

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Minutes of meeting March 22, 2006

The eleventh meeting of the Committee was held at 120 S. Riverside Plaza, Chicago, from 2 to 4:30 P.M.

Those present

Leigh B. Bienen

James R. Coldren, Jr.

Theodore A. Gottfried

Jeffrey M. Howard

Gerald E. Nora

Randolph N. Stone

Thomas P. Sullivan

Michael J. Waller

Not present

Kirk W. Dillard

James B. Durkin

Boyd J. Ingemunson

Thomas P. Needham

Edwin R. Parkinson

Richard D. Schwind

Geoffrey R. Stone

Arthur L. Turner

Also present: Peter G. Baroni, Special Counsel; Patrick Delfino, Deputy Director, State Appellate Prosecutor; and Linda Hui.

The minutes of the meeting of February 27 were unanimously approved as written.

1. *Special Counsel.*

Hank Anthony of CJIA prepared the contract by which the CPRSC retains Mr. Baroni as Special Counsel on terms agreed by the Committee and Mr. Baroni. The contract expires on June 30, 2006. The contract has been executed by Mr. Sullivan as Chair of the Committee and Mr. Baroni. Mr. Baroni reported that he has registered the Committee with the IL Secretary of State as a lobbying client of Leinenweber & Baroni Consulting, LLC. Mr. Anthony explained the requirements for the execution of the contract for the forthcoming fiscal year.

All members were reminded to notify Mr. Baroni in advance of scheduled subcommittee meetings, and to send him and the Chair copies of all subcommittee meeting minutes.

2. *Appropriation for fiscal year July 1, 2006 to June 30, 2007.*

Mr. Baroni reported that Rep. Turner has provided in the CJIA budget an item for \$150,000 as the Committee's appropriation. Mr. Baroni stated that he will continue to track the appropriation in the General Assembly, and report to the Committee at the next meeting.

3. *Reports of Subcommittees.*

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

Mr. Coldren reported that the subcommittee has not met since the last Committee meeting. It is scheduled to meet on April 24 at the offices of Jenner &

Block, with Crystal H. Marchigiani, Chief of the Cook County Public Defender Homicide Task Force, to discuss her office's experiences with recordings.

Mr. Coldren reported that there may be inadequate funding for videotape recording of custodial interviews in the south Chicago suburbs, and that some back-up recording equipment has been found incompatible with the equipment being used by officers. Mr. Nora reported that more equipment has been ordered so that uniformity may be attained. The subcommittee will inquire as to whether additional funds are needed for equipment and/or training. It was pointed out that the IL statute requires electronic recording, including either audio or video or both, and that the cost of audio equipment is far less than video, although it is not as satisfactory a method as video for making a permanent record of custodial interviews.

Mr. Coldren also stated that questions have been raised by some officers about the police use of certain tactics which are legally permissible, but which may be looked upon with disapproval by judges and juries, for example, lying to suspects about police possession of incriminating evidence.

Mr. Waller reported on the training given to officers in Lake County concerning recording interviews. Mr. Coldren's committee will attempt to obtain information about the Lake and Cook County training, as well as that given to the various IL major crimes task forces.

Mr. Sullivan stated that the report is expected soon regarding the pilot project comparing the sequential double blind lineup and photo spread method for eyewitnesses with the simultaneous method.

Additional meetings of Subcommittee 1 have been set for June 5, August 7, October 2 and December 4.

- (2) *Report of Subcommittee 2 - Eligibility for capital punishment, DNA, and proportionality.*

Ms. Bienen reported that the subcommittee held a telephonic meeting on March 15, dealing with various topics as reflected in the minutes attached as Appendix 1.

Ms. Bienen called attention to SB 2737 regarding registration of labs authorized to do DNA testing for admission in evidence in criminal trials. The members present did not take a position regarding SB 2737. It was agreed that our Special Counsel, Mr. Baroni, should track and keep the Committee currently advised of pending legislation which impacts the Committee's work.

Ms. Bienen reported that 62 of the 101 IL State's Attorneys have responded to her letter requesting information regarding murder indictments since January 1, 2003, and this information is being put into a database. Mr. Baroni was asked to follow through with regard to the major counties that have not yet responded. It was observed that the IL Coalition Against the Death Penalty has posted on its website a list of capital cases currently pending in IL.

Mr. Delfino reported that in approximately 30 to 40 days, there should be a distribution of the protocols adopted by the IL State's Attorneys Association and the IL Attorney General regarding recommended procedures for State's Attorneys to follow when deciding whether or not to seek capital punishment.

