



The New England Innocence Project

January 16, 2014

TESTIMONY OF ANDREW PAPPONE
ATTORNEY AT THE NEW ENGLAND INNOCENCE PROJECT
BEFORE MEMBERS OF THE VERMONT SENATE AND HOUSE JUDICIARY
COMMITTEES
RE: EYEWITNESS IDENTIFICATION

JANUARY 16, 2014

As a Staff Attorney with the New England Innocence Project, I am honored to have the opportunity to testify before you today on such important issues. I would like to begin by commending and thanking the Vermont legislature for taking such a proactive approach to addressing issues surrounding wrongful convictions in our legal system and for working collaborative and productively toward a day when no innocent person will ever spend time in a Vermont prison, or convicted in a Vermont court, for a crime he or she did not commit.

The story of collaboration between the Innocence Project and the Vermont legislature is nothing new. In 2007, the Innocence Project worked with the legislature to craft and pass the Innocence Protection Act, giving those incarcerated in Vermont prisons with a claim of actual innocence, access to forensic evidence associated with their cases. And this law has already shown extraordinary benefit. People who were previously sitting in prison with claims of actual innocence and no way to prove it have already used this law to gain access to the forensic evidence used in their cases. With new technology that was not available at the time of their convictions, these people now have the chance to petition the court to have the evidence reexamined and be exonerated if it proves their innocence.



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Another important result of the collaboration in 2007 is what brings us here today. The Innocence Protection Act created a task force in Vermont to look at eyewitness identification protocols and create recommendations to ensure they were useful, effective, and most of all, accurate. Since that task force released its report, The Innocence Project and Vermont law enforcement have worked together to develop and implement a training system so that all Vermont officers are trained in using best practices for eyewitness identification procedures. Rebecca Brown, Director of State Policy Reform, Innocence Project; Chief Bill Brooks, Norwood Police Department (MA); and the former executive director of the New England Innocence Project led a “train the trainers” event in Vermont, developing the curriculum that has now been implemented to train officers young and old in the newest science.

What they found a few years ago, and what I have found more recently on my trips to observe these training programs are the extraordinary resources that Vermont already has in place to make implementation of a bill like this very easy to envision.

Eyewitness ID Reform in Vermont: A Solution in Search of Problem?

Public Defenders in Vermont often joke that eyewitness identification is never an issue here because everyone knows each other. And it’s true- Vermont is small. Montpelier is the least populous state capitol in the United States and Burlington holds the title of being the least populous city in the United States to be the largest city within a state. But as we all know and as we all can see, the face of Vermont is changing.

Cross-racial identifications, where members of one race attempt to identify people of another race are most prone to error. So these reforms are not solutions in search of a problem.



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Rather, they represent a solution to a problem already present, the incidence of which can only be expected to increase in any place growing more diverse, like Vermont.

And the problem is not confined to cross-racial situations. Vermont draws thousands of tourists, college students, and short-term residents who may not be as familiar as the people that run into each other at the coop, movie theater, or coffeeshop.

Elephant in the Room: How Much Does it Cost?

As mentioned, Vermont already has tremendous resources that would allow and facilitate a smooth implementation of this law. And this implementation would be very inexpensive. For example, Vermont is already way ahead of the curve in its ability to provide local law enforcement officers to connect with the State Police who possess a library of photographs to use in a photo array identification procedure, one of the most effective ways for a small department to conduct blind administration.

This past November, I attended a training for officers in the Stowe area. Throughout the presentation, I was genuinely impressed by the depth and thoroughness of the substance being presented and the interest and engagement of all the officers present at the training. After the training, I had the opportunity to speak to the instructor of the course, a veteran State Trooper. I asked him how officers had been responding to the training- whether they saw it as a hindrance or a tool to help them do their jobs. He told me that because of the resources and systems that Vermont has in place to implement best practices (like the photo library), officers across the state do believe in it and view it as something that can contribute to the ultimate objectives of their work- identifying the perpetrator and bringing him or her (and only him or her), to justice.



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Because these training systems are already in place, because Vermont is ahead of the curve on being ready and able to implement best practices, and because Vermont law enforcement officers believe in their work, the cost and difficulty of passing this law is negligible.

To give you an idea of exactly how far along Vermont is in terms of having all law enforcement officers trained in best practices, in August, I met with Rick Gauthier, the executive director of the Vermont Criminal Justice Training Council and he provided me with an update of the training program in Vermont. At that time, 375 Vermont police officers had been trained (and more have been trained since). All officers in Burlington as well as all state police troopers had participated in the training.

This bill seeks to build on the recent history of voluntary training and enthusiasm for these practices shown by the Vermont law enforcement community. The policy is not meant to cost exorbitant amounts of money or make it difficult for police officers to do their jobs. Rather, it is a concerted effort to work collaboratively to accomplish one very important goal- to make sure no innocent person is ever sent to prison in Vermont.

The Need for a Mandate

So, if officers have been so good at following the best practices anyway, if Vermont is already so ahead of the curve, why do we need a legislative mandate?

Here are the reasons a legislative mandate makes sense in Vermont:

- It promotes uniformity: This will help officers, prosecutors, defense lawyers, judges, and others across the state speak the same language. Everyone involved in the criminal justice system will have a chance to learn and understand what best practices



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are, why they are used, and why they matter. Most importantly, everyone will use them.

- It helps police and prosecutors: Defense lawyers are already using the failure to employ best practices as a way to cast doubt on the accuracy of an identification. By following these best practices, defined by the legislature, the accuracy is improved and the extent to which it can be challenged by a guilty defendant is circumscribed.
- It protects the innocent: There is a reason we say best practices are so important. Failure to use them can end up in misidentification. We've learned about this from the stories of Dennis Maher, Ronald Cotton, and the other exonerated individuals, about 75% of whom were wrongfully convicted based on a faulty eyewitness identification. When best practices are not employed, defendants need a way to challenge the identification and allow the jury to decide to what extent that identification should be trusted.
- Above all, it allows our criminal justice system to better meet the goals it was created to achieve- to protect the innocent, hold those guilty accountable, and never again send an innocence man or woman to prison in Vermont for a crime they did not commit.

Thank you.