



IACP NATIONAL LAW ENFORCEMENT POLICY CENTER

Interrogations and Confessions

Concepts and Issues Paper

Originally Published: May 1996

Revised: April 2004

I. INTRODUCTION

A. Purpose of Document

This discussion paper is designed to accompany the *Model Policy on Interrogations and Confessions* established by the IACP National Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to provide greater understanding of the developmental philosophy and implementation requirements of the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model to the requirements and circumstances of their communities and their law enforcement agencies.

B. Background

Interrogations and confessions are an essential element of police work. Under the rules of evidence applicable in both state and federal courts, when an interrogation is conducted properly, any resulting statement or admission may be admissible in court against the person making the statement. Although many convictions have been obtained in criminal cases in which there was no confession, the admission into evidence of a confession is often critical to the prosecution's case, and the absence of an admissible confession may, and often does, result in an acquittal.

However, the key word here is admissible. A confession is of no value as evidence if it is inadmissible at the trial. Federal and state courts have, over the years, established very rigid guidelines as to when, and under what circumstances, an inculpatory statement may be admitted in a criminal trial. Failure to follow these

guidelines may be fatal to the prosecution's chances of obtaining a conviction.

Today's legal guidelines for confessions and interrogations derive from two sources: the Fifth Amendment to the Constitution of the United States, and the decision of the U. S. Supreme Court in the case of *Miranda v. Arizona*.¹ The *Miranda* case, as interpreted today, provides that no confession obtained during a custodial interrogation is admissible in evidence unless (1) the person who made the statement was first advised of his or her Fifth Amendment rights, and (2) the police observed those rights in the process of obtaining the statement.

The *Miranda* Warnings. The first step in observing the suspect's *Miranda* rights is to inform the person being interrogated of these rights, and this is accomplished by providing to the person being interrogated the four warnings required by *Miranda v. Arizona* and now familiar to all police personnel. These "*Miranda* warnings" must clearly inform the person being questioned of the following:

- The person has the right to remain silent.
- Anything that the person says may be used against him² in a court of law.
- The person has the right to consult with an attorney and to have an attorney present during questioning.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966). State constitutions, decisions, and statutes may also affect the procedures that can be used in a given state.

² In discussions or formulations of the *Miranda* rules, it is common to refer to persons under questioning as "he" or "him". However, these pronouns should in all cases be understood to refer to persons of either gender.

- If the person cannot afford an attorney, one will be appointed to represent him.³

The courts have held that police need not follow the precise language of the warnings as set forth in the *Miranda* case, as long as the suspect has been informed of the substance of his rights and understands them.⁴ However, it is strongly recommended that officers follow the “official” wording of the *Miranda* warnings, preferably by always reading the rights to suspects from a departmentally approved standardized form or card. See Section II.B., below.

Merely reciting these warnings to the person under interrogation, and obtaining a waiver of the *Miranda* rights from that person, is not sufficient. The rights must be meticulously observed, or any waiver of those rights given by the person being interrogated is of no effect.

The purpose of the Model Policy is to provide officers with the necessary guidance to enable them to follow the legal procedures mandated by the Fifth Amendment and the *Miranda* rule, to ensure that the rights of all persons are observed, and to protect the department and the officers concerned from charges of police coercion or intimidation.⁵

The Concept of Voluntariness. As noted in the preceding subsection, one of the purposes of the model policy is to protect the department and the officers concerned from charges of police coercion or intimidation. This point is essential, for one of the key concepts in the law of interrogations and confessions is voluntariness. To be admissible, the confession must be voluntary; that is to say, it must have been made freely, without any coercion or intimidation on the part of the police or their agents. Further, it must be clearly understood that providing the *Miranda* warnings, although an important element of voluntariness, is not in itself sufficient. For example, it is obvious that if, after reading the person the *Miranda* rights, and obtaining a waiver of those rights from that person, the police then proceeded to use physical violence on the person in order to obtain a confession, the confession would be inadmissible. The courts look at all of the circumstances surrounding the interrogation to determine whether or not—despite technical adherence to the requirements of *Miranda*—the confession was truly voluntary.

³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁴ See, e.g., *California v. Prysock*, 453 U.S. 355 (1981) (no “talismanic incantation” required by *Miranda*).

⁵ See IACP Model Policy, Sections I and II.

