

**Committee on Judiciary**  
**Connecticut General Assembly**  
March 9, 2011

**Testimony of David R. Cameron in Support of**  
**Raised Bill No. 954, An Act Concerning the Electronic Recording**  
**of Custodial Interrogations**  
**Raised Bill No. 6344, An Act Concerning Eyewitness Identification**

The exonerations of James Tillman, Miguel Roman, and Kenneth Ireland, each of whom was convicted and incarcerated for many years for a crime he didn't commit, demonstrate that Connecticut is not immune from wrongful convictions. That fact was underscored in the past year by the decision of a habeas judge last April to throw out the convictions of George Gould and Ronald Taylor, each of whom was sentenced to 45 years in prison on the basis of a fabricated statement by a supposed eyewitness that, years later, was recanted in its entirety. It was underscored further by the revelations that came to light in the habeas trial of Richard Lapointe, who was convicted of murdering his wife's grandmother on the basis of a false confession extracted by police guile, pressure, and threats during the course of a nine-hour interrogation that wasn't recorded, although the Manchester police had recording equipment and, indeed, secretly recorded a long interview with his wife that same day.

These bills address two of the most frequently-occurring causes of wrongful convictions. The New York-based Innocence Project, which has played an important role in the exoneration by DNA of 266 individuals across the country since 1989, reports that the single most frequent cause of the wrongful convictions that were subsequently thrown out because of DNA evidence was eyewitness misidentification. Such misidentifications occurred in more than 75 percent of the wrongful convictions for which those convicted were later – much later, it should be noted – exonerated. That statistic alone should make the prevention of eyewitness misidentifications an exceptionally high priority for this Committee.

The Innocence Project has also reported that “false confessions,” defined broadly to include incriminating statements, outright confessions, and even guilty pleas by individuals who didn't commit the crimes in question, occurred in 25 percent of the convictions in which DNA evidence eventually resulted in an exoneration. Like the previous one, this statistic should make the prevention of “false confessions” a high priority for this Committee.

If enacted into law, the two bills before you – Raised Bill No. 6344, An Act Concerning Eyewitness Identification, and Raised Bill No. 954, An Act Concerning the Electronic Recording of Custodial Interrogations – would go a very long way toward

preventing wrongful convictions in the future because of an eyewitness misidentification or a "false confession."

### **Raised Bill No. 954, An Act Concerning the Videotaping of Custodial Interrogations**

"False confessions" most frequently occur because of police persuasion, pressure, intimidation, threats or coercion during the course of a prolonged interrogation of an individual who is unusually gullible or otherwise susceptible, perhaps because of age or mental disability, to such tactics. If, as in Richard Lapointe's case, an interrogation is not recorded, there is no evidence of the extent to which those conducting the interrogation may have pressured, persuaded, threatened, intimidated, or otherwise influenced the individual. There is only the subsequent testimony by the officer conducting the interrogation that the individual confessed.

Raised Bill No. 954 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 against the person in a criminal proceeding unless the interrogation is recorded electronically and is substantially accurate and not altered. It does not preclude the admission as evidence of statements that were not recorded if they are made in open court at a preliminary hearing or were made voluntarily or spontaneously or after the routine questioning that occurs during the processing of an arrest. Nor does it preclude admission of a statement made during a custodial interrogation that was not recorded because electronic recording was not feasible. However, the state would have to prove, by a preponderance of the evidence, that one of the exceptions listed in subsection (e) of the bill was applicable.

A large number of states have required that custodial interrogations be electronically recorded. Indeed, according to the Innocence Project, 18 states – Alaska, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, and Wisconsin – and the District of Columbia either mandate or strongly encourage that custodial interrogations be recorded when feasible. Most states don't preclude unrecorded statements made in such interrogations but they do typically require either that a preponderance of evidence supports their admission or that the jury be instructed about the state's legislation or its court's view with respect to unrecorded statements.

As you know, the Connecticut Supreme Court recently considered, in *State v. Lockhart*, whether it should require that custodial interrogations be electronically recorded. The majority ruled against requiring that such interrogations be recorded. However, Justice Richard N. Palmer – the only justice who has served as a federal and state prosecutor; prior to being appointed to the Court he was the Chief State's Attorney – disagreed. He said the arguments in favor of recording custodial interrogations are "truly compelling" while the arguments against are "wholly unpersuasive" and "provide no legitimate basis for rejecting a recording requirement." The notion that the risk of an involuntary, unreliable, or false confession is not, as the majority claimed, a matter of

utmost seriousness “cannot withstand even the most cursory examination.” He concluded, “It is unacceptable, if not unconscionable, to continue to permit the police to choose when they will record an interrogation.” He’s right. I hope you will agree and will approve Raised Bill No. 954.

### **Raised Bill No. 6344, An Act Concerning Eyewitness Identification**

As noted above, the Innocence Project reports that the single most frequently-occurring cause of wrongful convictions is misidentification by a victim or eyewitness. Indeed, eyewitness misidentifications occurred in more than 75 percent of the convictions overturned by DNA. The New York Task Force on Wrongful Convictions likewise found that eyewitness misidentifications occurred in 36 of the 53 – almost 70 percent – of the wrongful convictions it investigated.

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

- 1) double-blind administration of the identification procedure, meaning that neither the witness nor the person administering the procedure know who the suspect is;
- 2) that eyewitnesses be told that the administrator doesn’t know the identity of the suspect and the suspect may not be present in the lineup or photo board;
- 3) that the fillers (those who are not the suspect) in the lineup or photo board match the description of the suspect.;
- 4) that the witness be asked immediately for a statement of confidence level; and
- 5) that the entire identification procedure be videotaped or otherwise electronically recorded.

Separately, the Innocence Project also recommends that the members of the lineup or the photographs be presented sequentially rather than simultaneously, although it recognizes that proposal is controversial and contested by some.

When I testified before you two years ago on a similar bill, I discussed in some detail the rationale for sequential rather than simultaneous presentation, the flaws in the design of a Chicago-area study (known as the Mecklenburg study) that is frequently cited by critics of sequential presentation, and the merits of a study conducted in Hennepin County, Minnesota (the greater Minneapolis area) that found that sequential presentation, accompanied by blind administration, substantially reduced the selection of “false positives” and dramatically increased the ratio of selection of suspects relative to selection of fillers. I have included a brief appendix that discusses those studies.

## Appendix

### A Note on Simultaneous vs. Sequential Presentation in Eyewitness Identifications

The most controversial of the several possible improvements in the eyewitness identification procedure undoubtedly involves 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 sequential 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. (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 sequential presentation resulted in a higher rate of “false positives – i.e., filler identifications (8 per cent vs. 3 per cent) – and a lower rate of suspect identifications than simultaneous presentation. (See *Report to the Legislature of the State of Illinois: The Illinois Pilot Program on Sequential Double Blind Identification Procedure*, 2006.)

Although often cited by opponents of sequential presentation, the design of the Mecklenburg study is deeply flawed. The precincts that used simultaneous presentation had, without exception, non-blind administration of the identification procedure whereas those which used sequential presentation had, again without exception, blind administration. The differences attributed to the sequential or simultaneous presentation could in fact have resulted from the differential impact of blind vs. non-blind administration. The abnormally low proportion of “false positives” – i.e., filler identifications (3 per cent vs. the normal 20-25 per cent in most academic experiments and field observations) – and much higher proportion of suspect identifications with non-blind administration suggest that in non-blind administration eyewitnesses may be systematically influenced in their selection, pointed away from fillers and toward suspects – exactly the problem blind administration is designed to redress. 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 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.)