

Kay Anderson
Northwest Ohio Innocence Clinic
nwoic.org info@nwoic.org

Thank you for the opportunity to provide testimony on house bill 96.

I have not read all 7,000 pages – just those that have *nothing* to do with the budget but *everything* to do with ‘protecting a bad conviction.’ I’m talking about the changes to Ohio’s Public Records laws, proposed by the Ohio Prosecuting Attorneys Association.

My name is Kay Anderson and I have been investigating wrongful convictions ever since my ‘unfortunate’ incarceration in Texas in 1994. I was facing a 20 year minimum sentence - if convicted for an ‘uncontrolled substance’ which was actually a prescription drug in the wrong bottle. But that short stint in the Dallas jail proved that if this could happen to me - a white, privileged, republican, Yankee - then it could happen to anybody. I lucked out. My case got dismissed. But I saw how easily somebody, less fortunate, could fall through the cracks in our justice system.

I have investigated cases for the Innocence Project, the Ohio Innocence project, Michigan , and, most recently, Northwest Ohio Innocence Clinic. I am currently the director of nwoic.org.

Thanks to current public records laws, my interns and I have uncovered evidence from a number of Lucas County wrongful convictions but today I want to focus on the 44 year old conviction of Danny Brown.

In 1981, Bobbie Russell, a young mother of 3, was beaten, sodomized, and strangled with an extension chord. Within days, police had their guy – Danny Brown – who was convicted in 1982 and received a life sentence.

In 1983, Denise Howell was beaten, sodomized, and strangled with a knotted pair of socks. The motive matched the murder of Bobbie Russell – but Danny Brown was doing time for that killing.

In 2000, DNA tests confirmed that both women were assaulted by the same person: Sherman Preston.

I think everybody here would agree on this fact: When the wrong guy is locked up, the real bad guy is free to rape and murder. And the public is not safe. To date, that has happened over 100 times here in Ohio.

Those of us who work on wrongful conviction cases are often, mistakenly pegged 'liberals' when, in reality, *we* are the ones that are tough on crime. We have one goal – to get to the truth. And we can't do our jobs when one side fears sharing *all* the facts with us.

The proposed changes to the public records law (buried within the budget bill) could allow *any* record to be denied. All the police or prosecutor would need to do is stamp it 'work product or law enforcement privilege' and it could remain buried forever.

The head of the Ohio Prosecuting Attorney's association says the changes to the law are, in part, to protect witnesses and victims. Let me simply say that the reports we currently receive are already redacted. Often we get totally blacked out pages. Give me one example where a witness or victim has been hurt by the current public records law and I'll give you 100 where the current law has served the public.

Our local prosecutor supports the changes to the public records statute. Here is a quote: "It is important to balance transparency with the need to protect the integrity of ongoing legal proceedings."

Danny Brown's case is a good example of an 'ongoing legal proceeding.' And I would be the first to agree that we should protect the integrity of the process. So you tell me: Is this how we protect that integrity?

After DNA pointed to Sherman Preston, our prosecutor revised her theory on the Danny Brown case – saying now that there were *two* people in the apartment that night.

Our student interns learn how to submit public records requests so as to analyze these old cases. One request resulted in the discovery that the prosecutor's office, in 2003, got a 'DNA hit' on a brand new, heretofore unknown suspect in the Danny Brown case. So yes – there may have been 2 people in the apartment that night. But Danny Brown wasn't one of them.

As far as our investigation can tell, the Lucas County Prosecutor's office has never shared this DNA revelation. We learned of it through public records. But changes to the law could deny us this critical information in the future.

Now let's touch on cost. For the past 40 plus years Danny Brown has been fighting to clear his name. To that end he has filed 3 civil suits against the state who continues to defend their position that Brown is guilty. His case is at the Ohio Supreme court – for the 3rd time.

Well, since this is a budget bill, then consider how much money we are spending to protect our own elected officials who continue hiding exculpatory evidence. Lucas County has been sitting on a bombshell since 1981 and all of us keep paying for the cover-up.

Our investigators have learned that a key witness for the prosecution at the 1982 trial - the person who provided 'motive' for the brutal killing - had perjured himself. That witness, Randolph Lee McCoy, testified to being at the victim's apartment twice in late 1981. He told the jury that on both of these occasions he was asked by Bobbie Russell (the victim) to remove the defendant, Danny Brown, because of his 'violent' behavior.

We've learned, however, that Randolph Lee McCoy could not have been at the victim's place any time between August and mid December of 1981 because he was sitting in the Lucas County jail on a felony rape charge - of a minor.

Statements he made under oath concerning the defendant's propensity to violence were a lie; a lie that sealed Danny fate and a lie that taxpayers have been subsidizing for 44 years.

What the public has a right to know is: "How did Lee McCoy become a witness for the prosecution in the 1982 case against Danny Brown?" That answer might be contained in a 2001 interview with McCoy that the prosecution deems 'law enforcement privilege.'

Really? Is this how we protect the integrity of ongoing legal proceedings? Or are the changes to the public records statute really meant to protect a bad conviction?

I ask you to reject that part of the budget bill that would make any changes to current public records laws. Hiding the truth wastes money and puts Ohio citizens at risk.

Thank you

Kay Anderson