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POLICE VIDEOTAPING OF SUSPECT INTERROGATIONS AND CONFESSIONS:

A Preliminary Examination of Issues and Practices

A Report to the National Institute of Justice

by

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CHAPTER 1: INTRODUCTION

The assessment of technology as an aid in criminal justice administration and operations has been a major focus of federally-funded research and development since the establishment of the Law Enforcement Assistance Administration in the 1960s. For example, research has explored and evaluated the advantages and disadvantages of using computers in myriad applications: automated fingerprint identification, computer-aided dispatching and differential response decisionmaking, mobile digital terminals in squad cars, the investigation of computer-related crimes, financial planning, simulation training, officer "career risk" early warning systems, court docket management, offender-based tracking to reveal criminal justice system case attrition patterns, and corrections management, to name just a few. The testing of voice communications systems, including especially the modernization and miniaturization of the two-way radio, has also received considerable attention, as has research and development on weaponry—both lethal and "less-than-lethal" and on simulation training in the use of such implements. Vehicular safety design has been still another important subject area. As a final example, one of the most promising recent areas of "high-tech" forensic science exploration has been "DNA profiling."

Among such innovations, *video* technology is employed for a wide array of purposes across the entire range of criminal justice agencies' processes.¹ A systematic tally of the diverse uses to which video technology has been put in the administration of justice in the United States would include the following applications, some of which have received considerable attention in the research and professional literature, others of which have been noted but neither described nor appraised with any rigor. Thus, video technology has been employed:

1. During police recruit and in-service training

- to impart standardized information to personnel via pre-recorded videotapes (both in academy sessions and in roll-call briefings);
- to present details of crime scenes or other aspects of criminal cases that have value for investigative training;
- to show trainees how they look and sound to others (during role playing tactical exercises, in handling mock media inquiries, while conducting interviews with witnesses and suspects, etc.);
- to provide interactive simulation training in which officers have an opportunity to hone their tactical skills and make instructive mistakes in the

¹ This study looks in particular at police videotaping of suspect interrogations and confessions. A fuller description of this study appears at the end of this chapter.

safe environment of the training academy.

2. During police investigatory work

- to document *demonstrative evidence*, including:
 - crime scenes;²
 - vehicle accident scenes;
 - demonstrations of what the driver involved in, or a witness who observed, a vehicular accident would have seen immediately prior to the mishap;
 - the physical condition of an arrestee at the time of booking;
 - the notification of a suspect concerning his or her constitutional rights;
 - and
 - re-enactments of crimes.

- to document *investigative evidence*, including:
 - undercover operations (surveillance, narcotics transactions, etc.);
 - in-progress robberies (in banks, stores, subway stations, etc.) or shoplifting;
 - execution of search and arrest warrants;
 - crowd activities during civil unrest and other violent or potentially violent situations;³
 - field contacts with and investigations of suspicious circumstances or responses to potentially dangerous calls for service;⁴

² "Unlike still photography, video shows continuity by establishing, in one taped sequence, spatial relationships around a crime scene. *** Using videotape, it is possible to virtually transpose jurors to the crime scene and show them details and relationships between objects and locations which would be difficult with still photography" (*Law and Order* 1987: 71).

³ Increasingly, police are employing video cameras to document crowd behavior and police-civilian interactions at public demonstrations in which confrontations or disruptive behavior are anticipated. And, increasingly, camcorder-toting civilians have been reciprocating with their own videotaping of confrontations involving the police. An early, widely publicized instance was the police-civilian clash in New York City's Tompkins Square Park (see, e.g., Hays 1988; French 1988). The most famous incident of civilian video documentation of police-suspect interaction in modern times, of course, was, the taping of Los Angeles Police Department officers beating motorist Rodney King in March 1991.

⁴ Reportedly, some members of the Montreal Police Force, with the tacit approval of the police administration, have been covertly *audiotaping* "their encounters with the public" to refute claims against the police for "abusive language or improper behavior" (Harman, 1989). A number of American police departments (e.g., the Georgia State Patrol and the Altamonte Springs, Florida, Police Department) have been using dashboard-mounted *video* cameras in squad cars, together with wireless microphones worn by officers, to document such field contacts as traffic stops, high-speed pursuits, and field interrogations and arrests. In the wake of the notorious Rodney King incident

- stationhouse bookings;
- lineups;
- sobriety tests;⁵
- mental health evaluations of criminal defendants whose sanity is at issue;
- custodial interrogations and/or confessions of suspects;
- intelligence about criminal techniques gleaned during interviews with informants and suspects;⁶ and
- witness and victim statements.

3. During police planning and analysis

- to record crowd control at major public events (sports events, large festivals, etc.) as an aid in planning for improved future crowd control;

in Los Angeles, the Christopher Commission, appointed to investigate the organizational circumstances that allowed the beating to occur and to explore corrective measures, expressed interest in patrol-car mounted video equipment. Among the potential benefits the Commission saw from such use of video technology were the reduction of claims that police used excessive force ("because the tapes demonstrate that the officers acted appropriately and because officers would be more careful to use force appropriately") and the promotion of officer safety "by deterring violence by suspects against police officers" (Independent Commission 1991: 63-64).

⁵ The practice of police videotaping of sobriety tests has received published support dating back at least to the 1960s (see, e.g., Sweeny 1967). Such tapes both illustrate the suspect's physical appearance and dexterity and serve as a record of the "fairness of the test procedures" (Miller 1984: 14). Reportedly there has been a weakening of interest in the use of videotape to document sobriety tests in at least some jurisdictions due to the fact that some suspects, who are able to "hold their liquor" well, do not necessarily appear to be drunk on videotape even though their breathalyzer results clearly indicate intoxication (e.g., Alliance Against Intoxicated Motorists 1991: 1). Chief Thomas Nichols of Lubbock, Texas, expressed the view that state-mandated videotaping in drunk driving cases has adversely affected case outcomes because some drunk drivers do not appear drunk on videotape (Nichols 1989). Thus, from a prosecutorial point of view, the tape may complicate the case rather than facilitate the presentation of evidence against a guilty party.

Still, in some locales, there remain recent indications that videotaping of suspects in drunk driving cases is especially successful in fostering guilty pleas. In Morgantown, West Virginia, for example, former Chief John Cease reported a high rate of DWI arrests as a result of his department's aggressive enforcement policy and the resident population's inclusion of both "hard drinking coal miners" and college students. Videotaping of the advice of rights, interview, and physical dexterity test over the years 1986 through 1988 reportedly helped produce a conviction rate of approximately 96 percent in Morgantown's DWI cases (Cease, 1988).

⁶ Sometimes, for example, a suspect's demonstration of his criminal technique provides information useful to police not only in prosecuting the individual but also in planning better preventive strategies. El Paso, Texas police in early 1989, plagued by "a dramatic increase in car thefts over the past year," observed during the videotaped confession of a 16-year-old suspect, taken by the Chihuahua State Judicial Police after his arrest in Mexico, how easy it was to break into various types of automobiles "in a matter of seconds using only a screwdriver and Vise-Grip pliers" (*Law Enforcement News* 1989).

- to record traffic flow, using aerial or ground photography, as an aid in traffic management and planning.
4. During pre-trial court proceedings
- to transmit (via closed-circuit television or "videophone") the images and voices of participants in:
 - arraignments;⁷
 - bail hearings;⁸ and
 - preliminary hearings.⁹
 - to make an audio-visual record of arraignments, bail hearings, and preliminary hearings.
5. During the trial stage of court proceedings
- to present in court the pre-recorded testimony of witnesses, including:
 - witnesses who, at the time of videotaping, were expected to be unavailable for trial testimony;
 - expert witnesses whose schedules might not otherwise permit their appearance;
 - perfunctory witnesses (e.g., witnesses to establish a chain of custody for evidence or to verify official records) who can participate in the trial with greater convenience via video linkage and whose unavailability might otherwise delay a court proceeding;
 - witnesses who might forget important details as time passes between the event at issue and trial;
 - witnesses who would be excessively (and misleadingly) nervous on the stand;
 - witnesses who can be expected to make "inadmissible and inflammatory statements [which] can be edited out before presenting the testimony to the trier of fact" (Miller 1984: 26);

⁷ The first noted appearance of a suspect at an arraignment via closed-circuit television occurred in Philadelphia in June 1974 (Coleman 1976; Miller 1984: App. IX).

⁸ Reportedly, the first use of video telephone in a bail bond hearing occurred in Chicago in 1972, when a prisoner "appeared" in the Circuit Court of Cook County via videophone from a police district lock-up 2-1/2 miles away (Miller 1984: 21, App. IX; Coleman 1976).

⁹ In March 1976, a police officer in Phoenix, Arizona, testified via video telephone in the preliminary hearing of a marijuana possession case, the first use of video telephone in such a proceeding. That same month, also in Phoenix, the prosecutor, public defender, and judge were linked by video telephone for the first documented closed-circuit argument of pre-trial motions in a criminal case (Coleman 1976; Miller 1984: App. IX).

—witnesses whose testimony can be expected to raise complex admissibility questions, thus allowing the judge more time than he or she would have in a "live" trial to contemplate the facts and the law and rule on the admissibility question; and

—victim-witnesses who, as in the case of molested children, can be spared the trauma of courtroom testimony or, as in the case of a hospitalized victim of a crime, cannot readily appear at trial¹⁰

- to present in court physical evidence or other trial exhibits too large or immobile to be transported to the courtroom (e.g., vehicles, large machinery, buildings, crime scenes) or too small to be readily observed in court;
- to record trial proceedings either as a supplement or replacement for courtroom stenographers¹¹
- in special circumstances to present defendants in court and have them view court proceedings via closed-circuit television (e.g., this technique was employed in a Sacramento County, California, Superior Court in 1975 during the murder trial of two members of the Symbionese Liberation Army).

6. During pre-trial or post-conviction detention

- to monitor the condition and behavior of detainees in police lock-ups (e.g.,

¹⁰ The rights of child molestation victims and their accused molesters concerning video testimony in court and confrontation of accusers by the accused have received recent attention by the U.S. Supreme Court in *Maryland v. Craig* (1990) (see, e.g., *Law Enforcement News* 1991: 5). The Court ruled that the confrontation clause of the U.S. Constitution does not guarantee a criminal defendant an unqualified right to have face-to-face exposure in court to his or her accusers. In this case, a one-way video connection was made, in which the defendant and others in court could see the child's examination by the attorneys. Some court systems, such as that in New York State, employ two-way video communications in child molestation cases (Walsh 1992: 2). Occasionally, a victim-witness has other special reasons for being unable to participate personally in a criminal trial, as occurred when President Gerald Ford gave videotaped testimony in November 1975 in the prosecution of Lynnette Alice Fromme for pointing a gun at the President in California. U.S. District Judge Thomas MacBride flew to Washington for the videotaping of the President's testimony, taken by Fromme's defense attorney in the presence of federal prosecutors (*U.S. v. Fromme* 1975; Coleman 1976; Miller 1984: App. IX).

¹¹ Miller (1984: 42-44) notes the irony that the first use of videotape to create a trial record, which was widely credited for its pioneering role by commentators (e.g., Kingsbury 1972; Shutkin 1973; Stiver 1974; Taillefer, et al. 1974b; Kosky 1975; Moore 1979; Madden 1968, 1969) was not the product of a sincere interest in exploring the efficiency and effectiveness of a new technology. Instead, it was a gambit, which evidently worked, to stifle a fledgling interest in unionizing among the County's shorthand reporters. After the pilot project was concluded, the Court—the Circuit Court of Cook County, Illinois—quietly abandoned its celebrated "Trialvisions" initiative.

to prevent suicides and criminal assaults);

- to monitor a convict's compliance with conditions of "home confinement" or "house arrest" (typically in conjunction with some other electronic monitoring device).

7. During post-conviction court proceedings

- to present the record of a videotaped trial for consideration by appellate courts;
- to present, via closed-circuit TV or video telephone, the testimony of probation or parole officers in revocation hearings.¹²

Thus, video technology has, with wide variation across jurisdictions, taken hold as one of the important administrative and operational tools of modern criminal justice agencies. Descriptive and analytic research on these applications of video technology has been extensive on some topics (such as pre-recorded videotaped civil trials) and virtually nonexistent—at least in this country—on other topics. One of these topics which, prior to this study, had not received any serious research attention in the United States¹³ is the use by police of video technology to document the content and manner of stationhouse suspect interrogations.

The use of video technology for this purpose by at least some American police departments has been documented for years in case law, which began addressing the admissibility of videotaped confessions in the late 1960s (e.g., *Paramore v. State* 1969). The videotaping of confessions was also mentioned in passing in published discussions of other uses of video technology, such as closed-circuit TV arraignments.¹⁴

Moreover, a number of criminal justice commentators noted that, during the past two decades, considerable attention was being devoted by English, Scottish, Australian, and Canadian officials to the use of electronic methods to document police interrogations of

¹² The first instance of this application of video technology reportedly occurred in June 1975 in Phoenix, Arizona, when a Superior Court judge heard the testimony of probation officers (located three blocks away) in cases involving probationers who had fled the jurisdiction. The next month, the same court accepted a probation officer's video telephone participation in a revocation hearing even though the defendant was present in the jurisdiction (and participated, with the assistance of counsel, in the judge's chambers) (Coleman 1976; Miller 1984: App. IX).

¹³ The American experience with videotaping confessions has been discussed to a certain extent in English and Australian literature, which we have drawn on in this report for background.

¹⁴ See, e.g., National Center for State Courts 1974, 1975; Benowitz 1974; Kosky 1975; Brakel 1975; Salvan 1975; Lieberman 1976; Burt 1978; Greenwood, et al. 1978; Murray 1978; Dade-Miami Criminal Justice Council 1982; Monteleone 1982; Surette and Terry 1984.

criminal suspects. Responding to longstanding aspirations to enhance the credibility, accuracy, and completeness of courtroom presentations of suspect statements to police, these nations set in motion pilot experiments and/or policy assessments of the value of making audio or video recordings of these hitherto "low visibility" police-suspect interactions.

In England, the Home Office launched an ambitious, multi-site, randomized experiment with police audiotaping of police-suspect stationhouse interviews. In Scotland, the Home and Health Department mounted similar, although more limited "field trials." In Australia, several state police forces were experimenting with both audio- and videotaping, while in the state of New South Wales the Attorney General's Office and the police force were generating thoughtful, written policy and procedural proposals and counterproposals based on empirical evidence about electronic recording from around the world. In Canada, the Canadian Law Reform Commission sponsored an evaluation of a regional police force's experiment with videotaping suspect interrogations, and a number of other agencies, including the Metropolitan Toronto Police, undertook pilot videotaping projects and in-house assessments of their effects.

Interest in the electronic documentation of suspect stationhouse interrogations has grown steadily in several nations, the United States as well, as part of the search for law enforcement investigatory methods that both secure oral evidence effectively and efficiently and also reassure the criminal justice policy community and the public that such evidence was obtained humanely and fairly.

Following a series of discussions and informal inquiries among law enforcement practitioners, the Police Executive Research Forum concluded that there was some substantial (but largely undescribed and wholly unassessed) use of video technology by American police departments to document interrogations or at least the confessions resulting from interrogations. Without any predisposition for or against the value of such videotaping, we undertook this initial exploration of issues and practices to help determine:

- the issues of greatest concern to criminal justice practitioners as expressed in the literature from English-speaking nations (discussed in Chapter 3);
- the nature and extent of police use of video to document stationhouse interrogations (Chapter 4); and
- the perceptions of criminal justice practitioners concerning the possible effects of videotaping interrogations and confessions on criminal justice processing by police, prosecutors, defense attorneys and the judiciary (Chapter 5).

This line of inquiry was designed to provide a first detailed and systematic look at this use of electronic technology in American criminal justice systems and to lay a foundation on which NIJ and others could assess whether additional inquiry, including

rigorous field experimentation of the sort undertaken in England and Canada, is warranted in support of future policy and operational decisions. Thus, by design the study on which this monograph reports was *descriptive* rather than *prescriptive*. Its mission will have been satisfied if criminal justice practitioners and others in the criminal justice policy community come away with a richer understanding of the nature and extent of police videotaping of suspect interrogations or confessions and of the issues that those practices raise for analysts and decisionmakers. Evaluative research of the sort on which recommendations for or against videotaping and for or against different videotaping procedures might be premised is a second generation effort.

CHAPTER 2: APPROACH USED IN THIS STUDY

A. Literature Review

Our inquiry commenced by reviewing published research reports and criminal justice agency internal studies to the extent we became aware of and could gain access to them. We learned early on that there was relatively little literature published in the United States directly on the subject of police use of videotape to document suspect interrogations and confessions. Hence, we broadened the sweep of our exploration to include discussions of videotaping (and audiotaping) suspect statements in other English-speaking nations and to include related examinations of electronic technology in support of criminal justice operations and administration in our country. The justification for examining published discussions, debates, and analyses of *audiotaping* of suspect interrogations as part of our literature review is that our initial research disclosed that many of the issues presented for practitioners by audio and video documentation techniques are similar.

The resulting literature review is presented in Chapter 3 of this monograph. There, we focus principally on issues raised pertaining to policy and procedures employed in connection with videotaping of confessions or interrogations and on predictions and counterpredictions as to the possible impact of videotaping on criminal justice processes and outcomes. Our overview of other uses besides the documentation of interrogations to which criminal justice agencies have put video technology appears by way of background in the introductory chapter.

Thus, the literature review frames the key issues which policy and operational analysts and practitioners (mostly in other nations) have argued would arise in connection with decisions to employ or not employ video technology to memorialize police-suspect stationhouse interviews. Then, the two chapters which follow the literature review provide data from our national survey and field studies to illuminate the nature and extent of interrogation/confession videotaping in the United States (Chapter 4) and the perceptions of criminal justice practitioners concerning videotaping's possible impacts (Chapter 5).

B. National Survey

Our national survey, administered in February 1990, was prepared in collaboration with Dr. Dennis Rosenbaum, Professor in the Department of Criminal Justice, University of Illinois at Chicago. Rosenbaum is a nationally respected survey expert, having designed, conducted, and provided advice to shape numerous local and national surveys as part of Justice Department, National Crime Prevention Council, Police Executive Research Forum, and many other studies of criminal justice issues. He has also written and lectured widely on survey research methodology. The survey instrument developed appears as an appendix to this monograph.

The survey was administered by the Northwestern University Survey Laboratory under the direct supervision of Susan M. Hartnett. It consisted of telephone interviews with representatives of local police and county sheriffs' departments. The representatives had been designated by the agency CEO's office, which had been alerted prior to the telephone call by letter that PERF would be conducting this study with sponsorship by the National Institute of Justice.

1. Background on Survey Sample

This survey builds on a national sample of law enforcement agencies which responded to a previous survey conducted by the Northwestern University Survey Laboratory in November and December of 1988 (see Lavrakas and Rosenbaum 1989).¹ The original survey included, at the request of the Police Executive Research Forum, a single question about videotaping practices:

"Does your department currently videotape interrogations of suspects and/or resulting confessions in any of your investigations?"

Responses to this question were used to develop a national sample of law enforcement agencies engaged in videotaping practices without having to conduct another national screening survey. A few methodological notes about the original survey are therefore needed to document the sampling procedures that underlie the PERF study of videotaping practices presented in this monograph.

Using a computer tape provided by the U.S. Bureau of the Census, which contains a comprehensive listing of more than 14,000 law enforcement agencies in the United States, Lavrakas and Rosenbaum (1989) selected a random sample of law enforcement agencies, stratified by size of the population served. Of the 1,078 departments sampled, telephone interviews were completed with the chief executive officer (police chief or sheriff) in 778² departments, for a completion rate of 73 percent. The survey's degree of precision (margin of error) in representing all law enforcement executives in the nation was plus/minus three percentage points.

2. Procedures

The results of the original survey of chief law enforcement executives indicated that 54.6 percent of the police chiefs and sheriffs who answered the above question (i.e., 423

¹ The original survey was conducted for the National Crime Prevention Council and focused on current attitudes, policies, and practices regarding crime prevention.

² As noted later in this chapter in the section titled "Disposition of Survey Calls," the subsequent telephone survey conducted exclusively for our project started with a national sample of 423 agencies. This number represented those agencies (among the 778 departments contacted in the earlier Lavrakas/Rosenbaum survey) whose representatives told the survey administrators that their departments had, at some time, recorded videotapes of suspect interrogations or confessions.

of 778 respondents) said their departments use video technology to record suspect interrogations or confessions. Hence, these 423 agencies became the sampling frame for the PERF survey of videotaping practices. These agencies were identified and pulled from the larger sample. Addresses, telephone numbers, and several demographic variables were recorded from the original surveys in preparation for the PERF telephone survey.

As noted above in general terms, a packet of materials, prepared by PERF, was mailed by the Northwestern University Survey Laboratory to each of these 423 agencies explaining the PERF videotaping survey and seeking their cooperation. This packet included:

- a detailed letter to the CEO, from the project director (William Geller) on PERF letterhead, requesting his or her permission to interview "one official of your selection who is well acquainted with the history and current practices of your agency concerning videotaping interrogations";
- a bright green (eye catching) slip to be completed and returned to the Survey Lab indicating who in the agency the CEO's office has designated as the survey respondent; and
- a copy of the survey instrument so that potential respondents would have some idea of what to expect during the telephone interview.

To protect the confidentiality of the agencies and respondents in the original survey, the Northwestern University Survey Laboratory prepared the mailing labels and mailed these packets with PERF having no knowledge of the agencies' identity. However, because PERF was interested in possible follow-up contacts with selected agencies (principally to consider them as site visit departments), one of the PERF survey questions asked respondents if they would be willing to talk further with the project director about videotaping practices. Indeed, more than 96 percent of the agencies actually interviewed (322 of 334) expressed a willingness to participate further, and then provided specific identifying information, which was in turn furnished to PERF except for the four percent of survey respondents who declined to participate any further.

3. Survey Instrument

The survey instrument was prepared by the project director to cover a broad range of questions about videotaping. The questions were based on PERF's review of the literature and on site visits conducted as part of "phase 1" of this NIJ-funded study in four jurisdictions (Kansas City, Missouri, Orange County, California, Huntington Beach, California, and Washington, D.C.). A long version of the instrument was pilot tested with 12 agencies, and this feedback was used to revise certain questions and eliminate others.

One of the preliminary findings from the pilot test was that a substantial number of agencies that originally reported using videotaping for interrogations or confessions were

not in fact using it for that purpose. This was obviously an important surprise, and requires explanation here. The original survey by Lavrakas and Rosenbaum (1989) suggested that the majority of law enforcement agencies in the United States (54.6%) were currently videotaping interrogations or confessions. The follow-up survey for PERF (conducted by the same survey laboratory) found that only half these agencies (51.8%) reported that their department had "ever used video technology to record stationhouse interrogations or confessions of criminal suspects." The obvious question is: What happened to the 48.2 percent who reported videotaping approximately one year earlier? In order to develop some rough estimates of the prevalence of videotaping nationwide (this is done in Chapter 4 in this monograph), this discrepancy in the survey results must be addressed.

After careful study and consultation with PERF and Survey Lab staff, Dr. Rosenbaum expressed the opinion that the number of agencies involved in videotaping of interrogations was overestimated in the first survey for several reasons: First, the respondent in the first survey was the *chief executive* of the agency (either the police chief or sheriff) and, in some cases, did not possess a detailed knowledge of the day-to-day practices in the investigations bureau, where videotaping often occurs. In contrast, the respondent in the follow-up survey for PERF was usually the *head of the investigations bureau or the most knowledgeable person about videotaping practices*.

Second, and related to the first point, these busy chief executives (who were asked only one question about videotaping as the very last question on a telephone survey about crime prevention) may not have distinguished *videotaping interrogations* from *uses of video technology in general*. Indeed we have evidence from our telephone survey that the large majority of chiefs and sheriffs who reported videotaping interrogations (but whose top investigator or other designated respondent later said their departments are *not* videotaping in this manner) were running agencies that *do, in fact, make other uses of video technology*; and a substantial number (28%) *have plans to use video to document interrogations*. More than seven in ten of the "non-users" employ video technology for undercover surveillance, and nearly eight in ten use it to document crime scenes.

Finally, if there existed any built-in biases toward either under- or over-reporting of videotaping by chief executives, these would be toward slight over-reporting of their involvement in videotaping interrogations or confessions given ambiguous circumstances. The PERF survey results (presented in chapters 4 and 5) clearly suggest that videotaping is seen as a desirable application of technology to law enforcement, one with which law enforcement managers and leaders would want to be associated. However, there is little reason to think that measurable bias was introduced by the respondents in the PERF survey. Because the respondents in the PERF survey (1) were the most knowledgeable about their agencies' videotaping practices, and (2) were asked numerous questions about videotaping in a variety of situations, Dr. Rosenbaum and PERF believe that their reports are quite accurate and should be used as the basis for estimating the national rate of videotaping with regard to interrogations and confessions. In sum, PERF and our methodological consultant have reason to believe that there are "false positives" in the reports provided by police executives, and no reason to believe there is a problem with "false negatives." It is possible, however, that the survey findings on the proportion of

agencies that "have plans to videotape stationhouse interrogations or confessions in the near future" (see Chapter 4) present a figure inflated by selection bias in the PERF sample, which included only agencies that were believed, based on CEO responses, to be videotaping already.

While a substantial number of departments that the Survey Lab expected to be videotaping suspect interrogations or confessions turned out not to be doing so, the survey did reveal, as noted, that many agencies were using video technology for other aspects of police work. Hence, the final survey instrument was designed with two tracks of questions—one for agencies that use videotaping for suspect interrogations or confessions and one for agencies that use (or are planning to use) videotaping only for *other* purposes.

For agencies that were *not* then videotaping interrogations or confessions, respondents were asked about possible plans for using it, and if they had no plans, were asked why. These respondents were also asked a series of ten questions about "other ways your agency may have used *or* is planning to use video technology" (the copy of the final survey instrument is in Appendix A).

The bulk of the survey was designed for agencies that *do* videotape or have videotaped stationhouse interrogations or confessions. The questions covered a variety of areas, including the history of their videotaping experience, the types of cases in which they videotape suspect statements, the procedures they follow, and any problems they have experienced. Special attention is given to their assessment of the effectiveness, efficiency, and credibility of police interrogations using videotaping technology.

4. Disposition of Survey Calls

The Northwestern University Survey Laboratory started with 423³ possible agencies for inclusion in the sample, and most interviews were conducted in February 1990. In total, 395 agencies were contacted, and 334 telephone interviews were completed, for a completion rate of 84.6 percent.⁴ Only two respondents refused to be interviewed, thus yielding a cooperation rate above 99 percent.⁵ Interviews were conducted most often with the head of the investigations bureau because he or she was considered by the departmental CEO to be the most knowledgeable about videotaping practices.

³ These were selected from among the 778 contacted in the earlier survey by Lavrakas and Rosenbaum.

⁴ Of the 334 agencies, 137 reported they videotaped suspects' interrogations or confessions.

⁵ Other dispositions: 59 respondents were not available at the time of the calls; 5 were ineligible because of non-working numbers, and 6 others for miscellaneous reasons; 17 were not contacted due to the limitation on resources devoted to the survey and contractual agreements.

5. Data Preparation and Analysis

The 334 surveys were edited and keypunched. The data were checked for errors in recording, keypunching, and contingency patterns (skips). An SPSS/PC+ system file was created, and several key demographic variables were created or recorded for analysis.

The results reported in this monograph are based primarily on an examination of frequency distributions for individual variables and the crosstabulation of key demographic variables with other survey responses about videotaping. These demographic variables include: type of agency (police or sheriff), department size (number of employees), population size (number of citizens in the service jurisdiction), and region of country (using Census Bureau categories: Northeast, Midwest, South, and West).

C. Site Visits

Besides the national survey of a representative sample of American police and sheriffs' departments, the findings in this study are based on field work, which entailed interviews with knowledgeable police personnel, prosecutors, public defenders, as well as private defense attorneys and judges, in more than a dozen cities or counties.

1. Site Selection

The sites were selected for diversity on a number of dimensions: agency and service population size, police workload variety (e.g., mix of homicides and other violent felonies), geography, agency budget (e.g., Washington, D.C. was strapped for funds while the Huntington Beach, California Department had recently invested a proportionally large sum in designing and installing a state-of-the-art covert videotaping interview room); agency jurisdictional focus (municipality versus county), and criminal justice system function (most of our site visit agencies were police or sheriffs' departments, but we also included one site—the Bronx, in New York City—where the videotaping of confessions was managed and conducted by the prosecutor's office). Additional dimensions on which we sought variety in site selection are longevity of videotaping, whether agencies tape *entire* stationhouse interrogations or only the resulting confession statements, whether officials tape overtly or covertly, and the portion of all suspect statements eligible to be videotaped (e.g., suspect willing) which in fact are videotaped. It was especially important to us to take a closer look at departments videotaping only occasionally (as contrasted with videotaping virtually all eligible confessions), given the widespread belief by practitioners *not* currently videotaping that agencies cannot selectively videotape—"it's all or nothing, and *all* is neither tactically desirable nor financially affordable." Hence, we went to sites like Houston, where homicide detectives only occasionally videotape confessions. The one consistency among sites selected for visits was, of course, that they represented to us in correspondence and telephone calls prior to our travel that they do

indeed videotape at least some suspect confessions or interrogations.⁶

The site visits took place over the period December 8, 1988 (starting with the Kansas City Police Department) through June 13, 1991 (ending with the St. Louis Police Department). Many of these site visits were intermingled with analysis of the national survey results and thus afforded us an opportunity to probe for insights on subjects which the survey revealed to be especially significant to law enforcement practitioners. The jurisdictions we visited and the agencies whose personnel we interviewed (as well as private defense attorneys) in those locales are the following (listed alphabetically for convenience):

- **Adams County, Colorado** (Sheriff's Department)
- **Burlington, Massachusetts** (Police Department)
- **Denver, Colorado** (Police Department; Denver County District Attorney's Office; Denver County Public Defender's Office; private defense attorneys; Second Judicial District Court, which hears cases generated by the Denver Police)
- **Fort Wayne, Indiana** (Police Department; Prosecuting Attorney's Office for the 38th Judicial District—serving the Fort Wayne and Allen County, Indiana, area; Allen County Superior Court, Criminal Division; private defense attorney)
- **Houston, Texas** (Police Department; Harris County District Attorney's Office; 228th District Court, Houston Texas)
- **Huntington Beach, California** (Police Department; Orange County District Attorney's Office; Orange County Public Defender's Office; private defense attorneys; and a video technology expert who had been hired by the Police Department to design and build its state-of-the-art videotaping interview room)
- **Kansas City, Missouri** (Police Department; Jackson County Prosecutor's Office; 16th Judicial Circuit Public Defender's Office, which serves Kansas City and Jackson County; private defense attorneys)
- **New York City (Bronx County)** (New York City Police Department; Bronx County District Attorney's Office; private defense attorney; Supreme Court, Criminal Division, Bronx County—a felony trial court)
- **Orange County, California** (Sheriff's Department; Orange County District Attorney's Office; Orange County Public Defender's Office; private defense attorneys)
- **St. Louis, Missouri** (Metropolitan Police Department)
- **San Diego, California** (Police Department; San Diego County District

⁶ Despite correspondence and phone calls confirming agency current use of video technology for this purpose, we were surprised by one of our sites—the Burlington, Massachusetts, Police Department—which turned out not to be videotaping suspect confessions. In fact, the agency videotaped bookings (to guard against complaints of prisoner abuse by officers) but never had employed video technology to document confessions. We made the best of the site visit by exploring with police officials their attitudes toward videotaping and examining the cost-benefit analysis that a small department might undertake in exploring whether or not to adopt videotaping of confessions as agency procedure.

- Attorney's Office; Public Defender of San Diego County; private defense attorneys; Superior Court, San Diego County)
- **Tulsa, Oklahoma** (Police Department; Tulsa County District Attorney's Office; Tulsa County Public Defender's Office; 14th Judicial Circuit Court, which serves Tulsa City and County)
 - **Washington, D.C.** (Metropolitan Police Department; Office of the United State's Attorney, Superior Court Operations, District of Columbia; U.S. Public Defender Service, District of Columbia; private defense attorneys)
 - **Westminster, Colorado** (Police Department)

Of the 14 jurisdictions noted above, 12 were principal target sites (all but Adams County and the City of Westminster, Colorado). Eleven turned out to be using video technology to document suspect interrogations or confessions and were rich sources of information concerning the nature, extent, and possible effects of videotaping. In all, our sites stretched from East to West Coast and were located in eight states and the District of Columbia. The jurisdictions range in population from 24,000 (Burlington) or 200,000 (Huntington Beach) on the low end⁷ to approximately one million (Bronx County, New York's population).

Population makeups across our various sites include large concentrations of whites, African Americans, Hispanics, and Asian-Americans, and wide ranges in socio-economic status. The police/sheriff's agencies involved in the videotaping processes we examined range in sworn personnel from 211 (Huntington Beach) to over 26,000 (the New York City Police Department, which provides ancillary services to the Bronx County District Attorney's Office and other borough District Attorneys' Offices in connection with the prosecutors' videotaping of confessions). Finally, our sites included agencies which had been videotaping a long time (the St. Louis Metropolitan Police Department was, to our knowledge, the first in the nation to videotape a suspect confession, in 1971, and the Bronx County DA's Office and Denver Police Department have each been videotaping for many years) and departments that had only a few years' experience with this application of video technology at the time we visited them. Together, these jurisdictions represented a usefully diverse collection of experience and expertise on which we drew heavily for the findings presented later in this monograph.

2. Interview Protocol and Conduct of the Site Visits

To guide our interviews and ensure sufficient consistency across sites, we developed a lengthy interview protocol (appended to this monograph). All site visits were conducted by the project director to provide further consistency across interviews and to facilitate the accumulation of knowledge and the sharing of information across sites. The site visits in each jurisdiction generally lasted from two to four days, during which time we talked with police (or Sheriff's Department) detectives, supervisory and command personnel,

⁷ Since, as explained in the text, Burlington turned out not to be a Department engaged in videotaping confessions, it is more appropriate to use Huntington Beach as the low-end point on our site visit population range.

prosecutors, public and private defense counsel, and judges. We did not have the opportunity (nor had we planned) to interview a representative from each segment of the criminal justice system in each jurisdiction we visited, but we did of course talk with police in every locale. Our choice of interviewees was based on written and telephone communications in advance of our site visits with police and officials in other criminal justice agencies. We attempted where possible to cross-check with more than one source the proposed interviewees to ensure that they enjoyed a reasonably widespread local reputation for being knowledgeable about the creation and criminal justice processing of videotaped interrogations or confessions.

The interviews we conducted were both one-on-one and small group discussions, with the method selected primarily to accommodate the convenience of the interviewees and the interviewer's time schedule. Each interview generally lasted from one to three hours. In each of the principal law enforcement agencies we visited, we observed the room or rooms used to videotape interrogations or confessions (see the floor plans in Chapter 4), and in most instances we also viewed on-site sample recorded videotapes. This on-site viewing of recorded videotapes allowed us to ask follow-up questions before we left the jurisdiction concerning video interrogation procedures, visual and audio recording quality, etc. Our standard approach was to send prospective interviewees the interview questions we intended to ask, so that they could think about the issues, discuss them with colleagues and, where possible, attempt in advance of our site visit to collect information that would not be readily available without preparation (e.g., tallies of interrogations videotaped).

This interview method proved to work quite well. In general, the practitioners were well prepared to our discussions, having thoughtfully reviewed the questions and having developed pertinent responses. At the same time, each interview contained a desirable element of spontaneity.

The interview method was selected on the assumption that relatively little documentary evidence would exist summarizing the videotaping practices and the effects of those practices and that, at this exploratory stage of research on videotaping, the opinions and general recollections of knowledgeable, cooperative practitioners would be an acceptable and prudent way to commence the inquiry. Our site visit experience confirmed our supposition about the lack of documentary evidence which one could use to *describe* videotaping practices, let alone to assemble the sort of data sets that would suggest process or outcome effects. If greater rigor is considered desirable by practitioners and government policy and funding entities in the approach taken to appraising videotaping as a criminal justice tool, the obvious next step would be to prospectively collect systematic process and outcome data in one or more jurisdictions. Following that, a controlled experiment could be designed and fielded, as has been done in Canada and England, to more powerfully analyze the impact of videotaping on criminal justice decisions, processes, costs, and other variables.

CHAPTER 3: POLICY, PROCEDURAL, AND IMPACT ISSUES PRESENTED IN THE LITERATURE

Ever since the Patriots rose up against the tactics of King George's colonial constables the American people have maintained a keen interest in the propriety of police methods.¹ Walker (1977: 58) reports that the 1910 IACP convention was dominated by discussion of the "third degree" and that a Congressional investigation was launched the same year into such tactics by the fledgling Federal Bureau of Investigation.

Two decades and one world war later, growing national restiveness over the treatment of the powerless by government led to the deliberations and publications of the Wickersham Commission. The best known of its 14-volume report was volume 11, *Lawlessness in Law Enforcement*, which reiterated the American concern about police coercing confessions (National Commission on Law Observance and Enforcement 1931; see also Pound 1934; Potts 1950; Caplan 1985: 1428-30). This concern was a current running through the American civil rights movement of the 1950s and 1960s and of course was of central importance to the U.S. Supreme Court in a series of landmark criminal procedure rulings that included *Miranda v. Arizona* (1966), *Escobedo v. Illinois* (1964) and other cases (Kelling and Stewart 1991; Williams and Murphy 1988).

The importance of striking a suitable balance between the dual objectives of investigatory effectiveness (accurately and efficiently determining—and convincing other authorities about—a suspect's guilt or innocence) and investigatory legitimacy (humane treatment, fairness, respect for civil rights and civil liberties) is reflected in the titles of some of the best known modern American crime control literature. *The Challenge of Crime in a Free Society* (President's Commission 1967) and *Policing a Free Society* (Goldstein 1977) are but two examples. To be sure, Americans hold different views concerning *how* the balance should be struck between propriety and productivity in policing, but of paramount importance for present purposes is the fact that the literature—and public opinion²—reflect a consensus on the importance of the balancing

¹ Caplan (1985: 1421; see also 1425) observes that "society always has been concerned with regulating interrogations lest they become a test of endurance rather than veracity" and that historic documents as old as the Massachusetts Bill of Rights evince the public's concern that the government "protect society...in a decent manner." The fact that "decency" in colonial America involved "*humane*" as opposed to "*inhumane*" torture (id.; Langbein 1978) is a mark of shifting collective values.

² Twelve times since 1973 public opinion surveys have queried Americans about whether they would "approve of a policeman striking a citizen who was being questioned in a murder case." Although the responses seem to be shifting steadily but glacially in the direction of approval, still in 1990 only 11 percent of the sampled public would support this police interrogation technique

act.³

The emergence of electronic recording as a potential method for fostering both productivity and propriety in police interrogations of criminal suspects prompted some debate (most of it in countries other than the United States) and a fair amount of experimentation (although often without accompanying evaluative research). Out of these early discussions and implementation efforts emerged a host of questions pertaining to policy and procedural matters as well as questions about the potential advantages and disadvantages of electronically recording suspect statements. Although many of these questions were raised either initially or entirely with respect to *audio* recording of statements, virtually all of them have a bearing on *videotaping* as well. A brief overview of the nature of these questions and the concerns underlying them is presented in this chapter. The following chapters present findings concerning many of these questions derived from our national survey and field inquiries.

Questions about the utility of videotaping suspect interrogations arise against the history of the use of other methods for documenting oral evidence: note-taking plus report-writing by investigators, verbatim stenographic records of interviews, signed written statements by suspects, and the like (see, e.g., Olson 1988).⁴ Thus, as a practical matter the issue for criminal justice practitioners is not whether video technology presents an *ideal* tool to accomplish various objectives but whether it serves better than more traditional documentation methods without presenting offsetting complications or costs. The questions that practitioners and policymakers have asked and might be expected to ask about the nature and impact of videotaping suspect interrogations may be grouped in the following subject areas:

(Maguire and Flanagan 1991: Table 2.21).

³ Occasionally, colorful counter-voices are heard amidst the din of consensus. For example, the Buffalo, New York, police commissioner told the Wickersham Commission:

"If I have to violate the Constitution or my oath of office, I'll violate the Constitution.... A policeman should be free as a fireman to protect his community.... Nobody ever thinks of hedging a fireman about with a lot of laws that favor the fire.... Shysters have turned the Constitution into a refuge for the criminal" (National Commission on Law Observance 1931: 117, cited in Walker 1977: 134).

⁴ A PERF survey of medium and large American police agencies (to which 324 departments responded) revealed that, when an interview is *not* audio- or videotaped, 10% of the agencies typically take "full verbatim notes of the entire interview," 36% take "verbatim notes of only part of the interview (e.g., confession only)," 49% prepare only a "summary of interview (no verbatim notes)," and 4% of the agencies reported that they typically take "no notes" of police-suspect interviews (this, even in the absence of a recording). Nearly 25% of the responding agencies reported that they typically use *multiple* written documentation methods (e.g., "both a summary of the interview and verbatim notes of part of the interview (such as the confession)" in the absence of taping (Olson 1988).

- police effectiveness and efficiency
- fairness to suspects
- public perceptions of police and criminal justice system legitimacy
- prosecutorial effectiveness and efficiency
- defense counsel effectiveness and efficiency
- quality of courtroom proceedings
- cost considerations
- technical and procedural considerations, and
- security of equipment and recorded tapes

We will discuss the leading concerns and questions under each of these headings.

A. Police Effectiveness and Efficiency

1. Will videotaping reduce unwarranted allegations of improper police investigations?

It is a tenet of police professionalism that law enforcement officers are accountable to the public for their actions. Requiring police to answer charges of misconduct, however, also exposes them to the sometimes considerable stresses of dealing with unwarranted allegations.⁵ Some practitioners and commentators hope that taping, by creating an objective record of the police-suspect interview (or a portion thereof), will inhibit at least some false allegations that police have used improper investigatory methods (see, e.g., Grant 1987: 4, 6, 73; Willis, et al. 1988: 7, 12; Wozniak 1985; Krell 1971: 342; Criminal Law Review Division 1986: 1).

The American Law Institute, in advocating the *audiotaping* of interrogations, asserted that such taping would help all participants in the criminal justice process, including beleaguered police investigators:

"It is obvious that reliance upon the oral testimony of the officer to establish the conditions of interrogation will often lead to a swearing contest between the police officer and the suspect, a contest which the suspect will rarely win, whether he is telling the truth or not. It should be noted that criticism of this system does not stem exclusively from fear of police abuse; the system is a demeaning one for the officer who is telling the truth as well, for in any case of conflicting testimony, the credibility of that officer will be called into question, even though his version may eventually be accepted" (American Law Institute 1975: 346).

⁵ Admittedly, whether an allegation is warranted may be in the eyes of the beholder in any particular case. Nevertheless, it is beyond dispute that there is at least some amount of false allegations made against police by some of the subjects of criminal interrogations. These accusations may be made out of malice, misinformation, as a plea negotiating tactic, or for other reasons.

But there is also some skepticism expressed in the literature concerning whether taping would significantly curtail false charges against the police associated with arrest and interrogation procedures. Many practitioners and commentators argue that, since there will inevitably be police-suspect contact prior to the taping of an interrogation, unwarranted allegations concerning police conduct *prior* to the commencement of taping would continue to be made (see, e.g., practitioners quoted in Grant 1987: 7, 47, 49, 50, 77).

2. How will videotaping affect the willingness of suspects to make confessions and admissions?

Of greater concern to many police than whether taping will relieve the pressures of unfair charges against them is the effect of videotaping on the productivity of criminal interrogations. Some believe that videotaping generally will improve productivity, suggesting that there will be an increase in the number, length, and completeness of voluntary *incriminating* statements given to police by suspects and preserved by the police for subsequent use (Grant 1987: 32-36, 52, 74, 80). Others suggest that suspects, if aware of the taping,⁶ will be inhibited by the tape machine and by the general situation from making confessions or admissions that they otherwise would have made⁷ (see practitioners quoted in Grant 1987: 6, 28, 73; Public Complaints Commissioner 1984: 109; Willis 1984: 9, 32; Willis, et al. 1988: 9-10, 39; Williams 1979: 21; McConville and Morel 1983; Criminal Law Review Division 1986: 13, 14). Some practitioners believe that whether suspect inhibitions arise depends largely on the interrogating detectives' comfort with the taping process. Others believe the two reactions are not inextricably linked—and that suspect inhibitions might arise independent of police attitudes and conduct. Questions about the possible effects of taping on officer "interviewing style" are presented later in this chapter.

As indicated, some have argued that suspects who do not now talk with police might

⁶ Whether *officer* interrogation behavior changes as a result of covert videotaping, however, and, in turn, subtly influences suspect forthrightness, is an important issue to which we will turn shortly.

⁷ Although practitioners may hold divergent views on the matter, there is a powerful argument to be at least considered that suspect inhibition to speak on tape should be accepted as a consequence of a fair criminal justice system:

"[F]or many people, greater willingness to talk when they believe no recording is being made stems from an inability to understand the link between what is happening in the police station and what will happen in court and afterwards. Suspects should not be misled about the seriousness of their situation, and it is for this reason that disclosure [of the fact of recording] is required, even though it is recognized that it may sometimes make questioning less effective. Also, there may be some cases where disclosure of the fact of recording will make questioning more effective, because some persons may talk more freely when there is no risk that what they say will be misquoted" (American Law Institute 1975: 348-49).

be inclined to do so when told the interview would be taped:

"Although the suggestion that the suspects will be intimidated by the technology is raised as a negative aspect of electronic recording, it is likely that suspects who are now distrustful of, and intimidated by, present police interview techniques may be more open and less fearful if they can be confident of the accuracy of recording" (Criminal Law Review Division 1986: 14).

The crucial question, of course, is precisely how informative suspects are when they do talk. That is, does videotaping seem to influence the amount of incriminating information secured by interrogators?

One reason that some theorize that videotaping will elicit more and higher quality confessions is that distractions associated with note-taking, stenographic reporting, typewriters, and the like are removed from the interview room. Grant (id.: 74) suggests that suspects may be more inclined to concentrate and cooperate in a videotaped interrogation than in an untaped interview because the "suspect/accused is...relieved of extraneous objects [typewriter, notebooks, statement forms, etc.] upon which to concentrate his attention and tends to focus solely on the interviewer" (see also Galbraith 1986: 4).

Police officers, too, may be able to concentrate more fully when relieved of the necessity to take highly detailed notes during the interview (Galbraith 1986: 4). Moreover, they may find, in subsequently reviewing an interrogation tape as part of an on-going investigation, that verbatim documentation of the interview gives them insights that would have been lost with less complete interview documentation techniques (see, e.g., Greenwood, et al. 1977; Eck 1983; Olson 1988).

A Canadian defense attorney, acknowledging that, with videotaping, "[y]ou get longer, fuller confessions," observed: "...but it's a bit of a novelty and maybe that has an effect just now" (Grant 1987: 53-54). Whether, as the novelty of taping wears off—and particularly as taping procedures and their effects on previous cases become known among criminal suspects—high confession/admission rates would prevail is an important related question (see, e.g., Criminal Law Review Division 1986: 14).

The possibility that "seasoned criminals" or savvy first-time offenders would be discouraged by taping procedures from cooperating in an interrogation has also given rise, particularly among law enforcement agents specializing in organized crime investigations (Burgess 1988), to reticence about videotaping. In essence, the concern expressed is that wealthy or especially powerful suspects with high-powered defense counsel would draw on a "library" of prior videotaped interrogations as a "school for scoundrels" to help them thwart effective interrogation tactics by investigators (Stewart 1988; see also Criminal Law Review Division 1986: 14; Willis, et al. 1988: 50).

Besides concern over declining suspect cooperation rates over time, some practitioners have predicted that interviewee willingness to be taped would decrease as the seriousness of their suspected offense increased.

Clearly, any possibility that taping could decrease the flow of confessions or admissions that would have been voluntarily and knowingly given in the absence of taping is cause for concern since empirical evidence is strong that the existence of a confession nearly guarantees a conviction in most jurisdictions (on the English experience, see Baldwin and McConville 1979; Vennard and Williams 1980; and Willis, et al. 1988: 9; on the American experience, see Vera Institute of Justice 1977; Boland 1983; Seeburger and Wettick 1967: 11-20; Caplan 1985: 1464-67).

3. What impact will videotaping have on the willingness of suspects to provide "criminal intelligence" concerning offenses and offenders other than those immediately under investigation?

Closely related to the debate about whether videotaping affects suspect willingness to make admissions and confessions is the debate about whether taping encourages or discourages suspects from providing police with criminal intelligence. (As used here, "criminal intelligence" means information on matters other than those immediately under investigation.) Some suggest taping might induce an increased flow of such information (Willis, et al. 1988: 34, 43-52). But police, at least at the *outset* of every available empirical study of taped interrogations, have been skeptical on this point. They assumed that suspects would be inhibited by the tape machine and by the general situation from giving useful information to police about offenses *other than* those currently under investigation (whether committed by themselves or by others) (see quotes in Grant 1987: 8, 39, 78-79 and Willis, et al. 1988: 9, 43, 50-51).

Special concerns were expressed that suspects would not implicate others on tape for fear of reprisal if the tape's contents became known as a result of its public playing or by other means (Willis, et al. 1988: 43). In the absence of taping, it is argued, informing, snitching, or "grassing" (in the British parlance) could occur with plausibility "off-the-record" by virtue of the fact that the suspect could see the interviewing officer put down his or her pen and note pad. Switching off the tape to provide this same reassurance obviously could have the drawback of raising doubts about whether coercive conduct occurred during the hiatus (*id.*).

4. What effects might videotaping have on investigator "interviewing style" and techniques?

Many police and commentators believe that how forthcoming suspects are during an interrogation depends at least partly on police ability to employ a wide range of effective, legitimate techniques in their interrogational repertoire. The likely impact of videotaping on police interviewing style and methods has prompted divergent and ardently expressed predictions.

For instance, many worry that police interviewing style will be adversely affected by the camera's and microphone's intrusion into the interrogation room—whether or not the suspect is aware at the time that the interview is being recorded. Police investigators, it is suggested, will be inhibited by the taping from using legitimate, effective interrogation

tactics for fear that others (primarily judges and juries) would not fully appreciate the need for:

- trickery or deception (Inbau, et al. 1986; cf. White 1979; Dix 1975; Note 1979);
- profanity or "street language" (whether convivial or confrontational);
- aggression expressed through non-verbal means (excluding, of course, batteries and assaults);
- "social interaction" between officer(s) and suspect during the interview as a prelude to or break from focus on the suspect's possible criminal culpability (Criminal Law Review Division 1986: 14); and
- other approaches in certain investigations (on all these elements, see practitioners quoted in Grant 1987: 51, 65; Willis, et al. 1988: 4, 6, 9, 10, 43-52; Scottish Home and Health Department 1985b; see also Caplan 1985: 1423-24; Frey 1981).⁸

In the United States, FBI officials knowledgeable about serial murder investigations are particularly concerned that videotaping in such cases will inhibit the style of interrogation apparently required to elicit incriminating information from the unusual type of offender who commits ritualistic killings and other acts frequently associated with serial murders (Burgess 1988).

Willis, et al. (1988: 44-45) posit three categories of British police interviewing technique that could be jeopardized by taping:

- the ability of officers to maintain the suspect's respect (e.g., by selecting "an appropriate style of speech for an interview with a given suspect," including matching the vocabulary of a suspect whose "language is rich in expletives" (id.: 44; see also Inbau 1948: 149; Inbau, et al. 1986: 199);
- independent of achieving respect by the suspect for the interrogator, the need to tailor questioning technique to the particular circumstances (sometimes employing gentle questioning, other times being more "forthright"); and
- the development of rapport between interrogator and suspect using conversation about sensitive matters (e.g., the suspect's personal

⁸ Concerning the failure of even seasoned criminal justice professionals to appreciate—or be willing to openly acknowledge—the requisites of reasonable, effective police tactics, see generally Muir 1977 and Kerstetter 1985.

problems) which the suspect does not wish to have recorded in any form.

A related concern is that police would lose the ability to persuade suspects to incriminate themselves through reference to the guilt of third parties, for fear of being charged with defaming the third parties (Willis, et al. 1988: 46-47).

On the other side of the debate over taping's effects on interrogator techniques it is argued that taping could foster an improvement in police interviewing style and techniques because of:

- better officer preparation for interviews (Willis, et al. 1988; Grant 1987; Criminal Law Review Division 1986: 13);
- the ability to interrogate the suspect without the distractions of a typewriter, notebook, and statement forms (in place of the officer's traditional paper notebook the videotape serves as an "electronic notebook") (Grant 1987; Galbraith 1986);
- the ability to conduct one-officer interviews (since the tape takes the place of the note-taking detective), which are thought to be less "intimidating" to most suspects and "conducive to obtaining the suspect's co-operation" (Criminal Law Review Division 1986: 14);
- the ability of other police or prosecutors to monitor the interview outside the interview room and to suggest questions that the interrogating officer(s) might not have thought to ask at the time;
- the use of the tapes for formal or informal in-service training;
- the impetus that taping gives law enforcement agencies to provide advanced training on interrogation skills applicable in taped or untaped interviews; and
- the opportunity to play an accomplice's taped confession for an uncooperative suspect (on these several assertions, see Willis, et al. 1988: 7, 8, 52; Grant 1987: 66, 6, 51, 53, 72, 74, 75; Scottish Home and Health Department 1984; Wozniak 1985; *Law and Order* 1987: 72; O'Hara 1976: 156; Kamisar 1980: 134 n. 23; Galbraith 1986).

