

LICENSE TO LIE

From the high-profile Stephanie Crowe case to David Westerfield and others, here's a behind-the-scenes look at what really goes on — legally and not — in police interrogation rooms

BY KEVIN COX

MAYBE WE REALLY DO get our 15 minutes of fame. It's one explanation for reality TV, with its endless supply of bozos, bugs and breasts. Harmless fun. Increasingly tiresome, but harmless. It's not like anybody dies.

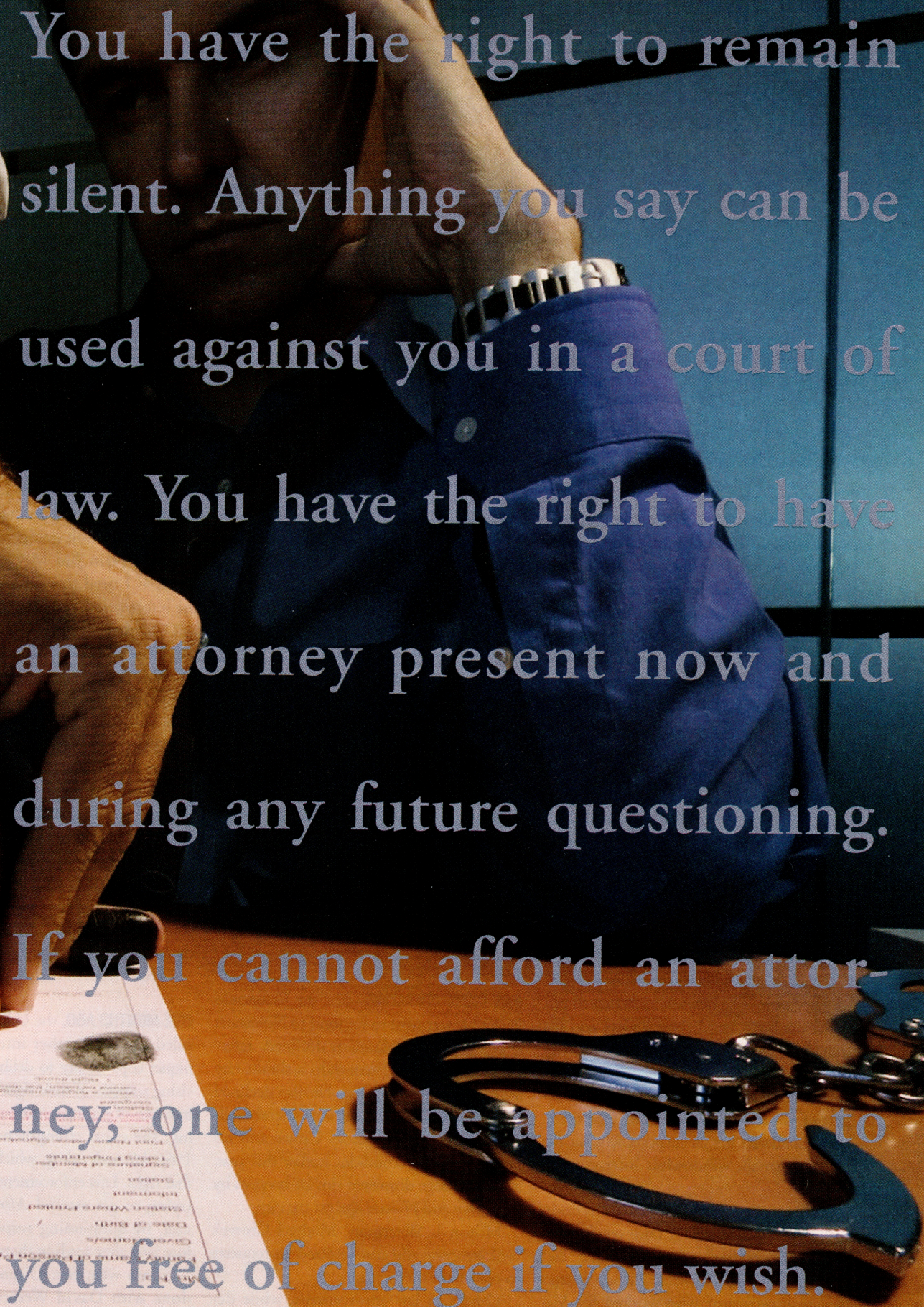
There's plenty of death on other shows, ones that profile murder cases, preferably with bizarre characters and circumstances. These programs don't offer candlelit dinners or cash prizes. Just death. Those connected to the victims—detectives, attorneys, friends and families—get their 15 minutes, too.

