

Open Discovery Columns

The Plain Dealer
Cleveland, Ohio
Regina Brett, *Columnist*



COMMITTEE COMMENTARY

Writing in Cleveland's *The Plain Dealer*, metro columnist Regina Brett doggedly led a public advocacy campaign to compel prosecutors to share police reports and other evidence with defense attorneys representing those accused of crimes. This legal practice, known as "open discovery" is common in most jurisdictions in the United States but had not been required in the state of Ohio. Brett focused her attention on practices in Cuyahoga County, home to Cleveland and Ohio's largest county. She wrote powerfully about death-row inmate Joe D'Ambrosio and how prosecutors withheld key evidence in his case, evidence that might have led to a not guilty verdict. Brett addressed head-on objections to open discovery made by Cuyahoga County prosecutors, making a compelling case to the public that they were without merit. She wrote about the consequences of the lack

of open discovery, including tremendous waste of taxpayer resources to conduct unnecessary trials and, even, wrongful convictions. Drawing on considerable skills of persuasion through the written word, Brett's columns caused a groundswell in public opinion. The result was a judicial determination to support open discovery—first in Cuyahoga County, but ultimately in the entire state of Ohio. Accomplishing this represents a tangible demonstration of the power of the press. We commend Regina Brett and *The Plain Dealer* for shedding light on a complicated matter of legal procedure well out of the mainstream of public discourse and thereby enhancing public confidence in the justice system. For these reasons, the ABA is presenting the first Silver Gavel in our recently established category of Commentary for Regina Brett's columns on open discovery.



INTERVIEW with Regina Brett

Regina Brett is a metro columnist for The Plain Dealer in Cleveland.

Why are you interested in the issue of open discovery?

For years, I have been writing about open discovery and pushing for the rights of defense attorneys to see the records and evidence needed to defend their clients. To me, this was a matter of defending the U.S. Constitution that guarantees due process and the right to an attorney. What good is the right to an attorney if your attorney cannot see police reports and witness statements to prepare an adequate defense? In Cuyahoga County, the largest county in Ohio, prosecutors refuse to let defense attorneys see even basic police reports. Some prosecutors read them aloud in court. They refuse to let the defense actually see the records, leaving defense attorneys to only guess at what information might be left out.

What prompted you to write these columns?

Too often we read about people who have been incarcerated unjustly because information that could have acquitted them was withheld by prosecutors. Joe D'Ambrosio served 20 years on death row in Ohio until a federal judge confirmed that local prosecutors had withheld ten pieces of evidence that might have resulted in an acquittal. Joe is now free and waiting for a new trial.

What resources did it take to write and publish the columns?

I am grateful for the support of the Cuyahoga County Common Pleas judges who made themselves available to me every time I needed their input and insights. The local and state bar associations were of great help, as was the Ohio Association of Criminal Defense Lawyers. The greatest resource was my editor, Stuart Warner, who went to bat for me every time the local prosecutor objected to my stance on open discovery.

How do the columns foster public understanding? What was their public impact?

Newspapers still have the power to change the world. Columns carry power because of the masses who still read newspapers. Until I started writing about open discovery, most of our readers had no idea that we did not have open discovery in Ohio. They assumed it was a given. When I asked readers to support open discovery, 10,000 of them signed petitions or wrote letters supporting it. It was a tsunami of support that no one could stop. The judges in Cuyahoga County voted for open discovery in their court-

rooms, which was a victory for everyone. From there, the wave spread across Ohio. The greatest impact the columns had was this—they opened the eyes of the public and wore down the resistance of prosecutors who fought against open discovery. The Ohio Prosecuting Attorneys Association and the Ohio Association of Criminal Defense Lawyers announced in May that they have agreed on a plan for open discovery for *the entire state of Ohio*. That was my dream. I'm still pinching myself. It really happened.

What does winning the Silver Gavel Award from the ABA mean to you and your newspaper?

This is a tremendous honor for me, for my newspaper, and for all those who fought with me to get open discovery in Ohio. The Silver Gavel will serve to remind me to never give up a fight when it is justice that is at stake.

EXCERPT

Open Discovery Is Way to Justice

Prosecutor Charles Coulson isn't afraid of open discovery. He grants it in nearly every case. Coulson has been prosecuting cases for 30 years, the last 13 as a prosecutor for Lake County. If only he could persuade prosecutors across the state to share records in criminal cases.

The Sixth Amendment to the U.S. Constitution guarantees all citizens the right to effective counsel. How effective can that counsel be if defense attorneys aren't even allowed to see a basic police report?

In Ohio, prosecutors don't have to share records. In Cuyahoga County, a defense attorney won't see witness statements until after the witness has testified. How can that attorney prepare an effective defense?

Anyone who believes defendants are no-good criminals who don't deserve fair discovery is mistaken. This is America, where every defendant is supposed to be presumed innocent until proven guilty.

Prosecutors like Bill Mason in Cuyahoga County argue that they are protecting witnesses from retaliation and intimidation by not sharing records.

Coulson doesn't buy that argument. He gives everything to the defense unless it would place a witness in jeopardy, which he says is rare. Nearly every defendant already knows who the witnesses will be, he said. Plus, even without open discovery, the defense gets a list of witnesses.

Also, judges can easily redact information. Simply put, that means using a thick black marker to cover all names, phone numbers, and addresses of anyone in danger. Open discovery would also speed up court cases. When defense attorneys are given all records, time in court isn't wasted by prosecutors reading aloud from police reports they won't let the defense see.

Also, when the defense gets all the information ahead of time and sees how good a case the prosecutor has, attorneys seek plea bargains instead of pursuing long trials they know they can't win.

Attorneys in Cuyahoga County routinely complain about the long delays. In Lake County, out of 1,000 felony cases a year, only 30 to 40 go to jury trial.

Although Coulson knows that open discovery isn't popular with some prosecutors, he doesn't see any valid argument against it. Open discovery does mean a prosecutor has to work harder to prepare questions for witnesses, he said. "But that's our job," he added.

Coulson believes the job of a prosecutor is not to win cases, but to do justice. "I'm here to protect the innocent just as aggressively as I want to prosecute the guilty," he said. "We have an ethical duty. We are ministers of justice. Our job is to do justice."

Why do some prosecutors oppose it?

"I don't know. You have to be afraid of something. I'm certainly never afraid of the truth," he said. He brought up the Joe D'Ambrosio case. D'Ambrosio has been on death row for 20 years. Two appeals courts have ruled he should be set free or get a new trial.

Prosecutors in Cuyahoga County withheld 10 pieces of evidence that probably would have led to a different verdict.

"Why would you do that?" he asked. "What are they afraid of, the truth? If you're afraid of the truth, get out of the prosecution business."

Good advice for anyone afraid of open discovery.



To read the columns, go to www.cleveland.com/brett/ and click on the "Open Discovery" columns on the left navigation.