



# REPORT TO THE RAMSEY COUNTY ATTORNEY

## AN INDEPENDENT REVIEW OF CASES INVOLVING DR. MICHAEL MCGEE

### PHASE 2 AND RECOMMENDATIONS FOR PHASE 3

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August 2024



# PCE

Prosecutors' Center for Excellence



INDEPENDENT REVIEW OF CASES INVOLVING  
 DR. MICHAEL MCGEE:  
*PHASE 2 AND RECOMMENDATIONS FOR PHASE 3*

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**INTRODUCTION**

In the Fall of 2021, Prosecutors' Center for Excellence (PCE) started work with the Ramsey County Attorney's Office (RCAO) to provide an independent review of cases involving the reports and the testimony of Dr. Michael McGee, the Chief Medical Examiner for Ramsey County, Minnesota from 1985 to 2020. This review was triggered by *US v. Alfonso Rodriguez*, Criminal No. 2:04-cr-55, slip op. (D.N.D. 09/03/2021), where judicial criticism of Dr. McGee's testimony regarding the cause of death and his interpretation of Acid Phosphatase tests (used to preliminarily identify the presence of semen) resulted in a reversal of the death penalty in a high-profile murder case that occurred in 2003.

In consultation with the RCAO, it was decided that PCE's independent assessment would be conducted in Phases, allowing for a systematic identification of cases that require further review. Phase 1 of the independent assessment was completed at the end of 2022 and PCE issued a report of its findings in Phase 1 and its recommendations for Phase 2. This report outlines PCE's work during Phase 2 and provides PCE's recommendations for Phase 3 of the project.

**INDEPENDENT REVIEW TEAM**

PCE is a national non-profit that works with prosecutors in offices of all sizes to improve the criminal justice system. PCE provides consulting services to prosecutors on a wide variety of issues from office efficiency to conviction review. PCE supports national and statewide prosecutor-led Best Practices Committees and hosts national prosecutor meetings that address innovative solutions to the difficult criminal justice issues of the day. PCE's Executive Director, Kristine Hamann, leads the team on this project.

*Kristine Hamann*

Ms. Hamann is the founder and Executive Director of PCE, where she has served since 2016 promoting prosecution best practices. She has written a guide for prosecutors on conviction review and has consulted on conviction review in several



states. From 2013 to 2016, Kristine Hamann was a Visiting Fellow at the Department of Justice/Bureau of Justice Assistance focusing on prosecutorial best practices. She is the chair of the National Best Practices Committee for Prosecutors and the New York State Best Practices Committee. She is a member of the ABA Criminal Justice Council Journal Editorial Board and was Independent Counsel to the Conviction Integrity Unit of the United States Attorney's Office for the District of Columbia. She teaches a prosecutor practicum at Georgetown Law School. Ms. Hamann's previous positions include serving as the New York State Inspector General, the Executive Assistant District Attorney to D.A. Robert M. Morgenthau in the Manhattan District Attorney's Office in New York City and the Executive Assistant District Attorney for the Special Narcotics Prosecutor for the City of New York. Prior to 1998, Ms. Hamann held several other positions in the Manhattan District Attorney's Office, including Deputy Chief of the Trial Division in charge of the Criminal Court, Director of Training, and Deputy Bureau Chief of the Career Criminal Bureau. Prior to her executive roles, Ms. Hamann was an active trial attorney handling violent crime including murder. She has received numerous awards for her work, most recently in 2023 the American Bar Association's Curtin-Maleng Award (annual prosecutor award).

#### *Patricia Riley*

Ms. Riley is a consultant with PCE and served for 34 years as an Assistant United States Attorney in the District of Columbia, where she tried significant cases, including murder, sexual assault, and other serious cases. She held various positions in that office including Chief of the Sex Offense Section and Special Counsel to the United States Attorney, working on legislative, policy, sentencing, jury instruction, conviction integrity, ethics, and professional responsibility matters. She served as the USAO representative on the D.C. Sentencing and Criminal Code Revision Commission and on the Criminal Jury Instructions (Redbook) Committee. Ms. Riley has served on dozens of interagency working groups, task forces, and committees. She is an expert in eyewitness identification and has developed training and procedures for use by prosecutors and law enforcement officers that promote the integrity of this important evidence. Ms. Riley has previously conducted independent conviction reviews of cases involving hair and fiber evidence. She currently teaches a prosecutor practicum at Georgetown Law School.

