Author(s): Sivasubramaniam, D.; Goodman-Delahunty, J.; Martin, M.A.; Fraser, M.D.

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Dr Diane Sivasubramaniam
School of Psychological Sciences and Statistics
Swinburne University of Technology
Hawthorn, Victoria, Australia

Professor Jane Goodman-Delahunty, JD, PhD
School of Psychology and Australian Graduate School of Policing and Security,
Charles Sturt University Manly Campus
Sydney, New South Wales, Australia

Miss Melissa Martin
School of Psychology and Australian Graduate School of Policing and Security,
Charles Sturt University Manly Campus
Sydney, New South Wales, Australia

Mr Martin Fraser
School of Psychology and Australian Graduate School of Policing and Security,
Charles Sturt University Manly Campus
Sydney, New South Wales, Australia

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KEYWORDS: criminal investigation; intelligence gathering; recording; interviewing; HUMINT; police

Abstract

The way in which interviewers balance human rights concerns in Australian investigative and intelligence interviews was examined by documenting common practices and beliefs among 139 seasoned practitioners ($M = 16$ years) employed in Australian police, military and intelligence organisations. An online survey gathered information about their use of recording practices, the duration of interviews and the number of times persons were interviewed for each matter. The majority of the participants (73%) were New South Wales Police Force interviewers. Reported interviewing practices were consistent regardless of assignment to criminal investigations or intelligence collection. While results revealed some variability, most interviews were conducted in 2-3 separate questioning sessions lasting approximately one hour each. Interviewers favoured strategies protective of detainees’ human rights such as videorecording of interviews. Analyses of open-ended responses revealed that recording was supported because it yielded more accurate information, promoted procedural fairness and transparency in compliance with legal evidentiary requirements for admissibility in court, and protected interviewer integrity. Participants reported that videorecording had the added advantage of preserving interviewees’ body language, tone of voice and other indicators of credibility. The majority of interviews conducted were within length requirements and recorded as required by policy, demonstrating substantial compliance with human rights concerns of suspects and nonsuspects.
In the past decade, there has been a movement away from a ‘criminal justice’ paradigm which values individualism, rights and process principles, towards a ‘control source’ paradigm which values minimising risk, ensuring the security of the group, and emphasises efficiency and flexibility of process (Dixon 2008; 2009). This shift has raised questions about potential infringements of individual human rights of police detainees and interviewees. For the past decade, academic debate on police management methodologies has centred on the value of intelligence in improving law enforcement performance (Radcliffe 2008). The role of some police in Australia has shifted from response and enforcement activities to managing intelligence and human security risks (Coyne and Bell 2011). As a result, the goals of law enforcement interviews have broadened, and investigative interviews are conducted for multiple purposes.

In Australian practice, investigative interviewing is the method of eliciting evidentiary information through the questioning of suspects, victims, and witnesses to record their accounts of events related to criminal activity (Green 2011; Kassin et al, 2010). The ultimate or desired outcome from interviewing is not exclusively criminal prosecution. Rather than documenting a suspect’s past offences and gaining viable evidence for prosecution, the focus in interviews has moved to gaining knowledge of future actions by others. The aim of the investigative interview is to contribute to an investigation by gaining details of events, rather than solely eliciting a confession or incriminating evidence (Kassin et al, 2010). In interviews with detainees suspected of a criminal offence, accusatory confession-oriented or prosecution-oriented tactics can lead to violations of the legal right against self-incrimination, which has attained status internationally as a fundamental human right, as outlined in the International Covenant on Civil and Political Rights (ICCPR). However, in recent years, recognition of the unproductive outcomes of confession-oriented, accusatorial tactics led to a revision of police interviewing procedures in Australian criminal investigations towards a less accusatorial and
more information gathering framework (Moston and Fisher 2007). In addition, in intelligence
and counter-intelligence operations (which may include intelligence gathering interviews not
only with suspects, but also with witnesses and other informants), the desired outcome may
be information ‘supporting the production of strategic, operational and tactical intelligence’

In this paper, we describe an empirical study that examined the practices employed by
contemporary law enforcement interviewers and the extent to which their practice aligned
with a human rights framework. This paper also analysed whether methods commonly used
in pursuit of intelligence operations where suspects are detained and interviewed are
consistent with the principle that ‘all persons deprived of their liberty shall be treated with
humanity and with respect for the inherent dignity of the human person’ (ICCPR art 10, para
1). Furthermore, in Australian criminal investigations and intelligence operations where
interviewees are not under arrest or detained, but are questioned informally by police officers,
their liberty may not be deprived. Thus, no enforceable legal rights are accorded to
nonsuspects such as informants or witnesses. Finding a balance between allowing public
authorities to function properly, and protecting the public from failure by public authorities to
exercise their power appropriately is difficult (United Nations Human Rights Council 2012),
and it is important to ensure that the human rights of interviewees are not compromised in
efforts by law enforcement to ensure community safety. Scholars have expressed concern
that the shift towards a control source paradigm has abrogated individual rights in favour of
community rights, making it more difficult to scrutinise police processes and eliminating the
clarity that existed under the criminal justice paradigm, in which individual rights were better
protected (Bronitt, 2004; Dixon, 2008; 2009). In this paper, we consider the ways in which
police balance the individual rights of interviewees (whether suspects, witnesses or
Informants), with the rights of the community to safety and security from crime, including terrorism.

