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We Need Second Look Programs In The Prosecutor's Office

In the last issue of *The Guardian*, I mentioned the shining example that Dallas District Attorney Craig Watkins represents in vigorously pursuing not only convictions of the guilty, but also in taking the lead in the battle against wrongful convictions. In case anybody missed last week's issue, I will review very briefly:

Watkins not only lobbies for change in the law to prevent wrongful convictions, and testifies at legislative hearings, giving frequent public presentations, but also has a "Conviction Integrity Unit" in which his staff looks for wrongful convictions. Thus far, the number is up to seven in terms of the DNA exonerations in Dallas since Watkins started the Unit, reviewing old cases in which his predecessor, Bill Hill, successfully blocked defendants' requests for DNA testing in court.

The Bronx DA's Office

The Bronx DA's Office was selected for this article because there have been known wrongful conviction there, and because of its proximity to Westchester.

Alan Newton served 21 years for Rape before he was exonerated by DNA evidence. His wrongful conviction was based upon misidentification. Newton was wrongfully convicted in 1985, and according to The Innocence Project's website, he "first requested postconviction DNA testing on August 16, 1994.

The Court denied his request on November 3, 1994, because "the kit could not be located." In 2005, at the request of the Innocence Project, the Bronx County District Attorney's Office asked the Property Clerk Division of the Police Department to conduct a search for the victim's rape kit, despite claims made by officials at that Office, over the course of 11 years, that the

kit "could not be located and was presumed destroyed."

In November 2005, the kit was found after a physical search of the evidence barrels at the Pearson Place, Queens warehouse. The rape kit was found in "the same barrel that was indicated on the evidence voucher." When the DNA proved that the semen found in the victim did not come from him, Newton's conviction was overturned, and he was exonerated. The District Attorney's Office joined in the Defense motion to vacate his conviction.

The Guardian contacted the Bronx District Attorney's Office and explained that an article was being written about the presence, or absence, of a Conviction Integrity Unit within various Prosecutors' offices, including The Bronx. A request was made to name the personnel who worked in such a unit, to list their titles, and to mention what the day-to-day work of that unit typically looked like. It was further explained that if there was no Conviction Integrity Unit, *The Guardian* would like to know why, especially in light of Newton's wrongful conviction.

Bronx District Attorney Robert Johnson, through his spokesperson Steven Reed, released the following statement: "Investigating post conviction claims of innocence is an integral part of my responsibility. Our mandate to see that justice is served permeates the entire organizational structure of the Office. One example of this occurred several years ago when the Innocence Project asked for our help in locating DNA evidence which was in the custody of the police department's Property Clerk.

Although the NYPD repeatedly insisted that the rape kit had been lost,

the evidence eventually was located because of the persistence of the Chief of my Sex Crime Bureau. Her determination in approaching this matter, which ultimately led to the exoneration of Alan Newton, is not unique.

Many times, defense attorneys have approached our Office with claims of innocence, and requests that we investigate, and all such requests are given full consideration. All of the lawyers in this Office, particularly those in the Appeals Bureau, have been instructed to review claims of innocence on a case-by-case basis and, in so doing, not to rely solely on technical legal arguments concerning questions that have been raised regarding issues of guilt or innocence."

Analysis Of The Response

Before getting to the merits of the response, I want to first give credit to Bronx DA Robert Johnson for not fighting against Newton once the DNA did not match him. This is in marked contrast to the, too often seen, all-out fight, no matter what, to preserve convictions at all costs; knowingly fighting against innocent defendants such as I have previously written about.

Former Dallas D.A. Bill Hill in fighting against DNA Testing, Thomas Spota in the Marty Tankleff case, and Jeanine Pirro in fighting against all of my appeals come immediately to mind.

In terms of the content of the statement, I certainly agree with Bronx DA Robert Johnson that investigating post-conviction claims of innocence is part of his job. It is nice to hear somebody say that, considering the marked contrast with the attitudes and occasional public statements from some people in positions of authority. For example,

the two Dallas County Commissioners who voted against Watkins getting the necessary funding, made public statements to the effect that they were against giving the funding because it would "place the district attorney in the role of defense counsel."

Similarly, unlike my personal past experiences, along with many other cases in which district attorneys preserve wrongful convictions, by hook or by crook, including fighting claims of innocence by the use of technical legal arguments, it is refreshing to hear someone in a position of authority acknowledge that moral fact.

Those statements however, merely acknowledge a duty, they are not tantamount to action. The Bronx District Attorney's Office has no Conviction Integrity Unit. In fact, when *The Guardian* called about the subject, Mr. Reed was quite surprised to hear of the presence of one in Watkins' office. That alone proves that there is no such division and no one whose daily job it is to work there. The very concept is very foreign to such Assistant District Attorneys.

Analyzing the statement that was made further, I would like to point out that investigating claims of innocence once a defendant's attorney has made such a claim, while laudable, is waiting until a possible wrongful conviction is brought to you, as opposed to being proactive and poring over old cases, as Watkins' staff is doing.

Furthermore, I would like to know how many cases have there been where a defense attorney has asked the DA's office to reinvestigate? What are the names of the cases? What were the outcomes? Why? Who worked on them?

Alas, we will never know, because



when *The Guardian* placed a further phone call to the Bronx DA's Office pointing out the difference between proactively investigating wrongful convictions, and waiting for requests to do so from defense attorneys, looking for a further comment, Mr. Reed swiftly and curtly responded by stating that they had already given a statement, thereby making clear that the dialogue was over. Such actions are consistent with being defensive and evasive. People who are evasive, rather than being forthcoming, are typically hiding something.