#### *Mark Larson*

Mr. Larson was the Chief of the Criminal Division for the King County Prosecuting Attorney's Office (Seattle) which serves a metropolitan area of over 2 million people and is staffed with over 170 lawyers. Mr. Larson oversaw all the work of the Criminal Division. The KCPAO has been reform oriented for decades. Mr. Larson worked



with leaders from across the region to create alternatives to incarceration and alternatives for offenders with therapeutic needs. To focus the KCPAO on “doing justice”, Mr. Larson established a conviction integrity review process as well as a prosecutorial error review committee, with the goal to learn from and respond to mistakes and errors that can arise in cases prosecuted by the KCPAO. Mr. Larson also maintained a trial practice throughout his years with the KCPAO. He is an adjunct professor at Seattle University, teaching a class on wrongful convictions. Mr. Larson has lectured and trained on a variety of topics. He was a charter member of the National Institute of Justice working group tasked with examining the law and science surrounding Eyewitness Identification. This seminal work in the 1990s stimulated a lifelong interest in the topic resulting in numerous published articles and speaking appearances throughout the country. More recently, Mr. Larson was tasked to a legislative committee in Washington state addressing eyewitness identification standards and training. A legislative companion project focused on cooperating and incentivized witnesses. Mr. Larson staffed both efforts for the Washington Association of Prosecuting Attorneys and was a 2019 recipient of the Association’s Distinguished Service Award.

## OVERVIEW OF PHASE 1

PCE conducted the review of cases involving Dr. McGee’s opinions in phases. The goal of the Phase 1 review was to determine which of these cases were High Priority for further review. In consultation with RCAO, PCE’s standard for these cases was those where Dr. McGee’s testimony or reports on cause and manner of death may have been erroneous or misstated **and** his opinions may have substantially contributed to the defendant’s conviction.

Starting in the Fall of 2021, the RCAO created a list of 214 cases from multiple sources where Dr. McGee may have been a witness. Some of the cases involved more than one defendant. RCAO provided a list of cases where Dr. McGee was identified as a witness in the case. The RCAO also received information on cases involving Dr. McGee from the Attorney General’s Office and the Great North Innocence Project.

To prepare for the review, PCE visited St. Paul and met with representatives from:

- The RCAO,
- The Attorney General’s Office,
- The Great North Innocence Project,
- Prosecutors in some of the other Minnesota counties where Dr. McGee had testified,





- Staff at Regions Hospital,
- Staff at the Minnesota Bureau of Criminal Apprehension, and
- Staff at the Ramsey County Medical Examiner’s Office.

To undertake the sorting process, the RCAO provided PCE with the initial criminal complaint and some court decisions for most of the 214 cases. The determinations in Phase 1 were based on the documents received from the RCAO. The decision to study the case further in Phase 2 did not reflect any opinion about the validity of Dr. McGee’s testimony or reports, as Dr. McGee’s opinions and testimony were not necessarily reviewed in Phase 1.<sup>1</sup>

At the conclusion of Phase 1, PCE divided the reviewed cases into categories, which were defined as follows:

- **High Priority Review:** The case required a thorough review as Dr. McGee’s testimony or reports about the time, cause, or manner of death or injury was at issue. (18 cases).
- **Low Priority Review:** There was insufficient information to determine if further review was needed. The type of additional information needed included ME reports, appellate opinions, trial transcripts, or other documents. (43 cases).
- **No Further Review:** The documents reviewed provided no indication that there were issues with Dr. McGee’s testimony or reports. (143 cases). This category was used when:
  - The examination or testimony of Dr. McGee appeared appropriate, was uncontested, and/or could not have substantially affected the outcome of the case;
  - There was an acquittal;
  - The defendant was deceased; or
  - Dr. McGee was not a witness in the case.
- **Insufficient Information:** PCE did not have enough information to make any determination about these cases. (10 cases). All cases in this category have been resolved in Phase 2.

## OVERVIEW OF PHASE 2

The main goal of Phase 2 was to study the High Priority cases classified in Phase 1 (18 cases), to review the remaining low priority cases (43 cases), and to review cases with insufficient information (10 cases), to determine whether any of these cases required a

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<sup>1</sup> See Phase 1 Report for a more detailed description of the Phase 1 work.





deeper investigation of Dr. McGee's work in Phase 3 of this project. In Phase 2 all cases in these three categories have been categorized as either Needs No Further Review or High Priority.

Other tasks for Phase 2 included interviewing the prosecutor of the *US v. Rodriguez* case, identifying an expert(s) to assist with evaluating Dr. McGee's testimony and further research on Acid Phosphatase testing. These tasks are described below.

## REVIEW OF HIGH PRIORITY CASES

### Documentation Reviewed for High Priority Cases

For the Phase 2 review of High Priority cases, PCE required substantially more documents for its independent review. RCAO undertook the laborious process of finding and scanning the files needed for PCE's evaluation. This was time consuming since many of the cases were old. Unlike Phase 1, where PCE reviewed only the initial police complaint, appellate decisions, and other easily accessible documents, the required documentation for Phase 2 was voluminous, often amounting to many hundreds of pages. RCAO did not always provide the prosecutor's entire file to PCE, either because some documents were unavailable, or the documents were deemed unnecessary for the review. However, when additional documents were requested by PCE, RCAO provided the documents when obtainable.

The types of documents provided for PCE's Phase 2 review included:

- Trial transcripts;
- Transcripts of other types of proceedings (where relevant), such as grand jury minutes, hearings, or plea allocutions;
- Medical examiner preliminary and final reports, autopsy photos, and diagrams;
- Crime scene photos;
- Police reports;
- Reports from social service agencies;
- Audio recordings or transcripts of statements by witnesses or defendants;
- Trial pleadings and orders related to litigation throughout the case;
- Prosecutor files; and
- Appellate briefs, pleadings, and opinions.

