

A new defense policy

■ **Lawyers adapt** as Suffolk courts allow police video

■ **Prosecutor sees taped interrogations** as benefit

BY ANDREW SMITH
andrew.smith@newsday.com

After clamoring for decades to have police interrogations videotaped in Suffolk County, defense attorneys have them and are finding they have to adjust how they question detectives.

In 2010, Suffolk police began videotaping homicide interrogations. Last week, the first two videos appeared in pretrial hearings in the criminal courthouse, and the effect they had on proceedings was stark.

Until now, hearings to determine whether statements would be admissible at trial featured defense attorneys suggesting that detectives beat or coerced their clients into confessing. At trials, attorneys often told jurors they had no way to know whether confessions were coerced because they had no record of the interrogations other than what detectives claimed.

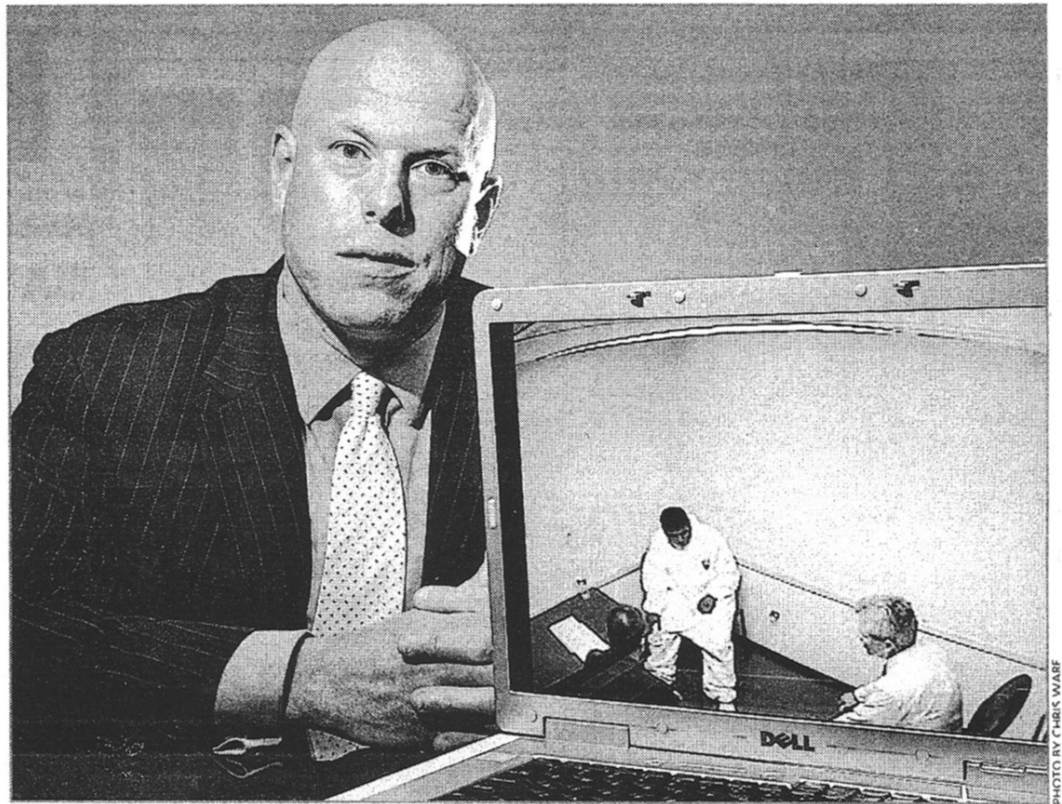
Last week, attorneys found they had to adjust their usual strategies. "That is going to be a very powerful tool for the prosecution," said Suffolk Assistant District Attorney Janet Albertson, chief of the office's homicide bureau. "It becomes very difficult for the defense to manufacture any untoward behavior by the police."

In the hearing for Jairon Gonzales Martinez, charged with beating Rumaldo Bethancourt Lopez, 29, to death outside a Brentwood pool hall, State Supreme Court Justice Mark Cohen cut some of defense attorney Michael Brown's questioning about Det. John McLeer's interrogation of his client.

Brown, flummoxed, told Cohen he wanted to explore how well Det. John Oliva translated his client's Spanish for McLeer. Cohen told him it wasn't necessary.

"Whatever happened in headquarters, it's part of the quote-unquote record," Cohen said, referring to the tape and a translated transcript of what Gonzales Martinez said. "I have it before me."

Later, Brown conceded he had to cross-examine differently — but he said the tape and tran-



With the introduction of videotaped interrogations, Michael Brown, above, attorney for Jairon Gonzales Martinez, right, says he's still adjusting his police cross-examination methods, but finds the record more complete — and beneficial to his client's case.

“That is going to be a very powerful tool for the prosecution.”

— Janet Albertson,
Suffolk assistant DA, about videotaped interrogations



script were valuable.

Numerous times on the tape, Gonzales Martinez told Oliva he didn't want to talk, but the detectives continued to question him. Oliva did not alert McLeer of some of the denials.

"You have the right to remain silent," Brown said in an interview. "Once you assert your right, they cannot continue to question you. That's a no-no."

Cohen will rule later on whether a jury can see what Gonzales Martinez said after that point.

Brown said this and future videos will be helpful before a jury. "It's no longer going to be the detective's word against the defendant's word," he said. "The detective wins that hands down."

One floor down from this case, Suffolk County Court Judge John Toomey Jr. was

watching the videotaped interrogation of Douglas Rico, charged with manslaughter in the death of Henrietta Sholl in a Riverhead motel. He's accused of choking her during rough sex.

In that tape, Detectives Gerard McAlvin and Robert Chase tell Rico he needs to tell the truth about how Sholl died. "I've never hurt anyone," Rico said, seated in a corner as McAlvin and Chase face him. "You guys are sitting here pressuring me to admit something I didn't do."

"I think it's pretty clear that there's no intent to harm this woman," defense attorney Daniel Russo said later, adding that he may point out to a jury how the video shows the intensity of the questioning. "You can see them right in his grille."

Nassau has had a head start of

about a year and a half in videotaping interrogations. After a rocky start, in which Nassau County Judge Jerald Carter threw out inaudible video of Caleb Lacey confessing to arson that killed four people, prosecutors say it has worked well.

"Videotaping ensures that defendants' rights are protected, while protecting law enforcement from false allegations that statements were coerced," said Nassau DA Kathleen Rice. "Our experience in Nassau County has been very positive."

Despite the adjustments he had to make in the Gonzales Martinez case, Brown said he was delighted to have the video showing his client tried to stop the interrogation. "If I didn't have this, we'd never know," Brown said. "It ain't in any detective's notes."