Criminal Jury Instructions Committee

Meeting Minutes
February 24, 2026.

Present
Hon. Jennifer Green
Hon. Elizabeth Bingert
Hon. Gary Donahoe
Hon. Lacy Gard
Hon. Danielle Harris
Hon. Sarah Mayhew
Ryan Alcorn
Greg Benson
Bryce Brown
Carlos Daniel Carrion
Ian Cobb
David Euchner
Kevin Heade
Jarom Harris
Alice Jones
Samantha Kluger
Todd Lawson
Jennifer Linn (plus proxy for Roseberry, Steinberg, Komrada, Bauman)
Ian McCloskey
Michael Minicozzi
Kevin Morrow
Christine Ortega
Joshua Spears
Mikel Steinfeld
Evan Tompkins
Ilona Kukan

Proxy Sent
Karen Komrada(Jennifer Linn)
Jeffrey Roseberry (Jennifer Linn)
Shawn Steinberg (Jennifer Linn)
James Baumann (Jennifer Linn)
Todd Lawson (Kevin Morrow after 3PM)

Not Present
Hon. Jeffrey Altieri
Joseph Butner
Sasha Charles
Kristian Garibay
Jamal Allen
Tai Summers

Guests
Hon. Kent Cattani
Julie Done
Jason Lewis
Jennifer Carpe
Ryan Green
Chris Sammons
Raquel Centeno-Fequiere
Sarah Heckathorne
Geoff Butzine

Call to order

Hon. Jennifer Greene called the meeting to order at 12 pm.

1. **Motion to Table Approval of November 2025 minutes**

- Kevin Heade moved to approve
- Mikel Steinfeld seconded
- **Vote taken, all in favor, motion to table approval of November 2025 minutes carried**

2. **Approval of Meeting Minutes for January 27, 2026**

- Alice Jones moved to correct a date on page 6 from 2023 to 2003
- David Euchner seconded.
- **Vote taken, all in favor, motion to correct date carried**

- Mikel Steinfeld moved to approve minutes for Jan. 27th, 2026
- David Euchner seconded
- **Vote taken, all in favor, minutes approved**

CAPITAL CASE INSTRUCTIONS

1. Capital Case 1.0 – Degree of Participation

- Judge Green asked the RAJI workgroup to summarize the status of the workgroup
- Judge Cattani explained that the Capital RAJI workgroup is meeting on March 9, 2026, to address the comments that were submitted to the State Bar. Workgroup did not have the ability to share its work with the larger legal community. Workgroup would like to review the comments received by the State Bar on the March 9th meeting. Explained the history of the workgroup, Natman Schaye suggested to the Capital Oversight Committee that they should use Professor Leonard of Hofstra University to revise the capital RAJIs to simplify. It took over 3 years to review the jury instructions.
- Discussion regarding how to review the capital RAJI jury instructions and comments.
- Dan Carrion moved to allow the workgroup to review the jury instructions again to incorporate the comments.
- Euchner seconded
- Supplemental Discussion: If an instruction is voted down, can the workgroup review it again and resubmit it to the State Bar CJI Committee. Judge Cattani asked that the workgroup be able to meet again and review the instructions if there is disagreement within the Criminal Jury Instructions Committee. Euchner and others suggested there would not be enough time for a second vote on the jury instruction before the committee ends on June 30th, 2026, so it may get pushed to a vote in September 2026.

2. Capital Case Verdict Forms: Degree of Participation in the Crime

Aggravation Phase

1. Capital Case 1.1 – Nature of Hearing

- Discussion regarding which version to work off. Decided to work off copy titled "12.18.25 1.0 Degree of Participation Enmund Tison . final version.docx" so both that version and the original were on the screen. Euchner worked as the scribe.
- Judge Greene asked the workgroup for a summary
- John Lewis and Judge Gard worked on this instruction. Lewis explained that people took issue with subjective reckless indifference standard. PD comment mentioned Lynch. Lewis stated that the *Tison* inquiry is both subjective and objective language. California interprets it the same way. *Allen* 2020 decision regarding the *Tison* claim talks about

objective danger, not a subjective mental state. Arizona Supreme Court noted the defense argument that the victim was in the box before and never died so the defendant did not know the victim would die. The Court decided it wasn't about what happened in the past, but it is about the danger itself. The activity is known and changed to the reasonable person standard. It is both subjective and objective. Lewis responded to someone's question that SCOTUS has not addressed the *Enmund Tison* standard in 30 years and Mikel Steinfeld agreed.

