

Capital Punishment Reform Study Committee
Minutes of Subcommittee No. 1 meeting

December 4, 2006

PART I

On December 4, 2006 at 9 A.M., the Police and Investigations subcommittee of the Capital Punishment Reform Study Committee held a meeting at the St. Clair County State's Attorney's Office in Belleville, Illinois. Attending were subcommittee members James R. Coldren, Jr., Gerald E. Nora (via teleconference) and Thomas P. Sullivan (via teleconference). Present were Jon Allard, St. Clair County Asst. State's Attorney, Lt. Jeffrey Wild, O'Fallon Police Department, Lt. Steven Johnson St. Clair County Sheriff's Office, and Mstr. Sgt. James Morrissey (Illinois State Police, Collinsville, Illinois).

Background of subcommittee guests.

All guests are members of the St. Louis Major Case Squad, which convenes upon the request of a department investigating murders and other major cases. Mr. Morrissey of the Illinois State Police is the lead investigator, handling murder investigations in jurisdictions of metropolitan St. Louis that have limited financial means and cannot conduct their own independent investigations. His office investigates approximately 30 murders a year. Mr. Johnson of the St. Clair County Sheriff's Office is the

lead investigator handling murder investigations in unincorporated areas of St. Clair County. His office investigates less than 10 murders a year. Mr. Wild of the O'Fallon Police Department is the lead investigator handling murder investigations in the City of O'Fallon. His department handles less than 10 murders a year.

The St. Louis Major Case Squad is comprised of law enforcement from both Illinois and Missouri. They have a murder clearance rate of 86% (see their website: www.majorcasesquad.org).

Recording custodial interrogations.

Mr. Allard reported that in the spring of 2002, the St. Clair State's Attorney's Office lost several murder jury trials. In addition, that year several murder confessions were suppressed based on the testimony of a psychologist that the confessions violated the Fifth Amendment based on the defendant's failure to understand his *Miranda* rights.

Now as a result, in June, 2002, the St. Clair County State's Attorney's Office instituted a county-wide policy requiring law enforcement to videotape custodial interrogations of suspects in homicides and crimes of violence. See Attachment 1. The policy required law enforcement to use a standard *Miranda* warning. Coupled with these new policies, the State's

Attorney's Office conducted training seminars for law enforcement on appropriate interrogations techniques.

All guests reported initial skepticism on the part of law enforcement in St. Clair County regarding the need for this new policy. Indeed some members of the law enforcement community were adamantly opposed. However, as a result of experience gained over the course of the last four years, all guests reported unanimous enthusiasm for videotaping of custodial interrogations. The St. Clair Sheriff is such a strong proponent of videotaped interrogations that his office requires taping of all interrogations done in conjunction with felony investigations. Mr. Wild reported that the O'Fallon Police Department videotapes all custodial interviews of felony suspects.

Mr. Baroni asked the guests how they dealt with the use of deception by interrogators on videotape when the case went before a jury. Messrs. Morrissey and Allard said it is the prosecutor's job to explain to the jury that the use of deception is an appropriate interrogation mechanism. Mr. Sullivan asked if a new pattern jury instruction would be helpful in explaining that deception is a permissible means of eliciting a confession. Mr. Allard said instructions to that effect would be very helpful, although

juries seem comfortable with the prosecutor's explanation, and seeing deceptive tactics employed by law enforcement during interrogations.

Mr. Allard said a videotaped confession is far more compelling than a paper confession. Juries do not see torture or beatings of suspects, as is often depicted in television dramas, and as a result, deception or trickery has not been an obstacle to a finding of guilt.

Mr. Nora asked if there was a difference in case clearance rate since the implementation of the videotaping mandate in St. Clair County. Messrs. Johnson, Morrissey, Wild and Allard all reported the clearance rates remain about the same, but there are far fewer motions to suppress filed based on constitutional rights violations since the use of videotape became the norm.

Mr. Sullivan asked if any motions to suppress had been granted since the implementation of the videotaping mandate. Mr. Allard said one motion was granted, but the ruling was reversed on appeal.

Mr. Allard said most law enforcement agencies in St. Clair County are comfortable with videotaping of interrogations, and the State's Attorney's Office has expanded the policy from homicides to all violent felonies.

Training, equipment and cost.

Mr. Morrissey said that the State Police have 14 mobile training units that travel the State providing ongoing training on the use of recording

equipment in interrogations. Mr. Johnson has gone through several ISP interrogation training classes, and found them very effective.

Most jurisdictions in St. Clair County received Criminal Justice Information Authority one-time grants to purchase recording equipment. . All guests expressed concern that the rapid evolution of videotaping technology would pass them by, because there was not an ongoing grant program for purchasing videotaping equipment, and some departments run on shoe string budgets.

