

**EMBARGOED UNTIL 7/9/20 at 10AM**

## **Innocence Project Calls for Policy Reforms in Wake of New Landmark Report on 25 Wrongful Convictions in Brooklyn**

*The report addresses the grievous errors and misconduct — including by police and prosecutors -- that tainted these cases.*

By Nina Morrison, Senior Litigation Counsel

July 9, 2020

Today, the Kings County (Brooklyn, NY) District Attorney's Office released a landmark, 96-page report examining how and why the KCDA's Conviction Review Unit agreed to exonerate twenty-five wrongly convicted people in a five-year period (between 2014-2019).

These twenty-five wrongly convicted persons served a staggering 426 years in prison before their exonerations. And virtually all of them – 24 out of 25 -- were Black and/or Latinx. They served an average of over 17 years in prison; the one white exoneree (the victim of a politically-motivated election-fraud prosecution) served no prison time. The report also finds that the evidence police gathered against many of these exonerees was clearly flawed from the outset – raising obvious questions about why so many Brooklyn citizens of color were prosecuted at all, and why none of the system's actors stepped in to halt these prosecutions or rectify them for decades.

The report forthrightly addresses the grievous errors – and, in a number of cases, outright misconduct – by both police and prosecutors that tainted the vast majority of these cases. We know that, for many reasons, retrospective investigations of official misconduct will always yield an undercount; for example, evidence supporting a claim of innocence that is intentionally suppressed by law enforcement is designed to – and often does – stay hidden. But those limitations make the errors and misconduct that were found by the CRU all the more undeniable. For example, the reinvestigations by the KCDA's *own CRU staff* revealed that:

- ***Misconduct and/or serious error by prosecutors*** was the most common factor in these wrongful convictions – occurring in at least **84 percent** of the 25 cases.
- ***“Police conduct”*** was the next most common factor – present in **72 percent** of the exonerees' cases.
- ***Failure to disclose favorable evidence to the defense*** – by prosecutors, police, or both – was a factor in fully **40 percent** of these exonerees' cases. (This factor was independent of – and/or in addition to – other police and prosecutorial conduct cited by the CRU.)
- ***False or unreliable confessions*** were used to wrongly convict **over one-third (36 percent)** of these 25 exonerees – and in many cases was the *only* direct evidence against them.
- ***Eyewitness Misidentification*** was a contributing factor in the wrongful convictions of **one-fifth (20 percent)** of the twenty-five exonerated people.

The KCDA, the Innocence Project and the law firm of WilmerHale co-authored the report, and the Innocence Project designed the research tool that was used to gather and analyze the data.

Many prosecutors around the nation have formed “conviction review” or “conviction integrity” units in recent years – specialized, independent units whose sole focus is to reexamine and reinvestigate claims of wrongful conviction. But today’s report constitutes the first public examination ever commissioned by any elected prosecutor in the United States of the reasons why *its own office* made the decision to throw out more than two dozen deeply flawed convictions in its own county. It is also the first time an elected District Attorney has ever allowed outside researchers – much less staff from an innocence organization – to analyze documents from its own files regarding that process.

The result is a groundbreaking report that, for the first time, provides a window into how and why one prosecutor’s office came to acknowledge the injustices earlier perpetrated in its own county, on so many of its own citizens.

The report is necessarily limited by its exclusive focus on the CRU’s own investigations and conclusions. The CRU’s conclusions reflect its own view of these cases, based on the evidence it had available and/or considered significant at the time. We recognize that many of these wrongly convicted persons and their advocates may have very different perspectives on why they were sent to prison for crimes they did not commit, and that key facts about these cases and the officials involved may not be included here.

However, there are still profound takeaways from this report for all who seek to fix our broken criminal legal system – particularly since it constitutes the District Attorney’s own acknowledgment of what went grievously wrong in these cases and its devastating human toll.

While there have been some gains in reforming the criminal justice system in New York State to prevent future miscarriages of justice like these, the report provides a good roadmap for modifications to existing reforms and the need to promote new changes to the criminal justice system through law and policy. These include:

- **Banning Police Deception/Assessing Reliability of Confession Evidence.** Addressing the legally permitted use of deception by law enforcement in the interrogation room and assessing the reliability of confession evidence before it is introduced. New York State Senator Zellnor Myrie, also from Brooklyn, has introduced SB6806, which would prohibit law enforcement’s use of “false facts” during interrogations and assure that when judges assess the voluntariness of a confession, they also assess its reliability before allowing it to be used in court.
- **Rejecting Repeated Presentations of the Same Person When Witnesses are Asked to Identify a Suspect/Requiring Witnesses to Rate How Confident They are When an Identification is Made.** In several cases, the same suspect was presented to the eyewitness in more than one identification procedure, such as a view in a mug book, a show-up, or one-on-one identification procedure, or a photographic or live lineup with multiple potential suspects. This has been shown to increase the possibility of a misidentification of an innocent person because of what is known as

“commitment effect” or misplaced familiarity. Multiple identification procedures of the same suspect should never be permitted during the course of an investigation.

The level of confidence an eyewitness expressed at the time of an identification is critically important to capture. The level of confidence an eyewitness might initially describe at the time he or she identifies someone as the perpetrator of a crime can be artificially inflated through any sort of confirming feedback, so that by the time the eyewitness takes the witness stand, he or she is 100% confident in the identification s/he has made. All police agencies should implement the policy of taking an immediate confidence statement - where the witness is asked in his or her own words how certain they are of the identification they have made - at the time when an identification is first made. While versions of these reforms are included in an advisory policy in New York State, they should be mandated and uniformly adopted across the State. Also, given the lack of evidentiary value offered by an in-court identification, they should no longer be permitted.

- **Assuring Police and Prosecutorial Accountability** – New York recently repealed Civil Rights Law 50-a, which had shielded police misconduct records from the public. Now that this law has passed, police agencies should readily provide this information to the public, without requiring Freedom of Information Law requests, and immediate action should be taken to remove law enforcement with histories of perjury and excessive force from police agencies. New York should also finally allow the nation’s first-ever Commission on Prosecutorial Conduct to begin its important work; the independent Commission was enacted into law in 2019 but has been ensnared in court challenges which will require either judicial resolution or legislative action to resolve.
- **Prosecutors’ offices should better assess the integrity of the evidence they may use in a criminal case** – The report’s authors noted that many of the 25 wrongful conviction cases might not have moved forward had trial prosecutors and their supervisors more thoroughly assessed the reliability of the evidence presented to them by law enforcement -- including eyewitness accounts, confessions, informant claims, and forensic evidence. For example, the report cites numerous cases where a “confession” or an informant’s statement simply did not fit the physical evidence or failed to comport with eyewitness accounts of the crime. While each of these cases represent a systemic breakdown at every step of the process, many red flags became apparent in the review of these cases that should have been heeded, and opportunities to prevent the cases from becoming wrongful convictions were missed.

The Innocence Project commends District Attorney Eric Gonzalez for making these detailed findings public, and for the report’s forthright acknowledgment that “[t]he wrongful convictions discussed here all point to failures of prosecution *as an institution*—whether through the acts of individual prosecutors, collective decisions, or failure to train or guide prosecutors adequately.” We look forward to working with policymakers and exoneree advocates to meaningfully redress the systemic failures cited in the report and prevent future wrongful convictions.