

# THE SUPREME COURT *of* OHIO

## TASK FORCE ON CONVICTION INTEGRITY AND POSTCONVICTION REVIEW

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December 10, 2020  
Meeting Minutes

### Task Force Members in Attendance

**Hon. Gene Zmuda (Chair)**  
Sixth District Court of Appeals

**Sara Andrews**  
Director, Ohio Sentencing Commission

**Hon. Pierre Bergeron**  
First District Court of Appeals

**Hon. Michael P. Donnelly**  
*Ex-officio member*  
Supreme Court of Ohio

**Sen. Theresa Gavarone**  
District 2

**Mark Godsey, Esq.**  
Ohio Innocence Project

**John Martin, Esq.**  
Cuyahoga County Public Defender's Office

**Elizabeth Miller, Esq.**  
*Non-voting Designee of Tim Young*  
Office of the Ohio Public Defender

**Meredith O'Brien, Esq.**  
Ohio Association of Criminal Defense Lawyers

**Sheriff Tom Riggensch**  
Buckeye Sheriff's Association

**Joanna Sanchez, Esq.**  
*Non-voting Designee of Tim Young*  
Wrongful Conviction Project  
Office of the Ohio Public Defender

**Hon. Nick Selvaggio**  
Champaign County Common Pleas Court

**Andy Wilson, Esq.**  
Senior Advisor on Criminal Justice Policy  
Office of the Governor

**Timothy Young, Esq.**  
Ohio Public Defender

### Approval of November 19, 2020 Meeting Minutes

Task Force Chair Judge Gene Zmuda opened the meeting by requesting a motion for approval of the November 19, 2020 meeting minutes. Judge Pierre Bergeron moved to approve the minutes and the motion was seconded by John Martin. The minutes were then passed unanimously by a show of hands.

## **Meeting Dates in 2021**

Judge Zmuda informed task force members that he plans to schedule future meetings on Fridays in order to avoid a conflict with the Ohio General Assembly's sessions, which are held on Thursdays. He then asked members if there are any known scheduling conflicts for January 15, 2021. There was no indication of any conflicts, and members agreed to hold the next meeting on January 15, 2021. Future meetings will continue to be held through Zoom and will be held in person only if the Ohio Judicial Center opens to the public.

The next meeting will focus on proposed changes to Ohio's statutes and rules.

## **Discussion of Larry Krasner and Patricia Cummings Presentation**

Judge Zmuda opened the meeting up to discussion of the previous meeting's presentation by Philadelphia District Attorney Larry Krasner and Philadelphia Conviction Integrity Unit ("CIU") head Patricia Cummings.

Discussion covered the following topics:

### *Finality of Judgment*

- Judge Nick Selvaggio stated that he felt that Krasner painted the concept of finality with too broad a brush. Judge Selvaggio asserted that finality of judgment is an important legal concept that should not be viewed in an entirely negative light, as it contributes to some important legal protections such as protection against double jeopardy. In fact, he said, the Ohio Supreme Court recently ruled in favor of finality of judgment.
- John Martin agreed that finality is a necessary part of the legal system but that it can't mean there is no recourse for an unjust sentence or conviction. Martin, who acted as counsel on the case Judge Selvaggio referenced, clarified that the Ohio Supreme Court ruled that a sentence was final in that it could not be raised by the state after failing to timely file an appeal. In Martin's opinion, there should be recourse for defendants in cases where sentencing goes beyond what is in the law. Constitutional due process rights should protect individuals, not the state, against finality of unfair or illegal rulings.
- Judge Zmuda added that the court did not make such a distinction between finality of judgment against individuals and finality of judgment against the state.
- Justice Michael Donnelly said he understood Krasner's point to mean that accuracy should have a higher value in the legal process than finality. Justice Donnelly said he believes that there should be a better process to vet claims of actual innocence and treat them with urgency. Prisoners are told to expect a year for rulings on motions for new trial and that is not acceptable.

