

Empirical Experiences of Required Electronic Recording of Interviews and Interrogations on Investigators' Practices and Case Outcomes

**Brian C. Jayne M.S.D.D.
John E. Reid and Associates**

Abstract

The states of Alaska and Minnesota have required electronic recordings of custodial interviews and interrogations for more than a decade. The survey results of 112 investigators from those states indicate that a higher confession rate was obtained when suspects could not see the recording device during an interrogation. Furthermore, respondents believed that electronic recording generally decreases the length of a trial and that the practice does not benefit the defense. A significant endorsement of required electronic recording in custodial situations is that 85% of investigators either strongly favor the law or believe the law has not affected their ability to do their job.

Introduction

In recent years defendants convicted of serious crimes have had their convictions overturned as a result of exculpatory evidence. A number of these individuals confessed following police interrogations which has sparked controversy about interrogation practices. Some academicians have strongly advocated electronic recording of interviews and interrogations as a safe-guard against false confessions.¹ There are also individuals who have expressed a belief that the interrogation techniques taught by John E. Reid and Associates are coercive and that the use of these techniques results in false confessions.² Gudjonsson writes, "The experiments of Kassin and McNall are important because they show that the techniques advocated by Inbau and his colleagues are inherently coercive in that they communicate implicit threats and promises to suspects."³ A vocal critic of the Reid Technique (Ofshe) goes so far as to allege that when using this technique, "police routinely elicit false confessions."⁴

Almost across the board, Federal agencies do not electronically record interviews or interrogations. Barring an all-encompassing U.S. Supreme Court decision, it would appear that the required recording of interviews and interrogations will be decided on a state-by-state basis. The first state to require electronic recording of interviews and interrogations was Alaska⁵. Nine year later Minnesota followed suit.⁶ This year, at least two other states have introduced and/or passed similar legislation requiring electronic recording of all interrogations.

There has been scant research in the area of electronic recordings of interviews, interrogations or confessions. The most detailed attempt at this effort was a 1992 National Institute of Justice (NIJ) study that surveyed about 2,400 law enforcement agencies across the United States.⁷ This report indicated that only 16 percent of the agencies surveyed videotaped interviews, interrogations or confessions. The reported benefits of videotaping confessions were

1) to minimize doubts as to the trustworthiness or voluntariness of a confession, 2) to help an investigator prepare for testimony and, 3) to defend against allegations of improper interrogation tactics. The majority of agencies surveyed did not videotape interviews, interrogations or confessions. There were two primary reasons cited for this. One was a concern that the recording would increase defense claims of improper interrogation tactics and a second was a belief that videotaping the interrogation would inhibit a suspect's willingness to tell the truth.

While the NIJ report provides a baseline of law enforcement recording practices, the methodology omitted some significant variables relative to electronic recording. First, the study focused only on videotaped recordings. Second, there was a failure to identify whether or not agencies recorded the entire interview and interrogation of a suspect or just the suspect's confession. Finally, most agencies surveyed indicated that they selectively videotaped only certain cases. Despite these shortcomings, the NIJ report is significant in that it serves as a barometer of the attitudes and concerns toward electronic recording by law enforcement agencies that existed in 1992.

To fully understand the implication of electronic recordings of police interactions with subjects, a distinction must be made between an interview, an interrogation and a confession. An *interview* is a non-accusatory question and answer session with a person who may have useful information about a crime under investigation. This person may be a witness, an informant, an individual with helpful knowledge or a suspect. Some interviews result in confessions or incriminating statements. In other situations, the person may be cleared of any wrong-doing. If the person being interviewed is a suspect he may or may not be placed in custody.

An *interrogation* describes an accusatory interaction with a suspect believed to be involved in a crime. Through active persuasive, the investigator attempts to convince the suspect to tell the truth using arguments that are based on factual or emotional elements of the crime. An interrogation may result in a confession, a partial admission or, when the suspect does not make any incriminating statements, an increased belief of his probable involvement in the crime. Some interrogations may produce the opposite result, where the investigator accepts the suspect's denials as truthful statements. A suspect may or may not be taken into custody prior to an interrogation.

