



BRIEN T. O'CONNOR (LEFT) WITH COLLEAGUE WILLIAM L. 'ROB' ROBERTS

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BRIEN T. O'CONNOR and WILLIAM L. ROBERTS

Ropes & Gray

The beginning of the COVID-19 pandemic began a period of confusion and fear for many across the country, with uncertainty about how to go about daily life.

For Boston lawyers Brien T. O'Connor and William L. "Rob" Roberts, March 2020 also launched one of the most challenging and rewarding projects of their careers.

As the state shut down, a coalition of the American Civil Liberties Union of Massachusetts, Committee for Public Counsel Services and Massachusetts Association of Criminal Defense Lawyers filed an emergency petition with the Supreme Judicial Court.

The petition requested that the SJC "reduce the numbers of people who are now in or who will enter Massachusetts jails, prisons and houses of correction" due to the pandemic's "mortal harm" to incarcerated people, corrections staff and the community.

The very next day, the SJC tapped O'Connor as special master for the case. Tasked with negotiating a settlement between the parties — the petitioners; the district attorneys and sheriffs for each of the 14 counties; and representatives from the Trial Court, Parole Board, Department of Correction and Attorney General's Office — and making recommendations to the court on how to handle the case, O'Connor quickly formed a team of fellow Ropes & Gray partners, associates and paralegals and got to work.

What the team didn't realize is that it would spend almost two years involved in the case, tallying roughly 3,500 hours by November 2021.

"Sometimes situations present themselves where there is no easy answer," O'Connor says. "We all had to think creatively and come together, irrespective of what side of the 'v' we were on."

Q. How did you become involved in the case?

O'CONNOR: About 7 p.m. on March 24, 2020, I received a text from Chief Justice [Ralph D.] Gants. He told me about the petition and said he thought it would be a perfect opportunity for me and Ropes & Gray to help out. Things started moving really quickly. We got conflicts cleared and as soon as the firm's Pro Bono Committee gave us a green light the next day, I put together a team.

ROBERTS: I jumped at the opportunity. I felt like it was exactly the kind of thing Ropes should be doing,

given our place in the community and the resources we could bring to bear. It was also a chance to be involved during those really uncertain early days of the pandemic, when we were all trapped at home and had no idea what was going to happen next.

Q. Where did you begin when faced with such a monumental task?

O'CONNOR: The first thing we did was take a look around the country at other states and the federal system to see if there were any ideas or information that we could gather. We also needed to get all the parties together for a discussion.

ROBERTS: The SJC's order gave us about five days to negotiate with all the parties before we needed to put together a report and recommendation on how the entire commonwealth should deal with this issue. It was fascinating to see how all the different parts of the criminal justice system interacted with each other, particularly at such an early stage of the pandemic.

When the petition was first filed, there were less than 1,000 confirmed cases of COVID in Massachusetts. It was such an uncertain time, and yet we still had to navigate a workable solution that we could propose to the court.

"We all had to think creatively and come together, irrespective of what side of the 'v' we were on."

Q. With so many different perspectives and backgrounds, how did you reach an agreement that worked for everyone?

O'CONNOR: There was a lot of haggling and negotiating with all of the parties. We got a lot of agreement on many of the issues, but things weren't always unanimous. We can't just open the doors to prisons and let inmates out because there is a deadly virus. On the other hand, we have a deadly virus and we have to do everything we can to protect the health of the inmates, officers and others.

ROBERTS: What struck me from those early days — and all the way through October 2021 — was how genuinely everybody from all sides came at this

problem and wanted to do the right thing for people detained, or in prisons or jails, despite all the different perspectives. Everyone had the same goal.

Q. After your report and recommendation was submitted, the SJC published an opinion that set forth the process and procedures. Was that the end of your work?

O'CONNOR: We were very involved in the continuing process. One part involved the correctional facilities, which reported data on a weekly basis such as the number of infections, testing and, later on, vaccinations. We packaged the information and put it into a report. Through 2020 and into 2021, we probably had around 60 weekly reports, followed by three or four monthly reports after the state of emergency was lifted by Gov. [Charlie] Baker in June of 2021.

The other big thing that we were doing was holding weekly calls with the different segments of the law enforcement and defense bar community where we would discuss the data and any other specific concerns that might be raised, whether legal or factual. It was a chance for the parties to work through various issues that came up.

Q. What was the biggest challenge working on the case?

ROBERTS: To me, the biggest challenge was that first week. We were all adjusting to working from home and then jumped into seven or eight hours of calls while simultaneously trying to do the research on complicated, novel legal questions and draft a report and recommendations in about a week.

Q. Where do things stand with the case today?

O'CONNOR: Even after Gov. Baker terminated the state of emergency, we let everyone know that we were going to stay on the job. The parties willingly agreed to do monthly reporting even though no reporting was required from July through October. Ultimately, Rob and I spoke with Justice [Frank M.] Gaziano in late fall and we all agreed we could stand down. We realize that the world continues to change — look at Omicron — and who knows what is going to be necessary. Right now we're very hopeful that there won't be a need for a new petition or continuing a process that involves us. We are very happy we have been able to participate and appreciate the SJC putting this task in our hands.

— Correy E. Stephenson