From Proponent to Opponent: My Lifelong Struggle with the Death Penalty

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I have a long history with the death penalty. As a young attorney with an interest in politics in the mid-1970s, I could never have anticipated that over the course of my career I would inadvertently, and frequently, interface with the death penalty, or that I would evolve from a proponent to an opponent. My changing views would parallel diminishing national support for state-sponsored death, in part, because new understandings challenged every claimed benefit of capital punishment.

Unlike most people, I not only observed the changed death penalty debate, I was directly engaged: first as a legislator involved in the reconstitution of the modern death penalty in Ohio, later as an official overseer of the execution of 19 men, and still later as a stunned student of startling new truths revealed by DNA.

My support for capital punishment dwindled in part as my understanding of wrongful convictions grew. DNA-proven wrongful convictions shook the foundations of my beliefs about our criminal justice system. Wrongful conviction became the subject of a book I co-wrote with my wife, Nancy Petro: *False Justice—Eight Myths that Convict the Innocent.*

Nancy and I did not want to include a discussion of the death penalty in this effort to explore flawed justice. Our good friend, Mark Godsey, esteemed law professor at the University of Cincinnati College of Law and co-founder and Director of the Ohio Innocence Project, reviewed our manuscript and wisely recommended: "You have to discuss the death penalty. It is inextricably bound to wrongful conviction," he said. "Your readers will want to know how you reconcile the two."

He was right.

I. THE FIRST FORTY YEARS

The evolution of my struggle with the death penalty through my personal experiences—from Ohio legislator, to Ohio Attorney General, to Innocence Pro Bono lawyer—is best shared from pertinent passages in *False Justice*, with some updates to the revised edition published in 2015 by Routledge. Throughout this paper, excerpts from the book are indicated in italics.[1]

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[1] JIM PETRO & NANCY PETRO, FALSE JUSTICE; EIGHT MYTHS THAT CONVICT THE INNOCENT (Routledge rev. ed. 2015) (2010).

On the morning of February 12, 2003, my wife Nancy noticed I was unusually quiet.

"Oh," she said, pausing as she figured it out. "Is today the execution?"
"Yeah," I answered. "Ten this morning."
"Who is it again?"
"Richard Fox."
"That's right. He killed a young woman?"
"Yes. Leslie Keckler, an eighteen-year old college freshman. Fox lured her into a fake job interview. She drove with him to review the supposed sales route for the job. He took her to a remote area, and when she refused his sexual advances, he stabbed her multiple times in the back. He later admitted he then strangled her with a rope, 'just to make sure she was dead.'"[2]
"That's just so horrible."
"I know. It was a brutal, terrible crime. You can't feel the least bit sorry for him. Still, I have been dreading this day."

I couldn't avoid the irony of it: I was partly responsible for the existence of a death penalty in Ohio—and days like this.[3]

About eight years before Richard Fox's heinous crime, in January 1981, I was in my first month as a freshman member of the Ohio House of Representatives and found myself thrown into deliberations that would determine whether the death penalty would be reinstated in Ohio. It was a quick and sobering baptism into the legislative process.

I had been appointed to the Ohio House Judiciary Committee, which was determining the future of Senate Bill 1. Ohio's death penalty had been declared unconstitutional by the U.S. Supreme Court in 1972. A new death penalty law in 1974 had also been struck down. This bill sought to restore Ohio's death penalty.

The bill before us had passed the Ohio Senate. Its journey to become law required passage out of the Judiciary Committee to proceed to a vote in the House. The committee members were deeply divided on the issue. With some still undecided, I knew my vote might determine whether the bill would go on to become law or would die in committee.

When I ran for state representative, the voters in my district supported the death penalty by a great majority. I supported the death penalty and said so. While I had thoughtfully determined my position, it is another matter to realize that your vote could determine whether there is a death penalty—that your vote could mean life or death for convicts.

