Legislative History for Connecticut Act

PA 11-174

SB0954

PA11-174

House	9480-9505, 9886-9895	36
Judiciary	1772-1799, 1856, 1862-1864, 1866-1880, 1909-1910, 1912-1914, 1925-1928, 1932-1934, 1936-1941, 1944-1946, 1962-1966, 2015, 2019-2021, 2033, 2037-2038, 2042-2086, 2090-2100, 2170-2198, 2211	166
Senate	5110-5121, 5129-5158, 7184-7187	46
		248

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

Connecticut State Library

Compiled 2013

H-1119

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
2011

VOL. 54
PART 28
9258-9615

DEPUTY SPEAKER ORANGE:

Have all Members voted? Have all Members voted? If all Members have voted, please check the board to determine if your vote has been properly cast.

If so, the machine will be locked and the Clerk please take a tally. Will the Clerk please announce the tally.

THE CLERK:

Senate Bill 939 as amended by Senate "A" in concurrence with the Senate.

Total Number Voting	143	
Necessary for Passage		72
Those voting Yea	142	
Those voting Nay	1	
Those absent and not voting		8

DEPUTY SPEAKER ORANGE:

The Bill passes in concurrence with the Senate.

Will the Clerk please call Calendar Number 614.

THE CLERK:

On Page 31, Calendar 614, Senate Bill Number 954 AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATION. Favorable Report of the Committee on Appropriations.

DEPUTY SPEAKER ORANGE:

Representative Gary Holder-Winfield, you have the floor, sir.

REP. HOLDER-WINFIELD (94th):

Yes, thank you, Madam Speaker. I move acceptance of the Joint Committee's Favorable Report and passage in concurrence with the Senate.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is acceptance of the Joint Committee's Favorable Report and passage of the Bill in concurrence with the Senate.

Will you remark? Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Yes, thank you again, Madam Speaker. This Bill deals with the recording of custodial interrogations at the place of detention. It is thought that, it is actually known that most false confessions stemming from an interrogation, come from the fact that there may be some intimidation, threats or coercion.

This Bill seeks to put in place audio-visual recording of the interrogation such that we can capture and see whether or not those threats, coercions or intimidations happen. I move passage of the Bill.

Madam Speaker, the Clerk is in possession of an Amendment, which is LCO 7361. It was previously designated Senate "A". I request that the Clerk call and I be granted leave of the Chamber to summarize.

DEPUTY SPEAKER ORANGE:

Will the Clerk please call LCO Number 7361 designated Senate "A".

THE CLERK:

LCO Number 7361, Senate "A", offered by Senators Prague and Witkos.

DEPUTY SPEAKER ORANGE:

The Representative seeks leave of the Chamber to summarize. Is there objection? Objection? Hearing none, Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Yes, thank you again, Madam Speaker. What this Amendment does is, it adds the deputy chief of police departments who are not subject to collective bargaining agreements to the provision we have for chiefs of police departments where you would need just cause for dismissal.

I urge adoption.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is on adoption. Is there further questions, remarks on Senate "A"? Representative Sawyer, Senate "A"?

REP. SAWYER (55th):

Thank you, madam. A question through you to the proponent of this Amendment.

DEPUTY SPEAKER ORANGE:

Please proceed, madam.

REP. SAWYER (55th):

Representative Holder-Winfield, who else in a police department falls under the same type of category?

Through you, Madam.

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Through you, Madam Chair, Madam Speaker, that would be the police chiefs.

DEPUTY SPEAKER ORANGE:

Representative Sawyer.

REP. SAWYER (55th):

Thank you. And could you tell us please how the Police Chiefs Association in Connecticut, what their response was to this legislation?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Through you, Madam Speaker, I don't actually know that, but this did come to us through Senator Witkos, who as I understand it vetted this. That is the answer that I have. Through you, Madam Chair.

DEPUTY SPEAKER ORANGE:

Representative Sawyer.

REP. SAWYER (55th):

Thank you. And did this have a public hearing?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Madam Speaker, just a moment. Madam Speaker, it is my understanding it's been discussed in the past, but I do not remember it having a public hearing in the Judiciary Committee. Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Sawyer.

REP. SAWYER (55th):

Thank you, and I appreciate that comment on that.

It's an interesting concept and I wish there had been more information out here for the public to be able to react to, but I thank the gentleman for his answers.

DEPUTY SPEAKER ORANGE:

Thank you, madam. Will you care to remark further on Senate "A"? Senate "A"? Representative Chapin.

REP. CHAPIN (67th):

Thank you, Madam Speaker. A question to the proponent, through you.

DEPUTY SPEAKER ORANGE:

Please proceed.

REP. CHAPIN (67th):

Thank you, Madam Speaker. I don't know if this is the case in any municipality, but if there is a deputy chief under contract where he could be fired for violations of the contract, would this Amendment apply in that case?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Through you, Madam Speaker, if you look at lines 6 and 7, it says that this would pertain to those deputy chiefs who are not subject to a collecting bargaining agreement.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Chapin.

REP. CHAPIN (67th):

Thank you, Madam Speaker. I understand that and I take that to mean that any deputy chief who may be a member of a collective bargaining unit.

But if it's a contract outside of a union, I was wondering if this would apply.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Through you, Madam Speaker, no.

DEPUTY SPEAKER ORANGE:

Representative Chapin.

REP. CHAPIN (67th):

Thank you, Madam Speaker, and I thank the proponent for his answer.

DEPUTY SPEAKER ORANGE:

Thank you, sir. Will you care to remark further on Senate "A"? Representative Alberts of the 50th.

REP. ALBERTS (50th):

Thank you, Madam Speaker, if I may, a question to the proponent.

DEPUTY SPEAKER ORANGE:

Please proceed.

REP. ALBERTS (50th):

Thank you, Madam Speaker. As I read this, I'm concerned about the status of police departments that are staffed with resident state troopers, and I'm not sure if the proponent is not familiar with that arrangement that many municipalities have in the rural areas where there's a relationship between the State of Connecticut and a relationship between the local municipality where there's a cost sharing.

Is the proponent familiar as to whether the resident State Trooper Program comes under a collective bargaining agreement? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Through you, Madam Speaker, I believe that, I'm not 100 percent sure, but I believe that they do.

DEPUTY SPEAKER ORANGE:

Representative Chapin. Excuse me. Representative Alberts. Sorry.

REP. ALBERTS (50th):

Thank you, Madam Speaker, I'm not insulted. So the proponent believes that they may be covered under a collective bargaining agreement, if I heard that properly. Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Maybe you should be. Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Through you, Madam Speaker. I want to clarify. I do not know. Actually, I'm thinking about it. I think they may not be, actually.

DEPUTY SPEAKER ORANGE:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Madam Speaker. I appreciate the clarification. Thank you.

DEPUTY SPEAKER ORANGE:

Thank you, sir. Will you care to remark further on Senate "A"? Senate "A"? Representative Kokoruda, you have the floor.

REP. KOKORUDA (101st):

Thank you, Madam Chairman. A question to the proponent of the Bill.

DEPUTY SPEAKER ORANGE:

Please proceed.

REP. KOKORUDA (101st):

Could you please tell me the cost of this and who would be paying for the, through you, Madam Chairman, who would be paying for this equipment and for this training?

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Yes, through you, Madam Speaker, if you'd give me a second, I'll pull up the cost.

Madam Speaker, I don't know what the exact cost is. Looking at the fiscal note it says there is a potential cost, but I don't know what the actual cost is to doing so.

And I would say, Madam Speaker, that if there was a dismissal with good cause that there is potentially less cost than dismissal without good cause.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Kokoruda.

REP. KOKORUDA (101st):

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Will you care to remark? Representative Stevie Dargan, of the 115th, you have the floor, sir.

REP. DARGAN (115th):

Thank you very much, Madam Speaker. I move in favor of Senate Amendment "A", just clarification and some questions have been asked by our good colleagues on the Republican side that in referencing collective bargaining with State Police that have resident troopers, this would not apply to those individuals.

It would just apply to concerns that came forward from Senator Witkos in referencing not only police chiefs but deputy police chiefs in instance where the mayor or first selectman for no cause was looking to get rid of that individual and it's just a protection

not only for the deputy chief but the assistant chief, and I move for adoption of Senate "A". Thank you.

DEPUTY SPEAKER ORANGE:

Thank you, sir and thank you for the clarification. Will you care to remark further on Senate "A"? Representative Linda Schofield.

REP. SCHOFIELD (16th):

Thank you, Madam Speaker. A question for the proponent.

DEPUTY SPEAKER ORANGE:

Please proceed.

REP. SCHOFIELD (16th):

Through you, Madam Speaker, is this saying that in a town that's having difficulty with finances, as so many of our towns are, that if they need to scale back the size of their police department, they cannot lay off a deputy chief because that wouldn't be for cause.

So even though he's not unionized, they would be prohibited from downsizing their police department at that level. Is that correct, sir?

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Through you, Madam Speaker, I missed a little bit of the question. I think I caught it, though.

The deputy chiefs would be treated the same way as the chiefs currently care, and I wasn't quite sure if the question was about chiefs or deputy chiefs, so I would ask for clarification.

DEPUTY SPEAKER ORANGE:

Clarification, Representative Schofield?

REP. SCHOFIELD (16th):

The question is about deputy chiefs. The chiefs are already in law, and I understand you always need a chief of the police department.

But to tell our towns who are in fiscal difficulties that they cannot lay off deputy chiefs is very concerning to me. There may be several deputy chiefs, and that may be the only thing the town can do in order to make their books balance. We're taking away their fiscal ability, as I understand it. Please correct me if I'm wrong, sir.

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Through you, Madam Speaker. This Amendment requires that there is just cause for dismissal. So I

recognize Representative Schofield's concerns, but that is what this Amendment does.

DEPUTY SPEAKER ORANGE:

Representative Schofield.

REP. SCHOFIELD (16th):

Thank you, Madam Speaker. Are there any other layers, typically, in a town police department aside from the chief, the deputy chief and then all the unionized workers?

Are there other layers in between the deputies and the unionized police? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Through you, Madam Speaker, I am not an expert on the layers of police departments. I believe in some there are, but again I'm no expert on that.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Schofield.

REP. SCHOFIELD (16th):

Thank you, Madam Speaker. I stand in strong opposition to this Amendment, because in those towns where there are no other layers, and if they need to

manage their fiscal situation through downsizing of their police, you're taking away, really all of their ability to do so and I don't think we should be subjecting them to our decision on this.

That should be a decision at the town level based on their particular fiscal situation.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, madam. Will you care to remark further on the Amendment? Representative Aman.

REP. AMAN (14th):

Thank you, Madam Speaker. On this subject, I'm looking at a lot of the mid-sized police forces where the deputy chief and the chief have to work together very carefully. When the deputy chief for any reason is not available, or the chief is not available for any reason, the deputy chief really runs the department singlehandedly, which is I think different than the big cities where there's a variety of people to handle various things.

So I, a question through you, Madam Speaker, if they could explain what just cause, give examples of what would be just cause for dismissal and what items the proponent would think would not be considered just

cause for a dismissal so I have a better idea of the flexibility a municipality may have when dealing with a deputy chief.

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Through you, Madam Speaker, I thank Representative Aman for the question. Just cause is often something that is a little bit difficult for people to understand, but it's basically dealing with the fact that there is evidence for a reason for dismissal, usually having to do with the actual performance of the job or violation of a rule at the workplace.

Some people refer to speak about just cause saying that if it's not on paper it's vapor, so that would be what we're talking about.

Things that would be outside of just cause would be things that there's a personal disagreement and you just want to get rid of someone. Perhaps Representative Schofield's notion that someone, for whatever reason wants to downsize and just seeks to

get rid of someone, things of that nature. Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Aman.

REP. AMAN (14th):

Yes. To go back to the just cause. In many, again in the mid-sized departments, your assistant, or deputy chief is actually in position in being groomed to take over the chief's responsibility maybe two years, five years or ten or fifteen years in the future.

If a municipality is looking at a deputy chief and saying, he's not doing anything wrong with the job. He's not doing anything that we would write him up for. He arrives on time. He does what he's told, but we know that he is not the person that we want running this department either in the future or when the chief is unavailable for any reason.

Would that fall under the just cause, or would the mid-sized department be unable to replace that individual? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Madam Speaker, I am not aware of all the permutations of how different departments will work.

I will say that while this prevents dismissal, it doesn't prevent possible demotions and things of that nature, so I'm not sure that it requires that current deputy chief become the chief fifteen years or so down the road. Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Aman.

REP. AMAN (14th):

Yes. I think I will be having a problem with that because a deputy chief does have to be able to run the department, and the personality and leadership characteristics, et cetera, that you need to run a police department than the same, the characteristics that someone needs to be a good police officer.

And I think it takes away a tremendous amount of management authority that a town has if you take the only two people in the police department that are in your leadership hierarchy and say that you have virtually no way of dismissing someone unless they do something very grievous.

We have seen the problems with police chiefs themselves in some of the municipalities, again the small or mid-sized municipalities.

I also understand the reason for that. You definitely don't want your police chief to have to worry about his job all the time, that they do have also a very direct responsibility to the general public to do what is right.

And so I can see while the protection is needed on the chief's level, I'm having problems understanding why it's really needed on the next tier down, because they're not the ones who would be involved in the public relations part.

So since it is a management position, it's also very often being groomed for advancement. I do not think this Amendment as proposed is in the best interests of the municipalities or their taxpayers.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir. Will you care to remark further? We are on Senate Amendment "A". Representative Roldan of the 4th. You have the floor, sir.

REP. ROLDAN (4th):

Thank you, Madam Speaker. If I may, a couple of questions to the proponent.

DEPUTY SPEAKER ORANGE:

Please proceed.

REP. ROLDAN (4th):

If I understand, through you, Madam Speaker, to the good honorable Vice-Chair. What is it that we are trying to fix? Why is this protection being expanded to deputy chiefs at this point? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Through you, Madam Speaker, it's my understanding through conversations with many people, including the proponents, Senator Prague and Senator Witkos, that the chief is currently covered by the similar provision. The rank and file are covered by union contracts. The only ones left out of some protections are the deputy chiefs.

They had conversations and came to the belief that we needed to cover the deputy chiefs, and so that is why we get her today. Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir. Representative Roldan.

REP. ROLDAN (4th):

I thank the gentleman for his answer. Through you once again, Madam Speaker, to the gentleman.

So in the instance of the City of Hartford with a police force of over 400 individuals, recently the City has seen some significant budget reductions as any other municipality in the State of Connecticut.

I believe the City had to take the measure of reducing some deputy chief positions within its department. If I'm to understand is, then in this situation the City would have had to not reduce the deputy chief positions, but rather reduce the line personnel of patrolmen that are on the streets on a daily basis.

So through you, through you, Madam Speaker, in this instance, the City of Hartford will have not been able to reduce those two positions, but rather would have to have some process for removal, which will have to have been based on some type of cause. Is that correct?

Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Through you, Madam Speaker, not necessarily. The way that I understand good cause, if there's a valid financial reason, it is possible to do the downsizing. But a financial reason cannot just be asserted as a reason to do so. So the City would, I guess, have some burden to actually show that there's a valid financial reason for dong that downsizing. Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Roldan.

REP. ROLDAN (4th):

Through you, Madam Speaker, I appreciate the gentleman's answer. I guess I'm a little concerned that if in a situation like this, having been and review City's budget for a long time in the City of Hartford and understanding exactly how this process have made an impact budget reasons, I get a little concerned about the impact that this would have on patrolmen on the front line.

With that, Madam Speaker, I'm a little uncertain if I would be supporting this, but I will hear the debate as it goes forward, but at this point, I'm unlikely to do so.

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, sir. Will you care to remark further on Senate "A"? Senate "A"? Representative Carter.

REP. CARTER (2nd)

Thank you very much, Madam Speaker. Before I begin my comments on the Amendment, I ask that when the vote be taken it be taken by Roll.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is when the vote be taken, it be taken by Roll. All those in favor signify please by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ORANGE:

The twenty percent has been met. When the vote is taken, it will be taken by Roll. Please proceed.

REP. CARTER (2nd):

Thank you very much, Madam Speaker. As I see this, I understand what the gentleman is speaking of and I compliment his efforts to take care of the deputy chiefs.

But I think the reason for this law in the first place is when you have a chief of police, that is a

policymaker in the department. That's also somebody who's working in the town to help make policy.

A deputy chief is not a policymaker, and while I understand we may want to protect them from somebody, or layoffs or whatever it may be, I don't think extending the law in this case makes a wise choice because this law is reserved for, in this case a chief of police for a reason.

So with that, Madam Speaker, I would urge rejection of the Amendment. Thank you.

DEPUTY SPEAKER ORANGE:

Thank you, sir. Will you care to remark further on Senate "A"? Representative Frank Nicastro, you have the floor, sir.

REP. NICASTRO (79th):

Thank you, Madam Chairperson. Madam Speaker, I rise in opposition to this Amendment. Quite frankly and quite honestly, in the City of Bristol right now what we're doing is, the Charter Revision Commission is looking against the chief even having this. They're looking at terms for the chief and they don't support here what they want to do with the deputy chiefs. They're against that.

I've checked with my mayor. I've checked with our personnel office.

This Bill was brought forward last year but if I remember correctly, it died. We didn't even speak on it here on the floor.

There's problems with this because, Madam Speaker, you start off with the chief. Next thing you know it's the deputy chief. Next thing you know it will be the captains and on and on and on. It will work down.

So I would urge my colleagues not to support this Amendment. Thank you, Madam Chairperson.

DEPUTY SPEAKER ORANGE:

Thank you, sir. Will you care to remark further on Senate "A"? Representative Rovero, you have the floor. Please clear the aisle so I can see you. There you go.

REP. ROVERO (51st0:

Madam Speaker, I would like my colleagues to please, please vote no on this Amendment.

As being a one-time chief elected official of a town, we did not need the state to tell us what regulations we should be governed by.

I think once again, this is a case of the state telling a local town, a municipality, what they should do. If they wanted to put this Amendment in their by-laws or in the contract, they would do so.

I get a feeling that this is an Amendment to please one particular town and why should all the towns throughout the State of Connecticut suffer for one particular town?

I urge my colleagues to please vote no, and leave the municipalities take care of their police departments on their own. Thank you very much, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you. Representative Sharkey, good afternoon, sir.

REP. SHARKEY (88th):

Good afternoon, Madam Speaker. Madam Speaker, I move that we pass this item temporarily.

DEPUTY SPEAKER ORANGE:

The question before the Chamber is to pass this item temporarily. Objection? Objection? Hearing none, so ordered.

Returning back to the Call of the Calendar, would the Clerk please call Calendar Number 615.

H-1120

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
2011

VOL 54
PART 29
9616-9973

Care to remark further on Senate "A"? Further on Senate "A"? If not, let me try your minds, all those in favor of the amendment, signify by saying Aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ALTOBELLO:

Opposed, Nay?

REPRESENTATIVES:

No.

SPEAKER DONOVAN:

The Ayes have it. The amendment is adopted. Remark further on the bill as amended? Remark further on the bill as amended? If not, staff and guests please come to the Well of the House, members take your seats, the machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber, please.

SPEAKER DONOVAN:

Have all the members voted? If all the members have voted, please check the roll call board to ensure your vote has been properly cast. If all members have

voted, the machine will be locked, the Clerk will please take a tally.

THE CLERK:

Total Number Voting	148
Necessary for Passage	75
Those voting Yea	90
Those voting Nay	58
Those absent and not voting	3

SPEAKER DONOVAN:

The bill as amended is passed.

Will the Clerk please call Calendar Number 614.

THE CLERK:

On page 31, Calendar 614, Senate Bill Number 954, AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS, Senate "A" has been called.

SPEAKER DONOVAN:

Representative Holder-Winfield. Hold on, Representative.

We're on the board now so Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the

bill.

SPEAKER DONOVAN:

Question is on acceptance and passage. Will you remark, sir?

REP. HOLDER-WINFIELD (94th):

Yes, thank you, Mr. Speaker. The bill was summarized earlier. I would -- say that the Clerk is in possession of -- LCO 7361, which was previously designated Senate "A". Request the Clerk call Senate "A" and I be granted leave of the Chamber to summarize.

SPEAKER DONOVAN:

Clerk, please call LCO 7361, previously designated Senate "A".

THE CLERK:

LCO Number 7361, Senate "A", offered by Senators Prague and Witkos.

SPEAKER DONOVAN:

Representative asks leave to summarize. Any objection? Representative, you may proceed.

REP. HOLDER-WINFIELD (94th):

Yes, thank you, Mr. Speaker. This is the amendment which gave the ability for -- deputy police chiefs to be dismissed for cause. I urge rejection by

the Chamber, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Would you remark further? Representative Genga, on the amendment.

REP. GENGA (10th):

Mr. Speaker --

SPEAKER DONOVAN:

Representative Genga, sorry.

REP. GENGA (10th):

Mr. Speaker, I would ask for a point of privilege, I cannot hear what's happening and I think we need the decency and the quietness so we can finish our business.

SPEAKER DONOVAN:

Thank you, Representative. You're absolutely right.

REP. GENGA (10th):

So what is happening, Mr. Speaker, on the floor? I couldn't hear --

SPEAKER DONOVAN:

If I'll explain where we are, the bill was called, Senate Amendment "A" was called, and Representative Holder-Winfield was -- moved for

rejection.

REP. GENGA (10th):

Thank you.

SPEAKER DONOVAN:

You're welcome, sir.

REP. GENGA (10th):

I'm in concurrence.

SPEAKER DONOVAN:

Sorry about the -- the noise level. Everyone, please try to keep it down.

Representative Rovero.

REP. ROVERO (51st):

Thank you, Mr. Speaker. Mr. Speaker, could you explain this to me, please? This rejection?

SPEAKER DONOVAN:

Actually, Representative, we ought to direct your question to Representative Holder-Winfield.

REP. ROVERO (51st):

Through you, Mr. Speaker, to the opponent of the bill. Could you please explain this objection to me?

SPEAKER DONOVAN:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Through you, Mr. Speaker. I am urging that the amendment which allows for good cause for dismissal for deputy police chiefs be rejected by the Chamber.

REP. ROVERO (51st):

I didn't hear what he said, Mr. Speaker. I'm sorry, but I didn't hear what he said.

SPEAKER DONOVAN:

Representative Holder-Winfield, could you please repeat the answer.

REP. HOLDER-WINFIELD (94th):

Yes, absolutely, Mr. Speaker. Through you, Mr. Speaker, I am urging that the amendment before us, Senate Amendment "A", which allows for good cause for dismissal for deputy police chiefs be rejected by the Chamber.

SPEAKER DONOVAN:

Representative Rovero.

REP. ROVERO (51st):

Thank you very much, Mr. Speaker.

SPEAKER DONOVAN:

You're welcome, sir.

Would you remark further on the amendment for rejection? If not, I'll try your minds to reject the

amendment. All those in favor, please signify by saying Aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

Opposed, Nay? The Ayes have it. The amendment is rejected. Remark further on the bill? Remark further on the bill?

REP. HOLDER-WINFIELD (94th):

Mr. Speaker?

SPEAKER DONOVAN:

Representative Holder-Winfield.

REP. HOLDER-WINFIELD (94th):

Yes, Mr. Speaker. The Clerk is in possession of an amendment which is LCO 7458, was previously designated Senate Amendment "B". I request that the amendment be called and I be granted leave of the Chamber to summarize.

SPEAKER DONOVAN:

Clerk please call LCO 7458, which is designated Senate "B".

THE CLERK:

LCO Number 7458, Senate "B", offered by Senators Looney and Coleman.

SPEAKER DONOVAN:

Representative seeks leave of the Chamber to summarize. Any objection? Hearing none, Representative, you may proceed.

REP. HOLDER-WINFIELD (94th):

Yes, thank you, Mr. Speaker. The amendment before us takes the recording provisions which were effective -- on October 1st of this year, pushes them out to January 1, 2014. It also -- eliminates a requirement in the bill that statements made when the interrogators were unaware that a death occurred were an exception. I urge -- I move adoption.

SPEAKER DONOVAN:

Question is on adoption of Senate "B". Remark further on the amendment. Representative Genga.

REP. GENGA (10th):

Thank you, Mr. Speaker. This is a good amendment. Makes a -- a good bill better, and I urge the Assembly to adopt it. Thank you.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Hetherington.

REP. HETHERINGTON (125th):

Mr. Speaker, I wanted to speak on the underlying bill. I'll wait.

SPEAKER DONOVAN:

Thank you, sir.

On the amendment. Representative Rovero.

REP. ROVERO (51st):

Mr. Speaker, I would just like to thank Ms. Olson on adopting this amendment. I appreciate it very much and thank you.

SPEAKER DONOVAN:

Thank you, sir.

Would you care to remark further on the amendment? If not, let me try -- your minds, all those in favor of the amendment, please signify by saying Aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

Opposed, Nay? The Ayes have it. The amendment is adopted. Remark further on the bill as amended? Remark further on the bill as amended? Representative

Hetherington.

REP. HETHERINGTON (125th):

Mr. Speaker, I believe this will catch our law enforcement authorities unprepared to do this even with the extended day and I think it will be a burden on our municipalities so I would urge rejection. Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, sir.

Remark further on the bill? Representative Smith.

REP. SMITH (108th):

Thank you, Mr. Speaker. I have some questions for the proponent of the bill.

SPEAKER DONOVAN:

Please proceed, sir.

REP. SMITH (108th):

All right, Mr. Speaker. I'm all set, thank you.

SPEAKER DONOVAN:

Thank you, Representative Smith.

Representative Alberts. Okay, everybody's all set? All those -- any -- further on the bill? If not, staff and guests please come to the Well of the

House, members take your seats, the machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber, please.

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted? Please check the roll call board to make sure your vote has been properly cast. If all the members have voted, the machine will be locked. Clerk, please take a tally. Clerk, please announce the tally.

THE CLERK:

Senate Bill 954, as amended by Senate "B",

Total Number voting	148
Necessary for passage	75
Those voting Yea	92
Those voting Nay	56
Those absent and not voting	3

SPEAKER DONOVAN:

Bill as amended is passed. Clerk, please call Calendar 596.

THE CLERK:

JOINT STANDING COMMITTEE HEARINGS

JUDICIARY

PART 6

1626-1949

2011

who are able to stay as long as you could the other night.

But having said that, we'll start with our public hearing of today, and the first member of the public officials is State Senate Majority Leader, Martin Looney. And is Marty here? Okay. All right, well, I'm sure when Senator Looney arrives, we'll find a chance to get him in.

The second name on the public officials' list is Chief State's Attorney, Kevin Kane. And good morning.

CHEIF STATE'S ATTORNEY KEVIN KANE: Good morning, Representative Fox and members of the Commission. I know we have a lot of bills on today and there's a lot of bills that we're interested in. With me at the table right now is John Smriga. He is the state's attorney for the Judicial District of Fairfield in the office of Bridgeport. And behind me is Mike Gailor and Patty Johannes who is a criminalist, a forensics science examiner at the forensic lab.

What I'd like to do, if it's all right with the committee, is testify first about some bills about video recording interrogations and about DNA and then I'll leave and wait. The rest of the people with me can go then right now and we'll wait until our turn is up because you have a lot of people here and I don't want to take up talking about many bills with many different people up here. It's unfair I think for everybody else to do that. So if that's all right, can we go ahead and wait?

SB954

REP. FOX: Yes, I think -- and just I know that there's been some question as to how to divide up the bills because a lot of times what we're

doing is we're putting obviously today there's a number of criminal justice or criminal law bills that you would have an interest in or we would anticipate you would have an interest in and we'd like your office to testify on them. The same thing applies to the public defender's office and the defense attorneys. I know that they've divided things up as well and it just does probably make it easier to do so. But in order to facilitate the public hearing, it helps if you testify first as to what you want to testify on and then we'll continue on throughout the day. So thank you.

CHEIF STATE'S ATTORNEY KEVIN KANE: Fine. Video recording interrogations is something that there was a lot of -- four or five years ago there was quite a bit of resistance about it, six years ago. I can remember not being -- or being concerned about it, although I recognize that there was some benefits as a result of some cases that I have been involved with down in New London. The legislature was very good and gave us some money at first so we could start out experimentally running programs to see how it worked and gave us a little bit of money which we were able to use and get to some police departments and police departments started doing it. And the tide really has changed. The more we've done it, the more people have liked it, the more we recognize it's a good idea.

Right now police departments are lining up trying to get money to do it, to get recording equipment, to get rooms to record, interview rooms. It's something which sounds easy on its surface. Of course why not record interrogations. There are a lot of practical problems that we thought would occur as we did it, and we wanted to be able to do it reasonably quickly but not too fast so we could

identify and work out the practical problems. More and more departments have equipment now. There are many in southeastern Connecticut. In the written testimony we've attached a report saying what we're doing.

The best example probably has been in Bridgeport where Bridgeport has been using it and using it in a lot of cases, a lot of interviews, that have resulted in cases coming to court and being tried and through the process we've learned a lot of things what we can do.

Some of the problems are this: And we were always concerned with this. A lot of times it's necessary to do multiple interviews. You can have a crime where there are a group of people who are suspects -- who may be suspects or who may be just witnesses and you don't know which they are and the police have to interview them simultaneously in order to try to get at the truth and have to conduct multiple interviews so it's important to have the facilities to enable the police departments to do it.

Now I think I'd like to have John testify a bit and explain to you the experience that he's had in Bridgeport where they've done it a lot and they've had some trials as a result.

JOHN SMRIGA: Thank you. Good morning. My name is John Smriga. As Chief State's Attorney Kane said, I'm the state's attorney down at the Fairfield Judicial District and we've been lucky enough to be able to actually work with a system through the Bridgeport Police Department since June of 2008 where not only detainees or accused people have been interviewed, but they're really on major cases they're taping just about every interview suspect prior to

them being detainees and also witnesses in cases.

And I can tell you that no one involved in that process, the police, the prosecutors or the defense attorneys that I've talked to have serious complaints about it. It is a desirable situation to have and I think it helps everyone. No matter what the fruit of the interrogation is, it's something that is advantageous to everyone and including the judges.

But what I would just want to emphasize when Attorney Kane talks about practical problems, what they might be, although the bill talks about it's sort of general in requiring electronic recording, the only way to do this properly is to do it in a room which is dedicated for the purpose of an electronic recording, and that's what Bridgeport does.

So there is a room which has a camera that is fixed in that location which shows everyone in the room so that the conduct of the interviewee is observable as is the people who are conducting the interview, and there's also a fixed microphone so that it can be heard.

The other important thing is that there is also a room where the equipment that actually records the statement is so that it can be monitored. If you don't do that, what can happen is that you get through a four-hour interview with a suspect and realize upon examining it that you really either have an inaudible recording or you didn't fully record everything that you thought you were recording. So as the interview occurs, it has to be monitored.

This is not possible with just us going out and

buying a $300 camcorder and then trying to photograph the event. You don't get the aspect of everyone that's in the room and you cannot monitor it. And we have had in efforts to do it that way, I have seen that be very undesirable, and of course, if that were used in this situation, it could easily result in us not having a recording at the time that we have to.

So, and as Attorney Kane indicated, optimally Bridgeport has one room. We've had problems just having one room because sometimes interviews take a long time and there are other people there that need to be interviewed and they can't be recorded at the same time. So it does present a problem. The bill would require by October every police department in every town and city in the State of Connecticut to have this kind of a facility and that I believe is a short period of time for that to happen.

Those are practical problems that occur at the point of recording. There are also things that we did not anticipate which are problems that occur after a recording has been successfully made. The first issue comes up when the state is required to provide disclosures. Because as I said, we're recording much more than just detainees' interviews, as we try to disclose statements, it requires reproduction of the media to be distributed to the defense attorneys.

In Bridgeport we actually had to purchase a batch duplicator. We were trying to do it with our computers. Many people aren't trained. We don't have sufficient software and our computers were not capable of doing it at the level that we were required to do it. We actually got the Chief State's Attorney's office to purchase us a batch duplicator. We

can throw the original in there. Most times we can get three copies out of it very quickly. That kind of equipment is also important.

The other thing is that now you can no longer -- what we find is a three-hour interview used to be turned into a three-page police statement. Now you've got three hours of interview. You have interviews that contain silence, a statement and then another 20 minutes between answers sometimes. This requires -- so everything has to be reviewed in real time. This is -- this can be a challenge and it also turns into a challenge for defense attorneys who have to take that material and somehow play it for their clients. If they are incarcerated, they have to go up and now they can't just read a statement but it has to play an entire interview or interviews if in the case of witnesses.

So and I think one of the most difficult things that we've had to deal with is the use of statements during the course of trial, and this is something we're still working on. Normally a lawyer will have a statement and confront the witness either on cross examination or if someone repudiates a statement and they show it to the witness and they use it. There could be a discussion with the court about what portion of the statement is usable and it can be redacted according to the court's ruling.

Now what happens is the evidence becomes the DVD. So we use the DVD and we have to now video edit and create a clip. Again, we have people that do this at their homes on equipment that they have. It is not commonly available as software throughout our division. We don't have people who are trained to do it.

So you come in with a video clip, you offer it,

and upon objection from counsel, it may have to be changed. So the judge may rule that more or less of the clip that you intended to use has to be shown to the jury which means that on the spot there has to be some way to produce another clip. It is difficult for us when our offices are in the court building. It is very difficult for defense attorneys who want to create -- have to react to that on the fly while they're sitting in the courtroom, perhaps if they have a laptop.

So those are just some of the things. And I don't want to sound negative on it because I really believe that having the product there is good for everyone. My concern is this particular bill requiring this all to happen by October, I can see that it can have unintended and disastrous results.

Thank you, Attorney Smriga and thank you, Attorney Kane. We do appreciate you coming. Mr. Kane, we see you all the time, but, Attorney Smriga, it's good to have you here.

JOHN SMRIGA: Thank you.

REP. FOX: I do hear good things about the work you're doing in Bridgeport from both sides of the bar and your input is welcome.

The recording of interrogations, as I understand it, originally began as something that was advocated by the defense bar initially, and then, as I understand it, throughout the country as various states and the Federal Government have adopted policies, it is something that is also come to be supported by law enforcement. Is that your understanding?

JOHN SMRIGA: Absolutely. And I think I was,

you know, one of those people that was skeptical. And now seeing how it works, it is -- there's really no down side to it other than those practical issues that I've raised.

REP. FOX: So just so we're clear as to your position, would you say the recording of interrogations is a good thing?

JOHN SMRIGA: Absolutely. And I think the law enforcement community is also gradually coming to that position as well.

REP. FOX: Okay. So is your biggest concern then the timing of this bill, meaning that October 1st would be too soon to implement --

JOHN SMRIGA: The timing of it and just so that there would be some kind of plan to make it work because I think it will just suddenly -- all police departments suddenly were told you have to go ahead and implement this, it would be -- it would just -- I don't think they could do it in that short a period of time.

REP. FOX: Okay. I do recognize when we talk about police departments, we're talking about there's 169 cities and towns and they're not all the same as a Bridgeport Police Department or a Stamford or something like that.

I recognize that some are not -- do not have the same facilities set up, but I do think that it seems to be -- that everyone is now on board with the practice of recording interrogations. We have a public hearing before us and some will get an opportunity to contradict that, but the more we do it, the more it seems that people support it.

JOHN SMRIGA: I agree with you.

REP. FOX: Okay. Are there other questions?

Senator Kissel.

SENATOR KISSEL: Thank you very much, Mr. Chairman.

Good morning, gentlemen, great to see you here. Three areas of inquiry. Where do you draw the line as far as currently you're videotaping, is it just certain high level crimes that you videotape or if it's something rather modest, vandalism, you have some teenage kids in there and you're asking them what they were doing and what -- I mean, do you videotape that? Is it everything or do you sort of have some sort of threshold?

JOHN SMRIGA: Well, I think first of all, what we get is after a decision has been made by the police department, and it seems to me that they're focusing on the more serious crimes, and as I said, they're even recording witnesses, but the priority seems to be the most serious and then not so much so in the more routine crimes.

SENATOR KISSEL: Do you think that we as a legislature should sort of have a requirement as to what should be videotaped and what shouldn't be? Because I can almost envision that, you know, if one part of the state is doing one set of crimes and another part of the state isn't, and I'm a defense counsel, there may be some basis for argument there that folks over here are doing it, folks over here aren't.

JOHN SMRIGA: I think that there is there's sort of a what will occur as this becomes the best practice of the police department, I think we're really getting to that position already that sort of what will occur is through cross examination of police witnesses they're going

to be encouraged to do it more and more because when they don't, they're going to have to answer some questions in front of a jury as to why they're not doing it. I think it might be difficult to define exactly the kind of crime where it should be used on because I think it's not just the level of crime but the nature of the case that makes recording more important in some cases than in others.

SENATOR KISSEL: And the second sort of set of questions are related. The October timeline too ambitious. What would be a reasonable timeline? And as far as the funding goes, I know that my towns had no unfunded mandates and I promise no unfunded mandates. Is there any revenue stream such as like Department of Justice grants or anything else like that that the State of Connecticut can tap into? In other words, I agree with you, I think that we can't do this. I don't know what my colleagues think. But I'm wondering what is a reasonable time frame and what kind of dollars are we talking about.

CHEIF STATE'S ATTORNEY KEVIN KANE: Different departments, and you may hear more from police departments, have applied for grants from different sources to try to get what they need to be able to do this, and it's hard to put a figure on that. We were very conscious when they started the pilot program that we would create that argument where defense attorneys could argue, well, you're not recording interrogations at all here but over there they are or you do in some cases.

We decided to take that risk because the benefits we think were valuable. The time frame it all depends on the money because they really do need money. State police, for instance, and there are a lot of small town

state police a lot of times they don't know where -- they start out on an investigation, they don't know where they're going to do the interviews.

