



November 16, 2021

Ohio House Criminal Justice Committee

Re: Statement in Support of House Bill 183

HOUSE BILL 183 COMMITTEE TESTIMONY

Good morning, Chairman Le Re, and members of the committee. And thank you for allowing me to speak on behalf of HB 183 to abolish the death penalty in Ohio. For almost 50 years I have practiced criminal defense and civil rights law. I am the founder and senior partner at Friedman, Gilbert + Gerhardstein with offices in Cleveland and Cincinnati. I recently published a book, *Trying Times*, on the struggle for civil rights and criminal justice, and have lectured widely on issues of wrongful imprisonment, police reform, and racial disparities in our justice system. I am a board member of the National Police Accountability Project, Northern Ohio Board of Advocates for the Ohio Innocence Project, and a cooperating attorney with the Center for Constitutional Rights in New York.

I believe I have a unique perspective on the failure of capital punishment arising from my experience as a trial lawyer. The death penalty does not deter crime, is procedurally flawed, is arbitrarily and disparately imposed, and inhumane.

In the early 90's I worked with the New York Innocence Project in pioneering the use of DNA as a revolutionary forensic tool, not only to identify perpetrators, but to exclude the innocent, including those already convicted and sentenced. In those early days of DNA, the DOJ Institute of Justice in 1996 published a report called "Convicted by Juries, Exonerated by Science". The report discussed 27 exonerations, including one of my own cases, which highlighted that despite traditional and hallowed means of proof (eyewitness identification, informant testimony, conventional forensics) the DNA results proved that those evidentiary modes failed and put innocent people behind bars. The exponential rise of thousands of DNA exonerations over the last three decades proves that people can be wrongfully convicted for a variety of reasons and even executed by the biases and misconceptions of trials being a holy path to the truth. Yet, DNA technology still accounts for a relatively small percentage of total people eventually proven innocent. Most of the time, simple human error contributes to these terrifying miscarriages of justice.

Later, I was privileged to investigate the Dr. Sam Sheppard 1954 murder case. With little evidence other than being a spouse, Sheppard, the Bay Village osteopathic surgeon, was charged with the capital murder of his wife Marilyn, but convicted of second-degree murder after a sensational media infused trial in 1954. His conviction was later overturned in a landmark Supreme Court decision. Yet, lingering questions remained as to who murdered his wife, Marilyn. My team spent years compiling reports, obtaining physical evidence, and

retaining experts. We discovered a range of exculpatory evidence including biased policing, and the identification of a likely suspect through DNA testing. Dr. Sheppard was very close to being executed, but his family was able to fund efforts to expose the unfair trial, and he was later acquitted. 45 years later, the forensic science suggests that Dr. Sheppard was likely not the perpetrator. His life and his family were destroyed because of a misguided and unfair prosecution and trial. Sheppard's young son, now 74 years old, is still emotionally wounded, and has dedicated his life to abolishing the death penalty.

Unfortunately, most victims of wrongful convictions do not have the means to mount costly and protracted reviews of old cases, litigate unresponsive public records requests, confront intransigent and skeptical judges, and deal with the never-ending procedural roadblocks. The innocence movement, after over 30 years of exonerations and reliable data compiled, reveals that trials don't always get it right. And death penalty trials are no exception.

There are too many human errors, as well as police and prosecutorial misconduct, incompetent legal counsel, and procedural mistakes for a society to be confident that innocent people will not be wrongfully convicted. Even if unfair trials are a small percentage, no one wants innocent people executed when the road to the death house is plagued with uncertainty and potential unfairness.

You might ask, has Ohio put innocent people or those victimized by unfair trials on death row? The answer is yes. And I have represented innocent clients who narrowly escaped execution. It is important that you know the stories of these men. Stories that should send chills up your spine.

