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Interrogation room with a view

By Claude Solnik

Friday, July 11, 2008

The tape shall set you free

Video recording entire interrogations can prevent wrongful convictions

Last week, the New York State Attorney General's office determined it would not retry Martin Tankleff, who was freed last December after serving 17 years in prison for the murder of his parents. His conviction was based on a confession gained after a lengthy interrogation in which he was told his father identified him as the attacker, his hair was in his dead mother's fingers and tests indicated he showered to wash off the blood. All were lies. If the interrogation had been videotaped, perhaps the case would have had a different outcome.

"What went on in that room? We really don't know. We have Marty's version of events and the detective's version," said Eric Friedman, a spokesman for the New York City Bar Justice Center. "It seems to me the way to resolve that is to record the entire thing."

"If the process existed on videotape, we could examine it and determine whether it resulted in a falsehood being passed off as the truth," said Joel R. Weiss, of counsel to Farrell Fritz, in Uniondale.

Weiss said overly aggressive interrogations can produce false confessions, particularly from young people. Videotaping the interrogations could provide some measure of protection against wrongful conviction, but only if done properly.

"Great interrogators who get what they want no matter what the truth is know there's a process," Weiss said. "Who's going to be believed? If the process were videotaped from start to finish, the jury could evaluate whether the process resulted in a true confession or a false and desperate one."

Protections for all

Advocates say videotaping interrogations captures abuse, protects interrogators from false charges and reveals state of mind. Alan Schwartz, a former prosecutor turned criminal defense attorney in Garden City, said video shows context.

"If I'm watching the videotape and see an individual is in distress or high on drugs or alcohol, that becomes abundantly clear," Schwartz said.

Thomas P. Sullivan, former U.S. attorney for the Northern District of Illinois, in hundreds of interviews with police, found "virtually every officer with whom we spoke, having given custodial recordings a try, was enthusiastically in favor of the practice."

Illinois, Alaska, Illinois, Minnesota, Maine, New Mexico, North Carolina, Denver, Los Angeles, Phoenix and Portland require videotaping in serious cases, such as homicide.

Schwartz said video in New York is used selectively, often showing officials "dotting I's and crossing T's." Schwartz heard an underage suspect asked repeatedly on video if he wanted to confer with his parents or attorneys.

"They went above and beyond to give him the opportunity to assert any right or complaint he had," because the tape was

rolling, Schwartz said.

Schwartz said recording the entire process would force "law enforcement to be on their best behavior because they know they're being observed."

Mark Gann, a criminal defense attorney in Mineola and first vice president of the Nassau County Bar Association, said video is used in New York only to make cases. "It's well into the process before the videotaped statement is offered," Gann said. "It's not set up to help the defendant. It's set up to help the prosecution."

One case in point

After a vicious sexual assault and homicide in Peekskill, Jeffrey Deskovic, age 16, was rounded up and interrogated. "I told them I was innocent and didn't know anything about it," he said recently.

That wasn't recorded. Police interrogated Deskovic for many hours, showing him crime scene images, saying they had evidence proving guilt and wouldn't let him go until he confessed. One officer said he couldn't hold back the other much longer. They suggested extenuating circumstances could prompt forgiveness.

"I took the out which the officer gave," Deskovic said. "I made up a story based on information they provided me during the course of the investigation."

Police then went to video, and he repeated the details he said police told him. DNA didn't match semen found on the murdered woman. Confession trumped science; he was found guilty and sentenced to life in prison.

At a parole hearing, he knew in order to be set free he'd have to admit guilt and invent details, something he couldn't do. "It would be really difficult for me to say I did disgusting things I never did," Deskovic said.

He said the parole board didn't want to hear about innocence and he was denied parole. The Innocence Project took his case and ran DNA from the crime through a data bank, finding a match with someone who confessed and was sentenced in 2006.

Video cameras used selectively also recorded false confessions on Long Island. John Kogut, John Restivo and Dennis Halstead were freed in 2003 after their convictions for a Nassau County homicide were found to be based on false confessions, according to Barry Scheck, co-director of the

Innocence Project. Kogut's unsigned confession, like Tankleff's, was written by an officer.

"The next day the confession was recorded on video-tape," according to a report by the Innocence Project.

Record from start to finish

Friedman said the best way to assure justice is to videotape the entire questioning for serious cases. "Go into that room. Open the door. It automatically triggers the videotape," Friedman said. "That's what we'd like to see."

Gann said digital video makes recording interrogations easier and cheaper. He said, "I don't see why it's not used more often."

"There will be electronic equipment installation and operational costs," said Robert Clifford, a spokesman for the Suffolk County DA's office. "There will be expenses related to training and ongoing instruction."

Scheck said it "really isn't that expensive to have a video set up in the room where interrogations are done."

Lonnie Soury, who worked closely with Tankleff's legal team, is glad that video is in the works in Suffolk. "It's long overdue," Soury said. "They should have done it when Marty Tankleff was brought in and lied to and forced into a coerced confession."

Suffolk County since 1986, two years before Tankleff's arrest, has been recording "recaps" of confessions. Suffolk said it plans to begin videotaping entire custodial interrogations of homicide suspects, representing a major shift in the way confessions are obtained. If it happens, it would be one of the first major jurisdictions in New York to make this shift to routinely recording the full process.