- Mark Godsey agreed that finality should exist as a concept, but, in his view, there are many instances where finality is given too much weight and procedural bars make it too difficult for those who claim actual innocence to receive justice. There are many minor tweaks to rules and statutes that can be made to eliminate unnecessary bars.
- Tim Young said that a small fraction of the dozens of letters received by the Ohio Public Defender each month claim actual innocence. In his view, the task force doesn't have to choose finality in all cases or in none at all. The task force can define the exceptions for cases of legitimate claims of actual innocence.
- Judge Zmuda reminded members that the task force has decided to limit its conviction integrity work to cases of actual innocence, but that the Chief Justice has also tasked them with making recommendations to improve the postconviction review process as a whole.

### *Conviction Integrity Units*

- John Martin raised concerns about employing the Philadelphia's CIU model in Ohio. He worried that leaving conviction integrity work solely to county prosecutors will lead to disparities across Ohio's 88 counties.
- Judge Pierre Bergeron voiced concern over an anticipated lack of support for CIUs in many of Ohio's counties.
- Tim Young pointed out that most of Ohio's rural counties will also be under-resourced to pursue CIU work.
- Judge Zmuda acknowledged their concerns, but also pointed to a lack of other approaches to conviction integrity work.
- Justice Donnelly expressed interest in statewide approaches to conviction integrity work due to the lack of support for this task force in some prosecutors' offices.
- Senator Theresa Gavarone suggested that some conviction integrity work could be done through public defenders' offices and the Ohio Attorney General.
- Sheriff Tom Riegenbach gave his perspective as the sheriff in a rural county. He said it is true that resources will be an issue for rural counties, but he would not agree with an approach that takes away a county's ability to start their own CIU. Sheriff Riegenbach recalled instances when the Attorney General's office provided help with large crime scenes in his county and wondered if the Attorney General could provide similar assistance with conviction integrity work.

## **Presentation by Maurice Possley, Senior Researcher at the National Registry of Exonerations**

Judge Zmuda introduced guest speaker Maurice Possley.

Maurice Possley is a Pulitzer Prize-winning journalist and author of five non-fiction books. He worked for the Chicago Tribune for 25 years, where he investigated numerous cases of wrongful conviction and wrongful execution as well as systemic problems in the criminal justice system. In 2009, he joined the Northern California Innocence Project to research and co-author a ground-breaking report on prosecutorial misconduct in California. He joined the Registry in 2012, where he is responsible for researching and writing case summaries of all exonerations added to the Registry. In this capacity, he obtains court documents, researches media reports and interviews lawyers and investigators

Possley's presentation included the following:

### *The National Registry of Exonerations*

- The National Registry of Exonerations is a project of the Newkirk Center for Science & Society at University of California Irvine, the University of Michigan Law School and Michigan State University College of Law. It was founded in 2012 in conjunction with the Center on Wrongful Convictions at Northwestern University School of Law.
- The Registry collects, analyzes, and disseminates information about all known exonerations of innocent criminal defendants in the United States, from 1989 to the present. It publishes their stories and provides accessible, searchable, online statistical data about their cases. It also conducts empirical studies of the process of exoneration and of factors that lead to the underlying wrongful convictions.
- The Registry was initially conceived of as an encyclopedia. Upon the realization that the encyclopedia would quickly become outdated as new cases arose, the founders of the Registry decided to focus their efforts on creating an online registry instead.
- The Registry went public in May of 2012 with 800 documented cases. The Registry now provides information on 2,699 cases.

### *Defining "Exoneration"*

- The Registry defines exonerations as those cases where a defendant is officially cleared of charges based on new evidence. New evidence is any evidence that was not previously presented in the case.
- To qualify for inclusion in the Registry, a person must be declared factually innocent by a government entity with the authority to make that declaration. This can come in the form of a pardon, an acquittal, or other legal process, as long as it is based on new evidence.

- A reversal of charges due to a lack of evidence, or an acquittal after retrial due to the inclusion of inadmissible evidence, would not qualify for inclusion in the Registry.
- Unexplained physical evidence of guilt would disqualify a candidate from inclusion in the Registry.