In many policing and security agencies, distinctions are made between information gathering interview techniques that aim to gain intelligence about past and future threats, and traditional criminal investigative interview techniques, which aim to produce admissible evidence about a crime. The primary purpose of interviews with witnesses and informants may be information gathering or production of admissible evidence, and interviews with witnesses and other informants are not accusatory. Interviews with suspects may also be conducted for the purposes of gathering information and producing admissible evidence, but different techniques may be used for different purposes in suspect interviews, with accusatory confession-oriented or prosecution-oriented tactics employed for the purpose of producing admissible evidence, and more rapport-based and less accusatorial techniques employed for information gathering. Although some confusion about usage of the terms “interrogation” and “interview” persists due to changes in questioning techniques over recent decades, and fictional portrayals of police procedures on television shows (Dixon 2010; Moston and Fisher 2007), the term “interrogation” is not used officially in Australian law enforcement (Dixon 2010).

**Regulation of investigative and intelligence interviews**

Within constraints imposed by the adversarial legal system, interviewers must secure the cooperation of interviewees (whether they are suspects, witnesses, or other human intelligence sources), and communicate with them in ways that are productive and that do not violate their human rights. Police powers to arrest, detain and interview suspects exercised in the course of operations to prevent and detect crime can infringe upon suspects’ human rights to personal freedom (such as the ICCPR) guaranteeing ‘the right to liberty and security of person’). In the past, a successful criminal interview was defined as one in which a full
confession was obtained, but failing a full confession, any incriminating evidence produced in the interview represented success. Historically, confessional evidence was relied upon, and courts controlled police malpractice in interviews through the exclusion of evidence at trial. A variety of compliance-gaining tactics have been used by interviewers in many jurisdictions. Australian courts usually dismiss any evidence gained via coercive, misleading or suggestive techniques, in line with Australia’s obligations as a signatory to United Nations Human Rights covenants (including the ICCPR and the Convention Against Torture).

Australian states and territories are largely responsible for regulating their own criminal justice systems; each state has its own criminal laws, justice system and police force. In the empirical study we describe in this paper, the majority of participants were agents of the NSW Police Force (NSWPF), the largest Australian state police force, with approximately 20,000 employees (NSWPF Annual Report 2011-12). The State of New South Wales does not have a rights-based legal system. However, its residents are, by implication, beneficiaries of the rights enumerated in the Articles of the United Nations Universal Declaration of Human Rights, ratified by Australia at the UN General Assembly in 1948 (www.humanrights.gov.au/australian-rights-timeline). Although the Declaration is not a binding Treaty, it is perceived as a source of law in Australia (Gans et al, 2011), interpreted and applied mainly by the High Court of Australia rather than by courts in the states or territories.

Four major articles in the Universal Declaration of Human Rights are pertinent to suspect interviews: Article 5 states that ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’; Article 9 that ‘No one shall be subjected to arbitrary arrest, detention or exile’; Article 11 that ‘Everyone charged with a penal offence has the right to be presumed innocent’; and Article 29 that ‘In the exercise of his rights and

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1 That is not the case in the States and Territories of Victoria and Australian Capital Territories (ACT) which have their own human rights legislation.
freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society’. These rights have implications for police practices with respect to the records of interviews, the duration of interviews and the number of times that a detainee is interviewed.

Furthermore, United Nations treaties such as the ICCPR have been used to interpret national domestic law through judicial intervention (www.bayefsky.com/getfile.php/id/1128). As noted in the General Comments and Recommendations on the ICCPR statement for Right to a Fair Hearing, the ICCPR provides that the accused may not be compelled to testify against himself or to confess guilt (para 24). The General Comments and Recommendations explicitly state that in considering this safeguard, the provisions of Article 7 (preventing torture, cruel or degrading treatment) and Article 10, paragraph 1 (ensuring that ‘all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person’) should be prioritised, and recognise that methods which violate these provisions are sometimes used in order to compel the accused to confess or to testify against himself. The General Comments and Recommendations state that the law should require that ‘evidence provided by means of such methods or any other form of compulsion is wholly unacceptable.’ The refusal by Australian courts to admit evidence gained via coercive, misleading or suggestive techniques is consistent with these ICCPR principles.

It should be noted that, while procedures and regulations designed to protect against coercive, misleading or suggestive techniques are well-aligned with human rights principles, they may not entirely eliminate the use of such techniques. For example, in the high profile terrorism case of Ul-Haque, Justice Adams condemned Australian intelligence officers who conducted an unlawful, intimidating and deceptive investigation, which included false
imprisonment and kidnapping that amounted to a ‘gross breach of powers’ (R v Ul-Haque 2007). Although interview recording requirements and other regulations were followed in this case (including the suspect being asked on tape if he was a willing and voluntary interviewee), the content of the interview made it clear that he was coerced into compliance with interviewers, rather than voluntarily cooperating in the interview.

