(Rev. 01-31-2003)

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE **Date:** 3/23/2006

To: All Field Offices
All HQ Divisions

All Legats

Attn: ADIC, SAC, and CDC
EAD; AD
FBIHQ, Manuals Desk
Legal Attache

From: Office of the General Counsel
Investigative Law Unit
Contact: Jung-Won Choi (202)324-9625

Approved By: Caproni Valerie E
Lammert Elaine N
Larson David C

Drafted By: Choi Jung-Won

Case ID #: 66F-HQ-1283488-3
66F-HQ-C1384970

Title: ELECTRONIC RECORDING OF CONFESSIONS AND WITNESS INTERVIEWS

Synopsis: To clarify existing FBI policy on electronic recording of confessions and to provide guidance on some of the factors that the SAC should consider when deciding whether to authorize recording.

Administrative: This document is a privileged FBI attorney communication and may not be disseminated outside the FBI without OGC approval. To read the footnotes in this document, it may be required to download and print the document in WordPerfect.

Details: FBI policy on electronic recording of confessions and witness interviews is contained in SAC Memorandum 22-99, dated 10 August 1999, which revised SAC Memorandum 22-98, dated 24 July 1998. Under the current policy, agents may not electronically record confessions or interviews, openly or surreptitiously, unless authorized by the SAC or his or her designee. See MIOG, Part II, Section 10-10.10(2). Consultation with an AUSA, CDC, or OGC may be appropriate in certain circumstances, but it is not required.[1] In certain circumstances (set forth in the above)

[1] If the recording is going to be surreptitious, SACs are urged to obtain the concurrence of the CDC or the appropriate OGC attorney. In addition, in accordance with the Attorney General's "Procedure for Lawful, Warrantless Monitoring of Verbal Communication," dated May 30, 2002, advice that the proposed surreptitious recording is both legal and appropriate must be obtained from the USA, AUSA or DOJ attorney responsible for the investigation.

guidance),[2] FBIHQ concurrence is required.

In recent years, there has been on-going debate in the criminal justice community whether to make electronic recording of custodial interrogations mandatory. According to a study published in 2004 by a former U.S. Attorney,[3] 238 law enforcement agencies in 37 states and the District of Columbia electronically record some or all custodial interviews of suspects. In four of those jurisdictions, electronic recording is mandated by law - by legislation in Illinois and the District of Columbia and by case law opinions issued by the state supreme courts of Alaska and Minnesota. In addition, it is the practice in some foreign countries--such as Great Britain and Australia--to record all interviews of suspects, and some U.S. Attorneys feel strongly that at least some interviews should be required to be recorded.[4]

There is no federal law that requires federal agents to electronically record custodial interviews and, to our knowledge, no federal law enforcement agency currently mandates this practice. There have been isolated incidents in which federal district court judges, as well as some United States Attorneys, have urged the FBI to revise its current policy to require recording all custodial interviews, or at least those involving selected serious offenses. In addition, agents testifying to statements made by criminal defendants have increasingly faced intense cross-examination concerning this policy in apparent efforts to cast doubt upon the voluntariness of statements in the absence of recordings or the accuracy of the testimony regarding the content of the statement. Furthermore, in some task force cases that result in state prosecution, FBI state or local partners have been precluded from using FBI agent testimony of the defendant's confession because of restrictive state law or policy.

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[2] These circumstances include, among other things, extensive media scrutiny, difficult legal issues, complex operational concerns, or significant involvement by FBIHQ.

[3] Thomas P. Sullivan, *Police Experiences with Recording Custodial Interrogations*, Northwestern University School of Law, Center on Wrongful Convictions, Number 1, Summer 2004.

[4] There is a group within the Department of Justice, which includes the FBI, DEA, ATF and the Marshals Service, that has met periodically to discuss this issue. It is conceivable that an outgrowth of those discussions will be a pilot program in one or more judicial districts in which recording at least certain interviews will be required.