A *confession* is a statement acknowledging commission of a crime coupled with information about the crime that would only be known by the guilty person and/or that can be independently verified following the confession. An unsupported statement such as, "I didn't intend on killing him," "I'm sorry I did this," or "I lied about my alibi" is not a confession. A confession may be offered by a suspect who is either in custody or not in custody.

Because of the potential impact electronic recording of interviews or interrogations may have on an investigator's ability to perform his duties and on the criminal justice system itself, there is much controversy surrounding the practice. A unique opportunity, however, exists which may provide meaningful data and insight on this important issue. Investigators working in

Alaska and Minnesota have had many years of experience working within the constraints of these laws. Consequently, it was believed that these investigators would be in the best position to offer real-life experiences with electronic recording of interviews and interrogations.

Methodology / Sample

Data Sheet

Eight hundred questionnaires were mailed to police investigators in the states of Alaska and Minnesota who had received training in The Reid Technique of Interviewing and Interrogation within the last two years. The questionnaire requested no personal information and was, therefore, anonymous. Respondents mailed the questionnaires to the author who entered their answers into a database file for analysis.

One of the reasons this sample included only investigators who received training in the Reid Technique is that the training emphasizes the distinctions between interviewing and interrogation and also clearly defines terms such as “admission” and “confession”. By selecting a sample of investigators who all shared the same training in interviewing and interrogation it was believed that the data would most accurately reflect the questions asked on the survey.

Sample

Out of the 800 surveys, 112 investigators responded representing a 14% return. Thirty-four of these were from Alaska and 78 from Minnesota. The sample included responses from 21 different agencies in Alaska and 53 agencies from Minnesota. The average number of years employed in law enforcement for the sample was 8.9 years, with a range from 1 to 24 years. Over the last two years these investigators conducted an estimated total of 9,375 interviews and 5,651 interrogations.

Results

Recording Practices

The laws regulating electronic recording of interviews and interrogations in Alaska and Minnesota do not specify the type of recording made. Therefore, it was of interest to determine if there was a preference for either audio or audio/visual recordings. Table 1 lists these preferences.

Table 1
Type of Electronic Recording Generally Made

Type of Recording	N (%)
Audio	83 (74%)

Audio/Visual	18 (16%)
Half Audio, Half Audio/Visual	11 (10%)

In Alaska and Minnesota only custodial interviews or interrogations are required to be recorded. An investigator often has a choice as to whether to conduct a voluntary, non-custodial interview or, conversely, to take a suspect into custody before conducting the interview and interrogation. It was speculated that investigators may try to minimize the impact of the law by increasing the number of suspects who are interviewed or interrogated in a non-custodial environment. A specific question was asked in this survey to identify whether or not investigators by-passed the electronic recording requirement by more frequently conducting non-custodial interviews/interrogations. Those results are listed in Table 2. Respondents were also asked to estimate the frequency in which they record interviews and interrogations. Table 3 lists those findings.

Table 2
Effect Required Recording Has on Increasing Non-Custodial Interviews/Interrogation

How much have you increased the number of non-custodial interviews/interrogations	N (%)
Significantly	9 (8%)
Somewhat	29 (26%)
Not at all	74 (66%)

Table 3
Frequencies of Recording Interviews and Interrogations

% Frequency of Recording	During an Interview	During an Interrogation
0 - 20%	3 (2%)	0 (0%)
20 - 40%	4 (4%)	2 (2%)
40 - 60%	5 (5%)	3 (3%)
60 - 80%	10 (9%)	5 (4%)
80 -100%	90 (80%)	102 (91%)

As these results indicate, investigators in Alaska and Minnesota electronically record the majority of their interviews and almost all of their interrogations even though this is required only when a suspect is in custody.⁸ Furthermore, the majority of investigators did not make a significant effort to avoid electronic recording by increasing the number of non-custodial interviews or interrogations conducted.

