

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE

Minutes of meeting May 13, 2008

The thirtieth meeting of the Capital Punishment Reform Study Committee was held at the Illinois Criminal Justice Information Authority, 300 W. Adams, Chicago, Illinois from noon to 3 P.M.

Those present

Leigh B. Bienen

Jennifer A. Bishop-Jenkins

Jeffrey M. Howard

T. Clinton Hull (via teleconference)

Gerald E. Nora (via teleconference)

Edwin R. Parkinson (via teleconference)

Richard D. Schwind

Thomas P. Sullivan

Not present

James R. Coldren, Jr.

Kirk W. Dillard

Boyd J. Ingemunson

Charles M. Schiedel

Geoffrey R. Stone

Randolph N. Stone

Arthur L. Turner

Michael J. Waller

Also present: David E. Olson; Barbara Hayler, retired professor of criminology, University of Illinois, Springfield; Laura Weizeorick, third year law student, Northwestern University, assistant to Ms. Bienen.

Late in the meeting, the following personnel of ISP Division of Forensic

Services (DFS), joined via teleconference: Colonel Scott Giles, Deputy Director, DFS; Lt. Colonel Carl Weitzel, Assistant Deputy Director, DFS; and Commander Donna Metzger, Forensic Sciences Command.

The minutes of the Committee meeting held on April 8, 2008, were approved as drafted, except for (1) correcting the spelling of Ms. Weizeorick's name, and (2) correcting Dr. Olson's power point graph as to State's Attorney responses regarding whether or not the requirement of complete electronic recordings of custodial interviews should be expanded to include additional felonies (Section II, Q. 12). The correct percentages are 79% not in favor of expanding this requirement, and 21% in favor.

1. Extension of Committee's tenure to 12/31/09.

Senator Dillard reported to Mr. Sullivan that SB 2657, the bill providing for extension of the Committee's tenure to December 31, 2009, was passed by the Senate on April 16, 2008. The bill, sponsored by Representative Turner, is now before the House, and is set for hearing before the House Judiciary Committee No. 2 on May 15, 2008.

Messrs. Parkinson and Schiedel have agreed to appear before the committee in support of the bill.

2. *Committee's funding for FYE 6/30/08 and 6/30/09.*

Senator Dillard reported to Mr. Sullivan that on May 8, 2008, he testified before the Senate Appropriations Committee in support of Senate Bill 2167, providing for an appropriation of \$250,000 for the Committee for the fiscal years ended June 30, 2008 and June 30, 2009. The bill is now pending before the Senate Rules Committee.

3. *Fourth Annual Report.*

Mr. Sullivan distributed copies of the Committee's Fourth Annual Report, dated May 12, 2008, which has been sent to the leadership of the General Assembly, the Governor, and the Chief Justice of the Illinois Supreme Court. The report will be posted on the CJIA website.

4. *David Olson's preliminary report on responses to the surveys sent to Public Defenders.*

Mr. Olson reported on the 55 responses received thus far from the surveys sent to 99 Illinois Public Defenders, including private lawyers who act as Public Defender under contract with local county counties. The questions and charts containing the responses are attached as

Appendix 1. The responses include comments made by the respondents, edited in some instances by Mr. Olson to protect the identity of the respondents, which are attached as Appendix 2.

Response rates compared to murder convictions during the years 2003 through 2007 were: counties with 11 murder convictions yielded a 64% response rate (9 of 14); counties with 1 to 10 murder convictions yielded a 54% response rate (33 of 61); and counties with no murder convictions yielded a response rate of 48% (13 of 27). Although not all of the 55 respondents had experiences in murder cases in which capital punishment was sought, many of the survey questions relate to matters encountered in all homicide cases before the facts are sufficiently developed to determine if the case is capital eligible and, as to those that are capital-eligible, before the State's Attorney decides whether capital punishment will be sought.

Some of the highlights of the responses received are (these percentages do not include "not applicable" responses):

- 70% believe training related to capital punishment met their office needs.

- Slightly over 80% believe their staffs have not received specialized training on mental retardation.
- About 45% believe there are sufficient numbers of defense lawyers to effectively handle capital cases, and about 35% responded in the negative.
- 70% believe there are not sufficient resources available to handle death-eligible cases; 30% believe there are.
- Over 60% have had no technical problems with their review of recordings of custodial interviews, and over 70% had no technical problems with presentation of recordings in court.
- Over 50% believe that recordings of custodial interviews have not influenced defendants' willingness to plea bargain, while over 40% believe they have.
- Over 50% believe that recorded custodial interviews have not reduced the number of motions to suppress confessions or admissions, while over 40% believe they have.

- About 55% believe that recorded custodial interviews have made it easier for prosecutors to obtain convictions in murder cases, while over 40% believe they have not.
- Almost 90% believe that recording custodial interviews should be expanded to include additional felony offenses.
- Almost 80% believe that in all lineups and photo spreads, if reasonably available, the administrator should be a person who does not know the identity of the suspect.
- 65% are not satisfied with current procedures used by police departments with eyewitness identifications in murder cases; 35% are satisfied.
- 60% have experienced problems with police departments in providing all investigative files and the like in homicide cases; 40% have not.
- Almost 70% have experienced delays in obtaining forensic lab results for murder cases that have delayed discovery or court

proceedings, including forensic results in murder cases; over 30% have not.

- Almost 80% are satisfied with the quality of the forensic labs' work product in capital cases.
- 85% believe that 120 days from arraignment is sufficient time for the State's Attorney to determine whether or not to seek the death penalty.
- 85% believe that depositions improve the processing of capital cases.
- Over 70% are satisfied with the definitions and court processes used to determine mental retardation, but over 80% believe their defenders have not received specialized training on the issue of mental retardation since 2005.
- There is almost an even split of opinion as to whether the number of factors that make a homicide case eligible for capital punishment should be reduced.

- Over 60% believe the cost to the county reduces the likelihood that capital punishment will be sought in capital-eligible cases, and that cost should be considered in determining whether to seek capital punishment, while about 40% believe cost does not and should not.

- 40% responded that the State's Attorneys office does not confer with the Public Defender prior to deciding whether to file a notice of intention to seek the death penalty; about 25% responded that the State's Attorney always or sometimes confers in advance.

- 60% believe case management conferences in capital cases should not be held in open court; 80% believe the conferences should be recorded.

- 54 of 55 respondents believe there is a need for pattern jury instructions in capital cases.

The comments made in response to the survey sent to the State's Attorneys are attached as Appendix 3.

5. *Reports of subcommittees.*

(1) *Report of subcommittee 1– Police and investigations*

Messrs. Hull and Schwind stated that the subcommittee has not met since the last full Committee meeting, and has nothing new to report.

(2) *Report of subcommittee 2 - Eligibility for capital punishment and proportionality.*

Ms. Bienen stated that the subcommittee has not met since the last full Committee meeting.

She proposed that two letters be sent to Illinois State's Attorneys, the first to those who have not responded to our prior request for copies of first degree murder indictments for the years 2003 through 2005, requesting that they send copies of their first degree murder indictments for the years 2003 through 2007, and the second to those who have sent us their 2003 through 2005 first degree murder indictments, requesting that they send us copies of their first degree murder indictments for 2006 and 2007. Mr. Olson stated he had no objection to these two letters being sent. It was agreed that they will be sent, signed by Messrs. Sullivan and Schwind on the Committee's behalf.

(3) Report of subcommittee 3 - Trial court proceedings.

Mr. Howard stated that the subcommittee has not met since the last full Committee meeting.

Mr. Howard explained that the current IPI Pattern Jury Instructions 7C01-07, relating to the third phase of capital cases (the aggravation and mitigation or sentencing phase) contain the language used in a statute that has been superseded. The prior statute provided that the jurors should vote to impose the death penalty if they found no mitigating factors sufficient to preclude capital punishment. The new statute provides that the jurors should vote for the death penalty if, after weighing the aggravation and mitigation evidence, they believe death is the appropriate sentence. Mr. Howard said that there currently is a dispute as to whether the pattern instruction should use the word “consider” rather than “weigh,” and if “weigh” is used, whether that word should be defined. It was agreed that subcommittee 3 will study this matter and prepare a recommendation for consideration by the full Committee.

Mr. Howard said the subcommittee will also consider the matters of juror questionnaires for use in capital trials. It was also agreed that the subcommittee will consider Mr. Nora's proposal that, in capital cases, the budgets of the prosecution and defense should be considered and ruled upon by a judge other than the judge who is assigned to try the case.

(4) Report of subcommittee 4 - Post-conviction proceedings, DNA and general topics.

Ms. Bishop-Jenkins and Mr. Nora stated that the subcommittee met on May 9, 2008, to discuss the matters the subcommittee intends to focus on this year.

During this portion of the meeting, three employees of the Illinois State Police joined by teleconference: Col. Scott Giles, Deputy Director, Division of Forensic Services (DFS); Lt. Col. Carl Weitzel, Assistant Deputy Director, DFS; and Commander Donna Metzger, Forensic Sciences Command, who oversees the eight operational forensic science labs operated by the DFS, located in Carbondale, Chicago (the Forensic Science Center of Chicago), Fairview Heights (the Metro East Forensic Science Laboratory), Joliet, Morton, Rockford, Springfield and

Westchester. Ms. Metzger also serves as the DFS representative on the Illinois Laboratory Advisory Committee (ILAC), which was established by the Illinois General Assembly in 2005 to oversee and report on the activities of, and make recommendations regarding, public and private laboratories in Illinois, including forensic science labs. (20 ILCS 3981/5).

Mr. Giles stated that several of the DSF labs are in poor physical condition and should be replaced. The Carbondale lab facility is housed in a building that was constructed in 1986, which will be demolished when vacated by the lab. The Fairview Heights lab is now under construction, containing 60,000 square feet, at a cost of \$33.5 Million, funded through the IL Capital Development Board.

Mr. Giles stated that there are three non-ISP forensic labs in Illinois:

- The DuPage County Sheriff's Lab. John Collins, the chair of ILAC, is the CEO of this lab.
- The Northern IL Regional Police Crime Lab. This lab is available by subscription to IL law enforcement agencies.

- Independent Forensics of Illinois, a private lab located in Hillside, which specializes in DNA testing. The lab is not accredited by ASCLD.

Mr. Giles and Ms. Metzger stated that the annual reports of ILAC appear to have gone unheeded by the IL General Assembly, despite their calling for action on several urgent matters. The ILAC 2006 and 2007 Reports are attached as Appendices 6 and 7 to the full Committee's minutes of March 4, 2008, and the ISP FY 2007 DNA Testing Accountability Report is attached as Appendix 8 to those minutes. Ms. Bishop-Jenkins' memorandum of Mr. Collins' conversation with members of the subcommittee on April 7, 2008 is attached as Appendix 4 to the full Committee's minutes of April 8, 2008.

Mr. Sullivan pointed out that in Part III 9 of the Committee's Fourth Annual Report (pp. 41-48), several of these matters are discussed, and prompt legislative action urged.

It was agreed that the members of subcommittee 4 will consult with Mr. Giles, Ms. Metzger and Mr. Weitzel, and attend the next scheduled meeting of ILAC.

6. *Other Business.*

There was a discussion about the costs of capital punishment in Illinois. Mr. Sullivan referred to Part III 4 of the Committee's Fourth Annual Report (pp. 26-30), in which we explain why we are not capable of ascertaining costs with any degree of accuracy with the information now available to us. The information which we now have about the cost of the administration of the IL capital punishment system, and the impact of the reforms on those costs (see 20 ILCS 3929/2(b)(5)), are set forth in Part III 4 of the Fourth Annual Report, pages 26 to 30.

Messrs. Sullivan and Schwind pointed out that Elliot Slosar's article, titled "Costs of Capital Punishment in Illinois" (attached as Appendix 10 to the Committee's minutes of March 4, 2008), does not deal with the actual costs of the Illinois Capital Litigation Trust Fund or the costs of the Illinois capital punishment system. Rather, the numbers in Mr. Slosar's article relate to appropriations, not amounts actually spent.

During 2008, members of subcommittee 4 will continue to attempt to obtain accurate information about the impact of the reforms on the

costs associated with the administration of the IL capital punishment system, as directed by the Committee's enabling statute.

7. Next meeting – Thursday, June 12, 2008, at noon.

It was agreed that the next full Committee meeting will be held at noon on Thursday, June 12, 2008, at the office of the Illinois Criminal Justice Information Authority, 300 W. Adams, 7th Floor, Chicago, IL.

Thomas P. Sullivan
Chair
June 5, 2008

Attachments – Appendices 1 - 3.

DRAFT
**Results from the Capital Punishment
Reform Study Committee Public
Defender Survey**

Prepared for the
Illinois Capital Punishment Reform Study Committee

Prepared by
David E. Olson, Ph.D.

&

Jordan Boulger
Loyola University Chicago

May 13, 2008



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Distribution Method & Response Rate

- Introductory letter distributed by co-chairs Sullivan & Schwind
- Cover letter, survey & self-addressed, postage paid return envelope sent to 99 county Public Defenders
- By 4/14/08 responses received from 38 of the 99 county Public Defenders
- 4/14/08 second cover letter, survey & self-addresses, postage paid return envelope sent to non-responders
- By 5/12/2008 a total of 55 of the 99 county Public Defenders had responded



Response Rates, by SFY 2003-2007

Volume of Murder Convictions

- Counties with 0 murder convictions
 - Surveys returned from 13 of the 27 counties (48.4%)
- Counties with 1 to 10 murder convictions
 - Surveys returned from 33 of the 61 counties (54%)
- Counties with 11 or more murder convictions
 - Surveys returned from 9 of the 14 counties (64.3%)



Staffing & Capital Litigation Trial Bar

- Overall, 19% of the total APDs employed by respondent agencies were members of the CLTB;
- Varied by volume of homicide convictions:
 - Among the counties with 0 murder convictions, 40% had no APDs, and 14% of the APDs were members of the CLTB
 - Among counties with 1 to 10 murder convictions, 29% had no APDs, and 10% of the APDs were members of the CLTB
 - Among counties with 11 or more murder convictions, all had APDs, and 19% of the APDs were members of the CLTB



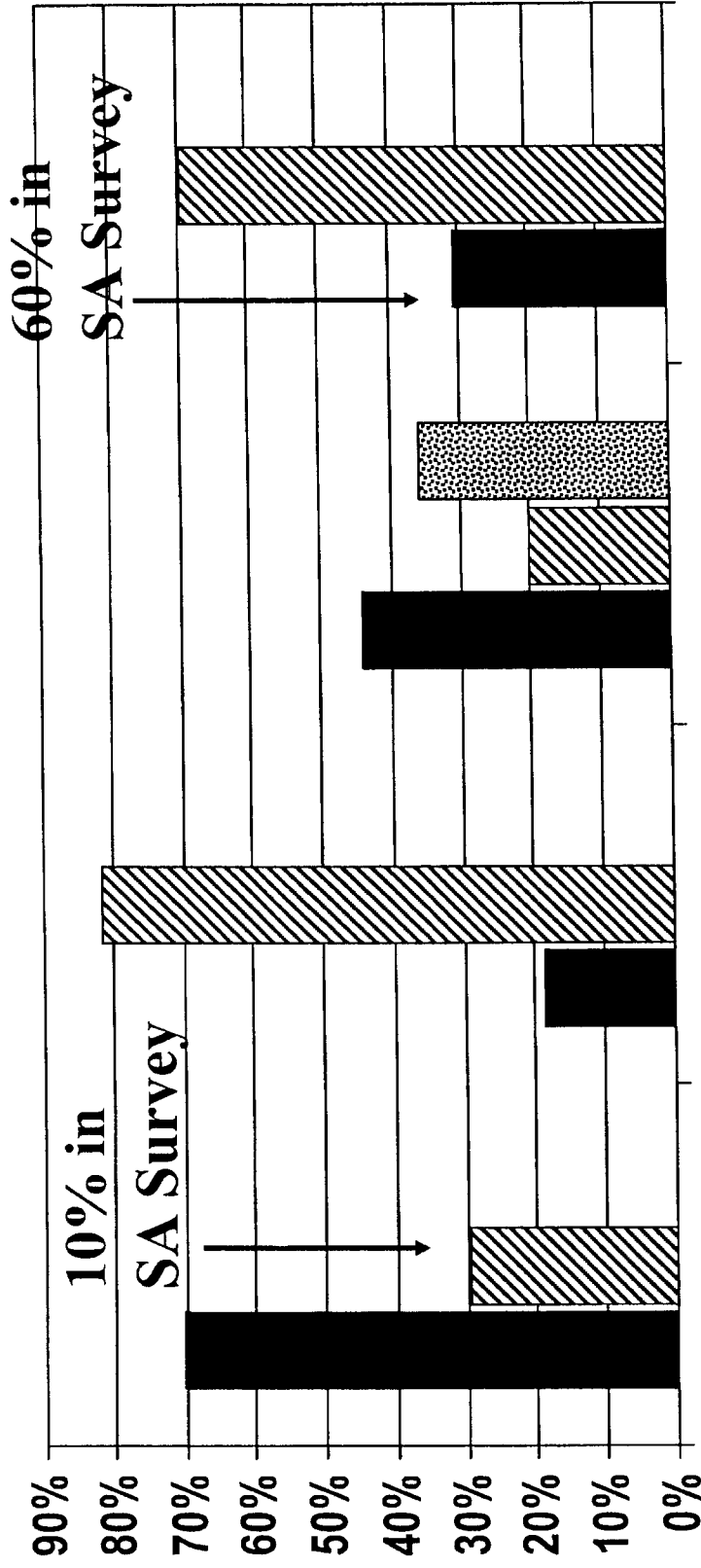
Questions 3 through 6 on Section I of the Public

Defender Survey

- Q1.3) Has the *training related to capital litigation* provided to the staff in your office met the needs of your office? (Check 1)
 - Yes
 - No
 - If no, what additional training for members of the Capital Litigation Trial Bar do you believe is needed?
- Q1.4) Have any public defenders in your office received any specialized training on the issue of mental retardation since 2005? (Check 1)
 - No
 - Yes
 - If yes, how would you describe the *quality* and *applicability* of the training provided?
- Q1.5) Are the *number* of defense attorneys (either private or within the Public Defender's Office) who are members of the Capital Litigation Trial Bar sufficient to effectively handle death-eligible murder cases in your jurisdiction? (Check 1)
 - No
 - Yes
 - Don't Know
- Q1.6) Are there sufficient resources available to your office to handle *death-eligible* murder cases? (Check1)
 - Yes
 - No
 - If no, what additional resources do you believe are needed for your office?



Questions 3 through 6 on Section I of the Public Defender Survey



■ Yes ■ No ■ Don't Know
 Q #1.3, Capital Lit. Training Met Needs Q #1.4, Staff Received Specialized Training on Mental Retardation
 Q #1.5, Sufficient Number of Defense Attorneys Q #1.6, Sufficient Resources to Handle Death Penalty Cases



Questions 1 and 2, Section II on Public Defender

Survey

- Q2.1) Since the statutory requirement took effect in July 2005 requiring complete electronic recordings of custodial interviews of murder suspects, were any *technical problems/failures* experienced with your office's receipt/review of recorded interrogations? (Check 1)
 Not applicable/have not had any murder cases since the recording requirement
 No, no technical problems/failures have not been experienced.
 Yes, technical problems/failures have been experienced.

If yes, please provide a brief explanation of the problem(s) experienced.

