Advocating for Those Left Behind: The Need for Discovery Reform in Non-capital Post-conviction Cases

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On October 1, 2004, the new pre-trial discovery laws for felony criminal cases went into effect. By enacting the new discovery rules in criminal cases,[1] the North Carolina General Assembly recognized the problems of evidence being withheld in violation of *Brady v. Maryland*[2] and the prosecutorial misconduct plaguing the criminal justice system in North Carolina.

The legislature was moved to action in this area of the law not through rhetoric regarding due process and equal protection, but because, for the first time, they were presented with concrete evidence of innocent citizens being sent to death row through prosecutorial misconduct in the semblance of withheld exculpatory evidence.[3] And the reason for the discovery of this evidence was the capital post-conviction discovery statute enacted in 1996.[4]

Before 1996, defendants and their lawyers, judges, and the public were forced to rely on the presumption that prosecutors, as officers of the court, would adhere to prosecutorial ethics and constitutional mandates and disclose relevant information that could assist a defendant in a criminal case. In 1996, the General Assembly enacted N.C. Gen. Stat. § 1415(f), which specifically provides defendants sentenced to death with the complete files of all law enforcement and prosecutorial agencies, including the work product of prosecutors.[5]

The enactment of the capital post-conviction discovery statute revealed the flaws of a criminal justice system riddled with prosecutorial discovery violations and procedures that allowed the prosecutors to control the dissemination of discovery. With the enactment of the statute, the names of Charles Wayne Munsey, Jerry Lee Hamilton, Steven Mark Bishop, and recently, James Alan Gell, became known to this state as the unfortunate victims of a system of pre-trial discovery tilted against the accused.

In each of these cases, as well as numerous others, the prosecution failed to disclose evidence that would have aided these individuals in asserting their rights to due process, cross-examination, and a fair trial. Yet the prosecutorial misconduct in these cases only surfaced because each of the convicted individuals received a sentence of death. If any of the individuals in the named cases had been sentenced to life in prison without parole, the misconduct committed against them by prosecutors likely never would have come to light.

State v. James Alan Gell

The case of James Alan Gell provides the most recent and compelling example of the irony created by the current post-conviction discovery system in this state. Were it not for having received the death penalty, Gell would still reside in prison under a sentence of life without parole, and the misconduct of his prosecutors would still be a secret.

Alan Gell was indicted in Bertie County in 1995 for the shotgun murder of Allen Ray Jenkins. The indictment was based largely on accusations made by Crystal Morris and Shanna Hall, who lied to police on numerous occasions about their knowledge of the murder before finally admitting their involvement, but then implicated Alan Gell as the shooter. There was no physical evidence linking Gell to the murder, and he consistently denied any involvement after waiving his right to counsel and voluntarily talking to the police.

In the days and weeks following the murder, police interviewed 17 disinterested witnesses who reported that they saw Allen Ray Jenkins alive after April 3, 1995, the night when Hall and Morris said the murder occurred, and the last point in time when Gell could have committed it (i.e., Gell was indisputably out of the state or in custody on an unrelated felony larceny

charge from April 4 until April 17, when Jenkins' body was discovered).

Alan Gell's case went to trial in February 1998, and he was convicted and sentenced to die. Based upon the sentence of death, Gell's post-conviction attorneys were able to use the capital post-conviction discovery statute to find that the prosecutors had withheld the statements of numerous witnesses who saw Jenkins alive after the last point in time when Alan Gell could have killed him. The prosecution also withheld the tape recording and transcript of a conversation secretly recorded by the lead investigator, SBI Agent Dwight Ransome, in which the co-defendants and chief accusers, Crystal Morris and Shanna Hall, profanely discussed their involvement in Jenkins' murder, sought information from another person in the conversation about his knowledge of the ongoing criminal investigation, and conceded that they had to "make up a story" to evolve with the course of the investigation.

In December 2003, over the objection of the Attorney General's Office, the Honorable Cy Grant summarily granted Alan Gell's Motion for Appropriate Relief and ordered a new trial. He based his decision solely on the prosecution's *Brady* violation in failing to disclose the witness statements and the taped conversation, especially in light of two court orders requiring them to do so: one entered by Judge Grant himself in September 1997, and another entered by the trial judge in February 1998, after the trial had commenced.

