



for the **RECORD**

NEWS FOR THE OHIO COURTS

Boundaries in Law and Science

News of the moment is dominated by an inquiry into the need for the imposition of guardrails or boundaries on the development of artificial intelligence. In many ways there is a striking similarity to the debates that occurred two hundred fifty years ago regarding the formation of our national government. Then and now, recognized leaders of towering intellect and passionate beliefs debate great unknowns.

Liberty without chaos is the common goal in both governance and scientific discovery. As judges you play a critical role in applying the constitutional, legislative, and common law boundaries that have developed over time to provide societal order. The wisdom of those boundaries continues to be tested by the Executive and Legislative branches of our government, but the final call rests with the Judiciary, an awesome responsibility.

Scientific discovery is the natural evolution of human inquiry for which the development of effective boundaries is improbable and unwise. Current debate on guardrails for the developers of products related to artificial intelligence is coming squarely back to the judiciary - tort liability for releasing products that cause harm. What could possibly go wrong?

It is now October, have some pumpkin pie with a dollop of ice cream, go for a walk every day to fully enjoy Ohio's beauty as the colors change. Be well!

Paul
419-563-4966
paul.pfeifer@sc.ohio.gov

The Forgotten 30,000: Why Congress Must Include State Judges in the Protect Our Prosecutors and Judges Act

By Judge Eugene A. Lucci

Judge Lucci serves on the Ohio Eleventh District Court of Appeals, is a member of the Court Security Committee of the American Judges Association and the Council of Chief Judges of the State Courts of Appeal, and has instructed on court and judicial security for the National Center for State Courts, the American Judges Association, and the Ohio Judicial College. He began his career as a peace officer in 1975 and served thirteen years as a police officer and sheriff's detective, practiced law for over twenty years, and has served for the last 26 years on the Ohio trial and appellate benches.

Introduction

On January 18, 2026, Tippecanoe County Superior Court Judge Steven Meyer and his wife answered a knock at their front door in Lafayette, Indiana. A man claiming to be looking for his dog stood outside. When Judge Meyer responded through the closed door, the man fired multiple shotgun blasts through it, striking both the judge and his wife. Both survived, but only barely.¹

Five individuals have been arrested. The alleged mastermind, Thomas Moss, is a high-ranking member of the Phantom Motorcycle Club with ties to the Vice Lords street gang. He was scheduled to appear before Judge Meyer for trial just two days after the shooting. Prosecutors allege this was a coordinated gang conspiracy to assassinate the sitting judge.²

The Meyer shooting was not an isolated incident. In 2017, our colleague Judge Joseph Bruzzese of the Jefferson County Common Pleas Court was ambushed outside the courthouse in Steubenville by a litigant who had waited in his car for nearly an hour. The attacker shot Judge Bruzzese multiple times at point-blank range. But Judge Bruzzese was armed—he drew his weapon and returned fire, as did a probation officer nearby. The attacker was killed; Judge Bruzzese survived and returned to the bench weeks later.³ As Jefferson County Sheriff Fred Abdalla said afterward: “If there wasn’t a probation officer, this gentleman would have kept shooting until he killed the judge.”⁴

In 2023, Maryland Circuit Court Judge Andrew Wilkinson was murdered outside his home by a defendant in a custody case—hours after the judge had ruled against him. In 2022, retired Wisconsin Circuit Court Judge John Roemer was murdered in his home by a man he had sentenced years earlier. The killer zip-tied him to a chair before executing him.⁵

Against this backdrop, Congress is considering legislation that would extend self-defense protections to prosecutors and judges—but inexplicably excludes the more than 30,000 state court judges who handle 98% of the nation’s cases. Senate Bill 2993, the Protect Our Prosecutors and Judges Act of 2025, would amend the Law Enforcement Officers Safety Act (LEOSA) to authorize concealed carry for qualified state and federal prosecutors and qualified federal judges.⁶ State judges—including Ohio’s 722 judges—are deliberately left out.

The Law Enforcement Officers Safety Act

LEOSA, codified at 18 U.S.C. §§ 926B and 926C, was enacted in 2004 to address a practical problem: law enforcement officers who traveled across state lines faced inconsistent firearms laws that could render them unable to carry concealed weapons for self-defense outside their home jurisdictions.⁷

Congress recognized that law enforcement officers face ongoing personal risk due to their professional duties—risk that does not stop at jurisdictional boundaries or the cessation of the officer’s active-duty status. An officer who arrested a dangerous criminal in Ohio might encounter that criminal’s associates while vacationing in Florida. The officer’s need for self-defense did not disappear simply because they crossed a state line, but their legal authority to carry a concealed weapon might.

LEOSA solved this problem by creating a federal floor: qualified law enforcement officers and qualified retired law enforcement officers who meet specified criteria may carry concealed firearms in any state, notwithstanding state or local laws that would otherwise prohibit such carry. The statute does not require states to issue permits or licenses; it operates as a direct federal authorization.

The logic is straightforward: certain individuals face heightened personal risk as a direct consequence of their professional roles. That risk follows them wherever they go, and even after retirement. They should have the legal authority to defend themselves regardless of where they happen to be.

