

Issues in the presentation of indistinct covert recordings as evidence in criminal trials

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Covert recordings can potentially provide highly probative evidence in criminal trials. Unfortunately, due to the manner in which they are obtained, their quality is often very poor – to the extent that few words can be clearly identified by listeners with no prior knowledge of their content.

For this reason, the law in Australian and other jurisdictions allows police, in the role of so-called ‘ad hoc expert’, to transcribe indistinct covert recordings in their cases. However, since police have no real expertise in transcription (a far more skilled task than is often recognized), their transcripts are frequently inaccurate, incomplete or misleading (French & Harrison 2006).

The law seeks to mitigate this problem by requiring the jury to be cautioned that they should use the transcript only as an aid, relying on their own ears to decide what is actually said in the recording.

This paper briefly summarizes results of two sets of experiments (Fraser & Stevenson 2014; Fraser et al. 2011) which indicate this caution is unrealistic, by showing it is quite possible for juries to genuinely believe themselves to be relying on their own ears, while yet being demonstrably influenced (primed) by an inaccurate transcript.

It goes on to discuss several recent cases, suggesting it is not only juries that can be primed in this way, and showing how the current system has the potential to allow substantial miscarriages of justice.

Finally, the paper outlines efforts that have recently been made, with limited success, to bring about reform in the Australian legal system’s handling of indistinct covert recordings, and discusses some possible ways forward in the quest to ensure that, before being admitted as an aid to perception, transcripts of forensic audio are verified by appropriately qualified experts, with reference not just to what can be heard, but to acoustic phonetic evidence.

References

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