Mr. Allard said reviewing videotaped confessions takes many additional attorney hours, and his office has had difficulty keeping up with the need to review videotapes. In some instances, videotaped interrogations last up to six hours, and each minute must be observed by an Assistant State's Attorney, sometimes more than once and by more than one Assistant. Mr. Allard also explained that the time involved in reviewing a five page written statement is exponentially less than the time involved in reviewing a five hour videotaped statement.

Lineups and photo spreads.

Mr. Allard reported that the St. Clair County State's Attorney's Office has no official policy on the method for conducting lineups and photo spreads. Mr. Morrissey said his office generally obtains photographs for

photo spreads from the Sheriff's Office. The Sheriff also has a computerized system of photographs, which is of great benefit in creating photo arrays.

Mr. Morrissey said his lineups and photo spreads are conducted using the traditional simultaneous, non-blind method.

Mr. Johnson said the St. Clair County Sheriff has adopted the sequential procedure line-up, and tries to use blind administrators. Mr. Sullivan asked whether Mr. Johnson thought the sequential method yielded better results; Mr. Johnson said he has not noticed a change. He said the office does not have a written policy regarding the use of the sequential method. They chose to adopt the method because they thought the sequential method would be mandated in the future.

Messrs. Johnson and Allard urged the subcommittee to recommend that the State provide additional funding to local State's Attorneys because of the additional time commitment the videotaping mandate requires.

Mr. Morrissey urged the subcommittee to recommend creation of a central state repository for storage of evidence in homicide cases that is required to be preserved indefinitely.

PART II

The subcommittee reconvened on December 4, 2006, 11 A.M. at the law offices of O’Gara, Gomric & Schultz, 6 East Washington, Belleville, Illinois. Attending were subcommittee members James R. Coldren, Jr., Gerald E. Nora (via teleconference), and Thomas P. Sullivan (via teleconference). Present were Timothy Nikolavzyk and Alva Bush, (private investigators), and James M. Stern, James A. Gomric and John J. O’Gara, Capital Litigation Trial Bar defense attorneys.

Background of subcommittee guests.

Messrs. Gomric, O’Gara and Stern are all long standing members of the Capital Litigation Trial Bar, and handle a large percentage of the capital cases charged in the metro east area, that is, St. Clair, Madison and other southern Illinois counties. Messrs. Bush and Nikolavzyk are private investigators who assist criminal defense attorneys in preparing capital defense cases. Mr. Bush was an investigator with the Illinois State Police for 25 years.

Recording custodial interrogations.

Messrs. Stern and Gomric reported that they represented two capital defendants in a case where the videotaped confession actually resulted in the prosecution dismissing the case. The case was dismissed because the

confession, once viewed in its entirety, was not a credible inculpatory statement. Mr. Stern was able to convince the prosecuting attorney of that after they both watched the videotape. In several other instances, Messrs. Gomric and O’Gara said that motions to suppress confessions could not be filed based on videotaped statements.

Mr. Gomric said videotaping accomplishes several goals: it keeps law enforcement and prosecutors honest, and it convicts guilty defendants. Mr. Bush said that the videotape evidence opens a window into the use of the Reid interrogation techniques often utilized by law enforcement. It also allows defense attorneys to focus on coercive conduct that may not be reflected in written police reports.

Mr. O’Gara believes interrogation tactics have changed with the onset of videotaping confessions, because the entire interview is preserved “in living color”. He believes the truth finding function is well served by the recording mandate.

Messrs. O’Gara and Gomric said that a transcript of any recorded interrogation is a prerequisite to a proper defense of the accused. However, transcription is expensive, and sometimes judges are reluctant to pay for it out of the Capital Litigation Trust Fund. These costs pose an even greater concern when a capital case is “de-deathed.” In other words, if a State’s

Attorney changes his/her mind and chooses not to seek capital punishment, the Capital Litigation Trust Fund is no longer available to the defense. This poses a problem not only in terms of transcription and storage cost, but also in terms of adequate representation. Mr. Gomric said that in one case, he prepared for trial for six months, and on the eve of trial the prosecution announced that the death penalty would not be sought. As a result, Mr. Gomric was almost forced to withdraw from the case, which would have been a huge disservice to his client. Messrs. Gomric, O’Gara and Bush believe a “Rural defense fund” should be created by the State to address the situation when a capital case is decertified.

Lineups and photo spreads.

All guests reported that lineups and photo spreads are not of great concern to them, because they have not been an issue that they have dealt with on any regular basis.

Judicial training for capital cases.

Mr. O’Gara said that inexperienced judges presiding over capital cases create grave problems for prosecutors and defense attorneys. He believes that intensive training and/or experience should be a prerequisite to judges presiding over capital cases.

Mr. O’Gara believes capital judges should be allowed to use funds from the Capital Litigation Trust Fund at the outset of every homicide case, if there is even a possibility that the case could result in capital punishment.

The subcommittee adjourned at 1:05 P.M.

Peter G. Baroni
Special Counsel to the CPRSC