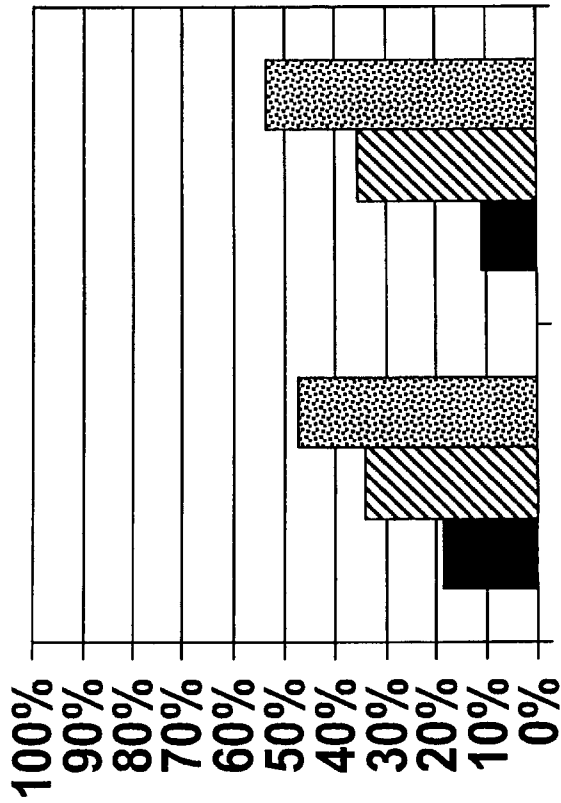
- Q2.2) Since the recording requirement took effect in July 2005, were any technical problems/limitations experienced with your office's *presentation of this evidence at trial* (i.e., courtrooms not equipped with necessary equipment, audio could not be heard by jury, etc)? (Check 1)
 Not applicable/have not had any murder cases since the recording requirement.
 No
 Yes

If yes, please provide a brief explanation of the problem(s) experienced.

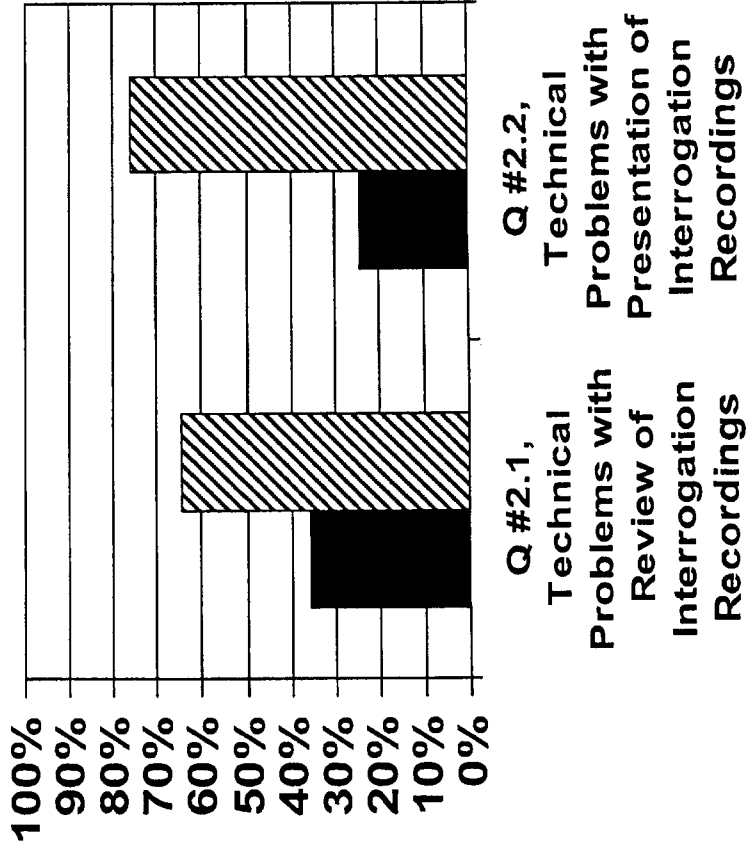


Questions 1 and 2, Section II on Public Defender Survey

All Cases



Excluding Not Applicable



Q #2.1, Technical Problems with Review of Interrogation Recordings

Q #2.2, Technical Problems with Presentation of Interrogation Recordings

■ Yes ▨ No ▩ N/A



Questions 3 and 5, Section II on Public Defender

Survey

- Q2.3) In your opinion, has the mandatory recording of custodial interrogations in murder cases changed the way *detectives* have conducted interrogations due to the knowledge that jurors will potentially view or hear these taped interrogations? (Check 1)

Not applicable/have not had any murder cases since the recording requirement.

Don't Know

No

Yes

If yes, please explain how (either positively or negatively) you believe this has changed their interrogation techniques.

- Q2.5) Has the availability of recorded interrogations/confessions in murder cases influenced decisions made by the State's Attorney's Office in your county regarding whether to seek the death penalty or not? (Check 1)

Not applicable/have not had any murder cases since the recording requirement.

Don't Know

No, has not influenced the decision regarding whether or not to seek the death penalty.

Yes, has influenced the decision regarding whether or not to seek the death penalty.

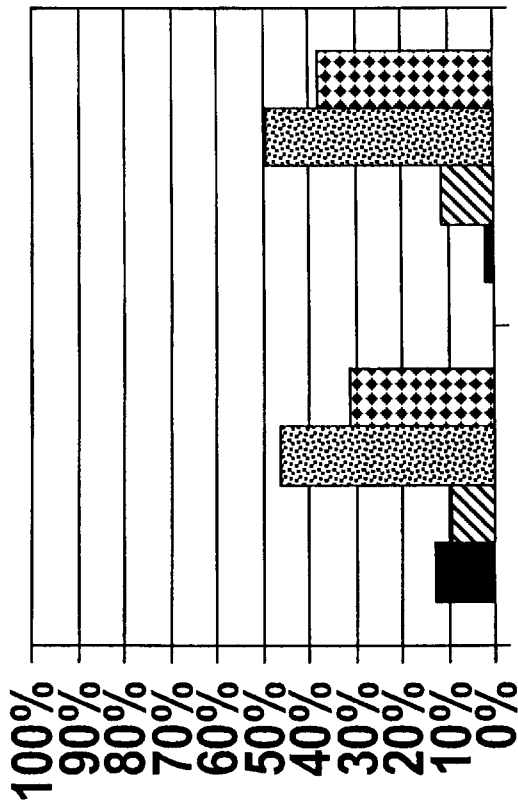
If yes, please explain how the availability of recorded interrogations/confessions influenced this

decision. Please provide specific examples.

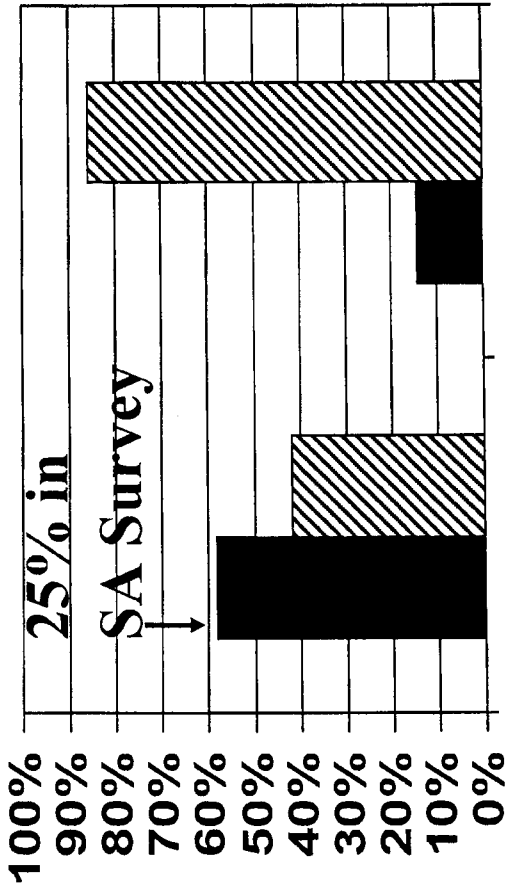


Questions 3 and 5, Section II on Public Defender Survey

All Cases



Excluding Not Applicable

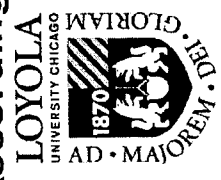


Q #2.3,
Changes in Interrogation Techniques due to Mandatory Recording

Q #2.5,
Changes in Decision to Seek Death due to Mandatory Recording

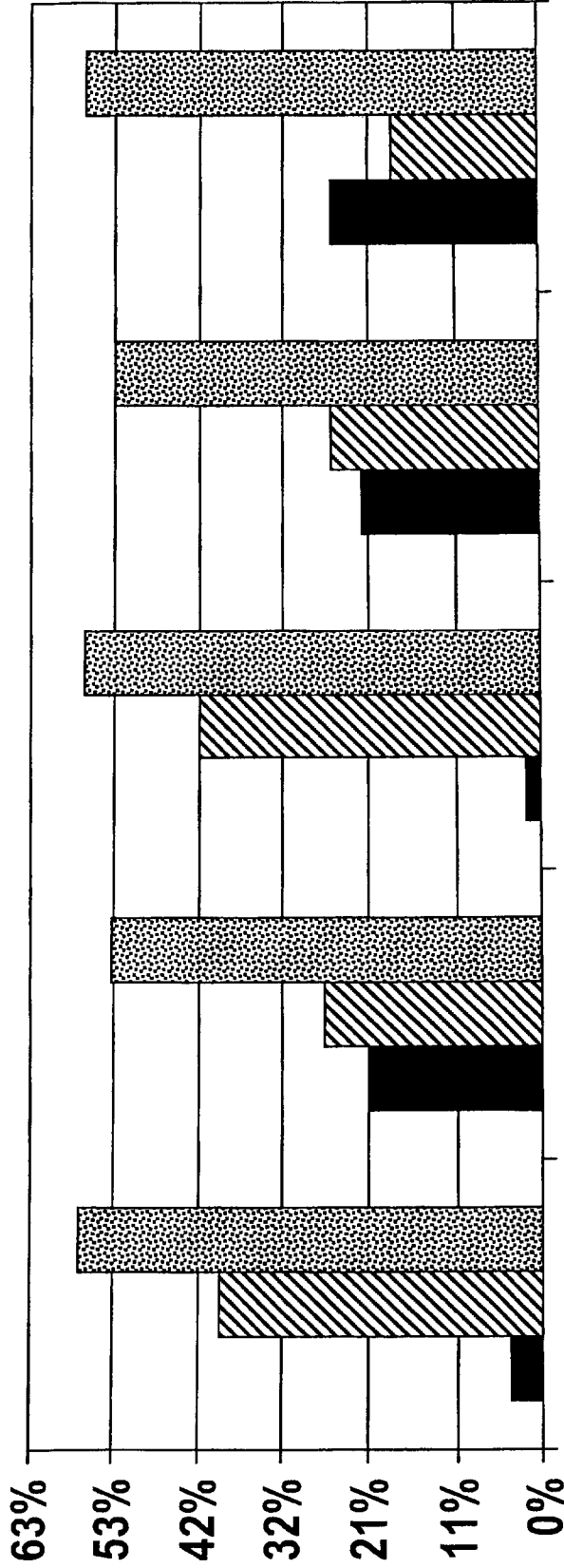
Q #2.3,
Changes in Interrogation Techniques due to Mandatory Recording

Q #2.5,
Changes in Decision to Seek Death due to Mandatory Recording



Yes
 No
 N/A
 Don't Know

Questions 4, 6, 7, 8 and 9, Section II on Public Defender Survey



Yes
 No
 N/A



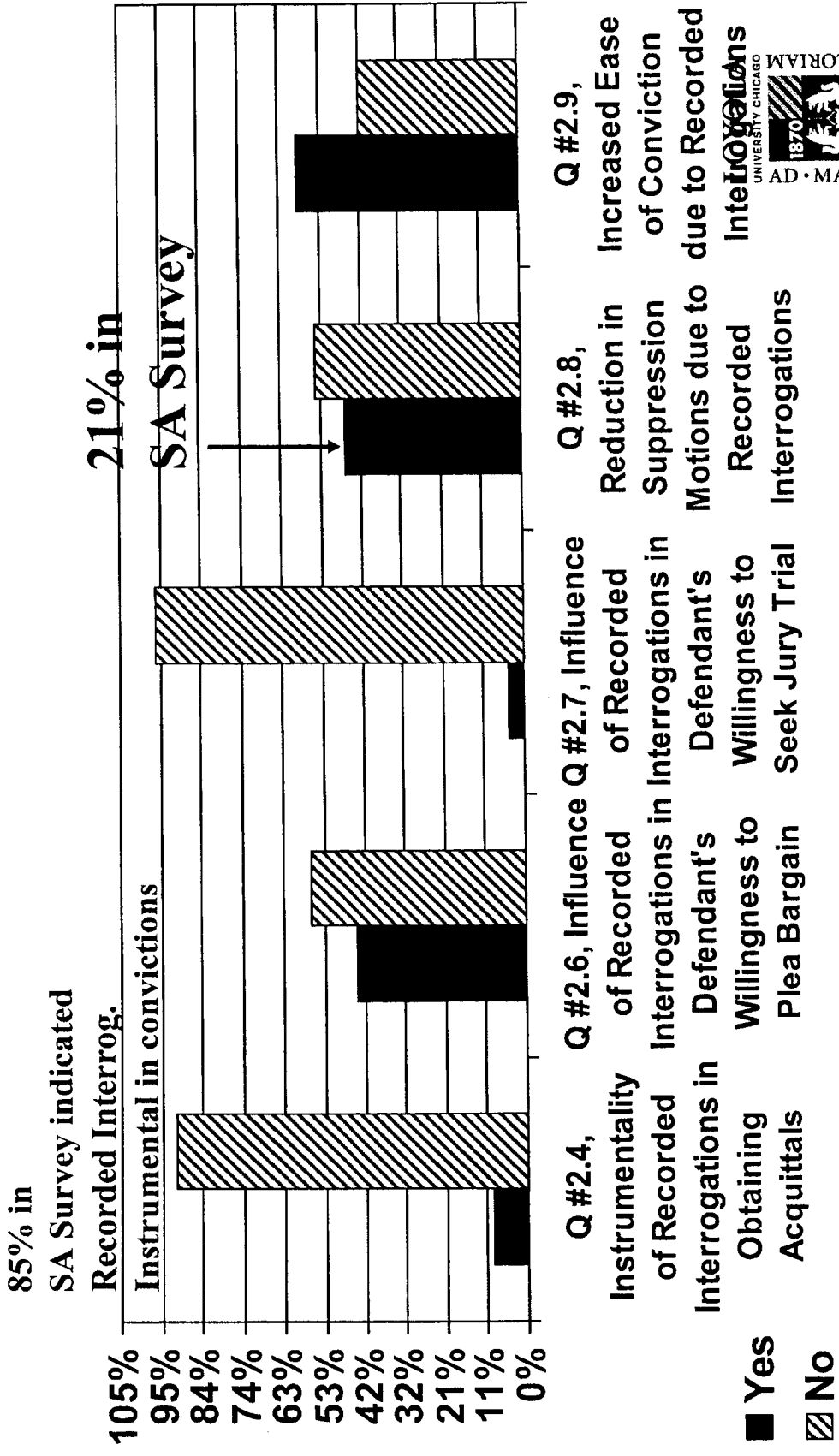
Questions 4, 6, 7, 8 and 9, Section II on Public

Defender Survey

- Q2.4) Have recorded interrogations been instrumental in obtaining *acquittals* in murder cases? (Check 1)
 Not applicable/have not had any murder cases since the recording requirement.
 No
 Yes
- Q2.6) In your opinion, has the existence of recorded custodial interrogations/confessions in murder cases influenced the willingness of the defendant to plea bargain? (Check 1)
 Not applicable/have not had any murder cases since the recording requirement.
 No, has not influenced defendant willingness to plea bargain.
 Yes, has influenced defendant willingness to plea bargain.
If yes, please explain how or give specific examples.
- Q2.7) In your opinion, has the existence of recorded custodial interrogations/confessions in murder cases influenced the willingness of the defendant to *seek a jury trial*? (Check 1)
 Not applicable/have not had any murder cases since the recording requirement.
 No, has not influenced defendant to seek a jury trial.
 Yes, has influenced defendant to seek a jury trial.
If yes, explain how and give specific examples.
- Q2.8) In your opinion, have electronic recordings of murder interrogations reduced the number of motions to suppress confessions or admissions owing to failure to give *Miranda* warnings, coercion, or use of improper interview tactics? (Check 1)
 Not applicable/have not had any murder cases since the recording requirement.
 No, has not reduced motions to suppress confessions or admissions.
 Yes, has reduced motions to suppress confessions or admissions.
If yes, please give specific examples.
- Q2.9) In your opinion, have electronic recordings made it easier for *prosecutors* to obtain convictions in murder cases? (Check 1)
 Not applicable/have not had any murder cases since the recording requirement
 No, has not made it easier for prosecutors to obtain convictions in murder cases.
 Yes, has made it easier for prosecutors to obtain convictions in murder cases.
If yes, please give examples of how they were used to obtain convictions.



Questions 4, 6, 7, 8 and 9, Section II on Public Defender Survey – Excluding Not Applicable

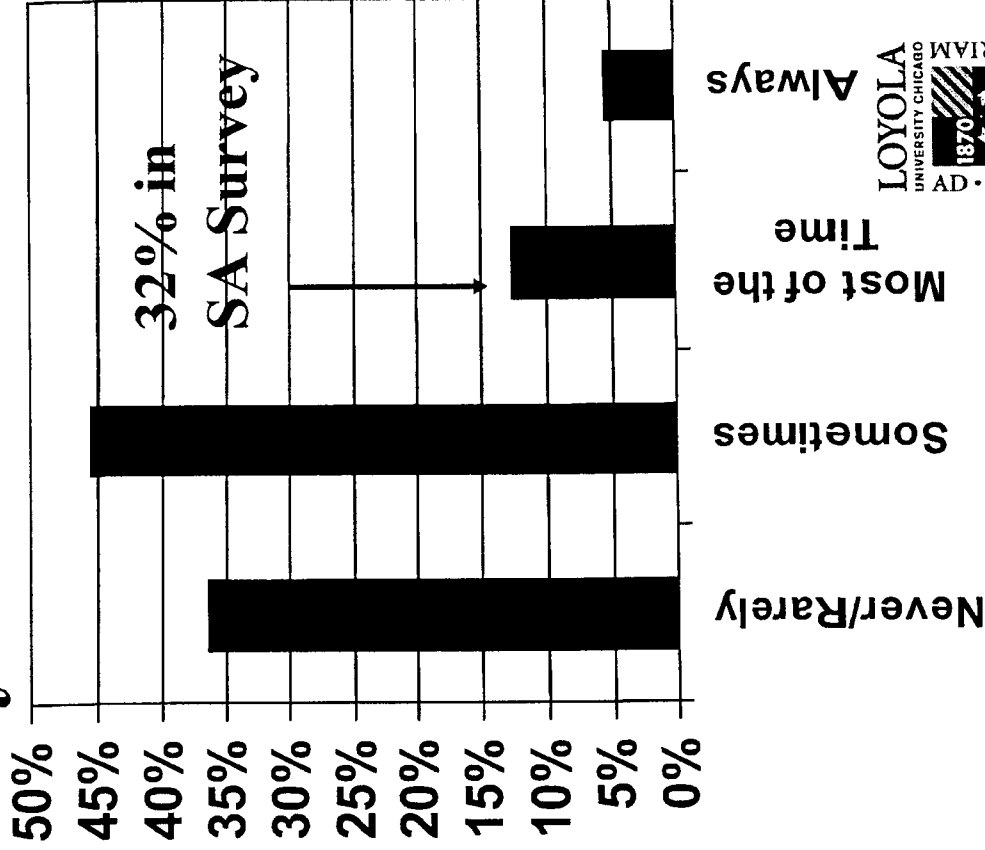


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Question 10, Section II on Public Defender Survey

- Q2.10) Since the statutory requirement took effect requiring electronic recordings of custodial interrogations of murder suspects, has your office been provided with recorded interrogations/confessions of any **NON-MURDER** cases? (Check 1)