The Gap in S. 2993

S. 2993 would extend LEOSA’s protections to prosecutors and federal judges. The bill defines “qualified prosecutor” as an employee of “the Federal Government or a State or unit of local government” who prosecutes criminal offenses.⁸ This is deliberately expansive: it covers federal, state, and local prosecutors—including part-time assistant prosecutors.

But the bill defines “qualified Federal judge” as an individual “serving in a position as a judge that is established under article I, III, or IV of the Constitution of the United States.”⁹ By its express terms, this excludes every state court judge.

The internal logic is incoherent. If prosecution creates risk regardless of jurisdictional level—and the bill assumes it does by covering all prosecutors—then adjudication does too. A state trial judge sentencing a violent offender faces the same risk as a federal district judge doing the same. The threat follows the function, not the jurisdictional level.

The absurdity is stark: a part-time county assistant prosecutor handling traffic cases would receive LEOSA protection; the state trial judge presiding over capital murder cases would not. In the Meyer case itself, the local prosecutors pursuing charges against the gang members would be protected; Judge Meyer, the intended victim, would not.

The Numbers

The federal judiciary comprises approximately 1,800 judicial officers. There are more than 30,000 state court judges presiding over 98% of all cases—some 70 million filings annually, compared to fewer than one million in federal courts.¹⁰ State judges outnumber federal judges 17 to one; state filings exceed federal filings 77 to one. Each state judge handles, on average, four to five times as many cases as each federal judge.

S. 2993 would protect the 1,800 while leaving the 30,000 exposed.

Why State Judges Face Greater Risk

State trial courts handle the cases most likely to generate personal vendettas: criminal sentencings, domestic violence protection orders, child custody disputes, terminations of parental rights. These place judges face-to-face with defendants who know exactly who is responsible for their fate.

Federal judges have the United States Marshals Service. Most state judges have no equivalent—court security typically ends at the courthouse door. State judges are on their own during their commutes, at their homes, at the grocery store, at their children's schools, or on a family trip.

State judges—especially in smaller jurisdictions—are known community members. Their addresses may be easily discoverable through property records, voter registration, or simple local knowledge. Judge Meyer was found at his home in Lafayette, Indiana—population 70,000. Judge Bruzzese was ambushed outside the courthouse in Steubenville. These were not sophisticated intelligence operations; they were simple acts of locating people who live in communities where they are known.

In Ohio and most other states, judges are elected. They must campaign—attending public events, knocking on doors, walking in parades, appearing at candidate forums, shaking hands at county fairs. Federal judges, appointed for life, face no such exposure. The campaign trail increases not only the judge's visibility but also the opportunity for those who harbor grievances to locate and confront them. A judge walking a parade route or greeting voters at a festival is uniquely vulnerable.

The Threat Data

The U.S. Marshals Service reported that threats against federal judges more than doubled in four years, from 224 cases in 2021 to 564 in 2025.¹¹ These numbers are tracked because there is a centralized system for tracking them.

There is no equivalent national system for state judges. Late last year, the Department of Homeland Security issued a nationwide alert warning that harassment of judges has surged and the trend is likely to continue.¹²

A New York Times investigation in April 2026 identified thousands of threats targeting state judges in the past three years, among more than 14,000 broader security incidents involving state courts across the country. An analysis of 15 states revealed threats climbing in all but two.¹³

More than 150 of 214 Indiana judges responding to a 2023 security survey reported receiving threats. According to the Wisconsin Supreme Court, 188 threats were recorded in 2024—114 of which were direct threats of physical harm or death.¹⁴

Perhaps most striking: a 2024 randomized national survey of state judges published in Court Review found that more than half of the 398 respondents reported receiving threats of harm. Nearly a third reported carrying a gun for protection since taking the bench. And half reported receiving less than a day of official security training.¹⁵

Judicial Security and Judicial Independence

The case for including state judges in S. 2993 is not merely about personal safety. It is about judicial independence and the rule of law.

As the National Center for State Courts observed following the Meyer shooting: “The increase in attacks against the judiciary, however, has become an existential threat to the rule of law.”¹⁶

Chief Justice Loretta Rush of the Indiana Supreme Court, who has herself been subjected to threats of vehicle sabotage, bomb scares, and graphic threats to burn her alive, put it plainly: “The idea of shooting a judge because of the role they have fundamentally affects what it means to live in a free society.”¹⁷

Consider a judge presiding over a gang prosecution after the Meyer shooting. The evidence is clear; the law requires a substantial sentence. But the judge knows what happened to Judge Meyer—shot through his front door because he was scheduled to preside over a gang member’s trial. The judge has a family.

The courageous judge sentences according to law. But even the courageous judge may experience that moment of hesitation, that involuntary calculation of personal risk. And the judge who must consciously overcome fear to do their duty is a judge whose independence has already been compromised, even if they ultimately rule correctly.

We should not design a system that requires heroism. We should design a system where ordinary conscientiousness is sufficient.

As Texas State District Judge Julie Kocurek—who survived a 2015 assassination attempt in her driveway by a man with a pending case in her court—has observed: “These threats affect the independence of our judiciary and people’s willingness to serve.”¹⁸

Judge Bruzzese is alive today because he was prepared. When ambushed at point-blank range, he did not wait for help that might have arrived too late; he drew his weapon and fought back.

