

**In the
Supreme Court of Ohio**

**STATE, *ex rel.* THE CINCINNATI
ENQUIRER, a Division of Gannett
Satellite Information Network, Inc.,**

Petitioner,

vs.

HONORABLE ROBERT H. LYONS,

Respondent.

Case No. 12-1924

REPLY TO SUGGESTION OF MOOTNESS

RECEIVED
JAN 18 2013
CLERK OF COURT
SUPREME COURT OF OHIO

John C. Greiner (0005551)
Counsel for The Cincinnati Enquirer
GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Phone: (513) 629-2734
Fax: (513) 651-3836
E-mail: jgreiner@graydon.com

FILED
JAN 18 2013
CLERK OF COURT
SUPREME COURT OF OHIO

Respondent Judge Lyons (“Respondent”) contends that this matter is moot, given his “correction” of the proceedings, which occurred in his courtroom on December 13, 2012. The Respondent’s Suggestion of Mootness, however, leaves out important details which establish that the matter is not moot. Indeed, the Respondent’s conduct in this proceeding, particularly his action in December, cry out for this court’s review.

Respondent admits that he had no authority to order the records of the proceeding sealed pursuant to R.C. § 2953.52. (See Exhibit 1, Deposition transcript of Robert Lyons, p. 12). That statute permits a court to seal a record following an acquittal or dismissal of charges. In the case, the defendant in the underlying proceeding pleaded guilty to a charge of disorderly conduct. Thus, R.C. § 2953.52 had no application. Apparently, Respondent conducted no hearing prior to sealing the record, and issued the order because the prosecutor and defense counsel agreed that the record could be sealed. (Exhibit 1, p. 11).

Following the filing of this proceeding, Respondent met with Sarah Rodkey, an attorney with the Butler County Prosecutor’s office and counsel for the defendant. At that meeting, the agreement was reached that the defendant would withdraw his guilty plea, the prosecutor would issue a nolle prosequi and Respondent would immediately seal the record of the proceedings. (Exhibit 1, pp. 14-15). The Respondent was unable to cite any reason for allowing the defendant to withdraw his guilty plea other than to allow Respondent to issue an order sealing the records. (Exhibit 1, p. 21).

Relator is filing simultaneously with this memorandum a motion for leave to amend its complaint for writ of mandamus. The amended complaint asks this court to order Respondent to unseal the records in the underlying proceeding because Respondent had no authority to permit defendant to withdraw his guilty plea. At the time the defendant filed the motion to withdraw his

plea, he'd already paid out his fine on the disorderly conduct conviction. (Exhibit 1, p. 12).

Ohio Rule of Crim. Procedure 32.1 provides:

A motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea.

Respondent had no authority to permit the defendant to withdraw his plea absent a showing that “manifest injustice” would result otherwise. Respondent pointed to no such grounds in his deposition. Indeed, the only ground for permitting the withdrawal was to permit the court to seal the records in an attempt to avoid the issuance of a writ in this proceeding. It would in no way be “manifestly unjust” for the defendant’s record to be unsealed. Given Respondent’s lack of authority to permit the defendant to withdraw his plea, there is no legal basis to support the December 13 order sealing the records. This action is in no way moot.

Besides the Rule 32.1 issue, it would be unseemly to allow Respondent to seal the records pursuant to a back room deal effected for no reason other than to avoid his clear legal duty to unseal the records. Respondent’s efforts are virtually a form of spoliation. While he did not physically destroy the records, he nonetheless took steps, not authorized by law, to put the records out of reach. This court should not stand for such behavior.

In addition, this court has recognized that: “[A] claim is not moot if it is capable of repetition, yet evading review.” *State ex rel. Dispatch Printing Co. v. Geer*, 114 Ohio St.3d 511, 2007–Ohio–4643, 873 N.E.2d 314, ¶ 10. This exception ‘applies only in exceptional circumstances in which the following two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.’ *State ex rel. Calvary v. Upper Arlington* (2000), 89 Ohio St.3d 229, 231, 727 N.E.2d 1182.

According to Respondent, "This is a college town. Record sealings, you know, I would say if I do ten record sealings in a week, that is not many." (Exhibit 1, p. 24). He also acknowledged that the entry used in this case, which incorrectly sealed the record of a case that resulted in a conviction pursuant to R.C. § 2953.52, is one he has used for "quite a while." (Exhibit 1, p. 25). The capable of repetition doctrine certainly applies here.

Given the circumstances of this case, this matter is not moot. This court should not dismiss it.

Respectfully submitted,

Of Counsel:

GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Phone: (513) 621-6464
Fax: (513) 651-3836


John C. Greiner (0005551)
Counsel for The Cincinnati Enquirer
GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Phone: (513) 629-2734
Fax: (513) 651-3836
E-mail: jgreiner@graydon.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *Reply to Suggestion of Mootness* was served via regular U.S. Mail, postage prepaid, this 17th day of January, 2013, upon the following:

Dan L. Ferguson, Esq.
Assistant Prosecuting Attorney
315 High Street, 11th Floor
Hamilton, OH 45011


John C. Greiner (0005551)

IN THE SUPREME COURT OF OHIO

STATE, ex rel., THE CINCINNATI)
 ENQUIRER,)
 Petitioner,)
 versus) CASE: 12-1924
 HONORABLE ROBERT H. LYONS,)
 Respondent.)

DEPOSITION OF: HONORABLE ROBERT H. LYONS
 Tuesday, January 15, 2013
 2:15 p.m.

Reported By:
 Jennifer L. Strothers

IN THE SUPREME COURT OF OHIO

STIPULATIONS

STATE, ex rel., THE CINCINNATI)
 ENQUIRER,)
 Petitioner,)
 versus) CASE: 12-1924
 HONORABLE ROBERT H. LYONS,)
 Respondent.)

It is stipulated by and between counsel for the respective parties that the deposition of HONORABLE ROBERT H. LYONS, respondent herein, may be taken at this time by the petitioner as upon cross-examination, pursuant to the Ohio Rules of Civil Procedure and pursuant to Notice; that the deposition may be taken in stenotypy by the notary public court reporter and transcribed by her out of the presence of the witness; and that examination and signature to the transcribed deposition is hereby waived.

