



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF CHIEF STATE'S ATTORNEY CHRISTOPHER L. MORANO

IN OPPOSITION TO:

**S.B. No. 456 (RAISED) AN ACT CONCERNING
THE ELECTRONIC RECORDING OF INTERROGATIONS**

**JOINT COMMITTEE ON JUDICIARY
MARCH 13, 2006**

The Division of Criminal Justice respectfully, but strongly, requests that the Committee reject S.B. No. 456, An Act Concerning the Electronic Recording of Interrogations.

One year ago, we appeared before the Judiciary Committee to discuss the same legislation. At that time, we informed you that the law enforcement community was through its own efforts undertaking an examination of two major issues, one being the recording of interrogations and the other being eyewitness identifications.

The examinations have been undertaken by the Chief State's Attorney's Law Enforcement Council. This Council includes the Chief State's Attorney, all 13 State's Attorneys, the Connecticut State Police, the Connecticut Police Chiefs Association and representatives of the two police training academies, that being the Police Officer Standards and Training Council (POST) and the Connecticut State Police Academy.

I am pleased to report to you today that we have reached a resolution on the issue of eyewitness identifications, which I will touch on later. I am also pleased to report that we have reached a consensus that the law enforcement community is very interested in engaging in a pilot program of electronic recording of interrogations.

How did we reach this consensus? We spent much of the last year meeting and hearing from veteran homicide detectives here in Connecticut. We also reached out to other states, bringing in prosecutors and police from states where electronic recording is standard practice. These included New Jersey, where the practice was recently imposed, and Minnesota, where it has been in place for a dozen years.

The Law Enforcement Council met just this past Thursday to continue our deliberations, and we will be meeting again very soon. What is clear is that we are at the point where we are ready to meet with legislators to discuss specifically what we are about to do in terms of a pilot program. It is clear that there is only one major issue left to resolve, and that is money.

It quickly became clear from the other states that electronic recording cannot be instituted without sufficient resources, for to do so would impose a tremendous unfunded mandate on both the local and state police. Our visitors from Minnesota recounted how they met with major expenses, including some that were not originally expected. This includes the cost of equipment, training on how to use that equipment, and, the biggest unplanned cost in Minnesota, the cost of producing transcripts of the recorded interrogations.

To summarize, the law enforcement community is now prepared to move forward on a voluntary basis to institute this practice on a pilot program basis. But we cannot accomplish this without necessary financial backing.

While the law enforcement community is agreeable to a voluntary pilot program, we strongly oppose any legislation that mandates law enforcement practice. Absent a constitutional crisis that requires action by the courts or the Legislature, we believe that law enforcement techniques should be left to the discretion of law enforcement. At this time in the State of Connecticut, there is no evidence that we are engaged in such a crisis. Our efforts over the past year underscore our commitment to examine and enact where appropriate better police practices.

But that is not what this bill is really all about. It is not about better police practices and procedures. Rather, it is an attempt to have written into the law a jury instruction that the courts have consistently rejected. This is an attempt to get from the Legislature – without showing a need – a jury instruction that has been rejected by the courts.

In *State v. James* (237 Conn. 390, 428-34 (1996)), our Connecticut Supreme Court directly addressed the question of recorded interrogations.

The defendant in that case, relying on the Connecticut Constitution, argued that he was denied due process because his interrogation was not recorded. Specifically, James argued that Article First, Section Eight requires the police, when feasible, to record electronically confessions, interrogations, and advisements or *Miranda* rights that occur in places of detention in order for such a confession to be admissible at trial.

The Supreme Court stated:

“Rather than establishing per se rules of corroboration for the admissibility of confessions, we consistently have allowed the trier of fact to consider the circumstances of the confession, including any lack of corroboration, in determining the weight, if any, to be afforded that particular piece of evidence.”

In the nine years since *James*, our Supreme Court has not even hinted that there is a problem. In fact, not even in *State v. LaPointe* (237 Conn. 694, 735 (1996)), often cited as the *cause celebre* by the

proponents of recorded interrogations, did the court hold that due process required the recording of interrogations.

The courts have generally agreed that while the recording of interrogations might be a desirable investigative practice and that it is to be encouraged, such recording is not a requirement under due process.

Even in other states where recorded confessions are required, the rule is not absolute. In Minnesota, for example, the courts have exercised their supervisory authority in this area, and although advancing the practice of recording interrogations, have declined to give the practice constitutional standing.

The Minnesota Supreme Court noted that recording of interrogations "would, in many cases, be a helpful tool in evaluating the voluntariness of a confession." But the Court further stated, "We also agree that recording would not in all circumstances be a foolproof mechanism for accurately resolving disputes between police and the accused."

The Court also would not accept the defendant's premise that allowing the trial court to resolve the factual issues is unacceptable under due process standards.

While it is the consensus of the law enforcement community to engage in a pilot program there are still many who share a multitude of valid concerns as to the potential for detrimental effects on the ability to investigate criminal activity. Accordingly, it is the feeling of the Law Enforcement Council that to examine this issue we should proceed with caution by way of a pilot program with adequate funding. We stand ready and willing to get the ball rolling and in light of our commitment would respectfully request that the Committee reject S.B. No. 456.