Even proponents of taped interrogations, however, have expressed concerns about the effects of changes in an investigator's interviewing style that might occur and not be explained to the suspect during a *covertly* taped interview. The fear is that officers, knowing their interrogation techniques will be viewed by juries, judges, prosecuting and defense attorneys, the public, the media, and perhaps advocacy groups attending courtroom proceedings, will almost inevitably use more "correct" language, dress more formally (wear jacket and tie throughout interview, etc.), and otherwise conduct

themselves in ways that may seem stilted to experienced, "street-wise" suspects. Unless such suspects have a plausible explanation for such zealous rectitude, it is argued, they may misread the interrogator as inexperienced and capable of being easily misled. It is further argued that, when a suspect is aware that an interview is being taped, the suspect will accept the officer's need to "play to the camera" as a reasonable explanation for what otherwise might seem overly correct behavior (Willis, et al. 1988: 51).

5. How might videotaping of interrogations facilitate or impede supervision of interrogators and interrogations?

Some researchers have suggested that the ability of police managers to supervise interrogations would be enhanced by their capacity to contemporaneously monitor the interrogation over a speaker, headphones, or closed-circuit TV and to subsequently review recordings of the interview (Grant 1987: 65; Willis, et al. 1988: 8; Hearst 1986). Moreover, Willis, et al. (1988: 41) suggest that supervision would be facilitated by the more complete interview logs that tapes would enable interviewing officers to prepare.

Researchers have acknowledged, however, that theoretical improvements in police supervision of detectives' investigation tactics could be thwarted if officers, out of dislike for taping or supervision, conducted their interrogations outside the stationhouse where they were beyond the reach of departmental taping systems (Willis, et al. 1988: 50).

Concern has also been expressed by practitioners that police, contrary to departmental directive, would write less satisfactory synopses of the content of stationhouse interrogations since they know the tapes are available as an authoritative record (see interviewees quoted in Grant 1987: 46; also see Harman 1988: 88).

6. Other police efficiency/effectiveness issues

- **Will videotaping enhance the relative importance of interview evidence compared to other evidence of guilt?**

English Home Office researchers had speculated at the commencement of the audiotaping field trials that, in cases with taped interviews, the interviews would assume a larger importance, in relation to other evidence of guilt, than interviews have in relation to other evidence of guilt in "untaped cases." If this were true, the Home Office reasoned, taped interviews could make a significant difference in police decisions to prosecute cases or present cases for consideration to prosecutors (Willis, et al. 1988: 35).

- **Is the amount of time spent by police interrogating suspects affected by videotaping?**

Numerous practitioners and observers anticipate that taping would help reduce the amount of time spent by police officers interrogating suspects (Grant 1987: 38; Willis, et al. 1988: 6, 25, 30-31; Willis 1984; Macleod 1985; Scottish Home and Health Department 1984; Olson 1988).

One reason offered in support of this view is that taping would inspire "a greater discipline in interviewing procedures" (Criminal Law Review Division 1986: 6). Another suggestion is that interrogating officers would spend less time "establishing a rapport with suspects" (Scottish Home and Health Dept. 1984; see also Willis, et al. 1988: 6; Criminal Law Review Division 1986: 8). In Scotland, police concern about rapport building arose from their belief "that they might be open to judicial censure on the grounds that the information elicited or exchanged primarily for this purpose was not directly pertinent to the offence or was designed to create a false image of the suspect" (Willis, et al. 1988: 8). Whether one might reasonably expect a reduction in the duration of interviews or suspect statements would probably depend partly on whether a given department's videotaping procedures entailed the recording of *entire* stationhouse interrogations or only recapitulations of statements made by suspects during authorized untaped interrogation. In agencies requiring the taping of *full* interviews (not just recaps), taping might possibly lengthen the interview if police, in contravention of agency procedures, conducted significant portions of the interviews off tape prior to beginning the recorded portion and then retraced some of the same ground during the taped interview. On the other hand, interviews documented on videotape might be shortened because interrogators are relieved of the obligation to take detailed contemporaneous notes (Olson 1988).

■ **Does videotaping alter the number of police personnel who need to be present for suspect interviews?**

The British and Canadian literature contains several assertions that taping would foster a reduction in the number of police officers who need to be present at the interrogation of a suspect or accused "either as a transcriber or as corroborator" (Criminal Law Review Division 1986: App. 14; see also Grant 1987: 6, 39, 72-73; Willis 1984: 26, 32; Willis, et al. 1988: 28-29; Roberts 1984: 543).

The possibility that the "note-taking officer" who traditionally accompanies the interrogating officer need not be present during a videotaped interview could be undercut, however, by the desire of police to use techniques (e.g., "nice cop-tough cop") that require the presence of more than one officer (see Inbau, et al. 1986: 151-52). Moreover, the personnel and economic saving of one interrogator in the interview room could be partly or fully offset if a police employee is required to constantly monitor and adjust the videotaping and audio equipment.

■ **Might videotaping interrogations influence how much time police spend in court?**

Savings in officer court time could arise from a reduction in hearings to suppress confessions, from increased plea bargaining rates (and a consequent reduction in trials requiring officers' presence), and from a decrease in the need for officers to appear in court to corroborate the contents of a suspect's confession. Savings in detective court time are of great potential significance in the management of law enforcement resources since a recent PERF survey suggested that, among large agencies, detectives spend an average of 21 percent of their working time per year on "judicial duties (suppression hearings, pretrial preparation and court)." The same survey found that "roughly 13 percent of an

investigative officer's time per year (overall) is spent corroborating the testimony of other officers" (Olson 1988), a function which, arguably, could be performed to a considerable extent by a recording machine rather than a sworn police officer with other critical responsibilities.

- **Will videotaping inhibit police from conducting multiple, simultaneous interrogations?**

The British Home Office, which prefers audiotaping to videotaping, offers as one reason for this preference the argument that, with videotaping, simultaneous, separate interrogations (in the same or unrelated crimes) would not be possible given the expense of installing multiple videotaping stations (Willis, et al. 1988: 39).

- **Will the adoption of videotaping procedures by one police agency prejudice neighboring police departments that do not tape interviews or prejudice cases by the "taping department" in which officers have not used available taping equipment to document a confession?**

Some practitioners have expressed concern about the effects of piecemeal progress. That is, even if they regard videotaping as a positive innovation, they wonder whether successful use of taping procedures by one police department would operate to the detriment of other, "non-taping" forces in the same judicial district (Grant 1987: 7, 77-78; Williams 1979: 16). It is suggested that police departments using only traditional methods to document confessions or admissions could suffer from the impatience of judges whose expectations for the credibility and completeness of evidentiary presentation have been heightened by a "taping" department. This of course is a disadvantage from the perspective of police and prosecutors dealing with untaped statements but possibly a tactical advantage from the perspective of defense counsel and defendants working with the same statements (see Grant 1987: 77-78).

A Canadian judge, having just presided over a lengthy homicide trial, resulting in a manslaughter conviction, complained in open court that the Police Force which arrested the defendant did not, like the nearby Halton Regional Police, videotape the man's statements. The 13-day trial, which included a three-day suppression hearing, "was a perfect illustration of how time-consuming and antiquated the use of written statements is," according to Supreme Court of Ontario Judge J.R. Barr (McGregor 1988; see also *United States v. Yunis* 1988 and Giacoppa 1991).

A leading concern expressed by departments hesitant about or opposed to adopting video technology as a documentary tool for confessions is that once the department begins taping suspect statements in *any* cases it will be obliged to tape *all* confessions—at least in similar types of cases—lest defense counsel persuade judges that a detective who declined to tape a confession had something to hide.

- Will the quality of police note-taking and summaries of interviews deteriorate with videotaping of suspect statements?

Some practitioners and commentators have expressed concern that, with taping, police will take less satisfactory notes and write less satisfactory reports on the inevitable⁹ pre-tape contact and conversation between the suspect and law enforcement personnel than they prepare in the absence of taping. Less adequate notes could diminish the capacity of the criminal justice system to review information that bears on the admissibility of any self-incriminating statements (see, e.g., Grant 1987: 49, 50). A related concern is that police follow-up summaries of interviews (required for a variety of internal police and criminal justice processing purposes whether or not interviews are taped) would deteriorate as police came to think of the tapes as the only interview record that mattered. Still another question is whether videotaping will help correct the "notorious deficiency" of police notebooks concerning time notations during an interrogation (Grant 1987: 49).

- Will videotaping help improve the efficiency and accuracy of transcriptions?

Although the various videotaping pilot projects in Canada and Australia (Grant 1987; Criminal Law Review Division 1986) seem to have structured the transcription process so that transcribers would rely primarily, if not exclusively, on the audiotapes recorded simultaneously with the videotapes, it is argued that, in some cases, videotapes will facilitate transcription. It is assumed that this would most likely occur when the transcriber (or anyone else attempting to make use of an audiotape) is unable to distinguish the statements made by people talking simultaneously on the recording and turns to the videotape for clarification. The difficulty of dealing with "overspeaking" on audiotapes was noted by Australian police investigator Prins (1983), quoted in Inbau, et al. (1986: 177). Whether video recordings will in fact help overcome the difficulties with overspeaking might depend at least partially on whether the camera captures a frontal view of the speaker(s) in question.

⁹ Even in the jurisdictions where the police tape only recapitulations rather than full interrogations, there would seem to be a certain irreducible minimum of pre-tape contact and conversation between police and suspects—in the field, during transport to a stationhouse, and on the way into the interrogation room. Note, however, the ambitious experimental use of videotape in recording field contacts between police and civilians in Florida (Liquori and Perry 1988; Perry, undated; Surette 1988a) and the use of video cameras in Toronto's Scarborough police district to document the suspect's movement and treatment from his entry into a police building until the commencement of an interrogation room interview (Criminal Law Review Division 1986: 9-10). As noted, the Christopher Commission in Los Angeles has also recommended that the LAPD explore audio-video taping of police field contacts with suspects.

B. Fairness to Suspects

1. What impact will videotaping have on notification of the suspect's rights, the fairness of interrogation tactics, and on preserving an adequate record of the interrogation or confession?

Throughout the British, Canadian, and Australian literature, the first reason ordinarily offered for encouraging police taping of interviews has to do with preventing "the use of unfair practices by the police prior to, during, and after interviews" (Criminal Law Review Division 1986: 1). This includes enforcing the obligation of police to caution suspects concerning their rights during interrogation (see Grant 1987: 45, 49; Willis, et al. 1988: 7; Krell 1971: 342; Barber and Bates 1974: 1024-25) and preventing the fabrication of oral evidence (known in Canada and Great Britain as "verballing" or "working the oracle") (Grant 1987: 4, 67; Wozniak 1985; Willis, et al. 1988: 12; Holdaway 1983: 108-19; 157; James 1980: 79).¹⁰

Another way in which taping is thought to facilitate fairness to the accused is by providing an "even-handed," complete record of anything and everything the suspect had to say, exculpatory as well as incriminating remarks (Grant 1987: 32-36, 52, 74, 80). Of course, whether videotaping serves this purpose will certainly be affected by whether police record the entire stationhouse interview or only a recapitulation of the high points.

A related question is whether in cases where an interpreter has been used during the interrogation of a foreign-speaking, deaf or mute suspect, taping will operate to the benefit of accused persons since what was originally communicated to the interpreter is preserved and can be commented on as to meaning by an independent interpreter for the defense (or, where warranted, the prosecution) (Grant 1987: 47-48). At the same time, it is arguable that at least audiotaping and possibly videotaping as well would prove distracting and wasteful when used to present courtroom testimony by suspects with heavy regional accents who are difficult for local criminal justice practitioners and juries to understand. Since it might be awkward (not to mention distractingly amusing) to use an interpreter for a person who speaks the national language but does so with a regional accent foreign to the trial jurisdiction, some have argued that the proper way to proceed in such instances is for a police investigator (or someone considered more neutral) who understands the accent to prepare a written statement presenting the testimony (Willis, et al. 1988: 72; Prins 1983, cited in Inbau, et al. 1986: 177). It seems self-evident, however, that the existence of a tape of the interview would be nearly essential if such an "interpreter" were to be asked to prepare the written statement after the fact.

¹⁰ Although the procedural rights of accused persons in Canada, England, and Scotland are not identical to those in the United States, in all instances police must advise the suspect of a right to counsel and caution him or her that incriminating remarks may be used in court in support of the prosecution's case (Willis, et al. 1988: 8).

A number of practitioners and commentators have wondered whether taping would have more than a marginal impact on police who, responding to various pressures, have a tendency to engage in illegitimate interrogation tactics. Such police, the argument goes, would employ improper methods off tape, including: "dry run" interviews to firm up a statement for the "official" taped version;¹¹ impermissible inducements to the suspect; failure to advise the suspect of his or her rights; and failure to advise the suspect that incriminating statements given in the absence of proper cautions could not be used in court (Grant 1987: 7, 47, 49-51, 77, 81, 83; Public Complaints Commissioner 1984: 106; Williams 1979: 10; Willis, et al. 1988: 5, 7, 64).

This concern is expressed clearly in the frustration a Canadian defense lawyer articulated:

"The police arrested and detained my client, a youth. They questioned him three times, once at the scene, once in the cruiser and once at the station. Then it was done on audiovisual at which time he was first advised about his right to counsel. The point is that the first three interviews were all conducted in violation of the *Charter* and the *Young Offenders Act* warnings. The police essentially took my client through a dry-run for the subsequent video-interview. They straightened out the questions and answers and then walked into the audiovisual room. Mommy's there. Read the rights. Get a signed waiver and away we go. My client was sunk. He was not aware that the statements he had already given were inadmissible and the police did not tell him that these statements could not be used against him, nor did they tell him that they had no intention of using these earlier statements. This kid saw the questioning in front of the camera as nothing more than a follow-up, a continuance, of what had gone before. From my point of view it was tainted by the earlier interviews but the judge didn't buy my taint argument, the video-statement went in and the client was found guilty" (Grant 1987: 53).

An additional concern arises about prejudice to an accused from an electronically recorded statement if, prior to recording, the police have asked the individual to make the incriminating statement several times and, as a result of the repetitions, the suspect's tone of voice and demeanor on the tape become artificially matter-of-fact, which will come across to those reviewing the tape as indicative of a lack of remorse over the offense.

¹¹ It should be noted that, in many jurisdictions, both in the United States and abroad, "dry runs," with subsequent taping of only recapitulations or "rehashes" of the high points of the interview are not considered improper or unprofessional.

2. Does the suspect's awareness that the statement will be videotaped impose subtle, coercive pressures? Does videotaping have an effect on the length of stationhouse detention for those arrestees eligible for bail?

Some practitioners, especially defense attorneys, wonder whether both obvious and subtle aspects of taping will undercut the cause of fairness to the accused. Among Grant's interviewees in Canada, a few suggested that suspects would feel undue, subtle, unarticulated pressure to make admissions or confessions, despite being advised of their rights, simply because of the presence of recording equipment (1987: 47, 50). Naturally, no arrestee is likely to feel a complete absence of coercion in a stationhouse interrogation, as Caplan observes: "In the typical interrogation...there is some coercion; the suspect is detained, queried, challenged, and contradicted" (Caplan 1985: 1430). The question bearing on admissibility of the statement, of course, is whether any such coercion rises to the level of legally impermissible conduct or conditions. And the question of most immediate relevance for our purposes is whether the use of video equipment in any way *alters* the inherent coerciveness of a custodial interrogation.

One of Grant's respondent's told him: "My clients seem to have the idea that if they cooperate by giving a statement on video, then they will be favourably dealt with in terms of a quick and prompt release from custody" (1987: 51).

It may be that, in some instances, the videotaping of interrogations *lengthens* police lockup detention due to the temporary unavailability of recording equipment or a recording technician. In other cases, however, the knowledge that police have firmed up a solid self-incriminating statement and captured it on video may induce police to expedite bail processing of suspects eligible for pretrial release.

3. Are there prejudicial effects created by the suspect's physical appearance and tone of voice as captured on videotape?

Some have argued that a variety of situations could occur in which the prejudicial effect to the accused (e.g., stemming from his or her dress and demeanor at the time of interrogation) may greatly exceed the evidential value of the taped admission (Grant 1987: 7, 45; Harman 1988: 88; Public Complaints Commissioner 1984: 106). A federal judge, dissenting from his court's affirmation of a murder conviction, opined:

"The videotape will tend to make the defendant look rougher than he is in the flesh. The videotape camera will emphasize scars, blemishes, or a heavy beard and it may create shadows under the eyes or elsewhere on the face. The videotape camera will pick out and magnify unpleasant mannerisms. These lessons have been learned by candidates for public office to their sorrow" (*Hendricks v. Swenson* 1972: 508).

Australian officials noted:

"A major issue is the manner in which judges and juries will react to the legally irrelevant content of the recording. This may be a particular problem with video recording. Essentially, it is argued that because of the prejudice created by a record of things such as tattoos, speech, mannerisms, dress, demeanour and language, electronic recording, and particularly video recording, should not be used. * * * [C]oncern is expressed about the possibility of the appearance of the suspect, rather than the content of the interview, becoming the major criterion of decision making for juries.

The possibility of prejudice to the accused, resulting from the use of video recording of police interviews, was one of the factors which caused the Shorter Trials Committee in Victoria to recommend audio recording" (Criminal Law Review Division 1986: 15).

But as noted earlier, even an audiotape will not avoid the problem of misrepresenting a suspect as overly callous if the principal reason he or she sounds unemotional in recounting the commission of a heinous crime is that, by the time the tape recording commences, the story has been told incessantly at the request of interrogating officers.

4. **What problems might arise concerning suspect and defense counsel access to the recorded interview tape? Will tapes be made available expeditiously upon a defense attorney's request? Will indigent defendants' public defender be given copies of confession videotapes for free? Which agency or agencies will bear the expense of duplicating videotaped statements?**

These questions are reasonably self-explanatory. Practitioners wonder who will be obliged to cover the new expenses associated with duplicating videotapes. Problems are anticipated as well with regard to the promptness with which police or prosecutors will make confession tapes available to defense attorneys and the accommodations that would need to be made for defense attorneys to show the videotaped confessions to their clients while they are being held in pretrial detention.

C. Public Perceptions of Police and Criminal Justice System Legitimacy

Will police *accountability* to the public be fostered by virtue of the "monitoring" role of the tape machine in the interview room and through any subsequent public viewing of the resulting tapes in open court or possibly even on television news shows (Grant 1987: 4, 46; Barber and Bates 1974)? In this regard, some have observed that *inconspicuous* taping would preserve the contemporaneous *privacy* of the interview, which is considered an important condition of effective interrogation (see Inbau, et al. 1986: 24), but would eliminate the permanent *secrecy* of interrogations which facilitates public doubt about the legitimacy of police tactics (Weisberg 1961).

A number of commentators and practitioners have expressed the view that taping, and

the changes in police courtroom practices it produces, would have a positive effect on the public image of the police (Grant 1987: 6; Williams 1979: 22; Public Complaints Commissioner 1984: 109). In part, public perceptions (of judges' and prosecutors' performance as well) might be elevated by virtue of the criminal justice system's "making use of modern scientific knowledge and technology" (i.e., video equipment) (Miller 1984: App. III, p. 20). A Canadian judge, having just presided over a lengthy homicide case that he believed would have moved more expeditiously if the arresting officers involved had videotaped the defendants' statements, exclaimed: "Why are we operating in the conditions of 1888 instead of 1988?" The judge described "a police officer taking long-hand notes as 'a scene right out of Charles Dickens'" (McGregor 1988: 1).

In part, the public might simply applaud the apparent benefits of taping in fostering the conviction and more expeditious sentencing of criminals (Grant 1987: 5, 71, 81; Williams 1979: 17; Roberts 1984: 543; Scottish Home and Health Department 1985b; Willis, et al. 1988: 12, 52, 60-61, 66).

Still, there are those who demur, suggesting that little progress would be made in eroding negative images of police investigatory tactics because even taped assurances by an accused that nothing untoward happened before the recorder was switched on would not be credible to either criminal justice practitioners or the public at large (Grant 1987: 83; Corrigan 1985; Willis, et al. 1988: 7; Harris 1986).

D. Prosecutorial Effectiveness and Efficiency

1. What effects might videotaped interrogations or confessions have on prosecutorial charging decisions and trial preparation?

Some believe that police videotaping of interrogations would strengthen the prosecution's ability to accurately and efficiently sort out meritorious from nonmeritorious cases and prevail more swiftly and surely against guilty individuals.

It is widely observed in the literature that taped evidence, especially videotaped evidence, should provide stronger and clearer information of the sort that prosecutors customarily need in deciding whether to charge a suspect with a felony, which felony to charge, and, in the event of trial, how to fashion a trial strategy (Grant 1987: 49, 58, 69; Roberts 1984; Willis, et al. 1988: 5, 12, 53-55). More specifically, some suggest that, with greater clarity than emerges from written interrogation summaries, taping discloses the "tenor of the investigation." Further, by revealing the accused's exact responses to questions, the tape, even if inadmissible, would arguably help prosecutors prepare to cross-examine the defendant (Grant 1987: 58; see also O'Hara 1976).

Videotaping, much more than *audiotaping*, is thought to enable the prosecutor (and defense attorney, police personnel conducting further investigation, judge, and jury) to assess the truth based on factors not normally presented by police note-taking and written statements: the suspect's and police officer's physical condition, demeanor, attire, and intonation; the "climate on the night of the arrest;" and the like (Grant 1987: 48, 53; New

South Wales Police 1985: 26-27).

The opportunity to assess a defendant's veracity based on nonverbal cues is considered a very substantial benefit of videotaping—indeed, it is the principal reason many urge that criminal justice systems incur the expense of shifting from audio to video recording. As the New South Wales Police (1985: 27) point out, Sigmund Freud in 1905 observed the way gestures and expressions provide a window into the psyche: "He that has eyes to see and ears to hear may convince himself that no mortal can keep a secret. If his lips are silent, he chatters with his fingertips, betrayal oozes out of him at every pore" (Freud 1905, 1959: 94). As the New South Wales Police report notes (1985: 26-27),

"there is substantial research to suggest that when lying verbally people indulge in non-verbal behaviour which is qualitatively and quantitatively different to their behaviour when telling the truth. This research includes predictions such as more frequent expression changes, hand to head movements, nose rubbing, posture changing and variations in eye contact, and reduced duration of eye contact, when a person is lying..." (e.g., Leventhal and Sharp 1966; Ekman and Friesen 1967, 1969, 1971; Mehrabian 1971, 1972; Ekman, et al. 1972; Knapp 1972; Weitz 1974; and Leathers 1976).

2. Are videotaped confessions likely to lead to more guilty pleas (in lieu of contested trials) and to guilty pleas entered sooner after arrest than is the case with an untaped confession?

Grant (1987: 48) suggests that prosecutors (and defense counsel alike) would find the taped interrogation useful in settling on a specific charge during plea negotiations. He and others also posit an increase in the number of guilty pleas and a decrease in the time within which they are entered as a result of taped interrogations (Grant 1987: 5, 71, 81; Williams 1979: 17; Roberts 1984: 543; Scottish Home and Health Department 1985b; Willis, et al. 1988: 12, 52, 60-61, 66).

For taping to make a difference in guilty plea rates could require a marked impact on the system, especially in America's urban centers, where more than half of all cases brought by prosecutors result in guilty pleas (Boland 1983; Bureau of Justice Statistics 1983, 1988a). In many American cities, between 80 percent and 90 percent of all felony case convictions stem from plea negotiations (*id.*), a pattern that prevailed as early as 1880 (Bureau of Justice Statistics 1983: 65).

3. Will videotaping affect the admissibility of confessions?

A number of publications note that when criminal cases are contested, the admission into evidence of incriminating statements and visual demonstrations (e.g., re-enactment of how a crime was committed) by accused persons will be facilitated by taping (Grant 1987: 5, 43, 74; Willis, et al. 1988: 10, 13, 63-64, 67-68; Vennard 1984). In large measure, this is because taping, particularly *videotaping*, makes a more convincing presentation to the court on the critical question of the suspect's voluntariness in providing

admissions or confessions (Criminal Law Review Division 1986: 39). For the past 23 years American appellate courts have held videotaped confessions admissible in evidence (since *Paramore v. State* 1969; see also American Law Institute 1975: 342) so long as voluntariness has been established in each instance.

Some arguments have been advanced that taping might impede courts from accurately determining voluntariness:

"Another common prediction, concerning audio recording [made by police opposing the adoption of this documentation method], is that a suspect will create false evidence of intimidation by hitting the table, or shouting out for help, or placing false allegations of mistreatment on the tape" (Criminal Law Review Division 1986: 15, citing *The West Australian* 1985).

Grant (1987: 42) observes that prosecutors could find it difficult to tender a number of confessions or admissions in court because the recordings contain apparent but not actual inducements which, in the case of traditional police practices, would not command such attention. Arguably, videotaping would be distinctly more helpful than audiotaping in thwarting opportunities for suspects to manipulate the record by creating false impressions of coercion (see Criminal Law Review Division 1986: 17), but might indeed present the prospect of memorializing questionable details of interrogations that would be forgotten in the absence of a visual record of the interrogation.

E. Defense Counsel Effectiveness and Efficiency

Grant (1987: 48) and others have suggested that defense counsel (and prosecutors alike) would find the taped interrogation useful in settling on a specific charge during plea negotiations. A related question is whether defense attorneys would find that videotaped confessions help them achieve "client control" (e.g., cut through lies the clients attempt to tell their attorneys about the conditions of interrogation or the substance of the incriminating remarks made; persuade clients that their best interests lie in pleading guilty to a reduced charge because the confession tape virtually assures conviction). Where a case is not settled by plea, commentators and public officials have suggested that tapes would also be useful to the defense in trial preparation because the tape can be used to assess the strength of the state's case, to mount possible affirmative defenses (e.g., insanity, drunkenness), to contest the voluntariness of the confession and to prepare lines of direct and redirect examination for defendants who will testify (Grant 1987: 49, 52, 69, 82; Willis, et al. 1988: 12).

Grant (1987: 59, 69) has noted that exculpatory information might be easier to introduce in courtroom proceedings when contained on videotape. He has in mind not only statements by the accused but depictions of the accused's condition that might benefit the defense (e.g., absence of "mens rea" due to intoxication or forgetfulness in cases requiring a specific intent for conviction).

As indicated earlier, federal law enforcement authorities in the United States are

particularly concerned that *mandatory* videotaping of interrogations with *all* criminal suspects would be particularly advantageous to defense counsel representing organized crime figures. Stewart (1988) has noted the concern that the defense bar would maintain a library of interrogation tapes as a "school for scoundrels."

F. Quality and Efficiency of Courtroom Proceedings

1. Will videotaping of statements reduce the need for or at least expedite pretrial hearings?

A number of commentators have suggested that taping suspect statements will reduce the necessity for pretrial hearings and trials. Where pretrial hearings (e.g., suppression or preliminary hearings) are required, however, taped police-suspect interviews are seen as streamlining the proceedings (Grant 1987: 4, 43, 49, 50, 52, 68, 81; Vennard 1984; Willis, et al. 1988: 12, 13, 52, 61-64, 67-68; Wozniak 1985).

Several attorneys interviewed for Grant's Canadian study noted that, in the absence of an "objective" record of what transpired during the interrogation, they have no choice but to test the admissibility of proffered confessions or admissions when their clients claim involuntariness or other defects in the investigatory process (1987: 49, 52, 63). To do otherwise might expose the defense attorney to claims of inadequate representation of the client.

2. In what ways might the videotaping of an interrogation or confession affect a judge's or jury's determination of culpability and sentence?

In contested cases, the court's ability to objectively assess the accuracy of the testimony and the credibility of the witnesses would be enhanced, it is asserted, because of the completeness of the taped record. With videotaping, there is the added benefit of visual information (demeanor, etc., as noted earlier) bearing on veracity and voluntariness (Grant 1987: 5, 48, 53, 54; Willis, et al. 1988: 7; New South Wales Police 1985: 26-27).

The American Law Institute, in commentary to its *Model Code of Pre-Arrest Procedure*, noted that the commonplace "swearing contest" between police and defendant in court concerning the content and voluntariness of the accused's self-incriminating remarks during a police interrogation did not always stem from *intentional* misstatements by either side:

"[I]n some cases it is possible that conflicts in the testimony concerning the interrogation period might result not from lying on anyone's part, but rather from different recollections or interpretations of the events which transpired" (American Law Institute 1975: 346).

Some of the literature, however, notes predictions that taping might actually prompt

more challenges by defendants, not to the *admissibility* but to the *meaning* of incriminating statements offered in evidence. This could occur, it is suggested, if the information on tape is presented in a disorganized and confusing manner, due to insufficient investigator preparation or inability to maintain a logical flow when unpredictable statements are made during the interview (Willis, et al. 1988: 13-14; Baldwin 1985a; Criminal Law Review Division 1986: 22).

The veracity and other characteristics of a defendant may be crucial, of course, not only for determining guilt but also at the sentencing of convicted persons. The literature suggests that taped interrogations (or mental health evaluations) would be useful to courts and counsel in considering factors in aggravation and mitigation of the offense (e.g., absence or presence of remorse) (Grant 1987: 43, 48, 69). A key question, however, which we noted earlier, is whether a suspect's lack of remorse in a recapitulation statement is reflective of genuine callousness or of the prior incessant repetition of the confession before the taping commenced.

G. Cost Considerations

1. What effect might videotaping of suspect statements have in expediting expensive criminal justice procedures?

Many claims are made about the cost implications of audiotaping and videotaping in the literature. Both audiotaping *and* videotaping proponents suggest that the innovations would reduce the cost of criminal justice administration as the result of:

- speedier completion of interrogations since the tape frees the detective(s) from having to take detailed notes (Grant 1987: 38; Willis, et al. 1988: 6, 25, 30-31; Willis 1984; Macleod 1985; Scottish Home and Health Department 1984; Olson 1988: section 3, p. 3);
- a reduction in the number of interrogations that defense counsel feel a need to attend in order to adequately safeguard their clients' rights (Willis, et al. 1988: 27-28);
- an increase in the number of guilty pleas and a decrease in the time within which they are entered (Grant 1987: 5, 71, 81; Williams 1979: 17; Roberts 1984: 543; Scottish Home and Health Department 1985b; Willis, et al. 1988: 12, 52, 60-61, 66);
- a decrease in the number and length of suppression hearings, where the question of the admissibility of statements made to the police by accused persons is determined by a judge (Grant 1987: 4, 43, 49, 50, 52, 68, 81; Vennard 1984; Willis, et al. 1988: 12, 13, 52, 61-64, 67-68; Wozniak 1985);
- the more expeditious handling of trials involving taped police

interrogations (Willis, et al. 1988: 62-63, 67); and

- a reduction in defense challenges to the "accuracy of the record" and completeness of the police/prosecution presentation of defendant's statements (challenges that can consume considerable appellate court resources) (Grant 1987: 5, 33-34, 46-48, 70).

There is little question that any innovation which averts full-blown trials has significant fiscal implications for the criminal justice system. Data on the relative costs of New York City felony cases disposed within different time periods following arrest illustrate the point:

"the cost of arresting, prosecuting, and trying the defendants in three 'typical' New York City robbery cases...ranged from \$851 to \$32,627, not including correctional costs after trial. In each of the cases, the defendants were arrested shortly after the crime, eliminating the need for long and costly police investigation. In the first case, the defendants pleaded guilty to a reduced charge the day after their arrest. Beyond arrest and booking, the costs were minimal. Each defendant received a six-month sentence.

The second case cost \$6,665. The defendant pleaded guilty after being indicted, but before trial. Seventy percent of the total cost was for pretrial detention; 68 days after arrest, the defendant received a sentence of 4 to 12 years of imprisonment for the plea of guilty to robbery.

In the third case, the defendant chose to go to a felony trial in which he was found guilty of robbery and sentenced to 9 to 18 years; 250 days had elapsed between arrest and sentencing. The total cost was \$32,627, half of which was for pretrial detention" (Bureau of Justice Statistics 1988a: 123).

2. What do videotaping equipment, equipment maintenance and other necessary items cost a police department and other criminal justice agencies?

Among the costs that need to be estimated and evaluated in light of other priorities are the purchase of video recording equipment, the remodeling of police interview rooms to accommodate satisfactory audio and video recording, the purchase of equipment for viewing videotapes in the prosecutor's office, public defender's office and relevant courtrooms, the on-going purchase of blank videotapes, and the safe and secure storage of recorded tapes.

3. Will transcripts of videotaped interrogations or confessions be required routinely, and what are the cost implications?

Much of the discussion about the adverse financial aspects of taping centers not on the cost of the basic equipment but on the possibility that criminal justice practitioners,

as a matter of routine, would insist on the creation of verbatim transcripts of entire interrogation tapes, which could be five or more hours long.

Many commentators suggest that minimizing the creation of tape transcripts will be essential lest taping overwhelm beleaguered criminal justice budgets (see, e.g., Grant 1987: 7, 12, 13, 54, 58, 62, 75-76, 82, 83; Williams 1979: 15, 17; Willis, et al. 1988: 12, 14, 41, 52, 53, 55, 68-69; Scottish Home and Health Department 1985b; Baldwin 1985b; Macleod 1985; New South Wales Police 1985; Criminal Law Review Division 1986; Piukkala 1989; Olson 1988).

The key question, of course, is whether the police, prosecutors, and defense can adequately do their jobs prior to and during court proceedings without full transcripts of the tapes.

There are suggestions in the literature that the pressure for transcription in at least serious criminal cases can be strong and may overcome budget watchers' objections to the practice. In that instance, the question for the criminal justice policy community will be whether, on balance, taping affords sufficient advantages to justify its costs. A subsidiary question relating to the financial impact of transcription is which criminal justice officials have the authority to require transcription and which have the obligation to pay for it.

4. Will tape editing, when required to eliminate inadmissible material for courtroom presentations, impose onerous costs?

A related concern is that, in the rare cases in which tapes are actually introduced in open court, the cost of editing out inadmissible portions could impose substantial costs. The kind of inadmissible information that might typically be recorded and need excision would include the mentioning of other suspects or the discussion of previous crimes committed by the suspect being interviewed (Willis, et al. 1988: 41; Criminal Law Review Division 1986: 22, 23).

5. What are the costs associated with *not* taping?

Besides the foregoing economic factors that might weigh on an agency's decision whether to document police-suspect interviews by electronic recording, there is also the possibility that, from a risk management perspective, taping might reduce a department's exposure to civil liability for allegedly improper police interrogation tactics (Olson 1988; see generally, Americans for Effective Law Enforcement, various dates; Jackson 1991; Jackson and Blau 1991).

H. Procedural and Technical Considerations

1. Are there recurring and insurmountable problems with equipment design (including the way in which videotaping

rooms are set up to try to create visually and audibly clear recordings) or with operator error in the use of the video equipment? Do these problems impede getting usable and admissible videotapes?

Whether technological innovation catches on over time is frequently a function of "user friendliness." Many practitioners have worried that, with audiotaping, and especially with videotaping, equipment design weaknesses, equipment malfunction, or operator error would result in the loss of crucial confessional evidence (see practitioners quoted in Grant 1987: 6-7, 13, 57, 81-82; Willis 1984: 30; Willis, et al. 1988: 11, 39, 68; Barnes and Webster 1980).

Taping system design flaws conceivably could include weak or intermittent microphones, improper audio recording levels that produce inaudible or distorted sound, inappropriate interview room lighting, insufficient soundproofing to eliminate the recording of sounds from outside the interrogation room or the recording of ventilation system noise, videotaping from an angle or with a picture frame size that fails to fully and accurately portray the interview or the conduct or facial expressions of all its participants, and use of short tapes that require frequent interruption of the interview to replace tape, etc. (Wilson 1988; Neville 1988; Criminal Law Review Division 1986: 18, App. 3, 8-9; Blain and Walker 1985; *Law and Order* 1987: 72).

2. What are the differential costs and benefits of recording entire interviews vs. recaptulations?

The international literature contains conflicting suppositions on the value and feasibility of taping entire stationhouse interviews with suspects. The British Home Office (Willis, et al. 1988), the Scottish government researchers (Scottish Home and Health Department 1984, 1985a, 1985b), the Canadian Law Reform Commission's researcher (Grant 1987), and the New South Wales Attorney General in Australia (Criminal Law Review Division 1986) all strongly support taping the entirety of interviews. At the same time, the New South Wales Police (1985) and other law enforcement personnel have objected that taping entire interviews would be excessively expensive and might inhibit effective police interrogations (see Prins 1983; McDonald 1983: 43; Royal Commission on Criminal Procedure 1980).

3. What are departmental practices—and their justifications—in terms of overt vs. covert and voluntary vs. involuntary recording?

Clearly, technology has advanced to the point where, from a strictly technical point of view, a police department would have the option whether it wanted a suspect to be aware of the videotaping. A clear video image can be captured using a camera with a "pin-hole" lens that shoots through a hole in the interview room wall about the size of a finishing nail head (see Marx 1988: 211). Audiotaping technology has long permitted

taping with subminiature microphones located in close proximity to the person being recorded but no longer even requires (if cost is no object) that a microphone be present in a room to pick up voices clearly (id.; Wilson 1988).

However, other considerations besides the technical feasibility of covert videotaping may be relevant for a given police department. For instance, the department may be constrained from surreptitiously taping by state or local laws. Or the department may determine that, as a practical matter, the opportunity to keep secret its videotaping practices will be short-lived. It is also possible, although unlikely, that physical constraints imposed by the location and configuration of the interrogation room in the stationhouse push the department to select a spot for the videotape equipment and related audio equipment (sound mixer, microphone(s), etc.) that requires overt taping (e.g., locating the camera on a tripod inside the interrogation room). Or, finally, the department may believe that taping in the absence of the suspect's informed consent does not square with the public image it wants concerning "fairness" in the handling of criminal suspects.

I. Security and Care of Equipment and Recorded Tapes

Canadian and British researchers have noted practitioner concerns that taping equipment or recorded tapes would be intentionally tampered with or lost or destroyed to the detriment of the accused and the interests of justice (Grant 1987: 7, 81; Willis 1984: 9; Willis, et al. 1988: 64, 68).

Besides the risk of intentional tampering, however, there is a perhaps greater risk of accidental spoilage of tapes through equipment malfunction, operator error, poor tape storage practices, and the like.

While our national survey and site visits did not afford the opportunity for us to reach new understandings on each and every one of the issues noted in this chapter, we were able to explore objective information and practitioner perceptions on a great many of them. Our findings are presented in Chapters 4 and 5.

CHAPTER 4: THE NATURE AND EXTENT OF POLICE VIDEOTAPING OF SUSPECT INTERROGATIONS AND CONFESSIONS IN THE UNITED STATES

A. Prevalence of Videotaping Interrogations or Confessions by Local Law Enforcement Agencies in the United States

Based on the results of our survey of a representative national sample of police and sheriffs' departments in the United States, we can estimate the number of law enforcement agencies that videotape at least some suspect interrogations and/or confessions. Assuming that there are approximately 14,000 police agencies in America (probably a slight undercount)¹, about 2,400 law enforcement agencies were using video technology to document at least some suspect oral statements to interrogators as the 1980s drew to a close. This number is derived by estimating the number of agencies serving various size resident populations and then computing within each service population group the properly weighted percentage of departments that videotape. Table 1 sets forth the calculations.

Table 1 also shows the estimated distribution of agencies that videotape interrogations or confessions according to service population size. These data are depicted graphically in Figure 1. Except for the smallest communities in the nation, approximately a third of all agencies in all other population categories videotape at least some interrogations or confessions. Because of the large number of small police agencies in America,² the low percentage of those agencies videotaping confessions or interrogations pulls down the national percentage of agencies that make such use of video technology.

Several reasons may explain the sharp decrease in percentage of departments videotaping interrogations in the "less-than-10,000" service population category: (1) the cost of videotaping equipment may be prohibitive; (2) the relative infrequency of serious felony cases in the smallest jurisdictions may not justify the purchase of equipment and

¹ It has been a daunting challenge for police researchers, the FBI, and others to estimate the number of municipal and county law enforcement agencies in the United States. Our recent efforts to identify a reliable number proved to no avail, despite our checking with the FBI Uniform Crime Reporting User Services Section, the Bureau of Justice Statistics, the U.S. Department of Labor, and the U.S. Census Bureau. Researchers believe the total to be approximately 14,000.

² A Bureau of Justice Statistics study estimated that 79 percent of America's local police departments employ fewer than 25 officers and that 89 percent serve jurisdictions with fewer than 25,000 inhabitants (BJS 1989).

Table 1:
**Calculation of the Number of American Police
 and Sheriff's Departments that Videotape at
 Least Some Suspect Interrogations or Confessions**

Service Population Group	Estimated Number of Departments in U.S. ¹	% of Surveyed Departments that Videotape	Estimated # of Departments in U.S. that VT
under 10,000	9,948	12.2	1,214
10,000-24,999	2,408	28.9	696
25,000-49,999	936	25.9	243
50,000-99,999	434	31.8	138
100,000-249,999	184	32.4	59
more than 250,000	91	34.5	34
National Total	13,999	16.4	2,384

¹ *Extrapolated from 1985 Uniform Crime Reporting data on 9,228 law enforcement agencies in the United States. The number of agencies listed in UCR data in each of the service population categories was as follows: under 10,000=6,557; 10,000-24,999=1,587; 25,000-49,999=617; 50,000-99,999=286; 100,000-249,999=121; and more than 250,000=60. We extrapolated as follows: Assuming there to be 14,000 police and sheriff's departments in America, we compared 14,000 to the UCR total of 9,228. We found we must multiply 9,228 by a factor of 1.5171 to equal 14,000. We then multiplied the number of agencies in each UCR service population group by this same factor (1.5171) to estimate the number of agencies in each category. This method necessarily assumes that, in each of the population groups, a similar proportion of the agencies will participate in the voluntary Uniform Crime Reporting program. Of course, this may not be true. That is, it is possible, for example, that virtually all of the agencies serving populations of 250,000 or larger participate in the UCR, while only three-fourths of the departments serving the smallest populations participate. If that were true, then multiplying the UCR participant tally in each category by the same corrective factor of 1.5171 to estimate the actual number of agencies in the nation would produce errors of both under- and over-estimation. In the absence of definitive national counts of police and sheriff's departments, researchers necessarily fall back on such imperfect bases for estimating the number of departments.*

training of personnel in its use for documenting interrogations; and (3) *serious crimes of violence* (those for which most "videotaping departments" find this technology useful) may be investigated in the smallest jurisdictions with assistance from other agencies (municipal, county, or state—including prosecutors' offices) whose own interrogation procedures may preempt the arresting agency's preferences. Hence, a small agency which responded to the national survey by indicating that it does not videotape suspect interrogations or confessions may in fact have some of its serious felony suspects videotaped giving statements to other officials assisting in the case investigations. Or, as we saw in some of our case studies, larger agencies may simply allow detectives from the smaller jurisdictions to use the larger agencies' videotaping interview facilities. We found instances in our case studies of both large police departments as well as prosecutors'

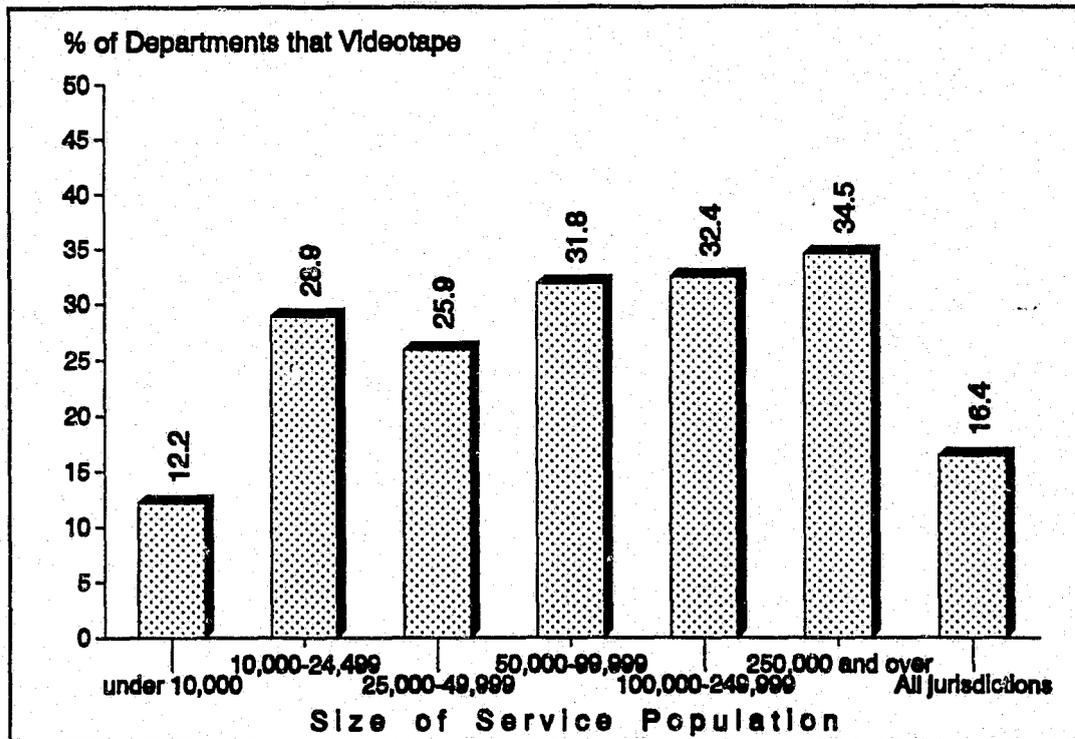


Figure 1: Percentage of American Police/Sheriffs' Depts. Videotaping Interrogations & Confessions, by Service Population

offices making their videotaping facilities available to investigators from small police departments in the region.

Besides the approximately 2,400 departments that were videotaping at least some interrogations or confessions in the late 1980s, we estimate that an additional 2,900 agencies plan to begin the practice. This estimate is based on the fact that, of the agencies we surveyed who were *not* then videotaping confessions or interrogations, 24.5 percent indicated they "have plans to videotape stationhouse interrogations or confessions in the near future."³ Twenty-five percent of 11,600 law enforcement agencies (14,000 minus the 2,400 already videotaping) yields 2,900.

Thus, it seems that, just as videotaping technology is becoming an increasingly common part of the average American's life (with camcorders and VCRs found in large percentages of households), the use of this technology by police agencies to document oral evidence provided by criminal suspects is also on the rise. If our "non-taping" respondents accurately reported their departments' plans to commence videotaping of interrogations or confessions, and if they stand as reasonably representative of the nation's law enforcement agencies, then it is safe to predict that, by the mid-1990s, roughly 5,300 police departments will be making use of video technology to document oral evidence.

³ See our caution in Chapter 2 about possible bias in our survey sample that might have produced an over-estimate of the proportion of departments planning to commence videotaping programs.

This would constitute 38 percent of the nation's local enforcement agencies overall; excluding the smallest agencies, the percentage of departments videotaping confessional evidence will likely exceed 50 percent within a few years.

1. Frequency With Which Videotaping Departments Document Suspect Statements on Videotape

We also explored the number of criminal cases in which police agencies memorialize suspects' statements on videotape. Some of these cases will include more than one suspect; others will be part of a series of similar offenses committed by a single offender (e.g., serial murder or, more commonly, a group of armed robberies cleared by the confessions of a lone arrestee). Among our national survey sample, the number of cases in which video statements were taken from suspects per year (using calendar year 1989 as the reference point) is shown in Figure 2.⁴

This figure shows the percentages of the surveyed departments which videotape suspects' statements in the indicated number of cases per year. Thus, for instance, approximately 27 percent of all responding agencies in 1989 videotaped suspects' statements in less than five cases, while, on the other extreme, about 16 percent of all agencies videotaped confessions or interrogations in more than 50 cases per year. Making a number of reasonable assumptions, we estimate that, in the United States in 1989, all police agencies employing video technology for documenting suspects' statements took video statements in approximately 57,000 criminal cases.⁵ If approximately 2,400

⁴ Figure 2—and various other figures and tables in chapters 4 and 5—is based on telephone interviews with senior officials in 137 police and sheriff's departments that reported videotaping suspect interrogations or confessions. The 137 agency figure is explained in Chapter 1, section 4.

⁵ We derive 57,000 thusly: We estimate that the true percentage of the 14,000 police departments in the nation that videotape suspects' interrogations is about 18 percent as a national total. (The figure of 18 percent is based on the fact that beside the 16.4 percent of agencies surveyed nationally that were videotaping suspects' statements in 1990 [see Table 1], a comparable number were planning to follow suit in the near future. Thus, 18 percent is a highly conservative estimate.) Eighteen percent of 14,000 is 2,520 agencies. We then apply the percentage of agencies shown in Figure 2 as videotaping different numbers of cases per year to this total of 2,520 agencies. Thus, for instance, 26.8 percent of 2,520 is 675 agencies which videotape less than 5 cases per year. We selected 2.5 cases as a reasonable specific quantification of "less than 5."

In like fashion, we derive the following counts: 338 agencies videotaped suspects in approximately 7.5 cases; 552 agencies videotaped suspects in approximately 13 cases; 88 agencies videotaped suspects in approximately 18 cases; 378 agencies videotaped suspects in approximately 23 cases; 96 agencies videotaped suspects in approximately 38 cases; and 396 agencies videotaped suspects in approximately 80 cases. (It is possible that the final figure in this sequence—396 agencies videotaping 80 cases per year—is an overestimate, since it may be that only the major city departments—of which there are not 396—videotape suspects with that frequency; but at least theoretically our national survey should have been reflective of the nation's local law enforcement agencies generally.) Multiplying, for each category noted above, the number of agencies times the approximate number of cases in which they take videotaped statements in a year yields 57,005 cases for the year 1989.

agencies accounted for videotaped statements in about 57,000 cases in 1989, the number of videotaped statements is likely to increase considerably as the number of departments videotaping oral evidence more than doubles in the next several years. The number of individual suspects who gave statements on video in 1989 and will do so in the future is more difficult to estimate in the absence of data that would allow us to sort out how many cases had multiple suspects and how many suspects were interrogated about multiple offenses.

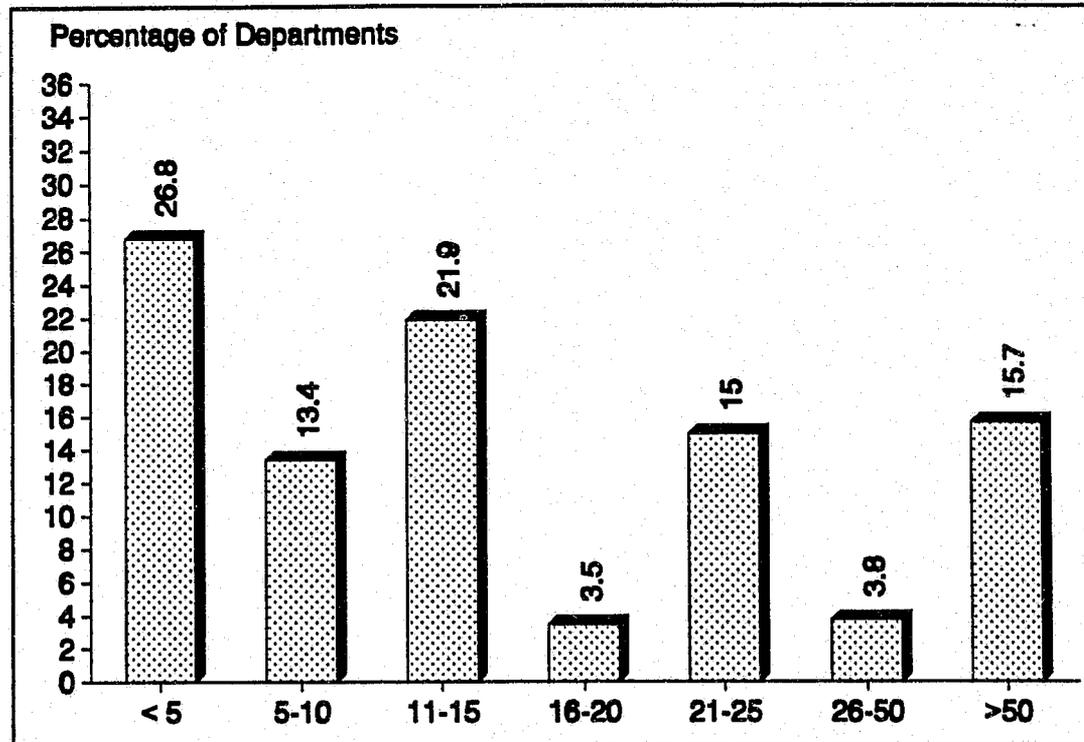


Figure 2: Number of Cases in Which Departments Videotaped Confessions or Interrogations in 1989

Our site visits also illuminated the question of how often suspects are videotaped giving interviews to investigators. We discovered, however, that departments typically had difficulty providing precise indications of the number of suspects whose statements had been videotaped, in most cases because the video log books did not distinguish clearly between the videotaping of a *suspect* versus *victim* or *witness* statement. Sometimes, the log books did not even distinguish the videotaping of statements from the videotaping of lineups. Where the offense for which an individual was questioned was indicated and the offense was homicide, we could of course eliminate the possibility that the interviewee was the crime victim. But in most instances, we were left unable to disaggregate suspects from witnesses in attempting to tally the frequency of videotaped suspect interrogations. This insight from our case studies has obvious importance for the interpretation of the results obtained from our national survey. We do not of course question the good faith or insight of the officers who responded to our national survey by estimating how many cases have suspect statements videotaped, but we do have serious doubts, based on our

site visits, that most departments would be able to offer *documentary* support for their estimates on this point. For convenience of presentation, we will report the frequency of videotaping interviews derived from our site visits in the section immediately below, for that allows us to efficiently provide that information and also to indicate the kinds of cases in which the agencies decided to videotape the statements.