Effect on Confessions

One of the primary concerns expressed by law enforcement relating to electronic recording of interviews or interrogations is that the suspect's knowledge that his statements are being recorded would inhibit the truth-seeking process. In the NIJ report 30% of agencies who chose not to videotape interviews or interrogations cited this as a primary concern. From a psychological perspective it must be appreciated that it is not the electronic recording of interviews or interrogations that potentially inhibits truthfulness; it is the suspect's knowledge and awareness of being electronically recorded. An obvious solution to this dilemma is surreptitious recording without the suspect's knowledge.

In Alaska and Minnesota, an investigator is not required to advise a suspect that his statements are being electronically recorded and also has the option to hide the recording device during an interview or interrogation. To determine the extent to which investigators took advantage of their ability to surreptitiously record interviews and interrogations one survey question addressed the frequency in which subjects were told that their conversation was being recorded. A second question asked about the frequency in which the recording device was visible to the subject. In this sample relatively few investigators attempted to surreptitiously record interviews or interrogations. These findings are listed in table 4.

TABLE 4
How Often Subjects are Advised They are Being Recorded
And Can See the Recording Device

Frequency	Advised they are recorded	Can see recording device
Never	26 (23%)	10 (9%)
Sometimes	35 (31%)	48 (43%)
Usually	25 (23%)	30 (27%)
Always	26 (23%)	24 (21%)

To investigate the effect electronic recordings have on the frequency in which investigators obtained confessions, both empirical and objective data was generated. Respondents were asked how they believed electronic recording affected their rate of eliciting confessions both during an interview and interrogation. These results are listed in table 5.

TABLE 5
Experience of Electronic Recording on Confessions
During Interviews and Interrogations

Observation	Interview	Interrogation
Not affected number of confessions	85 (76%)	82 (74%)
Decreased number of confessions	20 (18%)	25 (22%)
Increased number of confessions	7 (6%)	4 (4%)

An important variable to consider with respect to electronic recordings and confession rates is the suspect's knowledge of being electronically recorded. Clearly, the greatest reminder of this is having the recording device visible. Table 6 reflects the reported confessions rates during an interrogation ranging from never having the recording device visible to always having the recording device visible.

TABLE 6
Effect of Visibility of Recording Device on Confession Rates

Condition	Confession Rate
Never Visible	82%
Sometimes Visible	52%
Usually Visible	50%
Always Visible	43%

While the majority of investigators (74%) reported that they believed electronic recording did not affect their ability to elicit the truth during an interrogation, table 6 indicates that when a subject is not able to see the recording device, confession rates are much higher than when the recording device is always visible. While correlation coefficients were not calculated because of the nature of data collected, the gradual decrease of confession rates illustrated in table 6 suggests a significant relationship between the number of suspects who confess and the lack of visibility of a recording device.

Effects on Trial

A concern some agencies have with electronically recording interviews and interrogations is that the practice provides the defense with unnecessarily detailed material which could be used to suppress an otherwise legally admissible confession or to bog down the court system with a prolonged suppression hearing. The NIJ report indicated an 18% increase in defense claims of improper interrogation techniques when the interrogation was videotaped. The remaining 82% of agencies reported that defense claims stayed the same or decreased. In this study investigators were asked whether electronic recording of interviews and interrogations most favored the prosecution or defense. Table 7 indicates the results of the respondent's experience.

TABLE 7

Effects of Electronic Recording on the Adversarial System

Observation	N (%)
Most benefits the prosecution	54 (48%)
Most benefits the defense	8 (7%)
Benefits the prosecution and defense equally	50 (45%)

Respondents were also asked to assess the effect electronic recording of interviews and interrogations has had on the length of a trial. The survey option indicating a decrease in trial length suggested such reasons as more plea bargains and shorter suppression hearings. The option indicating an increase in trial length suggested defense expert testimony and the time for the court to review the electronic recording. The results are listed in table 8

**TABLE 8
The Effects of Electronic Recording on the Length of Trial**

Observation	N (%)
Not affected the length of trial	28 (25%)
Decreased the length of trial	76 (68%)
Increased the length of trial	8 (7%)

Tables 7 and 8 both reflect positive findings about electronic recording from a prosecution perspective. That is, electronic recording generally does not benefit the defense and also decreases the length of a trial. A number of the respondents wrote on their surveys that electronic recording of confession significantly increased the number of plea bargains.

