

INNOCENCE PROJECT

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Public Comments for Advisory Commission on the Administration of Justice
November 12, 2020**

I would like to thank the Advisory Commission on the Administration of Justice (ACAJ) for the opportunity to testify today. 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 partner with the Rocky Mountain Innocence Center, which works on wrongful conviction cases in Nevada, Utah and Wyoming.

Racism in the criminal legal system is not only killing innocent Black Americans like George Floyd and Breonna Taylor, it is also taking their lives in courtrooms through wrongful convictions. While African Americans make up 13 percent of the United States population, they account for the majority of wrongfully convicted people who were later exonerated.

Here in Nevada, 19-year-old DeMarlo Berry was convicted of a 1994 Las Vegas murder he didn't commit. Police coerced eyewitnesses into identifying Berry in a lineup, and withheld evidence about witnesses who did not pick him. Detectives coached a jailhouse informant to lie about hearing Berry confess, and the prosecutor never disclosed that the jailhouse informant was getting a deal in his own case for testifying.

Transparency must be the first step to meaningfully answer growing demands for racial justice and accountability in the criminal legal system. The Innocence Project is recommending two measures that would lift secrecy around jailhouse informants and police disciplinary records.

1. Regulating the use of jailhouse informants.

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. It is unclear whether all 16 district attorney offices have followed this requirement.

Legislation would be the most efficient way to ensure consistent, statewide safeguards against false jailhouse informant testimony. Connecticut, Maryland, Nebraska, Oklahoma and Texas require all district attorney offices to centrally track jailhouse informant testimony and cooperation deals. Connecticut, Maryland, and Oklahoma require prosecutors to input this information in a statewide record that is accessible to prosecutors in all jurisdictions. The idea is to provide prosecutors with more complete information before putting a jailhouse witness on the stand. In addition, tracking will identify "serial snitches" who continually avoid consequences for their own crimes by testifying against other inmates.

Connecticut, Florida, Illinois, Maryland, Nebraska, Oklahoma, and Texas have enacted laws that specify when and what types of information must be disclosed on jailhouse witnesses. This includes benefits offered or expected, their complete criminal history, and other cases in which they provided incentivized testimony. While

the U.S. Supreme Court has already ruled that discrediting evidence on government witnesses must be turned over to the defense, an itemized list ensures that prosecutors fulfill their constitutional obligations.

II. Public access to complete police disciplinary records.

Nevada is one of 20 states where police disciplinary records are inaccessible to the public. Furthermore, the Peace Officers Bill of Rights prohibits “unstained” complaints from being placed in officers’ personnel files. In addition, the law permits the removal of internal affairs investigative records and punitive actions from administrative files.

Complete, accessible police misconduct records are critical for ending abuses and preventing wrongful convictions. Taxpayers deserve to know if a local officer is facing a litany of complaints and if police departments are sufficiently investigating and correcting misconduct. When defendants are facing life-altering criminal charges, it is important for judges and juries to know if an officer who built a case has a history of lying, coercion or fabrication of evidence.

There should be a repeal of provisions in the Peace Officers Bill of Rights that prohibit unstained complaints from being placed in administrative files and permit removal of disciplinary records. The following information should be accessible under Nevada’s Open Records Act:

- (1) Any complaints, allegations, and charges pertaining to an officer;
- (2) The name of the officer complained of or charged;
- (3) The transcript of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing;
- (4) The disposition of any proceeding;
- (5) The final written opinion or memorandum supporting the disposition and discipline, if any, imposed, including the agency’s complete factual findings and its analysis of the conduct and appropriate discipline of the covered officer; and
- (6) Internal affairs records relating to an officer.

Sensitive information such as the officers’ home address, social security numbers and medical conditions should be redacted. This recommendation is modeled on the law enacted in New York in June to open police disciplinary records. The listed information has already been public in Alabama, Georgia and Ohio for many years.

Sunlight is the best disinfectant and must be the first step in achieving meaningful changes to policing and criminal justice. Thank you for considering these proposals.