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NY Law Journal: Law Enforcement Embraces Protocols on Videotaping Interrogations

Joel Stashenko, December 15, 2010

ALBANY - State, county and local law enforcement representatives yesterday endorsed [a set of protocols](#) they said all 550 police agencies in New York state should embrace for videotaping the interrogations of suspects in serious crimes.

The voluntary guidelines should be followed for the good of prosecutors, police agencies, courts and defendants themselves, said Franklin County District Attorney Derek P. Champagne, the president of the New York State District Attorneys Association.

"Obviously, it takes the accusations of police misconduct off the table," Mr. Champagne said yesterday in an interview. "You always hear, 'Defendants weren't allowed to leave, they weren't allowed to use the bathroom, they were not allowed to eat, there was pounding on the table [by interrogators].' Well, play the video. Any allegations of wrongdoing can be addressed by the tape. And, in terms of conviction and criminal prosecution, let's play the tape and see what your client said."

Mr. Champagne was one of about three dozen representatives of law enforcement and legal groups who attended a news conference in the Legislative Office Building to support the guidelines. They included members of the state Sheriffs' Association, the Association of Chiefs of Police, the New York City Police Department and the New York State Police.

Vincent Doyle III of Connors & Vilardo in Buffalo, president-elect of the New York State Bar Association, said in a statement that the bar group has been advocating for recorded interrogations of felony suspects for more than five years.

"We are pleased that well over half of the state's district attorneys and many others in the law enforcement community now believe that this practice promotes justice in the prosecution of criminal cases," said Mr. Doyle.

New York City Police Commissioner Raymond W. Kelly, who did not attend the news conference, issued a statement saying that the recording of suspects' interviews makes sense given electronic technology advancements.

"Anything that supports the integrity of a criminal confession and ensures justice is served should be thoroughly evaluated, which is what we intend through this pilot program," Mr. Kelly said.

The state bar's House of Delegates last year recommended in [a report](#) on preventing wrongful convictions that interrogations be taped ([NYLJ, April 7, 2009](#)).

The state bar also lobbied for a bill, [A5213/S7877](#), that would have mandated such recording by police agencies. It failed to get out of committee in the Assembly or Senate this year.

However, Mr. Champagne said a statewide mandate would be impractical due to differences in personnel and financing.

"Again and again, there are suggestions and recommendations where they are trying to fit a square peg into a round hole," Mr. Champagne said. "The legal system in rural upstate New York compared with urban New York, it is so vastly different. It's a different planet."

Police in 42 of New York's 62 counties are recording at least some interrogations, thanks in part to \$1.6 million in funding provided by the state Division of Criminal Justice Services (DCJS) and the state bar.

The DCJS announced yesterday [it was distributing another \\$400,000 in grants](#) to provide video recording to counties that do not now have that capability.

"The law enforcement community is overwhelmingly in support of this," Sean M. Byrne, the acting DCJS commissioner, said in an interview. "Today is not the beginning of something. The law enforcement community has been methodically implementing this for four or five years."

Mr. Champagne said that taping capacity varies widely from agency to agency. He said that taping interrogations of misdemeanor suspects would have to wait in his and other counties, since many of them are questioned by officers in the field and never reach the station house.

The protocols suggest, among other things, that officers give suspects their Miranda rights before they are recorded and that only suspects under custodial interrogations be taped. According to Mr. Champagne, the substance of discussions between defendants and their interrogators may not be used in court without prior permission by the court after a pretrial hearing.

Yesterday's pronouncement was patterned after an agreement last spring by most of the same players to adhere to standardized procedures when asking eyewitnesses to identify suspects through police lineups or photo arrays ([NYLJ, May 20](#)).

Mr. Champagne said that since May his group and the New York Prosecutors Training Institute have held six training sessions across the state attended by hundreds of law enforcement officials on following accepted suspect identification procedures.