It was a tougher decision than I would have predicted. Ultimately, I voted to move the bill out of committee. With some changes, it was narrowly approved by

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[2] In the Matter of Richard E. Fox, STATE OF OHIO ADULT PAROLE AUTHORITY, CLEMENCY REPORT #227-307, at 5 (2003).

[3] PETRO, *supra* note 1, at 114–15.

the Judiciary Committee and passed in the full House, 57 to 42. The new law took effect October 19, 1981.

As it turns out, the impact was not felt on death row for many years. I do not think that Ohio's governors at the time had much of a taste for executions. At the end of his term in January 1991, Governor Richard Celeste commuted the death sentences of eight persons on death row to life in prison. Eight years later, death row inmate Wilford Berry Jr. became "the Volunteer" by waiving all appeals. Prior to his execution on February 19, 1999, no one had been executed in Ohio since 1963, but after Berry, the pace picked up.

When I became attorney general, one of my responsibilities was to audibly monitor executions so that the state would be prepared to halt the proceedings in case of a last-minute stay of execution. I went to a specially equipped conference room in our offices to listen to the preparations and the execution. A dedicated open line to the execution chamber in Lucasville, Ohio, about one hundred miles away, put me in direct moment-to-moment voice contact with Terry Collins, deputy director of the Ohio Department of Rehabilitation and Corrections.

I had been in office about five weeks when I experienced this for the first time with the execution of Richard Fox. Before the execution that day, I called members of Leslie Keckler's family. I said words to the effect that, on behalf of the state of Ohio, justice would be served today with the execution of Richard Fox; that I was sorry for their loss and the pain that Mr. Fox's actions had caused them. Today the justice system would complete its response to the crime that had changed their lives.

And then I listened for the first time to a man's execution. By then, Ohio used lethal injection. Those who implemented Fox's sentence verbalized each step of the procedure: the transfer of the convict, the strapping down on the gurney; the opportunity for last words (he had none); the activation of each vial of poison; the pronouncement of death.

When it was over, I walked back to my office, closed the door, sat down, and took a few minutes to pull myself together. I was shaken by this first one, and I never became callous to this ultimate execution of justice. In my four years as attorney general, Ohio had nineteen executions. I dreaded every one of them. Nevertheless, I still supported the death penalty in cases where there is no question as to guilt in the most heinous of crimes.

As attorney general, I had no authority to overrule a sentence of death. I came to terms with my official responsibilities regarding the death penalty as "rendering unto Caesar what is Caesar's." The people of Ohio determined that this should be the state's response to one person's taking of another's life. Public sentiment shapes public policy through the election of legislators and judges who understand the people's mandate. Supreme Court Justice Scalia underscored this in his opinion on the death penalty in Kansas v. Marsh *(2006): "The American people have determined that the good to be derived from capital punishment—in*

deterrence, and perhaps most of all in meeting out of condign [appropriate] justice for horrible crimes—outweighs the risk of error."[4][5]

Proponents of the death penalty are consistent in their justifications for it. First, they say it is a deterrent. They also claim that it saves public money: that it is cheaper to kill someone than to house them for life. They contend that it brings closure for the victim's family. They view capital punishment as the reasonable, fair response for the state in its role of administering justice following acts that totally discount the value of human life—"an eye for an eye," in Old Testament terms.

None of these is the reason that I supported the death penalty.