They'll use facilities in a local police department or maybe a resident state trooper's office or maybe a place in the town hall to do the interviews. We've tried to get portable equipment there. It's all practical issues, and the unintended consequences of a bill requiring it right now all deal with money really because -- well, two things, money and training, and that's what you need to get the business side people to figure out today how long it will take and how much will it cost.

We've tried on our own. We've gone through wide variations in the cost of equipment. There's some equipment that it's terrific, it enables you to go back to a four-hour interview and find things in it and go right to that. Others you have to listen to and remember or make notes.

So there's a wide variety of the equipment depending on the money. You certainly don't want to buy a huge expensive equipment when less expensive equipment will do, but going the cheap way causes problems too and you need business people to think this out.

SENATOR KISSEL: So I guess my bottom line is this: The time frame is too ambitious. We don't have the funds following the procedures for the training and the equipment.

Is there anything less than just voting against the bill? Is there a way to redraft this in a way that will allow these pilot programs and other initiatives to move forward without creating unfunded mandates or unreasonable

expectations?

JOHN SMRIGA: You've had a terrific impact by doing what you've done over the years. You've really overcome by the proponents of this bill have overcome what was in the past a lot of resistance. I mean, I don't think you should look on what you have done as being unsuccessful.

You've overcome the resistance. The desire now is we want to do it. I don't think without knowing where the money is going to come from or how we're going to do it right now more -- even now people are calling the police department, they're calling the state's attorney's office and saying we -- in different JDs saying we want to do this, can you get us some money to do it, we want to do this, can we do it, will you let us do it. People want to do it. And you'll have to hear from the local police chiefs and the state police about the budgetary impact.

And also, as Attorney Smriga just said, there's an impact on us too because now instead of reading a report, a 15-page report, we have to listen to four hours of -- or listen and watch four hours of recordings, so there's an impact on the time it takes. There's also an impact on trail time because you can get a four-hour recording, only portions of which are admissible, if somebody wants to object to one part or another and there's a reason not to and then you have to go through a process to redact parts of it usually often while the jury is sitting there waiting in the jury room to come out.

So there are these practical issues that have to be really -- that's why we wanted the pilot program, and that's why we're learning these

things as a result of the pilot program. Now we have to get the other agencies involved, and so we don't have a good answer to your question if it's something we should do. We want to do it.

SENATOR KISSEL: Well, all right, and without belaboring this, I mean, should we put together some sort of study committee and bring all the stakeholders together and figure out what's the practical ramifications of moving forward at this point in time as far as police officer training, state's attorney's training, equipment that's necessary both for the interviews, interrogations, and also the equipment that's going to be necessary in the courthouses?

CHEIF STATE'S ATTORNEY KEVIN KANE: We're recommending a study committee on eyewitness identification procedures. Right now I'm getting overwhelmed with study committees, and we don't have the staff and ability to staff too many study committees. If you're putting priorities, I'd say put the priority on the eyewitness identification study committee and maybe people like OPM and the other existing agencies can just look at the finances of this without a great study.

SENATOR KISSEL: Thank you. Thank you, gentlemen.

REP. FOX: Thank you, Senator Kissel.

Representative Smith.

REP. SMITH: Thank you, Mr. Chair. Good morning, gentlemen. So this is a pilot program -- because I'm new at the committee here. You have a pilot program in the JD of Fairfield right now?

CHEIF STATE'S ATTORNEY KEVIN KANE: I would say that's not a pilot. There was a pilot program for two brief years. We had funding for two years. I think we lost the funding in the second year of the program, so I wouldn't even call it a pilot program. This is what police departments are doing now because they want to do it and they're planning to do it permanently, they need to expand it, so it's not really a pilot program.

REP. SMITH: So there's no statute on the books right now that permits the custodial interrogations pursuant to this section that's being raised as a bill?

CHEIF STATE'S ATTORNEY KEVIN KANE: There's nothing in the law that requires recording interrogations.

REP. SMITH: Okay. Now just looking through the bill quickly, and there was a mention of a mandate, Senator Kissel mentions the mandate, but I don't really see anything in the language that requires or would require the various police departments to actually fund or buy this equipment. I read it as an option if they choose to do so. Is that your understanding?

JOHN SMRIGA: I think the problem is that the statute says that if they choose not to and somebody confesses under the conditions defined under the bill, it won't be -- it won't be usable in court. That's the problem. So you could conceivably have a situation where somebody confesses to a serious crime, but it would not be something that would be admissible in front of a jury.

REP. SMITH: So just taking that a step further then, if they did enter into a confession while in custody, is there a situation that could

then be put in place where they could sign a confession? I don't know, I'm just wondering, is there a way to get around this without having to go through the electronic custodial interrogation?

JOHN SMRIGA: The way this reads now I don't believe so. I think it's as to capital felonies or A or B felonies if there isn't one. If it is not recorded, you just can't use that kind of evidence. I mean, I think it's pretty straightforward.

REP. SMRIGA: Okay, thank you. And lastly -- I'm sorry, go ahead.

CHEIF STATE'S ATTORNEY KEVIN KANE: If this bill were passed, we would run the risk of losing truthful confessions, not being able to get them into court, because police departments -- let's say police departments are conducting multiple interviews they have to do simultaneously because you don't want to interview somebody and have that person tell somebody else what the questions were, what the answers were, and get together. It can lead to problems.

So you have to interview people simultaneously sometimes. Let's say the police have two suspects they have to interview simultaneously. They only have one room that they can record. They record one and the other guy confesses. We wouldn't be able to get in -- maybe we'd get it in, maybe we're not. This bill would create havoc and run the risk of not having truthful evidence be it -- run the real risk of not having truthful evidence which a jury should weigh, not even be able to get it into evidence so a jury could weigh it.

REP. SMITH: Last, I think Chairman Fox mentioned

that the defense bar initially was one of the proponents behind this, and I just want to confirm that. They're in favor of this type of legislation?

CHEIF STATE'S ATTORNEY KEVIN KANE: I'm sure you'll be hearing from them and strongly, yes, they are in favor of it.

REP. SMITH: Thank you for your time.

REP. FOX: Thank you, Representative Smith. And just if I could follow up on that? But as I understand it, law enforcement is also in support of this now.

CHEIF STATE'S ATTORNEY KEVIN KANE: Of the concept of recording, yes, where nobody, no law enforcement, division or police, are in favor of having a requirement of admissibility or a presumption for admissibility that it be recorded. And there was another in past years they've recommended that a bill that would require courts to give instructions if it's not recorded, give cautionary instructions to a jury if it's not recorded. We're opposed to that too.

I think law enforcement by and large and the division, if by division I mean the state's attorneys are in favor of the concept of recording and the desirability of recording interviews, interrogations of people in custody or suspects not in custody, but we are not in favor, and we are very much opposed to any type of exclusionary rule, which would exclude evidence that might well be truthful from being admitted into evidence so a jury could consider it and determine whether or not it was truthful.

REP. FOX: Have you looked at other states as far as

what they have done with respect to that issue because it has to be -- they must confront the same problem.

CHEIF STATE'S ATTORNEY KEVIN KANE: Other states are and Massachusetts is in the process of doing it. Minnesota is doing it. They all have had problems to get money to try to do it. I don't know what your --

REP. FOX: No, I'm talking about the evidentiary issue and the exclusions. I'm just thinking you have to deal with it, of course, and I mean, you don't want the situation that you're describing where an accurate lawful confession is excluded for reasons that have nothing necessarily to do with the actual confession, but I just have to presume that others have also dealt with this issue and come up with a solution or at least something that could be workable.

JOHN SMRIGA: I think the whole purpose of exclusion is to force police departments to use the procedure. And what I think, as I've alluded to before, that's sort of a heavy hand to use in the first instance because I also believe that defense attorneys are quite capable of making police pay a cost if they don't, especially as it is now becoming one of the -- a best practice of police departments, and we've already seen that in cases where there's reasonable cross-examination to say, you know, you didn't tape this, and that's something that gets done in your department or other departments on a regular basis. So it isn't exactly like the police would be able to -- you know, there would be incentive for them to do this even without the heavy penalty of exclusion.

REP. FOX: I'm sorry, I spoke for the second time.

Any other members have questions?

Senator Meyer.

SENATOR MEYER: I have actually voted against this bill in prior versions, and let me explain why and get your reaction.

In my experience as both a prosecutor and a defense lawyer, when a person is arrested, on a fair number of occasions after Miranda warnings the suspect, the defendant, will make spontaneous admissions with respect to the crime. We saw that, for example, in the Cheshire home invasion case where apparently right at the scene of the crime right at the Petit house both made incriminating statements. My experience has been that if -- and you're not able to record those necessarily.

So you come back to the police station and you then get very formal. You repeat the Miranda warnings and then you do the filming, the video of the interrogation again, and at that time the spontaneity of the situation is lost and you lose -- this bill you would lose that confession or those admissions. And that from a law enforcement standpoint worries me about this bill, and I would appreciate your reactions to that.

JOHN SMRIGA: Well, there is a provision in the bill that indicates a spontaneous statement that is not made in response to a question, so I think that would probably cover that sort of thing. I think the bill recognizes that it is -- the way it defines custody that that isn't, you know, that's always been the concern that what happens before -- if they start talking before we can get to the police department and get to our equipment, and it seems that the bill honestly exempts that out. I don't think that

it eliminates all problems, but it does seem to make that attempt.

SENATOR MEYER: I appreciate that because I haven't carefully read the bill this year, but it sounds like that that's going to help.

Thank you, Mr. Chairman.

REP. FOX: Thank you.

Representative Adinolfi.

REP. ADINOLFI: Thank you, Mr. Chairman. Just quickly, I'm looking at this and sitting here at other public hearings, I picked up on a lot of stuff that happens within the judicial system.

Isn't there a long-term savings in doing this where you would cut down on the number of frivolous appeals where somebody plea bargains and then later on they try and appeal saying they were coerced into making a confession or admitting and so on, and doing something like this, it seems to me, would take that freedom away from them because you have it all, you know, recorded, not in writing, and it would be hard to dispute that.

And I see this as being able to cut down on a good number of those appeals in the future and actually have a cost saving long term. I don't know, it's just a question.

JOHN SMRIGA: My opinion would be that it would not do that. I think that it just changes the issue. If there's going to be an appeal, it will be a different claim, but unfortunately I'm not that optimistic about that.

REP. ADINOLFI: It may well resolve a lot of --

there may be -- if there are a number of cases that are resolved because now a defense attorney can play the tape to his client and say this is what you said, we can't go claim the police are lying, we can't do this, the client may hear it, the defense attorney hears it, and it may bring about the resolution of cases.

A lot of cases though the interviews don't result in a flat-out confession. The interviews or interrogations result in an admission to certain things, certain things that become circumstantial evidence of guilt, but there are other denials throughout the statement or there are other things.

There may be things on the video recording that are helpful to the state, but there may be some things on it that are helpful to the defendant too. And there may be trials, and these trials are certainly going to be prolonged because of the length of the videotape -- playing the videotape.

Now that's a good thing to do, I mean, we certainly don't want to -- the jury should have all the evidence they need to hear to be able to decide the truth, and that's why we're in favor of it. But the idea that it's going to save a lot of money or cost a lot more money than it might save, we don't know.

What we do know is that if police departments are going to have to do this, they do need money to buy the equipment, they do need money to get the transcripts. We all need money to get the time to listen to them and equipment we need to redact tapes to play only the proper so that the courts can redact portions of the tape that maybe shouldn't come in front of the jury for legitimate reasons, for all sorts of

legitimate reasons. So it's going to be something that if this bill were passed there would be consequences that need to be thought about before it is passed.

REP. FOX: Representative Grogins -- oh, I'm sorry, Representative Adinolfi, are you finished.

Representative Grogins.

REP. GROGINS: Mr. Chair, just a question to both state's attorneys. From my own experience, there are always issues regarding the voluntariness of an interrogation and/or a confession and with regard to police pressure. Don't you think that this would address those issues satisfactorily?

JOHN SMRIGA: I think the whole -- the desirable aspect of this is that the conduct of an accused and the conduct of the police can be measured so that I think it certainly is -- the issue of voluntariness is much easier to define if you're looking at a videotape than if you're reading a statement certainly.

CHEIF STATE'S ATTORNEY KEVIN KANE: Well, you're still going to have issues about what was said before they got into the station and how that played about, so there are always going to be issues to litigate.

REP. GROGINS: I understand there's always going to be issues, but what I'm saying is is even if there's an issue with what happened prior to the tape being, you know, turned on, at least you will be able to see visually whether an accused is under pressure or, you know, you'd be able to determine how valid perhaps a claim is. I think that that might cut out a lot of issues that are raised.

CHEIF STATE'S ATTORNEY KEVIN KANE: Yes.

REP. FOX: Representative Shaban.

REP. SHABAN: Thank you, Mr. Chair.

I've read Section E6 several times and kind of came away with three different reads on it. Pulling away from the specific language, do I understand your position that the ability or the -- it's a laudable goal but don't require it through an evidentiary preclusion mechanism, right, that's the sum and substance of what you're saying?

CHEIF STATE'S ATTORNEY KEVIN KANE: Yes, exactly.

REP. SHABAN: With the last section in here about the confidentiality of these interrogations, do you have an understanding -- and if you don't, I'd appreciate the answer right away -- of how this section might work if some of the tapes confession is used in court because once it's out of the bag, I'm thinking it's public record, I mean, have you put any consideration in that one way or another, whether it's limited, total, that kind of thing?

CHEIF STATE'S ATTORNEY KEVIN KANE: Two things. This is not our bill. In fact, we're opposed to the bill. But with regard to that, anything which is introduced as evidence into court is public record unless the court orders it sealed, and we do have rules and statutes that deal with the sealing requirements, so anything public this is one of the problems.

On homicide cases sometimes you get photographs and evidence which is very sad to have made public but it becomes an exhibit in court and it's public and the families of the people who are depicted run the risk of seeing them on TV

or in the newspapers or in blogs these days, and there are a lot of sad effects to that. And once something is in court, it's public unless for very certain limited reasons it's sealed.

REP. SHABAN: Yes. And the reason I ask is we had a bill of course a week or so back about similar issues with some pictures and whatnot, but I was just curious of your opinion.

Thank you, Mr. Chair.

REP. FOX: Are there any other questions from members of the committee?

Representative Baram.

REP. BARAM: Thank you, Mr. Chairman, good morning.

In looking at section B and section H, section B indicates that evidence is presumed to be inadmissible unless it is video recorded, and then H overcomes that presumption by a preponderance of the evidence that the voluntary admission was reliable and based on a totality of circumstances.

Wouldn't that presumption with the exception to it allow police departments to decide individually whether or not they wanted to record interrogations so that under the current rules of evidence you still have to show that an admission is reliable and the totality of circumstances?

So would anything really change if a police department for lack of training, lack of funds decided to rely on established methods of interrogation without the video recording they could so choose to do that and that this really isn't the mandate that is being projected on

individual police departments?

CHEIF STATE'S ATTORNEY KEVIN KANE: Well, it is. Would a court reading this statute decide that if a police department -- I know you have concerns enough so the legislature often enacts mandatory sentences because they're concerned about judges and sentencing.

Now you're going to have different judges deciding whether or not funding or lack of space or any variety of reasons is a sufficient reason to overcome this presumption. Are exclusionary -- we didn't have an exclusionary rule until Mapp versus Ohio back when some of us were old enough to know it, maybe not many. But the purpose of an exclusionary rule was to address police misconduct in a way that they didn't feel could be dealt with by civil suits. An exclusionary rule prevents evidence which may well be truthful from being considered by a jury.

This in effect is an invitation to courts to exclude evidence for a whole variety of reasons without us showing that we've had a wide spread abuse. Miranda versus Arizona didn't come up, and if you read that case, it's a whole history of what the supreme court and others felt was legitimate interrogation bad practices by police officers.

They had to adopt Miranda and same with Mapp versus Ohio, it's an exclusionary rule to bring about compliance. I think we have police departments now that want to comply and have practical consequences. The legislature shouldn't be considering setting this type of thing up where evidence that may be truthful will be excluded.

I mean, juries right now, and I've seen defense

attorneys do darn good jobs cross examining police officers in creating reasonable doubt in the jury as to which version about an interview was truthful and doing that. There are ways that we deal with this and traditionally have dealt with it and have dealt with it very well. I've lost confession cases where you didn't have any evidence.

We've learned an awful lot since Peter Riley. There was a time historically when police departments had to rely on confessions and that would end the investigation. Those days are over. Investigations, now police, if they get a confession, you have to go out and prove the truth of the confession, and police departments know that and work hard. Setting up and inviting the legislature to set up exclusionary rules or inviting courts to exclude evidence is a big mistake that will not serve the ends of justice, won't protect the public.

Having the legislature say, okay, let's find ways to fund places, let's encourage it, you've done a terrific job by holding out -- well, I don't even know if you held out a carrot, you put pressure on. You've overcome an awful -- by you, I mean the General Assembly and the proponents of this bill -- have overcome a lot of resistance on the part of police departments and some prosecutors to do this. We want to do it. We're trying to do it. And what we're requesting is -- you should be patting yourselves on the back actually because you brought this about, and let us continue finding ways to do it.

We're doing more and -- the tide really has changed. The doors are open and you have police departments asking for funds to be able to do this, find ways to get the funds made available and let's do it right and let's make

sure that the courts aren't going to get inundated having -- we've already had problems with trying -- done a study about the vanishing trial because trials have become too cumbersome and lengthy and God knows what they've turned into.

They sure have changed in the years about the duration. Now we have to see the impact that this is going to have. In some ways it's going to be good, in some ways it's not going to be good. But don't impose sanctions now even if they're just presumptions which can be overcome in certain situations because you don't know how that's going to play out in court, you don't know how individual courts are going to handle that, and you don't want to invite evidence that may be truthful to be excluded so that a court or a jury can't determine whether or not it is in fact truthful.

REP. BARAM: I don't necessarily disagree with you. I just felt that perhaps section H allowed a police department to overcome the presumption of inadmissibility and that to overcome that presumption was no greater than the evidence that would be required under current situations to introduce an admission. But if the presumption of inadmissibility was removed from the statute and somehow it was worded differently to allow video recordings or encourage them, would that make it more palatable to you?

CHEIF STATE'S ATTORNEY KEVIN KANE: If you had a bill which straight out just allowed video recording of interrogations, you don't need it. It's fine. I would say that's fine. I said earlier we took the risk that by starting out on a pilot program or getting some departments to do it, we would take the risk that that would invite defendants or defense attorneys to

argue that you're doing it here but not there or you're not doing it here but they're doing it there and therefore you must have a surreptitious reason for not doing it. We took that risk.

Now, if you laid out this in a statute, that will give them even greater ability to do that and raise some concerns; and yes, I'm concerned about putting it in a statute for those reasons.

REP. BARAM: And lastly, if this were adopted, do you think that this video equipment could be done on a regional basis and shared among police departments? Because, for instance, I'm aware that some of the smaller departments currently don't have some of the high tech equipment even to perform a breathalyzer test and they will take, you know, a person to another police department that has the equipment to do it.

So I'm wondering if the same thing could be done here with video equipment and for training where on a regional basis towns could purchase the equipment, train people who participated in the interrogation?

CHEIF STATE'S ATTORNEY KEVIN KANE: Yes, you can, and that's what we're doing actually in some areas of the state, and Waterford they've set up a facility and made that available to the departments around southeastern Connecticut there.

It's a good idea, and it's something that there are a lot of different things that regionalization can help and can save money on and this is one of them. The issue you get there sometimes is police departments from another department coming from a new department

they don't know how to work the equipment, they're not familiar with it because it's not theirs, and the people in the department where it's going on who know how to work the equipment and are familiar with it are not on duty and they have to get paid to come in or the department may have to pay them to come in to assist another department on its case.

So again there are practical issues, but that's what we're trying to do. The state police are trying to work with equipment with laptops. In the eastern district they set up using a laptop.

The problem was the equipment they got had a little camera on the top of it so when it was open, the camera was staring at everybody, and that had a negative impact on both the interviewers and the interviewees found it to be distracting. The interviewees found it more distracting than the interviewers. But there are issues like that. These are good ideas and there are different ways to do it in different areas of the state, and that's something we should absolutely explore and are exploring.

REP. FOX: Thank you. I don't see any additional requests for questions, so thank you for your testimony.

CHEIF STATE'S ATTORNEY KEVIN KANE: Okay, DNA, if we can go with that next?

REP. FOX: Oh, okay, you're coming back for that, is that how it's working?

CHEIF STATE'S ATTORNEY KEVIN KANE: Mike Gailor and Patty Johannes from the lab were here, but we can, whichever you'd rather.

REP. FOX: It probably would be better if we can mix

choice. That's something which happens to me and then this flows from something which I have had -- not the issue of whether I engaged in criminal conduct, but in terms of the arrest itself. How do you control that?

SENATOR COLEMAN: Well, I sort of assumed that those would be your responses and I'm trying to for my own purposes put some parameters on when it would be appropriate, when it wouldn't be appropriate. And I think the proponents of the bill -- I don't necessarily disagree with those that feel that there's a lot of social benefit to requiring the samples at the time of the arrest. I also agree with your insider position, having had some involvement in criminal defense manners, that there is a presumption of innocence that should be at work. And also for the member's consideration that should be considered. So thank you for your testimony today.

Senator Kissel had a question or unless you had a response.

BRIAN CARLO: No, I just wanted to note, because I forgot to say this earlier, we did also submit testimony on both the recording and the ID. So obviously, we didn't talk about that but are here as well on that. I'm sorry, Senator Kissel. SB954 HB1344

SENATOR KISSEL: No, no. By all means and I caught most if not all of the debate from my office. I apologize. I had to meet with some constituents at the same time as well. Related but not specifically on point, currently we have the DNA sample taken at the time of conviction by the Department of Corrections. It's my understanding that there is at least one individual that refused. We went through the whole process of getting a conviction for

Secretary and I respectfully submit our approval and support for this bill. Thank you and I'd be happy to answer and questions you might have.

REP. FOX: Thank you, Attorney Klaskin. Are there any questions from members of the committee? Senator Meyer.

SENATOR MEYER: Thank you, Mr. Chairman. Just a comment. Seth, you're a very distinguished constituent of mine and I compliment you on the great job you've done having the business section of the Secretary of State's office and just wish you a lot of continued success. And thanks for your testimony here. I think most of the members of the Judiciary Committee are going to agree with you.

SETH KLASKIN: Thank you.

REP. FOX: Any other questions from members of the committee?

Thank you very much.

SETH KLASKIN: Thank you.

REP. FOX: Next we have Chief Anthony Salvatore. Good afternoon.

JAMES STRILLACCI: Good afternoon, Representative Fox, members of the committee. I'm Jim Strillacci, police chief from West Hartford, Tony Salvatore Chief from Cromwell, we represent the Connecticut Police Chiefs Association. We're here to speak on several bills today.

First, the Connecticut Chiefs support House Bill 6368. This was our suggestion. This is about returning stolen property. Under current

SB954
HB6344
HB6489
HB6538

law if we arrest somebody and recover stolen property, if it's worth more than $250, we have to seize it as evidence and log it in which deprives the rightful owner of the use of that property. It takes the officer on the street, while he's logging it, packaging it, putting it in evidence, may even running into overtime and it makes the police department responsible for the safe keeping of that property.

The problem is it's very seldom used in court. We try very few cases. It's there just in case. And again, the dollar limits of larcenies have risen in time. Only in 2009, all the thresholds for the larceny levels were raised, but the level for this threshold has not gone up in 25 years. It's still well below the Larceny 6 level. So what we're asking for is an increase and we appreciate that this bill has been raised and we support it.

We oppose Senate Bill 954, concerning electronic recording of custodial investigations or interrogations. This would -- our primary objection is similar to that raised by Mr. Kane. It would exclude perfectly voluntary, truthful admissions without any testimony as to their validity, purely on procedural grounds, whether it's been recorded or not. And thereby it would let guilty persons escape their consequences.

We do not object to any advanced police practices. Mr. Kane spoke of the pilot program. Many police agencies have voluntarily taken up interview programs and are fairly happy with the results although not many have gone to trial. Our agencies have undertaken programs and we'd be happy to speak if you're interested in how we're doing so far.

Many agencies are going to be deterred by the cost as well. It's not easy to prepare an interview room. You need to sound proof it, you need to wire it so that you capture both the subject and the officers. You need to buy and install the cameras, the microphones, the wiring, the storage and retrieval devices. You've got to train your personnel.

We're not sure whether we're going to required to transcribe the statements made and transcription, from what we understand, is quite expensive. We'd certainly entertain funding to promote this promising practice, but we would certainly object to requiring it without any assistance in complying with that requirement.

We also oppose H.B. 6344 regarding eye witness identification -- bless you, Senator. Many of its provisions we're doing already. We got together with the State's Attorney, a number of Chiefs and came up with measures trying to reduce any suggestion from our procedures. We didn't use quite all that are listed in this bill but we did that intentionally. We omitted the blind administrator for a reason, because in many smaller departments it is harder to find somebody who either is not involved in a case or doesn't know about the case, especially if it's notorious.

Judge Borden mentioned a computer program. I don't have one. I don't know who does, but if somebody wants to buy one for us, we'll certainly look at it.

We omitted sequential administration for a different reason because research -- I respectfully disagree with Judge Borden. The research is not conclusive, the scientists are not in agreement. It's very easy to go online

persons arrested for serious felonies. Much like we take fingerprints and we take photographs, this is an additional method of identification. It would add work for the police and for the laboratory. I'd certainly be willing for serious felonies to front the cost which is relatively minimum. The lab, I can't speak for them, what their work load would be.

Importantly it would allow post arrest identification of an offender for crimes he either committed before he was arrested or crimes he may commit while released on bail. It's actually axiomatic in law enforcement, you almost never arrest anybody the first time out. You may catch him once, there's something he got away with. And when he's out on bail, he doesn't necessarily go back to the straight and narrow. He goes back to his old ways and he commits other crimes. We've certainly had first hand examples in our community where you arrest the guy for a rape and you start clearing burglaries because you've got his DNA and those are beneficial to society.

6538 would, in response to Senator Kissel's question, there's a proposal in there that would have a way to collect DNA from somebody who's required to submit but refuses. And you know, we think that's worth looking at. As always, ID by DNA assures both to convict the guilty and acquit the innocent. And certainly with all the questions about photo IDs by witnesses, you want something better than a photo. You want their DNA, which is very certain evidence.

ANTHONY SALVATORE: Representative, Chief Salvatore, I'd just like to add in addition to what Chief Strillacci says our position is, that it's time -- if you're going to look at videotaping

SB954

confessions, it's time now to start thinking about a piece of legislation that lying to a law enforcement officer is a violation similar to federal law where if you lie to an FBI agent, that in and of itself is a violation.

What I'm concerned about is that we get these individuals into an interview, they lie to us, they don't give us a statement, there's absolutely nothing that we can do about it. So if we're going to start looking at technology and using technology as we go forward, then I think it's time to start looking at that as a violation of Connecticut law also.

REP. FOX: Anybody like to ask any questions? Thank you. Senator Meyer.

SENATOR MEYER: Thank you, Mr. Chairman. Yeah, I agree with you about the false statement. We should -- section 1001 of Title 18 of the United States Code provides that you be guilty of a felony and sentenced up to five years in jail if you make a false statement to an agent of the government. It's not the perjury, it's the false statement as you're pointing out and we've -- we lack that -- that kind of provision in Connecticut law.

I just want to ask you quickly about the DNA. The implication of your testimony was that you support this bill on DNA because it relates to taking DNA in serious felonies and that's the wording and that's your testimony. I just would -- to me -- DNA is the fingerprint of the 21st century. We take people's fingerprints when they're charged with misdemeanors, felonies, and we've had remarkable success in this country with DNA in terms of finding out that people who have been in jail for decades, some of them, did not commit the crime. DNA

HB6489

shows that. I think we've had three such cases in Connecticut alone in recent years.

We had a chance to meet one of those people, James Tillman, who met with the Legislature. He'd been in, I think, 18 years for rape and finally, DNA comes out and shows that it was a wrongful conviction. And -- it was how many years? 18 years, yeah. So I'm -- just wanted to hear the reasons why we shouldn't have a broader application of DNA and I think in that connection you referred to cost and I don't -- I don't know enough about the costs to local PDs as to what that involves. And your help in this regard would be appreciated. Thanks.

JAMES STRILLACCI: Okay. We -- again, we're commenting on the bill as is. This is how it was raised. This wasn't our proposal. Certainly the benefits of identification by DNA would accrue if taken for lesser crimes. Certainly it positively identifies a person arrested to make sure that we don't have that alias where you pick them up or he skips his bond, we get a rearrest under the phony name he gave, we drag the wrong guy in and you want to eliminate those possibilities.

More important to us is the ability to identify somebody as the perpetrator of the crime for which he was not arrested. Something prior to his arrest or something subsequent to his arrest and before his conviction. There are people who have been spared victimization where their offender was identified before the final judgment and that arrest. And that's the public safety benefit.

Now, yes, it would be a cost. And you know, the last time we testified on this I brought the latest figures in from my detectives. But the kits that we use are essentially a

glorified Q-tip. There's a stick with a swab at the end of it. And there's a packaging to make sure that we're -- eliminate contamination. I think they're under $10. They can be taken by any trained police officer. It's what they call a Buccal swap. You insert it into the mouth, you scrap it along the inside of the gum and you package it up and you ship it to the lab with appropriate precautions against contamination. Again, serious felonies, it's a relatively small number that we have to purchase. If we were going to do it for all arrests, yes, the figure would go up. But we believe there would be certainly a benefit to public safety to identify people positively.

ANTHONY SALVATORE: And we did support that. I believe -- I think we presented it in 1997 that all arrests should be supported with DNA treated the same as fingerprints and certainly we will continue to support that also.

SENATOR MEYER: Thank you.

REP. FOX: Representative Hewett.

REP. HEWETT: Over here. So glad to have you guys on this bill, really. Because you guys are the front line. And right now, you're working and you're trying to solve cases with stone age methods, I mean really stone age -- we just had Barry Scheck in here yester -- day before yesterday to testify that fingerprints ain't what we thought it was, it really is not. But DNA that's the real deal, guys. That will get you off or that will put you in jail. It's for real. Thank you.

REP. FOX: Are there other questions or comments? Senator Coleman.

SENATOR COLEMAN: Thank you and I want to follow upon Representative Hewett's complimentary remarks. The two of you have been at this for quite awhile. And we certainly appreciate all of your effort and the time you spend up here trying to keep us informed.

Chief Salvatore, I've got a question for you. I don't think it's a very complicated question. But sir, in response to the expression of concern about false information being provided to police officers, I suppose in the context of an interrogation, and the question I have is why would the individual providing that information not be subject to arrest and prosecution for interfering with a police officer?

ANTHONY SALVATORE: Well, it wouldn't be interfering and it doesn't meet the elements of providing a false statement to a law enforcement officer because they would have to have the warning and they would have to acknowledge that they understand that they would be violating the law if they provided us with a false statement. And then they would actually have to -- it's a written instrument that they have to give us, the statement itself. They have to sign it.

SB954

SENATOR COLEMAN: Okay.

ANTHONY SALVATORE: Certainly, that might be able to be modified to include a verbal statement, but in its present form the law does not permit that.

SENATOR COLEMAN: And is the custodial methods -- the interrogation situation providing some distinction -- it would seem to me that I've experienced a lot of cases where on the street if the police officer is seeking information or in pursuit of a suspect and someone else who is

not necessarily involved in the offense is questioned and provides false information. It seems to me that there's at least an intent of an arrest for interfering with a police officer. I could be wrong.

JAMES STRILLACCI: I'm not sure how successful it would be in that prosecution. Whether it would be hard to find that it meets the elements of the offense.

ANTHONY SALVATORE: Yeah, I agree with Chief Strillacci. I don't think we would be very successful. Because we have a specific statute that details false statements. And perhaps the next time Chief State's Attorney Kane is up, you could possibly -- he be asked that question and he'd probably be better able to answer it than us.

SENATOR COLEMAN: Well, it's a little different situation but I guess I suspect that the interfering with the police statute has been resumed on occasion. I've know people who have been arrested merely for a video statement (inaudible) on the street.

JAMES STRILLACCI: (Inaudible) that's a misuse.

SENATOR COLEMAN: Okay. I'm grateful that you agree that that's a misuse, but I was also thinking if it could be used for that purpose then it certainly could be used where people would purposefully mislead law enforcement officers in the course of an interrogation.

ANTHONY SALVATORE: If there was -- I would feel more comfortable if that was actually added to the specific statute. I don't think today though, that I would feel comfortable.

SENATOR COLEMAN: Well, it was a for instance and I appreciate your response.

JAMES STRILLACCI: The devil's in the details. Usually any appearance that requires some kind of interposition by the offender into the investigation, we have -- and you know, somebody was arrested for a particular picture while you're doing your duty, it's wrong. If it gets into the scene and it disrupts the crime scene, that's another matter, that's interfering but there are -- well, judge on the facts of the case.

SENATOR COLEMAN: I got you. Thank you, I appreciate your answers.

JAMES STRILLACCI: Thank you, Senator.

REP. FOX: Thank you, I just have one follow up on the eye witness ID and I realize there are some other questions. Actually, excuse me, the recording of interrogations. I know that you've testified on this bill in the past and I also know that you have at least -- voluntarily -- met many police departments who are voluntarily beginning the recording of interrogations. I believe, Chief Strillaci, you even said in your own department you're initiating that. Do you know what the percentage of departments or how many departments are currently set up or -- to utilize the recording materials?

SB954

JAMES STRILLACCI: It's only a handful. I mean, we're about six local departments and the pilot study reports are doing it on their own. For awhile -- New Haven's been doing it. Torrington said that they're applying for a grant for one, but they're not there yet. Again, there's some lead time required on this. We decided to go ahead with it last fall.

We had to secure the funding, had to order the equipment, get it installed, there were delays on parts, they couldn't get the right wires. And we had a leg up because we already had a room for our polygraph that has audiovisual capability and a server. So we didn't have to buy the server, we just had a cable to it. Even so, we had issues with the installation and then with the software, the version of Windows used by the AV equipment was not compatible with the monitors used by our detectives when they wanted to use the monitor with the interview going on. So it's not as easy as plunking a, you know, Radio Shack tape recorder on the table and pushing the button. If you want to do this right, you need to invest some time, some research and some money into it.

I think we only spent about $4,000 on the most recent equipment and four thousand and change -- but we had already made an investment of $24,000 and change in our first room with the polygraph in it so that saved us a lot of money. And we still don't know what the effect is going to be. We got it up and running six days ago. We haven't had any major crimes that we've used it yet. So we're still in our infancy. But we are making the steps toward it. We think the practice is going to be beneficial. We just don't know what all the fine points and the wrinkles that we're going to encounter.

I know Mr. Kane and Mr. Smirga talked about some of the practical issues and we've testified it eh past that there are -- there are going to be some glitches because we haven't anticipated all the problems. But we're working towards it.

REP. FOX: Is your primary concern the perceived cost issues?

JAMES STRILLACCI: Our primary concern with the bill as it's written is is it going to chuck out confessions that are not on tape whether they're good, whether they're bad and they're valuable evidence. And not only the confessions, I might add you're going to lose any evidence that flows from the confession. If you get a bum confession and the guy says, "Well, I threw the gun out here" and you go find the gun which is good evidence on its own but it flowed from an invalidated confession, you're going to lose that evidence. If he tells you where he buried the body and you find the body, you're going to lose evidence.

So we've got to be very careful about what we use to encourage police officers to comply with the latest trend. And I think the suggestion that Justice Borden made is a good one whether it comes to identification or whether it comes to recording. We study it, we work together to get the best practice and police departments will voluntarily flock to it because it's going to become the standard.

ANTHONY SALVATORE: For the record, our association would be happy to be part of both of these if you were to go forward with the study.

REP. FOX: Okay, and I do agree with your concern that a otherwise valid interrogation would be -- would potentially lose valuable evidence such as you described, the location of a body or some other element of the crime was revealed, but if that can be worked through so that that is not the case, is the practice of recording interrogations, cost notwithstanding for the moment, is the practice of that something that you would be behind?

JAMES STRILLACCI: Yes, yes I believe we would. I think our association would be behind that as long as it's not required or else.

ANTHONY SALVATORE: Yeah, because we'd hate to lose the admissibility of the statements and anything that's derived from that. And then we're also very concerned when we do do multiple interviews, if you only have one room set up, what are you going to do? Pick and choose? You know, the Chief has already given you reasons why you've got to run them at the same time and you just don't have some opportunities and we hate to be able to have our cases being thrown out for those reasons.

JAMES STRILLACCI: We also may have occasions where we don't know that's required. Where you get somebody that you think is a witness and ends up confessing to it. It's unanticipated. Or you get somebody who you're talking to on a minor crime and they confess to a major crime. So you'd have to say stop and go into a room where you can turn on the tape recorder in order to satisfy the law. Or you'd have to make the argument in court that that was a good reason not to.

REP. FOX: And I understand the logistical concerns within various police departments and the evidentiary concerns if you get an otherwise valid confession but for whatever reason at the time it's not recorded. But I do believe that we've evolved to the point where everyone agrees that as far as a practice, a law enforcement practice, it's something that we want to see in the future.

JAMES STRILLACCI: Agreed.

REP. FOX: Okay. Representative Verrengia.

REP. VERRENGIA: Just on a personal note, I've had the honor and privilege as a West Hartford police officer for the past 21 years to work under Chief Strillacci and in my biased opinion, you're one of the best around.

Chief Salvatore, I haven't had a chance to really work with you but I look forward to working with the both of you as we move forward.

JAMES STRILLACCI: Thank you and congratulations on the election.

ANTHONY SALVATORE: Thank you.

REP. FOX: Representative Hetherington.

REP. HETHERINGTON: Thank you, Mr. Chairman. And thank you, gentlemen, for being here. I'd like to find out a little bit about meeting the cost of the equipment, the arrangements and so forth. How is that cost borne in the cases where it's been done or how would you expect it to be done?