The deposition of HONORABLE ROBERT H. LYONS, respondent herein, taken by the petitioner as upon cross-examination pursuant to the Ohio Rules of Civil Procedure and pursuant to stipulations hereinafter set forth, at the Offices of the Prosecuting Attorney Michael T. Gmoser, 315 High Street, Hamilton, Ohio, at 2:15 p.m., on Tuesday, January 15, 2013, before Jennifer Strothers, court reporter and notary public within and for the State of Ohio.

APPEARANCES:

INDEX

On Behalf of the Petitioner:
 JOHN C. GREINER, ESQUIRE
 Graydon Head
 1900 Fifth Third Center
 511 Walnut Street
 Cincinnati, Ohio 45202
 (513) 629-2734
 jgreiner@graydon.com

Page
 Honorable Robert H. Lyons
 Cross
 By Mr. Greiner 6

On Behalf of the Respondent:
 DAN L. FERGUSON, ESQUIRE
 Asst. Prosecuting Attorney
 P.O. Box 515
 Hamilton, Ohio 45012
 (513) 887-3478
 dlferguson@butlercountyohio.org

EXHIBITS

Exhibit 1 7
 Exhibit 2 7
 Exhibit 3 8

Also Present:
 Sheila McLaughlin

1 HONORABLE ROBERT H. LYONS,
2 of lawful age, as having been duly sworn, was
3 examined and testified as follows:

4 CROSS-EXAMINATION

5 BY MR. GREINER:

6 Q Judge Lyons, I am Jack Greiner and I
7 represent the Cincinnati Enquirer in this matter.
8 I am here with Sheila McLaughlin who is serving
9 as a representative of the Enquirer.

10 I am very sorry to hear about the
11 circumstances with your father. As we've said, if
12 you would prefer to do this at another time, we
13 will do it. You've indicated to go through and
14 get this done?

15 A Get it over with, Mr. Greiner.

16 Q You are an Area Court Judge; is that
17 correct?

18 A That is.

19 Q How long have you had that job?

20 A I think it is going to be 14 years in
21 February.

22 Q How many hours do you spend per week in
23 that capacity?

24 A It varies. I have a docket. I am also

1 the presiding and administrative judge. I have
2 -- the time I spend in court, I also spend quite
3 a bit of time on the administration as well.

4 Q So a range per week?

5 A 10 to 30.

6 Q Okay. You also maintain a private
7 practice?

8 A I do.

9 Q Let me show you what I have marked --
10 what the court reporter will hand you marked as
11 Exhibit 1.

12 (Deposition Exhibit 1 marked for
13 identification.)

14 Q Can you identify Exhibit 1 for me?

15 A It looks like my -- Lyons & Lyons
16 website.

17 Q I will tell you I went online and
18 printed Exhibit 1 out and it would appear to be a
19 paper copy of the home page of Lyons & Lyons.
20 Sounds to me like you would agree that is what
21 Exhibit 1 is?

22 A Yeah.

23 Q Let me show you Exhibit 2.

24 (Deposition Exhibit 2 marked for

1 identification.)

2 Q Can you identify Exhibit 2 for me?

3 A That is a website, SealMyRecord.com.

4 Q Is SealMyRecord.com --

5 A SealMyRecordOhio.com actually.

6 Q Thank you. Is that affiliated with
7 Lyons & Lyons?

8 A It is.

9 Q Do you personally handle cases in which
10 clients seek to seal their criminal records?

11 A I can and do and have for years.

12 Q Let's just say in the last two years,
13 on how many occasions have you handled cases of
14 people looking to seal their records?

15 A In the last two years?

16 Q Yes, two years.

17 A Less than 10 probably.

18 Q Did you handle more in years past?

19 A Less in years past.

20 Q Okay. Okay. What I want to talk to
21 you about, I will hand you Exhibit 3.

22 (Deposition Exhibit 3 marked for
23 identification.)

24 Q Can you identify Exhibit 3 for me,

1 please?

2 A It is an Entry For Sealing of Record of
3 Minor Misdemeanor Conviction is how it is titled.

4 Q There is no case number on Exhibit 3;
5 that's been redacted. The name of the defendant
6 has been redacted. Does your signature appear on
7 Exhibit 3?

8 A That is my signature. That is probably
9 a stamp of my signature on that document.

10 Q Just for the record, your signature or
11 a stamp of your signature appears on the line
12 marked "Judge"; is that right?

13 A It does.

14 Q Did you preside over the proceedings
15 described in Exhibit 3?

16 A I do not know that there -- what
17 proceedings are you speaking of?

18 Q Apparently -- well, let's talk about
19 that. Did the defendant, whose name is redacted
20 on Exhibit 3 appear before you on November 7th of
21 2012?

22 A Mr. Greiner, I think we have to be a
23 little bit -- cut the charade. This is the case
24 involving the young man who had allegedly had

1 something to do with the posting of the document
2 at Miami University regarding rape. Presumably
3 this is the entry sealing a minor misdemeanor
4 conviction for that. Am I correct in that?

5 Q I believe that is correct.

6 A Okay. That is where you are going with
7 this?

8 Q Yes.

9 A It was -- he was charged -- it is my
10 understanding he was charged with a minor
11 misdemeanor, which is a pay-out ticket. It was
12 my understanding for that, he did not come into
13 court. He paid it out and then based upon an
14 agreement that his attorney and Mr. Gmoser had,
15 the record was sealed -- was to be sealed
16 immediately by agreement.

17 Q Okay.

18 A This was the document to facilitate
19 that happening.

20 Q Okay. I appreciate it. I am trying to
21 recreate from records.

22 A Like I said, we shouldn't play
23 charades; let's talk about what we have here.

24 Q Sure. My question was going to be: Did

1 understanding. I believe in talking to Mr.
2 Deters and Ms. Rodkey, the assistant prosecutor
3 that works in the Area I Court.

