

Timothy J. McGinty
CUYAHOGA COUNTY PROSECUTOR

July 9, 2015

Honorable John J. Russo
Presiding & Administrative Judge
Cuyahoga County Common Pleas Court
1200 Ontario Street, Courtroom 16-D
Cleveland, Ohio 44113

In re: 120 Years of Waiting

Dear Judge Russo,

At the June 2nd meeting of the JSR Governing Board, you stated that only five percent of the criminal cases (160) on the Cuyahoga County Common Pleas Court docket were more than one year old. I found that rate to be excessively high. I believe if our two offices partnered with the rest of the Justice System Reform agencies, we could readily achieve a goal of one percent or fewer cases reaching a year in age.

You and I may disagree on the significance of that number, but I wanted to know more about the cases you cited and why they languished so long. So I asked my staff to dig into the facts and see what we could learn, hoping that then we could work together to reduce that high number.

Through our case management system, we identified 83 cases that as of June 3rd were active¹ for at least 365 days after arraignment². That's fewer cases than you cited, so if you have a list of the cases that you were working from I would appreciate obtaining a copy. We want to compare our two lists of active cases and reach the most accurate assessment possible. Doing so will require the cooperation of your staff and the sharing of data that would be good practice for both teams.

¹ Active days exclude any days the case was inactive due to capiases, mental health evaluations, etc.

² We derived this more conservative definition of active length from the Ohio Supreme Court Rule of Superintendence 39 and the metrics from the JSR Objectives, Goals and Measures, unanimously approved on February 14, 2013. To measure the progress of cases through the full criminal justice system, it would be preferable to track active days starting at arrest.

Whatever the exact number, I think you would agree that these cases are outside the norm, as well as beyond the minimal goals set by the Ohio Supreme Court. They cost the county far too much in added jail costs. We should be working together to identify the causes of delay and to rectify as many as possible.

I believe our office already has made a significant contribution to reducing delays by drastically reducing the number of cases in which we seek the death penalty. Since the fall of 2012 when I became Prosecutor, we have added capital specifications to only five cases. That represents less than eight percent of the cases we identified as capital-eligible, a significant decrease over the prior three years when 77 percent of eligible cases received capital specifications. In the past, the large number of capital cases was often cited as a major driver of delays. Well, that issue no longer exists.

Still the fact that 83 or 160 cases have lingered more than a year should spur us to act. Our goal as a system should be to reduce these older cases to less than one percent of the total active caseload. The most important result of significantly reducing the snail-paced cases is that the defendants will have less time and opportunity to commit new crimes, harm others or intimidate witnesses if their cases are tried in a timely fashion.

Our analysis of the journal entries found that there were 300 total continuances granted in the cases that are a year older. You will note that only a small fraction of continuances came at request of the Cuyahoga County Prosecutor's Office. The vast majority came from the defense:

- The 83 cases were continued a combined 300 times through June 3, 2015
- 78 percent of those continuances (233 total) were defense continuances
- 6 percent (19) were state continuances
- 6 percent (19) were court continuances
- 10 percent (29) were not attributed to any party

Of the 34 judges, two have year-old criminal dockets in the double digits. While the average courtroom has only 2.4 cases pending more than a year, these judges have 15 and 10 cases, respectively.

The judge with the most outstanding cases has alone granted more continuances (77) on his year-old cases than the Prosecutor's Office has been granted on all year-old cases combined (19). In fact, five judges have each granted more continuances than the CCPO has been granted in totality. Those five judges' 37 defendants have spent more than 11,000 combined days in the county jail, at a cost to the County of approximately \$1.3 million (calculated at \$115/day³).

But delay has costs that are not just financial. Consider defendant Byron Harris. He was indicted on January 21, 2014 for Aggravated Vehicular Homicide. He failed to appear for arraignment and a capias was issued from the Arraignment Room on February 4, 2014. He "rescheduled" the arraignment for March 11, the capias was recalled and he posted \$10,000 bond.

³ Per Cuyahoga County cost estimate for assuming operation of jail services for City of Cleveland prisoners

After approximately 13 pretrials between March 14 and September 14, Harris was scheduled to plead on September 17. He failed to appear. On September 23, he was indicted for an Aggravated Murder committed on August 17. He failed to appear again for his arraignment and was arrested in Texas in October. He was returned to Cuyahoga County in December.

If Harris had gone to trial in a reasonable time, he might not have been free to kill in August. That case should present a significant lesson.

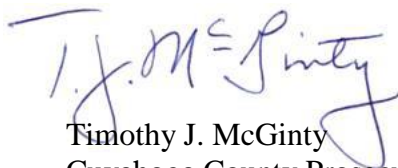
As we conducted this review, we identified cases that needed additional monitoring and internal practices that could be improved. We urge the court to do the same. By doing so, we can ensure that justice is not delayed and that neither the victims of crime nor the taxpayers are unduly burdened. As the attached list shows, 14 Common Pleas Court judges had no cases active longer than one year as of June 3rd, proving that efficient docket management is more than an ideal.

But of course, you know this first-hand. Judge, you have none of these older cases on your docket, and given your track record, I would not be surprised if you never have had a case linger that long. I doubt I ever did either. With proper management from the judge, there is seldom a good reason a case should linger for more than 12 months. Certainly, the excused cases should be less than 10 percent of the current 83 cases on our dockets.

I urge you and the rest of the Court to share data and work with us to end unnecessary delays and work toward meaningful and effective reform. Whatever part of the problem is ours, I pledge we will correct it. And we ask whatever part of it is yours, you do the same. We owe it to the public to prevent future unnecessary victims of our criminal justice system inefficiency.

While our Office and the Court obviously play different roles, we must work together to make the Criminal Justice System more effective. That has been our pledge to the taxpayers and to our county government partners since the JMI study a decade ago. I believe we can all improve our performance, and that the keys to doing so are creating and sharing measures, comparing ourselves to high-performing jurisdictions and emulating nationally accepted best practices detailed by JMI and other consultants. Let's use this issue of year-old cases to pilot that kind of cooperative problem-solving and then move on to the larger issues on our reform agenda.

Sincerely,

A handwritten signature in blue ink that reads "T.J. McGinty". The signature is written in a cursive, flowing style.

Timothy J. McGinty
Cuyahoga County Prosecutor