

INTERROGATIONS, CONFESSIONS, AND VIDEOTAPE

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To me, videotaping is in the same category as DNA evidence. It will send some people away for a long time to places they do not want to go, and it will free other people. It is a powerful truth-finding tool (Talbot 2002, 25).

William Geller, Justice Department

It's like calling for mandated DNA evidence. It sounds wonderful, but there's not DNA evidence in every case (Sealey 2002, 4).

Chuck Canterbury, Grand Lodge of the Fraternal Order of Police

In 1983, Walter Tyrone Snyder was asked to come into the police department in Alexandria, Virginia because investigators wanted to question him about a rape. Snyder had a conversation with an investigator in an interview room at the police department. After the conversation, the investigator claimed that Snyder cried and said that the victim actually raped him. The investigator also alleged that Snyder claimed to be Jesus Christ. Snyder, on the other hand, argued that the investigator suggested that the victim seduced him. Snyder claimed that throughout the interview, he maintained his account that he never had anything to do with the victim (Scheck et al. 61-62). What really occurred in that interrogation room? Some would assert that a videotape of the interrogation would have made the precise circumstances of Snyder's interrogation clear for posterity. Others would argue that this seemingly simple solution is not as clear-cut as it might appear.

Although videotapes may reveal facets of coercion or other questionable practices, is there an inherent problem with videotaping interrogations and confessions? Would videotaping an interrogation obstruct law enforcement and confuse the trial process? Certainly, the pros and cons of videotaping deserve examination before a comprehensive mandate is established in the United States.

Interrogations and confessions are widely acknowledged as significant procedures of the criminal justice system. However, the actual importance of confessions in courtroom proceedings is not as extensively known. Studies by Kassin and Neumann demonstrate that the presence of confession evidence in a case results in a higher conviction rate than the presence of eyewitness identification, or the presence of character testimony. Confession

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evidence is, to a jury and to many judges, the most incriminating type of evidence, for a confession seems to counter an innocent suspect's natural tendencies (Kassin and Neumann). Leo and Ofshe, in their 1998 study, found that in sixty instances involving false confession, the false confession helped generate an unlawful conviction (Lassiter et al. 1993). Because confessions are so heavily weighed in determining conviction or acquittal, it makes sense to scrutinize the methodology used in obtaining confessions.

In April of 1993, Gary Gauger was arrested for the murder of his parents. Officials questioned Gauger for twenty-one hours and showed him pictures of his parents' bodies. Investigators stated that Gauger confessed to the murder, while Gauger believed that during questioning he only put forth a possible explanation—that he killed his parents when he was blacked out—to try to account for the polygraph test that he was told he failed. Gauger was put on death row, but released when the real killers were found (Scheck et al. 90). The likelihood that the Reid techniques were utilized in this case is high. These interrogation techniques, illuminated in Inbau, Reid, and Buckley's *Criminal Interrogation and Confessions* and made part of popular culture's norms through shows such as *NYPD Blue* and *Law and Order*, are the most widely used processes of interrogation. However, some claim that this practice, which includes techniques such as minimization and maximization (editors note: what are minimization and maximization- I think this needs clarification), might actually lead people to make false confessions (Scheck et al. 89).

Although confessions that follow direct promises are generally excluded in court, more indirect promises insinuated through the interrogation process are allowed in court. Kassin suggests that a pertinent example of a confession coerced through such implied promises is the Central Park Jogger case in which the young teens involved may have given confessions as a means of escape, as they were in custody from 14-30 hours (Ingrassia 1). This is an example of a coerced compliant false confession. The other kind of false confession that may result from interrogation is the coerced internalized, in which the suspect comes to truly believe what he or she is confessing to. Kassin and Keichel replicated the development of coerced internalized confessions in 1996. Their experiment placed students in a situation of high vulnerability. The students were presented with false, incriminating evidence that they had pressed the [ALT] key on a computer when they had been told not to. All of these students signed confessions. Sixty-five percent actually believed that they were guilty, while thirty-five percent fabricated details to correspond with the imagined incident (Kassin 1997). Just as Kassin did in his study, the Reid technique encourages police detectives to put their subjects in highly vulnerable situations and present them with confabulated evidence. Nevertheless, the Reid technique is well regarded among

detectives, and many detectives assert that they have never procured a false confession using this or other techniques. However, the detectives employing the Reid technique to convict the confessors also perpetuate the “pernicious effects of motivated reasoning built on a foundation of naiveté regarding the psychology of human behavior” (Kassin 1998, 321).

