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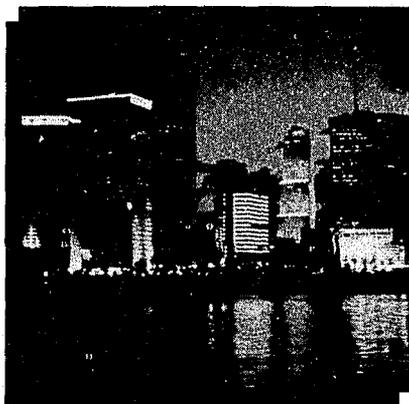
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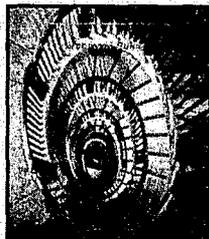
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**The Cover:** This month's *Legal Digest* addresses recent Supreme Court decisions of particular importance to law enforcement officers. Featured on the cover is the spiral staircase located in the Supreme Court Building in Washington, DC.

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William S. Sessions, Director

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# The Expanding Role of Videotape in Court

By  
MICHAEL GIACOPPO



**A** young child has been molested by an adult whom she trusted. The offender has been arrested, and a substantial case has been built that should ensure that justice is served. Is the nightmare over for the abused child? Hardly. Indeed, it has just entered a new phase in which this young victim will be forced to recount, over and over, the circumstances surrounding her violation.

For years, prosecutors have faced similar scenarios, not only with victims of child abuse but also with adult victims of rape and other

crimes. Many cases have been lost because the victim, whose testimony is often critical to the prosecution's case, becomes worn down by the court process and chooses to discontinue involvement.

However, prosecutors and district attorneys around the Nation are combating this problem with expanded use of videotaped testimony. In many cases, prosecution teams have been successful in submitting video testimony at grand jury hearings, as well as to augment the victim's appearance during the trial. In some instances, videotaped

interviews are even allowed in lieu of the victim actually appearing before the grand jury. This flexibility has formed a "marriage" between the grand jury and the television set, as prosecutors have increasingly relied upon video testimony in this critical stage of the court process.

No law enforcement officer has to be reminded that most victims suffer extraordinary stress leading up to a hearing or trial. When their day in court arrives, they often find that the judge has granted a continuance, which prolongs their wait and



Detective Sergeant Giacoppo serves with the Cambridge, Massachusetts, Police Department.

“**By videotaping an interview, it is possible to show...precisely what was said and what state the victim was in at the time.**”

adds to their anxiety. Once victims begin to feel that they are “dangling,” the potential for losing them is very high. Some defense lawyers even make this part of their defense plan.

## VIDEOTAPED TESTIMONY

### Child Victims

Children, in particular, face a unique burden in court. A successful case requires that they show courage and good recall, while often testifying against someone they love, such as a parent. In addition, the psychological implications that the system can place on a child are considerable.

A key element in a child molestation case is the investigative interview. What the victim says and how emotions are expressed are the basic ingredients that investigators use to make a case. Displays of anger, crying, or hyperventilating are very important when the officer is asked in court to describe the victim's demeanor during the interview. Since interviews with chil-

dren are often traumatic, it makes good sense to limit the number of times they must occur. By videotaping an interview, it is possible to show the grand jury, and even the trial court, in a very compelling way, precisely what was said and what state the victim was in at the time.

Child sex case interviews are routinely taped in the Middlesex County, Massachusetts, jurisdiction for several reasons. In situations where the emotional condition of witnesses is fragile, the videotape can serve as a substitute for the grand jury appearance. The investigator need only appear with tape in hand and play it for members of the jury. This procedure has the added benefit of speeding up the court process. In getting victims past the grand jury stage, the prosecution can reasonably offer them the “one shot deal” of appearing in court only on the day they must testify at the actual trial.

Another potential benefit of videotaping interviews may occur when the defense attorney “discov-

ers” the prosecution's evidence. On more than one occasion, a defense attorney has viewed a child's video interview and decided to make a deal so that the court would not see the tape.

In addition, these tapes can provide the useful corroboration that may be necessary at a later date. Children who must wait 1 or 2 years before testifying in court may try to forget the facts of the case in an attempt to put the pain behind them. The videotape can serve to refocus victims who may be reluctant to testify when the trial day arrives. Seeing the tape may remind child victims of the seriousness of the situation and deter them from ambivalent feelings resulting from the lengthy wait for trial.

### Expert Witnesses

In addition to the victim, other witness' testimony can also be videotaped for presentation in court. In Massachusetts, some witnesses may actually be excused from appearing in court after they have provided video testimony.<sup>1</sup> This would include expert witnesses who, because of prior commitments, are often the cause of court delays.

Now, these witnesses can submit to videotaped depositions that can be presented at both the grand jury and the trial. In order to overcome defense objections, courts usually allow both the prosecutor and the defense attorney to participate in a joint deposition with the expert witness.

The use of video for expert witness testimony has proven far superior to the old stenographic method because it eliminates transcription error and allows jurors to

view witness demeanor. And, since expert witnesses often use props and charts, court time is better served by having these presentations on videotape, which can be edited for brevity.

