



The Maryland Public Policy Institute

October 20, 2022

Mr. Charlton T. Howard III
Maryland State Prosecutor
Office of the State Prosecutor
300 East Joppa Road
Hampton Plaza, Suite 410
Towson, MD 21286-3152

Dear Mr. Howard:

I write to request that your office¹ open an investigation into possible instances of misconduct, incompetence, and mismanagement by State's Attorneys Office (SAO) for Baltimore City and its Conviction Integrity Unit (CIU) and Sentencing Review Unit (SRU).

While the CIU's mission is to 'free the innocent' by exonerating the wrongfully convicted, its flawed efforts have resulted in releasing duly convicted violent offenders (including killers) based on falsifiable claims of innocence and questionable evidence. Those decisions, as much as wrongful convictions, represent miscarriages of justice and undermine the public's faith in our criminal justice system. Further, these flawed exonerations often result in hefty (and fraudulently obtained) financial settlements from the City of Baltimore and State of Maryland, potentially amounting to tens of millions of dollars to date.

In erring toward exonerating the 'falsely innocent,' the SAO endangers the public while enriching the guilty at taxpayers' expense.

The issue is made more urgent by recent law changes in Maryland. A 2019 law grants local prosecutors broad discretion to vacate previously obtained convictions.¹ In September 2022, Baltimore City's State's Attorney Marilyn Mosby used this new power to overturn the 2000 murder conviction of Adnan Syed, despite numerous courts – including Maryland's highest court, the Court of Appeals, and the U.S. Supreme Court – rejecting Syed's repeated appeals. Another

¹ The Office of the State Prosecutor (OSP) is expressly authorized to initiate investigations pertaining to public official or employee misconduct and offenses including perjury and obstruction of justice related to that misconduct under Title 14 of the Maryland Code of Criminal Procedure. OSP can also pursue criminal charges directly if the subject of the probe is a State's Attorney or if the State's Attorney or Attorney General decline to file charges. See: <https://law.justia.com/codes/maryland/2021/criminal-procedure/title-14/>

change in 2021 allows for those with vacated convictions to receive monetary compensation if the prosecutors fail to re-file charges or win a new conviction.ⁱⁱ

These newly invested powers invite abuse for personal or political gain and thus their use requires greater oversight and outside scrutiny to maintain the public's faith in an impartial system of justice and to safeguard taxpayer money.

Background

The Baltimore City SAO established a CIU in 2012 which was “reconfigured” in 2015 by the new State's Attorney, Marilyn Mosby.ⁱⁱⁱ To date, the CIU has secured the release of at least 16 individuals – 13 of whom were exonerated under Mosby's tenure including Syed.^{iv}

Recent instances of either incompetence or impropriety have resulted in the release of two (2) convicted killers: Tony DeWitt, freed in 2015, and Jerome Johnson released in 2019. Two federal judges separately dismissed DeWitt and Johnson's litigation seeking compensation for their “wrongful” convictions. The courts found that both DeWitt and Johnson had forged documents and intimidated and/or bribed witnesses to secure their exonerations.^v

Johnson had already received \$2.3 million in state compensation prior to the federal court's finding that Johnson fabricated evidence of his innocence and had threatened a witness to recant their testimony against him.

While DeWitt's exoneration did not originate with the CIU, the SAO refused to retry the case after the judge granted the accused a new trial.^{vi} The Mosby-led SAO has refused to prosecute in numerous other cases – often those accused of murder and attempted murder in a city beset by violence. [DeWitt was himself murdered in July 2022.]

In two other cases, the city of Baltimore's attorneys identified instances of inconsistencies and outright document fabrication by exoneree plaintiffs in civil rights actions. Both lawsuits were later settled as continued litigation costs exceeded the settlement value. One of those individuals received an \$8 million settlement from the city.^{vii}

These cases raise questions that the SAO's conduct may constitute a pattern – if not a practice – of deceiving both courts and the public about the strength of exonerating evidence, its own due diligence in re-investigating these cases, and the motives for zealously pursuing such cases without clear and convincing evidence supporting exoneration or the dismissal of charges.