The Amendment Required

The fix is straightforward. S. 2993 should be amended to add parallel definitions for “qualified State judge” and “qualified retired State judge” that mirror the bill’s provisions for federal judges.

A state judge definition would require that the individual: (1) is serving in a position as a judge of a state constitutional court or court of record; (2) is not the subject of a pending disciplinary proceeding that could result in removal from office; (3) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and (4) is not prohibited by federal law from receiving a firearm.

Additionally, state judges would need to present photographic identification establishing judicial status and a certification that they have met qualifying firearms standards—either those established by the state or, if none exist, standards set by a law enforcement agency within that state.¹⁹

This amendment would not create a new principle; it would apply the bill’s existing principle consistently. If prosecutors at all levels deserve LEOSA protection, and if federal judges deserve LEOSA protection, then state judges—who face comparable or greater threats with fewer institutional resources—deserve it too.

Conclusion

I have spent more than fifty years in the justice system—as a peace officer, as an attorney, and as a judge. I have been the object of countless threats, including at least two that resulted in felony prosecutions and convictions. I have presided over cases involving the intended bombing of a judge and his family and the murder-for-hire of another judge. A judicial colleague of mine was shot multiple times walking from his car to the courthouse; he and another returned fire, killing the assailant. I have received death threats from across the country after controversial decisions—one involving COVID-19 restrictions, another after a viral sentencing video attracted over seven million views.

I know what it means to look out for myself and my family, to take every precaution, because “the police are minutes away when seconds count.” As a retired police officer, I can attest to that.

How much more can our state judiciary take before it affects—or could appear to affect—judicial decisions? Before it discourages qualified individuals from aspiring to the bench?

The exclusion of state judges from S. 2993 is not merely an oversight—it is an injustice. It tells 30,000 state judges that Congress considers their security less worthy of protection than that of their federal counterparts—that state judges’ lives do not matter. It tells the judges who handle the most dangerous cases that they are on their own.

Congress should correct this before it is too late. The next knock on a judge’s door may come from someone who is not looking for a dog.

The views expressed in this article are the author's own and do not represent the official positions of the Ohio Eleventh District Court of Appeals, the American Judges Association, the Ohio Judicial Conference, or any other organization.

¹ Indiana Judge, Wife Shot Through Front Door; 5 Arrested in Gang Conspiracy, Wash. Post, Jan. 20, 2026, <https://www.washingtonpost.com/nation/2026/01/20/judge-steve-meyer-indiana/> (last accessed 7/28/2026).

² 5 Charged in Connection with Shooting of Indiana Judge, ABC News, Jan. 24, 2026, <https://abcnews.go.com/US/5-charged-connection-shooting-indiana-judge-including-man/story?id=129497468> (last accessed 7/28/2026).

³ Ohio Judge Shot in Ambush Outside Courthouse, Returns Fire at Attacker, Wash. Post, Aug. 21, 2017, <https://www.washingtonpost.com/news/post-nation/wp/2017/08/21/ohio-judge-shot-in-ambush-outside-courthouse-returns-fire-at-attacker/> (last accessed 7/28/2026).

⁴ *Id.*

⁵ Maryland Judge Killed by Suspect in Divorce Case, CBS News, Oct. 20, 2023, <https://www.cbsnews.com/news/judge-andrew-wilkinson-shot-to-death-driveway-hagerstown-maryland-home/> (last accessed 7/28/2026); Former Wisconsin Judge Killed in Targeted Attack, Wash. Post, June 5, 2022, <https://www.washingtonpost.com/nation/2022/06/04/wisconsin-judge-killed-targeted-roemer-uhde/> (last accessed 7/28/2026).

⁶ Protect Our Prosecutors and Judges Act of 2025, S. 2993, 119th Cong. (2025), <https://www.congress.gov/bill/119th-congress/senate-bill/2993> (last accessed 7/28/2026).

⁷ Law Enforcement Officers Safety Act of 2004, Pub. L. No. 108-277, 118 Stat. 865 (codified at 18 U.S.C. §§ 926B–926C), <https://www.law.cornell.edu/uscode/text/18/926B> (last accessed 7/28/2026).

⁸ S. 2993 § 2(a)(1).

⁹ S. 2993 § 2(b)(1).

¹⁰ Admin. Off. of the U.S. Courts, Judicial Business 2024, <https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2024> (last accessed 7/28/2026); Nat'l Ctr. for State Courts, <https://www.ncsc.org/about-us> (last accessed 7/28/2026).

¹¹ Katie J.M. Baker, State Judges Turn to Guns in New Era of Judicial Threats, N.Y. Times, Apr. 10, 2026, <https://www.nytimes.com/2026/04/10/us/state-judges-threats.html> (last accessed 7/28/2026) (citing U.S. Marshals Service data showing threats against federal judges more than doubled from 224 cases in 2021 to 564 in 2025).

¹² Baker, *supra* note 11 (citing Department of Homeland Security nationwide alert to law enforcement agencies issued late 2025).

