

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

<p>LAURA HOFFMAN, <i>et al.</i>, Plaintiffs, vs. MICHAEL O'MALLEY, <i>et al.</i>, Defendants.</p>	<p>Case No. 1:18-CV-00309 Judge Christopher A. Boyko Declaration of Cory Shaffer</p>
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I, Cory Shaffer, have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto.

1. I am a reporter for Advance Ohio Media, the publisher of Cleveland.com. My basic duties involve covering newsworthy cases and issues in state courts in Northeast Ohio, including the Cuyahoga County Court of Common Pleas.
2. I am the author of the story published on Cleveland.com on February 13, 2017, titled "Prosecutors uncover dozens of uncharged juvenile cases, including rape," a true and accurate copy of which is attached to this Affidavit as **Exhibit A**.
3. My February 13, 2017 report reflects a true and accurate representation of information provided to me by the Cuyahoga County Prosecutor's Office.
4. Prior to my writing the February 13, 2017 report, in or around early February, Advance Ohio Media was contacted by the Prosecutor's Office about sexual assault cases that had allegedly been mishandled by the Office's juvenile unit.
5. On or around February 10, 2017, I was contacted by Ryan Miday of the Prosecutor's Office, who informed me that the Office had terminated three Assistant Prosecutors in connection with the

allegedly mishandled cases, and that the Office had identified as many as 1,900 sexual assault cases that were not reviewed by juvenile prosecutors.

6. On or about February 12 or February 13, I was invited to the Prosecutor's Office to participate in a meeting where Michael O'Malley, Gregory Mussman, Joanna Whinery, Jennifer Driscoll, Russ Tye, and Diane Russell spoke with me in detail about the allegedly mishandled sexual assault cases that were the subject of the report.

7. I reported in the February 13, 2017 report that Laura Hoffman and Linda Herman were two of the three prosecutors "who handled the bulk of the delayed cases," because that is specifically what Mr. O'Malley and the other members of the Office told me at the meeting referenced above.

8. Mr. O'Malley further told me at this meeting that Ms. Hoffman and Ms. Herman were specifically asked to resign due to their mishandling of these cases.

10. On February 15, 2017, I sent an email to Ryan Miday requesting that the Prosecutor's Office provide me with further information, including how many of the 76 allegedly mishandled sex-offense cases were assigned to Ms. Hoffman and Ms. Herman, how many of those cases were assigned to other prosecutors who received discipline in connection with the cases but were not forced to resign, how Mr. O'Malley "decide[d] who to force to resign and who to seek discipline against," and for the case numbers of the cases that were allegedly mishandled. A true and accurate copy of that email and the response from the Office that I received is attached as **Exhibit B**.

9. On February 22, 2017, when I had not received any substantive response from the Prosecutor's Office to my original email, I sent another email to Ryan Miday following up on my February 15, 2017 request. A true and accurate copy of my February 22, 2017 email and the response from the Office that I received is attached as **Exhibit C**.

10. On March 17, 2017, because I had still not received a substantive response from the Prosecutor's Office, I sent another email requesting that the Prosecutor's Office provide an on-the-

record response explaining why Ms. Hoffman and Ms. Herman were forced to resign if it were true that Ms. Hoffman and Ms. Herman handled only 7 of the 76 sex-offense cases. A copy of that email and the response from the Office that I received is attached as **Exhibit D**.

11. On March 21, 2017, I again emailed the Prosecutor's Office asking specifically about how many of the sex-offense cases had been assigned to Ms. Hoffman and Ms. Herman. In response, Kathleen Caffrey of the Prosecutor's Office issued a statement that Ms. Hoffman and Ms. Herman chose to resign, despite that the Prosecutor's Office had told me in our initial meeting that the Office asked them to resign. I received no response when I confronted the Office with this discrepancy. A true and accurate copy of this exchange is attached as **Exhibit E**.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on 07/02/2019



Signature of Declarant

Prosecutors uncover dozens of uncharged juvenile cases, including rape



By [Cory Shaffer, cleveland.com](#)

[Email the author](#) | [Follow on Twitter](#)

on February 13, 2017 at 9:05 PM, updated February 14, 2017 at 1:11 PM

CLEVELAND, Ohio -- Cuyahoga County Prosecutor Michael O'Malley said his office has uncovered dozens of sexual assault cases in the office's Juvenile Division that sat dormant on the desks of assistant prosecutors for months and, in some cases, years.

Three prosecutors were forced to resign last week after a team of lawyers found more than 70 rape and sexual assault cases dating back to 2014. The prosecutors failed to track the cases, and no charges were filed, O'Malley said.

Some cases included victims as young as 3 years old, suspects who had already confessed their crimes and suspects who later went on to commit more crimes, O'Malley and assistant prosecutors Joanna Whinery, Jennifer Driscoll and Gregory Mussman said Monday in an interview.

