

CAPITAL PUNISHMENT REFORM STUDY COMMITTEE
Police and Investigations Subcommittee

Subcommittee Meeting
University of Chicago Law School
February 6, 2005
12:00 pm – 2:00 pm

Subcommittee members present: Chip Coldren, Geoff Stone, Gerry Nora

Invited Guests: Mike Cook, John Palcu, Larry Rafferty, South Suburban Major Crimes Task Force

Not present: Tom Needham

Note: this document reviews the discussion this Subcommittee had with members of the South Suburban Major Crimes Task Force. See page 4 for a brief summary of discussion topics.

This meeting began with Subcommittee Chair Coldren welcoming the invited guests and providing a brief overview of the history of the Capital Punishment Reform Study Committee and this Police and Investigations Subcommittee. Coldren explained that the main discussion topic for the meeting concerned the Task Force members' experiences with mandatory recording of custodial interrogations since the new law took effect last July.

Cmdr. Palcu explained a bit about the organization of the South Suburban Major Crimes Task Force (MCTF). In recent months, MCTF has handled 36 capital cases in 2005 (July to Sept) and 4 so far in 2006. MCTF comprises members from 52 south suburban police forces (plus the Cook County Sheriff's Police and the Illinois State Police). The task force is divided into two key areas – East and West – with the West area comprising about twice as many communities as the East. Cmdr. Cook directs the activities of the East task force and Cmdr. Palcu directs the activities of the West task force. There is a fairly constant circulation of police officers (detectives mostly) in and out of the task force, depending on availability, priorities and other factors individual to each participating police department. Palcu explained that there are about 25 members assigned to a current case (involving the death of a baby).

Palcu also explained that there are 10 major crimes task forces in the Northern Illinois area, and that they reached out to talk with their contemporaries in those task forces before today's meeting.

MCTF used recording devices in several murder case interrogations before the July '05 law took effect; primarily to obtain recorded statements from witnesses as an aid in preventing changing stories.

Since July, Cook and Palcu said they had recorded custodial interrogations with 19 suspects (4 from the West area and 15 from the East area). Typically they turn the recorder on when individuals they interview as witnesses in capital cases turn into suspects. It became apparent

during our discussion that task force members do not routinely advise suspects that they are being taped during interrogations.

They explained that law enforcement practitioners did not react negatively to the law in July '05, though there have been several operational issues they have had to manage. Some local suburban police departments do not have sites suitable or equipped for taping, and sometimes task force members have difficulty finding sites available for taping or that work properly. One department (e.g., the department in a site where a murder has occurred) may have a working site for recording, but if there are numerous interviews to conduct they have problems – either they have to delay the interviewing of some suspects (when they would prefer to do them simultaneously) or they have to transport suspects to different locations, which poses logistical and other problems. Several times during our discussion, the MCTF representatives referred to problems relating to the requirement that charges be filed within 48 hours – in complicated cases with multiple suspects (and limited recording sites) the sequencing of interviews may push the police close to the 48-hour deadline, thus compromising their interrogation strategy or the quality of their interrogations. The task force commanders noted that sometimes suspects give statements while they are in transit from one place to the next, and these are viewed with skepticism in court.

Gerry Nora asked how these practical situations are typically handled, and Mike Cook responded that they will postpone the timing of an interview if they have to but they will not forego an interview entirely. Nora also asked about the impact of the delays the task force commanders described, and the commanders responded that delays make the investigation task more difficult.

The two task force commanders explained that they do not have a budget for the task force; budgets, supplies, officers and other resources are driven by the local jurisdictions that contribute to the task force.

Geoff Stone asked if suspects ask officers if they are being taped during interrogations; the response was that this happens infrequently, but that individuals heavily involved in criminal activity (e.g., gang members) have become very much aware that taping of interrogations takes place. They 'play to the juries' according to the task force commanders.

In response to questions from the subcommittee, it became apparent that the police officers were getting mixed messages regarding taping policy from district ASAs, compared with instructions they received via the Attorney General's Office training materials. This came up during a conversation about whether detectives (interrogators) should continue using the tactic of lying to suspects during interrogations. Apparently, the training provided by the Attorney General's office advised local officers to use the methods they routinely use in interrogations, while local ASAs have suggested otherwise.