Records of interviews

Since the 1990’s, police in Australian jurisdictions have been required to routinely electronically record suspect interviews about all indictable offences (Dixon 2010). The introduction of mandatory recording of police interviews is a pre-trial mechanism intended to control police malpractice in interviews and to protect the rights of suspects. In 1991 the NSWPF introduced its audio-visual programme, Electronic Recording of Interviews with Suspected Persons (ERISP), which was a police initiative rather than legislation mandating the recording of interviews. The policy in the NSWPF Code of Practice for CRIME (Custody, Rights, Investigation, Management and Evidence) is to require recording of admissions relating to indictable offences on a tape, with consent of the accused (NSWPF Code of Practice for CRIME 2010, 74). Further, when an interview is not recorded, the police must present reasonable explanations for failure to record (NSWPF Code of Practice for CRIME) which can include a refusal by the detainee to be recorded (Dixon 2006). Other Australian jurisdictions have similar requirements (e.g., 464H of the Crimes Act 1958 (Vic) requires police who are questioning a suspect in relation to an indictable offence to record by audio or audiovisual recording any confession or admission made by the person). In Queensland, police officers are required to electronically record cautions and the provision of information to persons under investigation or questioning for indictable offences ‘if practicable’ (s435 Police Powers and Responsibilities Act 2000 (QLD). Evaluations of this policy have demonstrated both benefits and harms to the administration of criminal justice: There was agreement amongst judges,
prosecution and defence lawyers that ERISP reduced the length of trials and challenges to the admissibility of evidence related to admissions, and increased public faith in the justice process (Dixon 2006). Conversely, the use of visual images in evidence could be problematic when defendants are judged on their appearance and body language, and the research revealed that the ‘majority of judges and prosecutors reported they believed that demeanour was an indicator of veracity’ (Dixon 2006).

In addition, the NSWPF Code of Practice for CRIME details the powers of police when investigating indictable offences. CRIME stipulates that police have no power to compel or intimate to the suspect that he or she must participate in an electronic recording of interview. The police caution in the NSW Evidence Act amendment given to detainees who are questioned by an investigating official is as follows: ‘You are not obliged to say or do anything unless you wish to do so, but whatever you say or do may be used in evidence. Do you understand?’ (Evidence Amendment (Evidence Of Silence) Act 2013 (NSW) Sch 1, s89(A), ss9(A)(9). In this context, "official questioning" of a defendant in relation to a serious indictable offence means questions put to the defendant by an investigating official who at that time was performing functions in connection with the investigation of the commission, or possible commission, of the serious indictable offence. In this way, the CRIME guidelines align with the principles outlined in the ICCPR, which specify the minimum guarantees in the determination and investigation of criminal charges, and aim to ensure that police interviewers engage in a noncoercive and transparent interaction with suspects in custody (art 14, para 13).

Notably, Australian police are not required to record interviews with witnesses or other informants, nor people who are not suspects of indictable offences. Furthermore, past research on the ERISP in NSW revealed that informal police questioning of suspects (pre-ERISP) was common (Dixon 2006). Researchers have noted that Australian courts give police some latitude
on interviews conducted away from formal ERISP facilities or other types of recording equipment (Moston, 2009).

**Interview duration**

NSW Police are directed to operate within the protocols of *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) (LEPRA) during interview proceedings. LEPRA ss114-121 constrains the duration of investigative interviews by imposing time limits on the investigation period. It specifies that the maximum investigation period is four hours, but may be extended up to eight hours by a detention warrant. In general, NSW Police must conduct and conclude an interview in less than four hours; in special circumstances, the detention and interview period may exceed four but not eight hours. During the detention period, a detainee may be questioned multiple times. Police in other jurisdictions around Australia are subject to similar restrictions, e.g., in Queensland, under the *Police Powers and Responsibilities Act 2000* (Qld), a person must not be detained for more than eight hours (unless an extension is obtained from a magistrate), and within that eight-hour detention period, the person must not be questioned for more than four hours.

**Research aims**

Few studies have examined the views and practices of Australian law enforcement officials’ interviewing practices. Dixon (2010, 437) called for additional research on this topic, noting the difficulties of access to police samples and records of interviews. The present research evaluated Australian investigative interviewing and intelligence collection practices with respect to records of interviews and their duration, in the context of human rights principles. In line with the principles articulated in various international human rights declarations and treaties, legislation mandating the video recording of suspect interviews in criminal investigations was introduced around Australia in the 1990’s. This study examined the extent to which practitioners reported compliance with that legislation, explored their
attitudes towards recording of interviews in both investigative and intelligence gathering contexts, and also compared responses of members of the NSWPF with those of police from other states and territories.²

Method

Participants

Participants were recruited via convenience and purposive sampling, via contacts with various law enforcement agencies in Australia, including police and intelligence agencies. Participants with intelligence, counter-intelligence or information gathering interviewing experience were invited by email to take part in the survey. To be eligible, participants had to be at least 18 years of age and have some experience in investigative interviewing. No incentives were offered in return for survey participation.

Participants comprised individuals from a wide range of organisations engaging in intelligence and investigative interviewing, such as police forces, military forces and intelligence organisations. Overall, 139 individuals (76.3% males, 23.0% females, 1 gender undisclosed) participated in the survey. Participants ranged in age from 21 to 62 years (M = 39.55, SD = 9.16). Almost the entire sample (96%) reported current engagement in active duty. Of the 139 participants, 88% (n = 122) were employed in a police force.

