

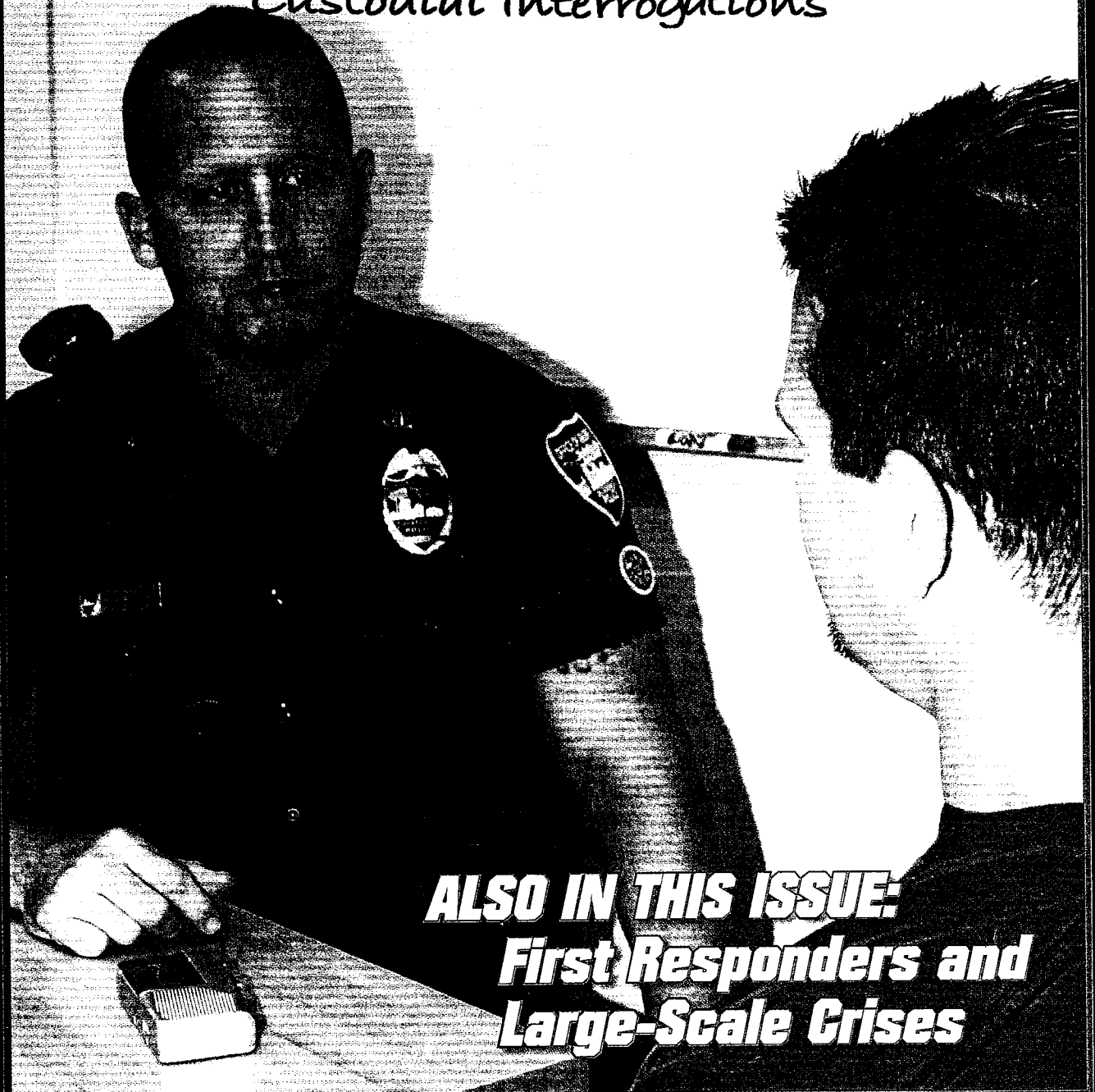


THE CHIEF OF POLICE®

THE OFFICIAL PUBLICATION OF THE NATIONAL ASSOCIATION OF CHIEFS OF POLICE
November/December 2005 Volume XIX Number 6

FOCUS:

*Electronic Recording of
Custodial Interrogations*



ALSO IN THIS ISSUE:
***First Responders and
Large-Scale Crises***

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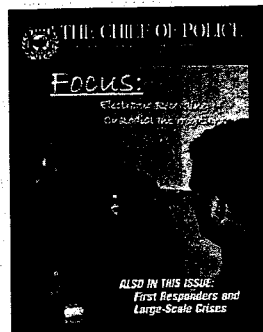
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JIM GORDON, EXECUTIVE EDITOR

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ON THE COVER — Noted author and Chicago attorney **Thomas P. Sullivan, Esq.**, writes on the growing trend among law enforcement agencies to require interviews of felony suspects who are in custody be electronically recorded from the Miranda warnings on. Sullivan discusses the “pros” and “cons” of the use of electronic recording in a fascinating and detailed review of this hotbed issue. Begins on P.17 of this issue. Our editors offer a special “thank you” to the law firm of **Jenner & Block**, Chicago IL for donation of this excellent article.

