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Guest post: FBI to record suspect interviews in policy reversal

Thomas P. Sullivan, a partner in of [Jenner & Block's](#) Chicago office, examines US Attorney General Eric Holder's new directive requiring the recording of federal custodial interviews, and why this reform is important for both law enforcement and the criminal justice system.

On May 12, 2014, the Attorney General of the United States, Eric Holder, announced adoption of a significant new policy governing future interviews conducted by the Department of Justice investigative agencies – the Federal Bureau of Investigation (FBI), the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF), and the Drug Enforcement Administration (DEA). Henceforth, with a number of specific exceptions, when questioning persons held in custody under suspicion of violating a federal criminal law, agents are “strongly encouraged” to make electronic recordings from the time “the subject enters the interview area or room until the interview is completed.”

In a videotaped statement accompanying the announcement of [the policy](#), Mr. Holder stated:

“Creating an electronic record will ensure that we have an objective account of key investigations and interactions with people who are held in federal custody. It will allow us to document that detained individuals are afforded their constitutionally protected rights. And it will also provide federal law enforcement officials with a backstop, so that they have clear and indisputable records of important statements and confessions made by individuals who have been detained. The policy will not – in any way – compromise our ability to hold accountable those who break the law. Nor will it impair our national security efforts. On the contrary, it will reduce uncertainty in even the most sensitive cases, prevent unnecessary disputes, and improve our ability to see that justice can be served.... And it will help to strengthen the robust and fair system of justice upon which all Americans depend – and which every American deserves.”

The rationale underlying Mr. Holder's comments about the importance of recording interrogations is not limited to the United States. Several countries currently require recording under varying circumstances: England, Ireland and Australia have enacted recording legislation, while Canada's Supreme Court and the New Zealand's Ministry of Justice have recommended custodial recording.

If suitable equipment is available or can be obtained, questioning of suspects held in custody in every country throughout the world should be electronically recorded.

The adoption of the Department of Justice's new policy builds on the experience of President Barack Obama when he was a senator in the Illinois legislature. In 2003, he was the major sponsor of a statute requiring statewide recording of custodial interrogations of all homicide suspects. This was the first mandatory recording statute enacted in the United States.

The President's handiwork has proven very successful. The recordings have ended disputes about what occurred behind closed station house doors, and usually support law enforcement. Claims of improper

police conduct and efforts to suppress confessions have decreased, and pleas of guilty have increased. In a very few instances, recordings documented improper police conduct. The overall result has been substantial savings of time and money for police, prosecutors, public defenders, court personnel and judges. The Illinois statute was recently amended to expand the recording requirement to other major felonies.

As news of the successful Illinois experience has spread, other states have followed suit. Today, 19 states and the District of Columbia require statewide recording of custodial questioning in varying criminal investigations, and all now reap the benefits of this reform, including increased public confidence in law enforcement.

Apart from vastly improving federal investigative procedures, the Attorney General's action has the potential to spur the other states in the United States, and countries worldwide, to enact mandatory recording legislation or court rules. This will greatly improve the fairness and accuracy of all criminal law systems.

Congratulations and thanks are due to Mr. Holder for acknowledging that recording custodial interrogations is a reform whose time has come!

This is a guest post written by [Thomas P. Sullivan](#) from [Jenner & Block](#) and may not reflect the views of Fair Trials International.