- Mikel Steinfeld: the goal of the workgroup was to restyle, not rewrite it. Goal was to simplify it. Both the objective and subjective standard were in the old version.
- Jennifer Linn did not have any major issues with the changes. It does read better but took issue with #4 and felt capitalizing the word BOTH, overemphasized that part of the instruction.
- Jason Lewis: Okay with not capitalizing it.
- Alice Jones: CJI Committee usually uses italics instead of capitalization
- Judge Cattani: Prof. Leonard favored capitalizing the whole word
- J. Linn: suggested uncapitalizing BOTH and italicize conjunctive words: *or* and *and*.
- D. Euchner did not like the suggestion because it made the instruction look mathematical.
- K. Heade: Capitalization is important because we are shifting from a series of disjunctive findings to conjunctive findings and that capitalization is necessary to accomplish this.
- Judge Cattani: Would like to take it back to Prof Leaonard to see if it changes the interpretation.
- Judge Donahoe: In addition to italics, they've also used bolding a word but not capitalizing the whole word.
- Spears: Asked Judge Cattani, why capitalize.
- Judge Cattani: the visual offset to have BOTH vs. both allows the reader to not just its cue from the word itself but the visual offset reinforces that they must find both a and b to find that #4 was proven.
- Bryce: Appears to be more intuitive if capitalized, Mikel Steinfeld agreed
- Todd Lawson: prefers italicized. Judge Cattani mentioned that Prof. Leonard hated the italics. Lawon then suggested every conjunction should be treated with the same style so all CAPS for all so no extra emphasis.
- Judge Mayhew was good with the caps but felt that #4 needed to be further indented and subsections a and b should also be further indented.
- Mikel Steinfeld: Lawson's suggestion would fix the problem Judge Mayhew found.
- D. Euchner: Suggested putting "or" on its own separate line and makes the change for everyone to see and mostly everyone liked the suggestion and dubbed it Euchner style.
- Morrow: suggested changing "You should consider all of these factors." To "You should consider all four of these factors." This affirms for the jury that there are 4 separate factors to consider.
- Judge Gard: suggested changing factor to circumstance.
- Mikel Steinfeld informed people that Prof. Leonard said we should only have one principle per sentence, so it is more understandable to all.
- K. Heade: agrees with Judge Gard to change "factors" to "circumstances."

- Mikel Steinfeld: Also agreed to change "factors" to "circumstances" under major participant so: "In determining whether the Defendant was a "major participant" in the [specify the felony], some ~~factors~~ circumstances to consider include:"
- Linn: Objected to BOTH and why are we assuming low literacy rate of jurors.
- Todd Larson: When we have a series and sub series, the BOTH should be capitalized for sub series. Needs to be consistent throughout.
- Judge Bingert: Can't pick jury based on literacy so we should place value on linguistics professor's recommendations. Only changing the word circumstance in line starting "In determining…"
- J. Done: asked if can jump to verdict form on p. 4 to visually style the verdict form in the same manner as the jury instruction
- Judge Greene: said they will address the verdict form but wanted to finish the instruction first and asked if anything else on 1.1
- C. Ortega: Discussion re subjective v. objective std. Take out Reasonable person language so jury understands that it is a subjective standard v. Objective standard. Prefers the PD version.
- Judge Cattani asked that the workgroup address the substance of the reckless indifference and the use of knowingly/subjective standard, etc. and the *ALLEN* analysis
- Todd: suggested workgroup will address BOTH v. both. Does it need to stay capitalized to be understandable or not? Consult with Prof. Leonard.
- Below line:
- Euchner: Suggested citation format follows SCOTUS, Marrow did not agree.
- Judge Green: Send issue of consistent citation style to workgroup.
- All agreed to send citation issue to the workgroup so jumped to verdict form on page 4.
- Euchner made the changes to have the verdict form appear visually the same as the jury instructions with "or" on its own line between the aggravating circumstances.
- J. Done: Verdict form needs to reflect today's changes to the jury instruction then asked if there a reason to change to proven vs. proved. Linn wanted to keep "proven."
- Judge Cattani: It was a conscious choice to change from proven to "proved." Workgroup will revisit proved v. proven and will ask Prof. Leonard for his input.
- Verdict: include language of the 4 factors v. just factor to make clearer
- Dan Carrion asked that we table the for discussion for this jury instruction for the workgroup to address on March 9th.
- Kevin Heade: read part of *Allen* case and stated it is a subjective standard. *Allen* is not a legal jury instruction test, so still a subjective test. *Allen* is not an instruction case, it is a sufficiency of the evidence case, so it is all subjective, not objective. Cattani agreed with Heade's interpretation of *Allen*.
- Judge Gard seconded Carrion's motion.
- **Vote taken, all in favor, motion to table and send the instruction back to workgroup to address reckless indifference instruction and the use of objective v. subjective**

language based on Allen; resolve citations in the use notes and sources; use of proved/proven in the verdict form

