EXHIBIT 2
DATE 2/19/09
HB 534

P.O. BOX 7607, MISSOULA, MT 59807 • (406) 544-6698

Written Testimony of Jessie McQuillan,
Executive Director of Montana Innocence Project

Re: HB 534, Recording of Custodial Interrogations in Felony Cases
Before the Montana House Judiciary Committee, Feb. 19, 2009

Summary of Testimony

- Montana Innocence Project worked with the Montana Department of Justice & other groups representing law enforcement professionals to craft a solid proposal that addresses concerns raised by law enforcement. It provides several major exceptions to the requirement to record felony custodial interrogations to accommodate situations where recordings can't be made.

- A number of Montana law enforcement departments have already begun recording interrogations & report positive experiences. Several states around the nation have recently adopted laws similar to HB 534.

- There are three key reasons why recording of interrogations makes sense:

    1) Forensic DNA testing has proven the innocence of 232 Americans who were wrongly convicted of serious crimes. In 25 percent of these cases, a false confession played a role in the wrongful conviction. Recording interrogations helps to prevent this mistake by providing an independent record of confessions, and thus helps to protect innocent people & the public who may be victimized when real perpetrators aren't convicted.

    2) It saves time & expense for everyone involved in the legal system, including police, prosecutors, judges, juries, defense attorneys, court clerks, etc. Having an electronic record of an interrogation is an invaluable tool for settling disputes & preventing pre-trial motions & hearings about what statements were made & what transpired during an interrogation.

    3) It helps convict the guilty. When defendants & their attorneys face the recorded evidence of statements they made during an interrogation, they're less likely to contest officers' reports, and more likely to negotiate guilty pleas. Similarly, it's easier for judges & juries to quickly decide the guilt of a defendant. Montana law enforcement departments that have already adopted recording policies confirm this experience.

MONTANA INNOCENCE PROJECT

P.O. BOX 7607, MISSOULA, MT 59807 • (406) 544-6698

FACT SHEET

THE RECORDING OF CUSTODIAL INTERROGATIONS OFFERS PROTECTIONS TO LAW ENFORCEMENT

Requiring the recordation of custodial interrogations has long been identified as a reform that shields the innocent from wrongful conviction by creating a record of the questioning that yields a confession. Discussions about the benefits of the reform, however, typically exclude protections the practice offers to law enforcement.

The Crime-Solving Potential of Recording Custodial Interrogations:

- Recording interrogations capture subtle details that may be lost if unrecorded, which helps law enforcement better investigate the crime;
- Creating a record of statements made by the suspect make it difficult for a suspect to change an account of events originally provided to law enforcement;
- Generating a recording of an interrogation permits officers to concentrate on the interview, rather than being distracted by copious note-taking during the course of the interrogation; and
- The production of an electronic recording creates a permanent record of original statements provided by suspects. If a shift in the investigative focus occurs later, law enforcement can easily refer back to the recording to yield additional details which may have been initially deemed irrelevant.

Electronic Recording of Interrogations Provides Additional Benefits to Law Enforcement:

- The presence of a recording removes the potential for disputes about how an officer conducted himself or treated a suspect;
- Electronic recordings protect innocent police officers and law enforcement agencies accused of coercing confessions. In the absence of a recording, the defense has ample opportunity to offer scenarios that seem plausible to fact-finders and can result in sizable settlements; and
- The decision to record interrogations enhances public confidence in law enforcement, while reducing the number of citizen complaints against the police.

Montana Law Enforcement Agencies that Currently Create Audio and/or Visual Recordings of Custodial Interrogations

from "Departments that Currently Record Custodial Interrogations," Appendix A of 2004 Report: "Police Experiences Recording Interrogations," by former U.S. Attorney Tom Sullivan

Law Enforcement Agency	Population (2000 Census)	Sworn Officers	Audio/Video	Years Recording
Billings PD	89,847	128	A/V	20
Bozeman PD	27,509	42	A	18
Butte/Silverbow LED	34,606	40	A/V	10+
Cascade County SO	80,357	40	A/V	10+
Flathead County SO	74,471	45	A/V	10+
Gallatin County SO	67,831	40	A	10+
Great Falls PD	56,690	80	A/V	8
Helena PD	25,780	49	A/V	10
Kalispell PD	14,223	45	A/V	10+
Lewis & Clark County SO	55,716	40	A/V	15
Missoula PD	57,053	89	A/V	3
Missoula County SO	95,802	58	A/V	14

