

**Capital Punishment Reform Study Committee**  
**Minutes of Subcommittee No. 3 meeting**

**October 16, 2006**

On October 16, 2006 at 12:15 P.M., a meeting of Subcommittee 3 was held at the Livingston County Courthouse Square, Pontiac, IL. Attending were Jeffrey M. Howard, Boyd J. Ingemunson, Edwin R. Parkinson, Randolph N. Stone, Judge Harold J. Frobish and Peter G. Baroni.

Minutes of the June 19, 2006 Subcommittee meeting were approved as submitted.

*Interview of Judge Harold Frobish.*

Judge Frobish is a judge of the Livingston County 11th Judicial Circuit. Subcommittee members asked Judge Frobish questions regarding his experience with recent reforms to the capital punishment system relating to trial proceedings.

Judge Frobish extolled the virtues of the Capital Litigation Trial Bar. He believes that the most significant change is probably that prohibiting unqualified counsel to handle capital cases. He also believes there should be regular re-certification of defense lawyers.

Judge Frobish believes judges presiding over capital cases should also be certified, and chosen by the Chief Circuit Judge based on training and experience, rather than the current random assignment of judges.

Judge Frobish expressed concern with the Office of the State Appellate Defender (OSAD) becoming involved in capital trial litigation, which may present the appearance of a conflict of interest. He said that in his opinion several OSAD attorneys had inserted themselves inappropriately into a capital case he presided.

Judge Frobish believes the Capital Litigation Trust Fund money flowing to the prosecution should be overseen by the presiding trial judge, similar to the judicial oversight of defense spending of Trust Fund money.

Judge Frobish believes the use of depositions should remain a discretionary decision of the presiding trial judge. He views the need for depositions in most cases as limited.

Judge Frobish believes case management conferences and certificates of readiness are very effective tools for insuring both parties are prepared to proceed with a capital case

Judge Frobish said he likes the jury instruction change from “mitigation sufficient to preclude death” to “death is appropriate.”

Also, as to jury instructions, Judge Frobish does not require a potential juror to provide evidence of hardship in order to avoid serving on a capital jury. He conducts individual *voir dire* with panels of 10 in the morning and 10 in the afternoon. He usually takes seven days to choose a capital jury. He allows the defense and prosecution to submit questions on *Witherspoon* or any other issue before the venire begins, and if appropriate integrates those questions into the questions he asks potential jurors.

Judge Frobish believes there should be a mechanism to allow downstate prosecutors to avoid seeking death in death eligible cases. He perceives that in almost all downstate counties there is often political pressure on the State’s Attorney to seek capital punishment in death eligible cases, which shifts the financial burden of the case from the county (non-capital murder) to the Trust Fund (capital murder). Without a mechanism, he thinks downstate prosecutors will, solely from financial motivations, often seek death if the case is statutorily eligible.

*Future meetings.*

The next Subcommittee meeting was set for December 12, 2006 at noon at the DeWitt County Courthouse.

The Subcommittee adjourned at 2:15 PM.

Peter G. Baroni  
Special Counsel to the CPRSC  
Leinenweber & Baroni  
Attorneys at Law