I don't believe that many of these justifications are, in fact, justifiable. In his book Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty, *best-selling author and lawyer Scott Turow—an on-again, off-again supporter of the death penalty—shares his reflections, experience, and research on the ultimate punishment. My takeaways from this book are consistent with my own experience and intuition. The deterrent theory is not much more than that. Some studies suggest that non-death row states have fewer murders per capita than death penalty states. Turow points out that Texas has a murder rate well above the national average even though more than a third of the nation's executions since 1976 have occurred there.*[6] *(Note that this observation was made in 2003).*[7]

At this writing in 2019, data continues to indicate the death penalty is not a deterrent. Utilizing murder rates by state per 100,000 population as reported in the FBI's "Crime in the United States," the Death Penalty Information Center has reported that in every year from 1990 through 2016, states without the death penalty consistently had lower murder rates per capita than states with the death penalty.[8]

The economic advantage of execution over life in prison has also been debunked by numerous studies. As one recent example, research published in 2017 by an independent study comparing the costs of seeking and implementing the death penalty with not seeking the death penalty in the state of Oklahoma reported that a capital case "incurs significantly more time, effort, and costs."[9] The researchers also looked at other states' studies on this question:

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[4] Kansas v. Marsh, 548 US 163, 199 (2006) (Scalia, J., concurring).

[5] PETRO, *supra* note 1, at 117–19.

[6] SCOTT TUROW, ULTIMATE PUNISHMENT: A LAWYER'S REFLECTIONS ON DEALING WITH THE DEATH PENALTY 58 (2004).

[7] PETRO, *supra* note 1, at 119.

[8] *Murder Rate of Death Penalty States Compared to Non-Death Penalty States*, DEATH PENALTY INFORMATION CENTER, https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states (last visited Oct. 25, 2019).

[9] Peter A. Collins et al., *Appendix 1B: An Analysis of the Economic Costs of Capital Punishment in Oklahoma* 223-24 (2017), https://files.deathpenaltyinfo.org/legacy/files/pdf/Report-of-the-OK-Death-Penalty-Review-April-2017-a1b.pdf.

> We systematically reviewed 15 state-level studies that were conducted between 2000 and 2016 . . . .What all of these studies have found, each to a varying degree, is that seeking and imposing the death penalty is more expensive than not seeking it . . . .*There is not one credible study, to our knowledge, that presents evidence to the contrary.* On average it cost about $700,000 more in case-level costs to seek the death penalty than to not.[10]

Similarly, the issues of closure for the victim's survivors and the state's moral and just response to heinous criminal acts are debatable.

My support for the death penalty was simple and pragmatic: it was all about public safety. My instructors in the lesson were Robert Daniels and John West, nicknamed the "Mad Dog Killers" by Ohio's newspapers.

From the early years of our marriage, I heard the story of horrific events that occurred in and around Tiffin, Ohio, the week of my wife's birth in July 1948. The Bero family, who lived in Tiffin, would remember this week for the arrival of their first daughter, Nancy, but for many Ohioans, the week would be marked by a murderous rampage.

Robert Daniels and John West, just released from the Ohio State Reformatory in Mansfield, apparently were determined to get revenge, although half of their victims would be random. The first person they murdered was a Columbus tavern owner. Daniels and West next drove to Mansfield, where they went to the home of John Niebel, the prison's farm superintendent. Daniels and West broke into his home, pistol whipped Niebel and his wife, raped their twenty-year-old daughter, forced all three to strip and marched them outside into a field where Daniels and West executed them.

The following day, they drove toward Tiffin, about fifty-five miles away. Nancy's parents, even into their nineties, still recall the terrible details. Daniels and West followed a newly married couple driving at night. Forcing their car to a stop, the two criminals approached the car and then shot the young man in the face. His bride miraculously managed to escape execution by running to a nearby farmhouse.

When Daniels and West needed to switch vehicles, they shot and killed a truck driver who was asleep in his truck near Old Fort, Ohio. Two days later, they finally stopped in Van Wert, near the Ohio-Indiana border, when they came to a roadblock and engaged in a shootout with police. West was killed, Daniels was captured. He reportedly bragged about his potential date with the electric chair, which occurred six months later.