Joe D'Ambrosio spent over 20 years on death row, coming within weeks of being executed. He had the good fortune of the dedicated work of a legally trained Catholic priest, Father Neil Kookoothe, who spent years looking up records, reading transcripts, and tracking down witnesses. His investigation led to the discovery of a file full of exculpatory evidence never disclosed by prosecutors, evidence pointing to the actual perpetrator who made a deal with the state to testify. It took a team of pro bono lawyers with lawyers from Jones, Day to win a habeas petition which was ultimately affirmed by the U.S. Supreme Court. Joe was released in 2009. A recently passed legislative amendment to the wrongful imprisonment act - providing compensation based on Brady violations - made it possible for Joe to finally get some compensation for all his suffering. Joe lived on death row day after day, year after year, with the belief that his life would be taken away by the state. By luck and determination, he escaped death, but how many innocent prisoners are out there whose cases are not heard?

Do we want this kind of state sponsored death so that we, as a society, feel good about an eye for an eye, life for a life, when other sentencing options, just as punitive, are available?

Rickey Jackson, Kwame Ajamu and his brother Wiley Bridgeman spent over 105 years in prison for a crime they did not commit. They were black teenagers who were arrested for the murder/robbery of a white money order salesman on the eastside of Cleveland, in 1975. The evidence? A 12-year-old boy, coming home from school, told a cop at the crime scene

that he THOUGHT he might know who shot the man and gave the nicknames of the three who lived in the neighborhood. Within a week, the boy was primed to be an eyewitness after being coached and even threatened if he did not identify them in a line-up. No physical evidence, just a 12-year-old boy. He testified in three trials. Rickey, Kwame, and Wiley were convicted and sentenced to death as teenagers. It was only because of the striking down of the Ohio Death Penalty in 1978, that their sentences were changed to life imprisonment. Imagine being 18 years old, having no clue about the crime, sitting on death row wondering why you were taken from your family and community?

It took another 40 years for a young reporter to investigate the case, locate the 12-year-old boy's pastor who eventually confronted the now 52-year-old in a hospital room where the man broke down and admitted he put three innocent men in prison. The man, Eddie Vernon, came forward and testified in 2014 how he was manipulated and threatened in 1975 if he didn't go along with the plan. The charges were dropped, the men received millions in compensation, but the trauma and loss never went away. The young boy grappled with a life of moral guilt, depression, and physical ailments. And the murder victim's family never received justice for the loss of their loved one because the actual perpetrator was never prosecuted. This tragedy was a product of a system that failed to live up to its ideals, co-opted by corrupt police, indifferent prosecutors, and the zeal to clean up a homicide within a week after the murder, when there were other viable suspects.

And less than a month ago, we represented 83-year-old Isaiah Andrews, now suffering from cancer, who stood trial a second time over the murder of his newly wed wife in 1974. He won a new trial through the work of the OIP because the prosecutor's office failed to provide evidence that the homicide detectives actually arrested another suspect and were convinced that man was the murderer. The Cuyahoga County Prosecutor refused to dismiss the charges, but an angry jury acquitted Isaiah after deliberating for an hour. Isaiah spent 45 years in prison, repeatedly rejected by the parole board because he wouldn't admit to the crime. In 1974, the prosecutors had the discretion, as they do now, to seek the death penalty for an aggravated murder with prior calculation and design, but did not choose to do so. Such a decision spared Isaiah's death. Another prosecutor might have opted for the death penalty.

These are just a few examples. While some reforms have been made: such as more complete discovery rules in criminal cases, the system cannot guarantee that bias, misconduct, fabrication of evidence, and prosecutor overreach will stop wrongful convictions. No set of procedures, appeals, or post-conviction petitions will completely provide a shield against the potential for a mistake. This is a major reason why capital punishment should be abolished, as has been done in a number of states without any appreciable higher murder rates. This is not a liberal or conservative debate. It is a question of common sense, best practices, public respect for the system, alternative sentences for punishment and deterrence, but most importantly - respect for human life.

Thank you for your time.

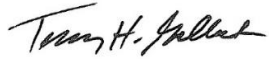
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