

Videotape All Police Interrogations

Justice demands it.

By Saul Kassin and David Thompson

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Ava Duvernay’s “When They See Us” is a docudrama about the 1989 Central Park jogger case in which five innocent teenage boys were wrongfully convicted of a brutal assault. In the film, the scenes depicting four of the young men being badgered into giving false confessions are hard to watch. Yet they do not depict word-for-word what happened. That was impossible, because no video footage exists.

In what became known as the Central Park Five case, detectives held the boys in custody and interrogated them on and off for 14 to 30 hours. It was only after the boys broke down and agreed to confess that an assistant district attorney was called in to record their prepared statements on camera.

New York now requires the police to record the entire interrogation for serious crimes. But half the states have no such requirement, leaving the most critical of police procedures a mystery to prosecutors, judges, juries and the public alike.

Justice requires that all police interrogations — the entire process, not just the final confession — should be recorded on video.

The two of us who write this article agree on this point, despite coming from very different professional perspectives. One of us is a partner in a company that trains law enforcement officers and investigators in how to conduct interviews and interrogations. The other is a social psychologist who studies the causes of false confessions, and the role they play in wrongful convictions.

We both know that confessions can be vital to policing and intelligence gathering. Relative to other forms of evidence, they are considered the gold standard. But they are also fallible. Today, 28 percent of DNA exonerations involve false confessions. This number that could be drastically reduced if all interrogations were recorded.

Some of the resistance in the law enforcement community to a recording requirement is pragmatic: For example, what would happen if officers failed to record an interrogation because of equipment malfunction? Some of it is also based on strategic concerns, like the fear that recording would inhibit investigators; that suspects knowing they are on camera would refuse to speak, much less incriminate themselves; and that judges and juries might not like the tactics they would see used in these tapes.

For many years now, police agencies have been videotaping confessions *after* the suspect had been interrogated. Beginning in 1975, the Bronx County district attorney, Mario Merola, initiated a program to do just that. After officers convinced a suspect to confess, they would take him to the D.A.'s office for an on-camera confession. Compared to the lifeless recitation of written statements reread in court, the theatrics were riveting; the effect was potent. In 1983, Mr. Merola was quoted in *The New York Times* as saying, "We get a conviction in virtually every case."

The practice of videotaping confessions was adopted in short order throughout New York City, in Chicago, and elsewhere in the country.

Then the landscape changed. In New York in 1992, attorneys Peter Neufeld and Barry Scheck founded the Innocence Project, a nonprofit organization that used new DNA technology to examine prisoners' claims of innocence. As the DNA exonerations started to pour in (a number that is now up to 374 and counting), they revealed that over 28 percent had involved a false confession. In the subset of homicide cases, that percentage was doubled.

At about the same time, scientific research on false confessions started to identify vulnerable suspect populations (like teenagers, and adults with intellectual disabilities and mental health issues), psychologically coercive tactics (like lying about evidence and implying leniency upon confession), and other risk factors — like the fact that innocent people almost never lawyer up ("Why would I, I didn't do anything wrong!").

The problem is not just that innocent people can be broken into capitulation; it's that their narratives are often too compelling to disbelieve. When law professor Brandon Garrett analyzed 66 false confessions, he unearthed this startling fact: Most contained details about the crime that were spot-on accurate, often vividly so, and yet not known to the public. These confessors were all innocent; they didn't know firsthand what happened. Whether purposeful or inadvertent, the detectives in these cases had communicated the facts during the interrogations — a process known as "contamination."

A retired Washington, D.C., detective, James Trainum, knows all too well how this can happen. In an article titled, "I took a false confession — so don't tell me it doesn't happen!" Trainum reflected on a case in which a suspect who confessed to him was later exonerated:

“Years later, during a review of the videotapes,” he noted that he and his colleagues had “discovered our mistake.” He explained: “We showed the suspect our evidence, and unintentionally fed her details that she was able to parrot back to us at a later time. It was a classic false confession case and without the video we would never have known.”

Inspired by these developments, many professional organizations — like the International Association of Chiefs of Police — have called for the video recording of custodial interrogations. Twenty-five states, the District of Columbia, and all federal law enforcement agencies also went on to adopt the practice for some or all felonies.

Every agency should demand the recording of all suspect interviews and interrogations without exception.

As reported in the *American Criminal Law Review*, Tom Sullivan, a former United States attorney and partner at Jenner & Block in Chicago, interviewed hundreds of officers in police and sheriff’s departments that had begun to record interrogations. Almost to a person, these officers became “enthusiastic supporters.”

Sullivan’s respondents cited multiple benefits. Many said that recording allows them to focus on the suspect without taking notes; that they can scour the sessions afterward for any fabricated, incriminating, or inconsistent remarks the suspect made; and that they spend less time in court having to defend their on-camera confession-taking practices against frivolous claims of coercion.

Recording brings two additional benefits. The first is that the mere presence of a camera will dissuade police officers from over-manipulating suspects and encourage instead the kinds of ethical interviewing practices that are starting to reshape modern-day police work. The second benefit is that recording preserves an accurate memorial account of the exchange between the police and suspects.

Opponents still argue that recording will distract or inhibit suspects, that some will flat out refuse to talk. That concern is unfounded. In partnership with a northeastern police department, Kassin and colleagues analyzed 122 real cases in which the suspects were informed — or not — that their sessions would be recorded. The result: Camera-informed suspects spoke as often; they were as likely to waive their Miranda rights; they were as likely to make admissions, not just denials; and detectives rated them as equally open and cooperative. One year later, the two sets of cases were similarly adjudicated. Not a single camera-informed suspect balked. There was simply no evidence to support the claim that recording inhibits suspects in any way.

We've heard it said that recording interrogations always benefits defendants. That is just not true. Justice benefits. Police officers frivolously accused of coercion benefit. Suspects prodded into false confessions benefit. Prosecutors, judges, and juries — the essential gatekeepers of confession evidence — benefit. The victims of serial offenders who roam the streets because an innocent person confessed to their prior crime benefit.

At a time when just about everyone is armed with a portable video camera, and false confessions are a known stark reality, there are no excuses. Yet many states fail to implement this remedy. And in some states that do, you could drive a truck through the loopholes that excuse the failure to do so (the suspect refused; the equipment was not available; “inadvertence”).

It is time to lift the veil of secrecy from the interrogation room so that everyone can see how true and false confessions are produced.

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