- Greg Benson: Motion to table verdict form
- Judge Mayhew: seconded
- No supplemental discussion
- **Vote taken, all in favor, motion to table verdict form carried**

1:30PM, resume at 2pm

- Judge Gard suggested taking another look at it for a *Simmons* instruction
- Jason Lewis is concerned with adding *Simmons* language in the general instructions but added if requested and eligible, the court should give it.
- Judge Gard suggested including Simmons instruction or when it is needed in use note
- Heade: Not giving *Simmons* instruction when legally required is error but is it error to include the *Simmons* instruction with the general instructions? Why not just give it so there would be no finding of error if the defense attorney failed to request it?
- Jason Lewis pointed out that some defense counsel do not want the Simmons instruction so he is concerned with meddling with 6th amendment right to counsel.
- Steinfeld: Can we put it in brackets to show it is discretionary?
- Judge Cattani: suggested we need a use note with brackets language
- Alice Jones: If we need to add bracket language, should we also add back the date when the jury instruction is applicable signifying when the law changed. (to be used for offenses occurring before/ on or after August 2, 2012)
- Lewis: agreed with added the date because of the proliferation of cold cases happening right now.
- Morrow: 2018, law eliminated Clemency. Stopped speaking because Linn corrected him regarding the categories
- Judge Cattani: Use bracketed language above the line and use note describing how and why for the different time frame language
- Ortega: asked if life in prison is mentioned in the instruction
- Lewis: agreed with Ortega, yes only for life in prison
- Linn: Moved to table Capital Case 1.1 Nature of Hearing to address how to add back *Simmons* instruction and where and to address proved/proven in the verdict form
- Steinfeld: seconded
- **Vote taken, all in favor, motion to table Capital Case 1.1 Nature of Hearing to address how to add back *Simmons* instruction and where and to address proved/has proven in the verdict form carried**

2. Capital Case 1.2 – Duties of Jury

- Workgroup needs to address has proven v. proved in the first sentence: "In deciding whether the State has proven (proved) an aggravating circumstance…"

Arrived: Judge Harris Pinal County and Ryan Alcorn

- Heade: Asked to put burden of proof back into duties of jury. Concern for a jury applying a lesser standard.
- Lewis: made burden of proof its own instruction.
- Linn pointed out reasonable doubt is mentioned in 1.1.
- Heade: said reasonable doubt should be mentioned in 1.2 too. It doesn't hurt and it ensures the jury will understand the state's burden.
- Judge Cattani asked to run it by the work group.
- J. Done: Are we doing has proven v proved?
- Judge Mayhew: Just wants it consistently throughout
- RCF: Linguistics professor said it is best to use active voice v. passive
- Euchner: actually, present perfect tense. It was proven, remains so, continues.
- Judge Cattani: likes mixed and matched
- Judge Green takes an informal vote on proved v. has proven
- Proved: 12
- Has proven: 12
- Euchner abstained
- Ian Cobb: Brings up the use of Nationality (proposed language) v. national ancestry (present language)
- Spears: Nationality (proposed language) v. national ancestry (present language) doesn't mean the same thing
- Marrow: criminal RAJI should take up changing national ancestry to nationality
- Bingert: suggested grammar committee in future

- **Judge Bingert: Motion to table and have workgroup address has proven v. proved: "In deciding whether the State has proven (proved) an aggravating circumstance…"**
- **Mikel Steinfeld seconded**
- **Vote taken, all in favor, motion to table Capital Case 1.2 Duties of the Jury to address how to add back Simmons instruction and where and to address proved/proven in the verdict form carried**

3. Capital Case 1.3 – Evidence

- Discussion regarding definition of evidence and how 2.3 has a different definition than 1.3
- Dan Carrion: Definition of evidence in 1.3 and 2.3 should be same
- Euchner likes revised 2.3 evidence definition and thought it was "really well written."
- Linn: Does not like the use of "I" because appears that the instruction is coming from judge v. trial court
- Mikel Steinfeld: Prof. Leonard told us that to simplify an instruction should make it more direct, so the workgroup revised certain things as directives. For example, if I am the one

giving instructions and rulings, saying “I” makes it clearer instead of speaking in the 3rd person.