Against this backdrop, FBI executive management has reviewed the current policy. After a careful deliberation of all the available options, the Director has opted for now to retain the current policy but has tasked the General Counsel to issue guidance on the factors that the SAC or his or her designee should consider before granting exceptions.

Before listing those factors, a brief review of the sound reasons behind the FBI policy on electronic recording of confessions and interviews is in order. First, the presence of recording equipment may interfere with and undermine the successful rapport-building interviewing technique which the FBI practices.[5] Second, FBI agents have successfully testified to custodial defendants' statements for generations with only occasional, and rarely successful, challenges. Third, as all experienced investigators and prosecutors know, perfectly lawful and acceptable interviewing techniques do not always come across in recorded fashion to lay persons as proper means of obtaining information from defendants. Initial resistence may be interpreted as involuntariness and misleading a defendant as to the quality of the evidence against him may appear to be unfair deceit. Finally, there are 56 fields offices and over 400 resident agencies in the FBI. A requirement to record all custodial interviews throughout the agency would not only involve massive logistic and transcription support but would also create unnecessary obstacles to the admissibility of lawfully obtained statements, which through inadvertence or circumstances beyond control of the interviewing agents, could not be recorded.

Notwithstanding these reasons for not mandating recording, it is recognized that there are many situations in which recording a subject's interview would be prudent. For this reason, it has been FBI policy for nearly eight years to grant an SAC the authority and flexibility to permit recording if he or she deems it advisable.

Often, during the time this policy has been in effect, SAC discretion has been viewed negatively; i.e., as an "exception" to the "no recording" policy, instead of positively; i.e., as a case-by-case opportunity to use this technique where and when it will further the investigation and the subsequent prosecution. Supervisors are encouraged to seek permission to record, and SACs are encouraged to grant it, whenever it is determined that these objectives will be met.

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[5] In theory, surreptitious recording would not affect this approach. However, if recording became routine practice, it would not take long before that practice became well known--especially among members of organized crime.

When deciding whether to exercise this discretion, SACs are encouraged to consider the following factors:

1) Whether the purpose of the interview is to gather evidence for prosecution, or intelligence for analysis, or both;

2) If prosecution is anticipated, the type and seriousness of the crime, including, in particular, whether the crime has a mental element (such as knowledge or intent to defraud), proof of which would be considerably aided by the defendant's admissions in his own words;

3) Whether the defendant's own words and appearance (in video recordings) would help rebut any doubt about the voluntariness of his confession raised by his age, mental state, educational level, or understanding of the English language; or is otherwise expected to be an issue at trial, such as to rebut an insanity defense; or may be of value to behavioral analysts;

4) The sufficiency of other available evidence to prove the charge beyond a reasonable doubt;

5) The preference of the United States Attorney's Office and the Federal District Court regarding recorded confessions;

6) Local laws and practice--particularly in task force investigations where state prosecution is possible;

7) Whether interviews with other subjects in the same or related cases have been electronically recorded;

8) The potential to use the subject as a cooperating witness and the value of using his own words to elicit his cooperation;

9) Practical considerations--such as the expected length of the interview; the availability of recording equipment and transcription (and, if necessary, translation) services; and the time and available resources required to obtain them. If cost factors prove prohibitive, consider whether the requesting U.S. Attorney's Office will agree to pay for the services.

These factors should not be viewed as a checklist and are not intended to limit the SAC's discretion. It is recognized, however, that establishing reasonable standards on the type of cases, crimes, circumstances, and subjects for which recording is a desirable objective so as to maintain internal field office consistency and to inform field agents and supervisors when and why to request recording.

Field office standards are to be encouraged for another very important reason. The absence of any standard by which field office discretion in this matter is exercised will render testifying agents vulnerable to attack on cross-examination. If, on the other hand, an agent can point to identifiable standards that provide a reasonable explanation for why some interviews are recorded and others are not, the implication that the agent chose not to record an interview to mask the involuntary nature of the defendant's admissions will be much harder to argue.[6] This office is prepared to assist in the preparation of such standards if desired.