JAMES STRILLACCI: Okay. Some of the pilot program had a grant that funded it. I believe it was through this body. Our local effort, we took asset forfeiture money for the original installation of the polygraph unit and the server. We were able to fund the additional equipment out of our detective equipment budget. We did have money sufficient and we had to do some other things. We didn't buy -- we made the conscious choice to buy this instead. I'm not sure if all communities would be able to do that.

ANTHONY SALVATORE: Torrington's got a grant.

REP. HETHERINGTON: So in the absence of a grant it would be part of the budget for the police department for the particular municipality?

JAMES STRILLACCI: Correct.

ANTHONY SALVATORE: Yes.

REP. HETHERINGTON: Is there any federal money available for this?

JAMES STRILLACCI: Well, we're learning that some of the federal grant programs that have supported us in the past are being looked at very hard at the congressional level and we may not see funding at the same levels. Many of those are competitive. There's no guarantee that you're going to get a grant. When you apply for it, it doesn't mean you're going to win it.

REP. HETHERINGTON: Thank you very much.

JAMES STRILLACCI: Thank you.

REP. FOX: Thank you. Are there any other questions from members of the committee? Senator Coleman.

SENATOR COLEMAN: This is sort of a playful jab so don't spend too much time with it, but it is the case, is it not, that police officers do not have to be truthful or forthright with the accused individuals in the course of an interrogation?

JAMES STRILLACCI: Yes, it's been held by courts that deception in interrogation can be a viable and legal technique.

SENATOR COLEMAN: I forget what the court's rationale is for that. What's your rationale for that? Why would you justify that?

JAMES STRILLACCI: Well, I don't generally hold with it as a good procedure because -

SENATOR COLEMAN: Okay, that's sufficient.

JAMES STRILLACCI: -- a good interrogator bases his work on trust. You builds a rapport with the suspect. You make him empathize with you as a human being, you gain his confidence and he confides things to you that are really not in his best interest. Lying to him is not necessarily a good idea. There are some that have said, "Well, your partner's in the next room confessing," hoping that will force a confession. I think it's very easy to burn your bridges that way very quickly.

SENATOR COLEMAN: Thank you. Thank you for indulging me, too.

REP. FOX: Thank you, Chairman Coleman. Any other questions? Thank you, gentlemen.

JAMES STRILLACCI: Thank you for your attention.

REP. FOX: Next is Colleen Murphy.

KATHLEEN ROSS: Good afternoon -

REP. FOX: Good afternoon.

KATHLEEN ROSS: Senator Coleman, Representative Fox, I'm not Colleen Murphy, I'm Kathleen Ross. Colleen Murphy could not be here due to a prior commitment. I'm a staff attorney with the Freedom of Information Commission. I'm here today to speak in opposition in part to Senate Bill 954, AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS.

The Commission submitted written testimony and I will keep my remarks brief. Essentially the Commission's concern with the proposal relates to the nondisclosure provision contained in lines 73 to 78. A video recording created under the proposal would fall squarely within the definition of a public record under the Freedom of Information Act.

Accordingly there should be a presumption in favor of disclosure of such record under the Freedom of Information Act. However, under the proposal as written, video recordings would be forever exempt under the Freedom of Information Act, even in instances where the recordings have been in public during a criminal trial.

And I believe the Chief State's Attorney already alluded to this in his testimony that this result really doesn't make a lot of sense, because once the video recording is made public at trial, it's public, but yet under this proposal an individual requesting the recording would not be able to get it under the Freedom of Information Act. So at a minimum the proposal should be amended to provide that the recording would be available at the time the recording became public at trial.

The Freedom of Information Act already contains an exemption for records of law enforcement agencies. As I've already noted, video recordings would be public records just like other video recordings maintained by law enforcement agencies or written confessions. And law enforcement agencies could deny a request for such records based on the law enforcement exemption if the agencies believed, for example, that disclosure of such records would be prejudicial to a prospective law enforcement action. The Commission has adjudicated many, many cases in which this

exemption has been claimed and in cases where sufficient evidence has been provided to the commission to prove such exemption, the commission has not ordered disclosure of these records.

Subjecting the video recordings to the same test as all other public records preserves the balance between the public's right to know and law enforcement officials ability to do their job. Thus the commission submits that the nondisclosure provision in the proposal is redundant and unnecessary and contravenes the spirit of the Freedom of Information Act and asks that such provision be stricken from the proposal. Thank you. Did you have any questions?

REP. FOX: Thank you, thank you very much. Are there any questions? Thank you very much.

Next is Barbara Fair. Good afternoon.

Excuse me, if you could just hit the button for your microphone. Thank you.

BARBARA FAIR: Thank you for the opportunity to come before you to testify on Bill 6539, AN ACT CONCERNING SENTENCE MODIFICATION, an act that will grant permission to a person sentenced to three years or less of incarceration to seek review and modification of his or her sentence regardless of whether or not the prosecutor is in agreement.

HB6415

I have wondered why it was necessary for the prosecutor to agree to an individual's request for relief from a sentence. I am certain that in most cases, one who sought the conviction and recommended the sentence is not likely to change their position at some later date. No one person within our system of justice should

would know that the person has or hasn't given the DNA sample. And then the court would be able to use that information in deciding what level of security the person would be placed at assuming that they're committed to the PSRB.

Similarly, the PSRB in subsequent hearings would be able to ask these questions. All of the PSRB hearings about patient movements out of maximum security to lesser security are all adversarial hearings at which the State's Attorney is represented, the public defender is represented and all of the board members can ask questions. So they would be able to take that into consideration as well in deciding whether to give a particular acquittees a lesser degree of security than their current placement.

So that's the essence of what we're asking for. If there are any questions I'd be happy to answer them.

REP. FOX: Thank you for your testimony. Are there any questions or comments from members of the committee? Seeing none, thank you very much.

Next is Senator Martin Looney.

SENATOR LOONEY: Good afternoon, Senator Coleman and Representative Fox and members of the Judiciary committee. My name is Martin Looney. I am the state Senator from the 11th District and the Senate Majority leader.

And I'm here today to testify in support of two bills. First, Senate Bill 954, AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS and secondly, House Bill 6344, AN ACT CONCERNING EYEWITNESS IDENTIFICATION.

Regarding the custodial interrogation recording, I believe that this procedure would be something that would protect both police and suspects in the interrogation process. And this bill, Senate Bill 954, would move our state in this direction.

While historically law enforcement officials have viewed taping of confessions with some trepidation, once they begin the process many of them become advocates for it. Our Chief State's Attorney, Kevin Kane, has been helpful in increasing the use of taping custodial interrogations and trying to help create a few pilot programs in the state.

And also, I would be happy to share with you a report from the Northwestern University School of Law of police experiences with recording custodial interrogations that points out that police who become familiar with this system become supportive of it because they realize that it actually helps them, as well, to avoid accusations of improper conduct in the course of interrogations.

The second bill, House Bill 6344, AN ACT CONCERNING EYEWITNESS IDENTIFICATION, I'm testifying in a way that is both supportive of and would draw your attention to the testimony of Justice David Borden earlier today on that same bill. This is clearly an issue of great significance because everyone involved in the criminal justice system is aware that eye witness identification can be a double edged sword. It is prone on the one hand to stunning inaccuracy but at the same time is often the most compelling testimony in the courtroom.

So therefore we have an obligation to insure that this testimony is as accurate as possible. And House Bill 6344 would reduce the

SENATOR KISSEL: Thank you very much, Mr. Chairman. Senator, great to see you this afternoon.

SENATOR LOONEY: Good to see you, Senator.

SENATOR KISSEL: My concern with 954 is I think you've won the war and now we just have to figure out how to move forward from there. You and I have served together on this committee in past years. I've been on this committee for, you know, going on 17 years and yes, there was a period of time where I think philosophically, law enforcement was absolutely opposed to videotaping and recording interrogations.

I don't think that's the case right now in Connecticut. The testimony of Chief Salvatore and Chief Strillacci is that the pilot proposals that were moved forward with the cooperation of the Chief's State's Attorney were a success. I think law enforcement is ready to move forward whether it's a large city or a smaller municipality.

The concern that I have is that if we -- it seems rather draconian and extraordinarily heavy handed that if a police department doesn't utilize this technique that some very important evidence could be excluded from trial and the net result could be there's no justice and that someone who is guilty of a crime might go out free and commit further crimes.

And my concern is that I think we as a state are ready to do this but that the municipal police departments are saying "Fund us." They need funding to train their police officers. And it seems rather complicated a little bit right now for dual interrogations and making sure that departments have certain set areas to conduct these interrogations while also filming it appropriately.

And so I think that there's -- I think that we have to say that there is a price tag associated with this and we've all heard that municipalities don't want further unfunded mandates and so -- I like the idea with the other proposal regarding the study committee, how can we move forward, get on the same page and implement best practices.

I think we're in agreement now on your first bill that what the best practices is is to go forward with this. I don't think that we need to coerce them into doing it. I wouldn't want to see any criminals not be convicted because a municipality didn't have the financial wherewithal to move forward with this.

So what's your response to my feeling that we really need to figure out a way to pay for this and a proper time line to let police officers be appropriately trained and so that they have the proper equipment that is changing all the time be purchased? And then I think we'll have it in the state of Connecticut. I mean, I can really see this happening in a few years if we as a state help them financially. Otherwise the towns are struggling and I think the net result might be problematic.

SENATOR LOONEY: Well, I agree, Senator Kissel, that is, I think that this is something that we could phase in over a period of years perhaps in terms of starting with the largest municipalities first and then phasing down to smaller ones, in terms of looking at that in terms of budget and impacts. And I think there are ways to do this in a way that is not unduly burdensome.

On the other hand, clearly it would be a mandate, there would be some additional

municipality cost. But we're also here talking about something that is fundamental justice, too. So I don't think we should just look upon this as just another mandate like requiring people to file another report. This is something that implicates the quality of our justice system. So it think that we need to try to find ways to make this happen.

Clearly it can't happen overnight. We also need to build in some protections for a good faith effort by police where perhaps you have a an equipment malfunction and because of some technical failure that should not be used as an exclusion for -- to have the good evidence not come in.

So I think we do have to find a way to build in those protections just as we do in other ways. But clearly this is not an effort just to try to find a way to discredit good evidence. It's a way to make sure that best practices are used in the conduct of interrogations.

SENATOR KISSEL: Well, Senator, I very much appreciate the candor of your answer. Certainly we're dealing with very weighty matters and what is actually the best practices for us as a state to move forward to make sure that justice is attained and that's not just for the guilty but to exonerate the innocent.

But I like your first idea better that perhaps we should start with our larger municipalities, get some funding streams, roll that forward and then in a few years, we will have this procedure. So thank you very much.

REP. FOX: Are there any other questions for Senator Looney? Representative Holder-Winfield.

ANDREW SCHNEIDER: Thank you. It was an important issue, thank you.

SENATOR COLEMAN: Michelle Cruz.

MICHELLE CRUZ: Good afternoon, Senator Coleman and distinguished members of the Judiciary Committee. My name is Michelle Cruz and I'm the state Victim Advocate and I run the Office of the Victim Advocate.

My office has submitted numerous volumes of written support and opposition to various bills today. However, what I will do today is I'll just comment on some of the highlights on a few bills and then read the testimony on two more important bills that relate to victims.

First of all, I just want to comment on the Office of the Victim Advocate did provide supportive testimony on House Bill 6537 regarding speedy trials. The victims in the state of Connecticut have a right to a swift disposition in their case and this would assist in those misdemeanor cases. The only addition that the Office of the Victim Advocate would ask for is in cases where an offender is challenging the speedy trial right, instead of immediately releasing that individual, the Office of the Victim Advocate would ask that a prompt bail or bond hearing be allowed to address the incarceration of that particular individual. The reasons for that are described in our testimony as well.

SB954
SB1099
HB6367

With regards to witness ID which is House Bill 6344, as a testimony today already suggests, there are best practices that will guide witness identification. But as you've heard for a myriad of reasons, codifying these guidelines is not desirable at this time.

These guidelines as I understand them stand apart from the National Institute of Justice and within that publication it does suggest that these are merely guidelines and should not be set aside as hard, fast rules. Every particular state should come up with their own guidelines based upon their unique situation within the law enforcement offices and also, their individual budget. And I would encourage the creation of the task force that you heard today.

I would also encourage for -- and this also will relate back to the interrogations in a moment -- for us to support the police departments in our state because many times I hear from police departments that they're looking for grants, that they don't have the staff to dedicate to looking for these grants on a 24 hour 7 day a week basis. The grant solicitation process is sometimes cumbersome.

And so if there's a way that we can support police departments in identifying grants that are applicable to them and that will create some of these best practices cemented in equipment and/or funds that they could have, that would be really a good result towards bringing the state to the standards and practices that have been recognized nationally.

Now, with regards to interrogation, as you've heard several times, I don't mean to belabor the issue that I used to be a prosecutor, but I used to be a prosecutor and when I was a prosecutor, I prosecuted in Springfield, Massachusetts, which does do the electronic interrogations. And what I can tell you from my experience is that there were some interrogations where you would see the offender and then they'd get up and leave because they don't want to be recorded.

SB454

There was another issue that came up pretty much periodically. I'd say once every two to three weeks I'd get a motion from a defense attorney asking for the video or the DVD of the interrogation. And the issue that Springfield had -- they're a very large department, there's a very large force is they had one full time, one part time person doing all the copying of the DVDs as well as the 911 tape duplications for trials. And when they do the 91 -- when they do the video duplications, you had to come up with four DVDs. You need one for the defense, prosecutor, police and then you need to keep the original in the department.

And my understanding was that this was a very -- and I've seen this --a very large piece of equipment. Not every department will choose to have this size of equipment but it's very expensive. And so even though this is an ideal and we're working towards getting there, the issue for victims is we don't want to create ways for cases to be sidelined because we financially can't come up with these video recorded interrogations.

And the request that I would get would constantly detract me from my case load to calling the police, making numerous phone calls. And I would always hear the individual who did the duplication say, "I've got about 400 video tapes I'm trying to do." I mean, he was just inundated.

So when we're looking at the cost, it's not just the cost of the equipment. In the bigger cities it's going to be the cost of having someone designated to make these duplications in a timely process so that discovery obligations are fulfilled and that there aren't any negative ramifications for that.

And so I would encourage the Legislature to look at this issue, look at it as a place that we're going. But codifying these particular guidelines in a way that could negatively affect a criminal case -- it will negatively impact crime victims because if the case is sidelined because a department couldn't do this and then maybe didn't have the officer available to come testify to explain that particular department's financial restrictions, that case will probably not live throughout the initial prosecution.

Now there's two particular legislative proposals that directly impact crime victims. The first one is Raised Senate Bill 1099. Now you heard this morning from a family member who was negatively impacted from the fact that we don't have this law here in Connecticut. And as you know, crime victims in Connecticut have a constitutional right to be treated with fairness and respect throughout the criminal justice process.

This particular bill will make it illegal for first responders who respond to a request to provide medical or other assistance to a person from taking or transmitting photographic or digital images of that person without that person's consent. It is unthinkable to think that this would occur, but sadly, this does occur.

And as I was looking for cases, I Googled, which apparently is my favorite tool because we keep talking about it this week. I Googled this particular behavior and I found three other states that this has happened. And in each case, it was -- one case was a fire department and in one case it was the California Highway Patrol and another case was

will only be compounded. The solution is to address the community distress and distrust and find ways, again, to make those communities come forward in a manner in which they feel safe and supported. The list of negative ramifications are endless with regards to this bill. I strongly urge the committee to reject House Bill 6367.

And I'm ready to answer any questions you may have about the proposed legislation that I testified on.

SENATOR COLEMAN: Thank you. Senator Kissel.

SENATOR KISSEL: Attorney Cruz, great to see you this afternoon.

MICHELLE CRUZ: Good to see you.

SENATOR KISSEL: One of the folks that hung with us for many hours on Monday as well.

Regarding the first bill on our list, the electronic recording of custodial interrogations, I appreciate your insight based upon your past practices as a state's attorney in the Commonwealth of Massachusetts.

SB454

And I listened to Senator Looney's statements and I have to acknowledge while he did not pull back from the fact that he's supporting the bill and has strongly supported it because of the seriousness with which it deals, I also have to strongly acknowledge we don't want to move forward with an unfunded mandate. I don't want to support something that will have -- because a municipality may not have the wherewithal to move forward with this -- some very dangerous criminal escaping justice. That would be terrible as well.

He has suggested in response to one of my questions that perhaps we could start -- I don't know if it would be specifically a pilot program, but directing resources to some of our larger municipalities such as New Haven and some of our other large cities and making sure that they have the training and the equipment to move forward and go from there. And my question to you is based upon your experiences and your legal background, do you think that's workable and would that set up a system where defense counsel and other municipalities may challenge procedures and point to an urban area and say, "Well, you know, if you were doing anything in Hartford or New Haven, how come you're not doing it in Windsor?"

MICHELLE CRUZ: I think it's a good -- it's a good suggestion. My only concern is that the cost -- the cost associated with bringing up a very large city to be able to create these electronic interrogation videos for all those cases -- you can't -- if only half of the cases in, let's say, Hartford, does the electronic interrogation, then within that department you're going to have exactly what you're talking about. Defense attorneys challenging why did Jim Smith get this and not Sarah Smith or whatever.

So the concern is we need to look at how much that's going to cost. What are the devices that are going to allow a bigger city to make the volume of copying of these interrogation videos over a long period of time. And the type of equipment is actually pretty expensive. It's not just a small DVD you can do in your office. It's actually got to be a bigger system so that we can produce a lot of duplicates.

I don't -- I mean, I see this that there might be an issue with one town versus one city, but I see it more as if we're going to start this pilot program, we need to make sure that we can fund the entire department that were choosing. So maybe starting with smaller departments because those might be -- actually be fiscally more -- might be in a better position to actually bring them up to speed.

The other issue I see though, is when we were doing the Magnano investigation, one of the police departments mentioned that they didn't even have 24/7 911 dispatchers. So we have some departments that are just -- they are struggling economically and so I just want to make sure that we're not -- we're not going to be pulling funds from, let's say a different part of the department to then create this mandate and then have other areas of the department not financially supported.

And so I get concerned when we're looking at the cost, when I know that it's an expensive endeavor. And this particular individual was listening to phone calls all day long from all the prosecutors of that particular office asking for videos and that was just one city.

So I think that -- and that is a problem with making it a codified rule. But I think that if we do a pilot project it would probably be best to start in the smaller departments so that we can see the unintended financial consequences, implement some changes there so that the financial burden isn't as great as it would be in a bigger study.

SENATOR KISSEL: Thank you. I really appreciate your insights regarding that. Thank you very much. Thank you for all you do for the victims, too.

to release to the victim advocate or the victim's advocate can address that?

MICHELLE CRUZ: Exactly.

SENATOR COLEMAN: Okay. Thanks. And on the electronic recording, I suppose you relied upon your past experience as a prosecutor and you were describing a scenario where the person that's responsible for recording was consumed with trying to do multiple recordings to satisfy the discovery requests and I'm trying to grasp the practicality of the multiple recordings. If there's a discovery request made to a law enforcement agency, isn't the agency responsible for responding to that particular discovery request and beyond that, isn't the person who receives that document or recording or whatever it is responsible for disseminating it to the other parties involved?

SB954

MICHELLE CRUZ: Exactly. What I was referring to is when there's the interrogation, there's the initial interrogation and the only piece right there would be the police officer pressing play and then recording the actual interrogation. From there, however, the -- that particular recording then needs to be duplicated. And you need to make a copy for the defense, the prosecution, copies for the police and they keep an original on file.

So there was an individual in the Springfield Police Department in Massachusetts who was responsible for that task. And so he would create the duplicates but there were so many that he would be overwhelmed. Because he was also responsible for creating the duplicates of the 911 tapes as well, which are pretty standard, that you would ask for a 911 tape in almost every, at least, domestic case.

And so when we're looking at how to fund this particular electronic interrogation policy, and/or codify it, we're going to need to look at departments that are larger like Hartford, Bridgeport, New Haven and do they currently have a staff person who can handle what's going to be a large volume of duplications. And it sounds like a minor issue, but it became a very big issue with this particular department, only because there were so many serious crimes, so many interrogations that making all those copies became very taxing on the particular department.

SENATOR COLEMAN: What would be a problem that you might foresee if the police department was responsible for supplying the State's Attorneys Office with a copy of the recording and then in the course of discovery, the defense comes to want access to that recording, that that request would be made to the State's Attorney's Office?

MICHELLE CRUZ: Well, that's how it was done in Massachusetts, the request would come to -- when I was a prosecutor -- to the prosecutor. The prosecutor would ask the police for the copy, but that same person who was making the copies had about -- hundreds of requests to make these DVDs and other interrogations and also --

SENATOR COLEMAN: You're saying that the person upon receiving a request for the record in question would be consumed in making four copies, one for the State's Attorney's Office, one for the defense, original, I guess, kept in the police department and I guess there was some other copies that were made and disseminated, I'm not sure for whom. My suggestion is why wouldn't the system be to supply the State's Attorney's Office -- just as we've done now with the

written -- if there's a written confession, that goes in the State's Attorney's file and if there is a defense attorney who's interested in that confession and other statements that apply to the case, that are pertinent to the case, then it's not the police department but the State's Attorney's Office that would be responsible for providing disclosure or disclosing those statements.

MICHELLE CRUZ: Well, I think the difference is if I am -- so copying this paper, I can just go over to the copier, press photocopy and that's pretty nontechnical. The chance of my -- the statement getting destroyed in the copier are probably slim to none.

However, as an attorney or an investigating officer I may not be in a position to create duplicates of those DVDs. Whether it's the prosecutor getting a copy or the police somebody has to manually make copies of the original. The original will have to stay with the police then they'd have to have a copy for the -- at the very least for the defense attorney and the prosecutor so that right there is three copies.

You have to have a system that's going to allow you to make those copies and not worry about the original being destroyed. So what they would usually do is they'd make one copy of the original and then make the other copies from that copied original. And so if you're talking about one case and even three DVD's that's one thing but when you have, let's say, 25 interrogations in March, 25 in April, that starts to build up. And the investigating officer, especially if it's a detective in a homicide or a serious assault or one of those more serious defenses, that officer is not

going to be the one making the copies because they're going to be busy investigating crimes.

So then you have to have a person in the department who is designated either because they're a technical person like the person who is doing the 911 tapes in Springfield or someone who is familiar with that procedure who can make those copies and who can respond to those requests. But it's not going to be -- a prosecutor is just not going to be able to go over to the police and say, "I need three copies today." It's going to be a little bit more involved than that. And I'm just saying that if we're going to be thinking about this, we need to think about their -- some departments are going to need to hire someone to do that or increasing these hours or find a body to be able to make those copies, especially in these bigger departments.

SENATOR COLEMAN: Yeah. I suppose either the police departments are going to hire people assigned to that responsibility or State's Attorney's offices will have to hire people to do that.

MICHELLE CRUZ: Well, you -- the way that I see it is that the police are not probably going to give the original DVD to the prosecutor so somebody at the police department is going to make a copy and then maybe the State's Attorney is making copies of the DVDs. I mean, one way or the other, I mean, the police department wouldn't be wise in just handing out the original to the prosecutor just because you don't want to lose that.

SENATOR COLEMAN: And I wouldn't suggest that they do that. But yeah, I think I understand. Thank you. Representative Adinolfi.

REP. ADINOLFI: Thank you. I -- you're not allowed to send these recordings or what you have on DVD via email to the other departments and let them download it?

MICHELLE CRUZ: I mean, I think you could do that but -

REP. ADINOLFI: And make their own DVD, I'm sure they're all equipped to do it.

MICHELLE CRUZ: I mean, I think it would depend on the system that you have. I mean, for instance, right now the way that the statute is written these are -- these particular -- the interrogations are supposed to be confidential. So for instance, the Office of the Victim Advocate, everything we do is confidential if it involves an investigation of a case or a complaint. So we can't network with any other system. We have networks individually.

Right now, I don't believe the State's Attorney's offices are networked individually. I man, so there could be some issues with confidentiality. And we all know that there are viruses and bugs. Do we really want to be sending interrogations through the email?

I mean, there are some departments who I know do that, but the better option would be than to make a copy and you know, maybe have the state's Attorney's email it to the defense attorneys. I mean, I'm just not sure of the legalities. The concern I almost have and I'm not a technical person, I prefer paper, I always have.

But the more down the line we get with technical stuff, whether it's from a DVD to an email the more complications that can occur. And so I don't know -- I think it would have to

be up to the particular department to decide whether or not they're going to email it.

And I know in some departments the individual officers don't have email. So then we have to figure out which departments have access to email because we have -- we have a list that goes out to police departments and I know some of them are limited with secure access as well. I mean, they have the main system but they may not have an individual system.

REP. ADINOLFI: I know that if you sent me or you gave me a DVD of a particular case and maybe many more, I would immediately put it on my computer because I don't want to go looking for the DVDs anymore, just set up a file. And I can have as many as, you know, a couple of hundred, easy, right on my PC and I'm sure that's actually happening so I think there might be a way around spending all the money making copies as somebody who's through -- it gets easier every day. Thank you.

SENATOR COLEMAN: Are there other questions? Seeing none, thank you, Michelle.

I think I'm mistaken, John Smirga testified already. Jennifer Zito?

ED GAVIN: Good afternoon, Chairman Coleman, members of the Judiciary -

SENATOR COLEMAN: You don't look like Jennifer.

ED GAVIN: I'm not as good looking as Jennifer Zito, our President of the Connecticut Criminal Defense Lawyers Association, is home with an injury so I've been asked to step in and testify on two bills this morning. 6539, AN ACT CONCERNING SENTENCE MODIFICATION and 6367,

committee before. It should be rejected again. It's a bad idea. It's like a bad Seinfeld episode. We already have a mandated reporters law in effect. It's unconstitutional. Individuals have the right to remain silent. There's a federal provision for misrepresentation of a felony which requires defendants that are prosecuted for concealing actual knowledge of the commission of felonies an affirmative act. Under this bill as it's drafted it doesn't require any action on an individual other than the mere failure to report a felony constitutes a violation.

It's inconsistent with modern rights of privacy and I think if you asked any experienced law enforcement professional, they will tell you that if they went out to go interview somebody that they believed had witnessed a crime and had to advise them that it was a crime for them failing to report and advise them of that right that that individual would most likely not say anything to the investigators. And so I think it's a terrible idea. It's been rejected before and on behalf of CCDLA, we would respectfully request the committee to reject it again. Thank you for your time.

SENATOR COLEMAN: Thank you. Are there questions? Since there's no request for questions, thank you for your testimony.

James McGaughey.

JAMES MCGAUGHEY: Good afternoon, Senator Coleman and members of the Committee, my name is Jim McGaughey and I'm the director of the Office of Protection and Advocacy for Persons with Disabilities. For those of you who don't know us, we're a small independent safeguarding agency that investigates abuse and pursues legal and administrative remedies for

SB954

disability discrimination. We also provide a lot of information and advice to individuals with disabilities and their families about civil rights issues.

I'm here to testify in support of Senate Bill 954, the act about electronic recording. I have submitted written testimony. I don't intend to read it. Actually I've been to this committee I cannot remember how many years in a row to testify in support of this bill or a different version of it. So I sort of memorized my speech.

But basically our office's interest in this grows from the fact that custodial interrogations are situations that really can affect people with particularly intellectual disabilities or autism spectrum disorders, brain injuries, certain types of mental illness such that the way they cope with those situations often is to try and please the authority figure that's interrogating them. And it can result in false confessions and wrongful convictions. So we think that the recordings that are required in this bill would be an important safeguard against that happening. And that's the reason we're supportive.

I am heartened to hear the progress that has been recounted today and to see the change over time in terms of the fact that the law enforcement community, which you're quite correct, did resist this idea initially, now sees it as a best practice and we're talking about logistical problems and evidentiary presumptions and what the rules ought to be about that. I would just say that if you're contemplating some kind of a task force, it doesn't produce another study. We already did that awhile ago. I think it has to produce an

implementation plan and that -- let's get it done. Because the other factor, besides logistical issues and evidentiary presumptions is the fact that there are people out there who are very, very much at risk of being wrongfully convicted without these recordings. So you should feel some urgency about getting this done.

And that's pretty much what I had to say so thank you for your attention and if there are any questions, I'll try and answer them.

SENATOR COLEMAN: Thank you. Other questions? Seeing none, thanks for your patience and your testimony.

JAMES MCGAUGHEY: Thank you.

SENATOR COLEMAN: Mickey Hurst? Gail DeLucia.

GAIL DELUCIA: Good afternoon, Chairman Coleman, members of the -- dwindling members of the committee, thank you.

I am here in support of Raised House Bill 6539, AN ACT CONCERNING SENTENCE MODIFICATION and Raised House Bill 6475, AN ACT CONCERNING MANDATORY MINIMUM SENTENCES.

I was a jury foreman on a mandatory minimum case for a repeat offender, a young man of color, back in, I believe, it was 06 or 07. He was a passenger in a car driven by a young female who was on probation. He saw her at a convenience store in a high crime area of New Haven when he asked her for a ride. She nervously asked him, "Are you clean?" He convincingly replied, "Yes, I am."

Well, the -- she decided to give him the ride and the undercover narcotics unit was on patrol

JOINT STANDING COMMITTEE HEARINGS

JUDICIARY

PART 7

1950-2303

2011

Richard Emanuel.

RICHARD EMANUEL: Good afternoon, Senator Coleman, distinguished members of the committee, my name is Richard Emanuel. I'm here today representing the Connecticut Criminal Defense Lawyers Association. I'm here to speak in favor of Raised Bill S.B. 954. And we have submitted written testimony.

CCDLA is strongly in favor of legislation that would require the electronic recording of custodial interrogations. I was therefore very heartened and delighted to hear the testimony this morning from Chief State's Attorney Kevin Kane and from State's Attorney John Smirga. I watched it on television before I left for Hartford and I grabbed a pad and wrote down some of the comments. I heard the Chief States' Attorney say, quote, the tide really has changed. He said that twice. He said police departments that wanted to record were, quote, unquote, lining up. And that, quote, more and more departments have the needed equipment.

And I heard State's Attorney John Smirga say, quote, it's a recording, it's a desirable practice that helps everyone, that the resulting product, quote, is good for everyone and it's absolutely a good thing.

I also heard Senator Looney's comments a few moments ago and I was not here in the middle of the day but I was informed that former chief -- former Justice Borden also spoke generally in favor of recording.

So I'm not going to spend any more of your valuable time to tell you that we think that this is a good idea. It's a great idea. Its time has come and we urge you to act on it.

Having said that, we do have some reservations, some concerns with the raised bill as drafted and I'd like to turn my attention to that.

First, right now as drafted it only would relate -- the recording would only relate to a capital felony or a class A and B felony. We think this could be problematic for a couple of reasons. I was looking yesterday at statutes from other states that have statutes that require recordings and every state takes a different approach.

We like New Mexico. Their standard is if the person is suspected of committing a felony offense, recording is required. The DC code talks about crimes of violence. North Carolina limits it to homicide investigations. In some states, New Jersey, by court rule, they list about 20 specific offenses.

One of the problems with doing that is when a person is first arrested or brought in for detention as a suspect, you cannot be certain what crime they are ultimately going to be prosecuted for.

The police -- when the police make an arrest in Connecticut whether it's with a warrant -- may I have a moment to continue?

SENATOR COLEMAN: Please.

RICHARD EMANUEL: Thank you. Or a warrantless arrest, they fill out a Uniform Arrest Report on which they specify the charge or charges for which the person has been arrested. Okay. Once that person is presented in the courtroom, it's a whole different ballgame. It's up to the prosecutor -- the prosecutor has considerable discretion as the case works along

through the system to increase, decrease, add or substitute charges.

And therefore, our recommendation would be that the statute should simply be worded in terms of felony in general without specifying A or B felony because someone can be brought in for a misdemeanor investigation that can turn into felony charges. And the opposite is also true.

So that's the first concern. We have the second is that the bill doesn't say anything about the advisement of Miranda rights and the waiver of Miranda rights. Custodial interrogation is defined in the bill as questioning initiated by law enforcement officers, et cetera. In many states there are statutes specifies that the recording shall include the advisement of rights and the suspect's either waiver or whatever the suspect says in response to that advisement of rights. That's critical, that's a critical part of the inquiry here.

I'll only make one other point. Some of these things and a few other points are covered in our written testimony, but a member of the committee alluded to this earlier this morning. I think it was Representative Baram. Subsection H, we think it's also problematic because it seems to be a subsection on which prosecutors could easily rely to gain admittance of a statement that has not been recorded.

And the fourth and final thing I'll say is that I've listened to many of the comments today about timing and the money concerns about doing this. I'd like to make just two quick points. The first is, I think you have to understand that there's a difference between the ideal and the acceptable. The ideal would be newly

constructed sound proof rooms with built in camera systems connected to sophisticated computer equipment. That's the ideal. But it's going to be awhile before every police department has that. In the meantime, there are probably less expensive video, audiovisual devices that could be used to accomplish the same purpose.

And my final comment is that if you were to pass this bill and perhaps not make it effective October 1st, put it back somewhat to give police departments more time to get the necessary funding.

There is one other possible temporary stop gap measure. And that is you could include a provision that says between the date of passage of the bill and it's effective date, when audiovisual is required, that an audio recording alone would satisfy the requirements of the statute. Because what we really want here -- the notion or concept that animates the need for recording is nothing less than the fallibility of human memory. People cannot accurately remember and recall what someone says.

You know, there were recent -- I've read some studies saying that the average person starts -- memory starts fading of what you hear after 80 syllables. Not 80 words, 80 syllables. And that's why an audio recording alone would at least -- I think it would be welcome by all participants in the criminal justice system and in fact, you know, in the 1970s, 1974, 75, state police would tape record interrogations in murder cases that made their way to the Connecticut Supreme Court. Westport police department did it in 1974, State versus Fraiser. So nobody needs additional training to use a tape recorder or whatever the

equivalent of a tape recorder is today. I'm not very technologically savvy so I'm not sure, but.

So in any event, we urge, we'd love to see this bill pass, but we hope you will take into consideration some of our suggestions.

SENATOR COLEMAN: Thank you. Are there questions? Senator Meyer.

SENATOR MEYER: Thank you, Mr. Chairman. Sir, I want to just correct your testimony. The Chief States Officer did testify with respect to the recording of custodial interrogation and testified in strong opposition to it, not in support of it. I'd be happy to give you a copy of his testimony -- I know you weren't here. You said you saw a little bit of it on television.

RICHARD EMANUEL: I didn't see all of it.

SENATOR MEYER: But I just want you to know that his office has taken a position in opposition to the bill.

RICHARD EMANUEL: Thank you.

SENATOR COLEMAN: Are there other questions or comments? Seeing none, thank you, Mr. Emanuel.

RICHARD EMANUEL: Thank you.

SENATOR COLEMAN: Lynn Warner. Dave Cuney. Attorney Linda Meyer. Attorney Beth Hogan. Katie Cruickshank, Anne Muldowney, Dan Scholfield.

BETH HOGAN: Good afternoon, Senator Coleman and Representative Fox, chairmen of the Judicial Committee and Judicial Committee members, my HB6539 HB6475

but you get cases where the victims are legitimate. You have a neighbor who's -- or somebody is assaulted. It's only a misdemeanor but there's a real victim who's been assaulted and wronged. The defendant says they didn't do it. Then it was good -- in the old days it was good to have been able to give them their day in court.

SENATOR COLEMAN: And I think that's my point. You do have cases where it's -- somebody has to (inaudible) and rather than to have those cases linger on a docket for a prolonged period of time -- I think it would really be nice to have court trials but I guess that decision is up to the defendant and counsel.

CHIEF STATE'S ATTORNEY KEVIN KANE: It is.

SENATOR COLEMAN: But it would be something that I certainly would be in favor of having some mechanism for excusing those kinds of cases from the dockets. Thank you.

CHIEF STATE'S ATTORNEY KEVIN KANE: Thank you.

REP. FOX: Next we have David Cameron. Is Mr. Cameron still here?

DAVID CAMERON: Good evening, Representative Fox and Senator Coleman and members of the committee and I appreciate the opportunity to be here again this year and to testify, even at this late hour after about seven hours. It's been quite an unusual day, though, in some of the testimony we've heard.

I'm appearing in support of three bills. I've submitted testimony to you, 954, on the custodial interrogation recording, 6344 on the eyewitness ID and 6489 on AN ACT REQUIRING DNA

important to have a double blind administration.

I would also urge all of the other measures in this bill, but there is this question about sequential versus simultaneous. And I think that is one reason why law enforcement authorities might not be willing to support this bill in its current form. And if that happens and that's the case, I would urge that you support the idea -- the task force that Senator Looney has spoken to you about today.

The third bill was the act concerning electronic recording of custodial interrogations. And the only thing I would point out to you is that I think there were a number of misstatements in previous testimony. For example, this would not necessarily preclude a spontaneous statements or voluntary statements. It would not preclude testimony if a recording was not feasible. There is a long list of exceptions in the event a prosecutor wishes to present testimony without a recorded interrogation. But there is a presumption that there -- the prosecutors would have to demonstrate by a preponderance of evidence that the statement was voluntary. And that's a general rule in many of the 18 states that now require or mandate or have courts that have strongly encouraged the recording -- electronic recording of custodial interrogations.

SB954

So with that, I will stop and if you have any questions, I'd be -- I'll try to answer them.

SENATOR COLEMAN: Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Thank you, Mr. Chairman. It's good to see you and I just wanted to thank you because I have seen you over and over again coming back so thank you and I would have

questions if you didn't present so well so thank you again.

DAVID CAMERON: Thank you. It's pleasure to be here and to be one of your constituents.