### *Navigating the National Registry of Exonerations*

- The Registry consists of three archives – the main archive, the pre-1989 archive, and the Groups Registry. The Groups Registry was launched in October 2020 to focus on groups of defendants tied together by a common pattern of systemic official misconduct in the investigation of their cases that undermined confidence in the defendant’s convictions.
- Cases can be sorted by name, age, race, state, county, crime, sentence, contributing factors, etc. Each case includes a narrative summary.
  - Examples of possible tags include “arson,” “co-defendant confessed,” “child sex abuse hysteria,” “female exoneree,” and “jailhouse informant.”
- The Registry also provides a running list of Conviction Integrity Units across the country divided into two categories – Operational CIUs with Recorded Exonerations and CIUs with No Exonerations Recorded.
- Interactive data displays, infographics, yearly reports, and reports on specific issues related to conviction integrity can also be found on the Registry’s website.
  - One of the Registry’s more recent reports, issued September 1, 2020, is titled “Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement.” The report discusses the role of official misconduct in the first 2,400 exonerations in the Registry.

### *Ohio Cases*

As of December 10, 2020:

- 85 exonerations since 1989 (out of 2,699)
  - One in 2020
- 21 exonerations prior to 1989 (out of 410)
  - Three were sentenced to death
- Two in Groups Registry
  - In 2007, 19 convictions vacated and charges dismissed as a result of misconduct by DEA agent and informant in Mansfield, Ohio.

- In 2016, 43 convictions were vacated and dismissed as a result of police misconduct in East Cleveland, Ohio.

#### *National Cases vs. Ohio Cases*

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| <ul style="list-style-type: none"> <li>• 2,699 cases nationally</li> <li>• 544 pleaded guilty (20%)</li> <li>• 994 were no-crime cases (37%)</li> <li>• 457 CIU cases (17%)</li> <li>• 659 Innocence Project cases (24%)</li> </ul> | <ul style="list-style-type: none"> <li>• 85 cases in Ohio</li> <li>• 3 pleaded guilty (4%)</li> <li>• 23 no-crime cases (27%)</li> <li>• 6 CIU cases (7%)</li> <li>• 24 Innocence Project cases (28%)</li> </ul> |
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#### *National Cases vs. Ohio Cases (Crime)*

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| <ul style="list-style-type: none"> <li>• 1,093 murder/manslaughter cases (40%)</li> <li>• 359 drug possession/sale cases (13%)</li> <li>• 339 sexual assault cases (12%)</li> <li>• 293 child sexual abuse cases (11%)</li> <li>• 134 robbery cases (5%)</li> <li>• 165 attempted murder/assault cases (6%)</li> </ul> | <ul style="list-style-type: none"> <li>• 36 murder/manslaughter cases (42%)</li> <li>• 4 drug possession/sale cases (5%)</li> <li>• 10 sexual assault cases (12%)</li> <li>• 14 child sexual abuse cases (16%)</li> <li>• 7 robbery cases (8%)</li> <li>• 3 attempted murder/assault cases (4%)</li> </ul> |
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#### *National Cases vs. Ohio Cases (Demographics)*

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| <ul style="list-style-type: none"> <li>• 1,336 Black exonerees (49%)</li> <li>• 987 White (37%)</li> <li>• 312 Hispanic (12%)</li> <li>• 2,460 Male (92%)</li> <li>• 239 Female (8%)</li> </ul> | <ul style="list-style-type: none"> <li>• 49 Black exonerees (58%)</li> <li>• 35 White (41%)</li> <li>• 1 Hispanic (1%)</li> <li>• 78 Male (92%)</li> <li>• 7 Female (8%)</li> </ul> |
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#### *National Cases vs. Ohio Cases (Contributing Factors)*

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| <ul style="list-style-type: none"> <li>• 767 Mistaken witness ID (28%)</li> <li>• 330 False confession (12%)</li> <li>• 1,606 Perjury/false accusation (60%)</li> <li>• 661 False/misleading forensics (25%)</li> <li>• 1,469 Official misconduct (55%)</li> <li>• 740 Inadequate legal defense (28%)</li> </ul> | <ul style="list-style-type: none"> <li>• 30 Mistaken witness ID (35%)</li> <li>• 2 False confession (2%)</li> <li>• 43 Perjury/false accusation (51%)</li> <li>• 20 False/misleading forensics (24%)</li> <li>• 46 Official misconduct (54%)</li> <li>• 13 Inadequate legal defense (15%)</li> </ul> |
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#### *Conviction Integrity Units*

- The Registry is aware of 72 conviction review/integrity units in the United States. Two more say the will open in early 2021.
- 33 of the 72 CIUs have at least one exoneration and 39 have none.