Never/Rarely _____
 Sometimes _____
 Most of the time _____
 Always _____



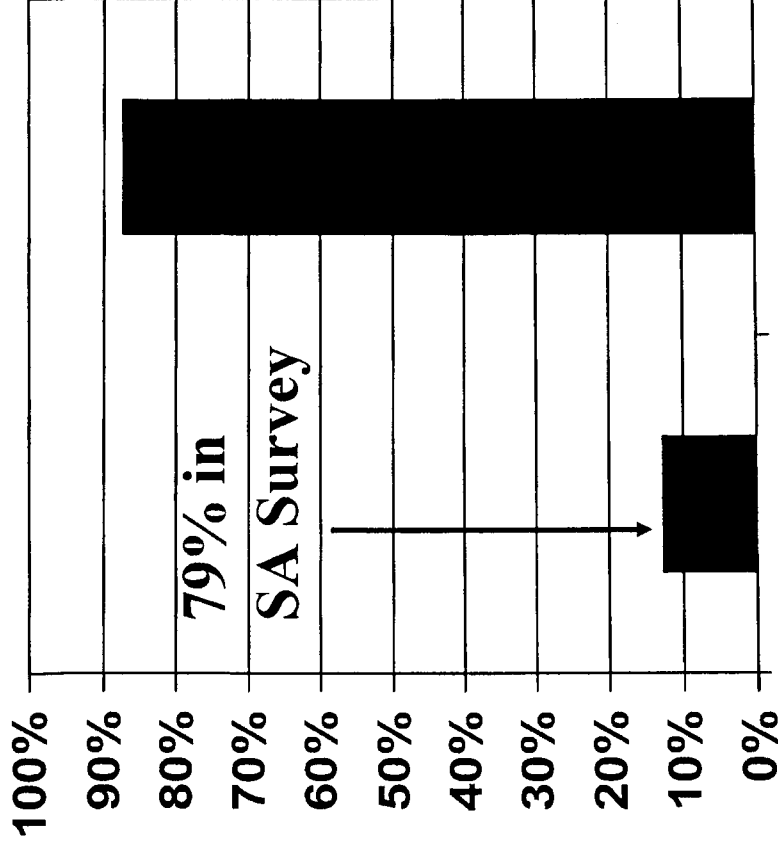
Question 11, Section II on Public Defender Survey

- Q2.11) Do you believe that the requirement of complete electronic recordings of custodial interrogations should be expanded to include additional felony offenses? (Check 1)

___ No

___ Yes

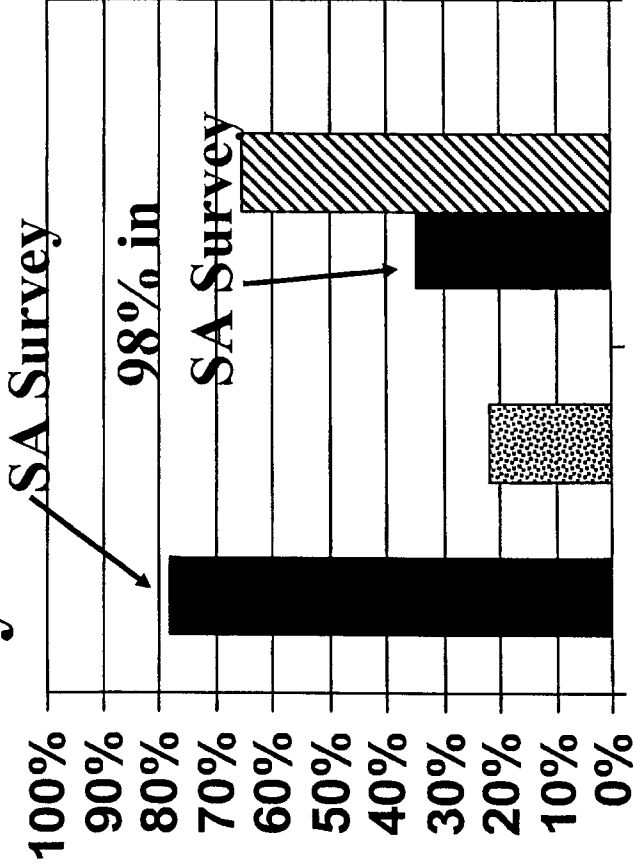
If yes, what other types of felony offense interrogations do you believe should be recorded and why?



Questions 1 and 2, Section III

on Public Defender Survey

30% in



- Q3.1) Do you prefer the use of administrators of police line-ups who do not know which member of the line-up is the suspect, the so-called "blind" administrator method, if one is reasonably available? (Check 1)

Yes, prefer "blind" administrator methods for police line-ups.
 No, do not prefer "blind" administrator methods for police line-ups.

Do not have any opinion.

- Q3.2) Are you satisfied with the current procedures used by police departments for eyewitness identification in murder cases? (Check 1)

Yes

No

If no, how do you believe line-up procedures in murder cases could be improved?

Q #3.1, Prefer "Blind Administrator" Method
 Q #3.2, Satisfied with Current Eyewitness ID Techniques

Yes
 No
 No Opinion



Question 1 & 3, Section IV, Questions 10 & 11, Section V on Public Defender Survey

- Q4.1) Have you experienced any problems with police departments in your jurisdiction complying with the requirement that they provide all investigative files, materials, field notes, etc. to your office in every homicide case? (Check 1)

Not applicable/have not had any murder cases since the requirement.

No, there have not been any problems with police departments complying.

Yes, there have been problems with police departments complying.

If yes, please describe the problems experienced (i.e., handwritten reports difficult to work with, incompatible/lacking equipment to review recorded custodial interrogations, timeliness, missing pages/documents, etc).

- Q4.3) In the past 4 years, have you experienced delays in obtaining forensic lab results for murder cases that have delayed discovery or court proceedings?

Not applicable/have not had any murder cases in the past 4 years.

No

Yes

- Q5.10) Has your office experienced delays in receiving results from forensic laboratories in *death penalty* cases? (Check 1)

No

Yes

If yes, please explain or give examples.

- Q5.11) Are you satisfied with the quality of the work product of forensic laboratories in *penalty* cases? (Check 1)

Yes

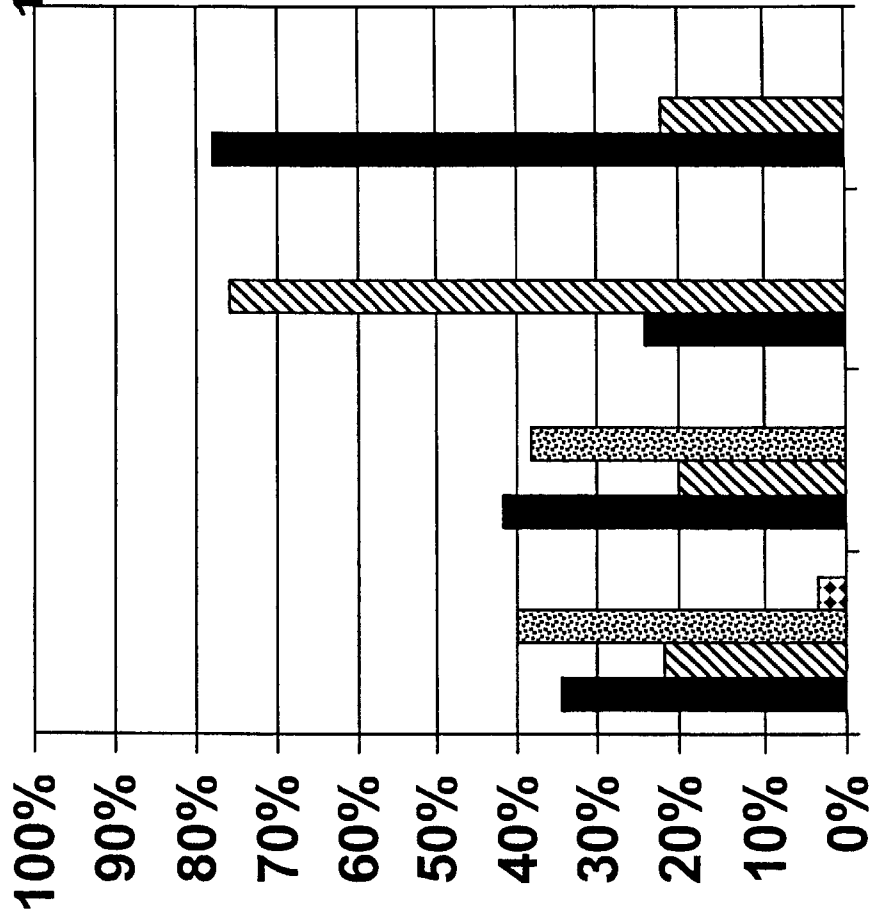
No

If no, please explain and give examples

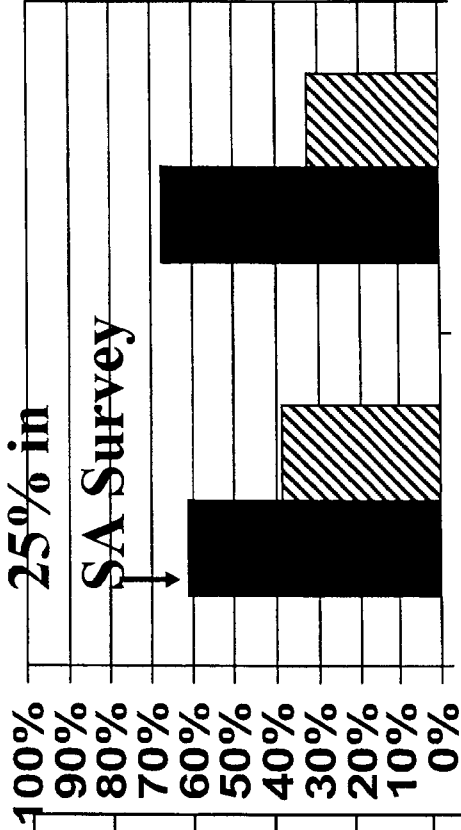


Question 1 & 3, Section IV, Questions 5 & 11, Section V on Public Defender Survey

All Cases



Excluding Not Applicable



Q #4.1, Experienced Problems with Police Depts. Providing Files, Materials, Notes, Etc.

Q #4.3, Experienced Delays in Obtaining Forensic Results in Murder Cases



■ Yes ▨ No ▩ N/A ▧ Don't Know

Question 1, 2, & 5, Section V on Public Defender

Survey

- Q5.2) In general, do you believe that 120 days from arraignment is sufficient time for the State's Attorney's Office to determine if the death penalty will be sought (i.e., a certificate to seek the death penalty is filed)? (Check 1)

___ No

___ Yes

- Q5.3) Have you had any specific cases/experiences where the 120 days was not sufficient time for the State's Attorney's Office to determine if the death penalty will be sought? (Check 1)

___ Not applicable/have not had any death-eligible cases since the 120 day requirement was implemented

___ No

___ Yes

If yes, please explain the circumstances where 120 days was not sufficient.

- Q5.5) Do you believe that allowing depositions in capital cases improves the processing of these cases? (Check 1)

___ Not applicable/ have not had any capital cases since 2003.

___ No, depositions do not improve the processing of capital cases.

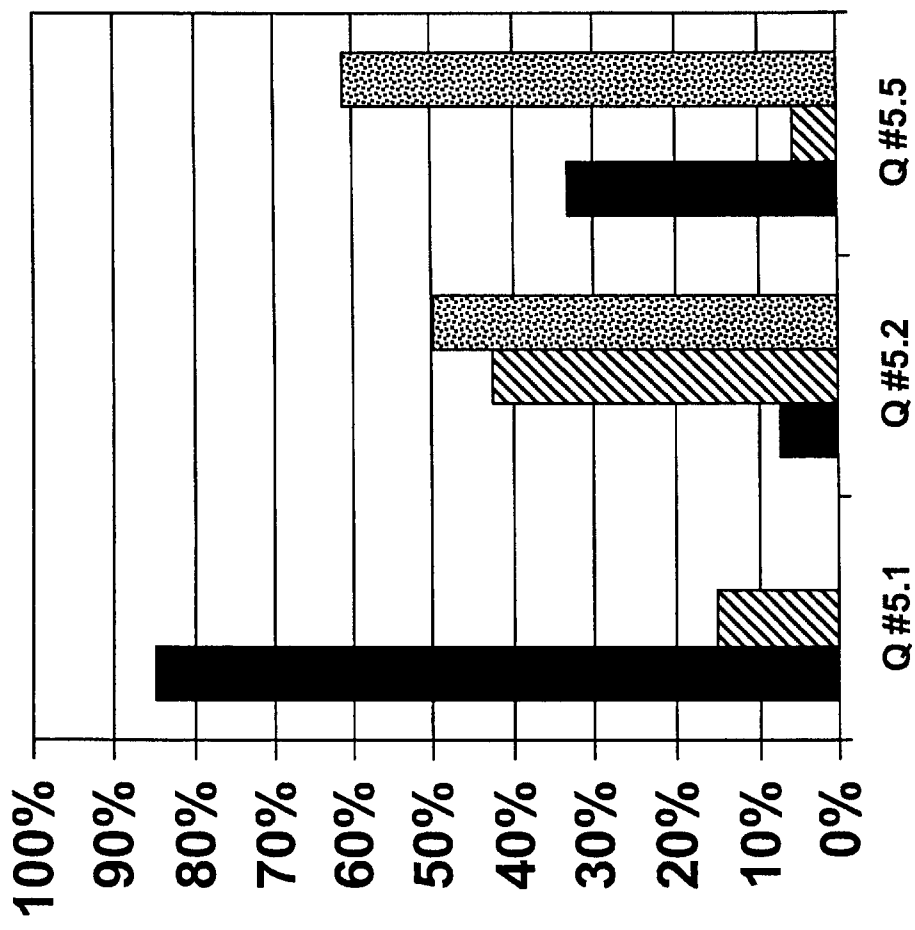
___ Yes, depositions do improve the processing of capital cases.

If yes or no, please explain why or why not.



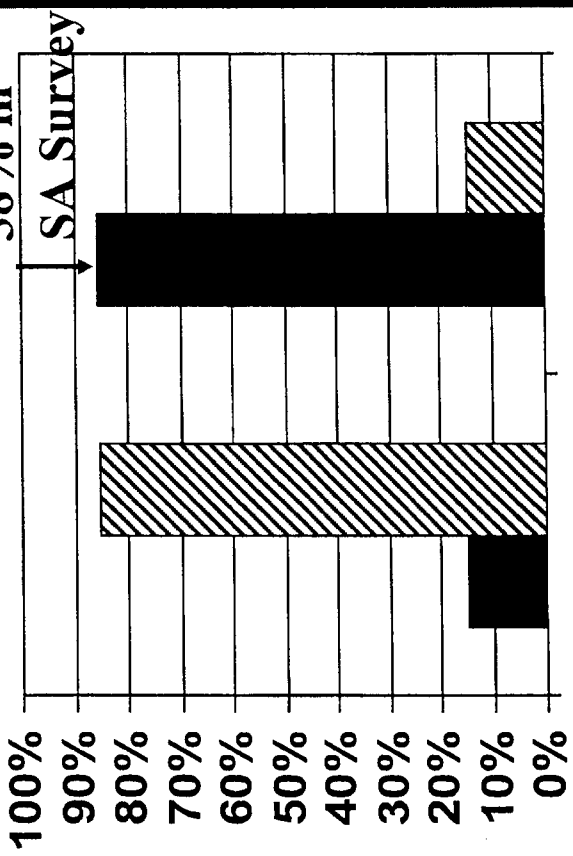
Question 1, 2, & 5, Section V on Public Defender Survey

All Cases



■ Yes ■ No ■ N/A

Excluding Not Applicable
38% in
SA Survey



Q #5.2, Cases where 120 Days was Insufficient
Q #5.5, Allowing Depositions Improves Processing of Capital Cases



Questions 3 & 4, Section V, and Question 4,

Section I on Public Defender Survey

- Q5.3) Do you believe that the new mitigating factor for mental and physical abuse or for diminished mental capacity has changed your office's decision to file a certificate to seek capital punishment? (Check 1)

___ Not applicable/ have not had any death-eligible cases since 2003.

___ No

___ Yes

- Q5.4) Are you satisfied with the factors utilized in the Illinois statute, and the process used in the court, to determine mental retardation? (Check 1)

___ Yes

___ No

If no, what aspect are you not satisfied with?

- Q1.4) Have any public defenders in your office received any specialized training on the issue of mental retardation since 2005? (Check 1)

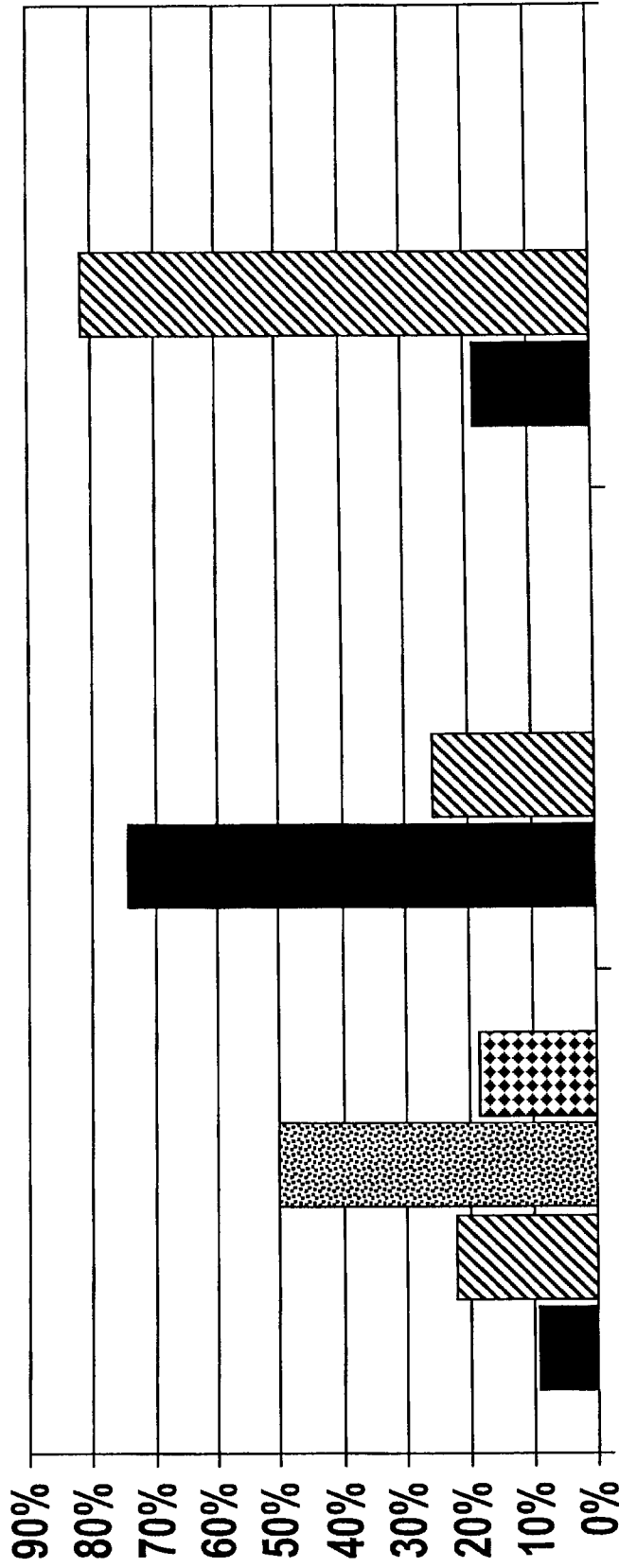
___ No

___ Yes

If yes, how would you describe the *quality* and *applicability* of the training provided?