Despite these possible shortcomings, many people stress that investigators are justified in their use of psychological methods such as Reid’s. Such proponents suggest that, generally, “evildoers do not just start confessing, like preschoolers, at the first sight of a skeptically raised eyebrow” (Zorn 2). Reid believes that any accurate estimation of the general rate of false confessions cannot be assessed, especially by Leo and Ofshe’s selectively chosen study. In addition, Reid takes Kassin to task for his keyboarding study, asserting that one cannot compare what occurs in an incident involving a keyboarding mistake to that involving a serious criminal act that would need to involve specific decisions on the part of the suspect. Reid suggests that there may be a plethora of *false* coerced internalized false confessions, for such a position is advantageous for the defendant. He or she truly believes they are guilty when they confess, but then they recant and blame their mistake on the investigator’s wrongdoing. Furthermore, Reid cites the impossibility of regulations preventing coerced compliant false confessions, as investigators would have to leave out anything that the suspect could misconstrue to be an implicit promise (Reid 1). The definition of what, then, the detective would not be allowed to detail would be too broad, as potentially the suspect could misconstrue anything. If there were such a prohibition, defense counsel could use it aggressively in suppression hearings, and their suggested suppressions would be difficult to disprove, even if there was mandated videotaping.

Some would view it proper that there is little concurrence between those who believe in the inherent coercion of interrogation and those who assert that the Reid interrogation technique is superior. The jury or judge would then be able to view and evaluate the propriety of the interrogation on a case-by-case basis. It is possible that Walter Snyder would not have languished as an innocent victim in jail had his interrogation been videotaped. Indeed, there are instances in which rolling videotape in interrogation rooms has proved advantageous. A suspect in Tulsa, for example, walked into an interrogation room and made incriminating statements, but later, after being read his Miranda rights, went silent. His statements, however, were on tape for use in trial (Hoffman 2). Videotape also has the capacity to reveal spontaneous confessions and quash the possibility of some intricate and untrue defense theories. In addition to these apparent advantages of videotape, juries would no longer be subject to “swearing contests” in which juries are given the task of deciding whose sworn testimony in an interrogation is accu-

rate. Videotaping may act as a safeguard, encouraging police to give Miranda rights and giving the court the chance to ensure that the interrogation was properly administered (Gilbert 7). Videotaping may also serve as a first-rate training tool for new police detectives (Gilbert 9). Furthermore, there is the opportunity for videotape to be relatively non-biasing. When there is a balanced focus on both interrogator and suspect, videotaped confessions ensuing from interrogations received the same rating on their level of voluntariness as the transcripts of those interrogations and confessions (Lassiter et al. 205). Despite these seemingly positive effects of videotaping interrogation and confessions, some consequences that videotaping proponents perceive as positive might actually have negative side effects for law enforcement and truth seeking. Some believe that, after the onset of mandatory taping, police officers will have to spend less time in court (Gilbert 12). However, is it not possible that many officers will have to take the stand to justify the legality of their interrogation techniques? Other proponents assert that the jury will be able to plainly see whether the confession originated with the police officer's suggestions or the defendant's replies to questioning (Talbot 25). However, perhaps the jury would not be sensitive to the insertion of a police officer's subtle suggestions or how these suggestions might possibly distort or factor into the suspect's own memory. In addition, a videotaped interrogation would allow the jury to see the suspect's actual manner of dress (editor's note: not sure what manner of dress means) and physical reactions to questioning. This may be quite different from how the subject appears in court. This may bias members of the jury, as they might stigmatize the suspect for a certain demeanor, be it talk, dress, or manner of interaction with the interrogator.