Finally, in order to assist agents who testify to unrecorded admissions, an explanation of this policy and the reasons behind it should be added to field office quarterly legal training. Questions may be directed to Assistant General Counsel Jung-Won Choi, at the Office of the General Counsel, Investigative Law Unit, at 202-324-9625.

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[6] Carrying this point further, it would be even easier to withstand cross-examination if a fixed policy as to when to record and when not to record were established at FBI Headquarters that permits no field office or agent discretion. Yet, such an advantage would be far off set by the loss of flexibility that field office SACs and supervisors need to make sound investigative decisions such as the choice of interviewing techniques.

To: All Field Offices From: Office of the General Counsel
Re: 66F-HQ-1283488-3, 3/23/2006

LEAD(s):

Set Lead 1: (Action)

ALL RECEIVING OFFICES

Disseminate to all personnel. The CDC of each field office should be the principal point of contact for this EC and should provide a briefing to the agents in his or her office consistent with this EC.

♦♦

1 - Ms. Caproni
1 - Mr. Kelley
1 - Ms. Gulyassy
1 - Ms. Thomas
1 - Ms. Lammert
1 - Mr. Larson
1 - Mr. Choi
2 - ILU

Raman, Mythili (ODAG)

From: Tenpas, Ronald J (ODAG)
Sent: Thursday, June 15, 2006 9:19 AM
To: Raman, Mythili (ODAG)
Subject: FW: Taping Confessions

Attachments: tmp.htm

Crim Chiefs

tmp.htm (6 KB)

-----Original Message-----
From: Murphy, Rich (USAIAN)
Sent: Tuesday, June 13, 2006 6:22 PM
To: Tenpas, Ronald J (ODAG)
Cc: Hahn, Paul (USAEO)
Subject: RE: Taping Confessions

Ron --

Paul forwarded your e-mail to me and I circulated it to the Criminal Chiefs Working Group for response.

The Criminal Chiefs that replied (about 6) were unanimously in favor of Arizona's proposal.

Our group has met with the FBI within the past year on this issue. I think it is safe to say that there is strong sentiment within the group, and among criminal chiefs nationally, that there should much wider, if not regular, use of recording equipment to document confessions and certain witness interviews.

I received no specific substantive comments to the Arizona proposal.

Best regards ---

Rich Murphy

From: Hahn, Paul (USAEO)
Sent: Friday, June 02, 2006 1:59 PM
To: Murphy, Rich (USAIAN)
Subject: FW: Taping Confessions

FYI. Comments are due by COB, Tuesday June 13. Please send any comments by Monday, June 12, as Ron wants coordinated responses. Have a great weekend.

Paul

From: Tenpas, Ronald J (ODAG)
Sent: Friday, June 02, 2006 2:55 PM
To: Caproni, Valerie; Favreau, Kevin; Hertling, Richard; Rowan, Patrick (ODAG); Rybicki, James E; Wulf, David M.; Wainstein, Kenneth (USADC); Sutton, Johnny K. (USATXW); Rowley, Raymond G.; O'Keefe, Kevin C.; Kenrick, Brian C.; Jaworski, Thomas J.; Howard, Joshua (USANCW); Harrigan, Thomas M.; Hahn, Paul (USAEO); Finan, Robert (USMS); Earp, Mike (USMS); Charlton, Paul (USAAZ); _Group Listing
Subject: Taping Confessions

Colleagues:

I have taken over shepherding this issue in ODAG, along with Senior Counsel Mythili Raman, in the wake of the combined departures of Bob Trono and Jim Rybicki. Attached you will find a proposal from the District of Arizona submitted to the Deputy Attorney General, seeking permission to operate a pilot program in the District of Arizona in which taping of interviews of investigatory targets would become the presumptive norm, although with exceptions for certain circumstances. Please provide any comments you have regarding this proposal to me by close of business, Tuesday, June 13. If there are comments, I would appreciate it if component agencies could provide a single consolidated response per agency/component -- i.e. one for FBI, one for ATF, etc.