- Discussion regarding how the jury won’t automatically understand that when the judge uses the term “trial court,” the judge means herself, not another trial court.
- Alice Jones: not unprecedented, other areas of the instructions use “I” instead of “trial court” and “I” is used instead of “trial court” in the prior instructions in Capital Case 1.2 – Duties of the Jury.
- Judge Mayhew: 2nd paragraph instructs that jury should not be concerned for the reasons for “my ruling.” She has no problem with the use of I and she would change to “I” if the instruction was in the third person and used trial court.
- Ryan Greene: Concerned with lay people understanding that the judge is the trial court.
- Alice Jones: make 2.3 evidence same as 1.3
- Ryan Green: revised 2.3 doesn’t include stipulated to evidence and should be added.

- **Judge Mayhew: Motion to table and send back to the workgroup to weave evidence language from 2.3 into1.3 and ensure the same definition for evidence is used in 1.3 and 2.3.**
- **Mikel Steinfeld seconded**
- **Vote taken, all in favor, motion to table Capital Case 1.23 Evidence and send back to the workgroup to weave evidence language from 2.3 into1.3 and ensure the same definition for evidence is used in 1.3 and 2.3 carried.**
- Heade: asked if the proposal addressed the comments submitted

2:07pm Recess taken, Back at 2:18

Judge Green called the meeting back to order at 2:23pm

- Congrats reviewed 5 instructions
- Mark Metzler needed to know if RAJI committee members are coming to March 9th work group meeting at the State Courts Building. Six raised their hands.

4. Capital Case 1.4 – Burden of Proof

- J. Lewis: Suggested bracketing [acting on advice of lawyer] in the second paragraph.
- Judge Gard: Noted a comment from Yuma stating 1.1, 1.2, 1.4, 1.5 stuff taken out and hurts the constitutional rights of the defendant but does not state how.
- Discussion whether the comma needs to be inside the bracket

- J. Linn: Moved to adopt 1.4 – Burden of Proof with comma change
- Judge Bingert seconded

- **Vote taken, all in favor, motion to adopt Capital Case 1.4 with the comma moved to instead of the bracket carried. ("The Defendant is not required to testify or present evidence of any kind. The decision whether to testify or present evidence is left to the Defendant[, acting with the advice of a lawyer].**
- Someone pointed out that this assumes client is not going to testify. If Defendant testifies, should we have bracketed language allowing for the Defendant to testify.
- Supplement discussion regarding reopening 1.4 Burden of Proof to remove [ ] regarding [acting with the advice of a lawyer.]
- Mikel Steinfeld: Agrees with brackets for [acting with the advice of a lawyer] and [ ] for the last sentence above source—[The Defendant's decision not to testify or present evidence is not evidence of the existence of any aggravating circumstance.] In use notes put language that it isn't an either or or.
- Judge Bingert: Because there is a period it isn't either. You don't need a use note. Where Alcorn wants a use note to explain, the period may not be obvious that it isn't an either or.
- K. Heade: Asked, does the comment meet the concerns.
- J. Linn asked if this was a concern and if there was ever a case where the defendant testified in the aggravation phase.
- J. Carpe: *Edwards* case the defendant testified in 2017 regarding *Enmund Tison* findings.
- Lewis: After *Miles* will be more common for a Defendant to testify in the Aggravation phase so it should be addressed.
- D. Euchner: Separate Burden of proof, separate 2nd paragraph its own, 3rd para. Its own. Euchner suggested renumber as a and b depending on choice or on its own. For example, Defendant need not testify instruction and jury instruction language about Defendant as a witness as their own instructions within the capital RAJIs.
- K. Morrow: Opposed idea of splitting it up because of 1.5 instruction.
- D. Euchner: Pointed out that Defendant testimony is split up in non-cap instructions because it is one concept.
- Judge Mayhew: agrees that it is the goal of changing the RAJIs, to make it simpler.
- K. Heade: Addresses the Defendant need not produce evidence instruction, it suggests Defendant not producing evidence, but cross-examination is presenting evidence. Why would we call the witness if we can elicit the same testimony during cross-examination. Doesn't want to change the language but delineation of presenting evidence showing cross as producing evidence.