- 383 of 457 CIU exonerations (84%) were the result of the work of just 8 units. 33 units achieved the remaining 74 exonerations – about two per unit. Bexar County, Texas has nine exonerations. Cuyahoga County, Ohio and Clark County, Nevada have six each.
- Houston County accounts for 32% of all 457 CIU exonerations due to the discovery of a large number of unreviewed lab reports that revealed no crime occurred in those cases.
- Cook County, Illinois (Chicago) accounts for 24% of CIU exonerations largely due to the uncovering of a pattern of misconduct by police sergeant Ronald Watts. Watts framed residents of public housing for crimes such as possession of drugs and guns.

*State of Ohio v. William Campbell*

- October 1, 2008: Single car accident. Police officer was following. William Campbell was found on the ground, alive. Tina Hayes, the owner of the SUV, found dead in the passenger seat. Campbell's blood alcohol level was .155.
- October 14, 2008: Campbell was charged with aggravated vehicular manslaughter. He already had life time suspension after 6 DUIs. He maintained that Hayes was driving. Campbell claimed Hayes was driving and dropped a cigarette. When she tried to reach for it, she stepped hard on the accelerator and lost control.
- June 2009: Campbell went to trial, but a mistrial was declared after one day when a second set of keys to the SUV were suddenly discovered in Campbell's clothing, which had been taken from him at the hospital. There was also a set of keys in the ignition.
- October 2009: The case went to trial a second time.
- The state's evidence included: (1) hair analysis of a single hair found in the passenger side door that was said to come from Hayes, (2) DNA of Hayes found on the glove compartment door, (3) an accident reconstruction expert who said Hayes had no injuries consistent with the bent steering wheel and Campbell had no injuries consistent with his knees hitting the glove compartment door, and (4) a sheriff's deputy who came to the scene and said that Campbell's shoes were on the driver's side floorboard.
- The defense's evidence included: (1) a privately retained accident reconstruction expert who said there was insufficient evidence to conclude whether Campbell or Hayes was driving—either scenario was possible, (2) a local TV news cameraman was on the scene almost immediately and his video of the interior of the car did not show any shoes on the driver's side floor, and (3) testimony from the victim's mother who said she retrieved personal items two days after the crash and noticed the driver's seat was pushed far forward and the passenger seat was pushed back. Hayes was several inches shorter than Campbell. The sheriff's accident expert pried off the glove box door while she was there and there was no dent in it or blood on it.
- October 22, 2009: Campbell was convicted by a jury and sentenced to 28 years.

- March 4, 2011: Ohio Court of Appeals for First Appellate District affirmed conviction, but remanded for resentencing. Campbell was resentenced to 20 years.
- January 2014: Campbell filed a federal petition for a writ of habeas corpus.
- December 2014: U.S. Magistrate Michael Merz granted defense motion for production of time-stamped crash scene photographs as well as all of the autopsy photographs.
- October 2016: the federal habeas case was held in abeyance while Campbell’s legal team returned to Hamilton County Court of Common Pleas.
- February 2017: Campbell filed a motion seeking permission to file motion for new trial. Among the claims: a new defense expert concluded that Hayes was the driver, not Campbell; undisclosed autopsy photos showed injuries to Hayes consistent with being the driver; time-stamped photo of shoes on the floor taken at 12:34 a.m. and TV video showing no shoes was taken around 12:15 a.m.—consistent with the shoes being planted. In addition, the prosecution agreed to bring in yet another expert who analyzed the evidence and also concluded that Hayes was driving. Nonetheless, the motion was denied.
- May 2019: Court of Appeals, First Appellate District, reversed and ordered a hearing on the motion.
- February 2020: Judge Jody Leubbers granted the motion to allow the defense to file the motion for new trial.
- February 12, 2020: Campbell’s convictions were vacated and a new trial was ordered. Campbell was released on bond—more than 11 years since his arrest.
- June 4, 2020: Campbell was acquitted in a bench trial after the evidence was submitted by the defense and prosecution.
- The contributing factors: false/misleading forensic evidence, perjury/false accusation, official misconduct, inadequate legal defense.
- Possley: “Would a conviction integrity unit have made a difference in this case? It is difficult to say, but one cannot deny that there were the procedural delays and that even though after a second expert (agreed upon by the prosecution) concluded that Campbell was not the driver, the case still languished in the court for several more years.”