Ron

<<Arizona proposal6.pdf>> <<Arizona proposal1.pdf>> <<arizona proposal2.pdf>> <<Arizona proposal3.pdf>> <<Arizona proposal4.pdf>> <<Arizona proposal5.pdf>>

Ronald J. Tenpas
Associate Deputy Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
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Washington, D.C. 20530
(202) 514-3286 / (202) 305-4343 (fax)

USMS

Raman, Mythili (ODAG)

From: Tenpas, Ronald J (ODAG)
Sent: Thursday, June 15, 2006 9:21 AM
To: Raman, Mythili (ODAG)
Subject: FW: Taping Confessions - correction

Attachments: tmp.htm

tmp.htm (2 KB)

-----Original Message-----
From: Roque, Steve (USMS)
Sent: Tuesday, June 13, 2006 2:05 PM
To: Tenpas, Ronald J (ODAG)
Subject: Taping Confessions - correction

Mr. Tenpas,

My earlier e-mail contained a typo in the response. Here is the correct response:

The United States Marshals Service (USMS) does not require mandatory taping of all statements or "confessions" taken by its federal law enforcement agents. The USMS does not normally solicit confessions to accomplish its investigative mission of tracking and capturing fugitives. Interviews and questioning of sources and witnesses are the principal investigative techniques of the USMS, rather than interrogation seeking confessions. Because the USMS conducts most investigations in the field, rather than in a controlled static, environment, recording devices are generally impractical investigative tools in accomplishing the USMS mission. Occasionally, an individual in USMS custody may confess to some other crime, but that confession is usually spontaneous, and not in response to any question by a USMS officer. Since the confessions made to USMS personnel are usually made spontaneously in vehicles and other remote locations, recording devices are not available.

Sorry for the confusion.

Steve Roque
United States Marshals Service
Office of General Counsel
(202) 307-9046

DEA

Raman, Mythili (ODAG)

From: Tenpas, Ronald J (ODAG)
Sent: Thursday, June 15, 2006 9:22 AM
To: Raman, Mythili (ODAG)
Subject: FW: Taping Confessions/DEA's response

Attachments: tmp.htm; OE Memo1.doc


tmp.htm (720 B)


OE Memo1.doc (62 KB)

-----Original Message-----
From: Harrigan, Thomas M.
Sent: Tuesday, June 13, 2006 9:22 AM
To: Tenpas, Ronald J (ODAG)
Cc: Ciminelli, Michael L.; Landrum, Timothy J; Wing, Timothy D.
Subject: Taping Confessions/DEA's response

Ron:

Please find attached DEA's response. If you have any additional questions, please do not hesitate to call. Thank you.

<<OE Memo1.doc>>

U. S. Department of Justice
Drug Enforcement Administration

www.dea.gov

MEMORANDUM

TO: Ronald J. Tenpas
Associate Deputy Attorney General
Department of Justice

FROM: Thomas Harrigan
Chief of Enforcement Operations

SUBJECT: Proposal by United States Attorney's Office, District of Arizona, for Mandatory Recording of Interviews

Thank you for the opportunity to comment on behalf of the Drug Enforcement Administration (DEA) on the proposal by the United States Attorney's Office (USAO), District of Arizona, to issue a District policy requiring Federal law enforcement agencies to record defendant interviews, entitled "The Recording Policy." While we understand and appreciate the USAO's concerns in this area we do not believe the proposed policy is necessary or practical.

First, there is no history or pattern of DEA defendant statements being suppressed, or DEA defendants be acquitted in the District of Arizona as a result of DEA's current policy which permits but does not require recording of defendant interviews. Thus, speaking for DEA, we do not believe the proposed policy is necessary.

Second, the proposed policy is overbroad by requiring recording of statements by "investigative targets." "Investigative targets" are defined in the policy as individuals for whom a law enforcement officer has "reasonable suspicion" has committed a crime. By its own terms, the policy is not limited to custodial interrogations, but to any interview of a subject when there is reasonable suspicion of a crime. Reasonable suspicion is the standard for investigative or "*Terry*" stops, so the policy as currently drafted would require recording of interviews in non-custodial investigative detention situations on the street. This requirement would be impractical if not impossible in the myriad of situations encountered by DEA Special Agents and Task Force Officers, especially in performing interdiction activities.