B. Types of Cases in Which Suspect Statements are Videotaped

In our national survey, we explored the percentages of law enforcement agencies which videotape statements in nine categories of offense:

- homicides
- aggravated batteries or aggravated assaults
- rapes or criminal sexual assaults
- armed robberies
- strong arm robberies
- burglaries
- other property crimes besides burglaries
- drunk driving cases and
- other types of crimes

The results are depicted in Figure 3. The figure shows that, of those agencies which videotape suspect statements at least some of the time, 83.1 percent of the agencies tape the statements of homicide suspects. "Videotaping departments" are decreasingly likely, as Figure 3 shows, to employ video technology to document suspect statements as the severity of the felony they are investigating decreases (with some uncertainty about the "other crimes" category). In drunk driving cases, video is used more often to document the visual aspects of the sobriety test in the stationhouse rather than to record comments by the suspect. Although the suspects' statements are, indeed, captured on videotape, commonly these utterances are used not so much for their incriminating *content* (statements of culpability) as they are to demonstrate slurred speech, incoherence, unsteadiness and other evidence of intoxication.

As noted in Chapter 3, our conversations with police nationwide over the past several years suggest that the video documentation of sobriety tests has been decreasing in popularity among American police agencies over the past decade. During the 1970s, largely because LEAA (the U.S. Justice Department's Law Enforcement Assistance Administration) funds were available to underwrite the purchase of video equipment for police departments interested in videotaping sobriety tests, many departments began to experiment with this method of preserving evidence. For many years the general experience was that these videos proved to be powerful prosecution tools in drunk driving cases. The defendants generally appeared clearly to be intoxicated on the tapes, and besides the sentence there was not much more left to discuss in court except for the rare excuse that what appeared to be intoxication was in fact caused by some disease or other condition suffered by the defendant.

However, with increasing public consciousness about the drunk driving problem in

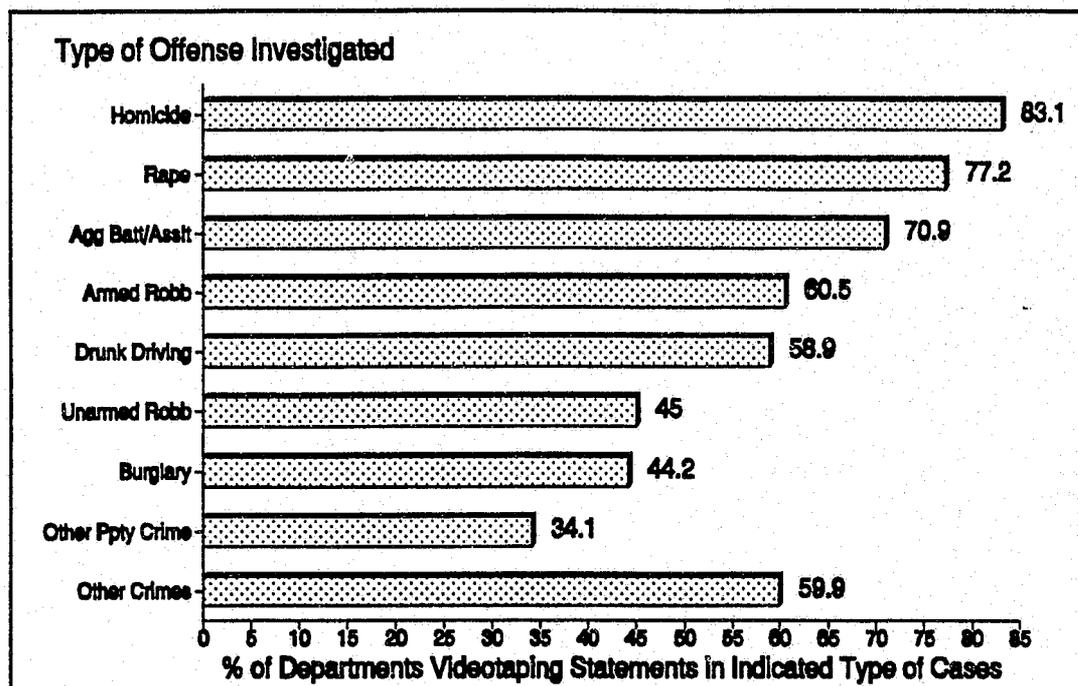


Figure 3: Departments Using Videotape to Document Suspect Statements: % Taping Different Types of Cases

the United States and increasingly effective public pressure to crack down on the problem during the 1980s, police in most jurisdictions began making arrests of drivers showing lower levels of intoxication than had been true some years before. Thus, during the 1980s police and prosecutors found themselves proffering as evidence videotapes of a substantial number of persons who, while legally drunk, did not appear clearly to be drunk from their demeanor and actions captured on the videotape. The resulting acquittals or lenient sentences caused many police and prosecutors to rethink their procedures for using videotape to document sobriety tests (Kuboviak 1992; Troehler 1991).

The practice has not been abandoned, but in many jurisdictions police have placed emphasis on videotaping suspected drunk drivers in the field rather than at the stationhouse after booking, when suspects will have had a chance to sober up and think about how to pass the stationhouse sobriety test (Kuboviak 1991; Troehler 1991). Moreover, in recent years, an automobile insurance company (Aetna) has been underwriting the purchase of the video equipment needed to document field stops of suspected drunk drivers (*New York Times* 1991). An example of an agency making widespread use of dashboard-mounted video cameras for sobriety tests and other purposes is the Georgia State Patrol (Earp 1989). The Christopher Commission, investigating the LAPD in the wake of the Rodney King brutality incident in March 1991, recommended that citizens and officers alike might find it useful in Los Angeles for police to begin using dashboard-mounted video cameras (Independent Commission on the Los Angeles Police Department 1991). The Orange County, California Sheriff's Department also planned to equip squad cars with video cameras for the protection of all concerned (Reyes 1992: B22).

1. Site Visit Findings Concerning Frequency of Videotaping Suspect Statements in Different Types of Cases

What did we learn from the site visits concerning how often suspects in various types of crimes have their interrogations and/or confessions videotaped? As noted above, it was often difficult to sort out in departmental records the videotaping of suspect statements from the videotaping of witness or even victim statements. Thus, recognizing the deficiency in the data, we offer the following findings as a preliminary, imperfect indication of the relative concentration of videotaping activity across different types of offense investigations in the agencies we visited.

Thus, for example, in Denver, during 1988, Departmental documents indicated the distribution of videos shown in Table 2. The distribution shown in Table 2 does not distinguish suspect statements from witness or victim statements—again, in the homicide category the uncertainty is only as between suspects and witnesses.

Table 2:
Video Records of Suspect, Witness, and Victim Interviews
by the Denver Police Department, 1988: by Case Type

Case Type	Number	Percent
Homicide	109	56
Aggravated Assault	23	12
Shooting by Peace Officer/Homicide	18	9
Sexual Assault	8	4
Robbery/Aggravated Robbery	7	4
Burglary	6	3
Narcotics/Poss. Controlled Substance	4	2
Theft	4	2
"Known Dead"	3	2
Kidnapping	3	2
Child Abuse	2	1
Prostitution	2	1
Pimping	2	1
Menacing	1	0.5
Type Not Indicated	2	1
TOTAL	194	100

Table 3 shows the Kansas City Police Department's distribution of videotaping across case types (again, combining suspect, witness and victim statements—with the exception again of victim statements in homicide cases).

A detective who works in the Kansas City Police Department's videotaping unit recollected that, prior to 1988, the Department did not videotape any witnesses to *homicides*. If that is accurate, then the 63 homicide videotapes in 1986 were of suspects' statements. (We know from other Departmental records that the tallies shown in the table above do *not* include lineup videotapes, of which there were a total of 129 recorded by the KCPD in 1986—101 in robbery cases, 18 in homicide/assault cases, 6 in sexual assault cases, and 4 in burglary investigations.)

**Table 3:
Video Records of Suspect, Witness, and Victim Interviews
by the Kansas City Police Department, 1986: by Case Type**

Case Type	Number	Percent
Homicide	63	57
Sex Crimes (mostly juvenile victims' statements)	30	27
Depositions for Courts	8	7
Assaults	7	6
Arson	2	2
TOTAL	110	100

In contrast to Denver and Kansas City, while the Fort Wayne Police Department videotapes fewer statements, that agency's log books did permit us to separate suspect statements from other types of videotaping activities. The results for a period of almost six years are depicted in Table 4.

In most departments we visited, where video was used in connection with child molestation charges, it was used to tape the child victim's statement, but Fort Wayne presents an example of a department using it also occasionally to videotape the suspect's statement. The Department explained that it has sometimes found it helpful, in protecting the child, to play the abuser's video confession for the child's mother if the mother is skeptical of the child's claim that the accused molested the child. The police in Fort Wayne report some success in using such videos to protect the child from the further victimization of being berated by his or her mother for telling horrible lies.

In contrast to many other agencies, Fort Wayne's leading type of case for videotaping suspect statements is *not* homicide. Among our site visits, Houston provides another instance of an agency where the concentration of videotaped interrogations lies outside of homicide cases (there the robbery unit made the most frequent use of video for suspect

interview documentation).

Table 4:
Video Records of Suspect Statements and Other Uses of Video
by the Fort Wayne Police Department, 1985-Oct. 1, 1990

Case Type	Number	Percent
<i>Suspect Statements</i>		
Burglary	33	34
Armed Robbery/Robbery	16	17
Homicide	14	14
Shooting/Battery	10	10
Child Molest/Pornography/Deviate Act	8	8
Vehicle Theft/Other Theft	5	5
Rape	4	4
Forgery	3	3
Hit & Run Accident/Fatal Traffic Acc	2	2
Harassment	1	1
Misc.	1	1
TOTAL SUSPECT STATEMENTS	97	100 25 of all
<i>Videos OTHER THAN Suspect Statements</i>		
Witnesses, Victims, Crime Scenes	288	75
TOTAL VIDEO RECORDINGS	385	100

The Orange County, California, Sheriff's Department, like Fort Wayne's Police Department, maintained records that permitted tallying video recordings of *suspect* statements. During a slightly more than six-year period (October 1982 through January 12, 1989), the distribution of suspect interview recordings by the OCSD was as shown in Table 5. We see that Orange County is more typical of departments nationwide than is Fort Wayne in that the videotaping of interrogations is concentrated in homicide cases.

**Table 5:
Video Records of Suspect Interviews by the Orange County, CA,
Sheriff's Dept., Oct. 1982-Jan. 12, 1989: by Case Type**

Case Type	Number	Percent
Homicide	62	45
Sex Crimes	20	15
Special Investigation (intelligence, etc.)	20	15
Other Crimes (major burglary, robbery, etc.)	35	26
TOTAL	137	101¹

¹ Totals more than 100% due to rounding.

In New York City, where the video recording is done by the District Attorney's Offices and the confession statements are taken by Assistant DAs rather than by the investigating police officers, Bronx DA's records did not permit us to disaggregate *homicide* interrogations of suspects from other types of suspect interrogations, but our principal interviewee expressed the confident view that the vast majority of the suspect interviews videotaped over the years by the Bronx DA's Office were in homicide cases. Thus, we can see the substantial numbers of homicide suspects' statements videotaped in the Bronx (one of five boroughs served by the New York City Police Department) over the decade and a half of video documentation in that locale (Table 6). Most but not all of the suspect video interviews enumerated in Table 6 are in homicide cases.

Given the enormous numbers of cases and suspects involved in the videotaping program in the Bronx, it becomes clear that practitioners in New York City have an opportunity few practitioners anywhere else in the nation have to see patterns emerge across groups of cases. Interestingly, however, despite the relatively steady rise in homicides throughout New York City's several boroughs, we do not see a continuing rise in the number of homicide suspects whose statements were videotaped in the Bronx over time. Indeed, there is a rather marked decrease from 1986 to 1987, followed by a slow increase through 1989. It may well be, however, that the reduction in homicide suspect videotapings in 1987 had more to do with resource constraints than with any distinctive change in the patterns of offending or willingness of homicide suspects to speak with police or prosecutorial personnel for the record during the case investigation.

In most of our site visit agencies, there was little change over time in the *mix* of cases in which police or prosecutors decided to videotape suspect statements. There was a growth in the number of statements taped in several of the jurisdictions, but, with the exception of the Bronx DA's Office and Fort Wayne Police Department (where officials reported that they began videotaping almost exclusively in homicide cases and over time added other serious felonies), most of the other agencies videotape pretty much in the same categories of cases (typically homicides and a few other very serious crimes) as they

began the video program with some years ago.

**Table 6:
Number of Suspect Statements Videotaped by the Bronx
District Attorney's Office, 1975-1989**

Year	Number of Suspect Statements Videotaped
1975-1978 combined	585 (annual average of 195)
1979	538
1980	478
1981	469
1982	487
1983	475
1984	558
1985	505
1986	556
1987	341
1988	357
1989	466
TOTAL	5,815

C. Taping Overtly or Covertly and Completeness of the Interview Taped

1. Overt Versus Covert Videotaping

Based on our national survey, we conclude that the vast majority of American police agencies videotape overtly. That is, the suspects whose statements are being videotaped are aware of the recording at the time, principally because the police interrogator(s) orally inform them of the taping (this occurs in 96 percent of all responding agencies). Additionally, in 70 percent of the "taping departments," some portion of the audio-video equipment (typically, the camera or at least a microphone) is readily visible to the person under interrogation throughout the taping. In the four percent of law enforcement agencies where the videotaping is done covertly, the equipment is concealed (e.g., the camera may shoot through a one-way mirror or, in the "higher-tech" settings, such as Huntington Beach, California, through a hole barely an eighth of an inch in diameter).

Among the agencies to which we made site visits, only Huntington Beach and Orange County videotaped covertly—without notifying the suspect that a recording was being made and without any of the video recording equipment being visible in the interview room. Tulsa police officials indicated an intention in the near future to begin experimenting with covert videotaping. In Kansas City, the equipment is concealed (because, as police explained, it is less distracting to the officer and suspect that way), but the interrogator routinely notifies the suspect of an intent to make a video record of the statement. In Denver, the microphone is in plain view but the camera shoots through a one-way mirror. This is the arrangement as well in most videotaping sites in Bronx County, New York (the prosecutor's office tapes at multiple sites throughout the county—principally at police precinct stations and in the prosecutor's office at the courthouse, and not every site is configured in precisely the same way).

In some other agencies, the camera is visible but the microphone is concealed (e.g., inside a thermostat on the interview room wall in San Diego and in a ceiling tile in Burlington, Massachusetts). In San Diego, interrogators normally do not explicitly notify the suspect that the interview is going to be videotaped, but to all but the most oblivious the video camera mounted on the ceiling and pointing towards the suspect's position in the interview room is a reasonably clear indication that the conversation may be recorded.

In some agencies (Tulsa was one), investigators conducting interrogations outside their home jurisdictions (because a suspect wanted for a local crime was arrested in another town) employed the covert videotaping practices routinely used by the agency in which they actually conducted the interrogation. Thus, for example, Tulsa investigators interrogated a homicide suspect—wanted for allegedly beating a man to death with a railroad tie—in the Oklahoma City Police Department's video interview room, set up for covert taping. After an hour of the suspect persisting in denying his guilt, the interrogators from Tulsa turned off the portable audio recorder they had sitting on the table in the interview room and told the suspect the interrogation was over. The Tulsa detectives left the room, but the hidden video recorder was left on. After a short while, Oklahoma City detectives entered the room, playing "nice cops" to the "tough cops" who had just given up their interrogation efforts. The ensuing conversation between the Oklahoma City police and the suspect was captured on videotape. (In point of fact, the suspect never did desist in his denials, and the Oklahoma City detectives soon abandoned the interrogation as well.)

The practice used by Tulsa detectives in Oklahoma City is one employed by San Diego detectives as well, who reported that, if a suspect asked to go "off-tape" for a portion of the conversation, the detectives would falsely agree to do so but in fact would keep the videotape running, reportedly as a safeguard against accusations that the police engaged in unprofessional conduct during the break in the taping.

2. Videotaping Entire Stationhouse Interrogations Versus Recapitulations and Duration of the Resulting Videotapes

Our national survey revealed that 48 percent of the "videotaping departments" reported taping the *entire* stationhouse interrogation, which, we pointed out in our

question "may last several hours." The balance (52 percent) reported taping what we term recapitulations—a statement by the suspect or interview of the suspect by officer(s) presented only after some prior *untaped* interrogation of the suspect by police personnel. The recaps usually contain the highlights of the information the suspect is willing to provide orally. Typically this will include both incriminating and exculpatory information, although, as we discovered in our site visits, some agencies will decide to *not* videotape a recapitulation of the interview's highpoints if they expect only to elicit exculpatory information or denials of culpability.

Some practitioners argue that declining to make a video record of the essence of a suspect's statement on the grounds that nothing of value to the prosecution is being said can be short-sighted, even if one ignores the dimension of fairness in the investigative process. Information that seems unimportant at the time of the interrogation (e.g., the suspect's insistence that he is innocent of murder by reason of self-defense or innocent of robbery by reason of coerced participation) may prove very useful at trial if the accused switches his or her defense strategy and enters an alibi claim. The video statement would be powerful impeachment evidence that the defendant was, contrary to his or her trial claim, present during the commission of the alleged crime.

Compared to videos of entire stationhouse interrogations, recaps, under the guidance of interrogating officers, generally follow a much clearer sequence in recounting the incriminating information. How orderly and sequentially clear the initial off-tape interrogation was that precedes a recap video will often turn substantially on how much information the interrogating officers have prior to asking their questions, how cooperative a guilty suspect is during the interview, and how skillful the interrogator is in conducting a logically ordered interview.

Although we took pains in our national telephone survey to clarify the distinction between taping an entire stationhouse interrogation and taping only a portion of that interrogation, we are nevertheless somewhat skeptical of the survey finding that nearly half of the agencies tape complete interrogations. While we selected jurisdictions across the nation for site visits, only three of 11 videotaping departments (the Huntington Beach, Orange County, and San Diego) law enforcement agencies taped entire stationhouse interrogations on a routine basis. The Tulsa Police reported occasionally videotaping entire stationhouse interrogations and an intention, once they switched to covert taping, to more routinely tape entire interviews. We have not, given time constraints, taken the step of recontacting the surveyed agencies which reported videotaping entire interrogations and attempting through a battery of follow-up questions to verify their response to our survey question.

The question of whether a department tapes entire interviews or only recaps has a variety of important implications, in the view of criminal justice practitioners. There are important fiscal implications. For instance, with a lengthy stationhouse interrogation in a serious felony such as murder, the costs for blank tape, equipment operator time, and transcription (a subject on which more will be said later in this chapter) would be far higher if the entire interview were taped than if only the recapitulated highlights of the interrogation were recorded. Similarly, court expenses attached to viewing entire interview

tapes versus recaps at preliminary hearings or trials can be expected to differ significantly. There are also implications for the way in which police, prosecutors, defense counsel, judges, juries, and the public at large may view the fairness, efficiency, and effectiveness of the videotape documentation process.

Bronx District Attorney's Office Bureau Chief Sean Walsh expressed the view that the important distinction for appraising the credibility and legitimacy of the process should not be whether an agency videotapes entire interviews versus recaps. Instead, he argues, the key distinction is whether the interrogators conduct the interview in a "conclusionary form with leading questions" to which the suspect simply says "yes" or whether the questions posed allow the suspect to present his or her story without on-camera coaching (Walsh 1992: 3). This does not, of course, resolve any doubts that might exist about pre-tape coaching, but it does seem clear that a video containing leading questions would be less credible than one without such questions. We will explore practitioners' perceptions of the implications of taping full interviews versus recaps more fully in the next chapter.

Given the divergence in practices among our site visit agencies concerning the taping of entire interviews versus recaps, one would expect that the duration of the recorded videotapes would, on average, differ considerably between the two categories of tapes. Among the agencies taping primarily recaps, the average lengths of video statements were estimated at 15 minutes on the short end (in Fort Wayne) to about 45 minutes on the long end. In San Diego, Huntington Beach, and Orange County (where full stationhouse interviews are normally taped), estimates of average duration ranged from two hours to four hours. At the extreme, one or more of these agencies had videotaped interrogations lasting as long as seven hours.

D. Willingness of Cooperative Suspects to Have Their Statements Documented Using Videotape Rather than Another Documentation Method

Since homicide suspects constitute most of those whose confessions are videotaped by American law enforcement agencies, we explored in our national survey the percentage of homicide suspects who give videotaped statements to police. Specifically, we asked:

Of the homicide suspects who are willing to talk with your interrogators, what percentage would you estimate are videotaped giving statements?

Thus, our question assumes that a certain percentage of homicide suspects will exercise their right to refrain from giving a statement to police. But of those who agreed to talk with police—in agencies with the capacity to videotape interviews—we were curious to find out what percentage of the homicide suspects had their statements memorialized on videotape. As Figure 4 shows, over 70 percent of all videotaping departments recorded *at least some* of their homicide suspects' statements on video. Thirty-nine percent of the agencies videotaped homicide suspects' statements in more than 80 percent of the cases where the suspects were willing to talk. That is to say, 39 percent of American police agencies possessing the technology to videotape a suspect's statement will, eight out of

ten times, capture a homicide suspect's statement on video.⁶

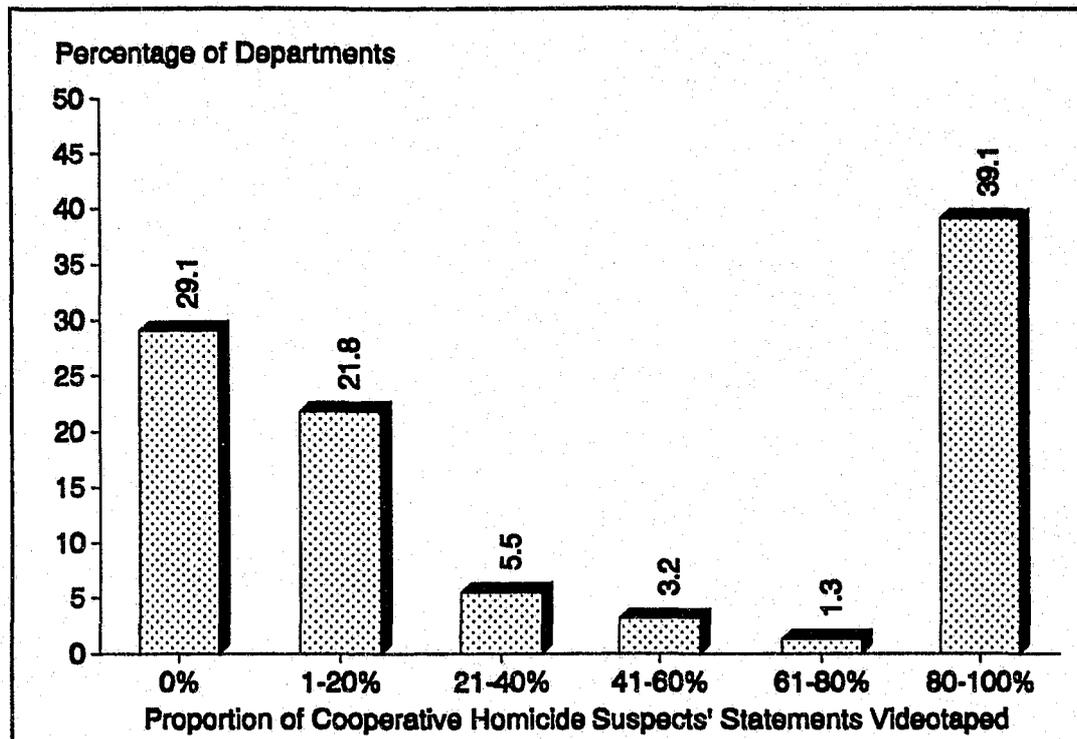


Figure 4: % of Departments Videotaping Cooperative Homicide Suspects' Statements: Proportion of Such Statements Videotaped

In several of our site visits, estimates by police that nearly all homicide suspects who were willing to talk with police and to talk on videotape were in fact videotaped were disputed by some other criminal justice practitioners—most often public or private defense attorneys and sometimes prosecutors as well. In the absence of appropriate documentary evidence (which, but for a study such as ours, departments might have little reason to compile), it is difficult and probably pointless to worry much over whose estimates are the more accurate. If such details are considered significant for policy or other analyses, it would be simple enough in the future to design a data collection system to capture pertinent data on cases investigated, interrogations conducted, and methods used to document the interrogations.⁷

⁶ Figure 4—and various other figures and tables in chapters 4 and 5—is based on telephone interviews with senior officials in 137 police and sheriff's departments that reported videotaping suspect interrogations or confessions. The 137 agency figure is explained in Chapter 1, section 4.

⁷ We will see in Chapter 5 that whether a department is able to routinely exercise selectivity in deciding which interrogations and confessions to videotape may be highly influential for law enforcement agencies that heretofore have been reluctant to begin videotaping suspect statements lest they lose discretion over which interrogations and how many to record.

The 29.1 percent of departments which have *not* videotaped homicide suspects' statements may be explained by a variety of factors, including the possibility that some of the smaller agencies responding to the survey had not conducted a homicide interrogation since acquiring video equipment and hence reported on their actual usage of videotape to record *homicide* interrogations rather than going beyond the specific question they were asked and projecting what percentage they might videotape if and when homicide suspects are brought into their interrogation rooms.

The other percentages of departments which have videotaped relatively small proportions of their homicide suspects' statements may be explained by agency policy of videotaping only when suspects offer *incriminating* testimony; a fairly large percentage of suspects who are willing to talk with investigators may offer primarily exculpatory statements. Moreover, since homicide investigators often are among the more senior detectives on many police agencies, individual detectives may resist using the new video technology to document confessions that they have been eliciting and documenting successfully for years without videotape. A case in point is the Houston Police Department, whose homicide detectives rarely use video to document confessions but whose robbery unit makes frequent use of video for recording confessions. In most of our case studies, however, as we have seen, the departments were more likely to videotape homicide confessions than confessions concerning any other type of offense.

We approached the subject of suspect willingness to talk on videotape with an additional question in our national survey. We asked, focusing not only on homicide suspects but more generally on all suspects, whether the responding law enforcement agencies would honor a suspect's request to give his or her statement without being videotaped. The results are depicted in Figure 5.

Thus, only 59 percent of the responding "videotaping" agencies indicated that they would *always* honor a talkative suspect's request to provide his or her statement without a video record of the statement. We can offer some insight into the reasons departments might refuse to do so from our case studies, as noted above. Essentially the reason provided by the minority of agencies that indicated they would not respect the suspect's wish to go off video when giving a statement was that the departments would thereby open themselves to criticism for not using the best documentation method for capturing the content of the interrogation.

A point related to the willingness of suspects to provide initial consent to the videotaping of their statements is what departments do if and when a suspect who, having granted initial consent to the video recording, has a change of heart and asks to go off tape. The Denver, Fort Wayne, St. Louis, and Washington, D.C. police departments are examples of some which will honor such a request. This situation had not arisen in Houston. In the Departments that videotape covertly, of course, the question normally would not be expected to arise. But in some agencies which videotape overtly (e.g., San Diego), police typically would refuse to interrupt a videotaped interview for a brief off-tape conversation. In San Diego, where this situation has rarely arisen, police personnel indicated they might tell the suspect they were turning off the video recorder but in fact would leave it running.

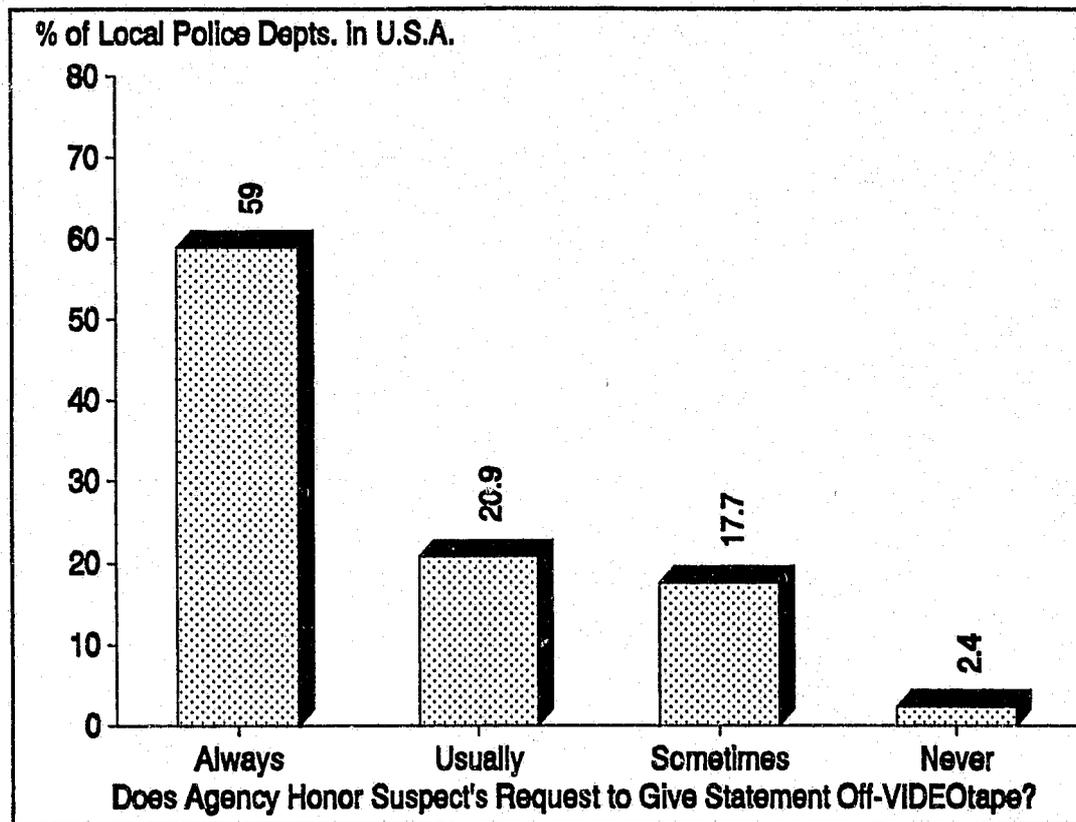


Figure 5: Videotaping Departments' Willingness to Honor Suspects' Request to Give Statement Without Video Documentation

E. Procedures and Practices Used by Departments to Document Suspect Interrogations or Confessions on Videotape

In our site visits we documented a wide variety of procedures used to take video statements and to safeguard the resulting videotapes against tampering or deterioration. We present some of the highlights below.

1. Who Has the Discretion to Decide Whether or Not a Suspect's Statement is Videotaped?

Most of our site visit departments leave the decision concerning whether to document an interrogation or confession on videotape to the interrogating detective. This is true in Denver, Fort Wayne, Houston, Huntington Beach, St. Louis, and Tulsa. In Kansas City and San Diego, typically a sergeant will make the tape/don't tape decision. And in Bronx County and Orange County standard operating procedure is to videotape in certain categories of cases, unless special circumstances dictate otherwise. Just because standard procedure is to videotape does not, of course, mean that the procedure is always followed. In New York City, for instance, some detectives and some Assistant District Attorneys who dislike the idea of videotaping sometimes try, with a modicum of success, to prevent

videotaping. For example, detectives may simply fail to make the necessary notification to the Bronx DA's Office video unit to come over to the precinct police station to record a statement.

Among the reasons why the Orange County Sheriff's Department might make an exception to its policy of videotaping homicide suspects' (and witnesses') statements are if the suspect is shot and is interviewed in the intensive care unit of a hospital or if the suspect is apprehended in another jurisdiction and OCSD personnel travel there to conduct the interrogation.

2. Do the Agencies Have Written Procedural Guidelines on the Subject of Videotaping Suspect Interrogations or Confessions?

In some departments, comprehensive written guidelines exist. In others, the guidelines consist mostly of brief memoranda concerning how to use the video equipment. Some of our site visit departments have not committed anything to writing—not even a simple script to remind interrogators about the standard colloquy they need to have with the suspect at the commencement of the taping session in order to identify the date, time, location of the interview, the circumstances that led to the interrogation, and the lack of coercion prior to the commencement of the video documentation. Where departments do not provide such scripts, they typically offer the explanation that the detectives conducting the video interrogations are generally experienced personnel who do not need such reminders.

A few of the agencies we visited have written instructions and guidelines that are sufficiently comprehensive that it would be well worth the effort for other departments to obtain copies of the manuals. The Denver Police Department, Bronx District Attorney's Office, and Metropolitan Police Department in Washington, D.C. all have very useful written materials.

3. How Many Police Personnel Typically Are Present During a Videotaped Interrogation and What Are Their Functions? Do Prosecutorial Personnel Ever Attend/Participate?

Most commonly, two detectives will be present in the interview room during a videotaped suspect interview. In most instances, there will also be a video camera operator present—either inside the room or in an adjacent video control room depending on where the camera controls are located. Sometimes this video operator will be a civilian technician; often the operator is a fellow detective. Some taping systems do not use a video operator because they are sufficiently automated or officials are willing to forgo the advantages of a video equipment operator. These advantages include being able to keep careful watch that the equipment is functioning properly and knowing when a video or audio tape is running out and has to be replaced; ensuring proper focus on the camera and proper recording levels on the audio equipment; zooming or panning if the camera does

not have a fixed focus and permits such operation; and so forth. In some instances, besides the officers participating in the interrogation, a supervisor or other investigative personnel will be present outside the room, monitoring the interview on a TV screen and speaker or headphones. Headphones are preferred if soundproofing is insufficient to avoid distractions from the audio monitor.

Personnel outside the interview room monitoring the interrogation can provide guidance if they think it appropriate to the interrogating officer. In a couple of the departments we visited, prosecutors also monitored the interview from outside the room and provided similar support. Commonly, the nature of the offense would determine whether a member of the prosecutor's staff monitored the interrogation. For example, in Denver, in homicide cases and cases involving shootings by police, the Assistant District Attorney is present in the interview room and participates in asking questions; in Tulsa, typically the prosecutor would attend and participate only in a major case with possible "political overtones."

In some other jurisdictions (e.g., Kansas City), prosecutors believe personnel from their office should stay out of the investigation of the case because of the prosecutorial role they will have to play should the suspect be charged. In San Diego as well, although sometimes prosecutors do go into the interview room and participate in the interrogation, an experienced prosecutor we interviewed expressed opposition to the practice because he thought it would appear to a jury watching the videotape that the prosecutor was taking unfair advantage of the suspect. This same prosecutor opined that, if prosecutors began participating on a more regular basis in interviews, he would strongly urge that prosecutors receive special training on how to appear more "judicial" during the video interrogation (i.e., how to present themselves in such a way that the viewer concluded they were engaged in a search for the truth rather than an adversarial effort to trip up the suspect).

Where either police or prosecutorial personnel are outside the interview room and wish to communicate with the interrogators, numerous methods were used to transmit questions to the interrogators, from knocking on the door and calling one of the investigators out on the pretense of taking a phone call, to speaking to the interrogator over a wireless intercom which the interrogator monitored with a miniature ear piece, to typing short messages on a computer terminal and sending them in on the interrogator's silent display pager. In most jurisdictions, efforts were made not to interrupt the flow of the videotaped interrogation, in part because of interest in keeping a talkative suspect talking and in part to avoid any appearance that an unexplained interruption in the videotaped conversation involved improper police methods.

In New York City, the roles of the prosecutorial and police personnel during a video interrogation are reversed in comparison to the other jurisdictions we visited. The Bronx District Attorney's Office has, since the inception of the videotaping program more than 15 years ago in New York City, been the lead agency in taking video statements. (We are informed there are similar arrangements in the City's other boroughs as well, but the Bronx DA's Office was the videotape pioneer in New York City.) Police personnel will be present in the interview room for security and guidance (since they conducted the

preliminary interrogation). But for homicides or other serious felonies, once a suspect is willing to provide a statement to authorities, the police will summon the DA's Office to send an assistant prosecutor over to conduct the video interview.⁸

The practice of having an assistant prosecutor take the final statement from a criminal suspect is not unique to New York City. In Cook County, Illinois, although video is not employed to document interviews, the State's Attorney's Office, under its Felony Review charging system, often has an Assistant State's Attorney take the suspect's final oral statement after police have conducted an initial interrogation. The suspect's final statement in that jurisdiction typically will be documented either by a stenographer or by notetaking (Jacobi 1990).

One of the advantages cited by prosecutors in several jurisdictions to having prosecutors involved early on in the investigation process is that they can help police spot key, often complex issues that need to be addressed in the accumulation of oral evidence (e.g., the potential for an insanity defense). Prosecutors in several jurisdictions suggested that they sense resistance by police to having prosecutors get involved in an advisory capacity at early stages of investigations despite what the prosecutorial personnel see as the apparent advantages of early intervention.

4. How Many Interview Rooms are Equipped for Videotaping Suspect Statements and What is the Physical Layout of the Videotaping Interview Rooms?

Agencies varied in the number of rooms equipped to take video statements. In Denver, for instance, one room was fully equipped and a second could be used when needed by wheeling in a camera on a tripod. The Fort Wayne, Kansas City, St. Louis, Washington, D.C., and Houston police departments and the Orange County Sheriff's Department each have one room set up for video statements. The San Diego Police have two rooms designated for videotaping interrogations, as does the Tulsa Police Department (in Tulsa, one room in the homicide unit, another in the sex crimes unit). Huntington Beach, one of the smallest agencies we visited, had three or four rooms which were properly sound-proofed and otherwise suitable for videotaping statements (although only one or two were fully equipped for high quality *covert* taping). Another smaller department (whose personnel we interviewed in conjunction with a site visit in Denver) is the Westminster, Colorado, Police Department (110 sworn officers), and it houses three video-equipped interview rooms, which its personnel reported are needed in officer-involved shooting cases to interview multiple witnesses expeditiously. The Bronx DA's Office uses a total of 16 rooms—each located in a different facility—to videotape suspect statements (12 are in police precinct stations, two are in Housing Police Department facilities, one is at a Transit Police Department station, and one is in the DA's Office in

⁸ In New York City, according to prosecutors with whom we spoke, DA's Office personnel have been taking suspect final statements in at least certain categories of cases since long before electronic documentation was possible; the practice dates to the 1930s.

the Bronx County Courthouse building).

Our site visit departments differed considerably in the physical layout of the rooms used to make the video recordings. The following diagrams depict the variety. In Denver, the police video room uses two microphones on the table, one for the suspect, the other for the principal interrogating officer. Although some agencies use a date/time code generator, which enables the date and time to be recorded superimposed over an area of the picture frame, Denver and a number of other agencies that we visited prefer to use a clock and calendar on the wall behind the suspect. Agencies that have made this decision for the most part do it not out of frugality but in the belief that the superimposition of the date and time on the picture frame will be distracting to jurors and others who must view the video and also in the realization that it is not difficult, if one wished to, to tamper with the date-time code by copying the videotape and replacing the original date-time information with a newly recorded date-time code.

Denver is also an example of an agency that shoots the visual portion of the recording through a one-way mirror, which separates the interview room from the equipment control room.

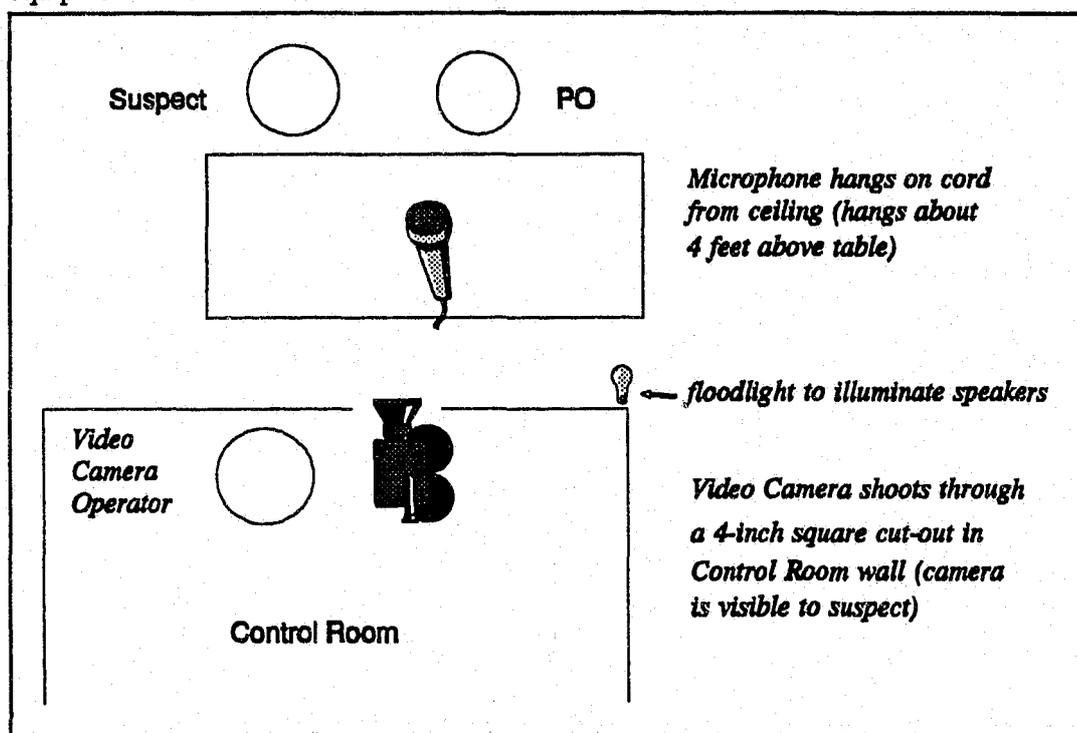


Figure 7: Ft. Wayne Police Department

The Fort Wayne Police Department also places the video camera in a room adjacent to the interview room, but instead of shooting through a one-way mirror, the Department simply has cut a hole (about four inches square) in the wall through which the camera lens points. The camera is also visible to the suspect because of this arrangement, in contrast to the situation when a one-way mirror is used. Thus, Fort Wayne attempts to be

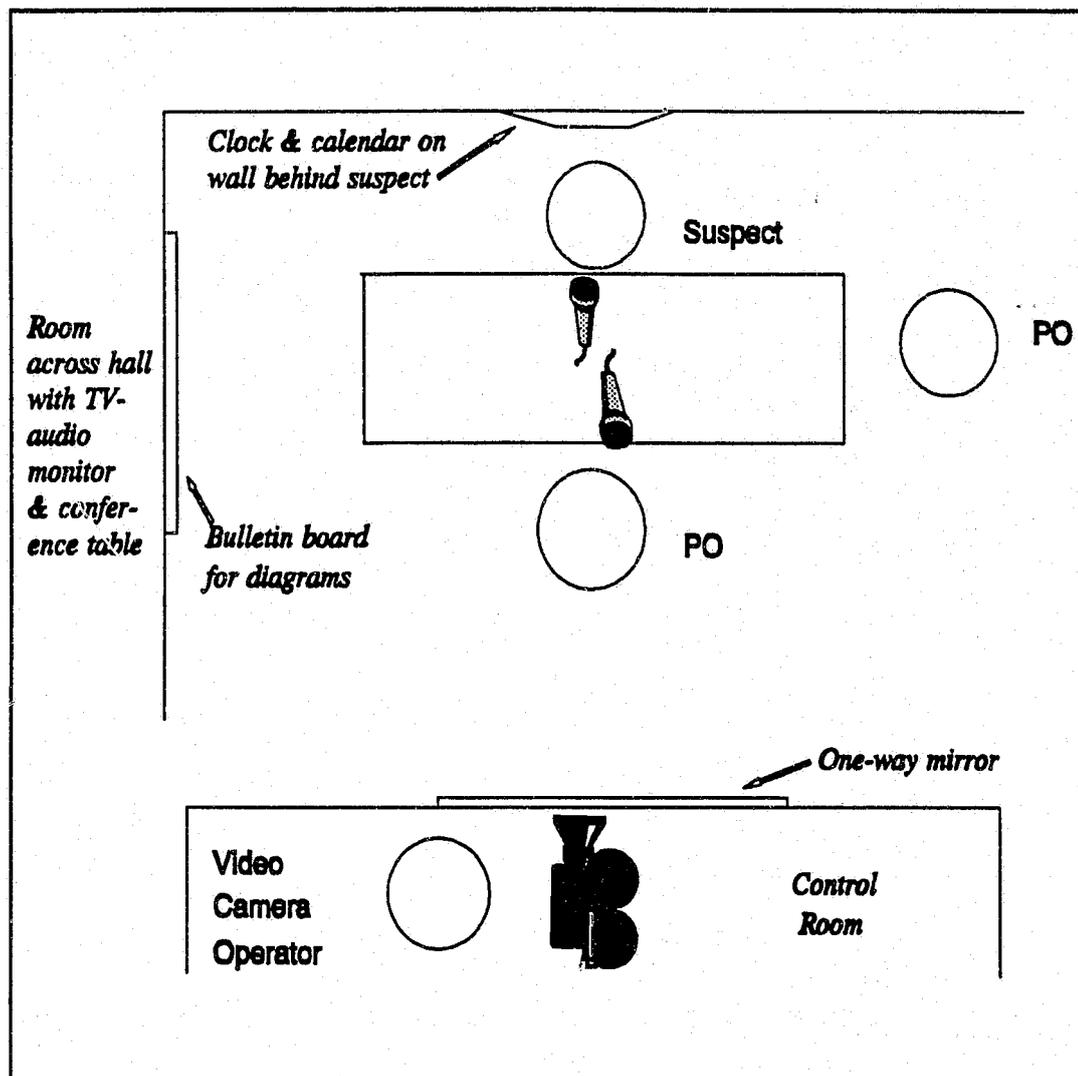


Figure 6: Denver Police Department

unobtrusive in its videotaping without making any effort to conceal the fact of the videotaping.

An important dimension on which the departments whose room layouts are depicted differ is in the participants who are included in the picture frame. In some departments, the officer(s) conducting the videotaped interview are visible; in others, only the suspect is seen. In several of the room layouts, the reader will observe that if the detective(s) are in the picture frame, they are visible only in a profile shot. In Denver, the viewer sees the back of the head of the lead interrogator and the side of the face of his or her partner. Fort Wayne and St. Louis solve this potential problem (it could be problematic in that the defendant could claim the interrogator used menacing facial expressions for coercive purposes) by placing the suspect and interrogating officer on the same side of the table facing the camera straight on.

Even if the camera takes a frontal view of the participants' faces, camera *angle* is important, for if the camera is mounted too high on the wall and thus shoots down at the suspect from above, it will often be difficult to see the suspect's facial expression if he tilts his head down during the interrogation. The Houston and San Diego configurations illustrate situations in which the high mounting of the camera may cause a loss of such information about the suspect's demeanor at times during the interview.

The St. Louis Police Department's interview room, while simple looking in the floor plan diagram, encompasses professional television studio equipment. The control room, for example, is fully equipped for professional video and audio editing. The interview room ceiling is covered with TV studio lights to properly illuminate the suspect and officers involved in the interrogation. An undistracting background is provided by using a white cloth drop, which hangs on the wall behind the interview participants.

The San Diego interview room, as we note in Chapter 5, has been criticized by some practitioners for its poor audio recording arrangement. The microphone is concealed inside a thermostat on the wall, producing both echo problems and problems in picking up soft-spoken individuals. The camera is mounted in open view on the ceiling, and this downward angle has also been criticized by some for occasionally losing facial expressions when the suspect tilts his or her head downwards. The blackboard at the back of the room allows the interrogating officers to diagram details of the crime scene as provided by the suspect and to capture those as part of the interview evidence.

The current layout of the Tulsa Police Department's video interview room is about as basic as such rooms get. A self-contained camcorder (housing the camera, recording unit and built-in microphone) is mounted in open view on a tripod in a corner of the room, and it shoots between the two detectives at the suspect, who sits under a clock mounted on the wall. This format illustrates that it is possible to set up a video recording room at very modest expense.

The Tulsa Police Department has plans, however, to modify the video room in the homicide division, and a comparison of the two diagrams presented here shows that there are two principal objectives in the change: (1) to get a better audio recording (by placing a microphone on the table in front of the suspect rather than using the built-in microphone on the videocamera); and (2) to remove from the interview room the distraction of the videocamera on the tripod and the camera operator (by locating them behind a one-way mirror in an adjacent room). The microphone that will be placed on the table in the interview room (to overcome the ambient noise problems (noted in Chapter 5) that stem from using the microphone currently attached to the camcorder, is a flat plate that measures about three inches square and rises only about a half-inch from the table surface. Such microphones are common in many other settings. They greatly reduce ambient noise (reverberation and echo) by reducing the number of angles from which they will accept sound—thus "ignoring" ricocheted sound waves and "accepting" primarily those that come in a straight line from the sound source.

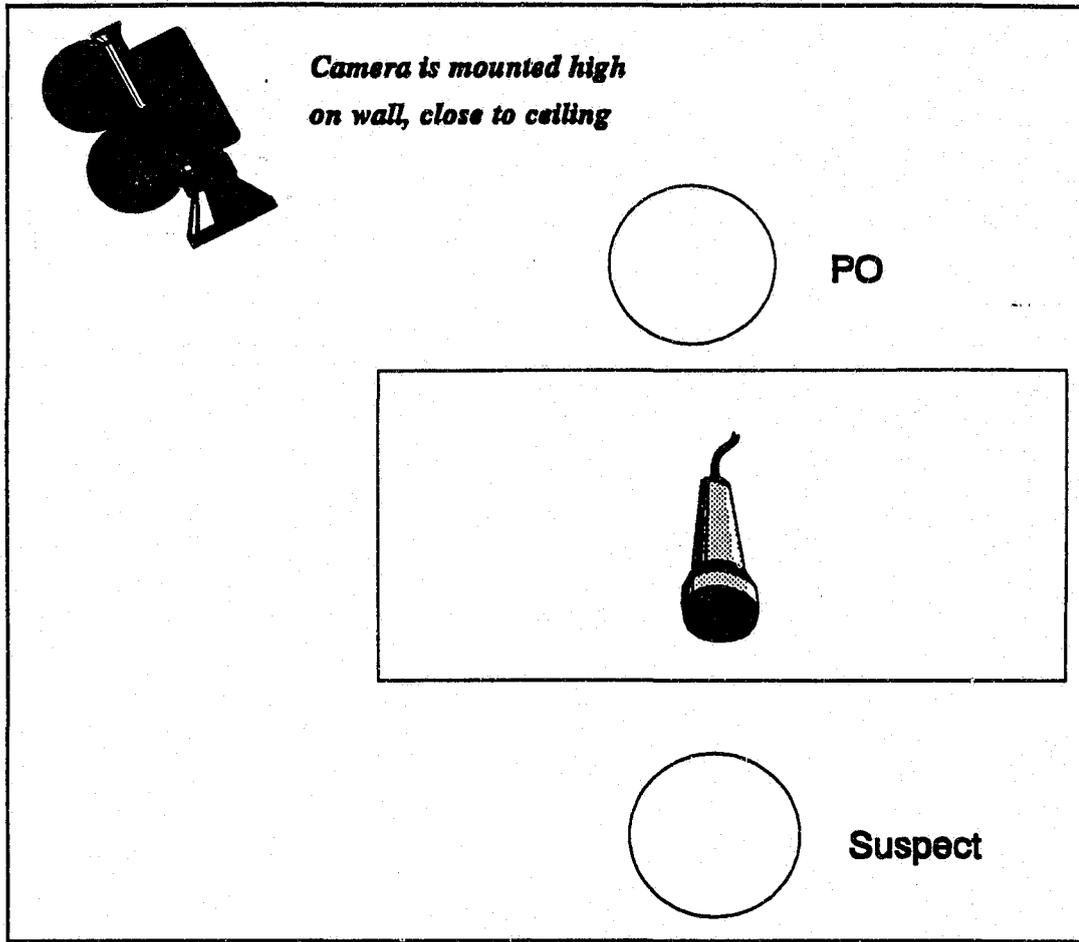


Figure 8: Houston Police Department

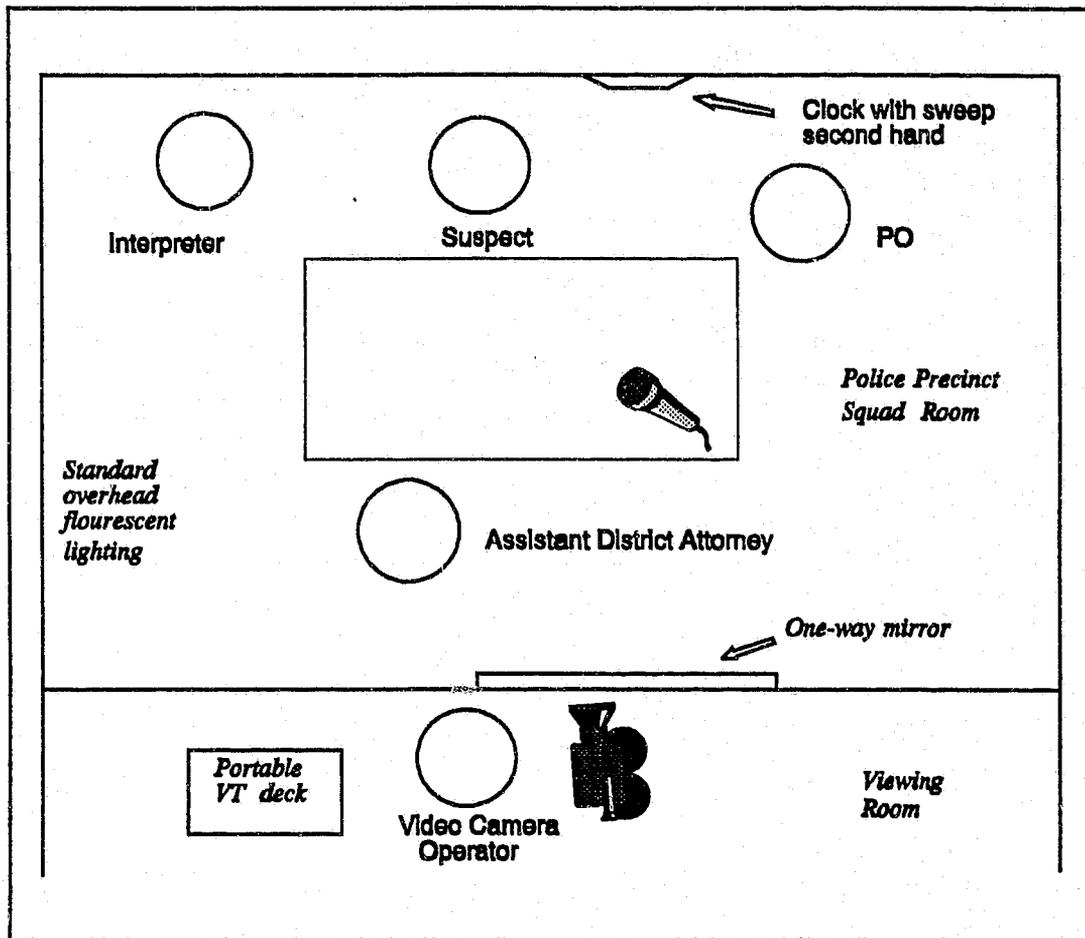


Figure 9: NYPD Precinct Stationhouse Layouts for Videotaping Suspect Statements by Bronx District Attorney's Office

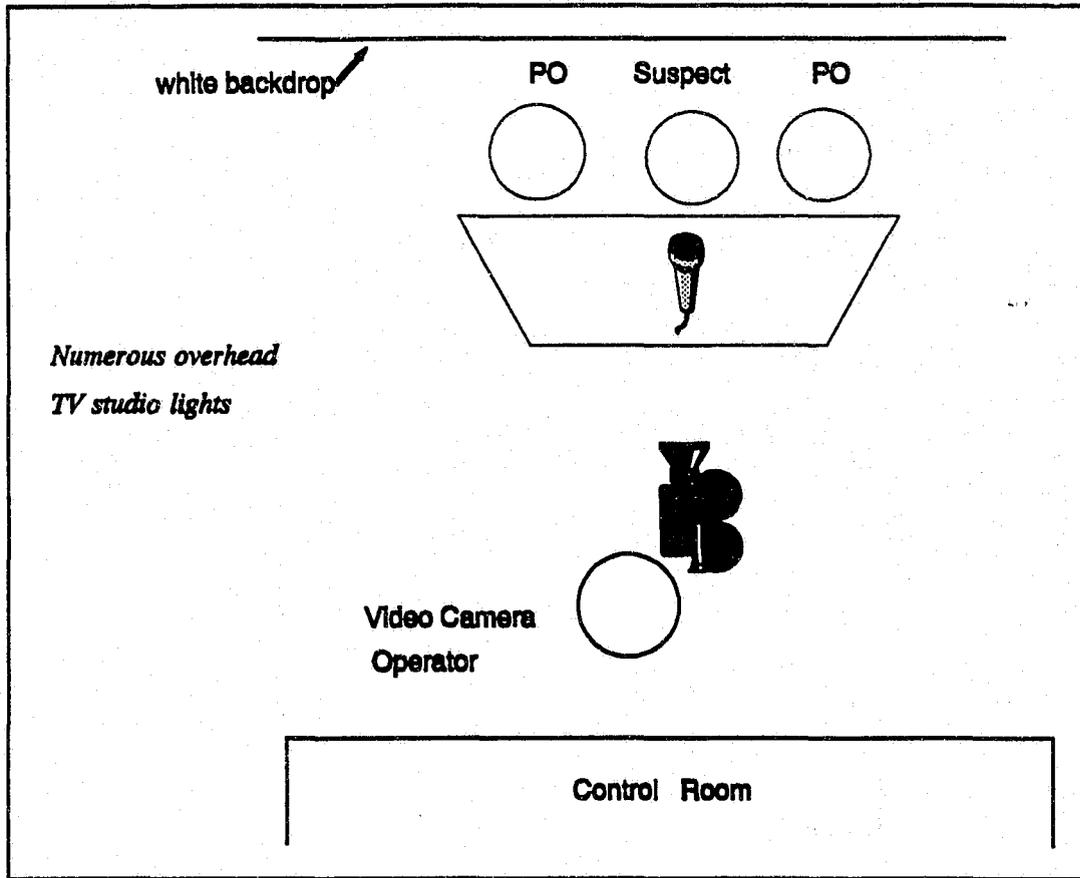


Figure 10: St. Louis Metropolitan Police Dept.