In those days, Nancy's grandparents had the forerunner of a bed-and-breakfast in Tiffin. In the 1940s, these were called "tourist homes." Nancy's grandmother loved to welcome traveling businesspeople; most were regular

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[10] *Id*. at 226–227.

customers. She recalled two strangers who came to the rear side door, rather than the front porch entrance, looking for a room the week that her granddaughter was born. She had no vacancy, but she said if they waited a moment, she would call the other area guesthouses to try to find them a room. They waited outside while she made the calls. She located a room for them two blocks away. Curiously, they used the room to clean up but left without staying overnight. Nancy's grandmother later realized that the timing, appearance, and odd behavior of the men suggested they might have been West and Daniels. She felt blessed to have been spared. That is why this story was told twenty-some years later when I started to visit Tiffin with Nancy.

I always had thought—and Nancy's parents thought—that West and Daniels were escapees. However, we learned that they had actually been released from prison early, ironically, for good behavior. That detail did not change my view that capital punishment was justifiable for reasons of public safety.

After hearing of the brutality of West and Daniels and others like them, I determined that some people were the equivalent of predatory wild animals. John Walsh, in addressing the National Association of Attorneys General at its February 2010 meeting, shared lessons learned in the years of seeking criminals through the television program he hosted from 1988 to 2012, America's Most Wanted*. In 1981, his own son, six-year-old Adam, was abducted from a department store in Hollywood, Florida, and killed. The presumed killer, who died in prison before he could be charged, had committed several other murders.*

Walsh, citing pedophiles as an example, said that these predators have an inexplicable sexual "compulsion" that is so strong that he has seen pedophiles even in their eighties who are still compelled to seek despicable sexual acts with children. Like other sociopaths, they feel no remorse after committing horrendous crimes.[11]

Robert Daniels and John West, and others like them, were among the malevolent elite appropriately described as "the worst of the worst." They were in our view, evil personified. Still, as we wrote this section of the book, I was transitioning from narrowly supporting the death penalty for these sociopaths to growing concern over the system's increasing evidence of conviction error and the very real risk of executing innocent people.

At the time, we wrote:

We should no more release such a person than we would free a wild tiger from the zoo. The challenge is to identify those beyond a redemptive life in public society, but certain criminal acts warrant this indictment.

The state appropriately has the responsibility to respond to unacceptable crime, and in America, the citizens shape this response, whether they recognize their role or not. My view is that God will be the ultimate judge of those like

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[11] PETRO, *supra* note 1, at 120–21.

Robert Daniels and John West—but also of us, if we should neglect to take every precaution against making a mistake when imposing the death penalty. When the state takes a life on behalf of justice, there is no room for error, and we can never become callous to the enormity of this responsibility.

Fortunately, I had a high degree of confidence in the guilt of the men who were scheduled for execution during my watch. Except for one.

John Spirko was convicted in 1983 of the murder of Mary Jane Mottinger, the postmistress in Elgin, Ohio. Spirko was the only execution scheduled during my term in which conviction was based solely on circumstantial evidence. He had served time for another murder and was not a good guy, but many were concerned about the weak evidence that convicted him of this crime. I sought to ensure that no stone was unturned with regard to testing the crime evidence for DNA. The results were not definitive; I asked for another reprieve for testing. Then more testing, then another reprieve. Governor Bob Taft granted my multiple requests for reprieves until his successor, Governor Ted Strickland, inherited the case.

On January 9, 2008, after I had requested seven reprieves and personally expressed my concerns to Governor Strickland's chief of staff, the Governor resolved the issue:

> *Mr. Spirko's claims that his own lies led to his conviction for an offense that he did not commit are unpersuasive in the face of the judicial scrutiny this case has received. Nonetheless, I have concluded that the lack of physical evidence linking him to the murder, as well as the slim residual doubt about his responsibility for the murder that arises from careful scrutiny of the case record and revelations about the case over the past twenty years, makes the imposition of the death penalty inappropriate in this case.*

Referencing the lengthy review of the case, he concluded, "I have decided to commute Mr. Spirko's sentence to life imprisonment without the possibility of parole."[12]

I was pleased with the governor's decision. When there is any legitimate doubt, commute.