Whether they want them or not.

When Michael Crowe's 12-year-old sister, Stephanie, was stabbed to death in her Escondido home in January 1998, the local cops quickly identified him as a suspect. Detectives interrogated the 14-year-old relentlessly. They told him his parents thought he was guilty and never wanted to speak to him again—both lies. They told him his sister's blood had been found in his bedroom, and a virtually infallible voice-stress analyzer confirmed his guilt—two more lies.

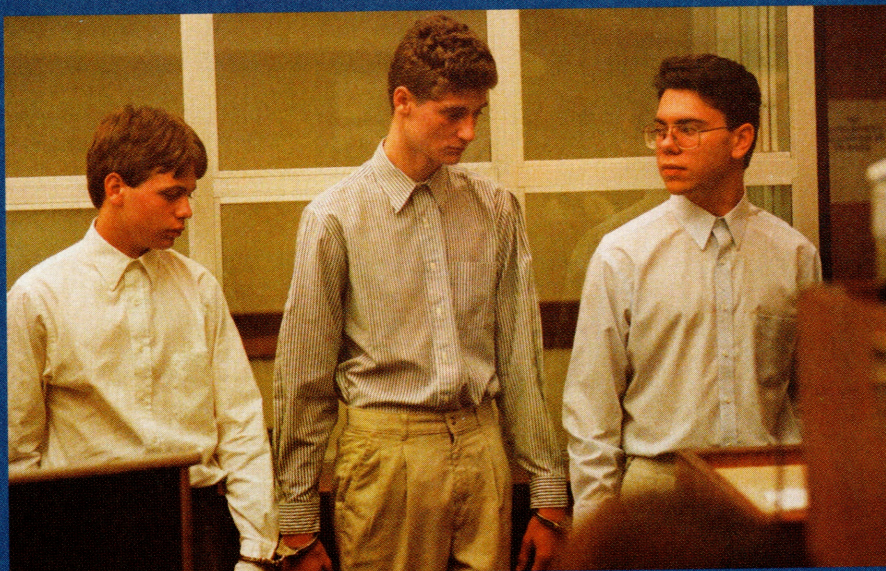
Michael Crowe told them what they wanted to hear. "I have this overwhelming feeling that I killed her, but I don't know why I feel this way," he says on the Escondido Police Department's interrogation video. The tape aired on Court TV and *48 Hours*, among other TV shows.





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silent. Anything you say can be
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during any future questioning.
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ney, one will be appointed to
you free of charge if you wish.

POLICE



Michael Crowe (left), Joshua Treadway and Aaron Houser

The cops made Michael Crowe believe he was a killer to create the prosecution's case: Stephanie Crowe's murder was an inside job by her brother and two of his friends, Joshua Treadway and Aaron Houser. But a San Diego Superior Court judge ruled Michael Crowe's confession was coerced, along with incriminating statements made by Treadway during his two interrogation sessions, which lasted more than 20 hours.

The prosecution's case really fell apart with the discovery of Stephanie Crowe's blood on clothing belonging to a transient named Richard Tuite. The cops had confiscated Tuite's sweatshirt because he'd been acting suspiciously in the Crowes' neighborhood before Stephanie Crowe was killed. But they didn't test it until Treadway's attorney demanded it.