Approximately three-quarters of the sample (73%, n = 101) were members of the NSWPF.

The majority of participants reported that their current or most recent assignment was a criminal investigation (68%; n = 95; intelligence collection 9%, n = 12; undisclosed 23%, n = 32). The sample was highly experienced (M = 15.79 years, SD = 8.92 years), ranging between 0.33 and 45 years of practical experience in the field. On average, they had a high

level of formal education ($M = 14.87$ years, $SD = 2.52$ years), ranging between 10 and 18 years (including primary, secondary, and tertiary education). The majority of the sample (65.9%) reported having at least some tertiary education, with 30.4% of the sample reporting at least four years of tertiary education³.

**Research design**

The study took the form of an online survey, administered via the psychsurveys.org website. The survey evaluated participants’ general interviewing experience, the requirements that governed their interview recording practices, their beliefs about recording of interviews, and demographic information.⁴ A copy of the survey questions is attached in Appendix 1.

**Procedure**

An email invitation containing a link to the survey was sent to contacts in policing agencies with a request to forward the invitation to eligible participants and co-workers. Before completing the survey, participants read a participant information form and a consent information statement that outlined the nature of the study and explained that completion and submission of the survey implied consent to voluntarily participation. The full survey took approximately 20-25 minutes to complete.

**Results**

**Previous experience**

As noted above, the overall sample was highly experienced, averaging over 15 years of professional experience in law enforcement. Participants reported having conducted an

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³ The question about education was phrased as: “How many years of formal school education (or their equivalent) did you complete (starting with primary school)?” Data about level of tertiary education is predicated on the assumption that 13 years of formal education is the completion time for primary and high school (as is the case in the Australian education system).

⁴ Data analysed for this paper were a subset of Australian responses to questions included in a larger, international survey. Questions included in the larger survey also evaluated participants’ personal approaches to investigative interviewing, their countries’ approach to interviewing, participants’ beliefs about their ability to detect deception, participants’ favoured interviewing techniques, their interviewing goals, their comfort and experience in interviewing members of other cultures, and their common interviewing practices.
average of 251.45 interviews \((SD = 440.19)\), ranging between four and 3,000 interviews. Participants indicated that each interview required an average of 2.28 questioning sessions \((SD = 4.11)\), ranging between one and 35. The average length of interviews conducted was approximately one hour \((M = 62.52 \text{ minutes}, SD = 36.15 \text{ minutes})\) and ranged between 15 and 180 minutes. The single longest interview session participants had previously conducted was reported to have persisted for an average of approximately four hours \((M = 3.52 \text{ hours}, SD = 2.87 \text{ hours})\), although the duration ranged between 0.12 and 20 hours.

Analyses were conducted to examine whether members of the NSWPF had different levels of experience to individuals outside of that police force, by examining years in the field and number of interviews conducted. Differences in the number of years of experience were not significant \((p = .488)\) between NSWPF \((M = 15.47 \text{ years}, SD = 8.74 \text{ years})\) and non-NSW police \((M = 16.68 \text{ years}, SD = 9.45 \text{ years})\). Subsequently, analyses were implemented to evaluate whether levels of experience varied based on whether respondents’ current or most recent assignment was a criminal investigation, or intelligence collection. Differences in the number of years of experience were not significant \((p = .796)\) between professionals performing criminal investigation \((M = 15.24 \text{ years}, SD = 8.72 \text{ years})\) and intelligence collection \((M = 14.56 \text{ years}, SD = 7.22 \text{ years})\).

Comparisons of estimates of the total number of previous interviews conducted yielded no significant differences \((p = .579)\) between NSW Police \((M = 264.52, SD = 433.62)\) and non-NSW police \((M = 216.00, SD = 462.12)\). Differences with respect to the average number of questioning sessions conducted with each interviewee were also not significant \((p = .974)\) between NSW Police \((M = 2.27, SD = 4.39)\) and non-NSW police \((M = 2.30, SD = 3.39)\). The average length of interviews conducted (minutes) was not significantly different \((p = .092)\) between NSW Police \((M = 58.53, SD = 30.25)\) and non-NSW police \((M = 73.14, SD = 47.41)\). In the number of previous interviews conducted, differences were also not significant \((p = \ldots\)
.482) between criminal investigation \((M = 267.77, SD = 423.73)\) and intelligence collection \((M = 373.75, SD = 837.31)\). Differences were also not significant \((p = .831)\) on the average number of questioning sessions conducted between criminal investigation \((M = 2.36, SD = 4.53)\) and intelligence collection \((M = 2.05, SD = 1.61)\). The average length of interviews conducted (minutes) was also not significantly different \((p = .515)\) between criminal investigation \((M = 65.68, SD = 34.66)\) and intelligence collection \((M = 77.08, SD = 57.50)\). In short, these comparisons confirmed that on all measures of general practice and experience, the Australian sample was homogenous.

