

THE SUPREME COURT *of* OHIO

TASK FORCE ON CONVICTION INTEGRITY AND POSTCONVICTION REVIEW

November 5, 2020
Meeting Minutes

Task Force Members in Attendance

Hon. Gene Zmuda (Chair)
Sixth District Court of Appeals

Sara Andrews
Director, Ohio Sentencing Commission

Hon. Pierre Bergeron
First District Court of Appeals

Hon. Rocky Coss
Highland County Common Pleas Court

Douglas Dumolt, Esq.
Non-voting Designee of Dave Yost
Ohio Attorney General's Office

Rep. David Leland
District 22

John Martin, Esq.
Cuyahoga County Public Defender's Office

Hon. Stephen McIntosh
Franklin County Common Pleas Court

Elizabeth Miller, Esq.
Non-voting Designee of Tim Young
Office of the Ohio Public Defender

Hon. Lindsay Navarre
Lucas County Common Pleas Court

Joanna Sanchez, Esq.
Non-voting Designee of Tim Young
Wrongful Conviction Project
Office of the Ohio Public Defender

Hon. Nick Selvaggio
Champaign County Common Pleas Court

Andy Wilson, Esq.
Office of the Governor

Timothy Young, Esq.
Ohio Public Defender

Approval of October 22, 2020 Meeting Minutes

Task Force Chair Judge Gene Zmuda opened the meeting by requesting approval of the October 22, 2020 meeting minutes. A motion was made by Judge Nick Selvaggio to approve the minutes as written, the motion was seconded by Judge Lindsay Navarre. The minutes were unanimously approved by a verbal vote.

Defining a Conviction Integrity Unit and Wrongful Conviction

Judge Zmuda thanked John Martin for his suggestion that the Task Force begin its work by defining what constitutes a “wrongful conviction” and asked Martin to start the discussion.

Discussion by the Task Force covered the following topics:

Actual Innocence vs. Procedural Error

- Martin argued that limiting the Task Force’s definition of wrongful convictions to cases of actual innocence could limit its ability to address systemic problems. In his view, a wrongful conviction should be viewed as process, rather than only a result. There should be integrity in the procedure as well as the result. He suggested addressing prevention as well as remediation with a goal of avoiding all error in the process.
- Judge Pierre Bergeron questioned whether including cases of procedural error not involving actual innocence in the Task Force’s definition could be overwhelming and result in too broad of a scope of work for the Task Force.
- Douglas Dumolt added that moving away from a focus on actual innocence could hurt public buy-in and use too much of the Task Force’s time and resources. There will always be small errors in the process.
- Martin acknowledged that the definition may need to be narrowed in order to avoid taking on too much work, but that the Task Force should not fully ignore procedural issues in its approach. If the Task Force does not address some procedural issues, it should be transparent about that fact and make sure the public knows that the Task Force did not address preventing all procedural errors.

Methods of Study

- Judge Selvaggio suggested that the Task Force look at the most common contributing factors that lead to wrongful convictions and ask themselves which factors are able to be controlled. Technology, for example, cannot be controlled, but the way technology is administered can be controlled. The Task Force should use data to find the most significant causes of wrongful convictions and build its recommendations around those causes in ways that the legal system has the power to control.
- Judge Stephen McIntosh wondered if procedural problems may be more difficult to study when they are not connected to cases of actual innocence. In his opinion, using exoneration information to work backwards and study the issues that led to a wrongful conviction seems to be the most effective method.
- Martin answered that ineffective assistance of counsel, for example, can be studied by looking at appeals in which issues with ineffective assistance of counsel were found to have occurred but

the conviction was upheld nonetheless. In these cases, the procedural error was not outcome determinative but the procedure was still deficient.

- Judge Coss raised a concern that addressing common procedural errors like ineffective assistance of counsel may be too broad for a task force that is directed to address conviction integrity and wrongful convictions. He suggested that we only look at wrongful conviction cases based on category of issues that contributed to the wrongful conviction (i.e. misconduct, false accusations, etc.). He pointed out that justice is a process, not a guarantee of any result, the goal is to just have the highest percentage as possible of correct results.
- Judge Selvaggio pointed out that we could solve all procedural problems in the system and still have a wrongful conviction if, for example, a witness lies. There is manipulation that is out of control of the system, the Task Force should work on the systemic issues that cause wrongful convictions.

Work of Other Task Forces/Commissions

- Judge Zmuda pointed out that, in other states that have formed task forces or other groups to study this issue, those groups defined “wrongful convictions” as those cases involving actual innocence. This group, he noted, has been tasked with studying the integrity of convictions and the postconviction relief process, thus procedural issues must be addressed. Improving the ability of the system to avoid procedural errors will result in fewer wrongful convictions, he said.
- Judge Zmuda concluded that the Task Force should focus on cases of actual innocence in its study of wrongful convictions. Procedural issues can be addressed as they relate to the postconviction review process.