Questions 3 & 4, Section V, and Question 4, Section I on Public Defender Survey



Q #5.3, Mitigating Factor for Mental/Physical Abuse Q #5.4, Satisfied with Factors/Process to Determine Mental Retardation Q #1.4, Defenders with Specialized Training in Mental Retardation Issues

Yes
 No
 N/A
 Don't Know

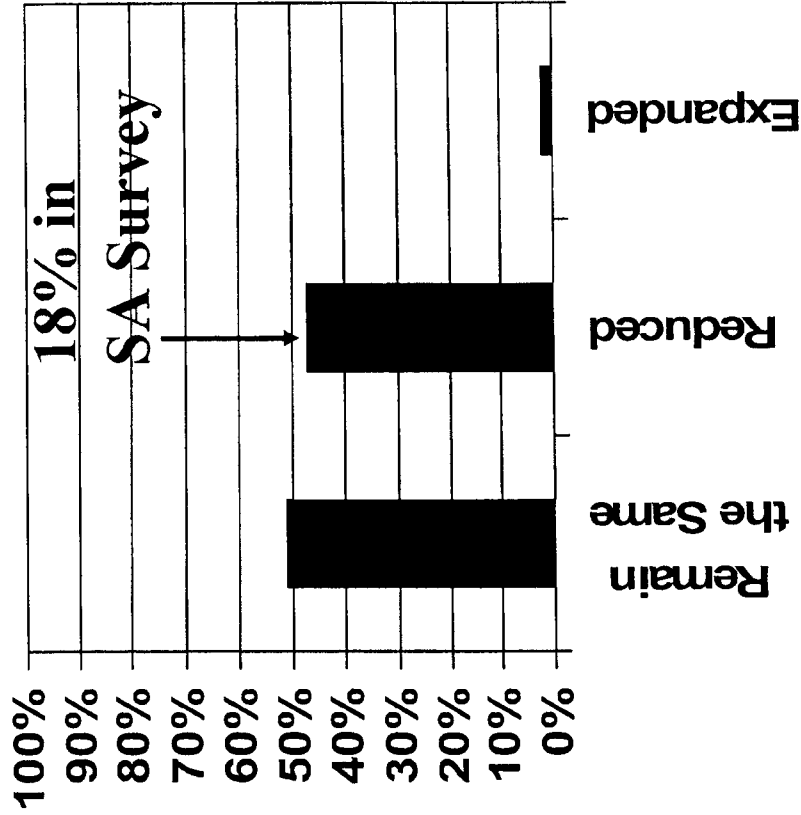


Question 6, Section V on Public Defender Survey

- Q5.6) Do you believe that the number of factors that make a homicide case eligible for the death penalty should remain the same, be reduced or be expanded? (Check 1)

_____ Remain the same
_____ Reduced
_____ Expanded

If reduced or expanded, what specific changes do you believe should be made?



Questions 7 & 8, Section V on Public Defender

Survey

- Q5.7) Do you believe that the *cost* to your County of pursuing the death penalty reduces the likelihood that it will be sought? (Check 1)

_____ No, the cost to the county does not reduce the likelihood that the death-penalty will be sought.

_____ Yes, the cost to the county does reduce the likelihood that the death-penalty will be sought.

- Q5.8) *Should* the cost of pursuing the death penalty be considered when determining whether it should be sought? (Check 1)

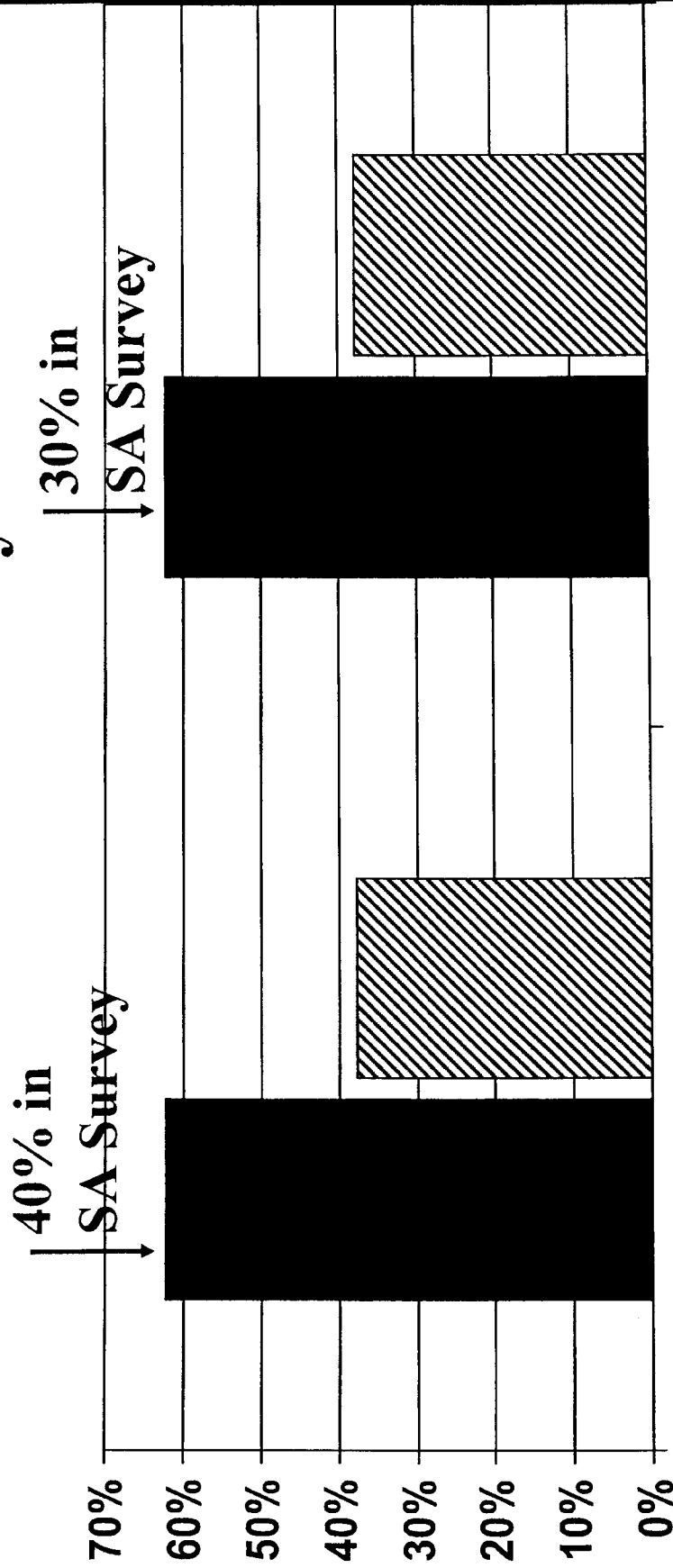
_____ No, the cost should not be considered.

_____ Yes, the cost should be considered.



Questions 7 & 8, Section V on Public Defender Survey

Defender Survey



Q #5.7, Does Cost of Pursuing Death Reduce Likelihood of Death Being Sought Q #5.8, Should Cost of Pursuing Death be Considered in Determining if Death is Sought

Yes
 No

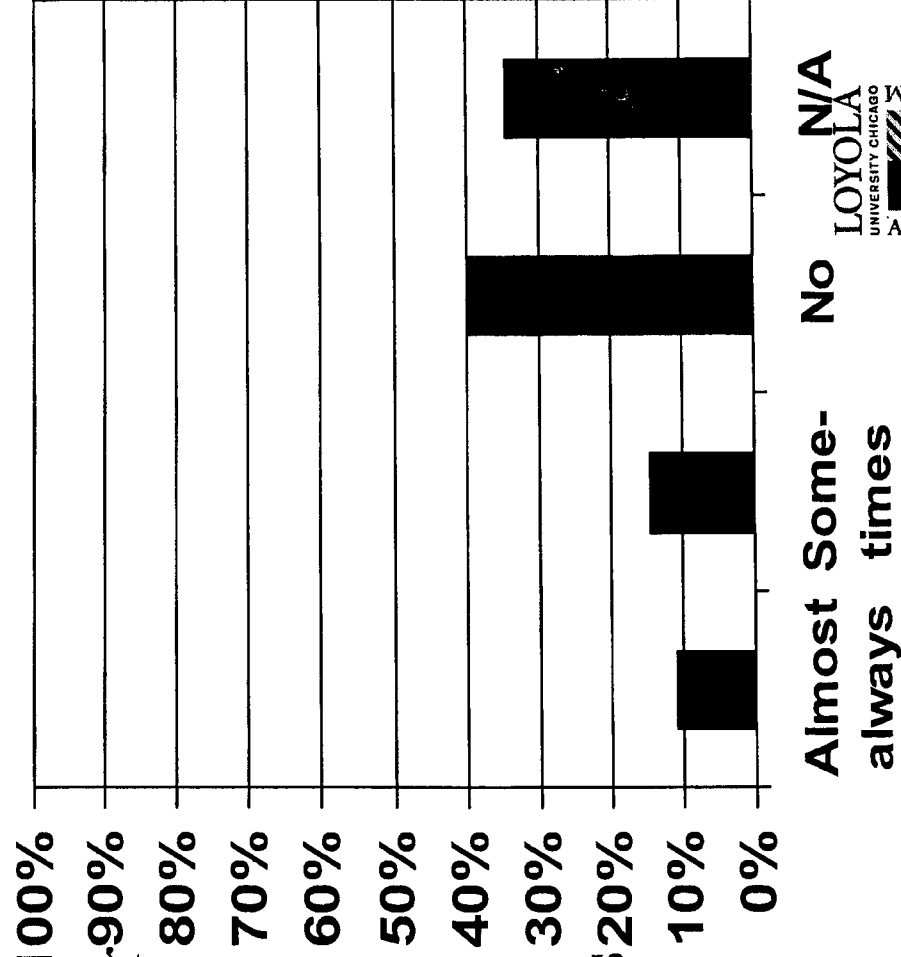


Question 9, Section V on Public Defender Survey

Survey

- Q5.9) Does the State's Attorney's Office in your county confer with your office prior to their decision to file a capital certificate?

_____ Not applicable/have not had any murder cases since 2003.
 _____ Yes, almost always
 _____ Yes, sometimes
 _____ No



Question 1, Section VI on Public Defender Survey

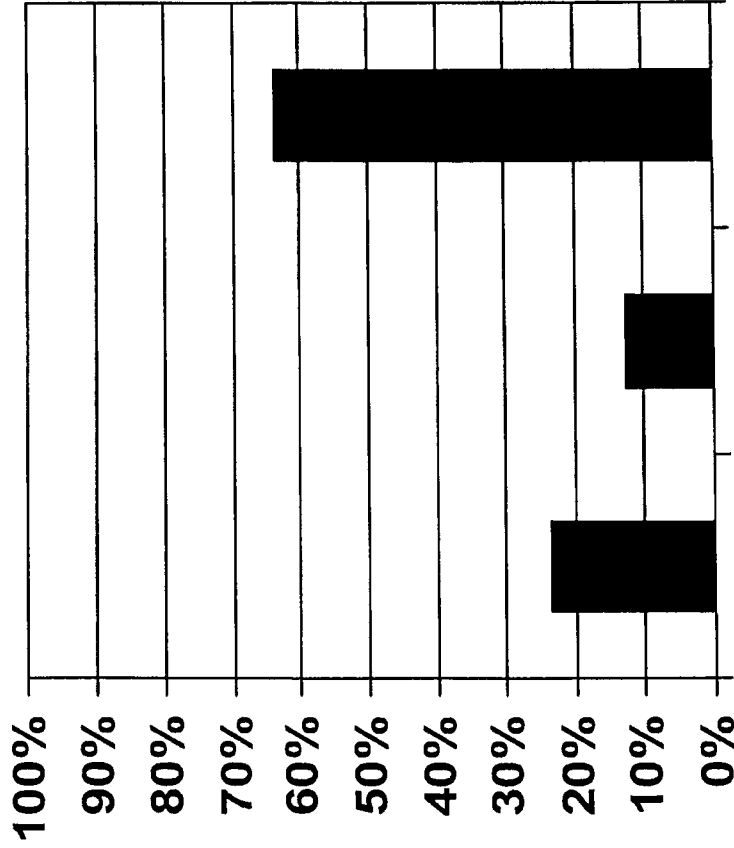
- Q6.1) Are juror questionnaires--questions proposed by the defense and prosecution, reviewed by the court to reach a consensus, and given to prospective jurors prior to *voir dire*—used in *capital cases* in your county? (Check 1)

Not applicable/have not had any capital cases involving a jury in the past 4 years

No

Yes

If yes, how are they created and do you find them useful?



Yes No N/A



Questions 2-5, Section VI on Public Defender

Survey

- Q6.2) Are case management conferences held in *every* murder case that are *potential* death-penalty cases (i.e., a certificate of intent to seek death has not yet been formally filed) in your jurisdiction? (Check 1)

___ Not applicable/ have not had any death-eligible cases since 2003.

___ No

___ Yes

If yes, please explain the process used by the court to make this determination/decision to hold case management conferences in potential death-penalty cases.

- Q6.3) Do you believe case management conferences for death-penalty cases should be held in *open court*? (Check 1)

___ No, they should not be held in open court.

___ Yes, they should be held in open court.

- Q6.4) Do you believe these case management conferences for death-penalty cases should be on the *court record*? (Check 1)

___ No, they should not be on the court record.

___ Yes, they should be on the court record.

- Q6.5) Do you believe these *case management conferences* for death-penalty cases have improved the processing of death-penalty cases? (Check 1)

___ Not applicable/ have not had any death-penalty cases since 2003.

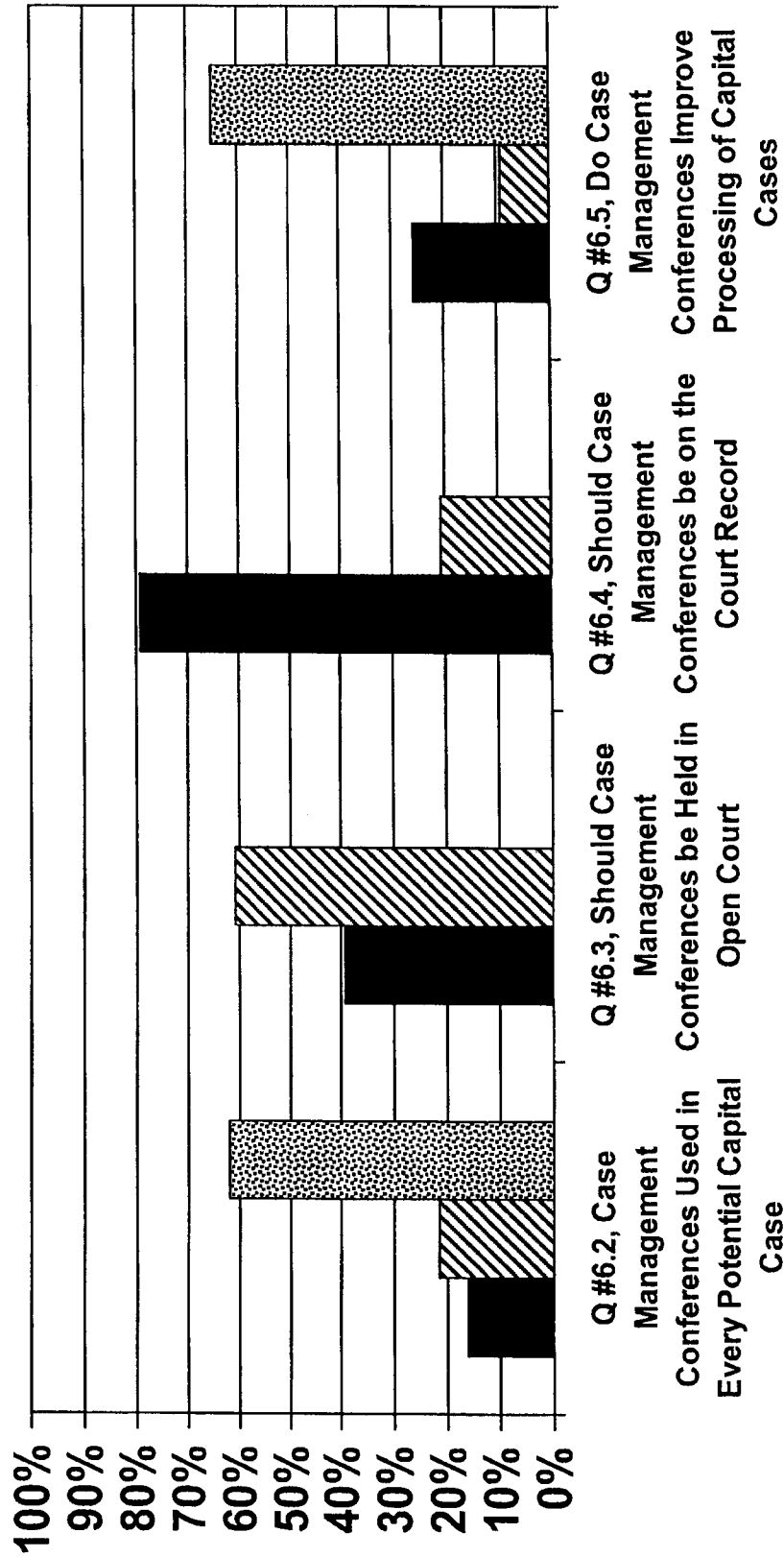
___ No, have not improved the processing of death-penalty cases.

___ Yes, have improved the processing of death-penalty cases.

If yes or no, please explain why or why not.



Questions 2-5, Section VI on Public Defender Survey



Yes
 No
 N/A



Question 6, Section VI on Public Defender Survey

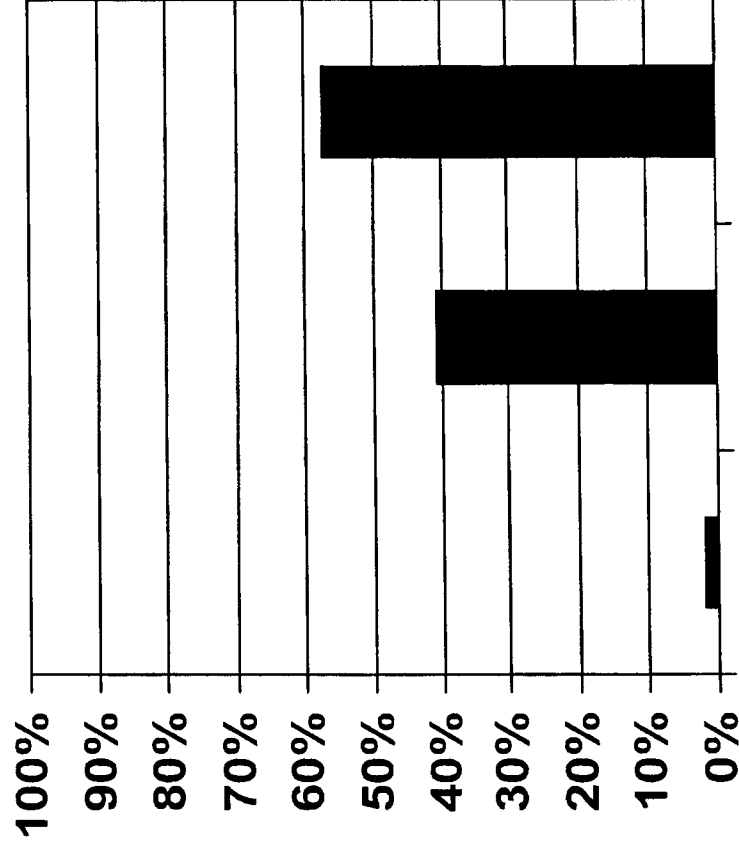
- Q6.6) Has your office had experience with the statutory requirement of a pretrial hearing concerning the reliability of testimony of informants (i.e., “jailhouse” informants) in a capital case? (Check 1)

____ Not applicable/ have not had any murder cases since 2003.

____ No

____ Yes

If yes, what are your perceptions of this hearing?



