

MEMORANDUM

TO: Drafting Committee on Electronic Recordation of Custodial Interrogations:
Members, Advisors, Observers

FROM: Andrew E. Taslitz, Reporter

DATE: October 9, 2008

RE: *Materials to Review in Preparation for the Upcoming October 31 Meeting*

You will probably shortly be receiving from our Committee Chair, David Gibson, a brief explanatory memorandum and an agenda concerning both the attached materials and how he plans to conduct our forthcoming meeting. My role as Reporter is, in part, to keep this Committee informed in ways that make its task easier, so I am acting primarily now as a conduit for information that will better enable each of you to understand David's goals. Accordingly, I have attached several documents for your review.

The document that you should read first is an approximately 48 page issues memorandum that I have prepared that explains the policy goals of the proposed uniform legislation and analyzes what David and I see as the twelve or thirteen (a footnote explains the "or thirteen") issues that this Committee must address. For each issue, the memorandum identifies the nature of the problem, gives some sense of the varied ways that the few states with legislation on the subject have sought to solve the problem, sometimes suggests new solutions, summarizes the arguments for and against each solution, and occasionally expresses my views and why I hold them.

It is probably best next to read a short 3 page document, an "Issues Checklist," that summarizes the issues and options in brief checklist form. No arguments for or against any position are included in the checklist. Rather, it is a simple listing of the issues and options, a handy reference and reminder.

The remaining documents flesh out details of matters discussed in the main issues memorandum and can be read in any order. They are fairly brief. One is a short article by Thomas Sullivan defending using jury instructions as the sole remedy for violations of the electronic recording requirement. I summarize Tom's views from this article in my issues memorandum and present counterarguments in favor of alternative or supplementary remedies. A second piece is a state-by-state summary of the law in each of the states with statutes, which has the actual statutes appended to it. This summary was prepared by Tom Sullivan. A third document is the just-adopted Maryland statute, which, because of its recent adoption, was not mentioned in Tom's memorandum. A fourth document is a memorandum that I have prepared summarizing the social science concerning whether jury instructions are an effective remedy. A fifth and final document is *Mandatory Justice: The Death Penalty Revisited*, a publication of the Constitution Project's Death Penalty Initiative. **YOU NEED ONLY READ PAGES 75-85 OF MANDATORY JUSTICE.**

I hope that you find these materials useful. If you have any questions about these materials, feel free to contact me, preferably at taslitz@pitt.edu or 571-265-5098, though I can also be reached at ataslitz@law.howard.edu or Odo33@aol.com. If you have any questions about the upcoming meeting or more general issues, please contact the Committee Chair. I look forward to meeting each of you soon!