

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

Minutes of the meeting June 11, 2007

Subcommittee 3 of the Capital Punishment Reform Study Committee held a meeting in the chambers of Judge Kathryn E. Creswell at the DuPage County Courthouse, Wheaton, Illinois from 3 P.M. to 4:15 P.M. Attending were subcommittee members Jeffrey M. Howard, Edwin R. Parkinson and Boyd J. Ingemunson. Also in attendance was Peter G. Baroni, Special Counsel. The subcommittee's guest was Judge Kathryn E. Creswell of the Eighteenth Judicial Circuit.

The minutes of the March 28, 2007 subcommittee meeting were approved unanimously.

1. Interview of Judge Kathryn E. Creswell.

Mr. Howard began a discussion regarding the capital cases Judge Creswell had presided over during her career on the bench. She has presided over four capital cases; two of those cases took place before the reforms had taken effect (*People v. Ceja & People v. Soto*), the third case took place post-reforms (*People v. Lovejoy*) and the fourth case is currently pending (*People v. Alfonso*).

Judge Creswell said that in the *Lovejoy and Alfonso* cases, mental retardation and jailhouse snitch testimony were not an issue. She also said

no depositions were requested and the Capital Litigation Trust Fund was not administered by the Court because the public defender and appellate defender handled the cases.

Both cases did involve videotaped interrogations. Motions were filed in each case seeking to exclude the statements. Judge Creswell found the recorded statements very useful. The video allowed her to see first hand the statement being given by the defendant, instead of hearing about the statement second hand through police officer testimony.

According to Judge Creswell, one issue which arose in the *Lovejoy* case was the defendant's unwillingness to cooperate with his attorneys. The defendant refused to speak to his attorneys before trial. Additionally, he refused to speak to a mitigation expert until *voir dire*. As a result, the defense mitigation evidence was not tendered to the prosecutors until the trial was underway. The defendant's unwillingness to cooperate with his attorneys affected his attorneys' ability to file the certificate of readiness. Judge Creswell researched the issue of *pro se* defendants in capital litigation and found that it is common in capital cases. She suggested that statutory changes (via Supreme Court Rule or in the Illinois Compiled Statutes) be made to address the issue of *pro se* defendants and defendants who are unwilling to cooperate with their attorneys in capital cases.

Judge Creswell believes the Capital Litigation Trial Bar is a great improvement to the system, although in the capital cases she presided over before the reforms, the defense attorneys and prosecutors were excellent.

According to Judge Creswell, case management conferences have not had a significant impact on the capital cases she has presided over. She uses these conferences for status hearings and to advance the discovery process. However, she realizes there are practical concerns which affect the discovery process. These practical concerns include lab testing and expert witness analyses that take time and cannot be rushed without endangering the defendant's right to a fair trial or threatening ineffective assistance of counsel problems.

She believes the certificates of readiness that both sides must file and the defendant must agree with in open court are great improvements in the system. The Judge appreciates the opportunity to ask the defendant directly if he or she is ready to proceed to trial.

Mr. Howard asked Judge Creswell if jury instructions covering all aspects of capital litigation would be helpful. Judge Creswell said comprehensive capital litigation jury instructions would be very helpful to the court in presiding over capital cases. Judge Creswell described the jury selection process she uses in capital cases. She believes the use of a jury

questionnaire and the submission of questions by both sides for that questionnaire before jury selection begins is the most efficient means of empanelling a jury.

Mr. Parkinson asked Judge Creswell if she believes assistant appellate defenders are appropriate trial counsel because of the potential for a conflict as appellate counsel. Judge Creswell believes assistant appellate defenders are appropriate capital trial counsel, assuming they are Capital Litigation Trial Bar certified. In *Lovejoy*, Judge Creswell specifically rejected a State motion to preclude Office of the Appellate Defender staff attorneys as trial counsel. Finally, Judge Creswell said she believes the change in the statute directing jury deliberations from “mitigation sufficient to preclude the imposition of the death penalty” to “death is appropriate” is a more clearly stated standard and easier for juries to understand.

2. *Discussion of Olson’s draft survey.*

The subcommittee agreed to review the Olson draft survey before the next full Committee meeting on July 6th. Mr. Baroni was instructed to distribute the list of questions the subcommittee conceived based on the subcommittee’s jurisdiction as well as a list of the statutory reforms within that jurisdiction.

3. *Next meeting – July 23, 2007, 2 P.M.*

It was agreed that the next subcommittee meeting will be held on Monday, July 23, 2007, 2 P.M., at 26th and California at the Cook County criminal courthouse with Judges who have presided over capital cases. Mr. Howard will arrange a meeting with judges who have presided over capital cases in Cook County post reforms.