**Interview procedures reported by participants**

When asked whether they were required to record the questioning of interviewees, almost all participants \((99\%, n = 137)\) indicated that they were, with 94% reporting that interviews were videotaped, 74% reporting that interviews were audiotaped, 26% reporting that interviews were recorded via written notes (stenographs), and 10% reporting other forms of recording were used. (Since participants could select multiple recording methods in response to this item, these figures do not sum to 100%.) Participants who selected the “other” category were asked to provide an open-ended response describing the specific recording method used, but all participants who did so described recording options already provided (i.e., of those who selected “other”, 50% reported using handwritten notes; 28% reported some other form of videorecording, e.g., DVD; 21% reported some combination of recording options already provided.)

The findings indicated that NSW Police interviewers were more likely to use videotape recordings than were non-NSW police, \(\chi^2 (1, N = 137) = 5.12, p = .024,\) but there were no significant differences between NSW Police and others with respect to use of other recording methods. As might be expected, there were also significant differences in recording practices based on type of assignment, with videotaped recordings, \(\chi^2 (1, N = 105) = 9.35, p = .002,\)
and “other” recording types, $\chi^2 (1, N = 105) = 8.91, p = .003$, more frequently used in criminal investigations than in intelligence operations.

Given that the answers to the former question tapped the policies and guidelines in place in different jurisdictions, a follow–up question sought more explicit information about actual practices. Participants were asked how often certain types of recordings were actually used in the interviews in which they had previously been involved. In response to this question, 78% of participants indicated that videorecording was used most of the time (i.e., in more than 50% of the interviews in which they had been involved) and 69% of participants indicated that audiotapes were recorded most of the time. Fewer than 15% of participants indicated that written records (stenograph) were taken most of the time, and only 1% of participants indicated that “other” recording methods were used most of the time.

Participants reported that it was very rare that interviews were not recorded at all, with 64% of participants reporting that sessions were always recorded in some form. However 16% of participants indicated that interview sessions were not recorded up to 10% of the time, 5% reported non-recording 11-20% of the time, and a further 5% reported non-recording 21-30% of the time.

The extent to which participants supported the policy of recording interviews was ascertained by asking whether interviews should be recorded. A very high proportion, 95% of the sample, indicated that they should. They indicated that their preferred recording methods were videotape (64%), audiotape (22%), with lower support for written notes (4%) and other recording forms (5%). Preferences for whether interviews should be recorded were not associated with whether participants were NSW Police or not, $\chi^2 (1, N = 139) = 632, p = .427$, nor whether their most recent assignment was a criminal investigation or an intelligence operation, $\chi^2 (1, N = 107) = 663, p = .416$. 
The reasons that participants supported or did not support the policy of recording interviews were investigated by asking participants why interviews should or should not be recorded. Those who had indicated in response to the previous question that interviews should be recorded were asked why they believed this. 128 participants gave open-ended responses that were coded into four categories. (Participants’ answers were coded so that they could indicate multiple categories - up to four.) 64% of participants reported that interviews should be recorded because they provide an aid to memory and accurate evidence; 39% responded that recordings addressed evidence admissibility requirements in court, and promoted procedural fairness; 28% stated that recordings protected interviewer integrity and enabled transparency of interview proceedings; and 27% reported that recordings were useful in viewing body language and credibility of the interview parties.

Those participants who had indicated in response to the previous question that interviews should not be recorded were asked why they believed this. Of the sample, 11 responded with open-ended answers, which were coded into three categories. (Participants’ answers were coded so that they could indicate multiple categories - up to three.) 46% reported that interviews should not be recorded because discretion should be applied based on the circumstances (e.g. when a witness or informant does not wish to be recorded or placed on record); 27% indicated they should not be recorded where consent was not given; and 27% stated that recordings of interviews were not required for intelligence collection purposes.

**Discussion**

The current study aimed to evaluate to what extent investigative interviewing and intelligence collection practices within Australia adhere to universal principles of individual human rights. This was explored by analysing the amounts of time interviewers spent conducting interviews, the frequency of interviews, and the recording practices of interview sessions. Findings of the present study revealed that the interviewers who participated in the
study tended to have significant professional experience as interviewers, were well educated, and that their longest interviews were on average less than four hours (consistent with LEPRA guidelines for NSWPF and comparable guidelines for police in other Australian jurisdictions). Additionally, interviewers conducted an average of fewer than three interviews with each interviewee, which (to the extent that the interviews described were suspect interviews) appeared reasonable within the constraints of human rights principles restricting length of detention without trial; e.g., see General Comments and Recommendations on Liberty and Security of the Person, para 1 and 2, as well as the Universal Declaration of Human Rights, which states: ‘In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society’ (art 29).

Analyses of whether NSW Police interviewers had different levels of experience or interview practices to non-NSW police revealed no substantially different levels of experience, nor were their number of average interviews or interview lengths different. This suggested that interviewing practices in both groups were fairly consistent, and that NSW Police interview practices were generally similar to those conducted outside of the NSWPF in Australia, regarding levels of experience and time taken in the interviews.

