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Police Experiences with
Recording Custodial
Interrogations

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The electronic recording of police interviews with criminal suspects is an efficient and powerful law enforcement tool. It has been done for years by many police agencies large and small throughout the United States. Their experiences have been uniformly positive.

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<http://www.law.northwestern.edu/wrongfulconvictions/Causes/CustodialInterrogations.htm>



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Thomas P. Sullivan, a senior partner at Jenner & Block LLP and the former United States Attorney for the Northern District of Illinois, was Co-Chair of Illinois Governor George H. Ryan's Commission on Capital Punishment from 2000 until it completed its work in 2002. He currently serves as Chair of the Advisory Board of the Center on Wrongful Convictions.

After graduating from Loyola University Law School in Chicago in 1952 and serving two years in the Army, including a year in Korea, Mr. Sullivan joined Jenner & Block in 1954. He has practiced at the firm continuously since then, except from 1977 to 1981 when he was the U.S. Attorney. A member of the bars of Illinois, California, and New Mexico, he specializes in civil and criminal trial and appellate litigation. He is a frequent author and lecturer on trial and appellate practice and has taught at Loyola and the National Institute for Trial Advocacy. He is a past member of the Board of Governors of the Illinois State Bar Association, a Fellow of the American College of Trial Lawyers, and a Laureate of the ISBA Academy of Illinois Lawyers.

He has received many awards, including the Loyola University School of Law Medal of Excellence (1965) and Damen Award (2004), the Illinois Public Defender Association's Award for Contribution of Service to the Indigent Accused (1972), the Constitutional Rights Foundation's Service Award (1990) and its Bill of Rights in Action Award (1993), the Justice John Paul Stevens Award (2000), the American Bar Association Section of Litigation John Minor Wisdom Public Service and Professionalism Award (2003), the Center on Wrongful Convictions Award (2003), and the Albert E. Jenner, Jr. Award for exceptional legal services to the needy (2003).

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THOMAS P. SULLIVAN

Police Experiences with Recording Custodial Interrogations

I. Introduction

As Co-Chair of Illinois Governor George H. Ryan's Commission on Capital Punishment, I led the subcommittee charged with making recommendations to the full Commission about police investigatory practices. We found a major problem concerning disputes as to what occurred when suspects under arrest are brought to a police station for questioning.

For example: The police are investigating a homicide. A person is arrested, taken to the station and questioned, without a lawyer. He is indicted for murder. He retains a lawyer. The prosecutor notifies the lawyer that the police gave the defendant the *Miranda* warnings, that he agreed to talk to the police without counsel, and then confessed to the murder. After conferring with the defendant, his lawyer files a motion to suppress the confession on multiple grounds: (1) the police did not give *Miranda* warnings; (2) the defendant said he wanted a lawyer but the police ignored the request and continued to question him; (3) the police used coercive tactics; and (4) the defendant did not confess — the police are misstating what he said.

This is not a fanciful hypothetical. With variations, this situation is presented time and again in courts throughout the United States. Judges repeatedly hear and evaluate diametrically opposed versions of what occurred behind closed doors in police stations from police officers and defendants.

To avoid these controversies, the Commission recommended that all questioning of homicide suspects in custody in police facilities be electronically recorded.¹ The legislature and Governor acted on this proposal: Illinois became the first state (recently joined by Maine and the District of Columbia) to require by statute the electronic recording of custodial interrogations in homicide investigations.²

In researching this matter, it struck me that literature on this subject has an invariable theme: recording custodial questioning is necessary to prevent police from using coercive tactics during unrecorded interrogations and misstating what the suspect said.³ But I believe that, with few exceptions, our police are honorable and law abiding, and do not use illegal tactics, commit perjury or attempt to convict the innocent. My associates and I set out to identify and learn the experiences of police and sheriff's departments that have

¹ Recommendation 4, REPORT OF THE ILLINOIS GOVERNOR'S COMMISSION ON CAPITAL PUNISHMENT (April 2002).

² The Illinois statute is summarized in Appendix C. *See also* the Maine statute, ME. REV. STAT. ANN. 15§ 801-A, available at www.mainelegislature.org/legis/bills/billtexts/LD089101-1.asp; Washington, D.C. Code, D.C. CODE ANN. § 5-133.20 (2003).

³ *See, e.g.*, Steven A. Drizin and Beth A. Colgan, *Let the Cameras Roll: Mandatory Videotaping of Interrogations is the Solution to Illinois' Problem False Confessions*, 32 LOY. U. CHI. L.J. 337, 345-78 (2001); Daniel Donovan and John Rhodes, *Comes a Time: The Case for Recording Interrogations*, 61 MONT. L. REV. 223, 245-46 (2000); Gail Johnson, *False Confessions and Fundamental Fairness: The Need For Electronic Recording of Custodial Interrogations*, 6 B.U. PUB. INT. L.J. 719, 735-41 (1997); Yale Kamisar, *Foreword: Brewer v. Williams – A Hard Look at a Discomforting Record*, 66 GEO. L.J. 209, 233-43 (1977); Ingrid Kane, *No More Secrets: Proposed Minnesota State Due Process Requirement that Law Enforcement Officers Electronically Record Custodial Interrogations and Confessions*, 77 MINN. L. REV. 983, 983-87 (1993); Richard J. Ofshe and Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U.L. REV. 979, 989-99 (1997); Bernard Weisberg, *Police Interrogation of Arrested Persons: A Skeptical View*, 52 J. CRIM. L. & POL. SCI. 21 (1961); Wayne T. Westling, *Something is Rotten in the Interrogation Room: Let's Try Video Oversight*, 34 J. MARSHALL L. REV. 537, 547-52 (2001); Welsh S. White, *False Confessions and the Constitution: Safeguards Against Untrustworthy Confessions*, 32 HARV. C.R.-C.L. L. REV. 105, 153-55 (1997).

voluntarily chosen to use electronic recordings in their interview rooms.⁴ We also contacted prosecutors to obtain their views. We sought to determine:

- The types of investigations in which recordings are made.
- The equipment used for recordings.
- Whether cost is a factor in the ability to record.
- Whether suspects are made aware of the recordings.
- The experiences of veteran detectives with custodial recordings: whether they favor recording custodial sessions, and whether they believe confession rates are adversely affected if suspects are aware a recording is being made.

We did not use accepted sampling or survey techniques. With few exceptions we contacted only police and sheriff's departments we had reason to believe were recording custodial interrogations.⁵ I am confident that the practice of recording custodial interrogations is followed by many, many more police and sheriffs departments which our efforts failed to identify.⁶ This article includes the results of our inquiries to date.

⁴ My thanks for their assistance to my associates and staff at Jenner & Block: Zachary V. Moen, Lauren E. Moy, Karen V. Newbury, Syed Mohsin Reza, Jo Stafford, Laura A. Thomas, Wade A. Thomson, and Hillary A. Victor, and with special gratitude to Andrew W. Vail. David Zulawski of Wicklander-Zulawski Associates, Inc. of Downers Grove, Illinois, was of great help to us. He emailed a questionnaire to law enforcement officers his firm has trained. We also thank the many law enforcement personnel throughout the country who graciously responded to our inquiries.

⁵ Under orders of the state Supreme Courts, all law enforcement agencies in Alaska and Minnesota have been required for many years to record custodial questioning. *Stephan v. State*, 711 P.2d 1156, 1158 (Alaska 1985); *State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994).

⁶ Readers who know of additional departments that record are requested to send contact information to tsullivan@jenner.com.

II. Logistics of recordings

As this article went to press, we had spoken with 238 law enforcement agencies in 38 states that currently record custodial interviews of suspects in felony investigations. They are located in every area of the United States, and are listed alphabetically in Appendix A. The departments are diverse in size and practices:

Agency size. There are dramatic variations in the populations served by the agencies and the number of sworn officers on their forces:

- Police departments in cities with populations over 500,000: Phoenix, Arizona; Los Angeles, San Diego, San Francisco, and San Jose, California; Denver, Colorado; the District of Columbia; Prince George's County, Maryland; Minneapolis, Minnesota; Portland, Oregon; Austin and Houston, Texas.
- Those in communities of between 200,000 and 500,000: Glendale, Mesa, Scottsdale and Tucson, Arizona; Sacramento, California; Colorado Springs, Colorado; Hialeah, Miami, and St. Petersburg, Florida; Savannah-Chatham, Georgia; Honolulu, Hawaii; Fort Wayne, Indiana; Wichita, Kansas; Lincoln and Omaha, Nebraska; Akron, Ohio; Corpus Christi, Texas.
- Others in suburban and rural communities, and states with fewer residents such as Alaska, Arkansas, Idaho, Kansas, Maine, Montana, New Mexico, South Dakota, and Utah.

