

# INNOCENCE PROJECT

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**Public Comments for Advisory Commission on the Administration of Justice**  
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My name is Michelle Feldman and I am the State Campaigns Director at the Innocence Project, a national organization that works to exonerate the innocent and prevent future wrongful convictions.

We are in a moment of reckoning with racial bias in criminal justice. Ahmaud Arbury, Breonna Taylor and George Floyd were victims of the same systematic racism that makes innocent black Americans seven times more likely to be wrongly convicted than whites.

Changing the system and delivering justice to victims of systematic racism begins with transparency and accountability. The Advisory Commission on the Administration of Justice (ACAJ) and the Nevada legislature have already done some incredible work to move towards those goals.

Last year, thanks to the work of ACAJ, Nevada enacted a law requiring police to record suspect interrogations in their entirety. The legislature passed new measures for overturning wrongful convictions, and compensating exonerated Nevadans.

To continue Nevada's commitment to fair and equal justice, the Innocence Project recommends that ACAJ considers the following issues:

- 1) Improving transparency around the use of jailhouse informants.
- 2) Removing secrecy around police disciplinary records.
- 3) Enhancing criminal discovery practices.

## **1. Improving transparency around the use of jailhouse informants.**

Three wrongful convictions in Nevada involved jailhouse informants. Many of you had the opportunity to meet DeMarlo Berry last session, who spent 23 years in prison for a Las Vegas murder he didn't commit. His conviction was based on testimony from a jailhouse informant who claimed that Berry confessed to him in jail as Berry awaited trial. Decades later the jailhouse informant recanted and said he lied in exchange for benefits from the state that were never revealed to Berry's defense attorneys.

In 2018, ACAJ formed an Innocence Working Group to examine wrongful conviction issues, including jailhouse informants. While the group did not reach consensus on legislation, the Nevada District Attorneys Association voted to require all offices by January 2019 to adopt written policies on the use of jailhouse informants, including tracking of cooperation agreements provided for their testimony.

ACAJ should consider measuring implementation by collecting and evaluating written policies, as well as aggregate data for inducement indexes, from all 16 district attorneys' offices. ACAJ should also consider legislative reforms that have been enacted in other states including: 1) statewide tracking of the use of and benefits provided to jailhouse informants, 2) enhanced disclosure requirements for the timing and types of

jailhouse informant evidence that must be disclosed to the defense, and 3) pre-trial hearings to enforce disclosure obligations and for judges to assess jailhouse informant reliability.

## **2. Removing secrecy around police disciplinary records.**

Congress and several states are currently considering legislation to improve transparency for police disciplinary records after it was revealed that the officer who killed George Floyd had 18 misconduct complaints filed against him. This is also an important innocence protection because a number of wrongful conviction cases involved officers with a history of misconduct that was never revealed to the accused person before trial, so the defense could not raise concerns about the officer's credibility and actions to the judge and jury.

Currently 13 states already make police disciplinary records public, including New York which just passed a new law yesterday. Nevada is one of 22 states that shields this information. It is treated as confidential employee records which are exempt from public information requests. ACAJ should consider enhancing transparency on police misconduct complaints.

## **3. Enhancing criminal discovery practices.**

Criminal discovery—the process of the state and defense sharing evidence—is closely tied to the need for transparency around jailhouse informants and police misconduct records.

The state is constitutionally required to disclose evidence that might help an accused person. However, in many wrongful convictions exculpatory evidence is given to the defense late, incompletely, or not at all. The ACAJ Criminal Justice Information Sharing Subcommittee is tasked with examining criminal discovery and the Innocence Project would like to offer assistance on how the issue has been addressed in other states.