(Photo by Christy Whitehead. Ms Whitehead may be contacted via e-mail at volume904@aol.com)

FOCUS:

Electronic Recording of
Custodial Interrogations

By Thomas P. Sullivan, Esq.

There is a growing trend among the law enforcement agencies throughout the United States to require that interviews of felony suspects who are in custody in police facilities be electronically recorded from the Miranda warnings on. Police Chiefs and Sheriffs are becoming aware that recorded interviews help solve crimes, convict the guilty, protect officers from unjustified claims that they used coercive tactics or lied about what suspects said and did, and train new recruits in effective interrogation techniques. During the past three years, my associates and I have spoken with more than 400 police and sheriff's departments in 43 states, who make it a practice to make complete recordings of custodial interviews in major felony investigations. Almost without exception, they enthusiastically endorse the practice, and heartily recommend its use.

Here are the reasons given by experienced officers (CSO stands for County Sheriff's Office):

- Recordings provide an incontestable record of what took place during custodial questioning. Officers who conduct the interviews are protected against unwarranted charges of coercion and misconduct. Motions to suppress are seldom filed, and defense lawyers frequently negotiate pleas of guilty.

Elizabethtown, KY PD: We want the jury to see and hear exactly what went on in the interview room, with no unanswered questions about what took place. Recordings save officers from being attacked on the witness stand for improper conduct, or not recounting correctly what

suspects said. They leave no room for argument about officers using tricks or intimidation.

Atlanta, GA PD: I have never seen a complaint against an officer who has taken a statement on tape.

El Dorado, CA CSO: A motion to suppress is a swearing match between the suspect's words and the officer's words. Now, we play the tape and the judge says, "It's right there! Motion denied."

San Diego, CA PD: Recording is a great investigative device, which eliminates the problem of suspects changing their stories when we get to court. I've never met a detective who didn't like it.

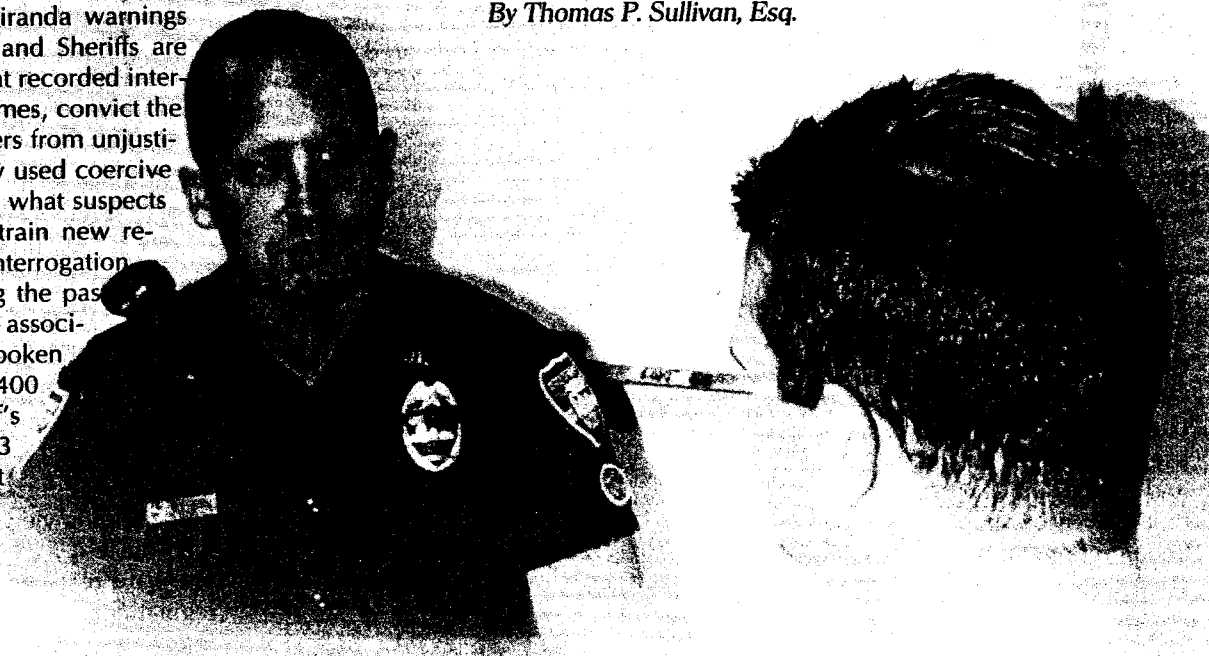
Polk, IA CSO: Recording is especially beneficial when the officer and suspect are of opposite sexes: the

tapes show exactly what occurred, so no allegations of harassment can be thrown at the police.