¹³ *Id.* The Times requested data from all 50 states; an analysis of 15 states that provided specific data revealed threats climbing in all but two. In Texas, court-security-related incidents jumped from 447 in 2023 to 2,129 in 2025. In New York, judicial security investigations more than doubled from 204 cases in 2020 to 514 in 2024.

¹⁴ Indiana Office of Judicial Admin., 2023 Judicial Security Survey, <https://www.in.gov/courts/news/2026/0123> (last accessed 7/28/2026); Man Accused of Stalking a Wisconsin Supreme Court Justice Gets Probation in a Plea Deal, Associated Press, Jan. 6, 2026, <https://apnews.com/article/wisconsin-supreme-court-stalking-probation-karofsky-6bc5e2dc5c0c616f22843eb06ab41481> (last accessed 7/28/2026).

¹⁵ Baker, *supra* note 11 (citing 2024 randomized national survey published in Court Review, the quarterly journal of the American Judges Association).

¹⁶ National Center for State Courts, Latest Attack on State Judge Another Reminder That Congress Should Act, Jan. 28, 2026, <https://www.ncsc.org/news/latest-attack-state-judge-another-reminder-congress-should-act> (last accessed 7/28/2026).

¹⁷ Baker, *supra* note 11 (quoting Chief Justice Loretta Rush of the Indiana Supreme Court).

¹⁸ *Id.* (quoting Texas State District Judge Julie Kocurek, who survived a 2015 assassination attempt in her driveway by a man with a pending case in her court).

¹⁹ Congress's decision to explicitly include prosecutors and judges in S. 2993 does not necessarily mean they are excluded under current law. A case can be made that judges already qualify under LEOSA's existing definitions. See Eugene A. Lucci, Judicial Arrest Authority and LEOSA: A Case for Inclusion of Judges Under Federal Concealed Carry Protections, For the Record (Ohio Jud. Conf.), Second Quarter 2025. Explicit inclusion in S. 2993, however, would remove any doubt and provide the clarity that state judges deserve.

An Adventure in Criminal Procedure:
Finding the origin of Bills of Particulars and
how the law can be obscured by precedent

By Judge Matthew L. Reger

A few years ago, I was presented with a conundrum in the form of a legal question I had previously answered. I was tempted to cut and paste my previous decision on the proposed question, but I had learned a few things from my previous confrontation with this question, and I thought it demanded further inquiry. The question posed to me was in the context of a demand for a bill of particulars.

The Ohio Rules of Criminal Procedure provide a clear statement on bill of particulars under Criminal Rule 7(E) and the prosecution's mandatory requirement to provide such a statement. But in some jurisdictions that mandatory requirement was amended through case law to create an exception when open file discovery was provided.ⁱ Under the holding in several districts if a prosecutor provided open file discovery the prosecutor was under no obligation to provide a bill of particulars.

Following the precedent in my district, when a defendant asked for a bill of particulars in a unique case involving the alleged abduction of grandchildren by their grandfather, after the death of their mother, I issued a standard order denying the request. The request wanted specificity in the means of abduction. This became an issue in the trial and ultimately in the Ohio Supreme Court's decision vacating Defendant's conviction.ⁱⁱ

While that case was pending in the Ohio Supreme Court and after watching oral arguments in the same case, I was presented with a demand for a bill of particulars in another case. This time, though, I wanted to know more about bills of particulars, why the rule required the prosecution's compliance with the request, and how an exception was created by courts of appeals in several districts in Ohio. In doing that research I learned a great deal about the creation and development of bills of particulars that continue to inform me as I address these issues in my criminal cases.

The source of the rule that open file discovery excuses a prosecutor from preparing a bill of particulars finds its origin in *State v. Halleck*, a Fourth District decision.ⁱⁱⁱ In tracing all the decisions that have stated this rule, the *Halleck* case appears at the end of the trail. In *Halleck*, the appellate court was faced with assignments of error claiming that the trial court erred in refusing

to grant an amended or supplemental bill of particulars and refusing to sustain a demurrer made by the defendant to an amended bill of particulars.^{iv} In methodically addressing this assignment of error the court first provided the following:

In the first instance, an application for a bill of particulars is addressed to the sound discretion of the court. *Wong Tai v. United States*, 273 U.S. 77, 47 S.Ct. 300, 71 L.Ed. 545. The purpose of a bill of particulars is to inform a defendant of the nature of the charge against him with sufficient precision to enable him to prepare for trial, to prevent surprise, or to plead his acquittal or conviction in bar of another prosecution for the same offense. However, it is not the function of a bill of particulars to enable a defendant to obtain access to evidentiary matters. *Stumbo v. United States*, 6 Cir., 90 F.2d 828, 833, certiorari denied, 302 U.S. 755, 58 S.Ct. 282, 82 L.Ed. 584. Nor will such a bill be ordered where the information sought is within the knowledge of the defendant or is information which he has equal opportunity with the state of Ohio to discover.^v

Continuing to rely upon established precedent to mark its path to the final decision in the case the Halleck court quoted from the following cases:

In *Foutty v. Maxwell*, 174 Ohio St. 35, 38, 186 N.E.2d 623, 626, the court said: ‘The basic purpose of the bill of particulars is not to reveal the state's evidence but simply to state specifically the nature of the offense charged. * * *’

In *State v. DeRichter*, 145 Ohio St. 552, at page 556, 62 N.E.2d 332, at page 335, in the course of the opinion, it is said: ‘Hence, it is clear that the purpose of a bill of particulars is not to disclose the state's evidence but simply to state specifically the nature of the offense charged. When this is stated in the indictment the accused is entitled to no bill of particulars * * *.’

