

Tuesday, July 26, 2011

Chairman Nething and Judiciary Committee Members:

I am attorney Paul H. Myerchin of Bismarck. I have been in private practice now for the last thirteen years. An area of my practice is criminal defense.

I first want to thank you for studying the feasibility and desirability of the Uniform Electronic Recording of Custodial Interrogations Act (the Act). It is my hope that my comments today will assist this Committee make a favorable recommendation of the Act for the next legislative session.

First, the Act promotes fundamental fairness in our criminal justice system. While we do not have a perfect criminal justice system here in the United States of America, thanks to the Founding Fathers of this country it is one of the best the world knows. This Act makes our criminal justice system better. Throughout my representation of many clients, I have read police reports time and again where the client is quoted directly by the officer. Typically, my clients would respond with statements such as, "I never said that", or "That is not what I meant." Recording interviews however takes away any uncertainty about what was said. Rather, an accurate and truthful account of the interview is captured for Courts to consider at a later point in time if necessary. By doing this, the constitutional rights of the accused and the rights of law enforcement are protected. Thus, the fundamental fairness of our criminal justice system is insured.

Second, the Act is not unfair to law enforcement if recording should not occur for some reason. For example, the Act does not punish officers for equipment failures or if officers believed the Act did not apply at the time. Importantly, violations of the Act do not automatically result in excluded evidence but merely become a factor for the Court to consider.

Third, the Act promotes cost savings to the State of North Dakota. In my example above where the client says "I never said that", or "That is not what I meant", it typically means that we are off to file a pre-trial motion with the Court or go to trial. Pre-trial motions and trials are costly in time and money to the court system, law enforcement and the accused. When an interview is recorded, prosecutors and defense attorneys can accurately access the facts of the case and give their clients the best advice based on accurate information. In turn, the number of pre-trial motions and trials before the Court will be reduced and amount to a cost savings. Additionally, the actual cost of digital recorders today is inexpensive typically running only \$50 to \$100 which is certainly feasible for nearly all law enforcement departments.

Thank you for your consideration. I hope this Judiciary Committee will give the Act a favorable recommendation.