

IN THE SUPREME COURT OF OHIO

State ex rel. DONALD CASTER	:	
	:	CASE NO. 2014-1621
Relator,	:	
	:	
vs.	:	
	:	ORIGINAL ACTION IN
CITY OF COLUMBUS, OHIO, et al.	:	MANDAMUS (Public Records)
	:	
Respondents	:	

**RELATOR'S FILING OF THE AFFIDAVITS OF
RANDY LUDLOW AND MARTIN YANT**

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In connection with the submission of evidence in this matter, Relator Donald Caster files the attached Affidavits of Randy Ludlow and Martin Yant.

Respectfully submitted,

/s/Frederick M. Gittes
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June 2015, a copy of the foregoing Relator's Filing of Affidavits was served by regular U.S. Mail upon:

Paula J. Lloyd, Assistant City Attorney, Office of Richard C. Pfeiffer, Jr., City Attorney, 77 N. Front Street, Columbus, OH 43215, Attorneys for Respondents.

/s/Frederick M. Gittes
Frederick M. Gittes (0031444)

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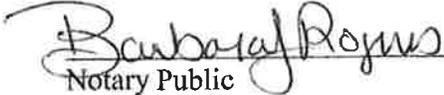
AFFIDAVIT OF RANDY LUDLOW IN SUPPORT OF
ORIGINAL WRIT OF MANDAMUS

I, Randy Ludlow, having been duly cautioned and sworn, do depose and state the following upon my personal knowledge:

1. I am a reporter for the *Columbus Dispatch*.
2. A true and accurate copy of the text of an article I authored in March 2010 is attached to this affidavit as Exhibit A.
3. The statements of fact and quotations in the article are accurate and properly attributed to the individuals who spoke to me, including Jeff Furbee, an attorney for the Columbus Division of Police.


Randy Ludlow

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, at Franklin County, Ohio this 5th day of June 2015.


Notary Public

BARBARA J. ROGERS
Notary Public State of Ohio
My Commission Expires 10-27-13



The Columbus Dispatch

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By **Randy Ludlow**

The Columbus Dispatch • Sunday March 28, 2010 11:51 PM

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Killers' police files closed -

Columbus killers will have to be executed, die in prison or freed before the public can examine police case files underlying their arrests and convictions.

A change in the Columbus Division of Police's interpretation of Ohio's public-records laws has led to a decision to not release any police investigatory documents while murderers remain in prison.

Previously, investigators, journalists and relatives of both victims and convicts were permitted - after the killer had exhausted appeals - to obtain case records and search for clues to confirm guilt or question convictions.

Public-records requests in murder cases have been used to uncover evidence and statements withheld from defense attorneys and build cases demonstrating wrongful convictions.

But the new policy forecloses the public's ability to examine the cases built by police to send murderers to Death Row or lock them up for life without parole. In most cases, decades would have to pass before records could be obtained.

"I think this is an outrageous and extreme interpretation of the law. It seems to serve no purpose other than to hide police or prosecutorial misconduct," said Columbus lawyer Fred Gittes, who has gone to court on many public-records cases.

Jeff Furbee, the legal adviser to Columbus police, said the change is not intended as a "cover-up," but rather to "close the back door for someone to get records to which they are not entitled."

Criminal defendants are not allowed to use public-records requests to obtain documents in their cases. Their attorneys must obtain records from police and prosecutors through the discovery process supervised by judges.

There are worries that friends and relatives of convicted murderers are obtaining police case records and then forwarding them to the killers and their attorneys, who are "blindsiding prosecutors" with records they were not entitled to obtain at trial, Furbee said.

"There are procedures for post-conviction relief. No one is trying to withhold these records to keep innocent people in jail," he said. "I admit it sounds harsh ... but a look at the case law shows it seems to be the appropriate response."

A state appeals court in Cleveland ruled in 2000 that police investigatory records cannot be released as public records while prisoners still might file habeas-corpus actions alleging wrongful conviction. Such appeals can be filed at any time and generally do not come until other appeals are exhausted.

Franklin County Prosecutor Ron O'Brien said he did not request a change in the records policy but recently notified the city attorney's office that he felt records in a gang-related murder case had been improperly released. The release of the records led to death threats against a witness, he said.