Subsequently, analyses of whether interviewers who had most recently engaged in criminal investigations or intelligence gathering revealed that they did not have substantially different levels of experience, nor were their number of average interviews or interview lengths different. This suggested that interviewing practices were consistent regardless of type of assignment. That is, levels of interviewer experience and time taken in the interviews were similar in both criminal investigations and intelligence collection sessions.
Nearly all participants reported that they were required to record interviews in some capacity, with videotape recording accounting for the vast majority of the recording practices. While video recording is not required in intelligence gathering interviews (which would suggest that a higher proportion of respondents should have reported that they are not required to record interviews), this finding is consistent with the characteristics of our sample: In Australian law enforcement agencies, intelligence functions are sometimes conducted by state police assigned to joint task-forces investigating crimes such as terrorism (when intelligence-gathering becomes important). Thus, there is a high degree of convergence between intelligence and crime analysis in practices and procedures in Australian jurisdictions; very few Australian police exclusively conduct intelligence interviews (Commonwealth of Australia NCTC, 2012). It is therefore likely that many of our respondents who have most recently worked in an intelligence context have at some point also conducted interviews in criminal investigations, a capacity in which they are required to record suspect interviews.

NSWPF interviewers were significantly more likely to use video to record interviews, and video was more likely in criminal investigations than in intelligence collection. This finding is consistent with the operational context (in which the requirement is to record suspect interviews, but there is no such requirement for witnesses and other informants, and no requirement to record interviews for intelligence gathering), and is likely explained by the fact that criminal investigations were motivated for evidence, where visual information may provide additional information about body language and the credibility of suspects’ responses. On the other hand, intelligence operations do not seek specific evidentiary statements for admissibility purposes in court.

Overall, the majority of the sample endorsed the recording of interviews, but 10% of the sample reported that they had been involved in interviews that were not recorded in any
way between 10-30% of the time. To the extent that respondents were referring to suspect interviews in criminal investigations that did not meet one of those criteria, this is problematic: Given the potential for human rights violations in an interview (particularly when the process is confession- and prosecution-focused), the failure to comply with recording practices leaves interviews open to the problem, recognised by the ICCPR General Comments and Recommendations, that in order to compel the accused to confess or to testify against himself, frequently methods which violate human rights provisions may be used. Compliance with interview recording requirements not only offers protection to detainees against such compulsion to confess, but also offers a degree of protection to interviewers from accusations of the violation of these principles.

However, it is important to note that the questions asked in this survey did not refer specifically to suspect interviews. So, there are several alternative explanations for participants’ reports that some interviews are not recorded, and nuances in recording requirements and investigative demands must qualify interpretation of this data. In addition, a large proportion of the interviews reported may have been conducted informally or in the field for intelligence collection, and others may have been conducted prior to the time that recording protocols were implemented. Considering the level of experience of our sample (which raises the possibility that some of the interviews they refer to were conducted prior to the current recording regulations), the breadth of our sample (many of whom conduct interviews in criminal investigations where recordings are required and also for intelligence gathering where recordings are not required), and the breadth of our participants’ interview tasks (which include interviews with suspects, witnesses, and other sources), the finding that some interviews are not recorded should not be interpreted as non-compliance with recording requirements, or as a violation of human rights principles. Rather, these data could indicate that interviews are being conducted in line with an array of varying recording requirements.
and human rights concerns. This interpretation was supported by participants’ own reports about why they endorsed (and the circumstances in which they did not endorse) recording of interviews.

When participants were surveyed on why they thought interviews should be recorded, the majority (64%) referred to videotaped recording, and described several key elements of this procedure. Firstly, they described recordings as useful as an aid to memory, noted that they resulted in more accurate evidence, and referred to the fallibility of human memory and the tendency for confabulations to increase over time. They also discussed recordings as important to meet court admissibility requirements in prosecutions, and noted their value in promoting procedural fairness with both parties aware that the interviews would be recorded. Additionally, interviewers commented that having interviews recorded helped to protect their professional integrity, and documented the transparency of their interview proceedings. Video recordings were also considered valuable for the interviewer, colleagues, and juries to view the body language, verbal responses and credibility of the interviewee, and recorded video footage could be valuable in attempting to detect deception. (This last element lent support to the findings of Dixon (2006), who noted that the use of visual images in evidence is problematic when defendants are judged on their appearance and body language). Finally, video recording was commended because it promoted the safety and respectful treatment of interviewees by increasing the accountability of interviewers with respect to both the content of the questions and also the treatment of the detainee.

Given the fact that the study predominantly used NSWPF interviewers as participants, the preference for a videotaped record (providing visual cues about the suspects’ interview responses) was hardly surprising as recording is one of the requirements under the NSW Code of Practice for Crime. However, it was interesting to note that a majority of the 11 participants who opposed videotaping were also NSWPF interviewers.
Analyses of open-ended responses as to why participants opposed the recording of interviews was restricted since only 11 participants gave reasons for disfavouring this practice. Reasons cited included denial of consent to record the interview (one of the exceptions to the recording requirements in NSW), that this procedure was not required for intelligence collection, and that investigators should be allowed to exercise professional discretion in circumstances where witnesses or informants would be discouraged by being placed “on record” or recorded unnecessarily.