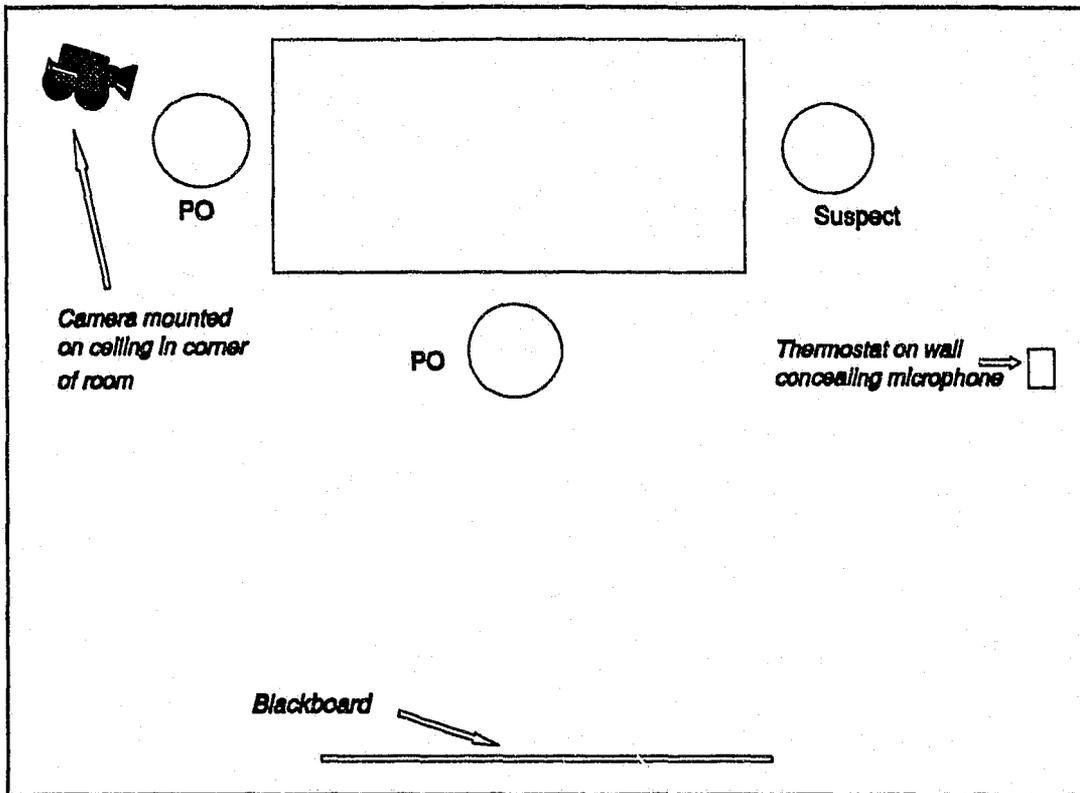


Figure 11: San Diego Police Dept.

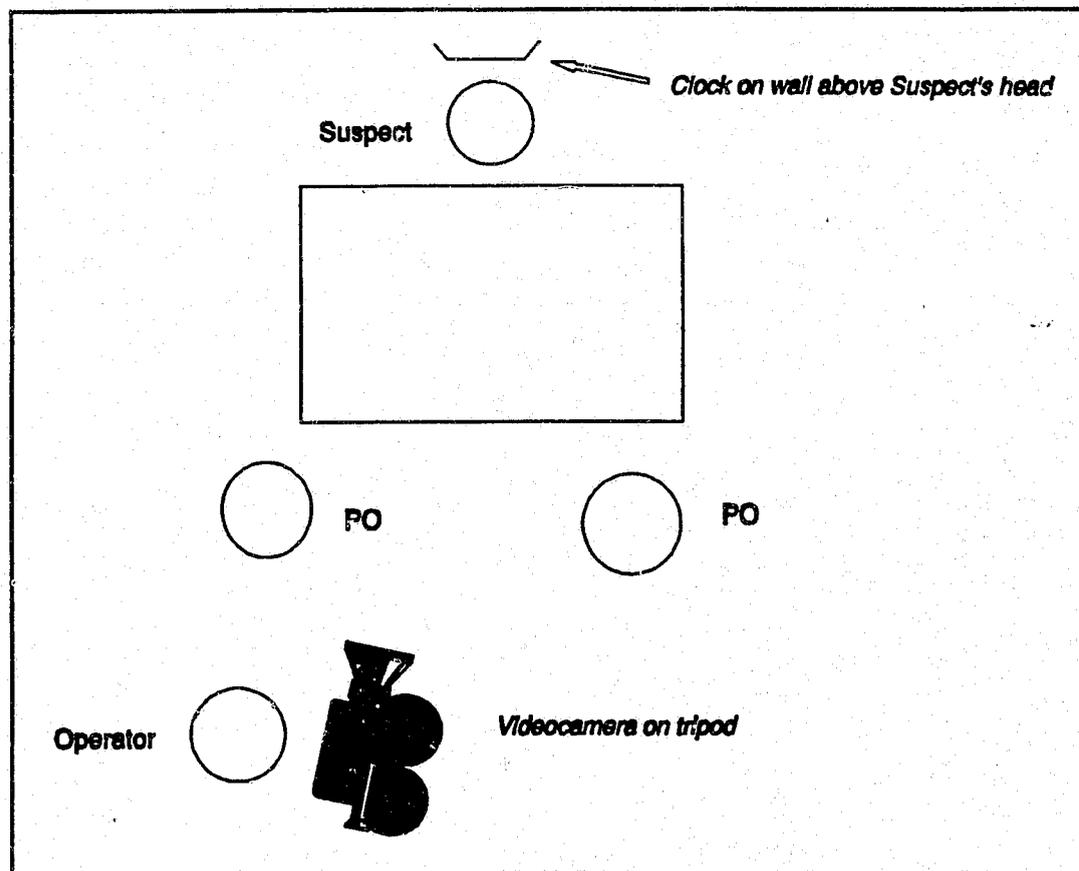


Figure 12: Tulsa Police Dept. Current Homicide Div. VT Room Layout

5. Video Equipment Used, Cost of Acquisition and Maintenance, and Agency Which Bore Start-Up Costs

The principal distinction amongst the site visit agencies concerning the type of video equipment they use is whether they use high-end consumer equipment or professional television equipment. Of the dozen agencies, two (the Bronx DA's Office and the St. Louis Police Department) have professional, commercial television quality video production studios. These facilities are capable of not only recording high quality tapes but of doing expeditiously any editing or duplication that may be required. The Huntington Beach Police Department, while not equipped for professional-quality "post production" work (editing, and other processes following the master recording process), does employ state-of-the-art equipment for the recording of the interviews. In Huntington Beach, the camera uses a "pin hole" lens to shoot through a finishing nail head-size hole in a piece of molding on the interview room wall.

All but two of the site visit agencies (Burlington, Massachusetts and San Diego) make color video recordings. Black and white videos have the advantage of providing clearer images but the disadvantage of masking certain information which might be

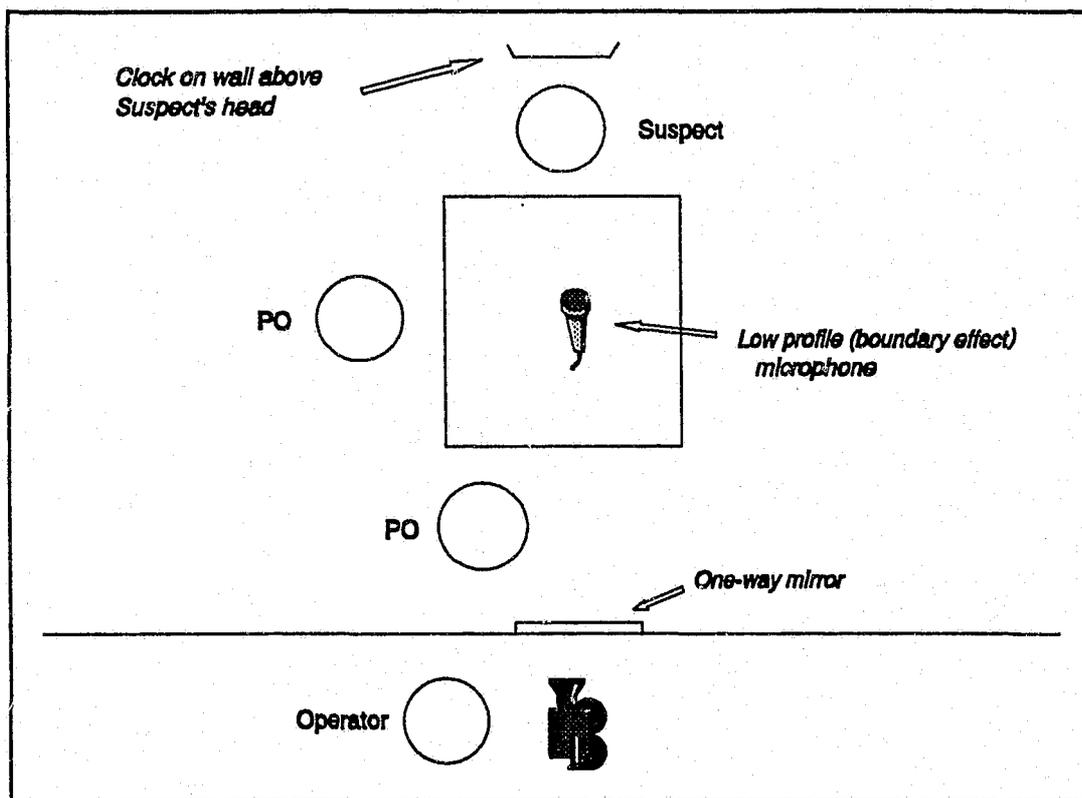


Figure 13: Tulsa Police Dept. Homicide Div. Planned VT Room Layout

pertinent (e.g., a skin discoloration on the suspect symptomatic of physical abuse and colors and hues of items of evidence insofar as that may be pertinent to an investigation).

In several of the departments, the video and backup audio recording equipment used is recovered property, which cost the agency nothing. In some instances, camcorders are used, typically mounted on tripods; in other departments, there is a camera mounted in a fixed location, which feeds a videocassette recorder (the camcorder is the commonplace consumer item which has the recorder housed in the same compact unit that contains the camera).

Where the equipment did not come to the detective squad by way of recovered property, we got some general estimates of the cost of purchasing the necessary audio-video machinery and of renovating the interview rooms so they are sufficiently soundproof and properly lighted to permit quality recordings to be made. In Denver, for example, police officials estimated they spent \$30,000 for one fully equipped videotaping room (their second room is basically a regular interview room into which they wheel a videocamera on a tripod when the second room is needed for videotaping). There were immediate offsetting savings to the criminal justice system in Denver due to the fact that the adoption of video documentation prompted the elimination of three court stenographers from the County payroll who had been used to take suspects' written confessions. In Huntington Beach, the Police Department spent \$7,000 to \$10,000 for the remodeling and equipping of the interview room for covert videotaping. To prevent

excessive reverberation on the audio recording, the interview room was furnished with floor carpeting and acoustical tile on the upper half of the walls and on the ceiling.

Kansas City, too, spent approximately \$10,000 for the initial setup of its video statement room and the acquisition of needed equipment. The Orange County Sheriff's Department estimates having spent about \$40,000 to purchase equipment and remodel the interview room and adjacent equipment control room. The OCSD also indicated that yearly equipment maintenance and blank tape purchase runs around \$2,000. The Metropolitan Police Department in Washington, D.C. estimates its equipment and interview room soundproofing cost about \$5,000.

The Bronx County District Attorney's Office received a \$79,000 LEAA grant in the early 1970s to experiment with videotaping confessions. The bulk of these funds were used to establish a professional television-quality video production studio, a facility which seems to be put to excellent use, although it also seems clear from our site visits to other locales that nothing nearly so elaborate is essential to make acceptable quality videos of stationhouse interrogations. In part the expense in the Bronx resulted from the volume of cases to be handled and the necessity to equip several crews of video technicians to respond simultaneously to different police precincts to take statements on unrelated homicides.

With the price of video equipment in the 1990s generally lower for perfectly acceptable quality gear than was true in the early 1970s, Bronx DA's videotaping expert Sean Walsh reports that the cost of constructing "one complete interview setup—playback equipment and editing with top of the line equipment—is \$25,000. This," he observes, "is less than the cost of one police car or police officer's salary." He acknowledges that "multiple set ups for larger departments will be more," but reports that the Bronx DA's office "replaced all [its] equipment—five field units, five playback setups, and editing—for \$60,000. I doubt," he suggested, "anyone in the world really will need more than we have, so cost is very low" (Walsh 1992: 2-3).

In most jurisdictions, the county prosecutor's office has its own video playback equipment (some of the offices also had their own video statement recording facilities, which they often made available to smaller police agencies in their jurisdiction which lacked their own video equipment). Commonly, the prosecutor's office brought its video playback equipment (tape player and monitor) into whichever courtroom needed to view a video statement for pre-trial or trial purposes. The video equipment often was kept on a cart in the courthouse and wheeled from courtroom to courtroom as needed.

F. Transcription of the Audio Portion of the Video Recording

As indicated in Chapter 3, in England, Australia, Canada and other locales a central concern in the debates over the advantages and disadvantages of electronic documentation of suspect interrogations and confessions has been the potential to bury criminal justice systems in paper transcripts. Home Office researchers in the United Kingdom concluded flatly that the only way the volume of audiotaping they recommended (which was the audiotaping of virtually *all* felony interrogations) would be feasible is if all key actors in

the criminal justice system—police, prosecutors, defense counsel and judges—agreed to forgo requesting written transcripts except in the most complex cases. In the United States—where the adoption of audio and video recording of suspect interrogations and confessions occurred in the absence of any significant national research, planning and debate concerning the wisdom of particular practices—transcription in many jurisdictions has become the rule rather than the exception.

Our national survey did not explore transcription practices, but we did inquire about this issue in our site visits. At one stage or another of criminal justice processing, it is common practice in virtually all the jurisdictions we visited to prepare written transcripts. In some locales the police typists produce the transcripts; in others prosecutorial staff do this work. In Fort Wayne, reportedly, police typists "rebelled" at having to transcribe audiotapes. Said one police respondent: "The police could not prepare transcripts in our community. The secretaries would declare war." So in this jurisdiction the transcription work is normally done by the prosecutor's staff, after a charging decision has been made.

In some jurisdictions (such as Kansas City and Orange County) the transcript is automatically prepared immediately after the completion of the interview. More often, however, officials wait to see whether prosecutors expect to go to trial. In most of the locales, court rules (either system-wide rules or the rules of particular trial judges) mandate that transcripts be prepared whenever a case is going to be tried and the video will be offered in evidence. San Diego prosecutorial staff, for instance, indicated that in California Appellate Court Rule 203.5 (a statewide rule) requires a transcript whenever a video will be presented as evidence at trial.

Interviewees indicated that a typical transcription effort will take four to six times as long as the running time of the recording—i.e., a 30-minute tape would take from two to three hours to transcribe. This would normally be followed by a review of the transcript by professional staff in the police department or prosecutor's office, followed by a brief period for the typists to make final corrections. In Huntington Beach, where the video equipment was state-of-the-art, the clerical pool had not yet begun using word processors at the time of our site visit (but was planning to get them soon), so preparing transcripts on conventional typewriters would often take eight to ten times as long as the running time of the tapes to be transcribed. A transcript of a four-hour interview in Huntington Beach typically ran about 120 pages, and a detective would consume about eight to ten hours proofing the transcript, at which point the secretary would spend another three to four hours correcting it.

In the Orange County Sheriff's Department (the county in which Huntington Beach is located), the cost of clerical staff using word processors to prepare transcripts of two-hour interviews (which is a typical length in that agency) can be estimated as follows:

8 hours of typist's time @ \$14 per hour
3 hours of detective time proofing and correcting transcript
(including benefits, a detective costs about \$30-\$35 per hour)

So, excluding materials (paper, computer disks, etc.), the personnel costs for creating the

transcript of a two-hour interview in Orange County are approximately \$217. This expenditure offsets the costs, in the days before audio or video recording, of having a detective or secretary type the suspect's written statement and then waiting for the suspect to read and decide whether to sign it. Orange County Sheriff's deputies estimated that in the old days it used to take an hour or so to type the suspect's written confession, have the detective proof it, correct it, and get it signed by the suspect. Given workloads in Orange County, law enforcement officials reported that normally it takes one to two weeks to get a transcript prepared, proofed, and corrected after the completion of the videotaped interview. In this jurisdiction, preliminary hearings typically will be held a couple of months after the defendant's arrest.

Typically, in jury trials the jurors are given copies of the transcript so they can follow along on it as they view the video statement. In Washington, D.C., prosecutorial interviewees indicated this practice is required by local case law. In some jurisdictions (such as Kansas City), jurors are only given copies of the transcript if the audio track is difficult to understand. In Fort Wayne, prosecutors reported they "often" provide the jury with transcripts to help them understand mumbled comments on the video.

Where video tapes contain inadmissible material (e.g., discussion of other crimes, of the suspect's background, or of polygraph tests) or great redundancy, it is not unusual—especially in the jurisdictions where entire stationhouse interrogations are recorded—for jurors to be given edited videotapes and transcripts conforming to the edited versions. The need to make edited videos that are not jarring to watch accounts for the decision in at least a couple of the jurisdictions we visited to acquire reasonably sophisticated video editing equipment and to employ skilled video technicians to do the necessary technical work.

Rarely does a trial judge require court reporters to take down the audio content of the video statement while it is being played in court. Most often, the video, together with the previously prepared and uncontested transcript, becomes part of the trial record and is available for review by the appellate court.

Prosecutors had different feelings about the importance of having a transcript prior to making the charging decision. Most expressed interest in having such a document, saying it facilitated their review of the case, allowing them to quickly turn back to a particular statement to check it for consistency with other physical or oral evidence. In Tulsa, however, prosecutors typically conduct their first review of the police investigation and make their charging decision solely on the basis of the videotape and police summaries of the investigation. The Tulsa police transcribe the audio portion of the suspect's statement only after a decision has been made by the prosecutor to file charges.

In Denver, by contrast, one of the public defenders whom we interviewed reported that even in cases where prosecutorial staff do not feel a need for a transcript, she has one prepared for her own use, even at the earliest stages of processing (e.g., suppression hearings), because she finds transcripts helpful in preparing witnesses and in impeaching them on the stand—again, finding it easier to locate specific material quickly on paper than on a video recording. But defense preferences on this—and other points—differ. An

equally experienced public defender in Kansas City indicated a willingness to operate as a routine matter without transcripts of the vast majority of videotaped statements. In Orange County, everyone—the District Attorney, public defender, private defense attorneys and judges—wants transcripts for purposes of processing cases.

Several prosecutors also said the transcript expedites their assessment of charges and trial preparation because they can read more quickly than they can review the video. A Denver police administrator suggested, to the contrary, that one of the benefits of videotapes to prosecutors at least theoretically should be in making efficient use of their time since a prosecutor could watch the videotape while at the same time skimming a written document, just as people generally might watch a television program while glancing at reading matter. In any event, most prosecutors indicated that they view the transcript as important *supplements* to videos rather than as substitutes for the electronic records.

In Washington, D.C., the U.S. Attorney's Office (which prosecutes local crimes committed in the District) explained the point at which videos and transcripts are typically examined in the prosecutors' intake of criminal cases: First the prosecutor talks with the detective when a case is brought in. Then, within the first day or two, the prosecutor looks at the videotaped suspect statement. Thereafter, the prosecutor requests a transcript. In D.C., the grand jury reporters often transcribe the audio portion of the interview (although sometimes, in accordance with a police department order requiring that police personnel prepare the transcripts, police clerical staff do this work). Prosecutorial staff, as in other locales, find it much easier to review sections of an interview and to compare them using a transcript than a videotape, which would have to be repeatedly rewound or run ahead to relevant segments. Our respondents said candidly that they believe prosecutors do better work with transcripts available than they could do in their absence because of the difficulties that would be presented for efficiently reviewing statements for consistency and for their evidentiary significance.

An emerging technology might some day provide a high-tech solution to the difficulties of quickly finding relevant passages on the video. Interactive video technology, combined with voice-recognition equipment and automated transcription technology may make possible the recording not only of the visual and audio portions of the interview but the automatic transcription of the audio track and the inclusion of the transcript on the computer or TV screen along with the picture. Then viewers could type in a key word, as they do now with word processors, and have the desired segment of the recorded video appear in an instant. At present equipment exists that places audio, video, and transcript on the same recording, but stenographers must key in the transcript (see Kurtz 1992; Bove and Rhodes 1991).

Sometimes, prosecutors' preferences for a written transcript is amplified by the difficulty of getting ready access to a video player and TV monitor when and where they want to work on case preparation. This point about the inconvenience of working with a video rather than a transcript was echoed by a private defense attorney whom we interviewed in Washington, D.C. An experienced murder trial lawyer, she indicated that, if video technology advances to the point where it is just as easy and quick to skip around

on a video tape as it is to flip the pages of a written transcript, she could not imagine insisting upon having a written transcript. She noted, however, her perception that the legal community is not very advanced technologically and that it took her a long time to accept a word processor in place of her dependable typewriter.

Perhaps the central point that emerges clearly from our findings on the issue of transcription is that, despite predictions in the international literature that electronic documentation of suspect interrogations and confessions would only be feasible if criminal justice practitioners eschewed transcription, the experience in numerous American jurisdictions has been to the contrary. It is true, of course, that police agencies in the States are not videotaping the large percentages of their felony case interrogations that have been contemplated in the United Kingdom and elsewhere, and this—coupled with the common practice here of taping *recaps*—is very likely a significant explanation for how criminal justice systems in this nation have been able to afford electronic documentation of suspect statements while transcribing those statements for use by prosecutors, defense counsel, and courts.

G. Procedures for Prosecutors and Defense Attorneys to View and Receive Copies of Videotapes

In most of the locales we visited, prosecutors are given duplicate copies of the videotapes recorded by the police. Defense attorneys sometimes view the tapes at police facilities (as in Fort Wayne), more often in prosecutors' offices. Not infrequently, defense attorneys will send blank videotapes to the prosecutor's office to have a defense copy made; sometimes the defense will obtain a copy of the tape only through more formal discovery procedures. In one jurisdiction, a defense attorney indicated that sometimes the DA's Office is uncooperative with defense efforts to view or obtain a copy of the videotape, presumably because the video would be of strategic value to the defense. Occasionally, the prosecutor's office might attempt to obscure the fact that a video statement was even taken from the suspect. While one might assume that such a ploy would be fruitless since the defendant could simply inform his or her attorney that a video existed, sometimes a defendant, seeking to maintain a front of innocence, thinks it will help his or her cause to keep the defense attorney unaware of the existence of a confession made to police.

The point in the process at which defense attorneys and their clients can view video statements varies from jurisdiction to jurisdiction. For instance, in Bronx County, defense attorneys can view the videos only after a defendant has been indicted. In Orange County, *defense attorneys* generally view the videotape within two to four weeks of arrest. But their *clients* often will see their videotaped statement for the first time in court—at trial. The public defender in Orange County complained during our interviews of being disadvantaged because of an inability to show the videotape to his clients while they are incarcerated pending trial. We will return to a related point—concerning the use of video confessions by defense attorneys for "client control" purposes—in the next chapter. In San Diego, where police will copy the videotape on a blank tape furnished by defense counsel, they may not be able to do so for a period of up to six weeks, during which the master of the video will be at the prosecutor's office awaiting duplication by the DA's

technicians.

The cost of providing defense counsel with copies of videotapes commonly is shared by the defense attorneys (either in cash or by providing a blank videotape to either the police or the prosecutors for duplication) and by the office which takes the time and uses the equipment to make the copy. This cost-sharing practice is followed in the Bronx, Fort Wayne, Kansas City, San Diego, and other jurisdictions. In Denver, for instance, private defense attorneys wishing to have a copy of the video statement must purchase it from the DA's office for \$50.00 (public defenders can acquire the copies at a discount). In Orange County, private defense attorneys are generally charged about \$25 for a copy of the videotape. If private defense attorneys want an audiotape containing the audio portion of the recorded interview, they can obtain that from the Sheriff's Department for about \$8 to \$10. The Sheriff's Department absorbs the cost of the tape duplication for tapes provided to the prosecutor's and public defender's offices.

H. Frequency With Which Videotapes Are Introduced in Evidence at Trial

The first relevant variable here is how often serious felony cases (in particular, homicide cases) go to trial rather than end in guilty pleas in any given jurisdiction. In some of the sites we visited, such as Houston and Washington, D.C., homicide cases—especially Murder 1 cases—are rarely settled by negotiated plea (this is a relatively new policy by the U.S. Attorney's Office in the District of Columbia, but a long-standing practice by the Harris County prosecutor, serving Houston and surrounding communities). But since the videotapes in Houston are mostly of *robbery* suspects, and these cases typically end in guilty pleas, videotaped confessions are rarely seen in court in Houston. In such locales as Tulsa, St. Louis, and New York City, pleas are common in homicide cases. One experienced homicide detective in Tulsa, who opts to make frequent use of video to document suspect confessions, reported that over his career on the force there have been guilty pleas in approximately 98 percent of the cases he has investigated.

When cases are tried, however, there is still some variety in practices concerning how often videotaped suspect statements would be offered in evidence. In most of the jurisdictions, if a video exists, it generally will be introduced. But in Orange County, for instance, if a video contains relatively little incriminating evidence and a fair amount of exculpatory evidence (e.g., defendant appears insane), the prosecution will not introduce the tape. If the defense counsel seeks to introduce it, he or she then opens the defendant to cross examination, so this is not always an easy tactical decision for the defense.

Another crucial variable affecting the frequency with which video statements become part of trial records is whether defense efforts to suppress the videos succeed with any regularity. The consistent answer in all of our site visits was that suppression motions rarely succeed; they infrequently succeeded in homicide cases even with prior forms of documentation, but they almost never succeed with video documentation. There are rare exceptions in which videotaped confessions have been ruled inadmissible, but even in such instances (or when prosecutors decide for other reasons not to introduce the video) the defense knowledge that prosecutors have the video can have a trial impact. As one

prosecutor in Orange County put it: "Even if you don't introduce the videotaped confession, it keeps the defendant straight." In the next chapter, we will explore in more detail the factors that prosecutors and defense attorneys consider relevant in determining whether and how to use video statements as part of the State's or defense's trial strategy.

I. Procedures to Safeguard Tapes After Recording and Policy/ Practice on Re-Use and Retention of Recorded Videotapes

The literature from England, Scotland, Australia, and Canada has noted that the prospect of tape tampering is an issue that needs to be addressed if electronic documentation of suspect interrogations is to accomplish its purpose of lending greater credibility to the oral evidence. In our various site visits, we encountered no concern whatsoever about intentional tampering with interrogation videos, and we explicitly asked this question of the police, prosecutors, public and private defense attorneys, and judges whom we interviewed. Even in locales—such as St. Louis and the Bronx (and in the Orange County District Attorney's Office)—where tape editing equipment would permit technicians to make "clean" edits if they chose, nobody suggested that video confessions had been intentionally altered in the "post production" phase of tape preparation.

The procedures followed by the departments to both control access to the master videotapes and to safeguard them against accidental damage varied somewhat across our site visit locales but typically entailed inventorying the tapes as any other case evidence would be inventoried. In no instance was the master video treated as the investigating officer's personal "electronic notebook" and kept in his or her personal possession. In Denver, however, two master videos are recorded simultaneously during the interrogation, and one of them is given to the investigating officer for use in the further investigation, with the other master becoming the "official" master tape sent for safekeeping to the property room. Invariably, there was a central repository for the recorded tapes (either adjacent to the videotaping interview room or in the evidence/property section of the department).

Among the other steps taken by many of the departments to safeguard the recorded videotapes are removing the tabs on the tape housing, which prevents the tapes from being accidentally recorded over, making a backup copy of the video, having the interrogating officer immediately label and initial the recorded tape, and maintaining continuity logs to keep track of who gets access to the videotape.

There are other risks to videotapes that most of the police departments do *not* seem to attend to—such as accidental erasure caused by placing the video in close proximity to a strong magnetic field (e.g., any equipment containing a motor) or deterioration due to exposure to high humidity or extreme temperature ranges. The St. Louis Police Department is one of the few that attends to the second possible risk, by keeping the recorded videos in fireproof cabinets in a specially air conditioned room.

Most of the agencies we visited do *not* reuse recorded videotapes, at least not when the suspects interviewed are being investigated for *homicides*. The Denver Police, in cases other than homicides, used to destroy or release for re-recording the videotapes as soon

as the relevant case was decided at the trial level and the assigned detective authorized the tape's release. Generally, this meant that videotapes in nonhomicide cases were kept for somewhat longer than a year. In Fort Wayne, the Department during the early years of its experimentation with videotaping confessions reused recorded videotapes after the relevant case was disposed of in court. Even then, the Department's policy was to keep homicide-related videos for at least five years. Today, the Fort Wayne Police Department generally does not reuse videotapes from any type of case.

The Houston Police Department (which videotapes primarily in robbery cases) keeps videotapes for ten years before releasing them. It is not clear whether at that point the tapes would be reused or simply destroyed, although there would be some concern from a technical point of view as to whether ten year old tape would be sufficiently fresh to make a high quality recording that in turn would be stored for another ten years (magnetic recording tape deteriorates over time). The San Diego Police, who had been videotaping suspect interviews for about three years as of the time of our site visit, intended to keep the videos through the last possible appeal. As other agencies, the San Diego Police Department did not plan to reuse previously recorded tapes, explaining that to have a video recording containing portions of old interviews might look to some as if the tape had been tampered with.

The storage space consequences of an agency's decision to keep oral evidence videos for a long time are obvious in the larger jurisdictions. The Bronx DA's Office, for instance, whose policy is to keep the suspect videos "forever," as of October 1990 had over 10,000 master videotaped confessions on file. In Tulsa, the police policy is likewise to never destroy the video confession in capital cases (seeking the death penalty). But, due to space limitations, the Tulsa police intend, after the appeals process or the time allowed for filing appeals has run, to destroy video recordings of homicide suspects when the individuals entered guilty pleas resulting in relatively short sentences (e.g., about ten years).

J. Length of Departmental Experience Videotaping Suspect Stationhouse Statements and Prior Use of Audiotape to Document Such Statements

As of the time our national survey was administered in February 1990, the responding departments that employed videotape to record suspect stationhouse interrogations or confessions displayed a wide range of experience with this technology. Nearly half had been using video for this purpose for five years or longer. Figure 14 shows the array of experience. Our site visit agencies similarly displayed a wide range of experience with videotaping—from three to 20 years—as noted in Chapter 2.

Typically, departments progressed from taking written statements to making audiotapes to making videotapes of stationhouse interrogations. This is true for Denver, Fort Wayne, Huntington Beach, Kansas City, Orange County, San Diego, and Tulsa among our site visit agencies. Nationally, of those departments which currently were videotaping interrogations or confessions, the vast majority had previously audiotaped at least some stationhouse statements by crime suspects for a period exceeding four years.

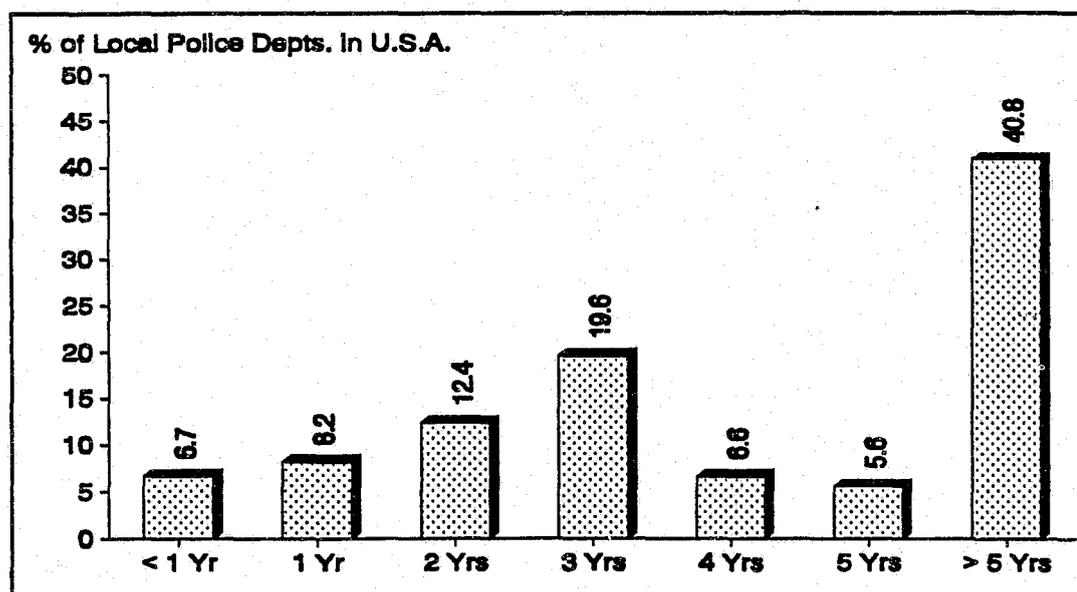


Figure 14: Number of Years U.S. Police Departments Have Been Videotaping Interrogations/Confessions as of February 1990

Figure 15 displays our survey findings on this point. Interestingly, however, a small percentage (5.8 percent) of departments "leapfrogged" in technology directly from written documentation to video documentation as a primary method of capturing the content of the statements. This was also the case in four of our case study sites—Houston, the Bronx, St. Louis, and Washington, D.C. Note that two of these agencies—the St. Louis Police and the Bronx DA's Office—made the switch to video recording in the early 1970s, before many of the departments had even begun to make *audio* records of interrogations. As of the time of our site visits, all of our site agencies made audio backup tapes simultaneously with the recording of the master videotape.

K. Other Uses Departments Make of Video Technology Besides the Recording of Suspect Stationhouse Interrogations or Confessions

Some of the reaction police investigators seem to have to the use of video technology in the interrogation room is, as with most innovations in most organizations, almost certainly a question of familiarity and comfort with the technology. In this regard, it is commonsensical to suggest that, as the American public has become increasingly familiar and comfortable with video equipment, so have police officers. Moreover, as police agencies have made more widespread use of video technology for other purposes besides documenting stationhouse interrogations, the idea of using video as a tool of the trade has become less jarring.

Until recently, when citizens and news media in New York City, Los Angeles, Kansas City, Long Beach, Fort Worth and other locales have begun using video

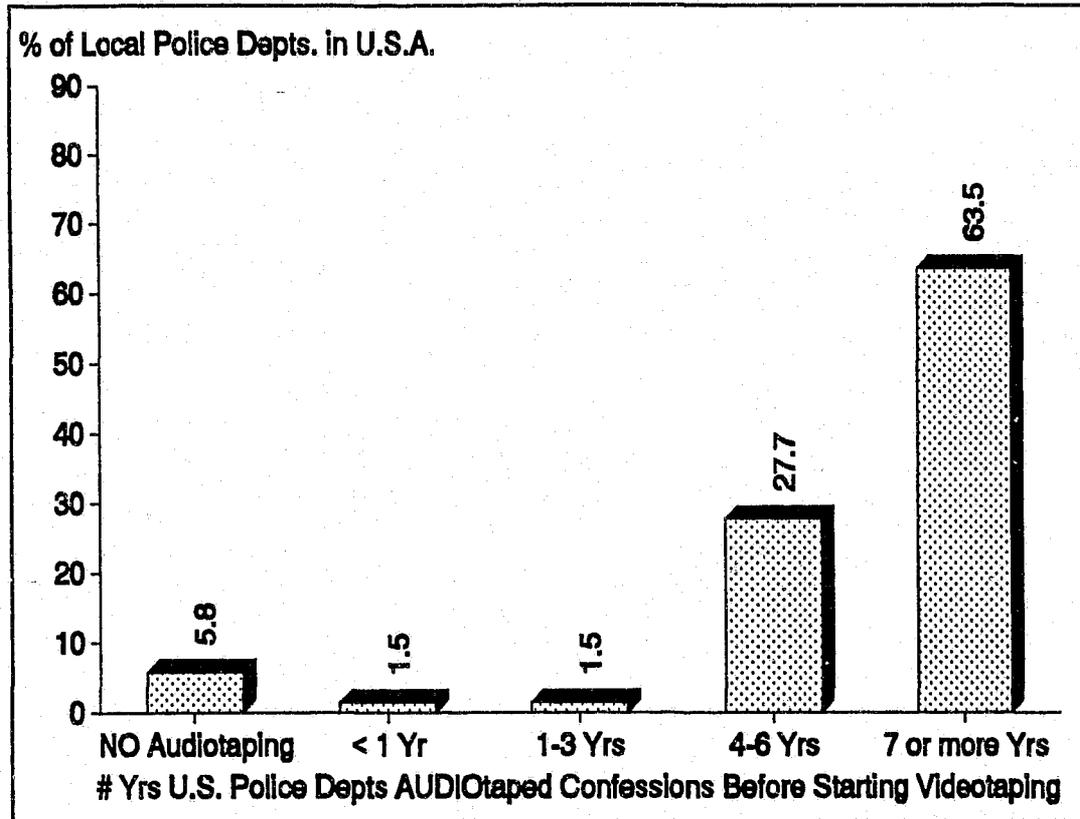


Figure 15: Departments' Experience Audiotaping Suspect Statements Prior to Commencing a Videotaping Program

equipment as a tool to document police *abuses*,⁹ there seems to have been a relatively steady progression of police comfort with video as a "friend" of law enforcement. Video remains no less useful to the police, of course, but now it has become a tactical tool used by others as well.

What are some of the principal uses to which police departments have been putting video technology? The findings from our national survey are set forth in Figure 16, which shows the percentage of the nation's local police departments and sheriffs' agencies currently deploying video for the indicated purpose, the percentage not doing so (and not

⁹ The videotaped beating of motorist Rodney King by Los Angeles Police officers in March 1991 became such a riveting event for Americans that it dominated the print and electronic news for weeks on end. Reflecting on the way in which amateur video recordists were altering the face of American privacy, *Newsweek* Magazine ran a length cover story in its July 2, 1991 issue entitled "Video Vigilantes: Cops, Crooks, Adulterers—No One is Safe From the Camera's Eye." Among other points made in the series of articles that bear on our current topic, one sidebar quoted differing viewpoints from a New York University law professor and the former federal prosecutor who headed the Abscam investigation concerning whether a videotaped "statement made under duress may seem an open confession" (Cowley 1991: 45).

intending to do so), and the percentage not doing so but planning to do so in the foreseeable future. What these data add to our discussion in Chapter 1 is not the *purposes* for which video is used by police but the relative *frequency* with which police employ video technology for these tasks.

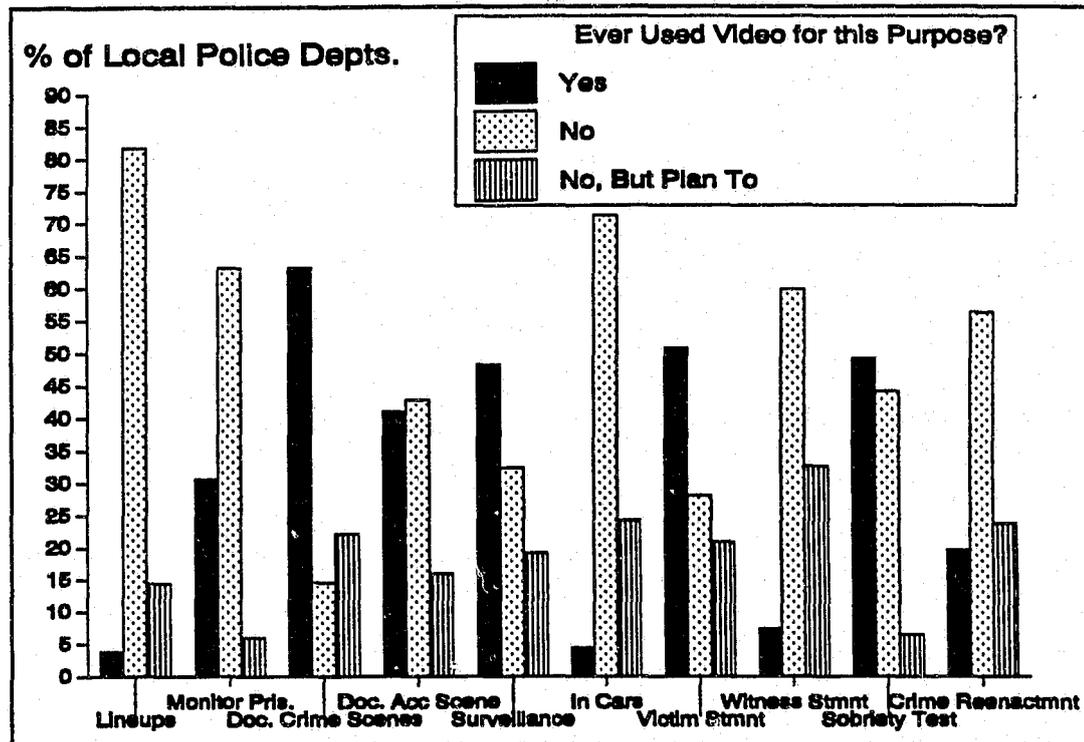


Figure 16: Police Dept. Uses of Video *Besides Documenting Confessions & Interrogations*

The percentages of departments shown in Figure 16 include our entire national sample and thus are indicative of the practices and plans of local law enforcement agencies regardless of size. We saw earlier in discussing the percentage of such agencies which videotape suspect confessions or interrogations that overall, approximately 16 percent of the nation's local police or sheriffs' departments use videotape for that purpose but that, when the smallest departments (those serving populations smaller than 10,000) are put aside, approximately a third of the remaining agencies videotape confessions and interrogations. Similar results would very likely be obtained were we to analyze the data in Figure 16 by eliminating the smallest departments, but we have not derived frequencies for these other uses of video for larger agencies since the principal focus of this research is on departmental deployment of video to record suspect confessions and interrogations.

The 16 percent of the nation's departments which currently videotape *confessions or full interrogations* can be considered in the context of other current uses of video technology. In descending order of popularity, local police and sheriffs' departments nationwide employ video for the following purposes:

■ to document crime scenes	63.4%
■ to record victim testimony (e.g., child molestation victims)	51.0%
■ to record the breathalyzer or other sobriety test of drunk driving suspects	49.4%
■ to conduct surveillance and document undercover operations	48.4%
■ to document vehicle accident scenes	41.2%
■ to monitor prisoners in departmental lockups with closed circuit TV	30.8%
■ to record crime reenactments by criminal suspects	19.8%
■ to document suspect confessions and interrogations	16.4%
■ to record eyewitness testimony (e.g., when witnesses are unable to testify at trial)	7.5%
■ to record in-progress events from video cameras mounted in police vehicle	4.5%
■ documenting lineups	3.9%

These findings may lend additional credence to the finding we report in the next chapter concerning the reasons why departments not now videotaping interrogations or confessions do not plan to commence, for we see here that *it is not simply lack of exposure to video technology that explains reluctance to make an audiovisual record of the suspect interview*. Half or more of the nation's police agencies have used video technology to depict crime scene evidence, record victim testimony, and document sobriety tests, and nearly half have used video in connection with undercover work. Yet, overall, not even one-fifth of the nation's departments (and only about one-third of the larger agencies) have been using video for interrogations or confessions, although there is reason to anticipate steady and perhaps rapid growth in this utilization of modern technology.¹⁰ Our assessment of the reasons for this pattern of choosing and not choosing to videotape interrogations is set forth in the following chapter.

¹⁰ The November 1991 issue of the *FBI Law Enforcement Bulletin* contains a discussion of the various uses of video technology for courtroom presentations, including police videotapes of suspect confessions (Giacoppo 1991). Moreover, in recent times the *general circulation* media have begun highlighting this use of video technology. For instance, a *Newsweek* cover story in the wake of the Rodney King scandal in Los Angeles reported: "Well aware of the power of such evidence [videotapes] in 'your word against mine' cases, law enforcement officials are increasingly making their own videotapes of arrests, demonstrations and confessions" (Beck 1991: 46).

CHAPTER 5: CRIMINAL JUSTICE PRACTITIONERS' REACTIONS TO VIDEOTAPING AND PERCEPTIONS OF ITS EFFECTS

A. Why "Videotaping Departments" Adopted Video Documentation for Interrogations or Confessions and Why "Nonvideotaping Departments" Have Not Done So

1. Reasons for Commencing a Videotaping Program

Although in our site visits we asked a large number of questions about what our interviewees found especially useful and at least potentially unhelpful about the practice of videotaping suspect interrogations or confessions, we were interested at the outset in finding out what first motivated the agency to commence its use of video documentation. In Denver, police responded to court decisions that encouraged the electronic recording of statements. Moreover, the police experience with prior documentation methods left them receptive to improved methods in that jurisdiction: they often found it inconvenient to wait for the stenographer to arrive after being summoned (not infrequently, in the middle of the night). After adoption of *audiotape* as a documentation method, Denver police still found that the accuracy of the tapes was often challenged by defense attorneys. Before launching their video program, Denver police representatives visited both the Bronx DA's Office and one or more jurisdictions in Alaska, where videotape was being used to capture suspect statements at the urging of the Alaska Supreme Court. Another factor that led to interest in the construction of a videotaping interview room in Denver was strong police interest in developing a capacity to videotape the statements of molested children. The availability of the taping room constructed for that purpose also facilitated the use of video to document *suspects'* statements.

In Fort Wayne, the police responded to a prosecutor's office suggestion that videotaping would reduce doubt about the voluntariness of confessions.¹ It was also seen as a tool to help jog the detectives' memories when it came time to testify in pretrial or trial proceedings. San Diego Police adopted video documentation in part to counter criticism over their use of "nice guy" techniques for interrogating suspects. Other reasons cited by interviewees in that jurisdiction for moving to video record-keeping included a desire to adopt the state-of-the-art documentation methods and the convenience of doing

¹ In Burlington, Massachusetts, where we discovered during our site visit that video technology was used more to document the booking process than to capture possibly incriminating conversations held during booking, the police said they hoped through the videotaping to protect the department against claims that prisoners were abused in the booking area.

so in early 1987, when a new police building was being constructed and it therefore would be relatively easy to make the interview room design changes needed to accommodate quality audio-video recording.

In Houston, video technology was first introduced through the taping of lineups (the Houston Police Department videotapes as many as 350 lineups per year). Like some other agencies, the Houston Police obtained a copy of the Bronx DA's Office videotaping manual prior to institution of the video process. The Huntington Beach Police Department, in the 1970s, reportedly found it very useful to videotape a victim under hypnosis, although the police and prosecutors had to labor to convince the court that the interviewers had not planted ideas in the hypnotized victim's mind. This initial use of videotaping evolved into experimentation with video for other purposes, including the recording of suspect interrogations. In Tulsa, video recording of suspect confessions was adopted not as a top-down initiative but after the detectives began on their own to experiment with this documentation method. The detectives were looking for ways to strengthen cases, taking the view that "when you go to court, you never have enough evidence." Seeking to "close the loopholes available to defendants," the detectives began making audio-video recordings of their confessions.

In the Metropolitan Police Department in the nation's capital interviewees reported that videotaping was begun by detectives not because they were experiencing problems with cases but because video technology seemed like a useful investigative tool, which could create an improved item of evidence for court. The police decided that, as they put it, "if a picture is worth a thousand words, we would present pictures" to prosecutors and courts. As often happens with any innovation, the timing of its adoption may be substantially the result of the interests of the personnel holding certain key assignments at the time. Thus, in Washington, D.C., the detectives who were assigned to the homicide unit in the early 1980s had recently worked in the internal affairs division, where they developed an affinity for making audiotapes of IAD interviews. They thus brought with them to homicide investigations the view that electronic documentation was valuable. At around the same time, D.C. police were experiencing great success with videotaping lineups—defeating defense allegations that lineups were conducted unfairly. This, too, became an influential source of support for the benefits of video documentation within the organization.

Kansas City Police officials reported that in the early 1970s, they accepted the invitation of a video equipment vendor to experiment with video as a tool for investigative work. One of the defense attorneys whom we interviewed in Kansas City recalled that the earliest experimentation with video in Kansas City (as in other jurisdictions) was not with the most serious felony case investigations but with driving while intoxicated cases. Indeed, one of the private defense attorneys recollected complaining in court after the adoption of video for DWI cases that the Department should use videotape in *homicide* suspect interviews as well. He reported that the Department resisted his proposed expanded use of video at the time, not as a matter of principle but due to the expense involved. The KCPD began videotaping homicide and some other serious felony suspect statements with some consistency in about 1980. By that time, one of the models the KCPD could draw upon was the use of video for documenting oral evidence in the other

major city police department in Missouri, the St. Louis Metropolitan Police Department. In St. Louis, the initial foray into audio-video documentation of suspect statements came at the initiative of a captain who suggested videotaping a suspect in a homicide case. Indeed, this suggestion resulted in the first known videotaped suspect confession in the United States—in a murder interrogation recorded on April 9, 1971.

The Bronx DA's Office has become highly influential, along with the Denver Police Department, as a source of guidance on how to set up a suspect videotaping operation, in part because of excellent written documentation of workable procedures. The Bronx prosecutor launched his exploration of this possible use for video technology in 1973 (two years after the St. Louis initiative), and actually began taping (with an LEAA grant) in 1975. Then-Bronx DA Mario Merola's interest in the videotaping of suspect confessions was prompted by his perception that the process by which police and prosecutors secured and memorialized confessions was not credible enough (as noted earlier, Bronx prosecutors—rather than NYPD detectives—had been taking the final suspect statements in the most serious cases investigated by the NYPD since the 1930s).

