

**CAPITAL PUNISHMENT REFORM STUDY COMMITTEE**  
**Minutes of Subcommittee No. 3 meeting**

**March 28, 2007**

Subcommittee 3 of the Capital Punishment Reform Study Committee held a meeting in the chambers of Judge Terry H. Gamber at the Jefferson County Courthouse, Mount Vernon, Illinois from 8 A.M. to 9 A.M. Attending were subcommittee members Jeffrey M. Howard, Edwin R. Parkinson and Boyd J. Ingemunson (via teleconference). Also in attendance were Peter G. Baroni, Special Counsel (via teleconference) and Judge Terry H. Gamber of the 2<sup>nd</sup> Judicial Circuit.

The minutes of the January 30, 2007 subcommittee meeting were approved unanimously as amended.

*1. Interview of Judge Terry H. Gamber.*

*(1) Depositions in Capital Cases.*

Mr. Howard began a discussion regarding the use of depositions in capital cases. Judge Gamber said that the defense and prosecution asked to take depositions in the capital case over which he presided. Judge Gamber expressed concerns regarding the judicial application of the standard of “just cause shown” set forth in Supreme Court Rule 416 (e) in deciding whether to grant or deny a request to take a deposition. However, in the case he presided over, the two sides agreed to a list of witnesses that should be

deposed. Judge Gamber also said that it is better to hold capital case depositions in the courthouse where the case is heard or close by so that the judge may be consulted for rulings in connection with problems that arise during the deposition.

(2) *Capital Litigation Judicial Training.*

Judge Gamber has attended three capital trainings for judges who preside over capital cases. He found all of them helpful and worthwhile. Topics covered were those judges may encounter while presiding over capital cases, including DNA, eyewitness testimony, evidentiary problems, jury selection, and mental retardation. Judge Gamber believes issues relating to mental retardation and jury selection could be covered more thoroughly in those training seminars.

(3) *Capital Litigation Trial Bar.*

Judge Gamber said that a very real problem exists in southern Illinois regarding defense counsel becoming members of the Capital Litigation Trial Bar. He stated that some very experienced defense attorneys have opted not to join the CLTB for a variety of reasons.

(4) *Capital Litigation Trust Fund.*

Judge Gamber believes the existence of the Capital Litigation Trust Fund has not impacted the prosecution seeking the death penalty in Jefferson

County. He said the Jefferson County State's Attorney has not sought death in many cases that were capital eligible. However, Judge Gamber believes that the availability of the CLTF in capital cases as an alternative to using county funding to pay for the defense in non-capital first degree murder cases may be a consideration for some counties and State's Attorneys.

Judge Gamber believes the submission of a budget and the requirement that another judge approve expenditures from the CLTF improves the administration of the CLTF in individual cases. Based on his experience with the prosecutor in Jefferson County, he believes it is unnecessary for a judge to control or oversee the State's Attorney's access to the CLTF.

Judge Gamber expressed concerns over the *ex parte* procedure for defense counsel to request experts through CLTF funding. The law does not give directions regarding how judges should handle a request of that nature. Judge Gamber believes notice should be given to the State, and that *ex parte* funding requests should be done in the presence of a court reporter.

(5) *Case management conferences.*

Judge Gamber found case management conferences to be helpful in the efficient administration of the case. Judge Gamber held the conferences

about once every month. During the conferences, he was able to deal with all discovery issues as they arose.

(6) *Miscellaneous Issues.*

In the capital case Judge Gamber presided over, jail house snitch testimony and mental retardation were not involved. He conducted individual *voir dire* for jury selection. Judge Gamber said Illinois Pattern Jury Instructions addressing the aggravation and mitigation portion of the case would have assisted him in instructing the jury. He said the reforms relating to the availability and testing of DNA proved to be a valuable asset.

2. *Next meeting – to be determined*

It was agreed that the next subcommittee meeting should be with judges who have presided over capital cases in either DuPage or Will County. Mr. Baroni will attempt to arrange those meetings.

Peter G. Baroni  
Special Counsel  
May 24, 2007