SENATOR COLEMAN: Any other questions from the committee? Thank you very much. I appreciated your testimony as well. Kathleen Sendrake? Kevin Lawlor? Ed Gavin, I believe has already testified. And Claude Albert?

CLAUDE ALBERT: Good evening. My name's Claude Albert. I'm the legislative chair of the Connecticut Council on Freedom of Information, an organization devoted to transparency and accountability in government. I'm here to oppose just one provision of Senate Bill 954, subsection I, which makes taped interrogations of criminal suspects permanently exempt from disclosure under the Freedom of Information Act.

Now presumably many of these interrogations will become public through the court processes, especially high profile cases. But others will not either because they're not used in court or because the charges are never brought.

It seems only logical that recorded interrogations should be subject to the same disclosure requirements and exemptions that written records of interrogations are subject to today. The FOI Act allows police to withhold information that would be prejudicial to a pending law enforcement action.

In practice this has generally meant that such information could be held until there was a disposition of charges in court or an investigation is no longer active. The FOI Act also provides other screens through which

police records can be passed before being released, such as exemptions for uncorroborated allegations of criminal activity, the identities of informants, investigative techniques not otherwise known to the public, medical information and invasions of personal privacy. These have been adequate protections for police materials in the past and we would expect them to continue to be so.

The actions of the police are an area of government authority where legitimate public interest is added. Though rare, cases will inevitably arise in which the public demands close scrutiny of an investigation that includes a recorded interrogation that has not become public in court.

A person questioned by the police may want access to the recording of his own interrogation. We believe that such recordings should meet the same tests for exemption as other material in police files and that adoption of this beneficial technology -- recordings -- should not upset the present balance of public access to police information.

So basically, new technology, same rules. Basically, the same information, we see no reason why a new broad Freedom of Information Act exemption should be added.

SENATOR COLEMAN: Are there questions? Seeing none, thank you, Mr. Albert, for your patience and your testimony.

Jeff Kestenbrand?

JEFF KESTENBRAND: Good evening, Mr. Chairman and other members of the Committee My name is Jeff Kestenbrand. I'm here as a member of the Connecticut Criminal Defense Lawyers

HB 6344

SENATOR COLEMAN: Any questions for Ms. Harvey? Senator Gomes, do you have a question? Because you're smiling so broadly.

SENATOR GOMES: (Inaudible).

LARESE HARVEY: Because he accused me of writing someone's name -- but I do appreciate you correcting my grammar.

SENATOR COLEMAN: It was my opportunity to reverse the role. Representative Hewett.

REP. HEWETT: I agree with your bill one thousand percent.

LARESE HARVEY: Thank you.

REP. HEWETT: Even though you didn't take a swab.

SENATOR COLEMAN: Any other questions? Seeing none, I guess we'll furlough you for now.

LARESE HARVEY: Thank you.

SENATOR COLEMAN: Regio Stephens is next. Greg Marchand? Angel Morales? Rebecca Brown?

REBECCA BROWN: Good evening, Chairman Coleman, Chairman Fox, members of the committee. My name is Rebecca Brown, I'm a policy advocate with the Innocence Project. And I thank you for the opportunity to testify tonight. I just want to speak to two of the bills, House Bill 6344 and Senate Bill 954.

As you know, the Innocence Project settles claims of innocence using DNA technology, and to date, there are 266 DNA exonerations across the country. 75 percent of them involved misidentification. And you've heard a lot about James Tillman. He also was

before about the Mecklenburg report. This was a report out of Illinois which capped basically the sequential presentation of lineup members. And since that time, another report was issued by a blue ribbon panel which included a Nobel laureate which really discredited that report because it said the methodology was so flawed that the findings of that report could not be trusted.

And I'm happy to answer questions about what was flawed in that study, but I won't take up more of the Committee's time.

And I'll just touch very quickly on the recording bill now, but we strongly support this bill.

The eyewitness bill. I've also heard mention the task force bill which could be a fabulous compliment to the bill that I just described to you, just in terms of how to implement the bill and maybe monitor the provisions in this bill. But the two taken together might be an excellent option.

But truly, the proscriptive elements in House Bill 6344 really speak to the best practices that, you know, are supported by tons of scientific research for over a 30 year period.

And on Senate Bill 954, you've heard about the fact that there's a ton of law enforcement support for this reform and it's not uncommon for there to be some opposition in the beginning before people put this into effect. But once this reform has been implemented there's been a uniformly positive response by law enforcement to this reform because it helps them to really nail convictions.

And now over 750 law enforcement agencies around the country record interrogations. In 2004 a former US attorney took a survey of all the law enforcement -- or I'm sorry, 238 law enforcement agencies around the country asking them about their experiences with this. They all reported that they were extremely happy with it. They articulated a number of benefits.

And I just want to add that section 1E2 creates an exception when it isn't feasible to record. So this needn't be a costly bill. This could be a bill that is simply implemented as is and as people get recording equipment they will just simply record interrogations. But I just -- I think the time is now. 25 percent of the nation's 266 DNA exonerations involved a false confession or some sort of admission of guilt. It's a leading cause, a major contributing factor to wrongful convictions. And I think both of these reforms are really critically needed.

So thank you and I'm happy to answer any questions.

SENATOR COLEMAN: Thank you. Representative Holder-Winfield.

REP. HOLDER-WINFIELD: So I take it you talked to us about the studies, the blue ribbon study a little bit and tell us about what it found, the Mecklenburg study.

HB6344

REBECCA BROWN: Sure, so the Mecklenburg study was a study of a pilot program that took place in Illinois, it was three jurisdictions that were testing the blind sequential method. It was Evanston, Jolliet and Chicago. And what the report found was that the sequential blind method was inferior to the traditional method,

Advocates for people with intellectual disabilities
and related developmental disabilities

43 Woodland Street, Suite 260, Hartford, CT 06105
Telephone: 860-246-6400 Facsimile: 860-246-6406
Website: www.arcofct.org

President
Diane Aubin
The Arc of New London County
Norwich

First Vice President
Imelda Reno
The Arc of Farmington Valley
Canton

Second Vice President
Barry Sheftel
The Arc of Meriden-Wallingford
Meriden

Secretary
Lori Baer
The Arc of Litchfield County
Torrington

Treasurer
Anthony Recck
Futures, Inc.
Middletown

Immediate Past President
Ken Cholewinski
SARAH Seneca
Guilford

Contributions are
tax-deductible

Executive Director
Lynn C. Warner

March 9, 2011

Testimony before the Judiciary Committee
Re: S.B. #954, "An Act Concerning The Electronic Recording of Custodial Interrogations"
by
Lynn Warner, Executive Director/The Arc of Connecticut

Senator Coleman, Representative Fox, and Members of the Judiciary Committee:

I am Lynn Warner, Executive Director of The Arc of Connecticut, a 59-year-old statewide organization that advocates for individuals with intellectual disabilities and their families. We have 23 local chapters that provide supports, services, and advocacy for people with intellectual disabilities throughout Connecticut.

I am here today to testify in support of **Senate Bill 954, "An Act Concerning the Electronic Recording of Custodial Interrogations",** as it directly impacts individuals with intellectual disabilities who become involved with the criminal justice system. This Bill is written to improve the reliability of confessions by providing that statements made by a person during custodial interrogation at a place of detention are presumed inadmissible unless the custodial interrogation is electronically recorded. The Arc supports this concept.

In general, people with intellectual disabilities get by in life by trying to cover-up the fact that the even have a disability and by trying to please the people around them. And as a natural result of their disabilities, they are very subject to suggestion, and can easily be persuaded and manipulated by others. Police officers and detectives are substantial authority figures and they can have a profound effect on the thoughts and actions of anyone – particularly someone with an intellectual disability – including having him or her confess to a crime they didn't really commit.

We honestly believe that if videotaped recordings are used the judge and jury would be able to see and hear for themselves what went on in an interrogation room. This "second pair of eyes" could only improve the reliability of confessions, maintain justified innocence, as well as guard police officers from improper allegations – it seems that everybody is better protected.

Currently, there are several municipalities in Connecticut, such as West Hartford, who are wired with the proper equipment and are recording interviews. The report also states that the majority of those units who are operational are reporting positive opinions of the technology from their officers and detectives. The Arc of Connecticut strongly urges this process to continue and the equipment be installed in all municipalities.

It is important for this Committee to also know that The Arc of Connecticut absolutely believes in the innocence of Richard Lapointe, a gentleman with intellectual disabilities. We believe that if the 10-hour interrogation of Mr. Lapointe had been recorded, he would have never been sentenced to "Life Plus 60 Years" for the brutal 1989 murder of Bernice Martin in Manchester, Connecticut. We believe that the real murderer of Mrs. Martin is still running loose while Richard has quietly served over twenty years in prison for a crime he did not commit.

The Arc of Connecticut and its 23 local chapters will never walk away from this man. And we will continue to draw your attention to this very important matter again and again, until we see it through to completion.

Thank you for the opportunity to testify before you today.

Robert Perske
159 Hollow Tree Ridge Road
Darien, CT 06820
203-655-4135
Rperske@aol.com
www.robertperske.com

PERSKE'S LIST: False Confessions from 75 Persons with "Intellectual Disabilities"

Robert Perske

This list names 75 "persons with "intellectual disabilities" who were coerced into confessing to major felonies they did not commit.

65 of them have been exonerated.
29 of them have been exonerated by DNA tests.
5 are now headed for court hearings, thanks to "Innocence Project" groups.
5 of them (Joe Arridy, Jerome Bowden, Earl Correll, Girvies Davis, Barry Fairchild) were so wrongly convicted and executed they will always be painful to justice-loving lawyers when they think about them.

This list keeps growing, thanks to:

Richard Leo who years ago compared notes on early cases with me
Steve Drizin who never ceases to pepper many of us with current cases
Innocence Project workers springing up everywhere due to Barry Scheck's inspiration
Kate Germond's constant sharing from Centurion Ministries, the First Innocence Project.

All 75 are listed alphabetically along with the date and state in which the confessions were made. All statements voiced about disabilities are placed between quotation marks.

Joe Arridy (Colorado, 1936): The Happiest Man Who Ever Lived on Death Row

Two girls, 13 and 15, were bludgeoned while sleeping in the same bed in their Pueblo, Colorado home. The older girl was raped and killed. Three days later, the Pueblo police caught the killer and recovered the murder weapon, but he refused to confess. Shortly after that, a sheriff in Wyoming picked up "a vagrant," Joe Arridy, 21, who was loitering in the Cheyenne railroad yards--and got him to confess to the Pueblo crime. The police then announced that the crime had been carried out by two men. Arridy was identified as "an imbecile with an IQ of 47, who had recently wandered away from the Grand Junction State School for Mental Defectives. He had climbed into a railroad boxcar and disappeared. After the conviction, Warden Roy Best found Arridy to be a soft, five-foot-three, 130-pound totally nonviolent man. He chose to look after him like a father would to a son. He introduced Arridy to reporters as the happiest man in his care. He joined with Attorney Gail Ireland who managed to get nine stays in a little over one year. Even so, the governor ordered the execution of Arridy on January 6, 1939. On October 19, a plea for a posthumous pardon was delivered to Colorado Governor Bill Ritter, Jr. (Perske, 1995, Ritter, 2010) .

Gabriel Baddeley (Washington, 2001): Cleared When Real Perpetrator Confesses

Baddeley, Age 19, "with fetal alcohol effect" was coerced into confessing to setting fire to the high school where he was a student. Two years after his conviction, a young woman in therapy voluntarily came forward with evidence showing that she was the true arsonist (Courtney, 2004).

Eunice Baker (New York, 1999): Murder by Thermostat

A 23-year-old woman "with IQ tests in the 70s," was hired to baby sit a 3-year-old child on a hot summer night. The sleeping child died in her bedroom from hyperthermia. A state trooper coerced Baker into confessing that she willfully turned up the thermostat to kill the child. At trial, Baker could not describe or even show the jury how to adjust a thermostat. Also, a technician described a malfunction in the home's heating system that caused it to rise excessively higher than normal. Even so, Baker was convicted of second-degree murder, apparently for failing to react properly to the overheated environment. After Baker spent nearly 5 years behind bars, the conviction was thrown out (Chittum, 2000; Nogas, 2000a, 2000b).

Medill Banks, Victoria Banks, Diane Tucker (Alabama, 1999): Murder of an Infant Who Never Existed

While in jail awaiting trial for an unrelated crime, Victoria Banks claimed to be pregnant. She did it to garner sympathy and get out of jail. The ploy worked. Later, when a sheriff asked her about the baby, she told him that the baby had died. She, her husband, Medill, and her sister, Diane Tucker, "all with mental retardation," underwent intensive questioning over 5 days until they confessed to murdering the infant. Later, it was discovered that Victoria had undergone a tubal ligation 4 years earlier and was unable to have children (Luo, 2002).

Leonard Barco (New Jersey, 1985): A Murder That Never Occurred

Barco's girlfriend was found dead in her car. Bruising on the victim's neck and chest led investigators to believe she had been strangled. During interrogation, Barco, "with IQ 57," confessed to beating her to death with a stick. He spent 8 months in jail awaiting his trial. His public defender finally called for a reexamination of the woman's body and found she had actually died from a lethal level of alcohol. The bruising was consistent with injuries typical of alcoholics. The murder charges were dropped (Associated Press, 1986).

Jesse Barnes (Maryland, 1972): Innocence Project Wins Freedom After 38-Year Imprisonment

Barnes, at age 17 and labeled "mentally defective and dropout special education student," was convicted for a rape as well as the bloody neck and throat slashing of his 15-year-old girl friend. Interrogators received two dissimilar confessions. The conviction was based only on the one that was typed by an interrogator. Witnesses who could have provided Barnes with an alibi did not testify. New investigations show that the victim had not been raped and it appears that the interrogators concocted this belief in order to provide a stronger motive for murder. Barnes has been described as "very timid, shy, very quiet, mannerly and respectful." Also records now show that the victim had not been raped. Since DNA testing was not an option in 1972, the Innocence Project lawyers are asking the court to review the case "in the interests of justice" (Kiehl, 2009)

Corinthian Bell (Illinois, 2000): Saved by DNA

After his mother was murdered, Bell, "a man with mild retardation," endured over 50 hours of questioning before he finally confessed. DNA evidence exonerated the man after spending 17 months in jail (Scharnberg & Mills, 2002).

Melvin Bennett (North Carolina,1990): Saved by DNA

A 7-year-old girl was raped and murdered. Bennett, "diagnosed as mentally retarded," confessed to both crimes. DNA evidence excluded him as the killer. Bennett spent 2 years in jail before a jury acquitted him (Aheran, 1998).

Jerome Bowden (Georgia, 1986): Too Early To Save

On October 11, 1976, a 55-year-old woman was brutally beaten with a pellet rifle and stabbed to death in her Columbus home. The next day, the police arrested a 16-year-old next-door neighbor. They found the pellet gun, the knife, a wig the killer wore as well as coins and jewelry that the teenager had taken. They also recovered the victim's TV that had been sold by the teenager to a pawnbroker. The teenager confessed to the crime. Then he told interrogators that Jerome Bowden, 24, committed the crime with him. Bowden was an easy-going, neighborhood-wandering person who had been expelled from school many years earlier after being given a "Wechsler Intelligence test that showed him to have a full-scale IQ of 59." No evidence linked Bowden to the crime, and he could not have read or understood the confession drafted for him by police. The teenager, being a minor, was sentenced to life without parole. Bowden was executed (Perske, 1991A).

Floyd Lee Brown (North Carolina, 1993): In Custody 14 Years With No Trial

Brown, a man "with an IQ of 50," was arrested and questioned for the beating death of an 80-year-old woman. Two detectives wrote a "full confession" in perfect English grammar that Brown could not read. In no way did it match Brown's halting, sparsely worded repetitive speech. He was placed in custody in a state mental hospital because he was not competent to stand trial. No physical evidence connected Brown to the murder (Thompson, 2007).

Keith Brown (North Carolina, 1991): Saved by DNA

A woman was raped. Brown, a man "who is mentally retarded," confessed and was given 35 years in exchange for pleading guilty. After spending 6 years in custody, he was exonerated through DNA, which identified the true perpetrator (Associated Press, 1997).

Timothy Brown (Florida, 1991): Beaten Into Confessing

A sheriff's deputy was murdered in his patrol car. Brown, age 15, "with an IQ of 57," was arrested, shackled, beaten, and threatened with the electric chair until he confessed. No physical evidence tied him to the crime. A confidential informant led investigators to focus on a sheriff's deputy, who later admitted that it was he who killed his fellow officer (de Vise & De Marzo, 2002; McMahon & Friedberg, 2002).

Albert Ronnie Burrell (Louisiana, 1986): Spends 14 Years on Death Row Due to Confused Prosecutorial Efforts

Burrell, "an illiterate man with mild retardation" was actually one of two persons in different settings who were convicted of murdering the same elderly couple. Both ended up on death row. After officials reexamined the case, they agreed that it should never have been brought to a grand jury. Scattered bits of evidence complicated the case. For example, Burrell's ex-wife told an officer that her ex-husband did the crime. She said it to gain full custody of their son. In addition, an obscure affidavit from an earlier prosecutor stated that he moved the cases along "to avoid embarrassing the sheriff." (Barrouquere, 2003; Baughman & Guarisco, 2001).

Anthony Caravella (Florida, 1983): Saved by DNA

A 58-year-old woman was raped and murdered in Miramar, Florida. Detectives picked up Anthony Caravella, a 15-year-old "with an IQ of 67." Witnesses observed interrogators grabbing a phone book and taking Caravella into another room. They also heard what sounded like phonebook slaps and yelling. After repeated sessions, the detectives came out with five statements. During the sentencing, the judge exclaimed, "I will tell you, Anthony, if the jury had recommended death, I would have executed you." Later, when found innocent, another judge spoke more tenderly: "Let me take the opportunity to apologize to you for the criminal justice system of the State of Florida (McMahon, 2010).

Allen Jacob Chestnut (Maryland, 1998): Saved by DNA

A man was stabbed to death in Baltimore, Maryland. Police arrested 16-year old Chestnut after observing a fresh cut on his hand and blood on his clothes. After 15 grueling hours of questioning, the teenager confessed to the murder. After 6 months in jail, Chestnut was excluded as the killer by DNA (Richissin, 1998).

Antwon Coleman (Missouri, 1990): Cleared When Real Killer Confessed

A homeless man was beaten to death. Coleman, 17, later confessed to the murder. According to his lawyer, this teenager "with learning disabilities" would have "confessed to anything." Five teenagers in all were charged and held in custody for 6 weeks before one of them, the true perpetrator, confessed and pled guilty (Sorkin, 1990).

Earl Correll (Virginia, 1985): Appointed Lawyers Fumble the Case

In a drug sale that went bad, two buyers admitted killing the dealer. Then they claimed that Earl Correll was with them as the overpowering "ringleader." Correll was small (5'6" and 130 pounds). He possessed "an IQ of 68" and was known as "a wimp." The victim was over 6-feet-tall and he had been choked and stabbed from behind. The trial judge appointed two defense lawyers who turned out to be wimps, too. They conducted no investigation. They claimed that communicating with Correll was impossible. When the attorneys asked Correll about the crime, he curled up in a corner and cried. The lawyers testified in court that after that, they threw up their hands and gave up. Correll was executed for being named as the ringleader. The other two received lesser sentences (Perske, 1991).

Ricky Cullipher (Virginia 1996): Russian Roulette Goes Wrong

Cullipher was hanging out with friends when one of them was crippled by a gunshot wound to the head. After hours of intense questioning, the 16-year-old "learning disabled" teenager confessed and was convicted at trial. Later, the victim was caught on videotape saying

he actually shot himself during a game of Russian roulette. A judge threw out the conviction and prosecutors refused to retry the case (Roberson & Lenz, 2001).

Anthony Dansberry (Illinois, 1991): Signs Confession When Told It Was a "Release"

An Oak Park woman was getting off a bus when a man knocker her to the payment, grabbed her purse and fled. The victim died later from a head injury. A woman in a car saw the attack and pursued the robber in her car. She claimed that he touched her car twice with his hands. She described the attacker as a black man about 18 to 20 years old and she helped police draw a composite sketch. Anthony Dansberry was not involved until the police received an anonymous tip and he was placed in a lineup before six eye witnesses The woman in the car was the only one who identified Dansberry--even though he is 29-years-old and had a mustache and beard--which did not appear in the composite drawing. Dansberry is also a man with "a verbal IQ of 58 and the reading comprehension of a 1st or 2nd grader." He was interrogated until he signed a confession written by a detective. He said he signed the paper because the police told him it was "his release." He was convicted and given a 75-year prison term. Innocence Project members are now interested in the case. (Possley, 2006, Drizin, 2006).

Girvies Davis (Illinois, 1978): Confess or Get Shot

Three days before Christmas 1978, in Belleville, Illinois, an 89-year-old retired farmer was shot to death in his wheelchair in his trailer home. There were no witnesses, no weapon, no fingerprints and no motives. Eight months later, in August, 1979, Girvies Davis, a 20-year-old black man was arrested after a theft in an auto supply store. He possessed a severe "organic brain disfunction since childbirth" that kept him close to being illiterate. While in jail, police said he passed a note to them through a guard confessing to 11 crimes--including "the old man in the trailer." After that the police checked him out of jail at 10 p.m. (the logs at the jail confirmed this) and drove him to a deserted road outside of town. The police, Davis said, took off his handcuffs and leg shackles, drew their guns and produced a stack of already written confessions. The told him if he didn't sign all of them they would shoot him and then testify that he died trying to escape. Davis signed everything they had. He was only tried for the shooting of the aging farmer which he vehemently denied. No blacks were allowed to serve on the jury. He was sentenced to death. He died saying, "I have done many bad things, but I'm no murderer" (Schwartz, 2006).

Selwyn Days (New York, 2001): Saved by DNA

In 1996, a man, 79, and his 35-year-old companion were stabbed to death in their Eastchester, New York home. After the case had been unsolved for four years, the police picked up and interrogated Selwyn Days, 36, a "man with brain damage and a low IQ." After long hours of questioning, he confessed to the crime in front of a TV camera. He received a sentence of "50 years to life." Innocence Project lawyers presented DNA test findings to the court that excluded Days. Also, four witnesses placed Days in Goldsboro, NC at the time the crime was committed. Even so, this man still spent the last 10 years in prison for a crime he did not commit (Stashenko, 2010).

Gerald Delay (Kansas, 1992): Bystander Speaks Up

The victim was shot with an antique ball-and-cap pistol. The killers pulled out the victim's teeth, sliced off his tattoos, lashed him to a steel beam, and threw him into the river.

After his body was recovered, Delay, "a man with mental retardation," was questioned and he confessed to the crime. A bystander who witnessed the crime finally overcame his fear and told police what really happened. Charges against Delay were dismissed (Fry, 1993).

Edward Lee Elmore (South Carolina, 1982): After 38 Years in Prison, Innocence Project Groups Enter the Case

A 75-year-old widow was murdered in her Greenwood, South Carolina home. She had been raped, stabbed 32 times and her body was dumped in a bedroom closet. A neighbor suggested that the police check the stubs in the white woman's checkbook. They found a record in the victim's checkbook showing that she paid Edward Elmore, a 23-year-old black man for doing yard work a few days earlier. He was picked up and questioned within 48 hours of the crime. Four months later, Elmore "a man with mental retardation, with IQ scores of 72 and 58." was sentenced to death. After the U.S. Supreme Court ruling in *Atkins v. Virginia,* it was changed to a life sentence. During the last 38 years of incarceration, numerous questions have emerged. The autopsy report had been botched. Hairs found on the body disappeared--and were found later in an investigator's filing cabinet. The DNA on the hairs proved to be from a white man. An FBI expert who studied the state's earlier forensic report against Elmore called it a "fraud." (Bonner, 2002).

Barry Lee Fairchild (Arkansas, 1983): Beaten into False Confession?

Acting on information given by a "confidential source," Barry Fairchild was arrested and questioned regarding the rape and murder of a 20-year-old white U.S. Army nurse in a field outside of Little Rock, Arkansas. Fairchild was black and "a man with retardation--a full scale IQ of 63, a verbal of 69 and a performance of 61." With his head bandaged, he was placed in front of a video camera. Investigators said the bandages covered a "bite on the top of the skull by a police dog." During the videotaping, Fairchild kept looking toward an off-camera person for guidance. Later, Fairchild recanted, saying that the confession was beaten out of him. No evidence connected him to the crime. Testing of the semen in the victim's body showed that the rapist had type O blood and Fairchild's was type A. On March 29, 1991, ABC TV's *20/20* described how 13 black men signed affidavits stating that the police tried to beat confessions out of them for the murder of the nurse--and failed. Fairchild was the 14th and the only one to give in. He was executed in 1995 (The Encyclopedia of Arkansas History and Culture, 2010).

Michael Fitzpatrick, (New York, 1999): Man Describes Own Arrest and Interrogation

This man "with autism" was questioned about a bank robbery. He signed a confession, but no record was made of the actual interrogation. Interestingly, Fitzpatrick, a man with remarkable weaknesses and strengths, possessed an uncanny knack for recall. He wrote a detailed 6-page summary of what went on between him and the interrogating police chief. In his summary, Fitzpatrick said that the chief "told me that he would talk to me like a father to a son. So I said, 'Okay, Dad.'" Five months later, the real bank robber confessed. He stated that he could not stand seeing a person with an intellectual disability go to prison for a crime he, a serial bank robber, committed (O'Brien, 1999).

John Floyd (Louisiana, 1981): Innocence Project Finds Exculpatory DNA

On Thanksgiving day, 1980, two men were murdered in New Orleans in different locations. The crimes were remarkably similar. Both men were white and had been involved in

homosexual acts at the time of their deaths. Both were stabbed in the neck and torso. Two months after the crime, the lead detective happened to visit with John Floyd, a black man, in a bar. Then he took Floyd for questioning and got him to confess to both murders. He has been in prison for 30 years. Recently, The Innocent Project of New Orleans began looking into the case. They found that Floyd possessed "an IQ of 59." Their psychological tests showed Floyd to be "highly suggestible and highly compliant," making him particularly susceptible to the sort of pressure applied by police when they interrogate. Mitochondrial DNA testing now shows that Floyd did not commit either crime. Consequently, the case is back in the courts and the Innocence Project has vowed to never give up until Floyd walks out of the penitentiary a free man (IPNO, 2010).

Michael Gayles (2001, Michigan): Saved by DNA

Gayles, 18, with "an IQ of 71," underwent 36 hours of interrogation before finally confessing to the rape and murder of a 12-year-old girl. He signed a typed confession that he could not read. Two weeks after his arrest, DNA evidence exonerated Gayles and he was released (Kresnak, 2001).

Ozem Goldwire (2006, New York): Tries to Give Right Answer Even When It Is Wrong

Goldwire, 28, "a man with a developmental disability with autistic features," was battered by questions from three high-pressure detectives, and he worked and worked on his answers until each one was precisely what the officers wanted to hear. After 21 hours in such a confessional pressure cooker, Goldwire was charged with strangling his sister to death and was jailed for a year and 11 days. By then, both the prosecutors and defenders saw that the confessions were so "preposterous" that a state supreme court judge released the man "because he was innocent." "Here we had the ingredients of the perfect storm for false confessions," said the judge. Goldwire's lawyer claimed that the detectives "lacked the necessary training for questioning suspects with special needs and are too eager for an arrest" (Dwyer, 2007; Marzulli, 2008).

Robert Gonzales (2005, New Mexico): Saved by DNA

This 19-year-old man "with mental retardation and an IQ range of 51–65," was interrogated for the rape and murder of an 11-year-old girl on Halloween night. Although no physical evidence connected the man to the murder, he confessed to raping and slaying the young girl in her trailer home. Fortunately, DNA found on the victim was run through the FBI's Combined DNA Index System (CODIS). It excluded Gonzales and identified the real killer (Sandlin, 2008).

Anthony Gray, Jr. (1991, Maryland) Freed After Real Perpetrator Confessed

Police interrogators convinced this man "with learning disabilities and borderline mental retardation" that two other suspects implicated him in a woman's rape and murder. In his compliant way, Gray confessed to being their "look out." He spent 6 years in prison before the real perpetrator confessed to the crime (Richissin, 1999).

Paula Gray (1978, Illinois): Saved by DNA

Police picked up this 17-year-old "with mental retardation" for questioning based on a tip. After 2 nights of intense questioning, Gray confessed that she was with four men who had

abducted a man and woman, raped the woman, and killed them both. Under pressure, she fingered four men as perpetrators. All were convicted. Seventeen years later, DNA revealed that Gray and the four men were innocent. The same evidence implicated the real perpetrators who eventually confessed (Frievogel, 2000).

Travis Hayes (1997, Louisiana): Saved by DNA

A grocer was shot four times for refusing to turn over the day's cash receipts to a bandit wearing a ski mask. The perpetrator threw away the mask after leaving the crime scene and dived into an open window of a fleeing car. Two 17-year-olds "with mild retardation," Ryan Matthews and Travis Hayes, were interrogated for the crime. Matthews refused to confess. Hayes, on the other hand, caved in after 6 hours of intensive pressure and trickery and told the detectives that he only drove the car while Matthews went into the store. Matthews received a death sentence. Hayes received life without parole. Many months later, the discarded ski mask was tested for DNA, and saliva incriminated another man. Both men have now been freed (Innocence Project, 2008).

Alejandro "Alex" Hernandez (1984, Illinois): Saved by DNA

This 20-year-old man was questioned about a break-in, kidnapping, rape, and murder of a 10-year-old girl. Hernandez, "whose IQ had been measured at various times in the mid-and-low 70s," under tremendous pressure by interrogators, finally exclaimed, "All I did was hold her down." After 12 years on death row, Hernandez was freed when DNA identified the real perpetrator. *Postscript*: After the confession was given, one of the top interrogators in Illinois decided to go out on his own and corroborate it. He found solid evidence showing that Hernandez was elsewhere when the crime was committed. After giving his report, his superiors ordered him to keep quiet. In addition, one of the top assistant attorney generals refused to defend the conviction and was rebuked for it. Consequently, both resigned and Illinois lost two of its most dedicated and honest crime fighters (Frisbie & Garrett, 1998; Perske, 2005).

Charles "Chucky" Hickman (2005, Indiana): Saved by DNA

On January 25, 2005, in Crothersville, Indiana, a 10-year-old girl disappeared while walking to a local store. She was found later in a local lake. She had been sexually molested and drowned. Later, Hickman, 20, was questioned and he immediately blurted out that he was the murderer. Although it was clear that he was "a vulnerable, malleable and disabled person" who was "very slow with the mental capacity of a 15-year-old," he was submitted to numerous interrogation sessions. In them, his story kept changing according to the leading questions he was being asked. This wild, interrogational spree ended for good, after DNA on the body of the girl was matched with the real perpetrator (Adams, 2006).

Tommy Lee Hines (1978, Alabama): Innocent but in a Legal Limbo

On May 23, 1978, Tommy Lee Hines, a 25-year-old black man, wandered away from a day program center for developmentally disabled persons in Decatur, Alabama. He walked up to a window of a building, looked in and scared an office secretary. The secretary called the police who took him away for questioning. According to investigators, Hines confessed to raping three white women. In each case, the women claimed that the perpetrator overpowered them in their own cars, drove them to the outskirts of town and raped them. Records show that Hines possessed "an IQ of 35 and the mental functioning of a six year old." His father testified that

"They had Tommy driving a car. That boy can't even ride a bicycle." Members of the local association for persons with disabilities rose up in indignation. Then a contingent of the Southern Christian Leadership Conference marched onto the scene. Finally, they were confronted with members of the Ku Klux Klan. Four men were shot but not killed in the clash that followed. Somehow, Hines' case became so cluttered by pressure from outside forces, true justice was ignored. He was sentenced to a prison where he was attacked. Later, he was judged to be incompetent to stand trial and was sent to a mental health hospital that expelled him as not being one of theirs. So he was sent to an institution for persons with intellectual disabilities where he was rejected as well. Hines was placed in a small group home in a small Alabama town while all legal forces apparently looked the other way (Perske, 1991).

Ladell Hughes (2003, Illinois): Saved by DNA

Hughes, age 15, was brought to the police station and questioned regarding a prostitute who was raped and beaten into a coma so severe that she could not recall the incident later. Hughes signed a confession that was written out by detectives. Although Hughes was "a severely developmentally disabled boy" who could not read or write, the confession was very detailed. Finally, DNA proved his innocence and he was released (Ferguson, 2008).

Harold Israel (1924, Connecticut): Saved by a Daring State Attorney

A beloved priest was gunned down on the main street of Bridgeport, and a chorus of citizens cried out for the capture and punishment of the killer. Eight days later, the police captured "a transient indigent and a person of low mentality of the moron type." In a 10-point report, law officers identified seven witnesses, a pistol, an empty shell, and a signed confession. The county state's attorney took the report, read it thoroughly, and then announced that he would speak for his whole department at the man's arraignment. At the arraignment, he announced that he was dropping the case. He spoke without notes for 90 minutes, discrediting every piece of evidence against Israel. Afterward, the audience in the courtroom applauded. Subsequently, this attorney was shunned severely by his own political party. Even so, in 1933, the president-elect of the United States appointed him as his first attorney general. Thirty years later, a witness to the shooting, who had been threatened to death if he ever spoke out about it, finally stepped forward. He named the real killer (Perske 2005; Zeldes, 1994).

Terric Jeffrey (2003, Florida): Judge Attacks Shoddy Confession and Suppresses It in Pretrial Hearing

Jeffrey, a "mentally retarded" 18-year-old, was brought to the police station and accused of beating to death his girlfriend's 13-month-old son. The baby was the grandson of a police officer in the same city. After his forced confession was signed, a public defender viciously attacked it line by line and finally got the judge to do the same. The officers coached Jeffrey about what to say. They led him to believe he could go home if he said he hit the child by accident. On the witness stand, the officers failed to agree as to who said what. The judge found that Jeffrey merely "parroted" what the officers told him to say. The judge called the whole investigation a "shameful embarrassment." He suppressed the confession and declared strongly that it was not voluntary. Because the investigating officers had little or no corroboration, the case was dropped. After 3 years in jail waiting for trial, Jeffrey was a free man. Even so, the judge made one final statement that the police department is now taking to heart. He said, "Prior to this hearing, I was not convinced that it might be good police practice to videotape the entirety

"They had Tommy driving a car. That boy can't even ride a bicycle." Members of the local association for persons with disabilities rose up in indignation. Then a contingent of the Southern Christian Leadership Conference marched onto the scene. Finally, they were confronted with members of the Ku Klux Klan. Four men were shot but not killed in the clash that followed. Somehow, Hines' case became so cluttered by pressure from outside forces, true justice was ignored. He was sentenced to a prison where he was attacked. Later, he was judged to be incompetent to stand trial and was sent to a mental health hospital that expelled him as not being one of theirs. So he was sent to an institution for persons with intellectual disabilities where he was rejected as well. Hines was placed in a small group home in a small Alabama town while all legal forces apparently looked the other way (Perske, 1991).

Ladell Hughes (2003, Illinois): Saved by DNA

Hughes, age 15, was brought to the police station and questioned regarding a prostitute who was raped and beaten into a coma so severe that she could not recall the incident later. Hughes signed a confession that was written out by detectives. Although Hughes was "a severely developmentally disabled boy" who could not read or write, the confession was very detailed. Finally, DNA proved his innocence and he was released (Ferguson, 2008).

Harold Israel (1924, Connecticut): Saved by a Daring State Attorney

A beloved priest was gunned down on the main street of Bridgeport, and a chorus of citizens cried out for the capture and punishment of the killer. Eight days later, the police captured "a transient indigent and a person of low mentality of the moron type." In a 10-point report, law officers identified seven witnesses, a pistol, an empty shell, and a signed confession. The county state's attorney took the report, read it thoroughly, and then announced that he would speak for his whole department at the man's arraignment. At the arraignment, he announced that he was dropping the case. He spoke without notes for 90 minutes, discrediting every piece of evidence against Israel. Afterward, the audience in the courtroom applauded. Subsequently, this attorney was shunned severely by his own political party. Even so, in 1933, the president-elect of the United States appointed him as his first attorney general. Thirty years later, a witness to the shooting, who had been threatened to death if he ever spoke out about it, finally stepped forward. He named the real killer (Perske 2005; Zeldes, 1994).

Terric Jeffrey (2003, Florida): Judge Attacks Shoddy Confession and Suppresses It in Pretrial Hearing

Jeffrey, a "mentally retarded" 18-year-old, was brought to the police station and accused of beating to death his girlfriend's 13-month-old son. The baby was the grandson of a police officer in the same city. After his forced confession was signed, a public defender viciously attacked it line by line and finally got the judge to do the same. The officers coached Jeffrey about what to say. They led him to believe he could go home if he said he hit the child by accident. On the witness stand, the officers failed to agree as to who said what. The judge found that Jeffrey merely "parroted" what the officers told him to say. The judge called the whole investigation a "shameful embarrassment." He suppressed the confession and declared strongly that it was not voluntary. Because the investigating officers had little or no corroboration, the case was dropped. After 3 years in jail waiting for trial, Jeffrey was a free man. Even so, the judge made one final statement that the police department is now taking to heart. He said, "Prior to this hearing, I was not convinced that it might be good police practice to videotape the entirety

of a defendant's interrogation." After listening to those investigators on the stand, he changed his mind (Nesmith, 2006).

David Allen Jones (1992, California): Saved by DNA

Jones, a man with "IQs ranging from 60 to 73 and unable to read words longer than four letters," was picked up and questioned about three murders and a rape. He confessed to all of them and was convicted in 1995. Because he confessed, little attention was paid to the blood and hair samples taken in the case. Later, the samples and DNA connected the crimes to another man. Looking back at the interrogation transcripts, it became clear that Jones merely repeated fictions created by the interrogators. A lawyer selected by the police commission to investigate the case stated that the interrogators "could have convinced Jones he was Spiderman had they chosen to do so." Sadly, while the wrong man was in prison, the real perpetrator succeeded in raping and murdering 10 other women (Blankstein, Gorman, & Larrubia, 2004).

