
National Association of Criminal Defense Lawyers



Norman L. Reimer
Executive Director

December 20, 2013

James Comey
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Dear Director Comey:

I write to you on behalf of the National Association of Criminal Defense Lawyers (NACDL) and the 39 undersigned affiliate organizations to congratulate you on your appointment as director and to raise an issue of mutual concern and interest.

Preliminarily, as you may recall, we originally met during your tenure as United States Attorney in Manhattan, where I practiced criminal defense for 30 years before coming to NACDL in 2006. NACDL, in cooperation with the Innocence Project, has been working with the FBI and the Department of Justice to review over 2,000 criminal cases in which the use of microscopic hair comparison evidence may have resulted in wrongful convictions. The Hair Microscopy Review Project commenced in July 2013 and is ongoing. NACDL hopes that this collaboration and exchange of ideas will continue regarding other issues affecting the integrity of criminal investigations and proceedings. One such issue is the electronic recording of interrogations.

NACDL and the undersigned affiliate organizations are concerned about the Federal Bureau of Investigation's long standing policy of not electronically recording custodial interrogations, specifically of individuals suspected of a felony offense. We firmly believe that a videotape recording from beginning to end provides the most objective means for evaluating what occurred during an interrogation, what the suspect and law enforcement agents said and did, any

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alleged waiver of a suspect's rights to remain silent and to the presence of an attorney, and the accuracy of any statement. We urge the FBI to adopt a policy that all custodial interrogations of felony suspects be recorded electronically.

The FBI's continued policy of not electronically recording interrogations is outdated and is increasingly being abandoned by other law enforcement groups across the country. Seventeen states, the District of Columbia, and hundreds of state and local law enforcement agencies have made electronically recording interrogations an integral part of their investigative procedure. Parts of the federal government also require that investigators record interviews under specific circumstances; these include the Air Force Office of Special Investigations, the Naval Criminal Investigative Service, and the entire Department of Defense. As the number of jurisdictions requiring interrogations be recorded increases, these localities may be unable to use FBI agent testimony pertaining to interrogations due to state law or local policy.

Many law enforcement officials who now voluntarily record interrogations initially resisted the practice, citing reasons such as a suspect's refusal to talk, hindrance of rapport building between interrogator(s) and suspect, possibly offending juries by exposing them to sometimes aggressive interview techniques, equipment malfunction, the cost of purchasing and maintaining recording equipment, and the costs associated with transcribing, storing, and cataloguing recorded evidence. Law enforcement groups throughout the country have found that these objections have not borne out in practice. In fact, these agencies have found that the benefits of electronically recording interrogations far outweigh the possible negatives and have embraced the technique as an invaluable tool in their investigations and prosecutions.

The benefits of electronically recording interrogations are being felt and praised by an ever increasing number of law enforcement groups. An electronically recorded interrogation has been repeatedly described as an objective instant replay that protects the integrity of the criminal justice system. This instant replay protects against false confessions and false confession claims, and allegations of coercion, abuse, and/or *Miranda* violations. The practice not only negates the need for a judge to hear and evaluate differing versions of what occurred during the

interrogation process, but facilitates efficient case resolution and dramatically reduces the risk of wrongful convictions.

Additional benefits exist for the agency recording the interrogations. By recording the interrogation, agent(s) are free to focus entirely on the suspect and his or her statements, demeanor, body language, etc., rather than being distracted with note taking. Having a record also allows investigators to review the tape for inconsistencies, and other comments or statements that did not seem important at the time or perhaps were overlooked. Finally, a library of taped interrogations is a treasure-trove of information that can be used to: (1) Evaluate the effectiveness of agents, investigations, and interrogation techniques; and (2) create real-world training materials to train and re-train agents in the most effective interrogation techniques in any given circumstance.

As Deputy Attorney General, you yourself established a working group in 2005 to formally consider the merits of an FBI policy to electronically record interrogations. Unfortunately, the working group dissolved shortly after your departure from the Department of Justice, effectively leaving the status quo in place. Another Justice Department review of the no-taping policy was undertaken in 2011, with no outcome reported to the public. NACDL, and all undersigned groups, strongly encourage you to continue the work you started in 2005 and issue a new FBI policy that requires all custodial interrogations of felony suspects be electronically recorded, and that provide clear standards for all agents and field offices to follow.

Sincerely,



Norman L. Reimer

on behalf of the undersigned

CC: Patrick W. Kelley, General Counsel (Acting)

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