Alan Gell's second trial began in February 2004. The withheld witness statements and the taped conversation figured prominently in the second trial. Indeed, the jury specifically requested the tape before rendering a verdict of "not guilty" after less than three hours of deliberations. Alan Gell spent nearly 10 years in prison—over five of them on death row awaiting his own execution and watching many of his fellow inmates walk to their deaths. Ironically, had Gell not received that death sentence and come so close to being wrongfully executed, he would remain in prison today, for the rest of his life, and the misconduct of the prosecution would not be known.

The Systemic Nature of Prosecutorial Misconduct and a Lesson for Non-capital Cases

The enactment of the capital post-conviction statute has given the rest of the legal world and the public a much-needed glimpse inside the inner workings of North Carolina's criminal justice system and into the questionable prosecutorial philosophies of some of those individuals chosen by popular vote to prosecute its criminal actions. The overriding factor in all of the cases in which a defendant has received some form of relief due to withheld *Brady* material is that prosecutorial misconduct has been, and continues to be, a systemic problem.

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The systemic nature of this problem in the United States is illustrated by the fact that the United States Supreme Court, which grants certiorari in only one percent of petitions filed,[6] has granted certiorari and rendered opinions in cases centering upon withheld *Brady* evidence in each decade following 1963, when *Brady* was decided.

The systemic nature of this problem in North Carolina is illustrated by the fact that since the enactment of the capital post-conviction discovery statute in 1996, seven individuals sentenced to death have received relief from the North Carolina courts because of withheld *Brady* material:

- ***State v. Womble,*** No. 93 CRS 1992-1993 (Columbus County, July 22, 1998)—new trial ordered for due process violation where State failed to disclose *Brady* material—evidence concerning victim's time of death inconsistent with evidence presented at trial.

- ***State v. Munsey,*** No. 93 CRS 4078 (Wilkes County, May 14, 1999)—new trial ordered for due process violation where State failed to disclose *Brady* material—evidence that key witness against defendant had fabricated his story.

- ***State v. Bishop,*** No. 93 CRS 20410-20423 (Guilford County, January 10, 2000)—new trial ordered for due process violation where State failed to disclose *Brady* material—evidence that key witness against defendant had fabricated his story.

- ***State v. Canady,*** 355 N.C. 242, 559 S.E.2d 762 (Robeson County, 2002)—new trial ordered because State failed to disclose *Brady* material—the name of the confidential informant who implicated persons other than the defendant in the murders.

- ***State v. Gell,*** No. 95 CRS 1884 (Bertie County, December 9, 2002)—conviction and death sentence summarily vacated where State failed to disclose *Brady* material—evidence that victim was seen alive at times such that it was impossible that defendant murdered him, and evidence of a secretly recorded conversation wherein co-defendants discussed their involvement in the murder and about having to "make up a story" to evolve with the investigation.

- ***State v. Hamilton,*** No. 95 CRS 1670 (Richmond County, April 23, 2003)—new trial ordered because State failed to disclose *Brady* material—evidence that sole witness against defendant testified in hope of receiving a deal from the State.

- ***State v. Hoffman,*** No 95 CRS 15695 (Union County, April 30, 2004)—conviction and death sentence vacated and new trial ordered because State failed to disclose *Brady* material—evidence that key State witness received a deal for his testimony.

The withholding of *Brady* material has been so pervasive within the criminal justice system that as recently as February 2004, the U.S. Supreme Court eloquently summarized the issue with the following statement in *Banks v. Dretke,* yet another case involving withheld *Brady* material:

> A rule thus declaring "prosecutor may hide, defendant must seek," is not tenable in a system constitutionally bound

to accord defendants due process. "Ordinarily we presume that public officials have properly discharged their official duties." We have several times underscored the "special role played by the American prosecutor in the search for truth in criminal trials." Courts, litigants, and juries properly anticipate that "obligations to refrain from improper methods to secure a conviction . . . plainly resting upon the prosecuting attorney, will be faithfully observed." Prosecutors' dishonest conduct or unwarranted concealment should attract no judicial approbation. The prudence of the careful prosecutor should not be discouraged.[7]

Along with the other named cases, *State v. Gell* and the resulting disciplinary proceedings against the original prosecutors in that case provide one of the clearest examples of the systemic nature of *Brady*-type prosecutorial misconduct in our state.