Lebrew Jones (1987, New York):A 20-Hour Interrogation While Physical Evidence is Ignored

Here is a case that can make modern day Innocent Project workers cringe. Two decades ago, A 21-year-old prostitute was savagely murdered at a Times Square building project. A mountain of physical evidence was found. Lebrew Jones, a security guard at the project, was brought in for questioning even though the crime happened six hours after his shift ended and he had gone home. The police interrogated this "soft and gentle man with an IQ of 68" for 20 solid hours. According to reports, Jones was invited to share how the crime happened and he did the best he could. Early on, he suggested that the woman beat herself to death with a rock. As of yet, not a single shred of physical evidence has been tied to this utterly nonviolent man. Even the mother of the murdered girl met with Jones and was convinced that the wrong man was in prison (Young, 2008).

Levon "Bo" Jones (1987, North Carolina): Death Penalty Based on a Single Snitch

A career snitch was paid $4,000 for her testimony showing that Bo Jones "a black farmhand with a low IQ" murdered a white man. He spent nearly 16 years on death row. The earlier defense attorney was so inept, he failed to raise numerous bits of evidence pointing toward Jones' innocence. Later, another lawyer picked up the case and the scene changed. The snitch recanted her story of Jones involvement in the crime. A massive amount of critical evidence pointing to Bo's innocence was heard, a federal judge overturned the conviction, and in 2006 he walked out of prison a free man (Levingston, 2010).

William M. Kelly, Jr. (1990, Pennsylvania) Saved by DNA

Police claimed that "mildly retarded" Kelly told them things about a rape and murder of a woman that only the killer could know. They also claimed that Kelly led them to the murder site. DNA excluded him and identified the real murderer. Kelly was released after 3 years in prison (Shellem, 2003b).

Charlie King (1992, Illinois) Freed After Real Perpetrator Confessed

After a 9-year-old girl was strangled, King, a man with an "IQ of 57" was picked up and questioned for 3 days. He then signed a confession he could not read. While in jail, he kept asking for his crayons and coloring books. After King spent 13 months in jail, the real killer

confessed and King was released (King, 1998).

Daniel Lackey (New York 2003): Convicted for a Rape and Stabbing That Never Happened

On January 16, 2003, a woman was cut with a knife and raped in Oneida, New York. Dan Lackey, 31, a man with "IQ 73" was brought in for questioning and he "wrote out" a confession. He was charged with first degree aggravated sexual abuse and received an eight-year prison sentence. Three years later, the female victim reported another attack from another man. The attacks were identical right down to the description of the man and the wounds inflicted. By then, the woman suffered serious psychiatric problems, including hearing voices and attempting suicide. She finally admitted that the attack never happened. The knife wounds in both cases were found to be self-inflicted. Lackey's release came after four years in prison. Afterwards, the state attorney general stated in court papers that "Lackey's conviction was brought on by his own conduct including giving a written confession" (O'Brien, 2009).

Richard Lapointe (1989, Connecticut): Centurion Ministries Refuse to Give Up

On March 8, 1987, in Manchester, Connecticut, an 88-year-old woman was raped, strangled, stabbed 11 times and her cottage was set on fire. It was obviously committed by a strong and athletic person. On the 4th of July 1989, the police picked up Richard Lapointe, 46, the step grandson of the victim. After 9 hours, investigators came out with three dissimilar confessions--all written by the police. To all who know Lapointe, he is about as nonathletic as one could be. He lives with Dandy-Walker syndrome and underwent five surgeries to drain excessive fluid from his enlarged head. He is five-foot-four, wears thick glasses, has hearing aids in both ears. He never runs. When he stops short or turns quickly, he gets dizzy. When he grew up, the other kids gave him the nickname "Mr. Magoo." Even so, Lapointe was found guilty, sentenced to "Life plus 60 Years," and has been in prison for 20 years. Currently, all attorneys involved earlier have testified to being inept in their defenses. Now, the case has been picked up by Centurion Ministries who are known nationally as the First Innocence Project organization in the nation (Perske, 2001)

Barry Laughman (1987, Pennsylvania): Saved by DNA

This man, "with an IQ of 70," was convicted of raping and murdering an elderly woman. He confessed after a state trooper convinced him that his fingerprints were found at the murder site. After 16 years in prison, Laughman was excluded by DNA evidence (Shellem, 2003a).

Matthew Livers (2006, Nebraska): Saved by DNA

In April 2006, the sheriff in a rural southeast Nebraska county announced that Livers, 29, confessed to the fatal shooting of a wealthy farm couple in their home. A cousin of Livers was also named as an accomplice. The confession came after 11 hours of tough interrogation and threats of the death penalty. According to a public defender and psychologist, "Livers was tired, hungry, and frightened. By confessing, Livers thought that the interrogation would cease, and he would be allowed to return home." Psychological assessments revealed that Livers was "learning disabled all of his life, had low intellectual functioning and was highly compliant, allowing him to fall prey to overzealous investigative tactics." By June 2006, the sheriff's department announced that two teenagers on a crime spree from Wisconsin turned out to be the real killers; DNA testing connected them to the crime. The public defender and a psychologist for the

defense wrote a brilliant, step-by-step account of all that happened in the case, which has been featured in the monthly magazine of the National Association of Criminal Defense Lawyers (Bear & Bresler, 2007).

Ryan Matthews (1997, Louisiana): Saved by DNA

A grocer was shot four times for refusing to turn over the day's cash receipts to a bandit wearing a ski mask. The perpetrator threw away the mask after leaving the crime scene and dived into an open window of a fleeing car. Two 17-year-olds "with mild retardation," Ryan Matthews and Travis Hayes, were interrogated for the crime. Matthews refused to confess. Hayes, on the other hand, caved in after 6 hours of intensive pressure and trickery and told the detectives that he only drove the car while Matthews went into the store. Matthews received a death sentence. Hayes received life without parole. Many months later, the discarded ski mask was tested for DNA, and saliva incriminated another man. Both men have now been freed (Innocence Project, 2008).

Godfrey G. Miller III,m (2004, Maryland): Eager to Please Police Officers

Twelve days after a man was beaten to death in a rooming house, police officers picked up Miller, a 20-year-old man with "IQ 66–69," who almost immediately confessed to the crime. After Miller spent 269 days in jail, the confession fell apart and the real killer was arrested. Normally, defense lawyers feel a sense of satisfaction from such victories and then go on to other cases—but not Miller's lawyer. He was angry. He went before the city council and castigated the police department's handling of the case. According to the lawyer, Miller had no police record or history of substance abuse. "He had had only good experiences with the police—making him eager to please them, which led to the confession." Even then, Miller's lawyer did not stop. He said that he would like to see "an experienced counselor with the mentally disabled train officers in questioning such suspects." The lawyer then demanded money from the city to help put Miller's life back together again. All this led to a shouting match in the council chambers, with Miller's lawyer threatening to sue. Later, the chief of police promised to conduct an investigation of city officers involved in Miller's case (Chansanchai, 2004; Lyons, 2004).

Jesse Misskelley (1993, Arkansas): False Confession Tactic Dooms Three

Jesse Misskelley, 17, with "Mental Retardation and an IQ of 70" gave in to a classic, old-time ploy. An interrogator told him to testify against two friends, Damien Echols, 19, and Jason Baldwin, 17, for the murder of three Cub Scouts on May 6, 1993 in West Memphis. If he did, the officer promised he would not go to jail. He talked but the promise was not kept. He and Baldwin were sentenced to Life plus 40 years because they were minors. Echols, being an adult, was given the death sentence. The victims were found naked in a drainage ditch. They were tied together with shoe strings. The prosecution hinged on the confession riddled with factual errors and a Satanic cult expert with a mail-order degree while angry citizens gathered and cried out "Burn in Hell." Through the years, fresh facts are emerging. No DNA has connected the three to the crime. What appeared to be a Satanic act was attributed to the animals chewing the dead flesh. A parent of one murdered child who studied the crime now feels the three are factually innocent. Even so, no court has yet ordered a retrial (Dewan, 2007).

Calvin Ollins (1986, Illinois): Saved by DNA:

This 14-year-old "with an IQ between 65 and 70" was one of four teenagers who confessed to raping and murdering a medical student. Investigators said that if he signed the confession he could go home. He signed. After 15 years in prison, Ollins was cleared by DNA and was freed (Possley & Mills, 2001).

Brian Oltmanns (1992, South Dakota): Shortest Confession Ever

Oltmanns, 28, was unconscious when he was rescued from an apartment building fire that killed two elderly apartment residents. This man "with cerebral palsy and mild retardation" was hospitalized for 3 weeks for carbon monoxide poisoning, smoke inhalation, and burns. While he was still in a groggy state, police interrogated him and got him to scrawl a single sentence on a piece of paper: "I accidentally started the fire with lighter fluid and match." No other evidence tied him to the arson. He was charged with two counts of first-degree murder, two counts of second-degree murder, and arson. Two years later, a court threw out the confession (Trautmann, 1994).

Don Olmetti (1997, Illinois): A Mile From the Crime

A teacher was murdered. Police picked up 16-year-old Olmetti on the basis of a tip. The teenager, "who is borderline mentally retarded," was questioned by the police for 18 hours before confessing to the crime. Teachers at another school one mile away then certified that Olmetti was with them at the time of the crime. Despite this alibi, he spent 2 full years in jail before the charges were dropped (Rossi & Tucker, 1997).

Ronald Paccagnella (1995, Wisconsin): Saved by DNA

A 78-year-old woman was raped and murdered. Police canvassed the neighborhood and found bloodstained clothing in Paccagnella's boarding house room. This "man with an IQ of 61" was taken in for questioning. As pressure in the interrogation room mounted, the man asked if he could go home if he apologized to the victim. That statement was taken as a confession. He spent 10 months in jail before DNA testing showed that the blood on the clothing was his own. A month after Paccagnella's release, the real killer was identified and convicted (Doege, 1996).

Roland Douglas Phinney (1989, Massachusetts) A Bizarre Confession 9 Years After the Crime

In 1980, a 22-year-old nursing student was viciously bludgeoned to death with a blunt object in her bedroom. Her roommate found her covered with blood. She was rushed to the hospital but died 5 hours later. The case grew cold until a detective reopened it in 1989. Then, he ignored many important leads and focused only on Phinney, then 47, "a man with borderline mental retardation," who lived in the house next door. The detective conducted a face-to-face interrogation for 12 hours. Of course, there was no videotaping in those days, so no judge or jury actually saw and heard what really went on in that interrogation room. Even so, the confession that was printed by the detective and signed by Phinney was bizarre. According to the confession, Phinney sneaked into the victim's house with his camera and flash attachment and found the woman asleep. He crept up to her, raised her nightgown, pulled down her underwear, and prepared to take pictures of her "private parts." Then she woke up. He panicked and beat her to death with his camera and flash. It had to be a terrible beating because blood was spattered on the walls and the 10-foot-high ceiling. Although no physical evidence tied him to the crime, his signed confession prompted a jury to find him guilty. Phinney was sentenced to life without

parole. In 2004, a superior court judge overturned the conviction. In 2006, the Supreme Judicial Court upheld the lower court's decision. Phinney was let out on bail to live at home with an electronic monitoring bracelet attached to him at all times. In 2008, the murder was retried. A national expert on false confessions studied the confession. Then, on the witness stand, the expert discussed it line by line and ripped it to shreds. The jury deliberated for 10 hours and then declared Phinney innocent. At 65, and after spending 19 years in prison, he was a free man (Redmond, 2008).

Melvin Reynolds (1979, Missouri): "I'll Say So if You Want Me To"

On May 26, 1978 in St. Joseph, a 4-year-old child was carried away and murdered. Then came a tip that Reynolds, 25, a man with "mild mental retardation," could be the killer. The police did everything possible to get "the right words" out of Reynolds, including two polygraph tests, hypnosis, and sodium amytal injections. Seven months later, Reynolds was brought in for a marathon interrogation that lasted 14 hours. "Reynolds finally looked up like a dog with his ears pressed against his head and said, 'I'll say so if you want me to.'" The next day, the chief called a press conference and announced that the case was solved. Reynolds was convicted. Four years later, a serial killer confessed to an FBI agent that he killed the child. Reynolds was released, but the police chief was angered by the agent's actions. Being a political power, the chief pressured the FBI to transfer the agent. The agent was transferred from Missouri to Hawaii (Ganey, 1989).

Roberto Rocha (2002, Georgia):Confesses to Murder That Happened in U.S. While Vacationing in Brazil

Rocha, a 20-year-old man with "mental disabilities who reads at the third grade level," confessed to being present during the Cherokee County murder of a 15-year-old girl and helping to dispose of the body. He confessed even though he and his family flew to Brazil 3 days before the girl's murder and returned 8 days after her body was found. Even so, the district attorney refused to drop the charges for 15 months. The legal director of The Center on Wrongful Convictions spoke out on national television about the case: "The interrogation was brutal and all of it was captured on tape. It is a classic example of a mentally disabled suspect's eagerness to comply with the demands of angry, shouting, accusatory interrogators using minimization and maximization, interrupting denials, and other confrontational tactics during a 2 hour plus interrogation" (ABC, 2006; Williams, 2005).

Lafonso Rollins (1993, Illinois): Saved by DNA

After a series of sexual assaults on elderly women in a public housing complex for senior citizens, police arrested this 17-year-old "special education student with seriously limited reading and writing skills." During the interrogation, he signed confessions for three assaults and was charged with four. Police told him he could go home if he signed them. Rollins was sentenced to 75 years. The defense attorney planned to have DNA tests conducted, but he was suspended indefinitely for "multiple acts of neglect" before the tests could be performed. Eleven years later, new DNA tests showed Rollins was innocent of all the crimes and he was freed. The city settled the wrongful conviction by awarding Rollins $9 million (Washburn, 2006).

Tyler Sanchez (2009, Colorado): "Force-fed" Confession is Only Evidence

In July, 2009, Tyler Sanchez, 19, was picked up and questioned by Parker, Colorado police for a break-in and fondling assault of an 8-year-old girl. There was DNA, but none of it

belonged to Sanchez. Sanchez is a small and slender red head and the victim described her attacker as being much taller, older with dark hair. Most important, Sanchez was a "slow talking, hearing-impaired and intellectually disabled man." The only evidence is "People's Exhibit #1, an 11 sentence confession he gave after a 17-hour interrogation. According to a reporter, "Sentence by sentence, it parrots the detectives, echoing verbatim details they admit they repeatedly fed him during their interrogation." The case is still going to trial (Greene, 2010).

Devontae Sanford (2007, Michigan): Contract KillerTakes Blame

When a four-person killing in a drug den took place in Detroit, Michigan, 14-year-old Devontae Sanford, was home with his mother. Later the "special education student with a developmental disability" was taken in by the police. After numerous hours of questioning, Sanford's final completed confession was videotaped. He pled guilty and was sentenced to a term from 37 to 90 years. A year later, a professional contract killer claimed that he murdered the four persons in the drug den. When evidence was compared, Sanford purportedly told the police that he shot the victims with an M14 rifle. The real killer used an AK47 and a 45-caliber pistol. A police investigator testified that Sanford was innocent (Hunter, 2009).

Antonio Santiago (2009, California): Bomb Threat Fizzles

It was a quick and clean case. A telephone call to a Caltrain customer-service operator claimed that a bomb was on board one of their trains. A bomb squad swung into action, but found no bomb. Later, the call was traced to a Pacifica man, 26-year-old Antonio Santiago, "a man with a mental disability." After being interrogated, officers came out with a solid confession. They reported that Santiago, while bored and sitting around with friends, suddenly decided to make the fateful call. Santiago pleaded "no contest" and faced six months in jail. But a later checking showed that the police traced the wrong phone number. It was off by one digit. (Melvin, 2010).

Donald Shoup (1996, Florida): A Spring Break Misfire

On a Friday in March, a Canadian student on spring break in Daytona Beach was fatally shot in the back of the head. On Saturday, the police picked up odd, loquacious, happy-go-lucky, beach-loving, 18-year-old Shoup. By 3:00 a.m. on Sunday morning, the police received a full confession. When the police gave the confession to the media, it was revealed that Shoup had "an I.Q. of 62." Three weeks later, the real shooter and two accomplices were charged with the murder. Even so, Shoup was not released until August (Ditzler, 1996; Holland, 1996).

Charles Singletary (2005, New York): Federal Judge Vacates Murder Conviction of "Mentally Retarded" Inmate:

A district judge abruptly ruled that Singletary, now 50 and "a retarded man with an IQ of 63," should be freed immediately. The judge claimed that a high-pressure detective tricked Singletary into confessing that he strangled his niece to death in 1995. Although he could not read, Singletary signed a confession and was partially videotaped while he cried and said he wanted to borrow money for drugs and tried to scare her into doing it by putting his hands around her neck. He said he did not mean to kill her. He was convicted for "depraved indifference murder" and sentenced to 20 years to life. None of the lawyers in early hearings mentioned his "mental retardation." Even so, the current attorney's habeas petition argued that

Singletary's mental condition should have been obvious to all who were involved in the case. No physical evidence connected him to the murder. Singletary stated later that the detective said something like, "Who are they going to believe, the white man with the badge or the black man on welfare" (Perrotta, 2005).

Cornelius Singleton (1992, Alabama): Too Early For Modern Forensics to Save

In 1977, Sister Ann Hogan was killed while praying in a Mobile cemetery. Eye witnesses identified a man thought to be the killer as a white man with blonde hair, but Cornelius Singleton, a black man "with an IQ between 55 and 65 and illiterate" was picked up. He was taken to the cemetery, and then to the police station where he was questioned for many hours. Finally an attorney dictated the sentences, one by one, that Singleton parroted back--while another investigator wrote them down. He was led to believe he signed a confession for stealing bed sheets at an earlier time in his life. He unknowingly waived his right to a defense counsel. He never received an independent investigation. His conviction was overturned when the U.S. Supreme Court voted against execution in 1972. In 1981, he was retried and sentenced to death again. He was executed in 1992 (ACLU, 2005).

Lourdes Torres (2007, New York) Saved by DNA

"Illiterate, mentally retarded," and an illegal immigrant from Mexico, this 31-year-old woman sat in prison for 4 years for confessing to the murder of her former 49-year-old boyfriend in New York City. The confession was received after 14 hours of interrogation. Torres claimed that the police promised to let her go if she confessed. Later, it was clear that there were elements in the confession that did not equate with the way the murder really happened. Then came DNA evidence showing that two men were the killers. Although Torres confessed that the murder took place in the kitchen, the blood of all three men was found in other rooms. On reception of this evidence, prosecutors dropped the case (Dienst, 2007).

James Thompson, Jr (1988, Maryland): Police Reward Leads to Wild Confession (Soon to Be Saved by DNA

When the police offered a $1000 reward connected with a rape and murder, James Thompson claimed he found the murder weapon. This turned out to be a big mistake, considering that earlier in life, he "suffered a serious head injury and was low functioning." Investigators took him in for questioning and came out with a bizarre confession that led to rape-and-murder convictions for himself and a close friend. Recent DNA tests show that the semen in the victim belonged to a third person. Also, outside of the confession, no forensic evidence linked the two with the crime. Both remain in prison (Tamber, 2007).

Jerry Frank Townsend (1979, Florida): Saved by DNA After 22 Years in Prison

His defenders called him "a human parrot." When he was questioned about the murders of six women, 38-year-old Townsend, a man "with an IQ of 56," confessed to all of them. A judge ordered his release after DNA evidence excluded him from all the murders. His defense lawyers claimed that he confessed to detectives "because he wanted to please them" (Farrington, 2001; Friedberg & Smith, 2001).

Diane Tucker (Alabama, 1999): Murder of an Infant Who Never Existed

See Medill Banks (Alabama 1999): Murder of an Infant Who Never Existed.

David Vasquez (1984, Virginia): Saved by DNA

Detectives approached Vasquez, 37, "a man with mental retardation," while he was cleaning tables at a McDonald's restaurant in Arlington. They asked him to come to headquarters with them. With a tape recorder running, the detectives described to Vasquez the murder of a woman who had been raped and strangled with a venetian blind cord. They then confronted him and told him they had evidence to show that he was the killer. Too naive to believe that policemen would lie to him, he broke down and cried for his mother. Three intense interrogations took place. During the third one, he went into a dreamlike state. His meek, pleading voice became low pitched and steady as he described how he killed the woman. Later, the police connected the crime to the real perpetrator with the first successful use of DNA testing. Vasquez received a pardon on January 4, 1989, 5 years to the day after the detectives approached him at McDonald's (Mones, 1995; Priest, 1989).

Delbert Ward (1990, New York): Saved by Good Neighbors

The four Ward brothers—William, 67; Delbert, 59; Lyman, 62; and Roscoe, 70—operated their ramshackle farm like their deceased father did for many years. They did it even though they were "illiterate and mentally retarded." Then William died in his bed. When the police arrived, Delbert was taken to a state trooper barracks and forced to confess to killing him by somehow putting his hand over the mouth and nose of his brother. The neighbors rejected the services of a court-appointed lawyer, took up collections, and gained the services of a skilled criminal trial lawyer. During the trial, the neighbors packed the courtroom. The jury voted to acquit (Perske, 1991).

Douglas Warney (1996, New York): Saved by DNA

At Age 34, Warney confessed to murdering a prominent civil rights activist. His lawyers contended that the admission was "riddled with errors, and was the rambling of a man with an IQ of 68." Early attempts to gain DNA testing were rebuffed by the state supreme court. In 2004, the court stated that, "Warney's defense had not met the legal threshold to require testing, and that claims that tests could show someone else has committed the killing were too speculative." Even so, the New York City–based Innocence Project took on the case and produced a DNA test that excluded Warney. It also identified the real killer, who was already in prison for another conviction (Craig, 2006).

Earl Washington, Jr. (1983, Virginia): Saved by DNA

This 23-year-old man "with mental retardation" took the blame for every crime mentioned by police interrogators, including three break-ins, two malicious woundings, an attempted rape, two actual rapes, two robberies, burglary, and capital murder. He was tried for capital murder and was sentenced to death. In 1985, Washington was only days away from execution when a fellow death row inmate sounded the alarm that Washington was about to die without a lawyer. For the next 17 years, a group of lawyers and citizen advocates battled for Washington's life. At long last, a series of DNA tests (some hidden by the state) showed that Washington was innocent (Edds, 2003).

Robert Wilkinson (1975, Pennsylvania): Cleared When Real Killer Confesses

A home was firebombed and five people died. Wilkinson, "a man who is mentally retarded," was picked up and taken to the police station. There, he was stomped and beaten with a blackjack by investigators and told that he would never see his wife and child again if he did not confess. After 15 months in jail, a judge threw out Wilkinson's confession, finding that he signed a confession he could not read. Later, a neighbor confessed to the crime (Radelet, Bedau, & Putnam, 1992).

Johnny Lee Wilson (1986, Missouri): "If You Just Tell Us We Can All Go Home"

A 79-year-old woman was burned alive in her Aurora home. Based on a tip, the police interrogated Wilson, a 20-year-old with "organic brain damage and mental retardation." A tape recording of the interrogation showed how detectives blatantly spoon-fed the words they wanted Wilson to say. They promised that if he confessed, "We could all go home." Later, a judge unwittingly scared Wilson into pleading guilty by telling him that if he went to trial he could be sentenced to death. Wilson pled guilty. Later, the real killer, doing time for a similar murder in Kansas, confessed to the murder of the woman in Missouri. Still later, the governor pardoned Wilson. In his pardon, he said, "It is evident that the only facts this mentally retarded man knew about this hideous crime were the facts given to him by investigators who felt pressure to solve the case quick" (Carnahan, 1995; Perske, 1994).

Dan Young (1990, Illinois) Saved by DNA

After firefighters put out a fire in an abandoned building, they found the burned naked body of a 39-year-old woman. She died from a head wound and was strangled. Later, a 16-year-old was picked up and questioned until he confessed. He said that a 19-year-old man and Young, 31, had been with him. They were coerced into confessing as well. However, it was discovered that the 16 year old was already in police custody at the time of the crime, leaving the other two to answer for the murder of the woman. Young, a man "with IQ 56 who couldn't read or write anything other than his name," spent more than 12 years in prison before DNA tests excluded him. After being released, Young said his years behind bars had been harrowing. Other inmates stole from him and fought with him. The stress, he said, made him want to just stay in his cell and sleep his life away (Mills & Coen, 2005).

References

ABC/TV. (2006, March 30). *Primetime: False confessions.*.

Adams, H. (2006, April 15). Hickman's words were unreliable from the beginning. *The Courier-Journal.*

Aheran, L. (1998, November 15). Rough justice: Bad cases make good lawyers. *Greensboro News & Record.* Farmington Hills, MI: Gale Group.

Associated Press. (1986, January 10). *Man spends eight months in jail, trial begins in murder that never occurred.*.

Associated Press. (1996, January 6) . Virginia executes an abductor who killed. *New York Times.*

Associated Press. (1997, July 8). DNA analysis 6 years later reverses fortunes. *Tampa Tribune.*.

Barrouquere, B. (2003, November 23). Number of wrongful convictions in La. immense. *Baton Rouge Advocate.*.

Baughman, C., & Guarisco, T. (2001, March 20). Justice for none. *Baton Rouge Advocate.*.

Bear, J., & Bresler, S. (2007, December). Overshadowing innocence: Evaluating and challenging the false confession. *The Champion: National Association of Criminal Defense Lawyers.*.

Blankstein, A., Gorman, A., & Larrubia, E. (2004, October 25). How wrong man was convicted in killings. *Los Angeles Times.*.

Bonner, R. (2002, July 8). Still on Death Row, Despite Mounting Doubts. *The New York Times.*

Carnahan, M. (1995, September 29). *A statement from Governor Mel Carnahan re: Johnny Lee Wilson.* Jefferson City, MO: Office of the Governor.

Chansanchai, A. (2004, October 27). Former suspect's lawyer demands $200,000 from city. *Baltimore Sun.*.

Chittum, S. (2002, April 8). Baker gets 15 years to life. *Binghamton Press & Sun Bulletin.*.

Courtney, R. (2004, April 3). Man with fetal alcohol effect cleared of arson. *Yakima Herald-Republic.*.

Craig, G. (2006, May 16). Innocent man freed after 10 years in prison. *Rochester Democrat and Chronicle.*.

de Vise, D., & De Marzo, W. (2002, May 30). Behan probers expand inquiry. *Miami Herald.*.

Dewan, S. (2007, October 30). Defense offers new evidence in a murder case that shocked Arkansas. *New York Times.*.

Dienst, J. (2007, January 25). *Woman cleared of murder.* New York: WNBC.com.

Ditzler, J. (1996, March 18). Man admits killing breaker during robbery. *Daytona Beach News Journal.*.

Doege, D. (1996, October 31). Man pleads guilty in Cudahay murder; guilt-ridden suspect says he caused a death once blamed on someone else. *Milwaukee Journal-Sentinel.*.

Drizin, S., & Leo, R. (2004, March). The problem of false confessions in the post-DNA world. *North Carolina Law Review, 82*(3).

Drizin. S., (2006, November 30). Northwestern School of Law ListServ.

Dwyer, J. (2007, June 16). Considering the crime; not the suspect. *New York Times.*.

Edds, M. (2003). *An expendable man: The near execution of Earl Washington Jr.* New York: New York University Press.

Farrington, B. (2001, September 29). Retarded man cleared of murder sues over 22 years in prison. *Sarasota Herald Tribune.*.

Ferguson, R. (2008, April). *Family's belief in boy's innocence vindicated: DNA clears teen charged with beating woman.* Chicago: NBC5. Available at: www.nbc5.com/video/5347877/index.html?taf=chi.

Filosa, G. (2004, August 10). Gretna man exonerated in murder. *New Orleans Times-Picayune.*.

Friedberg, A., & Smith, J. (2001, June 16). Townsend released: Judge cites "an enormous tragedy.". *South Florida Sun-Sentinel.*.

Frievogel, W. (2000, April 30). Lessons from 13 innocent men. *St Louis Post-Dispatch.*.

Frisbie, T., & Garrett, R. (1998). *Victims of justice.* New York: Avon Books.

Fry, S. (1993, October 14). Man testifies in Wakarusa River death. *Topeka Capital-Journal.*.

Ganey, T. (1989). *Innocent blood: A true story of obsession and serial murder.* New York: St. Martin's.

Greens, S. 2010, April 29). Greene: Force-fed confession is the only "evidence" in sex-assault case. *The Denver Post.*.

Holland, J. (1996, August 1). Former spring break murder suspect freed. *Daytona Beach News Journal.*.

Hunter, G. (2009, March 10). Alleged hitman claims responsibility in more murders, prosecutors say. *The Detroit News.*

Innocence Project. (2008, August 6). *The Innocence Project—Know the cases.* New York: Author.

(IPNO, 2010, May 21). Press release for John Floyd. *Innocence project of New Orleans.*

Kiehl, S. (2009, April 10). Lawyer seeks new hearing in 1972 murder conviction. *Baltimore Sun.*.

King, C. (1998, April 12). Confession of multiple child killer frees retarded man after a year of confinement. *St. Louis Post-Dispatch.*.

King, R. (2005, October 1) Broken justice: the death penalty in Alabama. *The American Civil Liberties Union, Washington, DC.*

Kresnak, J. (2001, February 27). Some question cops' methods when grilling youth. *Detroit Free Press.*.

Levingston, S. (2010, January 7). Assessing the justice of capital punishment cases. *The Washington Post.*.

Luo, M. (2002, July 7–9). Justice in a small town. *AP Newswires.*.

Lyons, S. (2004, October 5). Charges dropped in fatal beating. *Baltimore Sun.*.

Marzulli, J. (2008, January 14). Cops made autistic Brooklyn man confess to sister's slay, says lawsuit. *New York Daily News.*.

Melvin, J, (2010, August 26) Pacifica man who falsely confessed cleared of bomb-threat charges. *San Mateo County Times.*.

McMahon, P., & Friedberg, A. (2002, February 22). Prisoner says confession forced—Man convicted in 1990 shooting of deputy alleges officers beat and threatened him. *Ft. Lauderdale Sun Sentinel.*.

McMahon, P. (2010, March 25). After 26 years, Anthony Caravella is a free man: Judge throws out rape and murder conviction, apologizes on behalf of the state. *Ft. Lauderdale Sun Sentinel.*. \

Mills, S., & Coen, J. (2005, February 1). Twelve years behind bars, now justice at last. *Chicago Tribune.*.

Mones, P. (1995). *Stalking justice: The dramatic story of the detective who first used DNA testing to catch a serial killer*. New York: Simon & Shuster.

Nesmith, S. (2006, October 26). Mentally retarded man cleared of murder, abuse charges. *Miami Herald.*.

Nogas, C. (2000a, February 11). Baker denies killing girl. *Binghamton Press & Sun Bulletin.*.

Nogas, C. (2000b, February 15). Psychologists disagree on meaning of baby sitter's I.Q. test. *Binghamton Press & Sun Bulletin.*.

Nogas, C. (2004, February 14). Baker freed in death. *Binghamton Press & Sun Bulletin.*.

O'Brien, J. (1999, September 22). Accused worries about his job; police chief: "I've never had a case like this.". *Syracuse Post-Standard.*.

O'Brien, J. (2009, January 12). Man sues state for $8 million. *Syracuse Post-Standard.* .

Perrotta, T. (2005, April 22). Judge vacates murder conviction of a mentally retarded man. *New York Law Journal.*.

Perske, R. (1991A). Jerome Bowden's Eleventh Hour. *Unequal justice: What can happen when persons with retardation or other developmental disabilities encounter the criminal justice system.* Nashville: Abingdon Press, pp, 28-38

Perske, R. (1991B). A town fights for Adelbert Ward. *Unequal justice: What can happen when persons with retardation or other developmental disabilities encounter the criminal justice system.* Nashville: Abingdon Press, pp.88-94

Perske, R. (1991C). *Were Walter Correll's first lawyers too apologetic? Unequal justice: What can happen when persons with retardation or other developmental disabilities encounter the criminal justice system.* Nashville: Abingdon Press, pp, 28-38

Perske, R. (1991D). Perske, R. (1991B). A town fights for Adelbert Ward. *Unequal justice: What can happen when persons with retardation or other developmental disabilities encounter the criminal justice system.* Nashville: Abingdon Press, pp.88-94

Perske, R. (1991E). Tommy Lee Hines lives in a limbo called incompetency. *Unequal justice: What can happen when persons with retardation or other developmental disabilities encounter the criminal justice system.* Nashville: Abingdon Press, pp.95-96

Perske, R. (1994, February 20). Johnny shouldn't be in jail: No physical evidence has ever connected him to the murder. *Kansas City Star.*.

Perske, R. (1995). *Deadly Innocence?* Nashville: Abingdon Press.

Perske, R. (2001). We believe Richard Lapointe did not kill Bernice Martin. *Mental Retardation, 39. 410-412.*

Perske, R. (2005). Unlikely heroes. *Mental Retardation, 43*, 369–375.

Perske, R. (2008). False confessions from 53 persons with intellectual disabilities: The list keeps growing. *Intellectual and Developmental Disabilities, 46, 468-479.*

Possley, M., & Mills, S. (2001, January 27). Report alleges crime lab fraud; scientist is accused of providing false testimony. *Chicago Tribune.*.

Possley, M. (2006, November 29), Convict's case hurt by lost evidence. *Chicago Tribune.* .

Priest, D. (1989, July 16). At each step, justice faltered for Virginia man. *Washington Post.*.

Radelet, M., Bedau, H., & Putnam, C. (1992). *In spite of innocence*. Boston: Northeastern University Press, p. 353.

Redmond, L. (2008, March 5). Professor: Murder confession coerced by interrogation. *Lowell Sun.*.

Redmond, L. (2008, March 11). Acquitted in retrial after spending 16 years in jail. *Lowell Sun.*.

Richissin, T. (1998, November 20). Held without proof, boy free; he's jailed 6 months, even after DNA test debunks evidence. *Baltimore Sun.*.

Richissin, T. (1999, February 6). Trying to right an injustice. *Baltimore Sun.*.

Ritter, B. (2001) In Process

Roberson, H., & Lenz, K. (2001, May 25). Ricky free: Judge says Cullipher deserves new trial; prosecutor drops case. *Hampton Roads Daily Press.*.

Rossi, R., & Tucker, E. (1997, April 5). Suspect in murder of teacher was on school suspension. *Chicago Sun-Times.*.

Sandlin, S. (2008, June 28). Slaying suspect freed. *Albuquerque Journal.*.

Schwartz, D. (2006, May 21). Why you should care about Girvies Davis. *Chicago Tribune.* .

Scharnberg, K., & Mills, S. (2002, January 5). DNA voids murder confession. *Chicago Tribune.*.
Shellem, P. (2003a, November 11). DNA test in, Laughman may be freed. *Harrisburg Patriot-News.*.

Shellem, P. (2003b, November 30). False confessions spur calls to tape interrogations. *Harrisburg Patriot-News.*.

Sorkin, M. (1990, July 17). Teens cleared of killing homeless man in Alton. *St. Louis Post-Dispatch.*.

Stashenko, J. (2010, January 11), Failure to explore alibi defense upsets double-murder conviction. *New York Law Journal.* .

Tamber,C. (2007, October 9). Defense in fight for new trial in 1987 Baltimore Murder Case. *The Baltimore Daily Record.*

Thompson, E. (2007, September 8). Judge releases Floyd Brown. *Associated Press,* Durham, NC.

Trautmann, M. (1994, August 25). Nelson drops charges against arson suspect. *Sioux Falls Argus Leader.*.

Tydings, J. & Pokusa R. (1996), Petition for Executive Clemency of Walter Milton Correll, Jr. Office of the Governor of Virginia, January 2.

Washburn, G. (2006, January 27). Wrongfully convicted man gets $9 million. *Chicago Tribune.*.

Williams, C. (2005, May 25). Free from suspicion. *Atlanta Journal Constitution.*.

Young, C. (2008, September 21). Murder victim's mom meets convicted killer. Says the wrong man in prison. *Times Herald-Record.* .

Zeldes, J. D. (1994, December). Connecticut's most famous nolle. *Connecticut Bar Journal, 68*, 443–455.

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

Colonel Danny R. Stebbins
Acting Commissioner

Lieutenant Edwin S. Henlon
Chief of Staff

March 9, 2011

Rep. Gerald M. Fox, Co-Chairman
Sen. Eric D. Coleman, Co-Chairman
Judiciary Committee
Legislative Office Building
Hartford, CT 06106

SB 954 AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS

The Department of Public Safety opposes this bill and advises of fiscal impact.

As a preliminary matter, the committee should be advised of procedures currently used by the Connecticut State Police. These procedures do not require custodial interrogations involving capital felony, class A or class B felony violations of the Connecticut General Statutes to be electronically or digitally recorded. Connecticut is not alone in this regard; the FBI also does not require confessions or statements obtained during custodial interrogation to be electronically or digitally recorded. Connecticut Department of Public Safety investigative procedures for custodial interrogation involving a major criminal investigation require the presence of two sworn State Police investigators. After advising the accused in writing of his Miranda Rights, the investigators discuss the criminal act with the accused prior to obtaining a voluntary written statement on department paperwork. Upon completion, this written statement is read and visually reviewed by the accused. Once complete and accurate, the accused initials corrections on each page and signs the last page. The document is then notarized by a State Police investigator. Both State Police investigators sign the written statement as witnesses and a copy of the statement is provided to the accused. The State Police have continually had success in defending written confessions and statements when testifying in court trials. This testimony has lead to convictions for crimes including murder, robbery, sexual assault, and other serious crimes.