Third, although the policy contains an exception for cases "[w]here a taped statement cannot be reasonably obtained", there are no criteria or guidance provided on what is "reasonable." Rather, the decision is made on a case-by-case basis after the fact by individual AUSAs and their supervisors. It is inevitable that different AUSAs will interpret and apply the reasonableness requirement

differently. This lack of a uniform standard will make it difficult if not impossible for Agents to comply with the policy. Also, this is likely to lead to disputes between the USAO and law enforcement agencies, and may also result in attempts to "AUSA-shop" in an effort to direct a given case to AUSAs or supervisors deemed more lenient in applying the exception to the recording requirement.

Fourth, the policy requires recordings of the statements given by investigative targets for all "[c]ases submitted to the United States Attorney's Office for the District of Arizona for prosecution ...." Thus, the policy suggests that the USAO would not accept for prosecution any case in which the required recording(s) were not made. We do not believe it is proper for the USAO to reject a meritorious prosecution—especially one involving a serious or violent Federal crime—because recordings of investigative targets have not been made. Rather, the USAO should consider all the facts and circumstances in the case, and the available admissible evidence, in deciding whether to accept a case for Federal prosecution.

Fifth, DEA does many multi-district investigations. Adoption of this policy by the District of Arizona would make it very difficult to prosecute cases in the District of Arizona in which investigative activity has been by DEA divisions in other districts. Conversely, there would also be an adverse impact on multi-district cases prosecuted in other districts if defendant interviews are recorded in Arizona but not elsewhere.

Sixth, although this policy should not confer any rights, privileges, or benefits on any criminal defendant seeking to suppress his or her statement to law enforcement, *see United States v. Caceres*, 440 U.S. 741 (1979), it is likely that defendants will raise alleged violations of the USAO policy in seeking to suppress statements in pre-trial hearings, or in seeking acquittal at trial. At a minimum, this risks introducing the policy requirements into criminal trials.

Seventh, the existence of this policy presents civil liability concerns. As an initial matter, the failure to follow the policy, even if reasonable, will be admissible in civil litigation and will inject an issue that would not otherwise be present. This is exacerbated by the lack of any guidelines in the policy as to when exceptions to the recording requirement are reasonable, which is likely to lead to issues in civil cases over whether the failure to record an interview in a given case was "reasonable" under the USAO policy. More importantly, however, the existence of this policy may preclude the United States from benefiting from the discretionary function exception in cases brought pursuant to the Federal Tort Claims Act. At a minimum, however, in all civil cases, alleged violations of the USAO policy would be admissible against the United States and federal employees in civil cases.

In sum, rather than issuing the proposed policy, we believe that the USAO should continue to work cooperatively with management of the various Federal law enforcement agencies to address the issue of recording interviews. Please feel free to contact me if you wish additional input on this issue.

Raman, Mythili (ODAG)

From: Tenpas, Ronald J (ODAG)
Sent: Thursday, June 15, 2006 9:21 AM
To: Raman, Mythili (ODAG)
Subject: FW: ATF's response to the pilot program for recording statements
Attachments: Electronic recording.doc

From: Jaworski, Thomas J.
Sent: Tuesday, June 13, 2006 2:59 PM
To: Tenpas, Ronald J (ODAG)
Cc: Wulf, David M.; O'Keefe, Kevin C.; Kenrick, Brian C.; Durham, Melissa A.
Subject: ATF's response to the pilot program for recording statements

Mr. Tenpas,

ATF's comments re: the proposed pilot program are outlined below.

I have also attached a copy of a memorandum that we provided to the working group last summer. Please let us know if you have any questions.

Thank you.