## *Phase 2 High Priority Protocol*

The PCE Team developed a standardized review process for each High Priority case. A PCE staff member, Amanda Hester, oversaw the delivery of materials from the RCAO and tracked the assignment and completion of the cases reviewed.

The steps taken to review a High Priority case included:

- **Assignment:** A High Priority case was assigned to a PCE team member, in most instances to one who had not reviewed the case in Phase 1.
- **Review of Documents/Case Materials:** The assigned team member reviewed the electronic documents provided by RCAO.
- **Group Meeting:** The PCE team met at regular intervals and PCE team members would give a presentation on the case they had reviewed. This led to discussion and additional review. In some instances, a second PCE team member would re-review the case studied by a team member.

## Phase 2 Assessment Standards

In September 2023, PCE presented its preliminary findings to RCAO on the High Priority cases it had reviewed to date. In this meeting the RCAO and PCE confirmed the assessment standards that should apply to the Phase 2 review. They are:

- **No Further Review:** The documents reviewed provided no indication that there were issues with Dr. McGee’s testimony or reports. This category was used when the examination or testimony of Dr. McGee could not have significantly affected the outcome of the case, when there was an acquittal, when the defendant was deceased, or when Dr. McGee did not render an opinion in the case.
- **Raises Issues that Require Further Study:** Dr. McGee’s testimony or reports raised issues that require further study. In these cases, PCE recommends consulting with one or more independent medical experts regarding Dr. McGee’s testimony. The consultation will take place in Phase 3.

## Cases Recommended for Additional Review in Phase 3

Based on its review of the materials provided in Phase 2 by the RCAO, PCE identified seven cases in the “Raises Issues that Require Further Study” category. The inclusion of a case on this list means that further review by one or more independent medical examiners, as well review of additional materials, would be useful to PCE in reaching a final opinion. Inclusion on this list is not a finding, preliminarily or otherwise, that the testimony of Dr. McGee was in error. Rather, these are cases where PCE seeks a second opinion because PCE is unable to



satisfactorily answer the mixed medico-legal opinions sufficiently to conclude the case review.

## OTHER DELIVERABLES FOR PHASE 2

### Review of Remaining Low Priority Cases

Forty-three cases were identified in Phase 1 as Low Priority cases that required additional information to determine if additional review was required. Based on the information initially received from RCAO, there appeared to be no issue with Dr. McGee's report or testimony<sup>2</sup> but, in an abundance of caution, PCE requested one or more of the following items so it could complete its review:

- Medical Examiner's report and any diagrams or drawings
- Appellate decisions
- Trial transcripts

With the additional materials provided by RCAO the forty-three cases were resolved and PCE categorized them as cases requiring No Further Review.

### Review of Insufficient Cases

Ten cases on the initial Phase 1 list had insufficient materials for PCE to render an opinion. During Phase 2 materials were located for PCE to review. All ten cases were deemed to require No Further Review.

### Interview with North Dakota Prosecutor on the *US v. Rodriguez* Case

To gain a better understanding of Dr. McGee's testimony in the *Rodriguez* case, RCAO arranged for PCE to interview the AUSA from North Dakota who handled the litigation regarding Dr. McGee. The interview provided additional insights to the issues raised in that case.

### Case Review for Use of Quantitative AP Test Results

The Phase 2 review revealed one case where AP testing was used by Dr. McGee to form an opinion about the time of death. This case will be further studied in Phase 3. AP testing was discussed in PCE's Phase 1 report, and no further description is needed here.

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<sup>2</sup> See Phase I Report for the protocols used for reviewing the Low Priority cases.

In the Phase 1 report PCE raised the possibility of reviewing non-homicide cases where AP testing may have been used by Dr. McGee. Though PCE reviewed a few non-homicide cases where Dr. McGee may have been involved, none implicated AP testing. PCE is available to review non-homicide cases involving Dr. McGee and AP testing, if that is deemed necessary by the RCAO.

### Identifying Possible Experts

One or more experts may be retained by RCAO to assist in the evaluation of Dr. McGee's testimony and reports relevant to this review. PCE will identify possible qualified candidates who can serve as an independent medical examiner or expert on this project. PCE has automatically excluded from consideration any medical examiner or other expert who rendered an expert opinion for the prosecution or defense in the cases reviewed by PCE during the Phase 2 study or in the *Rodriguez* litigation. PCE will assist with identifying the issues requiring expert review by gathering relevant trial transcripts and reports and compiling a list of questions. The RCAO will make the final decision on whether to hire an expert and who to select.

## DELIVERABLES FOR PHASE 3

During Phase 3 of this project, PCE will meet with the medical experts retained by the RCAO and review additional materials related to the cases identified in Phase 2 as needing further review. This may require a trip to St. Paul to discuss the cases with the RCAO and any other stakeholders recommended by the RCAO.

PCE will prepare a report describing its work in Phase 3.