Both Cassell and Rothwax suggest an interesting potential result of the implementation of mandatory taping of interrogations and confessions—the demise of Miranda warnings. Cassell believes that Miranda is a 1960s-type approach, and by not requiring videotape instead of using Miranda warnings we are not utilizing superior solutions. Cassell suggests a suspect facing a policeman holding a rubber hose would much rather have that policeman's actions on tape than have him mumble his Miranda rights. This concern, however, is not only for the suspect, for Cassell believes that Miranda inhibits the propensity to confess. In fact, after Miranda, confession rates declined seventeen percent. (Cassell). Rothwax agrees that Miranda has many drawbacks. He asserts that Miranda undermines law enforcement practices, and creates a game of interrogation. He is concerned with the origins of Miranda, which stem partially from *Gallegos v. Colorado*, a case in which a boy's confession was thrown out partly because he was not equal in knowledge to the police. Rothwax expounds on the lunacy of such a decision and believes that current practice, in the words of Professor Caplan, “treats a confession as an

act of poor judgment by a vulnerable person outmaneuvered by the police” (Rothwax 79). Rothwax identifies Miranda as an overreaction that may potentially be precluded by videotape.

Despite Rothwax’s strong opinions about Miranda, there is still a prevalent belief in the benefits of Miranda. These include civilizing police action and increasing the awareness of constitutional rights (Kassin 1997). Moreover, the leaders of the Innocence Project believe that Miranda does not cripple law enforcement since eighty percent of people under question waive their Miranda rights (Scheck et al. 90). Would mandatory videotaping in addition to Miranda allow for such a high level of suspect compliance? Many officers propose that videotape would encourage a suspect not to discuss anything with the police. Detective Tim Muldoon offers an example of such an incident. He describes that when “a coworker of mine purchased a small hand held tape recorder...the witness that we were speaking to was cooperating fully until this guy pulled out his handy dandy recorder, the sight of which immediately brought the interview to a screeching halt. That witness never spoke to us again” (Muldoon).

Unwillingness to talk is not the only barrier mandatory taping would furnish for the police. Officers may feel as though they cannot use legal investigation techniques such as lying about evidence (Talbot 25). When they do use such techniques they would know that they might eventually need to make time to testify about those techniques in trial. In fact, the knowledge that a police officer’s techniques might bias the jury may someday lead to a restriction on police techniques. For instance, jurors tend to reject confessions after the threat of harm. However, even when they are told to discount involuntary confessions, they still, in their decision, consider confessions that may be involuntary but stem from promised leniency (Kassin 1997). Would this eventually lead to an end to the practice of suggesting potential leniency? Indeed, police officers themselves might be deterred from other typical interrogation practices. Would this allow actual criminals to slip through the system? Muldoon believes that he would feel self-conscious utilizing certain approaches on videotape. When a detective attempts to connect with the suspect, the detective may suggest that he or she shares common weaknesses with the suspect. Whether this is true or untrue, Muldoon and potentially a large portion of the detective population would be more reluctant to use this tactic knowing such an admission would be videotaped (Muldoon).

Muldoon raises the interesting point that videotaping interrogations may inadvertently hurt victim’s families, as detectives may denigrate the victim in an attempt at minimization. Similar fears are projected onto the jury—perhaps they will not be able to understand the legitimacy of vulgar tactics. However, the Defense Lawyers of the District of Columbia suggest

that the idea that jurors will not understand police tactics is unfounded. They assert that jurors are “aware that life is not all gentle” and that it is cause for concern if police need to keep interrogations secret (Gilbert 13).