Tom

Thomas J. Jaworski
Office of Chief Counsel (Litigation)
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
U.S. Department of Justice
650 Massachusetts Ave., N.W.
Washington, D.C. 20226
(202) 927-8216
Thomas.Jaworski@atf.gov

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Last summer when the Department components met, it was agreed that the taping of post arrest statements would be at the agency's discretion. As a result, ATF's Investigative Priorities, Procedures, and Techniques order was updated and is currently in draft form. This order leaves taping to the discretion of the case agent, with input from the supervisory chain and the AUSA. The proposed pilot program now requires mandatory taping of 'investigatory targets,' which (1) is broader than originally discussed by the working group and (2) is not based on any new policy arguments or new developments/change in circumstances since the group met last summer.

We reiterate ATF's concerns expressed last summer regarding the promulgating of a 'one-size fits all' approach to interrogation, suspects 'playing to the camera,' possible unsettling interrogation techniques, and logistical questions (type of recording, type of equipment required, must officers carry equipment, taping procedures, retention and storage issues, technical malfunctions). We have attached a copy of the memorandum provided to the Department last summer outlining ATF's position. Our position has not changed. We are strongly opposed to this program.

Further, we have concerns regarding the budgetary costs for the pilot program. We have no appropriation for recording equipment and transcription and storage costs for thousands of potential interviews each year. We did not request nor receive funding for the pilot program in FY 2006 or FY 2007.

Finally, we are also concerned with the mandatory language of the recording policy. This policy provides for an exception, but leaves the applicability of the exception solely within the discretion of the AUSA reviewing the case. Accordingly, it appears that law enforcement agents in the field have no discretion concerning taping, other than to decide whether the taping will be surreptitious or overt.

We suggest that your office hold a meeting with the components in order to discuss these issues further before implementation of any pilot program requiring the recording of statements.

From: Tenpas, Ronald J (ODAG)
Sent: Friday, June 02, 2006 2:55 PM
To: Wulf, David M.; Rowley, Raymond G.; O'Keefe, Kevin C.; Kenrick, Brian C.; Jaworski, Thomas J.; valerie.caproni@fbi.gov; kevin.favreau@ic.fbi.gov; Hertling, Richard; Rowan, Patrick (ODAG); Rybicki, James E; Wainstein, Kenneth (USADC); Sutton, Johnny K. (USATXW); Howard, Joshua (USANCW); Harrigan, Thomas M.; Hahn, Paul (USAEO); Finan, Robert (USMS); Earp, Mike (USMS); Charlton, Paul (USAAZ); _Group Listing
Subject: Taping Confessions

Colleagues:

I have taken over shepherding this issue in ODAG, along with Senior Counsel Mythili Raman, in the wake of the combined departures of Bob Trono and Jim Rybicki. Attached you will find a proposal from the District of Arizona submitted to the Deputy Attorney General, seeking permission to operate a pilot program in the District of Arizona in which taping of interviews of investigatory targets would become the presumptive norm, although with exceptions for certain circumstances. Please provide any comments you have regarding this proposal to me by close of business, Tuesday, June 13. If there are comments, I would appreciate it if component agencies could provide a single consolidated response per agency/component -- i.e. one for FBI, one for ATF, etc.

Ron

<<Arizona proposal6.pdf>> <<Arizona proposal1.pdf>> <<arizona proposal2.pdf>> <<Arizona proposal3.pdf>> <<Arizona proposal4.pdf>> <<Arizona proposal5.pdf>>

Ronald J. Tenpas
Associate Deputy Attorney General
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Washington, D.C. 20530
(202) 514-3286 / (202) 305-4343 (fax)

SUBJECT: ELECTRONIC RECORDING OF INTERROGATIONS AND CONFESSIONS

We have been advised that the Department of Justice (DOJ) is considering whether it is appropriate to promulgate a Department-wide policy on electronic recording (e.g., audio or video recording) of interrogations and confessions. Based on quick research, Illinois, New Mexico and the District of Columbia have recently enacted laws designed to require state and local law enforcement officers to record interrogations and confessions under certain circumstances.[1] ATF does not maintain a policy requiring electronic recording of interrogations or confessions. We understand that no other DOJ bureaus maintain a policy requiring electronic recording of interrogations or confessions. In fact, the FBI's policy is **not** to record, unless a waiver is received from the Special Agent in Charge.