Coeur d'Alene, ID PD: I like all parties involved to see my conduct and the suspect's behavior during the interrogation. Recording has minimized my time in court. It is very difficult to dispute a recorded statement or admission.

- Officers are able to concentrate fully on the suspect and the subject of the interview, without having to make extensive handwritten notes.

Corpus Christi, TX PD: Our detectives have found that they especially like the recording process because it is much faster and easier for them to simply record a suspect's interview, rather than the old method



[Photo by Christy Whitehead]

Interrogation - continued on page 18

of interviewing the suspect, writing down his version of events, having the writing typed, and signed by the suspect. When the interview is over, the suspect's statement is recorded for posterity without all the other paperwork.

- Through hardwire hookups, officers in nearby rooms may observe interviews in real time, and make suggestions to those conducting the interviews.

Randall, TX CSO: I often ask another officer to watch the interview by remote video hookup to see what I'm missing.

- Later review of recordings allows officers to hear and see significant statements, body movements and leads that may have been overlooked.

Contra Costa, CA CSO: Recording interrogations allows detectives to later dissect the tapes for the words used, mannerisms of the suspect and voice inflection — subtleties that may go unnoticed without the benefit of recording.

Fort Collins, CO PD: Watching videos often reveals changes in suspects, stories that were not observed during questioning.

Marshalltown, IA PD: By reviewing recordings, sometimes without sound, officers often detect indications of deception in suspects' behavior.

- When preparing to testify, officers do not have to refresh their recollections from notes or typed reports, and struggle weeks and months later to recall what was said and done. When testifying, they do not have to attempt to describe suspects, demeanors, attitudes, voice tones and inflections. They need not be concerned about omitting the precise words used, or failing adequately to describe the way the words were spoken. They no longer run the risk of inconsistencies between their testimony and their reports, or testimony of fellow officers.

Broome, NY CSO: After interviews are ended, officers may not recall precisely everything that was said

and done. When officers later testify in court, having conducted many interviews in the interim, their recollections may be hazy and inexact, and they may be unable to recall all the details of interviews. This is no longer a problem when the interview is recorded.

Cobb County, GA PD: Recordings preserve the evidence in a way that written reports cannot. Perspectives about what occurred during interrogations are incredibly unreliable when compared to what is shown on the tapes.

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Recordings provide a ready made tool for self evaluation of interrogation techniques, and for training new detectives.

Oak Grove, LA PD: Some of the younger guys get a head start and fashion their techniques by watching interrogations of experienced officers. I still learn from watching myself and other officers.

Plymouth, MN PD: Recording tends to increase your interview abilities, because you have a chance to both listen to and read your transcribed interview and learn from it — what worked, what didn't, what you forgot to ask, what you shouldn't have asked, etc.

- The public is assured that law enforcement personnel are conducting themselves in an open, forthright manner, and have nothing to hide from outside scrutiny.

Anchorage, AK PD: Recordings protect our ability to do our job.

They have proven beneficial to law enforcement. They ease public concern about how we treat people who are in police custody.

El Paso, CO CSO: Recordings improve the image of the police in the eyes of the public, who see that the fallacies shown on television are not what happen in real life.

- Any officer who is tempted to use inappropriate methods or exaggerate as to what suspects said or did, is no longer able to do so because the entire session is recorded.

Police Chiefs and Sheriffs who have doubts about recording interviews of felony suspects will profit from learning the experiences of their counterparts in large, medium and small communities, in every part of the country. Other favorable comments we have received may be found in my original report, published last year under the title "Police Experiences With Recording Custodial Interrogations," available at <http://www.jenner.com/policestudy>. Since that publication, we have received many additional endorsements, with virtually no dissenting views expressed by those who make it a practice to record. We also have received departments, written regulations on recording custodial interviews, which we will readily share with readers.

Legislative and Court Actions Concerning Recordings

As the benefits of recordings have become more widely known, law enforcement support for state legislation on the subject has increased. There are good reasons: statutory provisions spell out in detail when and where recordings are required, the exceptions that apply, how funding will be provided for equipment, interview rooms and training, and if necessary exempting custodial recordings from state eavesdropping laws, so suspects need not be told they are being recorded. Thus far, Illinois, Maine, New Mexico and the District of Columbia have enacted recording legislation, and bills have been introduced in many other state legislatures.

