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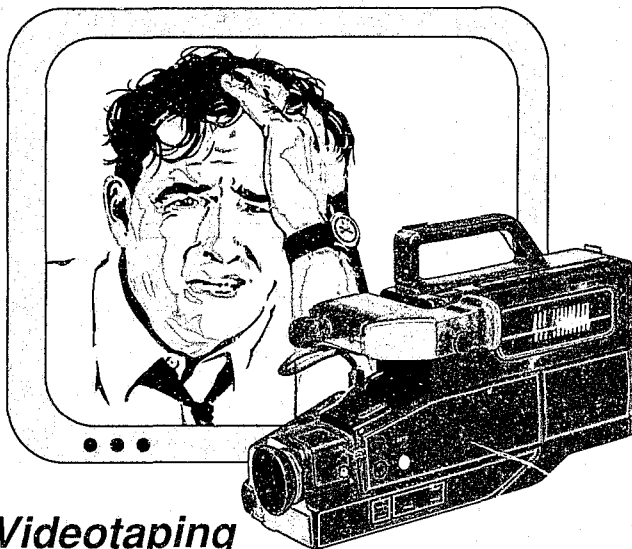
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Research Forum



Videotaping Interrogations and Confessions

Report by William A. Geller, J.D., Associate Director of the Police Executive Research Forum, Washington, DC.

Every aspect of American society feels the impact of video technology. No longer just for documenting baby's first steps, video cameras now play an increasingly important role in the criminal justice system. Law enforcement's use of audio-video technology ranges from providing department store surveillance to documenting police field stops of suspects and their interrogations in station house interview rooms.

In March 1993, the National Institute of Justice published the results of a preliminary study on the use of video technology in criminal interrogations.¹ The study provides a useful guide for departments in deciding whether to use videotaping. It identifies questions to consider when developing a videotaping policy, procedural issues to resolve, and the perceived effects of videotaped interrogations on case preparation and court proceedings.

The Study

In the three-part study, Geller first reviewed the relevant literature to define the issues involved in videotaping confessions and interrogations. Then, he surveyed police and sheriffs' departments nationwide to identify those that do and do not videotape,

followed by a phone survey on practices employed and practitioners' perceptions of the efficiency of such videotaping. Finally, Geller conducted indepth interviews of criminal justice practitioners (including police, prosecutors, defense attorneys, and judges) in 11 cities and counties where confessions and interrogations were videotaped to determine their perceptions about the practice and its effects.

The Results

Geller's exploration of videotaping practices employed by police across the country brought out a number of important issues. For example, each police department had to decide when to tape interrogations, whether tapes should be made overtly or covertly, how the use of tapes affected prosecutors' and defense attorneys' case preparation and court proceedings, and how the taping influenced the interviewers' choice of interrogation tactics.

Overview

The survey revealed that in 1990, approximately one-third of law enforcement agencies serving populations of 50,000 or more were videotaping at least some interrogations; that number was expected to swell to more than 60 percent of such departments by 1993. Larger departments used video technology more than smaller ones, perhaps because of budget constraints or caseload considerations. Most of the departments surveyed in 1990 had been using video technology for interrogations for at least 3 years, and 41 percent had done so for at least 5 years. Generally, departments had moved gradually from written reports to audiotapes and then to video documentation.

Types of Cases

Videotaping suspects' statements and interrogations is most prevalent in felony cases—the more severe the felony, the more likely videotaping will be used. Homicide suspects' statements were taped by 83 percent of the surveyed agencies that used videotaping. The majority of the videotaping departments also made some use of video documentation of interrogations in the other types of violent crime cases—rape, aggravated battery or assault, and armed robbery—as well as in drunk driving cases.

Reasons for Taping

Interrogations and confessions were taped for a variety of reasons. Many surveyed agencies sought to refute defense attorneys' criticisms of police interrogation techniques and challenges to the completeness and accuracy of written confessions or audiotaped statements. Others cited a desire to show clearly that suspects confessed voluntarily. Videotaped statements also served to remind detectives of important details when testifying in court.

At the same time, strong arguments were made against videotaping. These arguments were advanced primarily by practitioners who had never used videotaping and had no firsthand knowledge of its costs and benefits. Those opposed to such video recordings believed that suspects are more afraid to talk freely in front of a camera, knowing that every detail could be seen and heard in court. Some departments also cited the prohibitive costs involved in purchasing and maintaining equipment, remodeling interview rooms, and storing tapes.

Another concern revealed by the interviews was the fear that introduction of video technology in court would result in required taping of all statements in most serious felony cases. Detectives worried that courts would suppress nonvideotaped statements or that judges and juries would find written confessions unconvincing.

In fact, Geller's survey found that 70 percent of the agencies found it no harder to present nonvideotaped confessions and statements in court, even after introducing videotapes in other cases. Defense attorneys sometimes tried to insinuate that confessions were intentionally *not* taped because they couldn't withstand the close scrutiny, but the argument rarely persuaded judges to suppress such statements. Thirty percent of agencies surveyed, however, did find judges more reluctant to admit nonvideotaped confessions after the video program began.

Those who were apprehensive about being required to videotape all statements generally had never videotaped an interrogation. Most video users did not object to taping all statements; they usually believed videotaping was so beneficial that they employed it uniformly and avoided the selective taping issue entirely. Still, Geller speculates selective taping could cause problems and merits further evaluation.

Overt vs. Covert Taping

Very few agencies in the survey used covert taping methods. Most agencies either informed suspects that a tape was being made or simply left the camera or microphone in plain view during the interrogation.