In Orange County, Sheriff's personnel launched that agency's video recording program after they decided that video allows the relevant courtroom participants to see and hear the suspect describe his or her actions and to learn the suspect's mannerisms, the way in which he or she said things, how the police treated the suspect, and so forth. The OCSD adopted video, as detectives reported, simply because they "wanted to present the best evidence." It took two-and-a-half years, however, from the time the Department decided it wanted to offer such evidence until the County, in October 1982, provided the funding needed to set up the video room and recording equipment. One of our interviewees in Orange County stressed that cost-effectiveness was *not* the issue in that jurisdiction in prompting the adoption of videotaping; rather, effectiveness alone was the motivating factor.

2. Reasons for Declining to Commence a Videotaping Program

As noted, among our site visit departments the Kansas City Police declined for several years after being explicitly asked (by defense attorneys) to commence videotaping of suspect interrogations because of concerns over the expense of the process; and in the Bronx and Orange County agencies spent about two years seeking the funding needed to launch their taping programs. We wanted to explore the extent to which other departments around the country cite cost or other obstacles as reasons for their declining to establish programs for the video documentation of suspect statements. Thus, our national survey, albeit fortuitously (see Chapter 2), included departments that had *not* adopted video technology for this purpose, and we asked these respondents whether they planned to do so in the near future. Of those agencies which indicated they did not plan to begin videotaping interrogations or confessions (75.5 percent of the nonvideotapers had no plans to commence) we asked the respondents what the main reason was that the agency did not plan to videotape. As Figure 17 indicates, cost considerations predominated, with some additional agencies simply opposed to video documentation and others citing a variety of reasons (e.g., "see no need to videotape interrogations," "if it ain't broke, don't

fix it," etc.).

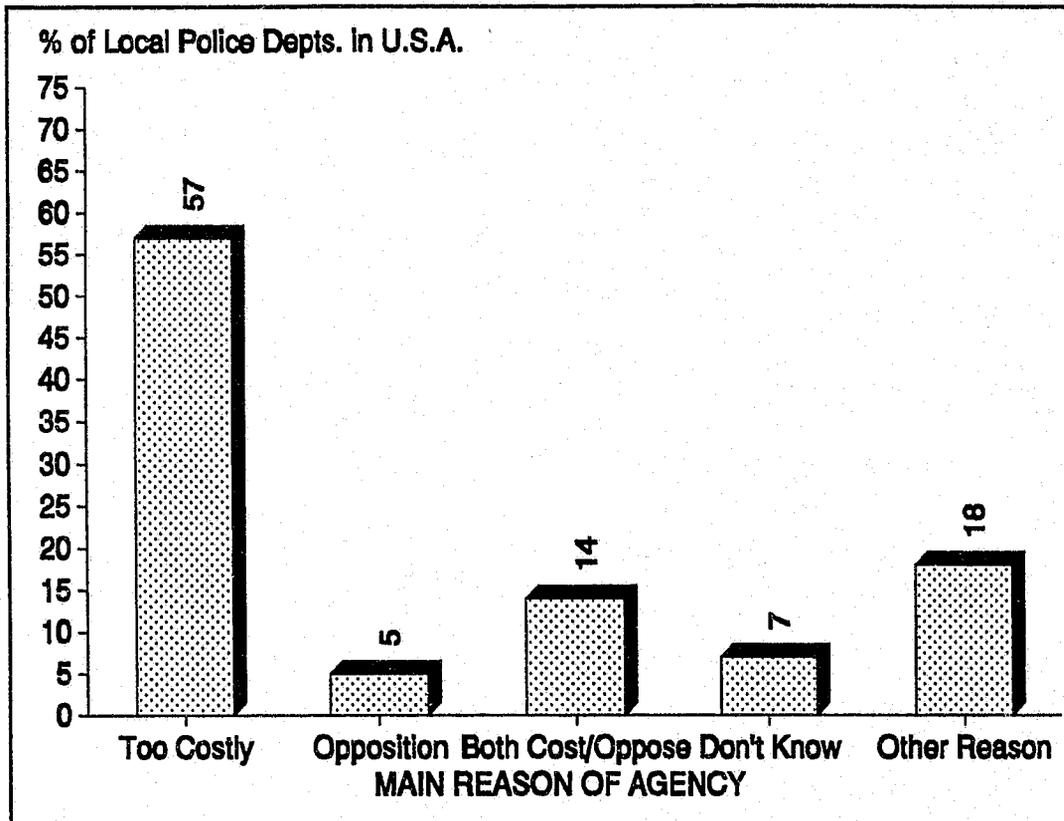


Figure 17: Reason Departments NOT Now Videotaping Interrogations or Confessions Do NOT Plan to Start

Cost concerns cited by both national survey respondents and site visit interviewees include at least the following elements, all of which had been anticipated in the international literature but heretofore had not been documented as concerns among practitioners in the United States: (1) the purchase price of the necessary audio-video equipment; (2) the expense of sound-proofing and otherwise remodeling interview rooms to accommodate unobtrusive or even covert videotaping; (3) construction and maintenance costs for storing recorded tapes in such a way that they are secured against chain-of-custody problems and safe from deterioration or damage due to temperature, moisture, magnetic or other environmental threats; and (4) on-going maintenance costs (e.g., purchase of blank videotapes and back-up audiotapes, repair and replacement of equipment).

Cost concerns also arise over the perception that once a department commences a videotaping program, it will lose discretion over which interrogations or confessions to tape and will be confronted with financial (as well as tactical) burdens associated with having to videotape *all* suspect statements in most types of serious felony investigations. This inhibition to establishing a videotaping program emerged as a pervasive concern among the police and, to a lesser extent, the prosecutorial communities and hence merits

some further discussion.

3. Departmental Reluctance to Commence Videotaping for Fear that Police Could Not Exercise Discretion to Selectively Videotape

Some practitioners with whom we spoke—and many whose views have been expressed in the international literature—worry about a department's ability to exercise discretion concerning which interrogations or confessions to document on videotape. They argue that, once a department acquires the technical capacity to use this form of oral evidence documentation, defense attorneys and courts—if not legislatures—will insist that all suspects who are willing to provide statements (at least concerning the types of offenses for which video documentation is normally employed) should be recorded on videotape. These practitioners argue, further, that failure to videotape when there is the capacity to do so (because the department owns the necessary audio-video equipment) would result in the suppression of video statements proffered by the prosecution or in adverse findings of fact by judges and juries during trials.

In fact, we found evidence both for and against this prediction that a department which videotapes any serious felony interrogations or confessions will be obliged to videotape all—or most. As we saw in the preceding chapter, our site visit agencies and national survey respondents range widely in the percentage of cooperative suspects (those willing to talk with detectives) whose interrogations they videotape. The question thus becomes whether, especially in departments that videotape a relatively small proportion of interviews, there have been adverse consequences either in the processing or outcome of investigations and cases in which a suspect statement has been documented by some means *other than* videotape. We pursued this line of inquiry with police, prosecutors, defense attorneys and judges during our site visits and with police agencies in our national survey.

In the national survey, more than two thirds of all responding departments indicated that, following adoption of videotaping, their own agencies found it easier (in 9.2% of cases) or no more difficult (in 60.7%) to present in court suspect confessions lacking video documentation than had been the case prior to the inception of the videotaping capability. Still, as Figure 18 shows, nearly one third of all responding agencies indicated they found it harder to secure the admission of non-video confessions after adoption of the video program.

In our site visits we probed further the potential effects of selective videotaping on the police and prosecutorial efforts required to introduce non-video confessions.² We

² This topic was not reflected in questions on our site visit interview protocol as it was initially drafted but arose during discussion in most of the sites. The questions we asked were essentially the following: Has the absence of a videotaped statement in a case caused a problem for prosecutors or police when the department which conducted the interview had the technical capacity to do a videotaped interview or when neighboring police departments within the same

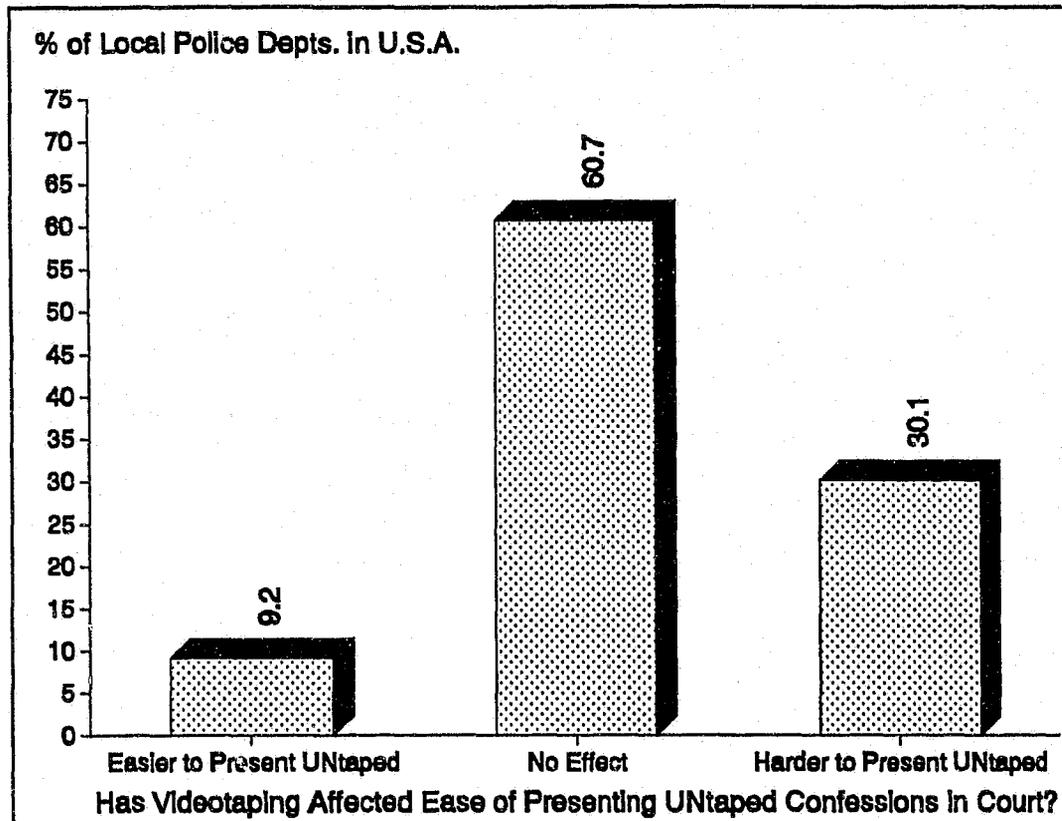


Figure 18: Effect of Videotaping on the Presentation of UNTaped Confessions In Court

again discovered mixed evidence concerning whether problems had arisen due to selective videotaping. In most of our site visit jurisdictions, defense attorneys had from time to time tested the receptiveness of judges to defense insinuations that police failure to videotape a defendant's confession implied that unprofessional interrogation tactics were used. In most locales these arguments rarely proved to be helpful in support of motions to suppress. Nor did they normally seem to help the defense very much in raising judges' or jurors' doubts about a defendant's guilt.

To be sure, concerns about having to videotape all confessions if any were taped were expressed by some police on our site visits. Generally, however, the interviewees who expressed such concerns were investigative personnel *not* currently engaged in videotaping. For instance, in Kansas City, where videotape is used primarily by homicide detectives, robbery unit investigators explained their reluctance to commence videotaping by saying they would be obliged to tape all robbery interrogations and could not afford the expense or find the interview room space associated with doing so. And in Houston,

prosecutorial/judicial district use videotape to document interrogations or confessions? Can police departments videotape in just a few cases without being obliged to videotape in large numbers of cases?

where *robbery* investigators take most of the video confessions, it is the *homicide* detectives who have declined to videotape at least partly because they fear losing discretion over which confessions to tape if they make more of a routine of videotaping.

In Kansas City, the belief of robbery investigators that when one tapes any confessions one must tape all is not borne out by the experience of the homicide personnel. KCPD homicide unit detectives, by most criminal justice practitioner accounts, do *not* videotape the statements by all suspects willing to go on video, and yet homicide confessions offered in evidence without video documentation have rarely been suppressed. Still, the effort required to secure the admission in evidence of non-video confessions is sometimes a burden for prosecutors. And, indeed, one prosecutor whom we interviewed in Kansas City said he was displeased that the Department videotapes only select statements because he could recall a small number of cases (robberies, assaults, and homicides) over the years in which he believes he failed to secure a conviction due to the lack of a videotaped confession statement (i.e., he believes that defense complaints about using written documentation for confessions influenced the jury's decision to acquit). A public defender in Kansas City reported that defense attorneys have occasionally persuaded juries that *witness* statements made in court would have been less incriminating of the defendant if those statements had been videotaped and preserved closer to the time the crime was allegedly committed.

In Fort Wayne, a defense attorney reported arguing in court that the police failed to use available video equipment in taking suspect statements in Class C felony cases (e.g., battery, forgery). He reported that the prosecutor's typical reply—which almost invariably satisfied the court—has been that it is the policy in the prosecutor's office for police to videotape only Class A and B felony interrogations. In Orange County, a defense attorney expressed the view that when a police department fails to videotape in a case where it could have done so, it can create doubts in a jury's mind about the legitimacy of the interrogation techniques used. Yet this defense attorney could not cite a case in which the outcome turned on police failure to videotape a confession. Nor did law enforcement personnel or prosecutors in that jurisdiction suggest that selective videotaping had created any significant burden.

A judge in San Diego County did allow that the adoption of a videotaping program, while often a benefit to the prosecution, could conceivably benefit the defense by enabling the defense to mount an argument that the police investigation was sloppy because of failure to videotape. Yet this judge could not cite a case in which such an argument seemed to have any effect on the case disposition. A defense attorney in Denver suggested that sometimes he "scores points" (i.e., strengthens the defense case) by asking police why they failed to audio- or videotape a confession, but he conceded upon further inquiry that this point probably did not really influence the outcome in those cases.

In Houston, two experienced Harris County Assistant District Attorneys indicated that, to their knowledge, no defense attorney had ever complained about the lack of a videotaped confession. A judge in Harris County opined that if videotape were used more frequently in that jurisdiction to document confessions, it would be a legitimate defense tactic to cross-examine the police concerning why they failed to document a confession

on video. Thus, it is possible that, in some jurisdictions, doctrine might evolve such that there is a threshold of videotaping activity which, once attained, will put pressure on police to use the best documentation method (videotape) unless the suspect objects.

Still, there are other jurisdictions we visited in which sizable numbers of suspect interviews are videotaped without reported adverse consequences for prosecutors dealing with the remainder of the suspect confessions which are not videotaped. In Tulsa, for example, a homicide detective with nearly two decades of experience could not recall a case (since the inception of videotaping) in which the fact that a suspect's statement was not videotaped presented any serious obstacle to successful prosecution. Explanations typically offered by police in that jurisdiction for failure to videotape after the equipment became available include that the suspect objected to videotaping and that the video equipment for one reason or another was unavailable at the time of the interrogation. In Denver, a judge whom we interviewed indicated that he has had cases in which the defense argued the police should have videotaped a statement but that he (and the jurors) accepted the police explanation that it was Sunday morning and the video equipment operator was not available. One wonders, however, given the predictable concentration of violent crimes in most urban areas on Saturday nights, how successful this particular explanation would be in any jurisdiction if offered repeatedly.

In Washington, D.C., during the early days of the videotaping program, police explanations that the video equipment or video-equipped interview rooms were not available did not fare as well as they have in Tulsa or as well as excuses about the unavailability of equipment operators at certain times have fared in Denver. U.S. Attorney's Office interviewees in Washington reported that they had problems in trials where there was not a video documentation of the defendant's confession if the police cited as their reasons for failing to videotape that "the video room was being used" or that "the lieutenant told me not to videotape" or that "we were so busy we didn't have time to videotape." The standard explanation *currently* offered by Washington police in court for failure to videotape a confession is that they left it up to the suspect whether a video record should be made. With this explanation, prosecutors have no longer experienced difficulty securing the admission of confessions in evidence in the District of Columbia.

Importantly, prosecutors reported that, even in the early days of videotaping homicide confessions in D.C., the lack of a video never cost the prosecution a verdict, although they indicated it did make the prosecutors' work more difficult. Although it may not be literally true that not a single case ever was lost in Washington due to failure to videotape (an experienced homicide defense attorney whom we interviewed cited one case in 1986 that she believes she won with an argument that police failure to videotape meant they had something to hide), it does seem to be the fact that it is extremely rare in Washington for the absence of a video record to affect case outcomes.

Thus, there is hardly overwhelming evidence from either our national survey or our site visits that departments videotape selectively at their peril. Nevertheless, the evidence we have developed cannot be said to be dispositive in the other direction either. There are indications from our site visit interviews that, at least in some locales, defense attorneys simply have not taken the initiative or had the opportunities to argue strenuously that

decisions on suppression motions or determinations of guilt or innocence should be influenced by the absence of a video record of a confession in the face of police or prosecutorial capacity to secure such documentation. Thus, it may simply be premature to predict with any confidence whether this "Jay's Potato Chip Syndrome" will prove to be a problem in the years ahead. Up to this point, however, it seems reasonably clear that, in the large majority of jurisdictions, selective videotaping has at most increased the effort required by prosecutors and police to secure the introduction in evidence of non-video confessions rather than actually preventing the admission of such evidence or persuading judges and juries to acquit when they otherwise would have found the defendant guilty. Given the advantages that departments find in selective videotaping (primarily financial benefits), the practical question for agencies becomes whether they gain more by selectively videotaping than they lose in increased transaction costs which are occasionally imposed on police and prosecutors in non-video cases.

B. Detective and Prosecutorial Attitudes Toward Videotaping When Departments First Adopted the Program and Several Years Later

The amount of detective reticence to go on video at the outset of departmental videotaping programs seems to have varied to a certain degree with the source of the suggestion to commence the practice. For instance, in Tulsa, where detectives themselves came up with the idea of videotaping the statements, interviewees reported that there was no initial resistance by the investigators. (This does not mean, however, that all detectives had a similar affinity for the practice nor that their tactical decisions about how often to employ video are identical. In Tulsa, some homicide detectives videotape virtually all of their interrogations while others do so in a relatively small percentage of all their homicide interrogations.) In some other locales, where police command staff or prosecutors suggested the videotaping, there was a generally reported hesitation among front line police investigative personnel about changing established documentation techniques. This finding emerged both from our site visits and (by implication) from our national survey. But early resistance has been transformed into active support among the majority of detectives whom we interviewed, as Figure 19 shows based on our national survey.³

Thus, the national survey data reveal that 60 percent of American police agencies which have adopted video documentation of suspect interrogations report that their detectives initially disapproved of or had mixed feelings about the practice. At the time of our national survey (after most of the responding agencies had several years of experience with videotaping interrogations or confessions), the percentage of departments reporting that their detectives *currently* disapprove of or hold mixed feelings about such videotaping was 25.5 percent. That is, 74.5 percent of the agencies said that currently their detectives generally expressed approval of the practice.

³ Figure 19—and various other figures and tables in chapters 4 and 5—is based on telephone interviews with senior officials in 137 police and sheriff's departments that reported videotaping suspect interrogations or confessions. The 137 agency figure is explained in Chapter 1, section 4.

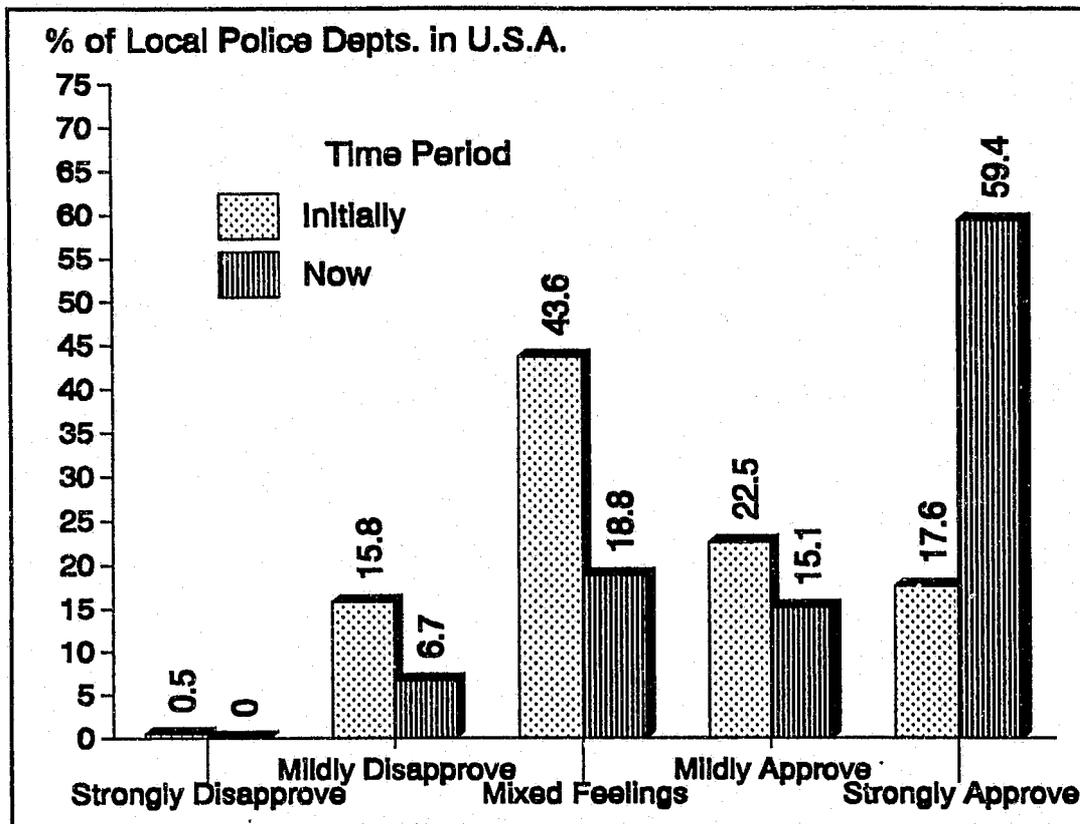


Figure 19: Police Attitude Toward Videotaping When It Was First Adopted and Attitude Now

There are possible reasons besides the source of initiative (command staff, prosecutors or courts as opposed to the investigators themselves) that might explain patterns and rates of change in police attitudes toward videotaping. For instance, one might expect a relatively greater initial resistance, stemming from a sort of "technoshock," in agencies that switched directly from making *written* records of confessions to making video records than in agencies that moved incrementally into the world of electronic documentation—progressing from written to audiotape to videotape documentation. We do not have a large enough sample to offer persuasive data on this point, but the question may be worthy of further exploration either in a follow-up study of videotaping interrogations or in a more general study of the processes and paces by which successful criminal justice organizational innovation is implemented.

In one or two of our site visit jurisdictions, we heard that, where the initiative to videotape came from the police agency, the prosecutor's office initially expressed some hesitation about the effects of the practice. (In all the other jurisdictions, the prosecutors strongly supported videotaping from the inception of the program.) One prosecutor, explaining his initial resistance to police videotaping, said that making written records of the confession allowed the police interrogators an opportunity to reflect on the content of the confession before finalizing it whereas they might overlook certain important details when taking a video confession. But over time these concerns proved unfounded in this

jurisdiction. Perhaps more to the point, in this jurisdiction, prosecutors lost a fair number of cases in the days of written documentation of confessions and, since the adoption of video records, have had much better success in securing convictions in homicide cases.⁴

In another locale, a small police department whose jurisdiction includes portions of two counties (and which thus deals with two different prosecutor's offices)⁵ had strong initial support from one prosecutor but opposition from the other to the idea of videotaping confessions. The opposition was explained as based on a concern that police might appear unattractive on videotape (e.g. by using offensive language). In this locale, the prosecutor who expressed initial support continues to like videotaping, and the prosecutor who expressed opposition has yet to see a videotaped confession and thus has not had the opportunity to reassess his attitude in the context of a real case.

C. The Effects of Videotaping on the *Processing* of Criminal Investigations and Cases

A social observer noted some years ago that, in mass communications, often the "medium is the message," and a criminal justice commentator applied the observation to criminal justice, noting that often "the process is the punishment" for the accused individual. A presumptively innocent arrestee confined for a year or more in pretrial detention or a criminal defendant whose reputation is vilified in a widely publicized trial has certainly been subjected to an extreme deprivation by the criminal justice process before any determination of guilt has been made. The process can be punishing for other participants in the criminal justice system as well—including crime victims (as when rape victims are treated as having asked for their abuse) and police officers (as when they are disingenuously accused on cross-examination of having coerced a confession). Thus, any meaningful distinction between "transaction costs" and outcomes can blur at times for some criminal justice system participants. Nevertheless, there are genuine differences between processes and outcomes for most of the actors in the criminal justice system, and it therefore seems appropriate to organize the balance of our discussion of practitioners' reactions to videotaping under the separate headings of process effects and outcome effects. We discuss process impacts in this section and outcome impacts (frequency of guilty pleas, impact on convictions, acquittals, suppression motions, etc.) in the next section of this chapter.

⁴ It is, of course, not possible in a study such as this one to convincingly attempt, except through expert opinion evidence, to isolate the effects of videotaping from the effects of other influences on case processing and dispositions.

⁵ It remains one of the several mind-boggling aspects of contemplating the task involved in managing the *New York City* Police Department to realize that the NYPD brings its cases for prosecution to *five* different elected District Attorneys, each enjoying at least some significant autonomy in priorities and practices.

1. Impact on Suspect Willingness to Talk and Amount of Incriminating and Exculpatory Information Obtained, Preserved, and Used at Trial

A number of criminal justice policy analysts and proponents of electronic documentation of suspect interrogations argued in the literature that this method of memorializing suspect statements would be seen as fairer to the suspect (since it would preserve more of his or her contentions as he or she wished them expressed) and hence would result in suspects being more willing to talk with police than in the past. Our national survey results do not lend much support to the notion that videotaping will stimulate the cooperativeness of suspects, as Figure 20 shows. Only 8.6 percent of the responding law enforcement agencies indicated that suspects are more willing to talk with investigators since the adoption of the videotaping program. The vast majority of departments (63.1%) reported no difference in suspect willingness to talk pre- and post-video, and 28.3 percent said that suspects are actually less willing to talk to police since the inception of a videotaping program.

We did not find, however, that our *site visit interviewees* commonly complained that videotaping had stifled suspect willingness to talk with police or prosecutorial interrogators. Detectives in St. Louis did note, as commentators had in the literature from other nations, that video can cut both ways in terms of inducements for suspects to talk with police. Some suspects are opposed to videotaping, the detectives told us, because the suspects are intimidated by seeing themselves on TV. Still, others will play for the camera because "it's show time." The bottom line, however, is that most suspects who are willing to talk will do so with or without video, according to our St. Louis interviewees. Metropolitan Police Department interviewees in Washington, D.C. expressed the view that experienced offenders are less likely than inexperienced ones to be willing to talk on videotape.

We also asked in the national survey what effect the adoption of a videotaping program might have had on the amount of incriminating information provided by suspects to police. Figure 21 displays our findings. Thus, although it is reported by the national survey respondents that some suspects are inhibited by videotape from talking, those who do talk with police reportedly provide more incriminating information (in 59.8 percent of the departments) than was the case with suspects prior to videotaping. The survey also revealed that 13.2 percent of the departments obtained *less* incriminating information after videotaping than prior to videotaping and that slightly more than a fourth (26.9%) obtained roughly the same amount of incriminating information as they had previously.

We also asked our site visit agencies about the effects of videotaping on the amount of incriminating and exculpatory information they obtain and preserve. The great majority of the departments reported capturing more of both types of information. Among our site visit agencies, several (Fort Wayne, Huntington Beach, St. Louis, and Washington, D.C.) observed that, as a result of videotaping suspect statements, they now preserve more, longer, and more complete exculpatory statements by suspects than was true under prior methods of oral interview documentation. Even in jurisdictions like the District of

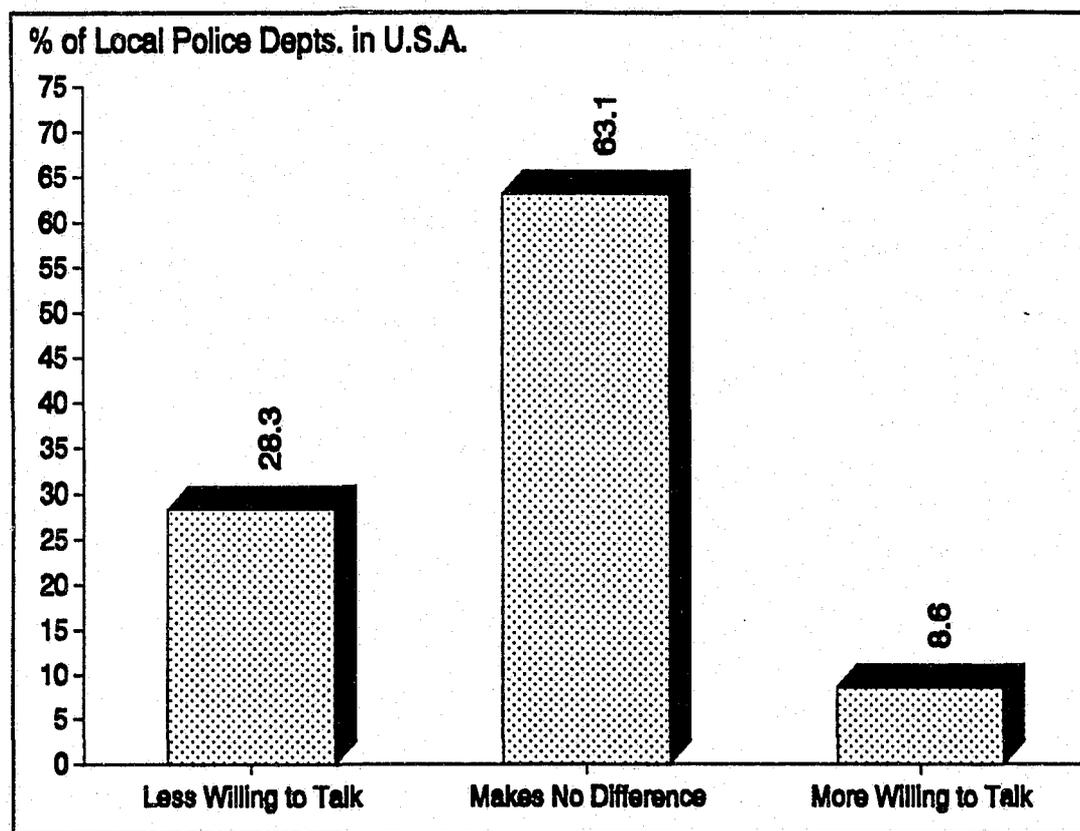


Figure 20: Effect of Videotaping on Suspect Willingness to Talk to Police

Columbia, where police videotape recaptulations rather than entire interviews, prosecutors reported that videotape has helped reduce allegations that used to be made to the effect that detectives failed to write down key exculpatory comments. Prosecutors in Washington, D.C. also expressed the view that most suspects fairly soon after the videotaping begins forget that they are being recorded (although the detectives do not—a point to which we will return later in discussing the impact of video on interrogation style and competence).

In several of the jurisdictions we visited, officials reported that purely exculpatory statements were less likely to be recorded than statements containing at least some incriminating information. Thus, the documentation of more exculpatory information than was captured prior to videotaping is accomplished primarily in the cases (a very large proportion of total interviews) in which the suspect provides both an admission/confession *and* exculpatory/mitigating assertions. Homicide detectives in Washington, D.C. explained the tactical importance of allowing suspects to offer exculpatory information in addition to incriminating information in the recaps videotaped by that agency: "Giving the suspect a 'moral out'—allowing him to attempt to justify his actions—is a way to get him to talk."

What is the perceived effect on prosecutors' work of police preserving more exculpatory information than they customarily did prior to adoption of videotaping? Most

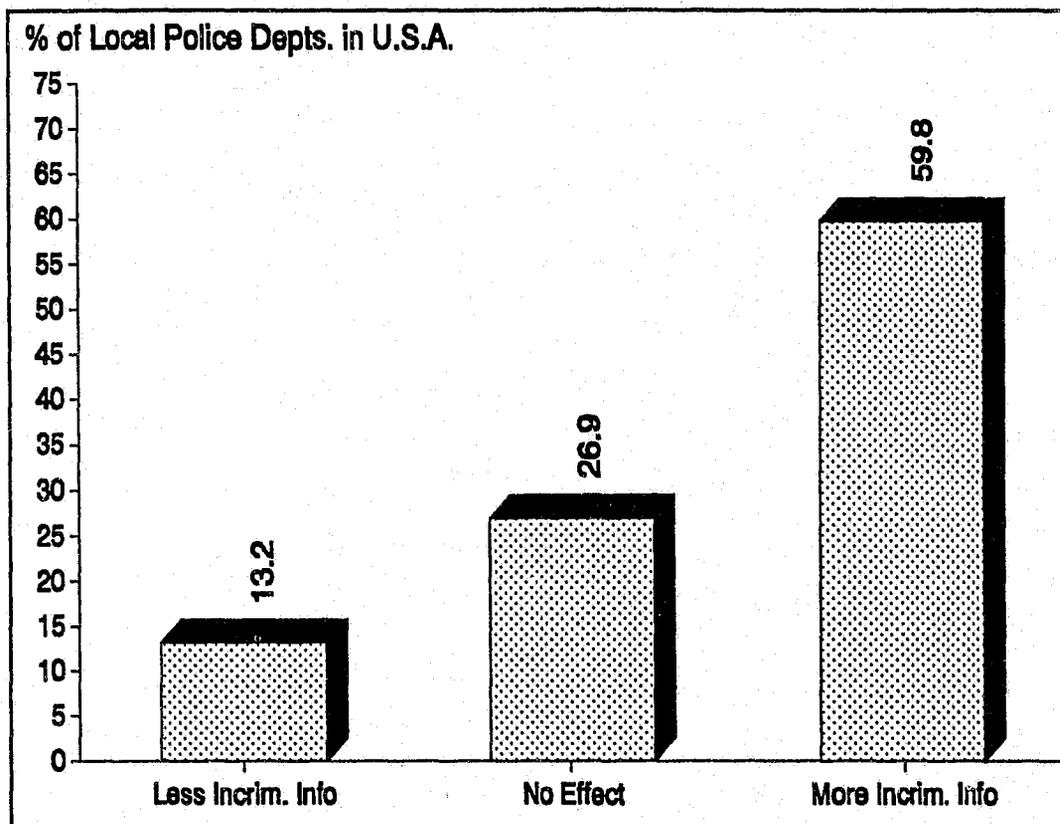


Figure 21: Videotaping's Effect on Amount of Incriminating Information Provided by Suspects to Police

of the prosecutors reported that this has not been a problem for them. Kansas City prosecutors indicated that they commonly find justifications and (somewhat less frequently) remorse expressed on the videotapes along with incriminating information, and that this has not presented obstacles to effective prosecution. Nor has the existence of self-serving suspect statements on videos in Fort Wayne posed a problem for prosecutors.

In San Diego, an assistant District Attorney indicated that, if the suspect's statement is *very* self-serving, the prosecution probably will not offer it in evidence. (If the defense offers the tape—as a prior consistent statement of innocence—then the defendant is subject to cross-examination by the State.) Orange County officials told us that, in unusual cases, denials of guilt on the interrogation tape have carried the day for the defense because the jury was persuaded by the consistency of the claim of innocence made by the defendant at trial and at the time the interrogation was videotaped. Generally, however, in Orange County, there are denials of guilt early in the interview, followed later by admissions or full confessions. Prosecutors have not found such videotapes difficult to handle, since the progression of the interview and the reasons for the suspect's eventual abandonment of protestations of innocence are usually pretty easy for the viewer to understand.

We also inquired in our national survey about the relative persuasiveness of

videotaped confessions and confessions documented by other methods. Figure 22 shows the results. Eighty-seven percent of the responding agencies said videotaped confessions are somewhat more convincing (22.2%) or much more convincing (64.8%) than the confessions they have documented using audiotape or written methods.

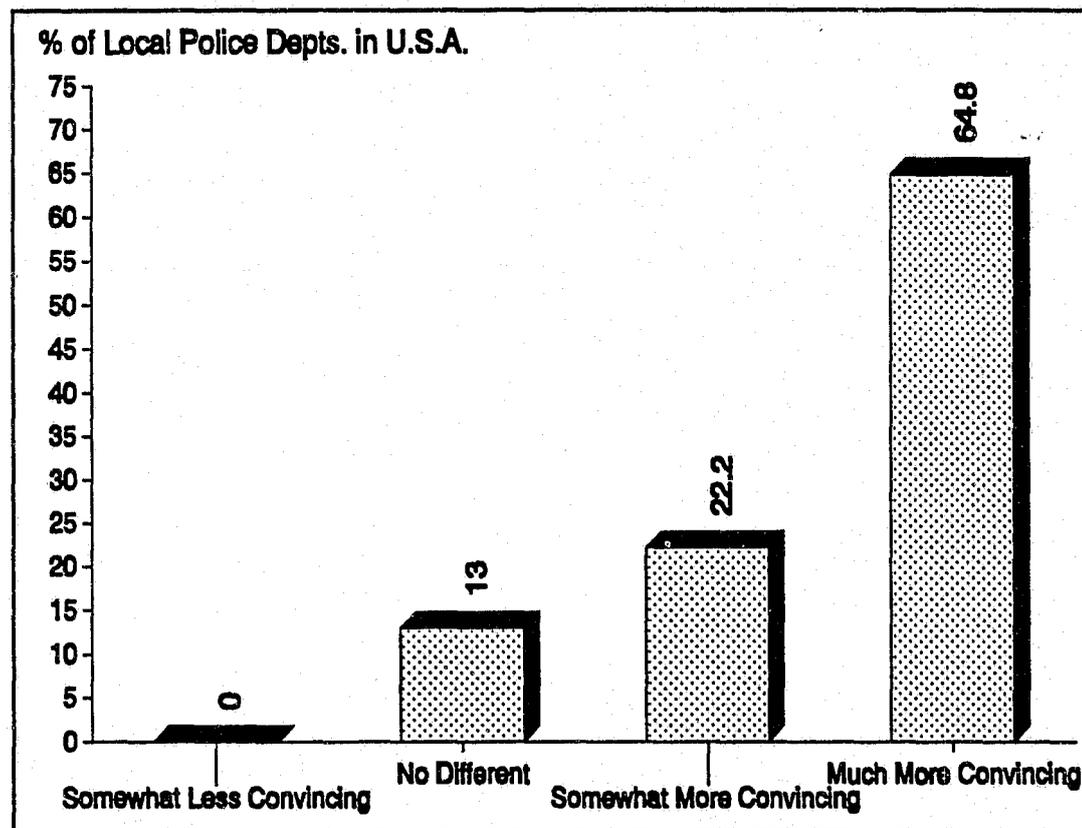


Figure 22: How Convincing Are Confessions Documented on Videotape Versus by Other Methods?

2. Impact on the Quality and Style of Police Interrogations

There is little doubt that most of the agencies surveyed nationwide believe that videotaping has fostered improvements in the quality of police interrogations, as Figure 23 indicates. More than 84 percent of all responding police departments believe that videotaping has helped "somewhat" (36.4%) or helped "a lot" (47.8%) in this regard.

Although not every one of our site visit agencies believed they could credit videotaping of interrogations with improving interview techniques (some said their detectives' techniques have been at high levels of proficiency for many years), most of the departments we visited did believe that video had fostered improvements in interrogator competence or conduct for one reason or another. Some of the ways in which

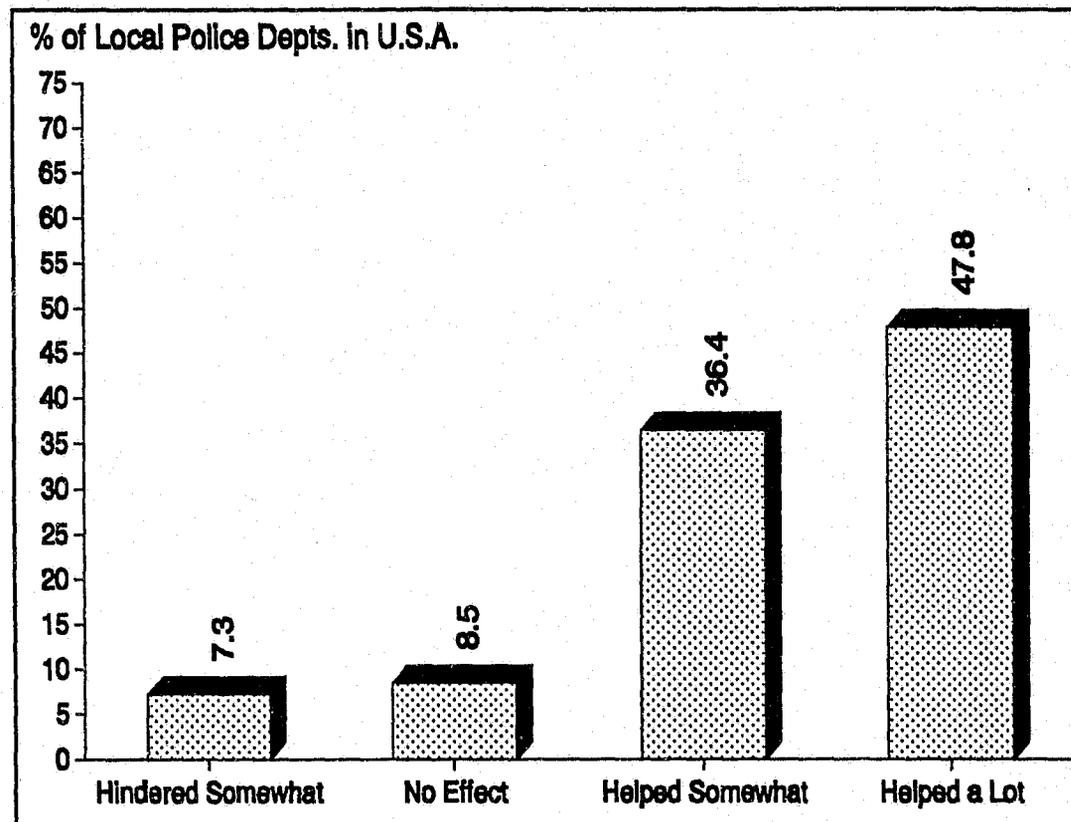


Figure 23: Has Videotaping Helped or Hindered the Quality of Police Interrogations?

videotaping has facilitated desirable changes in interrogation technique include:

- better investigator preparation for interviews (thinking out their questions and the sequence of questions in advance, etc.);
- the ability to interrogate the suspect without the distractions of a typewriter, notebooks, statement forms, court reporters, etc.;
- the ability of other police personnel (fellow detectives, supervisors) or prosecutors to monitor the interrogation live via closed-circuit television and to send suggested questions into the interview room;
- the opportunity, during a break in the interrogation, to watch the videotape in order to review the suspect's earlier statements and demeanor and to formulate further questions for the continuation of the interview (the break might be a momentary interruption in the videotaped interrogation, the time between pre-tape interrogation and the commencement of the video recapitulation or the period following a completed interrogation in which investigators decide to bring the suspect back for further questioning);

- use of the recorded tapes for training new detectives and for providing advanced training to experienced detectives;
- reduction in the amount of gratuitous vulgarity on the part of interrogating officers; and
- the opportunity to play an accomplice's taped confession for an uncooperative suspect (sometimes the back-up *audiotape* is played because that is more convenient than playing the videotape).

Although it was certainly possible for police or prosecutors outside the interview room to monitor both the words and visual aspects of the interviews prior to the adoption of video technology (through one-way mirrors and listening holes or audio monitors), video has facilitated this process. Now, with closed-circuit television, a supervisor or others in a location somewhat remote from the interview room can monitor the process while attending to other obligations. Such monitoring has the value of both assisting interrogators with questions they might not think of during the interview and of helping supervisors to observe whether detectives employ proper interrogation techniques.

As noted earlier, various methods are used to send suggested questions into interview rooms, from the old standard approach of knocking on the door and calling a detective out of the room on the pretense of taking a phone call or attending to some other obligation, to discussing possible questions during a brief break in the interview (this is done in Denver), to methods that permit the flow of the interrogation to continue. Examples of the latter approach are San Diego's "high-tech" system of sending short questions in on the interrogating officer's digital pager (set on silent mode) and the Washington, D.C. police approach of having the interrogating officer wear a mini-ear phone through which he or she can hear questions transmitted from colleagues outside the interview room.

In some agencies, such as Washington's Police Department, officials reported that personnel outside the interview room at least half the time lack sufficient information about the case to be in a position to provide useful suggestions to interrogating officers. In other jurisdictions, useful suggestions from outside the interview room are much more common. In some locales, prosecutors would like to be involved in sending suggested questions into the interview room more often than they currently are but believe the police would resist the "intrusion" on their domain. Prosecutors believe the police would find their "early intervention" in case investigations particularly useful when complicated defenses (such as insanity claims) seem likely to be presented.

In Kansas City, officials reported that supervisors have occasionally found the videos useful for spotting detectives who need further training in how to prepare for interrogations. Supervisors in the KCPD and other agencies have also used the videos to remind detectives about the need to be cognizant of their appearance and manner on the videos: the need to speak clearly and concisely, to sit up in their chair and to wear their

jackets while on camera.⁶

Orange County Sheriff's Department interviewees commented that videotaping cuts down on the amount of notes detectives have to take during the interrogation, and thus videotaping wins the appreciation of personnel for cutting down on their paper work—the bane of police everywhere.

In Washington, D.C., the video interviews are used for training homicide detectives in two ways: (1) during the live, pre-tape interrogation, while the audio-video monitors are on but the tape is not yet rolling, new detectives are able to observe interrogation technique; and (2) in detective training programs in the academy recorded confessions are available for instructional purposes and critique. The U.S. Attorney's Office in Washington also provides informal training to detectives based on any need for improvement prosecutors note in the videos they are reviewing for trial preparation. This "training" typically will take the form of discussions with the involved detectives in preparation for their trial testimony and cross-examination by the defense. Prosecutors report that such informal training has paid dividends over time by increasing detectives' competence in eliciting videotaped confessions. In Denver, videotapes of officer and witness statements in police-involved shootings are used in recruit training on officer safety. Orange County, San Diego, and St. Louis detectives are occasionally shown suspect videos as part of their academy training on proper interview techniques. In Houston, cadets in recruit school are shown videotaped confessions as part of instruction on interrogation methods.

In Fort Wayne, police reported that generally the *suspect* videos are not used in training because by the time the detectives handle homicide cases they are well trained in interrogation methods. Interviewees in that jurisdiction thought that there might be value, however, in using videotaped *witness* statements for detective training. And they noted that crime scene videos have occasionally been used for instructional purposes—generally to point out what *not* to do (e.g., uniformed officer at crime scene waving at the camera and saying "Hi Mom").

Prior to adoption of videotaping programs, police and prosecutors in some jurisdictions have expressed concerns about the possible inhibiting effects on successful, legal, but potentially unpalatable interrogation techniques, such as deceit, rapport-building, and the use of vulgarity in ways that will communicate more clearly to a vulgar suspect than prim and proper language. In some jurisdictions we visited, the inception of the videotaping program did indeed forge changes in the style of interrogations (reducing the

⁶ As noted later, not all practitioners agree that formal attire by detectives is always the most conducive to establishing the kind of rapport with suspects that helps interrogators elicit accurate incriminating information from them.

amount of improper "softening up"⁷ prior to confessions and fostering a more "correct" language and more formal attire by the interrogators). In other locales, detectives had for some time prior to the commencement of videotaping already adopted interrogation styles and habits of dress and vocabulary that were well suited to videos.

In Huntington Beach, where detectives videotape the entire stationhouse interrogation, police reported that videotaping does affect the interrogator's ability to establish rapport with the suspect—"there is no dead time to establish a relationship with the suspect." The detective who expressed this view indicated that, although he initially opposed videotaping for this reason, he has nevertheless since come to prefer video documentation over methods used previously. Several of the standard techniques used to establish rapport with suspects (e.g., providing coffee, cigarettes, and the like) are still used by most agencies during the videotaped portion of the interrogation as well as during the pre-tape interview. (In Denver, the only rooms in the entire police facility in which smoking is permitted are the interrogation rooms.)

There are also agencies where police reported that videotaping temporarily forced an artificial, excessive, and counterproductive formality or redundancy in the style of the interrogators. In such locales, interrogators' style reverted to a more acceptably balanced approach once detectives became comfortable with being videotaped and realized that their meticulousness was not necessary in order to present a professional and credible interrogation tape to other participants in the criminal justice system. In Kansas City, for instance, detectives in the early days of the videotaping program would "over advise" suspects concerning their constitutional rights during the video portion of the interview, with the result that some suspects began to change their minds about providing the video confessions they had agreed to give. Obviously, there are serious and delicate judgments to be made in this regard, and undoubtedly different observers would appraise individual cases and videos differently concerning whether detectives provided insufficient, proper, or excessive notifications and cautions to suspects concerning their constitutional rights. Some detectives in Washington, D.C. expressed the view that a slight drawback to videotaping is that the detectives have to be excessively careful about their language and demeanor. Prosecutors in that jurisdiction concurred that the detectives are not as "loose" on camera as they are off camera. A defense attorney in D.C. agreed: "On the videotapes the detectives behave like perfect gentlemen." On balance, the police and prosecutors indicated that videotaping had improved the effectiveness with which prosecutors can present confessions in court.

A related concern with videotaping is that detectives who have been working an investigation nonstop for long periods of time may look so exhausted on camera that their appearance may not command the respect of those who later view the tape. For instance, a defense attorney in Kansas City reported having watched a videotaped confession in a homicide case where the interrogating officer had worked 20 hours straight, was tired, and

⁷ An example of improper softening up cited by a defense attorney in San Diego is lying to a suspect about the potential penalties he or she may be facing (e.g., telling a juvenile that he is subject to the death penalty, which is barred for juveniles by state law).

looked drunk on camera even though the detective was not in the least intoxicated.

We encountered variations on these themes across the jurisdictions we visited. In Denver, police reported that interrogators' pre-tape style readily matches the street language of the suspects but that on videotape the officers' language is "very proper." Similarly, Fort Wayne police indicated that once the videotape rolls, the interviewers are "a bit more correct" in style. Prior to taping, detectives may holler to get a suspect's attention and may employ vulgarity or slang to communicate clearly with suspects. For instance, in a rape case, detectives have found that suspects are confused as to meaning if the police use a term such as "oral sex" rather than "blow job." Fort Wayne police also opined that often a detective wearing casual attire (e.g. a sport shirt rather than jacket and tie) will get more out of a suspect than one in a suit. They explained that the detective in a suit is seen as "just another government worker, such as a welfare worker, who is out to screw the suspect."

Profanity or slang is not confined only to pre-tape interviews in some jurisdictions but can be found on the recorded videotape. It is not at all uncommon for the suspects to use "street language" and occasionally the police will use it as well. Where the police are simply following the lead of the suspect's choice of terminology and are clearly doing so to facilitate clear communication rather than gratuitously or for intimidation purposes, police, prosecutors and judges in most of the jurisdictions we visited report that neither judges nor juries have adverse reactions to the police use of vulgarity or slang. In Tulsa, for instance, we viewed a videotaped confession in which the suspect's description of his assaultive behavior was "I kicked the ---- out of him." Thus, it was not jarring and was tactically understandable when, later in the interrogation, the detective's matter-of-fact choice of words was, "So when you kicked the ---- out of him..."

A defense attorney in Washington, D.C. indicated that profanity by both the suspect and the police appears on the videotaped confessions. The defense attorneys, he reported, hope that a juror will be offended by the officer's use of profanity. But in the District the police don't use profanity until the suspect does. "You can't argue that the cop is scum if your client is speaking dirtier," our interviewee conceded. Tulsa police reported that while vulgarity does get onto the videotapes, it does not get on as often as one might expect because the suspects as well as the police tend to "clean up their act" for the camera. This happens as well in Kansas City, according to an experienced homicide defense attorney.

Suspect self-control in the face of videotaping would not apply, of course, in jurisdictions where police videotape covertly and thus only the police have the advantage of knowing that their demeanor and language choice will be viewed in court. In agencies that videotape covertly, there is the possibility that a detective's "correct" language choices will seem odd to the suspect and may even suggest that the detective is somewhat naive in terms of the "ways of the street." As one detective put it in Huntington Beach, "For a department to be able to successfully videotape entire stationhouse interviews covertly, the detectives have to be sophisticated enough to realize that they are playing to the judge and the jury during the interview and yet still find ways to be convincing to the suspects."

Prosecutors in Fort Wayne indicated that they prefer taping recaptulations (rather than entire interrogations) so that detectives can use "plain language" during the pre-tape interview. On the other hand, prosecutors in San Diego prefer the taping of entire interrogations (which is what the San Diego Police generally tape) because, as one Assistant DA put it, "videotape keeps the cops acting like they have some sense. It keeps them from going for the jugular." This does not mean that the prosecutors oppose use of profanity when it makes sense in context. "Any experienced detective can get on the stand in court and explain why he used profanity," suggested a prosecutor.

Departments generally take care to avoid any visual implications of coerciveness in the environment of the video interview room. This does not always mean that the suspect has handcuffs removed, however, as in the Metropolitan Police Department in Washington, D.C., where prudence dictates restraint since typically only one investigator is present in the room with the suspect.