Regulations. Most of the departments have no written regulations or guidelines that govern when and how recordings are to be conducted.⁷

⁷ Denver, Colorado, and District of Columbia police (among several others) have adopted carefully crafted regulations.

Mandatory or discretionary. Most agencies leave the recording decision to the discretion of the officer in charge, although recordings are customarily made by the detectives in cases covered by discretionary policies.

When recordings begin. The departments listed in Appendix A use either audio and/or video recording devices to record interviews of persons under arrest in a police facility from the *Miranda* warnings until the interview is ended, with no intentional breaks or omissions in the recordings. We did not include departments that conduct unrecorded interviews followed by recorded confessions. Nor do we report on recordings made outside a police station or lockup, for example, at crime scenes or in squad cars.

Crimes under investigation. Most departments record in what they describe as “major” or “serious” felony investigations, such as homicide, sexual assault, armed robbery, and other crimes against persons and involving weapons. Many also record interviews in DUI, child abuse, and domestic violence investigations.

Equipment. Most departments use video or both audio and video to record. Some departments use multiple cameras from different views, while others use a single camera focused on the suspect.⁸ Many departments are acquiring digital technology in order to improve picture resolution and conserve storage space.

Suspect’s knowledge. State eavesdropping laws govern whether suspects must be told they are being recorded. “One-party consent” laws allow the police to record without informing the

⁸ See the discussion of camera angles in G. Daniel Lassiter, et al., *Criminal Confessions on Videotape: Does Camera Perspective Bias Their Perceived Veracity?*, CURRENT RESEARCH IN SOC. PSYCH., Vol. 7, No. 1 (2001), at www.uiowa.edu/~grpproc/crisp/crisp.7.1.htm.

suspects. “Two-party consent” laws require the police to obtain the suspects’ consent. Most state laws permit police to record surreptitiously, although sophisticated suspects and repeat offenders may be aware without being told. The departments listed in Appendix B usually or always inform suspects that the session will be recorded and/or place the recording equipment in plain view, although most of them are not required by state law to do so. Almost all officers turn the recording devices off if the suspect declines to talk while being recorded.

III. Benefits of recording for police officers and prosecutors

A contemporaneous electronic record of suspect interviews has proven to be an efficient and powerful law enforcement tool. Audio is good, video is better. Both methods create a permanent record of exactly what occurred. Recordings prevent disputes about officers’ conduct, the treatment of suspects and statements they made. Police are not called upon to paraphrase statements or try later to describe suspects’ words, actions, and attitudes. Instead, viewers and listeners see and/or hear precisely what was said and done, including whether suspects were forthcoming or evasive, changed their versions of events, and appeared sincere and innocent or deceitful and guilty. An electronic record made in the station interview room is law enforcement’s version of instant replay.

* * *

Virtually every officer with whom we spoke, having given custodial recordings a try, was enthusiastically in favor of the practice.

Here are representative samples of the views expressed by police and prosecutors from departments in which custodial recordings are made:

San Diego, California Police Department — Recording is a great investigative device, which “eliminates the problem of suspects changing their stories when we get to court. . . . I’ve never met a detective who didn’t like it.”⁹

Commerce City, Colorado Police Department — Recordings are “invaluable to us [in] resolving disputes regarding confessions.”

Bozeman, Montana Police Department — Recordings permit the viewer to see how the suspect looked and acted before being “cleaned up” for court. One video showed a suspect giggling when he described beating children. Our experience is 100 percent positive.

Clackamas County, Oregon Sheriff’s Office — “If a picture is worth a thousand words, it’s been my experience that a video is worth ten thousand.”

Houston, Texas Police Department — “I like to capture the person’s own words, so we can’t be accused of changing what was said. Video is an especially great tool, I love it. . . . Why not let what happened during an interrogation play out before the eyes of the jury?”

Sacramento, California Sheriff’s Office — “We like recording our interviews with suspects because later the jury may hear and see, via videotape, either their confession or their alibi. . . . The words and phrases of the suspects/defendants can be quoted without being questioned by a defense attorney, and if the suspect demonstrates how

⁹ The words within quotation marks are from law enforcement personnel of the corresponding department; the remainder of the text contains the essence of what we were told. Our sources are police and prosecutors with five to thirty-five years of experience in handling serious felony investigations and prosecutions.

they shot/stabbed/strangled their victim, it is not up for subjective interpretation.”

Moore, Oklahoma Police Department — Recordings “allow the judge and jury to better understand the demeanor of the defendant outside the courtroom, where false presentations are often the rule.”

St. Paul, Minnesota Police Department — The judge and jury experience the full oral and visual impact of a suspect’s changed story, rather than having an officer try to capture the contradictions in a few sentences.

Cobb County, Georgia Police Department — Recordings preserve the evidence in a way that written reports cannot. Perspectives about what occurred during interrogations are “incredibly unreliable” when compared to what is shown on the tapes.

* * *

Experience shows that recordings dramatically reduce the number of defense motions to suppress statements and confessions. The record is there for defense lawyers to see and evaluate: if the officers conduct themselves properly during the questioning, there is no basis to challenge their conduct or exclude the defendants’ responses from evidence. Officers are spared from defending themselves against allegations of coercion, trickery, and perjury during hostile cross examinations. These comments are illustrative:

Denver, Colorado Police Department — The department’s regulations state in part: “Claims of improper conduct by the police, such as brutality, intimidation, threats, promises or the failure to advise of constitutional rights can be judged first hand by the viewer. A jury can be shown a particular interview and allow them to make

their own decision. The videotape is also available for the appeals process and Supreme Court review.”

Mesa, Arizona Police Department — “The act of recording automatically brings with it the air of disclosure and avoids accusations of impropriety during the interview.”

DuPage County, Illinois Sheriff’s Office — The office policy statement provides: “Electronic recording of suspect interviews in major crime investigations protects both the suspect and interviewing officers against subsequent assertions of statement distortion, coercion, misconduct or misrepresentation. It can serve as a valuable tool to the criminal justice system, assisting the Court in the seeking of the truth.”

Brown County, South Dakota Sheriff’s Office — Many cases do not go to trial and many complaints about officers’ conduct are dropped after the recordings are seen by the defense. “It is good to have everything recorded so there is no question in court about what took place.”

Salt Lake City, Utah Police Department — Since the department has been using video to record interrogations there have been no complaints about voluntariness or coercion. “Videotaping statements helps us put forth the best case possible.”

El Dorado County, California Sheriff’s Office — “A motion to suppress is a swearing match between the suspect’s word and the officer’s word. Now we play the tape and the judge says, ‘It’s right there! Motion denied.’”

Norman, Oklahoma Police Department — “There is nothing better than a video and audio tape of a confession obtained by a skillful detective whose questions, demeanor, and methods are as

important as the confession. We have nothing to hide so why not document the process using modern technology.”

*International Association of Chiefs of Police*¹⁰ — “[W]hen asked about the effectiveness of CCTV [closed circuit television], the overall response [from more than 200 law enforcement agencies] indicates that there have been marked improvements in police operations: fewer frivolous lawsuits because defendants are unable to contradict taped evidence, protection against claims of abuse or coercion during interrogation procedures, [and] reduced court time for officers because defendants are unwilling to dispute charges when faced with taped evidence. CCTV becomes cost effective as its use increases; the videotape cost offsets litigation and settlement costs. . . .”

* * *

The use of recording devices, even when known to the suspect, does not impede officers from obtaining confessions and admissions from guilty suspects. When suspects decline to talk if recorded, the detectives simply turn the recorder off and proceed based on handwritten notes. (This subject is addressed in Part IV below.)