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

Mr. Howard reported that the subcommittee has not met since the last Committee meeting.

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

Mr. Gottfried reported that the subcommittee has not met since the last Committee meeting.

(5) *Other business.*

Mr. Nora raised a question about the following statement in Mr. Sullivan's memorandum to the Committee members dated February 13, 2006:

“As we move forward, each subcommittee should investigate and report on the current status of compliance with their assigned recommendations.”

Mr. Nora stated that he believes the Committee's authority extends only to capital punishment reforms which have been enacted by the General Assembly, courts or law enforcement agencies, and does not extend to recommendations of the Governor's Commission which have not been adopted. Mr. Sullivan responded that the Committee has discussed this issue twice before, and the agreement

reached by the members was set forth in the minutes of the meeting of March 28, 2005, and is also contained in the Committee's second report to the IL General Assembly, dated February 28, 2006. Mr. Sullivan agreed he should amend the language of his memorandum of February 13, 2006 by deleting the final paragraph. A revised cover memorandum dated February 13 is attached hereto as Appendix 2.

4. *Next meeting - May 10, 2006, 2 P.M.*

It was agreed that the next meeting of the Committee will be held on Wednesday, May 10, 2006 at 2 PM at the CJIA offices, 120 S. Riverside Plaza, Chicago.

Thomas P. Sullivan
Chair
May 1, 2006

Attachments: Appendix 1: Minutes of Subcommittee 2 March 15, 2006 meeting.
Appendix 2: Revised February 13, 2006 memorandum.

TO: Members of Subcommittee No.2
FROM: Leigh B. Bienen, Chairman of the Subcommittee
DATE: March 20, 2006
RE: MINUTES – Subcommittee Conference Call

Minutes of Subcommittee No. 2 Conference call meeting on March 15, 2006:

On March 15, 2006 at 2:30pm a Subcommittee Meeting by Conference call was held. Attending were Leigh Bienen (Chair) Mike Waller, and Peter Baroni (Legal Staff to the Committee). Tom Sullivan had said that he could not call in at that time. Kirk Dillard did not participate.

Item No. 1: The current status of SC 2737 regarding the requirement of certification of laboratories by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD) for DNA testing which is being requested after trial. The current status of that bill is attached. As of March 15th, it is pending before the Judiciary II Criminal Law Committee of the House, having passed the Senate on March 2, 2006. Two amendments were introduced in the Senate. Amendment No. 1 states that when forensic DNA testing is required in any criminal case, not simply in a case where the defendant was convicted, all testing shall be performed by a board certified laboratory. The proposed requirement that the testing be conducted by a certified laboratory would not just apply to cases in which the trial resulted in a conviction of the defendant. Senate Floor Amendment No. 2 provides in addition that upon written motion and argument or evidence, the court may order DNA testing to be performed by a laboratory which is not so accredited.

No one on the Conference call had any new information about the status of the DNA backlog. Peter Baroni will contact the Governor's office and some others familiar with this issue to see if there have been any changes or recent developments and report back at our full committee meeting on March 22.

Item No. 2: Peter Baroni and Leigh Bienen reported on the response to the letter sent asking for the indictments from the county prosecutors for first degree murders during the 2003 and 2004 period. More than half of the counties have responded, and the information on the indictments is being put in a data base. Peter Baroni met with Linda Hui and Leigh Bienen on March 13, 2006 to see what had been accomplished to date. Peter Baroni is contacting Cook County where the greatest number of homicides have occurred, in order to begin compiling the list of homicides from that county. Mike Waller reported that the compiling of the indictments from Lake County was almost completed.

Item No. 3: The status of the protocols adopted by the States' Attorneys regarding the prosecution of capital cases in Illinois. Mike Waller reported that the status was unchanged. We hope to get a copy of the Protocols for public distribution within the month. It is our understanding that minor technical changes are being finalized.

The meeting was adjourned.

**REVISED
MEMORANDUM**

JENNER & BLOCK

FEBRUARY 13, 2006

Jenner & Block LLP
Chicago
Dallas
New York
Washington, DC

To: Members of the Capital Punishment Reform Study Committee

In order to assist in our analysis of the current status of the April 2002 Report of the Governor's Commission on Capital Punishment, I have attached a list summarizing the Commission's 85 recommendations, separated into the four subcommittees of our Reform Study Committee. A copy of the full Commission Report is also enclosed, so you may read the text of the recommendations and the basis for each, and where applicable the dissenting views.

TPS
2/13/06

Enclosures