In some locales, police have worried prior to the adoption of videotaping that their interrogation "tricks of the trade" would become known to criminals and would eventually become less effective in suspect interviews. This concern was only expressed in one of our site visit agencies, however, and detectives there report that experience has shown the fear to be unfounded. Similarly, our site visit agencies indicated that they generally did *not* worry in advance of commencing videotaping programs that they would acquire less criminal intelligence during interrogations than they received before videotaping was used. And their experience demonstrated that in fact there was no diminution in criminal intelligence gathered during interrogations. This was true both in agencies (most of our site visit locales) which videotape recaptulations and in agencies (such as Orange County) which tape entire stationhouse interviews.

3. Impact on Allegations of Improper Police Interrogations

Even where videotaping does not have a demonstrable impact on the outcome of criminal cases (to be discussed in the next principal section of this chapter), police in many jurisdictions we visited indicated that the pressures on them in court have been relieved because fewer allegations are made—and such allegations as are made are easier to defeat—concerning police use of coercion or overbearing techniques. While many defense attorneys feel a professional obligation to present arguments about coercive conditions of interrogation even though they see little hard evidence to support their claims, most defense lawyers we interviewed indicated that the existence of on-camera administrations of the *Miranda* warnings have pretty well halted allegations that detectives failed to apprise the suspect of his or her right to remain silent and to have counsel provided.

The national survey revealed that a sizeable proportion (43.5%) of police agencies have experienced fewer allegations of improper police interrogation techniques by defense attorneys following adoption of the video program (Figure 24). No difference in the level of such allegations surfaced in 38.7 percent of the departments nationwide. And 17.8

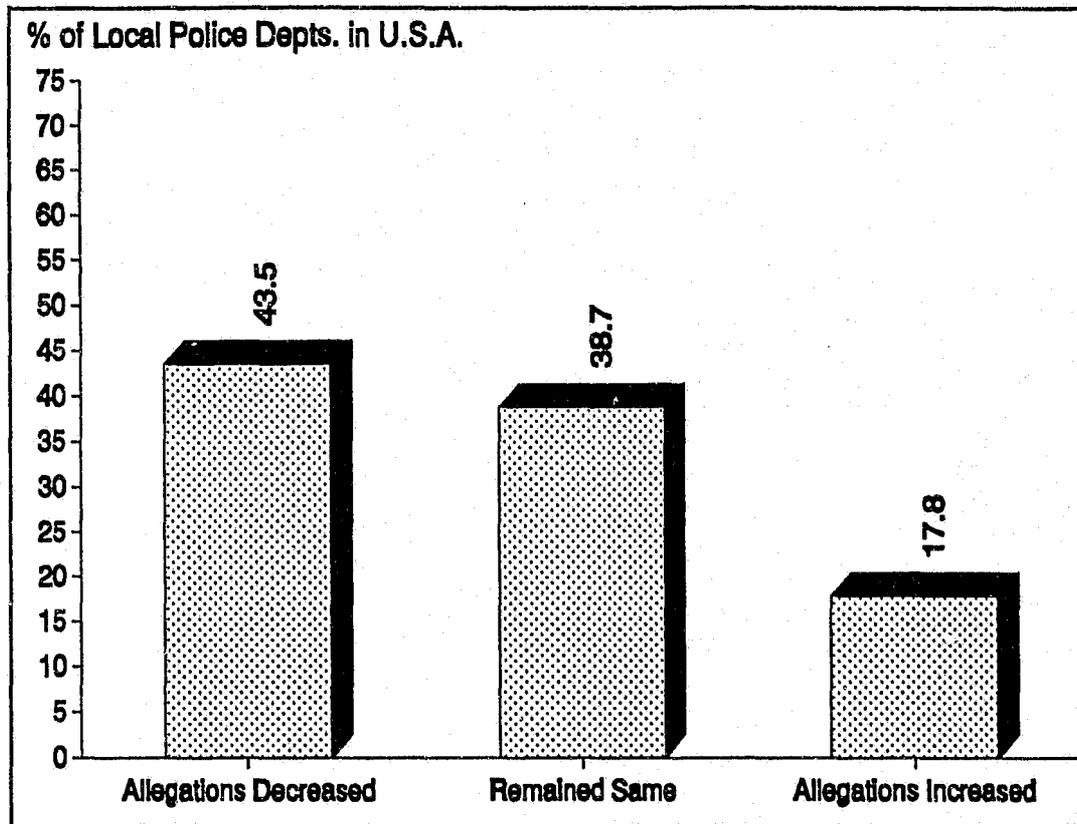


Figure 24: Videotaping's Effect on Defense Claims of Improper Police Interrogation Techniques

percent of the departments reported experiencing an *increase* in allegations of impropriety following the adoption of video documentation. Among our site visit jurisdictions, in Tulsa a defense attorney said that in some cases there has been an obvious break in either the audiotape or videotape and that this has lessened the credibility of the confession, sometimes resulting in either suppression of the confession or an acquittal. None of our site visit agencies indicated an increase in allegations of improper interrogations following adoption of videotaping, however. Still, several of our site visit departments said video had produced no difference in the number of such allegations. As noted above, however, defeating the allegations of coercion was easier for police and prosecutors using video confessions than it used to be with prior documentation methods.

A Huntington Beach interrogation that we viewed provided a helpful, concrete illustration of how detectives, without browbeating tactics, can overcome a suspect's resistance to confessing. The suspect persisted for more than an hour in denying his identity. Detectives eventually showed him a photograph that showed him standing beside other family members. This provided the "chink in his defense" that eventually led the suspect to confess to beating his girlfriend and then stabbing and beating her to death with a hammer.

In some locales, police suggested that they have long been free of allegations of

coercive interrogations—before the adoption of video. In San Diego, defense attorneys concurred in this view, and attributed the professionalism of the interrogation techniques in part to the fact that, even before the videotaping, *audiotapes* of interrogations helped to ensure that *Miranda* warnings were administered and that improper techniques were avoided. In other jurisdictions, interviewees cited changing times as requiring the benefits of videotape in attesting to the propriety of police tactics. Said a police sergeant in Orange County: "A policeman's word used to mean something. Today it has to be corroborated because we had overzealous police who ruined things for all police." A defense attorney in Orange County added the view that videotaping interrogations can be especially helpful in jurisdictions where there are racial tensions between the community and the police: "Videotaping can help reduce improper behavior by police and false assumptions among the public about police improprieties."

In Denver, police indicated that investigator morale had improved due to the reduction in false allegations of police abusiveness during interviews. A Huntington Beach detective reported that videotaped interrogations cut down on the stress he feels when he goes on the witness stand at trials. In Fort Wayne, police said videotaping had no effect on morale because the defense bar continues to make false claims of duress or promises made—allegations which police treat as "just part of the job." (The prosecutor in Fort Wayne reported, however, that other reasons might explain morale problems, since the police department for a year or two prior to our site visit had suffered several instances of police having been found guilty of committing crimes [drug dealing, sexual assault, etc.])

In Kansas City, prosecutors reported that videotape had produced a "dramatic reduction in the number of claims of coerced confessions." While reportedly "there have still been some claims that detectives coerced the suspect prior to or following the videotaped statement, these have been few." A defense attorney in Kansas City said: "It's been a long time since a defendant has alleged physical coercion by the KCPD in obtaining a confession, although you do hear about psychological coercion, such as mothers saying the police have told them they would have their kids taken away unless they cooperated with the police."

In New York City, a defense lawyer added to the illustrations of psychological coercion the assertion that police have told suspects: "Tell us you did it and we'll let you go." Or "Tell us what you did or we'll take your kids away." Or, he said, some police have told suspects they are holding the suspect's wife in another room. (A defense attorney in Washington, D.C. also cited one of her murder cases in which her client claimed he had to talk to police to prevent intimidation of his family.) An Assistant District Attorney in the Bronx DA's Office, however, reported that the DA's Office has not had problems with videotaped confessions being subjected to claims of coercion, deprivation of food, or the like. And in Washington, D.C., notwithstanding the assertion

by one of our defense attorney interviewees,⁸ an Assistant U.S. Attorney said that "videotaping has almost eliminated claims of coercion" by the police. Added an experienced murder defense lawyer in Kansas City: "When defendants see their videotaped confessions, they stop making claims of threats and intimidation by the police."

Besides claims of coercion, we were interested to see what impact videotaping may have had on defense claims that police fabricated confessions (i.e., put words in the suspects' mouths). In Denver, defense attorneys reported that such claims have not been eliminated by videotaping ("many police interrogate with nothing but leading questions"), but have been reduced compared to the days of unrecorded confessions. In Fort Wayne, an experienced defense attorney reports that there are many fewer allegations of fabrication compared to what he saw early in his career. In San Diego, as in some other locales, we noted an interesting divergence of opinion on this and some other questions between *public* and *private* defense attorneys. The San Diego public defender whom we interviewed (whose office handles 90 percent of the homicide cases investigated by the San Diego Police) said that there has "definitely" been a reduction in allegations of fabricated confessions with the advent of videotaping. A private defense attorney said there has been no such reduction.

An ancillary benefit of reducing the frequency or power of false allegations of police coercion or fabrication in some locales has been an improvement in the working relationship between police and prosecutors (this was reported in Adams County, Colorado, by an Adams County deputy sheriff). In Denver, a prosecutor reported that videotaping has also made a big difference in the credibility which judges extend to the Denver police. In Huntington Beach, as well, police reported that judges and juries have more confidence in the police because they can "see into the interview room" and "see the professionalism of the interrogators." In St. Louis, police reported that videotaping has caused many criminal justice practitioners to perceive that police are less likely to use overbearing interrogation techniques. Prosecutors in Washington, D.C. said that their *own* opinions about police interrogation tactics had not changed due to the adoption of videotaping (because they were already pretty familiar with the tactics and found them essentially professional) but that judges' opinions of police interrogation techniques had improved after adoption of the video documentation methods. Judges would also prefer videotaping, prosecutors suggested, because videos facilitated the process of making decisions on motions to suppress confessions.

This is not to say that all criminal justice practitioners find police interrogation tactics more acceptable with video records. Although some defense attorneys readily expressed their belief in the legitimacy of most police interrogation techniques, in a couple of jurisdictions defense attorneys said video had no effect on their views of the police. For instance: "I do not believe that video will make the police straighter or more honest.

⁸ A defense attorney in the District of Columbia argued that defense counsel are obliged to make a good faith claim of coercion when their clients make that assertion; he reported, however, that this claim does not prevail in the face of a videotaped confession.

Either the police will use improper tactics off tape or will be so full of themselves that they will act out anyway, regardless of the videotape rolling." Said another:

"The suspect has been at the police station four to five hours before the videotaping [of a recap]. The police brow-beat the shit out of the suspect to get him to cooperate. He's too tired to resist any longer by the time they take the videotaped confession."

Such opinions were not the common view among the defense bar we interviewed in several cities, however. Even among the most strident critics of the police, we found not a single allegation in any jurisdiction we visited that police or prosecutors had intentionally tampered with recorded videotapes—a concern that has been given some currency in the international literature.

4. Impact on Admission of Confessions in Evidence at Trial

The general consensus among our site visit interviewees was that videotaping confessions facilitates their admission in evidence. In Huntington Beach, officials noted that the videotape saves a considerable amount of time that otherwise would be devoted to the detective's testimony about the dialogue that led the suspect to confess (recall that in Huntington Beach the police videotape the *entire* stationhouse interrogation).⁹

Yet, even in locations where only recaptulations are videotaped, prosecutors find that video generally eases the process of gaining admission of the confession. In Kansas City, defense attorneys virtually automatically file a motion to suppress confessions, even when they are documented on videotape (to avoid charges of incompetent representation), but prosecutors and defense attorneys alike reported that these motions routinely fail, and the process of admitting the confessions is streamlined because of the video. As a defense attorney put it, "Judges dispense with the motions to suppress more quickly when the confessions are videotaped." Similarly, officials in New York City report that videotaping expedites the process of admitting confessions in evidence.

Expediting judicial decisions on motions to suppress does not always mean a favorable decision to the prosecution, of course, and a judge whom we interviewed in Tulsa indicated that he has both admitted videotaped confessions in evidence and suppressed them. Still, the balance of the rulings is tipped heavily in favor of the State—more heavily since the advent of videotaping than it used to be in most jurisdictions.

A public defender in San Diego suggested that one of the reasons videotaped confessions are easier to admit in evidence is that they carry the credibility of containing the suspect's self-incrimination in his or her own words far more often than appears to

⁹ We did not press the question whether there might be a trade-off between the time saved by the detectives not having to defend the pre-confession events and the time required to watch the video to discover whether the circumstances that led the suspect to confess were coercive.

be the case with written confession statements. A judge in the Bronx indicated that, in suppression hearings, if questions arise about the suspect's intelligent waiver of his or her rights, sometimes the videotape helps the court make an informed ruling—again, because of the ability to hear the administration of the rights and to listen to and observe the responses made by the suspect in the context of the immediate physical setting of the interrogation. This judge indicated that he always views the videotape in its entirety in ruling on motions to suppress but that experience has taught him that a judge would rarely need to see the entire tape to make an intelligent ruling. The most important elements in judging the voluntariness of the suspect's statement are the "surrounding facts," he said, not the content of the statement eventually given. For instance, as a Denver judge reported, when the defense seeks suppression of the video statement on the grounds the defendant was drunk during the confession, a video on which the suspect looks stone sober can be highly influential. (At the same time, there are possibilities of having persons appear more—or less—sober on videotape than they actually are.)

A prosecutor in Orange County cited an instance in which the visual elements of the interrogation clarified a point that otherwise would very likely have produced the suppression of a confession if it had been documented only on audiotape. This was a case in which the California Supreme Court eventually affirmed a death sentence rather than require a new trial based on the erroneous admission of a video confession. The videotape allowed the reviewing court to see that, in getting angry at one line of questioning by one of three detectives in the room, the suspect was not asserting an objection to continuing the interview but instead was simply expressing aggravation at one of the three detectives. The suspect's facial expression, gestures, and eye contact shown by the videotape produced convincing evidence that what would have sounded on audiotape alone like a change of heart about talking with police about an alleged murder was instead a temporary resistance to a particular line of questioning and to the way in which a question was propounded by one of the participating interrogators.

In Washington, D.C. an experienced prosecutor related that written confessions used to be attacked by defense attorneys on the ground that their clients could not read or write. The defense attorney would call the defendant to the stand to read his purported confession and he could not do so. This problem has been eliminated with videotaped confessions because in most jurisdictions there is not a written statement to place in issue. Yet another prosecutor in Washington expressed a somewhat different perspective. He opined that the existence of a videotaped confession does not necessarily make it easier to introduce confessions in evidence than it was in the days of written statements. In fact, he asserted, admitting the video in evidence may sometimes take longer than admitting a written confession because the detective has to sit with the prosecutor and review the videotape in its entirety. This last view was clearly the exception among our respondents, however. Prosecutors in Denver and Fort Wayne reported that videotapes in their jurisdictions had never impaired the admission in evidence of a confession or lesser incriminating statement. Judges in Denver and New York City concurred that the same pattern could be identified in their respective jurisdictions.

Still, there were reasons expressed why prosecutors sometimes might make a tactical decision to not offer a videotaped confession in evidence. In San Diego, for instance, if

the prosecutor judged that a detective would not be effective on the witness stand in laying the basis for admission of the videotape, the prosecutor would probably forgo proffering the tape in evidence.¹⁰ But this factor obviously could inhibit a prosecutor from seeking to introduce a *written* confession as well—and arguably would have a more pronounced effect with a written confession.

A Kansas City defense attorney reported that he once prevailed (*following the admission* in evidence of a videotaped confession) in persuading the jury that the statement was made under duress—not because of the words contained on the tape but because the interrogator looked "mean" on the tape and in court as well. It certainly is plausible that such considerations might lead a prosecutor to decline to offer in evidence a videotaped statement taken by such a detective, unless the evidence was crucial to the State's case. A judge in Denver offered the suggestion that, "if a police interrogator had a rubber hose sitting on the interview table, this could impede admission of an otherwise acceptable confession." Similarly, if the videotape showed a detective playing with his gun or slapping his palm with a set of brass knuckles—although none of our interviewees in any jurisdiction suggested anything so blatant as these examples having occurred recently¹¹—the video proof of such intimidation could thwart use of the confession at trial.

A far more subtle and realistic concern about judicial appraisals of the voluntariness of a confession was noted by a Denver jurist. It is possible, he argued, with the videotaping of *recapitulations*, that a suspect might look "beaten down" when the videotaping starts—not because the suspect has been physically beaten but because he or she has "the horrible feeling of resignation; 'I did it and I've been caught.'" Still, this problem was presented as a hypothetical problem and, to our interviewer's knowledge, had never arisen in Denver, despite the police department's long and active history of videotaping recap confessions.

In Fort Wayne a prosecutor suggested that if police used an excessive number of

¹⁰ Even though the tape of an entire stationhouse interrogation contains most of the information a judge needs to rule on the statement's admissibility, it is still necessary for police to lay a basic foundation for the introduction of the tape in evidence. Indeed, some of the procedural manuals prepared by departments to guide personnel in videotaping interrogations and making subsequent use of the recordings explicitly set forth instructions on the information that must be provided in order to lay a proper basis for introducing videotaped suspect statements in court.

¹¹ We do not, of course, take our interviewee's comments as conclusive evidence that police in various jurisdictions around the nation always faithfully avoid coercive tactics. Occasionally, in recent memory, scandals concerning coerced confessions have surfaced. In New York City several years ago, much of the command hierarchy in the NYPD was ousted in response to evidence that some detectives used electric stun guns to coerce a confession. In Chicago, community watchdog groups marched on City Hall in November 1991 calling for the dismissal of personnel who were similarly alleged to have used electric shocks and other means of torture to elicit incriminating information from suspects (in that instance, suspected cop killers—see Jackson 1991, Jackson and Blau 1991).

leading questions, with the suspect simply saying "yes" or nodding in agreement throughout the videotaped confession, this might impair the introduction of a confession in evidence. The prosecutor reported that this had never actually happened in Fort Wayne, however.

The District Attorney's Office in Orange County was also helpful in explaining the kind of reasons that might lead a prosecutor to decline to offer a videotaped interview in evidence (some of which naturally apply to decisions about proffering written or audiotaped confessions as well): (1) a *Miranda* violation;¹² (2) poor technical quality; (3) poor police interrogation techniques (e.g., police being too sympathetic or reinforcing possible defenses, such as the defendant's intoxication); (4) questionable authenticity of the tape (e.g., if an agency used a previously recorded tape and there was confusion about extraneous material on the tape or if there was any evidence of tape tampering); (5) if the tape contains too much exculpatory information in relation to the incriminating content; and (6) if the investigation of the rest of the case was so strong that a potentially problematic video simply was not needed to prove the State's case. The District Attorney hastened to add that some of these problems had never arisen in Orange County, but that they all seemed to seasoned prosecutors to be the kind of reasons that, if they arose, would inhibit the offer of a video in evidence in support of the State's position.

A defense attorney in Denver added that videotapes are sometimes kept out of evidence if they contain inadmissible information, such as reference to the suspect's prior record. In most jurisdictions, however, such a defect would normally be dealt with either by stopping the tape in court and skipping past the objectionable portion or by editing the videotape prior to bringing it to court. The Bronx DA's Office, St. Louis Police Department and Orange County DA's Office, for instance, each have sophisticated video editing facilities, and in Washington, D.C. the Metropolitan Police Department and federal prosecutor's office have access to the FBI's tape editing technicians. A judge in New York City noted that there have been some cases in which the prosecution "redacted" (excised) certain portions of the videotape because the deleted material was inadmissible. Where editing is done professionally (without questionable cuts in the middle of sentences, etc.) and the process and need for it are explained professionally to all parties and to the court, few problems seem to have been encountered with false accusations that the editing operated to the prejudice of the defendant. Sometimes, however, the "poor man's edit"—fast forwarding the video past inadmissible portions and trying to find exactly the right place to resume playback—can "annoy jurors," as a Kansas City defense attorney reported.

A public defender in Kansas City argued that assertions of rights by suspects are often ignored by police interrogators in many jurisdictions, his own included, but suggested that it becomes impossible to document those violations with a videotape of

¹² *Miranda* violations can sometimes be used to keep *portions* of videotaped confessions out of evidence. For instance, an assistant U.S. Attorney in Washington, D.C. recalled a case in which part of a videotaped confession was suppressed because of the lack of a new set of *Miranda* warnings when a recording resumed following a break.

only the recapitulation of the interview. Thus, he asserts, one would expect either more confessions kept out of evidence or an improvement in police compliance with due process rules if entire interrogations were videotaped. Indeed, a defense attorney in Orange County, where entire interrogations are routinely videotaped, noted that videotaping saves court time because questions about the administration of *Miranda* warnings and questions about coerced statements are drastically reduced. On the question of expediting the court docket, a Kansas City defense attorney offered the view that some judges may "secretly" dislike videotaping because of the extra time that is required to recess proceedings and set up video monitoring equipment in courtrooms. This interviewee thought that judges interviewed on this topic would not own up to such misgivings and would generally offer praise for the process of videotaping confessions or interrogations. A judge in San Diego, however, readily reported that it is not true that videotaping interrogations cuts down on the work of judges. He indicated that defense attorneys always make suppression motions regardless of the method used to document the suspect interview. He did say that, as a judge, he likes videotaping because it assists the jury in figuring out what happened and, "after all, trials are supposed to be searches for the truth."

5. Impact on Prosecution Preparation of Cases and Preparation for Plea Negotiation

In our site visits, we asked prosecutors whether they have found an improvement in their ability to assess the strength of the State's case and, if necessary, prepare for trial as a result of videotaping. The conclusion was virtually unanimous that videotaping typically is helpful. In Denver and Fort Wayne, for instance, prosecutors were very positive about this "process" impact of videotaping. In Fort Wayne an interviewee said:

"Videotaping is great for trial preparation. You can see how good the suspect will be if he testifies by looking at the videotape. This also helps a great deal with videos of witnesses—you can see how strong they will be on the stand. A suspect on TV confessing is inherently believable; people tend to believe what they see on TV. As a result, the existence of a videotaped confession helps strengthen the prosecutor's hand and helps him prepare for trial."

Similarly, in Orange County, the DA's Office reported: "You learn a lot from the videotape: how sophisticated the defendant is, how he answers questions; how you might cross-examine. Videotape is an important aid in trial preparation."

In Houston, the prosecutor's office does not see the Police Department's videotapes very often because the Department tapes mostly robbery confessions, which typically result in guilty pleas, and the prosecutor does not generally feel a need to view the videotape in negotiating robbery guilty pleas. Occasionally videos have been made of homicide confessions in Houston, however, and a prosecutor in that locale recalled a few cases in which his trial preparation was facilitated by watching the video. In one case, for instance, the defendant had lost 90 pounds between the time of the crime and the trial and appeared to be "a skinny old man in court," whereas on the videotape "he looked macho

and capable of killing." This example demonstrates how videotape can be used to demonstrate a suspect's physical stature as well as his physical condition (tired, bruised, intoxicated) or emotional state at the time of the interrogation.

In Kansas City, prosecutors said that "videotape has been a significant, powerful weapon in the prosecution of cases—much improved over the pre-videotape methods." They added that videotapes of key witnesses and of lineups can be very powerful prosecution tools as well. Similarly, the Bronx County DA's Office gave video confessions high marks as material valuable for both trial preparation and the negotiation of guilty pleas. Asked how often the recorded videotapes have played a significant role in plea negotiations, a Bronx County DA's office interviewee with nearly two decades of experience in that office responded: "regularly."

Prosecutorial reviews of videotaped confessions as a tool in securing convictions (a point we will explore in the next principal section of this chapter) do not suggest that videos *always* produce favorable results for the State, but this is a different point from the question of facilitating prosecutor *preparation* for either trials or plea negotiation. Even if "the news is going to be bad" from the prosecutors' perspective, at least he or she gets some advance warning of what is in store.

Still, it could be argued that in some instances, the videotape documents aspects of case evidence problematic to the State that simply would have gone undocumented with other techniques for memorializing the content of interrogations or confessions. For instance, in Washington, D.C., officials reported that when there are weaknesses in a video suspect statement (e.g., detectives don't ask sensible questions or fail to cover all the bases in eliciting the statement), it can complicate the prosecutor's job because the jury now has highlighted for it on the video the strengths and the flaws of the Government's case. Now, the prosecutor has the burden of defending the videotape in court. Still, this same prosecutorial interviewee admitted that videotaped confessions, both as material for trial preparation and as prosecution tools during trials, are "uniquely powerful evidence." Videotapes help prosecutors prepare, she reported, because

"you know what the defendant's style will be. It's easier to see the person's mind at work visually. The detective asks a zinger of a question, and you see the response. Watching the defendant *not* react when he gets caught in a lie is very informative to the prosecutor in planning for trial. You would cross-examine such an individual differently. You might spring more traps on such a defendant, letting the jury see his lack of reaction."¹³

Even if videotapes prove to contain information that complicates the prosecutor's work, however, the question then becomes whether the partisan interests of prosecutors

¹³ This same interviewee expressed the strong opinion that having more *witness* statements videotaped by police during their case investigations would *not* help the prosecution "because in so many cases the witness' first contact with the police involves complete fabrications." As noted elsewhere, however, other prosecutors express great approval of videotaped witness statements.

in securing high conviction rates ought to outweigh their own professional obligations and the societal interests in establishing the truth in specific cases. As a San Diego prosecutor said:

"Videotape helps show the truth, which is what our office wants, even if it means charging the defendant with a lesser crime than might be charged in the absence of the videotape (for example, manslaughter rather than murder.)"

Among the elements that many prosecutors cited in explaining why videotaped confessions or interrogations help them better prepare for trial or for plea negotiations are: (1) the suspect's and police officers' physical condition during the interview; (2) both parties' demeanor; (3) their attire; (4) their intonation; (5) their body language (e.g., if suspect nods "yes" or "no" in response to the interrogator's question that response can stand on its own without the interrogator having to demand a verbalization of the response); and (6) the circumstances on the night of the arrest. All of these elements, our interviewees noted, are normally impossible to capture from a written interview summary or transcript and most are lost in audiotapes as well. In jurisdictions where the police or prosecutorial interrogator's face is not visible on the videotape either because his or her back is to the camera or because the picture frame excludes all participants except the suspect, then the video of course will not be particularly informative about the demeanor or physical condition of anyone besides the suspect. Some prosecutors find this problematic and others do not. In Fort Wayne, the prosecutors place great emphasis on the importance of seeing the demeanor and attitude of both the suspect and the police, which is why both are visible on the videotape (see the videotaping room floor plan in the previous chapter).

A prosecutor in Orange County offered the view that his trial preparation and decisions about plea bargaining options are facilitated by videotapes because, among other reasons, videos help him distinguish genuine remorse from feigned remorse on the part of the suspect. Similarly, a San Diego assistant District Attorney observed that videotape shows the visual elements that give intonation meaning (for instance, a smile or frown can significantly alter the accurate interpretation of the identical words and tone).

While most of the prosecutors we interviewed expressed the view that videotaping assists them in negotiating acceptable pleas, a San Diego prosecutor said that videotaped interrogations can cut both ways in terms of plea bargaining. Sometimes the video raises hopes on the defense side that they may be able to assert a defense (such as insanity or intoxication) that, but for the video record, might be harder to assert. One prosecutor in San Diego, who said he generally finds videotaped statements quite useful both for plea negotiations and for trial preparation, suggested that it would be even more helpful to have dashboard-mounted video cameras in police cars. Videotapes recorded under these circumstances could help make understandable for juries "curbside identifications," in which the victim spontaneously points to someone and says, "that's the guy who stole my purse" or committed some other offense. By presenting evidence which would clarify for juries the plausible way in which such identifications are made, some prosecutors believe that videotapes would produce greater incentives for defense attorneys and their clients to settle cases by plea than by going to trial.

6. Impact on Defense Preparation of Cases, Preparation for Plea Negotiation, and "Client Control"

It is not only prosecutors who find videotapes useful for trial preparation and for plea bargaining, although the attitudes toward this documentation method on the defense side are considerably more mixed than the reasonably strong enthusiasm expressed by prosecutors. To a certain extent, we found in our site visit interviews that defense attorney attitudes toward videotaped confessions or full interrogations differ somewhat based on whether the defense attorney is a public defender fighting daunting caseloads or a private attorney feeling somewhat less pressure to move cases rapidly along.¹⁴

The reasons why some defense attorneys reported finding videotaped suspect statements or interviews useful in trial preparation are similar on some dimensions to the benefits cited by prosecutors. The tapes clarify the suspect's and officer's physical condition, demeanor, attire (e.g., torn clothing—which could corroborate a defendant's claim that he got into a fight with the homicide victim and did not premeditatedly kill him), intonation, and the circumstances surrounding the interrogation (number of interrogators present, hour of day, fatigue, hunger, frustration, etc.).

A public defender in Denver noted additionally that seeing the clock in the picture frame throughout the video helps her pin down when things are being said in relation to other statements and questions. The sequence of comments in the context of an overall interrogation can sometimes provide important insight into their meaning. She has also found it useful to watch the suspect's eyes during interrogation for evidence of drug effects, and has occasionally engaged psychologists or psychiatrists to testify as experts at trial about the possible influence of drugs on the testimony of the suspect shown in the videotape.

A private defense attorney in Denver recounted a homicide case in which he addressed the problem of proving his client's drunkenness on the videotape by taking the client to a lab, having the doctor medically intoxicate the individual to the point of legal drunkenness, and then showing that in both the lab test (recorded on videotape) and in the police videotape of the man's confession there were similar idiosyncratic behaviors. Thus, this individual, who was able to hold his liquor quite well, manifested in *both* of the videotapes the same subtle peculiarities of speech pattern, which the individual did not manifest when he tested sober. Thus, even though the defendant did not appear, using conventional manifestations of intoxication, to be drunk on the police videotape, laboratory tests created grave doubt about the defendant's sobriety at the time of the videotaped confession.

¹⁴ Many of the public defenders whom we interviewed seemed, because of the pressure to attend to many clients, to welcome tools which would help them expedite their cases. Videotaped confessions shortened the initial communications with their clients in which, often, the clients lie to their attorneys about what they did and what they said during the police stationhouse interrogation.

The videotapes also can help the defense, our public defender interviewee in Denver reported, by capturing the silence—the pauses—in the interview, whose timing can provide meaning to the interview that would be lost in a written documentation of what transpired. A private defense attorney in Denver recalled a case in which his client was told that if he cooperated with police he would not be charged and that a co-defendant would be charged instead. The lawyer was able successfully to use the defendant's eagerness in confessing on the videotape as corroboration of the allegations of improper promises made.

A public defender in Kansas City also expressed the view that the videotaped confession helps the defense lawyer "check out the defendant's physical condition and demeanor. It shows if people are clearly psychotic or drunk, and it efficiently gets accurate information to the defense attorney." An assistant District Attorney in Orange County indicated that in some cases the videotape has shown the defendant to be insane. In Tulsa, a defense lawyer indicated that the video can be very powerful in helping to defend a mentally retarded suspect who says "yes" to an incriminating question by police only after arduous efforts with leading questions.

Even if the defendant is mentally competent, as a public defender pointed out in San Diego, the defense attorney can learn a lot about whether it would be tactically useful to place his or her client on the witness stand from watching how the defendant behaves and speaks on the videotape. A video may make it obvious that the defense interests would not be served by having the defendant testify, and it may alert the defense attorney to the need to attempt to explain apparent hardness on the part of the defendant. For instance, as a Tulsa defense lawyer observed, "It is often true that a defendant will come off matter-of-fact about brutal crimes, and it's hard—but necessary—to try to explain why a person is grinning while telling you he just killed two people."

Sometimes, as noted earlier, after a long, nonstop investigation, followed directly by the stationhouse interrogation, the investigating officers can look so disheveled and tired that their own state of mind or sobriety might be called into question, even though exhaustion is being misread as intoxication. Our public defender interviewee in Kansas City reported such an instance in which he attempted to persuade the jury in a murder case that the police conducting the interrogation were drunk. He failed to do so, but defense attorneys often feel they have little to work with, and anything they can use to plant the seeds of doubt in jurors' minds is seized upon as a defense asset.

In New York City, a defense lawyer used a videotaped murder confession to argue a "battered woman's syndrome" defense. The female defendant had killed her husband after years of abuse, and her crying, screaming, and other behaviors on the video that her lawyer characterized as manifestations of battered woman's syndrome provided useful evidence for the defense. A defense attorney in Orange County reported that videotapes have proved helpful in preparing a defense when they show the police purposely avoiding an exculpatory line of discussion that the suspect tried to bring up or pursue.

In extreme cases, the videotape might help the defense plant especially fertile seeds of doubt. A New York City defense attorney recalled a case some years ago in which an

audiotape rather than videotape had been made of the confession, and in which there were clearly audible recurring clicks on the tape. On investigation, the defense attorney learned that these were the clicks of the police officer's gun hammer falling repeatedly on the officer's (empty) gun in between each question. In Orange County, in a far less rare and less blatant example of the potential utility of videotapes to defense attorneys, a public defender indicated that it is much easier with a videotape than an audiotape to place the police officer's demeanor on trial. A private defense attorney in the same jurisdiction added the view that video allows the defense to see whether the interrogating officers are using any physical intimidation (e.g., suspect chained to the wall of the interrogation room). It is interesting to note that the notion expressed by the Orange County public defender that video facilitates raising the "transaction costs" for the police by criticizing their demeanor was not cited by either police or prosecutors as a drawback to videotaping. We infer from our site visits that the demeanor of the interrogators on videotape is such—to the extent that they are visible on camera, which varies from jurisdiction to jurisdiction—that they rarely give the defense any negative behaviors to seize upon.

A public defender in Washington, D.C. cited a case several years ago in which a videotaped statement was helpful to the defense because the defendant had delirium tremens during the interrogation. While such physical conditions may be reasonably easy to detect, other more subtle conditions may be detectable in some jurisdictions and not in others depending on how much of a close-up view the camera provides. For instance, a suspect's tears may be invisible if the camera shot is not very tight, potentially prejudicing the defense's opportunity to introduce remorse as an element pertaining to culpability or sentencing. Other aspects of the videotaping procedures may also impact on the extent to which a suspect's remorse is masked. One of these procedures—the decision whether to videotape entire interrogations or merely recaps of their highlights—may substantially affect the depiction of remorsefulness. We will discuss this issue in a separate section later in this chapter.

Still another circumstance in which several of our defense attorney interviewees either have found videotapes helpful in preparing for trial or for plea negotiations—or projected that they would find them useful if the situation arose—is in connection with the interrogation of non-English speaking suspects by police using interpreters. The videotape captures the precise translation, facial expressions and gestures used in the three points of each exchange—the police question or comment, interpreter's translation, and suspect's statement. Thus, the defense can hire an independent translator to scrutinize the video for erroneous translations that might have prejudiced the defendant. An experienced homicide defense lawyer in Denver said that although she had never had such a case, she could readily see the benefits, since a video might sow confusion on the suspect's face or an expression or gesture that suggests he means the opposite of whatever answer the translator ascribed to the him.¹⁵

¹⁵ In a different context, Americans have become accustomed, in watching the videotapes of Americans held hostage in the Middle East, to the way in which individuals making false self-incriminating statements can use body language, facial expressions, obscene gestures or other hand signals, inflection and other techniques, either voluntarily or instinctively, to display the insincerity

A police executive in Denver indicated that he is aware of a number of interrogations of Spanish-speaking suspects in which a Spanish speaking detective was used. Even though such interrogations eliminate the go-between interpreter, there is still the issue of the accuracy of the translation eventually made for use by the lawyers on both sides and the court. A defense attorney in Kansas City told of a murder case he had in which a Spanish-speaking State's *witness* had his statement videotaped, and the defense was able to soften the impact of the testimony by hiring its own interpreter to critique the translation provided on the videotape.

In New York City, the Bronx District Attorney's Office pointed out that videotaping interrogations involving interpreters has not only proven useful to the defense on occasion but is often helpful to the prosecution. Prior to videotaping, if the prosecution in the Bronx sought to introduce in evidence a written, English language confession articulated by an interpreter based on a foreign-speaking suspect's interrogation, and if the interpreter was not available when needed in court, it was "virtually impossible" to establish the admissibility of the English language confession. Defense attorneys in San Diego reported that, in fact, some of the interpreters who have been used in police interrogations have been accused by Spanish-speaking attorneys of providing inaccurate interpretations of interrogations.

A defense attorney in Orange County noted one of the more subtle reasons why it can help the defense to capture on videotape an interrogation of a suspect who has only marginal fluency in English but nevertheless is interviewed in English. Many persons having only minimal skills in the language they are attempting to speak, the attorney argued, develop the habit of saying "yes" when they are not certain of the meaning of a question they are asked. With such people, a video could make a substantial difference in clarifying their true meaning or at least suggesting that their affirmative responses are the product of confusion.

Even with persons whose mother tongue is English, noted a Tulsa defense lawyer, if they have heavy accents, a videotape record of the interrogation can make it much easier than an audiotape record to understand what is being said. A Washington, D.C. defense lawyer noted that a verbatim audio-video record of the precise words used by police and suspects (either in stationhouse interrogations or in undercover operations in which the defense might claim entrapment) can prove very useful to the defense. She has hired a linguistics expert from time to time for murder trials to comment on the language used in a videotaped conversation between police and the suspect to attempt to establish that her client's words, in the context of the questions asked, do not carry the meaning ascribed to them by the prosecution.

of the words they are mouthing. Such clues to coercion could appear either in interrogations involving translations or in situations in which police have, during pre-tape interrogation, planted ideas in suspect's minds and employed unprofessional tactics to induce false confessions. The science of reading body language (eye contact and movement, nervous gestures or ticks, etc.) as a window into an interviewee's truthfulness is of course a part of basic training for police interrogators.

It is important to note that the ways cited above in which videotapes can help and have helped defense attorneys prepare for trial occur with wide variability. Most defense attorneys agree that, if their clients are going to confess (all attorneys would of course rather their clients simply refrained from talking with police), they prefer that they confess on video because at least that gives the defense information to work with in terms of demeanor, intonation and the other elements noted above. Still, some defense lawyers would rather have written confessions, purely as a defense tactic, because they are easier to attack as the product of coercion or fabrication. Some of our defense attorney interviewees who made this point about tactics distinguished their attitude toward videotaping interrogations or confessions based on their role as defense attorneys and as citizens. Said one: "As a defense lawyer, I hate videotaping. As a citizen, needing the protection of the police against criminals, I love it."

Several defense attorneys—especially public defenders struggling to process large case loads—indicated that, although videotaped confessions may not help them win their clients' freedom, the tapes do assist them in establishing the "client control" needed to cut through their clients' false assertions about what transpired in the police interview room. For instance, in Kansas City a public defender reported that one of his clients claimed he was drunk and therefore could not remember what he had told the police during interrogation. Yet the videotape revealed the suspect to be sober and his incriminating statements to be voluntary and unambiguous. This greatly facilitated a more honest and expeditious exchange between attorney and client. In Fort Wayne, a defense lawyer recounted a case in which the defendant told his attorney that he was wearing a red windbreaker during the interrogation (a point relevant to identification). Yet the videotape clearly showed the windbreaker to be a bright pink. When shown the video, this attorney's client desisted in this counterproductive assertion.

A Kansas City defense attorney reported that judicious use of the videotape will "get the defendant to stop protesting innocence to the defense attorney if in fact he is guilty." Another defense attorney in the same locale indicated that the existence of a videotape documentation of his client's confession has definitely helped him decide whether to go to trial or seek a negotiated plea of guilty. As a defense lawyer in New York City put it: "I don't want to try guilty defendants. I only want to go to trial with people who claim they are innocent." A prosecutor in San Diego offered the observation that, as between criminal defendants and their attorneys, the defendants will typically dislike videotaping more than their lawyers will.¹⁶

In many other instances, defense attorneys have played the videos for their clients to expedite the process of getting the defendants to come to grips with the reality of their

¹⁶ It was universally true among our defense attorney interviewees that they reported finding it much easier to represent a defendant they believe is guilty than one they believe to be innocent. As a Tulsa defense attorney specializing in murder cases explained: "It's very difficult to represent a person you know is innocent. You have his life in your hands, and you lie awake nights worrying. When a videotape establishes the defendant's guilt, the work of the defense attorney is less stressful."

circumstances and to participate in plea negotiations designed to secure sentences less stringent than those they might receive following a full trial. As a defense attorney in Denver explained, the videos can be useful not only in getting the defendant to own up to what he did, but in helping the defendant's family accept the fact that he or she really has done something wrong. A Tulsa defense attorney said that videotaping fosters client control and control over influential relatives and friends because it can convince them that the defendant has small chance of success if the defense demands a trial.

Moreover, for defendants who are attempting to be honest with their attorneys, the videos can help jog memory about details of the interrogation that may be useful to the defense (either in negotiating pleas or in preparing for trial). Attorneys in Fort Wayne have used videos with their clients not only to attain appropriate cooperation from them but to support arguments that the defendant's cooperativeness on the video is evidence of a capacity to be rehabilitated as a responsible member of the community. An Orange County defense lawyer said that a videotape suggesting a basis for raising an insanity defense can sometimes be helpful in persuading the prosecution to agree to what the defense considers a favorable guilty plea.

Some jurisdictions, such as Washington, D.C., at least in recent years, have rarely had plea bargaining in murder cases (the type of cases in which videotapes are most frequently made of suspect confessions or interrogations). Thus, one would not expect any "process effects" of a videotaping program to show up in the form of assisting defense attorneys with the "client control" needed for plea negotiations. As a Washington, D.C. defense attorney observed—in a comment equally applicable to some other defense lawyers' difficulties in using videotapes in other jurisdictions to facilitate client cooperation with plea bargaining—it is often difficult logistically to show the videotaped confession to incarcerated defendants. Frequently, the first time defendants held in pre-trial detention in certain jurisdictions get to see their videotaped confession is in the courtroom (typically at the preliminary hearing). Arrangements can be made to show the videotape to the defendant in the prosecutor's office, but in some locales this is a burdensome procedure.

7. Impact on the *Timing* of Guilty Pleas

We will discuss later in this chapter the perceived impacts of videotaping on the number of guilty pleas entered and the severity of the sentences negotiated. Here, however, we note briefly the perceptions of practitioners concerning whether videotaping programs have effected any change in the timing of guilty pleas. Interviewees reported different results across our site visit jurisdictions. In Denver, Bronx County, and Kansas City, defense attorneys speculated (no relevant statistics had been compiled) that there is a slight decrease in the time after arrest when guilty pleas are entered. The estimated effect in Kansas City on homicide cases was a reduction in the time between arrest and guilty plea from a period of six to eight months for defendants whose confessions were documented by some means other than videotape to a period of two to four months for defendants who confessed on video. The public defender's office in Kansas City suggested that there were cost savings for that office associated with the entry of earlier guilty pleas.

But in Fort Wayne one defense attorneys said the impact on the timing of pleas was minimal. Yet, in the same jurisdiction another defense attorney and a judge (who formerly worked as a defense lawyer) suggested that earlier pleas had resulted, at least in serious cases and where the defendant is represented by a public defender. No effect on the timing of pleas would be anticipated in jurisdictions, such as Orange County, Washington, D.C., and Houston, where prosecutors have a policy of taking almost all homicide cases to trial. In Orange County, a public defender reported that, in the rare plea agreement in a homicide case, the plea typically comes at the last minute, regardless of the existence of a videotaped interrogation. But the prosecutor's no-plea-bargaining policy in Orange County does not extend to sex cases, where a public defender suggested that the adoption of video documentation did have an effect in speeding up the entry of guilty pleas.

8. Impact on Judges' Processing of Cases and Judges' and Jurors' Consideration of Evidence and Arguments

For the most part, judges we interviewed cited the same kinds of beneficial attributes of videotaping as were cited by police, prosecutors and defense attorneys. We will not reiterate those attributes in any detail here. But a few additional observations are worth including at this juncture. A judge in Houston expressed the views of many of his colleagues around the country when he observed that videotaping has helped the judiciary's efforts to see that justice is done in cases brought before them. "It makes police work more credible," he explained. He acknowledged, however, that

"the police don't always like videotaping because they believe it cramps their style. They believe juries are not in tune with the reality of how the police must act to get confessions, and they worry that juries won't understand the need for trickery, cajoling, and the like."

Yet, there is evidence from every jurisdiction we visited that judges and juries alike do indeed understand and accept as legitimate a variety of lawful tactics regularly employed by detectives around the nation.

Most judges in most jurisdictions indicated that, as one put it, "juries really like videotapes. This form of evidence holds the jurors' interest." A defense attorney in Fort Wayne concurred: "The jury will be on the edge of their seats when the prosecutor says, 'Ladies and Gentlemen, we have a movie of the defendant telling what he did on the night in question.' This generates great jury interest."

Judges reacted as well to the fiscal implications of videotaping confessions or interrogations. In Denver, trials involving videotaped confessions were said to be shorter by hours or even sometimes by days than would be the case with a different method of documenting the defendant's statement. A judge in Fort Wayne said that he likes videotaping and would favor the taping of entire stationhouse interviews rather than only recaps, despite the fact that he would "hate the idea of lengthening trials from one day to two days because of having to admit a four-hour interrogation videotape in evidence." (Most felony cases in Fort Wayne reportedly are tried in one or two days at present.) A

judge in New York City indicated that videotaping confessions has not prevented court time from being taken discussing the pre-tape statement given to police by the defendant. The prosecutors bring the issue up for fear the defense attorney will make an issue out of the voluntariness of the video statement taken by the prosecutors. But by increasing the plea rate (a point to which we will turn later in this chapter), judges report that videotaping does save some court costs.

In sum, our judicial interviewees expressed the view that judicial determinations to admit confessions in evidence and to convict or acquit are more credible to the public and to the rest of the criminal justice system when the suspect's police interview or at least its highlights are captured on videotape. Thus, videotaping lends greater *legitimacy* to the justice system—a commodity sometimes in short supply.

9. Attitudes Toward Videotaping of Entire Stationhouse Interrogations Versus Recapitulations

In Chapter 4 we discussed the *frequency* with which departments videotape entire interviews as opposed to what we have called recapitulations¹⁷ of those interviews. Here, we explore the reactions we heard from criminal justice practitioners to the issues presented by an agency's decision to videotape either entire interrogations or recaps.

Just as we learned from our national survey and from discussions with criminal justice practitioners around the nation during the course of our study that practitioners hold strongly divergent views on the merits of videotaping versus other documentation methods, we discovered in our site visits that equally ardent and opposite views are held about how much of the stationhouse interrogation to videotape. As a general proposition, police in each jurisdiction we visited were highly enamored of their *own* procedure, and had difficulty imagining why their counterparts elsewhere preferred taping either more or less of their interviews. But loyalty to local police videotaping practices was not so uniformly expressed among local *prosecutors* or *judges*; and defense attorneys in almost every jurisdiction reported that, if they have to live with a videotaping program, they would strongly prefer the videotaping of *entire* interviews over the taping of recaps.

A defense attorney in Fort Wayne explained his opposition to taping recaps: "The police should videotape from the start of the stationhouse interrogation, so you don't just have leading questions with 'yes' or 'no' answers, which is the typical videotape I see." A judge (and former defense attorney) in the same jurisdiction added: "Defendants often say, 'The tape was what the police told me to say.'" A defense attorney in New York City put his assertion bluntly: "The videotapes show suspects who have been Pavlov-dogged into a reaction during rehearsals."

¹⁷ In the international literature, more partisan terminology is often used, such as "rehearsals" and "dry-runs" to characterize the pre-tape conversation and "rehashes" to designate the taped portion.

Among our site visits, there were a couple of defense attorneys who did *not* express strong opposition to the taping of recaps, as with one public defender in Washington, D.C. who asserted: "I oppose taping entire interviews because that removes the defense attorney's ability to argue coercion prior to the taping." A colleague in the same office disagreed, arguing that it was more important to prevent the coercion than to preserve the capacity to capitalize on it in court.

Detectives who videotape entire stationhouse interviews (as in San Diego, Orange County, and Huntington Beach) are perplexed at why detectives elsewhere would be willing to take the risk of losing potentially valuable information that a suspect says spontaneously and might not be willing to repeat subsequently on videotape after an opportunity to reflect on its potentially incriminating importance. A prosecutor in Washington, D.C. concurred:

"There is a risk in videotaping only recaps: In a number of cases the suspect has given an oral statement, but then refused to have it written down and sign it. There's the risk that taping only the confession, which requires the re-administration of *Miranda* rights, will produce an objection by the suspect to videotaping the confession. The confession would have been captured if the tape had been running from the start."

Nor do detectives who tape whole interviews accept the notion that lawful, professionally accepted, aggressive or deceitful interrogation tactics will prove alarming to judges or jurors when captured on videotape. Yet, detectives and prosecutors accustomed to videotapes of recaps only cannot fathom how their counterparts elsewhere can elicit clearly incriminating statements from suspects when their taped discussions include myriad tangents and a host of exculpatory claims. Nor can recap-tapers understand how their own organizations and the criminal justice systems in which they operate could absorb the costs of videotaping entire interviews (often running several hours in length).¹⁸

Our site interviews illustrate the perspectives practitioners hold on the question of how much of an interview to videotape and the kind of process and outcome consequences that might attach to that decision. In Denver, where normally the police videotape only recapitulations (although sometimes they videotape "cold turkey," as one detective put it), the police explained why they would be uncomfortable videotaping from the beginning of the interview: "I'm concerned," said one detective,

"that the DA or jury would be uncomfortable with some of the mind games I

¹⁸ Several times during the course of our site visits and since then we have reflected on how valuable an exercise it might be, as a follow-up to this study, to sponsor a national information-sharing conference for homicide investigators and prosecutors in which they described in their own words what videotaping procedures they use, why they find them desirable, and had a chance to dialogue with equally professional colleagues who employ and embrace substantially different approaches.

play with suspects—appealing to the suspect's conscience, religiosity, etc. Some people feel that it's inappropriate to appeal to a suspect's conscience in getting him to confess. I don't."

The desire for control over the interrogation's content and predictability are elements noted by several police or prosecutors to explain their discomfort with taping from the outset of the interrogation. In Fort Wayne, a police official said:

"The idea of videotaping from the beginning of the interview is not appealing because I don't know what the suspect will say. He may not want to confess, and the Department basically documents only incriminating information."

There is also the concern that a suspect will be inhibited to begin talking with a videotape rolling. A Fort Wayne detective expressed this concern, although others in our site visits thought it equally plausible that the suspect would feel *more* comfortable talking with police since he or she could be assured that everything he or she wished to say would be captured and be shown in court without the police or prosecutors picking only the parts most favorable to them. A prosecutor in Fort Wayne offered still another reason for preferring recaps: "Often the interview doesn't start out very polite. Videotaping from the beginning would inhibit the police and possibly the suspect." "I think videotaping the entire interview would scare the suspects to death, that they would refuse to talk," concurred a police manager from Kansas City.

In Kansas City, another senior administrator expressed the view that expediency is the prime reason that agency videotapes recaps: "The entire interrogation can run a long time (two to five hours). The cost of taping all that would be substantial." Another police administrator in Kansas City said he had additional concerns about taping from the outset: "You won't get the truth the first time around, and the defense attorneys will make use of the exculpatory statements. I can't believe there are actually departments that videotape from the start." A defense attorney in Kansas City expressed the same skepticism: "I do not believe that the police anywhere really videotape the entire interrogation. I think they prime the suspect prior to taping." Another Kansas City investigative specialist asked, "Where a department tapes from the beginning, what do you do if the interrogator makes an error? Do you deny that the videotape exists? Once the Kansas City Police Department makes a videotape, it's a permanent record."

Prosecutors in Kansas City agreed that videotaping entire interviews would be undesirable. A public defender in the same city reported that he would prefer to see the police videotape the whole interrogation, but said he understands that expense would be a major factor, as would police concern about disclosing tactics and techniques. One of the tactics he predicted police would be loath to disclose is the proper administration of *Miranda* rights at the outset of the interrogation, followed by a refusal later in the interrogation to acknowledge the suspect's change of heart and assertion of his right to remain silent or have an attorney provided. "You can't capture that problem on a rehearsed confession tape," this interviewee noted. Said a private defense attorney in Kansas City, "from a tactical point of view, I would rather see either entire interrogations videotaped or no videotaping at all." A defense lawyer from Tulsa said often he is more

concerned about the content than the completeness of the taped interview. Illustrating, he commented: "If I knew my client would be remorseful, I'd want a videotaped interrogation."

Even where no question is raised about the legality of the interrogation tactics used, concerns could arise about disclosing police techniques to defense lawyers who might school their "regular" clients, such as drug dealers or organized crime figures. A prosecutor in the nation's capital found plausible the concern that defense attorneys might "school such clients on how to defeat interrogations by showing them videotapes from a collection of interrogation tapes they could amass through discovery in their various cases." Clearly, the more complete the interrogation contained on the tape, the more potential instructiveness it would have for teaching "defensive tactics" to criminal interviewees.

One of the concerns that surfaced in several jurisdictions is the effect that videotaping entire interrogations versus recaps has on accurately depicting the remorsefulness or callousness of the suspect at the time of the interrogation. A number of defense representatives, some judges, and an occasional prosecutor thought it plausible that the videotaping of recaps would artificially conceal a suspect's genuine remorse. They reasoned that by the time the tape recording commences, the suspect has been asked to repeat his or her story incessantly, to the point where the story comes out without the emotional content it had in the first or early iterations. A Bronx District Attorney allowed that some suspects may look less remorseful than they truly feel on homicide confession videotapes for this reason. In Fort Wayne, a defense attorney told us:

"The police will normally wait until the defendant calms down to run the videotape. They will not videotape while the suspect is distraught. Even if this is done out of compassion, the effect often is that the defendant appears excessively callous on the videotape because he is relatively cool and unemotional while telling of committing a horrendous crime."