In response to a question about whether portable taping units were used by the task force, the commanders explained that the units provided through funding from the Illinois Criminal Justice Information Authority were obsolete within a very short amount of time. When local departments attempted to purchase identical back-up units from the same vendor(s), they found

that the equipment was no longer available. Some local departments purchased entirely new systems once this problem became evident. Thus, there are differences between local departments regarding the type of recording equipment available, different officers are trained on different systems, and not all departments have adequate back-up systems, all contributing to inefficiencies and difficulties with mandatory recording. Lots of the ICJIA funded equipment goes unused, they explained.

It also seems that the poorer communities, with the police departments that can afford the least, or least sophisticated, recording systems are those with more capital cases, resulting in a disparity between the need for recording equipment and its availability.

During a discussion about jurisdictions that do or do not have digital recording equipment, Cmdr. Cook raised a concern about whether a public defender could request a CPU as evidence in a case, even if that CPU has recordings of interviews in multiple cases stored on it.

Overall, the task force commanders lamented the lack of standardization regarding equipment and policies and procedures regarding recording of custodial interrogations, recalling that each local department can devise its own rules to be in compliance with the law.

We discussed the issue of recording interviews with juvenile suspects, and the task force commanders explained that there must be an adult present during any youth interrogation. This has posed some interesting problems in the recent past; for example, a youth who was responding to questions while his mother was present. In the presence of police officers the mother told her son to answer all their questions truthfully, but when the officers left the camera recorded the mother giving her son different instructions, to not be so forthcoming with information.

In response to a question about how departments inform suspects about the recording of interrogations in capital cases, Cmdr. Cook explained that the less affluent departments have placed signs up.

During our discussions about technology, the task force commanders suggested that often the video technology is obsolete as soon as bids are published. Gerry Nora suggested that perhaps we are chasing technological sophistication (and buying in to sales pressure and gimmicks) when it would be better policy to establish recording capabilities at the lowest common denominator (e.g., have most departments use the same, lower-level equipment).

Goeff Stone asked if the task force commanders would rather have the recording mandate, or not have it. Cmdr. Cook explained that they would rather have the option; that it helps if law enforcement can 'gauge' a suspect and decide whether recording is the best approach. Stone asked when officers might prefer to not use recording equipment, and Cmdr. Cook explained that as gang members become more accustomed to recorded interrogations he thinks they will play to [anticipated] jury sympathies while being interviewed.

Regarding future Subcommittee meetings, the members present agreed on the following:

- Chip will see if he can locate someone from the south suburban defense bar to address the subcommittee on the custodial regarding matter and other matters before the subcommittee;
- Chip will see if he can arrange a teleconference with a downstate major crimes task force;
- Chip will draft a set of standard topics and questions, to promote consistency in questions as different individuals discuss matters with the subcommittee;
- The subcommittee will continue its practice of meeting quarterly at the University of Chicago Law School, and Chip will see that a new schedule is posted on the ICJIA web site.

Summary of Topics Discussed:

- There is a need for standardization regarding policies for custodial interrogations in murder cases, including instances in which juveniles are suspects, and for standardization regarding equipment and training. Training provided to law enforcement may be inconsistent with advice provided by prosecutors.
- Sometimes, complex cases with multiple suspects prove difficult, when custodial interrogations must be recorded and there is no single site available for all interrogations relating to a case.
- State-funded recording equipment was obsolete in a short period of time; as local departments purchased new equipment, standardization suffered.
- Law enforcement does not view mandated recordings as uniformly bad or good; each case is different; there is still a lot to be learned.
- There seems to be a consensus that mandating recordings in capital cases will eventually change suspect behavior during interrogations, officer behavior during interrogations, and eventually the value of recorded interrogations in capital cases may diminish.
- Local police departments are not consistent regarding whether they inform suspects in murder cases that they are being recorded.
- It seems that (at least in the experience of this task force) the communities that need the most recording resources (e.g., high-crime communities) are often the communities with the least resources (lowest police budgets); thus, the need is greatest where the resources are less.