II. PROCEDURES

A. When the *Miranda* Warnings are Required

Miranda warnings are required whenever any person is being subjected by the police or their agents to a custodial interrogation.⁶ If there is no custodial interrogation, there is no requirement that the *Miranda* warnings be given, and this is true regardless of the nature of the offense and regardless of whether or not the person being interrogated is suspected of having committed the crime under investigation.

Normally, the police will not interrogate someone unless the officers suspect that individual of being involved in a crime.

Consequently, it is common to refer to the person being interrogated as “the suspect,”⁷ and that term will be used hereafter in this paper. However, it is extremely important to remember that it is not the presence or absence of police suspicion of the individual being questioned, or the degree of police suspicion of that person, that governs the *Miranda* requirement.⁸ The sole issue is: Is this person being subjected to a custodial interrogation?

The concept of custodial interrogation is therefore critical, and both of the two elements of this phrase—custodial and interrogation—are operative and must be understood.

Custodial. The clearest situation in which questioning is custodial is when the suspect is under arrest. However, it is vital to keep in mind that questioning may be custodial even though the suspect is not under formal arrest. If the circumstances are the “functional equivalent” of an arrest, the questioning is custodial. The model policy states that

*A functionally equivalent situation exists when a ‘reasonable person’ in the suspect’s position would feel that his freedom of action has been restricted to the same degree as a formal arrest.*⁹

⁶ Under certain limited circumstances, a statement taken in the absence of the *Miranda* warnings may still be admissible. See *New York v. Quarles*, 467 U.S. 649 (1984) (“public safety” exception), and *Harris v. New York*, 401 U.S. 222 (1971) (voluntary statement may be used to impeach a suspect’s testimony at trial even though *Miranda* warnings not given). However, these exceptions are very narrow, and should not be relied upon by officers conducting interrogations.

⁷ See, e.g., IACP Model Policy, Sections II et. seq.

⁸ Contrary to suggestions in some of the earlier cases, today the fact that the investigation has or has not “focused” on the person being questioned is not considered determinative. See *California v. Beheler*, 463 U.S. 1121 (1983); *Beckwith v. United States*, 425 U.S. 341 (1976).

⁹ IACP Model Policy Section III. The degree of restriction that will render the situation custodial may vary, depending upon the circumstances and the views of the court hearing the case. The Supreme Court said in *Miranda v. Arizona* that an interrogation is “custodial” if the person, even though not officially “taken into custody” (i.e., arrested),

The determinative factor is what the suspect reasonably feels the circumstances to be, not what the police officers conducting the questioning consider them to be. The test is an objective one: the courts will look at all of the circumstances of the questioning to determine whether a reasonable person in that situation would conclude that his or her freedom of action was restricted to the degree indicated.

Obviously, there are so many different combinations of circumstances that it is difficult for officers to determine precisely when questioning is custodial. The following situations have been found to be not custodial, so that the *Miranda* warnings are not required:

- Investigative detention—that is, a “stop and frisk.”¹⁰
- Routine traffic stops or stops for a minor violation.¹¹
- Routine questioning of individuals at the scene of an incident or crime when the questioning is for informational purposes and is not intended by the police to elicit incriminating responses.
- Questioning of a person who has appeared voluntarily at the police station or other police facility.¹²
- Statements made spontaneously, without prompting by police.¹³

Care must be taken in situations where such spontaneous statements are made. For example, persons being questioned in the non-custodial situations listed above may unexpectedly blurt out incriminating statements.

has been “deprived of his freedom ... in any significant way” *Miranda v. Arizona*, 384 U.S. 436 at 444. More recently, the courts have said that the situation is “custodial” if, under the circumstances, the person being questioned would reasonably believe that he or she was not free to leave.” See *Orozco v. Texas*, 394 U.S. 324 (1969); *United States v. Booth*, 669 F.2d 1231 (9th Cir. 1981).

¹⁰ It appears that *Miranda* warnings are not required during routine investigative stops that are “nonthreatening.” See *United States v. Berkemer*, 468 U.S. 420 (1984). However, as the Supreme Court in *Berkemer* pointed out, if the person who has been stopped “thereafter is subjected to treatment that renders him ‘in custody’ for practical purposes, he will be entitled to the ... protection prescribed by *Miranda*.” 468 U.S. at 440. Thus, if the investigative detention involves the use of restraints (e.g. handcuffs), the pointing of firearms, or other similar “threatening” actions by the police, *Miranda* warnings should be given before any questioning, even though no actual arrest of the suspect has yet been made. See, e.g., *United States v. Perdue*, 8 F.3d 1455 (10th Cir. 1993). And, of course, if the investigative detention results in arrest of the detainee, any questioning thereafter is, obviously, “custodial.”