- **Judge Gard: Moves to REOPEN 1.5 to address concerns brought up in supplement discussion**
- **D. Euchner seconded**
- **Vote taken**
- **In favor: 23 ayes**
- **Opposed: Kenvin Marrow, Jennifer Linn, and Jennifer Linn voting by proxy for Karen Komrada, Jeffrey Roseberry, Shawn Steinberg, James Baumann.**
- **Motion carries.**

- **Judge Mayhew: Motion to send back to workgroup with the comma correction and further discussion of breaking it up. Suggested Burden of Proof would be its own and then the defendant testifying would have and (a) and (b) or separate into its own instruction like non-capital RAJIs—Presumption, Defendant need not testify, D need not present evidence.**
- **D. Euchner seconded**
- **No further discussion**
- **Vote taken**
- **In favor: 23 ayes**
- **Opposed: 6 nays—Kenvin Marrow, Jennifer Linn, and Jennifer Linn voting by proxy for Karen Komrada, Jeffrey Roseberry, Shawn Steinberg, and James Baumann.**
- **Motion carries**.

5. Capital Case 1.5 – Definition of Proof Beyond a Reasonable Doubt

- Judge Gard: thinks we did not change except first two lines and collapsed into one sentence. Edit to last sentence in use note.
- D. Euchner: Asked if jury would still have instructions from guilt phase for reasonable doubt. RCF told him no. He would like to include the expanded Portillo instruction, maybe 1.5 a and b one truncated v. expanded with all the burdens to account for retrials or where the defendant pleads guilty and the jury won't have the guilt phase instructions.
- T. Lawson: not aware of reason to offer expanded Portillo instruction.
- K. Heade: opposed to Lawson, agrees with Euchner
- J. Done: Title explains the other burdens
- Judge Bingert: couldn't one argue about the other Burden of Proofs without it being in the jury instructions.
- Alice Jones: if cross referencing it, can't it be a use note
- RCF: Pointed out Prof. Leonard would find the expanded instruction would help the jury understand
- J. Linn: argued against it for legal context because the Professor doesn't decide
- Mikel Steinfeld: Stated how Linn describes the Professors opinions as unfair. How do we get people to conceptually understand the jury instructions. To understand the instructions better, it is helpful to break down elements visually or give examples to help with the comprehension of the standard. Instructions having comparisons of what something is or isn't helps the jury understand the concept better and the expanded Portillo instruction does that.
- D. Euchner: agreed that Portillo can't be changed but the expanded Portillo definition as an option is not a deviation because it is included in the non-cap RAJIs.
- J. Linn: maybe in retrial situation we could add something in use notes
- C. Ortega: make the 2 options available like we do in non-cap cases

- K. Heade: we want the judges to give the same instructions, but judges should be judges and be allowed to determine which Portillo instruction to give and not to give their judicial authority to the RAJI committee.
- J. Lewis: Clarified that he did not mean to just give these because they have been using their own set of instructions. We just want them to use this as a baseline that has been vetted.
- Judge Cattani: if we address it, do we want to address it as a use note or within RAJI.

- **D. Euchner: Moved to table and send to workgroup to explore if expanded Portillo language should be included in the instruction or as use note to create a 1.5a.**
- **Dan Carrion seconded**
- **Vote taken**
- **Yay: 18**
- **K. Morrow abstain**
- **Nay: 7 Todd Lawson, Ryan Alcorn, Jennifer Linn, and Jennifer Linn voting by proxy for Karen Komrada, Jeffrey Roseberry, Shawn Steinberg, James Baumann.**
- **Motion carries**.

- D. Euchner: can we move everything to table and send to work group or do we have to do it separately
- Discussion
- Judge Green: Separately

6. Capital Case 1.5.1 Order of Aggravation Phase

- Lewis: Rule change petition change pending. Not sure if we should address until that workgroup done.
- Judge Mayhew moved to table this section
- Discussion
- K. Morrow: Rule 19.1 petition change was just regarding the penalty phase
- Discussion that no issue with order
- Judge Mayhew withdrew motion to table this section
- D. Euchner: Asked what the order is in the Aggravation Phase when there is no first phase. If no new evidence in aggravation phase, would they just argue.
- Judge Cattani said a use note could address it.
- J. Carper: There is a caselaw (Allen) that court has to address the jury instructions in the beginning and end.
- Judge Mayhew: Suggested where no evidence presented and relying solely on evidence in the first phase, we could bracket first two paragraphs, and the instructions would start with "Each party may give a closing argument… and then explain why and when to use in use notes.
- J. Lewis: present language conforms with 19.1(d), he doesn't want to change it.
- Heade: Pointed out comments, the order of phase that was given before in Pinal County PD vs. RAJI now, the RAJI doesn't give full order up front by giving the big picture and then what

happens in the other 2 phases. Comment asks for a holistic instruction. Failure to give holistic view is a concern for Pima County.