Senior Counsel (Field Operations) advised that ATF's current practice leaves the decision regarding electronic recording of interrogations and confessions to the discretion of the ATF case agent. The case agent may also confer with his/her chain of command and the local United States Attorney's Office. ATF O 3210.7C briefly addresses recording interrogations, however only in the context of Miranda waivers, providing that "such other record of advice and waiver may include, but is not limited to, a sound recording." (Copy attached).

Electronic recording of interrogations and confessions has been addressed in several recent studies.[2] This topic has received extensive attention from the media and criminal defense bar due to alleged state and local wrongful convictions based on improperly obtained confessions. Quick research reveals that the issue has received little coverage concerning interrogations and confessions at the Federal level.[3]

While we recognize, in theory, there are several potential positive results which could result from promulgation of a Department–wide policy mandating electronic recording of interrogations and confessions, these results come at the expensive of limiting the flexibility of agents to make the determination of the proper course of conduct depending on the particular situation. Rather, than promulgating a 'one-size fits all' approach to

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[1] Alaska requires taping of suspects when the interrogation occurs in the place of detention and recording is feasible. Stephan v. State, 711 P.2d 1156 (1985). Minnesota requires taping of in-custody suspects. State v. Scales, 518 N.W.2d 587 (1984).

[2] William Geller, "*Videotaping Interrogations and Confessions*," National Institute of Justice, Research in Brief, U.S. Department of Justice, March 1993 (Attached); Report of the (New Jersey) Supreme Court Special Committee on Recordation of Custodial Interrogations, April 15, 2005, available at http://www.judiciary.state.nj.us/notices/reports/cookreport.pdf; Northwestern University School of Law, Center on Wrongful Convictions, Police Experiences with Recording Custodial Interrogations, Summer 2004, available at http://www.law.northwestern.edu/depts/clinic/wrongful/documents/SullivanReport.pdf; INT'L ASS'N OF CHIEFS OF POLICE, POLICY REVIEW: VIDEOTAPING INTERROGATIONS AND CONFESSIONS (Fall 1998)(Attached).

[3] But see H.R. 112, 109th Cong., 1st Sess. (2005) requiring the videotaping of U.S. military interrogations of detainees. The bill is currently in committee awaiting comment from the Department of Defense (DOD).

interrogation, a simpler and more effective strategy would be to provide SA's with additional interrogation and professionalism training in order to minimize any future interrogation issues.

On the other hand, there are also numerous potential negative consequences to an electronic recording policy. For example, suspects who know that they are being recorded may be less likely to speak candidly, or conversely, may "play to the camera," for the attention. If suspects are recorded covertly, once this tactic becomes known through the trial process, any usefulness it had will be lost. Law enforcement interrogation techniques (although completely legal) may still be unsettling for some jurors in video and audio form. Suspects may confess to a crime on the scene or in route to a station or office, well before recording is anticipated. This also raises the logistical questions of what kind of recording (audio or video) will be mandatory, what kind of equipment is required and where must it be present (with every agent/officer at all times, only in the office or station, etc.), what are the costs involved, what taping procedures must be adhered to, tape retention and storage issues, and what uniform training is to be provided and by whom. Technical malfunctions of equipment may create doubts in jurors' minds about what happened after the taping ceased. Further, depending on judicial interpretation, failure to record an interrogation or confession may result in additional "legal technicalities" that could lead to jury instructions harmful to the case at trial or even summary dismissal of criminal charges. Finally, prosecutions may be hampered in joint Federal-state task force operations, where Federal charges are brought following arrest and interrogation by local law enforcement in a jurisdiction where local law enforcement does not electronically record interrogations and confessions.[4]

This is the summary of our quick research. Further research and analysis may be required prior to the enactment of a new policy.

Attachments

[4] See Commonwealth v. DiGiambattista, 442 Mass. 423 (2004)(holding when police fail to record an interrogation, defendants are entitled to an instruction that the jury should weigh unrecorded statements "with great caution and care.").