Yes

No

N/A



Questions 7 & 8, Section VI on Public Defender Survey

• Q6.7) Do you believe that the trial judges in capital cases tried in your county since 2003 have sufficient experience and competence to handle these cases? (Check 1)

_____ Not applicable/ have not had any capital cases since 2003.

_____ Yes

_____ No

• Q6.8) Do you believe that the prosecutors in capital cases tried in your county since 2003 have sufficient experience and competence to handle these cases? (Check 1)

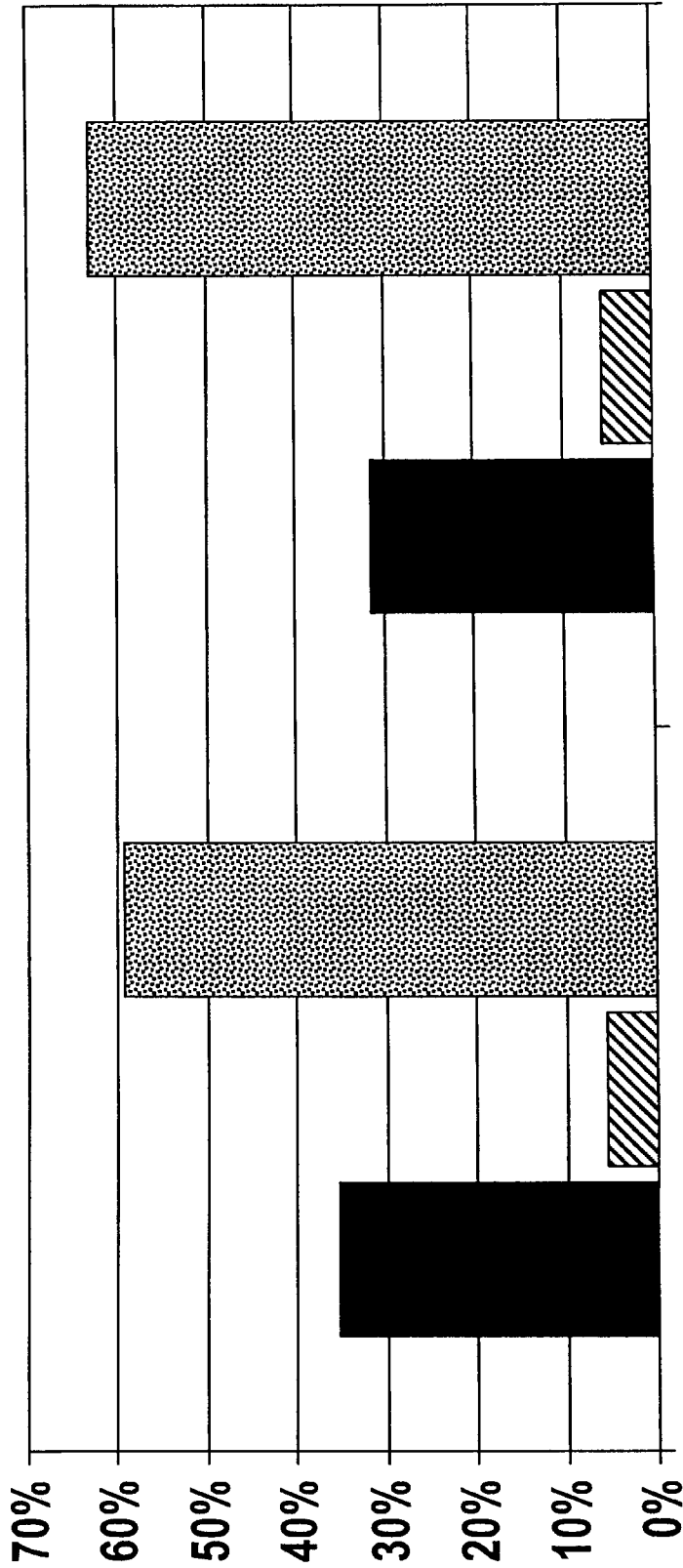
_____ Not applicable/ have not had any capital cases since 2003.

_____ Yes

_____ No



Questions 7 & 8, Section VI on Public Defender Survey



Q #6.7, Trial Judges in Capital Cases have Sufficient Experience and Competence to Handle these Cases Q #6.8, Prosecutors in Capital Cases have Sufficient Experience and Competence to Handle these Cases

Yes
 No
 N/A



Question 9, Section VI, on Public Defender Survey

- Q6.9) Do you feel that there is a need for pattern jury instructions in death-eligible cases?

_____ Yes

_____ No

**54 out of 55 Respondents (98%) Indicated
“Yes”**





**Capital Punishment Reform Study Committee Public
Defender Office Administrator Survey**

Survey Number: _____

I. Office Staffing & Resources

1) How many full-time Assistant Public Defenders were employed by your office as of January 1, 2008?
Number = _____

#20109 – I am the only PD and I am not full time.

#20148 – I am a contract employee

#20024 – In _____ County the APD position is part time

2) How many of these full-time Assistant Public Defenders are members of the Capital Litigation Trial Bar?
Number = _____

#20109 – 0, but I am a member of the CLTB – lead counsel

#20106 – The part time PD is a member of the CLTB

3) Has the *training related to capital litigation* provided to the staff in your office met the needs of your office?
(Check 1)

_____ Yes

_____ No

If no, what additional training for members of the Capital Litigation Trial Bar do you believe is needed?

#20071 – We have had no training but at this point any capital cases would be represented by appointed members of the CLTB

#20038 – There has been no training thus far

#20095 – N/A, no attorney in my office is a member of the CLTB

#20048 – More extensive treatment of DNA and psych issues

#20164 – PD is certified as lead counsel

#20148 – Haven't had any

#20183 – I attended at least 4 capital defense seminars. The content was similar and not particularly helpful. I tried a capital case in the spring of 2007. I spent time beyond belief in preparation studying DNA tests, conducting depositions, and meeting with experts. It would be unlikely that training could ever certify an attorney, who has not done a capital case, competent to try one

#20033 – I haven't received the training

#20170 – I am no longer certified and don't intend to re-certify

#20031 – One assistant is working towards the membership in the trial bar

4) Have any public defenders in your office received any specialized training on the issue of mental retardation since 2005? (Check 1)

_____ No

_____ Yes

If yes, how would you describe the *quality* and *applicability* of the training provided?

- #20032 – Good quality but limited applicability so far.
- #20038 – There has been no training
- #20174 – helpful
- #20198 – N/A, no training has been provided
- #20062 – The PD and 2 assistants attended a seminar that had a couple of hours on mental issues. Thought the quality was low as it was very generalized
- #20164 – It was good and applicable; it was part of Capital Litigation training
- #20118 – One or two breakout sessions of death penalty seminars attending by the head PD
- #20168 – Multiple trainings created by this office and many national seminars/conferences that have been very helpful and informative
- #20031 – Quality ok, applicability marginal, instructors need to be knowledgeable about the interphase of law and psychology
- #20176 – Fine, involve only a small percentage of training

5) Are the *number* of defense attorneys (either private or within the Public Defender’s Office) who are members of the Capital Litigation Trial Bar sufficient to effectively handle death-eligible murder cases in your jurisdiction? (Check 1)

- No
- Yes
- Don’t Know

- #20114 – Only one attorney is 1st chair certified
- #20038 –we have one private attorney in-county and one from [neighboring state] who is licensed in Illinois
- #20198 – There are no PD’s certified in _____ County
- #20170 – We haven’t had a murder in this county [in decades]
- #20031 – [there is only 1]

6) Are there sufficient resources available to your office to handle *death-eligible* murder cases? (Check1)

- Yes
 - No
- If no, what additional resources do you believe are needed for your office?

- #20034 – 1. investigator 2. social worker 3. legal assistant for research issues 4. judges who understand that a defense attorney cannot be assigned to a daily criminal docket 5 days a week and still have time to prepare for a murder case.
- #20173 – The PD doesn’t have: an investigator, a secretary, office equipment. However, I have been able to convince the local SA to elect not to seek the death penalty in cases in this county
- #20133 – We would need to add additional funds to the budget
- #20088 – If a death-eligible case occurred, resources would be insufficient; however, I am unaware of any cases where the death penalty has been sought in my county in decades
- #20071 – Money for experts, investigators...
- #20032 – We need greater funding for experts – we only get reimbursed when the case is actually prosecuted as a death penalty case. We also need more investigators
- #20038 – the aforesaid training and certification
- #20159 – Financial help to cover costs of any experts and investigators
- #20095 – Insufficient fund of information available to respond
- #20198 – Funds for investigators, expert witnesses, office supplies such as photos, transcripts, possibly depositions
- #20125 – Investigator

- #20048 – Secretarial staff, investigators on staff
- #20103 – We do not have sufficient office staff to handle death cases and must hire, using the fund, staff. And, then we are short legal staff to handle our regular caseloads
- #20135 – We only have a part-time investigator and no social worker/mitigation expert. If we get a DP case, we would ask for help from the St. App. Defender to get their resources
- #20047 – This office is not able to handle death-eligible cases
- #20183 – Never will be. One case would cripple our three attorney office. I speak from experience.
- #20098 – Additional personnel, such as a social worker, and mitigation specialist who can begin the investigative process for mitigating evidence
- #20075 – At this time, yes
- #20180 – An office to start with
- #20031 – 1) 2nd attorney who is member of this bar to co-chair 2) another assistant to share the case load 3) some flexibility in the kind of expenditure that can be reimbursed through the trust fund
- #20116 – We need the rural assistance funds restored so that we can get assistance with investigations, DNA experts, etc.
- #20176 – Not sure, no capital cases since new capital rules implemented

II. Experiences with the Recording of Interrogations of Murder Suspects

1) Since the statutory requirement took effect in July 2005 requiring complete electronic recordings of custodial interviews of murder suspects, were any *technical problems/failures* experienced with your office’s receipt/review of recorded interrogations? (Check 1)

- Not applicable/have not had any murder cases since the recording requirement
- No, no technical problems/failures have not been experienced.
- Yes, technical problems/failures have been experienced.
If yes, please provide a brief explanation of the problem(s) experienced.

- #20173 – Mechanical problems with recording devices, poor quality of the video and audio (including inaudible recordings), difficulty in displaying recorded interviews to members of a jury panel.
- #20114 – Except some recordings could only be played on a computer, because a special player was needed which was included on the DVD
- #20032 – There has been some difficulty getting the video interrogations in a viewable format (a problem that we appear to have solved) and have experienced some problems getting our clients to view their own interrogations
- #20198 – In _____ County the battery died on the recording device and it took several minutes for the device to be turned back on; however, there was no confession ever made
- #20125 – Some trouble copying the CDs/DVDs
- #20164 – No big deal. Apparently you can’t put the videos on CDs, meaning we have to use special video equipment. Sometimes the consultant/expert witnesses want to see the interrogation
- #20098 – Inability to adequately hear what is being said on the tapes
- #20075 – Recording system failed – no sound
- #20087 – Video was okay, audio only has failed
- #20031 – I am working through one right now where the recording is of such poor quality that it is open to abuse

2) Since the recording requirement took effect in July 2005, were any technical problems/limitations experienced with your office’s *presentation of this evidence at trial* (i.e., courtrooms not equipped with necessary equipment, audio could not be heard by jury, etc)? (Check 1)

- Not applicable/have not had any murder cases since the recording requirement.
- No
- Yes

If yes, please provide a brief explanation of the problem(s) experienced.

#20032 – We have a serious editing problem with DVD format. We have been successful in getting judges to order that portions of the interrogation are to be redacted or otherwise kept from the jury (eg. Discussion of prior prison experiences or other admissions not relevant to the murder charge) but have difficulty with the mechanics of it. We are forced to rely on the state because they have better equipment. This is not good.

#20062 – The problem is not in the presentation of the suspect's statement. Most departments are now videotaping all interviews in murder cases (by the way this is a good thing). The problems this creates are two-fold. A recent case had over 60 hours of video and only about 2 hours was really relevant. Still, every tape had to be watched. It is terribly time-consuming. Still, even with the time consumption, it is a good thing. The 2nd problem is cross-examination and the technical aspects of it. When a witness strays from his recorded statement, the physical logistics of impeachment can be daunting. On a 45 minute interview on disc, you need to be able to confront the witness with the one or two relevant questions. We are currently exploring the possibility of contracting with the mass communications dept. of a local university to have them index the discs so we can cue them up in court in a smooth, professional manner. There is obviously an expense to this and we are still trying to figure out how to physically accomplish this indexing as well as the costs.

#20168 – No, with a few exceptions

#20176 – When courtroom constructed in the late 80's audio/video presentation not considered

3) In your opinion, has the mandatory recording of custodial interrogations in murder cases changed the way *detectives* have conducted interrogations due to the knowledge that jurors will potentially view or hear these taped interrogations? (Check 1)

Not applicable/have not had any murder cases since the recording requirement.

Don't Know

No

Yes

If yes, please explain how (either positively or negatively) you believe this has changed their interrogation techniques.

#20032 – I believe they are less coercive than they were reported to be before the videotaping

#20198 – I believe the recordings have made detectives behave during interrogations (no shouting, screaming, lying, throwing/slamming things)

#20062 – it is positive. The police are behaving much more professionally and the jury is getting the true "flavor" of how some of these statements are cajoled, mentally coerced, etc.

#20103 – Much more polite and give appearance of being overly fair

#20135 – Yes, police try to appear nicer, yet the interviews are longer than before – to pressure a confession

4) Have recorded interrogations been instrumental in obtaining *acquittals* in murder cases? (Check 1)

Not applicable/have not had any murder cases since the recording requirement.

No

Yes

#20032 – but 2 have been useful in getting 2nd degree pleas

#20168 – Cannot make this link either way

5) Has the availability of recorded interrogations/confessions in murder cases influenced decisions made by the State's Attorney's Office in your county regarding whether to seek the death penalty or not? (Check 1)

Not applicable/have not had any murder cases since the recording requirement.

Don't Know

- No, has not influenced the decision regarding whether or not to seek the death penalty.
 Yes, has influenced the decision regarding whether or not to seek the death penalty.
If yes, please explain how the availability of recorded interrogations/confessions influenced this decision. Please provide specific examples.

#20055 – SA decided to plead to lesser charge based on issues of voluntariness, etc. revealed by taped interview
#20168 – It is difficult for our side to know how/why they make that decision

6) In your opinion, has the existence of recorded custodial interrogations/confessions in murder cases influenced the willingness of the defendant to plea bargain? (Check 1)

- Not applicable/ have not had any murder cases since the recording requirement.
 No, has not influenced defendant willingness to plea bargain.
 Yes, has influenced defendant willingness to plea bargain.

If yes, please explain how or give specific examples.

#20032 – as you would expect, some defendants can see how damaging their statements are. More so than with written statements where it is not unusual for a client to deny making the statement

#20198 – The recorded interrogation and the subsequent investigation and evidence became contradictory in nature. The evidence gathered showed the defendant had lied about his whereabouts and the people allegedly with him. These contradictions and the fact the recording would be shown to the jury led the defendant to accept a plea bargain

#20062 – When defendants see themselves on TV (and some of the witnesses against them), it is a reality check. They start to understand the futility of their position. On numerous occasions, we have asked a defendant, “how do you expect us to convince the jury you did not do it when there you are saying you did?”

#20125 – Once the client understood how he implicated himself the plea came easily

#20103 – They see what information they provided, which they usually “forgot” they said to the police

#20135 – Although a defendant may say “that’s not what I meant,” they can no longer deny making statements. It is easier to get a defendant to plea if their statement is recorded so they can see it.

#20183 – Resulted in a 2nd degree murder plea as client was very credible as to provocation and very remorseful

#20168 – Attorneys have used the existence/content of the tapes to help persuade clients to the fact that plea negotiations are the wisest course

7) In your opinion, has the existence of recorded custodial interrogations/confessions in murder cases influenced the willingness of the defendant to *seek a jury trial*? (Check 1)

- Not applicable/ have not had any murder cases since the recording requirement.
 No, has not influenced defendant to seek a jury trial.
 Yes, has influenced defendant to seek a jury trial.

If yes, explain how and give specific examples.

#20062 – My office has never tried a non-jury murder trial in 20 years and I do not see that changing or being influenced by recorded interrogations. A non-jury trial is just a slow guilty plea. If we try a murder, we are trying to win

#20087 – Allowed him to “testify” without undergoing cross-examination

#20168 – It is a factor to be considered with everything else but seldom leading reason to seek a jury trial

8) In your opinion, have electronic recordings of murder interrogations reduced the number of motions to suppress confessions or admissions owing to failure to give *Miranda* warnings, coercion, or use of improper interview tactics? (Check 1)

_____ Not applicable/have not had any murder cases since the recording requirement.

_____ No, has not reduced motions to suppress confessions or admissions.

_____ Yes, has reduced motions to suppress confessions or admissions.

If yes, please give specific examples.

#20114 – Reduces allegations of lack of *Miranda* warning being provided

#20123 – in our case it was apparent that the defendant had mental deficits. During the interrogation he had difficulty understanding the questions and responding appropriately

#20198 – the detectives on camera gave the required *Miranda* warning, asked defendant if he understood, then had him initial and sign the written waiver of *Miranda*. The defendant asked to file a motion to suppress saying he wasn't given his warnings under *Miranda*

#20062 – Everybody, the state, the defendant, and counsel can see what is the prelude to the defendant's statement. It is usually painfully obvious if *Miranda* was or was not observed, etc.

#20103 – All want confessions suppressed, but see the "confessions" and become aware that such motions would fail

#20118 – Filing less of them

#20135 – Only a bit. Harder to find *Miranda* problems but defendant still claim coercion

#20168 – Although there are a surprising number of cases where the accused has requested an attorney and the questioning has continued, or where *Miranda* improperly given and so a motion is warranted

#20031 – No, I have such a motion pending

#20176 – 1) Verification of *Miranda* warnings 2) Better verification that statements were voluntary

9) In your opinion, have electronic recordings made it easier for *prosecutors* to obtain convictions in murder cases? (Check 1)

_____ Not applicable/have not had any murder cases since the recording requirement

_____ No, has not made it easier for prosecutors to obtain convictions in murder cases.

_____ Yes, has made it easier for prosecutors to obtain convictions in murder cases.

If yes, please give examples of how they were used to obtain convictions.

#20032 – defendants on video frequently look more guilty. Their body language, tone, etc. hurts their case. Also a video confession by a defendant is much more compelling than police testimony about what was said.

#20123 – Post-*Miranda*, obviously voluntary admissions are often made

#20103 – If police do it right they will win every time provided they got the right person. Very simple, they want to explain why they were involved in a death.

#20135 – most videotaped statements are confessions. Jurors believe defendant when they see videos

#20075 – The defendant confessed on tape

#20168 – In some instances the confession has been compelling evidence

#20176 – Has resulted in less disputes over facts of case because of defendant admissions

10) Since the statutory requirement took effect requiring electronic recordings of custodial interrogations of murder suspects, has your office been provided with recorded interrogations/confessions of any **NON-MURDER** cases? (Check 1)

Never/Rarely _____

Sometimes _____

Most of the time _____
Always _____

#20062 – Most serious felonies, i.e. armed robberies, home invasions – some departments are now recording all defendant’s statements. A guess would be 30-40% now take felony statements on video and it is growing steadily

#20180 – Always, I recorded...more are

11) Do you believe that the requirement of complete electronic recordings of custodial interrogations should be expanded to include additional felony offenses? (Check 1)

_____ No
_____ Yes

If yes, what other types of felony offense interrogations do you believe should be recorded and why?

#20109 – It would just keep everybody honest

#20034 – Sex cases – may be helpful with motions to suppress to show involuntary statements made by the defendant.

#20173 – All felony cases

#20133 – All serious felonies to see that fairness and justice and lack of coercive tactics have been observed

#20090 – All of them

#20088 – All class X felonies

#20114 – All if possible, only has positive effects

#20071 – All felonies. Recorded statements would generally help a defendant more than a police officer’s summary of the same

#20032 – Anything class X

#20038 – All felonies, no matter what. We have the technology, let’s use it!

#20159 – Non-probationable/class X offenses

#20095 – All Class 2 felonies and greater – preserve accuracy of interrogations

#20055 – Sex offenses

#20174 – All

#20198 – All felony offenses should be recorded for the police and defendant’s protection. We are sentencing defendants to prison for long periods of time on disputed reports of what took place in a custodial interrogation of defendant. Whether we like it or not, the public still gives the police the benefit of the doubt.

#20160 – All

#20187 – As many as possible

#20062 – All

#20125 – Sex cases – all violent offenses – forgery – burglary – officer narrative of defendant’s statement are usually bullshit

#20048 – Any non-probationable felony – there is a high potential for abuse of “confessions” especially where the confession is “oral” only

#20164 – All of them, police tend to summarize and paraphrase in favor of guilt

#20103 – Officer notes are very poor as to what defendant’s confess to. It sets out what was said very clearly and how it was said. All felony and misdemeanor confessions should be recorded.