This result suggested that very few experienced interviewers believed that videotaping should not be standard practice, and that the rare circumstances under which interviewers would endorse the absence of a recording were consistent with human rights principles, such as the need to employ discretion where witnesses and informants are concerned. The views of interviewers in this regard were consistent with those of justice scholars; Crenshaw (1998) noted that in instances where no legal provisions exist to regulate police action (e.g., interviews with nonsuspects such as witnesses or human intelligence sources), and where no other guidelines have been developed, the legal principles for respect for human dignity and equal and inalienable rights should inform police action. Exempting witnesses and human intelligence sources from recording practices can be framed as exercising a duty of care to protect the human rights of the witness or informant, and Bronitt (2004, 47) noted that police ‘vigilantly protect’ undercover police and informers. Although the ICCPR states that everyone accused of a crime shall be entitled ‘To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him’ (art 14, para 3e), this must be balanced against the recognised danger to victims, witnesses, and other informants in criminal and intelligence contexts. The need to maintain this balance was acknowledged in the Report of the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and
Fundamental Freedoms while Countering Terrorism, who recommended: ‘Where victims of terrorism have given information to the authorities, or are called upon to provide testimony during a prosecution, their rights to life, physical security and privacy must be fully protected, subject to safeguards to ensure that any protective measures adopted are compatible with the accused person's right to a fair and public hearing under article 14 of the ICCPR’ (UN Human Rights Council 2012).

In some jurisdictions, judicial decisions have explicitly articulated reasoning consistent with this principle; for example, in Monfils v Taylor (1999), the United States Seventh Circuit Court of Appeals held that police were liable for releasing a tape of a telephone call from an informant regarding an alleged theft. The informant had requested that his taped telephone call not be released to the suspect. After the tape was released, the suspect killed the informant. The court held that the release of the tape by the deputy chief created a danger to the informant who otherwise would not have been in danger. In some jurisdictions, such as Canada, tort law provisions can protect the rights of suspects and nonsuspects who are injured as a result of a negligent or unreasonable police investigation (McCreight v Canada 2013). Besides Canada, no other common law jurisdiction has imposed liability on police officers who conduct an investigation that results in harm that was reasonably foreseeable (Mazzuca, Nash, Szymanski 2010). Although this is not a right, it is a source of protection for suspects and nonsuspects. Recognition by interviewers in our sample that discretion is required in decisions to record interviews, as well as our finding that some participants have been involved in interviews that were not recorded, could be indications that our respondents were engaging in some balancing of the human rights concerns of suspects, witnesses and other informants.

Further research is needed to determine whether the police may feel restricted in their powers to obtain information or whether there is a negative impact on police of having their
performance regularly monitored and evaluated. Additionally, future research should explore whether interviewees who may be nervous or fearful of being recorded become more reluctant to cooperate during an interview. Regarding both open-ended sets of responses, it was noteworthy that while the majority were commenting on videotaping practices, a minority of these responses were in reference to other forms of recording (audiotape, written notes, and other forms).

**Strengths and Limitations**

The present study has contributed a unique component to research on Australian policies and practices, by evaluating the practice of investigative interviews within the NSWPF and other Australian law enforcement agencies. Specifically, the study examined how often recordings are taken, and in what form, along with the attitudes of the professionals who use them. Additionally, this research explored how long and how often interviewees are subjected to interviews, and compared how these practices change depending on whether the interviewers are conducting criminal investigations.

By asking open-ended questions about interviewers’ views on whether video recording of interviews was beneficial, insights were gained than can inform future directions about policy and practice. The findings suggested that Australian policy guidelines to record suspect interviews in some form was being consistently met, and indicated that criminal and intelligence interviewers have strong, explicit motivations for upholding recording practices that are consistent with human rights concerns. In particular, the police expressed a desire to record suspect interviews because they themselves recognised that recordings were helpful in obtaining admissible evidence and preserving information about the evidence and interview. Where reluctance to record interviews was expressed by this sample, reported reasons for that reluctance were consistent with regulations, as well as with a desire to protect the human rights of witnesses and other informants.
The dominance of the NSWPF in this sample may limit our ability to draw conclusions about interviewing practices across other Australian jurisdictions, and some of our data are inconsistent with previous empirical investigations of police interviewing in other states in Australia. For example, in an audit of Queensland Police interview tapes of suspects, the average interview length was approximately 24 minutes (Queensland Crime and Misconduct Commission 2004, xi), much shorter than our participants’ reports that the average length of an interview session was just over an hour. While we conducted analyses to test for differences between NSW Police and others in our sample, comparisons between groups in the study were limited by low power, due to uneven group sizes, with the vast majority of the sample associated with the NSWPF. The restrictive size of non-police in the sample also meant that there were very few interviewers whose most recent assignments were related to intelligence collection, limiting the opportunity to compare criminal investigation practices within the police to those in other agencies who exclusively conduct investigative interviews for intelligence gathering. Therefore, results and interpretations of findings in the present study based on comparisons between these groups should be interpreted with caution, given the limited sample size5.