4 Q But it is your understanding on or
5 before November 7th that this defendant paid the
6 fine?

7 A It is my understanding the fine was
8 paid.

9 Q Okay.

10 A The fine and court costs.

11 Q On or before November 7th?

12 A I do not know the dates.

13 Q Well, I am using November 7th because
14 it is the date on Exhibit 3.

15 A Well, I am guessing this was done
16 November 7th or earlier. Obviously the fine and
17 costs would have been paid before that.

18 Q Okay. You were kind enough to answer a
19 lot of my questions, so I will cut through here.

20 Now that you've had a chance to review the
21 situation, would you agree that in fact you had
22 no authority to seal the defendant's record under
23 Section 2953.52?

24 A Absolutely I would agree with that.

1 the defendant appear in your courtroom on that
2 day and it sounds like he did not?

3 A I don't even --

4 Q November 7th?

5 A I do not even know if November 7th was
6 a court date, a date we had the docket. I do not
7 know what date this was stamped, signed, filed or
8 anything. But to answer your question, to my
9 knowledge, that young man did not appear in my
10 court for a plea because it was a pay-out; that
11 it was sealed without him appearing in my court.

12 Q Okay. So, the November 7th date that
13 appears on Exhibit 3 -- and Exhibit 3, again is
14 Entry for Sealing of Record of Minor Misdemeanor
15 Conviction -- it does not mean that the events
16 described here necessarily occurred on November
17 7th?

18 A Correct, I don't know.

19 Q It was your understanding the
20 prosecutor Mr. Gmoser and Dennis Deters, the
21 attorney for the defendant, had reached some sort
22 of an agreement in advance?

23 A That was my understanding. I did not
24 talk to Mr. Gmoser about it, but that was my

1 For whatever reason, this was a form that we use.
2 I do not know how long we have been using it, but
3 somehow there was an error in the form that we
4 had been using. Quite frankly, it was not until
5 your action that I realized I signed the wrong
6 Ohio Revised Code Section on the form.

7 Q Let's jump ahead to December 13, 2012.
8 Did you conduct a hearing on December 13, 2012 in
9 your courtroom at which time the defendant
10 withdrew his plea?

11 A There was a hearing and there is a
12 recording of that hearing.

13 Q At any time between November 7th and
14 December 13th did you discuss this case with the
15 defendant or his attorney, Mr. Deters?

16 A Did not have any discussion with the
17 defendant, none at all. I discussed it with Mr.
18 Deters. Again, along with Ms. Rodkey.

19 Q Is Ms. Rodkey from the prosecutor's
20 office?

21 A She is.

22 Q So there was some conversation that the
23 three of you had prior to December 13th?

24 A I would say yes.

1 Q Who initiated that conversation?

1 A He did. He appeared with Mr. Deters.

2 A I really could not be certain who
3 initiated it. It was initiated. Mr. Deters and
4 Ms. Rodkey, as well as myself, were aware of the
5 action that you had brought and that created
6 looking at the entry. And it was not a secret
7 that this action was brought. It was not a
8 secret that there was an error in the entry.

2 He appeared with Mr. Deters. I believe he
3 appeared in the morning with Mr. Deters and then
4 later in the morning with Mr. Schuller (phonetic)
5 who works with Mr. Deters, if my recollection is
6 correct. There was a motion filed to withdraw
7 the plea and I believe it was -- I believe it was
8 made orally, as well as being filed with the
9 court.

9 Q That was the substance of the
10 conversation?

10 Q And based on the affidavit --

11 A Yes.

11 A First, I should say that the record was
12 unsealed. Then Mr. Deters, on behalf of his
13 client, filed a motion to withdraw the guilty
14 plea or to withdraw the plea.

12 Q So as a result of this conversation
13 that occurred before December 13th, did the three
14 of you reach an agreement about how you would
15 proceed?

15 Q Okay.

16 A Well, here is the thing, and I do not
17 want to -- actually Mr. Deters and Ms. Rodkey,
18 Mr. Deters does a whole lot of work in my court
19 and Ms. Rodkey is the prosecutor for that court.
20 It is not unusual for the three of us to have
21 many discussions during the day regarding cases.
22 This one, because of the action that you
23 initiated, you know, like I say, it seemed
24 apparent that it was not properly sealed in

16 A Then I don't recall if that -- I
17 believe Mr. Deters made an appearance with his
18 client earlier in the morning where he -- when
19 the motion to withdraw the plea had been filed
20 with the court, then I believe he may have been
21 there that morning. Then I don't know whether
22 that motion was granted at that time or we said
23 we would have a hearing on that later. I know
24 there was no objection from the prosecutor's

1 accordance with the Ohio Revised Code. Knowing
2 that the part of the plea arrangement was the
3 sealing of the record, and also knowing that I do
4 not believe that it was sealed properly because
5 of the error in the entry, I had the discussion
6 about the error in the entry, about the
7 possibility of unsealing it with Mr. Deters and
8 Ms. Rodkey. I believe it was certainly agreed
9 that if it was unsealed, that the defendant would
10 have an opportunity to withdraw his plea because
11 the deal that was struck between the prosecutor's
12 office and the defense was not going to be able
13 to be accomplished. The plea arrangement, let's
14 say.

1 office.

15 Q Okay. So as result of that discussion,
16 it was decided that the defendant would withdraw
17 his guilty plea?

2 Q Prior to --

18 A He would have the opportunity to move
19 the Court to withdraw his plea of guilty.

3 A As a matter of fact, no objection --
4 this is probably a misnomer. Not only no
5 objection, but they were not going to object.
6 They were certainly in agreement with it.

20 Q And he did so on December 13th; is that
21 correct?

7 Q Did you know prior to December 13th
8 that the prosecutor would -- or would not
9 prosecute upon the withdraw of the guilty plea?

22 A That is correct.

10 A I certainly knew that was possible.

23 Q Did he, the defendant, appear in your
24 courtroom on December 13th?

11 Q That was based on a discussion with Ms.
12 Rodkey?

13 A Ms. Rodkey and Mr. Deters.

14 Q Under what legal authority did you
15 grant the defendant's motion to withdraw his
16 plea?

17 A I could not cite the authority right
18 now. It is something that happens; I believe it
19 is my discretion, but I could not give you cite
20 of that right now.