* * *

Recordings permit detectives to focus on the suspect rather than taking copious notes of the interview. When officers later review the recordings they often observe inconsistencies and evasive conduct which they overlooked while the interview was in progress. These were recurring themes in our discussions with detectives:

¹⁰ INT’L ASS’N OF CHIEFS OF POLICE, EXECUTIVE BRIEF: THE USE OF CCTV/VIDEO CAMERAS IN LAW ENFORCEMENT 5-6 (Mar. 2001). The IACP is the world’s oldest and largest nonprofit membership organization of police executives, with more than 19,000 members in 89 countries.

Gilbert, Arizona Police Department — “In addition to the detective not having the distractions of note-taking, the absence of notes frequently makes the subject more at ease and does not alert him/her to key phrases which may be of special interest at a later time.”

Omaha, Nebraska Police Department — “It works out great due to the fact you do not have to write anything down, which can make the suspect nervous and clam up . . . they clam up more when you write a lot of notes during the interview.”

Stockton, California Police Department — During interviews the officers often become fixated on the facts and overlook subtle changes in the suspect’s story, or his eye and body movements, which are observed when tapes are reviewed.

Ft. Collins, Colorado Police Department — Watching videos often reveals changes in suspects’ stories that were not observed during questioning.

Corpus Christi, Texas Police Department — “Officers have found that they especially like the recording process because it is much faster and easier for them to simply record a suspect’s interview, rather than the old method of interviewing the suspect, writing down his version of events, having the writing typed up and having the typing signed by the suspect. Simply recording everything means when the interview is over, the suspect’s confession is recorded for posterity without all the other paperwork.”

Contra Costa County, California Sheriff’s Office — Recordings allow detectives to “later dissect the tapes for the words used and mannerisms of the suspect, and voice inflections. These are subtleties that may go unnoticed without the benefit of a recording.”

Idaho Fish and Game Department — “Oftentimes I hear important facts in the recordings that I did not hear spoken at the time of the interviews.”

West Sacramento, California Police Department — Recordings allow officers to conduct interviews at a natural pace, rather than being overwhelmed with note taking during the interviews.

* * *

Full custodial recordings make it unnecessary for detectives to struggle to recall details when writing reports or testifying about past interviews:

Savannah, Georgia Police Department — Detectives frequently prepare reports or testify weeks or months after the interviews. In the interim they have conducted many other interviews. Their recollections of details have faded. Recordings provide them the ability to be accurate and complete.

* * *

Prosecutors approve and encourage recordings because they reinforce their cases. The result is increased numbers of guilty pleas, and greater prosecution bargaining power about sentences. In the cases that go to trial, recordings are readily accepted and relied on by judges and juries:

San Diego, California prosecutor — “Consider . . . the immeasurable value of giving the eventual jury the opportunity to hear, if not see, the defendant before he has thought to temper his attitude, clean up his language... and otherwise soften his commonly offensive physical appearance, and you begin to appreciate the tremendous value of a taped interview. . . .Not even Richard Gere [as the defense lawyer in the motion picture *Chicago*] will be able to tap

dance his way around the truth that an audio or videotape recording so obviously displays.”

Los Angeles County, California prosecutor — “I much prefer to have the evidence on tape, rather than in a police report or a statement written by the officer and signed by the suspect, because recordings provide the most persuasive evidence as to what was said and how the suspect was treated during the session.”

Larimer County, Colorado prosecutor — “I prefer to have all interrogations videotaped so the jury can see the suspect and how he reacts. Video is an excellent piece of evidence in homicide cases.”

Hennepin County, Minnesota State Attorney — “For police, a videotaped interrogation protects against unwarranted claims that a suspect’s confession was coerced or his constitutional rights violated. For prosecutors, it provides irrefutable evidence that we can use with a jury in the courtroom. For suspects, it ensures that their rights are protected in the interrogation process.”

* * *

Trial and appellate judges, who repeatedly have been forced to listen to the prosecution and defense present conflicting versions of what took place during unrecorded custodial questioning, also favor recordings. As a result, various trial and reviewing court judges have urged law enforcement officers¹¹ to make recordings when feasible.

¹¹ See, e.g., *People v. Raibon*, 843 P.2d 46, 49 (Colo. Ct. App. 1992); *State v. Crail*, 97 Haw. 170, 179, 35 P.3d 197, 206 (2001); *Stoker v. State*, 692 N.E.2d 1386, 1390 (Ind. Ct. App. 1998); *Commonwealth v. Diaz*, 422 Mass. 269, 273, 661 N.E.2d 1326, 1329 (1996); *State v. Worrall*, 293 Mont. 439, 453-454, 976 P.2d 968, 977 (1999); Order entered by District Judge Charles B. Kornmann in *United States v. Azure*, No. CR 99-30077, 1999 WL 33218402, at *1 (D.S.D. Oct. 19, 1999) (criticizing FBI agents’ repeated failure to record custodial interviews). On May 10, 2004, the New Jersey Supreme Court announced it “will establish a committee to study and make

An exasperated trial judge recently told a police witness: “If you’ve got audio and videotape there, I think you ought to use it. I don’t know why I have to sit here and sort through the credibility of what was said in these interviews when there’s a perfect device available to resolve that and eliminate any discussion about it.”¹²

* * *

We often heard reports of initial negative reactions to recording, and how experience changed these attitudes. Detectives with reservations became solid supporters after receiving training and observing firsthand the benefits of an indisputable record.

Anchorage, Alaska Police Department — Many detectives were skeptical when the Alaska Supreme Court ruled in 1985 that they must record, but after techniques were taught and positive results obtained, recordings became part of everyday station routine. “Recordings protect our ability to do our jobs. They have proven beneficial to law enforcement, and ease public concern about how our officers treat people who are in police custody.”

Stockton, California Police Department — We observed the same kind of apprehension as when cameras were put in patrol cars. Now the recordings are accepted and valued.

Broward County, Florida Sheriff’s Office — Detectives were trained and began recordings in May 2003. A supervisor: “We are recording all interrogations/interviews and are continuing to have great success. Our detectives have made the transition very well and are satisfied with the results. They have found their confession rates have

recommendations on the use of electronic recordation of custodial interviews.”
State v. Cook, 2004 U.J. Lexis 464, at *54 (N.J. May 10, 2004).

¹² Tr. of Mtn. to Suppress Hrg. at 72, *United States v. Bland*, No. 1:02-CR-93 (N.D. Ind. Dec. 13, 2002).

not been compromised.” A 17-year detective: “Initially I was very apprehensive, but after observing and being involved in interrogations I see how the use of video is much better than the old fashioned method. . . it has fostered new techniques. At the beginning it was somewhat intimidating, but once you become accustomed to the procedure it is second nature.”

Minnetonka, Minnesota Police Department — When the Supreme Court decided the *Scales* case in 1994, detectives “thought the world would fall apart,” but it has worked out very well. “Minnetonka has lived with audiotapes for over 10 years. They have enhanced our cases.”

* * *

Many experienced officers said they would not consider returning to non-recorded sessions, and expressed surprise when told that most police in the United States do not record in serious felony investigations:

Juneau, Alaska Police Department — “Electronic recordings eliminate the need for officers to take extensive notes, and allows them to observe the suspect’s body language. I can’t understand why every department doesn’t record.”

Maricopa County, Arizona Sheriff’s Office — Recording interrogations is well established here. “I’m surprised there are any police agencies that do not make recordings in serious cases. Every detective should want to have a record of his questioning sessions.”

Butte/Silver Bow, Montana Law Enforcement Department — Most felony investigations have been audio recorded for many years. “We would never go back to unrecorded statements.”

Kalispell, Montana Police Department — “None of our detectives would return to non-recorded procedures.”

Hobbs, New Mexico Police Department — “I find it hard to believe that all police do not record in investigations of serious felonies.”

* * *

For obvious reasons, recordings deter officers who might be inclined to engage in improper tactics or misstate what was said or done by the suspect:

Kentwood, Michigan Police Department — “As the investigator, it keeps you in check, knowing the video may be seen by a judge or jury.”

* * *

Another benefit is increased public confidence and approval of police practices:

El Paso County, Colorado Sheriff's Office — Recording “improves the image of the police in the eyes of the public. They see the fallacies shown on television are not what happens in real life.”

