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Protect the Innocent, Prevent Wrongful Conviction

The number of exonerations in New York undermines the assumption that we sufficiently protect the innocent. It is of paramount importance to all New Yorkers and all Americans that the entire criminal justice system work together to ensure only the guilty are convicted.

By **Michael Miller** | November 28, 2018



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One wrongful conviction is one too many.

But unfortunately, across New York and the rest of the country, there have been numerous exonerations stemming from wrongful convictions.

Just recently we heard about Valentino Dixon, who was exonerated after spending 26 years in prison for a murder in Buffalo that he did not commit. Josiah Galloway was also freed after spending a decade behind bars for a Hempstead shooting carried out by someone else.

These convictions derail the lives of the wrongfully accused and cause tremendous pain for their loved ones. The impact is also felt by the general public, because every time it is proven that an innocent person was sent to prison, public confidence in our justice system is further damaged.

According to the National Registry of Exonerations, New York has had approximately 250 exonerations in its history, second only to Texas. That's more than 2,500 years of innocent people's lives lost behind bars. A majority of those exonerations were due to misconduct by police, prosecutors or other government officials.

In 2009, a New York State Bar Association (NYSBA) Task Force on Wrongful Convictions issued a groundbreaking report concluding that government practices, identification procedures, mishandling of forensic evidence, defense practices, the use of false confessions and the improper use of jailhouse informants were among the leading causes of wrongful convictions.

The report, which included the input of a panel of experts from the criminal justice system who examined 53 of these cases, also recommended a sweeping array of changes to policy, procedure and legislation.

Since that report, our elected state officials have enacted some much-needed changes that were long advocated for by NYSBA. For instance, a state law requiring law enforcement agencies to video record custodial interrogations with individuals accused of serious crimes went into effect earlier this year. The state has also reformed procedures for eyewitness identifications.

Despite these positive efforts, more needs to be done. That's why NYSBA revisited the issue earlier this year with the formation of a new Task Force on Wrongful Convictions. The group is headed by retired New York Supreme Court Justice Barry Kamins, who was the leader of the original Task Force, and former Court of Appeals Judge Robert S. Smith. The Task Force also includes Martin Tankleff, who spent 17 long years behind bars after being wrongfully convicted for the murder of his parents.

Task Force members are reviewing new developments in technology, science, and judicial decisions in order to make affirmative recommendations to reduce the likelihood of more wrongful convictions.

In the decade since our first Task Force released its report, the conduct of prosecutors has emerged as an important factor relating to wrongful convictions. In August, Gov. Andrew Cuomo signed into law the nation's first state Commission on Prosecutorial Conduct to investigate allegations of misconduct which, among other things, can lead to wrongful convictions.

On Jan. 16, 2019, NYSBA will convene a panel discussion during its annual meeting in New York City that will focus on the role of prosecutors in wrongful convictions. The panel will examine the new Commission on Prosecutorial Conduct and include prosecutors, defense attorneys, academics and policy experts who will discuss the commission structure, the scope of its authority, and whether it can withstand the legal challenges brought on by New York prosecutors.

The number of exonerations in New York undermines the assumption that we sufficiently protect the innocent. It is of paramount importance to all New Yorkers and all Americans that the entire criminal justice system work together to ensure only the guilty are convicted.

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