Ads by ZINC

Those prosecutors also uncovered more than 1,900 additional cases that assistant prosecutors in the juvenile division may have incorrectly categorized as "inactive" in the office's computer system since 2012. O'Malley, who took office just over a month ago, is now examining new ways to track the cases that get handled in the juvenile division.

"It's horrific," O'Malley said.

The prosecutors said their review of the cases could lead to hundreds of new charges being filed in the coming months.

O'Malley said he does not believe his predecessor, former Cuyahoga County Prosecutor Timothy McGinty, knew about the cases.

EXHIBIT A

"This has nothing to do with the previous administration, other than the fact that you have a Juvenile Chief who apparently failed in his duties as well as somebody who was in charge of that intake unit who failed in their duties," O'Malley said.

McGinty's chief of the juvenile division was Assistant Cuyahoga County Prosecutor Duane Deskins.

Last month, Cleveland Mayor Frank Jackson appointed Deskins to a newly created position in his cabinet, Chief of Prevention, Intervention and Opportunity for Youth and Young Adults.

Deskins told cleveland.com Monday night that he couldn't respond to the way the cases were handled without the details of each case, but said he was not aware of any delays or mishandling of cases while he headed the juvenile division.

He pointed out that there were two levels of supervisors underneath him who would have directly dealt with cases on a daily basis, but stood by the work the office did.

"We did an aggressive job," he said.

The revelation

The Cleveland Rape Crisis Center reached out to prosecutors during O'Malley's first week in office for updates on several sexual assault cases involving juveniles.

A victim advocate at the rape crisis center also asked Whinery for an update on approximately 15 cases. Victims had become concerned that their cases had "fallen through the cracks," Whinery said.

When Whinery, Driscoll and Mussman started looking into the cases, they found the assistant prosecutors never fully reviewed them for charges, the lawyers said.

They launched a deeper probe and uncovered more uncharged cases in the juvenile division.

Then on Jan. 26, police in University Heights asked about the October sexual assault of a high school student at Cleveland Heights High School.

An assistant juvenile prosecutor took the case shortly after the crime was reported, but no charges were filed, Mussman said. Once Mussman looked at the case file, his office found probable cause to file charges against four teenagers and took out arrest warrants later that day.

On prosecutors' desks, they found years-old police reports that had never been entered into office database that tracks cases. Other cases, Mussman said, were entered into the database but sat for 18 months with no follow-up.

The prosecutors eventually uncovered 76 cases, including 37 reported rapes and 32 reports of gross-sexual imposition, that were never fully reviewed for charges.

"Police reports and files had been submitted to the office, but there was no charging being done," O'Malley said.

The revelation shocked O'Malley's team. O'Malley was a former assistant prosecutor under Cuyahoga County Prosecutor Bill Mason, whose 10-year tenure included the accumulation of thousands of rape kits that had sat untested in Cleveland's police department. Cleveland police officials first discovered the backlog in late 2009.

The revelation led to widespread reforms. McGinty created a special task force to use DNA evidence to test the kits and clear the backlog. It led to hundreds of convictions and is considered a national model.

More cases

But O'Malley cautioned that the 76 sexual assault cases may be just a fraction of the cases that were delayed or brushed off.

The office uses computer software that will send periodic alerts to remind assistant prosecutors if their cases are still active. The software allows prosecutors to change each case from "active" to "inactive," meaning the alerts would stop popping up, O'Malley said.

From 2007 to 2012, there were 13 cases that were switched from active to inactive status, and they were all duplicates of cases that had already been created, O'Malley's office said.

But Driscoll and Mussman found that since 2012, assistant prosecutors in the juvenile division switched more than 1,900 cases to "inactive" in the software.

Driscoll started looking into the cases that had been moved to "inactive" status, and found that, while many were duplicate files, others involved rape, aggravated robbery and felonious assault reports that should have been fully investigated. Some of the reasons prosecutors gave for moving the cases to inactive included that the victim or the victim's parents didn't answer a phone call, Driscoll said.

"It pretty much amounted to a do-nothing list," O'Malley said.

The office is conducting a full audit to determine how many of the 1,900 cases were incorrectly labeled as inactive. Driscoll is working backwards and has identified 20 cases that were incorrectly switched to "inactive" status dating back to May.

O'Malley said he assumes that review will lead to hundreds of new charges being filed in the coming months.

Discipline

O'Malley last week asked three assistant prosecutors who handled the bulk of the delayed cases to resign.

Laura Hoffman, Linda Herman and Robin Belcher resigned Wednesday, Thursday and Friday, respectively, after each had a disciplinary hearing in O'Malley's office.

O'Malley disciplined four more lawyers, handing out a combination of suspensions, demotions and reassignments, according to disciplinary records.

Records cite incompetency, inefficiency and neglect of duty as reasons for the reprimands.

O'Malley said his office is still investigating the scope of the problem and he could discipline more employees in the future. But he pledged that no case will ever fall through the cracks under his tenure in office.