¹¹ The IACP Model Policy states that this includes DWI stops until a custodial interrogation begins. IACP Model Policy IV.A.2.b.

¹² If, during the voluntary appearance at the police facility, the conduct of the police indicates to the suspect that he or she is no longer free to leave, this may cause the situation to become custodial, even though it was not so at the time of the suspect’s initial appearance.

¹³ See *Miranda v. Arizona*, 384 U.S. 436 at 478.

Such statements should be admissible despite the lack of *Miranda* warnings. However, once the incriminating statement is made, further questions by the police may require the *Miranda* warnings, unless the further questions are merely for clarification, i.e., to determine whether an incriminating statement has in fact been made.¹⁴

The location of the questioning is not determinative. Questioning in police stations or in police vehicles is not necessarily custodial, depending upon the circumstances. On the other hand, questioning in, for example, the suspect’s home or in a public place may be found to be custodial if the circumstances dictate it.

Although it is difficult to determine when questioning may be considered by a court to be custodial, common sense and a good-faith effort to follow the law will usually enable the police officer to decide when the *Miranda* warnings are required.

Interrogation. Even if the situation is custodial, *Miranda* is not applicable unless there is also an interrogation. Clearly, asking the suspect direct questions constitutes interrogation. However, even if no direct questions are asked of the suspect, if the police engage in any conduct that is the “functional equivalent” of questioning, that conduct is an interrogation for purposes of *Miranda*. Thus, if police engage in conduct that the officers should know may elicit an incriminating statement from the suspect, that conduct is considered to be “interrogation.”¹⁵ Examples might include statements made to another police officer or to another person that are uttered in the presence of, or within the hearing of, the suspect. Even though these statements are not made in the form of questions to the suspect, if the officers should know that the statements are reasonably likely to draw an incriminating statement from the suspect, such statements constitute interrogation.

B. Administering the *Miranda* Rights

The *Miranda* rights should be read to the suspect. Even though the officer knows the warnings by heart, and can recite them accurately from memory, the warnings should always be read, word for word, from the *Miranda* warning card or the *Miranda* warning waiver form in use by the department. Oral recitation of the rights makes it impossible for the officer to testify under oath as to the exact wording used on a particular occasion, and facilitates a claim by the defense that the correct warnings were not given.¹⁶

¹⁴ See IACP Model Policy Section IV.A.2.e.

¹⁵ *Rhode Island v. Innis*, 446 U.S. 291 (1980).

¹⁶ This is a standard tactic employed by criminal defense attorneys when the rights are given orally instead of being read from a departmentally approved standard card or waiver form.

Before questioning may proceed, the suspect must freely and voluntarily waive his or her rights. Threats, false promises, or attempts to coerce suspects into executing a waiver will render the waiver “involuntary.” This invalidates the waiver, and any subsequent statement by the suspect will be inadmissible.¹⁷

The waiver of the *Miranda* rights should be in writing, preferably on a standard form provided by the department. Although an oral waiver is sufficient legally to make the confession admissible,¹⁸ the lack of a written waiver may leave the police vulnerable to a later claim by the defense that there was in reality no such waiver.¹⁹

Even though a valid waiver has been given, the suspect may decide to change his or her mind during the questioning and invoke one or both of the *Miranda* rights. See the discussion of invocation of rights, below.

Obviously, a suspect who cannot understand what is being said to him or her by police cannot execute a waiver “freely, voluntarily, knowingly, and intelligently.” Officers conducting custodial interrogation of deaf suspects (or of others who for any reason, such as an inability to speak and understand English, are not able to understand their rights) should notify their supervisors and make arrangements to have an interpreter present during reading of the rights, the signing of the waiver, and the questioning.

The department’s policy regarding the location, employment, and use of interpreters should be followed.²⁰

C. Invocation of Rights

As noted earlier, there are two separate and distinct *Miranda* rights: the right to silence and the right to counsel. A suspect may choose to invoke either or both of those rights. The effects of a suspect’s decision to invoke

¹⁷ Any evidence that the suspect was “threatened, tricked, or cajoled into a waiver will show that the defendant did not voluntarily waive his privilege.” *Miranda v. Arizona*, 384 U.S. 436 at 475-76.