In May, a jury convicted Tuite of killing Stephanie Crowe—more than six years after her death. The defense had tried to pin the crime back on Michael Crowe and his friends by using their statements on the interrogation videos.

Those tapes highlight a controversial aspect of police work: cops telling deliberate, even calculated lies to suspects who sit for hours in small, windowless interrogation rooms.

"The reality is that almost anybody could be coerced into a false confession, particularly children and young adults," says George Michael Newman, a San Diego private investigator who worked for Michael Crowe's defense attorney. "People who don't think this could ever happen to them

have never spent 12 hours in an interrogation room.

"It's something akin to Stockholm syndrome, wherein the captive begins to accommodate the captors, actually sympathizes with them, and wants to give the captors what they want."

Newman says cops lie repeatedly during interrogations until the truth gets so blurry suspects sometimes make false confessions—by conveniently repeating law enforcement's version of the case. The private investigator believes that's what happened to Stephanie Crowe's brother and his friend.

"It's psychological torture," Newman says. "If you factor all the details together, the way law enforcement went about interrogating Michael Crowe and Joshua Treadway was outrageous.

"Escondido's investigation was an abomination."

SAN DIEGO MAGAZINE asked the Escondido Police Department to respond to Newman's charges, but a spokesman declined, referring a reporter to Escondido assistant city attorney Mark Waggoner. He also declined to comment, citing pending federal civil-rights lawsuits by Michael Crowe and his family against Escondido. Earlier this year, a federal judge dismissed similar lawsuits by Treadway and Houser against the city.

Milton J. Silverman, Michael Crowe's civil attorney, did not respond to requests to comment on the case.

Others in law enforcement, while declining to comment specifically on the Escondido PD's investigation, say detectives

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have to lie to suspects. "If I figure I can use that as a method to gain their confidence or get a conversation going," says San Diego Police Captain Jim McGinley, "I'll lie as much as I need to—to get to the root of the information."

Detectives often lie about obtaining a confession from one suspect, to trick others involved in the case to start talking. "You'll say, 'He told us everything,' when, in fact, the guy told you to pound sand," McGinley says. "You do that to see if you can get them going . . . to tell you the truth. It's a necessary tool."

Cops also frequently withhold information, to see if suspects will tell the truth, or get creative with it. "If you're a good investigator, you can't give up all your cards," says McGinley. "If you're a good poker player, you're not going to give in to someone, let them know you've got a good hand.

"That's human nature."

FIVE MONTHS AGO, the U.S. Supreme Court ruled against another interrogation technique: cops' ability to deliberately delay advising suspects of their right to remain silent, in hopes of getting a confession. In a 5-4 ruling, the court strengthened its landmark 1966 *Miranda* ruling, which first established that right. Law enforcement was increasingly trying to get around *Miranda*, the court said, by questioning suspects twice—before and after reading them their rights.

That's what San Diego cops may have done with David Westerfield, who was sentenced to death last year for kidnapping and murdering 7-year-old Danielle van

Dam. In the days following her February 2002 abduction from her Sabre Springs home, Westerfield became the main suspect. But when he wanted to leave after a February 4 interview session with police, a detective made a crucial error. She told him he wasn't free to leave, but didn't give Westerfield his *Miranda* warning—and he was still weeks away from being formally arrested in the case (“To Catch a Killer,” *San Diego Magazine*, October 2002).

The detective's mistake set up a so-called custodial setting, where Westerfield was being detained without being advised of his rights. The following day, he made several incendiary remarks about the case in another session with detectives. But during Westerfield's murder trial, Judge William Mudd ruled the February 5 interrogation video inadmissible.

Captain McGinley says he wasn't involved in the Westerfield case and would not criticize the SDPD detective. “If a rule was violated and a judge decided certain statements were obtained in a custodial setting where we didn't follow the rules, I would suspect it might be under that umbrella,” he says. “When you're an investigator, it's easy to get going down the road where you want to get to the punchline of what happened.