In Kansas City, a defense attorney reported his dislike for recaps because "the defendant's demeanor is misleading: he looks artificially cold because he is no longer crying by the time they run the videotape." Said a Denver defense lawyer: "Videotaping a recap can be misleading because it makes the suspect look colder than he is because he has told the story several times when it is finally taped." Even though he argued that "the police in Denver get the statement the way they want it, and then tape it," this defense lawyer offered: "But no enormous injustices are done."

A judge presiding in Bronx County found little basis in fact for concerns about concealed contrition. He opined that, in his 12 years on the bench, having sentenced about 150 major felony offenders, he "can never remember a single defendant showing remorse." Still, even this jurist allowed the possibility that some defendants might look artificially callous on recap tapes because of the repetition of their confessions. A prosecutor in Tulsa said he doubted that a suspect's telling of his tale of predation would get increasingly callous with each reiteration, a point with which a Fort Wayne prosecutor concurred. The Tulsa prosecutor did allow, however, that he could think of at least one

case in which a defendant's "matter-of-fact, nonemotional, unremorseful demeanor in telling about a brutal murder got him the death penalty instead of life imprisonment."

A defense attorney in the same jurisdiction replied that "the matter-of-factness usually comes after retellings; the tone and manner change." Another defense lawyer in Tulsa suggested that "a defendant who cries during the interrogation may help himself." He also suggested that, among the detectives he knew, some could be less effective in questioning suspects if they turned the videotape on at the outset of the interrogation. "Good detectives can pull it off," he argued, "but not all are that skilled." The kind of responses this attorney has received when he has asked Tulsa detectives why they don't routinely videotape from the inception of the stationhouse interrogation include: "The equipment wasn't available," "the suspect hadn't signed the waiver yet," and "I was waiting for another officer to get in from the crime scene."

A defense lawyer in Orange County observed that simply switching from taping recaps to entire interrogations is not a guarantee against induced callousness on the part of the suspect:

"Even if the amount of undocumented conversation is drastically reduced, the damage can still be done in a brief exchange. For example, an interrogator's casual comment before the videotaped interview starts that the *victim* was an ass-- can put the suspect in a frame of mind where he's callous during the videotaping in his references to the victim."

A judge in New York City noted that the seemingly most trivial comment by a suspect during interrogation might prove to be crucially important later at trial. For example, as noted earlier in this monograph, a suspect might say, "I was there but I didn't do anything." Coming in the context of an otherwise purely exculpatory statement, it may not seem clear at the time of the interrogation that the suspect's admission to being present at the scene of the alleged crime would be crucial if the defendant switches his defense strategy and later offers an alibi. Capturing the "I was there..." admission on videotape will very likely rule out an alibi defense at trial. "It is important to remember," noted this judge, "that the defense strategy in any case will be based on the holes in the police investigation." So failing to close the loophole of an alibi defense may invite it. Failing to realize the potential importance of the suspect's admission to being present at the crime scene when the suspect makes no hint of an intent to assert an alibi, a police investigator might decline entirely to videotape even a recap of the interview on the grounds that it would purely exculpatory. Even if the interviewer saw the importance of capturing the admission to being present by the time a recap tape was suggested, the suspect might decline to reiterate his admission.

A detective sergeant in Orange County expressed the view that his agency videotapes entire interrogations in order to avoid claims of coercion based on the pre-tape interview. The defense bar in Orange County reported skepticism that the video recording really does commence at the outset of the stationhouse interrogation; they believe that "dry runs occur," that "tapes are stopped" and that "the police only videotape when doing so would prove useful to the DA." Indeed, this approach to videotaping—taping recaps that seem

like they will be favorable to the State—is the approach favored in a manual entitled *California Peace Officer's Legal Sourcebook* (the copy we saw was revised through September 1988). It is apparently privately published, but widely available throughout California. Section 7.33-d of this volume urges detectives to videotape only recaptulations—advice ignored by a number of law enforcement agencies in California that we visited and presumably by others that we did not have an opportunity to contact in person.

A San Diego prosecutor explained that the police in his locale videotape entire interrogations to eliminate confusion about statements being taken out of context. He did concede, however, that if detectives personally know the suspects, they will sometimes talk prior to the taping, even though the expected procedure is to videotape the entire interview. An experienced public defender in San Diego confirmed, however, that as a general rule the San Diego Police will "turn on the videotape from the beginning of the interview, without a dry run first." Similar credence was given in Huntington Beach by a defense attorney to the statement by police there that they tape "unrehearsed interrogations." Commented a defense attorney in Orange County:

"Often it is not hard to tell whether there has been any important conversation prior to beginning the taping. For instance, it's a dead give-away if, at the outset of the videotape, the suspect, replying to a question, says to police, 'As I told you before...'. Nonrehearsed interrogations tend to have open-ended questions; rehearsed ones tend to have much more leading, closed questions."

In Tulsa, different detectives make different decisions about how much of an interview to videotape. "Some suspects are scared of cameras, and will give you only audio statements at first," explained one detective. Another detective reported that, as soon as he feels comfortable that a suspect will talk to him at all (even prior to eliciting any incriminating statements), he will turn on the videotape and leave it running for the duration of the interview. The validity of this assertion was supported by our review of a videotape in Tulsa which contained purely exculpatory statements by the suspect. As noted elsewhere in this report, Tulsa Police whom we interviewed indicated that the Department had plans in the near future to begin experimenting with routinely videotaping entire stationhouse interrogations.

In Washington, D.C., defense attorneys have argued in court that the police should videotape entire interrogations, but they have not prevailed. And, as the police reported, "no videotaped confessions have been suppressed, so we have not felt obliged to videotape entire interviews." This is not to imply that the Metropolitan Police in Washington videotape on a strictly adversarial basis, for we observed more than one previously recorded videotape in that jurisdiction which appeared to be a reasonable effort to capture the essence of a purely exculpatory statement made by the suspect during an untaped prior interrogation.

Prosecutors in Washington noted the importance of having the police turn on the videotape as soon as they realize the suspect is making a

"useful statement—either an incriminating or a false exculpatory statement. If the detective waits too long he will lose the false exculpatory statement—which can be useful at trial to show the defendant's propensity to lie—because the suspect will soon come to realize during the interrogation that the police know the statement is false."

There were divergent preferences among the Assistant U.S. Attorneys whom we interviewed in Washington concerning whether to videotape entire interrogations or recaps. Said one who advocated taping from the outset: "If you don't tape from the beginning, information may be lost. The police may not realize until later in the case that a comment (such as a false exculpatory statement) is crucial to the case." He argued also that taping whole interviews "would undercut accusations of coercion." But a colleague in the prosecutor's office noted, as the police had in a separate interview we conducted, that the prosecutor's office does not lose confessions in D.C. because of accusations about coercion. She did admit, however, that the prosecutorial staff has to work harder with recaps in which coercion is plausible than they might if the entire uncoercive interview had been captured.

Still others on the D.C. prosecutor's staff firmly opposed the idea of taping entire interrogations, even though they conceded that seeing more of the interrogation might be informative to them in trial preparation because they would learn more about the suspect. Said another prosecutor in Washington, who described himself as "ambivalent" about the idea of taping more than just recaps:

"The best police interrogators are those who warm a suspect up. They don't use intimidation tactics (except maybe with witnesses). So the question is whether one wants to see those rapport-building tactics on videotape."

He noted also that the idea of videotaping an "entire" interrogation loses much of its meaning in warrant arrests, where the investigating officer will be in on the arrest and will usually start talking with the suspect from the moment the arrest is made in the field, long before arriving at the stationhouse and being ready for the taped interrogation.¹⁹ "When the Metropolitan Police Department's videotaping first began," this prosecutor recalled,

"I was concerned that the taping would not begin at the outset of the interview. Over time, however, most of my colleagues and I have concluded that, while there might be a better way, the way the Police do it has certainly been very effective."

A judge in Tulsa allowed that a defense attorney potentially could "make points" with a jury over the "rehearsal" interrogation prior to the videotaping. "But the police could overcome that," he noted, "by recounting at the beginning of the taped interview what transpired before the videotaping began." A number of the agencies we visited have a

¹⁹ Theoretically, at least, police could address this concern, as the Christopher Commission recommended the Los Angeles Police do, by employing video recorders in the field.

simple but effective script or list of points for detectives to cover at the commencement of the taped interview, including soliciting the suspect's description of how he has been treated by the police prior to the recorded interview.

10. Impact on the Number of Police Present at the Interview

Some criminal justice commentators have expressed the opinion that videotaping would present a cost-savings to the criminal justice system because it would allow for fewer officers to be present at the interview (since the second officer would not be needed for corroboration). In most agencies we surveyed, as Figure 25 shows, there was no change in the number of police present during interrogations following the adoption of a videotaping program. There was a decrease in personnel present in 23.5 percent of the agencies, and an increase in only 2.2 percent.

In our site visits, we found no change in the number of detectives present as a result of videotaping. Practices varied across jurisdictions, however. For instance, the general practice in Fort Wayne was to have one detective in the interview room plus one video operator in the equipment control room. In St. Louis, standard operating procedure has long been to have two investigators present during the interview in case one of the officers is not available for testimony in court. In the Bronx, a typical interview at a police precinct station will have one or two police officers present, the Assistant DA taking the statement, and a video technician from the DA's Office.

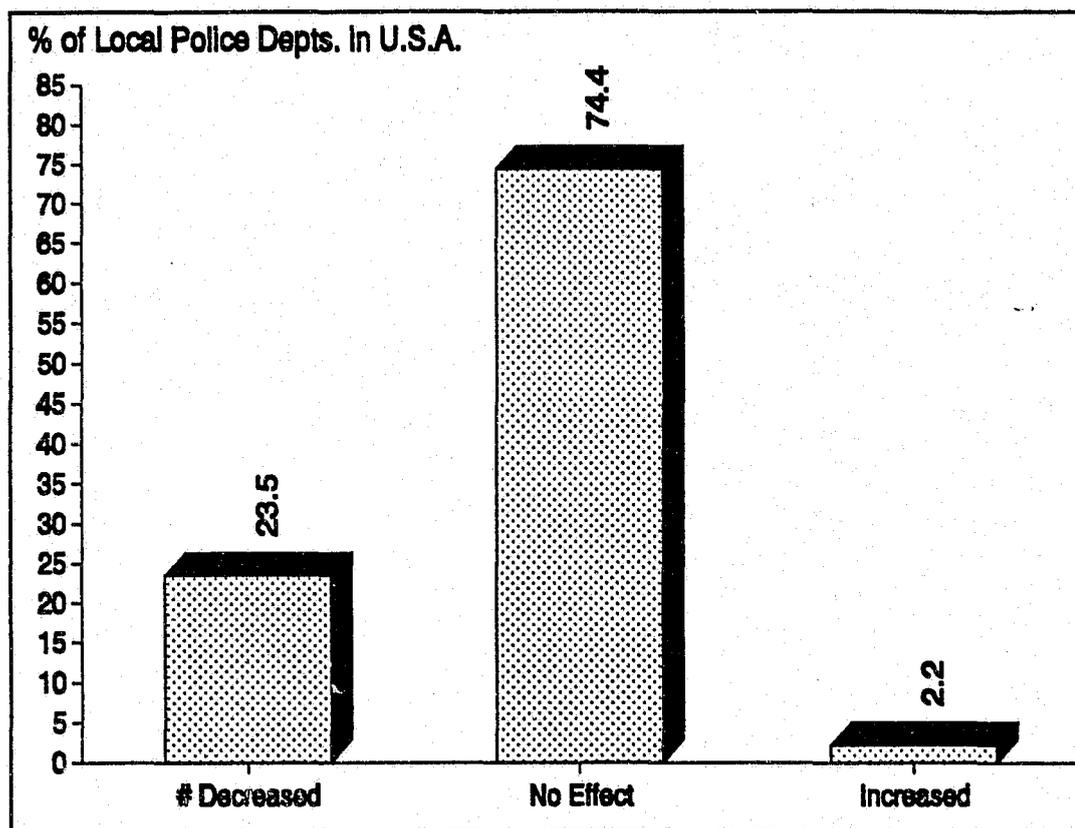


Figure 25: What Effect Has Videotaping Had on the Number of Police Present at Interrogations?

11. Impact on the Duration of Suspect Interviews

Not only has videotaping had little effect on the number of police personnel present during interrogations, it has also had minimal impact on the length of suspect interviews. Figure 26 shows the results from the national survey: 81.2 percent of the videotaping departments reported no effect on the length of stationhouse interviews, whereas the length decreased for 6.3 percent of the agencies and increased for 12.4 percent.

During our site visits, we learned that in Houston videotaping of robbery suspects' statements has apparently shortened the interrogations because, without the recording, when a suspect confessed to a number of robberies during the interview it was much harder to keep the separate cases clear. The general approach used by robbery detectives in Houston with suspects confessing to multiple offenses is to leave a 20 to 30 second pause on the videotape between confessions to different robberies. This allows the separate confessions to be used in different trials without encountering the need to delete discussions of other offenses. Houston detectives reported that it is typical in their jurisdiction for robbery suspects to confess to 10 to 15 separate offenses during a single police interrogation.

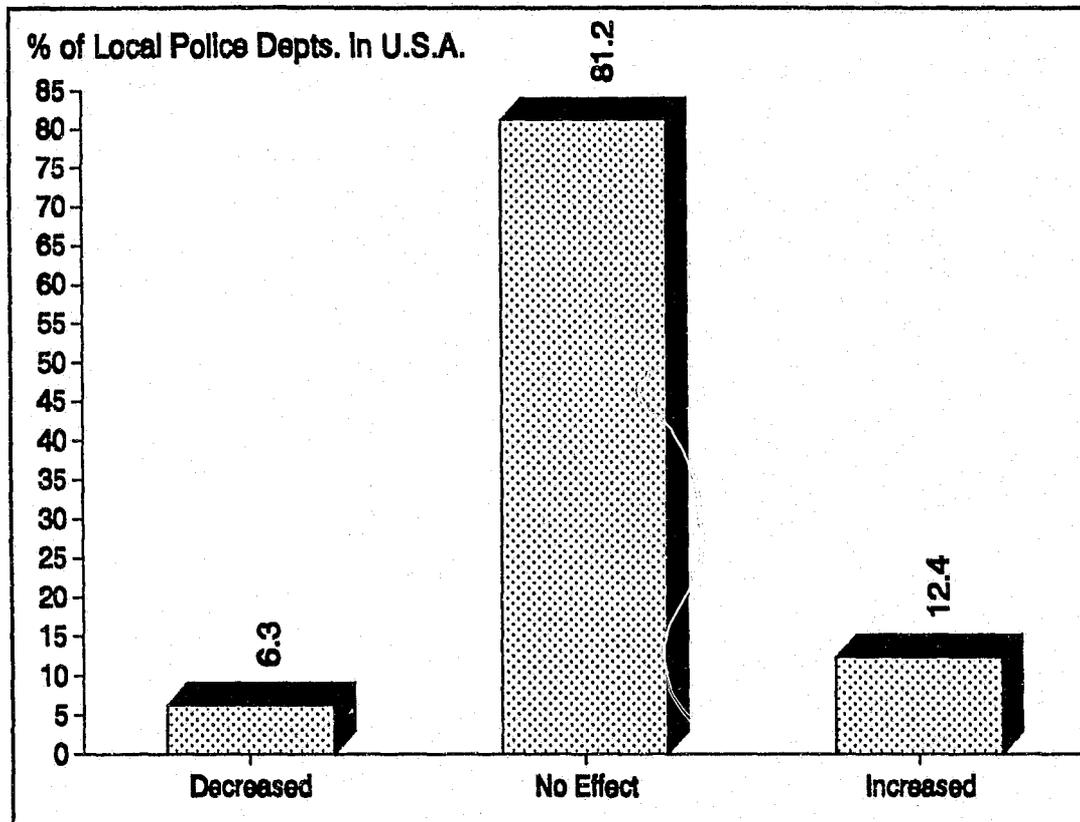


Figure 26: Effect of Videotaping on Duration of Interrogations

In Kansas City, video unit personnel indicated that videotaping saves detectives' time in taking oral statements. In Huntington Beach, where the police tape entire stationhouse interrogations, detectives were not sure whether videotaped interviews are shorter than interviews documented by other methods, but they suggested that video interviews save court time and also avert "wear and tear" on detectives, who face less stress during the process of introducing the confession in evidence.

12. Satisfaction of Criminal Justice Practitioners with Technical Aspects of the Video Recordings and Equipment

Our national survey of police and sheriffs' departments revealed, as shown in Figure 27, high levels of satisfaction with technical aspects of videotaping equipment. Equipment malfunctions or errors due to operator mistakes have been a "major" problem for only 7.2 percent of the nation's police agencies that are videotaping confessions or interrogations. About a third (34.4%) of the departments have had a minor problem of one sort or another, but nearly 60 percent (58.4%) have had no problems at all.

We also heard high levels of satisfaction with technical aspects of the videotaping process in our site visits. Among the police, Denver interviewees were generally satisfied

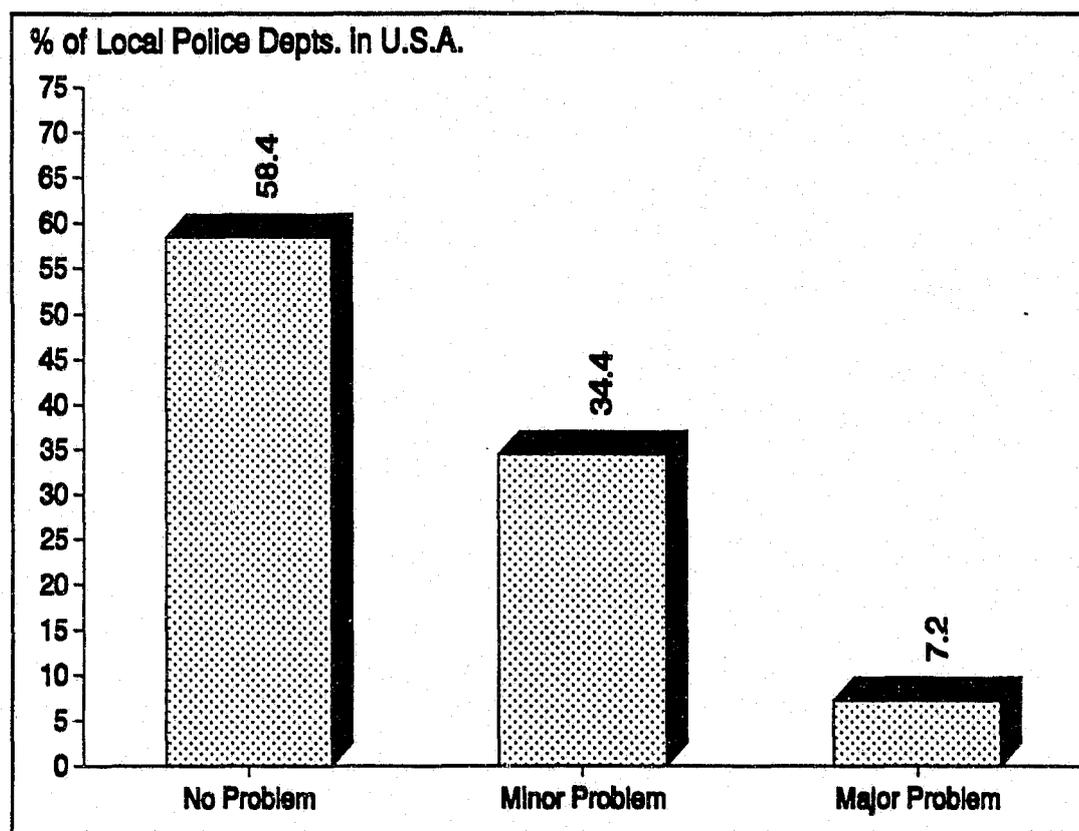


Figure 27: Have Videotape Equipment Problems Been Major or Minor?

with such aspects as ease of operation, design elements intended to minimize operator and machine error, and sound and picture quality. One interviewee suggested that additional improvements in audio quality might result from better soundproofing in the interview room. Denver employs a flashing red light outside the videotaping room to remind personnel to be quiet during a taping session, but this does not always accomplish its intended purpose.

Police in Fort Wayne and Houston were also generally pleased with the audio and video quality of their recordings and with the reliability of their equipment. Fort Wayne Police as of the time of our site visit videotaped in black and white, which presents the advantage of sharper images than color videos capture but the disadvantage of concealing certain details (e.g., skin discolorations revealing bruises or the color of evidence when that is relevant). In Houston, police said they might like to further improve the video clarity (which is actually quite good) and change the camera angle. During our site visit, the camera was in a fixed mounted position on a wall near the ceiling, resulting occasionally in not being able to see the suspect's face when his or her head was tilted downwards. Police in Houston also made the readily implementable suggestion that their microphone mixer should be powered by alternating current rather than direct current (this requires only a simple A/C adapter), since they had occasionally had a battery run down, complicating the recording of the audio elements of the interview.

In Huntington Beach, which boasts a state-of-the-art covert videotaping system, police were "very satisfied" with the technical performance of their equipment. They reported no distortion in the visual image using the pin-hole lens on their concealed camera and reported "good audio" quality on the recordings. In Kansas City, not only are police satisfied with technical aspects of the recordings, but a detective working in the video unit reported having to go to court only five or six times over a three year period to authenticate the equipment and technique used to videotape, which he suggested speaks well for criminal justice system acceptance of the machinery and methods.

Bronx DA's staff and St. Louis Police, whose equipment is of professional television quality, also report being very pleased with the technical performance of their videotaping equipment. In San Diego, police were satisfied with the visual aspects of the tapes but disappointed with the audio quality of some of the recordings. They report "too much echo," which is not surprising with the microphone concealed in a wall thermostat some distance from the interview participants. Another related audio problem in San Diego is that, although the detective is usually audible, it is sometimes difficult to hear the suspect clearly when he or she speaks softly. Too much echo is the complaint in Tulsa as well—there apparently the result of insufficient soundproofing (e.g., there is no carpet on the floor of the interview room). In Washington, D.C., occasional drop-outs in sound have occurred, although generally speaking the video and audio quality of the recordings have been excellent, despite the expectation one might develop from observing the humble physical appearance of the interview room.

Kansas City police, generally pleased with their equipment and quality of the tapes, noted that painting the walls in the interview room beige might present the best quality video image for suspects of all skin hues. In Orange County, where the Sheriff's staff were pleased with their equipment, they offered the advice to colleagues in other jurisdictions to be sure to set up and test on-site any videotaping equipment a department is inclined to purchase. They also recommended that only trained personnel (as opposed, for example, to untrained fellow detectives) operate the videotape equipment—a lesson learned the hard way through operator error.

Prosecutor, defense counsel and judicial reactions to the technical quality of videotapes and the video equipment generally tracked the reactions in each jurisdiction of the police. In San Diego, for instance, prosecutors noted that their video playback equipment sometimes malfunctions when they want to show a videotape in court. They noted that the courtrooms are old and poorly configured for showing videotapes. One prosecutor observed: "The people who design courtrooms aren't trial lawyers; they're judges and architects." In Tulsa, a prosecutor noted occasional problems with operator error—pushing the wrong button on the recorder and having to redo the video portion of the interview.

In Washington, D.C., prosecutors were somewhat more critical of equipment and operator quality than were the police, noting there are sometimes gaps in the videos because someone has asked for technical reasons to have the tape temporarily turned off and that there are missing portions of interviews because someone has forgotten to change an audio or video cassette. Also, there are times when the detective can be heard clearly

but the suspect cannot. Sometimes, budget pressures have forced the police to buy cheap audio or videotape, resulting in drop-out problems due to defective spots on the tape. In one instance, involving a bank surveillance tape rather than an interrogation tape, the U.S. Attorney's Office reports that the police watched the video so often that they literally wore it out—but had neglected to make a back-up copy, presenting serious challenges for the lawyer prosecuting the case. Prosecutors in Washington estimated that the technical problems about which they complained in our interview occurred in approximately 25 percent of the taped interviews.

A public defender in Denver said that she and other courtroom participants often had problems in open court clearly hearing the defendants on the videotapes. A private defense attorney in Denver said his problems with the quality of videotapes only arose if the copy he received was a third generation copy (i.e., a copy of a copy). He was able to avoid this problem by getting a copy from the police of their master recording.

Reflecting a historical perspective, a defense attorney in Orange County noted that the videotaping equipment and tapes malfunction far less often than did the audio recordings the Sheriff's Department used to make on hand-held mini-recorders. Defense attorneys in San Diego echo the complaints about poor sound quality made by police and prosecutors alike. Also, a defense attorney noted that the video recordings in San Diego are black and white, and said he would rather have color videos, for the reasons noted above in our mention of the black and white recordings in Fort Wayne.

Defense counsel in Tulsa complained about the amount of ambient (background) noise on the recordings, due to the fact that the microphone is mounted on the camcorder rather than being placed on the interview table in front of the participants. Tulsa's police already had plans to change their microphone placement when we made our site visit. (A "shotgun" microphone mounted on the camera is another possible solution to the problem they have encountered in Tulsa.) In Washington, D.C., the public defender complained not about equipment reliability but about design elements: the camera's frame is too large to permit the kind of close-up view of the suspect that would reveal tears or other indications of remorse.

Judges had no problem with technical aspects of the video recordings or equipment in most of the jurisdictions we visited. In New York City, a Bronx County judge reported he had good audio quality during playback in his courtroom despite the fact that his courtroom has "lousy acoustics." In Denver, a judge indicated it would be great if the video player could be connected to the large-screen monitors already installed in the courtroom for video arraignments rather than having to be plugged into more traditional size monitors. But no complaints were voiced about the technical quality of the recordings by the judiciary in that locale.

D. The Effects of Videotaping on the *Outcome* of Criminal Investigations and Cases

We noted earlier in this chapter that motions to suppress videotaped confessions

rarely succeed in any of the jurisdictions we visited. That result could be considered a process impact relating to prosecutorial handling of cases or an outcome effect in terms of the success of the police investigation.²⁰ In this final section of this chapter, however, we touch on the perceived effects of videotaping on several criminal justice decisions which most would treat as outcome measures: charging decisions (reflecting favorable or unfavorable outcomes of investigations), guilty plea rates, conviction rates after trials, and sentence severity. Although we did not specifically address the issue of police *clearance* rates (the rate at which pending cases are closed on the police docket with the arrest of a suspect) in our national survey or site visits, it is also possible that videotaped interviews of persons not yet considered suspects—or at least not yet arrested—contributed to the improvement of police clearance rates. This is one of several questions that deserve closer attention in any follow-up studies of the effects of videotaping on criminal justice processes.

We asked prosecutors whether they believe videotaping has produced an increase in the proportion of suspects charged by them with serious felonies. This was not always an easy question for our interviewees to answer. The District Attorney's Office in Denver simply was not sure, although our interviewee offered the opinion that, although charges filed might not be more numerous or more serious, they might be more *appropriate* as a result of videotaping. For example, a prosecutor might charge second-degree rather than first-degree murder after viewing the video interrogation. In Fort Wayne, the prosecutor said there probably had not been any impact one way or the other on the charging rate. Our interviewee acknowledged that there has been an enormous increase in the number of felony cases filed in that jurisdiction in recent years, but he could not attribute any significant portion of this increase to the Fort Wayne Police Department's adoption of videotaping to document confessions. Still, the prosecutor reported that videotaped confessions are an excellent tool for the prosecutor making the charging decision. He has used the videotape to learn first-hand what statement was made to police and, at times, to restrain police eagerness to see a case prosecuted without sufficient regard to the quality of the case.

In Houston, the DA's office rarely sees videotapes for charging purposes since most of the cases having videotaped confessions (robberies mostly) are plea bargained. In Kansas City, prosecutors noted no effect on charging decisions due to suspect videotapes, but indicated that *victim* videotapes in child molestation cases had indeed made a difference in the number charges filed by the prosecutor's office. Similarly, videotapes of key *witnesses* in Kansas City have made a difference—increasing the filing of charges—because these tapes allow a case to continue even if the key witness dies or otherwise becomes unavailable to testify at trial. In San Diego and Washington, D.C., as well, prosecutors reported that *suspect* videotapes do not make any substantial difference in charging decisions.

²⁰ The distinction is not of significance for our purposes in this monograph, since we use the delineation of process and outcome impacts merely as an organizing principle for our presentation of study findings.

But more significant effects were noted by most of our interviewees in relation to the number and seriousness of negotiated guilty pleas. In Denver, a prosecutor said he has negotiated a higher proportion of what he views as satisfactory guilty pleas—for higher charges—as a result of videotaping. "This," he suggested, "is videotaping's main strength in Denver." The Denver prosecutor's office also asserted: "Videotapes persuade the defense attorney to advise the defendant to punt [plead guilty]." A Denver police investigator concurred: "There are a lot more guilty pleas than there would be since the adoption of videotaping."

In Fort Wayne, prosecutors report having negotiated more guilty pleas—but not necessarily for higher sentences—as a result of the Department's adoption of a videotaping program. Prosecutors in Kansas City and New York City similarly reported more guilty pleas—and for higher sentences—because of video documentation. One prosecutor in the Bronx DA's Office reported that, of ten murder cases he had involving a videotaped confession, every one ended in a guilty plea. In Washington, D.C., where the U.S. Attorney's Office shortly before our site visit had adopted a no-plea-bargaining policy in homicide cases, a prosecutor interviewee reported that videotaped confessions until that policy change definitely prompted a higher-rate of guilty pleas in murder cases. "You got a stiffer sentence, and the judge feels more comfortable imposing a stiff sentence, with a video confession," he indicated.

A public defender in Washington confirmed the report that "defense attorneys are more likely to accept a plea where the defendant is on videotape confessing." In Tulsa, a prosecutor said:

"The impact of videotape on guilty plea rates was profound. A good defense attorney could make hay out of an audiotape; but this has not happened with videotapes. Video is a fantastic tool. If a good confession is preserved on videotape, the case is over."

Police in San Diego expressed the view that videotapes alone have not produced guilty pleas in their jurisdiction, but anticipated there would eventually be cases like that which they would handle. In Tulsa, however, police reported that

"videotape is the main reason for higher guilty plea rates. It's not any changes in the nature of the homicides being committed. How many ways can you kill a person? They've been killing people since the earth cooled, and they'll kill them until it burns up again. The difference in the guilty plea rates in this area is our use of video documentation. As soon as the defense attorneys around here find out that their clients have given a videotaped confession, the cases are plea bargained out. With audiotape, we didn't get nearly so many pleas. The defendant could still claim the police held a gun to his head or had a foot on his throat."

A detective with considerable experience in Tulsa suggested that, reflecting on his nearly two decades of homicide investigations, about 90 percent of the suspects whom he videotaped confessing pled guilty, whereas about 75 percent of those who confessed on

audiotape pled guilty. With stenographic documentation (prior to use of audio recordings), about 50 percent of this detective's interrogated suspects pled guilty.

The results of our national police agency survey on the question of whether videotaped confessions have helped secure guilty pleas are depicted in Figure 28. More than three-fourths of all responding agencies expressed the view that videotaped confessions or interrogations had helped "a lot" (55.4%) or "somewhat" (27.3%) in securing guilty pleas.

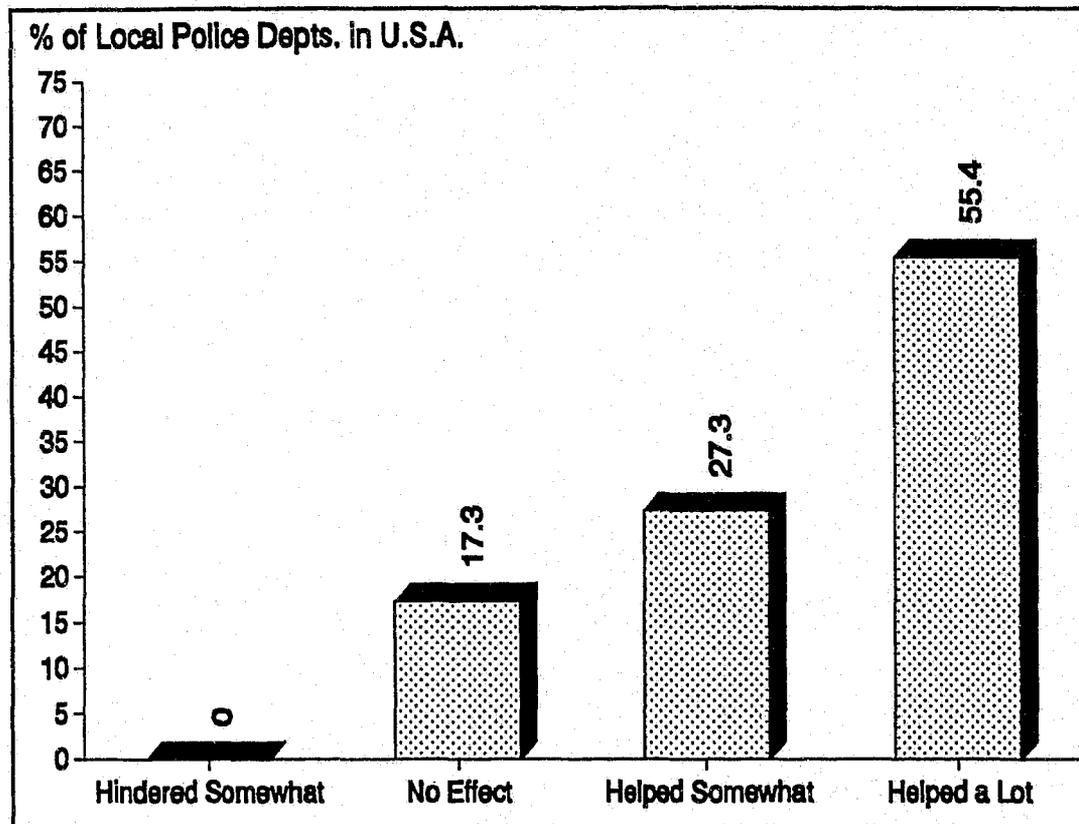


Figure 28: Has Videotaping Helped Secure Guilty Pleas?

Nearly as large a percentage of the nation's law enforcement agencies suggested that videotaping had proved useful to police and prosecutors in securing convictions in trials, as shown in Figure 29. Nearly 82 percent of the responding departments said that videotaped suspect statements helped "a lot" (41.6%) or "somewhat" (40.3%) in this regard. Indeed, in the case of both guilty pleas and convictions, not a single responding agency suggested that videotapes had in any way "hindered" the accomplishment of the State's purpose.

Among our site visit jurisdictions, there was also a reasonably strong consensus that videotaping had played an identifiable role in securing at least some convictions after trials. In Orange County, a Sheriff's investigator reported that not only have videotaped interrogations facilitated convictions, they have also at times shortened trials—in one

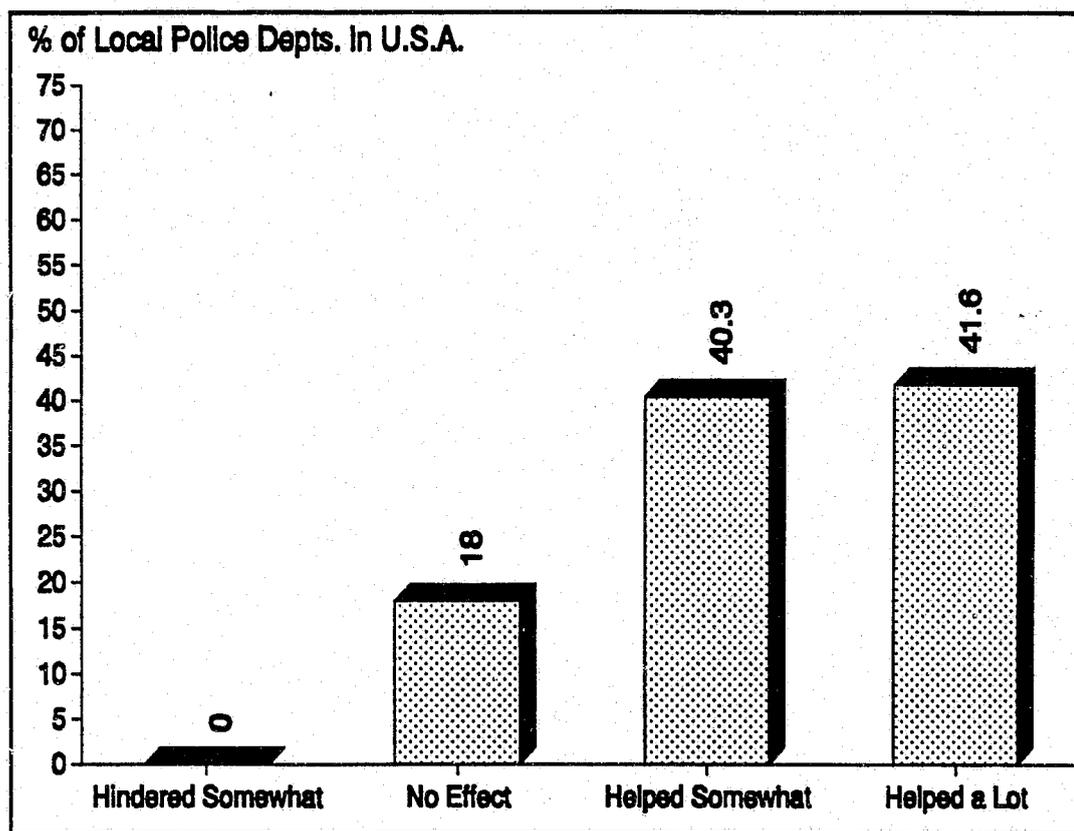


Figure 29: Has Videotaping Helped Police & Prosecutors Secure Convictions?

instance he could recall the video persuading a jury to come back with a verdict more quickly than they otherwise would have in a death penalty case. In St. Louis, police reported never having lost a murder trial that involved a videotaped confession (although they reported that their murder conviction rate even without videotaped confessions is above 90 percent—above average nowadays).

In San Diego, a prosecutor suggested that videotapes usually help him secure convictions but sometimes do not. "The big question in homicide cases," he said,

"is intent. If the suspect on the videotape is crying his eyes out, saying he didn't mean to shoot the victim, this can hurt the prosecution's ability to prove intent. On the other hand, I have used the video to refute claims by a suspect that he was high on dope or insane during the interrogation."

Police in Washington, D.C. asserted that in several cases, the videotape was the

"convincing evidence for conviction. We have obtained convictions that might not otherwise have been obtained through use of the videotapes; for instance, in cases in which the suspect's body language was very important to the jury."

A judge in New York City, where most homicide cases end in guilty pleas, related the

way he used to respond as an assistant District Attorney when the defense attorney would argue to a jury that the videotaped confession had been coerced or induced by the police. He would address the jury with the question:

"Ladies and Gentlemen, what would it take to get *you* to *falsely* confess to killing somebody? Ten days on the rack? But Ladies and Gentlemen, the defendant was arrested just two hours before the interrogation. And look at the videotape. Does the defendant look like he was beaten?"

In Fort Wayne and Denver, police reported that a videotaped confession had never been the factor which led to an *acquittal* in a homicide case, whereas the same could not be said for challenged confessions documented with more traditional methods.

We inquired also about the possible effects of videotaping confessions on sentence severity—either as a consequence of guilty pleas or following trials. In Denver, a prosecutor suggested that videotape's major strength is that "you dispose of the case at a high level [serious charge] without trial." A Denver judge indicated that seeing a defendant's honesty on a videotaped interview can foster leniency, as can seeing remorse. So videotape does not always cut in the direction of aggravation. A public defender in Denver reported that videotaping has had no apparent effect on sentencing. She argued: "The documentation of an offender's acts is not what influences sentencing decisions. Judges today are more influenced by legislative and societal pressures for longer sentences." A private defense attorney in Denver did not agree that videotaping had no effect whatsoever in sentencing. He cited two or three of his own cases in which the existence of the videotaped confession, showing a remorseful and cooperative defendant, operated to mitigate the sentence. And he cited another case in which a sentence was enhanced because the video showed his client to be cooperative but unremorseful.

In Fort Wayne, the police reported that videotaping has generally fostered more severe sentences when, as is frequently the case, the suspect is matter-of-fact in recounting his commission of a serious crime of violence. During the ten months preceding our site visit in Fort Wayne, there had been two cases with videotaped confessions which resulted in guilty pleas to about 90 years of imprisonment each. Still, police and prosecutors in the same jurisdiction did not always report similar perceptions in response to our inquiry, and Fort Wayne is a case in point, for a prosecutor there expressed the view that "videotapes have had little impact on the sentencing process and sentence severity." A judge in Fort Wayne reported:

"A videotape probably would not help a judge in sentencing on a plea bargain. But in a guilty plea entered *without plea bargaining*, the videotape would probably help the judge at sentencing."

Presumably the difference being represented by the Fort Wayne jurist has to do with whether or not the prosecutor and defense attorney have negotiated a specific sentence which the State recommends to the court. In the case of a spontaneous guilty plea, the court may feel more inclined to review the videotape than after a negotiation process has transpired.

In St. Louis, police expressed the view that videotaping has had an impact on enhancing the length of sentences imposed. In Orange County, the District Attorney's Office said that "neither audiotape nor videotape has made any difference in sentence severity." A public defender in Orange County agreed, but a private defense attorney did not concur: "Sometimes a videotape will help reduce the sentence if the defendant is very distraught." In San Diego, police reported that videotapes have not played a role in sentencing, although our interviewee could readily see the potential benefits of considering the video statement in sentencing. He also thought that videotaped interrogations as a sentencing tool could cut both ways, mitigating a sentence for remorseful defendants and aggravating the sentence for "sociopathic killers, for whom killing—and talking about killing—someone is as casual as stepping on an ant." A public defender in San Diego had no knowledge whether videotaping had impacted on sentence severity, but speculated that "a sobbing confession might show remorse and influence a judge toward leniency."

In Houston, prosecutors suggested that, although they rarely see videotapes in homicide cases (because homicide detectives in this jurisdiction prefer not to use video documentation), they could well imagine that a videotaped confession showing a defendant calmly recounting the facts of a killing would be helpful to the prosecution at sentencing time. Indeed, a *judge* in Houston reported that videotapes have a "definite impact on sentencing. Videotape helps in punishment decisions because it shows a suspect's remorse or lack of remorse."

A prosecutor whom we interviewed in Kansas City said that videotaping "generally leads to more severe sentences, unless the suspect expresses remorse on the tape." A defense attorney in the same city expressed skepticism about this assertion, but on further questioning agreed that sentences might be longer in pled cases having videotaped confessions than in pled cases lacking video documentation for a confession. He insisted, however, that the difference in sentence would be slight. A fellow defense attorney in Kansas City disagreed, reporting:

"On pleas, generally the existence of a videotape confession makes no difference in the time given; but in contested cases (at least in homicides), the jury sets the sentence and will definitely give more severe sentences because of a videotaped confession."

In Tulsa, a prosecutor recalled a homicide case in which he is convinced the videotaped confession persuaded the jury to vote a death penalty instead of life imprisonment. A judge in that jurisdiction indicated that when a guilty plea is presented to him he never looks at the videotape, although he acknowledged that the video might influence the deal struck by the prosecutor and defense attorney. A defense attorney in New York City expressed doubt that videotaping had any effect on sentencing. It is important to recall, however, that in the Bronx, as in St. Louis, videotaping has been the standard practice for about two decades. As a result, attempting to assess videotaping's impact on changing sentencing or other procedures can be a highly speculative undertaking since memory of earlier conditions is vague and so many other factors likely to impact on criminal justice decisionmaking have arisen in the past 20 years. A New York City judge, whom we quoted earlier, suggested that while theoretically a defendant's

remorse on a videotape might produce some leniency in sentencing, in 12 years on the bench he had yet to encounter a killer who expressed remorse.

E. The "Bottom Line"

While we asked many questions of many practitioners during both our site visits and national survey designed to get at particular kinds of perceptions they might have of videotaping's process and outcome effects, we also asked some "bottom line" kind of questions. In our national survey, for example, we inquired of police agencies: "On balance, how useful or harmful has videotaping been for police?" The answers are shown in Figure 30. A striking 97 percent of all departments in the nation which are videotaping either confessions or full interrogations find videotaping "very useful" (65.8%) or "somewhat useful" (31.3%). An additional 2.5 percent of the agencies find this use of electronic technology "neither harmful nor helpful," and less than one percent cited the practice of videotaping as "somewhat harmful."

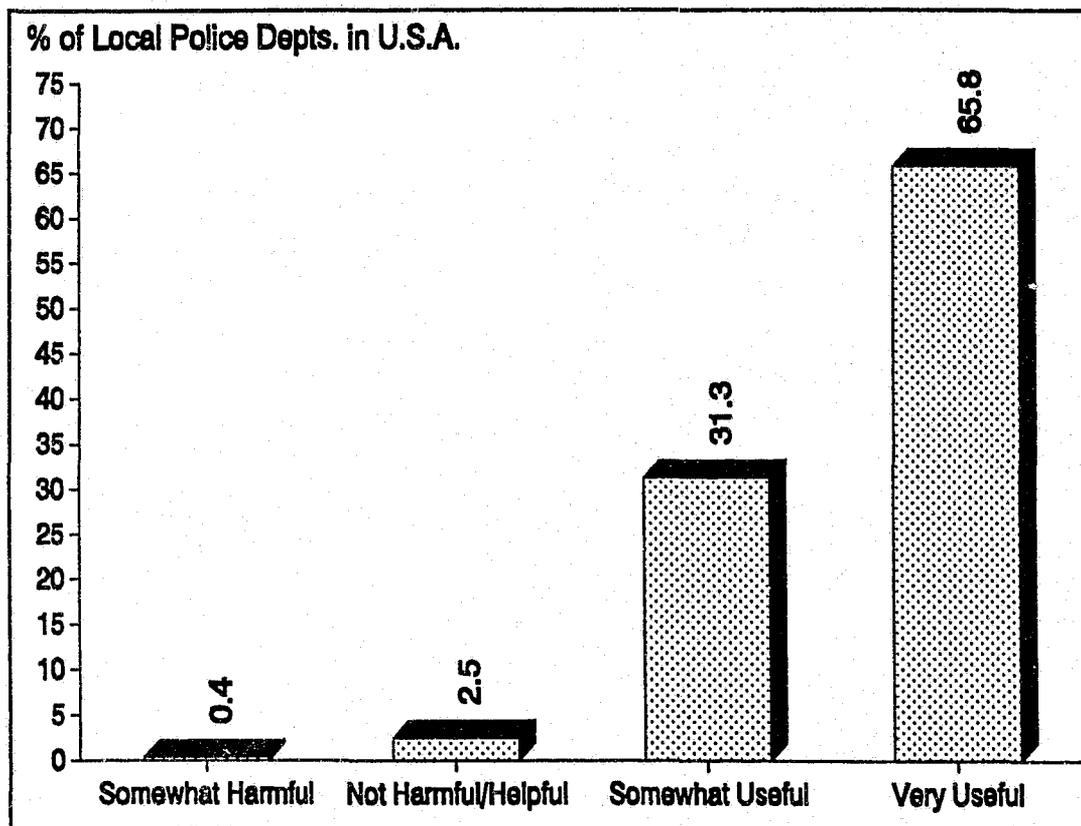


Figure 30: On Balance, How Useful or Harmful Has Videotaping Been for Police?

As we discovered in our site visits, this overall reaction was not always predicated on being able to cite concrete outcome effects of videotaping. In San Diego, for instance, even though the police could not link videotaping with improvements in case results, the

police explained that they strongly support the practice

"because using modern technology is the appropriate way to do police work. Not using video would be like not using state-of-the-art fingerprint analysis equipment. If better technology comes along, and its cost is reasonable, police should experiment with it if there is a reasonable chance that it can assist them in their work."

We also asked practitioners in our site visits: "If the department were today deciding for the first time whether to commence videotaping of interrogations, based on what you have learned over the past several years, *should* the department decide to begin videotaping?" The responses were unanimously affirmative. We asked also what modifications might be suggested, and there were relatively few. In St. Louis, a police interviewee recommended videotaping *all* stationhouse interrogations, not just homicide case interrogations, to avoid charges of police misconduct. In Denver, Huntington Beach, and Orange County, police indicated they would "welcome the continuation and expansion of the videotaping of interrogations." Prosecutors in Denver, Fort Wayne, Houston, and San Diego echoed this sentiment. Prosecutors in some jurisdictions, as noted above, also recommended taping from the inception of the stationhouse interview rather than taping only recapitulations. The general consensus among judges whom we interviewed was also in favor of videotaping, after weighing all the various costs and benefits it might offer.

Defense attorneys were predictably more mixed in their "bottom line" reactions to videotaping. A public defender in Denver said she would favor videotaping but only if done from the outset of the stationhouse interrogation. Ideally, although she believed this may not be feasible in the foreseeable future, she said she wished police could be wired for sound and pictures on the street, so that statements made to police prior to transportation to the police station interrogation room could also be memorialized objectively. This is, of course, analogous to the recommendation made some months ago by the Christopher Commission in Los Angeles. A defense attorney in Fort Wayne also said he would favor videotaping of entire stationhouse interviews. He observed that the police should prefer this as well, even though he recognized they do not in that jurisdiction. "Videotaping entire stationhouse interrogations," he argued, "would allow other police besides those involved in the interview to spot new leads unnoticed by the interviewers."

In San Diego, the public defender said he would welcome the continuation and expanded use of videotaping:

"You can't lose by using it. It will help you better assess your case and avoid getting bushwhacked and getting your client convicted of a greater charge. The bottom line is that I see no drawback to videotaping from the defense perspective."

Still, defense attorneys in some other locales differed, sometimes, as noted earlier, sharply distinguishing their dislike for videotaping as a powerful prosecution tool from their appreciation, as citizens, of this application of technology. In the end, considering both

our national survey and our site visits coast to coast, the weight of opinion among criminal justice practitioners who are aware first hand of the nature, extent, and effects of videotaping interrogations and confessions seems reasonably clear: Despite variations in certain procedures (e.g., taping full interrogations versus recaptulations and taping overtly versus covertly), the videotaping of suspect statements is a useful, affordable step on the road toward a more effective, efficient, and legitimate criminal justice system.

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State v. Jackson, 1977. 259 N.W. 2d 796 (Iowa) (hospitalized assault victim's videotaped testimony admissible in criminal trial).

State v. Jackson, 1988. 1988 West Law 16405 (La. App. 2d Cir, Feb. 24.).

State v. Lusk, 1970. (Missouri Supreme Court) (April) (upheld admissibility of videotaped confession in a murder trial).

State v. Newman, 1971. 4 Wash. App. 558, 484 P. 2d 473 (holding admissible videotapes of line-ups).

Stephan v. State, 1985. 711 P. 2d 1156 (Alas.).

United States v. Crocker, 1975. 510 F. 2d 1129 (10th Cir.).

United States v. Fromme, 1975 (November). U.S. District Court (videotaped testimony by President Gerald Ford in the prosecution of Lynnette Fromme for pointing a gun at him).

United States v. Gonzalez, et al., 1987. 833 F. 2d 1464 (11th Cir.).

United States v. Owens, 1988. 108 S. Ct. 838. (Supreme Court ruled admissible a prior, out-of-court statement by a beating victim identifying his assailant even though at the time of trial the victim had no current recollection of who his assailant had been.)

United States v. Yunis, 1988. Pretrial Memorandum Order No. 5, U.S. District Court for the District of Columbia, Criminal No. 87-0377, Judge Barrington D. Parker. Filed February 23.

Vermont v. Moffitt, 1975. 133 Vt. 366 (Vt. Supreme Court) (upheld use in a drunk driving trial of pre-recorded videotaped testimony by a police officer, chemist, and pathologist, who had been cross-examined on tape in the presence of the defendant).

Vermont Statutes Annotated, 1974. (T. 13, section §234, 1974 supplement).

Washington Revised Code Annotated, 1973. Section 9.73.090 (1973 Supplement) (provision authorizing audio- and videotaping of arrestees).

Wyoming Statutes, 1987. Section 7-11-408.

APPENDIX A:
NATIONAL TELEPHONE SURVEY
QUESTIONNAIRE

PERF SURVEY OF VIDEOTAPING PRACTICES AMONG AMERICAN LAW ENFORCEMENT AGENCIES

Q1. First I'd like to ask you whether your agency has ever used video technology to record stationhouse interrogations or confessions of criminal suspects?

18/ YES.....1 (SKIP TO Q. 7)
NO.....2

Q2. Does your agency have any plans to videotape stationhouse interrogations or confessions in the near future?

19/ YES.....1 (SKIP TO Q. 4)
NO.....2

Q3. What is the main reason your agency does not plan to videotape interrogations or confessions? Is it because.....

20/ It's too costly, or.....1
there is opposition to videotaping, or.....2
both?.....3
OTHER REASON.....8
DON'T KNOW.....9

Q4. I'd like to ask about other ways your agency may have used or is planning to use video technology. I'll read you a list of possible uses and for each one, please tell me whether your agency has ever used video technology in this way or has any plans to use it in this way in the near future. First, has your agency every used video technology....

		YES, HAVE USED	NO, HAVENOT USED	NO, BUT PLANNING TO USE IT	DONT KNOW
21/	a. to record lineups?.....	3.....	1.....	2.....	9
22/	b. to monitor prisoners in your lockup with closed circuit TV?.....	3.....	1.....	2.....	9
23/	c. to document crime scenes?.....	3.....	1.....	2.....	9
24/	d. to document vehicle accident scenes?.....	3.....	1.....	2.....	9
25/	e. to conduct surveillance and document undercover operations?.....	3.....	1.....	2.....	9
26/	f. to record in-progress events from cameras mounted in marked police cars?.....	3.....	1.....	2.....	9
27/	g. to record crime victim testimony, such as child molestation victims?.....	3.....	1.....	2.....	9

Has your agency every used video technology....