With due acknowledgment of my cautious support of the death penalty, I did not come to the question of the extent of wrongful conviction in America with a strong bias on either side of the debate.

Nancy and I considered the death penalty positions of those who sought to quantify conviction errors. At the time of our research (2008–2010), we learned that District Attorney Joshua Marquis supported the death penalty in Oregon, a state that had executed two men since the death penalty had been restored in 1984. His calculation of a .027 percent error rate was cited by Antonin Scalia in Kansas

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[12] Peter Zacari, *Gov. Strickland's Statement on Spirko*, CLEVELAND.COM (Jan. 9, 2008), https://www.cleveland.com/pdextra/2008/01/gov_stricklands_statement_on_s.html.

V. Marsh. *In this same opinion, the conservative Supreme Court justice criticized Professor Samuel R. Gross's inclusion of some of the exonerated in Gross's study (the basis of his calculation of a significantly higher conviction error rate of 2.3 percent) as not fitting the definition of an innocent person.*

Professor Gross responded by saying, "It is possible that a few of the hundreds of exonerated defendants we have studied were involved in the crimes for which they were convicted, despite our efforts to exclude such cases. On the other hand, it is certain—this is the clearest implication of our study—that many defendants who are not on this list, no doubt thousands, have been falsely convicted of serous crimes but have not been exonerated."[13] *Gross opposes the death penalty, but his focus is wrongful conviction, his greater concern.*

Justice Scalia referenced Marquis's error rate of .027 percent, less than three-hundredths of 1 percent, seeming to imply that this might be acceptable. "One cannot have a system of criminal punishment without accepting the possibility that someone will be punished mistakenly," he wrote.[14]

This raises the question of what is acceptable error in our justice system. A culture is defined in some ways by what it finds acceptable. When a commercial airplane crashes, the National Transportation Safety Board begins a painstaking investigation to determine the cause of the accident. Even the suspicion of a repeatable problem can ground an entire airline. Americans do not find errors in flight acceptable. The error rate in the justice system—whether the most conservative or most liberal calculation—would not be even remotely tolerated in the U.S. food industry or the U.S. pharmaceutical industry, for example. Why we have accepted it in the justice system is another question.

We believe that Marquis's conviction error estimate of .027 percent is flawed and a significant understatement. Nevertheless, if you apply that error percentage to our prison population in 2008, it would mean that 621 innocent persons were incarcerated in U.S. prisons that year. If these Americans were instead in a prison in a foreign land, it would constitute an international crisis.

If Professor Gross's death row 2.3 percent error rate were applied to the same prison population, it would suggest that more than 50,000 innocent Americans are imprisoned, but Gross believes that errors in the broader felony population are probably less frequent. The summary of his original study concluded, "[A]ny plausible guess at the total number of miscarriages of justice in

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[13] Samuel R. Gross et al., *Rate of false conviction of criminal defendants who are sentenced to death*, 111 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA 7230, 7230-7235 (May 20, 2014).

[14] *See* Kansas v. Marsh, *supra* note 4. *See also* Adam Liptak, *Consensus on Counting the Innocent: We Can't*, THE NEW YORK TIMES (Mar. 25, 2008) https://www.nytimes.com/2008/03/25/us/25bar.html ("A couple of years ago, Justice Antonin Scalia, concurring in a Supreme Court death penalty decision…").

America in the last fifteen years must be in the thousands, perhaps tens of thousands."[15, 16]

After the book was published, Professor Gross reported the astounding results of a subsequent study that indicated over four percent of those sentenced to death in the United States are likely innocent. In his peer-reviewed article, "Rate of False Conviction of Criminal Defendants who are Sentenced to Death," published May 20, 2014, in the highly respected scientific journal, *Proceedings of the National Academy of Sciences of the United States of America*, Gross and his colleagues utilized survival analysis, commonly used in medicine, to determine the 4.1 percent finding, which the authors of the study considered "conservative."[17]

All things considered (including all that we had yet to learn), Nancy and I have concluded that Professor Gross's calculations are both credible and probable.