In the disciplinary proceeding against David Hoke and Debra Graves (the two prosecutors who obtained a death sentence against Alan Gell at his first trial), David Hoke testified in his deposition that the tape and transcript of the secretly recorded conversation of the testifying co-defendants were withheld from the defense because they represented only "impeachment material," not "exculpatory" material. Part of Hoke's deposition reads as follows:

Q: At the time, what did you believe *Brady* material to include?

A: Exculpatory material that would tend to exonerate the defendant and would point to the guilt of another. In a nutshell, that's what I believe *Brady* to encompass.

Q: You didn't believe *Brady* encompassed impeachment material?

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A: I really did not. I believed that, you know, the statements would have been available to the defense under certain motions filed in some of the cases following *Brady* and interpreting *Brady* had those types of motions under *Giglio* and other cases been filed, but no such motions had been filed.

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Q: You didn't believe that you had a duty to provide that information, regardless of whether a motion was filed or not?

A: I did not believe the information that I reviewed on the transcript qualified as *Brady* material.

Q: Did you believe that Brady material included impeachment material?

A: I did not believe that that was—my understanding of *Brady* was that it applied to exculpatory material and that there had been some discussion of *Brady* in subsequent cases, such that impeaching material was discussed, but in terms of making a *Brady* disclosure, that that would rely primarily—that would relate primarily to exculpatory material.[8]

In 1972, the United States Supreme Court specifically stated that Brady material includes impeachment material.[9] In 1976, the United States Supreme Court held that prosecutors have a pre-trial duty to disclose *Brady* material, which includes impeachment material, even without a specific or general request.[10] In 1985, the United States Supreme Court specifically rejected any distinction between impeachment evidence and exculpatory evidence for *Brady* purposes and reiterated that when the reliability of a witness may determine guilt or innocence, *Brady* requires disclosure of evidence affecting the credibility of that witness.[11]

In 1992, the North Carolina Supreme Court summarized those principles in *State v. Soyars.*[12] A year later, David Hoke was reminded of all of those principles under circumstances very similar to those he would face later in his prosecution of Alan Gell.

Another Brady *Lesson*

In 1993, with 10 years of experience as an attorney and five years of experience in the Special Prosecutions Unit of the Attorney General's Office, Hoke was one of two prosecutors involved in the first-degree

murder trial of Charles Ray Smith. Smith was charged with shooting an individual whom Smith claimed had been threatening him (Smith) with a knife shortly before the shooting.

Grady Jefferson, a prosecution witness, testified at Smith's trial that he had seen Smith get a knife from his truck during the altercation; that he had not seen the victim with a knife until after the altercation; and that he had previously seen Smith with the knife found in the victim's hand after the shooting. The obvious implication of Jefferson's testimony was that Smith planted the knife on the victim after the shooting and then lied about the victim being armed during the altercation to bolster his claim of self-defense.

However, in the hours following the shooting, Jefferson had given a statement to law enforcement about the altercation in which he did not mention seeing Smith go to his truck to get a knife during the altercation, and in which he affirmatively said he did not recognize the knife found in the victim's hand after the altercation.

The substance of Jefferson's initial statement to law enforcement in the hours following the shooting was not provided to the defense before trial or after Jefferson testified at trial, and was only inadvertently discovered by Smith's defense counsel during cross-examination of a law enforcement officer after Jefferson had testified in the State's case. Citing the pre-trial *Brady* motion and the obvious impeachment value of Jefferson's first statement, defense attorney Thomas C. Manning immediately sought relief from the court in the form of a dismissal of the charges or a mistrial.

When the trial court gave Hoke the opportunity to respond to the defense's motion, Hoke said that he was unaware of Jefferson's initial statement but that, in any event, he did not believe that impeachment material was exculpatory within the meaning of *Brady:* "This is in the nature of impeachement," Hoke responded, "not exculpatory evidence, and under *Brady*, which is all the defendant has cited to you, that deals with exculpatory evidence, Your Honor."

