

February 6, 2018

**Sent via Email: [GovernmentAccountability&OversightCommittee@ohiohouse.gov](mailto:GovernmentAccountability&OversightCommittee@ohiohouse.gov)**

Louis W. Blessing, III  
Chair, Government Oversight Committee

Re: Statement to the Government Oversight Committee in Support of House Bill 411

Dear Representative Blessing:

My name is Terry Gilbert. I am partner in the law firm of Friedman & Gilbert, LLC, specializing in criminal defense and civil rights. I am on the board of the National Police Accountability Project, and the Northeast Ohio Board of Advocates for the Ohio Innocence Project. I am also a member of the National Association of Criminal Defense Lawyers, as well as the Ohio Association of Criminal Defense Lawyers. Much of my practice of 44 years has been in the area of criminal defense and civil rights litigation, particularly with respect to police misconduct and wrongful imprisonments. I have handled many wrongful imprisonment cases under R.C. 2743.48, and have argued two cases before the Ohio Supreme Court regarding the interpretation of that statute, one of which leads us to consideration of this amendment.

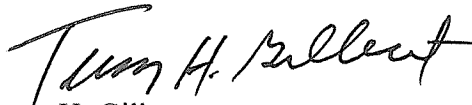
*Mansaray v. State of Ohio* involved the question as to when the timing of the “error in procedure” must occur before relief could be granted. All lower appellate courts considering this question held that it was absurd to say the legislature intended constitutional errors resulting in unfair trials - particularly by withholding Brady material - must occur after sentencing. These lower courts found the vast majority of errors occur before, or during the trial proceedings, not after. However, the Mansaray court read the statute otherwise, suggesting that it is up to the legislature to fix the statute with clear and unambiguous language. I applaud Rep. Seitz, the original sponsor of the 2003 “error in procedure” amendment, for his diligent effort in putting forth HB 411, which essentially addresses the drastic curtailment of the error in procedure remedy, which provides a remedy to those who suffered years of imprisonment because exculpatory evidence was withheld, causing unfair trials tainted by misconduct of either police or prosecutors. These people deserve justice and a measure of redress, and it is incumbent on the representatives of the people of Ohio to provide them an opportunity for some compensation in order to get back their lives after enduring the deprivations of incarceration.

Our client, Joe D'Ambrosio, is one of those whose wrongful imprisonment claim was overturned because of the Mansaray decision. He spent over 20 years on death row until the federal courts, through habeas relief, found multiple cases of egregious withholding of evidence by a chief Cuyahoga County prosecutor who had been cited by other courts for Brady violations and other misconduct. The favorable evidence was so profound that the U.S. District Court, as well as the 6<sup>th</sup> Circuit barred a new trial and the case was dismissed. (*D'Ambrosio v. Bagley*, 656 F.3d 379 (6th Cir. 2011)). Joe was within days of being sent to the execution chamber when a stay was granted as his case moved through the courts. He is moving forward, trying to put those lost years behind him, but the damage to him is profound. There can be no disagreement that the denial of his liberty by the legal system cannot be ignored. In my opinion, and those of many criminal justice reform advocates this amended bill is simply a common sense way to right a wrong.

I also would suggest one additional change in the legislation. While I understand the idea that those who plead guilty should not be afforded a remedy under the statute, in the case of Brady violations, guilty pleas, made by defendants without the benefit of knowing the existence of the favorable evidence, are often vacated down the road when the new evidence comes to light. Those pleas are constitutionally tainted and not knowingly and intelligently given. Should not these defendants, victims of shady police and prosecutorial actions, at least have the opportunity to seek compensation? The statute should not per se bar their claims. The common pleas court should be able to look at the totality of the circumstance leading to the plea, the nature and impact of the exculpatory evidence, and any other factors in the interest of justice in making the determination of wrongful imprisonment. Because the error in procedure prong is only permitted in Brady cases, to be completely consistent and fair, the guilty plea bar should be reconsidered.

Thank you for the opportunity to have my opinion on the Bill considered.

Respectfully submitted,



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THG/mm