

Criminal Law Section - Executive Council Meeting
June 28, 2013
Boca Raton Resort – Boca Raton, Florida

Amended Minutes

1. The meeting was called to order at 9:05 a.m.

Attendance - Present were the following ("t" denotes by telephone): **Council members** Scott Fingerhut, Susan Hugentugler, David Rothman, Hon. Angelica Zayas, Martin McDonnell, Hon. Lisa Porter, David Barksdale, Hon. Stan Blake, Hon. Robert Dillinger, Jeffrey Harris, Les Hess, Hon. Cynthia Imperato, Abraham Laeser, Calianne Lantz, Sheryl Lowenthal, Richard Polin, Hon. Donald Scaglione (t), Harvey Sepler, Joel Silvershein, James Smith III (t), Ken Swartz, Brian Tannebaum, George Tragos, Larry Turner, William Vose, Hon. Samantha Ward, Paul Zacks, and Jennifer Zedalis. **Also present were:** Florida Senator Maria Sachs, Board of Governors members Renee Suskauer (outgoing Board Liaison), Stephen Echsner (incoming Board Liaison) and Ray Abadin, Eugene Sherman, TFB Staff, and numerous other individuals, including Hon. Jeffrey Levenson, Gary Winston and Jason Blank.

Absent were: Excused – Honorable Richard Hersch, Donnie Murrell and Carolyn Snurkowski.

2. The minutes for September 21, 2012, were approved.
3. Outgoing Board Liaison Michelle Suskauer graciously said goodbye.
4. Incoming Board Liaison Steve Echsner graciously said hello.
5. The Chair recognized Board of Governors member Ray Abadin who addressed the Council concerning his experience and background.
6. **Treasurer's Report** – Seems the actual numbers are substantially different, in a positive sense, from those anticipated, which Mr. Tragos pointed out and then suggested the budget committee should examine the discrepancy between the two and try to avoid that going forward

7. Committee Reports

- A. **Capital Cases** – Judge Ward passed her report to Mark Schlakman. He spoke for about 10 minutes, at which point discussion followed, followed by a vote of the Council resulting in unanimous approval to write a letter and circulate restating our prior position asking for a comprehensive review of the death penalty process.

8. The Chair then recognized Florida Senator Maria Sachs who addressed the Council on several legislative matters. Senator Sachs told us the legislators are concerned about constitutional issues them. She said this is the session to pass good legislation and change bad laws. Her body will be looking at the death penalty – specifically the unanimity issue. She said they also we will be looking at decriminalization, or medical use, of marijuana. She told us we should get on this issue. According to Senator Sachs, another big issue is minimum mandatory sentence. In her words, a 25 year min man for

prescription controlled substance is “unconscionable.” She believes that in the next few years “we” can get a change. Finally, Senator Sachs believes the legislators will be examining alternative sentences and the CLS ought to get involved in this discussion. She urged us to meet and talk with legislators to educate them on the issues important to us.

The Chair then returned to committee reports.:

- B. **Legislative** - Marty McDonnell – reported there needs to be a legislative fix since we our statute is not in compliance with *Miller*. George Tragos mentioned he wanted us to get TFB's emails on pending legislation.
- C. **P/PD Program** – Jennifer Zedalis reported registration has started. Queens Counsel is coming from London. This is the 2nd year for a shortened program. The hotel has been remodeled. Paul Zacks reported there was pressure to save costs, costs have been cut, but they have been successful in doing this without hurting the program.
- D. **Selig Goldin** – Harvey Sepler reminded the Council Jim Miller is this year’s recipient. Jeff Harris, Larry Turner and our Chair spoke eloquently about Jim, describing him as a “Renaissance Man” and a superb and committed lawyer.
- E. **CLE** – Our Chair called Ken Swartz, who again put on an excellent Federal Practice seminar, an unsung hero. Ken Swartz told us the seminar had excellent presenters and a good turnout. Also reported was that the post conviction seminar was a new frontier, that we co-sponsored the evidence seminar and the DUI seminar complemented the one put on by FACDL. The chair raised the issue of reduced CLE fees – and asked the Council about its position on Gideon aftermarket sales – (we paid expenses and PILS did not contribute financially – so, do we split aftermarket with PILS? George Tragos moved we split with PILS after we pay our costs, Abe Laeser seconded and motion passed. Finally, Sheryl Lowenthal noted web attendance is up while in person attendance is down.
- F. Website – We discussed the proposal from Netphiles. It was determined that the Committee will make design decisions, and no objection was voiced. We agreed our meeting agendas must be available to all online. We voted to choose the one-pay option for payment of \$2,000 for website.

