

August 24, 2006

ADDRESS

RE: Letter of support for _____'s request for funding for electronic recording equipment

Dear _____:

We write in support of _____'s request for funding to purchase equipment for electronically recording custodial interviews with suspects. Electronic recording of custodial interviews is an essential tool for helping the criminal justice system convict the guilty, and only the guilty. Recording can provide objective evidence of incriminating statements, but it also helps reveal false confessions, which, although counter-intuitive, occur with surprising frequency and are one of the leading causes of wrongful convictions.

Although electronic recording is now state-mandated (by both the state legislature and state supreme court), the current state funding is insufficient to pay for the necessary equipment and storage costs. We hope this letter will help you understand the benefits of electronic recording, and why local funding is needed to support this important improvement in our criminal justice system.

Our interest in this issue arises from our role as a group of criminal justice professionals dedicated to improving the criminal justice system's accuracy and reliability. The Wisconsin Criminal Justice Study Commission is co-sponsored by four entities: the State Bar of Wisconsin, Marquette University Law School, the Wisconsin Attorney General's Office, and the University of Wisconsin Law School. The Commission is made up of well-respected professionals from every facet of the criminal justice system, including judges, prosecutors, defense attorneys, police, sheriffs, academics, and victim's advocates, as well as community leaders from outside the system. The Commission's purpose is to study issues affecting the criminal justice system's accuracy and reliability, and to recommend reforms that aid that purpose.

Electronic recording of suspect interviews is one such reform. As you may be aware, the Wisconsin Supreme Court and Wisconsin State Legislature have recently mandated recording. In July 2005, the Court required that all custodial interrogations of juveniles be recorded whenever feasible. *See State v. Jerrell C.J.*, 2005 WI 105. Then, in December 2005, the State Legislature codified *Jerrell* for juvenile cases and extended the recording requirement to custodial interrogations in adult felony cases. *See* 2005 Wisconsin Act 60.

In juvenile cases, the failure to record will prevent the state from presenting evidence of the suspect's statements. In adult cases, the failure to record will result in an instruction to the jury that recording is state policy and that

the jury should consider the failure to record in evaluating the evidence. In response to these changes in the law, the Wisconsin Attorney General's Office has since implemented guidelines and training suggesting that law enforcement record suspect interviews any time a suspect under arrest is subjected to questioning. See State of Wisconsin, Office of the Attorney General, *Recommendations for Electronic Recording of Custodial Interviews*, December 2005.

The Court, the Legislature, and the Attorney General had good reasons for implementing electronic recording. Most importantly, recording aids the truth-seeking process by providing an objective record of what occurred during an interrogation. When a confession is obtained properly, recording allows prosecutors to present conclusive evidence of a defendant's incriminating statements, effectively preventing the defendant from falsely denying or recanting a confession at trial.

Conversely, when suspects are improperly pressured or coerced into making involuntary or unreliable statements, recording allows defense attorneys to present evidence supporting the possibility that a defendant confessed falsely. As stated above, false confessions are one of the leading causes of wrongful convictions. Electronic recording gives jurors the opportunity to evaluate whether a confession is false, and to thereby avoid convicting an innocent person. Whether in support of the prosecution's case or the defense's case, the recording aids the jury in finding the truth and reaching a just verdict.

In addition, recording protects municipalities from lawsuits arising out of false claims of police misconduct. If a suspect claims that the police coerced or assaulted him/her during interrogation, the recording will provide objective evidence of whether the abuse actually occurred. This will allow municipalities to provide fair compensation when appropriate, and to avoid paying compensation for false claims.

Finally, recording can save resources. With a recording, disputes over what occurred during interrogation are resolved in the early stages of a case, thereby avoiding lengthy pretrial hearings and jury trials. With fewer suppression motions and hearings, police officers spend less time in court, thereby reducing the amount municipalities pay in overtime.

Although recording has the potential to boost the quality of justice in our state, this potential can only be realized if law enforcement agencies have adequate funding to purchase recording equipment. The Office of Justice Assistance, the State agency responsible for distributing the funds allocated by the legislature, has acknowledged that State funding will not be sufficient to purchase equipment for all the law enforcement agencies in Wisconsin,¹ and therefore local

¹ The legislature has allocated a total—for all law enforcement agencies in the state—of \$1,062,500 over the 2005-2007 biennium, with \$312,500 awarded before June 30, 2006, and the

funding is necessary. While agencies will have a wide range of equipment options (audiovisual vs. audio only; digital vs. analog; etc.), it is important that they have adequate funding to purchase digital audiovisual equipment. Audiovisual is preferable to audio only because it provides a more complete record of what occurred during an interrogation. Digital is preferable to analog not only because it produces higher quality recordings—and therefore best aids the truth-seeking process—but also because digital is the only kind of equipment for which the state’s supplemental funds are available.² Although the initial costs for digital audiovisual equipment may be higher, these higher costs are justified by the higher quality recordings, the availability of the state’s supplemental funds, and the likelihood that agencies purchasing less modern, less expensive kinds of equipment will likely need to purchase modern replacements in the near future.

Purchasing equipment is not the only cost associated with electronic recording. Because police departments are required by law to store and maintain evidence in criminal cases, departments need adequate funding to store recordings. Especially for larger departments, storage costs are likely to be substantial. Because the supplemental state funding is not available for storage costs, departments will need funding from local sources in order to adequately comply with legal requirements concerning storage.

Because recording interrogations can substantially increase the quality of justice in our state, and because new legal requirements impose a heavy sanction on the prosecution when police fail to record, we hope you will provide your local law enforcement agencies with funding that allows them to effectively comply with the new recording requirements.

If you have any questions, please contact our Commission’s staff attorney, Byron Lichstein.

Sincerely,
WISCONSIN CRIMINAL JUSTICE STUDY COMMISSION

Honorable Michael G. Malmstadt
Chairman

balance to be awarded during fiscal year 2007. See Wisconsin Office of Justice Assistance, *Digital Recording of Custodial Interrogations: Funding Announcement*, March 2006, available at: <http://oja.state.wi.us/docview.asp?docid=6607&locid=97>.

² See *Id.*