In *Boynton v. Sacks*, 173 Ohio St. 526, 529, 184 N.E.2d 377, 380, the court said: ‘The purpose of an indictment is to inform the accused of the nature of the offense with which he is charged. *Holt v. State*, 107 Ohio St. 307, 140 N.E. 349. If the indictment does this then the court does not abuse its discretion in failing to order a bill of particulars.’^{vi vii}

Based upon this precedent the *Halleck* court concluded that “[i]n the light of the above authority we cannot say that it affirmatively appears from the record that the accused was prejudiced by error or prevented from having a fair trial.” *Halleck* at 78, citing *State v. Petro*, 148 Ohio St. 473, 76 N.E.2d 355. The conclusion that the *Halleck* court arrived at was relied upon by many courts of appeals for many years establishing the precedent that the provision of a bill of particulars is within sound discretion of the trial court.^{viii} The problem with *Halleck* is that it began with an

incorrect proposition of law that a bill of particulars is discretionary and relied upon case law that predated the adoption of the short form indictment.

The provision of a bill of particulars has been a requirement since the adoption of the short form indictment on July 21, 1929.^{ix} Prior to the 1929 amendments to the criminal code there was no provision for a bill of particulars, either in statute or common law.^x In the pre-short form era an indictment sufficed because the Supreme Court had long held that “an indictment must contain a complete description of the offense charged, and that it must state every circumstance of an intention, knowledge, or action that constitutes a crime”.^{xi} When the new form of indictment was adopted it included the following statutory provision:

‘Provided, that the prosecuting attorney, if seasonably requested by the defendant, or upon order of the court, shall furnish a bill of particulars setting up specifically the nature of the offense charged’^{xii}

This provision in the general code as it related to the Ohio Constitution was ably explained by the Ohio Supreme Court in *State v. Petro*, 148 Ohio St. 473:

In 2 Bishop on Criminal Procedure (2 Ed.), Section 643, it is said: ‘An indictment which the court cannot pronounce ill may still omit details of which the defendant is justly entitled before trial.’

This is particularly true of an indictment in short form. To insure compliance with the terms of Section 10, Article I of the Ohio Constitution, the General Assembly in the same legislation authorizing the short form of indictment passed the provision whereby the prosecuting attorney, if seasonably requested, is required to furnish a bill of particulars setting forth more fully the details of the offense charged. However, this provision does not require the prosecuting attorney to disclose the evidence by which he expects to prove the offense.^{xiii}

The provision in Section 10, Article I of the Ohio Constitution that the court in *Petro* referenced provided, in relevant part, that a defendant is entitled to an indictment by grand jury and to “demand the nature and cause of the accusation against him”.^{xiv} Referencing Corpus Juris Secundum, the *Petro* court provided an elucidation on the purpose of the bill of particulars where a short form indictment is used:

‘[The] purpose of bill where short form is used is fully to protect accused, who has been indicted under such form, in his constitutional right to be informed of the nature and cause of the accusation against him, and for this reason, the provision as to a bill of particulars, where a short form of indictment is used, should be liberally interpreted.’^{xv}

Considering the history of the short form indictment and the adoption of the provision for bills of particulars it was apparent to me that the bill of particulars was meant to be a prophylactic statutory protection for Section 10, Article I of the Ohio Constitution when the legislature adopted the short form indictment in 1929. Like all prophylactic measures the provision is not a right in and of itself protected by the Ohio or United States Constitutions, but a measure to ensure the right to know the nature and cause of an accusation, as required under Section 10, Article I, is protected.^{xvi} The Ohio Supreme Court said as much in the 1933 decision in *State v. Whitmore*: “[The] provision for a bill of particulars is purely procedural” providing a “benefit of the accused” to protect constitutional rights under the Ohio and United States Constitutions..^{xvii}

Since the adoption of the short form indictment and the inclusion of a bill of particulars requirement in the 1929 legislation the requirement for a bill of particulars has remained a part of criminal procedure. Today that is enshrined in Ohio Criminal Rule 7(E), which provides in pertinent part the following:

When the defendant makes a written request within twenty-one days after arraignment but not later than seven days before trial, or upon court order, the prosecuting attorney shall furnish the defendant with a bill of particulars setting up specifically the nature of the offense charge and of the conduct of the defendant alleged to constitute the offense. A bill of particulars may be amended at any time subject to such conditions as justice requires.