Another bit of information stunned us and supported the conclusion of significant conviction error. In 1996, the National Institute of Justice commissioned a landmark study, "Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial," *that sought to spark discussion by the justice and scientific communities on the challenge of incorporating DNA analysis in criminal justice. Included in the study, a commentary by Peter Neufeld and Barry Scheck revealed the surprising consistency of inaccurate identification of the perpetrator in rape cases where DNA testing could affirm or exclude the suspect:*

> *Every year since 1989, in about 25 percent of the sexual assault cases referred to the FBI where results could be obtained (primarily by state and local law enforcement), the primary suspect has been excluded by forensic DNA testing. Specifically, FBI officials report that out of roughly 10,000 sexual assault cases since 1989, about 2,000 tests have been inconclusive (usually insufficient high molecular weight DNA to do testing), about 2,000 tests have excluded the primary suspect, and about 6,000 have "matched" or included the primary suspect.*[18]

The evidence sent to the FBI in these cases was typically sperm from swabs taken from the victim (vaginally, anally, orally) or from the victim's clothing.

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[15] Samuel R. Gross et al., *Exonerations in the United States*, 95 J. OF CRIM. LAW AND CRIMINOLOGY 523, 551 (2005).

[16] PETRO, *supra* note 1, at 121–24.

[17] Gross et al., *supra* note 15.

[18] Edward Connors et al., U.S. Dept. of Just., Nat'l Inst. of Just. *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial* (NCJ 161258), Washington, D.C.: Office of Justice Programs, at xxvviii, xxviii (June, 1996).

Identification of the suspect was primarily from eyewitness testimony.[19] *Generally, the prosecution not only confirmed these results with its own testing but also tested any males known to be in a recent relationship with the victim, to rule them out.*[20]

In short, local authorities—law enforcement and prosecutors—thought they had their rapist, and over many years, rape kit DNA, tested either by the FBI or in private labs, consistently proved an error rate of about 25 percent. Prior to DNA, there is no question that a percentage of these DNA-excluded suspects would have been tried and convicted (state conviction rates for felony sexual assaults average about 62 percent).[21]

What does this say about those in prison who were convicted of rape before 1989, before DNA? What does it say about people convicted of crimes today in which there is no DNA evidence to test?

This rate of incorrect arrest was shocking to us. It was irrefutable evidence of significant arrest and conviction error.

Scheck and Neufeld articulated the implications of these results: "The fact that these percentages have remained constant for seven years…strongly suggests that post-arrest and post-conviction DNA exonerations are tied to some strong, underlying systemic problems that generate erroneous accusations and convictions." [22, 23]

II. UPDATE: CONVICTION ERRORS CONTINUE TODAY

As I write this update, on July 25, 2019, The National Registry of Exonerations is reporting 2,472 known exonerations in the United States since 1989. More than 21,725 years of imprisonment have been lost by these wrongfully convicted persons. Frightening subsets of this group exist: 944 had been convicted of murder and 123 had been sentenced to death.[24]

By way of disclosure, Nancy and I serve on the advisory board of the Registry, a project of the University of California Irvine Newkirk Center for Science & Society, University of Michigan Law School, and Michigan State University College of Law. The bar is high for inclusion in the Registry. These are not cases of getting off on a technicality. An exoneration occurs when a wrongfully convicted person is officially cleared of the conviction(s) due to new evidence of innocence.

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[19] *Id*. at xxix.

[20] *Id*. at xxx.

[21] *Id*. at xxix.

[22] *Id*. at xxviii–xxix.

[23] PETRO, *supra* note 1, at 124–25.