YES, HAVE USED	NO, HAVE NOT USED	NO, BUT PLANNING TO USE IT	DON'T KNOW
----------------------	-------------------------	----------------------------------	---------------

- 28/ h. to record eyewitness testimony, such as when witness is unable to testify at trial?.....3.....1.....2.....9
- 29/ i. to record the breathalyzer or other sobriety test of drunk driving suspects?...3.....1.....2.....9
- 30/ j. to record crime re-enactments by criminal suspects?.....3.....1.....2.....9

Q5. Would you be willing to provide further insights about videotaping to the director of this study if he has any follow-up questions?

YES.....1
 NO.....2 (THANK RESPONDENT;
 POLITELY TERMINATE)

Q6. Let me record your name and some information needed to contact you:

RESPONDENT'S NAME: _____
 RESPONDENT'S TITLE: _____
 RESPONDENT'S WORK PHONE: (____) _____
 RESPONDENT'S AGENCY/CITY _____

Thank you for taking the time to answer our questions. The information you have provided will be very helpful for understanding videotaping practices across the nation.

Q7. Approximately how many years ago did your agency first begin using videotaping to record stationhouse interrogations or confessions of criminal suspects? Was it.....

Less than one year ago,..... 0
 One year,.....1
 Two years,.....2
 Three years,.....3
 Four years,.....4
 Five years ago, or.....5
 More than five years ago?.....6
 DON'T KNOW.....9

Q8. Before your agency started this videotaping, approximately how long, if at all, did your agency have a program of making audio recordings of at least some stationhouse interrogations or confessions of suspects? Was it....

- 33/ Less than one year.....0
- 1 to 3 years.....1
- 4 to 6 years, or.....2
- 7 or more years?.....3
- DID NOT MAKE AUDIOTAPES.....8
- DON'T KNOW.....9

Q9. In what types of cases does your agency videotape stationhouse interrogations or confessions of suspects? Does it videotape.....

- | | | YES | NO | DK |
|-----|--|-----|----|----|
| 34/ | a. homicide cases?..... | 1 | 0 | 9 |
| 35/ | b. aggravated batteries or aggravated assaults?..... | 1 | 0 | 9 |
| 36/ | c. rapes or criminal sexual assaults?..... | 1 | 0 | 9 |
| 37/ | d. armed robberies?..... | 1 | 0 | 9 |
| 38/ | e. strong arm robberies?..... | 1 | 0 | 9 |
| 39/ | f. burglaries?..... | 1 | 0 | 9 |
| 40/ | g. other property crimes besides burglaries?..... | 1 | 0 | 9 |
| 41/ | h. drunk driving cases?..... | 1 | 0 | 9 |
| 42/ | i. other types of cases? | 1 | 0 | 9 |

Q10. For the calendar year 1989, what is your best estimate of the total number of cases in which your agency videotaped stationhouse interrogations or confessions of suspects? Would you say the total number of cases was.....

- 43/ Less than 5,.....0
- 5 to 10,.....1
- 11 to 15,.....2
- 16 to 20,.....3
- 21 to 25,.....4
- 26 to 50, or.....5
- more than 50?.....6
- DON'T KNOW.....9

Q11. Of the homicide suspects who are willing to talk with your interrogators, what percentage would you estimate are videotaped giving statements? We realize it may be hard to estimate, but an educated guess would be useful. Would you say....

- 44/ zero percent are videotaped,.....0
- between 1 and 20 percent,.....1
- 21 and 40 percent,.....2
- 41 and 60 percent,.....3
- 61 and 80 percent, or.....4
- between 80 and 100 percent?.....5
- DON'T KNOW.....6

Q12. Under different state laws and department policies, some agencies videotape stationhouse interrogations overtly and others do so covertly. Do your interrogators generally inform the suspect, prior to videotaping, that they intend to videotape?

- 45/ YES, SUSPECTS ARE INFORMED....1
- NO.....2
- DON'T KNOW.....9

Q13. If a suspect asks to give his or her statement without being videotaped, will your agency honor this request....

- 46/ always,.....4
- usually,.....3
- sometimes, or.....2
- never?.....1
- DON'T KNOW.....9

Q14. Is any of the videotaping equipment (camera or microphone) readily visible to the suspect during the interrogation?

- 47/ YES.....1
- NO.....2
- DON'T KNOW.....9

Q15. Some agencies videotape the entire stationhouse interrogation (which may last several hours); others conduct an initial period of untaped interrogation and then decide whether to videotape a statement. Does your agency generally videotape the entire interrogation or videotape only after an initial untaped interrogation?

- 48/ VIDEOTAPES ENTIRE INTERROGATION.....1
- ONLY AFTER INITIAL UNTAPED INTERROGATION.....2
- DON'T KNOW.....9

** We recognize that every suspect and every interrogation is different, but we want to ask you to give us a few generalizations about the effects of videotaping.

Q16. In your opinion, do you think your agency's videotaping generally causes suspects to be more willing to talk with your interrogators, less willing to talk, or makes no difference?

- 49/ MORE WILLING TO TALK.....3
- LESS WILLING TO TALK.....1
- MAKES NO DIFFERENCE.....2
- DON'T KNOW.....9

Q17. Do you believe videotaping has produced more self-incriminating information, less self-incriminating information, or has had no effect?

- MORE INCRIMINATING INFORMATION.....3
- LESS INCRIMINATING INFORMATION.....1
- NO EFFECT.....2
- DON'T KNOW.....9

Q18. Compared with other methods of documenting confessions, do you believe videotaped confessions are....

- 51/ much more convincing.....5
- somewhat more convincing.....4
- somewhat less convincing.....2
- much less convincing, or.....1
- are no different than other methods?.....3
- DON'T KNOW.....9

Q19. As a result of your agency's videotaping confessions, has the number of courtroom allegations by defense attorneys about improper police interrogations....

- 52/ increased,.....3
- decreased, or.....1
- remained about the same?.....2
- DON'T KNOW.....9

Q20. How much has videotaping helped or hindered your agency in obtaining convictions? Has it....

- 53/ helped a lot,.....5
- helped somewhat,.....4
- hindered somewhat,.....2
- hindered a lot, or.....1
- had no effect on convictions?.....3
- DON'T KNOW.....9

Q21. How much has videotaping helped or hindered your agency in obtaining guilty pleas? Has it.....

- 54/ helped a lot,.....5
- helped somewhat,.....4
- hindered somewhat,.....2
- hindered a lot, or.....1
- had no effect on guilty pleas?.....3
- DON'T KNOW.....9

Q22. How much has videotaping helped or hindered the quality of your agency's interrogations? Has it.....

- 55/ helped a lot,.....5
- helped somewhat,.....4
- hindered somewhat,.....2
- hindered a lot, or.....1
- had no effect on the quality
 of interrogations?.....3
- DON'T KNOW.....9

Q23. In your agency's attempts to record clearly visible and audible videotapes, have technical equipment problems or equipment operator errors been a.....

- 56/ major problem,.....3
- minor problem,or.....2
- no problem at all?.....1
- DON'T KNOW.....9

Q24. Comparing the period before your agency adopted videotaping with the period since, has videotaping generally increased, decreased, or had no effect on the number of police personnel who are present during a typical interrogation of a suspect?

- 57/ INCREASED.....3
- DECREASED.....1
- NO EFFECT.....2
- DON'T KNOW.....9

Q25. Comparing the period before your agency adopted videotaping with the period since, has videotaping, on average, increased, decreased, or had no effect on the length of stationhouse interrogations (that is, number of hours)?

- 58/ INCREASED.....3
- DECREASED.....1
- NO EFFECT.....2
- DON'T KNOW.....9

Q26. Some departments not currently videotaping are reluctant to start because they worry that they would have to go to the expense of taping all felony interrogations to avoid accusations that the police had something to hide in untaped interrogations. Since your agency first began videotaping confessions, have cases with untaped confessions been easier, harder, or no different for your detectives and prosecutors to present in court?

- 59/ EASIER.....1
- HARDER.....3
- NO DIFFERENT.....2
- DON'T KNOW.....9

Q27. How did most of your agency's interrogators feel about videotaping interrogations when your agency first adopted videotaping? Did they.....

- 60/ strongly approve,.....5
- mildly approve,.....4
- express mixed feelings,.....3
- mildly disapprove, or.....2
- strongly disapprove?.....1
- DON'T KNOW.....9

Q28. How do most of your agency's interrogators feel now about videotaping interrogations? Do they.....

- 61/ strongly approve,.....5
- mildly approve,.....4
- express mixed feelings,.....3
- mildly disapprove, or.....2
- strongly disapprove?.....1
- DON'T KNOW.....9

Q29. Considering all the factors that make your agency's videotaping practices either attractive or unattractive to interrogators, on balance, would you say your agency's videotaping of interrogations or confessions is.....

- 62/ very useful,.....5
- somewhat useful,.....4
- neither useful or harmful,.....3
- somewhat harmful, or.....2
- very harmful?.....1
- DON'T KNOW.....9

Q30. Would you be willing to provide further insights about videotaping to the director of this study if he has any follow-up questions?

- 63/ YES.....1
- NO.....2 (THANK RESPONDENT;
POLITELY TERMINATE)

Q31. Let me record your name and some information needed to contact you:

RESPONDENT'S NAME: _____

RESPONDENT'S TITLE: _____

RESPONDENT'S WORK PHONE: (____) _____

RESPONDENT'S AGENCY/CITY _____

Thank you for taking the time to answer our questions. The information you have provided will be very helpful for understanding videotaping practices across the nation.

IN1. INTERVIEWER RATING OF RESPONDENT'S COOPERATION:

- 64-65/ LOW 1.....2.....3.....4.....5.....6.....7.....8.....9.....10 HIGH

IN2. INTERVIEWER RATING OF RESPONDENT'S INTEREST:

- 66-67/ LOW 1.....2.....3.....4.....5.....6.....7.....8.....9.....10 HIGH

APPENDIX B:
SITE VISIT INTERVIEW PROTOCOL

2300 M STREET, N.W., SUITE 910
WASHINGTON, D.C. 20017
(202) 466-7478



DARREL W. STEPHENS
EXECUTIVE DIRECTOR

THE PERF-NIJ VIDEOTAPING INTERROGATIONS PROJECT:

SITE DATA COLLECTION FORM

Sites _____

Dates of Site Visits _____

Please return to:
William A. Geller
Associate Director
Police Executive Research Forum
Midwest Office
2116 Thornwood Ave.
Wilmette, IL 60091-1452
(708) 256-0017
4/17/90

Background of the Project

According to a recent survey of American police departments serving populations of 50,000 or more, about one-third of the agencies videotape at least some suspect interrogations. Yet, despite rigorous empirical studies of audio and audiovisual documentation of interrogations in other countries (principally England, Scotland, and Canada), virtually no empirical data are available in the United States on the advantages and disadvantages, costs and benefits of such videotaping.

This deficiency is especially troublesome because respected practitioners and police scholars hold widely divergent views concerning the extent to which videotaping interrogations might advance or impede the legitimate missions of the police. In some cases these views are based on experience; in others they are unsupported speculation. In either instance there is no solid body of systematic data to point to for support or refutation.

Such data, thoughtfully analyzed, could be valuable to police agencies deciding whether to videotape interrogations at all and to departments deciding which types of cases to videotape and which procedures to use in taping and maintaining recorded tapes. Police choices concerning specific interrogation strategies, techniques, and technical videotaping procedures could make considerable differences in the power of the emerging videotape technology to facilitate the search for truth, successful prosecution of culpable offenders, and subsequent criminal investigations.

To correct the lack of objective, detailed data on the utility of videotaping interrogations in America, the U.S. Justice Department's National Institute of Justice asked the Police Executive Research Forum to undertake a multi-phase examination of the value of such videotaping. In the first phase, a thorough literature review was

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Project: Site Visit Questions

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conducted, followed by mini-case studies in four agencies: the Kansas City (MO) Police Department, the Metropolitan Washington (DC) Police Department, the Orange County (CA) Sheriff's Department, and the Huntington Beach (CA) Police Department.

In each instance, interviews were conducted with police personnel, as well as representatives of the prosecutor's and public defender's office and private defense attorneys. The goal was to learn, through recollections by knowledgeable criminal justice professionals and through review of available documentation (written records on costs, case processing time and case outcome; sample videotaped interviews; etc.) what effects videotaping seems to have had over the past several years in these four jurisdictions. Based on these mini-case studies, the Justice Department asked PERF to flesh-out our understanding of videotaping practices and perceptions about them by practitioners. This Phase-2 work entails a series of approximately eight additional site visits, the first of which will be in San Diego during April 1990. During this second round of site visits, representatives of the local judiciary will be added to the list of interviewees.

Specific Objectives of the Mini-Case Studies

The general objective of this project is to identify the relative impacts of videotaped and traditionally documented (written statements, stenographic transcript, audio recording only) suspect interrogations on the administration of justice. This objective can be broken down into several, more specific, components. These concern whether police videotaping of stationhouse suspect interrogations improves the effectiveness, efficiency, or legitimacy¹ of:

- (1) Police criminal investigation efforts;
- (2) Police efforts to assist prosecutors;
- (3) Prosecutors' decisions to pursue or decline prosecution and their efforts concerning charge selection, plea negotiation, the trial of contested cases, and sentencing;
- (4) The representation (by counsel or pro se) of suspects and accused persons; and
- (5) Court processing of criminal matters, including guilty pleas, contested trials, and sentencing.

1. Legitimacy as perceived by criminal justice professionals, the public at large, and even accused persons is within the scope of our interest in the overall videotaping project.

Questions to be Addressed During Site Visits

A. Questions for the Police: Description of the Videotaping Conducted by the Particular Agency

RESPONDENTS/dates: _____

1. When did the agency begin videotaping suspect interrogations?
2. Why did the agency begin videotaping suspect interrogations?
3. In what type of cases does the agency videotape suspect interrogations?
4. How many interrogation rooms in how many police facilities are equipped for videotaping interrogations and are currently in use? _____

Are any interrogations outside the police facility (e.g., in squad cars, suspects' homes, prosecutor's offices) videotaped? _____
5. Is the decision to videotape interrogations within the investigator's or detective supervisor's discretion or are all interrogations in cases of specified types videotaped?
6. Does the agency have standard operating procedures for conducting videotaped interrogations? _____ Are they written? _____

Have these guidelines proved workable or have exceptions been needed in order to facilitate effective and efficient interrogations consistent with the Department's overall mission? _____

Is the agency able to provide PERF with a copy of any written guidelines the agency has found workable? _____
7. What procedures and criteria are used to authorize exemptions from videotaping or to permit videotaping in types of cases whose interrogations are not normally videotaped?

8. How, if at all, has the mix of videotaped interrogations and/or the basis for deciding whether to videotape a given interrogation changed in this agency over the years?

9. Approximately how many interrogations (specified by type of case, if possible) has the agency videotaped since the agency began using this documentation method? How many per year?

Case Type	# Interr. Per Year	# Since Agency Began Videotaping
-----------	--------------------	----------------------------------

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

How do the numbers of videotaped interrogations for particular types of cases compare with the number of arrests for those crimes and the number of such crimes reported to the FBI's Uniform Crime Records system? Can the agency furnish annual reports for all years since videotaping began plus for a couple of years before? _____

10. How many police personnel typically are present during a videotaped interrogation? _____ Are videotape equipment operators present in addition to police interrogators? _____ How many? _____
11. Does an assistant prosecutor ever attend the videotaped interrogations? _____

Under what circumstances ordinarily? _____

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12. Approximately how long do typical videotaped interrogations last? _____

If there is no "typical" interrogation, are there a few reasonably typical types whose duration can be estimated? _____

13. Approximately how often do prosecutors, defense counsel, and courts view the recorded videotapes? _____
Where do they typically view them (at police facility, prosecutor's office, courthouse; defense counsel's office)? _____

Is defense counsel provided with a copy of the videotape gratis or for a fee? _____
If gratis, which agency absorbs the cost of dubbing the videotape? _____

If a fee is charged, which agency bears the cost of dubbing, _____
and which agency receives the fee as income? _____

14. Approximately how often have the recorded videotapes been introduced as evidence in court proceedings? _____

Is there any discernable pattern to the kind of cases, defendants, defense counsel, interrogators, or interrogations involved in those situations where a videotaped statement is introduced as evidence in court? _____

15. Approximately how often have the recorded videotapes played a significant role in plea negotiations? _____

In what kinds of situations, typically? _____

How does the impact of the videotaped confession on plea bargaining vary depending on the nature of the parties, the nature of the attorneys and judge, the nature of the offense, the nature of the statement, and other circumstances considered relevant by practitioners? _____

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16. Are suspects typically aware that they are being videotaped? _____

Is the videotaping equipment or some portion of it in plain view of the suspect during the interrogation? _____

Does the interrogator typically notify the suspect that the interview will be videotaped? _____

Are there any standard exceptions to such notification? _____

17. Are suspects typically given a choice concerning whether their statements will be videotaped? _____

If so, approximately how many interrogations have been conducted off-tape as a result of the suspect's willingness to be interviewed but refusal to have that interview videotaped? _____

18. Does the agency typically videotape the entire stationhouse interrogation, including exculpatory statements by the suspect (which may run four or five hours in a typical homicide interrogation), or does the agency usually only videotape a recapitulation of the high points of the statement (whether incriminating or exculpatory) once it has been elicited during the extended interrogation? _____

Inevitably, some conversation between investigators and suspect will occur prior to videotaping even in agencies which make a robust effort to videotape entire formal interrogations—variations in the amount and general subject matter of pre-tape police-suspect conversation are among our interests in this project.

19. Do the interrogators use a reasonably standard "script" or series of statements and questions at the outset of the videotaped interrogation and following any break in the interrogation to establish what transpired prior to the commencement of the videotaping? _____

What questions and statements (e.g., Miranda warnings) are part of this standard opening? _____

Can PERF get a copy of the standard script? _____

20. If the suspect initially consents to videotaping but later objects—or asks to go "off tape" temporarily in order to answer specific questions—does the investigator honor the interviewee's request? _____

In approximately how many videotaped interrogations has this been done? _____
Is a supervisor's authorization required? _____

How does the interrogator protect himself or herself against unwarranted allegations concerning what transpired during any such off-tape discussion? _____

How does the suspect attain comparable protection—and, therefore, how does videotaping help the interrogating agency enhance the credibility of the interrogation process? _____

21. What procedures does the agency use to protect the security and integrity of the recorded videotapes and to avoid unwarranted allegations of tape tampering? _____

Are the recorded videotapes kept in some central repository or are they safeguarded by each officer, becoming in effect his or her "electronic notebook"? _____

Are the recorded videotapes eventually re-used? _____

If so, when in the life of the pertinent cases (e.g., after trial-level disposition; after disposition of final appeal and any required retrial/resentencing; or only upon expiration of a specified waiting period after final appeal to allow for any habeas corpus proceeding)? _____

22. What videotape equipment is the agency using (brands of camera, VCR, microphone, audio mixer, monitor, tapes, etc.)? _____

23. Approximately how much did the videotape equipment and any needed modification of the interrogation room(s) cost at the outset? _____

Approximately how much does it cost per year to maintain the equipment and purchase videotapes? _____

24. Which agency's budget covered the cost of the video equipment used to record police stationhouse interrogations (either equipment permanently located in the stationhouse or transported there, such as by prosecutors, as needed)? _____

Which agency's budget covered the costs of any videotape recorders and monitors used outside of the police facility (e.g., in prosecutor's office, court house)? _____

What does this equipment consist of? _____

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25. Are the police agency's personnel satisfied with the technical aspects of the equipment (ease of operation, design elements intended to minimize operator and machine error, sound and picture quality on the recordings, etc.)? _____

What suggestions, if any, would the respondent(s) have for solving technical deficiencies in the videotaping equipment or the way in which it is currently used? _____

26. Do interrogators conducting videotaped interviews use any additional method of documenting the interrogation (take verbatim notes during the interrogation, use a court reporter, make an audiotape, etc.)? _____

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27. Are transcripts of the audio track on the videotapes ever prepared? _____

How often? _____

Who typically requests them? _____

Who prepares them? _____

Who pays the cost? _____

How much do such transcripts cost? _____

If transcripts are not routinely prepared of almost all videotaped interrogations, what factors determine the pattern of cases in which transcripts are prepared? _____

Would videotaping—or audiotaping—become prohibitively expensive if prosecutors and/or defense attorneys regularly requested full transcripts of the tapes? _____

Does this depend on whether the department tapes entire interrogations or only recapitulations? _____

28. What sort of written records are kept concerning each videotaped interrogation:

- _____ clear indication that the videotape contains an interview with a suspect rather than an uncharged or untargeted witness or victim
- _____ names of suspects
- _____ names of interrogator(s)
- _____ dates of arrest
- _____ dates of interrogation(s)
- _____ nature of charge on which suspect arrested
- _____ date of suspected offense
- _____ duration of entire interrogation
- _____ duration of videotaped portion of interrogation
- _____ whether copies of videotape were requested and furnished
- _____ charge(s), if any, approved by prosecutor against interrogated suspect
- _____ disposition of key motions and final trial-level disposition, including dates)?
- _____ Other (specify):

Were/are comparable records kept concerning untaped interrogations in similar types of criminal matters so that one could try to discern any effects of videotaping by going back and reviewing such records? _____

29. Are the videotaped interrogations used for training purposes? _____

Describe how. _____

30. When videotaping was first being considered and then introduced, what reaction did the police interrogators and their supervisors have to the idea?

What reaction did prosecutors, judges, and defense attorneys have? _____

Did the media, municipal executives, the local bar association, court decisions, legislative mandates, or other influential persons or groups play any significant role in the department's decision to adopt videotaping? _____

31. What other uses does the agency make of videotape technology besides videotaping interrogations? Approximately when did the agency begin each of these uses of videotaping or video technology? For example, is videotape used to document:

Yes/No Start Date

_____ sobriety tests in DW/DUI cases (and, if so, was any of the video recording equipment donated by MADD as part of its recent national program): _____

- _____ victim/witness statements
- _____ crime or accident scenes
- _____ line-ups
- _____ bookings
- _____ search warrant execution
- _____ officer field activities (such as alley or building searches, vehicle pursuits, vehicle stops): _____

_____ other (specify): _____

_____ other (specify): _____

_____ other (specify): _____

_____ other (specify): _____

Is closed-circuit video technology used for arraignments, monitoring police lockups or other criminal justice purposes? _____

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32. Who in the prosecutor's and public defender's office, and who among the judiciary and private criminal defense bar would the police recommend PERF make appointments to interview to get their perspectives on the advantages and disadvantages of videotaping interrogations?

33. What other police departments is the agency aware of that are videotaping interrogations or have given careful consideration to the pros and cons of such videotaping and hence would be helpful advisors to PERF in this study?

Which technical experts or academics might the respondent recommend as useful advisors on the costs and benefits and technical aspects of videotaping interrogations?

B. Additional Questions for the Police: The Effects of Videotaping on Police Procedures and Practices and Case Results

1. As a result of videotaping, have the investigators and their supervisors and managers found that, over time, their agency is better protected against unwarranted allegations of misconduct in relation to their investigation of cases and interrogation of suspects?

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If so, has this pattern had any effect on interrogator workload, work schedules, morale, and job stress?

2. Did the police early in the agency's use of videotaping express a generalized worry that their "tricks of the trade" concerning interrogation technique would be "revealed" to the courts, defense attorneys, prosecutors, criminals, and the general public?

If so, has that concern changed over time? For example, did police personnel eventually conclude that such "exposure" is not detrimental and come to welcome "publicity" concerning their skill and dedication as investigators?

3. More specifically, were the police early in the agency's adoption of videotaping concerned that such recording would reduce the amount of criminal intelligence they could gather during interviews?

2. We are particularly interested to see whether police and other criminal justice practitioners assess the impact of videotaping differently depending on the experience and wealth of the suspect and the resources of his or her defense attorney. For instance, we would like to assess the law enforcement concern that wealthy drug dealers or wholesalers and organized crime figures (who may or may not have been interrogated on videotape by the particular agency) will be able to draw on their defense counsel's "library" of videotaped interrogations for tips on how to thwart effective interrogation tactics.

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4. Comparing results before and after the adoption of videotaping, was there any change in the amount of criminal intelligence (about other suspects and other crimes) gathered by police investigators during interrogations in similar cases and with similar suspects? _____

If so, do the personnel attribute that change to videotaping or were there other explanatory factors (court decisions, etc.)? _____

Does there appear to be any relation between whether or not the suspect is aware that the interrogation is being videotaped and the amount of criminal intelligence gathered during the interrogation? _____

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5. Have the police interrogators found that their interviewing style has changed so that, rather than mirroring the communication style and demeanor of the suspect, their language and demeanor during videotaped interrogations became more uniformly "correct" and formal? _____

If so, was there a marked change perceived in the early weeks of the agency's use of videotaping, followed by a return to a more suitably balanced but still legitimate interrogation style later on? _____

Has videotaping forced a change in the amount of "rapport-building" conversation between the interrogator and suspect during the formal stationhouse interview? _____

Has videotaping actually decreased the total amount of such conversation (including any such exchanges off-tape)? _____

Has videotaping altered any prior patterns of nonverbal rapport-building (providing coffee, soft drinks, cigarettes, etc. to the suspect)? _____

Which legislative mandates, court decisions, and/or police policies govern the amount and type of rapport-building activities in which police can legitimately engage without becoming improper "softening up"? _____

April 17, 1990

6. If the agency has covertly videotaped any interrogations (i.e., without notifying the suspect of the taping and without any taping equipment being readily visible to the suspect during the interrogation), how productive (in terms of efficiency and outcome) were the interrogations, particularly with suspects whose language style and mannerisms were crude and profane?³

7. Have investigators generally found it easy to comply with departmental directives or guidelines specifying what types of interrogations they should videotape?

Has the introduction of videotaping had any effect on the percentage of suspect interrogations conducted outside the stationhouse (and, therefore, not videotaped)?

1. This question stems from the assumption that detectives, conscious that their language, demeanor, and attire will be held up to scrutiny by the criminal justice system and possibly the public (in the event the videotape is played in open court or on television), will no longer feel comfortable, in interrogations of suspects with offensive, profane communication styles and mannerisms, adopting interview styles that mirror those of the suspects. Unexplained to such suspects, especially seasoned offenders, the officers' "correct" language, demeanor, and attire may signal weakness and naivete. As a result, the suspects may gain false confidence that they can "snow" the detectives and may withhold self-incriminating information or other criminal intelligence that otherwise would be provided. By the same token, informing "experienced" suspects that the interview is being videotaped, according to this logic, would provide sufficient explanation to them of detectives' "correct" demeanor to remove any misconception that this demeanor reflects police inexperience or "softness."

April 17, 1990

8. As a result of videotaping, have the police secured and preserved more, longer, and more complete incriminating statements from suspects during interrogations?

Can the police provide any numbers illustrating any changes? _____

Overall, has the introduction of videotaping increased or decreased the number of interrogations in which suspects request the presence of counsel and refuse to give a statement? _____

If any marked change has occurred in this regard, can the police agency provide any numbers illustrating the change? _____

9. As a result of videotaping, have the police secured and preserved more, longer, and more complete exculpatory statements from suspects during interrogations?

Can the agency provide illustrative numbers? _____

10. As a result of videotaping, has there been a reduction—or increase—in the number of police officers who need to be—and are—present at the interrogation of a suspect?

Can the police provide any numbers illustrating the extent of the change and any personnel cost implications? _____

April 17, 1990

11. Even if the number of police personnel required for an interrogation has not changed, has there been a reduction or increase in the duration of stationhouse interrogations as a result of videotaping? _____

Any numbers available to support the perception? _____

12. Have interrogating officers and their supervisors perceived an improvement in the interrogators' interviewing techniques resulting from one or more of the following factors:

- use of the tapes for in-service training
- advanced training on interrogation skills applicable in both taped and untaped interviews
- better officer preparation for interviews (thinking out their questions and the sequence of questions in advance, etc.)
- the opportunity to play an accomplice's taped confession for an uncooperative suspect
- the opportunity, during a break in the interrogation, to watch the tape in order to review the suspect's earlier statements and demeanor and formulate further questions for the continuation of the interview
- the ability to interrogate the suspect without the distractions of a typewriter, notebook, statement forms, court reporter, etc.

What objective indicators would demonstrate any such improvement in police interviewing technique? _____

13. As a result of videotaping, have police decisions to release suspects from custody—and the actual releases—occured sooner after the particular stationhouse interrogations commenced than was generally true prior to the adoption of videotaping? _____
- _____

Or is detention for interrogation time longer since the adoption of videotaping than it used to be? _____

April 17, 1990

14. Do police supervisors believe that their ability to supervise interrogations has been enhanced by:

- contemporaneous monitoring of the interrogation (on a video monitor)
- subsequent review of videotapes
- the more complete interview logs that tapes enable interrogators to prepare

Has videotaping in any way impaired effective supervision of detectives? _____

15. Have the police found that, in making their decision whether to hold and/or seek prosecution of a suspect, the videotaped interview is more important than the untaped interview in relation to other evidence of guilt? _____
- _____

April 17, 1990

16. Do agency personnel believe that convictions (whether by guilty plea or after a trial) have been obtained in any cases where the result might have been different (acquittal, directed verdict, prosecutor's decision to decline prosecution) in the absence of a videotaped confession? _____

How many such cases? _____

In what types of cases would the result probably have differed without videotaping? _____

Have videotaped statements led to acquittals or other dispositions favorable to the suspect/defendant in any cases where the result might have been different in the absence of the videotaped statement? _____

How many such cases _____

_____ and what types? _____

17. In the view of police, what impact have videotaped statements had on the sentencing process and the severity of sentences imposed? _____

In how many cases might the sentencing process and severity of a sentence have differed in the absence of a videotaped interrogation? _____

In what types of cases has or might the videotape enhance the sentence _____

_____ and in what types has or might the videotape operate in mitigation? _____

April 17, 1990

18. Have police investigators and supervisors found that "time notations" on videotaped interrogations are superior to those in untaped interrogation notes? _____

If so, has this better documentation made any practical difference in case processing, courtroom challenges, or outcomes? _____

19. Has the agency experienced any appreciable level of videotape equipment design flaws, equipment malfunction, or operator error that resulted in the loss of evidence or affected the outcome of criminal cases? _____

If so, in how many instances? _____

Please provide illustrative descriptions. _____

20. Have police administrators found the cost of videotaping interrogations to be reasonable in light of its benefits? _____

Are these administrators willing and able to incorporate the cost of maintaining and expanding the practice into their agency's budget? _____

Faced with a budget crunch, would videotaping be the first activity dropped or has the practice become an important part of the agency's on-going investigative effectiveness? _____

21. Have the police found that videotaping presents any serious obstacle to the efficient and effective interrogation of suspects at "busy" times (i.e., when there are several persons arrested at about the same time who require interrogation)? _____

22. If the department were today deciding for the first time whether to commence videotaping of interrogations, based on what the respondent has learned over the past several years, should the department decide to begin videotaping? _____

If so, what differences, if any, should there be in how the department proceeds with videotaping? _____

Would the respondent welcome or oppose the continuation and/or expansion of videotaping of interrogations? _____

23. What advice not already provided above would the respondent give other police agencies about whether to videotape interrogations and any procedures or strategies to use in doing so? _____

Questions for All Criminal Justice Practitioners: The Effects of Videotaping on the Perceived Legitimacy (in the View of Criminal Justice Practitioners and Accused Persons) of Police, Prosecutorial, Defense, and Judicial Work

1. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police more faithfully and fully caution suspects concerning their rights during interrogations? _____

2. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police are less likely to use overbearing interrogation techniques? _____

3. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to feel greater confidence in the truthfulness of confessions obtained by police? _____

4. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police have become more professional in that they can more effectively and efficiently elicit and document convincing, self-incriminating statements from suspects without using questionable interrogation tactics? _____

5. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police have become more professional (or less so) in that they more consistently and fully record and preserve exculpatory statements by suspects which, if true, can be used to more expeditiously exonerate and release accused persons? _____

April 17, 1990

6. In the respondent's judgment, has videotaping caused elected or appointed local government officials, the media, and/or the public at large to in any way alter their perceptions of the effectiveness, efficiency, or legitimacy of work done by local police, prosecutors, defense attorneys, and judges?

If the respondent has detected no change in the public's perceptions, might the lack of change be due to a lack of public knowledge about the videotaping? _____

Would the respondent expect an effect if the public knew more about the videotaping? _____

Would publicity concerning local use of videotape to document interrogations have any negative impact on criminal justice work? _____

In fact, what publicity, if any, has there been surrounding the decision to adopt videotaping and its use since adoption? _____

April 17, 1990

C. Questions for Prosecutors: The Effects of Videotaping on Prosecutorial Decisions to Pursue or Decline Prosecution, on Plea Negotiations, on Prosecutions, and on Prosecutors' Perceptions

RESPONDENTS/dates: _____

1. Have prosecutors found an improvement in their ability to assess the strength of the State's case and, if necessary, prepare for trial as a result of videotaping? _____

2. Have prosecutors found that videotaping enables them to assess the truth based on factors not normally presented by police note-taking, written statements, or audiotapes:

- _____ the suspect's and police officer's physical condition
- _____ demeanor
- _____ attire
- _____ intonation
- _____ the "climate on the night of the arrest"
- _____ other (specify): _____
- _____ other (specify): _____
- _____ other (specify): _____

3. Has there been an increase in the proportion of suspects charged by prosecutors with crimes as a result of videotaping? _____

Are the charges filed more serious? _____

April 17, 1990

4. Have prosecutors found that the cases they accept for prosecution are stronger as a result of the availability of a videotaped interrogation? _____

5. Have prosecutors found that videotaped interrogations are more useful than untaped ones in plea negotiations? _____

6. As a result of videotaping, have prosecutors negotiated a higher proportion of what they view as satisfactory guilty pleas? _____

How has the number of guilty pleas changed as a result of videotaping? _____

Have guilty pleas been negotiated sooner after charging the accused with an offense than was the case prior to videotaping of interrogations? _____

How much sooner (days, months, stage of the process)? _____

April 17, 1990

7. In cases involving videotaping, have prosecutors reached their decisions to prosecute or decline prosecution without feeling a need for or requesting transcripts of the videotaped interrogations except in very rare, highly complicated cases? _____

How often have prosecutors and defense attorneys requested full transcripts? _____

Why have they requested them? _____

8. In lieu of transcripts of taped interrogations, have prosecutors found satisfactory for charging and plea bargaining purposes the detectives' written summaries of videotaped interrogations and their written reports on pre-tape conversations and events that might bear on the admissibility of the videotape? _____

Have prosecutors and defense attorneys needed and requested full transcripts of interrogations in contested cases? _____

April 17, 1990

9. Have prosecutors found that, in contested cases, videotape documentation facilitated the admission in evidence of an accused's incriminating statements? _____

How often? _____

In what type of cases? _____

For what reasons? _____

Have videotapes of interrogations ever impaired the admission of a confession or lesser incriminating statement? _____

How often? _____

In what kind of cases? _____

For what reasons? _____

10. How have prosecutors—and defense counsel, judges, and juries—dealt with the fact that a videotape containing a confession also contains an earlier denial before the suspect came around? _____

How often has this been presented? _____

April 17, 1990

11. What impact have videotapes of interrogations had in securing convictions in contested cases? _____

In how many cases might the result have been different in the absence of the videotape? _____

How might the result have differed? _____

April 17, 1990

12. Do prosecutors perceive that police interrogators' interviewing style has changed so that, rather than mirroring the communication style and demeanor of the suspect, their language and demeanor during videotaped interrogations has become more uniformly "correct" and formal? _____

If so, was there a marked change perceived in the early weeks of the agency's use of videotaping, followed by a return to a more suitably balanced but still legitimate interrogation style later on? _____

Has videotaping seemed to force a change in the amount of "rapport-building" conversation between the interrogator and suspect during the formal stationhouse interview? _____

Has videotaping seemed to decrease the total amount of such conversation (including any such exchanges off-tape)? _____

Has videotaping seemed to alter any prior patterns of nonverbal rapport-building (providing coffee, soft drinks, cigarettes, etc. to the suspect)? _____

Which legislative mandates, court decisions, and/or police policies govern the amount and type of rapport-building activities in which police can legitimately engage without becoming improper "softening up"? _____

April 17, 1990

13. What impact have videotapes of interrogations had on the sentencing process and sentence severity? _____

In how many and what type of cases might the process or the severity of sentence have been different in the absence of the videotapes? _____

How might the process or severity have differed? _____

14. Has the cost of prosecution decreased, even if only slightly, due to the entry of guilty pleas at a higher rate and earlier in the process? _____

Has the cost increased in any way because of videotaping? _____

In responding, please adjust for inflationary increases in the cost of case processing.

Videotaping Interrogations & Confessions

5. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police have become more professional (or less so) in that they more consistently and fully record and preserve exculpatory statements by suspects which, if true, can be used to more expeditiously exonerate and release accused persons? _____

6. In the respondent's judgment, has videotaping caused elected or appointed local government officials, the media, and/or the public at large to in any way alter their perceptions of the effectiveness, efficiency, or legitimacy of work done by local police, prosecutors, defense attorneys, and judges? _____

If the respondent has detected no change in the public's perceptions, might the lack of change be due to a lack of public knowledge about the videotaping? _____

Would the respondent expect an effect if the public knew more about the videotaping? _____

Would publicity concerning local use of videotape to document interrogations have any negative impact on criminal justice work? _____

In fact, what publicity, if any, has there been surrounding the decision to adopt videotaping and its use since adoption? _____

D. Questions for Defense Representatives: The Effects of Videotaping on Representation of Suspects

RESPONDENTS/dates: _____

1. As a result of videotaping, do suspects and accused persons make fewer allegations that police failed to properly and fully administer the Miranda warnings? _____

Do the defense attorneys, in turn, make fewer allegations on this topic in court? _____

2. As a result of videotaping, do suspects and accused persons make fewer allegations that police coerced or offered improper inducements in exchange for their admissions or confessions? _____

Is there a concomitant reduction in such allegations by defense counsel in court? _____

3. As a result of videotaping, do suspects and accused persons make fewer allegations that police fabricated their admissions or confessions? _____

Concomitant reduction in courtroom allegations by defense? _____

April 17, 1990

15. Have videotapes in any way altered the specific impressions prosecutors had prior to the adoption of videotaping of what transpires inside police interrogation rooms in the local jurisdiction? _____

If so, have prosecutors come to generalize about the quality of all police investigations based on such new insight, even though prosecutors appreciate the possibility that differences in interrogation style might exist between taped and untaped interviews? _____

Do the prosecutors' inclinations to make such generalizations seem to be related to the police department's practice in videotaping either entire interrogations or only recapitulations? _____

16. Are the police agency's personnel satisfied with the technical aspects of the equipment (ease of operation, design elements intended to minimize operator and machine error, sound and picture quality on the recordings, etc.)? _____

What suggestions, if any, would the agency's personnel have for solving technical deficiencies in the videotaping equipment or the way in which it is currently used? _____

17. Would the respondent welcome or oppose the continuation and/or expansion of videotaping or interrogations? _____

18. What advice, if any, would the respondent have for criminal justice practitioners in other jurisdictions contemplating the adoption or modification of videotaping of interrogations? _____

April 17, 1990

Questions for All Criminal Justice Practitioners: The Effects of Videotaping on the Perceived Legitimacy (in the View of Criminal Justice Practitioners and Accused Persons) of Police, Prosecutorial, Defense, and Judicial Work

1. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police more faithfully and fully caution suspects concerning their rights during interrogations? _____

2. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police are less likely to use overbearing interrogation techniques? _____

3. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to feel greater confidence in the truthfulness of confessions obtained by police? _____

4. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police have become more professional in that they can more effectively and efficiently elicit and document convincing, self-incriminating statements from suspects without using questionable interrogation tactics? _____

April 17, 1990

4. Have suspects and accused persons made any appreciable level of allegations concerning intentional tampering with the videotape equipment or the recorded tapes? _____

5. To what extent do suspects and accused persons complain that police conduct "dry run" or "rehearsal" interrogations off-camera in order to prime the interviewee and tighten up the questions and answers for the videotaped version of the interrogation? _____

To what extent, and in what type of cases, have—or would—defense counsel raise objections along these lines in court? _____

April 17, 1990

6. Do defense attorneys perceive that police interrogators' interviewing style has changed so that, rather than mirroring the communication style and demeanor of the suspect, their language and demeanor during videotaped interrogations has become more uniformly "correct" and formal? _____

If so, was there a marked change perceived in the early weeks of the agency's use of videotaping, followed by a return to a more suitably balanced but still legitimate interrogation style later on? _____

Has videotaping seemed to force a change in the amount of "rapport-building" conversation between the interrogator and suspect during the formal stationhouse interview? _____

Has videotaping seemed to decrease the total amount of such conversation (including any such exchanges off-tape)? _____

Has videotaping seemed to alter any prior patterns of nonverbal rapport-building (providing coffee, soft drinks, cigarettes, etc. to the suspect)? _____

In how many and what type of cases have—or would—defense counsel raised objections in court about "softening up"? _____

Which legislative mandates, court decisions, and/or police policies govern the amount and type of rapport-building activities in which police can legitimately engage without becoming improper "softening up"? _____

April 17, 1990

7. As a result of videotaping, has there been an increase in the rate at which accused persons enter guilty pleas _____ and a decrease in the time within which they enter them? _____

Are the charges to which they plead guilty more serious or less serious as a result of the videotaping? _____

In how many and what type of cases might the pleas have been different in the absence of a videotaped interrogation? _____

8. Correcting for inflation, has the cost of defending accused persons been reduced, even if only slightly, as a result of earlier and more guilty pleas following the introduction of videotaping? _____

Correcting for inflation, have defense costs increased in any way due to the adoption of videotaping? _____

9. If suspects are aware that their interrogation is being taped, do they feel subtle, unarticulated pressure to make admissions or confessions, despite being fully advised of their rights, simply because of the use of recording equipment? _____

April 17, 1990

10. Have defense counsel found taped interrogations useful in plea negotiations? _____

How so? _____

In how many and what type of negotiations has the videotaping proved useful to the defense? _____

11. As a result of videotaping, have defense counsel found an improvement in their ability to assess the strength of the case against their clients and, if necessary, prepare for trial? _____

In how many and what type of cases? _____

12. Have defense counsel found that videotaping enables them to assess the truth based on factors not normally presented by police note-taking, written statements, or audiotapes:

- _____ the suspect's and police officer's physical condition
- _____ demeanor
- _____ attire
- _____ intonation
- _____ the "climate on the night of the arrest"
- _____ other (specify): _____
- _____ other (specify): _____
- _____ other (specify): _____

April 17, 1990

13. Have defense counsel, after becoming accustomed to videotaped oral evidence, found that videotaping strengthens their ability to identify and raise certain defenses concerning the accused's mental or physical condition at the time of the alleged crime (e.g., absence of "mens rea" due to drunkenness or forgetfulness in cases requiring a specific intent for conviction)? _____

14. As a result of videotaping, has there been any change in the percentage of suspects who request the presence of counsel at interrogations? _____

Was it common practice in this jurisdiction for suspects to request that defense counsel attend police interrogations prior to the introduction of videotaping? _____

15. As a result of videotaping, has there been a reduction in the number of interrogations that representatives other than defense counsel (e.g., parents, guardians, social workers, probation officers) attend? _____

16. Have defense counsel found—or do they believe they would find—videotaping especially helpful in their early handling and preparation to handle cases where an interpreter has been used during the interrogation of a foreign-speaking, deaf or mute suspect since what was originally communicated to the interpreter is preserved and eventually can be commented on as to meaning by an independent interpreter for the defense? _____

April 17, 1990

17. What impact has the videotaping of interrogations had, from the defense perspective, on the processing (e.g., admission of evidence) and outcome of contested cases? _____

In how many and what type of cases might the processing and/or outcome have differed in the absence of a videotaped interrogation? _____

18. What impact, if any, has the videotaping of interrogations had on sentence severity? _____

In how many and what type of cases might the sentence have differed in the absence of the videotape? _____

19. Have videotapes in any way altered the specific impressions defense counsel had prior to the adoption of videotaping of what transpires inside police interrogation rooms in the local jurisdiction? _____

If so, have defense counsel come to generalize about the quality of all police investigations based on such new insight, even though defense counsel appreciate the possibility that differences in interrogation style might exist between taped and untaped interviews? _____

Do the defense lawyers' inclinations to make such generalizations seem to be related to the police department's practice in videotaping either entire interrogations or only recapitulations? _____

20. Are defense attorneys satisfied with the technical aspects of the equipment (ease of operation, design elements intended to minimize operator and machine error, sound and picture quality on the recordings, etc.)? _____

What suggestions, if any, would the respondent(s) have for solving technical deficiencies in the videotaping equipment or the way in which it is currently used? _____

21. Would the respondent welcome or oppose the continuation and/or expansion of videotaping of interrogations? _____

22. What advice, if any, would the respondent have for criminal justice practitioners in other jurisdictions contemplating the adoption or modification of videotaping of interrogations? _____

Questions for All Criminal Justice Practitioners: The Effects of Videotaping on the Perceived Legitimacy (in the View of Criminal Justice Practitioners and Accused Persons) of Police, Prosecutorial, Defense, and Judicial Work

1. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police more faithfully and fully caution suspects concerning their rights during interrogations? _____

2. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police are less likely to use overbearing interrogation techniques? _____

3. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to feel greater confidence in the truthfulness of confessions obtained by police? _____

April 17, 1990

4. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police have become more professional in that they can more effectively and efficiently elicit and document convincing, self-incriminating statements from suspects without using questionable interrogation tactics? _____
- _____
- _____

5. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police have become more professional (or less so) in that they more consistently and fully record and preserve exculpatory statements by suspects which, if true, can be used to more expeditiously exonerate and release accused persons? _____
- _____
- _____

April 17, 1990

6. In the respondent's judgment, has videotaping caused elected or appointed local government officials, the media, and/or the public at large to in any way alter their perceptions of the effectiveness, efficiency, or legitimacy of work done by local police, prosecutors, defense attorneys, and judges? _____
- _____

If the respondent has detected no change in the public's perceptions, might the lack of change be due to a lack of public knowledge about the videotaping? _____

Would the respondent expect an effect if the public knew more about the videotaping? _____

Would publicity concerning local use of videotape to document interrogations have any negative impact on criminal justice work? _____

In fact, what publicity, if any, has there been surrounding the decision to adopt videotaping and its use since adoption? _____

April 17, 1990

E. Questions for Judges: The Effects of Videotaping on Judicial Processing and Decisions Concerning Preliminary Hearings, Plea Negotiations, and Contested Bench and Jury Trials and on Judges' Perceptions

RESPONDENTS/dates: _____

1. Have judges found an improvement in their ability to assess the strength of the State's and Defendants' cases as a result of videotaping? _____

2. Have judges found that videotaping enables them to assess the truth based on factors not normally presented by police note-taking, written statements, or audiotapes:

- _____ the suspect's and police officer's physical condition
- _____ demeanor
- _____ attire
- _____ intonation
- _____ the "climate on the night of the arrest"
- _____ other (specify): _____
- _____ other (specify): _____
- _____ other (specify): _____

3. If the respondent knows, has there been an increase in the proportion of suspects charged by prosecutors with crimes as a result of videotaping?

April 17, 1990

Are the charges filed more serious? _____

4. Does it appear to the respondent that the cases prosecutors accept for prosecution and present to the court are stronger as a result of the availability of a videotaped interrogation? _____

5. Have judges found that videotaped interrogations are more useful than untaped ones in judicial supervision and decisionmaking concerning plea negotiations? _____

6. As a result of videotaping, has there been an increase, decrease, or no change in the number of cases settled by plea negotiation? _____

How, if at all, have the type of cases settled by plea negotiation changed as a result of videotaping? _____

Have guilty pleas been negotiated sooner after charging the accused with an offense than was the case prior to videotaping of interrogations? _____

How much sooner (days, months, stage of the process)? _____

April 17, 1990

7. In cases involving videotaping, have judges reached their procedural and dispositional decisions without written transcripts of the videotaped interrogations? _____

In the mix of videotaped suspect statements presented in the respondent's courtroom or other courtrooms in this jurisdiction (if the respondent knows) approximately what percentage would the respondent guess are accompanied by a written transcript (for the judge, litigants, jury, court reporter, etc.)? _____

Why are full or partial written transcripts needed, if they are, in the respondent's opinion? _____

8. In lieu of transcripts of taped interrogations, do judges in this jurisdiction generally permit the parties to bring videotaped statements into court accompanied only by the detectives' written summaries of videotaped interrogations _____

and their written reports on pre-tape conversations and events that might bear on the admissibility of the videotape? _____

April 17, 1990

9. Have judges found that, in contested cases, videotape documentation facilitated the admission in evidence of an accused's incriminating statements? _____ How often? _____

In what type of cases? _____

For what reasons? _____

Have videotapes of interrogations ever impaired the admission of a confession or lesser incriminating statement? _____

How often? _____

In what kind of cases? _____

For what reasons? _____

10. How have prosecutors—and defense counsel, judges, and juries—dealt with the fact that a videotape containing a confession also contains an earlier denial before the suspect came around? _____

How often has this situation arisen in cases brought to court in this jurisdiction? _____

April 17, 1990

11. Has the respondent or other judges experienced any technical difficulties viewing videotapes of confession statements in the courtroom? _____

How many monitors are usually used and where are they usually placed (in bench and jury trials)? _____

Is the equipment permanently installed in the courtrooms, or is it brought to court as needed by court personnel? _____

by prosecutorial personnel? _____

Does the respondent have any suggestions concerning the visual or sound quality of the videotaped statements that would improve their usefulness in court for the purposes of ascertaining the truth? _____

April 17, 1990

12. In the respondent's judgment, what impact have videotapes of interrogations had in securing convictions in contested cases? _____

In how many cases might the result have been different in the absence of the videotape? _____

How might the result have differed? _____

April 17, 1990

13. Do judges perceive that police interrogators' interviewing style has changed so that, rather than mirroring the communication style and demeanor of the suspect, their language and demeanor during videotaped interrogations has become more uniformly "correct" and formal? _____

If so, was there a marked change perceived in the early weeks of the agency's use of videotaping, followed by a return to a more suitably balanced but still legitimate interrogation style later on? _____

Has videotaping seemed to force a change in the amount of "rapport-building" conversation between the interrogator and suspect during the formal stationhouse interview? _____

Has videotaping seemed to decrease the total amount of such conversation (including any such exchanges off-tape)? _____

Has videotaping seemed to alter any prior patterns of nonverbal rapport-building (providing coffee, soft drinks, cigarettes, etc. to the suspect)? _____

Which legislative mandates, court decisions, and/or police policies govern the amount and type of rapport-building activities in which police can legitimately engage without becoming improper "softening up"? _____

April 17, 1990

14. What impact have videotapes of interrogations had on the sentencing process and sentence severity? _____

In how many and what type of cases might the process or the severity of sentence have been different in the absence of the videotapes? _____

How might the process or severity have differed? _____

15. Has the cost of judicial processing decreased, even if only slightly, due to the entry of guilty pleas at a higher rate and earlier in the process? _____

Has the cost increased in any way because of videotaping? _____

In responding, please adjust for inflationary increases in the cost of case processing.

April 17, 1990

16. Have videotapes in any way altered the specific impressions the respondent or other judges had prior to the adoption of videotaping of what transpires inside police interrogation rooms in the local jurisdiction? _____

If so, have judges reached any general conclusions about the quality of most police investigations based on such new insight, even though judges appreciate the possibility that differences in interrogation style might exist between taped and untaped interviews and even though, of course, judges are obligated to decide each case on its own facts? _____

Do the judges' inclinations to reach general conclusions about the quality of police interrogations in the jurisdiction seem to be related to the police department's practice in videotaping either entire interrogations or only recapitulations? _____

17. In the respondent's judgment, has the adoption of videotaping in this jurisdiction enhanced, diminished, or had no effect on the judiciary's efforts to see that justice is done in cases brought before it? _____

April 17, 1990

18. Are judges and other courtroom personnel satisfied with the technical aspects of the equipment (ease of operation, design elements intended to minimize operator and machine error, sound and picture quality on the recordings, etc.)? _____

What suggestions, if any, would the respondent(s) have for solving technical deficiencies in the videotaping equipment or the way in which it is currently used? _____

19. Would the respondent welcome or oppose the continuation and/or expansion of videotaping or interrogations? _____

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20. What advice, if any, would the respondent have for criminal justice practitioners in other jurisdictions contemplating the adoption or modification of videotaping of interrogations? _____

Questions for All Criminal Justice Practitioners: The Effects of Videotaping on the Perceived Legitimacy (in the View of Criminal Justice Practitioners and Accused Persons) of Police, Prosecutorial, Defense, and Judicial Work

1. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police more faithfully and fully caution suspects concerning their rights during interrogations? _____

2. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police are less likely to use overbearing interrogation techniques? _____

3. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to feel greater confidence in the truthfulness of confessions obtained by police? _____

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4. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police have become more professional in that they can more effectively and efficiently elicit and document convincing, self-incriminating statements from suspects without using questionable interrogation tactics? _____

5. In the respondent's judgment, has videotaping caused police, prosecutors, defense attorneys, judges, other court personnel, and/or suspects to perceive that police have become more professional (or less so) in that they more consistently and fully record and preserve exculpatory statements by suspects which, if true, can be used to more expeditiously exonerate and release accused persons? _____

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6. In the respondent's judgment, has videotaping caused elected or appointed local government officials, the media, and/or the public at large to in any way alter their perceptions of the effectiveness, efficiency, or legitimacy of work done by local police, prosecutors, defense attorneys, and judges?

If the respondent has detected no change in the public's perceptions, might the lack of change be due to a lack of public knowledge about the videotaping? _____

Would the respondent expect an effect if the public knew more about the videotaping? _____

Would publicity concerning local use of videotape to document interrogations have any negative impact on criminal justice work? _____

In fact, what publicity, if any, has there been surrounding the decision to adopt videotaping and its use since adoption? _____