In addition, jurors often request access to this expert testimony while in deliberation. Videotape is a convenient and effective way to provide jurors with unlimited access to this important information.

### Witnesses Who Cannot Appear in Court

In Massachusetts, prosecutors can also employ videotape to interview witnesses who are injured and are unable to appear in court.<sup>2</sup> Little effort is required to set up a video camera in a hospital room or the home of an incapacitated witness. This is particularly imperative if the victim's medical condition is critical. If the victim dies, the videotape may be the only testimony available.

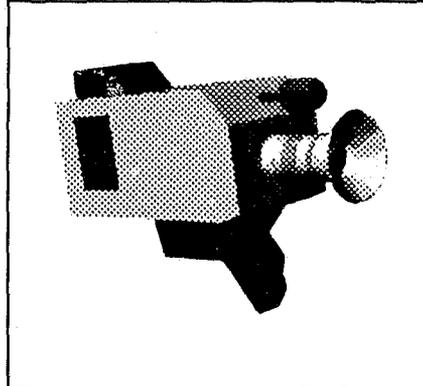
### Suspects

For many years, the police have been recording suspects' confessions on audiotape. The techniques police use to obtain these admissions, however, often become an important issue during trial. Motions to suppress "tainted" confessions can often contribute significantly to court delays and backlogs. If the defense can taint the method employed and cast doubt on the circumstances surrounding the admission, then the value of the confession can be severely undermined. Therefore, making a videotape of the police interview with the suspect is not only a good idea, it can literally save a case.

Again, court time can be better served because a videotaped interrogation can be viewed by the judge before the trial to ensure that the

interview was conducted properly and that the confession was not coerced. For this reason, criminal rights advocates should actually

### Video in DUI Stops



**I**n Franklin County, Ohio, video cameras are used to supplement a law enforcement officer's testimony during trials of impaired drivers. In a unique pilot program sponsored by an insurance company and MADD (Mothers Against Drunk Driving), several video cameras were donated to both the Franklin County Sheriff's Office and the Columbus, Ohio, Police Department.

The cameras were mounted to the dashboard of the police cruisers, midway between the driver and passenger seats. When a vehicle that appears to be operated by an impaired person is observed, the officer begins to record the suspect's driving. The officer notes the location and announces, on tape, what circumstances raised suspicions regarding the vehicle.

The officer also notes verbally any actions that could indicate an impaired driver was operating the vehicle. This will later enable the prosecution to document any poor or reckless driving.

Once the vehicle is stopped, the officer approaches the suspect while wearing an activated wireless microphone, which is able to record conversation up to 500 feet from the video camera. Again, this will assist the prosecution by documenting any slurred speech or other characteristics that would be exhibited by an individual under the influence of drugs or alcohol. In addition, the officer videotapes the field sobriety test to further document the actions of the suspect.

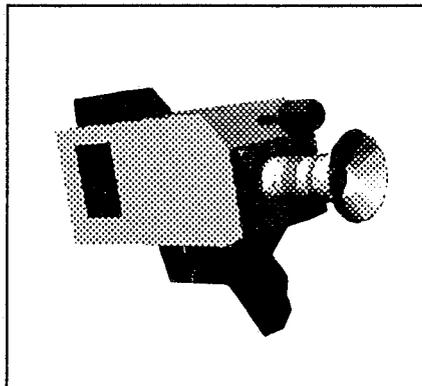
The principal benefit of obtaining a video account of impaired drivers is that it provides concrete evidence to support an officer's charges. Without the video "witness," defense counsels are often successful in contending that the officer's testimony is simply a matter of perception. The videotape, however, provides convincing corroboration to the officer's testimony.

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This information was provided by Sean Devillers of the Columbus, Ohio, City Prosecutor's Office and Dep. William McCoy of the Franklin County, Ohio, Sheriff's Office.

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## Video Used in Citizen Complaint Cases



In 1986, the Georgia State Police began equipping its patrol vehicles with video recorders. The system was originally intended to aid in drug interdiction efforts, prosecution of impaired drivers, and accident investigations. Additionally, tapes of routine traffic stops were later used in classroom instruction.

However, patrol supervisors soon discovered that the video recorders offered valuable assistance in another area that was not anticipated. The videotapes provide reliable, unbiased evidence in citizen complaint cases.

The camera system automatically records everything said or done within its range. For example, when a trooper was accused of being rude and using profanity during a traffic stop, the videotape provided the evidence that cleared him of the unfounded charges. When another trooper was accused of shooting an unarmed motorist, the video revealed the truth: The trooper issued at least 26 warnings for the individual to drop his gun prior to the trooper firing.

In these and many similar cases, the video record provides the concrete evidence that is usually lacking in citizen complaint cases. With videotapes, there is additional evidence, apart from the testimony provided by the citizen and trooper. This evidence has proven invaluable to investigators and patrol supervisors as they consider their response to these complaints. Often, as in the cases above, the videotape provides enough evidence to discredit the accusation. This saves the department valuable time and resources in countering groundless claims.