Under State's Attorney Mosby, the SAO has repeatedly sought out and received significant and largely positive media coverage for its work securing the freedom of the “innocent.” In addition

to producing numerous news releases and press conferences, the SAO's efforts have been featured by local as well as national media including ABC's *World News Tonight*.^{viii} In addition to assigning five prosecutors as well as additional support staff to the CIU full-time, Mosby has used taxpayer and grant funds to promote her efforts in her annual report and newsletters and via highly produced videos and graphics to highlight her "Faces of Actual Innocence" project.^{ix}

For these reasons, we ask that the Office of the Maryland Attorney General investigate the Baltimore City State's Attorney for any and all employee misconduct including negligence, incompetence, or malfeasance relating to vacating convictions, securing release, and reducing the sentences of convicted felons under the auspicious of "sentencing review" and "conviction integrity."

Questions for Consideration:

- 1) **Investigating Innocence:** What processes does the Baltimore City State's Attorneys Office (SAO) use to review these cases? How are case re-investigations handled? What is the role of the SAO staff? What third parties (i.e., defense counsel, experts, advocates, and activists) are involved and how? Do these third parties have any role in the re-investigation and if so, what does that entail? Do they have access to confidential documents, case witnesses, or evidence outside of the immediate control of SAO?
- 2) **Evidence Assessment:** What standard of evidence is applied by the SAO to pursue vacating a conviction? Does the SAO follow state and federal court precedent and law regarding the review of exculpatory evidence, *Brady* violations, ineffectiveness of counsel, or other claims of misconduct or negligence that warrant re-investigation and exoneration? What 'best practices' in assessing evidence, witness testimony, or legal wrongdoing are employed?
- 3) **Input from Involved Parties:** What consultations are made with those involved in the original conviction including witnesses, police officials, and the prosecutor of record for the conviction, if any? Are their views considered and are they presented to the court before or during hearings to approve overturning convictions or the SAO's decision on retrying the case?
- 4) **Victims' Rights:** Are victims and/or their families notified that their case is under review? If so, how are they apprised of developments in the re-investigation and court proceedings? What controls are in place to ensure the SAO is complying with Maryland's victims' rights statutes?

- 5) **Financial Accountability:** What taxpayer and outside funds and resources are used to review these exonerations and how are they allocated? Do outside organizations receive SAO funds or resources to work on these exonerations? If so, how are these organizations vetted, audited, and managed?

- 6) **Role in Settlements and Litigation:** What role does the SAO play in state settlements with the exonerated? Have any SAO funds used to compensate or provide for these individuals? If so, how and how much is spent and why? What role has the SAO played in these exonerated individuals' civil litigation against the government or private individuals? Has it expressly advocated for or negotiated any compensation on behalf of or in conjunction with plaintiffs? Does it provide its full case re-investigation files to both the plaintiff and the defense counsel and make itself available to them to answer any questions or concerns?

Victims and their families deserve justice and the people of Maryland deserve safety, accountability, and transparency.

Thank you for your attention to this urgent and troubling matter. We look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Sean Kennedy". The signature is written in a cursive, flowing style.

Sean Kennedy
Visiting Fellow

ⁱ Lea Skene, “How two new Maryland laws paved the way for Adnan Syed’s long-awaited release from prison,” *Baltimore Sun*, September 22, 2022, <https://www.baltimoresun.com/news/crime/bs-md-cr-syed-case-policies-20220925-ltjjuq2aabhsblvrrmuxa7mh6e-story.html>

ⁱⁱ Bryn Stole, “Maryland officials approve compensation for wrongly convicted Baltimore man. For others exonerated, law change will make claims easier,” *Baltimore Sun*, <https://www.baltimoresun.com/politics/bs-md-pol-exoneree-compensation-20210422-imkyp667jnhvdaihptq3ua442q-story.html>

ⁱⁱⁱ Tim Prudente, “With 12 men exonerated and a handful of new trials granted, the force behind Maryland’s Innocence Project hangs it up,” *Baltimore Sun*, June 1, 2021, <https://www.baltimoresun.com/news/crime/bs-md-cr-michele-nethercott-retires-20210601-qsklv3iabjfxxdwmueqrdf6vmi-story.html>

^{iv} National Registry of Exonerations, “Baltimore City,” University of Michigan Law School et. al., accessed October 19, 2022, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx>. NB: List does not include Adnan Syed to date.

