

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

**Minutes of the 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 possible 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 a judge may encounter while presiding over a capital case, including DNA, eyewitness testimony, evidentiary problems, jury selection, and mental retardation were covered. Judge Gamber believes issues relating to mental retardation and jury selection could be covered better 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 does not believe the existence of the Capital Litigation Trust Fund has impacted the prosecution seeking the death penalty in

Jefferson County. He said the Jefferson County State's Attorney has not sought death in cases that were capital eligible. Judge Gamber believes that the availability of the Fund 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 Fund improves the administration of the Fund in individual cases. He thinks it is unnecessary for a judge to control or oversee the State's Attorney's access to the Fund based on his experience with the prosecutor in Jefferson County.

Judge Gamber expressed concerns over the *ex parte* procedure for defense counsel to request an expert through the Fund. The law does not give direction regarding how a judge should handle a request of that nature. Judge Gamber believes notice should be given to the State. He also believes *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 the judge was able to deal with all discovery issues as they arose.

(6) *Miscellaneous Issues.*

In the capital case Judge Gamber presided over, no jail house snitch testimony was at issue before the court. Mental retardation was not an issue in this case. Judge Gamber 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. Judge Gamber said the reforms relating to the availability and testing of DNA were a valuable asset in the capital case he presided over from the beginning.

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 a meeting with judges who have presided over capital cases in DuPage County, including the judge who presided over the case in which the defendant received death in 2007.

Peter G. Baroni  
Special Counsel  
April 10, 2007