Butte County, California Sheriff's Office — Recording interrogations reduce citizens’ complaints and make police credibility automatic.

* * *

Many agencies use recordings in teaching interrogation techniques to their detectives:

Mesa, Arizona Police Department — “Electronic recording of custodial investigations has raised our level of sophistication in interview and interrogation techniques.”

Millersburg, Ohio Police Department — Recordings are useful in illustrating good and bad interrogation techniques, especially if you can see as well as hear what occurred.

Coeur d'Alene, Idaho Police Department — “There is no better training technique than to watch and review your interrogations.”

* * *

Cost is not a concern to most departments. (This subject is discussed in more detail in Part V below.)

* * *

A number of departments record suspects' final statements or confessions but not the preceding questioning.¹³ While it is debatable whether this is better than having no recording, the information we received in our survey indicates that for several reasons this practice is very much inferior to recording the entire interrogation:

First, detectives remain subject to challenges regarding their conduct during the initial unrecorded questioning, which usually lasts far longer than the final recorded statement. No matter what representations are recorded about the events in the prior session (e.g., no promises, no coercion), claims of trickery and abuse can and will still be made, requiring trial judges and juries to hear and evaluate the conflicting testimony. The defense is free to argue that negative inferences should be drawn because the entire session could have been

¹³ See Interim Policy Statement of the New Jersey Attorney General and the New Jersey County Prosecutors' Association Regarding Electronic Recordation of Stationhouse Confessions (April 13, 2004), *available at* www.njdej.org/releases/2004/policy_cook_0510.htm.

recorded by the flick of a switch, whereas the detectives chose instead to record only a rehearsed final statement.¹⁴

Second, we were repeatedly told that when detectives record the entire interview and later review the recordings, they often discover significant incriminating matters they overlooked during the give-and-take of the original interview, such as false exculpatory statements and alibis, subtle changes of story, and (with video) body and eye movements indicating deception. This crucial evidence is lost forever if the sessions are not recorded in their entirety.

Third, recordings of interrogations have proven to be of great benefit for training and self-evaluation.

The law enforcement personnel who oppose recording custodial interviews are almost invariably those who have never attempted to do so. They speculate about potential, hypothetical problems, whereas those who have recorded for years do not express similar misgivings. The responses we received from experienced officers in all parts of the United States were heavily weighted (almost unanimously) in support of recording custodial interrogations in felony investigations from the time the *Miranda* warnings are given until the suspect leaves the room.

The Denver Police Department regulations contain a summary of many of the benefits recordings provide to police: “The use of these statements help to reduce the time used to testify in hearings, reduce

¹⁴ The value of recording entire custodial interrogations is demonstrated in two recent, highly publicized cases out of Chicago (Corethian Bell) and New York (Central Park Jogger), where police conducted unrecorded interrogations followed by taped final confessions. The recorded confessions were later proven false, and allegations of police coercion have been made. See Kirsten Scharnberg & Steve Mills, *DNA Voids Murder Confession*, CHI. TRIB., Jan. 5, 2002; *Crime, False Confessions and Videotape*, N.Y. TIMES, Jan. 10, 2003, at 22; Saul Kassin, *False Confessions and the Jogger Case*, N.Y. TIMES, Nov. 1, 2002.

time in suppression hearings as well as the number of witnesses called to testify. They further reduce the amount of evidence lost through suppression. Guilty pleas have increased, the likelihood of conviction has risen and the mental trauma on victims and witnesses has been reduced, all through the use of this video medium.”

An experienced detective in Nevada said, “Recording is the greatest thing since canned beans,” and another from Indiana described recording custodial interrogations as “the best law enforcement tool in recent history.”¹⁵

IV. Recording does not affect the ability to obtain cooperation, admissions, and confessions

The most common objection to recording custodial interviews is that suspects who are informed or realize the session is to be electronically recorded will “clam up,” become tense, refuse to be interviewed, and fail to cooperate with the questioner, resulting in the loss of damaging admissions, false exculpatory statements and

¹⁵ Law enforcement departments in the United Kingdom (England, Wales, Scotland and Northern Ireland), Ireland, Canada, Australia and New Zealand record custodial interviews in serious felony investigations. See the United Kingdom’s POLICE AND CRIMINAL EVIDENCE ACT 1984 (Tape Recording of Interviews) Orders 1991 (Northern Ireland has an equivalent 1999 Order); see also Ireland’s CRIMINAL JUSTICE ACT, 1984 (Electronic Recording of Interviews) Regulations, 1997. Police departments we contacted in the United Kingdom and Ireland echo the endorsements we received from United States agencies – emphatic support for recording as a valuable law enforcement tool. Canadian and Australian authorities concur. See ALAN GRANT, THE AUDIO-VISUAL TAPING OF POLICE INTERVIEWS WITH SUSPECTS AND ACCUSED PERSONS BY HALTON REGIONAL POLICE FORCE ONTARIO, CANADA (1987) (prepared for the Law Reform Commission of Canada); see also Wayne T. Westling & Vicki Waye, *Videotaping Police Interrogations: Lessons from Australia*, 25 AM. J. CRIM. L. 493 (1998).

confessions.¹⁶ But scores of veteran detectives have found these fears to be unfounded. Here is why:

First, most states permit covert recording. Suspects who are not aware they are being recorded obviously will not be affected. This covers most custodial interrogations.

Second, there are instances in which suspects are aware that their interviews are to be recorded. A few two-party consent states do not make exceptions for police custodial interviews (e.g., Illinois until 2005, Massachusetts and Washington), so that suspects must be advised and their prior consent obtained. There are also a good number of police and sheriff's departments, located in states in which knowledge and consent are not required, who voluntarily advise suspects they are being recorded, either by telling them or by placing the equipment in plain view. Departments which customarily inform suspects of recordings either orally and/or by device placement are listed in Appendix B.¹⁷ Suspects may also learn from outside sources that custodial interviews are being recorded by the department.

Most detectives we spoke with said that suspects' awareness of being recorded is not a hindrance, because when interviews get underway any initial hesitation fades and suspects focus attention on the subject of their interview. Other detectives voiced concerns that suspects balk when they realize a recording will be made; others said that the sight of recording equipment causes some suspects to become uncomfortable and reluctant to proceed.

¹⁶See, e.g., the affidavits filed by various Massachusetts law enforcement officers in *Commonwealth v. DiGiambattista*, No. 09155 (Mass. Mar. 2004).

¹⁷We were told that many suspects want their entire interviews recorded.

Whatever the reason for suspects' unwillingness to answer questions if recorded, or displaying discomfort with recording, the solution followed by the detectives we spoke with is very simple and straightforward: *if necessary to obtain cooperation, stop the recording devices and proceed with the interviews in the handwritten note-taking manner.*¹⁸ It is clearly the wise way to proceed, because it is better to conduct non-recorded interviews than none at all. None of the hundreds of detectives we spoke with regarded this procedure to be an impediment to obtaining suspects' cooperation.

Courts in Alaska and Minnesota do not mandate recording when the suspect objects.¹⁹ The new Illinois statute excuses recording if the suspect declines to be recorded so long as the suspect's conditional refusal is recorded.²⁰ Similar exceptions have been provided in the regulations adopted by a number of agencies.²¹

Research by several respected organizations confirms that objections to recording based upon the anticipation of suspects' resistance are unwarranted. For example, a research paper entitled "Policy Review," published in 1998 by the International Association of Chiefs of Police ("IACP") and the National Law Enforcement

¹⁸ A very few departments told us they make a show of turning off the visible device but continue recording through an unseen system. The majority of departments stop all devices upon request.

¹⁹ *Stephan v. State*, 711 P.2d 1156, 1162 (Alaska 1985); *State v. Inman*, No. A03-80, 2004 WL 235458, at *2 (Minn. Ct. App. Feb. 4, 2004) (unpublished opinion), *review granted* March 30, 2004; *State v. Chang*, No. C6-00-1416, 2001 WL 536975, at *2 (Minn. Ct. App. May 22, 2001) (unpublished opinion); *State v. Lee*, No. CO-98-1135, 1999 WL 227394, at *2 (Minn. Ct. App. April 20, 1999) (unpublished opinion); *State v. Kattaria*, No. C6-97-2358, 1998 WL 481899, at *4 (Minn. Ct. App. Aug. 18, 1998) (unpublished opinion).