- Mikel Steinfeld: if we give a holistic approach jury instruction, should give prior to guilt phase or after.
- K. Heade asked to table to consult with commenter.
- J. Lewis: wants it to be consistent with 19.1(d).
- Jenny Carper brought up *Allen Smith* opinion, and the problem is if we don't apply the full rule, it can be error.
- J. Lewis: agreed it could be an issue if it was a trial where the Defendant plead guilty or was a retrial.
- J. Linn: Put the source and use note based on Jason Lewis's comments. Add Rule 19.1(d) and add *Allen Smith* case.
- D. Euchner and J. Lewis added the source and use note adding Smith, 250 Ariz. 69 and Rule 19.1(d)
- Heade: Pointed out the *Smith* case was error to not reinstruct jury, not to change the order of trial, so not sure it says it is error to change the order.
- J. Lewis read out loud from Smith case regarding instructions.
- Discussion regarding Smith case regarding whether it says if Judge has the discretion to change the order. Smith says less discretion not no discretion.
- Judge Bingert: Wants the use note
- J. Linn: Let the parties argue it out and just put "see Smith…" instead of the language telling them they have less discretion.

- **Judge Bingert moved to accept source and use note (SOURCE: Ariz. R. Crim. P. 19.1(d) USE NOTE: In *State v. Smith*, 250 Ariz. 69, 91 ¶ 95 (2020), the Arizona Supreme Court noted that trial judges have "less discretion to change the order of trial during the aggravation phase than the guilt phase.")**
- **D. Euchner seconded**
- **Vote taken, all in favor, motion to adopt Capital Case 1.5.1 Order of Aggravation Phase carried**

- J. Linn wants to strike the sentence "If a lawyer says something about the law that differs from my instructions, you must rely on my instruction"

- discussion ensues regarding "differs" vs. "conflicts with";
- Mikel Steinfeld: said conceptually it is the law
- Alice Jones likes the language as an appellate attorney
- Judge Cattani finds it helpful in rendering an error harmless
- Kevin Heade is not opposed to the concept or instruction
- Mikel Steinfeld: thinks conflicts is more powerful and suggests Prof. Leonard would like conflict more because it is direct language

- **Dan Carrion moved to adopt change from "differs" to "conflicts with"**

- **D. Euchner seconded**
- **Vote taken**
- **Yays: 18**
- **6 nays Ryan Alcorn, Jennifer Linn, and Jennifer Linn voting by proxy for Karen Komrada, Jeffrey Roseberry, Shawn Steinberg, James Baumann.**
- **Motion carries**.
-
- Mike Minicozzi: Concerned with language in paragraph 2 devaluing the juror's questions and wants the language used before
- Judge Cattani and Mikel Steinfeld suggested the changed language to 1.5.1 "You may then ~~After a witness has testified, you may~~ submit questions in writing, but you are not required to do so."
-
- **Mikel Steinfeld moved to adopt new last sentence (You may then submit questions in writing, but you are not required to do so.)**
- **D. Euchner seconded**
- **Vote taken, all in favor, motion to add "You may then" and delete "After a witness has testified, you may" carried**

- **Judge Mayhew moved to adopt Capital Case 1.5.1 – Order of Aggravation Phase with adopted changes**
- **D. Euchner seconded**
- **Vote taken**
- **Yays: 18**
- **6 nays Ryan Alcorn, Jennifer Linn, and Jennifer Linn voting by proxy for Karen Komrada, Jeffrey Roseberry, Shawn Steinberg, James Baumann.**
  Motion carries.

7. Capital Case 1.6 Aggravating Circumstances (for offenses occurring after August 27, 2019)

- Discussion about double bracket in 1.6(4)—replace with use note. Noted the brackets around each aggravating circumstances with internal brackets can be confusing. Pointed out jury won't see all the brackets because only the applicable aggravating circumstances will be submitted to the jury.
- Judge Greene: Let workgroup address whether the bracket after depraved needs to be moved in 4(b)

  [4. The Defendant committed the murder in an
  [a. especially cruel] or
  [b. especially heinous or depraved] manner;]

- J. Lewis: each circumstance is bracketed in entirety to show it is only read if alleged.
- Judge Gard, remove extra bracket
- J. Lewis said they are not extra brackets, the others are interior brackets

- Mikel Steinfeld: Suggested moving “manner” to the beginning of the sentence.