Covert taping brings up some sticky ethical questions, such as privacy rights, but proponents say the benefits still should be considered. One obvious benefit is that suspects who are reluctant to talk on camera can be recorded speaking freely and willingly. Covert recording also reduces the distraction to the interviewer and interviewee of having the equipment and camera operator in the interview room.

Other considerations may lead departments to decide against surreptitious taping of station house interrogations. State and local laws might prohibit it, even though Federal law does not. A "reasonable expectation of privacy," a Federal constitutional doctrine, does not exist during a station house interrogation.

Another issue is the futility of taping covertly when word spreads rapidly through the jails and on the street. Finally, such taping practices may not support the fair and just image a department wants to project to the community.

The desire to minimize distractions has led many departments to use covert techniques, even when suspects were made aware that the interview was being documented on video tape. In this way, some

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benefits of covert taping are gained without accompanying ethical or other drawbacks.

Portion of the Interview to Tape

Geller found a sharp division of opinion among practitioners over whether to tape the entire interrogation or just to record a restated summary, or recap, of a previously unrecorded interrogation. Recaps generally include exculpatory, as well as incriminating, statements. Full interrogations last 2 to 4 hours on average, whereas recaps average 15 to 45 minutes. In this era of shrinking budgets, the cost of purchasing blank tapes and creating transcripts—if judges and the attorneys on either side request transcripts—merits significant consideration, but there are other more significant arguments on both sides.

Defense attorneys generally favor recording full interrogations and object to recaps filled with leading questions. They believe full recordings help to keep police mindful of suspects' rights. Defense attorneys and judges assert that recaps often minimize defendants' expressions of remorse. Because the defendant's story typically has been repeated often during the preceding interrogation, the emotional edge reflective of remorse can be lost during the recorded recap.

Many detectives appreciate the capture of seemingly trivial comments that could later prove crucial to the case. Full recordings can also discredit accusations that coercion was used to obtain confessions.

On the other side of the issue, detectives who use recaps prefer getting concise and clearly incriminating statements. Some investigators object to full tapes that usually begin with denials of guilt, which are useful to the defense. Those using recaps can rebut defense charges of coercion by describing what preceded the taped statement.

In rebuttal, advocates of taping full interviews contend that juries and judges expect interrogations to begin with a suspect's protestations of innocence. Thus, they eventually find a confession most credible if they can follow the flow from denial of guilt to the

moment of transition and through to admission and a confession.

Procedural Aspects of Taping

Once a taping program has been instituted, a number of decisions need to be made about equipment and maintenance, and certain procedures must be established. For example, agencies must decide who has authority to determine which interrogations will be videotaped and whether comprehensive written guidelines are necessary.

Most departments surveyed allowed the interrogating officer to decide whether to tape, some gave that authority to the sergeant, while still others always taped in specific types of cases. Interview rooms might need to be remodeled to accommodate video equipment, which could consist of high-quality consumer products or professional television equipment. Geller's study describes a variety of ways in which the surveyed agencies handled these and other issues.

“ Geller's study revealed a generally positive perception of videotaping among criminal justice practitioners who have used it. ”

Effects of Videotaping

The bottom line in any decision about videotaping confessions and interrogations is whether tapes are useful and within legitimate bounds of fairness in preparing and prosecuting cases. Geller's study revealed a generally positive perception of videotaping among criminal justice practitioners who have used it.

Prosecutors across the board said that videotaped interrogations and confessions help them to assess the State's case, prepare for trial, and conduct plea negotiations. The videotapes capture subtle, often nonverbal, details missed in written transcripts and audiotapes.

Defense attorneys, however, had mixed views. Because videotaped statements are more difficult for the defense to attack than written transcripts or audiotapes, some defense attorneys disliked the strategic edge video tapes give to prosecutors. Others, though, appreciated the details video recordings supply and the fact that they can also help clients to

remember important details. Seeing the demeanor and sophistication of the defendant helps defense attorneys to determine whether to put their clients on the witness stand.

As evidence, it is somewhat easier to secure admission of videotaped confessions than written confessions because prosecutors can demonstrate the voluntary nature of the suspect's statement. As for the effect on convictions and sentences, police departments and prosecutors reported that videotaped interrogations helped them to negotiate more guilty pleas and longer sentences and secure more convictions. However, tapes sometimes work for the defense, too, such as by indicating that a confession was coerced or by leading a judge to impose a lesser sentence on a demonstrably contrite defendant.

Conclusion

Based upon this initial, exploratory study, it appears that criminal justice practitioners generally

find videotaping to be a useful tool. Videos help to assess a suspect's guilt or innocence, encourage fair treatment of suspects and respect for their civil rights, reduce the stress on officers who must defend their interrogation techniques in court, and capture important details lost through other recording methods. Thus, video technology used in this aspect of police operations appears to simultaneously serve three often disparate goals of the criminal justice system—effectiveness, efficiency, and legitimacy. ♦

Endnote

¹ William A. Geller's full report titled "Police Videotaping of Suspect Interrogations and Confessions: A Preliminary Examination of Issues and Practices" is available from the Police Executive Research Forum, 2300 M Street NW., Suite 910, Washington, DC 20037 (202) 466-7820. A shorter version of the report was published by the National Institute of Justice, which funded the underlying study, in March 1993 (Request NCJ # 139962).

This Research Forum was prepared by Julie R. Linkins, Office of Public and Congressional Affairs, FBI Headquarters, Washington, DC, based on a report by the author.

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