



Cynthia Mousseau
Staff Attorney, New England Innocence Project
Testimony on HB1236
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My name is Cynthia Mousseau and I am a Staff Attorney at the New England Innocence Project, an organization that works to correct and prevent wrongful convictions throughout New England. I want to start by thanking the committee for considering my words on this important issue. I am here because the New England Innocence Project seeks to increase truth, accountability, and fairness in the criminal legal system.

Recording police interrogations is a critical opportunity to bring that objectivity and honesty into the courtroom. Failing to ensure that all police interrogations are recorded not only deprives the court process of the transparency and accountability that should be its hallmarks, but often results in the incarceration of people for crimes they did not commit.

I want to talk briefly about how this bill has gotten here. We filed recording bills in previous years but ultimately they did not pass. We discussed last year's bill with multiple interested parties and redrafted the bill to better capture the intent and to prevent undue hardship to law enforcement.

As a New Hampshire practitioner of about 18 years, I'm surprised to hear that any police departments would object to recording. I practiced in Manchester and rarely encountered a case where an interrogation was not recorded. Indeed, as a practitioner, recording made it MORE difficult for criminal defendants to make arguments regarding an interrogation. There are far less motions to suppress statements when there is objective evidence of the statement instead of "he said/she said" testimony about the statement. This bill truly benefits the court system and the police in this way.

The bill offers protection to the wrongfully convicted folks that have given false confessions. Innocence cases teach us how the criminal legal system fails. Since 1989, there have been 481 exonerations involving a false confession. Statistics suggest that almost a third of DNA exonerations include a false confession. That means that in many cases where DNA conclusively proves that these folks didn't commit the crime, they confessed to it! People are often shocked by this number. It is extremely hard to understand why people falsely confess and most folks believe they would never confess to something that they didn't do. There are, however, a myriad of reasons why people confess: stress, mental illness, age, pressure, unethical interrogation practices, etc. But examples often help highlight our points better than lists.

Take the case of Gary Cifizzari. Gary, who was exonerated in 2019 after spending 35 years in prison for a brutal assault and murder he did not commit, was prosecuted based on his brother,

Michael's, false confession. In September of 1979, a woman named Concetta Schiappa was found dead in her home. Ms. Schiappa was the great-aunt of Gary and Michael. Though the police had leads, including a man named Michael Giroux, no arrests were made.

The murder remained unsolved. In February of 1981, Michael Cifizzari showed up at the police station and asked to spend the night. The police had let him sleep there a few times in the past six months. Michael exhibited many strange behaviors that night: he signed his name "Paul M. Cartney" on legal paperwork and he appeared visibly confused and "wild-eyed." Further just three months prior, the police had driven Michael to the psychiatric wing of the hospital after he was seen drinking out of a dog bowl outside of a stranger's home. During that car ride, police had asked Michael about his Aunt Connie's death and Michael said he had gotten upset with her a few weeks earlier (though she had been dead for over a year) and had hit her and then he said he hadn't hit her but he said that just to appease the police. Nonetheless, being aware of Michael's long mental health history, his current presentation, and his strange behavior, police still interrogated him multiple times about the murders.

The officers said Michael gave five statements total that day to local and state police, eventually stating that he went with his cousin Robert to Ms. Schiappa's house and hit her with a stick. And during the final interrogation, when an officer asked, unprompted, if Michael meant Gary, not Robert, Michael said Gary and Robert were there, though he never said that Gary did any actions in furtherance of the murder. This last statement was the only statement that linked Gary to the crime. None of the statements was signed. None was recorded. The only evidence we have of these interrogations are the unsigned, written out statements and the officer's recollections and testimonies about the interrogations.

Michael was arrested that day and charged with murder. He had a competency evaluation, where he recanted his confession and said he was innocent. The examining psychiatrist recommended he be sent to a state psychiatric hospital. Michael was later found to be "acutely mentally ill" and for more than a year deemed incompetent to stand trial. Michael was eventually found competent, and despite his renewed recantations, was convicted of murder. He died in prison in 2000.

Gary, meanwhile, was also arrested. Despite his repeated assertions of innocence, he was tried and convicted for this murder in 1984. Gary languished in jail for years until DNA testing revealed that neither Gary nor Michael was a match to the DNA found at the scene. Instead, the DNA matched the initial suspect, Michael Giroux, who the police had interviewed and cleared immediately after the crime occurred.

I know this is not a case from New Hampshire. But one of the lessons that Gary's case teaches us is that a recording of a police interrogation is a critical piece of evidence. If the jury had seen how ill Michael was, if the jury truly understood how distressed he had been, if they had seen



how questioning had affected Michael, not just Gary's conviction and wrongful imprisonment, but Michael's, too, could have been avoided.

There haven't been any exonerations in New Hampshire based on false confessions. Although we would like to believe that is because NH has a flawless legal system, that is simply not supported by the national evidence on exonerations. Instead, the data on national exonerations suggests that we in NH are allowing some wrongful conviction cases to slip through the cracks. Gary's case may highlight some places we can start to address this issue. Recording police interrogations can ensure that evidence is reliable, honest, and as accurate as possible. In a criminal legal system that relies on evidence, only the most accurate and objective evidence should be accepted.

We can and should promote transparency and the best and most accurate evidence in our courtrooms. Recording interrogations brings reliability to the criminal legal process and could very well prevent wrongful convictions in the future. We strongly urge you to pass HB1236.