¹⁸ See, e.g., *North Carolina v. Butler*, 441 U.S. 369 (1970), where the suspect told the officers, “I will talk with you, but I am not signing any form.”

¹⁹ If the suspect waives his or her rights orally, but refuses to sign the waiver form, or if for any other reason a written waiver is not possible, there should be at least two witnesses to the oral waiver so that at trial it will not be just a matter of the suspect’s word against the word of one police officer that an oral waiver was given. In addition, the interrogating officers should prepare a written memorandum or report setting forth the circumstances of the oral waiver, the exact words used, and the witnesses present at the time.

²⁰ If the suspect is unable to understand his or her rights due to intoxication, illness, or some other such transient condition, questioning should, of course, be delayed until the temporary disability no longer exists. The issue of using sign language interpreters can be more problematic. Where this issue has or may arise, agencies are urged to establish specific policy on the use of such interpreters. A suggested policy on this has been developed by the U.S. Justice Department’s Bureau of Justice Assistance and is available through the Justice Department’s National Criminal Justice Reference Service in Rockville, Maryland.

his or her rights will depend upon which of the rights is invoked, and when. Failure of the interrogating officers to understand these basic points will almost inevitably lead to suppression of any statements obtained from the suspect as the result of that interrogation.

A suspect may invoke the *Miranda* rights at any time. This may occur even after a waiver has been obtained. The fact that a suspect has initially consented to talk to police does not prevent the suspect from withdrawing that consent at any time during the questioning.

Invocation of Right to Silence. When a suspect invokes the right to silence, questioning must terminate immediately. Once the right to silence has been clearly invoked by the suspect, the interrogating officers should not prolong the interrogation by trying to persuade the suspect to change his or her mind.

Although a suspect’s invocation of the right to silence requires immediate suspension of questioning, it does not preclude a resumption of questioning at a later time.²¹ The model policy provides that “Suspects who are not represented by an attorney may not be interrogated for at least 90 minutes following their invocation of their right to silence.” The model policy further states that if questioning is resumed after that time, the *Miranda* warnings must again be administered, and a new waiver must be obtained.²²

It is possible that, after invoking the right to silence, the suspect may initiate further communication with the officers. In that event, questioning may be resumed at any time, but again the model policy calls for re-administration of the *Miranda* rights and the execution of a new waiver.²³

Invocation of the Right to Counsel. When a suspect invokes the right to counsel, all questioning must cease immediately. However, in some instances it may be unclear as to whether the suspect is actually invoking the right to counsel. A mere reference to an attorney may not be sufficient. For example, the suspect might say something like “You guys did say that I could have a lawyer if I wanted one, didn’t you?” This does not appear

to be an unequivocal demand for an attorney, and in the event of such ambiguous comments, officers may ask further questions to clarify the suspect’s intentions and determine whether the suspect has, in fact, unequivocally

²¹ See *Michigan v. Mosley*, 423 U.S. 96 (1975) (*Miranda* does not create a “per se proscription of indefinite duration upon any further questioning” when the right to silence is invoked).

²² It is possible that questioning resumed sooner, or without the re-administering of the *Miranda* rights, may still produce admissible statements. However, courts will scrutinize very carefully any statement made after the right to silence has been revoked, and the Model Policy takes a strict approach to minimize the possibility that such a statement might be found improper. IACP Model Policy Section IV.D.2.

²³ IACP Model Policy Section IV.D.3.

invoked the right to counsel.²⁴

When a suspect invokes the right to counsel, questioning may not be resumed unless

- The suspect's attorney is present, or
- The suspect initiates new contact with the police.

This is the rule first announced by the Supreme Court of the United States in the case of *Edwards v. Arizona*,²⁵ and it has been rigidly enforced, both by the Supreme Court and by other federal and state courts. Unlike the invocation of the right to silence, which permits resumption of questioning after a period of time, the rule applicable to invocation of the right to counsel applies regardless of how much time has passed since the suspect invoked the right, and it applies to questioning about any crime, not just the crime about which the suspect was being questioned at the time of the invocation of the right. Thus, unless the suspect's attorney is present, or the suspect initiates new contact with police, there can be no further question about any crime by any officer at any time while that suspect is in custody.

