

**CAPITAL PUNISHMENT REFORM STUDY COMMITTEE**  
**Trial court proceedings Subcommittee No. 3**

**Minutes of the meeting January 30, 2007**

The Trial Court proceedings Subcommittee of the Capital Punishment Reform Study Committee (Committee) meeting was held in the chambers of Judge Stephen H. Peters at the DeWitt County Courthouse, Clinton, Illinois from 11:30 A.M. to 12:40 P.M. Attending were subcommittee members Jeffrey M. Howard, Edwin R. Parkinson and Boyd J. Ingemunson (via teleconference). Also in attendance was Peter G. Baroni, Special Counsel. Present was Judge Stephen H. Peters of the 6<sup>th</sup> Judicial Circuit.

The minutes of the December 12 2006 subcommittee meeting were approved unanimously.

*1. Interview of Judge Stephen H. Peters.*

*(1) Pretrial Jailhouse Snitch Reliability Hearing.*

Mr. Howard began a discussion regarding the pretrial jailhouse snitch reliability hearing reform. Judge Peters is believed to be the first judge to preside over a capital case involving a pretrial hearing on the reliability of jailhouse informant's testimony in the *People v. LaGrone* case. Judge Peters said the pretrial hearing was an improvement to the capital litigation process. In the *LaGrone* case, the jury was empanelled and sent home during the two day pretrial hearing. Judge Peters said his focus was on the reliability of the

jailhouse informants, not their credibility. He also views such hearings as helpful to the truth finding function and allowed the trial to proceed more efficiently.

(2) *Depositions in Capital Cases.*

Judge Peters thinks the current standard allowing depositions in capital cases for good cause shown creates a subjective standard that differs in applicability from judge to judge. He believes the standard should be changed to provide categories for witnesses eligible to be deposed. Such a change would institute an objective standard for judges to apply in determining if depositions should be allowed in capital cases.

(3) *Capital Litigation Trial Bar.*

Judge Peters was asked if he has had difficulty finding a qualified attorney to represent capital defendants. Judge Peters said that he has had no problems finding Capital Litigation Trial Bar members to represent such defendants. While there are no Capital Litigation Trial Bar members in DeWitt County, the county is geographically close enough to Springfield and Decatur, that there were plenty of qualified and willing defense attorneys to choose. Judge Peters believes the Capital Litigation Trial Bar is a vast improvement to the system and the single most important reform to date.

(4) *Capital Litigation Trust Fund.*

Judge Peters said something needs to be done to control spending by defense counsel in capital cases. Many experts were sought and paid for by the Fund. Additionally, one capital defense attorney wanted the Fund to pay for a mock trial; Judge Peters denied that request, so the attorney went around the judge's order, in his view, and had the Office of the State Appellate Defender use the Fund. Judge Peters believes the circumvention of his order was appropriate.

Judge Peters believes the judge should oversee the prosecutions capital budget as well as the defense budget. He said judicial oversight of both the prosecution and defense use of the Fund would improve the system. Finally, he believes trial judges need assistance in managing capital trial budgets, especially when the capital trial judge is also the chief judge of the circuit.

(5) *Case management conferences.*

Judge Peters is a strong advocate of the case management conference reform. He holds case management conferences in court and on the record. These conferences promote progress and movement in the capital litigation discovery process. Judge Peters believes there is less acrimony between the prosecution and defense in capital litigation outside Cook and the collar

counties. Case management conferences are generally agreeable, in his experience, and move cases forward. The last capital case he presided over lasted about two and a half years from indictment to trial. He does not think that is a problematic time frame for a capital case.

(6) *Miscellaneous Issues.*

Judge Peters thinks there is pressure in small counties in his circuit for the state's attorney to seek death if the case is eligible. Generally, that pressure is based on the lack of first degree murders in the area. Any murder is abhorrent to the community because there are so few.

Judge Peters believes several of the capital punishment reforms should apply across the board to all felonies based on his experience as a police officer, prosecutor and judge. The first reform that he thinks should be expanded in its applicability is the recording of custodial interrogations. The other reform he suggests apply more broadly is the pretrial reliability hearing for jailhouse informants.

Finally, Judge Peters is skeptical of the Office of the State Appellate Defender's role as trial counsel in capital cases. He thinks they are too focused on creating a good record for appeal and it sometimes is to the detriment of the defendant at trial.

2. *Next meeting – to be determined*

It was agreed that the next subcommittee meeting will be held in Mt. Vernon with Judge Terry H. Gamber of the 2<sup>nd</sup> Judicial Circuit. Mr. Parkinson agreed to seek out available dates for Judge Gamber and notice the subcommittee.

Peter G. Baroni  
Special Counsel  
February 20, 2007