- Alice Jones: asked about changing pecuniary gain
- J. Done: shared pecuniary gain was a whole day discussion
- Judge Cattani said pecuniary gain instruction is more accurate now
- K. Heade: explained in the Prince case found insufficient evidence for pecuniary gain where murder was to wipe out of debt and case returned.
- Judge Greene: brought up double bracket concern. Could we use a use note that says only put aggravators that are alleged instead of having brackets around each aggravating circumstance.
- C. Ortega: Add back use note with changes: “The trial judge should list only the aggravating circumstance(s) that will be submitted to the jury. Use bracketed material as applicable.” And Use brackets around each aggravating circumstance.

- J. Done: use the word instruct instead of list in the use note being added back
- Judge Greene: informally asked if they should use list or instruct and Alice Jones, Dan Carrion, and Judges Mayhew, Bingert, Gard and Greene agreed.
- Mikel Steinfeld: Pointed out this use note does not address the MCPD comment

- **Ian McCloskey moved to adopt use note with “instruct” instead of list as seen on the screen. (“Use Note: The trial judge should instruct on only the aggravating circumstance(s) that will be submitted to the jury. Use bracketed material as applicable.”)**
- **Mikel Steinfeld seconded**
- **Vote taken, all in favor, motion to add “Use Note: The trial judge should instruct on only the aggravating circumstance(s) that will be submitted to the jury. Use bracketed material as applicable.” Motion carried.**

- Discussion of Maricopa defense comment on 1.6(2)
- Mikel Steinfeld: addressed PD comment regarding (2) Serious offense and concern with circular logic. Reads as they have to find serious offense. Proposed a four sentence change. Mikel said it cleans up the internal bracketing that takes place
- D. Euchner said brackets can be dealt with depending on what is alleged. If there is a separate instruction for serious offense that would make the issue go away. Definition of serious offense is defined later 1.6(a)-Definition of Serious Offense because here it’s unclear. Suggests we delete all of it and send to 1.6(a)(1). Pointed out that the instructions under (4) do not give the definition for Especially Cruel, Heinous or Depraved manner (CHD), it just lists it as an aggravated circumstance. Argued CHD is defined later in separate instruction so why define “serious offense” here. Just list it here and define it later.
- Judge Cattani: it doesn’t define “serious offenses.”
- D. Euchner said it doesn’t just have to be a list; we could put the definition from 1.6(a) earlier.
- Mikel Steinfeld: Suggested 1.6 (2) only states “The Defendant was previously convicted of a serious offense.” and not the rest of it (3 bracketed sentences) because it is defined in 1.6(a).

- **Mikel Steinfeld: Moved to delete the 3 interior bracketed sentences in 1.6 (2) and leave "The Defendant was previously convicted of a serious offense."**
- **D. Euchner seconded.**
- Supplemental discussion.
- J. Done: can we remove previously
- Judge Cattanni: keep previously because it may be interpreted to apply to the present homicide
- K. Heade: Joint offense v. previous. D is convicted of serious offense other than the murder he is convicted of here. 2nd proposal is cut the middle sentence of 1.6 (2) ([The offense could be a(n) [attempt], [solicitation], [conspiracy], [facilitation] offense.]
- Judge Mayhew: just strike the second sentence (The offense could be a(n) attempt, etc.)
- Judge Greene asked everyone to look at sentence proposed by Judge Mayhew on screen
- **K. Heade: moved to adopt what is on screen as suggested "[2. The Defendant has been or was previously convicted of a serious offense. [A conviction for a serious offense committed on the same occasion as the murder, or not committed on the same occasion but joined for trial with the murder, is treated as a serious offense];]"**
- **Motion to strike bracketed sentences withdrawn by Mikel Steinfeld and moved by Spears**
- **D. Euchner seconded withdrawal to delete all bracketed sentences in 1.6 (2).**
- Judge Donahoe like the language of adding "other than the murder"
- Morrow moved to add the word "another" serious offense
- Spears and Euchner accept it.
- Supplemental Discussion:
- Judge Donahoe suggested: "The Defendant has been convicted of a serious offense other than the murder for which you are considering this aggravating circumstance."
- Heade and Julie Done liked the friendly amendment

- Judge Bingert read from statute and said it should be "The Defendant has been or was previously convicted of a serious offense." Highlighted suggested
- Mikel Steinfeld: Change to "other than this these murders"
- Heade is back to supporting Judge Cattani's suggestion to keep previously

- Spears and Euchner accept the friendly amendment. Now it is "The Defendant has been or was previously convicted or a serious offense other than this [these] murder[s]."