9. CLS relationship with St. Thomas law review to continue - with letter from the chair of CLS to be included with each mailing to members.

10. *State v. Kidder* discussion initiated by our Chair. George Tragos said he would like to know the position of our Council members who are prosecutors. Paul Zacks wanted to refer this to Criminal Rules Committee. Abe Laeser asked why we are talking about it. Les Hess thinks the decision is good on the law but maybe not good policy. Bob Dillinger thinks this is a critical issue and we need to take a position. Brian Tannebaum thinks this will be fixed by the Rules committee but his question is whether prosecutors will take the position in cases as permitted by the court in *Kidder*. David Barksdale opined this is the most significant opinion for criminal trial lawyers in the last 20 years and we need to take a position. After several motions and amendments suggested, the Council voted unanimously to inform the Rules committee that the CLS “recommends the Rules committee should consider changing the rule to comport with past practice and the Federal Rules as expressed in the

opinion.” It was also determined a prelude to this recommendation will be written expressing the importance of this issue to us and the significance of the resolution.

11. Leadership Academy – two members of the newly constituted Academy were present at our meeting - Ashley Greene and Whitney Untiedt. Both expressed their appreciation for our support and are looking forward to learning about the Bar.

12. The animal terrorism discussion was not unexpectedly tabled. No new date announced.

13. Sequester discussion - only the Federal Defenders are affected and the effect has been devastating. James Smith, AFD, personalized the issue for us. We agreed to ask the president of The Florida Bar to send a letter, which Ken Swartz and James Smith will prepare, to Florida’s senators and congressmen.

14. We tabled the matter of the amount of our affiliate membership fee until next meeting, so that we can decide whether we should raise our fee for regular members and then gauge what we should charge the affiliate members.

15. Our Chair presented the matter of the referral from The Florida Bar Board of Governors’ Disciplinary Procedure Rules Committee related to *ex parte* communications in the criminal arena. This arose out of a specific case, but it is the suggestion of the Chair to address it in the larger context of ALL forms of *ex parte* communication. Judge Blake informed the Council the case was before him and described how he handled the matter. It was decided a committee will be formed to study the issues and if appropriate, make recommendations on the ethical considerations as well as whether there needs to be a Rule addition or amendment.

16. Judges Stan Blake and Lisa Porter said their goodbyes as they decided to leave mid term to provide openings for new members. Everyone agreed they will be missed.

17. We held our elections. The results are: Joel Silvershein is the new treasurer. Slate #1 is elected by acclamation (Judge Imperato, Donnie Murrell, Richard Polin, Judge Zayas and Jennifer Zedalis). From Slate #2 - the following candidates were elected: Ken Swartz, George Tragos, Marty McDonnell, Gary Winston, Judge Jeff Levenson, Larry Turner and Calianne Lantz. (Under our Rules, Larry will finish Lisa Porter term, which is 2 years and Calianne will finish Stan Blake’s term, which is 1 year.)

18. Gifts were given by our Chair, we sang Cumbayá, and finished with a group hug.

19. We adjourned at 12:10.

Respectfully submitted,

David B. Rothman

David B. Rothman, Secretary
CLS Executive Council