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CCDLA
"Ready in the Defense of Liberty"
Founded 1988

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March 24, 2009

Hon. Andrew J. McDonald, Senator
Hon. Michael P. Lawlor, House Representative
Chairmen, Judiciary Committee
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: Raised House Bill No. 348, An Act Concerning the Videotaping of Custodial Interrogations

Dear Chairmen and Committee Members:

My name is Conrad Ost Seifert and I am an attorney practicing in Old Lyme. I mostly handle appeals and criminal defense. I am the President-Elect of the Connecticut Criminal Defense Lawyers Association, CCDLA, and I am submitting this testimony on behalf of the CCDLA, as well as on behalf of myself.

CCDLA is a statewide organization of approximately 350 lawyers in both the public and private sectors dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States Constitutions are applied fairly and equally, and that those rights are not diminished. At the same time, CCDLA strives to improve and suggest changes to the laws and procedures that apply to the criminal justice system.

The CCDLA strongly supports Raised Bill No. 348, An Act Concerning the Videotaping of Custodial Interrogations.

Twelve states currently require that police record custodial interrogations in certain situations. Moreover, hundreds of police departments across the country have voluntarily implemented videotaping of interrogations as a matter of good practice.

Although there is an upfront cost to purchasing the video recording equipment and training personnel how to use it, over time, requiring that interrogations be recorded should save the State of Connecticut thousands and thousands of dollars each year. The reason that substantial money will be saved is because there will be fewer trials and fewer pretrial motions and fewer suppression hearings. If the videotape is rolling from the moment a suspect is read their rights to the conclusion of the interview, an exact, verbatim and clear record of who said what and how they said it is made. This, in turn, means there will be fewer defense claims of police misconduct or of psychological coercion or that a confession was false. As long as the tape is rolling during the entire process, it protects officers from claims of abuse or perjury and it reduces the risk of innocent people being convicted. As regards police who might be tempted to employ an improper questioning tactic, knowing the camera is “on” also serves as a deterrent.

Last week, the Providence Journal reported that United States District Judge William Smith is instructing federal juries in Rhode Island to view with caution police testimony about interrogations that have not been recorded. A bill similar to Connecticut’s is pending in Rhode Island.

www.projo.com/news/content/INSTRUCTION_TO_JURIES_03-18-09_DCDM2T4_v_21.3a19986. There is a definite trend showing that law enforcement is

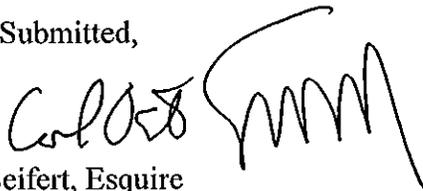
voluntarily using this technology more frequently, a technology that is silently “on” whenever you go to the bank, a gas station or to the mall.

There is one other point that I would like to personally make. Over 200 factually innocent convicted and sentenced people have been exonerated through DNA evidence testing. Of those exonerated inmates, *the Innocence Project notes that in approximately 25% of the wrongful convictions overturned with DNA evidence, defendants made or allegedly made false confessions or admissions to police.* www.innocenceproject.org/fix/false-confessions.php. I have the permission of Mr. Lennard Toccaline to tell you about his habeas corpus case. I represented Mr. Toccaline in his habeas corpus case that was tried in Hartford Superior Court in 2002. Prior to this habeas hearing in 2002, Mr. Toccaline had been convicted of first degree sexual assault based on the word of a person who came forward a few years after the incident allegedly happened. She received no medical treatment and there was no forensic evidence. She claimed it happened during September of 1996 at Mr. Toccaline’s cottage. However, the defendant had moved out of the cottage, that a couple of months prior to the date of the alleged rape and it was impossible for him to have been guilty as charged. At his criminal trial, unfortunately his lawyer did not present evidence that he had moved out of the cottage and the jury convicted him. He received a 25 year sentence, lost his appeal and then I represented him in his habeas corpus case. In this habeas case, overwhelming evidence was presented that Mr. Toccaline had moved out of the cottage, his furniture was long gone and the utilities were no longer in his name. Based on this evidence not presented at the criminal trial, Judge Rittenbrand granted the writ, ordered a new trial and released Mr. Toccaline on bond. The Commissioner of Correction appealed and ultimately the habeas judgment was reversed by the Appellate Court and Mr. Toccaline, a person I believe is factually innocent, is back in prison today serving his 25 year sentence. When the police

interrogated Mr. Toccaline for several hours on end, they eventually got him to admit to some inculpatory conduct which he later denied, but not to 1st degree sexual assault, and Mr. Toccaline signed a statement. However, near his signature, it was written down that he wanted to take a polygraph test but that never happened. In reversing the Habeas Court's decision, the Appellate Court stated, "*the petitioner's own statement renders meaningless his...alibi defense. . . .we conclude that the court was legally incorrect in its determination that the petitioner was prejudiced by his counsel's failure to present additional...evidence.*" State v. Toccaline, 80 Conn. App. 792 at 810-811. (2004). I believe that if the multi-hour, interrogation of Mr. Toccaline, including his request to take a polygraph test to clear his name had been videotaped – he never would have been convicted in the first place.

In conclusion, videotaping interrogations of felony suspects will save the State money, provide powerful evidence of what was said and how it was said and promote the ends of justice.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Conrad Ost Seifert', with a large, stylized flourish extending to the right.

Conrad Ost Seifert, Esquire

President-Elect, Connecticut Criminal Defense Lawyers Association

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