²⁰ 725 ILCS 5/103-2.1(e)(vi).

²¹ *See, e.g.*, D.C. CODE §5-133.20 (2003); Ft. Lauderdale PD Criminal Investigations Division, SOP at 13 (July 2002); Omaha PD, Interviews/Interrogations Policy at 102 (Oct. 2001); Santa Clara PD Investigations Division, Recording of Violent Suspect Statement (Dec. 2003).

Policy Center (“NLEPC”)²² (“1998 Policy Review”), contains the pros and cons of recording suspect interrogations,²³ including a discussion of whether suspects will speak freely when recorded. The author concluded: “There is little conclusive evidence to show that the use of videotape has any significant effect on the willingness of suspects to talk. While some are willing to talk or even play to the camera, others are reluctant. But the majority of agencies that videotape found that they were able to get more incriminating information from suspects on tape than they were in traditional interrogations.”

Thus, police experience supports the conclusion that using recording devices, even if known to the suspect, will not prevent properly trained law enforcement officers from eliciting cooperation, admissions and confessions from suspects. If suspects will not cooperate while being recorded, the simple solution is to stop the recording equipment and proceed with unrecorded interviews.

One final observation is in order. On several occasions we were told that some detectives oppose recording interrogations because they believe judges and juries may be offended if they heard or saw their interrogation techniques (i.e., shouting at suspects, using foul language and street talk, making offers of leniency or physical threats, expressing sympathy for suspects or blaming victims, or falsely asserting that incriminating evidence has been obtained). This is an unacceptable objection. We expect law enforcement personnel to give complete and truthful testimony, including candid descriptions of

²² In 1987, the IACP entered into an agreement with the U.S. Justice Department Bureau of Justice Assistance to establish the NLEPC, whose objective is to assist U.S. law enforcement agencies in developing and refining law enforcement policy.

²³ See also an earlier study, WILLIAM A. GELLER, VIDEOTAPING INTERROGATIONS AND CONFESSIONS: A PRELIMINARY EXAMINATION OF ISSUES AND PRACTICES — A REPORT TO THE NATIONAL INSTITUTE OF JUSTICE (1992).

what occurred during custodial interrogations. Surely these officers are not suggesting they should be free to modify or omit facts when testifying under oath about what happened during unrecorded interviews.

V. The relative costs and savings associated with recording

Many believe that, whatever the cost, full custodial recordings should be made because they help to secure convictions of the guilty and avoid convictions of the innocent. It is nevertheless instructive to compare expenses with savings.

Expenses include: acquisition of necessary equipment; restructuring interview facilities; training personnel in equipment use and interrogation techniques; salaries of employees who operate the equipment and transcribe the tapes; storage of tapes and discs; time and expense of personnel in observing or listening to playbacks, in preparing excerpts of recordings for courtroom use, and in making copies for defense lawyers, courts and juries.

Cost savings and related benefits include: no need for officers to prepare reports from handwritten notes, with the risk of important omissions; protection of officers against claims of abuse, coercion and perjury; stronger evidence for the prosecution; fewer pretrial motions to suppress; saving the time and costs of lengthy contested pretrial and trial hearings as to what occurred during custodial interrogations, because recordings make extensive testimony unnecessary;²⁴ more guilty pleas; reduction in risk of innocent persons being convicted or

²⁴ Tens of thousands of hours are spent each year during suppression hearings and trials relating to defense claims of coercion and false confessions. FRED E. INBAU, ET AL., CRIMINAL INTERROGATIONS AND CONFESSIONS 411 (4th ed. 2001).

guilty persons being acquitted; stronger prosecution records on appeal; reduction in post-conviction claims of false confessions and wrongful convictions, in investigations into charges of police misconduct, and in civil litigation with the risk of large damage awards; and a deterrent effect on officers who might succumb to an urge to use improper tactics, or misstate what suspects said or did.

Most costs come on the front end, and they diminish once the equipment and facilities are in place and training has been given to detectives. In contrast, savings continue so long as electronic recording continues.

In the many conversations we had with police throughout the country, very few mentioned cost as a burden, and none suggested that cost warranted abandoning recordings.

VI. Safety valves for when things go wrong

It is of course inevitable that glitches will occur when a recording device is used: the machine may not operate properly, the tape may run out and not be replaced, the operator may forget to turn the machine on, etc. Only a handful of those with whom we spoke with mentioned this as a matter of concern. It is nonetheless prudent to include appropriate safety valves as part of any regulation, statute or court order relating to recording of in-custody questioning.

If no recording was made because of a mechanical failure or inadvertent lapse, evidence of what occurred should nevertheless be admissible in evidence through the testimony of those present. Various methods have been proposed so that voluntary admissions and confessions, given after appropriate *Miranda* warnings, are not lost under these circumstances. Here are two examples:

- The new Illinois statute, summarized in Appendix C, contains several provisions that excuse the need for recording in-custody interrogations. For example, a non-recorded statement made during a custodial interrogation is admissible if “electronic recording was not feasible,” or if the prosecution establishes “by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances.”

- The American Law Institute’s Model Code of Pre-Arrest Procedure (1975) provides for suppression of statements only as a result of a “substantial” violation of the requirement that in-custody interrogations be recorded. The trial judge may consider, among other things, “the extent to which the violation was willful.” (Sec. 130.3(3)(c), 150.3(2), (3)(b), (5).)

Similarly, the courts in Alaska and Minnesota have upheld the admissibility of statements that were made when no operative recording device was available,²⁵ when by mistake no recording was made;²⁶ or when the recording was inadvertently erased or destroyed.²⁷ Unrecorded statements are also admissible if no testimony is presented that the statement is inaccurate or was obtained improperly apart from the failure to record.²⁸

Legislation, court orders or regulations adopted by police organizations should provide that the recording requirement is excused if the failure to record was due to inadvertent error or oversight, and not the intentional conduct of law enforcement personnel.

²⁵ *State v. Schroeder*, 560 N.W.2d 739, 740-41 (Minn. Ct. App. 1997).

²⁶ *State v. Miller*, 573 N.W.2d 661, 674-75 (Minn. 1998); *George v. State*, 836 P.2d 960, 962 (Alaska Ct. App. 1992); *Bodnar v. Anchorage*, No. A-7763, 2001 WL 1477922, at *2 (Alaska Ct. App. Nov. 21, 2001).

²⁷ *Bright v. State*, 826 P.2d 765, 773-74 (Alaska Ct. App. 1992).

²⁸ *Id.*; *Schroeder*, 560 N.W.2d at 739, 740-41.

VII. Conclusion

We are now accustomed to being recorded in private buildings, government offices, toll booths, stores, warehouses, factories and airports, and during many of our telephone calls. Police cars are equipped with cameras to record traffic stops. Video taped depositions are now routine. We rely on video to solve disputes in sports events, and to memorialize important occasions such as births, birthdays, weddings, holidays and vacations. We do so because the recordings enable us to replay past events in real-time, and thus to have a far more accurate and complete understanding of what occurred than still pictures or oral recountings can provide. These reasons apply with equal force to the questioning of suspects in police custody.

Jurors are coming to expect recordings when questioning takes place in police station interview rooms. When no recordings are made, defense lawyers are quick to argue that unfavorable inferences should be drawn.

This practice has been a long time coming, but as shown by my informal survey, it has already been adopted by a significant number of law enforcement agencies throughout the country as a wise and effective police practice.

Two recently issued reports of well respected organizations have endorsed the practice:

- The IACP-NLEPC *1998 Policy Review* concludes: “. . . on the whole, videotape appears to be a valuable investigative resource when structured through sound policies and procedures. Videotape in these contexts tends to protect the rights of defendants while ensuring a factual and often fair presentation of evidence and criminal liability. It is a persuasive tool for prosecutors and juries alike.”