The trial court, Judge Howard R. Greeson, then disabused Hoke of the legal relevancy of any distinction between "exculpatory" and "impeachment" material, reading to Hoke directly from *State v. Soyars:*[13] "Defendant has a constitutional right to the disclosure of exculpatory evidence or favorable evidence. Impeachment evidence as well as exculpatory evidence falls within the *Brady* rule."[14] Later, Judge Greeson continued: "I see nothing to indicate to me that you did this purposely, willfully, or in any way to harm the defense, but as Mr. Manning pointed out, it has been done, and [*Soyars*] says you have to give it to them if it's impeachment."[15]

While Judge Greeson did not dismiss the case or grant a mistrial, he did allow a postponement of the trial for the defense team to conduct further investigation about the matter. Also, in granting the relief, Judge Greeson specifically told Hoke, "I don't know how long you will stay in the business of prosecution, Mr. Assistant Attorney General, but you will always be able to say you came within a very little bit of a first-degree murder case jerked out from under you."[16]

Although Hoke stayed in "the business of prosecution" for the Attorney General's Office, he continued for years to follow the unconstitutional practice that Judge Greeson warned him against in *State v. Smith.* Thus, the systemic nature of *Brady*- related prosecutorial misconduct is perfectly illustrated by the fact that Hoke was directly educated by Judge Greeson during a first-degree murder trial under circumstances legally indistinguishable from *State v. Gell* about the false distinction between "impeachment" and "exculpatory" evidence; nevertheless, only a few years later, he persisted in the *exact same* course of misconduct, rationalized by the *exact same* false distinction, which led to Alan Gell receiving the death sentence.

Moreover, in his 2004 deposition and testimony at the disciplinary hearing, Hoke, who is now second-in-command in North Carolina's court system and the chief legal advisor to the chief justice of the North Carolina Supreme Court, *continued,* in error, to identify a distinction between "impeachment" and "exculpatory" material for Brady disclosure purposes.[17]

And Hoke is not alone. An even greater example of the systemic nature of *Brady*-related prosecutorial misconduct is the fact that Hoke's erroneous distinction was popular among many of his fellow prosecutors in our state's top criminal prosecution unit. At the disciplinary hearing of Hoke and Graves, North Carolina's Senior Deputy Attorney General for Law Enforcement and Prosecutions at the Department of Justice, James J. Coman, testified that the false distinction operated as discovery policy at the Department of Justice for many years.[18] Testifying about that policy and the secretly taped conversation of the testifying co-defendants in *State v. Gell,* Coman had the following exchange with State Bar prosecutor David Johnson:

> **Johnson:** Was there any policy within the Attorney General's Office in regard to Brady material, specifically that impeachment material was required to be turned over?
>
> **Coman:** Well, I think you know, the standard policy would be that anything that was *Brady* material, there was no question that you should turn it over. I—I would say that it was, you know—I think it was up to the individual pros-

> ecutor to determine in their case whether or not they thought something was *Brady* material. But I would say that the prevailing view when I was there the first time, both under Judge Thornburg and Attorney General Easley and now Governor Easley, was that just because something embarrassed a witness or might be impeaching to them did not in and of itself, unless it went to being exculpatory, was not something that we had to turn over. Minus a *Hardy* motion being made. Now obviously, if after the person testifies, and the defense attorney says, "I want any materials that you've got that might allow me to," then I think absolutely you have an obligation to turn it over, and I think that was—if you went back or brought everybody in here that was handling cases in the A.G.'s office at that time, that's what the prevailing view would be.[19]

As Coman's testimony makes clear, the issue of *Brady*-related prosecutorial misconduct is not limited to a few isolated prosecutorial districts within North Carolina. Such misconduct has been a policy of the lead prosecutorial agency of this state for many years, and Coman's admission in that regard is testament to the fact that the withholding of *Brady* information in North Carolina's prosecutions has not been inadvertent or limited. Whether intentional or based on an honest but clearly erroneous belief about the law, such misconduct has been widespread.

State v. Gell and the cases mentioned at the beginning of this article involved defendants sentenced to death, all of whom received the benefit of the capital post-conviction discovery statute. But the lessons learned from capital post-conviction litigation under that statute are applicable with equal force to the pursuit of open-file discovery in non-capital cases. The cases of Munsey, Hamilton, Bishop, and Gell were death penalty cases where prosecutorial misconduct came to light. Death penalty cases are the most highly scrutinized cases within our system of justice, a fact that is not forgotten by prosecutors.[20]

Thus, in taking a further look into the criminal justice system for purposes of reform, we have to ask: If this type of discovery-related prosecutorial misconduct is occurring in the most highly scrutinized cases within the criminal justice system, then what type of misconduct has occurred in non-capital cases, where such high-level scrutiny, including the post-conviction discovery statute, does not exist?

