

Video Recording Custodial Interrogations: The Devil's in the Details

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Abstract: Many of the wrongful convictions that have been brought to light over the last decade have their roots in the interrogation phase of criminal investigations where coerced or false confessions are sometimes extracted from detained crime suspects. A "simple" solution has been advanced to correct this particular problem: video record all custodial interrogations. We briefly review some relevant psychological science that points to significant limitations inherent in the video-recording practice. Some limitations can be offset with proper implementation of the practice, and in these instances we provide research-based recommendations for achieving it. Other drawbacks, however, cannot be as easily rectified, and in these cases criminal-justice practitioners should heed the old adage, "forewarned is forearmed," when making use of video-recorded interrogations.

Keywords: investigative interviews, police, sheriff, law enforcement, recording, interrogation, confession

Introduction

The Innocence Project, an organization dedicated to exonerating the wrongfully convicted by means of DNA testing, has, as of March 2009, helped liberate 232 people from unjust imprisonment (Innocence Project, n.d.). One factor contributing to these miscarriages of justice is false confessions, which can occur when innocent suspects succumb to the intense psychological pressure that is a ubiquitous feature of today's police interrogations in the United States (cf. Kassin & Gudjonsson, 2004; Lassiter, 2004; Leo, 2004). False incriminating statements made by suspects during detention

played a role in approximately 25% of the wrongful-conviction cases in which the Innocence Project has been involved (Innocence Project, n.d.).

In response to these troubling facts, many scientific, legal, and political leaders have called for mandatory video recording of custodial interrogations. Proponents argue that video recording interrogations will discourage police from using highly coercive techniques to elicit confessions and the resulting audio-visual record will permit later trial fact finders to more accurately assess the voluntariness and veracity of suspects' statements (e.g., Sullivan, 2005). All indications are that the video recording of in-custody interrogations will become a standard law-enforcement practice. It is therefore prudent to consider possible downsides associated with the video-recording procedure or with the manner in which it might be specifically implemented.

Implications of Psychological Science for the Video Recording Practice

Fundamental attribution error. Even if judges and jurors have the opportunity to view an entire interrogation video recording, their ability to accurately assess whether or not a confession was voluntarily given may still be an extremely difficult task. A vast amount of research on social judgment demonstrates that observers tend to attribute people's actions to internal causes (i.e., to their dispositions or intentions) even when external forces or pressures in the situation (e.g., orders from an authority figure) could readily account for their actions—a phenomenon known as the fundamental attribution error (Ross, 1977). The United States Supreme Court in *Lego v. Twomey* (1972) expressed the view that jurors are readily capable of differentiating voluntary from involuntary confessions and thereby discounting the latter. However, the pervasive tendency for people to commit the fundamental attribution error should serve as a warning that the task of evaluating the voluntariness of suspects' statements made during an in-custody interrogation designed explicitly for the purpose of extracting a confession is not necessarily as straightforward as it might seem. Consistent with this point, laboratory research has shown that mock jurors asked to consider a suspect's self-incriminating statements that came on the heels of very obvious high-pressure tactics on the part of an interrogator (e.g., he waved his gun in a menacing manner) were unable to completely discount the confession in rendering their verdict (Kassin & Sukel, 1997; Lassiter, Ware, Lindberg & Ratcliff, in press).

Expectancy effects. As our system of criminal justice is adversarial in nature, when examining a video-recorded interrogation the prosecution will be looking for proof that a defendant is guilty, whereas the defense will be looking for some indication that he or she is not. Psychological research indicates that people expecting or desiring to see different things very often end up seeing different things (e.g., Massad, Hubbard, & Newton, 1979). In one particularly relevant study (Darley & Gross, 1983), observers were provided with diametrically opposed expectancies and then viewed the same video-recorded sample of a person's behavior. Their subsequent evaluations of the person assimilated toward whichever expectancy they had been given, despite the fact that the information contained in the video was entirely inconclusive—that is, some of it supported and some it contradicted each of the expectancies. This and more recent

work (Balciotis & Dunning, 2006; Balciotis & Lassiter, in press; Lassiter, Lindberg, Ratcliff, Ware & Geers, in press) suggests that expectancies, hopes, and desires lead people to unintentionally register information from an event selectively; thus in instances in which the information available for forming judgments is not 100% conclusive (which for contested confessions is likely to be the case), people are literally more likely to perceive or notice the very information that fits with what they expect or wish to find.

Naïve realism. When conflicting conclusions are drawn from the same evidence, people often conclude that they are correct and others are incorrect. Moreover, individuals strongly believe that their view is the result of “seeing things as they truly are,” whereas the view of those who disagree with them is the result of an inadequate or biased examination of the evidence. This phenomenon has been dubbed naïve realism by Ross and Ward (1996).

Supreme Court judges, it turns out, are not immune to this effect. While writing this article an especially relevant, real-world event that parallels the aforementioned research came to our attention. In a 2007 ruling (*Scott v. Harris*), the United States Supreme Court was persuaded (although not unanimously) primarily as a result of viewing a video record of a car chase. Justice Scalia noted on behalf of the majority, “We are happy to allow the video record to speak for itself.” The implication of this statement is that there was only one way the video record could possibly be interpreted. However, Justice Stevens, the lone dissenter, indicated that the video record led him to draw the exactly opposite conclusion of the majority. Interestingly, the majority felt the “truth of the matter” was so clear in the video record that they took the unusual step of posting it online for citizens to draw their own (presumably identical) conclusions.

