

Capital Punishment Reform Study Committee
Minutes of Subcommittee No. 1 meeting

December 11, 2006

On December 11, 2006 at 11:00 A.M., the Police and Investigations subcommittee of the Capital Punishment Reform Study Committee held a meeting at the University of Chicago School of Law. Subcommittee members attending were James R. Coldren, Jr., Gerald E. Nora and Geoffrey R. Stone. The Subcommittee's guest was Sheri H. Mecklenburg, General Counsel to the Superintendent of the Chicago Police Department. Peter G. Baroni, Special Counsel to the Committee, was also present.

Minutes of the October 20, 2006 subcommittee meeting were approved.

DNA backlog.

Ms. Mecklenburg said she was charged with addressing the backlog of more than 10,000 untested DNA rape kits compiled by the Chicago Police Department (CPD). Over the last three years, the backlog has been reduced to approximately 300 rape kits that need to be tested. She also said the Women's DNA Project, a non-profit organization, co-founded by Ms. Mecklenburg, has assisted in the reduction of the backlog by bringing private contributions from the project to expedite testing of rape kit DNA.

Ms. Mecklenburg believes approximately 500 additional DNA tests were done as a result of the efforts of the Project.

Mr. Stone asked if testing was limited to open cases and whether testing was done to determine if convicted persons were actually innocent.

Ms. Mecklenburg responded that, based on limited resources, the CPD focuses on open investigations as the first priority, and then testing may be done on cases where a conviction has entered to determine if an innocent person was convicted. She pointed out that in San Diego, where a comprehensive effort was made to test all rape cases post-conviction, many defendants refuse to allow their DNA to be tested, and of those who were tested, no one was exonerated.

Mr. Stone said he believes a cost benefit analysis should be done, based on an analysis of how many innocent persons were incarcerated and then exonerated based on DNA testing. He believes that if a large number of innocent parties are found to have been convicted, then the priority for testing convicted parties would become more significant. Mr. Stone said he believes a study should be done to determine (1) how many people have been wrongfully convicted based on DNA testing, and (2) compare that number to the total number of convictions for similar crimes meted out by

the criminal justice system. Mr. Stone believes that comparison would shed light on the veracity of the current system.

Mr. Nora asked if Ms. Mecklenburg thought DNA testing for arrestees would address some of the concerns raised by Mr. Stone. Ms. Mecklenburg said that there has been public resistance to DNA testing of arrestees, based on concerns that the testing could lead to abuse by insurance companies, who could profile DNA for predisposition to disease, etc. Those concerns are unfounded at this point, because suspect testing of DNA is “junk” DNA testing and can only be used for identification purposes, not to determine DNA makeup, thus it is more analogous to a fingerprint. Also, the “CODIS” federal DNA database is restricted to convicted offenders. That database is the most comprehensive DNA database in the country, used by all law enforcement agencies for DNA cross referencing. If arrestees were tested, their DNA samples would not appear in the CODIS database, and as a result that testing would have limited use.

Recording custodial interrogations.

Ms. Mecklenburg reported that through November 19, 2006, the CPD has recorded 1,646 interrogations related to homicide cases as required by the recording statute. As a result, many investigators now refrain from using accepted interrogation techniques like deception, based on the concern that

juries will view that conduct negatively. Ms. Mecklenburg has implemented a comprehensive training program for those conducting taped interrogation interviews. Since the mandate is only one year and a half old, her department is still going through some growing pains.

Mr. Coldren asked Ms. Mecklenburg what could be done to avoid some of the growing pains. Ms. Mecklenburg said she believes funding should be allocated for more training, and new pattern jury instructions should be created to instruct the jury that interrogation techniques using deception and trickery are accepted tactics, and are not unlawful.

Mr. Nora asked if there was a computer program to convert videotaped recordings into a transcript. Ms. Mecklenburg said that technology was not on the market at this point.

Lineups and photo spreads.

Ms. Mecklenburg spearheaded the line-up study conducted in three Illinois jurisdictions, including the CPD, as authorized by the death penalty reform legislation. She believes that lineups and photo spread procedures have had little to do with the wrongful convictions in Illinois. Rather, the lineups and photo spreads were conducted in a sloppy manner by untrained and incompetent investigators, and that the procedure used was not at fault. She believes the results of the pilot program bear out this conclusion.

Ms. Mecklenburg said she is training investigators in the CPD on the appropriate, objective administration of simultaneous lineups and photo spreads, because training is the key to valid identifications, not changing to sequential, blind procedures.

Mr. Stone asked if sequential procedures would improve the system. Ms. Mecklenburg responded that her experience indicates sloppiness and inexperience are the most important problems to address. The suggestion that a non-blind administrator could inadvertently influence the decision of a witness unfounded; no one has given her an example of inadvertent influence. Intentional interference is official misconduct and a felony that will not be cured by a change in procedure.

Mr. Nora asked if filming the administration of lineups and photo spreads would be of use to the police department. Ms. Mecklenburg said she views that as problematic, based on cost and feasibility.

Mr. Stone said a non-blind administrator is obviously better than a blind administrator. Ms. Mecklenburg debated that statement. She gave as an example criminal sexual assault victims, who, not used to dealing with strangers in the investigation, may well have difficulty if the administrators were unknown to them.

Ms. Mecklenburg acknowledged that the CPD could reflect the eyewitness identification procedures in better detail in police reports. To that end the CPD will create an internal committee to review the procedures and reporting, and issue an appropriate protocol to be followed on a systematic basis.

Mr. Coldren asked if researchers had requested the data compiled in the pilot study. Ms. Mecklenburg said a request had been made, but the data is not subject to a FOIA request, and therefore the data would not be disseminated, based on privacy concerns.

Ms. Mecklenburg said she believes the study's finding that simultaneous procedures are more accurate than sequential is a result of problems relating to sequential procedures, rather than inadvertent influence by non-blind administrators. Her belief is based on no one being able to point out how or by what means inadvertent influences could be brought to bear.

Ms. Mecklenburg said two New York City studies cited in the report appendix and addendum are consistent with the results of the pilot program.

Mr. Nora asked why the police do not conduct another study using blind administrators for both simultaneous and sequential procedures. Ms. Mecklenburg said that the veracity of sequential procedures is so suspect

that the CPD would not use that method again. One of the problems is that a person might identify the first person in a sequential procedure, and not see any of the others, making the procedure like a show-up and altogether suggestive.

Ms. Mecklenburg said that the National Institute for Justice and the Department of Justice plan to fund a comprehensive eyewitness identification study. The CPD would be willing to participate, provided trusted experts conduct the study.

The subcommittee adjourned at 12:50 P.M.

Peter G. Baroni
Special Counsel to the CPRSC