The survey specifically inquired about the number of confessions that were suppressed at trial. Of the 3,938 confession obtained during an interview, 33 (.83%) were suppressed at trial. Twelve of these suppressed confessions were electronically recorded and 21 were not. The survey did not pursue the grounds for suppression. However, considering that two-thirds of these confessions were not electronically recorded suggests that the investigator believed that the suspect was not in custody at the time of questioning. It is, therefore, probable that many of these suppressed confessions involved either *Miranda* issues or state imposed regulations, e.g., was the suspect in custody at the time of the questioning and, therefore, electronic recording was required?

Out of the reported 3,162 confessions obtained following an interrogation, 18 were suppressed at trial (.56%). Fourteen of these were electronically recorded and four were not.⁹ Because the survey did not pursue grounds for suppression it is not known to what extent, if

any, electronic recording contributed to the suppression of these confessions. It is important to remember that the vast majority of the 3,144 confessions that were not suppressed as evidence were electronically recorded (see table 3).

An impressive statistic that can be drawn from this finding is that 99.44% of confessions obtained during an interrogation were not suppressed even though the vast majority of them were electronically recorded and, in those cases, the defense was able to scrutinize every word of the interrogation. Considering that all of these investigators received training in the Reid Technique and presumably used that technique, at least in part, to obtain these confessions offers a strong challenge to opponents' claims that the Reid Technique is inherently coercive and results in false confessions.

Discussion

Investigators who responded to this survey offered real-life experiences of mandated recording of custodial interviews and interrogations which should serve as a valuable source of information to states considering similar legislation. The clear preference for electronic recording is audio taping versus audio/visual recording. This may be due to cost or convenience factors. While some opponents of police interrogation advocate audio/visual recordings, this medium may involve perceptual problems that potentially could result in longer and more confusing trials.¹⁰ Overall, investigators in Alaska and Minnesota have adapted their interviewing and interrogation practices to accommodate the recording laws as 80% indicated that they electronically record 80-100% of their interviews and 91% indicated recording 80-100% of interrogations. Only 8% of investigators reported legally evading the law by increasing the number of non-custodial interviews or interrogations they conduct.

A significant part of an investigator's job involves gathering information and evidence through interviews and interrogations. While 74% of investigators in this study did not believe that electronic recording affected their ability to elicit confessions, objective findings challenge this perception. Investigators who never allowed subjects to see the recording device during an interrogation achieved a 39% higher confession rate than investigators who always had the recording device visible. This finding suggests that a suspect who is aware that a conversation is being recorded may be less likely to be forthright. Another possibility is that more skilled interrogators have learned not to make the recording device visible to suspects. Because of the general nature of data collected, this must be considered a preliminary finding and deserves further research. In the meantime, it may be prudent for investigators to make an attempt to surreptitiously record interviews and interrogations.

Another significant issue relating to altering police procedures is the effect those changes have on the court system. Investigators in this sample did not believe that electronic recording provided an unfair advantage to the defense. In fact, 48% believed that it favored the prosecution. A coinciding finding is that 68% of investigators believed that electronic recording decreased the length of a trial. At first blush this may appear to be a very positive finding. However, this is only true if electronically recorded interrogations and confessions serve to efficiently resolve common suppression hearing disputes such as whether or not the suspect was given his *Miranda* warnings or to refute claims of alleged threats or promises. The other possibility is that an electronically recorded interrogation and confession is considered so damaging that an average defendant feels powerless to refute it and pleads guilty. Further research in this area is certainly warranted.