The Current System for Non-capital Post-conviction Relief

The current statutory scheme for non-capital post-conviction relief in North Carolina is found within Article 89 of the N.C. General Statutes—N.C. Gen. Stat. § 15A-1411 through 1422—and relates primarily to a particular device for post-conviction relief known as the Motion for Appropriate Relief. There are two types of Motions for Appropriate Relief (MARs): one which must be filed after a verdict but within 10 days before the entry of judgment;[21] and one which may be filed, in non-capital cases, at any time after the verdict.[22] For purposes of this article, the writers refer to the Motion for Appropriate Relief in which there is no limitation as to time, unless otherwise specified.

For both types of MARs, there are certain circumstances and conditions that must be present in order for a defendant to file a motion under either statutory section. By passing N.C. Gen. Stat. § 1415 and providing for a post-conviction device that is unlimited as to the time for filing, the legislature recognized that under certain circumstances, there are errors at trial that are so basic to the principles of due process and fundamental fairness that one should be able to go back into court at any time, even many years after conviction, and seek relief.[23]

The withholding of *Brady* information by the prosecution is encompassed within N.C. Gen. Stat. § 1415(b)(3), which provides for appropriate relief when "[t]he conviction was obtained in violation of the Constitution of the United States or the Constitution of the State of North Carolina."

Yet, the primary difference in post-conviction MAR procedure between defendants who receive a death sentence and those who do not is the fact that capital defendants have the added benefit of N.C. Gen. Stat. § 1415(f), which provides for complete post-conviction discovery in capital cases:

> In the case of a defendant who has been convicted of a capital offense and sentenced to death, the defendant's prior trial or appellate counsel shall make available to the capital defendant's counsel their complete files relating to the case of the defendant. *The State, to the extent allowed by law, shall make available to the capital defendant's counsel the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant.* If the State has a reasonable belief that allowing inspection of any portion of the files by counsel for the capital defendant would not be in the interest of justice, the State may submit for inspection by the court those portions of the files so identified. If upon examination of the files, the court finds that the files could not assist the capital defendant in investigating, preparing, or presenting a motion for appropriate relief, the court in its discretion may allow the State to withhold that portion of the files.[24]

By enacting this procedure, the North Carolina General Assembly recognized the inherent need for complete and effective review of all the materials contained in a prosecutorial or law enforcement file to ensure that those who received the death sentence were not convicted or sentenced based on the misconduct or mistakes of the prosecution or law enforcement. In creating the capital post-conviction discovery statute, the legislature took a giant leap toward ensuring that the rights of the accused were protected and preserved—even in situations where those rights could not be asserted at the trial level due to prosecutorial misconduct.

The result of this enactment was the exposure of prosecutorial misconduct in capital cases, in the form of withheld *Brady* material, which affected some of the most basic rights held by citizens of this state. As a result of the exposure of that prosecutorial misconduct, our governor and attorney general both proclaimed publicly the need for a statutory scheme of open file discovery in criminal cases. Senator Tony Rand was instrumental in working with the Academy and the Conference of District

Attorneys to craft the new laws that are now in effect.

What is required now—a post-conviction open file statute in non-capital cases—will close the gap in discovery and ensure that **all** felony defendants, whether capital or non-capital, pre- or post-conviction, sentenced to die or to spend many years in prison, are ensured a fair trial under our criminal justice system.

As a result of the systemic nature of prosecutorial misconduct illustrated by the cases in which death row inmates received relief as a direct result of the capital post-conviction discovery statute, the time has come for the legislature to recognize the widespread nature of prosecutorial misconduct—whether "negligent" or intentional—and demand that the files of those individuals convicted of non-capital crimes be opened and examined. Non-capital defendants should be accorded the same benefit as those who have received the death penalty. ■

[1] N.C. Gen. Stat. § 903, *et. seq.*

[2] 373 U.S. 83, 10 L.Ed.2d 215, 83 S.Ct. 1194 (1963).