21 Q What grounds did the defendant cite in
22 support of his motion to withdraw his plea?

23 A At this point, I do not recall. I
24 believe it was stated on the record and contained

1 in the motion. I do not recall that at this
2 time.

3 Q Okay.

4 A Again, like I say, the prosecution did
5 not object. Matter of fact, it is my belief they
6 joined in with that motion.

7 Q So, it sounds that you said that this
8 defendant appeared before you in the morning of
9 December 13th and then again in the afternoon?

10 A Late morning. And it may have been
11 afternoon. It may have been 11:35, it may have
12 been 12:05.

13 Q I understand.

14 A But it was right after the morning
15 docket we then conducted a hearing. Like I said,
16 sir, I can't remember if the hearing on the
17 motion to withdraw the plea took place earlier
18 in the morning and then proceeded later, or if
19 all of that took place later in the morning. It
20 is my understanding, as I recall, the motion was
21 filed early in the morning, but before we
22 actually had any extensive -- anything extensive
23 on the record, it was later morning to early
24 afternoon.

1 I certainly remember the day and I remember
2 conducting the hearing with the defendant there,
3 with Mr. Schuller there who works with Mr.
4 Deters, and Ms. Rodkey there for the actual
5 hearing.

6 Q Do you have an independent recollection
7 of the name of the defendant?

8 A Actually, under oath, I could not tell
9 you the young man's name at this point if I was
10 tortured.

11 Q That is why I brought Sheila. So your
12 answer is: You do not have an independent
13 recollection of the name of the defendant?

14 A I do not.

15 Q Let me ask you what you do recall about
16 the defendant, if anything?

17 A I recall in the hearing.

18 Q I am saying "he", was it a male?

19 A It was a male. What I remember about
20 him is that there was certainly concern about
21 his, say, his mental health and there were
22 grounds stated on the record for the necessity of
23 sealing the record. It had to do with his --
24 probably as I recall, more so mental well-being

1 Q If I understand Revised Code 2953.52,
2 not only would the defendant have to withdraw his
3 plea, but there has to be some acknowledgment by
4 the prosecutor of an intent not to prosecute?

5 A You are talking about 2953.52.

6 Q Right. That is what you ultimately
7 sealed the record --

8 A Right. To seal it, it has to be a
9 finding of not guilty or dismissal or
10 non-prosecution. That is 29.

11 Q So technically, that had to happen
12 before you could entertain the motion to seal the
13 record?

14 A The case -- there had to be a
15 dismissal, not guilty, Rule 29, something.
16 Something along those lines.

17 Q Right.

18 A The case had to be disposed of, let's
19 say.

20 Q Sounds to me like you have, while not a
21 photographic recollection of December 13th, you
22 recall the events of December 13th?

23 A Yeah. I will emphasize your
24 characterization: not photographic by any means.

1 than anything else.

2 Q Those were grounds for sealing the
3 record. What about the grounds for permitting
4 him to withdraw his guilty plea? What were the
5 grounds for that?

6 A Like I said, I can't quote the
7 authority. The grounds, my understanding --
8 again between the discussion of both counsel, if
9 this was not what was agreed to because the
10 sealing of the record was certainly, say, a very
11 material part of the plea arrangement. You know,
12 it was agreed between -- my understanding or how
13 it was represented to me with Mr. Deters and Ms.
14 Rodkey -- I had no conversation with Mr. Gmoser
15 -- but it would be paid out and sealed.

16 Q Is the defendant, to the best of your
17 knowledge, still enrolled at Miami University?

18 A My knowledge on this is from what I
19 read in your newspaper. It is my understanding
20 he is no longer at Miami University. I do not
21 know whether it was because of expulsion or
22 withdraw, but it is certainly my understanding he
23 is not there.

24 Q But there was no discussion about his

1 status with Mr. Deters or Ms. Rodkey or with him
2 when they appeared before you?

3 A There was nothing discussed about -- I
4 do not recall. I actually do not recall. I
5 certainly -- I was under the belief he was no
6 longer at the University. And I can't tell you
7 if I read that -- I think I probably found that
8 out first in reading it in the Enquirer and then
9 it may have been confirmed by Ms. Rodkey or Mr.
10 Deters, Mr. Schuller. I do not know and I do not
11 recall if that was part of the hearing or not.

12 Q Okay.

13 A Certainly there was nothing that lead
14 me to believe he was still a student at Miami
15 after first finding out he was no longer a
16 student.

17 Q Is there any recollection you have
18 regarding him in terms of was he -- a class year,
19 for example?

20 A I don't.

21 Q Do you know where he is from?

22 A I don't.

23 Q So, any other information about him you
24 recall?

1 Q Just one quick question: You indicated
2 this form, Exhibit 3, as one that you used in the
3 past?

4 A Yes.

5 Q And was it used in similar
6 circumstances wherein there was some sort of a
7 conviction and the record was immediately sealed?

8 A Actually, this mistakenly was used for
9 the sealing of minor misdemeanor convictions.
10 But it cited the code section that dealt with
11 dismissals or findings of not guilty.

12 Q But there were other occasions similar?

13 A This form was used for this type of
14 situation for, sorry to say, I do not know how
15 long, but probably quite a while. And it was
16 wrong. Actually, I'm not sure -- don't answer
17 something that was not asked -- the charge,
18 technically after the plea was withdrawn, the
19 charge was nolle'd. It was the prosecutor's
20 action to nolle the charge.

21 Q The prosecutor did that on the record?

22 A Did nolle the charge on the record.

23 Q That was required to thereafter seal
24 the record under that?

1 A I could not remember what he was
2 wearing. I really --

3 Q His race?

4 A As I recall, he was Caucasian.

5 Q Okay.

6 A But really, I could not tell you what
7 he wore that day. I deal literally with
8 thousands of male students a year in my court. I
9 do not remember anything remarkable about it him.