A trio of legal researchers availed themselves of this opportunity and collected the reactions of over a thousand individuals who were asked to view the posted video record (Kahan, Hoffman, & Braman, 2009). Although the majority of these individuals agreed with the court’s ruling, the researchers reported that race, gender, income, party affiliation, ideology, region of residence and cultural orientation all produced sharp differences in opinion. These results clearly showed “that different people, with different experiences, can see different things” in even a purportedly definitive video record (Kahan et al., 2009).

Differentiating true from false confessions. As noted at the outset of this article, one of the primary reasons proponents of the video-recording practice are so outspoken about the need to adopt this approach is their belief that a video record of an interrogation will make it possible for judges and juries to more readily catch false confessions that make their way into the system. Years of scientific studies on people’s ability to accurately distinguish truthful from untruthful statements, however, indicate once again that common-sense notions may be largely incorrect. The consensus among researchers who study the detection of falsehoods is that people generally do little better than chance when it comes to separating lies from the truth (Bond & DePaulo, 2006; DePaulo, Stone, & Lassiter, 1985; DePaulo, Lindsay, Malone, Muhlenbruck, Charlton, & Cooper, 2003). Even those who receive special training purported to increase lie-

detection skills seldom show significant improvement; alarmingly, they sometimes perform worse after training than before.

An especially disturbing implication of the literature on lie detection for the video-recording practice is that people perform relatively worse when they rely primarily on visual cues, particularly those emanating from a person's face, when trying to make veracity judgments (cf. DePaulo et al., 1985). Consistent with this pattern, a recent study found that people were better at differentiating true from false mock confessions when they listened to an audio recording or read a transcript of an interrogation than when they viewed a full video version that featured a close-up of the suspect's face (Lassiter, Ware, Lindberg & Ratcliff, in press). People tend to believe that they can tell from closely observing another person's face whether he or she is speaking untruths, but the scientific evidence suggests otherwise. As Ofshe and Leo (1997) have noted, and in line with the aforementioned findings, the verbal content of a suspect's detailed account of his or her "guilt" is likely a more reliable source for differentiating true from false confessions, and consumers of video-recorded interrogations should avoid the temptation to be distracted by a suspect's nondiagnostic "body language" that unfortunately may stand out due to the visual nature of the medium.

Camera perspective bias. A final issue concerning the video-recording practice that should be taken into account is the perspective of the camera when the interrogation is initially recorded. This may appear at first to be an inconsequential factor, but a growing body of research indicates it may have profound effects on the conclusions drawn by triers of fact who later evaluate video-recorded confessions. A considerable body of research indicates that an observer attributes unwarranted causality (influence) to objects and other people when they stand out in his or her visual field or are the focus of his or her attention—a phenomenon referred to as illusory causation (Lassiter, Geers, Munhall, Ploutz-Snyder, & Breitenbecher, 2002; McArthur, 1980).

Based on such demonstrations, G. Daniel Lassiter (2002) and his colleagues hypothesized that video-recorded confessions made with the camera focused on the suspect would lead observers to assess that the suspect's statements were more voluntary and conclude that the suspect was more likely to be guilty than if the camera focused on the interrogator or on both the suspect and interrogator equally. Considerable research has confirmed this hypothesis (see Lassiter, Geers, Munhall, Handley, & Beers, 2001; Lassiter & Geers, 2004, Lassiter, Ratcliff, Ware, & Irvin, 2006, and Lassiter, Ware, Lindberg & Ratcliff, in press, for extensive reviews of this literature). Video records that show both the suspect and detective in profile (an equal-focus camera perspective) produce evaluations that are comparable to those based on more traditional presentation formats—that is, audiotapes and transcripts.

Specific Recommendations for How Custodial Interrogations Should be Video Recorded

In the end, a sound policy regarding the video recording of custodial interrogations must meet the concerns of all relevant constituents—defendants, prosecutors, police,

defense counsel, trial and appellate judges, and ultimately the public at large. To aid criminal-justice practitioners and legal policy makers in achieving this objective, we conclude with the following recommendations distilled from the research briefly described above (see Lassiter, Ware, Lindberg & Ratcliff, in press, for a more developed justification of these recommendations).

- 1) Custodial interrogations should be recorded in their entirety with the camera positioned so that the resultant video recording displays an equal-focus perspective or, still better, an interrogator-focus perspective. Although intuitively a suspect-focus perspective seems to make the most sense, time and time again the research demonstrates that this perspective leads to biased and inaccurate assessments of video-recorded interrogations, which could increase the possibility of an innocent person being wrongfully prosecuted and ultimately wrongfully convicted.
- 2) In instances in which an interrogation has already been video recorded from a suspect-focus camera perspective, the resultant video recording should not be used as evidence at trial. Rather, the audio track only or a transcript derived from the video recording should be used instead. Either of these presentation formats circumvents the well-established drawbacks of suspect-focus video recordings.
- 3) Although two cameras, one focused on the suspect and the other focused on the interrogator(s), increase the amount and variety of visual details that can be recorded, splicing the resultant video recordings together to produce a split-screen presentation of face-on views of both the suspect and interrogator is not advised. The research indicates that this dual-camera perspective minimizes the effect of illusory causation on voluntariness judgments, but does nothing to remedy the problems associated with a suspect-focus perspective in regards to the actual accuracy of judgments (i.e., the extent to which true and false confessions are correctly identified as such).

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