Another way in which recordings have been required or encouraged has been through action of state supreme courts, for example, in Alaska, ▶

Massachusetts, Minnesota, New Hampshire, New Jersey and Wisconsin. But from law enforcement's standpoint, these rulings are not as satisfactory as legislation, because they usually fail to deal with important matters such as funding for equipment and preparing interview facilities, providing for circumstances in which recording is excused, retention of tapes, and the like.

Some Concerns of Officers Who Haven't Tried Recording

Officers from departments who do not record express various concerns, the four most common being: (1) suspects will "clam up" if they realize we are recording, which will result in loss of confessions; (2) judges and juries will disapprove of tactics sometimes used, even though the tactics are lawful; (3) the cost will be prohibitive; and (4) confessions and admissions we obtain may be suppressed if, through inadvertence, a recording isn't made because, for example, the equipment fails to operate or we forget to start the machine.

Here is what officers who have recorded for years have to say about these anticipated problems:

The "clam up" concern. In most states, the police are not required to inform suspects they are being recorded, or obtain suspects' consent, hence most suspects are not aware that the interviews will be recorded. Most officers have told us that when suspects know of the recording, either because they see the equipment or are told they will be recorded, it makes no difference in obtaining suspects' cooperation. But when a suspect indicates he will not give full cooperation if recorded, the officers make an electronic record of the circumstances, then turn the recording equipment off, and conduct the interview using the "old fashioned" method of making handwritten notes. It's that simple; confessions are not lost. A statute or departmental policy that requires recordings should provide that, if a recording is made showing that the suspect will not cooperate or is hesitant about proceeding if recorded, no recording need be made.

Interrogation tactics. Most courts permit detectives to exaggerate

or lie about evidence that incriminates the suspect, raise their voices, express sympathy for the suspect, blame the victim, use street talk and foul language, and the like. Experienced officers have told us that if the tactics are permissible under applicable law, and the judge or jury believes the suspect's recorded statement is true, it will be accepted. In other words, the use of standard interrogation tactics has not been an impediment to obtaining convictions. And, of course, testifying officers are sworn to give an accurate, complete account of what occurred during unrecorded custodial interviews.

Costs. Most costs come on the front end. Audio equipment is inexpensive. The use of video requires greater expenditures for hardware and interview rooms, especially if the equipment is hidden. Preparing transcripts for investigative or court use will be required whether audio or video is used. With the advent of digital technology, storage costs are diminished.

Very few of the officers to whom we've spoken have mentioned cost as a problem. They recognize the many benefits to law enforcement associated with recordings, summarized above, including the substantial savings resulting from increased guilty pleas, less court time for officers who do not have to attend court to testify on motions to suppress, or at trial about alleged coercion, or what the suspect said and did during the interview. Post conviction proceedings are reduced significantly. Civil judgments based on police use of improper tactics or coerced confessions simply disappear.

To put it in a nutshell, costs are not a good reason to oppose recording custodial interrogations, because the long run savings are so substantial.

Glitches. When recording equipment is used in the station, it is probable that, sooner or later, something will go wrong. An officer may forget to start the equipment, or turn the tape over, or inadvertently stop the machine, or the equipment will not function properly, etc. And yet only a few of the many officers we've talked with have mentioned these problems, and none has indicated that occasional glitches are a serious problem or reason to abandon recording. Nevertheless,

statutes and departmental policies should explicitly provide that recording is excused if the failure to record was due to inadvertent error or oversight, and not intentional conduct of law enforcement personnel.

It is worth repeating that only a few of the many recording departments we've spoken with have mentioned any of the foregoing problems, and not a single Chief, Sheriff or detective has said that he/she would prefer to cease recording and revert to methods employed in pre-recording days.

Conclusion

Officers are understandably skeptical of proposals made by professors and defense lawyers, who often criticize and attack police, and have never themselves conducted a custodial interview. It is for that reason that we have amassed an impressive array of endorsements of electronic recording by detectives and supervisors with many years of experience, from all over the United States. Those officers speak from the same depth of experience as their fellow officers who, although they have not tried, are reluctant to record based on speculative objections. But the officers to whom we've spoken have been recording for years, and with amazing unanimity they report positive experiences. They speak about using modern technology as a better way to do their jobs, and to make the results of their investigations more accurate and persuasive.

Accordingly, I urge all Chiefs and Sheriffs to support appropriate legislation requiring electronic recordings of custodial interrogations of felony suspects, from Miranda to the end of the interviews, and in the meantime to adopt the practice in their own agencies. •Thomas P. Sullivan