- In 2003, John E. Reid & Associates, Inc. commissioned a survey of police officers in Alaska and Minnesota, who previously attended a Reid training seminar, to determine their experiences with recording custodial interviews. The survey concluded: “This reform in interviewing and interrogation practices suggests that the overall benefit of electronic recording in custodial cases is not only feasible, but may have an overall benefit to the criminal justice system. In an era where academicians generalize from laboratory studies and use anecdotal accounts to support claims that police routinely elicit false confessions, electronic recordings may be the most effective means to dispel these unsupported notions.”²⁹

Law enforcement agencies and detectives have traditionally embraced improved technology for investigating and solving crimes. The Denver regulations make the point in two short sentences: “The use of this tool has and will, continue to increase in the coming years. The courts have accepted this as a viable means of which to document information and has proven its evidentiary value and ability to sway juries.”

This is a matter of national concern, involving every law enforcement agency in the United States, which should be dealt with promptly and comprehensively. Legislatures, courts and law enforcement agencies - state and federal alike - should consider requiring that all in-custody interviews be recorded from the *Miranda* warnings to the conclusion. This may be accomplished by legislation

²⁹ BRIAN C. JAYNE, ET AL., EMPIRICAL EXPERIENCES OF REQUIRED ELECTRONIC RECORDING OF INTERVIEWS AND INTERROGATIONS ON INVESTIGATORS’ PRACTICES AND CASE OUTCOMES 9 (2003). John E. Reid & Associates, Inc. conducts training courses of interrogation techniques for law enforcement agencies throughout the United States.

(e.g., Illinois, Maine and the District of Columbia), or by rules or practices adopted by law enforcement agencies (e.g., police departments mentioned in Appendix A), or by rulings of state supreme courts (e.g., Alaska and Minnesota).

Recordings benefit suspects, law enforcement, prosecutors, juries, trial and reviewing court judges, and the search for truth in our justice system. The time has come for standard police practice throughout the United States to include the use of devices to record the entire interrogation of suspects in custody in all major felony investigations.

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APPENDIX A

DEPARTMENTS THAT CURRENTLY RECORD CUSTODIAL INTERROGATIONS

PD stands for Police Department. SO stands for Sheriff's Office. The county population figures include incorporated areas, although most sheriff offices serve unincorporated areas only.

LAW ENFORCEMENT AGENCY	POPULATION (2000 CENSUS)	SWORN OFFICERS	AUDIO/ VIDEO	YEARS RECORDING
Alaska				
All agencies	626,932		A/V	19
Arizona				
Casa Grande PD	25,224	60	A/V	10+
Chandler PD	176,581	304	A/V	20+
Coconino County SO	116,320	64	A/V	15+
El Mirage PD	7,609	47	A/V	1+
Flagstaff PD	52,894	95	A/V	6
Gila County SO	51,335	52	A/V	5
Gilbert PD	109,697	151	A/V	8
Glendale PD	218,812	300	A/V	10
Marana PD	13,556	65	A	9+
Maricopa County SO	3,072,149	675	A/V	10+
Mesa PD	396,375	820	A/V	12+
Oro Valley PD	29,700	75	A/V	10+
Payson PD	13,620	28	A/V	11+
Peoria PD	108,364	155	A/V	5
Phoenix PD	1,321,045	2,400	A/V	2+
Pima County SO	843,746	450	A/V	12
Pinal County SO	179,727	150	A/V	
Prescott PD	33,938	63	A/V	12
Scottsdale PD	202,705	300	A/V	10
Somerton PD	7,266	16	A/V	8
South Tucson PD	5,490	27	A	10

LAW ENFORCEMENT AGENCY	POPULATION (2000 CENSUS)	SWORN OFFICERS	AUDIO/VIDEO	YEARS RECORDING
Somerton PD	7,266	16	A/V	8
South Tucson PD	5,490	27	A	10
Surprise PD	30,848	85	A/V	20+
Tempe PD	158,625	380	A/V	5
Tucson PD	486,699	943	A/V	30+
Yavapai County SO	167,517	123	A/V	10+
Yuma County SO	160,026	80	A	5
Yuma PD	77,515	144	A/V	4
Arkansas				
14 th Judicial District Drug Task Force		4	A/V	10+
Fayetteville PD	58,047	140	A/V	5
State Police	2,673,400	490	A	
Van Buren PD	18,986	46	A/V	8+
California				
Alameda County SO	1,443,741	1,000	A/V	10+
Auburn PD	12,462	25	A/V	15
Butte County SO	203,171	110	A/V	15
Carlsbad PD	78,247	107	A/V	20
Contra Costa County SO	948,816	850	A/V	10
El Cajon PD	94,869	155	A	25
El Dorado County SO	156,299	160	A/V	10
Escondido PD	133,559	168	A/V	20+
Folsom PD	51,884	73	A/V	10
Grass Valley PD	10,922	29	A/V	5
Hayward PD	140,030	225	A/V	14
La Mesa PD	54,749	66	A/V	9+
Livermore PD	73,345	97	A/V	20
Los Angeles PD	3,694,820	7,000	A	23

LAW ENFORCEMENT AGENCY	POPULATION (2000 CENSUS)	SWORN OFFICERS	AUDIO/VIDEO	YEARS RECORDING
Oceanside PD	161,029	200	A/V	15
Orange County SO	2,846,289	1,600	A/V	15+
Placer County SO	248,399	250	A/V	10
Rocklin PD	36,330	45	A/V	12+
Roseville PD	79,921	110	A/V	10+
Sacramento County SO	1,223,499	1,700	A/V	25
Sacramento PD	407,018	675	A/V	22+
San Bernardino SO	1,709,434	1,550	A/V	25
San Diego PD	1,223,400	2,100	A/V	15+
San Francisco PD	776,733	2,500	A/V	
San Joaquin County SO	563,598	250	A/V	20+
San Jose PD	894,943	1,400	A/V	25+
San Leandro PD	79,452	94	A/V	15
San Luis PD	44,174	32	A	8
Santa Clara County SO	1,682,585	635	A/V	
Santa Clara PD	102,361	140	A/V	20+
Santa Cruz PD	54,593	95	A/V	4+
Stockton PD	243,771	372	A/V	8+
Union City PD	66,869	72	A/V	16
Ventura County SO	753,197	850	A/V	30
West Sacramento PD	31,615	62	A/V	5
Woodland PD	49,151	600	A/V	5
Yolo County SO	168,660	100	A/V	15
Colorado				
Arvada PD	102,153	140	A/V	17
Aurora PD	276,283	570	A/V	8+
Boulder PD	94,673	163	A/V	10
Brighton PD	20,905	53	A/V	2
Broomfield PD	38,272	130	A/V	9
Colorado Springs PD	360,890	686	A/V	7+

LAW ENFORCEMENT AGENCY	POPULATION (2000 CENSUS)	SWORN OFFICERS	AUDIO/VIDEO	YEARS RECORDING
Commerce City PD	20,991	75	A/V	15
Denver PD	554,636	1,300	A/V	22
El Paso County SO	516,929	386	A/V	17
Ft. Collins PD	118,652	156	A/V	20
Lakewood PD	144,126	270	A/V	10
Larimer County SO	251,494	237	A/V	25+
Loveland PD	50,608	79	A/V	9+
Sterling PD	11,360	22	A	5+
Thornton PD	82,384	147	A/V	8
Connecticut				
Bloomfield PD	19,587	52	A/V	2
Cheshire PD	28,543	48	A/V	20
District of Columbia				
Metropolitan PD	572,059	3,700	A/V	1
Florida				
Broward County SO	1,623,018	2,000	A/V	1
Collier County SO	251,377	800	A/V	6
Coral Springs PD	117,549	200	A/V	7
Daytona Beach PD	64,112	245	A/V	25
Ft. Lauderdale PD	152,397	500	A/V	1
Hallandale Beach PD	34,282	95	A/V	6 months
Hialeah PD	226,419	300	A	20+
Hollywood PD	139,357	340	A/V	1
Kissimmee PD	47,814	140	A/V	8+
Manatee County SO	264,002	650	A/V	20
Miami PD	362,470	1,100	A/V	1+
Mount Dora PD	9,418	36	A/V	18
Orange County SO	896,344	1,500	A/V	22
Osceola County SO	172,493	400	A/V	15
Palatka PD	10,033	35	A/V	6+
Pembroke Pines PD	137,427	225	A/V	2+