#20118 – all of them

#20135 – All sex offenses and perhaps all Class X felonies such as armed robbery and home invasion

#20183 – All station interrogations

#20098 – Sexual assaults, domestic battery

#20087 – Any non-probationable offense

#20168 – Ideally all felonies since the technology is available

- #20180 – All felonies. We’re equipping police patrol cars with computers and video recorders, we can certainly afford a few digital recorders
- #20031 – Child sex abuse cases, because of the nature of the offense, interrogation tactics are questionable
- #20068 – All felonies – the technology is available, it might as well be used to give us the best record of the facts
- #20068 – All – avoids conflicts regarding what was said, protects defendant from inaccurate “interpretations” of what was said
- #20116 – Sexual assault. The consequences are so severe
- #20176 – Domestic violence and sexual assault
- #20024 – All felonies
- #20006 – If the equipment is available anyway, then it should be used

12) In your opinion, does the recording of interrogations have any specific *disadvantages/problems* or any specific *advantages/benefits*?

Disadvantages/Problems (please describe)

- #20109 – Nailing the defendant to the wall
- #20044 – Not too good when they confess
- #20034 – Law enforcement may use their discretion on deciding when to turn on the equipment
- #20173 – Availability and quality of recording equipment and equipment for viewing audio and video recordings varies depending upon the law enforcement agencies and local court systems. Some clients are not “recorded” until the officers have a statement or a confession – and proving that all interrogations were not recorded still places the defendant at a disadvantage – and law enforcement officers in control
- #20071 – If the statement is harmful you can no longer argue that the police misunderstood what the defendant was saying. It is also more difficult to argue about coercion if the defendant appears relaxed and not under duress
- #20032 – Depending on the defendant’s performance it can be an advantage or disadvantage. A recorded confession is much more damaging. Recorded denials are not allowed into evidence, but give everyone, defense and prosecution, a chance to gauge how the defendant will perform on the stand. It also allows for full use of any statements without the filter of police report editing or people’s incomplete memories.
- #20159 – Problems may exist with police/defendant conversation *before* the recording equipment is turned on
- #20095 – problems can arise when the recorded interrogation follows previous unrecorded conversation/interrogations
- #20055 – None
- #20160 – Cost?
- #20187 – None
- #20062 – Please see my long answer to #2 regarding problems. Again, I stress that these “problems” are far outweighed by the advantages
- #20048 – one still never knows what happened prior to when the camera was turned on
- #20164 – none to the defense. To law enforcement it’s more cumbersome
- #20118 – Makes the trier of fact believe the interrogation was done properly when we don’t know what happened before the tape started rolling
- #20135 – None
- #20047 – Certainty of facts removes some ability to negotiate lesser charge or penalty
- #20183 – Can occur if some defenses are eliminated
- #20098 – It is allowing the courts to come up with even more excuses as to why they won’t grant a motion to suppress
- #20075 – It is hard for the defendant to deny he made certain statements when it’s on tape or to argue that he was coerced or threatened
- #20087 – Doesn’t allow for defendant to refute any “misstatement” of officer’s synopsis of the interview

- #20168 – None
- #20180 – Disadvantage from defendant’s standpoint is that properly recorded interrogation/confession can remove all doubt as to guilt
- #20031 – As mentioned before, quality of the recording
- #20068 – Advantage prosecutors as it is more effective evidence
- #20068 – Doesn’t protect from what was said prior to recording
- #20116 – Doesn’t always ensure that the entire conversation between defendant and cops is recorded – cops like to conduct “interviews” before recording
- #20176 – Makes it easier for prosecution to prove case
- #20006 – It will help ensure convictions if the jury sees the recordings

Advantages/Benefits (please describe)

- #20109 – Revealing the true context of questions; the defendant’s and officer’s tone in questions and answers, etc.
- #20044 – Shows the coercive nature of interrogation
- #20034 – Useful for pre-trial motions
- #20173 –Recording allows an attorney to verify that a defendant has actually been advised of rights under Miranda and observe whether the defendant appears to understand the rights. It also allows an attorney to determine whether a defendant actually made a statement or an officer writes a statement to be signed by a defendant that does not reflect what was actually said by the defendant. Recordings give attorneys a more accurate view of the conditions of the interrogation (actual amount of time, facilities, etc.) and the actual behaviors of their client and of any officers who are recorded.
- #20133 – To make sure that everything that was stated is accurately reported
- #20090 – no questions of what was said by all involved
- #20065 – It is advantageous to be able to review the interrogation to make my own evaluation of my client’s sobriety or altered state.
- #20114 –Allows trier of fact to judge demeanor, view deceptions if any, see actual pauses and delays, see physical set-up of interview room
- #20071 – If the statement is helpful you could argue that, *if* the state put the statement into evidence
- #20038 – It makes the job easier
- #20095 – Preserves accuracy of interrogations and completeness
- #20055 – Self-evident
- #20198 – Protects police and defendants from accusations of misconduct and false confessions/coerced confessions. It allows the jury to see the defendant in his own words, confessing or defending himself
- #20160 – Eliminates some guesswork, eliminates or reduces likelihood of police misconduct
- #20187 – Eliminates questions about the interrogation; eliminates disputes about what was said and under what circumstances
- #20062 – “Justice” in a word. Everybody actually knows what happened during the interview. Police can no longer lie about promises, threats, etc., or mischaracterize the defendant’s demeanor when confessing
- #20125 – able to view demeanor/techniques
- #20048 – Eliminates argument over exactly what was said in the alleged “confession”
- #20164 – You have the suspect’s actual words so there can be no doubt
- #20103 – Eliminates motions to suppress (usually) and we know what was said and how it was said
- #20118 – Cuts down on pre-trial motions
- #20135 – Helps plea bargaining, reduces motions to suppress
- #20047 – Provides certainty of facts of interrogations. Not needing to rely on memory of officers of defendants
- #20183 – Clearer record of what was said. Can observe body language/tone of voice of all parties

- #20098 – It allows the judge to see what happened during an interrogation; however, the court still will not suppress a statement because of coercion, lying, threats. The court still “works” around it thus continuing to give credibility to the police
- #20075 – Make for fewer motions to suppress statements
- #20087 – Allows jurors to see “human” side of defendants
- #20168 – See answer 8, previous
- #20180 – Removes “filtering” so long practiced by the ISP and other agencies (i.e. take NO written statements, record nothing, take notes, write report, destroy notes: the report becomes evidence)
- #20031 – A proper record is better because it can cut down on arguments/accusations of impropriety
- #20068 – Should help resolve case more efficiently as defendants are confronted with their own statements
- #20068 – Protects defendant from “inaccurate interpretations” of what was said
- #20116 – Makes defendant understand strength of state’s case
- #20188 – Police can’t fabricate/coerce confession
- #20006 – It may assist in suppression motions

III. Eyewitness Identification Processes

1) Do you prefer the use of administrators of police line-ups who do not know which member of the line-up is the suspect, the so-called “blind” administrator method, if one is reasonably available? (Check 1)

- Yes, prefer “blind” administrator methods for police line-ups.
- No, do not prefer “blind” administrator methods for police line-ups.
- Do not have any opinion.

2) Are you satisfied with the current procedures used by police departments for eyewitness identification in murder cases? (Check 1)

- Yes
- No
- If no, how do you believe line-up procedures in murder cases could be improved?

- #20109 – It’s never a blind line up here unless done with mug shots – but those are rare. I know “live” line ups are cumbersome but line ups with mug shots so long as the faces are *all* of the same race, general age, and backdrop are an improvement
- #20106 – More legal education for the police to understand the importance of tying the charged defendant to the criminal act and then to the in-court ID.
- #20173 – I would be impressed if there were any line-up procedures used (in person, photo, audio-voice recognition, etc.) in any cases in my county
- #20088 – blind administrator
- #20114 – Use sequential photo line-up rather than an array
- #20071 – A closer match to the description of the suspect to all persons in the line-up
- #20032 – We never do live line-ups in this county any more. Haven’t for several years. That is a better method, if fairly administered, than photo line-ups. Also, the “blind” administrator method would work better than the method currently used in this county
- #20038 – N/A. Have not used line-ups for any murder case in our county – ever.
- #20123 – We do not use the “blind” method in our jurisdiction
- #20198 – use a blind administrator – use a line-up which is reflective of the murder suspect – do not allow a photo line-up in place of an in-person line-up
- #20062 – Always have counsel present to observe. The ultimate improvement would be video recording of the eye-witness as he/ she view line-up because that would let everyone see how definite, length of hesitation, etc. in making ID

- #20048 – “blind administration”
- #20164 – Our police use only photo IDs, not live line-ups
- #20103 – yes, do not use photo 6-pack where witness picks one. Turn over photos one by one.
- #20118 – Blind administrator method in all cases
- #20135 – Many Fillers do not look much like the suspect. If you complain, police hold it against you
- #20047 – No experience to form an opinion
- #20098 – Still very skewed. A line-up should be conducted by an independent agency – not law enforcement
- #20168 – They couldn’t be worse or less fair
- #20068 – Our local police are generally sloppy in such procedures

IV. Experiences with the Delivery of Murder Case Evidence by Police

1) Have you experienced any problems with police departments in your jurisdiction complying with the requirement that they provide all investigative files, materials, field notes, etc. to the State’s Attorney’s Office in every homicide case? (Check 1)

- Not applicable/have not had any murder cases since the requirement.
- Don’t Know
- No, there have not been any problems with police departments complying.
- Yes, there have been problems with police departments complying.

If yes, please describe the problems experienced (i.e., handwritten reports difficult to work with, incompatible/lacking equipment to review recorded custodial interrogations, timeliness, missing pages/documents, etc).

- #20034 – in order for me to obtain materials, other than written police reports and criminal history, I always use the subpoena duces tecum powers. Otherwise, the state takes a long time to provide me with the material that I need. I believe it’s a tactic used by the state for speedy trial issues.
- #20173 – Timeliness, missing pages, incomplete information – (i.e. reports lacking from multiple officers – only receiving a report from one investigating officer where several officers were involved, problems in receiving criminal history information for all of the state’s witnesses, problems in receiving information related to state witnesses who are not residents of the state, limitations of investigation when the state has “found the right person”
- #20032 – We frequently get incomplete or untimely information. I do not know how much of it is the SA’s Office and how much is the police
- #20159 – Have experienced problems of timeliness and missing documents
- #20055 – All of the above
- #20198 – Trickle-down discovery – police not turning over all items of evidence in discovery in a timely fashion. Some now, some later, so on.
- #20164 – Documents discovered late in the trial process. I’ve had nothing deliberate or conniving, just bad filing systems
- #20135 – Timeliness; don’t get all notes; defense doesn’t know what exists so it’s hard to complain about what’s missing
- #20047 – Only on rare occasions with small town police departments. The form they fail to provide is the written Miranda warning waiver
- #20183 – Prosecutors don’t diligently verify compliance
- #20098 – They will not comply unless they get approval from the prosecutor...who will “drag his feet” as long as possible. Police do not act independently and even refer to the SA as “our lawyers”
- #20075 – Failure to keep notes or supply list of all people that were interviewed
- #20087 – Usually get information, just slow response

- #20168 – Timeliness sometimes an issue
- #20031 – Incomplete, information not provided in a timely fashion, out of sequence information
- #20116 – Timeliness

2) When requested, how long does it *usually* take to obtain all of the investigative files, materials, field notes, etc. that the police provide to the State’s Attorney’s Office for a homicide case?

- #20109 – I get most of it within 30 days usually. It’s ongoing of course.
- #20044 – 2-3 months
- #20034 – I usually get the bulk of my material after 21 days from the probable cause hearing.
- #20173 – This varies, but usually 3-6 months, sometimes more
- #20065 – 1 month
- #20114 – 6 months
- #20032 – We regularly get discovery at the last minute. Not just recent updates but reports generated several months earlier. It is an intentional procedure by SA’s and the judges do not ever impose sanctions
- #20123 – Months
- #20159 – often days before trial
- #20055 – Over a year, including supplements
- #20198 – 1 month and up, depending on the case
- #20062 – Within 2 weeks of arraignment (approx. 4 weeks form arrest), in most cases. Occassionally other stuff will trickle in later.
- #20125 – Usually within 30-45 days
- #20164 – 60 days
- #20103 – They provide info in a quick and timely fashion. We get it as soon as SA gets it
- #20118 – Couple months
- #20135 – 2 months
- #20047 – Within a month
- #20183 – all the way up to trial
- #20098 – Years
- #20075 – Generally 10-14 days
- #20087 – 4-5 months
- #20168 – Varies from months to years, even *during* trial
- #20031 – Varies; 2 days to 3 months
- #20176 – 6 months
- #20024 – Within 60 days

3) In the past 4 years, have you experienced delays in obtaining forensic lab results for murder cases that have delayed discovery or court proceedings?

- Not applicable/have not had any murder cases in the past 4 years.
- No
- Yes

#20116 – Labs failure to turn over all materials

V. Experiences with Murder/Capital Case Trials Pre-Indictment

1) In general, do you believe that 120 days from arraignment is sufficient time for the State’s Attorney’s Office to determine if the death penalty will be sought (i.e., a certificate to seek the death penalty is filed)? (Check 1)

- No

_____ Yes

#20038 – The decision is actually rationally easy to make

2) Have you had any specific cases/experiences where the 120 days was not sufficient time for the State's Attorney's Office to determine if the death penalty will be sought? (Check 1)

_____ Not applicable/have not had any death-eligible cases since the 120 day requirement was implemented

_____ No

_____ Yes

If yes, please explain the circumstances where 120 days was not sufficient.

#20114 – State had not made decision, we agreed to extend time

#20103 – Death needs to be on the table longer *if* other lesser penalties are being counseled. Plus, it takes (time, etc.) heat off the case

#20183 – if mental health defense issues are involved

#20098 – It takes a long time to hire a mitigation specialist who can gather enough information within 120 days

#20168 – In most cases ASA seeks extension

3) Do you believe that the new mitigating factor for mental and physical abuse or for diminished mental capacity has changed the State's Attorney's Office's decision to file a certificate to seek capital punishment? (Check 1)

_____ Not applicable/ have not had any death-eligible cases since 2003.

_____ Don't Know

_____ No

_____ Yes

4) Are you satisfied with the factors utilized in the Illinois statute, and the process used in the court, to determine mental retardation? (Check 1)

_____ Yes

_____ No

If no, what aspect are you not satisfied with?

#20106 – mental illnesses that are severe can be worse.

#20032 – Too much leeway even in the face of expert administered standardized testing.

#20095 – Insufficient fund of knowledge to respond

#20055 – I don't understand how whether cut off is 70 or 80 IQ or somewhere in between. Psych's come up with 71 or 81, just one point over the line

#20198 – If there is a belief that mental retardation is an issue, the defendant should be evaluated immediately in order to determine the mental retardation (there should be no lengthy delays)

#20125 – Not enough experience with this issue

#20168 – Too much reliance on adaptive functioning at hearings. Improper application of adaptive functioning at hearings

5) Do you believe that allowing depositions in capital cases improves the processing of these cases? (Check 1)

_____ Not applicable/ have not had any capital cases since 2003.

_____ No, depositions do not improve the processing of capital cases.

_____ Yes, depositions do improve the processing of capital cases.

If yes or no, please explain why or why not.

#20109 – 1. you always think of questions that the police didn't ask. 2. it's helpful to meet and see what the witnesses are like – strengths and weaknesses. 3. handy for impeachment

- #20114 – Some witnesses won't talk to defense attorneys. At times, we just need a more definite account of an incident to be able to advise our client
- #20032 –they can lead to information far enough in advance to follow up on without having to ask for continuances. It allows for better and more thorough preparation. Witnesses sometimes respond more completely without the additional anxiety a jury's presence can cause
- #20055 – Don't need private investigators to seek out witnesses and then convince them to talk to defense counsel – gives more equality, access to witnesses
- #20062 – Everybody is forced before trial to get familiar with the case in prep for the deposition
- #20164 – It's easier to plan cross and pin the witness down
- #20103 – Not much. But are a tool to see how someone would testify and how good a witness they are
- #20183 – The deposition process causes both sides in our case to eliminate questionable experts and were invaluable in preparation to the defense. Processing should be replaced with fairness
- #20098 – Police are still "arms of the state" and will not act independently
- #20075 – Have not had the need to use them
- #20168 – Discovery gained in process invaluable; can influence strategy for both defense and prosecution
- #20180 – Haven't had any, but (it should be obvious) pre-trial discovery greatly enhanced for both sides
- #20031 – Information is available directly from the witness rather than second hand

6) Do you believe that the number of factors that make a homicide case eligible for the death penalty should remain the same, be reduced or be expanded? (Check 1)

- Remain the same
- Reduced
- Expanded

If reduced or expanded, what specific changes do you believe should be made?

- #20114 – Factors are still too vague and general
- #20032 – there should be a much more limited group. The eligibility factors should not include as many eligible factors for the felony murder component. Justice could still be served by limiting the felony murder basis to non-capital cases
- #20038 – However, never in a circumstantial evidence case
- #20159 – the factors should be reduced – I'm not sure how
- #20055 – Certain forcible sex offenses, children under 12, multiple offenses
- #20187 – No defendant should be eligible for the death penalty
- #20062 – I am a death penalty opponent as I believe it to be a terribly expensive and inefficient form of punishment that does not deter. It follows that any contraction of eligibility would be viewed by me as a good thing
- #20164 – Fewer aggravations – "cold, calculated, premeditated" needs to go
- #20103 – Too many. Age; positions held by victim; disabled; felony murder rule; etc. Aggravating factors: reduce to a) 2 or more deaths b) torture, etc. c) to prevent testimony d) terrorism
- #20135 – Reduce to about 5
- #20183 –the legislature is out of control regarding the ways in which death can be sought. What ever happened to use in only the "worst of the worst?"
- #20168 – Should return to the original 7 factors
- #20031 – Remove subsections 6, 9, 10, 11, 13 from 720 ILCS 5/9-1(b)
- #20068 – The penalty should be abolished except for murder of prison guards and treason in time of declared war

7) Do you believe that the *cost* to your County of pursuing the death penalty reduces the likelihood that it will be sought? (Check 1)

- No, the cost to the county does not reduce the likelihood that the death-penalty will be sought.

_____ Yes, the cost to the county does reduce the likelihood that the death-penalty will be sought.

#20180 – Cost to county less in capital cases: state pays for chief and assistant counsel for defense, state reimburses expert expense. Non-capital murder case with extra counsel for defense can easily cost in excess of \$100,000 to \$150,000. In smaller counties, may actually encourage election of capital punishment for this reason alone

#20188 – I don't know, the cost to the county influences *everything*

8) *Should* the cost of pursuing the death penalty be considered when determining whether it should be sought?
(Check 1)

_____ No, the cost should not be considered.

_____ Yes, the cost should be considered.

#20109 – Wouldn't this put a price on justice?

9) Does the State's Attorney's Office in your county confer with your office prior to their decision to file a capital certificate?

_____ Not applicable/ have not had any murder cases since 2003.

_____ Yes, almost always

_____ Yes, sometimes

_____ No

10) Has your office experienced delays in receiving results from forensic laboratories in *death penalty* cases?
(Check 1)

_____ No

_____ Yes

If yes, please explain or give examples.

#20032 – ISP backlog has impacted every type of case including death penalty, both ballistic and genetic based evidence

#20095 – no fund of info

#20198 – have not had a death penalty case

#20164 – One case was “de-deathed” before trial, but I was concerned that the lab found some DNA after initially finding nothing on the same exhibit.

#20098 – Years to get results!

#20075 – DNA is often slow

11) Are you satisfied with the quality of the work product of forensic laboratories in *death penalty* cases?
(Check 1)

_____ Yes

_____ No

If no, please explain and give examples.

#20106 – in all cases, ISP lab is pro prosecution

#20032 – the ISP lab has people who are biased, both consciously and subconsciously. They are predisposed to interpret the data in accordance with the state's needs rather than with strict scientific standards of objectivity.

Private labs are extraordinarily expensive and to a large extent unavailable on a local (in-state) level. The standard ISP “expert” has a Bachelor's Degree and some suspect additional training – almost all of which comes from a law enforcement rather than purely scientific basis.