*Observations by Possley*

- According to Possley, Ohio prosecutors fight very hard to preserve convictions, filing appeal after appeal after appeal. There seems to be an extraordinary amount of effort spent to preserve convictions in Ohio. Possley’s personal impression is that they do it because they can.

- Some defendants, even after being granted new trial when new evidence is discovered, face the prospect of many more months—even years—in prison when the prosecution says the case will be retried. The result: *Alford* pleas for immediate release.
- Possley sees few consequences for misconduct. He cited the history of Carmen Marino, who was a prosecutor in Cuyahoga County. Joseph Ambrosio spent several extra years on death row while the state fought to preserve his convictions for years after Marino retired. Ultimately, Ambrosio was released in 2012. Ambrosio’s co-defendant, Michael Keenan, eventually gave up and pled to lesser charges just to get out. Three years later, in 2015—13 years after Marino retired – Laurese Glover, Eugene Johnson and Derrick Wheatt were exonerated after a literal trove of exculpatory evidence was discovered that Marino had intentionally suppressed.
- In 1998, while at the Chicago Tribune, a former prosecutor told Possley how he intentionally made an improper argument to obtain a conviction because he believed he was going to lose the case. The prosecutor knew that because the appeals process in Cook County took at least two years, that while the case would likely be reversed, he would suffer no consequences, and the defendant would spend an additional two years in prison.

### **Discussion of Maurice Possley Presentation**

Discussion of Possley’s presentation included the following topics:

#### *The Campbell Case*

- John Martin questioned why the prosecution in the Campbell case chose to go to trial a second time if their own expert said the defendant was not driving. Why not dismiss the case?
- Possley said that it is possible that the prosecution preferred to have the case dismissed by a judge instead of dismissing it themselves.
- Judge Bergeron, who authored the opinion in the Campbell case, said the prosecution “laid down” in the trial, most likely to have “cover” by choosing to let the judge be the one to dismiss the case.

#### *The National Registry of Exonerations*

- Judge Selvaggio asked Possley for recommendations on how to use the Registry and Possley’s work to bring awareness to the need for reform in the way colorable claims of innocence are handled.
  - Possley said that enlisting actual exonerees can help a lot. The Registry doesn’t only present data, it also tells stories. Exonerees have a voice now after being voiceless for a long time. Even still, a lot of people don’t know about the work the Registry is doing.
- Judge Zmuda asked if the Registry studies cases that are still pending.

- Possley responded that the Registry has an internal database of pending cases they hear about, which includes over 600 cases in various stages. The Registry maintains this database so that they can follow up on the outcome of those cases to determine if they should be included in the public registry.
- Joanna Sanchez requested guidance on how to use the Registry’s data – for example, how to interpret the difference in the rate exonerations based on false confessions in Ohio compared to the country as a whole.
  - Possley advised to reach out to the people who worked on those cases, often innocence projects/commissions.
- Mark Godsey, director of the Ohio Innocence Project, said there seems to be a connection between the low number of exonerations involving false confessions and the low number of exonerations involving guilty pleas. Oftentimes, he said, people who falsely confess are pressured to plead guilty. Ohio’s DNA testing statute does not allow those who pled guilty to apply for DNA testing. Godsey said that the OPAA has fought efforts to amend the statute. Godsey agreed with Possley’s assessment that there is resistance to acknowledge wrongful convictions in Ohio.
- Judge Zmuda asked Possley for an example of a state that is less resistant to reform than Ohio, whose model would be good to reference.
  - Possley responded that California is a good example. California has several CIUs who have managed to change the culture around prosecution. The District Attorney in San Francisco has also made significant progress, he said.

**Next Meeting Date – Friday, January 15, 2021 from 10:00 a.m. to 12:00 p.m.**

The next meeting of this Task Force is scheduled for January 15, 2021 from 10:00 a.m. to 12:00 p.m.