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Joint Committee on Judiciary
Connecticut General Assembly
Legislative Office Building
300 Capital Avenue
Hartford, CT 06106

**Re: S.B. 348, An Act Concerning the Videotaping of Custodial Interrogations
S.B. 357, An Act Concerning Eyewitness Identification**

To the Committee:

Good afternoon. My name is David Cameron. I am a professor of political science at Yale University. I am interested in, and from time to time have written about, the operation and performance of the state's criminal justice system. I appear today to urge adoption of S.B. 348 and, with modification, S.B. 357.

S.B. 348, An Act Concerning the Videotaping of Custodial Interrogations

Wrongful convictions occur for many reasons. One of the more frequently-observed reasons involves false confessions. The New York-based Innocence Project, which has played an important role in the exoneration by DNA of 234 individuals across the country, notes that false confessions, defined as including incriminating statements, outright confessions, and guilty pleas of innocent defendants, reports that about 25 per cent of the wrongful convictions overturned with DNA occurred, at least in part, because of false confessions. Its analysis of the first 130 wrongful convictions in which there was an exoneration via DNA found there was a false confession in 35 of the cases, making such confessions the second most frequent cause of wrongful convictions after mistaken eyewitness identifications.

In January, the New York State Bar Association's Task Force on Wrongful Convictions issued a preliminary report on its examination of 53 wrongful convictions in the state. Its study was not confined to wrongful convictions exonerated by DNA; in fact, in slightly more than half of the cases, exoneration occurred for other reasons. (See <http://www.nysba.org/Content/NavigationMenu42/January302009HouseofDelegatesMeetingAgendaItems/TFWrongfulConvictionsreport.pdf> .)

The study found that false confessions figured in 12 of the 53 wrongful convictions, a ratio the Task Force labeled "shockingly high" although it is consistent with those reported in several other studies. As the Innocence Project notes, false confessions occur for many reasons – duress, coercion, intoxication, diminished capacity, mental impairment, ignorance of the law, fear of violence, threat of harsh sentence,

gullibility, etc. And while often regarded as the result of methods of interrogation that intimidate, threaten, or coerce the person being questioned, they can and do occur in instances in which law enforcement personnel act within the spirit and letter of the law.

The Task Force recommends that custodial interrogations of all felony-level suspects be electronically recorded in their entirety and that law enforcement personnel, prosecutors, judges, and defense attorneys be given specific training about false confessions. It notes that 12 states and the District of Columbia now require – eight by statute and five by judicial decree -- that custodial interrogations be electronically recorded. Included among the states are some of Connecticut's neighbors – for example, Massachusetts and New Jersey. 26 of New York's 62 counties have adopted some form of recording of such interrogations and there are currently pilot programs underway in four other counties.

S.B. 348 would require that any oral, written or sign language statement made by a person under investigation for or accused of a capital felony or class A or B felony made as a result of a custodial interrogation be presumed to be inadmissible as evidence in a criminal proceeding unless the interrogation is recorded electronically and is substantially accurate and not altered. If enacted into law, S.B. 348 will provide a safeguard in interrogations involving the most serious felonies against one of the major causes of wrongful convictions. I urge that you approve the bill.

S.B. 357, An Act Concerning Eyewitness Identification

The studies conducted by the Innocence Project and the New York Task Force on Wrongful Convictions agree that the single most important cause of wrongful convictions is misidentification by a victim or eyewitness. The Innocence Project reports that, among the first 130 wrongful convictions that were exonerated by DNA, mistaken identifications occurred in 101 – more than 75 per cent – of the cases. The Task Force reports that misidentification of the accused by a victim or a witness occurred in 36 of the 53 cases it studied.

Both organizations argue that the best way to reduce the wrongful convictions that result from eyewitness misidentification is by changing the procedure by which such identifications are obtained. Specifically, both organizations recommend that:

- 1) the identification procedure be administered by persons who don't know the identity of the suspect;
- 2) eyewitnesses be told that the administrator doesn't know the identity of the suspect and that the suspect may not be present in the lineup or photo board;
- 3) the fillers (those who are not the suspect) match the eyewitness description of the suspect and that the suspect does not stand out from the fillers;

- 4) the procedure be documented in its entirety. The Task Force, for example, recommends that the entire identification procedure be videotaped and with enough cameras and audio equipment to capture the administrator, the eyewitness, and the members of the lineup or the photo array;
- 5) the eyewitness be asked his or her confidence level prior to being given any feedback with respect to his/her selection or non-selection; and
- 6) there be a sequential rather than a simultaneous presentation of the members of the lineup or the photos.

The Task Force goes further and recommends the adoption of a variety of other measures as well – for example, allowing experts on eyewitness identifications to testify at trials with respect to the scientific research (of which there is a great deal) pertaining to such identifications, instructing juries on eyewitness identifications so they are aware when they deliberate about the potential unreliability of such identifications, training law enforcement personnel, prosecutors, judges, and defense attorneys in the issues relating to eyewitness identifications, etc. But the most important changes are the six enumerated above.