- K. Heade brought up you could have 2 murders and each be a serious offense for the other.
- Euchner said no
- **McCloskey moved to adopt "The Defendant has been or was previously convicted or a serious offense other than this [these] murder[s]."**
- **Spears seconded**
- **Voted**
- **Yay Euchner, McCloskey and Spears**
- **Nay 19**
- **1 abstained**
- **Did not pass**

- Judge Bingert moved to change (2) to: "[2. The Defendant was previously convicted of a serious offense. [A conviction for a serious offense committed on the same occasion as the murder, or not committed on the same occasion but joined for trial with the murder, is treated as a serious offense];]
- Mikel Steinfeld seconded
- **Vote taken, all in favor, motion to replace (2) with " [2. The Defendant was previously convicted of a serious offense. [A conviction for a serious offense committed on the same occasion as the murder, or not committed on the same occasion but joined for trial with the murder, is treated as a serious offense];] Motion carried.**

- Alcorn suggested we add "has been or" as suggested earlier

- **Euchner moved to add "has been or" so it reads: "[2. The Defendant has been or was previously convicted of a serious offense. [A conviction for a serious offense committed on the same occasion as the murder, or not committed on the same occasion but joined for trial with the murder, is treated as a serious offense];]"**
- **McCloskey seconded**
- Supplemental discussion
- Judge Mayhew wanted "previous" before serious offense in the last sentence
- Euchner did not accept the friendly amendment to add "previous" to serious offense in the last sentence
- **Vote taken, all in favor, motion to add "has been or" to (2) so it reads, " [2. The Defendant has been or was previously convicted of a serious offense. [A conviction for a serious offense committed on the same occasion as the murder, or not committed on the same occasion but joined for trial with the murder, is treated as a serious offense];] Motion carried.**

- Mikel Steinfeld: Concerned with repetition of serious offense in the second sentence. Change the last sentence to "This includes a conviction for a serious offense committed on the same occasion as the murder, or not committed on the same occasion but joined for trial with the murder,];]"
- Mike Minicozzi: Steinfeld's suggestions solves the concern submitted in the PD comment.
- **Euchner moves to add "This includes" and delete "is treated as a serious offense" so (2) reads as follows, "[2. The Defendant has been or was previously convicted of a serious offense. [This includes a conviction for a serious offense committed on the same occasion as the murder, or not committed on the same occasion but joined for trial with the murder];]**
- **Judge Gard seconded**
- **Voted**
- **In favor: 19 ayes**

- **Opposed: 5 (Jennifer Linn, and Jennifer Linn voting by proxy for Karen Komrada, Jeffrey Roseberry, Shawn Steinberg, James Baumann.)**
- **Motion carries.**

- Linn: wants to address pecuniary gain

- **D. Euchner moved to send Capital Case 1.6-Aggravating Circumstances (for offenses occurring after August 27, 2019) back to workgroup to revise and apply outstanding submitted comments**
- **Dan Carrion seconded**
- **Vote taken, all in favor of motion to send Capital Case 1.6-Aggravating Circumstances (for offenses occurring after August 27, 2019) back to workgroup to revise and apply outstanding submitted comments; Motion carried.**

- **Dan Carrion moved to send remaining Capital RAJIs back to workgroup to revise and apply outstanding submitted comments**
- **Mikel Steinfeld seconded**
- **Vote taken, all in favor of motion to send remaining Capital RAJIs back to workgroup to revise and apply outstanding submitted comments; Motion carried.**

- Ended at 1.6(2)—did not vote on 1.6 as a whole; stopped at a point where Jennifer Linn wanted to revisit Pecuniary Gain statutory language

Next meeting

- Judge Greene shared an email would go out to arrange the next meeting date and time.

Call to the public

- No public comments.

Adjournment

- **Carrion moved to adjourn.**
- **Steinfeld seconded.**
- **Vote: Unanimously voted to adjourn.**

- **Adjourned at 4:30 p.m.**