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At Oakland P.D., taping not a given

Agency is one of a few in Bay Area that doesn't always record interviews, a practice that has come into the spotlight

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The Oakland Police Department is nearly alone among Bay Area law enforcement agencies in its refusal to tape entire interviews with suspects and witnesses, a survey has found.

The department's policy of tape-recording only portions of interviews has come under criticism in two recent high-profile cases, including the slaying of Oakland Post Editor Chauncey Bailey.

Oakland officials say their policy produces the best outcome because it allows them to win the trust of the suspect or witness in a nonthreatening environment before they turn on a tape recorder.

But six other Bay Area agencies said that they routinely, and often covertly, tape entire interviews because they think a tape is the best possible evidence to take to a prosecutor and a jury.

"Recording is the best evidence, and we encourage it if at all possible," said homicide Lt. John Murphy with the San Francisco Police Department, which investigates an average of 85 homicides a year. As of Friday, it had reached 96, compared with 117 in

Oakland.

A notable exception to the practice of full recording is the FBI, which tapes interrogations only on a limited basis and only when the taping has first been officially approved, according to spokesman Bill Carter in Washington. He said that taping can hurt the rapport investigators develop with those being interviewed.

Similarly, Oakland investigators -- by long-standing policy -- often turn their tape recorders on only after suspects and witnesses have first had a chance to give helpful testimony in private.

Oakland's assistant police chief, Howard Jordan, declined to comment on the practice, saying he cannot discuss matters related in any way to Bailey's killing. A gag order is in effect throughout the department regarding that case and its ongoing investigation.

Deputy police Chief Jeffrey Israel told KQED-FM earlier this month that his investigators find that many people do not want to talk on tape, at least initially, although generally speaking the department would like to record everything from the beginning of the interview.

He said the department hopes next year to outfit its interview rooms with equipment that will secretly tape interrogations as an experiment.

Oakland's interrogation policy has been thrust into the spotlight by Bailey's slaying Aug. 2 and by the recent trial of Alfonza Phillips, convicted Friday of murdering Antar Bey, former leader of Your Black Muslim Bakery, in a failed carjacking last year.

In both cases, defense attorneys questioned partial tape recordings of interrogations.

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The Alameda County public defender has long complained about the partial recordings, saying they raise doubts about the integrity of the justice process and encourage questions about whether confessions have been coerced.

The Alameda County District Attorney's Office declined to comment Monday, saying it cannot comment on an issue that could be related in any way to cases not completed.

"We have to be really careful about commenting on things that could potentially be issues in cases," said deputy district attorney Jeff Rubin.

Assistant public defender Ray Keller, who heads the public defender's felony trial staff, supports the covert recording of all interrogations from start to finish.

"There's absolutely no legitimate reason not to record the interrogation. A growing number of police departments are doing it," he said.

In San Francisco, the department's 19 inspectors decide on a case-by-case basis when to record interrogations, but the usual practice -- and the department's preference -- is that all interrogations be recorded from start to finish, Murphy said.

If the person being interviewed objects, police can simply turn off the tape. But they may continue to videotape secretly, he said.

San Leandro police make video and audio recordings of all interrogations conducted at the police department, sometimes covertly, using state-of-the-art equipment, said Tom Overton, a police lieutenant in charge of investigations.

They record interrogations in a broad range of

cases, from misdemeanors such as vandalism to the two or three homicides they investigate each year, he said.

"It gives a person a chance to explain their side of the story," Overton said. "Attorneys and juries get to hear their exact words."

Police departments in Berkeley, Fremont and Hayward, and the Alameda County Sheriff's Office, also generally record entire interrogations, sometimes covertly. These departments typically have fewer than 10 homicides a year. Richmond police did not return calls on the subject, but Keller said that the department tapes from start to finish.

Spokespeople for the departments stressed the benefits of full recordings.

Some said full recording allows investigators to do a more thorough job of focusing on the interviewee -- watching for body language clues, for example -- because they do not have to take notes. It also lets them go back and review the interview repeatedly, watching for something they may have missed.

Covert recording actually can put interviewees at ease because investigators are not visibly taking notes, some said. And recordings, especially covert video recordings, let juries see defendants' behavior before they get spruced up to go to court, some said.

"If you show a suspect and they're telling in their own words what happened, it doesn't get any more compelling than that," said Sgt. J.D. Nelson of the Alameda County Sheriff's Office.

Judy Campbell, a reporter with KQED-FM, and staff writer Paul Rosynsky contributed to this story.

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DNA exonerations in recent years, often in cases that included false confessions, have prompted a national debate about the best ways for police to conduct interviews and interrogations.

The National District Attorneys Association encourages police agencies to record statements by suspects and witnesses but opposes the exclusion of otherwise truthful and reliable statements simply because the statement was not electronically recorded.

www.ndaa.org/ndaa/capital/capital_perspective_sept_oct_2007.html

The California Commission on the Fair Administration of Justice recommends that the state Legislature mandate electronic recording of all custodial interrogations relating to serious felonies by all police agencies in California.

www.ccfaj.org

The California Police Chiefs Association prefers interrogations be recorded from start to finish, but it opposes a state mandate without money to pay for the equipment.

www.californiapolicechiefs.org

A March 2006 memo outlines the FBI's reasons for opposing electronic recording of confessions and witness interviews.

<http://judiciary.house.gov/media/pdfs/DOJDocsPt4-3070319.pdf>

Chicago attorney Thomas Sullivan wrote in 2004 what is believed to be the most complete report on law enforcement agencies nationwide that record interrogations start to finish.

www.jenner.com/people/bio.asp?id=179



A groundbreaking self-report of police practices found in January that 81 percent of the 631 investigators surveyed favored recording interrogations start to finish.

www.williams.edu/Psychology/Faculty/Kassin/research/confessions.htm

The Uniform Law Commission in Chicago, which drafts legislation that brings consistency to state-by-state law enforcement, is crafting a uniform state statute on the mandatory recording of custodial police interrogations.

www.nccusl.org

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