Overall, the vast majority of participants expressed attitudes showing strong support for recording of interviews. This finding was consistent with other empirical research that revealed that concerns expressed about electronic recording were not substantiated: the interviewer’s task has not become impossible and suspects continued to confess and make

5 For reliable statistical analysis, available power to detect differences between groups should be 80% or greater (Cohen 1988). Power analyses were conducted using the G*Power statistical software package (Faul et al 2007). Effect sizes were defined as 0.2 for small, 0.5 for medium and 0.8 for large (Cohen 1988). Analyses testing differences between NSWPF and non-NSW police interviewers had 12% statistical power to detect a small effect, 48% power for a medium effect, and 87% power for a large effect. Thus, the present study was not equipped with enough participants to reliably detect small to medium-sized effects. For comparisons between criminal investigations and intelligence collection, the study did not have a large enough sample size to reliably detect a small to large effect between groups, based on type of most recent assignment.
admissions (Cohen 1988). The mandatory recording of interviews for NSWPF has reduced previous difficulties with evidence and admissibility in court (Mills 2011).

The requirement in Australia that police videorecord suspect interviews has been instrumental in ensuring that interviews are conducted in conformity with human rights principles, and have reduced the potential for human rights abuses. The impact of these regulations in constraining abuses was demonstrated vividly by the conduct in 2006 of a group of Queensland police who, when the believed there was no videorecord, threw the suspect across the room and intimidated him (Moston, 2009). As this example shows, and as academics such as Dixon (2009, 2010) have noted, the requirement for a record of interview on video does not preclude coercion prior the to the commencement of the recording, or as Justice Adams observed in reviewing the videorecorded interview in Ul-Haque (R v Ul-Haque 2007, Nolan 2009, Dixon 2008) the verbal statement on tape by a suspect that he is voluntarily participating in an interview does not necessarily end the inquiry into the question as to whether participation is in fact voluntary cooperating or is simply compliant after earlier unrecorded coercion. Thus, these videotaped records of interview are not a panacea, and do not guarantee compliance with human rights principles. Accordingly, while self-reported survey responses have limitations in terms of a research method, it is important to acknowledge that access to records of interview, where granted, is also a method subject to limitation, in that these records do not capture the entire interaction between a suspect and an interviewer.

Conclusion

The present study offered a preliminary view of factors that can impact upon policy and practice regarding investigative interviewing and intelligence collection, particularly in relation to the human rights of the suspect and nonsuspect interviewees. Findings indicated that video recordings of suspect interviews were supported by the majority of interviewers,
for the protection of both themselves and their interviewees. The majority of interviews conducted were within length requirements and recorded as required by policy, demonstrating substantial compliance with Australian guidelines, as well as human rights principles such as the ICCPR principles of liberty and security of the person, protection from self-incrimination, treatment with humanity and respect for inherent dignity, and protection from cruel, inhuman or degrading treatment. Future directions for policy and practice of investigative interviewing would benefit greatly from additional research with larger sample sizes and an international scope. Collectively, these findings suggested that interviewing professionals were engaging in procedures designed to uphold the human rights of suspects, witnesses, and other human intelligence sources in their interviewing practices.
Reference List

Domestic cases
R v Ul-Haque [2007] NSWSC 1251

Domestic legislation

*Evidence Amendment (Evidence Of Silence) Act 2013 (NSW)*

*Police Powers and Responsibilities Act 2000 (Qld)*

International legal material


*Monfils v. Taylor* 165 F. 3d 511, 518 (7th Cir. 1999), cert. denied, 120 S. Ct. 43 (1999)

*McCreight v. Canada (AG)* 2013 ONCA 483

Universal Declaration of Human Rights, GC Res 217A (III), UN Doc A/810 (1948)

Books, journal articles and online material


Available:

Available:


Available:
Appendix A

Interview Questionnaire

1. What is your gender?
   - Male
   - Female

2. What is your age?
   [______]

3. How many years of formal school education (or their equivalent) did you complete (starting with primary school)?
   - 10 years or less
   - 11 years
   - 12 years
   - 13 years
   - 14 years
   - 15 years
   - 16 years
   - 17 years
   - 18 years or over

4. What is your current status?
   - Active
   - Retired

5. In total, approximately how much professional experience do you have in law enforcement?
   - Years [______] Months [______]

6. Approximately how many interviews with a source or suspect have you conducted, alone or with others?
   [______]

7. Is your current or most recent assignment:
   - Criminal investigation
   - Intelligence collection from human sources (including counterintelligence)
   - Other:

8. What was the average length of an interview session?
9. What was the longest interview session you were involved in?
   ____ (hours) ____ (minutes)

10. Do you have to record your questioning of interviewees?
    □ Yes □ No
    IF YES, what procedure is used? (Select all that apply)
    □ Videotape recording
    □ Audiotape recording
    □ Written (stenographic)
    □ Other (Describe): ________________________________

11. Considering all the interviews in which you have been involved, please estimate the percentage (0-100) in which the following was true:
    ____% The session was videotaped
    ____% The session was audiotaped
    ____% A written record was kept by a stenographer
    ____% The session was not recorded in any way

12. Should all interviews be recorded in some way?
    □ Yes □ No
    IF YES, how? (Select one)
    □ Videotape recording
    □ Audiotape recording
    □ Written (stenographic)
    □ Other (Describe): ________________________________
    If YES, why?
    ________________________________
If NO, why not?