

**4MINUTES OF THE MEETING OF THE POLICE & INVESTIGATIONS
SUBCOMMITTEE #1 OF THE CAPITAL PUNISHMENT REFORM STUDY
COMMITTEE**

June 5, 2006

**University of Chicago Law School
Chicago, IL**

Notice of the meeting was sent to all members and posted on the Illinois Criminal Justice Information Authority website.

Present: Subcommittee members: Chip Coldren, Gerry Nora and Geoff Stone; legal counsel: Peter Baroni; non-subcommittee members: Leigh Bienen (via teleconference); guest speaker: Crystal Marchigianni, Head of the Cook County Public Defender's Office Homicide Task Force

The meeting was called to order at 2:10 p.m.

Testimony of Crystal Marchigianni

Ms. Marchigianni leads the Cook County Public Defender's Office Homicide Task Force. Mr. Coldren invited her to give testimony to the subcommittee regarding videotaping of interrogations and her experience with that reform. Ms. Marchigianni said, as a threshold matter, that in her estimation approximately 70% of the first degree murders that get assigned to her task force (all first degree murders in the City of Chicago assigned to the Public Defender) could be eligible for the death penalty. Also, approximately one third of the cases assigned to her task force trigger the Capital Litigation Trust Fund. She indicated that since the inception of the videotaping of interrogations mandate in July 2005, her task force has been assigned 142 first degree murder cases (down about 25% from previous years for the same time period). Ms. Marchigianni further indicated that her task force is currently handling approximately 120 definitive capital cases (prosecutors have elected or indicated on the record they are seeking death). Typically, the State's Attorney's office will take between six and nine months from date of arraignment to formally notify the Public Defender's office that they are seeking death in a particular case. Additionally, unless the murder case involves a "serial murderer," Capital Litigation Trust Fund resources will not be used for six months after arraignment. The oldest cases pending are several 2000 murders and several "cold cases."

Ms. Marchigianni suggested that the recording in first degree murder cases is generally of good quality. She said there was a distinct departure in the procedure used by police and prosecutors before and after the videotaping mandate. Before the mandate, the typical videotaped interrogation was formal and involved police and prosecutors

sitting at a table in an interrogation room with the defendant at the head of the table answering questions that seemed to have been answered at an earlier time. Also, the recording was generally short in time. After the mandate, the recording is much longer (up to 24 hours in some cases) and includes the entire time the suspect is in custody – without stopping. Geoff Stone asked Ms. Marchigianni, at this point, what percentage of defendant's ask for attorneys, while recorded. She replied that approximately 10% requested an attorney. She also indicated that the recordings have reduced the amount of Fifth Amendment motions to suppress filed by her office claiming that the police denied their client an attorney or continued with the interrogation, when an attorney was requested. Geoff Stone also asked Ms. Marchigianni what her office's general reaction has been to the recording mandate. She indicated her office had mixed feelings about the mandate. In terms of generally having more reliable, objective, truthful evidence, the new recording mandate was helpful, especially in terms of showing a defendant's remorse for conduct, in addition to an admission of guilt. On the other hand, it is a recorded confession and creates strong evidence of guilt that is difficult to defend in court. Overall, she believes it has been helpful in the truth finding process.

Several committee members asked Ms. Marchigianni for her opinion on how to improve the capital punishment system beyond the recent reforms. She responded with several ideas. First, the recorded interrogations do not show what took place before the defendant is in custody at the police station. She is often left with questions and concerns about what happened to the defendant when he was placed in custody and transported to the station. Gerry Nora asked if mounted cameras in squad cars would address her concerns. She was unclear if that was the answer. Another issue raised by Ms. Marchigianni was length of custody before going in front of a judge. She believes the 48 hour custody rule is coercive and leads to statements that are not trustworthy. She also believes that the re-initiation of the interrogation by a suspect after the suspect has invoked his or her Fifth Amendment rights, in the context of a long custodial period is particularly coercive. Finally, Chip Coldren asked Ms. Marchigianni's if her office had any problems, in the context of recorded interrogations, with the absence of language interpreters. She indicated that her office has not had such problems since the recording mandate's inception (July 2005), however, it has been a problem in the past with several bad police officer interpreters.

Sequential Line-up Study Issue

Chip Coldren asked the special counsel to arrange for subcommittee members to have the report and appendix for the Chicago Police Department's sequential lineup study. Coldren would like to discuss the study at a special subcommittee meeting on June 21, 2006.

The next subcommittee meeting is set for June 21, 2006 at 2:30 p.m. at the University of Chicago Law School, 1111 East 60th Street, 6th Floor (Prof. Stone's Office, Room 625), Chicago, IL 60637.

The Subcommittee adjourned at 3:45 p.m.