



Opening Argument



Richard A. Brown

WRONGFUL CONVICTIONS

Wrongful convictions are seldom the result of intentional misconduct – they are more likely the result of inadvertent mistakes. For example, police and prosecutors rely on the credible accounts of civilian victims and witnesses as to how the crime was committed and who committed it. And sometimes those victims and witnesses make mistakes. To prevent these mistakes – most of which are honest mistakes – from having tragic consequences, the Queens District Attorney's Office does a number of things right from the outset.

Question and Challenge

Firstly, no criminal case brought to the office by the police may proceed until it is screened by our Intake Bureau. The bureau is staffed with veteran prosecutors who carefully review every case for legal sufficiency. They are not afraid to challenge police officers and complainants, to reject cases if they do not meet the office's standards, to direct further investigation or even to decline to prosecute them at all.

Secondly, the office tries to get its assistants involved in cases as early as possible. To this end, the office has in place a "riding" program which puts assistants at virtually every major crime scene where they speak to arresting officers, take statements from victims and witnesses, supervise lineups and try, from the very earliest point, to determine the true facts of each case.

Videotaped Interrogations

Thirdly, the office has a program in which videotaped interrogations of defendants awaiting arraignment on felony charges are conducted. The entire interrogation, which is conducted by an office investigator or an assistant district attorney, is videotaped from beginning to end – and the defendant decides whether to speak to the office knowing that the interrogation is being videotaped. A copy of the videotape is given to defense counsel at arraignment. The information produced during these interviews has, in some cases, quickly confirmed the office's assessment of the case; in others led to a modification of the charges; and in still others to promptly exonerate individuals who have been mistakenly arrested.

In addition, the Queens District Attorney's office makes

every effort to instill in its assistants the need to keep an open mind throughout the life of a case and to examine and re-examine every aspect of the case to make certain that every witness account makes sense, every piece of forensic evidence fits and every investigative lead has been adequately pursued.

The office has also been moving more and more toward vertical prosecution so that the same assistant who rides the case puts the case into the grand jury and also brings the case to trial. That helps to ensure that the trial assistant has the best understanding of all the facts and circumstances rather than having to rely on another assistant's investigation or analysis.

Plea Policy

Also extraordinarily helpful is the office's plea policy – which severely limits post-indictment plea bargaining. In the overwhelming majority of cases, defendants in Queens County choose to waive the provisions of C.P.L. 180.80 in order to engage in discussions with the District Attorney's Office. This gives the office more time to thoroughly investigate and review cases before they are indicted.

All parties benefit when we uncover problems early and resolve them one way or the other rather than indicting problem cases with the hope that we can sort it all out later. And if we have focused on the wrong man, we are not searching for the right man – and public safety is endangered.

The District Attorney's Office also urges defense counsel to come in early and tell us about any evidence that they might possess that raises concerns about a defendant's guilt.

A Reputation For Fairness

While we strongly encourage defense counsel to approach us immediately, we treat wrong man allegations with the seriousness they deserve whenever they are made. We are always ready to listen to claims of innocence. When a credible claim is raised post-conviction, a senior prosecutor is assigned to review it. Our office has earned a reputation for fairness because we

are not afraid to take a hard look at a case after a conviction to make sure that justice has been done.

It is a difficult and time-consuming effort to re-examine cases – particularly many years later when witnesses' recollections may have dimmed and physical evidence and records may no longer be available. We undertake this effort readily, however, when any real issue is presented as to a defendant's guilt, even if it does not ultimately result in the defendant's exoneration.

What Else Can Be Done?

Firstly, we must ensure that we have prompt and comprehensive access to technology, such as DNA, that can definitively establish defendant's guilt or innocence. We have learned that DNA is a powerful tool to exonerate those who have been wrongly convicted. And yet we have moved far too slowly in expanding our DNA database and still do not take samples from all convicted offenders. Consequently, we have missed many opportunities to promptly and correctly solve crimes. Few changes in our criminal justice system would have as direct and important an effect on preventing wrongful convictions as early access to DNA test results from an expanded database.

Personal Responsibility in the Criminal Justice System

Secondly, we must help change attitudes and work habits that foster an atmosphere in which mistakes can go unnoticed. The participants in the criminal justice system rely too often on others to do their part to ensure that justice is done. Prosecutors rely on the police to investigate fully and thoroughly. Police rely on prosecutors to test the legal sufficiency of their cases and the strength and credibility of the evidence. Prosecutors rely on defense attorneys to present a vigorous and professional defense and to aggressively test the prosecution case at trial. When any component of the system fails to perform its role adequately, the potential exists for error. We must begin to instill in every participant, through training and encouragement, a sense of individual and personal responsibility for obtaining a just result.

And finally, we must demand the highest ethical and professional standards of all participants in the criminal justice system. Prosecutors, especially, must be held to a higher standard of conduct. They must refrain from improper conduct and at all times act in a manner consistent with the highest ethical standards. Assistants in the Queens District Attorney's Office are literally told on the day they arrive that our paramount goal is to do justice.

Training

One of the most important means by which a District Attorney can send a clear and unequivocal message to

his or her assistants regarding their professional responsibilities is training. Our office, for example, has a full time Director of Training. Assistants in my office receive intensive and repeated instruction throughout their careers on both substantive and procedural law and ethical responsibilities. The training that we provide is supplemented by regional and statewide training programs.

The New York State District Attorneys Association has a training committee that conducts regional training programs. And NYPTI – the New York Prosecutors Training Institute – which serves as the full time training arm of the District Attorneys Association, makes sure that assistants in offices large and small, in every area of the State, have access to free, quality programs.

NYPTI provides New York prosecutors with legal and technical assistance both in and out of the courtroom and offers continuing legal education programs on a broad spectrum of legal and ethical issues.

In addition to day-long training conferences throughout the year, NYPTI has established a summer college at Syracuse University which offers training to over 1,000 prosecutors over a two-week period.

Guarding Against Moral Exhaustion

We must also guard against moral exhaustion and cynicism. We must refuse to tolerate laziness, incompetence and negligence in ourselves, our colleagues and our adversaries. We must maintain a high state of alert to any indication of corruption or misconduct and root it out immediately. We must trust each other more and eschew gamesmanship for better communication and cooperation in areas where we have a common, vital interest.

Judges have a particularly critical role to play. For it is the judiciary to whom we look to insure fairness, to hold both sides to the highest standards of professionalism and to keep a watchful eye out for the slightest indication that justice is not being served.

Strengthening Safeguards

But most of all, it is essential that each of the components of the criminal justice system work together to strengthen the safeguards against wrongful convictions and erroneous identifications. For as I said at the outset, there is one thing upon which we can all agree – one conviction of an innocent person is one too many.