MONTANA
INNOCENCE
PROJECT

P.O. BOX 7607, MISSOULA, MT 59807 • (406) 544-6698

FACT SHEET

RECORDING INTERROGATIONS HAS BROAD SUPPORT

From law enforcement:
"We don't object to any recordation of interviews or interrogations which would result in a clearer picture of what the defendant or the witness told the police officer. After all, it is our firm belief that in an extraordinarily overwhelming number of cases, the information being reported out of those cases is accurate and correct, and we believe that a recording would help us to prove that."

-Jim Pasco, Executive Director, Fraternal Order of Police
NPR's Tavis Smiley Show, *Jan. 17, 2003*

"Police and prosecutors have little to fear from a requirement to videotape all interrogations. Recording not only protects the innocent, it helps convict the guilty and sustain the public's faith in our criminal justice system."

-Amy Klobuchar, Hennepin County, MN, County Attorney
"Eye on Interrogations: How Videotaping Serves the Cause of Justice,"
Washington Post *op-ed, June 10, 2002*

"[I]f it's done right, there is no more powerful evidence than a videotaped confession there for the defense and the public to see."

-Capt. Barney Forsythe, director of Montgomery County (MD) major crimes division
"Md. Weighs Taping Police Interviews; Videos Dispel Questions on Tactics,"
Washington Post, *Feb. 12, 2002*

From judges:
"I would describe [videotaping] as a big improvement. We're spending a lot less on pre-trial motions. It just narrows the issues."

-Kankakee County, IL, Judge Clark Erickson
"No More Excuses. Go to the Tape," Chicago Tribune, *editorial, Apr. 21, 2002*

"A $200 video recorder and a $2 cassette would have saved all this time and money and the questions of whether this confession is valid would not be in this courtroom."

-U.S. District Judge Donald Graham, Florida
"Prosecutor: Hard to retry Behan case," Miami Herald, *October 3, 2002*

From the media:
"Illinois' criminal justice system is flawed. The 13 men who have been wrongly sentenced to die since 1977 stand as stark evidence of that. It is time to substantially improve that system, and videotaping interrogations and confessions will be an important step toward that."

-*"No more excuses. Go to the tape,"*
Chicago Tribune, *April 21, 2002*

"It is not all that uncommon for people to admit under intense interrogation that they committed crimes of which they were innocent. Their lawyers say the teenagers were questioned by police for up to 28 hours, and charge that the confessions were coerced. Had the entire questioning been videotaped, as Alaska and Minnesota require but New York does not, the quest for truth might be easier."

-*"Justice in the Central Park Jogger Case,"*
New York Times, *October 16, 2002*

"Recording what happens as cops grill a suspect is not only a protection against the bad acts of rogue officers, but also a guard against false allegations of police misconduct by criminal suspects. To ensure both of these good outcomes, New York's police department -- and others across the nation that don't do so -- should videotape all interrogations."

-DeWayne Wickham, USA Today columnist
"Film all police interrogations," USA Today, *September 24, 2002*

"While video acts to protect the rights of defendants, it also helps protect police and the prosecution from charges like coercion that sometimes sway jurors to decide against an otherwise solid case."

-Clarence Page, syndicated columnist
"Jogger case revelation: Tape interrogations too," Newsday, *October 1, 2002*

From academics:
"Taping interrogations and preventing false confessions are issues about truth and justice. They should be embraced by all who participate in or benefit from our criminal justice system."

-Professor Steven A. Drizin, Northwestern University Law School
"Taping confessions makes just sense," Milwaukee Journal Sentinel *op-ed*, May 11, 2002

From defense attorneys:
"Custodial interrogations are a legitimate law-enforcement tool used by the police to elicit what is certainly one of the most powerful pieces of evidence in a criminal case: a confession. Legislation requiring that such confessions be electronically recorded in their entirety as a predicate to admissibility at trial serves not only to improve their credibility and reliability, but also to protect those who may, for whatever reason, be in danger of giving a false confession."