LAW ENFORCEMENT AGENCY	POPULATION (2000 CENSUS)	SWORN OFFICERS	AUDIO/VIDEO	YEARS RECORDING
Pinellas County SO	921,482	900	A/V	20
Port Orange PD	45,823	82	A/V	20
St. Petersburg PD	248,232	539	A/V	5+
Georgia				
Atlanta PD	416,474	1,500	A/V	
Cobb County PD	607,751	558	A/V	20+
DeKalb County PD	665,865	1,000	A/V	2
Fulton County PD	816,006	350	A/V	8+
Gwinnett County PD	588,448	515	A/V	15
Macon PD	97,255	305	A/V	15+
Savannah-Chatham PD	232,048	600	A/V	10
Hawaii				
Honolulu PD	371,657	1,200	A	18+
Idaho				
Coeur d'Alene PD	34,514	63	A/V	16+
Dep't. of Fish & Games	1,341,131	100	A	10+
Jerome PD	7,780	20	A/V	6
Nampa PD	51,867	95	A/V	4+
Illinois¹				
DuPage County SO	904,161	439	A/V	4
East St. Louis PD	31,542	65	A/V	
Kankakee County SO	103,833	63	A/V	10
Kankakee PD	27,491	71	A/V	10
Naperville PD	128,358	182	A/V	8
O'Fallon PD	21,910	43	A/V	1
Indiana				
Auburn PD	12,074	22	A/V	7
Carmel PD	37,733	90	A/V	15+

¹ Departments that recorded before the statute (see Appendix C) takes effect.

LAW ENFORCEMENT AGENCY	POPULATION (2000 CENSUS)	SWORN OFFICERS	AUDIO/VIDEO	YEARS RECORDING
Cicero PD	4,303	7	A/V	3
Elkhart PD	51,874	118	A/V	15
Fishers PD	37,835	69	A/V	8
Ft. Wayne PD	205,727	400	A/V	20+
Greensburg PD	10,260	18	A/V	20
Hamilton County SO	182,740	60	A/V	12+
Hancock County SO	55,391	40	A/V	7
Johnson County SO	115,209	60	A/V	4
Noblesville PD	28,590	67	A/V	5
Sheridan PD	2,520	5	A/V	16
Steuben County SO	33,214	21	A/V	5
Westfield PD	9,293	30	A/V	10+
Iowa				
Sioux City PD	85,013	127	A/V	15
Kansas				
Sedgwick County SO	452,869	172	A/V	20+
Wichita PD	344,284	650	A/V	5
Kentucky				
Elizabethtown PD	22,542	42	A/V	5+
Hardin County SO	94,174	20	A/V	2
Oldham County SO	46,178	30	A/V	4
Louisiana				
Lafayette City PD	110,257	240	A/V	15
Lake Charles PD	71,757	175	A/V	10
Plaquemines Parish SO	26,757	216	A	19
St. Tammany Parish SO	191,268	600	A/V	7+
Maine				
Lewiston PD	35,690	80	A/V	15
Portland PD	64,249	160	A/V	2
State Police	1,274,923	320	A/V	15
Maryland				

LAW ENFORCEMENT AGENCY	POPULATION (2000 CENSUS)	SWORN OFFICERS	AUDIO/VIDEO	YEARS RECORDING
Harford County SO	218,590	685	A/V	15
Prince George's County PD	801,515	1,420	A/V	2
Massachusetts				
Yarmouth PD	24,807	52	A/V	2+
Michigan				
Kentwood PD	45,255	72	A/V	10
Ludington PD	8,357	14	A/V	3
Waterford PD	73,150	90	A/V	5+
Minnesota				
All agencies	4,919,479		A/V	10
Mississippi				
Biloxi PD	50,644	145	A/V	25
Cleveland	13,841	40	A	20
Gulfport PD	71,127	200	A/V	15
Harrison County SO	189,601	250	A/V	5
Jackson County SO	131,420	150	A/V	19
Missouri				
St. Louis County Major Case Squad	1,016,315		A/V	
St. Louis County PD	1,016,315	730	A/V	
Montana				
Billings PD	89,847	128	A/V	20
Bozeman PD	27,509	42	A	18
Butte/Silverbow LED	34,606	40	A/V	10+
Cascade County SO	80,357	40	A/V	10+
Flathead County SO	74,471	45	A/V	10+
Gallatin County SO	67,831	40	A	10+
Great Falls PD	56,690	80	A/V	8
Helena PD	25,780	49	A/V	10

LAW ENFORCEMENT AGENCY	POPULATION (2000 CENSUS)	SWORN OFFICERS	AUDIO/VIDEO	YEARS RECORDING
Kalispell PD	14,223	45	A/V	10+
Lewis & Clark County SO	55,716	40	A/V	15
Missoula PD	57,053	89	A/V	3
Missoula County SO	95,802	58	A/V	14
Nebraska				
Douglas County SO	463,585	120	A/V	20
Lancaster County SO	250,291	73	A/V	3
Lincoln PD	225,581	315	A/V	28
Madison County SO	35,226	23	A/V	2
Norfolk PD	23,816	43	A/V	6
North Platte PD	23,878	42	A/V	1
Omaha PD	390,007	750	A/V	8+
O'Neill PD	3,733	7	A/V	12
Sarpy County SO	122,595	123	A/V	20
State Patrol	1,711,263	509	A/V	10
Nevada				
Boulder City PD	14,966	28	A/V	4
Carlin PD	2,161	6	A/V	10+
Dep't. Public Safety	1,998,257	49	A	16
Douglas County SO	41,259	97	A/V	12
Elko County SO	45,291	75	A/V	12
Elko PD	16,708	35	A/V	12
Henderson PD	175,381	280	A/V	10
Lander County SO	5,794	23	A/V	3
Las Vegas Metro PD	488,111	1,988	A/V	26
North Las Vegas PD	115,488	215	A/V	7+
Reno PD	180,480	300	A/V	25
Sparks PD	66,346	102	A/V	15+
Washoe County SO	339,486	400	A/V	20
Wells PD	1,346	52	A/V	8

LAW ENFORCEMENT AGENCY	POPULATION (2000 CENSUS)	SWORN OFFICERS	AUDIO/VIDEO	YEARS RECORDING
Yerington PD	2,883	7	A/V	30
New Mexico				
Carlsbad PD	25,625	50	A	5+
Doña Ana County SO	174,682	150	A	18
Hobbs PD	28,657	81	A/V	4
Las Cruces PD	74,267	150	A/V	18
Santa Fe PD	62,203	143	A/V	6
New York				
Broome County SO	200,536	52	A/V	2+
Ohio				
Akron PD	217,074	480	A	15
Garfield Heights PD	30,734	61	A/V	2
Millersburg PD	3,326	9	A/V	11
Wapakoneta PD	9,474	14	A/V	2
Westlake PD	31,719	40	A/V	10
Oklahoma				
Moore PD	41,138	62	A/V	20
Norman PD	95,694	130	A/V	10
Oklahoma County SO	660,448	350	A/V	1
Tecumseh PD	6,098	10	A/V	5
Oregon				
Clackamas County SO	338,391	300	A	5+
Eugene PD	137,893	175	A/V	26
Medford PD	63,154	97	A/V	16
Portland PD	529,121	1,048	A/V	15+
Springfield Office, State Police		25	A/V	
Warrenton PD	4,096	8	A/V	6 months
Yamhill County SO	84,992	40	A/V	6
South Dakota				

LAW ENFORCEMENT AGENCY	POPULATION (2000 CENSUS)	SWORN OFFICERS	AUDIO/VIDEO	YEARS RECORDING
Aberdeen PD	24,658	40	A/V	3+
Brown County SO	35,460	14	A/V	20
Tennessee				
Blount County SO	105,823	300	A/V	20
Chattanooga PD	155,554	480	A	2
Loudon County SO	4,476	35	A	2
Texas				
Austin PD	656,562	1,431	A/V	5+
Cleburne PD	26,005	50	A/V	5
Corpus Christi PD	277,454	400	V	1
Houston PD	1,953,631	5,300	A/V	12
Randall County SO	104,312	78	A/V	10
Utah				
Salt Lake County SO	898,387	350	A/V	5
Salt Lake City PD	181,743	460	A/V	3
Utah County SO	368,536	256	A/V	7+
Vermont				
Norwich PD	3,544	7	A	
Washington				
Marysville PD	25,315	40	A/V	8
State Patrol	5,894,121	800	A	17

