

TO: Members of Subcommittee No.2

FROM: Leigh B. Bienen, Chairman of the Subcommittee

DATE: February 22, 2006

RE: MINUTES – Subcommittee Conference Call held February 22, 2006

The Subcommittee No. 2 on Eligibility for Capital Punishment, Proportionality Review, and DNA held a telephone conference call meeting at 2pm on February 22<sup>nd</sup>.

The agenda was as follows: (1) A report on the status of legislation regarding the certification of DNA labs and also the DNA backlog; (2) A report on the response to the letter to the counties sent in December regarding the number of murder cases since January 2003; (3) The status of the protocols adopted by the Illinois States' Attorneys regarding prosecution of capital cases in Illinois.

With regard to those three items, the following was reported: Regarding No. 2: Bienen has received more than 50 responses from the 102 counties to whom letters were sent with indictments enclosed in almost all instances. A follow up letter will be sent to the county prosecutors in those counties where we have not had a reply. The original letter stated that for counties which had more than 10 murders in the period (the large volume counties, e.g. Cook, DuPage, etc.) those counties would be contacted separately to work out a way for us to obtain comparable information from them. Bienen reported that she had received information from the Coalition to Abolish the Death Penalty. She also had spoken to researchers at CIJA regarding what information they had available, and they did not have information on murder cases which could be made available to our Committee. Discussion ensued as to how factual information would be compiled to provide a foundation for proportionality review of the selection of cases for capital prosecution.

The subcommittee members agreed that the next step would be to ask the full Committee for referrals to other sources of cases. In the meantime, a baseline is being developed of cases of murder in the state since January 2003.

Tom Sullivan pointed out that the Governor's Commission recommended that the Administrative Office of the Courts and the trial courts begin this compilation of information, but that to the best of our knowledge that process has not been started by the trial courts or the Supreme Court of Illinois. The members of the subcommittee agreed that when counsel to the Committee is in place this is one of the tasks for which he can provide assistance.

Regarding No.1: The pending legislation regarding the certification of laboratories for DNA testing. That bill is SB 2737, and copies of the bill will be brought to the Committee meeting on February 27th. Tom Sullivan pointed out that a particular laboratory in California, which had been used by some defense attorneys in exonerations, had refused to submit itself to the certification process. While we agreed that in principle the idea of certification was sound, perhaps we should ask some of the attorneys familiar with the certification issues if they might inform us as to what issues might be involved in this question.

Tom Sullivan will distribute a recent article from The Champion; the magazine of the Association of Criminal Defense Attorneys on the subject. The members of the subcommittee had no new information to offer on the question of the current DNA backlog, except to note that the issue was one of several on the present Governor's agenda.

Regarding No.3: The protocols for state prosecutors in the prosecution of capital cases. Mike Waller noted that the Protocols were accepted in the December meeting of the States' Attorneys, and he hoped to bring the final text of the protocols to the meeting on February 27th.

There being no other matters raised, we adjourned until the meeting of the full Committee.