It is not sufficient that the questioning be suspended while the suspect consults with an attorney. This is regarded by the courts as insufficient to protect suspects' rights. Once the right to counsel has been invoked, unless the suspect's attorney is actually present at the questioning, the questioning may not be resumed unless the suspect requests it.²⁶

This means exactly what it says—the new contact must be initiated by the suspect. Police may not themselves initiate further contact with the suspect—not even to ask if the suspect wishes to resume questioning.

If the suspect initiates new contact with the police, the *Miranda* rights should again be administered and a waiver obtained, regardless of the length of time that has passed since the termination of the previous questioning. Further, officers should, if possible, obtain written verification from the suspect that it was the suspect who requested the resumption of contact.

²⁴ This is the position generally taken by state and federal courts. However, some state courts may require cessation of questioning even though the apparent invocation of the right to counsel was ambiguous. See, e.g., *Ochoa v. State*, 573 S.W.2d 796 (Tex. Crim. App. 1978). Departments should check the case and/or statute law of their specific jurisdictions on this point.

²⁵ *Edwards v. Arizona*, 451 U.S. 477 (1981).

²⁶ Following the decision in *Edwards v. Arizona*, 451 U.S. 477 (1981), it was thought by some authorities that it was sufficient if, following the invocation of the right to counsel, the suspect was given the opportunity to consult with counsel before the police initiated further questioning. However, in *Minnick v. Mississippi*, 498 U.S. 146 (1990), the Supreme Court held that when counsel is requested, the interrogation must cease immediately, and (unless reinitiated by the suspect) may not be resumed without counsel present, regardless of whether or not the accused has, in the meantime, consulted with his or her attorney.

D. Cooperation with Counsel

The model policy provides that officers “shall cooperate in any reasonable way with efforts by counsel to contact or meet with suspects in custody.”²⁷ Many court cases have been lost because the courts found that police interfered with the efforts of the suspect's counsel to get in touch with the suspect. Tactics such as “hiding” the suspect by failing to complete the booking procedure, or moving the suspect from one police station to another, or just simply denying the attorney's request to see the suspect, will not be tolerated by today's courts, and the model policy makes it clear that departmental personnel are to be cooperative in facilitating reasonable contact between attorneys and suspects in custody.

Although there is no question that the presence of counsel greatly reduces the odds of obtaining a confession from a suspect, American courts (and American society) have long since concluded that the protection of the rights of suspects and the importance of permitting a suspect to have the benefit of the advice of counsel are more important goals. Past police practices that interfered with these rights and goals are known to, and will no longer be permitted by, today's courts, and adherence to department policy in such matters is essential if serious repercussions for the department and for the officers involved are to be avoided.

E. Documenting Statements and Confessions

In any case in which a confession has been obtained by the police, it is almost certain that the defense will attempt to have that confession excluded from evidence on the grounds that the confession was not voluntary and/or was not obtained in compliance with the requirements of *Miranda*, *Edwards*, and other applicable cases. This issue will therefore often be litigated at the trial of the suspect, and evidence will be heard from both the prosecution and the defense on the issue of the admissibility of the confession.

Unfortunately, many police officers feel that, because they are police officers, their word as to giving *Miranda* rights and the compliance with the other applicable rules will be accepted automatically by the court and/or jury. Unfortunately, this is not always so. In many instances, the matter comes down to the word of the suspect against the word of one officer, and the court or jury, operating on the principle of reasonable doubt, may decide to accept the word of the suspect over that of the officer.

To minimize this risk, the IACP model policy calls for the fullest possible documentation of the circumstances surrounding interrogations and confessions. There are many different procedures available, ranging from handwritten interrogation logs to computer records to audio

²⁷ IACP Model Policy IV.E.3.

or video recording. Each department must determine what it is capable of doing, and what its local courts will require it to do.

In whatever manner the documentation is accomplished, the model policy recommends that the documentation include such matters as the following:

1. *The location, date, time of day and duration of the interrogation.* If the interrogation is held in some location or at some time other than that normally employed for such questioning, the reasons for the deviation should be stated.
2. *The identities of the officers or other persons present.* This is especially important in the case of an oral waiver, or the occurrence of any unusual circumstance during the questioning. For example, if an issue arises over whether or not statements made by the suspect during the questioning amounted to an unequivocal invocation of the Miranda rights, the testimony of these witnesses may be critical.
3. *The warnings given, the responses of the suspect, and the waivers obtained.* Even though a written waiver form is obtained from the suspect, backup documentation may be of great value if the validity of the waiver is later challenged. Here again, the presence of witnesses who can verify the statements of the interrogating officers may be important.²⁸
4. *Breaks, food and drink, and other amenities provided to the suspect during questioning.* The lengthier the questioning, the more likely it is that the defense will contend that the police “wore down” the suspect by long, uninterrupted questioning during which the suspect was not afforded the opportunity to go to the lavatory or have a drink of water. To prevent this type of contention, all circumstances of the questioning period, including the breaks and amenities provided to the suspect, should be logged or otherwise documented.