10 Q December 13th, to the best of you
11 recollection, was the only time he physically
12 appeared before you, correct?

13 A Well, let me say, if he had been in my
14 court for something else on another occasion,
15 when he did appear on the 13th, I did not
16 recognize him from ever being before me in the
17 past. That is not saying he did not have
18 something else at some other time. I do not
19 know. As far as when I saw him that day, as far
20 as I knew or remember, that is the first and only
21 time I have seen him.

22 Q Okay. Can I have a minute with Sheila
23 and then we will be right back?

24 (Whereupon a short recess was taken.)

1 A That was one of the ways to get us to
2 2953.52.

3 Q Okay. Since the case came up, have you
4 had occasion to seal any records at any
5 circumstances since we filed this case?

6 A Yes.

7 Q Post-conviction?

8 A Sorry?

9 Q After convictions?

10 A Yes. This is a college town. Record
11 sealings, you know, I would say if I do ten
12 record sealings in a week, that is not many.

13 Q Okay. But to my understanding, there
14 is a year waiting requirement; isn't there?

15 A For criminal convictions.

16 Q Felony and misdemeanor?

17 A From the conclusion of the case, it's a
18 one-year wait on a misdemeanor conviction. On a
19 felony conviction, it is a three-year wait from
20 the conclusion of the case. And that's again,
21 assuming they are eligible.

22 Q What about, and I am asking you, I
23 guess, in your capacity as a judge, is there a
24 waiting period for a minor misdemeanor?

Page 26

1 A My interpretation there is not.
 2 Q Okay.
 3 A It's conclusion of the case; that is my
 4 reading of the sealing ordinance, or sealing code
 5 section.
 6 Q Okay. So again, your interpretation is
 7 immediately upon conclusion --
 8 A Conclusion of the case.
 9 Q -- there can be a motion to seal?
 10 A That is my interpretation.
 11 Q And that has been and continues to be
 12 your practice?
 13 A That is my practice and was being done
 14 before I got there. It was the prior judge's
 15 practice. And because I believe there is a
 16 differentiation between misdemeanor and minor
 17 misdemeanor. Minor misdemeanor does not carry
 18 possibility of jail or probation.
 19 Q Okay.
 20 A Or community control, I should say.
 21 Q Okay. Your Honor, I have nothing
 22 further at this time. You have the right to
 23 review the transcript and sign it. You can waive
 24 that. That is up to you and your counsel.

Page 27

1 MR. FERGUSON: We waive.
 2 A Okay.
 3 Q Thank you. We will order.
 4 (Deposition concluded at 2:45 p.m.)
 5
 6
 7
 8 (Signature Waived.)
 9 HON. ROBERT H. LYONS
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24

Page 28

1 STATE OF OHIO)
 2) ss
 3 COUNTY OF HAMILTON)
 4 I, Jennifer L. Strothers, the
 5 undersigned, a duly qualified and commissioned
 6 notary public within and for the State of Ohio do
 7 hereby certify that before the giving of his
 8 aforesaid deposition, the said HON. ROBERT H.
 9 LYONS was first duly sworn to depose the truth,
 10 the whole truth, and nothing but the truth; that
 11 the foregoing is a deposition given at said time
 12 and place by HON. ROBERT H. LYONS; that the said
 13 deposition was taken in all respects pursuant to
 14 Notice; that said deposition was taken by me in
 15 stenotypy and transcribed by computer-aided
 16 transcription under my supervision; and that
 17 examination and signature to the transcribed
 18 deposition is hereby waived.
 19 I further certify that I am neither a
 20 relative of nor attorney for any of the parties
 21 to this cause, nor relative of nor employee of
 22 any of their counsel, and have no interest
 23 whatsoever in the result of the action.
 24

Page 29

1 IN WITNESS WHEREOF, I have hereunto set
 2 my hand and official seal of office at
 3 Cincinnati, Ohio, this _____ day of
 4 _____, 2013.
 5
 6
 7
 8
 9 _____
 10 JENNIFER L. STROTHERS
 11 Notary Public
 12 State of Ohio
 13
 14 My Commission Expires:
 15 July 10, 2015
 16
 17
 18
 19
 20
 21
 22
 23
 24

