



Fact Sheet

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False Confessions & Recording Of Custodial Interrogations

How could someone confess to a [crime](#) one didn't commit?

Over 25 percent of the more than 290 wrongful convictions overturned by DNA evidence in the U.S. have involved some form of a false confession. Yet it's virtually impossible to fathom why a person would wrongly confess to a crime he or she did not commit. Researchers who study this phenomenon have determined that the following factors contribute to or cause false confessions:

- Real or perceived intimidation of the suspect by [law enforcement](#)
- Use of force by law enforcement during the interrogation, or perceived threat of force
- Compromised reasoning ability of the suspect, due to exhaustion, stress, hunger, substance use, and, in some cases, mental limitations, or limited [education](#)
- Devious interrogation techniques, such as untrue statements about the presence of incriminating evidence
- Fear, on the part of the suspect, that failure to confess will yield a harsher punishment

How to prevent "false confessions" from leading to wrongful convictions

- The entire interrogation – during the time in which a reasonable person in the subject's position would consider himself to be in custody and a law enforcement officer's questioning is likely to elicit incriminating responses – should be electronically recorded. This is simply the only way to create an objective record of what transpired during the course of the interrogation process.
- In cases where law enforcement failed to make a recording, at minimum, a mandatory instruction should be given to the jury, directing them to disregard the confession if they believe it was coerced. Ideally, the judge should suppress "confessions" that were not recorded or improperly recorded so that they are not heard by jurors.

The practice of recording of interrogations can be implemented in one of three ways:

- Via legislation
- By action of the highest court in a particular jurisdiction
- Through adoption of policies by individual police departments

An important note about videotaping interrogations is that it is only a reform when the videocamera is either focused upon both the interrogator and the suspect or when focused solely upon the interrogator. Research indicates that when the videocamera is fixed only upon the suspect, the problem of false confession is exacerbated, prompting jurors to disregard the appearance of the interrogator and conclude that the confession was given freely.

Do states legislate the [electronic](#) recording of interrogations?

To date, Connecticut, Illinois, Maine, Maryland, Missouri, Montana, Nebraska, New Mexico, North Carolina, Ohio, Oregon, Wisconsin, and the District of Columbia have enacted legislation requiring the recording of custodial interrogations. State supreme courts have taken action in Alaska, Iowa, Massachusetts, Minnesota, New Hampshire and New Jersey. Approximately 840 jurisdictions have voluntarily adopted recording policies.

Electronic Recording of Interrogations: A Boon to Both the Innocent *and* to Law Enforcement

The mandated electronic recording of the entire interrogation process protects the innocent, ensures the

admissibility of legitimate confessions, and helps law enforcement defend against allegations of coercion.

Electronic Recording of Interrogations helps the innocent by:

- Creating a record of the entire interrogation, including the interaction leading up to the confession;
- Ensuring that the suspect's rights are protected in the interrogation process;
- Creating a deterrent against improper or coercive techniques that might be employed absent the presence of a recording device.

Electronic Recording of Interrogations assists law enforcement by:

- Preventing disputes about how an officer conducted himself or treated a suspect;
- Creating a record of statements made by the suspect, making it difficult for a defendant to change an account of events originally provided to law enforcement;
- Permitting officers to concentrate on the interview, rather than being distracted by copious note-taking during the course of the interrogation;
- Capturing subtle details that may be lost if unrecorded, which helps law enforcement better investigate the crime; and
- Enhancing public confidence in law enforcement, while reducing the number of citizen complaints against the police.

Case in Point: Chris Ochoa, Texas Exoneree

In 1988, a woman was raped and murdered at an Austin, Texas Pizza Hut restaurant where she worked. Based on a hunch that the crime was committed by a Pizza Hut employee with a master key, police began questioning employees of the chain restaurant. Chris Ochoa and his roommate, Richard Danziger, worked at a different Austin area Pizza Hut, but became the main suspects when they were observed drinking beer and appearing to toast the victim. Mr. Ochoa and Mr. Danziger were subsequently convicted of the crime. Both convictions grew out of a false confession by Mr. Ochoa. It was later discovered that his confession was coerced and that interrogators had threatened him with the death penalty. Years after their convictions, letters detailing the crime were sent to the police, to then-Governor George W. Bush's office, and the District Attorney's Office. The author of the letters, Achim Marino, had apparently undergone a religious conversion while in prison on three other convictions, and felt obligated to confess to the Pizza Hut rape/murder. The DNA evidence from the original crime scene was retested. It exculpated both Mr. Ochoa and Mr. Danziger, while implicating Mr. Marino. Had Mr. Ochoa's initial "confession" been taped, jurors, at the subsequent trial, would have had an opportunity to assess the circumstances under which his confession was made.

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