Will mandatory interrogation and confession taping pull the criminal justice system down the slippery slope to the need to videotape absolutely everything? As the system stands now, all witness testimony is subject to trial. Should and will all witnesses eventually be recorded? confusion remains about whom and what is appropriate to tape. Recent Illinois legislation proposed mandatory taping, but a large gray area exists in its definition of suspects and witnesses since the legislation does not define custody (Zorn 2). Eventually, defense counsels may succeed at dismissing cases because the defendant was not taped “every moment” (Baer 22). Recommendations have already been made that videotaping should go beyond the interrogation room. In fact, there are currently proposals that all lineups, photo spreads, and other identification processes be videotaped (Scheck et al. 76).

Mandatory taping would present logistical problems for police departments across the United States. How could many departments, who are already in the throes of financial turmoil, afford to renovate their facilities to accommodate taping? Costs upwards of \$25,000 are projected for each interrogation room. This is inordinately high, but it takes into consideration that subjects must be videotaped everywhere. Twenty-five thousand dollars will allow for elaborate, uninterrupted recording, even in places like bathrooms (Illinois Police). However, the technology itself might create problems. What happens if equipment malfunctions? Who would be in charge of the taping and the tapes—the district attorneys or the police? (Baer 22).

Just as there are problems with creating videotape during interrogation, there are problems using videotapes as evidence in trial. Videotapes may fall pray to editing, resulting in a recap bias. In such a showing, jurors would only view a final confession. Only showing a final confession is a controversial idea; because jury members cannot see prior investigation, they will see the confession as more voluntary than they would have had they also seen the investigation. The suspect might also appear unemotional, even if he had shown great sorrow before (Kassin 1997, 12). Likewise, in these recapitulations, detectives script admission-centered statements, not allowing suspects to include mitigating factors in their confession (Gilbert). In the Central Park Jogger Case, for example, four recorded confessions without the prior interrogation were shown. Despite the lack of semen match, jurors convicted boys in two trials of rape; attempted murder and assault. Kassin demonstrates his abhorrence for the system that only shows confessions, identifying such videotaped confessions as “scripted with crime facts, rehearsed during interrogation, directed by the questioner and enacted by the suspect” (Kassin 2002, 31). Unfortunately, the Illinois Association of Chiefs of Police sees

videotaping only the confessions as a great starting point to determine whether they should eventually tape the entire confession (Illinois Police). Apparently, they are unaware of the potential for bias they could be inflicting on juries.

In addition to recap bias, framing bias may also skew the juror's perception of the substance of videotaped interrogations and confessions. If an interrogation produces an ambiguous videotape, the prosecution and the defense both get the opportunity to manipulate these ambiguous results by showing or pointing out bits and pieces of the video and suggesting an interpretation that conforms to their theory (Kassin 1997, 13).

Even without such manipulation, there is an undesirable bias seemingly inherent in the evaluation of videotapes (Lassiter et al. 191). One would think that fact finders need to see only what the confessor is saying and doing to determine his truthfulness and confessions' voluntariness, but there is a bias created by turning the camera to the suspect only (Lassiter et al. 195). Attributions of causality are influenced by point of view, so jurors overestimate the prominent suspect's causality in his or her confession (Lassiter et al. 197). Overestimating the suspect's influence on his or her confession may inflate the voluntariness of this confession, causing jurors to believe the false confessions. In this vein, investigators have found that jurors view confessions in which the camera is solely on the subject as the least coercive and the confessions in which the camera is on the detective as most coercive, with the confessions where they are both on camera in between. Deliberations, increased accountability for judgment and judicial instruction do nothing to minimize the propensity for bias when one sees only the suspect on camera (Lassiter et al. 207-226). A juror's appropriate determination of voluntariness is critical because of the principle of harmless error. This principle may increase prosecutors propensity to introduce confessions, regardless of voluntariness, because in the case of *Arizona v. Fulminante* it was decided that if evidence besides the involuntary confession could justify conviction, the confession's admission was harmless error (Lassiter et al. 198). However, this is not necessarily true, because in Kassin's study involving jury perception, people were affected by confessions despite their knowledge that it was a coerced, inadmissible confession (Kassin and Sukel 1997).