^v Justin Fenton, “Baltimore man forged a police memo to get out of prison on murder charge, judge rules in tossing his wrongful arrest suit,” *Baltimore Sun*, March 16, 2021, <https://www.baltimoresun.com/news/crime/bs-pr-md-ci-cr-false-affidavit-exoneration-20210316-ucxznrfowfhqfnd6dvqdsutzd4-story.html>; Justin Fenton, “Man who forged document, paid witness to overturn murder conviction is Baltimore’s 200th homicide victim,” *Baltimore Banner*, July 25, 2022, <https://www.thebaltimorebanner.com/community/criminal-justice/man-who-forged-document-paid-witness-to-overturn-murder-conviction-is-baltimores-200th-homicide-victim-WVX2OJJ6CBCIBAG5IGP3G4BGEL/>; Justin Fenton, “Federal judge throws out civil lawsuit of Baltimore man exonerated of murder citing fraud,” *Baltimore Banner*, October 17, 2022,

<https://www.thebaltimorebanner.com/community/criminal-justice/federal-judge-throws-out-civil-lawsuit-of-baltimore-man-exonerated-of-murder-citing-PYEISM2DTBAKBPLRP4NMCVV7EI/>

^{vi} Justin Fenton, “Baltimore man forged a police memo to get out of prison on murder charge, judge rules in tossing his wrongful arrest suit,” *Baltimore Sun*, March 16, 2021, <https://www.baltimoresun.com/news/crime/bs-pr-md-ci-cr-false-affidavit-exoneration-20210316-ucxznrfowfhqfnd6dvqdsutzd4-story.html>

^{vii} Justin Fenton, “Federal judge throws out civil lawsuit of Baltimore man exonerated of murder citing fraud,” *Baltimore Banner*, October 17, 2022, <https://www.thebaltimorebanner.com/community/criminal-justice/federal-judge-throws-out-civil-lawsuit-of-baltimore-man-exonerated-of-murder-citing-PYEISM2DTBAKBPLRP4NMCVV7EI/>; Baltimore City Law Department, “Police Misconduct Litigation Report,” July 2022, <https://law.baltimorecity.gov/sites/default/files/20220720%20%20Police%20Misconduct%20Report.pdf>

^{viii} Ibid.

^{ix} Office of the Baltimore City’s State’s Attorney, “BCSAO Newsletters,” <https://www.stattorney.org/media-center/newsletters>; BCSAO, “Careers: Grant-Funded Conviction Integrity Program Prosecutor,” <https://www.stattorney.org/careers-training/57-open-positions/attorney-positions/2568-conviction-integrity-program-prosecutor-2>, Accessed October 19, 2022; WJZ-Baltimore, “City State's Attorney Marilyn Mosby Launches New Initiative To Share Stories Of Men Who Were Wrongfully Convicted,” September 8, 2021, <https://www.youtube.com/watch?v=6lKqb0chNu0>; CBS News, “I Spent 36 Years In Prison For A Crime I Didn't Commit': City State's Attorney Office Talks About Program That Helps To Overturn Wrongful Convictions,” September 22, 2021, <https://www.cbsnews.com/baltimore/news/i-spent-36-years-in-prison-for-a-crime-didnt-commit-city-states-attorney-office-introduces-new-program-to-help-overturn-wrongful-convictions/>; NBC News, “Maryland man freed after serving nearly 17 years for murder he didn't commit,” November 4, 2021, <https://www.nbcnews.com/news/us-news/maryland-man-freed-serving-nearly-17-years-murder-didnt-commit-rca4602>