At the same time, the video system has proven equally adept at confirming instances of wrong doing. In a highly publicized case, videotape (which had been recorded automatically) was admitted as evidence against a trooper charged with raping a motorist he had stopped for a traffic violation. Even in this instance, however, the video proved valuable to the department. Because they had gained advanced knowledge of the severity of the infraction, supervisors were able to initiate appropriate action and limit the extent of adverse publicity.

The video recording system installed in patrol cars is the quintessential eyewitness. It can be used to document that proper police procedures were employed, to refute unfounded accusations, or to confirm wrong doings. In essence, these video recording systems provide the department with an unbiased perspective that works to the benefit of all involved in citizen complaints.

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This information was provided by Trooper Ray Clark of the Georgia State Patrol.

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support videotaping these interrogations since the possibility of police misconduct in securing a confession is significantly reduced if the interview is being videotaped.

### CRIME SCENE VIDEOS

In addition to interviews, prosecutors are finding other uses for videotape. Probably, the most effective use of video is surveillance cameras that capture suspects actually committing the crimes for which they are charged. When the

prosecution is armed with such evidence, the result is often a plea from the defendant or a very short trial.

In many cases, it is also beneficial to videotape crime scenes after the crime has been committed. This video record will prove helpful in reconstructing the scene and the events surrounding the crime for the jury. Photographs, while important, have a limited impact on juries due to their inherent restrictions. Videotape, however, provides the jury with an enhanced perception of the

crime scene and an expanded understanding of the crime itself. A taped record can also eliminate the need for the jury to visit the crime scene physically, thus saving valuable trial time.

### BENEFITS OF VIDEOTAPING

Besides saving court time and relieving victims and other witnesses from continuously repeating testimony, videotape presents prosecutors with additional advantages. Perhaps most important is the

## Bulletin Alert

novelty factor video holds for jury members. Videotaped presentations may arouse jury interest and curiosity, and therefore, may enhance their appreciation for the information being presented. While there is, to some degree, a cultural resistance to sitting for long periods of time listening to a speaker, there is no such reluctance to watching presentations on a television set.

In an early study conducted by Michigan State University, jurors indicated on post-trial questionnaires that they retained more information that had been presented on video. Their responses indicated that their perceptions of credibility also were enhanced when video was used. The results overall were positive regarding videotaped presentations.<sup>3</sup>

### CONCLUSION

Expanded use of videotape offers the opportunity to assist victims and witnesses, make trials more efficient, and enhance jury understanding of crimes. With courts experiencing unprecedented backlogs and delays, video provides a practical way to use today's technology to address very real problems. In the process, it offers prosecutors effective new methods to present evidence and testimony to juries.

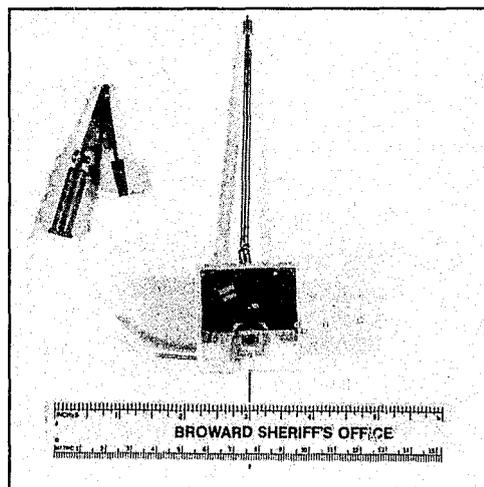
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#### Footnotes

<sup>1</sup> See *Massachusetts Criminal Procedure*, Rule 35.

<sup>2</sup> See *Commonwealth v. Key*, 381 Mass. 19 (1980.) Commonly referred to as the "Dying Declaration" rule.

<sup>3</sup> Gerald Miller, *The Effects of Videotaped Court Materials on Juror Response*, Michigan State University, East Lansing, Michigan, (1976).



### Homemade RF Detectors

**B**roward County, Florida, Sheriff's Office (BSO) deputies discovered a homemade radio frequency (RF) detector during a routine drug interdiction operation at a Fort Lauderdale crack house. After examining the unit, BSO electronics specialists concluded the device was manufactured by an amateur, most likely one of the drug dealers arrested during the raid. Unfortunately, the written instructions probably used to build the unit were not found.

One BSO telecommunications expert noted, "More expensive detectors have been in use by large drug trafficking operations for years. But, this is the first time we've seen them employed at this level. For as little as \$15 or \$20, just about anybody can make one."

The Broward County Sheriff's Office believes that these

units are currently in use and are circulating. They can detect virtually all police radios and body bugs from a distance of 5 to 15 feet. Violators can wear the units and receive signals through an earphone or can have the device positioned near the doorway to intercept police sting operations. Obviously, these detectors can be dangerous to law enforcement officers when using body transmitters.

BSO's Telecommunications Unit is offering a special training tape on amateur RF detectors. To obtain a copy of this or any of the agency's instructional videos, send a blank tape and a letter of request to: The Broward County Sheriff's Office, Telecommunications Unit, 4300 NW 36 Street, Lauderdale Lakes, Florida 33119.

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