[3] *See,* e.g., Joseph Neff, *Justice Withheld,* Raleigh News & Observer, Nov. 2, 2003 (especially Part I: "Cheating prosecutors ruin lives, go unpunished; Law opens files for those on Death Row, but other inmates are in the dark when the state keeps vital evidence secret" <http://www.newsobserver.com/politics/misconduct> [last visited December 15, 2004]; *See also* Joseph Neff, *Time of Death,* Raleigh News & Observer (series on the case of Alan Gell) <http://www.newsobserver.com/news/crime_safety/deathrow> [last visited December 15, 2004].

[4] N.C. Gen. Stat. § 1415(f).

[5] State v. Bates, 348 N.C. 62, 505 S.E.2d 97 (1998).

[6] *See* Clerk of the United States Supreme Court, *Guide for Prospective Indigent Petitioners for Writs of Certiorari,* (October 2004) <http://www.supremecourtus.gov/casehand/guideforifpcases.pdf> [last visited December 14, 2004]. "The primary concern of the Supreme Court is not to correct errors in lower court decisions, but to decide cases presenting issues of importance beyond the particular facts and parties involved. The Court grants and hears argument in only about 1% of the cases that are filed each Term" (p.1).

[7] 540 U.S. 668, 124 S.Ct. 126, L.Ed.2d 1166 (2004) (citations omitted).

[8] Transcript of N.C. State Bar v. Hoke and Graves, at 56-57.

[9] Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).

[10] United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976).

[11] United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985); *reaffirmed* in Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

[12] 332 N.C. 47, 418 S.E.2d 480 (1992).

[13] 332 N.C. 47, 418 S.E.2d 480 (1992).

[14] Transcript of State v. Charles Ray Smith, at 326.

[15] Transcript of State v. Charles Ray Smith, at 327.

[16] Transcript of State v. Charles Ray Smith, at 324.

[17] Transcript of N.C. State Bar v. Hoke and Graves, at 57-60; transcript of Deposition of David F. Hoke, at 49-50.

[18] Transcript of N.C. State Bar v. Hoke and Graves, at 56-57.

[19] Transcript of N.C. State Bar v. Hoke and Graves, at 56-57. Incidentally, State v. Hardy, 293 N.C. 105, 235 S.E.2d 828 (1977), is a case based on then-existing *statutory* discovery obligations under the North Carolina Criminal Procedure Act. A prosecutor's duty to disclose exculpatory information to the defense under the Due Process Clause of the United States Constitution is the supreme law of the land and, under the Supremacy Clause of the Constitution, cannot be limited by any state action.

[20] California v. Ramos, 463 U.S. 992 (1983); Eddings v. Oklahoma, 455 U.S. 104 (1982).

[21] N.C. Gen. Stat. § 1414.

[22] N.C. Gen. Stat. § 1415.

[23] *See* Commentary under N.C. Gen. Stat. § 1415.

24 N.C. Gen. Stat. § 1415(f) (emphasis added).

Post-conviction Open-file Discovery: Now Is the Time

In what is becoming a more and more common occurrence, yet another death row inmate has been granted a new trial based on the state's post-conviction open-file discovery law that requires prosecutors to share helpful information with defense lawyers.

Death row inmate Jonathan Hoffman was convicted of murdering a jewelry store owner in Marshville, North Carolina, during a robbery in November 1995. The key witness against Hoffman was his cousin, Johnell Porter, who, like Hoffman, had a lengthy criminal record and, at the time, was looking at 20 to 40 years in prison.

What was not shared with defense attorneys was that Porter apparently made a deal with the district attorney and federal officials in which he would receive a substantial reduction in prison time, immunity from some state and federal charges, and reward money for testifying against his cousin.

Thus, the jury that sentenced Jonathan Hoffman to die did not have a chance to assess Porter's truthfulness given the concessions he received for his testimony—they knew nothing about the immunity deals or the reward money.

When the North Carolina General Assembly enacted the post-conviction open-file discovery statute for capital cases, they recognized the need for a complete review of all the materials in a prosecutorial or law enforcement file to ensure that those who received the death sentence were not convicted or sentenced based on the misconduct or mistakes of the prosecution or law enforcement.

The question is, if discovery-related error is occurring in the most highly scrutinized cases within the criminal justice system, what's going on in non-capital cases? The files of individuals convicted of non-capital crimes should be opened and examined. ■