“We do have humans involved, and there are mistakes that can be made.”

McGinley says it is SDPD policy to advise suspects of their right to remain silent before interrogating them in a custodial setting. But applying that rule is sometimes difficult, he says, offering the following scenario:

“We roll up to a shooting scene, and it's chaos. We're trying to figure out what's happening, sort through who's a witness, a suspect, a victim. Sometimes, we stumble on a suspect who wants to tell us everything.”

But in all the confusion, police haven't formally identified any suspects yet, according to McGinley. So the cops get a statement from someone who turns out to be the shooter, without giving a *Miranda* warning.

“We're not obligated to say, ‘Stop talking. We're obligated to read you your rights,’” says McGinley. “Maybe we're detaining them at the location where the shooting happened, in the back of a patrol car. Obviously, we don't want people leaving the scene. So it's a fine line between what's custodial versus what's noncustodial.”

Even criminal defense attorneys, happy with the Supreme Court's new ruling about

Miranda, say the cops shouldn't be overly restricted. “We can't completely disarm law enforcement and its ability to ferret out crime,” says Tom Warwick, a prominent San Diego lawyer and president of the local bar association. But Warwick's generosity toward law enforcement doesn't include advising his clients to talk to detectives without him present.

“You don't have to talk to them,” he says, “and if you're going to talk to them, you're doing it at your own risk. Talking to law enforcement is fraught with danger.”

In his 31 years as a lawyer, Warwick says he's lost count of how many clients have talked to the cops anyway. Inevitably, they make mistakes, he says, giving investigators incorrect information. Even if it isn't necessarily incriminating, Warwick says it still looks bad if the case goes to court.

“That gets translated into ‘lies’ on the [witness] stand,” he says. “That's potentially damaging enough to push a circumstantial case over into a conviction. Or maybe the admission won't convict you, but it will ruin your credibility in front of a jury, and that may affect your ability to testify during your own trial.

“Law enforcement knows what it's doing, so you've got to protect yourself. You've got the ultimate protection if you just avail yourself of it.”

Warwick is far too polite to say that the ultimate protection is to just shut up and get a lawyer.

IN JANUARY 1999, Roy Lacsina talked to the cops—on the same night he shot and killed two skinheads who crashed a party at his Imperial Beach home and threatened to kill him. Lacsina said he fired his pistol when the skinheads made threatening moves toward him. The San Diego County Sheriff's Department started an investigation to determine if the shootings met the legal definition of justifiable homicide: a reasonable fear by Lacsina for his safety or the safety of others.

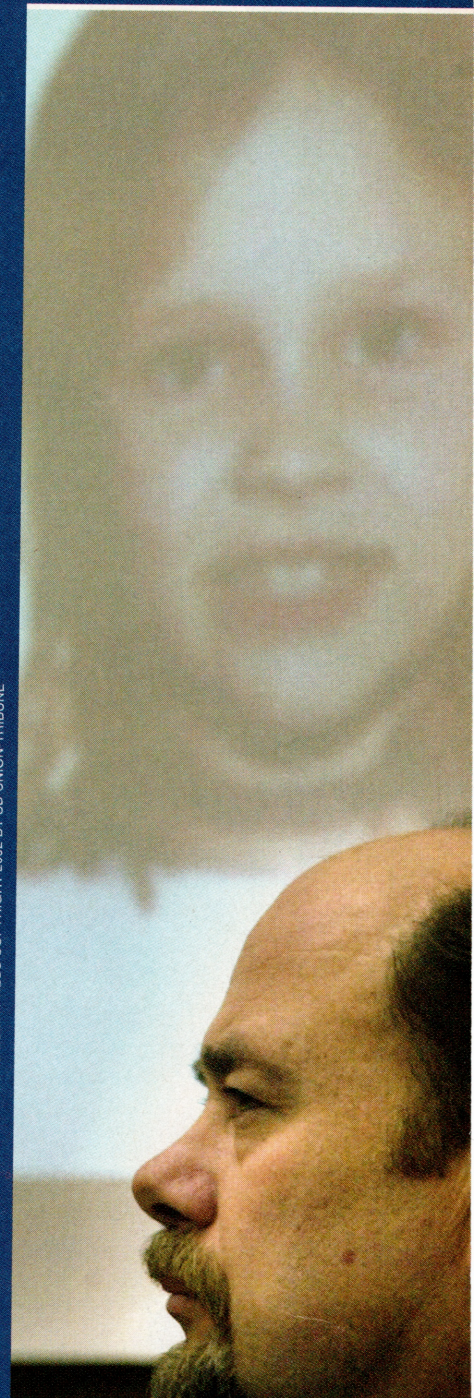
Lacsina wound up at the sheriff's substation in Imperial Beach that night with homicide detectives Rick Empson and Curt Goldberg. The video of that interrogation session is a classic display of how the cops work a suspect, as Goldberg starts out by expressing his sympathy for what Lacsina has been through.