"We will never have a situation where we're talking about any case and any victim where this office failed them," O'Malley said.

Changes

O'Malley has installed Mussman as the head of the juvenile division, and assigned veteran prosecutor Maggie Kane to the juvenile division to help with the influx of cases.

The office is also going to work with the juvenile court to install a better tracking system for every case that gets brought to their office, whether it's initiated by a police report or a case kicked to them through municipal court.

The office has eliminated the "inactive list," Driscoll said. Cases will remain active until supervisors in the juvenile division decide to either file charges or completely close the case.

"If it takes time, it takes time," she said. "We want to do the right thing."

'Not about personalities'

O'Malley was in the running to get the job that Deskins ultimately got when McGinty took office in 2012. McGinty instead assigned

O'Malley to supervise the unit that prosecutes crimes in the southwest side of Cleveland and the surrounding suburbs.

O'Malley said his office's decision to go public with revelations had nothing to do with making McGinty or Deskins look bad.

"This isn't about personalities. This is about results," O'Malley said. "And the results for the public have been a failure in this particular case."

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Miday, Ryan <rmiday@prosecutor.cuyahogacounty.us>

Hi Cory, Got your email. I will respond. Ryan

Wed 2/15/2017, 11:41 AM



Cory Shaffer

Wed 2/15/2017 9:46 AM

To: rmiday@prosecutor.cuyahogacounty.us; kcaffrey@prosecutor.cuyahogacounty.us

Reply | v



Sent Items

Hey guys.

I have a few follow-up questions for the juvenile division story:

1. How many of the 76 sex-offense cases your office identified as needing review were assigned to each APA who was forced to resign, Laura Hoffman and **Linda** Herman?
2. What was the hire date of each of those APAs?
3. What was Robin Belcher's role in the office, and when was she first hired?
4. How many of the 76 cases were assigned to the APAs who received discipline? What are their hire dates?
5. What was Mr. Kolasinski's role? Did he know about the cases not getting entered for review, or the inactive list?
6. Can you provide the correspondence from the Rape Crisis Center advocate?
7. How did Prosecutor O'Malley decide who to force to resign and who to seek discipline against?
8. Can you provide a list of case numbers for these cases that sat dormant?

Thanks guys.

-Cory

Cory Shaffer
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EXHIBIT B

 RE: Follow up on juvenile cases



○ Miday, Ryan <rmiday@prosecutor.cuyahogacounty.us>

○ Cory Shaffer; ○ Caffrey, Kathleen

Wednesday, February 22, 2017 at 12:41 PM

[Show Details](#)

Hi Cory,

I am looking into it
Ryan

From: Cory Shaffer [<mailto:CShaffer@cleveland.com>]
Sent: Wednesday, February 22, 2017 11:56 AM
To: Miday, Ryan <rmiday@prosecutor.cuyahogacounty.us>
Subject: Re: Follow up on juvenile cases

Hey Ryan.

Doubling back on this. Any word?

Thanks.

Cory Shaffer
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EXHIBIT C



Cory Shaffer

Fri 3/17/2017 9:41 AM

To: rmiday@prosecutor.cuyahogacounty.us

Reply | v

Sent Items

Hey Ryan.

I got an email from one of the juvenile prosecutors who resigned that says that both of the APAs combined only had 7 of the 76 un-reviewed sex-crimes cases, and none of the inactive cases.

Is that accurate? If so, I need an on-the-record response from you guys explaining why they were made to resign.

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EXHIBIT D



Miday, Ryan <rmiday@prosecutor.cuyahogacounty.us>

Fri 3/17/2017 5:21 PM

To: Cory Shaffer

Reply |

Inbox

Hi Cory

Mike said:

If her admission is true, ignoring seven sexual assaults against children in the county prosecutor's office will never be acceptable.


Ryan




...



Cory Shaffer

Tue 3/21/2017 11:10 AM

To: Miday, Ryan <rmiday@prosecutor.cuyahogacounty.us> 

  Reply | 

Sent Items

Hey man.

Did you guys get the numbers of the sex-crimes cases that were assigned to Herman and Hoffman yet?

Cory Shaffer
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...

EXHIBIT E



Caffrey, Kathleen <kcaffrey@prosecutor.cuyahogacounty.us>

Tue 3/21/2017, 2:18 PM



Statement from the Cuyahoga County Prosecutor's Office:

It is Prosecutor O'Malley's belief that neglecting even one sexual assault case is unacceptable.

Our office policy is not to discuss personnel issues in the media. The work performed by these employees was clearly deficient. When confronted with that fact, they made a choice to resign.

...



Cory Shaffer

Tue 3/21/2017 3:12 PM

To: Caffrey, Kathleen <kcaffrey@prosecutor.cuyahogacounty.us> 

  Reply

Sent Items

Thanks Kathy.

But I thought Mike said during the first interviews that he asked for their resignations?

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