[24] The National Registry of Exonerations, *Milestone: Exonerated Defendants Spent 20,000 Years in Prison*, 1 (accessed online July 25, 2019), https://www.law.umich.edu/special/exoneration/Documents/NRE.20000.Years.Report.pdf.

The challenge of proving innocence after conviction in a system that values finality, and has uncertain, time-consuming, and laborious pathways to any reconsideration of guilt or innocence, greatly restricts access to justice for innocent people who have suffered this ultimate injustice. This reality strongly suggests that those who are exonerated are the tip of the iceberg of those wrongly convicted who will never have the opportunity to prove their innocence.

Consider the 123 people who we now know were convicted of murder, sentenced to death, and were later officially exonerated. Their lives were spared either because appeal rulings or new evidence of innocence resulted in a commutation of the sentence or a reversal of the verdict before the death sentence was implemented.

But how many wrongly convicted people have been unable to attract legal counsel willing to pursue the long, uncertain road to exoneration?

III. A CHANGE OF HEART AND MIND

The growing and frightening body of evidence of the very real risk of wrongful execution tipped the scales for me from support to opposition of the death penalty. Very simply, I realized the risk of a state executing an innocent person was greater than the risk of a death row inmate escaping and killing innocent victims. I concluded that life in prison presents the better option, and I became a proponent of this solution.

Since this conversion, realities concerning both the magnitude of wrongful conviction and flawed application of the death penalty have become more apparent. The nation has grappled with the methods of death and the meaning of "cruel and unusual punishment."

There has been increasing evidence throughout the United States of the uneven and unfair application of the death penalty. Nationally, an effort to enact standards for a fair and accurate death penalty process was undertaken by the American Bar Association. A 2007 American Bar Association (ABA) report assessing Ohio's death penalty laws, procedures and practices found that Ohio did not comply with 29 ABA established recommendations, partially complied with 35, and fully complied with only 4 of 65 recommendations in which sufficient information was available to make an assessment.[25]

To initiate a comprehensive review of Ohio's efforts, Ohio Supreme Court Chief Justice Maureen O'Connor created the Joint Task Force to Review the Administration of Ohio's Death Penalty in 2011. Two years of engagement by the Task Force members, a balanced array of judges, prosecutors, defense attorneys, and academics, resulted in a comprehensive Task Force report published in 2014. The Task Force made 56 recommendations to the Supreme Court of Ohio and the

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[25] Death Penalty Due Process Review Project, *Ohio Death Penalty Assessment Report and Supplemental Reports*, ch. 1, AM. BAR ASS'N (Aug. 3, 2017) https://www.americanbar.org/content/dam/aba/administrative/death_penalty_moratorium/ohio_chapter1.pdf.

Ohio State Bar Association that the Task Force believed would "promote fairness in capital cases for both the state and the defendant. In addition, the recommendations would respond to the majority of the American Bar Association's proposals from its 2007 report."[26]

IV. WE CAN DO MUCH BETTER, BUT STILL CANNOT AVOID RISK OF WRONGFUL EXECUTION

If we were to adopt the recommendations resulting from this superb effort of leading criminal justice and legal professionals in Ohio, I am confident the risk of wrongful conviction and wrongful execution would be reduced and Ohio's application of the death penalty would be fairer. Nonetheless, my opposition to the death penalty would remain.

Formed over decades of experience and troubling evolving truths, my opposition to the death penalty will remain, because it is based on a fundamental understanding that truth is elusive and humans are flawed. Knowing what we now know in this post-DNA world, we must abandon the death penalty. This is the only conclusion I find consistent with logic, conscience, and our nation's fundamental guarantee of justice for all.

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[26] J. Jim Brogan et al., *Joint Task Force to Review the Administration of Ohio's Death Penalty: Final Report and Recommendations*, SUPREME COURT OF OHIO, 4 (2014), https://www.supremecourt.ohio.gov/Boards/deathPenalty/resources/finalReport.pdf.