APPENDIX B

**DEPARTMENTS THAT INFORM SUSPECTS
ABOUT RECORDINGS**

LAW ENFORCEMENT AGENCY	SUSPECT TOLD	EQUIPMENT IN VIEW
Chandler, AZ PD		x
Coconino County, AZ SO	x	
El Mirage, AZ PD		x
Gila County, AZ SO		x
Oro Valley, AZ PD		x
San Luis, AZ PD	x	x
Somerton, AZ PD		x
South Tucson, AZ PD	x	x
Yuma, AZ PD		x
14 th Judicial District Drug Task Force, AR		x
Fayetteville, AR PD	x	
State Police, AR		x
Van Buren, AR PD		x
Oakland, CA PD	x	
Carlsbad, CA PD	x	x
Aurora, CO PD		x
Denver, CO PD	x	x
Sterling, CO PD		x
Alameda County, FL SO	x	
Daytona Beach, FL PD	x	
Hialeah, FL PD		x
Kissimmee, FL PD	x	
Manatee County, FL SO		x
Mount Dora, FL PD		x
Osceola County, FL SO	x	
Palatka, FL PD	x	x

LAW ENFORCEMENT AGENCY	SUSPECT TOLD	EQUIPMENT IN VIEW
Pinellas County, FL SO		
Macon, GA PD	x	x
DuPage County, IL SO	x	
East St. Louis, IL PD	x	
Kankakee County, IL PD	x	
Kankakee County, IL SO	x	
Naperville, IL PD	x	
O'Fallon, IL PD	x	
Elkhart, IN PD		x
Hancock County, IN SO	x	
Johnson County, IN SO	x	x
Noblesville, IN PD		x
Sheridan, IN PD	x	x
Steuben County, IN SO	x	
Westfield, IN PD	x	
Sedgwick County, KS SO	x	x
Lafayette City, LA PD	x	
Lake Charles, LA PD	x	x
New Orleans, LA PD	x	
Plaquemines Parish, LA PD		x
State Police, ME	x	x
Harford County, MD SO	x	x
Prince George's County, MD PD	x	x
Yarmouth, MA PD	x	x
Plymouth, MN PD		x
Cleveland, MS PD	x	x
Gulfport, MS PD		x
Jackson County, MS SO		x
Missoula County, MT SO	x	x
Madison County, NE SO	x	x

LAW ENFORCEMENT AGENCY	SUSPECT TOLD	EQUIPMENT IN VIEW
Boulder City, NV PD	x	
Carlin, NV PD	x	
Department of Public Safety, NV	x	
Elko County, NV SO	x	x
Elko, NV PD		x
Henderson, NV PD	x	
Doña Ana, NM PD		x
Santa Fe, NM PD		x
Garfield Heights, OH PD		x
Westlake, OH PD		x
Moore, OK PD	x	x
Norman, OK PD	x	x
Tecumseh, OK PD		x
Clackamas County, OR SO		x
Eugene, OR PD	x	
Medford, OR PD	x	
Portland, OR PD		x
Springfield Office, OR, State Police	x	
Warrenton, OR PD	x	x
Blount County, TN SO	x	
Chattanooga, TN PD	x	x
Loudon County, TN SO	x	x
O'Neill, NE PD	x	x
Corpus Christi, TX PD	x	
Salt Lake County, UT SO		x
Marysville, WA PD	x	x
State Patrol, WA	x	x

APPENDIX C

Summary of the new Illinois law

The preamble to the statute creating the electronic recording pilot program (20 ILCS 3930/7.2(d)) states:

“The General Assembly finds that technology has made it possible to electronically record custodial interviews of suspects during first degree murder investigations. This technology will protect law enforcement agencies against claims of abuse and coercion by suspects while providing a memorialized account of interviews at police stations. The technology will also provide a better means for courts to review confessions of suspects with direct evidence of demeanor, tone, manner, and content of statements. . . .”

The statute which will require recordings beginning in August 2005 applies to pretrial custodial interrogations of persons who are later indicted under any of the following sections: 720 ILCS 5/9-1 (first degree murder); 5/9-1.2 (intentional homicide of an unborn child); 5/9-2 (second degree murder); 5/9-2.1 (voluntary manslaughter of an unborn child); 5/9-3 (involuntary manslaughter and reckless homicide); 5/9-3.2 (involuntary manslaughter and reckless homicide of an unborn child).¹ 725 ILCS 5/103-2.1.

All oral or written statements made by those persons, as a result of a custodial interrogation at a police station or other place of detention, “shall be presumed to be inadmissible as evidence against the accused” unless “an electronic recording is made of the custodial

¹ The recording requirement also applies to persons under 17 at the time of the crime under investigation, if he/she is charged in a criminal or juvenile court proceeding for an act that, if committed by an adult, would be brought under one of the listed sections. 705 ILCS 405/5 - 401.5.

interrogation” and “the recording is substantially accurate and not intentionally altered.” § 5/103-2.1(b).

a. “Custodial interrogation” is defined as “any interrogation during which (i) a reasonable person in the subject's position would consider himself or herself to be in custody and (ii) during which a question is asked that is reasonably likely to elicit an incriminating response.” § 5/103-2.1(a).

b. “Place of detention” is defined as “a building or a police station that is a place of operation for a municipal police department or county sheriff department or other law enforcement agency . . . at which persons are or may be held in detention in connection with criminal charges against those persons.” *Id.*

c. “Electronic recording” includes “motion picture, audiotape, or videotape, or digital recording.” *Id.*

The statute provides that “if the court finds, by a preponderance of the evidence, that the defendant was subjected to a custodial interrogation in violation of this Section, then any statements made by the defendant during or following that non-recorded custodial interrogation . . . are presumed to be inadmissible in any criminal proceeding against the defendant except for the purposes of impeachment.” § 5/103-2.1(d).

The statute specifies a number of circumstances in which a non-recorded statement is admissible, including: an “electronic recording was not feasible;” “a spontaneous statement that is not made in response to a question;” a non-recorded statement made by a suspect who agrees to respond only if an electronic recording is not made, provided that the suspect’s conditional refusal is electronically recorded; a statement given at a time when the investigators are unaware that a death has occurred; and statements made outside

Illinois. § 5/103-2.1(e). Also excepted are “a voluntary statement . . . that has a bearing on the credibility of the accused as a witness,” and a statement “used only for impeachment.” *Id.* Perhaps the most significant exceptions are “any other statement that may be admissible under law,” and the proviso, “[t]he presumption of inadmissibility of a statement made by a suspect at a custodial interrogation . . . may be overcome by evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances.” § 5/103-2.1(e)-(f). The prosecution has the burden of proof by a preponderance of the evidence that an exception is applicable. § 5/103-2.1(e).

The statute will not take effect until August 2005, which will allow time for law enforcement agencies to prepare facilities, obtain equipment and train personnel. § 5/103-2.1; 705 ILCS 405/5 - 401.5. The bill also amends the Illinois Police Training Act to provide for the training of police officers on the “methods and traditional aspects of conducting electronic recordings of interrogations.” 50 ILCS 705/10.3. A companion bill establishes an interim pilot program for recording in-custody interrogations in four Illinois police stations. 20 ILCS 3930/7.2.

The Illinois Eavesdropping Act was amended to permit the police to make the custodial recordings without the knowledge or consent of the suspect. 720 ILCS 5/14-3(k).

MISSION OF THE CENTER ON WRONGFUL CONVICTIONS

The Center on Wrongful Convictions is dedicated to identifying and rectifying wrongful convictions and other serious miscarriages of justice. The Center has three components: representation, research, and community services. Center faculty, staff, Bluhm Legal Clinic students, and cooperating outside attorneys investigate possible wrongful convictions and represent imprisoned clients with claims of actual innocence. The research component focuses on identifying systemic problems in the criminal justice system and, together with the community services component, on developing initiatives designed to raise public awareness of the prevalence, causes, and social costs of wrongful convictions and promote reform of the criminal justice system. In addition, the community services component helps exonerated former prisoners cope with the difficult process of reintegration into free society.



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