- #20095 – no fund of info
- #20198 – have not had a death penalty case
- #20062 – The “yes” answer does not mean that we do not seek independent review of lab results. We still do not trust them
- #20183 – My case involved poor DNA work by the ISP lab
- #20098 – Sloppy! Poor report writing. Will not act independent of the state. Refuses to meet or speak with defense.
- #20168 – Lab is still an arm of the prosecutor’s office
- #20180 – No DP cases since 2003. But forensic testing (mostly by state) far more partisan (pro prosecution) than 30 years ago

VI: Experiences with Murder/Capital Case Trials Post-Indictment

1) Are juror questionnaires--questions proposed by the defense and prosecution, reviewed by the court to reach a consensus, and given to prospective jurors prior to *voir dire* —used in *capital cases* in your county? (Check 1)

Not applicable/have not had any capital cases involving a jury in the past 4 years

No

Yes

If yes, how are they created and do you find them useful?

#20109 – they are created by a joint effort of court, prosecution and defense. They are very useful because they give one an insight into the prospective juror that might not otherwise be available.

#20173 – the court doesn’t allow juror questionnaires for any cases

#20114 – Jointly created. Useful in giving insight regarding ability and qualifications to sit as a juror

#20032 – We created our own with mixed effectiveness. The judge limited it too much. It was still a useful screening tool, but could have been much better. Still it allowed us to segregate people with “red flag” answers from the general voir dire thereby decreasing contamination

#20055 – Joint effort SA/defense – final approval by judge

#20062 – Each side submits questions and the judge then compiles a questionnaire. Both counsel are also allowed in-person voir-dire

#20164 – We have one we’ve used – it’s worthwhile because the judge doesn’t have to spend voir dire gathering biography so he/she lets us use the time for other questions

#20183 – Written questionnaire was used

#20116 – Attorneys and judges work together to create – very useful

2) Are case management conferences held in *every* murder case that are *potential* death-penalty cases (i.e., a certificate of intent to seek death has not yet been formally filed) in your jurisdiction? (Check 1)

Not applicable/ have not had any death-eligible cases since 2003.

No

Yes

If yes, please explain the process used by the court to make this determination/decision to hold case management conferences in potential death-penalty cases.

#20109 – The court docket it and the clerk notices it up.

#20114 – Required by statute

#20125 – the state announced very quickly and the case proceeded nearly from the outset as a death case

#20164 – I don’t know the process. The judge tells us we’re having one and I show up

#20183 – Done very poorly in the case I had

#20098 – Regular court dates

3) Do you believe case management conferences for death-penalty cases should be held in *open court*? (Check 1)
 No, they should not be held in open court.
 Yes, they should be held in open court.

4) Do you believe these case management conferences for death-penalty cases should be on the *court record*? (Check 1)
 No, they should not be on the court record.
 Yes, they should be on the court record.

#20109 – This all depends of course. But generally not a good idea to be on the record.
#20034 – appeal purposes

5) Do you believe these *case management conferences* for death-penalty cases have improved the processing of death-penalty cases? (Check 1)
 Not applicable/ have not had any death-penalty cases since 2003.
 No, have not improved the processing of death-penalty cases.
 Yes, have improved the processing of death-penalty cases.
If yes or no, please explain why or why not.

#20109 – it keeps everyone's feet to the fire
#20065 – mitigation is a major part of any death case, the court should be kept up to date
#20114 – Estimate of defense costs by private attorney
#20032 – Have made both sides more accountable and prevented litigation of some issues that did not need to be litigated in the first place.
#20125 – Keeps both sides honest and keeps the case moving
#20135 – keeps the case moving, i.e. discovery
#20183 – What is this with processing? Is speed paramount?
#20098 – Court is at least outwardly trying to hold the state accountable for discovery violations and such
#20075 – Have not had any formal conferences
#20031 – Court-managed schedules work better

6) Has your office had experience with the statutory requirement of a pretrial hearing concerning the reliability of testimony of informants (i.e., "jailhouse" informants) in a capital case? (Check 1)
 Not applicable/ have not had any murder cases since 2003.
 No
 Yes
If yes, what are your perceptions of this hearing?

#20168 – Hearings are absolutely essential...should be allowed to depose prior to hearings

7) Do you believe that the trial judges in capital cases tried in your county since 2003 have sufficient experience and competence to handle these cases? (Check 1)
 Not applicable/ have not had any capital cases since 2003.
 Yes
 No

8) Do you believe that the prosecutors in capital cases tried in your county since 2003 have sufficient experience and competence to handle these cases? (Check 1)

Not applicable/ have not had any capital cases since 2003.
 Yes
 No

9) Do you feel that there is a need for pattern jury instructions in death-eligible cases?
 Yes
 No

#20183 – A real mess, no excuse for not having them by now.

Are there any other things related to the reforms of how murder cases in general, and capital cases in particular, are processed through the justice system that you believe are important for the Capital Punishment Reform Study Committee to be aware of or consider? Feel free to add additional pages.

#20038 – The death penalty doesn't deter commission of a crime, but it will deter the person who did it. If we have the death penalty, we need to make certain the recipients deserve it for the crime done and that there can be no question that they did it. If there is any question – life.

#20103 – get rid of CLTB – we have MCLE for all lawyers – we do not need a special bar



**Capital Punishment Reform Study Committee State's
Attorney's Office Administrator Survey**

Survey Number: _____

I. Office Staffing & Resources

1) How many full-time Assistant State's Attorneys were employed by your office as of January 1, 2008?
Number = _____

#10052 – We share an ASA with a neighboring county

2) How many of these full-time Assistant State's Attorneys are members of the Capital Litigation Trial Bar?
Number = _____

3) Has the *training related to capital litigation* provided to the staff in your office met the needs of your office?
(Check 1)

_____ Yes
_____ No

If no, what additional training for members of the Capital Litigation Trial Bar do you believe is needed?

#10066 – They haven't had any training

#10101 – Make the training more accessible location-wise

#10185 – We have had little if any training

4) Have any prosecutors in your office received any specialized training on the issue of mental retardation since 2005? (Check 1)

_____ No
_____ Yes

If yes, how would you describe the *quality* and *applicability* of the training provided?

#10125 – Yes, training segments concerning the issue of mental retardation have been a regular part of the capital trial bar training seminars for prosecutors since 2005

#10010 – Good

#10137 – Fine

#10135 – Good

#10071 – The training provided by the Association of Government Attorneys in Capital Litigation as well as the training provided by the Cook/DuPage appellate prosecution office has been very good regarding mitigation. More specific training needed regarding decertification under 725 ILCS 5/114-15

#10006 – As part of capital litigation training – was a section devoted to mental retardation and it was a good section

#10109 – It was a small part of a two day training, so more information would be helpful

#10197 – Ok, was received at SA winter conference

5) Are the *number* of defense attorneys (either private or within the Public Defender's Office) who are members of the Capital Litigation Trial Bar sufficient to effectively handle death-eligible murder cases in your jurisdiction? (Check 1)

- No
- Yes
- Don't Know

#10125 – On the surface, the numbers appear sufficient, but we are not privy to all of the issues faced by defense attorneys

#10176 – The only in-county attorney that I was aware of that was a CLTB [is no longer available]

#10019 – Issue hasn't arisen in jurisdiction since current prosecutor took office

#10023 – Neighboring counties

6) Are there sufficient resources available to your office to handle *death-eligible* murder cases? (Check 1)

- Yes
- No

If no, what additional resources do you believe are needed for your office?

#10125 – More funding for audio-visual equipment and for hiring expert witnesses

#10086 – Population of county is [relatively small]. Funding is always tight on normal budgets. Need more money for experts

#10066 – Additional staff

#10101 – Can't answer because we haven't had a DP case in nearly 10 years

#10137 – Attorney's time and money

#10135 – Manpower and money. I can't assign more than 1 attorney to any case and my budget is very limited

#10146 – Yes, assuming the capital litigation trust fund will have money

#10023 – Yes, thanks to the state trust fund

#10188 – Need full financial access for A/V aids, medical experts, etc.

#10099 – The opportunity for the defense to have a bottomless pit of payment causes cases to go on and on and on. Accordingly, the prosecution devotes valuable ASA time to a case for years. Absurd.

#10109 – Additional investigator; additional paralegal

#10029 – Too broad of a question. It would depend on the case. Single defendant case, yes. If more than one defendant, the answer could go either way.

#10095 – The one death-eligible case that we have had recently showed that the defense received extensive support while we received little. Maybe we needed to ask, but we did not know who to ask or what we could ask for

#10197 – With assistance of Attorney General of Appellate Prosecutor

#10091 – Would depend on assistance from AG were one to occur in the county

#10033 – Not without the assistance of the CLTF for funds to assist with expert witnesses and investigative assistance

#10159 – Funding, staff

II. Experiences with the Recording of Interrogations of Murder Suspects

1) Does your State's Attorney's Office have the State's Attorney or an Assistant State's Attorney *physically present* during custodial interrogations (i.e., from *Miranda* warning forward) of *murder suspects*? (Check 1)

- Never/Rarely
- Sometimes
- Most of the time

Always _____

#10176 – I would say more physically “available” if necessary, but there has only been one murder in the county since the taping requirement

#10019 – Hasn’t been an issue

2) Since the statutory requirement took effect in July 2005 requiring complete electronic recordings of custodial interviews of murder suspects, were any *technical problems/failures* experienced with your office’s receipt/review of recorded interrogations? (Check 1)

_____ Not applicable/have not had any murder cases since the recording requirement

_____ No, no technical problems/failures have not been experienced.

_____ Yes, technical problems/failures have been experienced.

If yes, please provide a brief explanation of the problem(s) experienced.

#10125 – We have experienced technical problems in _____. Primarily the problems occur because the acoustics and microphone placement in some interview rooms make it difficult to hear and understand offenders during the interview process. Additionally, DVD recording equipment breaks down.

#10086 – Sound recording failed on mobile equipment on one homicide case

#10137 – Not with defendant’s, but some minor problems when recording witness statements

#10023 – DVD formatting/compatibility issues

#10048 – Confession occurred [out of state]. Lapse of several minutes in interrogation because tapes were being changed

#10099 – Recording isn’t “time stamped” with running seconds/minutes. This makes redacting very difficult. Always seem to have trouble with compatibility between police dept. software or recording devices and courtroom “playing” devices

#10109 – Often times we found out after the fact that the machine was not recording. Sometimes the recording experiences deletions over time due to lack of proper electronic wiring. Since the suspect is wearing no microphone, they are always difficult to hear. Topics of discussion come up that would have to be omitted for jury as they are not admissible evidence (criminal history, etc.)

#10110 – One department in our jurisdiction had technical problems with their recording system but the problem has been remedied

3) Since the recording requirement took effect in July 2005, were any technical problems/limitations experienced with your office’s *presentation of this evidence at trial* (i.e., courtrooms not equipped with necessary equipment, audio could not be heard by jury, etc)? (Check 1)

_____ Not applicable/have not had any murder cases since the recording requirement.

_____ No

_____ Yes

If yes, please provide a brief explanation of the problem(s) experienced.

#10125 – Most of the courtrooms are not equipped to present interrogation videos. The limited equipment available has visual and audio limitations

#10101 – The courts have a limited budget. We have had to bring in TV sets and audio equipment

#10116 – Hard for the jury to hear

#10099 – Audio has on occasion been poor or near silent. Digital wireless projection onto courtroom screens seems to always have a “glitch.” If jury wishes to view a portion during deliberations, must it always be played in courtroom?

#10109 – It is very difficult to decide how to present the evidence since inadmissible information always ends up on the recording. Sometimes the linguistics used by offenders are not easily understood by a juror and almost appear to be a foreign language (i.e. “crib” instead of house).

- #10095 – We have projection equipment, but the audio is problematic
- #10180 – Recorder wouldn't play back at trial
- #10091 – Our courtroom needs better audio and video equipment. Have been able to use the recordings made, but some difficulty in clarity of both video and sound
- #10110 – As stated above, the problem has been addressed by the department involved

4) In your opinion, has the mandatory recording of custodial interrogations in murder cases changed the way *detectives* have conducted interrogations due to the knowledge that jurors will potentially view or hear these taped interrogations? (Check 1)

Not applicable/have not had any murder cases since the recording requirement.

Don't Know

No

Yes

If yes, please explain how (either positively or negatively) you believe this has changed their interrogation techniques.

#10125 – Prior to interrogations being videotaped, our ASAs were rarely present during interviews, between detectives and suspects. As a consequence, we have no basis for comparing the techniques used before and after videotaping began

#10066 – Eliminates coercive tactics and credibility issues

#10101 – Can't answer for every dept. Some detectives use same methods as before; others have had to clean up their language

#10048 – We are now recording most misdemeanor cases and all felony cases in our jurisdiction

#10099 – Yes, but not enough. The depts. that have infrequent interview experience go on forever or become very disjointed

#10105 – I would comment that the new requirements have made the detectives more open to video recording of interviews in non-homicide cases/felonies of all types

5) Have recorded interrogations been instrumental in obtaining convictions in murder cases? (Check 1)

Not applicable/have not had any murder cases since the recording requirement.

No

Yes

#10125 – Insufficient information at this time

#10010 – Have had one murder case and defendant pled

#10109 – Any statements are usually helpful

#10087 – Recordings prior to the requirement have been very helpful in getting pleas

6) Has the availability of recorded interrogations/confessions in murder cases influenced decisions made by *your office* regarding whether to seek the death penalty or not? (Check 1)

Not applicable/have not had any murder cases since the recording requirement.

No, has not influenced the decision regarding whether or not to seek the death penalty.

Yes, has influenced the decision regarding whether or not to seek the death penalty.

If yes, please explain how the availability of recorded interrogations/confessions influenced this decision. Please provide specific examples.

#10125 – Each case is decided on its merits. In that context, what is contained in a particular videotaped interrogation will impact our decision

#10099 – In one case, defendant told a very cool and collected tale (alibi) totally false. When “caught” the metamorphosis change in the defendant revealed his innate behavior of lying.

#10166 – Yes, showed the defendant’s apathetic demeanor

7) In your opinion, has the existence of recorded custodial interrogations/confessions in murder cases influenced the willingness of the *defense/defendant* to plea bargain? (Check 1)

Not applicable/ have not had any murder cases since the recording requirement.

No, has not influenced defense/defendant willingness to plea bargain.

Yes, has influenced defense/defendant willingness to plea bargain.

If yes, please explain how or give specific examples.

#10125 – This question should be addressed to defense counsel. It is our sense that the answer will depend on what is contained in the specific recording

#10086 – Allows defense attorneys to convince their clients a plea is the only route after other issues are exhausted

#10119 – Recorded interviews have not been good for the defendant

#10048 – Defendant abandoned an insanity defense because of his sane appearance on the video-taped recording

#10099 – The visual “confession” usually is hard for defendant to explain away

#10109 – I’ve noticed no significant difference

#10043 – A co-defendant gave a full confession on video which influenced the defendant to plead open

#10088 – It has largely removed the suggestion by the defendant that his confession was coerced or otherwise improperly obtained. The tape speaks for itself

8) In your opinion, has the existence of recorded custodial interrogations/confessions in murder cases influenced the willingness of the *defense/defendant* to *seek a jury trial*? (Check 1)

Not applicable/ have not had any murder cases since the recording requirement.

No, has not influenced defense/defendant to seek a jury trial.

Yes, has influenced defense/defendant to seek a jury trial.

If yes, explain how and give specific examples.

9) In your opinion, have electronic recordings of murder interrogations reduced the number of motions to suppress confessions or admissions owing to failure to give *Miranda* warnings, coercion, or use of improper interview tactics? (Check 1)

Not applicable/have not had any murder cases since the recording requirement.

No, has not reduced motions to suppress confessions or admissions.

Yes, has reduced motions to suppress confessions or admissions.

If yes, please give specific examples.

#10176 – Not sure, only one homicide case, but no motion to suppress

#10071 – in one case, _____, the defense and the state agreed that a portion of the defendant’s statements were not admissible at trial because they were plea related

#10099 – Defendants file boilerplate motions in every murder and cherry-pick its preferences moments before hearing. The preparation time of the SA has not been reduced

#10091 – No, but has affected the outcome of these motions

10) In your opinion, have electronic recordings made it easier to obtain convictions in murder cases? (Check 1)

Not applicable/have not had any murder cases since the recording requirement

No, has not made it easier to obtain convictions in murder cases.

Yes, has made it easier to obtain convictions in murder cases.

If yes, please give examples of how they were used to obtain convictions.

- #10125 – The ability to obtain a conviction in a murder case depends on the evidence in that particular case
- #10086 – Allows trier of fact to not only see but “feel” the emotions of the defendant and the defendant’s truthfulness
- #10066 – Confessions
- #10010 – In the cases I’ve had. No questions about who said what, or misunderstood. Eliminates issues of coercion, etc.
- #10176 – With the recording, there is no dispute as to exactly what was said by the defendant and the police. The defendant’s emotional and physical appearance was depicted accurately. It allowed me to properly assess the defendant and defendant was only charged with involuntary manslaughter
- #10101 – Body language, phraseology of defendant, demeanor of defendant
- #10116 – Jury was able to watch interview instead of relying on testimony
- #10099 – Yes, SELF EVIDENT
- #10180 – Playing for jury was very effective
- #10033 – Defense counsel has the recording to review
- #10110 – If the defendant confesses, it is great to have it on video tape for the jury to watch and hear

11) Since the statutory requirement took effect requiring electronic recordings of custodial interrogations of murder suspects, has your office been provided with recorded interrogations/confessions of any **NON-MURDER** cases? (Check 1)

- Never/Rarely _____
- Sometimes _____
- Most of the time _____
- Always _____

12) Do you believe that the requirement of complete electronic recordings of custodial interrogations should be expanded to include additional felony offenses? (Check 1)

- _____ No
- _____ Yes

If yes, what other types of felony offense interrogations do you believe should be recorded and why?

- #10125 – Our office is already strained by the currently unfunded mandate to record interrogations in homicide cases
- #10086 – All felonies: will destroy the myth of the “false” confession
- #10198 – There is no need to statutorily regulate this when as a practical matter officers that don’t regularly investigate homicides, but may need to do so in the future, need to develop and maintain the special skill set necessary to be effective
- #10119 – The more the better
- #10066 – All felonies
- #10176 – Not at this time
- #10101 – While I would love to see cops do video of all interviews, it is impractical. Also, article 14 would have to be amended
- #10116 – Sexual abuse, arson, juvenile abuse/neglect
- #10071 – Sexual offenses involving child victims
- #10023 – Forcible felonies, violent felonies
- #10048 – Just makes sense

#10105 – I do not think it should be legally required. However, I think SAs doing their jobs should make clear to detectives the commonsense preference that statements be video recorded.
#10166 – Should be optional – too burdensome to require in other felonies
#10057 – Child sex abuse/assault
#10110 – Violent felonies, because in serious cases it is good to know exactly what the defendant said during interrogation

13) In your opinion, does the recording of interrogations have any specific *disadvantages/problems* or any specific *advantages/benefits*?