<p style="text-align: center;">A</p> <p>able 15:12 Absolutely 12:24 accomplished 15:13 acknowledgment 19:3 action 13:5 14:5,7 14:22 24:20 28:23 actual 20:4 administration 7:3 administrative 7:1 advance 11:22 affidavit 16:10 affiliated 8:6 aforsaid 28:8 afternoon 18:9,11 18:24 age 6:2 agree 7:20 12:21,24 agreed 15:8 21:9 21:12 agreement 10:14 10:16 11:22 14:14 17:6 ahead 13:7 allegedly 9:24 answer 11:8 12:18 20:12 24:16 apparent 14:24 Apparently 9:18 appear 7:18 9:6,20 11:1,9 15:23 23:15 appearance 16:17 APPEARANCES 3:1 appeared 16:1,2,3 18:8 22:2 23:12 appearing 11:11 appears 9:11 11:13 appreciate 10:20 Area 6:16 12:3 arrangement 15:2</p>	<p>15:13 21:11 asked 24:17 asking 25:22 assistant 12:2 Asst 3:11 assuming 25:21 attorney 2:16 3:11 10:14 11:21 13:15 28:20 authority 12:22 17:14,17 21:7 aware 14:4</p> <p style="text-align: center;">B</p> <p>B 5:9 back 23:23 based 10:13 16:10 17:11 behalf 3:3,9 16:12 belief 18:5 22:5 believe 10:5 12:1 15:4,8 16:2,7,7,17 16:20 17:18,24 22:14 26:15 best 21:16 23:10 bit 7:3 9:23 Box 3:12 brought 14:5,7 20:11</p> <p style="text-align: center;">C</p> <p>C 3:4 capacity 6:23 25:23 carry 26:17 case 1:7 2:7 9:4,23 13:14 19:14,18 25:3,5,17,20 26:3 26:8 cases 8:9,13 14:21 Caucasian 23:4 cause 28:21 Center 3:5 certain 14:2 certainly 15:8 17:6</p>	<p>17:10 20:1,20 21:10,22 22:5,13 certify 28:7,19 chance 12:20 characterization 19:24 charade 9:23 charades 10:23 charge 24:17,19,20 24:22 charged 10:9,10 Cincinnati 1:4 2:4 3:6 6:7 29:3 circumstances 6:11 24:6 25:5 cite 17:17,19,21 cited 24:10 Civil 2:14 4:8 class 22:18 client 16:13,18 clients 8:10 code 13:6 15:1 19:1 24:10 26:4 college 25:10 come 10:12 Commission 29:12 commissioned 28:5 community 26:20 computer-aided 28:15 concern 20:20 concluded 27:4 conclusion 25:17 25:20 26:3,7,8 conduct 13:8 conducted 18:15 conducting 20:2 confirmed 22:9 contained 17:24 continues 26:11 control 26:20 conversation 13:22 14:1,10,12 21:14 conviction 9:3 10:4</p>	<p>11:15 24:7 25:18 25:19 convictions 24:9 25:9,15 copy 7:19 correct 6:17 10:4,5 11:18 15:21,22 16:6 23:12 costs 12:10,17 counsel 4:3 21:8 26:24 28:22 COUNTY 28:3 court 1:1 2:1,19 4:10 6:16 7:2,10 10:13 11:6,10,11 12:3,10 14:18,19 15:19 16:9,20 23:8,14 courtroom 11:1 13:9 15:24 created 14:5 criminal 8:10 25:15 Cross 5:4 cross-examination 2:13 4:7 6:4 cut 9:23 12:19</p> <p style="text-align: center;">D</p> <p>D 5:1 DAN 3:11 date 11:6,6,7,12 12:14 dates 12:12 day 11:2 14:21 20:1 23:7,19 29:3 deal 15:11 23:7 dealt 24:10 December 13:7,8 13:14,23 14:13 15:20,24 17:7 18:9 19:21,22 23:10 decided 15:16 defendant 9:5,19</p>	<p>11:1,21 12:5 13:9 13:15,17 15:9,16 15:23 17:21 18:8 19:2 20:2,7,13,16 21:16 defendant's 12:22 17:15 defense 15:12 Dennis 11:20 depose 28:9 deposition 1:13 2:11 4:4,9,13 7:12 7:24 8:22 27:4 28:8,11,13,14,18 described 9:15 11:16 Deters 11:20 12:2 13:15,18 14:3,17 14:18 15:7 16:1,2 16:3,5,12,17 17:13 20:4 21:13 22:1,10 differentiation 26:16 discretion 17:19 discuss 13:14 discussed 13:17 22:3 discussion 13:16 15:5,15 17:11 21:8,24 discussions 14:21 dismissal 19:9,15 dismissals 24:11 disposed 19:18 dlferguson@butl... 3:13 docket 6:24 11:6 18:15 document 9:9 10:1 10:18 draw 18:17 duly 6:2 28:5,9</p>
--	---	--	--	--

<p style="text-align: center;">E</p> <p>E 5:1,9 earlier 12:16 16:18 18:17 early 18:21,23 eligible 25:21 emphasize 19:23 employee 28:21 Enquirer 1:5 2:5 6:7,9 22:8 enrolled 21:17 entertain 19:12 entry 9:2 10:3 11:14 14:6,8 15:5 15:6 error 13:3 14:8 15:5,6 ESQUIRE 3:4,11 events 11:15 19:22 ex 1:4 2:4 examination 4:12 28:17 examined 6:3 example 22:19 Exhibit 5:11,12,13 7:11,12,14,18,21 7:23,24 8:2,21,22 8:24 9:4,7,15,20 11:13,13 12:14 24:2 Expires 29:12 expulsion 21:21 extensive 18:22,22</p>	<p>Fifth 3:5 filed 11:7 16:6,8,13 16:19 18:21 25:5 finding 19:9 22:15 findings 24:11 fine 12:6,7,10,16 first 16:11 22:8,15 23:20 28:9 follows 6:3 foregoing 28:11 form 13:1,3,6 24:2 24:13 forth 2:15 found 22:7 frankly 13:4 further 26:22 28:19</p>	<p>28:3 hand 7:10 8:21 29:2 handle 8:9,18 handled 8:13 happen 19:11 happening 10:19 happens 17:18 Head 3:5 health 20:21 hear 6:10 hearing 13:8,11,12 16:23 18:15,16 20:2,5,17 22:11 hereinafter 2:15 hereunto 29:1 High 2:17 home 7:19 HON 27:9 28:8,12 Honor 26:21 Honorable 1:8,13 2:8,11 4:5 5:3 6:1 hours 6:22</p>	<p>jail 26:18 January 1:14 2:18 Jennifer 1:24 2:19 28:4 29:9 jgreiner@graydo... 3:7 job 6:19 JOHN 3:4 joined 18:6 judge 6:6,16 7:1 9:12 25:23 judge's 26:14 July 29:13 jump 13:7</p>	<p>longer 21:20 22:6 22:15 looking 8:14 14:6 looks 7:15 lot 12:19 14:18 Lyons 1:8,13 2:8,12 4:5 5:3 6:1,6 7:15 7:15,19,19 8:7,7 27:9 28:9,12</p>
<p style="text-align: center;">F</p> <p>facilitate 10:18 fact 12:21 17:3 18:5 far 23:19,19 father 6:11 February 6:21 felony 25:16,19 FERGUSON 3:11 27:1</p>	<p style="text-align: center;">G</p> <p>give 17:19 given 28:11 giving 28:7 Gmoser 2:17 10:14 11:20,24 21:14 go 6:13 going 6:20 10:6,24 15:12 17:5 grant 17:15 granted 16:22 Graydon 3:5 Greiner 3:4 5:5 6:5 6:6,15 9:22 grounds 17:21 20:22 21:2,3,5,7 guess 25:23 guessing 12:15 guilty 15:17,19 16:13 17:9 19:9 19:15 21:4 24:11</p>	<p style="text-align: center;">I</p> <p>identification 7:13 8:1,23 identify 7:14 8:2,24 immediately 10:16 24:7 26:7 independent 20:6 20:12 indicated 6:13 24:1 information 22:23 initiated 14:1,3,3 14:23 intent 19:4 interest 28:22 interpretation 26:1 26:6,10 involving 9:24</p>	<p style="text-align: center;">K</p> <p>kind 12:18 knew 17:10 23:20 know 9:16 11:5,7 11:18 12:12 13:2 14:23 16:21,23 17:7 21:11,21 22:10,21 23:19 24:14 25:11 knowing 15:1,3 knowledge 11:9 21:17,18</p>	<p style="text-align: center;">M</p> <p>maintain 7:6 male 20:18,19 23:8 man 9:24 11:9 man's 20:9 marked 7:9,10,12 7:24 8:22 9:12 material 21:11 matter 6:7 17:3 18:5 McLaughlin 3:17 6:8 mean 11:15 means 19:24 mental 20:21,24 Miami 10:2 21:17 21:20 22:14 Michael 2:16 minor 9:3 10:3,10 11:14 24:9 25:24 26:16,17 minute 23:22 misdeemeanor 9:3 10:3,11 11:14 24:9 25:16,18,24 26:16,17,17 misnomer 17:4 mistakenly 24:8 morning 16:3,4,18 16:21 18:8,10,14 18:18,19,21,23 motion 16:6,13,19 16:22 17:15,22 18:1,6,17,20</p>
	<p style="text-align: center;">H</p> <p>H 1:8,13 2:8,11 4:5 5:3,9 6:1 27:9 28:8,12 Hamilton 2:17 3:12</p>	<p style="text-align: center;">J</p> <p>Jack 6:6</p>	<p style="text-align: center;">L</p> <p>L 1:24 3:11 4:1 28:4 29:9 Late 18:10 lawful 6:2 lead 22:13 legal 17:14 let's 8:12 9:18 10:23 13:7 15:13 19:18 line 9:11 lines 19:16 literally 23:7 little 9:23 long 6:19 13:2 24:15</p>	