Requiring confessions and statements obtained during custodial interrogation to be electronically or digitally recorded may hinder the investigators' interview techniques. Defense attorneys may use the tape in an attempt to divert the focus of a jury's attention in a criminal trial from the accused to criticism of an investigator's interrogation techniques.

Not all accused individuals will agree to be taped. An individual, convicted in Connecticut on three counts of murder in 2004, refused to be taped, stating that he never wanted his mother to see or hear him say what he did. He did provide investigators a detailed written statement of the incident that was used against him at trial along with the testimony of the investigators who obtained it.

On many occasions, once apprehended in the field and advised of their Miranda Rights, accused individuals confess or discuss the criminal act with investigators prior to reaching the troop or booking area. These statements could be presumed inadmissible if this bill is passed.

In addition to the policy reasons, the committee should be aware that this bill will have fiscal impact. Requiring these custodial interrogations to be electronically or digitally recorded will involve equipping all investigators with an audiovisual device. Concerns pertaining to tampering with the electronic or digital recordings will have to be addressed. As the recordings may be subject to chain of evidence rules, there will be the administrative cost of securing the same pending trial.

Sincerely,

Colonel Danny R. Stebbins
ACTING COMMISSIONER

STATEMENT OF THE FREEDOM OF INFORMATION COMMISSION IN OPPOSITION, IN PART, TO RAISED BILL NO. 954, AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS

March 9, 2011

The Freedom of Information (FOI) Commission does not oppose the stated purpose of Raised Bill 954 - to improve the reliability of confessions by providing that statements made by a person during a custodial interrogation at a place of detention are presumed inadmissible unless the custodial interrogation is electronically recorded. Ensuring the authenticity of custodial interrogations by using electronic recordings is a worthy goal.

As written, however, the proposal forever excludes such recordings from disclosure under the FOI Act (lines 73-78), thereby decreasing government transparency in the State of Connecticut, and further eroding the state's FOI Act and the public's confidence in law enforcement. The proposal begs the question: What is the need to permanently exclude these videotapings from the purview of the public?

Section 1-210(b)(3)(A), (C) and (G), G.S., provides that disclosure is not required of:

> Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known...(C) information to be used in a prospective law enforcement action if prejudicial to such action...or (G) uncorroborated allegations subject to destruction pursuant to section 1-216 ....

Thus, the FOI Act already permissively exempts from disclosure information that may be gathered during a custodial interrogation. This exemption shields from disclosure information to be used in a prospective law enforcement action, information that would reveal the identity of informants and uncorroborated allegations of criminal activity. Therefore, law enforcement agencies already have the ability to permissively withhold the electronic recordings, in appropriate circumstances, making the proposed legislation repetitive and unnecessary.

At a minimum, the language of the proposal should be amended to require that when a recording becomes evidence in court during a public trial - particularly a recording that contains a confession – it will also be available to the public. Doing so will uphold the rights of both defendants and the public itself. Such availability will instill public trust and confidence in law enforcement.

The FOI Commission respectfully submits that this exclusion is unnecessary and that the objectionable lines of the bill be stricken to preserve public access to these recordings.

Contact: Colleen M. Murphy, Executive Director and General Counsel or Eric V. Turner, Managing Director and Associate General Counsel at (860) 566-5682.

Michael J. Herbst
23 Side Hill Road
Westport, CT 06880

203-226-9777
mjherbst@optonline.net

TESTIMONY ON BILL REGARDING SB NO. 954 AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS

My name is Mickey Herbst, and I live in Westport. I have a 35 year old daughter with intellectual disabilities who has been my inspiration to become active as an advocate for her and her piers since she was born.

I have come to know some of the loveliest, most kind and most willing to please people in all of society. People who are a little different, a little slower, and a little less likely to make a lot of friends, use every tool at their disposal to overcome these traits to get the approval and acceptance that we all crave.

Unfortunately, this creates tragic consequences for some of them, when they encounter the criminal justice system. We know that scores of people with intellectual disabilities who confessed to crimes and were convicted have been exonerated after spending years in jail for crimes they did not commit. Nobody knows how many more are still incarcerated or have been executed for crimes they did not commit.

It is not acceptable that after having the technology for decades, Connecticut still does not require the video recording of custodial interrogations. This simple change in policy will make it possible to review the process, and lead to more objective outcomes. The reasons for resistance to doing so, simply are not good enough. The law needs to change to help prevent false confessions in the future. As a parent, and an advocate for people with intellectual disabilities, I urge you to pass this legislation now.

Thank you,

Mickey Herbst

TESTIMONY

of the

CONNECTICUT CONFERENCE OF MUNICIPALITIES

to the

JUDICIARY COMMITTEE

March 9, 2011

CCM is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent over 90% of Connecticut's population.

We appreciate this opportunity to provide testimony to you on issues of concern to towns and cities.

S.B. 954, "An Act Concerning the Electronic Recording of Custodial Interrogations"

S.B. 954 would mandate that law enforcement agency interrogations for capital felony A or B crimes be inadmissible in court, unless such interrogations are recorded electronically.

S.B. 954 presents a host of public policy implications that need and warrant exploration: whether it is in the public's interest that police interrogation techniques be studied by defense attorneys and criminals – allowing defense attorneys to focus on *interrogation techniques* rather than the guilt or innocence of the suspect; and whether and what standards and procedures are to be mandated (what kinds of recording devices are acceptable, what kinds of storage facilities are acceptable, etc.).

The Committee must ensure that the bill is not written in a way as to undermine the criminal investigative process.

CCM is not sure of the fiscal impact that S.B. 954 would have on towns and cities. We, therefore, urge the Committee to obtain a fiscal note on this bill.

★ ★ ★ ★ ★

If you have any questions, please contact Ron Thomas at rthomas@ccm-ct.org or (203) 498-3000.

900 Chapel St., 9th Floor, New Haven, CT 06510 P. 203-498-3000 F. 203-562-6314 www.ccm-ct.org

TUXIS RESIDENTIAL & COMMUNITY RESOURCES, INC.
Advocacy & Empowerment... One Person at a Time *Terrence W. Macy, Ph.D., Executive Director*

Testimony Submitted to the Committee on Judiciary

Senate Bill # 954, An Act Concerning the Electronic Recording of Custodial Interrogations.

In Favor -written only testimony

Testimony scheduled for March 9, 2011

My name is Terrence Macy, Ph.D. I am the Executive Director of SARAH Tuxis Residential and Community Resources, Inc. We are a community based agency that has been supporting persons with intellectual disabilities for 20 years. I am writing in support of this legislation proposed by the Public Defenders.

I have been in support of similar legislation that has been proposed many times in the past by the Arc Connecticut. I supported those efforts because I believe persons with intellectual disabilities have been forced to make confessions to major felonies they did not commit. This year, I am writing to support SB 954 because I believe the need for it remains extremely urgent and it provides balanced safeguards for both the law enforcement community and those persons with intellectual disabilities.

My collogue, a nationally recognized author, Robert Perske, has already offered you a painfully aware testimony in favor of this bill He has been a strident proponent of this kind of legislation for years. His is not an academic view of the subject but one based on his first hand experience with cases where persons with intellectual disabilities have been wrongly accused and made false confessions. Some have paid with their lives. I would ask that you add my voice to his as we share a belief in the rights of persons with disabilities to be treated fairly in the process of custodial interrogations.

Thank you for considering this testimony in favor of SB #954 the purpose of which is "To improve the reliability of confessions by providing that statements made by the person during custodial interrogation at a place of detention are presumed inadmissible unless the custodial interrogation is electronically recorded"

45 Boston Street, Guilford, Connecticut 06437
203•458•8532 Fax 203•453•7717
E-mail: info@sarah-tuxis.org / Web page: www.sarah-tuxis.org
A Chapter of the ARC Connecticut and ARC U.S.

PAGE 32
LINE 9

Claude Albert, Legislative Chair, Connecticut Council on Freedom of Information

Statement in opposition to one provision of Senate Bill 954, An Act Concerning Electronic Recording of Custodial Interrogations

March 9, 2011

Senator Coleman, Representative Fox and members of the Judiciary Committee:

My name is Claude Albert. I live in Haddam, and I am the legislative chair of the Connecticut Council on Freedom of Information, an organization dedicated to transparency and accountability in government.

I am here to comment on one provision of Senate Bill 954 – subsection (i) – which makes taped interrogations of criminal suspects exempt from disclosure under the Freedom of Information Act. We believe that taping interrogations may be good public policy that protects both criminal suspects and the police, but we are concerned about the provision keeping video interrogations forever exempt from the Freedom of Information Act.

Presumably some of these interrogations will become public through the court process, but others will not, either because they are not used in court or because charges are never brought.

It seems only logical that recorded interrogations should be subject to the same disclosure requirements and exemptions that written records of interrogations are subject to today. For example, the FOI Act allows police to withhold information that would be prejudicial to a pending law enforcement action. In practice, this has generally meant that such information can be withheld until there is a disposition of charges in court or an investigation is no longer active. The FOI Act also provides other screens through which police records can be passed before being released, such as exemptions for uncorroborated allegations of criminal activity, the identities of informants, investigative techniques not otherwise known to the public, medical information and invasions of personal privacy. These have been adequate protections for police materials in the past and we would expect them to continue to be so.

The actions of the police are an area of government authority where legitimate public interest is at its apogee. Though rare, cases will inevitably arise in which the public interest demands close scrutiny of an investigation that includes a recorded interrogation that has not become public in court. A person questioned by the police may want access to the recording of his own interrogation. We believe that such recordings should meet the same tests for exemption as other material in police files and that adoption of this beneficial technology should not upset the present balance of public access to police information.

PAGE 23
LINE 18

RAISED BILL NO. 954

AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS

Testimony of Richard Emanuel, member of the executive board of the Connecticut Criminal Defense Lawyers Association, in support of Raised Bill No. 954, with certain suggestions for improving the legislation.

Chairman Coleman, Chairman Fox, and Distinguished Members of the Judiciary Committee:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of approximately 350 licensed lawyers, in both the public and private sectors, dedicated to the defense of individuals accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States Constitutions are applied fairly and equally and that those rights are not violated or abridged.

CCDLA is strongly in favor of legislation that would require the electronic recording of custodial interrogations and statements in all felony investigations. In pursuit of that ultimate objective, CCDLA thanks the legislature for its support and authorization of the pilot project that has been ongoing in several Connecticut jurisdictions. It is very encouraging that police officials are reporting extremely positive results from the pilot program. See *Update on the Recording of Custodial Interrogations Pilot Project* (Feb. 28, 2011) (memorandum from Mitch Forman, Grants and Contracts Manager, to Kevin Kane, Chief State's Attorney). For example, the *Update* reports that in Bridgeport,

- "100% of detective users now have positive opinions regarding recording the interviews";

- the State's Attorney for the Judicial District of Fairfield "feels that the use of this technology has a beneficial effect on the presentation of evidence";
- the Deputy Chief of Police reports "'that the tapes may be facilitating guilty pleas,'" and that "'[a]s far as the use of the equipment is concerned, its use is at this point institutionalized here and we are outfitting a second interview room with the same equipment.'"

Id., pp. 1-2. Notably, such findings are consistent with the positive findings of national experts in this field. See, e.g., Thomas P. Sullivan, *Electronic Recording of Custodial Interrogations: Everybody Wins*, 95 J. Crim. L. & Criminology 1127 (2005).

In October of 2010, in the case of *State v. Lockhart*, 298 Conn. 537 (2010), the Connecticut Supreme Court declined to adopt a recording requirement.[1] Although the majority in *Lockhart* repeatedly acknowledged the benefits that could ensue from a recording requirement; see id., 543-44, 565, 569, 570 & n. 13, 575, 577; the majority believed that a recording requirement should be a matter of legislative policy: "Because we believe that the legislature is better suited to gather and assess the facts necessary to establishing a recording requirement, we defer to this branch." *Id.*, 577.

At this point in time, the "facts" are in, and they prove without doubt that a recording requirement will increase the *accuracy and reliability* of evidence presented in our criminal courts. An electronic recording is obviously the "best evidence" (and the only original evidence) of what occurs in the interrogation room. Since interrogation evidence often carries the consequence of confinement, there is no principled reason to settle for conflicting or ambiguous accounts of what occurred

[1] The *Lockhart* court unanimously held that recording was not required by our state constitution. Four justices also declined to impose such a requirement pursuant to the Supreme Court's inherent supervisory authority over the administration of justice. In a concurring opinion, Justice Richard Palmer argued that a recording requirement *should* be adopted under the court's supervisory powers. See *State v. Lockhart*, supra, 587-620 (concurring opinion).

during an interrogation, when we possess the means to capture a complete and accurate account of the actual interrogation and any resulting statements.

Unquestionably, a recording requirement will benefit all participants in the criminal justice system—police, prosecutors, defendants, defense lawyers, jurors, and trial and appellate judges and justices. It will obviate or greatly reduce the need for protracted suppression hearings, thereby conserving valuable legal and judicial resources. See *State v. Conger*, 652 N.W. 2nd 704, 707 & n. 1 (Minn. 2002) (noting positive effects of that state's recording requirement: "We take judicial notice of the fact that fewer cases come before us in which a key issue is whether a suspect waived his or her constitutional rights during interrogation."). And it will "promote the fair and impartial administration of justice in this state"; *State v. Lockhart*, supra, 588 (concurring opinion); thereby increasing the public's respect for, and its confidence in, our criminal justice system.

Although CCDLA supports Raised Bill No. 954, CCDLA offers a few suggestions that would both clarify and strengthen the recording requirement.

1. Subsection (b), the "presumptive inadmissibility" rule: CCDLA believes that subsection (b) is problematic for two principal reasons.

First, the requirement to record is only phrased in negative terms. That is, under subsection (b) a statement obtained during a custodial interrogation is "presumed to be inadmissible" *unless* the statement has been electronically recorded and the recording is "substantially accurate and not intentionally altered." CCDLA believes that the legislation should contain at the outset a recording requirement phrased in positive, affirmative terms, specifying both the *obligation to record and the scope of that which must be recorded*, e.g., the entire interrogation, including the administration of *Miranda* warnings and any responses to those warnings.[2] Another

[2] For just a few examples of statutes that set forth an affirmative duty to record, or specify the content of what must be recorded, see D.C.Code Ann. § 5-116.01(a),(b) (the police "shall electronically record, *in their entirety*, and to the greatest extent feasible, custodial interrogations . . ." and the recording "shall *include the giving of any warnings as to rights* required by law") (Emphasis added.); N.Mex. Stat. ch. 29-

example of a provision mandating an obligation to record may be found in subsection (b) of the bill submitted by the CCDLA, which is reproduced below.[3]

Second, the Raised Bill provides that the recording requirement would only apply to a person "under investigation for or accused of a capital felony or a class A or B felony." CCDLA believes that limiting the recording requirement in this manner is not only ill-advised, but highly unworkable. For example, would the limitation (to a capital felony or class A or B felony) be measured *as of the time the statement is obtained*, or *at the time of trial*? A suspect may initially be "under investigation for or accused of" a "qualifying" offense (capital felony or class A or B felony), but subsequently be charged with a lesser felony or misdemeanor. And the opposite is also true: a suspect may be subjected to custodial interrogation for a misdemeanor or class C or D felony, yet the interrogation might ultimately result in the suspect being accused of an offense for which electronic recording *would have been* required. Furthermore, the police do not make the ultimate decision as to the charges brought against a defendant. Although the police arrest and "book" an individual for specific criminal offenses, once that suspect is brought into court, the prosecuting official has considerable discretion (and for a considerable amount of time) to increase, decrease, amend, or substitute the charges against the defendant.

1-16 A. (1) ("the custodial interrogation shall be electronically recorded *in its entirety*") (Emphasis added.); N.C. Gen. Stat. § 15A-211(a) ("The purpose of this Article is to require the creation of an electronic record of *an entire custodial interrogation*," and recording must include "a law enforcement officer's *advice to the person in custody* of that person's constitutional rights. . . .") (Emphasis added.). See also, N.J. Sup. Ct. R. 3:17(a) ("all custodial interrogations conducted in a place of detention must be electronically recorded. . . .").

[3] CCDLA proposed the following language: "(b) Any custodial interrogation of a person at a place of detention, including any statement made by the person, *shall be electronically recorded in its entirety* if such person has been arrested for, or is accused of or under investigation for the commission of a felony. The electronic recording of the custodial interrogation *shall include the advisement of rights and the person's response to the advisement of rights*. If the person was advised of his rights prior to commencement of the custodial interrogation, the person shall again be advised of his rights at the commencement of the electronically recorded custodial interrogation." (Emphasis added.)

See, e.g., Practice Book § 36-17 (providing in part that "[i]f the trial has not commenced, the prosecuting authority may amend the information, or add additional counts, or file a substitute information"). In CCDLA's view, the least confusing and most practical suggestion is to impose a recording requirement with respect to all felonies, i.e., to the "statement of a person under investigation for or accused of a felony."

2. Subsection (d), the "violation" section: The omission from the Raised Bill of a provision affirmatively requiring electronic recording (as discussed in § 1 above), must be viewed in light of subsection (d), which provides:

> "If the court finds by a preponderance of the evidence that the person was subjected to a custodial interrogation *in violation of this section*, then any statements made by the person during or following that nonrecorded custodial interrogation, even if otherwise in compliance with this section, are presumed to be inadmissible in any criminal proceeding against the person except for the purposes of impeachment." (Emphasis added.)

The essential problem here is that because there is no expressly stated, affirmative obligation to record (but only a rule of presumptive inadmissibility unless certain interrogations are recorded), a trial court may be hard-pressed to actually "find" that a person "was subjected to a custodial interrogation in violation of this section." In other words, "what (and where) is the *violation*?" Construed strictly, subsection (b) merely sets forth a rule of "presumptive inadmissibility." But since subsection (b) does not require the doing of any affirmative act, it is difficult to see how a court would find that there has been a "violation" of that duty. That is why the legislation should contain an express affirmative obligation to record—in which case subsection (d) would apply in a more meaningful way. As currently worded, subsections (b) and (d) may prove difficult, if not impossible, to reconcile.

3. Subsection (e), the "exceptions" to a recording requirement: CCDLA suggests that some modifications be made in this subsection, lest the exceptions swallow the rule. For example, subsection (e)(2) would authorize the admission of a statement made during custodial interrogation "that was not recorded as required by

this section because electronic recording was *not feasible*." (Emphasis added.) CCDLA suggests that this language be amended to read "not feasible due to unforeseeable equipment failure or malfunction, or due to other exigent circumstances." See, e.g., N.C. Gen. Stat. § 15A-211(e)(2) (providing exception where failure to record is due to "unforeseeable equipment failure, and obtaining replacement equipment was not feasible"); N.Mex. Stat. ch. 29-1-16 B. (1), (2) ("good cause" for not recording an interrogation includes the fact that "electronic recording equipment was not reasonably available" or the "recording equipment failed and obtaining replacement equipment was not feasible").

CCDLA also believes that subsection (e)(9), which would authorize the admission of "[a]ny other statement that may be admissible under law," is much too broad, and of uncertain meaning.

4. Subsection (f), the burden of proof for exceptions: This subsection provides that "[t]he state shall have the burden of proving, by a preponderance of the evidence, that one of the exceptions specified in subsection (e) of this section is applicable." CCDLA believes that a higher burden of proof should be required to justify the state's reliance on one of the listed exceptions. Proof by "a preponderance of the evidence" presents a relatively low threshold of proof, requiring only that a fact or issue be "more probable than not." In view of the importance of a recording requirement, CCDLA recommends that the state be required to prove the applicability of an exception by "clear and convincing evidence." The "clear and convincing evidence" standard is generally interpreted to mean that a fact or issue is "highly probable"; *State v. Jarzbek*, 210 Conn. 396, 397-398 (1989); or that there is a "substantially greater probability" that the fact or issue is true rather than false. See *Lopinto v. Haines*, 185 Conn. 527, 534 (1981); *Dacey v. Connecticut Bar Association*, 170 Conn. 520, 536-538 (1976).

5. Subsection (h), the "catch-all" provision: CCDLA opposes subsection (h), which could essentially undermine the recording requirement. Subsection (h)

provides that the presumed inadmissibility of an (unrecorded) statement "may be overcome by a preponderance of the evidence that the statement *was voluntarily given and is reliable*, based on the totality of the circumstances." (Emphasis added.) This will amount to a "free pass" for many unrecorded statements, and may act as a *disincentive to record*. Pursuant to this subsection, police officials theoretically could decide *not* to record a custodial interrogation, secure in the knowledge that the statement may nevertheless be admissible in court if the prosecution can establish (by a preponderance of the evidence) that the statement was "voluntary" and "reliable." *Almost all confessions and statements that are challenged in court as being "involuntary," are in fact found to be "voluntary,"* which simply means that the statement was not "coerced" by the police. And the "reliability" factor—a factor not generally utilized in determining the admissibility of statements and confessions—adds little of substance to the equation. In short, in most cases the prosecution would probably have little trouble in admitting unrecorded statements pursuant to subsection (h).

For the reasons stated above, the CCDLA respectfully urges this Committee to incorporate the suggested modifications to Raised Bill No. 954.

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.;

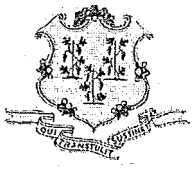
4) that the witness be asked immediately for a statement of confidence level; and

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.

PAGE 21
LINE 15



STATE OF CONNECTICUT

OFFICE OF PROTECTION AND ADVOCACY FOR
PERSONS WITH DISABILITIES
60B WESTON STREET, HARTFORD, CT 06120-1551

JAMES D. McGAUGHEY
Executive Director

Phone: 1/860-297-4307
Confidential Fax: 1/860-297-4305

Testimony of the Office of Protection and Advocacy for Persons with Disabilities Before the Judiciary Committee

Presented by: James D. McGaughey
Executive Director
March 9, 2011

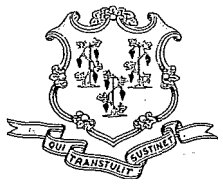
Thank you for this opportunity to comment on **S.B. No. 954, An Act Concerning the Electronic Recording of Custodial Interrogations.** This bill would establish a rebuttable presumption of inadmissibility of a statement (e.g. confession) obtained from a person suspected of committing a serious crime when that statement was obtained during a custodial interrogation at a place of detention and no recording is made of the interrogation. By operation of the definitions and explicit exceptions listed in the bill, the presumption of inadmissibility would be strictly limited, and could be overcome in a number of circumstances.

Our Office supports this proposal. The video recordings called for in this bill would help safeguard the rights of people with cognitive or psychiatric disabilities who may be subject to interrogations. Many people who have intellectual disabilities (including those who meet the criteria for "mental retardation" as defined in Section 1-1g of the General Statutes), non-verbal learning disabilities, autism-spectrum disabilities, brain injuries and mental illnesses find themselves at a significant disadvantage when being questioned by authorities. Although generalizing is risky and often unfair, there is strong evidence to the effect that people with mental disabilities are often more easily talked into agreeing to do or say things. Some of this is a survival strategy: people who have intellectual disabilities or who experience difficulty reading social cues often cultivate a sense of how to please authority figures and "pass" in situations where they do not fully understand what is happening. In the context of custodial interrogation, relying on such a strategy can prove disastrous. But there is more involved than a desire to pass for "normal" and to please others. Some of the problem also has to do with naiveté and confusion: if you have a mental disability, it is easy to become confused or insecure as to your own recollections of past events, and you are quite likely to accept interpretations offered by others.

Unfortunately, interrogation techniques designed to undermine the resistance of "typical" suspects can so confuse people with mental disabilities that they may falsely confess, perhaps even without recognizing that they have done so. Across the country evidence is mounting that people with mental disabilities are particularly susceptible to falsely confessing when confronted by exhausting, aggressive interrogation tactics. Various studies and investigations into the phenomenon of "false confession" point to a high correlation between mental disability and susceptibility to faulty results from intensive interrogation techniques.

The fact that a person has a cognitive or psychiatric disability is often not immediately apparent to interrogators. When a question of cognitive or psychological function is subsequently raised, having a recording to refer to will likely be very helpful in determining the reliability of the person's statements and the circumstances under which they were obtained. Knowing what was actually said would also go a long way toward preventing wrongful convictions, and assuring that our criminal justice system treats persons with cognitive and psychiatric disabilities fairly. Our Office urges your support for this legislation.

Thank you for your interest. If there are any questions, I will try to answer them.



STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE
505 HUDSON STREET, HARTFORD, CONNECTICUT 06106

Michelle S. Cruz, Esq.
State Victim Advocate

Testimony of Michelle Cruz, Esq., State Victim Advocate
Submitted to the Judiciary Committee
Wednesday, March 9, 2011

Good morning Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

Raised Senate Bill No. 954, *An Act Concerning the Electronic Recording of Custodial Interrogations*
Raised Bill No. 6344, *An Act Concerning Eyewitness Identification*

The Office of the Victim Advocate (OVA) opposes Raised Senate Bill No. 954 as it proposes to bring forth more up-to-date interrogation practices, while simultaneously neglecting to address the financial climate of many of our police departments. As we learned in the investigation of the murder of Jennifer Magnano, some police departments lack sufficient funding to provide police dispatchers 24/7. Unless funds are appropriated for the implementation of electronic recording devices for all of the state and municipal law enforcement departments as well as providing appropriate equipment for the State's Attorneys and Assistant State's Attorneys to review this evidence, the proposed bill is simply another unfunded mandate. The end result of the proposed legislation is that it will place a financial burden on many cash strapped law enforcement departments. Departments who simply cannot afford the required recording equipment will then endure the added costs of sending officers from their department to provide testimony as to why the department did not record the interrogations, wasting precious funds to respond to motions to dismiss and/or suppress by the defense bar. The proposed legislation would likewise create more legal issues for defense attorneys to challenge the investigation of our state's law enforcement officers and delay the criminal proceedings yet again.

Rather than creating a law requiring law enforcement officers to electronically record all custodial statements for certain felony offenses, the OVA strongly recommends that state and local law enforcement departments create a committee to seek out federal and private grants for law enforcement officers throughout the state to receive additional education, training and equipment to enhance our state's custodial interrogations practices.

The OVA certainly understands the intent of Raised House Bill No. 6344, which is aimed at standardizing the eyewitness identification practice in all of the law enforcement departments in the state. The Committee should nonetheless consider that the proposed statutory "checklist" may have the unintended consequence of hampering the law enforcement community from responding to and investigating crimes in an

efficient and timely manner. First, it is common knowledge that in the majority of criminal cases, the offender is someone the victim knows, as opposed to a stranger. Hence in these cases, the "identification process" would be straight forward and the issues that have plagued many of the high profile false identification cases would not be relevant. Nonetheless, as a result of codified statutory eyewitness identification procedures, each and every case would become bogged down with "procedural" requirements, even if unnecessary. Photo arrays and live lineups are not necessary or relevant in a large percentage of the criminal investigations. Therefore, each and every "eyewitness" case would become a checklist, and for the sole purpose of safe guarding the officer's liability and the future prosecution of the criminal case. The police departments would be required to adopt and update scarcely used procedures. For example, in some of the smaller police departments where staffing is limited, it may be fiscally impossible to comply with paragraph (2) of the proposed bill which would require, when practicable, a law enforcement officer who is not aware of which person in the photo lineup or live lineup is suspected as the perpetrator, to conduct the identification procedure. The criminal prosecutions of these cases, if this legislation were to be adopted, would require law enforcement officers to commit copious amounts of times testifying in court as to the feasibility of complying with the requirements of paragraph (2) and the like.

Additionally, the framework of the proposed legislation stems from the 1999 United States Department of Justice, Office of Justice Programs, National Institute of Justice's "Eyewitness Identification Guide for Law Enforcement Officers". Although many of the practices suggested by the National Institute of Justice make good sense, the issue is that the foundation for this legislation is over twelve years. What happens when this guide is updated in the future? We will have codified guidelines that are out of date and have to enact new laws. The language of the guide forecasts that the guide is just that, a guide. As Janet Reno stated, "Although factors...vary among investigations, including the nature and quality of other evidence and whether a witness is also a victim of the crime, may call for different approaches or even preclude the use of certain procedures described in the Guide." With this in mind, I urge the Committee to reconsider codification of these proposed standards as they are merely a framework to guide officers in their investigations, rather than a hard fast set of rules. Law enforcement officers should be informed of the existence of these policies and yet officers must be free to focus on their investigations, applying practices and procedures from these policies that are applicable to their case.

Perhaps the better route would be for the state to seek grant funding in collaboration with the OVA to sponsor a one day training for witness identification procedures, including the best practices for each situation. The OVA could provide a training on the importance of creating a safe environment to take a crime victim's statement, including the reality that often times crime victims and witnesses for that matter, feel rushed or like they are bothering the police when they give their statement, which only serves to harm the integrity of the investigation and subsequent prosecution later on. In my previous life as a state prosecutor, I cannot tell you the numerous times during a trial when a victim would disclose a fact or facts that were not included in the victims' original statement. In the aftermath of the trial, I would inquire

of the victim what had occurred that caused their statement to be less detailed and inevitability, the victim would describe feeling rushed, scared, foolish, shamed or like they were bothering the officer when providing their statement. This is the cornerstone to changing the criminal justice process in the nation and in CT.

Therefore, the OVA urges the Committee to reject Raised Senate Bill No. 954 and Raised House Bill No. 6344. Thank you for consideration of my testimony.

Respectfully submitted,

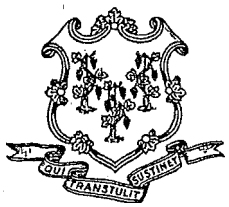
Michelle S. Cruz

Michelle Cruz, Esq.
State Victim Advocate

PAGE 18
LINE 7

SENATOR MARTIN M. LOONEY
MAJORITY LEADER

Eleventh District
New Haven & Hamden



State of Connecticut
SENATE

State Capitol
Hartford, Connecticut 06106-1591
132 Fort Hale Road
New Haven, Connecticut 06512
Home: 203-468-8829
Capitol: 860-240-8600
Toll-free: 1-800-842-1420
www.SenatorLooney.cga.ct.gov

March 9, 2011

Good afternoon Senator Coleman, Representative Fox and members of the Judiciary Committee. I am here to testify in support of S.B. 954 AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS and H.B. 6344 AN ACT CONCERNING EYEWITNESS IDENTIFICATION.

I have long been an advocate for the taping of custodial interrogations, as I believe that this procedure protects both the police and the suspects in the interrogation process. S.B. 954, AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS would move our state in this direction. While historically law enforcement officers have viewed taping of confessions with some trepidation, once they begin the process many of them become advocates for it. The Chief State's Attorney, Kevin Kane, has been helpful in increasing the use of taping custodial interrogations. If you would like more information on taping of confessions and the positive response from law enforcement I would be pleased to share with you a

report from the Northwestern University School of Law, "Police Experiences with Recording Custodial Interrogation." Taping of confessions would ensure greater accountability in our judicial system.

H.B. 6344, AN ACT CONCERNING EYEWITNESS IDENTIFICATION, would represent another improvement in the accuracy of our judicial system by addressing the notorious conundrum of eyewitness identification

Everyone involved with the criminal justice system is well aware that eyewitness identification can be a double edged sword. It is prone to stunning inaccuracy, but it is also perhaps the most compelling testimony in a courtroom. Therefore, we have an obligation to ensure that this testimony is as accurate as possible. H.B. 6344 would reduce the probability of error or of undue influence by law enforcement by, among other things, requiring that the line-up or photographs be shown in sequential order rather than simultaneously and that, when possible, the person conducting the identification procedure should not know who in the line-up or photographs is the suspected offender, and that the fillers in the line-up generally fit the description of the suspected offender. These proposals would increase confidence in the investigative techniques used by our criminal justice system. However, the best way to make the most positive changes regarding eyewitness identification require the support of the law enforcement community.

I have been working with former Connecticut State Supreme Court Justice David Borden and Chief State's Attorney Kevin Kane on a bill to create a task force to research current scientific knowledge as well as current practices. The task force would

create recommendations for law enforcement best practices. These recommendations could be the basis for legislation if they were not adopted voluntarily by the law enforcement community. This task force should create support within the law enforcement community for these procedural changes and that should lessen the resistance that these proposals have faced in the past. I look forward to working with you on this issue

CONNECTICUT INNOCENCE PROJECT

State of Connecticut
DIVISION OF PUBLIC DEFENDER SERVICES

c/o McCarter & English
CityPlace 1, 36th Floor
185 Asylum Street
Hartford, CT 06103
e-mail: Karen.A.Goodrow@jud.ct.gov
(860) 275-6140 Telephone
(860) 275-6141 Fax

KAREN A. GOODROW, ESQ.
DIRECTOR

TESTIMONY OF KAREN A. GOODROW, DIRECTOR, CONNECTICUT INNOCENCE PROJECT

Raised S.B. No. 954
An Act Concerning the Videotaping of Custodial Interrogations

Public Hearing before the Judiciary Committee
March 9, 2011

As in years past, this office supports electronic recording of interrogations as proposed in Raised Bill No. 954, An Act Concerning the Videotaping of Custodial Interrogations. We believe that this is critical to ensure that the process by which interrogations are conducted is fair and will enhance the truthfulness and accuracy of statements that are given as a result of that process. Our understanding is that the Division of Criminal Justice is currently undertaking a pilot program with respect to the electronic recording of interrogations and we encourage and support that effort. We understand that the response by law enforcement to the pilot program has been overwhelmingly positive. We urge the codification of videotaping of interrogations in order to insure universal and consistent reform to enhance the reliability, truthfulness and accuracy of interrogations.

State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY

JOINT COMMITTEE ON JUDICIARY

In opposition to:

S.B. No. 954 (RAISED):
An Act Concerning the Electronic Recording of Custodial Interrogations

March 9, 2011

The Division of Criminal Justice opposes S.B. No. 954, An Act Concerning the Electronic Recording of Custodial Interrogations, and would respectfully recommend that the Committee take no action on the bill. The Division opposes this legislation for the same reasons it has opposed similar bills consistently and repeated in the past: the bill seeks to legislate what should be "best practices" developed and implemented by the law enforcement profession, and it seeks to impose punitive sanctions, already rejected by the courts, for the failure to record an interrogation. The bill does not give due credit to the ongoing commitment and outstanding effort initiated voluntarily by the law enforcement community to strengthen and improve investigative practices and procedures, specifically the continuing pilot program for the recording of interrogations in serious felony investigations.

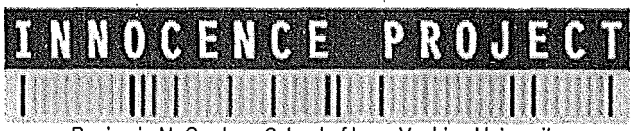
The Division of Criminal Justice is pleased to report that the pilot program, inaugurated with the strong support of the Judiciary Committee, is continuing and allowing us to collect invaluable information. This pilot program is allowing the law enforcement community and the courts to assess the practice and its impact on the criminal justice system and criminal cases from the initial investigation through final disposition in court. We are finding that there are many positive aspects to this program, there are also areas of concern, both in terms of practical implication and financial impact. For example, we are finding that review of recordings from interrogations can require a substantially greater time commitment than was previously required to review hours of interrogation condensed into a matter of pages of written statements. Another concern is the significant cost that can be incurred to produce a written transcript of what can be a lengthy interrogation process.

And, of course, there is the question of cost - who is going to pay for the equipment and personnel to operate it, particularly with regard to smaller departments. It is not simply a question of taking out your cell phone and recording the interrogation. There are strict legal requirements governing the chain of evidence to document where and when the interrogation took place. There are also technical requirements to allow for review of what can be hours of

to make a legislative end-run around the established case law and refusal of the courts to render inadmissible confessions rendered during interrogations that are not recorded. See *State v. James* (237 Conn. 390, 428-34 (1996) and *State v. LaPointe* (237 Conn. 694, 735 (1996). The courts have generally concluded that while the recording of interrogations might be a desirable investigative practice that is to be encouraged, such recording is not a requirement under the constitutional guarantee of due process. The legislature should make funding available to enable police departments to expand and develop this practice.

In conclusion, the Division would respectfully request that the Committee recognize and support the law enforcement community in its continuing efforts to implement best practices through such initiatives as the pilot program. We would further ask the Committee to recognize the longstanding findings of the court and for these reasons to reject S.B. No. 954.

PAGE 33
LINE 9



Benjamin N. Cardozo School of Law, Yeshiva University

TESTIMONY OF REBECCA BROWN,

SR. POLICY ADVOCATE FOR STATE AFFAIRS, INNOCENCE PROJECT,

BEFORE THE CONNECTICUT JUDICIARY COMMITTEE

Re: HB No. 6344 (Raised) – An Act Concerning Eyewitness Identification
SB No. 945 (Raised) – An Act Concerning Recording of Custodial Interrogations

SB954

On behalf of the Innocence Project, thank you for allowing me to testify today before the Connecticut Judiciary Committee.

Since its U.S. introduction, post-conviction DNA testing has proven the innocence of 266 people who had been wrongly convicted of serious crimes. With the certainty of innocence that DNA provides, we can also be certain that something(s) went wrong in the process which led fact finders to believe beyond a reasonable doubt that the innocent person was, in fact, guilty of the crime.

The Innocence Project was founded in 1992 at the Benjamin N. Cardozo School of Law to exonerate the innocent through post-conviction DNA testing. We regard each DNA exoneration as an opportunity to review what causes wrongful convictions, and identify factually-supported methods to minimize the possibility that such errors will continue to create wrongful convictions. The recommendations that we make are grounded in robust social science findings and practitioner experience, all aimed at improving the reliability of the criminal justice system.