F. Use of Video or Audio Facilities to Tape Interrogations

Videotaping and audiotaping facilities available to the interrogators should be employed in accordance with the rules of that department. The IACP model policy contains specific recommendations regarding these matters.²⁹ However, local laws, rules of court, and departmental policies on the use of such capabilities vary

greatly. Consequently, each department should evaluate its own local laws and capabilities to determine whether modifications of the model policy are necessary as to the employment, preservation, and use of video or audio capabilities in connection with interrogations by the members of that department. Legal advice and, if possible, the participation of the local courts should be sought in this evaluation and/or modification process.

The issue of whether to videotape confessions has received a great deal of attention from both police and prosecutors. As a result, the IACP National Law Enforcement Policy Center addressed this issue the center’s newsletter, *Policy Review*, Fall edition, 1998. Portions of that issue are summarized below as excerpted from William Geller, “Videotaping Interrogations and Confessions,” National Institute of Justice, *Research in Brief*, March, 1993, which provided the results of a nationwide survey of police use of videotape for interrogations and confessions.

Perceptions of Videotaped Interrogations and Confessions. Some criminal defense attorney’s in the study stated that the failure to videotape interrogations (when the equipment is available) gives defense lawyers an opening to claim police misconduct in the interrogation process. But according to some state’s attorneys, videotape recordings provide defense lawyers with the opportunity to pore over interrogations for evidence of misconduct. Under these latter circumstances, suppression hearings may be encouraged.

But the use of videotape for recording interrogations and/or confessions also has advantages according to many. In one case for example, a defendant in Beaumont, Texas took the witness stand in his trial for kidnapping and recanted his admission of guilt. He had confessed, he asserted, because during the hours of questioning police officers had “confused” him and made him “picture” that he had committed the crime. But the state provided the jury with a videotape of the defendant’s statement. “The jurors viewed the tape, quickly convicted the defendant and later lamented to reporters that they could not sentence him to death.”

The law related to interrogations and confessions emphasizes the need for voluntariness of confessions and the absence of coercion by police officers. Videotapes, say advocates, allow solid documentation that acceptable police practices have been followed. They also provide visual insight into the non-verbal cues and body language of defendants and suspects that is invaluable to the prosecution, but is lost in transcripts and audio recording of statements.

But, the foregoing observations present only part of the arguments for and against videotaped interrogations and confessions and raise more questions than they provide answers. For example, one might ask: Should

²⁸ While the existence of other witnesses to the interrogation is often desirable, there should not be so many officers present that the defense can later contend that the defendant was coerced or intimidated by the presence of overwhelming numbers of police officers.

²⁹ IACP Model Policy, Section IV.F.2.,3.

videotaping be reserved for recording confessions rather than interrogations” Should the practice be restricted for use in more serious felony investigations or used for all offenses? Do videotaped interrogations increase the likelihood of suppression hearings and charges of improper police interrogation practices? Should videotaping of interrogations or confessions be performed overtly or covertly? How does videotaping affect the outcome of cases?

Videotape Usage. The NIJ study estimated that about one-third of law enforcement agencies serving populations of 50,000 or larger videotape at least some interrogations. As one might expect, agencies are more likely to videotape in cases involving the most serious of offenses. The reasons for using videotape, according to agencies that engage in the practice include:

- Avoiding defense attorney’s challenges to the accuracy of audiotapes and the completeness of written confessions.
- Helping reduce doubts about the voluntary nature of confessions.
- Jogging detectives’ memories when testifying.
- Countering defense criticism of “nice guy” or “softening up” techniques for interrogating suspects.

But strong resistance was found among agencies that choose not to institute videotaping procedures. Many investigators express concern regarding the perceived fear of suspects to provide information during interrogations or to provide full or partial confessions when they know that they are being recorded or videotaped. Many persons, including suspects and police investigators alike have difficulty conducting themselves naturally in front of a camera.