Martin Yant, a Columbus private investigator whose work has helped free wrongfully convicted defendants, recently wrote Mayor Michael B. Coleman to protest the change.

"This is a serious setback for anyone trying to investigate possible wrongful convictions. In my own experience, public-records requests have turned up substantial exculpatory evidence and statements never disclosed to defense lawyers," Yant said.

Gittes and Yant said Columbus' insistence that no police records will be released while murderers are in prison is a more-restrictive policy than those used by the vast majority of Ohio police agencies. Gittes fears other departments soon might follow Columbus' lead.

"How does that help anybody? This is supposed to be a free, open society. If criminal proceedings, particularly misconduct by police or prosecutors, can be hidden, then the commitment to justice is going to be lost," Gittes said.

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**AFFIDAVIT OF MARTIN YANT IN SUPPORT OF
ORIGINAL WRIT OF MANDAMUS**

I, Martin Yant, having been duly cautioned and sworn, do depose and state the following upon my personal knowledge:

1. I am a private investigator and the principal of a licensed Ohio private investigation firm, Ace Investigations.
2. A portion of my work involves investigating cases in which individuals may have been wrongfully convicted of crimes.
3. My investigative work has contributed to the reversal of over fifteen wrongful convictions, including two individuals who were originally sentenced to death.
4. At least five individuals I assisted were exonerated, and their convictions were reversed, as a direct result of my ability to obtain criminal case files held by law enforcement agencies and/or prosecutors through public records requests under Ohio Revised Code Section 149.43.
5. In 1994, the Franklin County Court of Appeals overturned the conviction of Sean Ennis, who had been convicted of rape and kidnapping in 1990. I obtained Mr. Ennis's investigative file from the Columbus Division of Police through a public records request. The file contained

the names of three witnesses who had not been disclosed to defense attorneys. The witnesses' testimony would have demonstrated important discrepancies in the victim's account, including evidence that the alleged rape occurred during a time Mr. Ennis could prove he was elsewhere.

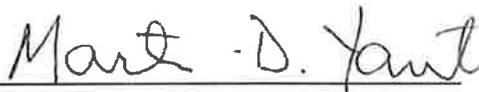
6. In 1996, a judge overturned the 1985 convictions and life sentences of Jenny Wilcox and Robert Aldridge, who were convicted of multiple counts of sexual abuse of minors. I obtained public records from the Huber Heights Police Department, including written interview summaries. The summaries, which had not been provided to defense attorneys at trial, showed, among other things, that several of the minors who were witnesses for the prosecution had been threatened and coerced by police officers after initially denying the allegations against the defendants. Through these records and the subsequent recanting of the testimony of multiple witnesses, Ms. Wilcox and Mr. Aldridge were exonerated and released.

7. In 2003, the federal Sixth Circuit Court of Appeals overturned the 1992 murder conviction and life sentence of Wyman Castleberry based on public records I obtained from the Columbus Division of Police regarding their investigation of Mr. Castleberry. The case file I obtained through public records requests revealed that the victim's dying statement included a physical description of his assailant that did not match Mr. Castleberry at all, and that other witnesses had observed men who did not match Mr. Castleberry's description walking toward the victim's apartment immediately before they heard a gunshot. The file also showed that a witness told the police that the key prosecution witness, who did match the victim's description of his assailant, had planned to rob the victim. None of this information had been provided to defense attorneys prior to my public records requests.

8. In 2005, Clarence Elkins was released from prison after being wrongfully convicted of rape and murder and sentenced to life without parole in 1999. Through public records requests, I

obtained documents from the Barberton Police Department related to the Elkins case. Among the documents I obtained was a list of physical evidence that had not been tested. Subsequent testing of some of that evidence identified the actual killer, Earl Mann, who entered a guilty plea following the release of Mr. Elkins.

9. Unfortunately, I am not always able to access the records I request. One reason is that not all police departments keep criminal files, even for major crimes such as homicide, indefinitely. In response to some public records requests I have submitted related to the cases of potentially wrongfully convicted defendants, I have been informed by Ohio law enforcement agencies that the records I have requested have been destroyed.



Martin Yant

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, at Franklin County, Ohio this 5th day of June 2015.



Notary Public



BROOKE N. JENNINGS
Notary Public, State of Ohio
My Commission Expires
November 28, 2017