An indictment provides notice of charges and is constitutionally sufficient if it: (1) contains the elements of the offenses; (2) give the defendant adequate notice of the charges; and (3) protects the defendant against double jeopardy.^{xviii} The bill of particulars is meant to provide the accused an explanation of what the charges in the indictment are and what conduct constituted the act or acts alleged in the indictment.^{xix}

The *Halleck* decision began with an incorrect premise based upon federal precedent that the provision of a bill of particulars was discretionary. It further built its decision upon case law decided prior to the enactment of the short form indictment and the provision for mandatory bill of particulars. As such all subsequent decisions applying *Halleck* sought to determine if the defendant was prejudiced by not being provided a bill of particulars, instead of determining if a mandatory procedural requirement protecting a constitutional right was complied with by the State of Ohio. Part of the reason for this application of the *Halleck* precedent was the conclusion by that court about bills of particulars:

Hence it is clear that the purpose of a bill of particulars is not to disclose the state's evidence but simply to state specifically the nature of the offense charged. When this is stated in the indictment the accused is entitled to no bill of particulars.^{xx}

This conclusion ignores the history of the short form indictment and the statutorily created protections of the bill of particulars. But still the question remains as to what the purpose of the bill of particulars is within our current world where the rules of criminal procedure exist, and so-called open file discovery is provided under Criminal Rule 16.

The bill of particulars is not a substitute for discovery and, as stated above, is more an extension of the indictment than a tool of discovery.^{xxi} The purpose of a bill of particulars is “to elucidate or particularize the conduct of the accused alleged to constitute the offense.”^{xxii} But from a practical perspective how does this definition apply to discern the difference between a bill of particulars meant to define or delineate the offense for the defendant and discovery that the defense must interpret itself in preparing a defense? The decision in a United States Third Circuit case, provides a helpful definition of the difference between a bill of particulars and discovery:

Turning to the functions performed by a bill of particulars, we again find them more akin to the functions of an indictment than to discovery. While it is true, as appellant stresses, that a bill of particulars, like discovery, provides information to the defendant for use in his or her defense, the same can be said of the indictment. A bill of particulars, unlike discovery, is not intended to provide the defendant with the fruits of the government's investigation. See, e.g., *United States v. Hill*, 589 F.2d 1344, 1352 (8th Cir.); *cert. denied*, 442 U.S. 919, 99 S.Ct. 2843, 61 L.Ed.2d 287 (1979); 8 MOORE'S FEDERAL PRACTICE ¶ 7.06[1] (2nd ed, 1985 Rev.). Rather, it is intended to give the defendant only that minimum amount of information necessary to permit the defendant to conduct his own investigation. *United States v. Manetti*, 323 F.Supp. 683, 696 (D.Del.1971). More importantly, a bill of particulars, like the indictment, is designed to define and limit the government's case. As with the indictment, there can be no variance between the notice given in a bill of particulars and the evidence at trial. *United States v. Neff*, 212 F.2d 297, 309 (3d Cir.1954); *United States v. Murray*, 297 F.2d 812 (2d Cir.) *cert. denied* 369 U.S. 828, 82 S.Ct. 845, 7 L.Ed.2d 794 (1962).^{xxiii}

A reform of Criminal Rule 16 became law on July 1, 2010 providing for open file discovery through the criminal procedure rules.^{xxiv} “Developed collaboratively by the criminal-defense bar and prosecutors, the purpose of the revisions ‘was to provide for a just determination of criminal proceedings and to secure the fair, impartial, and speedy administration of justice through the expanded scope of materials to be exchanged between the parties.’”^{xxv} “The new rule ‘expands the State's duty to disclose materials and information beyond what was required under the prior

rule.”^{xxvi} However, the mere fact that open-file discovery is provided does not abolish a defendant’s due process right to notice of the charges against him.^{xxvii}

Pursuant to the criminal rules of procedure and the Ohio Constitution, a defendant is entitled to a bill of particulars that does more than recite the indictment. The bill of particulars must provide the defendant with information that defines what specifically the State of Ohio believes constitutes the elements of the offense for which defendant allegedly violated. In providing such the State should provide information on the exact nature of the offense charged, the precise conduct of the defendant alleged to constitute the offense (i.e. principal offender, aider or abettor, pattern of conduct, means of entrance, etc.). Further, to the extent possible, the State should provide the time and location of the offense within a reasonable degree of specificity. This will necessarily define and limit the State of Ohio’s case against the defendant, but that is the purpose of the bill of particulars. At the same time, under Crim. R. 7(D), the State of Ohio may at any time – before, during or after a trial – move to amend the complaint.

This was the conclusion I reached after looking into the history of bills of particulars. It is also the same conclusion that Ohio Supreme Court concluded when they issued a decision in the abduction case I had presided over as trial judge. The Supreme Court was succinct and clear when it stated that “[t]here are no exceptions to the requirement [to provided a bill of particulars]; the state must provide a bill of particulars on a defendant’s request, even when the prosecutor believes that the defendant is able to glean the nature and cause of the accusation against him from the discovery the state provided or from some other source.”^{xxviii} But knowing that bills of particulars are required is not the only point of this article or even that it is an Ohio Constitutional right.