“Okay, Roy, I know that this has been a real tough night for you tonight, okay,”

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“We do have humans involved, and there are mistakes that can be made.”

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Murderer David Westerfield and his victim, Danielle van Dam

Goldberg says. The detective's voice is quiet, even soothing. "I know it's going to be difficult for you."

Goldberg's tone becomes more business-like as he gives Lacsina a *Miranda* warning. But Lacsina doesn't want to remain silent, repeatedly telling the detectives he wants to cooperate. Yet he also tells them he wants to protect his rights.

"If I want to speak to an attorney first, do I stay in jail?" Lacsina asks.

"I don't know if anyone's made a decision as to whether you're going to jail," Goldberg says. "We just want to find out the facts and the truth."

Then the detective asks Lacsina to consent to a search of his home, and gives him a form to fill out. "There's just a lot I don't understand about how everything works," Lacsina says. "Will I be able to get an attorney right now and ask him a couple of questions?"

"No," Goldberg replies.

One of Lacsina's *Miranda* rights—even though he waived it initially—is to have an attorney present during his interrogation. But the sheriff's department says Lacsina

wanted a lawyer to discuss consenting to a search and wasn't changing his mind about invoking *Miranda*.

"They're totally separate issues," says Robert Phillips, a deputy district attorney assigned to be a legal adviser to the sheriff's department. "The law is quite clear. When they're discussing a consent to search, the defendant does not have a right to have an attorney present or assisting him."

"I don't see any confusion as to the *Miranda* admonishment. The only confusion is: 'Do I have to consent to a search?'"

On the interrogation tape, the discussion continues. "See, 'cause I don't want to waive my rights in any way," Lacsina tells Detective Goldberg.

"I understand," Goldberg says.

"I want to cooperate in any way I can, too, you know," Lacsina says. "I just don't understand."

"You understood about the attorney, right?" Goldberg asks.

"Yeah," Lacsina replies.

Which attorney? The one that Lacsina wants but can't have, according to Phillips,

or the one he's guaranteed by *Miranda*? Phillips acknowledges Goldberg's question wasn't specific enough to end the confusion. The interrogation tape continues, and the detective has another question.

