

5-29-2013

Recording Police Interrogations Has Worked -- And Should Be Expanded

Marc D. Falkoff

Follow this and additional works at: <https://huskiecommons.lib.niu.edu/clglaw>



Part of the [Law Commons](#)

Suggested Citation

Marc D. Falkoff, Recording Police Interrogations Has Worked -- And Should Be Expanded, Chi. Daily L. Bull., May 29, 2013.

This Article is brought to you for free and open access by the College of Law at Huskie Commons. It has been accepted for inclusion in College of Law Faculty Publications by an authorized administrator of Huskie Commons. For more information, please contact jschumacher@niu.edu.

Chicago Daily Law Bulletin®

Volume 159, No. 105

Recording police interrogations has worked — and should be expanded

Legislation to expand the use of audio and video recordings of police interrogations of criminal suspects is now pending in the Illinois General Assembly. As originally conceived, the bills would modify the current statute requiring police to record interrogations of homicide suspects, further obliging them to tape interrogations of all felony suspects.

The legal community — from police to prosecutors to defense lawyers — should embrace the reforms. The bills would enhance the reliability of criminal trials, deter harsh and abusive interrogations and squelch frivolous claims of abuse by criminal defendants. Moreover, the reforms will save the state money.

The antecedent of the new reform measures was a bill signed into law by Gov. Rod Blagojevich in 2003, virtually mandating that police record interrogations of suspects in homicide cases. The law created a presumption that a homicide defendant's statements to police would be inadmissible at a criminal trial if the interrogation was not recorded.

The 2003 legislation was initially opposed by police groups and prosecutors, who feared law enforcement would be hampered by a recording requirement. But their opposition couldn't withstand the public perception that our criminal justice system was broken and needed repair. Between 1987 and 2000, 13 men had been released from Illinois' death row and in 2002 the torture accusations against former Chicago police Cmdr. Jon Burge and his Area 2 subordinates was the subject of a special prosecutor's investigation.

Since it went into effect in 2005, the legislation has been a success, and it's not difficult to see why. Because interrogations in homicide cases are now being taped, detectives may focus their attention on the suspect and his body language, without the burden of capturing those details in their handwritten notes.

Detectives need not draft sub-

sequent reports from memory. Prosecutors have been forced to deal with fewer defense motions to suppress statements and confessions — after all, the tapes speak for themselves — and suppression hearings are more streamlined. In addition, officers are less frequently asked to defend their conduct at trial.

A final advantage for law enforcement is that the defendant's demeanor at the interrogation can be observed by the jury, almost always to the benefit of the prosecution. Indeed, the tapes have been characterized as law enforcement's version of "instant replay."

These were precisely the outcomes that former U.S. Attorney Thomas P. Sullivan predicted after he canvassed similar voluntary efforts at police stations across the country for a special report he drafted on behalf of Northwestern University School of Law's Center on Wrongful Convictions in 2004.

While the primary beneficiary of a taping regime has been law enforcement, criminal defendants have likewise been protected by the homicide taping law. Taping of interrogations, of course, is designed to deter police from engaging in misconduct in the first place. Where recording is effectively mandatory, the likelihood of detectives deploying brutal tactics drops significantly.

Some preliminary empirical evidence suggests that the recording law for homicide interrogations has had just such a prophylactic effect in Illinois. Tyler Creekmore, one of my students at Northern Illinois University College of Law, searched the Westlaw database for published judicial opinions addressing claims of coercive interrogations in homicide cases in Illinois and discovered that the number of claims has plummeted to near-zero levels since the effective date of the recording requirement.

Of course, judicial opinions are an indirect and inexact measure of how much coercion actually occurs in the station house. But the apparent drastic reduction in claims — whether a result of few-



BY MARC D. FALKOFF

Marc D. Falkoff is an associate professor at Northern Illinois University College of Law, where he teaches and writes about criminal law and procedure.

er coercive interrogations or fewer frivolous claims made by defendants in light of the visual record — is obviously of benefit to the efficient running of the judicial system.

The question now before the General Assembly is whether these efforts should be expanded beyond homicide investigations.

The answer should be yes.

To all appearances, the chief concern of the opponents to expansion is cost. And, to be sure, there will be some costs involved in recording interrogations for all felonies. Equipment must be procured and interview facilities set up.

There will be some data storage expenses, though such costs are less significant in the digital age than they may have been in the past. There will be training costs for detectives and prosecutors as well as expenses for reproducing and distributing recordings to defense counsel and the court.

These are, however, by and large one-time expenses. On the other side of the ledger, consider

“A decade ago, Illinois was at the vanguard of the interrogation-recording reform movement. Today, we in the legal community should support efforts to enhance this valuable reform.”

that wrongful convictions have cost the state at least \$253 million since 1989 — a figure that's growing and doesn't take into account the time required by government lawyers to defend against claims of coercion that are eventually found to have no merit.

There will also be savings associated with police officer time (no generating reports from scribbled notes, fewer court appearances) and state's attorney time (less litigation of pretrial motions to suppress, more guilty pleas).

And, of course, taping of interrogations for all felonies will continue to deter police from deploying unsavory questioning techniques, decreasing the likelihood of innocents being convicted and ultimately increasing public confidence in the administration of our criminal justice system.

Only a mandatory recording system, though, will supply all of these benefits to police and criminal defendants. House Bill 2945, introduced in the Illinois House by Rep. Scott R. Drury, D-Highwood, would be sufficient for this goal, since it creates the same presumption of inadmissibility for unrecorded interrogations in all felonies as currently exists for homicide investigations.

A similar measure, Senate Bill 1332, introduced in the Senate by Sen. Kwame Y. Raoul, D-Chicago, was initially structured to achieve the same ends, but amendments have stripped the bill of its mandatory nature.

As passed by the Senate, the Raoul bill simply allows the state to introduce tape-recorded interrogations into evidence, markedly diminishing the potential deterrent effect that mandatory recording could achieve.

Whether or not either of these bills is eventually signed into law, they represent a laudable effort to restore the faith of Illinois citizens in the fair administration of our criminal justice system. A decade ago, Illinois was at the vanguard of the interrogation-recording reform movement. Today, we in the legal community should support efforts to enhance this valuable reform.