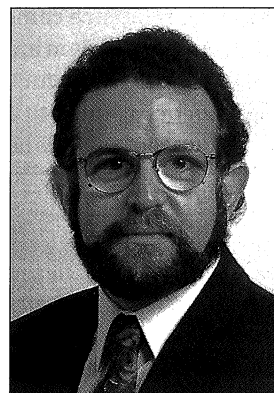


CCTV and the Law

Sound familiar?

Videotapes can provide an excellent source of evidence in a criminal trial, but if the audio portion is needed, incomprehensibility will not work in the prosecution's favour

By Elliott Goldstein



Consider this hypothetical conversation about a videotaped interview.

A: "What did he say?"

B: "I don't know. I can't make it out clearly. The audio is 'poor' on this tape."

A: "Why don't we have a transcript made?"

B: "But what if it's inaccurate?"

A: "Look, the tape is hours long. The transcript is hundreds of pages. Nobody is going to read the transcript, listen to the tape, and compare the two. Any mistakes there are will be minor and won't be noticed."

B: "But what if somebody does find those mistakes and they are really important?"

A: "We'll worry about that if it happens."

Now consider this real case:

A recent murder trial came to an abrupt halt when a dispute arose between the Crown prosecutor and Defence counsel over the words spoken, on a videotape, by a Crown witness.¹ There was a glaring inconsistency between the witness' trial testimony and the transcript of the previously recorded videotaped statement. Both statements were made under oath.

The trial judge immediately ordered the jury out of the courtroom. The videotape was played back several times in the jury's absence. It was difficult to determine what the witness had said because of the tape's poor quality. The court was adjourned.

Later, after greatly amplifying the tape, it was discovered that particular transcript was inaccurate. Other transcription errors were also found. Unfortunately, the quality of the other videotapes' soundtracks were equally poor,

if not worse, for a number of reasons, including the recording equipment, the facilities, slurred words, voices dropping off, speech impediments, tiredness and intoxicants.

Neither the Defence nor the Crown could advise the trial judge as to whether or not the remaining 33 transcripts of tapes were accurate. The problem became worse when it was learned that several of the other witnesses were given the original "inaccurate" transcripts of their videotaped statements to refresh their memories and to pre-

The Crown never advertised or held out that the transcripts were accurate

pare them to testify at the preliminary hearing and at the trial.

All of these problems arose in the fifth week of the trial. "A trial," said the presiding judge, "that has more than enough interruptions in the actual presentation of evidence to the jury."

Defence counsel submitted that it was misled by the transcriptions of the various recorded witness statements given to it. Defence counsel contended that the Crown should be responsible for ensuring that the transcripts are accurate.

The Crown submitted that it gave Defence counsel copies of the videotapes and the transcripts. However, the Crown never advertised or held out that the transcripts were accurate.

The police transcribed the video-

taped statements for the sole purpose of assisting the Crown in preparing its case. The Crown submitted that the transcripts were not prepared for the purpose of being part of the Crown's presentation of its evidence. The tapes were never intended to be of "wiretap" quality.

Before setting out the procedure to be followed when using audio and video recordings at trial, the trial judge, the Honourable Mr. Justice Thompson, made the following general comments about audio and video recordings:

"The quality of the recordings vary drastically, depending upon the quality of the recording equipment used, the placement of the recording devices, the quality of the facilities used for the recording, and the training of the interviewer and the technician actually doing the recording. While many (law) enforcement (and other) agencies have carefully utilized high quality equipment, carefully considered the placement of the equipment and designed facilities conducive to accurate recording of statements, others have not taken such care or, because of financial restraints, have not had the funds to accomplish the desired results. As a result, recordings vary drastically from the highly defined to the barely comprehensible."

He then laid out the proper procedure to follow with regards to recordings (see "The golden rules" on page 21).

A clear, unambiguous and comprehensible recording is required for the proper administration of justice. If the proper facilities, equipment, equipment

placement and training are not utilized, the result can be a "difficult-to-comprehend" recording. The same agency that cannot find the resources to address the problem will later be forced to hand-somely pay personnel to interpret the poor quality recordings.

The benefits of comprehensible recordings are apparent. They will contribute to the early resolution of criminal charges, to a defining of the issues in criminal trials, to efficiency in the conduct of a trial, and to a better ability on the part of the trier of fact (the jury or, if sitting without a jury, the judge) to focus on the words spoken or visible demeanor of a witness maker, as opposed to debating what the words or actions of the statement maker were.

What the Keeshig case clearly demonstrates is the importance of producing "comprehensible" videotapes. If the

tape poses "comprehension difficulties," the onus is on the party tendering the tape to produce an accurate transcript of it, and to provide that transcript to the court.

What this means is security managers should purchase the best quality equipment their budgets can afford. Remember, the better a tape's quality, the more likely that it will be admitted into evidence. And it is only admissible evidence that will win a case.

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Author's Notes

1 *R. v. Keeshig* (March 31, 1999, Owen Sound, Ontario), unreported decision of Thompson, J.

The Golden Rules

In *R. v. Keeshig*, the Honourable Mr. Justice Thompson set out the proper procedure to follow with regards to recordings, a portion of which appears below. His ruling is an excellent guide.

1. If a party wishes to introduce a recording as evidence, that recording must be sufficiently comprehensible to be admissible. If it is of such a quality that the recording itself is incomprehensible, it may well be ruled inadmissible as not being capable of being evidence. It is the responsibility of the party intending to introduce the recording to satisfy themselves that the recording is sufficiently comprehensible for a court to accept the recording itself as evidence.

2. Subject to disclosure rules, if a party intending to introduce recordings as evidence is not satisfied as to their comprehensibility, it is that party's responsibility to prepare an accurate transcript of the recording.

3. The same rules will apply no matter what use a party wishes to make of the recording in the course of the trial. That party must ensure the comprehensibility of the recording and, if there are comprehension difficulties, provide an accurate transcript of the recording.

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