Conclusion

- Judge Zmuda asked if the Task Force could agree that wrongful convictions for this Task Force defined as ones that involve actual innocence. The Task Force members agreed with this definition.

Discussion of Summary of Brainstorming Ideas Document

Judge Zmuda thanked Task Force members for their brainstorming submissions, which were organized into three categories for the Summary of Brainstorming Ideas document: (1) Wrongful Conviction Review Models, (2) Modifications of Statutes and Rules, and (3) Training and Education Initiatives and Data Collection.

The Task Force members agreed with the categories that had been used and did not indicate that there were any additional categories that should be created.

Discussion of the Summary of Brainstorming Ideas document included the following:

Subcommittees

- Judge Zmuda requested input from members on using the categories outlined in the Summary of Brainstorming Ideas document to systematically approach the duties of the Task Force. Could the categories be used to divide the Task Force into subcommittees or should they be approached sequentially by the entire group?
- Douglas Dumolt worried that working in subcommittees could lead to a lack of representation of some views, depending on how the subcommittees are divided. The absence of the prosecutors would exacerbate this problem.
- Judge Selvaggio agreed that the Task Force should not break up into subcommittees – at least not until it has progressed further in its work and achieved consensus about how to move forward.
- Judge Zmuda suggested that if proceeding sequentially, the Task Force should start with statutes and rules, then proceed to training and education, then conclude with what model for conviction review should be used.

Data and Case Studies

- Sara Andrews stated that more data is needed about the landscape of wrongful convictions in Ohio and specific cases are needed to study.
- Judge Bergeron suggested that the Ohio Innocence Project may have Ohio-specific data that could be used, but that it may be more time consuming to collect and organize that data rather than using existing national data.
- Judge Rocky Coss said that existing data could be used, but that the data should be Ohio-specific to avoid claims of illegitimacy of conclusions drawn from that data.
- Representative David Leland added that being as Ohio-specific as possible will increase buy-in for potential legislation in the Ohio General Assembly.
- Judge Zmuda said that he may be able to secure a presentation from the National Registry of Exonerations on the causes of wrongful convictions in Ohio.

Ideas Not Covered in Brainstorming

- Douglas Dumolt suggested that improving recruitment and retention of good public defenders and prosecutors should be added to the list of brainstorming ideas.
- Judge McIntosh proposed that training for private attorneys – not just prosecutors and public defenders – be addressed as well.

Supplemental Authority Memo Addressing the “Reid Technique,” *Brady v. Maryland, Strickland v. Washington, and State v. Petro*

Judge Zmuda thanked Justice Donnelly’s interns, Elliot Nash and Jordan Rowland, for preparing the memo on the “Reid Technique,” *Brady v. Maryland, Strickland v. Washington, and State v. Petro*. He asked Task Force members to let him know if there were any additional topics they would like researched.

Judge Selvaggio asked if the memo on the “Reid Technique” was intended to establish the technique as a substantial contributing factor in wrongful convictions, or simply to provide an explanation of the technique. Judge Zmuda answered that memo was intended to explain the technique to those who may not be familiar with it, as it was mentioned in some of the brainstorming submissions.

Judge Selvaggio suggested that the memo not be relied on as a complete explanation of the technique, as it is missing some key information. Judge Coss added that more data on the technique may be needed before any recommendations regarding it can be made.

Next Steps for the Task Force

Judge Zmuda told Task Force members that he would reach out to the National Registry of Exonerations about a potential presentation in December. Starting in January, he said, the Task Force will begin to evaluate the data and concepts covered in previous meetings.

Because the Task Force is looking at a May date for its report and recommendations, Judge Zmuda suggested that the frequency of their meetings be increased from once per month to twice per month. Alternatively, the length of meetings could be extended.

Task Force members agreed to meet twice per month rather than extending the length of meetings, due to the limitations of meeting by Zoom. Although there will be some scheduling conflicts for meetings going forward, members can always stay involved by watching the YouTube streams of meetings they are not able to attend, or by having a non-voting designee attend in their place. Members can contact Justin Kudela to set a non-voting designee.

Judge Zmuda informed members that the next meeting of the Task Force is still set as previously scheduled, but that the election in Pennsylvania could possibly lead to a scheduling conflict for guest speaker, Philadelphia District Attorney, Larry Krasner. Judge Zmuda will keep members informed of any changes.

The next meeting of this Task Force is scheduled for November 19, 2020 from 10:00 a.m. to 12:00 p.m.