Of the six, the most controversial recommendation is undoubtedly the last one endorsing sequential rather than simultaneous presentation. Sequential presentation, it is argued, forces the eyewitness to make an absolute decision – yes or no – in response to each person or photo as the person or photo is shown while a simultaneous presentation is more likely to lead to a relative judgment in which the eyewitness chooses the person or photo closest to his/her memory of the perpetrator. Laboratory experiments have found that a sequential presentation results in far fewer “false positives,” (i.e., identifications of fillers) than simultaneous presentation, although it may also increase the frequency of “false negatives” (i.e., failure to identify the person who committed the crime). However, the studies of scholars such as Dr. Gary Wells have found that the overall effect of double-blind administration and sequenced presentation is, first and most importantly, a reduction in the number of “false positives” (i.e., persons who didn’t commit the crime) and an increase in the ratio of accurate to mistaken identifications. (See Wells, “Eyewitness Identification: Systemic Reforms,” *Wisconsin Law Review*, 2006; also Stedley et al. in *Law and Human Behavior*, 2001.)

One frequently-cited study, conducted in Chicago, Evanston, and Joliet, Illinois and directed by Sheri Mecklenburg, the General Counsel of the Chicago Police Department (hence the frequent reference to the Mecklenburg report), found, contrary to experimental evidence, that double blind administration with sequential presentation had a higher rate of filler identifications – i.e., “false positives” (8 per cent vs. 3 per cent) and a lower rate of suspect identifications than the traditional procedure. (See *Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double Blind Identification Procedure*, 2006.)

Although frequently cited by opponents of sequential presentation, the design of the Mecklenburg study is deeply flawed. The precincts that used a simultaneous presentation always had non-blind administration whereas those which used sequential presentation always had blind administration. Thus, differences attributed to the sequential or simultaneous presentation could in fact have reflected the differential impact of blind vs. non-blind administration. The abnormally low proportion of filler identifications – 3 per cent vs. the normal 20-25 per cent in most experiments and field observations – and much higher proportion of suspect identifications with non-blind administration suggest that in non-blind administration eyewitnesses are systematically influenced in their selection, pointed away from fillers and toward suspects – exactly the problem blind administration is designed to redress. On the other hand, the confounding effect of blind vs. non-blind administration means that Mecklenburg's conclusions with respect to the relative impact of simultaneous and sequential presentation must be disregarded. (See Schacter et al. in *Law and Human Behavior*, 2008.)

A much better study, in terms of research design, is the one conducted in Hennepin County, Minnesota, the county that contains Minneapolis and the surrounding area. That study, initiated by now-Sen. Amy Klobuchar when she was Hennepin County Attorney, found that sequential presentation, accompanied by blind administration, reduced the reliance on relative judgments, substantially reduced the selection of fillers (i.e., “false positives”), substantially increased the proportion making no choice, and dramatically increased the ratio of selection of suspects relative to selection of fillers, thereby making the identification process much more reliable. (See Amy Klobuchar and Hilary Lindell Caligiuri, “Protecting the Innocent/Convicting the Guilty: Hennepin County's Pilot Project in Blind Sequential Eyewitness Identification,” *William Mitchell Law Review*, 2005-6.)

As the Innocence Project notes, a number of jurisdictions have adopted double blind administration and sequential presentation in eyewitness identifications – New Jersey, North Carolina, and Wisconsin, as well as many municipalities across the country (e.g., Boston, Madison, Wisconsin, Minneapolis and Hennepin County, St. Paul, Minnesota and Ramsey County, Santa Clara, California, Virginia Beach, Virginia).

My own view is that the most important recommendations of the six mentioned above are the first five, pertaining to double blind administration, the instructions given the eyewitness, the selection of fillers, the documentation of the procedure, and the confidence level of the eyewitness. Although the academic evidence appears increasingly to support sequential presentation, the procedure remains controversial and perhaps, for that reason, should perhaps be studied first in a well-designed pilot program before being mandated for all municipalities and law enforcement agencies in the state. Having attended a trial last year in which three eyewitnesses to a New Haven homicide recanted their identifications of the defendant on the grounds that they were coached or otherwise influenced by one of the investigating detectives, I believe the first priority should be to ensure the double blind administration of the eyewitness identification procedure and full documentation of the procedure by videotaping and recording it in its entirety.

Eyewitness misidentifications are the single greatest cause of wrongful convictions. As you know from the case of James Tillman, Connecticut is not immune to wrongful convictions resulting in part from an eyewitness misidentification. I urge that you approve a slightly modified version of S.B. 357 – modified to strengthen the provisions pertaining to documentation of the eyewitness identification procedure by requiring videotaping and recording of the entire procedure and to provide for a well-designed pilot program to test the relative effectiveness of sequential vs. simultaneous presentation in decreasing the number of “false positive” (i.e., filler) identifications and increasing the ratio of accurate to mistaken identifications.

Sincerely,


David R. Cameron