I do not agree with the way the Bronx DA is trying to spin his Office's role in the Newton case. Although, at the end, the Sex Crime Bureau Chief went and found the evidence, what about everything that went down before that?

I would like to point out that at the time of his exoneration, all of Newton's appeals had long since been exhausted. He had raised, among other issues, his innocence. Far from reinvestigating a case when innocence is alleged, they, the Bronx DA's Office, successfully fought against all of his appeals.

Recent court documents reveal that the Bronx DA failed to investigate Newton's alibi. Additionally, what happened during all of the searches prior to the last search? Why could nobody find the evidence, when it was right where the voucher had said that it would be during the whole time? It is also worth noting that Newton is suing the Bronx DA, so clearly he does not regard them as pro-active heroes in his case.

The Manhattan DA's Office

Who could ever forget the "Central Park Jogger" case, in which Yusuf Salaam, Kevin Richardson, Korey Wise, Raymond Santana, and Antron McCray, were wrongly convicted before being exonerated by DNA, with the real perpetrator identified? The case was heavily sensationalized. Salaam served five and a half years, Richardson five and a half, Wise eleven and a half, Santana five, and McCray served six years.

The following facts are taken from The Innocence Project's website:

"After prolonged interrogation, the

defendants confessed. The defendants were between 14 and 16 years of age. Richardson, McCray, Sanatana, and Wise all gave videotaped confessions.

The confessions were presented as evidence though they differed in the time, location, and participants of the rape. At trial, the prosecutors also presented forensic evidence, including hair found on one of the defendants that 'matched and resembled' that of the victim and a hair found on the victim's clothing that was believed to have originated from one of the defendants.

Also presented as evidence was a rock found near the scene of the crime that had blood and hair on it; evidence that was believed to have come from the victim. The following year, all five teenagers were convicted, in two separate trials, of charges stemming from the attack.

Raymond Santana was tried as a juvenile and convicted of rape and assault. He was sentenced to five to ten years.

In early 2002, Matias Reyes, a convicted murderer and rapist, admitted that he alone was responsible for the attack on the Central Park jogger. Reyes had already committed another rape near Central Park days earlier in 1989, using the same *modus operandi*. The victim of that rape had described the rapist as having fresh stitches in his chin and an investigator quickly linked Reyes to this description.

Although the police had Reyes's name on file, they failed to connect Reyes to the rape and assault of the Central Park jogger. Eventually, the evidence from the crime was subjected to DNA testing. The DNA profile obtained from the spermatozoa found in the rape kit matched the profile of Reyes. Mitochondrial DNA testing on the hairs found on one of the defendants revealed that the hairs were not related to the victim or the crime.

Further testing on hairs found on the victim also matched Reyes. Neither blood nor the hair found on the rock matched the victim. The evidence corroborates Reyes's confession to the crime and is consistent with the other crimes committed by Reyes. He is currently serving a life sentence for those

crimes.

The investigation of the convictions of these five teenagers has raised questions regarding police coercion and false confessions, as well as, the vulnerability of juveniles during police interrogations. In retrospect, it is clear, these young men did not know where, how, or when the attack took place. On December 19, 2002, on the recommendation of the District Attorney, citing the DNA evidence, the weakness of the case, and how the statements were conflicting, the convictions of the five men were overturned."

In addition, in a case touched on in a prior issue of *The Guardian*, David Lemus and Omar Hidalgo served time wrongfully in a shooting murder- known as "The Palladium Case". They both served more than a decade before they were freed. A big factor in their being freed was evidence pointing to the real killer. There were numerous witness statements implicating the real murderer which were hidden from the Defense, including third party admissions that he made to people. The assistant prosecutor, Daniel Bibb, himself became convinced of Lemus' and Hidalgo's innocence.

With these cases, it becomes clear that the Manhattan DA's Office has had significant problems with wrongful convictions. *The Guardian* placed a call to the Manhattan D.A's Office. Jennifer Kushner, spokeswoman for Manhattan District Attorney Robert Morgenthau, mentioned the following statement, when asked whether they have a Conviction Integrity Unit: "We review cases when the facts demand it". When asked

what the criteria were for reinvestigating cases, she said "No Comment."

Analysis Of The Response

Much like Bronx DA Johnson's Office, Manhattan DA Mogenthau's Office was not totally forthcoming, to say the least. Merely claiming that they reinvestigate cases whenever the facts demand it, is not the same thing as taking a proactive position of having a review office look for cases of wrongful convictions on their own, without being prompted by a defense attorney or an outside agency. There is no Conviction Integrity Unit in the Manhattan DA's office, despite the numerous wrongful convictions.

In terms of how the Central Park Jogger Case was handled, the same inconsistencies that were cited in support of dropping the case, were present at the time that they were convicted. So again, like Johnson, some credit at the end may be called for, but well deserved criticism for what went on before that.

They did reinvestigate the Lemus and Hidalgo case once evidence started popping up, but the investigation process was really stretched out far longer than necessary. In fact, the detectives who turned up the evidence of innocence grew quite impatient. Then, even after the prosecutor went to his superiors and told them that he was convinced of the defendants' innocence, he was told to go into the post conviction hearing and try to uphold their convictions anyway.

Finally, even after the conviction were overturned, the Manhattan DA's office retried David Lemus, despite the evidence.

Next week we'll take a look at the Westchester DA's Office. ■

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