The total number of reported confessions that were suppressed was so small that no meaningful statistical analysis can be made. Combining confessions from interviews and interrogations, a total of 51 (.71%) confessions were suppressed. Of these, 26 were electronically recorded and 25 were not. It would be interesting to pursue this statistic further. For example, do states that require electronic recording have a greater or lesser rate of suppressed confessions than states that do not? Are the grounds for suppressing confessions in states that require electronic recording different from states that do not? Because of the specific standard of requiring electronic recordings in only custodial situations, common sense indicates that defense attorneys may focus on the suspect's state of mind at the time a confession was given, e.g., did the defendant believe he was in custody and, therefore, the session be electronically recorded? In this regard, it would be to the investigator's advantage to clearly advise a non-custodial suspect that he is not under arrest and is free to leave at any time.

The final consideration when enacting legislation that alters existing procedures is how the people affected will respond to the change. To address this, a question was asked on the survey as to the impact required recording has had on the investigator's job. The results are listed in table 9. As can be seen, the vast majority of investigators in this study either strongly support electronic recording or believe that it has not affected their ability to do their job.

Table 9
Investigator's Opinion of Requiring Electronic Recording of Interviews and Interrogations

Opinion	N (%)
Support the law and believe it should be passed in other states	53 (47%)
Not affected by the law one way or another	42 (38%)
The law has decreased the investigator's ability to perform duties	12 (11%)
The law is wrong and should be repealed	5 (4%)

In conclusion, much of the law enforcement concern surrounding electronic recording of interviews, interrogations and confessions described in the 1992 NIJ study appears to be unwarranted. In actual practice, a preponderance of investigators report no overwhelming negative effects associated with required electronic recording and generally express positive experiences. This reform in interviewing and interrogation practices suggests that the requirement of electronic recording in custodial cases is not only feasible, but may have an overall benefit to the criminal justice system. In an era where academicians generalize from laboratory studies and use anecdotal accounts to support claims that police routinely elicit false confessions, electronic recordings may be the most effective means to dispel these unsupported notions.

John E. Reid and Associates is located in Chicago, IL and is internationally recognized for expertise in interviewing and interrogation. Brian Jayne is their director of research and development.

ENDNOTES

¹Gudjonsson, G.(2003) The Psychology of Interrogations and Confessions Wiley & Sons, West Sussex, 21— 24

²Kassin McNall, (1991) “Police Interrogations and Confessions: Communicating Promises and Threats by Pragmatic Implication,” *Law and Human Behavior* 15,3, 233-254.

³*Supra* note 1, p.21

⁴Leo, R. & Ofshe, R. (1998) “The Consequences of False Confessions: Deprivation of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation.” *Journal of Criminal Law and Criminology*, 88, 429

⁵Stephan v. State, 711 P.2d 1156, 1158 Alaska 1985

⁶ State v. Scales, 518 N.W. 2d 587 Minnesota, 1994. In a recent case (State v. Conger, Minnesota, 2002) the Supreme Court refused to expand required electronic recording to non-custodial interviews and interrogations.

⁷Geller, W. A. (1993) “Videotaping Interrogations and Confessions.” *National Institute of Justice Research in Brief*, Washington, DC, March 1 — 11

⁸ Quite a few investigators from Minnesota wrote on their survey that their prosecutor would not even accept a confession as evidence unless the interrogation was electronically recorded. On the other extreme, one investigator from Minnesota indicated that most of his interrogations are non-custodial and he places a suspect in custody after the person confesses. He indicated that the courts have upheld all of his non-electronically recorded confessions because he made it clear to these suspects that they were not in custody.

⁹Supplemental notes on the survey indicated that three of the electronically recorded confessions that were suppressed at the original trial were later upheld by a court of appeals.

¹⁰ Lassiter, G.D, Geers, A. L. Handley, I. M.& Weiland, P.E., Munhall, P.J. (2002) "Videotaped Interrogations and Confessions: A Simple Change in Camera Perspective Alters Verdicts in Simulated Trials" *Journal of Applied Psychology*, Vol. 87, No 5, 867--874