecutors identify cases in which to seek the death penalty;
- the statutory scheme of aggravating circumstances that define which defendants are death eligible;
- the minimum age for imposing the death penalty;
- the issue of mental retardation as it applies to eligibility for the death penalty;
- residual doubt as a mitigating factor; and
- the time lines for filing a notice of intent to seek the death penalty.

Trial Issues Subcommittee:

Dave R. Cole, Chair	Charles R. Hastings
Steven F. Conn	Marilyn Jarrett
Jaime Gutierrez	Christopher Johns
Michael D. Kimerer	John A. Stookey
Gail Leland	Rick A. Unklesbay

Issues:

- the issues of trial defense attorney competence;
- time lines for disclosure of intent to seek the death penalty;
- conduct of an aggravation/mitigation hearing and death penalty sentencing;
- the use of mitigation experts in preparation of the defense case;
- the need for adequate trial defense attorneys for indigent defendants in Arizona; and
- the issue of delay in investigating and trying a capital case in the trial courts.

Direct Appeal/PCR Subcommittee:

Michael D. Ryan, Chair	Chris Cummiskey
Paul J. Babbitt, Jr.	Stanley G. Feldman
Peg Bortner	Lois Yankowski
Charles Krull	Tom Smith
James Moeller	Steven J. Twist

Issues:

- the issues of qualifications for an appellate defense attorney;
- the need to provide an adequate number of attorneys to handle PCR proceedings in Arizona capital cases;
- the long time intervals in processing capital appeals in Arizona;
- the need for a trial and appellate public defender office in Arizona;
- Ariz. R. Crim. P. 32 governing PCR proceedings; and
- the issue of 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 subcommittees made recommendations for consideration by the full Commission.

The Interim Report

This report will first review the history of capital punishment in Arizona, summarize the research completed to date by the Center for Urban Inquiry, and then discuss the issues reviewed and the recommendations returned by the Pre-Trial Issues Subcommittee, the Trial Issues Subcommittee, and the Direct Appeal/PCR Subcommittee. This report will summarize the recommendations of the entire Commission, and list reforms proposed by the Commission for the capital litigation system in Arizona.