Eyewitness Identification Reform

At least one mistaken eyewitness identification contributed to the wrongful conviction in a full 75% of cases of wrongful conviction proven through DNA testing. But it is not just the wrongfully convicted who suffer when an eyewitness misidentifies an innocent person as the perpetrator of a crime. When an

Barry C. Scheck, Esq. and Peter J. Neufeld, Esq., *Directors* Maddy deLone, Esq., *Executive Director*
100 Fifth Avenue, 3rd Floor • New York, NY 10011 • Tel: 212/364-5340 • Fax: 212/264-5341

eyewitness misidentifies someone, police are also led away from the real perpetrator, and instead focus their investigation on an innocent person. What's more, if the police do again focus their case on the real perpetrator, the eyewitness who had previously identified an innocent person is "burned," and thus not of use in the criminal prosecution. Simply put, nobody – not the police, prosecutors, judge, jury, or indeed, the public at large – benefits from a misidentification. The only person who benefits is the real perpetrator of a crime.

The good news is that over the past 25 years, a large body of peer-reviewed research and practice has been developed, showing us how simple reforms to the eyewitness identification process can greatly reduce the inadvertent misleading influences present in traditional eyewitness identification procedures.

Lineup Protocols Should be Grounded in Best Practices & Social Science Research

From DNA exonerations we've learned that the traditional lineup procedures provide many opportunities to inadvertently cause a witness to misidentify an innocent person as the perpetrator of crime. Traditional eyewitness identification methods also often reinforce a witness's wrong choice, resulting in even stronger witness confidence in an identification that was incorrect. **Social science research over the past three decades has consistently confirmed the fallibility of eyewitness identifications as well as the unwitting contamination of witness recall through many standard eyewitness identification procedures. This same research has also identified simple changes in eyewitness identification procedures that can greatly reduce the possibility of misidentification.**

Responding to the proliferation of research in this area, police and prosecutors from across the country have begun to rethink traditional eyewitness identification procedures and promulgated updated policies for use by their law enforcement officials. Attorneys General in New Jersey and Wisconsin have gone so far as to promulgate best practices for use in their respective states. In April 2001, New Jersey became

the first state in the nation to officially adopt best practices related to eyewitness identification protocols when the Attorney General issued Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures, mandating the requirement that lineups be administered by blind administrators – by all law enforcement agencies statewide. In Minnesota in October of 2009, the Ramsey County Attorney's Office, the Minnesota Bureau of Criminal Apprehension and the Minnesota County Attorneys Office sponsored statewide training on the "blind sequential lineup" for the entire law enforcement community in that state in these best practices.

Just two months ago, a nine-member task force in Rhode Island, which included membership from all corners of the criminal justice community, called for every law-enforcement agency in the state to establish a written policy for conducting eyewitness identifications consistent with the report's recommended best practices and that all law-enforcement officers be trained in these "best practices" by June of this year. The best practices recommended by the Rhode Island task force include blind administration of live and photo lineups, proper filler selection, the issuance of specific instructions, and that a confidence statement be taken immediately upon identification. According to Task Force Co-Chair Deputy Attorney Gerald Coyne, "We all have an interest in making sure the right person is convicted."[1]

Reforms Embraced by Other Jurisdictions

These changes have proven to be successful across the country. The states of New Jersey, North Carolina, Ohio, large cities such as Minneapolis, MN, Winston-Salem NC, and Boston, MA (to name just a few) and small towns such as Northampton, MA have implemented these practices and have found that they have improved their quality of their eyewitness identifications, thus strengthening prosecutions and reducing the likelihood of convicting the innocent.

[1] Mulvaney, Katie. "R.I. General Assembly to take up report on guidelines for eyewitness evidence." Providence Journal, January 26, 2011.

Across the country, jurisdictions that have implemented these reforms at first experienced resistance, but after police were provided the opportunity to learn more about them, receive training about how to properly implement them, and to participate in the formation of the specific adaptations of the reforms in their jurisdictions, there is widespread agreement that these improved eyewitness identification procedures increase the accuracy of their criminal investigations, and the effectiveness of their criminal prosecutions.

Legislation requiring the uniform implementation of best practices has been considered by this committee for several years, but has not spurred its voluntary implementation by law enforcement. Simply put, Connecticut can wait no longer, and this legislation represents a reasonable way for the state to uniformly advance in this critically important area of wrongful conviction reform.

False "confessions" are far more prevalent than one might think.

A false confession, admission, or dream statement was found to have contributed to nearly 25% of the wrongful convictions in America's 266 DNA exonerations. Electronically recording custodial interrogations from Miranda onward removes serious questions about the "confession" in question, by enabling the finder of fact to consider the most accurate presentation of the confession evidence at trial, thus narrowing the possibility of a wrongful conviction.

Ancillary Benefits of Recording Interrogations

There are a number of ancillary benefits that can be achieved through the implementation of mandatory recording. A record of the interrogation can resolve disputes about the conduct of law enforcement officers—allegations of police misconduct can be disproven. Investigators will not have to focus upon writing up a meticulous account of the statements provided by the suspect, and may instead focus his

attention on small details, such as subtle changes in the narrative, which he might have otherwise missed. Having a record of good interrogation techniques can be a useful training device for police departments, particularly as cases with distinctive characteristics come to light. Overburdened courts will welcome a huge reduction in defense motions to suppress unrecorded statements and confessions as well as pretrial and trial hearings focused upon establishing what transpired during the course of an interrogation.

The single best reform available to hinder the occurrence of false confessions, the mandatory electronic recording of interrogations, is being embraced by police departments around the country, now estimated at 750 law enforcement agencies. The states of Alaska, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Wisconsin, and the District of Columbia already require it in serious cases, and the same is done in large metropolitan cities such as Phoenix, AZ; Los Angeles, San Diego, San Francisco and San Jose, CA; Denver, CO; Austin and Houston, TX. As of this writing, we understand that a pilot project is underway in Connecticut and that the preliminary feedback from law enforcement speaks to the benefits previously articulated in this testimony. What is required, however, is statewide, uniform implementation of this critical reform, whose innumerable benefits will undeniably bolster the investigations of criminal cases.

In the summer of 2004, Thomas P. Sullivan, the former U.S. Attorney for the Northern District of Illinois, published a report detailing police experiences with the recording of custodial interrogations. **Researchers interviewed officers in 238 law enforcement agencies which have implemented the reform in 38 states and concluded, "virtually every officer with whom we spoke, having given custodial recordings a try, was enthusiastically in favor of the practice."** (Sullivan, Thomas, "Police

Experiences with Recording Custodial Interrogations." Report presented by Northwestern University School of Law's Center on Wrongful Convictions, p. 6.)

SB 945 carves out broad exceptions to recording interrogations that seek to protect law enforcement, while also ensuring that the best possible evidence is available to fact finders during the course of criminal proceedings. Passage of SB 945 will assure protections to the innocent, which in turn will allow law enforcement to focus its attention on the apprehension of the true culprit. Less than ideal interrogation procedures have contributed to or been the main factor in nearly one in five of the nation's wrongful convictions of individuals later exonerated through DNA evidence. In each of these cases, the true perpetrator remained at large, able to commit additional crimes.

By uniformly recording interrogations in serious cases, false confessions can be more readily identified, police will be relieved of needless (and some would say endless) questioning from defense lawyers about what transpired during the interrogation, and perhaps most importantly judges and juries will have the best evidence of what was and was not said during an interrogation.

We hope the Committee will agree that taking advantage of the emerging research and best practices will further enhance the ability to swiftly and surely convict offenders, and avoid being misled into pursuing others, or worse, convicting the innocent. Passage of both HB 6344 and SB 945 will assure protections to the innocent, which in turn will allow law enforcement to focus its attention on the detection of the true culprit.

002176

INNOCENCE PROJECT

EXHIBIT

SOCIAL SCIENCE RESEARCH SUPPORTING EYEWITNESS IDENTIFICATION REFORM

SUBMITTED TO THE CONNECTICUT JUDICIARY COMMITTEE

REBECCA BROWN,
SR. POLICY ADVOCATE FOR STATE AFFAIRS
INNOCENCE PROJECT

002177

Blind Administration of Lineups

Blind testing means that the person administering the test does not know the "correct" or "desired" answer.

In tests of new drugs, for instance, the medical person who examines subjects does not know whether the subject received the experimental drug or a placebo.

Blind testing simply applies a fundamental scientific principle to the criminal setting.

Why is blind administration necessary?

The call for blind testing does not call into question the integrity of law enforcement.

People generally do not know when they are unintentionally influencing others.

Purpose of blind administration: to prevent inadvertent cueing of the eyewitness.

What Blind Administration Can Prevent

Verbal influences on identification decision:

- **e.g. suspect is in position #3**
  Witness: "um..number two.."
  Detective: "Now, be sure you look at everyone"
- **e.g. if suspect is in position #3**
  Witness: says "um..number three.."
  Detective: "Tell me about number three"
- **e.g. if the suspect is in position #3**
  Witness: says nothing..
  Detective: "I noticed you paused on number three"

Nonverbal influences on identification:

- **Pauses, leaning, displays of interest/disinterest**

Blind Administration is Scientifically Supported

"The need for double-blind testing procedures is one of the best known, best respected, and best documented findings in all of scientific psychology and is a staple in science." – Gary Wells, prominent social scientist

Robert Rosenthal – **meta-analysis** of 345 studies concluded that the effect of the testers' expectations is robust and, based on the scientific data, there is less than one chance in a million that there is no relation between a testers expectations and the behavior of the person tested. [Rosenthal & Rubin, 1978, *Behavioral and Brain Sciences*]

More Scientific Support for Blind Administration

Phillips et al. (1999) *J. Applied Psychology*
erroneous belief of the lineup administrators led eyewitnesses to be more likely to choose that person (in sequential lineups)

Haw and Fisher (2004) *J. Applied Psychology*
Close contact led to an increase (from a mere 3% to 30%) in choosing the person that the lineup administrator was led to erroneously think was the correct person. (in simultaneous lineups)

Douglas, Smith, & Frafer (2005) *Law and Human Behavior*
All lineup administrators were blind, but the identification behavior of the first eyewitness (an individual who picked an innocent person) led the second eyewitness to misidentify the same person.

Garrioch and Brimabombe (2001) *Law and Human Behavior*
Lineup administrators' erroneous beliefs regarding which lineup member was the suspect influenced the eyewitnesses confidence in their choice.

Greathouse and Kovera (2009) *Law and Human Behavior*
Lineup administrators' beliefs regarding which lineup member was the suspect influenced witnesses to choose that person, especially when other factors present that led to propensities to choose.

Clark, Marshall, & Rosenthal (2009) *Journal of Experimental Psychology: Applied*
Subtle influences from administrator affected witnesses and witnesses showed little or no awareness that they were influenced.

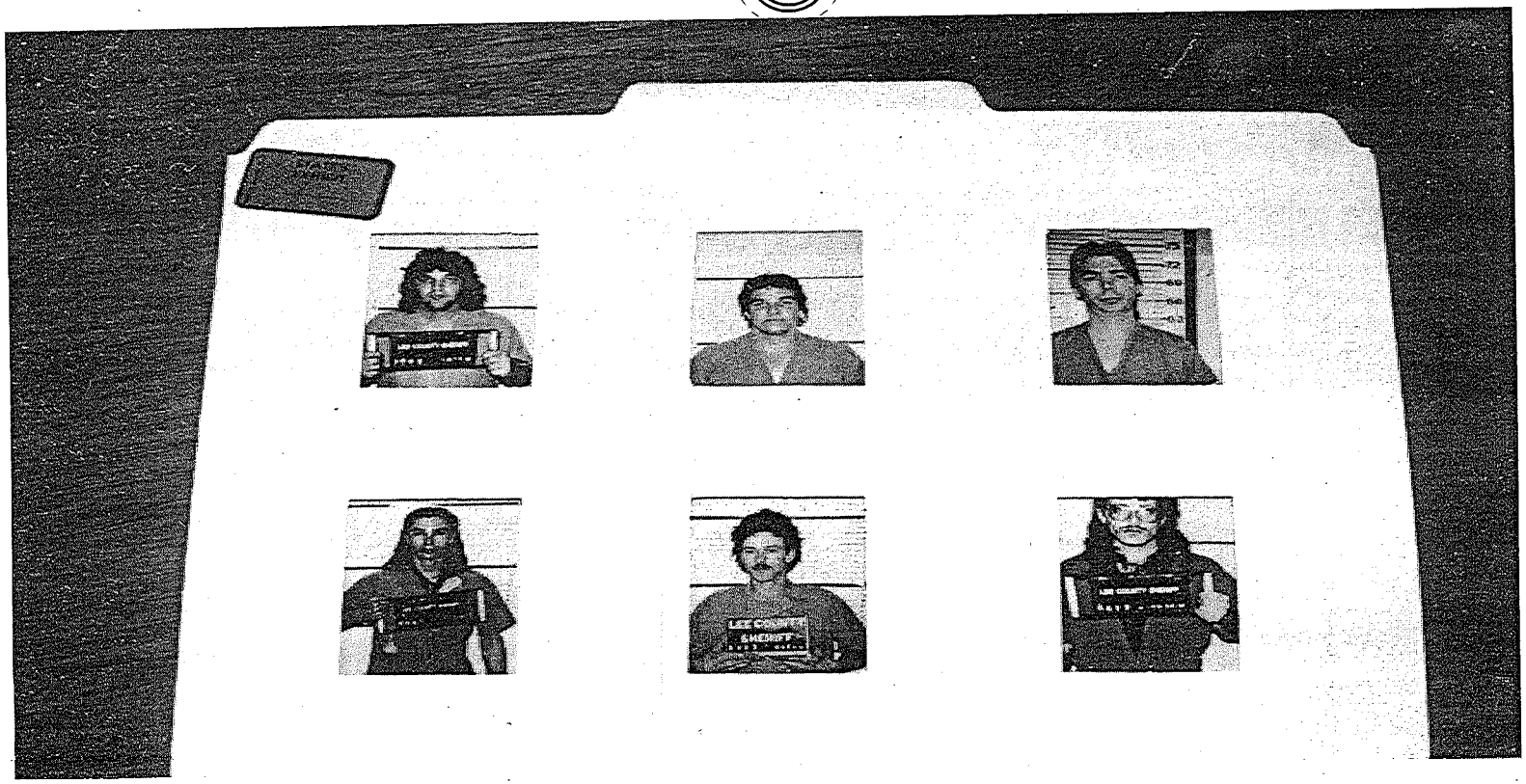
Line-up Composition: Proper Selection of Fillers

Fillers need to be selected carefully so that the person of interest does not stand out (e.g., as being the only one who fits the description).

Mock witness test:

Given the description that the witness gave of the perpetrator, would mock witnesses (who have never seen the perpetrator) be able to pick him out of the lineup?

Proper Composition of Lineup



The witness described the perpetrator as white male, about 6'2", dark hair just over the ears, clean shaven

Instructing the Eyewitness

"Instructions" are a series of statements issued by the identification procedure administrator to the eyewitness that deter the eyewitness from feeling compelled to make a selection, seek clues from the administrator about whom to (not) pick, or whether or not a selection was correct, and otherwise help minimize the likelihood of a misidentification.

Instructing the Witness

In identification procedures where the perpetrator is absent (and therefore any identification would be incorrect), the type of instructions provided – "biased" or "unbiased" - have a significant effect on eyewitness's accuracy.

- When "unbiased" instructions are given, the number of (incorrect) identifications decrease.
- When "biased" instructions were given, the number of (incorrect) identifications increase.

Instructing the Witness: Scientific Support

When the perpetrator is absent, and thus when the innocent suspect is more vulnerable, unbiased instructions lead to fewer false identifications, whereas biased instructions lead to an increased rate of false identifications.

Source: Malpass, R. S. & Devine, P. G. (1981) Eyewitness identification: Lineup instructions and the absence of the offender. *Journal of Applied Psychology, 66,* 482-489.

Instructing the Witness: Scientific Support

These findings are supported by a **meta-analysis** of results from twenty-two individual studies (with **2,588 participant witnesses**) on the effects of instructions, which found that when biased instructions were provided to witnesses, a higher level of choosing occurred.

When unbiased instructions were provided to witnesses, correct identifications (including correct rejections of lineup members when the suspect was absent) occurred fifty-six percent of the time. On the other hand, when biased instructions were provided, correct identifications fell to forty-four percent.

Source: Steblay, N. M.. (1997) Social influence in eyewitness recall: A meta-analytic review of lineup instruction effects. Law and Human Behavior, 21, 283-298.

Recommended Instructions

Issued by National Institute of Justice Technical Working Group on Eyewitness Identification:

1. Instruct each eyewitness without other persons present.
2. Describe the photo array to the eyewitness only as a "collection of photographs."
3. Instruct the eyewitness that **the person who committed the crime may or may not be present** in the identification procedure.
4. Consider suggesting to the eyewitness to think back to the event and his/her frame of mind at the time.
5. Instruct the eyewitness to select a photo array or live lineup member if he/she can and to state how he/she knows the person if he/she can.
6. Assure the eyewitness that **regardless of whether he/she makes an identification, the police will continue to investigate the case**.
7. Instruct the eyewitness that the procedure requires the investigator to ask the eyewitness to state, **in his/her own words, how certain he/she is of any identification**.

The Value of Confidence Statements

Studies consistently show that people (i.e. jurors) consider an eyewitness's confidence level the primary factor in determining the accuracy of his identification.

False Certainty Can Be Created
(And Can Never Be Undone)

Eyewitnesses can be influenced even after they have made a choice from the lineup.

**** This is known as 'confirming feedback'****

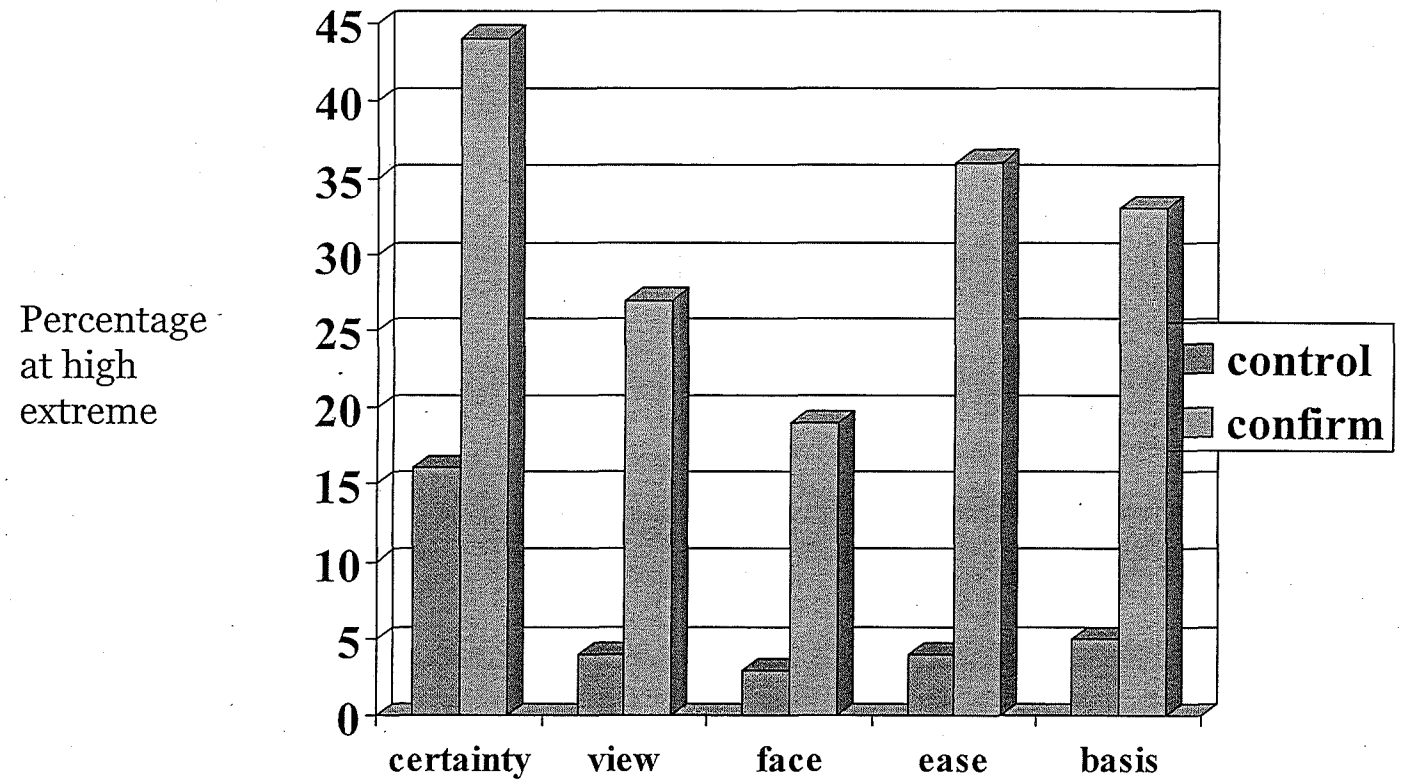
Wells, G.L., & Bradfield, A.L. (1998). "'Good, You Identified the Suspect': Feedback to Eyewitnesses Distorts Their Reports of the Witnessing Experience," Journal of Applied Psychology, 83, 360-376.

After identification, participants were asked:

CONTROL GROUP: Received no feedback
COMPARISON GROUP: Received confirming feedback

- **How certain were you at the time your identification that you identified the real gunman?**
- **How good was the view you had of the gunman?**
- **How well could you make out details of the gunman's face?**
- **How easy was it for you to identify the gunman?**
- **How good of a basis did you think you had for making an identification?**

The Power of Confirming Feedback



Difference between 'control' and 'confirming feedback' = Manufactured false confidence

Post-Identification Feedback Articles

Bradfield, A. L., Wells, G.L, & Olson, E.A. (2002). The damaging effect of confirming feedback on the relation between eyewitness certainty and identification accuracy. *Journal of Applied Psychology, 87,* 112-120.

Douglass, A. B., & Steblay, N. (2006). Memory distortion in eyewitnesses: A meta-analysis of the post-identification feedback effect. *Applied Cognitive Psychology, 20,* 859-869.

Dixon, S., & Memon, A. (2005). The effect of post-identification feedback on the recall of crime and perpetrator details. *Applied Cognitive Psychology, 19,* 935-951.

Hafstad, G. S., Memon, A., & Logie, R. (2004). Post-identification feedback, confidence and recollections of witnessing conditions in child witnesses. *Applied Cognitive Psychology, 18,* 901-912.

Neuscahtz, J. S., Lawson, D. S., Fairless, A. H., Powers, R. A., Neuscahtz, J. S., Goodsell, C. A., & Toglia, M. P. (2007). The mitigating effects of suspicion on post-identification feedback and on retrospective eyewitness memory. *Law and Human Behavior, 31,* 231-247.

Neuschatz, J. S., Preston, E. L., Burkett, A. D., Toglia, M. R., Lampinen, J. M., Neuschatz, J. S., Fairless, A. H., Lawson, D. S., Powers, R. A., & Goodsell, C. A. (2005). The effects of post-identification feedback and age on retrospective eyewitness memory. *Applied Cognitive Psychology, 19,* 435-453.

Semmler, C., & Brewer, N. (2006). Post-identification feedback effects on face recognition confidence: Evidence for metacognitive influences. *Applied Cognitive Psychology, 20,* 895-916.

Semmler, C., Brewer, N., & Wells, G. L. (2004). Effects of postidentification feedback on eyewitness identification and nonidentification. *Journal of Applied Psychology, 89,* 334-346.

Skagerberg, E. M. (2007). Co-witness feedback in lineups. *Applied Cognitive Psychology, 21,* 489-497.

Smith, S.M., Lindsay, R.C.L., & Pryke, S. (2000). Postdictors of eyewitness errors: Can false identification be diagnosed? Journal of Applied Psychology, 85, 542-550.

Wells, G.L., & Bradfield, A.L. (1998). "Good, you identified the suspect:" Feedback to eyewitnesses distorts their reports of the witnessing experience. *Journal of Applied Psychology, 83,* 360-376.

Wells, G.L., & Bradfield, A.L. (1999). Distortions in eyewitnesses' recollections: Can the postidentification feedback effect be moderated? *Psychological Science, 10,* 138-144.

Wells, G. L., Olson, E., & Charman, S. (2003). Distorted retrospective eyewitness reports as functions of feedback and delay. *Journal of Experimental Psychology: Applied, 9,* 42-52.

Wright, D. B. & Skagerberg, E. M. (2007). Post-identification feedback affects real eyewitnesses. *Psychological Science, 18,* 172-178.

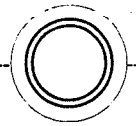
Eyewitness Confidence

Mistaken identifications do not always result in the conviction of innocent people.

Convictions of the innocent more often occur when eyewitnesses are both mistaken **and confident.**

False certainty: Certain (confident) and yet mistaken

The Importance of a Confidence Statement



A confidence statement is a declaration provided by the eyewitness *immediately upon identification and before any feedback is provided,* in which he articulates *in his own words* the level of confidence he has in the identification he has made.

Systemic Factors Leading to Misidentification Can Be Addressed

- Research shows that eyewitnesses seek and receive unintentional cues from **non-blind lineup** administrators about which person to pick from the lineup;
- Proper **lineup composition** (resembling description, not suspect) enhances accuracy;
- **Instructions** reduce pressure on eyewitnesses;
- Research shows that memory is extremely malleable; immediate **confidence statements**, in witnesses' own words, most reflect witnesses' actual memory; and

Eyewitness Identification Reform: Support Across Nation

- The following jurisdictions are among those that have implemented "double-blind" as standard procedure: The states of **New Jersey, Ohio** and **North Carolina**; various jurisdictions in **Maryland**; **Denver, CO**; **Dallas, TX**; **Hennepin County, MN (Minneapolis); Ramsey County, MN (St. Paul); Santa Clara County, CA; Suffolk County, MA (Boston); Northampton, MA**.

- The states of **Georgia** and **Wisconsin** have recommended/promulgated "double-blind sequential" voluntary guidelines and incorporated them into law enforcement training.

INNOCENCE PROJECT

For more information, please contact:

Rebecca Brown
Senior Policy Advocate for State Affairs
rbrown@innocenceproject.org
(212) 364-5360

www.innocenceproject.org

CONNECTICUT POLICE CHIEFS ASSOCIATION
342 North Main Street, West Hartford, Connecticut 06117-2507
(860) 586-7506 Fax: (860) 586-7550 Web site: www.cpcanet.org

Testimony to the Judiciary Committee
March 9, 2011
Chiefs Anthony Salvatore & James Strillacci, Connecticut Police Chiefs Association

The Connecticut chiefs support HB #6368, **AAC Return of Stolen Property.** Currently police must seize and hold as evidence stolen property valued over $250, though it is seldom needed as evidence by the court; property of less value may be returned to the owner. The requirement:

- Deprives the rightful owner of the property until the court orders its return.
- Requires an officer making a routine misdemeanor larceny arrest to log and inventory evidence, keeping the officer off the street longer.
- May add to police overtime cost.
- Makes police responsible for storing and accounting for this evidence.

The General Assembly raised the property-value thresholds on degrees of larceny in 2009 (P.A. 09-138), the threshold on holding stolen property as evidence has not changed since 1985 (P.A. 85-263), from $50 (1976) to $250. This bill raises the threshold to $500 (the Larceny Fifth threshold) which is reasonable.

We oppose SB #954, **AAC Electronic Recording of Custodial Interrogations,** which would make in-custody statements in capital, A, and B felonies inadmissible unless videotaped. It would exclude on purely procedural grounds voluntary and truthful admissions—and any information or evidence gained thereby—without any consideration of their validity. It would let guilty persons escape justice.

We do not object to this body supporting promising police practices. The Division of Criminal Justice and selected police agencies have been recording suspect interviews in a pilot program. Early results are positive, and several police departments are starting recording on their own initiative, including ours.

Other agencies may be deterred by the cost-- to prepare an interview room, buy and install cameras, microphones, wiring, storage and retrieval devices, and train personnel. Transcription, if required, is quite expensive. Funding would encourage more departments to participate.

We oppose HB #6344, **AAC Eyewitness Identification.** Many of its provisions are redundant; Connecticut police and prosecutors adopted measures to remove suggestion from identification procedures in 2005. The provisions not adopted then were excluded intentionally.

We omitted the "blind" administrator for a line-up because in smaller departments, or in the case of a notorious crime, it may be impracticable to find an officer who doesn't know the suspect.

S-627

CONNECTICUT

GEN. ASSEMBLY

SENATE

PROCEEDINGS

2011

VOL 54

PART 16

4951-5268

Chamber. An immediate roll call vote has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted?

If all members voted, the machine will be locked.

And the Clerk will announce the tally.

THE CLERK:

Motion is on passage of Senate Bill 1148.

Total number voting	36
Those voting Yea	22
Those voting Nay	14
Those absent and not voting	0

THE CHAIR:

The bill passes.

Mr. Clerk.

THE CLERK:

Calendar Number 388, File Number 630, Senate Bill 954, AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS; Favorable Report of the Committee on Judiciary, and Appropriations.

The Clerk is in possession of amendments.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President.

I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

On acceptance and passage, will you remark?

SENATOR COLEMAN:

Mr. President, this bill provides a presumption that a statement that is taken from an individual who is involved in a custodial interrogation at a place of detention is presumed to be inadmissible in a court proceeding unless the statement is electronically recorded.

The purpose of the bill is to improve our criminal justice system, and part of the shortcoming of our criminal justice system may have to do with such things as an overreliance on informants' testimony.

THE CHAIR:

Excuse me, Senator Coleman.

Please take your conversations outside the Chamber.

Thank you.

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President.

I was saying that some of the flaws and shortcomings in our criminal justice system have to do with, perhaps, an overreliance on the testimony of informants, eyewitness identification procedures, and, in fact, the voluntariness and the validity of statements and confessions of accused oftentimes is suspect and has come into question.

I believe that the bill before us would be a significant step in direction of -- of contributing to a greater reliance upon the confessions of individuals

who are involved in custodial interrogation. In -- in doing so would be a significant step in the direction of legitimacy of the criminal convictions that oftentimes result in our criminal justice system.

In recent years, we have made or we've discovered that we've made some significant errors in terms of meting out lengthy sentences and terms of incarceration for individuals who were later exonerated. We discovered that too often we wrongly convict individuals, and individuals' lives are devastated and the consequences become too severe.

I believe that the recording of custodial interrogations will not only help the accused but, in fact, where those confessions and those statements are valid, the recording of them will serve as significant evidence of that fact.

For these reasons, Mr. President, I would urge the Senate to support the passage of this bill.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Will you remark further?

Senator Kissel.

SENATOR KISSEL:

I may, at the end of the day, still be opposing this bill. I have significant problems with the bill. There was ample testimony over the -- and this is an issue that's been debated in the Judiciary Committee, probably for the last ten years, if not longer. Certainly in -- in some instances having a recording

of a statement by an individual can -- can be helpful, and there is ample belief that more than helpful, it's necessary.

The underlying bill states that this information, this testimony would be inadmissible if it wasn't recorded. And, to me, that's too Draconian. And when I reached out to proponents of the measure and I said that I felt that not allowing information back into the -- before the -- the judge or the jury was too Draconian. And they said, Well, we feel so strongly about this public policy that there needs to be something akin to a big stick to make people comply, to make law enforcement comply.

And there is a methodology that would allow this information to come into a trial, although it would be presumed that the statement is inadmissible but that information could be rebutted by a preponderance in -- of an evidence showing the statements were voluntarily given and are reliable.

One of the biggest roadblocks to this policy is that we have a variety of police departments and the state police, and they all have access to different technology. And this proposal is not based upon the size or the financial capabilities of a municipality, but it applies to statements made by individuals that are charged with capital felony or a Class A or B felony.

So the ambit of individuals is broad and predicated on their charged behavior. And that charged behavior could take place in some place as

large as the City of Bridgeport or as small as the Town of Union, and all the different communities we have in between. And they all have different equipment right now. They all have differing degrees of how their officers have been trained to utilize that equipment. They all have various degrees of areas where equipment can be stored or equipment can be repaired or used.

We also heard during the public hearing that while this is used to some extent in the Commonwealth of Massachusetts, that it's not as simple as just recording the interrogation, because these recordings have got to be made available for further court proceedings. So it means that you need to have the equipment and the personnel, depending on when cases get ready for trial, that can provide adequate copies and copies of the appropriate portions that are being used in the trial for the State's Attorney, for the judge, for the defense counsel; at least three copies, and I think there might be another, fourth copy, that has to be made available for the court reporter. And so it's not as simple as just getting a video camera and recording an interrogation; it's detailing what's there, storing it, making sure it's in a database, it's accessible, and that with appropriate notice it can be used for a hearing. And let's say there's -- there's a motion to disqualify some of the testimony; it has to be ready and to go at that point in time.

Probably in a perfect world, every interrogation

situation would have the same style room, the same equipment, the same standard of training for the officers, and the same ability to get that equipment before the appropriate tribunal. But we don't live in that world. So as this moves forward, I hope it has, number one, an appropriate time where it could be put into service.

Two, because this is, in effect, a mandate on our municipalities and our peace officers, police departments, we need to make sure that they have appropriate funding to move this policy forward.

And if I've heard one thing from my first selectmen and mayors and town managers, it's do no harm. Please don't give us additional burdens without some level of compensation so that we're not looking, scrambling for more funds.

I have heard -- and I'll explore this more fully if the amendment is proffered -- that there is some pool of funds from confiscated materials that could be used to pay for this, but there's a real question mark as to (a) what those funds would otherwise be used for, if it wasn't for this, and (b) do we have an idea of where those funds are right now; are they available?

So I'm concerned because we're pushing through a policy where various communities are on different areas, moving in that direction. I'm concerned because we don't have a standardized police officer standard for training and doing this kind of recorded interrogation. I'm concerned because we have this

very heavy stick hanging over the head of the prosecutors and -- and the ultimate attainment of justice, because if for whatever reason this is not followed, there's a better chance than not that this - this important, sometimes critical, information will be inadmissible.

And while I understand the goals of the proponents, what do we tell the victims or the victims' families of a crime where but for the lack of this technology or the appropriate utilization of the technology, some villain will be set free. Maybe that's where we are, very similar to those concepts of the fruit of the poisonous tree.

I remember back in law school, the old case about the Christian burial. And a police officer, I think it was a state trooper out in the Midwest, had an individual in the backseat of his car -- I think there was a missing girl -- and driving, driving, you know those long, barren flatlands. He just kept saying, you know, just too bad. Just too bad that that little girl couldn't get a good, Christian burial, and her parents are so sad.

And eventually, my understanding, my recollection from years and years ago was that -- and I believe it was a United States Supreme Court decision -- that you couldn't do that to somebody. You couldn't keep them in a confined space, backseat of the car, long period of time, long drive, and using this sort of guilt technique on that individual.

And out of cases like that, pretty neat,

interesting cases came the concept of Miranda warnings. Anything you say can and will be held and used against you in a court of law. And that's all appropriate. But I don't see that kind of Miranda-warning-kind-of-situation resolving this issue, and it just strikes me that having this information inadmissible and presumed to be inadmissible, unless the State's Attorneys are able to lay a whole nother groundwork for it, that's -- that's a lot.

There's a lot on the table with this policy. If it doesn't work out, bad people will not be found guilty, because critical information may not be there.

The other part of the public hearing that was pretty clear was that odds are, as we push forward with this laudable goal, small towns, probably not affected. Why? Mercifully, not a lot of capital felonies and A and B felonies.

And for some really small towns, resident state troopers take them back to the barracks; they have different facilities. Big cities, big city police departments, much more use to A and B felonies, capital felonies, unfortunately -- very much unfortunately -- but probably has a lot of this technology up and running already. Problematic is all the municipalities in between. Where will this be done? Where will the technology be stored? Who will be trained? Maybe they're proceeding along this path and then bam, bam, bam, they're hit with one, two, three of these kinds of crimes.

So I think what I've gleaned over the last

several years regarding this is I understand where proponents are going. I think it's laudable, but I think the nuts and bolts of this policy need to be ironed out. I'm hoping that by the time we get done with this debate, amendments will be offered and accepted that will push out the date that this can be effective to give our police departments time to plan and prepare, and that there will be a tangible and realistic funding source for this to move forward.

And I'm not even quite sure that we're there yet. Folks that I've heard from in the State of Connecticut, law enforcement, while some seem to be onboard, some seem to be very concerned about the pool of funds.

And so at this point in time for the purposes of an amendment, I'd like to yield to my friend and colleague Senator Witkos, if he would accept the yield.

THE CHAIR:

Senator Witkos, do you accept the yield?

SENATOR KISSEL:

And --

THE CHAIR:

Apparently not.

SENATOR KISSEL:

Apparently not. Apparently --

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

-- Senator Witkos would like me to yield to my

friend and colleague, Senator Prague.

THE CHAIR:

Senator Prague, do you accept the yield?

SENATOR PRAGUE:

Yes, Mr. President.

THE CHAIR:

Got a winner.

SENATOR PRAGUE:

I do accept the yield.

Thank you.

THE CHAIR:

Please proceed, madam.

SENATOR PRAGUE:

And through you, thank you to Senator Kissel.

Mr. President, I have before me an amendment, LCO 7631. Would the Clerk please call and I be allowed to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 7361, which will be designated Senate Amendment Schedule "A," is offered by Senator Prague, of the 19th District.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

I move adoption.

THE CHAIR:

On adoption, will you remark?

SENATOR PRAGUE:

Mr. President, at this point in time I would like to yield to Senator Witkos.

Senator Witkos, pay attention.

THE CHAIR:

Senator Witkos, do you accept the yield from --

SENATOR WITKOS:

Yes, I do.

THE CHAIR:

-- Senator Prague, rather than Senator Kissel?

SENATOR WITKOS:

Yes, I do.

Thank you, Mr. President.

THE CHAIR:

Very good. And Senator just -- Senator, please proceed.

SENATOR WITKOS:

And I want say thank you, Senator Prague for, for the yield.