-John J. Hardiman and Michael A. DiLauro, Rhode Island Public Defender's Office
"Videotape them; R.I. should fight false confessions," The Providence Journal *op-ed*, *November 17, 2002*

MONTANA
INNOCENCE
PROJECT

P.O. BOX 7607, MISSOULA, MT 59807 • (406) 544-6698

FACT SHEET

RECORDING CUSTODIAL INTERROGATIONS: A RANGE OF COST ALTERNATIVES

Concerns about cost are frequently raised by those who oppose requiring the recording of interrogations. However, a number of cost-effective options are available for large cities and small rural towns alike. This piece will lay out a number of cost options, from the simplest variety to state-of-the-art systems.

Audio Recording

Some jurisdictions do audio-only recording, and the necessary equipment for implementing such a policy is simply a hand-held recording device that can be purchased for as little as $20. A digital voice recorder can be purchased for $40-$60. Digital recording devices allow an officer to record over 100 hours of uninterrupted audio and then transfer those files to a computer. A state-of-the-art audio recording device may be purchased for about $300.

Because recording is only required at a fixed place of detention, departments only need to have one or two devices per police station, they do not need to have a device for each officer. The vast majority of departments already have this equipment on hand.

Storage for Digital Recordings:

- It is now possible to make and/or transfer audio and video recordings to digital format. As a result, departments will not need to buy and store cassette tapes or even DVDs, but can retain the recordings on small and inexpensive data storage devices or on computers.
- Law enforcement agencies can store 700MB of audio (roughly 80 min) on a standard CD. Using the same formula for long-term storage, agencies can store 190 hours of recorded audio on a standard 100GB hard-drive. Those hard-drives are running for $70 on the internet right now, so the cost of storing an hour of recorded audio is $.37 and that cost will drop as the technology becomes more efficient.
- Multiple copies of digital recordings can be made at no expense.

Video Recording

A Low-Budget Alternative:

It is possible to comply with legislation that requires the recording of interrogations at minimal cost. The figures below represent costs for one system; however, should an entire department or several at once opt to purchase such equipment, wholesale options are likely available.

The following represents a cost estimate for a system to outfit one department, offered at current retail prices:

- Single digital camcorders now retail for $199.99;
- An individual DVD can hold approximately 4.7-gigabites, on which 2 hours of studio quality (supergrade) footage can be recorded;
- An inexpensive DVD player retails for as low as $49.99;
- A 600-gigabite external hard drive [used to store all of the interrogations] can cost as little as $279.99;

(Source: http://www.bestbuy.com)

This ballpark figure is consistent with an estimate provided by a Special Committee on the Recordation of Custodial Interrogations submitted a report to New Jersey's Supreme Court, indicating that "**for under a thousand dollars** a video system can be installed recording onto VHS tape."

(Source: www.judiciary.state.nj.us/notices/reports/cookreport.pdf)

A Mid-Range Alternative:
Also possible is a mid-range alternative that offers a server which has the capacity to hold all archived interrogations, in addition to more recent ones.

Denver, CO, for instance, has a 25-room recordation system that contains individual work stations which receive data from the video camera and places it onto the hard drive. These interrogation videos are taken from the hard drive and burned onto a CD. The total cost for all of the video rooms and work stations was $175,000 (at $7,000 per room). In addition, Denver purchased an $11,000 mainframe computer to store all of its interrogations over time. According to officials, this was less challenging than warehousing all of the individual interrogation DVD's.

State-of-the-Art Integrated Recordation System:
Some law enforcement agencies, such as the Chicago Police Department, have installed integrated systems, which allow all investigators within a particular department to view live and stored interviews. Such a system also permits investigators to embed typed notes onto already-recorded interrogations, which serves as a valuable investigative tool. In such an integrated system, all investigators can watch and retrieve interviews from all computers and from any desktop in the stationhouse. In this way, investigators can collaborate on cases and build upon the ideas and premises of others working on a case.

Such a system which integrates four different rooms with the capacity for real-time note-taking is $40,000. However, for a one-room system that does not allow system connectivity, the cost is $8,000. While this version is less expensive than the fully –integrated system, it still allows investigators to continually view interrogations and burn them onto CDs.
(Source: Word Systems: http://www.wsystems.com/)