Another fear is that a policy to videotape only in serious cases may leave police and prosecutors open to the allegation that improper interrogation techniques were employed and that specific video recordings were, for that reason, either not made or not retained as evidence. Thus, some questions that have to be addressed in any policy that involves videotaping include: At what point should videotapes be initiated in qualifying cases? Should tape recordings be made of all or part of (1) suspect interviews, (2) station house interrogations following formal arrest and/or charging or (3) only for purposes of recording confessions?

Overt Versus Covert Taping. There are a number of good arguments both for and against covert taping. For example, many proponents claim suspects are more reluctant to submit to an interrogation if they are conscious of the presence of a camera. They may be more inclined to invoke their constitutional right to silence and to the presence of an attorney. On the reverse side of this coin,

some more experienced offenders, knowing that they are being videotaped may effectively “play” to the camera and use it to their advantage. Convert use of the video recorder may limit these possibilities and the distraction that is created by the presence of a camera and camera operator in the interrogation room.

On the other hand, it is often naïve to believe that police can keep the presence of video camera entirely convert over time, particularly as word of this practice becomes known among habitual offenders and others who are acquainted with the criminal justice system. The law may bar surreptitious taping in some jurisdictions. Federal law would not normally come into play in instances in which a suspect is being interrogated following issuance of *Miranda* rights in police custody as there would be no “reasonable expectation of privacy.”

Full Interrogations Versus Recaps. Proponents of recaps, or summaries, point to the excessive amount of time that can be occupied on tape if full interrogations are recorded. Two to four hours is normally required on average to record a full interrogation session and many take even longer. Recaps, on the other hand can be take only about fifteen to forty-five minutes to record. Of course, the argument against recaps is generally that one cannot determine the tactics that have been used by interrogators to elicit the recorded statements. This leaves the door open to prosecutors to allege that police didn’t record the full interrogation because they feared that their tactics would not meet legal scrutiny or otherwise be viewed favorably by the jury. Defense attorneys may also hold recaps up as pre-rehearsed “shows” or contend that they fail to reveal any mitigating information that normally flows from interrogations and that can be important at trial.

Those who favor recaps, point to the frequent difficulty of drawing the facts of confessions together from the often rambling nature of interrogations that are often so full of tangents and false claims. Such excuses, false claims and protestations of innocence are common and may add to the confusion of jurors.

The Quality of Videotaped Confessions. Nearly half of the police agencies surveyed said that the use of videotape improved their interrogations and nearly 40 percent more noted that it helped somewhat. This is attributed by these agencies to better preparation for interrogations by investigators who recognize that others outside the police agency will view their interrogation techniques. The majority of agencies that videotape also said that they were able to get more incriminating information from suspects on tape than they were in non-taped interrogations.

Some police investigators initially feared that they would feel constricted and inhibited by the presence of cameras during interrogations and their normal interrogation techniques would have to be moderated or

compromised. While this was the case initially for some investigators, it was generally regarded as only a temporary issue.

Prosecutor's Views. Prosecutors almost unanimously agreed that videotape helped them assess the strengths and weaknesses of the state's case and helped them prepare for trial. Videotape can also be helpful in negotiating acceptable and reasonable pleas.

Videotaping Policy. The model policy does not take a position on the use of videotape for recording confessions. Its use can have distinct advantages but it can also sometimes have a negative outcome on the investigative and prosecutorial functions. Needless to say, for agencies that use videotape for such purposes, it is important to develop policies and procedures in many of the areas touched on here as well as the technical components of the videotaping process. While differing opinions exist concerning the strengths and weaknesses of videotaped interrogations and confessions, on the whole, videotape appears to be a valuable investigative resource when structured through sound policy and procedures. Videotape in these contexts tends to protect the rights of defendants while ensuring a factual and often fairer presentation of evidence. It can be a persuasive tool for prosecutors and juries alike.

Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "model" policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities among other factors.

This project was supported by a grant awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice or the IACP.

IACP National Law Enforcement Policy Center Staff: Philip Lynn, Manager; Sara Dziejma, Project Specialist; and Vincent Talucci, Executive Director, International Association of Chiefs of Police.

© Copyright 2004. International Association of Chiefs of Police, Alexandria, Virginia U.S.A. All rights reserved under both international and Pan-American copyright conventions. No reproduction of any part of this material may be made without prior written consent of the copyright holder.