The underlying bill talks about the confessions that are done through interrogative process. And can you imagine the police officer, the most heinous of crimes that he's being detailed and is recording? And if he -- if you mess it up or he didn't record it, and the law says you have to record it, called into a chief's office and said, What are you doing? You know it's a law that you have to record these crimes. We don't want the inadmissibility of a -- of a beautiful confession because you mess it up.

And the chief could say to the officer, you know, you know what? You're -- you're out of here; you're

fired. And there is recourse for that officer.

And then the officer says, well, I was following the direction of the sergeant that's on duty. And the chief calls the sergeant and says, you're out of here, you're fired. And then he calls in the deputy chief. He says, ah, you know, we don't like how you're managing things. It's just not working out; you're out of here. And the deputy chief has no recourse.

So this amendment here before us provides a similar protection to that of the chief of police. Right now, the chief of police can only be terminated for just cause. All union members in a police department can be terminated for just cause. But the deputy chief of police can be terminated on a whim.

We had a similar situation in a town just south of here, not too long ago -- I think it was last year -- where there was a change in the town government leadership. And the mayor came in and said that --

THE CHAIR:

Excuse me, Senator Witkos.

Senator Looney, for what purpose do you rise?

SENATOR LOONEY:

Thank you, Mr. President, with -- and with apologizes to Senator Witkos.

Would ask that this bill be passed temporarily.

THE CHAIR:

The bill will be PT'd.

Thank you.

Mr. Clerk.

SENATOR LOONEY:

the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? Have all members voted?

If all members voted, the machine will be locked.

And the Clerk will announce the tally.

THE CLERK:

Motion is on passage of Senate Bill 1108, as amended by Senate Amendment Schedule "B."

Total number voting	35
Those voting Yea	33
Those voting Nay	2
Those absent and not voting	1

THE CHAIR:

The bill passes as amended.

Senator Looney.

SENATOR LOONEY:

Yes, thank you. Thank you, Mr. President.

Mr. President, if we might return to the item just passed temporarily, a moment ago, Calendar page 44, Calendar 388, and Senate Bill 954.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calendar page 44, Calendar Number 388, File Number 630, Senate Bill 954, AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS; Favorable Report of the Committee on Judiciary, and Appropriations. When the bill was last before us, Senate Amendment Schedule "A," LCO 7361 was called and

designated as Senate Amendment Schedule "A."

THE CHAIR:

There's an amendment before us (inaudible) --

SENATOR COLEMAN:

I'll move acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

And --

THE CHAIR:

On acceptance and passage, will you remark?

SENATOR COLEMAN:

Thank you.

And if I may yield to Senator Witkos, at this time.

THE CHAIR:

Senator Witkos, do you accept the yield?

SENATOR WITKOS:

Yeah, thank you, Mr. President, I do.

The scenario that I was relaying was that the town just south of here had a new town manager come in and he had said to the police chief, I want you to get rid of your deputy because I have somebody else that I would like to serve in that capacity. And the chief -- chief of police said I -- I'm not willing to do that and he's -- hasn't done anything wrong. And the town manager said to him, Well, then you're on suspension for failure to obey a direct order.

And, unfortunately, in -- in police departments,

the chief of police has a protection and everybody under the chief of police, except for the deputy chief has their protections. And this bill affords the deputy chief the same protection as the chief of police. They -- they can be fired for just cause but not on a whim.

So, with that, Mr. President, I'd urge the Chamber's adoption of the amendment.

THE CHAIR:

Thank you, Senator.

SENATOR WITKOS:

And I'm (inaudible) --

THE CHAIR:

Will you remark? Will you remark further on the amendment?

Senator Coleman.

SENATOR COLEMAN:

Mr. President, I rise to support Senate "B." I accept it as a friendly amendment and would urge the Senate to support it.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Will you remark further on the amendment? Will you remark further on the amendment?

If not, I'll try your minds. All those in favor, please signify by saying, aye.

SENATORS:

Aye.

THE CHAIR:

Opposed, nay.

The ayes have it. The amendment is adopted.

Senator Coleman.

SENATOR COLEMAN:

Yes, Mr. President.

The Clerk has an amendment, LCO 7458. I'd ask that the Clerk please call that amendment.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 7458, which will be designated Senate Amendment Schedule "B." It is offered by Senator Coleman, of the 2nd District, et al.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I'll move the adoption of the amendment, Mr. President.

THE CHAIR:

On adoption, will you remark?

SENATOR COLEMAN:

Senator President -- Mr. President, during Senator Kissel's remarks, he had indicated a couple of concerns. One was the appropriateness of an immediate implementation of a practice moving toward the recording of custodial interrogations. And, second, he was concerned about the standards for the equipment and the cost of the equipment. The purpose of this amendment is to address both of those concerns. The first change would be to change the effective date of

the implementation of the requirement to record custodial interrogations to January 1, 2014. And the second part of the amendment involves the development of standards for the equipment.

As Senator Kissel may have indicated in his remarks, during the course of negotiating and discussing this bill, one of the things that came to light significantly was that there may be some incompatibility between the equipment of the State's Attorney's Office and the equipment of many local police departments. And so it was thought to be advisable that the Chief State's Attorney, in conjunction with the Police Officers Standards and Training Council as well as the Connecticut Police Chiefs Association collaborate to come up with and establish standards for the equipment to be used in the electronic recording of custodial interrogations. And that is the purpose of the amendment before us.

I would urge the adoption of the amendment.

Thank you, Mr. President.

THE CHAIR:

Senator Roraback.

Senator Looney -- I'm sorry -- did you rise?

SENATOR LOONEY:

Yes. Thank you, Mr. President.

Mr. President, speaking in support of the -- of the amendment, the -- the amendment reflects a number of discussions that we had with Chief State's Attorney Kevin Kane on this issue in terms of the -- the logistics of making sure that -- that when equipment

is -- is purchased for purposes of the underlying bill, for the electronic recording of custodial interrogations, that the equipment tends to -- to interface well with the equipment that is also held in the State's Attorney's Offices as well as in police departments.

And the -- the key was that Mr. Kane said that it would be helpful if some period of time would be allowed for, a period of six months or so, as provided in the amendment, and January 1, 2012, to establish standards for the equipment to be used in the electronic recording of custodial interrogations, and -- and then to allow another two years beyond that for the -- for the police departments to comply, to make sure that they had, in fact, purchased the right equipment.

So it seemed to be a -- a reasonable way to -- to phase in the -- the requirements of this transition without being too burdensome to people who were opting -- operating in good faith to comply.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Will you remark further?

Senator Roraback.

SENATOR RORABACK:

Thank you, Mr. President.

And through you, to Senator Coleman.

I was going to ask on the underlying bill the purpose of lines 59 and 60, which speak to statements

made at a time when the -- when the interrogators are unaware that a death has, in fact, occurred. This amendment deletes that language.

And through you, Mr. President to Senator Coleman, I don't know if he has an explanation of what the language was supposed to do and why it's being deleted.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I apologize, Mr. President.

Was the question do I have an explanation concerning why lines 59 and 60 were deleted?

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

Through you, Mr. President.

Yes, that is the question, that I believe this amendment deletes those lines.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Mr. President.

I -- I'm not recalling the explanation for that, but I will find out and get that response to Senator Roraback.

THE CHAIR:

Senator Roraback.

SENATOR RORABACK:

Thank you, Mr. President.

And I have every confidence. It's not something that is getting -- is causing me to stop in my tracks, it's just something that has me scratching my head, and I'll follow up with Senator Coleman at a later date.

I support the amendment, Mr. President. This is something that many other states have undertaken, and in many states there has initially been resistance. But after the program is implemented, law enforcement officers say, this is not something that's going to used against me; at long last I have something which defends the proprietary of the work that I've done.

And I ask defense attorneys how often do you contest the voluntariness of statements, and they say, well, it's malpractice not to contest them. So because these statements are contested in virtually every case, the best defense that law enforcement can have is an actual recording of what transpired. And so I support the amendment and I support the underlying bill.

And thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Will you remark further on the amendment? Remark further on the amendment?

If not, I will try your minds.

All those -- oh, Senator Kissel. I'm sorry.

SENATOR KISSEL:

Thank -- thank you very much, Mr. President.

Just a question -- a couple of questions through

to the proponent.

THE CHAIR:

Please proceed, sir.

SENATOR KISSEL:

I -- I'm very thankful that Senator Coleman has brought out this amendment, and I appreciate the remarks by Senator Looney and Senator Roraback.

There was this overriding concern regarding the funding mechanism, though, and I'm just wondering what funding mechanism is anticipated by the amendment.

Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

There has been some discussion about a funding mechanism, and I think the one that was designated may already be allocated to some other purpose. So within the time that's required for implementation, that is Jan. 1, 2014, there will have to be -- if the equipment is going to be funded by the state for the state police barracks and for the local law enforcement agencies, we will have to identify a source of funding prior to January 1, 2014.

But some of the tasks that the State's Attorney, in collaboration with the post and the police chiefs, will be involved in is trying to establish an appropriate cost for that equipment. There is an OFA estimate concerning that cost, which may or may not be on point. But in addition to establishing standards for the type of equipment to be utilized, the Chief's

State's Attorney and those that he's collaborating with will also determine an appropriate amount of cost for that equipment.

Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, very much.

So is it my understanding -- because I know at the public hearing there was some reservations expressed by the Police Chiefs Association, and just within the last week or so, I've gotten some e-mails from some of my first select-people in smaller communities, and I'm just wondering whether the underlying bill, if -- should this amendment go forward -- if Senator Coleman is aware if there's any other or if there's any opposition even with the bill as amended, if he's aware of any -- Connecticut Conference of Municipalities, Council of Small Towns, any -- anybody out there or does this pretty much address the concerns raised by everybody who was in opposition?

Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

In response to Senator Kissel's question, through you, Mr. President, I wouldn't say that CCM is happy. They regard the bill as an unfunded mandate. There is being represented an agreement between the State's

Attorney's Office and the police chiefs, through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, very much.

Well, I always think it's better when we all work together in harmony and when people sit down and try to iron things out. And given the long time frame and the laudable goals of what we're dealing with here, I'm more than happy to support the amendment. And I'm happy to, again, listen to the rest of the debate on the underlying bill. And, with that, I'm happy to support the amendment.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Will you remark further on the amendment? Will you remark further on the amendment?

If not, I'll try your minds. All those, if in favor, please signify by saying, aye.

SENATORS:

Aye.

THE CHAIR:

Opposed, nay.

The ayes have it. The amendment is adopted.

Will you remark further on the bill?

Senator Meyer.

SENATOR MEYER:

Thanks, Mr. President.

Colleagues, I've had some concerns with this bill, and now let me outline those to you and tell you how I've come out on them. I've had a primary concern that admissions could be made by defendants in criminal cases, which because of the place or time that they were made or the spontaneity of the making of the admission, there would not be any recording made, and therefore the admission, which could be very central to the prosecution of the case, the admission would be lost, found inadmissible and -- and not be able to be used.

Let me give you a prime example of that. When Steven Hayes was arrested in the Cheshire murders, he is reported to have been asked, right after arrest -- he's been asked -- reported -- it was reported that he was asked this question by the police officer: Is there anybody else in that house? And Steven Hayes responded -- I'm quoting, I think verbatim -- It all got out of control.

Now, the statement by Hayes that it all got out of control is clearly an admission, not recorded. And, therefore, on the face of this bill, it would not be admissible. But a careful reading of this bill shows it would be admissible because the bill says that it's addressed to statements made by defendants which are made in the -- in the place of -- in a place of detention.

And a place of detention is specifically defined as a police station, the courthouse, a correctional facility -- which means a jail -- or a detention

facility, which also means a jail. So a statement made by Steven Hayes of that kind at the scene of the crime, spontaneous, right after arrest, would still be admissible.

I also was concerned about the number, in my experience, of admissions that have been made in the cars of law enforcement officers after arrest, on the way to -- to the police station or to another law enforcement location. And, again, this bill doesn't apply to police cars. It applies to places of detention, and detention is very specifically defined to mean a police station, courthouse, jail, that sort of thing -- doesn't say police car.

So I am satisfied that those kind of admissions and right at the scene of the crime after -- after an arrest or in a police car are -- are still -- are still admissible.

I'm also taking it -- taking into account the very significant language in this bill, of lines 68 to 71, which -- which says, in essence, that the presumption of inadmissibility of a statement made at a place of detention may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances. So there's very much of a balance here, as we seek to get the truth of what a defendant's -- defendant stated.

I'm also fortified here that this bill does not apply to all crimes; this bill applies to the most serious. It applies only to capital felonies and A

and B -- and A and B felonies. And -- and there's -- there's a very strong justification that in those very serious crimes, recordings would be -- would be appropriate.

So this bill is -- is more limited, on careful examination, than I thought. Indeed, I had a chance to talk to Senator Coleman, at length, as we went through this bill in a very serious way. He was helpful. My own Police Chief in Guilford, Tom Terrible, called me today and said that this bill is fine, as far as he's concerned, that -- that his town, my town has got the equipment to do the recording and routinely uses that equipment.

So because of the balance in this bill, because of the carefully looking at it, because of the statements made by Senator Coleman and my own police chief, I believe this bill has got -- is reasonable and balanced and I will support it.

Thank you.

THE CHAIR:

Thank you.

Senator McLachlan.

SENATOR McLACHLAN:

Thank you, Mr. President.

I rise for the purpose of question to the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR McLACHLAN:

Thank you, Mr. President.

Thank you, Senator Coleman for your work on this.

I was very interested in the testimony in our public hearing on this bill, and I recall some extensive concern on the part of our Chief State's Attorney, Kevin Kane about the timing may be premature. His thought, as I recall, was that there's a pilot program out there and that perhaps a little bit more time needed to be -- to study the -- the pilot program and how to properly implement this idea. I don't -- I didn't get the impression he opposed the idea in general; in fact, I thought he said that it's a -- will ultimately be a successful program. But he was concerned about training.

And through you, Mr. President.

Could you address the concerns of police chiefs and the Chief State's Attorney about training police officers in time for implementation?

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Yes. Thank you, Mr. President.

And through you.

I believe training of police officers is always a concern, and a legitimate one at that. And part of the reason for the delay in implementation was certainly to allow the Chief State's Attorney, in collaborations with others, to develop standards for the equipment involved. But also inasmuch as the Police Officers Standards and Training Council are involved to make certain that not only is the -- the

equipment compatible, department to department, and state to local law enforcement agency but also that those officers who will be involved in interrogations are appropriately prepared to perform that function in conjunction with the equipment that they will be utilizing.

Through you, Mr. President, to Senator McLachlan.

THE CHAIR:

Senator McLachlan.

SENATOR McLACHLAN:

Thank you, Mr. President.

And through you, Mr. President.

Senator Coleman, for clarification, what is the deadline for implementation of this new procedure?

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you.

The -- well there are a couple of deadlines. The deadlines for the establishment of standards for the equipment and the training in conjunction with the equipment would be January 1, 2012. The effective date of the bill would be January 1, 2014.

Through you, Mr. President.

THE CHAIR:

Senator McLachlan.

SENATOR McLACHLAN:

Thank you, Mr. President.

And through you, Mr. President.

Those departments that have already acquired

equipment for this purpose, as I understand the City of Danbury Police Department has contracted for new equipment, just this week, in preparation and anticipation of this legislation, is there -- will that equipment be grandfathered in? Do -- are they going to have to buy new equipment once the new rules are -- are in place?

Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Mr. President.

I don't know that there will be a requirement that Danbury or other departments that already have equipment in place will be required to replace that equipment, but I think all of the departments probably have some interest in making certain that their equipment is compatible with that of other law enforcement agencies, especially a state-to-local-department, inasmuch as for -- certainly for capital felonies but also possibly for A and B felonies, which the bill applies to.

Where the assistance of the state police may be required, it would be advisable that the computers that the state police have will be able to accommodate any disk that might be shared with the state police by a local enforcement, local law enforcement agency.

Through you, Mr. President.

THE CHAIR:

Senator McLachlan.

SENATOR McLACHLAN:

Thank you, Mr. President.

Thank you, Senator Coleman.

The last question pertaining to cost and back to training, has there been -- I didn't see in the fiscal note any reference to the cost of training officers for the purpose of this video process. Has that been looked at?

Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President.

I'm -- I'm glad you asked that question because it allows me to respond to the question that was earlier asked by Senator Roraback. And that is, is there a source of funding that may be available to finance this entire operation. And I believe that training would be considered part of the entire operation, along with the acquisition of the equipment.

And I'm informed that those who are involved are looking into asset forfeiture of funds that -- that result from asset forfeiture in in rem proceedings, in order to finance the purchase of equipment as well as to finance the provision of training for those officers that would be involved in custodial interrogations.

Through you, Mr. President.

THE CHAIR:

Senator McLachlan.

SENATOR McLACHLAN:

Thank you, Mr. President.

And thank you, Senator Coleman for your answers and your work on this bill.

I'll continue to listen to the discussion here. I -- I did vote no on this in the Judiciary Committee for all the reasons that Senator Meyer had concerns and certainly for the financial reasons that were anticipated by municipalities. It sounds like you've fine-tuned it a bit, and so I'll wait to hear more about it before making a final decision.

Thank you.

THE CHAIR:

Thank you, Senator.

Will you remark further?

Senator Welch.

SENATOR WELCH:

Thank you, Mr. President.

I rise in -- in opposition to this bill for a number of reasons, some of which have already been mentioned. I appreciate Senator Kissel raising the issue that the consequences of this bill, Mr. President, are -- are pretty dire. In essence, we are taking Miranda and we're adding to it another element. You have the right to remain silent; everything can be used against you, as long as we record it. And I think that goes a little bit too far.

As long as we record it -- that is in a detention center -- which I think brings me to my first

question.

Through you, Mr. President, if I may, to Senator Coleman?

THE CHAIR:

Please proceed, sir.

SENATOR WITKOS:

And -- and the question is this, Senator Coleman: Why -- why is the emphasis here on detention centers? When -- when I think about the concerns that would be or could arise with the -- with respect to interrogations, I think of detention centers as probably the safest place for an interrogation.

You have multiple people, multiple peace or police officers in the facility. Usually you have more than one involved in the questioning. So of all the places, I think there would be a concern for maybe improperly obtained admission, I would think that that would probably be the least of the ones to be concerned about, rather than in the field or somewhere else.

So through you, Mr. President.

The question is: Why detention centers; were thoughts given to other situations outside of detention centers?

Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Mr. President, I'm not sure that I understand the question.

Is the question why -- why aren't statements made at detention centers inadmissible or would be deemed to be inadmissible or presumed to be inadmissible if not recorded?

Through you, Mr. President, to Senator Welch.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

In essence that is -- that is the question. Why -- why are we -- why if -- if the concern of this body is nonrecorded admissions and the integrity of those admissions, why -- why is it -- why are we just limiting it to detention centers here as opposed to all admissions?

Through you, Mr. President.

SENATOR COLEMAN:

Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Yes. Through you, Mr. President.

I think I understand the question. And I would say that somebody during the course of the debate had referenced perhaps the history of -- maybe it was Senator Roraback, in conversation with the criminal defense attorneys, asking whether they routinely attack purported confessions. And I think the response was probably based on a lot of criminal law history and -- and case law in the State of Connecticut.

The issue is whether or not the admission or confession was voluntarily obtained. And -- and I think a lot of case law and a lot of criminal law history would probably bare out that many of the challenges to the voluntariness of confessions have been on the basis those confessions not being voluntarily because they were coerced in some manner, physical coercion included, because at a place of detention the suspect was deprived of sleep and was subjected to a continuous questioning, perhaps without the assistance or availability of an attorney in the suspect's behalf and primarily because a place of detention, as defined in the bill, would mean that access to the suspect is limited and completely under the control of the authorities that are conducting the custodial interrogation.

Through you, Mr. President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you.

And -- and I guess that leads me to two of my other concerns, which -- which I don't think I've heard expressed so far. And that is, one, the -- the chilling effect that this is going to have on the interrogation process -- or the interviewing process is probably a better word to use -- not just with the questioning and not with the -- the police officers but -- but also with the responses that might be received, assuming that the suspect at the time knows

that he or she is -- is being recorded.

The -- the second point is, in my mind, this is just another thing we're kind of having to require our public safety officers to have in the back of their mind, that they're complying with these video recording rules on top of all the other things that we're adding, rather than focusing on -- on the task at hand.

So those primarily are my concerns. I do have just two more questions for the proponent, and I think these are more for getting the legislative intent of some of the language here. And if I may propose those, through you, Mr. President.

THE CHAIR:

Please proceed, sir.

SENATOR WELCH:

And the first has to do with recording itself, found on lines 51 through 56 of the bill. Is it intended here, through you, Mr. president, that the suspect know that he or she is being recorded?

Maybe if I could put it another way: Are we requiring the police to inform the suspect that he or she is being recorded?

Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Mr. President, I don't think that the bill specifically addresses a requirement that the suspect be informed that he is being recorded, but I certainly

think that that was the intent of the bill. There's no specific provision in the bill that addresses that or makes that requirement. But it would be my considered opinion that the suspect be made aware that his statement or confession is being recorded.

Through you, Mr. President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you.

And then, if I may, Mr. President, direct the proponents' attention to line 43, where we have the exception regarding feasibility.

If -- if I may through you, Mr. President, what -- what exactly are we contemplating by the term "not feasible"?

Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Was your reference to lines 33?

Through you, Mr. President?

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Maybe I misspoke. 43.

SENATOR COLEMAN:

43.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Yeah, thank you. I see it.

Not feasible could encompass many situations. Maybe it's a busy day at a particular police department, and there are four or five people being interrogated, and maybe there's some urgency to the fifth person being interrogated but there's no equipment available in order to perform and record that interrogation.

Maybe it's the case that it's a small -- small-town police department and they have one set of equipment and that equipment malfunctions, which makes it not feasible to record the statement or confession of a particular suspect.

Those are two examples that come to mind. I'm sure there may be others.

Through you, Mr. President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you. And I thank the senator for his responses. That's all I have.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Will you remark further on the bill as amended? Will you remark further on the bill? Senator Looney?

SENATOR LOONEY:

Thank you, Mr. President.

Speaking in support of the bill as -- as amended,

I wanted to thank Senator Coleman, Representative Fox, for their hard work on this, as well as other members of the Judiciary Committee.

I think that Senator Kissel and Senator Meyer had a significant amount of input into the discussions of this bill that improved it greatly by talking about a number of -- of hypotheticals, both during Judiciary Committee public hearings, and thereafter, in -- in discussion, I think, to enhance this bill, and to help us to move into the -- into the mainstream of a large number of states that are moving toward this provision for electronic recording of -- of confessions, is something that improves their transparency and accountability in police procedures, and also is, of course, to the -- the benefit of the police when the quality of their -- their police work and the circumstances under which they conduct interrogations are above reproach.

The camera and the recording will document good and sound technique, as well as flawed technique. And I think that that is significant in this bill. And again, with the assistance of Chief State's Attorney Kane, who has -- has been an advocate for finding a way to -- to move gradually toward this, his input into this has been significant as well, as it has been for the last couple of years with the -- the pilot program that he initially helped establish and worked with those who had voluntarily participated in that.

So, again, I think this -- this moves us into what is now a rapidly, expanding mainstream in terms

of best practices.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Will you remark further on the bill as amended? Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President.

Just some closing comments. As Senator Kissel alluded to, and I may have mentioned in my remarks, this bill only applies to interrogations that are conducted in connection with capital felonies, or Class A and B felonies. All other offenses, or classes of offenses would not be subject to the requirement of electronic recording.

And it's also important to understand that the bill creates a presumption that custodial interrogations at a place of detention that are not recorded are inadmissible. Presumably, there is an opportunity to rebut such a presumption. And the bill, in other places, certainly makes provision for the use of statements by a suspect for impeachment purposes. And it also lays out certain exceptions so that statements may be used, whether recorded or not.

If made in open court, a statement made during custodial interrogation that was not recorded because of electronic cording was not feasible, as Senator Welch inquired into, other exceptions include a voluntary statement that has bearing on the credibility of the -- of the person or witness could be used irrespective of whether it was recorded.

Spontaneous statements not made in response to a question do not have to be recorded and can be used in court.

A statement made after questioning that is routinely asked during the process of the arrest of a person can be used even though not recorded. And a statement made during custodial interrogation by a person who requests, prior to making the statement, to respond to the interrogator's questions only if an electronic recording is not made, that statement could be used in a proceeding, as well as a statement made during custodial interrogation that is conducted out of state. And there is a catchall provision. Any other statement that may be admissible under law may be used even though not recorded.

Finally, Mr. President, I believe that most of our police officers do fine work, and we certainly owe them all a debt of gratitude. But because of the authority that they wield, I don't believe that their -- their work should be unfettered or not subject to some control.

As I indicated in opening remarks, the recording of confessions will contribute to the perception that the statement that a suspect makes, or the confession that a suspect makes is a reliable statement. And I think that will be of great benefit, even though there is some trepidation expressed on the part of law enforcement officers regarding this requirement. I think eventually it will work to the benefit of law enforcement departments and law enforcement officers,

as I think it was Senator Roraback who noted. I agree with that assessment and, consequently, I urge passage of the bill as amended.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Will you remark further on the bill as amended? Will you remark further on the bill as amended?

If not, Mr. Clerk, please announce the pendency roll call vote.

THE CLERK:

Immediate roll call has been ordered in the Senate. Will all senators please return to the Chamber. Immediate roll call has been ordered in the Senate. Will all senators please return to the Chamber.

THE CHAIR:

Senator Maynard? Senator Maynard? Senator Maynard? Senator Doyle?

Have all members voted? Have all members voted? The machine will be locked, and the clerk will announce the tally.

THE CLERK:

Motion is on passage of Senate Bill 954 as amended by Senate Amendments Schedules "A" and "B".

Total number voting	33
Those voting Yea	24
Those voting Nay	9
Those absent and voting	3

THE CHAIR:

The bill passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President.

If we mind standing at ease for just a moment. Thank you.

THE CHAIR:

The Senate will stand at ease.

On motion of Senator Looney of the 11th, the Senate at 7:25 p.m., recessed.

THE CLERK:

The Senate will reconvene immediately. The Senate will reconvene immediately.

(The Senate reconvened at 9:49 p.m., Senator Williams of the 29th in the Chair.)

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Thank you. Good evening, Mr. President.

THE CHAIR:

Good evening.

SENATOR LOONEY:

Mr. President, I believe the Clerk is in possession of Senate Agendas 2 and 3 for today's session.

THE CHAIR:

Thank you, Senator Looney.

Mr. Clerk.

S-633

CONNECTICUT

GEN. ASSEMBLY

SENATE

PROCEEDINGS

2011

VOL. 54

PART 22

6915-7208

SENATOR LOONEY:

Thank you, Mr. President -- Madam President.

I move all items on Senate Agenda Number 5, dated Wednesday, June 8, 2011, to be acted upon as indicated and that the Agenda be incorporated by reference into the Senate Journal and the Senate Transcript.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, would ask the Clerk to call the single item appearing on Senate Agenda Number 5, under "Disagreeing Actions," Senate Bill 954.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calling from Senate Agenda Number 5, Senate Bill 954, AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS, as amended by Senate Amendment Schedules "A" and "B," the House-rejected Senate Amendment Schedule "A"; Favorable Report of the Committee on Appropriations and Judiciary.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

I move the acceptance of the Committee's Favorable Report and passage of the bill, in concurrence with the House.

THE CHAIR:

Motion is on adoption of the bill.

Will you remark further, sir?

SENATOR COLEMAN:

We discussed the bill before. It involves recording, video recording of custodial interrogations at a place of detention, with certain exceptions.

I urge passage of the bill, in concurrence with the House, and would like to yield to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, very much, Madam President, and I would accept the yield.

I certainly disagree with the underlying premise of the -- the bill and will vote accordingly. But I know that we have other important business to attend to in the next 21 minutes, and so I would simply urge

a vote on the bill, as amended by the House.

THE CHAIR:

Will you remark further? Will you remark further?

If not, Mr. Clerk, will you call for a roll call vote?

And the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber. An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Mr. Clerk, will you just call the roll call again? I know --

THE CLERK:

The Senate is now voting by roll call. Will all Senators please return to the Chamber. The Senate is voting by roll call. Will all Senators please return to the Chamber.

THE CHAIR:

If all members have voted; all members have voted? The machine will be locked.

Mr. Clerk, will you call the tally.

THE CLERK:

Motion is on passage of Senate Bill 954, in accordance with the House.

Total number voting	36
Those voting Yea	25
Those voting Nay	11
Those absent and not voting	0

THE CHAIR:

The bill is passed.

Ladies and gentlemen, we're going to try to go through things quickly. If everybody can stay close by, we'd appreciate it, for the last 20 minutes.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, would like to place some items on the second Consent Calendar.

THE CHAIR:

Please proceed, sir.

SENATOR LOONEY:

Yes; thank you. Thank you, Madam President.

Madam President, from the -- I wanted to verify with the Clerk the Agenda item. Senate Bill 18 came

that he or she is -- is being recorded.

The -- the second point is, in my mind, this is just another thing we're kind of having to require our public safety officers to have in the back of their mind, that they're complying with these video recording rules on top of all the other things that we're adding, rather than focusing on -- on the task at hand.

So those primarily are my concerns. I do have just two more questions for the proponent, and I think these are more for getting the legislative intent of some of the language here. And if I may propose those, through you, Mr. President.

THE CHAIR:

Please proceed, sir.

SENATOR WELCH:

And the first has to do with recording itself, found on lines 51 through 56 of the bill. Is it intended here, through you, Mr. president, that the suspect know that he or she is being recorded?

Maybe if I could put it another way: Are we requiring the police to inform the suspect that he or she is being recorded?

Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Mr. President, I don't think that the bill specifically addresses a requirement that the suspect be informed that he is being recorded, but I certainly

think that that was the intent of the bill. There's no specific provision in the bill that addresses that or makes that requirement. But it would be my considered opinion that the suspect be made aware that his statement or confession is being recorded.

Through you, Mr. President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you.

And then, if I may, Mr. President, direct the proponents' attention to line 43, where we have the exception regarding feasibility.

If -- if I may through you, Mr. President, what -- what exactly are we contemplating by the term "not feasible"?

Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Was your reference to lines 33?

Through you, Mr. President?

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Maybe I misspoke. 43.

SENATOR COLEMAN:

43.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Yeah, thank you. I see it.

Not feasible could encompass many situations. Maybe it's a busy day at a particular police department, and there are four or five people being interrogated, and maybe there's some urgency to the fifth person being interrogated but there's no equipment available in order to perform and record that interrogation.

Maybe it's the case that it's a small -- small-town police department and they have one set of equipment and that equipment malfunctions, which makes it not feasible to record the statement or confession of a particular suspect.

Those are two examples that come to mind. I'm sure there may be others.

Through you, Mr. President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you. And I thank the senator for his responses. That's all I have.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Will you remark further on the bill as amended? Will you remark further on the bill? Senator Looney?

SENATOR LOONEY:

Thank you, Mr. President.

Speaking in support of the bill as -- as amended,

I wanted to thank Senator Coleman, Representative Fox, for their hard work on this, as well as other members of the Judiciary Committee.

I think that Senator Kissel and Senator Meyer had a significant amount of input into the discussions of this bill that improved it greatly by talking about a number of -- of hypotheticals, both during Judiciary Committee public hearings, and thereafter, in -- in discussion, I think, to enhance this bill, and to help us to move into the -- into the mainstream of a large number of states that are moving toward this provision for electronic recording of -- of confessions, is something that improves their transparency and accountability in police procedures, and also is, of course, to the -- the benefit of the police when the quality of their -- their police work and the circumstances under which they conduct interrogations are above reproach.

The camera and the recording will document good and sound technique, as well as flawed technique. And I think that that is significant in this bill. And again, with the assistance of Chief State's Attorney Kane, who has -- has been an advocate for finding a way to -- to move gradually toward this, his input into this has been significant as well, as it has been for the last couple of years with the -- the pilot program that he initially helped establish and worked with those who had voluntarily participated in that.

So, again, I think this -- this moves us into what is now a rapidly, expanding mainstream in terms

of best practices.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Will you remark further on the bill as amended? Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President.

Just some closing comments. As Senator Kissel alluded to, and I may have mentioned in my remarks, this bill only applies to interrogations that are conducted in connection with capital felonies, or Class A and B felonies. All other offenses, or classes of offenses would not be subject to the requirement of electronic recording.

And it's also important to understand that the bill creates a presumption that custodial interrogations at a place of detention that are not recorded are inadmissible. Presumably, there is an opportunity to rebut such a presumption. And the bill, in other places, certainly makes provision for the use of statements by a suspect for impeachment purposes. And it also lays out certain exceptions so that statements may be used, whether recorded or not.

If made in open court, a statement made during custodial interrogation that was not recorded because of electronic cording was not feasible, as Senator Welch inquired into, other exceptions include a voluntary statement that has bearing on the credibility of the -- of the person or witness could be used irrespective of whether it was recorded.

Spontaneous statements not made in response to a question do not have to be recorded and can be used in court.

A statement made after questioning that is routinely asked during the process of the arrest of a person can be used even though not recorded. And a statement made during custodial interrogation by a person who requests, prior to making the statement, to respond to the interrogator's questions only if an electronic recording is not made, that statement could be used in a proceeding, as well as a statement made during custodial interrogation that is conducted out of state. And there is a catchall provision. Any other statement that may be admissible under law may be used even though not recorded.

Finally, Mr. President, I believe that most of our police officers do fine work, and we certainly owe them all a debt of gratitude. But because of the authority that they wield, I don't believe that their -- their work should be unfettered or not subject to some control.

As I indicated in opening remarks, the recording of confessions will contribute to the perception that the statement that a suspect makes, or the confession that a suspect makes is a reliable statement. And I think that will be of great benefit, even though there is some trepidation expressed on the part of law enforcement officers regarding this requirement. I think eventually it will work to the benefit of law enforcement departments and law enforcement officers,

as I think it was Senator Roraback who noted. I agree with that assessment and, consequently, I urge passage of the bill as amended.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Will you remark further on the bill as amended? Will you remark further on the bill as amended?

If not, Mr. Clerk, please announce the pendency roll call vote.

THE CLERK:

Immediate roll call has been ordered in the Senate. Will all senators please return to the Chamber. Immediate roll call has been ordered in the Senate. Will all senators please return to the Chamber.

THE CHAIR:

Senator Maynard? Senator Maynard? Senator Maynard? Senator Doyle?

Have all members voted? Have all members voted? The machine will be locked, and the clerk will announce the tally.

THE CLERK:

Motion is on passage of Senate Bill 954 as amended by Senate Amendments Schedules "A" and "B".

Total number voting	33
Those voting Yea	24
Those voting Nay	9
Those absent and voting	3

THE CHAIR:

The bill passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President.

If we mind standing at ease for just a moment. Thank you.

THE CHAIR:

The Senate will stand at ease.

On motion of Senator Looney of the 11th, the Senate at 7:25 p.m., recessed.

THE CLERK:

The Senate will reconvene immediately. The Senate will reconvene immediately.

(The Senate reconvened at 9:49 p.m., Senator Williams of the 29th in the Chair.)

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Thank you. Good evening, Mr. President.

THE CHAIR:

Good evening.

SENATOR LOONEY:

Mr. President, I believe the Clerk is in possession of Senate Agendas 2 and 3 for today's session.

THE CHAIR:

Thank you, Senator Looney.

Mr. Clerk.

S-633

CONNECTICUT

GEN. ASSEMBLY

SENATE

PROCEEDINGS

2011

VOL. 54

PART 22

6915-7208

SENATOR LOONEY:

Thank you, Mr. President -- Madam President.

I move all items on Senate Agenda Number 5, dated Wednesday, June 8, 2011, to be acted upon as indicated and that the Agenda be incorporated by reference into the Senate Journal and the Senate Transcript.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, would ask the Clerk to call the single item appearing on Senate Agenda Number 5, under "Disagreeing Actions," Senate Bill 954.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calling from Senate Agenda Number 5, Senate Bill 954, AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS, as amended by Senate Amendment Schedules "A" and "B," the House-rejected Senate Amendment Schedule "A"; Favorable Report of the Committee on Appropriations and Judiciary.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Madam President.

I move the acceptance of the Committee's Favorable Report and passage of the bill, in concurrence with the House.

THE CHAIR:

Motion is on adoption of the bill.

Will you remark further, sir?

SENATOR COLEMAN:

We discussed the bill before. It involves recording, video recording of custodial interrogations at a place of detention, with certain exceptions.

I urge passage of the bill, in concurrence with the House, and would like to yield to Senator Kissel.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, very much, Madam President, and I would accept the yield.

I certainly disagree with the underlying premise of the -- the bill and will vote accordingly. But I know that we have other important business to attend to in the next 21 minutes, and so I would simply urge

a vote on the bill, as amended by the House.

THE CHAIR:

Will you remark further? Will you remark further?

If not, Mr. Clerk, will you call for a roll call vote?

And the machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber. An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Mr. Clerk, will you just call the roll call again? I know --

THE CLERK:

The Senate is now voting by roll call. Will all Senators please return to the Chamber. The Senate is voting by roll call. Will all Senators please return to the Chamber.

THE CHAIR:

If all members have voted; all members have voted? The machine will be locked.

Mr. Clerk, will you call the tally.

THE CLERK:

Motion is on passage of Senate Bill 954, in accordance with the House.

Total number voting	36
Those voting Yea	25
Those voting Nay	11
Those absent and not voting	0

THE CHAIR:

The bill is passed.

Ladies and gentlemen, we're going to try to go through things quickly. If everybody can stay close by, we'd appreciate it, for the last 20 minutes.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, would like to place some items on the second Consent Calendar.

THE CHAIR:

Please proceed, sir.

SENATOR LOONEY:

Yes; thank you. Thank you, Madam President.

Madam President, from the -- I wanted to verify with the Clerk the Agenda item. Senate Bill 18 came