19:12 26:9 move 15:18	10:6,17,20 11:12 12:9,18 15:15 16:15 18:3 22:12 23:5,22 25:3,13 26:2,6,19,21 27:2	point 17:23 20:9 possibility 15:7 26:18 possible 17:10 posting 10:1 Post-conviction 25:7 practice 7:7 26:12 26:13,15 prefer 6:12 presence 4:11 Present 3:17 preside 9:14 presiding 7:1 Presumably 10:2 printed 7:18 prior 13:23 17:2,7 26:14 private 7:6 probably 8:17 9:8 17:4 20:24 22:7 24:15 probation 26:18 Procedure 2:14 4:8 proceed 14:15 proceeded 18:18 proceedings 9:14 9:17 properly 14:24 15:4 prosecute 17:9 19:4 Prosecuting 2:16 3:11 prosecution 18:4 prosecutor 11:20 12:2 14:19 17:8 19:4 24:21 prosecutor's 13:19 15:11 16:24 24:19 public 2:20 4:10 28:6 29:10 pursuant 2:13,14 4:7,8 28:13 p.m 1:15 2:18 27:4	P.O 3:12	14:21 22:18 rel 1:4 2:4 relative 28:20,21 remarkable 23:9 remember 18:16 20:1,1,19 23:1,9 23:20 Reported 1:23 reporter 2:19 4:10 7:10 represent 6:7 representative 6:9 represented 21:13 required 24:23 requirement 25:14 respective 4:4 respects 28:13 respondent 1:9 2:9 2:12 3:9 4:5 result 14:12 15:15 28:23 review 12:20 26:23 Revised 13:6 15:1 19:1 right 9:12 17:17,20 18:14 19:6,8,17 23:23 26:22 Robert 1:8,13 2:8 2:11 4:5 5:3 6:1 27:9 28:8,12 Rodkey 12:2 13:18 13:19 14:4,17,19 15:8 17:12,13 20:4 21:14 22:1,9 Rule 19:15 Rules 2:14 4:7
N	P	Q	R	
N 4:1 5:1 name 9:5,19 20:7,9 20:13 necessarily 11:16 necessity 20:22 neither 28:19 newspaper 21:19 nolle 24:20,22 nolle'd 24:19 non-prosecution 19:10 notary 2:19 4:10 28:6 29:10 Notice 4:8 28:14 November 9:20 11:4,5,12,16 12:5 12:11,13,16 13:13 number 9:4	P 4:1 page 5:2 7:19 paid 10:13 12:5,8 12:17 21:15 paper 7:19 part 15:2 21:11 22:11 parties 4:4 28:20 pay-out 10:11 11:10 people 8:14 period 25:24 permitting 21:3 personally 8:9 petitioner 1:6 2:6 2:12 3:3 4:6 phonetic 16:4 photographic 19:21,24 physically 23:11 place 18:17,19 28:12 play 10:22 plea 11:10 13:10 15:2,10,13,17,19 16:7,14,14,19 17:9,16,22 18:17 19:3 21:4,11 24:18 please 9:1	qualified 28:5 question 10:24 11:8 24:1 questions 12:19 quick 24:1 quite 7:2 13:4 24:15 quote 21:6	race 23:3 range 7:4 rape 10:2 reach 14:14 reached 11:21 read 21:19 22:7 reading 22:8 26:4 realized 13:5 really 14:2 23:2,6 reason 13:1 recall 16:16 17:23 18:1,20 19:22 20:15,17,24 22:4 22:4,11,24 23:4 recess 23:24 recognize 23:16 recollection 16:5 19:21 20:6,13 22:17 23:11 record 9:2,10 10:15 11:14 12:22 15:3 16:11 17:24 18:23 19:7,13 20:22,23 21:3,10 24:7,21 24:22,24 25:10,12 recording 13:12 records 8:10,14 10:21 25:4 recreate 10:21 redacted 9:5,6,19 regarding 10:2	
O			S	
O 4:1 oath 20:8 object 17:5 18:5 objection 16:24 17:3,5 Obviously 12:16 occasion 23:14 25:4 occasions 8:13 24:12 occurred 11:16 14:13 office 13:20 15:12 17:1 29:2 Offices 2:16 official 29:2 Ohio 1:1 2:1,13,17 2:20 3:6,12 4:7 13:6 15:1 28:1,6 29:3,10 Okay 7:6 8:20,20			S 4:1,1 5:9 saw 23:19 saying 20:18 23:17 Schuller 16:4 20:3 22:10 seal 8:10,14 12:22	