The point of this article, as evidenced in the title, is that when we research a legal precedent we need to look not just at the provision of law, but the history of that conclusion. The decision in *Haynes* abrogated a long line of cases that had relied upon the holding in *Halleck*.^{xxix} None of those decisions had tried to dissect the *Halleck* decision or why the provision in statutory law, criminal rules, and constitution making the provision of a bill of particulars mandatory were somehow discretionary when open file discovery is provided. *Halleck* even predated the changes to Criminal Rule 16 in 2010, that essentially codified what many prosecutors throughout the state were practicing. When the rule was changed, Crim.R. 7(E) was not amended to make bills of particulars discretionary considering open file discovery.

These are all clues that I missed as a judge in researching the law. It is often easy to find the precedent we want, particularly in this modern era of AI research, and because it comes from a higher court it is often rephrased or whole quoted in a decision without questioning the holdings foundations. But sometimes we need to look at the precedent behind an often cited and well-held principle to determine if it is in context with other principles we know to be as sacrosanct in law and precedent. That historical research can be tedious, but sometimes it reveals truths we did not know where there. I hope that this journey through bills of particulars has provided you a different perspective on bills of particulars, but also on the research of law.

ⁱ *State v. Coffey*, 6th Dist. Lucas No. L-12-1047, 2013-Ohio-3555, ¶ 35, citing *State v. Evans*, 2006–Ohio–1425 (2d Dist.), ¶ 24 and *State v. Tebcherani*, 2000 WL 1729456 (Nov. 22, 2000)

ⁱⁱ *State v. Haynes*, 2022-Ohio-4473

ⁱⁱⁱ 24 Ohio App.2d 74 (1970)

^{iv} *Halleck* at 75

^v *Halleck* at 76

^{vi} *Halleck* at 77-78

^{vii} It is interesting to note that in quoting *Boynton v. Sacks* the court also sites to *Holt v. State*, 107 Ohio St. 307, 140 N.E. 349 (1923), a case which pre-dates the short form indictment and the provision for a bill of particulars which became part of criminal procedural law in Ohio in 1929.

^{viii} See e.g. *City of Toledo v. Enis*, 6th Dist. Lucas No. C.A. L-86-404, 1987 WL 19477, *State v. Williams*, 6th Dist. Erie No. E-87-16, 1988 WL 62971.

^{ix} *State v. Whitmore*, 126 Ohio St. 381, 385, 185 N.E. 547 (1933).

^x *State v. Petro*, 148 Ohio St. 473, 480-481, 76 N.E.2d 355 (1947), citing *State v. Boyatt*, 114 Ohio St. 397, 399 (1926).

^{xi} *State v. Boyatt*, 114 Ohio St. 397, 399 (1926), citing *Lamberton v. State*, 11 Ohio, 282 (1842); *Anderson v. State*, 7 Ohio 250, pt. II (1836), *Stoughton v. State*, 2 Ohio St. 562 (1853).

^{xii} *Whitmore* at 386, quoting Section 13437-6, General Code

^{xiii} *Petro* at 481 (Emphasis added.)

^{xiv} Ohio Constitution, Article I, Section 10.

^{xv} *Petro* at 483, quoting 42 C.J.S. Indictments and Informations § 156.

^{xvi} See *Michigan v. Tucker*, 417 U.S. 433, 444, 94 S.Ct. 2357, 41 L.Ed.2d 182 (1974). By referencing *Michigan v. Tucker* I am providing a general reference regarding prophylactic rules meant to protect constitutional rights. In *Tucker* the reference was to the *Miranda* warnings established as a prophylactic rule protecting the 5th Amendment right against self-incrimination in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

^{xvii} *State v. Whitmore*, 126 Ohio St. 381, 388

^{xviii} *State v. Wampler*, 6th Dist. Lucas No. L-15-1025, 2016-Ohio-4756, ¶ 20, citing *State v. Adams*, 2014–Ohio–5854, 26 N.E.3d 1283, ¶ 28 (7th Dist.), *Russell v. U.S.*, 369 U.S. 749, 82 S.Ct. 1038, 8 L .Ed.2d 240 (1962).

^{xix} *State v. Lawrinson*, 49 Ohio St.3d 238, 239, 551 N.E.2d 1261 (1980), citing *State v. Sellards*, 17 Ohio St.3d 169, 478 N.E.2d 781 (1985), syllabus

^{xx} *Halleck*, 24 Ohio App.2d 74, 77.

^{xxi} *State v. Sellards*, 17 Ohio St.3d 169, 171, 478 N.E.2d 781 (1985).

^{xxii} *State v. Wachee*, 8th Dist. Cuyahoga No. 110117, 2021-Ohio-4427, ¶ 8, quoting *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 2012-Ohio-3328, 974 N.E.2d 89, ¶ 30, quoting *State v. Sellards*, 17 Ohio St.3d 169, 171, 478 N.E.2d 781 (1985).

^{xxiii} *U.S. v. Smith*, 776 F.2d 1104, 1111 (1985) (Emphasis added).

^{xxiv} *State ex rel. Caster v. Columbus*, 151 Ohio St.3d 425, 89 N.E.3d 598, 2016-Ohio-8394, ¶ 37.

^{xxv} *Id.*, quoting 2010 Staff Note to Crim.R. 16(A).