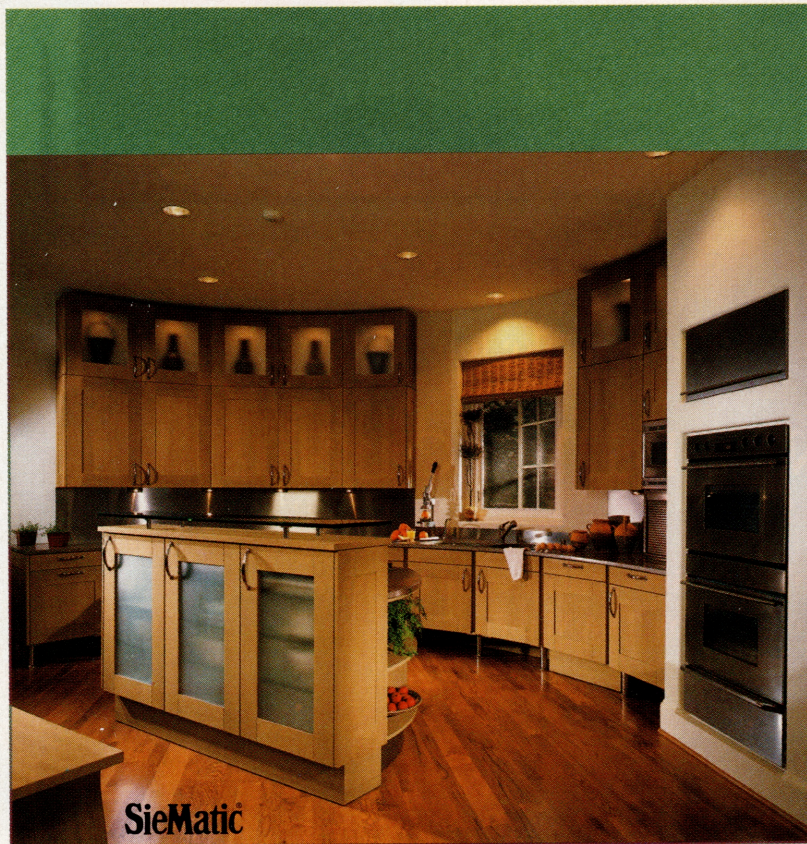
"You understand you don't have to talk to me about this right now," Goldberg says.

"Yeah," Lacsina says.

Phillips says even with the confusion about the attorney, Detective Goldberg didn't violate Lacsina's rights. "There's nothing to indicate that [Lacsina] was suddenly backing away from consent to search and back to his *Miranda* rights," says Phillips. "You can speculate, but a court is not going to find that."

A San Diego attorney who eventually represented Lacsina strongly disagrees. "That's bullshit," says David A. Miller. "They're using their knowledge of the law to subvert its purpose and intent. They're making up a story to excuse their bad behavior."

The interrogation tape did wind up in court, along with Roy Lacsina. Based on the sheriff's investigation into the shootings, the San Diego County District Attorney's Office filed two counts of first-degree murder



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against him. Before his trial started, the D.A. reduced the charges to manslaughter. A jury acquitted Lacsina in May 1999. Because of death threats against him in connection with the shootings, he moved to another state following the trial. Miller says he's lost contact with his former client.

So has Alex Loebig, Lacsina's other attorney during the trial. But Loebig remembers the case as unique in his 33 years as a criminal defense attorney, because of what happened on Lacsina's interrogation video.

"He came across as honest and spontaneous," Loebig says. "That's what made a difference for the jury. They absolutely believed him."

"I can't remember another case I've had where the defendant's spontaneous cooperation worked so much to his advantage and so much to the disadvantage of the skeptical interrogating officers. They played him and tried to cajole him into admitting that he overreacted and buy into their theory that it didn't have to go down like it did."

Loebig remembers that the detectives talked to Lacsina about his interests in the ocean and music during the interrogation session. It was a cynical ploy to keep Lacsina talking, Loebig believes, in the hopes he would incriminate himself.

"That was just all bullshit on the part of the homicide investigators," says Loebig. "They never talked to him in good faith."

Legal adviser Phillips, speaking for the two sheriff's detectives, says law enforcement can't win. "Cops are put in the difficult position where they're criticized for being too mean and criticized for being too nice," he says. "It's a lose-lose proposition. They try and pick a happy medium and are still criticized."

As long as people play cops and robbers in real life, interrogation techniques will remain controversial. Even though Phillips is a prosecutor, he sounds like a defense attorney when he says suspects shouldn't talk to investigators without their lawyers.

"I always tell people that, guilty or not, you never do yourself any favors by waiving your rights and talking," he says. ■

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