<p>19:8,12 24:23 25:4 26:9 29:2 sealed 10:15,15 11:11 14:24 15:4 19:7 21:15 24:7 sealing 9:2 10:3 11:14 15:3 20:23 21:2,10 24:9 26:4 26:4 sealings 25:11,12 SealMyRecordO... 8:5 SealMyRecord.c... 8:3,4 secret 14:6,8 section 12:23 13:6 24:10 26:5 seek 8:10 seen 23:21 servicing 6:8 set 2:15 29:1 Sheila 3:17 6:8 20:11 23:22 short 23:24 show 7:9,23 sign 26:23 signature 4:12 9:6 9:8,9,10,11 27:8 28:17 signed 11:7 13:5 similar 24:5,12 sir 18:16 situation 12:21 24:14 sorry 6:10 24:14 25:8 sort 11:21 24:6 sounds 7:20 11:2 18:7 19:20 speaking 9:17 spend 6:22 7:2,2 ss 28:2 stamp 9:9,11 stamped 11:7</p>	<p>State 1:4 2:4,20 28:1,6 29:10 stated 17:24 20:22 status 22:1 stenotypy 4:9 28:15 stipulated 4:3 stipulations 2:15 Street 2:17 3:6 Strothers 1:24 2:19 28:4 29:9 struck 15:11 student 22:14,16 students 23:8 substance 14:9 supervision 28:16 support 17:22 SUPREME 1:1 2:1 sure 10:24 24:16 sworn 6:2 28:9</p> <hr/> <p style="text-align: center;">T</p> <p>T 2:16 4:1,1 5:9 taken 2:12 4:6,9 23:24 28:13,14 talk 8:20 9:18 10:23 11:24 talking 12:1 19:5 technically 19:11 24:18 tell 7:17 20:8 22:6 23:6 ten 25:11 terms 22:18 testified 6:3 Thank 8:6 27:3 thing 14:16 think 6:20 9:22 22:7 Third 3:5 thousands 23:8 three 13:23 14:13 14:20 three-year 25:19 ticket 10:11</p>	<p>time 4:6 6:12 7:2,3 13:9,13 16:22 18:2 23:11,18,21 26:22 28:11 titled 9:3 tortured 20:10 town 25:10 transcribed 4:10 4:12 28:15,17 transcript 26:23 transcription 28:16 truth 28:9,10,10 trying 10:20 Tuesday 1:14 2:18 two 8:12,15,16 type 24:13</p> <hr/> <p style="text-align: center;">U</p> <p>U 4:1 ultimately 19:6 undersigned 28:5 understand 18:13 19:1 understanding 10:10,12 11:19,23 12:1,4,7 18:20 21:7,12,19,22 25:13 University 10:2 21:17,20 22:6 unsealed 15:9 16:12 unsealing 15:7 unusual 14:20 use 13:1</p> <hr/> <p style="text-align: center;">V</p> <p>varies 6:24 versus 1:7 2:7</p> <hr/> <p style="text-align: center;">W</p> <p>wait 25:18,19 waiting 25:14,24 waive 26:23 27:1 waived 4:13 27:8</p>	<p>28:18 Walnut 3:6 want 8:20 14:17 ways 25:1 wearing 23:2 website 7:16 8:3 week 6:22 7:4 25:12 well-being 20:24 went 7:17 we've 6:11 whatsoever 28:23 WHEREOF 29:1 withdraw 15:10,16 15:19 16:6,13,14 16:19 17:9,15,22 19:2 21:4,22 withdrawn 24:18 withdrew 13:10 witness 4:11 29:1 wore 23:7 work 14:18 works 12:3 16:5 20:3 wrong 13:5 24:16</p> <hr/> <p style="text-align: center;">X</p> <p>X 5:1,9</p> <hr/> <p style="text-align: center;">Y</p> <p>Yeah 7:22 19:23 year 22:18 23:8 25:14 years 6:20 8:11,12 8:15,16,18,19 young 9:24 11:9 20:9</p> <hr/> <p style="text-align: center;">1</p> <p>1 5:11 7:11,12,14 7:18,21 10 7:5 8:17 29:13 11:35 18:11 12-1924 1:7 2:7 12:05 18:12</p>	<p>13 13:7,8 13th 13:14,23 14:13 15:20,24 17:7 18:9 19:21 19:22 23:10,15 14 6:20 15 1:14 2:18 1900 3:5</p> <hr/> <p style="text-align: center;">2</p> <p>2 5:12 7:23,24 8:2 2:15 1:15 2:17 2:45 27:4 2012 9:21 13:7,8 2013 1:14 2:18 29:4 2015 29:13 29 19:10,15 2953.52 12:23 19:1 19:5 25:2</p> <hr/> <p style="text-align: center;">3</p> <p>3 5:13 8:21,22,24 9:4,7,15,20 11:13 11:13 12:14 24:2 30 7:5 315 2:17</p> <hr/> <p style="text-align: center;">4</p> <p>45012 3:12 45202 3:6</p> <hr/> <p style="text-align: center;">5</p> <p>511 3:6 513 3:7,13 515 3:12</p> <hr/> <p style="text-align: center;">6</p> <p>6 5:5 629-2734 3:7</p> <hr/> <p style="text-align: center;">7</p> <p>7 5:11,12 7th 9:20 11:4,5,12 11:17 12:5,11,13 12:16 13:13</p>
---	--	---	--	---

<hr/> <p style="text-align: center;">8</p> <hr/> <p>85:13 887-3478 3:13</p>				
---	--	--	--	--