^{xxvi} *Id.*, quoting 2010 Staff Note to Crim.R. 16(B).

^{xxvii} *State v. Nolling*, 98 Ohio St.3d 44, 2002-Ohio-7044, 781 N.E.2d 88, ¶ 60, citing *Cole v. Arkansas*, 333 U.S. 196, 201, 68 S.Ct. 514, 92L.Ed. 644 (1944).

^{xxviii} *State v. Haynes*, 2022-Ohio-4473, ¶ 26

^{xxix} The syllabus of *Haynes* stated the following: The Supreme Court, Brunner, J., held that trial court was required to provide defendant, who had been charged with abduction, with a bill of particulars, after defendant made a written request prior to trial; abrogating *State v. Coffey*, 2013 WL 4401316; *State v. Franklin*, 2020 WL 1624370; *State v. Tebcherani*, 2000 WL 1729456; *State v. McDay*, 2000 WL 1349804; *State v. Swiger*, 1991 WL 131528; *State v. Sarnescky*, 1986 WL 2228; *State v. Hudson*, 1982 WL 5074; *State v. Eves*, 1981 WL 3897; *State v. Miller*, 118 N.E.3d 1094; *State v. Freeman*, 2009 WL 1813791; *State v. McQueen*, 2008 WL 5228973; *State v. Johnson*, 2018 WL 4678893; *State v. Evans*, 2006 WL 759694; *State v. Sewell*, 112 N.E.3d 1277; *State v. Wilson*, 2014 WL 80542; *State v. Renfro*, 2013 WL 6174896; *State v. Oliver*, 2008 WL 5124425; *State v. Brown*, 2005 WL 1385715; *State v. Pittman*, 2021 WL 1230546; *State v. Betts*, 2020 WL 5946618; *State v. Jamison*, 2016 WL 4037193; *State v. Ross*, 2012 WL 440821; *State v. Burney*, 2020 WL 738433.

Thoughts about Life after the Judiciary

So I am making my regular run to the grocery store and, of course, I have a list. But the list just says soft drinks.

I have no idea if this means bottles (what size and glass or plastic) or cans, regular, diet, or zero sugar, one six pack versus a 12 pack (regular size or minis), or much else about my assignment.

Out of the corner of my eye, I see a person with a grocery cart, stopped in the aisle and staring at me. Having lived in the county my entire life and having been elected to judgeships in the city, county, and six-County appellate District over the last 40+ years before age and the Ohio constitution put me out to pasture, I have met a lot of people - campaigning as well as from the bench. Nonetheless, having a memory is not something I can even remember, so I simply smile and say hello.

The “stranger” smiles back and politely asks, “didn’t you used to be somebody?”

Despite the fact that I am apparently not somebody anymore (but am I still anybody), I try to be polite when I can, and I respond by introducing myself and apologizing for not remembering her. She, again politely, tells me her name and that she works at a particular office in the county. I tell her how nice it is to see her and that I’m sorry I didn’t remember her (not saying that, of course, I still have no idea who she is).

Well, that took me back to the beginning of trying to remember why I was in the store. So I took a photo of the entire soft drink section and texted it to my wife. She correctly reminded me that the number of times I have to text her from a store is directly proportionate to how confused I am. I thanked her profusely for reminding me. Anyway, the entire “incident” and the other customer’s question got me thinking - something I do way too much of since retirement - about whether I was ever “somebody” (and what that means anyway) and, if so or if not so, what am I now?

When I got home with the “right” soft drinks, I decided to have the computer help me answer the question (about what “somebody” means as it relates to me or anybody). After reviewing several articles, and being totally confused by the writings of Descartes, Hume, and Kant, I decided to go back to the store and purchase, for somebody, a large quantity of wine. Of course, I could not decide if I wanted red (Cabernet? Pinot? Semi sweet?) or white (Chardonnay? Riesling? Sauvignon Blanc?), a bottle (what size?) or a box, etc. The only thing I was sure of is that whether I were “somebody” or “nobody”, I would not be asked for proof of age. Maybe that’s good enough.

Jeff Froelich (Tired) aka Judge Jeffrey Froelich (Retired)

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Ohio Judicial Conference Staff

Executive Director

Hon. Paul Pfeifer, Retired 419-563-4966
Paul.Pfeifer@sc.ohio.gov

Legislative Counsel

Marta Mudri, Esq. 614-387-9764
Marta.Mudri@sc.ohio.gov

Deputy Legislative Counsel

Joshua Williams, Esq. 614-387-9767
Joshua.Williams@sc.ohio.gov

Deputy Legislative Counsel

Shawn Welch, Esq. 614-387-9765
Shawn.Welch@sc.ohio.gov

Fiscal/HR Officer

Aleta Burns 614-387-9757
Aleta.Burns@sc.ohio.gov

Legislative Services Specialist

Justin Long 614-387-9756
Justin.Long@sc.ohio.gov

Judicial Services Program Manager

Trina Bennington 614-387-9761
Trina.Bennington@sc.ohio.gov

Judicial Services Program Manager

Jennifer Whetstone 614-387-9766
Jennifer.Whetstone@sc.ohio.gov