Certainly, research has shown that instituting mandatory videotaping of interrogations and confessions is not as uncomplicated or as beneficial as one might assume. Such a directive has potential to generate videotape misuse in trial, be it deliberate exploitation by attorneys or unintentional misuse by the jury. Furthermore, mandatory taping may make investigators' jobs more difficult by encumbering many aspects of their day-to-day work. This potential for harm and burden must be annulled before insisting that videotaping be used in all interrogations and confessions.

References

- Baer, Thomas. "Taped Confessions: Not a Good Idea." *The New York Times* 4 Nov. 2002: A22.
- Cassell, Paul G. "How Many Criminals Has Miranda Set Free?" *Wall Street Journal*. 1 Mar. 1995. 14 Nov. 2002. <www.law.utah.edu/faculty/websites/cassellp/howmanycrims.htm>.
- Gilbert, Richard and the District of Columbia Association of Criminal Defense Lawyers. *Statement of the District of Columbia Association of Criminal Defense Lawyers in Support of Bill 14-3, The Miranda Codification Act of 2001*. 10 Oct. 2001. 18 Nov. 2002. <www.dccadl.org/docs/videotape-cdl.pdf>.
- Hoffman, Jan. "Miranda and Confessions." *The New York Times*. 30 Mar. 1998. 18 Nov. 2002. <www.tnstate.edu/cmeginnis/postmirandaconfessions.htm>.
- Illinois Association of Chiefs of Police. *Response of the Illinois Association of Chiefs of Police to the Report of the Governor's Commission on Capital Punishment*. 18 Nov. 2002. <<http://www.ilchiefs.org/misc/CapitalPunish2.pdf>>.
- Ingrassia, Robert. "Are confessions valid? Three experts weigh in on teens' taped admissions." *Daily News* 8 May 2002: 8.
- Kassin, Saul. "False Confessions and the Jogger Case." *The New York Times* 1 Nov. 2002: A31.
- . "More on the Psychology of False Confessions." *American Psychologist* 53 (1998): 320-321.
- . "The Psychology of Confession Evidence." *American Psychologist* 52 (1997): 221-223.
- Kassin, Saul and Katherine Neumann. "On the power of confession evidence: An experimental test of the fundamental difference hypothesis." *Law and Human Behavior* 21 (1997): 469-484.
- Kassin, Saul and Holly Sukel. "Coerced confessions and the jury: An experimental test of the 'harmless error' rule." *Law and Human Behavior* 21 (1997): 27-46.
- Lassiter, G. Daniel, Andrew Geers, Patrick Munhall, Ian Handley and Melissa Beers. "Videotaped Confessions: Is Guilt in the Eye of the Camera?" *Advances in Experimental Social Psychology* 33 (2001): 189-254.
- Muldoon, Francis Austin. Email Correspondence. 24 Nov. 2002.
- Reid, John E. and Associates. "Research." *Critic's Corner*. 18 Nov. 2002. <<http://www.reid.com/critic-research.html>>.
- Reid, John E and Associates. "Interrogation." *Critic's Corner*. <<http://www.reid.com/critic-interrogation.html>>.
- Rothwax, Harold. *Guilty: The Collapse of Criminal Justice*. New York: Time Warner Books, 1996.
- Scheck, Barry, Peter Neufeld and Jim Dwyer. *Actual Innocence*. New York: Doubleday, 2000.
- Sealey, Geraldine. "Confused Confessions." *ABC News Online*. 25 Sept. 2002. 18 Nov. 2002. <www.abcnews.go.com/sections/us/DailyNews/falseconfessions020925.html>.
- Talbot, Margaret. "True Confessions." *The Atlantic Monthly* 290 (2002): 24-25.
- Zorn, Eric. "A Surprise Vote for Videotaping Interrogations." *Chicago Tribune*. 18 Nov. 2002. <www.law.nwu.edu/depts/clinic/Articles/ASURPRISEVOTE.html>.