Disadvantages/Problems (please describe)

#10125 – Recording entire interrogations has placed a substantial burden on our office both in observing and processing the interrogation and preparing the recording for use at trial
#10034 – Additional requirement upon law enforcement during investigation
#10119 – None
#10066 – Some suspects are more willing to talk when not being recorded. This is particularly true when co-defendants are involved
#10176 – Reluctance of defendants to talk with officers without any prior report between them. Defendant may not talk loudly enough or technical problems with equipment. Familiarity with equipment by interrogating officers (in small counties use is infrequent)
#10137 – Time doesn't always allow the ability in rural areas to get quick statements recorded
#10135 – Reluctance of suspect to give a statement
#10023 – Sometimes a suspect would rather say nothing than be recorded – I'm not sure why
#10099 – Police are unsure of requirements of recording. If defendant is arrested for involuntary manslaughter (a Class 3 felony), and doesn't allow recording of statement, but the possibility exists for a murder charge, should police overrule defendant's refusal and record anyway? Not record? If they record, must they tell defendant? What if he won't speak unless not recorded?
#10006 – Severe impact on resources when these recordings have to be transcribed – not enough staff time to transcribe hours and hours of tapes. Also difficult to transcribe, or jurors to understand when suspect is talking fast or using slang/street talk
#10109 – Most persons being interviewed don't simply tell their story. The progress of an interview is piecemeal so an inexperienced juror does not understand it as easily as reading with a written summary of a crime on a written statement. Some criminals speak way too softly
#10095 – Time and cost of transcription; if officers make a mistake, there is no dispute, but it is rare that any custodial interrogation contains no problems; cameras can cause people to behave differently; once defense bar is accustomed to having interrogations recorded, they expect everyone to be recorded
#10197 – Juries may not understand how far police officers can embellish or lie to get a confession. It might make the officers appear less credible. The requirement of taping might scare some perps away
#10105 – The only disadvantage to recording is that a certain percentage of defendants will get scared off, and not give a statement at all. We need to have options for taking a statement for those defendants who will not allow themselves to be recorded
#10033 – None
#10159 – Possibility of technical problems with equipment
#10190 – A dishonest denial, repeated at trial, can support a guilty defendant
#10166 – None
#10088 – Possible chilling effect on the person's willingness to speak to police
#10133 – Some may be concerned that suspects will not speak if they know they are being recorded, but we have not found that to be the case.

#10183 – Defendant may be a good actor. Recording equipment may malfunction. Police interviewer may use poor techniques and not obtain enough useful information

#10087 – None

#10038 – Defendant may be able to play to jury to show innocence

#10110 – None, except the eavesdropping statute needs to be amended to allow for videotaping of all witness statements in murder cases. Right now all that is exempted is a custodial interrogation of a suspect. If it's not exactly clear whether a person is in custody or a suspect, you have to choose between violating the eavesdropping statute or following the spirit of the mandatory taping legislation

Advantages/Benefits (please describe)

#10125 – It allows the trier of fact to see every moment a suspect is in custody (in _____) which makes it easier to defend some allegations of police misconduct. It allows the jury/judge to see the offender, as well as hear his words, which can be useful in determining truthfulness.

#10034 – Preservation of evidence; potential for stronger influence of admission/confession at trial

#10086 – Allows the trier of fact to see what took place at the interrogation and stops the defendant from lying about it

#10119 – Defendants can't change their story and claim officer is not telling the truth. Eliminates argument as to violations of Miranda

#10066 – Eliminates the need for the judge/jury to believe an officer over the defendant

#10010 – Eliminates a lot of issues

#10176 – Waiver of rights is clear/accurate. If no technical problems and defendant speaks loud enough, there is no factual disputes as to what was said and what transpired. Physical/emotional depiction of defendant can show lack of duress. Tone/actions of police can show lack of duress

#10101 – Eliminates issues of coercion disagreement over what was said and how it was said

#10135 – Compelling evidence at trial

#10071 – Whether the suspect makes admissions or denies involvement, the key to case outcomes is often found in the evidence that either corroborates or refutes what the suspect describes on tape. The police are protected from claims of coercion and the defendant's rights are also protected

#10023 – Obvious – jury gets to see statement and judge for themselves

#10048 – Can't challenge the memory of the investigators

#10006 – Beneficial when admissions were actually present on tape to show to fact finders

#10109 – Being able to view nervous mannerisms of a subject first hand is helpful. Also, if a subject used gestures to demonstrate it can be very compelling evidence.

#10029 – Recording is helpful with inexperienced felons and certainly homicides. However, since consent is needed in non-homicide cases, experienced defendants are less likely to talk on tape, if they talk at all

#10197 – We have evidence that can't be disputed if the defendant did confess

#10180 – Get rid of nonsense motions

#10105 – There are many advantages. Number one would be the jury seeing with its own eyes the defendant confessing in his own words. Number two would be the jury seeing with its own eyes that no improper police conduct was used in obtaining the statement. There are others that are obvious

#10033 – No disputes as to what transpired

#10159 – Accurate record

#10185 – Consistencies/inconsistencies of defendant

#10190 – Confessions

#10166 – Nothing is left to interpretation

#10111 – Helpful to demonstrate voluntariness of confessions. Jurors like to see these. Usually assist in plea negotiations

#10133 – Recording interviews allows the trier of fact to see what actually occurred. This prevents witnesses and attorneys from being able to misinterpret the facts; the tape is the evidence rather than the testimony. Recording protects both sides

#10183 – Tougher for defense attorneys to win motions to suppress. Few defendants are that good at acting to muster effective denials. Confessions/admissions result in more plea bargains

#10087 – Fewer motions to suppress, more pleas

#10038 – Proof in confession

#10110 – There is a clear record of what exactly went on in the interrogation room

III. Eyewitness Identification Processes

1) Does your State's Attorney's Office have the State's Attorney or an Assistant State's Attorney physically present during *eyewitness identification procedures of murder suspects*? (Check 1)

Never/Rarely _____

Sometimes _____

Most of the time _____

Always _____

#10019 – Issue hasn't arisen, law enforcement would contact

#10105 – We rarely, if ever, use live lineups. It's almost always a photo lineup

2) Do you prefer the use of administrators of police line-ups who do not know which member of the line-up is the suspect, the so-called "blind" administrator method, if one is reasonably available? (Check 1)

_____ Yes, prefer "blind" administrator methods for police line-ups.

_____ No, do not prefer "blind" administrator methods for police line-ups.

_____ Do not have any opinion.

#10176 – Don't use line-ups, use photo arrays

#10099 – The leading study doesn't validate this as any more reliable than without "blind" administrator

3) Are you satisfied with the current procedures used by police departments for eyewitness identification in murder cases? (Check 1)

_____ Yes

_____ No

If no, how do you believe line-up procedures in murder cases could be improved?

#10099 – I don't know. Eyewitness testimony standing alone makes for a poor case

IV. Experiences with the Delivery of Murder Case Evidence by Police

1) Have you experienced any problems with police departments in your jurisdiction complying with the requirement that they provide all investigative files, materials, field notes, etc. to your office in every homicide case? (Check 1)

_____ Not applicable/have not had any murder cases since the requirement.

_____ No, there have not been any problems with police departments complying.

_____ Yes, there have been problems with police departments complying.

If yes, please describe the problems experienced (i.e., handwritten reports difficult to work with, incompatible/lacking equipment to review recorded custodial interrogations, timeliness, missing

pages/documents, etc).

#10125 – Final police reports are not always completed in a timely fashion. High cost of copying and editing videos

#10086 – More of a procedural glitch in the sheriff's records dept. than anything else. We have been and continue to work on a better procedure to get all evidence

#10066 – Reluctance to produce

#10116 – Lack of training in smaller jurisdictions

#10071 – Time has been the only real concern

#10099 – The supervisors (sgt./lt.) seem to rubberstamp reports and case status. Follow-up by superiors (to see if patrol or detectives have been vigilant in following up) is often non-existent. No police system activates or alerts that a case is being neglected. Hence, things get strewn, overlooked, shoved aside, hidden, etc.

#10055 – Have trouble getting the hand-written notes

2) When requested, how long does it *usually* take to obtain all of the investigative files, materials, field notes, etc. from police departments for a homicide case?

#10125 – Varies, at least 3-6 months. On rare occasions up to a year

#10034 – 1-2 months

#10086 – 3-4 months

#10052 – Months

#10044 – 1 week

#10119 – ISP is slow. Too much red tape. Sometimes several months to get official reports

#10066 – Not long

#10010 – A few days to 2-3 weeks

#10176 – Within one month of case being filed

#10116 – Depends on length of investigation. Initial investigations, approx. 4-6 months

#10135 – Less than a month

#10031 – 30 days

#10071 – Depends on the number of agencies and the complexity of the case

#10048 – Less than a month

#10188 – A few days to a week or two

#10099 – Weeks!

#10109 – Up to 90 days

#10095 – If investigation is ongoing, they are automatically supplied upon completion of each phase within 1-2 weeks

#10180 – A few days

#10033 – 30 days, approx.

#10159 – 30 days

#10166 – Local agencies are quicker than ISP

#10088 – Almost immediately available after completion of reports

#10133 – Less than one week

#10151 – 1 week

#10057 – Within a week

#10183 – Less than 30 days

#10148 – Approximately 1 week

#10087 – No delay

#10055 – Couple weeks

#10110 – Less than a week for the initial materials, but you have to be really diligent in making sure they didn't forget anything
#10113 – 2 weeks

3) In the past 4 years, have you experienced delays in obtaining forensic lab results for murder cases that have delayed discovery or court proceedings?

- Not applicable/have not had any murder cases in the past 4 years.
- No
- Yes

#10101 – State crime lab is underfunded
#10019 – Sure have in every other felony!
#10071 – Rare

V. Experiences with Murder/Capital Case Trials Pre-Indictment

1) Since January 1, 2003, how many certificates to seek the death penalty has your office filed? _____

2) In general, do you believe that 120 days from arraignment is sufficient time to determine if the death penalty will be sought (i.e., a certificate to seek the death penalty is filed)? (Check 1)

- No
- Yes

#10101 – Generally, yes. There may be cases where more time is needed

3) Have you had any specific cases/experiences where the 120 days was not sufficient time? (Check 1)

- Not applicable/have not had any death-eligible cases since the 120 day requirement was implemented
- No
- Yes

If yes, please explain the circumstances where 120 days was not sufficient.

#10125 – Cases involving DNA and mental health histories

#10071 – Defense request to delay filing notice so that they could present mitigation pursuant to our guidelines

#10095 – Couldn't complete the forensic tests in time to make a sufficient determination

#10087 – Delays in lab results

4) Do you believe that the new mitigating factor for mental and physical abuse or for diminished mental capacity has changed your office's decision to file a certificate to seek capital punishment? (Check 1)

- Not applicable/ have not had any death-eligible cases since 2003.
- No
- Yes

#10125 – Note: this office already treated this as a significant mitigating factor that affected decisions to seek the death penalty

#10105 – I can imagine scenarios where it would change our office's decision

5) Are you satisfied with the factors utilized in the Illinois statute, and the process used in the court, to determine mental retardation? (Check 1)

- Yes
- No

If no, what aspect are you not satisfied with?

- #10135 – No opinion. I have no experience to use to form an opinion
- #10099 – This arcane term (retarded) is poorly presented for lay jurors to understand
- #10105 – For defendants who are truly of diminished mental capacity, I don't have a quarrel with it being a factor of mitigation. However, I think that only people who have lost all objectivity on the subject can believe that our system is working as it should on this issue. Virtually every defendant in capital cases makes such a claim and I believe that less than 10% of them are legitimate factors
- #10111 – Too much non-expert influence
- #10110 – The factors are basically the DSM definitions with a 5 point cushion for IQ. I don't think it works well – it is too vague and nebulous

6) Do you believe that allowing depositions in capital cases improves the processing of these cases? (Check 1)

- Not applicable/ have not had any capital cases since 2003.
 - No, depositions do not improve the processing of capital cases.
 - Yes, depositions do improve the processing of capital cases.
- If yes or no, please explain why or why not.

#10125 – It depends on the particular case and the care with which the trial judge applies the rule. In some cases unnecessary depositions are allowed causing substantial delays in capital cases. The “good cause” standard is not adequately defined

#10086 – Depositions are only used as fishing expeditions by the defense to cause yet another delay because of some non-material issue brought up by a witness

#10119 – Slows things down

#10101 – Depositions are bullshit. It allows the defense to harass the state's witnesses

#10071 – Deposition *can* improve the processing of a case. There is no yes or no answer. It depends on the nature of the case

#10023 – Better if higher predictability of witness testimony at trial

#10099 – It is all about money for death certified attorneys. It yields very little and wears down innocent witnesses. It also frightens witnesses to provide personal data.

#10095 – Given the number of court delays it allows witnesses that are crucial to the case to be examined while available of whereabouts are known

#10105 – I don't need to have had a capital case to know that this has done terrible things to the processing of capital cases. Defense attorneys are using the process to pervert justice

#10166 – Allows more thorough investigation

#10057 – In my case, we are deposing many witnesses in the hope of expediting discovery

#10110 – We haven't conducted any depositions in capital cases yet, so can't comment

7) Do you believe that the number of factors that make a homicide case eligible for the death penalty should remain the same, be reduced or be expanded? (Check 1)

- Remain the same
- Reduced
- Expanded

If reduced or expanded, what specific changes do you believe should be made?

#10125 – Several factors could be eliminated. An example is the drive-by shooting factor

#10101 – Eliminate some of the stupid factors, i.e. (9), (12), (17), (18), (19), (20). Oh, by the way, as to (7) and (16), why not just have a “brutal and heinous” factor for all victims?

#10135 – I think the entire criminal code has too many exceptions/special provisions. Each one standing alone may be a good idea, but considered all together the code has simply become unworkable

- #10071 – The General Assembly should reduce the number of statutory aggravating factors by eliminating factors (9), (12), (13), and (15)-(20)
- #10099 – Eliminate (18), (15), (13), (12), (11)
- #10095 – Expanded, death should be an option on every homicide case
- #10180 – Reduced, I disagree with factors which suggest that certain people’s lives are more valuable than others
- #10166 – Capital cases should rarely be filed. However, the large number of aggravating factors give less prudent SAs the ability to seek death in *almost* every homicide

8) Do you believe that the *cost* to your County of pursuing the death penalty reduces the likelihood that it will be sought? (Check 1)

- No, the cost to the county does not reduce the likelihood that the death-penalty will be sought.
- Yes, the cost to the county does reduce the likelihood that the death-penalty will be sought.

9) *Should* the cost of pursuing the death penalty be considered when determining whether it should be sought? (Check 1)

- No, the cost should not be considered.
- Yes, the cost should be considered.

- #10010 – No, but you often have no choice
- #10101 – No, but the sad fact is that in smaller and poorer counties, it is a factor
- #10146 – In a perfect world, no. Small counties can’t afford certain expenses
- #10111 – Cost should never be a factor in administration of justice, but unfortunately that consideration is pervasive in smaller counties

10) Has your office experienced delays in receiving results from forensic laboratories in *death penalty* cases? (Check 1)

- No
- Yes
- If yes, please explain or give examples.

- #10125 – State labs often decline to work up all of the DNA requested. State lab employees leave the state and refuse to return to testify. State labs farm out DNA examinations to private labs and refuse to compensate local prosecutors for the cost of testifying witnesses
- #10095 – DNA tests take longer than the time available to get a defendant in custody to trial. Limited staff results in important evidence either not being tested or held off until later results show a need
- #10087 – There are delays in ALL cases

11) Are you satisfied with the quality of the work product of forensic laboratories in *death penalty* cases? (Check 1)

- Yes
- No
- If no, please explain and give examples.

VI: Experiences with Murder/Capital Case Trials Post-Indictment

- 1) Are juror questionnaires--questions proposed by the defense and prosecution, reviewed by the court to reach a consensus, and given to prospective jurors prior to *voir dire* —used in *capital cases* in your county? (Check 1)
- Not applicable/have not had any capital cases involving a jury in the past 4 years

No
 Yes

If yes, how are they created and do you find them useful?

#10125 – They are not a regular part of the process but have been used, usually in high profile cases. There is no consensus on how helpful they are

#10086 – Created by SA and defense attorney; reviewed by judge and not presented until ruled on by judge

#10044 – Submitted by both sides and reviewed by a judge

#10101 – We have used questionnaires in non-capital murder cases in which there has been significant publicity

#10071 – Questionnaires are prepared by both sides and submitted to the court. Questions that cannot be agreed upon are ruled on by the court. These juror questionnaires save time and provide for an efficient exercise of challenges, often by agreement

#10095 – By state, defense and court so that all basic questions are covered. Yes, we find them useful

#10105 – I think it would be useful if we had a capital case

#10166 – They are jointly created by the state and defense

2) Are case management conferences held in *every* murder case that are *potential* death-penalty cases (i.e., a certificate of intent to seek death has not yet been formally filed) in your jurisdiction? (Check 1)

Not applicable/ have not had any death-eligible cases since 2003.

No

Yes

If yes, please explain the process used by the court to make this determination/decision to hold case management conferences in potential death-penalty cases.

#10125 – Each trial court regularly schedules case management conferences. They are made a component of status court dates. The trial court specifically addresses the topics required by statute or rule before moving onto issues unique to each case

#10180 – Judge determines

#10159 – All parties are informed of court's intent to hold CMC and all parties agree

#10166 – Really didn't apply, because the intent was filed after the arraignment on same day

#10113 – Done in almost all felony cases

3) Do you believe case management conferences for death-penalty cases should be held in *open court*? (Check 1)

No, they should not be held in open court.

Yes, they should be held in open court.

#10125 – * the court can decide which case management conferences should be held in open court.

Occasionally, fairness to the defendant dictates in camera conferences. All conferences should be on the record, but the court should retain the ability to seal and control information that will prevent a fair trial by an impartial jury

#10176 – No, but Constitutional requirement of open court prevents it

#10023 – After informal meeting in chambers with all counsel

#10099 – Depends

4) Do you believe these case management conferences for death-penalty cases should be on the *court record*? (Check 1)

No, they should not be on the court record.

Yes, they should be on the court record.

#10099 – Depends. If judge or lawyer becomes pushy in private, attorney should reserve right to go to open court

#10029 – Yes, but they should be sealed from the public until the trial is over

5) Do you believe these *case management conferences* for death-penalty cases have improved the processing of death-penalty cases? (Check 1)

Not applicable/ have not had any death-penalty cases since 2003.

No, have not improved the processing of death-penalty cases.

Yes, have improved the processing of death-penalty cases.

If yes or no, please explain why or why not.

#10125 – *Experienced* trial courts can closely monitor the pre-trial stages of the case and focus attorneys on achieving discovery compliance

#10071 – The conferences ensure that both sides are well prepared and fully complying with their discovery and adversarial duties

#10023 – Allows court and counsel to keep an eye on the ball and take care of issues sooner rather than a “seat of the pants” handling during trial

#10099 – No, they are treated as mere review dates. Defense sees them as a deadline for nothing

#10110 – It forces everyone to stay on schedule

6) Has your office had experience with the statutory requirement of a pretrial hearing concerning the reliability of testimony of informants (i.e., “jailhouse” informants) in a capital case? (Check 1)

Not applicable/ have not had any murder cases since 2003.

No

Yes

If yes, what are your perceptions of this hearing?

7) Do you believe that the trial judges in capital cases tried in your county since 2003 have sufficient experience and competence to handle these cases? (Check 1)

Not applicable/ have not had any capital cases since 2003.

Yes

No

#10125 – There are too many judges of varying competencies in large jurisdictions to make a general response

#10066 – They have presided over other capital cases in other counties

#10110 – Judges should be required to meet lead counsel standards as set by the CLTB to hear a capital case

8) Do you believe that the defense bar in capital cases tried in your county since 2003 have sufficient experience and competence to handle these cases? (Check 1)

Not applicable/ have not had any capital cases since 2003.

Yes

No

#10066 – They have tried cases in other counties

9) Do you feel that there is a need for pattern jury instructions in death-eligible cases?

Yes

No

Are there any other things related to the reforms of how murder cases in general, and capital cases in particular, are processed through the justice system that you believe are important for the Capital Punishment Reform Study Committee to be aware of or consider? Feel free to add additional pages.

#10135 – Don't increase the burden of proof to "no doubt." This will in effect abolish the death penalty, but prosecutors will be blamed for not pursuing it. If the legislature wants to abolish the death penalty, then just do it. Don't try and pass the blame to prosecutors

#10023 – Current trends in legislature to continue "reforms," i.e. add extra burden of proof, etc. are becoming tedious and make things unfairly difficult for SAs. If the governor won't lift the moratorium, the legislature should just eliminate the death penalty and save us all the wasted effort

#10088 – Lift the moratorium or publicly identify the objective reasons why it should remain in place, otherwise abolish the death penalty if it will not realistically be available as a sentencing alternative

#10110 – I want to stress again how important it is for the eavesdropping statute to be re-examined in relation to mandatory taping requirements